



Technical Assistance Consultant's Report

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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)

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 II)

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

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Acronyms

ADB	Asian Development Bank
ALAGaC	Administration of Land Affairs, Geodesy and Cartography
EBRD	European Bank for Reconstruction and Development
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GOM	Government of Mongolia
IFC	International Finance Corporation
JICA	Japan International Cooperation Agency
LAR	Land Acquisition and Resettlement
LE	Land Expropriation
MCA	Millennium Challenge Account
MCUD	Ministry of Construction and Urban Development
MRTCUD	Ministry of Road, Transportation, Construction and Urban Development, predecessor of MCUD
PWG	Project Working Group
SC	Steering Committee
TA	Technical Assistance
UBCG	Ulaanbaatar City Government
UBLAD	Ulaanbaatar Land Administration Department

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List of TA Reports

- Quarterly Progress Report Jan – April 2012
- Quarterly Progress Report May – September 2012
- Report on High level delegation study tour to Korea
- Stakeholder Consultation Workshop Report 1
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- Report on Field Trip to Selenge, Dungovi and Umnugovi aimags
- Study of the LAR experiences of 5 countries
- Report on the legislative and regulatory framework of compensation valuation in the Republic of Korea

Concept Paper of Law on Land Expropriation
Draft Law on Land Expropriation, version 2012.12.27
First draft of Elucidation of the draft Law on Land Expropriation
Conceptual Framework of the Regulations
First draft of Capacity Assessment and Capacity Development Plan

List of Consultation Meeting Notes

Stakeholder Consultation Meeting Note – April 6, 2012
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KNOWLEDGE SUMMARY

1. The land acquisition and resettlement related to the infrastructure development such as roads, water and heating networks in urban areas and related to the mining activities in rural areas of Mongolia became one of the urgent and crucial issues that should be regulated and legislated to appropriately balance the interests and public need of the State and the rights and interests of the individual property owners who are affected by the land acquisition. Currently, Mongolia does not have a legislative framework that clearly sets the procedures for land acquisition and resettlement and most importantly protects the rights of the affected people in accordance with the recommended and recognized international involuntary resettlement safeguards and best practices.
2. Therefore, the Government of Mongolia, represented by the Ministry of Construction and Urban Development (MCUD), requested ADB to support with expertise on reforming the legislative framework for involuntary resettlement and introduce international safeguards principles. The support by ADB was provided in the form of technical assistance in two phases within the ADB Regional Technical Assistance 7566: Strengthening and use of country safeguards systems.
3. The first phase was implemented from March to October 2011 and the main results were the “Issues Paper” that identified the problems related to LAR and the very first complete draft “Law on Land Acquisition and Resettlement” (LAR Law). This first draft was formulated only for MCUD and ADB for their internal review and comments before the draft law was disseminated and publicized to all concerned stakeholders for review and comments.
4. The second phase was implemented from February 2012 to July 2013 and the main results were:
 - **Draft Law on Land Expropriation¹** (LE Law), which was submitted to the Parliament on January 11, 2013 and documents that are related to this draft. These include the first draft of the Elucidation of the Law on Land Expropriation, Concept Paper of the Law on Land Expropriation, Regulations – concepts and summary, which is a document describing regulations that need to be formulated and approved following the draft law and their brief description;
 - **The first draft of the Capacity Assessment and Capacity Building Plan;**
 - **The study on the LAR experiences of 5 countries;**

¹ During the implementation of the TA, the consultant team and MCUD discussed and agreed to change the name of the draft Law on Land Acquisition and Resettlement to draft Law on Land Expropriation. The consultant team, considering that the whole process of land acquisition is involuntary, suggested to change the draft law name that expresses the purpose concisely. However, there were a lot of discussions on the name of the law and this shall be consulted further and decided by MCUD. It might happen that the name will be changed again to be named “Law on Land Acquisition and Resettlement”.

- **The study on the Land and Property Compensation Valuation, the case of the Republic of Korea;**
 - **Advice and support to the Ministry of Construction and Urban Development to go through the official process of lawmaking; and**
 - **Extensive Stakeholder Consultation.**
5. The consultant team formulated the first public draft of the LE Law on in March 2012 for public review, discussion and consultation. This first public draft was revised in September 2012 based on the comments received from some people affected by projects and their representative organizations, private sector, and academic and professional organizations which were identified and contacted by the Consultant Team. Then the draft was reviewed and amended in December 2012 based on the comments received from governmental organizations including the ministries, central governmental and local agencies and Project Working Group. The draft Law on Land Expropriation was submitted to the Parliament by the Cabinet in January 2013. The draft LE Law was submitted as one of the five laws, so called “set of land laws”. The other laws include Law on Land, Law on Land Cadastry, Law on Land Fee and Law on Geodesy and Cartography. The LE Law, however, was withdrawn from the Parliament, as it was necessary to conduct studies on the impact² and costs of the draft law and draft/formulate the regulations to be issued in accordance with the law; this additional work will be conducted with further TA support from ADB. It is planned that draft law will be re-submitted, together with the studies on the impact and costs and the draft regulations, in the fall session of the Parliament.
6. The capacity assessment of the current institutions that implement land acquisition and resettlement activities was carried out. In the assessment, the main governmental organizations dealing with the land acquisition and resettlement were studied. The study included the extent to which they are involved in the process of land acquisition and resettlement, the professions and experiences of the staff related to land acquisition and resettlement and the relationships and roles of the various agencies. This information served to formulate the draft Capacity Development Plan which specifies the institutional structure, staffing and training needs for the organizations to be responsible to administer the land acquisition and resettlement procedures. The plan covers 5 years as per the request of MCUD. In the next phase the capacity assessment and the draft Capacity Development Plan shall be updated and finalized based on the latest version of the draft law and regulations. Also, more studies to be conducted on the capacity of the professional entities such as valuation and social impact assessment individuals and companies and considered their involvement in the land acquisition and

² The team working on the impact assessment of the draft law will try to calculate the costs to be born on the government organizations, i.e. number of new staff to be required etc. They may also estimate the average percentage increase of the compensation amount when comparing the existing procedures and new procedures. However, this cost calculation cannot really estimate how many projects will be implemented in the future and how much land acquisition will take place.

resettlement according to the draft law and possible capacity building for them. This is important to ensure the Government allocates sufficient budget and resources to implement the new law properly. Moreover, in this phase the initial steps for the capacity development were made by organizing a study tour for high-level government decision makers and officials to Seoul, Korea on the LAR experiences of Korea. Also, MCUD officials were invited to ADB headquarters to present the Mongolian experiences on LAR, the progress on reform of the legislative framework and learn from the experiences of the other countries in the region.

7. Studies on the land acquisition and resettlement experiences of 5 countries, namely Australia (Victoria State), Inner Mongolian Autonomous Region of the People's Republic of China, Lao Peoples Democratic Republic and Chile, were conducted to learn from their experiences. These countries were selected considering the similarities with Mongolia such as active mining industry, big territory and sparse population, socialistic background, rapid economic growth, nomadic life style and herding, etc. Also, a study on the compensation valuation procedures and actual cases from the Republic of Korea was conducted. These studies served as well documented reference for the members of the Project Working Group, officials of MCUD and other interested parties.
8. The consultant team was involved extensively in the official lawmaking process of the Government of Mongolia. The Ministry of Construction and Urban Development requested this as the consultants were experts in the land acquisition and resettlement issues and the international safeguards related to them. The consultants were involved in the whole process and were involved in all the meetings, discussions and consultations with the state organizations, which included Ulaanbaatar city Government, Cabinet, Ministry of Justice, Ministry of Road and Transportation, Cabinet Secretariat, Parliament Secretariat and the Parliament.
9. The consultant team has facilitated a continuous and extensive consultation with all the concerned stakeholders on behalf of MCUD. The consultation activities were organized in the form of individual meetings, focus group meetings, stakeholder consultation workshops and contacts and discussions, and follow-ups via emails and phone calls. The consultations were of great importance for the improvements and amendments of the draft law and built solid ground for public relations and understanding among the stakeholders. In this phase the consultation process was led by the consultant team as the team is appropriately qualified to provide LAR related information and solutions for the current issues in Mongolia. However, the consultation process should be taken over gradually by the MCUD, as in the future MCUD shall be the main party to go through the process of the governmental law making process, which involves extensive consultations with all the concerned stakeholders.
10. In general, the TA was implemented successfully and achieved the planned results and outputs. The project implementation period was prolonged for three months in connection with the request of the Ministry of Construction and Urban Development for

continued efforts and inputs of the consultants to support and advise the ministry in the lawmaking process. The consultant team supported the Ministry of Construction and Urban Development all the way until the draft Law on Land Expropriation was submitted to the Parliament in January 2013 and formulated and delivered all the required documents required for drafting the law and for the lawmaking process. However, new rules of the Ministry of Justice and the delicacy of the land acquisition and resettlement issue required that the draft law be submitted together with the studies on the impact and cost of the draft law and regulations to be issued in accordance with the law.

11. Therefore, the draft law was withdrawn from the Parliament. The anticipated re-submission is October 2013. ADB and MCUD agreed to continue this project by implementing the next phase starting from the end of March 2013. The scope of the next phase will address the pending issues: (i) studies on the impact and cost of the draft law, (ii) regulations to be issued in accordance with the law, and (iii) update and finalize the Capacity Development Plan.

I. INTRODUCTION

12. This Final Report for Phase II³ of 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 Systems⁴ presents the results of the phase II of the technical assistance (TA), highlights the implementation processes and challenges, and provides recommendations for next steps.

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

- Introduction
- Background
- Project Activities and Outputs
- Implementation Challenges
- Next Steps.

II. BACKGROUND

A. RATIONALE FOR THE PHASE II

14. The Government of Mongolia, represented by the Ministry of Construction and Urban Development (MCUD), requested ADB to support with expertise on reforming the legislative framework for involuntary resettlement and introduce international safeguards principles. The support by ADB was provided in the form of technical assistance in two phases within the ADB Regional Technical Assistance 7566: Strengthening and use of country safeguards systems. The first phase was implemented from March to October 2011 and the main results were the “Issues Paper” that identified the problems related to land acquisition and resettlement (LAR) and the very first complete draft Land Expropriation⁵ (LE) Law. This first draft was formulated only for MCUD and ADB for their internal review and comments before the draft law was disseminated and publicized to all concerned stakeholders for review and comments.

³ This subproject has a two phase approach. This TA Report refers to Phase II from January 2012 to July 2013. A TA Report was prepared for Phase I, which lasted from March to December 2011.

⁴ 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.

⁵ In the first phase the title of the law was Law on Land Acquisition and Resettlement. The second phase uses the title Law on Land Expropriation or LE law. The final title will be decided by Government.

15. During the implementation of the phase I of the TA, the Government of Mongolia (GOM) highlighted the urgency of the draft legislation and the need for strong ADB support to draft the legislation, and subsequently to design relevant procedures, assess institutional capacity and requirements and formulate a capacity development plan. Therefore, MCUD⁶ requested ADB to continue the TA and support the reform of legal and regulatory framework for involuntary resettlement in Mongolia. ADB agreed to carry on its efforts to support Mongolia in this reform and pursue additional funding.

B. OBJECTIVES OF THE TA

16. The objectives of the Phase II of this capacity development technical assistance (CDTA) subproject was to:

- assist GOM to finalize the LE law and build consensus for its approval
- prepare/formulate regulations for the LE law
- assess institutional requirements and formulate a capacity development plan
- initiate capacity development for government officials.

17. The inputs of the consulting services were to be focused on the following areas:

- Finalize the draft LE law
- Integrate pasture, agriculture and mining related LAR issues in the draft LE law
- Advise and assist MCUD and GOM throughout the law making process
- Organize stakeholder consultations and workshops to reach consensus on the draft LE law and obtain support from the stakeholders
- Formulate regulations and other documentation to be issued following the draft LE law
- Re-assess institutional capacity and assess institutional capacity requirements based on the draft LE law
- Formulate capacity development plan and budget based on the institutional capacity requirements of the draft LE law
- Strengthen the capacity of government counterparts to analyze and formulate new legislation and regulations to address LE issues
- Increase awareness for government decision makers and officers through stakeholder workshops, consultative meetings and an international conference/study tour in a regional country

⁶ The Ministry of Road, Transportation, Construction and Urban Development, known as MRTUD in the phase I, was restructured and divided into Ministry of Road and Transportation and Ministry of Construction and Urban Development (MCUD) when a new Government was established after the Parliamentary elections held in June 2012.

- Disseminate the results of the TA within Mongolia and ADB, including sharing with other regional countries with similar LAR issues.

18. During the course of the TA, the original scope of work was discussed and changed in consultation with the MCUD and ADB. The activities related to the study on LAR activities carried out during 2002-2012 were cancelled due to the unexpected unavailability of the Social development and resettlement specialist. It was postponed to be implemented later when appropriate resources will be available. Also, the activities of the consultants related to the advice and assistance to MCUD and GOM throughout the law making process became one of the major inputs of the consultants and much of the consultants' time was spent on these activities. It included activities such as formulation, introduction, presentation, explanation, clarification and discussion of the draft LE law and related documents with the Government and Parliamentary officials and Parliamentarians. This latter activity caused the deferral of the drafting of the regulations to the next phase.

19. Final agreed project deliverables include:

- Detailed work plan and schedule for Phase II
- Final version of the draft LE law
- Concept paper of the draft LE law
- Elucidation of draft LE law
- Conceptual framework of regulations to be formulated following the draft LE law
- Stakeholder consultation workshops, 3 times
- Stakeholder consultations – focus group meetings
- Paper on LAR experiences of 5 countries
- Paper on LAR related compensation valuation, the case of Korea
- Field trip report on LAR in rural areas
- Retreats for the Project Working Group (PWG)
- Draft institutional capacity assessment and 5-year capacity development program
- Quarterly progress reports
- Final report.

C. IMPLEMENTATION ARRANGEMENTS

20. 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).

21. The Phase II TA provided 5.5 person-months of international consulting services and 30 person-months of national consulting services (collectively referred to as the Consultant Team). The Consultant Team consisted of:

- Chinzorig Batbileg – Land management specialist / Team Leader (11.5 person-months)
- Enkhtamir Vanchigsuren – National Land Management Legal Specialist (11 person-months)
- Tsengelmaa Sambuu – Social development and resettlement specialist⁷ (0 person-months)
- Odonchimeg Davaasuren – Institutional development specialist (4 person-months)
- Sukhbaatar Javzan – Public Awareness and Consultation Specialist (3.5 person-months)
- Campbell Duncan – International Land Management Legal Specialist (2 person-months)
- Heenam Jung – International Land and property valuation specialist (2 person-months).

22. The Consultant Team was guided and supported by the Urban Development and Land Management Policy Implementation Coordination Department of MCUD (the Implementing Agency for the TA) and the Advisor (on land related issues) to the Minister for Construction and Urban Development. MCUD has been working closely with the Consultant Team and elaborating on drafting the LE law and other policy and procedural documents required for the law making process.

23. For effective project implementation and integrated support by the Government, the Project Working Group (PWG) which was established during the implementation of the Phase I was renewed. The re-established PWG consists of key staff involved in the land management and LAR at MCUD, UBCG and other government officials. The Director General, Urban Development and Land Affairs Policy Implementation Coordination Department of MCUD (formerly known as the Urban Development and Land Affairs Policy Department of MRTAUD) serves as the Chairman of the PWG. The Team Leader of the Consultant team serves as Secretary. The other members include officials such as the Director of Land Affairs and Urban Development Department, Administration of Land Affairs, Construction, Geodesy & Cartography (ALAGaC), Specialist of the Legal Policy Department, Ministry of Justice, Deputy Director of Land Administration Department of Ulaanbaatar City and Head of Land Expropriation

⁷ The Social development and resettlement specialist was unexpectedly unavailable since the middle of the project implementation. No deliverables were received from the Social development and resettlement specialist.

Division, Land Administration Department of Ulaanbaatar City. The full list of PWG members is presented in **Attachment 1**.

24. Also, to ensure that TA outputs are consistent with and supportive of Government policy to introduce legislative framework that manages appropriately the existing LAR issues and to ensure better coordination at the local level, particularly in Ulaanbaatar city, the projects Steering Committee (SC) was established on Feb 16, 2012. The SC was headed by the Vice Minister for MCUD and included officials from the Ministry of Finance and UBCG. Due to the restructuring of MRTAUD into MCUD, the SC was re-established into a joint SC of all the international projects implemented in the land management and urban development sector for more effective, efficient and better coordination of the activities of the projects being implemented in the sector. The newly formed SC is chaired by the State Secretary of the MCUD and includes officials of the MCUD, Ministry of Finance and all the Team Leaders and/or Coordinators of the international projects carried out under the MCUD. The full list of the SC members, both the first one and the new one, is presented in **Attachment 2**.
25. The Consultant Team had been working closely on daily basis with the Urban Development and Land Affairs Policy Implementation Coordination Department of the MCUD and Advisor (on land related issues) to the Minister for Construction and Urban Development. Also, the consultants have been collaborating strongly with PWG on weekly basis. These close collaborations were necessary as the consultants were requested to support and advise MCUD and GOM on daily basis with their LAR expertise to go through the Mongolian law making process to draft and submit the LE law.

III. PROJECT ACTIVITIES

A. THE LAWMAKING PROCESS

26. Substantial efforts of the Consultant Team were utilized in the formulation of the Concept Paper of the draft LE law (to be referred to as Concept Paper), the draft LE law, response to the comments on the draft LE law from Ministries, the Conceptual Framework of the regulations, Elucidation of the draft LE law and in advising and supporting MCUD and GOM on LAR and draft LE law related issues.
27. The concepts, principles and the issues identified and discussed, and the very first draft of the concepts and principles formulated in the Phase I of the TA were re-visited, summarized, re-formulated and documented in the Concept Paper. First the consultant team has re-formulated and drafted the Concept Paper in accordance with the requirements of the GOM. This was then reviewed and commented by the PWG. Based on the comments from the PWG, the consultants revised the Concept Paper and made it ready for submission to the Minister for Construction & Urban Development and

Minister for Justice for their joint approval. The Concept Paper was approved by the two Ministers in November 2012. The Concept paper sets the grounds on which the LE law should be approved and the basic principles to be followed when drafting the law. It serves as the official justification and guiding document for drafting the law.

28. The Concept Paper consists of four parts. The first part provides the legislative and practical grounds for enacting the law, the second part gives information on the purpose, scope and structure of the law, the third part includes information on the social, legal and economic consequences of the law, and finally the fourth part lists the laws to be amended and regulations to be formulated in connection with the new law.
29. In the first part the legislative grounds include the justification for this draft law based on the Constitution of Mongolia. The Constitutional articles provide that land can be exchanged or taken for the public purpose, specified as “special or exclusive public need”, with compensation. However, the Constitution also states that if an owner’s rights are “limited”, i.e. when the property is taken or exchanged, then it must be done exclusively on the grounds specified in the law. See **Attachment 3** Concept Paper of the Law on Land Expropriation for more details. Another section of this first part provides more legislative grounds for formulation and approval of the law in the form of the Parliamentary resolutions, which respond to the current needs to formulate and approve legislations and policies.
30. The practical grounds provide information on the need and demand for this particular piece of legislation. It includes (i) information on the need to acquire land for national and local level developments to satisfy public need due to the rapid economic growth, (ii) lack of legislation that sets how the processes of LAR should protect the rights of the affected people and to implement the development projects on a timely manner, (iii) lack of just and fair methodologies for appraisal of the land and properties, and (iv) lack of eminent domain power which limits the competency of the state to implement public works effectively and efficiently.
31. The second part of the concept paper describes the objectives of the draft LE law, its scope and proposed structure. This part describes the main principles of the law, such as avoid and minimize LAR, appraisal to be done based on market price or replacement cost, protect the rights and properties of the affected entities, etc., which are in line with the international safeguard principles. Further, it gives information on the scope of the law, which includes the grounds for land acquisition, powers and responsibilities of central and local authorities in relation to land acquisition, entities affected by land acquisition, their rights and responsibilities, compensation, social welfare and support arrangements, the procedures for implementation of LAR, land expropriation and forced eviction, and grievance redress. Then, in this part the contents of all six Chapters are briefly described.

32. The third part of this document presents the socio-economic and legal consequences of the law if it is approved. The social consequences are considered as to be the protection of the rights of persons affected by the land acquisition, enable access to appropriate compensation, social welfare protection and assistance, levels of livelihoods before land acquisition shall be maintained or improved. The economic consequences are expected to be effective and timely implementation of development projects and activities for public needs. The effectiveness and timeliness in turn, will contribute to social and economic development of the country. The legal consequences are considered to be resolution of constraints and issues related to land acquisition and clear legal background for land acquisition processes. Moreover, it is expected that there will be a positive impact to enable citizens to exercise their rights to live in a healthy and safe environment.
33. The last part of the Concept Paper lists the laws that need to be amended and new regulations to be formulated and approved in case the draft law is approved by the Parliament. The laws that need to be amended include Law on Land and Law on Privatization of Land to Mongolian Citizens. It will be necessary to enact seven regulations and these are:
- Regulation on provision of support and assistance to the entity affected by land expropriation who inevitably needs social welfare support and assistance,
 - Regulation on preliminary assessment for land expropriation,
 - Regulation on land acquisition and resettlement plan,
 - Regulation on resolution of issues involving persons using land without permit,
 - Methodologies for compensation appraisal and calculation of support and assistance to affected persons,
 - Regulation to establish a mediation council and its operational procedures, and
 - Regulation to define impact areas of development, projects and activities.
34. Another major output of the consultant team is the draft Law on Land Expropriation (LE). In the Phase I of the TA, the consultant team formulated the very first draft of the law which was titled Law on Land Acquisition and Resettlement and which was intended only for the internal review and comments by MCUD and ADB. The Local Land Management Legal Specialist who worked in the Phase I had formulated a separate draft LAR law and submitted to ADB and MCUD after the end of Phase I. The Phase II consultants⁸ of the TA have reviewed both versions of the law and developed the first public draft Law on LE in March 2012. This draft was reviewed by the MCUD, PWG and ADB and revised based on their comments by the consultant team. Then it was made available to the stakeholders for consultation and discussion purposes. The consultant team has worked and revised the first public draft LE law after consulting

⁸ The Phase II Team Leader was the Deputy Team Leader of the Phase I. This ensured continuity.

with the stakeholders, collecting and reviewing the comments from the stakeholders and conducting field trip to rural areas to study LAR related to mining activities. The main findings of the field trip included the difficulties of determining the impact zones of the areas affected by land acquisition, possible issues related to the host herder communities and appraisal of pastureland, winter and spring camping sites. These were addressed in the revised draft law.

35. This revised second draft was ready by the end of September 2012 for internal review by MCUD and PWG. The consultant team had number of meetings with the PWG and MCUD officials and presented the draft LE law and provided explanations and clarifications. Comments were also received from ADB, the World Bank, JICA and other international agencies; these were taken into consideration when revising the draft law. This second draft was then submitted to the MCUD Minister's Council⁹ for review and comments and presented at its meeting held on November 7, 2012. The Minister's Council recommended that the draft law should be submitted to the Cabinet. There were no major comments at this stage and therefore it was decided by the MCUD to submit the draft LE law to the Ministry of Justice together with the Concept Paper¹⁰. When the Concept Paper was jointly approved by the Ministers for Justice and for Construction and Urban Development in November 2012, the draft LE law was sent to all the Ministries for their review and comments.
36. As part of the official lawmaking procedure of GOM, the Consultant Team has prepared the Response to the comments on the draft LE law from Ministries. After the joint approval of the Concept Paper by the Ministers for Justice and for Construction and Urban Development and the meeting of the Council of the Minister for Construction and Urban Development held in November 2012, the draft LE law was sent to all the Ministries for their review and comments. The consultant team had been working with the Ministries to present them the draft LE law and provide clarifications and explanations upon their request. All the comments from the Ministries were received in December 2012 and the consultants prepared the response to the Ministries in close cooperation with the Advisor to the Minister and PWG. 5 out of total 14 Ministries (excluding Ministry of Construction and Urban Development) submitted their comments.

⁹ The Minister's Council is an ad hoc set up established by the decision/order of the Minister for the purpose of advising the Minister on both generic and specific land and urban related issues. The members of the council include the Vice Minister, State Secretary, Director Generals of the MCUD's departments, Director Generals of Agencies under the MCUD, Presidents/Heads of the Professional Associations such as Land Management Association, Condominium Association, Construction Association, Geodetic & Cartographic Association, ex-Ministers for Construction & Urban Development, leading professionals and academicians of the sector. The council meets on irregular basis by the call of the Minister and it issues recommendations on the issues that were discussed.

¹⁰ Although the Concept Paper is the document which should be formulated and approved before drafting the law itself, Ministry of Justice usually requires that both the Concept Paper and the draft law be submitted at the same time.

These are Ministry of Justice, Ministry of Road and Transportation, Ministry of Nature and Green Development, Ministry of Defense, Ministry of Energy.

37. Most of the comments were enquiries to clarify and the most important comments were provided by the Ministry of Justice as expected. The main concern of the Ministry of Justice was related to ensuring the protection of rights, interests and livelihood of affected entities and provision of necessary support from the state to them and not to worsen the quality of life of these entities. The Consultant Team and the PWG have considered all the comments of the Ministries one by one and made necessary improvements to clarify and strengthen the rights of the affected entities. Also, many technical comments were received from the Ministries which were useful to improve the writing technique of the draft law.
38. The draft LE law was finalized at the end of December 2012 after revising it considering the comments from the Ministries, and making the draft compatible with the set of land laws. This latest version, 2012.12.27, was submitted to the Cabinet and discussed at its meeting held on January 5, 2013. The Cabinet have approved draft LE law and decided to submit it to the Parliament together with the set of Land Laws. The set of Land Laws were submitted to the Parliament for discussion on January 11, 2013. The draft Law on Land Expropriation, version 2012.12.27, and its Elucidation are presented in **Attachment 4**. The consultants work “Response to the comments on the draft LE law from Ministries” is provided in the **Attachment 5**.
39. According to the Mongolian law-making procedure, some detailed issues should be regulated by regulations within the framework and context of the given law. These regulations can be enacted by the Government, ministries and governmental agencies such as ALAGaC. Also, some documents to be used in the implementation of the law should be formulated and approved. Depending on the nature of the regulations and involvement of different government bodies in the implementation of the regulations and related documents, it is decided which governmental body approves the regulations and formulates the documents. In the case of draft LE law, the consultants recommended that it will be necessary to pass the following regulations and documents by the Government, MCUD and ALAGaC respectively:

No.	Regulation/documents	To be enacted by
1	Regulation for formulating land acquisition and resettlement plan	Government
2	Regulation for conducting preliminary assessment for land expropriation	Government
3	Regulations for establishment of Mediation Council and to run/operate this Council	Government

4	Regulation to determine impact zone of the development, project or activity	Government
5	Regulation to regulate issues to arise related to the entity who is using land without permission	Government
6	Regulation for valuation of compensation to be reimbursed due to land expropriation	MCUD, in collaboration with the Ministry of Finance
7	Regulation for additional assistance to a member of family – a citizen who inevitably need social welfare support	MCUD, in collaboration with the Ministry of Human Development and Social Welfare
8	Regulation for delivery of the notice on land acquisition and for considering the notice as delivered	ALAGaC
9	Exemplary statute for creating and operating representative organization of affected parties	ALAGaC
10	Template agreement for land expropriation	ALAGaC
11	Templates, forms, guidelines and instructions to be used in land expropriation activities	ALAGaC

The consultants formulated the purpose, concepts and preliminary content of these regulations in the document Conceptual Framework of Regulations as the first step for drafting the regulations. This document will serve as the initial paper to discuss and decide on the content of the regulations and as a guiding document when drafting the regulations. The Conceptual Framework of the Regulations is presented in the **Attachment 6**.

