

How the Myanmar Government's Repressive Land Laws are Catalyzing Conflict and Insecurity: An Analysis of the Vacant, Fallow, and Virgin Land Management Law

By Saw Alex Htoo and Frank Scott

Burma's (Myanmar since the junta changed the country's name in 1989) generals continue to hold sway over key areas of government, and though direct military rule has transitioned into 'democracy', political power remains concentrated in the hands of the army or *Tatmadaw*. The army, and effectively the government, which was established through the controversial 2008 constitution, have long been in pursuit of absolute control over land and natural resources. Such situation has long been a key catalyst for the country's protracted civil war, which has driven millions of civilians from their land and homes in the past decades. Widespread armed conflict has been accompanied by oppressive laws aiding in the dispossession of smallholder-farmers of their land and livelihoods, particularly in ethnic nationality areas.

On 11 September 2018, in the latest push of government to consolidate control over the country, the *Pyidaungsu Hluttaw* (Parliament) passed amendments to the 2012 *Vacant, Fallow, and Virgin Land Management Law* (VFV Law), imposing criminal penalties on rural people for continuing to use land that the government has deemed vacant and fallow or virgin. According to the amendments, after 11th March 2019, farmers will face up to two

years in prison and a 500,000 kyats (\$300) fine if they continue to use the land, even if it has not yet been leased to anyone else.

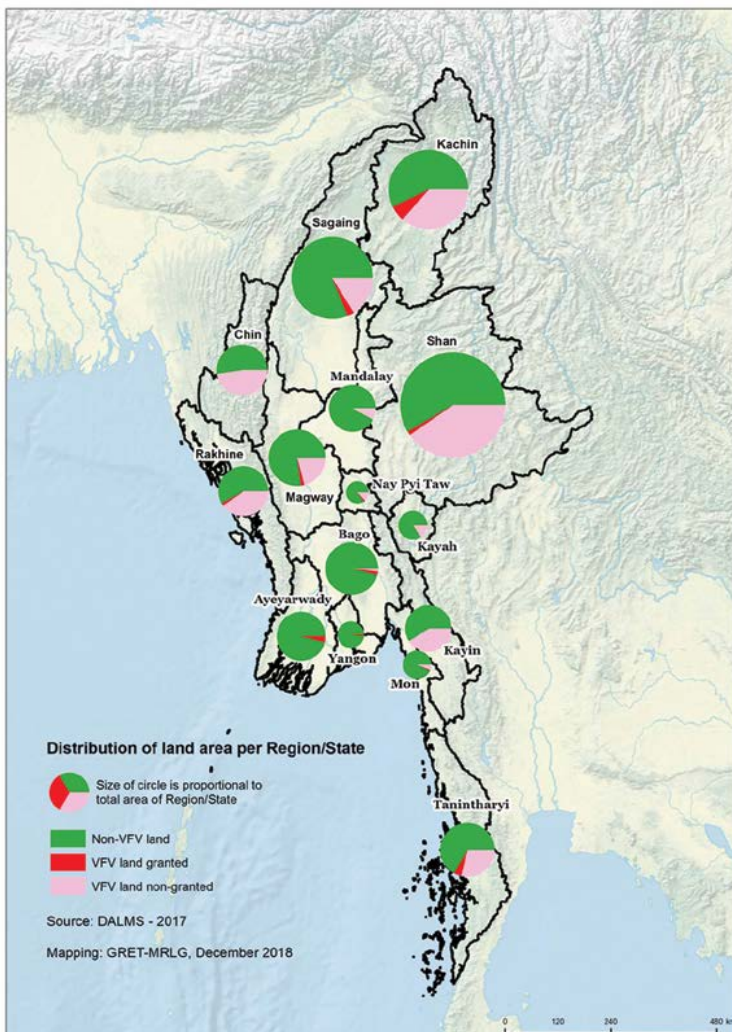
The 2012 VFV Law, and 2018 amendments, provide a legal mechanism for the Myanmar Government to confiscate land in rural areas across the country, constituting a massive statutory land grab. The most pervasive impacts of this legislation will be in ethnic areas where, according to government statistics, there are about 35 million acres, or 75 percent, of the country's vacant, fallow and virgin lands.¹

Civil society organizations across the country are calling for the VFV Law to be abolished, and for a democratic federal land law to be drafted and passed as part of an inclusive and participatory legislative process. Endorsed by ethnic armed organizations (EAOs), ethnic political parties, and local communities, these calls spearheaded by Burma's ethnic civil society networks form part of a longstanding campaign for the legal recognition and protection of diverse customary land tenure systems administered by ethnic communities across the country. It is argued that the full recognition of customary land tenure rights will be a crucial foundation upon which genuine, federal peace can be built.

