

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

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Abstract

Myanmar adopted the Land Acquisition, Resettlement and Rehabilitation Law (LAARL) in 2019, replacing the colonial era 1894 Land Acquisition Act. It sets out a new legal framework for most, but not all, compulsory land acquisitions. The compulsory acquisition of land by governments for public purposes is a normal function of government, but one that overrides property rights and that can override human rights if not designed and conducted in line with international standards. Accompanying physical and economic displacement can result in long-term impoverishment and hardship unless properly managed. The Law therefore needs to strike an important balance between protecting land-owner and land-user rights while ensuring an effective and equitable process for compulsory acquisition in the public interest. Land tenure in Myanmar is particularly complex, governed by a patchwork of over 50 different laws, often overlaid with customary land tenure systems and practices. This complexity is not reflected in the new Law. While the Law takes several important steps forward, notably in linking requirements on resettlement and rehabilitation to compulsory acquisition, it takes further steps backwards. In addition, it is unclear whether the 2019 LARRL represents the 'specific procedure' referred to in the EIA Procedure (Article 7) which needs to be clarified. It could have provided some reassurance to tenure rights holders and investors alike by aligning with international standards on land tenure, resettlement and human rights. Instead, it contains numerous internal inconsistencies and significant gaps and as a result, project proponents and EIA consultants in Myanmar relying on government implementation of the 2019 LARRL to guide any resettlement process associated with their investment run the risk that the project will not be conducted to established international standards which are increasingly expected. They are therefore advised to address any gaps by referring to the international standards mentioned in this article.

Keywords

Land acquisition; public purpose; compensation; resettlement; IFC Performance Standard 5; Environmental Impact Assessment; Resettlement Action Plan; Myanmar.

Myanmar needs one updated expropriation law as it has been relying to date principally on the colonial era 1894 Land Acquisition Act that governed compulsory land acquisition (expropriation) in Myanmar, and until recently in India as well. The law should be: (i) grounded in the National Land Use Policy (NLUP); (ii) cover all expropriations; (iii) set out clear processes that allow expropriations to proceed efficiently but only when truly in the public interest; (iv) while also ensuring respect for the rights of those affected; (v) through fair and transparent procedures that have as their objective improving the situation of any affected by the expropriation. The Government's belated but welcomed initiation of steps to implement the NLUP could have provided an important opportunity to develop a compulsory acquisition law that was aligned with the NLUP, that drew on consultations that brought to light key stakeholder concerns and was aligned with the forthcoming National Land Law (NLL). As such, the better option would have been to develop a new, comprehensive land acquisition act as part of the NLUP implementation process launched in 2019 that is expected to include some measure of land law harmonisation. Instead, the Government adopted the Land Acquisition, Resettlement and Rehabilitation Law (LAARL or the Law) in 2019 (although the Law still not in force as it is awaiting a Presidential notification). The Law has therefore added to the complexity

of overlapping land laws in Myanmar, rather than contributing to land law harmonisation. In addition, as elaborated below, it does not provide sufficient clarity on the expropriation process, lacks sufficient protections for land owners and land users, has several significant gaps and as such, may discourage investment in sectors that rely on expropriation, such as infrastructure.

Given the significant, and at times irreversible, disruption expropriation causes to people's lives, it is an extraordinary government power that should be limited to projects that are truly in the collective public interest and where the negative impacts on all those affected can be managed, with a view to improving the situation of those who are subject to expropriation. Expropriation laws should set out narrowly defined "public purposes" that allow the government – and ideally a court -- to review whether a project is indeed in the public interest. India adopted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Indian LARRA), that is considered by many land and resettlement specialists to include many positive provisions. Given the shared antecedents of the 1894 Law, Myanmar should have looked to the Indian LARRA as a useful model and to the following international standards in developing an expropriation law that better balanced the public interest, land tenure rights and the interest of responsible investors. These four international standards reflect and build on relevant human rights standards – the right to housing as part of the right to an adequate standard of living in particular - set out in the International Covenant of Economic, Social and Cultural Rights that Myanmar ratified in 2017.

1. **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGTs) (2012)** serve as an international reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure.
2. **Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles) (2007)** were developed by the UN Special Rapporteur on Adequate Housing to assist states in developing policies and legislations to prevent forced evictions.
3. **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.
4. **The UN Guiding Principles on Business and Human Rights (UNGPs) (2011)** are the expected global standard of practice that is now expected of all states and businesses with regard to business and human rights.

