

Mandates of the Special Rapporteur on the situation of human rights in Myanmar; the Special Rapporteur on the right to food; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on minority issues and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the right to food; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on minority issues and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 34/22, 32/8, 33/12, 34/9, 32/11, 34/6 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **recent adoption of the Law Amending the Vacant, Fallow and Virgin Lands Management Law 2018, which amended the Vacant, Fallow and Virgin Lands Management Law 2012**. We are concerned that this law may be used to illegally dispossess land users of their land without due process or adequate notice, undermine their human rights, and have a disproportionate impact on poor, rural and minority communities, ethnic nationalities and indigenous peoples.

The Law Amending the Vacant, Fallow and Virgin Lands Management Law 2018 (hereinafter the 2018 amendment) was approved by parliament and passed into law on 11 September 2018. Before it was adopted, the draft bill amending the 2012 Law received significant criticism from civil society organisations concerned about adverse impacts on farmers and communities in rural areas, and the particular impact on minorities, ethnic nationalities and indigenous peoples. Despite these notable objections, the bill was adopted by parliament, and entered into force on 11 September 2018. The Vacant, Fallow and Virgin Lands Management Central Committee (Central Committee), the body established under Article 3 of the 2018 amendment and charged with overseeing the prescribed land management process, subsequently issued a notification that all persons and organisations currently using vacant, fallow and virgin land without the Committee's permission must apply for a 30-year land use permit from the Committee by March 2019 in order to continue using the land, or risk criminal trespass charges.

The impact of this law will be significant as the total area of land in question is approximately 50 million acres, almost one third of the total area of Myanmar, and

concerns the livelihoods of millions of people. Furthermore, 82% of this land is reportedly located in areas of the country inhabited by national minorities, according to the Department of Agricultural Land Management and Statistics, and the law could have a disproportionate or discriminatory impact on these groups. We are concerned that the law could result in the dispossession of land without adequate notice or due process; loss of livelihoods and adequate food and housing; increased land conflicts and grievances instead of peaceful resolution, and could infringe on the right to an adequate standard of living and drive people into poverty.

We are further concerned that the amended Law may violate several provisions of international human rights law, such as Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which Myanmar ratified on 6 October 2017. We note that these rights include protection from forced eviction. We are particularly concerned given prior reports of land seizures in Myanmar without adequate notice or compensation, and arrests and prosecutions of land rights activists.

Definitions

According to section 2 of the Law, relevant terms are defined as follows:

(e) Vacant or Fallow Land means land on which agriculture or livestock breeding business can be carried out and which was tenanted in the past and abandoned for various reasons and without any tenant cultivating it and land which is specifically reserved by the State.

(f) Virgin Land means wild land and wild forest land on which there are trees, bamboo plants or bushes growing or not, whether the geographic (surface) topography of the land is even or not and new land which has never been cultivated, not even once. The said expression shall include land with the status of forest reserve, grazing ground and fishery lakes and ponds lands where:

- this status of the land has been revoked/cancelled; and/or
- the land is not in use.

We are concerned that the definitions of vacant, fallow and virgin land are very broad and could include all land in Myanmar that has not been registered, or is subject to a permit or authorisation under another law. Moreover, we understand that the boundaries of vacant, fallow and virgin land are not clear and that people are not aware about whether their land is considered as such.

We would in this regard like to express our concern that key elements of the National Land Use Policy, in particular relating to customary land and the land use rights of ethnic nationalities will be negatively affected. We would like to draw your attention to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), article 26, which states that indigenous peoples have the right to ‘the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’

and for legal recognition of those rights ‘with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.’

Exception for customary lands

Section 30(a) provides that particular types of land are not covered by the Law:

30-a. Management of the following types of land shall not be governed by this law; -

- (a) The lands for which the right to use as hillside cultivation (*taungya* land) is granted under the existing law and rules,
- (b) Customary lands designated under traditional culture of the local ethnic people.
- (c) The lands currently used for religious, social, education, health and transportation purposes of the public and ethnic people.

