

Myanmar - “A Declaration of War on Us”: The 2018 VFV Law Amendment and its Impact on Ethnic Nationalities

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The right to land for all peoples is essential for peace, democracy and development.



Farmers working on land in Pinlaung township in Shan State / Photo credit Tom Kramer

The recently adopted amendment by parliament to the 2012 Vacant, Fallow and Virgin Lands Management Law (VFV Law) has immediate, deep and far-reaching implications for many millions of rural working people in Myanmar, especially in ethnic nationality regions. The new law has also serious, negative consequences for the country’s development and the transition towards democracy, and ultimately for the prospects for a lasting peace in Myanmar.

Across Myanmar, but especially in ethnic borderland areas, the livelihoods and well-being of agrarian communities have, for centuries, been assured through traditional customary land and resource management systems. Many such systems continue to exist, and they command social legitimacy in regulating how people relate to each other and to land and resources at the village level. These systems involve community assertion of authority over the local land and resources, and regulation of their management and use. These systems are often informal, but there is clear understanding within and between villages what land can be used, by whom, for how long, and for what purposes.

These systems have come under several threats. In 2012 the then Thein Sein government adopted two new land laws: the Farmland Law and the VFV Law. These new land laws set the legal framework for largescale land grabs. The Farmland Law stipulates that land can be legally bought, sold and transferred on a land market with land use certificates (LUCs). The VFV Law legally allows the government to reallocate what in fact are villagers’ farm and forest lands to domestic and foreign investors. These territories include both upland shifting land, especially fallow, and lowlands that do not have official land title.

Worryingly, these new land laws do not take into account the existing land tenure practices in ethnic nationality areas where shifting cultivation in the uplands is common and where few have formally-recognized land titles or national identity cards. Indeed, the new laws do not recognize customary and communal land rights at all. Nor do they consider the right of return of hundreds of thousands

of ethnic nationality villagers who have been displaced from their ancestral lands due to decades of conflict and economic marginalization within the country. Consequently, the new laws are seen as exclusively benefitting the private sector, particularly large foreign investors, at the expense of smallholder farmers, who make up three-quarters of the population.

Under these laws community-managed resources, such as village forests, waterways, fishponds and grazing lands, are susceptible to confiscation, despite being crucial to local livelihoods and food security, particularly for vulnerable households. Smallholder farmers have been labelled as “squatters” under this law. The law allows for a total acreage for industrial crops for up to a maximum of 50,000 acres for a thirty-year lease, with the possibility for renewal. Confronted with these new laws, representatives of ethnic nationality communities throughout the country have told TNI on numerous occasions: “There is no VFV land in our areas!” In several ethnic nationality languages in the country, these terms do not even exist.

In an effort to address some of these serious problems, in early 2016 the Thein Sein government adopted the National Land Use Policy (NLUP) [1], just at the end of its term. The NLUP includes provisions to recognize and protect customary land tenure rights and procedures of the ethnic nationalities and also supports the right to return and restitution for Internally Displaced Persons (IDPs) and refugees. The 2016 NLUP and the public consultation process that led to it seemed to have drawn a line that any new land law would rise to the standards set by the NLUP. Instead, what people have received today is indeed a sinking of land law to a new low. The new VFV law amendment not only ignores the NLUP, but directly contradicts it.

When the Thein Sein government stepped down, expectations were initially high that the new democratically-elected NLD government would take the concerns of rural working people across the country seriously. This included ethnic nationality areas where many people voted for the party and its leader Daw Aung San Suu Kyi. In apparent follow-up to this, the NLD government has been working on amending the old Thein Sein government-era land laws since last year.

However, as the public eventually discovered, the new government has amended laws in ways that sometimes make them worse than they were to begin with. Since 2017, a draft of a new law on land acquisition has been submitted to the Parliament, and a revised version again in 2018. This land acquisition draft law is seen by civil society groups as failing to keep in line with international standards and relevant human rights law instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples. The implications are extremely severe in the absence of any safeguards and recognition of people’s customary lands and of IDPs’ and refugees’ right to land restitution. Indeed, it is hard to understand how the current government imagines that either law could ever achieve social acceptance and legitimacy.

