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ISSUE PAPER

Prepared by ADB Consultant Team

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Asian Development Bank

Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

**Supported by ADB Regional Technical Assistance 7566:
Strengthening and Use of Country Safeguards Systems**

Issue Paper

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Acronyms

ADB	Asian Development Bank
ALACGaC	Agency for Administration of Land Affairs, Construction, Geodesy and Cartography
EBRD	European Bank for Reconstruction and Development
ILMLS	International Land Management Legal Specialist
GASR	General Authority for State Registration
GOM	Government of Mongolia
IFC	International Finance Corporation
IR	Involuntary Resettlement
JICA	Japan International Cooperation Agency
LAPD	Land Administration Department
LAR	Land Acquisition and Resettlement
LAUD	Land Affairs and Urban Development Department
LEC	Land Expropriation Committee
LMIS / DTL	Land Management Institutional Specialist / Deputy Team Leader
LVAC	Land Value Appraisal Commission
MRTCUD	Ministry of Road, Transport, Construction and Urban Development
NLMLS	National Land Management Legal Specialist
PACS	Public Awareness and Consultation Specialist
PRA	Property Relations Agency
PWG	Project Working Group
SDRS	Social Development and Resettlement Specialist
TA	Technical Assistance
UBCG	Ulaanbaatar City Government
UB LAD	Ulaanbaatar Land Administration Department
UB UDPD	Ulaanbaatar Urban Development and Planning Department

UDLAPD Urban Development and Land Affairs Policy Department

UBCGO Ulaanbaatar City Governor's Office

I. INTRODUCTION

1. The following presents the Consultant Team's review of relevant legislation and procedures on land acquisition in Mongolia. The report includes a comparative analysis of current legislation with international social safeguard principles and practices, with specific reference to the Asian Development Bank's (ADB's) Safeguard Policy Statement (SPS), including a detailed gap analysis between Mongolian legislation and the SPS, as well as World Bank Policy 4.12, the International Finance Corporation's performance standards and the Japan International Cooperation Agency policy. The report also provides a detailed description of Canadian and Korean land acquisition legislation, as well as briefer reference to legislation in the United States and Australia.

2. The report concludes with a summary of key issues related to land acquisition and resettlement procedures in Mongolia, with particular emphasis on the challenges posed by the proposed urban infrastructure development in Ulaanbaatar. The summary reflects feedback received by the Consultant Team through extensive consultations with a broad array of stakeholders, including central and local government officials, *ger* area residents, civil society representatives and private sector developers.

II. LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR LAND ACQUISITION AND RESETTLEMENT IN MONGOLIA

A. LEGISLATIVE FRAMEWORK

3. The basic legislative framework for land acquisition and resettlement (LAR) consists of the Constitution (1992), the Land Law (2006) and the Land Privatization Law (2003) and the Land Law. Art. 6.4 of the Constitution is the source of the state's power to expropriate land owned or possessed privately. The grounds for involuntary acquisition are *special public need*. Art.16.3 obligates the State *to make due compensation and payment* in the case of taking private property for public need. Land may also be confiscated, i.e. without compensation, if it is used in a manner adverse to the health of the population, the interests of environmental protection or national security.

4. The Land Law governs expropriation of land allocated for possession or use. The Land Privatization Law was introduced in 2003 and contains provisions respecting expropriation of land given in private ownership. Both laws provide for compensation to a certain extent. The Civil Code may require the State to provide compensation beyond that required by the land laws.

LAND LAW

5. The Land Law contemplates three kinds of private land tenure: (1) ownership, which may be granted only to citizens of Mongolia; (2) possession, granted under

license, to Mongolian citizens, economic entities and organizations, for terms of 15 to 60 years, extendable up to 40 years at a time; (3) use, granted under contract or lease to foreign countries and legal entities.

6. Article 13.1 lists special needs for which land in private possession can be acquired by the state:

- Land under special government protection
- Border strip lands
- Land for ensuring national defense and security
- Land for foreign diplomatic missions and consulates, as well as resident offices of international organizations
- Free zone area
- Land for scientific and technological tests, experiments and sites for regular environmental and climatic observation
- *Aimags* level reserve rangelands.

7. The ministry in charge of land issues must notify affected persons and undertake negotiations. If the negotiation is amicably completed, the government issues a decision on land acquisition and the governor of the appropriate level concludes an agreement with the affected person. The affected person must vacate the land within 90 days of the agreement date, except that this may only be required between 15 May and 15 September. If there is no agreement or if a dispute arises, it may be referred to the court.

8. Under Article 43, possessors are entitled to replacement land and compensation for land under possession includes the current market price of buildings and other constructions plus all expenses related to relocation.

9. There is no clear provision in the Land Law concerning LAR over land that is in use, except the obligation of the land office to provide prior notice. The Law is silent on negotiation and compensation, except to say that the provision on compensation for possessors is not applicable to them.

10. There is possible protection for users of land under the principles of the Civil Code, which may entitle them to compensation for immovable assets built in accordance with the contract and with the proper permission.

11. Although the Land Allocation Law and Land Law require that land be compensated at market value, this is not the case in practice. Rather the practice is to value land for compensation purposes on rates set by the government. Private land is valued at MNT 13,200 per square meter, based on Cabinet Resolution No. 103 of 2003.

12. In case of valuation of buildings, depreciated replacement cost is calculated in accordance with International Valuation Standards, under Cabinet Decree No. 111 of 2006. There is no regulation governing the calculation of other damages. General principles of the Civil Code should apply.

LAND PRIVATIZATION LAW

13. Article 32.1 states that special needs for which private land can be acquired are:

- Ensuring national defense and security
- Creating a permanent surveillance field for scientific and technological tests or experiments and environmental or forecast observation
- Building national roads, engineering lines, buildings and constructions.

14. The State must notify owners and enter into negotiations with owners at least one year prior to a decision to expropriate, attempting to agree on:

- Value of the land and immovable property located on it
- Transportation costs regarding resettlement or relocation
- Investment made by the owner on the land
- Location, size, characteristics and quality of replacement land that is provided by state
- Conditions and deadline for vacating the land
- The amount of compensation, payment procedures and date.

15. If an agreement is reached, the owner must vacate within one year of the agreement date. If there is no agreement, the dispute will be referred to the court.

16. Under Article 33 *soum* and district governors may establish servitudes over private land for the purposes of access through the land, installing survey markers, drainage or other land management measures. No compensation need be paid for such access. If the land becomes difficult or impossible to use because of the servitude the owner has the right to demand that the authority purchase the land or compensate for damages.

17. Article 37 outlines the principles applicable to compensation that landowners are entitled to upon expropriation:

- Replacement land must be not worse in character and quality than the owner's land
- Land and immovable property will be compensated at their value
- Improvements made to the land will be compensated

- Losses incurred by the owner due to the taking of the land and relocation must be compensated
- No compensation is paid for immovable property built or improvements made after the notice given at the start of the process.

THE CIVIL CODE

18. The Civil Code contains principles concerning a person's right to be compensated for damage or loss caused to property by another person. These principles may be applicable to involuntary settlement.

B. INSTITUTIONAL FRAMEWORK

19. This section provides an outline of i) institutions involved with land management and urban development in Mongolia, and ii) the key organizations involved with land acquisition and resettlement in accordance with existing legislation and based on current practice.

20. The Ministry of Road, Transportation, Construction and Urban Development (MRTCUD) is the central government body responsible for overall land and urban development policy and regulation. The ministry prepares policies, regulations, draft legislation, and organizes and coordinates land and urban development activities nationwide with other relevant ministries and associated agencies, Ulaanbaatar City (UB) and 21 *aimags* through its Urban Development & Land Affairs Policy Department (UDLAPD). (See Appendix 1- General Framework of Land Management and Urban Development Organizations).

21. The Administration of Land Affairs, Construction, Geodesy & Cartography (ALACGaC), under the Urban Development & Land Affairs Policy Department of MRTCUD, is responsible for implementation of land and urban development policy, legislation and regulations. It also supports policy formulation and legislative drafting. ALACGaC is represented in all districts of UB and in all *aimags* and *soums* (see Appendix 2 - Organizational Structure of ALACGaC).

22. *Aimag* Land Affairs & Urban Development Departments (LAUD) employ one land officer in each *soum*. The *aimag* LAUDs and the UB LAD are tied to both ALACGaC and respective UB city/*aimag* administrations. (See Appendix 3 - Organizational Structure of UB LAD).

23. The UB Urban Development & Planning Department (UB UDPD) is an independent implementing agency under the UB City Governor. (See Appendix 4 - Organizational Structure of UB UDPD). It ensures urban development policy implementation, makes amendments to the urban development master plan and prepares and monitors the implementation of the detailed development plans. UB UDPD does not have a direct reporting relationship with ALACGaC

24. The General Authority for State Registration (GASR) under the First Deputy Prime Minister was established in 2008 by merging Civil Registration & Information Center, Property Rights Registration Authority and Commercial Entity Registration Authority. The agency is in charge of implementation of the state registration legislation and carries out the registrations of individuals, private enterprises and properties. Its Department of Property Rights Registration registers land, properties and other related rights. GASR has local offices in UB city and all *aimags*. The department works in close cooperation with ALACGaC and its local offices to secure cadastral information when registering land and properties.

ORGANIZATIONS INVOLVED IN LAR – CURRENT LEGISLATION

25. The current legislative framework regulates LAR only in regard to the exchange of land or taking back land with compensation for the special needs of the State. Based on the Law on Land, Law on Land Allocation, and Government Decree – Regulation on Taking and Releasing Land for Special Needs of the State, the key institutions involved with LAR and their responsibilities and rights are presented in Table 1 below.

Table 1 - Organizations Involved in LAR

No.	Organization	Responsibilities/Rights
1	State Great Khural	Take land for and release from i) State special protected areas, ii) border strips, iii) national defense and security purposes, iv) diplomatic missions and international organizations, and v) free trade zones.
2	Cabinet	Make decision on exchange of land or taking back land, both possessed and owned land, with compensation for the special needs of the State.
3	Central Government Body (MRTCUD)	1. Agree with the land possessors on exchange of land or taking back land with compensation for the special needs of the State. 2. Make Proposal to Government to exchange land or taking back land with compensation for the special needs of the State.
4	Aimag, UB city Council	Give comments to the Proposal on exchange of land or taking back land with compensation for the special needs of the State prepared by the Local Governor.
5	Government Body (ALACGaC)	Agree with the land owners on exchange of land or taking back land with compensation for the special needs of the State before the decision of the Government is made.
6	Local Governor (Governor of UB city, <i>Aimags</i> or Districts and <i>Soums</i>)	1. Make Proposal to Government Body in charge of land management to exchange land or taking back land with compensation for the special needs of the State. 2. Conclude agreement with the land possessor on exchange of land or taking back land with compensation for the special needs of the State. 3. Exchange of possessed land or taking back possessed land with compensation for the special needs of the State based on the decision of the Government. 4. Dispute resolution on the decision of the lower level Local Governor.
7	Police	Exercise forced eviction of land possessors based on the decision of the local Governor after the land under possession was taken for special needs of the State and the compensation was fully paid to the land possessor
8	Court	Make decision based on the complaint of the land possessor or land owner related to exchange of land or taking back land

No.	Organization	Responsibilities/Rights
9	Land tenure holders (owner and possessor)	1. Make complaint to the higher level government authorities or governors. 2. Make complaint to the court, if not satisfied with the decisions of the government bodies and governors
10	Land tenure holders (user)	The procedures related to exchange of used land or taking back used land with compensation for the special needs of the State shall be carried out in accordance with the Government Decree – Regulation to take land for and release land from special needs of the State. However, the Land Law states that the compensation does not concern land users.

26. There must be a decision by the Government and the local governors, based on the agreement between ALACGaC in case of land ownership and between the governor and land possessors in case of land possession, to organize land acquisition and resettlement through the local bodies in charge of land management. In the event of disagreement, affected owners and possessors can lodge a complaint with the higher level governors or government bodies and courts.

ORGANIZATIONS INVOLVED IN LAR – CURRENT PRACTICE

27. The following describes the current practice of LAR in UB and the main stakeholders involved in the process. It deals with common LAR activities related to improvement or construction of roads and *ger* area development. Appendix 5 presents a general outline of current LAR practice.

28. UB City Council approves the master and annual development plans, both land and urban.

29. UB City Governor with the support of relevant agencies (e.g. the Road Authority) makes decisions on implementation of the master and annual development plans. The governor secures funding for LAR from central or local government budgets. The Governor provides general direction and guidance for the implementation of LAR to UB LAD/Project Unit.

30. The UB Road Authority or other relevant authority prepares the development plans such as Plans for Road Construction for the approval of the UB City Council through the UB City Governor. The plan preparation process does not involve extensive consultation and coordination with relevant bodies such as UB LAD. Once the decision to proceed with the development project is made, the UB Road Authority or other relevant authority depending on source of funding, prepares for the development, including management of the tender process. Ideally, design drawings are then provided to UB LAD/Project Unit to allow commencement of the LAR process.

31. The UB LAD / *Ger* Area Housing Project Unit prepares for development based on decision made by UB City Governor or other relevant authority. In most cases UB LAD / *Ger* Area Project Unit initiates LAR activities based on provisional design drawings to help avoid project delays. UB LAD / Project Unit works closely with *khoroos/khesegs*

heads to identify affected parcels and families and collect required data. Individual meetings are then organized to agree and compensate for displacement impacts. In some cases NGOs represent affected landholders during negotiations.

32. The UB Property Relations Department provides valuations of affected buildings and other built structures, which are used by UB LAD / Project Unit to assess the properties of the affected people for compensation purposes.

33. District / *Khoroo* Government supports the UB LAD / Project Unit to prepare for the development by identifying and providing information on the affected people and facilitating meetings and negotiations between the UB LAD / Project Unit and affected people. Meetings are facilitated by *khoroo* or *kheseg* heads.

34. Construction companies and/or private land developers are sometimes also involved in the purchase of land in *ger* areas. They negotiate amicable agreements with land owners. Compensation is paid in different forms, including cash, replacement housing/land, livelihood restoration support and other social support.

35. Public meetings are rarely organized to explain and discuss the proposed development with affected communities. Affected persons are advised on short notice to resettle and then, as indicated above, met by the UB LAD / Project Unit to discuss compensation. Affected persons are not provided relocation support.

III. COMPARATIVE ANALYSIS OF CURRENT MONGOLIAN LEGISLATION AND INTERNATIONAL SOCIAL SAFEGUARD PRINCIPLES AND PRACTICE

36. This section presents a summary of key provisions of select international social safeguard policy instruments with a comparison of these standards, and in particular the ADB's involuntary resettlement safeguard principles, to current Mongolian Legislation.

37. There is growing awareness internationally that poorly planned and managed land acquisition and resettlement can have significant, and detrimental short and long-term impacts, exposing affected people, families and communities to the possibility of: homelessness; landlessness; joblessness; economic and social marginalization; increased morbidity and mortality; food insecurity; loss of access to common property resources; and social and cultural disruption.

38. There is widespread recognition – as reflected in international social safeguard principles and practice - that project and resettlement design which anticipates and plans for these risks can increase the likelihood of stronger, healthier communities and improved project outcomes through: a wider range of financing options; smoother permitting processes; fewer project delays and hence lower costs; enhanced local,

regional and international reputations for project proponents, funders and government; and reduced resistance and potential conflict from project-affected people.

A. ASIAN DEVELOPMENT BANK (ADB) – SAFEGUARD POLICY STATEMENT¹

39. The ADB's July 2009 **Safeguard Policy Statement (SPS)** governs the environmental and social safeguards of the Bank's operations. It combines and builds upon the ADB's previous safeguard policies on the environment (2002), involuntary resettlement (1995) and indigenous peoples (1998).

40. **Safeguard Requirements 2- Involuntary Resettlement (IR)**, outlines the requirements that ADB borrowers/clients are required to meet in delivering IR safeguards to ADB supported projects. The overriding objectives of the IR safeguards are:

- Avoid involuntary resettlement wherever possible
- Minimize IR by exploring project and design alternatives
- Improve, or at least restore the assets, living conditions and livelihoods of affected persons
- Improve the standards of living of vulnerable displaced groups.

