



Technical Assistance Consultant's Report

Project Number: 44140
Date: September 2012

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

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

STAKEHOLDER CONSULTATION WORKSHOP II REPORT

Prepared by ADB Consultant Team

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Asian Development Bank

STAKEHOLDER CONSULTATION WORKSHOP II REPORT

KEMPINSKI HOTEL, ULAANBAATAR, 14 SEPTEMBER 2012

INTRODUCTION

“Reform of the Legal and Regulatory Framework for Involuntary Resettlement in Mongolia” project, a subproject of the ADB TA 7566: Strengthening and Use of Country Safeguard Systems, started its second phase in February 2012. The main objective of this project is to create a legislative framework on involuntary resettlement, i.e. land acquisition, resettlement and compensation in Mongolia. In the second phase, the Consultant Team formulated the draft Law on Land acquisition, resettlement and compensation (LARC) for the concerned stakeholders and general public for consultation based on the working drafts that were developed in the first phase of the project.

In accordance with the project work plan, first stakeholder consultation workshop was organized by the project team on 6 April 2012 at the Kempinski Khaan Palace Hotel. Consultant team gathered extensive feedback information from the participants of the workshop. As a result of the workshop, it was decided to continue public consultation activities with the stakeholders through focus group discussions and targeted meetings. Between April 9 and September 7 2012, total of 29 meetings and 2 fieldtrips were organized by the consultant team. These public consultation activities allowed the Consultant team to improve and reflect the comments of the stakeholders in the draft law and come up with a second draft (of August 29, 2012) of the law on land acquisition, resettlement and compensation under the name Law on Land Expropriation (LE). It was also agreed with the Ministry of Construction and Urban Development (MCUD) to conduct the second, follow up consultation workshop to introduce the second draft of the law.

The objectives of the second consultation workshop were:

- introduce revised, second version of the draft law on land acquisition, resettlement and compensation to different stakeholders,
- provide necessary clarifications and explanations on how the draft legislation was developed and improved, and
- gather further comments from the stakeholders.

Annex 1 presents the program of the workshop.

In total of 53 people participated in the workshop. The participants were representatives from national and local government representatives, central and local authorities in charge of land affairs, representatives of international and donor organizations, civil society representatives, and private sector developers, and representatives of affected persons. The list of participants is presented in Annex 2.

The draft law on LE was emailed prior to the workshop to the participants. Workshop program, draft law and presentation slides, see annex 3 for slides, were printed out and handed to the participants

upon registration. Two-way simultaneous translation from English into Mongolian and from Mongolian into English was provided.

The workshop started at 9:00AM and closed by 13:00PM with a coffee break of 15 minutes. Workshop budget is presented in annex 5.

OPENING REMARKS

Mr. B.Chinzorig, Consultant team leader, opened the workshop with the following speech:

Good morning everybody! Draft legislation on Land Expropriation (LE) was developed by the consultant team and introduced to you in April this year. That consultation workshop was attended by the representatives of relevant government, non-government organizations, private sector and the citizens. Today, we would like to present the second, revised version of the draft law. This version was prepared based on the feedback received during April workshop and follow up meetings with different stakeholder groups. The opening of the workshop will be made by Mr. Bayarbat, Director General, Department of Urban Development and Land Affairs Policy, MCUD. Then, I will introduce draft law and its concept. After my presentation, a short clarification will be given if there is any unclear issues directly related to draft legislation. We would like to listen to your comments, critiques and suggestions after a coffee break. This is the program of our workshop today. I'd like to invite Mr. Bayarbat for the opening remarks.

Mr.Ts. Bayarbat, Director General, Department of Urban Development and Land Affairs Policy, MCUD:

Good morning to everybody! First of all, I would like to thank everyone for coming to this workshop. MCUD, Capital city Governor's Office and ADB are implementing a project for improving legislative framework of land acquisition and resettlement. Within this project a draft law on LARC has been developed. We are organizing a series of workshops, seminars, and discussions to gather valuable comments from different stakeholder groups including government and non-government organizations, citizens and the private sector. All these are for developing a good quality draft legislation. You all know well that first discussion of the draft law was organized in April this year, because you all participated in that discussion. This is the second discussion of the draft law. We see an urgent need for this legislation in the context of the current situation in the country. I firmly believe that this legislation will help us to solve many problems we are facing today including air pollution, traffic jam, and redevelopment of "Ger" districts. Thus, I encourage all of you actively participate in the discussion. With your valuable comments the quality of the draft law will definitely improve. This means that the legislation will provide complete regulation of the issue. Let us start this important discussion and I look forward to your active participation. Thank you.

PRESENTATION

Mr. Chinzorig, Consultant team leader/Land management specialist presented the second draft law on LE (see annex 3 for presentation slides). In particular, he presented the purposes for land expropriation and what the law does not regulate, i.e. the issues outside the scope of the law, the process of developing the legislation, concept of LAR law and draft law itself. His presentation included the following topics:

I. DRAFT LAW AND CONSULTING TEAM

1. Draft Law
2. Consultative process
3. Consulting team

II. CONCEPT

1. Concepts & principles
2. Eminent domain and Constitutional principles
3. Basic principles
4. Purposes and grounds for land acquisition/expropriation

III. DRAFT LAR LAW

1. Structure of draft law
2. Legal definitions
3. Purposes and grounds for land acquisition/expropriation
4. Objects to be affected by land acquisition
5. Persons to be affected by land acquisition
6. Compensation
7. Land acquisition process
8. Land acquisition and expropriation & resettlement

FEEDBACK RECEIVED

Following the presentations, the floor was open for discussions to obtain feedback from the stakeholders. There were many suggestions, comments and criticisms. Compared to April workshop, in which many of the issues raised were not directly related to the LAR, this workshop discussion was more constructive and resulted in numerous specific and detailed, therefore, valuable comments. The feedback from the stakeholders is noted and summarized in the Notes of the Consultation Workshop, see annex 4.

CONCLUSION AND CLOSURE

The workshop fulfilled its objectives and received many constructive comments and criticisms, which will be used in further improvement of the draft law. The discussions were very intensive and useful to obtain the feedback from the stakeholders. Mr. Ts. Bayarbat, Director, Department of Urban Development and Land Affairs Policy Implementation Coordination, MCUD made a short closing speech as follows:

Thank you all very much for participation in today's meeting. We received many good suggestions addressed to consulting team and working group. You can give us your comments also in written

form. Comments can be provided to ministry working group. We will further work on the draft law. I think that today's event was fruitful. I wish success to everyone. Thank you!

ANNEX 1: PROGRAM OF THE WORKSHOP

STAKEHOLDER CONSULTATION WORKSHOP ON THE DRAFT LAND EXPROPRIATION LAW

PROGRAM

September 14, 2012
KempinskiKhaan Palace Hotel

Time	Activity	Responsible Person
0845-0900	Registration	
0900-0905	Opening	B. Chinzorig, Consultant Team Leader
0905-0910	Opening Remarks	Ts. Bayarbat, Director General, Urban Development & Land Affairs Policy Implementation Coordination Department, MCUD
0910-1000	Introduction of revised draft Land Expropriation law	B. Chinzorig, Team Leader
1000-1020	Questions and clarifications regarding the draft Land Expropriation law	Stakeholders and Consultant Team
1020-1040	Tea/Coffee Break	
1040-1220	Comments and discussions on the draft Land Expropriation law	Stakeholders and Consultant Team
1220-1230	Closing and concluding remarks	Ts. Bayarbat, Director General, Urban Development & Land Affairs Policy Implementation Coordination Department, MCUD

ANNEX 2. LIST OF PARTICIPANTS

The list below is the final list of the participants. The signed list of the participants is provided to ADB (Scott Ferguson) as the original document by ordinary mail.

