

This is not an ADB material. The views expressed in this document are the views of the author/s and/or their organizations and do not necessarily reflect the views or policies of the Asian Development Bank, or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy and/or completeness of the material's contents, and accepts no responsibility for any direct or indirect consequence of their use or reliance, whether wholly or partially. Please feel free to contact the authors directly should you have queries.

Draft Law on Land Acquisition for Unavoidable Public Need

ADB TA MON 8210

Reform of Legislative Framework for Land Acquisition and Resettlement

Chinzorig Batbileg – Nomad Systems

Country Safeguard Systems Sub-regional Workshop

Tbilisi, Georgia

30 May to June 1 2016

Content

I. CONCEPTS & PRINCIPLES

Eminent Domain

Constitutional Principles

Concepts

Principles

Purposes and grounds for land acquisition

Application of the draft Law

II. DRAFT LAW ON LAND ACQUISITION FOR UNAVOIDABLE PUBLIC NEED

Structure

Regulations & documents

Specific features

Details

I. CONCEPTS & PRINCIPLES

Concepts & Principles - LAR Background

- **Social and economic**
 - Rapid socio-economic change, development
 - Economic growth → more investment in public infrastructure
 - Unavoidable public need
 - Need for creation of healthy and safe environment

Concepts & Principles - LAR Background

Air, soil, underground water pollution → highly degraded living conditions throughout the year.



Ulaanbaatar is one of the most polluted cities in the world

Concepts & Principles - LAR Background

- **Legal**

- Lack of protection of the affected persons
 - No eminent domain power legislated → but people are forced to move, i.e. expropriated without “law” and proper compensation and protection
- Lack of legislation, no provisions in current Land Law
- Grounds for land acquisition under eminent domain not defined

Concepts & Principles - LAR Background

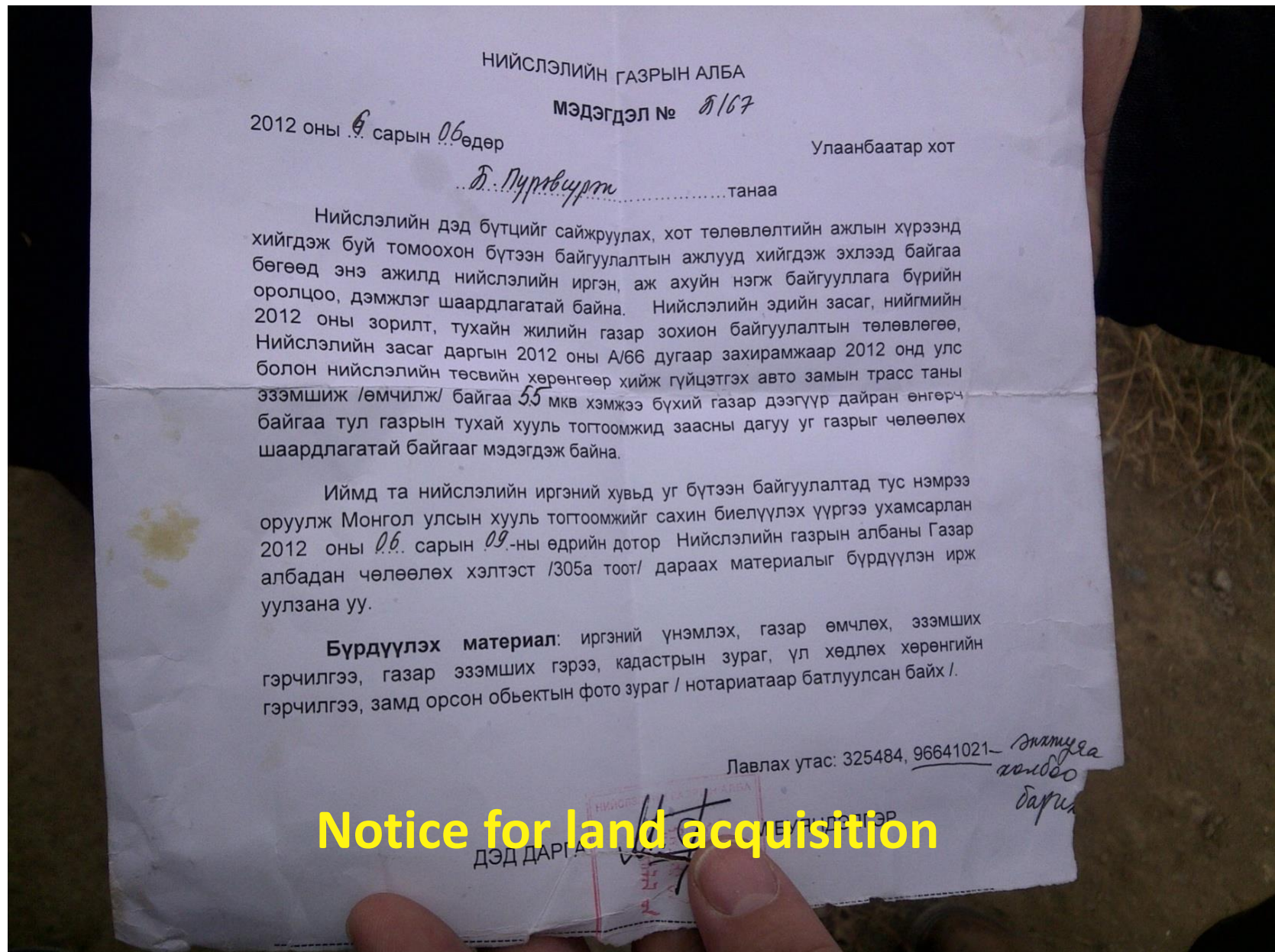
- **Legal**
 - Lack of due process/procedures for land acquisition
 - Compensation and valuation - not addressed by law
 - Rehabilitation, relocation and transition measures are lacking
 - No social safeguards, including for the poor and vulnerable

