

FAO LAND TENURE STUDIES

10

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**Compulsory
acquisition of land
and compensation**



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FAO Land Tenure Studies

FAO's Land Tenure Studies are concise presentations on the often complicated and controversial subject of land tenure, especially as it relates to food security, poverty alleviation and rural development. These studies do not seek to be exhaustive but instead reflect what FAO and its many international collaborators have discovered are "good practices" for a particular aspect of land tenure and its administration.

The studies cover various aspects of improving access to land and other natural resources and increasing tenure security. They address the role of land tenure in rural development, gender and access to land, improved access to land through leasing arrangements, rural property taxation systems, land consolidation, land access and administration after violent conflicts, good governance in land tenure and administration, and compulsory acquisition of land and compensation.

More information on the Land Tenure Studies, and on FAO's work in land tenure, is available at:

http://www.fao.org/nr/lten/lten_en.htm

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Contents

Foreword	vii
1. INTRODUCTION	1
2. WHAT IS COMPULSORY ACQUISITION?	5
What are the sources of the power of compulsory acquisition?	7
What are the limits of the power?	8
For what purposes may the power be used?	10
Who has the power to compulsorily acquire land?	12
What is considered to be compulsory acquisition and what rights should be compensated?	14
The process of compulsory acquisition	15
3. PLANNING AND PUBLICITY	19
Planning	19
Notice	20
Public meetings and review	21
4. VALUATION, COMPENSATION AND TAKING POSSESSION	23
Procedures for valuation and compensation	24
Determining valuation and compensation	27
Valuation and compensation for the partial acquisition of land	31
Valuation and compensation for partial rights	32
Valuation and compensation of religious sites	33
Valuation and compensation of land owned by extended families	33
Valuation and compensation of customary land	34
Valuation and compensation of informal rights and for illegal uses	37
Alternative land as compensation	38
Taking possession of the land	44

5. APPEALS	45
The need for opportunities to appeal	45
Reasons for appeals	46
Mechanisms for reviewing the appeal	47
6. ADVOCACY AND ASSISTANCE	49
7. FINAL COMMENTS	53

Foreword

This volume is part of a series of Land Tenure Studies produced by FAO's Land Tenure and Management Unit of the Land and Water Division. Land tenure arrangements are a key factor in achieving food security and sustainable rural development. Equitable and secure access to land, especially for the rural poor, is a crucial factor for reducing poverty and hunger, for increasing agricultural productivity, and for improving rural conditions. Effective land tenure institutions are needed to administer who has rights to which natural resources for which purposes, for how long, and under what conditions.

Countries retain powers of compulsory acquisition in order to enable governments to acquire land for specific purposes. The nature of these powers and the ways in which they are used are invariably sensitive and have wide implications, including from the perspective of international agreements on human rights and their national expressions. Compulsory acquisition is disruptive for those who are affected and whose land is taken and, if done poorly, will have serious negative impacts on people and their livelihoods.

It is important, therefore, that satisfactory approaches are in place and effectively implemented to ensure that communities and people are placed in at least equivalent positions to those before the land acquisition. Prerequisites for this are appropriate legal frameworks and capacities for implementation, and good governance and adherence to the rule of law (see FAO Land Tenure Study 9: Good governance in land tenure and administration.)

FAO has been working since 2004 on raising awareness of the importance of compulsory acquisition and prepared this guide and related publications and policy materials with partners, including the World Bank, UN-Habitat and the International Federation of Surveyors (FIG).

This guide is intended to support land tenure and land administration officials, valuers and civil society partners who are involved where policies, legal frameworks and capacities are being developed, and where compulsory acquisitions are being implemented. The guide, like others in the series, does not seek to be exhaustive but rather reflects what FAO and its many collaborators have discovered are “good practices”. FAO’s Land Tenure and Management Unit looks forward to continuing collaboration with its larger audience.

Paul Munro-Faure
Chief
Land Tenure and Management Unit

1. Introduction

- 1.1 Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and restoration of the natural environment. An early step in the process of providing such facilities and infrastructure is the acquisition of appropriate land. In some cases, several locations could be suitable for a facility such as a new government office, and the government may be able to purchase land at one of the locations through the land market. In other cases, specific land parcels are required, for example, in order to accommodate the route of a new road, the protection of certain areas from flooding, or the fulfilment of requirements of redistributive land reform legislation. That land may not be on sale at the time it is required. In order to obtain land when and where it is needed, governments have the power of compulsory acquisition of land: they can compel owners to sell their land in order for it to be used for specific purposes. The power, discussed in this guide as the compulsory acquisition of land, is also referred to as expropriation, eminent domain, compulsory purchase, land acquisition and resumption.
- 1.2 The compulsory acquisition of land has always been a delicate issue and is increasingly so nowadays in the context of rapid growth and changes in land use. Governments are under increasing pressure to deliver public services in the face of an already high and growing demand for land. Many recent policy dialogues on land have highlighted compulsory acquisition as an area filled with tension. From the perspective of government and other economic actors, the often conflictual and inefficient aspects of the process are seen as a constraint to economic growth and rational development.
- 1.3 The process also brings tension for people who are threatened with dispossession. The compulsory acquisition of land for development purposes may ultimately bring benefits to society but it is disruptive to people whose land is acquired. It displaces families from their homes, farmers from their fields, and businesses from their neighbourhoods. It may separate families, interfere with livelihoods,

deprive communities of important religious or cultural sites, and destroy networks of social relations. If compulsory acquisition is done poorly, it may leave people homeless and landless, with no way of earning a livelihood, without access to necessary resources or community support, and with the feeling that they have suffered a grave injustice. If, on the other hand, governments carry out compulsory acquisition satisfactorily, they leave communities and people in equivalent situations while at the same time providing the intended benefits to society.

- 1.4 The power of compulsory acquisition can be abused. Unfair procedures for the compulsory acquisition of land and inequitable compensation for its loss can reduce land tenure security, increase tensions between the government and citizens, and reduce public confidence in the rule of law. Unclear, unpredictable and unenforceable procedures create opportunities for corruption. Good governance is necessary to provide a balance between the need of the government to acquire land rapidly, and the need to protect the rights of people whose land is to be acquired. Conflict is reduced when there are clear policies that define the specific purposes for which the government may acquire land, and when there are transparent, fair procedures for acquiring land and for providing equitable compensation. Effective and fair compulsory acquisition cannot exist without good governance and adherence to the rule of law (see FAO Land Tenure Studies 9: Good governance in land tenure and administration).
- 1.5 This guide provides advice on how countries can equitably and efficiently acquire land necessary for development. It is intended for use by policy-makers, land administration specialists and development professionals, and their counterparts in civil society organizations. The guide identifies issues that should be considered in the design and implementation of compulsory acquisition policies, legislation and procedures. It provides only general advice; its contents should be assessed and applied in a manner appropriate to each situation. Some circumstances, and suggested responses to them, may not apply in a given setting.
- 1.6 The guide places emphasis on the compulsory acquisition of land for planned development. For such projects, the procedures for compulsory acquisition

provide for specific periods of time for each phase of the process. Different procedures may be used during emergencies: some countries have special legislation that permits the government to acquire land within a short period after publication of the notice of intention and before compensation is determined and paid. (The need for land for temporary and permanent settlements after wars is described in FAO Land Tenure Studies 8: Access to rural land and land administration after violent conflicts.) Similarly, where land is to be compulsorily acquired for redistributive land reforms, legislation may make specific provision for paying compensation which is lower than the value of the land. Such decisions are considered to be broader policy matters outside the scope of this technical guide. While this guide is not specifically oriented towards compulsory acquisition in emergencies or land reforms, some of the material and guidance may be useful to people working in such situations.

- 1.7 Chapter 2 provides an overview of compulsory acquisition: what it can be used for, the principles that should guide it, and problems that might be encountered. It sets out, in generic terms, the process of compulsory acquisition.
- 1.8 Chapters 3, 4 and 5 provide more details on the various steps of the process. Chapter 3 presents information on the preparatory stages, i.e. planning for the compulsory acquisition of land, providing notice and holding public meetings. Chapter 4 deals with the core of the matter: the steps of valuation and compensation, and the taking of possession of the land by the government. Chapter 5 describes the appeals mechanisms which people can use to challenge the purpose of the project, the procedures used, and the amount of compensation offered.
- 1.9 As it is often the poor who suffer most from the compulsory acquisition of land, chapter 6 shows how assistance can be provided to people so they can safeguard their rights. Chapter 7 provides concluding comments, including a summary of recommendations.

2. What is compulsory acquisition?

- 2.1 Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. It is a power possessed in one form or another by governments of all modern nations. This power is often necessary for social and economic development and the protection of the natural environment. Land must be provided for investments such as roads, railways, harbours and airports; for hospitals and schools; for electricity, water and sewage facilities; and for the protection against flooding and the protection of water courses and environmentally fragile areas. A government cannot rely on land markets alone to ensure that land is acquired when and where it is needed. However, a number of countries require that the government should attempt to buy the required land in good faith before it uses its power of compulsory acquisition.
- 2.2 Compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. In seeking this balance, countries should apply principles that ensure that the use of this power is limited, i.e. it is used for the benefit of society for public use, public purpose, or in the public interest. Legislation should define the basis of compensation for the land, and guarantee the procedural rights of people who are affected, including the right of notice, the right to be heard, and the right to appeal. It should provide for fair and transparent procedures and equivalent compensation. Box 1 gives some principles for legislation on compulsory acquisition.
- 2.3 Compulsory acquisition is inherently disruptive. Even when compensation is generous and procedures are generally fair and efficient, the displacement of people from established homes, businesses and communities will still entail significant human costs. Where the process is designed or implemented poorly, the economic, social and political costs may be enormous.

BOX 1

PRINCIPLES FOR LEGISLATION ON COMPULSORY ACQUISITION

Principles for legislation on compulsory acquisition should include:

- Protection of due process and fair procedure. Rules that place reasonable constraints on the power of the government to compulsorily acquire land strengthen the confidence of people in the justice system, empower people to protect their land rights, and increase the perception of tenure security. Rules should provide for appropriate advance consultation, participatory planning and accessible mechanisms for appeals, and should limit the discretion of officials.
- Good governance. Agencies that compulsorily acquire land should be accountable for the good faith implementation of the legislation. Laws that are not observed by local officials undermine the legitimacy of compulsory acquisition. Good governance reduces the abuse of power and opportunities for corruption.
- Equivalent compensation. Claimants should be paid compensation which is no more or no less than the loss resulting from the compulsory acquisition of their land. Laws should ensure that affected owners and occupants receive equivalent compensation, whether in money or alternative land. Regulations should set out clear and consistent valuation bases for achieving this.

