

A Legal Study of the Implementation of Just Compensation in Korean Urban Redevelopment - Focus on the Relocation Assistance -

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II. Background of the Relocation Assistance Statute	IV. Conclusion

한국에서의 주택재개발사업은 정비구역 안에서 인가받은 관리처분 계획에 따라 주택 및 부대·복리시설을 건설해 공급하거나 환지로 공급하는 방법을 이용하고, 정비구역 내 토지 등 소유자 전원은 강제로 사업에 참여하게 된다. 오늘날 공공개발사업 대부분이 대규모로 이루어지면서 새로운 보상의 문제에 대하여 당사자들은 생활보상 등의 욕구가 점차 강해지고 있다. 특히 도시 및 주거환경정비법에서는 재개발사업의 공익사업적 성격을 고려해 재개발사업시행자(조합)의 토지, 물건 등의 수용권한을 인정하고 있으며, 이에 따른 손실보상에 대해서는 대부분 ‘공익사업을 위한 토지 등의 취득 및 보상에 관한 법률’을 준용하도록 정하고 있다. 세입자이주대책이란 생활보상의 일환으로 공익

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사업의 시행으로 인하여 생활기반을 상실한 자에게 종전의 생활 상태를 유지·회복시키기 위해 행하는 보상으로서 손실보상의 한 부분으로 이루어진다. ‘공익사업을 위한 토지 등의 취득 및 보상에 관한 법률’ 제78조 제5항 및 동법 시행규칙 제54조는 “공익사업의 시행으로 인하여 이주하게 되는 주거용 건축물의 세입자로서 사업인정고시일 등 당시 또는 공익사업을 위한 관계법령에 의한 고시 등이 있을 당시 해당 공익사업시행지구 안에서 3개월 이상 거주한 자에 대하여는 가구원수에 따라 4개월분의 주거이전비를 보상하여야 한다. 다만, 무허가건축물 등에 입주한 세입자로서 사업인정고시일 등 당시 또는 공익사업을 위한 관계법령에 의한 고시 등이 있을 당시 그 공익사업지구 안에서 1년 이상 거주한 세입자에 대하여는 본문에 따라 주거이전비를 보상하여야 한다”라고 규정하고 있다. 이 논문에서는 공익사업의 시행에 따라 이주하는 손실보상 규정의 입법 미비 또는 기준 미정립 등으로 현금청산자, 세입자들의 민원, 소송 등이 남발돼 조합은 유·무형의 불필요한 비용을 지출하는 경우가 많다. 정비사업 지구 내에 거주하는 세입자들에 대한 토지수용 등에 의해 생활기반이 침해되는 경우 사업의 방식이나 형태에 따라 그 특성들을 감안한 기준 등이 마련되어 있지 않아 이에 대한 기준의 정비와 세부적인 대책이 시급한 실정이다. 본고에서는 도시정비등 재개발사업에서 세입자들을 대상으로 주거이전비를 보상하고 있는 법 규정 및 판례를 바탕으로 주거이전비 등 대상자에 손실보상의 문제점에 대해 검토하였다. 이 논문에서는 이와 관련해 실무상 많은 문제가 되는 법적 쟁점들을 살펴보고 관련 판례들을 정당보상이라는 손실보상의 원칙에 비추려 비판적으로 살펴보고 이를 비판하여 주거이전비 등 대상자에 손실보상의 문제점에 이주지원 대상, 이주지원 보상수단, 구제 수단 등에 관한 입법적 대안을 제시하였다.

[주제어] 정당한 보상, 도시재개발 수용 조항, 토지사용규제, 이주보상, 손실 보상

I . Introduction

South Korea's rapid economic growth over the last fifty years has dramatically changed the composition of its urban areas.¹⁾ Since the 1960s, a large proportion of the South Korean population has flooded into Seoul for job opportunities. As of 2009, the Seoul National Capital Area, which includes Seoul and its vicinity areas, had twenty-four million inhabitants, comprising almost half of the total South Korean population. As the most densely populated metropolitan city of South Korea, Seoul is the main target of urban redevelopment projects.²⁾ Today, urban redevelopment in Seoul and its vicinity continues in order to accommodate the large population and to renovate old urban districts. These redevelopment projects usually result in developers acquiring land from existing owners and renters. The South Korean government justifies large-scale land acquisition related to urban redevelopment as a public works project, enhancing the quality of urban living and promoting modernization. One of the major urban redevelopment projects in Seoul was the "New Town Project."

The New Town Project is a comprehensive urban redevelopment project intended to transform broad areas of Seoul to create a new "town" within the city. Under the Project, the city not only replaces old, substandard housing with new, modernized housing, but also provides new roads, parks, and

1) Lisa Kim Davis, *Housing, Evictions and the Seoul 1988 Summer Olympic Games* 8 (2007); <http://www.cohre.org/store/attachments/Seoul_background_paper.pdf>, (last visited January 2, 2021). The Asian Coalition for Housing Rights, *Evictions in Seoul*, South Korea, 1.1 *Env't & Urbanization* 89 (1989).

2) Davis, *supra* note 1, at 21; The Asian Coalition for Housing Rights, *supra* note 1, at 89; Myung-Hoon Lee, *Tasks to Improve Public Characteristics in Redevelopment Project*, 325 *Urb. Info. Serv.* 5 (2009), available at <<http://www.kpa1959.or.kr/>>, (last visited January 2, 2021).

schools.³⁾ While urban redevelopment projects have improved the quality of housing and urban living for some people, they simultaneously created a significant relocation problem for displaced residents. The low resettlement rate after the developers' large-scale land acquisition is attributable to two things. First, the redevelopment projects reduced the quantity of available housing units. Second, the redevelopment projects construct housing units that are prohibitively expensive for the original residents, who are mainly poor or low-income people.⁴⁾ Thus, with respect to low-income residents, these urban redevelopment projects failed to improve the original residents' housing quality, which was one of the stated purposes of the project, and low-income residents have been effectively expelled from the redeveloped districts.

As a result, the current urban redevelopment projects primarily benefit wealthy new residents at the expense of low-income original residents. Displaced residents strongly resent this policy and have initiated protests. Tragically, having failed to secure alternative housing, some displaced residents committed suicide out of frustration, anger, and desperation after losing their homes. In response, displaced residents demanded that the Korean National Assembly amend the law governing compensation for displaced residents, the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor ("Compensation Act").

Among other things, they criticized the unfairness and inadequacy of relocation assistance, which is provided under Article 78(1) of the Compensation Act ("Relocation Assistance Statute"). However, no changes

3) Soo-Hyun Kim, *A Study on the Issue and Fundamental Alternative of South Korean Urban Redevelopment Program: New Town Project*, 15 *Citizens & World* 212 (2009).

