EGYPT
Policy Note on Public Land Acquisition and Institutional Reforms

Application of Eminent Domain Principles

I. INTRODUCTION AND STATEMENT OF THE PROBLEM

Reports on the cost of doing business in Egypt consistently identify delays in land acquisition as one of the impediments to setting up new businesses as well as attracting foreign direct investments. Despite the provisions of Law 10/1990 (hereafter referred to as Law 10), which lays out a legal framework for the expropriation of real estate for public-interest projects, these delays persist due to overlapping in national and sectoral policies and practices.[1] The ensuing lack of policy coherence has brought about the following challenges, each of which is expanded on in this policy note.

a. **Public interest undefined**. There is no shared definition or agreed-upon set of criteria for what constitutes "public interest." Instead, Law 10 outlines a set of investments deemed to be "public interest projects" and authorizes the Cabinet to introduce new activities also deemed to be in the public interest.

b. **Lack of unified institutional framework.** There is no unified framework or mandate requiring the application of Law 10 to all public interest projects across all ministerial departments. In the interest of expediency, different ministerial departments have developed their own internal guidelines and practices for land acquisition, following eminent domain principles, but these practices are not always consistent with the provisions of Law 10.

c. **Lack of criteria for valuations**. There is no unified framework or set of criteria for valuation of entitlements under Law 10. The law provides for a valuation committee, to be led by ESA, but it does not include any independent member on the committee. The methodology used by the valuation Committee is, in many cases, not very systematic, nor is it open to public review.

[1] Egypt Public Land Management Strategy, Volume 1: Policy Note, WB, 2006. The 2006 World Bank Policy Note, which focused on the broader issue of weak land administration limiting revenue collection by the government, highlighted the prevalence of "a multitude of differentiated, non-transparent, complex and arbitrary procedures related to public land allocation, pricing and development controls, the lack of a coherent public land information system and the inability of investors and non-investors to figure out which authorities control public land and where is public land available, as well as ineffective land use planning with little gauge of demand and without consideration of the opportunity cost of land."

d. **Reliance on consensual arrangements**. The rampant use of consensual arrangements (willing buyer–willing seller mechanism) as the alternative mode for acquiring land for public- interest projects, though expedient in finalizing transactions, has proven to be very costly and is often subject to abuse. It is governed by civil law principles, but in many cases the principle of ensuring that the process truly involves a willing buyer and a willing seller (including the right of the seller to refuse to sell) is not fully adhered to.

e. Affected stakeholders left out of decisions. There are no clear requirements under Law 10 to consult or seek the participation of affected individuals or communities prior to implementing a land acquisition process.

f. **Long and costly grievance mechanisms**. Finally, the contestation or recourse mechanisms under Law 10 are often long and costly, and they can work against the affected parties if the parties have to take their complaints to the court system.

This Policy Note acknowledges the absence of a comprehensive land administration system in Egypt. It focuses instead on the challenges facing land acquisition for public interest projects and the shortcomings of Law 10. It summarizes key challenges based on the findings of key research products from the technical assistance (TA) program offered by the World Bank to the Egyptian government concerning land acquisition and policy reform, including the diagnostic analysis report prepared in June 2016 and the report of the TA Committee Members' visit to India prepared in May 2016.[2]

The key challenges discussed in this policy note fall under two broad kinds: limitations in law, and policy coherence. To help develop a more coherent and transparent approach to land acquisition, this note also lays out recommendations and a road map. The Annex to this note highlights the broader issues of land administration, with a special focus on the weak institutionalization of deeds and title registration systems.

II. KEY ISSUES

[2] Land Acquisition Practices in Egypt: Diagnostic Assessment of the key Issues and Challenges faced with Land Acquisition in Egypt" April 2016.
"Report: On the knowledge exchange program that was held in Hyderabad – India during the period from March 4 – 15, 2016 entitled 'Land Acquisition Resettlement and Rehabilitation Policies' under the technical assistance program provided to Egypt by the World Bank's Multi Donor Trust Fund to Support Land Acquisition Policies and Institutional Reform in Egypt." April 2016

A. LEGAL AND POLICY LIMITATIONS OF LAW 10

Law 10/1990 was enacted to enable land acquisition for public investment projects under eminent domain principles. However, the law has some shortcomings in its formulation and application when reviewed under current domestic practices and compared with international good practice. Due to the challenges encountered during the application of the Law, the Egyptian authorities are becoming also more cognizant of the limitations of the law and its coherence with other laws and the need to ensure its consistency with the provisions of the constitution.

a. Definition of Public Interest

Law 10 neither defines what it means by "public interest" nor lays out a set of criteria for its application; instead it enunciates a set of public investments and actions that serve the "common good." By not defining public interest doctrine, the law authorizes ministerial departments "to add other works of a public utility nature" to be included under eminent domain principles. It contains the caveat that an expropriation decree should be issued by the prime minister each time any new public work is launched, thereby conferring some level of oversight on the use of the doctrine. Without that oversight, public officials could have unfettered discretion in the use of the public interest doctrine.