2.4 Problems may arise when compulsory acquisition is not done well:

- Reduced tenure security: Policies and legislation that strengthen land rights of individuals and communities may be eroded through compulsory acquisition. People may believe they lack tenure security if the government can acquire rights in private land without following defined procedures, and/or without offering adequate compensation.
- Reduced investments in the economy: Insecure tenure, with the threat of the arbitrary loss of land and associated income, discourages domestic and foreign investment.
- Weakened land markets: Threats to tenure security discourage land transactions, reduce the acceptability of land as collateral, discourage people from investing or maintaining their property, and depress land values.
- Opportunities created for corruption and the abuse of power: The lack of protection and transparency can result in injustices which anger citizens and undermine the legitimacy of government.

- Delayed projects: Appeals against unfair procedures may hold up the acquisition of land, and thus block projects and increase costs.
- Inadequate compensation paid to owners and occupants: Financial awards may be inadequate to allow people to enjoy sustainable livelihoods after their land is acquired. People may feel that they are not compensated for the loss of cultural, religious or emotional aspects of the land.

WHAT ARE THE SOURCES OF THE POWER OF COMPULSORY ACQUISITION?

- 2.5 The constitutions of many countries provide for both the protection of private property rights and the power of the government to acquire land without the willing consent of the owner. There is, however, great variation. Some countries have broadly defined provisions for compulsory acquisition, while those of other countries are more specific.
- 2.6 Constitutional frameworks that have broadly defined provisions concentrate on basic principles and often simply assert the power to compulsorily acquire land as the single exception to fully protected private property rights. For example, the constitution of the United States of America mandates that: “No person...shall be deprived of...property, without due process of law; nor shall private property be taken for public use without just compensation.” (Article V). Similarly, Rwanda’s constitution states: “Private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation.” (Title II, Article 23). Such constitutions leave the details of compulsory acquisition to other legislation and, in some instances, to the interpretation of the courts.
- 2.7 Other constitutional frameworks specify in detail the mechanisms by which the government can compulsorily acquire land. They tend to include a specific list of the purposes for which land may be acquired. For example, Ghana’s constitution includes provisions detailing exactly what kinds of projects allow the government to use its power of compulsory acquisition, and specifies that displaced inhabitants should be resettled on suitable alternative land (Chapter Five, Article 20). Chile’s constitution identifies the purposes for which land

may be compulsorily acquired, the right of property holders to contest the action in court, a framework for the calculation of compensation, the mechanisms by which the state must pay people who are deprived of their property, and the timing and sequence of possession (Chapter III, Article 19, §24).

2.8 Most countries supplement the constitutional basis for compulsory acquisition, whether broadly or specifically defined, with extensive laws and regulations. National or sub-national laws usually describe in detail the purposes for which compulsory acquisition can be used, the agencies and officials with the power to compulsorily acquire land, the procedures to be followed, the methods for determining compensation, the rights of affected owners or occupants and how grievances are to be addressed. The regulations that accompany these laws may be particularly important as they often provide the acquiring agency with instructions on how to carry out compulsory acquisition during all phases of the process.

2.9 The laws governing compulsory acquisition are part property law and part administrative law which dictates governance procedures. Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearings and appeals, and are subject to judicial review.

2.10 **WHAT ARE THE LIMITS OF THE POWER?**

A balanced approach to compulsory acquisition requires a respect for the human rights of owners and occupants of the land to be acquired. Various international laws reflect the concern for protection of land rights and the payment of compensation when people are displaced (Box 2). Multilateral financial institutions link funding for large scale development projects to compliance with principles that protect people who may be displaced as a result of projects that they support. Governments should review national legislation and amend it to comply with human rights principles.

2.11 The acquisition of the land of indigenous communities is particularly sensitive. Protection of indigenous peoples' rights in relation to land is specifically expressed within a human rights framework (Box 3).

BOX 2

HUMAN RIGHTS LAW AND COMPULSORY ACQUISITION

The Universal Declaration of Human Rights (Article 17) provides that “everyone has the right to own property alone as well as in association with others” and that “no one shall be arbitrarily deprived of his property”.

Several regional conventions on human rights also protect rights to property, including:

- The American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 1969, (Article 21 Right to Property): “1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”
- The African Charter on Human and Peoples’ Rights, 1986: “Article 14. The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” “Article 21. 1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.”
- The European Convention on Human Rights and Fundamental Freedoms, 1950, (Article 8, First Protocol): “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” This right is expanded by Article 1, First Protocol: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

BOX 3

INDIGENOUS LAND RIGHTS

Secure rights to land and other natural resources are essential for the livelihoods of indigenous peoples. These rights are the basis of their economy and are often the foundation of their spiritual, cultural and social identity. Despite this, the natural resource base and livelihoods of indigenous peoples have been undermined by development projects, urban expansion, establishment of national parks, mineral exploration, logging of forests and the growth of large agribusinesses.

Numerous international statements and declarations recognise the rights of indigenous peoples to their lands. The Habitat Agenda, reaffirmed by the Istanbul Declaration on Human Settlements (1996), commits to the following objectives: "Protecting, within the national context, the legal traditional rights of indigenous people to land and other resources, as well as strengthening of land management... [and] Protecting and maintaining the historical, cultural and natural heritage, including traditional shelter and settlement patterns, as appropriate, of indigenous and other people..." (paragraph 40 (m), (r), (s)).

The International Labour Organisation's Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) sets out in Article 14(1) that: "The rights of ownership and possession of [indigenous people] over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities."

FOR WHAT PURPOSES MAY THE POWER BE USED?

- 2.12 Many constitutions and laws refer to compulsory acquisition being used for public purposes, for public uses and/or in the public interest. In practice these terms are often not clearly distinguished and they tend to be used interchangeably.
- 2.13 A broad survey of both developed and developing countries reveals the following among the commonly accepted purposes for compulsory acquisition:

- Transportation uses including roads, canals, highways, railways, bridges, wharves and airports;
- Public buildings including schools, libraries, hospitals, factories, religious institutions and public housing;
- Public utilities for water, sewage, electricity, gas, communication, irrigation and drainage, dams and reservoirs;
- Public parks, playgrounds, gardens, sports facilities and cemeteries;
- Defence purposes.

2.14 An exercise in compulsory acquisition is more likely to be regarded as legitimate if land is taken for a purpose clearly identified in legislation. An exclusive list of purposes reduces ambiguity by providing a comprehensive, non-negotiable inventory beyond which the government may not compulsorily acquire land. Yet exclusive lists may be too inflexible to provide for the full range of public needs: the government may one day need to acquire land for a public purpose that was not considered when the law was written.

2.15 Inclusive lists contain, along with the list of permissible purposes, an open-ended clause that allows for flexibility. Poland's relevant law identifies specific purposes for which land may be acquired and then adds as a final item: "Other obvious public goals." (Expropriation Law of 1991, Article 46.1.) Such provisions provide the flexibility to expand the eligible purposes when required. At the same time, the scope for expansion is limited: the list of purposes identified provides guidelines for the judiciary when adjudicating challenges to the legitimacy of compulsory acquisition for a purpose that is not defined in the list.

2.16 The rationale for compulsory acquisition may be straightforward when land is acquired by the government for use by a public entity, for example for a public school or hospital, or for a new public road or airport. The rationale for acquiring land for a public purpose or in the public interest may be also clear where the land will be held by a private entity but used for a public purpose. For example, in countries where the generation and transmission of electricity is privatized, the government may support private electricity companies to acquire land for the infrastructure needed to ensure service to their customers.

- 2.17 More controversial are cases where private land is acquired by government and then transferred to private developers and large businesses on the justification that the change in ownership and use will benefit the public. In a number of countries, compulsory acquisition has been used as a tool to help assemble land in order to promote urban renewal and attract commercial investment in areas where buildings and infrastructure have deteriorated substantially. It has been used also on behalf of developers (both private, and public-private ventures) in order to change the land use of an area, for example, from residential to commercial use. In such cases, it is argued that the development benefits the wider public by creating economic growth and jobs, and by increasing the tax base which in turn allows the government to improve its delivery of public services. Proposals to use compulsory acquisition of land for private development should undergo a public scrutiny that ensures that the balance between the public need for land and the protection of private property rights is properly considered, and that the compensation reflects the profit potential of the land to be acquired.
- 2.18 In countries where policies of redistributive land reform have been adopted, these are usually considered as being in the public interest, even if the reform transfers land from one private owner to another. Such land reforms are often part of government programmes to address social injustices and to promote agricultural and rural development. In challenges to a land reform, the government may have to prove that the redistribution of land from one citizen to another is for a purpose that is beneficial to the community. Clear intent in legislation can help to diminish the potential for conflicting court decisions in such challenges. Where such redistributive land reforms are addressed using powers of compulsory acquisition, governments have sometimes adopted a policy where full compensation is not provided for land that is compulsorily acquired. Such policy decisions can be controversial but it is beyond the scope of this guide to address them.

WHO HAS THE POWER TO COMPULSORILY ACQUIRE LAND?

- 2.19 Each country has its own set of agencies, ministries and officials who have the power to compulsorily acquire land. The national level of government is usually granted authority for compulsory acquisition by the constitution, and

relevant laws often designate the head of government or a specific minister as the person empowered to authorize the functions associated with compulsory acquisition. In some countries, power is assigned only to the national government while in other countries it may be also vested at the regional level. It may be possible for local governments and parastatal organizations to compulsorily acquire land for public works, although usually with the permission of higher levels of government. Relevant laws and regulations should clearly identify the authorized government bodies in order to reduce opportunities for abuse of power (see Box 4).

- 2.20 The centralization of the power of compulsory acquisition may enhance uniformity of standards, achieve a coherent national land policy and establish a body of core expertise. However, centralization may also lead to delays in the acquisition of land, and does not guarantee that processes will be implemented fairly. There is a strong case for adopting a mid-way position: the use of checks and balances that allow lower levels of government to compulsorily acquire land but only with the authorization and supervision from higher levels of government.

