



resource federalism

a roadmap for decentralised governance of Burma's natural heritage



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www.bewg.org

The Burma Environmental Working Group is a network of ten 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 livelihoods, natural resources and environment of affected communities and promote their participation in decision-making. See information about member organizations in Appendix 1.

BEWG would like to thank our friends who helped in the editing process.

Note for English readers

The *Pyidaungsu Hluttaw* is the national-level bicameral legislature of Burma established by the 2008 Constitution. The *Pyidaungsu Hluttaw* is made up of two houses, the *Amyotha Hluttaw* (House of Nationalities), a 224-seat upper house, as well as the *Pyithu Hluttaw* (House of Representatives), a 440-seat lower house.

The *Tatmadaw* are the Burma armed forces, composed of the Army, Navy, and Air Force.

published in 2017

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Explanation of terms

Centralise: to concentrate by placing power and authority in a center or central organization

Decentralise: to disperse or distribute functions and powers from a central authority to regional and local authorities

Devolve: the highest form of decentralisation, to transfer *functions and powers* to autonomous units of government through statutory provisions (in unitary systems) or constitutional provisions (in federal systems)

Deconcentrate: the lowest form of decentralisation, merely to transfer *tasks* to state and regional field offices of central government ministries

Central government: Burma currently has a unitary government with one main center of power in Naypyidaw; it is often called the “Union government” but is referred to in this report as “the central government”

Federal government: a form of government in which power is distributed between a central authority and a number of constituent territorial units. Once a federal system is in place, the “federal government” often refers to the previous “central government”

States: Burma’s fourteen subnational administrative areas, currently termed States and Regions

Substate: an umbrella term that refers to an area or governance unit within States or Regions, such as a district or village. Substate units include the following referred to in this report:

Substate self-administered zones: areas within States or Regions with concentrated ethnic population, including, but not limited to, currently designated self-administered zones and divisions.

Substate customary management areas: local areas within states or regions that can demonstrate customary land and natural resource management systems and regulations. These may comprise one or more villages that are located within a traditional boundary (for example a Karen *Kaw* or Karenni *Hgay*).

Summary

While Burma's ethnic states are blessed with a wealth of natural resources and biodiversity, they have been cursed by the unsustainable extraction and sale of those resources, which has fuelled armed conflict. Instituting a system of devolved federal management of natural resources can play a key role in resolving conflict and building a lasting peace in Burma.

Despite some ceasefires on paper, Burma remains in a state of conflict. Ongoing offensives in Kachin and Shan states alone have left hundreds of thousands homeless. Fundamental calls for self-determination have gone unheeded in a lack of political dialogue to end decades of fighting.

Military offensives into resource-rich ethnic areas have expanded Burma Army presence in places previously controlled by de-facto ethnic governments. This has facilitated the rapid increase in the extraction and sale of natural resources in recent years. Resource projects have collected huge revenues for the army and the central government, but have not benefited local populations.

Constitutional powers place natural resource ownership, control, and management fully in the hands of the central government. This report analyzes six key natural resources: forests, land, water, minerals, gems, and oil and gas. In each sector, a series of laws and practices prevent affected peoples from having a say in their own development: they cannot assess, provide input into, or censure the management of their natural resources. Ethnic women, particularly in rural areas, are doubly marginalized from natural resource governance.

Centralised resource control is fanning the flames of discontent and anger. Resource projects are causing environmental destruction, human rights abuses, and loss of livelihoods, with unique impacts on women. Extracting and exporting raw, often non-renewable, resources is further inflicting an incalculable liability on future generations. Resources used to produce energy are consistently prioritised for export, contributing to the development of neighboring countries while resource-rich areas remain in the dark.

People from across the country have staged protests and demonstrations, calling for an end to destructive resource exploitation and for constitutional rights to own, control, and manage their own resources. Ethnic political parties and armed groups are standing with the people in these demands. Devolved decision-making offers stronger accountability and representation at all levels of government, an opportunity for local input and control, benefits to local populations, and environmental sustainability.

Burma does not need to start from zero in developing devolved governance structures. Local communities have managed lands, water, and forests with sustainable customary practices for generations, and de-facto governments have supported such practices with formal structures and laws.

Based on decades of grassroots work by members of the Burma Environmental Working Group, the report presents a way out of conflict and toward a more sustainable management of natural resources under a federal system of governance. The proposed roadmap seeks to safeguard rights and tenure, safeguard against environmental destruction, and prevent the escalation of conflict. Steps are intended to build the capacity of local, representative governments to establish and implement development priorities appropriate for their respective populations. It is hoped that this will not only strengthen opportunities for lasting peace but may also pave the way for sustainable economic development.

The roadmap for devolved federal natural resource management sets out a time sensitive, sequenced chain of actions during the following three periods:

1. **Interim period:** Immediate steps to be taken while conflict and political dialogue is ongoing, and until a national peace accord is signed.
2. **Transition period:** Steps to develop new constitutional and legal frameworks and establish federal institutions at the national, state, and substate levels, based on a signed peace accord.
3. **Implementation period:** Operationalising new federal structures.

During interim period:

- Institute a moratorium on new and incomplete large-scale land and natural resource investment projects (all stakeholders)
- Review and analyze operational large-scale investment projects: grant permission, renegotiate, or cancel projects (natural resource management bodies established by political, civil society, and community-based groups)
- Recognise and do not interfere with communities practicing customary land tenure systems or existing ethnic land and natural resource administrative structures (central government)
- Formulate long-term economic development vision, policies, and plans around the use, development, and management of land and natural resources (ethnic stakeholders)
- Formulate clear division of powers between central, state, and substate governments related to the ownership, control, management, and revenues of natural resources for political negotiations (ethnic stakeholders)

During transition period:

- Continue moratorium, review, and analysis of natural resource investments, and maintain non-interference toward existing local customary practices and natural resource policies (all stakeholders)
- Develop national and subnational safeguard systems, including minimum standards for cross-cutting themes in all natural resource sectors on issues such as human rights, environmental protection, transparency and accountability, (political, civil society, and community-based groups)
- Draft and adopt democratic federal, state, and substate constitutions, legislation, and policies through representative processes in respective areas, within the framework of a signed national peace accord (central government, state-based and ethnic institutions)
- Devolve constitutional powers to state and substate governments to control and manage resources and revenues (central government)
- Develop federal, state, and substate institutions and departments that are representative and accountable to manage natural resources and revenues (central government, state-based and ethnic institutions).

During implementation period:

- Begin devolved management of natural resources and resume investment once representative and accountable federal, state, and substate institutions and departments are able to manage land and natural resources in accordance with federal, state and substate constitutions, legislation, and economic development policies
- Monitor and facilitate public participation in natural resource management, investment, and enforcement of safeguards under new structures (federal, state, and substate governments; civil society and independent parties)

For complete roadmap and recommendations see pages 84-88



Jade mine in Hpakan, Kachin State

PART 1: CENTRALISED CONTROL

After 25 years of ceasefires with no political dialogue, conflict continues in Burma with no end in sight. Hundreds of thousands remain homeless. Military offensives into resource-rich ethnic areas have expanded Burma Army presence in places previously controlled by de-facto governments. This has facilitated a rapid increase in the extraction and sale of natural resources in recent years.

Natural resource projects are wreaking havoc on the environment and livelihoods, and forcing people off their lands in the wake of “development” imposed by Naypyidaw.

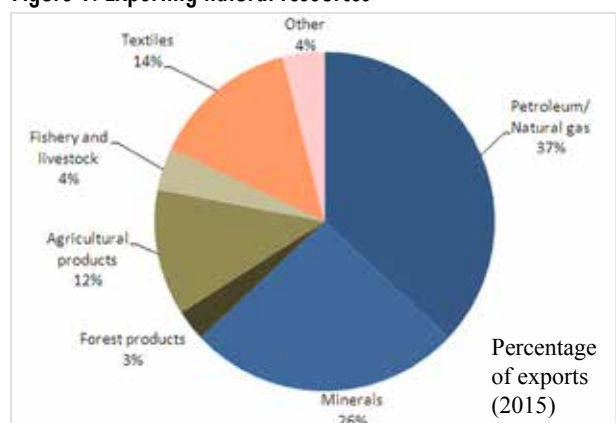
The resources are sold off to neighboring countries, most often in raw form. Revenues from the sale go directly to Naypyidaw and benefits are rarely felt in the areas where resources originate.



Photo SM

Refugee children in Jegau camp

Figure 1: Exporting natural resources



<http://atlas.media.mit.edu/en/profile/country/mmr/#Exports>

1.1 Calls for change

As large destructive extraction projects continue, people across the country are calling for greater local powers in managing their own natural resources.

In March 2016, 61 civil society groups met to address concerns about natural resource governance in Kachin State. They collectively agreed that all natural resource projects and extraction should cease until conflicts are resolved through political means, that the people in Kachin State are the owners of the natural resources there, and that the ultimate management authority over extraction and taxation of natural resources should be conferred to the Kachin State government.¹

In August 2016, 26 Shan community groups sent an open letter to Aung San Suu Kyi to cancel dams planned on the Salween River. It said: “The unilateral decision to go ahead with the Salween dams before political dialogue about federalism has even begun, is depriving ethnic communities of their right to decide about natural resources in their areas.” The letter was sent one year after over 23,000 community members had submitted signatures to oppose construction of the Mongton dam.

By September 2016, the Arakan Natural Resources and Environmental Network had gathered 300,000 signatures calling for full Arakan State control of local property and resources.

Ethnic political parties and armed groups are joining the people in making the same demands:

“If the Salween dams go ahead against the wishes of local ethnic communities, we will join with all the ethnic people, civil society groups and environmental groups in opposing the dams.” - August 2016 statement by the Committee for Shan State Unity, comprised of Shan political parties and armed groups, including the Shan Nationalities League for Democracy (SNLD), the Shan Nationalities Democratic Party (SNDP), the Shan State Progress Party (SSPP) and the Restoration Council of Shan State (RCSS)

Protest
against
large-scale
natural
resource
extraction
at Manau
Park in
Myitkyina,
Kachin State
on October
3, 2016



Photo KDNG

The statement also said:

“During this time when trust needs to be built between the government and the ethnic armed groups in order to promote peace, it is important to stop these large dams. Disputes over ownership, use and benefit sharing from natural resources are one of the main sources of conflict. Until there is a negotiated settlement of this issue, moving ahead with these large projects will fuel conflict. Therefore, we strongly condemn the fact that the government is moving ahead with these dam projects while conflict continues in the ethnic areas.”

“Even though it is the local people who will suffer most from the dams, most of the power generated by the dams will be for neighboring countries. Before the dams are implemented, full, transparent information must be given to the people, in order to get their consent.”

At the Panglong conference in August 2016, Dr. Aye Maung, chairman of the Arakan National Party (ANP) demanded natural resources ownership, control and management powers for resource owner states. He said: “All natural resources existing in the ethnic states are owned by those states. The states also have the rights to control and manage their natural resources. The states should, however, provide a share of the revenues from resources to the federal government.”²

Elected representatives from states and regions are not able to find out basic information about projects happening in their constituencies. They too are calling for more powers in order to do their jobs representing the interests of the people. Sai Thiha Kyaw, a Shan State MP, said: “We asked about six Thanlwin dam projects. Our questions were brushed aside for the union parliament.”³

In May 2016, a committee of Kachin political parties developed policies on natural resources. Their guiding principles stated that the Kachin State government must have independent management powers over natural resources detailed in the constitution.⁴ The parties also called on the government and ethnic armed organizations to suspend mega natural resource extraction projects during the peace process and trust building period.

Photo Shan State Farmers Network



Protest against coal mining in Hsipaw Township, Shan State in April 2016

1.2 Conflict and control

These calls echo those that have come for decades from ethnic resistance movements for the protection of ethnic identities and lands, and rights to control and manage sectors in their respective areas. As successive Burman-dominated military governments vied to establish uncontested rule, they have consistently excluded and discriminated against other ethnic groups in law, policy, and practice. Ethnic movements that emerged after independence from the British demanded political autonomy and called for devolution of power through a democratic federal constitution.

While conducting resistance efforts against the central government, ethnic de-facto governments such as the Karen National Union (KNU), the New Mon State Party (NMSP) and the Kachin Independence Organization (KIO) set up systems and departments to govern territories under their control. These systems generally recognize and complement customary management practices at village levels, and provide culturally appropriate services such as education, healthcare, and adjudication. Several ethnic governments also have land, agriculture, and forestry policies and laws, as well as departments that provide land titles and forestry and agricultural support. Legal disputes that cannot be resolved at the community level may be referred to the local (de-facto) government.

Burma Army offensives and subsequent ceasefire agreements have led to a decrease in areas under complete control of such de-facto administrations since the early 1990s; today such areas are primarily under Wa, Kachin, and Mon control. Since 2012, the Burma Army and government has forged ahead with military offensives in northern Burma and Rakhine State and excluded several ethnic groups from political dialogues. Bilateral ceasefire agreements signed during 2011-2013 between the government and ethnic armies in Karen, Karenni, Shan, and Chin states, as well as Tenasserim and Sagaing regions⁵ remain extremely fragile on the ground, with codes of conduct yet to be properly implemented. In these areas, de-facto government administrations maintain partial control, defining them as mixed-administration areas.

Despite the fragility of the ceasefires, the central government continues to invite large-scale foreign investments that proceed with natural resource extraction. One survey in southeast Burma found 155 new investments in ceasefire areas over a three-year period.⁶

1.3 Constitutional powers over natural resources

The 2008 constitution enshrines a centralised ownership and control of natural resources by the Union (central) government in Section 37:

"the Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere."
Section 37 (a)

"the Union shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces."
Section 37 (b)

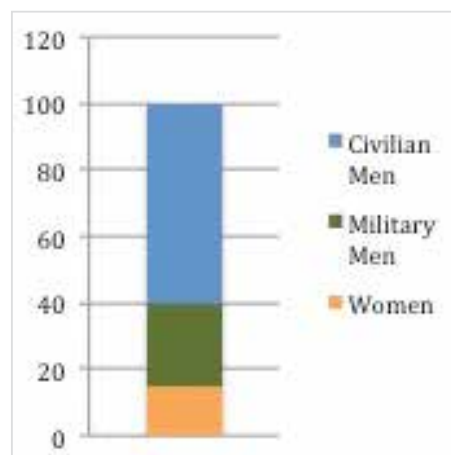
Revenue collection from the sale of high value natural resources is also centralized, as are decisions around how those revenues will be disbursed and used. State and regional budgets are small and dependent on Naypyidaw. State and regional legislatures have the power to enact laws only for an extremely limited list of matters in Schedule Two of the constitution.⁷

According to Sections 109 and 141 of the constitution, 25% of the Union level legislature (both upper and lower houses) is reserved for military personnel. The military also holds 25% of state and regional legislative bodies. This requirement makes these seats effectively permanently off limits to women, reinforcing a severe lack of women in decision-making bodies. Currently in the Union parliament, where almost all decisions are made about natural resources, only 14.5% is female. Out of 14 chief ministers, two are women.

The ministries of defense, home affairs, and borders affairs are appointed directly by the Commander-in-Chief of the Defense Services.⁸ The chief ministers of the states and regions are also appointed, not elected. The chief minister, in turn, appoints all state and region-level ministers.

This structurally centralised nature of Burma's government means that a large portion of lawmakers and government officers has zero incentive to respond to the needs and demands of local populations when it comes to how to manage and use natural resources and their revenues, but every incentive to follow the directives of the person or persons who appointed them. Conversely, there is no mechanism for local populations to restrict or approve of these government officials, making them not only not representative, but also unaccountable. Changing this situation requires amending the constitution. An amendment requires approval from over 75% of parliament, essentially giving the military veto powers and making amendments to the constitution that would reduce the military's power in government virtually impossible.

Figure 2: Union Parliament



The 2008 constitution designates “self-administered zones” in some ethnic areas. Yet the ten-member “leading body” in each of these zones is allowed to make laws in ten prescribed issues only. Leading body members are mainly elected representatives of the townships that make up the zone and representatives of the Burma Army appointed by the Commander-in-Chief. A member of the General Administration Department (GAD), under the military appointed Home Affairs Department, has a significant position as “secretary” to facilitate implementation of leading body decisions. The Pa-O are one group who have a self-administered zone. People in Pa-O communities, however, find self-administrative power insubstantial. One member of the Pa-O National Organisation called the zones merely a new brand of an old divide and rule strategy, saying, “we are not in power, we just have a name to play around with politics.”

The centralised structures enshrined in the 2008 constitution prevent ethnic populations from managing their own areas and resources or determining development policy, entrenching decades of exclusion and discrimination. This is even more tangible for ethnic women, who are doubly marginalized and under-represented. Village tract administrators, the key interface between the central government and rural populations, are almost exclusively men: in August 2015 just 29 of

13,602 (or 0.21%) were women.⁹ Yet even if these numbers were better, having a certain percentage of women in government does not necessarily ensure that women's interests and concerns will be addressed. For example, many women currently in political positions are urban-based and may not understand or advocate for the needs of rural-based women.

1.4 Investment paradigm

Investment in Burma has a huge impact on how natural resources are used and sold. Yet investment decisions are extremely centralised, with most planning and prioritisation executed by the central government and foreign entities.

Investment Law

In October 2016, the Union Government passed a new Investment Law with the goal of increasing foreign investment in Burma. The Law was followed by a set of Investment Rules that were enacted on March 30, 2017.¹⁰

The Myanmar Investment Commission (MIC) is the central body charged with promoting, monitoring, and approving investments within the country. It is currently comprised of 11 members; almost all are from the central government and only one is a woman.¹¹ The executive branch of the central government appoints each of these members.¹² The 2016 Investment Law does not require the Commission to include any Regional or State-level representatives and in its current composition, the MIC does not include any such representatives.

Sweeping discretion, limited accountability of the MIC

The MIC has a number of powers and duties over investments in Burma, including the power to stipulate which types of investments require Permits, and issuing Permits. Investments that require approval by the MIC are those that 'are strategic for the Union,' have a 'large potential impact on the environment and local community,' are large capital-intensive investments, and use state owned land.¹³ When issuing Permits, the MIC is bound to allow only investments it considers 'beneficial to the union.'¹⁴ The 2016 Investment Law does not cover Special Economic Zones (SEZs), which are covered by the 2014 Special Economic Zone Law; investments within the zones require permission from the SEZ Management Committees rather than the MIC.

The MIC is subjected to only a limited measure of parliamentary oversight (it is obligated to annually report on the status of investments it has approved to the central government legislature, the *Pyidaungsu Hluttaw*).¹⁵

Prohibited and Restricted Investment Types

The new Investment Law requires the MIC to prohibit certain categories of investment entirely, including investment activities that may cause significant damage to the environment, and those that may affect the traditional culture and customs of ethnic groups within the Union.¹⁶

Long term foreign land ownership

The 2016 Investment Law allows investments with MIC permits to lease land for 50 years (with a possible 20-year extension), even if they are foreign-owned. Under the law the MIC may also grant a longer lease to investors who 'invest in least developed and remote regions,' with the approval of the *Pyidaungsu Hluttaw*.¹⁷ These longer land leases for least developed and less accessible regions may pose significant long-term problems for landholders in ethnic borderlands.

No framework for regional and state-level participation in investment decisions

Although certain provisions of the Investment Law aim to attract investment to the least-developed Regions and States, their participation in such matters is not guaranteed by the Law. The MIC is only bound under the 2016 Investment Law to ‘co-ordinate’ with the Region and State Governments to allocate authority for investments.¹⁸ It is yet to be seen, however, how this duty of ‘co-ordination’ will be implemented in practice.

In October 2016, the Director General of DICA and Chairman of the MIC indicated that, “state and divisional governments will also manage some areas [of investment].”¹⁹ Despite this suggestion, the 2016 Investment Law does not create a formal legal framework that provides for the decentralization of power away from the Union-level Government. There is provision for the MIC to open branch offices ‘locally,’ which may be used as means to transfer some administrative functions to state and regional levels.²⁰

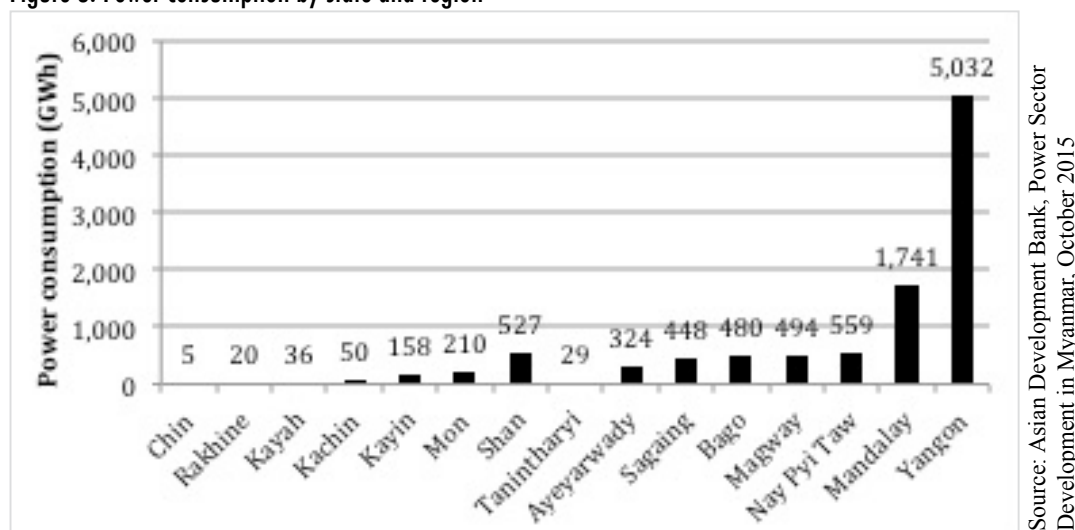
Energy policy

The energy sector is a significant part of Burma’s centralised economic development planning. Plans to export energy to create revenues for the central government and investors, and to generate electricity to feed industrial expansion in cities and economic zones, are speeding ahead. This is despite severe energy needs in Burma and an estimated 66% of the population working in agriculture.

A majority of the planned electricity generation will, according to the Myanmar Energy Master Plan, come from the construction of hydropower and coal-fired power plants. Currently hydropower makes up nearly 70% of Burma’s total installed electricity generation capacity with the remaining generated from gas (28%) and coal (3%).²¹ Rather than maximizing energy use from Burma’s vast natural gas fields, 80% of existing gas is exported to China and Thailand.

Impacts from large-scale energy projects are concentrated in the ethnic states: 60% of existing hydropower reservoirs are flooding lands and communities in ethnic states while the people in these states represent only 10% of the total national electricity consumption.²² The vast majority of planned hydropower projects are also located in the ethnic states.

Figure 3: Power consumption by state and region



* the chart does not represent community-managed small scale energy production from for example micro-hydro and solar projects, further illustrating how larger projects primarily benefit urban populations

Who is making Burma's energy policy?

Until mid-2016, the National Energy Management Committee, comprised of seven central government ministries, was the official body to set overall energy plans and policies for the country. The Myanmar Energy Master Plan was actually commissioned by the Asia Development Bank²³ in 2015, and the president's office announced the National Energy Policy on January 6, 2015.²⁴ According to its website, as of June 2017 the Asian Development Bank was still funding an active project for institutional strengthening of the National Energy Management Committee in energy policy and planning,²⁵ even though the committee has been disbanded. No replacement for the committee has been announced.

International agencies and banks such as ADB and the World Bank appear to be driving Burma's energy planning process. Foreign energy companies are also set to implement and profit from the energy sector expansion.

Energy prioritized for export and for central grid

A large proportion of the energy generation proposed in the Energy Master Plan—45,000 MW of electricity from hydropower alone, a staggering 1500% increase over ten years—is for export

Table 1: Foreign entities making energy policy in Burma

Sector Planning	Legal and Regulatory	Financial Sustainability	Transmission & Distribution	Generation	Rural Energy
Analytical Basis for Strategic Decisions (WB)	EITI Application Support (WB)	Financial Viability Action Plan (WB)	Distribution Improvement in Yangon (JICA)	New GTTC for MEPE & IPPs; PPP Transactions (WB)	Off-grid Power Program (ADB)
Energy Master Plan for NEMC (ADB, Japan/JFPR)	Electricity Law & Electricity Regulation (ADB/Norway)	Strengthening Financial Management (Multi-donor)	4-region Distribution System Improvement (ADB)	Donated GT and Generators (GOT, Japan/JICA)	Rural Electrification Project (WB)
National Electricity Master Plan (JICA)			National Power Transmission Network (ADB-JICA-Korea)	Urgent Rehabilitation and Upgrade (Yangon, Thilawa, Baluchaung, Hlaingtharyar) (JICA)	Rural Power Infrastructure (electrification in 14 regions/states) (JICA)
National Electrification Plan (WB)	Rural Electrification Law (AD)	Economic Valuation of Natural Gas in domestic mkt. (WB)	Advisor for Yangon Electricity Supply System (JICA)	National Electrification Plan (WB)	Rural Electrification Law (ADB)
Energy Efficiency policy and Renewable Energy Development Plan (ADB)	Environmental and Social Safeguard and Conservation (ADB)		YESB Corporatization Support through Investment and Advisory Support (WBG)	Energy Efficiency Policy and Renewable Energy Development Plan (ADB)	Environmental and Social Safeguard and Conservation (ADB)

EITI Extractive Industries Transparency Initiative
 GTCC Gas Turbine Combined Cycle
 PPP Public Private Partnership
 JFPR Japan Fund for Poverty Reduction Program
 GOT Government of Thailand

Source: JICA, The Project for Formulation of the National Electricity Master Plan in the Republic of the Union of Myanmar, December 2014

to neighboring countries. Export of energy resources requires a large-scale transmission system. However, large-scale transmission lines are not needed to link villages and districts together, nor are they needed for rural and household energy use. A centralised transmission system takes decades to build and is very expensive. Investment in such a system will become part of the nation's debt, and primarily benefit Independent Power Producers (IPPs).

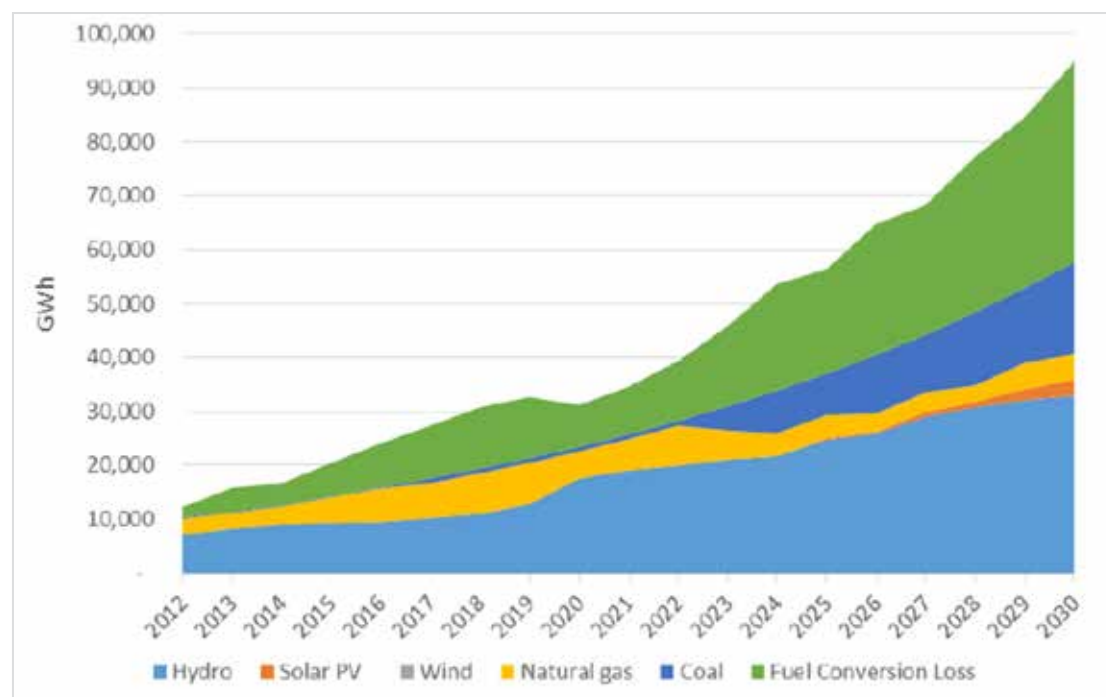
The rationale for exporting power is to generate revenues for the central government that can be used for domestic development. As seen with previous projects, however, such revenues do not reach rural Burma and areas where the resources originate. The Master Plan also prioritizes developing a national grid, something that will not reach major areas of ethnic states for 30 years.

Locally produced and managed energy can be more efficient

Energy experts have called instead for investment in off-grid and mini-grid delivery of electricity, systems that serve local populations directly and involve them in management decisions. This will benefit rural populations more quickly and efficiently, and have the added benefit of democratizing energy production and distribution. Transmission costs in a centralised system can add up to 40% of the generation cost, and up to two-thirds of the original energy output may be lost.

The Master Plan is consistent with the ADB's vision of a regional energy market in which energy is transmitted to areas of high demand (urban and industrial centers). Yet how consistent is it with the needs and demands of populations in Burma's states and regions, in its districts and villages?

