



LAND

Myanmar Centre for Responsible Business BRIEFING PAPER March 2015



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The Myanmar Centre for Responsible Business (MCRB) was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments. Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations and governments to encourage responsible business conduct throughout Myanmar. Responsible business means business conduct that works for the long-term interests of Myanmar and its people, based on responsible social and environmental performance within the context of international standards.

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I. INTRODUCTION

This briefing paper on land issues in Myanmar is part of an occasional series from the Myanmar Centre for Responsible Business. It is intended to assist businesses investing in Myanmar that are conducting due diligence on land and seeking an understanding of the current landscape from a human rights/responsible business perspective. It is not intended as a substitute for legal advice.

Land is likely to be a resource any business investing in Myanmar will need to make use of, whether as the site for a factory, warehouse, installation or office site, or for natural resources extraction or agricultural investment. It is also likely to be one of the most complex subjects for their due diligence.

The paper describes major challenges facing companies; briefly sets out the legal framework for land acquisition; highlights some key risk areas including widespread land disputes, Special Economic Zones (SEZs), and land in ethnic minority areas; and makes recommendations to companies on how to approach these issues. The recommendations are based on relevant international standards including the UN Guiding Principles on Business and Human Rights; the International Finance Corporation's (IFC) Performance Standards 1, 5, 7, and 8; and the FAO Voluntary Guidelines on the Responsible Governance of Tenure.

II. SETTING THE CONTEXT

The issue of land rights in Myanmar has gained increased prominence since 2011 when the Government initiated an unprecedented political and economic reform process and stated its desire for major foreign investment in order to expand the economy and reduce poverty. Many new laws have been adopted since the 2011, including *inter alia* the 2012 Foreign Investment Law (FIL) and two new land laws also passed by Parliament in 2012.¹ Western governments have responded to these reforms by lifting or suspending economic sanctions. With increasing investment, both domestic and foreign, land is becoming an even more valuable commodity.

At the same time, the Government of Myanmar has embarked on a peace process with ethnic minority armed groups and lifted many but not all restrictions on political opposition parties, the media, and civil society. With increased freedom of expression and the right to peaceful assembly, the Myanmar people are starting to openly criticise the authorities' policies and practices, whether in the press, through protest demonstrations, or in Parliament. In particular, farmers, other rural people and those living in urban areas have launched major protests against "land grabs", many dating back decades, but some concerning more recent land disputes. Not all of these protests are tolerated by the Government. During 2014 arrests and

¹ The government intends to replace the 2012 FIL and the 2013 Myanmar Citizens Investment Law with a unified 'Myanmar Investment Law' governing both foreign and domestic investment. See <http://dica.gov.mm.x-aas.net/>

imprisonment of people protesting against land confiscations and other issues have increased, particularly in rural areas but also in Yangon.²

Large tracts of land have already been allocated by the previous government to businesses, including those associated with the military. At a December 2012 seminar, Myanmar land experts advised companies to take into account that a large amount of land has been taken for infrastructure, industrial zones, extractive industries and industrial agriculture in the past few decades.³ One 2013 report notes that almost two million acres⁴ have been allocated to the private sector by the previous military government.⁵ It is in this context that many land disputes have emerged.

Although the Government has recognized the problems surrounding land and has taken some steps to address them, new land laws could facilitate the acquisition of land by businesses at the expense of small scale farmers and customary land users (i.e. those who have informal or traditional rights to use land).⁶ For example, in the agricultural sector, some of the new government policies favour large scale land acquisitions for agribusiness rather than promoting small scale farming. The stated goal of the Ministry of Agriculture's Master Plan for the Agriculture Sector (2000-01 to 2030-1) is to convert ten million acres of "wasteland" into private industrial agricultural production, with rubber, palm oil, paddy, pulses, and sugarcane for export particularly encouraged.⁷ However, much of this "wasteland" may in fact be occupied by customary land users who have been on the land for decades.⁸

Land is often the most significant asset of most rural families. An estimated 70% of Myanmar's population lives in rural areas and 70% of the population is engaged in agriculture and related activities.⁹ Many farmers use land communally (that is, share the use of land amongst themselves) under a customary land tenure system, especially in upland areas inhabited by ethnic minorities. Customary use and ownership of land is a widespread and longstanding practice, in which land use patterns have been established informally by custom rather than legal documentation.¹⁰ At the same time much of the rural land is not formally registered, leading to weak to non-existent protection of usage rights or tenure for small scale farmers, communities, ethnic minorities and other vulnerable groups.

² For an example of a protestor sentenced for peacefully demonstrating about land confiscations, see ["Urgent Action, Further Sentences For Protestor In Yangon", Amnesty International, 18 September 2014](#)

³ ["Dialogue, Opportunities and Risks in Business to Communities and Business to Business Relationships in Myanmar/Burma: A Report of two multistakeholder workshops on responsible investment", the Institute for Human Rights and Business and the British Council, April 2013.](#)

⁴ The Government has stated that Myanmar has a land mass of 167.18 million acres.

⁵ ["Access Denied: Land Rights and Ethnic Conflict in Burma"](#), p 1, Transnational Institute/Burma Centrum Netherlands, May 2013

⁶ See [FAO "What is land tenure", paragraph 3.12](#)

⁷ ["Myanmar Agribusiness Investment Summit 2014"](#), January 2014

⁸ See for example, ["Access Denied: Land Rights and Ethnic Conflict in Burma"](#), p 5, *ibid.*

⁹ See [UNDP About Myanmar](#), and [CIA World Factbook, Burma, Economy](#)

¹⁰ Transnational Institute, ["Access Denied"](#) p 11 *ibid*

Rural people also continue to be at risk of dispossession from their land due to poverty and debt, which has over several decades led to landlessness among the population. The Government itself recognizes landlessness as a major problem in its Framework for Economic and Social Reforms (FESR) and states that landlessness for the whole country was at 26% in 2005, with even higher levels in Yangon (39%), Ayeyarwady (33%), and Bago (41%) Regions, the so-called “rice bowl” of Myanmar.¹¹

Displacement due to conflict is another major issue. Hundreds of thousands of ethnic minority civilians have been displaced in eastern and northern Myanmar as a result of internal armed conflict, and almost 140,000 have been displaced by inter-communal violence in Rakhine State since June 2012. Some ethnic minorities in the east of the country have been displaced for decades, leading to very weak tenure over their original land, which they may not have occupied for years, and may now be used by others.

Companies and people living in towns and cities face challenges as rents and land prices in and around Yangon and Mandalay continue to increase dramatically with the influx of foreign investment and international organizations in the last three years. There have also been land disputes in major metropolitan areas; for example during 2014 dozens of villagers from Michaungkan, suburban Yangon, staged protests in downtown Yangon over land they say was taken from them by the military in 1990.¹² Special Economic Zones and other industrial zones near urban areas (see below) also present challenges with regard to land disputes.

Moreover, there are large numbers of urban people living in informal settlements or slums, with inadequate basic services such as water and sanitation, insecure tenure, and poor living conditions. The last available data from UN Habitat reported that in 2005, 45.6% of urban dwellers in Myanmar lived in slums.¹³

In addition, beginning in 1989, many people were relocated outside of the major cities into satellite towns in outlying areas. At that time the military government adopted a massive squatter clearance scheme and resettlement program in urban areas throughout Myanmar. UN Habitat estimated that this affected some 1.5 million out of a total urban population of less than 10 million people. These apparent forced evictions with very little notice caused disruption and hardship, with critical defects in the new sites, particularly in low lying areas subject to flooding around Yangon.¹⁴ Other reports indicate that an estimated 500,000 people were

11 “Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan”, (Jan. 2013) ([Final Draft – Submitted to the First Myanmar Development Cooperation Forum](#)).

12 “[Michaungkan protestors stand fast as deadline passes](#)”, Democratic Voice of Burma, 4 October 2014. See also footnote 2, in reference to one of the protestors who has been imprisoned.

13 “[State of the World’s Cities 2012/2013](#)”, p 170, Table 2, UN Habitat

14 “[Human Settlements Sector Review](#): Union of Myanmar”, the United Nations Centre for Human Settlements (Habitat), pp 10-11, 1991

moved from Yangon to new satellite settlements on the outskirts of the city from 1988 to 1994.¹⁵

Land therefore presents major challenges for companies and communities in Myanmar, and indeed the government itself. UN Habitat is working with the Government on the implementation of a land administration and management programme.¹⁶ But beyond basic administration of the existing system, participatory land use planning is needed that balances the needs of all land users, together with an approach grounded in human rights. For the vast majority of the Myanmar population dependent on access to land for their livelihoods, where land is taken, even with monetary compensation, the impacts on their right to an adequate standard of living can be significant. Compensation often does not keep up with rapidly escalating land prices, meaning displaced farmers are unable to acquire new land in nearby areas.

