

Gap Analysis - Mongolia Legislative Framework and ADB Involuntary Resettlement Safeguards

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
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| Involuntary resettlement | <p>The SPS considers resettlement involuntary when the affected persons have no right to refuse land acquisition by the state that results in their displacement.</p> <p>Involuntary resettlement refers to physical displacement and economic displacement. Displacement can be full, partial, permanent or temporary.</p> | <p>The State has eminent domain power over privately owned and possessed land only for national needs of the state.</p> <p>It can acquire privately owned land only through negotiated settlement under the Law on Land Allocation. However, the State retains the right to confiscate land from the owners, if the owner uses land against public health, safety, and welfare of the residents, harmful to the social and economic well-being of the entire communities (Article 35). Moreover, the State may expropriate land in the event of environmental or public disasters that can cause heavy damage to property, lives and health of people and loss of animals and livestock (Article 34). The decision on replacing or taking back Citizen's owned land for special needs of the state with compensation is made by the Cabinet (Article 32.1).</p> <p>The state can acquire privately possessed land through negotiated settlement under the Law on Land. The decision on replacing or taking back such land for special needs of the state with compensation is made by the Cabinet (Article 42.2).</p> <p>The Law on Urban Development acknowledges that involuntary resettlement may be caused in accordance with an approved urban development plan (Art. 27.3).</p> |
| Land acquisition/ restriction of access | <p>Involuntary resettlement occurs as a result of:</p> <p>(i) involuntary acquisition of land through:</p> <ul style="list-style-type: none"> • Expropriation by invoking the eminent domain powers of the state • Negotiated settlement when the pricing is negotiated in a process <p>(ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.</p> | <p>Under Art. 33 of the Land Allocation Law <i>soum</i> and district governors may establish servitudes over private land for the purposes of access through the land, installing survey markers, drainage or other land management measures. No compensation need be paid. If the land becomes difficult or impossible to use because of the servitude the owner has the right to demand that the authority purchase the land or compensate for damages.</p> <p>Involuntary restrictions on land use may be imposed by zoning and detailed plans under the Urban Development Law. The Law contains no safeguards in such cases.</p> |
| Resettlement plan | To prepare a resettlement plan with time-bound actions and a budget based on an | Not addressed in the Law. |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
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| | <p>assessment of social impacts for every project with involuntary resettlement impacts. The objective of a resettlement plan is to ensure that livelihoods and standards of living of displaced persons are improved, or at least restored to pre-project levels and that the standards of living of the displaced poor and other vulnerable groups are improved, not merely restored, by providing adequate housing, security of tenure and steady income and livelihood sources.</p> | |
| Cut-off date | <p>In the absence of national government procedures, the date of completion of the census and assets inventory represents the <i>cut-off date for qualifying displaced persons</i></p> <p>Individuals who move into the project affected area <i>after the cut-off date will not be eligible</i> for compensation and other types of assistance.</p> <p>Information regarding the cut-off date will be <i>well-documented and disseminated</i> throughout the project area.</p> | <p>To acquire owned land, a written notice must be served one year prior to the taking of land. This serves as the cut-off date. Investments and improvements, including immovable structures, on the land after service of this notice are ineligible for compensation. (Land Allocation Law, Articles 37.2 and Article 37.4)</p> <p>There is no provision as to cut-off date for acquisition of land under possession or use.</p> |
| Scope of impact (project design) | <p>Consideration of feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.</p> | <p>Not addressed in the law. Usually social impacts of a project due to involuntary resettlement are overlooked in a large scale project that would benefit the wider community. Only if costs associated with displacement are high may the government reconsider the project design.</p> |
| Eligibility | <p>Type 1 –persons with formal legal rights to land and/or structures lost entirely or in part;</p> <p>Type 2 - persons who have no formal legal rights to land and/or structures lost entirely or in part, but who have claims to such lands that are recognised or recognisable under the</p> | <p>Eligibility to receive benefits depends on the type of rights.</p> <p>Displaced owners are eligible to receive compensation for lost land and property. There is debate that where land ownership is allocated for residential use structures for commercial use should be ineligible for compensation unless permission had been obtained from the proper authority.</p> |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
