

## Brief Updates: Myanmar Land Law Reform

- In September 2018, Myanmar's Vacant Fallow and Virgin Lands Management Law was amended with the goal of reducing the unregistered use of vacant land and subsequent land grabbing.
- The amendment has important implications for permit requests of potential (foreign) investors.
- The most recent amendment a) decreases the number of acres<sup>1</sup> one can acquire a permit for, and b) adds strict liability for trespassing or use of land without a permit.
- The amendment has been criticized, its design and application are not conflict sensitive in the current environment. It has the potential to enable land-grabbing by powerful actors from vulnerable groups, while at the same time not providing adequate awareness, safeguards, time and mechanisms for vulnerable groups – especially in conflict-affected areas – to prove or register their claim to the land. Potential investments including land use should be considered on a case-by-case basis.
- Investors are advised to seek expert advice to comply with legal and social corporate responsibility standards and the UN principles on Business and Human Rights.

### ***Introduction***

In September 2018, Myanmar's Vacant, Fallow and Virgin Lands Management Law was amended with the goal of reducing the unregistered use of vacant land and subsequent land grabbing. The amendment has important implications for permit-requests of potential (foreign) investors, and those currently making use of agricultural lands. Next, the application of this amendment in conflict (-adjacent) areas can be problematic, negatively impacting citizen's rights. Through these laws, it has become easier for foreign investors to renounce communal land rights, and seize plots previously used to sustain the livelihood of local people. With this brief, we aim to inform you regarding the wider context, the amended law, and its implications for (potential) foreign investors.

### ***Context***

More than two-third of Myanmar's population relies directly or indirectly on agriculture for its livelihood. During more than sixty years of civil war, both military and ethnic armed groups have confiscated and grabbed land with little to no compensation. Although the exact numbers are unknown, estimates suggest that it concerns millions of acres of land spread over the country. A number of land right laws were designed to "move land out of the hands of rural working people and into the hands of 'modern' farmers and business actors." The erection of Special Economic Zones located in rural ethnic areas – intended to attract foreign investors – have pushed numerous farmers off their lands.

The impact of the amendment on communal lands has been criticized for infringing on cultural communal practices and access to livelihoods in certain rural areas. This is

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<sup>1</sup> 1 acre = 0.4(05) ha of 40.5 are

ultimately the result of a lack of respect and full entitlement for the long-term right to land. Especially the lands of internally displaced and refugees are vulnerable to illegal confiscation, further complicating their safe and sustainable return in the future.

Under the previous military government that set in motion Myanmar's reform and opening up, the government started public consultations for a new national land use policy and started a number of reform initiatives. Considering the substantial variability of land use systems amongst communities, amendments of the law have had opposing impacts in different regions and subsequent responses. Nonetheless, successive governments have moved forward with the amendments to combat landlessness, clarify land claims, and to increase the efficient and effective use of land.

### ***Land Law reforms & VFV law amendment 2018***

Although the 2008 Constitution stipulates that all land remains property of the State, the Farmland Bill 2011 allowed persons with 'land use rights' to "transfer, exchange, or lease their land" – legalizing a previously unlawful but common practice. In 2012, the Vacant, Fallow and Virgin lands Management Law (VFV Law) was established, dictating that unused land can be claimed by willing individuals, including local and foreign investors, on the condition that the land is made economically productive. These lands also include rich biodiverse and forest areas in need of protection.

Most recently, the VFV law was amended in 2018 with the aim of boosting economic development by using vacant, fallow and virgin lands for agricultural, mining and other business. The amendment has two relevant components.

First, it decreases the number of acres one can acquire an agricultural permit for.<sup>2</sup> According to the amended law, a first permit of between 300 and 3000 acres can be applied for with the regional governments of the designated land. When 75% of this land is used, one may again request a permit of between 300 and 3000 acres with the regional government, which can be repeated up to 10 times. If one wants to apply for a permit of between 3000 and 30.000 acres, applications must go to the Union level government (central committee). Permits are granted for a period up to 30 years. Here, it must be noted that the process for permit requests may differ from region to region and it is advised to search further expertise for each specific case.

All persons who failed to register their land before 11 March 2019 may face severe penalties or up to two years imprisonment. Many (communal) farmers are unaware of this new law, do not have access to land administration services, or have protested against what they perceive to be an infringement on their traditional and/or communal rights.

Second, the 2018 amendment adds strict liability for trespassing or use of land without a permit. This means those who use land they have owned for generations – although unregistered – may be arrested even without awareness of these laws. The implications are especially severe for those who have had to flee their homes and leave behind their lands as consequence of conflict.

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<sup>2</sup> The law only changed for perennial plants, orchard crop and industrial crops. The laws remained unchanged for livestock breeding, and poultry farming business.

### ***Concerns regarding the VFV land law amendments***

With the land registration lapsing last March, civil society organizations and others have increasingly become concerned with the highly centralized nature of the land laws, leading to disproportionate implications across “non-modern” land use practices. In January 2019, the UN Special Rapporteur expressed its concern that “this law may be used to illegally dispossess land users of their land without due process or adequate notice, undermine their human rights, and have a disproportionate impact on poor, rural and minority communities, ethnic nationalities and indigenous peoples.”

Civil society actors are similarly worried of unequal implementation of the policies and opportunities to register the land. Here, communal land use and rotational systems will be harder to maintain under the new amendments. Last, the amendments make it somewhat easier for large corporations and foreign companies to acquire land that has been ceased under the label of VFV land. This is worrisome as – even when one sticks to the legal regulations, corporate social responsibilities are not necessarily fulfilled.

### ***Recommendations***

- 1) Be aware of the complex implications of the VFV law amendment 2018, and its diverse uptake in different regions of the country.
- 2) Be aware that compliance with current VFV laws may satisfy legal requirements, but it may not be consistent with social corporate responsibilities.
- 3) Case-by-case assessments of the on-the-ground situation are highly recommended, including regional laws, communal practices, and environmental risk calculations.
- 4) Seek (legal) expertise for each specific case. Collaboration with existing local organizations engaged in the region could be a valuable asset for refining legal responsibilities and corporate social responsibility. This may be in addition to finding counseling with regional governments.

### ***For further information, please see links below***

Myanmar Centre for Responsible Business

<https://www.myanmar-responsiblebusiness.org/>

Article on the VFV laws

<http://www.burmalibrary.org/docs25/2018-09-11-VFV-amendment-en.pdf>

Information on the history of land laws

<http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2012/pyidaungsu-hluttaw-law-no-10-2012-vacant-fallow-and-virgin-land-management-act.html>

Civil society statements

<https://lioh.org/?tag=vfv>

Information on special economic zones

<https://earthrights.org/what-we-do/land-rights/special-economic-zones/>

Statement from the UN Special Rapporteur in Myanmar

[https://lioh.org/wp-content/uploads/2019/02/UN\\_Rapporteur\\_on\\_VFVL\\_20190121.pdf](https://lioh.org/wp-content/uploads/2019/02/UN_Rapporteur_on_VFVL_20190121.pdf)

Transnational Institute commentary on VFV law concerns

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