

Commentary

Myanmar in Focus - Implementation of Burma's Vacant, Fallow and Virgin Land Management Law: At Odds with the Nationwide Ceasefire Agreement and Peace Negotiations

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Land rights of peoples must be protected to improve prospects for peace.

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Farmers working in the northern Shan State / Photo credit Jason Gelbort

The Government of Myanmar's approach to land policy risks increasing land conflicts and exacerbating current challenges in formal peace negotiations. Civil society organizations strongly oppose implementation of the recently-amended Vacant, Fallow and Virgin Land Management Law (VFV Land Law),¹ due to well-founded fears that its implementation will facilitate the displacement of villagers from their ancestral lands and will weaken customary land tenure rights. This presents an example of legal reform in Naypyitaw contradicting the aims of the peace process and the commitments contained in the Nationwide Ceasefire Agreement (NCA). There are also significant parts of the country where the NCA has not been agreed. A change in the government's approach is therefore necessary to protect land rights and improve trust in prospects for peace.

Background: Civil society rallies against the Vacant, Fallow and Virgin Land

Law

Hundreds of civil society organizations are mobilizing in opposition to the government's implementation of the VFV Land Law due to the expectation that the law will facilitate land grabbing and land conflict. One statement explains that the VFV Land Management Central Committee's notification of 30 October 2018 requires that anyone using the VFV land register receives permission to continue using the land.² This requirement creates serious uncertainties for a large portion of Myanmar's population. If they do register their land, they will lose their historical and traditional rights to it, instead receiving a 30-year use permit. If they do not register the land, they risk eviction or penalties of imprisonment for two years and/or a 500,000 kyats fine. The government has reportedly estimated that 45 million acres qualify as VFV land, 82% of which is in the ethnic nationality states, threatening the livelihoods and survival of an unknown number of persons throughout the country.³

CSOs have pointed out the ways that the VFV Land Law will threaten pre-existing land tenure, will facilitate land grabbing, and will cause land conflicts to increase.⁴ Three hundred and forty-six organizations signed onto a statement saying, "Instead of accepting and enacting this law, the fundamental priority must instead be to effectively recognize customary practices and communal land rights, and to safeguard the interest of the peoples depending on land."⁵ This statement and a recent statement by internally displaced persons (IDPs) from Kachin and northern Shan States point out that the law will negatively affect persons displaced by conflict, who already face challenges in holding on to their ancestral lands.⁶

An amendment to the law exempts lands used under ethnic customary tenure from the VFV Land Law. However, there is no guidance on how these exclusions will be determined, nor is there any affirmative protection for such land rights under Myanmar laws or structure for coordination with ethnic-based administrations.⁷ This means that villagers' claims to customary tenure will likely be adjudicated arbitrarily, and they will still face risks to their rights.

The United Nationalities Alliance (UNA) of 15 political parties and its partner organizations have also released a statement setting out the problems with the law. The UNA publicly explains the need to "recognize formally and protect customary land tenure rights and related local customary land management practices of ethnic groups, whether or not existing land use is registered, recorded or mapped."⁸ Civil society organizations have been pushing for the law to be repealed and replaced with a Federal Land Law based on the existing National Land Use Policy and a participatory legislative process.

The VFV Land Law and the Nationwide Ceasefire Agreement: Out of Sync

The government's land law reform and implementation appears to frequently ignore and contradict its commitments under the Nationwide Ceasefire Agreement. Ten out of at least 20 relevant Ethnic Armed Organizations (EAOs) have signed the NCA with the government and Tatmadaw, and the parliament has ratified the agreement.⁹ There are two ways that the NCA text requires the government to coordinate with signatory EAOs on land management that may not be immediately apparent: first, through the interim arrangements and NCA meeting decisions, and second, through the bilateral ceasefire agreements reaffirmed in the NCA.¹⁰

The interim arrangements chapter of the NCA provides a list of substantive areas where the government and EAOs are required to coordinate activities. This section recognizes existing ethnic governance and is intended to protect against encroachment on those administrations during the

period before the implementation of a final peace agreement. Sub-article 25(a)2 of the NCA names “Environmental conservation” as an area under the interim arrangements.