III. Current Policy and Legal Framework

Reform of land policy and law in Myanmar remains incomplete. The current land regime is characterised by a patchwork of new and old laws that leads to overlap, contradiction and confusion. Insecurity of tenure is a major problem. Moreover, the land registration system is considered inefficient, with complex requirements and lack of benefits for registering land.¹⁷ The cadastral (land mapping) system is outdated, which further exacerbates land disputes, as land classifications and mapping used by different government ministries may overlap or not reflect current land use patterns. Land in Myanmar is classified into several different categories, for example Freehold Land, Grant Land, Reserved Forest Land, Farmland, Grazing Land, Religious Land etc. So a plot of land may be classified on maps as Reserved Forest land, when in fact the land may now be used as farmland, without the classification having been changed.¹⁸

A March 2014 OECD Investment Policy Review of Myanmar highlights deficiencies in the current policy and practice: *“[l]and tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not reflect the reality of existing land use; iii) lack of recognition of customary land use rights; iv) weak protection of registered land use rights; v) inefficient land administration; and vi) active promotion of large-scale land allocations without adequate safeguards.”*¹⁹

¹⁵ US State Department 1994 report, as cited in [“Profile of Internal Displacement: Myanmar \(Burma\)”](#), p32, Norwegian Refugee Council compilation, 27 June 2005

¹⁶ UN-Habitat, [“UN-Habitat to help strengthen land administration and management in Myanmar”](#) Jun 2014

¹⁷ OECD, [“OECD Investment Policy Reviews: Myanmar 2014” \(March 2014\), pg. 108.](#)

¹⁸ Food Security Working Group’s Land Core Group, [“Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”](#), (Nov. 2012), pp 7-10.

¹⁹ OECD, above, pg. 292.

A. Land Policy Reform

There is a recognized need in Myanmar for a written national land use policy and comprehensive umbrella national land law. The **Land Allotment and Utilisation Scrutiny Committee**, a Cabinet-level committee, was established in July 2012 with a remit to focus on national land-use policy, land use planning, and allocation of land for investment²⁰ that will allow it to better balance competing demands for land use. It is expected that such demands will inevitably increase with further economic development and investment. The Land Allotment and Utilisation Scrutiny Committee was disbanded on 17 October 2014 with the enactment of a Presidential instruction to replace it with a temporary National **Land Resources Management Central Committee**. Parliament is expected to authorize the creation of a **National Land Resources Management Council** to replace it as part of the new National Land Law.

A working group of the original Land Allotment and Utilisation Scrutiny Committee which included civil society representation and external experts formulated a draft land policy, which was made available for public consultation on 18 October 2014.²¹ Consultations took place in every Region and State towards the end of 2014. The consultations were due to be completed in December. However the government later announced that the draft land policy would be delayed so that consultations could continue. The draft land policy is expected to be sent to the Cabinet after an expert meeting and national forum.²² The policy will guide the drafting of an umbrella land law.

While the development of an overarching policy document is a needed and welcome step, civil society in Myanmar had expressed concern about the short consultation period which they feared would not allow enough time to sufficiently consider the views of the public, especially farmers. They also feared that poor farmers' land rights will not be adequately protected.²³ International organizations criticized the draft for not explicitly emphasizing poor, marginalized and vulnerable people, as called for under the **2012 FAO Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries, and Forests**.²⁴ They also noted that the policy made no reference to poverty alleviation and food security, and did not provide a clear roadmap of priorities to be addressed.²⁵ The draft is silent on how to deal with past takings of land and complete landlessness, both pressing issues in Myanmar²⁶. However recent reports indicate that the new policy may include provisions for existing land disputes to be settled, although Myanmar civil society have said that

20 Food Security Working Group's Land Core Group, "[Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)", (Nov. 2012), p 12.

21 The [English version of the text of the draft policy](#)

22 "[Government responds to public concerns on land policy](#)", Myanmar Times, 5 January 2015,

23 See for example "[NGOs, Farmers Concerned After Reviewing Draft Land Use Policy](#)", The Irrawaddy, 1 November 2014

24 "[Pro-Business or Pro-Poor?. Making sense of the recently unveiled draft National Land Use Policy](#)", p 7, Transnational Institute, 23 October 2014

25 [Global Witness submission on Myanmar's draft national land policy](#), November 2014,

26 Commentary on the Draft National Land Use Policy (Summary Version), Landesa Rural Development Institute, 28 October 2014

more specific and clearer instructions on how to handle these land disputes are needed.²⁷

Positive aspects of the draft include provisions on resettlement; when a land taking requires resettlement, equivalent housing, land and infrastructure must be established before the resettlement takes place (paragraph 37i). However, it is not clear from the draft if compensation in cases of resettlement would also include restoration of livelihoods, which international standards call for as part of any resettlement process. Part VII on land use rights for “ethnic nationalities” is also positive, as it provides for recognition of customary land tenure and use in these areas.²⁸

B. Current Legal Framework for the Acquisition or Lease of Land

1. Acquisition by/with the Myanmar Government

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but also provides for ownership and protection of private land property rights.²⁹ The Government can carry out compulsory acquisitions in the state or public interest (see below). A private investor may acquire land or land use rights from either the Government or from a private land rights owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either the “**Vacant, Fallow and Virgin (VFV) Land Management Law**” or the “**Farmland Law**” – see below), land acquisition is governed by a 120 year old law, a legacy of the British colonial period. The **1894 Land Acquisition Act** provides that the Government can carry out land acquisitions for a company when the acquisition is “likely to prove useful to the public” (Article 40(1)(b)). The Government has responsibility for carrying out the acquisition and distributing compensation but the funds for compensation are to be provided by the company acquiring the land. Land in kind can be provided in place of monetary compensation.

The law sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land (Article 5A). The agreement between the company and the Government is to be disclosed in the National Gazette³⁰; notice is to be given to the public (Article 42); and notices are to be posted publicly in the locality of the land (Article 4 (1), Article 9 (1)). Notice to the occupier of the land must be given (Article 9 (3), but only once there is a declaration of intended acquisition. Although there are provisions for objections to the land acquisition (Article 5A (1)), the President’s decision on the objection is final (Article 5A. (2)), giving wide discretionary powers to the President.

²⁷ “[New policy to give farmers edge in land disputes: official](#)”, the Myanmar Times, 23 January 2015

²⁸ Commentary on the Draft National Land Use Policy (Summary Version), Landesa Rural Development Institute, 28 October 2014

²⁹ Myanmar Constitution (2008), Articles 35, 37, 356 and 372.

³⁰ See <http://www.moi.gov.mm/ppe/?q=pyantan>

2. Vacant, Fallow and Virgin (VFV) Lands

The **Vacant Fallow and Virgin (VFV) Lands Management Law** and Rules (see below), are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as VFV may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the Government classifies as VFV. The complicated registration procedures under the new agricultural laws mean that smallholder farmers, which is most of Myanmar's population, will struggle to register their land tenure claims and are at risk of having their land registered by more powerful interests. Potentially developers could register their tenure claims as land users of farmland and so-called VFV land, which has in fact long been occupied by others. By not recognising informal land rights, and formalising land rights through titling, despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices, potentially creating or exacerbating tensions or even conflict.³¹

With respect to land designated as VFV, investors may acquire land by applying to the Government for land rights over VFV lands. Foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizens and Myanmar citizen investors are permitted by the 2012 VFV Law to apply to the Central Committee for the Management of VFV Lands for the rights to cultivate and use VFV land (Article 5(a), (d), and (e)). Foreign investors without MIC permits do not appear to be permitted to do the same. These VFV land rights are temporary and not transferable.

Article 55 of the 2012 VFV Rules gives the Central Committee for VFV Land Management the right to repossess VFV land that had been granted to others for, among other things, the *“implementation of basic infrastructure projects or special projects required in the interests of the state”*, and also where natural resources are discovered on VFV lands. Compensation is based on current value (Article 56). The 2012 VFV Law and Rules do not provide for procedures for objections to be made to the acquisition or to the compensation provided and no procedures for judicial review, which has been widely criticised. The VFV legislation is strict in prohibiting and criminally penalising persons that “encroach” on VFV land without permission, “obstruct” VFV land rights owners, and “destroy the benefit” of immovable property on VFV land. These criminal provisions may be abused through their use against protestors seeking reform or remedy in respect of VFV land.

