



Technical Assistance Consultant's Report

Project Number: 44140
Date: July 2011

TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Reform of Legal and Regulatory
Framework for Involuntary Resettlement–Phase I
(Mongolia)

SUMMARY REPORT: WORKSHOP ON REFORM OF THE LEGAL AND REGULATORY FRAMEWORK FOR INVOLUNTARY RESETTLEMENT IN MONGOLIA

Prepared by ADB Consultant Team

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Asian Development Bank

**Workshop on Reform of the Legal and Regulatory Framework for
Involuntary Resettlement in Mongolia
(Continental Hotel, Ulaanbaatar: 5 July 2011)**

SUMMARY REPORT

Introduction

The workshop entitled **Reform of the Legal and Regulatory Framework for Involuntary Resettlement in Mongolia** was conducted by the **Consultant Team** (CT) of ADB's Technical Assistance (TA) 7566: Strengthening and Use of Country Safeguard Systems, regional project supports activities that help align country safeguard systems with international good practices.

The workshop, held on 5 July, 2011 in Continental Hotel, Ulaanbaatar, was attended by participants from government agencies – Ministry of Road, Transport, Construction and Urban Development (MRTCUD), Ulaanbaatar City Government (UBCG) and Ministry of Social Welfare and Labor (MSWL); central and local level authorities in charge of land affairs – Agency of Land Affairs, Construction, Geodesy and Cartography (ALACGC) and Ulaanbaatar city Land Administration Department (UBLAD); representatives of the World Bank and ADB; civil society representatives, research institutions and private sector representatives. Representatives of displaced persons were also invited to participate. The list of attendees is attached as Annex 1.

The Workshop was held as a follow-up to the June 2 Workshop, which brought together all relevant stakeholders to discuss the issues, possible solutions and implications of changes to legislation and regulations pertinent to Land Acquisition and Resettlement (LAR). As agreed in the previous workshop, the CT prepared the outline of the draft legislation and presented the outline at the workshop. The Workshop had the following objectives:

- (i) To discuss and seek feedback on proposed draft outline of LAR law
- (ii) To flag key policy issues and to seek feedback on preferred choices
- (iii) To discuss next steps in legislative reform process

The expected outcome of the Workshop was feedback on the draft outline of proposed LAR law, which in turn would help develop the draft law.

The Workshop budget is presented in Annex 2. The budget overrun is the result of the higher than anticipated charge for simultaneous translation.

Opening Remarks

In his opening remarks, Scott Ferguson, Principal Social Development Specialist, ADB, indicated ADB's commitment in assisting The Government of Mongolia (GOM) reforming its legal framework for urban development and related laws for LAR which will enable MRTCUD and UBCG to implement its urban development strategy. ADB mobilized the Consultant team to work closely with government counterparts supporting reformulation and drafting of legislation.

In his welcome remarks, Mr. Bat-Erdene, J., State Secretary of MRTCUD, indicated that the Workshop was a collaborative undertaking by the Ministry, UBLAD and ADB to reform legal and regulatory framework for LAR. He noted the importance of developing national policy on involuntary resettlement, the most challenging issue the GOM has to tackle, which is the result of rapid urban growth and urban development. Although it is related to urban development, LAR is a complicated issue therefore needs to be regulated by a separate law. According to UB City Master Plan ger areas will be developed to apartment blocks in the near future and safeguards must be enshrined in the relevant legislation and properly implemented to ensure impacts on displaced persons are mitigated. For this reason, it is crucial to have support on integrating international safeguard standards and other countries experiences in formulation and drafting of LAR legislation.

The State Secretary stressed further that engagement of concerned stakeholders in drafting law is vital for enacting an enforceable and adoptable law and hoped that this Workshop would help to capture and integrate thoughts of all concerned stakeholders into the proposed legislation. He wished Workshop participants success in their discussions.

Recommended Legal Structure

Chris Johnstone, Consultant Team Leader briefly introduced objective of the Workshop that is to discuss the ***Outline of the Draft Law on LAR*** proposed by Consultant team.

He pointed out that in all countries, the state has the power to expropriate land for defined public purposes. The main purpose of land acquisition law is to ensure that the state follows transparent and fair procedures in doing so, and to secure rights of land owners and occupiers to just compensation. This purpose is a separate legislative topic from those of the Land law and Land Ownership law.

