



**SIGNIFICANT FEATURES AND FACTORS AFFECTING THE PRACTICE OF PHILIPPINE
EXPROPRIATION: PERSPECTIVES FROM NATIONAL GOVERNMENT LAWYERS AND
POLICY IMPLICATIONS**

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ABSTRACT

In the Philippines, expropriation has received renewed interest in light of the previous administration's "Build, Build, Build" program, which sought to promote economic opportunities through infrastructure development. Notably, even as international studies suggest that Philippine law on expropriation is comparatively more progressive than that of other countries, local policy reports have noted that expropriation proceedings, which the Philippine government frequently undertakes, are time-consuming, costly, and inequitable. There is, however, a lack of empirical studies exploring these issues and problems in detail. This qualitative study, based on interviews with national government lawyers, offers an examination of the salient features of the Philippine expropriation system and the critical factors that facilitate and hinder the practice of eminent domain in this jurisdiction. The results suggest that, while the applicable law and legal procedure, as written, are fairly straightforward and predictable, the expropriation process on the ground is substantially hindered by several factors. These include delays and costs incurred in court proceedings and the resistance of property owners, arising from disagreement with the expropriator's valuation of the property and the low compensation price usually offered during attempts to arrive at a negotiated sale. Based on the results of this study, the author opines that the current system incentivizes the government's immediate recourse to expropriation rather than prior consultations and negotiations with property owners. In view of these concerns, the author proposes exploring the following policy responses: (1) promotion of good faith negotiations with landowners; (2) creation of an administrative body tasked with the initial determination of compensation price acceptable to both expropriator and landowner; and (3) legal reform of the rule allowing immediate possession of the property sought to be expropriated upon the mere payment of its zonal value.

Keywords: expropriation, right-of-way, eminent domain, negotiated sale, just compensation

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INTRODUCTION

Eminent domain is the inherent right of a State to take private property for a public purpose (*National Transmission Corporation v. Oroville Development Corporation* [*TransCo v. Oroville*], 2017). In the Philippines, the government exercises the power of eminent domain through expropriation (also known as condemnation) proceedings in court.

Expropriation has received renewed interest in light of the previous administration's "Build, Build, Build" program, which sought to accelerate socioeconomic growth through infrastructure development (National Economic and Development Authority, 2018, p. 123). Notably, to address the economic effects of the COVID-19 pandemic, the 2021 national budget featured infrastructure development as a core policy response, with the economic services sector, including the "Build, Build, Build" program, receiving the second largest allocation at 1,323.1 billion pesos, equivalent to 29.4 percent of the budget (Department of Budget and Management, 2021). Promising to continue this program under the banner of "Build Better More," the current administration has committed to sustain infrastructure development spending at 5% to 6% of the GDP (Office of the President, 2022).

While the Philippine government frequently resorts to expropriation for right-of-way and site acquisition for infrastructure projects, and international studies suggest that Philippine law conforms with several voluntary international standards (Tagliarino, 2016, 2017), local policy reports assert, however, that expropriation continues to be time-consuming, costly, and inequitable (Lebrilla, 2014; Mira & Gutierrez, 2020).

In this study involving the perspectives of government lawyers with experience handling expropriation for the national government, the author takes a deeper look at the issues, challenges, and critical factors affecting the exercise of eminent domain in the Philippines. Policy implications and possible responses to these problems and concerns are discussed in this paper.^[1]

Background

Eminent domain is one of the three inherent powers of the State (the other two being taxation and police power). The Supreme Court has described the power of eminent domain as follows:

Eminent domain is the right or power of a sovereign state to appropriate private property to particular uses to promote public welfare. It is an indispensable attribute of sovereignty; a power grounded in the primary duty of government to serve the common need and advance the general welfare. The power of eminent domain is inseparable in sovereignty being essential to the existence of the State and inherent in government (*TransCo v. Oroville*, 2017).

As an inherent power of the State, eminent domain is traditionally wielded only by the national government. However, the legislature may delegate this power to local governments, other government entities, as well as private enterprises operated as public utilities (*City of Manila v. Alejandro Roces Prieto*, 2019).

As the exercise of eminent domain interferes, however, with private property rights, such

power is expressly circumscribed by the Constitution (1987), which mandates that “private property shall not be taken for public use without just compensation” (art. III, sec. 9). Accordingly, there are two general limitations for the valid exercise of the power of eminent domain: (1) the existence of a public use or purpose and (2) the payment of just compensation to the property owner (*TransCo v. Oroville*, 2017).

Apart from the limitations set by the Constitution, substantive legal requirements are prescribed by Congress through applicable laws. In particular, the acquisition of right-of-way and sites for vital infrastructure projects of the national government was previously governed by Republic Act No. 8974 [R.A. 8974] (2000). This law has since been repealed by Republic Act No. 10752 [R.A. 10752] (2016) or *The Right-of-Way Act*.

Meanwhile, procedural rules governing the conduct of expropriation proceedings in courts are specified in Rule 67 of the Rules of Civil Procedure (1997), promulgated by the Supreme Court.^[2] This study focuses on expropriation for national infrastructure projects under R.A. 10752, formerly under R.A. 8974, in relation to Rule 67 of the 1997 Rules of Civil Procedure.^[3]

Expropriation under R.A. 10752

R.A. 10752 was enacted in 2016 and is the prevailing statute governing right-of-way and site acquisition for infrastructure projects of the national government. R.A. 10752 expressly repealed R.A. 8974 but substantially reproduced the latter’s provisions. However, R.A. 10752 also introduced several changes aimed at expediting the implementation of infrastructure projects and ensuring a fairer valuation to landowners.

Under R.A. 10752, when an expropriator (referred to as the “implementing agency” in said law) finds it necessary to acquire private property for an infrastructure project, it may do so under any of three general modes: (1) donation, (2) negotiated sale, or (3) expropriation (sec. 4). The Implementing Rules and Regulations [IRR] of R.A. 10752 (2016) (which fills in the details in enforcing said law) also provides for other modes of acquisition, such as barter or exchange (IRR, sec. 4). However, the expropriator usually attempts a negotiated sale prior to expropriation.

In a negotiated sale, the expropriator offers to buy the property at a compensation price equal to the current market value of the land, its trees, and crops, plus the replacement cost of improvements (R.A. 10752, sec. 5[a]). If the owner refuses or fails to act upon the offer, expropriation is commenced in court. It is estimated, however, that only 10% of right-of-way and site acquisition for public works is accomplished through negotiated sale, while 90% is undertaken through expropriation (Department of Public Works and Highways [DPWH], 2017).

At the early stage of an expropriation case, the expropriator can immediately enter the land and implement the project by obtaining a writ of possession, which a court issues upon the expropriator’s deposit, in favor of the owner, of a provisional payment equivalent to 100% of the current zonal valuation of the land as determined by the Bureau of Internal Revenue [BIR] (R.A. 10752, sec. 6[a][1]). Thereafter, the expropriation proceeds with the determination of (1) the public use of the project and (2) the amount of just compensation (Rules of Civil Procedure, rule 67, sec. 4-5). With the aid of a board of commissioners, the court issues a judgment fixing the just compensation (sec. 5-8). The amount payable to the owner consists of the judgment award less the provisional payment made earlier by the expropriator, plus

legal interest on the balance from the time of taking of the property until finality of the judgment (*Republic of the Philippines v. Spouses Pedro and Zenaida Goloyuco*, 2019). Either party may appeal the ruling to higher courts.

Definitions of some key terms are provided in Table 1, while notable similarities and differences between R.A. 8974 and R.A. 10752 are presented in Table 2. Notably, expropriation under these two laws involves substantially the same court procedure (Rules of Civil Procedure, rule 67) and equivalent valuation standards for just compensation (R.A. 8974, sec. 5; R.A. 10752, sec. 7). The general flow of the expropriation process is outlined in Figure 1.