4) Chang-Hum Byun, *Directing Seoul Urban Redevelopment for Sustainability and Housing Stability*, 325 *Urban Information Service* 7 (2009).

have been introduced yet, and courts have increased the developers' discretionary power in implementing relocation assistance by interpreting the statute in favor of the developers. This study argues that South Korea should amend the Relocation Assistance Statute to ensure adequate and equitable relocation assistance for displaced residents by clarifying their legal right to relocation assistance and legal obligations of developers. This study describes the Relocation Assistance Statute, and argues that although the statute imposes obligations upon developers to provide relocation assistance to displaced residents, its vagueness as to the displaced residents' legal right to relocation assistance and developers' duties to fulfill the legal obligation causes confusion and arbitrariness in its implementation.

This study analyzes the Korean Supreme Court's interpretation of the Relocation Assistance Statute, which held that displaced residents do not have a legal right to demand relocation assistance and developers enjoy broad discretion in establishing and implementing the relocation assistance. This study argues that, contrary to the Court's interpretation, relocation assistance is an integral part of the fundamental human rights recognized by the Korean Constitution and the International Covenant on Economic Social and Cultural Rights. In conclusion, this comment recommends that the Korean National Assembly amend the Relocation Assistance Statute to: 1) recognize displaced residents' legal right to relocation assistance, 2) establish standards for adequate relocation assistance, and 3) provide appropriate and accessible complaint procedures for displaced residents.

II. Background of the Relocation Assistance Statute

The Relocation Assistance Statute creates a legal obligation for developers to provide relocation assistance to displaced residents; however, the statute's vagueness has undermined the intent of the statute and caused significant confusion and arbitrariness in its implementation. Although the Relocation Assistance Statute imposes a duty on developers to provide relocation assistance for displaced residents,⁵⁾ it fails to specify what means are acceptable to fulfill the developers' legal obligation to the displaced residents. As a result, the city of Seoul has exploited the statutory vagueness to adopt controversial relocation assistance methods.

1. Relocation Assistance Statute

When the South Korean government implements an urban redevelopment project under the Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents ("Urban Redevelopment Act"),⁶⁾ the Compensation Act governs.⁷⁾ The Urban Redevelopment Act provides that developers may expropriate or use private property to implement an urban redevelopment project.⁸⁾ The developers, as defined under the Urban Redevelopment Act, include public sectors, such as local governments or governmental entities, as well as private sectors, such as landowners or private construction companies.⁹⁾ When a developer acquires or uses private

5) Compensation Act, art. 78(1).

6) Urban Redevelopment Act.

7) Id. art. 40(1).

8) Id. art. 38.

9) Landowners can initiate redevelopment by establishing a partnership with at least three

property for an urban redevelopment project, Article 40(1) of the Urban Redevelopment Act requires that developer to provide compensation according to the Compensation Act.¹⁰⁾

The Compensation Act is a comprehensive statute that regulates compensation for people who lose their property due to public use or acquisition.¹¹⁾ The Act was created in 1976 as the Special Act on the Acquisition and Compensation for Loss of Land for Public Use (“Special Act”) and was reenacted in 2003 to merge with other relevant statutes. The reenacted Compensation Act aimed to establish both the economic standard and the procedural process to administer compensation claims; and further aimed to provide more comprehensive legal protections to people whose property rights were infringed because of public works.¹²⁾

The Compensation Act provides several means of compensation for displaced residents - people who lose their homes due to appropriation for public use.¹³⁾ It requires developers to pay the owner the price of the land and the building.¹⁴⁾ In addition, developers have the obligation to pay the

fourths of landowners. *Id.* arts. 13, 16 (1)-(2). Public or private construction companies can join in the redevelopment with the partnership’s consent. *Id.* art. 8. Redevelopment generally takes place in the form of joint redevelopment, in part because construction companies often lobby or harass landowners to get the necessary consents. Myung-Hoon Lee, *supra* note 5, at 5; The Asian Coalition for Housing Rights, *supra* note 1, at 91-92.

10) Urban Redevelopment Act, art. 40(1).

11) Compensation Act, sarts. 1.

12) *Id.*

13) Compensation Act, sarts. 70-82.

14) Where a person’s land is expropriated, the Compensation Act requires developers to pay the owner the price of the land, as evaluated in the public record, in consideration of inflation and the value of location of the land. *Id.* art. 70(1). For the loss of a building, the Compensation Act requires developers to compensate for the building, in which case the amount of compensation can be either the cost of rebuilding the building in a new location or the price of the building, whichever is lower. *Id.* art. 75(1).

residents for their moving costs.¹⁵⁾ Relocation assistance is a specific form of compensation under the Relocation Assistance Statute of the Compensation Act¹⁶⁾ available to displaced residents - those who lose their homes due to appropriation for public use - in addition to the compensation for the land, building, and moving costs. The Relocation Assistance Statute provides:

Any developer shall either formulate and implement a relocation plan or pay the relocation fund, under the conditions as prescribed by the Presidential Decree, for persons who come to lose their basis for living due to an implementation of public works (hereinafter referred to as “persons subject to a relocation plan”) by providing the residential buildings.¹⁷⁾ Under the Relocation Assistance Statute, developers must provide relocation assistance either as a relocation plan or relocation fund to “persons subject to a relocation plan.”¹⁸⁾ The statute does not articulate a clear definition

15) Id. art. 78(5).

16) Id. art. 78(1).

17) Id. The translation of the statute here is a modified version from that of the Korean Legislation Research Institute. The translation by Korean Legislation Research Institute reads: “any project operator shall either formulate and implement a plan for moving or pay the resettlement funds, under the conditions as prescribed by the Presidential Decree, for persons who [come] to lose their basis for living due to an implementation of public works (hereinafter referred to as “persons subject to a plan for moving”) by providing the residential buildings.” This comment chose a different English translation for “project operator,” “plan for moving,” “resettlement funds,” and “persons subject to a plan for moving” and instead used “developer,” “relocation plan,” “relocation fund,” and “persons subject to a relocation plan,” respectively, for clarity and consistency without changing the original meaning of the statutory language in Korean.

18) Compensation Act, art. 78(1). When there are requests by more than ten households, developers must establish and provide a relocation plan. Gonggiksaupeul Wehan Toji Deungeui Chideuk Mit Bosangheh Kwanhan Bunryul Sihangryung [Enforcement Decree Pursuant to the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor] Rule No. 21565, art. 40 (amended 2009) [hereinafter Compensation Act Enforcement Decree].

of a relocation plan or relocation fund.¹⁹⁾ The statute only implicitly indicates that a relocation plan is a form of non-monetary relocation assistance, whereas a relocation fund is monetary compensation.²⁰⁾ Both forms of relocation assistance are available to “persons subject to a relocation plan,” meaning that those who are qualified for a relocation plan may be eligible to receive any benefit under the statute.²¹⁾ Therefore, the scope and content of the relocation plan is critical to the implementation of either type of relocation assistance.²²⁾

Although the Relocation Assistance Statute provides the legal basis that obligates developers to provide relocation assistance, it contains much ambiguity in its implementation. First, the statute does not specify how developers must fulfill their obligation to provide relocation assistance.²³⁾

19) Compensation Act, art. 78(1).