Figure 4: Burma's Energy Master Plan: Massive increase in hydropower and coal, tremendous loss of power



* Emphasis on a central grid system that primarily uses hydropower and coal will increase the amount of energy lost through long transmission lines (depicted by the green part of the graph)

Source: *Electricity total power Energy Supply Forecast*, ADB, Myanmar Energy Master Plan, December 2015

PART 2: NATURAL RESOURCE SECTORS

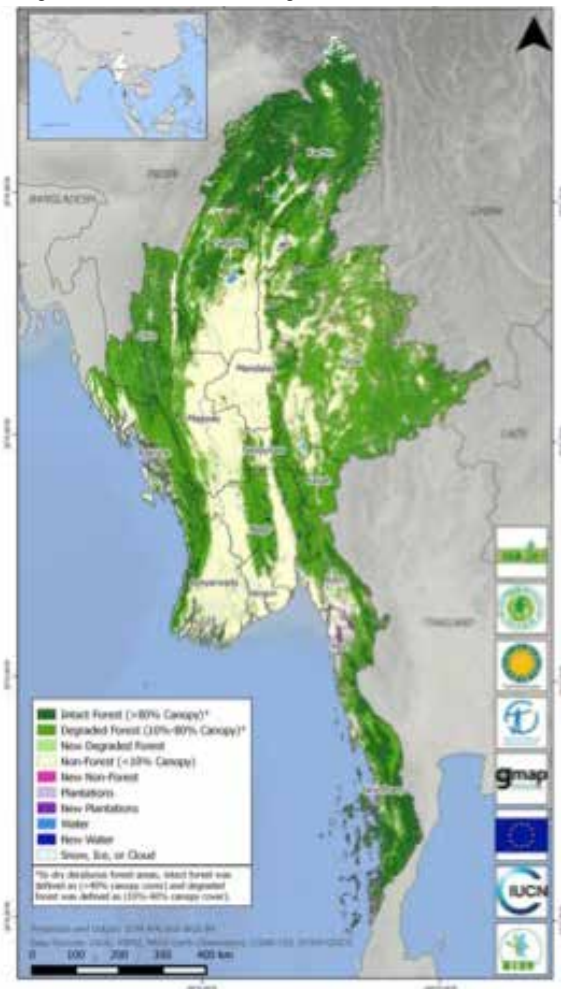
2.1 FOREST RESOURCES

I. Why forests are important

Burma's forests are famous throughout the world for their wild jungles and as the home of coveted and commercially valuable teak trees. Successive governments have focused on logging of lucrative tropical timber as the primary function of Burma's forests; this has taken precedence over all other benefits that forests provide. However, forests form the basis of livelihoods for upland shifting cultivators in ethnic areas, who represent an estimated 40% of Burma's population yet have no formal tenure recognition to those forests.

The history of forests in Burma is one of contestation, not only between citizens and the government, but also between the government and ethnic armed organisations. Burma's remaining forests are almost exclusively in ethnic upland areas. Control over forest resources have been both the driver of conflict and a product of it, as forested areas are at once a territory over which to claim jurisdiction, as well as an economic resource that has funded and abetted cycles of violence perpetrated by the state against ethnic armed groups and conversely, funded ethnic armed groups against the state. Forests have also provided sanctuary in times of conflict as ethnic communities have sought refuge and a place to flee and survive whilst in hiding from the Burma Army.

Figure 5: Forest Cover Change 2002-2014



The current extent of forests in Burma According to the FAO, 45% of Burma is forested.²⁶ This is a huge decline from 50% in 2000, a mere 16 years ago.²⁷ Burma also has one of the highest rates of deforestation globally, ranking third after Brazil and Indonesia. A recent study found that forest cover declined by more than 1.5 million ha from nearly 44 to 42 million ha, with an annual net loss of 0.30% between 2002 and 2014.²⁸ Intact forest cover is declining more rapidly than overall forest cover, and makes up only about 16 million ha, equivalent to 24% of the land area and 38% of Burma's forest cover. More than 2 million ha of forest loss was from intact forest, reducing these valuable ecosystems by 11% between 2000-2015.



The 42,200-acre MSPP oil palm plantation in Tenasserim

Photo Thet Oo Maung

The main drivers of deforestation can be attributed to:

- Forest degradation resulting from commercial logging. Forests have been systematically overharvested, ignoring sustainable limits set by the Forest Department, leaving virtually no commercial timber left.
- Plantation crops such as oil palm, rubber, and sugar cane (0.54 million ha)
- Other non-forest land uses such as mining, clear-cutting for agriculture, and infrastructure (1.00 million ha)
- Local consumption, and fuelwood. Timber is taken from forests for local supply, often the pattern of deforestation is that once forests have been exhausted of valuable timber by commercial loggers, they are left as open access and then further degraded for local supply (0.47 million ha)
- Hydro-electric dams and reservoirs (0.07 million ha)

The dynamics of forest loss are also of great concern. Figure 5 shows that the extent of intact forests in Burma (>80% crown cover) is found almost uniquely in ethnic areas which are concentrated in Burma's hilly and mountainous regions, including Kachin, Sagaing, Tenasserim, Shan, Karen, Mon and Chin (13,741,812 ha; 85% of all intact forest). However, the highest forest loss is also found in these same ethnic areas, especially Tenasserim, Naga Special Autonomous Zone (Upper Sagaing), Kachin, and northern Shan State. As the drivers of deforestation above indicate, forest loss in ethnic areas is primarily due to centralised state activities such as plantations, logging beyond sustainable limits, development projects, and infrastructure.

II. Centralized Governance of Forests

A. Legislation

The Nationalisation Act of 1954 placed all land and resources under government control. Although revoked in 2012, this paramount legal concept still exists today after having been reinstated by the 1974 and 2008 constitutions. Therefore, according to the law, all forested areas are under ownership of the central government.

The powers by which forests are managed are heavily centralised, with all important decision making coming from Naypyidaw, specifically the Ministry of Natural Resources and Environmental Conservation (MONREC). According to the 2008 constitution, power runs from the center down to the State/Region, District, and Township level, and so on. This also applies to forestry, with all power flowing from the ministry to the various departments, most notably the Forestry Department, the main implementing branch of MONREC.

States and regions have their own parliamentary assemblies and ministries, with forestry as part of their portfolio (this is often shared with mining, depending on the state or region). Regional ministers, however, have no formalised power, and no accompanying civil service. The regional minister responsible for forestry is limited to raising issues relating to forestry within the regional parliament and requesting that MONREC provide answers to the regional MPs. However, the state/regional minister has no mandate or power to make decisions over policy, implement activities, or take decisive actions to tackle governance issues such as corruption or illegal logging.²⁹ This configuration is a form of deconcentration where the appropriate central government ministry, in this case MONREC, has administrative responsibility to carry out activities through its offices in the states and regions, but there is no transfer of authority between levels of government.³⁰

Some very limited powers that have been decentralized are mostly negligible. For example according to Schedule Two of the 2008 constitution, States and Regions are able to legislate: “(d) village firewood plantations; and (e) recreational centres, zoological gardens, and botanical gardens.” According to Schedule 5 of the constitution, Regions and States are also able to collect revenue from a limited number of non-timber forest products.

Forest Law and Forest Policy

The 1992 Forest Law and the 1995 Forest Policy are the most current pieces of legislation and policy that govern forests in Burma. Aside from these, different guidelines and documents provide protocols, such as the *National Code of Harvesting* (1995) and *Reduced Impact Logging Guidelines* (1993).

The 1992 *Forest Law* is a thinly modified version of the of the 1902 colonial forestry law. It ostensibly supports sustainable forestry, conservation, and socio-economic benefits to local populations. The 1992 law also includes references to decentralization in forest management and encourages private sector and community participation in forest management. However, the spirit of the law is rarely followed in practice. Forestry remains deeply centralised, and very few tangible benefits flow to local communities.

The 1995 *Forest Policy* facilitates the implementation of the Forest Law. The Forest Policy includes a set target to expand what is called the “Permanent Forest Estate” (an umbrella term

that includes different categories of forest), to 30 percent of the country's total land area. The PFE include strictly protected forest habitats for conservation purposes, as well as managed forests for watershed protection, wildlife habitat, and—most significantly and prominently—for commercial logging.

Regulations on extraction of forest products

Numerous legal provisions regulate the cutting of wood in forest-designated land under the control of MONREC. For example, the extraction of any forest product requires a permit (Articles 17, 18, and 19). Extraction on a commercial scale requires a competitive bidding system unless it is carried out by a state-owned enterprise (SOE) (for example the Myanmar Timber Enterprise (MTE), the logging arm of MONREC), is beneficial to the public, or is granted a waiver by the MONREC minister (Article 18). These very significant clauses give the legal right to MONREC (especially MTE) to issue decrees to declare certain wood “officially legal” to extract. This is done without inter-ministerial oversight, following “rule by law” practices, or holding to the good intentions of the law. Myanmar Timber Enterprise (MTE) as a SOE also has a monopoly on timber extraction. This is a huge gap in the guiding policy and legal framework.

Prior to 2016, MTE subcontracted approximately 75% of its logging operations.³¹ There is no written or codified procedure known for awarding permits to extract timber. Historically, however, an annual meeting would take place where the Minister of MOECF (now MONREC) invited senior staff members, and announced which companies would be awarded permits for extraction through MTE.³² Given the hierarchical nature of the Burmese administration and high levels of deference to superiors within MONREC, and the fact that the minister (until the NLD government of 2016) was former *Tatmadaw*, senior MONREC bureaucrats would acquiesce to the Minister's choice of companies and locations, and permits would be issued.

In 2016 a temporary national logging ban was imposed. Normal logging operations are scheduled to resume at the end of March 2017, apart from the Pegu Yoma, where a decade-long ban is in place. In the future, sub-contracting will no longer take place and MTE will be exclusively allowed to extract timber.

Community Forestry

At present the only form of “decentralised” forest management that enables communities to manage forests is community forestry, which falls under a Forest Department decree, the 1995 Community Forestry Instruction, or CFI. The CFI is not enshrined in law, and therefore does not confer legal protection. It is based on the principle of a 30-year lease granted by MONREC to the community. The lease has no guarantee of renewal, regardless of how much time and effort is invested in the forest during the lease period. State level governments do not have authority to issue community forest leases.

While communities are able to apply for communal forest tenure through the CFI, it is severely limited and predicated on a ‘scientific’ forestry approach. Recipients of the CFI must have a forest management plan and follow silvicultural practices. Failure to do so may result in the lease being revoked. Such rigid parameters do not reflect the way that local people use forests (for example ethnic shifting cultivators who practice upland rotational agriculture). Furthermore, despite no stipulation in the CFI, in practice the FD is very reluctant to allow communities to manage good quality natural forest. Rather, the CFI has been widely criticised as simply a tool to use local people as a “cost effective” method to regenerate heavily degraded forests.

B. Practices

Forests in Burma are still governed today according to the colonial system of forest management that is firmly intact with few alterations. The colonial state drew upon “scientific” forestry practices in order to yield maximum revenue from Burma’s forests. This management system was designed to promote long-term commercial timber production. These practices were enforced through laws that exclude local people, leading to resistance from shifting cultivators and ethnic groups who oppose top-down exclusionary policies.

Unsustainable logging

The Myanmar Selection System (MSS) aims to sustainably manage forests by maintaining a high yield of quality timber and enhancing the natural regeneration of commercially valuable trees. The MSS is based on felling cycles of 30 years, with the division of forest blocks into 30 plots of approximately equal yield capacity. Each year, felling of all trees that have reached an acceptable girth limit is carried out in one plot. The defining feature of MSS is the Annual Allowable Cut (AAC), a sustainable level quota for teak and other hardwoods calculated based on forest inventories.³³

In practice however, the MSS has failed. Contrary to the AAC’s aim, the military junta set quotas for timber extraction based on revenue, not sustainability. Former military staff in MOECF (now MONREC), such as the minister and senior officials in the state-owned Myanmar Timber Enterprise (MTE), ensured that revenue targets were met by sub-contracting approximately 75% of the work to crony companies such as Htoo Company and Asia World.

As timber began to be extracted unsustainably from Burma’s state-managed forests, illegal logging also began to flourish. Today illegal logging is rampant across the country, especially in areas where logs can be smuggled across the border to China. The Sino-Burmese illegal timber trade relies on logs that originate from Burmese controlled state forests and pass through a web of Burmese government and military controlled checkpoints that all exact illicit taxes before passing through government border crossings or into KIO areas (where a single tax is paid), and into China. Once in China, in total disregard of Burma’s sovereign laws, customs officials mark up the timber as legal in China.

Illegal logging is also being used as a pretext in Kachin State for the Burma Army to launch attacks on KIA bases and to assert control over territories. Countless times, especially in Mansi Township, the *Tatmadaw* has cited the need to clear out illegal logging operations (despite all valuable timber having been logged years ago by the Burmese government), as a reason for military intervention. Such military operations have displaced over 10,000 people alone, especially in the Na Lim Pa area of Mansi Township.

Land concessions granted in forested areas

More recently, ministries and line-departments in Naypyidaw have been issuing large-scale land concessions in forested landscapes without following any safeguards or verifying the actual land use on the ground. These concessions are often for monocrop plantations, and are most often in ethnic areas, especially Kachin State, northern Shan State, Mon State, and Tenasserim Region.

Oil palm expansion in particular has grown at an unprecedented rate in Burma over the past 17 years. In 1999, the government initiated a military sponsored industrial oil palm scheme, led by military junta headman and former dictator, Than Shwe. This was touted as part of the

military's national self-sufficiency plan,³⁴ and a broader plan use to agri-business expansion as a cornerstone of economic development. In an effort to raise the tarnished image of Burma, the former Thein Sein government passed various laws to attract foreign investment. This, together with recent bilateral ceasefire agreements, has opened up huge areas of land in ethnic areas that were previously inaccessible due to active conflict to large-scale land concessions, including in forested areas.

Over 40 crony companies currently hold oil palm concessions. Many of these were placed on the US sanctions list for human rights abuses against communities and for aiding and abetting the former military regime. Since the reform process began in 2010, investment in the oil palm sector has come solely from joint ventures with foreign investment.

Tenasserim Region was chosen for oil palm development as its high annual rainfall and an extended monsoon season allow for commercial production. However, the selected areas are also thickly forested and a globally important bio-diversity hotspot and corridor. They contain Southeast Asia's last low-lying sundaic forest, which is a unique ecosystem.

In total 1.8 million acres of oil palm has been allocated to the private sector (35% of all agri-business concession areas nationally). Of the 1.8 million acres, only 535,000 acres, or 29% of the total area granted, will be planted by the end of 2016 due to high investment costs and limited expertise. Yet the forests, despite their high conservation value and rich bio-diversity, continue to be cleared for their lucrative timber.

Table 2: Oil palm concession areas allocated versus actually planted

No	Years	Concession area granted (in acres)	Concession area planted (in acres)	Percentage of concession area planted
1	2011-2012	329,650	95,721	29
2	2012-2013	353,659	96,856	27
3	2013-2014	363,399	102,887	28
4	2014-2015	375,894	106,457	28
5	2015-2016 (Proposed)	408,755	133,382	33
Total		1,831,357	535,303	29

Source: Department of Industrial Crop Development, MOAI. From Tenasserim Hluttaw News, No.8, 2015

Areas selected for concessions are not vacant but populated by communities. The Karen in particular live extensively across Tenasserim Region and have been adversely affected by conflict, with many refugees and IDPs who wish to return to their former land now finding that their land is in an oil palm concession. Upon return, communities are liable to be prosecuted for trespassing on their former village land. The Burmese companies Asia World and Shwe Pandomar are currently suing Karen IDPs from three villages that are trying to return to their customary lands.³⁵ These concessions, therefore, have caused not only the destruction of high conservation value forests as land is cleared, but also dispossession of local communities.

The Myanmar Stark Privilege Plantation (MSPP), a joint project with a 36.75 million USD oil

palm plantation in Myeik District, Tenasserim Region, is an example of how concessions cause dispossession. The concession, which totals 42,200 acres, includes four villages with a combined population of 1,504 people.³⁶ Over 90% of the concession area (38,900 acres) is village community land. The MSPP concession area has also been designated as a national park, although the government is currently trying to amend this. This demonstrates how various central government ministries operate in isolation without coordination and little concern for local realities.³⁷

“Before, during the time of fighting, we could flee to the jungle, but we always had our land to return to. Now that there is peace, they have taken our land and we have nothing left.”

- villager from MSPP palm oil concession area

Central government protected areas disregard human rights

In addition to expanding Permanent Forest Estate coverage, the central government has also set a target of 10 percent of the country’s total territory for its Protected Area System (PAS).³⁸ There are currently 34 protected areas under this system, including wildlife sanctuaries, bird sanctuaries, and national parks, amounting to 6.7 percent of the country’s total land area. These do not adequately cover or represent the country’s different biodiversity hotspots.³⁹ The Nature and Wildlife Conservation Division under the Forest Department manages 20 of the 34 protected areas. In addition, several new terrestrial parks in Kachin and Kayah states and Tenasserim Region are proposed that appear to have received provisional approval from MONREC.

International conservation organisations exert significant influence in decisions around whether, and which, areas will be designated as “protected,” as well as how those areas will be managed. Yet state, regional, and local governments have no influence in this arena, and local populations are rarely informed, let alone provided the opportunity to grant consent for such areas to be designated.

In presenting her annual report to the U.N. General Assembly in October 2016, the U.N Special Rapporteur on the Rights of Indigenous Peoples declared that:

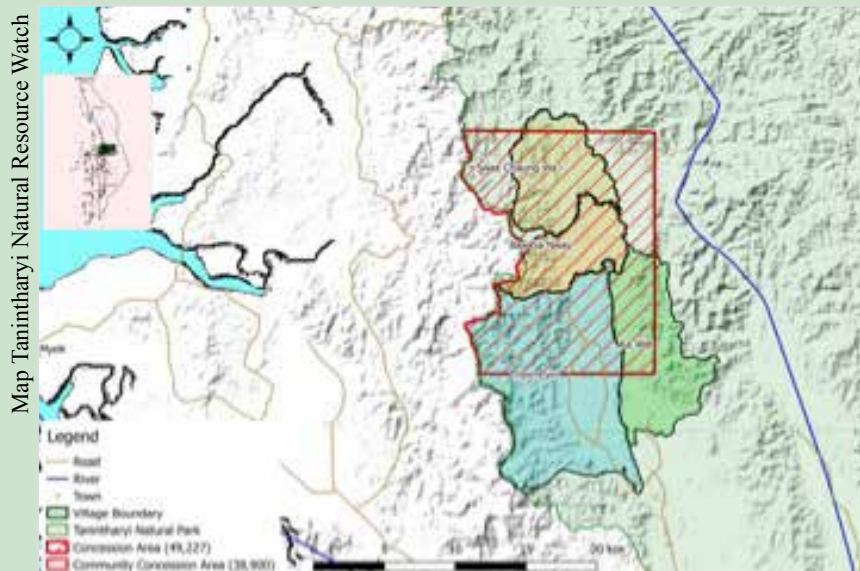


Figure 6:
Community land and the MSPP concession

The central government grants land concessions to companies in areas already populated by communities. In this case in Tenasserim Region, over 90% of the oil palm plantation concession area is on community land.

“The establishment of national parks and conservation areas has resulted in serious and systemic violations of indigenous peoples’ rights through expropriation of their traditional lands and territories, forced displacement and killings of their community members, non-recognition of their authorities, denial of access to livelihood activities and spiritual sites and subsequent loss of their culture.”⁴⁰

A similar trend has also taken place in Burma: the creation of conservation areas has violated the rights of ethnic people during both the military junta era and the reform period. The first wave of conservation activities was led by the Wildlife Conservation Society (WCS). The American organisation, despite US sanctions, worked with General Khin Nyunt, Burma’s head of military intelligence, to establish the largest tiger reserve in the world in 2001, in Kachin State’s Hugawng valley. The reserve was established without taking into account the customary resource rights of the Kachin and Naga communities living in the environs of the valley (see page 25).

Despite the failure of conservation efforts in the Hugawng tiger reserve (BirdLife International called it a “paper park”), foreign aid, including for wildlife conservation, is flowing in to Burma, and so-called protected areas are once more depriving ethnic peoples of their customary resource rights. In 2015, WCS initiated a project with the central government to carry out an extension of the reserve that would designate 51 villages, or 80 percent of the population in Namyun Township in the Naga Autonomous Zone, as a protected area.⁴¹

International conservation organisations have, among other places, begun to operate in Tenasserim Division, where a recent ceasefire with the KNU has rendered large ethnic Karen areas accessible to the Burmese government for the first time in decades. In this fractious landscape, conservation organisations such as Flora and Fauna International (FFI) and WCS are supporting the government to create protected areas without FPIC from communities, and to enter KNU areas, which is leading to more conflict.

Photo Thet Oo Maung



Land grabbing for oil palm plantations is rising across the country due to land concessions granted by the central government. These residents protest against the MSCP plantation in Tenasserim Division.

IV. Existing local forest governance structures

Forest Policy

Over twenty ethnic de-facto governments control territory primarily, but not exclusively, in forested upland areas in Burma. Many of them play a role in managing forests; some of the larger groups, such as the KIO and KNU, have dedicated forest departments with formalised forest policies.

The KNU recently updated its forest policy to reflect the changing political situation and new threats that have emerged since signing the ceasefire, including “land grabbing” and “green grabbing,” taking lands to establish protected areas. The policy is set out over six chapters and is broad in scope, covering all major areas of forest management. It begins by setting out objectives and a set of principles that include non-discrimination, human dignity and rights, transparency, rule of law, gender equality, consultation, and participation. It then sets out a range of mecha-

Case study of community forestry in KIO-controlled area of Kachin State

The central government’s community forestry instruction has failed to reflect and protect the way that many ethnic communities use and access forests through traditional customary arrangements. Yet community forestry is being practised in ethnic areas. In Bum Kahtawng village in the Sin Lung mountains of eastern Kachin State. This area falls under KIO’s Eastern Region and is administered by the KIO. (According to Union government classification, it is within Moe Mawk Township). Local management practices are officially recognised by the KIO as community forestry. Bum Kahtawng village was established 1,700 years ago by four families. The first Duwa (village chief) to preside over the area was Nh *Kum* Du Wa Zau.

In Kachin, many communities have a symbiotic relationship with the forest, sustainably using wood and non-timber forest products and practicing shifting cultivation, which encourages rich biodiversity. Every Kachin village has communal forests called “Mare Nam *Kawn*.” Historically, the Duwa, along with village elders, managed the forests sustainably and equitably so that everybody was able to reap not only materials from the forest, including for shelter, fuel, and health, but also livelihood, cultural, and spiritual benefits. Through the Kachin Duwa governance system, customary management enforced rules and regulations that allowed forest products to be taken, but ensured that resources were not depleted, watersheds were left untouched, and the forest was healthy for future generations.

Since 1962, however, communities have been disrupted by armed conflict. Between 1980 and 1990, approximately 70 families lived in Bum Kahtawng. The surrounding area became a conflict zone and experienced severe fighting due to the civil war. When the *Tatmadaw* burned down villages, the forest was the only safe place and provided refuge to hide and subsist. After an outbreak of fighting concluded, those in hiding would return and rebuild their village. The 1994 ceasefire between the Burma Army and the KIO created new threats to local communities as eastern Kachin opened up for infrastructure and “development” projects. Eastern Kachin State was particularly targeted for logging and agri-business concessions. Rampant logging and lemongrass cultivation led to vast areas being deforested. Businessmen were able to acquire many logging concessions and unregulated hunting led to the decimation of wildlife. Extensive logging and hunting took place in Bum Kahtawng village’s customary forests, so that few wild animals remained. As a consequence, many livelihoods were severely impacted.

nisms to secure land for ethnic people in KNU-controlled areas. These mechanisms grant local people the right to manage their customary forests and natural resources as an ancestral domain in accordance with traditional governance systems (including rights to practice swidden agriculture on forested landscapes). A community-forestry mechanism places communal management under the authority of the village community.

Specific provisions in the policy recognise, prioritise, and promote forest-based rights of restitution for refugees and displaced persons who have been forced from their lands due to civil war. The policy also contains specific articles that promote conflict sensitive approaches.

The policy includes the creation of wildlife sanctuaries and buffer zones for conservation activities to protect flora and fauna, providing the forest does not form part of communities' ancestral domains. The policy also outlines provisions for a protective landscape management approach that is based on co-management in order to integrate multiple land uses and management systems.

Responding to the loss of forests and wildlife and its impacts on livelihoods, the villagers and elders reorganized and started to protect their forests that had formerly provided so much. The villagers came together and made their own rules and regulations for forest use, managing things like the harvesting of non-timber forest products, cutting trees for housing, and times for hunting, and designating areas and practices to allow the forest to regenerate.

The community was able to manage the forests successfully, but ran into difficulty when an outside investor with close links to authorities tried to grab the land. Residents then realised that the only way to protect their land was to register it as a “Mare Nam Kawn” or community forest.

Since 2005, Bum Kahtawng village has worked in conjunction with a local NGO, carrying on their work by founding a CF committee, women's groups, a user group, and a patrolling group. They have mapped the village boundary and established the village area, protected areas, and watershed protection areas. There is a rotational harvesting calendar and checks and balances to ensure any products that are extracted are done so sustainably. The CF has been certified by the KIO, which offers communal tenure protection. Having protected the forest over a few years, wildlife has proliferated, and gibbon, mountain deer, and bears have returned. The forest has become dense and plentiful and there is good fresh water for the village and for paddy fields.

Photo Bridge



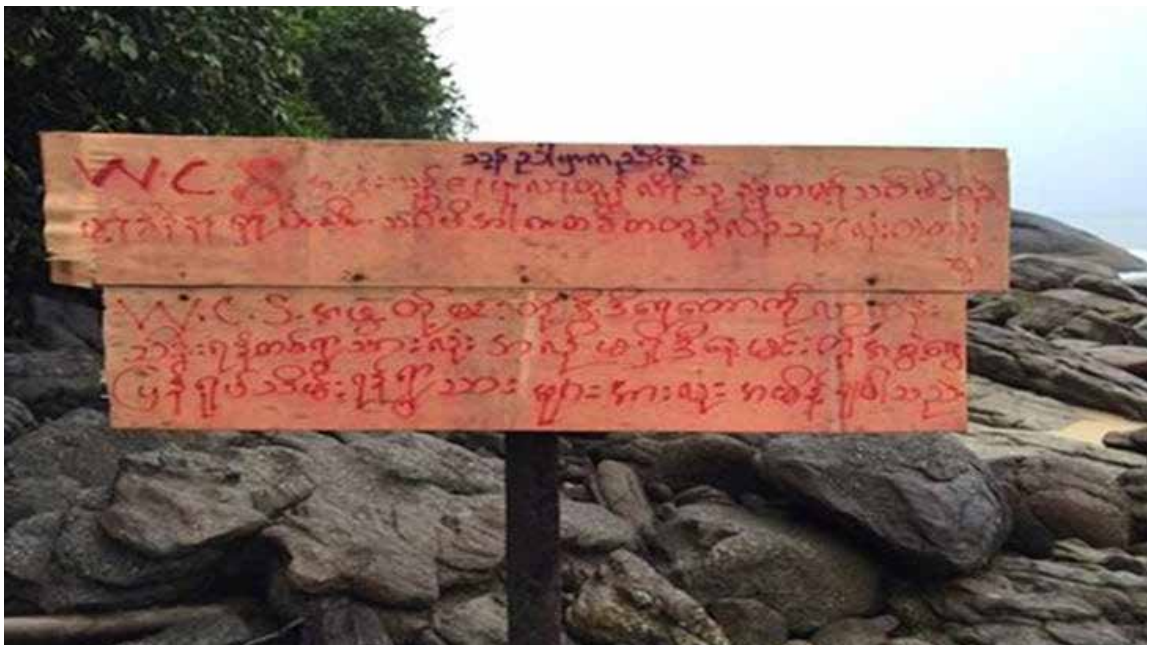
Conducting research to establish community forest in KIO-controlled area

V. Conclusion

Due to decades of conflict, communities have lived in fear and have been unable to register their land. Furthermore, there is no current legislation that recognises customary tenure or communal tenure to forests. As a result, communities in ethnic areas face different forms of structural violence and dispossession of their lands and forests. This is compounded in mixed-administration areas, such as the MSPP concession area in Tenasserim, due to militarisation and increased security threats. Multiple taxation regimes and claims to the land enable increased opportunities for rent-seeking behaviour from both the central government and EAOs at the margins of their respective territorial control. As the Hugawng tiger reserve case shows, action by the central government to delineate areas as “conservation areas” results in abuse of local populations.

As primary providers of water, food, and energy at the household and community level, women in rural settings are highly dependent on natural resources, especially those in forests, for livelihoods and to carry out their roles as caregivers. They therefore face particular hardship when their access to forests and natural materials is cut off.

The way forests are governed today has changed little in the 150 years since colonialism, with all management practices remaining deeply centralised. This governance system has prioritised timber extraction, especially for export. Burma is at an important juncture in its history: peace negotiations and national-level reform processes are underway and there is a newly democratically elected government. It is time not only to critically reflect on forest governance and management failures, but also to conceive a future under a democratic federal union where powers are decentralised and laws and policies protect smallholder and communal tenure in forested landscapes and ensure equitable access to and use of forest resources.



Public message to the Wildlife Conservation Society in Thayet Chaung township, Tenasserim
In Karen: "WCS, most of the villagers totally do not accept your project"
In Burmese: "WCS we don't accept you to come and conserve our mangrove.
We would like you to withdraw your group."



