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Most Farmers Do Not Know about the Vacant, Fallow and Virgin Land Management Law as the Grace Period to Register Closes

New data from a survey of 290 farmers who depend on land classified as Vacant, Fallow and Virgin Land.

Key Findings

1. Most farmers are unaware of the VFV law and the new amendment - 72% respondents did not know the substance of the law and only 3% could be considered knowledgeable about the law. Only 1% of farmers are aware that customary land is excluded for the definition of VFV land.
2. Farmers do not know the time constraints imposed by the law - only 9% of farmers surveyed are aware the 6 month grace period to apply for their land.
3. Farmers do not understand the process for registration - just 16 % of respondents have started to prepare for registration not one has yet applied.
4. Farmers find the implication that their land is seen as VFV and they only qualify for a concession insulting - 27% of respondents responded that they will not apply for VFV registration because they do not consider their land as VFV. Namati's interviewers also repeatedly heard from farmers that it is insulting to have to request a 30 year concession on their own land which they feel is theirs.

Introduction

On September 11, 2018 parliament passed an amendment of to the Vacant, Fallow and Virgin (VFV) Land Management Law. This law has been criticized by many groups ranging from civil society groups to mining companies. The primary concern is that it will cause further insecurity for farmers and ethnic communities. For purposes of this report when we refer to the VFV Management land law we refer to both the original 2012 VFV and the 2018 amendment to it - which has introduced new problems for farmers.

Most of the lands classified as VFV are in ethnic rural areas and up to 10 million people live or rely on this land for their livelihood. The new law means that these people must now apply for 30 year concessions to use their own land. If they fail to do so and another group such as a company is awarded their land, they face up to two years in prison for trespass. While the amendment does exclude land being used under customary tenure from being classified as VFV, the law provides no definition of customary land or any procedure by which communities can register their land as customary.

Given that most VFV land is used by ethnic minorities, there is a particular concern that those peoples who cannot read, write or speak Burmese will be most negatively impacted. For example, one key clause in the new amendment states that VFV land users should "Apply for the permit for land utilization within 6 months from the day of the amendment of the VFV law, or the person shall be evicted when he fails to apply for the permit or his application is rejected by the March deadline. This person will be subjected to penalties up to two years of imprisonment and fines if he continues to occupy and utilize the land." This short window seems ill advised. At the very least, it would need to be accompanied by a strong, widespread, and multilingual campaign to inform the millions of people potentially impacted by the law of the steps they should take to safeguard their lands and livelihoods.

Civil Society has engaged actively with the VFV law. In addition to informing the communities they serve about the implications of the law, several open letters have also been sent to MPs and the

government, raising concerns and suggesting a path forward. While Namati has also taken part in such efforts, we are now sharing some data and evidence from the ground with the government, MPs, civil society, and the media to provide more context and support good policy. We chose to conduct this survey now five months into the six-month registration grace period because it provides an accurate snapshot of the situation on the eve of the end of grace period. With the grace period ending on 11 March 2019 there is almost no opportunity left for farmers.

The focus of this short document is to present the findings of a survey carried out by Namati to better understand the level of legal awareness of the populations living on VFV lands. Below we present our findings.

Methodology

A total of 290 participants from 3 States and 1 region were surveyed in person by Namati's team in Myanmar. The locations surveyed were selected based on where most VFV land in Myanmar is located. Government statistics show most VFV land is in the States, as opposed to the Regions, in which Myanmar's ethnic minorities reside. Thus, in line with the language abilities Namati's Myanmar team and limited both by time and budget three States were selected Rakhine, Karen and Shan and one Region, Magwe. These four States and Region all have VFV lands, the possible existence of customary lands and practices and are accessible to Namati's Myanmar team and partners.

