The Meaning of Land in Myanmar

a primer

transnationalinstitute

ideas into movement

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Published by the Transnational Institute
November 2015

This primer would not have been possible without the invaluable contributions of the many participants in workshops that TNI co-organised with local organisations over the past years in Myanmar. We are very grateful to them and hope we have captured their lives and insights truthfully. Any omissions or errors are ours.

Contents

1 What is land and why is it important?

The United Nations' Food and Agriculture Organization (FAO) defines land as "a delineable area of the earth's terrestrial surface, encompassing all attributes of the biosphere immediately above or below this surface including those of the near-surface climate the soil and terrain forms, the surface hydrology (including shallow lakes, rivers, marshes, and swamps), the near-surface sedimentary layers and associated groundwater reserve, the plant and animal populations, the human settlement pattern and physical results of past and present human activity (terracing, water storage or drainage structures, roads, buildings, etc.")[1]

As this definition suggests, and what warrants stressing here, is that land is vitally important for one very significant reason: *people*. Human existence is so inextricably linked to land that it makes little sense to talk about land without also talking about human activity and the history of human beings on this planet.

> "States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth."
>
> Paragraph 4.1 of the Tenure Guidelines of the UN Committee on World Food Security

Adding humans both clarifies and complicates the picture. How people relate to the land can vary from one place to another, revealing the importance of diverse landscapes (e.g. rolling hills, flat valleys, thick jungles, rocky mountain ridges). How humans relate to the land may change over time too -- due to seasonal cycles (e.g., rainy and dry season) or more long-term climatic-geological changes (e.g., El Nino weather patterns or earthquakes).

Meanwhile, human society itself is varied, leading to not one single experience and perspective, but multiple experiences and perspectives. As long as there have been humans on the planet, land has been important for a variety of reasons that include, and go beyond, single physical plots of land.

> ***"Land is our life as well as our prestige. It's the food for us to survive, the home for us to live, and the place of unity for our family. Also land is our precious inheritance throughout the generations"*** *— A farmer, Paungtawchi Village, Taunggyi Township, Shan State.*

Land has been essential to many kinds of human practices and to the building of diverse human societies. Land has shaped human society along several dimensions: economic, social and cultural (including spiritual), as well as political dimensions. Consider, for example, jungles, forests, mountains, deserts, steppes, swamps, marshes, mangrove coasts, the open sea, and the polar regions. For some people, these places are inaccessible, inhospitable backwaters. But for others they may be sanctuaries: sought-out protected spaces where people seek refuge from state authorities, or from other civilisations, outsiders, intruders or newcomers.

What land is and what it means to us is found in *many diverse relationships* that humans have built over time with people and other life forms in the landscapes where we live. These relationships express particular understandings, perceptions and choices regarding our place and role in the world. The phrase "the multi-dimensional character of land" is a reference to all the possible ways in which land holds meaning for people and in which people find meaning in land.

Humans have the capacity to conform to the land and landscapes we encounter -- for example, land influences where we settle, how we feed ourselves, what materials we build our homes with, who we worship, which spirits we perceive in the air, and it informs our stories of where we come from and why we are here. Some upland societies in Myanmar such as the Kachin, Lisu, Akha and Lahu, for instance, "have a legendary creator-god, a dualistic male-female figure who formed the heaven and the earth", which in the past occasionally inspired the rise of movements led by priests, prophets or holy men "to resist subordination to valley-states".[2]

But the reverse is true too. Humans also have the capacity to alter the land and landscapes we encounter. We have often sought to make the land adjust to our own visions of how it should be. It's not just that the surface of the earth has been an underlying factor in moulding humanity and influencing what we do and what choices we make. Human society has been a huge factor in shaping and re-shaping the surface of this planet too.

Human Society Shapes Land and Landscapes and vice versa

The following examples highlight ways that humans have transformed land and landscapes with significant environmental and social consequences.

Hpakant jade mines

Hpakant, the hotbed of Myanmar's jade mining industry, which continues to be plagued by earth-gouging machinery, suffered 7 landslides in 2015, the most deadly of which killed over 100 people after the discarded waste soil collapsed.[3] In addition to deaths, the dramatic upheaval of land in the area has been linked to deforestation, pollution of the Uru River, and displacement of people.[4]

Letpadaung copper mine

The Letpadaung copper mine operations' assault upon the surrounding environment and neighbouring communities has manifested through its inadequate waste management systems, widespread land confiscations, fenced off farmland, and forced relocation of people.[5] Compounding this environmental damage, destructive police forces have utilised highly toxic substances and military weapons to 'secure' the vicinity amidst resident protests.[6]

Kyaukpyu deep sea port and Special Economic Zone (SEZ)

Unlocking the Bay of Bengal to Chinese interests, the Kyaukpyu SEZ will host industrial and commercial clusters as well as a deep sea port welcoming 100,000 ton oil tankers, whilst simultaneously dislodging 40 nearby villages in areas with Rohingya communities, intruding upon Myanmar's second largest mangrove forest, and damaging farmland and fishing areas.[7] Its potentially devastating and toxic effects upon the ecosystem, human health,

and livelihoods will be magnified by the imposing Shwe oil and gas pipeline already traversing the area.

Dawei deep sea port and Special Economic Zone (SEZ)

Slated to engulf 196 sq km of coastal land, the Dawei SEZ will host a deep sea port linking Myanmar with Thailand, and massive industries such as a petrochemical power plant and steel mills.[8] The SEZ is anticipated to encroach upon the lives of 22,000 to 43,000 people, and has already destroyed farmland, severely polluted bodies of water with heavy metals and fertiliser chemicals, blocked access to coastal areas for small-scale fishing, and tripled local cancer rates.[9] In swallowing up dozens of seaside fishing villages, Dawei is projected to swell into Southeast Asia's largest industrial and trade zone.

