

Myanmar's Land Acquisition, Resettlement and Rehabilitation Law 2019 – One Step Forward, Two Steps Back?

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Myanmar Centre for Responsible Business

1st International Conference on Environment and Sustainable

Development

Yangon, 8 January 2020

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စီးပွားရေး အဖွဲ့အစည်းများ၊ အရပ်ဖက် အဖွဲ့အစည်းနှင့် အစိုးရ အဖွဲ့အစည်း များအကြား တာဝန်ယူမှု ရှိသော စီးပွားရေးလုပ်ငန်းများဆိုင်ရာပညာ၊ ဗဟု သုတရရှိစေရန် လည်းကောင်း၊ အရည်အသွေး မြင့်မားစေရန် လည်းကောင်း၊ နှစ်ဦး နှစ်ဖက်အကြား ဆွေးနွေးညှိနှိုင်းမှုများ ဖြစ်ပေါ်လာစေရန်နှင့် မြန်မာ နိုင်ငံတွင် တာဝန်ယူမှုရှိသော စီးပွားရေး လုပ်ငန်းများပေါ် ထွန်းလာရေး အတွက်အများ ၏ ယုံကြည်မှုကို ရရှိသော သမာသမတ်ကျသော အဖွဲ့အစည်း တစ်ရပ် ဖြစ်ပေါ် လာစေရန် လည်းကောင်း ရည်ရွယ်ဖွဲ့စည်းခဲ့ပါသည်။



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 - Ireland
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- Founders:**



Summary of the Land Acquisition, Resettlement And Rehabilitation Act (2019) (LAARL)

The 2019 LARRL (not yet in force – awaits Presidential Notification/Rules) will govern most but not all compulsory land acquisition in the country

It sets out (though often not appropriately or clearly) the:

- **public purposes** for which land can be expropriated
- the **groups entitled** to compensation and access to resettlement and rehabilitation support for land acquired and livelihoods affected
- the **processes, studies and consultations** to be carried out as part of the acquisition and where relevant, the resettlement and rehabilitation processes
- **standards for compensation** and components of resettlement programmes
- processes for **objecting** to compensation
- various administrative arrangements, including setting up a **Central Committee** that has responsibility for making most but not all decisions (Union Government has final decision-making over expropriation)

Some improvements on the 1894 Land Acquisition Act can be found in 2019 LARRL.....

- Includes definitive list of “public purpose” categories for which expropriation can be used
- Provides more details on the expropriation process
- Requires surveys to identify some but not all potentially affected populations
- Includes provisions on resettlement and rehabilitation, requiring structured plans and programmes
- Requires some level of consultation with stakeholders
- Requires environmental and social impact assessments (ESIA) of the environmental and social impacts of projects to be carried out on the expropriated land
- Recognises need for experts to be involved
- Some attempt at transparency

...but there are many concerns

- Does not simply the multiple laws and multiple (and unnamed lead) ministries involved in expropriation
- Overly broad definitions of “**public purpose**”:
 - national defence, urban infrastructure and infrastructure development (these are usual reasons for expropriation, but not well defined in LAARL).
 - two very broadly worded justifications for using the extraordinary government power of expropriation which open the process to potential misuse and corruption and for use for private sector projects that should proceed on a willing buyer-willing seller basis.
 - *“projects ... in accordance with the national economic policy;”*
 - *“socioeconomic development projects as set out in the National Plan Law.”*
 - No in-depth cost-benefit analysis to test “public purpose” required as under the Indian Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (only *“reviewing whether or not the proposed land acquisition serves the interests of the State and people”*)
- **Does not require consideration of alternatives:** locations, minimization of land take or alternatives such as leasing not expropriating
- Lack of clarity on stakeholder consultation
- Two-step investigation process and interaction with E(S)IA process is unclear

Unclear LAARL interaction with EIA process

Appears to set out a two-step investigation process, but the difference between the two steps is unclear

- Step 1: requires submission of EIA and SIA (sic) and resettlement and rehabilitation plans (RRP), as a part of the proposal from the Government Department proposing the expropriation
 - unclear whether any and all expropriation projects require an ESIA or only if they meet the threshold requirements set out in the Environmental Conservation Law (ECL) and EIA Procedures and/or Myanmar Investment law
- Step 2: appears also to require review of E/SIA, RRP

Unclear if LAARL overrides existing environmental law

- Article 7 of the 2015 EIA Procedure (*‘Projects that involve Involuntary Resettlement or which may potentially have an Adverse Impact on Indigenous People shall comply with specific procedures separately issued by the responsible ministries. Prior to the issuance of any such specific procedures, all such Projects shall adhere to international good practice (as accepted by international financial institutions including the World Bank Group and Asian Development Bank) on Involuntary Resettlement and Indigenous Peoples.’*)
 - Is LAARL the “specific procedure”? If so, this would override the requirement to apply international standards.
- ECL/EIA requires Project Proponent to bears full legal and fiscal responsibility for adverse impacts on project affected people and livelihood restoration *‘until they have achieved socio-economic stability at a level not lower than that in effect prior to the commencement of the Project, and shall support programs for livelihood restoration and resettlement in consultation with the PAPs, related government agencies, and organizations and other concerned persons for all Adverse Impacts’*.
 - This requirement under the ECL is wider than the fiscal responsibility provisions in the LAARL. In addition, the LAARL does not contain any clear statements on legal responsibility.
- Project Affected Person (PAP) under the EIA Procedure has a broader definition than “Affected Persons” under LAARL.

