

Project-Level Impacts

Land



In this section:

- A. National Context
- B. Key Human Rights Implications for the O&G Sector
- C. Field Assessment Findings

A. National Context

Land is often the most significant asset of most rural families. 70% of Myanmar's population lives in rural areas and 70% of the population is engaged in agriculture and related activities.²⁵⁶ Many farmers use land communally 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.²⁵⁷ The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population dependent on access to land for livelihoods, where land is taken, even with monetary compensation, the impacts on an adequate standard of living can be significant. Compensation is often not keeping up with rapidly escalating land prices, meaning displaced farmers are unable to acquire new land in nearby areas.

Landlessness in Myanmar

Rural people continue to remain at risk of land confiscation, which has over several decades led to landlessness amongst the population. An estimated 25% of farmers are considered landless agricultural labourers in Myanmar, making them food insecure, in particular when food prices increase.²⁵⁸ The Government itself recognizes landlessness as a major problem in its Framework for Economic and Social Reforms (FESR) and states that landlessness in the 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.²⁵⁹ Additionally, hundreds of thousands of ethnic minority civilians have been displaced in eastern and northern Myanmar as a result of internal armed conflict, and 143,000 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,

²⁵⁶ Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009, Ministry of Labour Nay Pyi Taw 2011

²⁵⁷ Transnational Institute, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)" (May 2013).

²⁵⁸ Harvard Kennedy School, Ash Center, "[Creating a Future: Using Natural Resources for New Federalism and Unity](#)" (July 2013), pg. 10.

²⁵⁹ "[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).

leading to very weak land tenure of their original land, which they may not have occupied for years, and may now be used by others.

Land Regime

Reform of land policy and law in Myanmar remains incomplete. There is a recognized need in Myanmar for a written comprehensive land use policy. 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 investment that will allow it to better balance competing demands for land-use that will inevitably increase with further economic development and investment.²⁶⁰ A working group of the Committee, which includes civil society representation and external experts, is currently formulating a draft land policy. The final policy is not expected to reach Parliament until 2015 or 2016. Once adopted, the policy will presumably guide the drafting of an overarching land law in 2016.

The land regime in Myanmar 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.²⁶¹ UN Habitat recently announced new cooperation with the Government on the implementation of a land administration and management programme.²⁶² The cadastral (land mapping) system is weak, which further exacerbates the problem of land disputes, as land classifications and mapping may overlap or not reflect true land use patterns. For example one map may classify a plot of land as forest land, whereas another map may classify the same plot as farmland, leading to confusion about land use rights and possible disputes about whether the land can be sold or not, depending on the classification. Participatory land use planning is needed that balances the needs of all land users.

As the recent OECD Investment Policy Review of Myanmar notes: “[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.”²⁶³ The OECD has also recommended the use of free, prior and informed consent (FPIC) for all land acquisitions, not just those involving ethnic minorities / indigenous peoples, which goes further than the IFC Performance Standard.²⁶⁴

²⁶⁰ 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).

²⁶¹ OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 108.

²⁶² UN-Habitat, “[UN-Habitat to help strengthen land administration and management in Myanmar](#)” (June 2014).

²⁶³ OECD, above, pg. 292.

²⁶⁴ OECD, above.

Land Disputes

Since the recent reform process began, there has been increased reporting of protests against “land grabs” in the press and by non-governmental organisations in many parts of the country. In addition, large-scale land allocation has increased significantly in the past decade.²⁶⁵ While some of these land grabs are new, many of them originate in land confiscations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. In the past, there have been involuntary resettlements of villages to make way for O&G infrastructure directly and in connection with military forces moving into areas to protect gas pipelines. Some land in Myanmar has been returned to farmers and others since the reform process began. In January 2014 the military reportedly apologised for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land.²⁶⁶ However, there are still tens of thousands of rural people who have lost their land due to Government confiscation.

In recognition of the problem of land disputes, the Government has established two bodies to deal specifically with land issues. The Land Allotment and Utilisation Scrutiny Committee (as noted above) and the Parliament’s Farmland Investigation Commission (with a mandate to accept complaints from the public) were both established in July 2012. In February 2014 the Parliamentary Commission set a deadline for the Government to resolve cases of land grabs of farmland by September 2014, stating that the executive branch had not adequately responded to their March 2013 report outlining the severity of land grabs.²⁶⁷ 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 is currently administering two complementary Land Legal Aid Mechanisms, which are taking a few cases to court. As noted above, the October 2013 report on the ILO Forced Labour Mechanism notes that there has been an increasing number of complaints submitted about forced labour in association with land confiscation (see [Part 4.4](#) on Labour).²⁶⁸

Resettlement

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. As discussed below, 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.

