

Gap Analysis on Involuntary Resettlement between ADB Safeguards and Government of Myanmar

ADB SPS 2009	GOM Policy	Gap Equivalence
<p>Principle 1: Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>	<p>The Constitution of the Republic of the Union of Myanmar (2008), Chapter VIII, Section 356. The Union shall protect according to law movable and immovable properties of every citizen that are lawfully acquired.</p> <p>Section 357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.</p>	<p>Partial equivalence is noted by virtue of stipulations of protection under the Constitution and screening through a social impact assessment to determine resettlement impacts under the Environmental Conservation Law.</p> <p>However, procedures/guidelines in the conduct of social impact assessment for screening purposes with respect to involuntary resettlement is wanting.</p> <p>There is no clear law on involuntary resettlement whether pertaining to land/tenure and nonland assets.</p>
	<p>Environmental Conservation Law (2012), Chapter IV, Section 7. The duties and powers relating to the environmental conservation of the Ministry are as follows:</p> <p>(m) causing to lay down and carry out a system of environmental impact assessment and social impact assessment as to whether or not a project or activity to be undertaken by any Government department, organization or person may cause a significant impact on the environment</p>	
<p>Principle 2: Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive,</p>	<p>The Rangoon Development Trust Act. 1921. Chap IV-38.</p> <p>(5) Within twelve months from the date of the notification sanctioning the making of a scheme, the Board shall, in consultation with the local authorities concerned, and such owners or their agents as may be deemed necessary, prepare and publish in the prescribed manner a draft scheme for the area in respect of which sanction has been given.</p> <p>The Ward or Village Tract Administration Law (2012), Chapter VII, Section 13. The ward or village tract administrator shall carry out the following functions and duties in accord with the relevant laws, rules, and procedures:</p> <p>(c) Safeguarding the right of persons who live in the ward or village tract;</p> <p>(e) Informing and assisting the relevant Government departments and organizations in respect of revealing informing and organization in respect of revealing, informing and complaining, arresting and taking action of crimes and vices;</p>	<p>A gap is noted as regards meaningful consultation, participation, and completeness in consideration of vulnerability.</p> <p>The Rangoon Development Trust Act (1920) stipulates procedures focused on information dissemination but not consultation.</p> <p>Procedures for settling disputes/grievances are provided in the Farmland Law of 2012.</p>
	<p>The Law Safeguarding Peasant Rights (1963) [Unofficial Translation] Law No. 9, 1963.</p> <p>3. (1) Notwithstanding anything elsewhere contained in any existing law, a Civil Court shall not make a decree or order for:</p> <p>(a) A warrant of attachment for or confiscation of agricultural land; neither for employed livestock and implements, harrows and implements, other animate and inanimate implements, nor the produce of agricultural land.</p>	

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<p>compensation and resettlement decisions should be preceded by a social preparation phase.</p>	<p>Land Acquisition Act (1894), Part II, Acquisition – Objection. 5A. (1) Any person interested in any land which has been notified under section 4, sub- section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty day of the notification, object to the acquisition of any land in the locality, as the case may be.</p> <p>(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the President of the Union, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the President of the Union on the objections shall be final.</p>	
	<p>Farmland Law (2012). Chapter VIII. Deciding Land Disputes In Respect Of The Right For Farming And Appeal 22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes. 23. (a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law; (b) Township Farmland Management Body may approve (or) revise (or) cancel the decision made by the Ward or Village Tract Farmland Management Body; 24. (a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b) of this law; (b) District Farmland Management Body may approve (or) revise (or) cancel the decision made by the Township Farmland Management Body; 25 (a) Whosoever may appeal to the respective Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of</p>	<p>No appeal to courts is possible, and thus grievance mechanism is not externally accountable.</p>

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	<p>this law; (b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body; (c) the decision made by the Region or State Farmland Management Body is final;</p>	
<p>Principle 3: Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.</p>	<p>The Constitution of the Republic of the Union of Myanmar (2008), Chapter I, Section 37. The Union: (a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union; (b) shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces; (c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law.</p> <p>Land Acquisition Act (1894), Part II, Acquisition – Enquiry into Measurements, Value and Claims, and Award by the Collector. 11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of: (i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.</p> <p>12. (1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. 13. The Collector may for any cause he thinks fit,</p>	<p>Partial Equivalence.</p> <p>Equivalence with respect to replacement cost of land at market value as well as damage to crops as incorporated in 1894 Land Law. In addition, the Farmland Law establishes a compensation mechanism. But silence noted as regards to income restoration, prompt replacement of assets and access to benefit sharing schemes.</p> <p>Per Constitution, the Burmese State retains ownership of all land in the country and whatever rights over land that are accorded are exclusively leasehold rights, user rights, or rights to cultivate a certain land parcel subject to the approval of local government bodies that are appointed by the central government. (Martov S 2012 http://www.irrawaddy.org/archives/17424)</p> <p>Currently, farmers that do not have entitlement to their land are not protected in expropriating their land as their lots are categorized as “vacant” under the VFVM law. This is a problem for those who rotate fields, usually because they occupy upland, steeply-sloped territory. These farmers, in many cases, belong to minority groups and the VFVM law does not specifically protect minorities.</p>

