

International Journal of Social Science and Humanities Research-MIYR

ISSN(print): 2788-9092 ISSN(Online): 2788-9106

Volume 3. Issue 4. 2023.12

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

Yadamdorj Unurbayan

Law School of the National University of Mongolia



A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

Yadamdorj Unurbayan^{1*}

Doctoral Candidate, Law School of the National University of Mongolia

Unurbayan0821@gmail.com

Abstract - One of the most important issues in the process of implementing urban development and urban planning and redeveloping the city in Mongolia are about land. Although the basic legal principles of land ownership for Mongolian citizens are established and protected by the Constitution of Mongolia, these principles are not well reflected in other laws, such as the Land Law, Civil Law, and the Land on Land Ownership for Mongolian Citizens. In the context of this article, Monitor and analyzing the implementation of the above legislation, revealing the weaknesses and inconsistencies of the legal regulation of land expropriation, and comparing the good practices of some foreign countries, is to give a correct assessment from the point of view of making an independent law.

Keywords: Land acquisition, compensation, social necessity, cost of land acquisition.

1. INTRODUCTION

The right to impose obligations on the owner of the land in relation to the land owned by the citizen, which opened the possibility to limit the inalienable right of property rights[1]. As a result of the regulation of private land by the government, there are cases where the price of land increases or decreases[2]. For example, the redevelopment of Ger neighborhood can be mentioned. From the moment a citizen of Mongolia owns land, all other parties, including the state, are obliged to respect the owner's property rights and not to encroach on his private property[3]. Article 5, 2 of the Constitution of Mongolia states that "the state shall recognize any form of public or private property and protect the rights of the owner by law" [4]. Due to the fact that the main way of life of Mongolians

Received: 2023.11.13

Reviewed: 2023.11.29

Accepted: 2023.12.30

* Corresponding Author: Yadamdorj Unurbayan

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

was pastoralism, there was no private property in the history of Mongolia until 1992. Even in the case of Mongolian citizens, the fact that some restrictions are legalized in the Constitution, compared to the full meaning of property rights, reflects the tradition of land ownership in Mongolia[6]. Honored lawyer G. Sovd: a/ First of all, a land owner has no right to sell, gift, or mortgage his land to a foreign citizen or a person who is not a citizen of any country, b/ Citizens cannot arbitrarily let others own or use their land without the permission of the state authority. , c/ citizens do not own pastures, public domain or special needs land, d/ citizens do not own resources on the subsoil or soil, forests, water resources, and wildlife, according to the Commentary of the Constitution of Mongolia[7]. Comparing the studies of the above scholars on whether the Mongols personally owned land in history, I agree that they did not personally own land.

Ownership rights may be limited only on the grounds provided by law. The provision of the Constitution, "Illegal confiscation and mobilization of private property is prohibited", shows that property rights are protected within the framework of the Constitution. This protection is due to the fact that property rights guarantee the enjoyment of other human rights and freedoms[8]. By creating an individual protection zone, the property rights are guaranteed by the Constitution because it creates a space for the individual against the arbitrary behavior of the state, and creates an opportunity to enjoy other rights and freedoms[9]. According to the 1992 Constitution, "The state can impose obligations related to the land on the owner of the land, replace or reclaim the land with compensation based on the special needs of the state, and confiscate the land if it is used contrary to the interests of the population's health, nature conservation, or national security[10]." made it possible to mobilize the land. Also, in the event that land organization, planning, and cadastral mapping are not completed or new unavoidable circumstances are revealed, it is understood that the above regulations were made to protect the land ownership rights of citizens[11]. The act of replacing or recapturing the land based on the special needs of the state is a special case of restricting the private rights of the owner from the point of view of common interests, and it is proved by all parties that it cannot be solved otherwise, and most importantly, it is implemented only in the condition that the land owner accepts it. Reimbursement compensation is a material form of retribution and forgiveness for encroachment on the land ownership rights of citizens by the state organization, and compensatory compensation should be preliminary and fair[12]. In the future, it is desirable to create a legal framework for the fair implementation of owner rights and obligations.