41. The ADB's IR principles state that eligibility includes all people with formal legal rights to affected land (in whole or part) and those who have claims to the affected land that is recognized under national laws. People without formal legal rights or recognized claims, but who have occupied the land or structure prior to the agreed upon and publicized cut-off date, are eligible for compensation for non-land assets and resettlement assistance.

42. The ADB's IR principles also describe the compensation and assistance that will be provided, including: adequate and appropriate replacement land and structures, or cash compensation at full replacement cost without depreciation, transaction costs, accrued interest, transitional/restoration costs and any other payments; preference for land-based (not cash) resettlement strategies; assistance with relocation and improved housing with comparable access to employment/productive opportunities, civic infrastructure and community services; transitional support and development assistance; and opportunities to share in project benefits. For those who are economically displaced², they will be compensated for loss of income, and as well be

¹ Appendix 6 includes a more detailed analysis of ADB's IR safeguard principles.

²In the context of involuntary resettlement, displaced persons are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

assisted in restoring, and where possible improving, their earning capacity, production levels and standard of living.

43. Project proponents are expected to carry out meaningful consultations with affected persons and other stakeholders, including disclosure of information on entitlements and resettlement options, participation in the resettlement planning process, and establishment of a transparent and effective grievance redress mechanism, and, wherever possible, negotiate fair settlements to avoid forcible evictions.

44. Project proponents are also expected to undertake a comprehensive social impact assessment (SIA) in order to understand fully who will be displaced and how it will impact them currently and into the future. It is to be designed to serve as an inventory of affected people, their assets, their income and livelihoods, and should be disaggregated based on gender. The SIA should also describe the people who might be more vulnerable to negative impacts, suggesting targeted measures the proponent will put in place to ensure they do not suffer disproportionately and can share equally in the project opportunities and benefits.

45. The ADB's IR principles/SR-2 require preparation and disclosure of a resettlement plan (RP). The RP should describe in detail affected people's entitlements; income and livelihood restoration strategy (including measures for vulnerable people); institutional arrangements; consultation, participation and disclosure; grievance redress mechanism; monitoring and reporting framework (including external monitoring for projects with significant IR impacts), budget and time-bound implementation schedule.

B. IFC PERFORMANCE STANDARDS AND GUIDANCE NOTES 1 AND 5

46. The International Finance Corporation (IFC) adopted **Performance Standards on Social and Environmental Sustainability** in April 2006. The outcome-based Performance Standards (PS) updated IFC safeguard policies, strengthening social and environmental policy, and prescribing more comprehensive and integrated impact assessments. The IFC has also published Guidance Notes to help explain the requirements of the Performance Standards. The Performance Standards and Guidance Notes have been updated since original adoption.

47. Performance Standard 1, Social and Environmental Assessment and Management System, and Performance Standard 5, Land Acquisition and Involuntary Resettlement, are the most directly relevant of the eight performance standards

48. Performance Standard 1 requires that affected communities are appropriately engaged on issues that could potentially affect them. Key requirements include:

- Ensuring free, prior and informed consultation, and facilitate informed participation (iteratively, incorporating views in decision-making)
- Obtaining broad community support
- Focusing on risks and adverse impacts, and proposed measures and actions to address these
- Undertaking consultation in inclusive and culturally appropriate manner
- Tailoring the process to address the needs of disadvantaged or vulnerable groups.

49. Performance Standard 5 refers to the management of physical displacement (i.e. relocation or loss of shelter) and economic displacement (i.e. loss of assets or access to assets that leads to loss of income. sources or means of livelihood) as the result of project-related land acquisition. Involuntary resettlement relates to transactions where the project proponent can resort to government authority to gain access to land or impose limits on land use.

50. Similar to the ADB IR Safeguards, PS5 defines displaced persons broadly as persons with formal legal rights to the land they occupy, and others who do not have formal legal rights to land, but have claim to land that is recognized or recognizable under the national laws.

51. The objectives of Performance Standard 5 are largely comparable to those of the ADB IR principles/SR-2, including:

- Avoiding or at least minimize involuntary resettlement by exploring alternative project designs
- Mitigating impacts from land acquisition by providing compensation for loss of assets at full replacement cost and ensuring that resettlement activities are implemented with appropriate stakeholder engagement
- Improving or at least restore the livelihoods and standards of living of displaced persons
- Improving living conditions among displaced persons through provision of adequate housing with security of tenure.

52. Importantly, Performance Standard 5 further requires that standards for compensation be transparent and consistent within a project, and established with the participation of those impacted. Project proponents must offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods.

C. WORLD BANK OPERATIONAL POLICY – OP4.12 AND ANNEX A

53. The relevant World Bank safeguard standard is the **Operational Policy on Involuntary Resettlement (OP 4.12)**, and companion Annex A - Involuntary Resettlement Instrument. A core principle of this policy is to avoid adverse impacts on communities and the environment; and when unavoidable, to reduce, mitigate or compensate for the impacts.

54. When displacement is unavoidable, borrowers must prepare a RAP that includes:

- Ensuring affected people are informed of their rights and options, consulted on and offered choices, and provided with technically and economically feasible resettlement alternatives
- If physical relocation is involved, then moving allowances and residential housing, housing site or agricultural site must be provided that combines productive potential with locational advantages, and other factors at least equivalent to the old site
- Include measures to offer support after displacement, for a transition period, based on a reasonable estimate of time required to restore their livelihood and standard of living, additional development assistance (not detailed), and land preparation, credit facilities, training or job opportunities.

55. The RAP or RPF must describe the participatory process by which the resettlement will be prepared and implemented; how criteria for eligibility for displaced persons will be determined; how measures to assist and improve affected people's lives will be developed and implemented; the process for resolving conflicts involving displaced people; and the arrangements for implementation and monitoring.

56. Like other bodies, the World Bank highlights the importance of identifying and considering the needs of vulnerable groups, and the particular complexities associated with displacement of indigenous peoples. It also affirms the importance of ensuring implementation doesn't occur until necessary measures for resettlement are in place, and emphasizes the preference for land-based resettlement strategies rather than cash compensation.

57. Similar to the ABD Safeguard Policy Statement, WB OP4.12 stipulates that 'those who have no recognizable legal right, or claim to the land they are occupying', should be eligible for resettlement assistance in lieu of compensation for the land they occupy, and other assistance as necessary, as long as they occupied the land prior to the agreed upon and publicized cut-off date.

D. JICA GUIDELINES

58. The Japanese International Cooperation Agency (JICA) refers in their **Guidelines** to the World Bank Safeguard Policies. With respect to involuntary resettlement they include in their Appendix a copy of the World Bank OP 4.12 and outline four main components related to involuntary resettlement, as follows:

- Resettlement should be avoided if feasible
- compensation and support for affected people should be sufficient (i.e. at full replacement cost), timely and enable them to improve (or at least restore) their standard of living, income opportunities and production levels
- affected people should be involved in the planning, implementation and monitoring of resettlement
- Resettlement Action Plans must be prepared and disclosed publically.

E. EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)

59. EBRD has developed an **Environmental and Social Policy** with a set of **Performance Requirements** to govern how social & environmental issues should be addressed on projects it finances. Similar to other international social safeguard policy instruments, the EBRD Performance Requirements typically set a higher/different standard to national legislation in relation to social issues. Key objectives of Performance Requirement 5 – Land Acquisition, Involuntary Resettlement and Economic Displacement include:

- Avoid or at least minimize involuntary resettlement to the extent practically possible
- Careful planning and implementation of appropriate mitigation measures
- Compensation for loss of assets at replacement cost
- Improve, or at least restore, the livelihoods and standards of living of displaced people
- Improve living conditions of displaced people through provision of adequate housing with security of tenure
- Ensure adequate stakeholder consultation and participation
- Negotiate settlements wherever possible
- Recognize displaced persons who do not have recognizable legal rights or claims to the land they occupy

With particular regard to stakeholder engagement, Performance Requirement 10 sets out the EBRD's requirements for clients to identify stakeholders potentially affected by their projects, disclose sufficient information about issues and impacts arising from the projects and consult with stakeholders in a meaningful and culturally appropriate manner.

F. CONCLUSION

60. There is growing pressure to implement projects in a more socially responsible manner. Affected persons are increasingly aware of their rights and interests. Communities and civil society may have high expectations with regard to resettlement planning and implementation. Failure to address expectations results not only in

negative publicity and exposure to legal action but, crucially, in project delays, increased costs and budget overruns. On the other hand, well planned and implemented resettlement can significantly contribute to projects that are on time and on budget, while also benefiting affected people.

61. The social safeguard standards outlined above prescribe fair treatment for affected persons and communities, but also set out practical guides to planning and implementation of projects taking into account the specific context of each project.

62. Importantly, the principle that host communities should first be consulted on development projects and participate in project decision-making (e.g. master plans and rezoning) is increasingly being recognized in international norms, national laws, and voluntary best practice standards and guidelines. This is particularly relevant in the context of urban development planning and implementation where, in practice, it is rarely possible to deliver land acquisition without broad community support.

63. The fundamental difference between Mongolian legislation and international resettlement instruments is that national law concentrates on compensation for lost assets as part of the overall property rights system and not specifically as part of resettlement processes. As we have seen, the emphasis in resettlement international standards is placed not only on compensating lost assets but also on assisting people to restore housing, living conditions, incomes, ways of life and livelihoods.

64. Another key difference between Mongolian legislation and practice and international social safeguard standards relates to entitlements of informal residents/occupants. Under Mongolian legislation, non-titled occupants of land are not as illegal possessors eligible to transfer the land occupied or receive compensation under Mongolian legislation. Again as we have seen, under international social safeguard standards, displaced persons without recognizable legal rights or title the land they occupy title are eligible to entitlements such that they are no worse off than before the project. All displaced persons are, moreover, are entitled to compensation at replacement cost of non-land assets. These entitlements help ensure living conditions of all affected people, including the most marginalized, are at least restored, a key social safeguard principle.

65. A gap exists also between the Mongolian practice and international social safeguards with regard to valuation of affected assets. While the Law on Land Privatization provides for compensation for land and immovable property at their value, in Mongolian practice compensation for land is based on prescribed rates and compensation for buildings is based on depreciated replacement cost based on approved methodology. The prescribed rates applied to land values do not necessarily provide present day replacement value. With regard to immovable property assets (e.g. residential structures and other constructions), depreciation is applied under Cabinet

Resolution No. 233 of 2005 “Procedure for depreciation of capital assets”. International social safeguards require payment of compensation at replacement cost (i.e. market value of assets plus transaction costs, without accounting for depreciation of structures and other immovables). Compensation at replacement value allows displaced persons to replace lost assets with new assets of similar value and thus helps improve or restore their standards of living or livelihoods.

66. There is no requirement for comprehensive stakeholder engagement under Mongolian legislation. International social safeguards provide for informed participation of affected people and host communities in resettlement planning & implementation process to help manage risks and impacts on communities affected by projects and to help achieve enhanced community benefits.

67. Closely linked to the engagement process, there is no provision in Mongolian legislation requiring establishment of an independent grievance mechanism, although displaced persons are able to seek judicial redress under expropriation legislation. Resettlement good practice involves establishment of an understandable, transparent, timely & culturally appropriate grievance mechanism early in resettlement process.

68. Early screening of the scope and scale of resettlement impacts helps avoid or minimize displacement, leads to more informed project decision-making (scheduling and budgeting), helps resettlement planners achieve goal of improving living conditions and standards of living of affected populations, and facilitates monitoring and evaluation activities. In Mongolia, data is gathered on the owners of affected assets only. Involuntary resettlement impacts identified during the assessment process rarely lead to investigations of possible project design alternatives to minimize displacement. Socio-economic baseline information on household income, livelihood patterns and standards of living to enable the design appropriate rehabilitation measures is, moreover, collected in exceptional circumstances only.

69. Without a formal plan, articulating clear responsibilities, it is difficult to properly plan and implement resettlement in an appropriate, timely and cost effective manner. Mongolian legislation does not provide for the preparation of a formal resettlement planning document. International social safeguards require preparation (and disclosure) of a resettlement plan, documenting eligibility and entitlements, income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget and time-bound implementation schedule. The preparation of resettlement planning document supports a more systematic approach to management of project social risks and opportunities, helping to enhance the development impact of a project and improve living standards of affected people.

70. Poor and other vulnerable groups are typically less resilient to change and may be made more vulnerable by project impacts. Mongolian legislation does not

contemplate delivery of targeted support to help vulnerable groups adapt to resettlement challenges. International social safeguard standards, on the other hand, require projects to:

- Identify vulnerable groups during the assessment process
- Provide special measures in terms of consultation and development assistance to enable vulnerable groups to participate in resettlement planning meaningfully and to benefit from development opportunities
- Assist vulnerable groups to understand their options for resettlement and compensation, and to encourage them to choose the lowest risk option
- Improve standards of living and living conditions of displaced poor and other vulnerable groups to at least minimum living standards.

IV. LEGISLATIVE FRAMEWORK IN OTHER COUNTRIES

71. This section provides information on land acquisition legislation and experience in certain countries, discusses the pros and cons, and suggests what can be learnt for Mongolia from their experiences.

72. The countries chosen in discussion with the Project Working Group for this purpose were Canada, People's Republic of China, Germany, Kazakhstan, Korea, and a former socialist-block country, which after discussion with the Consultant Team has been determined to be Serbia. Reference is also made to legislation in the United States and Australia.

73. Legislation from Canada, the US and Australia provides good examples of governance, procedures, administration and principles of compensation. In these countries there are no provisions for special treatment of disadvantaged persons or for relocation of residents. This is the case for several reasons. (1) Expropriation is rarely used for the purpose of redevelopment of residential areas. (2) Rights of ownership and occupation of land are clear and there is no informal land occupation. (3) Illegal building and land use are rare, even by the poor, and are not tolerated by the authorities. (4) Affected persons are well aware of their rights and have easy access to lawyers. (5) Replacement land is usually available on the market so affected persons are satisfied with cash compensation and relocation expenses.

74. Land pooling and readjustment was pioneered in Germany in the early 20th century, and adapted successfully to Japan, Korea and several other countries. In this regard Korea's legislation is a useful example for Mongolia. Korea has a great deal of experience with intensive development and redevelopment of urban areas owned by many owners, involving the construction of infrastructure, replotting of building sites, compensation for affected persons, and relocation where necessary.

75. Serbia serves as the example of a former socialist country in Eastern Europe facing – like Mongolia – a host of challenges with regard to entitlement for untitled occupants.

76. A detailed matrix has been prepared that outlines the key provisions of the legislation in the countries mentioned above, as well as those of Armenia and Cambodia. The matrix also details relevant provisions of the ADB's Safeguard Requirements 2: Involuntary Resettlement.

77. The following provides background and context for the information contained in the matrix. It touches on the extent to which social safeguard standards are implemented in the sample countries. The detailed matrix is presented as Annex 7.

A. CANADA

78. In Canada, as in most developed countries, governments make every effort to purchase land by negotiating with owners. They consult early in the process, even where there is no legislative requirement to do so. Expropriation proceedings do not start until it is clear there are owners who do not agree. (There is no cut-off date until formal expropriation begins.) The government obtains ownership of the land very early in the process, even where the amount of compensation is disputed. It must offer the compensation calculated by its appraisers (usually government appraisers but sometimes outsourced), and the owner can accept the offer and get the cash without abandoning a claim for more, but in the meantime the government gets ownership of the land and can issue an eviction notice. This procedure is appropriate only where (1) the rule of law and good governance is strong, (2) owners' expenses of lawyers and appraisers are compensated for, and (3) there is an active market in land/housing and cash compensation is sufficient to buy replacement land/housing.

79. Canada's federal and provincial governments have separate expropriation laws, which are quite uniform throughout the country.

