



Between a Rock and a Hard Place:

**The Struggle of Returning Refugees to Resettle
their Lands in Ye Phyu Township**

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This report was researched and written by Tanintharyi Friends, a local civil society organisation based in Dawei, Tanintharyi Region.

Introduction/ Summary

Kye Zu Daw village is located along the banks of the Heinzel River in Ye Phyu Township, Tanintharyi Region in Southeast Myanmar. The village of approximately 53 households has a long history of displacement and dispossession. Forced to flee from their lands during the civil war, large swathes of their lands have now been enveloped by Protected Areas¹ and agribusiness concessions during their absence. Today, villagers are squeezed between land grabs by private companies for oil palm and rubber plantations on one side, and the Tanintharyi Nature Reserve on the other, leaving them with limited livelihood options and forcing them to struggle to provide for their families.

¹ Under the (1994) Protection of Wildlife and Protected Areas Law, SLORC.

Forced to leave their village as IDPs and refugees in 1992 during the civil war, villagers from Kye Zu Daw returned to their ancestral lands in 2012 to find their lands had been confiscated. Faced with few options, in 2016 Kye Zu Daw villagers decided that they would start the process of trying to register their lands, which had been categorised as VFV by the government. Despite their attempts to legally recover and register their lands, villagers have faced consistent barriers. They have been sued over three times by agribusiness companies, faced abuse and intimidation from the Department of Land Management and Statistics (DALMS), and being forced to compete with companies on an unequal playing field to register their lands under a legal framework that does not reflect how land is used by communities in Myanmar and strips them of their customary and communal land rights. As a result of the consistent hardship and discrimination faced by Kye Zu Daw villagers in recovering their lands, many have given up hope, some even considering returning to the border.

The case of Kye Zu Daw highlights the insurmountable difficulties that returning IDPs and refugees face with respect to land restitution in Myanmar. As a country with over 1.7 million refugees and IDPs, the denial of the rights of displaced people to have restored to them their lands and properties has enormous implications throughout the country.² It also highlights the conundrum that rural upland communities find themselves in as a result of the VFV Land Management Law. On the one-hand communities are pushed by the law into registering their lands and giving up customary tenure, but on the other local Department of Land Management and Statistics (DALMS) offices prevent local communities from registering, creating a legal impasse for rural communities.

This report calls upon the government of Myanmar to guarantee citizens from Kye Zu Daw the right to equality and justice, to treat villagers who have been displaced by conflict for decades with dignity, and to expediently restore lands that have been wrongfully confiscated to returning villagers.

² Central Intelligence Agency., (2018), World Fact Book: Refugees and internally displaced persons, available online at: https://www.cia.gov/LIBRARY/publications/the-world-factbook/fields/print_2194.html

A History of Displacement and Dispossession in Kye Zu Daw

Kye Zu Daw village was established approximately 150 years ago along the banks of the Heinzel River. When the village was initially established, it was home to just 20 households, today 53 households with a population of around 200 who rely on a mix of taunya, orchard cultivation and collection of forest products for their livelihoods.

Like many villages in Ye Phyu Township, Kye Zu Daw was severely impacted by the civil war. The community was first made to leave the village in 1988 after an escalation of conflict in the area. For four years, villagers lived insecurely between their village lands and the surrounding forests, before being forced to completely flee the area in 1992. Displaced villagers had to split up into small groups, some seeking refuge with family members in nearby Ban Chaung and Kamoethway, others leaving to the Thai-Myanmar border as refugees.

