The Implementation of the Vacant, Fallow and Virgin Land Law: a Case Study in Sagaing Region

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August 2020
Case Study
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
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<tr>
<td>DALMS</td>
<td>Department of Agriculture Land Management and Statistics</td>
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<td>DoA</td>
<td>Department of Agriculture</td>
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<tr>
<td>ECD</td>
<td>Environmental Conservation Department</td>
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<td>LRC</td>
<td>Land Reinvestigation Committee</td>
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<td>LUC</td>
<td>Land Use Certificate</td>
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<td>MADB</td>
<td>Myanmar Agricultural Development Bank</td>
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<td>MoALI</td>
<td>Ministry of Agriculture, Livestock and Irrigation</td>
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<td>NGO</td>
<td>Non-Government Organization</td>
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<td>PPF</td>
<td>Public Protected Forest</td>
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<tr>
<td>VFV</td>
<td>Vacant, Fallow and Virgin (land)</td>
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<td>VFVLMC</td>
<td>VFV Lands Management Committee</td>
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1. Introduction

In October 2018, the Government of Myanmar enacted the Law Amending the Vacant, Fallow and Virgin Lands Management Law (2018), compelling farmers to register the use of land which fell under the categories of vacant, fallow or virgin (VFV), and threatening fines and imprisonment if failing to do so.1

From the government perspective, this amendment was a unique opportunity for farmers to legitimize their existing land use and claim their rights.2 However, for civil society and various groups (including within government), the amendment represented a serious threat to the many farmers cultivating land in unregistered areas. One year after the amendment to the law was passed, questions have arisen around the real situation on the ground and the consequences of the law to date.

The Vacant, Fallow and Virgin Land Management Law (2012) is virtually identical to the Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (also known as the Waste Land Instructions) and the Procedures Conferring the Right to Cultivate Land/Right to Utilize Land, enacted by the military government in 1991.3 The Committee was empowered to scrutinize and grant both domestic and foreign companies as well as private citizens the right to use cultural land and fallow and wasteland for agricultural business (including livestock and aquaculture) for an initial period of 30 years, renewable 10 years at a time for up to a total of 50 years. A large number of large-scale land acquisitions and widespread expropriation occurred under this legal framework.4 State-sponsored agriculture projects and agro-industrial plantations on land under lease arrangements from the State have existed in Myanmar since the mid-nineteenth century. In recent times, these have been implemented through the Waste Land Instructions (1991) and the same rules were incorporated into the VFV Land Law (2012).

The land categories of wasteland or virgin, fallow and vacant fall outside of the land surveys conducted by the Department of Agriculture Land Management and Statistics (DALMS) and can therefore be highly problematic. Virgin land is defined in Article 2 of the VFV Land Law (2012) as “new land or other woodland, in which cultivation has never been done before”. Vacant and fallow land is defined as “land which was cultivated by the tenant before, and then that land was abandoned by the tenant for any reason, not only the State designated land but also for agriculture or livestock breeding purposes”. Due to the way VFV land is defined, many areas of land that are under active cultivation by farmers and community groups in a traditional or customary manner (particularly in non-Bamar ethnic areas) could be classified as vacant and fallow.

The VFV Land Law was enacted in 2012 with the primary objective of fostering large-scale agricultural investment, but it also threatens small-holder farmers whose land use is not registered, as is the case in many parts of the country.5

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1 The Law Amending the Vacant, Fallow and Virgin Lands Management Law. Pyidaungsu Hluttaw Law No. (24), 11th September, 2018
2 Dunant & Kyaw Ye Linn, 2019.
3 Which itself is very similar to the Rules for the Grant of Waste Land (1861) (Oberndorf, 2012)
4 San Thein et al. 2018
5 Oberndorf, 2012 and San Thein et al. 2018
In this context, the amendment to the VFV Land Law enacted in 2018 has been massively rejected by Myanmar civil society as being a further driver of landlessness and for criminalizing legitimate land users.6

On the government side, the law has been presented as an opportunity for smallholders to acquire legal protection for their land and associated with the process of better reallocation of wrongfully acquired land.7 According to VFV rules, family-sized cultivators can acquire a maximum of 10 acres of VFV land at a time. With evidence of implementation on 75 percent of the land, a further extension not exceeding 10 acres can be allowed each time, with up to a total of 50 acres in successive extensions.8 For perennial plants and orchard produce, the lease is granted for a 30-year period and, for seasonal crops or industrial seasonal plants, for an infinite period provided that prescribed rules are observed. However, in theory, such leases cannot be mortgaged, sold, sub-leased, divided or otherwise transferred without the approval of the government.9

The overall objective of this research is to provide information on how the VFV Land Law has been implemented by local stakeholders (township and village authorities and smallholder farmers) since its amendment in 2018. Doing so does not mean the authors or MRLG endorse the law itself but take as a fact that the law has been enacted and that farmers and authorities are dealing with the reality of implementation. This report thus tries to answer the following questions:

1) Are farmers aware of the possibility of registering land as a VFV concession? Are they interested in doing so? Why?
2) Is the VFV land application process clear, effective and fair? Does it work in practice?
3) Does the amendment to the VFV Land Law create new conflicts? Is there a mechanism to address conflict arising from VFV land allocation (from new applications or from concessions existing before the application)? Is this mechanism accessible and fair?
4) Does the amendment to the VFV Land Law affect the land tenure security of smallholder farmers by providing a better opportunity to formalize and secure their land tenure (also in comparison to the Farmland Law) or does the amendment to the law create opportunities for land grabs by companies?

Answering these questions will directly serve to advocate to the central government on the potential needs to reform the existing legal framework.

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7 Global New Light of Myanmar (30th October 2018)
8 For agri-business concessions, if used for perennial plants, 5,000 acres can be attributed each time up to a total of 50,000 acres. For orchard produce a maximum of 3,000 acres, and for seasonal crops, 5,000 acres each time up to a total of 50,000 acres.
2. Methodology

Kanbalu, Taze and Ye-U townships in Sagaing Region were selected for this study based on discussions with Civil Society Organizations (CSOs) held during a preparation meeting. The resulting decision was to target villages in Sagaing Region where local farmers have been applying for, or trying to apply for, VFV land use permits. In total, six village tracts and seven villages were visited over 10 days in February 2020 (see figure 1).

