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## Chapter 4.7 Land



# Chapter 4.7

## Land

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### A. Context

Land is often the most significant asset of most rural families in Myanmar. An estimated 70% of Myanmar's population lives in rural areas and is engaged in agriculture/aquaculture and related activities.<sup>489</sup> Many farmers use land communally (that is, share the use of land amongst themselves), establishing longstanding land use patterns informally by custom rather than law.<sup>490</sup> These customary land tenure systems are especially prevalent in upland areas inhabited by ethnic minorities. Because much of Myanmar's rural land is not formally registered, land use is characterised by weak or non-existent protection of usage rights and tenure for small-scale farmers, communities, ethnic minorities and other groups at risk of land expropriations.

Since the recent political reform process began in 2011, there has been consistent reporting of protests against 'land grabs'<sup>491</sup> in many parts of the country in the press and by non-Governmental organisations. In addition, large-scale land allocation by the Government has increased significantly in the past decade.<sup>492</sup> While some of these 'land grabs' are new, many of them originate in land expropriations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. Some land in Myanmar has been returned to farmers and others since the reform process began. However, there are still tens of thousands of rural people who have lost their land due to Government expropriation. Moreover, dozens of farmers and land rights activists have been arrested recently for peacefully protesting against land expropriations by the authorities.<sup>493</sup> There have also been several land disputes in major metropolitan and semi-rural areas. For example in the Thilawa Special Economic Zone near Yangon, dozens of families have had their land

<sup>489</sup> See UNDP, "[About Myanmar](#)" and CIA, "[World Factbook, Burma, Economy](#)" (last accessed August 2015).

<sup>490</sup> Transnational Institute, "[Access Denied](#)" (May 2013), pg 11.

<sup>491</sup> The term 'land grab' in Myanmar is used to cover a wide range of situations, including land disputes and government/military expropriation of land for companies and its own use.

<sup>492</sup> OECD, "[OECD Investment Policy Reviews: Myanmar 2014](#)" (March 2014), pg. 324.

<sup>493</sup> See for example Amnesty International "[Annual Report 2014/2015, Myanmar country entry](#)" (Feb 2015).



expropriated by the Government and have protested about the deprivation of livelihoods and inadequate conditions in their resettlement area.

In addition to the significant confusion caused by different types of land tenure systems in the country, Myanmar has large displaced communities that retain a claim to their lands, even though they do not currently have possession. Some ethnic minorities in the east of the country have been displaced for decades, leading to very weak tenure over their original land, which they may not have occupied for years, and may now be used by others. More recently, since mid-2011 some 200,000 ethnic minority civilians have been displaced in northern Myanmar as a result of ongoing internal armed conflict, and almost 140,000 have been displaced by inter-communal violence in Rakhine State since June 2012. These newly displaced populations may not be allowed to occupy and use their land when they attempt to return to it.

As a result, ascertaining the provenance of land ownership in Myanmar is not straightforward: existing land records may not reflect true ownership; many people do not have sufficient documentation of their land rights; and many have claims to land through customary land tenure systems which are not officially recognised by the Government.<sup>494</sup>

### Land Use for the Telecommunications Sector

ICT companies will usually lease (or for some local companies potentially purchase) land for their operations, whether it is for offices, ICT parks or infrastructure development. Compared to some of the sectors increasing their operations in Myanmar such as agriculture and mining, the ICT sector has a smaller and far more dispersed land footprint. The infrastructure is characterised by small tower sites (although nearly 8,000 towers are planned for 2015) as well as over 5,000 kilometres of narrow trenches for laying cable and fibre. The remainder of the footprint is essentially office space for day-to-day operations across the sector, some of which has been grouped together into 'ICT Parks'. There is negligible manufacturing in the sector so this part of the value chain currently has no footprint to speak of but could increase. For the most part, the 'over the top' services sector does not have a physical presence in the country. SIM cards and equipment are distributed through a myriad of small shops, often selling a wide range of goods.

Tower construction companies acquire land for towers by leasing the land from the owners for a long-term period of typically 15 years.<sup>495</sup> A mobile operator publicly commented that the Government had set a fixed price for leasing land held by ministries or administrative bodies (such as Yangon City Development Corporation in Yangon) if leased for tower construction.<sup>496</sup> The specific price is not public.