We are concerned that while management of *taungya* land and customary land are ostensibly excluded from this law, these terms are not defined, making it difficult to know what land would fall within these exceptions. Furthermore, there is no procedure specified to determine which land is to be recognized as such. We are therefore concerned that the administrative and judicial bodies have broad discretion to determine whether land is customary or *Taungya*, which could result in arbitrary or unfair decisions.

We are further concerned that Rohingya lands would be excluded from these exceptions, as the Rohingya are not recognised as an ethnic group by the Government of Myanmar nor as citizens of the country.

It is of further concern that land used by internally displaced people or refugees outside the country will fall within the broad definitions of the Law. In particular, we note that land “which was tenanted in the past and abandoned for various reasons” is deemed vacant or fallow land. This could include large areas in Kachin, Shan and Rakhine States, which are particularly at risk of being acquired by the government, and potentially sold to third parties, as their owners or occupiers are not present to claim the land or apply for a permit under the Law. Displaced people and refugees have a right to return to their places of origin, and many are currently unable to do so as a result of ongoing conflict and instability in several regions of the country. Implementation of this Law could therefore dispossess more than a million people from their land, most of whom likely belong to minority communities, who are unable to return to their places of origin to apply for the necessary permit. This might even undermine the peace process in Myanmar, where recognition of customary land and return to places of origin has been a priority called for by ethnic nationality leaders.

In particular, we are concerned that this law has the potential to disproportionately impact the Rohingya in northern Rakhine State, almost a million of whom, have sought refuge in Bangladesh as a result of the 2016 and 2017 “clearance operations”. Because they are unlikely to return to their land in Myanmar by the deadline, as well as reported efforts by the Government to bulldoze and develop Rohingya lands in the aftermath of the clearance operations, there is a high likelihood that the Law will lead to large-scale appropriation of Rohingya land by the State.

Permit to utilize vacant, fallow and virgin land

Section 22 of the Law requires an application to the Central Committee for a permit to use vacant, virgin and fallow land.

Section 22(b) provides that a person or organization occupying and utilizing the vacant, fallow and virgin lands without a permit from 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 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.

Section 22(b)(1) of the Law requires those occupying or using such land to apply for a permit within six months of the enactment of the Law, with a deadline of March 2019. Neither “occupy” nor “use” are defined and have very broad ordinary meanings. In the absence of such definitions, the provision may require all people who use, occupy, farm or live on customary or communal land to apply for a permit.

The provision requires applicants to provide “detailed information” about the land in question, but does not specify how to satisfy the requirement or the type of information required. Applicants will likely be people living in rural areas or in poverty, for whom it may be difficult to obtain detailed information such as mapping or surveys of the land.

The requirement may therefore place an undue burden on those occupying or using the land, or discriminate against those unable to supply the required information or access land administration services.

Given the short six-month deadline, we are also very concerned that many people will not receive adequate notice of the Law's requirements or will be unable to fulfil the requirements within the allotted time period. This could disproportionately affect ethnic minorities, indigenous peoples, people in rural areas, or those living in poverty, who may not have a strong command of the Burmese language, have limited access to information or other services, or may not have the resources to provide the required information.

Section 22(b)(2) of the Law states that occupiers or users of land who fail to apply for a permit under the Law, will be evicted from the land or the land will be acquired. This could make a large number of people landless and homeless, especially minorities, cut them off from their livelihoods, and push them into poverty. It would run contrary to the prohibition on forced evictions under international law, which includes "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." Any lawful eviction must be nondiscriminatory, provide for legal remedies or procedures and compensation, and strictly comply with human rights law, including requirements of genuine consultations with those affected, appropriate procedural and due process protections, adequate and reasonable notice and information, legal aid where possible, and protection against homelessness.

Again, this might have a disproportionate impact on different minorities, ethnic nationalities and indigenous peoples. According to the UN Declaration on the Rights of Indigenous Peoples article 10, indigenous peoples 'shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'

Section 22(b)(2) of the Law also states that evictions or appropriation of the lands will take place if a permit application is rejected. There is no criteria or information provided about the basis on which the Central Committee will accept or reject applications for permits, and we are concerned that this could result in arbitrary or discriminatory decisions.