Concepts & Principles - LAR Background



The way it is done

Concepts & Principles - LAR Background

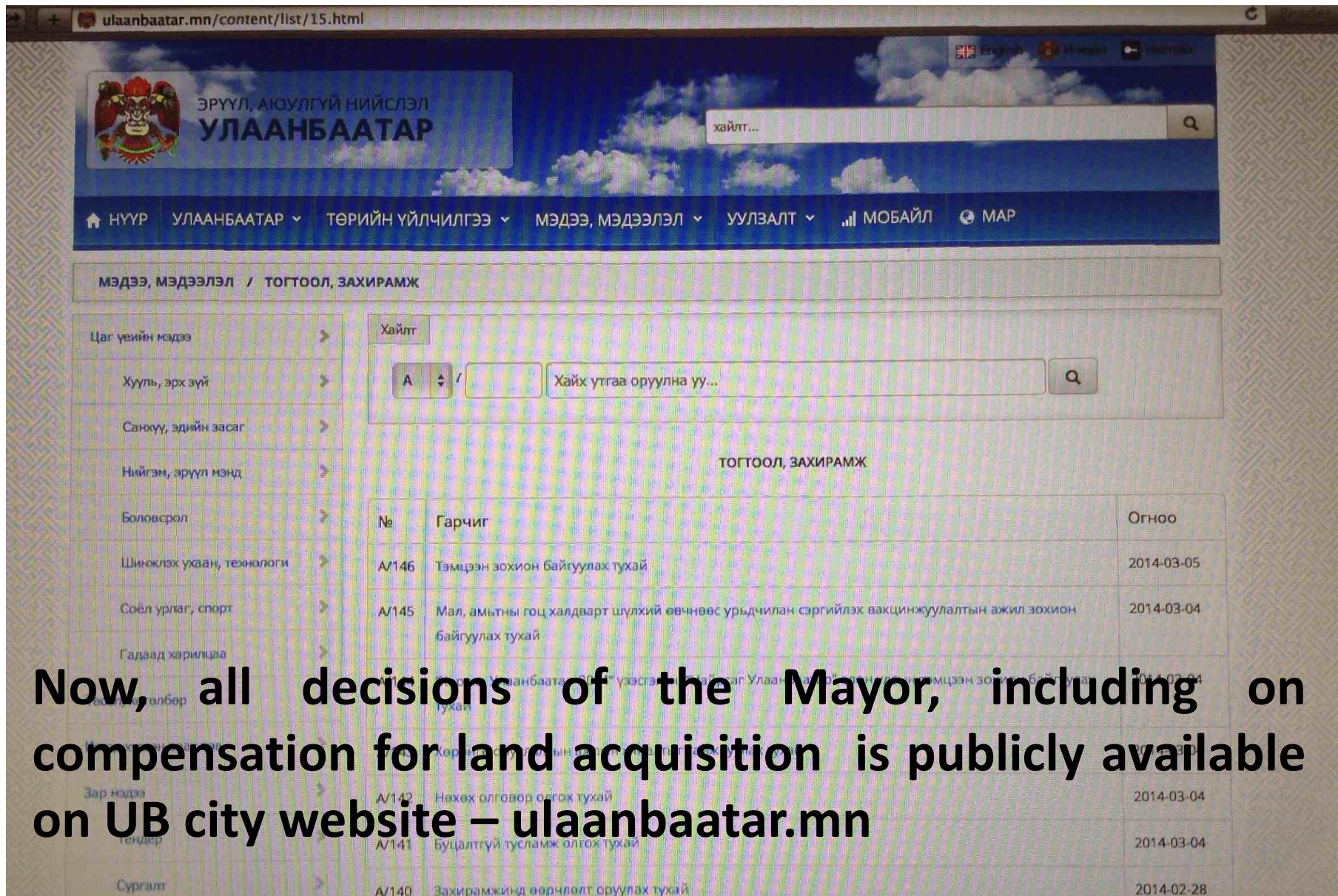


Concepts & Principles - LAR Background



Remove backwards 1.5 m

Concepts & Principles - LAR Background



The screenshot shows the official website of Ulaanbaatar City. The header features the city's coat of arms and the text "ЭРҮҮЛ, АЮУЛГҮЙ НИЙСЛЭЛ УЛААНБААТАР". A search bar is present with the placeholder "хайлт...". The main navigation bar includes links for "НҮҮР", "УЛААНБААТАР", "ТӨРИЙН ҮЙЛЧИЛГЭЭ", "МЭДЭЭ, МЭДЭЭЛЭЛ", "УУЛЗАЛТ", "МОБАЙЛ", and "МАР". The "МЭДЭЭ, МЭДЭЭЛЭЛ" section is active, displaying a list of decisions under the heading "ТОГТООЛ, ЗАХИРАМЖ".

№	Гарчиг	Огноо
А/146	Тэмцээн зохион байгуулах тухай	2014-03-05
А/145	Мал, амьтны гоц халдварт шүлхий өвчнөөс урьдчилан сэргийлэх вакцинжуулалтын ажил зохион байгуулах тухай	2014-03-04
А/142	Нөхөх олговор олгох тухай	2014-03-04