SUMMARY OF THE LAND ACQUISITION, RESETTLEMENT AND REHABILITATION ACT (2019) (LARRL)

The LARRL will govern most but not all compulsory land acquisition in the country, with some important exceptions, and 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 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 as the Union Government has final decision-making over expropriation

The LARRL improves on the 1894 Law by:

- includes a definitive list of "public purpose" categories for which expropriation can be used
- providing more details on an 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 of the environmental and social impacts of projects to be carried out on the expropriated land

- incorporates the involvement of experts into the process
- requires more transparency in the process

KEY CONCERNS WITH THE LAARL

The LARRL still does not solve the issue of multiple laws and multiple ministries involved in expropriation

The LARRL does not apply to all expropriation processes in the country, thus adding to the patchwork of laws. Expropriation of land covered by the Farmland Law and the Vacant, Fallow and Virgin Lands Law – two of the most significant land laws in the country – will continue to be covered those laws. The expropriation procedures under those two laws are minimalistic at best, leaving land tenure rights holders exposed to vastly different processes and protections, depending on the type of land. VFV land is estimated to cover approximately 30% of lands in the country; only 16% of land is officially recognised as farmland even though approximately 80% of Myanmar’s rural population is dependent on land under long fallow subsistence agriculture.

There is no lead ministry designated to implement the Law – in fact no specific ministries are named at all. The Law sets up a Central Committee comprised of various ministries yet to be designated. This is indicative of the complicated land administration system in the country where no one ministry is in charge. The on-going land reform process under the NLUP provides an important opportunity to make progress on this important issue, with many stakeholders highlighting the importance of a harmonised land administration.

The “public purposes” section of the LAARL include several overly broad provisions that are not tested through a specific cost-benefit or social impact assessment process

The LARRL provides for expropriation for several typical public purposes: national defence, urban infrastructure and infrastructure development. It would be far preferable if the Law defined them even more specifically than it does, but these are common “public purpose” provisions. However, the Law also includes the following two very broadly worded justifications for using the extraordinary government power of expropriation: “*projects ... in accordance with the national economic policy;*” and “*socioeconomic development projects as set out in the National Plan Law.*” These broad categories 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. The Law at least has a closed list of public purposes, rather than allowing the Government to add additional reasons for expropriation as it sees fit.

The LAARL does not require, as does the Indian LARRA, a specific cost benefit analysis to determine whether the potential benefits of the project would outweigh the social costs. It does require “*reviewing whether or not the proposed land acquisition serves the interests of the State and people*” but not to the detailed extent of investigations required under the Indian Law.

The LAARL does not require consideration of alternative locations, minimization of the land take or alternatives such as leasing the land

The Indian LAARA sets out several requirements that seek to minimise expropriation including considering alternative locations for project so that they do not require expropriation, specific examination of whether the proposal involves the minimum land take necessary and allows alternatives to expropriation such as leasing, rather than expropriating the land. The LARRL does not include any of these safeguards.

It is difficult to understand the step-by-step process in the LAARL but it includes important studies

The Law appears to set out a two-step investigation process which is useful, if used effectively – i.e. if preliminary studies and inquiries are undertaken to make a decision about whether expropriation should proceed considering the social costs, followed by more detailed investigations, once that decision has been made. This does not appear to be the intent under the Law. The Law requires full-fledged environmental impact assessments (EIA), social impact assessments (SIA) and resettlement and rehabilitation plans (RRP) at the very first step -- as a part of the proposal from the Government Department proposing the expropriation. In addition, the procedure as it stands is currently

unclear and appears to re-examine the EIA, SIA and RRP at two steps in the process without clarifying the difference between the reviews. In other words, the LAARL is written in such a confusing way that it is difficult to understand the exact sequence of events and how the different investigations differ from each other.

On the positive side, the Law requires these studies as they are important for understanding the environmental, social and human rights impacts of a project and for determining if the proposed project is in the public interest. The Law sets out a process for verifying them through on the ground investigations by the specialised bodies set up by the Law (Land Acquisition Implementation Committees and Resettlement and Rehabilitation Implementation Committees) that are to include officials from the relevant government departments and organizations, Landowners, local representatives, ethnic representatives, and experts, for the purpose of implementing the processes of land acquisition. However, there is no mention of civil society organisations participating in the bodies.