The direct link to land comes from the NCA meeting decisions and article 30 of the NCA. This article requires that NCA implementation include the relevant meeting minutes.¹¹ NCA meeting decision 25 provides clear instruction on the interpretation of the interim arrangements, explaining, “Article 25(a)2 ‘Environmental conservation’ will include coordination on land and resources management as proposed by the EAOs.”¹² This means that land management is included for the implementation of the NCA’s interim arrangements and should not be acted on unilaterally by the government in ways that conflict with existing ethnic nationality administrations or interests. This is relevant in all ceasefire areas, and notably in areas controlled or influenced by the Karen National Union (KNU), which has its own KNU Land Policy that recognizes and protects customary tenure.¹³

Additionally, the NCA addresses land wherever land was mentioned in the bilateral ceasefires with one of the signatory EAOs. The NCA twice commits the parties to continue to implement their bilateral ceasefire agreements. In the preamble, the NCA “recognizes, reinforces, and reaffirms all previous agreements between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations.” In Article 2(c), the parties “[r]eaffirm all promises and previous agreements signed between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations.” This matters for land because the New Mon State Party (NMSP) Union-level bilateral ceasefire includes an agreement “[t]o seek solution for cases of people’s lands through coordination.”¹⁴ Similar to the interim arrangements section, the government is bound to coordinate on land issues with the relevant EAO.¹⁵

Land Law Reform a Microcosm of Broader Challenges in Achieving Peace

In addition to the significant concerns that the VFV Law’s implementation raise for the rights and livelihoods of villagers, the disconnect shown between land law reform in Naypyitaw and the ceasefire implementation process serves as a case study for larger problems in efforts to negotiate a sustainable peace and in the NLD’s electoral prospects in the 2020 general elections. A July 2018 report by the Karen Peace Support Network highlighted this problem prior to the recent VFV Land Law amendments and implementation, stating:

“The land related legal reform process, currently taking place in parliament, has actively ignored the opportunity to resolve the deep-rooted land conflicts across the country, that could lay the foundations for long lasting peace in the country. Ethnic communities have sought to address this crucial issue through the peace negotiation process. However, parliamentary reforms on land related legal frameworks continue to jeopardise the peace negotiations process, and opportunities towards equitable and just solutions to the land issue, by further entrenching centralised control of land.”¹⁶

The NCA implementation process faces serious challenges. Following the 15-16 October meeting of the top leaders of the government, Tatmadaw, and NCA-signatory EAOs in Naypyitaw, the KNU and Restoration Council of Shan State (RCSS) decided to temporarily pause their participation in formal NCA-related meetings. These are the two largest of the NCA-signatory EAOs. But they expressed concern that the political dialogue process and Joint Monitoring Committees are being implemented in ways that will not lead to a sustainable peace or meaningful political change. Both organizations have stated that a key problem facing the formal process is the lack of common understanding on the terms within the NCA and a failure to properly implement the agreement (and bilateral agreements) by all parties.¹⁷

Members of civil society have also expressed concern that the implementation of land laws represents a further centralization of power instead of a move to a promised federal system to achieve peace.¹⁸ At the same time, there are areas of the country where conflict continues and where the NCA was not offered or has been rejected as requiring reconsideration or reform. Rebuilding trust in the peace talks will therefore need greater communication and coordination between actors in Naypyitaw and those working among civil society and in the ethnic nationality states, including on topics related to interim arrangements and bilateral ceasefire implementation.