№	БАЙГУУЛЛАГА / ORGANIZATION	АЛБАН ТУШААЛ / POSITION	НЭР / NAME
ТӨРИЙН БАЙГУУЛЛАГУУД, /STATE ORGANIZATIONS			
ЯАМД/MINISTRIES			
1	Барилга хот байгуулалтын яам / Ministry of Road, Transportation, Construction and Urban Development	Хот байгуулалт, газрын харилцааны бодлогын хэрэгжилтийг зохицуулах газрын дарга	Ц. Баярбат / Ts. Bayarbat
2	Барилга хот байгуулалтын яам / Ministry of Road, Transportation, Construction and Urban Development	Хот байгуулалт, газрын харилцааны бодлогын газрын мэргэжилтэн	Дондмаа / E. Dondmaa
3	Барилга хот байгуулалтын яам / Ministry of Road, Transportation, Construction and Urban Development	Хот байгуулалт, газрын харилцааны бодлогын газрын мэргэжилтэн	П. Энхмандах / P. Enkhmandah
4	Барилга хот байгуулалтын яам / Ministry of Road, Transportation, Construction and Urban Development	Хяналт, шинжилгээ, мониторингий хэлтсийн мэргэжилтэн	А. Мөнхболд / A. Munkhbold
АГЕНТЛАГУУД / AGENCIES			
5	Газрын харилцаа, геодези, зураг зүйн газар /Administration of Land Affairs, Construction, Geodesy and Cartography	Газрын харилцаа, геодези, зураг зүйн газрын дарга / Administration of Land Affairs, Construction, Geodesy and Cartography, General Director	Баярсайхан / Bayarsaikhan
6	Газрын харилцаа, геодези, зураг зүйн газар / Administration of Land Affairs, Construction, Geodesy and Cartography	Газрын харилцаа, геодези, зураг зүйн газар / Director, Land Affairs and Urban Development Department	Р.Ганхуяг / R. Gankhuyag
7	Мэргэжлийн хяналтын ерөнхий газар / State General Inspection Authority	Газрын харилцаа геодези зураг зүйн хяналтын улсын ахлах байцаагч	Нарантуяа / Narantuuya
8	Улсын бүртгэлийн ерөнхий газар / Property Rights Registration	Хэлтсийн дарга	С.Зулжаргал / S. Zuljargal
9	Шүүхийн шийдвэр гүйцэтгэлийн газар / Court Decision Enforcement Authority	Нийслэлийн шийдвэр гүйцэтгэлийн ахлах гүйцэтгэгч	Ц. Бямбасүрэн
НИЙСЛЭЛИЙН БА НУТГИЙН ЗАХИРГААНЫ БАЙГУУЛЛАГУУД / UB CITY LOCAL GOVERNMENT ORGANIZATIONS			
10	НЗДТГ, хуулийн хэлтэс -Legal division, UB City Governor's Office	Senior specialist / ахлах мэргэжилтэн	Б.Буянбат / B. Buyanbat
11	НЗДТГ / Legal division, UB City Governor's Office	ахлах мэргэжилтэн, хууль зүйн хэлтэс / Senior specialist	Д.Баялагцэнгэл / D. Bayalagtse ngel
12	Нийслэлийн хөрөнгө оруулалтын газар / Capital city investment department	Дарга	С. Очирбат / S. Ochirbat

13	Нийслэлийн мэргэжлийн хяналтын агентлаг, геодези, зураг зүйн газар / Professional Inspection Agency of the Capital City, Geodesy and Cartography Control	Байгаль орчны улсын байцаагч / Chief State Inspector of Environment	Я. Жамьяан / Ya. Jamiyan
14	Нийслэлийн газрын алба / UB LAD	Газар албадан чөлөөлөх хэлтсийн дарга / Land acquisition division	Д.Бат-Ундрах / D.Bat-Undrakh
15	Нийслэлийн газрын алба / UB LAD	Газар албадан чөлөөлөх хэлтсийн ахлах мэргэжилтэн / Land acquisition division, senior specialist	Билигсайхан / Biligsaikhan
16	Нийслэлийн газрын алба	ахлах мэргэжилтэн / Senior specialist	Соёлхүү / Soyolkhuu
17	Өмнөговь аймгийн Ханбогд сум	Засаг дарга / Governor	Б. Дэндэвсамба / B. Dendevsamba
ТӨРИЙН БУС БАЙГУУЛЛАГУУД / NGOs			
18	Газар хөдөлгөөн / Gazar NGO		Батмөнх / Batmunkh
19	Газар зохион байгуулагчдын холбоо / Mongolian Land Management Association	Гүйцэтгэх захирал	Сайнбаяр / Sainbayar
20	Цогц дэмжлэг ТББ / Tsogts demjleg NGO	менежер	Г.Индра
21	Монголын П-Р ассоциаци / Mongolian PR association		Болдхуяг / Boldhuuyag
22	Монголын П-Р ассоциаци / Mongolian PR association		Ц.Болор / Ts.Bolor
БОЛОВСРОЛ ШИНЖЛЭХ УХААНЫ БАЙГУУЛЛАГУУД / ACADEMIC ORGANIZATIONS			
23	National University of Mongolia / Монгол улсын их сургууль	Газар зүй геологийн сургуулийн захирал	Батцэнгэл / Battsengel
24	National University of Mongolia / Монгол улсын их сургууль	Газар зүй геологийн сургуулийн эрдэмтэн, нарийн бичгийн дарга	П.Мягмарцэрэн / P.Muyagmartseren
25	National University of Mongolia / Монгол улсын их сургууль	Хууль зүйн сургуулийн багш	Т. Энхмэнд / T.Enkhmend
26	Science and Technology University of Mongolia / Шинжлэх ухаан технологийн их сургууль	Геодези зураг зүйн сургуулийн	Д.Оюунцэцэг / D. Oyuntsetseg
27	Science and Technology University of Mongolia / Шинжлэх ухаан технологийн их сургууль	Геодези зураг зүйн сургууль	Г. Өлзийсайхан / G. Ulsiisaihan
ХУВИЙН ХЭВШИЛ / PRIVATE SECTOR			
28	" Бэрэн " / Beren Land development	Director / Захирал	Эрдэмбаяр / Erdembayar
29	" Бэрэн " / Beren Land development	Газрын мэргэжилтэн	Зоригтбаатар / Zorigtbaatar
30	Energy resources		Сугармаа / Sugarmaa

31	Энвайрон ХХК / Environ LLC	ерөнхий захирал	Эрдэнэсайхан / Erdenesaikh an
32	Энвайрон ХХК / Environ LLC		Түвдэндорж / Tuvdendorj
33	MDSA хуулийн байгууллага	хуульч	Дүгэржав
ОЛОН УЛСЫН БАЙГУУЛЛАГУУД / INTERNATIONAL ORGANIZATIONS			
34	АХБ / ADB	Principle social development specialist (safeguards) Office of the Director General, East Asia Department	Scott Ferguson
35	АХБ / ADB	Principal project management specialist, ADB Mongolia Resident Mission	Laurence Pochard
ТӨСЛҮҮД / PROJECTS			
36	АХБ / ADB	Urban Development Sector Project	Пүрэвсүрэн / Purevsuren
37	Улаанбаатар хот дахь авто зам сайжруулах дэд төсөл	захирал	Б.Зөвцэцэг / D.Zovtsetseg
38	Улаанбаатар хот дахь авто зам сайжруулах 2 дахь төсөл	Нүүлгэн суурьшуулалтын мэргэжилтэн	Нямдорж / Nyamdorj
39	Хотын дэд бүтцийг сайжруулах төсөл / USIP II-PMU	ахлах нийгмийн ажилтан	Б.Нямсүрэн / B. Nyamsuren
40	Хотын дэд бүтцийг сайжруулах төсөл / USIP II-PMU		Цэндсүрэн / tsendsuren
41	Хот байгуулалтын салбарын чадавхийг сайжруулах төсөл / Project on Capacity Development in Urban Development Sector in Mongolia, JICA	төслийн менежер	К. Nagayama
42	Авто замын салбарын чадавхийг сайжруулах төсөл АХБ / Road sector capacity development project ADB Vicroads international projects /	хуульч	А.Жаргалан / A.Jargalan
43	Гэр хорооллыг орон сууцжуулах төсөл/Ger district housing project	мэргэжилтэн	Туяа/Туяа
44	Гэр хорооллыг орон сууцжуулах төсөл/Ger district housing project	захирал	Ганхуяг/Gan kuuyag
45	Гэр хорооллыг орон сууцжуулах төсөл/Ger district housing project		Гансүх/Gans ukh
46	"Ajilchny guur" project/JICA	захирал	Ганбат/Ganb at
47	"Ajilchny guur" project/JICA	ажилтан	Цэнгэлмаа/T sengelmaa
48	Social policy, development reseach institute		Одгэрэл/Od gerel
49	Social policy, development reseach institute		Бүрэнжаргал/Burenjargal
50	Гэр хорооллын нөхцөл сайжруулах төсөл АХБ/Ger area improvement project ADB		Алтантуяа/A ltantuuya