Term	Definition
Market value	“that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on” (<i>Republic of the Philippines v. Bank of the Philippine Islands</i> , 2013); “the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, ... fixed at the time of the actual taking by the government” (<i>Republic of the Philippines v. Court of Appeals</i> , 2002)
Zonal value/valuation	the real property values of different zones/areas in the Philippines, as prescribed by the BIR for purposes of computing certain taxes (sec. 6[E] of Republic Act No. 8424, as amended by Republic Act No. 10963, 2017)
Just compensation	“the full and fair equivalent of the property taken from its owner by the expropriator” (<i>Evergreen Manufacturing Corporation v. Republic of the Philippines</i> , 2017); “the sum equivalent to the market value of the property” (<i>Republic of the Philippines v. Court of Appeals</i> , 2002)

Table 1: Definitions of some key terms

Similarities/ Differences	R.A. 8974	R.A. 10752
Coverage	National government infrastructure projects (R.A. 8974, sec. 2)	Same as R.A. 8974, including public service facilities (R.A. 10752, sec. 3)
Compensation price	Fair market value of property (R.A. 8974, sec. 6) and replacement cost of structures/improvements (sec. 10 of the IRR of R.A. 8974, 2001); in determining compensation price, expropriator may engage government financing institutions [GFIs] or the latter’s accredited private appraisers (IRR, sec. 11)	Current market value of land, crops/trees, and replacement cost of structures/improvements; in determining compensation price, expropriator may engage GFIs or independent property appraisers/professional association of appraisers accredited by the <i>Bangko Sentral ng Pilipinas</i> (R.A. 10752, sec. 5[a])

Price offer	First offer based on BIR current zonal valuation of land; second offer shall not be higher than fair market value; owner has 15 days to accept offer (IRR, sec. 7)	First and final offer based on current market value and replacement cost mentioned above; owner has 30 days to accept offer (R.A. 10752, sec. 5[a])
Writ of possession requirements	Payment to owner of 100% of BIR current zonal valuation of land, plus value of structures/improvements (R.A. 8974, sec. 4[a]), the latter at replacement cost (IRR, sec. 10); expropriator must present certificate of availability of funds (IRR, sec. 12)	Deposit to court of same amount in R.A. 8974, plus current market value of crops/trees (R.A. 10752, sec. 6[a]); BIR zonal valuation must be issued not more than 3 years prior to filing of expropriation case (sec. 6[a][1]); no need for court hearing (sec. 6[a]) or for certificate of availability of funds
Valuation standards	R.A. 8974, sec. 5	Same as R.A. 8974 (R.A. 10752, sec. 7)
Capital gains tax	Not mentioned	Shouldered by government in negotiated sale (sec. 5[c]); paid by owner in expropriation (sec. 6[g])

Table 2: Some notable similarities/differences between R.A. 8974 and R.A. 10752

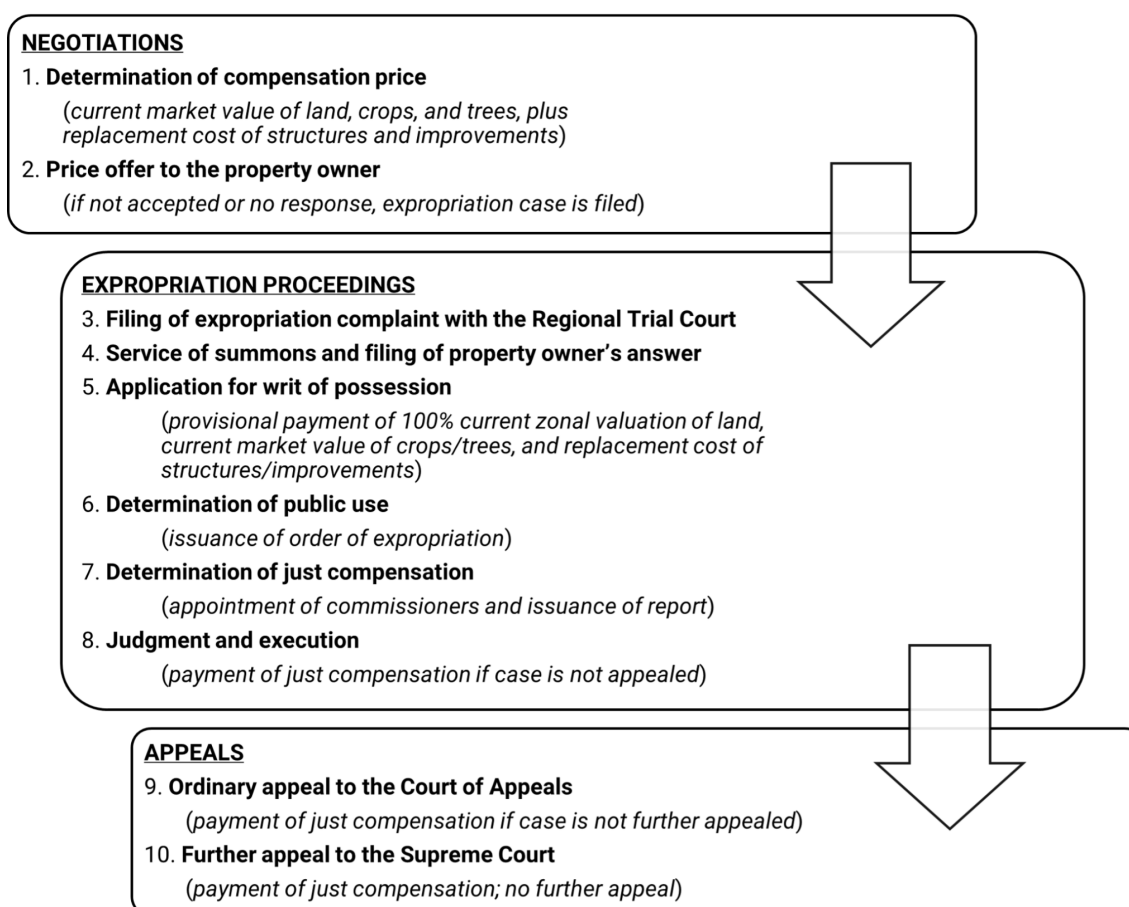


Figure 1: General flow of expropriation under R.A. 10752

Review of Related Literature

In a study of 30 countries in Asia and Africa, Tagliarino (2016) formulated 24 indicators to ascertain a state’s compliance with voluntary international standards on expropriation, particularly, in relation to public purpose requirements and limitations, as well as procedures regarding compensation, rehabilitation, and resettlement. Using the expropriation laws, regulations, and judicial decisions of the selected 30 countries as primary data, Tagliarino (2016) ranked the states according to their scores on the 24 indicators. The Philippines received the fifth highest score (p. 26; see Table 3).

Indicator	Y: Yes P: Partial
8. Prior to expropriation, must the government consult affected populations?	P
13. Must compensation reflect the economic activity associated with the land?	P
14. Must compensation reflect the improvements on the land?	Y
17. Must compensation be afforded prior to the taking of possession or within a specified timeframe?	Y
18. Can affected populations negotiate compensation levels?	P
19. Can affected populations challenge compensation in court or before a tribunal?	Y
24. Must the government avoid or minimize forced evictions?	P

Table 3: Some indicators on voluntary expropriation standards: Philippines (Tagliarino, 2016, p. 31)

In a subsequent study of 50 countries in Asia, Africa, and Latin America, Tagliarino (2017) developed a set of ten indicators to assess a state’s conformity with voluntary international standards, specifically, on just or fair compensation. This time the Philippines ranked second from the top (p. 20).

Tagliarino’s cross-country research (2016, 2017) is significant for the considerable number of countries involved and its contribution to the development of international standards on expropriation. Citing, however, his studies’ limitations, Tagliarino acknowledged that he had focused solely on the contents of laws, rules, and rulings but had not explored the extent to which they are implemented in practice within a particular state (2016, p. 10; 2017, pp. 6-7). Tagliarino likewise admitted that no domestic lawyers in the selected states had verified his findings (2016, p. 10).