According to the law on land ownership for citizens of Mongolia, defense, security, scientific experiments, construction of roads, networks, and buildings are considered special needs, and natural disasters, accidents, and special events are considered essential needs . However, it is possible to acquire land of any category from the unified land fund for special state needs, such as state-protected land, state border land, state defense and security land, inter-provincial otar pastures, etc[13]. According to Article 16, Part 3 of the Constitution of Mongolia, "Citizens have the right to fairly acquire, possess, own, and inherit movable and immovable property[14]. legal confiscation and mobilization of private property It is prohibited" clearly reflects the legal guarantee respecting private property. At the same time, the article states, "If the state and its authorized organizations mobilize private property based on the imperative needs of society, they shall pay compensation [15]." In other words, the state and its authorized bodies can mobilize private property, especially civilian land, with compensation based on the necessary needs of the society. This compensation shall be provided in

advance and shall be in accordance with the principles of fairness[16]. The civil property department is responsible for the mobilization of the property of this article. **Urgent needs** are social needs that need to be met immediately. For example, the project implementer can transfer the land and immovable property in the selected area by mutual agreement with the owner and owner, on the basis of signing a contract, by exchanging land for land, exchanging land for housing, selling or buying land. prescribed by law.

The rights of the People's Representatives' Meeting of the Parliament, the Government, the Province, the Capital, the Sum, the District, the Team, and the Committee, and the Governor are defined by the Law on Land Ownership to the Citizens of Mongolia. In 2002, it was stipulated that the citizens of Mongolia should own land in two areas: for family use and for agricultural purposes, in provinces, capitals, sums, districts and villages. The state administrative organization in charge of land issues will coordinate land policy issues and register the location, purpose, size, and boundaries of land to be owned by citizens for each subdistrict and district. Article 1, Section 2 of the Constitution states that the rule of law is the basic principle of state activity[17]. Dr. D. Sugar Property rights protection laws have not yet been fully developed, and the inviolability of human rights has not been fully appreciated and accepted. In addition to the lack of such a mentality among the citizens, as well as the lack of legal culture of all levels of government organizations and officials responsible for developing legal policies and ideologies, disputes about the violation of property rights do not stop in the Constitutional Court, Civil and Administrative Courts. shows.

1.1 Legal arrangements for land acquisition and protection of land owners' rights

Replacement or redemption of civil property land based on the special needs of the state /Eminent domain/ It is common for modern states to retain the right to reclaim privately owned land by paying compensation in the public interest. Gray, (2013) Without the implementation of this right by the state, it becomes impossible to protect public goals and interests. Dr. N. Lundendorge said that "the legal process of mobilizing private property based on the imperative needs of society in the world should not only be about compensation, but it should be fair compensation[18]. "Fair compensation and due process of law must be provided for the forced acquisition of private property. As of today, when Mongolia frees civilian-owned land, according to Article 9.1.4 of the Law on Land Ownership of Mongolian Citizens, the Government shall make a decision to replace or reclaim civilian-owned land in an appropriate way to cover the special needs of the state; 18.1.3 of the Land Law provides compensation in case of replacement or repossession of land in connection with taking it for special state use respectively. In the 3 cases specified in Article 32.1 of the Law on Land Ownership of Mongolian Citizens, land owned by citizens shall be replaced or repossessed by the decision of the government with compensation. It includes:

1. Ensuring national defense and security;
2. Establishment of scientific and technological challenges and experiments, as well as permanent observation sites for environmental and weather conditions;
3. It was instructed to build national roads, networks, and buildings;

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

Thus, when taking civilian land for special needs of the state, the purpose and reason for the mandatory replacement or repossession of the land must be specified, and the state administrative body in charge of land issues must agree with the land owner in advance at least one year before the decision to replace or repossess the land in a way that compensates for it. It is legalized in Articles 32.5. Thus, the following issues will be mutually agreed upon during preliminary negotiations with land ownership. It includes:

- The price of the land ;
- the value of real estate on the site;
- the amount of damage to the owner due to the replacement or recapture of the funds and land spent by the owner on the land based on the special needs of the state;
- the amount of land to be taken for special state use;
- the location, size, state, and quality of land to be exchanged for land taken for special state needs;
- terms and conditions of land release;
- obligations and responsibilities of the parties in connection with land release;
- the amount of compensation, the procedure and period for its payment;

Compensation for civilian land will be issued from the state budget, and if the parties do not negotiate and reach an agreement, the dispute will be decided by the court in accordance with Article 32.7 of the Law on Land Ownership of Mongolian Citizens [19].

This does not mean that the government will agree with the owner of the property on the return of the land, but whether the opportunity for consultation and legal assistance is provided, the principle of notifying the local community, consulting with them, and being open and transparent is not included, and it seems that the law has given a period of time to comply with the law in advance. Provisions to ensure that the citizens of that locality can discuss the same level of information, the possibility of losing, and the possibility of discussing changes in the environment have not been legalized [20].

The land owner has the following rights in the land affected by the special needs of the state.