40. During the consultation workshops, focus group discussions and meetings with the stakeholders, the consultants observed that many of the lengthy discussions and misunderstandings among parties arise due to the misinterpretation related to the draft LE law. These discussions concerned the land acquisition related to the urban redevelopment, especially ger area redevelopment. Many of the stakeholders have understood that this proposed legislation is to be applied for “mass eviction” of ger area residents. The Consultant Team made it very clear that there are procedures to inform, consult, involve and affected entities and that there is no provision to evict ger area residents. Also, it was informed that any expropriation can only be done by the court decision. Also, many of the discussions were too long simply due to the misunderstanding of the draft law.
41. Therefore, the team discussed this matter with ADB and MCUD and it was decided to prepare the Elucidation of the draft LE law. The team started to work on the elucidation already in September 2012; however it was not possible to finalize the elucidation due to the frequent revisions and changes that were made to the draft law throughout

September – December 2012. The frequent revisions and changes made the efforts of the team fruitless, as the elucidation had to be changed every time after each revision and changes. Thus the team decided to finalize the Elucidation of the Draft LE law once the draft law is finalized and submitted to the Government. The consultant team re-started to work on the elucidation when the draft law was finalized and submitted to the Government in late December 2012. The Elucidation of the Draft LE law was completed in February 2012.

42. Although, the Consultant Team made its best effort to make the law concise, it was still necessary to provide some background information and explain the articles and clauses of the draft law. Also, where needed, the elucidation spells out the references to certain articles and provisions in within the draft law and other related laws. This makes it easier for the readers to immediately see what is in the referenced articles and clauses. Refer to Attachment 4. The draft Law on Land Expropriation, version 2012.12.27, and its Elucidation for more details.
43. A very significant amount of inputs and efforts of the consultants were spent on the activities related to advising and supporting MCUD and GOM on LAR and draft LE law related issues. These activities were intensively carried out starting from September 2012 and completed in early February 2013 (when Phase III commenced). Especially, the consultants have been fully committed to advising and supporting MCUD and GOV in December 2012 and January 2013. This was due to the commencement of the official governmental procedure to submit the draft LE law to the Parliament. This procedure involves the formulation of the Concept Paper, formulation of the draft LE law, approval of the draft law by the Minister's Council, joint approval of the Concept Paper by the Minister for Justice and Minister for Construction and Urban Development, submission of the draft law to the Ministries, review and response to the comments of the Ministries on the draft law, revision of the draft law based on the comments from the Ministries and obtaining approval from the Ministry of Justice for submission of the draft law to the Cabinet, submission of the draft law to the Cabinet, review and response to the comments of the Cabinet, revision and finalization of the draft law based on the comments of the Cabinet, submission of the draft law to the Parliament. The consultant team was involved in the whole process and provided advice and support to the Minister for Construction and Urban Development and other officials of the MCUD. All the work related to the drafting and formulation of all the documents, including the draft LE law, responses to the related parties, and revisions, where necessary, was carried out by the consultant team. Also, the consultants were involved in all the meetings, discussions and consultations with the state organizations, which included MCUD, UBCG, Government/Cabinet, Ministry of Justice, Ministry of Road and Transportation, Cabinet Secretariat, Parliament Secretariat and the Parliament.
44. The draft LE law was finalized on December 27, 2012 and submitted to the Cabinet. Cabinet reviewed and approved the draft law. Then draft law was submitted to the Parliament on January 11, 2013 by the Cabinet. Parliamentary Standing Committee on

Nature, Food and Agriculture reviewed and discussed the draft. The Standing Committee voted for the draft law to be sent to the Plenary Session of the Parliament for obtaining approval whether to discuss the draft law at the Parliament or not. On January 18, 2013, the set of Land Laws¹¹, which included Law on Land, Law on Land Expropriation (LE), Law on Land Fee, Law on Land Cadastre and Law on Geodesy and Cartography, was discussed at the Plenary Session of the Parliament and decided that this set of laws should be further discussed and finalized by the related Parliamentary Standing Committees for discussion at the Plenary Session in April 2013. After this decision, a preliminary list of Parliamentary Working Group for the set of Land Laws, consisting of 11 Parliament Members, and Parliamentary sub-Working Group, consisting of 48 members who are representatives of state organizations (ministries, agencies, local governments, courts), academic organizations, international projects, advocates-lawyers and non-governmental organizations was created by the order of the Chairman of the Parliamentary Standing Committee on Nature, Food and Agriculture. The Consultant Team Leader and the Land Management Legal Specialist were preliminarily listed in this Parliamentary sub-Working Group.

45. On February 7, 2013, on its regular meeting the Cabinet made a decision to withdraw the draft LE law from the set of Land Laws. Then this decision was submitted to the Speaker of the Parliament on February 8, 2013 and the draft law was considered officially withdrawn after the Speaker announced the withdrawal at the Plenary Session on the same day. There was no official explanation by the Cabinet on the reason why the draft LE law was withdrawn as the initiator of the draft law has the right, according to the Law on Parliamentary Session Meeting Procedure, to withdraw the draft of a law from the Parliament at any time at any stage of the discussion.
46. This issue was discussed with the officials of MCUD and they informed that MCUD intends to re-submit the draft LE law to the Parliament in the autumn of 2013. The reasons for withdrawal are firstly, as explained by the officials of MCUD, the regulations of the draft LE should be submitted together with the draft law as this law will concern very delicate issues related to human and property rights and therefore the regulations shall be submitted together with the law to make sure that the regulations do not override the law itself, and secondly, the studies on the impact and cost of the draft law should be carried out in accordance with the recent regulations issued by the Ministry of Justice.

¹¹ Law on Land, Law on Land Expropriation, Law on Land Fee, Law on Land Cadastry and Law on Geodesy and Cartography are considered as set of Land Laws. All these laws, except Law on Land Expropriation, were considered as Set of Land Laws and were being discussed at the Parliament starting from autumn 2011. The new Government formed in July 2012, as the results of the Parliamentary elections held in June 2012, decided to make more changes and amendments in the Set of Land Laws and, also, include in the set the Law on Land Expropriation. Thus when the draft LE law (to be submitted to the Ministry of Justice along with the Concept paper) was ready in September 2012 it was included in the Set of Land Laws.

47. The Consultant Team leader had a follow up meeting with the Minister for Construction and Urban Development on the results of the TA and the law-making process after the withdrawal of the draft LE law from the Parliament. The Minister recommended that the consultant team continue its activities uninterruptedly and formulate the regulations and conduct the studies on the impact and cost of the draft LE law. Thus this matter was discussed with ADB and MCUD officials and the consultant team made recommendations for these activities to be carried out in the phase III of the TA.

B. DRAFT LAW ON LAND EXPROPRIATION

48. Based on the results of the law making process and extensive consultation, the first version of the draft LE law, which was formulated in the first phase of the project, was revised and improved in this second phase.
49. The main objective of the law is (i) to protect the interests and rights of the entities affected by land acquisition and (ii) to ensure timely and efficient implementation of the developments, projects and activities carried out for the public need. Today, any of the existing legislation sets the rights and eligibility of the entities affected by land acquisition and there exist no proper legal mechanism to ensure timely and efficient implementation of public works.
50. The draft law was formulated through improving and conforming existing procedures and processes of land acquisition and resettlement with the internationally recognized principles and practices of involuntary resettlement and within context of Mongolian law making practice and within existing governmental institutional and functional framework.
51. Internationally accepted principles were embedded not only in the Chapter 2 of the draft law where the rights and eligibilities of the entities affected by land acquisition are provided, but also in the Chapter 3 where rights and duties of the organizations involved in the LAR are set, Chapter 4 where the process of LAR is set in detail, and Chapter 5 where the procedures of expropriation are established. The following principles are embedded in the draft to protect the rights of the entities affected by land acquisition and to effectively and efficiently implement the LAR activities:
 - avoid land acquisition whenever possible and minimize the negative consequences to arise from land acquisition;
 - decision for land acquisition shall be made when there is well defined and grounded public needs;
 - entity affected by land acquisition must be clearly informed that the land acquisition is taking place under the eminent domain power of the state to expropriate;
 - land acquisition be settled through consultation, negotiations and agreements with the entity affected by land acquisition;

- compensation for the loss incurred to the entity affected by land acquisition or house demolition should be compensated based on the “replacement value” or “market value”, whichever is more;
 - entity affected by land acquisition shall be provided with relevant information on land acquisition, resettlement and compensation;
 - entity affected by land acquisition shall be consulted;
 - entity affected by land acquisition, the public and citizens shall be provided with opportunities to participate in LAR activities;
 - land acquisition through negotiations and agreements should be implemented by a government authority or by a private entity with the approval of competent government authority;
 - land expropriation should be the last resort and expropriation should be carried out only by government organization which is given such rights by law;
 - prior to commencement of the land acquisition or house demolition activities, the land and immovable property of the entity affected by land acquisition shall be fully compensated and the relocation, transition and rehabilitation assistances provided;
 - persons who inevitably need social welfare support and assistance should receive additional social welfare support and assistance;
 - budget required for land acquisition, resettlement and compensation should be included in the budget of the development, projects or activities to be implemented by acquiring the land;
 - any land acquisition related information and activity, except private confidential information of the individuals, shall be open to the interested entity and the public.
52. The draft law was formulated in conformity with the Law on the procedures of formulating and submitting draft of law and other decisions of the State Great Khural. Also, the Consultant Team, after having consulted with the MCUD, has drafted the law within the framework of the existing governmental institutional and functional setups. Especially, this concerns the parts of the draft law that deal with the organizations to implement the LAR activities (article 20, Chapter 4), organizations to expropriate land (Chapter 5), and organizations for monitoring and auditing (article 41).

C. STAKEHOLDER CONSULTATION

53. One of the crucial aspects to draft a good LE law that ensures timely implementation of the public projects, developments and activities and in the meantime protects human and property rights, (i.e. law that appropriately balances the public interest and individuals' human and property rights), is the involvement of the concerned parties and consultation with them. The consultant team has been engaged in continuous and extensive consultation with all the concerned stakeholders. The consultation activities were organized in the form of individual meetings, focus group discussions, stakeholder consultation workshops and contacts and discussions via emails and phone calls.

54. From the beginning, i.e. from April 2012 up to September 2012 the consultation activities were more focused on the non-governmental stakeholders. This included civil society organizations, representative organizations of the affected people, private sector, lawyers and law firms, professional organizations-associations, academic organizations, international organizations, international and local projects. Then starting from August 2012 until the beginning of February 2013, most of the consultation activities were concentrating on state organizations. This was due to the official commencement of the lawmaking process since September 2012. The list of the focus group meetings is presented in the **Attachment 7**.
55. The focus group meetings were organized to have in depth discussions to explain and clarify the draft LE law and other LAR related issues, to discuss the draft LE law in detail, to obtain general and specific feedback on the draft LE law, and to receive comments and suggestions to improve the draft LE law. The meetings with the professional non-governmental organizations, such as Mongolian Institute of Certified Appraisers, and the academic organizations, such as University lecturers, were very constructive and provided some good or concrete ideas and suggestions to improve or change the draft LE law. Also the meetings with ADB, WB, JICA, local and international projects dealing with LAR issues have provided good feedback on the problems encountered and triggered productive discussions for the improvements of the draft LE law.
56. The meetings with the representatives of the affected people and civil society organizations were more of explanatory and clarifying nature. There were extensive discussions on the purposes for which land can be expropriated and the compensation and the valuation issues related to LAR. Most importantly, as a result of these discussions, the proposed provision of the draft LE law stating that land can be expropriated for urban re-development purposes was removed. It was discussed and agreed that the expropriation for developing public infrastructure (like roads, utility lines, etc.) is unavoidable, whereas the expropriation for re-development is avoidable as there are other options when implementing urban re-development projects. For instance instead of vacating the land, the landowners could get a piece of land with infrastructure in the same area or the landowner could become a partner in the re-development contributing with their land, etc. The consultants have recommended the stakeholders to liaise with MCUD and discuss these options and other related matters with the working group on the Urban Redevelopment Law¹² under MCUD. Another important result of the discussions with this group is that it was agreed that the compensation valuation shall be done not only based on the market value, but also based on

¹² MCUD is drafting Urban Redevelopment Law which will be regulating and handling issues related to redevelopments such as development of satellite towns, replanning and development of urban public spaces and built up areas, demolishing structures/buildings that do not meet utility (and safety) requirements and developing new structures/buildings, ger area land readjustment, land acquisition and development.

replacement value, whichever is higher. In connection with these discussions and agreements, changes in the draft LE law were made accordingly.

57. The consultations with the affected people from rural areas with active mining and their representative organizations confirmed that it is very important to include LAR issues related to the herders in the draft LE law. As a result of these consultations, the draft LE was amended to include provisions on determining the impact zones of the developments, projects and activities (e.g., mining activities), issues related to the host community to share the pastureland and water areas with the affected persons and valuation of the pastureland and losses related to resettlement of herder families.
58. The affected people, their representative organizations and civil society organizations are one of the most important groups of stakeholders and therefore the consultant team tried to organize as many focus group consultation meetings and discussions as possible with this group. The consultants considered that focus group meetings are the most important consultation method at which in depth and constructive discussions can be held to improve the draft LE law. Therefore, the consultant team invited the representatives of this group to three focus group meetings and to all the other consultation activities and workshops. Despite all the efforts of the consultant team, unfortunately, many of the affected people's representative organizations and civil society organizations did not attend the focus group and other consultation meetings.
59. The consultations with the private sector, lawyers and law firms, international organizations, local and domestic projects dealing with LAR issues went professionally and to the point. In general these stakeholders agreed that LE law is very important and that Mongolia needs this law urgently. The discussions focused on specific issues and specific provisions of the draft law. The construction companies stressed the importance of inclusion of the urban redevelopment activities as one of the purposes for which land can be expropriated. However, the consultant team recommended to MCUD and PWG to exclude this activity from the purposes for which land can be expropriated and explained that this is an activity which can be carried out without expropriation as there are many options to solve the LAR issues related to urban redevelopment and recommended them to liaise with the working group drafting Urban Redevelopment Law under MCUD. Relevant changes in the draft law were made related to this matter and MCUD was informed on this. The mining companies discussed that there are quite serious issues related to LAR in the rural areas and that the law should make it possible to expropriate land for the purposes of carrying out all mining activities, but not only for the mining of deposits classified as strategic deposits. The consultant team informed that land cannot be expropriated to enable every mining activity as conducting mining business is not public need and explained that land can be expropriated only for strategic deposits as exploitation of these deposits will have significant impact on the economy and society of Mongolia and therefore they were classified as public need. However, the inclusion of the strategic deposits for the purposes for which land can be expropriated is only a suggestion by the consultant team and later it might be decided

as a result of more consultations and by the legislators that this should not be classified as public need and therefore not to be included in purposes for which land can be expropriated.

60. Individual meetings, contacts and discussions over the email and telephone were carried out to initiate the consultations and as follow up of the previously held focus group meetings and stakeholder consultation workshops and for clarification purposes.
61. Another important group of stakeholders is the state organizations. The consultants worked closely on daily and weekly basis with the members of the PWG who were representing both the central Government organizations, agencies and local government organizations. Also, the consultant team visited and met officials of the ministries, central and local government agencies to inform and present the draft LE law, the activities of the project and to discuss and consult on LAR issues that they were concerned with. The consultations with the state organizations were intensified in connection with the official commencement of the governmental lawmaking procedure. The consultants met and presented the draft LE law to the officials of the MCUD and Ministry of Justice and conducted in depth discussions. These discussions were more of explanatory and clarifying, as the officials at the Ministries do not have comprehensive knowledge and experience about LAR. For the other ministries and agencies, the consultant team met and held discussions, where necessary, and responded to their comments and clarifications through the official response to the comments from ministries, see Attachment 5, “Response to the comments on the draft LE law from Ministries”.
62. Within the consultation with the state organizations, the consultant team organized two retreats on the draft LE law and the integration and compliance of the draft LE law with the Set of Land Laws. The retreats were organized from November 16-17, 2012 with 10 officials and from December 19-21, 2012 with 14 officials. The participants were officials of the PWG, MCUD and ALAGaC. The first retreat was very important to make the draft LE law compatible and coordinated with the Set of Land Laws. Also, it was very helpful to discuss the draft LE and find common understanding on the principles of the draft law. The second retreat was organized after MCUD received the comments and reviews from the Ministries on the draft LE law. Thus the retreat was critical for reviewing the comments and responding to them. Also, this time, the consultants in cooperation with officials of MCUD worked on the revision of the draft LE based on the constructive comments from the Ministry of Justice and some other ministries.
63. In addition to the focus group meetings, individual meetings, contacts and discussions over the email and telephone, Stakeholder Consultation Workshops were organized three times. One in the beginning of the phase II in April 2012, the second one in mid September 2012 and the last one in the beginning of January 2013. This last workshop was organized in cooperation with and support of the Office of President of Mongolia.

64. The first Stakeholder consultation workshop was organized on April 6, 2012. The workshop's objective was to introduce the concept of the draft law on Land Expropriation and the actual draft itself, discuss the differences between land acquisition for public purposes and land acquisition for urban redevelopment purposes, discuss key issues included in the draft law within different stakeholder groups and receive criticisms, comments, and suggestions from the stakeholders. There were 71 participants, out of 80 invited participants, taking part in the consultation workshop. The participants were representatives from national and local government representatives, central and local authorities in charge of land affairs, international financial institutions and organizations, civil society representatives, private sector – construction and development companies and law firms, and representatives of affected persons and potential affected persons. During the workshop there were many constructive comments and criticisms, which were considered to improve the draft law. Based on the results of this workshop, the consultant team considered it vital to organize more focused consultation meetings with each of the interest groups to clarify and explain the draft law and obtain more feedback and build consensus.
65. The second Stakeholder Consultation Workshop was organized on September 14, 2012. The workshop's objective was to introduce the revised draft law on Land Expropriation as follow up of the first workshop held on April 6, 2012, to discuss the purposes and scope for land expropriation and the activities/purposes that are not to be regulated by this draft law and receive criticisms, comments, and suggestions from the stakeholders. There were 53 participants, out of 80 invited participants, taking part in the consultation workshop. The participants were representatives from national and local government representatives, central and local authorities in charge of land affairs, international financial institutions and organizations, civil society representatives, private sector (construction and development companies and law firms), and representatives of affected persons and potential affected persons. Although there were not many representatives of the affected people and civil society organizations attending the workshop, the workshop fulfilled its objectives and received many constructive comments and criticisms, which were used in further improvement of the draft law.
66. The last Stakeholder Consultation Workshop was organized on January 14, 2013 in cooperation with the Office of the President of Mongolia and the Advisor to the President on Urban and Rural Development and with the support of the MCUD and the Minister for Construction and Urban Development. The objective of the workshop was to widely publicize the draft LE law to the public nationwide and received criticism and comments for improvement of the draft. The workshop was organized in the Citizens Hall under the President of Mongolia. The venue was the perfect place for the draft LE law to be discussed as the Citizens Hall was established by the President of Mongolia for close interaction with the people and to listen to their opinion when making decisions. It is a venue to bring together the state organizations and the citizens to discuss any issue that is of importance to the society and that needs consultation and consensus of the concerned parties. Prior to the workshop, this event was publicized in

two nationwide daily newspapers for two days to ensure participation of all interested and concerned parties. There were around 100 participants invited and 80 of them participated (the Citizen Hall has 80 seats and all 80 seats were occupied). The participants were Members of the Parliament, representatives from the office of the President and Cabinet, national and local government representatives, central and local authorities in charge of land affairs, civil society representatives, private sector (construction, development and mining companies and law firms), and representatives of affected persons. The workshop was very successful as it attracted all relevant stakeholders and received many comments and some criticisms. There were many supporters of the current draft.

67. Also, there were many people who were not supporting this draft LE law. The main reason for not supporting the draft law, as it was apparent from the discussions and comments, was that the purposes for which land can be acquired under this draft LE law is mixed and confused¹³ with land acquisition for urban re-development of the ger areas, which is not one of the purposes for which land can be acquired under the suggested draft LE law. This workshop showed that MCUD needs to conduct more public awareness and consultation on the scope and purpose of this draft law.

68. Another crucial stakeholder consultation activity was with the stakeholders from rural areas impacted by mining activities. Field trips to rural areas were organized to study the current LAR practices in rural areas, particularly LAR carried out by private sector for mining projects and their impact on herder and other local communities. During August 15 – 18, Consultant Team members, together with a senior officer from ALAGaC, worked in Selenge aimag and during August 20 – 27 in Dunggovi and Umnugovi aimags. The meetings with the local authorities, land office officials and some of the mining companies were scheduled and arranged with the support of ALAGaC and its offices in the aimags. The affected people were identified during the meetings with the officials and were contacted and met. The meetings with the officials were of consultative nature discussing the problems and their possible solutions, whereas the meetings with the affected persons were more of an informative, more follow up discussions were held to find out their problems and their opinions for possible solutions. Based on the results of the field trips, some essential principle issues were integrated into the draft LE law. These include the (i) impact zone of the development, activity or project, (ii) host community in case of resettlement to other places, and (iii) specific features related to the valuation of the pasture land.

¹³ Currently in Ulaanbaatar the ger area is being replanned and developed into built-up areas. This is done by purchasing the land from the landowners and compensating them by cash or by offering apartments or combination of this two. Many residents have resisted or opposed this type of activity. They believe the developers who purchased the land will make a lot of profit, whereas the land owners will only get an apartment of one or two bedroom, i.e. the land owners are not really benefiting from this development. Therefore, many ger area residents are not making any deals with the developers and remaining on their land. Some stakeholders misunderstood that this draft law will be used to evict ger area residents and it made them to oppose and criticize the draft LE law.

69. The stakeholders discussed that it will be necessary to determine precisely the impact zone or zones, because currently based on the zones, the mining companies and affected herders negotiate the amount for compensation. Closer to the affected area, the more the compensation and the further away from the affected area, the less is the compensation. Also, the stakeholders expressed that there are no rules or procedures on how to determine the impact zone, which leads to disputes between the parties. Another matter is the host communities. When a herder family is resettled, it will be required to consider the impacts on the herders who will be sharing their pastures and water sources that are not taken into account at the moment. One very important issue is the appraisal of the rural land, especially the pastureland. In current practice the pastureland is not appraised and not considered in the compensation. Also, it was noted that it is very difficult to appraise such land. The Consultant Team has investigated these issues and made amendments in the draft law. The issues related to determination of impact zone and appraisal of the pastureland shall be legislated through regulations to follow the law and the host community matter was added in the draft law.
70. In order to have more inclusive consultation, better public awareness and for preparation of the Stakeholder Consultation Workshop that was organized in January 2013, the draft LE law was published in one daily newspaper. After the publishing of the draft law in the newspaper, there were many interested parties obtaining the digital copy of the draft law and expressing interest to participate in the Stakeholder Consultation Workshop organized in the Citizens Hall under the President of Mongolia.
71. All the stakeholder consultation activities were documented in the form of meeting notes and reports. These can be used as reference documents when making amendments and changes in the draft law and to use for future reporting purposes. All the available meeting notes are listed in the List of Consultation Meeting Notes and all the Reports are shown in the List of TA Reports presented in the beginning of this report.

D. STUDY OF THE LAR EXPERIENCES OF OTHER COUNTRIES

72. The study of other countries legal framework and experiences related to the LAR was essential for learning from the experiences of the others and comparison of the Mongolian legal framework situation with the others. Within the project activities, the consultant team organized a high level study tour to the Republic of Korea to explore and learn from their legal framework experiences, and made studies of the LAR experiences of 5 countries and the compensation valuation procedures and practices in the case of the Republic of Korea.
73. Study tour to Korea on “High Level Policy Advisory Program on Land Acquisition and Resettlement”, involving Parliamentarians, Parliamentary and Governmental officials to

study the legal and institutional framework and experiences related to LAR of the Republic of Korea was organized during March 5 – 9, 2012. It was organized with the excellent support and cooperation with the Korean Research Institute for Human Settlements. There were total of 12 participants and the Vice Minister of MCUD headed the team. The program was developed in close cooperation with MCUD and designed considering the diverse background of the participants and for best results and future support by and cooperation with the participants in the process of LAR lawmaking. It was necessary to provide the participants general knowledge and understanding on land management and urban development, and then specific knowledge and understanding of the land acquisition and resettlement issues. The program included topics on national and regional planning and development policy, land and urban policy, urban planning and development, LAR and valuation, land administration and land registration, urban re-development and LAR, spatial data infrastructure policy and planning, affordable housing and housing finance. Although, this activity involved politicians and high positioned officials, it was a tailor made technical study tour with the objectives to study the LAR experiences of Korea, including the legislative and institutional framework and current practice. The participants have obtained a general picture of land management and urban development and quite detailed knowledge about the LAR, the challenges related to the LAR and the need for clear and well formulated legislative framework in Mongolia.

74. The study on the LAR experiences of 5 countries, namely Australia (Victoria State), Inner Mongolia Autonomous Region of the People's Republic of China, Lao Peoples Democratic Republic and Chile, was conducted to learn about their legal framework and experiences. It is recognized that it is not possible to find a country which has the same situation with Mongolia; however there are countries which have similarities in some aspects. Thus, these countries were chosen considering the similarities such as active mining industry, big territory and sparse population, dry climate (grasslands), socialistic background, rapid economic growth, nomadic life style and herding, etc. The study draft paper was revised based on comments from ADB and Consultant Team members, and was finalized in October 2012. The study includes topics that provide information and analysis of the LAR legislative and institutional framework, the purposes for which land may be expropriated, the land acquisition process, affected persons, compensation, valuation and resettlement, comparisons with international standards and the lessons that might be relevant for Mongolia.
75. The study on the Land and Property Compensation Valuation using the case of the Republic of Korea was carried out. This study will be used as a guide to the Consultant Team to draft the regulations on the compensation valuation. The study provides detailed information on practical and real cases from Korea.

E. CAPACITY ASSESSMENT AND CAPACITY DEVELOPMENT PLAN

76. One of the basic components of this TA is the assessment of the current capacity, of organizations and their staff that carry out the LAR activities and the formulation of a plan to build and develop the capacity of the organizations and their staff to implement LAR in accordance with the new LE law. The very first capacity assessment was carried out and the first draft Capacity Development Plan was formulated within this second phase of the TA. In this first draft more attention was paid to the assessment of the existing capacity and less work was done on the formulation of the capacity development plan. This was due to the fact that the draft LE law is not final and there might be some changes in the draft law and this in turn may prompt making revisions in the capacity development plan. This first draft still needs improvements both in the capacity assessment and in the formulation of the capacity development plans. Therefore, the assessment and plan will be finalized once the draft LE law and its regulations are finalized and in the next phase of the TA.
77. The capacity assessment showed that there is no specifically trained officials in LAR, both at the central and local government level, and that there is limited knowledge of LAR activities complying with the internationally accepted social safeguard principles. This would need to be considered when developing the capacity development plan.

