



Using *Land Portal* to Monitor Laws and Practices Related to Expropriation, Compensation and Resettlement

- › *Nicholas K. Tagliarino*
- › *PhD Candidate, University of Groningen*
- › *Research Analyst, Land Portal Foundation*



Roadmap

- › Background and methodology
- › Discussion of how to use this legal data for monitoring, advocacy, and legal reform purposes
- › Overall conclusions & next steps



Expropriation and Sustainable Development





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Background & Methodology

VOLUNTARY GUIDELINES ON THE

Responsible Governance of Tenure

OF LAND, FISHERIES AND FORESTS IN
 THE CONTEXT OF NATIONAL FOOD SECURITY



WORLD
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WORKING PAPER

ENCROACHING ON LAND AND LIVELIHOODS: HOW NATIONAL EXPROPRIATION LAWS MEASURE UP AGAINST INTERNATIONAL STANDARDS

NICHOLAS K. TAGLIARINO

EXECUTIVE SUMMARY

As a broad legal power enabling governments to take land and resources from citizens for public purposes, expropriation can help governments serve public needs. However, expropriation can also trigger land disputes and threaten the wellbeing of the people who rely on the land for their livelihood. When misused to benefit exclusively private interests, expropriation can line the pockets of corrupt officials and private companies, without any benefit to the public. When expropriation decisions are made behind closed doors, the risks to land rights and livelihoods may intensify.

Even when expropriation is used for a genuine public purpose, compensation and resettlement measures may reduce the living standards of affected landholders, particularly the poor and vulnerable who depend on their lands for food, income, cultural identities, and other basic needs. The ripples caused by expropriations can be far-reaching: insufficient compensation and resettlement assistance hampers the ability of affected landholders to purchase or relocate to alternative land, leaving them homeless and without income. Without a home or income, affected populations may fall into poverty, suffer health problems, or endure other consequences of displacement, such as lost community structures and unraveling of the social fabric.

Recognizing a need for established international norms governing land tenure, the UN Committee on World Food Security, in 2012, endorsed a set of voluntary principles

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Working Papers contain preliminary research, analysis, findings, and recommendations. They are circulated to stimulate timely discussion and critical feedback and to influence ongoing debate on emerging issues. Most working papers are eventually published in another form and their content may be revised.

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Quick Links

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- Research Findings
- Recommendations
- Acknowledgments

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Article

The Status of National Legal Frameworks for Valuing Compensation for Expropriated Land: An Analysis of Whether National Laws in 50 Countries/Regions across Asia, Africa, and Latin America Comply with International Standards on Compensation Valuation

Nicholas K. Tagliarino

Faculty of Law, University of Groningen, P.O. Box 72, 9700 AB Groningen, The Netherlands

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Abstract: The challenges associated with determining fair compensation for expropriated land have been extensively discussed and debated among scholars, practitioners, policymakers, and the public. However, to date, a comprehensive study of national-level compensation procedures established by law considering whether such procedures meet internationally recognized standards on compensation valuation has not been conducted. This article aims to bridge this gap by serving as a reference point and informing "fair compensation" debates among scholars, practitioners, and policymakers. This article examines national-level legal provisions on compensation in 50 countries/regions across Asia, Africa, and Latin America against a set of legal indicators that are based on international standards on the valuation of compensation. The legal indicators focus on the substantive and procedural requirements pertaining to the calculation of compensation. The indicators ask whether laws require assessors to account for various land values when calculating compensation, and whether there are legal processes in place that allow affected persons to negotiate compensation amounts, receive prompt payments, and hold governments accountable by appealing compensation decisions in courts or before tribunals. The results of the study show that most of the 50 countries/regions assessed do not have national laws that comply with internationally recognized standards on the valuation of compensation. Based on the findings from the legal indicator analysis, this paper presents a set of recommendations for reforming compensation procedures to bring them into conformity with international standards.