In this connection, Lebrilla (2014), in a policy brief, pointed out several flaws in the Philippines’ expropriation system, including the delayed payment of just compensation to landowners (pp.

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18-19). In another policy brief, Mira & Gutierrez (2020), noting the failure of the BIR zonal valuation to accurately reflect the market value, emphasized the need to resolve inconsistencies in valuation even at the early stage of negotiations with property owners (pp. 9-10). Meanwhile, Alegre (2010) noted the incoherence in real property appraisal, arising from the employment of distinct methodologies by different government agencies.

Thus, while the Philippines' conformity with international standards on expropriation has been rated as relatively higher than that of other countries (Tagliarino, 2016, 2017), there appear to be various problems and challenges in the practice of expropriation (Lebrilla, 2014; Mira & Gutierrez, 2020). There is, however, a lack of empirical studies discussing such issues in detail.

This research seeks to examine empirically the key factors facilitating and hindering the Philippines' expropriation process, taking into primary consideration the experiences and views of national government lawyers.

METHODOLOGY

For this study, the following research questions were formulated:

1. From the perspective of Philippine national government lawyers,
 - a) What are the significant features of expropriation?
 - b) What are the factors that facilitate or hinder a successful expropriation?
2. What recommendations or policy implications can be drawn from the results?

To answer these questions, qualitative data were gathered from national government lawyers with experience handling expropriation cases.

The participants in this study consisted of 14 current and former lawyers from the Office of the Solicitor General (OSG), the statutory counsel of the Republic of the Philippines. The OSG's primary function is to represent the national government, its agencies, or officers in any litigation, including expropriation proceedings (Executive Order No. 292, 1987, book IV, title III, chap. 12). While the OSG, at the time of this study, has around 280 lawyers, not all are assigned to handle expropriation cases. Initial participants were sought from a pool of lawyers known to be handling expropriation in infrastructure projects. Through referrals from this initial pool, other lawyers with experience in expropriation were invited and agreed to participate in the study. Excluding the caseload of three lawyers who each handled around 100 or more expropriation proceedings, the average number of expropriation cases handled or being handled by the rest of the participants is 11. Three participants are former OSG lawyers.

From April to May 2020, semi-structured interviews, averaging 50 minutes, were conducted online *via* audio or video conferencing. With the consent of the participants, the interviews were recorded and transcribed.

The participants were generally asked to describe the expropriation process in the Philippines and to discuss its significant features, the factors that helped them in handling expropriation proceedings, the issues and problems they encountered in prosecuting such cases, and their

personal views on the topic, particularly, what changes to the present system they would recommend, if any. Ten of the 14 participants responded to follow-up questions through email. Names of parties in expropriation cases and other confidential information were neither sought nor disclosed.

The interview transcripts and e-mail replies were analyzed, and the general themes, patterns, or elements that emerged from the participants' responses were identified and are discussed below.

RESULTS AND DISCUSSION

The common factors, features, and categories that emerged from the interviews and responses are summarized in Tables 4 to 6.

Significant features of expropriation

Description of feature (E)	F	RF (%)
E1 Straightforwardness and predictability of legal procedure and issues	43	34.68
E2 Appointment of commissioners for determination of just compensation	23	18.55
E3 Acquiescence to public use or purpose of a project	19	15.32
E4 Immediate possession by the expropriator of affected properties	18	14.52
E5 Urgency of right-of-way and site acquisition	13	10.48
E6 Coercive nature of expropriation	8	6.45
Total	124	100.00

F: Frequency | RF: Relative Frequency

Table 4: Frequency distribution of features of Philippine expropriation

The significant features of expropriation, according to the participants (see Table 4), are discussed below:

- E1** *Straightforwardness and predictability of legal procedure and issues.* According to the participants, compared to other cases they handle, expropriation proceedings are generally simpler because the legal issues and procedures are straightforward and predictable. The law and jurisprudence are clear, and there is little room for their interpretation. The usual contentious issue revolves around the amount of just compensation.
- E2** *Appointment of commissioners for determination of just compensation.* The participants noted that while the determination of just compensation is a judicial function, commissioners are appointed to assist the court on this matter. In this regard, the Supreme Court has declared the constitution of a board of commissioners as a mandatory requirement in expropriation cases (*Evergreen Manufacturing Corporation v. Republic of the Philippines*, 2017).

- E3** *Acquiescence to the public use or purpose of a project.* The participants stated that compliance with the public purpose requirement in expropriation cases is rarely disputed. According to the participants, in the few times that property owners have questioned the existence of the public use or purpose of a project, such challenges have been unsuccessful and were no longer raised on appeal.
- E4** *Immediate possession by the expropriator of affected properties.* According to the participants, a defining feature of expropriation is the issuance of a writ of possession to the expropriator at the early stage of the proceedings to allow immediate project implementation. The writ is issued upon the provisional payment to the owner of 100% of the BIR current zonal valuation. One participant stressed that the expropriation case can “theoretically go on for several years without affecting the project as long as the writ of possession is issued.”
- E5** *Urgency of right-of-way and site acquisition.* There is a sense of urgency noted in expropriation cases; however, this pertains more particularly to the implementation of the project involved. As one participant explained, “the [expropriator] can directly resort to expropriation if time is of the essence, like if the funds ... have to be utilized already or [if] the contractors have been engaged for a set period of time.”
- E6** *Coercive nature of expropriation.* The participants emphasized that expropriation is essentially a forced sale or taking of private property. As one participant mentioned, “the person has no choice as to whether or not [they] would sell that property. What [they] can just do is, of course, ask for just compensation for the property.”

Factors that facilitate a successful expropriation or property acquisition

Description of factor (S)	F	RF (%)
S1 Prompt payment of mutually-acceptable compensation	33	25.78
S2 Proper coordination between the expropriator and its counsel	29	22.66
S3 Good faith negotiations with property owners	28	21.88
S4 Speedy court proceedings	13	10.16
S5 Expertise and independence of the board of commissioners	15	11.72
S6 Cooperation of property owners	10	7.81
Total	128	100.00

Table 5: Frequency distribution of factors facilitating expropriation/property acquisition

Factors that facilitate expropriation (see Table 5), according to the participants, are discussed below:

- S1** *Prompt payment of mutually-acceptable compensation.* In describing a successful

expropriation, the participants agreed that the expeditious payment of adequate compensation satisfactory to both the landowner and the expropriator is essential. The compensation may be arrived at after due proceedings in court but may also be the result of a settlement or compromise agreement between the parties during the pendency of a case. One of the participants recounted that “in the middle of the proceedings [they] were able to come up with mutually acceptable terms with the owner which allowed [them] to finish the case earlier than letting it drag on.”

S2 *Proper coordination between the expropriator and its counsel.* Considering that the OSG is an office separate and distinct from an expropriator, coordination between these two entities is critical to a successful expropriation. According to the participants, since expropriation is heavily reliant on proper documentation, the accuracy and completeness of documentary evidence provided by the expropriator would expedite the case.

S3 *Good faith negotiations with property owners.* The participants also noted that the negotiation phase could be strengthened to avoid the need to expropriate in the first place. According to one participant, “if the initial offer would be more accurate and more fair to the landowner then ... the need to resort to filing cases in court would be minimized.” Another participant opined that if “the [expropriator] has the flexibility to offer at least the price that is right ..., maybe a lot of cases would not end up in expropriation and just go by negotiation.”

S4 *Speedy court proceedings.* The participants noted that a swifter resolution of expropriation cases would benefit all parties involved. As one participant stressed, “any expropriation should be speedy because it contemplates the immediate use of the private property for public use.”

