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LAND AND PEACE IN MYANMAR: TWO SIDES OF THE SAME COIN

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Myanmar stands at a historic crossroads: one where the optimism of a “critical juncture” that is “more promising than at any time in recent memory” meets apprehension over what could happen if a “host of social crises that have long blighted our country” go unaddressed.²

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2 TNI, “The Generation to Enjoy Peace? A commentary by LahPai Seng Raw,” 17 March, 2016. Amsterdam: Transnational Institute. Available at: www.tni.org/en/article/the-generation-to-enjoy-peace.

3 FAO. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Rome: FAO, 2012. Available at: www.fao.org/docrep/016/i2801e/i2801e.pdf. For more information on the Tenure Guidelines, please see article “Towards an Assessment of the Implementation of the Guidelines on Tenure of Land, Fisheries and Forests: A Tool for Social Movements’ Struggles” in this issue of the *Right to Food and Nutrition Watch*.

4 In response to the many threats to the diverse relationships of rural peoples to land, many farmers and activists are asserting a human right to land, while resistance to the dominant development agenda is expressed through many avenues. Jennifer Franco *et al.*, *The Meaning of Land in Myanmar—A primer*. Amsterdam: Transnational Institute, 2016. Available at: www.tni.org/en/publication/the-meaning-of-land-in-myanmar.

5 TNI and Burman Centrum Netherlands. “Access Denied: Land Rights and Ethnic Conflict in Burma,” *Burma Policy Briefing* 11 (2013): 1. Available at: www.tni.org/en/publication/access-denied-land-rights-and-ethnic-conflict-in-burma.

After more than sixty years of civil war and ‘social crises’, land grabbing figures are high. New legislation is designed to move land out of the hands of rural working people and into the hands of ‘modern farmers’ and foreign and domestic big business actors.

This article outlines the land problem and how social actors have been using the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (hereinafter the Tenure Guidelines or TGs)³ to pursue their quest for land, justice, peace and democracy.⁴

THE MYANMAR CONTEXT: POPULATION, CONFLICT, LAND CONFISCATION

Approximately 70% of Myanmar’s 50 million people live and work in the highly diverse economic, social and cultural fabric of its rural areas. Extremely diverse ethnically, Myanmar’s ethnic minority communities comprise 30–40% of the total population, whilst ethnic states occupy 57% of the land area.⁵ They are home to often persecuted ethnic nationalities living in poverty, including many subsistence farmers practicing upland cultivation. The central government systematically exploits the natural resources of these impoverished, war-torn areas, without reinvesting the earnings to benefit local populations. Economic grievances fuel the ongoing civil war.⁶ The ranks of vulnerable and marginalized people living in poverty, who have little or no land, including many rural women and landless laborers, are growing⁷ as thousands are displaced by land grabs, as well as armed conflict⁸ and natural disaster.⁹ Land confiscation by the military is a major problem. During 50 years of military rule, much land was taken from farmers, often with little or no compensation. Although exact figures vary, an estimated 1.9 million acres was transferred to private companies before 2010.¹⁰ By mid-2013, another 5.2 million acres were confiscated for agribusiness concessions.¹¹ Internally displaced persons (IDPs) and refugees hoping to return to their original places face many challenges, including landmines, land disputes with secondary occupants, and military and/or industrial operations.

After 2010, new laws designed behind closed doors by the government of President Thein Sein, a former general, worsened the situation. They do not recognize ethnic and customary land tenure rights, such as shifting cultivation, water and forest commons. The *Farmland Law* (2012) legalized buying and selling of land use rights using government-issued individual Land Use Certificates (LUCs). The *Vacant, Fallow, and Virgin (VFV) Land Law* (2012) authorized reallocation of VFV areas, affecting villagers’ farms, areas under rotational farming systems, and community lands within upland areas under customary tenure systems and lowland areas lacking official land use title. Such areas are now earmarked for investments of up to 50,000 acres per deal for a renewable thirty-year lease for industrial crops.¹² A third