Traces of colonial injustice in Burma's land regime

The VFV amendments can be traced back to British colonial ambitions to incorporate Burma into its sphere of imperial commerce, particularly for forest and mineral resources. Just as the British were not able to consolidate centralized control over Burma's people or natural resources, centralized control over the territory of modern Burma has only ever been possible on paper. However, the 2012 VFV Law and its 2018 amendments are an effort to make this more of a reality. The main beneficiaries of the 2012 VFV Law and its predecessor, the 1991 Wasteland Instructions,² are political and business elites who have been able to lease so-called government land.

Aung San Suu Kyi's National League for Democracy (NLD) came into office in 2016 with a promise to "address the root causes of armed conflict and improve the quality of life and reduce levels of poverty in rural areas".³ Yet, while the NLD holds a majority in both houses of parliament, giving it legislative powers to pass, repeal, and amend legislations, it has failed to replace oppressive laws with legislations necessary to protect Burma's smallholder-farmers and customary land tenure systems. Instead, the role of the 2012 VFV Law in enabling land grabs has been maintained under the 2018 amendments, and the criminalization of people who continue to use their own land has expanded while the allocation of land to investors has been prioritized.




The VFV Law and “reform process” in Burma

Burma has been embroiled in a civil war dating back to independence from Britain in 1948, in which control over land and territory has featured centrally. The Bamar-dominated* government reneged on a 1947 treaty between different ethnic groups—the Panglong agreement—foreseeing an independent multi-national federal democracy, in which different ethnic groups would have equal political status. Military regimes have ruled the country beginning in 1962, until these were replaced finally by a hybrid military-democratic government in 2011. While the NLD, brought to power in 2016, is a civilian party, the military has continued to wield power over key ministries and sectors of the economy. NLD has since maintained a complicated relationship with the military.


During the colonial period, the British introduced the concept of “wasteland” through the 1861 Rules for the Grant of Wasteland. The British saw wasteland as

ALERT - Only 90 days to go before you become a landless trespassing criminal !!!



Because of the unjust "Vacant, Fallow and Virgin (VFV) Land Management Law,"
Countless numbers of innocent citizens and ethnic nationals who are making a living on more than 45 million acres of land could be prosecuted and humiliated with lawsuits. They could go to prison for as long as 2 years, or be fined as much as 500,000 MM kyats, or both. Only 120 days to go.

11/ 9/ 2018	- VFV Law Enacted
11/ 10/ 2018	- five months to register
11/ 11/ 2018	- four months
11/ 12/ 2018	- three months
11/ 1/ 2019	- two months
11/ 2/ 2019	- one month
11/ 3/ 2019	- Deadline



Land In Our Hands and Myanmar Alliance for Transparency and Accountability "Countdown Campaign Poster", November 2018

the potential site for the development of plantations.⁴ The categorization has persisted since. In 1991, the military government, which made a strong push to attract private (domestic and foreign) investment in agriculture, reinforced the concept of wasteland by issuing instructions called "Prescribing Duties of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land" and the "Procedures conferring the right to cultivate land/right to utilize land." These have allowed leases of "fallow" and "waste" land to businesses for

agricultural purposes. A report by the Mekong Regional Land Governance (MRLG) project has documented almost 3.5 million acres granted through this mechanism by 2011.⁵

The current government elected in 2011 continued this interest in attracting foreign investors, including for investment in land and agriculture. In 2012, a new VFV Land Management Law was passed, without any public input. It is described as "essentially a repackaging of the old Rules for the Grant of Wasteland (1861), and virtually identical to the more recent Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land, and Wasteland (1991)".⁶ Its objective is to "foster promotion of large-scale agricultural investment."⁷ Also in 2012, a new Farmland Law was passed, providing for a degree of private ownership of farmland, while also facilitating its corporate control.

The NLD promised to bring about reforms in land governance. This involved making amendments to laws that had been passed by the previous government or replacing earlier laws. It set up a committee to investigate land grabs under previous administrations. But, as noted above, while it could have repealed the 2012 VFV Law or significantly improved it, the new NLD-dominated parliament failed to do so. Its proposed amendments to the 2012 Farmland Law and its proposed new Land Acquisition Act (which would allow for confiscation by the state of land for vaguely defined "public purposes") are also in many ways a step backwards.

