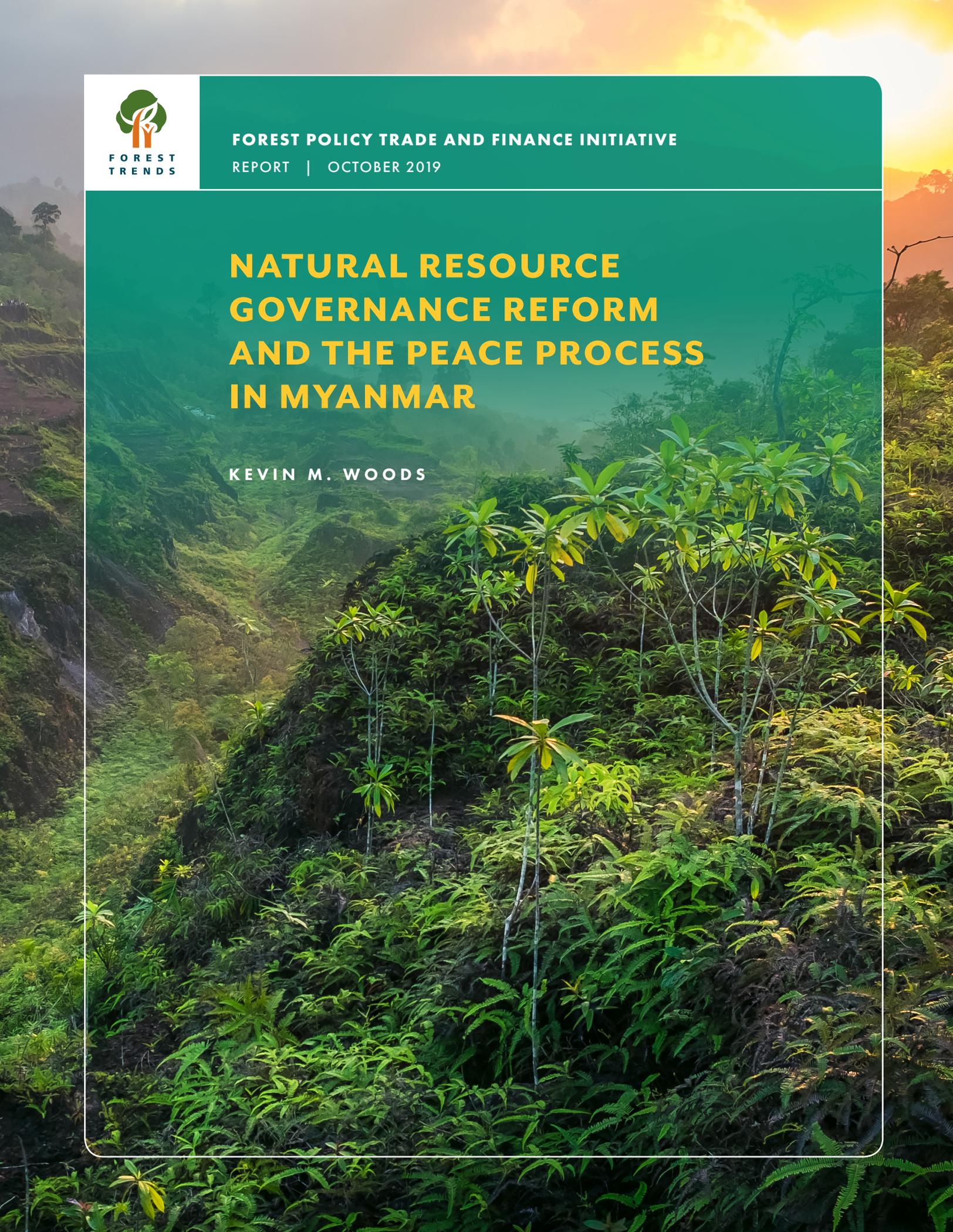




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NATURAL RESOURCE GOVERNANCE REFORM AND THE PEACE PROCESS IN MYANMAR

KEVIN M. WOODS





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Acronyms

AAC	Annual allowable cut	MEITI	Myanmar's Extractive Industries Transparency Initiative
BEWG	Burma Environment Working Group	MFCC	Myanmar Forest Certification Committee
BGF	Border Guard Force	MGE	Myanmar Gems Enterprise
CSOs	Civil society organizations	MIARP	Myanmar Interim Arrangements Research Project
CSR	Corporate social responsibility	MIC	Myanmar Investment Commission
EAO	Ethnic armed organizations	MOGE	Myanmar Oil and Gas Enterprise
EITI	Extractive Industries Transparency Initiative	MONREC	Myanmar's Union Ministry of Natural Resources and Environmental Conservation
ENAC	Ethnic Nationalities Affairs Center	MoPF	Ministry of Planning and Finance
EPPs	Ethnic political parties	MPs	Members of Parliament
EU	European Union	MTE	Myanma Timber Enterprise
FAO	Food and Agriculture Organization	NCA	Nationwide Ceasefire Agreement
FD	Forest Department	NCA-SEAO	Nationwide Ceasefire Agreement Signatory EAO
FPNCC	Federal Political Negotiation Consultative Committee	NGO	Non-Governmental Organization
FLEGT	Forest Law Enforcement Governance and Trade	NLD	National League for Democracy
FPD	Framework for Political Dialogue	NLUP	National Land Use Policy
FPIC	Free, Prior and Informed Consent	NMSP	New Mon State Party
GAD	General Administration Department	NRPC	National Reconciliation and Peace Center
GEF	Global Environment Facility	NTFPs	Non-timber forest products
HCCG	Health Convergence Core Group	OAs	Other accounts
IA	Interim Arrangements	PAS	Protected Area System
ICCAs	Indigenous and Community-Conserved Areas	PEFC	Program for the Endorsement of Forest Certification
IDPs	Internally displaced persons	REDD+	Reducing Emissions from Deforestation and Forest Degradation
INGO	International non-governmental organization	SEE	State-owned economic enterprises
ITF	Interim Task Force	SEZ	Special economic zone
JIAC	Joint Interim Arrangements Committee	UFA	Union Fund Account
JICM	Joint Implementation Coordination Meeting	UN	United Nations
JMC	Joint Monitoring Committee	UNA	United Nationalities Alliance
KIO	Kachin Independence Organization	UPDJC	Union Peace Dialogue Joint Committee
KNLA	Karen National Liberation Army	UNDP	United Nations Development Program
KNPP	Karenni National Progressive Party	UNEP	United Nations Environment Program
KNU	Karen National Union	UNFC	United Nationalities Federal Council
KPSN	Karen Peace Support Network	VFV	Vacant, fallow, and virgin lands
LUCs	Land use certificates		
MEB	Myanmar Economic Bank		

Executive Summary

This report summarizes the role of natural resources in armed conflict and the current peace process in Myanmar. It serves as a baseline study for efforts to promote equitable and accountable management of natural resources for peacebuilding. The main findings overall indicate a lack of meaningful progress on moving towards natural resource good governance reform in the country and specific to the peace process. Land and resource ownership and governance decentralization within federal structures anchor the central demands of ethnic civil society stakeholders and ethnic armed organizations, but these demands are so far at odds with the 2008 Constitution and Union laws and policies. The future Union Accord peace principles do not yet contain clauses specific to natural resources, and principles specific to land mostly serve to further centralize unitary state control.

The report finds that these discrepancies relate to unequitable structures and processes of decision making within the national peace process, where Myanmar's military representatives hamper meaningful discussion and the adoption of peace principles that would decentralize ownership and control over land and natural resources in support of political federalism. Global environmental good governance mechanisms could help support decentralization of natural resource governance and peacebuilding, but only if they address and account for the underlying causes of armed conflict and clarify questions over who has which ownership, benefit, and management rights, among other political governance matters. Finally, the current Interim Arrangements (IAs) offer an important opportunity to commit more political will and build capacity to implement natural resource good governance reforms that contribute to contribute to peacebuilding during the interim period.

OVERVIEW OF FINDINGS:

Natural Resources and Armed Conflict

Myanmar's natural resources and its history of armed conflict in ethnic areas are inextricably linked.

The majority of Myanmar's most valuable natural resources, such as timber, minerals and gems, hydropower, and opium are predominately located in states mostly inhabited by non-Burman ethnic nationalities. There has been a substantial increase since the 1990s of armed groups – the Myanmar military (*Tatmadaw*), ethnic armed organizations (EAOs), and paramilitaries – fighting for control over these resources and the revenues they generate, and ethnic minority communities suffering from violence, loss of livelihoods, human rights abuses, and forced displacement.

Globally, most peace agreements fail due to poor governance of resources that have been the root cause of armed conflict. Approximately 40 percent of civil wars since the Cold War have been associated with natural resources. Yet of the 800 peace agreements since 1945, fewer than 15 percent include terms related to natural resources (Blundell and Harwell 2016). Where peace accords address natural resources, implementation has been minimal. Due in part to lack of attention to the reform of the resource economy and its governance during post-conflict transitions, from 1960 to 2000 more than half of all peace agreements in the world were broken within five years (Azam et al. 2001). Of all armed conflicts, those associated with natural resources are twice as likely to relapse within five years (UNEP 2009). It is thus paramount that the ceasefire and peace negotiations in Myanmar directly address the governance of natural resources.



Economic growth based on natural resources will fail in the long-term if peace cannot be sustained.

There is a tendency for post-conflict governments to turn to resource extraction to push the country's economic development quickly back on its feet, as natural resources can provide much-needed jobs and revenue. However, rebooting the resource economy without addressing its underlying governance problems and the associated political and economic grievances that may have catalyzed armed conflict often leads to a failure to achieve sustainable peace.

The Peace Process in Myanmar

As of September 2019, the national peace process in Myanmar has included little discussion of issues related to natural resource governance. Of the 15 existing bilateral ceasefires in Myanmar, only five address natural resources. Rather than reform their governance, the ceasefire agreements simply allow EAOs to continue resource exploitation and revenue generation. In the multilateral Nationwide Ceasefire Agreement (NCA), only two clauses mention issues related to land and natural resources which fall far short of what is needed: 1) avoiding forcible land confiscation in favor of land tenure security (§9), and 2) supporting environmental conservation and community consultation in the planning of projects impacting civilians in ceasefire areas (§25). The future Union Accord peace principles have only twelve points that address land and environment, but these mostly assert centralized government control.

Ethnic leaders argue that political federalism would enable ethnic minority populations to have a greater say in their own region's development. Such a decentralized framework would be more resonant with the local cultural traditions and local communities' development aspirations and accrue more material benefits to state/region and local populations – meeting EAOs' and ethnic civil society's demands. The peace process is stalled, and stakeholders maintain competing demands with regards to land and natural resources: EAOs advocate for ethnic self-determination and subnational control over rights to, revenue from, and the responsibilities for the management of natural resources, while the Tatmadaw tries to maintain a centralized unitary state system.

Much of the focus so far has been on the percentage of revenue from natural resources that should be shared. However, many other issues, such as ownership rights and how natural resources are to be governed, must first be resolved. Revenue sharing alone will not achieve the long-term goals of sustained peace and could even undermine debates and pathways to resolving these issues. Regardless, robust institutions are needed to ensure revenue goes to the public good in a transparent and accountable manner. No matter what political structure emerges in Myanmar, there are steps to be taken now that can help alleviate grievances over land and resource ownership and how they are to be managed and benefits distributed.

Decentralization of rights and responsibilities can lead to a parallel decentralization of corruption and new destabilizing power dynamics. Calls for natural resources to be governed by subnational and local government officials may help meet ethnic political demands and steer the country towards a federalist political structure, but this does not in itself guarantee peace. New destabilizing entries of subnational crony elites into the resource foray could generate more grievances and renewed political demands. Regional and local governance institutions should therefore be supported and strengthened now, before any new

political system is introduced, to ensure that reforms better deliver peace dividends. By building management capacity, regional and local institutions and authorities can better equip themselves for a more successful transition to good governance and decentralization of power under a federal system.

Stakeholders in Myanmar’s peace process have generally taken the following positions related to the governance of natural resources:

Government: Despite movement towards more democratic political and economic reforms since 2011, recent land- and resource-related laws this decade have further centralized political governance over land, resources, and populations, such as the Vacant, Fallow and Virgin (VFV) Land Law (2012) and the Forest Law (2018). Over the course of peace negotiations, the Tatmadaw has blocked debates and future peace principles that support federal decentralization – the key demand of the ethnic stakeholders and supported by the Union (central) Government and the NCA.

Myanmar’s Constitution stipulates Union government ownership of all land and natural resources and authority to pass laws regulating their use and extraction. Natural resource revenue generation, and decision making on how revenue will be collected and disbursed within the Union budget, is especially centralized, with little correlation to the amount any one state has generated in natural resources. This is a source of tension for EAOs who have made ownership control and management rights a critical demand in negotiations (see EAO’s position below).

Many authorities in powerful decision-making positions are still appointed by the government or Tatmadaw, rather than democratically elected. State/regional budgets are small and dependent on Naypyitaw’s budgetary allocation. Moreover, state/regional legislatures hold power to enact laws only for a very limited set of matters, such as licensing for small-scale and artisanal mining and some grades of timber. This also conflicts with federalist aims and ethnic stakeholder demands.

Ethnic Armed Organizations (EAOs): Many EAO leaders have made ownership, control, and management rights as well as the right to collect tax within a national federal political system a critical demand in the ongoing peace negotiations. Some EAOs (the Karen National Union [KNU], Kachin Independence Organization [KIO], Karenni National Progressive Party [KNPP], and New Mon State Party [NMSP]) have established their own formal, autonomous policies related to land and natural resources in their territories, which recognize customary ownership and management practices and provide culturally-appropriate provision of services such as healthcare and education.

During the interim period – the transition between signing of bilateral ceasefires and the NCA and before consensus on a comprehensive political system and its implementation – EAO policies are meant to inform land and resource governance in their respective territories. In order to operationalize peace accords, governments will need to develop state and federal constitutions and legislations on multiple issues, which will take years. These policies in place now are therefore important in guiding the national peace process and the interim arrangements. But EAOs also view their policies as functioning as the policy framework for their respective ethnic states under a future political federalism. In this way, these policies are viewed by EAO leaders and ethnic civil society stakeholders as being an alternative to Union laws and policies during the interim period.

However, under the terms of some recent ceasefires, some EAOs have been rewarded by the government with economic concessions or permission to extract, tax, and trade in natural resources, but without any



good governance instruments in place. In some of these instances, the lack of robust policies and institutions to regulate extraction permits, coupled with lack of clarity on resource ownership, use, and benefit sharing, has led to violent clashes with the military and local villagers.