One or two township within each State or Region were selected based having significant amounts of VFV land and Namati having access to the area. In Shan state, the three townships were selected to cover Eastern Shan, the Danu Self-Administered Region, and Southern Shan. Three to five villages or village tracts were covered in each township and 5 to 10 interviews conducted per village. A total of 37 villages in 25 village tracts were selected in 7 townships. Each respondent was selected in one of three ways. House by house surveys were conducted in the villages where it was not possible to reach the village administrator. In some villages the village administrator provided a list of potential respondents which we then used to generate a random list. In some villages where it was not possible to follow the previous two methods a local organizer or a well-connected villagers organized a group of potential respondents. While it would have been best to only use one consistent method for participant selection time constraints made this impossible. Namati did not select any village tracts where it currently or has previously deployed paralegals. All interviews were conducted and recorded by Namati team members.

Finally, this report has been pulled together in very limited time in order to reflect the situation at the point just before the end of the 6-month grace period but also to be available before the end of 6-month grace period. Therefore we ask that you forgive typos and other small errors. Namati intends to publish a fuller report in due course.

If you have further questions, please contact:

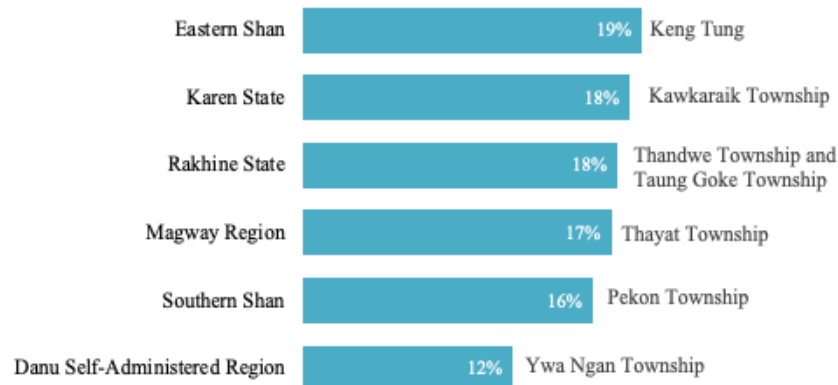
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Full Data and Findings

1. Background and Status of respondents

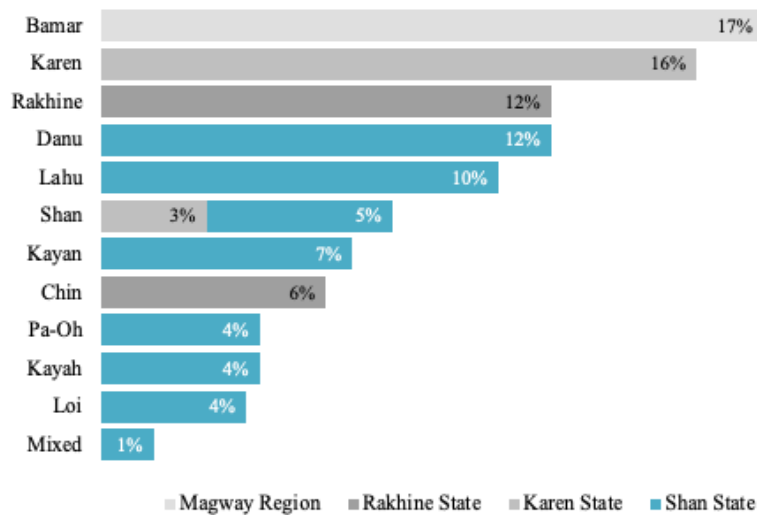
This survey was done in three States and one Region in Myanmar between 10 February and 15 February to discover what farmers know about the VFV Land Management Law. The survey was carried out by 5 staff members of Namati Myanmar who surveyed 290 farmers (61% male and 39% female) from 37 villages located in 25 village tracts and 7 townships. We asked the questions in Burmese, Shan, Rakhine, Lahu, Karen, and Kayan languages.

Location of Survey Respondents



While Bamar people were the largest single ethnic group surveyed the overwhelming majority of these farmers came from Magwe. Shan State had the largest number of ethnic groups.