Analysis of the VFV Law and its amendments

There are several factors behind the NLDs support for the amended VFV Law, which risks "increasing

The Farmland Law

Under the Farmland Law, people recognized by the government as farmers or engaged in agricultural activities are granted the right to apply for a Land Use Certificate (LUC), known as Form 7, at their local Farmland Administrative Body (FAB). The LUC confers the right to cultivate on, mortgage, lease, sell, exchange, and gift a specified area of land in line with a pre-agreed set of conditions specified by the Township FAB. Should the holder of an LUC breach any of these conditions, which can include constructing on the land without permits, using the land for something other than cultivation, changing the type of crop cultivated on the land without permit, or leaving land fallow “without sufficient reason,” among others, the Township FAB can revoke the LUC and eject the cultivator from the land. Although LUCs confer a degree of control over a plot of land, they should not be understood as freehold titles, but rather as a limited-term lease subject to terms and conditions dictated by the Central Government. LUCs can be revoked as consequence for breaching these oftenrigid terms and conditions, or in cases where the Central Government seeks to confiscate land for purposes of national development.

The Vacant, Fallow, and Virgin Lands Management Law

The VFV Law is primarily aimed at identifying large tracts of “wasteland” and making them available for domestic and foreign large-scale investment projects. Under this law, any land not registered under the Farmland Law can be deemed “vacant.” Tracts of up to 50,000 acres of vacant land may be leased for up to 30 years. While there are some limitations on how leased land can be used, requirements such as initiating projects within four years of the concession, as well as other regulations and their respective punishments, are rarely followed.

- Burma Environmental Working Group (2017) Resource Federalism, pp. 27-28

land conflicts and exacerbating current challenges in formal peace negotiations.”⁸ A key factor influencing the NLD’s approach to land policy is its eagerness to attract large-scale foreign investment. At a recent business forum in Singapore, Aung San Suu Kyi declared Myanmar as “Southeast Asia’s final frontier market,” announcing that “we have land, we have [a] good young working population, we have unexplored resources.”⁹ Yet, while Aung San Suu Kyi is calling for major investments, the laws that govern land-related investments were designed by the military to support their existing patronage and power networks.

The influential Legal Affairs and Special Cases Assessment Commission, responsible for drafting the 2018 amendments, is chaired by Shwe Mann, former Chief of General Staff of the Armed Services (2003-2010) and speaker of the lower house of Parliament (2011-2016). Shwe Mann’s close relationship with Aung San Suu Kyi and his chairmanship of the Commission has allowed him to influence the law-making process of the country. Given the influential role of the Shwe Mann-led commission and the NLD’s highly centralized decision-making structure, there is a serious lack of checks and balances in the parliamentary legal reform process.

Overall, the NLD-led government's approach to land policy reneges on its election pledge to "improve the quality of life and reduce levels of poverty in rural areas."¹⁰ It is further entrenching the power of the Myanmar government, including the Tatmadaw's, and the private sector's as they connive to strip farmers of their land and livelihoods.

The Transnational Institution (TNI), an international research and advocacy think tank, writes of the 2012 VFV Law: "It is meant to convert what the government labels as 'vacant, fallow and virgin land', which is often either actively cultivated or fallowed by local agricultural households, into industrial agricultural estates."¹¹ Together with the 2012 Farmland Law, the 2012 VFV Law created further legal precedent for widespread land grabbing and the dispossession of farmers, especially smallholder-farmers in ethnic areas, of their right to farm and more broadly their right to maintain their land, livelihoods, and customary tenure systems.

Civil society groups reacted strongly to the amendments, which mandate stiffer criminal penalties for trespassing on VFV land and even covering land that has not yet been leased. (*See information in the box*). Numerous civil society groups made submissions to Parliament on the draft amendments.¹² Earth Rights International wrote:

*Most worryingly, the proposed amendments will criminalise the actions of thousands of farmers across Myanmar. The provisions would penalize farmers working on land that falls within the wide definition of VFV land even though the actual land is not the subject of any permit/authorization. This applies to huge areas of land across Myanmar. Much of this land is actively used by farmers and is often managed using customary land practices. The amendments therefore threaten to put many farmers in prison.*¹³

