****

**About the Burma Environmental Working Group**

The Burma Environmental Working Group (BEWG) is a network of 22 civil society organizations primarily working in the ethnic, conflict-affected areas of Burma. It was formed in 2005 to develop and advocate for policies that protect the livelihood, natural resources and environment of affected communities and promote their participation in decision making. BEWG members are diverse, knowledgeable, and are actively working on land, environment, natural resources and investment around Burma. BEWG advocates for original solutions, reflecting the needs of the network members through collective action for ethnic issues. We are presenting to the Myanmar government the findings from community action research on lands, natural resources and development projects in ethnic areas.

**Abstract: Lessons Learnt from Land, Natural Resources, and Development Project Investments in Ethnic Areas and the Partial Solution for a Federal System**

Myanmar is in a crucially important transition from successive military dictatorships to democracy. Land, natural resources, and environmental issues are particularly central to national integrity and political conflict due to their impact on daily livelihoods, social security, and human dignity. These issues are so acute in ethnic areas that the success of a federal, democratic system hinges largely on resolving conflicts around the ownership, control, and management of ethnic lands. BEWG has proposed a moratorium on natural resource development projects in ethnic lands since (2017); it now also calls for a reformation period creating new federal institutions, and an implementation period introducing new practices. A moratorium would create space for the substantial and inclusive political dialogue that must accompany a legitimate state building process, and that examines and addresses the root causes of conflict. This process, in turn, must provide the foundation for lasting reforms.

*“The money monopolizes the laws and the laws oppress the local population, the farmers haven’t regained their lands, which had been grabbed by means of verbal order during the previous military dictatorship”*

*Voice of Hsisheng farmer*

**Key Challenges of Land, and Natural Resource Management**

**Lack of ownership and management:**Democracy and peace have disappeared in Myanmar due to a lack of political equity and self-determination. Local ethnic populations haven’t had the rights to own, manage and benefit from natural resources. According to Article 37(a) (b) of the 2008 constitution, the management of all resources are under the control of the central government, and all laws related to resources are promulgated by the central government.

**Lack of protection policy and regulation:** The parliament-promulgated land laws not only ignore the livelihood, environment conservation, peace and society of ethnic people, but also support centralized, capitalist business.

**Lack of recognition of customary practices**: Lands have been peacefully utilized under customary systems for generations. Nevertheless, although there are no vacant, fallow or virgin lands in ethnic territories, the land management law was ratified by creating new categories such as “vacant,”“fallow,” and “virgin.” This law can cause ordinary citizens and farmers to lose their lands, and create social problems and worsening poverty, which could cause conflict.

**Weak institution of natural resource management**: Foreign companies that are investing in land and natural resources will not bring sustainable development to Myanmar because institutions and mechanisms for human rights protection, local development, and local participation in management and decision-making are absent.

**Summarized Key Recommendations**

Managing land, natural resources and investment based on federalism are of upmost importance; the following policy recommendations are therefore crucial for implementation.

1. Moratorium –Identify actions to be taken immediately before a union peace accord has been signed.

2. Reformation period- Building a new, constitutional, legal framework and federal institutions based on a union peace accord at the union, state, and sub-state levels.

3. Implementation Period- Making new federal institutions operational in practice.

4. Ceding to the local population the right to own, manage, and benefit from lands and natural resources by means of these three periods (moratorium, reformation and implementation) provides a basic foundation and Recognizing ethnic land and natural resources rights Restitution for laws and institution and rehabilitation for the people rights, Regeneration for the future generation and sustainable resources, Representation for the genders, marginalize and lower class people voices and Redistribution land and resources rights from the military and corny to the people to achieve sustainable development and peace.

**STRUCTURES CENTRALISE POWER**

limiting who can make decisions and who benefits

**The constitution** contradicts ethnic demands for self-determination; enshrines Union-level ownership and control of all natural resources and all major resource revenues; limits state and regional legislatures ability to enact laws to an extremely narrow list of matters; and does not allow for the election of regional level ministers.