It is not clear how the LAARL interacts with the Environmental Impact Assessment Process

As noted above, the LAARL requires an EIA, SIA and where relevant, an RRP. However, it is not clear if the LAARL is meant to override the following provisions in Myanmar's environmental laws:

(i) The threshold requirements for an EIA/SIA set out in the Environmental Conservation Law (ECL) (2012) and the EIA Procedures (2015) – i.e. whether any and all expropriation projects require an EIA and SIA or only if they meet the threshold requirements set out in the ECL and EIA Procedures.

(ii) Article 7 of the 2015 EIA Procedure says that *'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.'* The LAARL does not state whether it is the "specific procedure" referred to, thereby overriding the requirement to apply international standards.

(iii) The requirements that the project proponent 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.

(iv) The scope of who should be considered for resettlement as "Project Affected Person" or "PAP" under the EIA Procedure has a far broader definition than "Affected Persons" under the LAARL.

There are important gaps in the groups covered by the LAARL

The Law identifies two groups of "affected persons" who have some entitlements under the Law: "*landowners*" and "*persons related to the acquired land*". This may have actually narrowed the scope of persons covered as compared to the 1894 Law which applied the vaguer and slightly circular but also broader definition of "*persons interested*" that covered "*all persons claiming an interest in compensation.*"

Landowners must have "strong evidence" of ownership – which is not defined and could be subject to widely varying interpretation. Given the challenges in documenting land ownership in Myanmar, this may be challenging for many. The definition of "landowner" does include a nod to the many people in the country with customary tenure, as a 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.*" However, this requires recognition by the Region or State Government – which introduces several additional layers of government in the decision-making – and a great deal of uncertainty about who will be recognised. In addition, these provisions do not recognise that customary law ownership is grounded in a community's unique and intimate connection to the land nor, significantly, does the Law appear to protect collectively ownership by communities. Customary tenure is currently not protected under Myanmar law (it has been excluded from the application of the amended VFV Law); that is likely to happen only when the National Land Law is adopted which is still several years away. Once it is, these government approval steps should not be necessary.

It is very difficult under the LAARL to determine what each group is entitled to and under which conditions. The Law uses a number of different terms —“*compensation*,” “*damages*” and “*harmful effects*” – which is justifiable if they are meant to apply to different groups or different situations. However, the Law does not use the terms in a clear or consistent way. While it is fairly clear that “*landowners*” are entitled to compensation for land and can access to resettlement and rehabilitation programmes, it is not clear what “*Persons Related to the Acquired Land*” are entitled to.

There are a number of types of people not covered by these definitions:

- (i) 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.
- (ii) Other communities who rely on customary tenure but are not “ethnic nationalities.
- (iii) Land held or used collectively/communally.
- (iv) Those displaced by conflict who have restitution rights.

Because the Law does not recognise them, they are vulnerable to having their lands expropriated without any compensation, thus pushing them deeper into insecurity and poverty and potentially adding to the significant population of landless already present in the country. This is exacerbated by the registration and titling system in Myanmar that is difficult to access, costly, and time-consuming, thus preventing many from establishing more formal claims to land. The Law therefore fails to recognise or reflect the realities on the ground of the many who do not have any form of security of tenure or the capacity to claim it but who, as a result, are likely to be very negatively affected by expropriation procedures.

As such, the scope of application of the Law is more limited than international standards. The VGGT require that states “*respect all legitimate tenure rights holders, especially vulnerable and marginalized groups, by . . . providing just compensation in accordance with national law.*” The VGGTs recognise that the state must define who falls within the definition of “legitimate tenure rights holders,” but calls on states to look beyond formally recognised rights. The Law is also more limited than IFC PS 5 that entitles those without formal, traditional or recognisable usage rights to compensation, replacement or retention of non-land assets and to relocation through a resettlement process that provides security of tenure in the new location and restoration for lost livelihoods.