3. Farmland

With respect to farmland, the **2012 Farmland Law** makes clear that applicants who are individuals must be citizens (Articles 6 (a) (v), 7 (a), (iv)). It also states that

³¹ Transnational Institute, [“Access Denied: Land Rights and Ethnic Conflict in Burma”](#), (May 2013)

“organisations” include Government departments or organisations, non-governmental organisations, associations, and companies (Articles 6(b), 7(b) are also permitted to apply. These provisions do not specify that a company must be a Myanmar company. However, under the **2012 Foreign Investment Law (FIL)**, there are restrictions on foreign investment in agriculture under Article 4(h), but Article 5 provides for the Myanmar Investment Commission, with approval from the Government, to allow investment if in the interests of the Union and citizens. Article 25 of Chapter XIV of the FIL, the Right to Use Land, allows investors to engage contract farming, but only as joint ventures with Myanmar citizens.³²

Farmland rights under the 2012 Farmland Law are freely transferable (subject to discrete restrictions such as transfers to foreign investors, discussed in greater detail below). This has been seen as problematic, since it exposes poor farmers to the temptation to sell their land use rights for short term gain, potentially leaving them landless and without a livelihood.³³ The problem is not the fact that farmland rights may be transferred through private negotiations and agreements, as this gives land rights owners the ability to convert their property assets into cash value when they choose. The issue is to what extent protection should be provided to sellers. Many states’ contract laws commonly provide protections against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation. The 2012 Farmland Law also allows for the “repossession of farmland “in the interests of the state or the public”³⁴ provided that “suitable compensation and indemnity is to be paid; the farmland rights holder must be compensated “without any loss” (Article 26). As with the VFV law, the Farmland Law and Rules do not provide for procedures for objections to be made to the acquisition or compensation awarded, or for judicial review.

4. Non-Citizens’ Use of Land

With respect to foreign investors, the **Restriction on the Transfer of the Immoveable Property Law (1987)** previously restricted foreign companies from buying land or leasing land for a term exceeding one year. Private investors may now acquire land rights from private persons through ordinary contractual agreement, subject to the following legal restrictions. First, land ordinarily cannot be sold or transferred to a foreigner through private transaction.³⁵ The Government may however allow exemptions from these restrictions and Union Government Notification No. 39 of 2011³⁶ sets out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article

³² Foreign Investment Law 2012, <http://www.moj.go.jp/content/000123996.pdf>.

³³ Displacement Solutions, “[Myanmar at the HLP Crossroads](#)” (Oct. 2012).

³⁴ The distinction drawn between interests of the state and interests of the public is troubling, but it may be premature to draw conclusions without knowing the nuances of the provision in Burmese.

³⁵ The 1987 Transfer of Immoveable Property Restriction Act prohibits the sale or transfer of immoveable property, and the lease of such immoveable property for more than one year, to a foreigner or foreigner-owned company (Articles 3-5).

³⁶ [Notification 39/2011](#) on the Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law

16(c) VFV Law) (Article 14 Farmland Law). Under the **2012 Foreign Investment Law**, foreign investors can obtain leases for an even longer period - 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment, providing they apply to the Myanmar Investment Commission. Leases can be even longer for land in “the least developed and less accessible regions.”³⁷ However Section 13 of the draft Myanmar Investment Law, which would cover both foreign and domestic investment, provided to the Myanmar Investment Commission under technical assistance from the International Finance Corporation (IFC) proposes to allow Foreign Investors the right to lease land up for 50 years (+ 10 + 10) without the need to apply to the Myanmar Investment Commission³⁸.

The **Foreign Investment Rules** provide certain protections against abuses but these apply only to leases by foreign investors under the Myanmar Investment Commission (MIC) permit regime. Leases must be submitted to the MIC and the person leasing the land can make a complaint to MIC if the investor fails to pay the promised lease payment or carry out any provision in the agreement. MIC can thereafter terminate the lease. MIC is also entitled to terminate the lease after necessary investigations if the investor violates a law on the land. Notably, a foreign investor shall not be permitted to lease land “*in a place that the public is not desirous to transfer and vacate.*”³⁹ If there are occupants, the foreign investor must submit to MIC the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement, including payment of the current price plus and damages.⁴⁰ This indicates that with respect to land leased by foreign companies that is privately negotiated, involuntary resettlements in theory cannot be compelled. However, given the wide scope of this provision, whether the Government can or will enforce this veto is questionable. Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.⁴¹

C. Concerns with the Current Legal Framework

There have been numerous concerns expressed about the current framework and its implications for owners and land rights holders:

- Myanmar does not have detailed procedures on land acquisition and appears primarily to be using outdated laws as the basis for land acquisition.⁴² These laws do not reflect more modern protections developed in other common law countries to define procedural and substantive protections, nor let alone the more recent international principles on security of tenure led by Food and Agriculture Organization (FAO).⁴³ In addition, the current lack of

37 Ministry of Planning and Economic Development, “[Notification 11/2013, Foreign Investment Rules](#)”, (31 Jan 2013)

38 <http://dica.gov.mm.x-aas.net/>

39 Foreign Investment Rules, above, Chapter 15, para 126.

40 Foreign Investment Rules, above, Chapter 15, para 126.

41 Foreign Investment Rules, above, Chapter 15, para. 125.

42 *Land Acquisition Act (1894)*. The *Land Acquisition Act* provides the main framework, but there are also provisions relating to government acquisition in the more recent *Vacant, Fallow and Virgin Lands Management Law (2012)* and *Farmland Law (2012)*.

43 FAO, “[Voluntary Guidelines on the Responsible Governance of Tenure](#)”, (2012)

transparency and consistency in land compensation provides opportunities for abuse.

- The current legal framework, including even the more recent Farmland and VFV Laws, provides only general authorisations on expropriation “in the public interest” with no further procedural or substantive restrictions, leaving this process open to abuse. The Government has wide discretion to expropriate land “in the interests of the public” or even if “likely to prove useful to the public.” The **1894 Land Acquisition Act** permits expropriation because the Government “is or was bound” to provide land under an agreement with a company, without any additional requirement of public interest.
- The laws and rules provide limited specifications on the process of expropriation and as noted, limited safeguards for those whose property is being acquired. Only under the 1894 Act is there a process for objections. There are no procedures for objections to acquisitions or compensation for VFV land or farmland. Apart from these laws, there are no other laws on expropriation or resettlement.
- The new land laws⁴⁴ do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights.⁴⁵ Experts have recommended that the Government formally recognise customary law for land use rights and provide mechanisms for communal ownership of land to ensure *inter alia* ethnic minority rights are protected.⁴⁶
- In addition, as noted above, the Government may be declaring land vacant that in reality is not. This has impacted large numbers of people whose land use will not have appeared in any Government records but who may in fact have occupied the so-called vacant land for several years.
- Myanmar also does not have detailed regulations defining specific compensation levels for all types of land⁴⁷ or on involuntary resettlement processes where it is necessary to move households or where there is economic but not physical displacement (although it does have some restrictions on what appears to be involuntary resettlement).⁴⁸
- There are also no core principles or mitigation hierarchy (avoid, minimize, compensate/offset), which is contrary to international human rights law and

44 *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012). See for further description, [Land Core Group, “Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”](#) (Nov. 2012)

45 -- “...the written and unwritten rules which have developed from the customs and traditions of communities...” Land Core Group, above, pp 15-16.

46 Land Core Group, above, pp 23-24.

47 However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). DICA, “Notification 39/2011” (2011), art. 15. The Ministry of Home Affairs’ General Administration Department (GAD) reportedly has rules on compensation, but it is not known if they are properly and consistently implemented. The [1894 Land Acquisition Act](#) (unofficial translation) provides for compensation at market value with adjustments, including for crops, Art. 23.

48 Interestingly, if foreign investors seek to lease land but “*in place that public not desirous to transfer and vacate, it shall not have the right to lease the land and invest.*” (sic) DICA, Notification No. 39/2011, above, art. 28. Given the wide scope of this provision, whether the government can or will enforce this veto is questionable.

other international standards. The objective for resettlement in line with international standards⁴⁹ is full livelihood restoration, not simply compensation for assets, with priority given to land-based compensation over monetary compensation⁵⁰ in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation.

D. Land classifications

The land regime in Myanmar is characterized by a complicated system of land classification, some of which dates back to the British colonial era. Different government authorities have the mandate to regulate different types of land. It is unclear what the current land classification system is, but reference is made in official media and otherwise to these categories:

- **freehold land** (i.e. ancestral land), mostly in urban areas, is transferrable and not subject to taxes; it can only be taken by the State under laws of compulsory acquisition.
- **grant land** is owned and allocated by the state for ten, thirty or ninety years and is transferrable; may be re-acquired by state during lease period under laws of compulsory acquisition.
- **farmland** can be used only by those holding a land-use certificate under the 2012 Farmland Law. This type of land can be transferred through sale, lease, inheritance and donation, and the transfer must be registered. Farmland should be used only for agricultural purposes and for 'regular crops' (not defined by law) unless otherwise authorised by the state; the user cannot allow the land to lie fallow without a sound reason.
- **grazing land** is now considered virgin land under the VFV Lands Management Law.
- **town land** is in most cases the same as freehold land or grant land.
- **village land** is located outside the parameters of town land.
- **cantonment land** is land which the state has acquired for the military's exclusive use.
- **monastery land** is land which the Ministry of Home Affairs has declared as such and retains its classification for eternity.
- **vacant, fallow or virgin land**, which cannot be transferred, sold, mortgaged, given or divided without prior approval from the Cabinet of the Union Government.⁵¹

⁴⁹ See [IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement" \(2012\)](#).

