



# Technical Assistance Consultant's Report

---

Project Number: 44140  
Date: December 2011

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

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

## FINAL REPORT

Prepared by ADB Consultant Team

This consultant's report does not necessarily reflect the views of ADB or the Government concerned, and ADB and the Government cannot be held liable for its contents.

Asian Development Bank

# **Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia (Phase I)**

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

**Final Report  
(Prepared by ADB Consultant Team)**

**December 2011**

## Acronyms

ADB	Asian Development Bank
ALACGaC	Agency for Administration of Land Affairs, Construction, Geodesy and Cartography
CBO	Community Based Organization
CDTA	Capacity Development Technical Assistance
EBRD	European Bank for Reconstruction and Development
GASR	General Authority for State Registration
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GOM	Government of Mongolia
IFC	International Finance Corporation
JICA	Japan International Cooperation Agency
LAD	Land Administration Department
LAR	Land Acquisition and Resettlement
LAUD	Land Affairs and Urban Development Department
MCA	Millennium Challenge Account
MRTCUD	Ministry of Road, Transport, Construction and Urban Development
NGO	Non-governmental Organization
PWG	Project Working Group
SPS	ADB's Safeguard Policy Statement, 2009
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

## Contents

KNOWLEDGE SUMMARY	I
I. INTRODUCTION	1
II. BACKGROUND	1
A. Rationale for the TA	1
B. Objectives of the TA	2
C. Implementation Arrangements	4
III. SITUATION ANALYSIS AND ASSESSMENT OF KEY ISSUES	5
A. Situation Analysis	5
B. Public Consultation and Stakeholder Analysis	7
C. Issues Paper	11
D. Institutional Constraints	13
E. Discussion of Key Issues and Possible Solutions - June 2 Workshop	15
IV. PROPOSED LEGAL REFORMS	17
A. Comments on Draft Legislation	17
B. Preliminary Outline of the Proposed LAR Law	19
C. Workshop on Preliminary Outline – July 5	19
D. Revised Outline/Blueprint	21
E. LAR Procedures	21
F. Draft LAR Law	23
V. IMPLEMENTATION CHALLENGES	25
VI. NEXT STEPS	25

## List of Annexes

Annex 1	Members of the Project Working Group
Annex 2	Summary Table of Stakeholder Engagement Activities
Annex 3	Consultant Team Comments on Draft Amendments to Law on Land
Annex 4	Consultant Team Comments on Draft Urban Redevelopment Law
Annex 5	Preliminary Outline of LAR Law – June 2011
Annex 6	Revised Outline/Blueprint of LAR Law – July 2011
Annex 7	Proposed Land Acquisition and Resettlement Process
Annex 8	International Consultant Comments on Draft LAR Law

## List of TA Reports

Reference Document 1	Issues Paper (Updated October 2011, including Comparison of Legislation in Other Countries)
Reference Document 2	Workshop Report No. 1
Reference Document 3	Workshop Report No. 2
Reference Document 4	Draft LAR Law submitted on 21 October 2011

# KNOWLEDGE SUMMARY

## LESSONS LEARNED

1. The scope of the TA in its original formulation followed a logical progression from review of legislation and procedures, comparative analysis with international social safeguards, workshops to discuss issues and possible solutions, through to recommendations for improvements, revisions or new legislation. Changing the scope of the TA to taking the lead on drafting a new Land Acquisition and Resettlement Law had the result of concentrating efforts on this deliverable, which necessarily had to include important policy choices in its formulation, without opportunity for sufficient consultation on key issues, not only with stakeholders but with the Project Working Group. Therefore consensus was not yet achieved on a number of issues.

2. Issues that remained unresolved, including among members of CT, comprised matters of institutions and governance. International social safeguards, even if imported into legislation, cannot be effectively implemented without close attention to the institutional and governance regime.

## VALUE ADDED

3. Policy makers and legislators have received the benefit of review of the draft laws (amendments to the Land Law, Law on Urban Development) in the light of international social safeguards and best practices in governance. Importantly, the Consultant Team recommended provisions on land acquisition and resettlement matters included in the drafts should be made in a separate Land Acquisition and Resettlement Law.

4. Capacity of MRTCUD, other ministries, NGOs, and interested citizens has been enhanced by introducing them to international legislation and practice and to international social safeguard standards. Comprehensive consultation and information disclosure activities, including two formal workshops involving all stakeholder groups engaged in the land acquisition and resettlement legal reform process, provided opportunity for extensive knowledge exchange on key issues related to the reform process and helped increase public awareness of the reform process generally.

5. The TA produced an Issues Paper and outline of law that are a useful resource for legislators, MRTCUD, other stakeholder ministries, and civil society in reviewing the draft legislation. It raises awareness of international social safeguards and places them at the centre of the reform process. In addition to providing a comparative analysis of current Mongolian legislation and international social safeguard principles and practice, the Issue Paper provided information on land acquisition legislation and experience in certain countries, discussing the pros and cons, and suggesting what can be learnt for Mongolia from their experiences.

6. The consultation process initiated under the TA and the resulting increased public awareness of the legal reform process provides a sound basis for finalizing the draft LAR

Law under Phase II of the TA. Capacity development needs identified under the TA will also be addressed under the TA's Phase II.

## I. INTRODUCTION

7. This Final Report for Phase I<sup>1</sup> the Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia subproject of the ADB's R-CDTA 7566 on Strengthening and Use of Country Safeguard Systems<sup>2</sup> presents findings of the technical assistance (TA), to consolidate project outputs, to document stakeholder engagement activities undertaken during project implementation, to highlight implementation challenges encountered, and to provide recommendations for next steps.

8. This report is aimed at a concise documentation of the activities of the TA and is structured as follows:

- I. Introduction
- II. Background
- III. Stakeholder Consultation and Situation Analysis
- IV. Proposed Legal Reforms
- V. Implementation Challenges
- VI. Next Steps

## II. BACKGROUND

### A. RATIONALE FOR THE TA

9. Mongolia's capital city, Ulaanbaatar, has experienced unprecedented urban growth in recent decades. With an estimated population of over 1.2 million, Ulaanbaatar now accounts for more than 40% of the total population of Mongolia, with most of the resulting spatial growth of the city occurring in the peri-urban ger areas surrounding the city's urban core. Basic infrastructure services, including water, sanitation, roads and public transportation, are poor or nonexistent. Social infrastructure (health clinics, schools, and housing and recreation facilities) are also inadequate. The unplanned growth of ger areas and the unprecedented pace of urbanization bring many challenges, including unemployment, traffic congestion, air pollution, and negative environmental impacts.

10. The Government of Mongolia (GOM), through the Ministry of Roads, Transportation, Construction and Urban Development (MRTCUD) and the Ulaanbaatar City Government (UBCG), has responded to these challenges by preparing plans for the urban development or redevelopment of Ulaanbaatar, both for the inner city and the outer ger areas. The

---

<sup>1</sup> This subproject has a two phase approach. This TA Report refers to Phase I from March to October 2011.

<sup>2</sup> Other R-CDTA approved subprojects include: ESMS Capacity-Building for Private Sector Financial Intermediaries; Supporting and Strengthening National-Level Capacity for a Country Involuntary Resettlement Safeguard System in Sri Lanka; Country Safeguard Review in Papua New Guinea; Strengthening WREA Capacity to Implement Lao Resettlement Policies; Amending Viet Nam's 2003 Land Law and its Implementing Decrees; Capacity Development for the Implementation of Viet Nam's New Environment Decree, and; Enhancing the Philippine Environmental Impact Statement (EIS) System Improvement Initiatives.

Ulaanbaatar City Master Plan's Compact City concept, as an example, envisions intensification of the downtown and ger areas with a well-developed public transportation system and improved accessibility to ger areas. MRTCUD's New Construction Development Mid-term Program aims, for its part, to bring Mongolian urban planning system and power, engineering and road networks up to international standards, and among other objectives, to increase housing supply in existing ger areas.

11. Mongolia's current legal and regulatory framework with regard to land acquisition and resettlement (LAR) is, ill-adapted to meet the land acquisition and resettlement challenges resulting from these urban development and redevelopment imperatives. Among other shortcomings, the current framework lacks of clear procedures and oversight, has inadequate institutional capacity, lacks meaningful public participation and transparency, and, most notably, bars eminent domain for urban development (land acquisition for local scale projects is currently possible only through negotiated settlement on the basis of contract law in the Civil Code). The growing familiarity of ger area residents with their rights and obligation with respect to land acquisition and resettlement, and the heightened expectations with regard to compensation standards, exacerbate the deficiencies of Mongolia's LAR procedural systems.

12. In 2009, GOM requested ADB assistance with legal and regulatory reforms for urban land management, including related social safeguard issues. The resulting Loan 2523-MON: Social Sector Support Program included a policy component that assisted in drafting resettlement guidelines in ger areas.<sup>3</sup> While conforming to Mongolia's existing legislative framework, the guidelines strove also to achieve outcomes consistent with international best practice with regard to land acquisition and resettlement. In consideration of enduring deficiencies in the legal framework, notably including the absence of eminent domain provisions for local scale projects, the GOM requested ADB's further support for development of new legal instruments for LAR combined with social safeguard provisions. This TA responds to that request.

## B. OBJECTIVES OF THE TA

13. The capacity development technical assistance (CDTA) for this subproject was conceived to provide the Government of Mongolia (GOM) with:

- Recommendations for improved legislation and regulations for land acquisition and resettlement;
- Institutional and capacity development needs assessment; and
- Increased public awareness of relevant legislation and regulations;

14. The inputs of the consulting services, as originally documented, were to be focused on the following areas:

- Review of relevant legislation and procedures on land acquisition and resettlement that pertain to Ulaanbaatar. – i.e. a comprehensive review of current

---

<sup>3</sup> *Land Acquisition and Resettlement Guidelines*, June 2010.



laws, regulations and procedures to administer land management, land acquisition and resettlement of displaced persons in the context of international social safeguard standards;

- Comparative analysis of current legislation with international social safeguard principles and practice;
- Workshop(s) to discuss the issues, possible solutions and implications of changes to legislation and regulations;
- Recommendations for improvements, revisions or new legislation;
- Workshop to discuss the proposed changes to legislation and regulations to try to reach or assess the degree of consensus and support from local government, civil society, representatives of ger area residents, NGOs and other international financial institutions;
- Institutional capacity assessment, including (a) review the institutional arrangements and capacity of MRTCUD, UBCG and local government, (b) an assessment of the institutional capacity to implement the proposed legislation effectively, and (c) a needs assessment report, including an initial capacity development plan and budget; and
- Public awareness, consultation and information dissemination to assist the MRTCUD and UBCG to seek feedback from all stakeholder groups on issues and proposed changes and dissemination of information on current legislation and recommendations formulated under this project.

15. Based on feedback received during project inception, a number of changes were made to TA reporting requirements. As an initial project output, The Consultant Team was asked to review and comment on proposed amendments to the Law on Land and whether the draft should contain a new chapter for LAR. The Consultant Team was requested to review and provide comments on relevant LAR aspects of the new Law on Urban Redevelopment before it is submitted to Parliament.

16. During the course of the TA, the scope of work expanded from a focus on urban resettlement to a national scope, including rural areas and mining areas. During project inception, the Consultant Team was asked, moreover, to take the lead on drafting the new Law on Acquisition of Land Back to State Ownership<sup>4</sup> (i.e., land acquisition and resettlement law), ensuring its consistency with other relevant laws, as well as the Constitution of Mongolia.

17. Final agreed project deliverables include:

- An inception report with a detailed work plan;
- Comments on proposed amendments to Law on Land and new Urban Redevelopment Law;
- Issues Paper based on the review of legislation and comparative studies;

- Workshop(s) to discuss issues and possible solutions with report on workshop outcomes;
- An outline of the draft law on land acquisition and resettlement (preliminarily named Law on Taking Over Land on Grounds of Special Public Need<sup>5</sup> and suggested to be renamed as the Land Acquisition and Resettlement Law);
- Workshop to discuss outline with report on workshop outcomes;
- Draft Law on Land Acquisition and Resettlement based on the outline;
- A situational analysis, including institutional aspects; and
- A final comprehensive report.

## C. IMPLEMENTATION ARRANGEMENTS

18. ADB serves as the executing agency for this TA subproject. The day-to-day administration is led by the Office of the Director General (EAOD, East Asia Regional Department) with technical support from the Mongolia Resident Mission (MNRM); the Urban and Social Sectors Division (EASS, East Asia Regional Department); and the Environment and Safeguards Division (RSES, Regional and Sustainable Development Department).

19. The Consultant Team is guided and supported by the Urban Development and Land Management Policy Department of MRTCUD and the Ulaanbaatar City Land Administration Department of the Capital City (LAD). The MRTCUD collaborates closely with the Consultant Team to ensure TA outputs are consistent with and supportive of Government policy directives related to the land acquisition and resettlement process.

20. The TA provides 6 person-months of international consulting services and 14 person-months of national consulting services (collectively referred to as the Consultant Team). The Consultant Team comprises:

- Resettlement Policy Specialist / Team Leader (4 person-months);
- Land Management Institutional Specialist / Deputy Team Leader (6 person-months);
- International Land Management Legal Specialist (2 person-months);
- National Land Management Legal Specialist (2.5 person-months);
- Social Development and Resettlement Specialist (3 person-months); and
- Public Awareness and Consultation Specialist (3 person-months).

21. A Project Working Group (PWG) comprised of key counterpart staff in MRTCUD and UBCG and other relevant GOM officials was established for the TA in April 2011. The Director General, Urban Development and Land Affairs Policy Department (MRTCUD) serves as the Chairman of the PWG. The Consultant Team Deputy Team Leader serves as Secretary. Other members include the Deputy Director of the Land Administration Department of Capital City, the Head of the Land Management Division, Agency for

---

<sup>5</sup> This was the official name used in the 2010 GOM/Parliamentary list of new legislation to be drafted. Suggested by CT to be renamed the Land Acquisition and Resettlement Law.

Administration of Land Affairs, Construction, Geodesy and Cartography (ALACGaC), and the Chief of the Land Management and Planning Division, Land Administration Department of Capital City. The complete list of PWG members is presented in Annex 1.

### III. SITUATION ANALYSIS AND ASSESSMENT OF KEY ISSUES

#### A. SITUATION ANALYSIS

22. The following provides a summary of the legislative and institutional framework for land acquisition and resettlement in Mongolia.

23. In the absence of a dedicated and comprehensive Land Acquisition Law, the basic legislative framework for land acquisition and resettlement (LAR) in Mongolia consists of the Constitution (1992), the Land Law (2006) and the Law on Allocation Law to Private Citizens (Land Allocation Law, 2003). Article 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. Article 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.

24. 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.

25. The Land Law contemplates three kinds of private land tenure: (i) ownership, which may be granted only to citizens of Mongolia; (ii) 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; and (iii) use, granted under contract or lease to foreign countries and legal entities.

26. The Land Law governs expropriation of land allocated for possession or use. Article 13.1 of the Land Law lists special needs for which land in private possession can be acquired by the State: (i) land under special government protection; (ii) border strip lands; (iii) land for ensuring national defense and security; (iv) land for foreign diplomatic missions and consulates, as well as resident offices of international organizations; (v) free zone area; (vi) land for scientific and technological tests, experiments and sites for regular environmental and climatic observation; and (vii) *aimag* level reserve rangelands.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. Article 32.1 states that special needs for which private land can be acquired are: (i) ensuring national defense and security; (ii) creating a permanent surveillance field for scientific and technological tests or experiments and environmental or forecast observation; and (iii) building national roads, engineering lines, buildings and constructions.

34. 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: (i) value of the land and immovable property located on it; (ii) transportation costs regarding resettlement or relocation; (iii) investment made by the owner on the land; (iv) location, size, characteristics and quality of replacement land that is provided by State; (v) conditions and deadline for vacating the land; and (vi) the amount of compensation, payment procedures and date.

35. 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.

36. 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.

37. Article 37 outlines the principles applicable to compensation that landowners are entitled to upon expropriation: (i) replacement land must be not worse in character and quality than the owner's land; (ii) land and immovable property will be compensated at their value (iii) improvements made to the land will be compensated; (iv) losses incurred by the owner due to the taking of the land and relocation must be compensated; and (v) no compensation is paid for immovable property built or improvements made after the notice given at the start of the process.

38. As noted above, 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. PUBLIC CONSULTATION AND STAKEHOLDER ANALYSIS

39. Public awareness, consultation and information dissemination activities took place throughout the Project period, ensuring broad participation in and awareness of the legislative reform process. Based on the engagement strategy developed by the Consultant Team's Public Awareness and Consultation Specialist, the Consultant Team consulted extensively with the broad range of stakeholders with an interest in the reform process, including national and local level government officials, civil society representatives, ger area residents, representatives of bilateral and multilateral development agencies involved in the urban development sector in Mongolia, media representatives and private sector developers.

40. Consultation with government took the form of meetings, of which there were four, and one focus group that was held with the Land Expropriation Division of the UB LAD. Six individual meetings were held with the private companies, a resident, and a member of the press. The remaining stakeholders were consulted during 14 focus groups and consultation meetings. The PWG convened four times.

41. The engagement process also involved two formal workshops (June 2 Discussion of Key Issues and Possible Solutions, and July 5 Presentation of Preliminary Outline of Draft LAR Law), the outcomes of which are summarized Section III.D and IV.C below. Detailed reports of workshop proceedings are included as Reference Documents 2 and 3.

42. Overall, there seemed to be convergence in stakeholders' opinions regarding the existing LAR framework. All parties recognize the need for reform, particularly regarding the transparency of the law, the steps required to complete a LAR process, and the clarity of LAR terminology. There was also a consensus that a methodology for land valuation and compensation rates (including for business losses) should be established, and that the LAR process should be highly participatory.

43. Annex 2 presents the comprehensive description of engagement activities undertaken by the Consultant Team summarized below.

### *GOVERNMENT AGENCIES*

44. Government Agencies consulted include:

- Ministry of Road, Transport, Construction and Urban Development;
- Land Affairs and Urban Development Department;
- UB Land Administration Department;
- Land Expropriation Division of the UB LAD;
- UB Urban Development and Planning Department, and
- Administration of Land Affairs, Construction, Geodesy & Cartography.

45. Although there are some concerns about (i) whether to have a separate LAR Law and (ii) the complexity of drafting a new law, government stakeholders widely recognize the need to reform the LAR process. It is felt to be increasingly necessary because there are, as noted above, numerous future development projects planned for Ulaanbaatar that will require LAR.

46. The majority of government stakeholders also believe that a separate law is necessary, rather than additional provisions within the existing law. Further, a review of existing laws that intersect with LAR was suggested, to ensure that the new LAR law can be integrated into the legal framework and compatible with, for example, the Civil Code and the Land Law.

47. One of the most frequently raised points was that the new law must be very clear, presenting the possible scope of LAR and the rights and responsibilities of all the parties, using comprehensively defined terminology. For example, provisions should detail exactly the kinds of projects for which the State can expropriate land; and include stronger protections against expropriating property by force. It was also suggested that guidelines be drawn up, detailing how each step of the LAR process should be implemented. It was widely felt that LAR processes should be consultative, participatory and transparent.

48. Another issue raised was that in Mongolia, although property values have been established, there is no standard mechanism for determining the market value of land. Often, those being displaced establish the asking price for their land themselves. A possible solution may be to enforce existing provisions within the Cadastral Law, which mandate that a database of parcel plots' market value in different areas should be annually updated and accessible by the public. Even if this is done however, how to compensate owners, possessors and users differently will still need to be determined.

#### *GER DISTRICT RESIDENTS*

49. Focus groups were held with residents from the 4<sup>th</sup> Microdistrict and Bayankhushuu, who had their land forcefully expropriated from them by the State without compensation; and with other residents of Bayankhushuu, the Unur khoroolol ger area, and the 13<sup>th</sup> khoroolol. The process of turning Ger districts into model ger areas has already begun in some neighbourhoods, but often the development promised does not materialize. People also say that they were promised the rights to the land they inhabit, but that this has not been granted to them. Many of these stakeholders distrust government officials, saying that the bureaucracy is actually impeding development by refusing to sign developers' permits. The residents do not feel that they have enough information on planned projects, LAR, or the terms of proper compensation.

50. Focus groups were held with residents from Khoroolol 7, and with households affected by the Baruun Salaa and Orbit-Takhilt subprojects of the ADB financed Urban Development Sector Project<sup>6</sup>. Those stakeholders consulted in Khoroolol 7 felt that they had not been given enough information and felt that the government was not being transparent about the Project. They were also unhappy with land valuation rates, believing them to be far below market value. They were critical of the survey measurements used, and of the inefficiency of the bureaucratic process. They stressed that many of their livelihoods depended on their land, and that compensation had to be fair.

51. Those stakeholders consulted related to the Baruun Salaa and Orbit-Takhilt subprojects felt much more confident that the LAR process was being well handled. Although they were also critical of the bureaucracy, they felt meaningfully consulted and clear about the resettlement process. They also gave examples of grievances that had been addressed and of times when their rights as affected persons (APs) had been protected. They hope that the process will continue to be transparent, and that the reforms will be implemented with all safeguard promised provisions.

#### *CONDOMINIUM RESIDENTS/ASSOCIATIONS*

52. Focus groups were held with condominium residents living in buildings that were slated for demolition and reconstruction, and residents hoping to be resettled from their buildings, usually because of structural safety concerns about those buildings. To finance redevelopment, buildings must be sold, most often to a private developer planning to build new residences on the land. In Mongolia, however, although the State may own the land a building is built upon, it is the responsibility of residents to negotiate with private developers regarding the terms of resettlement. This has created a lot of confusion, as residents do not always have the capacity to find investors or negotiate with developers, and there is little accountability on the part of the developer. Multiple attempts by different groups of condominium residents to get the government more engaged in the process have not been successful.

53. In the past, some condominium residents agreed to the demolition of their building with the understanding that they would receive apartments in the newly constructed replacement residences. In at least one case, the project was never finished, and residents were not compensated at all. As a result of examples like this, many focus group participants would like to see stronger protections for residents. For instance, they would like the government to help find investors, and to guarantee project completion, making developers accountable to the State rather than to the residents. Once such protections are in place, the respective roles of government, private investors and residents should be clearly communicated and enforced.

54. In terms of the LAR process, most condominium residents would prefer to be compensated in cash rather than in new apartments, and before demolition begins. Also, compensation would have to be high enough for them to buy another apartment in the same neighbourhood. Importantly, some apartments are so old that they do not include bathrooms,

---

<sup>6</sup> MON 2301 - Urban Development Sector Project.

kitchens, or lobbies, so new apartments, which do include these will have to be larger to encompass the same area of living space.

55. A model currently being tried in some places is for developers to work with more than one property at once, building residences that they then offer to the residents of the next building they wish to demolish and reconstruct. If this model proves to be successful, more people may be willing to accept compensation in apartments instead of cash in the future. A final concern of residents was whether provisions would be made for business losses, as many people work out of their homes.

56. The Supreme Council of Condominium Associations of Mongolia was in favour of compensation being made with residences rather than cash, to allow developers to play a larger role in LAR. They also felt that the issues of leasees and business losses must be addressed in any new law, and that deadlines for different LAR project components should be established.

#### *PRIVATE COMPANIES*

57. Private companies consulted include developers and an engineering firm. These companies stressed that compensation should be fair, and LAR processes mutually beneficial, so that households are happy to move and projects can go forward. They also felt that property and civil rights should be protected under the new law. The out-dated nature of the city's infrastructure was cited as a major constraint to project development.

58. In terms of the role of the State in LAR, companies would like to see that clearly defined, and State institutions and project teams given the necessary training to implement LAR processes. Although some think that the State's taking a role in construction could ease the LAR process, other developers feel that this would amount to an encroachment on the private sector.

#### *NGOs AND DEVELOPMENT AGENCIES*

59. NGO stakeholders included Amnesty International (AI) and Zov Garts (ZG), a national organization. They reported that few civil society organizations are working in the field of LAR, and training on LAR is needed within government organizations. AI has been studying LAR in Mongolia and would like to collaborate in the drafting of the new law, and in raising public awareness about LAR issues. They approach LAR as a human rights issue, and believe the new law should reflect international standards.

60. ZG has been more directly involved with LAR and focused their responses on this. Meeting the CT in May, ZG was worried that displaced people were not going to be adequately consulted on the LAR reform process. Also, they felt that the participation of displaced persons in the planning, implementation and monitoring of the LAR process should be assured, and that compensation rates should be set according market value or replacement value – i.e. for cash compensation, the value of 1m<sup>2</sup> of land should be set, at a minimum, at half the price of 1m<sup>2</sup> of apartment space.

61. For compensation in the form of apartments, ZG recommended that the number of rooms allocated to families in the new apartments should be based on household size as



well as land size. Moreover, extended family members who live in separate dwellings on the same plot should also be entitled to receive an apartment, or at least a separate room within the same apartment.