There are insufficient protections for Landowners while negotiating for their compensation and there are no provisions for Persons Related to the Acquired Land

While the Law notes in the objectives that it seeks to “*to ensure fair compensation and damages for affected persons,*” the procedures and protections for doing so are unclear. It is in principle useful that Law incorporates a process for landowners to negotiate compensation rather than simply putting in place a “take it or leave it” offer by the Government department that wants the land. However, the Law is lacking the necessary safeguards to ensure the process is fair and transparent.

The LAARL does not require that the offer from the Government department should be on the basis of transparent criteria and there is no specific requirement on the Government department to negotiate in good faith. There are no requirements set out in the Law about the procedures to be followed in the negotiation process – for example, whether landowners can be represented (or even better, supported with specialist assistance), whether the results of the negotiations will be formalized in legally binding documents signed off by all parties, minimum lengths of time, format and content of negotiations, etc. While the Law helpfully includes some provisions on vulnerable groups, it does not specify that support should be provided to vulnerable groups during negotiations. In other words, there are no protections to ensure some equality of arms during negotiations nor due process. This can make the procedure susceptible to corruption and abuse.

As the acquisition can proceed even where the Government department and landowner are unable to reach an agreement, this provides little incentive to Government departments to negotiate in good faith or otherwise. When combined with the strict criminal penalties for “*obstructing, hindering or deterring the body or person performing the functions assigned under this Law,*” the lack of minimum standards for the negotiation process may result in significant pressure on landowners to agree with whatever is proposed by Government departments.

Significantly the Law is entirely silent about what “*Persons Related to the Acquired Land*” need to do to secure their entitlements.

There is not sufficient clarity around consultation of stakeholders

The Law includes some general provisions on consultations with “*the public*,” which was quite lacking under the 1894 Law, so this is welcome. However, these provisions are too general, too unclear and do not meet international standards on meaningful consultation:

- (i) There is no requirement for consultations with stakeholders by the Government department proposing the expropriation, even though they must present a RRP, an EIA and SIA as part of their proposal as an initial step.
- (ii) There are repeated discussions with stakeholders on the same types of studies at two or three times during the procedure, without clarifying the differences in the discussions that may cause unnecessary stress and raise social tensions.
- (iii) There are no specific requirements with respect to consultations with vulnerable groups
- (iv) There do not appear to be any specific consultation processes on the development of the RRP (either before or after the Government department develops the RRP), or importantly any requirement to provide options for resettlement to those affected by resettlement and consult with them about their choice.
- (v) There appears to be little consideration of or consultation with the host community.
- (vi) As to consultations with ethnic nationalities, the Cabinet must seek the agreement of the Union Parliament before acquisition of land used by *tain-yin-tha* (ethnic nationalities) for traditional purposes, sacred sites, and land with historical significance can take place. However, this does not provide for Free Prior and Informed Consent (FPIC). It also does not reflect the protections in the 2015 Ethnic Rights Protection Law.

MONREC has developed detailed guidance on public participation as part of the ESIA process that provides important principles and process steps that spell out in more detail what “meaningful” consultation means, in line with international standards. These could be usefully adapted to apply to the expropriation process.

The compensation provisions do not meet international standards and are less than the 1894 Law standards

Significantly, the Law has several important gaps in coverage of assets that are important to communities and covered in other international standards, including the VGGT and IFC PS 5. It does not cover:

- (i) Impacts resulting from restrictions (rather than outright acquisition) on land use or on access to land.
- (ii) Improvements made to the land.
- (iii) Other physical assets besides buildings.
- (iv) Other types of plants besides the defined categories of standing crops (trees, shrubs, etc that have economic value as well).
- (v) Other types of animals besides livestock (i.e. fish ponds).
- (vi) 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.
- (vi) Social infrastructure.

It is unclear if it covers partial loss of lands or assets necessary for livelihood such as in linear projects where partial loss of assets renders the remaining asset unviable.

As to the level of monetary compensation, the Law provides for “market value” without further specifics about how it will be calculated. Where land markets are weak as in Myanmar, this can be very difficult to calculate. While this is a far better starting basis than the assessed tax value, it still does not meet comparative international benchmarks:

- (i) IFC PS 5 requires that loss of assets are compensated at “full replacement costs” which is defined as the market value of the assets plus transaction costs and other assistance, grounded in the recognition that there are costs associated with replacing lost assets.