IV. IMPLEMENTATION CHALLENGES

78. In general, the TA was implemented successfully and achieved the planned results and outputs. There were two minor issues that affected the project implementation. One is the non-availability of one of the consultants. The other one is the official lawmaking process of GOM. As in any other country, the lawmaking process in Mongolia is lengthy, unpredictable and requires continued and unplanned inputs and efforts from those involved in this process.
79. The local Social Development and Resettlement Specialist was not available unexpectedly since June 2012, so it was not possible to complete the study on the LAR activities that were carried out from 2003 to 2012. Once it was known that this specialist will not be available till the end of the project, the study on the LAR activities was postponed to the phase III, considering the availability and workload of the other consultants.
80. MCUD requested ADB to support and make the consultants available throughout the entire process of lawmaking. This was due to the lack of well qualified and experienced staff at the government organizations, especially staff who have appropriate knowledge about international social safeguards. Although there are certain processes through which the official lawmaking undergoes, the timing and level of efforts cannot be possibly, planned and estimated. The consultants were supporting MCUD and later GOM to introduce and present, discuss and clarify the draft law to all concerned parties

including affected people and civil society organizations and state organizations and the Parliament. Also, the consultant team worked on the revision and amendment of the draft LE law, when necessary, based on the comments received from the state organizations. This official lawmaking process stretched from September 2012, when the drafting of the Concept Paper of the draft LE law started, to the beginning of February 2013, when the draft LE law was withdrawn from the Parliament. The provision of the advice and support to MCUD and GOM was most demanding during the period from November 2012 to January 2013.

V. NEXT STEPS

81. A Phase III proposal for the project was approved by ADB in November 2012. The agreed scope for Phase III includes:
 - finalizing the draft LE Law including further consultation with civil society and Parliamentarians and through internal government review process
 - conduct studies on the impact and cost of the draft LE law
 - carry out studies on the LAR implemented from 2012 to 2013
 - continue building awareness and consensus amongst civil society
 - draft and finalize regulations to follow the new LE law
 - update and finalize the institutional assessment and capacity development plan
 - preparing related regulations and procedures
 - assessing the institutional requirements to implement the new LE Law and formulating a 5-year capacity development plan
 - initiating capacity development for government officials and employees (i.e., training and conference/study tour).
82. ADB, in consultation with MCUD, identified and recruited the members of the Consultant Team who were engaged in Phase III by the middle of March 2013.
83. Phase III will be implemented from end of March to October 2013.

ATTACHMENT 1 MEMBERS OF PROJECT WORKING GROUP

MEMBERS OF PROJECT WORKING GROUP

The PWG was renewed on February 14, 2012 by the order of the State Secretary of the MRTCUD as follows:

1. **Chairman** – D. Munkhbaatar, Director General, Urban Development and Land Affairs Policy Department, Ministry of Road, Transportation, Construction and Urban Development;
2. **Secretary** – B. Chinzorig, Team Leader, Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia, subproject of ADB TA 7566;

Members

3. E. Dondmaa – Specialist, Urban Development and Land Affairs Policy Department, Ministry of Road, Transportation, Construction and Urban Development;
4. P. Enkhmandakh – Specialist, Urban Development and Land Affairs Policy Department, Ministry of Road, Transportation, Construction and Urban Development;
5. Ch. Bat-Erdene – Specialist, Legal Policy Department, Ministry of Justice and Home Affairs;
6. R. Gankhuyag – Director, Land Affairs and Urban Development Department, Administration of Land Affairs, Construction, Geodesy & Cartography;
7. D. Bayalagsengel – Senior Specialist, Legal Division, Ulaanbaatar City Governor's Office;
8. E. Ariungerel – Deputy Director, Land Administration Department of Ulaanbaatar City;
9. D. Bat-Undrakh – Head, Land Expropriation Division, Land Administration Department of Ulaanbaatar City;
10. R. Bayar – Head, Urban Planning and Economy Division, Construction, Urban Development and Planning Department of Ulaanbaatar City.

ATTACHMENT 2 MEMBERS OF PROJECTS STEERING COMMITTEE

MEMBERS OF PROJECTS STEERING COMMITTEE

The first Steering Committee headed by the Vice Minister for Road, Transportation, Construction and Urban Development was established on February 16, 2012 as follows:

1. **Chairman** – B. Tsengel, Deputy Minister for Road, Transportation, Construction and Urban Development;
2. **Secretary** – B. Chinzorig, Team Leader, Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia, subproject of ADB TA 7566;

Members

3. D. Munkhbaatar, Director General, Urban Development and Land Affairs Policy Department, Ministry of Road, Transportation, Construction and Urban Development;
4. P. Enkhmandakh, Specialist, Urban Development and Land Affairs Policy Department, Ministry of Road, Transportation, Construction and Urban Development;
5. A. Munkhbold, Senior Specialist, Monitoring and Evaluation Department, Ministry of Road, Transportation, Construction and Urban Development;
6. M. Ayasgalan, Specialist, Development Financing and Cooperation Department, Ministry of Finance;
B. Buyanbat, Senior Specialist, Urban Development Policy Division, Ulaanbaatar City Governor's Office;

The second renewed joint Steering Committee chaired by the State Secretary of MCUD was established on September 21, 2012 as follows:

1. **Chairman** – R. Erdeneburen, State Secretary, MCUD
2. **Secretary** – R. Batchimeg, Senior Officer, Housing, public utility service policy implementation coordination department, MCUD

Members

3. N. Enkhbayar, Advisor to the Minister for Construction and Urban Development
4. G. Mergenbayar, Director General, Strategy, planning and policy department, MCUD
5. R. Erdenetsetseg, Director General, Housing, public utility service policy implementation coordination department, MCUD
6. Ts. Bayarbat, Director General, Urban development and land affairs policy implementation coordination department, MCUD
7. B. Tsedensamba, Director General, Construction, construction materials policy implementation coordination department, MCUD
8. D. Gantulga, Head, Finance and Investment Division, MCUD
9. B. Oyunchimeg, Senior Officer, Strategy, planning and policy department, MCUD

10. L. Bold, Senior Officer, Monitoring, Evaluation and internal audit division, MCUD
11. B. Bayarsaikhan, Director General, Construction Development Center, MCUD
12. A. Khurelshagai, Director General, Administration of Land Affairs, Geodesy and Cartography
13. M. Ayasgalan, Senior specialist, Development financing and cooperation Department, Ministry of Finance
14. G. Myagmar, Coordinator, Urban Development Sector project, ADB-MCUD (SC secretary without voting rights)
15. G. Otgonbayar, National Coordinator, Water supply and hygienic facilities joint project, UNDP-MCUD (SC secretary without voting rights)
16. B. Chinzorig, Team Leader, Reform of legal and regulatory framework for involuntary resettlement in Mongolia, ADB-MCUD (SC secretary without voting rights)
17. Sh. Dorjoo, Team Leader, Erdenet city sewage treatment facility renovation project, Government of France-MCUD (SC secretary without voting rights)
18. Sh. Buren, Team Leader, Central Asia water reserve integrated management project, Government of Germany-MCUD (SC secretary without voting rights)
19. B. Oyun, Team Leader, Umnigovi and Dornogovi aimag's urban development and border area settlement development project, ADB-MCUD (SC secretary without voting rights)
20. B. Munkhbayar, National coordinator, Building energy efficiency project, UNDP-MCUD (SC secretary without voting rights)
21. Ruth Erlbeck, Program Director, Integrated urban development, construction sector and VET promotion program, GIZ-MCUD (SC secretary without voting rights)

ATTACHMENT 3 CONCEPT PAPER OF THE LAW ON LAND EXPROPRIATION

APPROVED BY:**KH. TEMUJIN
MINISTER OF JUSTICE****APPROVED BY:****TS. BAYARSAIHAN
MINISTER OF CONSTRUCTION AND
URBAN DEVELOPMENT**

CONCEPT PAPER OF LAW ON LAND EXPROPRIATION

One. Grounds and need for draft law

A. Legislative grounds and needs

Constitution of Mongolia regulates the expropriation of land owned, in the possession of or used by private individuals and entities, as follows:

- “The state shall have the right to hold landholders responsible for the land, and may exchange or take possession of that land, with compensation, on grounds of special public need, or may confiscate land if it is used in a manner adverse to the health of the population, the interests of environmental protection, or for national security.” (Article 6.4)
- “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.” (Article 16.1.3)
- “The state recognizes all forms of public and private property and shall protect the rights of the owner by law.” “The owner’s rights shall be limited exclusively by grounds specified in the law.” (Articles 5.2 and 5.3)
- In addition, Article 16.2 of the Constitution of Mongolia mandates “the right to a healthy and safe environment, and to protection from environmental pollution and ecological imbalance,” which also serves as grounds for the proposed draft law.

This draft law is expected to regulate issues related to grounds and enforcement rules and regulations for exercising eminent domain for “exclusive public need”, “state special use” and “confiscation of private property” or for the return and exchange of land¹⁴ and government restriction of rights and titles to property as defined in the Constitution must be clearly regulated by a stand-alone law. In the meantime this law will regulate issues related to the rights and

¹⁴ Based on current practice, the legal term “exchange or return of land,” which is used in the Constitution of Mongolia, Land Law and Law on Privatization of Land to Mongolian Citizens, has been replaced with the terminology “land expropriation” in this draft law.

entitlements of the entity affected by land acquisition, the compensation and other supports and assistances to be provided to the affected entity.

Current regulations on acquisition of land, e.g. regulations on the return or exchange or acquisition with compensation of land, which is “possessed” and “used” as stated in the Land Law (Articles 42 and 43) and “owned” by citizens as stated in the Law on Privatization of Land to Mongolian Citizens (Article 32) for state special needs, regulate relations on negotiation with a land possessor and owner and acquisition or exchange of land based on mutually agreed contracts, but this definitely lacks regulations on expropriation if the parties do not reach agreement and no contracts are agreed.

As regards timing and time-related needs for formulation of this draft law, Parliamentary Resolutions 38 of 2009 and 36 of 2010 provide directives for the formulation of new legislation on determining the valuation for compensation for the taking back land or exchange of land and legislation on taking back land for state special need and emendation of existing legislation consistent with the directives. For example:

- “Directions to optimize Mongolian legislation till 2016” contains an action point to develop and approve the Law on Land Expropriation.
- Parliamentary Resolution 36, attachment 2.1 (2010) on approval of “New Development Mid-Term Program” listed the Law on Taking Back Land at the Disposal of the State to be approved.

Given the above, there is a need to create a legal environment for thorough regulation of land acquisition with compensation and taking back land at the disposal of the state with protection of the Constitutional rights of owners, possessors and users of property, and for restriction of these rights on certain grounds when necessary, and further to enable expropriation of land using eminent domain for immediate and necessary state, local and public need. The initiators of the draft law consider that the proposed Law on Land Expropriation would provide comprehensive regulation of this issue with multiple aspects.

B. Practical need and demand for development of the draft law

1/ In connection with the rapid development of Mongolia’s economy, larger-scale infrastructure and development projects are being implemented step-by-step at both national and regional levels. This creates a need to acquire land that is currently used under ownership and possession rights, in order to ensure the special state, local and public needs. Although the Mongolian Law on Land and the Law on Privatization of Land to Mongolian Citizens both contain regulations relating to land acquisition, the respective clauses indicate that land acquisition shall be carried out based on mutual contract being reached and there are no regulations on how to handle and resolve issues in the event that the parties cannot reach agreement. Therefore, approval of the proposed draft law will clarify legal regulations on the expropriation of land for the special state, local and public needs.

2/ The lack of detailed regulation of issues involving the state, citizens and other parties as regards land expropriation, the unclear rights of and social safeguards for affected entities, and the absence of grievance redress and dispute resolution systems, often negatively affect citizens and the citizens are often considered as the main victim but in the meantime as the principal wrongdoer in the land acquisition. Therefore, the proposed draft law regulates relations affecting the provision of fair compensation and the relations between parties by clarifying the rights and responsibilities of public agencies and citizens.

3/ Current practice in land acquisition regarding assessment of compensation and valuation of land and immovable property, uses an outdated methodology of base price, which was used early on for land privatization, rather than an up-to-date methodology of replacement cost¹⁵ or market price, whichever is higher, often resulting in failure of agreement with citizens.

4/ For implementation of development, activities and projects for public needs and benefit, usually there is an agreement with the majority of citizens on compensation and other issues by negotiations; however a small minority often insists on ungrounded requirements, thus hindering the public interest and restricting people's right to live in a safe and healthy environment; therefore there is a need to define legal conditions and regulations of eminent domain for expropriation of land.

5/ This generates a need to develop and bring into force a new Law on Land Expropriation, to regulate the wide range of issues by clearly identifying grounds for land expropriation, e.g. State, local special needs and public needs, and defining the basis for expropriation based on agreement consistent with the law, and when necessary to exercise eminent domain if parties fail to reach agreement on acquisition of land.

Two. Relations to be regulated by the draft Law, scope and general structure of the draft Law

1/ The proposed draft law on Land Expropriation has been developed in compliance with Article 5.4, Chapter 9, of the Law on Regulations for Developing and Submitting Draft Laws and Other Resolutions of Parliament.” The purpose of this law is to regulate issues of acquisition of land of the holders of ownership, possession and use rights with compensation under the eminent domain power of the State, based on the state, local special need and public need through administrative negotiations and agreement, and through expropriation and forced eviction if such negotiations fail to reach an agreement.

2/ Under this draft law, the following principles shall apply for land acquisition and resettlement.

¹⁵ "replacement value" means the 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 utility structures that were lost

- Avoid land expropriation whenever possible and minimize the negative consequences to arise from land acquisition;
- It shall be strived that land expropriation be settled through consultation, negotiations and agreements with the entity affected by land acquisition;
- Land expropriation and forced eviction should be the last resort;
- The decision for land expropriation shall be made only when there is well defined and grounded state and local special needs and public needs;
- The compensation for the loss incurred to the entity affected by land expropriation should be compensated based on the “replacement value” or “market value”, whichever is more;
- Land expropriation and forced eviction based on state, local special need or public need should not be carried out by private sector;
- Accommodation, livelihood and income of the entity affected by land expropriation must be maintained or improved after land expropriation, compared to the pre-expropriation period.
- Create a system for discussion of dispute, redressing of grievance, and make recommendations for effective and timely resolution of disputes involving land expropriation.
- Enable detailed assessment of impact, consequence and loss incurred by land expropriation.
- The budget required for land expropriation should be included in the budget of the development, projects or activities to be implemented by acquiring the land;
- Pay special consideration to issues of vulnerable groups affected by land expropriation.
- Have a separate approach to the issues of those with no land title and who cannot establish land titles and who are affected by land expropriation.

3/ The scope of the Land Expropriation Law will: 1) provide detailed definition and grounds for land expropriation and specify the state and local special needs and define the public need; 2) identify powers and responsibilities of central and local authorities in relation to land expropriation; 3) identify persons affected by land expropriation, their rights and responsibilities, compensation, social welfare and support arrangements; 4) identify procedures for implementation of land expropriation and resettlement; 5) land expropriation and forced eviction; and 6) detail grievance redress.

Draft Law on Land Expropriation shall comprise the following chapters.

Chapter One: reflects the general provisions of the draft law, including its purposes; legislation relating to land expropriation; definition of legal terminologies; purpose of expropriation of land for state, local, special needs and public needs; scope, objects and subjects relating to land

expropriation; types of development, projects and activities impact zones; and principles to be pursued in land expropriation.

Chapter Two: identifies persons affected by land expropriation; the rights of affected persons; compensation; support provided; social welfare; and responsibilities of affected persons.

Chapter Three: sets forth the rights and responsibilities of public and local administrative agencies and the initiator and organizer of the development, project and activity, to be implemented in the expropriated area and in relation to the land expropriation.

Chapter Four: identifies procedures for land expropriation; the chapter regulates procedures for reaching decisions on land expropriation; land expropriation planning; release of finance; publicizing; setting a deadline; identifying compensation; informing potentially affected communities; ensuring engagement with stakeholders, particularly affected communities; guaranteeing participation in decision-making and other processes; consultation; contracting; provision of compensation, resettlement and measures to improve livelihoods; monitoring, oversight and reporting.

Chapter Five: comprises regulations relating to land expropriation and forced eviction should the parties fail to reach agreement following the procedures set forth in Chapter Four.

Chapter Six; provides regulations for procedures to be followed for submission of complaints and grievances and their redressing, along with sanctions for violation of legislation, and issues relating to the effectiveness of the Law on Land Expropriation.

Three. Social, economic and legal consequences after approval of the draft law

Social consequences

Approval and enforcement of the Law on Land Expropriation and protection of the rights of persons affected by the land expropriation, enabling access to appropriate compensation, social welfare protection and assistance; after land expropriation, levels of livelihoods at pre-expropriation stage shall be maintained or improved.

Economic consequences

Approval and enforcement of the Law on Land Expropriation will enable effective and timely implementation of development, projects and activities that meet state and local special needs and public needs. This, in turn, will contribute to social and economic development of the country.

Legal consequences

Approval and enforcement of the Law on Land Expropriation will resolve constraints and issues related to land expropriation, and clarify the legal background for land expropriation action. Moreover, there will be a positive impact on the enabling of citizens to exercise their rights to live in a healthy and safe environment.

Four. Laws to be newly developed and amended

In connection with this draft law, the following legislations will be amended.

- Land Law.
- Law on Privatization of Land to Mongolian Citizens.

Regulations to be developed/formulated in connection with the proposed draft law:

- Regulation on provision of support and assistance to the entity affected by land expropriation who inevitably needs social welfare support and assistance.
- Regulation on preliminary assessment for land expropriation.
- Regulation on land acquisition and resettlement plan.
- Regulation on resolution of issues involving persons using unpermitted land.
- Methodologies for compensation appraisal and calculation of support and assistance to affected persons.
- Regulation to establish a mediation council and its operational procedures.
- Regulation to define impact areas of development, projects and activities.

ATTACHMENT 4
DRAFT LAW ON LAND EXPROPRIATION AND ITS ELUCIDATION

ELUCIDATION of the

LAW OF MONGOLIA

on

LAND EXPROPRIATION

DRAFT2012.12.27

UNOFFICIAL TRANSLATION

The technical comments were prepared by the Consultant Team as working document, using the official version of the Draft Law submitted by the Government to the Parliament. The comments were based on results, feedback or comments of numerous meetings, interviews and fieldtrips. The following terms were used in preparing comments.

Comment: *comment relevant to particular article is made at the end that article.*

PS: *comment relevant to any section within an article is made at the end of that particular section.*

Reference to internal source: *when given regulation refers to article or sections of this Draft Law.*

Reference to outside source: *when given regulation refers to other laws.*

Example 1: *when meaning of given regulation is explained by using a case to make it clear.*

{ } *– this sign is used when there is more detailed regulation and comment in the text of the Draft Law.*

LAW ON LAND EXPROPRIATION

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LAW OF MONGOLIA
on

...th day of ...(month), 201...

Ulaanbaatar city

LAND EXPROPRIATION

Comment: There is a number of potential titles which could be given to this Draft Law: 1) Law on land acquisition, compensation and resettlement, 2) Law on land expropriation with compensation, 3) Law on land acquisition, 4) Law on land expropriation for state, local and public needs with compensation, 5) Law on land expropriation. The project team deemed the last version as the most appropriate, because the purpose of the law is to protect public interest by expropriating privately owned land and immovable properties through applying eminent domain to few cases referred to in this Law.

CHAPTER ONE
GENERAL PROVISION

ARTICLE 1. PURPOSE OF LAW

1.1. The purpose of this law is to regulate issues of acquisition of land, resettlement, and compensation of the holders of ownership, possession and use rights with compensation by the State, based on the state and local special need and public need through negotiations and agreement, and through expropriation if such negotiations fail to reach an agreement and protection of human rights and rights to own property in connection to this acquisition, resettlement and compensation.

Comment: This article and the rationale of this law rests on the internationally recognized and practiced concept, eminent domain which refers to the legal concept, meaning “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” (Black’s Law Dictionary, Ninth edition, Bryan A. Garner, Editor in Chief). This is a concept that is commonly used in laws of other countries.

In fact, land expropriation laws of other countries are based on this concept. However, Mongolia does not use this concept and there is no legislative framework that elaborates this concept. This is why land expropriation related issues have been regulated through contracts and negotiations in the past, but now it has become clear that this cannot be continued further. When building engineering infrastructure (heating, electricity and roads etc.) necessary to the population, private land has to be vacated in some places.

The Constitution of Mongolia and the Law on Land refer to three grounds where land can be acquired with compensation – 1) state special need, 2) local special need, and 3) inevitable need of society. This Draft Law replaced the third term ‘inevitable need of society’ with “public need” and used it in this Draft Law confirming the current conditions, practice and clarity to the people and the grounds for its use and cases to which these grounds apply were provided in the Draft Law as a closed list.

Although it is infringement on private property for protection and interest of the public, i.e. for provision of healthy and safe environment for the public (for instance construction of

infrastructure to let the people live in an environment without air, soil and underground water pollution), there must be enough provisions for those entities whose rights are affected and losing their properties that protects human rights and property rights. Therefore, the main objectives of this law is to protect the rights of the entities who are losing their land and property for the sake of public needs and interests, especially the private property rights, which is one of the fundamental components of a democratic society with free economy.

ARTICLE 2. LEGISLATION ON LAND EXPROPRIATION

2.1. The legislation on land expropriation shall consist of the Constitution of Mongolia, Law on Land, Law on Allocation of Land to Mongolian Citizens for Ownership, Law on Urban Development, Law on State Registration of Property Ownership Right and Other Property Rights Related to It, Law on Social Welfare, Law on Property Valuation, Law on State inspection, Law on State Audit, this law and other legislation approved in conformity with them.

2.2. If international treaty to which Mongolia is a party provides otherwise then the international treaty shall prevail.

Comment: This Draft Law provides a regulation of one specific issue of land sector (land expropriation) and is a process/procedural law. As such, the Draft Law contains many provisions that refer to other laws that provide basic norms, including Law on Land, Law on State Registration of Property Ownership Right and Other Property Rights Related to It and other laws.

ARTICLE 3. SCOPE OF THE LAW

3.1. Within the scope of regulating issues defined in 1.1. of this law, this law will define and regulate the purposes of land expropriation, the decision for land expropriation, the subjects of land expropriation, the entity affected by the land expropriation, the procedures of the land expropriation, the parties of the land expropriation and their rights and duties.

Comment: Pursuant to Article 1.1 of the Draw Law, this law shall regulate issues related to expropriation of land being legally owned, possessed or used, for public need. So, any entity using state owned land in any form, without proper title (for example, Zaisan construction – place where land permits where obtained for tourism business purposes, but instead of running tourism related business, the land possessors built apartments and family houses, a clear case of breach of the law and corruption), will not be object of this law. In other words, legally, it is not possible to provide compensation for land that has been used illegally. Also the issue of land under possession or use with expired title will not be regulated by this law – the Law on Land will apply to all these cases.

ARTICLE 4. PRINCIPLES OF LAND EXPROPRIATION

4.1. The following principles are to be followed in land expropriation activities:

4.1.1. Avoid land expropriation whenever possible and minimize the negative consequences to arise from land acquisition;

Comment: Implementer of land expropriation shall undertake preliminary study and prove that the expropriation of that land is indispensable (taking into account all factors, such as safety, security of the population, technical solutions etc.), and shall have identified comprehensive measures for keeping adverse impact of land expropriation to minimum.

4.1.2. The decision for land expropriation shall be made when there is defined and grounded State and local special needs and public needs;

Comment: Decision making body referred to in this Law (Parliament, Cabinet, Aimag and Capital city Citizens Representative Khural) that receives draft decision from implementing entity shall make its decision after determining whether given project or activity meets public need and after weighing it up with adverse impact of given project or activity. Therefore, given decision making body has the possibility to return the draft decision to initiators, if it has some doubts about the benefit for the public and interests of affected entities.

4.1.3. The entity affected by land expropriation must be clearly informed that the land acquisition is taking place under the eminent domain power of the state to expropriate;

Comment: Pursuant to Article 1.1. and 3.1., entities affected by land expropriation should be notified that, if necessary, land shall be expropriated through the methods and forms referred to in this law (see Article 29).

4.1.4. It shall be strived that land expropriation be settled through consultation, negotiations and agreements with the entity affected by land acquisition;

Comment: While when necessary, it is possible to expropriate land, the state and organizations representing the state, to the extent possible, should try to resolve the issue through agreements and negotiations with affected entities. In other words, while land expropriation is possible, all parties should be aware and take into consideration that this would take time and may negatively affect the project or activity.

4.1.5. The compensation for the loss incurred to the entity affected by land expropriation should be compensated based on the “replacement value” or “market value”, whichever is more;

Comment: The actual amount of compensation to be paid to affected entities should be enough for obtaining land or rebuilding immovable property that are similar in size and quality with the one that is being expropriated (replacement value) or for buying straightaway from the market. In other words, when establishing damage to affected entities, both replacement value and market value methods will be used and the one with higher value will be applied. Of course, in most cases, market value will be higher, but in some few cases, where the location of land or immovable property is not that good, yet investment is high, replacement value may be higher than market value.

4.1.6. The entity affected by land expropriation shall be provided with relevant information on land expropriation, resettlement and compensation, shall be consulted, the entity affected by land expropriation, the public and citizens shall be provided with possibilities to participate in related activities;

Comment: This will be understood as taking measures to involve parties in all stages of developing, approving and implementing land expropriation decisions, through providing affected entities as well as other interested parties with information about the given project or activity and about development and implementation of land expropriation and resettlement plan and amount of compensation.

4.1.7. Land expropriation through negotiations and agreements should be implemented by a government authority or by a private entity with the approval of competent government authority,

Comment: Based on decisions made by authorized bodies, a public or private entity with the approval of competent government entity can implement land acquisition and resettlement activities. However, forced evictions will be implemented only by the body that made decision upon request from competent state organization or by the court.

4.1.8. Land expropriation through forced eviction should be the last resort;

Comment: Implementing land expropriation through voluntary means and agreements and negotiations with affected entities should be preferred means, and forced eviction will be avoided as much as possible. This principle will also apply to decisions of authorized bodies that make decision on forced eviction, including Parliament, Aimag and Capital city Citizens Representative Khurals and courts. In accordance with Article 34 and 35 of the Draft Law, preferred means is agreement through negotiations.

4.1.9. Land expropriation through forced eviction should be carried out only by government organization which is given such rights by law;

Comment: Forced eviction will be implemented only by court decision implementing organization based on valid court decision. See Article 44 for specific limitations and regulations related to this issue.

4.1.10. When the land expropriation activities are completed, the land and immovable property of the entity affected by land expropriation shall be compensated and the relocation, transition and rehabilitation assistances provided;

Comment: According to this principle, a requirement will be put for implementers of land expropriation so that affected entities obtain land or immovable property of size and quality of at least similar to that affected by land expropriation, and have living standards and income at least similar to the period prior to land expropriation.