As detailed below, companies ask permission from the owners and their immediate neighbours to rent the site and then construct and operate the towers. Some of the land being used for towers is paddy land,<sup>497</sup> which is protected for food security reasons and cannot easily be converted to other uses. Moreover, permission for conversion of paddy land on which rice is being grown needs to be granted by the national level authorities

<sup>494</sup> For a more detailed discussion of land issues, see: Myanmar Centre for Responsible Business, "[Briefing Paper on Land Issues in Myanmar](#)" (March 2015).

<sup>495</sup> Myanmar Times "[Ooredoo builds 100 towers as launch looms closer](#)", (26 May 2015).

<sup>496</sup> Telenor, "[Myanmar Sustainability Briefing](#)" (12 May 2015).

<sup>497</sup> [Myanmar Farmland Management Rules](#)

before it can be reclassified for other uses. This slows the process considerably, and increases the opportunity for officials to ask for bribes as the requests move through various levels of bureaucracy. Tower companies have been helping landowners to get the land reclassified from paddy land to grant land<sup>498</sup> so that it can then be leased out.

Some of the land used for towers is farmland (other than paddy land) which also requires a conversion process to change the designation, but this can be done at the state level. Even in urban areas, the lack of proper land documentation is causing delays. Companies and authorities are also confused about what documents are needed to change land registration status and to register long term leases, resulting in delays.

The companies laying fibre/cable are digging trenches, laying fibre/cable, then covering the trenches. As such, they are not entering into lease arrangements but instead may be making a one-time payment for the disturbance of the land, usually without further formal arrangements.

Several tower companies have joined together to highlight identified bottlenecks in the current processes to use of farmland for the placement of towers, the registration of leases and the use of Government land, and have proposed several solutions to the authorities to expedite the process.

### *World Bank Guidance for Land Use by the Telecommunications Sector*

The World Bank is currently financing and implementing a \$31.5 million telecommunications sector reform project in Myanmar that includes a programme to extend coverage in selected remote pilot locations that are commercially non-viable for operators to service without a one-time subsidy and are not part of the networks being rolled out by the licensed operators.<sup>499</sup> It has a set of environmental and social safeguard policies<sup>500</sup> that apply to most World Bank projects and that are applicable to this telecommunications sector reform project. As part of the environmental and social management framework (ESMF)<sup>501</sup> for the project, the World Bank developed a set of land lease guidelines for the roll out of pilot telecommunications infrastructure in rural areas<sup>502</sup>. All sites where telecommunication masts/ towers will be installed to extend connectivity will be selected and managed in line with the ESMF.

As the ESMF notes “[r]ecognising that land markets are poorly developed and there are few or no experiences with land leasing arrangements for telecommunications towers and masts in Myanmar, principles for such arrangements have been developed under this ESMF” because “tenure rights are rapidly evolving in rural Myanmar”. The Guidance notes that because land tenure is not fully established in rural Myanmar and rural

<sup>498</sup> Grant land is “Owned and allocated by the state, grant land is common in cities and towns, but rare in village areas. The state may lease grant land out for extendable periods of ten, thirty, or ninety years. Grant land is transferable, is subject to land tax and may be reacquired by the state during a lease period in accordance with laws governing compulsory acquisition.” USAID, “[Property Rights and Resource Governance: Burma](#)” (date unknown) pg. 10-11.

<sup>499</sup> World Bank, [Telecommunications Sector Reform Project](#) (last accessed August 2015).

<sup>500</sup> World Bank, “[Consultations on the Second Draft of Environmental and Social Framework](#)” (1 July 2015).

<sup>501</sup> [Myanmar - Telecommunications Sector Reform Project: environmental and social management framework](#) (2013). The Environmental and Social Management Framework describes the baseline project environmental conditions and impact, provides guidance for environmental and social assessment processes.

<sup>502</sup> World Bank, “[Myanmar - Telecommunications Sector Reform Project: environmental and social management framework \(Vol. 2\): Land lease guidelines](#)” (English) (2013).

populations may have informal claims to the land, care should be exercised to clarify if indigenous claims to lands identified for housing infrastructure exist – and whether any individuals use the land to gain a livelihood – before a decision is made to determine where infrastructure should be built. The series of steps set out are intended to mitigate impacts on rural communities.