Myitsone hydropower dam

Within politically-sensitive, biodiverse, and seismically-active Myitsone, construction of the world's 15th largest hydropower dam within 62 miles of the Sagaing major fault line jeopardises over 300,000 people living downstream in Kachin State's capital and could spark "irreversible damage to Burma's key river system", [10] including altering downstream flows that govern rice production and aquatic migratory patterns as well as river salinity.[11] Anticipated flooding of 766 sq km of land has already displaced 12,000 people from Kachin's cultural heritage hubs, representing the confluence of ecological and identity theft.[12]

Hat Gyi hydropower dam

Comparable to Myitsone hydropower dam, the location of the Hat Gyi dam within an ethnically diverse, wildlife-rich, earthquake-prone, and war-torn area along the Salween River serves as the ignition to drastically alter the living landscape.[13] Increased military presence to secure the dam has already escalated fighting and refugee flows, whilst environmental concerns over aquatic life habitats, deforestation, flooding of farmlands, losses of biodiversity, and increased seismic activity remain unaddressed.[14]

2 Why is land such a burning issue in Myanmar?

Today the country is facing a serious land problem. Land is a burning issue in Myanmar for several reasons.

First, the current land problem is linked to ethnic conflict. Myanmar is one of the world's most ethnically diverse countries, with ethnic minorities making up an estimated 30-40 percent of the total population, and ethnic states (home to mostly poor and often persecuted ethnic minority groups) occupying some 57 percent of the total land area.

Ethnic minority groups have long felt marginalised and discriminated against, resulting in a large number of ethnic armed opposition groups fighting for ethnic rights and autonomy, against the central government dominated by a narrow elite segment of the ethnic Burman majority. Systematic exploitation of the natural resources in these areas by the central government has ensured that economic grievances likewise play a part in fuelling civil war.[15]

The country has experienced more than 60 years of devastating civil war. Most of the people living in war-torn areas are ethnic minority farmers engaged in upland cultivation using customary farming practices passed down from earlier generations, and whose relationship with the land is spiritual, cultural and social.

> ***'Land has very deep meaning and value for us. It is our lives and the very blood in our veins. Without our land, our nationality will vanish. Land is our dignity.'*** — *Kayah farmer, Dawsoshay village, Demoso Township, Kayah State.*

Land grabbing and armed conflict have uprooted and dispersed families and forced many people to flee into economically precarious and politically uncertain situations as internally displaced people (IDPs) or as refugees living in camps along the borders with Thailand and China.

Second, in Myanmar today land is being revalued in a dramatic way by powerful economic actors as they try to grab control of land and other natural resources like water, forests, fisheries and the oil and minerals in the soil. This shift toward a singular meaning of land is being pushed by extractive, exploitative and predatory business practices and unrestrained rent-seeking behaviour by empowered political and economic elites aimed at controlling land, water, mineral, forest and fishery resources and the benefits of their use.

This trend is being encouraged and codified by several new land-related laws and policymaking processes in the corridors of the state. A series of land laws designed behind closed doors and promulgated in 2012, changed the legal basis for land use rights, especially in the uplands, while establishing a legal land market in order to encourage domestic and foreign investment in land.

Under the Farmland Law, plots of land can be legally bought and sold with land use certificates (LUCs), thereby inaugurating a land market based on Western-style (individual) private property rights. The legalisation of a land market without strong public safeguards has opened the door to a new generation of problems:"Under this new law, farmers who have been growing on hereditary land for their livelihoods can only possess land by means of official registration. As the registration process is not easily accessible for rural people, the land policies put them at risk. In most cases, they are helpless".[16]

Under the Vacant, Fallow, and Virgin (VFV) Land Law, land that is not currently titled and being used in certain ways is seen as a 'wasted asset'. The central government can redefine untitled farm and forestlands – both upland shifting land, especially fallows, and lowlands – as vacant, fallow or virgin land and reallocate them to domestic and foreign investors. This also applies to community-managed resources, such as village forests, waterways, fishponds and grazing lands, which become susceptible to confiscation, despite being crucial to local livelihoods and food security. The law allows industrial crops to occupy up to a maximum of 50,000 acres for a thirty-year lease, with the possibility for renewal.

To those who have been living and working in these areas and whose visions of the future depend on being able to keep living and working there, the idea that their land is being labelled and grabbed as 'vacant land' is absurd and offensive. It is absurd because so-called vacant land does not exist.

> ***'We do not accept the land classification of "Vacant, Fallow, Virgin Land". There is no "vacant, fallow, virgin land" in ethnic territories.'*** *— from the statement of the Ethnic Community Development Forum and the Customary Land Rights Protection Committee, concerning Myanmar's National Land Use Policy Draft, 6 November 2014, Mae Sot.*

These new land laws put many communities under threat of losing their lands, many of which have already been targeted for resource extraction, agribusiness concessions, and mega infrastructure projects. The new laws undermine their right to land, including their right to decide how they will use and manage their farms and forestlands, as well as their right to food and water, among others. Simultaneously, the right of return of hundreds of thousands of IDPs, refugees and migrants who used to occupy and use land in these areas is forestalled.

Third, the long-simmering land problem has become a burning land problem with the start of yet another new wave of land confiscations. Through confiscation, the control of land previously occupied and used by mainly poor, marginalised and vulnerable people and groups of people is being transferred to other kinds of actors intending to use it for different purposes. The wave of land grabbing since 2010 is occurring *on top of and in interaction with previous waves of land grabbing*. Evidence suggests the amount of land lost in these previous waves is significant and may even be larger than what has been lost under the current wave of land confiscations.

What is being lost as a result of all this? What is being lost are the many meanings and uses and relationships around land that fall outside of the narrow boundaries of land as an economic factor. The meaning of land to the people and peoples of Myanmar cannot be reduced to one-dimensional economic interest. Land is too precious and significant for that. What is increasingly ignored or dismissed by national and international policy-

makers today are the perspectives of ordinary people whose past, present and future is directly tied to staying on, or returning to, the land. Their stories are important and insightful, revealing profound perspectives on land and their relationship to it. Here are just some of their voices and perspectives.

Land is livelihood and life with dignity. Without land, there is enslavement, struggle, fragmentation, and mere survival devoid of dignity and self-determination.

