



DISPLACEMENT SOLUTIONS

Land Acquisition Law and Practice in Myanmar:

**Overview, Gap Analysis with IFC PS1
& PS5 and Scope of Due Diligence
Recommendations**

May 2015

Table of Contents

| | |
|---|-----------|
| A. Executive Summary | 4 |
| B. Law - The Domestic Legal Basis for Land Acquisition in Myanmar | 8 |
| <i>Key institutions engaged in land acquisition activities</i> | |
| <i>System of land classification</i> | |
| <i>The Constitution (2008)</i> | |
| <i>The Land Acquisition Act (1894)</i> | |
| <i>Special Economic Zone Law (2011)</i> | |
| <i>The Farmland Act (2012)</i> | |
| <i>The Vacant, Fallow and Virgin Land Act (2012)</i> | |
| <i>The Foreign Investment Act (2012)</i> | |
| <i>Yangon City Development Law (1990)</i> | |
| C. Practice - The Practical Dynamics of Land Acquisition in Myanmar | 17 |
| <i>Business, human rights and land acquisition</i> | |
| <i>Compensation and resettlement</i> | |
| <i>Public consultation and stakeholder engagement requirements and processes</i> | |
| <i>Available remedies to communities threatened with land acquisition</i> | |
| D. Gaps Between Myanmar Law and IFC PS 1& 5 | 21 |
| E. Recommendations on Scope of Due Diligence | 28 |
| E. Selected Sources | 33 |
| F. Annexure | 35 |
| Annex 1: The Land Acquisition Act (1894) | 35 |
| Annex 2: Government Entities with Responsibilities Concerning Land Acquisition | 50 |
| Annex 3: Land Classifications in Myanmar | 52 |
| Annex 4: First Report of the Investigation Commission for Prevention of Public Disenfranchisements Connected to Confiscation of Farmland and Other Lands | 54 |
| Annex 5: Human Rights and Land Acquisition Processes in Myanmar | 59 |

Project Objectives

The purpose of this paper is to provide IFC's Environment, Social & Governance Department (CES) with an understanding of the existing environment and key stakeholders in relation to land acquisition and tenure systems in Myanmar and how Performance Standards 5 and 1 may best be applied in these particular circumstances. This paper aims to enable CES staff to improve their ongoing project appraisals, and will inform the development of internal CES guidance on Due Diligence for Land-Related Risks in Myanmar. The guidance outlines the proposed approach of CES when assessing investments involving land acquisition and what constitutes a reasonable level of due diligence by IFC and/or our clients in determining the history of land acquisition/use/occupation. The paper, which was prepared solely by Displacement Solutions, includes recommendations that can be applied in private sector project-finance or corporate-finance due diligence processes.

Project Methodology

The present paper was prepared by Displacement Solutions (DS) upon the request of the IFC. DS has extensive experience working on housing, land and property rights issues in Myanmar and has been engaged on these matters since 2007. In preparing the present paper, DS carried out extensive legal and policy research on the land acquisition law and practice, including the review of more than 100 publications addressing these themes. DS also carried out numerous interviews with relevant actors in Myanmar, as well as undertaking a mission to the country in late June 2014 during which time DS met with a large number of actors with practical expertise and knowledge of land acquisition measures in Myanmar. Detailed comments on earlier drafts by IFC staff were gratefully received and largely incorporated into the final report.

"Most farmland in Myanmar taken from farmers by government bodies and private companies was not acquired properly."

A. Executive Summary

1. **Land acquisition issues and resultant land disputes of various types are some of the most controversial, contentious and vexing issues at play in the evolving political and economic landscape of today's Myanmar.** Few issues are discussed more fervently and frequently than issues relating to the critical question of land; who owns it, who controls it, who may seek to acquire it, disputes over it, and who is to be potentially removed from it. **Innumerable recent reports indicate three overarching trends concerning the scale of land acquisition in Myanmar: (1) Large tracts of land were compulsorily acquired and conceded during the past several decades of military rule that spanned 1962-2011; (2) Additional large tracts of land have been alienated since the present government took power in 2011; and (3) Yet further large tracts of land are currently threatened with confiscation in coming years.**²

2. As the political reform process begins to slow in the run-up to the planned 2015 national elections, and as the economy continues to liberalize within a legal and regulatory environment which remains disproportionately skewed in favor of State and business interests, **it is clear that law is incapable in its present form of adequately protecting the full spectrum of land-related rights of ordinary citizens and communities. In addition, land registration and record keeping remains extremely poor.**³ This is particularly so given the fact that farmers threatened with displacement have only what are effectively user-rights.⁴ These circumstances in turn lays the groundwork for potential land disputes which can have significantly negative impacts on business activities. The land sphere is increasingly seen as one of the most visible sectors of society where a collusion of economic and political elites linked to the government, military and the corporate sector find a continuing source of power and control. Arguably, given their largely inequitable, top-down and non-transparent nature, these developments place deeper and longer-term democratic reforms at considerable risk, and rather than constituting a boost to overall economic performance in the country, in fact, may undermine economic, political and social progress in this regard. **At the individual company level, the legal and political basis for land relations in Myanmar can pose the very real prospect of land disputes that may undermine investment opportunities.**

3. **Since independence in 1948, each of the successive regimes governing Myanmar, including the present government, have frequently invoked powers under prevailing legislation to compulsorily acquire and allocate (far more commonly referred to in the country as either 'land confiscation' or 'land grabbing')** large tracts of land in all areas of the country. While no reliable national figures are collected or exist as to the precise scale of land confiscation carried out in the country, it is certain that the total number of acres acquired is clearly not measured in thousands, but rather in *millions* of acres. One widely cited recent study asserts that more than 5.2 million acres of private agribusiness

concessions have been awarded, including more than 3 million since the current government took power.⁵

4. Land acquisition and involuntary displacement in Myanmar, both prior to and during the reform process, has been carried out for a number of reasons including State-sponsored agriculture projects, the establishment of agro-industrial plantations by private entities, large industrial development projects, military settlements, large public infrastructure projects, urban expansion and land speculation by individuals.⁶ In analyzing the manner by which many of these acquisitions were carried out one report notes that "Land confiscation, forced displacement and forced resettlement without informed consent or adequate compensation have been a major business related human rights issue. The main actors have been local private companies linked with the military, multinational companies in joint ventures with State owned enterprises or local businesses."⁷ **Businesses planning to invest in Myanmar, therefore will need to exercise considerable due diligence to ensure that any investment activities that are undertaken comply with relevant IFC standards and other international norms relevant to land acquisition processes, as well as protecting corporate and brand reputations that can be easily undermined by both actions and omissions leading to corporate complicity.**

5. In practical terms, in the vast majority of cases of land acquisition there are at the moment very few effective judicial remedies available to those wishing to halt land acquisition, to enforce compensation rights for those whose land has been acquired or to enforce restitution claims for land acquired in the past. At least in part because of the limitations existent within the judicial system, communities and supporters affected by land grabbing have turned increasingly to public displays of dissatisfaction through street protests which continue to receive extensive and growing media attention.

6. Business-led land confiscations have increased in recent years.⁸ One recent report found that "Whereas land grabs during previous periods were predominantly conducted directly by military-state and non-state armed actors for their benefit alone, "crony companies" with extreme wealth and political leverage have become the new driver of land grabs in different parts of the country, often financially backed by foreign investors".⁹

7. Indeed, though the political reform process of the past three years has altered many aspects of life in the country, most analysts agree that it has *not* reduced land confiscation throughout Myanmar, and may have increased and expedited the scale and frequency of these practices. As an indication of just how large future land grabbing and consequent displacement could become, under new laws *adopted during the reform process in 2012*, millions of acres of land now classified as cultivatable or arable, vacant, fallow or virgin could conceivably be conceded legally to investors, including foreign investors, thus raising considerable fears of larger-scale land acquisitions. Because most of this land is already home to people and communities, there are serious concerns that larger-scale dispossession and potential human rights abuses are possible.

8. There is also considerable concern that additional land acquisition measures will occur in the immediate aftermath of land mine and unexploded ordinance clearance operations throughout the country once those programs commence

and make safe the millions of acres of land thought to be mined, and which are currently of limited or no interest to the groups most responsible for land acquisition, but which will be once they are declared safe.¹⁰

9. Ethnic communities throughout the country - amounting to some 40% of the country's population - have faced particularly frequent land acquisition. Numerous detailed reports from all ethnic groups have systematically recorded land confiscation of a very large scale.¹¹

10. The large-scale nature of land acquisition in Myanmar needs to be viewed in light of the fact that structural landlessness in Myanmar remains a major problem. Anywhere between 30-50% of the rural population currently have little or no formal land rights, though virtually everyone has a legitimate claim of some degree over the land upon which they reside and often work.¹² In addition, slums and informal settlements are commonplace in urban areas, some of which recently faced forced eviction.¹³

11. Several common threads flow from these reports on land acquisition in Myanmar, all of which are at odds with IFC performance standards:

- **The frequently arbitrary nature of land acquisition with little or no efforts to find alternatives to reduce or preclude the need for subsequent displacement.**
- **A lack of consultation with affected communities.**
- **Disputed, inadequate or the absence of just and satisfactory compensation.**
- **The absence of any policy on resettlement following land acquisition and the general lack of attention to this issue; and**
- **Insufficient opportunities for judicial or other forms of redress to prevent or resolve displacement due to land acquisition.¹⁴**

12. While State- and Company-led land acquisition has been commonplace in the country for decades, only now during the reform process are detailed stories of land grabbing and confiscation, forced evictions and displacement, unpaid or inadequate compensation and a range of other abuses being reported widely in the national and international press. As a result of a loosening of censorship rules, stories involving human rights abuses in the land sector are now an almost daily occurrence in the nation's growing number of newspapers and periodicals, both in printed and electronic form. **Within the country this has had the effect of encouraging and invigorating local populations to protest in ever-growing numbers against land confiscations that those protesting see as illegal, unfair and often brutal. IFC and clients, therefore, face considerable legal and reputational risks if and when land acquisition measures may be contemplated.** It is for these reasons that companies such as Coca-Cola have adopted 'zero tolerance for land grabs' policies.

13. Companies engaged in business or planning to invest in Myanmar, thus, face a situation where by any objective measure, large-scale land acquisition measures have been commonplace in recent decades, and have remained in place since the present government took power in 2011. A mind-set within the governing political and economic elite, the military and within many sectors of the business community remains in place that takes the view that control over land rights and the accrual of wealth from land is something to be exercised exclusively by those

with political and economic power with little regard for the rights of the rural and urban poor. These perspectives, which – it must be emphasized - are at odds with both basic international human rights protections and IFC performance standards (and other similar international guidelines)¹⁵, will be difficult to change, not only because of their entrenched nature, but also because virtually the entire legislative framework of the country has been systematically designed to ensure that such controls over the ownership, allocation and use of land remain in place for as long as possible.

14. The remainder of this paper provides a succinct overview of some of the key legal, economic, political and social aspects of land acquisition issues in Myanmar today, and outlines the implications of these for IFC and the areas where they do and do not adhere to IFC performance standards, in particular IFC Performance Standard 5 (PS5), as well as elements of Performance Standard 1 (PS1), which collectively outline the standards required when IFC is involved in any project that potentially involves land acquisition. The paper then provides recommendations to the IFC outlining how best to work most constructively on the practice of land acquisition in Myanmar. A series of seven annexes give further details to the key salient points identified in the report.

B. Law - The Domestic Legal Basis for Land Acquisition in Myanmar

Key institutions engaged in land acquisition activities

15. **An array of government institutions are involved in land acquisition, including Ministry of Agriculture and Irrigation (MoAI), State Land Records Department (SLRD), Farmland Management Bodies (FMB), Ministry of Environmental Conservation and Forestry (MoECF), Forestry Department, Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVJV) and Department of Human Settlement and Housing Development (DHSHD), and City Development Committees.¹⁶ (See Annex 3 for descriptions of each entity, their legal and policy competencies and how they may interact with the others).**

System of land classification

16. **Virtually all land in Myanmar is owned by the State and with the exception of some freehold titles mainly in urban areas, the remaining land parcels in the country (except Forest Land, Grazing Land, land held in Cantonment and Monasteries) are rented out to individuals and companies through Grant, Lease or License, thus giving the State considerable leverage over how land is used and who uses it and for how long.¹⁷ (See Annex 3 for detailed descriptions of each form of land in Myanmar).**

17. **More than 70 different laws combine to form the Myanmar legal code on land (and housing and property) issues, many of which collectively form the legislative basis for land acquisition actions that have been such a central part of Myanmar political life since the military took control in 1962.¹⁸ In determining the comprehensive position of law on the specific question of land acquisition, the following laws, in particular, are of central relevance: *The Constitution of the Republic of the Union of Myanmar (2008)*, *The Land Acquisition Act (1894)*, *Special Economic Zone Law (2011)*, *The Farmland Act (2012)*, *The Vacant, Fallow and Virgin Land Act (2012)*, *The Foreign Investment Act (2012)*, and *The Yangon City and Mandalay City Development Laws* (See Table 1).**

The Constitution (2008)

18. **Under Myanmar law the State owns virtually all land in the country. Article 37 of the 2008 Constitution addresses the question of land in the following terms:**

37. The Union - (a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union. (b) shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces; and (c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law.¹⁹

The Land Acquisition Act (1894)

19. **The Land Acquisition Act (1894) enables the State and companies to compulsorily acquire land where the State and companies assert that such land is needed for 'public purposes'**. Article 4 provides:

4. (1) Whenever it appears to the President of the Union that land in any locality is needed or is likely to be needed for any public purposes, a notification to that effect, shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

The Act further outlines relevant procedures, including notice periods, procedures for objections to acquisition (Art. 5), the method of valuation of land, the process for taking possession of land (Arts. 16 and 17), court processes and appeals (Arts. 18 and 24), procedures for the temporary occupation of land (Art. 35) and the acquisition of land for companies (Art. 38). The Act requires that compensation 'at market value' is provided to those from whom land is acquired (Art. 23).²⁰

The Special Economic Zone Law (2011)

20. **The Special Economic Zone Law (2011), which governs land issues within these SEZ's, addresses the question of land acquisition places the burden on 'developers' and 'investors' to transfer and pay for compensation costs associated with land-based investments.** Article 36 reads:

36. The developer or investor shall bear the expenses of transferring and compensation of houses, buildings, farms and gardens, orchards/fields, plantation on land permitted by the Central Body if these are required to be transferred. Moreover, he shall carry out to fulfill fundamental needs of persons who transfer so as not to lower their original standard. The relevant Management Committee shall coordinate as may be necessary for the convenience of such works.