62. ZG also reported that because there is distrust between relocating families and the government, many families feel that it would be preferable to receive the keys to new apartments before they are expected to vacate their land. Finally, ZG questioned how business losses will be compensated and how livelihoods will be secured. They felt that these had not yet been addressed.

63. Development agencies consulted include the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the Japan International Cooperation Agency (JICA), the World Bank, and the Millennium Challenge Account (MCA). They support the legal reform process, and would like to see a new LAR law that would respond to the following needs:

- A fair, transparent valuation methodology that addresses different types of land ownership (possibly reliant on a database of reference market values);
- Detailed procedures for resident participation, and consultation, and mechanisms for freezing development;
- A more efficient LAR process that decentralizes more authority to local governments;
- Separate provisions for non-urban LAR, such as that related to mining and industrial parks; and
- Long term monitoring of resettlement programs.

#### *OTHER*

64. Other stakeholders include local media who are covering the reform of the LAR law, and a law firm that has been involved in previous LAR processes. The law firm reported that the complexities and inconsistencies of the existing LAR framework has allowed for manipulation of the process. They feel that the legal terminology must be carefully defined in the new law, and that the law should privilege community participation and streamline the administrative processes. They hope that civil society will become more interested in LAR issues over time.

### **C. ISSUES PAPER**

65. The Issues Paper presents the Consultant Team's review of relevant legislation and procedures on land acquisition in Mongolia. The goal of the Issue Paper is (i) to highlight the nature of the existing legal and regulatory framework for resettlement in Mongolia; (ii) compare Mongolian legislation with ADB's Safeguard Policy Statement (SPS, 2009) and the laws and practice on some selected countries; (iii) to identify problems, constraints and the gaps that exist between the Mongolian legislation and various international social safeguards; and (iv) to propose new legislation and procedures to address problems and constraints and come closer to international social safeguard standards and practice.

66. With these goals in mind, the Issues Paper begins by reviewing Mongolia's current legal and institutional framework for land acquisition and resettlement. The basic legal framework consists of the Constitution (1992), the Land Law (2006) and the Law on Allocation of Land (2003). The Constitution presents the highest source of State power to expropriate land that is privately owned or possessed in Mongolia. It sets the grounds for involuntary land acquisition based on special public need, establishes the obligation for due compensation and payment, as well as the circumstances wherein land can be confiscated without compensation. The Land Law and the Land Allocation Law serve to further refine the regulations and provisions by describing the kinds of private land tenure that exist in Mongolia; the circumstances, procedures and notifications by which private land can be acquired by the State; and the associated methods for replacement, compensation, and valuation. The Issues Paper also describes Mongolia's current institutional framework with regard to LAR, as summarized above, laying the groundwork for the subsequent analysis and recommendations.

67. The Issues Paper also provides an analysis of Mongolia's existing legal and regulatory framework in relation to various social safeguards including those of the ADB, WB, IFC, JICA and EBRD, specifically highlighting the gaps that exist between Mongolia's current framework and ADB's SPS. These international safeguards are designed to ensure that projects that involve resettlement safeguard the livelihoods and living conditions and prevent social conflicts. They arise from an international community that recognizes the significant and detrimental impacts that result from poorly planned and managed LAR aspects of development projects, impacts ranging from the disruption of local communities, increased joblessness and increased mortality, to longer project delays and higher project costs. The fundamental gaps that exist between Mongolia's current framework and these international safeguards centre on:

- Restoring livelihoods and ways of life in a manner that goes beyond mere monetary compensation;
- Recognizing the rights of informal residents;
- Establishing improved methods for the valuation of effected assets;
- Establishing comprehensive stakeholder engagement and grievance mechanisms;
- Investigating design alternatives and collecting of socio-economic baseline information to inform the development of projects;
- Producing formal resettlement planning documents; and
- Granting special consideration to the poor and other vulnerable groups in the resettlement process.

68. The Issues Paper provides finally a summary of current international approaches to land acquisition, resettlement and expropriation from countries around the world, with diverse examples being drawn from countries located in North America, Asia, Europe and Australia. Among the examples, Canada, the US and Australia present solutions for governance, procedures, administration and compensation, although their institutional capacities and legal structures vary greatly from those of Mongolia. Land pooling and readjustment techniques from Germany have been adopted in Japan and Korea, where they

are currently applied to intensive redevelopment projects and to those dealing with multiple owners; the solutions from Korea provide clear examples for Mongolia to draw from. Serbia, a former socialist county like Mongolia, provides solutions for addressing the entitlements of informal residents.

69. While none of these international approaches can be adopted directly to the Mongolian context (and none of them are completely exemplary in meeting the international safeguards in their own right), taken together, they provide good experience and basis for reforming and improving Mongolia's legal and regulatory framework, as summarized in the Situation Analysis presented below.

70. The complete Issues Paper, including detailed matrix comparing Mongolia's legislative framework for land acquisition and resettlement with that of the countries of study, and with relevant provisions of the ADB's Safeguard Requirements 2: Involuntary Resettlement, is presented in Reference Document 2.

#### D. INSTITUTIONAL CONSTRAINTS

71. The following presents an outline of key institutional constraints to LAR processes in Mongolia. The summary is based on findings from the consultation exercises described above and the conclusions of the Issue Paper, including the review of the regulatory and institutional frameworks for LAR in other countries identified above.

72. One of the most problematic aspects of existing LAR practice has been the over-reliance on regulation, rather than legislation, to order LAR processes. Passing regulation is a slow and complicated process, and when it fails, as it sometimes does in this context, conflicts, loopholes and gaps remain in legal frameworks, creating more of the inconsistencies that regulation is meant to address.

73. The over-use of regulation, as opposed to legislation, to order the LAR process has also resulted in confusion over the roles and responsibilities of different State institutions. There are no formal regulations regarding who, specifically, is responsible for LAR planning, implementation or monitoring. As a result, the management and operation of the LAR process is ad hoc and uncoordinated.

74. In contrast, in other countries' legislative frameworks, the parameters of the State's powers regarding land acquisition are clear. Further, the limitations to the exercise of these powers are comprehensively described; and the rights and responsibilities of both governmental institutions and affected parties are established. Further, whereas these other countries' legislation may address LAR in more than one law or regulation (for example, with relevant provisions in both environmental and urban planning legislation), the laws will not conflict with one another. For instance, South Korea has highly detailed legislation mandating different LAR processes for different types of projects, but each type of process is consistent with the legal LAR framework.

75. Limited human capital in the institutions concerned with LAR review, approval and implementation is also a challenge, although not necessarily something that can be addressed through legislation. It means however, that the organizations responsible for LAR

implementation, and for protecting the rights and interests of APs must be properly managed and provided the resources they need to fulfill their mandate. This is a key challenge for Mongolia.

76. Another set of issues were identified around the implementation of the LAR process. Although Mongolian law does include certain stipulations regarding LAR timelines, (for example the required waiting periods between AP notification and land acquisition), these are often not followed. Sometimes the Land Acquisition Division is informed of a prospective LAR process only after a project has been approved, leaving too little time before construction to follow such regulations. In other countries, time limits and procedural requirements are not only clearly legislated, but are enforced by regulations.

77. An additional aspect of LAR implementation that remains unclear is the respective roles of State and private developers in land acquisition. In other countries, where there is a role for private developers, their role and the government's role are clearly defined. In almost every case, it is within the government's mandate to make the final decision to expropriate. And in the US, court authorization is needed.

78. In Mongolia, it is not currently clear what LAR funding mechanisms are permissible, and which parties are responsible for funding. Elsewhere, it is usually the State implementing agency or Project developer that is responsible for all costs, which are considered part of the total cost of the project. In the Republic of Korea, when private developers are involved, they must prove that they have the financial capital required on hand before they are awarded the contract for a given project, and compensation must be paid before a project begins.

79. There are no LAR provisions in Mongolia for APs who do not own the title to their land. Although this is the same as in many other countries, there are exceptions: in some Canadian provinces, the expropriating authority is authorized to provide financial support to anyone affected, regardless of title. The Korean law recognizes the occupant of a house as an AP. In Germany, social mitigation plans that take all affected parties into account must be prepared in conjunction with a binding land use plan, to ensure that there are no significant negative impacts from such projects.

80. The lack of high capacity administrators is especially problematic in a context where there is a lack of opportunities for affected persons to engage with or participate in the LAR process, and no formally established grievance mechanisms. In many countries, there are generally formal mechanisms (courts or administrative tribunals for example) which are available once expropriation proceedings have begun. In the Republic of Korea, independent non-judicial grievance mechanisms are also part of the LAR process, available prior to approval of a LAR plan.

81. Another challenge faced by those trying to implement LAR processes in Mongolia is that some land parcels lack accurate cadastral maps, or encompass more land than is indicated in official documents. This can be due, for example, to the extension of a landholding without permission. In most countries, it is usually the case that only land that is formally and legally titled/registered will be compensated.

82. In terms of independent monitoring, there is currently no institution in Mongolia that monitors LAR implementation to ensure that the organizations concerned carry out their duties properly and that the rights of affected persons are protected. Elsewhere, independent monitoring is often not included in LAR legislation; for the most part monitoring only takes place when an affected person lodges a grievance or begins some kind of administrative proceeding. This is a key requirement for international financing institutions.

## E. DISCUSSION OF KEY ISSUES AND POSSIBLE SOLUTIONS - JUNE 2 WORKSHOP

83. The objective of this workshop was to present and discuss issues, possible solutions and implications of changes to legislation and regulations pertinent to land acquisition and resettlement and to receive feedback on same from stakeholders. The workshop formed an important element of the TA's awareness building mandate, ensuring informed participation of all relevant stakeholders in the legislative reform process.

84. The workshop, held on 2 June 2011 at Nukht Hotel in Ulaanbaatar, attracted 55 participants, including national and local government representatives, central and local authorities in charge of land affairs, representatives of international and donor organizations, civil society officials, and private sector property developers. The workshop involved six structured presentations by Consultant Team members informed by findings presented in the Issue Paper, and a group break-out session to allow participants to work with and share possible solutions to key land acquisition and resettlement issues and challenges confronting Mongolia.

85. Participants were effectively involved in the workshop, expressing views on priority issues, proposed solutions and other outstanding issues flagged by the Consultant Team during the workshop, notably including (see Table 1):

**Table 1 – Key Issues and Points of Discussion**

<b>Aspect</b>	<b>Proposed Solution Offered by CT</b>	<b>Outstanding Discussion Issues</b>
Structure of Law	<ul style="list-style-type: none"> <li>• There should be a single law on land acquisition, distinct from Land Privatization Law and Land Law.</li> <li>• There should be special provisions governing procedures and entitlements for urban redevelopment, including improvement of ger areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Should urban redevelopment be covered in a separate law?</li> <li>• What matters can be covered in regulations rather than the law?</li> </ul>
Power to expropriate	<ul style="list-style-type: none"> <li>• State and local government should have power to expropriate all land tenures for any State purpose.</li> </ul>	<ul style="list-style-type: none"> <li>• For urban redevelopment, to what extent should the State be able to expropriate to support private development?</li> <li>• For urban redevelopment, what should be the minimum agreement of affected persons?</li> </ul>
Authorization to expropriate	<ul style="list-style-type: none"> <li>• For national State purposes, final approval should be decided by the</li> </ul>	<ul style="list-style-type: none"> <li>• Appropriate roles of national and local khurals, Cabinet, governors</li> </ul>

<b>Aspect</b>	<b>Proposed Solution Offered by CT</b>	<b>Outstanding Discussion Issues</b>
	Cabinet. <ul style="list-style-type: none"> <li>For local purposes, final approval should be decided by Citizens Representative Khural, on recommendation of the Governor.</li> </ul>	and ministries.
Social safeguards	<ul style="list-style-type: none"> <li>Procedures and entitlements complying with social safeguards should be included in the law.</li> </ul>	<ul style="list-style-type: none"> <li>How does Mongolian reality affect the implementation of social safeguards?</li> <li>Consultation issues</li> <li>Compensation issues</li> <li>Relocation issues</li> </ul>
Dispute resolution	<ul style="list-style-type: none"> <li>There should be a grievance mechanism during preparation of LAR plan.</li> <li>There should be a procedure for objecting to expropriation.</li> <li>There should be a separate procedure for disputing compensation and resettlement measures.</li> </ul>	<ul style="list-style-type: none"> <li>Should dispute resolution be a matter for:               <ul style="list-style-type: none"> <li>A government-appointed non-judicial body?</li> <li>The courts only?</li> </ul> </li> <li>Should there be special procedures for the court in LAR disputes?</li> </ul>
Consultation	<ul style="list-style-type: none"> <li>For urban redevelopment, there should be consultation with affected persons on the detailed plan.</li> </ul>	<ul style="list-style-type: none"> <li>Procedures for detailed plan approval under the Urban Development Law.</li> <li>Regulation or need to amend Urban Development Law.</li> </ul>

86. By bringing together for the first time broad representation of all stakeholder groups, including local and national level government officials involved with land acquisition and resettlement policy and implementation, civil society representatives, and ger area residents, the workshop allowed a frank exchange of views on the range of LAR issues. There was general consensus in the identification of existing constraints to the LAR process, including:

- Ad hoc and uncoordinated management and operation of the LAR process;
- Absence of formal requirements as to who is responsible for land acquisition and resettlement planning, implementation and monitoring;
- Inadequate definition of LAR auditing, monitoring, supervision and reporting requirements;
- Poorly defined eligibility and entitlement criteria;
- Where there is a role for private developers, unclear definition of the respective roles for public and private bodies;
- Valuation standards, and the use of normative rates; and
- Absence of livelihood restoration considerations in resettlement planning.

87. All participants recognized the need to find early solutions to the constraints, with arguments made both for and against addressing the issues in a single law on land acquisition. Further details of this workshop are provided in Reference Document 2.

88. The June 2 Workshop was followed by a meeting of the PWG on June 8 where workshop outcomes were discussed and next steps agreed. The Consultant Team recommends a separate LAR Law for the following reasons:

- In all countries, the State has the power to expropriate land for its purposes
- Involuntary land acquisition and resettlement are separate legislative topics from those of the Land Law and Land Allocation Law or proposed Urban Redevelopment Law
  - Adoption of a separate law conforms to international practice, e.g.: Republic of Korea, Canada, USA, Sri Lanka, Australia, India (in progress)
- A separate law is compatible with other relevant laws (e.g. proposed Law on Redevelopment, Minerals Law)
- One law will address LAR issues of all types of land tenure (ownership, possession, use)

89. It was agreed during the meeting that a decision as to whether a separate LAR law should be developed or that LAR provisions should be introduced into relevant sections of other laws (e.g. amended Law on Land) could be deferred. The PWG instructed the Consultant Team to proceed with drafting a distinct LAR law, qualifying that should it later be decided that the provisions are better included in other legislation, relevant sections of the draft would be integrated therein as appropriate.

## IV. PROPOSED LEGAL REFORMS

90. This section outlines the Consultant Team's outputs with regard to the proposed legal reforms. It begins with a summary of comments provided by the Consultant Team on two key pieces of the broader set of land laws under formulation at the outset of the project period: the proposed amendments to the Law on Land, and the draft Urban Redevelopment Law. The Consultant Team restricted their comments to the land acquisition and resettlement related aspects of the drafts, concluding that provision on such matters should be made in a separate Land Acquisition and Resettlement Law.

91. The Preliminary Outline of the Draft LAR Law was presented at a July 5 workshop attended by the range of stakeholders with an interest in the reform process. The Outline formalized many of the recommendations made by the Consultant Team on the drafts. Subsequently, based on feedback received at the July 5 Workshop, the Consultant Team prepared the Revised Outline/Blueprint for Legislative Drafting. The procedures for LAR implementation also summarized in this section were presented to the Project Working Group to address limitations of the existing procedures, particularly with regard to definition of institutional roles and responsibilities. The section concludes with a summary of key aspects of the Draft Law presented to the PWG in October.

### A. COMMENTS ON DRAFT LEGISLATION

92. As noted earlier, as an initial project output, the Consultant Team was requested to provide comments on draft amendments to the Law on Land and the draft Urban Redevelopment Law. The following summarizes the Consultant Team's comments on the drafts. Refer to Annexes 3 and 4 for the detailed comments on the drafts.

#### *PROPOSED AMENDMENTS TO LAW ON LAND*

93. The proposed amendment to the 2006 Law on Land includes detailed provisions on the expropriation of privately owned land, while concentrating the most important aspects of land expropriation into the Land Law. The Consultant Team's comments on the draft amendment began by discussing the typical structure of laws on land acquisition and resettlement from an international perspective, in comparison with the existing legislative framework in Mongolia. Importantly, in its comments the Consultant Team recommended developing a separate LAR Law instead of nesting these provisions within the Land Law for various reasons, including the fact that expropriation is a fundamentally different subject than the Land Law's existing focus: the management and allocation of State land. The comments from the Consultant Team were focused into four main areas: (i) establishing clarity as to the purpose for which land can be expropriated; (ii) addressing process and governance issues; (iii) addressing safeguard issues; and (iv) providing links from the Draft Amendment (or the new LAR Law) to land use planning.

94. Specific recommendations include:

- Preparation of a separate comprehensive LAR Law consistent with other relevant laws covering all aspects of governance and safeguards, with a clear statement of the purposes for which land can be acquired for State needs, and applying to all classes of land use and tenures
- Early agreement on key process and governance issues, including:
  - Right of State to take lesser interests in land such as rights-of-way or servitudes;
  - Program approval for land acquisition by State Ikh Khural, with individual projects approved by Government;
  - Approval authority for local Khurals; and
  - Negotiated settlement as the preferred means of land acquisition.
  - A system of due process for grievances and appeals by affected persons;
- Incorporation of social safeguard issues into the legislation, including definition of:
  - Consultation approaches and methodologies;
  - Compensation principles and methodologies; and
  - Entitlement and eligibility criteria, including entitlements of informal occupants with recognizable claims to land.
- Clarification of the link between land management plans and urban master plans.

#### *DRAFT URBAN REDEVELOPMENT LAW*

95. The draft Urban Redevelopment Law is a new piece of legislation designed to facilitate the improvement of the built environment and the provision of better housing



through urban redevelopment. The Consultant Team's comments on the Draft Law are focused into three main areas: general comments related to clarity, consistency, and the roles of the State and the affected residents; process and governance related to the procedures, the role of the Citizens' Representative Khurals and the Central Governmental Administrative Organization; and safeguard issues related to aligning the consultation process with international social safeguards, defining thresholds for when and how expropriation can proceed, and the need for adequate compensation, monitoring, and grievance mechanisms in the Draft Urban Redevelopment Law.

The Consultant Team again provided recommendations on how to address identified issues, including:

- Reference compensation matters and other safeguard principles (including rights of non-titled occupants) in the proposed Land Acquisition Law (or equivalent), not in the Urban Redevelopment Law, to ensure uniform treatment of LAR impacts for all types of projects;
- Enhance participation of all stakeholders in urban redevelopment project planning;
- Increase clarity on the procedural steps by which urban redevelopment projects are proposed, prepared and implemented to avoid confusion;
- Targeting a much higher threshold (say 90%) of agreement by affected owners and possessors of property in an urban redevelopment project area before expropriation may be exercised;
- Provide for security procedures to address risk of failure on the part of the project implementer, including assurance, for example by escrow, of funds for compensation and resettlement;
- Clearly articulate the role of Citizens' Representative Khurals to oversee implementation of projects; and
- Establish independent monitoring and grievance mechanisms.

## B. PRELIMINARY OUTLINE OF THE PROPOSED LAR LAW

96. Based on outcomes of the June 2 workshop, the Consultant Team prepared a Preliminary Outline to guide drafting of the law. The Preliminary Outline provided a clear structure for the law and set forth a number of policy options for discussion with the PWG and, subsequently, with a broader stakeholder group at workshop organized in early July.

97. The general structure of the law as detailed in the Preliminary Outline is to (i) list the purposes for which the State may acquire land for special public need, (ii) describe the roles and responsibilities of State and other bodies in the process, including a new independent body that will adjudicate in the case of disputes, (iii) state the rights of affected persons and compensation principles, and (iv) set out the procedures that must be followed in the LAR and expropriation processes. The Preliminary Outline is presented in Annex 5.

## C. WORKSHOP ON PRELIMINARY OUTLINE – JULY 5

98. This purpose of the 5 July workshop was to present and seek feedback on the Preliminary Outline of the LAR Law, to flag key policy issues and to seek feedback on preferred choices and to discuss next steps in legislative reform process. Participating stakeholders included representatives from various government agencies in Mongolia, from the Ministry of Road, Transport, Construction and Urban Development, the Ulaanbaatar City Government, the Ministry of Social Welfare and Labor, the Agency of Land Affairs, Construction, Geodesy and Cartography, and the Ulaanbaatar City Land Administration Department. Additional stakeholders who participated in the workshop included representatives from various international financing institutions such as the World Bank and ADB; representatives from civil society, research and private sector institutions; and perhaps most importantly, representatives of displaced people in Mongolia. In these proceedings, the MRTAUD recognized the importance of securing the engagement of various stakeholders in order to formulate an enforceable and adoptable law for LAR in Mongolia.

99. The presentation of the Preliminary Outline for new LAR legislation in Mongolia was made by the Consultant Team. As agreed by the PWG, the Consultant Team has been instructed to formulate a separate LAR law as a separate piece of legislation from Mongolia's more general laws on land and urban development, due to the special nature of LAR laws in defining the extent of State powers for use of eminent domain for land acquisition and house demolition and in securing the rights of citizens to fair procedures and compensation. After the Consultant Team presented this draft outline for LAR legislation, the workshop proceeded with a period of questions, answers and discussions where the stakeholders raised key points with the CT, as summarized below.

100. Representatives from the various governmental agencies in Mongolia (as described above) inquired about the use of foreign LAR legislation in forming the new Mongolian law. The Consultant Team clarified that while experience has been drawn from other countries, the Mongolian situation is unique and deserving of its own solutions.

101. Representatives from the various civil society organizations (NGOs, CBOs, and condominium associations) inquired about the issues of taxation and consent. The Consultant Team clarified that under the proposed LAR legislation, the monetary compensation paid to displaced persons would not be subject to taxation, and the levels of consent required from the affected persons (say 80% to 90%) before the State can enforce eminent domain in the case of urban redevelopment schemes. In response to their issues surrounding participation in the planning process, the Consultant Team clarified the need for establishing a transparent compensation strategy, effective methods for handling grievances, and clear roles for a committee to confirm land acquisition, use, compensation and other related matters under the LAR legislation.

102. A representative from the private sector inquired about the need for information disclosure. The Consultant Team clarified that ensuring adequate information is essential to safeguarding the rights of displaced persons, and as such, all information regarding the LAR process would be made accessible, while at the same time, private personal data would be protected.

103. A representative from the groups of displaced people in Bayangol District discussed a previous situation where his property was acquired by the State and the problems involved

in the application in eminent domain. The Consultant Team clarified that under the proposed LAR legislation, State actions of this nature would not be allowed without due safeguards, consultation, and compensation prior to displacement. The Consultant Team also clarified that under the proposed legislation the expropriation of properties would have to be approved by the court.

104. Additionally, a representative from the lending institutions (World Bank) inquired about the protection of displaced persons when the State exercises its power of eminent domain, and the need for safeguarding the rights of both voluntarily and involuntarily displaced people. Furthermore, representatives from the research institutions (Science and Technology University of Mongolia, Mongolian State University of Agriculture) raised the issue that the current LAR proposal opens the door for private developers to expropriate land, which may lead to undue confiscation. They also raised the issue that the current proposal pays more attention to urban land than rural land, which may be problematic as rural land is relevant for public projects such as reservoirs. Although the Consultant Team did not directly respond to these points, they were important to furthering the stakeholder discussion.

105. At the conclusion of the workshop, the Consultant Team indicated that they would use the information collected from the various stakeholders in order to refine the outline for LAR Law into a blueprint for LAR legislative drafting.

106. Further details of this workshop are provided in Reference Document 3.

#### D. REVISED OUTLINE/BLUEPRINT

107. Reflecting outcomes of the July 5 workshop and other consultations, the Consultant Team revised the Preliminary Outline to guide drafting of the law. The structure of the law as presented in the Revised Outline presented in Annex 6.

#### E. LAR PROCEDURES

108. As earlier noted, the current procedures for LAR in Mongolia do not allow for efficient or participatory processes. LAR requirements are not well understood, responsibilities are not clearly defined, roles are not transparent, and stakeholders report feeling unable to navigate the process and excluded.

109. The Consultant Team presented the following proposed LAR procedures for inclusion in the LAR Law to key representatives of MRTAUD, UBLAD and ALACGaC in late September. These changes address the limitations of the existing procedures in the following ways:

- The different steps necessary to complete LAR are clearly defined, and they are sequential rather than parallel;
- Rights and responsibilities are established and can be transparently communicated; and

- Consultation has been made an integral and reiterative component of the LAR process.