Hugawng Valley: Centralised management by government, INGO, and corporation

In 2006, the central government granted a land concession of over 200,000 acres within the “protected area” of what was supposed to be the world’s largest tiger reserve in Kachin State’s Hugawng Valley. The concession was granted to Yuzana company, one of Burma’s bigger conglomerates with ties to the military junta.

Dense forests and forest corridors--habitat for tigers and other wild animals--as well as long-established local orchards and rice fields were cleared and destroyed to make way for massive sugarcane and cassava monocrop plantations within the boundaries of the reserve. Migrant workers were recruited to move in to the reserve, and a large factory for processing cash crops was built. Having lost their farms, some local residents turned to small-scale mining.

Local tiger trackers have not seen any evidence of tigers in years and have noted drastic declines in wildlife since 2000.⁴² The Wildlife Conservation Society, the American NGO that set up the park with the central government, has remained silent on the destruction in the reserve.



Yuzana plantation and factory project area in Hugawng Tiger Reserve



Photo: MRJ

Community forest in Warazup village in the reserve destroyed by Yuzana



Photo KESAN

2.2 LAND RESOURCES

I. Why land is important

Burma has many diverse land types and a huge amount of natural biodiversity, making land a key source of livelihoods for a large proportion of the nation's population. With shifts in government policy and increased exploitation of natural resources, issues of ownership and governance over land are playing an increasingly important role for many of the people living in Burma.

The central use for land as a physical resource in Burma is agriculture. Burma's agriculture sector, once so strong that it earned the nation the title of "rice bowl of Asia," continues to play a leading role in the country's economy, representing up to 40% of the national Gross Domestic Product (GDP). Various sources estimate that up to 66% of the population is currently engaged in farming and other agricultural activities; this number is likely higher in the ethnic states. The majority of these farmers are smallholders, over half of whom live at subsistence level, and who rely heavily on ownership and use of arable land to survive.⁴³ A report by the FAO suggests that these numbers may only be increasing: the authors state that, despite growth in the nation's urban centres, the amount of people dependent on agriculture for subsistence has almost doubled over the past two decades, further accentuating the importance of ownership of and access to land for the nation's population.⁴⁴

Land is not just a physical resource in Burma, but also a political one. The nation has spent the past half-century wrapped in some of the longest ongoing civil wars in history. While the conflicts are steeped in calls for equality and civil rights, the majority of them are framed in terms of territory, with various Ethnic Armed Groups (EAGs) and their associated de-facto governments fighting for the right to govern the populace, resources, and land of their homelands either under a federal system.

For Burma's population of community and customary land users, land can also be understood as more than a commodity or livelihood. Customary groups' ancestral lands are the foundation on which their communities and institutions are built, and the means by which they practice and preserve their belief systems. The lands are home to ancestors and deities, and many customary practices are so inextricably intertwined with the land that they cannot be performed without it. Consequently, displacement from or damage to their ancestral lands can have a significant impact on these communities. The right for them to govern these lands under their customary institutions is vital.

Burma has seen a steady move towards the idea of land as an investment opportunity. Small-scale investment in land-based enterprises has gone on for centuries. However, a directive by the Burma Army that cut food supplies to foot soldiers and encouraged the *Tatmadaw* to be self-sufficient, coupled with initiatives to use land to support the ailing economy, has spurred a rash of land grabs since the mid 1990s.

The idea of land as an investment opportunity has become stronger, with a 1) a series of laws introduced since 2012 that facilitate large land concessions for agribusiness, industrial and special economic zones, energy projects, logging, and other activities, and 2) a series of cease-fires during that time have opened up access for the central government to areas in the ethnic states. The country has seen a push for more foreign investment and the relaxing of economic sanctions has encouraged an increasing inflow of Foreign Direct Investment (FDI) in industry, infrastructure, and large-scale agriculture projects.

II. Centralized Governance of Land

A. Legislation

Under article 37(a) of the military-penned 2008 constitution, all land in Burma is ultimately owned by the state. It is possible to lease land from the Union Government in varying capacities, for lengths of time ranging from a few decades to a few generations, but under current legislation, no one other than the state can truly own land in Burma. This remains the key underpinning of laws passed since 2008, which operate under the assumption that the Union Government is the main locus of and highest authority in the governance of land.

There are currently 73 different laws relating to the ownership, management, and control of land, many of which were introduced under radically different regimes with different interests at hand, and which do not synthesise well with each other.⁴⁵

Of these 73 pieces of legislation, six play a significant role in contemporary land ownership, governance, and confiscation. These are: the Constitution of the Republic of the Union of Myanmar (2008), the Farmland Law (2012), the Vacant, Fallow and Virgin Lands Management Law (2012), the Special Economic Zones Law (2014), the Myanmar Investment Law (2016), and the Land Acquisition Act (1894). The recent National Land Use Policy (2016) may also have notable impact on the future direction of land governance. A duet of laws released in 2012, the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law (VFV law), are generally seen as the cornerstone of the government's efforts to commoditise land.

The Farmland Law

Under the Farmland Law, people recognised by the government as farmers or engaged in agricultural activities are granted the right to apply for a Land Use Certificate (LUC), known as Form 7, at their local Farmland Administrative Body (FAB). The LUC confers the right to cultivate on, mortgage, lease, sell, exchange, and gift a specified area of land in line with a pre-agreed set of conditions specified by the Township FAB.⁴⁶ Should the holder of a LUC breach any of these conditions, which can include constructing on the land without permits, using the land for something other than cultivation, changing the type of crop cultivated on the land without permit, or leaving land fallow “without sufficient reason”⁴⁷ among others, then the Township FAB can revoke the LUC and eject the cultivator from the land.⁴⁸ Although LUCs confer a degree of control over a plot or area of land to the holder, they should not be understood as freehold titles, but rather as a limited-term lease subject to terms and conditions dictated by the Central Government. LUCs can be revoked both by breaching these often rigid terms and conditions, or in cases where the Central Government seeks to confiscate land for purposes of national development.

FABs, created alongside the Farmland Law especially for the purpose of land registration, are deconcentrated agents of the central government and operate at the central, district, ward, and village tract levels. The FABs are chaired by the General Administration Department (GAD), which is under the military appointed Ministry of Home Affairs. They work in concert with the Settlement and Land Records Department (SLRD) to consider applications and either grant or refuse LUCs. The FAB is also responsible for handling all disputes relating to land titling. This creates something of a closed circle when it comes to farmland grants, confiscations, regulation, and disputes, as all four are handled by the same body, leaving little room for oversight or transparency, and weakening any potential appeal process. Women are rarely represented on Farmland Administrative Bodies.

The Vacant, Fallow and Virgin Lands Management Law (VFV law)

The VFV law is primarily aimed at identifying large tracts of “wasteland” and making them available for domestic and foreign large-scale investment projects. Under the VFV law, any land that is not registered under the Farmland Law can be deemed “vacant.” Tracts of up to 50,000 acres of vacant land may be leased for up to 30 years. While there are some limitations on how

Photos KESAN



Farmers lose their lands to infrastructure projects determined by the central government. The Asia Highway road link will be expanded by 35 meters on each side into existing farmland.

leased land is used, including requirements that projects be initiated within four years of the concession, in practice these regulations and their respective punishments are rarely followed.

The Central Management Committee of Vacant, Fallow and Virgin Lands (CCVFFV) is responsible for the identification and allocation of VFV land and is centrally responsible for the arbitration of any disputes arising from these processes. The eighteen-member CCVFFV is made up of representatives from nine of Burma's central government ministries, the majority from sub-departments of the Ministry of Agriculture, Livestock and Irrigation (MoALI).⁴⁹ Unlike the FAB, all matters of VFV land grants, confiscation, regulation, and disputes are handled by a central committee, with no deconcentration of powers to either local level representatives or community members. The CCVFFV similarly lacks transparency and oversight, though, as it acts as the ultimate authority in cases of VFV land grants, confiscations, regulation, and disputes.

The FABs, SLRD, and CCVFFV are all under the administration of MoALI, the ministry most centrally connected to the governance of land. Neither the VFV law nor the Farmland Law mention or recognise the rights of customary land users. Those seeking to pursue customary practices currently have zero tenure rights over their ancestral land.

Special Economic Zones Law (SEZ law)

In a similar vein, the Special Economic Zones Law (SEZ law) governs the procedures behind the allocation of land for SEZs. SEZ areas are earmarked for domestic and foreign investment and the promotion of international trade. Investors in such zones benefit from wide-ranging tax exemptions, exemptions from customs duties, and protection from nationalisation. Under the SEZ law, the onus is on the developers, thus far usually a combination of the central (Union) government and foreign businesses and donor organisations, to pursue the proscribed processes of consultation and compensation. The creation and maintenance of SEZs come under the mandate of the Union Government, with tasks carried out by a respective "central body," "central working group," and a series of management committees specific to each SEZ. Developers may apply to the relevant management committees for a land lease of up to 75 years for the construction of an SEZ. This land can then be subleased to investors with the consent of the Union Government. The confiscation of land for SEZs is done under the mandate of the Ministry of Home Affairs, a *Tatmadaw* controlled ministry, thus granting the military sweeping powers to legally grab land.



Land grabbing is rife across the country. Here, a villager argues with a land grabber in Pa-an District, Karen State.

Myanmar Investment Law (MIL)

Once the Myanmar Investment Commission (MIC) approves an investment permit or endorsement, the investor is accorded the right to a long-term lease for lands or buildings owned or managed by the Central Government, or by private citizens.⁵⁰ Investors can hold an initial land lease of up to 50 years, with two possible extensions of ten years each at the MIC's discretion.⁵¹ Longer leases can be granted by the MIC, with approval from the *Pyidaungsu Hluttaw*, to investors whose projects operate in the nation's "least developed and remote regions."⁵² Extended tax exemptions are also offered to some investors, the MIC granting income tax exemptions up to 7 years for those investing in areas the MIC classes "least-developed."⁵³ Both of these aspects pose a significant threat to landholders in Burma's ethnic borderlands, where tenure security is weakest. Provisions under sections 65(a) and 41(c) require investors to "respect and comply with the customs, traditions and culture of the national races in the Union"⁵⁴ and prohibit investment projects which "may affect the traditional culture and customs of the racial groups within the Union."⁵⁵ Given the NLD's commitment in their manifesto to "eradicate shifting cultivation practices,"⁵⁶ however, this does not necessarily guarantee protection for communities pursuing customary resource governance. Land confiscation, compensation, and processes of appeal are to be pursued in line with the 1894 Land Acquisition Act.

The Land Acquisition Act (LAA)

Many land laws have in part been influenced or facilitated by the 1894 Land Acquisition Act (LAA), introduced under the British Colonial Government. The LAA allows the Union Government and any related departments, including the military, to confiscate land for "public purposes."⁵⁷ It also grants a broad discretion for the government to confiscate land for the benefit of companies for construction 'that is likely to prove useful to the public. The LAA proscribes that once land is approved for confiscation, the impacted community must be informed, and are allowed 15 days to make any objections to the confiscation or claims to compensation for the confiscated land. The Act details requirements for confiscators to perform initial investigations and notify the impacted individuals or community before their land is confiscated, providing communities with the chance to object to or petition the confiscation. While these protection measures hold the potential to reduce land-related human rights abuses in Burma, they have rarely been followed in practice, or have been implemented improperly at the cost of the impacted individuals or communities.⁵⁸

National Land Use Policy (NLUP)

The recently released National Land Use Policy (NLUP) offers some hope for the future of democratically decentralised land governance. It offers stronger protections to the tenure security of smallholders, lays out the foundations for the recognition and registration of customary land tenure systems, introduces Free Prior and Informed Consent principles to land acquisitions, and calls for clearer approaches to compensation. The policy also seeks to harmonise the excessively complex land legislation system currently in place in pursuit of a more equitable land governance system.

The policy also creates space for a democratic decentralisation of the law design and policy implementation processes, allowing for some state and regional representation on a National Land Use Council (NLUC). The NLUC is accorded the power to create work committees to support the law formation process, and mandated to create State and Region level Land Use Committees responsible for ensuring that the NLUP is implemented correctly. These Land Use Committees must comprise of the Chief Minister from the State or Region, ministers from relevant State and Region government departments, farmer representatives, ethnic representatives, relevant experts,

and women and elders. It is further required to strengthen multilevel participation through the creation of a “technical advisory body that includes representatives from different stakeholders groups, such as farmer associations, ethnic nationalities, civil society, academia, private sector and others.” While this does not guarantee greater decentralisation of land management in the produced laws, it creates room for a more deliberative democratic approach in law formation.

Positive language about women’s rights and gender equality found in the English version of the NLUP is absent from the Myanmar language version.

Analysis

The current legislative framework of the Union Government leaves little room for decentralisation of land governance. All policy decisions regarding the governance of land remain securely in the hands of the Union Government, as does the taxation and budgetary process. While there is a notable absence of fiscal and political decentralisation under current legislation, there is a minor degree of administrative decentralisation. The Farmland Law allows FABs to manage LUC requests from farmers, and land disputes are initially administrated by village tract and township level FABs. The SEZ law also places some administrative duties in the hands of various management committees, which include a representative from State or Region governments dependent on where the SEZ is located.⁵⁹ These FABs and management committees are not truly devolved entities, though, and must receive approval from the bodies above them before proceeding with any action. This limited administrative decentralisation, then, is at best an exercise in deconcentration, with all real power over land governance remaining firmly at the Central Government level.

B. Practices

Land registration process leaves many groups vulnerable

The Farmland Law ostensibly offers ethnic communities the chance to register their individual land plots, but many are not afforded this opportunity. The registration process is both complex and costly, and a certain amount of documentation is required for applicants to be granted a LUC. As many ethnic peoples do not possess Union Government endorsed identity documents they are shut out from this process.⁶⁰ This renders their land ‘vacant’ and thus open to confiscation and/or repurposing under the LAA and the VFV Law.

For Burma’s customary communities this threat is even larger, as none of the Union Government’s contemporary legislation recognises customary land use and there is no legal framework for the registration of this land. Individual plots may still be registered under the FL, but communal resources and sacred areas not used for what the Union Government recognises as agriculture, and those areas under swidden agriculture, are significantly vulnerable to being deemed VFV land. The impacts of these laws have already been seen in Burma’s ceasefire zones, with reported significant increases in Union Government sponsored land concessions in these areas after the signing of various ‘bilateral’ agreements and the “Nationwide Ceasefire Agreement.”⁶¹

As the central government continues to see itself as the locus of all land governance, it does not acknowledge land policies or land titles from ethnic de-facto governments (see below). This can lead to multiple titles being granted to different individuals for the same plot of land, and potentially leading to conflict over land claims.

Women's rights to lands are particularly insecure

Article 6 of the Farmland Law implies that LUC certificates are to be issued only to one name; the law has no provision relating to the presumption of joint rights to land between spouses. Indeed, the application form itself is designed for a single name only. By specifically stating that the certificate may be granted to the “head of a household,” the law creates a presumption in favour of registering household land in the name of the male spouse.⁶²

The Farmland Law does not adequately provide for protection of women's land rights in the registration process. Spousal signatures are not required in land transaction documents such as sale contracts, and there is no formal process to record a spouse's consent to a transaction concerning marital property. Without more specific protections for female spouses, a married woman's property rights are at serious risk when registering household land in her husband's name and when the land is sold.

Although married couples are viewed as co-owners of property under various marriage Acts, without any formal process to require the active consent of both spouses to the management of co-owned property, any contestation requires recourse in the courts in order to enforce the rights of one (most often the female) spouse. In addition, there is no automatic presumption of equal division of property following the dissolution of a marriage. As women's land rights are largely unregistered and unprotected, while men's rights are recorded, women have to undergo sometimes lengthy procedures to ensure their rights are legally secure following divorce, separation, and even widowhood.

Various customary norms require spouses to discuss important decisions regarding land. However, in the context of a newly stimulated land market in which the rising price of land introduces new and perhaps divergent perspectives on the value of land, customary norms may not be sufficient to protect women's equal rights to make decisions concerning the ownership and management of lands. Any devolved governance of land must address these threats to women's land rights, as the current land policy of the Karen National Union does (see Existing Local Governance Structures section).

This is especially important because securing women's access to natural resources, particularly

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Central government land registration procedures make women's rights to land particularly insecure. Women's access to land has been shown to strengthen empowerment and improve children's welfare.

land, is imperative in development processes. Improving rural women's access to land has been found to be a direct means of strengthening their economic, social, and political empowerment. Furthermore, it has been found that the overall welfare of children is most likely to be fostered and improved when women have control over productive assets.⁶³

Flawed grievance procedures

As discussed earlier, any disputes or complaints regarding land titles or allocations made under the Farmland Law and VFW law are handled by the FABs and CCVFW respectively. These courts are only granted the mandate to investigate complaints made about land acquisitions made in contravention of laws in force at the time of the acquisition.⁶⁴ They hold no mandate to investigate or make judgment on land acquisitions made previous to 2012. The majority of such laws offered smallholders only very weak rights over their land. This issue is compounded by the fact that the majority of 'contemporary' land confiscations are often far older than they seem. Land that appears to have been confiscated for a recent large agricultural project may have been confiscated by the Union Government or *Tatmadaw* decades previous, thus denying any effective legal recourse to people seeking to lodge complaints of insufficient compensation or unwilling displacement arising from said projects.

Under the NLD, a new Central Reinvestigation Committee for Confiscated Farmlands and Other Lands has been formed. The Committee and its various sub-committees are mandated to investigate the nation's ongoing land acquisition dispute cases and to resolve them in line with a set of guidelines that outline policies to follow when handling disputes over land and procedures for returning lands to claimants.⁶⁵

These guidelines offer a new hope for land restitution for thousands of Burma's farming families, creating an executive channel separate from the CCVFW and Farmland Management Central Committee that holds the power both to investigate and resolve disputes, unlike the former Parliamentary Land Investigation Commission. The guidelines' recognition that some claimants may no longer have ownership documents for their confiscated land is also key, providing a vital fix for one of the largest issues in smallholder land confiscation cases. Alongside this, the guidelines also engender greater transparency in the land dispute and restitution process by requiring the Committee and its sub-committees to release public monthly reports on their activities.⁶⁶



Upland fields under shifting cultivation, customary lands, or any land not currently being cultivated may be identified as "wasteland" under the central government's VFW Law, and seized for investment projects.

Although there are many positives to the new Committee, some key weaknesses remain. The guidelines only allow the Committee to return land that was confiscated in contravention of laws in force at the time of confiscation. The majority of ongoing land cases involve plots confiscated under the 1894 LAA or the now defunct 1953 Land Nationalisation Act, both of which accord sweeping powers to the government and military for land confiscation and very little tenure security to the original owners. This will likely lead to most cases ending in compensation re-assessments rather than land restitution which, due to fluctuations in land value between time of confiscation and the handling of the dispute, may provide its own set of challenges for claimants.

Another issue arising from this approach is the piecemeal way that land will be returned to communities. Some claimants in a village may receive their land back, or part of their land, while others will need to negotiate for adequate compensation. This could create divisions in communities, or engender further protest. A further weakness is the lack of discussion of land confiscated in a claimant's absence. IDPs and refugees may have lost access to or ownership of their land when fleeing from conflict, and lost all of their original ownership documents during flight. In cases where whole villages were displaced, it may prove challenging to locate a 'respected community elder' to vouch for the claimant, leaving these claimants no path to regaining ownership of, or compensation for, their confiscated lands.

Lack of Restitution

None of the six key laws discussed clearly address issues of restitution for confiscated land, with claimants only able to apply for monetary compensation. There is no effective way for those who have had their land confiscated in a manner considered legal to regain ownership of it. It is true that, under the VFV law and the Myanmar Investment Law, investors must return land that they have been granted if they do not fulfil provisions under the law, either taking too long to begin developing a project or developing land without planning permission (uncultivated concession areas such as those in Table 2 would fall in this category).⁶⁷ The laws do not specify, though, that the land must be returned to its original owners. As land for these projects is confiscated by the state under the LAA, it is returned to the state, and in many cases the Union Government then grants it to another company for the same or similar projects.⁶⁸ Those whose land has been declared VFV may petition for it to be repurposed as farmland and then apply for a LUC, or to receive a small grant of it as VFV land, but even should these processes succeed the applicant is unlikely to receive much of their original land back.⁶⁹

Photo KRW



None of Burma's land laws address restitution for confiscated lands. This particularly impacts refugees and IDPs like these, who fled fighting near the Hatgyi dam site. They may have no land to go back to.

Taxation

The General Administration Department (GAD) levies a nominal annual land tax, or “land revenue,” on individual land plots. The amount of tax levied is dependent on the type of farmland and the size of landholdings. The rate of tax charged is based on the Upper Burma Land Revenue Manual of 1939, and the Lower Burma Land Revenue Manual, which was last updated in June 1945.

In the case of VFV land, a tax-exemption can be granted to investors by the CCVFFV for a length of time that they deem appropriate.⁷⁰ When this period of tax exemption comes to an end, investors must pay an amount of tax to the MoALI in accordance with the type and scale of project that the VFV concession was granted for. Similar to the VFV law, under the SEZ Law developers and investors are granted an exemption on land taxation. This tax exemption can be granted for a period that the Union Government deems fit.

III. Community Impacts

Tenure Insecurity

The current framework of laws and practices surrounding the ownership and management of lands coupled with the push for more local and foreign investment offers only weak tenure security to the nation’s populace. Displacement from large-scale land concessions and land confiscations by investors, the military, and the government has been documented nationwide. Many communities report that they received insufficient or no consultation and compensation before their land was confiscated.⁷¹ As a significant proportion of the country is reliant on ownership of and access to land for subsistence, this has had a major impact on livelihoods.

Weak tenure security, disharmonious laws, opaque land courts, toothless investigative committees, and a relentless push to turn Burma’s lands to profit, exacerbated by cronyism and an atmosphere of impunity, have left countless families landless and destitute and with little to no recourse to justice. These effects are amplified among Burma’s ethnic populations. Battles over territory and large-scale land concessions for non-ethnic and foreign-backed companies continue to cause significant loss of lands and displacement. Contemporary land laws and their lack of strong controls, transparency, and decentralisation have played a significant role in this.

Photo KESAN



De-facto governments in ethnic areas are drafting frameworks for governing land. The Karen National Union adopted a Land Policy with extensive community consultations. The policy protects customary tenure systems and women’s land rights.

No land to go back to

The lack of a clear land restitution framework has particular impacts on refugees and Internally Displaced Persons (IDPs). Various sources estimate that there are at least 620,000 IDPs and up to 156,000 refugees in Burma and its bordering nations, the majority displaced over decades of ongoing civil conflicts.⁷² In some cases, land left behind by refugees has been repurposed by the Union Government, or granted to other parties. Since the signing of the ceasefire agreements, other areas have been occupied by the *Tatmadaw* for various purposes, including training camps, and logging and mining concessions. While previous governments have sought to combat this issue by building resettlement ‘model villages’ for refugees and IDPs to return to, these projects have been criticised for providing insufficient and poor quality arable land for household use, and for being too isolated from other towns and villages.⁷³ Refugee returnees, unable both to survive in the model villages and to reclaim their original land, have had to move elsewhere to seek other means of survival, effectively returning to Burma only to become IDPs.⁷⁴

IV. Existing Local Governance Structures

Although the constitution declares that the central government owns all lands in Burma, not all land in the country is under its control. Ethnic Armed Organizations, their associated de-facto governments, and militias maintain control over large territories in border areas. In these areas, land is owned, managed, and controlled under alternate tenure systems than those proscribed in the Union Government’s legislative framework, and varies drastically across the country. The central government is not aware of, let alone able to document and protect, local land ownership and management practices in areas it has not had access to for decades. Even in areas of mixed control, de-facto governments are performing land governance functions. For example, the Karen National Union and the New Mon State Party have been working to combat tenure insecurity by allocating land titles to communities living within their jurisdiction. However, many households continue to face uncertainty.

Land Legislation

Ethnic de-facto governments and their associated armed groups administer lands in border areas under their control. Despite the challenges of land governance in these areas, most of which are active or recovering conflict zones, a number of de-facto governments, including the KIO, KNPP, and NMSP, are undergoing a process of drafting new frameworks for governing land. Many of these are still in development, with the only completed framework being the Karen National Union Land Policy (2016). The policy allows for individual titling of household plots of land, and currently proscribes methods for the demarcation, ownership, and governance of six types of land.⁷⁵ Individual household plots titled under the KNU policy offer residents tenure security, but do not accord full freehold rights: any moves to transfer or sell land by individuals must first be approved by village land committees.

The Karen Agriculture Department (KAD), Karen Forest Department (KFD), Central Land Committee, and a series of Village Land Committees are responsible for the governance of land at the regional and local level. Under the KNU Land Policy, all land is the property of community and individual landowners; the KNU is responsible for “protecting, promoting, and ensuring the rights of communities.” In accordance with this philosophy, any land required by the KNU for infrastructure or large development projects can only be acquired with the Free, Prior and Informed Consent of the affected parties, and after the completion of an Environmental and Social Impact Assessment.⁷⁶

Several sections of the KNU Land Policy address the protection of women's land rights. Objective 1.2.2 calls for "special attention to the rights of women and youth, and to protect them from any loss of enjoyment of these rights and of benefits of use." According to Basic Principle 2.1.3, it is essential to "(r)ecognize the distinct right of women to claim effective access to land, as peasants, rural labourers, forest dwellers or pastoralists, and as women. As farmworkers, (part-time) farmers, herders, and firewood gatherers, rural poor women have their own connections to land resources, independent of the men within the household, thereby entitling them to their own distinct land use rights." Where the Land Policy affords better protections to women's tenure rights than those in customary laws, it calls for those customary laws to be adapted accordingly, stating that "all parties must clearly and actively strive to cooperate to accommodate such changes in the *Kaw* systems."⁷⁷ (For an explanation of the *Kaw* systems, see following pages).

Unlike land legislation under the Union Government, the KNU Land Policy recognises customary tenure systems, using the term *Kaw* land to refer to customary territories. Under the policy, *Kaw* land is recognised as a distinct land type.⁷⁸ Community claims to *Kaw* territories are recognised if they are deemed socially legitimate, defined by the policy as "land tenure claims that, although they may not be formally recognized by law, are widely accepted according to local norms and values."⁷⁹ Customary authorities are responsible for the governance of *Kaw* and *Ku* land under customary law, and must be granted the right to "full and effective participation"⁸⁰ in any decisions impacting the governance of *Kaw* territories.

For the majority of registered landholders, taxation is calculated on a yearly basis in accordance with the amount of arable land in their possession both under cultivation and left fallow. Farms or agricultural projects larger than 20 acres are annually taxed 7% of their total harvest.⁸¹ There is as yet no clear explanation of how the KNU intends to manage the taxation of *Kaw* land.

The KNU Land Policy provides devolution of powers rather than mere deconcentration. While the majority of policy design and decisions remain centralised, the policy itself was subject to many rounds of extensive community-level consultations before being ratified. KAD and KFD officials at all government levels, elected once every two years, carry out their responsibilities in line with the Land Policy. Under the Policy, customary communities are allowed to manage their lands in line with community-defined and monitored customary regulations, and to modify these regulations as they see fit.

The Policy encourages political decentralisation, devolving power on local issues to local customary leaders and Village Land Committees. The local populace determines the size, structure, and membership of these Committees.⁸² The Committees can demarcate land by size and type, and issue land titles. While the Central Land Committee and KAD are ultimately responsible for the registration and valuation of village lands, all actions that they take regarding this land must be done with the FPIC of the associated communities. As with political devolution, the KNU Land Policy also accords a good degree of administrative devolution to Karen customary communities, although communities are required to register and receive approval of any inheritance, transfer, or sale of land with the KAD, Central Land Committee, and customary authorities.⁸³

The taxation and budgeting systems under the KNU Land Policy and the regulations of the KNU treasury department also support fiscal decentralisation. In most districts, tax is collected at the Village Tract level, and then transferred to the District level via the Township level. Forty percent of this tax is returned to the Township level, which distributes a portion of it to vulnerable families impacted by the civil war. The remaining funding acts as the Township level

KAD budget, and may be spent on administrative tasks and any new development projects. This system is flexible, and can take a slightly different form in areas where there has been recent conflict, or where there is mixed control. Money is stored at the Township and District level, as there is often no stable banking system at the Village Tract Level. If a Village Tract seeks to implement a new development project then they make a funding request to the Township level, which holds the authority to approve or deny the request. The same goes for a Township level project, which can be approved by the District level. This illustrates both a fiscal decentralisation, with a significant portion of tax revenues returning to the Village Tract level where it was collected, and an administrative devolution, with various levels of the KAD able to decide how their budgets are spent without having to put in a request to the highest authorities, but not totally without accountability.⁸⁴

V. Conclusion

With a rise both in the number and scale of land-related protests, and continued conflict around large-scale investment and development projects in the nation's borderlands despite multiple ceasefire agreements, the significant disagreement over how land should be held and governed remains central to securing peace. The nation's recent tentative steps towards democracy, brought about by the election of the National League for Democracy in 2015, may offer hope towards mending this discord and provide more room for real decentralisation in land ownership and governance. While some positive moves have already been made there are still many challenges on the path to equitable and appropriate land ownership and governance in Burma.