The United Nationalities Federal Council (UNFC), an EAO policy body, has adopted their own five policy positions on land and natural resources (ENAC 2019, Forest Trends 2018(a)). They also advocate for the principles of sustainable development, the use of natural resources for local benefit that does no harm, and recognition of local resource ownership rights. The more recent Federal Political Negotiation Consultative Committee (FPNCC), a bloc of EAOs that are based in the north who have not signed the NCA and some of whom are in battle against the Tatmadaw, also has recently developed a set of related land and resource governance policies.

Ethnic minority civil society organizations and leaders: Civil society organizations (CSOs) and community-based organizations and their leaders, particularly of non-Bama (or Burman, the ethnic majority) ethnicities and located outside Yangon, are the most active “constituencies for change” in Myanmar championing for the reform of natural resource governance. They play a pivotal role in shaping public discourse at the intersection of land and resource governance, peace and security for ethnic communities, and sustainable development and peace for Myanmar as a whole. They do so by advocating EAOs to adopt progressive land and resource policies, serving as informal advisors to EAO leaders, and convening various stakeholders to develop common positions.

Ethnic Political Parties (EPPs): The advancement of democratic reforms in Myanmar has led to the emergence of EPPs, an increasingly important set of actors in a political landscape that is no longer only captured by the governing party, the National League for Democracy (NLD). Thus far, EPPs have broadly espoused similar policies and principles to those of EAOs and ethnic civil society. However, the EPPs are generally limited to bureaucratic functions with little power, leaving EPP-elected officials unable to adequately respond to local issues or direct change in response to their constituency.

Peace Negotiation Process

The Union Peace Dialogue Joint Committee (UPDJC), comprised of government, Tatmadaw, NCA-signatory EAOs, and political party representatives, coordinates policy positions agreed upon by their members that are then submitted for future Union Accord consideration. It also oversees five thematic Working Committees, one of which is for Land and Environment. The NCA-Signatory EAO Office’s policy division has submitted a series of land principles in consultation with EAO NCA-signatories and ethnic civil society organizations and their leaders to UPDJC’s Land and Environment Working Committee. These submitted principles are based on federalism and “people-centered development,” ethnic ownership and control over land, and recognition of customary rights – which contrast with most clauses in related Union laws and policies as well as the 2008 Constitution. These principles further stipulate 1) a halt on all land-based investment until land tenure systems are clearly defined, and 2) that resources be protected in accordance with international standards. However, Tatmadaw representatives during the UPDJC’s vetting process to adopt Union Accord peace principles have rejected these proposals, and all others that support decentralization and ownership within federal structures.

These principles submitted to the UPDJC have not been made public, further eroding trust in the peace process and raising important questions on transparency and the internal politics and power of decision making. Forest Trends was not granted permission to publish the principles submitted to the UPDJC’s Land and Environment Working Committee nor the Economic Working Committee. Nonetheless, this report summarizes these principles after reviewing the submitted copies, as we believe it is crucial in understanding how land and resource federal decentralization trends in the peace process have been blocked within the UPDJC.

The wide discrepancy between land and environment principles submitted to UPDJC in 2018 and the current text on land adopted in the Union Accord for peace can be best explained by the vetting process, in which the Tatmadaw wields considerable power. Review and vetting by the UPDJC and the higher-level Joint Implementation Coordination Meeting (JICM) is an ambiguous closed-door process among stakeholders, with no known specific rules detailing the vetting and decision-making process. Civil society representatives do not take part in this vetting process, according to UPDJC protocol. Land principles submitted to the UPDJC that included strong calls for decentralization of power, authority and ownership and management rights were reportedly “censored and cut” by Tatmadaw representatives through a non-transparent decision-making process. As such, very few of the land principles submitted to the 21st Century Panglong conference by the UPDJC reflect the original land (and economic) policy proposals.

Thus far, a total of twelve points in the future Union Accords address land and environment, although none address benefit sharing or customary and ownership rights. These articles support existing (and even recently enacted) Union laws and policies, which continue to exert centralized state control over land administration and governance, rather than EAOs’ demands for fiscal and political federalism and self-determination.

No UPDJC policy process to date has adequately addressed the ownership and good governance of natural resources and decentralization within federal structures. The UPDJC policy process has actively supported the continued centralized ownership and control of land and resources within the framework of the 2008 Constitution, despite these being the very underlying issues to the conflict. The best chances for peace will rely on policy positions on natural resources that have been developed collaboratively and which reflect the positions of EAOs and ethnic civil society leaders. If the Union Accord did include peace principles that supported decentralization and resource federalism, the Union Accord principles must then be submitted to the Union Parliament for ratification (NCA: Chapter 3, Article 3(d)), where it would be expected to be vetoed by the Tatmadaw who retains veto power.

The interim period and related “interim arrangements” (IAs) offer a window of opportunity to build a foundation of robust governance structures.

Increasing constituencies supportive of governance reforms, and their technical capacity, can be included in the provision for IAs as stated in the NCA. Stakeholders would then need to meaningfully deliberate on the governance and political rights of resource use and ownership, and how to include these points of consensus in future political dialogue and future Union Accord principles. Until these conditions are met, ethnic civil society networks and EAO blocs and their policies demand a moratorium on large-scale land and resource-related investments in conflict-affected areas during this interim period.



Myanmar’s political and economic reforms have opened the country to more expansive international engagement, including several environmental “good governance” mechanisms. The Extractive Industries Transparency Initiative (EITI) and the EU’s Forest Law Enforcement Governance and Trade (FLEGT), for example, help to promote a range of “integrity mechanisms” that contribute to good governance reform. They also ensure civil society has a seat at the table in decision-making processes, supporting CSOs and other leaders in their advocacy and watchdog functions. Despite the potential for these benchmarking frameworks to help steer and strengthen governance reforms as Myanmar transitions to peace, thus far international mechanisms have not yet had much crossover into the peace process nor supportive of resource decentralization and political federalism.

Peace negotiations, good governance reform instruments, and new Union laws and policies should be anchored in principles that help steer the country towards decentralization and political federalism.

This is the best hope during the interim period to help end the conflict resource economy and put Myanmar back on the pathway towards peace.

1 Introduction

This report documents the positions of various actors in Myanmar with respect to the role of natural resources in the peace process and serves as a baseline study for efforts to promote equitable and accountable management of natural resources for peacebuilding in Myanmar. It summarizes the results of more than 50 consultative meetings and informal surveys of stakeholders, including civil society organizations (CSOs), independent experts, ethnic armed organizations (EAOs), and peace institutions in Myanmar and Thailand. The report also incorporates a review of the relevant grey literature on natural resources, armed conflict, and peacebuilding in Myanmar, as well as in the global context.

Myanmar initiated what is often referred to as a “national peace process” in 2011, which at first began with a string of bilateral ceasefire agreements.¹ Previous ceasefire agreements had been reached with EAOs, particularly in the late 1980s and early 1990s, but they were not national in ambition as is the case now. In 2015, towards the end of President U Thein Sein’s administration, eight EAOs signed the government’s multilateral Nationwide Ceasefire Agreement (NCA), with an additional two signing in 2018 for a total of 10 EAOs. The KNU is by far the most prominent EAO that has signed the NCA, while several other significant EAOs, such as the Kachin Independence Organization (KIO), have not signed – leaving much to be desired for reaching national ambition and scope.² Moreover, fighting resumed this decade in Kachin State and North Shan State with four EAOs who have not signed ceasefires nor the NCA. Over the past year or two, several more political setbacks have further retarded meaningful progress in building the prospects for peace.

Thus far, the peace process has largely focused on discussions over political rights and military matters, and rightly so – despite little actual progress on this front so far. Much less discussion, however, has centered on issues related to the governance of natural resources and the sharing of their benefits: who has which rights to ownership (customary or otherwise), management, use, and benefit from natural resources, and how should those benefits be shared? Natural resources are the mainstay of Myanmar’s economy, but they are also critical to many rural citizens’ lives and livelihoods, and as such, the governance of natural resources will be critical to the success of any political system to be developed as part of the ongoing peace process. Logging, gems and mining, oil/gas, opium, and hydropower generate billions of dollars in revenue every year. The revenues generated from these sectors are directed to the government and a plethora of armed conflict actors, such as the Tatmadaw, paramilitaries, and EAOs (Woods 2018).



CSO sector FLEGT (Tanintharyi)

Natural resources are the mainstay of Myanmar’s economy, but they are also critical to many rural citizens’ lives and livelihoods, and as such, the governance of natural resources will be critical to the success of any political system to be developed as part of the ongoing peace process.

¹ Despite being routinely called a *national* peace process and a multilateral agreement, the majority of the country’s EAOs have yet to join, with many EAO troops continuing to fight against the Tatmadaw.

² Refer to a report by TNI (2017(a)) for an overview on past and present peace initiatives and bilateral ceasefires with EAOs (in particular the tables found on page 8 and 33).



In order to achieve peace and security in resource-rich ethnic territories, the governance of rights to land and natural resources must be more directly accounted for in the peacebuilding process, with stakeholders eventually reaching comprehensive political settlements on land and resource governance. Ideally, natural resource good governance would be directly addressed in the bilateral ceasefires or at least the peace agreement phase; but absent that (as is the case here), it certainly must be addressed in these latter stages of peacebuilding. Otherwise, weak governance of natural resources risks undermining the peace and security that is fundamental to all facets of development. Globally, over half of ceasefires collapse within five years, often because the illegal exploitation of natural resources fuels the resumption of conflict (Azam et al. 2001).

During the current interim peacebuilding period in Myanmar, economic concessions should not be used to further entice EAO leaders into the peace process, nor to financially reward those that do, without first having a clear governance framework in place. Stakeholders must first meaningfully deliberate on the governance of the rights of resource use and ownership, and how to include these points of consensus in future political dialogue and settlements. Until these conditions are met, ethnic civil society networks and EAO blocs and their policies have demanded a moratorium on land- and resource-related investments in conflict-affected areas during the interim period. Natural resource good governance reforms should be more bottom-up and operate through EAOs' parallel structures of governance and administration, as per the NCA's "interim arrangements."

2 Background

2.1 The Global Importance of Natural Resource Governance in Peacebuilding

The United Nations Environment Programme (UNEP) estimates that at least 40 percent of all civil wars since the end of the Cold War were associated with natural resources (UNEP 2009). Insurgents may fight for territory in order to control natural resources and associated revenues, and warring parties in turn use this revenue to fuel further conflict. In a governance vacuum, companies are oftentimes more easily able to bribe corrupt politicians, bureaucrats, and soldiers – on all sides of the conflict – for access to the resources, and in some cases traffic in weapons. Despite this, Blundell and Harwell (2016) found that of the more than 800 peace agreements since 1945, less than 15 percent actually address terms related to natural resources, and that implementation of the few accords that do address natural resources has been minimal. Moreover, there is no indication that this is changing—peace agreements are no more likely to address natural resources now than they were at the start of the Cold War (Blundell and Harwell 2016).

Ignoring the complex and contentious task of improving governance of natural resources “increase[s] the risk of conflict recurrence because access to natural resources is an especially valuable prize worth fighting for” (Rustad and Binningsbø 2012). This is a major reason that peace is so difficult to maintain in post-conflict situations; from 1960 to 2000, more than half of all peace agreements were broken within five years (Azam et al. 2001). Another study has shown that of all conflicts, those associated with natural resources are *twice as likely* to relapse within five years (UNEP 2009). Yet given the role that resources play in fueling conflict, the failure of many peace agreements is likely due to the lack of attention to the reform of natural resource governance, despite resources often playing a pivotal role in the armed conflict, thus spoiling a country’s chances for peace. In these cases, corruption, speculation, and continued land or resource grabbing can ensue, unraveling citizens’ fragile trust in government and peacebuilding initiatives.

On the other hand, sound natural resource governance can be a driver of peace if done correctly: providing jobs for conflict-affected people and demobilized soldiers, improving transparency and legitimate institutions, and ensuring that resource ownership issues are resolved, their exploitation is done sustainably, and generated benefits are distributed more equitably. It is thus paramount that parties to conflict in Myanmar directly address natural resource management, ownership rights, and their governance in the peace process. Given the importance that EAOs – both NCA signatories and those outside the national peace process – have put on natural resources as fundamental to their self-determination (see **Chapter 3**), it is vital to tackle these issues now during the political negotiation stage, even if it is a contentious and fraught subject matter. Regardless



Given the role that resources play in fueling conflict, the failure of many peace agreements is likely due to the lack of attention to the reform of natural resource governance, despite resources often playing a pivotal role in the armed conflict, thus spoiling a country’s chances for peace



of when natural resource ownership rights and good governance are addressed, it must be approached in a conflict-sensitive way and incorporated into any peacebuilding efforts, as there are risks (and opportunities) that are specific to conflict and post-conflict environments.

2.2 Natural Resource Governance in Myanmar

There are strong linkages between the natural resource economy, armed conflict, and ethnic identities in Myanmar. The country’s valuable natural resources are predominately located in ethnic minority states – the mountainous geographic periphery inhabited by one-third of the country’s population, mostly non-Burman “ethnic nationalities.” Customary (rather than statutory) laws and authority still largely govern natural resource use and management in these areas. Rural livelihoods remain dependent on natural resources, such as taungya (shifting cultivation), agro-forestry, timber, and non-timber forest products (NTFPs).

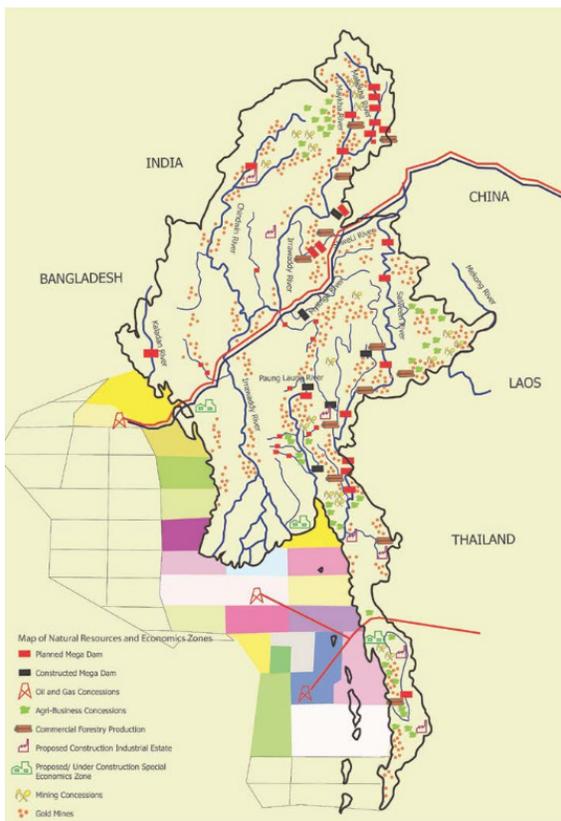


Figure 1A | The geography of natural resource wealth.