ADB SPS 2009	GOM Policy	Gap Equivalence
	<p>from time to time adjourn the enquiry to a day to be fixed by him.</p> <p>14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a civil Court under the Code of Civil Procedure.</p> <p>15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.</p> <p>Land Acquisition Act (1894), PART III REFERENCE TO COURT AND PROCEDURE THEREON.</p> <p>23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration:</p> <p>First, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);</p> <p>Secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;</p> <p>Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;</p> <p>Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings;</p> <p>Fifthly, if in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and</p> <p>Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.</p> <p>(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.</p> <p>24. But the Court shall not take into consideration:</p> <p>First, the degree of urgency which has led to the</p>	

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	<p>acquisition; Secondly, any disinclination of the person interested to part with the land acquired; Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; Fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put; Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; Sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or, Sevently, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1).</p>	
<p>Principle 4: Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.</p>	<p>Social Welfare Objectives of Ministry of Social Welfare, Relief and Resettlement</p> <p>(b) To contribute towards the development of human resources. (c) To assist those who are facing social problems. (d) To take preventive measure to control occurrence of social problems. (e) To give assistance to the State in some way by implementing social development tasks and giving social assistance</p> <p>The Rangoon Development Trust Act (1922), Chapter III, Section 37. With a view to facilitating the movement of the population in and around the City, the Board may from time to time: (1) subject to any conditions they may think fit to impose: (a) guarantee the payment, from the funds at their disposal, of such sums as they may think fit, by way of interest on capital expended on the construction, maintenance or working of any way or means of locomotion; or (b) make such payments as they may think fit from the aid funds by way of subsidy to persons undertaking to provide, maintain and work any way or means of locomotion; or (2) either singly or in combination with any other person, construct, maintain and work any way or means of locomotion, under the provisions of any law applicable thereto; or (3) construct or widen, strengthen or otherwise improve, bridges: Provided that no guarantee or subsidy shall be</p>	<p>Partial equivalence. Social assistance extended to APs but not with respect to tenure and integration with host communities.</p> <p>The Special Economic Zones Law of 2014 broadly stipulates that persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth.</p>

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	<p>made under clause (1), and no means of locomotion shall be constructed, maintained or worked under clause (2), without the sanction of the President of the Union.</p> <p>Myanmar Special Economic Zones Law (2014). Chapter 17 Land Use – 80. The developer or the investor – (a) shall pay the agreed expenditures for transfer, resettlement and compensation if houses, buildings, gardens, paddy fields, fruit bearing plants and plantations on the land are required to be cleared or transferred; (b) shall, as necessary, negotiate with the management committee in order to ensure that the persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth;</p>	
<p>Principle 5: Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.</p>	<p>Social Welfare Objectives of Ministry of Social Welfare, Relief and Resettlement</p> <p>(b) To contribute towards the development of human resources. (c) To assist those who are facing social problems. (d) To take preventive measure to control occurrence of social problems. (e) To give assistance to the State in some way by implementing social development tasks and giving social assistance</p> <p>Myanmar Special Economic Zones Law (2014). Chapter 17 Land Use – 80. The developer or the investor – (a) shall pay the agreed expenditures for transfer, resettlement and compensation if houses, buildings, gardens, paddy fields, fruit bearing plants and plantations on the land are required to be cleared or transferred; (b) shall, as necessary, negotiate with the management committee in order to ensure that the persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth;</p> <p>The Development of Border Areas and National Races Law, Chapter V, Section 8. The duties and powers of the Ministry in respect of the implementation of the development works of the border areas and national races are as follows:- (g) laying down programmes for disseminating knowledge and exchanging culture for the national races in the Development Areas; (h) establishing and opening schools for giving vocational education for the future of the youths of the national races in the Development Areas; (i) making arrangements for the promotion and propagation of the sasana in the development areas;</p>	<p>Partial Equivalence.</p> <p>Equivalence can be noted only concern the poor and vulnerables; The Special Economic Zones Law of 2014 stipulates that persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth.</p>