> ***"I am not an educated person, I am just a farmer. But we farmers know professionally how to grow and work on the land. Our lives depend on the land. People (authorities) confiscated our land and built buildings on it without discussing and negotiating with us. Now we don't have land to work and don't know how to work in other places. We find it very difficult to survive without having land to work."*** *— A male farmer, Dawei Town, Dawei Township, Tanintharyi Region.*

> ***"We plant vegetables and tomato, and also do Taungya on our land. I cannot measure the value of the land and it's essential for my family to survive."*** *— A male farmer, Mee Tway Chaung village, Pinlaung Township, Shan State (South).*

> ***"Land is like our vein; it is vital for our living. After our land was confiscated, we don't know what to do for our livelihood. It has become very difficult for us. Since 20 years ago, we worked on our land and also planted long-term types of plants. But our land is confiscated now."*** *— A farmer, Nankway, Myikyinar Township, Kachin State*

Land is freedom from exploitation and slavery. Land is self-determination; having their own land allows people to determine how they will farm and what they will plant, where they will graze their animals, where they will bury their dead, and what investments they will make toward the future.

Land is also inheritance with remembrance.

> ***"Land is very meaningful for us not only for our livelihood but also as an inheritance to work on and relay across the generations."*** *— A farmer, Tarmoenye Town, Kutkai Township, Shan State (North).*

> ***"Land is one of the resources that is a gift from Nature to survive and our livelihoods depend on it. I worry for my later generations since I don't have land to give as inheritance, and I believe only land can guarantee for the long-term a livelihood for them."*** *— A farmer, Meetouk village, Pinlaung Township, Shan State (South).*

> ***"Land is very important and precious to me and my family. My husband passed away in the same year that our land was confiscated. My husband had planted bamboo on our land for the last 30 years, and now the bamboo plants are very big. I inherited the land from my grandmother and my mom step-by-step. I want to work again on my land."*** *— A female farmer, Shwe Pyi Thar ward, Myitkyina Township, Kachin State.*

Land is family integrity and togetherness.

> ***"Our grandparents worked on the land and relayed the generations (to us) as inheritance. We have worked together as a family, but now our family members have to work separately. We don't have our land now to work. Some have had to migrate overseas and others are now working for daily wages at different places in town."*** *— A farmer, Lwot Kyan village, Nant San Township, Shan State (South).*

> ***"Land brings unity in my family. When we had our land, we worked together and farmed the land. Our family livelihood depends on the land. I love my land as my life and my family. Land is also the basic foundation of my family to survive. I can't imagine the future of my family if I don't get back my land."*** *— A farmer, Mingalar ward, Aungban Township, Shan State (South).*

"We don't have our land to work anymore. My children are working as migrants in another country and I worry about their working conditions. I want to live together with them. I want to get back my land so my children can come back and work together with the family in the same place." — *A farmer, Pain Nyaung Village, Lashio Township, Shan State (North).*

Land means family continuation across generations. Land is knowledge passed from one generation to the next.

"Land is like a rice pot that our family depends on for our living since we've been born and it is very valuable for us. We don't want to lose our pot, and also we value our land as what we inherited from our grandparents. Without this land, we worry that our family's next generation will become workers like a slave in uncertain conditions just to survive." — *A farmer, Tar Pat (East) village, Maubin Township, Ayeyarwady Region.*

"We cannot measure the value of our land. Land is very meaningful for us and we have traditionally worked on the land for a long time since our grandparents' time. We grow paddy and in the dry season we grow vegetables on the land. We have enough income to support all the family's needs and do not need to worry for food." — *A farmer, Dawei Town, Dawei Township, Tanintharyi Region.*

Land is the link between people's past, present and future; it connects lives from the past with those in the present and to a foreseeable future.

"Land is like my life. Also my family's livelihood depends on land. We want to get back our lives and future." — *A farmer, Panmati ward, Myitkyina Township, Kachin State.*

"Land carries the history for us. In our grandparents' era, the revolution council era, they fought for the country and got the

land. Then they lived here and worked on this land, and they passed the land as inheritance to their later generations. Land is like a remembrance of them." — *A farmer, No.5 village, Nant San Township, Shan State (South).*

"When we had our land, our family worked together on it and we could take care of our children very well and support them nearby. But since our land was confiscated, we have to struggle for our livelihood and we have to work separately, depending on daily-wage jobs. We also can't look after our children close to us and can't also support them. In our village, some kids and young people have to drop out of school and have no land to work. So then some of them start to use and trade drugs in the community. Land is the future for young people also."
— *A farmer, Panmati ward, Myitkyina Township, Kachin State.*

Land is individual identity.

"Land is essential for me; especially our livelihood depends on the land. I am a farmer and we can't farm without land. Since I was born I have worked on the land, doing farming, and now it seems like we can't do other work without land." — *A farmer, Warmayan village, Bago Township, Bago Region.*

Land is ethnic identity; land is community.

"Land has very deep meaning to us. We value it and it's like our lives and our veins. If we don't have our land, our (Kayah) nationality will vanish. Land is our dignity." — *A farmer, Dawsoshay village, Demoso Township, Kayah State.*

"In our community, we should have communal land. We planned to build clinic, pre-school and ward development office. But our communal land was confiscated and we are protesting to get it back." — *A farmer, Htantabin Village, Moe Nyin Township, Kachin State.*

Land is education and health.

> ***"(Providing) food for my family and education for my children depends on land. We farm on our land and our family doesn't need to worry for anything that we may need. We have enough food and everything for my family."*** *— A female farmer, Htantabin village, Moe Nyin Township, Kachin State.*

> ***"When we have worked on our land for one year, we could do nothing and still have enough food for our family for 2 years. Now we don't have land to work and we are struggling for our livelihood. We have to worry for our food, and have no guarantee for supporting our children's education and health."*** *— A farmer, Kay Hnin village tract, Lashio, Shan State (North).*

Land is safety and security.