- (ii) Human rights law refers to “prompt, adequate and effective” compensation – which is more general but seeks to ensure that compensation is able to restore the person to their earlier position.
- (iii) The India LARRA sets compensation at multiples of prevailing market rates (depending on several factors) and provides for minimum norms for the different components of rehabilitation and resettlement programmes.
- (iv) The 1894 Law provided for market value plus 15% addition on the market value, “in consideration of the compulsory nature of the acquisition.”

In addition, it is difficult to understand whether the Law provides for land for land compensation, especially where those affected have land-based livelihoods – or this is only available to Landowners who negotiate for it and whether this is exceptional and only with the approval of the Union Government. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

The resettlement provisions lack important details and do not meet international standards

The LAARL represents a big step forward from the 1894 Law that did not include any provisions on resettlement or rehabilitation. However, as it is now the 21st Century with significant experience to draw from in developing these provisions, the Law lacks the level of detail and clarity to make sure any resettlement is well planned, agreed with those affected and that the appropriate steps are taken before, during and after the resettlement process. The Law also does not use the terminology or concepts typically used in international standards -- ‘Physical Displacement’ and ‘Economic Displacement’ – that would provide a clearer distinction between the different types of programmes needed to respond to these adverse impacts.

As to who is and who is not covered, Landowners can choose to participate in resettlement and rehabilitation programmes but not Persons Related to the Acquired Land. But even for Landowners, coverage by the resettlement and rehabilitation provisions is available only if there are “buildings properly constructed” or businesses conducted on the land and only after negotiating and agreeing with the Government Department that proposes the acquisition. It is not clear if “businesses” cover the activities of self-sustaining smallholder farmers that derive their livelihoods from the land – a crucial consideration in determining whether small-holders who qualify as Landowners are entitled to participate in resettlement and rehabilitation programmes.

As to consultation with those potentially affected, as noted above as well, there are no specific provisions in the Law about consultations on resettlement and rehabilitation, offering alternatives, on-going consultation during the resettlement and rehabilitation process or participation in monitoring, nor consultations with host communities. Participation in the process is considered a core dimension of a rights-respecting resettlement process.

As to the level the resettlement and rehabilitation programmes offered, these appear to have a very significant restriction that is buried in the Law that undermines the whole concept of resettlement and rehabilitation, and has no equivalent in international standards. The Law provides that resettlement package appears to be limited to the market price of the acquired land and buildings.

As to what kinds of facilities and services are covered, different parts of the Law cover resettlement and rehabilitation schemes (and do not all match up) that generally provide some of the kinds entitlements found under IFC PS 5, but not to the scope and level of detail to match PS 5 or broader human rights standards. Significantly, the Law does not provide security of tenure over the land allocated to those resettled. The Law says nothing about ensuring that those resettled are provided with land ownership or land use documents over their new land. Similarly, the resettlement provisions do not include a commitment to improved living conditions or livelihoods or that replacement land should be of ‘equal or greater value’. Instead, the objective of the rehabilitation provisions as set out in the Law to “*restore socio-economic life*” rather than improving livelihoods, as set out in IFC PS 5. IFC PS 5 contains the most specific guidance on what should be covered in livelihood restoration programmes and therefore provide the most comprehensive benchmark for designing the rehabilitation programmes. The Law gives no indication of how important details such as the scope and length of the programmes will be determined - perhaps that too is up to the Landowner to negotiate.

As to vulnerable groups, the Law does, helpfully provide that “*special care and arrange to ensure that their resettlement and rehabilitation activities do not cause any harmful effect on vulnerable groups including women, children, ethnic minorities and traditional owners.*” However, no more details are provided.

As to the timing, the Law allows land acquisition to proceed even before the resettlement site is ready and people are moved, in contrast to international human rights standards and IFC PS 5 that requires resettlement sites, moving allowances and compensation before taking possession. In addition, there are no further provisions or targets for how long the resettlement programmes will be offered. They should be offered until livelihoods and communities are at least restored, if not improved, but as noted above, given the financial cap on the amounts available for resettlement and rehabilitation (market value), that will be the determining factor on timing.