- In accordance with the agreement with the authority of the organization in charge of land affairs, demand full payment of compensation for the land affected due to the special needs of the state, demand appropriate measures to compensate them for the damage caused to them in accordance with the legal grounds and procedures specified in the law, and require the compensation of the funds spent on the land by the owner. and receive compensation equal to the market value of the real estate in the land owned by the citizen,
- If the government's decision to acquire civilian-owned land with compensation for special needs of the state contradicts the law or other legal acts, or violates the rights of the land owner, the land owner has the right to appeal to the court that the decision is invalid.
- In the case of replacement or repossession of the yard of a private house or apartment, it is legal to release it only between May 15th and September 15th [21].

Necessary social needs – This concept reflected in the Constitution is only mentioned in Article 52 1.1 of the Law on Patents from the laws in force in Mongolia "if necessary for social necessity such as national security, defense, human and animal health, food supply" license holders can use it on the condition that they pay a compulsory license. There is a need to reach a common understanding among government organizations, government employees, citizens, and business organizations to determine the boundaries between either the essential needs of the society or the special needs of the state. As a result it is considered it has been essential needs of the society, as well as needs special needs of the state was added to the category of special needs.

Seizure of civilian-owned land – specified in the 34th article of the Law on Land Ownership of Mongolian Citizens, civilian-owned land may be confiscated if a disaster, dangerous phenomenon, or accident has occurred that causes significant damage to human health, loss of life, loss of livestock, property, or the environment [22]. it is legalized that in the event of a danger, civilian property can be temporarily mobilized by the decision of the governor of the province, capital, district, or sum for the purposes of disaster prevention in accordance with the procedures specified in the law. Equally, the owner of the land will be fully compensated for the damage caused to the citizen due to the seizure. In addition, in the event that it is impossible to return the mobilized land, the owners shall compensate the value and damages of the land at the current market rate, or compensate for the damages incurred by owning another land that is not worse in condition and quality than the mobilized land. The dispute will be decided by the court. In the regulation of land acquisition, Article 34.1 of the Law on Land Ownership of Mongolian Citizens stipulates the temporary acquisition of land "... in accordance with the procedure prescribed by law...", but the concept of "procedure prescribed by law" is not regulated by law [23].

Confiscation of civilian-owned land - According to Article 35 of the Law on Land Ownership of Mongolian Citizens, a land owner or a person who owns and uses his land in accordance with Article 29 of this Law may have his land confiscated by court procedure if he violates the provisions of Article 28 of this Law. Although the grounds for confiscation of civil-owned land are sufficiently established in the law, there is no detailed regulation as to which civil or administrative specialized court will decide the case. In addition, it is necessary to pay attention to whether the confiscation of civilian-owned land due to the violation of the law by a person who owns and uses the land owned by others is compatible with the principle of justice [24].

Article 27 of the Law on Urban Development of 2008, in case of forced eviction of a citizen in accordance with the approved urban development plan, the issue of evaluating his land, other immovable property and the income that he would have earned from the business activities he was engaged in during that time, is specifically regulated by law, and forced eviction, as well as, in the event that the government buys the land owned by the citizen based on agreement, the citizen will be reimbursed for the transportation and other related expenses incurred during the relocation. Therefore, in order not to disrupt the civil land ownership rights, it is correct to calculate compensation for land and real estate valuation, as well as business activity profit and loss, real estate demolition and relocation costs, and rent for living[25].

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

In relation to land confiscation, specified in Article 6, Section 3 of the Constitution of Mongolia states that "Citizens are prohibited from selling, trading, gifting, or mortgaging their private land to a foreigner or stateless person, as well as allowing others to own or use it without the permission of the state authority." It is quite difficult to understand one line. In understanding this provision.

First, if the word "Others" is read as a foreigner or a stateless person, it means that "Citizens are prohibited from transferring their private property to a foreigner or stateless person by selling, trading, gifting, or mortgaging it, as well as letting it be owned or used by others without the permission of the state authority." However, it can be understood that it can be owned and used by a foreigner or stateless person if authorized by the state authority. Another theoretical basis for understanding "others" as including only foreign citizens and stateless persons, not including citizens of Mongolia, is that the right to property is an inalienable and natural human right, which cannot be limited by any permission. It is considered from the point of view that the provision that violates the content of property rights should not be in the Constitution.