When building their infrastructure in accordance with the ESMF, the rural telecommunications service providers are expected to make a long-term lease contract on a commercial basis with willing land owners/occupants. The procedures require verification of all land leases being carried out with appropriate arrangements and on a commercial basis, without coercion or under duress, and with no legacy issues in any land transactions. If land markets are underdeveloped in the pilot area, as will be the case for most pilot sites, the lease fees should be set at a price that will be broadly sufficient to cover the long-term livelihood loss as a result of the leasing.<sup>503</sup> The project will not ask the Government to acquire land by exercising its power of eminent domain, nor will the Government be asked to move people involuntarily. The rural telecommunications service providers will be expected to put in place feedback mechanisms to handle grievances and compliance will be monitored by the World Bank task team.

### Land Policy Framework

Reform of land policy and law in Myanmar remains incomplete. The current land regime is characterised by a patchwork of new and old laws that often leads to overlap, contradiction and confusion for current and prospective owners and users. Moreover, the land registration system is considered inefficient and insufficient, with complex requirements and lack of benefits for registering land.<sup>504</sup> The cadastral (land mapping) system is outdated, which further exacerbates land disputes, as land classifications and mapping used by different Government ministries may overlap nor reflect current land use patterns.

Land in Myanmar is classified into several different categories, including Freehold Land, Grant Land, Reserved Forest Land, Farmland, Grazing Land, Religious Land, among others. This means for example that a plot of land may be classified on maps as Reserved Forest land, when in fact the land may now be used as farmland, without a change in the classification.<sup>505</sup> As a result, land tenure rights – the right to use, control, or transfer land<sup>506</sup> – are often insecure, posing a major problem.

The new land laws<sup>507</sup> do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their ‘usufruct’ rights (i.e. individual rights to use and enjoy the property of another).<sup>508</sup> 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

<sup>503</sup> Ibid.

<sup>504</sup> OECD, “[OECD Investment Policy Reviews: Myanmar 2014](#)” (March 2014), pg 108.

<sup>505</sup> 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), pg. 7-10.

<sup>506</sup> FAO “[What is land tenure](#)” (last accessed September 2015).

<sup>507</sup> Myanmar 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).

<sup>508</sup> “...the written and unwritten rules which have developed from the customs and traditions of communities...” Ibid. pg. 15-16.

minority rights are protected.<sup>509</sup> In addition, 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 may nonetheless be affected by displacement. They should be compensated for at least economic displacement if they have lost their livelihoods. Further livelihoods support could be addressed through social investment programmes.

It is expected that demands for land will inevitably increase with further economic development and investment. There is a recognised need in Myanmar for a written National Land Use Policy and comprehensive umbrella national land law. To that end, a working group of a Government committee which included civil society representation and external experts formulated a draft Land Use Policy. The 6<sup>th</sup> Draft of the Policy was published in May 2015 for further consultations among a wide group of stakeholders.<sup>510</sup> The draft National Land Use Policy is expected to be sent to the President after further meetings took place at the end of June 2015.<sup>511</sup> The Policy will reportedly guide the drafting of an umbrella Land Law, also expected to be discussed during public consultations. However, a new “*Land Law*” will not be passed by the current Parliament in 2015. While the development of such an overarching policy document is a needed and welcome step, civil society in Myanmar fear that poor farmers’ land rights will not be adequately protected under the new Land Use Policy.<sup>512</sup>

## Legal Framework for the Acquisition or Lease of Land<sup>513</sup>

### *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.<sup>514</sup> The Government can carry out compulsory acquisitions in the state or public interest (see below). A private investor may acquire land or land use rights from either the Government or from a private land owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either the 2012 *Vacant, Fallow and Virgin (VFV) Land Management Law* or the 2012 *Farmland Law* – 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. The law sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land.

<sup>509</sup> Ibid, pg. 23-24.

<sup>510</sup> 6<sup>th</sup> Draft of the National Land Use Policy, English version, May 2015, on file with IHRB/MCRB.

<sup>511</sup> Myanmar Times “[Delayed land-use forum scheduled for June](#)” (29 April 2015).

<sup>512</sup> Irrawaddy “[NGOs, Farmers Concerned After Reviewing Draft Land Use Policy](#)” (1 November 2014).

<sup>513</sup> For a more detailed discussion of the legal framework for acquiring land, see Myanmar Centre for Responsible Business, “[Land Briefing](#)” (March 2015).

<sup>514</sup> *Myanmar Constitution* (2008), Articles 35, 37, 356 and 372.