- 6 *Ibid.*
- 7 Hiebert, Murray, and Phuong Nguyen. "Land Reform: A Critical Test for Myanmar's Government, Commentary." *Southeast Asia from the Corner of 18th & K Streets* 3:21 (2012). Available at: csis.org/print/40444.
- 8 Prior to new fighting in Northern Shan State last year, there were an estimated 650,000 IDPs in ethnic borderlands, and more than 130,000 refugees in Thailand, as well as two million migrants to third countries. For more information, please see: TNI and Burman Centrum Netherlands. "Burma's Ethnic Challenge: From Aspirations to Solutions" *Burma Policy Briefing* 12 (2013): 10. Available at: www.tni.org/en/briefing/burmas-ethnic-challenge-aspirations-solutions.
- 9 For example, the destruction caused by 2008 Cyclone Nargis or the devastating floods of 2015.
- 10 *Supra* note 7.
- 11 Vrieze, Paul. "Rapid Plantation Expansion Fuels Deforestation in Ethnic Regions," *The Irrawaddy*, November 29, 2013.
- 12 Jennifer Franco *et al.*, *supra* note 4.
- 13 *Supra* note 5. Similar developments can be observed in other countries: in India, SEZs have led to large-scale land grabbing, and in Honduras, so-called 'charter cities' pose an imminent threat to human rights and peoples' sovereignty. For more information on the latter, please see: Moreno, Ismael. "A Charter City Amidst a Tattered Society." *Right to Food Journal* (2015): 7. Available at: www.fian.org/fileadmin/user_upload/Right_to_Food_Journal_2015.pdf#page=7.
- 14 This Chinese government program promotes and subsidizes Chinese companies in creating large-scale agricultural concessions, such as rubber plantations, in Northern Burma and Laos. Justified as combatting poverty and opium trade, the program fails to benefit people living in poverty, has led to dispossession, and is carried out through contracts with state and military authorities. For more information, please see: TNI. "Alternative Development or Business as Usual?" *Drug Policy Briefing* 33 (2010). Available at: www.tni.org/files/download/brief33.pdf. See also: Kramer, Tom, and Kevin Woods. *Financing Dispossession: China's Opium Substitution Programme in Northern Burma*. Amsterdam: Transnational Institute, 2012. Available at: www.tni.org/en/publication/financing-dispossession.
- 15 For more information, please see: Fairhead, James, Melissa Leach, and Ian Scoones. "Green Grabbing: A New Appropriation of Nature?" *Journal of Peasant Studies* 39:2 (2012). Available at: www.tandfonline.com/toc/jpps20/39/2.
- 16 For more information on LIOH, please see *supra* note 1.
- 17 LIOH. *Destroying People's Lives: The Impact of Land Grabbing on Communities in Myanmar*. LIOH, 2015. Available at: partnersasia.org/wp-content/uploads/2016/01/LIOH-land-research-report_Eng.pdf.
- 18 Many of those surveyed by LIOH say they reject compensation as an act of resistance. LIOH, *supra* note 17.

law restricts the agricultural sector to large-scale investment with land use rights of up to seventy years. A *Special Economic Zones (SEZ) Law* gives foreign investors up to seventy-five years of land use rights for large-scale industry; low tax rates; import duty exemptions; unrestricted foreign shareholding; and government security support.¹³ These laws are fueling land polarization and ethnic conflict.

Land grabbing is linked to the expansion of flex crops and other industrial crops (corn, sugarcane, oil palm, and rubber); China's opium substitution program¹⁴ and large-scale hydropower; mining concessions; military installations; and also to nature conservation projects backed by international environmental NGOs.¹⁵ Rural working households, as well as customary communities with community forests and grazing lands, medicinal gardens and reserve lands, are losing out. Access to land is increasingly tenuous, particularly for land users in ethnic borderland areas, upland shifting cultivators, and others lacking authorized documentation.

