

Framing the Discussion: How land law issues relate to (responsible) business

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National Land Law Reform

Online business consultation consultation
UNDP/MCRB/UMFCCI

17 December 2020

MCRB work related to land includes.....

- First MCRB land briefing paper published in April 2015: Intended to inform companies in Myanmar about land issues from a human rights and responsible business perspective.
- Preparations for an update ongoing
- Land chapters in Sector-wide Impact Assessments (SWIAs) based on field work and implications for companies.
 - Oil and Gas (2014)
 - Tourism (2015)
 - Information and Communications Technology (2016)
 - Mining (tin, gold, limestone) (2018)
 - Oil palm (not yet published) Briefing papers on Biodiversity, Human Rights, and Business (2018)



Relevant government stakeholders

- **Ministry of Agriculture, Livestock and Irrigation (MoALI)**
 - **Department of Agricultural Land Management and Statistics (DALMS)**
 - land registry and cadastral maps
 - **Central Committee for Management of Vacant, Fallow and Virgin Lands;**
 - **Central Administrative Body of Farmland**
 - Chair: Minister; Secretary DG DALMS
- **Ministry of Natural Resources, Environment and Conservation (MONREC)**
 - **Environmental Conservation Department (ECD) – EIA**
 - **Survey Department** - official topographic maps
- **Ministry of the Office of the Union Government (MoUG),**
 - **General Administration Department**
 - land administration; village land, town land, grazing ground etc; compulsory land acquisition; disputes
- **Ministry of Investment and Foreign Economic Relations (MIFER)**
 - **Directorate of Investment and Company Administration (DICA)**
 - issuing of MIC Permits, and Endorsements for foreign investors seeking leases of more than one year.

Some relevant laws

- Land Acquisition Act (1894)/Land Acquisition, Resettlement and Rehabilitation Law (2019)
- Vacant, Fallow and Virgin (VFV) Land Law (amended 2018)
- Farmland Law (2012, amended 2020)
- Law Protecting Farmer Rights and Enhancing their Benefits (2013)
- Transfer of Property Act (1882)
- Restriction on the Transfer of the Immoveable Property Law (1987 amended 2005)
- Myanmar Investment Law (2016) and 2017 Rules
- Myanmar Companies Law (2017) (35% foreign shareholding)
- Ethnic Rights Protection Law (2015) and 2019 Rules
- Environmental Impact Assessment Procedure (2015)
- Condominium Law
- Land and Revenue Act (1879)
- The Village Act (1908 amended 1955 and 1961)
- The Ward and Village Tract Administration Law (2012)
- Industrial Zones Law (2020)
- Municipal Laws
- Special Economic Zones (SEZs) Law (2014)

Sectoral laws

- Mining Law and Rules
- Tourism law etc

Others

- Biodiversity and Protected Areas Law
- Cultural Heritage Law
- Forest Law

Other land-related context

- Myanmar National Human Rights Commission - complaints
- Anti-Corruption Commission – complaints
- Central Reinvestigation Committee on Confiscated Farmlands and Other Lands (headed by VP-2 Henry van Thio)
- Decentralisation to states/regions
- Ethnic conflict, contested areas, Karen National Union land use policy
- 2020 solar tenders
- Ongoing drafting of National Building Code
- Project Bank
- Land Bank (August 2019 Presidential Notification)
- Draft Survey Law

Draft Myanmar Economic Resilience and Recovery Plan

(MoPFI/MIFER – subject to confirmation)

9.4 Expedite the establishment of the **Land Bank** through which State-owned land, property, factories, warehouses and similar assets may be leased or rented efficiently and transparently (MIFER)

9.5 Promote online platforms through which privately owned real estate and properties may be leased/rented

10.3 Use the **Project Bank** to solicit the development of industrial parks via BOT contracts, the development of separate (but adjacent areas) as value-added industrial parks where experienced value-added industries may be offered reasonable price incentives (varied based on investor experience and secured market share)

10.4 Screen and assess all **vacant lands** with/without built infrastructure (e.g. factories, warehouses and similar) currently under the control of the MoPFI and/or State/Region Governments for inclusion in the Land Bank such that these assets may be developed via the Project Bank for use by value-added industries