51	Төслийн зөвлөх баг / Project Consultant Team	Зөвлөх багийн ахлагч / Газрын менежментийн мэргэжилтэн/Project team leader/LMS	Б. Чинзориг / B.Chinzorig
52		Газрын менежментийн хуулийн мэргэжилтэн/ LMLS	В.Энхтамир/ V.Enkhtamir
53		Олон нийттэй харилцах, зөвлөлдөх мэргэжилтэн/PACS	Ж.Сүхбаатар / J.Sukhbaatar

ANNEX 3: PRESENTATION SLIDES

ADB TA-7566 (REG): Strengthening and Use of Country Safeguard Systems
Sub-project on Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia

Concepts & Introduction: Draft Law on Land Acquisition, Resettlement & Compensation

DRAFT 29 AUG 2012

Content

I. DRAFT LAW AND CONSULTING TEAM

1. Draft Law
2. Consultative process
3. Consulting team

II. CONCEPT

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2. Eminent domain and Constitutional principles
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4. Purposes and grounds for land acquisition/expropriation

III. DRAFT LAR LAW

1. Structure of draft law
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I. DRAFT LAW AND CONSULTING TEAM

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Draft Law

- Basic principles– agreed upon with ADB and MRTAUD
- Recommendations provided by ADB and MRTAUD
- Versions developed by consulting team
- Public– critiques, feedback, discussion and consultation- draft #2
- Basic principles of international agencies and other countries reflected
- Considered Mongolia’s circumstances
- Developed in compliance with Regulation on developing and submitting laws and other resolutions of/for Parliament
- Projecting outcomes and costs of draft law- not yet projects, need to be done
- Regulations following the law- not developed, need to be done

4

Consultative process

- Engage with all stakeholders
- Collecting feedback, consulting and disseminating information
- Meetings with interest groups
- 1-5 meetings with groups
- Groups not present at meeting- meet by site-visiting
- All stakeholder meeting– 2 times
- Consult mainly with NGOs, representatives of affected community, private sector and implementers
- Public agencies– consulted to some extent– get feedback from MRTCUD

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Consulting team

- Team leader/Land management specialist – B.Chinzorig
- Land management and law specialist – V.Enhtamir
- Social development and resettlement specialist – S.Tsengelmaa
- Organizational development specialist – D.Odonchimeg
- Public relations and consulting specialist – J. Suhbaatar
- Land management law specialist – Campbell Duncan
- Land and real estate valuation specialist – Heenam Jung

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Consulting team

- Independent consultants
- Selected and commissioned by ADB and MRTAUD
- Professional team– committed towards finding optimal solutions by considering current circumstances
- No persons with conflict of interest in relation to draft law

II. CONCEPT

Background

- **Social and economic**
 - Rapid socio-economic change, development
 - State, local special needs and public need
 - Need for land expropriation

Background

- **Legal**
 - Lack of regulations to enforce eminent domain
 - Lack of protection of the affected persons
 - Grounds for land acquisition under eminent not defined

Background

- **Legal**

- Uncertainty of the land acquisition process
- Compensation and valuation - not addressed by law
- Rehabilitation, relocation and transition measures are lacking and unclear
- No social safeguards, including for the poor and vulnerable

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Eminent domain and Constitutional principles

- **Eminent Domain**

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

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

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Eminent domain and Constitutional principles

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

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Eminent domain and Constitutional principles

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

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Concepts & Principles

- **Concepts**

- introduce eminent domain
- but “protect the rights of the affected persons”
- first negotiation and agreement, if it fails expropriation
- provide just compensation + rehabilitation, relocation, transitional assistances
 - Compensation based on the principles of “replacement cost”

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Concepts & Principles

- **Concepts**

- provide additional social welfare measures for vulnerable
- integrate international social safeguard principles and standards
- refine state and local special needs
- introduce public needs
 - special case – urban redevelopment

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Concepts & Principles

- **Concepts**

- applicable for urban and rural areas
- clarity in the responsibilities and processes
- new scheme for financing of LAR activities
- base on existing governmental institutional & functional structure
 - administration, state inspection, national auditing, court decision enforcement

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Concepts & Principles

- **Concepts**

- public private partnership
 - private sector can implement Land Acquisition and Resettlement Plan, but not expropriation
 - private sector to support with expertise on valuation, SIA etc.
- alternative dispute resolution mechanism
 - Mediation Council

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Concepts & Principles

• Principles

- main principles – Constitutional provisions
- avoid, minimize
- Justification for land acquisition – to be well defined and substantiated
- affected entity – cannot refuse land acquisition
- negotiation and agreement
- compensation based on replacement cost
- provision of information, participation, openness
- activities to be implemented by the government entity, some activities – private sector

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Concepts & Principles

• Principles

- expropriation – last resort
- expropriation – only by government entity
- affected entity's land, housing, livelihood, income not worse off
- affected vulnerable entity – land, housing, livelihood better off
- Costs to be born from the development, activity, project budget

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Purposes/grounds for land acquisition

- **State, local special need (only applies to land for special need stated in this law)**
 - Land Law specifies state, local special needs
 - some of these are included in this law
- **Public need**
 - new definition, closely tied with the provisions in this law

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Purposes/grounds for land acquisition

- **Public need**

“public need” means ... activity, infrastructure, buildings & facilities that are necessarily required for the interest, need and safety of the public; and activities of importance to national security, national and regional economic and social development ...

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Purposes/grounds for land acquisition

- **State and local special needs**
 - State Specially Protected Area
 - Create habitats of extinct wildlife–Takhi horse at Hustai range, protecting headwaters/reserve areas– Tuul river headwater
 - Border line corridor
 - Land for defense and securities purpose

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Purposes/grounds for land acquisition

- **State and local special needs**
 - Animal husbandry– social and economic importance
 - Inter-aimag otor movement/reserve pastureland
 - Pasture land to be used during disasters- Herlen Bayan Ulaan
 - Haymaking areas for state fodder fund
 - Area in where hay is made for the state reserve

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Purposes/grounds for land acquisition

- **Public needs**

- Land for engineering infrastructure (Law on Urban Development)
 - Power lines and networks
 - Drinking water and sewage pipelines
 - Road and related facilities
 - Transportation and communication network
 - Other necessary facilities
 - Add thermal pipeline in this classification

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Purposes/grounds for land acquisition

- **Public needs**

- Land for engineering infrastructure (Law on Urban Development)
 - Road- width, water removal system, canals, greenery areas, pedestrian road
 - Reduction of dust in areas under road construction, safety, quick, reduce damage to vehicles and traffic jam, less frustration
 - Relates to all urban population

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Purposes/grounds for land acquisition

- **Public needs**

- Land for engineering infrastructure (Law on Urban Development)
 - Drinking water, sewage and thermal pipelines
 - Key pipelines
 - Sub-lines
 - Population in the area under pipeline construction to live in healthy environment free from air, soil and underground water pollution
 - All urban population living in safe environment

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Purposes/grounds for land acquisition

- **Public needs**

- Land for state and local government owned schools and kindergartens
 - Kindergartens and schools must exist in nearby the community, possible to purchase the nearby land for family clinics and common service facilities
- Land for dams, canals and catchment areas
 - Preventing from disasters such as flood
- Mineral deposits with strategic importance (Minerals Law) – Tavan Tolgoi, Oyu Tolgoi, Erdenet, Asgat and so on.

