

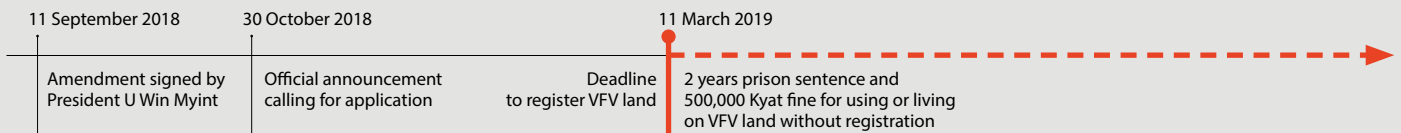
AS OF 11 MARCH 2019 – the date marking the end of the six-month grace period of the amended Vacant, Fallow and Virgin Lands law – **MILLIONS OF FARMERS ARE AT RISK OF BEING CONSIDERED TRESPASSERS ON THEIR OWN LANDS.**

The ‘Law Amending the Vacant, Fallow and Virgin Lands Management Law’ was drafted and approved by the National League for Democracy (NLD)-majority parliament and signed by President U Win Myint on 11 September 2018. The official announcement of the law on 30 October 2018 called for those currently using Vacant, Fallow and Virgin (VFV) land to apply for a permit to utilize the land by March 2019. Occupants failing to

do so by the deadline would be considered trespassers and criminalized, punishable by fines and imprisonment. **This hasty move to implement the amended law has great potential to proliferate land conflicts and render millions of people landless.** The VFV law is not compatible with the NLD’s election manifesto or the 2016 National Land Use Policy (NLUP). If the Government is committed to the peace process, sustainable development, and supporting smallholder

farmers, the VFV law should be repealed and a new National Land Law drafted to implement the NLUP.

In the recent past, granting ‘wastelands’ – now called VFV lands – harmed the nation’s interest without resulting in measurable gains in agricultural productivity or employment. Instead, deforestation skyrocketed and land conflicts escalated.



1. ECONOMIC IMPLICATIONS

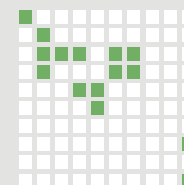
Wastelands and VFV land use permits for agribusiness undermine smallholder livelihoods and land use efficiency

The law’s explicit purpose is to allow businesses and foreign investors to utilize VFV land. Article 3(a) states that VFV land use permits are ‘for the economic development of the State and to create job opportunities for the locals and landless citizens.’ Yet evidence from Myanmar and the Mekong region suggests that large-scale land acquisitions exclude small landholders from their own farms and from fisheries, grazing, and forest resources that are essential for their livelihoods, resulting in landlessness, unemployment, and poverty. Large-scale land acquisitions across the Mekong region have engendered only limited job creation. In addition, companies involved often hire laborers from other places to avoid conflicts with locals.

The VFV law overlooks the fact that smallholder farming provides many jobs. For example, four of five rural households from the Delta and Dry Zone areas rely on cultivation for their livelihoods, whether on their own farms or as farm wage laborers. Over 80 percent of farming households in these areas employ seasonal agricultural laborers.¹ In addition, **Government statistics demonstrate that large-scale agricultural models across all States and Regions do not promote higher land use efficiency.** Of the 3,875,964 acres of VFV land granted for agriculture purposes since 1991, only 15 percent has actually been implemented and cultivated.²



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1 Boutry, M., Allaverdian, C., Mellac, M., Huard, S., San Thein, Tin Myo Win, Khin Pyae Sone. (2017). Land tenure in rural lowland Myanmar: From historical perspectives to contemporary realities in the Dry Zone and the Delta. ‘Of Lives of Land’ Myanmar research series. GRET: Yangon.
2 Department of Agricultural Land Management and Statistics (DALMS), Ministry of Agriculture, Livestock and Irrigation (MoALI)(2017b): Nay Pyi Taw. Summary report of large-scale land acquisition in Myanmar, as of December 2016.

2. LEGAL IMPLICATIONS

VFV land is a problematic notion that engenders vulnerabilities for informal occupants

Legal definitions of Vacant, Fallow and Virgin Land

Vacant and Fallow: Land on which agriculture or livestock breeding businesses can be carried out and that was tenanted in the past and abandoned for various reasons and without any tenant cultivating on it, and lands that are specifically reserved by the State.