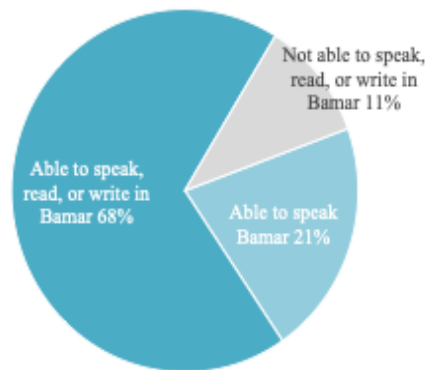
Ethnic Background of Respondents



1.1 All the respondents were smallholder farmers and subsistence livestock breeders of different ethnic origins.

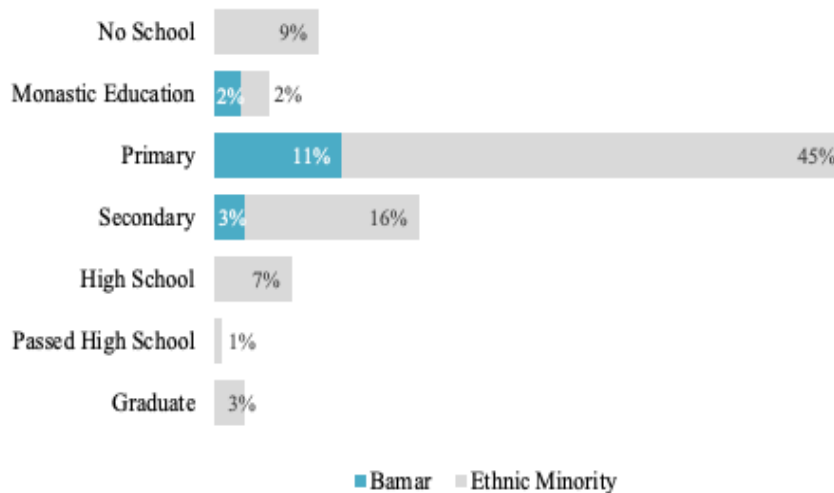
1.2 Of the 290 respondents, 11% do not speak, read, or write Burmese, which means that they have difficulty gaining access to the laws and policies, 21% can speak Burmese but not read or write it, and 68% can speak, read and write Burmese (this does not mean they are fluent but are able to get by in Burmese).

Language Abilities of Respondents

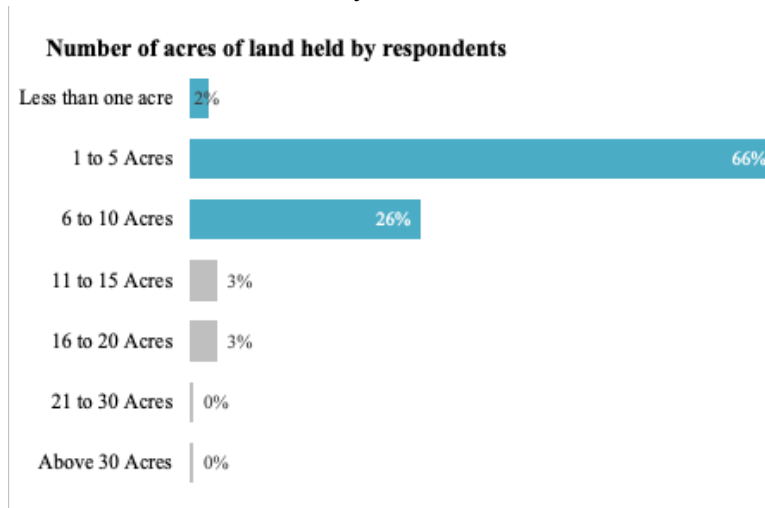


1.3 61% of the respondents only finished either primary education or basic monastic education yet only 3% graduated university.

Education Level of Respondents

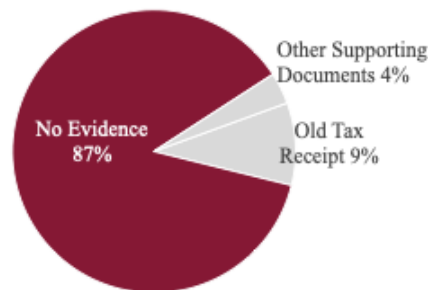


1.4 The main livelihood of 99% of the respondents was farming. 66% of the respondents had less than 5 acres of land. Note having more than 5 acres does not mean the farmers are wealthy as poor quality land far from transportation or markets can be of very low value.



