



Sector-Wide Impact Assessment

# Human Rights and Business Fact Sheet

## Housing, Land Acquisition and Resettlement



This factsheet was compiled for the use of the Myanmar Centre for Responsible Business (MCRB) sector-wide impact assessment (SWIA) research teams, but may be of wider use in understanding the human rights risks involved in particular business issues. For more information on MCRB's SWIAs, please see [www.mcrb.org.mm](http://www.mcrb.org.mm).

## Short Summary of the Human Rights Issue

The subject of housing, land and resettlement involves complex human rights issues. Land is often vital to livelihoods, it is a safety net for the poorest, is often part of cultural identity, and serves vital ecosystem functions. Government policies and business activities involving land acquisition and resettlement, if carried out improperly, can lead to evicting people and forcing them, against their wishes, to resettle away from their homes and lands. Impacts on housing, land and property rights can threaten livelihoods, weaken community structures and social networks, disperse kin groups, and diminish cultural identity.

### Housing

The right to adequate housing means people should have adequate shelter that allows them to live in peace and security. The government is not expected to provide housing to the whole population, but has to make sure that the housing market is regulated. Where the poorest and most vulnerable do not have housing, the government is expected to either provide housing or provide assistance in finding or paying for housing.

#### *The housing should meet some minimum requirements:*

- People have a right not to be arbitrarily moved out of their housing – by the government or companies (known as **security of tenure**).
- **Affordable** : the cost of housing isn't so high that inhabitants can't afford other basic necessities like food, education and health care,
- **Habitable** : the housing has adequate space, and protects from cold, damp, heat, rain, wind, structural hazards, and insects that can transmit disease,
- **Availability of services**, materials, facilities and infrastructure (safe drinking water and adequate sanitation, energy for cooking, heating and lighting, means of food storage, waste disposal, etc.),
- **Accessible** (to disadvantaged and vulnerable groups such as the poor, those with disabilities, those facing discrimination, victims of natural disasters, etc.),
- adequately **Located** (allowing access to employment options, health-care services, schools, child-care centres and other social facilities and should not be built on polluted sites or close to pollution sources),
- maintain **Cultural Adequacy** (accounting for and respecting cultural identity, expression and diversity – for example the structure and grouping of housing may support specific cultural patterns within the community).

*Companies are also not expected to provide housing – except when they have bought people's land and housing (or the government has done so on its behalf) and as compensation, the company has agreed to provide new housing. In that case, the housing should meet the standards above. (Regarding housing for workers, please see factsheet)*

### Land acquisition

Land acquisition includes both leasing and outright purchases of property and of access rights. In some cases, companies may acquire land from government agencies who took the land, with or without payment of compensation, from community members. In some developing countries, as in Myanmar, formal systems of land registration can co-exist with informal or customary systems of

land use and ownership. This can lead to land conflicts when local peoples lack documentation to prove land rights, other actors may have illegal or competing documentation, pressure can be applied to local peoples to sell their interests, and certain vulnerable groups such as women, children, those with disabilities, indigenous peoples or religious minorities can be disproportionately impacted if adequate consideration isn't given to their needs. Without proper investigation of ownership and consultation with local authorities and communities, a company can knowingly or unknowingly receive an inappropriate or illegal transfer of property.

## Resettlement

Governments and companies may need to resettle communities as part of a land acquisition process to acquire land for a business project. This involves acquiring their land, building new housing for them in a new location, relocating them to the new location and helping them to reestablish their livelihood activities. Resettlement can be voluntary or involuntary. Involuntary resettlement (also known as forced relocation) of communities can only be conducted by government and in accordance with national law and international human rights protections. It must be for a public purpose to promote national security, economic development, or protect the health of the population. It should be a last resort and feasible alternatives should be explored with affected communities.

Resettlement, voluntary and involuntary, should always involve engagement with current inhabitants before any property is acquired to discuss the project and how they might be resettled. Those displaced must be provided adequate compensation and not be made homeless. Indigenous groups enjoy special protections under international law due to their historical relation to the lands and territories they use and occupy, and their free, prior and informed consent is required before any relocation can be undertaken. Relocation must follow procedures to safeguard affected communities: assessing the impact on affected communities of the resettlement, notifying communities before the acquisition and consulting them on how it might impact them, providing them adequate and enforceable remedies, including fair and just compensation, and providing at least equivalent or better replacement land, housing and assets. Lastly, no violence or force should be used during relocation.