Customary practices: Decentralised management of land, forest, and water resources

Customary management of resources exists in many ethnic areas and varies according to cultural practices and beliefs. The term *Kaw* can be understood in multiple ways depending on the context in which it is used. It can be seen as a physical territory, a management and governance system, and a social framework. *Kaw* territories are the ancestral and spiritual domain of a Karen community, comprising all natural resources, including the lands and water. Depending on size (some *Kaws* comprise multiple villages), *Kaw* territories may have a number of different land types for various purposes within their boundaries. These can include *Ku* land (upland rotational agricultural plots), lowland agricultural plots, paddy fields, orchards, community forests, sacred areas, household plots, gardens, public lands (for example roads, schools, clinics, and meeting halls), pasture, and waters (lakes, rivers, ponds).

As well as a physical territory, the *Kaw* can also be understood as a management and governance system: it is a set of institutions and regulations that bind the people within a *Kaw* community together, mediating their relationships and interactions with the land and resources in the *Kaw* territory while promoting social order, support, and justice. This governance system, developed over the centuries by each *Kaw* community and in a state of constant evolution, reflects the community's own holistic vision for economic, psychological, socio-cultural, and spiritual well-being. This vision is inextricably intertwined with the preservation of the *Kaw* territory itself, which is a repository of the community's belief system, deities, and ancestors, and thus its history and identity. The *Kaw*, then, is simultaneously the core reason for the formation and maintenance of an effective governance structure, the foundation on which the *Kaw*'s institutions and governance structure are built, and the means by which the *Kaw* system itself is practiced.

Within this system, a plethora of notable actors contribute to different aspects of governance, including the resolution of disputes, regulation of hunting and gathering to promote conservation, demarcation of land for cultivation and fallow, and support of the community's more vulnerable members. The community elects most of these actors based on the candidate's knowledge and personal merit, and most positions can be held by both men and women. A small number of



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positions are hereditary and can only be held by men, notably the *Kaw Hko*, the *Kaw Hka*, and the *Htee Kho*.

These actors are essential to the smooth operation of the *Kaw* system, but they are not rulers. Rather they are guardians of the *Kaw*, acting as repositories of the community's knowledge and memory and as mediators in the *Kaw*'s everyday functions. Although they are important, it is not these actors alone, but every member of the *Kaw* community, and their relationship with and treatment of the *Kaw*'s lands and resources, that is vital to the *Kaw*'s preservation.

As each inhabitant of the *Kaw* plays an important role in its preservation, one could view the *Kaw* as an ecosystem when trying to clarify its functioning and governance. Every piece of the system is essential, with tasks of equal importance performed both by individual households and the community as a whole, making it impossible for one entity to manage it all with a top-down approach. This creates real space for decentralised governance of land-based resources.

Decentralised communal management

While some household plots are managed individually in the *Kaw*, the majority of land is managed communally. The *Kaw* upland cultivation system is likely the best example of this. Upland areas in the *Kaw* are communally owned, and plots are allocated to families for cultivation on a short-term basis. These plots are demarcated and allocated in line with the regulations and beliefs of the *Kaw* community by the *Kaw Hko* and *Kaw Hka*, who are responsible for the administration of land and the performance of necessary ceremonies before planting, cultivation, and harvest. Once allocated, individual households may then cultivate the plots for a limited number of cycles, the number of which varies from *Kaw* to *Kaw*.

As land can only be used for a limited period and must frequently be passed on to another household, cultivators are encouraged to view the land as communally owned and thus to preserve it for the next users. Communal ownership is also supported by the harvest method, where the whole *Kaw* community works together to harvest each individual household's crop. People are

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A team marks watershed conservation area (left) and three villages come together to conduct *Kaw* boundary demarcation (right) in Karen State



A sense of communal ownership extends to harvest and post harvest activities

able to manage plots individually, but are encouraged by a sense of communal responsibility to interact with others regarding decisions around the use and management of land.

The practice of communal responsibility also extends from one *Kaw* to another. The conservation of fish in certain areas of the *Kaw* is seen as vital to the preservation of the *Kaw* system. Every year the *Htee Kho*, *Kaw Hko*, and *Kaw Hka* must perform the *Lu Htee Hta*, a ceremony performed to the water spirits to ensure the fertility of all cultivable land within the *Kaw*

territory. The more fish are in the *Kaw*, the stronger the water spirits are said to be, and unless the water spirits are sufficiently strong, the ceremony cannot be performed and the community risks a bad harvest. Some of these fish conservation areas stretch over *Kaw* boundaries, and respective *Kaw* “guardians,” often the *Kaw Hko* and/or *Kaw Hka*, encourage communities on both sides of the boundary to work together to preserve fish and prevent unregulated fishing to ensure that the water spirits of both *Kaws* remain strong. These communal management methods encourage conservation.

Under *Kaw* regulations, households in the *Kaw* are predominantly matrilineal and women hold the right to pass land on to their daughters. This land is inalienable from them, and daughters retain full ownership of these lands even after marriage. Regulations require households with access to better land to share some of their harvest with poorer households so that every family has enough food to survive throughout the year.

The *Blaw*, both a physical building acting as a gathering point for the community and the name for the *Kaw* governance structure, allows for the political decentralisation of both inter- and intra- *Kaw* disputes. The *Kaw*’s internal and external boundaries are demarcated and preserved by the *Kaw Kho*, and the *Kaw* Boundary Arbitrator, who is knowledgeable on the history of land ownership within and around the *Kaw* territory. The Boundary Arbitrator is called on in times of dispute to advise on methods of dispute resolution and to clarify the history of a plot of land’s ownership. This information is then shared with the *Kaw* Judges’ Committee, composed of popularly elected representatives from the Elder’s Council and the Youth Organizations, who make the final decision on the ownership of the land and any necessary punishments. Should an individual seek to appeal the decision of the Judges’ Committee, the matter is opened up to the community who discuss it and vote on a solution. If no results are obtained from this process, the spirits of the *Kaw* are called upon in ceremonies to resolve the dispute. The involvement of the community in dispute cases ensures greater transparency, and devolves power to the community.

The Boundary Arbitrator is also responsible for maintaining good relations between the *Kaw* and any surrounding *Kaws*, and leads an annual boundary walk with members of the communities of all involved *Kaws*. On this walk, the communities themselves clarify the boundaries of each

Kaw, and any disputes are identified and addressed. This exercise not only reaffirms the boundaries of the *Kaw*, it also further encourages a feeling of communal ownership of the *Kaw* territory, and allows a political decentralisation at the community level of how the *Kaw* is defined.

In addition to creating room for public participation and discussion in the enforcement of regulations, the *Kaw* structure also encourages political decentralisation in the design of these regulations. Initially crafted by a number of the *Kaw*'s guardians, notably the popularly elected Judges' Committee, the regulations are then presented in the *Blaw* to the community as a whole, who may discuss and amend them to better benefit the community and *Kaw*.

The *Kaw* system thus offers a number of strong examples of decentralised management. Communities are able to participate in the formation and enforcement of regulations in an open court that is coordinated by predominantly elected officials. *Kaw* communities are also granted a strong degree of administrative devolution, with land directly managed by individuals and the community rather than a central body. While the demarcation of *Ku* land is still reasonably centralised, demarcation of the *Kaw*'s borders is far more participatory, and allows *Kaw* community members a say in how their territory is demarcated. The community as a whole also directly manages land-based resources and crop yields. While there is some central control in terms of the required redistribution of some of the *Ku* harvest from richer to more vulnerable households, this is done as an egalitarian measure, rather than for the profit of a central administration.

Some aspects of *Kaw* governance leave room for improvement, including the central method for *Ku* demarcation, and certain hereditary and gender specific positions. These issues are not set in stone, though, as customary practices like the *Kaw* system are adaptive and constantly evolving. Stronger support and recognition would allow the *Kaw* system to decentralise further.

Conclusions

The *Kaw* presents a model of an already functioning, decentralised, pro-poor, and ecologically sustainable natural resource governance system. Recognition and preservation of the *Kaw* system would offer a real and effective opportunity to institute devolved political, administrative, and fiscal decentralisation of land governance in at least a small part of Burma, and may encourage other groups to pursue similar modes of resource governance.

The *Kaw* system is under threat, though. The Union Government's current legal framework does not recognise *Kaw* land as occupied and in use. As nobody residing in *Kaw* territory holds a LUC, *Kaw* territories are constantly in danger of being declared "vacant" and confiscated. The continued presence of the Burma Army in the region and the ever-present threat of violence and forced labour due to ongoing conflict impact the ease with which *Kaw* communities can continue their practices. Displacement due to conflict has also cut a number of *Kaw* community members off from their ancestral territories, rendering it impossible for them to pursue customary practices. While customary practices are mentioned under the current NLUP, it remains to be seen how such practices can survive within a contradicting centralised system of land management.

In territories where the KNU have more secure control, communities have stronger tenure rights because customary practices are recognized and the KNU has issued land titles. Large parts of Karen State, though, remain under mixed control of the KNU and the *Tatmadaw*. As the Union Government does not yet recognise land titles and classifications issued by the KNU, many *Kaw* practitioners remain unprotected from land grabbing.



Photo KESAN

2.3 WATER RESOURCES

I. Why water is important

Water, along with land, is arguably a community's or a country's most important resource. Indeed for many countries, safeguarding water resources is considered a matter of national security. Control of water is also an issue of sovereignty, something already acknowledged in Burma's Rivers Law.⁸⁵ Inland water resources are essential to both agriculture and fisheries, which provide the basis of Burma's sustenance and economy.⁸⁶ They are also important for the country's commercial traffic and trade.

The country's two major river basins, the Salween and the Irrawaddy, account for approximately eighty percent⁸⁷ of Burma's territory, where rain-fed and irrigated agriculture is the main livelihood of more than half of the nation's population. Considered the "life-blood" of Burma, the mainstream of the Irrawaddy River represents the central artery of the country's largest river system; its delta has historically been considered the country's "rice bowl." The Salween River is recognised as Asia's last free-flowing international river.⁸⁸ The diverse ecosystem of the Salween basin supports the livelihoods of millions of people in eastern and southeastern Burma. In an area covering just five townships where the Salween meets the Andaman Sea, the river supplies an invaluable livelihood source and a way of life for over half a million people.⁸⁹

Burma's great rivers support globally significant inland fisheries, ranking fourth in the world in terms of capture,⁹⁰ exceeding that of any other nation in the Greater Mekong Subregion.⁹¹ It is the hydropower potential of Burma's rivers, however, that is currently most often in the headlines. Burma today relies on large hydropower dams for 70% of its energy, producing roughly 3,000 MW from 25 projects.

Both the previous and current governments have promoted a massive expansion of hydropower. According to the Ministry of Electricity and Energy (MoEE),⁹² at least 50 large hydropower projects are either planned or underway on all the country's major river systems, 45 of which are in ethnic areas.⁹³ These large dams are expected to increase the country's installed hydropower capacity by about 1,500%, from roughly 3,000 MW to about 45,000 MW, a large proportion of which will be exported to China and Thailand. This power will contribute to the development of neighboring countries while imposing huge costs on people and the environment in Burma.

II. Centralized water governance

A. Legislation

Management of hydropower projects

The greatest threat to Burma's water resources are the plans progressing for the construction of massive hydropower dams on each of the country's major river systems. The overwhelming majority of these projects target stretches of river in the ethnic states of Kachin, Shan, Karenni, and Karen, particularly the upper stream of the Irrawaddy and Salween River.⁹⁴

According to Schedule Two of the 2008 constitution, States and Regions only have the right to manage "medium and small scale electric power production and distribution...not having any link with the national power grid." It goes on to say that large-scale production and distribution will be managed by the central government. There is no provision for how local and state governments can input into central government management of large-scale hydropower projects.

To date hydropower contracts have been signed without any public input, and details of signed contracts are not disclosed to the public. Both upstream and downstream affected communities often are not even aware of hydropower plans until survey or construction work has already begun. In other words, affected peoples, local and state governments have no ability to determine energy plans and water resource usage for large hydropower development, let alone prevent the negative impacts from such development.

The Ministry of Electric and Energy (MOEE), specifically the Department of Hydropower Planning and the Department of Hydropower Implementation, is responsible for hydropower projects. In addition to the ministry, the Directorate of Investment and Companies Administration (DICA) and Myanmar Investment Commission have oversight over foreign investment projects.

In 2013 a National Water Resources Committee was formed to coordinate the development and enforcement of water governance between "all organs of State, Regions and Union Territories."⁹⁵ The NWRC submitted a national water policy to parliament in 2014 (see below), but was then dissolved in early 2016. It was re-established in late 2016 following a review of its functions.

The 28-member committee consists of representatives from central government ministries, international experts, and, interestingly, the mayors of Yangon, Mandalay, and Naypyidaw.⁹⁶ No members represent the ethnic states. The committee is currently working on a national water law.

Conservation of Water Resources and Rivers Law 2006

Issued in 2006 and signed by former Senior General Than Shwe, the Rivers Law addresses

three key themes: Navigation on rivers, water pollution, and water infrastructure. However, the Rivers Law makes no mention of specific regulations for hydropower development, and no clear procedure to enforce the coordination of river conservation. The River Law emphasises “improving water resources and [the] river system” for socio-economic benefits, but ignores the positive values of rivers for local people and biodiversity, and fails to discuss water usage rights or Integrated Water Resource Management. The emphasis on navigation is clearly tailored to fit the standing mandate of the Ministry of Transportation.

Myanmar National Water Policy 2014

After being prepared by an “Expert Group” from the Netherlands, the National Water Resources Committee (NWRC) submitted the Myanmar National Water Policy (NWP) to the Union government⁹⁷ and it was approved in 2014. The objective of the policy is “to propose a framework for creation of a system of laws and institutions and for a plan of action with a unified national perspective.”⁹⁸ The policy recognises that “issues related to water governance have never been addressed adequately”⁹⁹ and that relevant ministries and departments have thus far failed to properly consider “environmental sustainability and holistic benefits to the people.”¹⁰⁰

The Water Policy highlights the current lack of institutional capacity for well informed, coordinated water management at the Union level, specifying that “[c]ommunity based water management should be institutionalised and strengthened.”¹⁰¹ The recognition of the poor state of water resource management and the need for more community-centred approaches to governance is a positive sign, but it is not clear how this will translate from policy paper to implementation.

National Water Law (forthcoming)

The National Water Law is expected to pass through parliament at the end of 2017. To date, however, CSOs, CBOs, and local communities have not been consulted during the development of the law and the draft has not been publicly disclosed for review. While the National Water Policy states that, “meaningful intensive participation and accountability should guide decision making and regulation of water resources,”¹⁰² this has not been prioritised during the development of the very legislation that will guide the country’s future water management and governance.

B. Practices

Dams used as a weapon in the conflict

For developers and other contracted parties, implementing dam projects is highly reliant on the activities of the Burma Army, and its proxies. The majority of proposed dams and their associated infrastructure are in territories under mixed administration of government forces, *Tat-madaw*-controlled Border Guard Forces (BGF), and Ethnic Armed Organisations (EAOs). This has led to the exacerbation of existing social tensions and the outbreak of armed conflict in and around dam sites and roads used to access the projects. Once built, dam reservoirs will displace tens of thousands in territories under the control of ethnic de-facto governments. For example, the Hatgyi Dam, planned by Chinese and Thai companies primarily for electricity export to Thailand, will flood large areas of territory administered by the Karen National Union in Mudraw District.

Military campaigns to gain territorial control over ethnic areas have been characterised by widespread and systematic human rights violations. Such campaigns have made way for the extraction of natural resources and for hydropower dams. For example between 1996 and 1998, the Burma Army’s brutal “Four Cuts” campaign targeted 12 townships in Shan State, forcibly

displacing 1,500 villages or an estimated 300,000 people.¹⁰³ Prior to 1996, approximately 60,000 people lived in the rural village tracts adjoining the Mongton dam site and its projected flood zone. In *Kunhing Township* just north of the proposed site, 9,551 households from 185 villages were forced out under threat and experience of extreme violence.¹⁰⁴ During this campaign, extrajudicial killings and massacres resulted in the murder of 319 civilians. Between 1996 and 2001 Shan human rights groups documented 300 cases of rape by Burma Army troops within 50 km of the dam site.¹⁰⁵

In 1996, ten battalions were based in the townships adjoining the proposed dam site. By 2006, there were “a total of 30 battalions, not including engineering, medical, and other supply units.”¹⁰⁶ Surveys by Shan Sapawa Environmental Organisation in 2006 found that 35,000 of the original inhabitants had fled to Thailand, and the remaining 25,000 people were scattered between Burma Army relocation sites, had returned to their villages, or were hiding in the jungle.

Although construction work at the dam site made little progress, a ceasefire agreement between Restoration Council of Shan State/Shan State Army (RCSS) and the government in December 2011 coincided with new construction preparations in March 2013.¹⁰⁷ The Mongton dam remains listed by the MOEE as an ongoing project.

Powerless state governments

In theory, state-level offices of the MOEE are responsible for assisting the implementation of hydropower dams within their respective states. However, these state-level ministers have little information on the status of hydropower projects slated for implementation within their own states, or on the plans for distribution of electricity within their state.¹⁰⁸ State-level ministries have little decision making power; this is concentrated in the Union-level MOEE.

According to a senior researcher at MDRI, a government affiliated think-tank, even President Thein Sein had limited power over the Ministry of Electric Power.¹⁰⁹ The researcher added that MDRI, headed by an economic advisor to the President, enjoys good relationships with a number of ministries, but not the Ministry of Electric Power, now consolidated under the MOEE. Although it is unclear which interests or interest groups hold sway over powerful ministries such as the MOEE, military-private economic ties continue to hold high degrees of influence over the

Photo TSYO



Armed forces, like these sent to “secure” the Shweli dam, are known to abuse local populations. The Burma Army and its Border Guard Forces in Karen State displaced over 5,000 people near the site of the proposed Hatgyi dam on the Salween River in September 2016. Civilians continue to face grave insecurities and have been unable to return to their villages.

development and extraction of Burma's natural resources.

Legislators from ethnic states are not able to get information about projects in their constituencies, let alone input into the decision making process or seek restitution for grievances. According to the 2014 Electricity Law, state and region governments only have authority to issue licenses for mid-sized (less than 30MW) or small-scale (less than 10MW) power generation and distribution projects, and are not authorised to develop any projects for the national grid.¹¹⁰ Daw Nang Khin Saw, the MP from *Kunhing* township in Shan State, told the Myanmar Times: "I have raised concerns about the Mongton dam and its effects to the [regional] parliament but they replied that we need to raise our concerns with the national government."¹¹¹

Powerful investors set policy without considering local realities or prioritising local needs

International Financial Institutions (IFI), including the Asia Development Bank (ADB), Japan International Cooperation Agency (JICA), and the World Bank Group, with its private sector lending arm, the International Finance Corporation (IFC), are currently applying a mixture of technical assistance, financial investment, and lobbying power to Burma's hydropower sector. The IFC are leading Strategic Environmental Assessments (SEA) for the hydropower sector.

These financial institutions and banks promote large hydropower projects as a way to achieve rural electrification and poverty reduction. Yet by investing the majority of their support in central government ministries and the private sector, IFIs continue to marginalise communities from meaningful participation in the future of their river basins and favour centralisation of resource management. International support for the development of large-scale energy projects on Burma's rivers continues to ignore the unambiguous link between large dams, armed conflict, and human rights violations, disregarding the threat that dam projects pose to the peace process.

According to the IFC, approximately 66 percent of Burma's population does not have access to electricity.¹¹² The estimate, however, only recognises those connected to the national grid as having access to electricity. This ignores the widespread use of off-grid electricity generation, for example from mini-hydro projects run by local entrepreneurs and committees.¹¹³ According to the Mekong Energy and Ecology Network (MEENet), 5,840 hydro projects generating less than 1 MW are operating in the country.¹¹⁴ According to ADB's Energy Sector Initial Assessment of

Photo Network Media Group



Protest against the World Bank's International Finance Corporation in Myitkyina in February 2017. Agencies such as the IFC have tremendous influence on decisions about energy projects in Burma. State and regional governments have no powers over hydropower projects over 30 MW or connected to the national grid.

2012, just 35 (0.006%) of such projects have been developed by Burma's MOEE since 2007.¹¹⁵

Decentralised household and village level off-grid and mini-grid systems dominate Burma's rural energy map. Many of these hybrid energy solutions are integrated into customary land and resource management systems that have evolved over generations and are both participatory and resilient (see *Kaw* section). Investors and the MOEE, however, do not prioritise such decentralised solutions, focusing instead on developing a centralised national grid. Rural, off-grid communities will be among the last to be connected to the national grid, which could take as long as 30 years to achieve. In the meantime, foreign companies will construct and profit from large dam projects, and banks will receive additional interest from loans.

Hydropower projects planned by international "experts" have consistently prioritised energy export to neighboring countries. Hydropower energy has also been distributed to the military, industry, and government before households. This pattern is set to continue with the proposed Salween dams: only a small percentage of the generated capacity from the planned mega projects is currently slated for household consumption, while 85-90% is targeted for export.

Unscrupulous foreign companies operate without accountability

State-owned companies that have been punished for corruption in China¹¹⁶ or are working overseas because of opposition to their projects in Thailand¹¹⁷ are the main investors in Burma's hydropower sector. Over 90 percent of the large hydropower projects underway in Burma are being developed by 26 Chinese parent and subsidiary companies; twenty-three of these are State Owned Enterprises.¹¹⁸ The development of mega-dams such as the Myitsone and the Mongton are considered at the highest levels of China's State Council as a matter of foreign policy and national security. From dam design and conception stages to the execution of build-operate-transfer contracts, these companies—and the governments that own them—have the power to control water resources in Burma, threatening the country's sovereign right to its water.¹¹⁹

Many of Burma's mega dams were conceived of and planned under the previous military-run dictatorship, often by engineers in Beijing or Bangkok. Contracts signed with the previous military regime are still in effect despite a change in government. None of the agreements have been made public, even in the face of tremendous public pressure to reassess the costs and benefits of mega dams.

Rubber stamp assessments

Article 13 of the Environmental Impact Assessment Procedures requires project proponents to "arrange for appropriate public consultation" throughout the Initial Environmental Examination (IEE) and EIA processes, and "disclose to the public in a timely manner all relevant Project-related information."¹²⁰ Yet in practice, project proponents developing dams in Burma have failed to carry out meaningful consultations with local communities during the EIA process in contravention of Articles 13, 34, 50, and 61 of the Procedures.

Conducting a valid EIA that meets international best practice is impossible in a number of townships in the projected flood zones, as they are still affected by armed conflict. For example, in 2015 the United Wa State Army (UWSA), which controls villages in the area of the Mongton dam, told an Australian engineering firm carrying out assessments that it could not conduct consultations in the villages under UWSA control. This was after the company "angered locals by blatantly promoting the dam in public meetings, downplaying negative impacts, and promising them electricity, even though the dam's main purpose is to export power to China and Thailand."¹²¹

The consultants that completed the EIA for the *Kunlong Dam*—located in a heavily contested area of Shan State—also failed to adhere to the 2015 EIA Procedures, particularly articles 34, 50 and 61 relating to public consultation, and articles 65 and 66 relating to the public disclosure of the EIA report within 15 days of its submission to the Environmental Conservation Department (ECD). Although the six-month Environmental and Social Impact Assessment was completed in 2013, the EIA report has never been made public.

The EIA conducted for the Myitsone Dam also did not conduct sufficient public consultations, and did not address social and economic impacts or downstream impacts. An independent expert review of the assessment found that it contained “serious deficiencies and flawed conclusions.”¹²²

Military-connected businesses profit from dams

Companies with strong military ties often benefit from hydropower projects. For example, the International Group of Entrepreneurs (IGE) Company Ltd. holds a 10% stake in the Mongton dam project, significant stakes in the Hatgyi Dam in Karen State and the Naung Pha Dam in northern Shan State, and a number of other hydropower projects.¹²³ The company was founded in 1994 by Nay Aung and Pyi Aung, the sons of former Minister of Industry-1 Aung Thaung, known for his close ties to Than Shwe. Aung Thaung was also previously responsible for leading the negotiations of ceasefire agreements with ethnic armed groups. He successfully reached agreements with two ethnic armed groups, SSA-North and a faction of DKBA, but failed to reach an agreement with the Kachin Independence Organization (KIO).¹²⁴ Nay Aung and Pyi Aung are known as cronies who use “use their family connection and close ties to the regime to amass great wealth,” as noted in a US diplomatic cable.¹²⁵ Pyi Aung is married to Nandar Aye, the daughter of the former second-in-command of the military junta, Vice-Senior General Maung Aye.

III. Community Impacts

Burma’s largest existing dams are located in Shan State on the Shweli, Paunglaung, and Namtu (Myitnge) Rivers, major tributaries of the Irrawaddy and Sittaung Rivers respectively. The Shweli Dam 1 exports the majority of its 600 MW generated capacity to Yunnan, China, and to factories owned by the military-state,¹²⁶ while both the Upper (280 MW) and Lower Paunglaung (140 MW) dams export power from southern Shan State’s Paunglaung Valley to the capital city, Naypyidaw. The Yeywa Dam (700 MW) was completed in 2010 and although the dam wall is located in Mandalay Region, the reservoir’s flood zone is concentrated in Shan State.

Large hydropower dams transform river systems, extracting and exporting the resources of that river in the form of electricity to industrial hubs and cities far from the dam sites, and even across international boundaries for consumption in neighboring countries. Exploiting rivers using large hydro-dams is a twentieth century experiment, arguably made obsolete by modern technological advances and alternatives in energy generation. Large dams have historically been built at the expense of the natural environment, local communities, and often, entire nations.¹²⁷

Problems with large hydropower dams are documented around the world and unfortunately Burma has many of its own examples of such problems. Whether the already constructed Paunglaung or Shweli dam, or the proposed Irrawaddy and Salween dams, communities are experiencing everything from forced relocation and loss of livelihood to rapacious logging and unpredictable water surges. The members of the Burma Rivers Network have documented such impacts for over a decade.

Before construction: Mongton Dam

The Mongton Dam, if completed, will be the highest dam in Asia outside of China. This mega-dam will impound the Salween behind a 241m dam wall and flood an area of roughly 640 km.² The scale of this project exceeds anything else in the region, including the suspended Myitsone Dam, with a flood zone more than ten times that of the Upper Paunglaung Dam. The dam will submerge land in eight townships of Shan State, and directly impact tens of thousands of people. The unique island villages of Keng Kham, approximately 20 km upstream, will be almost completely submerged by the dam's massive reservoir.

Traditionally prosperous agricultural villages upstream of the proposed Mongton Dam site grew seasonal crops such as rice paddy and soybeans in the fertile valleys between mountains thickly forested with teak. This all changed when Burma Army's occupation of the surrounding townships saw many communities forcibly resettled to new villages located beside military outposts and command centers constructed along new road networks.

Construction of major roads branching out of Keng Tawng to Mong Nai, Kho Lam, Mong Pan and Keng Kham, built between 2001 and 2004, was led by Burma's largest conglomerate, Asia World Co Ltd, and "enabled various logging operations to move in and clear cut the area's thick teak forest."¹²⁸ The construction of a new road from Mong Kang Village north to Mong Boo Long by Asia World in 2005 opened up formerly inaccessible teak forests to predatory extraction of timber.¹²⁹ Asia World secured large timber concessions either side of the Mongton project site.

Logging operations today are largely concentrated along the Nam Sim River, a tributary of the Salween. Deforestation has had a severe impact on the watershed area. The loss of the natural water catchment provided by the forest has caused floods that have destroyed village farmland and irrigation systems. The scale and persistence of logging has resulted in a rise in temperatures and small streams are drying up. Hunters who relied on the streams to attract local wildlife are finding it harder and harder to find local animals.

In 2015, logging operations were carried out continuously in the area except during monsoons. This occurred despite the announcement of a logging ban by the Restoration Council of Shan State (RCSS)/Shan State Army, a ceasefire group that controls territory both upstream and downstream of the dam site along the river. Three logging concession sites linked to a Chinese company have been clearcut; logs piled up there are believed to be transported to the China border.

Photo Sapawa



Proposed reservoir areas are often logged out long before dam construction begins. Here logging trucks are busy near the Salween River in Shan State.

Even before serious construction work has begun, military-private partnerships focused on the construction of roads and the extraction of resources have wrought devastating losses on the hardwood forests of the Salween Basin. The depletion of watershed forests has resulted in the degradation of traditionally prosperous riverside farmland as increased floods and landslides during the rainy season batter crops and wash away fertile topsoil.

Patterns of deforestation and increased insecurity for local farming communities can be observed at multiple dam sites in Burma, including the Shweli Dam 1 and the Upper Paunglaung Dam. These impacts precede serious construction work and show the relationship between major dam projects and predatory logging operations.¹³⁰ Such operations have a series of knock-on effects, including the expansion of upland farming into previously uncultivated areas.

After construction: Paunglaung Dam

Between January 2013 and late 2014, the Upper Paunglaung Dam displaced over 8,000 people from their homes, farms, schools, and religious sites. The dam was originally proposed by Burma's military regime; it was built by Swiss, British, and Chinese developers.¹³¹ The electricity generated by the dam feeds Naypyidaw, just 50 km west of the once prosperous, now flooded Paunglaung River Valley in southwestern Shan State. The 60 km² reservoir has forced 23 villages of Shan, Burman, Pa'O and Kayan Lahta ethnic peoples up the sides of the valley where they have attempted to carve new farms and homes into the steep, muddy, and largely infertile hillsides.