Similarly, the recent by-election results, where the NLD won only seven of 13 contested seats, demonstrate that the party risks losing its large majorities in the state and union parliaments. The NLD government has powers as the government and majority in parliament to drive policy, and it should carefully use those powers to advance rights for all peoples in the country, including to help secure customary land tenure, following the recommendations of civil society groups and networks. It also should ensure that it does not undermine the text or spirit of its ceasefire agreements and that it properly upholds its commitments to implement ceasefires. In addition, international technical assistance to legislative reform efforts and to peace negotiations must be well informed by other efforts for political change and by other aspects of the country's legal and governance framework, including ceasefires and ethnic nationality administrations. The peace process has been faltering, and it is essential for all parties to consider why difficulties are occurring and progress is not being made. This includes ensuring that land reform and legal enforcement do not make matters worse. Land is a key issue in Myanmar's future.

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References

1 Vacant, Fallow and Virgin Land Law (amended 11 September 2018, by Pyidaungsu Hluttaw Law No.24). Forest Trends conducted a legal analysis of the law prior to the recent amendments in 2012. Food Security Working Group's Land Core Group, "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law" (November 2012), available at: https://www.forest-trends.org/wp-content/uploads/imported/fswg_lcg_legal-review-of-farmland-law-and-vacant-fallow-and-virgin-land-management-law-nov-2012-eng-2-pdf.pdf.

2 Land In Our Hands, "Statement on the Opening of the Vacant, Fallow & Virgin Land Management Central Committee for Applying VFV Lands", available at: <https://progressivevoicemyanmar.org/2018/11/06/statement-on-the-opening-of-the-vacant-fallow-virgin-land-management-central-committee-for-applying-vfv-lands/>.

3 See Land In Our Hands, "Statement on the Opening".

4 The statements cited here present many of these concerns. For information on land grabbing and land conflicts, see, e.g., Land In Our Hands Network, "Destroying People's Lives: The Impact of Land Grabbing on communities in Myanmar" (December 2015), available at: https://www.tni.org/files/article-downloads/lioh_research_report_eng_0.pdf; and Human Rights Watch, "Nothing for Our Land: Impact of Land Confiscation on Farmers in Myanmar" (2018), available at: https://www.hrw.org/sites/default/files/report_pdf/burma0718_web2.pdf. A recent randomized survey in Karen areas found that land grabbing was the most common human rights abuse since the 2012 bilateral ceasefires and that land-grabbing cases occurred almost exclusively in government-controlled and mixed-controlled areas. Saferworld and Karen Peace Support Network, "Security, justice and governance in southeast Myanmar: A knowledge, attitudes and practices survey in Karen ceasefire areas" (October 2018), pp.66-69.

5 “Civil Society Organizations’ Statement on the Vacant, Fallow & Virgin Land Management 2018 and related announcement”, 16 November 2018, (signed by 346 CSOs), available at: <https://www.facebook.com/landinourhands/posts/2264079397202697>. See also, “Letter of concern regarding implementation of the Vacant, Fallow and Virgin Lands Management Law (2012) as Amended by The Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018)”, 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>. Other civil society organizations continue to issue statements. See, e.g., statements by the Karenni Land Seminar, 5 December 2018, and by four Kayan (KNP, KyWO, KNGY, KLCC) organizations, 5 December 2018.

6 “Statement on 2018 VFV law by IDPs from Kachin and Northern Shan state” (26 November 2018), available at: <https://progressivevoicemyanmar.org/2018/11/26/statement-on-2018-vfv-law-by-idps-from-kachin-and-northern-shan-state/>. There have been multiple reports of Kachin IDPs’ land being grabbed, especially for banana plantations. See, e.g., Htun Khaing, “Kachin IDPs fear land grabs in the villages they once called home” Frontier Myanmar (19 January 2018), available at: <https://frontiermyanmar.net/en/kachin-idps-fear-land-grabs-in-the-villages-they-once-called-home>. The Kachin Independence Organization issued a statement opposing the land grabs of IDPs’ lands. Central Committee Kachin Independence Organization, “Statement”, 25 November 2017. The concerns raised by displaced persons in northern Myanmar also apply to IDPs and refugees from other areas of the country.

