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OPTION REPORTS

PROTECTION FROM EXPROPRIATION

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on which version was used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

Expropriation of private property by government in developing countries is one of the major obstacles for foreign direct investment. We describe below constitutional provisions regarding the rules governing expropriation of private property.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

Overall, 83% of constitutions in the sample allow the government to expropriate private property under at least some conditions. However, 93% of these constitutions impose explicit restrictions and limits on the exercise of this power, either in terms of the level of compensation required or conditions under which lawful expropriation can take place. There is great variation in terms of the conditions placed on expropriation.

Figure 1. Percent of Constitutions that allow Government to Expropriate Private Property at least under some Conditions by Year (N=550)

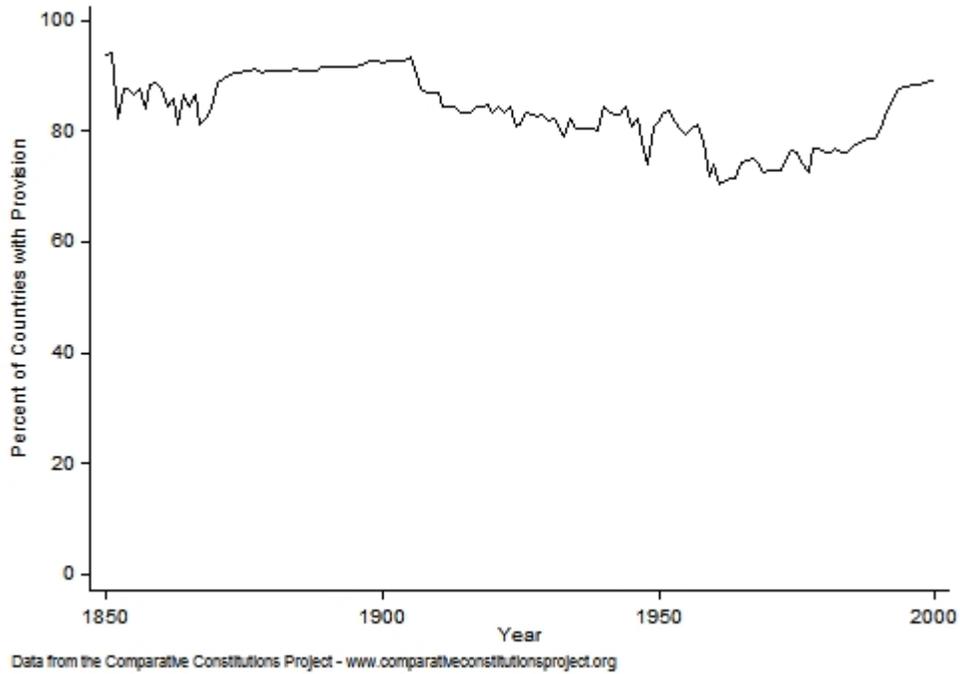
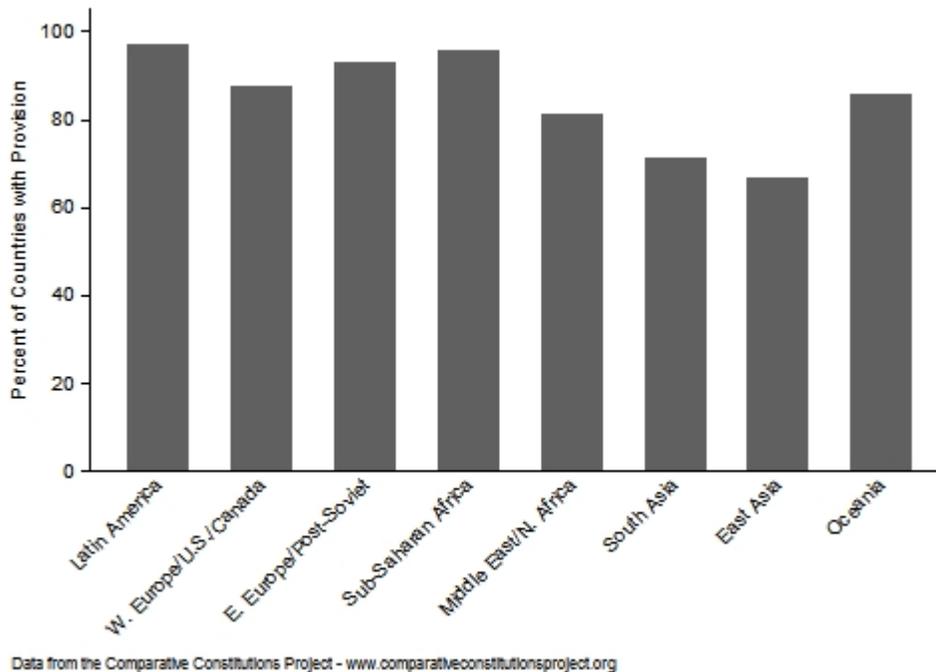