Second, if the word "others" is read as citizens of Mongolia, it means that "Citizens may not transfer their private property to foreigners or stateless persons by selling, trading, gifting, or pledging. In addition, it will be understood in the sense that citizens will obtain the permission of the authorized state organization when they let others/citizens of their own country own or use their private land. In accordance with this, Article 29, 1 of the Law on Land Ownership of Mongolia's Citizens states that "Citizens may own and use their land for their own purpose and for a certain period of time with the permission of the Governor of Sum and District" and submit a written request to the Governor of Sum. The governor shall decide on the request within 15 days[26]. According to Section 1.2 of Article 28 of the Law, "It is prohibited to let others own and use the land without the permission specified in Section 29.1 of this Law", and then in Section 35.1 of Article 35 on confiscation of civilian-owned land: A citizen who owns land or his land in accordance with Section 29 of this Law. If the person who owns and uses according to Article 28 of this Law violates Article 28 of this Law, his land may be confiscated by court procedure[27]. In Section 1.2 of Article 3 of this Law, "land ownership to citizens" means the transfer of land to citizens in accordance with the amount, conditions, requirements, procedures, and conditions specified in this law from the land specified in the Constitution of Mongolia that can be owned by citizens of Mongolia[28]. In other words, while the scope of this law should be limited only to the transfer of land to the ownership of citizens, it is necessary to correct the gross violation of the principle of inviolability of property, which is the basic principle of civil law[29]. For example, a Mongolian citizen who is a property owner has the right to exercise his ownership rights when disposing of the land he owns among himself, but obtaining permission from the state authority to allow others to own and use it is meaningless and restricts his ownership rights. Article 6.3 of the Constitution if it is considered that there is a provision to obtain permission to prevent ownership by persons or stateless persons, there is a legal logic that foreign citizens, legal persons, and stateless persons may own land if authorized by the state authority. However, according to Section 5 of Article 6 of the Constitution of Mongolia, "The state can use land to foreign citizens, legal entities, and stateless persons for a fee, for a period of time, and under other conditions and procedures prescribed by law." In this way, it was necessary to limit the content of the

ownership rights of Mongolian citizens in order to regulate the possibility of foreigners and stateless persons owning their property.

Therefore, if Article 6, 3 of the Constitution of Mongolia is amended to read, "Citizens are prohibited from transferring their private land to the ownership or ownership of foreigners or stateless persons by selling, trading, gifting, or mortgaging," the Land Law and the laws on land ownership for Mongolian citizens will be amended. There may be a need to repeal the provisions that limit the rights of citizens.

1.2 Mongolia's Land draft law

In 2022, the Government of Mongolia submitted draft law on land acquisition for essential social needs to the National Assembly that will implement in its activities in accordance with the urban development and land management plans. It is determined that essential needs of society based on a real situation, and ensure public interests to reduce negative consequences regarding to land acquisition by reaching an optimal solution for making negotiation with land acquisition cost that hearing was reflecting cases of land acquisition[29]. It is said that 19 purposes of land acquisition would be specified herein and its essential needs of the society. These include : 1) Pre-school education, 2) General education, 3) Primary health care and services, 4) Social welfare services, 5) Public libraries, 6) Cultural institutions, 7) Sports facilities, 8) Electricity . law enforcement, 16) Garbage removal, storage and disposal, 17) Landscaping, gardening, footpaths and bicycle paths, 18) Public transport services, 19) Gas and oil pipelines[30]. Therefore, There is no regulation on how to understand what and what needs in essential social needs, how to free up land, and how to calculate compensatory in case an agreement does not reach and a contract is not concluded, we needs to create a proper legal framework for forced land acquisition activities is that will be public interest wherever affect citizens and enterprises. Specified in 33 article of the draft that land owner has not released land within 30 days after receiving the notification, the request letter would be sent from authorized governor of the province or capital or competent body for a claim that be eventually transferred to competent court.

II. Legal regulation of foreign countries to acquire land as compensation

2.1. Relevant legislation of Germany, China, Taiwan and Kazakhstan

Researchers agree that the construction of the aqueduct, which ran in a straight line from one end of the ancient Roman Empire to the other, or the Roman aqueduct, was done by mobilizing private property and land[30]. In Article 17 of the "Universal Declaration of Human Rights" approved by the United Nations in 1948: Everyone has the right to own property individually or jointly with others. The right of civil property ownership has been declared internationally that no one's property can be

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

arbitrarily confiscated. In international laws, the rights of ownership of immovable and movable property are defined separately, and in laws, court practice, and teachings on immovable property, the principle of ownership of immovable property is governed by the law of the place where the property is located. The constitutions of some foreign countries include several types of regulations for the exchange or repossession of civilian-owned land, the imposition of obligations related to the land, and the confiscation of land . According to a United Nations study, in many developed countries with market economies, compensation standards for land acquisition are based on the fair market value of the land[31].