4.1.11. When the land expropriation activities are completed, the entity affected by land expropriation - person who inevitably needs social welfare support and assistance should have received additional social welfare support and assistance;

Comment: Negative effect of land expropriation may be higher for vulnerable and low income citizens, therefore, when resettling them, additional specific measures, such as enrolling them in vocational training course should be taken in order to improve their housing, livelihood and income situation. The newly adopted Law on Social Welfare provides for many opportunities for additional support or assistance with participation of the public. The Draft Law provides a legal basis for additional support and assistance to these citizens, using the Law on Social Welfare and its principle.

4.1.12. The budget required for land expropriation, resettlement and compensation should be included in the budget of the development, projects or activities to be implemented by acquiring the land;

Comment: According to this principle, direct costs related to land expropriation and resettlement and compensation to affected entities will be paid by initiators of given project and activity. These costs shall be one of the main parts of their budget, therefore, should be calculated and included in the budget. Therefore, the difficulty that has existed before, for instance where a budget for constructing a road is approved, but the entity to pay for compensation to citizens and for land expropriation actions remained uncertain, will be avoided.

4.2.13. Any land expropriation related information and activity, except private confidential information of the individuals, shall be open to the interested entity and the public.

Comment: Land expropriation will be organized in a manner that is fair and credible to the public by making all information, except private information, such as amount of compensation to be paid to individual person, open to interested parties. This will also enable, where necessary, use of eminent domain against “narrow interests”.

4.2. The principles stated in 4.1. of this law are equally applicable for the land possessor, user and other entity affected by land expropriation, and also are equally applicable for the local special needs.

Comment: The Draft Law provides rationale and procedure for implementing eminent domain or “assigning land owner a duty related to the land, as provided in the Constitution”, “replacing or taking back land with compensation for state special need” through ensuring the balance of two sided regulations of the Constitution, that is to protect owners right (Article 5.1.) and to limit owners’ rights only based on grounds stated in laws (Article 5.2.). Therefore, these provisions of the Constitution referred to in Article 4.1. of this Draft Law constitute basic principles of this Draft Law. In some cases, need to infringe on private property of citizens arises in order to ensure the right of citizens to live in healthy and safe environment (air, soil and deep water contamination of Ulaanbaatar), therefore, this is social relations which require special legal regulation.

ARTICLE 5. DEFINITION OF TERMS

5.1. The following terms used in this Law shall be understood as follows:

5.1.1. "land expropriation" means acquisition of land, in accordance with the procedures of this law, based on the state and local special needs or public needs through negotiations and conclusion of agreement with the entity affected by land expropriation;

5.1.2. "land expropriation through forced eviction" means acquisition of land through expropriation, in accordance with the procedures of this law, under the eminent domain power of the State based on the decision of the court in case that the entity affected by land expropriation and the implementer in charge of the land expropriation, resettlement and compensation activities could not negotiate and conclude an agreement;

5.1.3. "state special need" means the articles 13.3.1.-13.3.3. and 13.3.8. of the Law on Land;

5.1.4. "public need" means activity, infrastructure and structure that is inevitably needed for the public and serves the public interest and secures public's rights to live in healthy and safe environment and safety as specified in article 6 of this law and;

5.1.5. "entity affected by land expropriation" means individual, legal entity that has to give up its land, in accordance with this law, and as a result losing its land, moveable and immovable properties that was owned, possessed and used, and living, employment, possibilities to conduct a business, and possibility to use pastureland, and entity that is residing by renting land and immovable property and that is conducting an activity in the area where land acquisition is taking place and who are entitled to compensation;

5.1.6. "development, project or activity" means activity to be carried out on the land to be acquired as per this law based on the state and local special need and public need;

5.1.7. "initiator of the development, project or activity" means the initiator of the activity to be carried out on the land to be acquired as per this law based on the state special need and public need;

5.1.8. "organizer in charge of the development, project or activity" means a state organization or an entity appointed by competent state or local self governing organization to in charge of the implementation of the activity to be carried out on the land to be acquired as per this law based on the state special need and public need;

5.1.9. "replacement value" means the amount required to replace lost land and immovable property of the entity affected by land expropriation, i.e. the amount required to re-establish similar size, quality and utility structures that were lost;

5.1.10. "compensation" means 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 rehabilitation assistances;

5.1.11. “rehabilitation assistance” means activities directed to restore or improve the livelihood, income of the entity affected by land acquisition;

5.1.12. “relocation and transition assistance” means support provided to entity affected by land acquisition, who are physically displaced, when the entity is relocating and this includes compensation and other tangible means for transportation, food, accommodation and compensation and other tangible means to overcome the inconveniences associated with relocation;

5.1.13. “professional entity” means entity who holds special permission or has knowledge and skills to carry out land and property appraisal, cadastral surveying and mapping, social impact assessment and other necessary works that should be carried out during land expropriation activities;

5.1.14. “mediation council” means ad hoc setup established to implement public monitoring in land expropriation, resettlement and compensation activities, evaluate and make recommendations to properly redress the grievances and disputes in short period of time and mediate the parties to settle the disputes in an extrajudicial way;

5.1.15. “cut-off date for compensation entitlement /hereinafter to be referred to as cut-off date/” means the day on which the census of people, households residing and entities running activities in the area where land is being acquired and inventory of their land and assets has started in order to determine correctly the entity affected by land expropriation and the compensation to be provided;

5.1.16. “impact of the development, project or activity” means any negative consequences such as increased dustiness, noisiness and sharp lights, deteriorated and decreased pasture land and its water supply, blocked entrance and exit that occur due to the implementation of these development, project or activity and that have influenced or may influence the normal life and business of the entity affected by land acquisition.

ARTICLE 6. PURPOSES OF LAND EXPROPRIATION

6.1. Land shall be expropriated only for purposes mentioned below, based on the state special need and public need:

6.1.1. State special need include the following purposes:

6.1.1. a/ State special protection land as specified in 13.3.1. of the Law on Land;

6.1.1. b/ border strip land as specified in the 13.3.2. of Law on Land;

6.1.1.c/land for national defense and security as specified in the 13.3.3. of the Law on Land;

6.1.1. d/ land for the inter-aimag reserve pasture as specified in 13.3.8. of Law on Land;

Comment: State and local special needs are listed in Article 16 of the Law on Land. Of these, cases of acquiring land that is under others' ownership, possession or use are specifically regulated by Article 6.1.1. of this Draft Law, and following land were included: 1) state protected areas, 2) border strip land, 3) land for national defense and security, 4) inter aimag reserve pasture. Other land for special need stipulated in the Law on Land are as follows:

Reference to outside sources 1: It was considered inappropriate to use eminent domain in the following cases:

16.1.4. land for diplomatic and consular missions of foreign countries and resident offices of international organizations;

16.1.5. land for scientific and technological tests, experiments and sites for regular environmental and climatic observation;

16.1.8. contracted oil exploration sites to be utilized in compliance with the production sharing agreements;

16.1.10. land for building and using nuclear equipment;

16.1.11 land for micro-mining.

Reference to outside sources 2: Article 13.4 of the Draft Law on Land stipulates "Land can be taken for local special need for the purposes of aimag and the capital city engineering infrastructure or electricity, water and sewerage, road, transport, communications lines, construction, sources of drinking water, canals and inter soum reserve pasture". In other words, with the decision of aimag and capital city Citizens Representative Khural, it is possible to expropriate land for these purposes:

6.1.2. Public need include the following purposes:

6.1.2. a/land for *state/national level* physical infrastructure as specified in the 3.1.10. of Law on Urban Development¹⁶;

¹⁶3.1.10 of Law on Urban development reads as follows: "engineering infrastructure" means energy, fresh and waste water, road and related structures, transportation, communication lines and networks, and related structures.

6.1.2. b/ land for local special need as specified in 13.4. of Law on Land¹⁷;

6.1.2. c/ land for public kindergarten, elementary, secondary and high school to be built with state or local budget;

6.1.2. d/ mineral deposit land of strategic importance as specified in the 4.1.12. of Law on Minerals.

Reference to outside source: Article 4.1.12 of the Law on Mineral Resources stipulates “mineral deposit of strategic importance” is a deposit of a size that can affect national security, national and local economic and social development or a deposit producing more than 5 percent of GDP of Mongolia.

ARTICLE 7. SUBJECT OF LAND EXPROPRIATION

7.1. The following subjects can be affected by land expropriation:

7.1.1. ownership right of immovable property, land ownership, possession or use rights and other rights related to them specified in the 5.5.4.-5.5.10. of the General Law on State Registration;

7.1.2. ownership right of moveable and other rights related to them related to them specified in the 5.5.4.-5.5.6., 5.5.8 and 5.5.10. of the General Law on State Registration; *PS: The Draft Law development team deemed it appropriate to treat some movable properties as if they were immovable. These include equipment with precise fine-tuning and solid installation in the wall or on the floor.*

7.1.3. Publicly/commonly used pasture land, water points in the pasture land, salt marsh and saline soil area as specified in article 6.2.1. of the Law on Land and possibilities to use them.

Comment: This provision highlights that the direct legal object of land expropriation will be any title or rights of land and immovable properties, and other related rights, such as rental or collateral rights. This will allow avoiding discriminatory regulations on compensation that say “compensation shall not apply to citizens and entities who are users of land”.

The Draft Law development team also considered it necessary for Mongolia, which has real necessity to regulate the right balance of nomadic livestock and mining, to have

¹⁷ 13.4. of Law on Land reads as follows: Aimag and Capital city can acquire land for local special need for purposes of building engineering infrastructure, i.e. energy, fresh and waste water, road and related structures, transportation, communication lines and networks, and related structures, drinking water sources, dam and canals, and inter-soum reserve pasture land.

Article 7.1.3. Additional study is needed on determining amount of loss and value of compensation to be paid to herders for their right to use pasture and water points.

ARTICLE 8. DETERMINING THE IMPACT ZONE OF THE DEVELOPMENT, PROJECT OR ACTIVITY

8.1. The impact zone of the development, project or activity /hereinafter to be referred to as impact zone/ shall be determined based on the general environmental impact assessment (if necessary based on detailed assessment) of the development, project or activity and the social impact assessment to be carried out in accordance with this law, by the state administrative organization in charge of land affairs in cooperation with the organizer in charge of the development, project or activity through obtaining the comments of the entity affected by land acquisition and by consulting the entity affected by land acquisition.

8.2. The impact zone may be divided into zoning based on the degree of the negative consequences of the impacts.

8.3. The methodologies to determine the impact zone shall be regulated by the regulations specified in 18.1.4. of this law.

Comment: Land expropriation can be temporary and permanent. It is appropriate to determine impact zones based on features of given project or activity, and determination of impact zones will allow differentiated compensation. Impact zones will be used more for determining different degree of damage and loss of pasture land by herders. Detailed study is required for developing methodology to determining impact zones.

CHAPTER TWO

ENTITY AFFECTED BY LAND EXPROPRIATION, ITS RIGHTS AND DUTIES

ARTICLE 9. ENTITY AFFECTED BY LAND EXPROPRIATION

9.1. Entity affected by land expropriation is the entity specified in 5.1.5. of this law.

Reference to internal source: 5.1.5. "entity affected by land expropriation" means individual, legal entity that has to give up its land, in accordance with this law, and as a result losing its land, moveable and immovable properties that was owned, possessed and used, and living, employment, possibilities to conduct a business, and possibility to use pastureland, and entity that is residing by renting land and immovable property and that is conducting an activity in the area where land acquisition is taking place and who are entitled to compensation;

9.2. Entity affected by land expropriation shall be an entity owning, possessing and using land and immovable properties in the area being affected by land expropriation on or before the cut-off date.

Reference to internal source: 5.1.14. "cut-off date for compensation entitlement /hereinafter to be referred to as cut-off date/" means the day on which the census of people, households residing and entities running activities in the area where land is being acquired and inventory of their land and assets has started in order to determine correctly the entity affected by land expropriation and the compensation to be provided;

Comment: This regulation on cut-off date was used in order to determine correctly subjects and objects affected by land expropriation and consequently, to determine who is eligible for compensation. In other words, no compensation will be paid for any sale, dividing, or large amount of investment for the purpose of obtaining higher compensation if such actions took place after the cut-off date. This will restrict any opportunity for undue compensation. As stipulated in Article 28.1, the cut-off date will be set by the implementer of land expropriation, resettlement and compensation plan, based on land expropriation decision and features of that particular project or activity. This will also prevent from actions of people interested in unjust enrichment through buying at cheap rate land and immovable properties of citizens who lack information, and then obtaining large amount of compensation from the state.

9.3. Entity affected by land expropriation shall be herder using pasture and water in the area being affected by land expropriation on or before the cut-off date and who is losing or has restricted his/her rights to use the pasture.

PS: For herders, formally titled (land possession) land is only wintering place. However, due to specifics of nomadic livestock breeding, it is necessary to also take into account access to pasture and water points on it. Therefore, under this provision, compensation will include all the risks that herders and their livestock face when "moving to another place". The least that can happen is livestock animals run back to old pasture, which requires additional work, expenses and time. It also (might) happens a lot that livestock animals running back to old place get caught by wolves.

9.4. Entity affected by land expropriation shall be an entity renting land and immovable properties, based on appropriate contract and agreement, in the area being affected by land expropriation on or before the cut-off date.

PS: With this provision, citizens who are not legal owners of given land or immovable property, but who undertake activity on it, and generate income will also be treated as entity affected by land expropriation, and will be compensated for lost income and certain percentage of salary. Certain percentage of risks during the period of getting another place or job will also be shared.

9.5. Entity affected by land expropriation can be an entity who is not a holder of ownership, possession or use rights in the land and immovable property being acquired, but who is in the process of legally establishing these rights or who is eligible to establish these rights.

Comment: In accordance with Article 9.5, affected entity will be entitled to compensation in the following cases:

1) *There is no certificate of possession or use as per the Law on Land, but it is possible to let that entity possess or use the given land;*

2) *There is no certificate of possession or use as per the Law on Land, but the entity has submitted request to authorized body and it is possible to grant such certificate to that entity, and when the decision is expected to be positive;*

3) *The decision of the Governor for ownership has been made in accordance with Article 21 of the Law on Allocation of Land for Ownership to Citizens of Mongolia, but the entity has not registered this title with the General Authority for State Registration and has not obtained title certificate of immovable property;*

4) *Citizens who submitted request for ownership to authorized body in accordance with Article 20 of the Law on Allocation of Land for Ownership to Citizens of Mongolia.*

9.6. The issues of entity affected by land expropriation who is registered in certain ger district and who is not a holder of ownership, possession or use rights in the land being acquired and, also, who cannot establish such rights and who is using this land without permission, shall be settled by the regulations specified in 18.1.8. of this law.

Comment: For entities which do not have certificate of ownership, possession or use of given land, and for some reasons, such as flood area or high voltage electricity line, such permission cannot be granted for them, the issue of land expropriation will be regulated by a regulation to be issued by the Ministry of Construction and Urban Development. They are using land illegally, so compensation cannot be paid to them, so it is better to regulate resettlement issues related to this case by an administrative procedure. That procedure should include provisions related to making sure that social and engineering infrastructure is available in the resettlement area, and provide for some support or assistance during relocation and transition period. In other words, while the Draft Law makes it clear that it is impossible to provide any compensation for land illegally used, it also affirms the role of the state from both public interest and humanitarian perspectives (ger district air pollution or livelihood of ger residents etc), to provide assistance to these people in resettling in area where social and engineering infrastructure is available. On the other hand, when organizing land expropriation it is important for the state to provide assistance to these people by allocating land with appropriate engineering solutions so that they do not resettle in another place illegally and pollute the air.

However, there is a need to distinguish entities who are running business and earning money by “illegally using” land of others, including that of the state, as stated in Article 3.1 of the Draft Law, from people who are “residing without permission” on state owned land. In other words, this regulation will not apply to entities who are running business by “illegally using” land.

9.7. If the entity affected by land expropriation is, as defined in 3.1.2. of the Law on Social Welfare, a person-member of a family that inevitably needs social welfare support and assistance then he/she shall be provided with additional social welfare assistances according to the regulation specified in 19.1.3. of this law;

Reference to outside source: Article 3.1.2. of the Law on Social Welfare. “person-member of a family that inevitably needs social welfare support and assistance” means member of a household registered in the household unified information system and whose livelihood

is under the poverty line as determined based on the methodology approved by the National Statistical Office and central administrative organization in charge of social welfare (currently Ministry of Human Development and Social Welfare).

Reference to internal source: “19.1.3. approve and enforce regulation, jointly with the state central administrative organization in charge of social welfare, to provide support and assistance to the entity affected by land expropriation who is resettling and who is a person-member of a family that inevitably needs social welfare support and assistance specified in 18.2.9 of the Law on social welfare”;

ARTICLE 10. THIRD PARTY AFFECTED BY LAND EXPROPRIATION

10.1. Third party affected by land expropriation is the entity who has concluded an agreement to transfer the subject of land expropriation or who has rights to have fulfilled its obligations from the subject of land expropriation.

Comment: Any citizen or legal person who signed valid agreement to transfer the object before the cut-off date, and who have any claim, such as collateral rights of immovable property, will be considered as third party entity affected by land expropriation.

10.2. The entity specified in 10.1. of this law has the right to have appropriate portion that belongs to it from the compensation when relevant evidence is presented by itself or by the entity affected by land expropriation.

Comment: Third party itself or owner of land or immovable property will deliver valid agreement and other evidences and obtain his/her own share. The following provision was included in the section on duties of affected entities, in order to “add force” to this regulation.

Reference to internal source: “11.2.4. declare correctly the rights and duties of the third party”;

10.3. In the case of resettlement of herders, carried out in accordance with this law, the herder(s) who should be sharing the pasture and water rights with the herders being resettled shall be the third party affected by land expropriation.

Comment: In some cases, herder and livestock affected by land expropriation will have to share pasture and water points of another herder who is not affected by land expropriation. Therefore, there is a need to treat that herder who has to share pasture and water points with herder affected by land expropriation in equal terms with affected entities in some respects and provide some support and assistance, by providing well etc. See Article 9.3 of the Draft Law and comments on it.

10.4. The negative impacts to affect the herder(s) who should be sharing the pasture and water rights, specified in 10.3. of this law, should be identified and if necessary appropriate support and assistance provided.

Comment: In order to provide support and assistance to herders who have to share "access to pasture and water points" in just and objective manner, a specialized professional organization (private sector - appraiser) will carry out assessment of impact of herders and their livestock on others as part of the determination of impact zones as per Article 8 of the Draft Law and in accordance with appropriate methodology.

ARTICLE 11. RIGHTS AND DUTIES OF ENTITY AFFECTED BY LAND EXPROPRIATION

11.1. Entity affected by land expropriation has the following rights:

11.1.1. demand explanation and evidence from the administrative organization in charge of land affairs (ALACGaC and its local offices) that the purposes of land expropriation for state, local and public need are realistic and appropriate and that the acquisition of the land of the affected entity is unavoidable.

11.1.2. receive cash compensation for loss of land and immovable property that are appraised based on replacement value or market value, or;

11.1.3. receive compensation in the form of direct replacement, i.e. receive the compensation in the form of land and structures that are of similar size, quality and utility, for loss of land and immovable property;

PS: In accordance with Article 11.1.2. and 11.1.3, affected entity will have two main choices: cash or building of similar size and quality. This is in line with the meaning of the provisions of the Constitution of Mongolia, Law on Land and Law on Allocation of Land for Ownership to Citizens of Mongolia which say "replacing or taking back land with compensation". However, compensation is paid not for replacing land, rather land is of appropriate size or buildings are offered that matches the size of compensation, and on the other hand, the term "taking back" contains a connotation as if the state was the owner of private land. Therefore, a slightly different formulation was used.

11.1.4. receive the compensation in the forms specified in 11.1.2. and 11.1.3. as combination based on agreement;

PS: In order to fully take into account citizens' interests, for example, if a citizen wants to have good land in outskirts of the city and build a similar house him/herself, this provision allows meeting that demand.

11.1.5. receive compensation for loss of income sources, i.e. loss of salary or business profit, due to land expropriation;

PS: In other words, if a person had permanent work located on the land or immovable property, or had business, relevant calculation of loss in terms of salary or business profit will be made and paid as compensation. When determining salary or profit, means such as social security or tax reports shall be used.

11.1.6. receive relocation, transition and rehabilitation assistances;

11.1.7. not agree with the land expropriation related issues, compensation valuation, its amount and conditions and negotiate on these matters;

11.1.8. not agree with the land expropriation, consult with the authorized bodies on any issue and at any stage of land expropriation and make suggestions;

11.1.9. make suggestion, request and grievance to authorized body and officials at any stage of land expropriation and obtain response;

11.1.10. select one of the two appraisers to assess the compensation on his/her own judgement;

PS: According to the principle of the Law on property valuation, affected person proposing a valuer to assess his/her property enables objectivity of evaluation. See Article 33.5-33.7 of the Draft Law.

11.1.11. obtain any information, except confidential private information of an individual, related to land expropriation activities from an unauthorized body;

PS: amount of compensation is irrelevant to others, and in fact, should be kept confidential. The other information has to be as transparent as possible.

11.1.12. consult and participate in formulation of land acquisition and resettlement plan;

PS: Any land expropriation activities need to be organized open to the public starting from a certain stage, and this is one of the key principles of this Draft Law. Relevant regulations are included in the Draft Law.

11.1.13. monitor any activity of land expropriation in person or through its representative organization;

11.1.14. continue and complete 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 expropriated, with the approval of the state administrative organization in charge of land affairs;

Permission should be given if it is about repairing roof to from protect rain water or obtaining khas and ulzii stoves that are being installed as part of the Government actions in the public interest.

11.1.15. obtain professional advice from Mediation council on any land expropriation, resettlement and compensation issues free of charge;

Ordinary citizens affected by land expropriation will have to enter into negotiation and legal relationships with specialized entities with the mandate to organize land expropriation. Therefore, there should be made efforts to "level out" this inequality, citizens have the right

to seek advice and information from the Mediation Council. As stipulated in the Draft Law, this council is provided with possibilities to operate relatively independently.

11.1.16. have settled any issues related to land expropriation, resettlement and compensation directly through the court procedures without approaching the Mediation Council.

PS: As envisaged in the Draft Law, although this Council has the duty to ensure balance of interest of parties, if a citizen opts to do so, it would be possible to go to court directly. This is because this organization is regarded as useful structure by some, and as “another bureaucratic step” by others, so it is better to leave for people to decide on the option.

11.1.17. other rights specified in the law.

11.2. The following are the duties of the entity affected by land expropriation:

11.2.1. provide information required to implement land expropriation, resettlement and compensation activities to the competent state administrative organization in charge of land affairs and officials completely, freely and on timely manner;

11.2.2. provide correct information that evidences the ownership, possession or use of the subject being affected by land expropriation;

11.2.3. fulfill its duties specified in the land acquisition agreement;

11.2.4. declare correctly the rights and duties of the third party specified in article 10 of this law;

11.3. Entity affected by land expropriation is prohibited to do the following actions:

11.3.1. make improvements and investments that will have impacts to influence the value of the land and immovable property, except as specified in 11.1.14 of this law;

11.3.2. transfer the land and immovable property to the ownership, possession and use of the others after the cut-off date;

11.3.3. intentionally hinder the land expropriation activities;

PS: In practice, state organizations and officials in some cases find themselves powerless against citizens' resistance to land expropriation. Therefore, once the appropriate decision is made through legal means (court decision), certain penalties are provided in Article 48.2.4, including arrest for 3-7 days of persons who intentionally impede land expropriation activities.

ARTICLE 12. REPRESENTATIVE ORGANIZATION OF THE ENTITY AFFECTED BY LAND EXPROPRIATION

12.1. Entities affected by land expropriation can establish a representative organization for the purpose of protecting their rights and interests, and take part in its activities with rights to vote.

12.2. Assurances, that are inevitably required, such as provision of venue, equipment and other organizational assurances to establish the representative organization and organize meetings, can be obtained from the state administrative organization in charge of land affairs and local administrative organization in the respective area.

12.3. Issues of the establishment of representative organization and running its activities can be regulated by the exemplary template statute prepared by the state administrative organization in charge of land affairs.

Comment: As stipulated in the Draft Law, affected entities have the right to establish this organization if they wish, when the impact and scope of land expropriation is large. Citizens can defend their interest through this representative body, by establishing an organized form. Also this organization can contribute significantly to improving public participation in land expropriation and resettlement. As stipulated in the Draft Law, this organization will be represented in the Mediation council. See Article 26.3.3 of the Draft Law. The exemplary template statute is a document to facilitate the process of forming and running the representative organization the citizens and it is not a must to use and follow this statute by the citizens. They can formulate the statute on their own. It is their choice.

CHAPTER THREE ORGANIZATIONS RESPONSIBLE FOR LAND EXPROPRIATION, THEIR RIGHTS AND DUTIES

SUBCHAPTER ONE POWERS OF THE STATE GREAT KHURAL (PARLIAMENT) AND LOCAL SELF GOVERNING ORGANIZATIONS (PROVINCIAL, CAPITAL CITY, SOUM AND DISTRICTS COUNCILS)

ARTICLE 13. THE POWER OF THE STATE GREAT KHURAL (PARLIAMENT)

13.1. State Great Khural shall exercise the following powers regarding land expropriation:

13.1.1. make decision for land expropriation based on the purposes defined in clauses 6.1.1.a.-6.1.1.d., and 6.1.2.d. clauses of this law;

Comment: Land expropriation based on these grounds will be the special mandate of the Parliament only, i.e. the aimag and capital city Government and the Citizens Representative Khural cannot make decision for these purposes.

Also another regulation on this issue is that only Parliament, Cabinet, and aimag and capital city Citizens Representative Khural have the mandate to make decision to expropriate land for state and local special needs and public need. This is because these are the highest organs of respective levels to express common interest and need, in addition to being collective decision making bodies. The land expropriation decisions made by these bodies will have not just legal but also economic implications. If they consider it appropriate to expropriate land, then they also have to make decision on funding required for these activities.

13.1.2. approve the budget required to implement the decision specified in 13.1.1. of this law, when making the decision.

Comment: When the Parliament is to make land expropriation decision based on the above grounds, it will also have to approve the budget needed for project implementers, including costs related to organization of implementation of land acquisition and resettlement and compensation expenses. That way, land expropriation and compensation related costs would already have been approved as part of the appropriate budget, and this will allow avoiding the difficulties that are taking place today in land expropriation due to unavailability or delay of the funding for land acquisition and resettlement.

13.2. The Government shall organize activities to implement and fulfill the decision specified in 13.1.1. of this law.

ARTICLE 14. THE POWER OF THE NATIONAL HUMAN RIGHTS COMMISSION

14.1. As specified in 18.2. of the Law on Mongolian National Human Rights Commission, the National Human Rights Commission shall carry out, on its own initiatives, monitoring and evaluation (performance monitoring) if human rights were violated based on the national land expropriation activities report submitted by the Government.

14.2. The monitoring and evaluation (performance monitoring) specified in 14.1. of this law shall be carried out at least 2 years after the completion of land expropriation activities.