20) *Id.* Developers must provide a relocation fund when the developer does not implement a relocation plan or the “persons subject to a relocation plan” move to a district where the relocation plan does not cover. Compensation Act Enforcement Decree, *supra* note 50, art. 41. However, the amount of compensation provided as a relocation fund is not necessarily comparable to the relocation plan. Under the current government regulation, persons subject to a relocation plan may receive a relocation fund for thirty percent of the value of the appropriated residential building, the total amount of which is contained to minimum 5,000,000 (approximately US \$ 50,000) and maximum 10,000,000 (approximately US \$ 100,000). Gongiksaupeul Wehan Toji Deungeui Chideuk Mit Bosangheh Kwanhan Bunryul Sihanggyuchick [Enforcement Regulation Pursuant to the Act on the Acquisition of Land, etc. for Public Works and the Compensation Therefor] Rule No. 180, art. 53(2) (amended 2009).

21) In accordance with the Relocation Assistance Statute, the subsequent governmental regulations consistently use the term “persons subject to a relocation plan” as the target population for relocation assistance. E.g., Compensation Act Enforcement Decree, *supra* 50, arts. 40, 41 (relocation fund is available to “persons subject to a relocation plan”).

22) The Korean Supreme Court contemplated that a relocation fund is a form of relocation plan. 92Da35783 (en banc), (Gong1994.7.1.(971), 1779) (Supreme Ct., May 24, 1994) [hereinafter 92Da35783 [Lee Chun-Jae Case]] (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting on other grounds).

The Statute fails to set a clear standard for determining the adequacy of a relocation plan.²⁴⁾ Article 78(4) of the Compensation Act mandates the relocation plan to contain “the basic facilities for living on a normal level, such as roads, water-supply facilities, drainage facilities and other public facilities”²⁵⁾ However, the mere assurance of a basic living standard is insufficient as a standard for relocation assistance because it simply ignores the compensatory nature of the relocation assistance. Additionally, Article 78(2) requires developers to consult the local government when they intend to establish a relocation plan, and yet the provision fails to provide a standard on which the government can evaluate and monitor it.²⁶⁾ In the absence of clear guidance under the statute, developers are theoretically free to adopt any method to satisfy this vague legal obligation.

Second, the Relocation Assistance Statute does not specify how displaced residents can seek recourse against developers. It is ambiguous whether it creates a legal right for individuals to seek relocation assistance against developers when a developer fails to fulfill its statutory obligation. Thus, under the Relocation Assistance Statute, the question arises how, and if at all, a displaced resident can challenge a developer’s rejection to relocation assistance.²⁷⁾ While the Relocation Assistance Statute is silent about legal rights of displaced residents, developers can legally exclude renters and occupants of illegally constructed homes from relocation assistance under Article 40(3) of the Presidential Decree pursuant to the Relocation Assistance

23) See Compensation Act, art. 78(1).

24) See *id.* art. 78(1).

25) *Id.* art. 78(4).

26) *Id.* art. 78(2).

27) See, e.g., 92Da14908, (Gong1992, 2647) (Supreme Ct., July 28, 1992) [hereinafter 92Da14908 [Choi Yong-Min Case]]; 92Da35783 [Lee Chun-Jae Case], *supra* note 54.

Statute (“Presidential Decree”).²⁸⁾ This exclusion has caused serious resentment over the Relocation Assistance Statute because it effectively takes homes from the most disadvantaged people without providing alternative housing. Ambiguities in the Relocation Assistance Statute have resulted in a great deal of disputes, especially in Seoul where major redevelopment projects have taken place.²⁹⁾ Particularly, the controversies that Seoul has experienced in recent decades show how the ambiguities of the Relocation Assistance Statute create confusion and resentment in implementing its noble goal of providing relocation assistance.

2. The Ambiguous Terms of the Relocation Assistance Statute

The Relocation Assistance Statute fails to explain how developers should fulfill their relocation assistance obligations under Article 78(1). The city of Seoul filled this gap by promulgating the Seoul City Ordinance on Special Supply of Citizen Housing for Displaced Residents (“Housing Ordinance”).³⁰⁾ Before it was amended in 2008, the Housing Ordinance required the city to provide Special Bunyangkwon (“Bunyangkwon”) to displaced residents when it conducts redevelopment projects in Seoul. Bunyangkwon can be defined as a right of first refusal to occupy a redeveloped housing unit.³¹⁾

28) Compensation Act Enforcement Decree, art. 40(3).

29) See, e.g., 92Da14908 [Choi Yong-Min Case], *supra* note 60; 92Da35783 [Lee-Chun-Jae Case], *supra* note 54; 94Nu11279, (Gong1995.12.1.(1005), 3795) (Supreme Ct., Oct. 12, 1995) [hereinafter 94Nu11279 [Lee Yang-Ok Case]].

30) Seoulteukbyulsi Chulgumin Deungeh Daehan Kukminjootaek Teukbyulgonnggeup Gyuchick [Seoul City Ordinance on Special Supply of Citizen Housing for Displaced Residents], Ordinance No. 3616 (2008) [hereinafter Seoul Housing Ordinance].

31) See 92Da35783 [Lee Chun-Jae Case], *supra* note 54. Bunyangkwon literally means a right to allocation. Depending on the context, Bunyangkwon can be used to mean a right to

Bunyangkwon did not guarantee new housing; it only gave displaced residents an option to secure a new housing unit by placing a deposit before developers began to sell the housing in the market. For forty years, Bunyangkwon was the primary tool for implementing the city's compensation obligations under the Relocation Assistance Statute for urban redevelopment projects in Seoul.³²⁾

The effectiveness of Bunyangkwon was controversial. In a way, it was an effective means of relocation assistance because it allowed the residents to buy a new home at a relatively low price in the new development before its price increased in the open market. However, even the relatively low price was prohibitively expensive for the original residents in many cases.³³⁾ While the original residents were mainly low-income people living in small substandard homes, developers tended to build large, luxurious buildings in their place. Moreover, it created a black market for the trading of Bunyangkwon between residents and outsiders. Outsiders, who could afford the new housing, had an incentive to buy the original occupants' Bunyangkwon, not only to acquire the newly developed housing, but also to enjoy the increased market value of the housing after redevelopment.³⁴⁾

Indeed, for some people, Bunyangkwon was a "ticket" to a windfall profits because they could obtain a home at a low price before the price soared after redevelopment.³⁵⁾ As a result, only a very small percentage of the original residents could resettle in their redeveloped district, even with Bunyangkwon assistance. In amending the Housing Ordinance on April 10,

get an offer to buy or lease a housing site or an apartment.

32) Id.

33) Id.

34) Id.

35) Id.