Germany. Article 14 of the Constitution: The right to property and inheritance is guaranteed. Property creates obligations, and property can be compulsorily confiscated for the public good. He said that the land can be transferred to public ownership based on the compensation framework and the law. Although the right to property is protected by the Constitution and guaranteed, the right to own land can be limited on the basis of the law, and property can be confiscated with compensation for the benefit of society. While protecting property rights, it is characterized by allowing restrictions on property rights for public interest. In Germany, there are three categories: essential public needs, important public needs, and public interests, and it is believed that certain rights and freedoms can be restricted only based on public needs. The Constitution stipulates that the right to own land should be protected by law and that land should be used for public good. For example, land ownership rights can be confiscated based on the needs of the state, and in this case, land is paid at the market price. According to German law, the state can seize privately owned land by issuing an administrative act. Transfer of land to state ownership is allowed only under the following conditions. It includes:

- Infrastructure facilities, roads, networks, energy,
- Public residential buildings, industrial facilities,
- It is stipulated that it will be taken over for the purpose of building social facilities.

In doing so, this work will be carried out in conditions where it is not possible to build the designated facility.

Expropriation of land in the Russian Federation for two types of purposes: for state use and for local administration, and is regulated by the "Law on Repossession of Exploited Land for Special Purposes" . The Land Law allows land to be given instead of money instead of confiscated land.

Republic of China. The owner has the right to possess, use, benefit from, and dispose of immovable and movable property according to the law, and any immovable property specified by law as state property... Organizations and individuals have no ownership rights. If communally owned land is seized in accordance with laws and regulations, the land compensation, resettlement subsidy, and other equipment on the land will be paid in full.

Let's take a look at the regulations in China's Land Management Law .
Article 44 . The conversion of agricultural land into construction land is subject to the approval of the State Council. The State Council or the state, autonomous region, and municipal administration

authorized by the State Council shall implement the conversion of arable land other than the main agricultural land into construction land.

Article 45. Expropriation of the collective land of peasants under any of the following circumstances is absolutely necessary in the public interest, so expropriation can be done under law.

(1) The land must be used for military or diplomatic purposes;

to use land for the construction of energy, road transport, water resources, communication, postal and other infrastructure organized and implemented by the government ;

(3) Science, technology, education, culture, health, sports, protection of ecological environment and resources, prevention of disasters, removal of harmful effects, protection of cultural monuments, comprehensive community services, social welfare, urban utilities, and especially It is necessary to use it in matters such as care ;

to use the land for the construction of housing projects with the purpose of resettlement and social protection for poverty alleviation organized and implemented by the government ;

Organizes and implements large areas at the provincial level with the permission of the people's government, and places where it is necessary to build buildings;

Other circumstances under which the collective ownership of farmers may be reclaimed in the public interest provided by law. Land use meets the standards set by the Ministry of Natural Resources .

Article 46. The permission of the State Council will be obtained for the following land repossession operations .

(1) Permanent primary cropland;

(2) Cultivation area other than permanent main cultivation area is more than 35 hectares;

(3) Other areas with an area of more than 70 hectares.

Other than those mentioned in the previous section, the State, Autonomous Region and the municipal government directly affiliated to it shall approve the land. In case of repossession of agricultural land, it is necessary to obtain a permit for re-use of agricultural land in accordance with Article 44 of this law. In this case, if the State Council approves the issue of changing agricultural land, the procedure for granting permission for land repossession shall not be considered separately; If the permission to change the agricultural land and the permission to reclaim the land are obtained together, the permission of the State, Autonomous Region and directly affiliated city government is required. If the issue of land repossession is a matter under the jurisdiction of the State Council, it shall be decided separately in accordance with paragraph 1 of this article.

Article 47. When the government takes back the land, it will be announced and implemented by the local government at the level of Sum, district after obtaining permission in accordance with the law.

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

- If the local government of Sum, district or higher level is going to apply for land repossession, it should conduct research on the current situation of the repossession area, conduct a social stability risk assessment, determine the scope, current state of the land, purpose of repossession, and compensation. To announce issues such as standards for granting, relocation methods, and social protection in the location of the area to the soon and village team with a period of at least 30 days, to the cooperative organizations of the rural area and their members, village committees and other interests. Listen to the opinions of others .
- If the majority of the members of the collective farm organization in the rural community whose land has been confiscated believe that the land reclamation compensation and resettlement project is not in accordance with the law, the local government of the county or higher level will organize a hearing, and in accordance with the law and the hearing, add to the project make changes.
- The owner and user of the confiscated land shall complete the registration of compensation along with the relevant certificates and evidence of the immovable property within the period specified in the advertisement. The people's administration of counties and higher localities shall organize the implementation work in the relevant department after calculating the related costs, collect the full amount, and sign a compensation agreement with the owner and user of the reclaimed land. If the relevant party is not interested in entering into the contract, it will be determined at the time of application to the redemption office
- After the relevant preliminary work is completed, local governments at the county or higher levels may apply for land reclamation.

Article 48. In order not to reduce the standard of living of farmers whose land was confiscated and to ensure their long-term livelihood fair and appropriate compensation will be provided.