|------------------------------------|---|--|
| | <p>national laws</p> <p>Type 3 - persons who lost the land they occupy in entirety or in part who have neither formal legal rights nor recognised or recognisable claims to such land</p> <p>IR requirements apply to all three types of displaced persons, though entitlements differ.</p> | <p>Displaced possessors are eligible to receive compensation for the affected immovable property but not for the land. However, if required, replacement land is provided.</p> <p>Users are not entitled to compensation. Compensation may be available under the Civil Code for buildings and structures built in accordance with the contract and with proper permission. The land use contract period is short - not exceeding 5 years. Therefore the State will not extend the contract if it needs the land. (Most users are foreigners.)</p> <p>Unlicensed occupants are considered illegal by the Law on Land therefore are not entitled to compensation. (Articles 27.4, 63.1.10- 63.1.11). But in practice because many of whom are vulnerable to due poverty, replacement land may be allocated and transfer assistance provided in kind or cash. Moreover, the Civil Code recognizes the right of a long term non-owner occupant of ownerless immovable property (incl. land) to own it after 15 years, if registered in the State register (104.2).</p> <p>Lessees and usufruct owners have the right to be maintained on the land even if ownership changes hands (Civil Code, Article 297). There are no provisions for lessee rights in case of land acquisition for a project, except that termination of a lease requires 3 months' notice (Article 294.3).</p> |
| Negotiated settlements | Negotiated settlements are encouraged to help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. | The land laws require the government to try to reach agreement with land owners and possessors. |
| Compensation at replacement cost | Compensation for lost assets will be provided at replacement cost, usually calculated as the market value of the assets plus the transaction costs related to restoring such assets (registration and transfer taxes) and transitional and restoration costs. Depreciation of structures and assets should not be taken into account. | The implication in the land laws is that land and immovables should be compensated at market value. In practice, compensation is not based on market value but on fixed rates approved by relevant government authorities. Depreciation is applied to buildings under Cabinet Resolution No. 233 of 2005 "Procedure for depreciation of capital assets". |
| Income Restoration and Improvement | If land acquisition causes loss of income or livelihood | Article 37.1.5 of the Land Allocation Law entitles owners to <i>damages due to replacement or taking back of the land based on the special needs of the state to the full extent according to Civil Code and legislation</i> . This can be interpreted widely to include entitlements to income |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
|---|---|---|
| | <p>Type 1 and Type 2, should receive:</p> <ul style="list-style-type: none"> • compensation for loss of assets or access to assets, at full replacement cost • replacement property of equal or greater value, or cash compensation at full replacement cost <p>Type 3, should receive:</p> <ul style="list-style-type: none"> • Loss of assets, other than land, at full replacement cost <p>All three categories should receive:</p> <ul style="list-style-type: none"> • compensation for the cost of re-establishing commercial activities elsewhere • compensation for lost net income during the period of transition • compensation for the costs of the transfer and reinstallation of the plant, machinery or other equipment • transitional support based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living • additional targeted assistance (credit facilities, training, or job opportunities) and opportunities to affected persons whose livelihoods or income levels are adversely affected (owners of businesses and employees are eligible) | <p>restoration.</p> <p>The Land Law does not address loss of income or livelihood. The Land Law stipulates that the government authority in charge of land affairs must negotiate with the owners on envisaged losses due to land acquisition on top of loss of land and property (Article 32.5.3).</p> |
| Compensation in kind / cash | Compensation in kind will be offered in lieu of cash compensation where feasible. | Compensation in kind or cash is provided under the laws. No preference is given; largely dependent on the outcome of negotiation. |
| Provision of adequate housing / shelter with security of tenure | Adequate housing is measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility and locational characteristics. Should offer access to | Not addressed in the law. |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
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| | <p>infrastructure and services.</p> <p>Security of tenure exists if resettled persons are protected from forced evictions, to the greatest extent possible.</p> <p>New resettlement sites built for displaced persons will offer improved living conditions with security of tenure.</p> | |