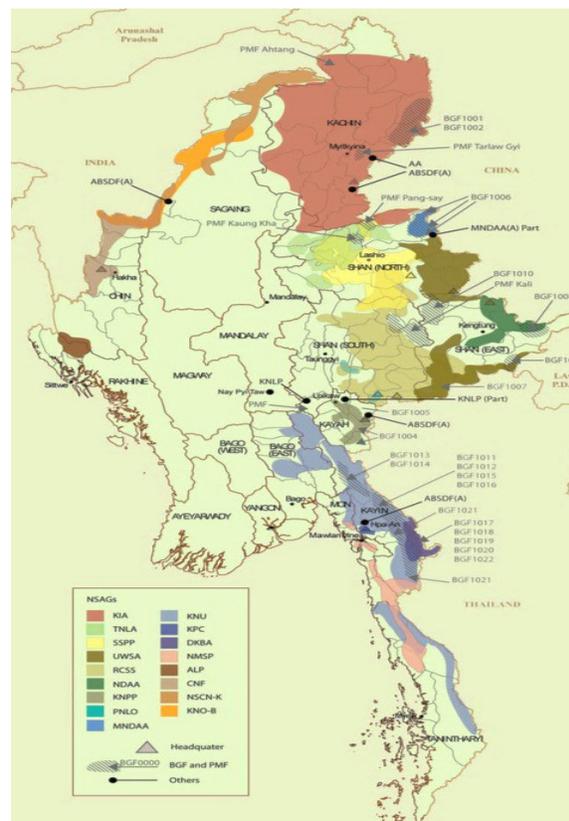


Figure 1B | The geography of active armed conflict in Myanmar.

Source: BNI, Myanmar Peace Monitor, 2016.

Figures 1a and **1b** above illustrate the spatial overlay between the country’s natural resource wealth and ethnic minority populated areas:

- Rakhine State: Southeast Asia’s largest oil and gas deposits ring the Bay of Bengal along the coast in the southwest;
- Southeast and South (Kayin and Mon States and Tanintharyi Region): agribusiness concessions, forests, hydropower, and minerals are located along the Thailand border where ceasefires have held so far this decade; and,
- Kachin State and North Shan State: Within China’s orbit, large-scale hydropower dams, forests, agribusiness concessions, gems, and minerals are still (to varying degrees) plentiful in the north where fighting resumed this decade.

2.2.1 The intersection of Myanmar’s resource economy and armed conflict

Since the 1990s, the resource economy in Myanmar has been defined by armed conflict in ethnic minority areas. Most of the country’s armed actors – the Tatmadaw, EAOs, and paramilitary organizations (“people’s militias” and Border Guard Forces [BGFs]) – as well as some national companies linked to the Tatmadaw (“crony companies”) have relied on the illicit natural resource and drug economy to finance their leaders and activities (Woods 2018).

Following the end of the underground Communist Party of Burma (CPB) in 1989, the military government signed a series of bilateral ceasefire agreements with many EAOs, especially those operating in the Sino-Myanmar borderlands. A gradual transition to a post-socialist economy in the early 1990s aimed to “turn battlefields into marketplaces,” a phrase coined by the then-Thai Prime Minister Chatchai Choonhavan to describe the Thai government’s new approach to diplomacy with their neighbors. During this time, the Tatmadaw relied on a similar strategy of effectively buying political patronage with ceasefire EAOs as was done during previous decades with militias. EAOs with ceasefires stopped openly fighting against the Tatmadaw in exchange for the right to engage in economic pursuits instead of fulfilling their political ambitions through armed revolt. These EAO leaders, however, retained their weapons, troops, and territories.

Leading into the 2000s, EAO leaders under ceasefire then began to more aggressively engage in the resource economy, mostly with state backing, and oftentimes in partnership with Tatmadaw and militia leaders and government officials. The military government, meanwhile, incrementally opened up the resource economy to the country’s nascent private sector, introducing national “crony” companies and foreign investors to the mix. During the same period, regional giants – namely Thailand and China – introduced more progressive domestic environmental legislation that protected their own national resources but had the domino effect of creating a supply gap, which was met by sourcing from other resource-rich nations, starting with neighboring countries. As a result, large-scale logging, mining, agribusiness, and hydropower schemes became widespread in these ceasefire areas starting in the early 2000s, leading to a loss of 1.2% of Myanmar’s forest cover each year between 1990 and 2010 (FAO 2010), losing 1.3 million acres per year since 2010 (FAO 2015) – the third-highest rate of deforestation in the world. For similar reasons, after drug production crackdowns in China, the illicit drugs economy also proliferated in Shan State, and to a lesser extent, Kachin State (ICG 2019).



2.2.2 Generating grievances and conflict

The conflict resource economy resulted in discontent among ethnic populations that witnessed their forests, fields, and rivers taken from them and degraded or outright destroyed, often with the compliance of their leaders. Many ceasefire areas in the 2000s became increasingly militarized by the Tatmadaw, in large part due to the piecemealing of land and resource concessions to militia leaders and crony companies who relied on Tatmadaw soldiers and police for securing the area away from EAOs and the surrounding ethnic civilian population (Woods 2011). In many cases these large-scale economic concessions led to forcible confiscation of land that was actively inhabited and used by local communities, without clear legal procedures or compensation. This has generated grievances among these minority populations, and is now regarded as one of the top issues confronting rural citizens, severely hampering their trust in state building and development during the ceasefire period (MRLG 2018; Scurrah, Hirsch, and Woods 2015). Even smaller-scale development projects have led to the curtailment of use and access rights for communities and individuals, particularly those who do not hold official land titles as they have historically relied on customary relations.

There is a decades-long military strategy – known as the *Four Cuts Policy*, or *pya lay pya* in Burmese – of separating minority farmers from EAOs by forcibly relocating these villagers into military-patrolled and government-controlled new “strategic hamlet” villages (*sut see ywa* in Burmese) along main roads cleared of forests. Other times villagers who fled war or the hamlet villages sought out their own alternative living and livelihood arrangements as internally displaced persons (IDPs), some of whom eventually became refugees. The economic concession area becomes de facto private property, oftentimes gated. If accessing the concession area is difficult, the militia or crony company will build access roads, which in some cases has facilitated Tatmadaw movements into these more remote areas. Concession areas, especially when developed by a paramilitary or the Tatmadaw, block EAO movements and activities in these areas because the local population is no longer present or accessible to support them (Woods 2019(a)). This territorialization process facilitated by large-scale resource concessions further entrench paramilitaries and the Tatmadaw in the local economy and further stake out their defined territory vis-à-vis nearby EAOs.

These actions have sown further discontent among ethnic nationality populations, leaving them vulnerable, destitute, and lacking faith in state institutions or private sector development (Buchanan, Kramer and Woods 2013). These trends in the North during the 2000s have been shown to repeat in the Southeast since being under a ceasefire this decade (KHRG 2013, 2018). Kayin civil society has been keeping close tabs on the resumed war in the North, where villagers, especially Kachin, have once again fled attacks by residing in towns or in IDP camps. Kayin villagers worry about a return to war pending peace deliberations with the KNU. Despite the KNU ceasefire, active fighting broke out in Kayin State’s Hpa’an (Mutraw) District in March 2018 with the Karen National Liberation Army’s (KNLA, KNU’s armed wing) 5th Brigade, breaching the terms of the NCA (KPSN 2018). There are increased incidences of land grabbing in the North and Southeast in areas where IDPs and refugees fled war due to the lack of local protection and resistance measures and greater militarization without accountability (TNI 2017(b), Woods 2016). Thus, peace and security in ethnic armed conflict areas in the country has been further undermined and trust in the national peace process eroded, leading to more grassroots support for EAOs and armed political resistance against the Tatmadaw.

It is therefore crucial that the peace process, aid agencies, and wider development industry fully account for the role of the land and resource economy in Myanmar’s armed conflict (NRGI 2018). This will only be achieved if the bilateral ceasefires, the NCA, the Union Accord, and other peace institutions and processes directly and fully address the good governance reform of land and natural resources.

BOX 1

Case Study: Resource Governance and Armed Conflict Dynamics in Tanintharyi Region

In the far south, Tanintharyi Region's resource-rich landscape is set within the backdrop of decades of armed conflict, militarization, and forced displacement. The KNU's 4th Brigade administers many areas in Tanintharyi Region, especially the eastern half where mostly ethnic Kayin populations reside. Resource extraction and conservation rezoning have laid claims to areas where the KNU claims authority and where the Tatmadaw have forcibly evicted Kayin villagers.

In the early 1990s, a consortium of foreign oil companies signed a deal with the then Burmese military regime to allow the Yetagon and Yadana oil and gas pipelines to cross the northern portion of Tanintharyi Region that borders Mon State into Thailand. To prepare for construction, the Tatmadaw led a military offensive to secure the area from the KNU and the Mon rebel group, the New Mon State Party (NMSP) (Earthrights International 2003 and 2009).

Pressure from international civil society groups and the implementation of corporate social responsibility (CSR) pushed the lead consortium member, Total, to establish the Tanintharyi Nature Reserve in the forests that bordered the pipeline to the southeast (Pollard, Hlaing, and Pilgrim 2014). The nature reserve still exists today and is being promoted for national park status. However, the KNU 4th Brigade claims territorial authority over the area encompassed by the nature reserve, and Kayin communities also have historical land claims in the area that they say is theirs to use according to their customs (Takabaw 2017, Woods 2019(b)).

After Thailand's logging ban in 1989 and a change in Thai-Myanmar border security relations with the defeat of communism in both countries, Thai companies logged on the Myanmar side of these borderlands throughout the 1990s (Fahn 2004). Thai logging companies were mostly connected to Thai and Myanmar national political and military leaders at that time and backed by Thailand's post-Cold War policy of turning battlefields into marketplaces. Some KNU leaders, despite still being at war against the Tatmadaw, became co-opted by propositions for lucrative logging deals in the 1990s from Thai businessmen and state officials, and Burmese commanders and government officials. The spate of logging in the Thai-Myanmar borderlands at this time further weakened KNU security and increased opportunities for corruption by all parties involved. The Tatmadaw also used the logging roads to move troops closer to the Thai border, setting up military units in these borderlands for the first time.

At the height of the logging frenzy in the late 1990s and as the military was pressuring the KNU to sign a ceasefire, a large military offensive swept through the northern portion of Tanintharyi Region. The Tatmadaw pushed KNLA units to the Thai border. Kayin villagers fled into forests as IDPs and across the Thai border as refugees. Remaining Kayin villagers resettled (some forced, some voluntarily) in village hamlets along the government-controlled roads cleared of forests, especially along the aptly-named Union Road running along Tanintharyi Region's western edge.

After the offensive, the KNU was not able to exert strong control over Kayin areas in much of the Tanintharyi Region as before, and much of their prior strongholds had been emptied of Kayin villagers. This political landscape then became host to another major assault, but this time in the allocation of

(continued)



Case Study *(continued)*

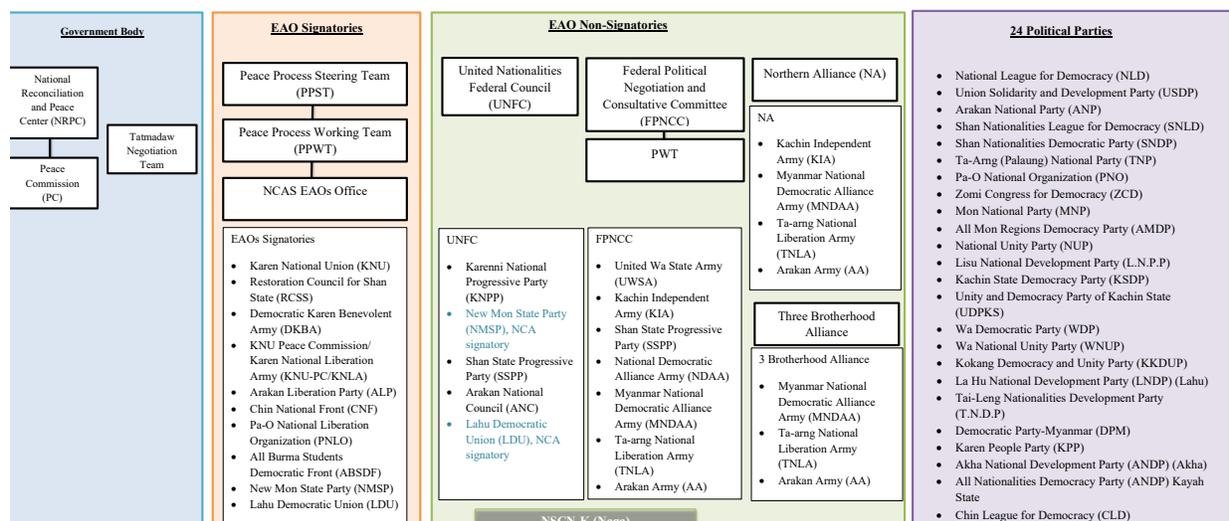
large-scale agribusiness concessions. By 2013 Tanintharyi Region received over one-third of the country's total agribusiness concessions (about 800,000 hectares) (Woods 2015). The total area demarcated by large-scale agribusiness concessions, nearly all for oil palm, covers nearly 20 percent of the total land area of Tanintharyi Region, predominately in the more extensively forested southern and eastern parts. In addition, regional businessmen have expanded tens of thousands of acres of rubber plantations into northern Tanintharyi, oftentimes backed by the Tatmadaw or the NMSP (Woods, forthcoming). Deforestation rates skyrocketed due to clearing for oil palm concessions – much of which were never planted as concessionaires' were mostly interested in accessing cleared timber – and rubber expansion (Woods 2015).

The KNU ceasefire scenario has created conditions that are beginning to resemble the “ceasefire capitalism” that gripped northern Myanmar in the 2000s. The Dawei Special Economic Zone (SEZ), infrastructure corridors to better access resources and connect across the border with Thailand, proposed hydropower and coal energy projects, and a KNU-proposed economic zone have all confounded contested claims to land and resources in the south.

This main section of the report reviews different key stakeholders' positions on resource governance reform and the peace process. See **Figure 2** for a mapping diagram of stakeholders in the peace process. By better understanding these various positions, armed conflict stakeholders, peace negotiators, and international partners can be better informed, and prioritize and strategize about engagements around land and natural resource sectors to encourage reform that delivers peace dividends and ends the conflict resource economy.

The peace process has been at a crossroads since late 2016. The last two Union Peace Conferences resulted in little meaningful progress (Wansai 2018). Peace negotiations continued to exclude northern EAOs who are not NCA-signatories, and further exacerbated division among some EAOs (both signatories and non-signatories). It soon became clear that Tatmadaw peace negotiators were unwilling to amend the 2008 Constitution (see box below) or NCA points of agreement to better reflect collective EAO demands, nor to agree to any future Union Accord principles that did not support the existing Constitution (see below for further details) (Wansai 2018, KPSN 2018).