80. Sectoral (e.g. highways) and local government laws authorize ministries and local governments to acquire land by purchase or expropriation. The expropriation laws apply to all land acquisition by all ministries and local bodies/entities.

81. Ministries and local governments may acquire land for public purposes related to their mandates. This is narrowly interpreted in Canada: there must be a clear public element to the acquisition. Private development cannot be directly supported by government land acquisition. For example, a city cannot expropriate a parcel to complete land assembly for a shopping centre or private housing. There must be a direct public purpose.

82. With respect to development plans (master plans), local governments may expropriate land to implement them, but this power only relates to land shown as required for public uses in the plans, such as roads and infrastructure. Also, the public are involved in the approval of master plans and rezoning of land use.

83. It is possible for a local government to expropriate land where the zoning of the property is changed so that the current use no longer complies. This power is rarely exercised.

84. For linear properties such as pipelines and telecommunication lines, special legislation may give rights equivalent to expropriation to private companies. In these cases, the rights to acquire land do not arise until government bodies have approved projects for which the land is required.

85. Governments only expropriate as a last resort. Every effort is made to come to an agreement with property owners. Therefore, much time and effort is devoted to negotiation with individual property owners.

86. The expropriation laws do not have consultation requirements. Depending on the nature of the project, consultation may be required under other laws; for example environmental and urban planning laws. Urban plans (master plans), detailed plans and land use rezoning have a consultation phase during preparation stage and public hearings prior to adoption.

87. The expropriating authority is a government ministry, local government, school authority, etc. At the provincial and national government levels the decision to expropriate is made by the relevant Minister; parliament's approval is not needed. For local bodies, including school authorities, the decision to expropriate must be made by the locally elected council or board; i.e. equivalent to a local parliament.

88. In Canada there is no role for a private developer in the expropriation process, with the exception of private companies in the highly regulated industries of railways, pipeline and telecommunications.

89. Only owners or tenants of land have rights in the expropriation process. In Canada, as in most developed countries, there is virtually no informal occupation of land (e.g., squatters), whether private or state-owned. If it should occur, squatters have no rights under the expropriation laws.

90. The right to compensation is based on the general principle that, after receiving compensation, the owner should be in the same economic position as before the expropriation. It includes:

- Market value of the land, buildings and other structures;
- Loss in value to the land remaining;
- Loss of amenities such as trees and landscaping;
- Business loss (applies to tenants as well as owners); and
- Disturbance damages, such as moving and relocation expenses (also applicable to tenants).

91. The compensation provisions are spelled out in some detail, for the most part to the benefit of affected persons. For example, the legislation does not allow the government to pay a low price for the land on the ground that a development plan (master plan) designates it for a future road or other public purpose.

92. Compensation is entirely monetary, unless the owner and the government agree otherwise. This is appropriate because there is an active land market, making it possible for affected persons to buy replacement land.

93. An important factor in the fair treatment of affected persons is that they are free to hire lawyers, appraisers and other consultants to assist them, and the government must pay the cost.

EXAMPLE - PROVINCE OF MANITOBA

94. We use the Province of Manitoba as our example. Geographically it has features in common with Mongolia: a huge territory (650,000 sq km), sparse population (1.2 million), 70% of the population living in the capital city (Winnipeg), and a continental climate.

95. In Manitoba, as is the case generally in Canada, the scope of eminent domain is restricted to government acquisition of land for its own purposes. Governments, both central and local, can expropriate land for roads, service infrastructure, government buildings, etc. – anything directly related to the mandates of ministries and local governments. Their authority in this regard is not spelled out in the Expropriation Act, but in sectoral and local government laws. Acquiring land for private development, which will boost the economy and increase tax revenue, is not an authorized public purpose, unlike in some US states.

96. Most of the province's area is state land, but it is unoccupied wilderness. Land occupied for residential, agricultural, commercial and industrial purposes is privately owned. The issue of informal occupiers does not arise because there are virtually no informal occupiers. Thus eligibility for compensation is restricted to legally registered owners and tenants of such owners.

97. A governing principle is that after receiving compensation, the owner should be in the same economic position as before the expropriation. The provisions that implement this principle are very thorough. For example, all moving and relocation expenses and all of an owner's business losses are covered. An important component of compensation is that the expenses of an affected person's legal, appraisal and other consulting advice must be reimbursed by the expropriating authority, to the extent they are reasonable. This empowers owners and exerts discipline on officials. If compensation is disputed, the final decision, binding on the government, is made by the Land Value Appraisal Commission, a specialized tribunal that is independent of the government.

98. In Manitoba it is not necessary for the government to go to court in order to sanction expropriation and approve compensation, unlike in the United States. The onus is on the landowner to initiate court proceedings to challenge the authority or actions of the expropriating authority. The courts, as in the rest of Canada, hold the government to high standards and will stop expropriation procedures if the law has not been followed meticulously.

99. There is no provision for a monitoring system or institution in the law. This function effectively resides in the Land Value Appraisal Commission with respect to compensation and in the courts with respect to the power to expropriate and the correct procedures.

100. An assumption of the Manitoba system is that there is an active market in real estate, so that cash compensation will enable an owner to purchase equivalent replacement property. This is why compensation is always in the form of cash, and why market value is the standard. If buildings are valued separately from land, then market value applies, implying that depreciation is a factor. The owner is able to buy a replacement building, also at its depreciated market value.

101. Provision for vulnerable persons is not strong in the Expropriation Act. The poor usually live in rented accommodation. Under the law they are entitled to moving costs, and if equivalent rented accommodation carries higher rent, then compensation to cover the higher rent for the remaining term of the lease. For people such as extended family members or small business operators who are neither owners nor tenants, the expropriating authority may make voluntary payments to cover moving expenses or business losses.

102. There is no provision for consultation in the Manitoba Expropriation Act. For most projects consultation is governed by other legislation, in particular the Environment Law and urban planning laws. The situation is not perfect, because only major projects will require full environmental review that includes such important elements as social assessment. The most important factor requiring prior consultation

with affected persons is the desire of politicians and officials to avoid controversy by obtaining the agreement of owners. Although there may be no law or regulation requiring engagement with owners prior to starting formal expropriation procedures, there is always a systematic attempt on the part of authorities to minimize impacts and obtain the agreement of as many affected persons as possible. This attempt to obtain agreement, combined with generous compensation provisions, means that expropriation is necessary only in a small minority of cases.

103. It is fair to say that in Manitoba, as in many other jurisdictions in developed countries, most internationally recognized social safeguards are assured despite not being directly addressed in the law of eminent domain.

104. Strong rule of law, good governance, independent and competent judiciary, easy access to dispute resolution, and low corruption are keys to the fairness and effectiveness of Manitoba's expropriation system. This applies to many jurisdictions in the developed world. The challenge for Mongolia is implementation of social safeguards where these elements are lacking. It is not enough for the law to provide for compensation and procedures complying with social safeguards. Strict attention must be paid to institutional issues, including (1) the body that authorizes expropriation when negotiations fail, (2) the body that makes the final decision on compensation, (3) the role of the courts.

B. GERMANY

105. Germany is an example of an advanced developed country with strong rule of law and good governance, and experience with land acquisition in connection with urban redevelopment, where the link between urban planning and land acquisition is well-developed.

106. The German Constitution allows expropriation only if (1) it is for the public good (2) it is under a law that determines the nature and extent of compensation (3) there is no other reasonable way with a lower level of interference. The government must attempt to buy the land in good faith before it can expropriate. Sectoral federal and state laws authorize expropriation for specific public purposes.

107. Each of the 16 German states has an Expropriation Act setting out procedures and compensation requirements. The Federal Building Code prescribes a system of master plans, which are not legally binding, and detailed plans which are legally binding. Expropriation is based on a designation of public use in a binding land-use plan. In fact, compensation must be paid to an owner if designation of land for a public use in such a plan results in loss, even in the absence of expropriation.

108. The principle is that compensation will give the owner the opportunity to acquire a comparable property. Market value is the criterion. Compensation is in cash,

except that if the owner's livelihood depends on the property, then substitute property must be supplied. As well as compensation standards similar to those in Canada, Germany provides specifically for vulnerable persons. A social plan is required in connection with a binding land-use plan that will cause adverse effects, including having to move house, find other employment or relocate a business. Hardship allowances are to be given to tenants "in order to prevent or mitigate economic disadvantage".

109. Institutional arrangements are particularly sound. Binding land-use plans are approved by municipalities only after a planning and impact assessment process and hearings involving the public and owners. An expropriating authority must satisfy a higher level special administrative authority that the legal requirements have been met (authority has made reasonable attempt to avoid expropriation, has followed the proper procedures, expropriation is needed to implement a public purpose, and offers are reasonable) before receiving authority to expropriate. This decision may be appealed in court.

110. The German experience has important lessons for Mongolia: (1) consultation on detailed urban plans, (2) a social plan in connection with the detailed plan, and (3) a method of independent oversight.

C. KOREA³

111. As noted above, Korea has a great deal of experience with intensive development and redevelopment of urban areas owned by many owners, involving the construction of infrastructure, replotting of building sites, compensation for affected persons, and relocation where necessary. The Korean legislation is a useful example for Mongolia because it is specifically tailored to urban redevelopment, which has been implemented successfully over a period of 60 years.

112. The Land Acquisition and Compensation Act (LACA) is a general law that prescribes rules and procedures for land acquisition (voluntary and involuntary), compensation and resettlement. It applies in all cases, except where a special provision is included in another Act. More detailed implementing rules are contained in Presidential Decrees.

113. The Urban Development Act (UDA) provides for urban development projects carried out by land readjustment, expropriation, or a combination of the two. Under UDA, if a private project serves a public purpose, the developer may be granted the right to expropriate if it owns more than 2/3 of the area or has consent from 2/3 of all other

³*Legal and Regulatory Framework for Land Acquisition and Resettlement in the Republic of Korea*, December 2010, Final Consultant's Report, ADB Project 39186, TA-6285-REG: Strengthening Country Safeguard Systems.

landowners. For a redevelopment project, the threshold is 95%. LACA rules and procedures will apply to this kind of expropriation.

114. All costs of land acquisition and resettlement, including compensation, relocation and livelihood rehabilitation (if any), are included in project costs. Project operator must pay them in advance. LAR costs are recovered by the sale of the developed land.

115. At the preliminary examination stage, if a community is within the project area, the possibility of relocation or preservation is examined. If the community is to be preserved, part of expenses for constructing public facilities are borne by building owners. For existing buildings to stay:

- The building and business must be properly permitted or licensed.
- The building must be compatible with the proposed land use plan.
- Keeping a building must be advantageous in the public interest or the economy.
- The building will be used for a long term.

116. Those eligible for compensation at the cut-off date are the owner of property, the resident of a house, a tenant in a house, and a business operator.

117. Tenants are entitled to compensation for relocation and moving expenses and access to public rental housing.

118. The purchaser of land in a development project must develop it within three years; otherwise they may not resell it.

119. Land supplied to affected persons as part of relocation or livelihood rehabilitation is priced at 80% of development costs. (This is much lower than market price. As a result most land for relocated persons is resold by APs immediately.)

120. Objects of compensation are:

- Land
 - If not all land is taken, and the remaining land is hard to use for the original purpose or loses value, the owner can ask the project operator to buy it.
- Buildings
 - If legally permitted
 - Not if built after the cut-off date without permission
 - The minimum compensation for a building is five million won (USD4620)
- Other structures
- Soil, stones, sand and gravel

- Business loss
 - If the business is closed or suspended due to the project
 - Based on loss of profit and incidental losses
 - Must be occupying legitimate business premises
- Agricultural loss

121. The following compensation principles apply:

- It must be paid before a project starts.
- There is no offset for increase in market value of remaining land.
- Normally paid in cash.
- Landowners may opt for non-cash compensation: serviced replacement land or public housing.
- Compensation is based on existing use value, not potential for future development.
- For housing and structures: expense of relocation, or if not practical to relocate then current market value.

122. For calculating compensation, an official system of real estate prices is used, in which values approximate market value. Land and building values are assessed by two private sector appraisers. An additional appraiser may be recommended by affected persons. Value conclusions of the appraisers are averaged to determine the compensation amount.

123. For housing relocation, in addition to compensation, affected persons have a choice of a housing site, a house, or a relocation allowance. If it is impractical to develop a relocation site, people receive a relocation allowance only. A relocation site must be fully serviced, at the expense of project operator. Moving expenses are covered.

124. Livelihood rehabilitation is not compulsory under LACA, It is provided for in several other laws, including land acquisition for dams and new towns “enterprise cities”. Livelihood rehabilitation may include vocational training, preferential hiring in urban development projects, and sites for commercial use.

125. The process begins with authorizations to proceed granted to the project operator by national or local government. Project operator is given the right to access private land for the purpose of measurements and investigations, subject to safeguards.

126. The procedure for negotiated settlement is as follows:

- Project operator must prepare an LAR plan in consultation with affected persons.
- Affected persons form a Residents’ Committee.

- Project operator carries out on-site examinations to identify affected persons and properties and to determine entitlements. The date on which affected persons are given notice about the examinations is the cutoff date.
- On-site examinations are conducted with the cooperation of affected persons or the Residents' Committee. Through the Residents' Committee the affected persons may propose a certain level of compensation, as well as measures for relocation and livelihood support.
- Affected persons may also consult with project operator through Indemnity Council (IC), formed for the purposes of the project.
- IC is established by the head of local government. It may consist of judges, lawyers, notaries public, professors, and officials of relevant local government agencies. At least one-third of members have to be affected persons.
- IC consults on compensation, relocation measures and livelihood restoration measures, or other issues raised by affected persons. (Most grievances are resolved by IC.)
- Project operator must consider the results of consultations with IC and adopt them if justifiable.
- When the LAR plan is completed, formal notice is given to public and affected persons.
- A deadline is set (at least 30 days) for affected persons to apply for resettlement measures under the LAR plan, or to object to the LAR plan.
- Project operator may accept the objection and make appropriate adjustments.

127. If objections are not resolved, expropriation procedures start. Expropriation procedures are as follows:

- Project approval is given by the Minister, after consultation with central agencies, local mayor or governor, etc.
- Public notice is given.
- Project operator applies to Land Expropriation Committee (LEC) for adjudication.
- LEC is a quasi-judicial administrative body established by national government, composed of impartial specialists (judges, prosecutors, lawyers, professors and senior officials). Local LECs are established by local government.
- Central LEC has jurisdiction over projects where the project operator is the national or local government, or any project that extends over more than one local government. Local LECs have jurisdiction over all other projects.
- LEC decides the boundaries of land to be expropriated, its use, compensation, and other related matters.

- Anyone dissatisfied with the decision of local LEC can appeal to Central LEC.
- Further appeal is available to court claiming an unlawful or unjust decision by LEC.

128. The procedures of implementing LAR are reported regularly. Records are disclosed to the public. There is inspection upon completion to verify whether LAR was implemented as planned.

129. The Korean legislation is a useful example for Mongolia because it is an example of a legislative framework specifically tailored to urban redevelopment, which has been implemented successfully for many years. Its effectiveness is demonstrated by the fact that more than 500 square kilometres were developed using land readjustment and expropriation over 60 years, despite the fact that a very high threshold of agreement by owners was needed.

130. There are several features of the Korean legislation that are worthy of consideration and adaptation to the Mongolian reality. The entitlements of affected persons are comprehensively described. The procedures for consultation and negotiation with affected persons are thorough. The grievance mechanism is representative of best practice.

131. The Korean legislative regime complies substantially with ADB involuntary resettlement safeguards, with an important exception, which is relevant to Mongolia. ADB emphasizes preferential consideration for vulnerable groups, such as the poor and those without formal land rights. In Korea they are given no special recognition in the LAR process. They are considered the responsibility of government social welfare agencies. This is only effective/adequate in a country with a strong social safety net.

132. Another weakness is that consultation is focussed on LAR, while the urban development plans that are implemented in the projects are not subject to consultation with affected persons. This is also the case in Mongolia.