1.5 87% of respondents have no official documentation proving their land tenure claims. Just 9% of respondents hold old tax documents which are very common when the land is farmland.

Supporting Documents For Land Tenure

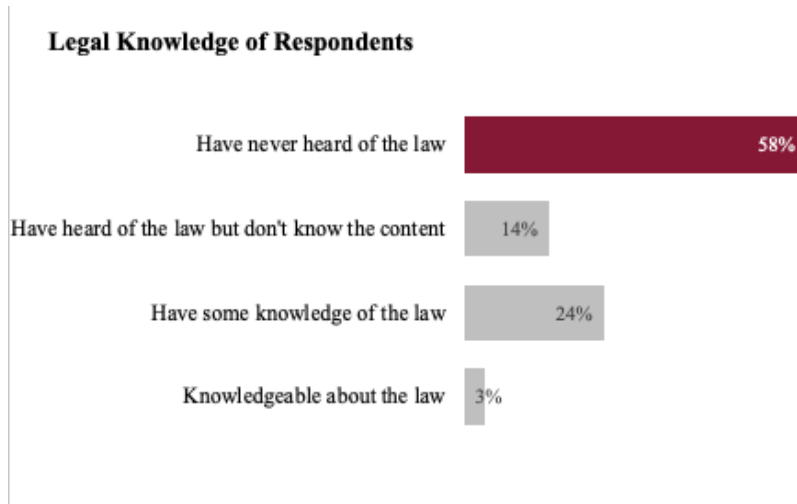


2. Legal Knowledge of the respondents

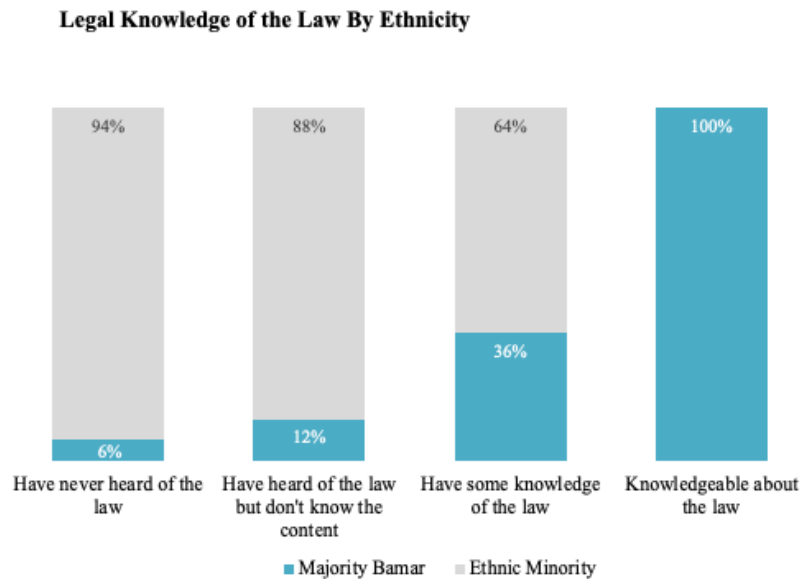
The survey explored whether Myanmar farmers using VFV land know the VFV Law enacted on 30 March 2012 and the amended version of the same law passed on 11 September 2018. The measurement of how much farmers know about these laws was divided into four categories as follows:

1. I have never heard of the laws
2. I have heard of the laws but don't know what's in them
3. I know the laws roughly. (For example, one must have an official permission to use VFV land, and the 2018 law says the application must be done within 6 months. I know these two facts)
4. I know more than 3 facts / articles of the VFV law

2.1 72% respondents do not know the substance of the law and only 3% could be considered knowledgeable about the law.



2.2 Respondents from the Burmese majority Region know more about the VFV law and amendment than ethnic minorities from the States. All of the individual respondents who know a lot about the law are Burmese.