Figure 1 shows the percent of constitutions over time that allow government to expropriate private property under some conditions. This has been a typical feature of most constitutions since the 1850s. Figure 2 shows regional variation among contemporary constitutions, and suggests the provision is almost uniformly distributed across region, being least prevalent in South and East Asia.

Figure 2. Percent of Constitutions that allow Government to Expropriate Private Property at least under some Conditions in 2000 by Region (N= 191)



Although most constitutions allow government to expropriate private property, many also place important restrictions on the power in terms of the level of compensation the state has to provide and limiting conditions under which expropriation can take place. As Table 1 shows, 73% of constitutions in the sample provide that government must compensate the property holder for expropriation, with 63% of constitutions requiring a specified level of compensation and 10% leaving the level of compensation to non-constitutional law.

Table 1. Levels of Compensation (N=456)

Level	Number	Percentage
Fair/Just	204	44%
Full	36	8%
Appropriate	5	1%
Adequate	5	1%
Left to Law	10	2%

Table 2 shows that constitutions frequently limit the conditions under which the state can lawfully expropriate private property. The most common restriction is that the expropriation must take place for a general public purpose of some kind. (In our analysis, *general public*

purpose includes provisions such as: public utility/interest/necessity; state-approved usefulness; state/society needs; public's sake; social interest/purpose/benefit; common good; common interest; and interest of all.)

Table 2. Reasons for Lawful Expropriation (N=456)

Body	Number	Percentage
General Public Purpose	350	77%
Infrastructure	38	8%
Redistribution	11	2%
National Defense	39	9%
Natural Resource Preservation	12	3%
Exploitation of Natural Resources	16	4%
Land Reform	18	4%

Some constitutions provide procedural conditions for lawful expropriation. Examples include:

- Public purpose must be legally approved (e.g. Bolivia 1861, Colombia 1832, Dominican Republic 1908, El Salvador 1883, 1886, 1941 and 1939, Venezuela 1857, etc.)
- By court order/judicial decree (e.g. Afghanistan 2004, Azerbaijan 2002, Democratic Republic of Congo 2003, Ecuador 1946 and 1987, Georgia 2002, Haiti 1987, Honduras 1904, Panama 1956, etc.)
- Expropriation must be authorized by law (e.g. Argentina 1994, Bolivia 1967, Bolivia 2002, Denmark 1953, Paraguay 1967, etc.)
- Owner must have right to appeal (e.g. Botswana 1997, Gambia 1996, Guyana 1995, Liberia 1986, Malawi 1999, Swaziland 2005, Zambia 1964, etc.)

4. NOTES ON ATYPICAL CASES

Sometimes conditions under which the state can expropriate private property are not explicitly specified in the constitution but rather left to non-constitutional law. Two unique examples are Afghanistan 1931, which links compensation to conformity with religious law. China 1954 leaves not just the amount of compensation to ordinary law but the larger issue of whether the state will pay any compensation at all.