> ***"We have been staying in our land since a long time ago. Our livelihood and lives depend on the land. We feel safe to work and live in our land. If we have land to work on, our food, livelihood, money, and other needs of our family are guaranteed. Now since we lost our land we worry for our future."*** *— A farmer, Dawlawku village, Phruso Township, Kayah State.*

> ***"Land gives security to our family. We don't have land to work now and my family members have to migrate to other country."*** *— A femalefarmer, Ka Myaut Kin, Dawei Township, Tanintharyi Region.*

> ***"We have grazing land for the community. We can confine our cows and livestock to feed in these areas. Without grazing land, where can we keep our cows? Also in these areas there are vegetables growing naturally and any of the villagers can freely get vegetable from that land."*** *— A farmer, Par Kyu village, 38 miles, Kaut Khine Township, Shan State (North).*

> *"Land is like our mother who gave birth to us and feeds us. Now I don't have my land and I have to work as a daily wage-worker doing (random) work."* — *A farmer, Shwe Pyi Thar ward (2), Myitkyina Township, Kachin State.*

> *"Since we have grown up, we do farming with the land and are able to support our family for food and livelihood. Land is inherited from our parents and essential for us. We can't measure the value of our land."* — *A farmer, Warmayan village, Bago Township, Bago Region.*

The value of land cannot be measured; land that is taken away can never be properly compensated.

> *"Land is like our vein and we can't live without it. If you cut the root of the tree, the tree can't grow up and sooner or later it will die. It's similar to our lives without land."* — *A farmer, Panmati ward, Myitkyina Township, Kachin State.*

All over the country, there are people whose relationship to the land goes far beyond the physical and economic boundaries of individual plots of earth. These wider and more socially meaningful meanings of land include: lifestream, history, sacred spirits, homeland, livelihood, sanctuary, safety net, daily life space, sacred places, watershed, inheritance, life with dignity, and last but not least, gift from Nature.

3 How is land related to debates about development?

Land is valued throughout the world, especially by those who live in close relationship with the Earth's natural endowments. Millions upon millions of families across the globe live in a close relationship with land and its associated waters, soils, forests, fisheries, flora and fauna for reasons and in ways that may not always be visible to the naked eye.

For some people, however, the lives and practices of peasants and pastoralists, fishers and forest dwellers, are basically irrelevant. They are merely irritating or even destructive obstacles on a predetermined path to (someone else's) profit and power -- one that may be strewn with harmonious words and abstract logics that we are told are good for us: economic development, environmental protection, poverty alleviation, employment generation, food security and the like. This ill-logic at work is often all consuming – erasing lives past and present and preempting future lives; enclosing living landscapes and reducing them to polygons demarcated on a map, waiting to be bought, sold and used until usable no more. Lives which once cultivated these spaces become swept away, and people are forced to adjust as best they can to something not of their own choosing.

To understand how land is related to debates about development in Myanmar today, we have to look at what lies ahead for different people and what will remain if the current trends continue unabated. Today across Myanmar there are very different visions of development competing for control of land and territory and related natural resources therein. The diverse visions at play on the ground involve very different logics of security and wealth creation; different priorities; and different starting points for defining what is land tenure security in particular and what is good living in general.

There are many business oriented projects and initiatives that are increasingly hitting the ground across the country, but they come from one general point of view of what development means – and it is one that does not necessarily reflect or respond to the aspirations of all of the people in Myanmar. The examples mentioned earlier – Hpakant jade mines, Letpadaung copper mine, Kyaukpyu deep sea port and special economic zone, Dawei deep sea port and special economic zone, Myitsone hydropower dam and the Hat Gyi hydropower dam -- are just some of the more visible large-scale capital-intensive, resource-depleting projects and initiatives in this vein and are part of a larger trend taking place around the world, not only in Myanmar.

Another kind of change often packaged as development is related to farming and agriculture. In the past and even today around the world, many different kinds of farming systems and agricultural practices are in place. Today's

global land rush is also having a big impact on agriculture, changing the way farming is done in many parts of the world including Myanmar. The change that is happening is usually in one overall direction. That is, moving societies *away* from small-scale, labour-intensive uses like peasant farming – including upland shifting cultivation practices, as well as peasant fishing, grazing and community forestry for household use and local markets, and moving them *toward* capital-intensive, resource-depleting industrial monoculture corporate enterprises that are linked to metropolitan areas and foreign markets.

The new agricultural projects are hitting the ground in ways that follow two basic patterns. First, rural working people are being incorporated into the new arrangements when the latter need both their land and their labour. Across Myanmar, rural working people are losing their farmland due to confiscation, but then being offered employment or the possibility of staying and farming the same land, on the condition of making so-called rental payments (either cash or kind) to the new owners. For example, from 1998 to 1999, the Myanmar Gold Star Company got permission to do an agricultural project on 5195 Ngu Village Tracts in Maubin Township, Ayeyarwaddy Region. The company allowed the farmers to continue working on the land by leasing it back to them with 7 baskets of grain per acre until 2013, and then in 2014-2015 sued 30 of the farmers for failing to make the lease payment.[17]

Second, it is also often the case that people are being driven off their farmland entirely. In the case below, from Nam Tawng Village, Pan Sai (Kyu Koke) Sub-township Village Tract in Muse District, northern Shan State, what was needed by the new enterprise was their land, but not their labour:

> *"In 1996, 2006 and 2008 with the cooperation of local authorities, four business cronies confiscated 338 acres of land. Local ethnic people had lived on and farmed these lands since their ancestors' time, and farming was their main source of livelihood. The reason given for the confiscation was that the land was to be used for a government agricultural project. The confiscated areas included 50 percent of the villagers' best farmland (good, fertile, flat), of which a portion was then rented out to Chinese workers for a sugarcane plantation. Other portions were rented out to the relatives of the four crony businessmen. Another forty-four acres of the confiscated land was supposedly for a government cement factory,*

but was subsequently used just for agriculture and animal husbandry. These lands are connected to the water source of the village, and villagers worry that the water will be polluted because of the chemicals being used in the crony farms. Moreover, the village water source protection forest is disappearing due to expansion of the confiscated area, and the amount of water coming from the source has decreased. Since the confiscation, some of the farmers who lost their land have had to seek work on very difficult to reach plantations, while others have had to look for odd jobs in oppressive conditions on the border with China. Currently, the villagers' population and the area where villagers can do plantations are not balanced and the villagers are becoming poorer and poorer."[18]

Taken together, all these various kinds of projects and initiatives are changing the land and landscapes (and water and waterscapes) in one overall similar direction, and in the process sacrificing the visions and aspirations for the future held by local people and communities. Recent discussion and debate inside Myanmar has revealed two broadly competing views of what development is or should be. One the one hand, there is the view that prioritises capital-intensive, resource-depleting agriculture and industry projects that drastically transform landscapes with serious consequences for the local population and local ecosystems. On the other hand, and by contrast, there is the view that small-scale, labour-intensive uses, including peasant farming, fishing and grazing and customary forestry practices, can and ought to be restored, recognised, protected and promoted.