BOX 4

EXAMPLES OF AGENCIES WITH THE POWER TO COMPULSORILY ACQUIRE LAND

The power of compulsory acquisition may be granted to agencies such as the following:

- Government departments, ministries and agencies at the national and regional levels;
- Local governments;
- Public bodies with statutory obligations, e.g. companies responsible for energy and water services;
- Private bodies regulated by government, e.g. airport authorities, forest enterprises, energy companies, railways, and telecommunications companies;
- Other miscellaneous bodies.

Each agency authorized to compulsorily acquire land may have its own regulatory guidelines on what acquisitions are permitted and how to carry out the processes defined in national legislation.

WHAT IS CONSIDERED TO BE COMPULSORY ACQUISITION AND WHAT RIGHTS SHOULD BE COMPENSATED?

- 2.21 When does compulsory acquisition occur? This question is usually easy to answer, but on occasion it can be more difficult than it appears at first glance. The extent of loss of land rights by owners and occupants may vary considerably, both in terms of the amount of land involved and the types of rights that are affected. This has implications for the extent to which a particular government action is governed by the principles of compulsory acquisition. It also has implications regarding the rights and remedies of people affected by that action.
- 2.22 Compulsory acquisition is commonly associated with the transfer of ownership of a land parcel in its entirety. This may occur in large scale projects (e.g. construction of dams or airports) as well as in smaller projects (e.g. construction of hospitals or schools). However, compulsory acquisition may be also used to acquire part of a parcel, e.g. for the construction of a road. In some cases, the acquisition of portion of a land parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes. In some countries, the governing legislation may allow the landowner to require the acquiring agency to acquire the whole parcel.
- 2.23 The use of specific portions of a land parcel may be also acquired for easements or servitudes to provide for the passage of pipelines and cables. Rights acquired usually include the right to enter the parcel to make repairs. The rights acquired may be granted temporarily or permanently, and may be transferable to others.
- 2.24 People may be deprived of some enjoyment of their land even if it is not acquired. For example, the construction of a highway may cause the value of neighbouring parcels to decrease because of the increased noise. Traditionally such losses have not been regarded as being eligible for compensation but

legislation is increasingly providing for at least some compensation in such circumstances. A project may also increase the values of neighbouring parcels. Some equivalence may be provided through changed tax burdens: people whose land declined in value may pay less property taxation while others may find their tax bill has increased to reflect the higher land values.

- 2.25 People may also suffer a loss when governments impose new and significant restrictions on the uses to which land may be put. Such zoning or land use controls may substantially reduce the usefulness or value of particular parcels. The payment of compensation for such losses where the land has not changed hands is not widely adopted. However, some countries do provide for compensation in such cases. The actions (known as “regulatory takings” or “planning compensation”) are complex and their treatment is beyond the scope of this guide.
- 2.26 Compulsory acquisition is not limited to contexts in which the state seeks to acquire land that is privately owned. Full private ownership of land does not exist in some countries, and the state is the owner of all land. In other countries, the state retains ownership of substantial areas of land. A range of private occupancy, lease or use rights may be permitted over such state-owned land. Chapter 4 addresses the acquisition, valuation and compensation of land that is privately owned, as well as of private rights in state-owned land, and of customary and informal rights.

THE PROCESS OF COMPULSORY ACQUISITION

- 2.27 Compulsory acquisition is a power of government, but it is also the process by which that power is exercised. Attention to the procedures of compulsory acquisition is critical if a government’s exercise of this power is to be efficient, fair and legitimate. Processes for the compulsory acquisition of land for project-based, planned development are usually different from processes for acquiring land during emergencies or for land reforms. Yet other processes may exist for electricity companies and others to acquire easements or servitudes. In general, a well designed compulsory acquisition process for a development project should include the following steps:

1. **Planning:** Determining the different land options available for meeting the public need in a participatory fashion. The exact location and size of the land to be acquired is identified. Relevant data are collected. The impact of the project is assessed with the participation of the affected people.
 2. **Publicity:** Notice is published to inform owners and occupants in the designated area that the government intends to acquire their land. People are requested to submit claims for compensation for land to be acquired. The notice describes the purpose and process, including important deadlines and the procedural rights of people. Public meetings provide people with an opportunity to learn more about the project, and to express their opinions and needs for compensation.
 3. **Valuation and submission of claims:** Equivalent compensation for the land to be acquired is determined at the stated date of valuation. Owners and occupants submit their claims. The land is valued by the acquiring agency or another government body. The acquiring agency considers the submitted claim, and offers what it believes to be appropriate compensation. Negotiations may follow.
 4. **Payment of compensation:** The government pays people for their land or resettles them on alternate land.
 5. **Possession:** The government takes ownership and physical possession of the land for the intended purpose.
 6. **Appeals:** Owners and occupants are given the chance to contest the compulsory acquisition, including the decision to acquire the land, the process by which the land was acquired, and the amount of compensation offered.
 7. **Restitution:** Opportunity for restitution of land if the purpose for which the land was used is no longer relevant.
- 2.28 Each of these steps is considered in more detail in the following chapters. Chapter 3 describes planning and publicity. Chapter 4 provides information on valuation, compensation and the taking of possession by government. Chapter 5 describes the mechanisms for appeals. Box 5 provides an overview of the principles that should guide the process for compulsory acquisition for a planned development project.

BOX 5

**PRINCIPLES THAT SHOULD GUIDE THE PROCESS
FOR COMPULSORY ACQUISITION**

Processes should be based on the following principles:

- The land and land rights to be acquired should be kept to a minimum. For example, if the creation of an easement or servitude can serve the purpose of the project, there is no need to acquire ownership of the land parcel.
- Participatory planning processes should involve all affected parties, including owners and occupants, government and non-governmental organizations.
- Due process should be defined in law with specified time limits so that people can understand and meet important deadlines.
- Procedures should be transparent and flexible, and undertaken in good faith.
- Notice should be clear in written and oral form, translated into appropriate languages, with procedures clearly explained and advice about where to get help.
- Assistance should be provided so owners and occupants can participate effectively in negotiations on valuation and compensation.
- The process should be supervised and monitored to ensure that the acquiring agency is accountable for its actions, and personal discretion is limited.
- The government should take possession of the land after owners and occupants have been paid at least partial compensation, accompanied by clearly defined compensation guarantees.

2.29 There is a danger that acquisition processes can last for many years, creating long-term insecurity and uncertainty for owners and occupants. Legislation should provide that the acquisition will be regarded as abandoned if the process is not completed within a specified period as a result of delays by the acquiring agency.

3. Planning and publicity

- 3.1 This chapter provides a description of the preparatory steps for compulsory acquisition, i.e. the initial planning, notice and public meetings.

PLANNING

- 3.2 The planning phase of a major public investment project should include the identification of any lands to be acquired for the project. Options should be analysed and presented to the public for their understanding and consultation in order to choose the site that presents the fewest obstacles and the best outcomes, having regard to all impacts, including those on any owners and occupants. In accordance with human rights law, evictions should occur only in exceptional circumstances (see chapter 4). The acquiring agency should obtain necessary permissions, if any, for the compulsory acquisition of the land identified for the project.
- 3.3 An impact assessment is a common requirement of the planning phase. Such assessments should ensure that the acquiring agency considers the social, economic, and environmental impacts before deciding whether and how to proceed with the project, and determines ways to minimize any negative aspects. Impact assessments should involve a variety of stakeholders in research and discussion about the project. Affected communities should be included in the planning process and, if necessary, they should be provided with the support needed to enable them to participate effectively. Their inclusion from the start will help the acquiring agency to consider fully the cultural, social and environmental concerns of local communities, and to identify measures to prevent or mitigate negative aspects of the project.
- 3.4 Decisions, assessment of options, and appeals processes should be based on the collection and analysis of data such as who lives on the land to be acquired; what land rights they enjoy; what natural resources and other assets they depend on for their livelihood; and what community resources, public spaces, burial grounds or religious sites exist within the project area. Comprehensive mapping

of the project area should document land use and cropping patterns, and the location of protected sites including cemeteries and sacred areas. Communities should receive support to allow them to contribute to the mapping.

- 3.5 The acquiring agency should establish a clear definition of which owners and occupants will be entitled to compensation in the context of the relevant legislation. It should define the date for establishing eligibility to be considered an owner or occupant. An inventory of affected owners and occupants should be prepared. The total compensation costs should be estimated and the necessary budget secured by the acquiring agency.

NOTICE

- 3.6 The provision of notice of the intention to compulsorily acquire land protects the rights of affected people. Notice should be given as early as possible to allow people to object to the acquisition of their land, to submit compensation claims, or to appeal against incorrect implementation of procedures. The timing of notice varies: a period of three to six months is common in many countries; some countries require that owners and occupants are given at least one year's notice. Legislation should ensure that the timing is not so short that it erodes the effectiveness of safeguards for due process.
- 3.7 Notice should be served to all owners, occupants and other affected people. It is often difficult to identify and contact all those who may hold rights to the land to be acquired. For example, the owner of a land parcel may have died and the heirs may not have registered the transfer of ownership. Difficulties also exist when rights are not clearly defined, e.g. in informal settlements or land held under customary tenure.
- 3.8 To ensure that all affected people are aware of the project, notice should be publicised as widely as possible. Printed information should be sent or delivered to affected households and displayed in public areas and prominently on the land to be acquired. Information should be disseminated through popular publications, and radio and television programmes. The information should be comprehensible: a legal notice does not mean genuine notice if people cannot understand what is

being said. The information and the communication process should be sensitive to gender differences. Information should be presented in local languages. Oral communication will be important in areas of high rates of illiteracy.

- 3.9 The information should explain the purpose of the acquisition, identify the land to be acquired, and provide a clear description of the procedures. It should describe the rights of owners and occupants, including the rights of appeal, and should reassure people of their rights, including in respect of compensation and when it is payable. The information should include the various time limits, e.g. for submission of claims for compensation. The dates, times and venues of public meetings should be stated, along with the dates on which the project's valuers will enter the land to determine its value, and the final date on which the land will be acquired. Information should be provided on where people can get help with the process.