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into sections on:

1. Power of government to expropriate private property
2. Requirement of law or court decision
3. Unusual provisions on level of compensation
4. Exceptions on timing or compensation

5.1. Power of government to expropriate private property

Property is inviolable. No one's property can be confiscated except in accordance with the provision of the law and the decision of a competent court. Expropriation is allowed only for securing public interest, against an advance equitable compensation, in accordance with the provisions of the law. No one shall be prohibited from acquiring property and exercising the right of ownership of the same, within the limitations of the law. The ways of utilizing property shall be regulated and guided by the law, for securing the public interest. Investigations and declarations of a person's property can be made only in accordance with the provisions of the law. Foreign states and nationals are not entitled to own immovable property in Afghanistan. Subject to the approval of the government, immovable property may be sold to the diplomatic missions of foreign states on a reciprocal basis and also to those international organizations to which the State of Afghanistan is a member.

- *Afghanistan 1964. Article 29*

No person may be deprived of his/her property except in the public interest, in cases established by law and in the manner it prescribes and on the condition that just compensation is made in advance.

- *Belgium 2005. Article 16*

Every person has the right to his property. No one shall be deprived of his property except for state-approved usefulness and in exchange for a just and prerequisite compensation.

- *Benin 1990. Article 22*

The Constitution ensures to Brazilians and to foreigners residing in the country the inviolability of rights concerning life, liberty, security, and property, in the following terms: ...

22. The right to own property shall be guaranteed, except in case of expropriation for public necessity or utility or social interest, with previous and fair compensation in money, except as provided in Article 157.VI.1. In case of imminent public danger, the competent authorities may use private property, with assurance of compensation to the owner at a later date.

- *Brazil 1967. Article 150.22*

Land in the cities is owned by the state.

Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and private plots of cropland and hilly land are also owned by collectives.

The State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.

No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law.

All organizations and individuals who use land must make rational use of the land.

- *China 2004. Article 10*

The right of property is guaranteed to all. No one can be deprived of his property if it is not for [a] reason of public utility and under the condition of a just and previous indemnization.

- *Cote d'Ivoire 2000. Article 15*

Property is guaranteed by the constitution. Laws determine its content and limitation.

Expropriation may only be decreed based on valid laws and for the purpose of public welfare. It has to be executed with appropriate compensation, unless specified otherwise by Reich law. Regarding the amount of the compensation, the course of law at general courts has to be kept open in case of a controversy, unless Reich laws specify otherwise. Expropriations by the Reich at the expense of the states, communities or charitable organizations may only be executed if accompanied by appropriate compensation. Property obliges. Its use shall simultaneously be service for the common best.

- *Germany (Prussia) 1924. Article 153*

...Private property may be taken for public use upon just compensation there for.

- *Japan 1946. Article 29*

The right to property is guaranteed.

The use and extent of this right may be restricted by law, should the need for it arise in the economic and social planning and development of the country.

Expropriation of property shall not be permitted, otherwise than under such circumstances as are prescribed by law, and in accordance with its provisions.

- *Morocco 1970. Article 15*

While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:

- (i) that reasons for such expropriation are given;
- (ii) that there is prompt payment of just compensation;
- (iii) that such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and
- (iv) that when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.

- *Liberia 1986. Article 24.a*

No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that:

- (a) requires the payment of adequate compensation therefore; and
- (b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

- *Nigeria 1963. Article 31.1*

No one may be arbitrarily deprived of his or her property except on the basis of decision by a court of law. Property can be forcibly alienated for state needs only on condition of a preceding and equal compensation.

- *Russia 1993. Article 35.3*

1. The right to private property and inheritance is recognized.
2. The social function of these rights shall determine the limits of their content in accordance with the law.

3. No one may be deprived of this property and rights except for justified cause of public utility or social interest after proper indemnification in accordance with the provisions of law.

- *Spain 1992. Article 33*

The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defense, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, or other public interests, and fair compensation shall be paid in due time to the owner thereof as well as to all persons having the rights thereto, who suffer loss by such expropriation, as provided by law.

The amount of compensation under Paragraph One shall be fairly assessed with due regard to the normal price, mode of acquisition, nature and situation of the immovable property, and loss of the person whose property or right thereto is expropriated.

The law on expropriation of immovable property shall specify the purpose of the expropriation and shall clearly determine the period of time to fulfill that purpose. If the immovable property is not used to fulfill such purpose within such period of time, it shall be returned to the original or his or her heir.