Focus Group Discussions were conducted with both VFV applicants and farmers who had decided not to apply, and separate discussions were also held specifically with groups of women.

In cases of land disputes, information was collected from each stakeholder involved. In-depth individual interviews were also conducted with a wide range of stakeholders including village authorities and township DALMS officers. While the research intended to make a comprehensive review of each case while ensuring that the views of a broad range of stakeholders were considered, it was never the intention to verify each statement and provide a definitive version of the cases. The intention was also not to solve cases or propose solutions. As such, any inconsistencies or inaccuracies in the statements are part of the results of the research.

Figure 1 – Map of studied locations (basemap: World Hillshade-ESRI, administrative boundaries and roads by MIMU)

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10 The meeting was held in MRLG office on the 20th of December 2019, together with representatives from Namati, Tharthi Myay Foundation, Oxfam, LCG, Paung Ku, AWDO and CPRCG.

11 In the absence of any written letter from a Myanmar ministry backing the current research, township authorities (especially DoA, but also one DALMS officer) were reluctant to provide information to the field researchers.
3. Applicant profile and reasons for applying for VFV land

Presentation of study sites
The villages visited in the study are mostly populated by the Bamar ethnic group. Irrigated paddy cultivation is practised in lowlands, most often on registered paddy land sanctioned by Land Use Certificates (LUCs) distributed after the enactment of the 2012 Farmland Law. Land used for irrigated paddy cultivation was systematically registered after 2012 in Bamar-dominated areas of Myanmar.\(^{12}\) Drylands for seasonal cultivation, also known as ya land, were only partially registered under the 2012 land law. Ya land (used for crops such as maize, sesame, groundnuts and, more recently, watermelon in this region) may have been cultivated for generations and are deemed ‘ancestral land’ (bo bwa paing myay) by their ‘owners’. However, not all ya land holdings may be under cultivation, as it depends on the available workforce. This explains in part why many ya land holdings were not registered after 2012 if no cultivation was undertaken at that time. Besides, farmers had less interest in registering ya land as the subsidized loan obtained from the Myanmar Agricultural Development Bank (MADB) is three times lower than for paddy land.\(^{13}\)

The unregistered drylands are part of the VFV land available in the study villages. The other available VFV land at the time of this study was land released from previous land acquisitions made under the Waste Land Instructions (1991). These acquisitions sometimes comprised land already cultivated by villagers and in such cases the released land may be claimed by villagers as ancestral land.

Proportion of villagers applying for VFV land
Although the 2012 VFV Land Management Law already provided family-sized investors with the possibility of applying for VFV concessions, all the VFV applications recorded during this study were initiated after the 2018 amendment making registration compulsory. The push from the amendment in 2018 to register VFV land use generated a move from villagers to apply for VFV concessions. However, VFV applicants make up only a small proportion of the population of each village (between 0% and 6% of households), except in Shwe Kyin Maw where the whole village applied collectively, and where there is greater availability of VFV land. In Myay Mon, villagers were aware of VFV land available in their tract, and wanted to apply, but they could not proceed with applications for VFV concessions due to challenges in claiming previously confiscated land as detailed in section 4.

Table 1 provides a breakdown of VFV applications at the household level within each village and the number of acres applied for.

\(^{12}\) Boutry et al. 2017
\(^{13}\) 150,000MMK/acre in 2019 for paddy land, up to a maximum of 10 acres per land user.
Table 1: Number of households (HH) applying for VFV concessions and corresponding surfaces (the data is from field interviews and does not mean to be exhaustive)

<table>
<thead>
<tr>
<th>Town-ship</th>
<th>Village Tract</th>
<th>Village</th>
<th>Total HH</th>
<th>No. of village HH applying for VFV</th>
<th>Total acreage applied for</th>
<th>Land areas applied for as recorded during the study (not exhaustive)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1-5 acres</td>
</tr>
<tr>
<td>Ye-U</td>
<td>Ye-U</td>
<td>Shwe Kyin Maw</td>
<td>55</td>
<td>29</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 collective (55 households)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 collective (55 households)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yae Myet***</td>
<td>271</td>
<td>0</td>
<td></td>
<td>95</td>
</tr>
<tr>
<td>Taze</td>
<td>Lel Tee</td>
<td>Sat Pyar Aing</td>
<td>&gt;100</td>
<td>2</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 collective (4 households)</td>
</tr>
<tr>
<td></td>
<td>Kan Htu Ma</td>
<td>Kan Htu Ma</td>
<td>?</td>
<td>4</td>
<td></td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>Zee Pauk</td>
<td>Leik Chan</td>
<td>183</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Kan balu</td>
<td>Myay Mon</td>
<td>Myay Mon</td>
<td>?</td>
<td>0</td>
<td></td>
<td>(186 + 515 available)</td>
</tr>
</tbody>
</table>

* Applications for VFV land use permits were made by outside businessmen.
** One application is from an outsider and two are from Kan Htu Ma farmers.
*** No Yae Myet villagers applied for VFV land. Applications were made for VFV land in Yae Myet village boundaries by U Yin villagers.