Other countries have also struggled with the definition of "public interest." Some define it narrowly, limiting it to a set of public utility investments (as in Uganda), and some define it with broad leeway for interpretation, representing the common good and subject to review by the courts (as in the Francophone Civil Law countries of Africa). As a matter of legal scholarship, "public interest doctrine" is commonly defined as

> *the power to take private property for public use by the state, municipality, or private agency/corporation authorized to exercise functions of a public character, following the payment of just compensation to the owner of that property. These powers are exercised by the state by virtue of its superior dominion of sovereign powers over all lands within its jurisdiction*

As a matter of general legal practice, countries with effective and independent legal systems tend to allow the courts to define public interest doctrine, while countries with weak legal systems tend to be more prescriptive in determining how the doctrine is applied.

b. Key Elements not Explicitly Covered

Law 10 provides an overarching land acquisition framework for public interest projects. However, it fails to address the issue of de facto land occupation by citizens as well as the process of engagement with affected communities.

- **Dealing with squatters and other secondary rights holders**. Informal settlements are commonplace in rapidly expanding cities and towns. These unplanned settlements and uses of public lands create two sets of problems for Law 10. First, they create long-standing communities, usually at the fringe of urban areas, whose occupants do not possess documentary evidence of ownership or legal occupation. Second, "spontaneous communities" can occupy land prior to or during an expropriation process as a tactic to acquire some compensation under the law. In its formulation, Law 10 does not specifically address the question of squatters and informal settlements. However, the application of the law is based on "apparent owners," which includes squatters. The onus is on the legal owner to prove his or her title against the claims of the apparent owner at the time of the land take. This approach is fraught with risks, allowing land speculators to game the system and acquire benefits under that law.

  Furthermore, Law 10 does not recognize or compensate economically displaced persons; instead, the entitlement under the law is based on the "real estate unit." This leaves out other secondary sources of employment and income, including street-level services not covered by the law.

- **Participation and consultations.** Law 10 provides detailed guidance on the notification of apparent owners whose properties are up for expropriation. It signifies an attempt at awareness raising through a process of public notification. However, it fails to lay out a framework for consultations and community engagement with citizens, including those affected within the area of the investment's influence. The land acquisition decree does not seek input from the host community; in fact, its primary purpose is to terminate or temporarily suspend the rights of affected landowners. This misses the point that stakeholder input might be a critical factor in the success of the investment.

c. Areas Lack of Clarity

Other areas where Law 10 lacks clarity include partial expropriation and restriction of use.

- **Partial expropriation.** Partial expropriation that renders the remaining property economically non-viable is covered by Article 21 of Law 10, but its application is uneven. Article 21 requires a set of criteria that will allow the landowner to demand such expropriation.
- **Restriction of use.** There are instances of temporary land acquisition, which are accompanied by long- term restriction of use, especially in the case of easements and other rights of way. Although the landowners retain their ownership rights to the land, they are not allowed full use of the land because doing so could have negative impacts on the investment by the public utility company. This is particularly the case with power lines and gas pipelines, where the use of the land often encounters certain restrictions beyond the construction phase.

B. KEY INSTITUTIONAL AND OPERATIONAL CHALLENGES

a. Lack of Unified Institutional Framework

Law 10, as amended in 2015, confers the Egyptian Survey Authority (ESA) with responsibility for implementing land acquisition for public interest projects. However, there is no unified institutional framework for applying the law[3]; on the contrary, different government agencies adopt their own internal decrees/laws, procedures, and approaches to avoid the complexities and lengthy procedures associated with the law. This institutional overlap creates a difficult situation for the central ESA. An additional problem is that ESA does not update land transactions generated at the governorate level on survey maps in a timely manner, leaving its database generally out of date.