Comment: The Draft Law development team deemed it necessary to have a role which undertakes independent monitoring and conclusion on whether or not human rights were violated, because any land expropriation actions involve infringement on property rights for the sake of public interest. The subject to perform this duty independently is the National Human Rights Commission. This is why the Draft Law provides that this organization will undertake performance monitoring and evaluation two years after the land expropriation takes place, and issue recommendations to the Government, if any violations are revealed. The copy of the Draft Law was sent to the Human Rights Commission for comments.

In terms of carrying out this monitoring after two years and not within two years is that, on one hand, negative impact of land expropriation may come to surface in the longer

run, and on the other hand, relevant public organizations such as National Auditing authority or professional inspection authority, affected entities, and their representative bodies will also be monitoring the process of land expropriation while it is being carried out. Also, if necessary, court can be involved in establishing whether or not human rights were violated. According to the Draft Law and estimated duration of procedural process of courts, it would take on average 1 year and 7 months for most disputed cases to finalize. Therefore, it was considered by the Draft Law development team that it would be better to make the monitoring by the Human Rights Commission to take place after two years, so that it does not overlap with judicial process. However, as mentioned before the main reason for conducting this M&E by the NHRC after two years since the land expropriation took place is to see the impacts of the land expropriation in relatively longer term rather than immediately after or during the land expropriation.

ARTICLE 15. THE POWER OF THE AIMAG, CAPITAL CITY CITIZENS REPRESENTATIVE KHURAL (PROVINCIAL AND ULAANBAATAR – CAPITAL CITY COUNCIL)

15.1. Aimag, capital city Citizens Representative Khural shall exercise the following powers regarding land expropriation:

15.1.1. make decision for land expropriation based on the purposes defined in clauses 6.1.2.b. and 6.1.2.c. of this law;

Comment: See comments for Article 12.1.1. of the Draft Law. Decision by Citizens Representative Khural will apply only to respective territory.

15.1.2. approve the budget required to implement the decision specified in 15.1.1. of this law when making the decision;

Comment: See these grounds in powers of the Parliament. In other words, Citizens Representative Khurals will approve plans of development, project, or activity of its respective territory, and the content of this provision is the same as with the Parliament.

15.1.3. approve land acquisition and resettlement plan if land expropriation is based on the purposes/justifications specified in 15.1.1. of this law;

15.1.4. establish Mediation council based on the decisions specified in 13.1.1., 15.1.1. and 17.1.1. of this law under itself;

15.1.5. If the Citizens Representative Khural considers necessary, it can establish and run ad hoc committee to study/review, make proposals, provide comments/conclusions, monitor the implementation of the council's resolution and decision regarding the land expropriation, resettlement and compensation issues in accordance with the article 21 of the Law on Mongolian administrative and territorial unit, and its administration;

15.1.6. give permission for land expropriation through forced eviction specified in 45.3. of this law;

ARTICLE 16. THE POWER OF THE SOUM, DISTRICT CITIZENS REPRESENTATIVE KHURAL (SUB-PROVINCIAL AND CAPITAL CITY'S DISTRICT COUNCIL)

16.1. The soum and district Citizens Representative Khural shall exercise the following powers regarding land expropriation:

16.1.1. appoint the representative of the Citizens Representative Khural who will work in the Mediation council, specified in 26.3.2. of this law;

SUBCHAPTER TWO

THE POWER OF THE GOVERNMENT AND STATE ADMINISTRATIVE ORGANIZATIONS

ARTICLE 17. POWER OF THE GOVERNMENT

17.1. The Government shall exercise the following powers regarding land expropriation:

17.1.1. make decision for land expropriation based on the purposes defined in clauses 6.1.2.a. of this law; *Comment: See the comment for Article 12.1.1. of the Draft Law*

17.1.2. approve the budget required to implement the decision specified in 17.1.1. of this law when making the decision;

17.1.3. approve land acquisition and resettlement plan, if land acquisition is based on the purposes/justifications specified in 13.1.1. and 17.1.1. of this law; *PS: The purpose and introduction about this procedure can be seen in Annex 1.*

17.1.4. approve the regulations to determine the impact zone of the development, project or activity; *PS: The purpose and introduction about this procedure can be seen in Annex 2.*

17.1.5. approve the procedures to establish Mediation council and regulations to run this council; *PS: The purpose and introduction about this procedure can be seen in Annex 2.*

17.1.6. approve the regulation for conducting preliminary assessment of land expropriation; *PS: The purpose and introduction about this procedure can be seen in Annex 2.*

17.1.7. approve the regulation for formulating land acquisition and resettlement plan; *PS: The purpose and introduction about this procedure can be seen in Annex 2.*

17.1.8. approve the regulation to regulate the issues to arise related to the entity, who is using land without permission specified in 9.6. of this law; *PS: The purpose and introduction about this procedure can be seen in Annex 2.*

17.1.9. give permission for land expropriation through forced eviction specified in 45.3. of this law;

17.1.10. submit the national land expropriation activities report, specified in 14.1. of this law, every 2 years to the National Human Rights Commission.

ARTICLE 18. THE POWER OF THE NATIONAL COMMITTEE ON LAND REFORM

18.1. The National Committee on Land Reform shall exercise the following powers regarding land expropriation:

18.1.1. provide policy support on land expropriation, determination and provision of the compensation within the directives specified in 5.3. of the Law on Land;

18.1.2. make suggestions and provide conclusions on the draft of the decisions specified in 13.1.1. and 17.1.1. of this law.

ARTICLE 19. THE POWER OF THE STATE CENTRAL ADMINISTRATIVE ORGANIZATION IN CHARGE OF LAND AFFAIRS (CURRENTLY THIS ORGANIZATION IS MINISTRY OF CONSTRUCTION AND URBAN DEVELOPMENT - MCUD)

19.1. The State central administrative organization in charge of land affairs shall exercise the following powers regarding land expropriation:

19.1.1. review the draft of the plan specified in 17.1.3. of this law and submit it to the Government;

19.1.2. approve and enforce valuation methodology for compensation to be reimbursed due to land expropriation, jointly with the state central administrative organization in charge of finance and budget (currently Ministry of Finance) as specified in 8.2. of the Law on Property Valuation.

19.1.3. approve and enforce regulation, jointly with the state central administrative organization in charge of social welfare, to provide support and assistance to the entity affected by land expropriation who is resettling and who is a person-member of a family that inevitably needs social welfare support and assistance specified in 18.2.9 of the Law on social welfare;

ARTICLE 20. THE RIGHTS AND DUTIES OF THE STATE ADMINISTRATIVE ORGANIZATION IN CHARGE OF LAND AFFAIRS (CURRENTLY ADMINISTRATION OF LAND AFFAIRS, GEODESY AND CARTOGRAPHY)

20.1. State administrative organization in charge of land affairs shall be responsible for the implementation of land expropriation activities.

20.2. The organization specified in 20.1. of this law shall implement the land expropriation activities through the Land Office in Aimag, Capital city and Districts and land officers in soums as specified in 51.1. of the Law on Land.

Comment: The approach taken when developing this Draft Law is to avoid creating any new government agency to implement the law, but to rely on existing institutional and functional structures. In other words, current structures in charge of implementing the Law on Land both at the national level and soum level will also be responsible for implementation of the Draft Law.

20.3. The organization specified in 20.1. of this law has the following rights to implement the decisions specified in 13.1.1. and 17.1.1. of this law:

20.3.1. obtain information, documents and materials, completely, freely and on timely manner, to be required to carry out land expropriation activities;

20.3.2. review the request and make decision, in accordance with the procedures set in this law, if the entity specified in 23.1.2., 23.2. of this law requests for permission to formulate and implement land acquisition and resettlement plan on its own;

20.3.3. obtain the costs of land expropriation from the organizer in charge of the development, project or activity;

PS: In current practice, because, for example, land expropriation costs are not reflected in road project budget when undertaking road expansion and improvement, it becomes unclear who would pay land expropriation costs and leads to delays in implementing that particular project. Therefore, according to this provision of the Draft Law, implementers of land expropriation would first obtain related expenses from organizers of given project and then proceed to relevant actions.

20.3.4. approve the templates, forms, related guidelines and instructions to be used in the land expropriation activities and enforce their use and implementation as specified in the law;

20.4. The organization specified in 20.1. of this law has the following duties to implement the decisions specified in 13.1.1. and 17.1.1 of this law:

20.4.1. carry out the preliminary assessment of land expropriation in cooperation with the organizer in charge of the development, project and activity;

20.4.2. consult with the concerned parties, provide information, receive and settle the proposal, request and grievance related to land expropriation from concerned parties; create conditions for concerned parties to take part in the land expropriation activities and implement monitoring of the land expropriation activities;

20.4.3. formulate the draft land acquisition and resettlement plan based on the consultations with and proposals (comments) obtained from the entity affected by land acquisition, organizer in charge of the development, project and activity and other interested entities and implement this plan;

20.4.4. organize the gathering of (all) the entities affected by land expropriation not less than 1 time after the land expropriation decision was made, and create conditions for

the entities affected by land expropriation to ensure their participation, make suggestions and lodge complaints;

20.4.5. make available information on land expropriation to the public, except confidential private information;

20.4.6. notify the entities residing or running an activity in the area to be affected by land expropriation about the decision for land expropriation and cut-off date;

Comment: The power to set the cut-off date is given to this organization, which will set it in flexible manner, based on land expropriation decision of authorized body, and depending on scope and schedule of given project or activity. After the cut-off date, it would be impossible to make any transfer in the registry of land or immovable properties subject to expropriation. This is for ensuring fair disbursement of compensation provided by the state to legally eligible entities.

20.4.7. inform the public about the decision for land expropriation and cut-off date;

20.4.8. notify the organization specified in 21.1. of this law not to make changes in the state title registration of ownership, possession and use rights related to land and property in the area included in the land expropriation starting from the cut-off date;

20.4.9. notify the organization specified in 21.1. of this law about the end of the ownership, possession and use rights related to the land acquired and the immovable properties on this land and have closed the registration, or have registered on the name of the entity who is transferring the rights on its name;

20.4.10. make changes in land ownership, possession and use rights and in the unified land territory inventory that occur due to the land expropriation and enter the changes in the land information system;

20.4.11. hand over the acquired land to the organizer in charge of the development, project or activity by act;

20.4.12. implement the regulations specified in 19.1.3. of this law in cooperation with the relevant level organization and official in charge of social welfare;

20.4.13. have the Government, Aimag and Capital city Representative Khural issue permission for land expropriation through forced eviction, in case that the negotiations specified in 35.1. of this law did not succeed and the agreement specified in 36.1 of this law was not concluded, and ensure its implementation;

20.4.14. lodge a claim to the court, if necessary, as specified in 46.8. of this law, for land expropriation through forced eviction;

PS: Forced eviction will be carried out only by court decision enforcement organization, based on valid court decision to do so. Forced eviction and permission for land

expropriation by authorized body are different notions with different legal implications. Detailed explanation is provided in comment on Article 45 and 46.

20.4.15. obtain in written form (unified) property ownership rights registration information from the state administrative organization in charge of state title registration based on the decision for land expropriation and land acquisition and resettlement plan.

20.5. Aimag and Capital city departments in charge of land affairs have the rights specified in 20.3.1.-20.3.3. of this law to implement the decisions specified in 15.1.1. of this law.

20.6. Aimag and Capital city departments in charge of land affairs have the duties specified in 20.4. of this law to implement the decisions specified in 15.1.1 of this law.

20.7. The state administrative organization in charge of land affairs shall provide directives and give tasks to the aimag and Capital city departments in charge of land affairs to exercise its rights and implement its duties specified in this law, and enforce their fulfillment.

20.8. Aimag and Capital city departments in charge of land affairs shall provide directives and give tasks to the soum land officers and district land offices, to implement its rights and duties specified in this law, and enforce their fulfillment.

Comment: This organization has the main duty to organize implementation of the Law on Land nationwide, and will also be responsible for implementing this Draft Law. However, land expropriation and resettlement activities can also be implemented by private organizations.

ARTICLE 21. THE POWER OF THE STATE ADMINISTRATIVE ORGANIZATION IN CHARGE OF STATE TITLE REGISTRATION(LAND REGISTRY)

(currently this organization is under the General Authority for State Registration – GASR and the land registry is called state title registration)

21.1. State administrative organization in charge of state title registration has the following duties concerning land expropriation:

21.1.1. not to make changes in the state title registration of ownership, possession and use rights related to land and property in the area included in the land expropriation starting from the cut-off date;

21.1.2. register the end of the ownership, possession and use rights related to the land acquired and the immovable properties on this land and close the registration, or register the rights on the name of the entity who is obtaining these rights.

21.1.3. provide the (unified) property ownership rights registration information specified in 20.4.15. of this law in detail for each entity affected by land expropriation and for each subject of land expropriation which should include information if there is any

special or provisional notes in the state title registration. This should be provided free of charge and in written form.

Comment: The main duty of this organization to get involved in this relationship is to assist implementers (land office or private organization) of land expropriation and resettlement plans in correctly identifying affected entities of given land expropriation.

SUBCHAPTER THREE THE POWER OF LOCAL ADMINISTRATIVE ORGANIZATIONS

ARTICLE 22. THE POWER OF THE AIMAG, CAPITAL CITY, SOUM, DISTRICT, BAG AND KHOROO GOVERNOR

22.1. Aimag, Capital city, soum, district, bag and khoroo Governors shall exercise the following powers regarding land expropriation:

22.1.1. initiate the development, project and activity specified in 5.1.6. of this law;

Comment: According to the existing Law on Land, Governors are the main bodies making decision on land. But this Draft Law provided "limited" powers for Governors, because the powers to make land expropriation decision is given to subjects which express common interest and need. Governors of all levels are the main initiators of development, project or activity involving land expropriation. In other words, if Capital City Road Department is building road with local budget, the Governor of Capital City will submit request to the Citizens Representative Khural for decision to be made.

SUBCHAPTER FOUR INITIATOR AND ORGANIZER IN CHARGE OF THE DEVELOPMENT, PROJECT OR ACTIVITY, THEIR RESPONSIBILITIES AND DUTIES

ARTICLE 23. INITIATOR OF THE DEVELOPMENT, PROJECT OR ACTIVITY, ITS RIGHTS AND DUTIES

23.1. The initiator of the development, project or activity specified in 5.1.7. of this law can be the following entity:

23.1.1. Parliament, Government, Aimag and Capital city Citizens Representative Khural;

23.1.2. local self governing organizations except those specified in 23.1.1. of this law, and state and local administrative organizations;

23.2. Interested citizen and legal entity can submit its proposal on the development, projects and activity to be carried out by expropriating the land to the entity specified in 23.1.2. of this law.

23.3. The initiator of the development, project or activity has the following rights:

23.3.1. the entities specified in 23.1.2. of this law can make request for decision for land expropriation to the entity specified in 23.1.1. and have the request settled;

23.3.2. the citizen and legal entity specified in 23.2. of this law can formulate and implement the land acquisition and resettlement plan based on the permission provided by the state administrative organization in charge of land affairs;

23.4. The initiator of the development, project or activity has the following duties:

23.4.1. calculate and budget the required costs for land expropriation in the documents (technical and economic 'feasibility' study, plans and designs, introduction to acquire land for state special protection, project technical document etc.) and budget of the development, project and activity;

23.4.2. the entity specified in 23.1.2. of this law shall have approved the budget required for the land expropriation by the entity specified in 23.1.1. of this law when it is making decision for land expropriation and obtain the funds;

23.4.3. the legal entity specified in 23.2. of this law shall have approved the budget (costs) required for the land expropriation by the entity specified in 23.1.1. of this law when it is making decision for land expropriation and shall provide these costs;

23.4.4. the citizen specified in 23.2. of this law, if it wishes, shall have approved the budget (costs) required for the land expropriation by the entity specified in 23.1.1. of this law when it is making decision for land expropriation and shall provide these costs on its own.

ARTICLE 24. ORGANIZER IN CHARGE OF THE DEVELOPMENT, PROJECT OR ACTIVITY, ITS RIGHTS AND DUTIES

24.1. The organizer in charge of the development, project or activity specified in 5.1.8. of this law can be the following entity:

24.1.1. State organization that is in charge of the implementation of the development, project or activity to be carried out on the land to be expropriated based on the decisions specified in 13.1.1., 15.1.1. and 17.1.1. of this law.

24.1.2. project unit, state or locally owned company established by the Government, state (central) administrative organization, aimag and Capital city Representative Khural to perform the duties of the state organization specified in 24.1.1. of this law;

24.1.3. entities other than the local self governing organizations specified in 23.1.2. of this law, i.e. State and local administrative organizations.

24.2. The organizer in charge of the development, project or activity has the following rights:

24.2.1. have issued decision for land expropriation specified in 13.1.1., 15.1.1. and 17.1.1. of this law by initiating the development, project and activity on its own or based on the proposal of the citizen and legal entity specified in 23.2. of this law;

24.3. The organizer in charge of the development, project or activity has the following duties:

24.3.1. include the land expropriation activities and costs in the documents (technical and economic 'feasibility' study, project technical document, introduction to acquire land for State special protection, etc.) of the development, project and activity when formulating these documents;

24.3.2. provide the financing and costs related to the implementation of the land expropriation activities to the state administrative organization in charge of land affairs.

24.3.3. use the land, obtained by act as specified in 20.4.11. of this law, for the specified purpose and take measures to protect illegal possession and use of it by other entities.

PS: In current practice, it is common that land expropriated with lots of costs and efforts, is resettled again without any permission, i.e. land is grabbed and somebody settles on it. Therefore, the Draft Law provides that land is handed over to implementers of project or activity they will be in charge of protecting that land from illegal possession or use.

Comment: This subject is specialized professional organization which confirms that land expropriation project or activity proposed by given initiator actually is a sectoral measure that meets public need (Ministry of Environment, Department of Electricity or Department of Road, etc.).

Example 1, on linkage of Article 23 and 24 of the Draft Law. Expropriation of land around Tuul river for the purpose of putting it under protected area as the source of drinking water (if actions would involve expropriation of privately owned land in order to protect some areas of Tuul river for provision of drinking water for the Capital city residents). The Capital City Governor will be initiator of this project and the Ministry of Environment can be organizer of the project, whereas Tuv aimag and the Capital City Land Offices will be implementers of the land expropriation and resettlement plan.

SUBCHAPTER FIVE

MEDIATION COUNCIL, ITS COMPOSITION, RIGHTS AND DUTIES

ARTICLE 25. MEDIATION COUNCIL, ITS ESTABLISHMENT

25.1. Mediation council is ad hoc setup established to implement public monitoring in land expropriation activities, evaluate and make recommendations to properly redress the grievances and disputes in short period of time and mediate the parties to settle the disputes in an extrajudicial way.

25.2. Mediation council shall be established by the decision of and under the aimag and Capital city Citizens Representative Khural, responsible for the respective area, within 22 working days since the decision for land acquisition specified in 13.1.1., 15.1.1. and 17.1.1. has been made.

25.3. If the land to be acquired for the implementation of the development, project or activity covers two or more administrative units (aimags and capital city), a mediation council shall be established under each of the administrative unit.

25.4. Mediation councils specified in 25.3. of this law shall run their activities separately, however, when necessary they shall make joint decision based on mutual agreement.

25.5. In case that in a particular administrative area two or more developments, projects or activities are to be implemented, a single Mediation council can be in charge of the land expropriation activities related to these developments, projects or activities.

25.6. Mediation council shall be dismissed by the decision of the aimag and Capital city Citizens Representative Khural based on the completion of the land expropriation activities.

Comment: This council is ex officio ad hoc body composed of representatives of specific interest groups and its main duty is to find the right balance of, and advise to, two different interests, "public interest and private interest that may be violated" through assisting in resolving disputes by non-judicial means.

ARTICLE 26. COMPOSITION OF THE MEDIATION COUNCIL

26.1. Mediation council shall consist of chairman and members.

26.2. The office of the respective Citizens Representative Khural shall be the office of the Mediation council.

Comment: This council is not permanent, therefore, it was deemed appropriate to assign daily duties of this council to Secretariat of Citizens Representative Khural which made a decision on land expropriation. Therefore, if needed, job description of officers of the Secretariat needs to be revised.

26.3. Mediation council shall consist of at least 12 members and the following entities shall be a member:

26.3.1. representative of the aimag, capital city citizens who is elected from the respective administrative area (1 person);

26.3.2. representative of the soum, district citizens who is elected from the respective administrative area (1 person);

26.3.3. representatives of the entities affected by land expropriation who were proposed by the residents and business organizations from the respective administrative area (total 4 persons, 2 of them are the representatives of the residents and 2 of them are the representatives of the businesses);

26.3.4. representative of the social welfare organization of the respective soum and district (1 person);

26.3.5. representative of the entity implementing the development, project or activity(1 person);

26.3.6. representatives of non-governmental organizations that carry out activities related to human rights and land acquisition (up to 4 persons);

26.3.7. lawyer who is specialized in land and immovable property legislation and has passed the examinations of lawyer;

26.3.8. appraiser who is specialized in land and immovable property valuation and has special permission to carry out property valuation;

26.3.9. specialist who is specialized in land management and land expropriation;

PS: The Draft Law provides that representatives of parties to land expropriation will make this Council in an equal basis, thus ensuring independence and creating conditions to fairly exercise its "advising role". According to Article 26.3.1., 26.3.2., 26.3.3. and 26.3.5 of the Draft Law, of the total of 12 members of this Council, a maximum 4 will be civil servants, another 4 will be representatives of affected entities, and 4 will be independent members, thus it is possible to resolve issues relatively independently and fairly.

26.4. The members specified in 26.3.7.-26.3.9 of this law shall be appointed based on the majority votes of the members specified in 26.3.1- 26.3.6.

26.5. The members specified in 26.3.7.-26.3.9 of this law shall be provided appropriate incentives for working in the Mediation council in accordance with the procedures set in the regulations specified in 17.1.5. of this law.

PS: Member of this Council representing Citizens Representative Khural and social welfare officer are civil servants, and will not get any reimbursement for the service, as they will be carrying out their main duties.

26.6. Costs for the activities of the Mediation council and incentives for the members shall be financed from the costs(budget) of the respective land expropriation activities.

26.7. The procedures for the establishment and activities of the Mediation council shall be regulated by the regulation specified in 17.1.5. of this law.

ARTICLE 27. RIGHTS AND DUTIES OF THE MEDIATION COUNCIL

27.1. When issuing recommendations concerning the disputes on land expropriation issues, Mediation council shall propose concrete proposal balancing the interests of the parties and which will suggest settlement through an extrajudicial way, i.e. through mediation, in accordance with the principles stated in this law.

27.2. Obtain required information, materials and documents on land expropriation from the concerned parties when fulfilling its duties specified in this law.

27.3. Mediation council shall not disclose and transfer confidential information of the state, organizations, business entities and individuals, obtained when fulfilling its duties specified in this law.

27.4. Provide professional advice on any land expropriation issues to the entity affected by land expropriation free of charge.

PS: Operating expenses of the Council will be paid from the budget of land expropriation, so all activities and services for the entities affected by land acquisition should be organized and provided free of charge.

CHAPTER FOUR LAND EXPROPRIATION ACTIVITIES

ARTICLE 28. PRELIMINARY ASSESSMENT OF LAND EXPROPRIATION

28.1. Preliminary assessment of land expropriation /hereinafter to be referred to as “preliminary assessment”/ shall be made jointly by the entities specified in 20.1. and 5.1.8. of this law for the purpose of defining the purposes/justifications of the state, local special need and public need and determining provisionally the required budget, financing, activities and social impact.

28.2. Preliminary assessment shall be part of the main component of the calculation and analysis, technical and economic feasibility study, blueprint, and budget documents of the development, project and activity.

28.3. Preliminary assessment shall be the basis for approval of the documents specified in 28.2. of this law and making the decision for land expropriation.

Comment: This preliminary assessment will include all information necessary for land expropriation decision making body to evaluate and make its decision. In addition, estimation of costs that would be needed for land expropriation and resettlement should be done and will constitute the main part of the document. In other words, based on this assessment, land expropriation decision will be made and other documents such as land expropriation and resettlement plan will be developed. Therefore, Article 26.4 of the Draft Law provided a list of items to be included in the assessment.

28.4. The following shall be included in the preliminary assessment:

28.4.1. proof and presentation that inclusion of that particular area in the land expropriation for the purpose of state, local special and public need is inevitable in terms of social, economic, environmental and engineering/technical solution and in the meantime the impact on the entities affected by land expropriation is minimum;

28.4.2. location, size, boundary of, and parcels and immovable properties on the land to be expropriated for the development, project and activity, impact zone and zoning;

28.4.3. inventory of the parcels and properties subject to land expropriation and their estimated value;

28.4.4. number of entities and households affected by land expropriation, their employment, livelihood level, and number of persons-member of a family that inevitably needs social welfare support and assistance;

28.4.5. calculation of the costs of compensation to be required for the land expropriation;

28.4.6. if necessary, preliminary estimation of the negative impacts to herders who should be sharing the pasture and water rights and measures to be taken;

28.4.7. calculation of the total costs to be required for the land expropriation;

28.4.8. other required items.

28.5. If necessary, the works of the preliminary assessment that require professional skills such as appraisal of the land and immovable property, social impact assessment, asset inventory and cadastral surveying and mapping and other necessary works, can be carried out by professional entity.

28.6. Preliminary assessment shall be made in accordance with the regulations specified in 17.1.6. of this law.

ARTICLE 29. LAND EXPROPRIATION DECISION, ITS ANNOUNCEMENT AND NOTIFICATION

29.1. Decision for land expropriation specified in 13.1.1., 15.1.1. and 17.1.1. shall be made together with the decision to approve and implement the calculation and analysis, technical and economic feasibility study, blueprint, and budget documents of the development, project and activity.

29.2. Decision for land expropriation shall not be made if the proof and presentation specified 28.4.1. of this law is not sufficient.

29.3. The entity specified in 20.1. of this law shall, within 22 working days since the decision for land expropriation was made, inform the public about the entity that made the decision for land expropriation, date and justification/purpose of land expropriation, administrative unit and location of land being acquired, cut-off date and address, contact

telephone, and email address of the entity to carry out land expropriation in the following manner:

29.3.1. publish in, at least, two nationwide distributed daily newspapers for 7 days on, at least, 1/16 of the page of that particular newspaper.

29.3.2. post in its website for 22 working days.

29.4. The entity specified in 20.1. of this law shall, within 22 working days since the decision for land expropriation was made, deliver to the entity affected by land expropriation, in addition to the information specified in 29.3. of this law, the notice for land expropriation which contains the following additional information:

29.4.1. copy of the decision for land expropriation, the rights and duties of the entity affected by land expropriation as specified in this law;

29.4.2. location, size and boundary of the land and immovable properties to be expropriated and the overview map of the area concerned;

29.4.3. the entity to receive suggestions, requests and grievances, its address, contact telephone and email address;

29.4.4. information on the representative organization of the entities affected by land expropriation and mediation council;

29.4.5. place, official, address and date of organization of the meeting/gathering for the entities affected by land expropriation to provide them information, consult them and listen their proposals on the land expropriation issues;

29.5. Decision and notice for land expropriation shall be informed and delivered to the entity affected by land acquisition by procedures as specified in this law.