**Individual and collective applications**

Applications for VFV land concessions can be both individual and collective. In Shwe Kyin Maw (Ye-U township), the whole village applied collectively for VFV land but some farmers also applied individually. The collective application was submitted in December 2019, after the first individual applications. According to a 10 household leader, the application was led by the village administrator and the 10 household leaders because “there are a lot of VFV lands around the village, and in order to prevent businessmen [i.e. outside the village] from applying for our land”. The application, if successful, would provide each household with 10 acres of VFV land. In Sat Pyar Aing village, most farmers have applied individually except for a group of four farmers, who are all relatives and inherited land from their forefathers, who applied collectively for 37 acres. As in Shwe Kyin Maw, they intend to divide the land equally among the four members. Both collective and individual applications are submitted with the same documentation (see section 4.a.) and include a list signed by the intended beneficiaries. Interviewees believe that one application for a bigger land holding with several beneficiaries would be easier to process than several individual applications with smaller land holdings. In all other villages, VFV applications were submitted individually.
Gender representation of applicants

Men make up the great majority of applicants. As documented in other Bamar ethnic areas, this pertains mostly to social norms. The few recorded female applicants were either widows or their name was used to bypass the 2012 VFV Land Management Rules ceiling of 10 acres per application by smallholder farmers (both the husband and wife apply for 10 acres of VFV land) or because their husband had existing issues with land authorities. Women were well represented in the interviews, showing a genuine involvement in the VFV application process, and were concerned about the transfer of land to succeeding generations, knowing that land is also capital that can be used for matrimonial strategies, notably as bride price.

VFV land applications for land released from concessions

Sabai Nant Thar and Myay Mon villages in Kanbalu township have been more affected by land acquisitions under the Waste Land Instructions (1991) than the other villages (see section 5). In Sabai Nant Thar, villagers applying for VFV land concessions are doing so mostly in order to reclaim land that they used to cultivate before the land acquisitions and for which they have tax receipts attesting the land use. However, as documented in other studies, land returns are rarely free of conflicts and at the time of the study none of the villagers had got their land back.

VFV land applications with intentions to lease the land

Although some farmers in Sat Pyar Aing reported applying for ancestral lands, these lands were only recently cleared (starting at the same time as the VFV application). Their application was motivated by the intention of neighbours from Kan Htu Ma village to secure land use rights for land located around Sat Pyar Aing which they would subsequently lease to Chinese investors to grow watermelon. Others from Sat Pyar Aing have filed objections to VFV applications from neighbouring Kan Htu Ma villagers who lease the land to Chinese investors.

In Shwe Kyin Maw, VFV applications appear as a strategy for farmers to extend their land holdings, also with the objective of leasing the land. A farmer highlighted that land clearing is expensive (up to 4 lakhs per acre), as is irrigation work, so farmers claiming 10 or more acres of VFV land may anticipate greater profits than if only cultivating ground nuts or maize.

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14 Boutry et al. 2014.
15 Huard 2020.
Chinese investors are reported to have been renting land from farmers at a 3.5 to 4.5 lakhs rate per acre per season since 2018 which is highly attractive for farmers. In relation to those filing objections to VFV applications from Kan Htu Ma villagers, one farmer commented that “before Chinese watermelon growers arrived, nobody was interested in working on these abandoned lands”. The Lel Tee village tract administrator confirmed that the interest in formalizing land use rights greatly depends on this economic opportunity and that Kan Thit villagers (also from this tract) “are not really interested in securing their land since there is no opportunity for watermelon”.

VFV concessions cannot officially be sub-leased. The fact that some VFV applications have been submitted with the main purpose of leasing the land has been highlighted by township Department of Agriculture (DoA) authorities as a motive for refusing some applications (see section 4.a.).

Farmer perceptions of the VFV Land Law to secure tenure of existing land holdings
Where there is no history of previous land confiscations, land conflict or any opportunity to seek income from leasing land, villagers have few incentives to apply for VFV concessions. The U Yin village administrator explained that “there are many farmers who do not apply for VFV because they have been working their dama-u-cha land for such a long time and they believe that their land tenure is secure enough. […] Another point is that Chinese investors are not interested in growing watermelons as our fields are difficult to access’. In these circumstances, the farmers feel that the local recognition and social legitimacy of their land use is sufficient for tenure security.

Farmers who have been cultivating land holdings for a long time without land use registration would rather apply for farmland LUCs (also known as Form-7) than VFV land use permits. LUCs give the right to transfer the land (sale, rent, mortgage or inheritance) and also provide access to subsidized loans from the MADB. Leik Chan (Zee Pauk village tract), was selected for this study based on the fact that villagers had received land law awareness training and were applying for VFV, although villagers ultimately applied for farmland LUCs.

The rationale for applying for a VFV concession is mostly linked to land disputes (see section 5) and the opportunity to lease land, which has come about mostly in Ye-U and Taze townships since 2018 with watermelon plantations.

Outsider applications for VFV land concessions
Apart from land conflicts dating back to previous government administrations, only three occurrences of outsiders trying to apply for VFV concessions following the 2018 VFV Land Law amendment were recorded: (i) in Leik Chan village where an outsider applied for 30 acres of VFV land, (ii) in Shwe Kyin Maw village by a businessman from Shwe Bo town, overlapping with the collective VFV application submitted by the villagers, and (iii) in Yae Myet village where three non-resident businessmen are applying for VFV land in this village tract.

Villagers in both Shwe Kyin Maw and Myay Mon villages have disputed VFV applications submitted by outsiders. In this respect, despite very limited knowledge of the VFV framework and its opportunities and limitations, villagers have recognized and asserted their right to file an objection against other applications for VFV concessions. This may be attributed to local awareness training conducted by CSOs but also to the massive land titling operation between 2013 and 2015 following the enactment of the 2012 Farmland Law which also proposed that villagers dispute land claims by other farmers.

To summarize, villagers are applying for VFV land concessions in order to get access to new land or to reclaim land previously confiscated, rather than applying to formalize existing land use, except if this formalization has a direct economic benefit.

17 Farmers have to pay back MMK 20,000 per acre to the brokers renting the land on behalf of the Chinese investors.
18 The expression dama-u-cha means ‘the first to yield the machete’ and is used to legitimize the claim on a land plot by the first person who valorized it.
4. Obstacles to VFV Land Law implementation

Institutional processes and obstacles to VFV applications

The application process for a VFV concession was described by the DALMS authorities interviewed in Taze and Ye-U townships as follows:

1. Farmers collect a VFV application called Form-1 from the township DALMS.

2. The village tract clerk from DALMS comes to survey the area and drafts a provisional map (Form 105) and a land history form (Form 106).