The Farmland Act (2012)

21. **The 2012 Farmland Act establishes a system of land registration²¹ for farmers that ostensibly provides land use certificates (LUCs) that, once secured, create rights to sell, exchange, access credit, inherit and lease the land over which they hold rights. The prevailing view is that this new law does not provide sufficient land tenure security for farmers as the law in fact fails to provide adequate protection against arbitrary and forced displacement or land confiscation.** Tenure rights under the *Farmland Act* are not secure because Government retains the power to revoke the LUCs if any of the strict conditions of use are not complied with in full. The law sacrifices security of tenure for commercial interests.

22. While this law may ostensibly expand the rights available to those in rural areas in a limited manner in principle, it is important to reiterate that without either a deed

of title or legal registration of rights in land, those residing or using the land in question are effectively without rights to the land concerned under statutory law. **Because it is estimated that only 15% or less of all farmers can show a land registration document²²**, and the fact that many in the rural sectors of the country live under customary land law arrangements that are not adequately protected under domestic laws, it is clear that farmers, shifting cultivators and villagers in rural, upland and ethnic areas are tremendously vulnerable to abuses of their land rights and to land acquisition and subsequent displacement.²³

23. Moreover, the *Farmland Act* sets up an ill-defined administrative scheme that lacks basic rule of law safeguards that are necessary for stable, rights-protective land administration system, and further, denies access to independent judicial review. The law contains vague rules with respect to farmers' obligations, a multi-layered appeals process with each appellate level appointed by the same central authority and unduly harsh penalties for non-compliance. All of this makes the process inordinately complex and the consequences of missteps disproportionately severe.

Table 1 – Key Laws Governing Land Acquisition in Myanmar

| Key Laws Governing Land Acquisition in Myanmar | Key provisions |
|--|---|
| Constitution (2008) | <p>37. The Union - (a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union. (b) shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces; and (c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law</p> |
| Land Acquisition Act (1894) | <p>Preliminary Investigation.</p> <p>4. (1) Whenever it appears to the President of the Union that land in any locality is needed or is likely to be needed for any public purposes, a notification to that effect, shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.</p> |
| Special Economic Zone Law (2011) | <p>Chapter VII - Land Use</p> <p>35. The Central Body: (a) shall may, with the approval of the Government, permit the developer or investor land lease or land use after causing payment of fees to be made for land lease or land use, for at least 30 years; (b) if desirous to continue to operate after the expiry of the permitted term under subsection (a), may extend consecutive term of 30 years for large-scale investment enterprise and further 15 years of extension after the expiry of the said term; (c) if desirous to continue to operate after the expiry of the permitted term under subsection (a), may extend consecutive term of 15 years for medium-scale investment enterprise and further 15 years of extension after the expiry of the said term; (d) if desirous to continue to operate after the expiry of the permitted term under subsection (a), may extend two times of consecutive term of five years for small-scale investment enterprises; (e) shall scrutinize and permit the term of period for land lease or land use which the developer or investor actually needs depending on the type of investment business and the amount of investment.</p> <p>36. The developer or investor shall bear the expenses of transferring and compensation of houses, buildings, farms and gardens, orchards/fields, plantation on land permitted by the Central Body if these are required to be transferred. Moreover, he shall carry out to fulfill fundamental needs of persons who transfer so as not to lower their original standard. The relevant Management Committee shall coordinate as may be necessary for the convenience of such works.</p> <p>37. The developer or investor: (a) shall use the land which he is entitled to lease or use in accordance with the prescribed terms and conditions; (b) may, in accordance with the existing Law, rent, mortgage or sell the land and building to another person for investment business within the term granted to operate in accord with the stipulations. If he sells, he shall comply with the stipulations under subsection (a) of Section 19; (c) shall not modify or alter, without permission, the topography or the</p> |

contour of the land for which he obtained lease or land use; (d) shall report immediately to the Management Committee if natural mineral resources or antiques not relating to the permitted enterprise and which are not included in the original agreement are found above or under the land which he is entitled to lease or use. If the Management Committee permits, he may continue to operate on such land. If not, he shall shift to the substituted area; (e) intend to operate affectively the permitted enterprises on the land permitted to lease or use. As such the enterprise contained in the agreement shall be completed within the prescribed term in the original agreement or up to two years from the day of permission to operate. If not completed, the permission shall be revoked. The said land shall be returned back and the buildings on this Land shall be removed.

Farmland Act (2012)

19. If it fails to comply with all or any of the terms and conditions contained in Section 12 of this Law, the Administrative Body of the Farmland appointed by the Ministry for this purpose may pass the following one or more order after scrutinizing in accord with this law and the rules issued under this law;

- (a) causing to pay the stipulated fine;
- (b) causing to carry out the farmland according to the stipulated means;
- (c) expelling the deserved person from the farmland;
- (d) removing the buildings constructed without permission on the farmland.

--

22. The Ward or Village Tract Administrative Body of the Farmland opens an original case of dispute in respect of the right to use the farmland shall make examination, hearing and decision.

23. (a) The person who is dissatisfied with the order or decision passed by the Ward or Village Tract Administrative Body of the Farmland under Section 22 may appeal to the relevant Township Administrative Body of the Farmland in accord with the stipulations within 30 days from the day of such order or decision.

(b) The Township Administrative Body of the Farmland may approve, amend or cancel the order or decision passed by the Ward or Village Tract Administrative Body of the Farmland.

24. (a) The person who is dissatisfied with the order or decision passed by the Township Administrative Body of the Farmland under Sub-section (b) of Section 23 may appeal to the relevant District Administrative Body of the Farmland in accord with the stipulations within 30 days from the day of such order or decision.

(b) The District Administrative body of the Farmland may approve, amend or cancel the order or decision passed by the Township Administrative Body of the Farmland.

25. (a) The person who is dissatisfied with the order or decision passed by the District Administrative Body of the Farmland under Sub-section (b) of Section 24 may appeal to the relevant Region or State Administrative Body of the Farmland in accord with the stipulations within 60 days from the day of such order or decision.

(b) The Region or Stat Administrative Body of the Farmland may approve, amend of cancel the order or decision passed by the District Administrative Body of the Farmland.

(c) The decision of the Region or State Administrative Body of the Farmland shall be final and conclusive.

Chapter IX
Indemnities and Compensations

26. Notwithstanding contained in any existing law, the Central Administrative Body of the Farmland shall coordinate as may be necessary in respect of giving compensation not to grieve absolutely for the matters carried out by the person who has the ownership right to use the farmland including the land confiscated for interests of the State or the public interests and development by building on such land and managing by other means by the relevant.

27. The person whose right to use the farmland is revoked or the farmland is recovered by the Central Administrative Body of the Farmland under Sub-section (d) of Section 17 shall not have the right to enjoy compensation

—

31. The Central Administrative Body of the Farmland may, if the farmland is not put into effect as the stipulated manner within six months from the permitted day or if the business is not completed within the stipulated period after having permission to use the farmland by other under Section 30, confiscate such farmland.

Chapter XI Administration of the Farmland

32. In confiscation the farmland for the projects of the State interests, only the required minimum area shall be confiscated. The project shall be implemented to complete as soon as possible within the prescribed period and when the project is not carrying out, it shall be returned to the person or organization which has the original right to use the farmland.

33. The Union government or the authority assigned by the Union Government for this purpose shall, except summons by other means, continue to keep not to damage pastures and communal land of the village.

34. In respect of vacant, fallow and virgin lands that are permitted to carry out or use for agriculture and livestock breeding businesses, when the cultivation and production of crops is stable, the Central Committee for the management of vacant, fallow and virgin lands shall alter and stipulate as the farmland and cause to involve in this laws.

—

40. No proceeding shall be filed at any court for any matter carried out in good faith in accord with this Law or rules made under this Law to the members of various levels of Administrative Body of the Farmland.

Vacant, Fallow and Virgin Land Act (2012)

Art. 2(e) “Vacant land and Fallow land” means land which was used by the tenant before, and then that land was abandoned by the tenant in any reason, not only the State designated land but also for agriculture or livestock breeding purposes;

Art. 2(f) “Virgin land” means land which may be new land or other wood land in which cultivation was never done before. It may have or not with forest, bamboo or bushes, even though ground feature may be plane or not, and includes the land which has been cancelled legally from Reserved Forest, Grazing ground, and Fishery pond land respectively for Agriculture, Livestock Poultry Farming and Aquaculture, Mining, and Government allowable other purposes in line with law;

Art. 7. The Central Committee shall permit the grant on application for granting right to do, right to utilize land of Vacant, Fallow and Virgin

| | |
|---|--|
| | <p>Lands with the agreement of Myanmar Investment Commission for foreign investment.</p> <p>Art. 8. The Central Committee shall make permission or rejection of the systematic application in order to ensure the management task concerning the use of Vacant, Fallow and Virgin Lands.</p> <p>Art. 9. In accordance with the Section 8, the Central Committee Shall issue the permission order, granting the right to do, right to utilize land of vacant, fallow and virgin lands, after security fees has been paid.</p> |
| <p>The Foreign Investment Act (2012)(Rules)</p> | <p>Art. 126 -The investor shall, if it is necessary to transfer and clear houses, buildings, farm and garden lands, fruit trees and edible plants etc, on the land on which work is carried out relating to carrying out of invested businesses, discuss and carry out with the approval of the relevant Government department, Region and State Government together with the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement of them, paying in local current price and paying damages. In places where the public is not desirous to transfer and vacant, it shall not have the right to lease the land and invest.</p> |

The Vacant, Fallow and Virgin Land Act (2012)

24. **The Vacant, Fallow and Virgin Act (2012) adopted at the same time as the Farmland Law, allows leases of State land vaguely classified as ‘vacant, fallow or virgin’ for 30 year periods.** It sets an allocation limit of 5000 acres at any one time, with a total maximum amount of 50,000 acres for any single person or entity. Both nationals of Myanmar and foreign entities can lease land under this law subject to a two-step process involving approvals from the Myanmar Investment Commission and then the Land Allotment Commission. Some have claimed that 50% of the land in the country could be classified as technically ‘fallow’, which, if correct, provides an indication that large-scale displacement and land disputes may occur as the new law is implemented.²⁴

The Foreign Investment Act (2012)

25. **The Foreign Investment Act (2012) provides the legislative framework for new investment by international companies in Myanmar.** Beyond the provision of a five-year tax-exemption for foreign investors and a range of other measures designed to stimulate foreign investment, the law explicitly addresses land questions in several of its key clauses.²⁵ These include:

Sec17. The duties of the investor are as follows: ... (d) using the land that he is entitled to lease or to use in accordance with the rules and regulations prescribed by the [Myanmar Investment] Commission and the terms of agreement; (e) sub-leasing and mortgaging the land and buildings or transferring shares or business for doing business under the permit with the term of the business enterprise, to any other persons for that investment only with the approval of the Commission; (f) undertaking no alteration to the natural surface or undulating condition of the land that the investor is entitled to lease or to use without the approval of the Commission; (g) reporting immediately to the Commission if natural resources or antiques

not relating to the permitted enterprise and which are not included in the original agreement are found above or under the land which he is entitled to lease or use, if Commission permits can continue to operate on such land, and if not, shifting to the substituted area; (h) carrying on the business in such a way as not to cause natural, environmental and water/air pollution in accordance with the existing laws in regard to the investment.

...

Chapter XIV – The right to use land

31. The Commission may permit the investor to lease the land or to use land for the term actually required based on the category of business, industrial business or agricultural, livestock breeding business and investment volume up to initial 50 years.

(Rules) Art. 126 -The investor shall, if it is necessary to transfer and clear houses, buildings, farm and garden lands, fruit trees and edible plants etc, on the land on which work is carried out relating to carrying out of invested businesses, discuss and carry out with the approval of the relevant Government department, Region and State Government together with the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement of them, paying in local current price and paying damages. **In places where the public is not desirous to transfer or vacate, it shall not have the right to lease the land and invest.**

26. According to one local analyst, "Land confiscation and forced relocation are prohibited under Article 126 of the Foreign Investment Rules by not permitting the lease of land for the investment purpose if there is objection from affected communities. The provision also requires the consent from communities and permission from the relevant government department in giving compensations at market value. Besides, investors need to ensure relocation and resettlement of local people and provide jobs to them in their investment projects"²⁶ It is not at all clear at this juncture that this rule will play itself out in this manner in practice.