The return of immovable property to the original owner or his heir under Paragraph Three and the claim of compensation paid shall be in accordance with the provisions of the law.

- *Thailand 1992 and 1997. Article 49*

No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say

(a) the taking of possession or acquisition is necessary in the interests of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition:

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the High Court of Uganda, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the

property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

- *Uganda 1963. Article 22.1*

The right of property is inviolable, but it is subject to laws enacted in the general interest. No one may be deprived of his property rights except in case of public necessity or utility established by law, and the National Treasury shall always pay just compensation in advance. Whenever expropriation is ordered for reasons of public necessity or utility, the property owners shall be indemnified for loss or damages they may suffer on account of delay, whether the expropriation is actually carried out or not, including those incurred because of variations in the value of the currency.

- *Uruguay 1996. Article 32*

Real property subject to the right of ownership may be expropriated against equitable compensation, or this right may be restricted if so required by the general interest determined in conformity with statute. The basic principles and criteria for deciding equitable compensation shall be regulated by statute. These basic principles and criteria may not be determined in a way which would through their application result in a serious deterioration of the living and working conditions which the owner of expropriated real property had before on account of the use of this real property.

Equitable compensation shall not include any increase in the value of real property resulting directly or indirectly from investment of social resources.

- *Yugoslavia 1974. Article 82*

The right to property is guaranteed. Every person has a right to the use, possession, enjoyment and disposition of his assets. Property is subject to the contributions, restrictions and obligations that the law establishes with purposes of public utility or general interest. Only for reasons of public utility or social interest, by means of firm sentence and opportune payment of just indemnification, can the expropriation of any type of assets be declared.

- *Venezuela 1999. Article 115*

5.2. Requirement of Law or Court Decision

Expropriation cannot be undertaken except within the framework of the law. It provides the ground for a just and equitable compensation.

- *Algeria 2002. Article 20*

No one is dispossessed without a decision of the court. Complete confiscation is inadmissible. The alienation of property for State needs or social needs is allowed only upon preliminary fair reimbursement of its value.

- *Azerbaijan 2002. Article 29.4*

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—...

(b) the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition...

- *Bahamas 2002. Article 27.1.b-c*

Expropriation is effected for reasons of public benefit or when property does not fulfill a social purpose, authorized by law and with just compensation.

- *Bolivia 2002. Article 22.2*

Art. 5.XXIV. The law shall establish procedures for expropriation for public necessity or use, or for social interest, upon just and prior compensation in cash, with the exception of cases provided for in this Constitution.

Art. 185. The following shall not be subject to expropriation for agrarian reform purposes:

I - small and medium-sized rural property, as defined by law, so long as its owner does not own other property;

II - productive property.

The law shall guarantee special treatment for productive property and set rules for compliance with requirements for its social function.

- *Brazil 2005. Article 5.24 and 185*

The right of private ownership is recognized for all, Burundi and foreigners, subject to legal limitations.

It should be compatible with the general prosperity. It cannot be expropriated in the case of proven public necessity or in view of establishing social rapport and equitable economic standing among the members of the collectivity, subject to a fair indemnity and under conditions prescribed by law.

- *Burundi 1981. Article 19*

Property is inviolable; no one can be deprived of his property, except in the public interest legally proved and after indemnification in conformity with the law. In case of war or internal disorders it is not necessary that indemnification be paid previously.

The Congress may, for reasons of public necessity, by the vote of two thirds of all its members, impose limitations on property for social interest.

- *Costa Rica 1946. Article 29*

The state may, in the public interest, buy, requisition or nationalize land and other means of production both in cities and countryside according to provisions of law.

- *China 1954. Article 13*

(1) The right of property shall be inviolable. No person shall be ordered to surrender his property except where required in the public interest. It shall be done only as provided by statute and against full compensation.

(2) Where a Bill has been passed relating to the expropriation of property, one-third of the members of the *Folketing* may, within three weekdays from the final passing of such Bill, demand that it shall not be presented for the Royal Assent until new elections to the *Folketing* have been held and the Bill has again been passed by the *Folketing* assembling thereafter.