29.6. The state administrative organization in charge of land affairs shall approve the form and regulations for delivery of the notice, specified in 29.4. of this law, and regulations for considering the notice as delivered.

Comment: This land expropriation decision will not just infringe on property rights, but will also negatively affect socio-economic life of given area for some time (though in the long run will have a positive impact). Therefore, a requirement to inform not just affected entities but also the general public is important, and this is why the Draft Law has listed potential means of notifying and providing information.

ARTICLE 30. CUT-OFF DATE

30.1. Cut-off date specified in 5.1.15. of this law shall be determined by state administrative organization in charge of land affairs in coordination with the decision for land expropriation, financing of the land expropriation activities, formulation and implementation of the land acquisition and resettlement plan.

30.2. Cut-off date shall be informed to the public and the entity affected by land expropriation as specified in 29.3.and 29.4. of this law.

Comment: This clause is for taking legal and organizational measures for objectively defining subjects and objects affected by land expropriation in order to prevent citizens who lack information from falling victim of people who seek profit, by selling them their property for cheap price. In other words, according to Article 30.1. of the Draft Law, any change in registry of not just land, immovable properties, but also of population, households and legal person, will not provide ground for receiving compensation.

ARTICLE 31. LAND ACQUISITION AND RESETTLEMENT PLAN

31.1.Land acquisition and resettlement plan is comprehensive document that determines the rights (entitlements) of the entity affected by land expropriation within the frames of the rights and duties specified in article 11 of this law, appropriate compensation, the land expropriation activities, their implementation schedules and the budget and financing issues required for the land expropriation activities.

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

31.2.1. brief presentation of the development, project, activity;

31.2.2. general information concerning the scope and impacts of the land expropriation;

31.2.3. detailed schedules of the land expropriation activities, and the duties and responsibilities of the organizations and officials to be in charge of these activities;

31.2.4.inventory of the area, parcels, properties, people, households, business entities and organizations to be affected, impact zone and zoning, detailed investigation and inventory of the public heritage and properties such as natural and cultural heritage;

31.2.5. social impact assessment, i.e. detailed survey of all the entities affected by land expropriation including demographic and households survey, household livelihood level, person-member of a family that inevitably needs social welfare support and assistance, survey on all entities running business activities and their employees;

31.2.6.activities, mechanisms and schedules to provide information for the entity affected by land expropriation, to consult with the entity affected by land expropriation to implement the plan and to enable participation of the entity affected by land expropriation, to negotiate and conclude agreement with the entity affected by land expropriation;

31.2.7. activities and measures to settle proposals, requests, grievances and disputes within the competency of the implementer of the land acquisition plan;

31.2.8. entitlements of the entity affected by land expropriation, compensation it receives, assistances and supports for relocation, transition period and rehabilitation;

31.2.9. additional assistance and support for the person-member of a family that inevitably needs social welfare support and assistance;

31.2.10. budget and financing of each and all activities of land expropriation and their breakdown, calculations, studies and appraisal, and methodology for the appraisal, sources of financial resources and schedules;

31.2.11. accurate cadastral surveying and mapping of the parcels and immovable properties in the area to be affected by land expropriation;

31.2.12. relocation or replacement buildings and structures, replacement compensation in cash, options for relocation site, buildings and structures, relocation site environmental assessment, the need to improve and develop the relocation site, preparation of resettlement site and schedule of relocation;

31.2.13. issuance and registration of land rights of the relocating entities;

31.2.14. provision and financing of required infrastructure and public services for the relocation site;

31.2.15. mechanisms to monitor, evaluate and report the implementation progress and performance/completion of land acquisition and resettlement plan, and arrangements for participation of the entity affected by land expropriation in these activities;

31.2.16. if necessary, the negative impacts to affect the herder(s) who should be sharing the pasture and water rights, the solutions to reduce and minimize the negative impacts and supports and assistances to be provided to them.

31.3. Collection of data required for the formulation of the land acquisition and resettlement plan shall start on the cut-off date.

31.4. The state administrative organization and official in charge of land affairs shall consult with the entity affected by land expropriation when formulating land acquisition and resettlement plan and take measures to enable its participation.

31.5. Works that require professional skills such as appraisal of the land and immovable property, social impact assessment, asset inventory and cadastral surveying and mapping and other necessary works, when formulating the land acquisition and resettlement plan, shall be carried out by professional entity.

31.6. Land acquisition and resettlement plan can be implemented, in accordance with the regulations specified in this law, by the initiator of the development, project and activity.

31.7. When necessary, an amendment to the activities, schedule, budget and financing shall be formulated jointly by the state administrative organization in charge of land affairs and the entity specified in 5.1.8. of this law and have approved as specified in 15.1.2., 15.1.3. and 17.1.2. and 17.1.3. of this law.

31.8. Land acquisition and resettlement plan shall be formulated as per the regulations specified in 17.1.7. of this law.

Comment: Although land expropriation decision is made by Parliament, Cabinet and Citizens Representative Khural, the Draft Law provides for development of specific plan according to which land expropriation should take place. This is for preventing from undue infringement on property rights by government agencies and on the other hand, for providing procedure for land expropriation and resettlement. The items to be included in this plan are also stated in the Draft Law. The procedure for developing this plan will be approved by the Government, in accordance with Article 18.1.7.

ARTICLE 32. SETTING THE COMPENSATION APPRAISAL DATE

32.1. The cut-off date specified in 30.1. of this law shall be set as the date for compensation appraisal for the land and immovable properties, except for the case specified in 32.2. of this law.

32.2. Compensation appraisal shall be renewed based on the current conditions and circumstances, if the compensation has not been provided within six months after the appraisal was done.

32.3. In case that the acquisition is carried out by land expropriation through forced eviction as specified in 45.3. of this law, it is prohibited to renew compensation appraisal.

32.4. If the compensation appraisal has decreased when the appraisal is renewed as specified in 32.2. of this law, the compensation shall be provided based on the appraisal made as specified in 32.1. of this law.

Comment: Appraisal date and cut-off date, as stated in Article 30.1. are linked but different concepts. Cut-off date is used for determining eligibility for compensation whereas appraisal date is related for determining/calculating the compensation to entities defined as affected entities. In other words, in line with Article 30.2, if compensation was not paid to affected entities within 6 months of the cut-off date, compensation valuation should be done again. This will allow any increase (not decrease, Article 3.4) due to inflation or price change in the properties market to be counted for in determining the amount of compensation.

ARTICLE 33. DETERMINING THE COMPENSATION VALUE

33.1. If not specified differently in this law, the compensation appraisal shall be determined according to the principles, methods and methodologies specified in the Law on Property Valuation.

33.2. Compensation appraisal shall be made based on the principles of replacement value or market value specified in 5.1.9. of this law.

33.3. when appraising land and immovable properties to determine the compensation, the principles specified in 33.2. of this law shall be followed and the depreciation of properties and the value of the re-useable and remaining materials should not to be deducted from the compensation;

33.4. compensation appraisal principles, methodologies and methods shall be the same for all compensation appraisals and be open and transparent.

33.5. If the compensation appraisal of a subject of land expropriation increases due to certain reasons, the appraisal of all other subjects in same conditions and circumstances shall be increased with the same amount.

33.6. compensation appraisal shall be carried out by two appraisers with special permission for appraisal separately, one selected by the state administrative organization in charge of land affairs and one selected by the entity affected by land expropriation.

33.7. If the difference in the value of the two appraisers, specified in 33.6. of this law, is equal to or less than 20 per cent of the lower value, the average of these appraisals shall be the actual compensation value.

33.8. If the difference in the value of the two appraisers, specified in 33.6. of this law, is more than 20 per cent of the lower value, verification appraisal shall be made by the Professional Council specified in 25.2. of the Law on Property Valuation.

33.9. The verification appraisal made by the Professional Council, specified in 33.8. of this law, shall be final for the parties.

Comment: It is natural that affected entities will aim at higher valuation of their land and properties and entity paying for land expropriation will aim at getting lowest price, and they will "task" this to the appraiser they propose. Therefore, as stated in Article 33.6, given evaluators' professional ethics, independence and the interest to take into account request of the party which proposed them, the level of tolerance was limited to 20 percent of the lower value.

Example 2, the appraiser of affected entity came up with 120 mln and the evaluator of the Land Office or project initiator came up with 100 mln, so 20 mln, the difference between the evaluations, is not more than 20 percent of the lower value (as per Article 33.6), or not more than 20 mln. So, the compensation to affected person will be 110 mln.

ARTICLE 34. FACTORS TO CONSIDER FOR COMPENSATION VALUATION

34.1. When determining the loss incurred to the entity affected by land expropriation, the loss shall be classified as physical or economic displacement, full or

partial, permanent or temporary, considering the effect, space and temporal factors of the loss:

34.1.1. physical displacement is loss of residential land and accommodation, and relocation, as the result of land expropriation;

34.1.2. economic displacement is loss or restriction of use of land, property and loss of income sources or means of livelihood, as the result of land expropriation;

34.1.3. full loss is inability to utilize the land and immovable property entirely, as the result of land expropriation;

34.1.4. partial loss is loss of part of the land and immovable property as the result of land expropriation and when it is possible to continue to utilize the remaining part for the purpose previously used;

34.1.5. although the loss is partial as specified in 34.1.4. of this law, however it is not possible to continue to utilize the remaining part for the purpose previously used and consequently the land and properties are devalued, the loss is considered full;

34.1.6. when the land and immovable property ownership, possession and use rights cannot be re-established as the result of land expropriation, then the loss is permanent;

34.1.7. when the land and immovable property ownership, possession and use rights are retained, but the land and immovable property cannot be utilized normally for a certain period of time as the result of land expropriation, then the loss is temporary.

34.2. The impact zone and zoning, the degree of negative consequences of the impact shall be considered in the compensation valuation.

34.3. The principles and methodologies for compensation appraisal for land ownership, possession and use rights shall be the same.

34.4. The reference land value of the specific area determined in accordance with the procedures set in the Law on Land Cadastre (draft amendment of this law) shall be considered in determining the compensation.

34.5. The detailed methodologies for appraisals of land, immovable property, loss of income sources and business, agriculture and pasture land, and calculations of relocation, transition period and rehabilitation supports and assistances, and other related appraisals and calculations shall be regulated by the regulation specified in 19.1.2. of this law.

ARTICLE 35. NEGOTIATING

35.1. Competent state administrative organization and official in charge of land affairs shall negotiate with the entity affected by land expropriation.

35.2. A notice, containing information concerning the date, time, location and subject of negotiation, compensation and assistances and supports to be provided, shall be delivered to the entity affected by land expropriation.

35.3. Entity affected by land expropriation can come to the negotiation with a member of family, a witness or can send a duly authorized representative.

35.4. Co-owner, co-possessor or co-user of the subject of land expropriation can come to the negotiation.

35.5. Negotiation can be held several times until an agreement is reached, however the total length of the negotiation period shall be not more than 45 days since the start of the negotiation.

35.6. Each negotiation and meeting shall be documented with notes.

35.7. If agreement cannot be reached within the time period specified in 35.5. of this law, the issue shall be submitted to the Mediation council for review and issuance of recommendations.

35.8. The Mediation council shall issue the recommendations within 10 working days.

35.9. The parties shall re-negotiate within 5 working days based on the recommendations specified in 35.7. of this law.

35.10. When negotiating, required information, calculations and studies shall be provided to the entity affected by land acquisition, also other additional studies and information, as requested by the entity affected by land acquisition, shall be provided.

ARTICLE 36. CONCLUSION OF CONTRACT

36.1. In case that the negotiation, specified in 35.1. of this law, is successful and the competent state administrative organization and official in charge of land affairs and the entity affected by land expropriation reach agreement, the parties shall conclude land acquisition contract.

36.2. Land acquisition contract shall contain the compensation, relocation, transition period and rehabilitation supports and assistances for the entity affected by land expropriation, their appraisal, calculations and conditions for resettlement, requirements, the procedures for transfer of land and immoveable property rights, the duties and responsibilities of the parties, etc.

36.3. The exemplary template of the land acquisition contract shall be approved by the State administrative organization in charge of land affairs.

ARTICLE 37. PROVISION OF COMPENSATION

37.1. Compensation shall be provided by the state administrative organization in charge of land affairs based on the terms and conditions specified in the land acquisition agreement concluded with the entity affected by land expropriation.

37.2. 60 per cent of the compensation shall be provided to the entity affected by land expropriation upon conclusion of the land acquisition contract and the remaining 40 per cent shall be provided after vacating the land and after the contractual obligations have been fulfilled fully.

37.3. If the entity affected by land expropriation could reach agreement within the time period specified in 35.5. or 35.9 of this law and fulfilled the contractual obligations, it shall receive cash incentives equal to 10 per cent of the total value of the compensation.

PS: Since the transaction under this law is involuntary, i.e. through expropriation, it was deemed important to provide some bonus or incentive for voluntary "involuntary" settlement in order to reduce time to be spent on expropriation. But if there is no voluntary settlement, no pressure or discrimination will be applied, rather affected entities will lose bonus/incentives of 10 percent. In other cases, equality of all citizens before the state constitutes the main principle of this Draft Law.

37.4. The incentives specified in 37.3. of this law shall be granted when the remaining 40 per cent, specified in 37.2. of this law, is provided, if not specified differently in this law.

ARTICLE 38. TRANSFER OF LAND AND IMMOVEABLE PROPERTY RIGHTS

38.1. Land and immovable property rights shall be transferred after the contract specified in 36.1. of this law is concluded and after full compensation due to the entity affected by land expropriation is provided and this must be mentioned in the land acquisition contract.

38.2. The issue of transfer of land and immovable property rights shall be regulated in accordance with the Law on State title registration of property ownership right and other rights related to it based on 20.4.8 and 21.1.2. of this law.

ARTICLE 39. RESETTLEMENT

39.1. Resettlement of the entity affected by land expropriation shall be carried out according to the terms set in the land acquisition contract by the competent state administrative organization and official in charge of land affairs or by an entity given right by it.

39.2. The participation of the entity affected by land expropriation shall be assured in resettlement site selection, planning of social and engineering (physical) infrastructure.

39.3. In connection with the resettlement, the entity specified in 39.1. of this law shall secure and register the land and immovable property right for the entity affected by land expropriation free of charge.

39.4. The entity affected by land expropriation shall be provided with required relocation assistances and supports.

39.5. The special measures to be provided to the entity affected by land expropriation who is person-member of a family that inevitably needs social welfare support and assistance shall be regulated by the Law on Social Welfare;

39.6. The activities to be implemented, supports and assistances to be provided in connection with the resettlement of the entity affected by land expropriation shall be included in detail in the land acquisition and resettlement plan and implemented.

39.7. All costs related to the resettlement of the entity affected by land acquisition shall be the responsibility of the organizer of the development, project or activity as specified in 44.2.3. of this law.

ARTICLE 40. REHABILITATION OF INCOME AND LIVELIHOOD OF THE ENTITY AFFECTED BY LAND EXPROPRIATION

40.1. When carrying out preliminary assessment and formulating land acquisition and resettlement plan, the analysis of the livelihood level of the entity affected by land expropriation shall be done.

40.2. Rehabilitation support measures and activities required for the entity affected by land expropriation shall be determined based on the analysis, specified in 40.1. of this law.

40.3. Rehabilitation support measures and activities shall be included in the land acquisition and resettlement plan and implemented.

40.4. Rehabilitation support measures and activities shall include special provisions for entity affected by land expropriation who is person-member of a family that inevitably needs social welfare support and assistance.

ARTICLE 41. INSPECTION AND AUDITING OF LAND EXPROPRIATION

41.1. The Government, state central administrative organization in charge of land affairs (currently Ministry of Construction and Urban Development), state administrative organization in charge of land affairs (currently Administration of Land Affairs, Geodesy and Cartography), aimag, capital city, soum and district Citizens Representative Khural (provincial, Ulaanbaatar city-UB, sub-province and UB's district councils) and Governors shall monitor the implementation of land expropriation legislation and legal acts in accordance with the Law on State Monitoring and Inspection and other legislation within their powers and competences specified in these legislation.

41.2. The professional inspection of the implementation of land expropriation legislation and legal acts shall be carried out by the professional inspection authority and state inspector in accordance with the Law on State Monitoring and Inspection and other legislation within their powers specified in these legislation.

41.3. The state auditing of the implementation of land expropriation legislation and legal acts shall be carried out by the national audit authority in accordance with the Law on State Auditing and other legislation within its powers specified in these legislation.

41.4. Entity affected by land acquisition and other interested parties can monitor the land expropriation activities and their implementation.

41.5. If the entity specified in 41.4. of this law shall monitor land expropriation activities and implementation, it shall agree with the implementer of the land acquisition and resettlement plan on the scope, timing and other necessary items and implement the monitoring.

41.6. National Human Rights Commission can give directions to the Government, if necessary, based on the monitoring and evaluation (performance monitoring) of the land expropriation activities as specified in the article 14 of this law.

ARTICLE 42. ACCESS TO LAND AND IMMOVABLE PROPERTY

42.1. Competent state administrative organization and official in charge of land affairs or the professional entities given right by it can access the land and immovable property to be potentially acquired to collect data for carrying out the preliminary assessment and formulation of the land acquisition and resettlement plan.

42.2. In case that it is necessary to access the land and immovable property as specified in 42.1. of this law, a notice to access shall be delivered and permission of the owner, possessor, user of the land and immovable property shall be obtained prior to access.

42.3. The date and time of access shall be agreed when the notice, specified in 42.2. of this law, is delivered.

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

42.5. If the data collecting entity causes damage, loss to land, immovable and other property while collecting data, the damage, loss shall be reimbursed at the market value.

42.6. In case that the owner, possessor, user of the land and immovable property does not allow access then the land and property should be accessed based on the approval from the prosecutor's office.

ARTICLE 43. DOCUMENTATION

43.1. In order to monitor if the land expropriation activities are carried out in compliance with the legislation, and to keep as evidence document, and to report and for other requirements, the processes of land expropriation shall be documented by the competent state administrative organization and official in charge of land affairs.

43.2. Documents shall be compiled for the following land expropriation issues:

43.2.1. social impact assessment, preliminary assessment and land acquisition and resettlement plan;

43.2.2. information delivered to the entity affected by land expropriation and other concerned parties;

43.2.3. notice and notes of meetings, consultation meetings and gatherings;

43.2.4. notice of cut-off date, negotiation and access to land and immovable property;

43.2.5. the entitlements of the entity affected by land expropriation, and the compensation to be provided;

43.2.6. compensation appraisal, rehabilitation, relocation and transitional period assistances;

43.2.7. population and household census, land and immovable property inventory, and related questionnaire;

43.2.8. financial document on receipt of the compensation;

43.2.9. land acquisition contract;

43.2.10. grievances and proposals;

43.2.11. others.

43.3. The documentation of issues specified in 43.2. of this law shall be carried out in accordance with the methodological guidelines approved by the state administrative organization in charge of land affairs.

ARTICLE 44. FINANCING AND BUDGET

44.1. Financing and budget of the land expropriation shall be borne by the initiator of the development, project or activity and provided to the state administrative organization in charge of land affairs before the formulation of the land acquisition and resettlement plan.

44.2. The following costs shall be included in the financing and budget of the land expropriation:

44.2.1. all costs related to carrying out preliminary assessment, formulation and implementation of the land acquisition and resettlement plan;

44.2.2. in the costs specified in 44.2.1. of this law, the costs of social impact assessment, land and property appraisal and cadastral surveying and mapping shall be included;

44.2.3. the costs for implementation of the land acquisition and resettlement plan must include compensation for the land and immoveable property affected by land expropriation, transaction fees and payments related to the transfer of rights of replacement land, housing and structures, if relocating then costs for moving to the newly provided resettlement land, accommodation and temporary housing, cost of acquiring and developing the resettlement site, cost of rehabilitation support and probable costs that might be required for land expropriation through forced eviction, additional assistances required for person-member of a family that inevitably needs social welfare support and assistance if necessary, support and assistance for herders who should be sharing the pasture land and water rights.

44.2.4. all costs for establishing and operating Mediation council;

44.2.5. contingency costs equal to 10 per cent of the total costs related to the land expropriation.

44.3. In case that the financing and budget of land expropriation is not sufficient, required budget amendment shall be formulated jointly by the organizer of development, project or activity and state administrative organization in charge of land affairs and shall be approved as specified in 15.1.2. and 17.1.2. of this law.

44.4. If necessary, the implementer of land acquisition and resettlement plan shall suspend the implementation of this plan until the financing and budget issues are settled.

CHAPTER FIVE LAND EXPROPRIATION THROUGH FORCED EVICTION

ARTICLE 45. PERMISSION FOR LAND EXPROPRIATION THROUGH FORCED EVICTION

45.1. In case that the land acquisition contract, specified in 36.1. of this law, has not been concluded, the competent state administrative organization and official in charge of land affairs shall make request to the organizations specified in 15.1. and 17.1. of this law for land expropriation through forced eviction permission.

45.2. In the request for land expropriation through forced eviction permission the documents, evidencing that land expropriation was carried out in compliance with the related legislation and land acquisition and resettlement plan, shall be attached.

45.3. If it is proved that the competent state administrative organization and official in charge of land affairs has carried out land expropriation in compliance with the related legislation and this law, the organization specified in 15.1. and 17.1. of this law shall give land expropriation through forced eviction permission within 22 days after the receipt of the request for land expropriation through forced eviction permission.

45.4. If it is proved that the competent state administrative organization and official in charge of land affairs has not carried out land expropriation in compliance with the related legislation and this law, the organization specified in 15.1. and 17.1. of this law shall reject the request for land expropriation through forced eviction and instruct to implement the land expropriation activities in compliance with the legislation.

Comment: Parliament, Cabinet, Aimag and Capital City Citizens Representative Khural, as subjects authorized to make land expropriation decision based on grounds of public interest, it is impossible for them to monitor the implementation of their decision and check if the process of implementation is in line with laws. Therefore, it was deemed appropriate to assign these subjects as administrative decision makers on land expropriation in cases where negotiations with affected entities fail. This will provide on one hand, an opportunity to review their decision one more time by looking at the implementation status of the decision by government agencies through complaints from citizens and requests from relevant organizations, and on the other hand, a chance to confirm once again the rationale of their decision on land expropriation.

However, even though a decision is made, if citizens still do not agree with the decision, government agencies and officials should not proceed to forced eviction.

ARTICLE 46. EXPROPRIATION THROUGH FORCED EVICTION

46.1. Competent state administrative organization and official in charge of land affairs shall submit notice of land expropriation through forced eviction, based on the permission of the competent entity specified in 45.3. of this law, to the entity affected by land expropriation who did not conclude land acquisition contract.

46.2. In the notice, specified in 46.1. of this law, the date by which land should be vacated shall be stated and offer of compensation, assistances and supports to the entity affected by land expropriation, included in the land acquisition and resettlement plan, shall be made again.

46.3. The date by which land should be vacated, specified in 46.2. of this law, shall be not more than 22 working days after the date of submission of notice of land expropriation through forced eviction, unless otherwise specified in this law.

46.4. If the entity affected by land expropriation agrees with the offer, specified in 46.2. of this law, competent state administrative organization and official in charge of land affairs shall conclude the contract specified in the article 36 of this law and provide the compensation, assistances, supports and the incentives, specified in 37.3. of this law, to the entity affected by land expropriation.

46.5. The compensation, assistances, supports and the incentives specified in 46.4. of this law shall be provided to the entity affected by land expropriation within 22 working days after the conclusion of the contract.

46.6. The entity affected by land expropriation shall vacate the land within 22 working days after the receipt of the compensation, assistances, supports and incentives.

46.7. The entity affected by land expropriation can receive the compensation, assistances and supports, even if it does not agree with the offer specified in 46.2. of this law and continue requesting for additional compensation and continue its other requirements.

46.8. If the entity affected by land expropriation did not vacate the land within the date stated in the notice specified in 46.2. of this law, competent state administrative organization and official in charge of land affairs shall submit request for land expropriation through forced eviction to the court.

46.9. In the request for land expropriation through forced eviction the documents, evidencing that land expropriation activities, compensation appraisal, assistances and supports were carried out in compliance with this law and other related legislation, shall be attached.

46.10. The court shall review the request and make decision in accordance with the Law on civil case trial procedures.

46.11. In case that court makes decision for land expropriation through forced eviction, its enforcement shall be carried out by the organization for court decision enforcement.

PS: Additional costs will be incurred if the forced eviction is carried out by officials of Court Decision Enforcement Agency. This can be cover from the 10% contingency of the budget.

46.12. The entity affected by land expropriation has the right to appeal the court decision, however this shall not be justification for suspension of the enforcement of this decision.

PS: This provision is useful, but there is a need to investigate if this will contradict principles of other laws.

46.13. Land expropriation through forced eviction can be carried out only between May 15 and September 15.

PS: Implementing court decision of forced eviction should take place only in warm months in our country, which has harsh winter, and is a humanitarian necessity. By clearly stating this in the Draft Law, implementers of land expropriation and funders of

development, project or activity will not put pressure using their power rather will have to resort to consensus and mutual understanding. Since specific limitations are put on the use of state power, government agencies would need to follow very specific plan when implementing forced eviction.

46.14. If the land is acquired by expropriation through forced eviction according to the procedures of the court, the incentives, specified in 37.3. of this law, shall not be provided to the entity affected by land expropriation.

Comment: As stated in Article 43 of the Draft Law, government organization does not have power to implement forced eviction using the decision on land expropriation, and as stated in Article 44.4 and 44.5, should give official notice and allow for voluntary vacating of land. But if land was not vacated voluntarily within the indicated timeframe, it is only then, forced eviction by court decision will take place.

In order to spend less time in judicial procedures, there is a need to study more the opportunities for simplified resolution of disputes. Take note of the fact that the decision is made by relatively high level subjects with high legitimacy. The most difficult dispute on land expropriation would last 19 months or 1 year 7 months since the start of land expropriation to the final court decision (see relevant study in Annex 2).

CHAPTER SIX MISCELLANEOUS

ARTICLE 47. MAKING GRIEVANCE AND ITS REDRESS

47.1. The entity affected by land expropriation can make grievance on issues related to land expropriation at any stage of its implementation to the Mediation council and other competent entities specified in this law.

47.2. The issues related to the receipt and settlement of the grievances shall be regulated in accordance with the procedures of the Law on Settlement of claims and grievances made by the citizens to the government organizations and officials.

47.3. The grievance receipt form shall be approved by the state administrative organization in charge of land affairs.

ARTICLE 48. SANCTIONS TO BE IMPOSED TO THOSE BREACHING THE LAW

48.1. Criminal and administrative sanctions shall be imposed to the entity breaching the land expropriation legislation based on the nature of the violation and extent of the loss.

48.2. If the entity breaching the land expropriation legislation is not liable for criminal sanctions, then the entity shall be held liable for the following administrative sanctions imposed by the judge or authorized state inspector:

48.2.1. if the organization and official in charge of land affairs do not implement their duties specified in 20.4.2.-20.4.11. of this law in accordance with the procedures specified in this law, they shall be charged with penalty equal to 10 to 20 times of minimal labor wage in tugrug (Mongolian currency).

48.2.2. official or organization who organized and implemented land expropriation activities without land acquisition and resettlement plan, approved in accordance with this law, shall be charged with penalty equal to 15 to 20 times of minimal labor wage in tugrug.