Outline of Proposed Legal Instrument

Mike McCandless, International Lawyer, Consultant team:

Presentation of Proposed ***Outline for Land Acquisition and Resettlement Law***

Key Policy Issues & Options

Mike McCandless invited participants to discuss the outline: Topics for discussion proposed as follows:

public purpose

- How far should the law go in authorizing the expropriation of land?
- Constitution: “unavoidable need of society”
- Important issue for urban redevelopment

role of the private sector

- What safeguards are needed in allowing private sector to be a project operator?
- Should it have expropriation power?

entitlements of informal occupants

- To what extent should they be entitled to recognition and compensation?
- What problems are created by recognition?
- How can they be addressed?

formal dispute resolution

- Can an impartial committee function well in the Mongolian context?
- What are the challenges that need to be addressed?
- Should dispute resolution simply be left to the administrative court?

consultation/participation

- There will be a duty to consult before a project plan is finalised
- What is the best way to do this? (e.g. Urban Development Law)

threshold for urban redevelopment

- What percentage of agreement is appropriate

Q&A

Question: Ms. Baasanjargal, Kh. (Representative of NGO “Lawyers Borderless”)

1. Will compensation payments paid to displaced persons be taxable or exempted?
2. When LAR Committee will be established is uncertain and will two distinct committees, LAR Committee and LAR Appeals Committee, be established?
3. 80% to 90% of DPs consent is required, elaborate more about the consent. Is it consent on the proposed project (i.e. conversion of ger areas into developments of apartment buildings) or consent on compensation payments and methods?
4. What is criteria for defining “unavoidable need of society” and “special public needs”?

Scott Ferguson: International good practice is that taxes are waived on cash compensation. Because compensation payment is paid to replace losses, it is not lottery or taxable income.

Mike McCandless: The 80% to 90% consent should be based on agreement with compensation/resettlement measures, rather than consent on the proposed project.

Chinzorig: Air pollution is pressing issue and affecting well-being of over million inhabitants of Ulaanbaatar city – reducing air pollution could be seen as public purpose.

Question: Mr. Ragchaabazar, L. (Head of CBO “New Street”, Songinokhairkhan district)

1. What is role of national and local governments for LAR?
2. How would you define community and community facilities/assets?
3. Who is the Project Operator? Could Community Based Organizations be the Project Operator?

4. How LAR will be correlated to Urban Planning?

Question: Mr. Jamyan, Ya. (Chief State Inspector of Environment, Geodesy and Cartography Control, Professional Inspection Agency of the Capital City)

1. Forest Law, Water Law, and Law on Railway stated prohibited strips and ROW. For example, forests which are located up to 100 m along both sides of railways and roads of national importance and forests which are located at a distance of up to 1 km around lakes and sources of rivers are classified as prohibited strip forests. In order to enforce these laws, may need to acquire land. Will the proposed law be effective in these circumstances? If yes, how this will be addressed?
2. Will taking back land for State Special Needs be regulated by this law?
3. How disputes will be resolved? At the court? If decision to acquire land was made at the court then where to refer?

Discussion

Mr. Enkhbaatar, D. (Displaced person, Khoroo 17, Bayangol district)

- 3 months ago UBLAD official has taken down my garage, which I bought in 2007. I had a contract with district LAD and had been paying land fee annually. Suddenly I was given a notice to vacate the land within 3 days and later the garage was taken down forcibly. We were told that District hospital will be built on the affected land, which will serve 700-800 outpatients and 100 inpatients daily. However, after vacating the land, State Inspection Agency prohibited building a hospital there because 1500m² of land was too small, according to building standard 15000m² of land must be allocated to build the hospital with this capacity. At the end, garage owners lost their property of 400 million tugrugs.

Chris Johnstone:

- Speak to the importance of the law. Few actions would not be allowed under appropriate safeguards. Lack of consultation, compensate prior to displacement

Mike McCandless:

- Prior to taken down the affected property State body has to have approval from the Court. If affected land is no longer required it must be returned to the owner.