D. PEOPLE'S REPUBLIC OF CHINA

133. In China, as well as for direct public benefit, private and collective interests in land can be taken back by the state for urban development and implementing other state plans for land utilization. Widespread urban redevelopment has taken place, but under a top-down planning and approval system, which has now come under closer scrutiny.

134. Only registered owners or users are entitled to compensation. Others may be compensated. In rural areas, land compensation is a minimum of 16 times average annual output value. In suburban areas, rates are set by local government. In urban areas: market value according to location, with local government rates adjusted for

housing quality. Allowances are paid for moving and transition expenses. Government may offer exchange housing consisting of a unit in a new apartment building. There is no provision for tenants. In practice, they may receive compensation for the remaining term of the lease, moving expenses and assistance to find replacement housing. Registered businesses may receive 2 to 3 months profit and wages. Larger enterprises will negotiate compensation based on production losses and immovable assets. Safety nets for the poor and vulnerable are provided by government rather than the project operator under land acquisition laws.

135. Compensation standards, implementation and supervision have improved since the mid-1980s. Most acquisitions are now based on agreement. Funds are generally paid prior to displacement. However, increasingly people are reluctant to move or accept the compensation offered. Their expectations for compensation can be unreasonable. Because local governments are reluctant to force the taking by going to court, even where the compensation offered is fair, they try to convince APs to agree, and as a result costs have been rising for land acquisition and resettlement.

136. Lessons for Mongolia are:

- It is useful to have detailed regulations that can be implemented by officials.
- Mistrust and delays can be avoided by notifications and transparency that help reach agreements.
- Public information campaigns can be used to gain public support.
- There should be close supervision of the payments and auditing system.
- There should be strict enforcement of misconduct by officials, but protection of officials if procedures are strictly followed.
- With rapid economic development, peoples' expectations for compensation can rise to unreasonable levels.
- Consider benefit sharing as a means to encourage agreements.

E. REPUBLIC OF SERBIA

137. Like Mongolia, Serbia is a transition economy currently implementing reforms in the areas of land tenure and property rights. Key challenges In this regard include registration of property rights in land books and cadastres, with the early consolidation of registries into a unique registration system a key goal. Of note, property rights transfers (i.e. upon conclusion of purchase agreements or probate proceedings) often remain unregistered due to high registration fees and complicated administrative procedures.

138. The Expropriation Law of the Republic of Serbia focusses on properties and assets which may be expropriated and restrictions which may be placed on property rights in the public interest. As presented below, as first step to initiate expropriation, the relevant expropriation beneficiary submits an application for the proclamation of public interest to the national government. If public interest is established, the

expropriation beneficiary then submits a request for expropriation to the municipal property administration within local self-governments. The application for determination of public interest and subsequent proposal for expropriation must include a detailed list of properties to be expropriated, their location, and information about individuals who have formal legal rights on these properties. The proposal for expropriation must also be accompanied by extracts from the cadastre or other public documents (land registries) specifying all rights on the affected properties.

139. The Expropriation Law recognizes only those who have formal legal rights over properties. The number of informal constructions in Serbia has blossomed during the transition years as rural, often marginalized households seek improved livelihood opportunities in urban centres, particularly Belgrade, the capital city. The country has recently adopted a law permitting, under certain prescribed conditions, legalization of informal structures. In areas where properties cannot be legalized (i.e. due to zoning or technical restrictions), households are evicted and property assets demolished without compensation, a clear contravention of international social safeguard standards.

140. Serbia's recently enacted (2009) Law on Social Housing aims to provide adequate housing for vulnerable groups. With limited resources, authorities find it difficult to justify favouring displaced households without formal legal rights to the properties they occupy over other vulnerable groups; in practice, informal occupants benefit little from the Social Housing Law.

141. The Serbian Expropriation Law does not contemplate compensation for lost profit/income of affected economic activity (formal or informal) resulting from displacement. More broadly, the Expropriation Law does not contemplate delivery of livelihood restoration assistance or transitional support to affected persons.

142. All eligible affected people (i.e. those with formal legal rights to affected properties) are informed about the proclamation of public interest and have the right to appeal. There is no engagement with those without formal legal rights. Neither are there requirements to make special provisions to inform / consult with vulnerable groups.

143. There is no specific legislative requirement to establish an independent grievance mechanism in Serbia. The Expropriation Law and administrative codes foresee rights of affected citizens (with formal legal rights) to appeal to courts during the expropriation process at various stages of the expropriation process, including the decision on public interest, the decision on expropriation, and the amount of compensation. Perceived challenges in navigating an appeal through the formal court system prompt many to explore informal redress through the relevant expropriating authority.

144. Compensation under the Expropriation Law is established in accordance with the prevailing market price. All costs associated with transfer of property rights to the expropriation beneficiary are borne by that entity. Although the law also does not specifically mention depreciation of structures and assets (the valuation methodology is not prescribed in the Law), depreciation is typically taken into account during valuations. Compensation is also provided for easement rights and for temporary occupation of land.

145. While negotiated settlements are not explicitly encouraged by the Expropriation Law, they are recognised as long as they are concluded within two months of the final decision on expropriation.

146. There are a number of sound provisions in the Serbian Expropriation Law, including a requirement that project proponents provide a bank guarantee covering the cost of resettlement prior to project launch. Shortcomings include the absence of any consultation provisions, the treatment of unlicensed occupants and inconsistent application of compensation standards on projects in multiple local jurisdictions.

F. KAZAKHSTAN

147. Kazakhstan is a post-socialist state, which has faced many similar transition issues as Mongolia. However, it is not by any measure a democracy. In the field of land acquisition, it can only be put forward as a poor example.

148. The law has some sound provisions. The scope of eminent domain is not open-ended. It is not allowed for commercial purposes of nongovernmental entities. It is not allowed if there is another way of meeting state needs. If an owner does not agree to sell, the executive body must file an expropriation case in court. In theory this ensures that the land is needed for an authorized state purpose, that the proper procedures have been followed, and that the offer complies with compensation principles. However, in Kazakhstan the courts cannot be relied on to protect the rights of affected persons.

149. Furthermore, the compensation provisions are wholly inadequate. Land compensation is the amount the owner paid the state when the land was acquired (plus cost of improvements). If the land was purchased from a private owner, then compensation can be no more than the purchase price specified in the contract. In practice this means that compensation is always lower than market value. In the CAREC Transport Corridor projects, APs' plots were assessed at less than 5% of market value, as they had been purchased from the state 15 years before at very low prices.

G. AUSTRALIA

150. Australia's expropriation legislation provides for powers, rights and procedures that are similar to Canada's. One difference is that instead of non-judicial administrative

tribunals deciding disputes, specialized courts are given jurisdiction (e.g. Land Court, or Land and Valuation Court).

151. In South Australia, the *Land Acquisition Act* has special procedures for land under aboriginal title. They illustrate some of the considerations necessary when dealing with affected persons who are part of a disadvantaged group or who have collective rights. They include:

- Formal participation of representative aboriginal bodies
- When acquisition is for a private purpose, an obligation of the authority to negotiate in good faith with affected parties
- Affected persons may request nonmonetary compensation
- The right to mediation by a specialized court (Environment, Resource and Development (ERD) Court)
- If agreement is not reached, the right to take the matter to the ERD Court
- Special considerations applicable to aboriginal land; e.g. effect on way of life, wishes of native title holders as to use or control of land
- The Minister may overrule the ERD Court
- Eminent domain can be used in the last resort, but is carried out by government, not a private project operator.

H. UNITED STATES

152. There are some important differences between US expropriation laws and those in Canada.

153. The Supreme Court in 2005 interpreted “public use” broadly, to authorize expropriation for the sole purpose of increasing tax revenues. This allows the property to be transferred to a private developer. Some 27 states reacted to the Supreme Court decision by changing their laws to restrict expropriation for redevelopment purposes. For example, in Minnesota “public use” only covers “mitigation of a blighted area” or reduction of abandoned property. This would cover an area of a city in which most buildings are abandoned or in severe disrepair.

154. The courts have a central role in the US system. The expropriating authority must present an application to the court, which decides whether the expropriation is lawful and appoints commissioners to determine compensation.

155. In the US, compensation for business losses is quite limited, and in most states the owners’ legal and appraisal costs are not covered by the expropriating authority.

V. KEY ISSUES IDENTIFIED THROUGH THE CONSULTATION PROCESS

156. The CT has engaged key stakeholders, including central and local government organizations, NGOs, affected persons and the private sector, to identify land acquisition and resettlement related issues of concern and to discuss possible solutions to these issues. Engagement activities included group and individual meetings, focus group discussions and, in some instances where face-to-face encounters could not be arranged, telephone interviews.

157. The following presents a summary of key issues identified through this consultation process. Issues raised have been grouped into the following:

1. Legislation and Regulation;
2. Compensation and Valuation/Expectation Management;
3. Resettlement Implementation;
4. Institutional Constraints;
5. Stakeholder Engagement/Participation;
6. Livelihood Impacts/Business Loss;
7. Property Measure Irregularities; and
8. Monitoring.

A. LEGISLATION AND REGULATION

158. The central legal issue that arose from discussions with stakeholders is the absence of a legal and regulatory framework to guide and support the LAR process by effectively balancing the rights and social safeguards of the affected people and the interests of the government, both central and local.

159. As has been noted, currently the LAR process is regulated by two enacted laws: the Law on Land and the Law on Land Allocation to Mongolian Citizen for Ownership as well as an additional implementing regulation under the Land Law. These regulations only apply to cases where the land under ownership, possession or use are exchanged or taken back with compensation for the special needs of the State. Eminent domain may not, as a result, be exercised for urban development; land acquisition for such local scale projects is currently only possible through negotiated settlement on the basis of contract law in the Civil Code.

160. It was felt strongly among several government authorities that these regulations fail to address all the issues occurring within the LAR process. The current practice is that LAR processes generally follow the provisions of the aforementioned laws and regulations, which, although legally bound by the Civil Code, are incomplete and imprecise according to stakeholders. Thus, it was put forward that there is a need to develop comprehensive legislation that protects both the rights of DPs and State needs or public interests.

161. A majority of stakeholders engaged (including UB UDPD, State Secretary of MRTCUD and PWG) argue that it is necessary to adopt a separate law on LAR. Some others believe that amending existing laws and adding additional provisions on LAR would be equally effective. Specifically the Land Affairs and Urban Development Department felt that there are too many fragmented separate laws which result in inconsistencies and incompatibilities within the existing legal framework and therefore proposed integration of LAR issues into the proposed Law on Urban Redevelopment and the amended Land Law.

162. Some of officials of UB LAD and other organizations felt that the law-making process is lengthy and complicated and are therefore unsure that a drafted law would be adopted in the near term. They suggested that the CT concentrate on the development of LAR guidelines and regulations and have those approved by the Government or relevant Ministry to ensure timely implementation of necessary reforms.

163. In regards to placing proposed LAR provisions in the Law on Land and proposed Law on Urban Redevelopment, it was pointed out by stakeholders that difficulties may arise when these proposed revisions are discussed within the Government and Parliament. Officials may question why those laws were submitted without waiting and integrating the relevant provisions on LAR.

164. Other legal issues involve land ownership. Land can only be privately owned by citizens of Mongolia, not by companies. Privately owned land purchased by Mongolian companies must be registered in the name of an individual, often a company officer or staff member. Stakeholders felt that there is a need to regulate this issue in the legislation, giving rights to private enterprises to own (not just possess) land rights.

165. The treatment of unlicensed occupants was also widely discussed. Government officials argued that compensating those without legal title rewards illegal behaviour. Others argued that international resettlement standards require extension of some form of compensation to these households to ensure they are not made worse-off by project development.

B. COMPENSATION AND VALUATION/EXPECTATION MANAGEMENT

166. Land value is a very controversial issue. *Ger* area residents and government officials have widely divergent views on the market value of land. There are no legislated procedures and rules for valuation and compensation. Government authorities are clear in stakeholder discussions that there is a strong need to establish a methodology for land valuation.

167. A key issue noted by stakeholders with regard to land valuation concerns the use of the base fixed values set by the Government in 1997. These values were designed to

calculate the land value on which annual land fees are based but are now also used to set compensation rates for land. The base values are divided into four zones for the entire country. In Ulaanbaatar, the base value system provides a fixed rate per m² of land from the center of the city to the peri-urban periphery. Market value is not considered, and rates have not been updated since 1997.

168. The practice of providing replacement land to affected landholders was also raised as an issue. Given the scarcity of suitable land in most *ger* areas of the city, particularly those closest to the city centre, replacement plots are often located great distance from affected landholdings. Replacement land is therefore often not the preferred compensation approach.

169. Prospective displaced persons expressed that if the Government offers cash compensation, they would like to value one m² of land at half of the price of a m² of an apartment floor. Some claimed that the average price per m² of an apartment is approximately US\$1,000, and so argue that they are entitled to US\$500 per m² of affected land.

170. In situations where the Government offers to exchange land for an apartment, *ger* area residents consulted felt that the number of rooms to be allocated should be based on household size. Moreover, it was put forward that extended family members who live in a separate dwelling but share the same plot and have formal title should be entitled to receive an apartment, or at a minimum a separate room in the apartment provided to the family member with title. It was further argued that that livelihood assistance offered to households without formal legal title to land should extend also to extended family members residing within the same *khashaa*. Displaced households would prefer to receive the key to an apartment before vacating the land.

171. *Ger* area residents believe that the compensation process is compromised generally due to a lack of transparency. Some allege that some of the money intended to be used for compensation is misappropriated. Others contend that those with advance information concerning development plans purchase land from vulnerable and under informed households at low rates in order to capture higher compensation.

C. RESETTLEMENT IMPLEMENTATION

172. In general current LAR procedure/process follows the provisions and regulations on the exchange of land or taking back of land with compensation for the special needs of the State. Despite this, stakeholders point out that some provisions and regulations are not followed, including, for instance the one year waiting period between receipt of written notice and land acquisition.

173. Some private developers who attended stakeholder discussions claimed that LAR should be done exclusively by the government, including land acquisition for the

construction of buildings, while others considered that there should be a separation of responsibility between the State and private sector in terms of LAR. It was proposed by some, for instance, that the State be given responsibility for the acquisition of land right related to infrastructure development while private developers carry out LAR on developable land.

174. Stakeholders explained, finally, that LAR funding mechanisms are not sufficiently clear; it is necessary to make clear how resettlement activities are to be financed.

D. INSTITUTIONAL CONSTRAINTS

175. One of the main issues addressed during stakeholder engagement is related to the ad hoc management and operation of the LAR process, due to the absence of specific legislative and regulatory procedures guiding and supporting the process. Stakeholders felt that there needs to be a clear allocation of duties and responsibilities of all organizations engaged in the LAR process, and that appropriate coordinating mechanisms are put in place.

176. Local government organizations given the task to carry out LAR are sometimes also tasked to carry out social safeguard measures, which are not strictly speaking their responsibility. Stakeholders, for instance UB LAD, explained how with the pressure to meet deadlines for development projects, these additional responsibilities can become a burden. They argue that they are neither properly directed nor adequately resourced to ensure that the rights of affected persons are protected. The lack of specific legislative and regulatory procedures, and the relative novelty of LAR experience, exacerbates these constraints.

177. More generally, officials involved with implementation of LAR activities pointed out that they are pushed to carry out their responsibilities with limited resources (e.g. transportation and work clothing) and technical support.

E. STAKEHOLDER ENGAGEMENT/PARTICIPATION

178. Many stakeholders decried the lack of consultation and engagement with affected people. *Ger* area residents voiced concern over their complete lack of involvement in the project planning process. Affected persons generally learn of proposed developments from third parties, not project proponents. Information disclosure and consultation procedures and protocols are similarly non-existent in the LAR process. Affected persons often resort a result to desperate measures (including public protests) to ensure their voices are heard. Stakeholders also express concern over the absence of accessible grievance redress mechanisms.