**The military** retains 25% of the national legislature and 25% of state and regional parliaments; it controls the Home and Border Affairs ministries, owns powerful businesses, and holds de facto veto power on constitutional amendment. All branches remain outside civilian control and as such abuses continue with impunity.

**The investment paradigm** gives the Myanmar In- vestment Commission sweeping discretion to approve investment projects with limited parliamentary oversight. There is no framework for state and regional participation in investment decisions. The 2016 Investment Law allows 50-year land leases by foreign entities, with longer leases possible in “remote regions.”

**Energy policy** is driven by international agencies, banks, and companies. It priorities a central grid and energy export for central government revenues over community-managed rural electrification, and industrial expansion over the realities of an agriculture-based economy. Destructive hydropower projects are mainly in ethnic states, although they use only 10% of total national electricity. Up to 65% of energy output may be lost in transmission to urban centers.

**Male dominance** resulted in a parliament that had 14.5% women members in 2016 and 29 of 13,602 village tract administrators in 2015. Rural-based women are not formally represented in development decisions, leaving gender-specific impacts of natural resource projects unaddressed.

**Key Findings**

**NATURAL RESOURCES CENTRALLY CONTROLLED**

leaving affected peoples no rights to sanction or approve projects

**forests**

Burma has one of highest deforestation rates in the world, yet regional ministers have no formal powers to curtail it. Logging permits are reserved for state-owned and crony companies, and land concessions are granted in conservation zones.

**land**

Land grabbing is rife across the country, but no laws address restitution. Customary land tenure is not recognised, and land not currently cultivated can be seized under the Union-level Vacant, Fallow and Virgin Lands Management (VFV) Law.

**water**

The central government is planning 50 large hydropower dams (expanding from 3,000 to 45,000 MW) that will flood farm- lands and displace communities in ethnic states, largely to export electricity. Yet local and state governments do not have powers to decide about projects larger than 30 MW.

**coal**

The national energy plan aims to increase electricity produced from coal by 28% in 15 years, despite damaging health and climate impacts. Only the central government can approve or deny large-scale mines.

**jade**

Top military generals and the central government raked in an estimated US$31 billion in revenues from jade in 2014 alone. The majority of mines are in areas under *Tatmadaw* control; licensing, sales, and regulations are controlled by the Union.

**oil&gas**

Burma exports 80% of its non-renewable oil and gas. Billions of dollars in revenues are managed without transparency or oversight. Arakan State remains the second poorest despite being the source of the lucrative Shwe gas.

Chin State

1. Although customary land tenure systems involving land, forest and natural resources have existed in practice among indigenous peoples in Myanmar, current land-related laws and investments laws are likely to endthe customary land tenure systems of the local indigenous people.

2. Due to the absence of basic principles in federal policies in Myanmar, and the country’s current orientation toward natural-resources-based development, ethnic groups are likely to face ignorance of their culture, land management practices, and the depletion of natural resources upon which they have relied.

Self-administered Areas – Pa-O

3. Instead of giving back confiscated land to the primary owners, the military lease confiscated lands to local farmers for a fee. The local farmers pay tax to the military. There are very few local farmers who get back the land that the military has arbitrarily confiscated. Although local farmers have attempted to gain back their confiscated land in different ways, local authorities have conferred the cases to the central government.

4. In some places, instead of getting compensation for land confiscated for the purpose of others’ business and development, farmers are being threatened and sued under the currentVacant, Fallow and Virgin Land Management Law.

5. Instead of giving back confiscated land to the original owners, those lands are conferred to the central government where preference to apply for ownership of these lands is given to wealthy persons and investors. There are quarrels among the farmers in some places regarding relinquished lands.

Karen State

6. The Eagle Eye Company and Japan International Cooperation Agency have been implementing the ‘Asia Highway Project’ without consulting the local population and without obtaining consent. Consequences include land confiscation, loss of agricultural products, contamination of water resources, inadequate compensation, and destruction of forests and mountains that are focal points of the cultural heritage of the local populations. Local people are breathing the dust from construction daily.

