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## **BRIEFER ON THE 2012 VIRGIN, FALLOW AND VACANT LAND MANAGEMENT LAW AND ITS 2018 AMENDMENT**

EarthRights International is a non-governmental, non-profit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as “earth rights.” We specialize in fact-finding, legal actions, training of grassroots and community leaders, and advocacy campaigns. This brief sets out the key concerns with 2012 Virgin, Fallow and Vacant Land Management (VFV) Law and its 2018 amendments, focusing on the VFV land category as a continuation of a colonial system and that conflicts with land use in Myanmar.

### **WHY DOES MYANMAR HAVE A VFV LAW?**

The 2012 VFV law continues the colonial concept of “wastelands” – which were lands the British could not exploit for tax revenue until they brought it under central control. British legal systems have no “wasteland” concept and the Indian legal system has moved away from it. The wasteland concept ignored how land was used in Myanmar and the VFV law repeats this, continuing a historical project to centralize land that undermines federalism and the peace process.[1]

### **WHAT IS WRONG WITH THE VFV LAW?**

A total area 50 million acres has been categorized as VFV land - about 30% of the country. 75% this land is in the 7 ethnic states, where customary land systems are dominant and there is little or no vacant land. Customary land use is completely different to land use in the delta and dry zone regions.

VFV permits give weak, restrictive rights to use land on a temporary basis and make the varied and complex ways that people use land including communal land and resource use, illegal. When a farmer applies for a VFV permit, they acknowledge that they have no right to the land and accept centralized control. When farmers apply for a permit, the process is not transparent, has widespread corruption and discrimination against ethnic farmers and requirements that farmers cannot meet. Companies, meanwhile, easily meet these requirements. So although there are legitimate reasons for finding land that is available for various purposes, such as allocation to the landless, the VFV law doesn’t do this. Instead it has been much better at putting land in the hands of the companies and well-connected businessmen.

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[1] <https://www.tni.org/en/article/implementation-of-burmas-vacant-fallow-and-virgin-land-management-law>

### **WHY IS THE AMENDMENT SO DAMAGING TO FARMERS AND COMMUNITIES?**

The amendments increase criminalization of farmers – they make it illegal to continue using land even if no-one else has a VFV permit for it. Since 11 March 2019, anyone who is using land categorized as VFV risks being classed as trespassers. If they now apply for a permit they are effectively admitting to an offence. Many people have never heard of the VFV law and almost no farmers knew about the time limit. Even if they did, land administration services are not accessible, the government has not set up the bodies to implement the law and it has no capacity to support farmers. The law will put more land in the hands of companies. It is impossible for people displaced by conflict to comply and turns them into trespassers if they return.

### **DOESN'T THE AMENDMENT PROTECT CUSTOMARY LAND?**

The amendment takes customary land outside of the VFV law, but there is no framework for protecting customary land. Government records show huge areas of land under customary tenure as VFV land. People must guess whether or not the government will consider their land use to be customary. They are being forced to choose between giving up customary tenure rights in order to apply for weak, restrictive land user rights on the one hand, or assert their historic customary rights, but risk being categorized as trespasser and years in prison on the other hand. Companies can rely on inaccurate land records to claim that land is VFV land and on the fact that no-one has applied by the 11 March 2019 deadline. Communities rarely have the resources to oppose these claims before government departments or in court. Communities displaced by conflict will not even know that companies are applying for their customary land.

Notifications and instructions since the amendment was enacted from the Ministry of Agriculture, Livestock and Irrigation down to village tract levels told farmers they must apply for a VFV permit – these notifications did not tell farmers that customary land is outside the VFV law, forcing them to apply for a permit. Surveys have shown that almost all farmers are unaware that customary land is excluded.

In the period since the VFV law was amended, the Department of Agriculture, Land Management and Statistics (DALMS) has not taken any public steps to ensure that land which may be under customary tenure is no longer recorded as VFV land.