А/141	Буцалтгүй тусламж олгох тухай	2014-03-04
А/140	Захирамжинд өөрчлөлт оруулах тухай	2014-02-28

Now, all decisions of the Mayor, including on compensation for land acquisition is publicly available on UB city website – ulaanbaatar.mn

Concepts & Principles - LAR Background

Attachment to UB city Mayor's decision for compensation budget of immovable properties affected by land acquisition for school and kindergarten complex

д/д	Газар өмчлөгч, эзэмшигчийн нэр /Регистрийн дугаар/	Хаяг, хашааны дугаар	Хөрөнгийн олговрын хэмжээ нөхөх үнэ /төгрөг/		Замын тасст орсон газрын үнэлгээ		Эдэлбэрийн хэлбэр	Кадастрын зураглалын үнэ	Нийт /төг
			үл хөдлөх хөрөнгө	эд хөрөнгө	Хэмжээ /м2/	Үнэ /төгрөг/			
0	1	2	3	4	5	6	7	8	9
1	Санжхүү Бадрах /УС61062511/	СХД 24-р хороо Зээлийн барилга 18-26б	251 268 581	3 052 000	700 м2	9 240 000	өмчилсөн		263 560 581
2	Бадрах Дөлгөөн /ЧА83102067/	СХД 24-р хороо Зээлийн барилга 18-26	20 830 538	4 309 327	700 м2	9 240 000	өмчилсөн		34 379 865