2008, Seoul abolished the Bunyangkwon compensation method. The city stated that it repealed Bunyangkwon because of: 1) a lack of new land sites for housing construction, 2) a desire to eliminate the black market for Bunyangkwon, and 3) a belief that the developers' financial burden under the Compensation Act was onerous. The city acknowledged that there would not be enough housing to offer to the displaced residents after redevelopment. With respect to developers' burden, the city indicated that a recent change in a government regulation (which now requires developers to offer moving costs to displaced homeowners as well as tenants) imposed a great burden on the developers. Whereas Bunyangkwon offered displaced residents an option to buy a new housing unit, the current Housing Ordinance provides only a right to lease to both homeowners and renters. The city explained that this new compensation plan intended to promote the city's new housing policy to guarantee "occupancy" rather than "ownership" of housing. In the amendment, the city also inserted a new eligibility condition for displaced residents, which limits the right to lease only to displaced residents who "agree to a negotiated compensation." If the displaced residents disagree with the compensation plan, they lose their right to lease under the Housing Ordinance. Although the city did not explain why it added this new condition, it appears that the city intended to use the relocation assistance not merely as compensation but also as a mechanism to precipitate redevelopment.

The repeal of Bunyangkwon instigated heated disputes about what should be adequate and fair relocation assistance for displaced residents.³⁶⁾ Many displaced homeowners fiercely opposed the new form of relocation assistance as an unfair and inadequate means of compensation for the loss of their

36) Mainly homeowners opposed the new Ordinance because it would turn them into tenants by taking their homes.

homes.³⁷⁾ However, the Relocation Assistance Statute, with the absence of clear terms, fails to guide adequacy and fairness of the relocation assistance. The subsequent Korean Supreme Court's decisions in cases below did not fill the gap in the Relocation Assistance Statute. To the contrary, the Court's decisions only broadened the leeway with which developers could formulate a relocation assistance plan at their own discretion.

III. Theoretical and Practical Considerations of Just Compensation:

1. The Theory of Just Compensation³⁸⁾

1.1 Fairness and Efficiency

The main purpose of just compensation is to act as a test of fairness.³⁹⁾ Between the need for urban development and the efficient allocation of resources, just compensation is one of several dimensions to social equity:⁴⁰⁾

37) Id.

38) The U.S. theory of just compensation, see Kihan Lee, "A Study of "just compensation." for a public use Under The Fifth Amendment of the United States Constitution", *12 Journal of global constitutional Law* 215, (2006), pp. 215-244.

39) Frank I. Michelman, "Property, Utility, and Fairness: Comments on the Ethical Foundations of" Just Compensation "Law", *80 Harv. L. Rev.* 1165, (1967), p.1172. "I shall argue that the only 'test' for compensability which is 'correct' in the sense of being directly responsive to society's purpose in engaging in a compensation practice is the test of fairness: is it fair to effectuate this social measure without granting this claim to compensation for private loss thereby inflicted?" Id. at 1171-72.

40) June Manning Thomas & Hee-Yun Hwang, "Social Equity in Redevelopment and Housing: United States and Korea", *23 J. of Plan. Educ. & Res.* 8, (2003), p.14. Other dimensions

“the purposes of just compensation are essentially two [fold]... ‘efficiency’ and ‘justice’... that satisfy some equitable principle of rightness.”⁴¹⁾ A common way to test the fairness (and thus legitimacy) of a given social measure “is to compare [society’s need] for the measure ... with the harm it will cause to the individual or class of individuals complaining. If individual losses are found to be ‘outweighed by’ social gains, the measure is deemed legitimate.”⁴²⁾ Given that a social measure is legitimate, it will be efficient if “other people’s (not society’s) gains in some sense exceed or overshadow the admitted losses.”⁴³⁾

Benefits are “measured by the total number of dollars which prospective gainers would be willing to pay to secure adoption, and losses are measured by the total number of dollars which prospective losers would insist on as the price of agreeing to adoption.”⁴⁴⁾ In cases of forced evictions, the evictees’ interests should be balanced against the interests of people who will potentially benefit from redevelopment. Immediate beneficiaries include real estate developers who reap profits from construction, and the government, which receives tax revenue from property investment as well as benefits from the positive image for the city. Finally, intermediate beneficiaries include the people who are able to move into the new dwellings built on the demolished land; most of the time this group of intermediate

of social equity include the following: “lack of oppressive practices, such as forced relocation and destruction of neighborhoods,” “equity of decision making,” and “benefits of government programs ... not ... skewed in favor of majority as opposed to minority populations.”
Id.

41) Michael A. Heller & James E. Krier, “Deterrence and Distribution in the Law of Takings”, *112 HARV. L. REV.* 997, (2003), pp. 998-99. (quoting Michelman, *supra* note 13, at 1165).

42) Michelman, *supra* note 13, at 1193.

43) Id. at 1194 (internal quotations omitted).

44) Id. at 1214.

beneficiaries is composed of middle to upper class residents.⁴⁵⁾

1.2 Just Compensation and Legitimacy

The efficiency analysis determines how much developers are willing to pay for the evictees to accept the evictions as fair.⁴⁶⁾ Just compensation is a way to distribute the cost of an inevitable taking, so that it does not fall upon the few individuals who owned the expropriated land.⁴⁷⁾ It is a way to ensure fairness. Although efficiency provides a logical framework and a critical perspective for analysis, justice and fairness should be the ultimate goals of just compensation law, because low income groups lack bargaining power to mediate, negotiate, arbitrate, or enforce compensation agreements.⁴⁸⁾

2. Problems with the Concept of Just Compensation

Just compensation assumes that the taking is inevitable. As a result, just compensation is the only justified means to ensure fairness and efficiency. However, the discussion of forced eviction is not limited to whether just compensation was paid. Sometimes evictions can involve issues on a more fundamental level, such as whether the taking itself was inevitable. For example, South Korean peasants in Pyongtaek recently organized massive

45) See Kihan Lee, “A Study of ‘just compensation’ for a public use under the regulatory taking and taking of the US Constitution”, *21 Journal of American constitutional Law* 351, (2010), pp. 351-394.

46) See Michelman, *supra* note 13.

47) Heller & Krier, *supra* note 15, at 1000.

48) See Kihan Lee, “A Comparative Legal Study of Authority and Limit of Power of Eminent Domain under the US Federal Court”, *17 Journal of Public Law* 259, (2016), pp. 259-285.

protests against forced evictions carried out to allow the expansion of a U.S. Army base.⁴⁹⁾ Their efforts attracted international attention.

Peasants in Daechuri, South Korea, evicted for the same reason, were offered a lump sum. However, because the amount was too low, farmers were unable to purchase comparable land with the compensation provided.⁵⁰⁾ In such cases, forced evictions have implications beyond the mere payment of just compensation. One such implication is that the taking may have been done with a questionable objective, and thus it was unfair and unjust. Whether just compensation is a measure of efficiency or an idealistic vehicle for justice in the fairness principle, forced evictions are still human rights violations that cause grave physical and psychological injuries to the evictees.⁵¹⁾ More often than not, monetary remedies do not compensate such injuries.⁵²⁾ Therefore, even if a just compensation clause is fully enforced, forced evictions must also be assessed from the perspective of their social effects and the demands of due process.