⁵⁰ International human rights on the right to an adequate standard of living, which includes the right to housing. See IFC, "Performance Standard 5", as above. See also Asian Development Bank, "[Involuntary Resettlement Safeguards" \(2012\)](#). These standards recognize that compensation should be provided when land (including housing) is acquired or used and when operations result in a loss of assets or access to assets and restrictions on land use that leads to loss of income sources or other means of livelihood.

⁵¹ USAID, [Property Rights and Resource Governance- Burma](#), May 2013.

E. Industrial Zones and Special Economic Zones (SEZs)

Industrial Zones

The government has prioritized the development of industrial zones to expand the economy, and formed the Industrial Development Committee in April 2011. The Committee supervises 19 industrial zones in nine States and Regions and is involved in the planning of seven new ones. Yangon has four industrial zones and 18 sub-industrial zones and parks.⁵² According to real estate agents in the Yangon area, Hlaingthaya, East Dagon, and Dagon Seikkan are developing quickly, with increased interest from Asian businesses since the reform process began.⁵³ Hlaingthaya is the largest industrial zone in Myanmar, with 600 factories (an increase of 100 since the reform process began) employing some 60,000 people. Most of the factories there produce food products, consumer goods, and garments. There is not much heavy industry in the industrial zones, including electronics, as they face challenges, most notably a lack of guaranteed electricity.⁵⁴

Special Economic Zones

The government has been actively promoting Special Economic Zones (SEZs) to create jobs and technological development. There are currently three major SEZs in Myanmar at different stages of development: Thilawa SEZ near Yangon; Kyaukphyu SEZ in Rakhine State, western Myanmar; and Dawei SEZ in Tanintharyi Region in the southeast of the country. These SEZs will need substantial investment in infrastructure, with investment sought from Japan, Thailand, and China.

The **Myanmar Special Economic Zone Law, 2014**⁵⁵ offers SEZs tax holidays, exemptions from customs duties and other taxes, and protection from nationalization for investors and developers. Under the SEZ law, the price of goods manufactured, services rendered, and good exported are not controlled.⁵⁶

The objectives of the new law are to create jobs, promote living standards, provide vocational training opportunities, promote the export of goods, and attract domestic and foreign investments (Chapter II). The law provides for a Central Body, Central Working Body, and Management Committee, most of them government officials who are accountable to the Union Government (Chapters III, IV, V).

Chapter XVII of the SEZ Law concerns land use. The Management Committee can issue a land use or land lease permit to an SEZ investor or developer for 50 years, renewable for an additional 25 years. The investor or developer “(a) shall bear the

⁵² See “[Myanmar: Unlocking the Potential, Country Diagnostic Study](#)”, pp 91-94, Asian Development Bank, August 2014, also [Myanmar Investment Guide](#) 2014 draft, Director of Investment and Company Administration (DICA), Myanmar Government

⁵³ “Renewed focus on industrial zones”, [Myanmar Times, 4 February 2013](#)

⁵⁴ “In The Zone”, interview with Chairman, Hlaingthayar Industrial Zone, [The Irrawaddy, 11 August 2014](#),

⁵⁵ This Law repeals the Myanmar Special Economic Zone Law (The State Peace and Development Council Law No. 8/2011) and the Dawei Special Economic Zone Law (The State Peace and Development Council Law No. 17/2011).

⁵⁶ Price Waterhouse Coopers, Myanmar Business Guide, February 2014, http://www.pwc.com/sg/en/assets/document/myanmar_business_guide.pdf.

expenses of relocating and paying compensation in accordance with the agreements if houses, buildings, farms, and gardens, orchards or fields, plantation on land permitted for land lease or land use are required to be relocated". The investor or developer shall work with the Management Committee to relocate people without lowering their original standard of living and ensuring that their fundamental needs are fulfilled. However, companies should be aware that there is no mention in the law of any provisions for the consultation of people affected by the SEZ; negotiations are believed to be conducted directly between the Management Committees and the investors/developers.

The investor/developer may also *"...sell, mortgage, lease, exchange or gift land lease, land use and buildings to a third party or other organizations enabling to operate [sic] the work within the approved term in accordance with the rules and regulations and with the agreement of the relevant Management Committee."* If the investment is dissolved, the permission to lease or use land will be revoked and the land returned. The Ministry of Home Affairs will carry out the takeover or transfer of the SEZ land.⁵⁷ The General Administration Department (GAD) within the Ministry is responsible for obtaining land for SEZs.⁵⁸

Thilawa is the most advanced of the three SEZs. It is served by a port and will host light manufacturing. The Japanese Government is providing assistance, with the Myanmar government and a consortium of nine Myanmar companies owning 51% and the Japanese International Cooperation Agency (JICA) and a consortium of three Japanese companies owning 49%.⁵⁹ According to the Myanmar Government, businesses should be operating in the zone by late 2015, although reports indicate that much work is still needed to complete project infrastructure. As of March 2015, fifteen foreign investment projects in the garment, light manufacturing, and waste processing had been approved.⁶⁰

Kyaukphyu SEZ on Rakhine State's Ramree Island will concentrate on oil and gas-related industries.⁶¹ A crude oil transshipment terminal and oil and natural gas pipelines have already been built there by a Chinese-led consortium; however major investment in basic infrastructure in the SEZ is still needed. The pipelines from the Bay of Bengal to Yunnan Province, southern China open up a new direct transport route for the Chinese, thereby avoiding the congested Malacca Straits.⁶² The pipeline transporting natural gas became operational in 2013, with the crude oil pipeline launching a trial run in January 2015.⁶³ In March 2014 Singaporean CPG Corporation

⁵⁷ [Myanmar Special Economic Zone Law, 2014, Law No. 1/2014](#), and Legal Analysis of the SEZ law by the International Commission of Jurists, on file with MCRB.

⁵⁸ ["Administering the State in Myanmar: An Overview of the General Administration Department"](#), MDRI and the Asia Foundation, p 20, October 2014

⁵⁹ See ["Myanmar: Unlocking the Potential, Country Diagnostic Study"](#), pp 91-94, Asian Development Bank, August 2014

⁶⁰ <http://myanmarthilawa.com/approved-investments>

⁶¹ See "Myanmar: Unlocking the Potential, Country Diagnostic Study, pp 91-94, ADB, *ibid*

⁶² See for example ["Kyaukphyu SEZ "key" to China Business Corridor, But Doubts Remain"](#), The Irrawaddy, 19 September 2014

⁶³ "Myanmar-China oil pipeline opens", Mizzima, 29 January 2015, <http://www.burmanet.org/news/2015/01/29/mizzima-news-myanmar-china-oil-pipeline-opens/>.

was selected to lead a consortium of companies in advising the Bid Evaluation and Awarding Committee of the SEZ, and in August twelve companies submitted proposals for three SEZ projects: seaport, housing, and factories, with decisions on the winners expected sometime during 2015.⁶⁴ The government announced that the SEZ would initially cover 1,000 acres, later expanding to 4,000 acres.⁶⁵

The **Dawei SEZ** is expected to be a key component of the East-West Corridor connecting Myanmar to Thailand.⁶⁶ It is expected to focus on heavy manufacturing, to be served by a deep water port. It is being developed with the Thai Government and includes road connections to Thailand, with project implementation the responsibility of the Dawei Development Company.⁶⁷ After several years of delays, in November 2013 the Thai and Myanmar Governments signed three Memoranda of Understanding on the project to develop the SEZ and deep water port. In October 2014, the Japanese government announced three studies on financing and assistance for the Dawei SEZ⁶⁸ but these are focussed on planning, infrastructure and financing, and it is not clear whether they will consider community concerns.

IV. Community Concerns and Land Disputes

Since the recent reform process began, there has been consistent reporting of protests against “land grabs”⁶⁹ in many parts of the country in the press and by non-governmental organisations. In addition, large-scale land allocation has increased significantly in the past decade.⁷⁰ While some of these “land grabs” are new, many of them originate in land expropriations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. Some land in Myanmar has been returned to farmers and others since the reform process began. However, there are still thousands of rural people who have lost their land due to Government expropriation.