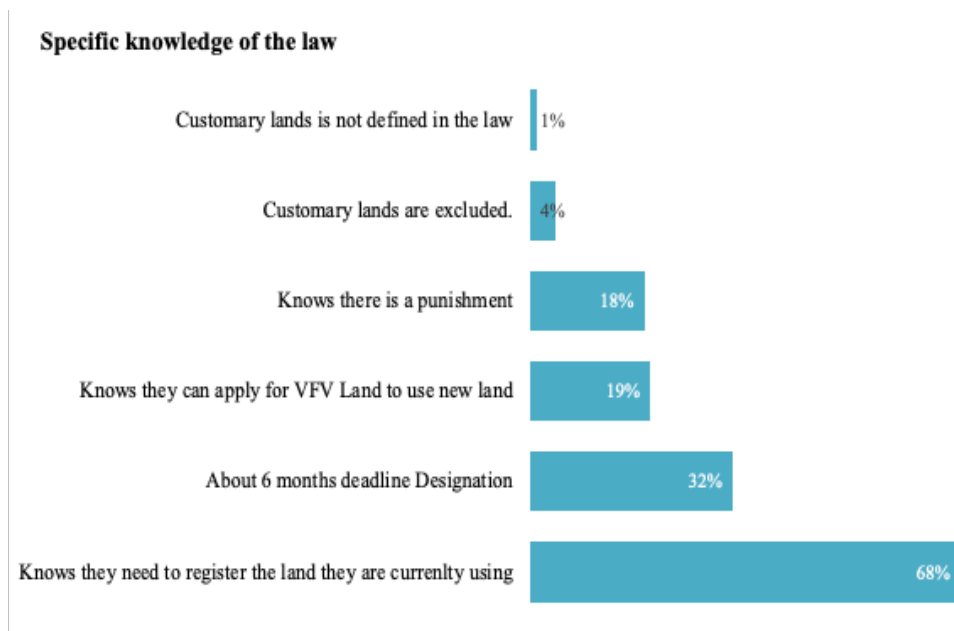
“The government should not enact law without informing or consulting with people who will be directly affected by the law. If not, we will be the one who get in trouble.”

- A Danu, ethnic minority, woman respondent

2.3 Specific knowledge of key sections of the VFV amendment

The survey assessed whether the respondents are aware of basic facts described in the amended VFV law and in particular the two key points. The first of which is the designation of only a 6-month grace period for those who are using (or assumed to own) the land which may be designated as VFV. The second concerns the exclusion of customary land from the VFV definition. The survey also provided some basic facts described in the law to see if respondents were aware of these.

According to the survey, only 10% of respondents are aware of at least one of two key points in the VFV law. Among them, 9% said they are aware of “6 month deadline” and only 1% of respondents are aware of the exclusion of customary land from the VFV definition - and all three of these individuals were ethnic minorities.



The extent of the knowledge of the respondents is not substantial, as they did not know important substantive features of the law. For example, they did not know that the VFV Law does not cover customary lands. They also did not know other facts such as the application needs to be started within six months from the day of the enactment of the amended law or they cannot continue to use their land. All they knew was they had to possess a document that guarantees their right to use land, but they did not know the process of acquiring this document. The sources of information listed in the below table did not explain the process of application or the legal responsibilities that farmers need to take. They only emphasized that farmers needed to apply for permission to use the VFV lands or they would lose the access to those lands.

“Apply for permission within six months. Or other people will come take your land.”