What do the people who have been or already experiencing this type of development have to say about it? Here are just a few examples of what development envisioned by some actually means for others.

"We, farmers, depend on water and land for our lives. It's not wrong that my land is my life and I value it much. After my land is confiscated by military, I have to work on my land by getting the daily wages, and I feel that I become a slave to work on my land." — *A farmer, Tawardon Village, Pu Ta O Township, Kachin State.*

> ***"We have lived on this land for long times and it's traditionally through past generations, it's inheritance land for us. We are a farming family and do shifting cultivation on the land. We cannot determine the value of land and it brings so many meaning to us.*** Now we don't have land and have to work random jobs which we are not professional, either interest or not, just for livelihood to survive." — *A farmer, TaungKhaungPwar village, YwarNgan Township, Shan State (South).*

> ***"Land is very valuable for our family. With this land we make food and do the livelihood in our family together.*** After our land was confiscated, our family members have to work separately in different places for our income and livelihoods." — *A farmer, WinkaBaw village, Bago Township, Bago Region.*

Whose vision will count?

As the new wave of land grabbing occurs, resistance and opposition to it are also growing. A profound clash of perspectives over the meaning and nature of land and related natural resources and how they *should* be used is behind many of the conflicts gripping Myanmar today. The burning question is whose vision of development will count ultimately? And for those embracing a multi-dimensional view of land and a more democratic vision of development, what is the way forward? For people on the ground whose lives, identities and livelihoods have already been or now stand to be negatively affected, one way forward is to build awareness that many of their practices, claims and visions of well-being are validated by existing human rights principles and provisions. Existing international human rights law provides an important starting point for building a path to a better future for all people and peoples of Myanmar.

4 Is there a human right to land?

> "States and the international system have not been capable of defeating poverty and hunger in the world. We reiterate our call to our governments, to the FAO, to other institutions of the UN system, and to the other actors who will be present in the ICARRD, and on our societies, to decisively commit themselves to carrying out a New Agrarian Reform based on Food Sovereignty, Territory, Dignity of the Peoples, and which guarantees us, as peasants, family farmers, indigenous peoples, communities of artisanal fisherfolk, pastoralists, landless peoples, rural workers, afro-descendents, unemployed workers, Dalit communities and other rural communities, the effective access and control over the natural and productive resources that we need to truly realize our human rights"
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> - from the Final Declaration of the "Land, Territory and Dignity" Forum, a civil society parallel meeting to the International Conference on Agrarian Reform and Rural Development (ICARRD), 6-10 March 2006, Porto Alegre, Brazil, convened by the International Planning Committee for Food Sovereignty (IPC), a global network of social movements including La Via Campesina, World Forum of Fisher Peoples and World FF.

Dare to imagine the right to have rights and another future.

While embracing human rights is an essential step in the way forward, the answer to the question is there a human right to land today is maybe less clear. The answer is yes *and* no. Unlike water or food, there is no internationally recognised human right to land. While a right to property was established in Article 17 of the Universal Declaration of Human Rights, it was not codified in the subsequent legally binding international conventions on economic, social and cultural rights or on civil and political rights. This was because of disagreement and lack of consensus at that time and during the deliberations over these two conventions.

Yet the idea of land as a human right – whether it is called that or not – is still deeply inspiring to a great many people around the globe. For those who do see land more as an essential component of the human right to life, then a human right to land makes a lot of sense: this is because land is *inextricably connected to the enjoyment of a whole series of already recognised human rights* – such as the human right to property, the right to self-determination, the right of ethnic minorities to enjoy and develop their own culture, the right to an adequate standard of living, the right to adequate food and nutrition, the right to housing, the right to work, the right to education, and, more recently, the right to water. For example, the right to property, the right to self-determination, as well as the right of ethnic minorities to their own cultural life, can be used to restore or safeguard the land rights of those who already own or possess land or who once did and were forcibly pushed off. Meanwhile, the right to an adequate standard of living can be used alone, or in combination with, other human rights to provide a legal basis for claiming the right to land of those without land.

While abstract on paper, in real life the links between land and other human rights are a tangible part of the everyday experience of many small-scale farmers and other food producers around the world. Some farmers in Myanmar point to the real connection between their family's control of land and being able to exercise their right to education, for example.

> ***"My parents have struggled against so many difficulties in life, and we survive because of this land. Our land supports our family's livelihood including our education; it enables us to fulfill all our family's needs."*** *— A female farmer and land rights activist from Pyapon Township, Ayeyarwady Region.*

> ***"I have worked on this land since my grandparents' era, and it is my inheritance from them. I farmed this land and could fully support my family's livelihood; we had enough food and could support my children's education too. But now my land has been confiscated. We are facing so many difficulties in my family, and even some of my children have had to drop out from school."*** *— A male farmer from Sarl Hkam Dam Village, Puta-O Township, Kachin State.*

"Also our livelihood, our health and education depends on this land. Land gives the guarantee to us for everything we need in our lives." — *A farmer, No.5 village, Nant San Township, Shan State (South).*

Overall, a number of relevant international legal instruments lend support to the idea of a human right to land specifically and other productive resources, and emphasise vulnerable people as the main rights-holders (see below). These various existing international human rights law express and validate a more multi-dimensional view of land and a more democratic perspective on land control. Many of the principles and perspectives expressed by people are clearly validated in international human rights law.

