
Land Acquisition for Public Projects - An International Perspective



1. Introduction
2. Public Purpose
3. Compensation
4. Process

Introduction to Compulsory Acquisition

Although known by many different names, compulsory acquisition is rooted in virtually all legal systems.



“ *Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant.* ”

eminent domain

condemnation

expropriation

COMPULSORY PURCHASE

TAKINGS

Controversial nature

Given the importance to economic development and the disruption to displaced people, it is no wonder that the subject is controversial – theoretically and practically.

- **At best, causes disruption in:**
 - community
 - livelihood
 - ways of life
- **At worst, worsens:**
 - tenure insecurity
 - corruption
 - market inefficiency
 - investment disincentive
 - community destruction
 - impoverishment



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5. Case Studies

CA is supposed to be extraordinary. National constitutions and laws typically limit the Government to CA for or in a *public purpose, public interest, public benefit, or utilite publique*. There are two approaches to defining *public purpose*...

Approach 1: Itemized List

- Lists typically include:
 - Transportation
 - Utilities
 - Public buildings
 - Public parks
 - National defense
 - Agriculture
- Approach provides certainty
- Restrains government abuse

Approach 2: No list

- Relies on terms:
 - “public purposes”
 - “public uses”
 - “public interest”
- Provides flexibility

Public Purpose - Tanzanian and Ghanaian Approach

It is difficult to set the right boundaries of *public purpose*, and different countries are experimenting with different approaches. One example of this relates to whether CA is appropriate to support commercial agriculture.



- Tanzanian Land Acquisition Act, 1967 specifically includes commercial agriculture in the list of public purposes justifying CA.
- Other countries that specifically allow CA for commercial agriculture include Ethiopia and Senegal.



- Rather than relying on CA, the Government of Ghana has adopted a process of voluntary negotiations between investors and communities in the Ghana Commercial Agriculture Project sponsored by the World Bank.
- Reflects history where there was extensive CA in the 1980s that was never used or was only partially used.

Public Purpose - Chinese Approach

Determining the right balance has big consequences for developing countries. China's rapid urban development has been fueled by aggressive CA.



- Although Chinese law stipulates that the state can acquire collectively-owned rural land only in the public interest, the term is not defined and has been construed broadly.
- Under law, rural land can *only* be converted to urban uses if it is first acquired by the state.
- CA is therefore widespread for urban development.
- Relative ease of CA has been suggested as the cause of China's relatively fast development.
- China has filled its treasury by transferring agricultural land to urban land.
- CA has caused resentment and heartache.

Countries may need to refine their approach over time.
Vietnam has recently added further limits to *public purpose*.



- 2003 Land Law in Vietnam authorized the state to “recover land” whenever it needs “to use the land for purposes of national defense and security, national interests, public interests or economic development.”
- ½ of takings were on behalf of private business and investors.
- Former landowners upset that they sold land for low price, shortly before the value of the land increased.
- 2013 Land Law in Vietnam removed the words “economic development” from the list and reverted to something closer to international standards, though “socio-economic development in the national or public interests” is still broad.
- Requires approval by Prime Minister or the People’s Council.

India has undertaken the most extensive recent legislative effort to reform CA and balance costs and benefits.



- Replaced the 1894 Land Acquisition Act, which had been enlarged through developer-friendly rulings by the Indian Supreme Court, including a finding that “public purpose” included “any purpose wherein even a fraction of the community may be interested or by which it may be benefitted.”
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR);
 - Requires social impact assessment covering public purpose, alternatives, weighing benefits and impacts, public consultation, and evaluation by expert group.
 - Government must look at social impact assessment, along with environmental and food security assessment that there is a clear *bona fide* public interest, the benefits outweigh the costs, minimum amount of land acquired, no alternative public land.
 - Unused land returned to original owners after 5 years.
 - Original owner gets 40% of profit on resale.
 - For private company 80% of owners must consent.
 - For Public Private Partnership, 70% must consent.

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Longstanding principle in many jurisdictions is that compensation should be determined in a way consistent with **equity** and **equivalence**. Some think that it should be more generous.



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Displaced persons should be assisted in their 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.

”

Compensable Interests

- The first task is to identify compensable interests and those who hold them.
- More difficult in emerging markets than in the US or Europe.

Amount & Form of Comp

- The next task is to define the appropriate amount and form of compensation.
- Difficult to give meaning to the agreed principle that compensation should be “just” or “fair.”
- No universally appropriate method for measuring loss.

Compensation – Compensable Interests

- Private rights over state land
 - In many countries, full private ownership does not exist
 - Long-term leaseholds, certificates of occupancy
 - Spectrum of how nominal state ownership is from a practical perspective
- Multiple layers of rights
 - Mortgages, leaseholders, rights of way, concessions
 - Problems with identifying, notifying and compensating
- Unregistered or inaccurately documented rights
 - Modern registration laws may not be followed
 - Some CA laws only recognize registered rights
 - Strict adherence can waste time and resources, while loose interpretation can invite corruption



- Customary rights
 - Growing recognition of customary rights, including in statutes.
 - Mozambique, Tanzania, Uganda, Burkina Faso, Mali, Philippines, Cambodia, Peru, all recognize customary tenure rights to some degree. In Ghana, 80% of all land is recognized in accordance with the Constitution as owned by traditional communities.
 - CA laws have yet to catch up, and it is often not clear how to operationalize customary rights in the context of CA.
- Shared Resources
 - Difficult to ensure that compensation actually makes it to the members of groups that are understood to have communal ownership.
- Compensation for informal occupation
 - International Organizations encourage payment to squatters; most governments do not agree.
 - Payment can create bad incentives.
 - But squatters may have no choice and may have been encouraged by government.

Compensation – Amount and Form

- Difficult where land markets do not exist or are thin
- Difficult where government does not allow sale
- Reluctance to rely on value in informal markets
- Lack of land valuation professionals
- Low valuations for tax purposes
- **China** – for agricultural land, applies multiplier (depends on region) times the productivity of land over the last three years
- **Albania** and **Ghana** – values assigned to different categories on the basis of government schedules and maps
- **India** – looks at comparable but includes a multiplier to address undervaluing



Compensation – Amount and Form

- Replacement cost vs. fair market value
 - World Bank and IFC promote use of “replacement cost” which in developed markets should equal “market value”
 - Shifts focus to what will be needed to put the owner in the same position
- Land-for-land vs. cash compensation
 - Useful alternative where land markets are weak and land is not fungible
 - Avoids disruption that comes from handling large amounts of money for the first time
 - World Bank and IFC promote land-for-land where livelihoods are land-based
 - Some nations have included in laws (e.g. Tanzania)
- Alternatives to land takings
 - Providing bonuses based on land value increase
 - Providing equity
 - Providing small plots in developed areas

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There is sometimes understood to be a tension between speed and justice, but the two can coexist and processes can be improved.

- Emphasizing participation and consultation
- Improving information delivery requirements
 - Not just registered owners
- Appropriate and accessible grievance mechanisms
 - Use of local bodies and authorities
- Providing compensation in a timely manner
 - World Bank encourages Escrow Accounts