- Within the scope of the reclaimed land , land compensation, relocation payments , rural residents' housing, other annexes behind the gas , and grain compensation shall be paid in full and on time in accordance with the law, and social insurance shall be paid to farmers whose land has been confiscated .
- The amount of land compensation and resettlement payment for reclaiming agricultural land shall be determined by the state, autonomous region, or directly affiliated city at the price of the relevant partial land. When setting this partial price, it shall take into account the purpose of land use, land resources, land yield, land location, land needs and demand, population and property status.
- Places other than the place of repossession, accessories of the place , The standard of grain compensation shall be set by the province , autonomous region, and directly subordinated municipal government. This includes providing housing compensation for rural communities, and respecting the wishes of rural communities in accordance with the principle of resettlement after improving their living conditions . payment; Reimbursement of costs related to relocation and temporary resettlement, and protection of the right to live and legal property rights of rural residents.

- The higher administration at the county level shall provide appropriate social protection systems such as pensions to farmers whose lands have been confiscated. Social insurance premiums for expropriated farmers are mainly used to compensate social insurance premiums for those who qualify for social insurance. It is stated that the rules of measures for collection, management and use of social insurance premiums of farmers whose lands have been confiscated will be established by the administration of provinces, autonomous regions, and directly affiliated municipalities.

In addition to insufficient compensation for land acquisition in China, the fact that compensated owners spend the compensation lavishly in the short term is another factor that puts them at risk of future poverty.

Kazakhstan Legal regulations related to the acquisition of land owned by citizens or other persons for state use

This type of relationship is regulated by the Law of Kazakhstan on Land, the Law on Construction of Private Housing, the Law on State Property, and other laws.

Let's consider how the regulations are included in the Law "On Kazakhstan State Land" .

Reasons and requirements for acquiring land from citizens and other persons for state use (Article 84)

, on the basis of negotiations with the land owner or land user (non-state), as well as by court decision , ", and Article 84, 2 specifies the necessary cases of forced acquisition of land for state use, and in other cases, i.e., to support someone's business activity, to give someone a beneficial advantage, etc. it is forbidden to take it for profit. In addition, it has been legislated that when acquiring land for state use, it cannot exceed the necessary amount.

84 of the law . 2. Land will be compulsorily acquired for state use in the following cases.

1. In accordance with the obligations assumed by the State of Kazakhstan in international agreements,
2. In accordance with the requirements of defense and national security, special natural protection, health protection, recreation and historical and cultural needs, as well as the creation of special economic zones,
3. When finding mineral deposits and extracting them,
4. Road and railway facilities (reconstruction of them) , airports, aeronautical facilities and aerotechnical centers, railway transport facilities, bridges, metropolitan, tunnels, energy and electricity transmission lines, communication lines, aerospace facilities, main pipelines , construction of engineering-connection lines, implementation of concession projects, construction of public buildings in settlements (renovation of them) ,
5. If the general plan of the inhabited territory includes the construction of the special objects specified here, as well as the construction of the objects specified in the document of the "Kazakhstan State Planning System", it is legalized to take the land for construction with public funds.

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

Expropriation of land for state use

This relationship is regulated by the laws of Kazakhstan "On Land" and "On State Property". The sequence of work for the forced acquisition of land for state use is:

1. Making a decision - the government or the local executive body will issue an official decision (decision) on the commencement of forced acquisition of land and real estate under the special conditions stipulated in Article 84 of the Land Law of Kazakhstan, when the land is taken for state use. Will be announced in the media. The following must be included in the decision. It includes:
 - A) The purpose and grounds of compulsory acquisition for the needs of the state
 - B) Land location, area size, and cadastral number
 - C) Name of land owner and land user
 - D) Indicate the date, month and day of compulsory acquisition. This period should not be less than 3 months after the official announcement of the acquisition of the land for state use.
 - D) Specify the place of contract negotiation. If necessary, other materials are attached to the decision. If changes are to be made to B and D, the process of expropriation of land for state use will be restarted from the day of the announcement of the decision on amendments.
2. Please be notified - Land owners or land users (non-state) will be notified in writing about the compulsion of land and immovable property when their land is taken for state use, no later than 3 days after the official decision. Also, a draft contract for the purchase of land and immovable property will be sent to him by mail. If no response is received, the material will be sent again. After notification to land owners or land users (non-state) are that compulsory acquisition of land and real estate. As a result, the state will have the privilege of purchasing the land. Providing that the land owner or land user (non-state) transfers his/her rights/land ownership, the compulsory notice should be informed the date when it is receiving the transfer of inheritance or compulsory land acquisition which would be for state use that land registration of state property would be terminated. Although it were changed, that forced acquisition would continue.
3. Implementation - When land acquired for state use based on consent of the land owner or user (non-state) or court decision that land and real estate be transferred to state that specified in the laws of Kazakhstan. It would be compensated reimbursement for land owner or land user has led to termination of land owner or use right. By submitting a compensate payment proof to the state registry of real estate made in asset state ownership registration to transfer right to state ownership.
4. It is necessary that leads to court – Supposing the decision from government or local executive body that regarding forced acquisition of land for public that shall not be accepted. Consequently, the parties may appeal to the court in pursuant with law. The court decision made on regulating the acquisition of land for state use in according to 88 article of the Law "on State Lands of Kazakhstan".
 - In the event that land owner or user (non-state) is not accepted decision regarding to start forced land acquisition for state use, or not reached an agreement regarding land price or other issues was that local executive body would refer to the court.