Former residents of Nan Sa Kin village U Doe Khine and his wife Myint Moe explained that they first relocated to the hillside in late 2013, but when interviewed in late 2014, they and eight other households from their former village were being forced to move again. "Before the dam gates closed we were told we could move to this place, that it would not flood, and that the land was safe,"¹³² explained U Doe Khine as the water lapped around the foundations of their house.

The displaced smallholder farmers used to cultivate river fed paddy, peanuts, fruits, and vegetables along a 23 km stretch of fertile land. Without consultation or adequate compensation, 84 percent of households had dropped below the national poverty line (328 USD annual) following displacement, while 66 percent have dropped below the UNDP's food poverty line (240 USD annual) and are now living in extreme hardship.¹³³

Photo Alec Scott



*"Food is more important than electricity. We cannot rely on electricity for our livelihoods. We can stand on our own two feet as farmers, but without the farm we cannot stand."*¹³⁴

- U Zaw Linn, Secretary of Kon Shinhi Village and former resident of Paunglaung valley

IV. Existing local governance structures

The health of a river is dependent on the health of the land and forest of the river basin, where vital and often fragile relationships of interdependence form ecosystems. Recent research on Burma's diverse customary land management systems reveals how local knowledge of these ecosystems has informed community led water conservation methods. These localised management systems are directly related to the agricultural practices and cultural ecologies developed over generations within a changing environment.

In Karen State's Mutraw District, local knowledge of the inseparable relationships between land, forest, water, and livelihoods has informed the creation of community demarcated conservation areas protecting the watershed area of the Yuzalin River and its tributaries from deforestation and unsustainable fishing. Rules and regulations were formally adopted by village committee members and submitted to the township and district level Karen National Union government for approval.¹³⁵ Such local governance of resources shows a capacity for foresight and a comprehension of complex local ecosystems that is sorely lacking in the policy and practice of the central government.

Photo KESAN



Community-managed irrigation near Hpa-an

The majority of farmers in the projected Mongton flood zone in Shan State rely on natural floods to feed their irrigation canals. In Keng Kham Village Tract, thousands of acres of paddy fields are irrigated using six communally managed dams. A villager with expertise and experience in making and maintaining the communal dam is elected to oversee the process of dam building and flood control and is responsible for supervising the equitable distribution of water through a series of canals. Some commu-

Ta Long Village Case Study: Community Based Water Management on the Namtu River

Ta Long, an ethnic Shan village located on both banks of the Namtu River in northern Shan State, has a history spanning hundreds of years. The present community of roughly 500 people from 120 households relies on riverbank farming for their main livelihood, maintaining orange and pomelo groves. The oranges in particular are famous throughout Shan State for their sweetness.¹³⁷

However, the Union Government has decided that Ta Long Village will disappear below the flood zone of the Upper Yeywa Dam. This large dam project was initiated in 2008 by Burma's former military dictatorship and is being constructed by a consortium of German, Chinese, and Japanese companies.

Most of Ta Long's population live on the eastern bank of the Namtu, where at least three tributary streams run down the hillsides into the river and provide water for irrigation of rice paddy

nities also have a locally elected irrigation committee to oversee water management while small hydropower systems provide some electricity to the local area.¹³⁶

In Chin State, the village of Dimlo at 6,000 feet above sea level is united in preserving essential water resources, since wells cannot provide enough water for the entire village. Every household contributed money and 4 quarts of corn to purchase watershed lands from a private landowner and pipes to distribute water throughout the village. Villagers agreed on community regulations for a Watershed Zone, including the prohibition of cutting trees and bamboo in the watershed area. A village committee administers the regulations and manages a mini-hydropower project that utilizes surplus water to provide electricity to the village. Income from the hydropower electricity bills is used to pay the salary of the committee chair and the local teacher.¹³⁸

Such decentralised production of energy has been shown to be a sustainable alternative in the region as well. The University of California Berkeley's Renewable and Appropriate Energy Laboratory researched energy options in Borneo's Sarawak and found that small-scale renewable energy projects such as solar, biomass, and run-of-the-river hydropower were efficient in meeting energy needs. TONIBUNG, a Sabah-based NGO, has supported the development of numerous small-scale renewable energy projects in rural areas of Sabah, including micro-hydro stations, gravity-feed water systems and solar photovoltaic systems. According to TONIBUNG's director, such projects minimize the losses from transmission and not only "address electrification, but also empower communities in terms of managing their resources, getting organized and generating income."¹³⁹

V. Conclusion

In the absence of negotiated federal settlement to armed conflict or the free, prior and informed consent of local communities, large hydropower dams imposed by the central government on local populations will continue to stoke military tensions between government forces and ethnic armed groups, threatening opportunities for genuine peace in a region affected by decades of civil war.¹⁴⁰

and corn farms. In 2010 the villagers collectively hired the services of an engineer from Hsipaw to construct a small hydropower station on one of the streams. The station is owned and managed by the Ta Long community and generates enough electricity to light the whole village, charge phones and batteries, and power fans and televisions. When an annual festival or special celebration takes place, each household turns off their lights and appliances allowing enough electricity to reach the village monastery for the whole community to gather together for the night.

This decentralised small hydropower project has provided a relatively uninterrupted flow of electricity to the households on the eastern bank of Ta Long village since it was brought online in 2010. Households rotate responsibility for switching the station's turbines on and off. Certain villagers have the engineering knowledge and skills to maintain and fix the station in the case of a mechanical fault, while the cost of repairs are covered at a communal level. The community-centred system of ownership reduces losses and increases the efficiency and sustainability of the project.



Photo PYO

2.4 COAL RESOURCES

I. Why is coal important?

Carbon pollution from burning coal causes not only untold health and environmental damage to nearby communities, but it is destroying the protective mechanisms of the planet. Burning coal is a major contributor to global warming; some argue it is the biggest threat to our climate. The destructive power of coal is increasingly recognized across the world: in 2015, nearly 200 countries signed the Paris Agreement, making them legally bound to cut carbon emissions to avoid the most dangerous effects of climate change. Although some industry proponents advertise “clean coal” technology, expensive systems that use other resources such as water and wood, are not enough to prevent the damage of burning coal.

Mining coal can trigger changes in tectonic forces, causing earthquakes. Mining also causes soil erosion, landslides, and subsequent pollution of waterways. This impacts human safety, livelihoods, and ecological biodiversity. Waste dumpsites at coal mines can cause damage for generations, but forcing mine companies to take responsibility for land rehabilitation is extremely difficult.

The former government signed at least 11 contracts for coal-fired power plants around the country with international and regional companies. None of these projects has yet come online due to widespread opposition by the public, local residents, and environmental groups. Communities in Mon, Shan, and Karen states, as well as Dawei region have protested against coal mining projects. Yet the new government has said it will focus on using natural resources, including mining projects, for economic development. Aung San Su Kyi and the Ministry of Energy had discussions with the Asia Development Bank and the World Bank about developing the mining sector in early 2016 but no official news has been announced yet. The Myanmar Energy Master Plan calls for a dramatic increase in the use of coal for electricity production (from 3 to 30 percent in 15 years), but does not significantly discuss renewable energy sources.

II. Centralized governance of coal

A. Legislation

According to Section 37 of the 2008 constitution, the central government is the ultimate owner of all resources, even those below the ground, which includes coal. The Department of Mines under the central government's Ministry of Natural Resources and Environmental Conservation (MONREC) is responsible for implementing mining legislation. State, regional, and autonomous region governments have no powers to legislate mining within their areas; they also have extremely limited powers in terms of energy policy, production, and distribution.

Section 56 of the 2008 constitution designates three townships in Shan State as the "Pa-O self-administered zone."¹⁴¹ According to the legislative powers granted to states and regions in Schedule 2 and to self-administered zones in Schedule 3, no subnational government has any authority to manage coal mining projects or coal-powered power plants. According to Section 4 of the 2016 Investment Law, the Myanmar Investment Commission, responsible for approving and monitoring investment projects, does not include leaders from self-administered zones.

Mines Law (1994)

According to Burma's mining laws, a mine permit seeker is not required to submit plans for disposal of mining waste, although they do have to submit plans for mitigating environmental, social and health impacts, local hiring, and post-project land rehabilitation.¹⁴² While conducting research for this report, we found no example of the central government requiring rehabilitation of ecosystems from mining, oil and gas, or logging operations. Amendments to the Mines Law in December 2015 allow large-scale mine permits for up to 50 years (the previous limit was 15 years). State and regional governments have no rights to approve or deny permits for large-scale mines, regardless of whether those mines are within their boundaries. There have been talks of creating "regional committees" to issue and scrutinize permits for small scale mining operations, but these committees must have approval from the central government,¹⁴³ leading many to believe that the members of these regional committees will be appointed by Union-level ministries.¹⁴⁴

Figure 7: Coal deposits in Burma

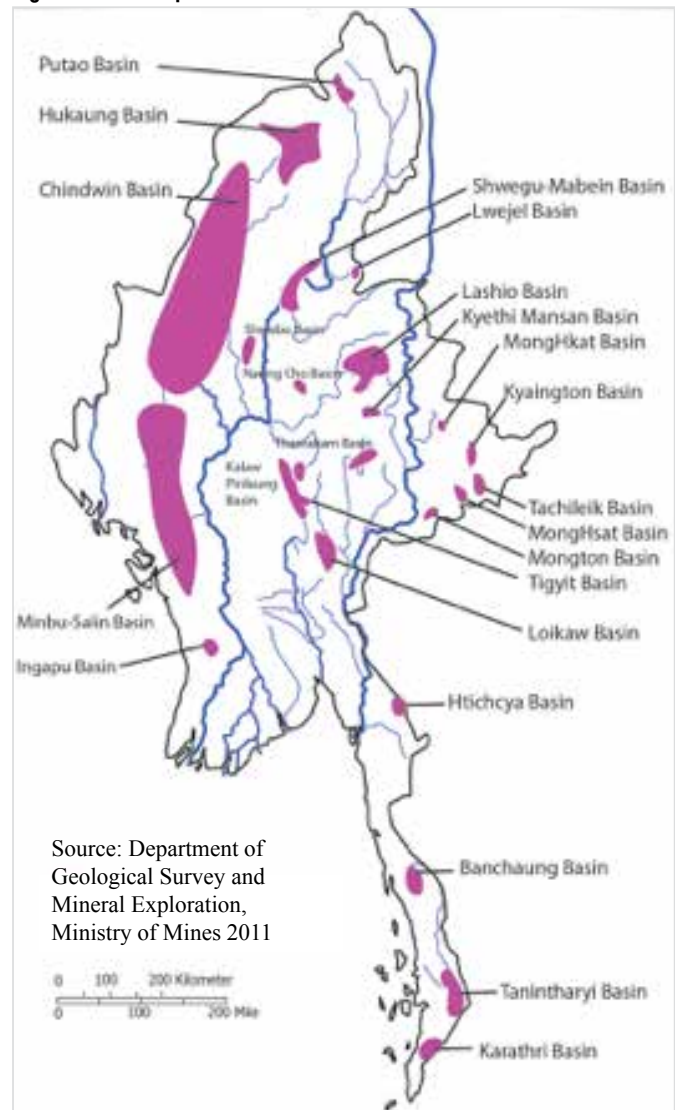


Table 3: Proposed Coal Power Plants

	Location	MW	Investors	MOU Status
1	Kon Chan Gone Township, Yangon Region	300 MW	Virtue Land, Subsidiary of Burma's Asia World	24.8.2014 Signed 24-month MOU; implementing EIA/SIA
2	Kyaunt Tan Township, Yangon Region	500 MW	India's Orange Power-gen, Singapore's Global Adviser and Burma's Diamond Palace Service	8.10.2013 Signed MOU; implementing assessment
3	Htandapin Township, Yangon Region	270 MW	China's Huaneng Lancang and Burma's Htoo Company	11.1.2010 Signed 24-month MOU; implementing EIA/SIA
4	Nga Yout Kaung Township, Irrawaddy Region	540 MW	India's TATA Power	11.4.2013 Signed MOU; implementing assessment
5	Myient Town, Tenasserim Region	50 MW	Domestic (Internal)	8.10.2014 Signed MOU
6	Bote Pyin Township (Manaw Lone), Tenasserim Region	500 MW	Cwave Global and 24 Hours Mining and Industry	21.9.2012 Signed MOU; implementing assessment
7	Myient Town, Tenasserim Region	1800 MW	Foreign (External)	8.10.2014 Signed MOU
8	Myint Wa Region, Tenasserim Region	2640 MW	Thailand's RATCH and Blue Energy & Environment, Burma's Vantage and Kyaw Kyaw Phy	October 2014 MOU signed between MOEP and RATCH
9	An-Den (Eden), Yay Township, Mon State	1280 MW	Thailand's Toyo-Thai Group	21.3.2013 Signed MOU; implementing assessment
10	Kalaywa Township, Sagaing Region	540 MW	Singapore's ISDN and Burma's Tun Thwin Mining	11.4.2013 Signed MOU; implementing EIA/SIA
11	Kyeng Tone Township, Shan State	660 MW	Thailand's Lumpoondum	1.10.2013 Signed MOU; implementing EIA/SIA
	Total	9080 MW		

Source: <http://consult-myanmar.com/2015/03/18/coal-fired-power-planned-but-on-hold/>

Currently operating coal power plants are in Naung Cho Township, Shan State, *Kaw Taung* Town, Tenasserim Division, and at Tigyt, Pa-O self-administrative zone, Shan State

B. Practices

Military, central government, and companies by-pass “self administration”

The Tigyit coal mine and coal-fired power plant are within the Pa-O self-administered area of southern Shan State, which is managed by the Pa-O National Organization (PNO). The PNO's army, the Pa-O National Army (PNA), signed a ceasefire in April 1991. Today the PNA has transformed into a militia and the PNO has formed the Pa-O National Party to compete in elections. After the ceasefire, the PNO focused on developing infrastructure and improving the economy in some parts of the self-administered zone.

According to the constitution, the Pa-O legally have their own administrative area. When it comes to natural resources, however, the PNO actually has no power to make decisions, because constitutionally natural resources belong to the Union. While the PNO has the power to organize and to intimidate people in the Tigyit area, the central government and companies make all important decisions around natural resources. A member of the Tigyit community put it this way: “In general, PNO politics is controlled from behind by the budget and economics.”

Generally, leaders in the Pa-O self-administered zone are selected by the central government. Although some Pa-O leaders and implementing companies have some management powers to run a project, initial authorization and overall project decisions must get approval from the central government. Project revenues primarily go to implementing companies and the central government. The Ministry of Mines is also heavily centralized; ministry staff, even those in local offices, are mostly non-local Burmese, and are appointed and selected by the central government.

The coal power plant is operated by a Chinese company, but it is not clear which laws are being followed in terms of pollution levels. Local people cannot know this information, as investors and central government entities make all the decisions. In other words, the “self-administered” part of the self-administered zone essentially does not exist.

Intimidation by companies and local authorities during confiscation of lands for coal mine

The Shan Yoma Nagar and Shwe Than Lwin companies, together with local authorities, pressured and intimidated farmers from villages nearby the Tigyit coal mine to “sell” their farmlands at a cheap price before mining began. Some lands were taken outright by the Ministry of Mining. When a company confiscated the land, they organized nine district-level authorities to sign the agreement. These authorities then coerced villagers to sign the agreement for compensation of 3,000-5,000 kyat per acre. The district authority said: “if you sign, you will get compensation. If you don't sign, you will lose your land...if you don't sign, and if you face problems, I am not going to help you. You have to solve them by yourselves.” Finally, people became afraid and some signed. According to some local residents, finally the district authorities (who come from the central government and the military) signed on behalf of those who did not sign.

Lack of transparency

When the land was taken in Tigyit, there was no information provided beforehand, and no consent given for the project. People did not know anything about the contracts or any agreements, and they did not have the permission or rights to know. At the time, although crops were still growing and some were ready to harvest, the company did not give farmers any time to harvest their paddy or other crops before destroying them with heavy machinery.

The Tigyit coal mining area has been a highly restricted area, with CBOs, CSOs, media groups,

and NGOs, as well as anyone else not identified as a local villager, being unable to enter the area. This was to ensure that information regarding the increase in negative project impacts and the anger of the local people would not become public.

Silencing local leaders

“The company made a donation to paint the temple, for food, and make a compound for the monastery. Monks were not allowed to reject the donation.” – local monk

The company attempted to buy the silence of the people by making donations to the local monastery, which houses monks who were active in supporting community efforts to stop the project. This action was effective in stopping the monks from supporting the local people. The company also rewarded community leaders who did not speak out against the project’s impacts by providing them with electricity.

No accountability: Company ignores rules set forth in project contract

A project contract for the Tigyit coal mining was signed between the Ministry of Mines and the local project implementer, Shan Yoma Naga Company, in January 2012. The agreement stipulated seven main rules and 16 minor rules as follows:

- The company must inform the central government of its activities
- The company must work only within the registered and specified area
- The company is not allowed to do business outside of the agreement
- If the mining uncovers cultural or religious objects, it must be reported to the directorate [a government department under a ministry]
- The company must report back to the directorate
- The company must pay taxes [it is not mentioned to who]
- If the company cuts trees, or digs on government land, it must inform the state and union governments. Although the project is in a self-administrative zone, the Pa-O authorities do not need to be informed.
- The project must protect the environment
- The company is responsible for any project impacts on the environment, and the stability of the community. If a solution cannot be reached, the company must stop running the project.

Photos PYO



Protests against Tigyit coal mine in Shan State in 2016. Although in a self-administered zone, the central government has decided to proceed with the Tigyit project.

In addition to agreeing to abide by the rules and regulations set forth by the Mining Ministry, the Shan Yoma Naga Company also agreed to provide the following for the affected community:

- Compensation for housing and buildings lost; compensation for land lost
- To build water supply for public-owned property; to prepare a well in a new location
- To provide electricity; to build a road; to build toilets
- To carry equipment “such as housing” and materials to a new place
- To build a new school and provide materials for the school

In the agreement, the company and the government agreed to engage in community development, to provide schools, roads, and electricity, and to disclose the amount of taxes paid. Today, there is one school building, some electricity for a few households, and a road has been built. The road is for transporting coal, and it runs in front of the hospital and school. Angry residents have complained that big trucks causing small dust storms on the road are a danger to local residents, especially children going to school and the sick going to the hospital. The electricity, provided to just some households, has caused disunity and animosity among the communities. While this token development proceeds, the company is ignoring the real needs of local people: clean water and health services. The coal mine continues to pollute the water and air, causing health problems. This is despite the section of the agreement that says the project must protect the environment. To date there has been no effort to prevent or clean up after the environmental damage of the project (see Community Impacts section).

Although the agreement says the company is responsible for impacts, and if a solution cannot be reached the project will be stopped, in practice there are no formal grievance procedures for this to happen. Local people have sent petition letters several times to both the union and state governments about the negative impacts, including the loss of land, damaged crops, health impacts, and the dangerous trucks carrying coal in front of the school and hospital. Despite many obstacles, community members were able to organize and write petition letters. However, the mining continues. This is complicated by the strong presence of the military and the PNO, who aim to control the local people and allow the project to continue without interruptions. Petition letters are often initially met with a positive response, but there is no actual follow-up.



State and regional governments have no rights to approve or deny permits for large-scale mines, regardless of whether those mines are within their boundaries.

Meaningless social impact assessment

In May 2015, when reports about Tigyt's health impacts began to come out in the media, company officials came to Tigyt to do a Health Impact Assessment, but the company only met with the company staff and conducted an HIA for the workers, not the local villagers. On May 16-17, 2015, about 50 people from Yangon Hospital (Social Service Department) came to Tigyt. However, once again the visitors only met with company staff, and the reason for their visit, as well as their activities during that time, were not disclosed to the villagers. Generally, when problems related to the project arise, people are not sure about where to direct their responses. An SIA and EIA were conducted in Tigyt in 2015, but it mainly focused on how to continue the project. Local people did not welcome this action; it was viewed as checking a box for the company and government rather than anything that will make a meaningful change for the community or result in the change or cancellation of the Tigyt project.

Local governments powerless

A Chinese (CHMC) and Burmese (Eden Group) company built the Tyigit coal power plant under the purview of the Energy Ministry in 2001. After being shut down in 2014, the Wuxi Huagaung Electric Power Engineering company from China was given a 22-year lease to upgrade and restart the facility. Testing was conducted in October 2016 and again in January 2017, and it looks set to reopen soon. Members of the Shan State and Union level parliament concerned about pollution and other impacts of the power plant have not been able to get information about the power plant or voice their concerns in parliament as community members continue to campaign against restarting the power plant.

III. Community Impacts

Tigyt is currently Burma's only coal-fired power plant. It began operating in 2005 under the management of the China National Heavy Machinery Corporation (CHMC), but was suspended in 2014 for upgrading. It is located in Tigyt village, with a population of nearly 3,000 people. The village is located on the main road between Taunggyi, Pinlaung, and Naypyidaw in Pinlaung Township, southern Shan State. Though the power plant project was suspended, the coal mine continues to run, supplying low-quality coal used by the company in Tigyt. The power plant is now in the process of restarting.

Photos PYO



Children from nearby Taung Pola village have to pass the mining area every day in order to go to school in Tigyt. They have to walk through the clouds of dust and in the rainy season walk through the muddy paths.

Confiscation, destruction, relocation

Two villages have been relocated for the coal mine and no one knows how much it will expand. In September 2001, the military regime's Vice-Senior General Maung Aye instructed the local military to confiscate over 100 acres of local farmlands for the power plant. No compensation was provided. The coal mine and power plant together currently occupy over 500 acres of local farmlands from Tigyit, Taung Pola, Pyin Thar, Lai Khar, and Bar Min Kone villages. Without their lands, villagers have had to sell their cattle and are now going hungry. These impacts continue until today and that is why people are protesting to shut down the power plant.

In 2002, digging began to prepare the open cast mine. Heavy machines first bulldozed any brush or trees and cleared off the layer of topsoil, destroying numerous farms in the process. The coal mine continues to use an open pit mining system that is destroying farming lands with heavy machinery 24 hours a day. Companies are also extracting coal through an underground tunnel system underneath tea farms near Naung Thara village. They dig four feet square holes and tunnel under the fields, leaving villagers in constant fear of land collapses. The extracted coal is piled alongside and on farm fields before it is transported to the power plant. The coal destroys the quality of the soil and the piles block water flow into the fields. Wastewater and ash are dumped in nearby waterways; the contaminated water also destroys farm soils.

Farmers from six villages have had their lands taken and need to find another means of survival. Some villagers are still allowed to work on some of the confiscated lands where the mine hasn't reached yet but they are anxious about their future. Some of villagers have left to find jobs in other countries.

Loss of livelihoods and no work

While local residents have lost their farmlands and crops, the mine and power plant have hired very few local workers. After the power plant project was suspended in 2014, the mining still continued in or near local farmlands with workers from Burma. Burmese workers not from the local area migrated in to take the mine jobs and have stayed. Some have also brought their families, expanding the population. Due to the history of past militarization and abuses by the Burma Army, locals are wary of the newcomers who practice a different culture.



Due to the presence of unknown workers in farming areas, local women are concerned about their security when going to work or traveling. One local woman said, "now, I dare not go to my farm. When I see the workers, in my mind I feel scared automatically. I'm afraid to work in the fields; other women too, are afraid when they travel to the fields, they are not feeling secure. Before it was not like that."

Health

Trucks transporting coal all day constantly emit plumes of dust that pollute local villages. The dust spreads and settles on the water sources, houses, and vegetable fields, threatening people's health. Explosions from the mine site and noises from the power plant are also causing troubles to students who can not concentrate on their studies.

Coal mine waste is discarded on the farmlands between Pyin Thar and Taung Pola villages east of the power plant. Piles of coal at the power plant often spontaneously combust, emitting noxious gases into the air. The fly ash is also a threat to health. Coal-fired power plants emit mercury, selenium, and arsenic into the air, which are extremely harmful to human health and the environment. Exposure to mercury is a particular concern for women who may become pregnant, pregnant women, nursing mothers, and young children.¹⁴⁵ The coal power plant has resulted in significant air pollution in a 5-mile area, with the 25 villages within this radius reporting skin diseases beginning in 2011.

Water pollution and water shortages

Dumped soil from the coal mine is piling up so high that the piles have become like hills and are blocking water flows, creating polluted and stagnant lakes. In the rainy season, rainwater collects behind these piles creating ponds. Water slowly erodes the dump piles and coal storage piles at the factory, sending waste into Tigyt creek. The farmlands behind the dumped soil piles are flooded by this dirty water. Toxic fly ash waste from the power plant that is dumped on coal mine waste piles or spread on local roads is also running off into local water sources, some of which eventually flow into Inle Lake. Women who collect water for cooking and washing are particularly exposed to contaminants in the water and have to travel farther to find clean water.

Cultural destruction and social tension

Workers used dynamite to blast into the ground and create the initial open pit. The blasts shook the ground until it collapsed down. The powerful force from the explosions also cracked buildings in Tigyt village. The ancient pagoda of Tigyt village crumbled and disintegrated from the force of explosions. The destruction incensed local villagers. To avoid confrontations between villagers and the company workers, the Abbot of Tigyt monastery had to mediate and resolve the problem. Later the villagers gathered broken pieces of the pagoda, placed them in its old place, and fenced off the area.

IV. Conclusion

The community around the Tygit coal project lives with fear and destructive impacts. This is the result not only of bad policies and practices, but also the control and management powers of the project. When locally affected people have no say in the negative impacts or the benefits of mining projects, when the minority voice and participation is abandoned, when so-called self-administrative power is controlled by a military and central government far away, instead of letting the state and community do their own job, bad projects like Tigyt will only continue.



Photo KDNG

2.5 JADE RESOURCES

I. Why jade is important

Jade represents one of Burma's most precious resources. In 2014 alone, the jade industry was worth up to US\$31 billion.¹⁴⁶ This is equivalent to nearly half the GDP of the whole country.

Yet once the highly valued stone is extracted, it is gone for good. Unlike forests, lands, or waters, it can never regenerate. The removal of jade by one generation, therefore, has serious consequences for future generations.

Although sales of jade represent Burma's biggest source of foreign income, hardly any of the money reaches the official central government budget, let alone Kachin State. Jade mining is devastating not only the environment, but also the health of resident communities and migrant miners alike in Kachin, the home of Burma's, and the world's, largest jadeite deposits.

According Union government statements at the *Pyidaungsu Hluttaw* on November 30, 2015, 7,714 private jade mining worksites operate in Kachin State along with 231 foreign/local joint ventures. Together these jade mining operations occupy a total of 22,558 acres.

Jade mining causes long-term damage to lands and waters. The massive scale of jade mining operations in Hpakant has stripped and turned the landscape upside down. Deadly landslides are common and soil erosion endemic. So much waste and sediment has been dumped into the Uru River that it no longer flows naturally but experiences fatal flooding during the monsoons. Completely unregulated, jade operations are throwing unknown agents into the environment with untold effects on human health. All of this raises the question of long-term damage to the lands and waters in Kachin State. Yet to date there have been no restoration or rehabilitation projects in jade mining areas.