Article 11 of the ICESCR (1966/76)

"1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognize the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

General Comment 12 of the Committee on ESC Rights (1999)
"26. The [national] strategy should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries of rights in land (including forests)."

Voluntary Guidelines on the Right to Food adopted by the Council of the FAO (2004)
"Guideline 8B
Land
8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities."

In addition to these principles and provisions in existing human rights law, slowly but surely land is increasingly being recognised as a matter of human rights, and not simply as a matter of business. At the same time that regulatory initiatives are taking a strictly business view of land and related natural resources, there is also a growing body of international standards that are moving in a more human rights direction.

One special tool is the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (known as "TGs" or "Guidelines" for short). Many of the numerous

international human rights instruments that are especially relevant for the people of Myanmar today are mentioned explicitly in the TGs.

The TGs were adopted by a UN intergovernmental body called the Committee on World Food Security (CFS) in 2012. The TGs are special partly because many social justice-oriented civil society and social movement organisations from all over the world had a hand in developing them. In addition, they are an *internationally agreed normative standard* – the highest currently existing on land and natural resources. Because the TGs are an example of so-called soft law – or law that sets standards and guidance on a particular subject but is not mandatory - some people doubt their efficacy in claiming rights. Yet the TGs are the first international soft law instrument that focuses on economic, social and cultural rights (ESCR) and how they can be applied to the governance of land, fisheries and forests.

Soft law can become a precursor to binding law at the national or international level. Given that the TGs are firmly anchored in basic human rights principles and instruments, their adoption by the CFS opened up the possibility to interpret and use them as a springboard to make claims for a right to land.

The TGs contain a number of important provisions that uphold land tenure rights and call for states to respect various meanings attributed to land.

The right to land tenure should be recognised, respected, protected, and promoted

- Article 3.1.1 – (States should) "Recognize and respect all legitimate tenure right holders and their rights…"
- Article 3.1.2 – (States should) "Safeguard legitimate tenure rights against threats and infringements…"
- Article 3.1.3 – (States should) "Promote and facilitate the enjoyment of legitimate tenure rights…"
- Article 4.5 – "States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed."

- Article 12.6 – "States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights…"

The various meanings attributed to land, its multi-dimensional character, should be recognised

- Article 9.1 – "State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems."

The various meanings of land should be reflected within institutional frameworks

- Article 5.3 – "Frameworks should reflect the social, cultural, economic and environmental significance of land, fisheries and forests… Frameworks should reflect the interconnected relationships between land, fisheries and forests and their uses, and establish an integrated approach to their administration."
- Article 18.2 – "Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable."

Rural communities can use these guidelines to frame and devise collective action and engagement strategies aimed at strengthening their tenure of land, fisheries and forest in order to bring about bottom-up accountability in the context of the current rush for land and other natural resources. The TGs are especially useful not only because they constitute information about an especially relevant standard, *but also, at the same time, they contain the seeds of how this standard can be deployed as a tool for investigation, reflection and action.*

The TGs establish standards that States and other actors *should* be held responsible for when it comes to the regulation of tenure of land, fisheries and forests, and in so doing establish normative pressure points that can be used to investigate specific situations and consider mounting bottom-up accountability initiatives. In theory such mobilisation might lead to changes in

the direction of greater accountability. But because neither laws nor standards self-implement or implement themselves, and are subject to potentially diverse *and competing* interpretations, there is also a need to proactively embed one's interpretation in the investigation, reflection and action process.

The most fundamental right of all is the right to have rights.

But human rights hard and soft law principles and provisions are just a starting point. In the end, it is people who must make good laws a reality in society. No law can shield anyone from resource grabbing. Around the world and across history, resource grabbing has been taking place even where people have legal rights to the natural resources they occupy, use and manage. Unfortunately, merely having legal rights alone does not guarantee that one's land, fishery or forest resources won't be grabbed.

In Myanmar, the mere existence of a legal right, does not directly translate into that right being respected on the ground in practice. One study has found that, whether before or after 2010, the possession of legal documents did not provide any significant defence or protection against land grabbing for farmers: 1129 respondents (42.5 percent) said they possessed legal documents issued by the government when their land was confiscated, while 1058 respondents (39.8 percent) said that they did not possess any such kind of document – almost equal odds.[19]

In the end, it is real people – namely, people in rural communities – who must try to apply more human rights interpretations of law in practice, in order to influence what rules take hold in the national parliament and on the ground. It is real people who must try to make law in numerous venues and numerous senses, including by making their human rights real in practice.

5 What steps are people in Myanmar taking to express and assert their human right to land?

In Myanmar, (I) respect for and protection of human rights, (II) recognition and promotion of human rights, and (III) restoration human rights of all people and peoples remains an unfulfilled and elusive dream. Therefore, the *struggle for democratic* access and control of land and related natural resources is inseparable from the *struggle for human rights*. People's struggles and movements across Myanmar are actively working to protect land access and the different meanings that land represents to people. Both physical and visionary, resistance to a single and economic –focused meaning of land has occurred at the ground level, judicial level, policy level, as well as through action research, networking and alliance building.

Ground level resistance

Large numbers of farmers anguished by land confiscations have been organising tools of resistance within their communities to defend their land, human rights, and to defy the seizure of their land access and control.