### *VFV Lands Management Law and the Farmland Law*

The 2012 *Vacant Fallow and Virgin (VFV) Lands Management Law* and *VFV Rules* are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organisations have pointed out that land regarded as VFV may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices, but which the Government classifies as “*vacant*” under the VFV. The complicated registration procedures under the 2012 *Vacant Fallow and Virgin (VFV) Lands Management Law* and the 2012 *Farmland Law* mean that smallholder farmers, a large percentage of Myanmar’s population, will struggle to register their land tenure claims and are at risk of having their land registered by more powerful interests. 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. This has potential to create or exacerbate tensions and disputes.<sup>515</sup>

With respect to farmland, the 2012 *Farmland Law* makes clear that applicants who are individuals must be citizens (Articles 6(a)(v), 7(a), (iv)). Under the 2012 *Foreign Investment Law* (FIL), there are restrictions on foreign investment in agriculture under Article 4(h), but Article 5 provides for the Myanmar Investment Commission, with approval from the Government, to allow investment.<sup>516</sup> The 2012 *Farmland Law* also allows for the repossession of farmland “*in the interests of the state or the public*”<sup>517</sup> provided that “*suitable compensation and indemnity is to be paid and 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*

Private investors may 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.<sup>518</sup> The Government may however allow exemptions from these restrictions and *Union Government Notification No. 39 of 2011*<sup>519</sup> sets out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article 16(c) *VFV Law*) (Article 14 *Farmland Law*). Under the 2012 *Foreign Investment Law*, foreign investors can obtain leases for an even longer period, 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment. Leases can be even longer for land in “*the least developed and less accessible regions*”.<sup>520</sup>

<sup>515</sup> Transnational Institute, “[Access Denied: Land Rights and Ethnic Conflict in Burma](#)”, (May 2013)

<sup>516</sup> [Myanmar Foreign Investment Law 2012](#).

<sup>517</sup> 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.

<sup>518</sup> 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).

<sup>519</sup> [Notification 39/2011](#) on the Right to Use of Land relating to the *Myanmar Foreign Investment Law*.

<sup>520</sup> Ministry of Planning and Economic Development, “[Notification 11/2013, Foreign Investment Rules](#)”, (31 Jan 2013).



It should be noted that the 2012 *Foreign Investment Law* and the 2013 *Citizens Investment Law* are currently being redrafted to create a single law for all investors and these provisions could change.<sup>521</sup>

### Resettlement

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. As discussed above, 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. In addition, the current *Foreign Investment Rules* appear to provide some general prohibitions on involuntary resettlement.

## B. Field Research Findings

The field research focused on parts of the ICT value chain where land acquisition processes were most significant (for infrastructure roll out)<sup>522</sup> and where land owners or users were most at risk (i.e. rural communities). It did not consider land acquisition for office use in cities where land registration and markets are more developed. The findings are based on the roll-out experience of private sector telecoms operators. While the field research team discussed land acquisition with state-owned enterprise MPT, the team did not have the opportunity to discuss land acquisition with military-owned enterprise MECtel. MECtel usually locates infrastructure inside military compounds or on land held by the military.

### 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 were numerous cases where individuals and communities claimed there was **no informed consultation and participation** about land acquisitions or tower or fibre projects using land in immediate proximity to their homes.
- In cases where there was consultation and participation, it was predominantly **only with the land owner/user and the (two to four) immediate neighbours**, who, under the land acquisition process, were needed to sign consent forms. In many of those cases, **those asked to sign agreements were unclear of their purpose or content**.
- There were **very few cases** found where any ICT company or Myanmar Government had done **wider community consultation regarding the network rollout**, land needs and plans, and the ways in which the rollout would affect their lives and livelihoods, positively or negatively.
- In many cases, community members:

<sup>521</sup> Myanmar Centre for Responsible Business “[Comments on the latest draft of the Myanmar Investment Law](#)” (27 March 2015).

<sup>522</sup> For example, TowerXchange reports in October 2014 that “*based on the volume of orders they are seeing, the tower installation firms have spoken to are more bullish than the GSMA’s forecast of 17,300 towers by 2017, with many feeling that the tower count in Myanmar by 2017 will be 25,000*”. TowerXchange “[The Myanmar tower rollout: FAQs](#)” (updated June 2015).