Name & ID of AP, address, amount of compensation for immovable & other property, value of land affected (m² & value), type or right, costs for cadastral surveying & mapping, total)

4	Цэндээ Оюунчимэг /ЧА58102966/	Зээлийн барилга 18-26а	13 838 725	6 035 400	687 м2	9 068 400	өмчилсөн		28 942 525
Нийт-4			285 937 844	25 273 756	2787 м2	36 788 400			348 000 000

Concepts & Principles

- Concepts & principles – agreed upon with MCUD and in discussion with ADB and others (WB, JICA, GLZ, Amnesty International, ...)
- Internationally accepted concepts & principles for IR & best practices from other countries
- Considered Mongolia's circumstances
- Developed in compliance with Mongolian legislation requirements

Concepts & Principles

Eminent Domain

- **Eminent Domain**

The inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use, subject to reasonable compensation for the taking

Source: Black's Law Dictionary, Ninth edition, Bryan A. Garner, Editor in Chief.

Concepts & Principles

Constitutional Principles

- **The Constitution of Mongolia states:**
 - “The State shall have the right to hold responsible the land owners in connection with the manner the land is used, to exchange or take it over with compensation on the grounds of special public need, or confiscate the land if it is used in a manner adverse to the health of the population, the interests of environmental protection and national security” (Chapter One, Article Six, Clause Four)”,
 - “If the State and its bodies appropriate private property on the basis of exclusive public need, they shall do so with due compensation and payment”(Chapter Two, Article Sixteen, Clause Three)”,

Concepts & Principles

Constitutional Principles

- **The Constitution of Mongolia states:**
 - “the State recognizes all forms of both public and private property and shall protect the rights of the owner by law” (Chapter one, Article Five, Clause Two),
 - “the owner`s rights shall be limited exclusively by due process of law” (Chapter One, Article Five, Clause Three)
 - “the right to a healthy and safe environment, and to be protected against environmental pollution and ecological imbalance “(Chapter Two, Article Sixteen, Clause Two)

Concepts & Principles

Concepts

- introduce eminent domain
- While also “protecting the rights of the affected persons”
- first negotiation and agreement, if it fails expropriation is possible
- integrate international social safeguard principles, standards and good practices
- introduce public needs – purposes for which land can be acquired
- provide fair compensation + rehabilitation, relocation, transitional assistances
 - Compensation based on the principles of “replacement cost” or market value, whichever is higher

Concepts & Principles

Concepts

- applicable for urban and rural areas
- clarity in the responsibilities and processes
- new scheme for financing of LAR activities
- base on existing governmental institutional & functional structure
 - administration, state inspection, national auditing, court decision enforcement
- alternative dispute resolution mechanism
 - Mediation Council
- involvement of professional entity – private sector (cadastral surveyors, property appraisers, lawyers etc.)

Concepts & Principles

Principles

- main principles – Constitutional provisions
- Justification for land acquisition – to be well defined and substantiated
- Minimize the negative consequences to arise from land acquisition
- affected entity – cannot refuse land acquisition (but can reject it, reject the offer and can appeal)
- consultation, negotiations and agreements
- compensation based on “market value” or “replacement value”, whichever is higher
- provision of information, participation, openness & transparency
- implemented only by government entity

Concepts & Principles

Principles

- expropriation – last resort, only by court decision
- affected entity's land, housing, livelihood, income not worse off
- State shall be fully responsible for all transaction costs
- No tax, fee and charge shall be applied for the compensation
- Costs to be paid from the development, activity, project budget
- Information open to public & interested entity, except for private confidential information
- All principles are equally applicable for all types of land rights
 - ownership, possession and use