110. Consultation is especially important. In most cases, it must begin as soon as resettlement planning is initiated, and recurs throughout the LAR process. For projects that fall under the category of Urban Redevelopment, consultation should actually begin earlier, prior to Project Approval.

#### **Project Announcement/Approval**

- Project identification, including assessment of the scope of necessary displacement
- Project proposal, including magnitude and severity and estimated cost of LAR, submitted to approval authority
- *Special Case: Public consultation and comment on proposal if urban redevelopment project*
- Project approval by relevant approval authority

#### **Technical Project Design**

- Confirm land take in detail project design
- Establish LARC
- Establish representative organization, as appropriate

#### **Land Acquisition and Resettlement Plan (LARP) Preparation and Approval**

- Assess LAR impact (census, socio-economic survey, and asset inventory) / use external expert consultants as appropriate
- Declare/disseminate cut-off date
- Define eligibility criteria (in consultation/negotiation with representative authority as appropriate)
- Appraise assets by licensed valuers
- Prepare Draft Land Acquisition and Resettlement Plan, unless scope of displacement minimal, including no physical displacement / use of external expert consultants as appropriate
- Disclose Draft LARP / update based on feedback received
- Submit Draft LARP to approving authority for comment approval / finalize based on feedback received
- Disclose Final LARP

#### **Negotiations, Payment of Compensation and Transfer of Property Rights**

- Prepare compensation agreements
- Invite AP to negotiate/negotiate agreements
- If agreement reached, pay compensation/provide relocation assistance and transfer property registration
- If no agreement reached, proceed to expropriation/eviction procedures

#### **Expropriation/Eviction** (if deemed necessary)

- Submit application, including evidence that LAR process has been compliant with Law, to relevant approval authority for authorization to proceed with expropriation
- If not compliant with LAR Law, application rejected
- If compliant with LAR Law, issue notice of intention to expropriate/compensation offer/notice of date to vacate property
- If offer accepted, AP vacates property and property registration transferred after compensation paid
- If AP does not vacate property by possession/transfer date, application for authorization submitted to courts
- Following ruling by judge, court ordered eviction notice issued.

111. Annex 7 presents a schematic of the LAR procedures outlined above.

## F. DRAFT LAR LAW

112. The Draft LAR Law was submitted to the Project Working Group on 21 October (see Reference Document 4).

113. The draft is based on the following principles:

- Land acquisition and resettlement shall be avoided to the maximum extent possible and negative impact shall be minimized;
- Prior to land acquisition and resettlement, best efforts will be made to reach negotiated settlements with affected entities;
- Forced eviction shall be the last resort and shall be based on properly defined State and local special needs or public unavoidable needs and only when there are no other viable alternatives;
- Compensation for damages to affected entities shall be based on “replacement cost method” and shall include rehabilitation, relocation, and transitional assistance that meet international social safeguard standards;
- The right to carry out land expropriation for State and local special needs or public unavoidable needs shall not be permitted for any private sector entity;
- Land, accommodation, livelihood and income of entities affected by land acquisition and resettlement shall be restored to the same or better level than before the acquisition and resettlement;
- There shall be monitoring and inspection mechanism and structure to verify whether the implementation of land acquisition and resettlement has been carried out according to the laws and regulations and whether the rights of affected entities have been protected;
- There shall be a mechanism to effectively and timely resolve any grievance or disputes that may arise in relation to land acquisition and resettlement;
- Impacts and losses due to land acquisition and resettlement shall be assessed by a professional authority and such assessments can be appealed by APs;

- The budget required for land acquisition and resettlement should be included in the budget of the development, projects or activities to be implemented by acquiring the land;
- All planned land acquisition and resettlement activities should be completed before (economic or physical) displacement of APs;
- Special provisions apply to consultation with and assistance for affected individuals belonging to vulnerable groups; and
- The issues of entity affected by land acquisition who do not have rights to use land shall be dealt through special measures to ensure that they are no worse off.

114. The Draft LAR Law is structured as follows:

**Chapter 1** outlines general provisions of the Draft LAR Law, including the purpose of the Law, other legislation that applies to land acquisition and resettlement, definition of terms used in the Law, purpose of land acquisition and resettlement for national or local special needs or public unavoidable needs, scope of land acquisition, objects and subjects that will be affected by land acquisition, and the principles applying to land acquisition and resettlement.

**Chapter 2** defines the entities affected by land acquisition and resettlement, including their rights and obligations and related social safeguards.

**Chapter 3** outlines the rights and obligations of State and local authorities with respect to land acquisition and resettlement, powers and obligations of initiators and implementers of development, project and activity to be carried out on land acquired.

**Chapter 4** documents the process of land acquisition and resettlement, including decision-making for land acquisition and resettlement, development of land acquisition and resettlement plans and provision of funding, public announcement, determination of the eligible cut-off date, valuation and determination of compensation, provision of information to those who may be affected by land acquisition, involvement of affected entities in decision-making process, consultation, signing of contract, payment of compensation, relocation, measures to improve the livelihood of affected entities, as well as mechanisms of monitoring and oversight of the process, and reporting.

**Chapter 5** details regulations for land expropriation and its implementation when it is not possible to acquire land through mutual negotiation and agreement.

**Chapter 6** includes provisions on grievances and dispute resolution.

**Chapter 7** includes sanctions to be imposed on those who violate the Law on Land Acquisition and Resettlement, and define regulations related to this Law entering into force.

115. As noted below in Section V, the complexity of issues surrounding the draft LAR Law made it impossible to reach consensus within the Consultant Team on all issues. The Team Leader and International Legal Specialist provided comments on the draft for PWG consideration, focussed chiefly on key institutional, governance, process and social safeguard issues (see Annex 8 for detailed comments on the Draft LAR Law). At the 21 October PWG meeting the Consultant Team's National Legal Specialist committed to preparing a separate draft of the LAR Law for presentation to the PWG. This draft, was submitted to the PWG on 15 November and proposes to give responsibility for LAR implementation to an independent organization, not ALACGaC, as a way to ensure greater transparency in the process, minimize conflicts of interest and limit the powers of Government. The PWG agreed to review both drafts.

## V. IMPLEMENTATION CHALLENGES

116. As noted in Section I, the original TOR for the CDTA charged the Consultant Team with, among other responsibilities, providing recommendations for improvements, revisions or new legislation to the Government of Mongolia. The request by the Project Working Group during the course of the CDTA that the Consultant Team assume responsibility for drafting new legislation placed increased pressure on the team of individual consultants to reach consensus on a very complex law tailored to Mongolian conditions within an already abbreviated project period. The initial TOR for the Project provided for a ten-month work plan, with activities beginning in early January 2011 and continuing through to October 2011. The Consultant Team Leader was to have mobilized to site for a two-month inception trip in early January, but was not contracted until late February and mobilized to site only in March. The full team of individual consultants was not in place until April.

117. Also of note, the decision by MRTCUD to request the Consultant Team to prepare draft legislation meant that some original items in the Consultant's TOR needed to be scaled back, importantly including development of the institutional capacity development plan, which was deferred to Phase II.

118. Finally, target dates for completion of the draft LAR Law were difficult to meet due to the need to reach consensus amongst the individual members of the Consultant Team. It had originally been agreed that the Consultant Team would submit the initial draft LAR Law to MRTCUD by 31 August 2011. In agreement with Government counterparts, this was later pushed back to mid-September and then to mid-October to allow internal revisions by the Consultant Team.

## VI. NEXT STEPS

119. A Phase II proposal for the project was approved by ADB in July 2011. The agreed scope for Phase II includes:

- Finalizing the draft LAR Law including further consultation with civil society and Parliamentarians;
- Preparing related regulations and procedures;

- Assessing the institutional requirements to implement the new LAR Law and formulating a 5-year capacity development plan; and
- Initiating capacity development for government officials and employees (i.e., training and conference/study tour).

120. As agreed at the 21 October PWG meeting, a reorganized Project Working Group will be assigned to develop the final Draft of the LAR Law, under the direction of a higher level Project Steering Committee.

121. The ADB, in consultation with GOM, is currently in the process of identifying and recruiting individual members of the Phase II Consultant Team.

122. Phase II will run from December 2011 to April 2012.



**ANNEX 1**  
**MEMBERS OF PROJECT WORKING GROUP**

## Members of Project Working Group

1. Mr. S. OCHIRBAT (Chair), Director General; Urban Development and Land Affairs Policy Department, MRTCUD<sup>8</sup>
2. Mr. B. CHINZORIG (Secretary), Deputy Team Leader; TA Consultant Team
3. Ms. Ts. DELGERMAA, Officer; Urban Development and Land Affairs Policy Department, MRTCUD
4. Ms. E. DONDMAA, Officer; Urban Development Land Affairs Policy Department, MRTCUD
5. Ms. E. ARIUNGEREL, Deputy Director; Land Administration Department of Capital City
6. J. DAVAABAATAR, Head; Land Management Division, Agency for Administration of Land Affairs, Construction, Geodesy and Cartography
7. Ms. D. SHURENTSETSEG, Officer; Urban Development Policy Department, UBCGO
8. Mr. P. ENKHEE, Chief Officer; Urban Development and Planning Division, Agency for Administration of Land Affairs, Construction, Geodesy and Cartography
9. Mr. B. GALMANDAKH, Officer; Land Cadastral Division, Agency for Administration of Land Affairs, Construction, Geodesy and Cartography
10. Mr. Ts. TULGA, Chief; Land Management and Planning Division, Land Administration Department of Capital City
11. Mr. D. BATUNDRAKH, Chief; Involuntary Resettlement Division, Land Administration Department of Capital City
12. Mr. P. BAYAR, Chief; Urban Development and Economic Division, Construction, Urban Development and Planning Department Of Capital City
13. Mr. Ch. REGZMAA, Specialist; Construction, Urban Development and Planning Department of Capital City
14. TBD – Official from Ministry of Justice

---

<sup>8</sup> Mr. Ochirbat was reassigned during the project period. The Deputy Director of the Urban Development and Land Affairs Policy Department, Mr. D. Munkhbaatar, assumed responsibility as PWG Chair in July.

**ANNEX 2**  
**SUMMARY TABLE OF STAKEHOLDER ENGAGEMENT ACTIVITIES**

## STAKEHOLDER ENGAGEMENT MEETINGS ORGANIZED DURING PROJECT IMPLEMENTATION

Prepared by Consultant Team Public Awareness and Consultation Specialist

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
PWG	Introductory meeting	<ul style="list-style-type: none"> <li>As a result of this project, PWG wants LAR legislation drafted, or provisions on LAR made within other laws.</li> <li>It is the PWG's responsibility to decide whether they want a separate LAR law drafted, or whether provisions should be added to other laws. In order to help the PWG make the decision, CT/ADB will provide PWG with examples of legislation from other countries. (Legislation from about five other countries will be made available.)</li> <li>Most of the PWG members are in favor of a separate LAR law, , although there is no clear basis for this</li> <li>Mr. Ganbaatar, the Development Project Manager for the 7thkhoroolol, mentioned that his office is working to produce, by May 15<sup>th</sup>, an officially sanctioned document: Temporary Regulations on Land Acquisition and Resettlement. He asked if CT/ADB could support this effort and collaborate in the development of the Regulations. Attendees suggested that it might be helpful for the CT to do this.</li> <li>The CT and the ADB should liaise to determine what should be done about the Development Project Manager's request.</li> </ul>	27 April
UB LAD	Introductory meeting	<ul style="list-style-type: none"> <li>One of the senior staff commented that what they do not need from this TA is a huge number of recommendations on how to improve the law. Lots of TAs provide recommendations. Instead, what they need are guidelines and regulations for UB LAD and other relevant local bodies to follow. LAR should be carried out in the best possible way. Drafting an entirely new law maybe too ambitious as this is a complicated and lengthy process. Concentrating on the development of LAR guidelines and regulations would be preferable.</li> </ul>	29 April
Land Affairs and Urban Development Department (ALACGaC)	Introductory meeting	<ul style="list-style-type: none"> <li>In Mongolia there are too many separate laws and there are inconsistencies between them. Therefore, it is recommended that any necessary LAR legislation be integrated into the Law on Urban Redevelopment or planned amendments to the Land Law.</li> <li>Mongolian laws are also poor at addressing specific issues that arise, often because</li> </ul>	9 May

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>the provisions made for different processes are not enacted. For instance in many laws it stipulates that specific issues shall be addressed by regulations developed by a given government body. Often however, these regulations are not developed or adopted, and inconsistencies remain in the original law. To avoid this, new LAR legislation should include very detailed descriptions of the required LAR processes.</p> <ul style="list-style-type: none"> <li>• Attendees noted that the team did not have planning or urban development specialists. These fields are clearly related to LAR, without specialists in these fields, there is a risk that urban development/planning issues might not be appropriately handled.</li> <li>• In order to really understand stakeholder issues and produce good solutions, the CT will have to work in communities, not simply remain in the office.</li> <li>• That the name of the project includes “Involuntary Resettlement” may cause it (and the CT) to be negatively perceived by potentially affected persons (APs). It may seem like the TA is being authoritarian, rather than working in the interests of the people.</li> </ul>	
State Secretary of MRTAUD	Introductory meeting	<ul style="list-style-type: none"> <li>• The purpose of this meeting was to introduce the project and those implementing it at a local level to the State Secretary, and receive feedback about the project work plan, reporting methodology and any other issues of concern.</li> <li>• The State Secretary favoured the drafting of a separate LAR law, rather than just the addition of relevant provisions to other laws.</li> <li>• It was emphasized that if a new law were drafted, the terminology had to make it clear that the State should not be expropriating property by force.</li> </ul>	11 May
UB UDPD	Introductory meeting	<ul style="list-style-type: none"> <li>• UB UDPD commented that the TA project is an important and timely project, because LAR is increasingly becoming an issue that needs to be properly addressed. This is due not only to the “New Development” midterm policy, but also in connection with many other planned development projects in UB. Within the “New Development” midterm policy, 6 areas will be (re)developed. Development in three of these areas will involve LAR.</li> <li>• Information was provided to the team on the National Committee implementing the “New Development” midterm policy. It is headed by the First Deputy Prime Minister and its Steering Committee consists of officials and the representatives of APs from the 7thkhorooolol “Project Unit.” Additional information was provided on</li> </ul>	11 May

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>the private development companies working in the 7thkhoroolol area.</p> <ul style="list-style-type: none"> <li>• CT shall liaise with these organizations to obtain information and, if necessary, to consult them on issues of interest.</li> <li>• UB UDPD would prefer that a separate law on LAR be drafted, rather than adding relevant provisions to other laws.</li> </ul>	
Land Expropriation Division of UB LAD	Focus group meeting	<ul style="list-style-type: none"> <li>• In Mongolia, property values have been established, whereas land values have not really developed apace. There is no standard mechanism for determining the market value of land. Often, those being displaced establish the asking price for their land themselves. The Land Expropriation Division, the only division that carries out land acquisition for UB roads, would like its facilities upgraded.</li> <li>• LAR should be based on an agreement. If the state takes citizen's land for special needs, then it has to be based on an agreement.</li> <li>• There are no provisions regulating LAR in the Civil Code. This needs to be remedied.</li> </ul>	13 May
Beren Construction Co., LTD And-International Co., LTD	Individual meeting	<ul style="list-style-type: none"> <li>• These companies have been buying expensive lands for construction since 2006. However, the state has not managed to acquire the additional land necessary to connect this privately purchased land to the city's infrastructure. This is making the land bought for private development less valuable.</li> <li>• Because of these delays in development, some the smaller companies may be in danger of losing their foreign investment</li> <li>• One of the private developers that it would be a positive thing for them if the State bought apartments from the company as part of the LAR.</li> <li>• Some of the private developers thought it was good that the State was taking responsibility for the implementation of the LAR, including the land acquisition for building construction. Other developers thought that there should be a separation between the state and the private sector's responsibility in terms of LAR. These developers believed that the state should be responsible for acquiring the land for construction and that private developers should then construct. They thought that the State should not be encroaching on the business of private development.</li> <li>• All the developers considered the LAR not to be a problem for private developers, as it is based on all parties' mutual interest of the parties However, they reiterated that there should be no violation of people's property rights. There should not be any pressure on people to sell, or any threats to their persons,</li> </ul>	16 May
	Individual meeting		19 May

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<ul style="list-style-type: none"> <li>Mongolia needs to improve the legal system so that it protects citizen's rights, particularly property rights, during LAR processes. There have been problems in the past with LAR. For example, when the State passed the land allocation law without consulting proper surveys, or the city's Development Plan.</li> </ul>	
ZovGarts, NGO	Focus group meeting	<ul style="list-style-type: none"> <li>Displaced persons (DPs) are not being adequately informed or consulted on this Project, which is directly affecting their properties and livelihoods.</li> <li>The price offered for land is nowhere close to the market value.</li> <li>No one has consulted APs regarding how they would like to be compensated and resettled. No one has given them choices or alternative options. The Government needs to negotiate with APs, and should set the price of 1m<sup>2</sup> of land in Zone 1.</li> <li>If the Government is planning to offer cash compensation, the value of 1m<sup>2</sup> of land should be set, at a minimum of half the price of 1m<sup>2</sup> of apartment space.</li> <li>If the Government is planning to offer compensation for land in the form of apartments, the number of rooms allocated to families in the new apartments should be based on household size as well as land size. Moreover, extended family members who live in a separate dwelling(s) on the same plot should also be entitled to receive an apartment, or at least a separate room within the same apartment. It would be preferable that families receive the keys to new apartments before they are expected to vacate their land.</li> <li>Transient housing could be an option. It would be nice to resettle on the previous location once it has been developed. However, families have no assurances that the promised compensation would actually materialize.</li> <li>Almost two-thirds of affected plots support income-generating activities. How business losses will be compensated and livelihoods secured have not yet been addressed.</li> <li>The participation of DPs in the planning, implementation and monitoring of the LAR process must be assured.</li> </ul>	19 May
Administration of Land Affairs, Construction, Geodesy & Cartography (ALACGaC)	Focus group meeting	<ul style="list-style-type: none"> <li>Attendees noted that the purposes of state needs to take back citizen's land with compensation should be determined very well for owners, possessors and users respectively.</li> <li>One of the most important issues LAR is to agree on land and property values. A methodology for setting these values needs to be established</li> <li>When the draft Land Law amendment is discussed in Parliament, there should be a</li> </ul>	20 May

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>provision inserted that deals with the state reclaiming its own land for government purposes.</p> <ul style="list-style-type: none"> <li>The database of parcel plots' market value should be updated annually and transparently disclosed to the public, as stated in the Cadastral Law.</li> <li>Question: If 80 percent of residents agreed on a land acquisition framework, would it then become an issue of involuntary resettlement for the remaining 20 percent?</li> </ul>	
"Ger District Housing" Project Unit	Focus group meeting	<ul style="list-style-type: none"> <li>The project implementation unit was newly established (April 2011) and it has not gained any experience yet. Its activity is at the preparation stage of the LAR.</li> <li>Staff capacity needs to be strengthened.</li> </ul>	20 May
Ger area residents - 7 <sup>th</sup> khorooolol	Focus group meeting	<ul style="list-style-type: none"> <li>No information on LAR has been provided APs.</li> <li>No disclosure or introductory meetings to date offered to APs.</li> <li>Feeling that there has been no transparency.</li> </ul>	21 May
Project Affected Persons – Urban Development Sector Project (Botanic-Sharkhad subproject)	Focus group meeting	<ul style="list-style-type: none"> <li>There were 2 meetings held in 2khoroo areas. In one meeting, some APs were unsatisfied with the land valuation rates.</li> <li>Currently, there is no market value established for land in ger areas, so it is hard for people to know if they should be satisfied with the land valuation. Particularly when their plot of land is the largest asset and often one on which their livelihoods depend.</li> <li>APs think that land value should be the same for all the city's ger areas. They would like the value of and to be 141 000MNT per 1m<sup>2</sup>.</li> <li>There are discrepancies between the detailed survey measurements and the plot sizes detailed on land titles (land certificates). This puts some DPs at risk of not being properly compensated for their plots.</li> <li>DPs criticized the land department of the district and the city for bureaucracy.</li> </ul>	24 May
The Supreme Council of Condominium Associations of Mongolia	Individual meeting	<ul style="list-style-type: none"> <li>There should be deadlines for demolishing and rebuilding those houses to be destroyed.</li> <li>The role of private developers should be greater.</li> <li>Apartments should be the only type of compensation for houses to be demolished.</li> <li>On the other hand, the developers are also willing to build houses in good location.</li> <li>How the issue of leasees will be is not clear.</li> <li>Business losses will be a contentious issue. Many of the APs whose houses are to be demolished earn 4-5 million MNT per month, and the state will not be able to</li> </ul>	9 June



## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		pay them compensation for this. There has already been one case where a business owner asked for compensation for business losses, but received nothing.	
TZTT Consulting Company	Individual meeting	<ul style="list-style-type: none"> <li>• Ulaanbaatar's infrastructure is dated.</li> <li>• As they were designing the road, there were budget increases due to the need for updating the central engineering systems of the city. These kind of problems are eroding the company's profit margins on projects. .</li> <li>• The company follows all construction standards.</li> <li>• None of other organizations the company has previously worked for required them to minimize the need for resettlement. Nevertheless, they try to avoid full resettlement. However, avoiding resettlement can be dangerous in terms of traffic safety, which is an important concern for the engineers. It was the ADB funded MON2301 Project that introduced them to resettlement policy. However, they are not involved in the resettlement process itself. They feel that APs should be given fair compensation so that they are satisfied and the land can be used for development projects</li> </ul>	9 June
MCA, GIZ and JICA	Focus group meeting	<ul style="list-style-type: none"> <li>• There are no national laws that detail how to carry out LAR.</li> <li>• The LAR work of international organizations is not hindered much by the absence of appropriate LAR laws, as they follow international standards e.g. for the MCA-M Road Project, they follow the World Bank's OP4.12..</li> <li>• Valuation is one of the major issues, but it is not clear what methodology should be applied to the process. Should the land be appraised for its present value? What about the future value? Should the valuation for land under possession and for land under ownership to be different? In general, it is logical that market values be used as the basis for compensation, but market values can be distorted.</li> <li>• In order to have some reference value to judge if the appraised values are more or less close to the market value, there is a need to have a database of market/references values. There is a value map for the 6 central districts of UB city, it can be obtained from the Integrated Urban Development Project, GIZ or from ALACGaC. The land values are different depending on its location, for instance now it is clear that the land value per m<sup>2</sup> in 7thkhoroolol is at least MNT100,000.00.</li> <li>• When there are ger area re-development activities, such as those in the 7thkhoroolol, it is critical to produce the development plans with the participation</li> </ul>	15 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>and consultation of the residents. There must be detailed procedures for resident participation, consultation mechanisms for freezing development, etc.</p> <ul style="list-style-type: none"> <li>• The Ministry of Justice and Internal Affairs prefers that where applicable, separate laws be integrated into one. The CT should support the enactment of a separate LAR law.. LAR issues are addressed in a proposed Law on Urban Redevelopment. It may be that this Law on Urban Redevelopment will be integrated into the Urban Development Law. It is suggested that new LAR legislation become part of the Law on Urban Development.</li> <li>• It is very important that the LAR law drafted should address not only urban LAR, but also LAR issues relating to mining, industrial parks, and pasture land.</li> <li>• Thought should be given to how new LAR legislation will fit into the framework of the legal system, The highest level is the Constitution, and then there are basic laws such as the Civil Code and the Land Law. Then one level below that there are the administrative laws. And the last level is the technical procedures such as regulations, by-laws, ordnances etc. It should be determined how detailed the new LAR law should be; and which bodies will be responsible for overseeing its implementation.</li> <li>• It should be decided whether to draft a separate LAR law, or to add relevant provisions to other laws. There is some concern that, if a stand-alone LAR Law is presented to Parliament, it will be rejected on the basis that LAR issues are already reflected in the proposed Law on Urban Redevelopment.</li> <li>• Capacity Development of Urban Development Sector project, JICA, will do some work on land readjustment in the ger area. However, under current legislation no provisions or regulations exist that regulate land readjustment activities.</li> <li>• One of the issues is the power of the local government. Many, if not all, issues are decided at the Ministerial level, so decision making becomes a bureaucratic, time consuming and unrealistic process. Therefore, there is a need to strengthen the local government and decentralize.</li> <li>• It should be determined whether owners and possessors will be treated equally in terms of compensation for land loss.</li> <li>• International standards require taking rehabilitation measures to improve the livelihoods and living standards of DPs. However, the project cycle is usually too short to assess whether people's livelihoods improved or not. This role should be</li> </ul>	