Some called for the VFV Law to be abolished. In a statement, the Land in Our Hands network said:

Overall, the NLD-led government's approach to land policy reneges on its election pledge to "improve the quality of life and reduce levels of poverty in rural areas" It is further entrenching the power of the Myanmar government, including the Tatmadaw's, and the private sector's as they connive to strip farmers of their land and livelihoods

*The proposed amendment to the 2012 Vacant, Fallow, and Virgin Lands Management Law includes stricter controls and punishment terms, thus being more oppressive for ethnic nationalities and vulnerable groups, instead of referring to the basic principles of the 2016 National Land Use Policy. For these reasons, the law must be repealed completely.*¹⁴

Virgin lands under VFV Law

According to article 2 (f) of the amended VFV Law, “Virgin Lands” are defined as:

... valid land and wild forest land whether on which there are trees, bamboo plants or bushes growing or not, or whether geographically (surface) topography of the land is even or not and being the new land which has never been used, not even once. The said expression shall include the land of forest reserve, grazing ground and fishery lakes and ponds lands which have been legally revoked to carry out in line with this law and not currently in use.

2018 Amendments to VFV Law Force Farmers to Trespass on their own Land

Article 22

- (b) The person and organization occupying and utilizing the vacant, fallow, and virgin lands without the permit of the Central Committee for the Management of Vacant, Fallow, and Virgin Lands shall—
- (1) apply for the permit to utilize the vacant, fallow, and virgin lands at the Central Committee or relevant management committees by submitting complete detailed information including the area of the vacant, fallow, and virgin lands that have been utilized, within six months from the day when the Law Amending the Vacant, Fallow, and Virgin Lands Management Law (2018) was enacted.
 - (2) acknowledge that the vacant, fallow, and virgin lands that have been utilized shall be resumed or they shall be evicted from the land in line with regulatory procedures in the case of failure to apply for the permit to utilize in line with the sub-section (b)(1) or such application is rejected.
 - (3) acknowledge that they shall be subject to penalties under this law in the case of continuing to occupy and utilize the vacant, fallow and virgin lands without applying for the right to utilize in line with the sub-section (b)(1) or by defying the order to leave the vacate the vacant, fallow and virgin lands issued by the Central Committee or relevant management committee with the reason the permission should not be granted.

Article 27

- (a) Any person who is convicted of violating sub-section (b) clause (3) of section 22 by utilizing the vacant, fallow and virgin lands without permission of the central committee shall be punished with a jail term not exceeding two years or a fine not exceeding five hundred thousand kyats or both.

Customary tenure in the amendments

In accordance with customary practices, it is common for farmers to rotate their agricultural land to allow the soil to recover during the fallow period. The government's own 2018 Agricultural Development Strategy states that the VFV law has resulted in "the alienation of land from customary rights holders who do not qualify to secure their land under the Farmland law."¹⁵ Despite this recognition, the amended VFV Law provides only a cursory exemption for customary tenure in the vacant, virgin and fallow land category, without providing it with any legal definition or protections.

Myanmar civil society groups have opposed the VFV Law from the beginning. Most recently, following the VFV Central Committee's call for farmers to apply for leases of their land or face criminal penalties (two years in jail and a fine of 500,000 kyats (\$300)), opposition has become more widespread. Following the government's adoption of the amended VFV Law, two leading civil society networks, Land in Our Hands (LIOH) and the Myanmar Alliance for Transparency and Accountability (MATA), launched a coordinated campaign calling for the abolition of the VFV law and enactment of a federal land law that recognizes customary tenure, through a fully inclusive and participatory process.¹⁶ A broad range of civil society have called for an immediate halt to the implementation of the 2018 VFV law amendments, a moratorium on the "allocation of VFV land to private sector entities," and the establishment of a "just and effective land governance framework in line with the National Land Use Policy."¹⁷

In a joint statement released in November, the Land in Our Hands (LIOH) and Myanmar Alliance for Transparency and Accountability (MATA) networks clearly stated that:

There is no vacant, fallow & virgin land in ethnic areas.... The present law is an unjust law that prioritizes the creation of a land market for

*investors to come in the name of development. This law makes millions of people into landless criminals; and it eliminates their livelihoods, cultures, identity and social status. Therefore, the government must abolish this law and enact a federal land law that safeguards peoples' integrity, their lives and livelihoods and their identities.*¹⁸

Civil society groups (346 of them) from across the country endorsed the LIOH and MATA statement on the VFV Law.