49) Press Release, Amnesty Int'l, South Korea: Elderly Farmers Forcibly Evicted for US Army Base (Mar. 17, 2006), <[http://news.amnesty.org/index/ENGASA250012006/\\$ FILE/newsrelease.pdf](http://news.amnesty.org/index/ENGASA250012006/$ FILE/newsrelease.pdf)>, (last visited January 2, 2021). The afflicted peasants in Pyongtaek have adopted extreme protest measures independent of the local government, such as self-defense, self-established community, and renouncement of South Korean citizenship. Save the Pyongtaek Farmers, Chronology of the Struggle, <<http://www.saveptfarmers.org>>, (last visited January 2, 2021).

50) Press Release, Amnesty Int'l, *supra* note 21.

51) Evictees have complained of losing the sentimental value they have attached to the demolished property. See Louisa Lim, China's Middle Class Rebels, BBC News Online, June 23, 2004, <<http://news.bbc.co.uk/2/hi/asia-pacific/3829935.stm>>, (last visited January 2, 2021).

52) *Id.*

3. Legal Framework for Just Compensation

3.1 South Korea Constitutional Provisions on Just Compensation

The South Korean constitutions recognize private property rights and contain just compensation clauses. The Constitution of the Republic of South Korea (hereinafter South Korean Constitution) also provides for just compensation in cases of forced evictions:

(1) The right to property of all citizens is guaranteed. Its contents and limitations are determined by law. (2) The exercise of property rights shall conform to the public welfare. (3) Expropriation, use, or restriction of private property from public necessity and compensation therefore are governed by law. However, in such a case, just compensation must be paid.⁵³⁾

These provisions lay out the basic concept of private property rights. The guarantee of private property protection was subject to a number of qualifications, such as “conformation to public welfare,” “public necessity,” and, in cases of expropriation, the compensation is to be “governed by law.”⁵⁴⁾

One significant difference between the South Korean Constitution and the Chinese Constitution is the South Korean Constitution’s guarantee of a right to adequate housing. “The State endeavors to ensure comfortable housing for all citizens through housing development policies and the like.”⁵⁵⁾ This guarantee comes in the form of a governmental responsibility. However, as discussed below, the South Korean government systematically violated this constitutional provision, both in its policy-making and in its eviction

53) S. Korea Const. art. 23, §§1-3 (1987).

54) Id.

55) Id. at art. 35, §3.

practices, starting as early as the 1950s.

In South Korea, it is clear that neither the just compensation clause nor the adequate housing guarantee have been accorded the respect they deserve as constitutional provisions. Hyung-Hook Kim attributes the non-enforcement of the South Korean Constitution's adequate housing provision to socio-cultural reasons: The failure to recognize housing rights originated from the lack of social consciousness of the poor people evicted.⁵⁶⁾

If Kim's analysis is correct, it seems peculiar that the two relevant constitutional provisions even exist in the South Korean Constitution. However, Kim's explanation sheds light on why the law has not been a major avenue through which evictees have sought remedies for their grievances. It is also noteworthy that South Korea underwent democratization only in 1987,⁵⁷⁾ before which the South Korean State assumed a strong authoritarian rule. It is not surprising that the government's development policies and beautification campaigns have overridden constitutional guarantees of just compensation and the right to adequate housing.

3.2 Other Legal Provisions

While each constitution lays out the principled requirement of just compensation, other relevant laws and regulations form the body of the legal framework that governs urban redevelopment, housing policies, and forced evictions. In the 1950s, the policy on forced evictions was a "nonprovision and forceful eviction plan," which subsequently turned into "coercive

56) Id.

57) Tom Ginsburg, Dismantling the "Developmental State"? Administrative Procedure Reform in Japan and Korea", *49 Am. J. Comp. L.* 585, (2001), pp. 591-92.

relocation” in the 1960s. Only when protest movements and strong antagonistic sentiments started to mount did the government pass the 1973 Interim Housing Improvement Act and its successor, the 1982 Urban Redevelopment Act.⁵⁸⁾ These laws list the South Korean government’s urban development and eviction policies. The Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents of 2002 (the Maintenance Act) stipulates the current South Korean policy on land redevelopment.⁵⁹⁾ This act abrogates all the redevelopment policies previously in effect⁶⁰⁾ and outlines the purpose of redevelopment,⁶¹⁾ the details of formulation of redevelopment projects,⁶²⁾ the implementation methods for rearrangement projects,⁶³⁾ and the rules of selection and termination for the managing personnel of redevelopment projects.⁶⁴⁾

The broad objectives of the Maintenance Act are to “contribute to the improvement of urban environments and the elevation of quality of residential life by prescribing the matters necessary for planned rearrangement of the areas, which are in need of restoring urban functions or whose residential functions are inferior, and for efficiency improving the worn-out and inferior structures.”⁶⁵⁾ To further these objectives, the Maintenance Act provides

58) Id.

59) Act on the Maintenance and Improvement of Urban Areas and Dwelling Conditions for Residents, No. 6852 (2002) (S. Korea) (on file with author) [hereinafter Maintenance Act]. The Maintenance Act has eighty-eight articles total, providing, in detail, all logistical and legal aspects of urban redevelopment.

60) Id. at addenda, art. 2 (“The Urban Redevelopment Act and the Act on Temporary Measures for the Improvement of Dwelling and Other Living Conditions for Low-Income Urban Residents shall be abrogated.”).

61) Id. at art. 1.

62) Id. at arts. 3, 4.

63) Id. at arts. 6, 7.

64) Maintenance Act, *supra* note 70, at arts. 8, 9, 10, 13, 14 & 15.

procedural safeguards so that the public is involved in the planning of these projects: “The head of Si/Gun⁶⁶⁾ shall formulate ... a rearrangement plan ... and offer it for a public perusal for more than 14 days, and hear the opinions of the local council.”⁶⁷⁾

The Maintenance Act authorizes government expropriation of private land for redevelopment by providing comprehensive guidelines on the mandatory procedures for the implementation of such projects.⁶⁸⁾ A companion law to the Maintenance Act is the “Act on the Acquisition of Land, Etc. For Public Works and the Compensation. Therefore of 2002” (the Compensation Act).⁶⁹⁾ The purpose of this law is to “ensure a promotion of public welfare and a pertinent protection of property rights through an efficient implementation of the public works, by prescribing the matters for indemnity of any loss incurred by the acquisition or use of the land, etc. required for the public works through consultations or expropriation.”⁷⁰⁾

Chapter VI of the Compensation Act outlines the possible types of indemnities and relevant methods of payment to be made to the “landowner or person concerned for any loss incurred by acquisition or use of the land, etc. required for public works.”⁷¹⁾ Besides lawful landowners, “persons concerned for any loss” are also included in the compensation scheme. This is a notable difference from previous policies, which do not protect tenants.

65) Id. at art. 1.

66) Si, Gun, and Gu refer to the autonomous regions in South Korea. The head of Si/Gun is equivalent to the governor of a province.