Figure 8: The real war economy: Jade mines under Tatmadaw control

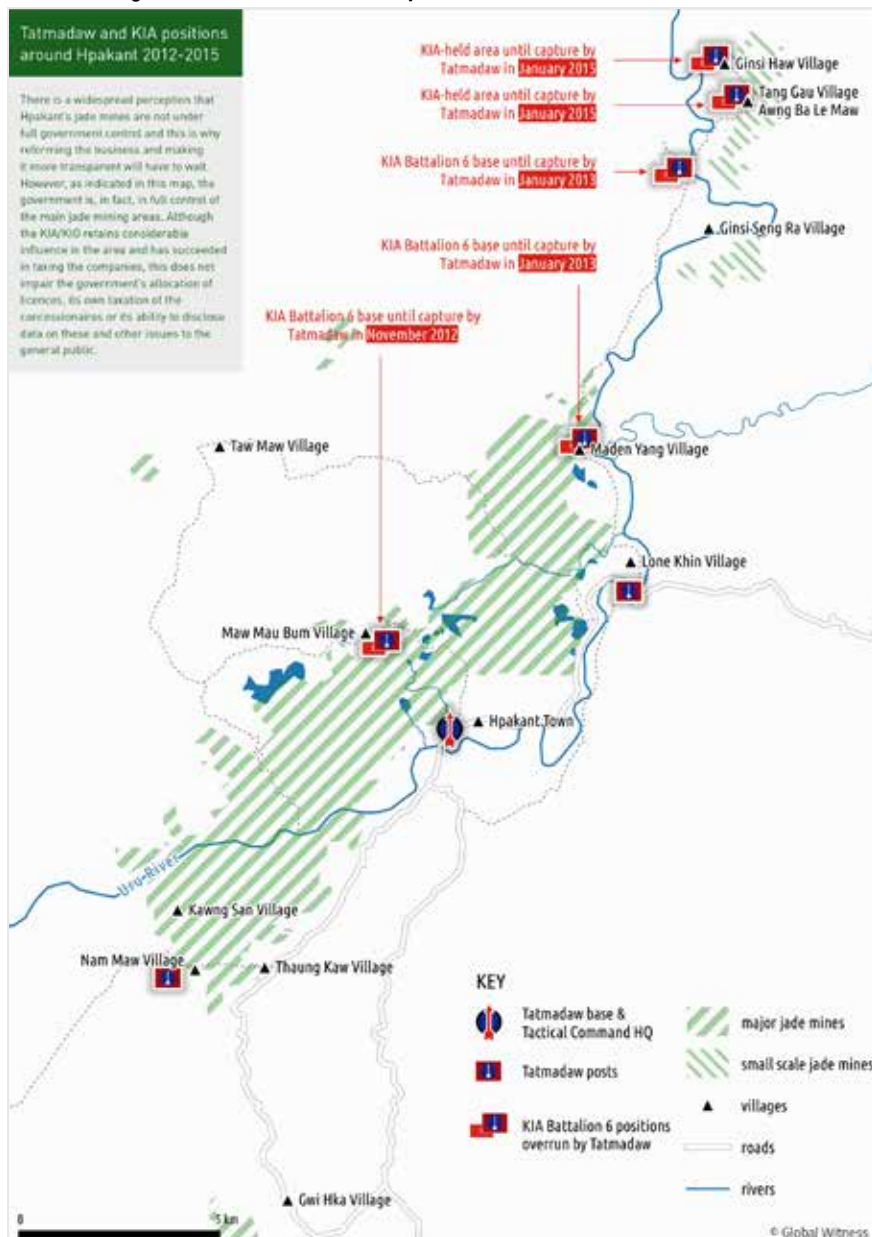
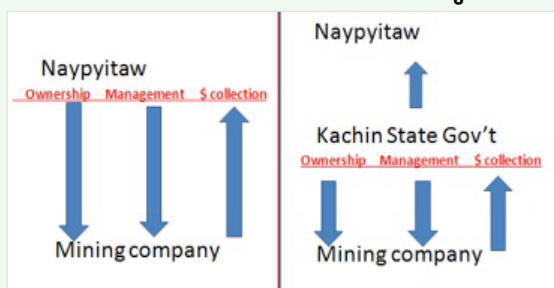


Figure 9:
2008 constitution vs. federal solution in mining sector



Currently the central government holds three main types of powers over natural resources: ownership, management/control, and the collection of revenues. It completely bypasses any input by the states or localities where extraction is taking place. In a federal system, these powers would be devolved to state and local levels. In the mining sector, the state and local governments would grant licenses to companies, regulate and monitor how mining is done, and collect taxes from mining operations.

II. Centralized governance of jade

A. Legislation

According to Section 37 of the 2008 constitution, the central government is the ultimate owner of all resources, including those below the ground, which includes jade. Schedule Two of the constitution allows State and Regional governments the power to legislate only the cutting and polishing of gemstones within the State or Region.

The Ministry of Mines was recently merged together with the Ministry of Environmental Conservation and Forestry into the Ministry of Natural Resources and Environmental Conservation (MONREC). This central government ministry is responsible for granting permits to mine in Burma. Yet many aspects of the licensing framework for mining are not clearly laid out in the mining laws.¹⁴⁷

Myanmar Gemstone Law (1995)

The Gemstones Law of 1995 made it necessary to obtain costly permits in order to mine jade. Companies were required to pay upfront for licenses and meet a quota on heavy machinery to bid for a mining permit. This pushed over 300 small-scale and independent companies out of the industry and consolidated control into the hands of crony companies well-connected to influential military figures.¹⁴⁸ These operate as joint ventures either with the military run company United Myanmar Economic Holdings Limited (UMEHL), or the state-owned Myanmar Gems Enterprise.

An amendment to the Gemstones Law in 2015 redefined different types of permits based on the size and type of mine, but essentially did not change the licensing process. In 2016 the Gemstone Law and amendment still had not been made available to the public online, one indication of the opacity of the industry.¹⁴⁹

In July 2016, after a series of deadly landslides and accidents in Hpakant, Naypyidaw announced that license holders can continue operations under their existing permits, but no new permits will be granted until a reformed legal framework is in place. This moratorium is a good beginning to restricting the unsystematic extraction of jade and its resultant environmental destruction and social conflict. But we have to wait and see: even with this moratorium, the central government continues to invite Foreign Direct Investment, including from foreign mining companies.



Photo: Wunpawng Amyusha Zinlum (Hpakant)

No oversight of the industry has caused many deaths and accidents. On November 21, 2015, over 200 people were buried alive when a heap of soil from a mine collapsed in Kan Hkam. 114 bodies were recovered.

B. Practices

Post ceasefire consolidation of jade licensing, extraction, and sales

Before 1994, the Kachin Independence Organization (KIO) controlled most jade mining areas in Hpakant. At that time, mining operations were small-scale and Kachin people could benefit from the jade in Hpakant. There were no large-scale jade mining companies in Hpakant. After the KIO and Burma Army signed a ceasefire in 1994, there was a boom in Hpakant of mining operations by private companies and joint ventures with the military-run UMEHL. Through the licensing process, small, independently owned businesses without ties to the military regime were pushed out of the jade industry. While the number of companies doing business plummeted, the amount of jade being extracted skyrocketed. The concentration of the industry rapidly increased the scale and speed at which jade was mined. While the industry expanded, the profits of it were funneled to a smaller number of people; former business owners and traders were reduced to low-paid wage earners.¹⁵⁰

In 2005, the military junta declared that commercial Grade A, B, and imperial jade could only be legally sold through an annual government auction. It is still illegal to buy or sell commercial grade jade in Kachin State today, and the Union government has denied a request by the Kachin State Gems and Jewelry Association to hold a gems emporium in Myitkyina.¹⁵¹ Control of sales, together with licensing procedures, put the majority of the jade industry under the control of the central government during the past two decades. Under the Thein Sein government (2010-2015), the Kachin State government and local communities also had no control over the mining in Kachin State. In 2014, more licenses were granted and large scale operations expanded further. Burma's military has consistently tried to portray Hpakant as a contested area, but the map on page 64 shows how the central government's military has total control of all main jade areas.

No transparency¹⁵²

"The jade companies have no rule and regulation. We don't know who has permission and who doesn't. We need to investigate. Some operations have no license but they are running under a big mining company who has permission." - U Tun Thaik, small business owner in Sharaw Hka Maw, Hpakant, March 2016

For years, Burma's jade sector has been mired in secrecy. Ordinary people have been unable to access even basic data on which companies hold mining licenses; who those companies' real owners are; how licences are allocated; what the terms of their contracts are; what they are paying the government; and how much they are producing.

Burma's jade licensing system is wide open to corruption and cronyism. The main concessions are in government-controlled areas of Hpakant Township, Kachin State. Blocks are awarded through a centrally-controlled process which multiple industry sources say favours companies connected to powerful figures and high-ranking officials.

Global Witness research uncovered that these figures are making vast amounts from jade. The Than Shwe, Maung Maung Thein and Ohn Myint families hold multiple concessions, which between them generated pre-tax sales of US\$220 million at the 2014 jade emporium (the official government jade sale), and US\$67 million at the 2013 emporium. Another company which Global Witness believes to be part of the Than Shwe family group posted sales of another US\$150 million across the 2014 and 2013 emporiums combined.

Use of jade revenues

Jade businesses are required to pay a range of fees, royalties and taxes to Burma's central government. These include license and administrative fees, a 20% value-based royalty on jade at the mine site, a 10% tax on emporium sales, and standard business taxes including a commercial tax. In addition, Burma's state-owned enterprises, the MGE, and army companies like UMEHL have stakes in the majority of large jade mines and receive 40% of post-tax sales revenues from each of them. Theoretically, therefore, the major share of jade revenues should end up in the Union-level budget. There is no public accounting of these revenues, however, and residents in Kachin State and Hpakant have not seen any revenues directed back to their areas to mitigate the impacts of the mining, let alone invest in education, health, or development.

III. Community Impacts

The devastating impacts of jade mining have been documented in numerous reports and news stories. Land confiscation, displacement, environmental destruction, and an intravenous drug use and HIV epidemic are all consequences of a jade industry that is not regulated. The following are just a few stories from local people that were documented in March 2016.

It is important to note that large-scale mining creates an environment that is particularly harmful to women. Jade mines displace female farmers and forest gatherers from their lands and forests, depriving them of their livelihoods, yet they cannot often find work in the mines due to the physical demands of mining. The large influx of single male workers to the mines, however, creates a demand for sex work. Women who need to survive and provide for their families turn to a booming—and unregulated—sex industry in mine areas, exposing themselves to sexually transmitted diseases and violence.

The pollution of the Uru River in Hpakant is notorious. Women who traditionally carry out the household tasks of washing and cooking are at constant risk of disease from contaminants in local water sources and have to travel further distances to find clean water. Contaminants from mine sites, in particular mercury, are extremely dangerous to pregnant women and unborn babies.

Floods, destruction of property, no compensation

Floods are frequent in the Hpakant area as mining waste and piles of earth are dumped in rivers and smaller waterways are blocked during mining operations. On June 5, 2015 Lahpai Nang Seng's house was destroyed and flooded when a dam blocking water at a mining site in Kate Maw broke. Before the event, the family had a big house, a store shop in front of the home, and a good well. But now everything is lost, including their means of livelihood. She estimates the damage so far at 30,000,000 *kyat* (22,000 USD). The family requested the mining company (called Myatyamone) to solve the problem, but until today they have not received any compensation and they are living in a basic hut they built themselves.

Death by landslides, collapses, and machinery

"There are too many trucks and large construction equipment. People are crushed up and die when the mining companies throw away waste and earth unsystematically. The Uru River is dirty and floods in the rainy season every year. Landslides and mine collapses also kill many. That's why we need to stop the trucks from crossing public transportation roads and the river. The companies need to remove the waste properly, away from where the people live." - Daw Khin San Yee, Lawng Hkang village group

“On October 30, 2014, U Gum Ja Awng, a 21 year-old from Longkin (Lawng Hkang) township, Mazup Yang village, was killed by mining company employees with a backhoe and those same employees disposed of his body in the area. U Gum Ja Awng’s wife was pregnant and they had a 4 year-old son. Their family feels so much pain and sadness.” - U La Mawng La Tawng, chairperson of Amyu sha zinlum hpung community organization, Hpakant

In the same interview, U Law Mawng La Tawng described the following deaths that resulted from a landslide in Hpakant township as documented by his organisation:

- (1) On November 21, 2015 a company left a waste mound unattended and it collapsed on local people searching for jade stones. Over 200 people died and their bodies remain trapped under the waste mound.
- (2) On the evening of December 25, 2015 in Kanpaunt Village, a 400-foot tall waste mound collapsed, killing 50 people. The waste mound collapsed further two days later; it is not clear how many people died in this second accident.
- (3) On January 6, 2016 Naymin Kaba company left a waste pile near a project site. The pile subsequently the pile collapsed, killing 20 people. On the afternoon of January 25, 100 people died when the same pile collapsed.

Members of Kachin State National Parliament admitted that in 2015, 37 such accidents involving waste mount piles occurred in Hpakant. There is no official death toll.

Explosions damage houses and cause health problems

“People are fearful and worried, we protest against jade mining company trucks crossing our roads, unsystematically extracting the jade and throwing the waste everywhere. The jade companies should operate at least 200 meters away from the village. We don’t want to see them, and we don’t want see more roads built for the jade mining trucks. They shouldn’t cross close to the villages, or across our clean water. There is too much pollution in the air from the mines and the trucks. So many trucks cause health problems for the local people. They often use explosive dynamite and we can’t sleep well at night. Sometimes it’s so loud we think the war is happening. Flying stones and debris from the explosions fly into our houses and crash through our roofs. We can not sleep well every night. We need to stay peacefully and make our own livelihood.” - U Tun Thaik, small business owner in Sharaw Hka Maw, Hpakant

V. Conclusion

There are many challenges in transition but change is needed because natural resources are the base of the economy. We are concerned that the current government is repeating the same mistakes as the former military government. In order to avoid further conflict, we need lasting solutions for real peace and a development that can rely on natural resources in the future generation by generation.

“We local people want to stop large scale jade mining. Local people get no benefit from it but suffer the impacts. If it continues like this, all the jade will disappear soon and problems will get worse and worse. We want small-scale jade mining for grassroots people, especially, for native people.” - U Tun Thaik, small businessowner, Sharaw Hka Maw, Hpakant



Photo AOW

2.6 OIL AND NATURAL GAS RESOURCES

I. Why oil and natural gas are important

Burma ranks within the top 40 nations globally for its proven natural gas reserves.¹⁵³ The resource is hugely important for two reasons. First, it has the potential to provide energy independence, electrifying untold domestic households and businesses (as well as providing cooking gas, reducing the use of wood for fuel). Second, the export of natural gas currently provides the largest official revenue source to the national budget. These revenues could be used to vastly improve health, education, and infrastructure. Unlike Burma's forest, land, and water resources, however, oil and natural gas are finite, and their sale is subject extremely unstable price fluctuations on the global market.

Despite military rule, a deplorable human rights record, and economic sanctions, the oil and gas sector in Burma has attracted a considerable number of foreign investors during the last two decades, mainly from Asian countries. The four current producing offshore natural gas fields, Yadana, Yetagun, Shwe, and Zawtika, started production 1998, 2000, 2013, and 2014 respectively.

Figure 10: Rapid increase in foreign direct investment



There has been a rapid increase in investment in the oil and natural gas sector since the easing of sanctions in 2011. From 2011 to 2015, Burma awarded 44 onshore and offshore oil and gas blocks to more than 40 foreign companies for exploration and production.¹⁵⁴ Total Foreign Direct Investment (FDI) in Burma during the 2015-2016 fiscal year reached 9.48 billion USD. This is 28 times more than the 329.6 million USD received in 2009-2010, the year before the 2010 elections. Of the 9.48

billion, 4.8 billion USD (51%) was in the oil and gas sector, followed by 1.9 billion USD (20%) in transportation and communication.¹⁵⁵

After the Thein Sein government came to power in 2011, Arakan State became the target of keen interest from Western investors for its oil and gas resources. By 2013, international oil companies such as ConocoPhillips and Chevron of the United States, Netherland's Royal Dutch Shell PLC, England-based BG group and Ophir, Woodside Energy from Australia, and Norway's Statoil had secured exploration rights for nine Arakan offshore blocks partnering with crony-owned domestic companies.

In contracts signed under the military junta, 80% of Burma's natural gas is exported to fuel the economies of Thailand and China rather than to provide electricity to domestic homes and industry. In 2014 Burma's revenues from oil and gas exports were 4.2 billion USD, 34% of the total exports or 7% of GDP.¹⁵⁶ Despite these huge amounts, in 2013 Burma was ranked as having the poorest natural resource governance among fifty-eight resource-rich countries.¹⁵⁷

II. Centralized Governance of Oil and Gas

A. Legislation

Policy formulation

Under the previous Ministry of Energy, the Energy Planning Department (EPD) was tasked with creating energy policy related to upstream oil and gas production and sale, downstream refineries and power plants, as well as retail and wholesale distribution of oil and natural gas products domestically. The department was abolished in 2015. According to the permanent secretary of the newly formed Ministry of Electricity and Energy (MOEE), a new division will be created at Myanma Oil and Gas Enterprise to replace the EPD and it will be responsible for energy policy formulation and management as it relates to oil and gas.¹⁵⁸

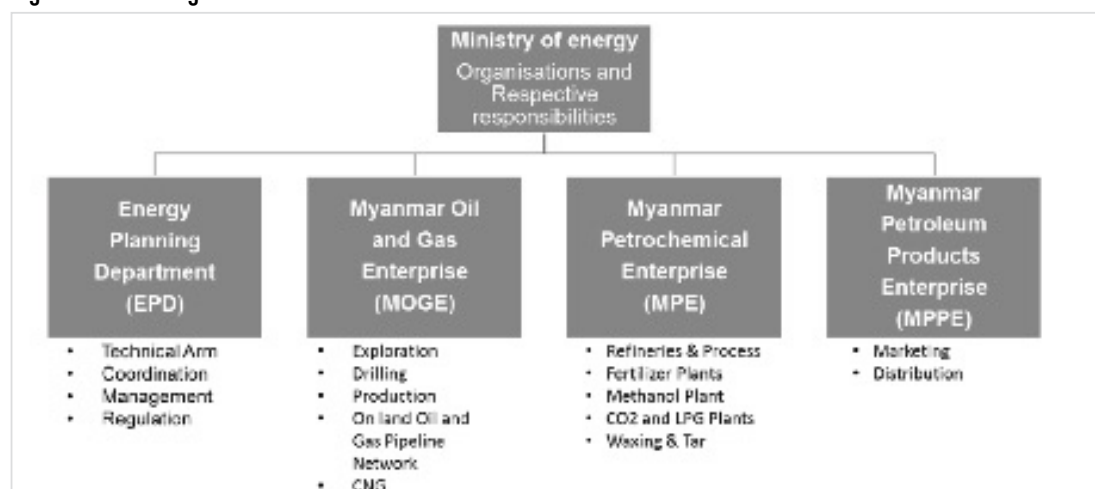
It is important to note that the Ministry of Energy, and presumably the new MOEE, depend on revenues from their state-owned enterprises to operate. This creates an inherent conflict of interest in that the Ministry, through its SOE, is acting as a business seeking profits while at the same time setting policy that impacts those profits.

Project control and management

Management of the upstream oil and natural gas sector is defined in eight pieces of legislation ratified between 1918 and 1969.¹⁵⁹ A new petroleum law is currently being drafted. The Ministry of Energy, until April 2016, was the main government agency with powers to manage the sector. The incoming NLD government reduced the overall number of ministries, and merged the Ministry of Energy (MoE) and the Ministry of Electrical Power (MoEP) to form the new Ministry of Electricity and Energy (MOEE). While in general this could be a positive move to form a comprehensive analysis of the production and use of domestic energy sources, it is too early to draw any conclusions. To date, however, the old structures are still in place.

The State Owned Economic Enterprises Law, ratified in 1989, places management powers regarding "Exploration, extraction and sale of petroleum and natural gas and production of products of the same" in the hands of four State-Owned Enterprises under the supervision of the Ministry of Energy. This basic structure has not changed since the creation of the MOEE.

Figure 11: MOE Organisation Chart



Project licensing

The state-owned enterprise Myanmar Oil and Gas Enterprise (MOGE) is the main government entity to facilitate oil and natural gas licensing through Production Sharing Contracts (PSC) with foreign and domestic investors. These contracts must also be approved by the Myanmar Investment Commission (MIC). Foreign companies may only enter into joint ventures with Burma companies and MOGE has been the local counterpart in larger natural gas projects, such as the Shwe Gas Project. For many years the licensing process was very secretive but has since the 2010 elections changed into competitive bidding process.

Environmental and social protections

The Ministry of Natural Resources and Environmental Conservation (MONREC) is the responsible agency for environmental protection in the oil and gas sector. Strategic Environmental Assessments (SEAs) are not included in current environmental legislation.

Revenue collection

Section 254 of the 2008 constitution specifies which taxes and revenues can be collected and expended by States and Regions. The powers to legislate and collect taxes on all high-value resources, including oil and natural gas, belong only to the central government.¹⁶⁰

B. Practices

Unaccountable project management

As the lead entity, MOGE has the responsibility to oversee the implementation of the Production Sharing Contract and monitor the activities of foreign oil and natural gas companies. Yet as MOGE is a business, and often a partner in the contract, they have no incentive to implement environmental or social safeguards. A 2013 assessment of 58 natural resource rich countries by the Revenue Watch Institute gave Burma the score 8 out of 100 for its weak ‘institutional and legal setting,’ the lowest of all assessed countries. The report stated, “Almost no information is available on the management of the extractive sector....Even experts and those working directly with policymakers know very little about the inner workings of the system.”¹⁶¹ If experts working directly with policymakers do not know how the oil and gas sector operates, how can it possibly be accountable to the populations it impacts?

Contracts signed before impact assessments

A crucial weakness in the regulatory framework, based on experiences with the implementation of the Shwe Gas Project, is that projects have been signed and sealed prior to conducting Environmental and Social Impact Assessments (ESIAs), conducting consultations with affected communities, or obtaining any form of consent. Questionnaires in SIAs have mainly focused on the economic livelihoods of landowners in order to create a monetary value to be compensated, while questions related to human rights in accordance with the International Declaration of Human Rights, or even guidelines by international corporate institutions such as the World Bank's International Finance Corporation (IFC). As such, one can assume that there is only an intention to minimize rather than prevent negative environmental and social impacts.

Opaque revenue management

The Myanmar Oil and Gas Enterprise (MOGE) has for the past twenty years been the country's main revenue generating institution. Gas exports to Thailand and China provide Burma with one of its largest sources of income, totaling USD 4.2 billion in 2014, or 35% of official exports.¹⁶²

Burma's central government has been notoriously opaque about how much it earns from the sale of oil and gas, and what it does with those revenues. Despite inclusion of oil and gas revenues in the national budget for the first time in 2012, the revenue management system remains extremely weak and non-transparent. A scoping study prepared for the implementation of the Extractive Industries Transparency Initiative (EITI) in Burma found a difference of 412 million USD in the value of gas exports reported by the Customs Department and the Central Statistical Organization for fiscal year 2013-14.¹⁶³ Such discrepancies in official data illustrate the difficulty in knowing exactly how much the country is earning from natural gas.

A recent study by Adam Smith International verifies that nearly half of the country's budgeted revenue is kept in non-transparent bank accounts, both foreign and domestic:

*"Ministries and SEEs (State Economic Enterprises) have off-budget 'Other Accounts' lodged in the Myanmar Economic Bank which are not in fiscal reports... The MOE (Ministry of Energy) has three 'Other Accounts' (in Singapore) and MOGE (Myanmar Oil and Gas Enterprise) has 14 'Other Accounts.' It is not clear what each of these accounts is used for and to what extent oil and gas revenues flow through these accounts... Myanmar has multiple 'other accounts'. 'Other Accounts' receipts for FY2011-12 total 2.54 trillion kyat, 44% of total budgeted revenue. While use of other accounts is not unusual, bringing these accounts into the formal budget process will ensure higher levels of transparency"*¹⁶⁴
- Adam Smith International

A vast majority of oil, gas, and mineral resources originate in the ethnic states, yet:

*"Today, approximately 99 percent of official oil, gas and mining revenues are collected by the national government or state-owned entities, as prescribed by the 2008 constitution. Transfers of these and general revenues to subnational governments are ad hoc, generally favoring conflict-prone areas like Kachin, Kayah and Tenasserim."*¹⁶⁵

Centralized collection of taxes from the sale of oil and gas and their subsequent distribution through various centralized ministries does not respond to diverse local needs and creates an unequal balance of power between the Naypyidaw government and the state and regional governments.

III. Community impacts

Arakan State stagnates

Under the Than Shwe military regime, Indian, South Korean, and Chinese companies developed the Shwe gas field and associated infrastructure to export the gas to China. Chinese oil giant CNPC built pipelines to transfer not only the gas, but also transshipments of Middle Eastern and African oil, to refineries in southwest China. The controversial pipelines have been operating since June 2013. Other mega projects include China's planned Kyauk Phyu special economic zone and India's Kaladan multi-model transit transport project.

The Shwe gas project in Arakan State produces 500 million cubic feet of natural gas per day. Exactly 80 percent, or 400 million cubic feet per day, will be exported to China over thirty years, while just 100 million cubic feet per day is planned for domestic use. Of the 20 percent slated for domestic use, the majority will go to Mandalay and to Than Shwe's home district of Kyaukse.¹⁶⁶ In December 2014, only cities in nine out of Arakan's seventeen townships had access to electricity from the national power grid.

Although Arakan State is the source of the Shwe gas, and has paid a hefty price for its extraction, it receives a paltry amount of the resource. The central government is instead planning to build a coal power plant in Kyauk Phyu Township to provide electricity to Arakan State. Arakan State has one of the largest natural gas fields in ASEAN that earns more than one billion USD annually for Burma, yet it still lacks electricity, roads and infrastructure, and jobs (Arakan State has the highest rate of unemployment nationally).¹⁶⁷ The state has the lowest percentage of households with access to clean water and sanitation facilities, and the third lowest percentage of households using electricity for lighting and cooking. It also has low education and health indicators and is currently ranked the second poorest state in Burma.

The Shwe Gas Project: stolen lands and toxic waste

Daewoo Company started the Shwe project without any social and environmental impact assessments.¹⁶⁸ Local farmlands were confiscated for the gas project terminal and pipeline construction without prior notice to the landowners. Some farmers got limited compensation and some did not get any compensation for confiscated or damaged land. Many farmers' lives have become worse since the beginning of the project in 2008 due to the loss of their farmland.

"We were not informed about the confiscation of our land. They just defined my rice farm as one acre without conducting any measurement. They provided over 37 lakhs (3,700,000 kyat or 2,890 USD) in compensation for the rice farm and paddy for three years. But I did not get anything for my vacant field and seasonal farmland. This happened in 2010, so we have not gotten any compensation for 2014 and 2015. There are 172 affected farmers in this area. We sent a letter to the local authorities demanding compensation but it was not taken seriously. We just want our farmlands back. We've had these lands since the time of our ancestors. Before the projects arrived, parents could provide education for their children. In these days, we don't have farmlands anymore. We have to struggle for daily food. So many parents have to stop their children's education before they graduate." - Daw Khin Nu, a local farmer who lost her farmland to Daewoo's gas terminal project

In 2014 four local women from the Malar Kyun village had stillbirths. The village is located next to the Onshore Shwe Gas Terminal (OGT) site and the majority of local people think that the incident happened due to toxic waste released from the site.

“I found the dirty wastewater in the canal when I went to my farm at 5 a.m. It smelled terrible and it was leaking into the rice farms nearby through cracked cement along the canal. People working in the farms and passersby could smell the dirty waste. This went on from September 2013 to the beginning of 2014 before they fixed it. Four pregnant women worked in the farms nearby. They drank water from their farms, and used it to cook too. I think those women gave birth to dead babies because of the dirty water, because we never had stillbirths in our village before.” - U AungWaiKhin, a Malar Kyun villager

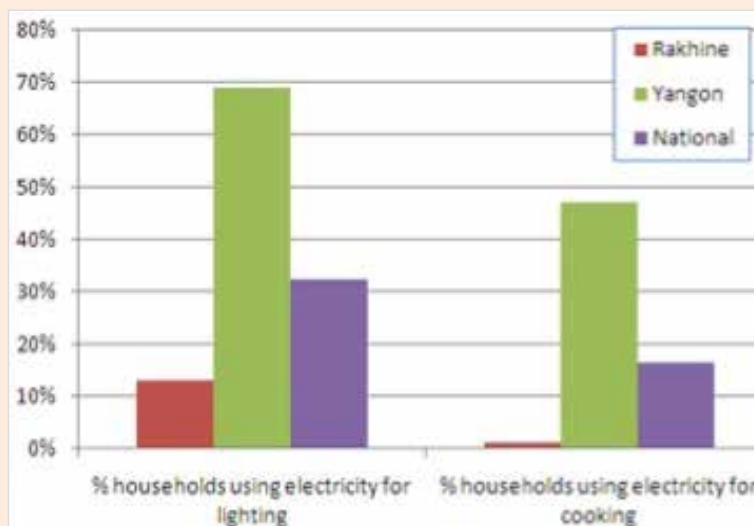
The Madae Deep sea port, oil terminal and pipelines

On Arakan’s Madae Island, the state-owned China National Petroleum Corporation (CNPC) is constructing a huge seaport and oil terminal to import oil from the Middle East and Africa through Burma to a refinery in Yunnan. China currently imports 80 percent of its oil from those areas, shipping it through the Straits of Malacca. The Burma pipeline provides a more secure and much cheaper alternative transport route. In contrast to the astronomical benefit that the projects represent for China, local islanders have lost farmlands and fishing grounds to CNPC, which means they no longer have any means to live. In addition to this desperate situation, they are also abused by local police.

Fishing is the other major livelihood for Madae islanders. According to fishermen, CNPC mined the rocks from local riverbeds for construction, and then dumped the unused rocks into the Thansit River, where islanders do the majority of their fishing. The rocks and concrete under navigational buoys now snag and rip fishermen’s nets, destroying key tools of their trade and making a successful catch impossible.

While the two main livelihoods on Madae are being destroyed, the project is not offering alternative means of living for local residents. Currently, over 200 workers from China and over 100 workers from central Burma are at the CNPC project site. Tun Kyi, a local, said that the workers from central Burma are former military personnel or those who have connections to military personnel. Only about sixty local Arakanese workers from various townships work at the CNPC seaport project site. If an accident occurs on the job, the worker receives no medical care or compensation, he or she is just fired.

Photo AOW



Ministry of Immigration and Population, May 2015

Although Arakan State is the source of the Shwe gas, it is ranked the second poorest state and has the third lowest percentage of households using electricity.

“At first, the Chinese promised to pay us 8,000 kyat per day. But when they actually pay us, they just give 4,000 kyat per day, because they think they can do what they want to local Arakanese workers. They also exploit working hours by increasing the workday by 15 to 20 minutes and sometimes until dark. Sometimes we don’t even have time to take shower. If we refuse to work additional time, we are fired.” - Arakanese worker at project site

IV. Conclusion

Under the 2008 constitution, Burma’s central government is not only the owner of all natural resources in the country; it also controls and manages them, enacting “necessary laws for extraction.” This centralised control has had disastrous effects in widening inequality, fueling a cycle of conflict and violence, and depleting non-renewable resources that could be the basis of a sound economy for future generations.