28

Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

As stated in Law on Urban Re-Development

- Re-development of parts that do not meet architectural, urban development and planning requirements
- Decommission facilities and constructions not meeting the maintenance requirements and build anew
- Re-arrangement of land in peri-urban areas
- Vacate land in peri-urban areas and undertake construction
- Land required for re-planning of land in peri-urban areas

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

Activities as stated in Law on Urban Re-Development

- E.g 7th micro-district, 14th micro-district, district planned in Radio and TV Center area, 40 000 micro-district, Apartment for workers of Meat processing factories in Songinohairhan district.
- Planning – residents must have land and real estate registration/title
 - Public apartment micro-districts, housing area, office buildings, selling land, replacing old apartment to new apartment- owners of real estate to decide

30

Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

Activities as stated in Law on Urban Re-Development

- Owners giving their land for the development and specific projects to be beneficiaries and shareholders
- If some title owners do not agree with plans and follow-up development:
 - Minority to respect interests of majority
 - Majority request to force the minority

11

Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

Activities as stated in Law on Urban Re-Development

- However, need to enable choices for the minority
 - Although not agree, but gain benefits of plans and follow-up development same as the majority
 - Not agree, not participate in activities – Resolve in accordance with law on LAR
 - Get compensation and exit project based on request from majority (90:10)
 - Reference to this law

11

Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

Activities on urban re-development and land expropriation as stated in this law

- Principally two different issues
- Urban re-development could be solved with participation of land owners and beneficial for them
- Solution is not to expropriate land
- Owners find solutions– private house, apartments, office and service facilities and etc.

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**

Activities on urban re-development and land expropriation as stated in this law

- According to this law, land expropriation must be carried out as obligation
- Public interests
 - Live in safe and healthy environment
 - Provision of basic needs
 - Need for expropriate under eminent domain as it is necessary in terms of social and economic development and engineering solutions

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**
 - Constructions taking place or have completed without permission, or owns the construction illegally in different forms
 - This is regulated by Land Law– Article 57
 - Evict land with notification from the respective level Governor
 - Expropriate land if not evicted within the stipulated period, and guilty party to indemnify the costs
 - If necessary, shift to state ownership for free
 - No compensation in this case

33

Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**
 - Constructions taking place or have completed without permission, or owns the construction illegally in different forms
 - For example building in Zaisan area
 - Building blocking roads, squares and playgrounds in the downtown
 - **Address specifically and separately to issues of peri-urban areas without land permission**
 - Under the high voltage line, flood and other disaster prone areas, cornered and landlocked areas

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**
 - Mineral deposits except those defines as strategically important and mining areas
 - If the deposit or mine is not formally defined as strategically important, not land expropriation shall be carried out as stated in this law
 - Land can be acquired only on mutual agreement and contracting
 - Mining operation is not necessary for ensuring provision of basic needs and healthy living environment

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**
 - Mineral deposits except those defines as strategically important and mining areas
 - However, conflicts often arise between herders mining companies as mining areas cover rangeland, water points, spring and winter shelters due to
 - Solutions must be reflected in the Minerals Law

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Purposes/grounds for land acquisition

- **Draft law shall not apply to the following**
 - Mineral deposits except those defines as strategically important and mining areas
 - Give mining license based on consent from the local community
 - Making contract with the community on its community related activities
 - Reflect that community consent must be sought for to define if the land has to be acquired or not, and get respective permission from the community
 - Reflect issues related to compensation– possible to calculate the compensations in compliance with this law

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III. Draft LAR Law

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LARC structure

6 Chapters and 48 articles

- I. General provision
- II. Entity affected by land acquisition, its rights and duties
- III. Rights and duties of organizations responsible for the LAR issue/Parliament, Cabinet, MRTCUD, ALACGaC, land offices as well Mediation Council, Representative Organization of affected entities/
- IV. Land acquisition and resettlement activities
- V. Land expropriation
- VI. Miscellaneous

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Legal definitions

- Land acquisition
- Land expropriation
- Land acquisition with compensations
- Land expropriation with compensation
- Land acquisition, resettlement and compensation

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Purposes and grounds for land acquisition and expropriation

- Acquire land of land owners, possessors and users for the state and local needs as well as for public needs (under expropriation condition) by (i) acquire land by mutual agreement, if it fails (ii) expropriate land.
- On one side, **ensure the local and state special as well as public needs are met**, on the other hand **protect the rights of affected persons and compensate their damages**
- Provide fair compensation to affected persons

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Objects for land expropriation

- Land ownership, possession and use rights and other related rights
- Right to own moveable and immovable property and other related rights
- Rangeland, water points in the rangeland, areas with natural salt, and possibilities to use these areas

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Affected persons

- Person entitled to compensation for losses caused by need for land acquisition, individuals and entities losing their rights and possibilities of living, employment and business that was carried out on the land which was under ownership, possession, those renting the land or object as well as those entitled with right to get compensated
- Person with possibility to create rights
- Have special regulation on issues related to person impossible to create rights
- Third person affected by land acquisition

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Compensation

- **Compensation**
 - Amount of money required to compensate the loss of land and immovable property, due to land expropriation, assessed with replacement value or market value and wages, profit of business activity, relocation, transition and livelihood assistances
 - If the parties reach agreement through negotiation, incentive equal to 10% of compensation to be paid

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Compensation

- **Compensation**
 - Market price
 - Replacement cost - amount required to replace lost assets of the entity affected by land expropriation, i.e. the amount required to re-establish similar size, quality and similarly conditioned and located structures that were lost

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Compensation

- **Compensation**
 - Resettlement and relocation assistance
 - Costs for transportation, loading and unloading, preparation and development of land to be resettled, taxes for transfer of land and immovable property rights, and administrative costs
 - Interim period
 - Accommodation until the resettlement, salary and business profit losses due to resettlement
 - Livelihoods support
 - Support for establishing livelihoods after the resettlement, re-starting and stabilizing business, herds to adapt to the resettled area, piling up manure/dried dung for shelter bedding and running business, employment- training and qualification/skills development

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Compensation

- **Compensation**
 - Citizens with necessity to receive social welfare
 - Compensation
 - Additional support and social welfare

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Land expropriation activities

- **Basic stages**
 - Preparation
 - Decision making
 - Implementation
 - Evict land based on mutual agreement and contract
 - Expropriation of land

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Land expropriation activities

- **Preparation**

- Preliminary evaluation on land acquisition and expropriation
 - Grounds for expropriation, budget, activities and social impact
 - Feasibility study, key components of budget documents
 - Approval of Feasibility study and make basis for decision making
 - Make the preliminary valuation in partnership with ALAGGaC, other agencies, ministries and local administrations

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Land expropriation activities

- **Decision making**

- Only Parliament, Aimag and Capital City Representative Khurals and Cabinet to make decision
- Based on preliminary valuation
- Ground for expropriation to be defined clearly

