

## Policy pointers

### Compulsory land

acquisition can severely undermine livelihoods and cause conflict in investment or development projects. Cameroon's ongoing law reform is an opportunity to both protect land rights and facilitate projects that are genuinely in the public interest.

### International guidance

calls for legislation to protect all socially legitimate tenure rights and to clearly define the public purpose that could justify any compulsory acquisition.

### International best practice

emphasises improving, or at least restoring, affected livelihoods, rather than merely compensating people for lost assets. This may require comprehensive packages involving cash and/or in-kind compensation and other livelihood-enhancing measures.

### Process is also key in

compulsory land acquisition: transparency, information and consultation are necessary throughout, as is ensuring people have access to effective legal recourse.

## Towards fair and effective legislation on compulsory land acquisition in Cameroon

Cameroon is part of a global trend towards large-scale investments in infrastructure, agriculture, extractive industries, industrial facilities and real estate that are displacing many people. Deeming these projects in the public interest, governments often acquire land by expropriating locally-held land rights. But compulsory land acquisition has severe economic, social and cultural impacts for families and communities. And disputes brought by legitimate landholders can delay or undermine projects, potentially causing losses to commercial operators or failing to deliver the intended public good. Many countries have old-fashioned expropriation rules, ill-suited to addressing the challenges involved. But Cameroon is well-placed to learn from and harness best practice: the ongoing process to reform legislation on compulsory acquisition is an opportunity to develop an effective system that both protects land rights and facilitates developments that are genuinely in the public interest.

Effective safeguards in land acquisition are essential to both secure land rights and facilitate projects that are in the public interest. Public officials often worry that strengthening the safeguards could hinder public purpose projects, as they might struggle to acquire the necessary land or could incur unsustainable costs in compensation. But research shows that getting land acquisition wrong can not only devastate livelihoods and social identities, it can also foster conflict between companies and communities, and ultimately delay implementation and undermine project returns.<sup>1</sup> It is widely recognised that negotiated solutions tend to work better; that compulsory acquisition should only be used as a last resort in very specific situations where a compelling public purpose is at stake; and that any compulsory acquisition requires effective safeguards in both law and practice.

In Cameroon, the legal framework governing the compulsory acquisition of land for a public purpose is based on Law No. 85-09 of 1985. This law broadly reflects prevailing thought at the time it was enacted. It restricts important safeguards to private land ownership, which few rural people hold. It demands expropriation be for a 'public purpose' but does not define what this means in practice. The law enables both cash and in-kind compensation but provides limited guidance on how to design compensation packages, unilaterally establishes the values of land and improvements, and restricts compensation to 'direct, immediate and verifiable damage' caused by the acquisition. It also limits legal recourse to disputes over compensation amounts.

In the 30 years since the law was enacted, the international landscape has changed significantly.

## *Evolutions in international and national law provide pointers for reforming Cameroon's legislation on compulsory acquisition*

New international soft-law instruments provide detailed guidance for land acquisition, including the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT).<sup>2</sup>

Additionally, developments in international human rights and investment law, and lender standards, have considerably advanced approaches to expropriation and compensation. At the

national level, judges and lawmakers in many countries have redesigned key substantive or procedural parameters.

These evolutions provide helpful pointers for the ongoing efforts to reform Cameroon's legislation on compulsory acquisition. This briefing summarises applicable international and national developments in four main areas: eligible rights, public purpose, compensation and due process.

### **Eligible rights: customary claims should count**

The VGGT calls on states to protect all tenure rights deemed to be socially legitimate in any given context, including rights not currently recognised by law. The guidelines clarify that, depending on the context, customary land rights may be legitimate tenure rights, and call on states to ensure their expropriation systems respect the rights of vulnerable and marginalised groups. International human rights institutions have found states to have violated the human right to collective property in circumstances where authorities had dispossessed people of customary claims that did not amount to full ownership.<sup>3</sup> And in the private sector, the safeguarding policies of some international lenders — including the World Bank Group — recognise some land and resource claims even if they are not protected under national law.

Cameroon's legislation restricts the expropriation process to private land ownership, meaning customary land rights are not eligible for the same safeguards. Under the Land Ordinances of 1974, land registration is the sole mechanism for establishing private land ownership; all unregistered lands are held by the state, though 'use rights'<sup>4</sup> are recognised. Registration is subject to certain requirements that are often difficult for rural and indigenous people to meet, such as evidence of productive land use. This is particularly true for the (often large) share of village landholdings devoted to hunting and gathering, wood fetching, livestock grazing,

sacred sites or land reserved for a village's growing population.

Despite recent simplification, land registration procedures remain complex and cumbersome for rural people with limited means, rendering widescale land registration simply too difficult to achieve. In practice, many rural people access land on the basis of customary arrangements, but these rights do not amount to private ownership and are excluded from the full protection of the law.