A recent case of land expropriation and resettlement provides one example of the challenges of larger scale resettlement where there are no detailed requirements and little Government experience in carrying out resettlement to international standards. The Japanese International Cooperation Agency (JICA) is supporting the development of the

²⁶⁵ OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg. 324.

²⁶⁶ Mizzima, “[Vice President defends land seizures by Tatmadaw](#)” (12 May 2014).

²⁶⁷ The Irrawaddy, “[Parliament Sets Deadlines for Govt to Resolve Land Disputes](#)”, (20 February 2014).

²⁶⁸ 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.

Thilawa Special Economic Zone outside of Yangon. Sixty-eight households have already been resettled under Phase 1 of the project; however, many resettled from this farming community do not currently have access to livelihoods options and there are also concerns about sanitation in the new resettlement site.²⁶⁹ A delegation of the resettled communities recently visited Japan to present their complaints directly to JICA, and to press for it to apply its own guidelines effectively.

Legal Framework for the Acquisition or Lease of Land

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.²⁷⁰ As set out below, the Government can carry out compulsory acquisitions in the state or public interest. 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 “Vacant, Fallow and Virgin Land” or “Farmland” – see below), land acquisition is governed by a 120 year old law, a holdover from the former 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. It 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 Gazette²⁷¹ and notice given to the public (Art 42), though it is not clear how the public would be notified and there is no requirement to directly notify those owning or occupying the land. In practice this has meant that local land owners or users are often unaware their land is being taken because notice in the Gazette is insufficient and they are not able to lodge an objection during the short window mandated under the law. At the same time, those who do publish a correct notice in the Gazette can claim compliance with the law.

Vacant, Fallow and Virgin (VFL) Land

The VFV and Farmland 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 vacant, fallow and virgin may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the

²⁶⁹ DVB, “[JICA dismisses accusations of negligence](#)” (10 June 2014). DVB, “[Displaced villagers descend on Tokyo](#)” (6 June 2014).

²⁷⁰ Myanmar Constitution (2008), Articles 35, 37, 356 and 372.

²⁷¹ See <http://www.moi.gov.mm/ppe/pyantan>

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 and are at risk of having their land registered by more powerful interests. Potentially developers could register in their names as owners of farmland and so-called VFV land, which has in fact long been occupied. 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.²⁷²

With respect to land designated as vacant, fallow and virgin (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 citizen 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.

Farmland

With respect to farmland, the 2012 Farmland law makes clear that applicants who are individuals must be citizens (Articles 6 (a) (iv), 7 (a), (iv)). However, it also states that "organisations" include Government departments or organisations, non-governmental organisations and companies (Articles 6(b), 7(b), who are also permitted to apply. This appears to include foreign companies, as there is no statement in the English translation of the law that a company that may be granted a right to use farmland must be a Myanmar company. Farmland rights under the 2012 Farmland Law are freely transferable (subject to discrete restrictions such as transfers to foreign investors). 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.²⁷³ 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

²⁷² Transnational Institute, "[Access Denied: Land Rights and Ethnic Conflict in Burma](#)", (May 2013).

²⁷³ Displacement Solutions, "[Myanmar at the HLP Crossroads](#)" (Oct. 2012).

into cash value when they choose. The issue is to what extent protection should be provided (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" ²⁷⁴ 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.

Non-Citizens' Use of Land

With respect to foreign investors, the Restriction on the Transfer of the Immoveable Property Law (1987) had 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.²⁷⁵ The Government may however allow exemptions from these restrictions and Union Government Notification No. 39 of 2011²⁷⁶ set 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 16(c) VFV Law) (Article 14 Farmland Law). Under the newer Foreign Investment Law, the 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. Leases can be even longer for land in "the least developed and less accessible regions."²⁷⁷

The Foreign Investment Rules provide certain protections against abuses but these apply only to leases by foreign investors under the 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. Interestingly, a foreign investor shall not be permitted to lease land "in a place that the public is not desirous to transfer and vacate."²⁷⁸ 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.²⁷⁹ This indicates that with respect to leased land that is privately negotiated,

²⁷⁴ 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.

²⁷⁵ 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).

²⁷⁶ "[Notification 39/2011](#)" on the Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law.

²⁷⁷ Ministry of Planning and Economic Development, "[Notification 11/2013, Foreign Investment Rules](#)", (31 Jan 2013).