PUBLIC MEETINGS AND REVIEW

- 3.10 Public meetings provide an opportunity for people to learn more about the project, to receive answers to their questions about the process and its procedures, and to voice their concerns. The meetings illustrate accountability and transparency when the government has to justify its proposal to compulsorily acquire land. Open discussion at public meetings should help the government to improve its understanding of the needs and concerns of affected communities, and to prepare responses that reduce the number of challenges to the compulsory acquisition. Ongoing, open communication about the project can be crucial to its success: when people are not given sufficient opportunity to express dissent as part of the normal process, they may engage in other forms of protest that block the project. Meetings should be held at times and places that are convenient for all affected people, both men and women, and should be planned and designed with local communities to ensure that all are heard, especially the vulnerable. Local languages should be used in presentations and discussions.
- 3.11 The period for public comment begins with preparation of documents that describe the main features of the project. The information should be displayed in a location that is easily accessible to the public. People should have the

opportunity to review the documents and submit written or oral objections to the project. The government should respond to these objections in writing. The body overseeing the public review should recommend whether or not to alter the original plan as a result of the objections received. Based on the report received, the decision of the relevant government official is final unless any appeal is received.

- 3.12 Once notice has been given and the public review process is concluded, people should submit claims for compensation of losses that will result from the compulsory acquisition of their land. These actions are described in chapter 4.

4. Valuation, compensation and taking possession

- 4.1 Compensation, whether in financial form or as replacement land or structures, is at the heart of compulsory acquisition. As a direct result of government action, people lose their homes, their land, and at times their means of livelihood. Compensation is to repay them for these losses, and should be based on principles of equity and equivalence (Box 6). The principle of equivalence is crucial to determining compensation: affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition. Financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition; the money paid cannot fully replace what is lost. In some countries, there is legal provision recognising this in the form of additional compensation to reflect the compulsory nature of the acquisition. In practice, given that the aim of the acquisition is to support development, there are strong arguments for compensation to improve the position of those affected wherever possible.

BOX 6

PRINCIPLES OF EQUITY AND EQUIVALENCE

Guiding principles for ensuring equity and equivalence include:

- **Equivalence:** people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged.
- **Balance of interests:** the process should safeguard the rights of people who lose ownership or use rights of their land while ensuring that the public interest is not jeopardized.
- **Flexibility:** the law should be specific enough to provide clear guidelines, but flexible enough to allow for the determination of appropriate equivalent compensation in special cases. Legislators cannot foresee all possible scenarios, and a rigid application of detailed provisions may result in people not being compensated for losses that are not identified in the legislation.



- Compensation should address both *de facto* and *de jure* rights in an equitable manner following the principle of equivalence. Where occupants have no recognizable legal right or claim to the land occupied, they may be entitled to resettlement assistance and to compensation for assets other than land. Some form of fair payment for squatters is important, particularly where they are poor, are driven to informality out of necessity, and especially where government has condoned or encouraged the settlement in the first place.
- Fairness and transparency: the negotiating powers of the acquiring agency and affected people should be as equal as possible. Reasonable costs of affected people, including support to the poor and illiterate in negotiations, should be paid as part of the compensation. Negotiations should be based on an open exchange of information.

4.2 The calculation of compensation is based on the value of the land rights and improvements to the land, and on any related costs. The determination of equivalent compensation can be difficult, particularly when land markets are weak or do not exist, when land is held communally, or when people have only rights to use the land. Many factors can lead to inadequate compensation (Box 7). Legislation should ensure fair processes for determining valuation and compensation. While the public interest in keeping costs as low as possible is important, this concern should not deprive people of the equivalent compensation they need in order re-establish their lives after the loss of their land.

PROCEDURES FOR VALUATION AND COMPENSATION

- 4.3 During the valuation phase, the acquiring agency and the people whose land is being acquired gather information and evidence to support their arguments for the compensation values they believe to be equitable. This work is triggered by the notice of intention to compulsorily acquire land. The notice of intention should set a deadline by which each affected owner or occupant submits a claim for compensation.
- 4.4 Responsibility for the valuation of land varies from one country to another. In some countries the work is done by or for the acquiring agency while in other countries the valuations are the responsibility of independent commissions. The notice of intention should set a deadline by which each affected owner or occupant submits a claim for compensation. At some point after notice has been given, the project's valuers must enter the land to inspect it and all

BOX 7

FACTORS THAT LEAD TO UNJUST COMPENSATION

- Poorly drafted laws and regulations create confusion, error, conflicting outcomes, and opportunities for abuse of power.
- Determination of equivalent compensation is difficult when people do not have clear legal rights to the land.
- Affected owners and occupants often have less negotiating power, experience and skills than the acquiring agency. They may be unaware of their rights, and under pressure to accept a low offer in order to be able to resettle elsewhere quickly. The rich may be able to afford professional advice on the value of compensation but the poor are likely to be at a disadvantage.
- A lack of standards and good governance practices allows corrupt officials to provide favourable compensation to those who offer bribes.
- Accurate valuation is difficult because it is time-consuming and expensive: each land parcel must be inspected to determine the value of the land and improvements. A shortage of skilled valuers will increase the time required to complete the work. It may be difficult to prepare reliable indicators for valuation when land sales are informal, or where markets do not exist or are just developing. It may be also difficult to financially quantify non-economic losses, e.g. religious, historical or cultural claims to the land.
- News of the project may affect the market value of the land. Legislation that does not clearly state the basis for compensation may result in inequitably low compensation if values fall, and inequitably high compensation and greater costs to the government if values rise.
- Appeals processes that are expensive and difficult to use are accessible only to the rich. The poor may have little option but to accept the offer of compensation even if they believe it is inadequate.

improvements in order to determine their value. Owners and occupants should hire their own valuers, or find other ways to determine the value of their land.

- 4.5 In some countries, the acquiring agency makes an offer; if this offer is not accepted by the owner or occupant, the acquiring agency makes an official determination of compensation which can be appealed only in court or to a quasi-judicial body such as a tribunal (see chapter 5). In other countries, the acquiring agency is required to first negotiate in good faith. Good faith

negotiations can save time and money when they produce solutions which leave the owners and occupants satisfied enough with the outcome and thus unlikely to prolong the process by submitting appeals. Fair and transparent negotiations can help to break down barriers between the acquiring agency and the people whose land is being acquired, and can allow each party to have a better understanding of the needs of others. While negotiating, it is useful if the acquiring agency has some flexibility regarding the upper limit of compensation of each land parcel, as this may allow for the quick resolution of cases.

- 4.6 A drawback of negotiation is that there can be an imbalance in negotiating power. The government should ensure that owners and occupants know about the negotiation procedures and what their rights are in the process. It should cover the reasonable costs of specialists such as valuers and lawyers as a part of the compensation claim. Special assistance will be needed for most claimants, but it is particularly likely to be necessary for indigenous communities and other vulnerable groups. Chapter 6 provides more information on the need for advocacy and assistance.
- 4.7 There will be a need to build capacity for valuation in government and the private sector if the existing valuers are unable to carry out the work demanded by the project within a reasonable time. Sufficient numbers of valuation staff may have to be trained to assist in determining compensation values.
- 4.8 Legislation should enable the clear definition of the date at which the land should be valued as values can change rapidly as a result of awareness of the project. The most equitable approach is to have a valuation date that sets the value of the land as if the proposed project did not exist. For this reason, it is common for legislation to require that the value of a land parcel is linked to the date of the publication of notice. If legislation does not specifically link the date of valuation to such an event, the acquiring agency should specify dates appropriate to the nature of the project.
- 4.9 Many constitutions state that compensation should be paid promptly. However, the period in which payment is to be made is often left undefined in relevant legislation. When the acquiring agency takes possession before full compensation is paid, there may be little incentive for it to make the final payment. Legislation

should ensure that people receive full payment of the agreed-upon compensation sum in a timely manner. Any departure from a standard compensation rule should be based on clearly stated grounds set out in the law, and should be approved by a judicial body or administrative officer superior to the acquiring agency. Legislation should require that possession takes place only after a substantial percentage of the compensation offer has been paid. The laws of some countries include provisions for payment plans, time limits, and other procedures by which people can force payment. Legislation should entitle people to claim interest on any unpaid compensation starting from the date of possession.

- 4.10 The assessment of compensation should recognise the taxation impacts and the taxation treatment by the State of any compensation payments. People who receive compensation should not have to pay tax on it.
- 4.11 At times, owners and occupants may refuse to cooperate. Precautions should be taken to ensure that they have not refused because they did not receive notice of the compulsory acquisition or do not understand the contents of the notice. Legislation should allow the government to pay compensation into special accounts held in trust for any such people so that the acquiring agency is able to enter and take possession of land according to its schedule.

DETERMINING VALUATION AND COMPENSATION

- 4.12 Most laws on compulsory acquisition broadly define equivalent compensation with reference to market value or “just compensation”. In general, compensation should be for loss of any land acquired; for buildings and other improvements to the land acquired; for the reduction in value of any land retained as a result of the acquisition; and for any disturbances or other losses to the livelihoods of the owners or occupants caused by the acquisition and dispossession.
- 4.13 If market value is the basis of compensation, legislation should clearly state what is understood by market value. A common approach is to define market value by the “willing buyer, willing seller” model, i.e. the amount which a willing buyer would pay a willing seller on the open market where some choice exists. The legislation should ensure that such an assessment does not include changes in the value of the property arising from the process of compulsory acquisition.

- 4.14 Assessing the market value of a land parcel is not always simple, particularly where land markets are weak. A variety of complex factors must often be considered. The value of land is usually affected by regulations that classify land according to permissible uses such as residential, agricultural, commercial or industrial. What if the person is using the land in a less valuable manner than is possible under existing regulations? Should compensation be determined on the basis of the existing use or on the other more valuable permitted use? The highest value permissible use (the “hope” value) will determine the value of the land in the market. Many compensation laws thus allow for compensation on the basis of the more valuable use as the person could have used the land in such a manner if compulsory acquisition had not occurred. In such cases, there are specific provisions for dealing with the assumptions to be made about development permissions for a more valuable use than the existing use.
- 4.15 There are occasions where the owner can demonstrate that someone is prepared to pay more than the usual market value for the land, e.g. the land may be particularly attractive to a neighbour. Should such offers be taken into account when determining the market value? Generally, equivalence may be achieved only by including the additional value of such an offer in the assessment of compensation. However, care should be taken in the consideration of evidence to avoid situations where the owner and others collude to falsely drive up the price of land.
- 4.16 It may not always be possible to determine compensation based on market value. Alternative approaches vary depending on the political economy of a country, the qualities of the land acquired, and the nature of the land rights. Some alternative approaches include:
- A replacement cost model may be useful in countries without a clear market value for the land and where there is no market for a particular use (such as a religious building). Some countries calculate compensation by determining replacement costs for the land and buildings acquired and the value of projected agricultural output. In South Africa, compensation is determined by the amount it would cost to replace improvements to the land, plus additional funds based on percentages of the value of those improvements. The less a person is paid for the replacement of the improvements, the higher the percentage of the money value of those improvements he or she is paid in addition. In India, depending on the quality of the land and the way it is used,

the acquiring agency uses various approaches to determine the replacement cost of the land, and then chooses the approach that gives the highest value.