Figure 2 | Myanmar Peace Process Stakeholder Mapping



Source: Sai Latt and Pao Hom (2019)

Issues related to natural resource governance have largely been sidelined, apart from the Extractives Industry Transparency Initiative (EITI) listed in the NCA as a reference to the global standard for reporting on revenue generated by oil, gas, mining, and forestry. Principles on land rights and their governance have been reached in the Union Accord, but do not reflect EAO or ethnic civil society demands (see below for further details). The lack of any meaningful political dialogue or resolutions addressing natural resource ownership rights and benefits within federal structures have left many EAO signatory leaders, their ethnic constituencies, and the wider public to further lose faith in the peace process and its ability to steer the country towards political decentralization under a federal system and result genuine peace.



A Way Forward

Despite these setbacks, the current interim period of the peace process nonetheless offers opportunities to build momentum toward peace. Given the role of natural resources in generating grievances in ethnic areas (see Section 2.2.2 above), the best way to deliver on those hopes for peace is by building both the constituencies for change on natural resource governance reform and the technical capacity to implement such governance – which should form an integral part of the Interim Arrangements (IAs) listed in the NCA (see Section 7). In order to best ensure better outcomes, the different armed conflict actors need to have increased technical capacity on the issues involved, and greater political openings to discuss, debate and negotiate agreed terms for the reform of natural resource governance in the peace process and from additional constitutional amendments.

3.1 National and Subnational Government

3.1.1 Union government

Myanmar’s military and government structures are highly centralized within a unitary state system. Ministries of Defense, Home Affairs, and Borders Affairs are appointed directly by the Commander-in-Chief of the Defense Services (the Tatmadaw) – not the head of state. Although Chief Ministers of the states and regions are approved by the state/region *Hluttaw* (parliament), all state and region-level ministers are centrally appointed by, and ultimately accountable to, the Union government and President, as detailed in the 2008 Constitution (Article 261(c)).

The General Administration Department (GAD) plays a leading role in coordinating administrative affairs between ministries and departments at the state/region level and down to the village level. Formerly reporting upwards to the military-controlled Ministry of Home Affairs, GAD now sits under the new government-controlled Ministry of the Office of the Union Government, which could significantly transform the politics and power of administration and governance at the local level, although it is still too early to tell (Nan Lwin 2019).

The centralized structure of Myanmar’s government means that regional lawmakers and administrators – who are predominately appointed by the central administration (see above) – have “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” (BEWG 2017:9). This structure is also enshrined in the 2008 Constitution (see **Box 2**), preventing ethnic populations from managing their own territories and resources or determining development policy, entrenching decades of exclusion and discrimination. This is even more true for ethnic women, who are doubly marginalized and under-represented at all levels of government. Village tract administrators, previously appointed but now elected, are almost exclusively men—as of 2015, just 29 (0.21 percent) were women (UNDP 2015).


BOX 2
The 2008 Constitution

The 2008 Constitution enshrines centralized state ownership and control of land and natural resources by the Union government.

- Section 37(a) states: “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(b) states: “The Union shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces.”
- Moreover, the Constitution does not legally recognize customary authority, land or resource ownership or use rights, nor customary land and forest use management practices (such as shifting cultivation or agroforestry).

Myanmar’s 2008 Constitution (with its 2015 amendments) does, however, provide a framework under which limited political and fiscal decentralization could take greater hold and thereby encourage more downward accountability.

- State / region *Hluttaws* comprise of elected Members of Parliament (MPs) (Schedule 2).
- An executive branch for each state/region that is led by a chief minister, judicial institutions, and a cabinet of ministers (although centrally appointed) (Schedule 2).
- Somewhat equivalent government structures have also been introduced to Myanmar’s five Self-Administered Zones and one Self-Administered Division (Schedule 3).
- State/region governments have limited control over budget allocations and service provision, but the mandate on expenditures remains narrow (Schedule 2).
- State/region governments have the right to issue licensing and collection of certain taxes and revenue streams from limited lower-value resource products, such as artisanal mining and forestry products (Schedule 5).

3.1.2 Political decentralization

Despite this legacy of centralized structures, at various levels, the Union government has incrementally granted some decision-making administrative responsibilities downwards over recent years (Minoletti 2016, Deshpande 2018). At the village or village tract level, Myanmar has replaced Tatmadaw-appointed village administrators under the GAD with locally-elected leaders who now operate under the Ministry of the Office of the Union Government (see above). At the township and district levels where key functions of government operate, however, authorities and committees are still mostly appointed by the central administration and remain accountable only to them. Therefore, while slowly moving towards deconcentrating governance responsibilities, in general, the Union government remains an upwardly accountable unitary state system that keeps power and authority centralized (see **Section 4.1** and **Box 3**).



It is expected that further political decentralization is likely to take place. But as administrative powers are further decentralized, it is important to make subnational entities more downwardly accountable to their citizens than is currently the case – otherwise “the potential benefits of decentralization are unlikely to materialize” (Minoletti 2016:26).

The remaining strong centralized administrative and legislative tenants in the constitution stand in contrast to the political framework of the peace process. The Basic Principles of the Framework for Political Dialogue (FPD), as agreed at the Union Peace Conference in January 2016, call “to establish...a union based on democracy and federalism.” The NCA principles of agreement likewise espouse “a union based on the principles of democracy and federalism.” Myanmar becoming a genuine federal democratic union has been further supported by Daw Aung San Suu Kyi’s public statements since her party swept the elections in 2016. The central tenants of the peace process itself and various declaration statements that are meant to guide the political process are all set upon bringing about political federalism, whereby power is decentralized to subnational governments.³ These political sentiments capture well the central demands of key stakeholders engaged in the peace process, including EAOs, civil society leaders and organizations, and ethnic political parties.

3.1.3 Fiscal decentralization

Fiscal decentralization has proceeded, but also remains very limited. State/region governments now have some control over budget allocations and service provision, as laid out under Schedule 2 of the 2008 Constitution, but the mandate on expenditures remains limited. State/region governments are now responsible for preparing their own budgets, but they cover only the income and expenditures of departments and state economic entities associated with those governments, and represent just 11 percent of all public spending in states and regions (Deshpande 2018:3). Their control over budget composition and priorities continues to be limited to sectors such as state roads and bridges, local administration, and development affairs’ organizations.

Revenue generation and decision-making on how natural resource revenue will be collected, disbursed, and allocated (and for which uses) is still centralized overall, despite some progress in deconcentrating responsibilities and revenue generation of some sectors and administrative tasks. The 2008 Constitution and some of its amendments, as well as some more recent resource-related laws and policies, have partly decentralized some select resource revenue generating activities – but mostly small-scale activities that generate insignificant revenue for the Union government. For example, subnational government authorities may issue permits for small-scale or subsistence gemstone extraction, and if permits are obtained and royalties paid to subnational government authorities, the small-scale permit holder may cut and polish rough gems and make jewelry, according to the Gemstones Law (2019).

More recently from constitutional amendments in 2015, the national government has begun delegating some responsibilities to the subnational level, which includes licensing and collection of certain revenue

³ However, it must be also considered that there is no consensus on what “federalism” means among various parties in Myanmar. While most groups agree to use the term, they appear to have divergent ideas about what it means to them and how to go about achieving it.

streams from artisanal and small-scale mining activity, on salt products, land revenue, agriculture, freshwater fisheries, smaller-scale electricity generation, and traditional medicines. With reference to the forestry sector, subnational governments are granted the right to legislate forest laws related to village firewood plantations and timber that is not marked as high-value state species. Subnational states, as per this 2015 Constitutional amendment, may also collect tax on NTFPs.

3.1.4 Union laws and policies

While there has been some limited progress towards political and fiscal decentralization with amendments to the constitution, new land and resource-related Union laws and policies this decade have mostly further centralized Union control and political governance over land, resources, and populations, as summarized below. These Union laws and policies run contrary to the principles enshrined in the NCA and future Union Accord principles to establish a democratic federal union, as well as against the political governance reforms called for by EAOs and ethnic civil society leaders (see **Sections 3.2** and **3.3**; **Annex 1** review these laws in more detail).

- **Centralized structure of implementation and enforcement:** Two land laws passed in 2012 (Farmland Law and the Virgin, Fallow, and Vacant [VFV] Law) are implemented and enforced via their own subnational committees (state/region and township levels) which are only upwardly accountable to the Union government in Naypyitaw. The new Forest Law (2018) operates under similar centralized command structures. The 2016 Investment Law empowers the Myanmar Investment Commission (MIC) as solely responsible for approving and regulating investment. MIC's 11 members are appointed by the executive branch of the central government and are only obligated to “coordinate” with state/region governments to allocate investment authority, despite assurances that subnational governments would manage some areas of investment. The 2015 Energy Master Plan also maintains central control over the policy, planning, production, management, or distribution of benefits in the energy sector. Finally, the Environmental Conservation Law (2012) and Rules (2014) empower the Ministry of Natural Resources and Environmental Conservation (MONREC) as the sole authority to regulate and monitor conservation and environmental health – and to exempt any state or private entity from complying with the Law.
- **Recognition of customary rights:** In line with the 2008 Constitution, land and forestry-related laws revoked the rights of customary practices, particularly in upland ethnic territories, although now with some limited recognition of ethnic nationality rights. The Farmland Law allows for the issuing of land use certificates (LUCs) for private parcels of land under permitted land use types (not collective land or customary practices like shifting cultivation, however) to denote rights which can be bought, sold and transferred on the market. The VFV Law, on the other hand, reallocates land that is without formally-recognized use rights – but which is oftentimes inhabited by farming households, and mainly located in ethnic upland territories and conflict-affected areas. Mapping these “wasteland” areas as free of users enables the allocation of these rights to the private sector. A 2018 VFV amendment further enables the Union government to infringe upon customary tenure use rights. The National Land Use Policy (NLUP) (2016), however, includes several clauses that recognize local land use rights, although it is unclear if those clauses remain after government leaders may have altered the text to some extent. Regardless, the NLUP remains so far unimplemented, although it may help guide a potential future new national land law. The 2018 Forestry Law, however limited, improves upon the 1992 Law in two ways: encouraging private plantations (affording more rights to legal owners), and providing legal support to the establishment and regulation of community forests. Yet it contains neither legal definition of community



forestry, nor recognition of individual or community use or management rights to forests or forest-based products, and thereby affords no further provision of any tenure security to local forest-dwelling populations over forests.

The VFV Law amendments have caused particular concern among EAOs and ethnic civil society, as three-fourths of VFV land is located in ethnic states, much of which is affected by armed conflict (Kissinger 2017). The KNU made an official statement in reaction to the VFV Law amendments:

It shows no concerns to the rights of indigenous people or human rights norms, and it does not reflect the democratic and federal principles. Moreover, it contains huge contradictions to the positions and concerns of the Karen People as a whole and to the land policy of Karen National Union. It discourages peace building, trust building and the formation of the future Federal Union. The amendment of the VFV Law is violating the agreements and contracts between Karen National Union and Government as follows: articles 9, 10, and 11 of the preliminary ceasefire agreements between the Government and the Karen National Union on 6 April 2012. Moreover, it violates the Nationwide Ceasefire Agreement (NCA), which was signed by Government, Tatmadaw and Ethnic Armed Organizations, especially article 9 of Chapter Three on the Protection of Civilians and article 25(a-1) of Chapter Six.⁴

The implementation of the VFV law, as amended, would appear to violate the NCA provision against forcible confiscation and transfer of land from local ethnic populations.

3.1.5 State-owned economic enterprises

As a legacy of the socialist period, Myanmar's state-owned economic enterprises (SEEs) control nearly every major natural resource commodity in the country. The most well-known and profitable is the Myanmar Oil and Gas Enterprise (MOGE), but others play a very significant role in the conflict resource economy. In 2016 alone, MOGE, the Myanmar Gems Enterprise (MGE), and Myanmar Timber Enterprise (MTE) together accounted for more than one-third of Myanmar's c.USD\$12 billion in export revenues (RI and NRG 2018). SEEs hold a monopoly on the country's natural resource wealth extraction, operating under opaque laws and rules, with little transparency or accountability to citizens. SEEs and the State-owned Economic Enterprises Law of 1989 that govern them thereby hinder pathways to achieving resource governance decentralization and federalism (see **Section 4.2**).

Prior to 2012, SEEs paid 70 percent of profits to a Union Fund Account (UFA) in the form of a "state contribution" (dividend) and 30 percent in corporate income tax. But in 2012 under the new government, the corporate income tax rate was reduced to 25 percent and the "state contribution" was apparently reduced to 20 percent. Since then, more than half (55 percent) of SEE profits were kept in the SEEs' own "other accounts" (OAs) at Myanmar Economic Bank (MEB), rather than the central budget (Forest Trends 2019(a)). This 2012 directive (known as a Ba Kha) issued by Ministry of Planning and Finance (MoPF) has not been made public, and presents questions on the legal basis of this change.⁵ However, in February 2019, the MoPF issued a

⁴ KNU (2018). On file with author.

⁵ Forest Trends obtained the Ba Kha in Feb 2019, in a presentation by the MoPF for a workshop on SEE reform. The text of Ba Kha-3/20(547/2012) appears to permit the MoPF to issue directives to carry out the 1989 SEE law. But it is not clear if the MoPF can use such a Ba Kha to change existing laws without parliamentary approval, especially laws that make such drastic change to public financial management.

new notification for SEEs' financial management (SaBa/Finance- 4/1/1(550/2019)) stating that all OAs will be closed as of September 2019, and must be transferred to UFA-SEE accounts after being audited and approved by the Office of the Auditor General (Forest Trends 2019(a)).⁶ It is too early to note if this has been implemented successfully yet.

The SEEs' OA acts as a mechanism to remove billions of dollars in resource revenue from the Union budget, effectively removing the funds from parliamentary scrutiny. The Deputy Minister of MoPF admitted that US\$8.5 billion had gone missing from SEE's OA from 2012-17 (Chau and Chan Mya Htwe 2018). While the ostensible policy purpose for the OAs was to help SEEs invest in their "corporatization," this does not appear to be happening. The MoPF claims (in the Myanmar EITI [MEITI] reports) that some of the OA money has been "used for the budget deficit financing which means that OA surplus are in fact spent for SEEs as well as the expenditures of non-revenue making ministries such as Education, Health and Sport, Social Welfare, Relief and Resettlement." NRGI estimates that for just MOGE and MGE alone, this could provide more than MMK 2.8 trillion (roughly US\$1.8 billion) for the Union budget for 2019 (NRGI 2018:4). Myanmar's EITI reports have revealed the scope of the lack of data transparency and the associated challenges in improving fiscal responsibility and decentralization (see **Section 5.3**).

In addition to the OA, the Union budget still covers some SEEs' capital expenditures, mostly those that provide state services such as transportation and communication. Those that are more profitable, such as all the natural resource sector (oil/gas, timber, gems, etc.), must use their own funds generated by previous fiscal years to pay for their expenditures, but the Union budget will provide debt service should it be needed.