F. LIVELIHOOD IMPACTS/BUSINESS LOSS

179. Stakeholders felt that the livelihood impacts of the affected people are not considered during the LAR. There is a sentiment that organizations carrying out the LAR are concerned only with acquiring land rights; livelihood impacts and business losses are not compensated for. Some specific concerns from affected persons that arose in this regard include concerns about livelihood opportunities following resettlement, relocation costs, schooling for children, and in the case of land being replaced with apartments, the quality of the apartments offered.

180. Issues related to the compensation for business loss were also raised. In some cases the affected people have relatively prosperous *khashaa* based businesses, interruptions to which impact significantly on livelihood strategies.

G. PROPERTY MEASUREMENT IRREGULARITIES

181. There are cases where discrepancies exist between the parcel size on the ground and on cadastral records. For instance on the land ownership certificate, the size of a parcel may be indicated as less than what is the actual size of the plot. There are different reasons for this, it can be that the paper or database has an incorrect record, or it can be that the information on the paper and database is correct, but the land owner extended the parcel size without permission. These discrepancies cause problems when trying to negotiate and agree on compensation value.

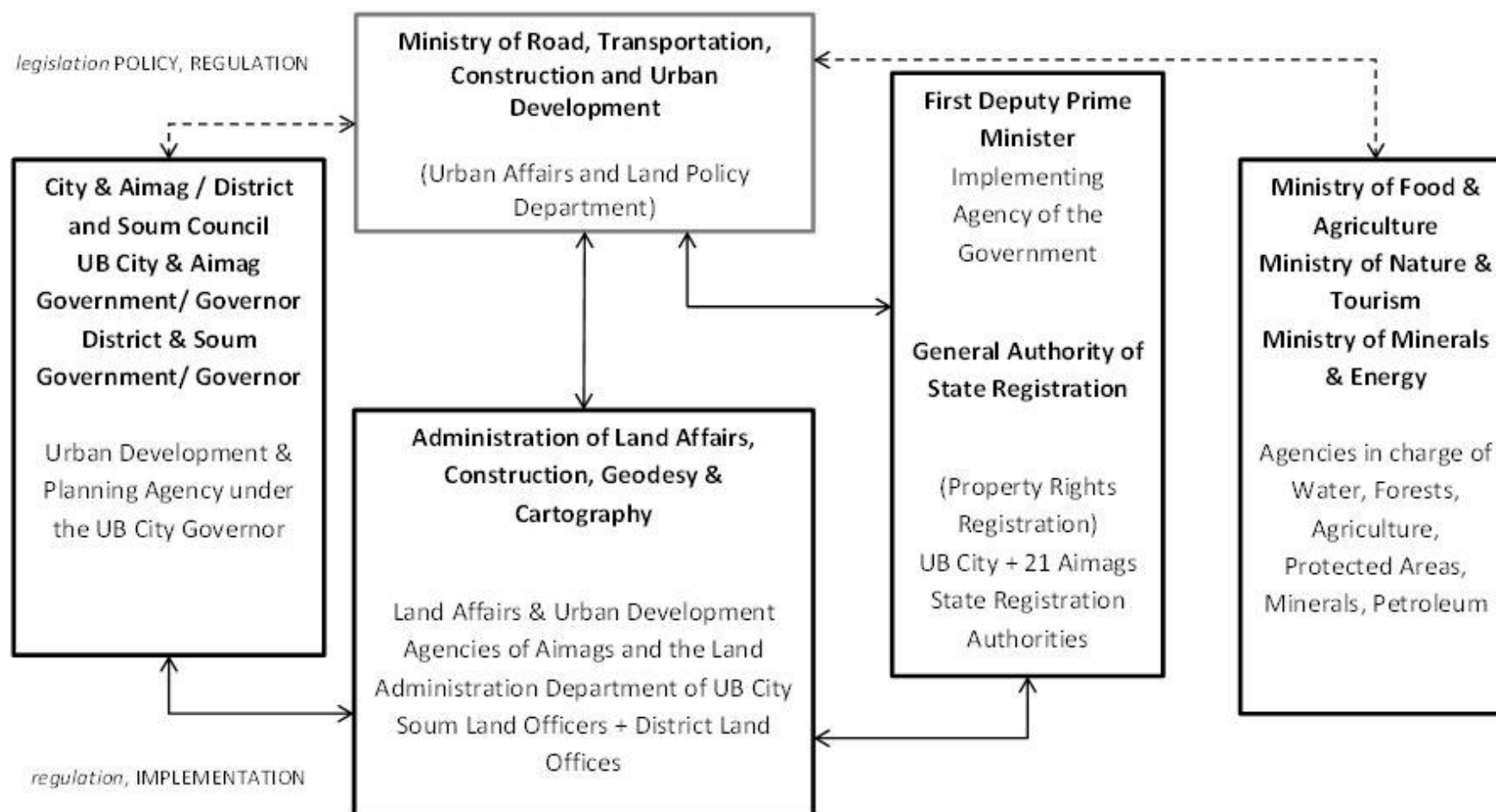
182.

H. MONITORING

183. The main issue in this regard described by stakeholders is that there is no organization that monitors the proper implementation of the LAR to ensure that the concerned organizations carry out their duties properly and that the rights of the affected people are protected. It is necessary to monitor the compensation process as well to ensure that affected persons receive full entitlements in light of allegations of misappropriation of compensation entitlements.