Yangon City Development Law (1990)

27. Both the Yangon City Development Committee and Mandalay City Development Committees, under the relevant City Development Laws have functions including drawing up civil projects and developing new towns, administering land in accordance with existing laws, constructing, maintaining and demolishing buildings, demolishing and resettlement of squatter houses, squatter buildings and squatter wards, carrying out environmental conservation work and other duties potentially involving land acquisition.²⁷

28. Viewed as a whole, therefore, the legislative framework governing land acquisition is skewed disproportionately in favor of the State, the military and companies with close relations or otherwise favored by these entities, and pays virtually no attention to the rights of people and communities whose lands may be of interest to those seeking to acquire it. Thus far, what is in many ways a dramatic political reform process involving the release of political prisoners, growing political freedoms and fewer human rights abuses than under previous regimes, rules

governing the land acquisition process have arguably worsened the position of the rural majority in the country, and create conditions that may lead to far greater displacement in coming years. One report notes that "Inadequate land laws have opened rural Myanmar to rampant land grabbing by unscrupulous, well-connected businessmen who anticipate a boom in agricultural and property investment. If unchecked, the gathering trend has the potential to undermine the country's broad reform process and impede long-term economic progress".²⁸ Another asserts that "Ironically, the over-played "rule of law" mantra is what provides state legitimacy in carrying out what can be thought of now as a "legal land grab", where the new land-related laws are haphazardly and improperly applied to legally turn farmers into "squatters" and their farm fields into "vacant wastelands" for corporate investment".²⁹

29. While three new land-related laws have been adopted since the reform process began, these laws - combined with the *Constitution* and *Land Acquisition Act* - effectively strengthen the powers of the political and economic elite and do not take seriously the rights of the poor majority who make up some 75-80% of the country's population. These new laws systematically fail to recognize the customary land rights that have governed land relations in much of the country for centuries, greatly facilitate the classification of land into categories enabling it to be acquired with increasing ease by the State and its adherents and create conditions of increased tenure insecurity and threatened human rights abuses.

30. Because of its many inconsistencies with relevant international norms and IFC performance standards, the current legal framework governing land acquisition may ultimately form the foundations for the generation of liabilities by companies investing in the country that could lead to lawsuits, damages to reputations and loss of profits and market position. IFC performance standards and other international norms are considerably stronger than domestic law in Myanmar in aiming to reduce the negative social and human rights consequences of improperly managed land acquisition and resultant involuntary resettlement and displacement.

C. Practice - The Practical Dynamics of Land Acquisition in Myanmar

31. As noted, State-, military- and company-led land acquisition has a long and controversial history in Myanmar. These processes have continued and have become legitimized throughout the reform process that commenced in 2011. Land acquisition is commonplace in Myanmar with extremely limited legal or judicial safeguards in place to protect existing communities against these practices. The concept of 'Free, Prior and Informed Consent' (FPIC) in the vast majority of cases of land acquisition leading to involuntary resettlement appears to be effectively ignored or unknown by those acquiring land, and other than the legally mandated payment of 'compensation' (which rarely occurs in practice in a just and satisfactory manner), the non-defined term 'for public purposes' is all that is required to justify land acquisition actions in the country.

32. The question of land acquisition in Myanmar is a central part of the country's history and remains a highly controversial and frequent occurrence. **The highly emotive nature of these practices within the country, and benefitting from the new political openness, have led to official efforts to investigate past cases of land acquisition**, including the establishment of a Land Confiscation Investigation Commission in 2012 to receive complaints from affected individuals and communities about cases of past land confiscation. The Commission's first report (included in annex 4 below) was widely covered by local media and among other things, analyzed the circumstances surrounding more than 117,000 acres of land that was acquired since 1989 for urban growth, industrial zones and mechanized agriculture projects³⁰ and that most land acquisitions did not take place according to the existing laws, rules and regulations. In August 2013, Parliament urged the government to expedite procedures that will allow confiscated farmland to be returned to its original owners across the country, based on recommendations from Commission.³¹ There have been several noted cases of formerly confiscated land being restituted to those from whom it was taken, however, such **reversals of land previously confiscated remain rare, are largely *ad hoc* in nature, and are driven far more by attempts at improving company reputations than securing the rights of those with legitimate claims to the land concerned.** Beyond the efforts of the Commission, further thousands of complaints about past land confiscation cases have also been submitted to other bodies, such as the Myanmar National Human Rights Commission³² and the Government's Rule of Law Committee, **neither of which, however, have judicial powers nor any means of enforcing whatever conclusions they may reach.**

Business, human rights and land acquisition

33. While under international law, all States are generally permitted to compulsorily acquire or expropriate land when certain fundamental preconditions are met (eg. the acquisition must not be arbitrary, it must be for a public purpose, be carried out in accordance with due process of law, include the payment of just and satisfactory compensation, and when there are verifiably no reasonable alternatives to such acquisition), it is vital to note that land acquisition (even when it is ostensibly 'legal' under domestic legal

provisions) can result in a series of negative outcomes, including human rights abuses.³³ In making the direct link between human rights and business, PS1, Para 3 states very clearly that:

"Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to. Each of the Performance Standards has elements related to human rights dimensions that a project may face in the course of its operations. Due diligence against these Performance Standards will enable the client to address many relevant human rights issues in its project.

34. The question of land acquisition in Myanmar also needs to be approached in light of the housing, land and property rights accorded to communities and individuals under prevailing international human rights law, and which clearly provides for greater levels of protection than current domestic law in the country. Myanmar has only ratified three of the main human rights treaties, and more needs to be done to encourage the government to improve in this regard.³⁴ People everywhere – including Myanmar – are entitled to the full spectrum of housing, land and property rights recognized by international legal norms. **Under these provisions, every State is obliged to ensure the protection and enforcement of these rights. Implementation is not optional, nor can implementation be delayed indefinitely. Under the entitlements and obligations inherent within this bundle of rights, people everywhere are meant to be able to live safely and securely on a piece of land, to reside within an adequate and affordable home with access to all basic services and to feel safe in the knowledge that these attributes of a full life will be fully respected, protected and fulfilled. If it can be shown that lost access to, use of or ownership over housing, land or property is incurred by people in violation of their rights and protections, appropriate forms of reparation and restitution must be accorded.**³⁵

35. While a range of human rights improvements have accompanied the political reform process (release of political prisoners, greater degrees of political freedoms including freedom of speech, etc), far more remains to be accomplished within the reform process, in particular in terms legislative and land reforms, to weave the provisions and sentiments of relevant international human rights laws directly into the domestic legal framework of Myanmar as it addresses complex questions of land acquisition. These new laws should be fully informed not only of IFC standards, but additional standards that aim to protect the rights of those threatened with displacement because of land acquisition. In particular, regard should be had of the OECD Guidelines for Multinational Enterprises (2011)³⁶, World Bank OD 4.12 (2001)³⁷, the UN General Comment No. 7 on Forced Evictions (1997)³⁸, the UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2008)³⁹, and many others.

36. Indicative of the human rights dimensions of the land acquisition process in Myanmar, Human Rights Watch has warned that “There are growing problems in Burma with land confiscation and inadequate compensation, particularly for farmers. Burma should enact new land laws that provide security of land tenure for people, particularly small-scale farmers, and meet international human rights standards. Currently farmers cannot use land as collateral since they do not have legal land titles, creating economic hardship and rendering them vulnerable to forced

eviction.... Too much authority appears to rest with farmland management bodies controlled by the state, including powers to order what can be cultivated on particular land.... Land reform should be undertaken together with other legal reforms to ensure access to justice when rights are violated.”⁴⁰

37. By contrast, at least foreign company has taken a pro-active approach to protecting HLP rights and now reports regularly on these issues. Coca-Cola has adopted an explicit 'zero tolerance for land grabs' policy, a process that would be of particular interest to IFC and companies newly investing in the country.⁴¹ In a recent report the company noted that: “There were no land acquisitions during the reporting period for this report. The vast majority of the land utilized by the facility is Grant Land and is leased from the government on a 30-60 year agreement. Due to restrictions on foreign ownership, the local Company entity, Coca-Cola Pinya Beverages Myanmar, Ltd. (CCPBM), will not be allowed to acquire the land nor the leases. The land would thus be subleased in all instances to CCPBM. Both sites are located in Yangon; one plant is in Hmawbi Township and the other is in an industrial zone within Hlaing Thar Township.” Further, “**We recognize that the issue of land rights is concerning in Myanmar given the numerous reports of confiscation... Due to the high proportion of land owned by the government and that Grant Land subleases will be assumed, the Company cannot ensure distance from government owned property. When planning new plant sites, we will strive to ensure that Free, Prior and Informed Consent is obtained. In the case of Myanmar, both plants are pre-existing and investigations could not clarify how the grant or garden lands were obtained by the government. We recognize the importance of land rights and are engaging in ongoing community engagement to ensure sensitivity to issues related to customary usage rights.**”

38. Their second report notes: “In 2013, The Coca-Cola Company announced a set of industry-leading commitments to protect the land rights of farmers and communities. **In these commitments, The Coca-Cola Company outlined a concrete action plan to address land rights in its supply chain, including zero tolerance for land grabs.** Although no land acquisition has been made since the December 2013 report submission, the Company is currently starting the process of identifying potential areas for a new plant. Once these areas have been identified, a long list of possible plant sites will be developed. Land rights will be an important component of this ongoing plant siting due diligence process. One of the tools used in the process will be the Plant Siting Checklist, one of seven such checklists published on our website, which is used internally as an early issue identification tool. In addition, suppliers in Myanmar undergoing a Supplier Guiding Principles audit will be assessed against the land rights provisions, including Free, Prior and informed consent of any land acquisition.” **Clearly Coca-Cola is deeply concerned about the land aspects of its business operations in Myanmar and has acted accordingly. Other companies investing in the country can take useful guidance from the approaches taken by Coca-Cola.**

Compensation and resettlement

39. The payment of market rate compensation is envisaged when land is acquired under relevant legislation. In practice, however, compensation for land acquisition is frequently not paid, wholly inadequate, and often falls far short of the market-value provisions found in the Land Acquisition Act.⁴² There are no

standard methodologies in place to ensure consistency in compensation frameworks and there is no oversight body in place that can review compensation payments. By way of example, some reports indicated an amount of 800 kyats per acre was paid, while others received 300,000 kyats per acre. Compensation is seen to be almost totally subjective in nature, and differing levels of compensation are often offered by companies to divide communities negotiating for better compensation arrangements.

40. Neither resettlement action plans nor livelihood restoration plans are recognized in law or policy in contemporary Myanmar. While there is a history of land acquisition and resultant displacement in the country, there is no tradition of active resettlement or relocation to assist persons and communities so affected to re-establish their lives at new locations. **Relocation measures have been undertaken at some locations including the Special Economic Zone at Thilawa and at Letpaduang copper mine, however, these have been heavily criticized.⁴³ There are no best practice examples of successful, rights-based resettlement in Myanmar.**

Public consultation and stakeholder engagement requirements and processes

41. Free, prior and informed consent requirements appear to be entirely absent from existing law and policy governing land acquisition leading to involuntary resettlement. As long as projects are officially shown to constitute a 'public purpose', land acquisition can effectively proceed, with only limited means to resist or prevent such processes, and few real judicial remedies available to do so. Some companies have incorporated consent issues within their practices, but government policy and law have yet to enshrine these important notions. **While international human rights norms indicate that involuntary resettlement and eviction should only occur in exceptional circumstances where no other possible alternatives to displacement are possible, such norms are absent from both relevant law and policy in Myanmar.**

42. Communities that have faced land dispossession in Myanmar have become increasingly vocal in their efforts to both prevent acquisition, and in cases when this was not possible, to seek to draw attention to previous land acquisition cases by protesting and attempting to re-occupy land from which they were displaced. In what appears to be a growing number of cases, the authorities have brought legal cases against farmers and others protesting the loss of their land. In August 2014, for instance, the government brought cases against hundreds of farmers in Kantbalu Township who returned to land that was previously seized by the military and given to a sugar company.⁴⁴

Available remedies to communities threatened with land acquisition

43. Judicial remedies to redress unjust land acquisition are unlikely in the vast majority of cases to provide the remedies required to secure residential justice for those affected under current legislation. It is not usual for land disputes to reach court except in major cities. Not only can most citizens, in particular farmers, not afford to defend themselves in court, but also even when land cases make it to court they are often unsuccessful. Farmers resisting land acquisition by private companies often face prison terms on charges of mischief and trespassing, while some have even been jailed.

D. Gaps Between Myanmar Law and IFC PS 1 & 5

44. **Systematically comparing and contrasting IFC performance standards with relevant land acquisition law and practice in Myanmar clearly reveals that there are significant gaps between the contents of PS1 and PS5 and Myanmar domestic law and practice regarding land acquisition, both historically and under the current reformist government.** These gaps are widely recognized by analysts working at all levels in the country. Reports abound of land confiscation cases where the gaps between standards such as PS1 and PS5, related standards and certainly human rights norms are considerable, and in many instances growing.⁴⁵ These include major international donors and governments. One donor government, for instance, in reference to the *1894 Land Acquisition Act* and the *2012 Foreign Investment Act*, has urged the government of Myanmar to "Bring compulsory acquisition policies in line with international best practices"...."Burma's laws permit the state to use compulsory acquisition to acquire land for public purposes and for business purposes. The law defines neither purpose in detail, leaving landholders vulnerable to losing their land through arbitrary processes. Donors could help improve compulsory acquisition policies by providing technical, legal and policy support for the development of a law that embodies minimum international standards for fair and effective compulsory acquisition procedures".⁴⁶

45. **The objectives of PS5 (para. 2) are clear in their aim to avoid involuntary resettlement caused by land acquisition measures and recognize the human rights, social and economic impacts of these practices.** An analysis of these expectations against prevailing law and practice on land acquisition in today's Myanmar reveal considerable gaps that will require attention by IFC officials when engaging in projects and working with companies that may possibly be linked to or otherwise complicit in land acquisition practices that neither comply with IFC rules nor basic international human rights protections.