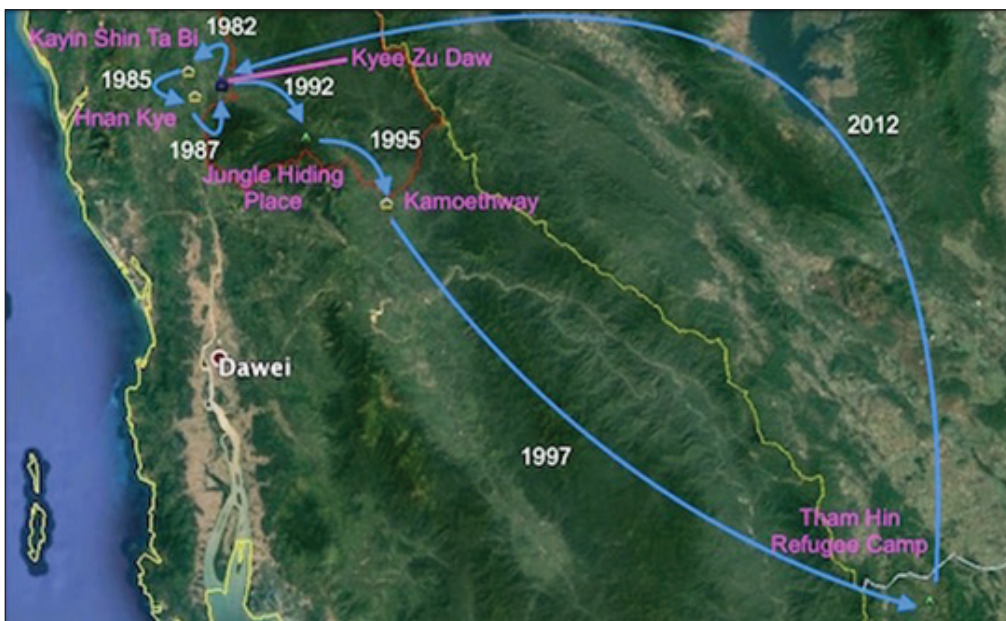


Figure 1: Conflict map of Kye Zu Daw village

Land Conflicts:

In 2012, after a bi-lateral ceasefire between the KNU and the central Myanmar government was signed, the Karen Ethnic Minister for Tanintharyi Region

announced that conflict had ceased, and that Kye Zu Daw villagers could now return. Upon this announcement, families started to return to their lands to re-establish their community and livelihoods only to discover that their ancestral customary lands had been incorporated into Protected Areas and agribusiness concessions. Villagers are now forced to subsist on a small section of land, cut off from their farms and forestlands.

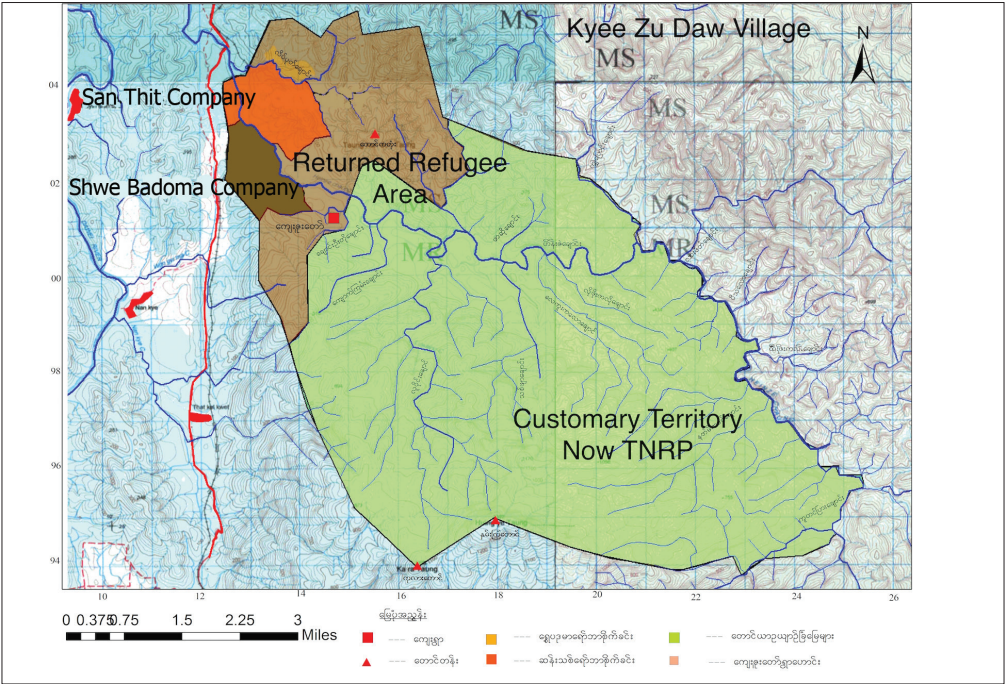


Figure 2: Land use map of Kye Zu Daw village

Tanintharyi Nature Reserve Project (TNR)