²⁷⁸ Foreign Investment Rules, above, Chapter 15, para 126.

²⁷⁹ Foreign Investment Rules, above, Chapter 15, para 126.

there should be no involuntary resettlement. 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.²⁸⁰

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. 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.

B. Key Human Rights Implications for the O&G Sector

Considerations for Land Acquisition / Use

- **Pre-2011 approaches:** Access to natural resources and the land base for carrying out extractive operations has often been a source of contention in Myanmar, whether as a driver of armed conflicts between the Government and ethnic minority groups, or a basis for local disputes. Pre-2011 approaches to land acquisition, especially through State and military expropriation, are no longer acceptable to the public, even if they are still happening in practice.
- **Antiquated land acquisition procedures:** Myanmar does not have detailed procedures on land acquisition and appears primarily to be using laws from the 19th and early 20th centuries as the basis for land acquisition and designation of oil field areas respectively.²⁸¹ These laws do not reflect more modern protections developed in other common law countries to define procedural and substantive protections, nor the even far more recent international guidelines on governance of tenure led by FAO.²⁸²
- **Lack of recognition of customary rights:** The new land laws²⁸³ do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their “usufruct” rights.²⁸⁴ 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

²⁸⁰ Foreign Investment Rules, above, Chapter 15, para. 125.

²⁸¹ *Land Acquisition Act* (1894) and the *Oilfield Fields Act* (1918). 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).

²⁸² FAO, “[Voluntary Guidelines on the Responsible Governance of Tenure](#)”, (2012).

²⁸³ *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).

²⁸⁴ “...the written and unwritten rules which have developed from the customs and traditions of communities...” Land Core Group, above. pp 15-16.

are protected.²⁸⁵ In addition, as noted above, the Government may be declaring land vacant that in reality is not. This has resulted in large numbers of landless who would not appear in any Government records but who many nonetheless be affected by displacement and compensated for at least economic displacement if they have lost their livelihoods, and could be addressed as part of a social investment programme.

- **“Land grabbing”:** There has been extensive reporting in the press and by civil society organisations in recent years of outright “land grabs” with little pretense of following the law and of villagers being deprived altogether of compensation for expropriation, receiving reduced payment for land, or being denied any recognition of ownership²⁸⁶ by Government authorities, the military and business. Some of these incidents have been connected to O&G operations. In the complicated Myanmar land situation, there is therefore legitimate concern about land grabs in connection with existing O&G projects or anticipated projects and the source of tension with local communities and advocacy by civil society groups (who are increasingly better versed in international standards and international good practices). There are increasing calls from CSOs and also from the recent OECD Investment Policy Review for companies to use a process of free, prior, informed consent (FPIC) for any kind of land acquisition or use in Myanmar, and not only in connection with land belonging to or used by ethnic minorities.²⁸⁷
- **Speculation:** Companies should also be aware that there have reportedly been cases of speculators moving in to acquire land in areas where it is thought that investment projects may be implemented. These speculators seek to acquire land cheaply from original land users who are unaware of the development, hoping to profit from compensation payments. This can create tensions with the original users, who may feel cheated when land compensation is subsequently paid.
- **Detailed due diligence:** Longer-term relationships with the communities in their areas of operation can be influenced early on, positively or negatively, by processes for land acquisition and use. Given the lack of a uniform and accessible land registry establishing land ownership, the lack of recognition of customary ownership, and the significance of land based livelihoods and attachment to ancestral lands, any approach to land use and acquisition should recognise those customary rights and deal with the holders on an equal basis as more formal land owners. This requires detailed due diligence, with direct consultation with villagers and local authorities. Companies should be sensitive to the continuing fear of many villagers in raising

²⁸⁵ Land Core Group, above, pp 23-24.

²⁸⁶ The Land Core Group, a subset of the Myanmar-based NGO-led Food Security Working Group, has documented 13 cases of land confiscations in central Myanmar in September 2012 (Land Core Group, “13 Case Studies of Land Confiscations in Three Townships of Central Myanmar” Sep. 2012, on file with IHRB.). 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). 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).

²⁸⁷ OECD, [“OECD Investment Policy Reviews: Myanmar 2014”](#) (March 2014).

concerns about land acquisition processes, meaning concerns may remain hidden and unresolved. 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. It cannot be taken for granted that land acquired or reallocated by the Government has been done in a manner in line with national law, international standards and community expectations. The SWIA team was informed that MOGE is in charge of land acquisition processes when expropriation is involved, often together with a land acquisition team that also involves the Settlement and Land Records Department. MOGE holds the title to any land acquired. The Operators signing PSCs must obtain land use or other certificates from land owners and pay compensation for permanent and temporary acquisitions as well as damages. Voluntary land acquisition by companies needs MOGE approval and consultation with regional authorities. 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 recognised owner of land.