Mr. Naranbold, S. (Head of NGO "Right way out", Sukhbaatar district)

- The NGO was established on April 2008 to protect rights of land owners and inhabitants of Khoroo No.9 and 11 of Sukhbaatar district – the planned ger area for new development of 7th microdistrict (apartment housing blocks). Have about 2000 members and supporters. Since 2008 politicians and the Government high ranking official without consulting with the residents broadcasted on TV that the area will be converted to apartment and was cutting red ribbons.
- Firstly, because of lack of regulation government officials treat us as the way they want to. The GOM offers an apartment housing to swap land or 20-40 million tugrugs cash compensation for land. Initially Government refused to compensate

immovable properties attached to the land: simply said that “all we need is your land not the property, you can take all your belongings with you”. As a result of our protest, affected structures will be compensated. No one has consulted and negotiated with us; instead we have been threatened that “if you won’t accept this offer right now you may be left with nothing.”

- Secondly, LAR Committee should be established outside of government structure at both level; national and local. Citizens do not trust to Local Citizens Representative’s Khural, because elected representatives do not present citizens interest, but their political party’s interest. LAR committee needs to be composed of representatives of NGOs, human right practitioners, and displaced persons.

Mike McCandless:

- Importance of participation in planning process. Need to adopt transparent compensation strategy. Committee is important body that confirms land acquisition, its use, compensation and other related matters. Grievance should be handled well before issues raised.

Ms. Ulziisaikhan, G. (Lecturer, Science and Technology University of Mongolia)

- Terminology used needs to be consistent within the text. If not it is confusing and prone to misinterpretation.

Mr. Tsognyam, (Lawyer, Beren Construction group)

- I am pro-separate law on LAR. I would recommend including provisions related to properties owned by foreigner. As many multinational companies are operating in Mongolia, foreign properties may be affected. As you may know, there is always a dispute on 8 apartment buildings of Russian property in Ulaanbaatar.
- Constitution - “unavoidable need of society”. Parliament should explain.
- There are provisions in few acts such as Law on Railway, Law on State of Emergency, which allows expropriation of individual property.
- Compensation is not only cash compensation. In the Constitution (clause 16.4) states temporary and permanent acquisition and corresponding compensations.
- In Germany, airport was built near residential area. Residents complained about disturbing noise of passing airplanes to the court. The Court ruled that the Government to pay compensation, including relocation cost, cost of rebuilding a house on new site or purchase a house.
- If private developers given a power to acquire land can disputes be still resolved at Administrative Court?
- Mongolian court practice has 4 tiers of court; a case will take 216 days to be decided. Rethink on disputes will be referred to the court.
- If decision made to expropriate land and property, who will execute, also who will protect individual property?

Ms. Selenge, O. (Head of Condominium Association “Gegee 9”, Khoroo 10, Sukhbaatar district)

- Law safeguarding displaced persons is lacking. It seems all Mongolian laws and regulations are serving/protecting rights of only those who have power and money.

Ms. Tungalag, Ch. (Human Development Operations Officer, World Bank)

- Involuntary resettlement is pressing issue. How the rights of displaced persons will be protected in exercise of State eminent domain power?
- There is need of regulation stated clearly procedures should be followed during voluntary and involuntary resettlement safeguarding DPs.
- It seems the CT tries to combine two difficult issues in one regulation, might be very challenging task. I hope social safeguards will not be overwhelmed by expropriation for special public needs. World Bank has experts on this field, we would be happy to comment and discuss the draft law.

Mr. Gankhuyag, P. (Head of Land Affairs and Urban Development Division, Agency of Land Affairs, Construction, Geodesy and Cartography)

- State power of eminent domain may need to be exercised not only in urban settings, but in rural settings. But at the moment it is concentrated on urban areas. I recommend reconsidering the matter.
- When draft law is discussed at the Parliament, inevitable question will be that what countries' experiences and laws and regulations had been studied. Does the draft we are proposing follow the laws of any other countries?

Mike McCandless:

- The description of the LAR plan process is derived from the Korean law. The expropriation procedures are based on Canadian legislation. It needs to be recognized that the situation in Mongolia is different and we should not just copy other countries.