The TNR is located between Ye Phyu and Dawei Townships, covering an area of 420,000 acres. The Protected Area was established in 2005 by the Forest Department with the help of Wildlife Conservation Society (WCS), and with financial support from Total and Chevron as part of their CSR programme for the Yadanar Gas Pipeline. Established during a peak in fighting during the civil war, the TNR was created on lands temporarily vacated by communities who had fled as refugees and IDPs.

When villagers from Kye Zu Daw returned to their village in 2012 they discovered that vast areas of their forest and farmlands had been incorporated into the TNR.

Villagers who had previously relied on the forest for shifting cultivation, fishing, gathering vegetables and non-timber forest products, medicinal herbs and timber for domestic use were cut off from the forest, no longer able to legally access their lands and resources.

“Now we have no taungya, no rice, and we are in debt” – Kye Zu Daw villager



Figure 3: TNRP Marking sign in Kye Zu Daw village.

Agribusiness Concessions

In addition to losing their lands to the Tanintharyi Nature Reserve, villagers from Kye Zu Daw found that portions of their lands had also been handed over to private companies as agribusiness concessions during their absence. An area of approximately 1000-acres had been granted as rubber and palm oil concessions.³ Villagers first discovered concessions had been established on their lands in 1999 by word of mouth. The villagers came to an agreement with San Thit company by way of a compensation settlement and the agreement that they would leave the area after their 30-year lease had expired. The villagers were unable to reach an agreement with Shwe Padoma despite several attempts, and have faced recurring troubles including three legal cases brought against local residents by the company.

³ San Thit company was granted 460 acres, and Daw Yi Yi Win was awarded one 611-acre concession.

Daw Yi Yi Win and Shwe Padoma Company

In 1999 Daw Yi Yi Win, a business woman was granted a 611-acre plot for oil palm development under the 1991 Virgin, Fallow and Vacant Land Management (VFV) Central Committee Notification. After Kye Zu Daw villagers returned to their lands in 2012, company representatives visited the village, announcing that the land now belonged to the company and that villagers were not to enter. Returning villagers have never received compensation for the loss of their lands, despite the obligations of the company under the 2012 VFV Land Management Law.⁴



Figure 4: Shwe Padoma company Signboard.

Daw Yi Yi Win and Shwe Padoma Company – operating in violation of the law

Since being granted a 611-acre VFV permit to grow palm oil in 1999, Daw Yi Yi Win has consistently operated in violation of the law. While the concession was established in 1999, almost 60% of the concession has been left unplanted for over 20 years. According to the 2012 VFV Land Management Law, land left vacant for over four years should revert to state land.⁵ Furthermore many of the areas of the palm oil concession have been used to grow other crops such a beetle-nut, cashew

⁴ Section 25(b) of the 2012 VFV Land Management Law and Rule 52(b) VFV Land Management Rule. (this also applies to permits awarded under the 1991 VFV Central Committee Notification)

⁵ Section 22(a) of the 2012 VFV Land Management Law

and durian trees, a violation of the VFV Land Management law.⁶ This consistent violation of the 2012 VFV Land Management Law should have resulted in the revocation of the permit, however this land has remained in the possession of Daw Yi Yi Win.

In 2015 Daw Yi Yi Win applied for another 1,200-acre concession in Kye Zu Daw lands, this time under her company, Shwe Padoma. The application received a provisional recommendation from local authorities, however the Central VFV Committee has not yet approved it. While Shwe Padoma is not in possession of a VFV permit, it has already started to clear and plant areas of the provisional concession in contravention of the law.

This land should be available for Kye Zu Daw villagers to apply for and resettle, however, Shwe Padoma Company continues to occupy the area and has consistently been given favour through land application processes at the expense of local communities. Favour has been given to the company at the discretion of the DALMS office, which has expediently mapped and processed company paperwork and overlooked numerous law breakages, while foot dragging with the applications of local communities.