- **Legacy land issues:** There may also be significant legacy issues around land allocated by the Government that, while potentially not the legal responsibility of companies coming in, nonetheless leaves a practical legacy of tension and distrust that risks escalating if ignored. Where deficiencies are identified in dealing with current and legacy claims, companies should engage directly, as far as possible, with the communities, rather than relying solely on land committees and Government authorities (although companies should cooperate and coordinate as necessary).
- **Minimising land use:** Given the lack of clarity on ownership, the high levels of shifting cultivation in some areas, the high levels of landlessness, there are clear risks of operations impacting people without any compensatory measures. In addition, given that land based compensation is uncommon, companies should be seeking to minimise their impact: limiting their 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 and thereby providing a steady source of income to landholders, although restrictions on change of use of paddy land sometimes complicate the ability to do this.

Resettlement

- **Gaps in the law:** The current legal framework, including even the more recent Farmland and VFV Laws, provide only general authorisations on expropriation “in the public interest” with no further procedural or substantive restrictions, leaving this process open to abuse. Myanmar also does not have detailed regulations defining specific compensation levels for all types of land²⁸⁸ 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

²⁸⁸ 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 1894 [Land Acquisition Act](#) provides for compensation at market value with adjustments, including for crops, Art. 23. Available at (unofficial translation).

be involuntary resettlement).²⁸⁹ There are also no core principles or hierarchy of compensation approaches, which is contrary to international human rights law and other international standards. The objective for resettlement in line with international standards²⁹⁰ is full livelihood restoration, not simply compensation for assets, with priority to land-based compensation over monetary compensation²⁹¹ in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation. In addition, the current lack of transparency and consistency in land compensation provides opportunities for abuse. In many circumstances there is no effective process to object to acquisition or negotiate the level of compensation. Given the complete lack of guidance on voluntary or involuntary resettlement, companies should encourage the Government to apply IFC Performance Standards 1 and 5 and be guided by those standards themselves.

- **Draft EIA Procedures on involuntary resettlement:** The latest available English translation of the draft Environmental Impact Assessment (EIA) Procedures explicitly states that it does not apply to resettlement; instead projects involving resettlement or potentially affecting Indigenous People shall comply with separate procedures issued by responsible ministries, “and in the absence of such procedures all such Projects shall adhere to international best practice on Involuntary Resettlement...” If adopted as is, adherence to international best will become a requirement, not just an option.

Land in Areas Affected by Armed Conflict & Communal Tension

- **Added complexity:** In conflict-affected areas, the situation has added complexities. Many of these areas are not included in the national cadaster, or are considered VFV 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. Local armed group commanders may give authorisations without the knowledge of their headquarters.²⁹² In addition, large swathes of the borderlands are polluted by landmines and other explosive remnants of war, restricting their use by communities and other potential land users; the fact that they have not been able to be utilised by rights holders for long periods increases the chances of dispossession, and particularly susceptible to land grabs if future demining programs render this land safe to use. The critical importance of land issues in the peace process has been recognised through the proposed establishment within the

²⁸⁹ 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.

²⁹⁰ See IFC, “[Performance Standard 5: Land Acquisition and Involuntary Resettlement](#)” (2012).

²⁹¹ 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 recognise 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.

²⁹² See Karen Human Rights Group, “[Losing Ground: Land conflicts and collective action in eastern Myanmar](#)” (Mar. 2013) and TNI, “[Financing dispossession](#)” (Feb. 2012).

Myanmar Peace Centre of a Land Centre,²⁹³ focused on policy issues and technical issues such as geospatial mapping.

- **Additional due diligence in Rakhine State:** In areas of inter-communal tension, such as Rakhine State where 143,000 people, the vast majority of them Muslim Rohingya, 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 need 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 organisations operating in the area before deciding how to proceed. See also [Part 6](#) on Region-Specific Conflict Considerations.

See also [Part 4.5](#) on Ethnic Minority Groups / Indigenous Peoples.