S5 *Expertise and independence of the board of commissioners.* As the appointment of commissioners is a mandatory requirement in the critical phase of determining just compensation, their expertise and independence in discharging their duties are indispensable. One of the participants affirmed that the commissioners’ assessment “lends more credence [to price determination] than the parties themselves trying to prove what just compensation should be paid.”

S6 *Cooperation of property owners.* The participants agreed that the cooperation of landowners who understand the need for expropriation facilitates the resolution of the proceedings. Proper communication between the property owner and the expropriator is essential.

Factors that hinder expropriation or property acquisition

Factors that hinder expropriation (see Table 6), according to the participants, are discussed below:

Description of factor (H)	F	RF (%)	RF (%)
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H1 Resistance of property owners	127	100.00	49.61
a Low price offered by the expropriator in negotiations	64	(50.39)	25.00
b Costs incurred by owners in maintaining litigation	24	(18.90)	9.38
c Owners' sentiments on dispossession of land or home	18	(14.17)	7.03
d Owners' lack of understanding of expropriation/ lack of effective communication from the expropriator	13	(10.24)	5.08
e Taking of land without prior expropriation	8	(6.30)	3.13
H2 Lengthy court proceedings	91	100.00	35.55
a Non-uniform interpretation of the law by judges	42	(46.15)	16.41
b Overcrowded court dockets	28	(30.77)	10.94
c Inordinate filing of appeals	11	(12.09)	4.30
d <i>Ad hoc</i> nature of the board of commissioners	10	(10.99)	3.91
H3 Lack of responsiveness of the expropriator to its counsel	23	--	8.98
H4 Inaccurate and incomplete land/property records	15	--	5.86
Total	256	--	100.00

F: Frequency | RF: Relative Frequency

Table 6: Frequency distribution of factors hindering expropriation/property acquisition

H1 Resistance of property owners. Whereas the cooperation of landowners facilitates expropriation, their resistance or opposition to the proceedings hinders the same. According to the participants, landowners may be hostile, antagonistic, adversarial, or simply not receptive to the expropriator during negotiations and expropriation proceedings. While some landowners have resorted to hiding from or refusing to meet with the expropriator's representatives, others have made threats of physical harm or erected physical barriers to prevent the expropriator's entry into their land.

Factors that contribute to landowner's resistance are discussed below:

- a** *Low price offered by the expropriator in negotiations.* Of the ten participants who responded to follow-up questions sent by email regarding recent or ongoing expropriation cases covered by R.A. 10752 at the time of the interviews, nine considered the expropriator's offer to be less than the market value. Meanwhile, only one participant reported that the price offer, based on the zonal valuation, was equivalent to the market value. The responses appear to confirm that a price offer pegged at the BIR zonal valuation often fails to reflect the real market value. One participant even claimed that zonal valuations encountered in some cases have not been updated for one to two decades.
- b** *Costs incurred by owners in maintaining litigation.* Another issue that emerged from the interviews is that affected landowners, especially if they are not well off, are subjected to further financial difficulty or economic burden when

impleaded as defendants in expropriation cases. Since expropriation cases are judicial proceedings with concomitant rules and formalities, landowners usually engage the services of a lawyer to defend their interests in court. As their cases drag on, however, they are compelled to spend money, time, and other resources to maintain litigation. These include legal representation, documentation, and transportation costs, court and commissioner fees, and expenses incurred for witness attendance, among others. Meanwhile, owners have already been dispossessed of their land but have yet to be paid full compensation.

- c *Owners' sentiments on dispossession of land or home.* Landowners' resistance is also aggravated by the consequent deprivation of their lands and homes. Landowners who have already made substantial investments in their properties suddenly find themselves having to relocate. Apart from monetary considerations, sentimental value of, and emotional attachment to, the properties are also involved.
- d *Owners' lack of understanding of expropriation/lack of effective communication from the expropriator.* According to the participants, many landowners are not familiar with the expropriation process. As one participant remarked, many individuals "don't know the law, and then suddenly they get this legal document asking them to give up their property." This lack of understanding on the part of landowners may also be due to the expropriators' failure to communicate or to do so effectively. According to one participant, "sometimes [the expropriators] really don't talk to the landowners. ... [T]he miscommunication or the failure of communication makes the process, the procedure, [and] the proceedings more adversarial."
- e *Taking of land without prior expropriation.* Some participants also recounted instances when a government agency, intentionally or unintentionally, had entered a property and commenced construction work without the landowner's consent or knowledge, and without initiating a prior expropriation case. This usually leads to landowners filing court actions against the government agency for the payment of just compensation. Such cases are called "inverse expropriation," as the roles of the government agency and the landowner (as plaintiff and defendant, respectively, in the usual expropriation case) are reversed. The Supreme Court has denounced such a situation as unjust and one that results in people losing trust in the government (*Felisa Agricultural Corporation v. National Transmission Corporation*, 2018).

H2 Lengthy court proceedings. Unfortunately, all participants agreed that expropriation cases take too long to be resolved. According to the participants, proceedings may take anywhere from six months to more than ten years, including appeals. This results in delayed payment of just compensation, as owners merely receive at the outset a provisional amount equivalent to the zonal value and obtain the balance only after the case is finally resolved. On the part of expropriators, the lengthy proceedings entail the payment of hefty legal interest on top of the balance of the

judgment award.

Factors that contribute to delays in court proceedings are discussed below:

- a** *Non-uniform interpretation of the law by judges.* According to the participants, while the expropriation law and jurisprudence are fairly established, the proceedings in reality are subject to varying interpretations by judges. One participant shared that “probably the main challenge when it comes to expropriation cases ... is the inconsistent application of the expropriation law and rules by different trial court branches.” Another participant declared that “in theory there is a uniform procedure. [However], the interpretation or the application of that procedure greatly differs in trial court branches” This variance in interpretation significantly contributes to delays. As one participant noted, “even if there are rules or even if the law is clear about the procedure of expropriation, the judge would exercise discretion to include or introduce other procedures that are not contemplated under the rules.”
- b** *Overcrowded court dockets.* Regional Trial Courts, where expropriation cases are initially filed, are courts of general jurisdiction; hence, they handle a wide variety of proceedings. Courts swamped with cases have less time to dispose of the same and may thus need to prioritize some cases more than others. As one participant shared, “since courts in the Philippines are usually filled with other cases [like] civil cases and criminal cases, [they] are constrained to conduct hearings fewer times than [they] hope [to] have.” This participant added that “sometimes [they] hear cases every three months instead of monthly. So that also affects the length of time that the case finishes”
- c** *Inordinate filing of appeals.* Any party unsatisfied with a court judgment may appeal. According to the participants, an appeal to a higher court adds between one to three years to the entire proceedings. The usual issue on appeal involves just compensation, with the landowner demanding a higher price for their property and the expropriator claiming a lesser amount for payment. Sometimes parties will appeal simultaneously.
- d** *Ad hoc nature of the board of commissioners.* This issue arises from the practice of filing a separate expropriation case for every landowner. Thus, a number of expropriation cases, even if they involve the same infrastructure project, may be handled by different judges and treated as independent proceedings. In this regard, the board of three commissioners that a court constitutes for a particular case is deemed unique as it may be composed of distinct individuals nominated by different parties. This *ad hoc* nature of the board of commissioners becomes problematic. Not only does it permit the application of varying standards for just compensation by different individuals, it also becomes another source of delay.

H3 *Lack of responsiveness of the expropriator to its counsel.* The expropriator’s lack of responsiveness to the OSG’s requests for clarification or documents impedes the expropriation process. Some participants noted that expropriators tend to focus on project implementation upon obtaining possession of the land. This leaves the

burden of handling the expropriation entirely upon the OSG, which still needs, however, the expropriator's assistance in prosecuting the case.

