GOOD PRACTICE APPROACHES TO LAND ACQUISITION & RESETTLEMENT IN PERI-URBAN AND URBAN ENVIRONMENTS

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SEMINAR AGENDA

1. Overview of International Standards
2. Good Practice Approaches to Land Acquisition, Resettlement & Livelihoods
3. Interactive Discussion using:
   o Case Studies on Resettlement
   o Small Group Exercises on Livelihood Restoration, Community Engagement, and Complaints Management
4. Reflections and Wrap-Up
SESSION 1: OVERVIEW OF INTERNATIONAL STANDARDS & KEY REQUIREMENTS

TERMINOLOGY

• **Involuntary Resettlement** - occurs when affected individuals or communities do not have the right to refuse land acquisition that results in displacement

• **Project-Affected Person (PAP)** - any person who, as a result of the implementation of the project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, pastoral or undeveloped/unused land), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.

• Not all PAPs must physically move as a result of a project
**TERMINOLOGY (CONTINUED)**

- **Physical displacement** - loss of shelter
- **Economic displacement** - loss of means of livelihood
- **Resettlement Action Plan** (or Resettlement Work Plan) – a document that defines planning activities, the resettlement process, anticipated outcomes, proposed monitoring, the intended schedule and the cost of implementing the resettlement program
- **Livelihood Restoration Plan** (or Income Restoration Plan) – defines the specific activities for livelihood restoration for economically displaced persons

  Resettlement terminology is a continuing source of confusion

  **For Example**: A large pipeline project across 3 countries has three “Resettlement Action Plans,” although not a single person was physically displaced or resettled under any of the plans

  Important that Government, Company, Others use consistent and properly defined terms when consulting with stakeholders

**RESETTLEMENT AND LAND ACQUISITION IS COMPLEX AND DIFFICULT**

No resettlement program will avoid having problems and complaints

- But there are proven ways to minimize problems and achieve good outcomes......if there is willingness and commitment
OVERVIEW OF INTERNATIONAL STANDARDS

World Bank Safeguards / Environmental and Social Standards

IFC Performance Standards

JICA Guidelines for Environmental and Social Considerations

Asian Development Bank's Environmental and Social Safeguards

Equator Principles III for Financial Institutions

GLOBAL EQUATOR PRINCIPLES FINANCIAL INSTITUTIONS

- Currently 80 Equator Principles Financial Institutions, in 35 countries
- Cover over 70% of international project finance debt in emerging markets
**When Do These Standards Apply?**

- Land acquisition or long-term lease
- Restrictions on land and natural resource use
- Economic displacement from activities other than land acquisition, e.g. loss of access to fishing grounds
- What does “willing buyer–willing seller” mean?
- If there is a willing buyer-willing seller scenario, does this mean these standards should be applied?
- Physical and economic displacement

_Beware of applying “willing buyer-willing seller” concept._

**How Are They Relevant for Myanmar?**

- Developed for emerging economies – so very relevant to Myanmar
- Myanmar EIA Procedure 2015 requires World Bank/Asian Development Bank Safeguards to be applied (para. 7)
- They don’t “tell you what to do”......they are designed to be flexible – instead they highlight the _key requirements_ which should be met
- The standards promote good practice but there are many different ways to “get there”
- This seminar focuses on ‘field-tested’ good practices which meet these standards
WHAT STANDARDS NEED TO BE MET?

- Resettlement planning and implementation needs to meet both national laws on land acquisition and compensation AND international standards.
- Use a Gap Analysis to identify differences – in policy and practice (e.g. some levels of Government may not follow own policy).
- The higher standard shall be met in case of differences.
- Mitigation measures for gaps developed by Government and Companies/Lenders.
- Involve experts and advisors including legal.