The Land Core Group,⁷¹ a consortium of organizations in Myanmar working on land rights, has provided a useful overview of the types of land takings impacting smallholder farmers’ land tenure security. Those which have been most common in the past are state sponsored agriculture projects; establishment of agro-industrial plantations by private entities; and military settlements. Existing types of takings

⁶⁴ “Kyaukphyu SEZ Winners to be Announced in February”, The Irrawaddy, 19 January 2015, http://www.jica.go.jp/english/our_work/social_environmental/objection/c8h0vm00008zvp4f-att/report.pdf and “Another Deadline Missed by Kyaukphyu SEZ Developers”, The Irrawaddy, 13 March 2015, <http://www.irrawaddy.org/business/another-deadline-missed-by-kyaukphyu-sez-developers.html>

⁶⁵ “12 Companies Bid to Develop Infrastructure in Kyaukphyu SEZ”, The Irrawaddy, 29 September 2014

⁶⁶ “Burma, Thailand push ahead with Dawei SEZ”, Democratic Voice of Burma, originally published in the Bangkok Post, 2 January 2014

⁶⁷ See “Myanmar: Unlocking the Potential, Country Diagnostic Study, pp 91-94, Asian Development Bank, August 2014 *ibid*

⁶⁸ <http://www.irrawaddy.org/business/japan-carry-studies-revive-dawei-sez.html>

⁶⁹ The term “land grab” in Myanmar is used to cover a wide range of situations, including land disputes and government/military expropriation of land for companies and its own use.

⁷⁰ OECD, “OECD Investment Policy Reviews: Myanmar 2014” (March 2014), pg. 324 *ibid*

⁷¹ The Land Core Group, founded in 2011, is one of the network groupings under the Food Security Working Group, comprising local NGOs, INGOs, and concerned individuals. See <http://www.myanmarswg.org/homepage/fullpost/land-core-group1>.

which may increase with the expansion of Myanmar's economy include: large industrial development projects; large public infrastructure projects; urban expansion; and land speculation by individuals.⁷²

A. Agricultural land

One widely-reported high profile case is the “plough protest” which began in March 2014 in Kanbalu, Sagaing Region by farmers whose land had been taken in 1997 by the military, which then leased out the land for a sugar cane plantation. In a plough protest, farmers plough land which had been taken from them, in this case after their complaints had not been addressed by the authorities. In July 2014 dozens of farmers were sentenced to varying terms of imprisonment for trespassing and other charges and over 200 others have charges pending. Such a case highlights potential problems for a business considering a military-owned company as a partner or supplier in Myanmar.⁷³

A major report by Global Witness in March 2013 also highlights the problem of land expropriations by the military and allied political and business interests. The report documents large swathes of land taken from ethnic minority farmers for commercial rubber plantations in northeastern Shan State in the mid 2000s. Villagers were not consulted and received little if any compensation for land taken. The report also notes that by 2013, 5.3 million acres of land in Myanmar has been leased out to investors for commercial agriculture, most without the consent of the owners. Rubber plantations account for 25% of this land.⁷⁴

A 2013 Parliamentary report reflecting the findings of the Parliamentary land commission conducted investigations in 10 States and Regions about military land expropriations, noting that more land was taken than was necessary. Military takings of farmland often exceeded its needs, which the military then rented out to other farmers. The report also stated that reparations for land and crops were not provided at “prevailing prices” at the time of expropriation. Not all land expropriations were undertaken according to the 1894 Land Acquisition Law and the Land Confiscation Procedural Act 1932. Moreover transparent negotiations between the authorities and the land owners were not carried out. The Commission reported discrepancies between maps maintained by the Land Records Department and the Forest Department, wherein land recorded as vacant was in reality under cultivation. The Commission recommended that farmers working on land recorded as forest, vacant, fallow, grazing or virgin land be provided with proper reparations and other unspecified support.⁷⁵

⁷² [“Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law”](#), pp 13-14, Food Security Working Group's Land Core Group, November 2012

⁷³ See [“Dozens More Farmers Imprisoned in Sagaing Division Over Land Protest”](#), Irrawaddy, 25 July 2014; [“Three farmers sentenced to three years for plough protest in Sagaing”](#), Democratic Voice of Burma, 16 July 2014; and [“How military-owned companies have been silencing dissent in Burma”](#), Food navigator-asia.com, 29 July 2014

B. Urban land expropriations

Although details about the mass urban relocations which took place in Myanmar during the late 1980s/early 1990s are scarce, the available information suggests that these may have been forced evictions, with very little notice given and hardships for the relocated population. Given the expected expansion of Yangon and other cities and towns, there may be an increased risk of forced evictions if the government takes land from people living on land slated for development by the private sector without due process and consultation.

In Dawei, there is an ongoing dispute over compensation between farmers and the developers of the Dawei urban extension project⁷⁶.

C. Industrial zones

Development of industrial zones has come at the expense of farmers. A parliamentary report in early 2013 recorded 63 complaints about 109,634 acres taken from farmers in several townships for urban area expansion and the establishment of industrial zones projects. Complaints were filed for a number of townships in and around Yangon. 65% of the acreage confiscated was in the four townships of Dagon Myothit - East, South, North, and Seikkan (Port). Other complaints were filed for Shwe Pyi Tha (including Thadukan industrial zone), Hlaingthayar Township (including Shwelinban and Anawarhta industrial zones and FMI/Pun Hlaing), Mingaladon (including a complaint against Zaykaba company), Thanlyin-Kyauktan, Htantapin, Kyimyindaing, Insein, Tamway and Mingalataungnyunt townships, as well as Myaungmya and Tachileik industrial zones, neither of which had materialised.

The report identifies a variety of issues and potential remedies, some of which have been implemented. It notes *inter alia* that farmers were not consulted beforehand and were given no notice of the land confiscation.⁷⁷

D. Special Economic Zones

All three SEZs have attracted protests about land expropriation, environmental concerns, and lack of consultation by the government and others with local communities affected by the projects. In Thilawa SEZ, the government took land from farmers in the late 1990s, some of whom said they had received inadequate or no compensation. However they were allowed to remain on the land for several years. When the SEZs began to be developed, their land was under threat of expropriation once again, giving rise to disputes. Communities and civil society have mobilized around these issues; for example, the Thilawa Social Development Group works with people who have been or will be displaced by the Thilawa SEZ.⁷⁸

⁷⁶ See for example <http://www.daweivatch.com/2015/03/02/news/dawei/958#more-958> (in Burmese)

⁷⁷ Report of the Investigation Commission for Easing Sufferings of People Whose Farmlands and Other Lands were Confiscated, Part 2, Pyidaungsu Hluttaw, on file with MCRB/IHRB.

⁷⁸ See for example "[Displaced Villagers File Complaint Regarding Japan's Investment in Myanmar's Thilawa Special Economic Zone](#)", 2 June 2014

There have been protests from the communities who have been or will be displaced by the Thilawa SEZ, which is supported by JICA. Sixty-eight mostly farming households are affected by resettlement under Phase I of the project, which covers 400 hectares; however, some of those resettled have reduced access to livelihoods options and there are also concerns about sanitation in the new resettlement site. Phase II reportedly covers 2,000 hectares; initial surveying work began in early 2014 and community consultations have taken place in early 2015.⁷⁹

In June 2014 three Thilawa residents filed a formal complaint with JICA under its objection procedures, the first time this mechanism is known to have been used. The allegations of damage include loss of farmland and livelihood opportunities; substandard housing and basic infrastructure; and loss of access to clean water in the new resettlement site. JICA commissioned an inquiry by an Examiner to determine if it had violated its own guidelines for environmental and social considerations for the project.⁸⁰ Its findings, which were released in early November 2014, reportedly recommended that JICA play a more active role as a conduit between the government and the project-affected people, as its role is to enhance communication between the two and facilitate mutually acceptable solutions. The report also recommends that a multi-stakeholder dialogue take place among the two parties and international and local NGOs, facilitated by a fair and trustworthy entity whom JICA should engage.

The Dawei Development Association (DDA) was formed in 2011 to work *inter alia* on land rights and natural resource management around the Dawei SEZ.⁸¹ In September 2013 demonstrators protested about unfair levels of compensation they received from a Thai company for land it had acquired from local villagers during the construction of a road from Dawei to Thailand in 2010. Villagers reported that the compensation process was not transparent, and that cash crops such as rubber and betel nut were destroyed during construction. They also said that the company had not yet provided any compensation to dozens of families for their losses.⁸² An October 2014 visit by the Thai Prime Minister to Myanmar prompted the DDA and other groups to issue a joint statement calling on both governments to delay the project until problems around land expropriation and inadequate compensation were resolved.⁸³

Protests in the Kyaukphyu SEZ area have centred around the construction of the Shwe Gas Pipeline from the Bay of Bengal through Myanmar and into China. Both international and Myanmar non-governmental organizations have reported on land

⁷⁹ DVB, "[JICA dismisses accusations of negligence](#)", (10 June 2014); DVB, "[Displaced villagers descend on Tokyo](#)" (6 June 2014) and "[Thilawa SEZ Holdout Hit with Trespassing](#)", *The Irrawaddy*, 30 Sept 2014

⁸⁰ "[Investigator Meets With Thilawa Residents Over JICA Complaint](#)", *The Irrawaddy*, 22 July 2014.