Virgin: Wild land and wild forest land that has never been cultivated and where an official classification as reserved forest, protected area, or public protected forest, has not been conferred. It includes forest reserve land, grazing grounds, and fishery lakes and ponds lands whose classifications have been legally revoked and are not currently in use.

Exceptions from VFV land (as per Article 30-a)

(a) The lands for which the right to use as hillside cultivation (taungya land) is granted under the existing law and rules,

(b) Customary lands designated under traditional culture of the local ethnic people,

(c) The lands currently used for religious, social, education, health, and transportation purposes of the public and ethnic people.'

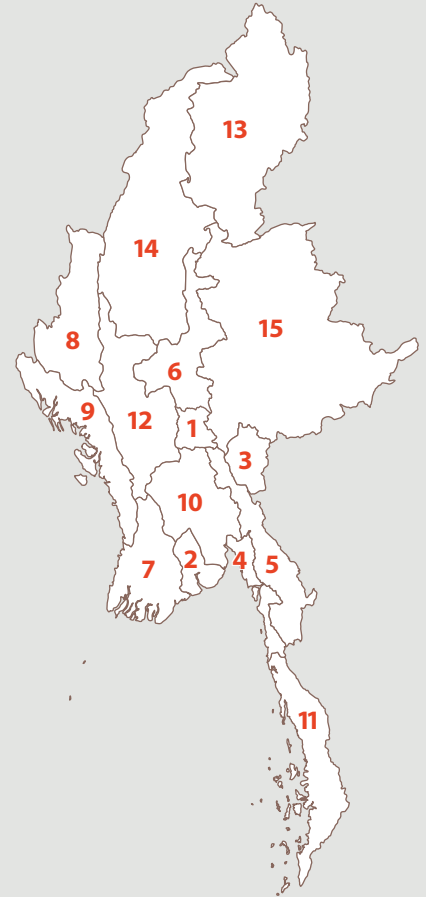
In practice, VFV land is often a category by 'default': This means that lands that have not been categorized and registered under other types of land use automatically fall under what can be legally considered as VFV, despite the fact that such lands may have been in use and occupied by people for decades. There are also no accessible or verified maps of such a land category.

Although hillside cultivation (taungya), customary lands, and lands for religious, social, education, health and transportation are excluded from the VFV law, there is no legal definition or mechanism for the classification and registration of these lands.

In the absence of a clear definition of customary land, villagers who consider that their lands are customary, on the basis of Article 30-a, and who are confronted with trespassing charges or faced with objecting to others' VFV applications, will face huge difficulties in representing themselves.

Distribution of land area per Region/State

Region State	Other land	VFV granted	VFV non-granted
1 Naypyitaw	1,478,922	33,750	231,172
2 Yangon	2,471,848	41,524	0
3 Kayah	2,445,093	0	453,827
4 Mon	2,811,754	33,296	193,515
5 Kayin	4,406,369	35,034	3,066,340
6 Mandalay	6,967,011	58,170	607,430
7 Ayeyarwady	8,335,674	346,945	0
8 Chin	4,664,626	1,744	4,234,088
9 Rakhaine	5,273,366	140,774	3,673,913
10 Bago	9,366,782	203,298	167,474
11 Tanintharyi	7,133,979	474,829	3,101,948
12 Magway	8,547,536	212,172	2,315,696
13 Kachin	12,575,053	1,386,281	8,041,368
14 Sagaing	18,793,315	602,753	3,758,314
15 Shan	22,523,526	437,608	15,538,211



3. IMPLICATIONS FOR PEACE AND FEDERALISM

Granting VFV lands is a major cause of land conflicts countrywide, in particular in ethnic areas, threatening the peace process