46. The following chart lists all relevant land acquisition-related expectations under IFC 5 and 1 in the first column. Column two then indicates whether and if so, how, relevant Myanmar legislation addresses each point. This is followed by the third and final column providing, as relevant, general comments about the gaps involved.

| IFC PS 5 & 1 Expectations | Myanmar Law and Practice | Comments |
|---|--------------------------|---|
| Performance Standard 5 | | |
| 'Involuntary resettlement should be avoided' (PS 5, Para. 2) | No reference | At present, there are no laws or policies in place that actively seek to avoid involuntary resettlement. As a result, land confiscations have occurred on an extremely large scale in the country during the regimes of the present and former governments. |
| 'To help avoid expropriation and eliminate the need to use governmental authority to enforce relocation, clients are encouraged to use negotiated settlements' (PS5, Para. 3) | No reference | 'Objections' to intended land acquisition are allowed under Article 5 of the Land Acquisition Act |
| Objective: To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs | No reference | There is very little evidence of any attempts by either the state or companies to reduce the scale of displacement in projects involving land confiscation. |
| Objective: To avoid forced | No reference | Forced evictions have been repeatedly classified |

| | | |
|---|---|---|
| evictions | | under international law as gross and systematic violations of human rights. Myanmar law and practice has yet to address the human rights implications of the forced eviction process, a practice that is widely carried out throughout the country both in rural and urban areas. |
| Objective: To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by: (i) providing compensation for loss of assets at replacement costs and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected. | No reference Market-value compensation (Land Acquisition Act (LAA), Articles 9, 23(1) and 23(2)) No reference | As above While compensation is sometimes provided for confiscated land, from the evidence available it appears that in many cases no compensation whatsoever is provided and in numerous cases the compensation that is provided falls far short of market value. Resettlement activities are generally not undertaken by the state or companies, except in rare instances. |
| Objective: To improve, or restore, the livelihoods and standards of living of displaced persons. | No reference | There appear to be no references to this objective in any law or policy in the country. |
| Objective: To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites. | No reference | Security of tenure, generally, remains exceptionally limited in Myanmar. Freehold ownership rights occur primarily in urban areas where a minority of the population resides. Those residing in rural areas, including upland areas, may possess strong rights under customary law, however, such rights are not recognized under statutory law. Farmers may register land and receive land use certificates under the Farmland Act (2012), however, in practice a small minority of farmers have done so and even those with certificates have extremely limited tenure protections. |
| 'Project Design' (PS5, Para. 8) - 'The client will consider feasible alternative designs' - 'To avoid or minimize physical and/or economic displacement' - 'While balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable' | No reference No reference No reference | The top-down nature of Myanmar political culture is such that citizen involvement in decision-making and other measures of consultation are in their nascency. As above |
| Compensation and Benefits for Displaced Persons (PS5, Para. 9) - 'When displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets' - 'At full replacement cost and other assistance' - 'To help them improve or restore their standards of living or livelihoods' - 'Compensation standards | LAA Article 23(1) 'In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration: first, the market value of the land at the date of the publication of the notification under section 4 [and five additional criteria]' No reference No reference Partially covered in LAA - | As noted, in practice there is scant evidence that structural measures are undertaken explicitly to avoid displacement from occurring. Moreover, compensation - when it is paid - is largely ad hoc in nature and often far below market value. As above As above Such standards are not transparent in Myanmar. |

| | | |
|--|---|---|
| <p>will be transparent'</p> <ul style="list-style-type: none"> - 'Applied consistently to all communities and persons affected by the displacement' - 'Where livelihoods of displaced persons are land-based, offer the displaced land-based compensation' - 'The client will take possession of acquired land and related assets only after compensation has been made available' - 'And, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation' - 'The client will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project' | <p>Articles 11-15</p> <p>No reference</p> <p>No reference</p> <p>Issue addressed in Article 6(1) of the LAA</p> <p>No reference to resettlement</p> <p>No reference</p> | <p>There are no common standards in place to ensure equitable compensation standards.</p> <p>Most analysts state that compensation levels are highly subjective in nature, and principles are not applied consistently.</p> <p>Resettlement is rarely offered to displaced communities, though it does occur occasionally, such as in the cases outlined in the present report.</p> <p>Not common in practice.</p> <p>There is no evidence of this in practice.</p> |
| <p>Community Engagement (PS5(10))</p> <ul style="list-style-type: none"> - 'Stakeholder engagement' - 'Disclosure of relevant information and participation of affected communities' | <p>LAA Article 5A(1) 'Any person interested in any land which has been notified... (1) as being needed or likely to be needed for a public purpose or for a company may, within 30 days of the notification, object to the acquisition of any land in the locality, as the case may be.'</p> | <p>Persons and communities affected by land acquisition measures where the LAA is the legal basis for such acquisition have rights to object (Art 5), however, in practice stakeholder engagement as envisaged under IFC performance standards are very rare. Where acquisition occurs on other legal/non-legal bases, stakeholder engagement is effectively non-existent.</p> |
| <p>Grievance Mechanism (PS5, Para. 11)</p> <ul style="list-style-type: none"> - 'The client will establish a grievance mechanism' | <p>LAA Article 5A(1) (see above)</p> <p>LAA Article 18(1) 'Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector to the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.'</p> | <p>Certain grievance/objection procedures are in place, however, due to difficulties in accessing legal assistance, time constraints and lack of confidence in the legal/judicial system, they are rarely invoked and generally fail in those rare instances when they are fully invoked.</p> |
| <p>Resettlement and Livelihood Restoration Planning and Implementation (PS5, Para. 12)</p> <ul style="list-style-type: none"> - 'A census will be carried out to collect appropriate socio-economic baseline data' | <p>No reference</p> | <p>Generally, resettlement is not the norm in cases involving land acquisition in all of its forms.</p> |
| <p>Resettlement Action Plan / Livelihood Restoration Plan (PS5, Para. 14)</p> | <p>No reference</p> | <p>See above</p> |

| | | |
|--|----------------|---|
| <p>Displacement - Physical Displacement (PS5, Para. 19)</p> | | |
| <p>- 'In the case of physical displacement, the client will develop a resettlement action plan'</p> | No reference | See above |
| <p>(Para. 20) - 'If people living in the project area are required to move to another location, the client will</p> | No reference | See above |
| <p>(i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and</p> | No reference | See above |
| <p>(ii) provide relocation assistance suited to the needs of each group of displaced persons</p> | No reference | See above |
| <p>- 'New resettlement sites built for displaced persons must offer improved living conditions'</p> | No reference | See above |
| <p>- 'The displaced persons' preferences with respect to relocating in preexisting communities in groups will be taken into consideration'</p> | No reference | See above |
| <p>(Para. 21) - 'The client will offer the choice of replacement property of equal or higher value, security of tenure, equivalent or better characteristics, and advantages of location or cash compensation where appropriate'</p> | No reference | See above |
| <p>- 'Compensation in kind should be considered in lieu of cash'</p> | No reference | Compensation references are made generally only to market value, not to replacement cost, though this is widely viewed as highly subjective in most instances |
| <p>- 'Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets'</p> | Arts 11-15 LAA | |
| <p>(Para. 22) - 'The client will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction'</p> | No reference | A fundamental change of approach will be required in Myanmar in cases of land acquisition to ensure the rights of those affected, in particular housing, land and property rights, are included within relevant law and policy. |
| <p>- 'Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standard of living at an adequate alternative site'</p> | No reference | See above. |
| <p>(Para. 24) - 'Forced evictions will not be carried out except in accordance with law and the requirements of this Performance Standard'</p> | No reference | Forced evictions are common and facilitated by law. New policies and laws are required to prevent forced evictions except in truly exceptional circumstances. |
| <p>Economic Displacement (PS5, Para. 25-29)</p> | | |

| | | |
|--|--|---|
| <p>- 'The client will develop a Livelihood Restoration Plan...'</p> <p>(Para. 27) - 'Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at full replacement cost'</p> <p>(Para. 28) - 'Economically displaced persons whose livelihoods or income levels are adversely affected will also be provided opportunities to improve, or at least restore, their means of income - earning capacity, production levels, and standards of living'</p> | <p>No reference</p> <p>Market-value compensation (Land Acquisition Act (LAA), Articles 9, 23(1) and 23(2))</p> <p>No reference</p> | |
| <p>Private Sector Responsibilities Under Government-Managed Resettlement (PS5, Para. 30)(For. Invest. Law)</p> <p>(Para. 30) - 'Where land acquisition and resettlement are the responsibility of the government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard'</p> <p>(Para. 31) - 'In the case of acquisition of land rights or access to land through compulsory means or negotiated settlements involving physical displacement, the client will identify and describe government resettlement measures'</p> <p>- 'If these measures do not meet the relevant requirements of this Performance Standards, the client will develop a Supplement Resettlement Plan'</p> | <p>No reference</p> <p>No reference</p> <p>No reference</p> | <p>IFC should develop standard procedures and principles, specific to Myanmar and grounded in PS 1 and 5, to bridge the gap.</p> <p>As noted, considerable work is required to address the lack of any effective resettlement policy.</p> |
| | Performance Standard 1 | |
| <p>Overview (PS1, Para. 5)</p> <p>- 'Clients must comply with applicable national law, including those laws implementing host country obligations under international law'</p> <p>Overview (PS1, Para. 7)</p> <p>- 'When host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent'</p> | <p>No reference</p> | <p>Though Myanmar's record of ratifying international human rights treaties is limited, there is scope for applying relevant provisions in the country to the benefit of land rights holders.</p> <p>IFC performance standards are clearly 'more stringent' in virtually every respect.</p> |

| | | |
|---|---|--|
| <p>(PS1, Para. 3)</p> <p>- 'Business should respect human rights, which means to avoid infringing on the human rights of others, and address adverse human rights impacts business may cause or contribute to'</p> | | <p>The Myanmar Centre for Responsible Business (MCRB) carries out a range of projects in the country which focus on the links between business and human rights.</p> |
| <p>Policy (PS1, Para. 6)</p> <p>- 'Under some circumstances, clients may also subscribe to other internationally recognized standards, certification schemes, or codes of practice and these too should be included in the policy'.</p> | <p>No reference</p> | <p>All IFC clients should be encouraged to sign all relevant voluntary and other codes of conduct for responsible business, including the HLP Commitment administered by www.iplc.com.au.</p> |
| <p>Identification of risks and impacts (PS1, Para. 7)</p> <p>- 'The client will establish and maintain a process for identifying the environmental and social risks and impacts of the project'</p> <p>(Para. 12)</p> <p>- 'Where the project involves specifically identified physical elements, aspects and facilities that are likely to generate impacts, and as a part of the process of identifying risks and impacts, the client will identify individuals and groups that may be directly and differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status'</p> | <p>No reference</p> <p>No reference</p> | <p>After extensive research in the country, the only international companies investing in Myanmar that appear to have refined policies on land are Telenor and Coca Cola. In particular, Coca Cola has an explicit policy of 'zero tolerance for land grabs'</p> |
| <p>Disclosure of Information (PS1, Para. 29)</p> <p>- 'The client will provide affected communities with access to relevant information on:</p> <p>(i) the purpose, nature, and scale of the project;</p> <p>(ii) the duration of proposed project activities;</p> <p>(iii) any risks to and potential impacts on such communities and relevant mitigation measures;</p> <p>(iv) the envisaged stakeholder engagement process; and</p> <p>(v) the grievance mechanism.'</p> | <p>Partially addressed in LAA</p> | <p>All land-based investment activities by IFC clients should always commence with an on-site visit to the land parcel under consideration. This should involve cross-checking any official documentation that may have been provided to the client, and importantly, direct and equitable discussions and negotiations with all persons and communities residing on or otherwise claiming rights over the land concerned.</p> |
| <p>Consultation (PS1, Para. 30)</p> <p>- 'When affected communities are subject to identified risks and adverse impacts from a project, the client will undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks, impacts and mitigation measures, and allows the client to consider and respond</p> | <p>Article 5 of the LAA allows 'objections', though these rarely succeed.</p> | <p>Some companies do this (a minority, however), however law and policy do not support these requirements.</p> |

| | | |
|--|--------------|--|
| to them' | | |
| Informed Consultation and Participation (PS1, Para. 31) - 'For projects with potentially significant adverse impacts on affected communities, the client will conduct an (ICP) process'. | No reference | Such measures require commencement in Myanmar. |

D. Recommendations on Scope of Due Diligence

47. As the preceding analysis clearly reveals, there are large gaps between domestic legislation, policy and practice on the question of land acquisition and relevant IFC performance standards. To remedy these discrepancies will require formidable efforts by the government of Myanmar driven by political will that clearly recognizes the many benefits that may be gained by improving land acquisition laws and practices in the country to bring these into line with international minimum standards. **At the same time, it must be emphasized that whatever law and policy changes do eventually occur will only take place when the prevailing political and governance cultures on the question of land acquisition that have prevailed in the country - effectively since independence in 1948 - change fundamentally. The Constitution, the legislative framework governing the process of land acquisition in Myanmar, including the 2012 land and foreign investment laws, their administrative and governance structures and the underlying social circumstances in which these exist and are applied, have been designed in their essence to provide an almost fool-proof rationale for the State, those associated with it, the military and large-scale business interests to have almost comprehensive control over who owns land, how it is used and when it can be lawfully acquired by these interests.**

48. The fundamental rights of tens of millions of individuals and communities affected when land acquisition measures are undertaken are almost completely absent within the prevailing frameworks guiding land acquisition processes in the country. The prevailing lack of security of tenure and limited nature of legal land rights (and title) experienced by millions of both rural and urban dwellers, and the almost complete failure of Myanmar to recognize customary land rights, despite these being in place in much of the country, point to the need for major land reform in the country.