Ploughing protests, or the organised clearing or cultivating of seized land, are one such tool that have been used by farmers in Sagaing division, Mandalay division, and Ayerarwady region.[20] Through these protests, farmers are publicly asserting their ownership of the disputed land. In response, hundreds of farmers have been arrested on charges of trespassing and/or failing to obtain a permit prior to publicly demonstrating.[21]

At Letpadaung, where around 2,500 people's lives have been harmed by a huge copper mine, residents have vigorously protested against destruction of their villages for expansion of the mine, as well as the mining company's handling of resettlement, compensation, the environment - including the sulphuric acid emissions infecting farmland and water sources - and the health impacts on 26 villages.[22] Their actions include blocking the access road to prevent the company, backed by state police, from pushing ahead with the plan to expand the mine. Riot police employed to disperse protests

have been implicated in using white phosphorous flares in November 2012, injuring up to 150 people as well as for shooting dead a woman in December 2014 amidst protests over the enclosure of seized land by those who rejected compensation schemes.[23]

An anti-dam movement resisting six hydropower dams (including the Hat Gyi dam mentioned above) that have been approved for building on the 2800km, ecologically-diverse Salween River, is protesting the sale of their river, as well as the environmental and human rights abuses associated with the dams.[24] Over 2,000 activists, many of whom are IDPs and refugees, organised a Salween day to commemorate the river's magnificence and call for the protection of rivers globally.[25] Communicating through the banner slogan of "NO DAMS! THE SALWEEN IS NOT FOR SALE!", and greeting Environmental and Impact Assessment consultants with these banners, their message is clear.[26]

In response to the highly contested Myitsone dam described above, "protests began even before construction."[27] A national anti-dam movement has since spread rapidly, manifesting through creative outlets and uniting ethnic minority groups in the area. With the assistance of artists and social media, the movement has captured global attention through protest videos and an international letter-writing campaign to terminate the currently suspended dam altogether.[28]

Judicial action

Complementing ground level resistance is the use of law to assert one's claims to land. Throughout Myanmar, individuals and communities are also using the courts to challenge encroachments upon land and human rights abuses.

This strategy is being used by the men and women in the Hukawng Valley. Beginning in 2010, over 100 farmers organised a letter of appeal and subsequently brought legal action against U Hyat Myint, a Yangon-based tycoon with contacts in the Burmese military, for land confiscations and forcible displacement committed by the Yuzana Company near the Hukawng Valley tiger reserve.[29] To assemble Yuzana's cassava and sugar plantations, entire villages had been displaced, whilst forests and animal habitats were

destroyed along with farmers' paddy fields and orchards.[30] While the verdict ruled in favour of the farmers, farmers were offered compensation of only about 80 USD per acre (and not a return of their lands), leading 17 farmers to reject the offer.[31]

Organising at the ground level and judiciary level continued in 2012, when farmers protested in Yangon and wrote letters to various authorities and government officials. U Hyat Myint agreed to return the land to those farmers that had not accepted the compensation offer, but as the current state of the land was unsuitable for farming, the farmers demanded that the land be given back in a suitable way as well as compensation for the associated losses of livelihood in the years since their lands were confiscated.[32] While the case is ongoing, it demonstrates the value of accessible legal action and frameworks in upholding land rights for disenfranchised groups.

Action research

Action research empowers activists from impacted communities to become their own advocates, construct their own research agendas, develop advocacy materials and share their knowledge through different media, scrutinise the merits of those that claim to represent their interests or speak on their behalf, and tell their stories themselves. The research is integrated with capacity building and activism to induce a societal shift toward democratic principles.

Several civil society groups within Myanmar, including the Land in our Hands network (LIOH or Doe Myay in Burmese), are using action research to document and convey experiences of land grabbing and its impacts upon communities throughout Myanmar and to highlight the value of customary practices. LIOH's recent report entitled 'Through Land Grabbing, Destroy People Lives: The Impact of Land Grabbing on communities in Myanmar' voices the experiences and perspectives of over 2,500 members of the network within 329 villages across seven regions. It documents the diverse and profound ways that the widespread and systematic land confiscations have impacted their lives, calling for a restoration of rights and principles, particularly for Myanmar's ethnic minority groups.

Policy advocacy

National land policy

One way that land access is controlled is through land policy and regulatory frameworks. As noted above, powerful elites (foreign and domestic) have been using Myanmar's official land policy to legally inscribe narrow meanings and uses of land – primarily economic ones focused on accumulation and the rights of the powerful whilst minimising social and cultural understandings that are rooted in human rights and democratic values.[33] Because of its importance, influencing official land policy processes and outcomes is critical to reclaim the multi-dimensional character of land.

Local, national and international civil society organisations have been actively influencing the policy-making processes and content of Myanmar's National Land Use Policy (NLUP) and Investment Law. As a draft version of the NLUP was opened for public consultation in November 2014, numerous organisations and networks held their own workshops throughout the country to inform farmers' movements, women's groups, and community leaders of the draft's content and to spark discussion as to what a democratic, just land policy that meets their needs would look like. Many of the workshops produced their own statements about why land was important to them and what they saw as the problems with the government's draft. The LIOH network submitted their own response to the government, entitled 'National Land Use Policy of Myanmar: Our Response and Recommendations.'[34]

National investment policy and investment treaties

Similarly, civil society has coordinated efforts to protest Myanmar's recently proposed Investment Law draft, as it legally protects investor rights at the expense of Myanmar's people.[35] Supported by the International Finance Corporation, the first draft of the law included a provision enabling investors to use the Investor State Dispute Settlement (ISDS) clause, which empowers investors to challenge any new legislation put forth by the Myanmar government that impacts investment, by bringing the issue to an international investment arbitration tribunal. Inclusion of the ISDS clause would have heavily and adversely impacted the content and implementation

of new laws, particularly those concerning the environment and the public at large. It would have also severely restricted the public's power to alter land laws, including the NLUP, toward more democratic and socially just principles. Because of civil society's policy advocacy actions, however, the infamous ISDS clause was successfully removed from the next draft of the Investment Law.

The forthcoming EU-Myanmar Investment Treaty has also been met with opposition by Myanmar's civil society. Over 200 civil society organisations have released an advocacy statement concluding that this is not the time to sign and support investment treaties that give more far more rights to foreign investors than those provided to its own communities and can challenge at private international arbitration tribunals any future government policy in the interest of the public and the environment.[36]

Land and the peace process

Getting the issue of land into the peace process is another key advocacy of civil society groups in Myanmar. With over 135 ethnic minority groups, many of whom live in resource-rich areas and have endured decades of civil war, important questions around access to and control of land are at the heart of the civil war, and unless they are addressed well, real peace is likely to remain out of reach. Deciding who can live and work where and under what conditions is a core matter for any society.[37] For most ethnic minority groups, it is especially so precisely because land means so much more than livelihood and economic survival. Real recognition, protection and promotion of ethnic land rights is needed to ensure that different ways of life will be respected and flourish well into the future. Creating a peace process that involves civil society, is genuinely inclusive and participatory, and allows for civil society's input on complex questions over who ought have what rights, to which land, for how long and for what purposes, is critical.