Even those with legal documents are not immune. A survey by the right to land movement Land in Our Hands (LIOH, 'Doe Myay' in Burmese)¹⁶ of its members whose land was confiscated, found that 42.5% possessed the proper legal documents, while 39.8% did not.¹⁷ For many, one-time monetary compensation does not compensate for the injustices endured, especially when it involves giving up their right to land.¹⁸

USING THE TENURE GUIDELINES TO ADVANCE LAND RIGHTS

Against this backdrop, use of the Tenure Guidelines has come more 'from below' (i.e., civil society actors *using* them) than 'from above' (i.e., state actors *implementing* them). While the TGs were being negotiated in 2011–2012, Myanmar's land problem reignited with new talks (leading to signing of new ceasefire agreements) with some of the ethnic armed groups and promulgation of the new land laws—both widely seen as benefitting a few whilst harming the many, particularly those in rural and ethnic areas.

Strengthening civil society voices vis-à-vis talks between the government and ethnic armed opposition groups has become key for many ethnic rights groups, especially in borderland areas where armed conflict and natural resource exploitation and extraction is most concentrated. Many see the need to develop land policies based on their own distinct customary practices and values and on their conceptions of social and environmental justice.

Policymaking 'from below' involves grassroots communities making their own proposals for lobbying the Myanmar government and the ethnic armed groups, and using the TGs to illuminate gaps in existing policy proposals, to validate people's ideas based on their own experiences and beliefs, and to encourage those suffering injustice to speak out. The TGs are also being used to frame advocacy vis-à-vis national land policy-making processes.

In an unprecedented move in October 2014, the Myanmar government unveiled a draft *National Land Use Policy (NLUP)* for public consultation, which it hoped to finalize and adopt by December 2014. Although the move was welcomed, the draft NLUP itself was decidedly pro-business and the planned consultation was severely limited. In a tense atmosphere, many local groups chose to engage, hoping to slow down the process and give time for people to study and develop a unified response.

Aided by allies, the LIOH network organized nearly a dozen autonomous pre-consultations across the country. Participants used the TGs to assess the draft policy's objectives and principles, to identify gaps and weaknesses, and to reflect on their own perspectives. The TGs showed where the government's draft fell short of international standards, while underlining the legitimacy of grassroots perspectives.¹⁹

Their efforts contributed to changing the process and its outcome. The government was forced to slow down and become more inclusive. Only in January 2016 was the final version of the NLUP unveiled—not perfect, but vastly improved. Ultimately, the strategy of critical engagement altered the parameters of the consultation process and some of the most important demands of LIOH and others were accommodated.

Today, however, new uncertainties lay on the horizon. Chief among them is uncertainty over how the newly elected National League of Democracy (NLD) government will proceed in drafting a new land law. Ironically, the NLUP adopted under the previous government is far closer to the TGs than the new NLD government's own election manifesto. Those hoping for change in a better direction will likely have to struggle on.

CONCLUSION

The TGs are not a 'magic bullet' that, if applied correctly, will solve the land question in Myanmar. Rather, under the right conditions, they can be one small but useful weapon, in an arsenal of weapons for redressing injustice and realizing the right to land with peace and democracy.

The future remains uncertain especially for ethnic nationalities, whose right to land and tenure rights are not recognized by current laws, for landless and near-landless rural working people, and for IDPs and refugees who wish to return.

Yet solving the land problem is tied to prospects for peace. Moving forward on either front will require an approach that puts state-led initiatives at the service of community-defined and community-led processes of negotiation and collective decision making, and opening political space particularly at the ground level for those most affected to debate and negotiate amongst themselves their own visions of the future.

19 For a comparison between the TGs and Myanmar's land policy draft, please see: Jennifer Franco *et al.*, *The Challenge of Democratic and Inclusive Land Policymaking in Myanmar*. Amsterdam: Transnational Institute, 2015. Available at: www.tni.org/files/download/the_challenge_of_democratic_and_inclusive_land_policymaking_in_myanmar.pdf.