49. IFC and the companies with which it may work and that decide to invest in Myanmar face a complex set of circumstances within the land domain. There is extensive understanding within some sectors of the corporate sector investing in Myanmar about the positive role that can be played by socially responsible and rights-sensitive investment. The UN's Global Compact was launched in Myanmar in April 2012 and has garnered a number of adherents, and groups such as the Myanmar Centre for Responsible Business are active in the country to assist companies to ensure that their investment practices conform to international human rights standards. Should IFC and its clients intend to work further in the country, beyond its normal duties of due diligence and the obvious wish to refrain from supporting any acts or omissions that would place it in a position of complicity in any number of possible (indeed, probable), land rights abuses linked business activities, and then defending itself against any eventual lawsuits, public protests or other criticisms, with proper project planning and constant oversight of the human rights implications of any project the company may undertake, IFC and its client companies have every potential to establish a unique position within the business community operating in Myanmar, which will be good for both the people of the country as well as the corporate bottom line.

50. Many analysts of the land rights situation in Myanmar have offered a wide range of specific recommendations to improve the imperfections that continue to dominate land law, policy and practice in the country. USAID, for instance, has specifically urged: support the development of a land policy, support the development of a comprehensive land law and related implementing rules and regulations, improvement of land titling procedures, recognition of existing land use, improvement of the system of land classification improve tenure security for vulnerable populations including smallholder rights, improvement of land tenure security for women, reducing landlessness, bringing compulsory acquisition policies in line with international best practices, promoting expansion and improvement of community forest user groups, supporting more sustainable water management and support regulation of the mining industry.⁴⁷

51. There are a range of immediate measures that could be undertaken by Government of Myanmar that would considerably improve domestic law and practice concerning land acquisition. These include, for instance: repealing the Land Acquisition Act and replacing it with a new law that takes fully into account international normative frameworks and best practice, with a focus on the rights of individuals and communities threatened with land acquisition; significantly amend and democratize 2012 land laws; develop a National Involuntary Resettlement Policy that is fully consistent with PS5 and other relevant international standards; create an independent oversight body with a mandate to review all cases of land acquisition, including all aspects of the compensation process; ratify all major international human rights treaties, beginning with the entire International Bill of Rights, eg. both 1966 Covenants and related protocols; adopt a comprehensive national land use policy; establish a National Independent Land Transfer Oversight Panel for all land parcels larger than 50 acres as a means of preventing unlawful land acquisition; develop proper oversight procedures to revoke rights over land acquired through land grabbing, and any number of additional measures.

Specific Recommendations

52. IFC and its clients will need to exercise considerable due diligence in any project they may become involved with that envisages land acquisition to ensure full compliance with PS5, and to protect the reputations of both entities.⁴⁸ With a view to achieving these aims, IFC and clients should consider the following specific recommendations:

Recommendation 1: Encourage all client companies (both domestic and international) to Develop Appropriate Internal Policies on Land Acquisition and Forced Resettlement

53. The development of self-assessment measures, combined with the development of internal policies on land acquisition and forced resettlement,⁴⁹ can go a long way towards ensuring that the IFC and clients support land-related human rights in Myanmar and is in no way complicit in any rights abuses that may have occurred in any areas where clients choose to invest. Actively striving to avoid involvement in projects where abuses took place in the past or will take place in the future, and strongly supporting the internationally recognized human rights of the people in Myanmar will greatly reduce the potential for of lawsuits alleging complicity in human rights abuses, such as the well-known *Total Case*⁵⁰ in Myanmar, the well-known *Chevron Case*⁵¹ in Ecuador, and many others. Guidance may be also sought

from companies that have already invested in Myanmar such as Coca-Cola which have adopted zero land grabbing policies.

Recommendation 2: Encourage Company Self-Assessments

54. In the first instance, IFC should encourage companies to carry out self-assessments of possible impacts of their investments may also be a useful tool to ensure that the IFC and companies it may work with plays a supportive role in the land sector. Possible questions in such a self-assessment could include:

- Is the company currently or soon to be engaged in a development, extractive or investment project that has required the purchase, lease or acquisition of land?
- If so, is the company certain of the legal ownership and possession status of the land concerned prior to the conferral of rights to use or exploit the land to your company?
- Were people living on the land prior to the sale, lease or use of the land by the company?
- If so, how many persons were in residence and where are they now?
- Were any former or current residents of the land concerned the statutory or customary legal owners of the land or did the occupants hold other rights to reside there?
- Is the company certain that the statutory and/or customary rights of those residing on the land prior to purchasing or acquiring use rights of the land were complied with in full by the local authorities/government in the country concerned?
- Are the legally enshrined housing, land, and property rights of the people in the project area recognized, respected, and protected in a comprehensive manner?
- Was anyone involuntary resettled by the government concerned to provide 'empty' land to the company?
- Were provisions requiring the government to remove people from the land concerned contained within any contract or agreement entered into by the company?
- If so, what legal standards were taken into account in terms of best practices and international legal norms?
- Is the company certain that it has complied with all such practice and legal norms?
- What legal protections were provided to the people who were resettled?

- Has the company considered alternative project locations such that the local people need not be resettled?

Recommendation 3: Address Historic Acts of Land Confiscation

55. In a country such as Myanmar where the practice of arbitrary, unjust, unfair and illegal land confiscation has such a long and controversial history, and where such practices continue within a legal regime that facilitates it with general disregard as to the rights of ordinary citizens, it is clear that IFC clients will almost invariably - if they wish to comply in full with the terms of PS 1 and 5 - need to investigate both allegations of current and historic acts of land acquisition prior to commencing business activities on the parcel of land concerned. IFC clients should, therefore, be encouraged to develop appropriate and consistent due diligence guidelines that ensure that any land upon which a company wishes to initiate investment/business activities was not subject to arbitrary or illegitimate land confiscation. In determining an appropriate time-frame for uncovering past instances of forced displacement and eviction from acquired land, all cases of alleged displacement and acquisition that took place from the entry into power of the Ne Win military regime in 1962 until the present.

Recommendation 4: Encourage the Development of Government a New National Policy on Involuntary Resettlement

56. In specific regard to land acquisition measures carried out by government, the military or companies, the prevailing absence of legal duties to provide resettlement and livelihood re-establishment options for people and communities facing dislocation also requires prompt remedy. IFC should, therefore, encourage the development of a new national policy on involuntary resettlement modeled on the contents of IFC PS 1 and 5.

Recommendation 5: Engage Local Stakeholders

57. Given the very considerable gaps between IFC performance standards and law and policy on land acquisition in Myanmar, IFC should seek to systematically engage with all government ministries with responsibilities within the land sector (see annex 2 below) and present to these agencies an overview of the key elements of IFC PS 5 and 1. To ensure that all relevant stakeholders are engaged, beyond government agencies, IFC should also attempt to develop working relations with entities that can provide case-by-case assistance on questions relating to land acquisition, including, for instance, Displacement Solutions, the Food Security Working Group (FSWG) - Land Core Group, Local Resource Center (LRC), Pyoe Pin, EcoDev, Vriens Partners, and others.

Recommendation 6: Develop a Myanmar-Specific Capacity Building Program on Compliance with IFC PS1 and PS5

59. The development of capacity-building programs within IFC and for its clients to implement IFC PS1 and PS 5 would seem highly advisable. One possible option for IFC and its clients would be to host an intensive two-day workshop on 'Business and Land Acquisition' with the aim of developing business-wide guidelines on these issues, which identified how companies can best ensure compliance with relevant norms and to find mutually interesting answers to key questions and answers relating

to how can companies collect data on the history of lands where they are considering investments? Where can they realistically get reliable information, including land records, market valuation of lands and other required documentary evidence ensuring successful due diligence. This should be a multi-stakeholder event with participants from the IFC, the business sector, government and civil society.

E. SELECTED SOURCES

Noe Noe Aung, 'Destitute, Myanmar's Farmers Seek Compensation' (21 Jan 2013) - <http://www.mmtimes.com/index.php/national-news/3848-destitute-farmers-seek-compensation.html>

Noe Noe Aung, "Most acquisition broke land laws, says commission", *The Myanmar Times*, 01 April 2013

Clifford Chance & VDB/Loi, *Myanmar Briefing Note: Foreign investment rules in practice*, Bangkok, March 2013

DAEWOO International, *Land Acquisition Activities 2009-2010 Kyayk Phyu, Rakhine State*.

Displacement Solutions (2012) *Myanmar at the HLP Crossroads*, available at <http://displacementsolutions.org/files/documents/MyanmarReport.pdf>

Displacement Solutions, *Guidance Note on Developing Policy Options for Addressing Land Grabbing and Speculation*, 26 June 2012

Displacement Solutions (2013) *Bridging the HLP Gap: The Need to Effectively Address Housing, Land, and Property Rights During Peace Negotiations and in the context of Refugee/IDP Return*, available at: <http://displacementsolutions.org/landmark-report-launch-bridging-the-housing-land-and-property-gap-in-myanmar>.

Hnin Wut Yee, *Baseline Report: Myanmar (Burma), Business and Human Rights in Asean*, 2013

The Human Rights Foundation of Monland - Burma, *Disputed Territory: Mon Farmers' Fight Against Unjust Land Acquisition and Barriers to Their Progress* (October 2013)

Chris Jochnick, 'Land conflicts will burn you, big ag' (31 October 2013), Oxfam America

Jones Land LaSalle & Myanmar Legal, *Myanmar Property Investment Guide*, 2013

Karen Human Rights Group, *Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar*, March 2013

Land Core Group of the Food Security Working Group, *13 Case Studies of Land Confiscations in Three Townships of Central Myanmar*, September 2012

Land Core Group, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012

Brian McCartan, 'Land grabbing as big business in Myanmar' in *Asia Times Online*, 8 March 2013

McKinsey Global Institute, *Myanmar's moment: Unique opportunities, major challenges*, McKinsey & Company, June 2013

Tim McLaughlin and Aung Si Hein, 'Residents fight SEA Games Venue' in *The Myanmar Times* (28 Jan 2013) - <http://www.mmmtimes.com/index.php/national-news/3934-residents-fight-sea-games-venue.html>

Aye Nai, 'Rule of Law Committee deluged with complaints' at <http://www.dvb.no/news/rule-of-law-committee-deluged-with-complaints/25806>, 16 Jan 2013

OECD, *Myanmar: Responsible Business Conduct and the OECD Guidelines for Multinational Enterprises*, 2014

Soe Sandar Oo, 'After 50 Years, Farmers in Ayeyarwady End Silence' (21 Jan 2013) - <http://www.mmmtimes.com/index.php/national-news/3847-after-50-years-farmers-in-ayeyarwady-end-silence.html>

Ashley South, *Displacement and Dispossession: Forced Migration and Land Rights*, COHRE, 2007; http://www.ashleysouth.co.uk/files/COHRE_November_2007.pdf

TNI & BCN, *Access Denied: Land Rights and Ethnic Conflict in Burma* (Burma Policy Briefing No 11, May 2013)

Phoe Soe Thu and Nann Myint, 'Forced eviction leaves hundreds homeless in Yangon Region village', in *Mizzima*, (5 Feb 2014)

UNHCR, UN Habitat and the Norwegian Ministry of Foreign Affairs, *Guidance Note on Land Issues Myanmar*, 2010

USAID Country Profile: Property Rights and Resource Governance - Burma

Kevin Woods, 'A political anatomy of land grabs' in *The Myanmar Times*, 03 March 2014

Kevin Woods, *Agribusiness Investments in Myanmar: Opportunities and Challenges for Poverty Reduction*, Yunnan University Press, Kunming, Yunnan, PRC China, 2013.

F. ANNEXURE

Annex 1

THE LAND ACQUISITION ACT (1894)

PART I PRELIMINARY

1-2. [...]

3. In this Act, unless there is something repugnant in the subject or context:

(a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

(c) the expression “Collector” includes any officer specially appointed by the President of the Union to perform the functions of a Collector under this Act;

(d) the expression “Court” means a principal civil Court of original jurisdiction, unless the President of the Union has appointed (as he is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;

(e) the expression “company” means a company constituted or registered by or under the law of the United Kingdom, the Union of Burma or India or Pakistan, and includes a society registered under the law of the Union of Burma or India or Pakistan relating to the registration of societies or co-operative societies;

(f) the expression “public purpose” includes the provision of village sites in districts in which the President of the Union shall have declared by notification in the Gazette that it is customary for the Government to make such provision; and

(g) the following persons shall be deemed persons “entitled to act” as and to the extent hereinafter provided (that is to say) - trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that:

(i) no person shall be deemed “entitled to act” whose interest in the subject-matter

shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;
(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;
(iii) the provisions of Order XXXI of the Code of Civil Procedure shall, mutatis mutandis, apply in the case of persons interested in appearing before a Collector of Court by a next friend, or by a guardian for the case, in proceedings under this Act;
and

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

PART II ACQUISITION

Preliminary Investigation.

4. (1) Whenever it appears to the President of the Union that land in any locality is need or is likely to be needed for any public purposes, a notification to that effect, shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by the President of the Union in this behalf, and for his servants and workmen:

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

5. The Officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of

the Collector or other chief revenue-officer of the district, and such decision shall be final.

OBJECTIONS

5A. (1) Any person interested in any land which has been notified under section 4, subsection

(1), as being needed or likely to be needed for a public purpose or for a company may, within thirty day of the notification, object to the acquisition of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary. submit the case for the decision of the President of the Union, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the President of the Union on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

DECLARATION OF INTENDED ACQUISITION

6. (1) Subject to the provisions of Part VII of this Act, when the President of the Union is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect;

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

6.(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the President of the Union may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a company, the President of the Union, or sonic officer authorized by the President of the Union in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no

plan has been made thereof, a plan to be made of the same.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents, authorized to receive service on their behalf, within the revenue-district in which the land is situated.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under the Burma Post Office Act.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, subproprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code. Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of:

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. (1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. The Collector may for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a civil Court under the Code of Civil Procedure.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

TAKING POSSESSION

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the State, free from all encumbrances.