- So by not transfer land-ownership right to state within 3 months after receiving official notification within forced execution period specified in the decision, state executive body can file a petition or complaint to the court on the matter.

Taiwan Land Acquisition Law

Article 1. The purpose of this law is to regulate land acquisition, proper use of land, protection of private property, and promotion of public interest. The provisions herein shall be followed for land acquisition, and other legal provisions shall apply in cases that is not specified in this law. In the event that other laws conflict with this law, this law shall prevail.

Article number 2. Those are the regulations that the authorities referred to: the Ministry of Interior at the central level, and the municipal and county governments at the municipal level.

Article number 3. The following activates are released by government and its scope of expropriation is limited by operational requirements.

1. National defense, 2. Transport business, 3. Public benefit, 4. Activities in the field of water, 5. Public health and environmental protection activities 6. Government organizations, local self-governing organizations and many other public buildings 7. Education, research, cultural activities 8. Social welfare activities, 9. State-owned activities, 10. Other activities carried out execution of land acquisition in accordance with the law.

Article 4. In the following conditions in which the area shall be mobilized.

1. Construction built in some or all where it was newly established that locates in urban areas ;
2. Providing more space for public transportation in order to keep in public safety, sanitation and appropriate use of land;
3. That both agricultural and special protected zone will be changed construction or industrial area in the way where would build residential and commercial area of the city;
4. Develop non-urban area;
5. Strengthen public facilities of rural communities, improving public health to develop in line with agricultural development plan;
6. Do other partial mobilization comply with law.

Article 9. The land owner must get reimbursement compensation that was announced within 20 days after expropriated land by partial or full and except as otherwise provided in this law and others and along with following circumstances those are;

1. Reimbursement for mobilization compensation shall be made in accordance with schedule within three years after receipt.
2. Prohibit using unauthorized activities
3. The mobilization plan shall be valid within five years from the date when it commenced.

Compensation. Article 30 of land acquisition law that the land is confiscated, reimbursement compensation must provide with amount at the current market price. The land reimbursement is

A Comparative study on the legal regulation expropriating land owned by citizens of Mongolia

reimbursed at the average market price that locates in the territory of the urban planning zone where residential will be built.

That would be determined by the competent authority of city and town that market price mentioned in the previous section.

The competent authority, the city administration and town (city) must conduct regular research in which regular study dynamics land prices then submit them to the Land Acquisition Review Committee for every six months that they evaluate market price fluctuation of freed land. It would be basic price of land for acquisition reimbursement compensation. The competent authorities are based on the above three points that are issues such as procedures, methods, and measures to calculate land price.

2.2. Good experiences of Foreign countries

Based on the good practices of foreign countries land acquisition laws, for example, Article 9 of Taiwan's Land Acquisition Law stipulates that land has not been used in accordance with the plan for three years will be compensated at market value. Article 47 of the Land Management Law of the People's Republic of China provides for a complete solution to the social security issues of farmers whose land has been confiscated, while Article 84 of the Kazakhstan Land Law, Article 2.3 states that the land used for the discovery of mineral and mining deposits and their extraction shall be compulsorily acquired for state special needs. It can be included in the appropriate draft law of Mongolia. It is emphasized that in the above-mentioned countries, the possibility of compulsorily vacating civilian-owned land based on social necessity is regulated in detail by passing a special law on compulsory land vacating within the framework of the Constitution. It is a good practice for countries such as Germany and Taiwan to adhere to the market price when providing compensation for land expropriation.