Land and peace

The adoption of the 2018 VFV Law amendments comes within the context of a national peace process, in which the main actors are the army, the NLD-led government, and ethnic armed organizations (EAOs). A central call of the EAOs within the peace negotiation process has been for the formal recognition of ethnic rights to self-determination, enshrined within a democratic federal union, and exercising customary land tenure rights.¹⁹ By further undermining these rights, the VFV Law risks increasing land conflicts, exacerbating existing land insecurities of rural populations, and fanning the flames of civil war.

In their recent report, *Burma's Dead-End Peace Negotiation Process*, the Karen Peace Support Network (KPSN) highlights how the centralization of control, management, and ownership of land is "unacceptable to ethnic organizations as it represents the primary cause of conflict."²⁰ Conversely, they argue that "[l]and tenure and resource access are also tied to opportunities for peace, as they are at the centre of all ethnic groups' longstanding struggles to secure equal rights and self-determination."²¹

Roughly one third of Burma is considered VFV land, according to data from the Department of Agricultural



Villagers demonstrate for peace, Ler Mu Plaw, Mutraw District, Kawthoolei. Photo by Brennan O'Connor

Land Management and Statistics.²² However, ethnic organizations have very different visions of land, in which there is no place for the concept of “wasteland” or “vacant, fallow, and virgin land.”

The Salween Peace Park initiative in Mutraw (Papun) District, Karen State, is a powerful vision of an alternative to the “business-as-usual” approach of the government and modern development which narrowly defines land and natural resources in relation to their commercial value under a centralized resource economy.

The vision of the Salween Peace Park is to establish an indigenous-run sanctuary for endangered species, rooted in the customary territories and traditional socio-ecological management practices of the Karen people of Mutraw. The current *de facto* management and governance systems in Mutraw have been co-produced by the Karen National Union (KNU)

and Indigenous communities. For example, the KNU (Kawthoolei) Land Policy recognizes and provides registration procedures for a range of broadly-defined land types, including *Kaw* or customary lands, community forests, reserved forests, and wildlife sanctuaries. These are not simply technical categories for land control and management, rather, they are vital institutions binding the Karen people of Mutraw to their indigenous territories and represent the foundations of their political struggle for equal rights and self-determination.

The *Kaw*, for example, can be viewed simultaneously as a management and governance system, a social framework, and a physical territory. A community’s *Kaw* territories are its ancestral and spiritual domain, comprising the lands, waters, and natural resources. Hence, the maintenance of the *Kaw* is crucial to the Karen people of Mutraw’s struggle for cultural survival, environmental integrity, and ultimately, peace.

As the Ethnic Community Development Forum (ECDF) clearly states in its 2016 report, *Our Customary Lands*:

*Protection and recognition of ethnic customary land management systems is an important component in achieving sustainable peace and must be enshrined in a future federal constitution and decentralized legal framework.... In order to protect these lands and systems until peace accords, constitutional amendments, and new land legislation formalizing these systems have been finalized, there should be a moratorium on land acquisition in areas where customary land management systems are being implemented or were implemented before displacement due to armed conflicts.*²³

Conclusion

The adoption of the VFV Law amendments have fortified a centralized system of ownership, management, and control over land, effectively undermining opportunities to build trust and address the root causes of nationwide grievances, in which land is central. Ethnic communities have sought to address this crucial issue through the peace negotiation process. However, land-related legal reforms through the parliament are jeopardizing opportunities towards equitable and just solutions to the land issue.

The 2012 VFV law and its 2018 amendments are symptom of a way of thinking on land that originated during the colonial period. Land that did not have a purpose that fit neatly into a government-imposed category was then defined as wasteland and now VFV land. Addressing the problems posed by the VFV law and its amendments will take more than revoking and replacing them with something else.

Land is the key to addressing political grievances and unresolved historic injustices in Burma.

The success of a participatory and inclusive peace and reconciliation process will hinge on a political will to embrace the diverse territorial claims and governance systems at work across the country.

Burma is one of the most ethnically diverse countries in the world, and while ethnic Burmans (also known as the Bamar) represent a majority in the central Irrawaddy river-plain, non-Burman ethnic groups inhabit about half of the country making up over one-third of the population, forming a relative majority in the great horseshoe of mountains which surround the central lowlands.

Saw Alex Htoo is a prominent land activist who focuses on issues related to conflict, peace, and land and natural resources.