EXAMPLE: BRIDGING NATIONAL AND INTERNATIONAL REQUIREMENTS

<table>
<thead>
<tr>
<th>Myanmar</th>
<th>International</th>
</tr>
</thead>
<tbody>
<tr>
<td>No policy, practice or legislation for avoiding / minimizing resettlement</td>
<td>Require documented evidence of alternatives analysis and effort to minimize land acquisition</td>
</tr>
<tr>
<td>Cut-off Date not required</td>
<td>Cut-off date should be set at time of inventory / DMS and publicly announced</td>
</tr>
<tr>
<td>Compensation rates for land set by Government but not required to meet full replacement cost</td>
<td>Full replacement cost including transaction cost should be met</td>
</tr>
<tr>
<td>Some legislation requires standard of living to be restored but in practice this is not applied</td>
<td>Livelihood restoration required until livelihoods restored; transition allowance also expected</td>
</tr>
</tbody>
</table>

National laws should always prevail; international standards generally require national laws to be ‘complemented’ through supplementary measures if need to meet more rigorous requirements.
GENERAL OBJECTIVES

- Avoid, minimize adverse impacts from land acquisition or restrictions on land use
- Avoid or minimize displacement
- Avoid forced eviction
- Improve or restore livelihoods and standards of living
- Improve living conditions among displaced persons e.g. adequate housing, security of tenure

“Not Net Harm” / “No Worse Off”

LAND AND RESETTLEMENT: A COMPREHENSIVE APPROACH

- Compensation of lost assets at full replacement costs
- Restitution of livelihood losses
- Respecting different tenure systems
- Consultation & engagement
**KEY RISKS**

**For Affected Persons**
- Impoverishment - homeless, landless, jobless, marginalized
- Breakdown of social and cultural networks
- Difficulty in transitioning to new lives

**For Governments and Companies**
- Loss of social license to operate
- Business disruption and budget overruns
- Public scrutiny -> increased transaction costs
- Delays in project completion
- Dependency - “resettlement syndrome”

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**KEY ISSUES AND CHALLENGES RELATED TO INVOLUNTARY RESETTLEMENT**

- Compensation and other benefits
- Vulnerable Groups
- Livelihood Restoration without creating dependencies
- Community Engagement (incl. complaint management)
- Eligibility and Tenure
**Mitigation Hierarchy**

- **Avoid**
  - Anticipate and avert the adverse impact

- **Minimize**
  - Abate, rectify, repair, and/or restore impacts

- **Compensate / Offset**
  - Compensate for loss, damage, inconvenience

**Avoiding and Minimizing Displacement**

**Project Design**
- Anticipate, avoid & minimize displacement
- Much can be achieved by alternative project design
- Determine the potential cost for mitigation, compensation, and livelihood restoration

**ROW Re-Routing**
**Resettlement Planning and Implementation – Key Steps**

**Resettlement Planning**
- Census, Asset Inventory, Valuation, Tenure, Eligibility
- Consultation
- Establishing cut-off date
- Resettlement Action Plan or Livelihood Restoration Plan (or Framework)

**Resettlement Implementation**
- Replace, compensate, assist
- Monitor and evaluate
- Consultation and Grievance Mechanism
- Completion Audit

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**Balancing Act: Careful Planning vs Moving Project Along**

- Community Engagement
- Project Schedule
- Country Permits / Approvals
- Investor / Shareholder Expectations
- Land Acquisition & Resettlement
- Human Rights
- Capital Costs

*Conflict with communities a big cost to business*

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JICA IRP Expert Team
Social Clarity
SESSION 2: GOOD PRACTICE APPROACHES TO LAND ACQUISITION AND RESETTLEMENT

UNDERSTANDING THE LAND HISTORY

Myanmar’s land history needs to be carefully considered in current developments……

HOW?
- Engage local government and communities
- Review and document land history
- Identify risks and propose mitigations

WHY?
- Minimize future claims
- Manage public scrutiny and reputation risks
- Minimize delays and cost over-runs
- Maximize potential investments

Who owns / uses the land now?

What major land transfers have occurred in past 20, 30 or more years?

Has there been a previous compensation program in the area?

Are there any known or likely land claims in the area?
Government manages land acquisition for a company. Land classification based on survey maps/data from 1917. Land Use Certificates issued in 2012 under new Land Law. Only farmland from 1917 is paid at higher compensation rate; all other land is deemed pastureland and paid at a lower rate. In reality, the land is of similar quality across the whole area.

Farmer is cultivating land that is needed to build a resettlement site. Government pays crop compensation to farmer; brothers and sisters also make claim on the land.

Land acquired by Government in 1990’s. Land was not developed then but is now being developed by a private company. Compensation is being paid to current users but they are not the ‘original owners’ who still live nearby.