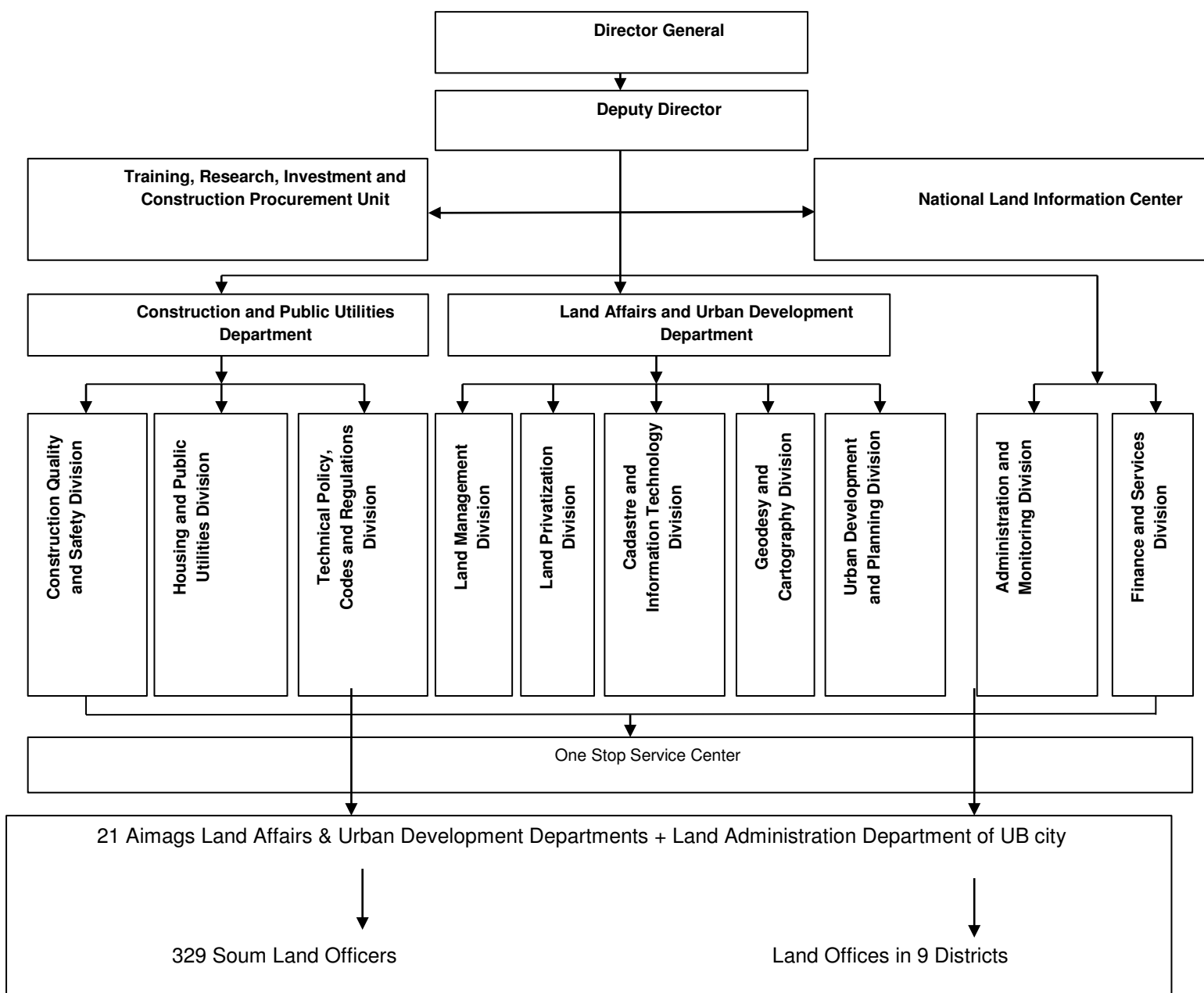
Appendix 1

General Framework of Land Management and Urban Development Organizations



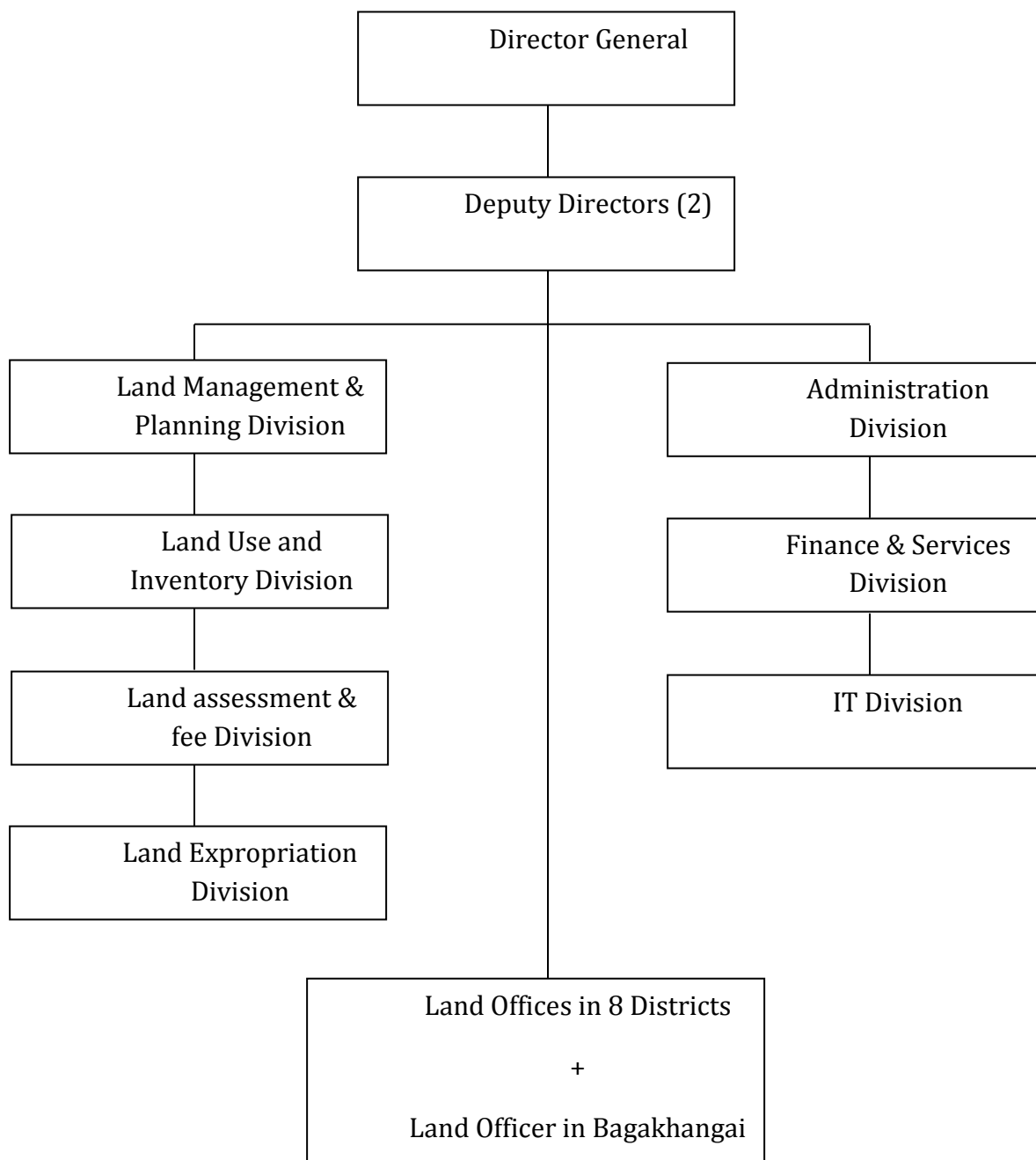
Appendix 2

Organizational Structure of ALACGaC

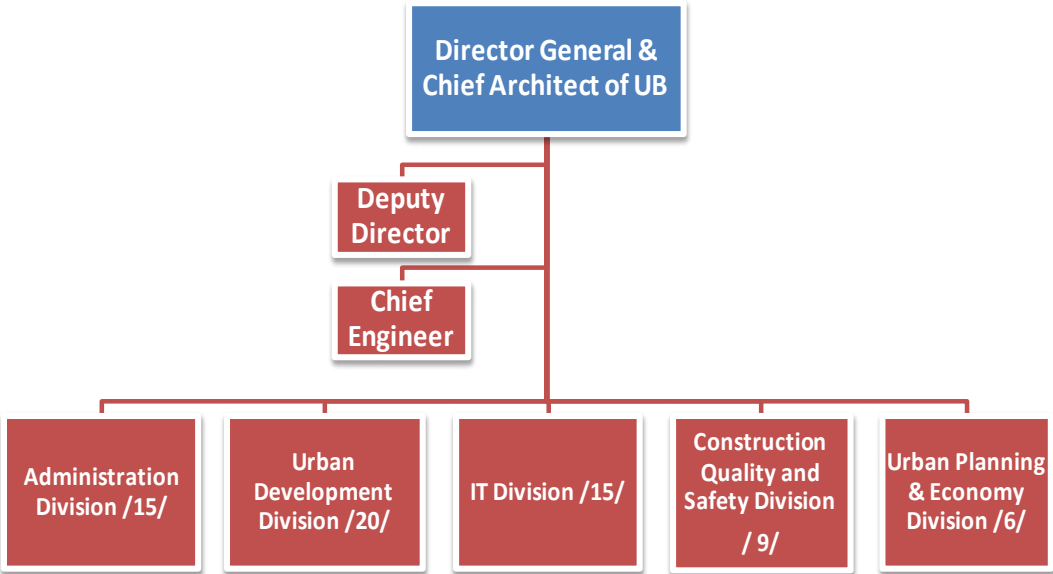


Appendix 3

Organizational Structure of UB LAD

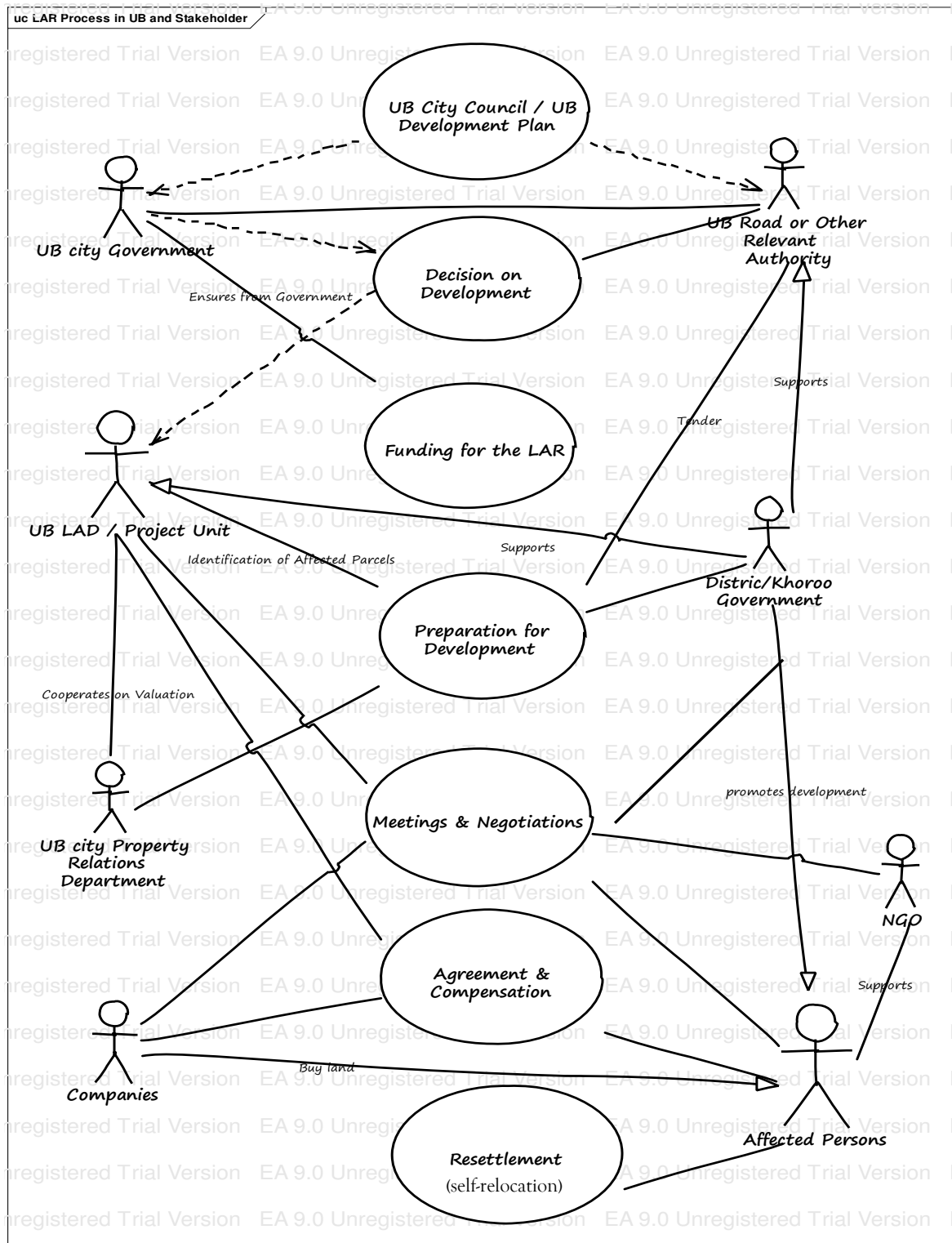


Appendix 4
Organizational Structure of UB UDPD



Appendix 5

LAR Process in Ulaanbaatar



Appendix 6

Gap Analysis - Mongolia Legislative Framework and ADB Involuntary Resettlement Safeguards

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
Involuntary resettlement	<p>The SPS considers resettlement involuntary when the affected persons have no right to refuse land acquisition by the state that results in their displacement.</p> <p>Involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.</p>	<p>The State has eminent domain power over privately owned and possessed land only for national needs of the state.</p> <p>It can acquire privately owned land only through negotiated settlement under the Law on Land Allocation. However, the State retains the right to confiscate land from the owners, if the owner uses land against public health, safety, and welfare of the residents, harmful to the social and economic well-being of the entire communities (Article 35). Moreover, the State may expropriate land in the event of environmental or public disasters that can cause heavy damage to property, lives and health of people and loss of animals and livestock (Article 34). The decision on replacing or taking back Citizen's owned land for special needs of the state with compensation is made by the Cabinet (Article 32.1).</p> <p>The state can acquire privately possessed land through negotiated settlement under the Law on Land. The decision on replacing or taking back such land for special needs of the state with compensation is made by the Cabinet (Article 42.2).</p> <p>The Law on Urban Development acknowledges that involuntary resettlement may be caused in accordance with an approved urban development plan (Art. 27.3).</p>
Land acquisition/ restriction of access	<p>Involuntary resettlement occurs as a result of:</p> <p>(i) involuntary acquisition of land through:</p> <ul style="list-style-type: none"> Expropriation by invoking the eminent domain powers of the state Negotiated settlement when the pricing is negotiated in a process <p>(ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.</p>	<p>Under Art. 33 of the Land Allocation Law <i>soum</i> and district governors may establish servitudes over private land for the purposes of access through the land, installing survey markers, drainage or other land management measures. No compensation need be paid. If the land becomes difficult or impossible to use because of the servitude the owner has the right to demand that the authority purchase the land or compensate for damages.</p> <p>Involuntary restrictions on land use may be imposed by zoning and detailed plans under the Urban Development Law. The Law contains no safeguards in such cases.</p>
Resettlement plan	To prepare a resettlement plan with time-bound actions and a budget based on an	Not addressed in the Law.

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	assessment of social impacts for every project with involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of tenure and steady income and livelihood sources.	
Cut-off date	<p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <i>cut-off date for qualifying displaced persons</i></p> <p>Individuals who move into the project affected area <i>after the cut-off date will not be eligible</i> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <i>well-documented and disseminated</i> throughout the project area.</p>	<p>To acquire owned land, a written notice must be served one year prior to the taking of land. This serves as the cut-off date. Investments and improvements, including immovable structures, on the land after service of this notice are ineligible for compensation. (Land Allocation Law, Articles 37.2 and Article 37.4)</p> <p>There is no provision as to cut-off date for acquisition of land under possession or use.</p>
Scope of impact (project design)	Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.	Not addressed in the law. Usually social impacts of a project due to involuntary resettlement are overlooked in a large scale project that would benefit the wider community. Only if costs associated with displacement are high may the government reconsider the project design.
Eligibility	<p>Type 1 –persons with formal legal rights to land and/or structures lost entirely or in part;</p> <p>Type 2 - persons who have no formal legal rights to land and/or structures lost entirely or in part, but who have claims to such lands that are recognised or recognisable under the</p>	<p>Eligibility to receive benefits depends on the type of rights.</p> <p>Displaced owners are eligible to receive compensation for lost land and property. There is debate that where land ownership is allocated for residential use structures for commercial use should be ineligible for compensation unless permission had been obtained from the proper authority.</p>

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	<p>national laws</p> <p>Type 3 - persons who lost the land they occupy in entirety or in part who have neither formal legal rights nor recognised or recognisable claims to such land</p> <p>IR requirements apply to all three types of displaced persons, though entitlements differ.</p>	<p>Displaced possessors are eligible to receive compensation for the affected immovable property but not for the land. However, if required, replacement land is provided.</p> <p>Users are not entitled to compensation. Compensation may be available under the Civil Code for buildings and structures built in accordance with the contract and with proper permission. The land use contract period is short - not exceeding 5 years. Therefore the State will not extend the contract if it needs the land. (Most users are foreigners.)</p> <p>Unlicensed occupants are considered illegal by the Law on Land therefore are not entitled to compensation. (Articles 27.4, 63.1.10- 63.1.11). But in practice because many of whom are vulnerable to due poverty, replacement land may be allocated and transfer assistance provided in kind or cash. Moreover, the Civil Code recognizes the right of a long term non-owner occupant of ownerless immovable property (incl. land) to own it after 15 years, if registered in the State register (104.2).</p> <p>Lessees and usufruct owners have the right to be maintained on the land even if ownership changes hands (Civil Code, Article 297). There are no provisions for lessee rights in case of land acquisition for a project, except that termination of a lease requires 3 months' notice (Article 294.3).</p>
Negotiated settlements	Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.	The land laws require the government to try to reach agreement with land owners and possessors.
Compensation at replacement cost	Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes) and transitional and restoration costs. Depreciation of structures and assets should not be taken into account.	The implication in the land laws is that land and immovables should be compensated at market value. In practice, compensation is not based on market value but on fixed rates approved by relevant government authorities. Depreciation is applied to buildings under Cabinet Resolution No. 233 of 2005 "Procedure for depreciation of capital assets".
Income Restoration and Improvement	If land acquisition causes loss of income or livelihood	Article 37.1.5 of the Land Allocation Law entitles owners to <i>damages due to replacement or taking back of the land based on the special needs of the state to the full extent according to Civil Code and legislation</i> . This can be interpreted widely to include entitlements to income

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	<p>Type 1 and Type 2, should receive:</p> <ul style="list-style-type: none"> • compensation for loss of assets or access to assets, at full replacement cost • replacement property of equal or greater value, or cash compensation at full replacement cost <p>Type 3, should receive:</p> <ul style="list-style-type: none"> • Loss of assets, other than land, at full replacement cost <p>All three categories should receive:</p> <ul style="list-style-type: none"> • compensation for the cost of re-establishing commercial activities elsewhere • compensation for lost net income during the period of transition • compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment • transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living • additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible) 	<p>restoration.</p> <p>The Land Law does not address loss of income or livelihood. The Land Law stipulates that the government authority in charge of land affairs must negotiate with the owners on envisaged losses due to land acquisition on top of loss of land and property (Article 32.5.3).</p>
Compensation in kind / cash	Compensation in kind will be offered in lieu of cash compensation where feasible.	Compensation in kind or cash is provided under the laws. No preference is given; largely dependent on the outcome of negotiation.
Provision of adequate housing / shelter with security of tenure	Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to	Not addressed in the law.

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	<p>infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p>	
Other resettlement assistance	<p>Relocation costs (moving allowances).</p> <p>Specific resettlement assistance for vulnerable groups.</p>	<p>Article 37.1.5 of the Land Allocation Law appears to require relocation costs in the case of owners. The Law on Urban Development stipulates that transportation and other costs associated with resettlement must be paid to displaced persons (Article 27.4). No other assistance than the relocation cost is offered to displaced persons.</p>
Vulnerable groups	<p>The LARP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p>	<p>Legislation makes no provision for vulnerable persons</p>
Joint property	<p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills</p>	<p>The Civil Code recognizes joint property ownership and family property rights (Articles 108, and 125-128).</p> <p>Joint property ownership requires permission of other owners to dispose of part of the property (108.4).</p>

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	training, access to credit and job opportunities are equally available to women and adapted to their needs.	Family property includes ‘other properties accrued since the marriage, notwithstanding in which name of spouses or family members the property is registered’ (126.2.4). Disposal of immovable (incl. land) family property requires mutual agreement (128.1) and certified written permission from an adult family member (128.2).
Legal assistance	Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.	Not addressed in the law.
Timing of compensation	Compensation (alternative housing and/or cash compensation) has to be provided prior to displacement	<p>No specific timing was set in regard of acquiring owned land, but the Law on Land Allocation states government authority in charge of land affairs shall negotiate with the owner compensation rate, payment method and time (Article 31.5.8).</p> <p>The Law on Land stipulates that Governors of a <i>soum</i> or a district shall pay the compensation to the displaced persons within 60 days after the contract conclusion, unless stated otherwise in the contract referred to in provision 42.3 (Article 43.4) .</p>
Information disclosure and public consultation	<p>The client should summarize the information contained in the LARP and/or the LARF for public disclosure to ensure that displaced persons understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>During the development of the RP, displaced persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing. Special provisions should</p>	<p>There is no provision for public consultation and information disclosure in the Law on Land or the Law on Land Allocation.</p> <p>The Law on Urban Development (Article 17 and 18) states participatory planning shall be adopted in urban development planning and consultation with citizens shall be conducted in the course of implementation of urban planning and. Decisions pertinent to urban development shall be disseminated and disclosed to the public in timely manner.</p>

IR Principle	ADB Safeguards	Provisions of Mongolian Law and Identified Gaps
	be made for consultations with vulnerable groups. Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.	
Grievance procedure	<p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p>	<p>Grievance procedures as contemplated in SPS are not addressed in the laws.</p> <p>The Land Law refers disputes over land to the local governors and eventually the courts (Article 60). The Law on Land Allocation states an aggrieved person is entitled to file a complaint to the respective higher ranking government authority or official (Article 39).</p> <p>Grievance and complaints of citizens regarding to decisions and conduct of government authority or officials are governed by the Law on Handling Grievances of Citizens Addressed to Government Authority and Government Officials. Grievances must be resolved within 30 days of making (Article 16).</p>
Monitoring	Monitoring of the LARP will be carried out in accordance with SPS and will include assessment of resettlement outcomes and impacts on standards of living of the displaced persons, and whether objectives of resettlement plan have been achieved.	Not addressed in the laws.

Appendix 7

Detailed Matrix – Comparison of Other Countries Legislation

Issue	ADB SPS	Mongolia – Current	People's Republic of China	Republic of Korea	Canada – Province of Manitoba	Germany	Kazakhstan	Republic of Serbia	USA – State of Minnesota	Armenia	Cambodia
1. Scope of eminent domain		<p>Grounds are special public need.</p> <p>Private land:</p> <ul style="list-style-type: none"> Ensuring national defense and security Creating a permanent surveillance field for scientific and technological tests or experiments and environmental or forecast observation Building national roads, engineering lines, buildings and constructions. <p>Land in private possession</p> <ul style="list-style-type: none"> Land under special government protection Border strip lands Land for ensuring national defense and security Land for foreign 	<p>Rural collective-owned lands:</p> <ul style="list-style-type: none"> Land needed for the benefits of the public Land for readjustment to revitalize old urban area in accordance with city planning At expiration of period stipulated in the contract for use of the land as land assignment, the user has not applied to extend the period or, if s/he has, the application is rejected Use of originally allocated State-owned land is terminated because, among other reasons, the unit that 	<p>For the following projects:</p> <ul style="list-style-type: none"> National defence and military affairs For the public interest: railroads, roads, airports, harbours, parking lots, public garages, cargo terminals, cable ways, rail tracks, rivers, dikes, dams, canals, potable water system, sewerage system, sewage treatment, treatment of wastewater, erosion control, windbreak, fire prevention, tide embankment, water embankment, reservoirs, irrigation 	<p>Ministries and local governments may acquire land for public purposes related to their mandates. Land must be needed by the authority for its <u>own</u> purposes. Private pipeline, electric power and telecommunication companies: rights equivalent to expropriation. Government bodies must first approve project.</p>	<p>German Constitution allows expropriation only if (1) it is for the public good (2) it is under a law that determines the nature and extent of compensation (3) there is no other reasonable way with a lower level of interference. Government must attempt to buy the land in good faith before it can expropriate. About 30 sectoral federal and state laws authorize expropriation. Including:</p> <ul style="list-style-type: none"> Roads, railways, airports, channels Pipelines, electricity transmission lines School, hospital, church, public green Environmental or monument 	<p>For state purposes for specific uses:</p> <ul style="list-style-type: none"> To meet international obligations Defense purposes, protected natural areas, recreational, historical and cultural facilities, special economic zones Mineral deposits Roads, power lines, communication lines, pipelines, engineering and communication networks, and other objects of state significance Demolition of dilapidated housing, emergency, threatened collapse. Execution of master plans for settlements by 	<p>Land required in the common interest, determined by law or Government of the Republic decision. Can be for any level of government and public enterprises. Includes constructing buildings for education, public health, social welfare, culture, water management, sports, transport, power generation and public utility infrastructure, national defence, environmental protection and protection against natural disasters, ore-mining, buildings to house needy people. Key criterion: the project cannot proceed without expropriating the property.</p>	<p>For public use or public purpose. Public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose. Includes mitigation of a blighted area or reduction of abandoned property. Eminent domain may be exercised by state and local authorities, utilities, pipeline and electricity companies and the like. Acquiring authority must make a good faith attempt to negotiate with the owner.</p>	<p>In the case of exceptional public and state priority needs. State protection, public and state security; communication infrastructure, transport, energy, land use, land study, city construction, energy supply, water supply; protection of the environment.</p>	<p>Under the Constitution, only in the public interest, payment of just and fair compensation in advance. Open-ended definition of <i>public interest</i> to include anything determined by the Government to be required by the nation.</p>