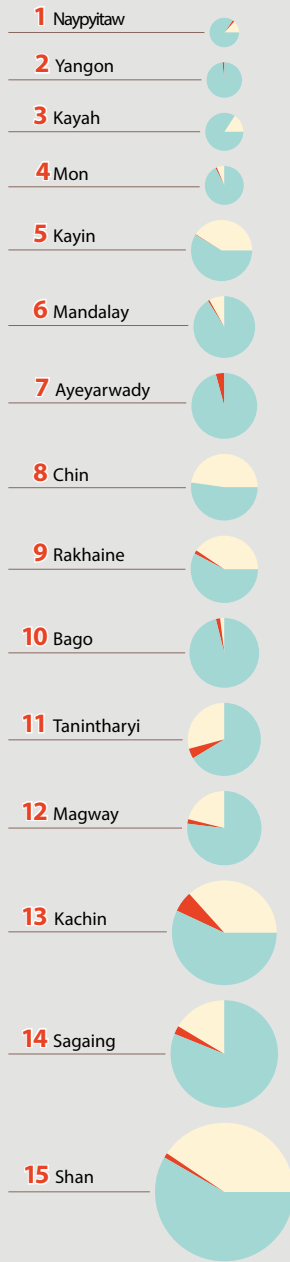
The VFV law applies the colonial-era concept of 'wastelands' – that is, lands which the British could not exploit for tax revenue until it had been brought under central control. The concept overlooks customary claims. The current law follows the colonial-era legacy of ignoring how land is actually being used. It continues a historical project to centralize land; undermining both federalism and the peace process.

A total of 75 percent of VFV land is in the seven ethnic States, where customary land systems prevail. Tanintharyi Region and northern Sagaing Region also include many ethnic areas where customary land systems are prevalent.

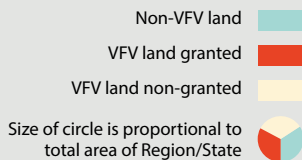
The definition of customary lands should be addressed through a participatory process, respecting the National Land Use Policy, rather

than by one Government ministry. It should be set out in a national land law, as part of a wider decentralization and federalism process essential to the peace process.

The situation is further exacerbated by the presence of an estimated 1.5 million internally displaced persons (IDPs). An additional estimated 1.5 million refugees from Myanmar are staying in Bangladesh, Thailand and India, and should eventually return to their homelands. The NLUP states that 'for ethnic nationals who lost their land resources where they lived or worked due to civil war, land confiscation, natural disasters or other causes...adequate land use rights and housing rights shall be systematically provided in accordance with international best practices and human rights standards.' (s.74).

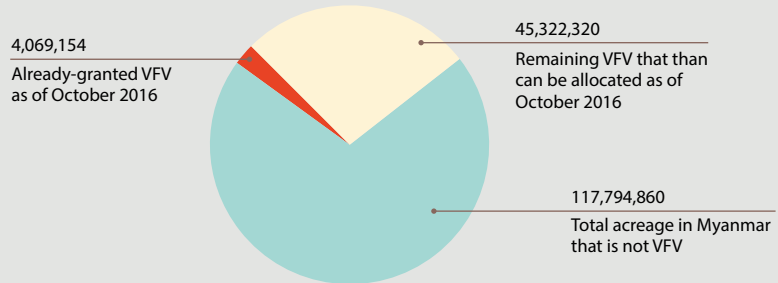


Distribution of land area per Region/State



Source: DALMS—2017
Mapping: GRET / MRLG—December 2018

Total distribution of land area in Myanmar per Region/State



*“Most of the unresolved land disputes so far have come from the **4 million acres** of VFV already allocated. With **45 million acres** still considered as available VFV that can be granted, there is potential for a substantial new wave of land disputes...”*

4. IMPLICATIONS FOR RIGHTS

Lack of access to information and clear data prevents informed decision-making, putting millions of farmers at risk of dispossession

The VFV land that is made available for agribusinesses or individual entrepreneurs is often already in use for agricultural production, livestock-raising, fisheries, and forestry by smallholder farmers. These people are hampered by a weak or non-existent statutory recognition of their land tenure and by the poor implementation of legally-defined procedures to identify and allocate rights on such lands. Most of the numerous land complaints already filed pertain to conflicts stemming from conflicting land claims, and remain unresolved.

Unequal access to information on the ground creates a substantial gap between well-connected business people who are already applying for VFV lands, and current farmers who are cultivating VFV lands. **Often, farmers may not even know that they are occupying lands that are considered as VFV lands, putting them at risk of being classed as trespassers.** Many farmers will never be able to access, afford or know how to apply to VFV land management committees. In cases of competing applications, business people will most likely win over smallholders' applications.