Apart from fiscal considerations that NRGI (2018) and the MEITI reports cover extensively, there has not yet been a focus on how SEEs hamper natural resource decentralization governance reform. SEEs are managed centrally, without any downward accountability to subnational governments or populations in those states/regions in which they operate. The State-owned Economic Enterprises Law of 1989 provides monopoly power to all SEEs, and other land and resource-related laws have further supported SEEs' monopoly on management and revenue generation. For example, the Forest Law (2018) granted the MTE exclusive ownership over the timber sector (at least for high-value state-designated species) and the right to avoid the competitive bidding system in buying and selling timber in the country. Although not written into the SEE Law, the governance and management of the SEEs is mostly beyond even Union parliamentary oversight, let alone at the subnational level, with the Tatmadaw and crony companies playing a significant role in the management of SEEs and revenue generated. Since much of the natural resources extracted and revenue generated, especially for oil/gas, originates in ethnic and religious conflict-affected states, SEEs and their governance present a major obstacle to achieving further steps towards fiscal and resource federalism.

3.2 Ethnic Armed Organizations and Institutions

In preparation for the Panglong 21st Century Peace Conference in August 2016, EAO signatories (and ethnic political parties, see below) gathered the month before to agree to a platform in support of ethnic political aspirations. They agreed on eight principles in drafting a new "federal union" constitution (TNI 2017(b)). Later, in mid-2017, more than 60 representatives of EAOs – both signatories to the government's NCA and those who had not signed – agreed to what they called basic guidelines to work towards the future establishment of a Federal Union in Myanmar (Khun Ba Thar 2017).

⁶ MoPF letter to prepare and submit the 2019-2020 budgets of the union-level departments and bodies, 28 February 2019.



Political federalism, as EAOs and EAO blocs argue, would, in general, offer a political arrangement that essentially works to decentralize power and decision-making to the subnational administrative level that would enable ethnic minority populations to have a greater say in their own state’s development, be more resonant with the local cultural traditions and local communities’ development aspirations, and accrue more material benefits to the state/region and local populations (ENAC 2017).

Political and fiscal federalism also deeply concerns land and natural resource sectors, as reviewed above (also see **Section 4** for further details). Ethnic civil society and EAO leaders are demanding ownership and a greater say in the management of natural resources and the sharing of revenue (and other benefits) generated from their exploitation. These positions are key demands being made by EAO leaders in the ongoing ceasefire and peace negotiations.

Some EAOs and EAO blocs have established formal policies related to land and natural resources. These EAO policies are reviewed in the next sub-section.

EAOs cover a wide range of politics and territories, the nature of which shapes how EAOs engage with the natural resource sector and their exploitation. **Table 1** summarizes EAOs’ stances on political alliances, territorial control, and exploitation of natural resources.

Table 1. A typology of EAOs with relation to the peace process and natural resources.

EAO	Ceasefire	NCA Signatory	Affiliations	Governance / Administration	Territory			EAO land/ NR/ governance policies
					Control	Natural Resources	Exploitation	
All Burma Students' Democratic Front (ABSDF)	2013	Yes	—	No	No (non-ethnic nationality force based in ethnic territories)	No	No	No
Arakan Army (AA)	No	No	Northern Alliance, FPNCC	No	No	No	No	No
Arakan Liberation Party (ALP)	2012	Yes	Still initial phase of ceasefire	No	Y (Areas of Rakhine State)	oil/gas	limited	No
Chin National Front (CNF)	1988, 2012	Yes	Ex-UNFC member (2015)	Yes	Thantlang area, Chin State	border trade	limited	No
Democratic Karen Buddhist Army - Brigade 5 (DKBA)	2011	Yes	Some fighting with other Kayin EAOs	No	Yes (Myawaddy area, Kayin State)	border trade	Tax trade	No
Kachin Independence Organization (KIO)	1994-2011	No	Northern Alliance, FPNCC, Ex-UNFC member (2017)	All major depts, thorough service provision	Significant areas in Kachin State, some in northern Shan State	Timber, agriculture, minerals/ gems, hydro, border trade	Yes	Land (official); natural resources (official); forest (in process)
Karen National Union (KNU)	2012	Yes	Leading NCA-Signatory EAO / Ex-UNFC member (2014)	All major depts, thorough service provision	Expansive areas in southeast and south	Timber, agriculture, minerals, hydro, border trade	Yes	Land (official); Forest (unofficial); Environment (unofficial); Economic (unofficial)

(continued)

Table 1 (continued)

EAO	Ceasefire	NCA Signatory	Affiliations	Governance / Administration	Territory			EAO land/ NR/ governance policies
					Control	Natural Resources	Exploitation	
KNU/KNLA Peace Council (KPC)	2012	Yes	—	No	Yes (around Tokawko in Kayah State)	limited	limited	No
Karenni National Progressive Party (KNPP)	2005, 2012	No	UNFC member	Yes	Yes (areas of Kayah State)	Timber, agriculture, hydropower, border trade	Yes	Land policy and forest policy (in process)
Lahu Democratic Union	—	Yes	UNFC member	No	No	No	No	No
Myanmar National Democratic Alliance Army (MNDAA)	1989-2009	No	Northern Alliance, FPNCC, Ex-UNFC member (2015)	Yes	Previously Kokang Self-Administration Zone (SAZ)	Yes	Yes	No
National Democratic Alliance Army (NDAA)	1989, 2011	No	FPNCC	Yes	Y (Mongla)	border trade	tax trade	No
National Socialist Council of Nagaland (NSCN-K)	2012	No	Still initial phase of ceasefire	Yes	Yes (a new Naga SAZ)	agriculture, limited mining and timber, border trade	limited	SAZ laws/ policies
New Mon State Party (NMSP)	1995, 2012	Yes	UNFC member	All major depts, thorough service provision	Yes (areas of Mon State)	agriculture (rubber), fisheries, limited mining and timber	Yes	Land policy (in process)
Pa-O National Liberation Organization (PNLO)	2012	Yes	Ex-UNFC member (2015)	Yes	Yes (Pa'O SAZ)	agriculture, timber, mining	Yes	SAZ laws/ policies
Shan State Army / Restorative Council of Shan State (RCSS)	2012	Yes	—	minimal	Yes (around Loi Tai Leng)	agriculture, mining, timber, border trade	Yes	No
Shan State Army / Shan State Progressive Party (SSPP)	1989, 2012	No	FPNCC, Ex-UNFC member (2017)	minimal	Yes (areas of North Shan State)	agriculture, mining, limited timber and trade	Yes	No
Ta'ang National Liberation Army (TNLA)	1992-2012	No	Northern Alliance, FPNCC, Ex-UNFC member (2016)	All major depts, thorough service provision	Yes (Palaung SAZ)	Limited timber, minerals, border trade	Yes	SAZ laws/ policies
United Wa State Party (USWP)	1989, 2011	No	Ex-UNFC member (2017)	Yes	Y (Wa SAZ)	agriculture, mining, narcotics, border trade	Yes	SAZ laws/ policies, others
Wa National Organization (WNO)	1997	No	Ex-UNFC member (2017)	No	No	No	?	No

Source: Compiled by Kevin Woods

Note: This is not meant to serve as a definitive list nor to capture necessary specificities. All unintentional errors are of the author alone.



3.2.1 EAO natural resource policies

Several of the more well-established EAOs, such as the KNU, KIO, NMSP, and Karenni National Progressive Party (KNPP) have set up systems and departments to govern and administer territories, land and resources, and populations under their influence. These generally recognize and complement customary management practices, and provide culturally-appropriate service provision, such as health care and education. Several EAOs also have forestry and agriculture departments that manage land and natural resources under their territorial jurisdiction.

In recent years, both NCA-signatory and non-signatory EAOs have updated and revised policies related to land, environment, and natural resources:

- The KNU adopted a Land Policy and will soon pass a new Forest Policy.
- The KIO has drafted a Land Policy, a Forest Policy, and a Natural Resources Policy.
- The NMSP and KNPP also have draft land policies waiting for final approval, and KNPP has started working towards a Forest Policy.
- These policy formulation workshops convened both EAO department leaders and ethnic civil society leaders active in the respective fields.

All known EAO policies related to land and natural resources are anchored in customary resource ownership rights and practices, where local customary authority figures maintain their right to govern village affairs and land and resource management. Importantly, they also support integrity mechanisms to advance good governance and accountability, such as third-party oversight and monitoring committees, and the active participation of civil society and customary authorities. There do not appear to be any significant differences in policy intent or substance for those EAOs that are signatories to the NCA and those who are not.

These EAO policies offer crucial temporary provisions to protect peace accords as well as land and natural resources from over-exploitation, and better-ensure good governance practice during the interim period (see **Section 6.2** on sequencing). In order to operationalize peace accords, there will be a need to develop state and federal constitutions and legislations on multiple issues, which will take years. These policies already in place are therefore important in guiding the national peace process and the interim arrangements in terms of providing policy and implementation examples of the decentralization of political and fiscal governance for land and natural resources (see **Section 6**). During the interim period, the EAO policies are meant to inform land and resource governance in their respective EAO-controlled territories. But EAOs also view their policies as functioning as the policy framework for their respective states (e.g., Kachin State, Kayin State) under a future political federalism. In this way, these policies are viewed by EAO leaders and ethnic CSOs as being an alternative to Union laws and policies during the interim period and as the political negotiation stance in the peace process for EAOs.

Currently, in mixed administration areas, communities “shop” for which of the two policies –Union or EAO – best serve their interests (South et al. 2018). When possible, villagers will often apply, for example, for a community forest or an agricultural land title from both the Union government and the EAO. But in most

instances, ethnic villagers tilt towards obtaining titles from EAOs because they recognize their customary ownership of land and traditional resource management practices. EAOs, on the other hand, use the application of these land and natural resource policies to further bolster their claims of territorial authority. Political federalism could enable a subnational governance framework that is more responsive to local community needs and development aspirations, and works to integrate complimentary sharing of competence and jurisdictions.

Karen National Union (KNU)

The KNU is regarded as the most important NCA signatory based on the size of their army and territory governed, as well as their important political role since the start of insurgency in the country. The KNU has also been the most involved EAO in the country in terms of institutionalizing the management of land and natural resources within their territorial jurisdiction.

After the KNU updated their Land Policy in 2015, KNU officials and Kayin civil society leaders developed a Forest Policy that is expected to be passed by Central Congress when it next convenes. The KNU's Forest Policy, much like their Land Policy, is anchored in respecting customary law, authority, rights, and practices. "Ancestral domains" will be honored, meaning wherever communities demonstrate customary ownership over forests, they have the right to manage those forest-based resources according to their traditions and customary authority. Only those forests that fall outside of recognized ancestral domain does the KNU's Forest Department have management rights, as per their draft policy.

The KNU also has drafted an Environmental Policy, awaiting approval, which supports the land and forest policies, but more specifically addresses environmental and social impacts from development and resource extraction. KNU's Economic Policy reinforces integrity mechanisms in their economic pursuits with the goal of sustainable development.

All these policies include clauses on the necessity of Free, Prior, and Informed Consent (FPIC) with local communities who may be impacted by development and resource extraction. In addition, an Environment Committee comprised of multiple stakeholders, including civil society leaders, must review and agree to any project first before the KNU can issue any development or resource extraction permit to ensure regulations and good governance standards enshrined in these policies are met.

In addition to these policies, the KNU has also released several public declarations repeating their positions with regards to their bilateral ceasefire and being an NCA signatory and the associated peace process protocols, some of which directly relate to natural resource extraction and conservation. The KNU's 4th Brigade Forestry Department passed an official declaration in 2013 on principles of international humanitarian and conservation engagement in KNU territory (see **Annex 2**), and made specific mention to the Myanmar government on respecting KNU's own forestry management and conservation endeavors in an emergency KNU Congress meeting in 2017 (see **Annex 3**).

Kachin Independence Organization (KIO)

The KIO has likewise adopted a Land Policy and is working on finalizing a Forest Policy. The Kachin Forest Policy has adopted a similar rights-based approach as the KNU's, where customary law, authority, rights, and practices of communities will be respected and supported. Wherever communities demonstrate

⁷ Many of UNFC's initial members, however, had withdrawn over the years upon signing the NCA or disagreements over decision making processes within the UNFC. Refer to Table 1 for a list of original members and those who have withdrawn. Despite the UNFC suspending their participation in the peace process in August 2019 (Swe Lei Mon, 2019), their policies are still supported by EAOs who were involved in the policy development process.

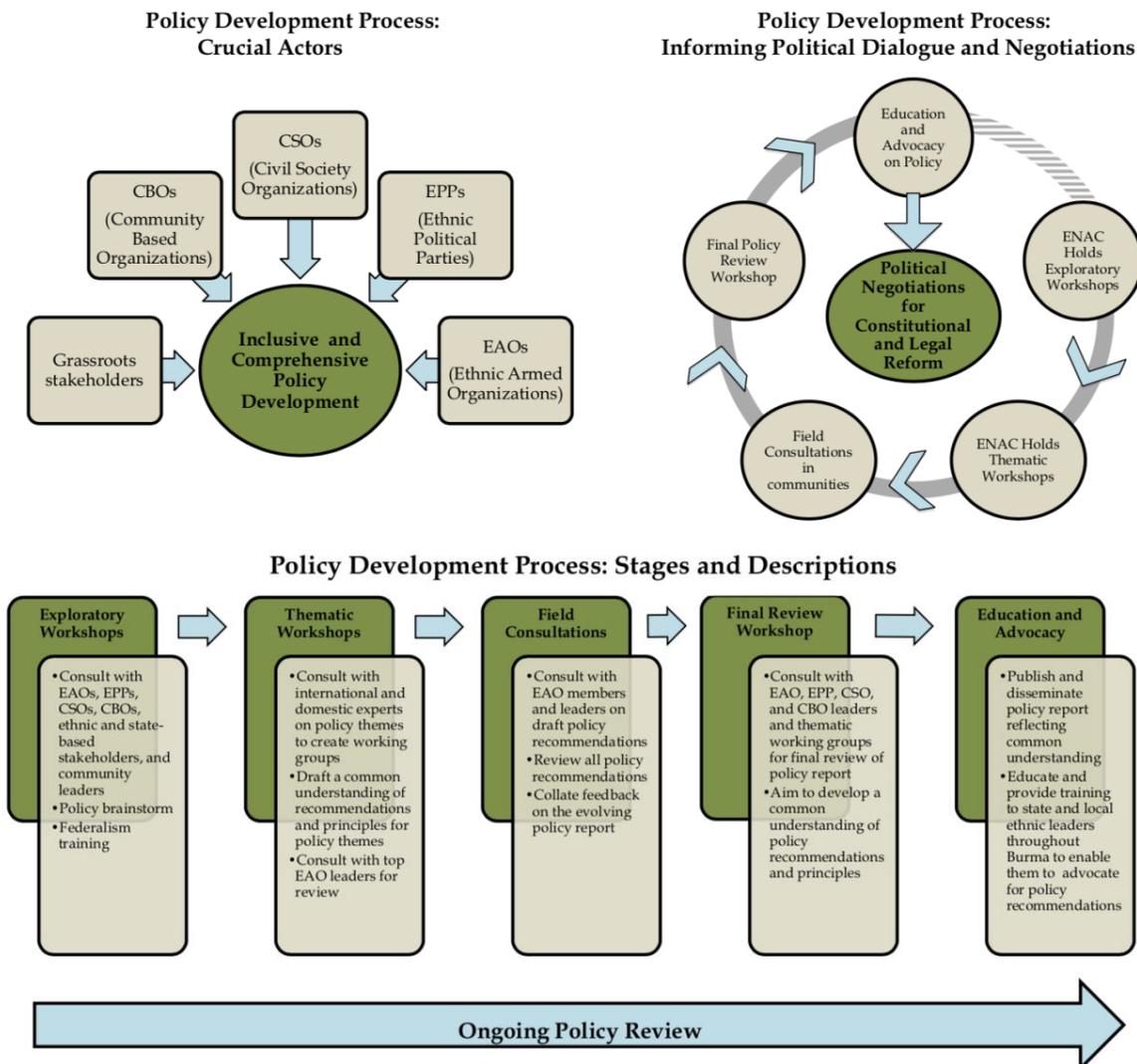


customary ownership over forests, they have the right to manage those forest-based resources according to their traditions and customary authority. The draft Land Policy covers similar ground. The author has not seen their draft Natural Resource Policy.