(3) Any question of the legality of an act of expropriation, and the amount of compensation, may be brought before the courts of justice. The hearing of issues relating to the amount of the compensation may by statute be referred to courts of justice established for such purpose.

- *Denmark 1953. Article 73.2*

No one shall be deprived of his property unless by judicial decision, or through condemnation for public use, which shall be made according to law and upon previous indemnification.

- *Ecuador 1897. Article 16*

Everyone has the right, within the limits of the law, to own and dispose of property. No one may be deprived of his property except upon a finding by ministerial order issued pursuant to the requirements of a special expropriation law enacted in accordance with the provisions of Articles 88, 89 or 90 of the present Constitution, and except upon payment of just compensation determined in the absence of agreement, by judicial procedures established by law. Said ministerial order, to be effective shall

be approved by the Council of Ministers and published in the *Negarit Gazeta*.

- *Ethiopia 1955. Article 44*

No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of a law that -

(a) requires the acquiring authority to give reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition;

(b) requires the acquiring authority to apply to the High Court for an order authorizing such taking of possession or acquisition or to apply thereto within thirty days of such taking of possession for such an order as aforesaid;

(c) requires the High Court. not to grant such an order unless it is satisfied that the taking of possession or acquisition is necessary or expedient in the interests of defense, public safety, public order, public morality, public health, town. and country planning or utilization of any property in such a manner as to promote the public benefit; (d) requires the acquiring authority to pay damages in respect of such taking of possession prior to an application to the High Court when such an order is not granted and requires the prompt payment of adequate compensation for the taking of possession *or* acquisition where such an order is granted;

(e) requires the acquiring authority, if no agreement as to the amount and manner of payment of compensation has been concluded with any claimant to compensation within thirty days of the grant of the order referred to in paragraph (b) of this subsection, to apply to the High Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation); and

(f) requires the acquiring authority to pay the costs reasonably incurred by any other party in connection with the proceedings before the High Court for any of the, aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court or the Fiji Court of Appeal given for those purposes.

- *Fiji 1990. Article 9.1*

Every person has the right not to be deprived of property by the State otherwise than in accordance with a law...The acquisition of property...is permissible for public purposes only; and is subject to the payment of agreed compensation or, failing agreement, to the payment of such

compensation and within such period as is determined by a court or tribunal to be just and equitable taking into account all relevant factors...

- *Fiji 1998. Article 40*

No property of any description shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of The Gambia except by or under the provisions of a law that

(a) requires the payment of adequate compensation therefore; and
(b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation to the Supreme Court.

- *Gambia 1970. Article 18*

In specific cases, private property can be expropriated for reasons of duly proven collective utility, social benefit, or public interest. Expropriation will have to be subject to the proceedings indicated by the law, and the affected property will be appraised by experts taking its actual value into account.

Compensation will have to be made in anticipation [*ser previa*] and in legal tender, unless another form of compensation is agreed upon with the interested party.

Only in cases of war, public disaster, or serious disruption of peace can there be occupation or interference with property or expropriation without prior compensation, but the latter will have to be done immediately following the end of the emergency. The law will establish the norms to be followed with enemy property.

The form of payment of compensation for the expropriation of idle land will be determined by law. In no case will the deadline to make such payment effective exceed 10 years.

- *Guatemala 1993. Article 40*

The right to private property shall be guaranteed. Nothing shall be expropriated if it is not in the legally constituted interest of all, and subject to a just and prior compensation.

- *Guinea 1990. Article 13*

Property is inviolable and sacred.

Concessions and sales legally made by the State shall be irrevocable.

No one shall be deprived of his property except for public use and in the cases and in the manner established by law, upon previous payment of a just indemnity.

Property shall not be confiscated for political reasons.

- *Haiti 1889. Article 19*

Saving of laws providing for acquisition of estates, etc.

(1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of share-holders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or license, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:]

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

- *India 2003. Article 31a.1*

1st - Private property is protected and the owner has the right to use it, exploit it and benefit from it within the boundaries of the law.