Issue	ADB SPS	Mongolia – Current	People’s Republic of China	Republic of Korea	Canada – Province of Manitoba	Germany	Kazakhstan	Republic of Serbia	USA – State of Minnesota	Armenia	Cambodia
		<p>diplomatic missions and consulates, as well as resident offices of international organizations</p> <ul style="list-style-type: none"> Free zone area Land for scientific and technological tests, experiments and sites for regular environmental and climatic observation Aimag level reserve rangelands. 	<p>uses the land has been dissolved or relocated</p> <ul style="list-style-type: none"> Highways, railways, airports or ore fields abandoned with approval. <p>Urban lands:</p> <ul style="list-style-type: none"> Needs for national defense and diplomacy; Needs for infrastructure construction for energy, transportation and water conservancy projects etc, organized and implemented by government; Needs for public services organized and implemented by the government, such as, science and technology, education, culture, health, sports, environment 	<p>and drainage canals, petroleum reservation and oil supply, treatment of oil waste, electricity, telecommunications, broadcasting, gas and meteorological observations</p> <ul style="list-style-type: none"> Facilities to be built by state or local government: office buildings, plants, research institutes, test institutes, health or cultural facilities, parks, squares, athletic fields, markets, graveyards, crematories, slaughterhouses For the public interest: schools, libraries, museums and art galleries; 		<p>protection</p> <ul style="list-style-type: none"> Preservation of building structures <p>The public use must be designated in a binding land-use plan. If a binding land-use plan designates land for public purposes or restricted use, owner must be compensated to extent loss is suffered.</p>	<p>construction of the facilities listed</p> <ul style="list-style-type: none"> Facilities provided by state and regional programs and investment projects to ensure the public interest and achieve socially important goals. <p>Expropriation is not allowed if there is another way of meeting state needs. Expropriation is not allowed for commercial purposes of nongovernmental entities. Expropriation is permitted to implement concession projects.</p>				

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			<p>t and resources protection, disaster prevention, cultural relics protection, social welfare and municipal public utilities;</p> <ul style="list-style-type: none"> Needs for the welfare-oriented Comfortable House Project organized and implemented by the government; Needs for the reconstruction of old town districts, such as, centralized rebuilding of hazardous house and improvement of infrastructure, organized and implemented by the government according to relevant provisions in the Town and Country 	<ul style="list-style-type: none"> Housing, or creation of housing lots for the purpose of rent or transfer Pathways, bridges, electric lines, material storages and other accessory facilities required for implementing the above projects. Other projects under special legislation <p>Urban development projects, including private projects that serve a public purpose. Developer must own at least 2/3 of the area or have consent from 2/3 of the rest. If redevelopment, threshold is 95%.</p>							

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			Planning Act; • Needs for other public interests stipulated in laws and administrative statutes.								
2. Land tenure system		Land is state-owned unless ownership rights have been granted. State-owned land can also be allocated to individual or enterprises under possession rights or land use rights. (1) <u>ownership</u> , granted only to citizens of Mongolia; (2) <u>possession</u> , granted under license, to Mongolian citizens, economic entities and organizations, for terms of 15 to 60 years, extendable up to 40 years at a time; (3) <u>use</u> , granted under contract or lease to foreign countries and legal entities. There are no customary or traditional lands.	The PRC practises socialist public ownership of land, namely, ownership by the whole people and collective ownership by the working people. Ownership by the whole people means that the right of ownership in State-owned land is exercised by the State Council on behalf of the State. Urban land is State-owned, so property is leased to users for up to 70 years; rural land is mainly collectively owned and farmland, forest and grazing land may be contracted to users for 30-50 years. Ownership or the right to the	Freehold title. The poor are usually renters (tenants)	Private ownership. Most single family houses are owner-occupied. Multiple dwellings units are condominiums or are rented.	Private ownership Leasehold (est. 40% of urban households)	Land is owned by the state. It can be transferred to private ownership, or rented to individuals, generally for 49 years.	Private ownership of buildings. Usually in urban areas land under buildings is state-owned. Owner of building has permanent right of use or long term lease right (max 99 years) over the land as long as the building exists.	Private ownership.	Private ownership	All land belongs to the state. Private property rights of possession, use and inheritance are recognized. Occupants may apply for Certificates of Possession and Use. Many occupants do not have legal titles. Their tenure is recognized by occupation and recognition by neighbours.

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			use of forest land or grassland and the right to the use of water surfaces or tidal flats for aquaculture shall be confirmed respectively in accordance with the relevant provisions of the Forestry Law, the Grassland Law and the Fisheries Law.								
3. Legal framework		Constitution Law on Allocation of Land to Mongolian Citizens for Private Ownership Land Law Civil Code Law on Property Valuation	Land Administration Law 2004 and Housing Expropriation Regulation 2011, Forestry Law	Land Acquisition and Compensation Act (LACA) Urban Development Act	Expropriation Act	State Expropriation Acts (16) Federal Building Code	Land Code (Art 84) Law on State Property 2011 (Chapter 6) Law on Housing Relations (1997, amended in 2011) Labour Code	Expropriation Law 20xx Law on Planning and Construction	Minnesota Statutes Chapter 117 Eminent Domain Uniform Relocation Assistance and Real Property Acquisition Policies Act	Land Code (Art 102, 104) Civil Code (Art 218-221) Law on Expropriation of Property for Public and State Purposes	Expropriation Law (2010) Sub-decrees on grievance procedures and compensation process are contemplated in the law but not yet issued. Land Law: Those occupying state land after 30 August 2001 do not have the right to be recognized as legal occupants and are not entitled to compensation or social support if evicted. Government Circular No. 02 of 26 February 2007.

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4. Entitlements											
Eligibility	Type 1 – persons with formal legal rights to land and/or structures lost entirely or in part; Type 2 - persons who have no formal legal rights to land and/or structures lost entirely or in part, but who have claims to such lands that are recognised or recognisable under the national laws Type 3 - persons who lost the land they occupy in entirety or in part who have neither formal legal rights nor recognised or recognisable claims to such land Requirements apply to all three types of displaced persons, though entitlements differ. Type 3 eligible for resettlement assistance and compensation for nonland assets.	Owner of private land. Possessor under Land Law No entitlement under Land Law for private user	Registered owners or users, but not renters; unregistered people or houses are considered illegal but can be compensated	Owner of property Resident of house Tenant Business operator Compensation payable in cash, unless AP opts for replacement land or public housing.	Owner Tenant	Owner Holder of other rights in land, such as tenant Business owner	Registered private owner, leaseholder or holder of rights for permanent use.	Owner Holder of lease on socially or state-owned apartment Tenant	Owners and anyone with an interest in land (e.g. tenants, mortgage holders) If relocation required, minimum compensation for owner must be sufficient to purchase a comparable property in the community. Acquiring authority must not require the owner to accept replacement property. Up to \$1500 for homeowner’s appraisal costs. Displaced persons: anyone lawfully occupying property – entitled to relocation assistance.	Titled land owners only	Only persons recognized as legal occupants. Owner/right holder may accept replacement property.
Land	Preference for	Private land:	In rural areas,	Market value	Principle: after	Principle:	The amount	If large area	Market value.	Market value	Market price

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compensation	land-for-land replacement. If replacement land not available, market value of plus transaction costs related to restoring assets (registration and transfer taxes) . Ensure security of tenure.	<ul style="list-style-type: none"> Market value Replacement land must not be worse in character and quality <p>Possessor under Land Law</p> <ul style="list-style-type: none"> Replacement land User Rights No compensation 	value is based on a minimum of 16 times average annual output value, but can be 30 times or more if decided by local gov’t. In suburban areas, value is much higher due to higher market prices; rates are set by local gov’t but are negotiable. Urban land and property is based on market value which varies by location.		receiving compensation, the owner should be in the same economic position as before the expropriation. Market value Loss in value to remaining land remaining Loss of amenities such as trees and landscaping	compensation will give the owner the opportunity to acquire a comparable property. Market value Loss in value of remaining land. Increase in value of remaining land is a factor. Compensation in cash, except if owner’s livelihood depends on the property, then must be compensated in substitute property. (Difference in value compensated in cash.)	the owner paid the state when the land was acquired plus cost of improvements made on the land (i.e. for improving fertility, market value of real estate situated in a plot- including fruit trees and perennial plantations, costs associated with the development of a plot, its maintenance, protection measures, enhancing soil fertility and losses to be incurred with premature termination of obligations to third parties). If the land was purchased from a private owner, then the purchase price specified in the contract (not exceeding market value). If owner consents, a plot of equal value instead of cash compensation. (For temporary acquisition, land should be	being expropriated, right to equivalent land in the same municipality. Owner may opt for cash compensation based on market value.	Loss in value of remaining land. Cost of environmental remediation deducted.	plus 15%.	or replacement cost.

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							restored. Compensation should include costs of the operations associated with the construction of new or reconstruction of existing facilities and installations (systems)).				
Temporary land occupation for construction			This is regulated by the LAL Law. The maximum time is 2 years and contractors must pay a deposit for restoration costs. The compensation to APs is at least equivalent to annual output value of the land. Use of valuable land and demolition requirements is discouraged in favour of wasteland or vacant land.								
Tenants	As Type 3 category, eligible for resettlement assistance, including transitional rental support. Compensation at replacement cost for any structures	No provision	In practice, tenants are compensated for the remaining period of the lease. They may be eligible for moving expenses and assistance to find	Relocation and moving expenses. Access to public rental housing.	(including businesses) Compensated for disturbance: related to length of time remaining in the lease. Moving costs paid.	Consequential losses calculated in regard to remaining term of the lease.	(Of state land) Amount of lease paid to the State (if fully paid), plus cost of improvements made on the land (i.e. for improving fertility irrigation,	Compensation based on market rent for the nearest similar land.	Rental assistance: extra cost of comparable property. Moving expenses.	none	Allowance for disturbance: relocation expenses. No compensation if rent is higher.

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	constructed by tenant.		replacement housing. (Note, there is no specific provision in the Housing Expropriation Regulation 2011).				structures and losses to be incurred with premature termination of obligations to third parties.				
Business loss	Compensation for the cost of re-establishing commercial activities elsewhere Compensation for lost net income during the period of transition Compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment Transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living Additional targeted assistance (credit facilities, training, or job opportunities) and opportunities	No specific provision. For business operated by owner of land, may be covered as a “loss incurred due to the taking of the land”.	Businesses that are registered are compensated for business loss. Small business may receive 2-3 months profit and wages; larger enterprises will negotiate compensation based on production losses and non-movable assets. Non-registered (informal) businesses are treated as residential properties.	Must be occupying legitimate business premises Loss of profit and incidental losses	All the owner’s business losses are compensated. Determination is delayed until 6 months after starting business in the new location.	Lost profits and other consequential losses	Crop losses. Lost profit of <u>registered</u> businesses is considered in the valuation and compensation.	None.	Compensation for loss as a going concern, unless loss can be prevented by relocation in the same or a similar and suitable location. Reestablishment expense for farms/small businesses (max \$10,000). Fixed payment based on one year’s net earnings (max \$20,000). Loss of physical property (e.g. inventory). Moving expenses.	Crop losses for titled land owners	Tenant: compensation for impact on business operation and loss of invested capital. Owner: additional compensation for “loss in value of property”.

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	to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible)										
House compensation	Full replacement cost calculated based on the following (i) fair market value; (ii) transaction costs; (iii) interest accrued, (iv) transitional and restoration costs; and (v) other applicable payments, if any. Depreciation of structures and assets not taken into account.	Market value (i.e. depreciation applied) User under Land Law may be entitled to compensation under Civil Code for non-movable assets built in accordance with the contract and with the proper permission..	In urban areas, accredited appraisal companies are selected by affected persons to estimate compensation; these are based on local gov't rates and then adjusted for housing quality; the final amount is based on negotiated settlement. The gov't may also offer exchange housing (i.e., same house area in a new apartment building). In rural areas, unit rates are set by local gov't. Appraisal is often done by the local gov't. There is generally less negotiation.	Legally permitted buildings only Market value (or if movable cost of relocation) Minimum compensation 5 million won (US\$4660)	Market value (i.e. depreciation applied).	Market value (i.e. depreciation is applied)	“Market value”. If owner wishes, can choose replacement house from a list of available houses. (If replacement house is worth less, cash compensation for the difference.) Only those whose structures are legally registered are entitled to compensation.	Owner has right to equivalent replacement house or apartment or business premise nearby. (Difference in value to be paid, except if replacement house is worth more, house owner must agree.) Owner may opt for cash compensation at market value (i.e. depreciation applied). Lessee of socially or state-owned apartment is given another suitable such apartment.	Market value (depreciation applied)	Compensated, except for unregistered commercial buildings Market value (i.e. depreciation applied)	Market price or replacement cost.
Relocation assistance	Compensate for relocation costs (moving allowances). Provide	Relocation expenses compensated.	Allowances are paid for moving and transition periods. If	Relocation allowance and moving expenses. If there is a	All disturbance damages paid, including moving and relocation	Moving expenses Not compensated: notarial deed	None.	None.	Cost of relocation	Not compensated.	No specific provision

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	transitional support and development assistance		exchange housing or housing in a new resettlement site is chosen, the local gov’t provides the local service amenities and assists with relocation. Sometimes, a bonus is given to encourage people to move on time.	relocation site: choice of housing site, house, or relocation allowance. Moving expenses.	expenses.	cost, land registry fees, survey cost, transaction tax.					
Livelihood restoration	Provide displaced persons with opportunities to share project benefits .	No entitlement.	There are policy statements but so far there are only provisions for people with serious land loss, or are very poor. People are entitled to social insurance but must use some of the cash compensation to pay the premiums.	Compulsory only under special laws, including dams and new towns. May include vocational training, preferential hiring, sites for commercial use.	Not addressed.	Owner’s temporary or permanent losses to profession or livelihood are compensated in cash.	Registered workers are entitled to one-month salary for loss of work.	None.	No provision	None	Below.
Vulnerable persons	Requirement to take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance. Special measures in terms of consultation and	No provision.	There are safety nets for poor households and other vulnerable “Wubao” households provided by the government rather than the project entity. These provide assistance for new housing,		Authority may make voluntary payments to persons displaced from houses or other buildings who are not otherwise entitled to compensation, for moving expenses or business loss.	A Social Plan is required in connection with a binding land-use plan that will cause adverse effects, including having to move house, find other employment or relocate a business. Hardship	No provision.	Additional compensation may be paid depending on financial, personal or family circumstances that affect livelihood.	Displaced persons have right to advisory services concerning rights and relocation opportunities. Special consideration for low-income persons re rental assistance.	No provision	<u>May</u> receive preferential treatment to obtain land for livelihood: through sale, lease, gift, usufruct (right to use and enjoy the fruits of the land for life), social land concessions, economic land concessions, or use permits.

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	development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.		transition and training. There are no specific provisions under the Land Administration Act or the Housing Expropriation Regulation.			allowances are to be given to tenants “in order to prevent or mitigate economic disadvantage”.					
5. Valuation methods	Replacement cost principle. No depreciation of structures and other assets.	Market value, according to the law. A methodology for property valuation is to be prescribed under the Law on Property Valuation. In current practice, the value offered is based on rates set by the government.	Originally, all rates were stipulated by gov’t. Over time, these were increased to reflect replacement value. Now, the gov’t rates are used as a floor price and compensation is based on market prices, which have escalated quickly in recent years. There is still debate over the valuation of rural land based on output value. Real estate valuers are used for urban housing.	Current market value. Based on existing use, not potential for future development. Official system of values that approximate market values. Two private sector appraisers are used. AP can recommend a third. Value conclusions are averaged.	Market value as determined by professional appraisers applying generally accepted valuation standards. Owner may hire own appraiser at expropriating authority’s expense. If no agreement can be reached, LVAC (below) makes binding decision.	Valuation based on the kind of land use that was probable before expropriation began. Urban development: proposed development’s effect on value is included as far as the market reflects it. In expropriation applicant’s last offer must be based on report of licensed valuer (sometimes specialist valuers needed) or the Valuation Committee (composed of valuation experts). Valuation standards are defined in the Valuation	Compensation amounts determined by valuation commission. Market value is to be defined by independent evaluator. There are general standards for compensation depending on the type of structure. For non-commercial structures, valuers use the cost method. For commercial structures, they use a combination of revenue method and comparative method. However, there are differences in specific formulas used by valuers for each type of method.	Market value. No valuation methodology is prescribed. Tax Administration carries out valuation for the expropriating authority.	Acquiring authority must obtain at least one appraisal. Appraiser must consult with owner, if possible. Appraisals divulged to owner. Owner may obtain appraisal. Valuation based on market values. Carried out by professional appraisers. If disputed, by disinterested experts appointed by the court.	Procedure outlined in Law on Real Estate Valuation. By licensed real estate valuers.	Values determined by independent committee or agent appointed by EC.