Land data on VFV land is inconsistent. Land use changes that have occurred throughout the last decades have often not been recorded properly, leading to outdated land use information with potentially negative impacts on local rights over land and natural resources.

Also, a large part of lands in upland or isolated regions of Myanmar have not been surveyed by the Department of Agricultural Land Management and Statistics (DALMS). Since the 2018 law does not take into account the lack of accurate data over these vast areas, upland regions could thus all be considered as de facto VFV lands.

Informal occupants across Myanmar have until 11 March 2019 to apply for the lands that they are already farming. However, the Government has not set up any support for farmers in this process in terms of awareness, means, institutions, and procedures, for transparency and objection. For people displaced by conflict, compliance with the deadline is impossible.

CURRENT STATUS OF IMPLEMENTATION, DAYS BEFORE THE DEADLINE.

MPs claim that civil society organizations (CSOs) are misrepresenting the VFV law and its implications, and that the law is aimed at obtaining unused land back from companies. This disregards the mechanisms to revoke land use permits that are already included in the 2012 law and other laws, but are rarely enforced. The situation on the ground suggests that the VFV law is currently often implemented in ways that benefit well-connected elites at the expense of local communities.

This is confirmed in recent field surveys, notably an MRLG survey* and the latest Namati survey. Both surveys demonstrate that despite the fact the deadline of 11 March has virtually been reached, the vast majority of farmers have no knowledge about the VFV law and its implications.

Numerous accounts from many areas describe a lack of information, lack of Government capacity, unreasonable top-down deadlines, and lack of procedures for objection or to manage fraud, all which may engender the exclusion of many people and new conflicts in the coming months and years. The situation is even more acute in ethnic areas due to conflict, displacements, and more unequal access to information and services.

* The survey was conducted with over 1,000 households in 19 villages of 6 townships of 4 States (Kayah, Tanintharyi, Chin, and Shan States) by an alliance of 4 organizations: Chin Human Rights Organization (CHRO), Karuna Mission Social Solidarity (KMSS-Loikaw), Save the Natural Resources/Green Rights Organization (SaNaR/GRO and Tenasserim River and Indigenous People's Network (TRIP-NET), supported by Mekong Region Land Governance (MRLG).

For further information:

Previous statements and letter of concerns made in November 2018

"Letter of concern regarding implementation of the VFV Lands Management Law (2012) as Amended by The Law Amending the VFV Lands Management Law (2018)" <https://reliefweb.int/report/myanmar/41-civil-society-ogranisations-call-myanmar-government-suspend-controversial-land-law>

and the "Statement on VFV law and related announcement" <https://lioh.org/?p=46>

Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes. San Thein, Diepart J.-C., Hlwan Moe and C. Allaverdian (2018). MRLG. Thematic Study Series #9. Vientiane: MRLG. <http://mrlg.org/resources/large-scale-land-acquisitions-for-agricultural-development-in-myanmar-a-review-of-past-and-current-processes/>

Namati's VFV instruction manual for VFV application: <https://drive.google.com/file/d/11UvxQ7cMYdEKKeecAURaw3rmZSsuLLXD/view?ts=5c18c36c&fbclid=IwAR3UZKWL23nMAM9XkwwPO0X0Uhy0LcVVd6HvrlZNknCkQSo4OQuV9q7c8>

For all laws including the VFV land management law (2012) and 2018 amendment: browse the Union Attorney General's Office Legal Information System Webpage. <https://www.mlis.gov.mm>

5. RECOMMENDATIONS

Since the VFV amended law threatens local livelihoods and the economy at large, as well as human rights, peace, decentralization and federalism processes – and environmental and cultural protection – we call on the Government to:

- Halt the implementation of the 2018 amendment of the law
- Halt the allocation of all VFV lands to private sector entities (companies and large private investors) that would impact on informal and customary land claims
- Consult with farmers, ethnic nationalities and civil society organizations to establish a just and effective land governance framework in line with the NLUP and led by the National Land Use Council (NLUC).

We also call for transparency on applications for VFV land use permits that have been submitted up to now. We encourage the Government to analyse the nature of VFV applicants and applications submitted during the recent six-month period. We also call on the Government to specify its plans in relation to taking Article 30-a into account, notably on the exemption of customary lands from VFV lands.

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