17. (1) In cases of urgency, whenever the President of the Union so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub section (1), take possession of any waste or arable land needed for public purposes, or for a company. Such land shall thereupon vest absolutely in the State, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or whenever it becomes necessary for the War Office to acquire the immediate possession of any land for the use of the armed forces of the Union the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the President of the Union, enter upon and take possession of such land, which shall thereupon vest absolutely in the State, free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the President of the Union, the provisions of sub-section (1) or sub-section (2) are applicable, the President of the Union may direct that the provisions of section 5A shall not apply, and, if he does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken; Provided that every such application shall be made:

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand:

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively:

20. The Court shall thereupon cause a notice specifying the day on which the Court

will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any civil Court in the Union of Burma shall be entitled to appear, plead and act (as the case may be) in such proceeding.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:

first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings;

fifthly, if in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

24. But the Court shall not take into consideration:

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1).

25. (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same subsection, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment, within the meaning of section 2, clause (2), and section 2, clause (9), respectively, of the Code of Civil Procedure.

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or, that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

PART IV APPORTIONMENT OF COMPENSATION

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V PAYMENT

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person be competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount;

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18;

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the President of the Union, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall:

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit; and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied:

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys; and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be:

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI

TEMPORARY OCCUPATION OF LAND

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the President of the Union that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the President of the Union may direct the Collector to procure the occupation and use of the same for such term as the President of the Union shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein. Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the President of the Union shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII ACQUISITION OF LAND FOR COMPANIES

38. (1) The President of the Union may authorize any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the company" were inserted.

38A. An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a company for the purposes of this Part, and the references to company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company unless with the previous consent of the President of the Union, nor unless the company shall have executed the agreement

hereinafter mentioned.

40. (1) Such consent shall not be given unless the President of the Union be satisfied, either on the report of the Collector under section 5A, sub-section (2), or by an enquiry held as hereinafter provided:

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the President of the Union shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a civil Court.

41. If the President of the Union is satisfied, after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an enquiry under section 40, that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public, he shall require the company to enter into an agreement with the Government, providing to the satisfaction of the President of the Union for the following matters, namely:-

(1) the payment to Government of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the company;

(3) the terms on which the land shall be held by the company;

(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; and

(5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act:

43. The provisions of sections 39 to 42, both inclusive, shall not apply to the acquisition of land for any railway or other company, for the purposes of which under any agreement the Government is, or was, bound to provide land.

44. In the case of the acquisition of land for the purposes of a railway company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VIII MISCELLANEOUS

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Courthouse, and also in some conspicuous part of the land to be acquired;

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under the Burma Post Office Act, and service of it may be proved by the production of the addressee's receipt.

46. Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land to the Collector.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the

determination of the compensation payable under this section.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired;

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his other land, the President of the Union is of opinion that the claim is unreasonable or excessive, he may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the President of the Union to the person interested, and shall thereafter proceed to make his award under section II.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation;

Provided that no such local authority or company shall be entitled to demand a reference under section 18.

51. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

54. Subject to the provisions of the Code of Civil Procedure applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court, and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in section 110 of the Code of Civil Procedure [and in Order XLV thereof].

55. (1) The President of the Union shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication.

(3) All such rules shall be published in the Gazette, and shall thereupon have the force of law.

Annex 2

Government Entities with Responsibilities Concerning Land Acquisition

Ministry of Agriculture and Irrigation (MoAI)

The MoAI is the main, and very powerful, government body responsible for land administration and agricultural policy (but not forested lands) in Myanmar, and is responsible for land-use planning, settlement, land records and a range of other matters. The Farmland Management Body (FMB) and the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVfV), both established by laws enacted in 2012 are chaired by the head of MoAI.

State Land Records Department (SLRD)

The SLRD is located within MoAI and is responsible for updating and maintaining land records, especially for lands used by farmers for agricultural and settlement purposes. With passage of the new Farmland and VFV Laws, the SLRD is responsible for recording and registering interests in farmland and VFV land, and issuing Land Use Certificates to farmers who have received approval to use farmland from the Farmland Administration Body at the appropriate level.

Farmland Administration Body (FAB)

The Farmland Administration Body (FAB) falls under the auspices of the MoAI designated under the Farmland Law (2012), and is chaired by the Minister of MoAI. The Deputy Minister of MoAI is deputy chairperson and the Director General of Settlement and Land Record Department is the secretary. FABs are responsible for: reviewing applications for the use of farmland; formally recognizing/approving rights to use farmland; submitting approved rights to use farmland to the SLRD for registration; conducting valuations of farmland for tax and acquisition compensation purposes; issuing warnings, imposing penalties or rescinding use rights if conditions for use of farmland are not met; and resolve disputes that arise over the allocation and use of farmland use rights. Land use rights are managed by FMBs at Village/Ward, Township, State and Central levels, and registered by the Settlement and Land Records Department (SLRD).

Ministry of Environmental Conservation and Forestry (MoECaF)

This Ministry is responsible for issues relating to protection of the environment, implementing rules relating to Environmental and Social Impact Assessments (ESIA), and management of forestlands and forest resources in the country. MoECaF has overlapping authority over lands classified as Public Forest in the Forest Law, and Virgin Land under the VFV Law.

Forestry Department

The Forestry Department is the primary authority responsible for administering Reserved Forest lands and works within the MoECaF. The Forestry Department also has delegated authority over areas of land classified as Protected Public Forest

and Public Forest.

Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFL)

Under the VFV Law, the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFL) has the overall management responsibilities regarding VFV lands including dispute resolution in coordination with other government departments and agencies. CCVFL is a national, multi-ministerial committee formed at the President's discretion who may appoint the Minister of MOAI as Chairperson; the Director General of the SLRD as the Secretary and individuals from various government department organs, or other suitable persons of his choosing, as members of the CCVFL. The CCVFL oversees the granting and monitoring of use rights over VFV lands in the country for agriculture, mining and “allowable other purposes” under the law, in coordination with concerned Ministries and Regional or State Governments. The CCVFL is specifically responsible to: receive recommendations for the use of VFV land from various Ministries and Regional or State Governments; receive applications for the use of VFV land from public citizens, private sector investors, government entities and NGOs; reject applications or Grant “Permission Orders” for the use of VFV lands; rescind or modify rights to use VFV land; coordinate with MoECaF and other Ministries to prevent damage or destruction to forest lands and conserve natural regions, watershed areas and natural fisheries; submit semi-annual monitoring reports on the use of VFV to the Cabinet of the Union Government; provide input on the formulation of National Land Policy; fix the rate of security fees to be deposited for use of VFV land; fix the annual land revenue rate and suitable period for tax exemption in connection with the use of VFV land; organize and delegate responsibilities to Task Forces and Special Groups for use of VFV land at the Regional and State level of Government; help those with rights to VFV land secure assistance upon request (technical assistance, inputs, loans etc.); resolve disputes related to the use of VFV land in coordination with other Government departments and agencies.

Department of Human Settlement and Housing Development (DHSHD)

The Ministry of Construction's Department of Human Settlement and Housing Development (DHSHD) is another major player in the land acquisition process in Myanmar. The Land Investigation Commission received many letters reporting that the DHSHD had taken land from farmers.⁵²

Land Allotment and Utilization Scrutiny Committee

In July 2012 a Cabinet-Level *Land Allotment and Utilization Scrutiny Committee* was established to examine national land-use policy, land-use planning and the allocation of land for investment. The Committee is headed by the Ministry of Environmental Conservation and Forestry.

City Development Committees

In the cities, land administration, use and ownership activities are managed by the respective City Development Activities. These Committees have powers enabling them to reclassify the assigned designation to land parcels, to acquire land and buildings and to transfer titles of ownership.

Annex 3

Land Classifications in Myanmar

Farmland

These lands are administered under the 2012 Farmland Act and are sub-divided into Le-land - paddy land; Ya-land - land not suitable for paddy; Kaing-Kyung - land near rivers, seasonally flooded, suitable for growing oilseed crops, pulses, vegetables and tobacco; Garden-land - land suitable for fruit orchards and/or suitable for growing vegetables; Dhani-land - land where Nina palm is grown; and Taung-ya-land – land used as a part of shifting cultivation. The Law further states in this definition that farmland “does not include land situated within any town or village boundary used for dwelling, religious buildings and premises, and public owned land which is not used for agriculture purposes”. The Farmland Law specifically defines paddy land in Article 3 as “land mainly for growing irrigated or rain fed rice paddy.” The Law also specifically defines alluvial island land in the same Article as “land flooded yearly whose character and location varies in relation to the water channel.” The Farmland Law does not further define the other sub-classifications of farmland mentioned. The sub-classifications of farmland have historically been used in order to control agricultural outputs of farmers and provide a basis for calculation of taxes (tax rates based on agricultural land classifications). This classification system does not recognize customary land use and agricultural practices of many communities on what is commonly referred to as taungya (upland cultivation). It should be noted that the term used for ‘taungya land’ in the Farmland Law specifically refers to this land-use when it is not in a rotational fallow system. Areas of farmland currently included in land surveys conducted by the Settlement and Land Records Department (SLRD) within the MoAI have some level of land tenure security due to formal recognition of land use rights by the Government. However in practice even when smallholder farmers have legal land tenure documents, their land is still often appropriated in the interests of the nation or the public as prescribed in the Farmland Law. Many farmers possess records that clearly show they have been cultivating and paying taxes on these lands for some time. Some farmers possess what are classified as permanent land use rights to these lands, which appear to be primarily for areas of irrigated paddy lands. Other areas of land often have land use rights classified in tax payment documents as being “non-permanent”. The non-permanent designation has made the land tenure security of these lands less certain.

Reserved (Protected) Forest Land

These lands are administered under the provisions of the 1992 Forest Law. Such lands are intended primarily to be used in the production of forest products, but many people reside in such areas.

Protected Public Forest Land

Forested land used primarily for conservation purposes, and are administered under both the Forest Law and the Protection of Wildlife and Conservation of Natural Area Law (1994).

Public Forest Land

Public Forest lands fall under provisions found in the Forest Law (1992) and the VFV Law (2012). The Central Committee for the Management of Vacant, Fallow and Virgin Lands, headed by the Minister of the Ministry of Agriculture and Irrigation (MoAI), may make a request from the Ministry of Environmental Conservation and Forestry (MoECaF) that these lands be used for State economic development under the VFV Law. Currently the most common land use in public forest land is by smallholder farmers in the uplands practicing rotational fallow agriculture.

Virgin Land

“Virgin land” is defined in Article 2 of the VFV Law as “new land or other woodland, in which cultivation has never been done before.” The land may or may not be covered in forest, and includes land that has been “cancelled legally from Reserved Forest land, Grazing land and Fisheries Ponds.” These areas fall outside of the land surveys conducted by the SLRD. There are mechanisms by which Community Forestry arrangements can be secured for these areas of land. The Forestry Department of MoECaF and the MoAI currently have overlapping authority over these areas of land. The access and land use tenure claims to these areas of land generally do not appear to be very secure, due to the lack of documentation to back up land use claims.

Vacant and Fallow Land

These are areas of land defined in Article 2 of the VFV Law as “land which was cultivated by the tenant before, and then that land was abandoned by the tenant for any reason, not only the State designated land but also for agriculture or livestock breeding purposes.” The majority of these areas of land fall outside of the land surveys conducted by the SLRD. Due to the way that “vacant and fallow” land is defined, many areas of land that are under active cultivation by farmers and community groups utilizing these lands in a traditional or customary manner could be classified as “vacant and fallow”. The land tenure claims to these lands are very weak, due to the lack of documentation to back up land use claims.

Grazing Land

Classification and management of grazing lands in Myanmar is set out in the *Upper Burma Land Revenue Regulations* (1889). Grazing land is not mentioned in the *Farmland Law*, though brief mention is made of these lands in the definition of “virgin land” under the VFV Law.

Non-agriculture land

Non-agricultural land is sub-divided into thirteen sub-categories: mine areas; grazing ground areas; railway land areas; road areas; embankment, land and dam areas; river/stream and underwater areas; fisheries/ponds areas; factories areas; town land areas; village areas; air field areas, religious buildings and cemetery areas; and cantonment areas.

Annex 4

First Report of the Investigation Commission for prevention of Public Disenfranchisements connected to Confiscation of Farmland and Other Lands

Republic of the Union of Myanmar
Union Parliament

Investigation Commission for prevention of Public Disenfranchisements connected to
Confiscation of Farmland and Other Lands

Report Part 1

Reporting as Parliamentary Proposal

1. The Investigation Commission for prevention of Public Disenfranchisements connected to Confiscation of Farmland and Other Lands has been organized through the decision of the Day 7 meeting of the First Union Parliament fourth normal session, 8th. August, 2012 by decree No.52/2012, as per the Law of the Union Parliament No.8, by-law (Pa). The commission shall be organized of 74 members including the chairman.

2. The commission organized missions to 10 divisions and states mentioned in complaint letters. This Part 1 report has been prepared from the findings, comments and suggestions in the course of these missions. This has been discussed at the third meeting of the commission at 1530 hrs on 14.2.2013, then edits, revisions, and additions made by commission members, and agreed for submission to the Union Parliament.