**LAND TENURE & ELIGIBILITY**

**Eligibility:** classified as persons

i. who have formal legal rights to the land or assets they occupy or use;

ii. who do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law; or

iii. who have no recognizable legal right or claim to the land or assets they occupy or use

*The inventory & census is designed to identify ALL potentially eligible people (e.g. owners, renters, sharecroppers, ‘squatters’ etc).*
LAND TENURE & ELIGIBILITY

House Owner – own land
House Tenant
Land User - renter
House Owner - rented land
Land owner - farmer
Small Business Owner
Employee – business
Grave owner
Grave tenant
Non-resident home owner
Pastoralist
Seasional agricultural labourer
Opportunistic settler – “squatter”
Others?

Economically Displaced
Physically Displaced
Temporarily Displaced
Titled, Soft Titled, No Title

SQUATTERS.....?

When is a squatter not a squatter?

☑ Traditional rights where the State never legally acquired land
☑ Local recognition based on taxes and other fees; de facto ownership
☑ No enforcement of exclusion zones
☑ Promises of land regularization by politicians
☑ Inconsistent application of policies
☑ Others?
INVENTORIES AND SURVEYS

- Establishes the number and type of ALL potentially displaced persons – Project Affected Person (PAPs)
- Sensitization of community before the inventory is essential
- Good practice – village resettlement committee(s)
- Time required to sort out and document land ownership and land use can be significant
- Build in support for PAPs – E.g., trusted third parties, respected local leaders, community-based organizations.

ELIGIBILITY CRITERIA – WHAT IS IT?

Entitlements Matrix

<table>
<thead>
<tr>
<th>Asset, Right, Interest</th>
<th>Eligible Entity (Individual or Household or Other)</th>
<th>Eligibility Conditions</th>
<th>Entitlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land held under a registered title</td>
<td>Registered land owner (usually a physical person – one case in the Project-affected Area)</td>
<td>Hold a registered land title that was registered with relevant authorities prior to the Cut-Off Date</td>
<td>Compensation – X Or Y or X and Y Allowances – Livelihood restoration assistance –</td>
</tr>
<tr>
<td>Land held under customary ownership and not registered</td>
<td>Customary land owner whether resident or non-resident (includes “transhumant farmers”)</td>
<td>Hold, prior to the Cut-Off Date, a customary land right, such as by local authorities</td>
<td>Compensation – X Or Y or X and Y Allowances – Livelihood restoration assistance –</td>
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Compensation – at full replacement cost
Alliances – to ensure people are not ‘worse off’ in transition phase
Livelihood restoration – to restore livelihoods / income levels
OTHER ECONOMIC DISPLACEMENT

- Shops/Small Businesses & Workers
- Forest resources
- Pastoralism
- Fishing / fish production
- Formal / informal tourism

EXAMPLE: SMALL/INFORMAL BUSINESSES
**CUT-OFF DATE**

- Established at time of inventory/DMS exercise
- Should be well documented and communicated
- Disseminated throughout project area
- Government should always be involved when establishing the Cut-Off Date
- Common challenges with Cut-Off Date?
  - Minimises speculation if people know they will not be included after cut-off date
  - Brings intra-family claims to light early

**BUILDING BLOCKS OF SUPPORT: ENTITLEMENTS**

- Development Opportunities
- Impacts on Groups and Communities
- Loss of Livelihoods
- Non-Vulnerable Groups
- Vulnerable Groups
- Loss of Assets (or Access)
  - Recognized Owners
  - Land Occupants without Legal Ownership
**What About Linear Projects like Roads?**

**Who is Eligible and What are the Entitlements?**

- Inside Corridor of Impact: Individual support to Project Affected Persons (PAPs)
- Outside Corridor of Impact: Group oriented support targeted at poor and vulnerable people
**Key Compensation Requirements**

- Compensation standards will be **transparent** and **applied consistently** to all parts of the project and communities and persons affected by the displacement.
- The project will take possession of acquired land and assets **only after compensation available/paid**.
- Resettlement and compensation packages will include options and alternatives.
- National laws will be met, and complemented to meet international standards.
- Compensation at full replacement cost.
- Compensation can be “in-kind” as well as “cash”.