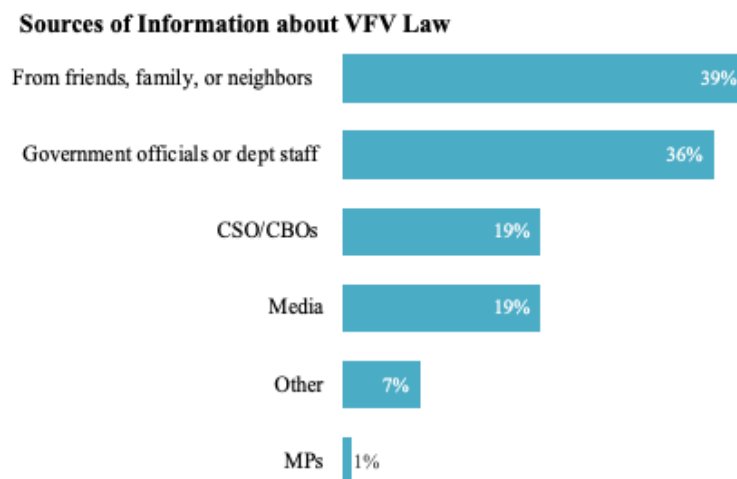
– A village administrator

3. Sources of information about VFV law

For a law which could have such a significant impact upon so many people we have found that the dissemination of information about the law to be insufficient. This is particularly true because it has been already 5 months since the law was passed and grace period is only 6 months in duration. It is important to note that the information which was shared by different parties mostly focused on encouraging farmers to apply for concessions without emphasizing the exclusion of customary land from VFV, the obligation of the applicants such as taxation, and the commitments farmers have to make during the concession period.

3.1 Of the 290 respondents only 42% had heard of the law at all. Of those who had heard of the law 39% heard from their family and 36% from a government source. The key source from the government was the Village Administrators. However, it seems they were often not very clear as they said “People using land without any official documents must to do land registration”. This can have two different meanings: farmland registration (form 7) or the VFV land registration. This confusion was clear to the Namati staff conducting the interviews.

Likewise, some political party members have shared the information that people using VFV land need to apply for permission within 6 months. We heard that these party members acted after being instructed to do so by their respective township-level party offices. However, these party members were not able to share specific information about the application process. One MP gathered people in two village tracts and encouraged them to apply for VFV land permission, but the same people who listened to her encouragement did not know how to start the process. Many applicants wrongly assumed that the process was completed once they gave their names to the village administrators.



“A Member of Parliament from the Lower Level told us the government will come to the ground to help the applicants who want to apply VFV land - don’t miss the chance to apply. But until now, no one has come to our village”.

- A Villager

3.2 A significant corruption case

We heard from villagers in one village in Rakhine that the village administrator told them “If you want to apply to register VFV land, you will have to go State level, not the township or district level as before. So, give me and this assigned DALMS officer 80,000 Kyat for each acre you apply for”.

This information is incorrect because the process can be done at the township or district level and there are no fees to apply for the land. Many applicants gave their names to apply for VFV registration with 80,000 Kyats per acre. The applicants who already paid the money to the village administrator think they have already applied and are in the process but this is not the case. The village administrator knows who has requested him to make the application since December but up to the time of this survey (mid-February), no one has come to the ground and measured the land yet. There is VFV land in the community and also landless people around the village but people do not know how to apply.

4. Planned actions and intentions

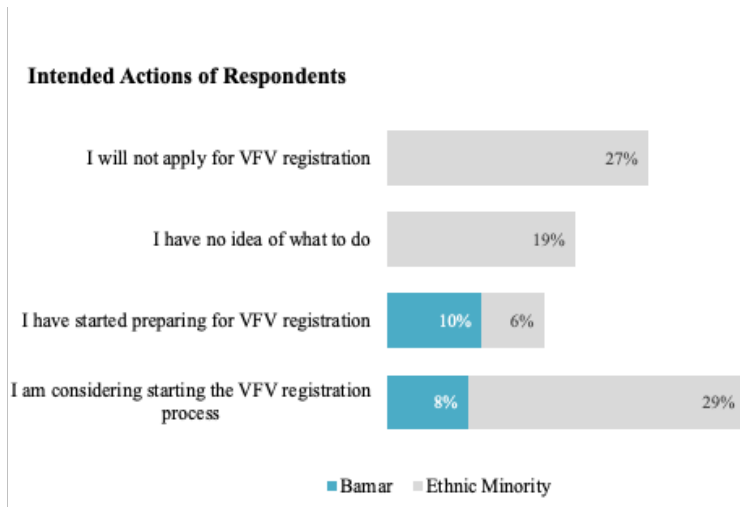
The majority of respondents, 277 out of 290, who are using lands that have potential risk to be classified as VFV land by government want to secure their land legally. Nevertheless, only 16% said they will register as VFV land and have started preparing. Of these 16% some 2/3rd are ethnic Burmese in Magwe. Some 37% of respondents are thinking of registering their land not under VFV title but under a more secure title whether it is form-7 (for farmland) or something else. This shows that knowledge of the law is limited, that farmers strongly wish to secure their land, and that current land definitions are not up to the job of supporting the needs of farmers.