- received **no prior information about the intention to acquire their land or land near their homes**, only understanding the reason was to build a tower or lay the cable line once it became apparent during construction or digging
- were **not consulted** or given an opportunity to become informed about the **broader project of building the network**. Instead, information was given only with respect to the land registration process (see Due Process below) and compensation
- were given **no choices** or opportunity to negotiate about the plot of land or restrictions on land use
- often **did not know for which telecom operator** the tower construction company was building, or the cable line was being dug
- were **not given any information to make contact or complain** either with the cable laying company, tower construction company or telecom operator
- It was a regular occurrence for communities to **host tower construction managers and/or groups of workers, in their homes** during the build period, without compensation for the accommodation, water or laundry use. While this was by agreement, it often lasted for a period longer than originally agreed and some cases involved more workers than agreed and/or also their spouses and children (and sometimes pets)
- **Commonly raised community concerns included:**
  - **not knowing which company was involved** in the construction (whether fibre cable or tower)
  - **not having a company contact** in cases of problems or emergencies
  - **not being provided with basic information on the safety of the tower** including:
    - whether the tower could withstand earthquakes or severe weather
    - whether they would be subjected to unsafe levels of radiation from the tower
    - whether they would be electrocuted by the tower during rain showers
  - **noise from generators powering the towers** causing a disturbance, headaches, and small cracks in walls/floors
  - **tower sites being fenced in but not locked**, compelling villagers to “*guard*” the site to ensure children or others do not wander in
- Community members expressed a desire for **strong mobile phone reception** (which comes with good tower coverage) but **did not want towers built nearby their villages** – which reflects the common NIMBY (‘not in my backyard’) phenomenon.
  - There was also the perceived dilemma of the benefits of regular income from lease payments versus concerns about health risks from living near a mobile phone tower.

### 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

#### Field Assessment Findings

- The field assessment findings **affirmed the complexity and opacity of the land acquisition process and regulatory framework** outlined in the National Context section above for the tower companies and land owners.
- Some called for a **model lease contract template, approved by the authorities**

and **available in local languages.**

- Reports were received of **construction taking place on paddy land or farmland, without the necessary documentation, including land conversion approval.** Private companies noted that receiving the land conversion approval for farm or paddy land was “*impossible*” due to administrative delays, bribery, and in some cases farmers lacking requisite documentation needed to apply for the conversion. However a regional-level minister expressed awareness of the complexity of the approval process, and suggested that regional-level Government is working to ease the process for both landowners and companies engaged in the roll-out.
- **For tower construction,** interviews indicated a **relatively consistent process was followed by most companies that resulted in a signed lease for land owners:**
  - A ‘site hunter’ comes to the home/farm to investigate the land and suitability for a tower site.
  - If suitable, they discuss with the village leader/administrator their intention to build on the land, how much land they will need (usually about 50 square metres) and where, how long construction will take (usually a 28 day target), and their rental and compensation rates.
  - The village leader/administrator and site hunter(s) discuss with the land owner their intention to build the tower:
  - The company usually facilitated the process of getting the land registered as “*grant land*” under the required Form 105. (If paddy land, this was first applied for at regional level, then approved at national level before it could be issued). This generally took 1-2 months
  - The landowner must get the signed consent of (usually 2-4) immediate neighbours confirming they do not object to the construction
  - A contract (usually a land lease) is signed between the landowner and company.
- **Fees and costs for registering as grant land** were generally incorporated into the lease agreement (not putting land owners out of pocket), but the **fees and costs cited varied greatly** from 500 MMK (\$0.46) up to 40 MML (\$3,709), by location.
- It was often the tower site hunter’s or village leader/administrator’s job to **verify who was the true land owner:**
  - Citizenship Scrutiny cards, Household Lists, and land titles were cited as among key initial documents sought. However, there are still high risks of misidentifying ‘true’ land ownership in Myanmar even using such evidence, given wide-spread practice of customary ownership and the fact that Myanmar only recently completed its first census in 30 years, which is still widely regarded as problematic because *inter alia* people in some areas of armed conflict and inter-communal violence were not counted.
  - Depending on the circumstances, companies may bring in local lawyers to meet the land owner and assist them in applying for the needed documents.
  - Researchers heard general estimates that around 10% of prospective sites fail because documents cannot be obtained.
  - Researchers heard of some cases in which Myanmar officials obliquely requested bribes in order to return the proper documentation.
- Though contracts were commonly signed with landowners confirming the lease arrangements, a **copy of the contract was often not provided to the land owner** and researchers were regularly told by **land owners that they did not fully understand the content of what they were signing.**
  - Most contracts appeared to include **automatic renewal clauses**, meaning unless the landowner gives notice of their wish to cancel or renegotiate the agreement prior to the completion of the agreed term they will automatically be

tied into a renewed term.