H4 *Inaccurate and incomplete land/property records.* Based on the interviews, inaccurate and incomplete land records make it difficult to commence negotiation or expropriation. For instance, properties may still be registered in the names of deceased persons. It thus becomes the expropriator's duty to locate their heirs who may now live in other places in the country or even abroad. Sometimes a prior sale may not be registered at all so the land is still titled in the previous owner's name. In addition, many lands, especially in rural areas, remain untitled. These lots have not come under the operation of the land registration system, even though their possessors may have already acquired certain rights and are eligible to obtain formal title. Conflicting claims of ownership complicate further this problem.

Discussion of expropriation features (E) and factors (S/H)

A significant finding in this study is that expropriation principally involves a straightforward and predictable legal procedure (feature E1), and its underlying purpose is generally accepted and rarely challenged in national infrastructure projects (features E3 and E6). However, the process appears to be hampered by property owners' disagreement with the government's determination of the property's market value (factor H1a), as well as delays in the completion of court proceedings (factor H2).

Insofar as court procedure is concerned, a unique feature of expropriation is the expropriator's ability to obtain immediate possession of the property through a provisional deposit or payment (feature E4), in view of the urgency of commencing works for infrastructure projects (feature E5). In addition, in the determination of just compensation, courts are assisted by expert opinions or recommendations by a board of three appointed commissioners (feature E2 and factor S5). However, such a board is constituted on an *ad hoc* basis, and its membership may therefore differ for each expropriation case filed against a landowner (factor H2d).

On the other hand, based on the participants' responses, right-of-way or site acquisition for infrastructure projects may be facilitated not only through expediting expropriation proceedings (factor S4) but also by arriving at a fair and mutually acceptable price for the property in a negotiated sale or amicable settlement outside of court (factors S3, S1, and S6). This dispenses with the need to initiate or continue expropriation cases and avoids the latter's attendant costs and delays (factors H1b and H2).

The significance of good faith negotiations between the expropriator and property owners, including consultations on the amount of acceptable compensation, was noted by Lebrilla (2014, p. 25) and Mira & Gutierrez (2020, p. 17), and acknowledged by several legislators and resource persons who participated in crafting R.A. 10752 (House of Representatives [House], 2014, February 19; Senate, 2015, April 22; 2015, April 29; 2015, December 7).

In this regard, R.A. 10752 was enacted to address, among others, the concern that expropriators were not maximizing opportunities for negotiations with landowners. Notably,

the previous law, R.A. 8974, referred vaguely to the determination of the “fair market value” in a negotiated sale (sec. 6) without explicitly requiring expropriators to offer such value to the owner. This deficiency was sought to be addressed by the IRR of R.A. 8974 (2001), which required a first offer based on the BIR zonal valuation of the land and a second offer not higher than the fair market value (IRR, sec. 7). With the aim of enticing more landowners to voluntarily convey their lands to expropriators, R.A. 10752 now requires in clearer language that expropriators desiring a negotiated sale “shall” offer a compensation price based on the “current market value” of the land, its crops, and trees, in addition to the replacement cost of improvements (sec. 5). Moreover, R.A. 10752 provides that in a successful negotiated sale, the government shall shoulder the capital gains tax, otherwise borne by the owner as seller (sec. 5[c]).

Thus, a proposal to expressly provide in the law that expropriation is the preferred mode of acquiring property was not accepted as the intention was to encourage negotiated sales (House, 2015, May 12; Senate, 2015, April 22). However, while deliberations in Congress emphasize, at least at the outset, this intended preference for negotiated sales (House, 2014, February 19; Senate, 2015, April 22), many legislators and resource persons also remarked that such negotiations could similarly entail a lengthy period that may further delay infrastructure projects (Senate, 2015, March 10; 2015, April 22; 2015, December 7).

Instead, with the aim of fast-tracking negotiations, legislators placed in the law a provision that the expropriator need only make a single price offer, which if refused or left unheeded within 30 days, shall authorize the immediate initiation of expropriation (R.A. 10752, sec. 5[a]). While such price offer in R.A. 10752 must now be made at the land’s current market value, (which is supposed to be higher than the BIR zonal valuation that is first offered under the IRR of R.A. 8974), it would appear that the negotiation process under the law has essentially been reduced to a “take-it-or-leave-it” approach, effectively closing the door on any meaningful negotiation. In their deliberations, legislators merely assumed that consultations should have already been done by expropriators during prior feasibility studies (Senate, 2015, April 29)—an assumption that may not necessarily be true, especially with regard to valuation and compensation of properties intended to be taken.

Notably, the main point of disagreement in attempts at negotiated sale, as with expropriation, pertains to property valuation. With due regard to the technical competence required in property appraisal (Senate, 2015, April 29), R.A. 10752 now provides that the compensation price may be determined by the expropriator with the assistance of government financial institutions or independent property appraisers/professional association of appraisers accredited/recognized by the *Bangko Sentral ng Pilipinas* (sec. 5[a]). Notwithstanding this provision, however, several participants of this study, as mentioned earlier, have noted that price offers by expropriators are still less than the market value later awarded by the court as just compensation.

The findings suggest that such low price offers may be due to a commonly held notion that the least disbursement of public funds to acquire needed inputs (such as land for infrastructure projects) is usually the best policy for the State. Moreover, according to the participants, and as confirmed in congressional deliberations, expropriators are understandably reluctant to offer a higher price during attempts at negotiated sale for fear of being accused of connivance with landowners (House, 2014, May 7; Senate, 2015, March 10; 2015, April 22; 2015, April 29; 2015, December 7). The Commission on Audit [COA], which examines disbursements of public funds, generally operates on a post-audit basis

(Constitution, 1987, art. IX-D, sec. 2[1]); thus, to insulate themselves from potential audit issues, expropriators simply resort to expropriation and let the courts decide the amount of just compensation to be paid.^[4]

As mentioned earlier, a recourse to expropriation also allows the expropriator to immediately possess the property by depositing in court a provisional payment equivalent to 100% of the BIR zonal valuation of the land (which amount, to reiterate, is usually much less than the market value). In this regard, deliberations in the crafting of R.A. 10752 reveal a bias in favor of expediting the court's issuance of a writ of possession for the expropriator to begin project implementation (House, 2014, February 19; 2014, May 7; 2015, May 19; Senate, 2014, May 27; 2015, March 10; 2015, April 22). This apparently resulted in a provision in R.A. 10752 expressly providing that a court hearing is not necessary for the issuance of such writ (sec. 6[a]).

Significantly, this basic provision authorizing a writ of possession in favor of the expropriator upon making a provisional deposit (of less than the market value of the land) appears not to have been seriously questioned by legislators (House, 2014, February 19; 2014, May 7). It is noted that similar provisions are found in R.A. 8974 (2000), Rule 67 of the Rules of Civil Procedure (1997), Executive Order No. 1035 (1985), and Rule 67 of the former Rules of Court (1964). These laws and rules only differ as to the amount of provisional payment to be made to warrant the issuance of a writ of possession.

In reality, therefore, the present system reveals an apparent preference for expropriation in right-of-way and site acquisition for national infrastructure projects, even as legislators admit that expropriation is tedious, time-consuming, and costly (House, 2014, May 7; Senate, 2015, April 29; 2015, December 7). In fact, according to congressional deliberations on R.A. 10752, the government has a backlog of unpaid claims or awards of just compensation in past expropriation cases (Senate, 2015, April 22).

Review of Supreme Court decisions

To provide a more concrete picture of the delays and costs characteristic of expropriation in the Philippines, decisions of the Supreme Court from 2017 to 2020, published in its official website, were selected for review if the cases (i) directly arose from expropriation involving the national government and its agencies, including government corporations; (ii) concerned just compensation as the principal issue; (iii) were governed by the 1997 Rules of Civil Procedure; (iv) and were filed under R.A. 8974, the precursor of R.A. 10752 (both laws having substantially similar court procedure for expropriation and the same standards for the determination of just compensation). Sixteen cases matching these criteria were found.^[5]

For the 16 cases, the dates of the respective rulings of the Regional Trial Court, the Court of Appeals, and the Supreme Court were noted, and the length of time of court proceedings per case was computed. The results are presented in Figure 2, where each bar corresponds to one case.