67) Maintenance Act, *supra* note 70, at art. 4.

68) Id. at art. 38.

69) Act on the Acquisition of Land, Etc. For Public Works and the Compensation Therefor, No. 6656 (2002) (Amended, Act No. 6916 (2003)) (S. Korea) (on file with author).

70) Id. at art. 1.

71) Id. at art. 61.

With a broader range of possible evictees recognized and covered, the Compensation Act shows significant progress on the part of the South Korean government. The remainder of Chapter VI outlines the different modes of payment for compensation, including cash,⁷²⁾ government bonds,⁷³⁾ and lump-sum payments upon request.⁷⁴⁾ It also provides the general guidelines for the computation of indemnity.⁷⁵⁾

4. The Korean Supreme Court Eroded Displaced Residents' Rights

The Relocation Assistance Statute does not specify whether or not it creates a legal right for displaced residents to obtain relocation assistance. Nor does it clearly describe how developers must fulfill their obligation to provide relocation assistance.⁷⁶⁾ The Korean Supreme Court reviewed these issues and concluded that the Relocation Assistance Statute does not create

72) Act on the Acquisition of Land, Etc. For Public Works and the Compensation Therefor, No. 6656 (2002) (Amended, Act No. 6916 (2003)) (S. Korea)) at art. 63, §1 (on file with author. Cash is the default method of payment as specified by the law; “except as otherwise provided for in other Acts, the indemnity for losses shall be paid in cash.” Id.

73) Id. at arts. 63, §§2, 3.

74) Id. at art. 65.

75) Id. at art. 68. In case where any project operator intends to compute the indemnity amount for the land, etc., he shall entrust the appraisal of lands, etc. to not less than two appraisal business operators under the Public notice of Values and Appraisal of Lands, etc. Act Provided, that the same shall not apply to the case where the project operator is able to compute the indemnity amount by himself according to the standards as set by the ordinance of the Ministry of Construction and Transportation. Act on the Acquisition of Land, Etc. For Public Works and the Compensation Therefor, No. 6656 (2002) (Amended, Act No. 6916 (2003)) (S. Korea) at art. 68. Art. 70 (on file with author). The Act provides detailed computation guidelines, taking into account fluctuations in price, time of purchase, land utilization, character of the land, etc. Id. at art. 70, §§1 & 2.

76) See id.

a legal right for displaced residents to obtain relocation assistance, and that developers have broad discretion in determining how to implement their legal obligation to provide relocating assistance. The Court's interpretation of the Relocation Assistance Statute effectively deprives displaced residents of their right to demand adequate and fair relocation assistance, and places them at the mercy of developers to secure relocation assistance.

According to the Korean Supreme Court, the Relocation Assistance Statute Does Not Create a Concrete Right for Displaced Residents. The Korean Supreme Court's current position on the individual rights conferred by the Relocation Assistance Statute represents a complete divergence from precedent. On July 28, 1992, the Korean Supreme Court held that the Relocation Assistance Statute creates a legal right for displaced residents to sue developers for relocation assistance when the developers allegedly fail to provide relocation assistance.⁷⁷⁾ In the 92Da14908 decision ("Choi Yong-Min case"), the developer, the Korean National Housing Corporation, declined to offer the plaintiffs Bunyangkwon as relocation assistance under its relocation plan when the property was expropriated.⁷⁸⁾ At the time of expropriation, the plaintiffs, Choi Yong-Min and another unnamed displaced

77) 92Da14908 [Choi Yong-Min Case], *supra* note 60. In this case, the Court interpreted Article 8 of the Special Act on the Acquisition and Compensation for Loss of Land for Public Use ("Special Act"), which is equivalent of the 78(1) of the Compensation Act. When the South Korean National Assembly enacted the Compensation Act in 2003, replacing the Special Act, it amended the Relocation Assistance Statute so that it applied to those who lose their "residential buildings," rather than broadly applying to people who lose land. For displaced residents, therefore, courts have continued to adopt the interpretation under Article 8 of the Special Act to interpret Article 78(1) of the Compensation Act. See, e.g., 2008Du12610, (Gong2009Sang, 475) (Supreme Ct., Mar. 12, 2009) [hereinafter 2008Du12610 [SH Corporation Case]]; 2004Hunma19, Case Report (18(1), Sang), p. 242 (Constitutional Ct., Feb. 23, 2006), [hereinafter 2004Hunma19 [Lee Sun Case]].

78) See 92Da14908 [Choi Yong-Min Case], *supra* note 60.

resident, had temporarily designated a third party as the owner in trust of their home.⁷⁹⁾ The plaintiffs argued that they were eligible for Bunyangkwon because they were the true owners of the property at issue, notwithstanding the temporary change in the title.⁸⁰⁾ However, the Corporation determined that the plaintiffs did not qualify as “persons subject to a relocation plan”⁸¹⁾ under its relocation plan and contended that the plaintiffs thus had no right to demand relocation assistance.⁸²⁾

The Court held that the plaintiffs had the legal right to challenge the developer’s denial of Bunyangkwon when the developer’s rejection was based on its own arbitrary relocation assistance eligibility determination. In reaching this holding, the Court determined that the intent of the Relocation Assistance Statute is “to provide a developer with a duty rather than power.” The Court thus concluded that “a displaced resident who is excluded from a relocation plan because of the developer’s arbitrary interpretation [of the plan] should be able to seek a claim to demand the same legal status as other displaced residents who secured the status of persons subject to a relocation plan.” In this case, the Court effectively ruled that the Relocation Assistance Statute created a private right of action allowing displaced residents to bring a civil lawsuit against developers when the residents were denied relocation assistance.⁸³⁾

This interpretation of the statute lasted only two years. On May 24, 1994, the Korean Supreme Court revisited the issue.⁸⁴⁾ In the 92Da35783 decision

79) *Id.*

80) *See id.*

81) Compensation Act, art. 78(1).

82) *See* 92Da14908 [Choi Yong-Min Case], *supra* note 60.

83) *See id.*

84) 92Da35783 [Lee Chun-Jae Case], *supra* note 54. As in the Choi Yong-Min decision,

(“Lee Chun-Jae case”), Lee Chun-Jae, who was the owner of a residential building, brought a civil suit against the developer, the Korean National Housing Corporation, seeking Bunyangkwon for relocation assistance.⁸⁵⁾ In this case, the plaintiff failed to submit an application for Bunyangkwon during the designated period.⁸⁶⁾ Meanwhile, Yang Jae-Hong, who was the plaintiff’s renter at that time, claimed ownership of the building and acquired Bunyangkwon.⁸⁷⁾ The plaintiff argued that he had the right to demand Bunyangkwon from the developer as the actual owner of the house, and that the defendant corporation was obligated to provide him with Bunyangkwon, according to the developer’s relocation plan.⁸⁸⁾

In its en banc decision, the Court disagreed with the plaintiff.⁸⁹⁾ The Court held that the Relocation Assistance Statute intends to assist displaced residents to “recover their previous living condition, as well as to ensure a quality of life as a human being.”⁹⁰⁾ However, the Court ruled that the Statute did not create a “concrete”⁹¹⁾ right for individuals to claim relocation

92Da14908 [Choi Yong-Min Case], supra note 60, the Relocation Assistance Statute interpreted in this case was Article 8 of the Special Act, which is equivalent of Article 78(1) of the Compensation Act. See text accompanying n.89.