The 2018 VFV Law reiterates the long-hated concept of VFV. It introduces a six months’ deadline for those who are eligible and can register a portion of their land. By doing this, it totally disregards all the problems related to land registration projects all over the world, whilst also setting up those who do manage to register to experience all the problems associated with entering onto the Western private property land-market path. Equally serious, the new VFV law introduces punishments if people fail to register and remain on the land (monetary or jail time), thereby effectively authorizing criminalization of people on the land in ethnic nationality areas.

It is therefore hard to imagine that this new law could ever become authoritative on the ground without coercion and/or the use of force, and yet its authors signal their intent by introducing a deadline and punishment. Overnight, this amendment not only labels millions of people in the country living and working on their ancestral lands for generations as squatters, but it also criminalizes them and threatens them with prison sentences. As one ethnic nationality community

leader said: “This law is like a declaration of war on us”.

In response, two local networks, Land in Our Hands (LIOH) and the Myanmar Alliance for Transparency and Accountability (MATA) [2], have launched a campaign which aims to abolish the VFV law and calls for the government to develop a new federal land law, in close consultation with civil society organisations and communities. LIOH is a local multi-ethnic land network of some 60 organisations that aims to fulfill the right to land for small-scale land users. MATA is a nationwide network comprised of 418 local civil society groups for the adoption of transparency and accountability standards in extractive sectors.

“The law will raise the likelihood of conflict in ethnic areas”, says a LIOH spokesperson. “It is a political issue, not a technical issue.” The campaign has been successful on Facebook and has also attracted media attention. In addition, it has resulted in statements from different organisations echoing the concerns and demands from the campaign. These include the United Nationalities Alliance (UNA - coalition of ethnic political parties) [3], the Karen National Union (KNU - ethnic armed organisation) [4], IDPs in Kachin State [5], a Karenni Land Forum held in Loikaw recently, [6] and a joint statement by several Kayan organisations. They are all equally extremely worried about the VFV Law and demand that it be abolished.

The KNU has its own land policy, dating back to 1974, which was revised and published in 2015 [7]. The KNU policy explicitly recognizes ethnic customary and communal right to land, as well as the right to land for IDPs and refugees. Efforts by the KNU to include these principles in the country’s faltering peace process have not been successful, as these were opposed by representatives from the Myanmar armed forces (*Tatmadaw*) and not vocally supported by representatives of the NLD. The KNU has recently withdrawn from all formal meetings in the peace process due to the lack of progress in the talks.

To address this worsening crisis, local communities must be protected by the government against land grabbing. Land and investment laws should respect, recognize and promote the needs and rights of smallholder farmers for all the peoples of Myanmar. Recognition of existing customary and communal tenure systems in land, water, fisheries and forests is a crucial starting point for any discussion about how to eradicate poverty and build real peace in the country. This is important to ensure sustainable livelihoods for marginalized ethnic communities who have been affected by decades of civil war, and for IDPs and refugees who wish to voluntarily return to their ancestral lands. Without recognition and protection of the right to land for all nationalities in Myanmar, the prospects for democracy, peace and development are slim.

Transnational Institute (TNI)

P.S.

- Transnational Institute (TNI), 13 December 2018:
<https://www.tni.org/en/article/a-declaration-of-war-on-us>
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Footnotes

[1] <http://extwprlegs1.fao.org/docs/pdf/mya152783.pdf>

[2] <https://lioh.org>

[3] <https://lioh.org/?p=53>

[4] <https://lioh.org/?p=88>

[5] <https://lioh.org/?p=61>

[6] https://lioh.org/wp-content/uploads/2018/12/Karenni_Land_Forum.jpg

[7] https://www.tni.org/files/article-downloads/knu_land_policy_eng.pdf