b. Lack of Criteria for Land Valuation

- **Composition and mandate of Valuation Committee.** The central tenet in the implementation of Law 10 consists of the valuation of the indemnity due to be paid to the landowners. The mandate is vested in a valuation committee created in each of the governorates by decree of the Ministry of Water Resources and Irrigation. Unfortunately, the criteria for selecting the committee's members is driven more by institutional affiliation than by technical competence. A common critique of these committees is their lack of technical expertise and professionalism in

[3] Although not mentioned in the Law, the Governorates of Cairo and Alexandria have also set up their own independent land expropriation systems. Executive regulation article #1 states, "Egyptian Survey Authority implements expropriation procedures of land and real estate necessary for projects of public interest with the exception of the projects undertaken by other parties in accordance with law." The governorates of Cairo and Alexandria have land expropriation sections to implement the process without coordinating with the ESA.

the valuation process. Another common critique is that neither representatives of the affected communities nor independent valuators are present on the committees as members.

- **Lack of structured methodology for valuation.** Although the law requires that valuation be based on market prices prevailing at the time, there is no structured methodology for such valuation in Egypt due to the relatively random nature of the market. There are no uniform, announced guiding principles on how to determine prevailing prices. As a matter of principle, proper valuation criteria should be based on replacement costs, either at the ongoing market rate or using other mechanisms for assessing equivalence. The valuation framework should be available for review by all interested parties and subject to regular revision as warranted by the circumstances on the ground.

c. Reliance on Consensual Arrangements

Public utility investments are covered by eminent domain principles. But given the delay in undertaking land expropriation under Law 10, public utilities commonly pursue consensual transactions, even though these might come at a substantially higher price. A common practice therefore is to obtain an expropriation decree before initiating the willing buyer–willing seller transaction. At that point, the landowner is at a significant disadvantage, because the public utility firm can always exercise its legal right to expropriate the land if the landowner does not agree to the terms of the transaction. Knowing the time factor and delays it might take to navigate through a formal expropriation process, the landowner's best bet is to accept the terms of the willing buyer–willing seller transaction. Left unregulated, this consensual transaction could lead to a major abuse of eminent domain powers.

d. Burdensome Grievance Mechanisms

Law 10 specifies that any grievances against an acquisition should be resolved by the land acquisition implementation authority (in most cases, the ESA). It allows just 15 days for aggrieved parties to launch a complaint after the publication of the final list of entitlement holders by the implementing agency. This timeframe is widely considered too short by landowners, and complainants tend to rely instead on the courts for a final resolution of their grievances. In practice, the courts are not receptive to complaints when the landowners do not possess documentary evidence of ownership or occupancy such as a title deed. Overall, the current grievance redressal system is too expensive and unresponsive to secondary- interest holders in the property. Mediation services should be available at the level of the governorate or lower levels to register, conduct hearings, and resolve land expropriation grievances before any recourse is made to the courts.

e. **ESA's ineffectiveness as the lead implementation agency**

Land acquisition for public-interest projects is just part of the broader issue of land management, which requires that the implementing agency (ESA) should possess the skills and capabilities to set up and manage a land administration system. That does not seem to be the case, however. The recurrent critique is that the agency lacks a land management database and possesses incomplete land survey data. The diagnostic report attributed some of these shortcomings to (i) the staff's high turnover rates, (ii) the inability to recruit new candidates to work for ESA, and (iii) inadequate number of properly trained personnel. This analysis raises the broader issue of weak incentives to recruit, train, and retain technical staff. Capacity building and greater staff motivation will be needed to enhance the effectiveness of ESA as the lead implementation agency.

C. **LACK OF POLICY COHERRENCE DUE TO LEGAL AND INSTITUTIONAL PLURALISM**

Law 10 came into operation when other laws and regulations were already in existence regulating different aspects of land administration. Rather than envisaging and establishing a Framework Law that could have provided some coherence to the various policy and normative systems, none was put in place. Nor were the preexisting laws retired to allow for a unified normative framework. Consequently, Law 10 operates in a context of legal and institutional pluralism, with considerable overlap in the spheres of implementation. The most critical issues are *land improvement fees* and *dealing with the fiscal authority*.

a. **Land improvement fees (Law 222)**

Public utility investments in a locality are likely to bring about improvements to the value of the property. There are two relevant cases in this regard. (i) The first case is that of the impacted landowner whose asset (either fully or partially) is affected by the project bringing about improvements to the area. In such a case, the incremental value of the improvement is deducted from the compensation. (ii) The second case is when the entire neighborhood improves as a result of the project. In that case, the concept of improvement fees is applied to the owners of assets within the neighborhood at the point of sale. In some cases, certain types of investments actually reduce the value of the land and assets, although the owners and users of those assets are not compensated for the loss of value.

b. **Dealing with the fiscal authority**

The Ministry of Finance requires the ESA to refer any pending compensation for land expropriation to the tax authority to ensure that the landowner has no outstanding tax obligation; if there is an obligation it is deducted from the compensation payments. Even though the taxation office is required to respond within 40 days, this has been a major source of delay in finalizing land expropriation.