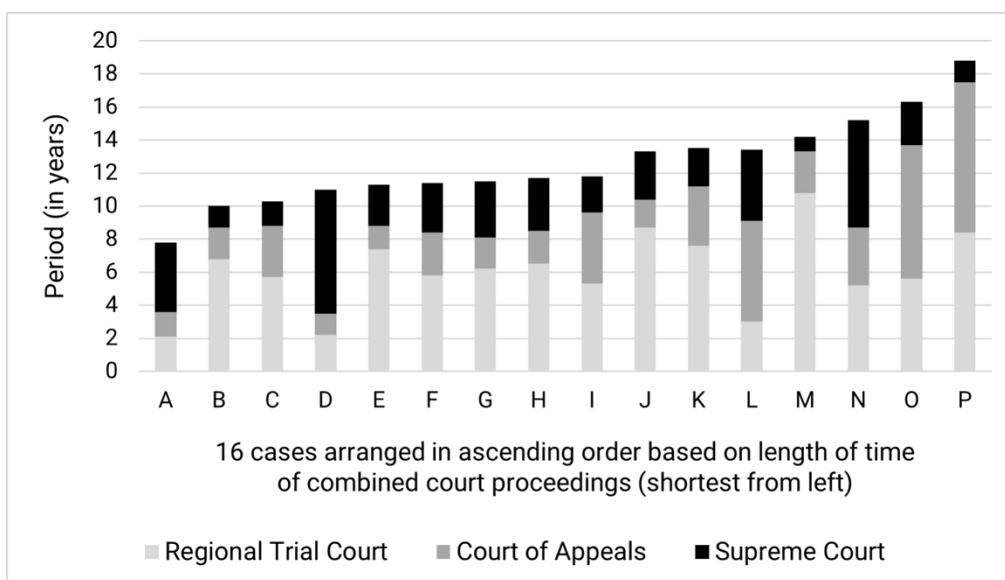


Figure 2: Length of time of court proceedings in 16 expropriation cases (2017-2020)

As shown in Figure 2, the expropriation case with the shortest period of court proceedings, represented by the leftmost bar (case A), was resolved in almost eight years, while the case that spent the longest time in court, represented by the rightmost bar (case P), took almost 19 years. Excluding case A, the court proceedings for each case took at least 10 years. The average period for the 16 cases is 12.59 years (see Table 7).

Court	Average period (years)
Regional Trial Court	6.08
Court of Appeals	3.41
Supreme Court	3.10
Total	12.59

Table 7: Average period of court proceedings in 16 expropriation cases (see Figure 2)

Each case was also reviewed to determine the cost structure of the just compensation for the land physically taken, consisting of the following components: (i) the provisional payment corresponding to the BIR zonal value; (ii) the balance of the judgment award, equivalent to the market value determined as of the date of taking minus the provisional payment; and (iii) the legal interest imposed on the balance of the award, reckoned from the date of taking of the land until the date of finality of the judgment.

Of the 16 cases, 13 had available or determinable information allowing for the computation of the three components above. The cost structure of the just compensation for each case, showing the relative weight (in percentage) of these three components, is shown in Figure 3. [8]

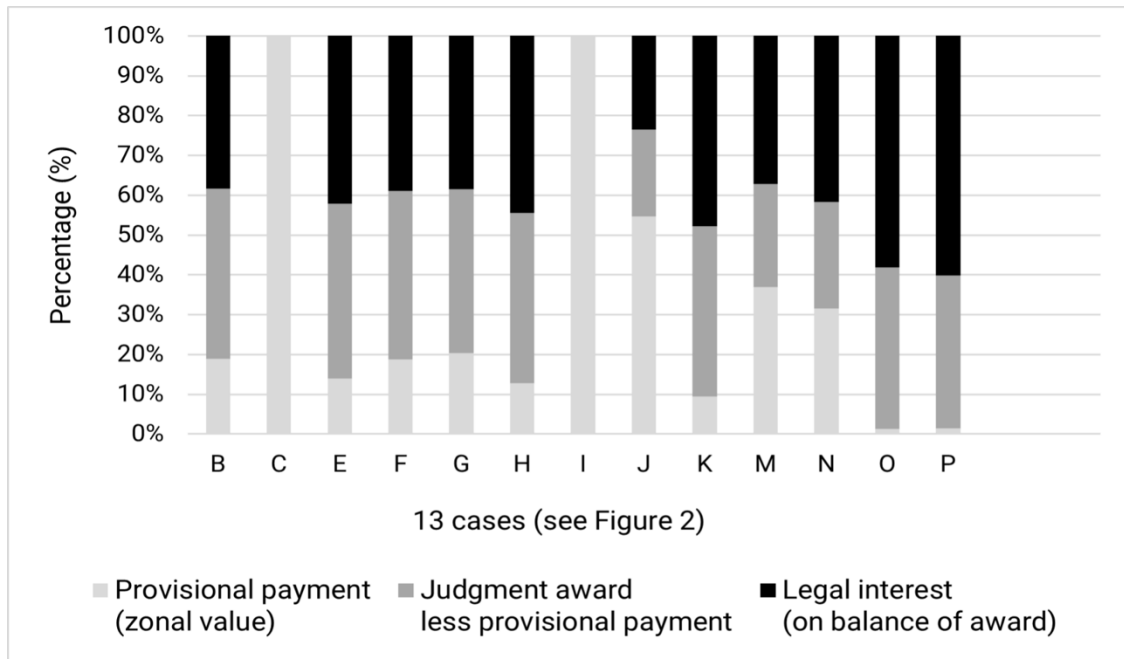


Figure 3: Cost structure of just compensation in 13 expropriation cases

As shown in Figure 3, except for two cases (C and I), the judgment award exceeded the provisional payment. In addition, for a majority of the cases (8 out of 13) the provisional payment represented only around 20% or less of the total compensation, while for two cases (M and N) the initial payment accounted for only 30-40% of the entire cost. Evidently, even though the expropriator succeeds in possessing the property at the start of the expropriation case by paying a minimal amount equal to the zonal value, it ends up paying much more in the form of the balance of the award plus legal interest when the case is finally decided years after. On the other hand, as shown in two cases (C and I), if the provisional payment is found to be equivalent to (or more than) the adjudged award, the balance payable by the government is reduced to zero and the application of any legal interest is avoided.

The findings suggest that the expropriator's apparent lack of appreciation for the negotiation process with landowners may be rooted in the overriding concern to obtain immediate possession of the property for the purpose of project implementation. Thus, when an expropriator is faced with the choice of (1) negotiating with landowners, or (2) pursuing expropriation, the law apparently incentivizes the expropriator to choose the latter option, for this appears to bring more instant benefits: immediate possession of the land at a low, initial cost. In other words, the current system appears to encourage a hasty resort to expropriation at the expense of good faith negotiations with landowners.

The author believes, however, that the failure to appreciate the possible long-term implications of the expropriator's practice, as described above, compounds the reported issues in expropriation. First, the frequent resort to expropriation adds to already congested court dockets, thereby potentially affecting the quality of dispensation of justice. Second, landowners are immediately deprived of their lands and homes, even if they have not been fully paid the just compensation supposed to be guaranteed by the Constitution and the law. Third, as landowners have no choice but to appear in court in order to secure the just compensation they rightfully deserve, they are compelled to spend resources to maintain

litigation, which could take years before being finally resolved. Meanwhile, the deposit by the expropriator of an unreasonably low amount as provisional payment to the owner, coupled with the long delays in expropriation proceedings, could ultimately result in bigger disbursements of public funds when the expropriator is finally required to pay the balance of the judgment award with legal interest. Unfortunately, it appears no party is held accountable for these issues and problems.