For the expropriation of privately owned land, Cameroon's legislation requires compensation for the loss of both the land itself and for any 'improvements', such as crops and buildings. For the taking of use rights, only improvements are compensated. One problem with this arrangement is the risk that the loss of lands providing important livelihood contributions but not presenting visible improvements — grazing land, for example — are not being compensated.

The ongoing reform process offers an opportunity to rethink the current approach and ensure that any new laws protect the rights that rural people hold.

### **Defining public purpose: the courts demand a re-think**

The notion of public purpose — a government's justification for expropriating property or curtailing access rights — may be relatively straightforward for social infrastructure such as schools and hospitals. But it has often been a contentious issue where authorities expropriated land for commercial projects, for example in the agriculture, extractives or real estate sectors. One problem is that many national laws, including Cameroon's, do not define 'public purpose', leaving authorities with significant discretion. As representatives of the people, public authorities are well placed to define and advance the public interest. But the lack of any clear parameters or redress mechanisms can make land rights insecure.<sup>5</sup>

The international trend is toward greater specificity and more effective recourse. The VGGT calls on states to 'clearly define the concept of public purpose in law' and to allow courts to review whether a public purpose exists.<sup>6</sup> Some recent national laws list the type of projects that can qualify as public purpose and that would enable authorities to acquire land, for instance, India's Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act of 2013.

In recent years, courts have scrutinised more closely the notion of public purpose (see Box 1).

International investment tribunals have also scrutinised government claims that measures were taken for a public purpose, stating in one case:

*‘a treaty requirement for “public interest” requires some genuine interest of the public. If mere reference to “public interest” can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless.’<sup>7</sup>*

National courts in several jurisdictions have reviewed whether authorities provided sufficient evidence of the public interest they claimed to advance and whether the measures taken were proportionate to the stated purpose. Any claims that commercial projects are for a public purpose would require particularly close scrutiny. If the thinking is that commercial developers can use the land more productively or efficiently, they should be able to ‘buy out’ existing landholders. International best practice, including lender standards, clearly favours negotiated solutions over compulsory acquisition. However, negotiations must be fair and lead to the restoration or enhancement of the livelihoods of families who were bought out.

### Compensating lost assets versus restoring livelihoods

Traditionally, laws on compulsory acquisition emphasise compensating landholders for the value of the assets lost. Legislation may require authorities to calculate compensation based on ‘fair market value’. A recent study covering 50 countries found that 37 used this approach exclusively.<sup>5</sup> This approach has important drawbacks, because fair market values:

- Are often difficult to calculate, particularly in areas where no formal market exists
- May be lower than the full cost of replacing the asset, causing hardship on those impacted
- Fail to consider the cultural value of land
- Could incentivise governments to expropriate lower-value assets that are often held by poorer people.<sup>5</sup>

The overall result is that compensation based on fair market value may simply not be sufficient to restore affected livelihoods to pre-acquisition levels or to address the socio-cultural dimensions of displacement. This is particularly the case where compensation is limited to improvements alone, excluding the value of the actual land.

Cameroon's legislation contains some limited references to market value; the compensation system is mainly built on a list of fixed compensation rates for a selection of

### Box 1. Human rights trump claim of ‘public purpose’

In a case concerning the eviction of the Ogiek people from a protected forest in Kenya, the African Court on Human and Peoples’ Rights found that the government had violated the community’s human right to collective property. While the government presented the eviction as being for the public purpose of protecting the environment, it did not provide evidence ‘that the Ogieks’ continued presence in the area [was] the main cause for the depletion of the natural environment in the area’. The Court also found that the eviction was not proportionate to the stated public purpose, even if genuine.<sup>8</sup>

improvements on land. These rates are unilaterally determined by a government regulation and present at least two weaknesses: (1) improvements out of the list will hardly be compensated for; (2) rates in the regulation may be eroded by inflation and changing market conditions. Again, international instruments provide helpful pointers on improving this aspect of Cameroon's land law. The VGGT requires states to promptly pay ‘just compensation’ in case of compulsory acquisition, while lender standards emphasise improving local livelihoods, or at least restoring them to pre-acquisition level. Livelihood restoration is emerging as the key reference point for designing effective compensation packages.<sup>9</sup> In effect, livelihood restoration shifts the emphasis from merely completing a process, inclusive of compensation payments, to ensuring positive outcomes.

In line with this approach, World Bank safeguards require borrowers to compensate assets at replacement value — what it would cost to replace the assets lost. Replacement value is likely to be linked to some estimation of market value but also to include, for example, transaction costs and would not be discounted for asset depreciation (for example in relation to old fences or buildings). While governments may worry that paying for the replacement value of assets could significantly increase compensation bills, a recent road project in Cameroon only saw a five per cent increase in the total value of compensation paid when replacement values were applied.<sup>10</sup>

Other consequences flowing from the livelihood restoration approach are that compensation is only one element of an overall package, which may also include other livelihood support measures such as trainings or benefit sharing, and that compensation may be in cash or in kind, with the latter being primarily in the form of alternative land. In-kind compensation is already allowed by Cameroon's legislation. It could, however, benefit from safeguards to ensure the quality, distance and infrastructure associated with the replacement assets (land, housing, access to services and so on) are comparable to those of the original assets acquired. Where

land is held collectively, safeguards are needed to ensure that more vulnerable members of families and communities — including in terms of gender, status or ethnicity — receive their fair share of compensation.