III. RECOMMENDATIONS AND NEXT STEPS

The recommendations proposed here cover issues in the following four areas: amending Law 10, restructuring and improving institutional arrangements, and improving policy alignment and coherence.

A. AMENDING LAW 10

Without providing a rigid definition of public interest, Law 10 should be amended as follows.

a. **Defining criteria and boundaries**. To better defining its boundaries, the law should lay out criteria for the declaration of public-interest projects and expand the category of those affected by expropriation to include bona fide secondary users of the land without title. This amendment should broaden the scope of the law to include both physical and economic displacement.
b. **Improving the valuation committee**. The composition of the land valuation committee should be amended to include independent land assessors as well as representation from affected landowners. This can only be done by amending the law or the executive regulation.
c. **Compensation for restriction of use of the right of way**. Where there is strict restriction to land use pursuant to an easement or right of way, Law 10 should be amended to compensate for the loss of use during the existence of such restriction.
d. **Inclusion of all stakeholders**. The law should be amended to require a consultation process in which all stakeholders are involved in determining their entitlements and feedback on the investment. Consultations should be an ongoing process during the project cycle.

B. RESTRUCTURING AND IMPROVING INSTITUTIONAL ARRANGEMENTS

On the implementation front, the following set of actions will significantly enhance the institutional arrangements for land expropriation.

a. **Establishing a unified framework**. Law 10 should be amended to provide for a unified institutional framework for land expropriation operating at the level of all the governorates,

with ESA serving as the secretariat for the process.[4] In addition, the ESA should be mandated to provide the technical services associated with broader land administration, including cadastral services as well as updating of deeds and title registries.

b. Improving transparency. The methodology and criteria for land valuation should be made public to enhance transparency. The guiding principle for the valuation process should be based on the principle of replacement costs.

c. Preventing opportunistic squatter occupation. To avert the spontaneous occupation of land after its expropriation, the acquiring agency should ensure a strict enforcement of the cut-off date to differentiate bona fide squatters from opportunistic squatters. For bona fide squatters and other economically displaced persons, compensation does not necessarily have to be in cash; alternative arrangements for in-kind resettlement should not be excluded if the ultimate goal is to avert the impoverishment of displaced persons.

d. Improving the grievance system. The current Grievance Redressal Mechanism is expensive and unresponsive to the needs of secondary right holders in the land. Grievance services should be localized at the level of the governorates with the mandate to register grievances, conduct hearings, and resolve all expropriation complaints before any recourse is made to the courts.

e. Professionalizing land administration. To enhance the ESA's ability to carry out land administration, technical assistance should be provided to beef up training and accreditation and to create an appropriate work environment that would retain and nurture the careers of young professionals. All professionals working with ESA should be provided with the resources to undertake study tours and other training opportunities to enhance the ESA competences at the local, governorate, and national levels.

C. IMPROVING POLICY ALIGNMENT AND COHERENCE

a. Making land registration comprehensive. Egypt has two systems for land registration: Law 142/1964, which deals with title registration, and Law 114/1946, which deals with deed registration. The title registration system does not permit a building or parts thereof to be registered as a real estate unit while it is also registered under the deed system. Since the Government of Egypt aims to apply the title system all over Egypt, the law should be amended to make registration compulsory as proof of occupancy.

[4] ESA should handle all the administrative and technical aspect of land expropriation, including updates of survey and cadastral data.

b. **Delinking land improvement fees and compensation from unrelated matters**. As a matter of principle, improvement fees should only be considered if there is proof of material benefit. The Land Improvement fee under Law 222/55 should be delinked from the implementation of Law 10. Also, because there is no conceptual link between land expropriation and tax payments, the compensation payments under law 10 should be delinked from the enforcement of the general tax obligations.

c. **Developing guidelines for consensual transactions.** Even though consensual transactions are governed by civil law, national guidelines should nevertheless be developed to regulate them when land is being purchased for public-interest projects or the threat of applying Law 10 motivates a consensual transaction. These guidelines should be modeled on the principle of replacement costs used in the valuation framework under Law 10, which should serve as a compensatory floor for all transactions. However, the parties should be free to negotiate upwards, depending on the characteristics of the property, without compromising the notion of the replacement costs.

d. **Institutionalizing TA and policy committees.** Both a Technical Committee on Land Expropriation and a new Policy Committee should be made permanent and linked with the Office of the Prime Minister. The current TA Committee should be institutionalized as the technical committee, dealing with the operational issues of policy reforms and implementation across various sectors. A policy-level standing committee, consisting of heads of departments, should be constituted as the Policy Committee, to provide policy oversight and ownership of the reforms.

