

Land readjustment: An examination of its conceivability application in Iran (to lay emphasize on the Legal aspect)**¹Sohaila Hamidzadeh khiavy, ²Hossein Zabihi, ²Hamid Majedi and ³Mahyar Ardashiri**¹*Department of Art and Architecture, Shabestar branch, Islamic Azad University, Shabestar, Iran.*²*Department of Art and Architecture, Science and Research Branch, Islamic Azad University (IAU), Tehran, Iran.*³*Department of Art and Architecture, Faculty of Urban Planning, Shiraz University, Shiraz, Iran.*

Sohaila Hamidzadeh khiavy, Hussein Zabihi, Hamid Majedi and Mahiar Ardashiri: Land readjustment: An examination of its conceivability application in Iran (to lay emphasize on the Legal aspect)

ABSTRACT

The principle norm of participation in urban planning, exchange and development is an important factor in achieving LR goals. Such participatory method is acceptable by considering this norm. This research tries theoretically to recognize a proper method for land readjustment plans against compulsory land purchasing and dispossession of ownership as a the participatory approach. This method has put it in practice officially and legally through comparison in which legal and official structures practiced in several countries of the world have been examined and even very small differences among various methods have been extracted and presented in a comparative table. Additionally, etiology and its analysis, as well as future legal necessities and potentials have been presented from participation view point and possibilities, and backgrounds necessary for applying this participation method have been recognized in other countries especially Iran. In this article we conclude, official and legal participation are most important in Land Readjustment.

Key words: Land Readjustment, Participation, Land owners, Comparative research, Legal and Lawful structure.**Introduction**

Any intervention in urban change and development is done in order to enhance the life expectancy and obtain its goals in the mentioned scope. Today participatory methods of intervention are main effective factors on achievement of the goals. Land readjustment Programs have been identified as the common intervention practices - against compulsory land and property purchase practices - as a participatory approach in several countries [14]. Participatory method and executive background cannot be provided without legal commitment. This article emphasizes formal participation based on legal structures. It was identified that there were elegant differences related to how to implement these programs in relation to legal structures in different countries despite many common aspects. Investigation of the content of these structures showed its vulnerability, their differences and similarities and their future requirements for the improvement of these structures according to participation aspect and it was indicated that the normative principle of participation would be passed with minimal problems by providing legal structures and requirement.

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Adoption of the scientific methods for comparison of the participation legal structures in land readjustment programs in different countries is important and necessary. In these studies many researchers are attracted by the idea of adding the international dimensions of their works [9].

Maser and colleagues believe that to carry out comparative research successfully, evidence and explanations are necessary so that the chain of evidences should cover not only comparative processes but also separate steps and cause that individuals draw their own conclusions from the evidences. For this purpose, graphical representation and tables of events are the best comparative methods of summarizing of complex information [9].

According to the availability of library and Internet documents the data have been collected and summarized in tables. In most land readjustment program research participation legal structures were not direct goals but the experiences of other countries and their legal resources and requirements have been addressed. And then Iran's legal structures have been analyzed in order to assign applicability of LR method.

Reasons for participatory nature of land readjustment (LR) programs:

Before comparison, it is necessary to propose the reasons of being participatory of LR programs in order to identify subject relation. Information and direct participation of the owners are important issues of urban development processes in order to involvement of the project owners. In the next emphasis, land use project drafts with detailed reports and related statements were exposed to public view for a month. During this period, proposals were submitted. One of the important conditions on effective use of land re-adjustment is public participation. In this approach, participation of the owners is much more planned (as a whole). Every owner is asked to talk about the claims and decide about capabilities and limitations and consider wishes and desires, negotiate and discuss with private owners and finally consider involvement of the sectors that affect on land readjustment [12].