3. The report comprises the following sections:

a) Introduction :

- 1) Submission of proposal to Union Parliament
- 2) Organization of the commission by Union Parliament

b) Root causes for land confiscation :

- 1) Expansion of urban development
- 2) Development of industrial zones
- 3) Expansion of military cantonments
- 4) National projects such as railways, highways, airports
- 5) For setting up state factories and plants
- 6) Inclusion of existing farmlands in allocation of land to private agriculture and livestock enterprises

c) The responsibilities of the commission

The methodology for investigation of each category of land confiscation has been prescribed by the patron of the Union Parliament. This report details the responsibilities of the commission as per the prescription.

d) Jurisdiction of the commission

The jurisdiction of the commission has been prescribed by the patron of the Union Parliament. This report details the jurisdiction of the commission as per the prescription.

e) Refrainments by the commission

The refrainments by the commission has been prescribed by the patron of the Union Parliament. This report details the refrainments.

f) Organization of sub-commissions

Organization of 10 sub-commissions for the divisions and states and additional judicial advisory unit is described under Annex A to the report.

g) Investigation of the root cause for land confiscation

This report deals with the land confiscation for expansion of military cantonments, among the 6 root causes above.

h) Complaints

Of the complaint letters that reached the commission up to 24.1.13, 565 complaints deal with land confiscation by the military and total 247,077.60 acres. The summary table on this is included as Annex B to the report.

i) Procedures for land confiscation

The summary of essential procedures to be followed in land confiscation that the commission has reference to as per the Land Confiscation Act 1894, and Land Confiscation Procedural Act 1932, is described in this report.

j) The investigation and findings

The sub-commissions traveled to the concerned regions and undertook investigations. Based on the findings, meetings were held in the commission office with the Ministry of Defense Quartermaster General from 28.1.13 to 29.1.13. The findings of the commission are tabulated as Annex C to the report, and can be summarized here as follows:

- 1) There have been cases of land confiscation undertaken in line with prescribed laws, by-laws and procedures, rules and regulations, as well as cases which do not conform thus.
- 2) More area of land has been confiscated than is necessary according to the structure and strength of the regiments.
- 3) The confiscated land area in many cases is not in continuity with existing cantonment area, and often in different township.
e.g. The Infantry Regiment 55 of Than Dwe township has confiscated 1,055.17 acres of coconut plantations at Gwa township; the Intelligence Corps 4 of Pathein township has seized 86 acres of farmland of Bogalay township; the South-west Military Command of

Pathein seized 833 acres of farmland at Thet Kai Thaung village, Nga Pu Taw township for the alleged purpose of setting up shrimp ponds, then transferred the plot to the Wan Toe Company for growing paddy; the Light Infantry Regiment 302 of Le Wai township, Naypyi Daw, seized 100 acres of dry farmland but did not work on it and instead let it on rent to other tenant farmers; the Police Station of Ay Lar township seized farmland but did not work it and instead transferred it to other farmer who is a police staff; 9 regiments under the Yangon Military Command Mingaladon have let on rent to other farmers 600 acres of confiscated farmland.

- 4) Farmlands seized in excess of regimental needs have been let on rent to other farmers instead of being worked by the regiment itself.
- 5) Inclusion in the confiscation of perennial cropland such as rubber, bamboo plantation, betel nut, coconut, citrus, etc. Regiments are not working on these lands and have let them to other farmers on rent.
e.g. In Mon State No.4 Advanced Training School confiscated 1,393.48 acres of perennial cropland in this manner, and also 592.00 acres by 8 other regiments.
- 6) Reparations for the land and crops were not provided at prevailing prices at the time of confiscation.
- 7) Amicable and transparent mutual negotiations with the owners have not been carried out.
- 8) Lands have been confiscated for the by-gone castor plantation projects, have not been returned thereafter, and let to other farmers on rent.
- 9) Rights to alluvial lands obtained by the military, and let on rent to other farmers.
e.g. 7 farmers cleared land and cultivated on Myet Sane Thaung alluvial island in Kawt Hmu township, Yangon Division. When the Yangon Division Peace and Development Council allocated 150 acres of this land to the Yangon Division Military Command, many plots of the original farmers have been included, and the latter ended up paying rent to the military.
- 10) Reparations provided upon confiscation for the land, the homestead, and crops have not been the same even for the same division or state. Some military units did not pay anything, some paid Kyats-500/acre, some Ks.5,000, some Ks. 10,000, and up to Ks. 20,000, etc.
e.g. In Magway Division, No.22 Defense Industries Plant and Air Force Base Magway paid Ks. 5,000/acre, in Sin Paung Wai township of same division the No.8 Defense Industries Plant and No.2 Signal Corps paid Ks.12/acre, in Nga Hpe township of same division the No.14 Defense Industries Plant paid Ks.600, 900, and 1,800 respectively.
- 11) Procedures for confiscation have not been carried out according to the rules and regulations and timelines prescribed.
- 12) Some of the signatures of farmers on the case files of the land confiscation are fake.

k) Cooperation by the concerned departments : the findings are ____

- 1) The concerned governmental departments did not execute the confiscations as per the prescribed laws, by-laws, procedures, and directives.
- 2) Inability to fully produce documents that are not of classified nature.
- 3) On field visits of the missions the concerned departments have acted in unconcerned manner.
- 4) Weaknesses in cooperation, responsibility, and accountability in tackling the problems by the concerned departments, organizations and companies involved in the land confiscation.

l) Comments : as follows __

- 1) In cases of land confiscation executed as per the prescribed procedures there have been weaknesses in just settlements to offset the damage to the socio-economic life of farmers.
- 2) Reparations do not conform to prevailing market prices.
- 3) Confiscation exceeds extent of area called for, and the excess has been let on rent.
- 4) Confiscations have been apart from the cantonment area, and these lands have been let on rent.
- 5) Amicable negotiations with the farmers are lacking.
- 6) Discrepancies between the maps maintained by the Land Records Department and the Forest Department and the reality on the ground, wherein they have been recorded as fallow land, virgin land and grazing land while in reality they have been under cultivation.
- 7) Land confiscations have not duly followed the existing laws, viz. Land Confiscation Act 1894, Land Confiscation Procedure Act 1932, and the prescribed procedures therein.
- 8) The public purpose for land confiscation needs to be clarified.
- 9) The extent confiscated should be as per the need.
- 10) If the land confiscated has not been utilized as per the original stated purpose, it should then be returned to the original owner of right, or returned to the state for proper utilization.

m) Recommendations

- 1) Reparations: Should be as per the prevailing market price endorsed by the local authority.
- 2) Area needed should be set according to structure and strength of military unit.
- 3) Confiscation should not exceed this set area.
- 4) Renting the excess area of confiscated land should not be allowed.

- 5) To return to the owner of right lands confiscated for regimental benefits that are not in continuity with existing cantonment area or distant from the latter.
- 6) If land confiscated has not been utilized according to the purpose of confiscation, or the purported project has been abolished, the land should be returned to the owner of right.
- 7) Farmers working on land that is documented as forest land, fallow land, virgin land, or grazing land should not be treated as usurpers. They should have humanitarian consideration for arduous labor of livelihood and are entitled to proper reparation and other support. These lands should be properly marked to prevent further mistakes.
- 8) Confiscated land obtained for the purpose of livestock activity but in reality used for cultivation contravenes the directive as per La Na 39, and should be returned to the original owner of right.
- 9) Mistaken identities in paying reparations should be prevented by proper verifying of identity.
- 10) Uncompleted confiscation procedure in connection with construction of regimental structures should be completed soon as per the recommended procedures.

n) General Recommendation

The land confiscation issue is a complex one. The government departments concerned should duly follow prescribed laws, by-laws, procedures and rules and regulations. The concerned departmental staff should be active in educating the farmers and public to prevent acts of ignorance. Only when all public servants as well as the public follow the existing laws will we be able to realize a peaceful, law-abiding, modern and prosperous nation.

o) Conclusion

The commission is comprised of members from various elected political parties, and attests to the fact that it has followed the directive of the patron of Union Parliament to refrain from all bias whether partisan, ideological, racial, using as political forum, organizing and personal gain. Commission is unanimous in the purpose of truth, and has acted in righteousness, wisdom, compassion, and put emphasis on the rule of law and transparency. The commission recommends for the expedient addressing of its findings, comments and recommendations by the Union Government.

4. The investigative reports concerning the remaining 5 root causes of confiscation shall be submitted to Union Parliament in due course according to respective category.

5. Thus, this submission via the Union Parliament of findings, comments, and recommendations concerning the confiscation of land for expansion of military cantonments, with the view to their immediate resolution.

Investigation Commission for prevention of Public Disenfranchisements connected to Confiscation of Farmland and Other Lands

Annex 5

Human Rights and Land Acquisition Processes in Myanmar

Housing, land and property (HLP) rights are not only essential for the well-being of Myanmar's people. When they are respected and protected, when their contents are clear and when they are subject to judicial review by a fair, impartial and competent judiciary, they are also good for business. Effective enforcement of HLP rights fosters faith in Government and diminishes discontent and unrest, thus promoting social stability, which in turn, creates a welcoming business climate, a domestic market for goods and services and a reliable workforce. Indeed, a system of strong HLP rights enhances and protects the reputation of the country and the international and domestic businesses that operate and invest there. In effect, it enhances the brand value of the nation and its products in a world that is increasingly aware of and concerned with the human and environmental impact of business practices. However, land confiscation, displacement, landlessness, slums, housing decay and homelessness are all serious obstacles to making Myanmar a country seen as a conscious upholder of HLP rights.

States are bound by obligations to respect, protect, promote and fulfill these rights. Human rights laws indicate that once such obligations have been formally accepted through the ratification of an international or regional treaty or promulgation of related domestic legislation, the State must endeavor by *all appropriate means* to ensure everyone has access to HLP resources adequate for health, well-being and security, consistent with other human rights, including those affected by potential land acquisition.⁵³ **Governments must, therefore, adopt the policies, laws and programs required - to the maximum of their available resources - to continually and progressively expand the enjoyment of these rights and simultaneously ensure in policy, legal or other terms, that no *deliberately retrogressive measures* are taken that lead to the decline in the enjoyment of these basic rights.** Of all the HLP rights, the right to adequate housing under international law has advanced the farthest. In 1991, the UN Committee on Economic, Social and Cultural Rights adopted 'General Comment No. 4 on the Right to Adequate Housing' which indicates that the following seven components form **the core contents of the human right to adequate housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) location; (d) habitability; (e) affordability; (f) accessibility; and (g) cultural adequacy.**⁵⁴ General Comment No. 4 also reiterates that the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity, but that housing rights should be seen as rights to live somewhere in security, peace and dignity. **To achieve these rights, States need to respect these rights by ensuring that no measures are taken which intentionally erode the legal and practical status of this right.** Governments need to comprehensively review relevant legislation, refrain from actively violating these rights by strictly regulating forced evictions and ensure that the housing, land and property sectors are *free from all forms of discrimination at any time*. States must also assess national HLP conditions, and accurately calculate, using statistical and other data and indicators, the true scale of non-enjoyment of these rights, and the precise measures required for their remedy. **Governments need to protect the rights of people by effectively preventing the denial of their rights by third parties such as**

landlords, property developers, social service providers, companies and others capable of restricting these rights. To *promote* HLP rights, Governments should adopt targeted measures such as *national HLP strategies* that explicitly define the objectives for the development of the HLP sector, identify the resources available to meet these goals, the most cost-effective way of using them and how the responsibilities and time frame for their implementation will be applied. Such strategies should reflect extensive genuine consultation with, and participation by, all those affected, including groups traditionally excluded from the enjoyment of HLP rights. Finally, the obligation to *fulfil* these rights involves issues of public expenditure, the regulation of national economies and land markets, housing subsidy programmes, monitoring rent levels and other housing costs, the construction and financing of public housing, the provision of basic social services, taxation, redistributive economic measures and any other positive initiatives that are likely to result in the continually expanding enjoyment of HLP rights.

Annex 6

Myanmar Mission itinerary (23-30 June 2014)

| | | |
|-------------------|------|--|
| Monday 23 June | 2130 | Depart London Heathrow Terminal 3 (TG917) |
| Tuesday 24 June | 1505 | Arrive Bangkok |
| | 1750 | Depart Bangkok |
| | 1845 | Arrive Yangon |
| Wednesday 25 June | 1200 | IOM Patrick Duigan duigan.patrick@gmail.com phone 094317023 |
| | 1900 | UNAIDS Dominique Chambless Chamblessd@gmail.com |
| Thursday 26 June | 1400 | International Commission of Jurists U Kyaw Min Sann kyawminsann@gmail.com Daniel Aguirre daniel.aguirre@icj.org Tobyn Aaron tobyn.aaron@icj.org Vani Satishan vani.sathisan@icj.org |
| | 1600 | EcoDev Win Myo Thu winmyothu@gmail.com |
| | 1930 | Richard Horsey richard.horsey@gmail.com |
| Friday 27 June | 0900 | Myanmar Centre for Responsible Business Hnin Wut Yee Programme and Outreach Manager HninWut.Yee@myanmar-responsiblebusiness.org |
| | 1530 | USAID/TGCC Allan Slipher allanslipher@hotmail.com Rob Oberndorf rob.oberndorf@tetrattech.com Nayna Jhaveri Nayna.jhaveri@tetrattech.com |

| | | |
|------------------|------|---|
| | 1800 | IFC Jason Brett Pellmar, Senior Investment Officer jpellmar@ifc.org |
| Saturday 28 June | 1100 | Action Aid Swe Set Swe.Set@actionaid.org |
| | 2000 | Centre for Peace and Conflict Studies Sweta Velpillay |
| Sunday 29 June | 1945 | Depart Yangon |
| | 2140 | Arrive Bangkok |
| Monday 30 June | 0110 | Depart Bangkok |
| | 0715 | Arrive London Heathrow, Terminal 3 |

Annex 7

Endnotes

¹ Quoting statements from parliamentarian U Aung Zin analyzing the first report of the parliamentary land investigation commission: "The two biggest reasons are grabbing land for the needs of the military and for government projects, especially for industrial zones and to extend city areas." Noe Noe Aung, "Most acquisition broke land laws, says commission", *The Myanmar Times*, 01 April 2013.