- As companies involved in **laying fiber** were not using land for an extended period of time, they did not use more formalised processes or documents to negotiate access. **One time compensation for disturbance of land was sometimes paid.**

### 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

- Compensation rates for rental of tower sites varied greatly** (including both rooftop and ground towers), **from 2 MML monthly (\$185) up to 72 MML (\$6,676) monthly**, depending on the location and the land tax to be paid.
- Most landowners were agreeing to lease periods of 10-15 years** for positioning towers on their land, though periods of 5 and 25 years were also reported. As above, contracts often included **automatic renewal clauses**.
- Lease payments were usually paid annually**, though some companies paid owners every quarter, some every 6 months and others every 2 years.
  - Some landowners expressed a preference for larger (e.g. 3 year) up-front payments** in order to have sufficient capital to start a business or new venture.
  - As above, **application fees for registering the land** in order to host the **tower were usually incorporated into the payment for the lease**.
  - Some companies paid additional **monthly security fees to the land owner to look after the tower site**.
- Most lease agreements included percentage increases**, often 3-5%, every 3-5 years.
- For fibre construction on religious land** it was found that leases and lease payments were not formalised and no official approval had been required. Instead, companies **simply made donations**.
- For tower construction on religious land** the formal authorisation required at the township level was obtained. Neighbour consent was also obtained. Stakeholders did report difficulty receiving satisfactory information from company representatives regarding the lease, acquisition, and construction process.
- Most companies seemed to operate according to standard compensation ranges. Some **provided site hunters with financial incentives to ensure lease agreements within the specified ranges**, e.g. allowing them to keep the amount left over between the agreed fee and top of the specified range, or receive a commission for staying within the range.
- A few cases were reported of **lack of compensation for trees/crops cut down** to make room for towers or loss of income from their yields.

### Access to Remedy for Land Grievances

**Human Rights Implicated:** Right to an effective remedy; Right to take part in the conduct of public affairs; Right to information

#### Field Assessment Findings

- As mentioned above, there were **regular reports of communities and land owners not knowing which company was responsible** for fibre cable digging or tower construction, including whom to contact in cases of emergency or grievance.
- Cases of noise disturbance from generators powering towers were generally**

resolved, in some cases by the village administrator.

- **Some communities complained of damage by the company of roads, as well as of company-provided road repairs that failed to restore the quality of the road prior to the company's use.**

## Conflict Areas

**Human Rights Implicated:** Right to life, liberty and security of the person; Right to take part in the conduct of public affairs; Right to information

### Field Assessment Findings

- There were some cases in which companies attempted to negotiate access to areas to lay fibre cables with non-state armed groups (NSAGs). **In some cases a fee was paid for this access.**
- Researchers received reports of cases of operational delays, where local groups, including armed groups, **blocked access to sites, due to lack of consultation at the site level.** While some consultation with local leaders may have been undertaken, this may not have been communicated to or accepted by all stakeholders.
- Researchers observed **fire-arms being carried by NSAGs** present during roll-out in ceasefire areas. While researchers neither observed nor heard reports of shots being fired, the presence of fire-arms is a risk for both the civilian population and the company itself.
- Researchers also received reports from workers that they were aware that in the past landmines **may have been sown around infrastructure in conflict areas.** This led workers to avoid walking through certain areas. The measures companies took to protect their workers in such circumstances were unclear.

### Myanmar Good Practice Examples:

- **Written lease agreements were regularly signed with landowners for towers** (though, as above, copies were often not provided to land owners or they claimed they did not understand the content fully).
- **Most lease agreements included percentage increases**, often 3-5%, every 3-5 years.
- **Companies often facilitated the registration application process, reducing or removing the burden on landowners.**
- Given the lack of a uniform and accessible land registry, regular reports were received of companies accepting alternative forms of documentation. This can offer a significant protection but can also be a significant risk if this is used to bypass customary owners. As a result, **some companies also seemed to be undertaking more detailed due diligence to identify the 'true' landowners**, including direct discussions with villagers and local authorities.
- One company has reported it leases some 1,000 land parcels for its towers with full written approvals and documentation from landowners.<sup>523</sup>

<sup>523</sup> See further: Apollo Towers Myanmar, "[Response by Apollo Towers: Myanmar Foreign Investment Tracking Project](#)", Business & Human Rights Resource Centre (last accessed September 2015).