Concepts & Principles

Purposes & grounds for land acquisition

- **Land Acquisition**

- means acquisition of land, in accordance with the procedures of this law, based on the unavoidable public needs through negotiations and conclusion of agreement with the entity affected by land acquisition

- **Land Expropriation**

- means acquisition of land based on the court decision, in cases where the affected entity and the government authority implementing the LAR could not negotiate and conclude an agreement

Concepts & Principles

Purposes & grounds for land acquisition

- **Unavoidable Public Need**

- means activity, infrastructure and structure that is unavoidably needed for the public and serves the public interest and secures public's rights to live in healthy and safe environment and safety (article 6 of the draft Law on Land Acquisition)
- new definition, closely tied with the provisions in this law

Concepts & Principles

Purposes & grounds for land acquisition

- **Land shall be acquired only for purposes of unavoidable public need:**
 1. establishing new state special protection land (Law on Land, 13.3.1), for instance re-introduction/protection of endangered species – wild horse – takhi – Khustai Mountain,
 2. national defense and security (Law on Land, 13.3.3)
 3. Inter-provincial reserve pasture (Law on Land, 13.3.8), animal husbandry → high importance → economic as well as societal & cultural

Concepts & Principles

Purposes & grounds for land acquisition

- **Land shall be acquired only for purposes of unavoidable public need:**

4. land for national and local level energy/power, fresh water, sewage, road, transportation and communication line and network and structures related to/accompanying them and dam, canal and ditch which are to be built with state or local budget; national defense and security (Law on Land, 13.3.3)

5. land for state and local government (publicly) owned kindergarten, elementary, secondary and high school to be built with state or local budget

Concepts & Principles

Application of the draft law

- **Applicable only to the above mentioned 5 purposes**
- **Draft law shall not apply to the LAR in the following cases:**
 - Urban re-development
 - Mining

II. Draft Law on Land Acquisition for Unavoidable Public Need (Law on Land Acquisition)

Draft Law on Land Acquisition

The ***objectives*** of the law is to regulate:

- acquisition of land of the holders of ownership, possession and use rights based on the unavoidable public need through negotiations and agreement, if such negotiations fail to reach an agreement, through expropriation,
- resettlement, provision of compensation,
- protection of human rights and rights to own property

Draft Law on Land Acquisition

Structure

6 Chapters and 49 articles

- I. General provision
- II. Entity affected by land acquisition, its rights and duties
- III. Organizations responsible for land acquisition, their rights and duties
- IV. Land acquisition activities
- V. Land expropriation
- VI. Miscellaneous

Draft Law on Land Acquisition

Structure

Three levels of legislation

- I. Constitution
- II. Civil Code, Law on Land, etc.
- III. Law on Land Acquisition, Law on Cadastral Surveying, etc. – process oriented

Process oriented – therefore quite detailed, both the draft law and regulations

Draft Law on Land Acquisition

Regulations & documents

Regulations

1. Compensation appraisal for land acquisition
2. Formulation of LAR plan
3. Preliminary study for land acquisition
4. Delivery of the Land Acquisition Notice and on considering the Land Acquisition Notice as delivered

Draft Law on Land Acquisition

Regulations & documents

Regulations

5. Resettlement of citizens who do not have land permission and who are not eligible to obtain such permission
6. Establishment and operation of Mediation Council
7. Organizing specialized training on land acquisition compensation appraisal and registration of compensation appraisal service providers

Draft Law on Land Acquisition

Regulations & documents

Documents – template

1. Statute of the Representative Organization of Affected Entities
2. Land acquisition and provision of compensation contract
3. Land acquisition, resettlement and provision of compensation contract
4. ... more templates included in the regulations

Draft Law on Land Acquisition

Specific features

- Balance public needs and the rights/interests of affected persons
- Both form & substance formulated to protect the rights of the affected entities and property rights
- Internationally accepted good practices & standards enshrined in the national legislation
 - ADB Safeguard Policy Statement requirements on IR, WB Operational Policy on IR, recommendations of Amnesty International etc.