3. Farmers then return the three forms (1, 105 and 106) to the township DALMS, normally with a bank statement.

4. After one or two months, DALMS issues an announcement to the village tract detailing the VFV areas applied for and calling for potential objections (within a one-month period). The announcement is relayed to each village by the administrator.

5. If there are no objections, farmers themselves must obtain approval signatures from seven township departments: Department of Agriculture, Forest Department, Irrigation and Water Utilization Management Department, Department of Highways, Fire Service Department, Myanmar Post and Telecommunications Department, and Department of Electricity and Energy.

6. After obtaining the seven signatures, the files have to be validated by the township DALMS director, and then sent to the township General Administration Department.

7. After being approved, the files are collected again by the township DALMS and sent by the end of the month to the regional level to be scrutinized by the Regional VFV Land Management Committee (VFVLMC).

8. If the application is approved, the Regional VFVLMC issues Form 11 for the right to cultivate seasonal crops or Form 12 for perennial plants or orchard produce.

In order to facilitate the process for farmers, the township DALMS officers take care of sending the applications to the regional government for validation. DALMS officers also decided that for small concessions or farmers, a bank statement was no longer a requirement. However, farmers may encounter issues at the very beginning of the process. In Kanbalu township (both in Myay Mon and Sa Bai Nant Thar villages) respondents reported that, when they went to the township DALMS, they were told that Form-1 had run out. Others in Ye-U had to go to the township DALMS several times in order to obtain a Form-1.

Under the provisions in the 2012 VFV land management by-laws in the event of no available kwin19 map, the DALMS provides farmers with a hand-drawn sketch map. Farmers have been regularly complaining that the surface stated in the sketch map was underestimated compared to the land area they are actually claiming.

Some farmers complained that the process of going to town in order to obtain the signatures from seven different departments was costly. Furthermore, out of the seven signatures needed from government departments, none of the VFV applicants interviewed from any of the three townships had managed to get a DoA representative’s signature. The reasons given to farmers are multiple: the DoA officer is about to retire and will not process any file before the end of his term; the intended use for the concession

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19 A kwin is the unit for managing cadastral maps.
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is not for subsistence but to lease the land; the concession area is too large, a field visit has not taken place yet, and so forth. In Taze township, farmers reported that they were asked by the township DoA officer to pay MMK 50,000 to obtain his signature. While in some circumstances the reasons given by the DoA to reject an application may be legitimate, the VFV land management by-laws clearly state that the decision should be made by the regional VFVLMC based on the remarks contained in the file sent by the township DALMS. While some informants said they have been waiting for one year for the signature from the township DoA, no reason for rejection has been stated or documented and it seems that there is no recourse against any abuse of power from the DoA. The 2012 VFV land management by-laws also state that applications with objections should be examined by the township DALMS and the findings reported together with the case file to the respective regional or state VFVLMC. The VFVLMC should subsequently delegate an ad hoc committee to investigate the case. If there is more than one applicant for the particular VFV land, the township DALMS should issue a notification using the Notification for Objection form (Form-6) for any objections with sound evidence. However, both Taze and Ye-U township DALMS officers noted that there were no ad hoc committees to investigate the many VFV land applications that had objections or overlapping applicants and these applications remain stuck in the process.

A collective application submitted for 55 households in Shwe Kyin Maw has experienced the consequences of the lack of oversight and scrutiny of applications where a government land reclamation project also submitted a collective claim for the same land (box 1). The DALMS officer was unable to explain how the two applications would be managed.

**Box 1: Overlap of individual and collective VFV applications and government land allocation project**

Shwe Kyin Maw (Ye-U township) has the greatest availability of VFV land among the villages studied. 29 villagers (three women among them) have been applying individually for VFV concessions since early 2019. In December 2019, the village tract administrator and household leaders decided to apply collectively for 550 acres of land (10 acres per household) to be redistributed to the whole village and to prevent outside businessmen from acquiring VFV land in their village. In February 2020, a regional government land reclamation project of 100 acres (planned to be distributed as two acres per household) was enacted, from within the 550 acres claimed collectively. However, Ye-U township DALMS officer confessed that “I cannot tell if there are overlapping applications. We have to check their total applied acres (both collective and individual applications) and their household economic situation to invest in these concessions”. He could not provide any information either on how the collective application will be managed in relation to the government land allocation project. Some farmers interviewed for this study in Shwe Kyin Maw did not even know that they were included in the collective VFV application, though they had heard that they may have access to two acres of land through “a government project” (although they did not know the difference between farmland and VFV land).

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20 The VFV Land Law amendment 2018 authorizes up to 50 acres for “agriculture on manageable family-sized scale”.
21 A field visit by the township DALMS is required in case the VFV application has received any objections (VFV land management by-laws 2018).
Farmer awareness on the VFV land framework

Despite the efforts by civil society (NGOs and CSOs) to provide awareness and training to farmers about the VFV Land Law, awareness remains low in many villages. The interest villagers have in applying for VFV concessions depends on two interconnected factors: their awareness regarding the possibility and benefits of applying for a VFV concession, and the economical/political context surrounding land appropriation and agriculture.

Villager awareness often depends on relations with local authorities (and the DALMS officer in charge of the village tract in the first place). Wealthier farmers are generally in greater contact with their village tract DALMS officer and most of those applying for VFV concessions are therefore farmers who already own land. Information circulates from one village to another through connected individuals and local authorities such as village administrators and 100 household leaders.

The level of awareness can also have an impact on the type of application submitted by villagers. In Leik Chan, for example, farmers were unable to tell if they applied for farmland LUCs or for VFV concessions. In fact, farmers as a whole are more interested in obtaining LUCs which provide more tenure security and access to subsidized loans from the MADB. A Sagaing CSO leader remarked that most of the time farmers were unaware of the fact that VFV concessions may be later turned into proper farmland and thus LUCs could be obtained.