Mr. Myagmarsuren, D. (Secretary of the Parliamentary Standing Committee on Environment, Food and Agriculture)

- The proposed legislation deals with both parties' interest and rights; the State and displaced persons. In order to pass this law there is need for consultation and dialogue among all stakeholders at all level. I understood this workshop is the beginning of the process. Few things needs to be discussed starting from the name of Law and definition of special public needs.
- Engagement of community members, NGO activists and scholars in drafting a law is plausible approach and should be encouraged and time and resources should not be saved for this matter. Enforcement of the law proven to be effective if community participation ensured at drafting stage.
- Various organizations need to be involved in resettlement process. Depending on land title types safeguard measures should vary.

Mr. Sainbayar, (Lecturer, Mongolian State University of Agriculture)

- As brilliantly described in Mongolian sayings that "A man who changed his residence wanders for 3 years until he re-finds his residence and stone thrown wanders for a year until it finds its place", involuntary resettlement is delicate matter that needs to be handled properly. Land is acquired for state special needs according to Land Law, but the proposed outline given a power to expropriate land to private developers, which opens a door to confiscate individual property.

- Moreover, the proposed law paid greater attention to urban land but rural land such as water reservoir area, river beds, pasture land are abandoned.
- Urban development should lead to sustainable development. How community participation is ensured, the outline has no provisions?

Ms. Baasanjargal, Kh. (Representative of NGO “Lawyers Borderless”)

- Highlighted importance of building awareness of lawyers and judges.

Ms. Jargalsaikhan, Sh. (Director, The Supreme Council of Condominium Associations of Mongolia)

- Highlighted challenges associated with renewal of derelict/uninhabitable apartment blocks.

Ms. Regzen, S. (Ministry of Social Welfare and Labor)

- The proposed legislation is very important. Vulnerable persons should be focused, because today many vulnerable persons have no land and housing, live and work underneath of staircases in entrances of apartment buildings. MSWL jointly with UN-Habitat is implementing the housing project targeting these persons. Actions need to be taken to prevent from that displaced persons fall into similar circumstances. Relocation land is allocated for 60 km from center of the city, the poor cannot afford cost of living there, for instance transportation cost will be doubled.

Mr. Davaabaatar, J. (Head of Land Management Division, Agency of Land Affairs, Construction, Geodesy and Cartography)

- Clarify special public purpose and state special needs. Land Law will be base or umbrella for the proposed legislation. Revision of Land Law stated about Government reserve land. The Prime Minister endorsed resolution on taking back land for Government reserve but Aimag Governor refuses to transfer land, how such situations will be regulated in the proposed law.
- Definition and terminologies need to be consistent with other laws.
- How the proposed legislation is correlated to Law on Urban Redevelopment?

Ms. Dondmaa, E. (Specialist, Urban Development, Land Affairs Policy Department, MRTUD)

- Objective of the proposed legislation needs to be revisited. The proposed legislation should regulate not only land acquisition of urban land, but agricultural land, mining exploration land, free trade zone land etc. How it is correlated to Land Law and other branch laws?
- Safeguard principles need to be stated in acquiring land and relocating displaced persons, and should be based on international safeguard standards.
- The proposed legislation should lay procedures for compensation in great detail. Moreover, ways to ensure community participation in LAR.

Mr. Basbayar, S. (Member of Steering Committee of NGO “Right way out”)

- The proposed legislation needs to stipulate public purposes very clearly, if left ambiguous as it is, prone to misinterpretation could be used violently.
- What happens after land is expropriated is uncertain.
- The draft law needs to be discussed at higher level with broader participation.

Ms. Enkhee, P. (Specialist, Administration of Land Affairs, Construction, Geodesy and Cartography)

- Relocation site needs to be consistent with master and detailed plan. Ensure community participation. Compensation payment can be higher than the market rate as an incentive for instance higher by 10 per cent.

Ms. Purevkhuu, Ts. (Freelance Journalist)

- When DPs should be informed on the project? What is the best international practice? Many grievances of DPs related to given a short notice and having no time to prepare.
- How to ensure equal access to information? Persons with access to information are gaining. Land in redevelopment area already has been purchased by those persons.
- Providing a transient housing to DPs seems to be a plausible solution, and needs to be addressed.

Mike McCandless:

- Information disclosure is essential requirement for safeguarding displaced persons. All information must be accessible, apart from personal information.