### **WHY CAN'T THE GOVERNMENT MAKE A BYLAW TO CLARIFY WHAT IS CUSTOMARY LAND?**

This is a complex, highly political question deeply linked to the peace process and federalism. It should be addressed through a participatory process, respecting the National Land Use Policy (NLUP) and federalism and not by a government ministry. It should be set out in a national land law.

### **HOW DOES THIS LINK WITH OTHER LAND LAW REFORMS?**

When the 2019 Land Acquisition, Resettlement and Rehabilitation Law comes into effect by presidential notification it will allow the government to acquire customary land without Free, Prior and Informed Consent. The law offers minimal additional protections to customary land rights holders.

The Farmland Law (as amended in 2020) brings shifting and rotational cultivation inside the Farmland Law and criminalizes farmers using such land without a permit. As with the VFV law, this may force communities either to give up customary tenure and apply for a limited user rights or assert their customary rights and risk being categorized as trespassers.

## SO WHY DID MANY MPS SUPPORT THE AMENDMENT?

MPs have said that CSOs are misrepresenting the VFV law and its implications, and that it is aimed at getting land back from companies. In fact, there were already mechanisms in the VFV law and other laws for doing this, but these are rarely enforced. The amendments could have been applied only to companies or to individuals commercially exploiting large areas of land, but instead it was applied to all farmers; the amendment to exclude customary tenure was a last-minute change.

## WHAT SHOULD HAPPEN NEXT?

This amended law is extremely unpopular [2] and a major violation of NLD's election promises, the NLUP and international law. It will increase land conflicts and grievances and undermine economic development. As most of the land categorized as VFV is located in ethnic areas, it will undermine the peace process under which ethnic leaders prioritize recognition of customary land. The government and parliament should:

- Halt the implementation of the 2018 amendment of the law, especially Article 22B, to prevent the criminalization of innocent people.
- Halt the allocation of all VFV lands to private sector entities that would impact on informal & 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).



[2] CSO Statement on the VFV Law, 16 November 2018, signed by 346 CSOs, available at: <https://www.facebook.com/landinourhands/posts/2264079397202697>. Letter of concern regarding implementation of the VFV Law, 16 November 2018, signed by 41 INGOs and CSOs, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Final%20VFV%20letter%20to%20CC%20English.pdf>





## A CASE STUDY - KYE ZU DAW

This is based on the experiences of the villagers of Kye Zu Daw which is located along the banks of the Heinzel River in Ye Phyu Township, Tanintharyi Region in Southeast Myanmar. Their story is told in full in the report by True Friends “Between A Rock and A Hard Place”[3].

- A community returns to their ancestral lands after being displaced by conflict.
- Much of their land has been awarded to companies under the VFV law and other parts are now Protected Forest under the Forest Law.
- They use what little land they have left, but local government departments accuse them of trespass. Companies are applying for VFV permits to use the land.
- There was no legal way to protect their customary land, so they tried to register it as VFV land.
- Villagers meet with government departments 26 times just to get a ‘Form 1’ to begin the VFV application process. In effect, it is impossible to complete the process. Yet companies get permits for 100s or 1,000s of acres in the same area.
- Even if the villagers get VFV permits, they will have given up customary rights and will probably only be given permits of 10 acres per household. They would have no right to use this small area in a customary way, pass it to their children or other community members, change crops or leave the land fallow or use it in other ways such as collecting firewood or edible plants. They will lose all the rest of their communal lands to companies.
- Local government departments have not told villagers about the new customary land exemption, so the only option appears to be for villagers to apply for VFV permits for a small proportion of their customary lands.
- Since 11 March 2019, companies can say no-one has applied for a VFV permit on the land and that anyone using it is a trespasser under the new criminal offences. Even when informed of the customary land exemption, villagers may not have the resources to fight companies’ VFV applications or defend criminal charges – they have already faced discrimination at every step.

This case study is for an area of around 1,200 acres. The new law has forced millions of farmers across 50 million acres into similar situations.

### **For further information, please contact:**

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[3] Available at <https://progressivevoicemyanmar.org/2019/08/30/between-a-rock-and-a-hard-place-the-struggle-of-returning-refugees-to-resettle-their-lands-in-ye-phyu-township/>