48.2.3. if the entity affected by land expropriation makes or made improvements and investments in the land and immovable property by violating 11.3.1. of this law, this activity must be stopped and shall be charged with penalty equal up to 5 times of minimal labor wage in tugrug in the case of citizen (individual) and up to 20 times of minimal labor wage in tugrug in the case of business entity or decision not to provide the compensation shall be made based on the court decision.

48.2.4. citizen (individual) who intentionally hinders land expropriation through forced eviction activities, specified in the article 46 of this law, carried out by the authorized organization, shall be charged with penalty equal up to 5 times of minimal labor wage in tugrug or shall be imposed sanctions to be detained for 3 to 7 days.

48.2.5. official who did not make decision and officially respond to the grievance made by the entity affected by land expropriation in indicated time, as specified in the article 47 of this law, shall be charged with penalty equal to 5 to 10 times of minimal labor wage in tugrug.

Comment: Development of sanctions section of the Draft Law is based on current law practice used in existing laws. Basically, those to be held accountable will be officials. Citizens, who made unduly large amount of investment in land and immovable property without permission (for purposes of increasing the amount of compensation to be paid), or who impeded land expropriation will be charged with monetary penalty, and may lose right to compensation or be arrested by decision of judges.

ARTICLE 49. REIMBURSEMENT FOR LOSS

49.1. The injury to the health of individual and loss to the property incurred, due to the violation of the land expropriation legislation, shall be reimbursed by the entity who is guilty.

49.2. if it is proved that the entity authorized to carry out compensation appraisal of the land and immovable property to be affected by land expropriation has made the appraisal incorrectly, then this entity shall be sanctioned to reimburse the costs to do the compensation appraisal and reimburse the direct loss incurred.

ARTICLE 50. THE LAW BECOMING EFFECTIVE

50.1. The law shall become effective after six months after the day of its adoption.

Comment: Some studies carried out during the development of the Draft Law and comments on it are attached, and referred to in sections of comments where needed.

CHAIRMAN OF THE STATE GREAT KHURAL

ATTACHMENT 5
RESPONSE TO THE COMMENTS ON THE DRAFT LE LAW FROM
MINISTRIES

**LIST OF COMMENTS MADE BY THE CABINET MEMBERS
ON THE DRAFT LAW ON LAND EXPROPRIATION**

26 December 2012

No.	Comments	Clarifications and/or comments as incorporated in the Draft Law
1.		Minister for Justice
	Supported the Draft law in principle, and made the following comments:	
1)	<p>The revised draft Law on Land refers to the National Committee on Land Reform and assigns a specific mandate to it. It is not clear what rights and duties this Committee would have in relation to land expropriation and resettlement.</p> <p>The Draft Law provides that state organization in charge of land matters shall implement land expropriation. But there is no specific study or estimation on whether there is a real possibility that this organization can do it, and what organizational unit would be needed to do this task.</p>	<p>1) THE COMMENT WAS ACCEPTED AND THE DRAFT LAW NOW INCLUDES THE MANDATE OF THE NATIONAL COMMITTEE ON LAND REFORM.</p> <p>The Capital city Land Department has Land Expropriation Division. District Land Offices also provide support to the Capital city Land Department, and all aimags have dedicated unit (land office). Land expropriation is currently being implemented by using existing resources and staff, and basically, in the absence of any legal regulation. The impact assessment of the Draft Law and calculation of the cost of the draft law are planned to be conducted as part of the ADB TA.</p>
2)	<p>Include specific provisions so that duly authorized organizations take into consideration suggestions of persons affected by given expropriation, conclusions of specialized agencies, local administrative and representative bodies of given territory, as well as regional development plan, development and detailed plan, and land management plan of given territory when making land expropriation decisions and when undertaking preliminary land expropriation assessments;</p>	<p>2) Preliminary assessment is to be done at the stage of research, technical and economic feasibility study and development of detailed blueprint and budgeting, in accordance with the implementation plan of any development, project or activity (for example, annual land management plan, detailed urban development plan, etc.). Therefore, it was deemed not necessary to obtain citizens' suggestions at this stage. Because i) decision on whether to proceed to land expropriation or not will be made based on the preliminary assessment, ii) since the decision to expropriate is not made yet, it will be counterproductive to obtain feedback and suggestions from entities to be affected by land expropriation. For example, make investments and improvements into land and immovable property in order to get unfairly increased compensation, which may, on one hand, put in disadvantaged situation either that person (if decision is not to expropriate land) or the state (by forcing it to pay higher than realistic amount of compensation), iii) gossip about land expropriation may lead to increase or decrease of prices of land and immovable properties of given territory, which in turn may result in "land speculation/deals" and citizens becoming victim of such deals.</p>

	<p>Taking into account the comment and the above explanation, the Article 11.1.12 was amended to “consult and participate in formulation and implementation of land acquisition and resettlement plan”;</p> <p>The proposal on participation of specialized or professional agencies was accepted and included in Article 28.5 of the Draft Law.</p> <p>Any development, project or activity should take place in accordance with regional development plan, development and detailed plan and land management plan of given territory, and as stipulated in Article 28.2, preliminary assessment is part of the main component of the research, technical and economic feasibility study, blueprint and budget documentations. As such, preliminary assessment <i>will be or is</i> based on regional development plan, development and detailed plan and land management plan of given territory.</p>
<p>3) The issue of expropriation of land owned, possessed or used by entities should not be limited to actual expropriation, resettlement, and compensation. Ensuring protection of interests and livelihood of affected persons, provision of necessary support from the state, and not worsening the quality of life of these persons are also very important. Therefore, the purpose of the Draft Law needs to be changed to fit this spirit;</p>	<p>3) The proposal was taken into consideration. The purpose of the Draft Law was amended to “The purpose of this law is to regulate issues of acquisition of land, resettlement, and compensation of the holders of ownership, possession and use rights with compensation by the State, based on the state and local special need and public need through negotiations and agreement, and through expropriation if such negotiations fail to reach an agreement and protection of human rights and rights to own property in connection to this acquisition, resettlement and compensation”</p>
<p>4) Article 1 of the Draft Law “acquisition ... under conditions of expropriation ...” is not clear. Also the difference between “land expropriation” and “land expropriation through forced eviction” is not clear.</p>	<p>4) The proposal is accepted and the words “under conditions of expropriation”, i.e. the wording “under the eminent domain power” is removed. Taking the proposal into account, the explanation of terminologies was amended.</p>
<p>5) Replace “Constitution” referred to in Article 2.1. by “Constitution of Mongolia”;</p>	<p>5) The relevant part was replaced as per the proposal.</p>
<p>6) The scope of the law referred to in Article 3 of the Draft Law is not easily understandable, and has repetitions, and needs to be reformulated so that it is simple, easy to understand, concise and clear.</p>	<p>6) The proposal was accepted and the Article 3 was edited.</p>
<p>7) The Constitution of Mongolia is the legal act adopted by the</p>	<p>7) The proposal was accepted and the Article 4.1 of the Draft Law</p>

<p>supreme state organization and each of its provisions has highest legal force. Therefore, there is no need to refer to the relevant provisions of the Constitution in Article 4.1. of the Draft Law, and this section needs to be removed;</p> <p>Also it is not clear what is meant by specific principle in Article 4.2. of the Draft Law. Principle is understood as the main concept that is pursued in relationships that are being regulated by that law.</p> <p>The principle referred to in Article 4.2 took the matter in too much details did not specify the main concept, and formulated every issue as principle. Hence, main principles need to be formulated in clear and concise manner;</p>	<p>was removed.</p> <p>The Draft Law has features of procedural law, regulates newly emerging relations, and was developed in the spirit of putting an emphasis on “protecting interests and livelihoods of citizens and business entities, providing all round support by the state, and not allowing worsening of the quality of life”. Also Article 4.2 of the Draft Law aims to fully reflect recommendations and principles issued and applied by international organizations. These principles will provide guidance in implementation and monitoring of implementation, therefore, it is proposed to leave this article as it is.</p>
<p>8) It is not clear that entities affected by land expropriation shall sign an agreement under the conditions to expropriate (under the eminent domain power), because no one will sign an agreement with a condition to expropriate the land under his/her ownership.</p> <p>Therefore, to review and revise the definition of the terminology “land expropriation” referred in Article 5.1.</p> <p>Also, land expropriation as stated in the Draft Law is to take land only for the state, local public and special needs. But it is not clear if the notion of ‘land acquisition” referred to in the Law on Land and the amended Draft Law on Land will cover expropriation of land, the title of which has expired or land that is being used illegally;</p>	<p>8) The proposal was accepted and the Article 5.1.1. was amended.</p> <p>The notion of “land acquisition” referred to in the Law on Land and amended Draft Law on Land, expropriation of land with expired title or illegally used land will not be covered by this Draft Law. This is because, <i>firstly</i>, compensation will not be paid for land with expired title, and as stipulated in the Law on Land, entities whose land title expired should vacate the land and return it to the owner or the state; <i>secondly</i>, entities without due title do not have any right to claim and there will be no protection of their rights and no compensation. Relations that arise due to such situation are regulated by the law (i.e. the Land Law).</p> <p>In contrast, this Draft Law formulated each of the land expropriation cases as a closed list, in Article 6. In other words, land will be expropriated only for the purposes listed in Article 6 of the Draft Law, and the scope of the Draft Law will be limited only to these purposes.</p>
<p>9) The term used in the Draft Law “state need” should be made consistent with the term used in the amended Draft Law on Land “land for special purpose”. Please take note that the term “public need” is not defined in the amended Draft Law on Land, and clarify what criteria are to be applied for “land for public need”;</p>	<p>9) The term “state need” was an editing mistake, and was corrected as “land for state special need” and this is consistent with the amended Draft Law on Land.</p> <p>The term ‘public need” is defined newly in the Draft Law, and it is not important to define it in the Law on Land. It is not possible to state detailed criteria for defining public need. More specifically,</p>

<p>The Article 5.1.3 refers to existing Law on Land, so this section should be made consistent with the set of law on land formulated by your Ministry;</p>	<p>Parliament, Cabinet, aimag and the capital city Citizens Representative Khural shall decide whether public road and infrastructure networks are public need, taking into consideration public interest, and based on research, blueprint and technical and economic feasibility study of development, projects, and activities. For example, the decision maker as a collective body expressing common interest will make a decision based on whether the given development work or network installation is for houses of 5 families or 500, 5000 families.</p> <p>The proposal related to Article 5.1.3 is accepted, and the relevant section was made consistent with the amended Draft Law on Land.</p>
<p>10) Land expropriation can touch upon the rights and interest of any citizen or legal person, therefore, definition of the term “entity affected by land expropriation” in Article 5.1.5 should be formulated in general term, not as specific list;</p>	<p>10) It is not possible to define entities affected by land expropriation in general manner. It is only by clearly defining affected entities that it would be possible to provide compensation and other assistance to legitimate entities and protect legal rights of affected entities.</p>
<p>11) The Draft Law defines “development, project, activity” in general manner, but Articles 5.1.6, 5.1.7, 5.1.8, 5.1.16 refer to different terms and actions, therefore, it is not appropriate to provide a general definition;</p>	<p>11) The intention is to express all measures related to land expropriation for state special need or public need by three terms, including development, project or activity. Therefore, general definition of these three terms is considered as the right solution for this Draft Law.</p> <p>For clarification: development can include construction of road and networks, schools and kindergartens through announcing tender. On the other hand, it is also common to implement such construction through project or program (Millennium challenge account road project, school project as part of grant, etc.). Activity can include measures which are not direct construction/development work but require specific arrangements. For example, in order to restore sources of drinking water take measures to protect Tuul river, or in order to protect mazaalai (gobi bear) or wild horse and their habitat take the area as land of special need, etc.</p>
<p>12) The amended Draft Law on Land defines “land for special need”, and provided its classification, but did not provide definition of “land for public need”.</p> <p>In accordance with Article 6 of the Draft Law, land for public need</p>	<p>12) See no.9.</p> <p>Cases of expropriating land for public need were grouped in Article 6 by a closed list. This list includes schools and kindergartens, but does not include land for “hospitals, parks and public services.</p>

<p>is one rationale for land expropriation, but it is not clear what land will be considered as land for public need.</p> <p>Article 6.1.5 of the Draft Law provides for expropriation of land for schools and kindergartens to be built by state and local budgets, by taking into account public need.</p> <p>It is not clear why the issue of land for public need is limited only to schools and kindergartens. It is not clear whether the same provision would apply to land for hospital, park and public services;</p>	<p>Because it was considered that land for hospital, parks and public services does not have to be expropriated by breaching human rights and property rights. School and kindergarten are common services that citizens necessarily use on a daily basis. For example, today ger districts do need land for schools and kindergartens. On the other hand, land for family medical centre, park, or other public services (khoroo building, police station, etc.) can be made available through purchase, not expropriation. Larger hospitals for specialized diagnosis or treatment can be built on state owned vacant land. Land for parks and playground can be made available as part of urban redevelopment, through involvement of residents of given area. Therefore, these cases were not included in the Draft Law.</p> <p>The meaning of the term “public need” in this Draft Law overlaps to some degree with terms such as “land for state special need”, “public land” and “land for public need”, but in this law it has a different, but specific purpose.</p>
<p>13) Article 5.1.5 defines the term “entity affected by land expropriation”, but Articles 9.1, 9.2, 9.3, 9.4, 9.5 again provided definition, creating overlap;</p>	<p>13) Article 5.1.5 provides definition, Articles 9.1.-9.5 listed in detail all potential entities which may be affected by land expropriation. If these articles are removed, some legitimate entities may get excluded from regulation of the law and may be put in disadvantaged position, so detailed description was provided.</p>
<p>14) Take note of the error in reference to laws in Article 8.3, 9.6, 20.3.2, 20.4.10, 27.2:</p>	<p>14) Corrected, as per proposal.</p>
<p>15) To clarify “other rights” in Article 7.1.1, 7.1.2,</p> <p>“well settled ger districts” in Article 9.6,</p>	<p>15) The proposal is accepted and necessary reference is made in Article 7.1.1. and 7.1.2.</p> <p>The proposal is accepted and Article 9.6 is made clear. Note: affected persons of this type are those ger district residents who live in flood risk zones, under high voltage power lines, or in areas that are not for residence according to the land management plan, who do not have any ownership, possession or use rights, but have registered under the given addresses. These citizens usually cannot afford buying fences and houses legally; plots of land to own or possess legally are too far from the city centre, their work or services, so they are not willing to move there and prefer to settle in on vacant lands which are not subject to legal ownership or possession by</p>

<p>“procedure referred to in this Law” in Article 10.3, “correctly state rights and duties” in Article 11.2.4, “sources comparable to them” in Article 6.1.5, “proposals of relevant entities” in Article 20.4.3, “entity authorized by” in Article 42.1;</p>	<p>citizens, and build their fence and houses. Although they do not have any formal title over these plots of land, if they are “kicked out of there”, it is likely that they will settle on other plots of land near the city centre (mountain top, slopes, other areas near high voltage transmission lines, etc.). Therefore, the issue of these residents affected by land expropriation needs to be resolved properly, and the Draft Law provides for adoption of a special regulation. If this matter is not resolved properly, the issue will remain and its resolution will only be postponed for a while. After few years, the resolution of this matter would require much more cost and efforts. Article 10.3. is reworded. Article 11.2.4. is amended to provide clarity. Article 6.1.5. is changed to Article 6.1.2.c, and is reworded. Article 20.4.3. is amended to provide clarity. Article 42.1. is amended to provide clarity.</p>
<p>16) Does Article 11 provide for opportunities for not agreeing to land expropriation, taking lawful measures to resist, not agreeing to amount of cash compensation or terms of compensation, and resolving the issue without vacating land? Include specific provisions to initiate/exercise such rights;</p>	<p>16) The proposal was taken into consideration and Articles 11.1.1, 11.1.7, 11.1.8, 11.1.9 are amended. According to Articles 11.1.9, 11.1.15., 1.1.16, affected entities have the right to take measures to resist.</p>
<p>17) The Law on National Human Rights of Mongolia provides for submission of complaints to the NHRCM, undertaking of investigation based on complaints, and making of relevant decisions, ...</p> <p>... the Article 21 of the Law on Administrative and territorial units and their management provides for establishment of temporary committee, therefore, it is proposed to remove Article 14, Article</p>	<p>17) According to the Law on NHRCM, investigation shall be undertaken when somebody submits complaint or when NHRCM takes initiative to investigate based on information it received. If someone does not submit complaint or if NHRCM does not take initiative, there is no other independent organization which would investigate whether or not human rights were breached during land expropriation. Therefore, it was deemed necessary to include a special provision on participation of this organization. Especially, land expropriation touches upon important issues which affect citizens’ interests, property rights and quality of life. It is proposed to keep this provision as it is. It is proposed to keep Article 15.1.6. as it is. Because this provision regulates breaches of human rights, it will give more opportunities for people whose rights are breached if the law states means and channels for citizens on how to deal with government agencies and officials. In other words, affected person can see from this Law and</p>

<p>15.1.6 from the Draft Law;</p>	<p>not from the Law on Administrative and territorial units and their management, that he/she has the opportunity to create a temporary committee and get the issue inspected and obtain a conclusion/evaluation.</p>
<p>18) The powers of aimag, Capital city Citizens Representative Khural referred to in Article 15.1.1 overlap with the powers of the Cabinet referred to in Article 18.1.1, creating confusion.</p> <p>The difference between the rationales upon which the Cabinet and Aimag, Capital city Citizens Representative Khurals make decision on land expropriation is not clear.</p> <p>Land expropriation infringes on property rights protected by the Constitution of Mongolia, and as such, is a complex issue. The Draft Law provides for double decision making on land expropriation – by aimag, Capital city Citizens Representative Khurals and the Cabinet. This has to be reconsidered. Especially, where there are many affected persons, it should be clear who, which subject shall retain the right to make decision on land expropriation;</p>	<p>18) The proposal was accepted and Article 6 is amended to remove overlap of decision making powers of the Parliament, the Cabinet, and Citizens Representative Khurals.</p>
<p>19) The Draft Law does not have Article 6.1.10, so remove reference to this article in Article 15.1.1;</p>	<p>19) Relevant correction is made.</p>
<p>20) The Draft Law does not provide for decision making to be based on conclusions and proposals of authorized entities, therefore, remove Articles 15.1.3, 16.1.2, 17.1.2 which talk about giving conclusions and proposals, remove Articles 15.1.6, 16.14, 18.1.10, 19.1.4, 20.5, 22.1.1, as these are already regulated by other laws and legislative acts;</p>	<p>20) Proposal on Article 15.1.3, 16.1.2, 17.1.2 is accepted and removed from the Draft Law.</p> <p>Article 15.1.6 was kept, given the explanation made in 17. Other proposals are also accepted, and relevant sections are removed from the Draft Law.</p>
<p>21) Article 18 of the Law on Administrative and Territorial Units and their management provides that soum, district Khurals have the powers to make decision on any matter relating to economic, social or organizational affairs of their given territory, except for those that are subject to decision by the President, Parliament, Cabinet, ministries, agencies, higher level khurals or other state organizations and officials with due authority. Therefore, remove Article 16.1.1 which defines the powers of soum and district;</p>	<p>21) The proposal is accepted and Article 16.1.1. is removed from the Draft Law. Following the same principle, entire Article 17 is removed.</p>
<p>22) Articles 13.1.2, 15.1.2, 18.1.2 of the Draft Law already</p>	<p>22) As stated in Article 13.1.2. 15.1.2, 18.1.2., decision maker shall</p>

<p>regulated relevant costs to be approved together with the decision on land expropriation. Therefore, remove Article 20.3.3. which oblige implementers of development, program or project, activity pay for costs of land expropriation;</p>	<p>approve the necessary budget, however, the funding may not go to the actual implementer of land expropriation activity at site (for example, land office), and this may delay land expropriation, further delay development, project or activity, and may also harm affected citizens. Therefore, it is necessary to indicate who should pay for such action. It is proposed to keep this provision.</p>
<p>23) Law on State Registration, Law on Civil Registration, Law on Registration of Legal Persons, Law on State Registration of Property Ownership Right and Other Property Rights Related to It, provide for institutional arrangement, and regulate matters relating to registration bodies, therefore, move the provision of Article 21 to relevant provisions of the relevant laws;</p>	<p>23) The proposal is accepted and draft amendments to the Law on State Registration, Law on State Registration of Property Ownership Right and Other Property Rights Related to It, are developed and attached.</p>
<p>24) Clarify Article 20.2 which says “land expropriation actions shall be implemented through institutions referred to in Article 23.1 of the Law on Land”;</p>	<p>24) The proposal is accepted, and Article 20.2. is reformulated to ensure clarity.</p>
<p>25) In accordance with Article 23.1 of the Draft Law, initiative to select land for expropriation for development, project or activity can be taken by any citizen or legal person. Therefore, review this provision, and regulate thoroughly the issue where citizen or legal person represent the public and take initiative on land expropriation for state special need or public need. This provision has to be regulated in detail with specific criteria and requirements. Also given initiative should not be directly decided by relevant authorized bodies. Instead they should receive request and make preliminary conclusions and submit to higher level bodies for decision making. This kind of regulation should be added;</p>	<p>25) The proposal is accepted, and Articles 23.3, 23.4. are combined into Article 23.2. In connection with this change, Article 23.3, 23.4 are revised.</p>
<p>26) References to laws made in Articles 23.2.1, 23.3.2, 23.3.3, 36.1, 44.3, 46.14 are not correct and not clearly formulated, Article 23.2.1 overlaps with 24.2.1;</p>	<p>26) References are corrected and some Articles are made clear.</p>
<p>27) Provide details on which state organization can have the powers to lead and organize development, project or activity as provided for in Article 24, and include detailed rights and duties of this organization;</p>	<p>27) In accordance with the Draft Law, state organizations which would lead and organize development, project and activity are, for example, Ministry of Road and Transport, or Capital city Road Department, or Road project unit created by the Ministry of Road and Transport. As stated in the Draft Law, their rights and duties are to provide funding for vacating land, jointly develop land expropriation plan, and receive land handed over to them.</p>
<p>28) Include more detailed regulation on rights and duties of the</p>	<p>28) The Draft Law states who will create this council, it composition</p>

<p>Medication Council referred to in Article 27, with regard to each of direction of actions of land expropriation;</p>	<p>and its common rights and duties in relation to land expropriation relations. Detailed regulation will be formulated in a separate regulation. The Medication Council will have the right to provide advice on any issue related to resolving any dispute that arises of land expropriation.</p>
<p>29) Include regulation in Article 28.4 that require proving that the importance of resolving the issue outweighs consequences of particular action, given the gains and risks that arise out of resettlement of affected persons and the objective of not worsening their livelihood. Include also specific provision so that financial sources to fund all land expropriation related actions are clear or possible to resolve;</p>	<p>29) Article 28.4. is about conducting studies for making land expropriation decisions, and furthermore, for implementing that decision. Such research will determine whether land expropriation is an absolute necessity, support by relevant facts and evidences, and make preliminary estimations of costs required. If this study is incomplete or insufficient and decision makers are not sure that financial resources required for all actions related to land expropriation, resettlement and ensuring living standards, are enough, then it is better that they do not make decision. A new provision was added in Article 29 to clarify this.</p>
<p>30) Check the feasibility of the time required for specific actions referred to in Article 29, and 45.3, 46.3, 46.6,...</p> <p>... Make clear the cut-off date and date for announcement, stated in Article 30;</p>	<p>30) Time required for actions of land expropriation pursuant to the Draft Law has been estimated, and a table with estimations is attached. The proposal regarding Article 45.3 is accepted and Article 13.2. is added, so that the Government issues permission for land expropriation for decisions made by the Parliament.</p> <p>In current practice and context, it is difficult to set a rigid date for cut off. Taking into account the decision making process, availability of funding for land expropriation actions, and time required for developing and implementing land expropriation plan, the implementer of this plan (Land office) can determine the cut off date. The Article 30.1. provides flexibility for setting this date.</p>
<p>31) Add regulation in Article 35 so that when negotiating with affected entities, provide them with all necessary information, estimations and studies, and any additional information that they demand, ...</p> <p>... so that when negotiations fail with the majority of affected entities the issue is reconsidered, and submitted to relevant authorities;</p>	<p>31) The proposal is accepted and Article 35.9 is added in the Draft Law.</p> <p>However, it is not possible to include a regulation which allows reconsidering of the issue when the majority did not conclude agreement. Because i) this law does not regulate relations of urban redevelopment which require acceptance by the majority, ii) land expropriation should be indispensable for meeting state, local special and public needs from the points of view of social, economic, environmental, and engineering perspectives. Hence, withdrawing it</p>