Consequences of farmer dependence on local authorities

At best, the lack of awareness regarding implementation of the VFV Land Law leads farmers and local authorities alike to try multiple ways to obtain VFV land use rights, as seen in the case of Shwe Kyin Maw in section 3 where villagers asserted their right to file an objection against an application for VFV from an outsider. In most cases, however, farmers are left helpless faced with the complexity of the legal framework for land use rights and for this reason have to rely almost blindly on local land authorities and the DALMS officer in the first instance.

The experience of the two farmers from Ye-U township described in box 2 not only underlines their confusion between the two land registration processes for farmland and VFV land, but it also demonstrates their inability to manage the process by themselves. Their dependency on the goodwill of the DALMS officers means that they are put in a position where they have to pay for their services. In the land sector, corruption is a common and well-rooted practice. Farmers often prefer to bow to a form of corruption that simplifies their involvement in the administrative process to obtain a title. The amendment to the VFV Land Law reinforces farmer dependency on DALMS officers to process applications and the practice of informal payments.

22 On how main farming families have 'monopolized' local state institutions, see Huard (2020).
23 The township DALMS officer confirmed Leik Chan villagers had applied only for LUCs.
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Challenges in claiming previously confiscated VFV land

The diverse and multiple appropriations of land by governmental bodies have brought great confusion to villagers and local authorities alike regarding land management at present. Although many areas of concession land may have theoretically been released, it is proving extremely difficult for villagers to apply for VFV land permits, even where they have been granted rights (see box 3). Challenges include blocks at the township DALMS office, conflicts with previous tenants who will not vacate the land and cases where even locating the land available is problematic. Villagers do not know how to overcome the challenges and are left frustrated and unable to proceed further with the application process.

In Yae Myet village, confusion over the location of released land has resulted in a dispute over applications submitted by two different villages. The Environmental Conservation Department (ECD) developed a plantation of more than 900 acres in 2006-7 in U Yin village tract, and subsequently gave back 95 acres to two villages to manage as fuel plantations: 60 acres to Yae Myet village and 35 acres to U Yin village. However, nobody is clear about the location so some VFV applications submitted by U Yin village have received objections from Yae Myet villagers for fear that they are encroaching on their fuel plantation even though the villagers cannot be sure that this is the case.

Box 2: Lost in translation: corruption practices and farmers’ lack of awareness regarding the Myanmar land framework

Two farmers from Ye-U township:

“We would like to apply for a VFV concession over our lands that have no legal land use permit because if we have a legal permit from the government, especially if we have Form-7, we can get a loan from the MADB. It represents great security for us because if we have no money in an emergency, especially a health problem, we can sell our land to other farmers. DALMS field staff in our village informed us to submit an application to the DALMS office to get a land use permit. So, we went to DALMS in order to ask how to apply for a land use permit. And when he came to the village, we asked him again and again. After receiving no answer, we went to see the leader of a CSO in Shwebo. He told us to take Form-1 and explained the VFV Land Law to us in his home. After that, we made another request to DALMS field staff, who said he would do what was necessary to apply for VFV but that we needed to give him ‘tea money’ and fuel costs for his travels. I had to pay one lakh for 8 acres and another guy had to pay 1.4 lakhs for 11 acres in early 2019.”

“Over the past three years, we have been trying to apply for a land use permit for our land so last year we gave money to DALMS field staff to help with land registration. The village administrator obtained Form-7 in 2013, so we thought we had to pay money to DALMS in order to easily get a Form-7 for our land. That’s why last year we both gave money to DALMS field staff. Another 7 farmers from the village went to the DALMS field office and gave some money to help with land registration. Since then, we have been waiting to get land use permits. DALMS field staff will do the process for us, however the village administrator and other farmers are trying to get some signatures from the government departments. We then asked the village administrator what these signatures were for and what they were doing. The village administrator replied that they were trying to get 30-year land use permission from the government for their land areas that have no land use permits. He then suggested we take Form-1 and apply to the township DALMS but we don’t know how to do for this VFV registration.”
**Box 3: Where is Myay Mon’s VFV land... if any?**

**Local authorities slow the progress of applications**

MFF Company confiscated more than 1,000 acres of land under the Waste Land Instructions (30-year lease period) near Myay Mon village tract. Unable to cultivate all the confiscated land, the company rented part of it to farmers who do not live in Kanbalu township. Many land areas remained unused within the concession and, in 2015, three farmers from Myay Mon village and 26 from Sa Kyin village began farming within the MFF concession. Tenant farmers sued the newly arrived farmers for destroying their plantation and squatting in their fields but the farmers from Sa Kyin and Myay Mon won the lawsuit. Some interviewees heard from the DALMS clerk in 2019 that 186 acres from the MFF concession were taken back by the government since they were uncultivated. Three farmers from Myay Mon village tract subsequently went to the township DALMS for Form-1 to apply for VFV concessions, together with farmers from other village tracts under the lead of a local CSO. However, the DALMS officer informed them that he had no updated Form-1 for VFV registration so the farmers should come back later to collect them. When they returned to the DALMS office, officers said that villagers could not apply for the 186 acres that had been released because the announcement letter had not reached the township DALMS office. Since then, the farmers have not been able to find out how to proceed in order to reclaim their confiscated land.

**Farmers unable to claim rights already granted**

Around 1984-5, another large area (approximately 1,000 acres) was confiscated by the Irrigation Department to build an embankment which was never implemented. The manager of the Irrigation Department rented out the land to other farmers to work within the confiscated areas. The confiscated lands were then transferred from the Irrigation Department to a military unit who subsequently rented out a number of acres to other local farmers. As a result, tenants from both the Irrigation Department and the military utilized land within the confiscated land area. In 2015, the military unit moved to another area. In May 2018, the confiscated land that had been left unused by the military was released by Vice President U Henry Van Thio and returned to the original 30 owners with temporary farmland use rights (Form-3). A conflict broke out between the Irrigation Department and military unit tenants and the original owners who had received temporary land use rights. The original landowners could not farm their entire land holdings because part of the land was already being cultivated by tenants (some of whom are villagers’ relatives). In August 2019, one of the original owners had his hand cut off following a violent fight to the conflict over this land.