² As foreign investors begin to gain increasing access to the Myanmar market, additional concerns have arisen that further, and perhaps even larger, land acquisition processes will be undertaken in the coming years. According to one analysis, for instance: "Between 2010 and 2030, our analysis suggests that Myanmar will need to invest \$320 billion in its infrastructure if the economy is to achieve growth of 8 percent a year. The majority of infrastructure investment - 60 percent - will need to be in residential and commercial real estate, but there is also a huge need for power plants, water-treatment plants, and road and rail networks" McKinsey Global Institute, *Myanmar's moment: Unique opportunities, major challenges*, McKinsey & Company, June 2013).

³ "Another land-related issue that hampers manufacturing is the inadequacy of access rights and ownership registries. Poor records and regulations that leave land ownership unclear and inadequate housing in both rural and urban areas contribute to difficulties faced by companies trying to find adequate building sites. Moreover, if disputes arise over land, Myanmar currently offers no meaningful legal recourse and no national legal-aid programme to ease access to the justice system. Certifying land rights in a way that is fair and equitable, particularly those relating to customary and communal use, is a major challenge and a familiar issue for other countries that are making the transition to become modern economies. Any land reform needs to address taxation, land valuation and zoning" (p. 77, id., McKinsey).

⁴ Displacement Solutions (2012) *Myanmar at the HLP Crossroads*, available at <http://displacementsolutions.org/files/documents/MyanmarReport.pdf>. See also: Scott Leckie, *Guidance Note on Developing Policy Options for Addressing Land Grabbing and Speculation*, 26 June 2012.

⁵ Kevin Woods, 'A political anatomy of land grabs' in *The Myanmar Times*, 03 March 2014. "This means we have entered the terrain of "legal land grabs" that cannot easily be contested on legal grounds, including more than 5.2 million acres of private agribusiness concessions that have been awarded to date. Of this, more than 3 millions acres have been "legally" awarded since the new government took office and started applying its new land-related laws."

⁶ *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012, 13-14.

⁷ Hnin Wut Yee, *Baseline Report: Myanmar (Burma), Business and Human Rights in Asean*, p. 254.

⁸ See, for instance, Burma Partnership, 'Rampant Land Confiscation Requires Further Attention and Action from Parliamentary Committee', 12 March 2013.

⁹ Kevin Woods, 'A political anatomy of land grabs' in *The Myanmar Times*, 03 March 2014.

¹⁰ Displacement Solutions, *Land Rights and Mine Action in Myanmar - Do No Harm: Proposal for a Set of Eight Core Principles and a 14-Step Sequencing Process for Land Rights-Sensitive Mine Survey and Clearance in Myanmar*, February 2014.

¹¹ There are numerous in depth studies exploring the particular land hardships facing various ethnic groups throughout Myanmar. See, for instance, TNI & BCN, *Access Denied: Land Rights and Ethnic Conflict in Burma* (Burma Policy Briefing No 11, May 2013), Karen Human Rights Group, *Losing Ground: Land Conflicts and Collective Action in Eastern Myanmar*, March 2013, The Human Rights Foundation of Monland - Burma, *Disputed Territory: Mon Farmers' Fight Against Unjust Land Acquisition and Barriers to Their Progress* (October 2013) and many others.

¹² "Estimates of landlessness among Burma's rural population range from 30-50%" *USAID Country Profile: Property Rights and Resource Governance - Burma*, p. 8. McKinsey's estimates are somewhat lower: "Around one-quarter of Myanmar's rural households do not have title to their land and are often under-employed" (p. 85, McKinsey, quoting UNDP, *The Integrated Household Living Conditions Survey*, June 2011).

¹³ Phoe Soe Thu and Nann Myint, 'Forced eviction leaves hundreds homeless in Yangon Region village', in *Mizzima*, (5 Feb 2014).

¹⁴ *USAID Country Profile: Property Rights and Resource Governance - Burma*, p. 1: "Forcible and uncompensated land confiscation is a source of conflict and abuse in Burma, and protests and fear of

"land grabs" have escalated as the state opens its markets to foreign investors and pursues policies to dramatically increase industrial agricultural production".

¹⁵ See Chris Jochnick, 'Land conflicts will burn you, big ag' (31 October 2013), Oxfam America, which lists several of these standards, including the Equator Principles, the UN Principles on Responsible Investment, the Voluntary Guidelines on Responsible Governance of Tenure, and others.

¹⁶ See annexure below for descriptions of each entity.

¹⁷ See annex 3 for a full listing of different land categories.

¹⁸ See: Scott Leckie and Ezekiel Simperingham, *Housing, Land and Property Rights in Burma: The Current Legal Code*, Displacement Solutions, Bangkok, 2009; UNHCR, UN Habitat and the Norwegian Ministry of Foreign Affairs, *Guidance Note on Land Issues Myanmar*, 2010; Displacement Solutions (2013) *Bridging the HLP Gap: The Need to Effectively Address Housing, Land, and Property Rights During Peace Negotiations and in the context of Refugee/IDP Return*, available at:

<http://displacementsolutions.org/landmark-report-launch-bridging-the-housing-land-and-property-gap-in-myanmar>; and *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012.

¹⁹ The Constitution, however, does not explicitly recognize citizen's rights to land or housing, but it does enshrine a number of rights of direct relevance, which are unlikely to have been tested thus far to determine which level of protection they might provide against land acquisition. Chapter VIII of the Constitution outlines fundamental rights and duties of citizens, and contains a number of provisions that are relevant to the framework of housing, land and property rights: 347. The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection; 348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth;...353. Nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person;...355. Every citizen shall have the right to settle and reside in any place within the Republic of the Union of Myanmar according to law; 356. The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired; 357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution;...370. Every citizen has, in accord with the law, the right to conduct business freely in the Union, for national economic development; and...372. The Union guarantees the right to ownership, the use of property and the right to private invention and patent in the conducting of business if it is not contrary to the provisions of this Constitution and the existing laws.

²⁰ The full text of the Act is contained in the annexure at the end of this report.

²¹ Under Section 4, "A person who has permission to use farmland shall have to apply for a Land Use Certificate to the Township Land Records Department Office passing it through the relevant Ward or Village Tract Farmland Management Body"(unofficial translation).

²² "42% of farmers live in upland areas and their livelihood is agriculture. Less than 10% of them have land use certificates (Supra, Hnin, 258).

²³ "In many cases, customary land use of farmers was ignored and agribusiness were awarded such 'vacant' land given it was not registered with the SLRD. Even if farmers registered their land with the SLRD and had the land use certificate, land confiscation was still possible" (id., Hnin, p. 257).

²⁴ For an overview of some of the structural flaws in both of the 2012 land laws, see: Supra, *Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law Improving the Legal & Policy Frameworks Relating to Land Management in Myanmar*, Food Security Working Group's Land Core Group, Yangon, November 2012, 13-14. According to another analyst, "The result of these two new land laws is that families and communities living in upland areas - now labeled 'wastelands' - have no legal land rights and land tenure security....The two land laws dispossess farmers, especially upland subsistence farmers, of their right to farm, and more broadly their right to land and to decide how they will use and manage their farm and forestlands". Kevin Woods, K. *Agribusiness Investments in Myanmar: Opportunities and Challenges for Poverty Reduction*, Yunnan University Press, Kunming, Yunnan, PRC China, 2013.

²⁵ Under the law of Myanmar foreigners cannot own land, however, under the 2012 FIL foreign investors can lease land from the government for 50 years, and then extend it for another 20 years with two 10-year extensions; thus amounting to the possibility of 90 year leases. Private land owners can also lease land to foreigners if approved by the relevant ministries.

²⁶ Supra, Hnin, 259.

²⁷ Art. 8, *City of Mandalay Development Law* (2002).

²⁸ Brian McCartan, 'Land grabbing as big business in Myanmar' in *Asia Times Online*, 8 March 2013.

²⁹ Supra, Kevin Woods, 'A political anatomy of land grabs' in *The Myanmar Times*, 03 March 2014.

³⁰ Supra, Noe Noe Aung, "Most acquisition broke land laws, says commission", *The Myanmar Times*, 01 April 2013.

³¹ Shwe Aung, 'Parliament calls for land grab recommendations to be expedited', DVB, 30 August 2013.

³² "...the majority of over 1700 complaints received by the Myanmar National Human Rights Commission (MNHRC) in the first six months of its operations concerned land grabbing cases reportedly committed by army-owned companies, joint ventures and other economically and politically powerful operations with connections to the military. As of September 2012, according to U Win Mra Chairman of the MNHRC, 'around 30 complaint letters come daily to Myanmar National Human Rights Commission and most are related to farmland problems". Source: Hnin Wut Yee, Baseline report: Myanmar (Burma), Business and Human Rights in Asean, p. 247.

³³ IFC PS 1, para 5 clearly stipulates that "clients must comply with applicable national law, including those laws implementing host country obligations under international law". Moreover, in para 7 "When host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent".

³⁴ Myanmar ratified the Convention on the Rights of the Child (CRC) on 15 July 1991 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 22 July 1997 and the Convention on the Rights of Persons with Disabilities on 7 Dec 2011.

³⁵ See, Displacement Solutions (2013) *Bridging the HLP Gap: The Need to Effectively Address Housing, Land, and Property Rights During Peace Negotiations and in the context of Refugee/IDP Return*, <http://displacementsolutions.org/landmark-report-launch-bridging-the-housing-land-and-property-gap-in-myanmar>.

³⁶ *OECD Guidelines for Multinational Enterprises (2011)* - II. General Policies: A. Enterprises should: (2) Respect the internationally recognised human rights of those affected by their activities;... (5). Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues....IV. Human Rights: States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations: 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur. 3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts. 4. Have a policy commitment to respect human rights. 5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts. 6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.... 38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles. 39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights.

³⁷ *World Bank OD 4.12 (2001)* - 2. Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons, the overall objectives of the Bank's policy on involuntary resettlement are the following: (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs; (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs; (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

³⁸ *General Comment No. 7: Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113*

(1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003) - 9. ...The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions...10. ... legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply in relation to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards their government greatly reducing their responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies....16. Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognised in both International Human Rights Covenants. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

17. Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. 18. The Committee is aware that various development projects financed by international agencies within the territories of State Parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No.2 (1990) which states, inter alia, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of person without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account"

³⁹ *Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18)* 6.

Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law....38. States should explore fully all possible alternatives to evictions....43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights....56(a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place...60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests of property.

⁴⁰ Human Rights Watch, (Feb 2012), as cited in *Displacement Solutions, Myanmar at the HLP Crossroads*, October 2012.

⁴¹ Coca Cola recently submitted their first report on their Myanmar operations to the US State Department under the Responsible Investment Reporting Requirements required of all US companies investing more than US\$500,000 in Myanmar. (<http://burma.usembassy.gov/reporting-requirements.html>). The first Coca Cola "Responsible Investment in Myanmar Report" (December 2013) is available here:

<http://photos.state.gov/libraries/burma/895/pdf/TCCCStateDepartmentResponsibleInvestment%20in%20MyanmarReport121213.pdf>. A second updated report (30 June 2014) is available here: <http://photos.state.gov/libraries/burma/895/pdf/TCCCDoSResponsibleInvestmentMMReport63014.pdf>.

⁴² See, for instance, Earthrights, "There is no benefit, they destroyed our farmland" - Selected Land and Livelihood Impacts Along the Shwe Natural Gas and China-Myanmar Oil Transport Pipeline from Rakhine State to Mandalay Division, 2014.

⁴³ <http://business-humanrights.org/en/myanmar-thilawa-special-economic-zone---summary-of-impacts-company-responses-and-updates-0>.

⁴⁴ Lawi Weng, 'Sentencing Delayed for 173 Farmers in Sagaing Land Grab Case, Irrawaddy (4 August 2014).

⁴⁵ Supra Hnin, pp. 254-257. This report lists a range of recent land confiscation cases, all of which were carried out far short of the rules contained in PS5.

⁴⁶ Supra, *USAID*, p. 2

⁴⁷ Supra, *USAID*, 2013.

⁴⁸ IFC has already been the subject of considerable criticism for expenditure decisions made in 2014. See: <http://www.irrawaddy.org/business/campaign-group-criticizes-world-bank-subsidiary-funding-hotel-real-estate-burma.html>.

⁴⁹ BP adopted an internal policy on human rights and involuntary resettlement in 2002, which is believed to be the first such company policy on HLP rights themes. It is not clear the extent to which this policy that strongly sought to avoid BP involvement in any project involving involuntary resettlement, remains in place.

⁵⁰ See, for instance, the views of Total on this case: <http://burma.total.com/myanmar-en/faq/have-legal-proceedings-been-instituted-against-total-what-was-the-outcome-200235.html>

⁵¹ For the views of those filing the case that resulted in an unprecedented US\$ 19 billion judgment by the Supreme Court of Ecuador against Chevron, see: <http://amazonwatch.org/work/chevron>. For the opposing views of Chevron on the case, see: <http://www.theamazonpost.com/>.

⁵² Supra, Noe Noe Aung, "Most acquisition broke land laws, says commission", *The Myanmar Times*, 01 April 2013.

⁵³ See, for instance, Scott Leckie, 'Where It Matters Most: Enforcing International Housing Rights Nationally' in *National Perspectives on Housing Rights*, The Hague: Kluwer International Publishers (2003).

⁵⁴ Paragraph 8 of General Comment No. 4.