	<p>due to majority's viewpoint is not possible, in accordance with this Draft Law. For example, this may lead to compromising "the destiny" of road reaching 5,000 families, by few families (20 or something) who have "narrow, but united interest".</p>
<p>32) Article 36 provides a general regulation on contract between affected entities and state organization. For affected persons who are handing over their land and moving to other places, the contract should contain clear and detailed provisions, and the Draft Law should list down the necessary items to be included in such contract;</p>	<p>32) The proposal is accepted and items to be included in the contract are listed in Article 36.2. of the Draft Law.</p>
<p>33) Resettlement is a very complex activity with broad scope. The risk of negative consequences, including human rights breach or change in quality of life, is high. There is also a need to do a good research in order to select new settlement area and resolve its infrastructure and development issues. Therefore, more detailed regulation related to above activities is needed;</p> <p>Include a provision so that all costs related to resettlement of affected entities referred to in Article 39 are borne by organizer of the activity;</p>	<p>33) All issues related to resettlement, including its negative consequences will be studied during land expropriation preliminary assessment and development of land expropriation plan, together with social impact assessment. Based on these, comprehensive measures should be included in land expropriation plan so that rights of affected entities are infringed in minimal way. This regulation is included in Article 31.</p> <p>The proposal is accepted and Article 39 of the Draft Law assigns responsibility to Organizer of development, project or activity to cover all related costs.</p>
<p>34) include specific mandatory requirements to be included in resettlement plan, in relation to resettlement referred to in Article 39, and rehabilitation and other support referred to in Article 40;</p>	<p>34) It is not possible to provide detailed specific requirements in relation to issues referred to in Article 39 and Article 40. Cases of every affected person will be studied and tailored compensation and other support measures will be taken. Therefore, these specific requirements are better to be included in land expropriation and resettlement plan, which will be developed pursuant the procedures referred to in Article 18.1.7.</p>
<p>35) Land expropriation and resettlement related costs referred to in Article 44.2 need to be provided in detail by each type of action.</p> <p>Substantial amount of funding will be required for land expropriation and resettlement, so potential for funding sources should be investigated on a preliminary basis and made clear. Regulation on expenditure control of approved funds, monitoring and reporting is needed;</p>	<p>35) The proposal is accepted and Article 32.2.10 is amended. Article 44 includes all costs related to land expropriation. The detailed breakdown of costs will be included in land expropriation and resettlement plan, as envisaged in the Draft Law. As provided for in the Draft Law, the decision maker will approve the funding sources based on preliminary assessment, and organizer of development, project and activity will be responsible for costs. Article 41 provides for inspection, monitoring and audit of all activities related to land expropriation, including expenditure control,</p>

	monitoring and reporting.
36) Include a specific regulation in Article 44 so that comment from the Cabinet member in charge of finance matters is received on financial issues related to land expropriation;	36) Land expropriation is a key component of development, project, or activity, rather than a stand alone activity. As provided for in the Draft Law, decision maker will approve related costs as part of given development, project, or activity's budget. If necessary, the feedback from the Ministry of Finance can be obtained within this context.
37) Specify types of breaches referred to in Article 48, and set realistic penalty; In particular, there is a need to ensure state organizations and officials do not breach human rights during land expropriation, and in cases of such breach, penalties should be clear;	37) The proposal is accepted, and Articles 20.4.7.-20.4.11 are added to the section on penalties for state organizations and officials of Article 48.
38) Overall, some provisions are not consistent with each other, some references are incorrect, or formulated in such a way that is not easy to understand. These are basic requirements for development of draft laws, so take note of this;	38) The proposal is accepted, consistency is checked and references are corrected to meet requirements of development of draft laws.
39) Make the Draft Law consistent with amended Draft Law on Land, amended Draft Law on Land Payment, amended Draft Law on Land Cadastre, Draft Law on amendment to the Law on Geodesy and Cartography;	39) Relevant changes are made to make the Draft Law consistent with those relevant draft laws.
40) Article 9.10 of the Law on Procedure for Development and Submission of Draft Laws and other Draft Resolutions of the Parliament states "Development of draft laws shall be accompanied by list of amendments to be made to other laws, draft resolutions to be issued in line with proposed law, and relevant estimations and studies". Therefore, proposals on actions to be taken for implementation of the Law, budget needed to implementation, and relevant financial estimations should be developed. Introduction and concept of the law should also be developed and attached.	40) Proposed amendments to the Law on State Registration, Law on State Registration of Property Ownership Right and Other Property Rights Related to It, are developed and attached. Draft procedures that should be issued following the approval of the Draft Law, impact assessment and budget estimations are being studied by the Ministry of Construction and Urban Development, and will be finalized in the near future. Land expropriation and resettlement relations are new concepts in Mongolia, therefore, once the Draft Law is approved, it is planned to implement a project to strengthen capacity of organizations in charge of land expropriation and other related activities.
41) Review comments received from "Economic and Legal advice" LLC regarding the Draft Law on Land Expropriation.	Comments were reviewed.
2	Ministry of Energy
1) The purpose of monitoring by the National Human Rights Commission is to ensure protection of human rights, so change Article 14.2 "... at least two years after land expropriation" and	The proposal was considered and the explanation is as follows: it would be better to carry out performance audit after at least two years to assess if human rights were breached in the long run

make it one year;	because of land expropriation and if livelihood of affected persons got worsened. However, monitoring of land expropriation activities can be undertaken by relevant officials and affected persons themselves as provided for in the Draft Law. Therefore, the formulation was kept as it is.
3	Ministry of Environment and Green Development
<p>1. Articles 16.1.1-16.1.3, 16.1.6-16.1.7 referred to in Article 5.1.3 in defining “state needs” do not exist in amended Draft Law on Land, therefore, change to (13.3.1-13.3.3, 13.3.6-13.3.7), In 6.1.1, change “16.1.1” to “13.3.1” In 6.1.2, change “16.1.2” to “13.3.2” In 6.1.3, change “16.1.3” to “13.3.6” In 6.1.4, change “16.1.6” to “13.6.8”. Thus, before seeking comments, further editing is needed, to make provisions of the Draft Law consistent with amended versions of other draft laws and eliminate discrepancies in meaning.</p>	The proposals are accepted. Relevant corrections are made taking these comments and comments of MoJ into account. Article 6 is fully rewritten.
2. Affected entities may not necessarily be herder, and land expropriated may not necessarily be pasture, water points, so change Article 9.3 to “... citizen and business entities who used to operate on land being subject to expropriation, and who lost the title or had the title limited”;	It is not possible to accept this proposal, because Article 5.1.5 of the Draft Law provides the general definition of “entities affected by land expropriation”, and types of affected entities are defined in Article 9 in relation to cut off date. The issue of herders and citizens residing in ger districts without permission is regulated by special provision in the Draft Law, whereas entities affected by land expropriation are owners, possessors and users of land and immovable properties, as stated in Article 9.2 and 9.4.
3. There is no need to include persons who do not have ownership, possession or user rights and who are in the process of obtaining these or have the potential to obtain such rights, and create complications at decision making stage. Therefore, delete Article 9.5;	It is not possible to accept the proposal. The process of registering and validating land and immovable properties is complicated in Mongolia, and still in transition. Because of this, from human rights perspective and for ensuring protection of individuals’ properties, it would be appropriate to treat persons who have submitted land ownership request to respective Governor and are waiting 3 months as per laws, persons who have submitted requests to State Registration Office, and those who currently do not hold rights but have potential of getting one, as “entities affected by land expropriation”.
4. Pasture and water points are not subject to individual possession and right to use them are open to everyone, therefore, the definition in Article 10.3 “herders who should be sharing	It is not possible to accept the proposal. As it is referred to in the proposal and in Article 6.2.1 of the existing Law on Land, “pasture and water points ...” are to be used by the public. However, on one

<p>pasture and water rights” is not needed. So, provide a different example for “third party”, or leave them as “third party” (applicable also to Article 44.2.3);</p>	<p>hand, there are herders and their livestock subject to resettlement have to leave the pasture and water points to which they have “accustomed” to, and on the other hand, there are herders who are made to share their pasture and water points with herders being resettled. Therefore, it was deemed necessary to regulate this issue by special provision in the Draft Law. Herders who now have to share the pasture and water rights will be provided due support and assistance.</p>
<p>5. Meaning in Article 11.3.1 is not consistent with the meaning in Article 11.1.13. Need to review and correct.</p>	<p>Article 11.3.1 and Article 11.1.14 complement each other. Article 11.3.1 prohibits any “substantial improvement” to the land or immovable property for the purpose of unduly increase the value of compensation to be paid to affected entities, whereas Article 11.1.14 allows repairs, such as stopping water running from the roof, or installing <i>khas</i>, <i>ulzii</i> stoves that are being installed by projects, etc., which are necessary for maintaining normal conditions for daily life. Such repairs and maintenance can be done with the permission of organization in charge of land expropriation.</p>
<p>6. Carrying out monitoring of human rights breaches related to land expropriation after at least 2 years of its implementation will be useless, so replace Article 14.2 “ . . . within 2 years of its implementation”;</p>	<p>See explanation given to the comments of Ministry of Energy.</p>
<p>7. There is no Article 6.1.10, so make changes in Article 15.1.1 “... 6.1.4-6.1.5 and 6.1.7 ...”;</p>	<p>The comment is accepted, correction is made.</p>
<p>8. Edit Article 15.1.8 “other than those indicated in Article 15.1.1 of this Law ...”;</p>	<p>The comment is accepted, and Article 15.1.8. is deleted in response to this and the Ministry of Justice comment on 16.1.4.</p>
<p>9. Article 6.1.4 and 6.1.5 fall under the mandate of aimag and the capital city Citizens Representative Khural, therefore, change Article 18.1.1 “... on the grounds referred to in Article 6.1.1-6.1.3 and 6.1.6”;</p>	<p>The comment is accepted, and Article 6 is rewritten, in response to this and the Ministry of Justice comment.</p>
<p>10. Remove “-18.1.8” in Article 18.1.10;</p>	<p>The comment is accepted, Article 18.1.8 is removed, in response to this and the Ministry of Justice comments.</p>
<p>11. Change the reference in Article 20.2 to the Law on Land from (23.1) to “50”;</p>	<p>The comment is accepted. Based on the latest version of the Draft Law on Land, and the reference is changed to Article 51.1.</p>
<p>12. Entity referred to in Article 21.1.2-21.1.4 of the Draft Law is irrelevant to actions referred to in Article 20.3.2, so, change (23.1.2-23.1.4);</p>	<p>The comment is accepted, and the necessary changes are made.</p>
<p>13. Provisions in Article 23.3.2-23.3.4 related to decision making</p>	<p>Relevant changes are made reflecting the comment.</p>

	authorities are not consistent with the given Article. Hence, developers of the Draft Law need to make relevant editing;	
	14. In Article 44.3, change “14.1.2” to “13.1.2”;	The comment is accepted, and the correction is made. Reference to (15.1.2) is added.
	15. Because permission to expropriate land, vacate by force is being sought, change and edit as below: - Article 45.2 “... attach proof which shows necessity to do it according to the plan” - Article 45.3 “... in cases where it was deemed necessary pursuant to laws ... ” - Article 45.4 “... in cases where there is potential to breach ... “;	Explanation to the comment: When the implementer of the plan submits a request on vacating land by force to relevant authority who made decision on land expropriation (Government, aimag or the capital city Citizens Representatives Khural), he/she should prove that the actions are undertaken according to laws and human rights were not violated. Decision maker shall make a decision based on these proofs and completeness of documentation.
	16. In Article 46.4-д “... Article 37 ... “ is mentioned by mistake, so corrected to “... Article 36 ... “.	The comment is accepted and the relevant correction is made.
4	Ministry of Defense	
	Delete references in Article 15.1.1 of the Draft Law on Land Expropriation “... and 6.1.10” and Article 46.14.	The comment is accepted, and the relevant change is made.
5	Ministry of Road and Transportation	
	1. Use terms that are consistent with Article 6.3 and 6.4 of the Constitution of Mongolia, Law on Land, and Mongolian language grammar. For example, take note of terms and words such as entities affected by land expropriation, replacement value, vacate land by force, and give priority.	The comment is accepted, the Article 6 is rewritten in response to this and the Ministry of Justice comment.
	2. Resolving land related issue is most important priority in implementing development, project or activity that is important for state and socio-economic development. Therefore, add “government reserve land” in the list of grounds mentioned in Article 6 of the Draft Law on Land Expropriation for which land can be expropriated. This is included in Article 3.1.8 of the Draft Law on Land.	It is not possible to accept this proposal. “Government reserve land” is too broad. Cases of land expropriation for state level road and engineering infrastructure are included referring to relevant sections of the Law on Urban Development (3.1.10).
	3. Article 13 of the Draft Law provides that “decision on land expropriation shall be made by the Parliament”. But Article 18 provides that the Government will make a decision. Take note of this duplication.	The comment is accepted, duplication in decision making power is resolved, and Articles 13.1, 15.1.1, 18.1.1 are revised.
	4. Article 13 of the Draft Law provides that the Parliament has the mandate to approve expenditure related to implementation of land expropriation. In Article 18, the Government is also given similar mandate.	The comment is accepted, and is taken into consideration as part of the revision made in response to the comment 3.

ATTACHMENT 6
CONCEPTUAL FRAMEWORK OF THE REGULATIONS

CONCEPTUAL FRAMEWORK OF THE REGULATIONS

No	Title of legal act, legal reasons (as referred to in the Draft law)	Description and relations to be regulated	Comments
<i>I.</i> Legal acts to be approved by the Government			
1	Regulation for formulating land acquisition and resettlement plan (Art. 18.1.7 of the Draft law)	This will be a document that provides common guidance to relevant subjects by defining detailed methodology for developing the plan. As envisaged in Article 31 of the draft law, such plan will be a comprehensive document which contains rights and entitlements of affected entities, compensation to be received, actions of land expropriation and schedule of implementation of these actions, as well as necessary budget and funding. In other words, land expropriation should be done based on clear work schedule, research, funding schedule, and planning (linked to core development, project, or activities).	
2	Regulation for conducting preliminary assessment for land expropriation (Art.18.1.6 of the Draft law)	In case where request for land expropriation is made to relevant authority for undertaking development, project, or activities, preliminary assessment needs to be made as rationale for that decision, and request should be accompanied by draft decision. This preliminary assessment should demonstrate the necessity or inevitability of land expropriation, provide the assurance that the impact of proposed land expropriation on affected entities is minimal, and provide preliminary estimation of compensation to be paid.	To demonstrate “inevitability” and select the option the impact of which is “minimal” means while considering several options available to select the one that involves the fewest number of affected entities and properties, in terms of social, economic, engineering and technical perspectives.
3	Regulation for establishment of Mediation Council and regulations to run/operate this Council (Art.18.1.5 of the Draft	This procedure will regulate issues related to establishment and operation of this setup, which will have the mandate to assist parties to resolve land expropriation related disputes through fast, non-judicial means. The draft law stipulates the rights and duties, and	

	law)	composition of this Council, thereby allowing conditions and opportunities for protecting rights of affected persons. While the procedure is to be approved by the Government, the Council shall be created under the respective Citizens' Representatives' Khurals with due powers.	
4	Regulation to determine impact zone of the development, project, or activity (Art.18.1.4 of the Draft law)	It is considered important to set differentiated amounts of compensation, especially for herders, through identifying impact zones based on scope and duration of development, project, or activities, and depending on whether the impact is permanent or temporary. Therefore, the Art.9.3 of the draft law is formulated in such a way as to include herders who are losing their access to pasture and water points. For example, in cases where projects similar to Khustai wild horse (takhi or referred to as "Przewalski" horse) project are to be implemented, this law would apply and allow herders receive differentiated and fair amount of compensation through identification of impact zones – because some herders may lose rights to use pasture or water points altogether whereas some others may only lose rights to use pasture or may just face limited access to pasture. The current practice shows that given major mining projects are implemented through stages of exploration, development and extraction, therefore, the scope of impact on herders varies. This situation needs to be taken into account.	There is also a need to include in the impact zones those citizens who end up sharing their pasture and water points with herders who had been resettled due to mining projects.
5	Regulation to regulate the issues to arise related to the entity, who is using land without permission (Art. 18.1.8, 9.6 of the Draft law)	Affected person may be using the land without any permission and there may be situations where there are no legal rights to that land (including people who settled in flood prone spots, under high voltage lines, or in spots obstructing roads and passes). Resettlement of these families will be regulated by this regulation. While it is not possible to provide compensation because land had been used without permission, it would be consistent to the principle of humane treatment if the state considers the situation of these people when	In the current practice, the state protects public interest by actually "kicking out" those citizens. However, it is very common that those "kicked out" citizens go and settle on other plots of land which are not subject to formal permission. This

		undertaking development activities for public need and allocates a place to move to, and assists in obtaining legal right to this newly settled place. This regulation will apply only to citizens who live in ger district and those who are not involved in business activities.	means that the state is not resolving the issue, rather just postponing such resolution. In the long run, it would be necessary to resolve the issue of these citizens. If the issue is not resolved now, the situation will further exacerbate, and will require more funding and more efforts. This is why it is proposed to resolve this issue by requiring formulation of such regulation in this draft law.
Legal acts to be approved by state central administrative organization in charge of land affairs (Ministry of Construction and Urban Development)			
6	Regulation for valuation of compensation to be reimbursed due to land expropriation (Art.19.1.2 of the Draft law)	Detailed methodology and principles of compensation valuation of land, immovable properties and assets, will be determined in according with the Law on property valuation. Art.33 and 34 of this draft law defines general factors which should be taken into account in valuation. Such procedure should meet international valuation methodology.	Art.8.2 of the Law on property valuation states that in case of specific valuations the “Central state administrative organization in charge of finance and budget affairs (in other words Ministry of Finance) by itself or in cooperation with other duly authorized state organizations shall approve and enforce the procedure for property valuation which takes into account nature and purpose of properties”.
7	Regulation for additional assistance to a member of family-a	Vulnerable groups are at risk of being hit hardest by land expropriation. Therefore, certain additional assistance needs to be provided to	To be approved jointly with the state central administrative body in

	citizen who inevitably need social welfare support (Art.19.1.3 of the Draft law)	these citizens in line with the concept of the Law on social welfare. This is why the draft law has a specific provision on this issue.	charge of social welfare (in other words with the Ministry for Social Welfare)
Legal acts to be approved by state administrative organization in charge of land affairs (Agency for Land Affairs, Geodesy and Cartography)			
	Regulation for delivery of the notice on land acquisition and for considering the notice as delivered (Art.29.5 of the Draft law)	It may be difficult sometimes to identify owners of objects to be affected by land expropriation, therefore, it was deemed necessary to have such regulation. According to law and this procedure, the implementer of the land expropriation should deliver the notice to affected parties using “all possible means”. It was also deemed necessary to provide in the draft law for cases by which notice is not delivered physically (after attempting to deliver using all possible means) but is deemed as delivered. However, affected person still retains his/her rights stipulated in the draft law and receive fair amount of compensation.	
8	Exemplary statute for creating and operating representative organization of affected parties (Art. 12.3. of the Draft law)	This Exemplary statute will be developed in order to help affected persons to create and operate their representative bodies. This procedure is not binding for citizens. This statute can be used if the affected persons wish to use it. If they decide to develop their own statute, it is OK. This example statute is there only to facilitate.	The purpose of the procedure is to support and assist parties therefore it is not necessary to make it binding.
9	Template agreement for land expropriation (Art. 37.3 of the Draft law)	There is a need to approve a template agreement in order to facilitate participation of organizers/implementers and affected persons of land expropriation. Of course, in some cases, affected persons will have right to propose some additional conditions or items to be included in the agreement.	
10	Approve templates, forms, guidelines and instructions to be used in land expropriation activities (Art.20.3.4 of the Draft law)	This provision will allow approval of different types of templates and forms that would be used for formalizing the process of land expropriation. These may include notice template, note on transfer of immovable property, notification on entry into immovable property, instruction on organizing general	The draft law stipulates development and approval of the following templates: Notice template Note on transfer of

		meeting of persons affected, template agreement on confidentiality etc. However, any legal act which was approved pursuant to this provision cannot be used for limiting rights of affected persons or imposing any binding obligations on them.	land and immovable property Notification on entry into property Announcement for meeting Template agreement on land acquisition Notification of compensation payment
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The following Annex provides a summary of items that need to be reflected in procedures/regulations to be developed pursuant the Draft law.

Annex**Legal acts that need to be developed pursuant the Law on Land Expropriation, and relations to be regulated by these acts****I. Regulation for developing land acquisition and resettlement plan, items to be reflected, and requirements to be met:**

- Brief description of development, project, or activities;
- Must contain general information on scope and impact of land expropriation;
- Detailed schedule for implementation of the plan, responsible agency, job description of responsible officer;
- Detailed study of territory, unit, property or population to be affected;
- Social impact assessment;
- Define activities to be carried out for providing information to affected entities, consulting with them, ensuring their participation and entering into agreement with them, determine means and schedule of implementation;
- Regulation for resolution of comments, requests, complaints and disputes;
- Rights of entities affected by land expropriation, compensation, resettlement, transition and rehabilitation assistance;
- Land expropriation budget, funding, calculation, assessments, and methodology that was used, and source of funding;
- Detailed cadastral survey and mapping of territory, parcel, or property to be affected by land expropriation;
- Measures for resettlement (allocating certain plot of land, land title, land registration issues need to be arranged);
- Other necessary things to be planned.

II. Items to be reflected in preliminary assessment of land expropriation:

- Stipulate in the procedure for preliminary assessment so that it is linked with the financial and feasibility studies, blueprint and design, and budget of given development, project or activities, and become an integral part of these;
- Demonstrate that the given land expropriation action is indispensable due to social, economic, environmental and engineering solutions, and is least harmful to affected entities;
- Regulate issues related to determining location, size, boundary, parcels of land, immovable properties, impact zone, and zoning of lands to be expropriated for development, project or activities;
- Regulate issues related to inventory of parcels and properties, and estimation of their approximate values;
- Conduct a study on families affected by land expropriation, including the total number, employment status, living standards, and the number of families/persons which require social welfare assistance;
- Valuation of compensation related to land expropriation and estimation of needed expenditures;
- Developed the methodology for estimating the total cost of land expropriation;
- Identify potential negative factors and risks which may occur during implementation of land expropriation and identify measures for mitigating these risks;

- Other necessary items.

III. Establishment of Medication Council, its operating procedure, and items to be reflected in this procedure:

- Regulation for establishment and dissolution of the Council, appointment of members who meet preconditions spelled out in the law, regulation on recruitment and selection of members;
- Define in detail the powers and duties of the Council;
- Regulate relations between implementers and participants of land expropriation actions;
- Secretariat of the Mediation Council, its operating procedure, rights and duties;
- Funding of the Council's operational activities;
- Grievance procedure;
- Other necessary items.

IV. Regulation for determining impact zones and zoning of development, project or activities:

- Identify the need for determining impact zones and zoning;
- Determine the number of zones and zoning, and provide clear details on difference in regulatory regimes of different zones;
- Determine objectively the real impact of projects on zones and zoning;
- Regulate the issue of differentiated rates of compensation based on zones and zoning;
- Define the methodology for drawing border lines of zones and zoning;
- Regulation for making changes in border lines of zones and zoning;
- Regulation for ensuring participation of affected entities in determining zones and zoning, regulation for dispute resolution;
- Other necessary items.

V. Regulation of issues that may arise relating to persons who use land without any permission:

- Regulation which provides rationale for considering affected person as having no permission;
- Regulation for land expropriation involving dismantlement of unauthorized buildings;
- Requirements for places of resettlement;
- Enhance participation of affected persons in resettlement;
- Support and assistance to be provided to affected persons who do not have legal rights;
- Ways to provide rehabilitation support after resettlement;
- Regulation for formalizing and registering land titles of places where people have resettled;
- Other items.

VI. Issues to be reflected in Regulation/methodology for compensation valuation to be applied in land expropriation:

- Determine the nature of land or properties, and define realistically those factors which need to be considered in valuation;
- Develop methodology for detailed valuation;
- *Require valuation using both replacement value and market value methods;*
- Include the principle of not imposing any depreciation in valuating immovable properties;
- Additional requirements for appraisers to do land and immovable property valuation;

- Methodology for support and assistance during resettlement, relocation, transition and rehabilitation periods
- Methodology for estimating lost wage and business income
- Methodology for valuation of pasture, winter camp and crop field
- Other items.

VII. Issues to be reflected in regulation for additional assistance to a member of family-citizen who inevitably need social welfare support:

- Methodology for identifying persons who are eligible for such welfare assistance;
- Regulation for making the funds available for this type of welfare assistance, regulation for its disbursement;
- Powers and duties of officials in charge of social welfare and division of labor between social welfare officials and implementers of land expropriation;
- Regulation for provision of social welfare assistance;
- Other items.

VIII. Regulation for delivery of the notice on land acquisition and for considering the notice as delivered

- Identify possible ways to deliver notice;
- Develop rationale, procedure and timeline for considering the notice as delivered;
- Regulation on legal implications for considering the notice as delivered;
- Regulation on rights of affected parties to be compensated;
- Other items.

IX. Items to be reflected in template agreement for land expropriation

- Detailed information of parties of the agreement, including first name, family name, residential address, phone number, email address, bank account number, emergency contact name and his/her phone number;
- Rights and duties of parties;
- Determine the compensation package to be provided to affected parties, including value of immovable property set by appraisal, additional support and assistance, schedule for provision of these support and assistance measures, and size of compensation;
- Procedure for transferring titles of land and immovable property;
- Note on transfer of land and immovable property that are being expropriated;
- Any additional conditions that parties have agreed;
- Resolution of disputes that may arise.

ATTACHMENT 7
LIST OF FOCUS GROUP MEETINGS

LIST OF FOCUS GROUP MEETINGS

No.	Organizations	Date	Stakeholder group
1	Gazar, Zuv Garts NGOs representing potential affected persons and residents of urban redevelopment ger areas	April 9, 2012	NGO
2	ALACGaC	May 9, 2012	State organization
3	International organizations/projects - JICA, GIZ, MCA-Mongolia, UN Habitat, IFC, WB, ADB, EBRD	May 18, 2012	International organizations/projects
4	Law firms - ELC, Anand & Batzaya, Bona Lex, Khuuli zuin zuvluuu, Mongol umguulugch	May 18, 2012	Private sector
5	PWG and Working Group of the Urban Redevelopment law	May 22, 2012	State organization
6	Construction and development companies - Beren land development, Monnis	May 23, 2012	Private sector
7	Academic organizations - Science and Technology University of Mongolia, School of geodesy and markshadery; Mongolian State University of Agriculture, Eco Asia Institute, National University of Mongolia	May 23, 2012	Academic organizations
8	UB LAD	May 24, 2012	State organization
9	Professional organizations - Members of Association of Authorized Appraisers; Land Management Association; Geodetic and Cartographic Association	May 24, 2012	Professional organizations
10	Local projects - 14th Khoroolol Project Unit, 7th Khoroolol Project Unit, UB city 7th, 14th and MNPRTV district housing and infrastructure project	May 24, 2012	Local projects
11	Advisor to the President: Sosormaa	May 25, 2012	State organization
12	NGOs - Gazar khudulguun; Zuv garts; Hil hyazgaargui alkham; Hunii erh hogjil tuv; e-mail announcement through NGO network has been sent	May 25, 2012	NGOs

13	International organizations/projects on urban development- UB road improvement project; Project to support urban development; Project on improvement of conditions of ger districts	June 14, 2012	International organizations/projects on urban development
14	Mining companies - Late and asia, SouthGobi Sands, Energy resource, MonEn Co LLC	June 15, 2012	Private sector
15	International organizations/projects - Sustainable land management project	June 21, 2012	International organizations/projects on land
16	International organizations/projects - JICA	June 21, 2012	International organizations/projects on infrastructure development
17	Mineral Resources Authority	Aug 7, 2012	State organization
18	General State Inspection Authority	Aug 7, 2012	State organization
19	State inspection authority,	Aug 8, 2012	State organization
20	Mineral resources authority	Aug 8, 2012	State organization
21	ADB TA-7844 Mongolia Road Sector Capacity Development Project	Aug 9, 2012	International organizations/projects
22	Selenge aimag, Dundgovi aimag, Umnugovi aimag	Aug 15 - 27, 2012	Local organizations, companies and affected persons
23	Road Department, Capital City - Ulaanbaatar	Aug 30, 2012	State organization
24	Investment Department, Capital City - Ulaanbaatar	Aug 30, 2012	State organization
25	Land Administration Department, Capital City - Ulaanbaatar	Aug 30, 2012	State organization
26	Infrastructure Division, Office of the Mayor of Capital city - Ulaanbaatar	Aug 30, 2012	State organization
27	OT Watch, Khil khyazgaargui alkham, Open Society Forum + NGOs that work with human rights and environmental protection	Sep 6, 2012	NGOs
28	Gazar Khudulguun, Zuv Garts NGOs representing potential affected persons and residents of urban redevelopment ger areas	Sep 6, 2012	NGOs representing affected persons
29	Law firms - ELC, Anand & Batzaya, Bona Lex, Khuuli zuin zuvluguu, Mongol umguulugch	Sep 7, 2012	Private sector - law firms

30	Affected persons from Bayankhushuu-Khanyn material road broadening area	Sep 26, 2012	Affected persons
31	Khuvei Mongolia Road construction company	Sep 26, 2012	Private sector - road construction
32	Ger area housing project, UB city	Oct 3, 2012	State organization
33	Ulaanbaatar Urban Service & Ger Areas Development Investment Program, ADB TA	Oct 4, 2012	International organizations/projects
34	Office of the President	Dec 17, 2012	State organization