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Land expropriation activities

- **Implementation**
 - Notify and inform the decision
 - Stipulate the deadline
 - Develop and implement land expropriation plan
 - Valuation for compensation
 - Land and immovable property
 - Support resettlement and interim livelihoods
 - Negotiating and contracting
 - Contracting
 - Transfer of land and immovable property rights
 - Resettlement and relocation
 - Evict land based on mutual agreement and contract
 - Expropriation

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Land expropriation & forced eviction

Land expropriation and forced eviction- (only when necessary)

- **Administrative land expropriation**
 - decision to land expropriation
 - Decision made by entities, who approved development project /exception for Parliament/
 - Make room for citizens to move voluntarily/notice of decision/
- **Judicial land expropriation /forced eviction/**
 - LARC implementer's claim– court
 - Carried out by Court decision enforcement agency
 - exception for winter season 15 September- 15 May

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Land expropriation & forced eviction

- Preliminary valuation for land acquisition and expropriation
- Decision to evict/ expropriate land
- Financing and budget
- Deadline/end-date
- Expose/enter to land and immovable property
- Compensation valuation and issuance of compensations
- Land eviction/expropriation plan
- Negotiation
- Contracting
- Transfer of land and immovable property rights
- Resettlement and relocation
- Support to livelihoods of affected persons
- Inspection, oversight and audit
- Documentation
- Expropriation, if necessary

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Please send any criticisms, recommendations and suggestions to:

- Administration of Land Affairs, Construction, Geodesy & Cartography
Room 403, Ikh Toiruu 1, Chingeltei District, Ulaanbaatar
- J. Sukhbaatar, Public awareness and consultation specialist
• jsukhbaatar8@hotmail.com
- V. Enkhtamir, Land management legal specialist
• tamiira_26@yahoo.com
- S. Tsengelmaa, Social development and resettlement specialist
• stengelmaa@gmail.com
- D. Odonchimeg, Institutional development specialist
• oddnoo@yahoo.com
- B. Chinzorig, Team Leader/Land management specialist
• chinzorig@mongol.net

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ANNEX 4: NOTES OF WORKSHOP DISCUSSION

Stakeholder Consultation Meeting on Law on Land Expropriation Kempinsky Khan Palace Hotel 14 September 2012

Notes of the Discussion on Draft Law on Land Expropriation

B.Chinzorig

Good morning. We have developed the draft law and organized a discussion in April inviting relevant government agencies, NGOs, citizens, and representatives of the private sector. Since then, we have also been organizing meetings with interested groups, and the comments and feedback received at these meetings were incorporated in the draft law, further improving it. Today we are presenting the second draft of the law for public discussion. The meeting will be opened by Mr. Bayarbat, Director of the Department of Urban Development and Land Affairs Policy Implementation Coordination, Ministry of Urban Development. After that, myself, Chinzorig, the project Team Leader will present the draft law as well as the concept of the law. After the presentation, there will be opportunity to ask questions to clarify any area of the draft law that were not clear, before we break for tea. Then, floor will be opened for your comments and suggestions. This is how we will proceed today. Now let me invite Mr. Bayarbat to open the meeting.

Ts. Bayarbat (Director of the Department of Urban Development and Land Relations Policy Implementation, Ministry of Urban Development)

Good morning to all of you. First of all, thank you for coming here today. The Ministry of Urban Development in cooperation with the Mayor's Office and the Asian Development Bank is implementing a project to strengthen the legal environment for land acquisition and resettlement. As part of this project, a draft Law on Land Expropriation was developed. In order to ensure the quality of this legislative act, we have conducted several workshops and discussions in order to obtain comments and critical remarks from the public, government agencies and NGOs. As you may already know, the first discussion took place in April. Some of you also participated in that discussion. This is the second discussion.

The draft law is necessitated by the current circumstances of our country. We think that this law will be very important in resolving many challenging issues that we face today. For example, redevelopment of ger district, in particular, air pollution, road traffic etc. We hope the law will contribute significantly to resolving many problems of this kind. Therefore, we hope that you will participate actively in the discussion and provide suggestions, recommendations and comments. Following such discussions, the quality of our draft law will also improve. Quality draft law means all regulatory aspects will be fully incorporated in the law. Therefore, I urge you again to participate actively and let me announce today's consultative meeting open. Thank you.

Dugerjav (Lawyer, "MDSA" law firm)

- What new laws are expected to be developed in the process of developing this draft law? Are you planning to make any amendment to existing laws? If so, what are these amendments?

V. Enkhtamir (answer)

- If this draft is to be approved now, amendments are needed in the Land Law on Land and the Law on Privatization of Land to citizens of Mongolia. As you know, the Land Law provides that “land shall be exchanged or returned”, and as this is being replaced by the concept of land acquisition, the above two laws will need amendment. Also if necessary, the Law on Court Decision Enforcement will be amended. Draft of subsequent laws has not been developed yet.

Purevsuren (Urban Development Project, Asian Development Bank):

- It was said that land will be expropriated for development project. It seems time for starting these projects after land is expropriated is not specified. Can you please explain?
- Could you please also clarify for what purpose land will be expropriated? I can take an example from my personal experience. Land is made vacant, but the follow up work does not start so the land acquisition loses its sense. It has become a big problem now to look after the land. After households moved out, others move in, and it is becoming increasingly difficult to fight. Any regulation of such issue?

B.Chinzorig (answer)

- It is a question about legal regulation. As provided for in the draft law, after land is made vacant, land office will hand it over to those responsible for development project on that piece of land. Land is expropriated and handed over to the party responsible for further action. If it was for road construction, an act of transfer will be made and handed over to the Road Department.

S. Ochirbat (Director of the Capital City Investment Department)

- Article 20 on common mandate of local governing bodies says “Aimag, the capital city, soum, district, bag, khoroo governor shall have the following mandate with regard to land expropriation“. The Law on Urban Development mentions about “urban development project“. Therefore, I think it is not sufficient to amend the Land Law. Do you have an explanation?

V. Enkhtamir (answer)

- Aimag, the capital city, soum, district, bag, khoroo governors are referred to here to state common mandate that they would exercise. If you read the draft law, you will see that the State provides land but the actual process is handled by the governors with due rights. As envisaged in the draft law, governor will not make decision on his/her own regarding expropriation of land that went to private ownership in accordance with the decision of governor with due rights. The expropriation decision will be made by the State Great Khural, the Cabinet, and aimag and the capital city khurals. In other words, the decision will be a collective decision. This will ensure the right judgment is made on whether this is a public interest issue or not. Therefore, instead of making decisions themselves, governors identify the need and pass the issue on to local relevant bodies.

Tea break

Sainbayar (Executive Director, Association of Land administration officers)

- I have a few comments in relation to the draft law. The purpose of the land expropriation law, as written in the draft law, is to expropriate land. The issue of protecting legal and legitimate rights of land possessors and owners when their land is subject to expropriation is included in the section on principles. I propose this issue of protecting rights should be included in the purpose section.
- In Article 17 and 18, there are provisions on rights of public administration organization in charge of land issues. One of these articles needs to be deleted.
- There is a provision which says poor and vulnerable citizens affected by land expropriation shall be protected. However, this protection does not extend to business entities even though they do violate laws. This may involve a breach of the Constitution as such provision appears to

discriminate among the citizens dividing them as rich or poor, and discriminate those who do try to do business. Therefore, strict measures of sanction should be imposed on all parties and if law was violated, any of these allowances should not be given.

- After land is made vacant those vulnerable groups move back on to this land and ask for compensation, when project work does not start straightaway. This will create a complicated situation.
- Make clear who will be members of the Mediation Council. Especially we need to decide on participation of professionals - whether those professionals should be people from government agencies or private sector. This should be clear. Because the state is the party that is expropriating the land, and the Mediation Council is supposed to defend rights of citizens, it would make sense if participation of non government organizations and associations of professional people is greater. And I wish you success.