3.2.2 UNFC/ENAC and FPNCC

The United Nationalities Federal Council (UNFC), which represents those EAOs who have not signed the NCA, provides another EAO policy body outside the NCA process (Nyein Nyein 2017).⁷ The UNFC officially adopted 11 policy positions, five of which relate to land and natural resources (ENAC 2019, Forest Trends 2018). All of the UNFC’s policies are developed by their policy arm, the Ethnic Nationalities Affairs Center

Figure 3 | EAO policy development process.



Source: UNFC

(ENAC), through a highly consultative process. They also advocate for and support the principles of sustainable development, the use of natural resources for local benefit that does no harm, and recognition of local resource ownership rights.

The UNFC policies related to land and natural resources resonant with other existing EAO policies, such as those reviewed above. UNFC and ENAC engaged in a policy development process with multiple stakeholders with EAO non-signatories, CSOs, and ethnic political parties, as illustrated below in **Figure 3**. Individual EAOs who have produced land and natural resource policies have followed a similar process with their constituencies in order to build social legitimacy for the policy process and the policies themselves.

The more recent Federal Political Negotiation Consultative Committee (FPNCC), the bloc of EAOs based in the north who have not signed the NCA (some of whom are in battle against the Tatmadaw), also has recently developed a set of related land and resource governance policies. However, the author was not able to obtain a copy of these policies nor learn more about their specificities, or whether any significant differences exist compared to UNFC and other EAO policies.

3.3 Ethnic Minority Civil Society Leaders and Organizations

Ethnic civil society leaders and organizations are the most active constituency in Myanmar championing natural resource governance reform, and that this be a key aspect of the peace process and political federalism.

A diverse array of ethnic nationality-based CSOs have played a pivotal role in shaping public discourse and policies at the intersection of land and resource governance reform that is anchored in ownership and use rights as well as building peace and security for ethnic communities. These CSOs are the basis for an emerging “constituency demanding reform” that elites may otherwise resist. Ethnic CSOs – predominately based in provincial capitals in ethnic states or in Thailand, and some with offices in Yangon – oftentimes nudge EAOs to adopt progressive land and natural resource policies as well as make land and natural resource decentralization an integral part of the movement towards political federalism. Recognizing that ethnic civil society leaders have technical expertise related to good governance of land and resources, EAO leaders regularly consult them as informal advisors. In many cases, civil society leaders and their organizations and networks initiate workshops and other processes for EAOs. For example:

- In March 2016, 100 leaders from over 60 organizations in Kachin State released a statement that outlined their positions on natural resource governance reform needed to address the ongoing armed conflict.⁸ The statement called for the people of Kachin State to be the owners of natural resources, for elected Kachin State parliamentarians to have the power to manage natural resources, for the sharing of revenue and other benefits with the people of Kachin State, and for adherence to FPIC and other integrity mechanisms on good governance. Attendees called for a temporary moratorium on all land and natural resource related projects until political conflicts are properly resolved and fighting as ended.
- In September 2016, the Arakan Natural Resources and Environmental Network had gathered 300,000 signatures calling for full Rakhine State control of local property and resources (Chan Mya Htwe 2016).

⁸ <http://www.burmapartnership.org/wpcontent/uploads/2016/03/Statement-on-Kachin-State-NR-English.pdf>



- In August 2016, 26 Shan community groups sent an open letter to Aung San Suu Kyi to cancel dams planned on the Salween River: *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. 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.*⁹
- Burma's Environment Working Group's (BEWG) report on Resource Federalism (2017) developed a detailed road map to devolved federal natural resource governance (see **Section 6.2.1**).

Some national and international NGOs based in Yangon tend to work more closely with, and in some cases through, government agencies. Their advocacy on natural resource governance reform tends to be more aligned with Union government stances of fiscal and administrative decentralization as a type of deconcentration where the Union government retains most of the power, but allocates some responsibilities to subnational levels. These different viewpoints are explored in more detail later in this report (see **Chapter 4**).

3.4 Ethnic Political Parties

Democratic reforms have led to the emergence of ethnic political parties (EPPs), whose prominence has grown along with ethnic minority dissatisfaction with the NLD administration as evidenced by the elections in 2015 and the 2017 by-elections. EPPs have thus far espoused similar sentiments as those expressed by EAOs and ethnic CSOs. For example, policies of Kachin and Rakhine political parties cover land and natural resource ownership, control, and management. Some of these policies mention revenue sharing as well, with ethnic states sharing revenue with the Union government (not the other way around).

The United Nationalities Alliance (UNA), a pan-ethnic alliance of EPPs whose members have won seats in recent elections, have adopted ENAC's recommendations "in principle" (as some EAOs are not UNFC members), including all of those related to land and natural resources.

At the Panglong conference in August 2016, Dr. Aye Maung, chairman of the Arakan National Party (ANP), argued that natural resource ownership, control, and management powers be decentralized to states rich in resources. In addition to ownership rights, he also acknowledged the importance of resource benefit-sharing as part of the fiscal arrangement:

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.

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 ownership and independent management

⁹ <https://www.burmalink.org/open-letter-26-shan-community-groups-daw-aung-san-suu-kyi-cancel-salween-dams/>

powers over natural resources detailed in the constitution.¹⁰ The Kachin parties also called on the government and EAOs to suspend large natural resource extraction projects during the interim period. Similar gatherings and calls from ethnic-based political parties have taken place in other ethnic states, especially Rakhine State (oil/gas), Shan State (mining, dams), and Kayin State (mining, dams).

While registered EPPs have grown in prominence with constitutional backing to contest elections, EPP leaders and MPs still explain how they have no decision-making power and must follow orders from Naypyitaw without the ability to express much agency. Thus, it seems that while the bureaucracy has been deconcentrated, power, authority, and accountability has not, leaving EPP-elected officials unable to adequately respond to local issues or their constituencies (see **Section 3.1**). Elected representatives oftentimes insist they cannot find much information about projects slated for their jurisdiction.

3.5 National Peace Process Structures and Institutions

3.5.1 Bilateral ceasefires with Ethnic Armed Organizations

Of the 15 existing bilateral ceasefire agreements in Myanmar, only five address natural resources in some way. In all five cases, EAOs are allowed to informally continue their exploitation and revenue generation (see **Table 2**) – despite not following national laws and policies nor good governance principles. No integrity mechanisms promoting good governance principles for land and natural resource management are mentioned in any ceasefires. Only in one case, for the National Democratic Alliance Army (NDAA), are resources mentioned outside of exploitation, which is merely to send researchers to “assess the [conditions of] natural resources” (BNI 2016).

Table 2. Natural resources and ceasefires with EAOs in Myanmar

Key Word	#	Faction	Activity, as described in CA
Natural Resources	1	National Democratic Alliance Army (NDAA)	<ul style="list-style-type: none"> • Access to mining, coal, and gold exploration and production • Allow trade of 10,000 Tons of teak & 10,000 Tons other hardwoods • Allow NDAA control of border checkpoint/fees • Send researchers to access natural resources
Forest	0		
Logging/Timber	4	Pa-Oh National Liberation Organization (PNLO)	• Establish companies related to mining, logging
		Restoration Council of Shan State (RCSS)	• Develop businesses such as gemstones, mining, and timber extraction
		KNU/KNLA Peace Council (KPC) Karen State	• Exploration and trade licenses for timber & mineral extraction to avoid exploitation from Thailand
		United Wa State Army	• Allowed to trade timber
Mining	3	PNLO RCSS KPC	• Allow to mine and trade minerals/gems

Source: Blundell and Harwell 2016

¹⁰ For more information, see <http://www.rfa.org/english/news/myanmar/kachin-state-political-parties-call-for-policy-on-natural-resource-extraction-05272016145812.html>



3.5.2 The Nationwide Ceasefire Agreement (NCA)

In 2015 towards the end of Thein Sein's administration, eight EAOs signed the government's multilateral NCA. An additional two EAOs signed in 2018, for a total of 10. Just as the bilateral ceasefires do not address natural resource use and ownership rights and their good governance, neither does the NCA. Only two clauses in the NCA specifically mention issues related to land (Article 9(f)) and natural resources (Article 25), while a few others are related:

- Article 9(f) states how the Tatmadaw and EAOs shall avoid forcible confiscation and transfer of land from local populations.
- Chapter 6 on the interim arrangements of the NCA recognizes existing ethnic governance and is interpreted as protecting against encroachment on those administrations during the interim period (see Gelbort 2018).
- Article 25, Chapter 6 supports "environmental conservation" (25a-2), "efforts to preserve and promote ethnic culture..." (25a-3), and the "planning of projects that may have a major impact on civilians living in ceasefire areas shall be undertaken in consultation with local communities in accordance with the Extractive Industries Transparency Initiative (EITI) [s]tandard procedures" and coordinated with the relevant EAOs for implementation (25b). (See more on EITI in **Section 5.3**).
- Article 30, Chapter 7 states that relevant NCA meeting minutes on agreed decisions during negotiations should be included in NCA implementation. Following this, NCA text has been amended through these additional decisions that provides clear instruction on the interpretation of supporting environmental conservation during the interim period. These additional provisions "will include coordination on land and resources management as proposed by the EAOs" (Decision 25), and, concerning the planning of projects in ceasefire areas during the interim period, to "coordinate on land and resource management" (Decision 26) (SHAN 2016). This means that the NCA directly addresses land and natural resource management and should not be acted on unilaterally by the government in ways that undermine or conflict with existing EAO administration, their service provision, or the implementation of their bilateral ceasefire agreements (Gelbort 2018).

Therefore, the NCA compels the Union government and EAO signatories to coordinate on and cooperatively engage in environmental conservation in EAO-controlled areas. This includes recognizing the existence of ethnic governance systems and protection against encroachment on those administrative and service provision systems.

The NCA allows for constitutional amendments, and recognizes EAOs as having an expressed role in contributing to these constitutional legal challenges: "We agree that all decisions adopted by the Union Peace Conference shall be the basis for amending, repealing and adding provisions to the Constitution and laws, *in line with established procedures*" (22d, author's italics). Such constitutional changes would be necessary to have the legal backing for resource federalism in such a way as to meet EAO demands. However, the established procedures, as detailed in the FPD (see below), means that the parliament has the power to veto any bill seeking constitutional amendment – effectively meaning that the Tatmadaw retains the legislative power to veto any constitutional amendment they do not want, which has already

3.5.3 The Union Peace Dialogue Joint Committee

The NCA peace process involves many institutions and structures. The Joint Implementation Coordination Meeting (JICM) is the highest-level body, composed of 16 representatives from government (includes the Tatmadaw) and an equal number from EAO signatories. It is tasked with receiving and processing inputs from two secondary NCA institutions: the Joint Monitoring Committee (JMC) (on military affairs) and the Union Peace Dialogue Joint Committee (UPDJC) (on political dialogue). The UPDJC is comprised of 48 members: 16 members each from the government (including Tatmadaw), EAO signatories, and political parties. The UPDJC's Framework for Political Dialogue (FPD) provides a dialogue process plan, agendas for discussion, and structure for the political dialogue to resolve grievances that fuel conflict. The FPD lays out the "Agendas for Political Dialogue" (Chapters 3-4), which are broken down into five thematic areas (Chapter 5): political; social; economic; security; and land and environment (also sometimes written as "land, natural resources and environment")¹² – each of which has an assigned thematic Working Committee (WC).

The mandate of the Land and Environment WC, as agreed by the FPD, is to facilitate dialogue on issues related to natural resource "management and distribution" and "protection against natural disasters". The Economic WC has decided to not specifically address natural resources in the economic policy, although on such issues as fiscal decentralization and the management rights related to economic benefits, there could have been synergies with discussions in the Land and Environment WC.

The NCA-Signatory EAO (NCA-S EAO) Office was created in 2017 to help coordination among the different EAO signatories and their senior leadership's negotiation in the NCA peace process. Within their policy division, the office provides policy support for the five different WCs.

For each thematic area, dialogues are meant to take place based on (1) ethnicity (led by EAOs), (2) subnational regions (multi-stakeholder conferences), and (3) various nationwide issues (led by CSO Forum). These national and ethnic state dialogues are meant to gain wider consultation and feedback among stakeholders, especially ethnic civil society. However, in some cases the Tatmadaw and government authorities have blocked various dialogues from taking place, despite following FPD protocol, such as some subnational dialogues (e.g., for Rakhine and Shan States), as well as for the nation-wide issue-based dialogue on security affairs, among others.