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<p>Principle 6: Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p>	<p>No law stipulating transparency and negotiated land acquisition.</p>	<p>Gap</p>
<p>Principle 7: Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of nonland assets.</p>	<p>The Constitution of the Republic of the Union of Myanmar (2008), Chapter I, Section 37. The Union:</p> <p>(a) is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union;</p> <p>(b) shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces;</p> <p>(c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law.</p> <p>Land Acquisition Act (1894), Part I, Preliminary</p> <p>(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;</p> <p>(g) the following persons shall be deemed persons “entitled to act” as and to the extent hereinafter provided (that is to say)-</p> <ul style="list-style-type: none"> • trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability; • a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and • the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted: <p>10. (1) The Collector may also require any such person to make of deliver to him, at a time and</p>	<p>Partial equivalence.</p> <p>Burmese State through its Constitution retains ownership of all land in the country and whatever rights over land that are accorded are exclusively leasehold rights, user rights, or rights to cultivate a certain land parcel subject to the approval of local government bodies that are appointed by the central government.²⁸ (Martov S 2012 ‘Report urges govt to address land grabbing issue’ in The Irrawaddy, 26th October 2012. http://www.irrawaddy.org/archives/17424)</p> <p>Currently, people that do not have entitlement to their land are not protected in expropriating their land as their lots are categorized as “vacant” under the VFVM law.</p> <p>Law 1894 has a broad statement on person interested and is silent on whether titled, with other legal rights or not.</p>

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	place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.	
Principle 8: Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.	No law stating such.	Gap
Principle 9: Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	Land Acquisition Act (1894), Part VII, Section 42. Every such agreement shall, as soon as may be after its execution, be published in the Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act: Foreign Investment Rules (2014), Chapter 22, Services-8. Publishing and publication of periodicals in ethnic languages including Myanmar;	Partial equivalence. Broad equivalence with Law 1894 but not specific to investment rules of 2013 as regards disclosure of RP.
Principle 10: Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.	No such provision.	Gap. No laws can be found relating to the consideration of costs of resettlement during development projects and programs of the GOM
Principle 11: Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision	Land Acquisition (Mines) Act (1885), Section 5, Subsection 2. If it appears to the President of the Union that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the President of the Union may publish a declaration of his willingness either:	Partial equivalence in the determination of the date due for compensation of expropriated land. The Rangoon Trust Act of 1922 has set a deadline for payments, which is within 3 months upon publication for compensation. It is not clear however if within the 3 months,

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throughout project implementation.	<p>(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having all interest in the same; or</p> <p>(b) to pay compensation to all such persons in consideration of those mines or minerals; or that part thereof, being worked or gotten in such manner and subject to such restrictions as the President of the Union may in the declaration specify.</p> <p>(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.</p> <p>Section 9. The Government shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lieu on both sides of the mines, the working of which is prevented or restricted, all such additional, expenses and losses as may be incurred by him: by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the Government which cannot be obtained by reason of the action taken under the foregoing sections; and if any disputes or question arises between the Government and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act</p> <p>The Farmland Law (2012), Chapter IX, Section 26. Notwithstanding any provision contained in any other existing law, the Central Farmland Management Body must be coordinated with acted for suitable compensation and indemnity in the case of repossession of farmland either in the interest of the State or in the interest of the public. Confiscated farms are to be compensated without any loss. If farm is upgraded with building, it is required to compensate for such building.</p> <p>The Rangoon Development Trust Act (1922), Chapter IV, Section 56. (1) Where property or a private right of any sort is injuriously affected by reason of any provisions contained in a scheme, compensation shall, subject to the provisions of this Act, be payable by the Board or by any person benefited, or partly by the Board and partly by such person, as may be determined in each case by the</p>	acquisition is realized and civil works commence.

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	<p>final scheme. (2) Such compensation may be paid either in cash, or by the allotment of a plot, or in such other manner as may be determined in each case by the final scheme:</p> <p>Provided that: (a) no compensation shall be payable under sub-section (1) if or in so far as the provisions of a scheme are such as would have been enforceable without compensation under any rule having the force of law, bye-law or Act in force at the time; (b) property or a private right of any sort shall not be deemed to be injuriously affected by reason of any provisions inserted in a scheme, which, with a view to securing the amenity of the area included in such scheme or any part thereof, impose any conditions and restrictions in regard to any of the matters specified in section 41, clauses (i) and (j); (c) the Board shall not be bound to consider any claim to compensation which is made after three months from the publication of the draft scheme.</p>	
<p>Principle 12: Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.</p>	<p>Foreign Investment Rules (2014), Chapter 22, Services-8. Publishing and publication of periodicals in ethnic languages including Myanmar;</p>	<p>Gap. No laws in the GoM conceived for monitoring and assessing project impact specifically as regards IR. Vaguely, the foreign investment rules of 2013 broadly suggests at disclosure, but not explicit to monitoring.</p>