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
The residents of “Iron Factory” CA	Focus group meeting	<p>assigned to government or a nongovernmental institution.</p> <ul style="list-style-type: none"> <li>• The Condominium Association has raised their issues several times, with all the authorities concerned, including UB city Governor, UB UDDP, UB LAD, the Property Relations Department of UB city (UB PRD), the Engineering Utility Department of UB city (UB EUD), MRTCUD, the Ministry of Social Welfare and Labor (MSWL), the Prime Minister, and elected MPs. Despite this, no decisions on these issues seem to have been made so far.</li> <li>• Most of the households are willing to sell their apartments, sized from 14 m<sup>2</sup> to 30m<sup>2</sup>, for cash. However, those running businesses are not in favour of demolishing the building, as they will lose their business income. Further, they are not sure if they will get same area (m<sup>2</sup>), in the same location after a new building is erected. As city officials have said, it is not clear whether a new building will be built, or if the land will be used for parking.</li> <li>• Negotiation is an important part of the process.</li> <li>• The residents want to be compensated before anything happens to their building. They are worried that if not, they might end up with no apartment/nothing tangible. They do not feel that they have any guarantees that the city will actually permit people to rebuild the houses.</li> <li>• One big issue will be to find the proper investors (for reconstruction).</li> <li>• Currently, no agreement has been reached with potential developers. Residents are nervous, and would like the government to i) find an investor and developer ii) guarantee development even in the face of failure on the part of that developer.</li> <li>• Compensation is another contentious issue</li> <li>• Most of the residents want to receive cash compensation, as they do not want compensation by apartment.</li> <li>• Near this area, a 2 room apartment costs around MNT 80,000,000. People want to be able to buy new apartments, themselves, with their compensation money. However, they are worried that the compensation will not be enough for them to purchase a new apartment of the same size of their previous homes. While they acknowledge that their previous homes may older and have worse infrastructure than the newer apartments, the older homes were very conveniently located, and residents believe they should be well compensated for this. “What we want to sell is the location of our apartment, whatever is the condition of our apartments”.</li> </ul>	15 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<ul style="list-style-type: none"> <li>• The residents feel that the legislation regarding demolishing old apartment houses and building new ones are not sufficient, in that it is not clear where ultimate responsibility for the process lies, and what the rights of APs really are.</li> <li>• There is suspicion that officials involved in the LAR process might manipulate it to their own advantage.</li> </ul>	
The residents of “Development” CA	Focus group meeting	<ul style="list-style-type: none"> <li>• The Executive director of the Condominium association with her family established a company on whose name the land possession certificate was issued in 2004. The land possession includes the land under the building and the nearby land area that belongs to the association. Unfortunately none of residents knew that until recently. As a result, the residents became untitled for land.</li> <li>• There was issued a resolution N405 in August 2009 by the UB city Governor that mandated their status to build the new house on the foundation of existed house.</li> <li>• In October 2010, there was no legal regulation on demolishing of old unusable houses. Even though, some amendments in the Housing law were approved in February 2011, it is still not fully clear how the state to be involved in this process and also how the residents issues to be solved and their rights protected. The resolution N405 made without proper justification. The city itself made it confused by giving the land under 44 owners’ properties to the family owned company.</li> <li>• There was no negotiation on further actions with each household. No proper contract with the residents has been made. Only once the executive director of the Condominium association briefly introduced the plan to get agreement with residents on condition 1/ to demolish the house 2/ to find the construction company and 3/ later once the new house builds, each household receives an apartment respectively. Residents got agreed on this general condition considering that a detailed contract will be discussed later. Unfortunately, they signed one page document without knowing the executive director will use it for her own purposes. Using these papers with signatures, she has got the resolution on land possession and permission to demolish and build new one. They consider this action as a fraud.</li> <li>• By cutting off electricity, water and heating in winter time, the state forced the residents to leave their property. Residents suspect that the executive director took part on this.</li> <li>• While leaving the house, the residents left some of their properties in the</li> </ul>	15 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>apartments which were robbed as the Condominium association did not accurately guarded the house.</p> <ul style="list-style-type: none"> <li>• In January 2010, a company named “Chinggis khaan” has expressed interest to buy the apartments and compensate per 1m<sup>2</sup> 900 000MNT which was adequate amount for that time. 40 households out of 44 got agreed on that condition. However, the company demanded 100 percent of residents’ agreement and then disappeared.</li> <li>• Up to now, most of residents already spent 4.0-5.0 million tugrug for renting rooms or apartments. Especially it gives hard time for some vulnerable families. There is one household with 11 members which is divided into three parts to rent apartment/room as they all could not fit in one room or lesser simply do not like to rent rooms for the big family.</li> <li>• There is injustice and predatory interest from the executive director’s side.</li> <li>• The residents had a meeting where they discussed to make resigned the executive director of the Condominium association as she broke faith of the residents. She never comes to such meetings and does not want to be resigned. She came once to a meeting when the UB city Governor and other officials called her to come.</li> <li>• UB city Governor promised to re-consider the resolution N405 if the residents could find investors/developers. The construction companies have interest as the location is very attractive. Now, after all this mess, the executive director insists people to sell the apartment per 1m<sup>2</sup> for 900 000MNT. It was proper value in 2009 or 2010. Now, with this compensation impossible to buy the same sized apartment.</li> <li>• It is considered that the state has to be involved in such cases. Otherwise, all these development might impoverish those vulnerable displaced people.</li> <li>• No business loss has been discussed to be paid.</li> <li>• Currently the residents are trying to find investors/construction companies to buy the land and compensate the residents.</li> <li>• The authorities, especially UB city Governor, immediately responded to the residents, when the issue was publicized using mass media. Before this, he did not respond at all.</li> <li>• There is a need for the state to interfere and support the residents on this and later to monitor or make sure that the residents are treated fairly and just.</li> <li>• When the residents addressed this issue and the actions of the executive director</li> </ul>	

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>of the CA to the police, the police checked the documents and the situation and inform that there is not criminal action which would make to file complaints against the Executive Director.</p> <ul style="list-style-type: none"> <li>The residents did not address this issue to the court yet fearing that they will lose the case which would mean losing their properties.</li> </ul>	
Residents of “Star” CA	Focus group meeting	<ul style="list-style-type: none"> <li>The Condominium Association has raised their issues several times, with all the authorities concerned, including UB city Governor, District Governor and Citizens Representatives Khural of the district, elected MPs and the National Emergency Management Agency. The last letter was sent to UB UDPD a month ago and residents are waiting for a response.</li> <li>The Condominium Association has not been working as it should. The previous two executive directors did nothing to improve/renovate old water pipes. These two people misused their positions to access the money collected from the residents. Over the last three years, the water pipes have been deteriorating rapidly and there is always water leakage. This contributed significantly to the collapsing of the 1<sup>st</sup> entrance’s wall.</li> <li>Currently, there are 36 households, out of which 30 households say they have nowhere to go, and would stay in the apartments until they collapse completely. These families feel that no action will be taken in their favor even if they do vacate the apartments. This is what happened to the 12 households who had to leave the building go due to the collapse of the wall.</li> <li>As the residents recognize that the building is too deteriorated and therefore there is little chance to obtain support from the state, the residents are willing to reach an agreement with a construction company and pay additional money to have an apartment in a re-built apartment block. The house itself old aged, the water pipe system is in very bad condition, but there is hot water supply. The only issue that needs to be agreed with the prospective developer is the size of the apartment. There is gap in size measurement. 16m<sup>2</sup> old apartments are equal to 30-35m<sup>2</sup> of current apartment. Previously, apartment size did not include toilet and lobby and kitchen. Nowadays, it is different and this fact also must be considered.</li> <li>Another option raised by the Executive Director was that the State sign an agreement with a large construction company to re-build the building at cost in return for preferential access to land elsewhere for other projects. This would be a</li> </ul>	16 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>way to reduce building costs.</p> <ul style="list-style-type: none"> <li>• The state should take care of the houses that do not meet exploitation requirements anymore. Most of the residents do not really know that to do and have no capacity (or they are vulnerable and poor) to do something to solve this matter.</li> <li>• The Condominium Association is no longer really a cooperative. Previous Directors used residents' fees for personal profit. Subsequently, the residents stopped paying their fees (although they still pay the Public Utility Service Office). Consequently, the new Director has no plans to improve the condition of the building. Some owners want to file a complaint in court against the previous Directors of the Condominium Association.</li> <li>•</li> <li>• Luckily, no injuries or deaths happened when the bearing wall collapsed in 2010. However, the residents live in fear that the rest of their apartment building will collapse any day.</li> <li>• Some new leasees did not recognize the danger of the building collapsing, which why they are willing to rent apartments in this building.</li> <li>• Since the amendment to the Housing law was approved in February 2011, the residents have intensified their action, primarily by sending a letter to officials and meeting with them.</li> <li>• District authorities have said that if the residents could find a developer the government would provide some assistance, such as help with infrastructure and with accessing credit. No developer has been found yet.</li> </ul>	
80 year-old citizen Ms. Tsendeekhuu	Individual meeting	<ul style="list-style-type: none"> <li>• Initially, the khoroo governor found a construction company. The decision to demolish the house was made by the District, but how everything ultimately went is not really clear. It is possible that the company took the land by fraud. The residents have proof of ownership of their apartments, but the land on which they stand might belong to another person.</li> <li>• The residents agreed with the company that each household would get an apartment one year after the contract was signed. However, the contract was very general, and it was not indicated how many square meters residents would get as compensation. None of residents had raised the issue as they all were they did not really understand the situation. To date, the construction company has excavated</li> </ul>	16 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>the foundation but other civil works have not yet begun.</p> <ul style="list-style-type: none"> <li>• Currently, from the former building, 3 households live in a basement, 2 or 3 people have passed away and others still live in gers. None of the residents, many of whom are vulnerable, are as concerned about the demolition of their apartments as Ms. Tsendeekhuuis. She suspects that other residents might have received some small cash compensation (MNT 2 to 3 million?) as they do not seem to want to raise this issue.</li> <li>• She wants to sell the land to a proper company to re-build the apartments as soon as possible. If other residents would also raise this issue, they would have found a proper company by now and had new apartments. The company has asked her to be patient for two more years, but she does not believe the work will ever be completed.</li> <li>• On behalf of the residents, Ms. Thendeekhuu wants to find a good company to rebuild the apartments.</li> <li>• She has raised her issue with District Authorities, but nothing has been done. Once, she was on television speaking about the problem. Next, she intends to address it to the President.</li> <li>• At this point, she is desperate and does not know where to go for help</li> </ul>	
Project Affected Persons – Urban Development Sector Project (BaruunSalaa, Orbit-Takhilt subprojects)	Focus group meeting	<ul style="list-style-type: none"> <li>• Since the beginning of the LAR, it has been very clear what will be done in terms of the resettlement. The project team has worked closely with DPs to solve the issues that were raised by the residents. For instance, there was overlapping land use in between two neighboring DPs. One had a possession and another had ownership licenses. The resettlement specialists together with land organizer solved the problem without delay and in the end both parties were satisfied.</li> <li>• In the case of Orbit, it is reported that the project operator (road construction company) threatened to renege on the terms of the LAR. They were reprimanded by the resettlement specialists for this and will be held to the terms of the agreement.</li> <li>• Ms. Dashdulam from Baruusalaa said that she has a possession license and still has not changed it into an ownership license as the area is far away from the centre. Later, after the road construction is complete, she might consider obtaining full ownership.</li> <li>• Some of the displaced people in this area are now running small businesses such as</li> </ul>	17 June



## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>selling raw materials, food shop etc., this creates a situation where the new buildings are located to close to the newly built road.</p> <ul style="list-style-type: none"> <li>• As the construction of the new road approaches, disputes over land have increased. Everybody wants to claim more land, with or without permission of LAD.</li> <li>• The road must be built properly in terms of quality, and to the correct standards. It must have sidewalks. There was a road accident in that area causing a death of a small child.</li> <li>• Participants were criticizing the Lands Department for their bureaucracy and unaccountability. It was felt that Lands Officers were not spending enough time work in in the field and getting to know every corner of the relevant area. Because of this, some people were trying to claim land that belonged to others, or was meant for public use.</li> <li>• Politicians have always promised to build a road here, but nothing has ever been done.</li> <li>• Generally, UDSP project have done a very good job on resettlement. Everybody was duly informed and satisfied, and all residents were happy to have a road here. The Lands Department should learn from the project team and work more like them.</li> <li>• Reportedly, some of the unaffected people wanted to be affected as they wanted their own problems with land licenses to be solved by the LAR project. Information about project resettlement was broadly disseminated among the residents of this area.</li> <li>• It would be very useful for the people and the State if there was a law that determined the requirements and necessary steps for resettlement as a process.</li> </ul>	
'Anand and Batzaya' Law Firm	Focus group meeting	<ul style="list-style-type: none"> <li>• Current legal system itself makes it difficult for public administration bodies to work. It causes many problems. There is no legal regulation on the concerned issue.</li> <li>• There is a tendency of judges to serve to the state rather than the citizens when it comes to land related issues.</li> <li>• In some cases, law has been interpreted in a different ways.</li> <li>• LAR terminology needs to be very carefully determined.</li> <li>• Compensation is one of the key issues of LAR.</li> <li>• Laws are fragmented and overlap one another. This leaves some important issues</li> </ul>	17 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>unregulated. This can work in people's favour, if they are able to manipulate it to their advantage, but this means that other people's rights are violated.</p> <ul style="list-style-type: none"> <li>• It would be better to have a separate LAR law. The new law should consider all the factors of LAR, in order to prevent new loopholes from being created.</li> <li>• The Ministry of Justice and Internal Affairs has a team working to eliminate the overlap between laws.</li> <li>• Public participation is very important when it comes to LAR. Whenever decisions are made on LAR, residents should be informed by the state bodies responsible for the LAR process. The law is not always just, and sometimes the Supreme Court needs to intervene. Sometimes even the Supreme Court's interpretation of the law should be reconsidered.</li> <li>• LAR processes are very costly. Generally, middle level officials are less accountable.</li> <li>• The company started to work for people from 4th micro district where 50 garages needed to be removed. In this case, the owners of the garages could not find agreement among themselves. Some of them demanded compensation; some of them disagreed with the need for the garages to be moved. As the end, the company objected to work for the group of people.</li> <li>• It often happens that initially, land acquisition presented as necessary for the building of public infrastructure, such as a hospital. Later, the purpose of construction will change to something much more profitable, like an apartment building. Parliament members may approve laws for reasons of personal interest. Some MPs are suspected to support the adoption of laws which allow tobacco and alcohol to be advertised on television. There are some lawyers, like the Club of Young Lawyers, who do some work on strategic cases, such as LAR related issues. These lawyers succeeded in a case the brought to protect the environment from mining activities. Perhaps there advocacy could be used for LAR processes as well.</li> </ul>	
Residents of "American Denj" CA	Focus group meeting	<ul style="list-style-type: none"> <li>• Previously, it was belonged to 27th auto base and privatized without any maintenance. In recent years, the residents have been solicited to re-build the house, unfortunately, up to now could not achieved any result. N61 building was closer to Kempinski hotel and bigger at size than N60.</li> <li>• The land on which the building is located belongs to the state. The CA contracts the right to use the land from the UB LAD, renewing the contract every two years.</li> <li>• In 2003, the residents set up their own condo association as no other CA's in the</li> </ul>	22 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>area wanted to take responsibility for such a dilapidated building.</p> <ul style="list-style-type: none"> <li>• The residents sought support from the District Authorities, but were told that as the building was their property, they were responsible for finding investors themselves.</li> <li>• The residents of the N61 building received cash compensation and bought apartments in the same area with their money. This was instead of taking the apartments offered by the company, which were less comfortable. The residents of N60 also want to see their living conditions improve even though the building they are in is not causing them any problems. They understand that their property itself is old, but its location is very good and the building should sell at a high price.</li> <li>• Some residents would agree to compensation in the form of a higher quality apartment, even on that was not new. One of the concerns of the residents is that the total land area available is quite small, and thus, will not be interesting to investors. Residents are concerned that investors will not be able to turn a profit on the development of the land, and will not be able to offer residents any compensation.</li> <li>• N61 was sold totally around MNT 700 million. Residents of N60 would like to sell that building for MNT 1 billion.</li> <li>• The residents of N60 say that they are not worried about the building collapsing, as the building's quality remains good. Even though in 2008, the Memorandum of Understanding to build a 25 storey building between organizations such as The Supreme Counsel of Condo Associations of Mongolia, Ministry of Construction and Urban Development and investors was signed, no results had been achieved. The only gateway from the situation is to find investors themselves and get mutually agreed.</li> <li>• All the residents have the same desire to improve their living conditions. They believe that If they work hard, for example, by uploading ads on the internet showing the location of the building and the plot, they will be able to find investors. The residents also want to improve their knowledge of the law on land related issues.</li> </ul>	
Ger district residents of Bayankhushuu, Unurkhoroolol ger area,	Consultation meetings	<ul style="list-style-type: none"> <li>• This is a ger area in Bayankhushuu. The houses in this area are mostly big houses in reasonably good condition. There are 49 such parcels. Until around 2000 the area remained relatively structured, in keeping with the original plan for the area.</li> </ul>	24 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
13 <sup>th</sup> khoroolol and old apartment residents' Condominium Association in Zuun Ail		<p>However, around 2000 there were Parliamentary Elections, and one of the candidates told people to settle in this area. They were promised titles to the land they had settled if the candidate was elected. As a result, the area was settled in a chaotic manner and became similar to any other ger area in UB. Around 2009, the government began the process of turning the area into a model ger area. One of the residents took the initiative and prepared, in cooperation with UB LAD, a detailed development/readjustment plan. The plan includes details such as water pipes, sewage system, heating system and road. It was approved by UB city Council. One of the residents claims that there were some funds from UN Habitat to implement this plan, but that the funds were spent for some other purposes. Some of the funds were used for the plans, but projects were often not well implemented. For example, wells were not put in where they had been designed to go. The resident driving the plan is reported to have been meeting the city officials and the MCA-M to discuss the plan's implementation.</p> <ul style="list-style-type: none"> <li>• Once the plan was approved and the residents agreed to implement the plan, some families have made space for the roads by moving their fences back a few meters. The readjustment plan was made some two or three years ago, but nothing has progressed. In some cases, households have actually built brick houses where the road is planned, upgrading from a ger.</li> <li>• The residents are aware that they will give up some of their land for the infrastructure like road, but they intend to give up only very small portion of it. There might be some parcels that will be affected entirely or most of it, but this seems not to be an issue yet, as it is not certain if the land readjustment plan will be implemented. On the other hand, one of the residents consider that it might be more complicated as they do not know how the issue of the residents whose land will be affected by a road that will run through the middle of the road.</li> <li>• Unurkhoroolol road project. There are plans to build a road connecting the "GemtliinEmneleg" hospital to the north of TavanShar area, i.e. a road parallel to the north of EnkhtaivnyGudamj, through the ger area of Unurkhoroolol in the 1st khoroolol. This plan seems to have existed for quite some years. Many of the people in that area did settle there ~8-9 years ago. When settling there they were told that they would have to go when the road will be built. Thus they received only temporary land rights. Also, the residents claim that the road plan has</li> </ul>	

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>changed, it used to be few streets to the south of where it is planned to be built today. The politicians, who got elected to the Parliament, before they were elected, promised to make arrangements so that they residents obtain full (not temporary) rights to their land. The residents of the affected streets (2 streets) were informed by the khoroo officials that the road will be built and that they should be ready to move, sometime in last fall. The residents do not have more information on the road construction, the plans, the LAR, compensation etc. The residents expressed their distrust to the government and officials as the plan has changed, as the work is pending for many years, as the promised full rights are not given to them and as there is not open and transparent information dissemination. Some of the residents do not have an idea of what compensation they should receive, while some expressed their interest to receive an apartment in exchange of their land and buildings. However, those who said that they want to receive an apartment say that they do not want get an apartment but they want get the cash and buy the apartment themselves. This is because of the distrust again. These people suspect that the government and officials will fool them and give them an apartment of very bad quality.</p> <ul style="list-style-type: none"> <li data-bbox="824 826 1912 1367">• Zuun Ail old apartments demolishing and re-building project There are 7 two-story old apartment buildings in the south eastern part of the 7th khoroolol which are unusable as certified by the State Inspection Authority. However, more than 300 households still live in these apartments. The Condominium Association (CA) and all the residents made an agreement with a private developer to exchange their apartments for a new one to be built in the neighborhood. In this case the residents will stay in their apartments until the new one is built and will vacate their apartments when they receive the new ones. As CA claims there were no difficulties to work with the private developer, they made the agreement and they are cooperating well. The developer, in accordance with the Master Plan of UB city till 2020, and the detailed plan for the 7th khoroolol, obtained land possession certificate for the J-1 part of the 7th khoroolol and made the detailed plan for this area which is approved by the UB city. Although the development is planned to start from May 2011, it did not start due to pending approval from the UB city organizations for the extension of the physical infrastructure and replacement of some of the infrastructure lines. This is a problem for both the residents and the</li> </ul>	

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		<p>developer. CA expressed its distrust and frustration with the local government and its officials as CA does not get any support from the local government and its officials. On the contrary, local government and its officials are burden on their activity, for instance the local government give the permission to build an infrastructure lines to a new building in the neighborhood through the land where there will be some apartments built, i.e. even when the officials knew of the existence of the plan, now the developer needs to obtain permission to replace these lines. Another example is that the local government organization is not giving permission to extend the main physical infrastructure line to the development site due to a reason that the person responsible is not there or could not be found. Another instance is the local government officials use the land, without the permission of the residents/CA, that belongs to the CA by putting storage containers and renting them to the construction materials sellers, the money goes to the pockets of the officials not to local budget or similar. CA, i.e. the residents have These are just couple of examples that delays the progress of the development.</p> <ul style="list-style-type: none"> <li>• 13th khoroolol ger area development project: this area is located just to the south of 13th khoroolol across the road. This area was settled in the early 1990's. Initially, families were not given land rights and were warned that in a new housing district would be established in the area. During one of the parliamentary elections, however, the residents were granted the formalization of their land rights. Now most of the ger area's parcels are purchased by private developers based on negotiations. On some of them new apartments are built, some are still vacant guarded by the original residents or by the developers/purchasers. The site visited by the CT had some 10 parcels out of which 2 were not sold yet. Both residents met CT. The residents inform that there are some preliminary discussions with developers. They feel confident that their land will be sold. Usually when the land is purchased two parcels in a row are purchased as the size of two parcels is good enough to build an apartment house. The residents informed that all their neighbors sold their parcels and they were satisfied with the transaction. So far none of their neighbors complained about the transaction or suffered from it. It is observed that the area is being developed rather chaotically, not much space is dedicated for public spaces.</li> </ul>	

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
Residents of 7 <sup>th</sup> khoroolol	Public Awareness meeting	<ul style="list-style-type: none"> <li>• LT provided introduction on international principles and MON2301 subprojects so that DPs could obtain knowledge on LAR.</li> <li>• DPs appreciated that presenters gave complete and pertinent information.</li> <li>• There was no disclosure meeting discussed regarding (and no introduction to) the on LAR to be implemented in 7<sup>th</sup> khoroo area.</li> <li>• Poor legal system to protect DPs rights.</li> </ul>	24 June
Amnesty International NGO	Focus group meeting	<ul style="list-style-type: none"> <li>• Adequate housing is one of the main human rights. In these terms, land acquisition and resettlement can produce human rights impacts, and should be planned so that this is completely avoided.</li> <li>• Since 2009, Amnesty International (AI) has tried to involve local NGOs in these issues, but this has not been achieved. It seems that local NGOs have limited human and financial capital, and tend to focus on issues where funds are available, such as mining sector. Nonetheless, AI has published a handbook on adequate housing and has planned several activities around this issue on the matter.</li> <li>• AI Mongolia began studying LAR in May, 2011. In order to provide recommendations to the Government of Mongolia, AI Mongolia planned to conduct a survey on involuntary LAR beginning in September and continuing for one year. This survey will be supplemented by a study of existing legal framework, which will be undertaken by international experts. There will also be training organized around LAR for the public and other interested parties.</li> <li>• It would be good, if the AI and TA projects could combine efforts on the drafting of a LAR law. The new law would reflect all the relevant concerns in terms of human rights and international LAR standards.</li> <li>• Officials who deal with LAR should undergo training. To date, it does not seem that any such training has been offered to them.</li> <li>• The AI and TA projects could also pool their resources to work on building capacity in terms of LAR within state organizations and civil society. For example, if AI worked with civil society and the ADB worked with the state bodies, more could be achieved overall, If the TA project thinks that AI should start their survey earlier than September, this may be feasible. TA would have to provide justification for this.</li> </ul>	27 June
Journalist from Daily News	Individual meeting	<ul style="list-style-type: none"> <li>• A journalist wrote an article about DPs from Development CA. He discussed the international principles regarding the social safeguard policies. He will cooperate</li> </ul>	27 June

## Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Stakeholder	Type of Meeting	Key Discussion Points, Comments & Conclusions	Date
		with LT when the draft of LAR law is presented.	
Residents from 4 <sup>th</sup> Microdistrict and Bayankhushuu	Focus group meeting	<ul style="list-style-type: none"> <li>This meeting was households who had their garages and the property they were on forcefully expropriated. They owned these garages and had been paying an annual land tax. No compensation has been paid to date.</li> <li>No results have been achieved.</li> </ul>	28 June
PWG meeting		<ul style="list-style-type: none"> <li>Draft Issue paper.</li> <li>June 2 workshop report.</li> <li>June 8 report.</li> <li>Quarterly progress report.</li> </ul>	1 July
PWG meeting		<ul style="list-style-type: none"> <li>Draft Concept paper on LAR Law.</li> <li>Outline of the LAR law.</li> <li>Requirements for the five countries legislation and experiences – proposed countries and the content.</li> <li>LAR law related policy and other issues.</li> </ul>	12 Aug
PWG meeting		<ul style="list-style-type: none"> <li>LAR institutions.</li> <li>Land Acquisition and Resettlement Procedures.</li> </ul>	22 Sep



**ANNEX 3**  
**CONSULTANT TEAM COMMENTS ON DRAFT AMENDMENTS TO LAW ON LAND**

## **Comments from the Consultant Team on the Draft Land Law Amendments for Mongolia**

Note: The version reviewed includes the Chapter on Taking Back or Releasing Land for Special Needs of the State (“CTBL”).