In LR it is decided with public initiative and public officials regardless of the consent of landowners and landowners become aware after the public announcement, and its trends continue as an administrative procedure. Public participation is presented in the project through public statements in different stages of the process. By using this indirect participation; the landowners cannot easily be persuaded to accept the project. It is probable that some landowners claim against the project and prevent projects promotion while for projects under private initiative, landowners should be reached consensus at each stage [16].

LR is a project that is conducted by one executor with owners and tenant negotiations. In a cooperative implementation of the project by owners and tenants, their participation is conducted through public meetings and meetings with various representatives. Where the project is made by a local government, association is formed to actively participate in projects.

In any case, the project is implemented by a method accepted by owners and tenants, because the project directly linked to their property and lands [16]. Based on the writings of Larsson [7] the reasons of the participatory nature of such projects can be summarized as follows:

- In this method, urban development project owners and authorities achieve their goals peacefully together instead of harsh competition and best practices are proper communication between them, something not seen in compulsory purchase.

- Owners Associations and decision making Committees and demanding personal rights of these associations and committees are suitable participatory methods for dialogue between owners and local authorities.

- Equal dividends between the owners and provide land needed for public infrastructure services are the best forms of participation with its benefits for both public and private sectors.

- All methods and their procedure are based on private agreement and land deformation that implies participation.

- Despite of the increase cost of land because of implementation of land readjustment, even less motivated owners inclined to participate in the project [7].

Comparison of different countries in land readjustment program participation rights:

Investigation and comparison of the participation legal aspects of LR programs require investigation and comparison of different rules of planning based on their participation principle. Explanation of democratic participation rights is difficult since different societies propose a combination of different democracies like parliamentary, registered political groups, referendum and participatory. So, participation can be variable in societies in different stages of the planning process. Objective planning rights play legal ritual factor's role such as considering planning imminent actions, rights of groups in opposition to the plans and investigation of the oppositions and their claims, commitments for clear investigation of defined plans in planning legal referral or other decision making departments [3].

Because of participatory nature and emphasis on participatory programming LR methods involve key aspects. Based on conditions in different countries legal structures are diverse and different by having similarities. Key aspects of legal structures, analysis and etiology and future needs and potentials are shown in Table 1.

Table1: Analysis of legal contents practiced in LR plans in Japan and their future legal commitments

Practiced legal content key aspects	<ul style="list-style-type: none"> -reliable legal structure prepared by governmental responsible(1) -forcing all people for participation specially unsatisfied groups and implementation by main owners -transferring main land legal rights after deduction of some parts of it for public foundation to main owners -using local, regional and national experiences in regulations and their completion by private sector participation -identification of participation share (15%) according to special announcement of urban planning (1946) -existence of legal mechanism of imbalance coordination for compensation of difference between proposed map and implementation of the plan and fair payment -readjustment law means adjustment of new separated part with situation and place and main plot in order to preserve owners rights -required legal background for establishment of LR firm by owners (7 and more)
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	-right of purchasing land during implementation of the project Preservation of owners rights by considering their opinions and critics and improvement of the project -permit for determination of assets in defined period -exemption of paying fee of permit and registration affairs
Present legal etiology and analysis	-right of the owners for replacement, expansion and establishment of new houses during execution of the project and as a result prevention of rapid implementation of LR -restriction of executive rights based on land owner rights
Required future legal capacities and commitments	-compilation of new land registration regulations under land establishment regulation 1899 -Japanese new tax system for tax and land transfer duties exemption -balance between land ownership rights and executive office in order to project progress according to new legal structure commitment -emphasis on flexibility of proposed plans for facilitation of the affairs based on new legal structure

Required legal structures for effective application of LR based on the results of comparative study of the selected countries are as follows:

The legal commencement of LR projects:

The first basic condition for legal structure is a LR special legal structure like structure in Japan or inclusion of any part of building and urban planning

regulations for LR in Germany (see table 2 and 3). In case of lack of implicitness in the exact definition of LR regulations every action on this project will not be successful.