The Shwe Gas Project off the coast of Arakan State produces 500 million cubic feet of natural gas per day, yet none of this is used to provide electricity in Arakan State, and only 20% of the resource is used within the country. While affected communities bear livelihood and environmental destruction, human rights abuses and land confiscation, the gas is sold to China and more than one billion USD annually flows to Naypyidaw. There, accounting of the revenues remains opaque and reinvestment in Arakan’s infrastructure, education, and health is practically non-existent. The state is the second poorest in the country.

Until now, the military, the central government, and foreign investors have taken advantage of the centralized governance structure and a lack of protection mechanisms to make all the decisions around natural resources and reap most of the benefits.

In contrast, devolving the powers within a federal system to manage resources to lower levels of government will establish political, administrative, and fiscal structures so that decisions around the use of natural resources can be made at local levels with input from affected peoples. This distribution of powers makes natural resource management more accountable to the needs of local communities and will therefore ensure a more sustainable development.

Photo bangkok.com



Natural gas from the Yadana fields in Tenasserim Region power malls like this one in Bangkok. The Shwe gas in Arakan State is sent to industrial zones in China.

PART 2.7 CONCLUSION

Similar to the development process after ceasefires were signed in the mid-1990s, the central government and army have again expanded their reach into ethnic areas through land acquisition, road construction, and natural resource investment projects since the signing of recent ceasefire agreements. These projects have been designed and promoted through the centralized political system prior to a political dialogue. They therefore threaten an already fragile peace process.

On the ground, human rights abuses committed by the *Tatmadaw* against local people further adds to grievances among ethnic nationalities across the country. Even as minor reforms have taken place, continued militarization – aimed largely at securing key economic sites and supply or trade routes – has sustained an environment where local people interact with the state almost exclusively as subjects of harassment, exploitation, and abuse.

Extraction and sale of high-value natural resources, such as oil, gas, minerals, and gems, as well as large hydropower projects, have caused irreparable damage to ethnic water systems, agricultural lands, and livelihoods. Revenues from these sales are funneled to the central government and ethnic areas rarely see benefits. Government-sanctioned mining and hydro projects in conflict-affected states have led to clashes between ethnic armed organizations and the Burma Army. Large-scale land concessions granted by the central government for mono-crop plantations have increased in ethnic areas since ceasefires were signed, yet since land is constitutionally owned and controlled by the central government, communities lack legal rights to protect themselves.

Large infrastructure development projects facilitate Burma Army access to ethnic areas, expanded extraction and export of resources, and the transmission of electricity to markets in Southeast Asia and China. Designed by the central government and neighboring countries in collaboration with international investors and banks, such as the Asian Development Bank (ADB) and the Japan International Cooperation Agency (JICA), these projects have very little input from ethnic communities and proceed without consent. Such infrastructure comes with high costs for affected ethnic communities while Burma's central government and neighboring countries receive the financial benefits.

International conservation agencies have also become drivers in the conflict, as they work with the central government to map out and designate centrally controlled "conservation" zones in conflict-affected areas. Such zones, managed by the central government, do not respect customary management practices and have led to displacement of ethnic communities living in forests.

Continued centralization and abusive practices have diminished faith among key elements of EAOs as well as ethnic civil society in prospects for a political solution to the conflict, as they demonstrate a severe lack of commitment to equality. Such dynamics indicate that anything deeper than a fragile, negative peace is unlikely to emerge. Since independence we have seen a persistent accumulation of grievances without altering the political structures at the root of those grievances. The current central government is proceeding as if peace has already arrived, without proposing any changes in the centralized control over the ownership, management, and revenue generation from natural resources.



Photo AOW

PART 3: MOVING FORWARD

3.1 Devolved decision-making key to sustaining peace

Currently development and natural resource use is defined exclusively by the central government and armed forces, both of which have minimal ethnic representation. As decades of conflict have shown, development cannot be sustainable, just, or peaceful when communities have no powers to decide their own futures. The root cause of conflict is the loss of self-determination, which includes ownership and powers of management. This is made worse by a centralized development. A peace process offered without devolved federal structures and policies will drive a development that creates new conflicts in an unending cycle. Peace will fail again and again under a development process dictated from the center.

In order to achieve a sustainable peace in the ethnic states, it is imperative that ethnic stakeholders control and manage any potential large-scale development in their respective states and regions. Without healing the decades of fear after living under a military dictatorship, without increasing grassroots participation and decision-making, and appropriate powers shared to state and local governments in a federal system, who is accountable, and how can the centralized system that has caused the country so much bloodshed, be overcome?

Practically, at the community level, affected people should be able to decide and to have ownership when it comes to their lands and forests. Local or community leaders should have the rights to make decisions about any investment or company, and the powers to get free prior information and give consent regarding any investment project. Basic policy recommendations should be able to be made at the township, state, and union levels of government. At the township and self-administrative zone levels, elected representatives should have the power to regulate companies, and make changes quickly related to company impacts. They should also have judiciary power and powers to hold referendums on projects.

The state government should have the power to own natural resources, legislate, and facilitate revenue sharing. They should be able to collect taxes and share those back to the community to make sure that grassroots areas where companies operate receive benefits. The state governments should additionally have the political power to set policies for the state's economy, development, and use of natural resources. The people of a state should elect their own representatives instead of having government officials appointed by the central government.

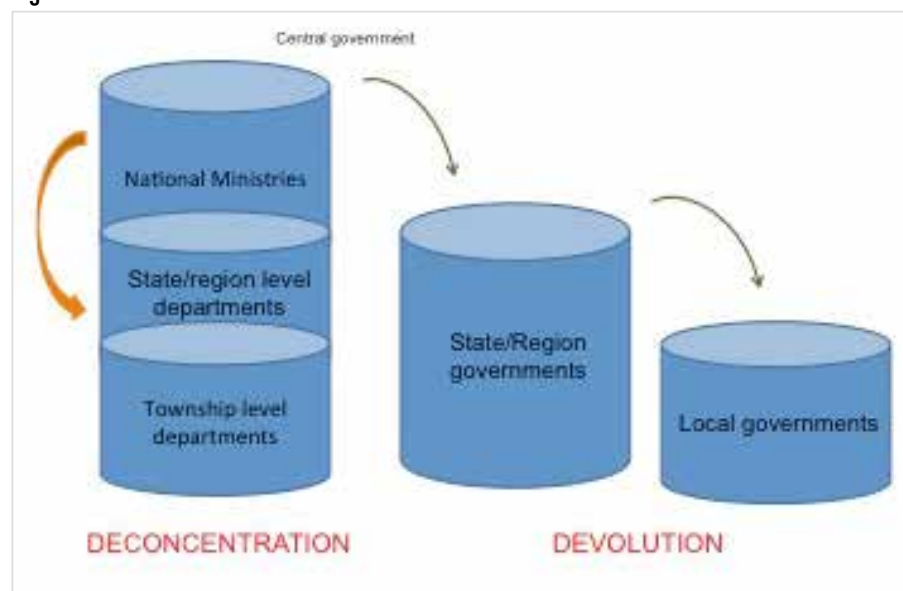
Within states ministries and local government agencies, the staff should reflect and represent the local population; now the role of the military is too large. At the central government level, also, those holding parliament seats should represent their constituencies. Local people and actors need a chance to manage their own affairs and build their capacity in a systematic way.

In order to achieve genuine decentralization, awareness and debate is essential, and for this independent media is needed. Through community meetings, events, and discussions, community should form community groups by themselves to take action and practice decision-making and elections. Communities should reclaim customary laws and practices that are appropriate for today. Communities should have monitoring and action groups to reduce corruption and hold elected leaders accountable. Finally, actors should create space at the community level for dialogue and discussion. They should document and advocate to improve institutions.

The government, army, and investors should therefore immediately cease current expansion and military offensives in ethnic areas to allow the fragile ceasefires to take hold and inclusive political dialogue to proceed while ethnic stakeholders develop an economic and development vision and policies that build on the experience, existing resources, and needs of the ethnic peoples themselves.

Devolved decision-making is not just good for the ethnic states, however. It offers stronger accountability and representation in all areas and at all levels of government. This provides opportunity for local input and control, benefits to local populations, and environmental sustainability. It can also reduce the potential for creating social tensions and conflicts over resource use.

Figure 12: Deconcentration vs. Devolution



3.2 Reject token decentralisation

Currently the government is instituting token decentralization reforms simply by creating de-concentrated offices of central government ministries. Most of these subnational offices perform specific administrative functions, and although they are given some authority and discretion, they remain accountable to the central government. The MONREC township offices are an example of this. If structures remain top-down, there will continue to be problems in genuinely sharing powers among central, state, and local governments.

In order for decentralization to be truly effective, local authorities must be responsive to the local population and the local population needs to be able to restrict or approve of the authorities through accountability measures, such as elections. This is done best when decisions are made at the lowest possible political-administrative level. In other words, nothing should be done at a higher level of government that can be done as well, or better, at a lower level.¹⁶⁹ (This is often called the **principle of subsidiarity**).

However, in order to respond to local demands and serve local needs, autonomous subnational units of government need to have sufficient formal powers that are guaranteed by a federal constitution.¹⁷⁰ These must include political, fiscal, and administrative powers fully devolved to subnational governments (see box). This will set up structures and mechanisms so that decisions around the use of natural resources can be made at local levels with input from affected peoples, and allow locally elected legislative bodies to manage the use of resources.

Devolved decentralization has three aspects:

1. **Political:** subnational political representatives have powers to formulate and implement substantive local laws and policies. Decision making power and accountability are transferred to local levels.
2. **Fiscal:** subnational governments are able to plan, formulate budgets, and manage finances to address local needs through the collection of significant taxes and revenues
3. **Administrative:** subnational governments and ministries are able to retain significant powers to manage the delivery of local services

3.3 Importance of protection mechanisms

Natural resource projects have displaced countless numbers of people across the country, destroyed landscapes, and polluted waterways. Existing central government laws and safeguards for the environment and human rights are inadequate and enforcement is weak. All existing projects need a thorough review and a process of restitution, compensation, and rehabilitation must begin. National and subnational safeguard systems should be more fully developed and integrated into future federal structures.

Current central government laws intended to provide environmental and social protections have serious weaknesses. It is therefore important that future federal national and subnational governments ensure justice by enshrining strong protections in both laws and practice. Existing ethnic legislation and management structures are significant building blocks to establishing

capable institutions that will do this. In addition to these, a strong civil society and open media is essential in the process of monitoring government actions at every level, and in holding officials accountable to enforcing environmental and human rights standards.

The Environmental Conservation Law, ratified in 2012, and the Environmental Conservation Rules, ratified in 2014, empower the Myanmar Environmental Conservation and Forestry (now MONREC), to perform Environmental and Social Impact Assessments (ESIA) and draw up an Environmental and Social Management Plan (ESMP). However, these are only done after MOUs have been signed between investors and the responsible central government agency.

The Environmental Conservation Law provides the legal framework for environment protection in Burma. However, it does not provide for access to information, public participation, and right of review or appeal.¹⁷¹ Significantly, Article 36 of the Law gives the Ministry the right to “exempt or relieve a government department, organization or private business from complying with any provision contained in this Law for the interest of the Union and its people.”¹⁷²

Although the Environmental Impact Assessment Procedures, issued in 2015, have the potential to hold a Project Proponent legally accountable for adverse impacts, in practice they have not done so. Article 13 requires project proponents to “arrange for appropriate public consultation” throughout the Initial Environmental Examination (IEE) and EIA processes and “disclose to the public in a timely manner all relevant Project-related information.”¹⁷³ Yet in practice, project proponents often fail to carry out meaningful consultations with local communities during the EIA process. Indeed, although an EIA needs to be conducted independent of both the government and private sector to remain impartial, it is often the project implementer that hires the EIA investigator. This results in EIAs being used to support projects rather than provide a balanced investigation of their social and environmental impacts.

Article 7 of the Procedures states that “Projects that involve Involuntary Resettlement or which may potentially have an Adverse Impact on Indigenous People” are to adhere to the policies of the World Bank and the Asian Development Bank. Yet neither the ADB nor the WB has adopted the principle of FPIC, a requirement for Indigenous Peoples¹⁷⁴ provided for under international law, into their official policies. Instead the banks have replaced FPIC with the ambiguous concept of Broad Community Support (BCS), something according to a UN official, “with no legal basis under international law and without a clear understanding or meaning.”¹⁷⁵

While the Procedures do require that social impacts be mitigated, social impact assessments that have been conducted tend to focus on quantifying livelihoods and ignore discussion of human rights. Health impact assessments are extremely rare, as are analyses of how a project may impact women differently than men, or exacerbate conflict.

In the future, state and substate governments should require that full Strategic Impact Assessments (including assessment of impacts not only to the environment, but also taking account of social, gender and health considerations) be conducted prior to signing any project agreement or granting concessions. Affected people should have full access to information about proposed projects, opportunity to input into the planning process, and clear mechanisms to reject or approve them based on the international Free, Prior, and Informed Consent framework.

3.4 Why women need to be at the decision making table

Decisions around natural resources in any area should be made by the people living there, the men and women. Yet the argument often used to claim that ethnic states or localities are not able to run their own affairs—that they do not have experience or capacity—is also often given for why there are not more women in government positions.

Women and men use and depend on natural resources differently depending on the different work that they do and the different roles they play in the family and community. As we have seen in this report, the management of natural resources consequently impacts men and women differently, and women face unique impacts simply because of their physical nature. For example, women are more vulnerable to certain types of pollution during pregnancy.

Large-scale projects such as building an oil pipeline, logging, or operating a mine create a situation of transient workers living in squalid conditions. Women, due to the physical demands of the work on such projects and social perceptions, have limited job opportunities and receive lower wages. Female workers on such projects have also suffered sexual harassment by male workers.¹⁷⁶ Women who work in the sex industry at such sites face the dangers of violence and disease as well as the trauma of community censure.

Natural resource projects are often “secured” by military personnel or other male security agents. Sexual violence committed by Burma Army troops against women in ethnic areas has been documented in many reports. The vast majority of rapes go uninvestigated and perpetrators are not charged. In the continued atmosphere of impunity, there is grave concern for the safety of local women following increased deployment of soldiers to dams and other project sites.

Displacement and resettlement from dams and other large natural resource projects also affect women differently than men. Land confiscation is often implemented by local administrative authorities who are mainly men, adding another level of patriarchal coercion to the process. For example, women in Tavoy said they had been bullied by male authorities to give up their land for the planned special economic zone there.¹⁷⁷ When compensation for displacement is provided in the form of cash, land, or materials, it is often only given to the male head of a household.

Displaced migrants need to seek employment in new places, yet restrictions on travel and lack of access to information leave women vulnerable to trafficking when they migrate. Studies by the Kachin Women’s Association of Thailand document how women desperate for work are tricked into following traffickers in search of legitimate work only to find themselves trapped in a cycle of involuntary sex work or sold as wives to Chinese men across the border.

These patterns of negative impacts on women will worsen if projects are imposed by a central government that has no accountability to local populations. It is precisely because women have their own set of challenges when natural resources are mismanaged, that they need to be involved in decisions around that management. Ensuring that women are in decision-making bodies and that regular consultative mechanisms are established with a broad range of women’s groups are important steps. The more this is done at the local level, the more that women’s actual experience will be considered in natural resource decisions, and their distinct perspectives, roles, and capacities will contribute to a fully representative and therefore effective resource governance.

3.5 Sequencing decentralised natural resource governance

According to empirical evidence from peace processes globally, it is important to sequence events and their implementation if there is to be lasting and meaningful peace. Three examples that illustrate this are from Sri Lanka, Papua New Guinea (PNG), and Indonesia.

In **PNG**, the central government began awarding concessions to large international companies to mine valuable extractives found on indigenous land in the 1960s. By the late 1980s this had triggered an armed resistance movement that led to a defacto moratorium on the destructive mining. A peace agreement was signed in 2001, followed by the Bougainville Organic Law on Peace-building in 2002. New local governing structures were then formalized in the 2004 Constitution of the Autonomous Region of Bougainville. The peace agreement stated that implementation of devolved powers would take place following ratification of Bougainville legislation in respective sectors. As such, the moratorium on mining in the critical transition phase was maintained until a robust legal framework was in place, preventing local conflict from flaring up again. Legislation on mining was formalized through the Bougainville Mining Act, adopted in March 2015, formally ending the 26-year moratorium.

In **Sri Lanka**, after a ceasefire was agreed it was decided (following proposals by Norwegian mediators) that development aid and investment could bring both parties together to enable coordination and trust building before a political settlement was finalized. On the contrary, however, without any fundamental agreement on how powers and controls would be assigned to different layers of government and different sectors—on the political structures of a peaceful Sri Lanka—the influx of aid and investment created conflict between the warring sides about how it would be used. These basic disagreements led to a breakdown of the peace process and renewed armed conflict that ended with the Sri Lankan Army crushing the armed Tamil movement in May 2009.

Decentralizing powers alone is not enough, however. Corruption and mismanagement practices can be relocated or “downloaded” from the central to subnational governments. In some cases, even when the structure is bottom-up, or there is a federal system, if the power is not really in the hands of the state and localities, representative and accountable governance cannot be practiced.

Photo AOW



The vice chairwoman of the Arakan National Party speaks at a rally in Kyauk Phyu demanding management of the state's resources. Women are needed at every step of the decision making process since they face different impacts from natural resource projects than men do.

In **Indonesia**, regional autonomy was enacted within a unitary system through constitutional amendments following the fall of President Suharto's autocratic regime in 1998. Local governments' increased authority and the direct election of officials produced policies and officials much more receptive and responsive to local needs than Soeharto's central bureaucracy. However, regional autonomy has also in some ways relocated corruption and mismanagement practices from Jakarta to the local level, while the center maintained all significant powers. These failures are largely due to the speed with which the measures were enacted, without popular participation and adequate deliberation, without preparation of the local governments to develop capacity for carrying out the new functions, and without putting in place safeguards to prevent corruption and maintain equity and sound resource management.

In the absence of safeguards such as transparency, open participation, and accountability, local elites have been able to capture the licensing process and monopolize benefits from resource extraction in Indonesia. As some analysts have put it, because post-conflict Aceh has not yet built institutions that are capable of ensuring participation, addressing local grievances, delivering services, enabling transparency and accountability, or controlling corruption, Special Autonomy has at present largely resulted in adding to the inequity (and grievance) between the central and local government a new layer of inequity (and grievance) within the province.¹⁷⁸

These three examples offer a cautionary tale for Burma that highlights the need for a moratorium on natural resource investments until a meaningful peace accord is met and federal structures are in place.

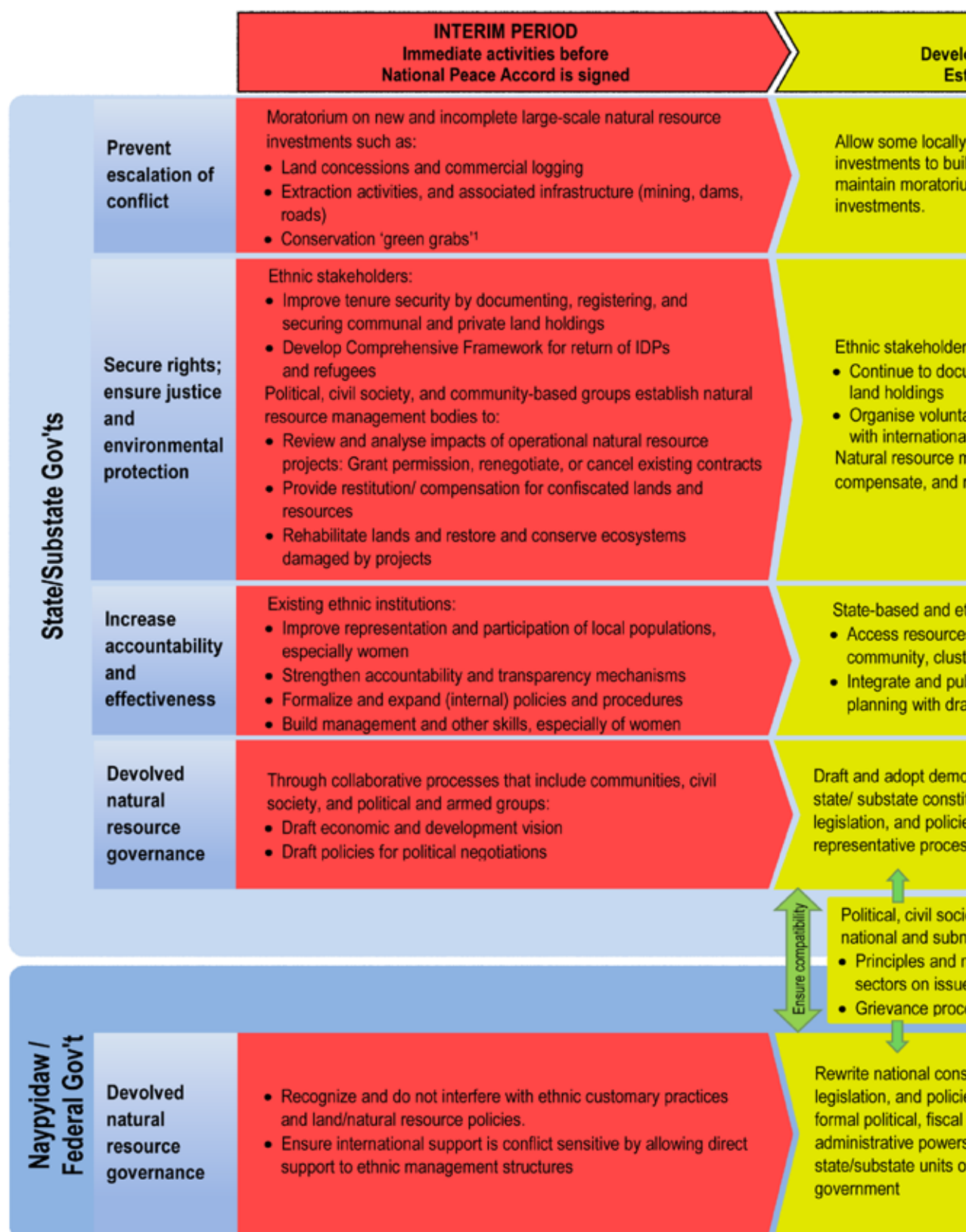
The roadmap on the following pages sets out a sequenced approach to the decentralisation of natural resource management and economic development based on the current context in Burma. In order to avoid repeating the mistakes of the central government and military, the framework sets out a time sensitive, sequenced chain of actions that allows existing ethnic institutions and civil society to build capacity and work in a practical way. It seeks to safeguard the rights and tenure of conflict-affected communities, prevent environmental destruction, and decrease the potential for further conflict. These steps are intended to build the capacity of local, representative governments to establish and implement development priorities appropriate for their respective populations. It is hoped that this will not only strengthen opportunities for lasting peace but may also pave the way for sustainable economic development.

Photo Shan State Farmers Network



Protest against investments in coal. An influx of aid and investment before political settlement can cause a breakdown in the peace process. A moratorium on natural resource investments during a transition phase can allow for a robust legal framework to take hold first.

Roadmap to devolved federal natural resource governance



¹ Green grabs: the designation and management of large areas of land by international agencies and/or the central government that can result in displacement of local communities.

² Agreed ceilings on natural resources may be required to meet national commitments (for example climate change obligations and the UDHR).

TRANSITION PERIOD Developing new legal framework and establishing federal structures	IMPLEMENTATION PERIOD Operationalizing new federal structures
<p>Controlled sustainable natural resource management and governing capacity and provide benefits; focus on new and incomplete large-scale</p>	<p>Resume natural resource investments:</p> <ul style="list-style-type: none"> • Under state/substate jurisdiction • In accordance with state/substate policies and legislation as well as state, cluster², and village plans • Following new national and subnational safeguards
<p>...S: ...ment, register, and secure communal and private ...ary return of IDPs and refugees in accordance ... humanitarian laws ...management bodies continue to review, ...rehabilitate</p>	<ul style="list-style-type: none"> • Civil society, affected communities, and uncensored media monitor and facilitate public participation in natural resource project implementation and safeguard enforcement • Mechanism to create investigative commissions in egregious cases • Safeguard systems are integrated into new federal structures
<p>...ethnic institutions: ...s and plan according to development needs at ...er², and state level ...bly debate state/substate draft natural resource ...ft economic/development plan</p>	<ul style="list-style-type: none"> • Research, evaluate, and adjust policies through inclusive processes to ensure sustainable management of natural resources, economy, and livelihoods • State level planning, implementation and monitoring systems
<p>...ocratic ...stitutions, ...es through ...ses</p> <p>Develop state/substate institutions and departments that are representative and accountable, to manage natural resources and revenues</p>	<ul style="list-style-type: none"> • Representative and accountable state/substate institutions and departments manage and control resource and revenue usage, enforce safeguards • Formal mechanisms for input, approval, and/or censure of projects by affected communities • Women participate equally in natural resource decisions
<p>...ety, and community-based groups develop ...national safeguard systems: ...minimum standards for cross-cutting themes in all ...es of human rights and environmental protection ...edures and mechanisms</p>	<p>Establish inter-state/substate commissions as needed to manage trans-boundary resources (and revenues) that involve two or more states and/or substates</p>
<p>...stitution, ...es to grant ...and ...s to ...f</p> <p>Develop new federal institutions and departments that are representative and accountable, to manage natural resources and revenues</p>	<p>Federal institutions and departments:</p> <ul style="list-style-type: none"> • Monitor and oversee state, inter-state and substate resource management to ensure compliance with national standards • Develop national natural resource plans and ceilings per sector³ • Disburse equalisation payments • Administer FDI in cooperation with relevant stakeholders at all levels, with negotiation at state or substate level • Ensure compliance with international treaties and guidelines³

¹ For livelihood loss by local populations; ² Cluster: landscape or watershed

3.6 Recommendations and proposed devolved federal natural resource management

Interim period recommendations

1. A moratorium on new and incomplete large-scale natural resource investment projects by all stakeholders is needed until constitutions and relevant legislations are adopted, in accordance with a future Union Peace Accord.
2. All operational large-scale investment project contracts need to be disclosed and reviewed. These may be renegotiated or cancelled under the decision-making powers of new federal, state, and substate structures that are representative and accountable, depending on environmental and social safeguards and the equitability of revenue sharing. Mechanisms for the rehabilitation and restitution of lands damaged from existing projects should also be established.
3. A long-term economic development vision, policies, and plans around the use, development and management of natural resources need to be formulated by ethnic political stakeholders, including civil society, community based organizations, and affected communities in respective states and substates. This should start with community consultations for the creation of state and regional policies on development priorities, input at the conceptualization stage of large-scale projects, as well as monitoring of projects, including management of local grievance procedures.
4. Division of powers between central, state, and substate governments related to the ownership, control, management, and revenue collection of natural resources should be clearly defined, discussed in political dialogue, and included in the federal peace accord between ethnic political stakeholders and the central government.
5. The central government should not interfere with existing ethnic natural resource administrative structures and policies until federal structures have been created.
6. The central government should not interfere with customary land tenure systems until specific federal institutions have been established to support these customary systems.

Transition period recommendations

1. The 2008 constitution must be abolished and replaced with a new devolved federal constitution.
2. New devolved federal and state constitutions, related legislation, and policies based on the principles of democracy, self-determination, human rights, and environmental sustainability, must be adopted through representative processes.
3. Central, state, and substate governments need to develop institutions and departments that are representative and accountable to manage natural resources and revenues.
4. Political, civil society, and community-based groups need to develop national and subnational safeguard systems with principles and minimum standards for cross-cutting themes in all sectors on issues of human rights and environmental protection, as well as grievance proce-

- dures and mechanisms to provide input into the writing of new constitutions and legislations.
5. Emergency measures must be instituted to ensure women's participation and input into the drafting of central, state, and substate policies, constitutions, and legislation.

Implementation period: proposed federal structures

A new federal constitution provides:

1. **Ownership of natural resources:** Ownership of all natural resources, including those under the ground, to the people in the respective states and substates.
2. **Control and management of natural resources:** Powers for state and substate governments to control, manage, and conserve their natural resources, including comprehensive devolved political, fiscal, and administrative powers.
3. **Natural resource revenue management:** Powers for states and substates to collect revenues from the use and sale of their natural resources and to develop their own budgets for the development of their areas and delivery of services to their populations.