Table of planted and unplanted concession areas.

661-Acre Concession (Daw Yi Yi Win) ⁷		Reviewed Concessions	
Planted Land	318 acres (63.4%)	Current	Proposed
Unplanted Land	293 acres (26.6%)	611	611
1,200-Acre Proposed Concession (Shwe Padoma)			
Planted Land	5 acres (0.4%) ⁸	1,200	213 ⁹
Unplanted Land	1,195 (99.6%)		

In 2016 the government began reviewing oil palm concession permits under the 2012 VFV Land Management law, examining whether land was under use or unplanted, in order to return unplanted lands, giving priority to their original owners and local residents. Despite having only planted 318 acres of land and having consistently violated the terms of the 2012 VFV Land Management Law, Shwe Padoma has applied for 1,200 acres in addition to the 611 acres it is already

⁶ Section 16(a) of the 2012 VFV Land Management Law

⁷ OneMap Myanmar, (2017) Daw Yi Yi Win (Shwe Padoma Company) Oil Palm Concession. On File.

⁸ This figure was given orally by government departments, but has not been officially announced.

⁹ This figure was given orally by government departments, but has not been officially announced.

in possession of. We understand that a total of over 800-acres of community land will again be handed to Shwe Padoma company for oil palm development.

Difficulties in applying for VFV Lands

Faced with a set of difficult options, Kye Zu Daw and Nan Jel, a neighbouring village, decided that they would apply for land use permits on their lands, which had been categorised as VFV. Despite their efforts, communities have faced consistent discrimination and hostile abuse from the DALMS office in their attempts to recover access to their lands. Villagers have come to realise that the legal tools at their disposal cannot help them in their quest to recover their customary lands.

‘We want to follow the law, but this law is not for us’ – Kye Zu Daw villager

In January 2018, Ye Phyu Township DALMS officers, GAD and police informed Kye Zu Daw residents that their lands were categorised as VFV lands, and that they would be sued for occupying, using or cultivating them. From this point, villagers began their endeavour to register their lands, but have faced consistent barriers and impediments to their efforts.

Villagers have met with township and district DALMS offices 17 times and with government departments 24 times over the space of a year in order to register their lands. Despite considerable perseverance, community members have received consistent and hostile abuse, harassment and intimidation from township DALMS officials, causing many to abandon their efforts to register their lands, and some even to consider returning to the border.

‘When we went to the land department they started to shout and swear at us, they look down at us’ – Kye Zu Daw villager

Vacant, Fallow, Virgin Lands Law

The 2012 VFV Law categorises most land not under permanent cultivation as waste lands that can be appropriated by the government for investment or conservation.

Over 30% of land in Myanmar is categorised as VFV, with approximately 75% of this located in upland areas. Section 22(b) of the 2018 VFV Law amendment gives communities until March 2019 to register their lands, after which time they may face heavy criminal charges of a fine of up to 500,000 kyats or two years in prison under section 27 (a) for using or occupying them.



Figure 5: Kye Zu Daw villagers wait at township DALMS office

Table of Meetings and encounters with government departments.

Department	Number of meetings and encounters
Kale Aung Township DALMS office	13
Ye Phyu Township DALMS office	2
Dawei District DALMS Office	2
Tanintharyi Regional MOALI	1
Meetings with Minister of Agriculture, Livestock and Irrigation and Karen Ethnic Minister	1
Meeting with Minister of Agriculture, Livestock and Irrigation, Karen Ethnic Minister, Director of DALMS, Director of Department of Forestry, Director of Myanmar Investment commission, Director of Environmental conservation department.	1
Vacant Fallow and Virgin Land Management Committee	2
Meetings with Ye Phyu MPs	1
Meeting with Regional Parliament	1
Total number:	24

Customary lands and the VFV Land Management Law

Kye Zu Daw's territory is customary land, managed in accordance with the traditional governance systems of indigenous Karen communities who have settled the area for generations. According to the 2018 VFV Land Law Amendments 'customary lands designated under the traditional culture of local ethnic people' are exempt from VFV land categorisation, and should therefore remain under the traditional ownership of indigenous communities.¹⁰ According to this law, the entirety of Kye Zu Daw's customary lands should be restored to the community.