13.2 Enhance land registration systems via appropriate digital means and strengthen rural households' land tenure and

Responsible Business Risks

- Dealing with land grab legacies, unresolved land disputes, internally displaced people's land
- Difficult to determine land ownership. Majority of land owners have incomplete or unregistered chain of ownership. Land of effective land cadastre
- Urban/peri-urban population – hundreds of thousands living in informal settlements/slums; lack of written documentation/insecure tenure rights. Lack of low cost housing. Speculation, particularly in urban areas and industrial zones
- Lack of proper customary tenure arrangements/lack of written documentation puts land users/farmers at risk of land expropriation.
- Most agricultural land ownership registered under head of household, typically a male. Difficulties for women farmers because of male-dominated system of decision-making.
- Government has wide discretion to expropriate land 'in the public interest'. Limited safeguards for those whose property is being acquired including lack of detailed regulations on compensation levels or criteria about what compensation

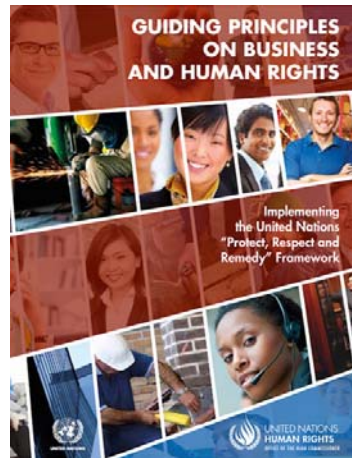


What MCRB usually recommends to companies on land

- Be aware of **history and context of land use and acquisition** and respond to it responsibly. ‘**Ground truth**’ the land history; don’t rely on assurances from government or lawyers. Don’t rely solely on cadastral records, including for compensation. Consider carefully how best to address **legacies** and past impacts, drawing on international best practice.
- Seek to respect rights (**legal or customary**) of those historically owning/using land. Ensure that due diligence addresses the risks of speculation and new arrivals. Negotiate a fair deal that does not seek to exploit communities’ possible lack of information or documentation of owners.
- Conduct **detailed due diligence** through direct consultation with villagers and community leaders, as well as local authorities. Establish relationships with communities as soon as possible. Use mitigation hierarchy: avoid, minimize, compensate/offset. Develop operational grievance mechanisms
- Pay particular attention to at-risk groups including **women and landless people**. Understand additional considerations, standards, and expectations in **ethnic minority** areas. Take **conflict-sensitive** steps in considering land transactions in conflict-affected areas. Undertake enhanced due diligence in Rakhine State involving land.

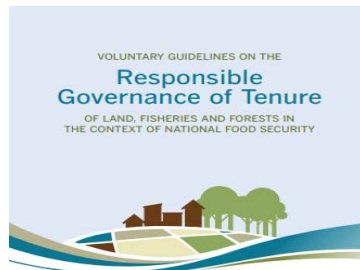


International Standards



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BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT-BASED EVICTIONS AND DISPLACEMENT

Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

A/HRC/4/18

Performance Standards



5 – Land

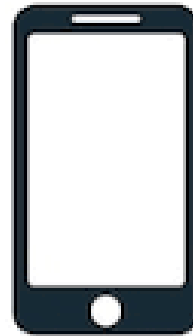
7 – Indigenous Peoples



Discussion

- What are the well-functioning / badly functioning aspects of current land laws and administration from your perspective (and why)?
- What gaps, enforcement and business integrity issues in current land laws does your business and/or sector experience?
- What should government/the legal framework do to address these issues? What do you want to see changed? Please be as specific as you can
 - Amendments to law
 - Interpretation of law
 - New law
 - Processes
 - Etc
- What business organisations should be involved in the National

- First, some online polling to get you 'talking'
- Anonymous, so please express yourself
- Then – a 10 minute coffee break
- Then please come back for further 'Open up your House Rule' discussion (no



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Use the code
98 75 13 6



10 minutes, please

Discussion

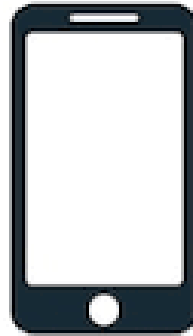
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 - Interpretation of law
 - New law
 - Processes
 - Etc
- What business organisations should be involved in the National Land Law reform process?

National Land Law reform sub-working groups

1. Strategy, Union Visions, Sync, Coordination
2. Maps, Data, Spatial, Land Classification
3. Land Disputes, Cases, Conflict in Laws
4. Customary Tenure
5. Financing Model, Tax, Revenue
6. Budget for the process (Union & Donors - Support Tech, Finance and Personnel inputs coordinate)
7. Portal, Outreach

Any final thoughts/recommendations?

If you want to share them anonymously go to Mentimeter.....



Go to
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Or just put them in the chatbox.....

Thank You!
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