| Other resettlement assistance | <p>Relocation costs (moving allowances).</p> <p>Specific resettlement assistance for vulnerable groups.</p> | <p>Article 37.1.5 of the Land Allocation Law appears to require relocation costs in the case of owners. The Law on Urban Development stipulates that transportation and other costs associated with resettlement must be paid to displaced persons (Article 27.4). No other assistance than the relocation cost is offered to displaced persons.</p> |
| Vulnerable groups | <p>The LARP should specifically take into account any individuals or groups that may be disadvantaged or vulnerable – consultations and relocation assistance.</p> <p>Vulnerable or ‘at-risk’ groups include people who, by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage or social status may be more adversely affected by displacement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Special measures in terms of consultation and development assistance may be needed to allow such groups to participate in resettlement planning meaningfully and to benefit from development opportunities.</p> | <p>Legislation makes no provision for vulnerable persons</p> |
| Joint property | <p>Ensure that the documentation for ownership or occupancy and compensation is issued in the names of both spouses or women single head of households, as relevant to each situation, and that other resettlement assistance, such as skills</p> | <p>The Civil Code recognizes joint property ownership and family property rights (Articles 108, and 125-128).</p> <p>Joint property ownership requires permission of other owners to dispose of part of the property (108.4).</p> |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
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| | training, access to credit and job opportunities are equally available to women and adapted to their needs. | Family property includes ‘other properties accrued since the marriage, notwithstanding in which name of spouses or family members the property is registered’ (126.2.4). Disposal of immovable (incl. land) family property requires mutual agreement (128.1) and certified written permission from an adult family member (128.2). |
| Legal assistance | Displaced people should be provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts. | Not addressed in the law. |
| Timing of compensation | Compensation (alternative housing and/or cash compensation) has to be provided prior to displacement | <p>No specific timing was set in regard of acquiring owned land, but the Law on Land Allocation states government authority in charge of land affairs shall negotiate with the owner compensation rate, payment method and time (Article 31.5.8).</p> <p>The Law on Land stipulates that Governors of a <i>soum</i> or a district shall pay the compensation to the displaced persons within 60 days after the contract conclusion, unless stated otherwise in the contract referred to in provision 42.3 (Article 43.4) .</p> |
| Information disclosure and public consultation | <p>The client should summarize the information contained in the LARP and/or the LARF for public disclosure to ensure that displaced persons understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail).</p> <p>During the development of the RP, displaced persons (including host communities) should be informed and consulted on the development of compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing. Special provisions should</p> | <p>There is no provision for public consultation and information disclosure in the Law on Land or the Law on Land Allocation.</p> <p>The Law on Urban Development (Article 17 and 18) states participatory planning shall be adopted in urban development planning and consultation with citizens shall be conducted in the course of implementation of urban planning and. Decisions pertinent to urban development shall be disseminated and disclosed to the public in timely manner.</p> |

| IR Principle | ADB Safeguards | Provisions of Mongolian Law and Identified Gaps |
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| | <p>be made for consultations with vulnerable groups. Consultations will continue during the implementation, monitoring and evaluation of compensation payment and resettlement.</p> | |
| <p>Grievance procedure</p> | <p>The grievance mechanism will be set up as early as possible in the process, to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.</p> <p>The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution.</p> | <p>Grievance procedures as contemplated in SPS are not addressed in the laws.</p> <p>The Land Law refers disputes over land to the local governors and eventually the courts (Article 60). The Law on Land Allocation states an aggrieved person is entitled to file a complaint to the respective higher ranking government authority or official (Article 39).</p> <p>Grievance and complaints of citizens regarding to decisions and conduct of government authority or officials are governed by the Law on Handling Grievances of Citizens Addressed to Government Authority and Government Officials. Grievances must be resolved within 30 days of making (Article 16).</p> |
| <p>Monitoring</p> | <p>Monitoring of the LARP will be carried out in accordance with SPS and will include assessment of resettlement outcomes and impacts on standards of living of the displaced persons, and whether objectives of resettlement plan have been achieved.</p> | <p>Not addressed in the laws.</p> |