V. Enkhtamir (answer)

- Article 24 deals with this. In order to create the Mediation Council, this article specified parties that should be included in the composition of the Regulatory Committee. For example, it will be composed of 11 persons, including representative of local areas, professional valuator, etc. if you have suggestions to remove or add somebody, please let us know.
- There is a provision which aims to protect interests of vulnerable groups. This reflects international trend in land expropriation. International organizations put a requirement to specifically take care of vulnerable groups as people living below the poverty line have more probability to become vulnerable because of the land expropriation. This is the core policy of the Asian Development Bank. Therefore, I don't think that this will affect the equality principle proclaimed in the Constitution.

T. Enkhmend (Lecturer, Law School, National University of Mongolia)

- I have a question. Land expropriation is one type of activity. So would that be possible to have a title of this law other than land expropriation. The Constitution used a word land acquisition, so this can be taken into account. Expropriation means forceful implementation. This will raise human rights issues, on the other hand. Although this action will be undertaken in public interest, the use of word with a meaning of force needs to be revisited and changed.
- This action involves two subjects. It seems to me that interests of those related to the expropriating party, that is, the interests of state organizations dominate in this law and the protection of the other side, those who are becoming subject to expropriation is not sufficient. So if there are risks to these sides, the law should also provide how relationship shall be resolved when risks materialize.
- Participation of professional bodies, organizations is very limited. Especially the purpose for which land expropriation will take place should be decided based on the feedback from professional bodies and organizations. In addition to the existing provision on the mandate of state organizations, mandate of professional organizations should also be added.
- The capital city mayor, newly appointed governors are using new regulatory action with regard to buildings which do not have any authorization or permission, and seeking citizens' feedback. Therefore, a provision on obtaining citizens comments and feedback need to be added.
- Last summer the Law on Mediation was adopted. To what extent the Mediation Council is in line with that law? How funding will be raised? Disputes that arise from implementation of the law should go first to the Mediation Council and then, to the court. Otherwise, one of the disputed parties is state organization and according to the jurisdiction, the case should go to the Administrative court, and this will put an immense burden on that court. Therefore, one of the mandate of the Medication council can be relevant preparation for court proceeding.

V. Enkhtamir (answer)

- This is a complicated issue. There are different versions of the title of the law. When the law gets adopted, it may end up having a name 'law on land acquisition, resettlement and compensation' etc. Your comments are welcome. The law is only in drafting process now.
- Protection of rights of those who will be subject to expropriation. This law has two sides and two duties. One is to protect citizen's rights and the other one is to implement state duties. Both are considered in the law. We put efforts to ensure human rights are protected. If anything is missing, please share with us specific comments.
- Professional bodies and organizations will be represented by land valuers, cadastre mapping specialists, and land relations specialists. We also need to take into account capacity building issues.
- Law on Mediation as I understand is about resolving family disputes. Therefore, we tried to avoid using the same name so that it is clear that it is not about family disputes and is not based on equality principle. The Mediation Council will only provide advisory services to the dispute hence we have not made the services of this Council mandatory. As provided for in the section on rights of those who are affected by land expropriation, they have the right to go to court bypassing the Medication Council. Certainly few cases will go to court, but not as many as family disputes. The expropriation will not involve the whole Ulaanbaatar city.

B.Nyamsuren (Senior Coordinator, Ulaanbaatar City Public Utilities Improvement Project)

- Does the draft law include provisions on handling complaints related to land expropriation? If not, this is something that should be included. It should be clear to citizens who shall submit complaint to whom and how, and citizens should be able to submit complaint if needed, and receive responses through a feedback system.
- When we look at activities or steps of land expropriation, the list has preparation, decision, implementation, and stopped there. It would be good to add one more stage – monitoring and evaluation. Date, how many households were affected, and how many households improved their livelihood and how many were not able to do so etc. should be collected and it would be good to announce such information to the public.
- How the public can be involved in monitoring and evaluation. In general, it is not possible for the state organizations alone to make decision and to resolve the issue. I also think and issues of social responsibility should be included as well.

V. Enkhtamir (answer)

- It was a requirement to include complaints mechanisms and oversight and monitoring in accordance with the relevant policy of the Asian Development Bank and the international benchmark. This issue was resolved by referring to the existing Law on Procedure for Making Complaints and Requests to Public Organizations and Public Officials and Resolving Them.
- Further discussion will be held on how to inform about living standards of people who were affected by land expropriation. This is a very good proposal. We will also ask our international consultants. We will discuss again how this should be incorporated in the draft law.
- Public participation will be regulated through Medication Council.

Erdembayar (Beren company)

- The rationale for land expropriation is public needs, as it was said in the draft law. However, why public interest is not considered as justification or rationale for land expropriation? Public is a comprehensive concept. For example, in Ulaanbaatar, ger districts in A zone, such as districts 7,14, and denjiin myanga are the areas which pollute the city the most. Why public needs are separated from public interest?
- There are some legal contradictions. We are told that housing of Ger districts will be regulated by the City Redevelopment Law. However, in Article 18.6 of the Law on Urban Redevelopment, land

will be taken to the state and local special purposes in order to conduct housing construction. This is again also included in the draft law on land expropriation. There is a weak link here, please explain.

V. Enkhtamir (answer)

- Let me sit together with you separately on the second question you have asked.
- The first question you have asked is very important. Public needs and public interest are comprehensive concepts. Kello case is well known in the US. In 2005, the court made a decision on the issue of vacating land of several families based on economic benefits of carrying out the planned project. Since then, there has been a trend to put limit to such decisions. This has become one of the key issues of the election debate. The point is the public interest is a very big pot. Private property cannot be attacked using public interest. We deleted issues related to nuclear waste or airport. We do not want to have a big pot which breaches human rights.

B.Chinzorig (answer)

- This draft law does not have anything on urban redevelopment. Because in order to allow those people to live in healthy and safe environment and in order not to allow air pollution, soil degradation, and water contamination, infrastructure can be built in consultation with owners, and land owners can build their houses. If owners agree, a house or an apartment can be built, office building can be built. This will incur profit. Road will also bring profit in the long run. The solution should be found that does not negatively affect air, soil and water. And this solution should be based on owners' proposals.

Ts.Bayarbat (answer)

- At the final stage of the drafting process, the two laws will be screened again and any duplication will be removed, but there will be two laws.

Tsendsuren (Project Manager, Ulaanbaatar City Infrastructure Development Project)

- Although it is important and appropriate to translate international laws and procedures to local context, I have one comment in order to support those local organizations that do implementation in local conditions. Article 8.3 of the draft Law on Land Expropriation says about the required documents being under the collection process. How this can be determined? It is a very difficult process to determine in which stage of the process the documents are. Article 8.4, 8.5 are provisions that protect rights of poor and vulnerable groups, why do we need again Article 8.3?
- On valuator of compensation. There are three main types of valuation. Depending on which method is used the price or the amount will fluctuate. For example, if we use income method, the cost will be higher, if we use real investment made into the property, the cost may be lower. Therefore, percentage and the method need to be specified. Otherwise, two different methods can be used and if these two valuations are compared and if it turns out higher than 20 percent, the implementation of the law will entail lots of disputes.

V. Enkhtamir (answer)

- Article 8.3 is a provision which took into account Mongolian specific condition. In western countries, land expropriation takes place in an environment where all land areas are already registered. Whereas in Mongolia although ownership process started in 2002, the process has not completed yet, and some have received certificate and some have not. Therefore, this provision deals with the situation where land is still not registered but where land title can be easily issued and there is no contradiction. Also, this provision covers those who have land possession right, and have submitted requests for ownership and are waiting for issuance of certificate.