- Tax valuations are used in some countries to determine compensation. Such provisions are based on the logic that if people have had the benefit of paying taxes on the basis of low property values, they should accept compensation on the same basis. Linking compensation to a tax value does not put people back in the position they were in before the acquisition. The practice results in inequitable compensation, and is inappropriate as technical assessments of value for tax purposes are generally fundamentally different to those for the compulsory acquisition of land.
- In some countries transaction data reported as part of the registration process when parcels are bought and sold may provide evidence of land values. However, great care should be taken in the use of the declared transaction values because these may reflect the cadastral value rather than the actual market transaction value.

- 4.17 Agricultural land is valued in specific ways in some countries. In Poland, the value is determined on the basis of the land's location; the quality of the soil and timber located on the land; improvements that promote agricultural production; and the degree of development on the land among other measures. The legislation also entitles owners of agricultural land under cultivation to any lost profits on the projected harvest, calculated according to the crop's current market price.
- 4.18 Improvements to the land can be valued in various ways according to their nature. Houses and other buildings may be valued by applying market values, or by their replacement costs. Trees and perennial crops may be valued by calculating the annual produce value for one season and then providing the owner with a multiple of that annual value, determined by the nature of the tree or crop and how long it would take the owner to grow equivalent trees or crops. Compensation for timber trees may be based on their market value, while compensation for fruit trees may be based on replacement costs.
- 4.19 The value for compensation should include more than the value of the land and improvements. The disturbance accompanying compulsory acquisition often means that people lose access to the sources of their livelihoods. This can be due to a farmer losing agricultural fields, a business owner losing a shop, or a community losing its

traditional lands. Compensation may be awarded for the disturbance or disruption to a person's life under certain conditions. Some countries allow for additional compensation for personal distress in recognition that the sale is not voluntary and people may be deeply emotionally, culturally, or spiritually affected by the loss of their land. In the United Kingdom and several Commonwealth countries, this element of compensation is based on the principle of "value to the owner". Regulations identify what types of losses can be quantified and compensated. Losses related to land and buildings are based on the "willing buyer, willing seller" model, while losses to livelihoods are specific to the people affected. A number of other countries also provide for additional payments which may comprise a specific percentage of the claim, or be derived from some other measure such as the sale or rental value of the land.

- 4.20 A pragmatic way of determining when compensation is equivalent and appropriate is to consider all the general categories of expenses caused by the compulsory acquisition and to legislate that payments should cover those categories of expenses (see Box 8, and Box 9 on compensation for loss of customary rights). These categories alone will not cover every eventuality; there will be circumstances that are impossible to foresee. Legislation should allow for flexibility in covering unforeseen expenses in situations when denying compensation would create injustices. It should identify a wide and varied list of eligible expenses and also clearly state the general principles that should be applied if additional circumstances are encountered.
- 4.21 When land has special value to the acquiring agency (i.e. above the market value), should the additional value be reflected in the compensation? Many countries follow the principle that an acquiring agency should not have to pay for extra value created solely by its own actions.

VALUATION AND COMPENSATION FOR THE PARTIAL ACQUISITION OF LAND

- 4.22 When only a portion of a parcel of land is acquired, what compensation should be paid? The route of a new road may cut across a parcel and cause the remainder to be divided into several unconnected pieces. There may be a need to demarcate and fence the new boundaries, create new access routes to the pieces of the remaining land, and reconstruct drainage and irrigation systems to fit the new

BOX 8

EXAMPLES OF WHAT MAY BE COMPENSATED

Depending on the jurisdiction, the total compensation may be based on:

- The land itself.
- Improvements to the land, including crops.
- The value of any financial advantage other than market value that the person may enjoy by virtue of owning or occupying the land in question.
- Interest on unpaid compensation from the date of possession.
- Expenses incurred as a direct and reasonable consequence of the acquisition.
- Loss in value to other land owned by the affected owner due to the project. In some countries, the compensation will be reduced if the retained land increases in value as a result of the project, a condition sometimes referred to as “betterment”.
- Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents.
- Costs of moving and costs of acquiring alternative accommodation.
- Costs associated with reorganization of farming operations when only a part of a parcel is acquired.
- Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition.
- Temporary loss of earnings.
- Personal hardship.
- Other losses or damages suffered.

parcel layout. Valuation for compensation in such cases should follow the principles used when an entire parcel of land is acquired. However, additional factors may arise, e.g. if a new road cuts a remote portion of agricultural land from the majority of the farm, the isolated portion may have little value to the owner, yet its market value may increase if it becomes more accessible to someone on the opposite side of the road. Alternatively, the value of the remaining land might increase as a result of the project: equivalence could be accomplished by balancing the compensation of the land acquired with the projected increase in value to the remaining land.

- 4.23 The use of land for easements or servitudes is also subject to compensation in most countries when providers of public services have to place electric power

transmission lines and pipelines on private land. In such instances, compensation is usually paid annually and is based on the market value of the area of land used.

- 4.24 People whose land is partially acquired usually do not have to relocate, but they may experience problems when the project is implemented, e.g. temporary obstruction of access, interference with electricity and water services, inability to maintain fence lines, interference with irrigation and drainage systems, and widespread dust or smoke. Additional compensation is required if the installation of underground pipelines in agricultural land damages the soil structure or causes drainage problems. Legislation should ensure that the acquiring agency is responsible for compensating affected owners and occupants for damages caused during construction, whether or not their land was acquired.

VALUATION AND COMPENSATION FOR PARTIAL RIGHTS

- 4.25 What compensation should be given to people who use the land through leases or sharecropping agreements? Whether or not land is leased from the state or from private owners, lessees should be entitled to compensation for the loss of their land rights on the basis of the principle of equivalence. The terms and conditions of the leases may identify the basis for compensation in the event of the termination of the lease prior to its expiry. In any case, the compensation entitlement should put the claimants in the same position as they were prior to the acquisition.
- 4.26 One approach is to base compensation on the replacement cost of finding equivalent land to lease. This may include payment of an amount equal to the rent for a certain number of months as well as compensation for disruption and moving costs. Alternatively, the compensation can be based on the value of the lease rights, taking into account the length of the lease; the remaining number of years; profit rent, if any; the lessee's right or prospect of renewing the lease; and any valuable investment in the land made by the lessee in accordance with the provisions of the lease.
- 4.27 Legislation may also need to provide for the basis on which compensation is allocated between a landowner and a lessee or sharecropper. The provisions should conform with the general principle of equivalence in the value of the right acquired, as reflected in the terms and conditions of the lease or sharecropping agreement, and other types of compensation.

VALUATION AND COMPENSATION OF RELIGIOUS SITES

- 4.28 Valuation and compensation of sacred areas and religious sites are difficult. In the case of a temple, church, mosque and other building that houses the meetings of a religious group, it may be possible for the acquiring agency either to provide the group with an equivalent building on another site, or to pay compensation that covers the cost of constructing an equivalent place of worship at a new site, the cost of the new site, and costs associated with any disturbance.
- 4.29 Financial compensation is often inappropriate when the religious site is a burial ground or sacred forest; some sacred areas simply cannot be replaced. Whenever possible, measures should be taken to avoid destruction of these sites. Even if an affected community can no longer live near its sacred areas, such preservation may at least enable community members to continue to visit the site according to traditional practices. Where it is impossible to avoid the use of such sites, an approach used in some cases is to agree on appropriate lease terms for their use by the acquiring agency.

VALUATION AND COMPENSATION OF LAND OWNED BY EXTENDED FAMILIES

- 4.30 When a number of members of a family, including women and children, jointly own land, it may be unclear who should receive compensation. Some members of the family may live together on the land and jointly cultivate it while other co-owners may have migrated elsewhere to seek work. Conflicts may arise when the land is compulsorily acquired: siblings may contest inheritance claims, or there may be inter-generational disputes. Women and children may have a great stake in the family home or agricultural land but hold few rights to control what happens to it. Local laws, or cultural or religious rules, may prevent women and other vulnerable groups from having a legal claim to the land on which they live and work. The male head of the family may be automatically considered the landowner and receive the compensation; this decision may lead to injustice and the eventual impoverishment of the entire family if the funds are mismanaged.
- 4.31 To remedy these situations, legislation should require the acquiring agency to investigate which family members hold *de facto* interests in the land and will suffer personal losses from its compulsory acquisition. The legislation could

create mechanisms through which compensation is paid to members of an affected family in a manner that ensures joint decision-making about the use of such funds.

VALUATION AND COMPENSATION OF CUSTOMARY LAND

- 4.32 In many countries land is held under customary tenure, with traditional leaders being responsible for the administration of land according to customary practices. Typically some lands are assigned for the exclusive use of individuals or families (e.g. for residences and cultivation) while the use of other lands (e.g. forests and pastures) may be shared by all members of the community.
- 4.33 Distinctions have often been made between customary tenure and statutory tenure (i.e. defined in written laws). Frequently, formal legislation did not recognise customary rights to land. Such customary tenure was often regarded as extra-legal, i.e. not against the law, but not recognised by the law. Lands under customary tenure were often treated as public or government land, vested in the nation or in the name of the president in trust for the citizens. In line with such nationalization of customary land, there was often an official view that the land itself had no value. The compulsory acquisition of customary land thus resulted in the payment of compensation only for improvements to the land, and not for the land itself.
- 4.34 There is now increasing recognition of customary rights within formal law, which is leading to a blurring of the distinction between customary and statutory tenure. For example, until recent changes to the constitution and land act in Uganda, people living on customary land were regarded as occupants of state land; if the land was required by the government, people could be evicted after a notice period of three months, and with compensation limited to improvements to the land. The legal recognition of customary rights elevated customary tenure to the same level as other forms of tenure, and opened the door for people with customary rights to receive compensation for land that is compulsorily acquired.
- 4.35 Customary land used by people considered to be indigenous may have special protections: the land may be regarded to be inalienable except under specific circumstances. The use of leases rather than outright sales may be a more appropriate solution for such lands. The International Labour Organisation's Convention concerning Indigenous and Tribal Peoples in Independent Countries

(No. 169) sets out in Article 16(1) that, whenever possible, indigenous peoples “shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.” If such return is not possible, then Article 16(4) provides that indigenous peoples shall “be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.”