2nd - Property may not be taken away except for the public interest in exchange for fair compensation. This shall be regulated by law.

3rd - (a) An Iraqi has the right to ownership anywhere in Iraq and no one else has the right to own real estate except what is exempted by law.

(b) Ownership with the purpose of demographic changes is forbidden.

- *Iraq 2005. Article 23*

Private property may be expropriated, in cases provided for by law and with provisions for compensation, for reasons of general interest.

- *Italy 2003. Article 42*

Expropriation is permissible only for the public good. It may only be ordered by or pursuant to a law that regulates the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute respecting the amount of compensation, recourse may be had to the ordinary courts.

- *Germany 2002. Article 14.3*

Expropriation, use or restriction of private property from public necessity and compensation therefore shall be governed by law. However, in such a case, just compensation shall be paid.

- *Republic of Korea. Article 23.3*

(1) No land right or other private property may be taken unless a law authorizes such taking; and any such taking must be by the Government of the Republic of the Marshall Islands, for public use, and in accord with all safeguards provided by law.

(2) A use primarily to generate profits or revenues and not primarily to provide a public service shall not be deemed a 'public use.'

(3) Land rights shall not be taken if there exist alternative means, by land fill or otherwise, of achieving at non-prohibitive expense the purpose to be served by such taking.

(4) Before any land right or other form of private property is taken, there must be a determination by the High Court that such taking is lawful and an order by the High Court providing for prompt and just compensation.

(5) Where any land rights are taken, just compensation shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benefits that such land rights provide.

(6) Whenever the taking of land rights forces those who are dispossessed to live in circumstances reasonably requiring a higher level of support, that fact shall be considered in assessing whether the compensation provided is just.

(7) In determining whether compensation for land rights is just, the High Court shall refer the matter to the Traditional Rights Court and shall give substantial weight to the opinion of the latter.

(8) An interest in land or other property shall not be deemed 'taken' if it is forfeited pursuant to law for nonpayment of taxes or debt or for commission of crime, or if it is subjected only to reasonable regulation to protect the public welfare.

(9) In construing this Section, a court shall have due regard for the unique place of land rights in the life and law of the Republic.

- *Marshall Islands 1979. Article 2.5*

No expropriation can take place except in the cases and forms provided by law.

- *Morocco 1996. Article 15*

The right of private ownership of movable and immovable property and of the instruments and means of production is guaranteed.

By virtue of the social function of property, for reason of public utility or social interest, this right is subject to the limits and obligations imposed by the laws regarding its exercise. Immovable property mentioned in the first paragraph may be the subject of expropriation in accordance with the law following the cash payment of fair compensation.

- *Nicaragua 2005. Article 44*

Expropriation or restrictions on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated.

- *Slovakia 2001. Article 20.4*

Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

(a) for a public purpose or in the public interest; and
 (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

(a) the current use of the property;
 (b) the history of the acquisition and use of the property;
 (c) the market value of the property;
 (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 (e) the purpose of the expropriation.

(4) For the purposes of this section—

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land.

- *South Africa 2003. Article 25 paragraphs 1-4*

The right to property is guaranteed. Every person has a right to the use, possession, enjoyment and disposition of his assets. Property is subject to the contributions, restrictions and obligations that the law establishes with purposes of public utility or general interest. Only for reasons of public utility or social interest, by means of firm sentence and opportune payment of just indemnification, can the expropriation of any type of assets be declared.

- *Venezuela 1999. Article 115*

Legal property of individuals and organizations shall not be subjected to nationalization.

The state may, when it deems it absolutely necessary to serve national defense and security goals as well as national interests, purchase or requisition with compensation the property of individuals or organizations based on current market prices.

Procedures for purchase or requisition shall be defined by law.

- *Democratic Republic of Vietnam 1992. Article 23*

(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say:

(a) the taking of possession or acquisition is necessary or expedient:

(i) in the interests of defense, public safety, public order, public morality, public health, town and country planning or land settlement; or
(ii) in order to secure the development or utilization of that, or other, property for a purpose beneficial to the community; and

(b) provision is made by a law applicable to that taking of possession or acquisition:

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Zambia.