85) 92Da35783 [Lee Chun-Jae Case], supra note 54.

86) Id. In this case, the property was appropriated for a housing site development, which is a public work implemented to develop housing sites for housing construction.

87) Id. Yang Jae-Hong was a co-defendant in this case.

88) Id. Under the corporation’s relocation plan, a person was eligible to become “persons subject to a relocation plan” if he was the actual building owner and did not have other housing. In this case, the plaintiffs argued that they satisfied both of the conditions.

89) See id.

90) 92Da35783 [Lee Chun-Jae Case], supra note 54.

91) The Korean word translated into “concrete” here can be also translated into “substantive” or “actionable,” which in any case indicates that it is a right that is deemed to have a self-sufficient power to be enforced through legal recourse. In this case, the Court used “concrete” right, as opposed to “abstract” right, to mean that a concrete right is a legal

assistance.⁹²⁾ In other words, although the statute required developers to provide relocation assistance, the Court interpreted that the requirement does not enable individuals to bring an action to demand relocation assistance against the developers.⁹³⁾ According to the Court, relocation assistance is a mere benefit arising from government's political and benevolent motivations rather than a right created because of loss.⁹⁴⁾ Thus, while individuals can generally sue for an indemnity, they cannot do so for relocation assistance because they did not suffer deprivation of a cognizable right that would allow them to bring a civil lawsuit against developers.⁹⁵⁾

The Court further stated that an individual's right to relocation assistance is realized as a concrete right only after "the resident seeks to obtain the right, and applies to the selection process, ... and the developer confirms and determines the resident as a person subject to a relocation plan."⁹⁶⁾ Thus, the Court effectively held that displaced residents under the Relocation

right that is vested in the individual and allows the individual to bring a lawsuit against developers when the right is violated. In comparison, an abstract right has no legal power in itself and needs to satisfy other conditions to have the legal effect as a concrete right. See *id.*

92) *Id.*

93) See *id.*

94) See *id.* In reaching this decision, the Court introduced the term "living compensation" as a type of compensation that is distinguishable from "indemnity." According to the court, the key distinction between living compensation and indemnity is that the right to living compensation arises from the government's political and benevolent motivations, whereas the right to indemnity arises from the loss itself. While individuals cannot bring a civil lawsuit against developers for living compensation, they can sue for an indemnity. In this case, the court held that assistance under the Relocation Assistance Statute may only be granted for living compensation.

95) See 92Da35783 [Lee Chun-Jae Case], *supra* note 54, (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting).

96) *Id.*

Assistance Statute merely have a right to apply for relocation assistance according to the developer's relocation plan, while the developer has the final decision whether or not to grant such assistance.⁹⁷⁾ The Court's interpretation of the Relocation Assistance Statute in the Lee Chun-Jae case directly contradicted its previous interpretation in the Choi Yong-Min case.⁹⁸⁾ Thus, the Supreme Court overruled the decision in the Choi Yong-Min case.⁹⁹⁾ Accordingly, subsequent cases have relied on the interpretation in the Lee Chun-Jae case and have denied displaced residents' concrete rights to relocation assistance.¹⁰⁰⁾

The Constitutional Court of Korea¹⁰¹⁾ adopted the Supreme Court's interpretation in Lee Chun-Jae case when it decided 2004Hunma19 (the "Lee Sun case") on February 23, 2006.¹⁰²⁾ In this case, Petitioner Lee Sun challenged the constitutionality of Article 40(3) of the Presidential Decree, excluding renters from relocation assistance despite the mandate under the Relocation Assistance Statute.¹⁰³⁾ In upholding the constitutionality of the

97) See *id.* (Kim Sang-Won, J., Bae Man-Woon, J., Park Man-Ho, J., Chun Kyung-Song, J., & Park Jun-Suh, J., dissenting).

98) *Id.*

99) *Id.*

100) See, e.g., 94Nu11279 [Lee Yang-Ok Case], *supra* note 63; 2008Du12610 [SH Corporation Case], *supra* note 89. South Korea has a civil law system. In the civil law system, the Lee Chun-Jae decision, 92Da35783 [Lee Chun-Jae Case], *supra* note 54, does not have a binding effect but has legal authority to serve as guidance for statutory interpretation.

101) Both the Korean Supreme Court and the Korean Constitutional Court are the courts with the highest authority in the South Korean judicial system. Although the Korean Constitutional Court is primarily responsible for dealing with constitutional disputes, the Korean Supreme Court also has the authority to interpret the Constitution when deciding cases. This parallel judicial structure, which allows the two highest courts to render different decisions about constitutionality, is controversial. Gang-Jin Cha, *Constitutional Law* 1289 (8th ed. 2008).

102) 2004Hunma19 [Lee Sun Case], *supra* note 89, at 245-46.

provision, the Constitutional Court relied on the Supreme Court's interpretation of the Relocation Assistance Statute in the Lee Chun-Jae case¹⁰⁴⁾ and ruled that relocation assistance is a form of "living compensation," which is a mere benefit given by the government, rather than a fundamental right prescribed by Constitution.¹⁰⁵⁾

This uniform interpretation of the Relocation Assistance Statute by the Supreme Court and the Constitutional Court confirms that under the current Relocation Assistance Statute whether a displaced resident has a right of action depends on the developer's decision; displaced residents can demand relocation assistance from a developer only when the developer establishes a relocation plan and designates the displaced resident as an eligible applicant.¹⁰⁶⁾ While individual displaced residents do not have a legal power to enforce the Relocation Assistance Statute, the residents are left to the mercy of the developers to secure relocation assistance.

IV. Conclusion

This study analyzes the Korean's Relocation Assistance Statute, which held that displaced residents do not have a legal right to demand relocation assistance and developers enjoy broad discretion in establishing and implementing the relocation assistance. This study argues that, contrary to

103) Id. at 243-44.

104) This case cites a Korean Supreme Court Decision, 2001Da57778, (Gong2003.9.15.(186), 1817) (Supreme Ct., July 25, 2003), which refers to the Lee Chun-Jae decision to support its decision. 92Da35783 [Lee Chun-Jae Case], *supra* note 54.

105) 2004Hunma19 [Lee Sun Case], *supra* note 89, at 246.

106) 92Da35783 [Lee Chun-Jae Case], *supra* note 54.

the Court's interpretation, relocation assistance is an integral part of the fundamental human rights recognized by the Korean Constitution and the International Covenant on Economic Social and Cultural Rights. In conclusion, this paper recommends that the Korean National Assembly amend the Relocation Assistance Statute to: 1) recognize displaced residents' legal right to relocation assistance, 2) establish standards for adequate relocation assistance, and 3) provide appropriate and accessible complaint procedures for displaced residents.