C. Field Assessment Findings

Consultation Prior to Land Acquisition

Human Rights Implicated: Right to take part in the conduct of public affairs, right to information

Field Assessment Findings

- There was **inadequate informed community consultation and participation** about projects or land acquisitions that can have an impact on communities' livelihoods (and other rights), particularly concerning pipeline projects. In many cases, communities:
 - received **no prior information** about the intention to acquire their land, or the project for which their land would be taken.
 - were **not consulted** or given an opportunity to become informed about the broader project. Instead, information was given only with respect to land compensation, often shortly before the arrival of construction crews for the pipeline.
 - were not made aware of, **nor given the opportunity to provide input** into the pre-feasibility or feasibility stages of the project design.
 - were given **no choices** or opportunity to negotiate about the plots of land taken or restrictions on land use.

Due Process in Acquisition

Human Rights Implicated: Right to not be arbitrarily deprived of property, right to an adequate standard of living, right to freedom of expression

²⁹³ [Myanmar Peace Centre](#)

Field Assessment Findings

- **There was lack of basic due process in the procedures followed** (generally by Government authorities rather than a company) to inform villagers about the acquisition of their land, to seek to secure their consent to the land acquisition and to negotiate compensation. Communities:
 - **were not informed which Government authorities or companies were involved** in the discussions with them about the acquisition of their land, on whose behalf action was being taken, or how further information could be obtained, with the exception where “land committees” were put in place (see below).
 - **were not consistently given written documentation** setting out the conditions of the purchase of their land.
 - **were sometimes asked to sign documentation in a language that they did not understand.** The documentation was not translated from Burmese into a local language or was sometimes not even in Burmese (i.e. in foreign languages). (Some contracts were bilingual Burmese/English).
 - were sometimes told that **by signing the documentation they were also agreeing not to object to or obstruct the project.**
 - **were given a document where the Burmese translation of documentation did not match the English version of the document, or even reflect the same concepts.** In one village the binding English version of a document used the terms “compensation”, while the local Burmese version referred to the compensation as a “good will gesture”, thus undermining the concept that compensation was owed as a matter of right.
 - **were required to undergo additional, burdensome steps necessary to claim compensation** – e.g. to travel to the nearest regional administrative centre to claim the compensation, claim compensation payments from local authorities (rather than being paid directly), or pay bribes to local authorities to recover some proportion of their compensation payment.
- In most of the villages, villagers were compensated on the basis of Form 7 (formerly Form 105, and or tax form showing tax paid on land or property), or sometimes alternative documentation or even testimony from neighbours. Given the lack of a uniform and accessible land registry, being able to provide alternative forms of documentation to prove ownership is a significant protection but can also be a significant risk if this is used to bypass customary owners. **As a result, establishing land ownership, including customary ownership, requires more detailed due diligence**, often including direct discussions with villagers and local authorities.

Compensation for Land Acquisition and Use

Human Rights Implicated: Right to not be arbitrarily deprived of property; right to an adequate standard of living; right to an effective remedy

Field Assessment Findings

Communities often complained of inadequate compensation for land, housing or crops,

and in particular:

- **Lack of transparency and documentation of rates offered** for land and crops. In principle it appeared that land and crops were compensated at market value which is an appropriate standard. This results in variation throughout the country depending on the market price in that location.²⁹⁴ In some cases however, there was little or no transparent documentation on rates, and no negotiation. Given that rates varied, in the absence of transparency about the basis for calculations, resentment was found amongst villagers in some areas upon hearing of higher amounts being paid for land elsewhere.
- **For many there was no breakdown of payments, just a lump sum offered, making it difficult to verify whether they were receiving an appropriate amount.**
- **There was variation in the types of assets that were being compensated,** depending on location and company. In some cases permanently occupied land was compensated as well as compensation for 5 years' worth of crops if there was a crop on the plot. In other cases the team heard reports of farmers only receiving land compensation and 3 years' worth of crop compensation even for permanently occupied land. In the case of temporarily occupied land one operator provided 90% of the land value and 3 years' worth of crops, while another did not compensate for land. For the most part compensation for crops was offered, for example where land was damaged by soil overspill and one company gave compensation for 1 year's crop while another gave 150%, also continuing to compensate yearly if the damage continued.
- **There was less likelihood that loss of access to resource usage, customary land or communal land was compensated.**
- There was **frequent denial of claims for economic displacement** (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) resulting from ongoing operations.
- **Some did not receive any compensation at all for their land despite claims of appropriate documentation.** Some complained about the level offered (sometimes based on specific information on comparisons). There were complaints of Government officials soliciting or taking a cut in cash-based compensation for land.
 - In other cases, some villagers were satisfied with compensation received.
 - For one pipeline, "Land Committees" along the pipeline comprised of relevant authorities from different Government departments, MOGE and the companies provided, in principle, a coordinated approach to land acquisition and a single point of enquiry for villagers.
- **In principle, there is no legal impediment to providing compensation to women or women-headed households,** but households are registered in the husband's name and therefore **in general compensation was handed over to the husband in the family.** However, widows or single mothers would also be able to obtain compensation in the same way as male headed households.
- **Little consideration was given to alternative livelihoods for affected populations in the project areas or in designing appropriate compensation**

²⁹⁴ See IFC, "[Performance Standard 5](#)", Footnote 4.

packages.