### **A. Structure of Laws on Land and LAR**

1. In international experience, a typical set of laws governing land rights and land management would be:

- The Constitution: recognition of private property, the state's right to expropriate moveable and immoveable property for public purposes, subject to law and compensation.
- The Civil Code: setting out basic civil and property rights.
- Sectoral laws: including highways, railways, telecommunications, etc., giving ministries (state authorities) the power to acquire land, including expropriation.
- Local government laws: giving local government bodies the power to acquire land, including expropriation, for local public purposes.
- A law on expropriation (or Land Acquisition and Resettlement (“LAR”)), covering expropriation of all kinds of property by all authorities. This law covers procedures and compensation matters.
- In some countries, special laws covering land redevelopment or readjustment. These processes are considered exceptional, raising issues and requiring procedures that are more complex than a simple taking of land for a purely ministerial purpose, such as a highway.

2. The Mongolian legislative regime includes:

- The Constitution.
- The Civil Code.
- Some sectoral laws, e.g. highways, whose purposes contemplate expropriation of land for state purposes under the land laws.
- A local administration law that does not have expropriation provisions and whose purposes are not within the special needs of the state. Special needs of the state are restricted to national purposes.
- The Land Allocation Law, which deals with land given in private ownership. It allows expropriation for the special needs of state.
- The Land Law, which deals with granting the use and possession of state land. It allows expropriation for the special needs of state.
- There is no general law on expropriation/LAR.
- There is no land redevelopment/readjustment law.

3. The Government of Mongolia has proposed the following:

- Amendments to the Land Law, containing more detailed expropriation provisions, and including provision that concern expropriation of privately owned land.
- An Urban Redevelopment Law.
- A Law on Taking Back Land for the Needs of the State (or LAR law).
- A Law on Renewal of Land Management (Readjustment).

4. The Amendments to the Land Law are useful in concentrating the most important aspects of expropriation in one law. (There are some exceptions, noted below.) This is

preferable to a piece-meal approach for several reasons. Firstly, the basic principles and safeguards applicable to expropriation should be uniformly applicable, regardless of the state purpose of land acquisition or the nature of the land and its ownership. This is arguably a constitutional imperative. Secondly, uniformity facilitates administration, institutional development, capacity building, public education and judicial approach to dispute resolution.

5. On the other hand, it would be preferable for the provisions on expropriation to be contained in a separate Law on Expropriation, for the following reasons:

- LAR is fundamentally a different topic from the management and allocation of state land, which is the main subject matter of the Land Law. Governance of the LAR system – who makes decisions and under what procedures, dispute resolution – will not be uniform with governance for land management and allocation.
- As will be discussed below, the amendments to the Land Law will in our view require much adjustment and elaboration. The resulting recommended provisions will constitute a comprehensive and consistent legislative regime for expropriation, amenable to a separate law.

6. A separate law on land redevelopment/readjustment is preferable, with linkage to the amended Land Law or Law on Expropriation as appropriate. This will be implemented through the proposed Urban Redevelopment Law or Law on Renewal of Land Management (Readjustment).

## **B. General Comments on the Draft Land Law Amendments**

### **B.1. Clarity as to the purposes for which land can be expropriated**

7. The comments in this part are based on the attached English translation. It may be the case that the Mongolian text is not ambiguous.

8. It is crucially important that the legislation be clear as to what state purposes support expropriation. It is not clear in the amendments what are the purposes for which land can be acquired. Consider the following:

*3.1.5 “Government reserve land” means land taken back for special needs of the state for the purpose of implementing projects or programs with extraordinary significance for state social and economic development and determining industrial areas.*

See below.

*3.1.11 “taking back land with compensation for the special needs of the state” means vacating land for the purpose of constructing facilities of engineering infrastructure or energy, water supply, sewage, road, road facilities, transportation, telecommunication networks and structures referred to implementing projects or programs with extraordinary significance for state social and economic development.*

Is the list of specific items exhaustive, with them having to be part of projects or programs with extraordinary significance, or are the projects of extraordinary significance additional candidates for acquisition?

*3.1.16 “projects or programs with extraordinary significance for the state social and economic development” mean projects or programs approved by State Ikh Hural and Government decision and to use minerals reserve field with strategically significant ....[?]*

State Ikh Khural and the Government have to approve all projects and programs that involve land acquisition, according to CBTL. Does approval by State Ikh Khural mean by definition that the projects or programs have extraordinary significance? In other words, can State Ikh Khural authorize expropriation for any purpose whatsoever?

*13.1 Mongolia shall have lands for special needs.*

*13.2 Land belonging to any classification of the unified land territory can be taken for special needs.*

*13.3 Land for special needs shall be classified as follows:*

*13.3.1 land under special government protection;*

*13.3.2 border strip lands;*

*13.3.3 lands given for ensuring national defense and security;*

*13.3.4 land given to foreign diplomatic missions and consulates, as well as resident offices of international organizations;*

*13.3.5 free zone area;*

*13.3.6 Government level reserve lands;*

*13.3.7 land for scientific and technological tests, experiments and sites for regular environmental and climatic observation;*

*13.3.8 aimag level reserve rangelands;*

*13.3.9 land allocated for construction and usage of nuclear facility;*

The definition of the term *government level reserve lands* may or may not mean that the purposes for which land can be acquired are open-ended.

9. This is particularly important for redevelopment of ger areas. It could be a constitutional issue. In the US, the Supreme Court has authorized expropriation by a city for private development that would generate more local tax revenues. This was a split decision and highly controversial. In Mongolia the permissible reach of state purposes is a matter for constitutional scholars, if not the Constitutional Court. It may be the case that redevelopment must have a tangible public element such as a school or social housing, but in any case, a clear and comprehensive definition of what ger area redevelopment involves must be set out.

10. Redevelopment/readjustment as a basis for expropriation can be included in the list of matters of state purpose contained in the Land Law, or it could be left to the special laws on redevelopment/readjustment.

## **B.2. Process and governance issues**

11. The state should be able to take lesser interests in land such as rights-of-way and servitudes.

12. CBTL Art. 2 deals with submission of proposals for land acquisition to State Ikh Khural. They are very detailed, based on close study and analysis of the site, with land boundaries set. They cover a specific project. Land Law Art. 3 refers to projects and programs approved by State Ikh Khural. "Program" appears to be a broader concept. Approval of a program could be blanket approval in principle for specific projects involving land acquisition. It may be useful for the legislation to cover program approval by State Ikh Khural, under which the Government (rather than State Ikh Khural) approves particular projects.

13. Art. 18 on Authority of Citizens' Representatives Khurals of Aimags and the Capital City gives the local legislature decision-making authority for land acquisition only for reserve rangelands. For projects of aimag and UB City significance, consider whether local khural should have the authority to approve land acquisition. This would seem to be the appropriate place for decision-making on an issue of local significance, rather than the national

legislature. It would be consistent with local khural's authority to approve land management plans. (This does not mean approval of all projects in the city. There would be a clear delineation between those of local and national significance, and over-ride by national legislature if national interests are in need of protection – particularly important in the case of the capital city.) Another technique would be for the national legislature to approve programs under which the local legislature has land acquisition authority.

14. Art. 1.3 of CTBL assigns the authority to make proposals for land acquisition to sectoral ministries, which are submitted to the State Central Organization in Charge of Land Issues (Land Authority). For government level reserve land this role is given to the Land Authority itself. If this category is a catch-all, giving this role to Land Authority is not appropriate. (It does not make sense for it to make an application to itself.) Land Authority has a technical role in the process, reviewing and processing proposals brought by other authorities. For a role in this procedure that would be parallel to that of the sectoral ministries, the application would be made by MRTCUD itself. Consideration should be given to have the governor of aimag or UB City as the initiator of the proposal, where the project is of only local significance.

15. CTBL Art. 3.1 contemplates applications by non-state actors, including citizens. This is inconsistent with Art. 1.3. More importantly, land acquisition is for the special needs of the state. Possibly the provision is contemplating land readjustment projects initiated by private owners, but this matter should be covered in the separate legislation for that purpose.

16. The Land Law's treatment of disputes needs to be strengthened. There is government review of applications and complaints (Art. 22.2.10). The courts are available to deal with the grievances of citizens. In LAR matters, the due process for disputes needs to be tailored to the rights involved and the processes in play. This does not necessarily mean the creation of new tribunals. It can be formal means of triggering administrative review, and it can include special court procedures.

17. Expropriation and acquisition by agreement are treated together, even from an administrative point of view. The process should emphasize negotiated settlement as the preferable means of land acquisition.

18. For simple land purchase under the Civil Code, the approval of State Ikh Khural should not be needed. Consider whether it should only be necessary for the complex procedures in CTBL to cover project land that needs to be expropriated.

19. The role of the Land Authority should be restricted to implementation of laws, regulations and policies emanating from legislatures and government. There are a few provisions in the Land Law where the Land Authority may be given an inappropriate role:

- 17.1.4: Land Authority approves regional land management plans.
- 17.1.9: Regulation on issuing land use and possession certificates.
- 17.1.11: Regulation on licensing professional organizations.

### **B.3. Safeguard issues**

20. Land Authority is to ensure citizens' participation in developing general and annual land management plans of aimags and the capital city (Art. 22.3.10). These plans have important implications for entitlements in LAR. There should be detailed procedures fleshing out how this consultation is to be done.

21. Art. 37 on the agreements with land possessors lists the contents of an agreement, but allows miscellaneous *other provisions* to be included. Such provisions could be used to detract from safeguards otherwise applicable.

22. Provisions relating to compensation in the Law Land amendments are restricted to the following:

- Art. 13.6 contains a general statement as to the right to compensation.
- Art. 50.2, respecting expropriation of land under possession (only), states that compensation includes fees related to land acquisition and the current market price of inseparable immovable property.
- CTBL Art. 3.1 provides for combinations of land replacement and compensation.
- CTBL Art. 3.2 states that compensation amounts and methodology are to be stipulated in a regulation.
- CTBL Art. 4.2 refers to compensation for land and structures being determined by methodology in the Law on Land Cadastre.
- CTBL Art. 4.8 states that land users are not to be compensated.

23. The Land Law amendments leave the particulars of compensation to regulations. The amendments themselves are weak on social safeguards, as will be noted below. Some (but not all) of the shortcomings can be addressed by the proposed regulation. Such a regulation is important enough for safeguard issues that a draft of it should accompany the amended law. It would be preferable, however, that all of the compensation principles and methodologies are contained in legislation.

24. CTBL Art. 3.1 mixes land replacement and cash compensation. Resettlement good practice is land for land, but it is highly problematic if land replacement can be imposed on unwilling affected persons. Even if land equivalence could be assured (which is difficult in the Mongolian urban context), this will not necessarily satisfy the recipient. Court disputes about this will be hopelessly complicated and outcomes unpredictable. They could cause serious delays in execution of projects, or worse, leave affected people without shelter or enough money to pay for it. In a context of weak rule of law, the latter may be the higher risk. Therefore there should be a statement in the law that affected persons have the choice between land replacement and cash compensation (calculated under safeguard principles).

25. It is important that land values not be fixed normatively but be derived from market information. The prices at which land and structures are bought and sold on the open market should be the raw material for deriving real estate values. The term *value* should be given the usual market-based definition, with those who lose land entitled to compensation on that basis. The reference to determination under the Law on Land Cadastre is problematic.

26. For land possessors, Art. 50.2 seems to provide no compensation for land. The term *inseparable immovable property* probably means structures fixed to the land and not the bare land. If so, this seems to violate safeguards. This is not only because many of the possessors are entitled to private ownership, but also because the right to possess is in itself property. It may very well have a market value. This was found to be the case in ger areas even prior to the privatization program. The market was willing to pay for the land component even though the right was in a 5-year permit. This was not an informal market. (Sale agreements were notarized and permits re-issued in the name of the purchaser.) If the market today recognizes this value, it should be compensated.

27. We agree with the social safeguards concerns as spelled out in part C.4 of the comments from ADB. We add the following for consideration:

- “Injurious affection”; i.e. where only part of an owner’s land is acquired, compensation for adverse effect on the balance of the land.
- Compensation for tenants on private land.
- Business losses.
- Safeguards on the government taking more land than is needed for the project.

28. Voluntary land acquisition by agreement under the Civil Code will still operate. Social safeguards apply to situations where a government has the power to expropriate failing agreement with the affected person. This recognizes the unequal bargaining position of the parties. Therefore, the legislation should have a statement of this principle, and procedures that implement it.

29. Art. 51.1 allows the government to use land in a person’s possession with or without fee, “based on urgent social need”. There must be safeguards for this. At a minimum, there must be an official declaration of a state of emergency and those affected must be compensated for loss.

#### **B.4. Link to land use planning**

30. There is no link between land management plans and master plans under urban planning law. CTBL 5.1 says *State Administrative Organization in charge of Land and Urban Development Issues shall be responsible for planning on lands to be taken back for the special needs of the state*. This needs to be elaborated.

#### **C. Recommendations**

- 1) A separate comprehensive LAR Law should be prepared.
- 2) The LAR Law (or amendments to the Law Land, if that is the chosen instrument) should cover all aspects of governance and safeguards, and include the following:
  - a) Clearly state the purposes for which land can be acquired for state needs.
  - b) Apply to all classes of land and all tenures.
  - c) Set out the procedures for state acquisition of land.
  - d) Provide for all entitlements for affected persons and contain the methodologies for determining compensation.
  - e) Provide a system for complaint and dispute resolution.
  - f) Be consistent with other laws.
- 3) The process and governance issues raised in these comments (B.2) should be reviewed and discussed with the Working Group members in order to decide how they should be addressed in the legislation. Important elements for consideration are:
  - a) “Program” approval for land acquisition by State Ikh Khural, with individual projects approved by Government.
  - b) Approval authority for local Khural.
  - c) A system of due process for grievances and appeals by affected persons.
- 4) The social safeguard issues discussed in these comments (B.3) and those of the ADB should be incorporated into the legislation. (Some are applicable to the Land Law rather than a separate LAR Law.)
- 5) The link between land management plans and master plans must be clarified. Further review and discussion with Working Group is needed.

**ANNEX 4**  
**CONSULTANT TEAM COMMENTS ON DRAFT URBAN REDEVELOPMENT LAW**



## **Comments from the Consultant on the Draft Urban Redevelopment Law for Mongolia**

Note: The version reviewed was dated 8 April 2011.

### **A. General Comments**

1. The Law on Urban Redevelopment is an ambitious measure designed to facilitate the improvement of the built environment and provision of better housing. Legislation in this subject matter is necessarily complex. The law must be understandable, unambiguous, internally consistent, and its links to other laws clear. The draft law needs improvement in this respect.

2. The draft law covers the topic of compensation for involuntary resettlement. The safeguards and principles applicable should be the same for all types of projects, including urban redevelopment projects. Therefore it would be preferable for compensation matters to be referred to the separate Land Acquisition and Resettlement Law (or similar) that we have recommended.

3. In general, the draft law does not strike an appropriate balance between the rights of residents and the interests of the state. The power of expropriation in connection with urban redevelopment is an extraordinary one, because the public interest in redevelopment is not as obvious as it would be, for example, in land acquisition for a highway. In most developed countries expropriation for private redevelopment is rare and usually contentious. Even so, it is surrounded by the rule of law and good governance that are not well established in Mongolia. Therefore, the law must have strong provisions on consultation prior to project approval, agreement by a high percentage of affected persons, and compensation and resettlement provisions that meet social safeguard standards. Expropriation must be an unusual and unavoidable step, rather than a routine procedure to acquire the land of 49% of the residents in a project. To address these concerns will require considerable redrafting.

4. State actors should recognize that consultation and agreement with most residents is in all likelihood the only way to ensure that urban redevelopment projects can be implemented. Firstly, it may be needed in order to obtain the agreement of a majority of residents. Secondly, a minority of unhappy residents can often prevent a project from being implemented, despite what the legislation says.

### **Process and Governance**

5. The draft law is confusing on the order in which projects are proposed, prepared and implemented. Below is a summary of what we take to be the procedure:

- A detailed plan is prepared, in accordance with the Urban Development Law (Art. 9.1.1).
- A project is "initiated" by the governor (Art. 11.2), who submits a proposal for approval to Citizens' Representative Khural (Art. 13.1, 15.2, 16.2).
- Citizens' Representative Khural approves, and the public is notified (Art. 13.2, 13.4).
- The governor issues an invitation for bids for selection of a project implementer (Art. 13.5).

- The project implementer prepares the project and obtains the agreement of a majority of residents (Art. 12.1.2)<sup>1</sup>.
- For ger area land reorganization, there are more detailed preparation and planning requirements (Art. 15.8).
- After the governor approves the land acquisition plan, the project implementer acquires the land and carries out compensation and resettlement (Art. 12.1.3). There is no mention of infrastructure provision and site development, but presumably the project implementer is responsible for them.

6. The risk of failure on the part of the project implementer is not addressed in the draft law. There should be a requirement for security and procedures for enforcing it. Funds for compensation and resettlement must be assured and protected, for example by escrow accounts.

7. The power of Citizens' Representative Khurals to oversee implementation of projects (Art. 8.1.3) is only notional. Its exact oversight role should be spelled out, including any powers it has to trigger investigation, obtain information, cancel decisions, etc.

8. Central Governmental Administrative Organization in charge of urban redevelopment approves norms, rules and regulations concerning urban redevelopment (Art. 7.1.2). This is a vague grant of authority, and may include matters that are more appropriately in the power of the government.

9. Art. 7.2: Which "Governmental Administrative Organization" is referred to here?

### **Safeguard Issues**

10. Consultation with affected persons does not comply with social safeguard standards. Areas are designated for redevelopment upon approval by Citizens' Representative Khural on the proposal of the governor. This designation has immediate legal effect: (1) land allocation and building construction are frozen; (2) a developer will be engaged who is in effect given land acquisition authority; but only after this approval is the public notified. The detailed plans are approved under the Urban Development Law, but this law has weak provisions on public consultation and participation of residents. Effective consultation must start during the preparation of the detailed plan, and no proposal should be submitted to the Citizens' Representative Khural unless there is general consensus among the residents that redevelopment is desired. Consultation must then be carried out throughout the process.

11. A project may be implemented, with expropriation if necessary, when a "majority of residents" agree. This is well below the threshold used in other countries where similar redevelopment schemes are carried out. Given that the developer will have an incentive to minimize compensation and resettlement costs and that affected persons are in a vulnerable position, the proportion who approve should be much higher, say 90%.

12. Because the threshold of agreement is crucial, the provisions governing it must be very clear. Are all adult residents counted, regardless of how many occupy a land plot or are joint owners of a property? Or does each piece of property support one vote? The draft law is unclear on this point. Furthermore, the language is inconsistent: Art. 19.1 refers to the majority of the *owners, possessors and users* of immovable property.

---

<sup>1</sup> Art. 15.8.1.1: In land reorganization of ger areas, choosing an area for project implementation is included in project preparation stage. It is unclear what this means, since the area has already been chosen and a detailed plan prepared.

13. The freezing of building construction and land allocation once an area has been designated for redevelopment is too broad and open-ended.

14. We agree with the detailed comments from ADB on compensation and resettlement safeguard issues in the draft law, notably including provisions to address the issues of non-titled residents. (As noted above compensation and resettlement should be addressed in the recommended Land Acquisition and Resettlement Law.)

15. We reiterate the comments of ADB on Citizens' Associations and the need for independent monitoring and a grievance mechanism. In the Mongolian context the effectiveness of the Citizens' Association in representing the interests of residents is questionable for several reasons. Members will lack the capacity to organize and operate the association. (This was the experience with condominium associations.) The association cannot address disputes involving individual entitlements, nor can it protect the interests of the minority who disagree.

16. The Monitoring Committee as provided in the draft law is from a governance point of view not an external or independent body. The issue of monitoring and grievance redress, including valuation issues, needs further discussion.

17. How the transfer of land rights is carried out at implementation stage requires careful treatment. In ger area reorganization, there should be no "temporary" stage. Owners should not surrender rights until they received compensation or the new apartment they are entitled to. There cannot be an intermediate step where the developer has the land. The legal mechanism is one where a plan is prepared and upon registration titles issue automatically to the owners, public areas, etc. without having to prepare large numbers of conveyances and reconveyances of small parcels of land.

**ANNEX 5**  
**PRELIMINARY OUTLINE OF LAR LAW (JUNE 2011)**

## **PRELIMINARY OUTLINE OF LAND ACQUISITION AND RESETTLEMENT LAW (The LAR Law)**

### **Chapter 1: General provisions**

#### Objective of the law

The overall objective of the Land Acquisition and Resettlement Law is to (i) protect the rights of Mongolian citizens and businesses who own, possess or use the land in accordance with Land Law/etc. and (ii) enable the government to re-acquire land under special circumstances for State purposes, as specified in this Law.

This Law should ensure effective land acquisition capabilities consistent with international involuntary resettlement safeguard systems. More specifically, the purpose of the Land Acquisition and Resettlement Law is to define the scope of the public works for which eminent domain powers may be used, outline the procedures for negotiated settlements in such circumstances, stipulate eligibility, entitlement and compensation appraisal processes, and document the procedures for informed participation of affected households in resettlement planning and implementation, grievance management and monitoring of project impacts.

#### Definitions

*For purposes of the outline, we wish to be clear as to what is meant by urban redevelopment, since it receives special treatment.*

- Definition of *urban redevelopment* will describe (1) replanning and complete redevelopment of a project area, involving buying out all APs, (2) land readjustment involving land owners/possessors contributing a portion of their land for public infrastructure and space for social infrastructure, plus surplus area that may be sold to finance the infrastructure, in exchange for smaller serviced plots, or (3) a combination of these.

Other terms to be defined in the Law may include but not necessarily be limited to:

- State/public purposes
- Affected person
- LAR Plan
- LAR Appeals Committee
- Project operator
- LAR procedures
- Project approval
- Resettlement
- Cut-off date
- Involuntary land transactions
- Voluntary land transactions
- Vulnerable persons
- Compensation
- Prescribed private acquisition
- Expropriation
- Negotiated agreement

## **Chapter 2: Legislation affecting land acquisition and resettlement**

This law applies to all land acquisition by the state, local administrations or other authorized bodies, including private citizens, businesses and developers. It applies to land acquisition by negotiated agreement in any case where expropriation may take place if negotiations fail.

Also:

Urban Development Law

Urban Redevelopment Law (*unless this is covered in an amended Urban Development Law*)

Housing Law

Law on Cadastre

Law on Property Valuation

*Urban Redevelopment Law provides more detailed provisions for redevelopment, including land readjustment.*

*The Law on Land and Law on Land Privatization will be amended so that all LAR provisions are contained in the LAR Law.*

## **Chapter 3: The power to acquire land**

Land may be acquired, by purchase, gift or expropriation, for these purposes:

- National defence and military purposes;
- Publicly owned/constructed infrastructure (railroads, roads, dams, canals, water supply system, etc.);
- Government facilities (including government buildings, health or cultural facilities, national parks, national athletic fields,
- Schools, libraries, museums)
- Projects for housing construction and housing site development in which 80-90% of owners/possessors/renters have given consent;
- Urban redevelopment, where required for health, environmental or safety reasons,
- Free trade zones.
- Other projects for which land acquisition is permitted under other legislation.

**Central** state bodies may carry out land acquisition for all purposes listed on the basis of state need. UB and aimag authorities may carry out land acquisition for all purposes listed (except defence and military) on the basis of local need.