Besides being a livelihood asset, land can also have significant cultural and spiritual value. During construction works for the World Bank-funded Chad–Cameroon oil pipeline, many communities were dissatisfied — despite compensation restoring their livelihoods — due to the cultural heritage lost. Legislation in some countries requires authorities to consider ‘intangible’ cultural and historical properties of land. Bhutan and the Philippines explicitly require that cultural properties, and in the case of Bhutan ‘scenic beauty’, be taken into account when calculating the value of land and other assets. Ghana similarly requires consideration of social and cultural values in compensation arrangements.<sup>5</sup>

### Procedural safeguards: participation and transparency

To ensure that acquisition processes are perceived as legitimate, the process is as important as the outcome. The VGGT calls for a transparent and participatory process that identifies, informs and consults affected people at all stages. These guidelines view consultation as an important vehicle for minimising disruption to livelihoods and identifying consensual solutions. International instruments also call for free, prior and informed consent in specific situations, particularly where projects affect indigenous peoples. International best practice additionally points to clear timelines, prompt payment of compensation and access to judicial remedies to challenge the legality of the acquisition or compensation amounts.

### An opportunity for stronger practice

Cameroon's land law reform process provides a chance to strengthen the methodology and

outcomes of any compulsory acquisition processes, bringing them in line with best practice and international law. We suggest this can be achieved by:

- Ensuring the revised law protects the rights of rural people, including both individually and collectively held land and resource use rights
- Explicitly defining ‘public purpose’ through a clearer statement, and possibly an illustrative or exhaustive list of project types
- Anchoring compensation arrangements to restoring livelihoods, including adoption of ‘replacement value’ and establishing robust safeguards for both cash and in-kind compensation
- Ensuring transparency, information and consultation throughout the process, and accessible, effective legal recourse for legitimate tenure holders
- Tailoring arrangements to the needs of particularly vulnerable groups in tenure terms (such as women, migrants and indigenous peoples), including the use of appropriate safeguards in compensation payments.

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*LandCam: Securing land and resource rights and improving governance in Cameroon*

This project pilots approaches to secure rights to land and natural resources in selected sites, and supports inclusive national-level debate about workable reforms of the law. The project is funded by the European Union and coordinated by the International Institute for Environment and Development (IIED), the Center for Environment and Development (CED) and the Réseau de lutte contre la faim (RELUFU). [www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon](http://www.iied.org/landcam-securing-land-resource-rights-improving-governance-cameroon)



## Knowledge Products

The International Institute for Environment and Development (IIED) promotes sustainable development, linking local priorities to global challenges.

The Centre pour l'Environnement et le Développement (CED) protects the rights, culture and aspirations of local communities in Central Africa.

The Réseau de Lutte contre la Faim (RELUFU) works to address poverty, hunger, and economic, social and environmental injustices in Cameroon.

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#### Notes

<sup>1</sup> Munden Project (2012) The Financial Risks of Insecure Land Tenure: An Investment View. [http://rightsandresources.org/wp-content/uploads/2014/01/doc\\_5715.pdf](http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf) (accessed January 2018). / <sup>2</sup> FAO (2012) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs). / <sup>3</sup> For example, African Commission on Human and Peoples' Rights v. Republic of Kenya, African Court on Human and Peoples' Rights, Judgment (26 May 2017). / <sup>4</sup> Access or use rights are guaranteed by national legislation, notably Ordinance n°74-1 of 6 July 1974 Establishing Rules Governing Land Tenure and the 1994 Forestry Law. These allow ‘customary’ rights holders to continue to hunt, gather and use natural resources on lands, subject to certain restrictions, categorised as ‘National Lands’ that are held in trust by the government. / <sup>5</sup> According to Tagliarino, NK (2017) 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. *Land* 6:37. / <sup>6</sup> VGGT, see note 2 above, paragraph 16.1. / <sup>7</sup> ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary, ICSID Case ARB/03/16, Award (2 October 2006), paragraph 432. / <sup>8</sup> African Court on Human and Peoples' Rights Judgment, see note 3 above, paragraph 130. / <sup>9</sup> Cernea, M (1999) Why Economic Analysis Is Essential to Resettlement: A Sociologist's View. In: Cernea, M (ed) *The Economics of Involuntary Resettlement Questions and Challenges*. The World Bank, Washington DC, USA. / <sup>10</sup> Interview with World Bank Official. 2017.