

Briefing Note No 2 Expropriation and Compensation Articles 136-139, 142-145 of draft Land Law

Issue

The lack of procedural safeguards in the new Land Law to protect people's land use rights in cases when the government requires private land for public purposes.

Background

Expropriation of land for public purposes is required in every country so that the government can deliver positive outcomes for the population. Roads, hospitals, schools, etc. are essential to modern society, and they need land for construction. Where there is no state land available, it is appropriate for the government to expropriate private land use rights.

Most countries have Constitutional guarantees about expropriation that ensure certain safeguards apply. For example, there is often a requirement to give notice, follow the procedure specified in the law and pay compensation promptly. Many countries also have laws on expropriation and compensation that include various safeguards, such as thorough assessment of alternatives to expropriation, that provide further protection to the rights of the people.

The Land Law of 2003 contains some very basic provisions on expropriation in Article 63.2 and compensation in Article 71.

Problem

The draft Land Law contains some new provisions on expropriation and compensation when land use rights are terminated for public purposes, but they do not cover all the important aspects. For example, the new Article 136.2 permits termination of land use rights where the land is required for a public purpose or state project, and the new Articles 138, 139.3, 142, 143, 144 and 145 deal with compensation. However, the draft Land Law does not contain safeguards such as:

- The requirement to assess alternative means to deliver the public infrastructure, such as an alternate site.
- The requirement to buy the land use right (if the owner agrees) at the market price
- The requirement to compensate not just the owners of the land use rights but also lessees and concession holders.
- An obligation to follow a clear process, which has a number of stages, such as preliminary notification, community consultation, negotiated agreement, recording of expropriation in the land register.
- The option for an owner person to appeal against the amount of compensation if he/she thinks it is inadequate.
- Providing the former owner with the option to buy the land use right if the land is no longer required by the state.

Without these safeguards, the people are vulnerable to decisions to take their land use rights.

Proposal

It is recommended that a new chapter with five articles be inserted in the Land Law that will cover all the main aspects of expropriation and compensation. By including the provisions in the Land Law, the rights of the people will be better protected. The text of the proposed articles is attached.