The authority must follow the procedures of this law, making a reasonable effort to negotiate an agreement with persons with land rights (owners, possessors and users). If effort to negotiate purchase fail, the project owner may submit an application for expropriation and if granted must follow the procedures set out herein.

Land may not be expropriated for an urban redevelopment project unless owners, possessors and users of 80% to 90% of the people consent.

All costs of land acquisition and resettlement, including compensation, relocation, transitional support, livelihood rehabilitation, transaction costs, planning and survey costs, administration costs (including grievance redress), and independent monitoring must be budgeted for and included in project costs.

## **Chapter 4: Powers of government and other bodies**

State Great Khural

Cabinet

decision on LAR for projects of strategic and/or national scale/interest

Central administrative bodies

- MRTCUD
- ALACGaC

Aimag Land Affairs & Urban Development Departments

UB Land Administration Department

Citizens Representative Khurals of UB and aimags

decision on LAR for projects of local significance

Governors of UB and aimags

- UB Urban Development & Planning Department

LAR Committees (see Chapter 5)

Project operator

- The ministry or government body executing the project
- Can be a non-profit private entity authorized by and reporting government
- Project operator may carry out LAR process on its own or through another state or local administrative organization, or may contract with a private company or NGO for any aspect of the LAR process

Government will make a regulation specifying roles and responsibilities of state and local administrative bodies.

## **Chapter 5: LAR Appeals Committee(s)**

State the objective and function of this body

Appointed by Great State Khural for projects of national state need.

Appointed by local representative khurals for local projects.

May be ad hoc or permanent.

Composed of impartial specialists (judges, lawyers, professors, planners, valuers, social scientists, and, potentially, community representatives and NGO representatives).

Can be five or more members.

Government regulation provides for procedures, etc.

In any case where some APs do not give consent, the project operator must apply to LAR Committee for adjudication.

Project operator is responsible for LAR Committee's costs.

LAR Committee confirms the boundaries of land to be acquired, its use, compensation, and other related matters; i.e. approves the LAR plan.

Further appeal is to the court on grounds of an unlawful or unjust decision.

## Chapter 6a LAR Plan Requirements

### Chapter 6: Rights of affected persons (APs) and compensation principles

#### Over-riding principle

A citizen's right to property ownership/possession or use should be fully respected as per the Constitution. There may be certain causes where property is required for State purpose (as set out in this Law) but the citizens right to timely full information, justification of the need for property, due process, and fair and timely compensation and support must be fully respected.

In such cases, the government will first negotiate with the property owner to reach a fair agreement. If no agreement can be reached and the government still requires the property, they can apply for approval to expropriate. The State/LARC will determine the value of compensation and other entitlements based on replacement value plus transaction and transitional costs.

After receiving compensation and/or other entitlements, affected persons (APs) should be no worse off compared to conditions before the land acquisition or house relocation. The standard of living of vulnerable APs should be improved and all APs should be able to benefit from the project.

#### APs include

- Person with land rights
  - Owner
  - Possessor
  - User (contract)
- Tenant (renter)
- Business operator
- Resident of a house or ger
- Agricultural household/business
- Person with grazing use rights or practice
- Occupant of land without formal rights (squatter)

#### Effect of illegality

Lack of required permission or legality for occupation of land, building or business operation does not disentitle an AP from compensation.

However, no rights to compensation will be recognized for any person who without legality or the required permission occupies land, builds or starts a business after announcement of the project under this law. Such person is liable for any cost of removal, which may be deducted from other compensation to which an AP is entitled.

#### Land

##### 1) Owner, or possessor of residential plot

- replacement or market value on announcement date (valuation as per Chapter 7)
- use to which authority will put the land is not a factor in valuation
- if part of land taken, compensation for lost land plan adverse effect on remaining land
- value will not be lowered by prior designation for public purpose in master or detailed plan
- transaction costs and transition costs to be paid in full to Aps



2) APs eligible for land titling/house certificates will receive full compensation and support for new land titling and housing certificates.

3) If part of land taken and use of remaining land is badly affected, authority must buy the whole parcel if requested by the AP.

4) User under contract, or possessor of non-residential plot

- replacement land/housing, or cash compensation based on the value of equivalent land over the remaining term of the person's rights

#### Buildings and structures

All building owners entitled, regardless of legality.

If for residential or family-based business or agricultural purposes, replacement cost without depreciation plus transaction and transition costs.

For other purposes, depreciated replacement cost.

(valuation as per Chapter 7)

#### Business losses, including agricultural

All operators entitled, regardless of legality.

If operation closed or interrupted

- loss of profit
- expenses of relocation and reestablishment

#### Tenant (formal, under lease contract)

Provision of new rental housing of similar quality and location at the same terms and conditions, plus relocation and transition expenses, if has to move before end of term.

#### Relocation

All APs entitled

- Options for relocation (market housing, exchange housing, house plot, etc.)
- Moving expenses
- Incidental/transaction costs
- Transitional costs and support

#### Vulnerable persons

- Improvement or minimum of standard of housing
- provision of vocational training, preferential hiring in projects, share in project benefits

#### Appraisal and legal advice

- A reasonable allowance available to all APs

## Resettlement strategy/options

Replacement land and/or housing with

- equivalent access to employment and business opportunities
- equivalent access to infrastructure, school, community services, etc.
- equivalent land value/location value.

OR

Cash compensation as above.

For people who are relocated, they should receive lands/plots with clear title and housing that is registered/certificate. Similarly, informal shops should get registration.

## **Chapter 7 Valuation of land and buildings**

Valuations of land and buildings will be carried out by licensed valuers in accordance with the standards of the International Committee on Valuation Standards and the methodology for property valuation prescribed under the Law on Property Valuation.

Speculative transactions in the project area within one year prior to project announcement will be disregarded in determining valuations.

The project operator must engage a registered valuer to determine values of land and buildings for an LAR plan. The project operator may increase the valuations up to 10% for the purpose of the LAR plan.

APs may engage registered valuers to determine valuations.

If as a result of negotiations a project operator agrees to increase a valuation, then it must make corresponding increases for all other properties meeting the same criteria.

## **Chapter 8 Project approval and announcement**

National state projects

- Project approved and announced by Cabinet decision, with budget allocation covering all estimated costs, including LAR costs
- Announcement date is cutoff date
- LAR plan must be completed and approved within one year of announcement date

Local projects (except urban redevelopment projects)

- Project approved and announced by decision of citizens representative khural, with budget allocation covering all estimated costs, including LAR costs
- Announcement date is cutoff date
- LAR plan must be completed and approved within one year of announcement date

Urban redevelopment projects

- Notice/Proposal of intention to replan/reorganize project area
- Consultation with affected communities, APs and other interested parties
- Plan approved in accordance with Urban Development Law, including community consent
- (Notice, consultation, etc. in accordance with Government regulation)

- Project approval and announcement as above

## **Chapter 9 LAR procedures**

Form, content and procedures for development proposals, feasibility study, community consultation and consent, socio-economic assessment, LAR plan, establishing grievance redress mechanism, project design and approvals, and agreements with APs will be prescribed by a Government regulation.

### Basic procedures

- Project operator must prepare an LAR plan in consultation with APs.
- APs, or a portion of them, may form residents committees or other representative committees if they choose. They may obtain the assistance of NGOs. They may engage lawyers and registered appraisers.
- Project operator carries out on-site examinations to identify properties and APs, carry out a census and socio-economic assessment, and determine entitlements as per laws/regulations. Vulnerable persons must be identified and measures specified to assist them.
- On-site examinations (FS, design, DMS?) are conducted with the cooperation of APs, their committees, and NGOs (if any).
- APs may propose a certain level of compensation, as well as measures for relocation and livelihood support.
- Project prepares draft LAR plan and discloses it to APs.
- APs who are not satisfied with compensation, relocation or other matters may refer their concerns at no cost to a grievance committee established by the project operator. The object of the grievance redress mechanism is to address concerns promptly in a transparent fashion.
- Project operator must consider the results of consultations with grievance/LAR committee. If it does not adopt changes recommended by grievance committee, it must state written reasons.
- When the LAR plan is completed, formal notice of completion is given to the public and provided to APs.
- A deadline is set (at least 30 days) for APs to apply for resettlement measures under the LAR plan, or to object to the LAR plan.
- Project operator may accept objections and make appropriate adjustments, which must be applied to other APs in equivalent positions, in which case the LAR plan is approved for implementation.
- In an urban redevelopment project, if objections are received from owners, possessors and users of more than 25% of the land area, then (unless a sufficient number of objections are agreed to by project operator) the project may not proceed. Project operator must pay compensation to APs for losses, costs and disturbance.
- If project operator does not accept all of the objections, it applies to LAR Committee for adjudication.
- If the LAR plan includes non-cash compensation, for each AP whose objection is rejected by LAR Committee, the Committee must determine equivalent cash compensation.
- The decision of LAR Committee to approve the LAR plan is final. Subject to any appeal to the court, LAR plan must be implemented in accordance with its terms and time periods.

No appeal can be made to the court more than 30 days after notice is given of the LAR Committee's decision.

## Safeguards on property transfer and displacement

APs do not transfer their property rights or vacate the land until they have received full cash compensation and/or replacement property or temporary accommodation (if applicable) in accordance with the LAR plan.

### **Chapter 10 Expropriation procedures**

No sooner than 30 days after approval of the LAR plan, project operator may apply to the Cabinet or the governor (depending on whether it is a national or local project), for authorization to proceed with expropriation. If authorization is granted, project operator:

- starts expropriation proceedings by issuing a notice of intended expropriation to each AP who has not agreed
- make an offer of cash compensation in accordance with the standards set out in the approved LAR plan
- notify the AP of the date upon which the land must be vacated, which date must be at least 90 days after the notice date.

Forms and requirements of giving notice and making offers are provided in a Government regulation.

Within 30 days of receiving the offer, APs may accept it without giving up the right to claim further compensation. If they accept the offer, project operator must pay them within 15 days of acceptance. In either case, the project operator automatically becomes the owner or possessor (as applicable) of the property 45 days after the date the offer is received by the AP. Property Registry to effect registration in the name of the project operator.

If a person has not vacated the land by the date of possession, project operator may apply to a judge of the court to authorize the police to enforce eviction. The judge must review the case, make a decision and where applicable authorize eviction. Cases would be rejected if the project operator failed to follow the required procedures.

### **Chapter 11 Rights and duties**

Restriction on building following announcement of project. Exceptions for necessary repair, etc.

Duty of authorities to monitor illegal occupation and encroachment following announcement of project, and to take timely enforcement procedures.

Right of project operator to enter land and buildings for surveying, investigation, etc.

Duty of owner/occupiers not to damage or destroy the land or any buildings or improvements required by the project operator.

Project operator withdrawing from LAR – compensation required.

Provisions as to what happens if acquired land is not developed or used for the intended purpose within a certain period of time.

Information to be given to APs and the public by project operators and administrative bodies throughout this process (to be specified).

## **Chapter 12 Treatment of acquisition of servitudes and smaller impacts for infrastructure/services.**

### **Chapter 12a Land acquisition for mining enterprises**

### **Chapter 13 Temporary and occupation of land**

### **Chapter 14 Emergency occupation/acquisition of land by the State**

Natural disasters, etc.

### **Chapter 15 Anti-corruption measures**

Prohibition on government officials or any person connected to them acting on inside information to purchase land in a proposed or actual project area. Such persons have no rights in the LAR process, except minimum compensation as below.

If the purchase price was less than market value as determined in the LAR process, any such person's entitlement is restricted to the amount paid for the land and building, without interest. For this purpose, project operators must review all transactions in a two-year period prior to project announcement.

### **Chapter 16 Sanctions for violations of the law**

Including heavy sanctions against officials who fail to follow the law and regulations, resulting in loss to APs.

**ANNEX 6**  
**REVISED OUTLINE/BLEUPRINT OF LAR LAW (JULY 2011)**

## OUTLINE OF DRAFT LAW ON TAKING OVER LAND ON GROUNDS OF SPECIAL PUBLIC NEED

1 August 2011

For discussion purposes only

<b>Law on Re-acquiring Land by the State for Special Public Need</b>
<b>Chapter 1: General provisions</b>
<b>Objective of the law</b>
<p>The overall objective of the Law is to (i) enable the government to re-acquire land and immovable property under special circumstances for special public purposes; (ii) set out the mandate, responsibilities and procedures the government must follow in exercising such power; and (iii) prescribe the rights, entitlements and obligations of those affected.</p> <p>This Law sets out effective land acquisition policy, regulations and procedures capabilities consistent with the Constitution and based on international involuntary resettlement safeguard systems. More specifically, the Law defines the scope of the public works for which eminent domain powers may be used, stipulates eligibility, entitlement and the compensation appraisal processes/methods, and specifies the procedures for information disclosure/notifications, consultation with affected persons, approvals, negotiated settlements, expropriation, compensation, rehabilitation, grievance address and monitoring and supervision.</p>
<b>International conventions</b>
<p>Refer to relevant international convention(s) to which Mongolia is a party, and state that provisions of this law must be interpreted and applied in a manner not contradicting the convention.</p>
<b>Definitions</b>
<b>Chapter 2: Legislation affecting land acquisition and resettlement</b>
<p>This law applies to all land acquisition by the state, local administrations or other authorized bodies for public purposes as set out in Chap 3, including private citizens, businesses and developers, in the case of (1) expropriation or (2) negotiated settlement where expropriation may take place if negotiations fail.</p> <p>This law applies in any case where land may be expropriated under another law, except where specifically provided otherwise in this or the other law.</p>
<b>List other relevant laws:</b> Urban Development Law Housing Law

Law on Cadastre  
Law on Property Valuation  
Land Privatization Law  
Land Law  
Minerals Law

### **Chapter 3: The power to acquire land**

Land may be acquired, by purchase, gift or expropriation, for these public purposes:

- National defence and military purposes
- Railroads and stations, highways, airports, dams, power plants, electric transmission lines, canals, pipelines, etc.
- Government buildings, including health or cultural facilities, public schools, libraries, museums, parks, athletic fields)
- Public infrastructure services (local roads, water lines, sewer lines, communication lines, power lines, lighting, sidewalks, bus stops, motorized, non-motorized & pedestrian safety features).
- National parks, nature reserves, other protected areas
- Public/social housing
- Free trade zones
- Specially approved urban redevelopment (inner core and ger areas projects (as stipulated in the law and/or Law on Urban Redevelopment)
- Other projects for which land acquisition is permitted under other legislation

As well as taking land back, lesser interests such as servitudes and leases may be taken.  
Also temporary occupation of land may occur.

Central state bodies may carry out land acquisition for all purposes listed on the basis of special public need. UB and aimag authorities may carry out land acquisition for all purposes listed (except defence and military) within their local jurisdictions.

The authority must follow the procedures of this law, using best efforts to negotiate an agreement with persons with land rights (owners, possessors and users). If efforts to negotiate purchase fail, the project operator may submit an application for expropriation and if granted must follow the procedures set out in Chapter 11.

All costs of land acquisition and resettlement, including compensation, relocation, transitional support, livelihood rehabilitation, transaction costs, planning and survey costs, administration costs (including DMS, implementation, grievance redress, monitoring and supervision), and independent monitoring must be budgeted for and included in project costs.

Urban redevelopment (special case)



Includes (1) replanning and complete redevelopment of housing in a project area, involving buying out land owners and possessors, providing service infrastructure, creating new building plots and constructing housing, including affordable housing for APs) (2) land readjustment involving land owners/possessors contributing a portion of their land for public infrastructure and space for social infrastructure, plus surplus area that may be sold to finance the infrastructure, in exchange for smaller serviced plots, or (3) a combination of these.

State bodies and local administrations may acquire land for urban redevelopment. They may enter into agreements with private parties or associations of landowners authorizing them to be project developers for these purposes.

During implementation of the LAR plan, if 80% of affected owners and possessors of land in an urban redevelopment project agree to compensation and resettlement, then the remaining land required for the project may be expropriated, if required, and subject to government approval.

Urban redevelopment – rules for determining 80% approval:

Project developer's (or anyone associated with project developer) land holdings are not counted; i.e. 80% of the rest must agree.

"Agreement" refers to formal agreements on compensation and resettlement measures that owners/possessors enter into in accordance with an approved LAR plan.

Only landowners and possessors are counted. Each separate plot represents one vote. Where there is more than one person entitled to ownership or possession, including husband/wife situation, then all must agree.

Non-state project developer

A private project developer that is selected must meet minimum standards of financial and managerial capacity and provides bank guarantees or other security to the government to ensure implementation of the project, and must deposit the funds for compensation and resettlement measures with the gov't body.

Selection of a project developer for urban redevelopment projects must be based on competitive procedures under procurement laws. Exception can be made where a project developer possesses a significant portion of land within a project area.

A government regulation will prescribe form of agreement, minimum standards, guarantee requirements, etc.

An association of landowners may be appointed as project developer in the case of a land readjustment project.

#### **Chapter 4: Powers of government and other bodies**

State Great Khural

Cabinet decision on LAR for projects of strategic and/or national scale/interest
Central administrative bodies <ul style="list-style-type: none"> <li>• MRTCUD</li> <li>• ALACGaC</li> </ul>
Aimag Land Affairs & Urban Development Departments UB Land Administration Department
Citizens Representative Khurals of UB and aimags decision on LAR for projects of local significance
Governors of UB and aimags <ul style="list-style-type: none"> <li>• UB Urban Development &amp; Planning Department</li> </ul>
LAR Committees (see Chapter 10)
Land Acquisition and House Demolition Body
Project developer/proponent, could include <ul style="list-style-type: none"> <li>• The ministry or government line agency executing the project</li> <li>• An independent non-profit government body/corporation authorized to arrange land for sale to developers</li> <li>• A private entity authorized by government to finance and construct the development</li> <li>• An association of landowners</li> <li>• Combinations or the above</li> </ul>
Government regulation specifying in more detail roles and responsibilities of state and local administrative bodies.
<b>Chapter 5: Compensation principles</b>
Over-riding principle  After receiving compensation and/or other entitlements, affected persons (APs) should be no worse off compared to conditions before the land acquisition or house relocation, and should either benefit directly from the public purpose or should be compensated in kind.
APs include <ul style="list-style-type: none"> <li>• Person with land rights <ul style="list-style-type: none"> <li>○ Owner</li> <li>○ Possessor</li> <li>○ User (contract)</li> </ul> </li> <li>• Occupiers of land who are eligible to be allocated ownership of that land under the Land Privatization Law</li> <li>• Tenant (renter)</li> </ul>

- Persons who built houses or made other improvements to land
- Business operator
- Resident of a house or ger
- Agricultural household/business
- Person with grazing use rights or established and recognized practice
- Person with hunting, gathering or fishing rights
- Occupant of land without formal rights (squatter)
- Owners or possessors of land that is not required for the project but the value of which will be reduced because of it
- Workers laid off or terminated by reason of the project

#### Effect of illegality

Lack of required permission or legality for occupation of land, building or business operation does not in itself disentitle an AP from compensation.

#### Exceptions:

- Where the illegality constitutes criminal activity.
- Where more than one year prior to project announcement date, the authorities have started formal enforcement proceedings against an illegality, and have actively pursued enforcement.
- Where an illegal business operation is carried on by a person who is not a resident of the project area.
- Where an illegal business operation is carried on by a person who is not part of a family group resident in the project area.
- Where an illegal building is not occupied as the principal residence of the owner of the building. (NB The occupants are not disentitled.)
- Where the occupant owns or possesses other land in the particular city or aimag centre.

No rights to compensation will be recognized for any person who without legality or the required permission occupies land, builds or starts a business after announcement of the project under this law. Such person is liable for any cost of removal, which may be deducted from other compensation to which the person is otherwise entitled as an AP.

The onus is on land office to document occupation of land etc as of the cutoff date by means of a census and asset inventory.

#### Land

##### 1) Plot, owned or possessed

- replacement plot or market value (valuation as per Chapter 6)
- if part of land taken, compensation for adverse effect on remaining land (see item 5)

- Possessor who is entitled to be allocated ownership is treated same as owner
- If replacement land is desired, the land office will assist to arrange suitable plot and the cost of registration fees will be paid by project developer.

2) User under contract

- Replacement land/property contract or cash compensation based on the difference in cost of equivalent land over the remaining term of the person's rights
- The land office will assist to arrange suitable replacement property and the cost of registration fees will be paid by project developer.

3) Renter (tenant) of land owned or possessed by others

- Cash compensation based on the difference in cost of equivalent land over the remaining term of the person's rights
- The land office will assist to find replacement property and the cost of registration fees will be paid by project developer.

4) Unlicensed occupier of public land (except where ineligible- see above)

- Replacement land with certificate of possession

5) If part of land taken and use of remaining land is badly affected, authority must acquire the whole parcel if requested by the owner, possessor or user under contract.

6) Regardless of the market value of land, compensation shall be no lower than the official value.

Buildings and structures

Compensation available to owners of buildings and structures

For residences occupied by the owner or possessor of the land, or buildings used for family-based business or agricultural purposes, replacement cost without depreciation.

Otherwise, depreciated replacement cost.

Where market prices combine land and building without allocation between them, compensation for land and building may be based on such market values, plus where applicable adjustment due to the market recognizing depreciation.

(valuation as per Chapter 6)

Business losses, including agricultural

If operation closed or interrupted

- loss of net income for the period of loss/disruption (ranging from 1 to months), including wages that must be paid to staff and contract workers
- expenses of relocation and reestablishment of the business
- compensation for non-movable equipment at replacement cost, with/without depreciation

Tenant

For housing tenant, provision of new rental housing of similar quality and location at the same terms and conditions, plus relocation and transition expenses, if has to move before end of term.

For other purposes, cash compensation based on the difference in cost of equivalent premises over the remaining term of the person's rights.

Farmland

Market value or based on net present value of production or replacement land of equivalent quality and size nearby (3 km)

Grazing use rights or practice

Replacement of rights or cash compensation, covering loss of value of products for self-consumption and loss of profits.

Forest land rights and water use rights

Compensation of State-owned land

Need to compensation the existing user (to be negotiated?)

Ground attachments on the property

Resident of a house or ger

(one who has no other entitlements and no other accommodation)

Provision of equivalent accommodation.

Does not apply if the person owns or possesses other land in the particular city or aimag centre.

Relocation

Where relocation is required, all APs entitled to

- Options for relocation (market housing, exchange housing, house plot, etc.), or equivalent cash compensation as above

- Moving expenses
- Incidental/transaction costs
- Transitional costs and support (e.g., market housing – 1 to 3 months, for house plot – 6 months, for exchange housing – actual period with subsidy doubled after 12 months)
- If eligible for land ownership or possession, support for obtaining title or certificate.
- Informal businesses: support for registration/licensing.

Replacement land and/or housing must have

- equivalent access to employment and business opportunities
- equivalent access to infrastructure, school, community services, etc.
- equivalent land value/location value.

#### Appraisal and legal advice

- A reasonable allowance available to all APs
- May be paid directly to appraisers and lawyers

#### Workers

- Loss of wages during period of work stoppage or transition to new job.
- If terminated, compensation under labour standards law (i.e., \_\_\_\_\_) plus assistance for re-employment and skills training.

#### Vulnerable persons

Are persons who may be differentially or disproportionately affected by land acquisition because of their disadvantaged status, by reason of being below the poverty line, without land rights, elderly, illiterate, disabled, or single mothers/parents. The census of APs must identify them in the process. They are entitled to a minimum of standard of housing and an opportunity to enhance their standard of living, through such measures as vocational training, preferential hiring in projects, share in project benefits. These are in addition to any entitlements provided above.

#### **Chapter 6 Valuation of land and buildings**

Valuations of land and buildings will be carried out by licensed valuers in accordance with the standards of the International Committee on Valuation Standards and the methodology for property valuation prescribed under the Law on Property Valuation.

The valuation date will be the date of project announcement, and will be reset every 6 months until the LAR plan is approved. If expropriation is to be carried out, the valuation date will be the date authorization to expropriate is given.

In determining valuations, no account will be taken of

- The use to which the project operator will put the land.
- Any increase or decrease in value resulting from the imminence of the project or the prospect of land acquisition, including expropriation.
- Any decrease in the value of the land that is attributable to designation in a master plan or detailed plan.

- Any increase in the value of the land resulting from illegal use or use detrimental to public health.

Except that in urban redevelopment, account may be taken of the use to which the project operator may put the land.

The project developer/land agency must engage a registered valuer to determine values of land and buildings for an LAR plan.

APs may engage private valuers to determine valuations at their own cost.

If as a result of negotiations a project operator agrees to increase a valuation, then it must make corresponding increases for all other properties meeting the same criteria.