**Full Replacement Cost & Allowances**

**Full Replacement Cost**
- Valuation methods – which one?
- Market price, land transactions, established unit rates, reduced floor area, construction and labour costs?
- Who determines cost? Who pays?
- Reaching consensus = less grievances

**Adequate Allowances**
- Transition Allowance
- Moving Allowance
- Disturbance Allowance
- Others?

**Why?**
- Indebtedness
- Loss of local culture and social disruption
- Impoverishment
- Food insecurity
- Loss of well-being

More costly to fix than to get right in the first place.
WHAT ABOUT COMPENSATION FOR COMMUNAL LAND AND ASSETS, SOCIAL INFRASTRUCTURE, NATURAL RESOURCES

MINIMIZE CASH COMPENSATION

• **Cash** compensation as a last resort
  
  Cash in cash-poor economies can have negative consequences

• **Over-compensation can be as harmful** as under-compensation (grows the gap between “haves” and “have-nots”; encourages compensation fever, bribery, jealousy…..)

• **Land for land, home for home** is nearly always preferred

  Give incentives for non-cash compensation, e.g., uplift

  Use/Set-Up Bank Accounts

  Provide money management & savings training
PHYSICAL RESSETLEMENT

If people living in the area must physically move to another location, the development shall:

• Offer choices among feasible resettlement options
• Provide relocation assistance
• Provide other relevant support and assistance such as moving help
• Provide security of tenure (e.g., title) at no cost to affected persons

HOUSING: BEFORE AND AFTER

• Housing should be of improved standard (e.g., generally improved quality and size)
• Urban housing can be costly compared to semi-urban/rural housing
• Also many examples of nice houses that people cannot maintain, don’t use properly, e.g., latrine being used as storage shed
• Gardens are generally recommended, even in semi-urban resettlement
Housing and Resettlement Sites

- **Options** for resettlement sites and housing type need to be provided
- Important for **resettlement site services to be properly planned** and aligned with town/master planning

Some Important Considerations for Resettlement Planning

- Do affected persons wish to be resettled together as a community or locations of their individual preference?
- What social networks exist that should be considered? Will communities be "disarticulated"?
- What are the potential cultural and psychological impacts of resettlement?
- Can livelihoods be adequately restored at the new location?
- How will local governance be affected (e.g., 10 HH head, 100 HH head.....)
**SHOULD AFFECTED PEOPLE BE ALLOWED TO BUILD THEIR OWN HOMES?**

- Sometimes affected people will want to build their own homes and this is usually an option the project should offer.
- **Self reconstruction is often a good option, particularly in urban resettlement of low-income communities** – the strategy can be based on providing a developed plot with basic services and access to credit.
- Other options include providing a developed plot and shell for the home that the affected household can then ‘fit-out’ themselves.

*Reconstruction of houses in resettlement projects provides good opportunities for employment, local/local procurement and capacity building but there can also be risks.*

**RESettlement SITES AND INFILL RESettlement**

- Resettlement sites are not always possible in urban environments.
- Infill resettlement might be more appropriate.
- When should self-relocation be encouraged?

*Resettlement Sites and Infill Resettlement*
WHAT HAPPENS IF PEOPLE DO NOT WANT TO MOVE?

Involve government and legal advisors early to develop expropriation plan so that it is in place in the event that not everybody agrees to sell willingly.

The expropriation process must:
- Not put affected peoples’ rights at risk
- Have safeguards in place to protect affected peoples’ rights
- Demonstrate all reasonable steps taken to offer suitable resettlement, compensation and other support before expropriation.

HOST COMMUNITIES

- What is the willingness of the host community towards receiving resettled people? Involve host community in consultation.
- Will there be disparities between accommodation and services in host community residents and resettled people?
- Are there common cultural characteristics, e.g., religion that need to be considered?
- Are there plans in place to help bring the host community to a similar level as resettled people?
- Do social infrastructure and services need to be upgraded to cope with population increase?
KEY CONSIDERATIONS FOR LIVELIHOOD RESTORATION

- Improve or at least restore livelihoods
- It is challenging, particularly for agriculture- or fishing-based economies
- Should include viable alternatives
- Experience shows that it is usually very difficult to ‘change’ livelihoods
- Is there a history of success or failure of the proposed models?
- Are there adequate food security measures in each of the models?
- Jobs for affected persons/locals during construction & operation of a project do not happen without considerable efforts

EMPLOYMENT AND JOB MATCHING

- Example: Refinery and Economic Zone

  Strong Local Recruitment:
  - Strong local recruitment policies and requirements for sub-contractors
  - Support to sub-contractors
  - Work ready training and ongoing mentoring for affected persons

  Recruitment Campaigns:
  - More than 2,300 job offers given
  - 880+ candidates passed interviews