During 2018 villagers from Kye Zu Daw and Nan Jel managed to submit a total of 155 applications for Form 1s, which would afford them with legal titles to their lands. Despite having exerted considerable effort to acquire and submit these forms to the DALMS office, to date not one village from either Kye Zu Daw or Nan Jel has been granted a VFV land permit. If villagers do not register their land by March 2019, they may be liable to heavy fines and criminal charges.

Attempts at land registration by Kye Zu Daw and Nan Jel villagers.

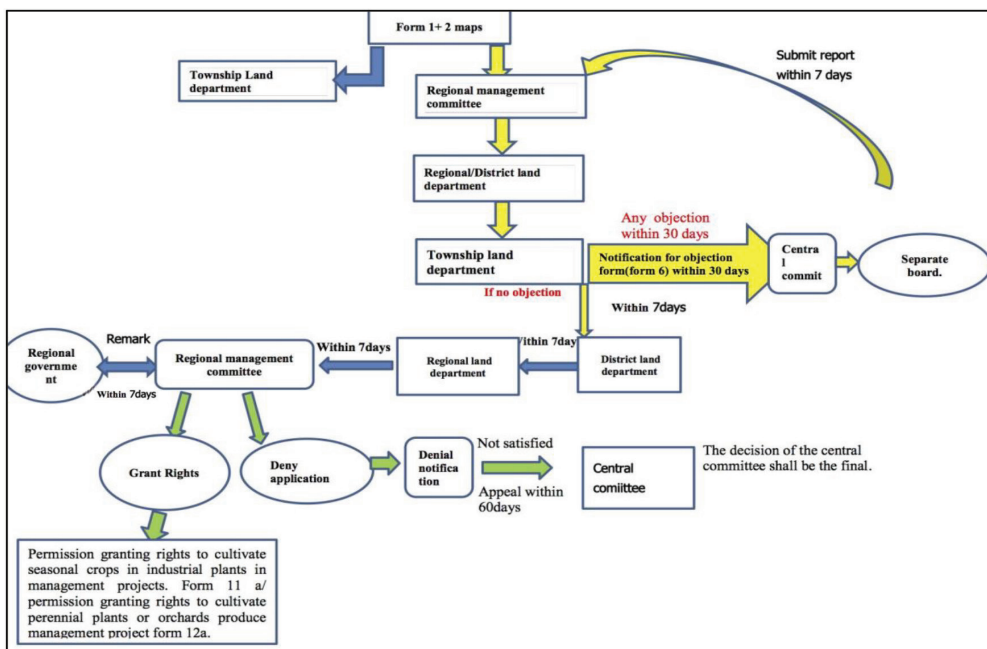
Kye Zu Daw Village							
No	Times	No. of applications	Acres	Application date	Announced	Investigation	Issued/ Completed
1	First time	9	41	26.4.2018	1.8.2018	10.12.2018	0
2	Second time	4	149	31.8.2018	18.9.2018	-	0
3	Third time	17	121	23.11.2018	-	-	0
		30	311				

Nan Jel Village							
No	Times	No. of applications	Acres	Application date	Announced	Investigation	Issued/ Completed
1	First time	28	68.9	30.8.2018	18.9.2018	-	0
2	Second time	97	344.5	5.11.2018	-	-	0
		125	413.4				
	Total	155	724.4				

According to the 2012 VFV Land Management Law and rules, villagers can apply for plots of up to 50-acres of lands defined as VFV. Villagers can apply for their lands by way of a Form 1 and 2 maps drawn by the Township DALMS office.

¹⁰ Section 26(b) of the (2018) Vacant, Fallow, Virgin Land Management Law Amendments.