### **Chapter 7 Project announcement**

#### National state projects

- Proposal submitted by project developer/proponent
- Public consultation and comment on the proposal
- Project announced by Cabinet decision, with budget allocation covering all estimated costs, including LAR costs
- Announcement date of the approved project proposal
- Detailed measurement survey is conducted, which becomes the cutoff date
- LAR plan (where required) must be completed, disclosed to APs and approved by \_\_\_\_\_ within one year of announcement date
- Household agreements signed and compensation entitlements provided
- Relocation of APs, followed by house demolition and land transfer
- Rehabilitation of APs

#### Local projects (except urban redevelopment projects)

- Project announced by decision of governor, with budget allocation covering all estimated costs, including LAR costs
- Announcement date is cutoff date
- LAR plan (where required) must be completed, disclosed to APs and approved within one year of announcement date

#### Urban redevelopment projects (special case)

- Notice by governor of intention to replan/reorganize project area
- Consultation with affected communities, APs and other interested parties
- Redevelopment Plan reviewed and approved by \_\_\_\_\_ in accordance with Urban Development Law
- (Notice, consultation, etc. in accordance with Government regulation)
- Project announcement as above

Project operator may on application (before the end of the one-year period) apply for extension of time period for approval of LAR plan. Is liable to APs for losses due to the delay, including loss due to restrictions on building during the period.

#### Method of giving notice of project announcement

## Chapter 8 Rights and duties during process

Right of land officer and/or project developer to enter land and buildings for surveying, investigation, etc.

- Permission given to private project operator for access.
- Notice of access to occupants.
- Identification to be carried by person accessing
- Occupants to cooperate.
- Removal of obstacles, digging, etc.
- Liability for damage

Effect of project announcement – cutoff date

Special permission of governor required for erecting buildings, large repairs. Project operator must be consulted. Exception: (1) right to complete building or repair if permission/licence was granted prior to cutoff date and is still in effect (2) necessary repair or protection of the property. Any building work done contrary to this is not compensable.

Duty of owner/occupiers not to damage or destroy the land or any buildings or improvements required by the project operator.

Duty of authorities to monitor illegal occupation and encroachment following announcement of project, and to take timely enforcement procedures. Must formally notify offending persons and post notices on the properties or in their vicinity.

APs do not relinquish their ownership, possession or other rights or vacate the land until they have received their full entitlements to compensation and/or possession of replacement property. Where a resettlement program involves temporary accommodation pending the completion of replacement housing, APs may be required to relinquish rights upon receiving cash compensation and possession of temporary accommodation only if project proponent has provided satisfactory financial guarantees and security.

If having received the required cash compensation and other entitlements, a person has not vacated the land by the date of possession set out in the agreement with project operator, project operator may apply to a judge of the court to authorize the police to enforce eviction. The judge must review the case, make a decision within 15 days and where applicable authorize eviction (see provision in Chapter 11).

Abandonment or alteration of the project by project developer

- Report and notice.
- Duty to pay for losses of APs.
- Loss of security deposit and other penalties for default.

Right to information for APs, public, media

- Project approval document, authorization by government to project operator, and agreement between them.
- Documents produced in the LAR and expropriation procedures, except personal information about individual APs must be excluded in



disclosure to public and media, unless AP consents.

## **Chapter 9 LAR procedures**

Government regulation provides for

- For projects involving acquisition only of vacant plots or vacant parts of plots, or fewer than 10 plots of land, or fewer than 20 affected persons, regulation to streamline some of the basic procedures (below)
- Form, required content and procedures for disclosure of development proposals/feasibility study, community consultation and comments/agreements, social impact assessment, LAR plan preparation and approval, notifications, establishing grievance redress mechanism, agreements with APs, compensation payments and audits, relocation and rehabilitation, and monitoring, supervision and reporting.
- Regulation may provide that certain requirements and processes of other laws (such as environmental), if required must be met in addition to requirements of this law.

### Basic procedures for LARP approval

- The Project developer must prepare an LAR plan in consultation with APs. Annex 1 provides the required contents of a LAR plan.
- Where residences will be lost, LAR plan must where feasible include a plan for relocating affected households, with security of tenure.
- Where farmland will be lost, LAR plan must where feasible include a plan for replacement farmland, with security of tenure.
- APs, or a portion of them, may form residents committees or other representative committees if they choose. They may obtain the assistance of NGOs. They may engage lawyers and registered appraisers.
- Land Office and Project developer (and engineer) jointly carry out on-site examinations to identify properties and APs, carry out a census, social impact assessment and inventory of affected assets (DMS), assess the scope of necessary displacement and reduce it to the extent possible, and determine entitlements as per this law. Vulnerable persons must be identified and measures specified to assist them.
- Project developer prepares draft LAR plan with detailed budget and schedule and discloses it to APs for comments. If requested, a public hearing(s) will be held.
- Persons claiming to be APs must have LAR plan disclosed to them. They have the right to participate in the grievance redress mechanism, objecting to their exclusion and claiming compensation/resettlement measures, and to object to the completed LAR Plan.
- APs who are not satisfied with compensation, relocation or other matters may refer their concerns at no cost to a grievance committee established by the project operator. The object of the grievance redress mechanism is to address concerns promptly in a transparent fashion.
- The draft LAR plan is submitted to the Gov't LAR approving body for review and comments. Project developer must abide by the decision of the LARP approval body and revise the LARP accordingly.
- Then the LARP is disclosed to the public and all APs.
- A deadline is set (at least 30 days) for APs to consider or to object to the LAR plan. If requested, a public hearing(s) will be held.
- Project developer may accept objections and make appropriate adjustments, which must be applied to other APs in equivalent positions, in which case the LAR plan is approved for implementation.

- In an urban redevelopment project, if the required 80% of owners and possessors do not agree, then (unless a sufficient number of objections are agreed to by project operator) the project may not proceed. Project operator must pay compensation to APs for losses, costs and disturbance.
- If project developer does not accept all of the objections, it applies to LAR Committee for adjudication [see Chap 10].
- If the LAR plan includes non-cash compensation, for each AP whose objection is rejected by LAR Committee, the Committee must determine equivalent cash compensation.
- The decision of LAR approval body is final. Subject to any appeal to the court, LAR plan must be implemented in accordance with its terms and time periods.

#### Negotiated Agreement Procedures

- Once the LAR plan is approved, the Land Office/Project Developer will begin the process of negotiating agreements with individual households and entities.
- The Land Office will arrange for house, business and industrial property appraisals.
- The Land Office will prepare the initial compensation agreement (cash and non-cash elements) based on the DMS and the appraisal results and discussions with the Project Developer, and will notify the AP.
- After 7 days, a Land Officer will meet with the AP to negotiate a final agreement. If agreement cannot be reached, the AP can submit a claim through the grievance redress channels.
- The process continues until a negotiated settlement is reached. If this is still not possible, the Project Developer can submit a request for expropriation procedures (see Chapter 11 – i.e., decision through arbitration of the courts).

#### Procedures for Provision of Compensation Entitlements

- Cash compensation paid in one or two installments (say pay 50% on signing and 50% on removal), OR
- Provision of replacement land and/or housing prior to removal/demolition, OR
- Provision of temporary housing or subsidy and guarantee to provide a serviced plot of condominium unit by a fixed date, after which penalties must be paid to the AP, AND
- Provision of livelihood support measures (e.g., training, labor arrangement, etc.) within 3 months, to be specified in the agreement
- Provision of employment in the project construction or operation.

No appeal can be made to the court more than 30 days after notice is given of the LAR Committee's decision.

#### **Relocation and Rehabilitation Implementation**

##### **Chapter 10: LAR Committee(s)/Grievance Redress Mechanism (?)**

Appointed by Great State Khural for projects of national state need.

Appointed by local representative khurals for local projects.

May be ad hoc or permanent.

Composed of impartial specialists (judges, lawyers, professors, planners, valuers, social scientists).

Can be five or more members.

In any case where some APs do not give consent, the project operator must apply to LAR Committee for adjudication.

LAR Committee confirms the boundaries of land to be acquired, its use, compensation, and other related matters; i.e. approves the LAR plan.

Further appeal is to the court on grounds of an unlawful or unjust decision, with a short deadline for making the appeal – 21 days

Matters to be adjudicated

Chairmanship

Members' qualification, disqualification

Secretariat

Meetings, how decisions made

Term of office

Security of tenure

Conflict of interest

Investigation

Allowances, expenses

Government regulation for detailed rules for operation.

### **Chapter 11 Expropriation/eviction procedures**

No sooner than 30 days after approval of the LAR plan, or later than 90 days, project operator may apply to the Cabinet or Citizens Representative Khural (depending on whether it is a national or local project), for authorization to proceed with expropriation.

Authorization may not be given unless project developer demonstrates by documentary evidence that the provisions have been complied with.

If the project proponent is a private party, authorization is to a government body to carry out expropriation at the expense of the private party.

The Land Officer:

- starts expropriation proceedings by issuing a notice of intended expropriation to each AP who has not agreed
- makes an offer of cash compensation in accordance with the standards set out in the approved LAR plan

notifies the AP of the date upon which the land must be vacated, which date must be at least 90 days after the notice date.

Forms and requirements of giving notice and making offers are provided in a Government regulation.

Right of AP to make court application to challenge the expropriation, with restrictions

Within 30 days of receiving the offer, APs may accept it without giving up the right to claim further compensation. If they accept the offer, project operator must pay them within 15 days of acceptance. In either case, the project developer automatically becomes the owner or possessor (as

applicable) of the property 45 days after the date the offer is received by the AP. Property Registry to effect registration in the name of the project developer.

A claim for more compensation does not suspend the effect of this provision.

**Eviction.** If a person has not vacated the land by the date of possession, project developer may apply to a judge of the court to authorize the police to enforce eviction. The judge must review the case, make a decision within 15 days and where applicable authorize eviction. Cases would be rejected if the project operator had failed to show that it followed the required procedures.

Right of repurchase

(applies to expropriated properties only)

### **Chapter 12 Servitudes**

Authority given to governor (UB, aimag centre)

Purposes listed

Notice and consultation

Compensation required (as per this law)

If as a result use of remaining land is seriously impaired, owner/possessor may demand that entire parcel be purchased

Agreement with owner or possessor

If no agreement, expropriation procedures (as per this law)

Registration (and cadastral surveys)

### **Chapter 13 Auditing, Monitoring, Supervision and Reporting**

- Payments must be audited, especially when paid through government bodies – refer to relevant procedures
- Planning, negotiations, compensation, relocation and rehabilitation need to be monitored and supervised and reported to the land approval body and local governors
- There need to be both internal and external (independent third party) monitoring to ensure resettlement is implemented in accordance with this law and the LAR plan, and that all APs are better off within a reasonable time period.
- Supervision authority must be specified, as they will be responsible to resolve implementation problems in an efficient and timely manner.
- LAR plan with complex resettlement and rehabilitation (e.g., urban redevelopment) will require significant management capabilities that go beyond the standard administrative duties. LAR plan budgets should be formulated with this provision in mind.

### **Chapter 14 Emergency land acquisition or occupation**

Land may be occupied by the state immediately

Notice requirement

Compensation for damage within 30 days

If necessary to acquire the land

- Notice and consultation – timelines can be compressed or waived (to be stipulated here)

- Compensation required (as per this law)
- If part of land taken and as a result use of remaining land is seriously impaired, owner/possessor may demand that entire parcel be purchased
- Agreement with owner or possessor
- If no agreement, expropriation procedures (as per this law)
- Registration

**Chapter 15 Miscellaneous provisions**

Responsibility for risk; need for guarantees from the project developer

Transfer of private project operator’s rights and duties

- Restrictions and safeguards

Where owner or other APs cannot be identified or found

Where owner or AP refuses to accept compensation

If AP transfers ownership or rights

If AP dies or becomes incompetent

Treatment of security interests (mortgage)

- Compensation for land and buildings is paid to the mortgage-holder to the extent of its interest
- If result of this would leave person without a home, equivalent housing to be provided
- Need special provisions for vulnerable groups, since this was project-induced and involuntary – See Section 5

Requirement to pay interest on cash compensation

Method of notifying people – see Chapter 7

**Chapter 16 Anti-corruption measures**

Prohibition on government officials or any person connected to them acting on inside information to purchase land in a proposed or actual project area. Such persons have no rights in the LAR process, except minimum compensation as below.

If the purchase price was less than market value as determined in the LAR process, any such person’s entitlement is restricted to the amount paid for the land and building, without interest. For this purpose, project operators must review all transactions in a two-year period prior to project announcement.

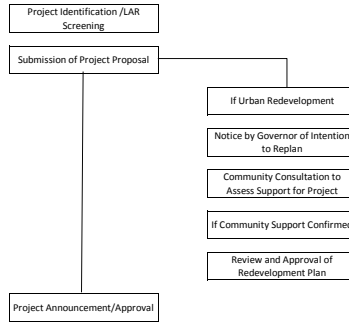
**Chapter 17 Entering into force and transitional provisions**

**Chapter 18 Sanctions for violations of the law**

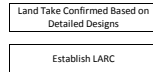
**ANNEX 7**  
**PROPOSED LAND ACQUISITION AND RESETTLEMENT PROCESS**

**Land Acquisition and Resettlement Process**

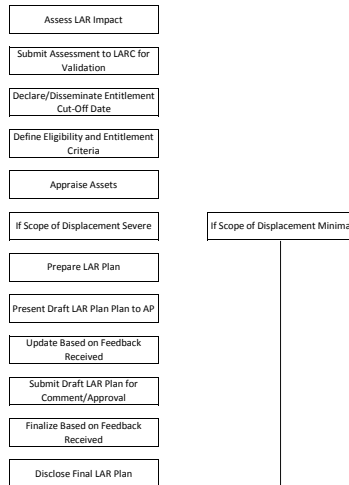
**Project Announcement/Approval**



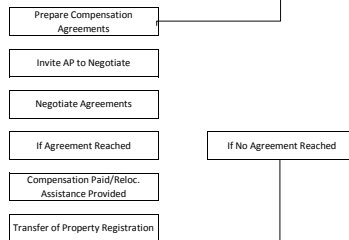
**Technical Project Design**



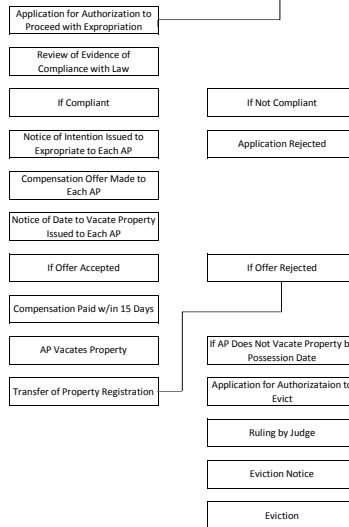
**Land Acquisition and Resettlement Plan Preparation and Approval Procedures**



**Negotiation Procedures**



**Expropriation/Eviction Procedures**



Consultation and Grievance Redress (Inspired by JAKCI)

**ANNEX 8**  
**INTERNATIONAL CONSULTANT COMMENTS ON DRAFT LAR LAW**



## **Comments on Draft Land Acquisition and Resettlement Law (21 October 2011)**

This report provides comments of the international consultants on the draft LAR Law presented to the Project Working Group on 21 October 2011.

Many of the comments provided by the Consultant Team Leader and International Legal Specialist during preparation of the draft were incorporated into the final draft presented to the PWG. Consensus could not, however, be achieved within the Consultant Team on a number of key institutional, governance, process and social safeguard issues. The following highlights the most significant of these issues and suggests points of clarification.

### **Eminent domain / scope of law**

*3.2. The issues of land acquisition or selling and buying land and other land transactions to transfer the land rights on voluntary basis through negotiation and agreement within the civil legal relationship shall be regulated by the Civil Code and other related legislation.*

This provision should be removed, as suggested in draft. It gives the State the power to purchase land outside the requirements of this law. This is contrary to the principle that LAR safeguards apply to voluntary sale to the state, if the state is in a position to exercise eminent domain if negotiations fail.

*5.1.17. acquire land for the purpose of urban redevelopment, i.e. re-planning and development of urban built-up area, re-building of buildings and structures that do not meet utilization requirements, ger area land readjustment and ger area land acquisition and development, respectively. In this case, permission to acquire land shall be obtained from at least 90% of the land and immovable property owners, possessors and users of the area included in the urban redevelopment developments and projects.*

This appears to authorize eminent domain for anything new, as long as there is 90% agreement. This may reflect government policy, but it needs to be highlighted as an issue for further discussion, including comment by constitutional law experts.

Rebuilding of buildings that do not meet “utilization requirements” should be explained. We know that many if not most buildings in ger areas do not comply with requirements to some extent.

*7.1. The main principle to be followed in the land acquisition and resettlement shall be to protect the rights of the owner, possessor, user and other related entities by law and to limit their rights exclusively by due process of law, as stipulated in the Constitution.*

*Alternative:*

*The main principle to be followed in the land acquisition and resettlement shall be to protect the rights of the owner, possessor, user, occupiers of land who are eligible to be allocated ownership of that land under the Law on Allocating Land to Mongolian Citizens for Ownership, and other affected entities by law and to limit their rights exclusively by due process of law, as stipulated in the Constitution.*

The right of affected persons with recognizable legal rights is a fundamental social safeguard. Alternative favoured.

*8.1. The following principles shall be followed in land acquisition and resettlement processes.*

*8.1.1. The decision for "land acquisition", as defined in the article 4.1.1. of this law, to exercise the power of eminent domain shall be made only in case when there is well defined and grounded state and local special needs and unavoidable public needs and when the scope and extent of displacement has been reduced to the extent possible.*

This should be stated as fundamental to the power to acquire land rather than a principle applicable to the process. It in effect places limits on the power to acquire land under Article 5, and therefore should be located under that article.

## **Institutions and governance**

*8.1. The following principles shall be followed in land acquisition and resettlement processes.*

*8.1.7. Land acquisition and resettlement to be carried out based on the state and local special needs and unavoidable public needs should be implemented by a government authority or under the strict supervision of a government authority,*

"Strict supervision" is a vague term for a legislative provision, unless it is elaborated in detail as to what this implies. The later provision on the role of a project implementer (24.1.2) does not provide the necessary elaboration.

*9.1.3. The issues of entity affected by land acquisition, who is not a holder of ownership, possession or use rights in the land being acquired and who uses this land without permission and where ownership, possession or use rights cannot be established, shall be settled by the regulations of the State central administrative organization in charge of the land acquisition and resettlement.*

Entitlements to compensation for non-land assets and resettlement assistance of such persons should be provided for in the law. Regulations are properly restricted to administrative and procedural matters.

If this matter is left for regulations, they must be Cabinet regulations. The State LAR Organization is not in a position to decide such entitlements. There are no guidelines specified for the regulation, and the organization is in a conflict of interest as a unit of the Ministry executing projects.

*11.5. Improvement that has been commenced or must be carried out after the cut-off date in order to create conditions to lead normal way of life or activity, in the area included in the land being acquired, can be continued to be completed after agreeing with the government organization in charge of land acquisition and resettlement*

Decision on building permission should be made by the body normally responsible. AP carries the risk of not receiving compensation. There could be a requirement for notice by building licensing authority to government LAR authority and opportunity to state its objection to issuance of the license, which would have the effect of informing the AP that no compensation will be offered for the improvement.

*12.1. Entities affected by land acquisition can establish a representative organization for the purpose of protecting their rights and interests, electing their representatives to the land acquisition and resettlement council, monitoring the implementation of the land acquisition and resettlement plan and representing them in other related issues.*

The representative organization may also (depending on scale of project displacement) participate in collective negotiations with project implementer to arrive at mutually agreed compensation principles, policies, procedures, rates and other assistance for AP in advance of individual negotiations/sign-off.

These bodies should also be seen as part of the (informal) grievance redress process, helping resolve contentious resettlement issues, solve problems and assess individual complaints on a case-by-case-basis.

### **CHAPTER THREE: Organizations in charge of the land acquisition and resettlement, their powers and duties**

The institutional and governance system set out is not in accordance with international best practice, and should be reconsidered.

In effect a single government organization has the only effective role, and this organization is a unit of the most important project implementer, MRTAUD. Where controversy or complications arise the system will have difficulty responding, and affected persons will have little confidence in it.

The system is overly complex, with several levels of decision-makers, and it is not obvious why such a structure is needed.

*13.1. State Great Khural shall exercise the following powers regarding land acquisition and resettlement. (the clauses except 13.1.1. are most probably better placed under the responsibility of the Government)*

*13.1.1. make decision for land acquisition and resettlement for the purposes defined in 5.1.1.-5.1.3., 5.1.6., 5.1.7., 5.1.14.-5.1.16. of this law,*

*13.1.2. in order to make decision to acquire land, it shall study thoroughly the grounds to acquire land for state special needs and unavoidable public needs,*

*13.1.3. in order to make decision to acquire land for the purposes defined in 13.1.1., it shall obtain preliminary assessment of land acquisition and resettlement, specified in 28.1. of this law, from the state administrative organization in charge of land affairs.*

*13.1.4. set the location, area and boundary of the land to be acquired for the purposes defined in 13.1.1.,*

*13.1.5. approve the land acquisition and resettlement plan, specified in 32.1. of this law, to be implemented to acquire land for the purposes defined in 13.1.1. of this law.*

*13.1.6. instruct the implementer of the development, project or activity that will be carried out on the land acquired to include the costs for the land acquisition and resettlement in the budget of the development, project or activity, based on the land acquisition and resettlement plan specified in 32.1. of this law.*

This is an unusual set of responsibilities for a legislative body. There may be strategic projects that require its approval, but there is no need for parliament to be involved in the details of land acquisition. Does it not introduce a cumbersome and politicized process?

Prescribing duties for a parliament like *studying thoroughly* and obtaining assessments is appropriate for government agencies but not for parliament. Such a large body is not going to be in a position to review area boundaries and the contents of LAR plans. On what basis will

they carry out the review? They are a political body and cannot be criticized for making political decisions.

*14.1. The Government shall exercise the following powers regarding land acquisition and resettlement.*

*14.1.5. approve the land acquisition and resettlement plan, specified in 32.1 of this law, to be implemented to acquire land for the purposes defined in 14.1.1. of this law.*

The law must be clear on the Cabinet's power to approve the LAR plan. That is, whether they can change it unilaterally when approving it and if so, on what basis. Or whether, if they disagree with it, they send it back for further review.

*15. The power of aimag and capital city Citizen Representative Khural*

See comments above re Great State Hural.

*16.1. The State central administrative organization in charge of land affairs shall exercise the following powers regarding land acquisition and resettlement:*

*16.1.4. adopt the regulation for doing preliminary assessment of land acquisition and resettlement, specified in 28.1 of this law,*

*16.1.5. adopt the regulation for formulating land acquisition and resettlement plan, specified in 32.1 of this law,*

*16.1.6. adopt the regulation to regulate the issues to arise related to the entity, defined in the article 9.1.3. of this law, who is using land without permission,*

*16.1.7. adopt and enforce valuation methodology for compensation, specified in 4.1.7. of this law, jointly with the state central administrative organization in charge of finance and budget as per 8.2. of the Law on Property Valuation.*

*16.1.8. adopt the regulation for the activities of the land acquisition and resettlement council defined in 25.1. of this law.*

These should be government regulations. They are substantive and touch on interests of other ministries, as well as APs.

*Article 17. The structure and power of State administrative organization (agency) in charge of land acquisition and resettlement*

*17.1. State administrative organization in charge of land affairs shall be responsible for and carry out land acquisition and resettlement.*

The mention of the organization in charge of land affairs here must be inadvertent. It is inconsistent with the title of the article, and Article 16 covers the role of the land affairs agency. We understand this article to describe the authority of the state LAR organization.

State LAR organization is given a virtual monopoly on land acquisition and resettlement. There is no justification for this, particularly if a project implementer has capacity in-house or under contract. For example, a donor-funded project could include land acquisition, and international mining companies hire expert land acquisition teams. They will have greater capacity than State LAR Organization.

State LAR organization is in a conflict of interest, being a unit of MRTCUD, the ministry that will be implementing most projects. This conflict will be apparent to affected persons.

The law has in effect no independent review or oversight of how state LAR organization is carrying out a particular project, as the LAR council has no resources and will be left simply to review reports presented to it by state LAR organization.

*17.4.14.(1) if the initiator of the development, project or activity requests to implement the land acquisition and resettlement plan, review the request and give approval.*

*17.4.14.(2) review of the request, specified in 17.4.14.(1) of this law, shall establish that the initiator of the development, project or activity has the capacity to implement the land acquisition and resettlement plan in accordance with this law, if the review cannot establish the capacity, approval should not be given.*

*17.4.14.(3) strictly supervise the implementation of the land acquisition and resettlement plan, if implemented by the initiator of the development, project or activity.*

These provisions only apply to implementation, not to a role in preliminary assessment or preparation of LAR plan. With respect to them, implementer can only “support and cooperate” with state LAR organization: 24.1.2. There is no reason why an implementer should not have the option to carry out preliminary assessment and preparation of the LAR plan.