The institutionalized Technical Committee on Land Expropriation should be responsible for the following:

- Review good practices in the sectors and improve the standardization and customization of sector-wide guidelines. These guidelines should provide consistency in the application of the policy while responding to the specific needs of the department or agency;
- Prepare an *Operations Manual* (booklet) to provide practical guidance to teams in the field and enhance consistency in the implementation of Law 10. This manual should include shared guiding principles and guidelines for dealing with recurrent grievances; and
- Review and provide guidance on how to streamline administrative processes as well as assess the feasibility of a one-stop-shop for administrative clearances.

IV. NEXT STEPS

The highly energized TA Committee envisages a work program in two phases: short-term, and medium/long-term:

A. PHASE ONE: LAW REFORMS

This phase, which has already been initiated by the Ministry of Justice, is putting forward several law reform initiatives, consistent with the Constitution and based on the principles of fair compensation paid upfront into a bank account. The compensation integrates a 20 percent premium for moral/social loss. This phase of the reform process is inspired by the findings of the TA as well as the learning/exchange visits undertaken by members of the TA committee to India.

B. PHASE TWO: INSTITUTIONAL REFORMS

The second phase of the reform agenda will be inspired by the lessons learned from domestic investments as well as the comparative analysis of international good practices. The primary focus will be on institutional reforms that will sketch out the criteria and revised composition of the valuation committee. This phase of the reform process, to be sponsored by the Ministry of Water Resources and Irrigation, will also include actions that can be taken by executive order to enhance the effectiveness of Law 10. The primary goal of these actions should be to enhance policy coherence and foster a systematic engagement and alignment with other ministries, especially the Ministry of Justice and the Ministry of Finance.

Annex 1. Highlights of Framework for Land Administration in Egypt

There are three predominant forms of land holdings in Egypt: (i) public or state lands, (ii) private lands, and (iii) *waqf* land (being held in trust/endowment for religious or charitable purposes). All unregistered lands and/or communal lands fall with the domain of public or state lands, including the customary lands of Bedouin tribes in the desert. Individuals are expected to register their lands under a deed and title registration system. In practice, the vast majority of Egyptians have not registered their interest in land; data show that about 95% of rural land but only about 10% of urban land is effectively registered.

The Title Registration system, unlike the deed system, is an authoritative record of ownership of real estate rights. The system is property-based, and information in the register is indexed according to a unique parcel or real estate unit identification number.

The National Project for the Automation of Title registration in Rural Areas was initiated in 2006 to run for a duration of three years. This was to put into practice the provisions of Law 142 of 1964, enacted to convert deed registration—prevalent in the rural areas—to title registration.

This title registration system has never been implemented in urban areas, because Law 142/1964 does not permit a building or parts thereof, such as an apartment, to be registered as a "real estate unit." Article 8 of Law 142/1964 defines a real estate unit to be (i) a land plot, (ii) a mine or quarry, and (iii) a public utility. Given the potential limitation in scope, the law further authorizes the Ministry of Justice to amend the definition of a "real estate unit" by decree. The ESA is advocating such an amendment to include buildings or parts thereof (apartments) as a critical step toward title registration in urban areas.

Furthermore, the title registration system has been significantly affected by the high administrative costs of registration, leading to low rates of registered parcels. The situation is most undesirable in urban areas, where the absence of title registration, especially of buildings and apartments, accounts for poorly developed municipal finance policies. It goes without saying that since most urban parcels are unregistered, the framework for the establishment of various entitlements under Law 10 is fraught with challenges over ownership; hence the rampant use of "apparent owner" to identify the physical occupant of the land.

On technical grounds, the situation is further exacerbated by the fact that cadastral survey maps are outdated and fail to capture consensual land transactions or other customary real estate contracts not registered in the system. Despite the numerous legal attempts to regularize instances of encroachment on public lands, mostly urban sprawl into desert lands with the attendant informal land transactions, there is no complete record of occupancy/ownership in the technical cadaster.