Frank Scott is an independent researcher whose work focuses on a range of issues, including human rights, natural resource governance and environmental and social justice.

Notes

- 1 Department of Agricultural Land Management and Statistics (DALMS) (2017) *Summary report of large scale land acquisition in Myanmar, as of December 2016*. Department of Agricultural Land Management and Statistics Ministry of Agriculture, Livestock and Irrigation (MoALI), Nay Pyi Taw
- 2 The 1991 Wasteland Instructions promoted access to land for commercial export agriculture during a period when the ruling generals were seeking to attract foreign investment. By legalising 30-year land concessions of up to 5,000 acres of land, farmers became increasingly vulnerable to permanent displacement from their land.
- 3 National League for Democracy 2015 Election Manifesto, Chapt. 3 (ii)
- 4 Scurrah et al (2015) "The Political Economy of Land Governance in Myanmar" *Mekong Region Land Governance*
- 5 U San Thein et al (2018) "Large-Scale Land Acquisitions for Agricultural Development in Myanmar" *Mekong Region Land Governance*
- 6 Oberndorf, Robert B. "Legal Review of Land Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law" *Food Security Working Group - Land Core Group*. 2012: iii
- 7 Ibid

- 8 Gelbort, Jason. "Implementation of Burma's Vacant, Fallow and Virgin Land Management Law: At Odds with the Nationwide Ceasefire Agreement and Peace Negotiations", *Transnational Institute*, 10 December 2018. Accessible at: <https://www.tni.org/en/article/implementation-of-burmas-vacant-fallow-and-virgin-land-management-law>
- 9 Associated French Press "Aung San Suu Kyi beckons investors to Myanmar despite troubles", *Frontier*, 12 November 2018. Accessible at: <https://frontiermyanmar.net/en/aung-san-suu-kyi-beckons-investors-to-myanmar-despite-troubles>
- 10 National League for Democracy 2015 Election Manifesto, Chapt. 3 (ii)
- 11 Transnational Institute (May 2013) *Access Denied: Land Rights and Ethnic Conflict in Burma*, Burma Policy Briefing Nr 11, p.4
- 12 Ben Dunant, "Why a land law change is sparking fears of mass evictions" *Frontier*, November 19, 2018. Accessible at: <https://frontiermyanmar.net/en/why-a-land-law-change-is-sparking-fears-of-mass-evictions>
- 13 Earth Rights International (2018) *Proposed Amendments to the 2012 Vacant, Fallow and Virgin Lands Management Law*
- 14 Land In Our Hand (LIOH) & MyanmarAlliance for Transparency and Accountability (MATA) "Civil Society Organizations' Statement on the Vacant, Fallow & Virgin Land Management 2018 and related announcement" 16 November 2018. Accessible at: https://lioh.org/wp-content/uploads/2018/11/LIOH_MATA_Statement_20181116.pdf
- 15 The Government of the Republic of Myanmar, Ministry of Agriculture, Livestock and Irrigation (MoALI) (2018) Myanmar Agriculture Development Strategy and Investment Plan (2018-19 ~ 2022-23), p.16 Para. 49
- 16 Land In Our Hand and MyanmarAlliance for Transparency and Accountability (2018), See <https://lioh.org/>
- 17 *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 civil society organisations addressed to; Chairman, National Land Use Council, Nay Pyi Taw; Chairman, VFV Land Management Central Committee, Nay Pyi Taw. Accessible at: <https://reliefweb.int/report/myanmar/41-civil-society-ogranisations-call-myanmar-government-suspend-controversial-land-law>
- 18 Land In Our Hand and MyanmarAlliance for Transparency and Accountability "Civil Society Organizations' Statement on the Vacant, Fallow & Virgin Land Management 2018 and related announcement" 16 November 2018
- 19 Karen Peace Support Network (2018) Burma's Dead-End Peace Negotiation Process
- 20 Karen Peace Support Network (2018) Burma's Dead-End Peace Negotiation Process, p.5
- 21 Ibid.
- 22 Department of Agricultural Land Management and Statistics (DALMS) (2017) *Summary report of large scale land acquisition in Myanmar, as of December 2016*. Department of Agricultural Land Management and Statistics Ministry of Agriculture, Livestock and Irrigation (MoALI), Nay Pyi Taw
- 23 Ethnic Community Development Forum (ECDF) (2016) *Our Customary Lands: Community Based Sustainable Natural Resource Management in Burma*, p.3