Countries analyzed

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List of countries assessed		
Asia	Africa	Latin America
1. Afghanistan	1. Angola	1. Argentina
2. Bangladesh	2. Burkina Faso	2. Belize
3. Bhutan	3. Botswana	3. Brazil
4. Cambodia	4. Eritrea	4. Ecuador
5. China	5. Ethiopia	5. Honduras
6. Hong Kong	6. Ghana	6. Mexico
7. India	7. Kenya	7. Nicaragua
8. Indonesia	8. Lesotho	8. Peru
9. Laos	9. Liberia	9. Trinidad and Tobago
10. Kazakhstan	10. Namibia	
11. Sri Lanka	11. Nigeria	
12. Malaysia	12. Rwanda	
13. Mongolia	13. South Africa	
14. Myanmar	14. South Sudan	
15. Nepal	15. Sierra Leone	
16. Papua New Guinea	16. Swaziland	
17. Pakistan	17. Tanzania	
18. Philippines	18. Uganda	
19. Taiwan	19. Zambia	
20. Thailand	20. Zimbabwe	
21. Vietnam		



VOLUNTARY GUIDELINES ON THE
**Responsible
Governance of Tenure**
OF LAND, FISHERIES AND FORESTS IN
THE CONTEXT OF NATIONAL FOOD SECURITY



Clearly define “public purpose” to allow for judicial review

Provide just compensation to all legitimate tenure rights holders

Provide productive alternative land and housing

Minimize or avoid involuntary resettlement



New Infographic on Land Portal's Land Book

Voluntary Guidelines on the Responsible Governance of Tenure

2016



VGGT 16.1 Expropriation and Compensation Elig



Clear Legal Definition of Public Purpose



● Clear Legal Definition of Public Purpose ⓘ

Legend: National laws adoption of the VGGT principle



Fully adopt



Partially adopt



Not adopted



Missing Value

Explanation

Article 61 of the 2013 Land Law 45/2013/QH13 provides a clear definition of the circumstances in which land may be recovered for national defense or security purposes. Article 62, however, contains the provision "implementation of projects which or decided by the Prime Minister, including...a) Projects on construction of industrial parks, export processing zones, hi-tech zones, economic zones, new urban centers; investment projects funded with official development assistance (ODA) capital; b) Projects on construction of offices of state agencies, central political and socio-political organizations, offices of foreign organizations with diplomatic functions; ranked historical-cultural relics and scenic spots, parks, squares, statutes, monuments and national public non-business facilities; c) Projects for construction of national technical infrastructure including transport, irrigation, water supply and drainage, electricity and communication facilities; oil and gasoline pipelines and depots; national reserve warehouses; facilities for waste collection and treatment. The word "including" does not necessarily limit the Prime Minister's discretion to the specified list.

Relevant laws

Government of Vietnam. 2014. Constitution of Vietnam. Available at:

<https://landportal.info/library/resources/constituteproject919/constitution-viet-nam-1992-rev-2013>

Government of Vietnam. 2013. Land Law No. 45/2013/QH13. Available at: <https://landportal.info/library/resources/land-law-no452013qh13>

Government of Vietnam. 2014. Regulations on Compensation, Support, and Resettlement Upon Land Expropriation By the State. Available at: <https://landportal.info/library/resources/regulations-compensation-support-and-resettlement-upon-land-expropriation-state>



Cambodia | Land Portal

landportal.info/book/countries/KHM

Apps New Tab Bookmarks

Note: Some Indicators might have multiple values (e.g. Green-Orange), which might refers to different localities or categories of people. For more information please refers to specific country reports and to the methodology made available by the original data source/provider: [The Land GovernanceAssessment Framework \(LGAF\) website of the World Bank](#)

Voluntary Guide

2016

VGGT 16

A right to challenge comp

Fully add

Select an indicator...

A gender-sensitive approach to providing compensation to affected landholders

✓ A right to challenge compensation decisions in court

A right to negotiate compensation levels

Alternative land as a compensation option

Alternative to the 'fair market value' approach to calculating compensation in cases where land markets are weak or non-existent

Compensation for economic activities associated with the land

Compensation for improvements made on the land

Compensation for intangible land values (e.g. historical, cultural, spiritual values)

Payment prior to the taking of possession or within a specified timeframe thereafter

Explanation

Article 34 of the Law on Expropriation, 2010 provides that "If there is a disagreement with the decision on the complaint by the Complaint Resolution Committee, the owner and/or the rightful owner may bring their complaint to the competent court, concerning expropriation procedures carried out improperly, the expropriation which is not for public and national interest, and the compensation which is not fair and just. The formalities and complaint procedures shall be determined by sub-decree."