REFERENCES

1. Oriental literature

Chang-Hum Byun, Directing Seoul Urban Redevelopment for Sustainability and Housing Stability, 325 *Urban Information Service* 7 (2009).

Dae-Hee Lee, Housing Reduced to Half Due To New Town Project, *Pressian*, Jan. 16, 2009.

_____, Why Low-income Residents in Redevelopment Sites Have to Violently Resist, *Pressian*, Jan. 30, 2009.

Gwang-Suk Choi, Issues of Legal Disputes Surrounding Repeal of Special Bun yangkwon, *LawnB*, <http://www.lawnb.com> (last visited Feb. 21, 2010).

Kihan Lee, "A Study of "just compensation." for a public use Under The Fifth Amendment of the United States Constitution", 12 *Journal of Global Constitutional Law* 215, (2006), pp. 215-244.

Kihan Lee, "A Study of "just compensation." for a public use under the regulatory taking and taking of the US Constitution" 21 *Journal of American Constitutional Law* 351, (2010), pp. 351-394.

Kihan Lee, "A Comparative Legal Study of Authority and Limit of Power of Eminent Domain under the US Federal Court", 17 *Journal of Public Law* 259, (2016), pp. 259-285.

Myung-Hoon Lee, Tasks to Improve Public Characteristics in Redevelopment Project, 325 *Urb. Info. Serv.* 5 (2009).

Save the Pyongtaek Farmers, Chronology of the Struggle, <<http://www.saveptfarmers.org>>, (last visited January 2, 2021).

Si-Youn Sung & Sun-Wook Choi, Ticket for Displaced Residents Disappears

to History, Chung-Ang Daily, Apr. 19, 2008.

Soo-Hyun Kim, A Study on the Issue and Fundamental Alternative of South Korean Urban Redevelopment Program: New Town Project, 15 *Citizens & World* 212 (2009).

Sang-Cheol Kim, The Death of a Tenant: His One Year of Agony, OhMyNews, Dec. 9, 2009.

2. Western literature

Durham, James Geoffrey, "Efficient Just Compensation as a Limit on Eminent Domain", 69 *Minnesota Law Review*, (1985), pp.1277-1313.

Echeverria, J. and Dennis, S., "The Takings Issue and the Due Process Clause: A Way Out of a Doctrinal Confusion", 17 *Vermont Law Review*, (1993), pp.695-721.

Epstein, Richard A., *Takings: Private Property and the Power of Eminent Domain*, Cambridge, Harvard University Press, 1985, p.362.

Farber, Daniel A., "Economic Analysis and Just Compensation", 12 *International Review of Law and Economics*, (1992), pp.125-138.

Fischel, William A., "The Offer/Ask Disparity and Just Compensation for Takings: A Constitutional Choice Perspective", 15 *International Review of Law and Economics*, (1995), pp.187-203.

Frank I. Michelman, "Property, Utility, and Fairness: Comments on the Ethical Foundations of Just Compensation Law", 80 *Harv. L. Rev.* 1165, (1967), pp. 1165-1258.

Ghosh, Shubha, "Takings, the Exit Option and Just Compensation", 17 *International Review of Law and Economics*, (1997), pp.157-176.

- June Manning Thomas & Hee-Yun Hwang, "Social Equity in Redevelopment and Housing: United States and Korea", *23 J. of Plan. Educ. & Res.* 8, (2003), pp. 8-23.
- Kmiec, D., "The Original Understanding of the Taking Clause is Neither Weak Nor Obtuse", *88 Columbia Law Review*, (1988), pp.1630-1666.
- Knetsch, Jack L., "Environmental Policy Implications of Disparities between Willingness to Pay and Compensation Demanded Measures of Values", *18 Journal of Environmental Economics and Management*, (1990), pp.227-237.
- Lisa Kim Davis, Housing, Evictions and the Seoul 1988 Summer Olympic Games 8 (2007).
- Louisa Lim, China's Middle Class Rebels, BBC News Online, June 23, 2004.
- Michael A. Heller & James E. Krier, "Deterrence and Distribution in the Law of Takings", *112 HARV. L. REV.* 997, (2003), pp. 997-1025.
- Press Release, Amnesty Int'l, South Korea: Elderly Farmers Forcibly Evicted for US Army Base (Mar. 17, 2006).
- The Asian Coalition for Housing Rights, Evictions in Seoul, South Korea, *1.1 Env't & Urbanization* 89 (1989).
- Tom Ginsburg, "Dismantling the "Developmental State"? Administrative Procedure Reform in Japan and Korea", *49 Am. J. Comp. L.* 585, (2001), pp. 585-625.

[Abstract]

**A Legal Study of the Implementation of
Just Compensation in
Korean Urban Redevelopment
– Focus on the Relocation Assistance –**

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Major urban redevelopment projects are currently on-going to beautify the urban landscape in Seoul, which is the most densely populated metropolitan area of South Korea. In this process, massive acquisition of homes has taken place, displacing many residents who are now demanding relocation assistance. South Korean law imposes obligations upon developers to provide relocation assistance for displaced residents. However, vagueness in the statutory language causes not only confusion in the implementation of the law, but has also led to a Supreme Court decision denying displaced residents' legal right to relocation assistance. This interpretation further expanded developer's discretion in carrying out their statutory duty to provide relocation assistance. As a result, the current law fails to protect displaced residents from the exploitations of developers, who are often private, for-profit corporations. This Comment argues that South Korea should amend the Relocation Assistance Statute in order to ensure displaced residents' right to housing, which derives from the Korean Constitution and international law, so that they can secure adequate and fair relocation assistance. This study analyzes the Korean Supreme Court's interpretation of the Relocation Assistance Statute, which held that displaced residents do not have a legal right to demand relocation assistance

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and developers enjoy broad discretion in establishing and implementing the relocation assistance. This study argues that South Korea should amend the Relocation Assistance Statute to ensure adequate and equitable relocation assistance for displaced residents by clarifying their legal right to relocation assistance and legal obligations of developers. This study describes the Relocation Assistance Statute, and argues that although the statute imposes obligations upon developers to provide relocation assistance to displaced residents, its vagueness as to the displaced residents' legal right to relocation assistance and developers' duties to fulfill the legal obligation causes confusion and arbitrariness in its implementation. This study also argues that, contrary to the Court's interpretation, relocation assistance is an integral part of the fundamental human rights recognized by the Korean Constitution and the International Covenant on Economic Social and Cultural Rights. In conclusion, this paper recommends that the Korean National Assembly amend the Relocation Assistance Statute to: 1) recognize displaced residents' legal right to relocation assistance, 2) establish standards for adequate relocation assistance, and 3) provide appropriate and accessible complaint procedures for displaced residents.

[Key Words] just compensation, eminent domain, public use, Property, Remedies, Takings