27% of respondents, all of whom are ethnic minorities, clearly responded that they will not apply for VFV registration because their lands are not VFV, irrespective of how government has designated it. Many of these respondents mentioned that their lands are all inherited from their parents as ancestral inheritance. This point cuts to the heart of the VFV land issue. Most of these lands are not vacant, fallow, or virgin and many people living and working these lands find it deeply insulting that the government applies such a colonial era classification. It is hoped that the government is aware of such anger and perceived insult.

19% of respondents all of whom are ethnic minorities have no idea of what to do because they do not understand the law or the process of registration. They know they need to secure their land but have no idea how to.

“I do not want any kind of forms whether form-7 or VFV related form. I do not think any of them are good. Instead, I just want to use as we customarily use.”

- A woman villager

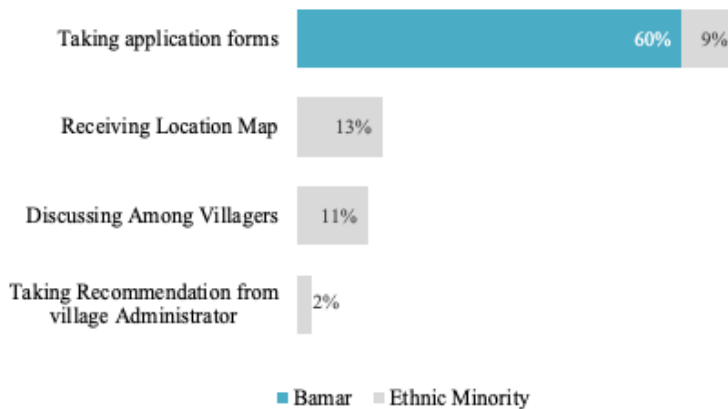


“I am thinking to apply for a land use permit. My neighbors have also encouraged me to do that. They said if I don’t apply, someone will take my land.”

- A villager

As described above, although there are 16% who have started preparing to register under the VFV system, as yet not one of the 290 respondents has submitted an application. Of these 16% the majority has taken application forms but only few have received location map and a recommendation from their village administrator. There also few villagers who said that they are still in the process of discussing/negotiating among themselves to prevent or resolve boundary dispute problems.

Actions taken by those who have started registration process



Burmese people in Magwe region said that it was the village administrator who supported them. Ethnic minorities living in Shan state mentioned that it was a land activist (which we categorized in the survey as CBO/CSO). Two respondents also mentioned it was NLD party members who shared information in the first place.

“A Law does not have to affect in the whole country. We ethnic minorities can have our own law that is suitable with ours customs and situation.”

- respondent in Shan

5. Some respondents want to preserve currently unused or underused land for future generations.

A total of 81 people (16%) of the 290 respondents responded the question of “are you willing to apply for new lands as per VFV law if there is available?” In total, 58% of the 81 respondents said they are interested in applying for new lands if there still are virgin lands available. Interestingly 57% of the 81 people were ethnic minorities living in Shan state and a few in Rakhine state.

Assessing the reasons of why they are thinking or may be interested to apply for new lands, responses includes:

- To farm as he/she has no lands
- To expand farming areas as he/she has no enough lands
- To use as community land for grazing land, etc.,
- To save lands for future generations to expand agricultural land
- To save lands from being grabbed by other outsiders or companies and for government projects
- To save lands for landless families in the village
- To save for greening the village with forest

There are some who have no idea of applying or not applying because they do not know about the law. Likewise, there are 9% who clearly stated that they will not apply for new VFV land because they believed there is no VFV land - that is land not owned by anyone. Another reason is that they are not interested or cannot travel far to apply for new lands in other areas outside of their area.

Recommendations:

With regards to recommendation, we would like to refer to the recommendation we made along with 41 CSOs in the “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)”. This letter can be found at:

<https://reliefweb.int/report/myanmar/41-civil-society-organisations-call-myanmar-government-suspend-controversial-land-law>

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