To this end, CSOs in Karen, Kachin, Shan, and Karenni States have started to engage not only with the Government, but also with the ethnic armed groups (EAGs) to bring forward and develop their own perspectives on the right to land and to express these in concrete policy proposals. The importance of a land policy that ensures ethnic land rights cannot be overstated,

and experiences of landlessness and displacement have guided many of these groups to develop their own views of how this can be done. As of now, concrete policies are being developed by a number of ethnic groups, including the Karen, Kachin and Karenni.

Over the past few years, the Karen National Union (KNU) has undergone a process of revising its land policy, known as the KNU Land Policy, including through a series of consultations with Karen civil society organisations and local communities. The "principle of democratizing access to and control over these land and water resources" is at the centre of the revised KNU Land Policy, along with protecting marginalised and vulnerable groups' right to land, and fixing past injustices whereby people were displaced from their land. To meaningfully resolve their experiences of injustice, the KNU has opted for a long-term land policy that learns from and remedies past injustices, while also building a future based on recognition and protection of the distinct land rights of women, informal, commonly practiced tenure rights, rights to communal land, as well as the social and environmental meanings of land and water. The KNU Land Policy also emphasises ecological farming and explicitly recognises the men and women who have served the land and "the ecological welfare of all" by protecting and respecting the lands' environmental needs in their everyday work.[38] The policy is not only a list of principles, but is also about what happens to these principles. It ought to be implemented in a way that "result(s) in improved political and ecological governance of tenure of land, forests, fisheries, water, and related natural resources."[39]

Networking and alliance building

Building strong networks and alliances is an important step to assert the human right to land. Networks and alliances facilitate collective action and organising, as well as the sharing of knowledge, experiences, strategies, and resources, and the tackling of cross-cutting issues. This in turn enables groups to act on a common vision with a stronger voice, such as through on-the-ground protests, class action lawsuits, action research, and the policy advocacy strategies discussed above.

The Land in Our Hands (LIOH) network is one example of what can, and is being achieved, through building networks. The LIOH network was founded in February 2014. A multi-ethnic network, LIOH is composed of more than 60 allied farmers organisations, community based organisations, civil society organisations, and ethnic rights activists from fourteen states and regions. One of its strengths lies in that the network is coordinated by fifteen representatives from Kachin, Kayah, Kayin, Chin, Mon, Rakhine, southern and northern Shan Shan States as well as from Mandalay, Magwe, Sagaing, Yangon, Bago, Ayeyarwady and Tanintharyi Regions.

"We believe in striving for durable peace and genuinely equitable and sustainable development throughout the country. We believe that in the spirit of current democratic reforms the Government, the Congress and the Judiciary of the Union of Myanmar Republic must work to promote, protest, respect, and fulfill human rights and tenure rights of small-scale farmers and fishers, especially rural women and ethnic communities, and future generations.

We believe that land belongs to those who actually live and work on and care for the land, and we are against land concentration and land speculation. We believe in land redistribution to the landless and in land restitution to people had previously lived and worked on the land but were forced off it because of armed conflict, natural disaster or similar situations. We advocate for a land use policy in federal system that is suitable and appropriate for the diverse traditional practices of ethnic people and other customary communities in the context of democratic principles and social justice for all. LIOH tries to engage every level of Government, Parliament, and Ethnic Armed Groups in order to achieve this."

Excerpt taken from: Land In Our Hands Network (LIOH), "Destroying People's Lives: The impacts of land grabbing on communities in Myanmar" December 2015, Yangon: LIOH, p. 9-10.

"Land is for those who live on it and work it; whose lives, livelihoods and identities depend on this.

Therefore, any "development" or "investment" initiative that goes against this core principle should be stopped and rolled back; any and all land dispute processing mechanisms must adhere to this core principle.

Land size ceiling is important as it is both a remedial and preventative measure to stop and prevent future land polarization, to remedy landlessness, and to address past land injustices, both "inside" and "outside" customary tenure systems.

It is vital to recognize diverse customary tenure systems and farming practices, respect for the right to self-organization and self determination in the use and management of land and related natural resources by those who live on and work the land, and adoption of a federal system.

We believe that land and forests, rivers and lakes, fisheries and seeds are for life with genuine environmental protection, not for profit"

Excerpt taken from: Land In Our Hands Network (LIOH), "Destroying People's Lives: The impacts of land grabbing on communities in Myanmar" December 2015, Yangon: LIOH, back cover.

Processes that destroy life, erase lives, and sacrifice ways of life must be resisted and rolled back.

Reclaim the meaning of land as life and dignity!
Land for people not profit!

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1. "There are no concrete national land policies and laws in place that secure the rights of Myanmar citizens vis a vis foreign investors
2. There are no laws protecting ethnic minority rights under the current reform process
3. There is a need to develop policies and adopt laws that control the behaviour of foreign investors and allow them to be sued when they violate human rights
4. Environmental and social problems, caused by existing foreign investments have not been addressed, such as Myitsone hydropower project, Lethpadaung copper mine, Salween hydropower project, landgrabbing etc.
5. There is currently no stable peace in Myanmar. If we sign investment treaties at this moment, we will not have taken into account the concerns and aspirations of ethnic communities.
6. There is a need for a public, broad and participatory consultation process in order to decide whether or not Myanmar needs investment treaties.

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TNI Myanmar programme: The advent of a new quasi-civilian government in Myanmar has raised hopes for fundamental reforms and for an end to one of the longest running armed conflicts in the world. TNI's Myanmar programme aims to strengthen (ethnic) civil society and political actors in dealing with the challenges brought about by the rapid opening-up of the country, while also working to bring about an inclusive and sustainable peace. TNI has developed a unique expertise on Myanmar's ethnic regions and it is in its Myanmar programme where its work on agrarian justice, alternative development and a humane drugs policy comes together.

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