Thus, while the timely completion of infrastructure projects may foster development, the landowner's constitutional right to just compensation is apparently overlooked when the State wields its power of eminent domain in an indiscriminate manner.

CONCLUSION AND RECOMMENDATIONS

In this research, the reported challenges and problems in the conduct of expropriation in the Philippines were examined from the perspective of national government lawyers with actual experience on the ground. The results of this study highlight several significant features of expropriation and the critical factors that facilitate, as well as hinder, the process.

In particular, while the legal process and issues in expropriation are fairly straightforward and predictable, the procedure in practice is hindered substantially by lengthy court proceedings and the resistance of property owners, arising from the low price usually offered by the expropriator during attempts at negotiated sale.

In light of the issues and problems surrounding the Philippines' expropriation system, the author proposes exploring the following policy responses:

1. *Promotion of good faith negotiations as a definite State policy.* Notably, in R.A. 10752, there is no expressed requirement of consultations or negotiations with landowners regarding compensation price (other than a one-time price offer) prior to resorting to expropriation. Neither is there in the law any declared policy of invoking expropriation as a mode of last resort. Without the command of binding law, as well as more specific language to operationalize the conduct of good faith negotiations, the same remains a discretionary act of expropriators.^[9]

However, negotiations done in good faith may avoid the need to expropriate (Lebrilla, 2014, p. 25; Mira & Gutierrez, 2020, p. 17). Thus, the legal provision of R.A. 10752 requiring expropriators to offer the current market value of the land during negotiations (sec. 5[a]) should be strictly enforced to entice landowners, at the outset, to part with their land at a fair price. In addition, the government, including the Commission on Audit (COA), should consider and recognize that successful negotiations may avoid higher costs of lengthy litigation.

2. *Creation of an administrative body for an initial determination of compensation price.* Under Philippine law, expropriation is essentially a judicial function, even as land valuation requires special and technical competence. In this regard, prevailing rules require a board of commissioners to aid the court by recommending the amount of just compensation. Meanwhile, under Republic Act No. 9646 (2009), the practice of real estate service, including property appraisal, is supposed to be reserved to professionals who have passed the required licensure examinations (sec. 29).

Apart from the designation of special courts to handle expropriation cases (Supreme Court of the Philippines, 2020),^[10] the possible creation, through new legislation, of an administrative body tasked with making an initial determination of the compensation price that may be considered by parties prior to resorting to expropriation, and with a view to arriving at a negotiated sale, is worth exploring. This suggestion is akin to the valuation board proposed by Mira & Gutierrez (2020, p. 15).

Through the establishment of an administrative body composed of professionals and experts who can focus exclusively on the determination of a proper compensation price, the issues of unfair valuation by either or both the expropriator and landowner, the undue delays and high costs of litigation, as well as congested court dockets, may potentially be addressed. In addition, consolidation of right-of-way acquisition cases involving the same infrastructure project in joint administrative proceedings would promote uniformity of application of valuation standards and transparency of information. At the same time, this would avoid redundancies and inefficiencies caused by having expropriation cases filed with separate courts, considered by *ad hoc* boards of commissioners, and resolved by different judges. Furthermore, administrative proceedings dispense with the technical rules of court procedure, thereby promoting a less adversarial atmosphere between landowners and expropriators and one that is more conducive to consultation, negotiation, and amicable settlement.

In the event that an agreement on the compensation price still fails to materialize, and expropriation in court is ultimately resorted to, the administrative body's valuation of the property could be considered in lieu of the commissioners' report, further expediting court proceedings.

3. *Legal reform of the rule on immediate possession of the land by the expropriator based solely on the provisional payment of the BIR zonal valuation.* While the expropriator's immediate entry into the land upon the deposit of a provisional amount appears to be a basic feature of expropriation laws and rules in the Philippines, the author opines that the operation of such provision assumes that litigation is swift, court proceedings are efficient, and property owners dispossessed of their property will be timely paid the just compensation adjudged by courts. These assumptions, however, may not reflect realities on the ground.

The results of this study suggest that the legal provision of R.A. 10752 (as well as previous expropriation laws or rules) allowing the issuance of a writ of possession upon the deposit of 100% of the zonal valuation (sec. 6[a][1]), or anything less than the market value of the property, encourages expropriators' indiscriminate recourse to expropriation to obtain immediate entry into the land. Thus, the author believes that most negotiations with landowners are done perfunctorily and destined to fail. While possession of the land is vital in project implementation, the expropriator's authority should be tempered by the need to ensure fairness to affected landowners, who are immediately deprived of their properties and have to wait for an unreasonable length

of time to receive full compensation.

To balance the public and private interests involved, it is proposed that such immediate possession be allowed only if expropriators make a provisional payment that approximates or reflects more accurately the land's current market value (instead of its zonal value as currently provided in the law). As one of the participants remarked, if expropriators deem the acquisition of certain properties to be of crucial importance, then they must be willing to pay immediately the true value of such lands. If the payment of the estimated real cost of the properties is required at the outset, expropriators are incentivized to end litigation at the soonest time possible to avoid further costs and delays.

Notably, the Philippines' commitment to the Sustainable Development Goals (SDGs) includes building resilient infrastructure, as well as promoting effective and inclusive institutions.^[11] As the effects of the COVID-19 pandemic and the state of the economy continue to be matters of utmost concern, it is hoped that the new administration will improve policies on the allocation and use of public resources. This presents a unique opportunity for the Philippines to rethink its law and policy on expropriation and infrastructure development to ensure greater accountability for official actions, compliance with the rule of law, and respect for the landowners' right to just compensation.

REFERENCES

- Alegre, J. A. C. (2010). Philippine Real Property Appraisal: Legal Infirmities and Proposed Reforms. *Ateneo Law Journal*, 55(2), 370.
- City of Manila v. Alejandro Roces Prieto. (2019, July 8). G.R. No. 221366. Republic of the Philippines.
- Commission on Audit [COA]. (2021). *Amendment to Section 1, Rule VIII of the 2009 Revised Rules of Procedure of the Commission on Audit*. Resolution No. 2021-008.
- Constitution. (1987). Republic of the Philippines.
- Department of Budget and Management. (2021). *PRRD signs the P4.506 Trillion National Budget for FY 2021*. Retrieved April 12, 2021, from <https://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/1778-prrd-signs-the-p4-506-trillion-national-budget-for-fy-2021>
- Department of Public Works and Highways [DPWH]. (2017). *Reissuance of Department Order No. 124, s. 2017, Directing the Use of the DPWH Right-of-Way Acquisition Manual By All Concerned*. Department Order No. 152 Series of 2017.
- DPWH. (2021). *Clarifying Department Order No. 110, Series of 2019 Particularly in Entering Compromise Agreement, Filing an Appeal, Motion for Reconsideration, Petition for Certiorari, or Other Legal Remedies in Court Case involving DPWH Right-of-Way Acquisition*. Department Order No. 37 Series of 2021.
- Department of Transportation [DOTr]. (2018). *Prescribing the Use of the DOTr Right of Way and Site Acquisition (ROWSA) Manual*. Department Order No. 2018-005.

Significant Features and Factors Affecting the Practice of Philippine Expropriation: Perspectives from National Government Lawyers and Policy Implications

Evergreen Manufacturing Corporation v. Republic of the Philippines. (2017, September 6). G.R. No. 218628. Republic of the Philippines.

Executive Order No. 1035. (1985). *Providing the Procedures and Guidelines for the Expeditious Acquisition by the Government of Private Real Properties or Rights Thereon for Infrastructure and Other Government Development Projects*. Republic of the Philippines.

Executive Order No. 292. (1987). *Administrative Code of 1987*. Republic of the Philippines.

Felisa Agricultural Corporation v. National Transmission Corporation. (2018, July 2). G.R. Nos. 231655 and 231670. Republic of the Philippines.