Penalties

Section 22(b)(3) states that people and organisations who occupy and use land covered by the law without applying for a permit, or those who do not vacate the land when ordered to, are subject to a penalty. This could result in a large number

of people, including families and children, being unfairly and inappropriately penalised, given the aforementioned concerns.

Section 27 of the Law provides for various penalties in relation to occupying, living or using vacant, fallow or virgin land:

27. Any person, if convicted of committing any of the following acts shall be punished with a jail term not exceeding two years or a fine not exceeding five hundred thousand kyats or both;

(a) Occupying and living or allowing occupying and living, working or allowing working on the vacant, fallow and virgin lands without proper permits as defined under this law.

(b) Occupying and working on the vacant, fallow and virgin lands without approval from the person having the right to cultivate or use the vacant, fallow and virgin lands under this law or their legitimate representative.

27A. 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.

The effect of sections 27 and 27A is that occupying, living or utilising land without a permit is a criminal offence, punishable by up to two years in prison or a fine of 500,000 kyats. We are concerned that such penalties would be highly disproportionate, could negatively affect a large number of people, and could provide a gateway to arbitrary mass detention.

The terms “occupying”, “living” and “utilizing” are extremely broad and undefined in the 2018 Law. As outlined above, a large number of people who use land according to customary or communal practices or who are unable to obtain a permit under section 22(b) could be considered trespassers on their own land by March 2019. The offence specifically includes people who live on vacant, fallow and virgin land, meaning that entire families, including children, could be convicted of criminal offences.

Exception for customary lands

Section 30(a) provides that particular types of land are not covered by the Law:

30-a. Management of the following types of land shall not be governed by this law; -

(a) The lands for which the right to use as hillside cultivation (Taungya land) is granted under the existing law and rules,

(b) Customary lands designated under traditional culture of the local ethnic people.

(c) The lands currently used for religious, social, education, health and transportation purposes of the public and ethnic people.

We are concerned that while management of Taungya land and customary land are ostensibly excluded from this law, these terms are not defined, making it difficult to know what land would fall within these exceptions. Furthermore, there is no procedure specified to determine which land is to be recognized as such. We are therefore concerned that the administrative and judicial bodies have broad discretion to determine whether land is customary or Taungya, which could result in arbitrary or unfair decisions.

We are further concerned that Rohingya lands would be excluded from these exceptions, as the Rohingya are not recognised as an ethnic group by the Government of Myanmar.

As it is our responsibility, under the mandates we are appointed to by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please explain how the 2018 amendments made to the 2012 Vacant, Fallow and Virgin Lands Management Law are in line with Myanmar's obligations under international human rights law, notably the ICESCR, including with respect to the rights to an adequate standard of living, food, work, housing, indigenous peoples' rights to their lands, territories and resources, and prohibitions on discrimination and unlawful forced evictions.
2. Please provide information about steps the government has taken to ensure those living in affected areas have received adequate notice of the Law and information about how to comply with its requirements.
3. Please provide information about the basis upon which the Vacant, Fallow and Virgin Lands Management Central Committee will adjudicate decisions on applications for permits.
4. Please provide information about the status of the land following the expiration of the 30 year permits provided for under the 2018 law, including with regard to ownership, occupation, and use.
5. What safeguards the government put in place to prevent forced evictions or homelessness? Please provide information about any such safeguards.

6. Please provide information about how the livelihoods of people affected by the Law will be protected, in particular those belonging to minorities, ethnic nationalities and indigenous peoples.
7. How will land belonging to or previously occupied by internally displaced people or refugees be protected from acquisition?
8. How does the Law fit with the National Land Use Policy and existing land laws, in particular related to the recognition of customary law and the land use rights of ethnic nationalities and indigenous peoples?
9. As the Law concerns areas of land that are in conflict affected areas, please provide information about how the Law fits with requirements under the Nationwide Ceasefire Agreement.
10. Please provide information about what process will be put in place in relation to implementation of the Law after the March 2019 deadline has passed, including ensuring that all affected peoples' rights are protected.
11. Please indicate what legal procedures and remedies are available including access to legal aid for people affected by the Law.
12. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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