7. Even after the bilateral ceasefire agreement between government and ethnic armed groups, land confiscations still occur without compensation.This threatens displacement, as no information on the development projects is provided, increasing ethnic populations’ vulnerabilities to human rights violations. Development projects could derail the peace process and provoke resumed fighting between ethnic armed groups and the government’s military.

Karenni State

8. The Lawpitamega-hydro electric power plant located in KarenniState has permanently displaced 12,000 of the local populous due to the construction of the plant. Thousands of Myanmar military personal are stationed in the area due to security concerns, leading to human rights violations such as forced labor, sexual violence, and arbitrary killing in the area.

9. The saying “Access to electricity in Loikaw, We Karenni embrace the Candle” implies despite electrical power being produced in Karenni state, the people don’t receive any of it benefits. The current, anticipated electrical power project is intended to distribute its output to neighboring countries such as Thailand and China, as well as business people who have good relationships with the government. The power project will also threaten indigenous people like “Yin Tale” since their ancestors’ land, rivers, cultural heritage, and beliefs will be destroyed.

10. Severe fighting between the ‘Karenni National Progressive Party’ (KNPP) and the military government took place in the designated dam construction project area before ceasefire agreements had been reached in 2012. Before 2012 due to fighting between the KNPP and Myanmar’s military, various human rights violations prompted local people to frequently evacuate the area. The area is still jointly controlled by both the government and KNPP. mega development drive ethnic conflicts, divide ethnics people and unstable peace when there is no political solution and federal based laws and constitution.

Rakhine State

11. On 8 November 2018, in order to construct two deep seaports, Myanmar and China signed a memorandum of understanding withMyanmar holding a 30 percent share and a Chinese company holding a 70 percent share, respectively. There is a deep seaport and industrial zone as a part of Kyaukpyu Special Economic Zone. Although the local people’s livelihood relies on forestland, pasture, mangroves, creeks and rivers, the illegal trade of lands and applying for land lease licenses without acknowledging the original owners were widespread in the region. Water pollution, the extinction of fish species, and a shortage of food supplies for the local population have occurred as well. Although thousands of local people have demonstrated to address these problems, there have not been any actions from the concerned body.

Kachin State

12. Massive jade extraction mining projects in Kachin State are happening without transparent and accountable operational procedures.These often result in hazardous conditions and the deaths of local mining workers and young jade collectors from collapsing mines. Moreover, due to higher rates of unemployment, many young people end up as addicted drug users instead to finding better life opportunities and earning money in the jade collecting business.

Dawei,Thanintharyi

13. Due to on-going land confiscation cases in Tanintharyi region, consequences are increasing migration both internal and external, and many of land activists are being judiciary charges and imprisoned due to their public demonstration. Moreover, losing land left many women farmers jobless, lack of income for living, and prone to face different forms of discrimination, inequality and unsecured life.

**Actionable Policy Recommendations**

Decentralize Natural Resource Management

- The government must recognize and respect customary designated natural sanctuaries, religious sacred forests, creeks, streams, and lakes in ethnic areas.

- Customary land ownership, management and land tenure systems must be recognized, respected, and protected. Local indigenous people who have been living in the specified area since their ancestors’ era should have collective rights to manage and utilize their territory, wild forest, forest, pastures, lakes, alluvial land, and sacred lands.

- Self-determination and self-management rights of the people who are cultivating lands and the management of resources related to those lands must be recognized and respected.

Respect International Standards/Regulations

- Genuine environmental impact assessments (EIAs), human rights, health and social impact assessments must be conducted before and during the implementation of every investment or development project.

- The government and all stakeholders should abide by the standard protected by international human rights law where all peoples have the right to freely pursue their economic, social, and cultural development that guarantee by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and also International Labour Organization (ILO) 169that protect the right of the local population:free, prior, and informed consent (FPIC),whenever mega projects are conducted.

Promote Transparency and Accountability

- There must be transparent discussion between the government, companies and local people regarding implementation of development projects. Customary land tenure systems should be recognized and included in the laws of special economic zones and existing laws.