Expropriations are not subject to judicial review and there are limited processes to manage objections

The Law does not provide for an independent grievance handling mechanism that would be separate from the government bodies making the decisions but quicker and more accessible than the courts. This could hopefully be built into the revised set of land dispute mechanisms to be developed under the NLUP implementation process – but that is likely many years down the road. In the meantime, objections are heard at the Region/State level which will make it time consuming and expensive to object; in most cases the District level would be sufficient and more practical as they will have better understanding of the claims.

Currently objections only around demarcation, compensation and allocation can be challenged in court (but only via an application made to the Land Acquisition Implementation Body) but the acquisition itself cannot be challenged in court. This means the executive branch is the sole decision-maker on what is in the public interest and allows wide discretion in expropriating land.

In addition, while the Law contains helpful provisions that allow the State (Union Government) to 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,*” it does not provide any remedies for those who may be affected by that incomplete rehabilitation processes.

Urgent acquisitions may lead to forced evictions if steps are not taken by the authorities to ensure due process

Even the urgent acquisition process should meet basic standards of due process. If it does not, it would be considered “forced evictions” and in contravention of the International Covenant on Economic, Social and Cultural Rights, to which Myanmar is a State party.

CONCLUSIONS

Expropriations and evictions entail significant disruptions to communities and livelihoods. Globally, the overall record on resettlements, even when conducted by experts with resources, is not positive. The process also carries high reputational risks for the authorities, private businesses and investors. The upcoming national dialogues on implementation of the NLUP and the development of the NLL should be used to identify further concerns about the Law and its implementation as the basis for revisions to the Law. Some of those issues will be about tidying up the drafting to make the Law clearer; others will be far more substantive. The upcoming NLUP dialogues provide an opportunity to re-examine key issues and concerns around expropriations and to develop sustainable, balanced solutions that recognise important public interest requirements while also respecting and securing tenure rights. Aligning the Law with international standards on land tenure and human rights will provide reassurance to tenure rights holders and investors alike.

In the meantime, project proponents and EIA consultants in Myanmar relying on government implementation of the 2019 LARRL to guide any resettlement process associated with their investment run the risk that the project will not be conducted to established international standards which are increasingly expected. They are therefore advised to address any gaps by referring to the international standards mentioned in this article.

REFERENCES

- Cernea, M., (2003) "[Impoverishment Risks, Risk Management and Reconstruction: A Model of Population Displacement and Resettlement](#),"
- FAO (2012) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security (VGGTs)
- FAO, (2009) "[Compulsory Acquisition of Land and Compensation](#)," FAO Land Tenure Studies 10
- Norwegian Refugee Council and Displacement Solutions, (2019). "[Addressing Myanmar's Unsettled Restitution Gap](#)"
- IFC (2012) Performance Standard 5 on Land Acquisition and Involuntary Resettlement (PS 5) and Performance Standard 7 on Indigenous Peoples
- IFC (2019) [Good Practice Handbook: Land Acquisition and Resettlement Guidance](#)
- OHCHR and UN Habitat, (2014) [Fact Sheet No. 25/Rev. 1 on Forced Evictions](#)
- MCRB/IHRB/DIHR (2016) [Indigenous Peoples' Rights and Business in Myanmar](#)
- Spectrum, (2017) "[Women & Resettlement: A case study of gender aspects at the Upper Paunglaung Dam](#)"
- UN Special Rapporteur on Adequate Housing (2007) Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles)
- UN (2011) UN Guiding Principles on Business and Human Rights (UNGPs)
- OHCHR, (2015) "[Land and Human Rights: Standards and Application](#),"
- Tagliarino, N.K. "[Encroaching on Land and Livelihoods: How National Expropriation Laws Measure Up Against International Standards](#)," WRI-University of Groningen Working Paper (June 2016)
- World Bank, (Sept 2017) "Towards a Sustainable Land Administration and Management System in Myanmar: Land Sector Needs Assessment; Thematic Policy Notes, Policy Note 5: Property Valuation and Taxation,"
- World Bank, (March 4, 2015) "[World Bank Acknowledges Shortcomings in Resettlement Projects, Announces Action Plan to Fix Problems](#)"
- Government of Myanmar, [Environmental Conservation Law](#) (2012)
- Government of Myanmar, [Environmental Impact Assessment Procedure](#) (2015)
- Government of Myanmar, Land Acquisition, Resettlement and Rehabilitation Law (No. 24/2019)
- Government of Myanmar, National Land Use Policy (2016)