Ms. Enkhtuya, N. (PPP Specialist, TA 7591-Ulaanbaatar Water, Sanitation and Planning Improvement Project; Director of Binderiya Consulting LLC)

- Concept of the law is unclear. The Law greatly stipulates on expropriation but lacks of safeguard measures. Moreover, it lacks of provisions regulating or guiding LAR process, for instance, when and how displaced persons will be resettled.
- As for Chapters 3&4, it is confusing about the power to acquire land, bodies that make a decision to acquire land and the bodies that execute the decision. The body that has the power to acquire land needs to be stated precisely; if not, or the power to acquire land is given to wide arrange of authorities, may entail misuse of the power and expose land title holders to greater risk of losing occupied land and assets. Therefore for what public purposes the state can expropriate land needs to be listed intently, compensation payment methods and payment schedule should be stated in the law.
- If Government will make a regulation specifying roles and responsibilities of state and local administrative bodies as stated in Chapter 4, then what is a use of this Law.
- Property appraisal must be conducted clearly.

Mr. Munkhbaatar, D. (Deputy Director, Urban Development, Land Affairs Policy Department, MRTUD)

- First, need to define “unavoidable need of society” and “special public needs”, and make an exhausting list of the state needs to expropriate land then discuss broadly

under which State power of eminent domain can be exercised. How this can be regulated. South Korean regulations could be used as a good example.

Closing remarks

Chris Johnstone thanked to the participants for their active participation. What was presented is the outline, not the draft law. Thus based on helpful discussions held today, CT will develop the blue-print of the law, intention is end of August. National lawyer will work extensively to ensure consistency with other legislation. Assess capacity to implement enactment of new regulation.

Scott Ferguson

Law on LAR has direct impacts on peoples livelihood therefore needs to be thoughtfully developed and extensively discussed with all stakeholders involved in.

Draft will be discussed broadly through government web sites,

Basic social safeguard principles need to be addressed.



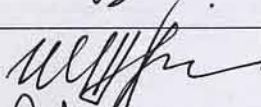

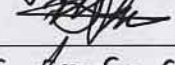
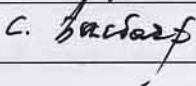

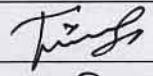
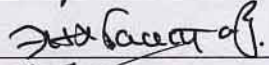
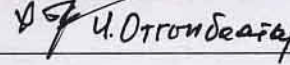
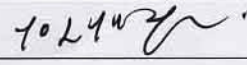
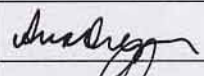



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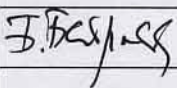
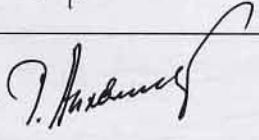
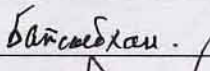
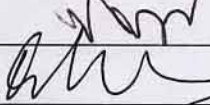
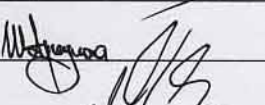
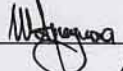
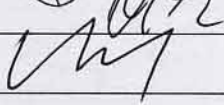
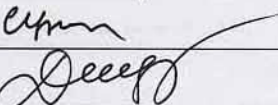
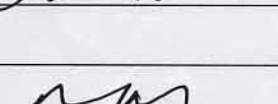
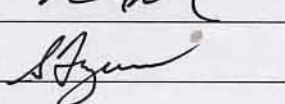


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* Member of Project Working Group

ANNEX 2 - WORKSHOP BUDGET

Item	Unit	#	Unit Rate US\$	Total US\$	Actual
Rental fee for conference room	Hours	4	25.00	100.00	100.00
Lunch	Participants	60	18.00	1,080.00	990.00
Tea break	Participants	60	2.50	150.00	137.50
Fresh water	Participants	60	1.00	60.00	60.00
Pen	Participants	60	0.70	42.00	
Folder	Participants	60	0.70	42.00	
Interpretation	Hours	4	150.00	600.00	1,200.00
Rental fee for translation equipment	Hours	6	35	210.00	210.00
Rental fee for headsets	Hours/participants	200	0.30	60.00	59.00
Total				2,344.00	2,756.50