### *There are a number of different human rights issues involved:*

- **Right to self-determination:** This means people should be able to freely dispose of their natural wealth and resources and in no cases be deprived of their own means of subsistence. This right may be impacted if acquisition or resettlement is carried out without communities' participation, or with inadequate means for participation.
- **Right to participation:** The right includes participation of individuals, groups and communities in decision-making, planning and implementation processes that affect them such as in land acquisition and resettlement, as the right to information which enables their meaningful participation.
- **Right to non-discrimination and equality:** This can be impacted when acquisition or resettlement leads to disadvantages of certain groups involved, e.g. minorities and indigenous groups.
- **Right to free, prior and informed consent (FPIC):** The right to self-determination and the right to participation provide the basis for the concept of free, prior and informed consent. As defined by international law, the principle of FPIC applies only to indigenous peoples. However, given the lack of clarity in Myanmar between who are considered indigenous peoples as opposed to ethnic nationalities (ethnic minorities), the principle may be applicable more broadly (See further the fact sheet on indigenous peoples.)

- **Freedom of movement:** This right may be impacted if a community has to relocate and they are restricted in choosing where to live, or if communities cannot access their lands because of company operations. This restriction is permissible in limited circumstances for public purposes.
- **Right to property:** Everyone has the right to own property alone as well as in association with others, and no one should be arbitrarily deprived of their property. Land seizure involving involuntary resettlement impacts this right. Companies can also impact this right when they fail to, for example, provide for equivalent replacement land including housing and assets, or compensation.
- **Right to an adequate standard of living (including right to adequate housing and food):** Land acquisition and resettlement that reduces or removes access to food and water, or to farming land, or the provision of inadequate replacement housing, may adversely impact this right. Resettlement in areas distant from employment or other means of livelihood may also adversely impact this right.

## Why this is Relevant to Local and International Companies Operations

Projects that displace people in violation of their land and property rights can have serious economic, social and cultural impacts on affected individuals. It can also have serious impacts for the project itself, by causing extensive delays, increasing project costs, increasing security risks, harming labour relations, damaging company reputation and creating a hostile environment for business. If companies obtain land use rights from governments who have seized land and property without adequate consultation and/or compensation, companies may be complicit in potential adverse human rights impacts.

Within the Oil & Gas industry, several public reports have been produced alleging land confiscation without due process. These are usually related to Oil & Gas pipelines, such as the Shwe, Yetagan and Yadana pipelines. Offshore Oil & Gas activities will also carry high land rights risks as well, where companies will need to bring oil to transfer points on land, in particular in the blocks sitting just off Rakhine State now suffering from massive displacement following inter-communal violence since 2012.

Land is also highly relevant to the Myanmar Tourism industry, which requires land in all sizes for small- and large-scale infrastructure and related development. Tourism brings its own set of land challenges as new constructions are made in both urban and rural, as well as culturally significant, areas.

It is relevant to ask about Land Acquisition/Resettlement in order to establish whether:

- Consultations around land acquisitions and resettlements, followed by voluntary agreement are becoming more regular in practice in Myanmar or “land grabbing” with little to no consultation, agreement and consultation is still the common approach.
- Any individuals or communities may have been made homeless or landless from any Government or company land purchase, rent, acquisition or access, or any other impacts.
- Any effort by the Government and/or company was made to consult communities, identify potential impacts, and account for those impacts in their planning before proceeding with their land acquisition or resettlement.
- The Government or company involved worked with communities to ensure they had all the information they needed to understand how their land use or ownership might be affected and provided a chance to share their concerns or stop the acquisition because of their disagreement.

- The Government or company may have ignored or not identified potential impacts of their land activity at issue on vulnerable people and groups, such as women, children, indigenous and other groups.
- The Government or company explored possible alternatives to the land activity at issue to avoid resettlement unless strictly necessary.
- Communities' land rights were actually enforceable in practice, meaning they could effectively apply clear standards for adequate compensation.
- The community was provided effective remedy for the acquisition or resettlement - a way to complain to the local administration or courts that then provided an impartial way to address the community's complaints.

## Human Rights References

- Right to an adequate standard of living, including the right to housing and food. Prohibition of forced evictions, Article 11 of the ICESCR.
- Right to self-determination, Article 1 of ICCPR and ICESCR.
- For indigenous peoples, there is ILO Convention 169 and the non-binding UN Declaration on the Rights of Indigenous Peoples.
- IFC, Performance Standard 5 Land Acquisition and Involuntary Resettlement.
- UN Special Rapporteur on the right to adequate housing, Basic Principles and Guidelines on Development-based evictions and Displacement.