“Strictly supervise” is too vague. The respective roles of implementer and state LAR organization have to be very clear. In that regard, implementer must have freedom to implement as it sees fit as long as it complies with LAR plan. State LAR organization’s role should be to review implementation.

*17.4.16. provide the compensation in accordance with the agreement and implement measures related to the resettlement and acquire the land, in case that the negotiations with the entity affected by land acquisition succeed and the agreement for land acquisition and resettlement is concluded.*

*17.4.29. obtain the land acquisition and resettlement financing and budget, specified in 43.2. of this law, from the implementer of the development, project or activity*

There is no justification for state LAR organization to implement agreements with APs, pay compensation, and carry out relocation, if the implementer is prepared to do this.

*17.4.28. support and cooperate with the state organization in charge of social welfare and other related organizations to implement livelihood support measures for the entity affected by land acquisition-person who inevitably needs social welfare support and assistance, in accordance with the land acquisition and resettlement plan, specified in 32.1. of this law,*

Draft is unclear as to responsibility for developing livelihood support measures for AP who do NOT inevitably need social welfare support and assistance (i.e. vulnerable APs) but whose livelihoods are nevertheless impacted by project land-take.

*17.5. Land offices of aimag and capital city shall exercise the following powers regarding the processes of land acquisition and resettlement for the purposes defined in 15.1.1. of this law*

Comments above on Article 17.4 apply equally to 17.5.

Comment on Article 17.4.28 applies equally to Article 18. Role of state organizations in charge of social welfare limited to provision of support for vulnerable APs.

*Article 20. Power of the aimag, capital city Governor, sum and district Citizens Representative Khural, bag and khoroo Citizens Khural, bag and khoroo Governor*

All of these entities have the same role described in this article. This does not clarify roles and responsibilities and blurs accountability.

There are no formalities or safeguards for the powers listed, and we are not told how and when these actions fit into the LAR process.

*23.1. The following entity can be the implementer of the development, project or activity:*

*23.1.2. project unit or state owned company established, by the Government, ministry or local self governing organization, to perform the duties of the state organization specified in 23.1.1. of this law*

Private companies such as pipeline or mining companies should be eligible to be implementers, and in the case of urban redevelopment, private developers.

*24.1. The implementer of the development, project or activity shall exercise the following powers:*

*24.1.2. support and cooperate with the state organization in charge of land affairs and aimag, capital city land offices to carry out the preliminary assessment of land acquisition and resettlement intended for the authorized state organization to make the decision specified in 13.1.1., 14.1.1. and 15.1.1. of this law and make proposals to this preliminary assessment*

The implementer is not given the option to carry out preliminary assessment or prepare the LAR plan. This is unjustified and impractical.

*24.5. hand over the costs of land acquisition and resettlement, specified in 43.2 of this law, to the state administrative organization in charge of land affairs, aimag, capital city land offices, having obtained these costs from the initiator of the development, project or activity.*

There is no reason why the state LAR organization has to administer the funds.

### ***SUBCHAPTER THREE: Land acquisition and resettlement council***

LAR Council has heavy responsibilities requiring much time and effort. However the LAR Council is a part-time, volunteer group that will usually have to meet on the members' spare time. The members of the committee cannot be expected to carry out the required tasks on their own. LAR Council needs a budget to run its activities, and capacity to do so. The secretariat of LAR Council will consist of officials of the Hural, who will have other responsibilities. There may be several LAR Councils in operation at the same time, so the administrative burden could be heavy. It appears therefore that LAR Council will be fully dependent on state LAR organization to carry out its activities between meetings, and therefore will be merely a body that meets to receive reports and recommendations from land officials. It does not have the authority to direct them. In effect it does not have the means to ensure its independence, which is presumably the reason for its existence. It is important to note that both the urban planning organization and state LAR organization are units of MRTAUD, which will often be a project implementer. As a result, LAR Council will not be in a position to protect the rights of affected persons, and in many cases is likely to have no credibility among affected persons.

Establishment of LAR Council should not in any case be a requirement if project involves minimal (including no physical) displacement, as proposed in alternative to 25.1.

*26.4. Land acquisition and resettlement council shall consist of the following 11 or more members:*

This institution appears to be cumbersome and unwieldy. It will be very difficult from a practical point of view to establish the LAR Council. The members are mostly volunteers, and it may be difficult to find volunteers. There may be no NGOs active in the area.

Much preliminary work will have to go into finding members, including the APs choosing their representative. The only body with a mandate and resources is state LAR organization, which will have an undue influence over the membership of the LAR Council.

*CHAPTER FOUR: Land acquisition and resettlement process*

The process described is complex, with no obvious justification for its complexity. As described, it is difficult for the reader to follow the temporal sequence of each of the steps involved in the process and how they relate to each other. Combined with the practicalities of establishing LAR Council, it is foreseeable that land acquisition will very easily get bogged down. The inclusion of non-LAR process related topics in the chapter (e.g. valuation principles) adds to the risk of misinterpretation and argument.

The process is restricted, moreover, to land acquisition matters. There is no provision for notice or consultation on the project itself. There are supposed to be consultation procedures in place for plans under the Urban Development Law, but they are not in place. Consideration should be given to requiring consultation on the project, possibly as part of preliminary assessment.

The chapter should set out the steps sequentially, from project identification through delivery of compensation packages and transfer of property registration, culminating, in the event of failure to reach negotiated settlement, with expropriation and eviction procedures, as outlined for example below:

**Project Announcement/Approval**

- Project identification, including assessment of the scope of necessary displacement
- Project proposal, including magnitude and severity and estimated cost of LAR, submitted to approval authority
- Public consultation and comment on proposal if urban redevelopment project
- Project approval by relevant approval authority

**Technical Project Design**

- Confirm land take in detail project design
- Establish LARC
- Establish representative organization, as appropriate

**LAR Plan Preparation and Approval**

- Assess LAR impact (census, socio-economic survey, and asset inventory) / use external expert consultants as appropriate
- Declare/disseminate cut-off date
- Define eligibility criteria (in consultation/negotiation with representative authority as appropriate)

- Appraise assets by licensed valuers
- Prepare Draft LARP (unless scope of displacement minimal) / use of external expert consultants as appropriate
- Disclose Draft LARP / update based on feedback received
- Submit Draft LARP to approving authority for comment approval / finalize based on feedback received
- Disclose Final LARP

#### Negotiations, Payment of Compensation and Transfer of Property Rights

- Prepare compensation agreements
- Invite AP to negotiate/negotiate agreements
- If agreement reached, pay compensation/provide relocation assistance and transfer property registration
- If no agreement reached, proceed to expropriation/eviction procedures

#### Expropriation/Eviction

- Submit application, including evidence that LAR process has been compliant with Law, to relevant approval authority for authorization to proceed with expropriation
- If not compliant with LAR Law, application rejected
- If compliant with LAR Law, issue notice of intention to expropriate/compensation offer/notice of date to vacate property
- If offer accepted, AP vacates property and property registration transferred after compensation paid
- If AP does not vacate property by possession/transfer date, application for authorization submitted to courts
- Following ruling by judge, court ordered eviction notice issued.

Comments on specific clauses related to the LAR process include:

*28.3. The following issues shall be investigated and included in the preliminary assessment of land acquisition and resettlement:*

*28.3.4. number of entity and households affected by land acquisition, their livelihood level,*

*28.3.5. number of entity affected by land acquisition-person who inevitably needs social welfare support and assistance,*

Livelihood levels and vulnerability status of AP typically assessed during LAR Plan preparation as part of detailed baseline investigations (i.e. census of every affected household to understand basic socio-economic characteristics, and livelihood survey of a statistically significant sample of affected households to understand livelihood strategies and to characterise the significance of displacement impacts). The preliminary assessment – undertaken to help inform a project go/no go decision - provides estimated number and basic characteristics of displaced households only.

*28.4. State administrative organization in charge of civil and state registration of property rights, state administrative organization in charge of social welfare, sum, district, bag and khoroo, the initiator, implementer of the development, project or activity and other concerned parties shall provide, without hindrance, the required information, materials, documents, calculations and studies to state administrative organization in charge of land affairs and aimag, capital city land office and cooperate with them to carry out the preliminary assessment of the land acquisition and resettlement*



Request for information must be reasonable and specific and specify a time for compliance. The cost of responding to such requests should be considered. To what extent should state LAR organization be able to impose tasks and costs on other agencies?

*32.9. In case that the initiator of the development, project or activity will formulate and cooperate in the implementation of the land acquisition and resettlement plan, as specified in 32.7. and 32.8. of this law, the state administrative organization in charge of land affairs and aimag, capital city land offices shall supervise if the formulation, processes and implementation of the land acquisition and resettlement plan is proper and in compliance with the legislation.*

There must be clear procedures as to how and when this supervision takes place.

*33.9. 85 per cent of the compensation shall be provided to the entity affected by land acquisition before its resettlement.*

*33.10. 15 per cent of the compensation shall be provided to the entity affected by land acquisition after its resettlement and fulfillment of its contractual obligations.*

Compensation must be paid prior to displacement. Articles 33.9 and 33.10 should be changed as follows:

33.9. 85 per cent of the compensation shall be provided to the entity affected by land acquisition within one month of signing contract.

33.10. 15 per cent of the compensation shall be provided to the entity affected by land acquisition after fulfillment of its contractual obligations, prior to resettlement.

*38.1. When carrying out preliminary assessment of land acquisition and formulating land acquisition and resettlement plan, the analysis of the entity affected by land acquisition, including entity affected by land acquisition-person who inevitably needs social welfare support and assistance, shall be done.*

See comments on 28.3 above regarding scope/purpose of preliminary assessment of land acquisition.

*38.2. Livelihood support measures and activities shall be determined based on the analysis, specified in 38.1. of this law, of the entity affected by land acquisition.*

See comments on 17.4.28 above related to responsibility for development of livelihood support measures.

*39.1. Monitoring and inspection of the land acquisition and resettlement process shall be regulated in accordance with the 16.1.3., 17.3.2., 20.4., 25.1., 32.9. of this law.*

This refers to monitoring and inspection by state land organization, city/aimag and local governors, Hurals, and state LAR organization. These provisions do not explain what monitoring consists of and contain no process for monitoring and inspection. Monitoring needs to follow a clear process.

All of the bodies mentioned monitor. This blurs accountability.

There is no provision for evaluation, or what the consequences can be of evaluation.

*41.1. State administrative organization in charge of land affairs, aimag, capital city land office and the entities cooperating with them can access the land and immoveable property to be potentially acquired to collect data for carrying out the preliminary assessment of the land acquisition and resettlement and formulation of the land acquisition and resettlement plan.*

Land access not necessarily required for preliminary assessment of LAR impact (i.e. pre-project decision) and in fact may not be advisable (issues of expectation and speculation management). Access is required to undertake detailed baseline investigations (census, socio-economic survey and formal inventory and legal description of affected immoveable assets held by affected households) necessary for resettlement planning after project announcement.

### **Eligibility, Entitlements, Valuation and Resettlement**

*9.1.3. The issues of entity affected by land acquisition, who is not a holder of ownership, possession or use rights in the land being acquired and who uses this land without permission and where ownership, possession or use rights cannot be established, shall be settled by the regulations of the State central administrative organization in charge of the land acquisition and resettlement.*

As noted above, entitlements to compensation for non-land assets and resettlement assistance of such persons must be provided for in the law.

*11.1. Entity affected by land acquisition shall have the following entitlements.*

*11.1.2. receive compensation in the form of direct replacement, i.e. receive the compensation in the form of land and structures that are of same size and quality, for loss of land and immovable property*

This provision should state explicitly that an AP cannot be forced to accept replacement property.

*11.1.3. receive compensation for loss of income sources, i.e. loss of salary or business profit*

This is too broad and open-ended. It will be a source of dispute unless clear parameters are set.

*17.4.8. notify the state administrative organization in charge of land and property rights state registration to stop registering the transfer of land and property rights in the area included in the land acquisition starting from and after the cut-off date*

*19.1. The State administrative organization in charge of state registration of rights shall exercise the following powers regarding land acquisition and resettlement:*

*19.1.1. stop registering the transfer of land and property rights in the area included in the land acquisition starting from and after the cut-off date based on the notification of the state administrative organization in charge of land affairs ,land office of aimag, capital city,*

There is no reason to stop land transactions. Anyone who speculates in land at this point will not benefit, since entitlements are frozen.

If stopping land transactions is considered necessary, there needs to be an exception for sale agreements entered into in good faith prior to project announcement; i.e. those where the date of closing of the sale takes place after cut-off date.

*33.6.8. when carrying out compensation valuation, the issues specified in 9.2. and 9.3., shall be considered*

Some matters in the provisions referenced are not questions of valuation, but matters in which an appraiser has no special expertise. The role of professional valuers should be restricted to estimating the value of land and immovables.

*33.6.13. compensation valuation principles, methodologies, methods, valuation of land under ownership, possession or use, calculation of income sources or business loss, valuation of replacement land, accommodation, buildings and structures, calculation of rehabilitation, relocation and transitional costs and all other issues related to the valuation and calculation shall be addressed clearly and comprehensively in the valuation methodology specified in 16.1.7. of this law,*

Valuation is a narrower exercise than this article contemplates. Valuation is an opinion of what something is worth on the market, relating only to land, buildings and other tangible assets lost. Compensation for this kind of loss is one type of compensation that this law provides for. Other types of compensation (e.g. relocation expenses) are not the subject of valuation.

*41.3. The date and time of access shall be agreed when the notice, specified in 41.2. of this law, is given.*

*41.4. The owner, possessor, user of the land and immovable property or entity representing them shall be present when collecting data.*

This is too restrictive on the power of access. The provision needs to say what happens if the person does not agree.

As written, the owner would have to agree, and then the notice is given. There would be no need for a notice, if the owner agreed in advance.

Access provisions should provide for access on reasonable notice. Access to an occupied or occupiable building should require the consent of the owner/possessor/user. If access is denied, the court should authorize it.

*42.1. In order to monitor if the land acquisition and resettlement is carried out in compliance with the legislation and properly, to keep as evidence document, to report and for other required needs, the processes of land acquisition and resettlement shall be documented.*

There are no provisions concerning AP or public access to such documents.

### **Grievance redress and dispute resolution**

*32.4. The following issues shall be included in the land acquisition and resettlement plan:*

*32.4.6. activities and measures to settle grievances and disputes within the competency of the implementer of the land acquisition and resettlement,*

The LAR Plan must include a description of a project-specific grievance management process to receive and address specific concerns about the land acquisition process raised by those affected in a transparent, constructive, timely, confidential (if desired), and accessible manner. Opportunities for informal resolution of grievances through, for example, the consultations led by the representative organization of APs, should also be provided for. Satisfaction with the informal resolution process would be “proved” by the complainant not taking the issue into the formal grievance resolution mechanisms described.

*34.9. If agreement cannot be reached within one month as specified in 34.7. of this law, the issue shall be submitted to the land acquisition and resettlement council for review and issuance of recommendations.*

LAR Council does not make a binding decision – only a recommendation. Its usefulness therefore is open to question. Informal grievance redress under an LAR plan does not produce legally binding decisions. In international experience legally binding decisions are made either by courts or by independent administrative tribunals. LAR Council appears to be a version of the latter. Its formation by Hurals indicates an intention to independence from government administration, which is only important if it has decision-making authority. If it does not, then there is little justification for its existence.

*42.2. Documents shall be compiled for the following issues:*

This sets out a list of documents that must be prepared and compiled. It does not include documents pertaining to LAR proceedings and decisions.

*46.1. The entity affected by land acquisition can make grievance on all issues related to land acquisition and resettlement at any stage of its implementation.*

This statement appears to enable APs to make formal grievances on all issues and whenever they consider necessary. There need to be parameters and timeframes for making grievances or else the process may get hopelessly bogged down. This provision is an opportunity for those who want to obstruct and delay.

*47.1. In the first instance, grievance shall be made to the implementer of the land acquisition and resettlement plan.*

As noted above, there appears to be no opportunity for informal grievance address procedures designed for the particular project. There is only the formal process under this Article. See comments on potential role of representative organization.

*47.3. If the grievance of grievance maker has not been resolved after the grievance redress decision and implementation of relevant measures or he/she/it still has grievance, then grievance shall be made to the Land acquisition and resettlement council.*

Time limit for appeal to LAR Council needed.

*47.5. Land acquisition and resettlement council shall review and make recommendation for measures to resolve the grievance within 14 days after the receipt of the grievance and submit the recommendation to the implementer of the land acquisition and resettlement plan and grievance maker in writing.*

There is no opportunity for the grievance maker to be heard. There is only the grievance receipt form, placed before LAR Council by state LAR organization.

The time frame for the decision is too short.

*47.7. If the implementer of the land acquisition and resettlement plan did not accept the recommendation and measures, specified in 47.6., or if the recommendation of the land acquisition and resettlement council is considered not satisfactory, the grievance maker may lodge grievance with the court with legal aid.*

Deadline for lodging grievance with the court is needed.

## **Expropriation**

### *Article 44. Permission for land expropriation*

Further consideration needs to be given to the issue of what body should authorize expropriation. The options are (1) a court, (2) the government, or (3) Hurals. In the latter case the decision is naturally made on political grounds, in which case provisions setting criteria for the decision (44.6) are ineffectual. The court is an appropriate body to determine whether the criteria are met. Either the request should go straight to the court, or the court reviews the decision of the government or Hural if an AP appeals.

*44.1. In case that the implementer of the land acquisition and resettlement plan and the entity affected by land acquisition could not reach concurrence and the parties did not conclude a land acquisition and resettlement agreement, specified in 35.1. of this law, the implementer of the land acquisition and resettlement plan shall make request to the organizations specified in 13.1., 14.1., 15.1. of this law for land expropriation permission.*

There should be minimum and maximum times within which the request for expropriation can be made. There must be a reasonable period for last efforts to reach agreements, but the state must not be in a position to freeze the land indefinitely if agreement is not reached within a specified period.

The authority or private sector entity acquiring the land should make the decision to expropriate. In other words, project implementer rather than LAR implementer.

Depending on the circumstances, it may choose to abandon the project or redesign it to exclude the holdout's land. In the latter case, provisions are needed to protect the holdout from loss or damage due to implementation of the project.

44.4. Land acquisition and resettlement council shall submit its evaluation within 14 days after receiving the request for land expropriation and related evidence documents to the organizations specified in 13.1., 14.1., 15.1.

This is a purely documentary review based on the report of State LAR Org. There is no opportunity for holdouts to make their case before LAR Council.

Time frame is too short to be practical.

*44.6. If it is proved that land acquisition and resettlement was carried out in compliance with the related legislation and land acquisition and resettlement plan, the organization specified in 13.1.,14.1., 15.1. of this law shall give land expropriation permission, based on related evidence documents and evaluation of the land acquisition and resettlement council, within 21 days after the receipt of the request for land expropriation permission.*

Time frame is much too short to be practical.

## **Sanctions**

*48.1. If the breach of land acquisition and resettlement legislation is not to charge with criminal responsibility, the judge shall apply the following penalty upon conviction:*

Penalties stated should be maximums. The court must have discretion in this regard.

*48.1.1. Official who provided permission to construct buildings and structures and issued land ownership, possession and use rights, transferred rights after the land acquisition and resettlement decision is made and cut-off date for compensation entitlement is announced, shall be fined with tugrugs 10 to 15 times of minimum wage,*

A penal sanction is only appropriate if the official knowingly broke the law. In that case there should be criminal prosecution.

*48.1.2. Person or legal entity who, on their own, constructed new buildings and structures, made extension and renovation of, transferred to others or rented the buildings and structures, transferred the land ownership, possession and use rights, after the land acquisition and resettlement decision is made and cut-off date for compensation entitlement is announced, shall be fined with tugrugs 5 to 10 times and 30 to 40 times of minimum wage, respectively.*

This penalty is inappropriate and unnecessary. The person is already penalized by being disentitled to compensation.

*48.1.3. Person or legal entity who did not fulfill its contractual obligations or did not fulfill its contractual obligations properly, shall be fined with tugrugs 5 to 10 times and 30 to 40 times of minimum wage, respectively.*

Contractual obligations are enforced under contract law; i.e. the Civil Code. The contract form, which will be prescribed by the State, should contain the remedies. (The penalty is one-sided. It does not apply to the State if it fails to comply with agreements.)

## **Technical and drafting issues**

### *Article 4. Definition of terms*

From the point of view of legislative drafting, several of the definitions are unhelpful and unnecessary. Because a term is an important one in the law is not a reason for defining it, if its meaning is clear and unambiguous. Defining terms unnecessarily can only cause problems with interpretation of the law.

If it is Mongolian legislative practice, to provide definitions of important concepts in the law, even where their meaning is clear from the context in which they appear, then care should be taken not to introduce ambiguity or confusion by means of the definition.

*4.1.6. "unavoidable public needs" means public infrastructure and structures that serve purposes such as state and local public needs, benefits and safety*

5.1 distinguishes between unavoidable public needs and state and local public needs. This definition includes the latter in the former.

Public infrastructure and structures is too restrictive. Several things that land can be acquired for do not involve infrastructure or structures.

This is a good example of a definition that can produce an ambiguity that would otherwise not exist.

*4.1.7. "compensation" means amount of money or land and immovable property required to compensate the losses defined in 11.1.1.-11.1.3. of this law,  
Alternative: "compensation" means payment in cash or in-kind for an asset or a resource affected by a project at the time the asset needs to be replaced.*

In a law, a set of definitions is not a glossary, nor should it state legal duties and prohibitions. What it says is: when we use this term in the law, here is what we mean by it. (That is why most definitions are unnecessary, because the meaning is already clear from the text.) This definition of "compensation" may be correct as to what the term means in LAR practice, but in this law it means more. See 11.1, where everything an AP is entitled to comes under the heading of compensation. Rather than bother with refining the definition of "compensation" or adjusting 11.1 and several other provisions, the best thing to do is to delete the definition, as it is unnecessary.

*4.1.11. "cut-off date for compensation entitlement" means the day on which the entity affected by land acquisition eligible for receiving compensation entitlements specified in 11.1.1.-11.1.6. of this law is determined, the cut-off date for compensation entitlement is the day on which the census of people, households residing and entities running activities in the area that is included in the land being acquired and inventory of their land and assets has started.*

The cut-off date is typically established at conclusion, not start, of the census and asset survey.

*8.1. The following principles shall be followed in land acquisition and resettlement processes.*

*8.1.7. Land acquisition and resettlement to be carried out based on the state and local special needs and unavoidable public needs should be implemented by a government authority or under the strict supervision of a government authority*

The other principles listed in this article are for benefit and protection of affected persons. This one has no obvious benefit for them. It is misplaced.

*34.2. A notice, containing the date, time, location and subject of negotiation, shall be delivered to the entity affected by land acquisition.*

*34.3. Information on the compensation, support and assistance shall be attached to the notice,*

34.9. *If agreement cannot be reached within one month as specified in 34.7. of this law, the issue shall be submitted to the land acquisition and resettlement council for review and issuance of recommendations.*

Good legislative drafting avoids the passive voice, which does not tell us who has the duty to carry out the action.

40.2. *entity affected by land acquisition and other concerned parties shall participate in the land acquisition and resettlement in the following way:*

40.2.1. *disclosure of information, such as documents related to the land acquisition and resettlement, decisions, meeting notes and all other relevant information, in a most accessible, timely, relevant and understandable way,*

40.2.2. *hold a meaningful consultation in a favorable atmosphere free of intimidation, coercion and striving for understanding the interests of the parties,*

40.2.3. *joint decision-making on issues such as choosing resettlement site, livelihood restoration measures, provision of support and assistance,*

40.2.4. *provide choices on issues such as resettlement site, compensation, livelihood restoration, provision of supports and assistances, and make a choice.*

Proper legal language would state these as obligations of state bodies. Without doing so, there is doubt whether they apply, except as covered in an LAR plan.

42.2. *Documents shall be compiled for the following issues*

Passive voice again.

### **Other provisions that should be included in the law**

The Land Law and Land Allocation Law will have to be amended in order that they be compatible with this law.

There should be transitional provisions dealing with land acquisition processes that are being carried on when the law comes into force.

Certain miscellaneous provisions should be considered:

Responsibility for risk; need for guarantees from the project operator
Transfer of private project operator's rights and duties <ul style="list-style-type: none"> <li>• Restrictions and safeguards</li> </ul>
Where owner or other APs cannot be identified or found
If AP transfers ownership or rights
If AP dies or becomes incompetent
Treatment of security interests (mortgage) <ul style="list-style-type: none"> <li>• Compensation for land and buildings is paid to the mortgage-holder to the extent of its interest</li> <li>• If result of this would leave person without a home, equivalent housing to be provided</li> </ul>
Requirement to pay interest on cash compensation
Methods of notifying people