- Land dispute committees must be formed and composed of such individuals as members of the public, local civil society groups, and concerned officials who are knowledgeable on local land history. Transparency and accountability should be ever-present in addressing land disputes.

- Courts must be established for the purpose of addressing land disputes, with access to public hearings and with provisions for translation services for those who have difficulty in speaking the Burmese language.

Ensure Stakeholder Participation

- Land disputes must be addressed through the decisions of local peoples. These may include representatives of farmers unions, women’s organizations, youth associations, and legal experts, rather than central government representatives with no previous involvement in ethnic land issues.

- Local people must be allowed to discuss and make decisions on local development planning. Development projects must be implemented after having consulted and received consent from the local population.

- The government must conduct meaningful consultation with local stakeholders (local farmers representatives, ethnic leaders, women, NGOs, unions) when developing land-related laws, investment laws, and environmental conservation procedures.

Policy and Regulation Environment

- The current “Vacant, Fallow, and Virgin Land Management Law” needs to be abolished since there is no such land in ethnic areas.

- Customary practices addressing land disputes must be accepted and legally recognized.

- Land ownership and management rights should be also ensured for marginalized groups such as women, persons with disabilities, and LGBTI.

Proper Protection and Procedures

- Independent monitoring organizations on land issues should be established where stakeholders including women, LGBTI, land activists, and local people are given the right to cooperate and monitor freely.

- Injustice inland confiscation including manipulating land markets should be addressed through mapping and setting up the scale of land ownership from low to high level based on geographical periphery. Doing so will help to address issues of returning, distributing, and substituting land effectively.

- Traditional customs, practices, and creeds that are a barrier to women’s land ownership must be evaluated and amended.

Remedy and Reparation

- The confiscated lands by the armed forces and successive governments must be handed back to the original owner without any debt after proper scrutinization.

- Refugees who have abandoned their area in order to avoid war must have the right to redeem their original lands, or be provided substitutional lands equal in value to their original lands as compensation.

* If certain lands are to be confiscated for development and economic projects, expropriation should be done free prior and informed consent (FPIC) and in a transparent process with just compensation like substituting lands, or financial compensation of an equivalent value based on local market prices.

Land’s 5 R Principles:

When we think about land and natural resources, we also have to follow;

1. Recognize (recognize of the ethnic, indigenous people and the diversity)
2. Restitution (restitution of policy, laws and compensation and rights to be ensure)
3. Regeneration (regeneration for the sustainable future of the generation)
4. Representation (ensure the equal and equity of the representation to include voices and decisions)
5. Redistribution (Redistribute land, wealth and natural resources to the land loss or to who need land with limitation from land lord or from the government)

Common Policy from Ethnics Political Parties, Ethnic Armed Organizations and CSOs

Common Policy from Resource Federalism National Forum

Ethnic CSOs, Ethnic Political Parties and Ethnic Armed Organization hold Resources Federalism National Forum and came out with common recommendations

1. Ownership of land and natural resources: The ethnic people living in States and Regions must be the ultimate owner of all the land and natural resources above and below the ground, above and beneath the water and in airspace.

2. Control and management of natural resources: According to federal principles, State and Region governments must have the power to manage and control land and natural resources.

3. Natural resource revenue management: According to federal principles, the governments of States and Regions must have the power to manage revenues and benefits from the use and sale of natural resources.

4. A moratorium on new and incomplete large-scale natural resource investment projects by all stakeholders is needed in the current process of seeking national equality, justice and self-determination.

5. All operational large-scale investment projects and contracts made with domestic and international investors need to be disclosed to the public and reviewed.

6. Existing ethnic natural resource administrative structures and customary land tenure systems should be legally recognized and protected.

7. The rights to ownership, control and management of natural resources must be formalized and women’s participation and input into the drafting of central, state, and region policies, constitutions, and legislation must be ensured.

After Military coup in Myanmar, the military blocked the farmers to move around and not allow to use the land anymore and unable to return the land to the farmers. The coal investment projects from Tigyit, Southern Shan State and Taunggyi are with Chinese and Russian.