Relevant laws

Government of Cambodia. 1993. Constitution of Cambodia. Available at: <https://landportal.info/library/resources/constituteproject913/constitution-cambodia-1993-rev-2008>

Government of Cambodia. 2010. Law on Expropriation. (Unofficial Translation). Available at: <https://landportal.info/library/resources/cambodia-law-expropriation>

Government of Cambodia. 2001. Land Law of 2001, Chapter 3, Part 2. August 13. Available at: <http://landnortal.info/librarv/resources/land-law-2001-chapter-3-part-2>



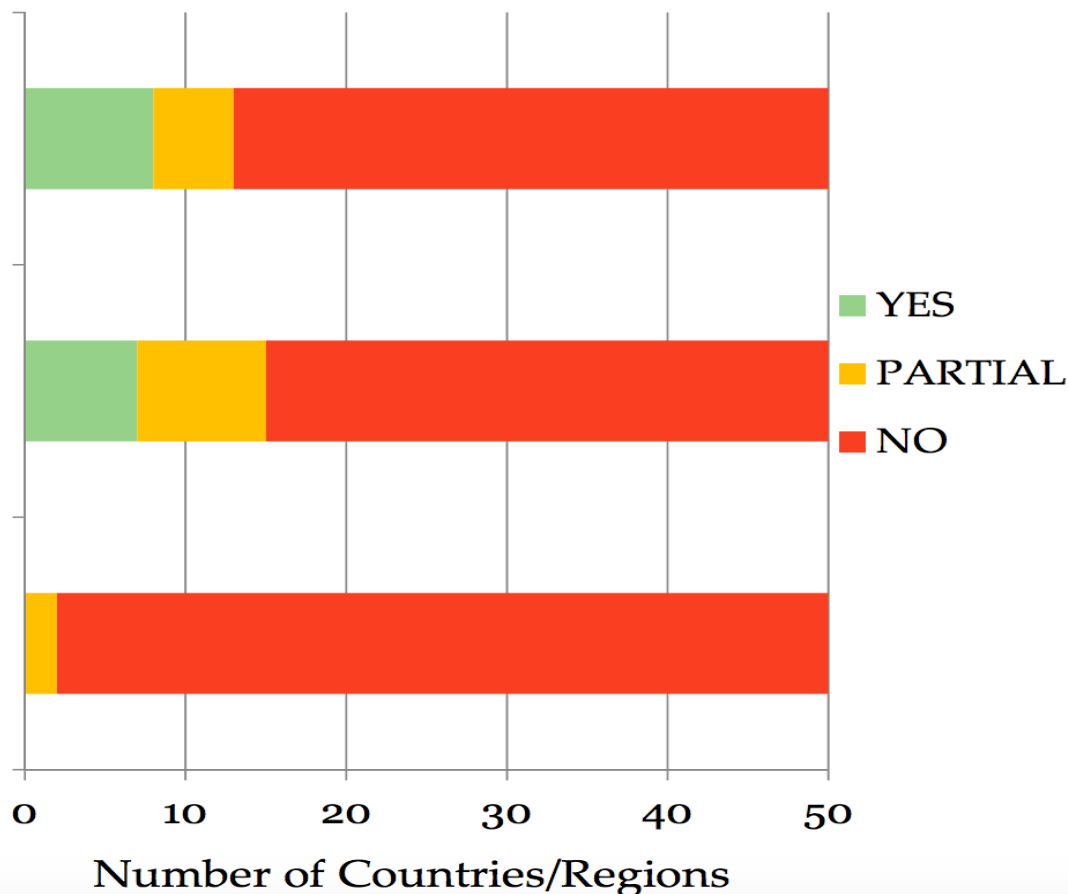
Key Findings

Compensation for poor and marginalized groups

Does the law allow for assessors to follow an alternative approach (e.g. “replacement cost” approach) instead of a “fair market value approach” to calculating compensation in cases where land markets are weak or non-existent?

Does the law provide compensation for unregistered customary tenure rights held by Indigenous Peoples and local communities?

Does the law establish special protections for women landholders regarding compensation entitlements?