House of Representatives. (2014, February 19). Committee on Public Works and Highways. Republic of the Philippines.

House of Representatives. (2014, May 7). Committee on Public Works and Highways. Republic of the Philippines.

House of Representatives. (2015, May 12). Congressional Record No. 68, Vol. 2. Republic of the Philippines.

House of Representatives. (2015, May 19). Congressional Record No. 70a, Vol. 2. Republic of the Philippines.

Implementing Rules and Regulations of R.A. 8974. (2011). Republic of the Philippines.

Implementing Rules and Regulations of R.A. 10752. (2016). Republic of the Philippines.

Lebrilla, M. L. (2014). *The State of Compulsory Acquisition of Land and Compensation in the Philippines*. Congressional Policy and Budget Research Department, House of Representatives. Policy Brief No. 2014-03. Retrieved April 17, 2021, from <https://cpbrd.congress.gov.ph/images/PDF%20Attachments/CPBRD%20Policy%20Brief/PB2014-03%20Compulsory%20Land%20Acquisition.pdf>

Mira, R. P., & Gutierrez, E. (2020). *Strengthening the Right-of-Way Law to Accelerate Infrastructure Growth*. Congressional Policy and Budget Research Department, House of Representatives. Policy Brief No. 2020-01. Retrieved April 17, 2021, from https://cpbrd.congress.gov.ph/images/PDF%20Attachments/CPBRD%20Policy%20Brief/PB2020-01_RIght_of_Way_Law_final.pdf

National Economic and Development Authority. (2018). *2017-2022 Public Investment Program*.

National Transmission Corporation v. Oroville Development Corporation. (2017, August 1). G.R. No. 223366. Republic of the Philippines.

Office of the Court Administrator. (2021). *Guidelines for the Special Expropriation Courts for Public Roads*. Circular No. 12-2021.

Office of the President. (2022, July 25). *State of the Nation Address of his Excellency Ferdinand R. Marcos Jr. President of the Philippines to the Congress of the Philippines*.

Republic Act No. 8424, as amended by Republic Act No. 10963. (2017). *The National Internal*

Prado

Revenue Code of 1997, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN). Republic of the Philippines.

Republic Act No. 8974. (2000). Republic of the Philippines.

Republic Act No. 9646. (2009). *Real Estate Service Act of the Philippines*. Republic of the Philippines.

Republic Act No. 10752. (2016). *The Right-of-Way Act*. Republic of the Philippines.

Republic of the Philippines v. Bank of the Philippine Islands. (2013, September 11). G.R. No. 203039. Republic of the Philippines.

Republic of the Philippines v. Court of Appeals. (2002, July 2). G.R. No. 146587. Republic of the Philippines.

Republic of the Philippines v. Spouses Pedro and Zenaida Goloyuco. (2019, June 19). G.R. No. 222551. Republic of the Philippines.

Rules of Civil Procedure. (1997). *1997 Rules of Civil Procedure, as Amended*. Republic of the Philippines.

Rules of Court. (1964). Republic of the Philippines.

Senate. (2014, May 27). Committee on Public Works Joint with the Committees on Local Government, Ways and Means, Finance, and Justice and Human Rights. Republic of the Philippines.

Senate. (2015, March 10). Committee on Public Works Joint with the Committees on Justice and Human Rights, Ways and Means, and Finance. Republic of the Philippines.

Senate. (2015, April 22). Committee on Public Works Joint with the Committees on Justice and Human Rights, Ways and Means, and Finance (Technical Working Group). Republic of the Philippines.

Senate. (2015, April 29). Committee on Public Works Joint with the Committees on Justice and Human Rights, Ways and Means, and Finance (Technical Working Group). Republic of the Philippines.

Senate. (2015, December 7). Senate Journal Session No. 41. Republic of the Philippines.

Supreme Court of the Philippines. (2020). *Designation of Special Courts to Specifically Hear, Try, and Decide Expropriation Cases Involving National Government Infrastructure Projects*. Memorandum Circular No. 08-2020.

Tagliarino, N. K. (2016). *Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards* (Working Paper). Washington, DC: World Resources Institute. Retrieved April 17, 2021, from https://files.wri.org/d8/s3fs-public/Encroaching_On_Land_And_Livelihoods_How_National_Expropriation_Laws_Measure_Up_Against_International_Standards.pdf

Tagliarino, N. K. (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*

[1] This paper is a revision of the author's independent study paper entitled *Prosecuting a Successful Expropriation: Perspectives from the Philippines and a New Approach from Japan* (2020), written at the National Graduate Institute for Policy Studies (GRIPS) in Tokyo, Japan, under the guidance and supervision of Professor Emeritus Ikuo Shimomura. The author would like to thank Shimomura sensei for providing invaluable feedback and comments, as well as the participants in this study for sharing their thoughts and views on Philippine expropriation.

At the time of the study, the author was a lawyer in the Office of the Solicitor General (OSG); he is no longer connected with this office. The respective views of the author and the study participants do not represent the position of the OSG as an institution.

[2] In 2019, amendments were made to the 1997 Rules of Civil Procedure; however, Rule 67 was not amended.

[3] This article does not cover expropriation under special laws, such as that undertaken by public utilities under congressional franchises, by local governments under Republic Act No. [R.A.] 7160 (the Local Government Code) or for socialized housing projects under R.A. 7279 (the Urban Development and Housing Act), or by the Department of Agriculture under R.A. 6657, as amended (the Comprehensive Agrarian Reform Law), as these laws have distinct procedures and requirements. In this article, the discussion of expropriation under R.A. 8974 and/or R.A. 10752 is also without prejudice to the concurrent application of other applicable laws, such as the special charters of government corporations/entities and R.A. 8371 (the Indigenous Peoples' Rights Act) in the case of ancestral lands.

[4] The COA (2021) has expressly recognized the final character of executory judicial decisions on just compensation; however, its issuance does not appear to cover disbursement of funds arising from successful negotiated sales prior to any expropriation.

[5] For a list of the Supreme Court cases involved in this study, please contact the author (see also <https://elibrary.judiciary.gov.ph/>, last accessed April 12, 2021).

[8] The valuation of improvements, crops, trees, or other land affected but not physically taken was excluded. For details on computations, including assumptions, please contact the author.

[9] Notably, the IRR of R.A. 10752 provides for the preparation by expropriators of their manual of procedures for right-of-way [ROW] acquisition (sec. 18). It is possible for well-meaning government agencies to issue administrative regulations to implement ROW manuals where consultations and negotiations are required prior to a resort to expropriation. In this regard, agencies such as the DPWH and the Department of Transportation [DOTr] should be lauded for their respective ROW manuals, which require public consultation meetings (DPWH, 2017) and public information campaigns (DOTr, 2018) with project-affected persons. Nonetheless, according to the author's reading of these two ROW manuals, such consultations appear to involve merely high-level discussions aimed at drumming support for the planned project and are conducted prior to land appraisal and the finalization of ROW action plans, where the expropriator's price offer is ultimately determined. Thus, it appears that the sole opportunity for negotiations (if they occur at all) is limited to the rather short period of 30 days commencing from the owner's receipt of the expropriator's first and final letter-offer.

Meanwhile, recent guidelines issued by the DPWH (2021) appear to encourage compromise agreements in pending expropriation cases. However, some provisions in these guidelines seem unfavorable to landowners, such as an agreement to waive any damages claim (including accrued interest), a requirement for owners to pay capital gains tax (which, in negotiated sales under R.A. 10752, is payable by the government for the account of the owner as seller), and a limitation of compensation to the BIR zonal valuation in case of inverse expropriation.

[10] A welcome development is the issuance of guidelines by the Office of the Court Administrator (2021), reiterating provisions of existing law and rules aimed at expediting proceedings of special expropriation courts for public roads.

[11] SDGs 9 and 16.