  Job Seeker Support Services:
  - Almost 4,000 registered resettlement-affected job seekers
  - 1 main office; 4 branch offices; 10 staff

TRAINING ALONE IS USUALLY NOT ENOUGH
ESSENTIAL COMPONENTS OF SMALL SCALE BUSINESS DEVELOPMENT

- **TRAINING**
  - Community-Based
  - Transport Fees
  - Daily Allowances

- **SMALL-SCALE ENTERPRISE DEVELOPMENT**
  - Market Driven
  - Well Researched

- **CAPITAL INVESTMENT**
  - Capital Investment
  - Material Support & Equipment

- **ACCESS TO CREDIT**
  - Small-Scale Loans
  - Institutional or Community-Driven
  - Microfinance

- **MONITORING & TECHNICAL SUPPORT**
  - Ongoing Tech. Advice
  - Refresher Training
  - Regular Expert Visits

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EXAMPLE: SMALL SCALE BUSINESS DEVELOPMENT

- Comprehensive livelihood restoration program
- All categories of economically displaced
- Provision of materials and capital investment
- Strong monitoring and evaluation

Community-Based Training
LIVELIHOOD RESTORATION

Some other considerations for livelihood restoration

• Livelihood restoration programs very often under-budgeted / funded
• **Vulnerable people** require tailored livelihood restoration
• While nice houses are appreciated in the short-term, **nice houses do nothing to restore livelihoods**
• **Host communities** should be included
• The time to restore livelihoods is usually several years

VULNERABLE PEOPLE

How do you define Vulnerable People?

- Food support
- Tailored livelihood activities
- Family support

Vulnerable People are disproportionately affected by land acquisition and resettlement
COMMUNITY ENGAGEMENT IN RESETTLEMENT

- **Resettlement** requires intensive engagement with affected people on an ongoing basis
- **Active participation and negotiation** should be central to any resettlement program
  - Long consultation and negotiation processes are often necessary
  - It is usually **good to organize** affected people in resettlement committees **at the community level**
- Keeping affected people **fully informed of their rights and responsibilities** is crucial to the success of resettlement
- Balance disclosure of information with “**compensation fever**” and risks of opportunistic settlement

EXAMPLE: ENGAGEMENT IDEAS

Stakeholder engagement – home owner handbooks

- **Stakeholder engagement**
  - AN NINH
  - KHÁCH THỊ TÍNH
  - BÁN CÔ THỊ
**Example: Good Community Engagement**

- Wide range of community engagement methods & tools
- Local community relations team – in place early; good support

**Why Are Grievance Mechanisms Important?**

- Allows affected people to have their complaints heard and addressed.
- Important component of stakeholder engagement but **not** a substitute
- Early warning sign for Government/companies – can address issues before they escalate
- Good stakeholder engagement can reduce complaints and risk!
COMMUNITY COMPLAINT MECHANISMS – PROCESS STEPS

- Multiple access points
- Awareness-raising about the grievance mechanism
- Systematic tracking (logs & databases)
- Seeking feedback (users and non-users)
- Engaging communities in design of mechanism
- Build in dispute resolution/mediation processes

Some Common Misconceptions

- Many resettlement projects consider building nice houses as a priority; while rewarding to show, and appreciated by PAPs in the short term, nice houses do nothing to restore livelihoods
- In urban resettlement, long term security of tenure is the real factor in housing improvement; a good housing strategy is based on giving affected people security of tenure and access to credit
- Under-funding resettlement projects is common, particularly for livelihood restoration activities; build all costs into budgets
- Corrective actions more costly than doing it right first time

The absence of physical displacement impacts does not necessarily mean that the land acquisition process will be straightforward.

Economic displacement impacts are often the more difficult to address and leaving residents very close to facilities rather than resettle can cause a range of ongoing impacts
**Some Final Thoughts**

- **Land acquisition planning takes time**,...usually years and must commence early in the project cycle (e.g. pre-feasibility, feasibility)
- **Urban resettlement is highly variable** and sensitive to land costs
- **Government should always be involved** but companies can also play a lead role; tripartite committees are always recommended
- **Resettlement** should be **guided by resettlement specialists** including local/national specialists
- **Seek independent review** of resettlement planning and implementation to ensure relevant standards are being met
- A willingness to **adapt when things are not working as intended** is crucial

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**Thank You!**

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SESSION 3: CASE STUDY AND INTERACTIVE SESSION