III. CONCLUSION


It is considered important to regulate the compulsory release of privately owned land by a special law and to meet the requirement to limit the rights of the owner only by law in accordance with the Constitution of Mongolia. This includes: First, it is advisable to adhere to the principle of preliminary and fair compensation in case of compulsory release of land owned by citizens, to protect public officials from abuse of their administrative powers, and to create a legal framework for the fair exercise of rights and obligations of land owners. Secondly, it is not because the State will agree with the owner of the property about the forced release of the land, but whether the possibility of consultation and legal assistance is provided, the principle of notifying the local community, consulting with them, and being transparent is not included, so that the citizens of the locality can get the same level of information, there is a lack of independent legal regulation that provides the opportunity for landowners to discuss their loss and environmental changes .

REFERENCE

- [1] Constitution of Mongolia, 1992 No. 1
- [2] Law on Land Ownership to Citizens of Mongolia - State Information, 2002, No. 27 (264)
- [3] Land Law - State Information, 2002, No. 27 (264)
- [4] Law on Redevelopment of Cities and Towns - State Information, 2015, No. 28 (889)
- [5] The draft law on land package, submitted by the government of MU to the Parliament, 17.06.2022
- [6] Jambaldorj O. Others, Civil law, general class, Book I, UB, 2004
- [7] Narangerel S. "English - Mongolian jurisprudence dictionary", UB, 2005
- [8] Lundendorge N. Scientific Commentary on the Constitution of Mongolia, UB, 2022
- [9] Lundendorge N. "Historical controversy about land ownership in Mongolia, historical, philosophical and legal analysis", "Land, management and law" collection, UB, 2005
- [10] Sunjid Du. Constitutional issues of real estate, 2016, www.Legaldata.mn
- [11] Sovd G. Others, Commentary on the Constitution of Mongolia, UB, 2000
- [12] Gangabaatar D. "Constitutional Regulations to Protect Private Land from Indirect Mobilization", Legal Journal, 2015, No. 1 (31)
- [13] Gangabaatar D. "Constitutional law", state organization, principles and concepts, UB, 2016
- [14] Gangabaatar D, "Theoretical Basis of the Constitutional Concept of Compensation", Journal of Rule of Law, 2015, No. 1 (51)
- [15] Bataa G, Jadamba Ch. Legal issues in determining the scope of compensation related to the mobilization of civilian land by the government based on the imperative needs of society, Journal of Law, 2013, No. 2
- [16] National University of Science and Technology of Ukraine, Problems of Public and Private Property Law, UB, 2012
- [17] Bayarsaikhan N, Dondov L. Presentation "The need to introduce a rights-based approach to land acquisition policy", "Human rights issues related to land" theoretical and practical conference, 2015
- [18] Especially R. "Land Rights and Restrictions" speech, "Land-Related Human Rights Issues" Theory and Practice Conference, 2015
- [19] Onerjargal Z. "Forced evictions and state intervention" speech, "Land-related human rights issues" theoretical and practical conference, 2015
- [20] Yanjinkhorloo D. Civil law and real estate law of Mongolia, 2016
- [21] Gantulga B, Sainjargal B. Real estate valuation system and experience of the legal environment in Germany, UB, 2010
- [22] Enkhmend S. Presentation "Legal basis for replacement or redemption of civil property land based on the special needs of the state"
- [23] Eminent domain has been described as "the proprietary aspect of sovereignty" (Minister of State for the Army v Dalziel) (1944) 68 CLR 261 at 284 per Rich j
- [24] Kevin Gray, Land law and human rights, Willan publishing, 2002, p.2011-245
- [25] I'll give ishlah. Jones, Expropriation in Roman law, 45 LQ Rev. 512, 521 (1929), See also Pound, The Valuation of Property in Roman law, 34, HARV.L. Rev, 227, 252, (1921)
- [26] MM. Boguslavsky. International private law, 1994, page 165
- [27] Food and Agriculture Organization of the United Nations (2008). Compulsory Acquisition of Land and Compensation. FAO Land Tenure Studies: 23, 27~30, 40~41, 43, 53.
- [28] Magna Hart, Orchuulsan P. Amarjargal, UB, 2012
- [29] KhBNGU-yn Undsen Khuul, UB, 2020, Orchuulsan: P. Amarzhargal
- [30] BNHAU-yn Irgeniy khuul, UB, 2021 he, orchuulsan: Tserendolgor H,
- [31] <http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/>
- [32] Zhang Hueying, Lu Haiyuan. Compensation for Compulsory Land Acquisition in China: to Rebuild Expropriated Farmer's long-term livelihoods
- [33] Land Code of the Republic of Kazakhstan - ILS "Adilet" (zan.kz)
- [34] <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0060002>

AUTHOR'S INTRODUCTION

1. First Author

	Unurbayan Yadamdorj Unurbayan0821@gmail.com
	Doctoral candidate at the Department of private law, Law School of the National University of Mongolia, Ulaanbaatar, Mongolia Work field: Lawyer, Advocate