## C. Land Recommendations for ICT Companies

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4.7

### Considerations for Land Acquisition / Use

- See [Chapter 4.9 on Stakeholder Engagement and Access to Remedy](#) for further recommendations on stakeholder engagement and land acquisition processes.
- **Be sensitive to concerns about ‘land grabbing’:** There has been extensive reporting in recent years of outright ‘land grabs’ with little pretence of following the law, and of villagers being deprived altogether of compensation, with or without official expropriation, receiving reduced payment for land, or being denied any recognition of ownership<sup>524</sup> by Government authorities, the military and business. There may therefore be legitimate concern about land grabs in connection with existing and planned ICT projects. Even though the vast majority of land transactions for ICT infrastructure is through long-term leases between willing lessee/lessor, this issue could be a source of tension with local communities and subject of advocacy by civil society groups. Operators and tower companies should expect close public scrutiny of their approach to land issues.
- **Ensure effective, transparent and equitable procedures:** The rollout of the ICT infrastructure has an extensive footprint throughout the country, even if the footprint of each individual transaction is not large. When added together, the network rollout will entail thousands of transactions with thousands of landowners. Companies should adopt consistent and effective procedures for consultation and compensation to make sure that this wide range of people impacted by operations are dealt with equitably and transparently across these many transactions.
- **Provide an easy-to-understand guide to the rollout process:** This should identify step-by-step each part of the construction and rollout process that is understandable by villagers, in their local language.
- **Provide an easy-to-understand guide to the contracting process:** This should include a step-by-step process with checklists that identifies steps, documentation and permitting required that is shared with landowners and local authorities to promote greater transparency. It should provide an easy to understand explanation of the contents of the lease contract. This and any contracting documentation should be provided in local languages and in form that local landowners can readily understand.
- **Recognise customary land titles:** 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 should recognise those customary rights and deal with customary owners on the same basis as more formal land owners. This requires detailed due diligence to understand who the customary owners are, often with direct consultation with communities and local authorities.
- **Provide or pay for legal assistance for landowners:** Some stakeholders highlighted good practice of providing landowners with legal assistance where there were more

<sup>524</sup> The Land Core Group, a grouping of Myanmar and international NGOs working on land issues, 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); TNI, “[Developing Disparity: Regional Investment in Burma’s Borderlands](#)” (Feb. 2013), and TNI, “[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, “[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).

complicated legal issues to address in the land registration or leasing process. It should be made clear in those circumstances whose interests are represented if there are choices or a conflict of interest between the tower company's interest and the landowner's interests. If the legal representative cannot take a neutral position, independent legal assistance should be provided to landowners so that they can make informed choices about disposition of their land and the implications of signing longer-term leases.

- **Ensure farmers are not disadvantaged by lack of paperwork:** Paddy land or other farmland is preferred for tower construction because it is flat and easy to reach. Under the current land classification, it is not allowed to be used for anything other than cultivation without Government approval, which is not always immediately forthcoming. Where towers have been constructed without or before approval, subsequent strict enforcement of land laws could potentially result in farmers being penalised for renting to tower companies, and create a risk to their livelihoods. If farmers are penalised, companies should be ready to put in place remedial compensation to ensure that there is no impact on their livelihoods.
- **Be alert to speculation:** Companies should also be aware that there have reportedly been cases in other sectors involved in land acquisition 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 use compensation is subsequently paid

### Land in Areas Affected by Armed Conflict & Communal Tension

- See [Chapter 4.10](#) on Conflict and Security.

## D. Relevant International Standards and Guidance on Land Issues

### Relevant International Standards:

- [ILO Convention 169](#), Indigenous and Tribal Peoples Convention (1989), Part II – Land
- [FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (2012)
- The World Bank Myanmar Telecommunications Environmental and Social Management Framework (ESMF) [Land lease guidelines](#) (English)
- [IFC Performance Standard 5 and Guidance Note – Land Acquisition and Involuntary Resettlement](#)
- The [IFC/World Bank Group Environmental, Health, and Safety Guidelines for Telecommunications](#) also provide relevant guidance on siting infrastructure and other aspects of community safety.