Applicants are required to submit their documents to the Regional VFV Land Management Committee, who will then refer the application to the Township Department office through Regional and District offices, who will open a 30-day period, whereby others have the opportunity to oppose or contest the application. If an opposition is filed, a special investigation team is required to conduct an investigation and submit a report to the regional management committee. However, if no opposition is filed, the Township Department need to submit the application with their recommendation to the Regional Management committee through the District and Regional Departments. The Regional VFV Land Management Committee then have to send all the case files and opposition reports to the Regional Government for final consideration.



Discrimination and Justice Denied

Despite large areas of unplanted concession land within Daw Yi Yi Win's 611-acre plot, community members have been consistently blocked from applying for their lands. Further, villagers now have to compete with Shwe Padoma Company for registration over their village lands within the 1,200-acre area, a competition in which they, Karen IDPs, have been consistently discriminated against, and the company consistently given favour.

The unfair and unequal treatment of Kye Zu Daw villagers is a clear case of discrimination, one that has cost them their lands, livelihoods and right to resettle after decades of conflict. The 2008 Myanmar Constitution guaranties that 'every citizen shall enjoy the right of equality, the right of liberty and the right of justice'. This guarantee has not been upheld.

Further, the 2008 Constitution guaranties the protection of all properties of citizens, and the 2016 National Land Use Policy states that ethnic nationals who have lost their lands and resources due to civil war, have the right to have their lands and properties restored to them in line with international law. These rights again have not been extended to returning refugees in Kye Zu Daw.



Figure 7: Kye Zu Daw village nestled between TNRP and Daw Yi Yi Win's oil palm concession

Recommendations:

To the Department of Agricultural Land Management and Statistics:

1. Villagers have been scared and intimidated by DALMS officials. The department should welcome, respect and support villagers to register their lands, and those who fail to uphold this duty must be disciplined, dismissed or relocated to avoid conflicts with the community.
2. The DALMS is poorly resourced and lacks the capacity to carry out its mandate. Community land registration is urgent and of the utmost importance, and as such DALMS must be given more resources to register lands expediently.
3. DALMS must follow and implement the law without discrimination, and give respect and support to villagers who are attempting to register their lands.
4. DALMS officers and other related government departments must visit the ground level regularly in order to understand the situation faced by rural, indigenous and IDP communities.

To the Vacant, Fallow and Virgin Land Management Committee

1. The 2018 VFV Land Management amendment Law requires that villagers register their lands with immediacy or face criminal charges for occupying their lands. This case shows that there is neither the capacity nor the will to support communities to register their lands. The amended VFV Land Management Law must be repealed or reviewed in order that community land rights are not undermined.
2. The granting of agribusiness concessions on and next to community lands has been the cause of considerable conflict and distress to Kye Zu Daw villagers. Before giving concessions the VFV Land Management Committee must conduct thorough ground level investigations before giving permits in order to mitigate potential land conflicts.
3. Village level citizen representation must be included in all relevant land committees to ensure that the voices and rights of communities are heard and respected.

To the National Land Use Council:

1. There are over 1 million IDPs and refugees in Myanmar, whose land rights have not been respected. The government must prioritise the rights of IDPs and refugees to have restored to them their land and properties of which they have been forcefully deprived.
2. Myanmar has no framework to recognise the customary land management systems of ethnic minority communities. A new land law must be enacted which recognises, respects and secures the land tenure of ethnic minority communities and any laws inconsistent with this must be repealed.

The National League for Democracy Government:

1. The current government has lost the trust of rural ethnic communities. In order to restore this trust, the government must act in good faith and support rural communities, IDPs and refugees, and ethnic minorities in attaining land tenure security.