The UPDJC Secretariat, which is comprised of equal numbers of members from these same representative groups as the UPDJC, coordinates the efforts of the WCs. The WCs, with support from the NCA-S EAO Office, submit policy papers – which are not made public – to the UPDJC Secretariat for decision making and approval before being submitted to the JICM for review. Review and vetting by the UPDJC and JICM is an ambiguous closed-door process among stakeholders from the government, Tatmadaw, EAO signatories' senior leaders, and political parties (see **Section 3.5.5**). The Karen Peace Support Network (KPSN 2018) explains the non-transparent process of decision making as passing through five "gates," in this order: WCs, UPDJC-Secretariat, UPDJC, Union Peace Conference, and Union Parliament. No specific rules or protocols

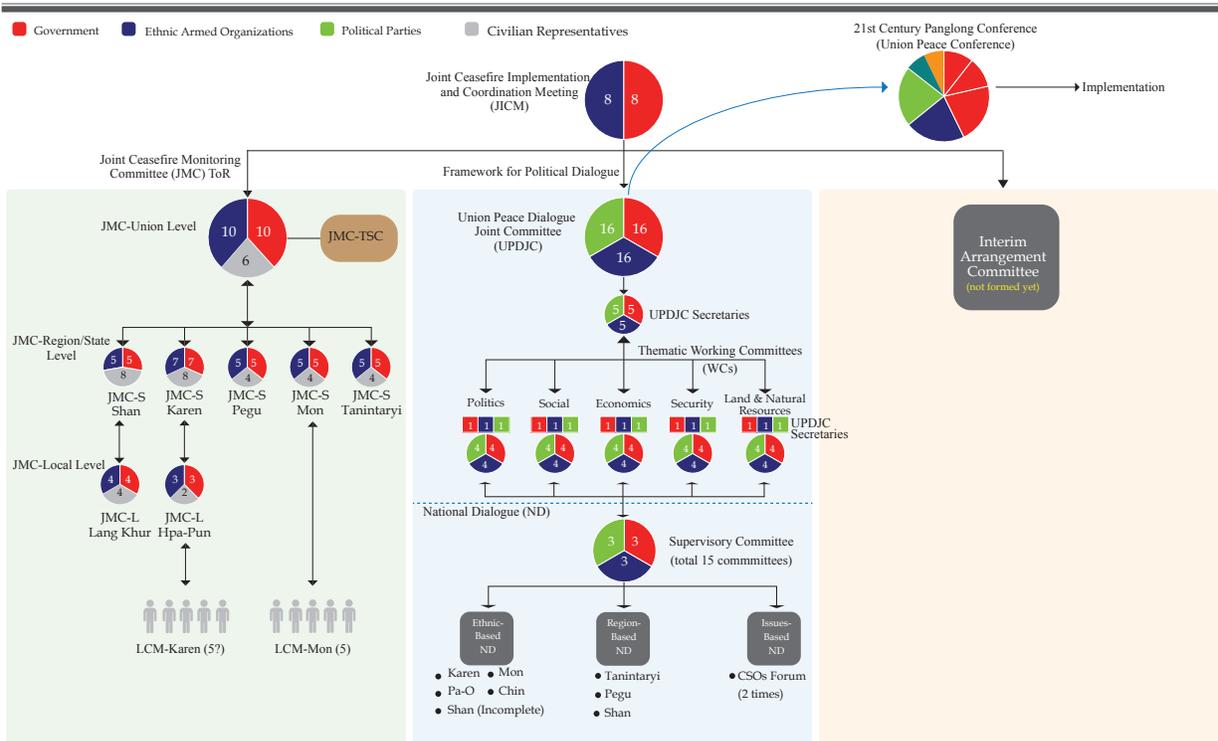
¹¹ A quarter of the seats in the house are, by law, held by the Tatmadaw, who have so far always voted as a unified bloc. Currently the Constitution states that in order for a bill to pass, including amendments to the Constitution, there must be at least 75 percent house approval – effectively meaning that the Tatmadaw retains the power to veto bills.

¹² In the FPD it is called the "Land and Environment" thematic area, with the working committee of the same name. However, more recently some have called it "Land, Natural Resources and Environment" in order to be more inclusive of the natural resource sector. This report, however, retains the original and still official name. The lack of mention of natural resources in the official name does help partially explain how natural resources have so far been sidelined from direct engagement in this sector, and why the policy principles submitted to the UPDJC focused almost exclusively on the land sector.



Figure 4 | NCA Peace Process

Myanmar Nationwide Ceasefire Agreement Implementation Mechanism (up to Sept 2019)



Source: Sai Latt and Pao Hom (2019)

are known to exist detailing decision-making processes within the UPDJC or JICM. Civil society representatives are barred from participating in any of these bodies. Vetted principles are presented to participants at the Union Peace Conference, and then adopted as principles in the future Union Accord before being presented to the Union Parliament for ratification as national law as the last step. **Figure 4** above provides an institutional flow chart for the NCA peace process.

3.5.4 Land and Environment Working Committee

The NCA-S EAO Office staff responsible for supporting the Land and Environment WC compiled a land and environment policy paper based on national-level political dialogues on land, the relevant office staff’s technical knowledge, and input from foreign consultants, EAO signatory leaders, and WC members. The NCA-S EAO submitted the policy paper to the Land and Environment WC in 2017, who then discussed it and handed it over to the UPDJC Secretariat in time for a heavily vetted version to be submitted for the second session of the Union Peace Conference 21st-Century Panglong in May 2017.

Forest Trends’ request for inclusion in this report of the full list of these principles submitted to the UPDJC, was denied. The lack of transparency in putting these important documents into the public realm severely dampens confidence and trust in the peace process and begs the question why these documents cannot be publicly available for all to read and analyze.

Land remained the focus in the policy principles submitted to the UPDJC's Land and Environment WC, but the policy paper included some overlapping principles for natural resources. Below we summarize key content of the land policy principles submitted to the Land and Environment WC:

- *Definition:* Land is defined as including forest, water, and natural resources.
- *Objectives:* Following the political sentiments of the central principles established in the NCA, the objectives for the land policy are “based upon federalism, democracy, right to self-determination, absolute guarantee, and freedom, equality and justice in line with Panglong spirit.” In addition to this guiding principle, there is also agreement that land policies should support “people-centered development” and “establish the policies for decentralization.”
- *Protecting customary land tenure:* Also supportive of the framework of political federalism, the policy stresses that “ethnic people are the ultimate owners of the land in the country.” Moreover, “indigenous people have rights to land tenure in customary (in tradition), in individual or in a cooperative (group),” and all citizens have the “right to work on the land and land tenure of local ethnic people must be legally recognized.” Later in the document several additional related clauses give further support to protecting and supporting customary land tenure, laws and policies: “[p]romote and recognize the freedom of ethnic nationalities’ customary practices, land ownership, management, [and] the land use system;” “[t]he customary land laws for ethnic nationalities must be designed by their own respective ethnic nationalities;” and “[t]he customary practices [and] laws of ethnic nationalities must be included in the law of member states of the union.” The document further states, “There must be recognition o[f] the system [of] customary conflict resolution.”
- *Land investments and disputes:* With regards to large-scale investments and land disputes, different clauses state that projects “must be done with the consent of local ethnic communities.” Furthermore, “Existing land disputes and land grabbing must be resolved urgently,” and “all sorts of investment that might use massive land have to be halted till the land tenure system in the ethnic region is clearly defined.”
- *Specific mention of natural resources:* Forests should be protected in line with international standards so not to negatively affect local ethnic communities, and EAO’s own protected forest reserves must be recognized by the government. In addition, “The government must recognize and cooperate with the community based environmental conservation.”

However, the clauses on respecting customary land tenure and practices and political decentralization are at odds to the existing 2008 Constitution and Union land and natural resource related laws and policies (see **Section 3.1.4** and **Annex 1**). There is a clear disjuncture, then, between these land policies submitted to the Land and Environment WC and the existing Union legislative framework and policies.

Furthermore, apart from the specific clauses on forests mentioned above, no other clauses specific to natural resources exist in any of the policy position papers submitted to the UPDJC or adopted in the Union Accord principles (see **Section 3.5.4** below). But as natural resources typically have higher extractable values than land, with higher generated revenues, and specific use and management rights structures, the governance of natural resources require additional principles than what is covered for land.

The principles in the policy paper initially submitted to the UPDJC Secretariat resonates well with those positions espoused by the wider ethnic civil society community and EAOs, positions that were reviewed above. Synergies can also be seen with the results from a Kayin State National-level Political Dialogue for



the land and environment thematic area, which took place in Hpa'an, Kayin State in January 2017. Over 300 people attended, with representatives from Kayin-based EAOs (the KNU, DKBA, and KNU/KNLA Peace Council), Kayin political parties, and Kayin religious and civil society leaders. The participants agree to a total of 69 land policy positions, which were then submitted to the UPDJC Secretariat for consideration for the Union Peace Conference and Union Accord principles (see Annex 4 for a summary list of the main principles submitted) (see KPSN 2018). These submitted land policy positions were in addition to those submitted by the Land and Environment WC, as the Kayin representatives wanted to ensure they directly influenced the content of the land principles to be adopted in the Union Accord.

The principles from Kayin State were anchored in federalism and self-determination, and honored and fully supported customary ownership, use, and management rights over land and natural resources. For example:

- *Principle 11* supports “States within the Union [to] have the right to draft and adopt land related policies and laws that are in line with its own State and with the participation of its own people.”
- *Principle 12* supports “State Governments of the Union shall have the right to land governance that allows the registration, problem solving, and decision making over land management in its own State.”

3.5.5 Union Accord principles on land and environment and the vetting process

The vetting process

The land principles submitted to the UPDJC Secretariat stand in stark contrast to those that have been allowed for discussion in the Union Peace Conference in July 2018 and ultimately adopted as principles in the future Union Accord (see below). This wide discrepancy can be explained by the vetting process.

Interviewees claim that at each of the “five gates,” Tatmadaw representatives blocked any policies that did not “strictly abide by the existing laws”, were not “in accord[ance] with the 2008 Constitution”, and did not follow the Tatmadaw’s six-point peace policy objectives and “national causes” (Wansai 2018). In effect, the Tatmadaw vetoed any policies that ran against the spirit of decentralization, federalism and self-determination.

According to the UPDJC Secretary, the three negotiating clusters in the UPDJC peace structures – Tatmadaw, government, and EAOs – have an ad hoc veto-wielding power over what can be discussed, and a topic for debate will not go higher or be adopted in the Union Accord if any one cluster disagrees (Wansai 2018:5). The Tatmadaw wielded considerable power in these closed-door meetings, above and beyond what was designed for the formal process of decision making within the UPDJC. According to interviews with those who have been present in these meetings, EAO and non-military government representatives were not willing to stand up to the Tatmadaw representatives’ considerable influence in the vetting process. Thus, core issues like open political dialogue, security reform, natural resource-sharing and ownership, and the ethnic right of self-determination were not included for discussion at the Union Peace Conferences, as these topics were disallowed by the Tatmadaw. Rather, only 14 subsidiary issues that are already covered in the 2008 Constitution were discussed and agreed upon (Wansai 2018:1). Frustrations at the institutionalized culture of obstructions by the Tatmadaw in the UPDJC seem similar to those experienced in the JMC on

military affairs, according to insiders interviewed.

In addition, civil society representatives do not take part in any formal discussions on vetting the principles that have been submitted to the UPDJC Secretariat. Although its leaders are invited to the Union Peace Conference, civil society therefore has no direct say in which principles get adopted in the Union Accord, and in effect the Tatmadaw makes the final decisions. This has left civil society leaders interviewed for this report to question the politics of representation and transparency in the process.

These entrenched political dynamics expressed in the vetting process were applied to the land policy positions submitted by both the NCA-S EAO Office and the Kayin National-level Political dialogue to the Land and Environment WC. According to Karen Peace Support Network (KPSN), the land policy positions submitted by the Kayin State National-level Political Dialogue for the land and environment thematic area to the WC were “censored and cut before reaching the 2nd 21 CPC [Union Peace Conference], first under the Land and Environment Working Committee, and second under the UPDJC-Secretariat, and the UPDJC” (2018:19). None of the eleven land principles submitted by the UPDJC to the Union Peace Conference reflected the original content or intent of the Kayin National-level Political Dialogue’s policy positions (KPSN 2018:21).

The National Reconciliation and Peace Center (NRPC) recorded that at the second Land and Environmental Sector Negotiation Meeting held in May 2017, the Tatmadaw officials publicly rejected several presented principles on the grounds of being against Union government’s mandate and responsibilities. Several times, the Tatmadaw representatives stated that they rejected ethnic nationality rights to use and manage customary land and natural resources on the grounds that “the Union is the owner of all the land and sea, resources under and above the land, water, and space.” In another recorded meeting exchange, Tatmadaw representatives rejected the principle that “[s]tates of a Federal Union must have rights to adopt and implement land and environment policies that are suitable to their state.” The Tatmadaw’s stated reason for rejecting principles that decentralize land management is that “the Union is mandated to protect the environment; the Union government is the only authority with a mandate to manage land.”

Land and environment principles

This vetting process resulted in an initial ten principles related to land and environment being adopted as future Union Accord principles at the Union Peace Conference in May 2017, with an additional two points added after the third conference in July 2018 (see **Annex 5** for the total 12 adopted principles). Much like the land policy paper submitted by the NCA-S EAO Office to the WC, these 12 principles adopted in the future Union Accord are primarily concerned with land, with little mention of natural resources – although some of the principles can be applied to the governance of natural resources more broadly. Below, a few of the more prominent articles are reviewed.

- *Article 3* supports “a policy that reduce[s] central control,” a central tenant of land and natural resource governance reform in line with federalism.

However, the other points do very little to advance land and natural resource governance decentralization in support of federalism and self-determination despite being guiding tenants of the Union Accord (*Article 1*).

- *Article 7* on ownership rights states, “All nationals have a right to own and manage [a] land in accordance with the land law.”
- *Article 9* further centralizes the governance of land and management rights. “If the land right granted for an original reason is not worked on in a specified period, the nation can withdraw the granted right and



concede it to a person who will actually do the work.”

It is inferred here that the “land law” is the Farmland Law (2012) and the amended VFV Law (2018), and that land and management use rights would fall under this Union legislation. The concern is that these two Union land laws exert further centralized control over land administration and governance, and specifically target the transfer of customary land users’ land that the government categorized as VFV land – more than 75 percent of which is located in ethnic upland areas, much of which is affected by armed conflict (see **Section 3.1.4**) – to the private land development sector. It is noteworthy, however, that the VFV Law amendments currently include a clause that exempts lands under customary land management, although this term is not specifically defined, and its effective implementation is far from guaranteed. The National Land Use Policy (NLUP) (2016) also includes articles that support customary land claims and management practices. Many of the initial 10 land principles adopted in the Union Accord match the intent of existing Union land laws and policies and the 2008 Constitution, which centralize government control at subnational levels (KPSN 2018:3).

Two land and environment principles that were adopted help give limited support to the intent of federalism and self-determination, however:

- *Article 6* states, “In setting up [a] policy for land development, the desire of the local people is a priority and the main requirements of the farmers must be facilitated.”

The “desire of the local people” infers a degree of self-determination, although this is vaguely worded and thus rendered without much import.

- *Article 10* further notes: “To aim toward protecting and maintaining the natural environment and preventing damage and destruction of lands that were social, cultural, historical heritages a[re] treasured by ethnic nationals.”

While Article 10 in theory could support customary land and the management of natural resources according to local traditions, it does not infer any decentralized governance and management rights, nor give legal protection to customary land management practices, representing a significant omission on just what sort of governance system would help confer those protections.