⁸¹ See [Dawei Development Association](#)

⁸² "[Responsible Business in Myanmar: Getting down to the grassroots?](#)", Institute for Human Rights and Business, 30 September 2013

⁸³ See "[Civil society group calls for freeze on Dawei Special Economic Zone](#)", *Myanmar Times* 13 Oct 2014

expropriation associated with the pipeline, including in the Kyaukphyu area.⁸⁴ In April 2013 some 400 people in Maday Island in Kyaukphyu Township protested *inter alia* against unfair compensation for land taken for the project.⁸⁵ Ten of the protest leaders from the Maday Region Development Association were arrested in May 2013 for organizing a demonstration without a permit⁸⁶ and had their three month sentence reduced to two months in October that year.⁸⁷

The Thilawa land expropriation and resettlement process provides an example of the challenges of larger scale resettlement processes where there are no detailed requirements and little Government experience in carrying out resettlement to international standards. Unresolved land disputes in Dawei and Kyaukphyu SEZs, with people claiming no or insufficient compensation for land taken from them, illustrate some of the legacy issues surrounding land which companies investing in Myanmar may face.

E. Hotel Zones

Recent examples of compulsory land acquisition have related to the government's plans for 'hotel zones' across the country. The current number of existing and planned hotel zones is not available from government sources⁸⁸ but according to media reports there are now five in Bagan alone⁸⁹ and three in Nay Pyi Taw⁹⁰. In the Tada Oo zone near Mandalay airport, village officials were recruited as agents and received commission if they persuaded villagers to sell land to the company developing the zone⁹¹. Further details of the negative impacts of hotel zones on human rights including the right to livelihood, are available in MCRB's [Sector Wide Impact Assessment on Tourism](#).

V. Current government actions addressing land acquisition and expropriation

In recognition of the problem of land disputes, the Government has established three bodies to deal specifically with land issues. However, they do not have the authority to enforce resolution of problems relating to land. The above-mentioned **Land Allotment and Utilisation Scrutiny Committee** (now disbanded) and the **Parliament's Farmland Investigation Commission** (with a mandate to accept complaints from the public) were both established in July 2012.⁹² In 2013 the **Land Utilization Management Central Committee** headed by a Vice President was set up to implement the findings of the Parliamentary Commission. This Committee has agreed to return land or provide compensation for 474,000 acres (699 cases) but in

⁸⁴ See "[There is no benefit, they destroyed our farmlands](#)", Earthrights International, April 2013, and "[Drawing the Line](#)", Shwe Gas Movement, September 2013

⁸⁵ "[Hundreds Protest Pipeline in Burma's Rakhine State](#)", Radio Free Asia, Burmese Service, 18 April 2013

⁸⁶ See "[Burma: China-led Oil, Gas Projects Spark Arrests](#)", Human Rights Watch, 11 May 2013

⁸⁷ "[Court reduces Prison Time for Detained Arakanese Activists](#)", The Irrawaddy, 25 October 2013

⁸⁸ [Myanmar plans new hotel zone in Yangon to cope with growing visitors](#), *Xinhua*, 8 January 2013.

⁸⁹ [Booming tourism in Bagan nets fifth hotel zone](#), *Eleven Media*, 19 March 2014.

⁹⁰ [With new hotels, Naypyidaw could see a glut of rooms](#), *The Irrawaddy*, 9 May 2014

⁹¹ MCRB field research at Tada Oo March 2015

⁹² [Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law](#)", pp 12-13, Food Security Working Group's Land Core Group, November 2012

July 2014 reports suggested that less than 150,000 acres may be returned. Moreover observers have noted that in some cases the land was returned to tenants, rather than owners of the land.⁹³ However this may reflect the fact that land use rights had been informally 'sold' by previous owners, in a transaction which until 2012 was not officially allowed, meaning that the original owners name remained in the registry.

In September 2014 the Parliamentary Commission presented a report to Parliament, citing many layers of bureaucracy as the main cause of extreme delays in returning land to farmers which had been taken by the government.⁹⁴ Indeed, the official newspaper The New Light of Myanmar reported in September 2014 that the Commission said only 583 out of 2,689 complaints which they had forwarded to the Ministry of Defence, and only 299 out of 6,559 complaints forwarded to the State/Region Governments, had been addressed.⁹⁵ Such delays indicate the lack of capacity in the government to deal with the large number and the complexity of land disputes, as well as a cumbersome legal and administrative regime.

The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broader range of issues, has noted that most of the complaints they receive are in relation to "land grabs". The Myanmar Legal Aid Network, a wide network of law firms and legal groups for legal aid across the country, is currently taking a number of cases to court, including those of farmers and others charged with trespassing on land taken from them. An October 2013 ILO report notes that there has been an increasing number of complaints about forced labour in association with land expropriation submitted to the ILO Forced Labour Mechanism. Vulnerable rural landholders are either losing their livelihoods because of land expropriation or being forced to work on land which they have traditionally occupied.⁹⁶

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. The 1894 Land Acquisition Act does provide for compensation for land the Government has acquired in the public interest, but with only limited safeguards and no provisions concerning resettlement. As the Land Core Group has noted: "Historically, there were no government-directed land resettlement schemes for poor farmers and landless agricultural workers in the waste land areas. This led rural people to settle and resettle themselves, often on land they would fail to register."⁹⁷

⁹³ ["MPs pressure govt. to return farmland"](#), Myanmar Times, 7 July 2014

⁹⁴ ["Colonial style' red tape blamed for delay in returning seized land"](#), Democratic Voice of Burma, 23 September 2014

⁹⁵ "Local authorities fail to address land confiscation issues: Pyidaungsu Hluttaw's Commission", [p.3, New Light of Myanmar, 23 September 2014,](#)

⁹⁶ ILO, ["Update on the operation of the complaint mechanism in Myanmar"](#), report of the ILO Liaison Officer to ILO Governing body", 319th Session, Geneva, (16-31 October 2013), GB.319/INS/INF/2, Section 6.

⁹⁷ ["13 Case Studies of Land Confiscations in Three Townships of Central Myanmar"](#), the Land Core Group, September 2012

In response to the problem of land rights in Myanmar, many local non-governmental organizations are working with communities to resolve land disputes and land expropriations. The Land Core Group, whose mission is to promote sustainable economic, social and environmental development, conducts research and advocacy to promote good laws, policies and practice with regard to land.⁹⁸ Other organizations have also written reports about land challenges in Myanmar.⁹⁹ At the same time local farmers' groups and community based organizations have organized themselves in order to claim their land or compensation, and to publicly protest against takings of land. However, as noted above, many of them have been arrested and imprisoned for participating in such demonstrations. A Myanmar NGO, the Assistance Association for Political Prisoners (Burma) reported that as of December 2014, 78 farmers were in jail.¹⁰⁰

VI. Ethnic minorities and land

Myanmar's ethnic minorities make up an estimated 30 - 40% of the population, and the ethnic states occupy some 57% of the total land area.¹⁰¹ They live primarily in the seven states surrounding the centre of the country, each named for the largest minority in the state.¹⁰² The Mon, Rakhine (Arakanese) and Shan groups live mostly in the valleys whereas the Chin, Kachin, Kayin (Karen), and Kayah (Karenni) live mostly in the uplands. Decades-long armed conflict has greatly inhibited economic development in the seven ethnic minority states, and poverty rates in these areas are high. For example 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State, and 33% in Shan State; the national poverty rate is 25%.¹⁰³ At the same time ethnic minority states are rich in natural resources, including minerals and gems, hardwoods, hydropower, and off-shore natural gas deposits.

Shifting cultivation, or swidden (*'taung-ya'*) agriculture, where some plots of land are cultivated and some left fallow on a rotating basis, is common in the uplands of ethnic minority areas. Few of these farmers have formally recognized land titles for land they have traditionally occupied. Like many parts of rural Myanmar, these areas operate under customary and communal land use rights. Yet the current legal

⁹⁸ see <http://www.myanmarfswg.org/homepage/fullpost/land-core-group1>.

⁹⁹ Over the last several years the Transnational Institute has focused on land rights problems in Myanmar's borderlands where ethnic minorities live. See for example TNI, "Financing Dispossession, China's Opium Substitution Programme in Northern Burma" (Feb. 2012); "Developing Disparity: Regional Investment in Burma's Borderlands" (Feb. 2013), and "Access Denied: Land Rights and Ethnic Conflict in Burma", (May 2013). Available at: <http://www.tni.org>. Myanmar civil society, including those which are ethnic minority-based, have also reported on land grabs without compensation or recognition of customary ownership. The Karen Human Rights Group has documented land disputes and land grabs in Karen areas over a number of years. See KHRG website, particularly "[Losing Ground: Land conflicts and collective action in eastern Myanmar](#)" (Mar. 2013). The Human Rights Foundation of Monland has also reported on such abuses, particularly at the hands of the military, in ethnic Mon areas. See for example Human Rights Foundation of Monland, "[Disputed Territory: Mon farmers' fight against unjust land acquisition and barriers to their progress](#)", (Oct. 2013).