Draft Law on Land Acquisition

Specific features

- Existing local practices legislated – practical to implement
- Good practice – project implemented with the funding from ADB
- Use of existing institutional & functional structure – minimized burden on budget
 - Current organizational set up and staffing used
 - Administration of Land Affairs, Geodesy & Cartography – its local offices – LAR implementation
 - MCUD, State Inspection Authority, National Audit Office – monitoring and evaluation
 - Social Welfare Authority – social welfare assistances for those in need
- Both the law and regulations are drafted before adoption of the law

Draft Law on Land Acquisition

Specific features

- **Decision making**
 - Only Parliament, Aimags (Provinces) and Capital City Representative Khurals (Councils) and Cabinet to make decision – not an individual decision such as Governor, but joint decision of representative bodies
 - Based on preliminary study
 - Need for acquisition to be defined clearly and justified

Draft Law on Land Acquisition

Specific features

- **Implementation – attempt to logically order the process**
 - Notify and inform the decision
 - Determine the cut-off date
 - Formulate and implement LAR plan
 - Valuation for compensation
 - Land and immovable property
 - Relocation, rehabilitation, transition assistances
 - Negotiating
 - Contracting
 - Compensation provision
 - Transfer of land and immovable property rights
 - Resettlement and relocation
 - based on mutual agreement and contract
 - 10% of land and immovable properties - incentives

Draft Law on Land Acquisition

Specific features

- **Taxes, fees and transaction costs**
 - No taxes and charges on the compensation
 - All transaction fees and cost are paid by the state

Draft Law on Land Acquisition

Specific features

Land expropriation as a last resort

- Administrative decision/measures
 - Decision for land expropriation
 - Decision made by entities, who approved development, project, activity /exception for Parliament – Government acts on behalf/
 - Leave possibilities for citizens to move themselves /notice of decision/ - 10% incentives still provided

Draft Law on Land Acquisition

Specific features

Land expropriation (only if necessary)

- Court decision
 - Court ruling for expropriation
 - Carried out by Court decision enforcement agency
 - Court decision cannot be enforced from Sep 15 - May 15 – winter season
 - Loses 10% incentives

Draft Law on Land Acquisition

Details – Affected Entities

- Individual, legal entity that has to give up its land for unavoidable public need
- Losing land, moveable and immoveable properties that was owned, possessed and used
- Losing livelihood, employment, business
- Losing possibility to use pastureland
- Those who are renting – residence or business

Draft Law on Land Acquisition

Details – Affected Entities

- Can be an entity who is not a holder of ownership, possession or use rights in the land and immovable property
- But who is in the process of legally establishing these rights or who is eligible to establish these rights

Draft Law on Land Acquisition

Details – Affected Entities – without official permission

- Individuals without official land permission/title and who cannot establish such rights is dealt with specifically in a regulation
- Not compensated for land
- But receives other types of compensation → compensation for immovable property on land, relocation assistance, assistances for transition period and rehabilitation
- on the same principles as with individuals with legal rights.

Draft Law on Land Acquisition

Details – Affected Entities – without official permission

- lived on that land permanently or for at least 180 days
- offered land parcel free of charge, as stipulated in the Law on Land Privatization
- compensation only in case of residential use of land
- If running business on the land → not compensated
- Prevent from abusing the law

Draft Law on Land Acquisition

Details – Affected Entities – those in need of social support

- social welfare support and assistance provided for those in need
- reflected in the LAR Plan
- support and participation of the state administrative organization in charge of social welfare
- i.e. use of existing structure and functions of the government

Draft Law on Land Acquisition

Details – Affected Entities – third parties

- concluded an agreement to transfer the subject of land acquisition or who has rights to have fulfilled its obligations from the subject of land acquisition reflected in the LAR Plan
- Banks – mortgage, buyer – sales contract etc.
- Compensated for their share in the subject being acquired
- Herders who need to share their pasture with the resettled herders → support and assistance provided

