

To:

- 1) Chairman, National Land Use Council, Nay Pyi Taw.
- 2) Chairman, VFV Land Management Central Committee, Nay Pyi Taw

Date: January 10, 2019

Re: Concern about impact on responsible investment of 2018 Amended Vacant, Fallow and Virgin Lands Management Law

We are writing to express our concern regarding the public announcement made on October 30, 2018 calling for those currently using Vacant, Fallow and Virgin (VFV) land without Central Committee permission to apply for a permit by March 2019, making reference to Section 22 sub section (b) of the Vacant, Fallow and Virgin Lands Management Law (2018), as amended. This letter has been prepared on the basis of MCRB's experience working to promote responsible business in Myanmar since MCRB was established in 2013.

MCRB has followed the developments leading up to and following the adoption and amendment of the VFV Law, and shares many of the concerns raised in the letters from farmers organisations, civil society organisations and NGOs. Since MCRB's inception, land has constantly been identified by the responsible investors with whom we work – and indeed by most companies - as their biggest human rights risk, and one which reduces their willingness to invest in Myanmar.

In 2015, MCRB published a Briefing Paper on Land, which contained recommendations for business on how to conduct human rights due diligence on land issues in Myanmar, and issues to be aware of when seeking to invest responsibly and in line with international standards. The field research for MCRB's Sector-Wide Impact Assessments on Oil and Gas, Tourism, ICT, Mining and Oil Palm have all revealed that human rights impacts associated with land acquisition are widespread, and of concern to rights holders and businesses alike. Businesses have a responsibility to respect the rights of land owners and land users.

The Briefing Paper on Land, Business and Human Rights in Myanmar is currently being updated. In May 2018, MCRB held a multi-stakeholder consultation on current issues for inclusion in the Paper, which was well-attended by businesses including the international legal firms who represent them. One of these lawyers noted that **'Land remains one of the most challenging issues for investors in Myanmar. Many companies give up in view of the uncertainty around land ownership and unquantified liabilities due to land acquisition legacies'**.

Others involved in the consultation noted that it will be difficult to obtain clarity over issues like customary tenure by amending existing land laws - as has been done with the VFV Law - rather than first adopting an over-arching Land Rights law as envisaged in the National Land Use Policy. A number of other concerns were raised, including lack of information on land ownership, and lack of a reliable cadaster. All of these concerns have led some international investors in Myanmar to put plans for expansion on hold, due to their inability to find Myanmar partners who can provide land without human rights legacies.

In order to invest responsibly and respect human rights, businesses need the Myanmar Government to fulfil its duty to protect. The Myanmar Government signed and ratified the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) in 2017. This means that Myanmar law needs to be aligned with the Covenant and protect ESC rights. Currently a number of Myanmar land laws, and amendments to those laws including VFV and the proposed draft law to replace the 1894 Land Acquisition Act are not compliant with Myanmar's ICESCR obligations. This causes problems for responsible investors as well as for the formal and customary users of land.

We therefore share the concerns raised by others about the Amended VFV Law. We believe that implementation of this amended Law should be halted, pending an expert review of its human rights impacts, and that future amendments should be made to bring the VFV Law – and other draft laws related to land - in line with Myanmar's Covenant obligations and consistent with the 2016 National Land Use Policy.

MCRB recently made suggestions with this aim concerning the proposed amendment to the 1894 Land Acquisition Act, another law of major concern to responsible investors. We believe that a revised, rights-protecting Myanmar legal framework for land will serve to encourage responsible investment, and contribute to sustainable development. We hope that those responsible for policy and law on land in Myanmar will achieve this aim, and wish you success in this.

Yours Sincerely,

Vicky Bowman

Director

Myanmar Centre for Responsible Business, MCRB

Copy of the letter to send to the following:

1. Speaker, Pyihtaungsu Hluttaw, Nay Pyi Taw
2. Speaker, Amyothar Hluttaw, Nay Pyi Taw
3. Speaker, Pyithu Hluttaw, Nay Pyi Taw
4. Chair, Union Parliament Law and Special Issues Investigation Commission, Nay Pyi Taw
5. Farmer Affairs Committee of the Amyotha Hluttaw, Nay Pyi Taw
6. Farmer and Labour Affairs Committee of the Pyidaungsu Hluttaw, Nay Pyi Taw