¹⁰⁰ [Monthly Chronology December 2014](#), Assistance Association for Political Prisoners – Burma

¹⁰¹ "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", Transnational Institute/Burma Centrum Netherland, May 2013

¹⁰² The seven ethnic minority states are: Chin; Rakhine; Kachin; Shan; Kayah; Kayin; Mon.

¹⁰³ [Interim Country Partnership Strategy](#): Myanmar 2012 – 2014, Poverty Analysis (Summary)

framework does not recognize customary and communal land tenure arrangements, which are therefore not adequately protected.¹⁰⁴ Ethnic minorities who practice shifting cultivation are particularly at risk of having their land taken in the absence of land registration documents and formal recognition of land resource property rights.

Non-international armed conflict between ethnic minority armed opposition groups in the border areas and the central Burman-dominated Government broke out shortly after independence in 1948. Bitter and protracted conflict has continued since then. Ethnic grievances have centred on abuses in the context of conflict; the lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; religion; and lack of education in ethnic minority languages. Although the government has agreed ceasefires with 14 out of 16 ethnic minority armed opposition groups, fighting in Kachin and northern Shan States continues between the army and armed groups. At the same time the government and these groups are engaged in negotiations around a nationwide ceasefire agreement and political dialogue.

Many conflict-affected areas are not included in the national cadaster, or are considered Vacant Fallow or Virgin land by default. Some ethnic armed group administrations have their own systems of land registration, including recognition of communal rights, customary rights, and shifting cultivation. Weaknesses in these systems, corruption and lack of transparency mean that local populations are not always consulted on decisions, including the granting of logging and mining concessions and plantation agriculture. In some areas of contested authority, communities are sometimes not aware that such concessions have been granted, or by whom.

Ceasefires agreed between ethnic minority armed groups and the government have made land more available to commercial interests, some of them linked to the central government and the military. Ethnic minority armed opposition groups also have business interests in the territories which they control. At the same time these areas are highly militarized, including government troops and allied militias, and armed ethnic minority groups. This has resulted in very poor land governance, with a heightened risk of land takings, instability and a climate of fear. Future demining operations that make land more accessible and commercially valuable will likely exacerbate these risks. There is considerable concern now, among armed groups and communities, that their areas are at risk of economic exploitation, and companies with operations in these areas will inevitably face a high level of concern and suspicion that they will have to address.

As a result of internal armed conflicts and unrest over the last several decades, hundreds of thousands of people have been internally displaced, and others have fled to neighbouring countries. The UN Refugee Agency (UNHCR) estimates that some 100,000 people are displaced in northern Myanmar as a result of internal

¹⁰⁴ "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", pp 2, 11, Transnational Institute/Burma Centrum Nederland, May 2013

armed conflict; almost 140,000 displaced in Rakhine State; 230,000 people remain displaced in southeast Myanmar, and some 120,000 refugees live in camps in Thailand near the Myanmar border.¹⁰⁵ When the Government and armed ethnic groups agree a nationwide ceasefire, internally displaced people and refugees may eventually return to their home villages. However, this poses significant challenges as their land may have been claimed by others or may remain seeded by landmines.

There has been significant internal displacement in Rakhine State due to inter-communal violence between Rakhine Buddhists and Muslims, with almost 140,000 people, the vast majority of them Muslim Rohingyas¹⁰⁶ now living in internally displaced persons camps. In September 2014 the government announced the controversial draft Rakhine State Action Plan for moving Rohingyas currently in the camps into permanent resettlement zones in April/May 2015, which critics say will result in segregation and possible loss of the Rohingya's original homes.¹⁰⁷ While some problematic provisions have reportedly been removed, fears remain that the Buddhist Rakhine and Muslim communities will remain segregated in separate settlements under the terms of the plan.¹⁰⁸ In January 2015 the government announced that the plan was still being revised.¹⁰⁹

The challenges for companies operating in ethnic minority areas are particularly acute, due to difficulties in establishing tenure rights under customary communal systems in the absence of official land registration documents and accurate land cadasters. In addition, many of these areas are emerging from decades of armed conflict, with large numbers of displaced people, further complicating the process of identifying the original land users. Ongoing inter-communal tension in Rakhine State, where many Muslims are no longer living on their land, also makes accurate identification of land ownership difficult. It will therefore be even more crucial for companies to consult closely with local communities and other local stakeholders in all these areas.

VII. Recommendations for companies seeking to use or acquire land

The following recommendations are intended to assist companies operating in Myanmar to address issues that they may face when acquiring or leasing land for their operations.

Be aware of the historical context

- Given experiences over recent decades, there is heightened concern amongst communities about company use of land or government acquisition of land on behalf of companies. Companies should be sensitive to the continuing fear of many villagers in raising concerns about land acquisition processes, meaning

¹⁰⁵ [2015 UNHCR country operations profile](#) – Myanmar, UNHCR, h

¹⁰⁶ Many of these Muslim populations self-identify as Rohingya, a term the Myanmar government refuses to accept.

¹⁰⁷ See for example "[Burma: Government Plan Would Segregate Rohingyas](#)", Human Rights Watch, 3 October 2014.

¹⁰⁸ "[Myanmar: The Politics of Rakhine State](#)", p 36, International Crisis Group, 22 October 2014,

¹⁰⁹ "[Action Plan being "reviewed"](#): government", Myanmar Times, 9 January 2015,

concerns may remain hidden and unresolved. Paperwork provided by the authorities to prove that previous occupants agreed to compensation or resettlement will not show whether that agreement was obtained under coercion.

Conduct Enhanced Due Diligence

- The historical legacy (and to some extent on-going suppression of protests with respect to land); the lack of a uniform and accessible land registry establishing land ownership; the lack of full recognition of customary ownership; and the significance of land based livelihoods and attachment to ancestral lands all mean that enhanced, detailed due diligence is necessary.
- Companies need to engage in extensive “ground truthing”. This entails direct consultation with villagers, community and religious leaders, as well as local authorities, and may be best conducted informally and 1:1.
- As some form of cadasters are usually maintained in paper form at the township level, local authorities are often relied upon to identify who is the recognized owner of land. However, many cadastral maps are out of date, so accuracy of land records is a major problem. In some cases land users will have unofficially ‘sold’ land use rights to another user many years ago, but due to this being unofficial, the tax receipts for use of the land – often used as proof of ‘ownership’ – will be in the name of the registered, rather than the actual user.
- In addition, as in other countries, speculators are moving in to acquire land in areas where it is thought that investment projects may be implemented. These speculators, hoping to profit from compensation payments, seek to acquire land cheaply from original land users who are unaware of the development. This can create tensions with the original users, who may feel cheated when compensation is subsequently paid.
- In other cases, where news of a development starts to circulate, squatters with no title may move onto the land in the hope of obtaining compensation. Existing land users may also quickly plant additional trees or crops in order to benefit from compensation. Companies therefore need to establish baseline data as early as possible on who is present at the site.

Don’t assume that legal title (or lack thereof) is the end of the story

- Relying only on legal titles (to the extent they exist) or promises that legal titles have been reviewed and secured, is unlikely to address the full story of occupation and use in many parts of the country. The current legal framework does not recognise customary ownership and use that may stretch back many generations. Local landowners and users may not have formal legal title so enhanced due diligence may be required to understand ownership, occupation and use patterns. Any approach to land use and acquisition should recognize those customary rights and deal with the holders on the same basis as more formal land owners with respect to any consent, negotiation, compensation, on-going permission for use, etc.
- Furthermore cadastral registries may not record who has been using the land for years, due to unofficial transfers of land use rights.

Don't assume that land acquired from the government is the end of the story

- It cannot be taken for granted that land acquired or reallocated by the Government has been conducted in line with national law, international standards and community expectations. Where the acquisition has been carried out by the Government, due diligence should also focus on identifying whether there have been deficiencies in Government consultations with communities (or indeed, any consultations at all), or deficiencies in expropriation and compensation processes, including with respect to customary owners or users of land, benchmarked against both national law and international standards.
- While the legacy issues around land acquired by the Government through expropriation which is re-allocated to companies many years later may not potentially be the legal responsibility of incoming companies, it nonetheless leaves a legacy of tension and distrust that risks escalating if ignored.
- Where legacy deficiencies in the land acquisition process are identified, companies should engage directly, as far as possible, with the communities, rather than relying solely on Government authorities. Companies may decide that addressing legacy issues, through compensation or some other form of remedy (such as assisting those displaced in seeking compensation for their claims) in order to make up for these deficiencies may be necessary in order to move forward with operations, particularly where requests to the Government to address deficiencies goes unheeded.