7 See Ben Dunant, “Why a land law change is sparking fears of mass evictions”, Frontier Myanmar, 19 November 2018.

8 The United Nationalities Alliance and its Partner Organizations, “Joint Statement of the United Nationalities Alliance (UNA) and its Sister Organizations on the Vacant, Fallow & Virgin Land Management Law” (November 2018), available at: <https://www.facebook.com/UnitedNationalitiesAlliance/posts/1135254689975656>.

9 “Two new signatories become members of NCA”, Global New Light of Myanmar, 1 March 2018.

10 “The Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations (15 October 2015)”, available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf.

11 “We agree that, in consultation with each other, decisions contained in the agreed meeting minutes taken during negotiations for the Nationwide Ceasefire Agreement shall be referred to in the implementation of the Agreement.” NCA, article 30.

12 In addition to land, women’s participation in the political dialogue and education programs are key issues addressed by the NCA meeting decisions. “Decisions and minutes made during NCA” (unofficial translation), SHAN Herald (11 January 2016), available at: <https://english.shannews.org/archives/13393>.

13 “Karen National Union – KNU Land Policy”, Office of the Supreme Headquarters, Karen National Union, Kawthoolei (December 2015), (updated from a series of land policies beginning in 1974), available at: https://www.tni.org/files/article-downloads/knu_land_policy_eng.pdf.

14 “NMSP-Government 4-point Union-level Peace Agreement” (25 February 2012), Unofficial English translation summary available at:

<http://mmpeacemonitor.org/images/pdf/NMSP-Government-feb2012.pdf>. The signed the NCA on 13 February 2018. See also the KNU agreements of 13 January and 7 April 2012, noted discussion of resolving land rights issues.

15 A separate question for analysis remains on whether the overall land law framework and the Union Accord agreed at the Union Peace Conference (21st Century Panglong) are consistent with each other. During the July 2018 conference, the Union Accord was updated to include the principle: "Only citizens can own land in the country, and foreigners and illegal settlers must not own it directly or indirectly." If the Burmese term more accurately refers to land use, then the Union Accord may create an inconsistency with the VFV Land Law and other existing land laws, which allow permissions to be granted for the transfer of rights to foreign or partially foreign entities. If a full legal analysis confirms this inconsistency, it would mean that 1) the political dialogues are able to achieve results contrary to existing laws, but 2) perhaps only where the government and Tatmadaw lack a consistent strategy across the political dialogue and legal reform processes, including for encouraging investment. For the Union Accord Part II text, see, "14 points signed as Part II of Union Accord", Global New Light of Myanmar, 17 July 2018.

16 Karen Peace Support Network, "Burma's Dead-End Peace Negotiation Process: A Case Study of the Land Sector", 2 July 2018, 16, available at: <https://progressivevoicemyanmar.org/wp-content/uploads/2018/07/Eng-Burmas-Dead-End-Peace-Negotiation-Process-KPSN-report-web.pdf>.

17 The KNU stated, "Implementation of the NCA without common understanding among the stakeholders in the peace process is now the issue is [sic] necessary to solve." Karen National Union Headquarters, "Statement on the 6th Central Standing Committee emergency meeting", 10 November 2018, available at: <https://www.facebook.com/knuheadquartersofficial/posts/2229673713981732>. The RCSS stated, "The RCSS finds that the RCSS and Tamattaw [sic] have a different understanding and definition of bilateral ceasefire agreements of both of state and union levels." Restoration Council of Shan State, "Statement of Central Executive Committee of RCSS Emergency Meeting", 12 November 2018, available at: <http://www.taifreedom.com/english/index.php/2014-05-27-08-24-29/statements/762-the-statement-of-central-executive-committee-of-rcss-emergency-meeting>. The statement of the 6th KNU Toungoo District Meeting stated that the government is taking the land from the land's historical owners. "KNU Toungoo District 6th Meeting Statement", 2 December 2018.

18 See, e.g., Lawi Weng, "Newly Amended Law Helps Officials Seize Land, Critics Warn", The Irrawaddy, 13 November 2018.
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- TNI, 10 December 2018 : <https://www.tni.org/en/article/implementation-of-burmas-vacant-fallow-and-virgin-land-management-law>
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