- 4.36 Decisions regarding the valuation of customary land may be based on a combination of statutory and customary law. Customary laws may dictate different methods of valuation according to local custom. In such instances, there may be a need for the clarification of tenure prior to determining the compensation claim (see Box 9). The acquiring agency should research relevant customary laws and practices to ensure that its methods of valuation will be acceptable to the community. If there is a land market in the country, it may be possible to value the customary land by applying standards of the national land market. When there is shared use of a resource such as forest land or pastures, the total value should take into account the value to each affected member of the community.
- 4.37 The payment of financial compensation may present challenges. The compensation for the loss of shared resources may be complicated by arguments as to who is eligible to share in the award. Leaders may divide the compensation according to customs which discriminate against women and other vulnerable groups. Even payment of compensation for the loss of land used exclusively by an individual or family may be complicated if it is culturally and legally inappropriate for the acquiring agency to make the payment directly to the intended beneficiary. Yet if payment for all affected families is made as a lump sum to the customary leaders, there is a danger that the leaders will keep an unduly high amount for themselves, and will give the affected families amounts that are insufficient to allow them to re-establish their livelihoods elsewhere.
- 4.38 There may be occasions when financial compensation is inadequate. In cases where a community is to be displaced, the allocation of land for resettlement or leasing arrangements may remove the problems associated with financial

BOX 9

LOSSES OF CUSTOMARY RIGHTS THAT MAY REQUIRE COMPENSATION

The Asian Development Bank's Summary of the Handbook on Resettlement: A Guide to Good Practice (1998) identifies the following losses for which compensation may be required:

- agricultural land;
- house plot (owned or occupied);
- business premises (owned or occupied);
- access to forest land;
- traditional use rights;
- community or pasture land;
- access to fishponds and fishing places;
- house or living quarters;
- other physical structures;
- structures used in commercial/industrial activity;
- displacement from rented or occupied commercial premises;
- income from standing crops;
- income from rent or sharecropping;
- income from wage earnings;
- income from affected business;
- income from tree or perennial crops;
- income from forest products;
- income from fishponds and fishing places;
- income from grazing land;
- subsistence from any of these sources;
- schools, community centres, markets, health centres;
- shrines, religious sites, places of worship and sacred grounds;
- cemeteries and other burial sites;
- access to food, medicines and natural resources.

compensation but, as shown below, the provision of alternative land as compensation can bring its own problems. In cases where only portion of a community's land is to be acquired, negotiations may reveal that compensation could also take the form of the provision of facilities such as schools, clinics, public toilets, wells, markets or storage areas. The loss of forest land may be

partially compensated through assistance with reforestation of other community lands. Legislation should anticipate such instances for the valuation and compensation of customary land by including mechanisms that fairly and effectively resolve them. It should require that qualitative and quantitative research be carried out with the people affected to ensure that they receive equitable compensation when customary land is to be acquired.

VALUATION AND COMPENSATION OF INFORMAL RIGHTS AND FOR ILLEGAL USES

- 4.39 The payment of compensation for rights that are not legally recognised may be a difficult policy question given the variety of cases that exist. In many such cases, people may be regarded to deserve compensation and an alternative place to settle if the land they occupy is to be used for a public investment project. For example, residents of an informal settlement who have only informal rights to their land and homes may be considered to be entitled to assistance, particularly if they are poor and had no alternative possibility for accommodation. The case may be especially compelling if the government has recognised or implicitly condoned in some manner the existence of the informal settlement. In other cases, people using land illegally may not be regarded as deserving of compensation. For example, a rich family that has erected a luxury hotel in a state-owned coastal area in violation of regulations may not be viewed as worthy of receiving compensation for the hotel, and alternative land for a new hotel. It may be difficult to distinguish between cases to determine whether or not a particular illegal or informal occupant is deserving of compensation, but clear guidelines should be developed.
- 4.40 Legislation for compulsory acquisition tends to specifically exclude the payment of compensation for the value of the land to people who have only informal rights. However, in the case of occupants who are considered to deserve special assistance, the government should ensure that people are relocated to appropriate land. The following section emphasizes the need for policies and guidelines for involuntary resettlement in order to protect people who are displaced as a result of projects.
- 4.41 Occupants who meet the requirements for compensation should receive payment equivalent to the replacement cost of the construction of their homes and other

improvements, as well as compensation for disruption and moving costs. The construction of homes and other structures in informal settlements is usually illegal, either because of zoning restrictions (e.g. the informal settlement is on land that is officially classified as agricultural and not residential), and/or because the construction did not follow legally defined procedures (e.g. building permits were not issued, and the buildings were not inspected and certified that they conform to building regulations). However, such illegality alone should not prevent the payment of compensation for the value of buildings.

- 4.42 In a project area where the occupants in general are considered to be eligible for compensation and resettlement, there is a risk that after the project planning has started, people will move in solely with the intention of benefiting from the payments. The acquiring agency should fix the date by which people must have established their occupation in the area in order to be considered eligible for compensation and resettlement.

ALTERNATIVE LAND AS COMPENSATION

- 4.43 The decision as to whether compensation should be through resettlement or money may be difficult and complex. Caution must be taken to ensure that a proposed solution is not an attempt to avoid paying equivalent compensation, i.e. to propose financial compensation even if it is not equitable when the cost of resettlement is high; or to propose resettlement when financial compensation will be above the existing use values of the land to be acquired. In addition, displaced families may have their own reasons for preferring one option over the other.
- 4.44 Providing suitable alternative land may be difficult in the light of current population pressures on the land and it is not anticipated that this will get any easier. However, many owners and occupants may prefer to receive land as compensation rather than money. The provision of land as compensation is usually associated with the resettlement of vulnerable groups, but the demand for alternative land exists in developed economies as well (Box 10). Providing suitable land can help to reduce objections to the process and reduce the overall costs of compensation.
- 4.45 Resettlement of vulnerable people on alternative land is required when the loss of their land means a loss of their livelihoods, and they are unable to use financial

BOX 10

ALTERNATIVE LAND AS COMPENSATION IN DENMARK

Projects such as the construction of new highways and railway lines often disrupt farming operations by cutting through fields. Other projects, such as the recreation of wetlands, may take much of the land of farmers. In Denmark, land consolidation techniques are used to assist farmers affected by such projects. Land consolidation specialists meet with affected farmers to identify their wishes, e.g. many farmers may want equivalent land elsewhere in order to continue their farming operations. The specialists help to identify suitable land that can be acquired for use as compensation, e.g. by negotiating with neighbouring farmers, or from the state land bank which buys land for later use in such projects.

The negotiated agreements of sale and exchange form the basis of the land transactions to be carried out as part of the compulsory acquisition. The process reduces appeals: by participating in the negotiated agreements, farmers are less likely to appeal against the acquisition of their land. The time spent by specialists to find solutions can also reduce the total compensation to be provided. For example, a farmer may have facilities for a herd of 100 cows. If the project would result in the farmer having land for only 20 cows, the government would have to pay compensation for the land as well as the loss in business. By finding alternative land which allows the farmer to maintain the size of the farming operation, the government has to pay only the costs of acquiring the alternative land, and not for the loss of business.

compensation to purchase similar land elsewhere or to find new ways to earn a living. People whose families have been farmers, herders or gathers for generations may have little ability to do otherwise. Resettlement may be the only way for them to maintain their livelihoods. When resettlement involves an entire community, social cohesion and networks can be maintained. Resettlement may be also required for people in informal settlements and others who have weak or absent legal rights to land that is compulsorily acquired. Financial compensation may be insufficient to enable them to purchase alternative land through the market. Resettlement may be also appropriate when the land to be acquired is used for a non-commercial use, such as a religious institution. Those who are to be displaced may be more interested in being able to continue their work with minimum interruption than in money.

- 4.46 The offer of alternative land as compensation may avoid problems that can arise when financial compensation is paid to people who are unused to handling

large amounts of money. Without adequate training on how to manage a large lump sum payment, people may spend the money quickly and unwisely, or may be fooled into investing in fraudulent schemes. If compensation is paid to the male head of the household, the needs of women and children may be ignored as the money vanishes, to the detriment of the family's health and welfare. The end result may be people with no land to farm, no income stream to support themselves, and no job skills to compete in a non-agricultural economy. Moreover, if a community is displaced, the offer of financial compensation will result in the dispersal of households as not all of them will be able to purchase alternative land in the same location. As a result, community institutions and social networks will be weakened.

- 4.47 At the same time, compensation as resettlement will not automatically provide benefits for people who are displaced. Resettlement schemes can fail for a number of reasons. The land provided as compensation may have poorer quality soils and lack the water and forest resources that existed in the original location. The new area may not have basic infrastructure such as roads, wells and waste disposal facilities, and insufficient funds or delays may mean that they are not constructed by the time the people are relocated. The land identified for resettlement may be already occupied by communities with strong claims to that land, and the introduction of additional people to the area can result in overcrowding, environmental degradation and competition for increasingly scarce resources. If the new land is remote, it may lack a local economy that can provide the level of off-farm income that exists in the original location.
- 4.48 Resettlement plans should ensure that people do not face impoverishment when they are relocated to areas where their productive skills are less applicable and where competition for resources is higher. Care should be taken that an urgency to maintain the project's schedule and budget does not force resettlement regardless of the suitability or readiness of the new location.
- 4.49 Most international development banks have adopted policies and guidelines to protect people who may be displaced as a result of projects that they support. Some key features of the approach adopted by the World Bank and the Inter-

American Development Bank are shown in Boxes 11 and 12. It should be noted that these are only selective summaries of two quite detailed policies. It is important to review the policies in their entirety to understand them fully.

BOX 11

WORLD BANK OPERATIONAL POLICY ON INVOLUNTARY RESETTLEMENT (OP 4.12)

Selected features of the World Bank's policy are listed below. The policy itself is detailed and should be reviewed in its entirety to understand it fully.