Narantuya (State Specialized Inspection Agency)

- The draft law says that environmental degradation will be determined by general environmental impact assessment. This is not sufficient. As indicated in laws, specific detailed environmental impact assessment should be done.
- The role of the State Property Registration Office is very weakly reflected in the draft law. This is an organization which has a reputation of high bureaucratic red tape. The draft law should specify its role in details. Otherwise, the implementation may be complicated.
- Valuation of property was discussed. But the issue of land surveying and measurements needs to be included here. Because of land issues, Mongolia shifted to unified system topographical and horizontal measurements. According to this new measurement system, owned land will have different size. This is something that should be done.
- When you refer to mining land, does it only refer to mining sites or include other major construction areas such as electricity, heading power station etc, which are adjacent to the mining sites. What to do with those sites? If everything is included, there will be almost no one to live there. I wish you take a good care of this issue.
- Also there is a need to pay attention to the selection of words. There are many expression and words that have never been used in Mongolian legal lexicon. Explanation of terms should be provided well in the beginning sections. The draft law has a word to 'take forcefully'. All laws should be based on the principle of humane treatment. Therefore, it may not be good to use those words which will sound negatively in people's mind.
- The issue of registration archive is very vague. In our country, registration is in disorder. Registration and archiving should be done very accurately. As citizens' rights are at stake, land expropriation will take a lot of time and will take different routes. Therefore, a special attention should be drawn to this issue.

V. Enkhtamir (answer)

- I accept all the suggestions. However, putting order in registration and archiving need to be done through other laws, not this law.

Munkhbat (Ministry of Urban Development)

- Since the process of the law replaces one right by another, the name can refer to 'Retaking of land to state' or 'Land Nationalization'.
- This law deals only with land expropriation by the state for one-off action. So I understand this law will not apply to urban redevelopment, rebuilding urban roads or expanding roads.
- The law has parts about mining sites that are of strategic importance. I understand this list will include those 15 mines approved by the Parliament. However, in Zavkhan aimag, there is no coal mine and if a coal deposit is found, whether this law will apply or another law will regulate that issue? If reference is still to the list of mines of strategic importance, I would like to suggest reviewing the draft law again.
- Article 13 and 14 on mandate of state and local authorities – it would be better to separate them as it was done in the Land Law, as the scope of aimag, capital city, soum, and district are different. Soum and district are different.

V. Enkhtamir (answer)

- The actual wording is to replace and retake land with compensation based on state and society's necessary needs. Land nationalization is not appropriate for current reality. The Constitution is a good law, but already it has been 20 years since it was adopted. So terminology may not be appropriate. I agree to your second suggestion. However, this regulation was limited to the scope of the existing laws.

Battsend (“Gazar (Land) movement for fair ownership of land)

- I work as human resource and legal advisor to the mayor. However, my suggestion is not the official position of the city mayor’s office. There are 4-5 articles which say that follow up procedure shall regulate. It is not important how many pages the law will have. Therefore, as much as possible procedures should be avoided. Please take note that all issues related to compensation are going to be regulated by procedures.
- Article 4.1 of the draft law has constitutional words and terms. However, different uses of similar words should be streamlined in terms of formulation – society’s unavoidable needs, public needs, public unavoidable/necessary needs etc. I propose the last one is better.
- Article 6 says about purposes of public needs. Here public security should also be included. In addition to school and kindergarten, security and disaster management issue should be added. There should be one firefighting point among 4,000 households. Is it possible to include firefighting and police station?
- Reference was made to dams and canals. This would probably be included in engineering infrastructure according to urban development. What do you understand by canals – this should not have different meanings and allow everybody to interpret according to own understanding.
- What do mean by relevant documents? I would think of one thing and others will have a different notion. Could you elaborate this in the explanation section?
- Under the mandate of the Parliament, if deemed necessary, some issues that fall under the mandate of aimag and the capital city may be submitted to the Parliament. According to our laws and legislations, the upper level organizations should not intervene on issues that fall under aimag and the capital city hural. Please consider this.
- Reducing the number procedures is an issue that arises from real life. The Presidium of the capital city khural in its decree No.92 adopted a procedure on land expropriation and resettlement of ger district. In accordance with existing laws, procedures adopted by the capital city hural do not have to be endorsed by central level state organizations. Because if the Ministry of Urban development issues a normative act, this act has to go to the Ministry of Justice and only after its endorsement becomes a valid normative act. But this is not the case with local hural decisions. Such decisions are explained by the Constitution and the Law on Administrative Units and Its Management. Therefore I propose to avoid procedures. It does not matter if the law is long or short. I wish you success.

V. Enkhtamir (answer)

- I agree with you. Procedures should not violate human rights. Public needs should be determined by local hurals. Depending on financing sources, decision shall be made at different levels.

B.Chinzorig

- The content of each procedure that should be developed will be written down in one page.

Soyolkhuu (Capital city land office)

- This is a very important draft law. The Land office had been dealing with this type of issues without having a legislative act regulating these issues. Land Acquisition Division was established. Its staff members are attending this meeting. But no law at all. This draft law envisages two concepts – land acquisition and land expropriation. Land expropriation refers to vacating land through administrative decisions, whereas land expropriation refers to vacating land by court decision and this decision will be implemented by the Court Decision Enforcement Agency. So who will implement the administrative decision? Is there any difference between expropriation and by force?
- Secondly, this law will go into force from the day it was adopted, I guess. Without covering past decisions. So how do we vacate land, such as Zaisan?

- Many social welfare related constructions are taking place in Ulaanbaatar with state and local budgetary resources. These include schools and kindergartens inside ger districts. These pieces of land are usually already under somebody's ownership. People do not accept the amount of compensation adopted by the Property Relations Division. So how do we regulation such circumstances? Should be use force?

V. Enkhtamir (answer)

- This is a question that I wished you asked. This is a law which has a harsh name but is very generous and humane. As stipulated in this draft law, land expropriation shall be carried out in two stages. Land expropriation through administrative processes means citizens will enter into negotiations with the capital city land office, and if this fails, land office will go to authority with due mandate and will explain the purpose. After that, the authority with due mandate will make a decision on land expropriation and gives it to the land office. The land office shall present the decision to citizens. If again this fails, the process will go to the court. In case it goes to the court, 10 percent bonus will not be provided.
- On what to do for Zaisan. Dismantling unauthorized buildings will not be regulated by this law.
- Land valuation will be conducted for school and kindergarten lands. According to the law, it will be a market based valuation or valuation at replacement value.

Dendevsamba (Umnugobi aimag, Khanbogd soum Governor)

- The current plans for urban development, construction and business entities are being aligned with the master plan. In the future, the general principle will apply when the master plan is improved or updated. There is not much need to vacate hospital, school, kindergarten land. Any official who gave land authorization violating the master plan should be held accountable for his/her decision.
- It is illegal to provide compensation for land that was acquired from a governor of certain level without providing ownership. It is only fair to provide compensation and resettlement to those who legally obtained possession, use, or ownership. In all the other cases, the article 57 of the Land Law should apply.
- If resettlement covers all sites of mining with exploration and extraction licenses, there will be a chaos or there will be many other issues arising. Therefore, it may be appropriate to limit only to mining sites of strategic importance. But border line should be determined, and extraction and exploration fields and areas outside of these fields, what would be the area next to it on the left side or right side etc. There is also an issue of affected zones. For Khanbogd soum, all of these issues are already under discussion. It would be appropriate to avoid resettlement as much as possible, according to the laws.
- After resettlement, how do you envisage the arrangement for adjustment process in the new pasture? If the state cannot do this job, the organization in charge of resettlement may be given this responsibility.
- Article 7.1.3 refers to article 6.2.1 of the Land Law on common use water points, fields of salt licks, and possibility of using these. I suggest to add to this list wintering place and spring place.
- In Article 5.1.5, somebody who is renting cannot be identified as affected by land expropriation. What will happen if lessee was temporarily residing but obtains compensation and moves out? This should cover only possessors, users and owners and does not need to include lessees.
- Article 5.1.10 refers to 'lost land' due to land expropriation, I suggest to change it to 'land returned or retaken' by expropriation.
- Instead of 'professionals specialized in land relations and land expropriation', I suggest to use the word 'professionals with due mandate'.
- Article 43.3, 43.4 say in cases where 'it was found' that state central administrative agencies have implemented land expropriation in accordance with relevant laws and this law. This sounds like a court decision. Please change.

