

An estimated 10m people are displaced from development projects every year. A new study aims to monitor government adoption of voluntary guidelines on expropriation, compensation and resettlement, **Nicholas Tagliarino** reveals

Pushed off their land



Development in
Pakistan

The complex web of interests attached to land makes it difficult to implement development projects without affecting property rights and livelihoods. An estimated 10–15m people are displaced from development projects each year; in China, around 80m people were displaced between 1950 and 2015, and in India, 65m between 1950 and 2005.

As governments respond to resource scarcity, urbanisation and population growth, these increases in land acquisitions and forced displacement for infrastructure expansion, natural resource extraction and other development projects are likely to be more dramatic in coming years.

The exercise of expropriation, a broad legal authority of governments to take land from citizens for public purposes, poses a threat to land tenure, human rights and livelihoods.

When land is expropriated for development projects, affected landholders can suffer serious impoverishment and other socio-economic impacts.

Studies in many developing countries show that displaced populations suffer not only from income loss and a reduced standard of living, but also landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property and services, and a reduced sense of community.

The legality principle calls for government actions to be limited by laws that are written with adequate precision and clarity; governments should not be allowed to make arbitrary decisions that depart from established law. To limit government authority for expropriation, countries should enact laws that clearly define the public purpose of any project requiring displacement of people, and establish legal procedures for compensating, resettling and reconstructing the livelihoods of landholders who are pushed off their land.

These laws should enable landholders to challenge government and private-sector expropriation decisions that violate their rights to fair compensation and resettlement assistance. If these rights are violated, then displaced populations should be able to seek redress in court.

Tenure governance guidelines

Current PhD research at the University of Groningen in the Netherlands, published on the Land Portal's Land Book (<http://landportal.info/book>), is monitoring progress on government adoption of international standards for expropriation, compensation and resettlement.

The study is assessing national laws in 50 countries across Asia, Africa, and Latin America against a set of legal indicators that are based on section 16 of the Voluntary Guidelines on the Responsible Governance of Tenure (VGGTs), which were officially endorsed by the Committee on World Food Security, a body consisting of 193 countries, in 2012. The VGGTs are the first internationally agreed guiding principles on land tenure governance. Section 16 calls for states to:

- provide a clear definition of “public purpose” in law to allow for judicial review
- identify, inform and consult affected populations at all stages of the expropriation process
- pay fair and prompt compensation to all legitimate tenure rights-holders
- provide productive alternative land and adequate housing
- explore feasible alternatives to forced eviction in consultations with affected landholders
- avoid or minimise the need for evictions.

For this study, a broad range of legally binding instruments, including constitutions, statutes and regulations, were assessed to determine to what extent they adopt VGGTs' standards. The

results are displayed in an infographic on the Land Portal's Land Book country pages that provides colour-coded indicator scores and a detailed explanation box.

Abuse of power

Gaps and ambiguities in the law potentially open the door for governments to abuse or misuse expropriation power, posing a risk to the tenure security, human rights and livelihoods of affected landholders. Unless laws define the circumstances in which land can be expropriated, governments might arbitrarily justify the expropriation of land, or falsely justify expropriation under the pretext of a public purpose; for instance, they may use expropriation power to acquire land for a company or extractive industry that will not actually support local economic growth or otherwise serve the public interest.

The VGGTs call for states to:

- expropriate only where land is needed for a public purpose
- clearly define "public purpose" in law
- only acquire the minimum resources necessary
- follow a transparent and participatory process that involves surveying, informing and consulting affected landholders.

But research shows that many country laws fail to adopt these principles. A preliminary assessment conducted at the World Resources Institute in 2016 found that only four of 30 countries in Asia and Africa have laws that clearly define public purpose to allow for judicial review, and only three countries require governments to survey, inform and consult affected populations before implementing a project. In most of the countries analysed, governments have broad discretion to determine what constitutes public purpose and to take land without consulting affected landholders.

Displacing landholders without consultation can lead to disputes that can cause long delays, increased costs and financial risks for developers. A study by TMP Systems and the Rights and Resources Initiative found that the vast majority of land disputes examined in Africa were caused by community displacement and insufficient compensation, and that more than two-thirds of the cases involved significant work stoppages or legal intervention. Conflicts over land in India have also delayed projects worth billions of dollars.

Customary lands

According to the World Bank, 70% of land and property in developing countries is unregistered and sits outside formal markets. Due to the expansive nature of informal land markets, determining fair compensation based on market value may be problematic. To address this issue, RICS and the Global Land Tool Network are developing fit-for-purpose guidelines for valuing unregistered lands. Additionally, the University of Groningen and True Price are developing a protocol on fair compensation that aims to provide guidance to governments, project developers and other stakeholders in cases of land tenure change where fair compensation needs to be assessed.

The VGGTs call for fair and prompt compensation to be paid to holders of "all legitimate tenure rights" and to consider non-market land values, including social, cultural, religious, spiritual and environmental values. While the term "legitimate tenure" is not defined by the VGGTs, the word "legitimate" has often been interpreted to include rights that are legally or socially accepted; for example, customary rights. The VGGTs call for states to respect legitimate tenure rights whether they are formally recorded or not, including the rights of indigenous peoples and local communities with customary tenure.

Compensation

The PhD study examines compensation procedures to determine whether communities with customary tenure must first register their lands to be eligible for compensation. The indicators show that only seven of 50 countries provide compensation regardless of whether customary land is formally registered. In these countries, the law on the books is strong, though enforcement may remain a key challenge.

In the remaining 42 countries assessed, communities remain vulnerable to expropriation without fair compensation, since the government is not legally obliged to recognise unregistered customary rights as eligible. Laws should acknowledge such rights regardless of registration, or streamline the process of the registration to widen the eligibility requirements for compensation and ensure that vulnerable groups, including indigenous and local communities with customary tenure, receive fair compensation for being pushed off their land.

Assisting the displaced

The VGGTs call for states to provide adequate alternative housing and productive alternative land to displaced populations, and to explore feasible alternatives to forced evictions in consultation with affected populations. However, of the 50 countries assessed, only China, Vietnam, the Philippines, India and Laos have enacted binding legal requirements that provide displaced populations with adequate resettlement and rehabilitation assistance.

In Brazil, Sri Lanka and several other countries, resettlement policies are not legally binding and thus do not provide the displaced with legal recourse. Due to the severity of impoverishment and other risks associated with forced displacement, countries would be wise to mitigate these by affording displaced populations adequate legal protection.

Strong laws needed

This study establishes a benchmark for monitoring national progress on the adoption and implementation of the VGGTs' standards. With a greater understanding of the ways in which current national laws fall short of international standards, land activists and policymakers are better equipped to advocate legal reforms that strengthen tenure security and limit government expropriation power. Strong laws coupled with effective government implementation may reduce the risk of arbitrary expropriation, forced eviction and landholder impoverishment, ensuring that development projects appropriately balance property rights with the public interest. ●

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The study and other information can be found on Land Portal's Land Book
<http://landportal.info/book>
<http://bit.ly/2tn06E5>



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