- **Involuntary resettlement avoided or minimized:** Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
- **Sharing in project benefits:** Where it is not feasible to avoid resettlement, steps should be taken to enable displaced persons to share in project benefits.
- **Restoring or improving livelihoods:** Displaced persons should be assisted in efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- **Consultation:** Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programmes.
- **Impacts covered:** The policy covers impacts including those associated with the acquisition of land (caused by the relocation or loss of shelter, loss of assets or access to assets, loss of income or means of livelihood), as well as impacts on livelihoods from restrictions on access to parks and protected areas.
- **Vulnerable groups:** Particular attention should be paid to the needs of vulnerable groups among those displaced, especially the landless, elderly, women, children, indigenous peoples and ethnic minorities.
- **Indigenous peoples:** Physical displacement of indigenous peoples may have significant adverse impacts on their identity and cultural survival, so all viable alternatives to avoiding such displacement should be explored. Where it is unavoidable, preference is given to land based resettlement strategies compatible with cultural preferences and prepared in consultation with such groups.
- **Timing:** Possession of land and related assets may take place only after compensation



has been paid and, where applicable, resettlement sites and moving allowances have been provided.

- Land based resettlement: Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land based. The productive potential, locational advantages and other aspects of the replacement land should be at least equivalent to the land taken. If land based options are not the preferred option of displaced people, or if sufficient alternative land is not available, non-land based strategies can be used combining financial compensation for the land and assets and employment opportunities.
- Financial compensation: Financial compensation may be appropriate where there are active markets for land, housing and labour, and land and housing are sufficiently available, or where livelihoods are not land based. Financial compensation levels should be sufficient to replace lost land and other assets at full replacement cost.
- Eligibility: Persons eligible for compensation include those with formal legal rights to land (including customary rights recognized under laws of the country) as well as those without formal rights but with legitimate claims to land or assets. Those who have no recognizable rights or claims to land are entitled to resettlement assistance and compensation for non-land assets. Encroachers who enter the area after a certain date are not entitled to compensation.

BOX 12

INTER-AMERICAN DEVELOPMENT BANK POLICY ON INVOLUNTARY RESETTLEMENT

Selected features of the Inter-American Development Bank's policy are listed below. The policy itself is detailed and should be reviewed in its entirety to understand it fully.

- Physical displacement avoided or minimized: Disruption of the livelihood of people living in a project's area of influence should be minimized, by avoiding or minimizing the need for physical displacement, ensuring equitable treatment of displaced people and where feasible, ensuring that displaced people share in the benefits of the project.
- Fair and adequate compensation: Affected people are entitled to fair and adequate compensation and rehabilitation. This means that compensation and rehabilitation are sufficient to ensure, in the shortest possible period of time, the resettled and host populations will: (i) achieve a minimum standard of living and access to land, natural

resources and services (such as potable water, sanitation, community infrastructure and land titling) at least equivalent to pre-resettlement levels; (ii) recover all losses caused by transitional hardships; (iii) experience as little disruption as possible to their social networks, employment and access to natural resources and public facilities; and (iv) have access to opportunities for social and economic development.

- Replacement value: Compensation and rehabilitation options must provide a fair replacement value for assets lost, and the necessary means to restore subsistence and income, to reconstruct the social networks that support production, services and mutual assistance, and to compensate for transitional hardships.
- Intangible assets: The compensation and rehabilitation package must take adequate account of intangible assets, especially non-monetary social and cultural assets and, particularly in the case of rural populations, of customary rights to land and natural resources.
- Housing and services. Housing and service options, when included, will be appropriate for the social and cultural context and will, at the very least, meet minimum standards of shelter and access to basic services, regardless of conditions prior to resettlement.
- Minorities and indigenous peoples: Displacement of indigenous communities or other low income ethnic minorities will be supported only if resettlement results in direct benefits relative to their prior situation; customary rights are fully recognized and compensated; and compensation options include land based resettlement; and affected people have given their informed consent.

4.50 Such policies and guidelines are effective in internationally financed projects but they are not a substitute for national legislation. Countries should prepare their own resettlement policies that promote fairness, justice and equitable compensation. Legislation should specify the circumstances and procedures through which claimants may select resettlement or financial compensation.

TAKING POSSESSION OF THE LAND

4.51 A project can face serious financial consequences if the acquiring agency cannot take possession of the land at the necessary time. As a result, it is common for legislation to contain provisions to allow for the possession of the land even without the cooperation of affected owners and occupants.

- 4.52 In many countries, the acquiring agency may take possession of the land when it has paid all or some of the amount agreed as compensation. The land is then vested in the government free from all encumbrances. In some countries, however, the land does not automatically vest to the government; instead, a judicial body must make an official order of possession and extinguish all rights relating to the land before it is formally transferred.
- 4.53 The acquiring agency should be able to enter the land on a specific date, as required by the project's schedule. However, people may face hardship and loss if they are not given enough time to peacefully and carefully vacate. Legislation should allow owners and occupants a reasonable time to vacate their land. Various time limits have been set by different countries but a common period is 60 to 90 days after the compensation has been approved or awarded. Special consideration may be given where people derive their livelihoods from agriculture: possession should be timed with the agricultural cycles if possible to ensure that the year's crops have been harvested. This will help affected owners and occupants to recover some of their investment in the land before being displaced.

5. Appeals

THE NEED FOR OPPORTUNITIES TO APPEAL

- 5.1 Legislation should provide opportunities for owners and occupants to appeal against the compulsory acquisition of their land. Procedures to appeal protect the rights of affected people. At the same time, governments have an interest in providing effective procedures: a belief that the appeals process is legitimate will encourage people not to resort to other forms of protest that could lead to violence and even loss of life.

- 5.2 Unless care is taken, many obstacles can prevent people from appealing against the actions of government. The appeals process may be expensive, time-consuming, in language that claimants can not speak, or technically inaccessible and overwhelming. If the hearing is not held locally it may be impossible for poorer people to travel to the review body. A high level of technical expertise may be needed to counter the claims of the acquiring agency and people may not have the technical knowledge to argue their cases effectively. They may risk costs being awarded against them if they lose, or the need for immediate compensation to pay for settlement elsewhere may force them to accept what the acquiring agency has offered. To prevent such problems arising, legislation should ensure that the appeals procedures are comprehensible and simple. It should define when an appeal can be made. Good practice is for an appeal to be allowed only when an agreement cannot be reached in any other manner, e.g. only when negotiations have failed.

- 5.3 While procedural aspects of the appeals process vary widely, common practice is for regulations to define which bodies will hear and rule on appeals; the time limits for bringing an appeal; what kinds of evidence can be admitted (e.g. whether only formal rules of evidence are followed); and which party is allocated the burden of proof. Appeals are usually required to be in writing, but such rules may limit objections to owners and occupants who are literate or have access to legal assistance. Consideration should be given to relaxing such rules to allow a wider range of affected people to appeal.

- 5.4 Because the government has much greater access to resources and information, it typically has the burden of proof during an appeal, and pays the associated costs. This is particularly important when there is an appeal against the purpose of the acquisition, abuses of power, or procedural injustice. If reasonable costs are not covered by the government, fear of having to pay all costs associated with an appeal may deter people from asserting their rights of appeal.

REASONS FOR APPEALS

- 5.5 Legislation should establish the situations when a person can appeal. There are generally three types of appeals: against the purpose of the project and the designation of land to be taken; against the procedures used to implement compulsory acquisition; and against the compensation value.
- 5.6 **Appeals against the purpose of the project.** An objection to the purpose of the project is a challenge that the project does not serve any of the public purposes for which compulsorily acquisition is allowed. Appeals against the purpose of the project also include challenges by people who believe that their specific parcels are not needed for the project or that the project would be best located elsewhere. Because these appeals go to the heart of the project, there are usually early time limits for when such challenges must be filed. These time limits are often linked to the date of first publication of notice to affected people. There also tend to be limits on who can appeal; often only people whose land is being compulsorily acquired can object to the proposed plan.
- 5.7 Once the government has identified land as being necessary for a project, it is often difficult for the affected owner or occupant to prove that the acquisition is not essential. It is often easier for people to challenge the purpose of projects in countries that have clearly defined purposes for which land can be compulsorily acquired, as the purpose identified by the acquiring agency has to be on the list. Even in countries that have provisions allowing for unspecified public goals, the identified purposes provide a measure of restraint as the purpose of the project should be evaluated against them. A radical departure from the list may allow the review body to declare that the purpose of the project is not permissible by law. In such instances, either the law must be changed to add that public purpose or the project must be stopped.

- 5.8 **Appeals against the procedures.** Examples of improper procedure include improper notice (e.g. the acquisition taking place without an owner being informed of the process, or failure to include all required information in a notice of compulsory acquisition); timing (e.g. unreasonable haste in pursuing acquisition); improper processing of compensation claims (e.g. bad faith actions taken by the acquiring agency when negotiating over compensation); delay in payment or payment to the wrong person; and incorrect procedures for gaining entry to the land or taking possession of it. Claims based on such errors are often the only means for owners and occupants to protect their rights against corruption.
- 5.9 Courts are often more willing to tackle procedural appeals than appeals related to the purpose. If a person wins an appeal against the procedures, the acquiring agency may have to start the process over again, either with the person who appealed or with the project as a whole. Because these appeals can greatly impede the timing of a project, the acquiring agency should avoid them by conducting the process in a fair and transparent manner, and according to the law.
- 5.10 **Appeals against the compensation offered.** The most common appeals are about compensation. They are generally based on the perception of people that the compensation offered to them for their land is inadequate. Those who appeal do not challenge the constitutional power of government to acquire their land for the project, but they simply seek more money or other forms of compensation. Appeals may claim that incorrect principles of valuation have been used, or that the compensation offered is unjust and should be recalculated.

MECHANISMS FOR REVIEWING THE APPEAL

- 5.11 Owners and occupants should have the right to appeal to a body that is independent of the acquiring agency. The review of appeals should be fair, inexpensive, easily accessible and prompt. Two main types of review procedures exist: procedures in civil law countries tend towards juridical procedures, while administrative procedures tend to be used in countries with common law systems. However, many countries have a combination of administrative and judicial review mechanisms.