- Article 44.6 says that affected person shall vacate the land within 20 days after receiving compensation, assistance, support and bonus. However, Article 44.5 says that compensation, assistance, support and bonus shall be provided within 22 working days after the agreement was signed with affected person. Compensation needs to be given in installments. Otherwise, there may be instances where people do not respect the state. Compensation can be given in installments based on percentage of performance.
- It was said that person will be arrested for 3-7 days. Arresting somebody for 3-7 days is a big issue. Law has to be humane. Yet, everyone who read the law should get the understanding that this is binding. The law should be writing in such way. Otherwise, when you have such provision in the law, arrest may be pre-planned.

V. Enkhtamir (answer)

- We have invited Mr. Dendevsamba as special guest. Thank you for accepting our invitation and providing valuable comments.

Dugerjav (Lawyer, "MDSA" law firm)

- It is quite a good draft. There are two ways to take property against the will of owners. The first one is to confiscate it if law was violated. Expropriate means taking private property for public needs with compensation. In terms of the title of the draft law, Law on Land Expropriation (Газрыг дайчлан гаргуулах тухай хууль) would be in line with the Constitution and the Civil Law.
- This law would be more understandable or clear if made as a part of Package Law on Land Reforms.
- You are talking about general principles. But principles of transparency and public participation must always be included. These principles should be materialized by specific provisions.
- In later sections, local hural and parliament are made as decision making bodies. This sounds like a pre-court decision. As decision has already been made at the planning stage, old decision will be kept. Or shall they make a decision to move by force. This part needs to be revisited.
- There are many other items in the draft law to pay attention. If you want to cooperate with our law firm, we are ready. We can propose more comments.

Aranjin (7th microdistrict project)

- I want to focus on 7th microdistrict. You have mentioned earlier that there is no need to expropriate land in 7th microdistrict to build school or kindergarten, and it can be negotiated with private persons. This is included in Ulaanbaatar city master plan for 2020. But when it comes to vacating land, everyone is asking for high price. Earlier it was mentioned that the valuation of 1 sq m land is 100,000 togrogs. In real life, it ranges between 300-400 thousand per sq m. Let me take real example, for plots of land which was included in the master plan for school or kindergarten buildings, the owners are asking 500 million togrogs and things are not moving. How the law would regulate such situation where negotiation with citizens does not result in consent?

B.Chinzorig (answer)

- Draft Law on Ulaanbaatar city redevelopment is being drafted. If the whole district is being redeveloped, the law on redevelopment of this district should regulate. You may meet the members of the working group on that draft law.

Representative of the Court Decision Enforcement Agency

- Once this draft law gets approved, the involvement of the Court Decision Enforcement Agency will be huge. This has two contradictions with the main laws. Article 44.10 says that the court will review the case and decide according to the procedure indicated in the law on adjudication on

civil cases. So if the court is to make a decision, the plaintiff has the right to appeal the decision of the primary instance court. But you put that the time spent on appeal shall not be the justification to hold the case. Since the dispute is a civil case, when the court decision has not become valid, the court decision enforcement action will also be put on hold. So there is a contradiction here. Contradiction with the Civil Law.

- The next thing is it is said in Article 44.13 that land expropriation shall take place from 15 May to 15 September. This contradicts the Law on Court Decision Enforcement, the main law. According to that law, court decision can be enforced at any time.
- Is there a possibility for court decision enforcement staff to get bonus?
- The court makes a decision. We send the notice. Then we start implementing the decision. Please also take care of terms and terminologies. Expropriate by force – what does this mean?
- The draft law mentions 3-7 days, but in the main law this period is up to 30 days. So there is no need to introduce many new sanctions.

B. Zuvtsetseg (Ulaanbaatar city Road Improvement project)

- In the past, I participated once in the discussion of this draft law. I agree to the title of the law. But there are areas to improve in the content of the law. Subchapters need to be deleted.
- Mandates of the parliament, local self governing bodies, Cabinet, public administration organizations and local administration organizations are included, however, duties or obligations of these organizations are not included. These should be added.
- Among parliament and the capital city local hural, it should be clear who exactly will be responsible for what in terms of approval of budget. This has to be done in the section on rights.
- Have another look of terms and terminologies.
- Article 5.1.11 says about 'professional person' – also need to be reviewed.
- Article 8.2 – its content and meaning are the same as those in Article 5.1.5. if you add "subject to land expropriation on the threshold day or before that day" to Article 5.1.5, these two can be combined.
- Article 8.5 should specify which article of the Law on social welfare is included.
- Specify who is third party with due rights
- Article 10 says about appointing one of the two valuers to do valuation of compensation based on the rights of the affected person. This provision on valuator needs to be made clear - it is not acceptable for affected person to look around in search of valuers.
- Article 10.1.12 please specify 'through representative bodies'. It is not clear what you want with this – increase transparency of activities or what.
- There are provisions which do not have definition.
- Please specify in detail different mandate and rights and duties of different levels of local hurals.

P. Myagmartseren (Geography and Geology School, National University of Mongolia)

- I support this draft law. I would like to criticize two things. If you look at the content, it is not clear whether the law is about land expropriation or on compensation to citizens because of land expropriation? It is not clear which one it is.
- This is an incomplete law. Because it is only logical to expropriate land that is being owned illegally. There is no legal regulation of this issue. This law should have an additional chapter on expropriation of illegally owned land. This chapter should provide procedure for giving notice, submitting the case to the court, and expropriation.

B.Chinzorig

- We did not include here the issue of land without proper permission. Because there is already a legal provision on this, governors have certain rights, and if necessary, land can be taken to state

property. So in such case, there is no question about protecting human rights or providing compensation. The other law shall regulate it.

- This draft law is all about taking land of rightful owners for state unavoidable purposes, with due compensation, with due protection of rights, and without worsening the situation from the present condition. This is the scope of the law.

Ts. Bayarbat: thank you to all of you who participated in today's meeting. Many good suggestions and comments were made. It would be useful if you could also share your suggestions in writing. Comments can be sent to the Ministry working group as well. I think today's meeting was very effective and productive. I wish you all success. Thank you.

ANNEX 5: WORKSHOP BUDGET

Item	Unit	Quantity	Unit Rate US\$	Total US\$	Total US\$ Actual	Actual In local currency/MNT
Rental fee for workshop room	Hours	4.5	80	360	373.83	520000
Tea & coffee	Participants (1 time x 5\$)	80	5	400	345.08	480000
Fresh water	bottles	100	1	100	69.02	96000
Stationary	Participants	80	3	240	172.54	240000
Simultaneous Interpretation	Hours	4.5	150	675	600.00	N/A
Copying workshop materials for participants	Participants 80 x 50 pages	4000	0.04	160	120.78	168000
Preparation of workshop materials and registration (purchase of stationary, sorting & binding of copied materials, transportation, delivery, distribution and registration of the participants)	lump sum (total of 16 work hours x 25 USD)	1	400	400	400.00	556400
Equipment for synchronous translation	piece	1	120	120	323.51	450000
Rental fee for headset	Participants	70	2.6	182	201.29	280000
Total				2637	2,606.04	N/A