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						Ordinance.	In practice values are below market.				
6. Institutional arrangements											
Mandates, roles & duties	Establish institutional arrangement responsibilities and mechanisms for carrying out the measures of the resettlement plan. Consider establishing a dedicated resettlement unit for projects with significant resettlement impacts. Provide necessary capacity building to ensure effective resettlement implementation. Use qualified and experienced experts to undertake resettlement planning.	State Great Khural: decision on land acquisition for i) State special protected areas, ii) border strips, iii) national defense and security purposes, iv) diplomatic missions and international organizations, and v) free trade zones. Cabinet: decision on land acquisition for all other purposes. Central government body (MRTCUD): enters into agreements with land possessors; makes proposals to Cabinet on land acquisition. Aimag/UB councils: comment on proposal made by Governor. Government body in charge of land administration	Ministry of Land and Resources (ML&R) must approve (i) land use and (ii) transfer to ownership. For urban resettlement, house demolition agencies are used although responsibility is now clearly with local gov'ts. For large water resources projects, a resettlement plan must be prepared and approved by Ministry of Water Resources and/or local Resettlement Agency. No such detailed plans are required for other projects.	Project operator is any public or private body that has been granted the authority to carry out a project. For urban development may be a specialized public enterprise. Receives authorization to proceed from government. APs form residents committee. Indemnity Committee (IC) established by head of local government. consisting of judges, lawyers, professors, officials, and at least 1/3 APs: consults on issues raised by APs. Minister of Construction and Transportation gives project approval, which authorizes start of expropriation	Ministries, local governments, school authorities, and utility companies have eminent domain power. No higher or independent approval is needed. For local bodies, the elected council decides. Provincial government has a specialized land acquisition agency that acts on behalf of all ministries. Local governments and other bodies carry out land acquisition and expropriation independently. Land Value Appraisal Commission (LVAC): specialized independent body that decides disputes about compensation.	Approval of binding land-use plan: <ul style="list-style-type: none"> Plan process / impact assessment: public and owner hearings Plan approved by municipality Expropriation: <ul style="list-style-type: none"> Special upper administrative authority (usually regional). Municipality requests the authority to expropriate. Preliminary proceedings : Authority consults the parties, determines whether legal requirements have been met and reasonableness of offer. If no agreed resolution, official procedure: hearing of the parties. Decision is 	powers. The ministry or authority requiring the land initiates the project, prepares feasibility study. Oblast and rayon review and comment. Executive body issues resolution on land acquisition (registered with Dept of Justice) Lower executive body administers LAR, establishes valuation commission. (In CAREC road project, the implementing agency relied solely on licensed valuator engaged by the detailed design firms. Rayon's role is limited to issuing notices/acts on land acquisition. Or if alternative land is sought, oblast/rayon akimats provide the	Plan must have been adopted under Law on Planning and Construction. Ministry of Finance authorizes the body requiring the land to undertake preparatory operations. Republic Government makes declaration of common interest. Municipal land department accepts the proposal for expropriation, conducts expropriation proceedings, including hearing and negotiating with the owner, and approves the proposal, including compensation provisions.	Acquiring authority investigates, obtains appraisals, attempts to negotiate.* If agreement not reached, acquiring authority petitions the court to appoint commissioners to appraise damages due to taking land. Court appoints 3 disinterested commissioners.	State agency that requires land makes request to Government. Government Decree determines exclusive public and state priority. President ratifies. Acquiring state agency implements land acquisition. If AP does not agree with compensation offered, acquiring state agency must apply to court, which appoints independent valuer.	Acquiring ministry makes proposal. Expropriation Committee (EC), chaired by Ministry of Economy and Finance, prepares expropriation project proposal after consultation and interviews with concerned parties. Presents it to Government. Government approves. EC issues expropriation declaration, decides ownership and land rights, compensation, and sets deadline for vacating property. Expropriation Subcommittee at provincial and municipal levels, chaired by governors. Role not described. Sub-decrees to determine organization and functioning of EC and

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		(ALACGaC): Enter into agreements with land owners. Governors: (1) make proposals to ALACGaC, (2) enter into agreements with land possessors, (3) based on the Cabinet decision implement land acquisition through ALACGaC’s local office.		procedures. Land Expropriation Committee (LEC) established by national government, consisting of impartial specialists: Local LECs by local government. LEC decides area to be expropriated, compensation, and related matters. If expropriation necessary, project operator applies to Minister of Construction and Transportation for approval.		subject to appeal to court.	alternative land) Draft agreements must be approved by local representative body. Signed agreements registered with Dept of Justice. If owner disagrees, the lower executive body may file an expropriation case in court.				Subcommittee s.
Grievance redress mechanism	Set up a grievance redress mechanism to receive and facilitate timely resolution of affected persons’ concerns.	Complaints to governors and higher officials.	There is a regulation called "Letters and Visits" which gives procedures for making complaints to gov't. Nonetheless, the system is quite rigid. People often prefer to negotiate with the project agency, as they have more leverage. Under the new Housing	IC resolves most grievances. LECs adjudicate if expropriation proceeds. If local LEC decision, can be appealed to national LEC. Appeal to court claiming unlawful or unjust decision by LEC.	Inquiry officer: appointed by Minister if owner objects to the necessity of the expropriation. Decision is only a recommendation. LVAC: decides compensation.	Upper administrative authority Judicial review.	Owner may appeal to local executive body. Court.	Complaints decided by Ministry of Finance. If no agreement within 2 months of expropriation order, then municipal court sets compensation.	Court only. Owner may challenge public use or public purpose.	AP has 10 days after receiving minutes of proposed compensation to protest with the acquiring state agency.	Grievance Redress Committee led by Ministry of Land Management, Urban Planning and Construction, composed of relevant ministries. Sub-decree to determine organization and functioning. Owner or holder of legal right may file a complaint

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			Expropriation Regulation, negotiation will now only be with the local government rather than an intermediary. If APs are not satisfied with decisions of government agencies, they can take their case either to administrative courts or to civil courts; however, this is not very common because the regulatory provisions are quite detailed and clearly specified. Before a dispute over ownership of land or the right to the use of land is solved, no party may alter the condition in which the land is being used.								within 30 days of the expropriation declaration against the need for the land in the public or national interest. No right to file complaint if taking is for national roads, bridges, railway, transmission and distribution systems, pipelines, drainage or irrigation. Complaints about compensation or other matters: may be made to EC or Grievance Redress Committee. EC decision may be appealed to Grievance Redress Committee. Finally to court.
Monitoring requirements	Monitor and measure the progress of implementation of resettlement. Monitoring to include assessment of resettlement outcomes and impacts on		There is monitoring of payments and regular auditing. Social monitoring is not required. Large water resource project have special requirements	LAR procedures are reported regularly. Records disclosed to public. After completion, inspection to verify whether LAR was implemented	None.	Not addressed in urban development or expropriation legislation.	None	Minister of Finance sets requirements for record-keeping. Municipal authorities must provide consolidated data to MoF quarterly. There is no	Court only.	None	None.

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	standards of living of the displaced persons, and whether objectives of resettlement plan have been achieved.		for supervision.	as planned.				provision for AP or public access to such records.			
Consultation requirements	Conduct meaningful consultation with all stakeholders. Inform all displaced persons of their entitlements and resettlement options.		The legislation has provisions for consultation but there are no detailed procedures, except for official notifications to APs, which is done in a two-step process. There is also a provision for public hearings but these are not common, as most negotiation is done with individuals.	LAR plan must be prepared in consultation with APs. Project operator, APs and third-party experts participate in Indemnity Councils.	None in expropriation law. Required for major projects by environmental and urban planning law. Consultation is carried out in practice in order to minimize impacts and promote agreement with owners.	At planning stage.	Valuation commission includes officials and land owners. Affected owners also should be notified officially at least 1 year prior to actual acquisition.	None.	Not in eminent domain law.	APs participate in compilation of minutes of acquiring state agency prior to calculation of compensation.	Prior to making expropriation project proposal, EC must organize public consultations.
National vs local authority		Local authorities have no independent land acquisition powers. They assist in the land acquisition process.	National ministries set the policy and laws; local governments issue regulations and standards of compensation. ML&R supervises local gov't land bureaus since 2005.	Project operator can be national or local government body. Local government has a procedural role in all projects. Expropriation requires approval of the Minister.	Each is autonomous with respect to land acquisition and expropriation, except that local government cannot expropriate higher authority's land.	Municipal development plan must be approved by higher-level authority. Authorization to expropriate given by special higher-level body.	Local executive bodies have eminent domain powers. They are involved administratively in all land acquisition projects (as above).	Expropriation cannot start without MoF authorization and Republic's declaration of common interest. All expropriations are implemented by municipal authorities.	State and local authorities have independent land acquisition and eminent domain powers, neither subordinate to the other. Local authorities are bound by state law on eminent domain (with some exceptions).	Local government appears to have no role.	No apparent local authority role.
7. Private		None	Very limited.	Private sector	None, except	Private sector	None.	None.	Private utility		None in the

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sector involvement			They must acquire land through gov't. In urban areas, lands are assembled by gov't real estate companies and then sold to housing developers by bidding. Private entities may offer additional provisions to APs, including livelihood opportunities.	company can be appointed as project operator for urban development or redevelopment project. Presidential Decree covers requirements for procurement, agreement, security, etc. Private sector project operator can be given approval to expropriate.	pipeline, electric power and telecommunication companies.	has no role in the expropriation process. Land can be expropriated by government in favour of a private party implementing a public purpose.	There are private-sector initiated projects (i.e. gas pipelines) where the private sector paid compensation both to APs and the rayons.		corporations may exercise eminent domain. Otherwise private sector has no role.		law. In practice, land is expropriated by the Government and turned over to private developers.
8. Experiences											
Good features			There is abundant experience since the mid 1980s and steady improvements were required to improve policy, regulations, compensation standards, implementation procedures and supervision. Most agreements are now based on negotiations but transparency promotes more equitable settlements. The funds are made available	LAR plan preparation procedures are spelled out in the law. On-site examinations are conducted with cooperation of APs or residents committee. Valuations by certified private sector appraisers rather than government officials. Grievance redress procedures are thorough. Monitoring of implementation of LAR plan, with results	Thorough coverage of governance, procedures, administration and principles of compensation. Procedures are simple, accountability clear. Disputes about compensation do not delay land acquisition. Owners' legal and appraisal expenses are compensated. As a result, APs are empowered. Court oversight is effective.	Thorough coverage of governance, procedures, administration and principles of compensation. Consultation on binding land-use plans. Independent confirmation that authority has made reasonable attempt to avoid expropriation, followed the proper procedures, and that expropriation is needed to implement a public purpose. Court review	Expropriating authority must go to court for approval. State cannot take possession of the land until the owner has received compensation.	A simple process. Bank guarantee covering compensation.	Simple land acquisition and eminent domain procedures. Court supervision is effective. Acquiring authority has to have court approval. Easy access by APs.	Security deposit for compensation.	National body responsible for land acquisition.

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			and generally are fully paid prior to displacement.	publically disclosed.		on same principles. Compensation provisions are thorough. Provision for livelihood restoration and vulnerable persons.					
Problems and constraints			Increasingly, people refuse to move or accept the amount of compensation offered. This causes project delays and may need to be settled by court action, which local gov'ts seem reluctant to do. They prefer to convince the APs to reach agreement. The result has been rising costs for LAR (sometime 50% of the cost of urban infrastructure developments).	Consultation is lacking on the urban development plans that are implemented in projects. Vulnerable persons are given no recognition. No monitoring of impacts after resettlement.	There is little or no disincentive for owners to appeal to LVAC, since all costs are reimbursed.	None identified.	Compensation valuations are inherently unfair and confiscatory.	No relocation expenses or business losses are compensated. No consultation with APs. No compensation for unlicensed occupants. Diffusion of land acquisition responsibility at the local level, leading to inconsistent application of compensation standards on projects located in multiple local jurisdictions (e..g regional road projects).	Business losses are not fully compensated.	Abuse reported. Only titled APs are compensated. Business losses and relocation expenses are not compensated. Despite the law requiring expropriation to be for exceptional public and state priority need, because of corruption and conflicts of interest land is expropriated and turned over for private development.	Abuse of expropriation and eviction power has been reported and documented. Open-ended definition of public interest. Disentitlement of those without land rights, including anyone who occupied state land after 30 August 2001. No requirement to try to reach agreement with APs. Law vague and incomplete. Due to corruption and conflicts of interest impartial implementation of the laws and regulations by the Government and fair interpretation by the judiciary are unlikely.

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Lessons for Mongolia			Specific regulations that can be implemented by officials. Notifications and transparency can help reach agreements, otherwise there is greater mistrust and delays. Propaganda is used to gain public support. 4. Close supervision of payments and auditing system. Strict enforcement of misconduct by officials, but protection if procedures are strictly followed. With rapid economic development, peoples' expectations for compensation can rise to unreasonable levels. Benefit sharing has not been widely considered; normally it is only a means to forego adequate upfront payments.	Specialized government enterprise to execute urban development and resettlement more efficiently. Neutral organization for conflict resolution.	Importance of rule of law and good governance. Consider appropriateness of independent specialized oversight body.	Consultation on master and detailed plans is important. Consider methods of independent oversight. Livelihood restoration and vulnerable persons.	Compensation provisions are unsupportable. Consider court approval for expropriation.	Importance of complementary legislation to address shortcomings in land acquisition (expropriation legislation. Consultation on master and detailed plans. Danger in fragmenting land acquisition and resettlement implementation responsibility. Importance of effective registration of property rights. Treatment of vulnerable groups.	Importance of strong rule of law, independent and informed judiciary, professional appraisers.		Consider national body responsible for land acquisition. Danger in empowering state authorities and officials where there is corruption and weak rule of law.
9. Other issues relevant to Mongolia											

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Land readjustment			There has been widespread urban redevelopment which was made possible by top-down planning and approval system. This has now come under closer scrutiny.	Under Urban Development Act. If there are holdouts, then LACA applies to expropriation proceedings.	No provision.	Part 4 Federal Building Code. May be carried out to create plots suitable in terms of location, shape or size for built development or other uses. In accordance with a binding land-use plan. No threshold of agreement is required. Those who do not agree are compensated in accordance with expropriation laws.		Not contemplated.	Not contemplated.	Not contemplated.	Not provided for.
Financing of resettlement	Project proponent to provide adequate contingency funds to address involuntary resettlement impacts identified during project implementation. Ensure that such funds are readily available.		Despite high costs, project owners are required to ensure LAR costs are fully budgeted and paid upfront. Even when LAR costs increase, additional funds are made available; otherwise, the progress stops.	All costs are included in project costs, and must be paid in advance.	Project cost incurred by acquiring body.	Project cost.	From the “republican budget” if national project. If local, then from akimat budget. For projects with private-sector involvement, funds for compensation are sometimes provided by the private sector.	Project cost. Expropriating body must submit commercial bank guarantee covering compensation.	Project cost.	Project cost. In expropriation proceedings, acquiring state agency must deposit compensation offered with court or notary in advance.	Compensation comes from budget of EC (rather than project implementer).