- 5.12 In some countries, appeals against the compensation offered are reviewed by a court that deals with civil matters. Typically, a judge appoints experts who value the land to be acquired and the judge then approves the decision of the experts. An approach used in other countries is the creation of specialized commissions to review appeals. Some commissions have rotating members of relevant professions (valuers, lawyers, etc.) who are appointed by senior officials or judges. Other commissions comprise elected experts whose sole function is to adjudicate compensation disputes. A third approach used in yet other countries is for each disputing party to select a valuer to sit on an appeals committee; these two valuers then jointly select a third valuer. The three valuers together determine the appropriate amount of compensation. Regardless of the approach followed, the body of casework built up over time provides a valuable resource to facilitate future negotiations and to guide decisions in subsequent appeals.
- 5.13 To reduce costs and improve access to the appeals process, legislation should require the acquiring agency to establish alternative dispute resolution mechanisms when appropriate. Such mechanisms should be flexible, comprehensive, inexpensive, appropriately informal, and physically and technically accessible. It may be possible to use or adapt existing dispute resolution mechanisms for disputes over compensation.
- 5.14 Most countries have an extensive body of legislation that protects the right of parties to a legal action to appeal decisions to higher courts for further review. Legislation should allow for the decisions of commissions and committees to be appealed to the civil courts for review.

6. Advocacy and assistance

- 6.1 All affected owners and occupants may be at a disadvantage when their land is being compulsorily acquired, but the burden is particularly hard on the poor. They may not know their rights or how to safeguard them during negotiations with experienced officials who are supported with all the powers and resources of government. In addition, it is often the land of the poorest and most vulnerable that is compulsorily acquired for projects. The value of their land is usually low compared with land owned by others, making it less costly to acquire and thereby lowering the total costs of the project. It is also easier to locate an unpopular public works project in a poor area because the residents lack the political influence and other resources to successfully block the choice of location. As well, local governments may have an interest in redeveloping the poorest areas in order to increase the tax-base. Such redevelopment usually requires the removal of residents.
- 6.2 People whose land is being compulsorily acquired should be given help to understand every aspect of the process. They may need assistance contesting the decisions and actions of the acquiring agency, getting second opinions on the value of their land, and ensuring that compensation is paid. The Habitat Agenda, reaffirmed by the Istanbul Declaration on Human Settlements (1996), asserts that governments should pro-actively provide advocacy assistance to affected individuals. It states that governments should provide access to effective judicial and administrative channels for affected individuals and groups so they can challenge or seek redress from decisions and actions that are socially and environmentally harmful or violate human rights; broaden the procedural right of individuals and civil society organizations to take legal action on behalf of affected communities or groups that do not have the resources or skills to take action themselves; and facilitate access to legal services by people living in poverty and other low-income groups through the provision of facilities as legal aid and free legal advice centres (paragraph 182 (k), (l), (o)).
- 6.3 Legislation can help to address the imbalance of power by providing for mechanisms to assist people to become better advocates for themselves. Laws

could require that the acquiring agency provide affected people with access to lawyers, valuers and other relevant professionals to help them understand the process and prepare their responses. Alternatively, people may be allowed to hire their own valuers and lawyers, with the cost of their fees being added to their overall compensation award.

- 6.4 Non-governmental organizations (NGOs) can play an advocacy role throughout the process. They can educate people about their rights, advocate on their behalf, and teach them negotiation skills to argue for equitable compensation. NGOs can assist people to organize themselves to contest the purpose of the acquisition; to fight for transparency and due process during the procedures; or to request higher compensation standards. They can be advocates for the vulnerable, including women, within the affected population and help them to protect their rights. NGOs can play the role of a watchdog, monitoring the acquiring agency's actions to ensure that it is following the legally-prescribed processes in a transparent and equitable manner. (See Box 13.)
- 6.5 The government has the primary responsibility for ensuring that affected owners and occupants do not suffer injustice as a result of compulsory acquisition. The acquiring agency should take measures to guarantee that people are given voice, power and protection of due process throughout the process. While doing so may seem costly in the short term, the long term effects may be a quicker, more efficient acquisition process, fewer appeals, and fewer impoverished people dependant on state support.

BOX 13

THE ROLE OF NON-GOVERNMENTAL ORGANIZATION AS ADVOCATES

NGOs can support affected owners and occupants by taking action to:

- Conduct surveys to determine community needs, undertake impact assessments and assist in data collection.
- Implement an education campaign to train people on the acquisition process, their rights in the process, how to contest unfair procedures, and how to dispute compensation determinations.
- Organize public meetings where community members can educate each other, voice their concerns, share their experiences and identify potential strategies.
- Help to develop effective communication procedures between the acquiring agency and affected owners and occupants.
- Help to identify viable, cost-effective alternatives to the project that avoid or minimize disruption to the community.
- Assist vulnerable people, including women, to make effective compensation claims.
- Implement mechanisms to redress grievances and resolve conflicts.
- Assist people to effectively advocate for themselves, or act as their advocates, in the appeals process or other conflict resolution procedures.
- Assist people to develop alternative options for compensation, relocation and the restoration of their livelihoods.

7. Final comments

- 7.1 When governments compulsorily acquire land, they have an obligation to ensure that the process is completed in an equitable and transparent manner. People should not be impoverished because their land was acquired by government. Equitable and transparent procedures are also needed for economic growth: compulsory acquisition will destabilize the economy if investors perceive that their rights to land are not adequately protected by the government.
- 7.2 Legislation to establish the government's power to compulsorily acquire land should be written clearly and with precision. It should ensure that people know what their rights are throughout the process, and that the decisions and actions of government officials are well structured and controlled. Unclear laws and regulations can lead to poorly-implemented procedures, inequitable compensation, reduced tenure security and even conflict. They may erode public faith in governance and the rule of law, and increase project costs.
- 7.3 To promote social and economic growth, governments should review and revise the laws and regulations that govern the compulsory acquisition of land. Legal frameworks should be aligned with other legislation that protects land rights, and specifically those that protect the vulnerable, including women and indigenous people. Legislation should include principles of due process and other protections for affected owners and occupants (see Box 14).

BOX 14

SUMMARY OF RECOMMENDATIONS FOR COMPULSORY ACQUISITION PROCEDURES

Planning:

- An impact assessment should evaluate the environmental, social and economic impacts of the project.
- The strategy for planning and implementing the project should be participatory, involving affected owners, occupants and other stakeholders.



- The plan for the project should be on public display, providing an opportunity for people to review and submit objections.
- Relevant data should be collected on land rights for the parcels to be acquired.
- Good faith attempts to acquire the necessary land through voluntary sale and purchase should be made before using the power of compulsory acquisition.

Publication of notice:

- The notice should be widely published and served to all affected individuals, erring on the side of over-inclusiveness.
- The notice should be published in local newspapers in all local languages or dialects, communicated orally at community meetings, over the radio and in other ways appropriate to the local population.
- The notice should include a comprehensible map of the land to be acquired.
- The notice should describe the purpose of the acquisition, the timing of the process and a clear explanation of procedures and time limits.
- The notice should explain the rights of people in the process, and provide information on where to get help.

Public hearing:

- Affected owners and occupants should be given an opportunity to be heard and to have their concerns acknowledged and addressed by the acquiring agency.

Valuation and compensation:

- People should be compensated in such a way that they are no worse off than they were before the compulsory acquisition process started.
- Regulations should be specific enough to provide clear valuation guidelines, but flexible enough to allow room to determine equivalent compensation in all situations.
- Legislation should define a date for the valuation.
- Valuation and compensation should be based on both *de facto* and *de jure* rights. Compensation should be calculated on the basis of what would have occurred had the land not been acquired.
- The valuation and compensation should not reflect changes in the value of the land arising solely from the project itself.
- If market value forms the basis of compensation, laws must clearly state how market value will be assessed and determined.



- People should be compensated for the loss of any land, and also for all improvements to the land and crops, trees, and other natural resources.
- Where communities lose access to sustainable resources such as forests, waterways or grazing lands, they should be provided with replacements in kind or compensated for per capita yearly use.
- People should be compensated for disturbances and disruption, including removal expenses and other costs, which result from the compulsory acquisition process.
- People should be compensated for the costs of any disturbance, disruption, or damage caused by the project on their remaining land.
- Vulnerable groups should be provided with training or financial support if the acquisition results in the loss of their livelihoods.
- The acquiring agency should take steps to ensure that there are a sufficient number of independent valuers and advocates to help people to assess their compensation claims.
- People should receive full payment of the agreed upon compensation sum in a timely manner.

Possession of the land by government:

- Possession should not be taken unless at least a substantial percentage of the agreed upon compensation offer has been paid. If the remainder is unpaid, interest on the remainder should accrue from the date of possession.
- People should be given a reasonable time to vacate, while respecting the need to keep to the project schedule.
- Farmers should be allowed time to harvest that year's crops, or receive full compensation for the crops.
- A clear time-limit should be placed to ensure that that the acquisition process is not unduly long.

Opportunity for appeal:

- People should have prompt, unrestricted rights to appeal to an independent body, including for the delay of payment without good cause.
- Hearings should take place at a time and place and in a language convenient to people.
- Governments should provide assistance to people to enable them to use the appeal procedures to protect their rights.



- The court or reviewing body should adjudicate matters in a public and transparent manner.
- Procedures should be conducted at low or no cost to people. Only in exceptional circumstances should costs be awarded against them.
- Proceedings should be conducted in a manner easily understandable and accessible to people. The procedures should not be intimidating to people, and should allow them to present their own cases.

This guide on *Compulsory Purchase and Compensation* is written for people who work in land administration and all those with an interest in land, land tenure and their governance. Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. This power is often necessary for social and economic development and the protection of the natural environment. Compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. Compulsory acquisition is inherently disruptive. Even when compensation is generous and procedures are generally fair and efficient, the displacement of people from established homes, businesses and communities will still entail significant human costs. Where the process is designed or implemented poorly, the economic, social and political costs may be enormous. Attention to the procedures of compulsory acquisition is critical if a government's exercise of compulsory acquisition is to be efficient, fair and legitimate.

This guide explains what compulsory acquisition and compensation are, and what constitutes good practice in this area. It examines the consequences of poor legislation, procedures and implementation in compulsory purchase and compensation and looks at how they can be improved in general, as well as in some specific areas in which compulsory purchase and compensation can be problematic. It draws out the lessons learned from the extensive experience and field programmes of FAO and the World Bank, and from parallel work in urban areas. The focus of the guide is broad, covering the widest range of possible situations. The guide is likely to be of most use in countries that are seeking to understand good practice in this area and to improve their own legislation, procedures and implementation in compulsory purchase and compensation in the interests of society as a whole.

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