**Location of land unknown**

Myay Mon villagers also heard of 515 acres of available VFV land, although they do not know where these lands are located. The village tract administrator reported as follows:

“**In May 2019, I received an announcement from the township DALMS that there were 515 acres of VFV land available (particularly in Myay Mon village area). So I went to the township DALMS to find out about the location of the VFV land and how to apply for it but DALMS did not give any information about the location of the VFV land area or VFV registration. We could not apply for VFV because we don’t know the land location and DALMS did not give us Form-1 for VFV registration. In our village tract, only the military grabbed land has been returned and it has already been given back to their original owners by Vice President U Henry Van Thio. The government declared in the announcement that these 515 acres were once again VFV. I have no idea what I should do. How can we get any legal land use permission for this VFV land? Where are these 515 acres of VFV land located?**”
Further accounts provided by Myay Mon villagers and described in box 3 show how nobody has been able to apply for VFV land due to conflict, local authority processes and not being able to identify the exact location of the land, even though the village is supposed to encompass hundreds of acres of VFV land.

**Outcomes for VFV land use permit applicants**

A fair and transparent application of the VFV framework seems questionable given the confusion surrounding the availability, location and actual use of VFV land. This lack of clarity may be explained by the fact that VFV land is often unmapped but also because of the multiplicity of departments concerned with this land category over the decades. None of the farmers from the three townships studied had received a VFV land use permit at the time of this study, even though some of them had submitted applications more than one year previously, reflecting the many issues that the institutional process of applying for a VFV land holding presents. Even those whose application is free from objection, conflict or overlapping claims have not received permits.

5. Old and new land claims: land conflicts under the VFV Land Law

Having dealt with the diversity of applications for VFV land use permits and the different issues farmers face in following this process, we now turn to how land conflicts are further hindering the implementation of the VFV Land Law. The multiple land acquisitions that have had an impact on the region since the Waste Land Instructions of 1991 have created several layers of stakeholders, each with their own claims over land, who have clashed with each other under the contemporary VFV land framework and applications for VFV concessions. In many cases, even where conflict over land is not an issue, past land acquisitions are undermining the current implementation of the VFV Land Law. Table 2 provides a summary of the types of land confiscation relevant to the study villages. Out of the seven villages studied, four are concerned with land acquisitions that occurred through the military period, whether by businessmen, government institutions or military units. Two other villages have also been affected by land issues linked to government institutions: in Leik.

### Table 2: Summary of land acquisition cases by village

<table>
<thead>
<tr>
<th>Township</th>
<th>Village</th>
<th>Land confiscations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ye-U</td>
<td>Shwe Kyin Maw</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Yae Myet</td>
<td>ECD acquired land for tree plantation purposes and subsequently sold part of it to private interests</td>
</tr>
<tr>
<td>Taze</td>
<td>Leik Chan</td>
<td>None (but FD forcibly tried to turn the village fuel plantation into PPF)</td>
</tr>
<tr>
<td></td>
<td>Kan Htu Ma</td>
<td>Wastelands concession to a local businessman and subsequent land sales to Kan Htu Ma farmers</td>
</tr>
<tr>
<td></td>
<td>Sat Pyar Aing</td>
<td></td>
</tr>
<tr>
<td>Kanbalu</td>
<td>Myay Mon</td>
<td>Several concessions established under the Waste Land Instructions by a military unit and private companies</td>
</tr>
<tr>
<td></td>
<td>Sa Bai Nan Thar</td>
<td>Several concessions established under the Waste Land Instructions by several government departments, a military unit and a private company</td>
</tr>
</tbody>
</table>
Chan because the Forest Department (FD) wants to classify village-owned land into a Protected Public Forest (PPF) and in Yae Myet because the ECD sold land first acquired in order to grow trees to outside businessmen.

While in some instances the VFV Land Law may be seen by some applicants as an opportunity to reclaim confiscated lands, it does not succeed in resolving land disputes. In fact, the law provides fertile ground for new disputes to arise.

**VFV applications to reclaim ancestral lands amid unresolved land disputes**

By pushing for the registration of undeclared use of VFV land, the 2018 amendment opened a door for villagers to reclaim previously confiscated ancestral land. Among the villages studied, Myay Mon and Sa Bai Nant Thar in Kanbalu township were the most affected by land confiscations.

Although Myay Mon villagers are confused regarding the possibility of reclaiming their land under VFV, they have shown a strong will to reacquire former land use rights. Women especially expressed their wish to be able to pass on their original land to their children. However, the process is not only complicated by the general confusion around the application process, but also by conflicts that have been generated through decades of mismanagement of land by authorities and opportunism from businesses.

Sa Bai Nant Thar villagers in Kanbalu township have been affected in the past by four VFV concessions that were confiscated from existing land users under the Waste Land Instructions throughout the 1990s and in 2000. Three were obtained by local businessmen, and the fourth by a military unit (table 3).

**Table 3: Summary of concession land released in Sa Bai Nant Thar village (Kanbalu township) and VFV land applications by original owners**

<table>
<thead>
<tr>
<th>Concession reclaimed by the government</th>
<th>Year of concession allocation</th>
<th>Area (acres)</th>
<th>Area released/VFV land (acres)</th>
<th>Number of original owners claiming rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual concession 1</td>
<td>1994-5</td>
<td>100</td>
<td>79</td>
<td>3</td>
</tr>
<tr>
<td>Individual concession 2</td>
<td>1994-5</td>
<td>200</td>
<td>200</td>
<td>5</td>
</tr>
<tr>
<td>Individual concession 3</td>
<td>2000</td>
<td>281</td>
<td>281</td>
<td>5</td>
</tr>
<tr>
<td>Military concession 4</td>
<td>1993-94</td>
<td>210</td>
<td>210</td>
<td>12</td>
</tr>
</tbody>
</table>