- No alternative land was reported as offered to those with land-based livelihoods, resulting in major impacts on livelihoods, especially where there was not sufficient additional land in a nearby area (see *Impact Summary on Livelihoods*).
- Payments were made in cash. **Many in rural communities have no access to or knowledge of banking to safeguard cash and were also unfamiliar with how to manage large amounts of money.** For some, compensation was spent quickly, leaving them with no livelihood or assets to fall back on and often few skills that would allow them to move into employment-based livelihood.
- Some companies and local officials are seeking to **improve transparency in the payment process**, by making payments publicly, in front of the concerned group, providing a clear and transparent register of payments, or providing payments directly into bank accounts when they exist.

Involuntary Resettlement

Human Rights Implicated: Right to housing; right to an adequate standard of living

Field Assessment Findings

- The team was not informed about any large-scale resettlements directly attributable to operations in the areas where they conducted the assessments. (See the national context section above for reports in other areas).
- The field assessments identified only limited, individual resettlement in the areas of the field work. **No assistance was provided in re-establishing the family in the new location.** Cash compensation was provided. However, it was up to those resettled to find a new location, move and build a new house.

Access to Remedy for Land Grievances

Human Rights Implicated: Right to an effective remedy

Field Assessment Findings

- Most villagers expressed **concern or even fear about speaking out** to raise complaints about the land acquisition process or compensation. Others noted they would be threatened if they complained.
- Others noted that complaints were futile due to **layers of bureaucracy**, being passed from one authority to the next, lengthy delays and active obstruction. No one spoke of having been able to change decisions on the taking of their land or their level of compensation. However in one case a local official was prosecuted and lost his job for confiscating land compensation payments.
 - A few companies had established their own grievance mechanisms with local contacts and local procedures to make the process more accessible to villagers (see [Part 4.1 on Stakeholder Engagement & Grievance Mechanisms](#)).
- Villagers were often **directed to MOGE** to make their complaints, yet MOGE liaison officers posted in companies are typically rotated into company operations for a

short period of time and do not have the expertise or training to deal with community complaints.

- There have been a number of examples of **localised protests** around land acquisitions in connection with O&G projects, one of which resulted in the jailing of protestors.

Myanmar Good Practice Examples:

- For one pipeline, “**Land Committees**” along the pipeline comprised of relevant authorities from different Government departments, MOGE and the companies provided, in principle, a coordinated approach to land acquisition and a single point of enquiry for villagers.
- Some companies and local officials are seeking to **improve transparency in the payment process**, by making payments publicly, in front of the concerned group, providing a clear and transparent register of payments, or providing payments directly into bank accounts when they exist
- The model of “**Village Rights Committees (VRC)**” makes complaint resolution a community process in the first step, helping vulnerable affected persons to raise justified concerns. If communities do not manage to solve the conflict the practice of “Legal Clinics” (involving the help of professional lawyer who visits the community as mediator) has been very successful.

Box 18: Relevant International Standards and Guidance on Land Issues, and Linked Initiatives in Myanmar

Relevant International Standards:

- [IFC Performance Standard 5 and Guidance Note – Land Acquisition and Involuntary Resettlement](#)
- FAO, “[Voluntary Guidelines on the Responsible Governance of Tenure](#)”

Relevant Guidance:

- ADB, “[Handbook on Resettlement, A Guide to Good Practice](#)”
- FAO, “[Guidelines on Compulsory Acquisition of Land and Compensation](#)”
- IFC, “[Handbook for Preparing a Resettlement Action Plan](#)”

Myanmar Initiatives on Land Linked to the O&G Sector:

- The UN-Habitat, Supporting the implementation of the [Land Administration and Management Programme \(LAMP\)](#) by the Myanmar Settlements and Land Records Department (SLRD)
- [Myanmar Food Security Working Group](#) and the [Land Core Group](#)