ANNEX 1: KYE ZU DAW LAND REGISTRATION TIMELINE - 2018

07/01/2018	<ul style="list-style-type: none"> ➤ Ye Phyu Township DALMS, GAD and police meet with villagers in Nan Jel village. KZD villagers informed that if they cultivate or use VFV lands, they would be sued.
10/03/2018	<ul style="list-style-type: none"> ➤ Kaleinaung DALMS office calls a meeting with Nan Jel and Kye Zu Daw villagers and Shwe Padoma company representatives. Officers announce that both villagers and the company would be able to apply for VFV land at the same time.
11/03/2018	<ul style="list-style-type: none"> ➤ Village para-legal visited the DALMS office to enquire about applying for the VFV land, and discover that the company had already applied for 1,200 acres.
19/03/2018	<ul style="list-style-type: none"> ➤ Villagers visit the Ye Phyu Township DALMS office to show which lands they intend to apply for. The township officers tells them it is not possible, because the company has already applied for those areas. Villagers are told to meet with the Regional Level DALMS Director.
21/03/2018	<ul style="list-style-type: none"> ➤ Villagers meet Regional Level DALMS Director and show him photos of unplanted concession lands where they would like to apply. The Director did not accept the photographs as evidence, and tells them that applying VFV lands would be a difficult task because the company already owns it.
23/03/2018	<ul style="list-style-type: none"> ➤ Township DALMS inform villagers that they must submit a objection letter to the company's 1,200 acre application to start an investigation process.
29/03/2018	<ul style="list-style-type: none"> ➤ Ye Phyu Township DALMS officer calls the village head to inform him that they will help villagers to apply for VFV land. ➤ Villagers prepare maps and send complaint letter supporting 110 villagers to apply for their VFV lands ➤ The Kaleinaung Township DALMS officer tells villagers that the areas that they have applied for have already been taken by the company. ➤ Many villagers give up efforts to apply for their lands having been refused many times ➤ 8 Villagers submit applications for Form 1s
JUNE/2018	<ul style="list-style-type: none"> ➤ An investigation team comprised of DALMS officers and the Forest Department conducted an investigation into the 1,200-acre concession and discover that only 5-acres have been planted. The team decide that the company should be reallocated 213-acres, and that villagers could apply for plots in the remaining 108-acre and 800-acre areas.

05/08/2018	➤ DALMS office informs villagers that company has submitted opposition letter to the 8 Form 1 applications filed by villagers
28/08/2018	➤ 25 villagers go to Kaleinaung DALMS office to apply for Form 1s. DALMS Officer scolds the villagers, telling them that they must submit a complaint letter first. Many villagers are discouraged and give up the application process.
29/08/2018	➤ Kye Zu Daw villagers meet with MOALI, the Karen Ethnic Minister, and the Regional DALMS director with other government departments and CSOs. The DALMS director promises villagers that he will help them to apply for VFV lands.
30/08/2018	➤ After meeting with Regional DALMS again, villagers are told that they need to submit maps and documents the following day. Villagers stay up until midnight to map their lands, and 32 people submit their applications the following day.
01/09/2018	➤ Township DALMS officer asks Kye Zu Daw and Nan Jel villagers to take their applications to the District Office. There were 3 extra applications from outsiders in the file. Villagers refuse to take these 3 extra applications.
11/09/2018	<p>➤ Township Officer tells villagers to submit complaint letter the GAD office, however there has been no investigation.</p> <p>➤ The Kaleinaung township DALMS officer asks Regional DALMS to investigate the case file. The department meets with the company, who present falsified photographs of cultivated concession land, claiming that they had planted the whole area.</p>
02/10/2018	➤ Questions asked by MPs in Parliament about Kye Zu Daw. In response, the Kaleinaung township DALMS officer tell villagers that anyone who had planted on the 1,200 acre area could obtain Form 1s. 30 villagers had already cultivated the area with cashew trees and beetle trees.
04/10/2018	➤ Villagers went to the Kaleinaung township DALMS office to give NRC numbers of applicants. Kye Zu Daw asked for Form 1s to deliver to Nan Jel village, but the DALMS responded that they needed to come in person.
05/10/2018	➤ Nan Jel village head visits the Kaleinaung DALMS office to take Form 1s, but the township officer said that he wanted to see the maps first. The village head did not have maps with him, so he sent them by post.
10/10/2018	➤ Villagers prepare applications for Form 7s, mapping and measuring orchard lands
20/10/2018	➤ Villagers receive a letter from Ye Phyu DALMS township office, stating that they could come and take Form 1 application forms from the office.
30/01/2019	➤ Shwe Padoma company clears land illegally in 1,200 acre area