Gaps in definition of ‘affected person’

- LARRL identifies two groups of “affected persons” who have some legal entitlements:
 - *Landowners*
 - *Persons related to the acquired land.*
- Project affected people (PAPs) not covered by these 2 definitions who are vulnerable to having land expropriated without compensation include:
 - Informal settlers with informal tenure rights but who may have been on the land for generations in some cases – of which they are likely millions in Myanmar, in urban and rural areas
 - Those displaced by conflict who have restitution rights.
 - Other communities who rely on customary tenure but are not “ethnic nationalities.
 - Land held or used collectively/communally.
- Landowner includes “[a] person who is accepted by local community and recognized by the Nay Pyi Taw Council or relevant Region or State Government as the owner according to customary practices of ethnic nationalities, though he/she has no legal document.” This is problematic because it:
 - requires recognition by the Region or State Government (there is not yet a definition of customary tenure in Myanmar land law)
 - does not recognise the nature of customary or collective ownership, as determined by communities.

Concerns about compensation provisions in LARRL

- Insufficient protections for Landowners while negotiating compensation
- No protections for Persons Related to the Acquired Land
- LARRL compensation provisions do not meet international standards, and are less than the 1894 Law.
- LAARL does not cover compensation for:
 - Impacts resulting from restrictions (rather than outright acquisition) on land use or on access to land.
 - Improvements made to the land.
 - Other physical assets besides buildings.
 - Other types of plants besides the defined categories of standing crops (trees, shrubs, etc that have economic value as well).
 - Other types of animals besides livestock (i.e. fish ponds).
 - Loss or restriction of access to resources such as water, non-timber forest products, grazing, etc. which may be important for maintaining livelihoods for many communities.
 - Social infrastructure.

Resettlement provisions have gaps, do not meet international standards

- Landowners can choose to participate in resettlement and rehabilitation programmes; Persons Related to the Acquired Land cannot.
- Resettlement package appears (according to LARRL) to be limited to the market price of the acquired land and buildings (definitely not international standards).
- Different parts of the Law cover resettlement and rehabilitation schemes (and do not all match up)
- Some of the kinds of entitlements in IFC Performance Standard 5 are included but they do not equate to PS 5 or broader human rights standards.
- No provision for ensuring security of tenure over land allocated to those resettled
 - i.e. no mention of whether those resettled will receive land ownership or land use documents over new land

Concerns about remedy

- **Expropriations are not subject to judicial review and there are limited processes to manage objections**
 - Does not provide for an independent grievance handling mechanism separate from the government bodies making the decisions but quicker and more accessible than the courts
 - Only demarcation, compensation and allocation can be challenged in court (but only via an application made to the Land Acquisition Implementation Body): the acquisition itself cannot be challenged in court
 - Union Government can reclaim all or part of the land due to “*lack of implementation of or failure to implement resettlement and rehabilitation schemes in line with the agreed standards,*” but no remedies for those who may be affected by that incomplete rehabilitation processes

Conclusion: MCRB Recommendations

- MCRB believes
 - implementation of the LARRL should be put on hold
 - It should await adoption of the National Land Law
 - the 2019 LARRL should then be revised to create a single land expropriation law that is fair, transparent, protects human rights, and is aligned to Myanmar land and environmental laws, inter alia.
 - The revised law should be developed with full consultation and aligned to international standards.
- In the meantime, **project proponents and EIA consultants** involved in expropriations and resettlement should address the gaps in the LAARL identified by referring to the 1894 Act, 2015 EIA Procedure and applying international standards, and in particular
 - **IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement (PS 5) and Performance Standard 7 on Indigenous Peoples (2012)** apply to IFC-financed projects but serve as widely accepted references on compulsory land acquisition and involuntary resettlement for projects involving the private sector.
 - **UN Guiding Principles on Business and Human Rights (UNGPs) (2011)**
 - **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGTs) (2012)** - set out principles and internationally accepted standards for practices for the responsible governance of tenure.
 - **Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles) (2007)** - developed by the UN Special Rapporteur on Adequate Housing to assist states in developing policies and legislations to prevent forced evictions.

Thank You!

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**Coming soon! MCRB's revised 'Land,
Business and Human Rights Briefing Paper'**

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Law 2019 – One Step Forward, Two Steps Back?**

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