In this legal structure, the executor of the project and the conditions of the LR application in each country are compiled and exertion of decision makers and executors viewpoints is prevented.

Table 2: Analysis of legal contents practiced in LR plans in Germany and their future legal commitments

Practiced legal content key aspects	-Inclusion of some part of building code as LR structure(2) -determination of decision making competency of LR board (3)and preparation of program by executive office of the mentioned board and conduction of all steps by local government -price two stages evaluation before and after adjustment for preservation of land owners rights with exact civic plan -content of owners for receiving plots (money, joint ownership) -possibility of reclamation ,improvement, recreating real state rights by executive organization -control and supervision on building in owners proposed plans in order to development or establishment of new building according to article 76 approved 1954, required approve and obtaining government agreement -owners participation related to rights, needs and claims before approve of the plan - Identification of maximum share rate for installations and public possibilities for installations and public possibilities (10%)
Present legal etiology and analysis	-ineffectiveness of owners demand after approve of project and surpass of demand rights -inability of the owners for opposition with converting their assets to building
Required future legal capacities and commitments	-Germany model for continuous urban development is challengeable -emphasized on proposed plans in order to preserve owners rights after approve of the project -possible legal emphasize on real states by related rights

Public participation of basic factors:

Participation of basic factors involving owners, local authorities and providers, structures, public services and developers of the private sectors and their contribution in the project should be specified.

The main issue in participation of the owners is the primary agreement for the beginning of the project. The agreement of 2/3 of the owners is necessary for activity in Turkey (see table 4).

Table 3: Analysis of legal contents practiced in LR plans in Nepal and their future legal commitments

Practiced legal content key aspects	-supervision of building and urban development ministry with urban development and sartorial committees and proposition of directions and executive methods and adherence of municipalities (4) -considering land owners opinions before final approve for two months
Present legal etiology and analysis	-lack of legal document of project and landscape -change of the urban development law related to need to 75% owners agreement for production of the project (it was 50% before) -lack of legal position with defined budget For implementation the project and attraction of other projects allocated budget

	<ul style="list-style-type: none"> -incorrect land registration documents, time consuming of obtain registration office confirmation -violation of agreed owners rights because of opposition of other owners and delay in implementation -part time supervision of executive committees supervisors and delay in execution
Required future legal capacities and commitments	<ul style="list-style-type: none"> -encounter of project with several land ownership legal documents and need to defined land ownership data base in order to prepare re plotting maps -legal appointment of executive managers with high negotiation skills for attraction of public participation and non transfer of the new and different manager -proposition of regulation of forms and standards in order to prevention of individual planning

Table 4: Analysis of legal contents practiced in LR plans in Turkey and their future legal commitments

Practiced legal content key aspects	<ul style="list-style-type: none"> -legal structure related to LR(5) in 5 years executive plans framework of municipalities -freedom of application of owners of districts required to LR according to article 13 of related regulations in case of municipalities 5 years plans for the mentioned district -determination of LR district for sizes equal or bigger than residential block in rehabilitation and related regulations -dispossession costs in addition to participation share and survey of district by municipalities according to rehabilitation regulations 3194 and article 80 of municipalities incomes
Present legal etiology and analysis	<ul style="list-style-type: none"> -lack of legal force and rule for responsibilities of municipalities for preparation of 5 years plans even in case that the owners demand LR and coverage of costs -undefined municipalities and owners share percentage having rights and unjust behavior and escape way for municipality in case of budget shortage -complexity of the dispossession law 2001 and law 4650 and its effect on LR projects in share percentage upper than 40%
Required future legal capacities and commitments	<ul style="list-style-type: none"> -legal commitment for 5 years executive plans and specially priority of LR projects -identification of maximum owners participation share for public services and municipalities share and minimum application of forced dispossession law

Maximum contribution percentage:

Maximum contribution percentage for providing facilities and possibilities from land viewpoint is different from 10% in Germany to 40% in Turkey (table 4).