Apply international standards and guidance during any land processes

- Given the concerns on the Myanmar legal framework (see above) and its numerous deficiencies, companies should follow relevant international standards for their land processes (See below for details of the main international standards in this area). Civil society groups in Myanmar are increasingly well versed in the relevant international standards and good practices, including the IFC's Performance Standards, and expect companies to follow these standards.
- This includes the requirement to seek to obtain Free Prior and Informed Consent (FPIC) where land belonging to indigenous peoples is involved. However it should be noted that Myanmar lacks a definition of 'indigenous peoples' (for further details see MCRB's [Oil and Gas Sector-Wide Impact Assessment](#)).

Establish relationships with the community as soon as possible

- Companies should seek to develop longer-term relationships with the communities in their areas of operation. These relationships can be influenced early on, positively or negatively, by processes for land acquisition and use. Investing in community engagement and land acquisition processes that are respectful, fair and that meet international standards, are likely to pay off for the company and the local community in the long run.

Pay particular attention to other at-risk groups during any land processes

- Due diligence should also consider the impact of acquisition of land on the **landless**, since they may rely for their livelihoods on farming the land of others as day labourers. Moreover, due diligence should also consider the land rights of women, as their names may not appear on registration documents.

Further care is needed if operating in Rakhine State or in conflict and post-conflict areas

- In areas of inter-communal tension, such as Rakhine State where almost 140,000 people, the vast majority of them Muslims, have been displaced by inter-communal violence beginning in June 2012, companies will need to carry out particularly careful due diligence on the provenance of any land they may seek to use. They should first establish whether there is a connection to persons displaced by inter-communal violence. Since displaced populations should be entitled to return to their homes, it is important for companies to avoid contributing to the problem, or appear to give tacit support to, or benefit from, the activities which have resulted in the displacement.
- Companies should obtain advice from local experts including relief agencies and civil society organizations operating in the area before deciding how to proceed. Given serious allegations of past and more recent “land grabs” in ethnic minority areas, both where ceasefires are holding and where they have broken down, companies will also need to exercise particularly careful due diligence on the provenance of any land they may seek to use.
- Companies should consult with ethnic minority civil society in these areas. It will also be critical for companies to establish direct or indirect contacts with armed opposition groups, who have longstanding non-state administrative systems, including on customary land tenure rights.

Minimise land use

- Given the lack of clarity on ownership, the high levels of shifting cultivation in some areas, and the high levels of landlessness, there are clear risks of operations impacting people without any compensatory measures. Companies should use the mitigation hierarchy (avoid, minimize, compensate/offset) and try to minimize their impact. This means limiting footprint to the minimum possible, returning land when it is no longer used for operations, and seeking alternatives to outright purchase, such as leasing land – where the law and land classification permits - thereby providing a steady source of income to landholders.

Develop accessible and effective operational level grievance mechanisms to address land issues

- International human rights standards require access to remedy for harms, and international good practice recognises that engaging with communities early and resolving concerns (real and perceived) effectively is an essential part of operating successfully. Accessing remedies in Myanmar is difficult if not impossible in many cases. There is – with good cause – little or no faith that the judicial system can currently deliver this.
- Operational level grievance mechanisms – i.e. processes that allow concerns to be raised and remedied at the operational level (rather than at far away headquarters) – are therefore even more important in Myanmar, where there are few other outlets to resolve concerns. Such grievance mechanisms should be implemented according to the criteria established in the UN Guiding Principles

on Business and Human Rights¹¹⁰ while not impeding access to other remedies, judicial or non-judicial.

- Operational level grievance mechanisms may not be well equipped to deal with land issues that require action by the authorities such as disputes around formal title. They may be better equipped to deal with complaints around informal land claims or other grievances around operational impacts on land.

Be transparent and report on how land is acquired and used

- US businesses either investing \$500,000 or more in Myanmar or investing in its oil and gas sector are required to submit an annual report to the US State Department.¹¹¹ These reports are intended to be used by the State Department to consult with US businesses so that they can develop robust policies and procedures to address impacts as a result of their investment. The public reports are intended to assist civil society in monitoring investment in Myanmar and in engaging with companies to promote responsible investment.
- Question 7 of the Reporting Requirements requires reporting on the purchase, use, or lease of land or other real property over \$500,000 or more than 30 acres. The following topics must be covered *inter alia*: policies and procedures to ascertain land ownership and resettlement in each land purchase, use, or lease transaction; policies and procedures, including grievance mechanisms, relating to displacement and resettlement; and any information about involuntary displacement and resettlement.¹¹²
- Companies not covered by these US reporting requirements should consider publishing such information which will contribute to the ‘knowing and showing’ that they are aware of and addressing human rights risks in accordance with the UN Guiding Principles on Business and Human Rights.

VIII. International standards applicable to companies

Given the absence of guidance on voluntary or involuntary resettlement in Myanmar, companies should encourage the Government to apply [IFC Performance Standard 1](#) on Assessment and Management of Environmental and Social Risks and Impacts and [IFC Performance Standard 5](#) on Land Acquisition and Involuntary Resettlement and [IFC Performance Standard 7](#) on Indigenous Peoples and be guided by those standards themselves.

[IFC Performance Standard 5](#) sets out standards for physical and/or economic displacement resulting from project-related land acquisition and/or restrictions on land use that is involuntary. The Performance Standard covers the process and scope of actions that should be taken to address land acquisition and any resulting resettlement by both the government and companies. It goes beyond national law but reflects international human rights standards and international best practice.¹¹³

¹¹⁰ See [UN Guiding Principle 31](#).

¹¹¹ Embassy of the United States, Rangoon, <http://burma.usembassy.gov/reporting-requirements.html>

¹¹² Embassy of the United States, Rangoon, <http://burma.usembassy.gov/reporting-requirements.html>.

¹¹³ See also [Handbook on Resettlement, A Guide to Good Practice, Asian Development Bank](#), 1998,

[IFC Performance Standard 7 on Indigenous Peoples](#) recognizes that Indigenous Peoples, as social groups with identities that are distinct from mainstream groups in national societies, are often among the most marginalized and vulnerable segments of the population. It sets out processes and standards to anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts.

[IFC Performance Standard 8 on Cultural Heritage](#) sets out processes that companies should follow to ensure they protect cultural heritage in the course of their project activities. This includes intangible cultural heritage such as unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls.

Tenure rights

The Food and Agriculture Organization's (FAO) [Voluntary Guidelines on the Responsible Governance of Tenure](#) set out standards to improve the governance of land, fisheries and forests with the goal of achieving food security. The guidelines cover both government and non-state actors, which include businesses.

Under international human rights law, land acquisitions should also not result in **forced evictions**. Forced evictions are defined by the UN Committee on Economic, Social and Cultural Rights as *"the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection"* (General Comment No.7, Paragraph 3). The UN Committee has identified procedural protections that must be in place before any evictions are undertaken (General Comment No. 7, Paragraphs 14, 16, and 17).¹¹⁴ These include:

- genuine consultation with all affected persons on feasible alternatives to evictions;
- due process safeguards such as adequate prior notice; provision of remedies and legal aid;
- payment of compensation, and provision of adequate alternative housing for those who cannot provide for themselves.

Any land acquisition process that would result in the eviction of people from their homes, farm lands or other lands which they occupy should meet these requirements.

¹¹⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No 7 on the right to adequate housing, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en.

IX. Civil Society Organisations working on land issues

MCRB has published a [briefing paper](#) on CSOs in Myanmar, with a focus on the extractives.

Myanmar civil society organisations working on land issues include Badeithamoe, Paungku, Pandita, Myanmar China Pipeline Watch Committee, Myanmar Green Network, Braveheart, ECODEV, Metta, POINT, 88 Generation and Agriculture and Farmers Federation of Myanmar (AFFM).

There are also local groups focused on particular developments such as the Thilawa Sustainable Development Group, Dawei Development Association and Sein Yaung So (Mandalay/Upper Myanmar).

The Myanmar Alliance for Transparency and Accountability (MATA) which brings together around 450 local civil society organisations, with a particular focus on the extractives industry.

International NGOs working in and on land rights issues in Myanmar include Forest Trends, Transnational Institute, Global Witness, Earthrights, Oxfam, CARE, Swissaid and International Alert.

The [Land Core Group](#) brings together international and local NGOs working on land and smallholder agriculture issues

Further information about NGOs and international organisations active in Myanmar, including those working on wider development and humanitarian issues, can be found at [the Myanmar Information Management Unit](#)

Myanmar Centre for Responsible Business can help to put businesses in contact with relevant groups.