The cases in Sa Bai Nant Thar village (box 4) illustrate how the allocation of wasteland concessions have been a fertile ground for land disputes that have continued to the present day. As in many documented stories of land concessions throughout Myanmar, these concessions have arisen from a combination of already cultivated ancestral *dama-u-cha* land and unused wasteland, creating a first layer of land claims.24

Another common point of land concessions throughout Myanmar is the allocation of land by the concessionaires to tenant farmers, who are generally not the original landowners and foreign to the villages directly affected. Following the call by President Thein Sein in 2012 to return “arbitrarily confiscated land”, conflicts arose between different categories of users amid overlapping land claims (often between original owners and tenants). On the one hand, the cancellation of prior concessions and the recategorization as VFV land enabled some ‘original farmers’ to lodge claims to take back control over their landholding. In that sense, the push to register use of VFV land under the 2018

Box 4: Release of VFV concessions and land disputes in Sa Bai Nant Thar village

**Individual concession 1**

One business concession was cancelled by the Central LRC and returned to the pool of available VFV land in early 2019. Three original landowners (holding tax receipts) opted to reclaim their ancestral land through new VFV concessions covering part of the land released (their applications are still pending).

**Individual concession 2**

The land from another concession was partly sold and partly rented out by the concessionaire to two farmers from Shwe Bo. The concession was cancelled by the LRC in early 2019 and returned to the pool of VFV land. The two Shwebo farmers claim they hold ancestral rights over these lands (for which they can show tax receipts from before the concession) and have applied for VFV concessions. Five local farmers (one woman and four men) have also claimed they hold ancestral rights and have submitted applications for the same area. The two parties have since been disputing each other’s applications.

**Individual concession 3**

The third concession of over 281 acres of land was acquired by a retired military officer. The concessionaire then informally extended his concession by an additional 46 acres, encroaching on the unregistered land of five local farmers. In contrast to the other concessions, the 281 acres were not released by the Central LRC; only the 46 acres extension were put back into the pool of available VFV land. Part of these 46 acres had been turned into housing plots occupied by villagers. The five original farmers decided to apply for their ancestral land under VFV concessions, excluding the housing plot area as the residents are villagers and relatives. Informants from the regional LRC believe the whole concession was not released by the Central LRC due to concessionaire’s former military position.

**Military concession**

The concession taken by a military unit in 1993-4 was partially transferred to another unit (105 acres out of 210). In 2014, the first military unit left and its half of the concession was released by the Central LRC. Since the land was left unused, three farmers (two women and one man), who had been cultivating the land before it was turned into a concession, applied for LUCs. As part of their original holdings remained within the concession held by the second military unit, these three farmers applied for land of a size equivalent to their original land holdings in the released area. In 2015, they obtained LUCs for these plots. In this process, the ‘ancestral’ land holding of one of the original owners was included in another’s LUC, which ignited a dispute between them. In March 2019, the Central LRC cancelled the whole concession so that the whole 210 acres were again available as VFV land. However, the Regional LRC considers the above-mentioned conflict between the users none of its concern since they obtained proper LUCs. Therefore, the case is to be handled by Land Management Committees.
amendment seems to have created a new opportunity to redress past injustices. However, nothing has been done to solve land disputes between the current land users and the original owners.

As per our observations, village-level Farmland Management Committees exist mostly on paper and their members do not want to be involved in resolving such conflicts. An interview with one farmers’ representative of both the regional Land Reinvestigation Committee (LRC) and the Kanbalu township LRC revealed that many of the cases documented in this report were unknown to him. Regarding the issues he knew about in his township, he confirmed that cultivators were asked not to cultivate until a solution has been found. However, when asked why decisions have been pending for a year, both township and region LRCs claimed that they are waiting for a decision from higher levels. Farmers interviewed who were involved in the above-mentioned land disputes report that there is absolutely no transparency around decisions being made or action being taken in these committees.

Nobody knows how these conflicts will be solved and whether claims by original farmers will be recognized or not. One farmer representative member of the regional LRC said that since some conflicts between tenants and farmers had turned violent, the village tract administrator has issued a notice to stop cultivation on all conflicting land. At the time of the report, even though the cultivation season has resumed, no solution has yet been found to accommodate the different claims.

VFV land applications amid fake Land Use Certificates

Cases of unused concessions being released by the government, such as the military concession in Sa Bai Nant Thar village, suggest that authorities are ignoring existing conflicts and land claims.

The release of concession land has also prompted corrupt practices in issuing fake LUCs. After the enactment of the 2012 Farmland Law and the distribution of LUCs, some kwin DALMS officers in charge of affairs at the village tract level have been taking financial incentives and issuing fake LUCs. In other words, a Form-7 was not validated by the township DALMS office and therefore not supported by proper documentation at the office. This practice was used to reclassify land acquired as concessions under the Waste Land Instructions as farmland and used also to formalize farmers’ use of ancestral land. The fake LUCs were most likely in order to avoid red tape (at least in the case of ancestral unregistered lands) or in order to bypass a very complicated process of reclassifying VFV land into farmland.

In the midst of conflicting land claims, farmers have been registering complaints to the regional LRC since 2016. In Sat Pyar Aing for instance, titles were consequently nullified but existing land disputes between farmers created by this situation have not been resolved (box 5). The case of Sat Pyar Aing and Kan Htu Ma VFV land clearly illustrates how much local authorities control and manage land, whether in line with or disregarding the legal framework. The fake LUCs issued to transform VFV concession land into farmland are a case in point which directly questions the legitimacy of such authorities to arbitrate VFV applications when the 2012 VFV land management by-laws already contain provisions on how to process objections or overlapping applications.

25 These committees are formed according to the Farm Land Management Law (2012), at all administrative levels: central (Union), regional, district, township and ward/village-tract. Village-tract farmland management committees are in charge of scrutinizing applications for LUCs, solving existing conflict or referring these to the upper level committee.