Specifying percentage prevents disputes between public sector and land owners. The owners will be agreed by legal identification of shear rate.

Owner's opinion and owners association:

Owner's viewpoints and critics and probable required reformation in the primary LR and legal structure are the main conditions for participation in the project before final approve of the primary LR plan. Japan and Germany samples are the best strategies.

By establishing the required background for the formation of the owners association or participation in LR, the owners will find the best way for demanding their rights by participating in these associations and contact with local authorities.

Table 5: Analysis of legal contents practiced in LR plans in Colombia and their future legal commitments

Practiced legal content key aspects	<ul style="list-style-type: none"> -completeness of introductory legal structures for implementation of LR specially principles by upstream plans(6) -public institutes laws for public participation and current mechanisms for encouragement of local government in employing LR -strong rule of ownership rights - fight against illegal land ownership and speculation
Present legal etiology and analysis	<ul style="list-style-type: none"> -lack of regular legal order and comprehensive view point in order to propagation of the LR -incorrect and vague information of urban cadastre -legal difficulties related to tenancy and contemporary land ownership, internal conflict and its effect on project implementation schedule -contradiction between condemned legal system and civil law in implementation of LR
Required future legal capacities and commitments	<ul style="list-style-type: none"> -commitment of legal and organizational order for step by step operation of LR -financial evaluation and transfer to defined legal structure of involved elements proportionate with country conditions -identification of lands rights with undefined owners

Survey and evaluation:

Survey and evaluation of the LR project before and after readjustment are the main challenges. This part relates to land owners rights and legal structure so defined legal structure is necessary besides proper approved maps.

LR Complementary methods:

Compulsory dispossession or coordination of imbalance of just payment by the local authorities is required. In order to compensate the difference between proposed plan and its implementation, just the payment and coordination of imbalance were applied in Japan. This case was observed in Turkey when land by more than 40% contribution percentage was required for compensation of public services and foundation.

Table 6: Analysis of legal contents practiced in LR plans in Neterlands and their future legal commitments

Practiced legal content key aspects	-compensation and easy possession relative to land forced purchase, using more methods of land development management, providing social dwelling and urban possibilities and offering programming document for LR districts and their urban planning by municipalities
Present legal etiology and analysis	-lack of legal structure for LR and voluntary of projects in framework of local plans and some municipalities -undefined legal scope of the private, public and owners and domination of the market powers
Required future legal capacities and commitments	-commitment of legal constitutional order for implementation of LR -commitment of plan based LR instead of project based in order to prevent improper urban planning

Table 7: Comparison and analysis of legal contents practiced in LR plans in the selected countries and their future legal commitments (summery)

Essential aspects	The legal commencement	Public participation	Contribution percentage	Owner's opinion	Survey	Complementary methods
Japan	1954 Land Readjustment Act, ...	all people main owners executive office	15%	opinions and critics and improvement of the project	Strongest part before and after the project	yes
Germany	building code	executive office local government land owners	10%	needs and claims before approve of the plan	Strongest part before and after the project	yes
Nepal	land Acquisition Act, Town Development Act	land owners executive office municipalities	21%-56% No legal compulsion	before final approve for two months	Strongest part before and after the project	yes
Turkey	Reconstruction Law 1985	land owners municipalities	45%	Only in benefits	Strongest part before and after the project	yes
Colombia	Urban Reform Law; Territorial Development Law not yet a regulatory decree	No explicit	No explicit	No explicit	Imprecise in cadastral information	unknown
Netherlands	No legal resources	No explicit	No explicit	No explicit	No problem	Unknown

*Analysis of Iran's legal structure to determine applicability of LR method:**The legal commencement of LR projects:*

There is no explicit LR legal structure in Iran but in urban planning changing land utilization, passages widening in adjustable size and shape have been considered for middle of the 20th century [11]. Development and reformation of Passages law in 1933, establishment of a dwelling and development

ministry law in 1964, law of renaming of dwelling and development ministry to house and urban planning in 1353 and establishment of architecture and urban building in 1972 and preparing master plans for Iran cities are considered as legal structures for merging and integration of land re-adjustment. Recently, law of regeneration and restoration of the old fabric (approved in 2011) and LR are considered by municipalities by detailed plans.