Federal, state, and substate laws and democratic institutions:

- formulate a long-term development vision and socio-economic planning based on sustainable natural resource management that protects the rights of future generations
- recognize ethnic customary natural resource management systems and provide formal registration of customary/community land titles based on socially legitimate village boundaries
- enforce environmental and social safeguards that protect rights and rights defenders and include mechanisms for affected communities to reject natural resource projects; proceed only with projects that follow safeguards, receive free, prior, and informed consent inclusive of women's representation at every stage, and are scrutinized by an independent and transparent assessment process that includes Gender Impact Assessments in accordance with the Rio Declaration on Environment and Development
- regulate and monitor companies engaging in the development of natural resources
- receive and settle complaints that arise from the development of natural resources based on human rights principles
- institute emergency measures to ensure women's rights under CEDAW, freedom from discrimination, and unfettered ability to participate in political and social life, including a minimum 30% quota for women's participation in legislative, political, judicial, and administrative bodies.
- A federally negotiated inter-state body collectively manage resources and use impacts that traverse multiple state and/or regional boundaries. This body must be informed by community-led research and ensure the incorporation of local practices into formal regulations and procedures.
- The federal government holds all states and substates to a single minimum standard to protect the rights of communities through national legislation that:
 - o protects rights to freedom of association and expression, and to conduct community referendums in the development of natural resources
 - o requires full disclosure of all relevant information, assessments, and monitoring of projects

- State and substate governments have powers to:
 - o Facilitate the election of their chief ministers and all legislative representatives by residents; form and appoint their cabinet members; elect their chief judge through legislatures; and supervise law enforcement actors

State and substate financial institutions:

- have clearly defined powers to collect and manage revenues, including taxes and royalties, from the sale and use of natural resources with negotiated proceeds transferred to the federal government
- ensure that a significant percentage of the revenues from high-value natural resources are saved and invested for future generations through the establishment of:
 - o savings funds, for future development;
 - o stabilization funds, responding to price and revenue fluctuations; and smooth spending (where relevant, such as the oil and gas sector)
 - o government budgets, with clear strategic allocation policies established through public participation and debate.
- ensure that a fair amount of the revenues are allocated and reinvested in the local development and the restoration of the environment degradation in accordance with the local and indigenous communities' own plan and priorities.
- manage independent financial auditing of government agencies and extractive companies, and present reports to the public.
- The federal government disburses equalization payments to other state or substate governments based on a fair distribution of wealth across the federal union.

endnotes

- ¹ The statement also called on international researchers and investors to “acknowledge and analyse the local context, history, and culture when making recommendations.” See the full statement and list of endorsing organizations at <http://www.burmapartnership.org/2016/03/statement-of-kachin-people-on-natural-resource-governance-in-kachin-state/>
- ² <https://www.facebook.com/burmaenvironmentgroup/posts/1026503494131061>
- ³ “Shan MPs condemn powerless parliament,” Weekly Eleven, October 2, 2016.
- ⁴ <http://www.rfa.org/english/news/myanmar/kachin-state-political-parties-call-for-policy-on-natural-resource-extraction-05272016145812.html>
- ⁵ Only 8 of 21 ethnic armed groups signed a “Nationwide Ceasefire Agreement” (NCA) in October 2015 when the Burma Army rejected an inclusive political dialogue with all 21 groups.
- ⁶ The Burma Consortium (TBC), Protection and Security Concerns in South East Burma/Myanmar, November 2014.
- ⁷ Sections 96, 188, and 196 of the 2008 Constitution specify that legislative powers are prescribed to the Union Government in Schedule One, to States and Regions in Schedule Two, and to Self-Administered Divisions/Zones in Schedule Three respectively.
- ⁸ Section 232. All ministries, except those headed by Aung San Suu Kyi, are headed by men, including the Ministry of Natural Resources and Environmental Conservation.
- ⁹ UNDP, Women and Local Leadership: Leadership Journeys of Myanmar’s Female Village Tract/Ward Administrators, 2015.
- ¹⁰ Swan Ye Htut, MIC aiming for new investment law to come into play next financial year, Myanmar Times, November 1, 2016.
- ¹¹ The MIC is chaired by the Minister of Finance and Planning; members include the Director General of DICA, the Attorney-General, as well as permanent secretaries from the Ministry of Commerce and the Ministry of Natural Resources and Environmental Conservation. The MIC also includes a private sector representative from the Union of Myanmar Federation of Chambers of Commerce and Industry. See Directorate of Company Administration, Information on the Myanmar Investment Commission <http://www.dica.gov.mm/en/information-myanmar-investment-commission-mic>.
- ¹² Member’s tenure expires at the end of the Union-Government’s term. Commission members cannot serve for more than two consecutive terms. 2016 Investment Law, s 10.
- ¹³ 2016 Investment Law, s 36.
- ¹⁴ 2016 Investment Law, s 25(c). According to Section 46, only when it considers that an investor ‘may have a significant impact on security, economic condition, the environment or the national interest of the Union and its citizens,’ the MIC must submit the investment proposal to the *Pyidaungsu Hluttaw* and receive its approval (but the commission appears to have discretion in deciding which investors fall into this category). Investments that fall outside those categories do not require MIC approval, and must only comply with other relevant ministerial approvals and applicable national laws, such as company registration and environmental clearance.
- ¹⁵ 2016 Investment Law, s 24.
- ¹⁶ 2016 Investment Law, s 41.
- ¹⁷ 2016 Investment Law, s 50.
- ¹⁸ 2016 Investment Law, s 24(h).
- ¹⁹ Kyaw Hsu Mon, Investment Law Rules and Regulations to be Released by March, The Irrawaddy, October 24, 2016
- ²⁰ 2016 Investment Law, s 28.
- ²¹ Asian Development Bank, Power Sector Development in Myanmar, October 2015.
- ²² Asian Development Bank, Power Sector Development in Myanmar, October 2015 and Myanmar Energy Master Plan, December 2015
- ²³ <http://www.myanmarinternational.tv/news/national-energy-vp-addressed-management-committee-meeting> accessed November 15, 2016.
- ²⁴ <http://www.myanmarpresidentoffice.gov.mm/2015en/?q=issues/energy/id-4827>, accessed May 24, 2017
- ²⁵ <https://www.adb.org/projects/46389-001/main#project-pds>

- ²⁶ FAO, Global Forest Resources Assessment: Myanmar Country Report, 2015. <http://www.fao.org/3/a-az283e.pdf> This is based on 10% crown cover and trees over 5m in height. There is actually much less good quality forest left, the FAO estimates as little as 19%.
- ²⁷ Mu Mu Aung, State of Forests and Forest Genetic Resources in Myanmar, 2002. At: <http://www.fao.org/docrep/005/ac648e/ac648e08.htm> Accessed November 16, 2016.
- ²⁸ Tejas Bhagwat, Andrea Hess, Ned Horning, Thiri Khaing, Zaw Min Thein, Kyaw Moe Aung, Kyaw Htet Aung, Paing Phyo, Ye Lin Tun, Aung Htat Oo, Anthony Neil, Win Myo Thu, Melissa Songer, Katherine LaJeunesse Connette, Asja Bernd, Grant Connette, and Peter Leimgruber. “Losing a Jewel—Rapid Declines in Myanmar’s Intact Forests from 2002-2014.” 2016. Forest cover here is measured at 10% canopy cover and intact forest at 80%.
- ²⁹ The state or regional forestry minister is able to complain to the State/Region Chief Minister; however, often the degree of seriousness to which the complaint is treated depends more on the Chief State/Regions minister’s personal status as supposed to any formalised institutional arrangement.
- ³⁰ For more on deconcentration, see Gregersen, H., Contreras-Hermosilla, A., White, A. and Phillips, L. 2004. Forest Governance in Federal Systems: An Overview of Experiences and Lessons.
- ³¹ Woods, K. Commercial Agriculture Expansion in Myanmar, 2015.
- ³² Private communication with retired government official, 2015.
- ³³ Woods, K. and Kanby, K. 2012. Myanmar: Overview of Forest Law Enforcement, Governance and Trade.
- ³⁴ Tin Maung Maung Than. 2007. State Dominance in Myanmar: the political economy of industrialisation.
- ³⁵ <http://www.bnionline.net/news/karen-state/item/2365-asia-world-and-shwe-padonmar-companies-sue-returning-idps-for-trespass.html>
- ³⁶ MSPP is a joint venture between Malaysian-based Glenealy Plantations (the parent company is Samling group), which owns a 95% stake, and Myanmar-based Stark Industries, which owns a 5% stake. There are 4 villages in the concession area with the following populations in each: 1) Thein Byin – 865 people, 2) Kawet – 189 people, 3) Baw Sa New – 190 people, 4) Swe Chaung – 66 people.
- ³⁷ There is little or no coordination between ministries. Both MONREC and MOAI rely on territory as their power base and have a long history of trying to expand areas under their respective jurisdiction. Both ministries are also very reluctant to relinquish land to another ministry, especially to each other.
- ³⁸ <http://www.fdmocaf.gov.mm/eng/content/protected-areas-myanmar> Accessed March 26, 2017.
- ³⁹ This count includes proposed new national parks, such as Lenya and Tenasserim National Parks in Tenasserim Region that have not yet been officially recognized by the government; if omitted the total land area would decrease to approximately 5.7 percent.
- ⁴⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20748&LangID=E>
- ⁴¹ <http://mylaff.org/document/view/3300>
- ⁴² <http://www.irrawaddy.com/news/burma/worlds-largest-tiger-reserve-bereft-of-cats.html>
- ⁴³ Srinivas, S. & U Saw Hlaing, Myanmar: Land tenure issues and the impact of rural development, 2015.
- ⁴⁴ Srinivas, S. & U Saw Hlaing, Myanmar: Land tenure issues and the impact of rural development, 2015.
- ⁴⁵ USAID country profile: Property rights and resource governance Burma, 2013; Henley, G., Case study on land in Burma, 2014, retrieved from Evidence on Demand: <http://www.evidenceondemand.info/case-study-on-land-in-burma>
- ⁴⁶ Farmland Law, 2012, Chapter 3, Section 9.
- ⁴⁷ Farmland Law, 2012, Chapter 4, Section 12.
- ⁴⁸ Farmland Law, 2012, Chapter 7, Section 19.
- ⁴⁹ Members of the Central Management Committee of Vacant, Fallow and Virgin Lands are decreed by Notification 41/2016, found here: <http://www.mylaff.org/document/view/3648>
- ⁵⁰ Myanmar Investment Law, 2016, Chapter 12, Section 50(a)
- ⁵¹ Myanmar Investment Law, 2016, Chapter 12, Section 50(b-c)
- ⁵² Myanmar Investment Law, 2016, Chapter 12, Section 50(f)
- ⁵³ Myanmar Investment Law, 2016, Chapter 18, Section 75(a)
- ⁵⁴ Myanmar Investment Law, 2016, Chapter 16, Section 65(a)
- ⁵⁵ Myanmar Investment Law, 2016, Chapter 10, Section 41(c)
- ⁵⁶ National League for Democracy 2015 Election Manifesto, 2015, p.20.
- ⁵⁷ Land Acquisition Act, 1894, Article 4 (1)
- ⁵⁸ Land Acquisition Act, 1894, Article 38 (1)

- ⁵⁹ Special Economic Zones Law, 2015, Chapter 5, Section 9(b)
- ⁶⁰ BCN and TNI, Access denied: Land rights and ethnic conflict in Burma, 2013.
- ⁶¹ TBC, Protection and security concerns in South East Burma/Myanmar, 2014; Gayeski, J., Stolen land, stolen peace, 2014; Kramer, T., Ethnic conflict and lands rights in Myanmar, 2015; Woods, K. (2011). Ceasefire capitalism: Military-private partnerships, resource concessions and military-state building in the Burma-China borderlands. *The Journal of Peasant Studies* 38(4): 747-770.
- ⁶² Across Myanmar, the term “household head” is commonly understood, in the first instance, to refer to the male spouse within a household, except in cases where this spouse is not present, for example due to separation, divorce, or widowhood.
- ⁶³ UNEP, UNWomen, UNDP, PBSO, Women and Natural Resources: Unlocking the Peacebuilding Potential, 2013.
- ⁶⁴ Woods, K., A political anatomy of land grabs. *The Myanmar Times*, 2014.
- ⁶⁵ Guidelines for the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands, 2016, Article 2.
- ⁶⁶ Guidelines for the Central Reinvestigation Committee for Confiscated Farmlands and Other Lands, 2016, Article 2(c)[7]
- ⁶⁷ VFV Law, 2012, Article 21; FIR, 2013, Article 63.
- ⁶⁸ HURFOM, Disputed territory: Mon farmers’ fight against unjust land acquisition and barriers to their progress, 2013.
- ⁶⁹ VFV Law, 2012, Article 25; VFV Law, 2012, Article 10(a)(4); Farmland Law, 2012, Article 34.
- ⁷⁰ VFV Law, 2012, Article 14.
- ⁷¹ See for example Palmano, C., What we need now: Exploring communal desires for justice among post land confiscation communities in eastern Bago Division, 2015; All Arakan Students’ and Youth’s Congress, Pa-O Youth Organisation, Mon Youth Progressive Organisation, Holding our ground: Land confiscation in Arakan & Mon States, and Pa-O area of Southern Shan State, 2009; Land in Our Hands, Destroying people’s lives: The impact of land grabbing on communities in Myanmar, 2015; Karen Human Rights Group, Losing ground: Land conflicts and collective action in eastern Myanmar, 2013.
- ⁷² TBC, Protection and security concerns in South East Burma/Myanmar, 2014; OHCA, Myanmar: Humanitarian overview, 2016; IDMC, Myanmar IDP figure analysis. Internal Displacement Monitoring Centre, 2016; UNHCR, Refugee and IDP camp populations: July 2016, 2016; UNHCR, Bangladesh factsheet: March 2016, 2016.
- ⁷³ MRJ, Model villages are not a model, 2013; TBC, Protection and security concerns in South East Burma/Myanmar, 2014.
- ⁷⁴ TBC, Protection and security concerns in South East Burma/Myanmar, 2014.
- ⁷⁵ (1) *Kaw Land*, (2) *Communal Land*, (3) *Village Land*, (4) *Periodic Land*, (5) *Reserve Land*, and (6) *Public Land*
- ⁷⁶ KNU Land Policy, 2016, Article 4.1.4
- ⁷⁷ KNU Land Policy, 2016, Article 3.3.7
- ⁷⁸ KNU Land Policy, 2016, Article 3.3
- ⁷⁹ KNU Land Policy, 2016, Article 1.3.15
- ⁸⁰ KNU Land Policy, 2016, Article 3.3.6
- ⁸¹ KNU Land Policy, 2016, Article 5.3.7
- ⁸² KNU Land Policy, 2016, Article 3.5.2
- ⁸³ KNU Land Policy, 2016, Article 1.4.11-1.4.12
- ⁸⁴ Interview with Acting Chairperson of the KAD, 15/06/2016
- ⁸⁵ Under Article 5 (f) of Burma’s Rivers Law, the Ministry of Transport is given a mandate for “protecting and maintaining the waterways of border rivers so as not to lose State-owned land, and making arrangements thereof.”
- ⁸⁶ Freshwater fish captures are the largest in Southeast Asia and represent 28 percent of the total national fish production. Improving Freshwater Fisheries Management in Myanmar, Myanmar Fisheries Partnership, 2016.
- ⁸⁷ According to Professor Maung Maung Aye, a leading member of the Advisory Group to the National Water Resource Committee (NWRC), “about 19.9% of ... [Myanmar] lies in the drainage area of the Salween River” (Date: July 2, 2016, Meeting Place: MEI Office Yangon), while the Asian Development

- Bank (ADB) estimates that “[t]he Ayeyarwady [also known as the Irrawaddy], along with its major tributary, the Chindwin, drains 58% of the country’s territory” (ADB, Myanmar Energy Master Plan, p. 10, fn. 9). The collective basin of these two rivers’ basin areas, therefore, accounts for roughly 78% of the country’s territory.
- ⁸⁸ Diana Suhardiman, “The Plans to Dam Asia’s Last Free-flowing, International River,” *The Brink*, October 13, 2016.
- ⁸⁹ Mon Youth Progressive Organisation (MYPO), *In the Balance: Salween Dams Threaten Downstream Communities in Burma*, 2007.
- ⁹⁰ The Nature Conservancy, World Wildlife Fund, and the University of Manchester, *Improving Hydro-power Outcomes through System-Scale Planning*, 2016, p. 4.
- ⁹¹ Food and Agriculture Organisation, *Myanmar Aquaculture and Inland Fisheries*, 2003, p. v.
- ⁹² In March 2016 the new NLD-led government nominally streamlined Burma’s 36 ministries to 21. Under this move the Ministry of Electric Power (MOEP) was combined with the Ministry of Energy (MoE) to form the Ministry of Electricity and Energy (MoEE).
- ⁹³ Ministry of Electric Power (MOEP), “Present & Future Power Sector Development in Myanmar,” presented on 27 February 2013 at <https://www.slideshare.net/SeokhoShin/ministry-electric-power-myanmar22713> accessed on May 19, 2017 and Ministry of Electricity and Energy (MoEE), “Status of Existing, Under Construction and Planned Hydropower Projects in Myanmar” 27th January 2017, IFC Strategic Environmental Assessment Workshop, Novotel, Yangon.
- ⁹⁴ Asian Development Bank (ADB), *Myanmar 2015 Energy Master Plan (EMP)*, p. 190.
- ⁹⁵ Zaw Win, Directorate of Water Resources and Improvement of River Systems, *River Basins Management in Myanmar*, Power Point Presentation, Naypyidaw, January 2014.
- ⁹⁶ Zaw Win, Directorate of Water Resources and Improvement of River Systems, *River Basins Management in Myanmar*, Power Point Presentation, Naypyidaw, January 2014.
- ⁹⁷ “National Water Resources Management in Myanmar,” Sein Aung Min, Assistant Director, Environmental Conservation Department, at http://webcache.googleusercontent.com/search?q=cache:BnK-Mbh-5c8MJ:www.inbo-news.org/IMG/pdf/Myanmar_IWRM_workshop_Final_.pdf+&cd=1&hl=en&ct=clnk&gl=jp&client=firefox-b Accessed February 11, 2017.
- ⁹⁸ National Water Resource Committee (NWRC), *Myanmar National Water Policy*, 2014, Article 1.2.
- ⁹⁹ NWRC, *Myanmar National Water Policy*, 2014, Article 1.3, ii.
- ¹⁰⁰ NWRC, *Myanmar National Water Policy*, 2014, Article 1.3, xi.
- ¹⁰¹ NWRC, *Myanmar National Water Policy*, 2014, Article 4.5.
- ¹⁰² NWRC, *Myanmar National Water Policy*, 2014, Article 2.5, iii.
- ¹⁰³ According to the Salween Watch report, *The Salween Under Threat*, “the forced relocation program conveniently cleared out communities along the river so that if the dam is built, the military simply can say that no one is living in the area that will be flooded, thereby avoiding having to pay any compensation to those villagers who already were relocated.” (2004: 47).
- ¹⁰⁴ *Dispossessed: A report on forced relocation and extrajudicial killings in Shan State, Burma*, Shan Human Rights Foundation, April 1998.
- ¹⁰⁵ *Warning Signs*, Shan Sapawa Environmental Organisations (SSEO), 2006.
- ¹⁰⁶ *Warning Signs*, Shan Sapawa Environmental Organisations (SSEO), 2006.
- ¹⁰⁷ “Relocations of over 100 villages in the area of Mongton Hydroelectric Power Project begun,” *Burma News International*, March 19, 2013. <http://www.bnionline.net/index.php/news/shan/14970-relocations-of-over-100-villages-in-the-area-of-mongton-hydroelectric-power-project-begun.html>
- ¹⁰⁸ Interview with Karen Minister of Electric Power, Hpa’ An, Karen State, July 2014; Interview with Mon Minister of Electric Power, Mawlamyine, Mon State, July 2014.
- ¹⁰⁹ Interview with Senior Research Fellow at MDRI-CESD, Rangoon, Burma, June 20, 2014.
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- ¹¹¹ “Documentary raises alarm over Shan region threatened by Salween dam,” *Myanmar Times*, September 29, 2016.
- ¹¹² International Finance Corporation, IFC and Private Sector Launch Working Group to Drive Change in Myanmar Hydropower Sector, Tiffany Noeske, Yangon, August 18, 2016. http://www.ifc.org/wps/wcm/connect/lao_ext_content/sustainable_hydropower/sustainability_hydropower/news/press_release/ifc+and+private+sector+launch+working+group+to+drive+change+in+myanmar+hydropower+sector

- ¹¹³ Witoon Permpongsacharoen, Mekong Energy and Ecology Network (MEE Net), Myanmar Power Sector Development in the Regional Context, 2014.
- ¹¹⁴ Ibid.
- ¹¹⁵ ADB, Myanmar Energy Sector Initial Assessment, October 2012, p.16.
- ¹¹⁶ The China Three Gorges Corporation (CTG) is a state-owned enterprise. In recent years, the Chinese government has sought to hold it accountable for the adverse environmental and social impact of the Three Gorges dam project and in March 2014, the Chairman, Cao Guangjing, and General Manager Chen Fei, were removed by the Communist Party's Organization Department following investigation of corruption in the project. See Sui-Lee Wee and Li Hui, "China's Three Gorges replaces top executives amid graft probe," Reuters, March 26, 2014. <http://www.reuters.com/article/2014/03/26/us-china-corruption-threegorges-idUSBREA2P0BY20140326>
- ¹¹⁷ The Electricity Generating Authority of Thailand (EGAT) is a state-owned power utility managed by the Thai Ministry of Energy. Faced with difficulties in domestic expansion due to environmental protection laws and a relatively stronger civil society, EGAT has turned towards investments in Southeast Asia where environmental and human rights protections are weaker. EGAT International Co. Ltd. (EGATi) is a wholly owned subsidiary and the overseas investment arm of EGAT, and is involved in Hatgyi and Mongton dams. See Khettyia Jittapong and Wilawan Pongpitak, "Thai power producer EGAT plans to venture into Southeast Asia," Reuters, July 4, 2014. <http://www.reuters.com/article/2014/07/04/thailand-egat-expansion-idUSL4N0PF1ST20140704>
- ¹¹⁸ Chinese Investments in Myanmar: A Scoping Study, Global Environmental Institute, 2016.
- ¹¹⁹ Chinese state-owned corporations still play a huge part in determining how Burma's water resources will be used. In 2012, the China Three Gorges Corporation, the main stakeholder in the Mongton dam, funded the production of Burma's twenty-year power plan, which was conducted by HydroChina Kunming Engineering and presented to the Ministry of Electric Power in 2014.
- ¹²⁰ This article specifically states that non-disclosure is permitted where information "may relate to National Security concerns as informed by the Ministry."
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- ¹⁵¹ Kachin Chief Minister Lajawn Ngan Seng interviewed by Myitkyina Journal Volume 2, No.2, March 30-April 9, 2015.
- ¹⁵² This and the following “Use of jade revenues” sections are taken from the report Jade: Myanmar’s Big State Secret, Global Witness, 2015.
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- ¹⁵⁴ <http://www.offshoreenergytoday.com/myanmar-awards-new-offshore-blocks/> - MOGE presentation
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Myanmar, March 2015 p.47.

¹⁶⁵ Bauer and Maw Htun Aung, Could Natural Resource revenue Sharing Help Secure Peace in Myanmar?, Natural Resource Governance Institute, August 2015 <http://www.resourcegovernance.org/blog/could-natural-resource-revenue-sharing-help-secure-peace-myanmar> Accessed on September 15, 2015

¹⁶⁶ See <http://www.aprenergy.com/content/apr-energy%E2%80%99s-myanmar-project-named-asian-power%E2%80%99s-fast-track-power-plant-year> and <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=5303509/>

¹⁶⁷ The rate was 10 percent in 2014. The 2014 Myanmar Population and Housing Census, Union Report Vol 2, Ministry of Immigration and Population, May 2015.

¹⁶⁸ According to a staff member of the organization conducting the Social Impact Assessment, the SIA was conducted after the project began and was not disclosed to the public. The organization had to provide a report to the government and claimed that they therefore self-censored the questionnaires and the final assessment.

¹⁶⁹ For more on the subsidiarity principle, see <http://www.fdrindia.org/local-governance/>

¹⁷⁰ taken from Choosing Representation: Institutions and Powers for Decentralized Management of Natural Resources, Jesse C. Ribot, January 2012.

¹⁷¹ “The Ministry may, with the approval of the Union Government, exempt or relieve any government department, organization or private business from complying with any provision contained in this Law for the interest of the Union and its people.” Environmental Conservation Law (2012) Chapt XIII, Art 36 (m).

¹⁷² “The Ministry may, with the approval of the Union Government, exempt or relieve a government department, organization or private business from complying with any provision contained in this Law for the interest of the Union and its people.” Environmental Conservation Law (ECL), 2012, Chapter XIII, Article 36.

¹⁷³ This article specifically states that non-disclosure is permitted where information “may relate to National Security concerns as informed by the Ministry.”

¹⁷⁴ Requirements for indigenous peoples’ Free Prior and Informed Consent (FPIC) upheld by the ILO Convention 169 and the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) – has Burma become signatory to these. United Nations Guiding Principles on Business and Human Rights (UNGPs)

¹⁷⁵ Letter from the UN Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli Corpuz, (May 20, 2016) to Mr. Jim Yong Kim, President of the World Bank Group.

¹⁷⁶ Tavoyan Women’s Union, Our Lives Not for Sale, 2014.

¹⁷⁷ Tavoyan Women’s Union, Our Lives Not for Sale, 2014.

¹⁷⁸ Barron and Clark, Decentralizing inequality? Center-periphery relations, local governance, and conflict in Aceh, 2006.

BEWG member profiles

Arakan Oil Watch (AOW) is an independent, community-based non-governmental organization operating in Burma, especially in Arakan state. Founded in 2006, the organization aims to ensure that community rights, land, livelihoods and the environment are guaranteed and protected from natural resource extraction and other mega-projects. AOW monitors the activities of corporations and resulting human rights, environmental and financial impacts in Arakan and Burma. AOW educates communities and conducts advocacy around the issue of decentralized natural resource management, and networks with Burma-based CBOs, political parties, and regional and international NGOs that monitor natural resource extraction and its impacts around the world. AOW is a member of Oil Watch South East Asia (OilWatch SEA). www.arakanoilwatch.org

Bridging Rural Integrated Development and Grassroots Empowerment (BRIDGE) works together with rural communities impacted by political and socio-economic change in Kachin State to strengthen their capacities to manage their own natural resources. BRIDGE supports their community-based development activities and builds collaborations and partnerships that advocate for sustainable development and foster a culture of peace. www.bridgemm.org

Earth Rights International (ERI) EarthRights International (ERI) is a group of activists, organizers, and lawyers with expertise in human rights, the environment, and corporate and government accountability. Since 1995, ERI has worked in Burma to monitor the impacts of the large-scale natural resources development on local populations and ecosystems. ERI specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through these strategies, EarthRights International seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work. In addition, ERI works alongside affected community groups to prevent human rights and environmental abuses associated with large-scale natural resource projects in Burma. www.earthrights.org

Kachin Development Networking Group (KDNG), founded in 2004, is a network of civil society groups and development organizations in Kachin State. KDNG's purpose is to effectively work for sustainable development based on indigenous knowledge and culturally-appropriate environmental management and conservation methods. KDNG works to maintain the integrity of land and forest, and empower indigenous people by providing awareness on environment issues, especially relating to human rights, environmental rights and indigenous rights. It achieves these goals through trainings, workshops, research, documentation, and advocacy. www.kdng.org

Karen Environmental and Social Action Network (KESAN) was established in 2001 as the first local community-based organization to raise environmental awareness among Karen people. KESAN works to empower and educate communities and local institutions to revitalize existing indigenous knowledge and practices for increased livelihood security in Karen State and in areas along the Thai-Burmese border. KESAN strives to build up local capacities in forest and natural resource management, raise public environmental awareness, and support community-based development initiatives. In addition to playing a leading role in environmental law and policy formulation, KESAN advocates for environmental policies and development priorities that ensure sustainable ecological, social, cultural, and economic benefits and promote gender equity. www.kesan.asia

Lahu National Development Organization (LNDO) was established in 1997 to promote the welfare and well-being of Lahu communities, including the promotion of alternatives to growing opium. LNDO facilitates community development projects and awareness raising activities with communities in eastern Shan State. LNDO also conducts community research and has published a series of reports on drugs, internally displaced persons (IDPs) and development projects along Burma's Mekong River. www.lndoess.org

Network for Environmental and Economic Development (NEED) was founded in March 2006. NEED is a nonprofit NGO working to strengthen Burmese civil society so that all the people of Burma may benefit from the practice of indigenous and holistic development strategies, based on economically, environmentally, and socially sustainable ideas. NEED concentrates on the promotion of environmental conservation, sustainable agriculture, and economic development in Burma. www.need-myanmar.org

Pa-O Youth Organization (PYO) is a non-profit independent organization that was established in 1998 by Pa-O youth. It aims to empower youth to become leaders and envisions a new society based on the principles of freedom, equality, justice and peace. PYO has produced several reports on land and natural resources, particularly on mining, opium farming, and land loss. PYO continues to monitor the situation and to educate communities of the environmental and social impacts of large-scale development projects. It also advocates for a bottom up approach to development and federalism. www.paoyouth.org

Shan Sapawa Environmental Organization (Sapawa) works along the Thai-Burmese border and inside Burma to promote environmental protection and human rights in Shan State, Burma. Sapawa was established in 2003 by Shan alumni of Earth Rights School and the Shan State School for Nationalities Youth and Shan communities who had become increasingly concerned about the environmental situation in Shan State. Sapawa's envisions a just and peaceful Shan State free of environmental destruction and exploitation. The mission of Sapawa is to empower Shan communities to protect their rights and livelihoods, and preserve their natural resources, and to expose the destruction of the environment and human rights violations occurring in Shan State to local peoples as well as the international community, in order to find ways to prevent such violations. www.shansapawa.org

Action Group for Resource Accountability in Myanmar (AGRAM) (formerly the Shwe Gas Movement) is a community-based organization publicizing impacts from the Shwe gas project and the China Trans-Burma pipelines. AGRAM facilitates advocacy and community awareness campaigns to promote human rights, environmental justice and revenue transparency in the extractive sectors in Myanmar.