26 The Central Reinvestigation Committee for Confiscated Farmlands and Other Lands (commonly called Land Reinvestigation Committee) has been directed to scrutinize land disputes and return confiscated land to farmers, and to establish committees at state, region, district, township and village-tract levels to assist.
Box 5: Fake LUCs and VFV applications: Sat Pyar Aing and Kan Htu Ma villagers (Taze Township)

In 1998, a local businessman from Budalin township obtained a wasteland concession (on uncultivated land) of 198 acres in Sat Pyar Aing village tract. After 2012, he managed to obtain a fake LUC for his concession with the help of the local DALMS clerk and then sold a proportion to four Kan Htu Ma villagers in 2015. Kan Htu Ma is a large village where all lands are already occupied and used. The four buyers then cleared the land they received and cultivated it. As a result, in 2015, two of them were prosecuted by the ECD for illegally cutting trees and jailed for 3 months. In 2018, they started to lease part of their land to Chinese watermelon growers for an attractive fee (about 3.5 lakhs per acre per season) and the land then drew the interest of farmers from Sat Pyar Aing village (where the land is located). They began to question the land use rights held by the buyers and discovered the issue of the fake LUC. The regional LRC scrutinized the land use certificates and, in 2016, the fake LUCs were nullified. The former businessman was allowed to continue cultivation on the area of his former concession that was actually developed (63 acres out of 198) and the remaining 135 acres were put back under VFV land category in 2018. However, in practice, the concessionaire and the buyers were still cultivating the whole 198 acres and part of this land was still rented out to Chinese watermelon growers. The township DALMS officer advised them to formalize their land use by applying for VFV concessions since they had already invested some money in buying, clearing and cultivating the land themselves. In early 2019, they applied for VFV concessions (two used their wife’s name to avoid any objections due to the ECD prosecution against them), but their application was disputed by five Sat Pyar Aing villagers, claiming the land for themselves. The township DALMS however arbitrated in favour of the four Kan Htu Ma villagers and resumed the VFV application process in April 2019. The four buyers sought the signatures from the seven township government departments necessary to validate their application, but the DoA officer refused to give his, since “the land concessions asked by the four buyers are not for self-subsistence but rented out to Chinese watermelon growers”. In the meantime, Sat Pyar Aing villagers sent another objection letter to the regional level in April 2019. The VFV applications have been pending since then.
6. Conclusion

The findings have provided the following answers to the initial research questions:

1) Are farmers aware of the possibility of registering land as a VFV concession? Are they interested in doing so? Why?

Farmer awareness of the legal framework for land use rights in general is quite limited. In many instances, they barely know the difference between VFV land use permits and LUCs. As a whole, farmer interest in registering their land as VFV concessions is relatively low. They mostly do so where there have been existing land claims related to large-scale land acquisitions throughout the 1990s and 2000s and where the land is perceived to have economic value, mostly related to watermelon investment. When it comes to land that has been used for generations but is not registered, farmers do not see the point in registering their land as VFV concession but are seeking LUCs which provide greater tenure security as well as access to subsidized loans from the MADB.

2) Is the VFV land application process clear, effective and fair? Does it work in practice?

The first steps in the application process – obtaining forms, waiting out the objection period and obtaining signatures from the different departments – is well known by those farmers applying for VFV land registration. However, the study shows that farmers get stuck at the level of obtaining the signature from township DoA officer. More than one year after having applied for a VFV land concession, none of the interviewed farmers have received their permit. When land is subject to overlapping applications or objections, none of the farmers knew what the next steps should be.

To be effective, the VFV Land Law implementation process should set clear eligibility criteria for applying for VFV land concessions and inform farmers accordingly. In cases where applications are rejected or not processed at any level of administration, there should be an independent grievance mechanism accessible to farmers to support them with the administrative process.

3) Does the amendment to the VFV Land Law create new conflicts? Is there a mechanism to address conflict arising from VFV land allocation (from new applications or from concessions existing before the application)? Is this mechanism accessible and fair?

The VFV land amendment per se did not create new conflicts in the case reviewed. What it does not do is help to address past land conflicts and grievances that arose from the decades-old practice of large-scale land acquisitions through the Waste Land Instructions framework. In the study, land returns from past VFV land concessions ordered by the Central LRC systematically result in releasing the land as VFV thereby opening up the opportunity for anybody, including the first VFV concessionaires, to make new claims over the released VFV land. It seems that claims from farmers who were cultivating the land before these land acquisitions – some holding tax receipts testifying to this land use – are simply overlooked in the process, as are claims from other users such as tenants or sub-leasers who, though at odds with the law, have been investing in the land over several years. While it is presumed that the different levels of the LRC are scrutinizing these cases, farmers have no idea what is going to happen and whether those who claim former land ‘ownership’ will be prioritized or not.

Since the current process of reviewing competing claims on VFV land seems only somewhat effective, the government should consider a more decentralized mechanism accessible to farmers which is able to accommodate these claims, such as dividing the land fairly between two users or deciding who should be awarded the rights. Ideally, for decisions to be legitimate, the scrutiny process should occur close to the stakeholders at the village or township level.

4) Does the amendment to the VFV Land Law affect the land tenure security of smallholder farmers by providing a better opportunity to formalize and secure their land tenure (also in comparison to the Farmland Law) or does the amendment to the law create opportunities for land grabs by companies?

VFV land around the study villages has received relatively little interest from outside businessmen or companies and may differ from other regions...
(such as Kachin) where land is sought after notably for banana plantations. Farmers have a good understanding that to protect their land from outside interest, they can dispute VFV applications of this nature. However, this study reveals that, aside from protecting land that may be sought after by outsiders, the VFV Land Law and the process of applying for land use permits looks largely irrelevant for smallholder farmers. It would make greater sense for the government to further proceed with land surveys and distribute LUCs on cultivated land rather than 30-year land use permits of VFV land which offer much less tenure security.
7. References


The Implementation of the Vacant, Fallow and Virgin Land Law: a Case Study in Sagaing Region
The Mekong Region Land Governance Project (MRLG) aims to improve the land tenure security of smallholder farmers in the Mekong Region and has been operating in Cambodia, Laos, Myanmar and Vietnam since April 2014.

MRLG is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the Government of Germany and the Government of Luxembourg.

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