Public participation basic factors:

The governmental agencies and municipalities pay the land cost according to acquisition and purchasing land for governmental and municipalities law in 1979 [10]. There is no position for owners whom their lands are in plan thus compulsory acquisition is conducted. In order to obtain public participation of the owners, this condition is announced and agreement and the determination of the cost are considered (article 6). In case of in agreement the complementary cost is paid (article 7).

Contribution percentage:

There is no meaning for contribution percentage in Iran. In other hand, the cost of land and construction of public utilities is in charge of the public sector. So the cost of public sector is increased and the needs of public utilization in urban areas are not met because of shortage of the budget and sufficient credit, while in LR method some part of the cost of providing public utilization is transferred to the private sector and owners.

Owner's opinions and formation of the owners association:

This trend relates to the participatory nature of the LR method that it was addressed before approve of restoration support law. There was no position for LR in urban planning in Iran. Owner's opinions were not considered before approve of the plan and it was compulsory after improvement. So the owners opposed to this plan. The number of cases referred to article 5 commission of establishment of architecture and the urban building council are increased in order to change the proposed usage to nonpublic utilizations. [2].

As before said owners opinions issue has been addressed in article 6 and it can be considered an owner's association formation in the legal structure of cooperation formation rules.

Survey and evaluation:

In order to LR in Iran urban development project land acquisition is conducted by land purchase law, monuments and building law of municipalities approved in 1991 [4] and the reformation is conducted (note 1, article 7, restoration law)

LR complementary methods:

Employing dispossession and paying the land cost is possible according to the mentioned laws in Iran.

Conclusion:

There are several legal structures and reliable participatory methods in designing and implementation for land readjustment conducted by the owners and governmental responsibilities in foreign countries. Although lack of these structures is inevitable but exact investigation of legal positions in constitutional structure is necessary. The mentioned cases are proposed for application in Iran:

A-reliable legal structure has been provided with the aim of the owners of the rights in LR scopes proportionate with characteristics of the selected countries such as Japan, Germany and Turkey, but in Colombia and Netherlands informal methods and chaos in law of involved project sectors were considered in their theoretical literature of programming.

B-considering of land owner's legal rights is the principal of this method that all ownership rights is transferred to main owners after deduction of a participation share for providing land required for public services (e.g. Most of the countries by defining legal structure in this case).

C-Balance between the rights of private sector (owners of lands and rights) and by the proper structure in order for participation in implementation of the project in Japan problems were arisen in this case.

D- Accurate database of registration of land and urban Cadastre is main legal supports in preparation stage of LR maps and they lead to the persuasion of the participation of the involved parties, it can be referred to Nepal and Colombia as countries by problems in land registration and Germany by exact land registration system and urban Cadastre.

E-Legal mechanism of opposition right, the proposition of the opinions and reclamation of real estate and revision in LR proposals are success key of Japan, Germany and Nepal.

F-Application of the compulsory dispossession strategy where required land for development is more than participation share can be used as complementary by less possibility (like Turkey).

Generally, in implementation of the LR plans as participatory approach followings should be considered:

-Successful implementation of the LR plans for urban change and development needs of legal and official participation structures and owners' rights especially those in districts affected by these plans.

-It is better that the legal structure of these plans is coordinated with countries current structures.

Recently, it is possible to implement the method in Iran by establishing a new legal structure and coordinate with existing legal structure, but some essential basics of the method have no specific structure for determination of contribution percentage to provide public service, how to distribute of lands after implementation of projects and employer obligations.

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