- *Zambia 1964. Article 18*

5.3. Unusual provisions on level of compensation

In Afghanistan the movable and immovable property of everyone is protected. In the event of any immovable property being required by Government in the public interest, the value of it will be paid to the owner according to Shariat law and the special code concerned, before it is taken over.

- *Afghanistan 1931. Article 15*

...The price established as compensation for the expropriated property shall be based on the assessed value recorded in the assessment or tax offices, whether this value has been declared by the owner or tacitly accepted by him by having paid taxes on that basis...

- *Mexico 2003. Article 27.vi*

5.4. Exceptions to compensation or timing

...The right to own property. Consequently, no one may be deprived of it except for a justified reason of public benefit or social interest, after payment of its fair value determined by the judgment of a competent tribunal. In case of public disaster, compensation need not be paid in advance. The penalty of general confiscation of property may not be imposed for reasons of a political nature.

- *Dominican Republic 1994. Article 8.13*

Expropriation shall proceed because of public utility or of social interest, legally proven, and after a just indemnification.

When expropriation is motivated by causes arising from war, public disaster or if it is has the objective of supplying water or electric energy, or for the construction of housing or highways, roads or public streets of any kind, compensation need not be in advance.

When justified by the amount of indemnification to be recognized for properties expropriated in conformity with the previous paragraphs, the payment may be made in installments which shall not exceed as a whole fifteen years, in which case the expropriated person shall be paid the corresponding bank interest. The said payment shall be preferably made in cash.

Entities that have been created with public funds may be expropriated without indemnification.

Confiscation as a penalty or in any other concept is prohibited.

Authorities which contravene this precept shall answer at all times with their persons and their properties to the damage inferred. Confiscated properties are imprescriptibly.

- *El Salvador 2003. Article 106*

6. APPENDIX

This report is based on the following questions from the Comparative Constitution Project's "survey instrument":

[EXPROP] Can the government expropriate private property under at least some conditions?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: Instructions: Please answer "no" if the constitution explicitly denies the subject of the question and "not specified" if the subject of the question is not mentioned in the constitution.

[EXPRCOMP] What is the specified level of compensation for expropriation of private property? (Asked only if EXPROP is answered 1)

1. fair/just
2. full
3. appropriate
4. adequate
90. left explicitly to non-constitutional law
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: If the constitution refers to actual value, market value, or the current price, code as full compensation. If the constitution refers to "reasonable" compensation, code as appropriate. Comment on any terms other than those listed in the answer choices.

Under what conditions or for what purposes can the state expropriate private property? (Asked only if EXPROP is answered 1)

1. Infrastructure, public works [EXPCOND1]
2. Redistribution to other citizens [EXPCOND2]
3. National Defense [EXPCOND3]
4. Land, natural resource preservation [EXPCOND4]
5. Exploitation of natural resources [EXPCOND5]
6. Land Reform [EXPCOND6]
7. General Public Purpose [EXPCOND7]
90. left explicitly to non-constitutional law [EXPCOND90]

96. other, please specify in the comments section [EXPCOND96]

97. Unable to Determine [EXPCOND97]

98. Not Specified [EXPCOND98]

Instructions: General public purpose includes such formulations as: public utility, interest, or necessity; state-approved usefulness; state or social needs; social interest, purpose, or benefit; common good or interest; and interest of all. Please code “interest of defense” as “national defense.”

[EXPLIM] What limits/conditions are placed on the ability of the government to expropriate private property? (Asked only if EXPROP is answered 1)

1. certain types of property (e.g. immovable property) [EXPLIM1]
2. payment must be made within specified time limits [EXPLIM2]
3. allowed without compensation in times of war/emergency/urgency public need [EXPLIM3]
4. only allowed through legal process or court decision [EXPLIM4]

90. left explicitly to non-constitutional law [EXPLIM90]

96. other, please specify in the comments section [EXPLIM96]

97. Unable to Determine [EXPLIM97]

98. Not Specified [EXPLIM98]

99. Not applicable [EXPLIM99]

Instructions: For example, if the constitution specifies that expropriation must be immediate, please mention that here.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.