Draft Law on Land Acquisition

Details – Subjects of Land Acquisition

- Ownership right of immovable property, land ownership, possession or use rights and other rights related to them
- Ownership right of moveable property and other rights related to them
- Publicly/commonly used summer and autumn encampment, water points in the pasture land, salt marsh and saline soil area and possibilities to use them, possibilities to use pasture land, and winter and spring camp

Draft Law on Land Acquisition

Details – Compensation

- amount of money required to compensate the loss of land and immovable property, assessed with replacement value or market value and wages, profit of business activity, relocation, transition and rehabilitation assistances
- Choice → cash compensation or direct replacement
 - + 10% of incentive, if the parties reach agreement

Draft Law on Land Acquisition

Details – Compensation Appraisal

- Market value – as defined in International Valuation Standards
 - the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion

Draft Law on Land Acquisition

Details – Compensation Appraisal

- Replacement value – amount required to replace lost land and immovable property of the entity affected by land acquisition, i.e. the amount required to re-establish similar size, quality and utility structures that were lost
- **Regulation on Compensation appraisal – detailed instructions**

Draft Law on Land Acquisition

Details – Compensation Appraisal

- **Two appraisers**
 - One by the government
 - The other one by the affected entity
- **Determining the compensation value**
 - If difference of two appraisals is less than 20 per cent of the lower value, the arithmetic average
 - If more than 20 per cent of the lower value, verification appraisal shall be made by the Professional Council specified in the Law on Property Valuation
 - Professional Council → Final Value

Draft Law on Land Acquisition

Details – Compensation Appraisal

- rehabilitation assistance - activities directed to restore or improve the livelihood, income of the entity affected by land acquisition
 - training, counseling, care services etc. as specified in the Law on Social Welfare
- relocation and transition assistance
 - support provided to those who are physically displaced
 - when the entity is relocating
 - includes compensation and other tangible means for transportation, accommodation and compensation and other tangible means to overcome the inconveniences associated with relocation

Draft Law on Land Acquisition

Details – Compensation Appraisal

- **Regulation on Compensation appraisal – detailed instructions**
 - Appraisal of current market value of land rights and immovable properties;
 - Costs related to transfer of rights (transaction costs);
 - Costs related to relocation, transition and rehabilitation support

Draft Law on Land Acquisition

Details – Compensation Appraisal

- **Regulation on Compensation appraisal – detailed instructions**
 - Compensation to cover the loss of business
 - estimated based on average annual profit of last three years
 - temporary – provided for up to 3 months
 - Stopped/relocated – provided for 6 months
 - Compensation for loss of salary
 - Temporary – provided for up to 3 months salary
 - Loss of employment - 6 months salary

Draft Law on Land Acquisition

Details – Stakeholder consultation

- **Consultation with stakeholders, especially with affected entities, is embodied throughout the law**
 - openness, transparency, participation, monitoring
 - Private information – confidential, can be open if the affected entity allows

Draft Law on Land Acquisition

Details – Land acquisition and resettlement planning

- LAR Plan - essential part for LAR
- determines the rights (entitlements) of the affected entity
- the land acquisition activities, their implementation schedules, budget and financing, consultation, grievance redress, monitoring issues are reflected
- Formulated in consultation with the stakeholders

Draft Law on Land Acquisition

Details – Grievance redress mechanism

- Affected entities are given all possibilities to make claim – reflected in the LAR Plan
- Involvement of Mediation Council
 - ad hoc setup
 - implement public monitoring in land acquisition activities
 - evaluate and make recommendations to properly redress the grievances and disputes
 - in short period of time and mediate the parties to settle the disputes in an extrajudicial way

Draft Law on Land Acquisition

Details – Grievance redress mechanism

- Also, the procedure goes as specified in the Law on Settlement of claims and grievances made by the citizens to the government organizations and officials
 - Detailed provisions on the rights of claimant, duties of the government and its official
 - Receipt, response procedures, time-deadlines for response
 - appeal, etc.

**Thank you very much
for your attention**

Questions, comments!?

Chinzorig Batbileg

bchinzorig@hotmail.com