Developing Recommendations for Legal Reform

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**Towards a protocol on fair
compensation in cases of
legitimate land tenure changes**
Input document for a participatory process





Informing World Bank Policy Debates

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CHALLENGING THE PREVAILING PARADIGM OF DISPLACEMENT AND RESETTLEMENT

RISKS. IMPOVERISHMENT. LEGACIES. SOLUTIONS



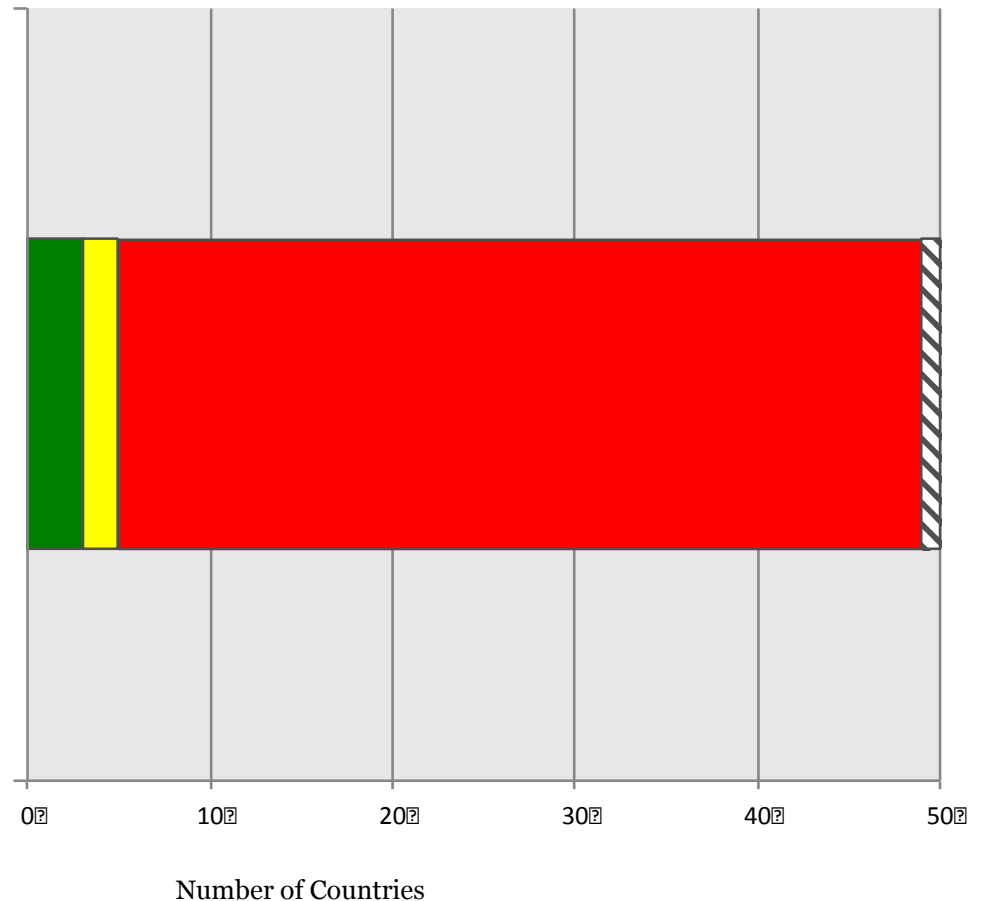
EDITED BY MICHAEL M. CERNEA
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■ YES ■ PARTIAL ■ NO ■ UNCLEAR

Is there a national-level law that establishes procedures for resettling and rehabilitating populations displaced by expropriations?





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INDR updates

Are Indonesia's Country Standards equivalent to the Asian Development Bank's Involuntary Resettlement Standards? A Report of an INDR Ad Hoc Commission on Country Standards.

The 2017 Annual meeting focused on the international financial intermediaries (IFI) focus on using country rather than international standards for development project related forced displacement. The process will require comparing country standards to international standards. The process is just beginning.

A KOSID-INDR Study Examines Mining-induced Involuntary Resettlement in Kosovo



UPDATE. The World Bank Inspection Panel has accepted a request from project affected Kosovaars to investigate the harms to them reported in The [Read More](#)



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The International Network on Displacement and Resettlement
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INDR Comments ¹ on the Asian Development Bank's Country Safeguards
Review: Indonesia Consultation: Draft of March 2017

Thank you for sharing the Technical Assistance Draft through a Public Consultation process. We offer these comments for your consideration for the topic of Involuntary Resettlement.



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Measuring practice on the ground

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Conclusions and Next Steps





Thank you for your attention

email: nicholas.tagliarino@landportal.info