Thus, those principles that supported decentralizing power, authority and management rights to the subnational and community levels did not make it through the UPDJC vetting process. None of these articles do much to support decentralization in line with federalism and self-determination. Most of the articles, in fact, support the status quo of centralized control within a unitary state, or even further strengthen centralization in line with Union land laws and policies. Their spirit and content are at odds with the subnational dialogues and input from EAOs and ethnic civil society to the land and environment policy position paper, and peace stakeholders’ positions on governance reform (aside from the Tatmadaw) more generally.

Economic principles

A similar pattern can also be seen in the vetting process for adopting economic principles. In the lead up to the third Union Peace Conference in July 2018, representatives of the government, Parliament, Tatmadaw, EAOs, and EPPs laid out 24 proposed economic sector principles to be discussed at the UPDJC's Economic Sector WC. These initial principles drawn up reflected federally-based economic principles and development aspirations responsive to local demands. The principles granted subnational states significant decision-making power and authority over most economic facets within each state and region, including revenue generation and taxation of natural resources (without any limitations noted). Moreover, subnational states were to have the legislative power to enact rules and regulations matters relating to natural resources.

The Economic Sector WC reduced the 24 submitted principles to just 11, which were then submitted to the UPDJC Secretariat for discussions the week before the Union Peace Conference in 2018. Ultimately, the UPDJC only allowed one principle to be discussed at the conference: "region/state governments have the right to draw up and implement economic projects that benefit the people" where "consideration must be made toward not adversely affect the adjacent states and regions." Much like for the land principles, those principles which express aspirations for federalism in economic management, including for resource-benefit sharing, have been expunged.

Forest Trends' request for inclusion in this report of the full list of these principles submitted to the UPDJC was also denied – just as was the case for the land principles. Again, the lack of transparency in putting these important documents into the public realm severely dampens confidence and trust in the peace process and keeps the public from engaging in what should be a wider debate on the vetting of principles for the future Union Accord.

The Tatmadaw's privileged position of power in these decision-making processes in the UPDJC and in parliament hold serious political implications for the peace principles adopted and any potential constitutional change to bring about peace building outcomes that are aligned with ethnic stakeholders demands. Overall the Tatmadaw controls three pathways in vetting peace principles:

- 1** Blocking principles within the UPDJC vetting process that espouse decentralization and federalist aims.
- 2** Union Accord principles must be submitted to the Union Parliament for ratification, according to Chapter 3 Article 3(d) in the NCA. However, the Tatmadaw retains veto power in parliament, so that even if the Union Accord did include peace principles that supported decentralization within federal structures, it would be expected that they would be vetoed by parliament.
- 3** The other option is to try to use NCA Article 22(d), as reviewed above, which grants EAOs the right to negotiate amending the 2008 Constitution. However, once again, the Tatmadaw would be expected to veto those amendments when put before the Union Parliament.



4

Resource Governance Decentralization Models



The federal decentralization of land and resource governance on the other hand, if managed well with a full set of integrity mechanisms, could be a means of addressing grievances in many of Myanmar's resource-producing areas.

Despite these setbacks on progressing towards land and resource governance decentralization and political and fiscal federalism within the NCA, different possible resource good governance reform models could progress – and some already have – during the current interim period both within and outside the structures of the NCA, to varying extent and effect. In the rest of this report we review how natural resource governance decentralization could support and give further shape to political federalism to promote trust and peacebuilding, possibly reforming the peace process itself.

Natural resource governance decentralization, broadly defined, is the process and outcome of conferring some level of decision-making and responsibility to subnational institutions and jurisdictions. This report broadly defines “resource federalism” as the governance of natural resources within a federal political system that devolves political power to the subnational level.

There is no single model for what resource governance decentralization should look like in Myanmar, as many different approaches and political configurations are possible (see NRG 2018). Likewise, resource federalism can mean many things to different actors involved in Myanmar's peace process. Approaches range from fiscal decentralization and natural resource benefit sharing to types of political federalism. Decentralizing only certain legislative responsibilities to subnational

governments and institutions is the least ambitious as it stops far short of transferring full power, authority, and benefits. Political federalism (as a type of federal decentralization), on the other hand, which EAOs and ethnic civil society representatives in Myanmar are demanding, gives subnational governments constitutional sovereignty in many arenas, including the ownership, as well as the management of and benefits from, land and natural resources.

4.1 Benefit Sharing and Decentralization

Governance reform advocates have promoted a range of positions for pathways to peace. Here we review resource benefit sharing and those calling for decentralization of political and fiscal power under future federal structures, two dominant models discussed and debated in Myanmar. These different advocacy positions mirror the principles of deconcentration and devolution as two types of decentralization. At times

BOX 3

Deconcentration, Devolution and Benefit Sharing

Deconcentration is the redistribution of administrative responsibilities among different levels of a national government, but crucially not political or fiscal power nor horizontal or downward accountability. To some extent, deconcentration is already supported by the 2008 Constitution, and is in effect for some sectors and administrative duties (see **Section 3.1.2** and the **Box 2**). Deconcentration is exemplified by state ministers who have been put into office under reforms this decade, but who have no power in decision-making or accountability, effectively functioning instead as the hand of Naypyitaw in the provincial capitals. Schedule 2 of the Constitution, to take another example, is vague and only grants legislative power to states or regions on a narrow range of activities.

Devolution, on the other hand, decentralizes political and/or fiscal power to lower levels of jurisdiction (e.g., state or regional), which are then held politically and fiscally accountable for their decisions and actions by their local constituents. EAOs and ethnic civil society's call for political federalism supports devolution of power, not just deconcentration of responsibilities where bureaucrats are upwardly accountable to the Union government.

Resource benefit sharing arrangements have also received ample attention, especially among INGOs/NGOs working in Yangon and Naypyitaw on national resource governance and political reform. Various resource-benefit sharing models exist, but all have in common a sharing of revenue between the Union and subnational levels of government – but does *not* include power-sharing arrangements. The models diverge, however, on whether resource benefit sharing is only between revenue generating state or region, or whether revenues are to be shared amongst many sub-national units with the aim of promoting more equity between resource-rich and poor areas, or some combination of the two. Other divergences relate to taxation rights, royalties and responsibilities – which belong to the Union and which fall under sub-national levels (Minoletti 2016).

there is confusion between the two terms; what is in fact deconcentration can sometimes be incorrectly thought of as devolution.

Natural Resource Governance Institute's (NRGI) (2018) publication on Resource Federalism cautions addressing ethnic demands for political federalism with benefit sharing arrangements.

Increased revenue sharing and allocation of minor responsibilities to state and regional governments—whose officials in many cases remain primarily accountable to Union authorities—may be inadequate to respond to claims for greater control over natural resources. Subnational stakeholders may demand greater influence over how the sector develops, a bigger role in mitigating negative impacts and an increased share in non-fiscal benefits (2018:4).

The focus on deconcentrating state administration and finances to the subnational level so as to broaden and deepen resource revenue capture and distribution stops short of addressing land and natural resource ownership and governance issues, and instead frames the armed political conflict as one about vertical financial inequity and lack of material benefits. Given the complexity and long-standing nature of Myanmar's conflicts, benefit sharing alone may prove insufficient to satisfy the political demands of ethnic representatives



and to address some of the drivers of violence and grievances. It may also prove insufficient to address the sector's broader governance challenges.

A report by Minoletti (2016) for the ICG reviews fiscal decentralization in Myanmar, but as a means to achieve political decentralization and resource federalism. Deconcentration can be a preliminary step in the direction towards devolution of power, he argues, which would promote stronger accountability mechanisms that would come through the actual decentralization of decision-making power. Moreover, the lack of accountability to local constituents generated from deconcentration measures risks amplifying corruption at lower levels. Therefore, promoting benefit sharing as the answer to the conflict resource economy offers a false hope, as grievances will not be addressed, nor would the aims of EAOs, EPPs, and ethnic civil society for fiscal and political decentralization within federal structures.

In the peace process, the Tatmadaw is likely to continue to limit the discussion around resource federalism to only resource benefit sharing in order to curtail the much more politically contentious but crucial debates on power sharing and resource ownership and use rights. If the peace process dialogue does not lead to resource federalism, and instead only starts and ends with resource benefit sharing, it is highly unlikely that EAOs and ethnic civil society leaders and networks will be satisfied with these outcomes, thereby derailing any positive steps towards durable peace.

4.2 | Resource Federalism

The federal decentralization of land and resource governance on the other hand, if managed well with a full set of integrity mechanisms, could be a means of addressing grievances in many of Myanmar's resource-producing areas (BEWG 2017). Decentralization generally fails to help locals unless accompanied by appropriate governance mechanisms to ensure compliant implementation – meaning that more focus on and support for resource governance institutions and mechanisms is needed (Blundell and Harwell 2016). The extractive sector could act as a driver of more equitable socio-economic development that helps provide greater stability during the post-conflict transition (*ibid*).

Decentralizing powers and responsibilities can bring decision-making closer to stakeholders directly impacted by the sector. While this could also be achieved through a local presence of national institutions, officials directly accountable to local voters may feel greater pressure to act. This is especially helpful in a country like Myanmar, where monitoring and enforcement capacity among national institutions is limited, particularly in rural areas that are contested between the national government and EAOs.

For federal decentralization as resource federalism to be managed well and thereby effective, local authorities must be responsive to the local population, and likewise the local population needs to be able to apply pressure to, or approve of, the authorities through accountability measures, such as elections. However, in order to respond to local demands and serve local needs, autonomous subnational units of government would need to have sufficient formal powers – political, fiscal, and administrative powers that are guaranteed by a federal constitution. 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 (BEWG 2017:79).

The following is a brief review of four global environmental instruments that could be repositioned as promoting good governance in Myanmar's multi-faceted peace process, including interim arrangements (IA) interventions (see Chapter 6). In doing so, they offer opportunities to decentralize land and resource governance as a peacebuilding mechanism.

The four global governance mechanisms reviewed here – international nature conservation, Reducing Emissions from Deforestation and Forest Degradation (REDD+), the Extractive Industries Transparency Initiative (EITI), and the EU Forest Law Enforcement Governance and Trade (FLEGT) – already operate in Myanmar, to varying extents. But none of these instruments have been directly brought into the peace process in any formalized way, with the exception of the EITI – but even here, only in principle.

The four mechanisms include a range of international standards in achieving robust environmental outcomes, oftentimes measured in terms of good governance (see below for details). These benchmarks could, ideally, also help promote peacebuilding and pathways to resource federalism. But so far, the mechanisms have not yet had much cross-over into the peace process. And in the few cases when these mechanisms claim to have considered the peace process, armed conflict dynamics have been shown to have either been ignored or even potentially exacerbated in practice (Woods 2019(b)). All mechanisms go through Union government channels and multilateral agency procedures, a point that ethnic civil society and EAOs continually stress as undermining peace and security. More than just “conflict sensitivity” (e.g., “do no harm”), mechanisms and programs must try to address and account for the underlying causes of conflict and recognize and work within the parallel structures in EAO areas. Done in this way, these standards will greatly amplify Myanmar's potential for achieving durable peace because they will help keep focus on resolving the conflict resource economy by clarifying questions over who has which ownership and benefit rights and the power to decide management issues, among other political governance matters. Likewise, stakeholders uniformly applying internationally-driven global good governance standards to the Myanmar context can inadvertently undermine peacebuilding goals – unless the standards are interlinked, mutually supporting, and streamlined with the peace process.



Global environmental good governance mechanisms could help support decentralization of natural resource governance and peacebuilding...

5.1 International Nature Conservation

The legacy of nature conservation in Myanmar is still very top-down and state-centric. On numerous instances, conservation programs have inadvertently led to forced displacement, thereby generating grievances amongst the local population living in the vicinity of areas targeted for conservation, usually state forest reserves and watershed forests. The workings of many state-led conservation projects in Myanmar have been shown to impede peacebuilding objectives, overlook customary land and resource ownership and use claims, and contravene clauses in the NCA (KDNG 2007, CAT 2018).


BOX 4

Case Study: International Conservation and “Green Grabbing” in Tanintharyi Region

In Tanintharyi Region (previously called Tenasserim and which the KNU calls Tavoy-Mergui) in the far south of Myanmar bordering the Andaman Sea and Thailand, international organizations’ attempts at new national parks and wildlife conservation initiatives have triggered renewed conflict with Kayin villagers, CBOs, and the KNU. Since the KNU signed their bilateral ceasefire agreement in 2012, KNU’s 4th Brigade in Tanintharyi Region has at times felt inundated by foreign conservationists and their conservation projects. According to the head of the Brigade’s Forest Department, international conservation organizations carry out conservation projects in KNU territory (with and without permission) and bring Myanmar Union government forestry personnel (sometimes unannounced) into KNU territory.

The international conservation project *Ridge to Reef* project exemplifies these sorts of conflicts. The US\$22 million project is being implemented by United Nations Development Program (UNDP), Fauna and Flora International (FFI), Smithsonian Institute, and MONREC. The project aims to add more than 800,000 acres of protected state forests in Tanintharyi Region, a region that has been identified as a global biodiversity hotspot in dire need of international conservation efforts.

As one important element of the Ridge to Reef Project, Lenya National Forest is being pushed towards national park status. Kayin villagers currently reside in this forested landscape, and many Kayin IDPs hold historical land claims. Kayin IDPs (and in fewer cases, refugees) have been checking on their original village areas, including those inside the proposed Lenya National Park, about the possibility to return. None of the villagers currently living in the proposed Lenya park boundary or those in refugee camps have claimed to know about this park (CAT, 2018:19-21). When Kayin CBOs started reaching out to potentially affected villagers inside the proposed new national park boundaries, villagers grew worrisome: “If they really establish a national park here, then we cannot live here. We will have to move. But there is no place for us to move” (CAT, 2018:19). Interestingly, national cronies also hold on to logging and oil palm concessions inside the park boundaries since the 2000s. Due to these political and logistical problems, and pressure from cronies who want to secure their land grabs, formal establishment of the park has been temporarily further delayed.

Due to questions over authority and the implementation process that is seen as contravening KNU’s ceasefire agreement, articles in the NCA, and KNU’s existing policies, and for not going through KNU governance structures nor at times getting permission to operate in KNU areas, the Ridge to Reef project was temporarily suspended in 2018. However, according to UNDP’s public responses to these grievances, only “social safeguards” are being reevaluated, rather than the political governance of the project being addressed as KNU and Kayin civil society demands.¹⁴

¹⁴ See <https://info.undp.org/sites/registry/secu/SECUPages/CaseDetail.aspx?ItemID=28> (last accessed 1 August 2019)

According to several articles in Chapter 6 in the NCA, the Union government and EAO signatories should cooperatively engage in environmental conservation in EAO-controlled areas (see **Section 3.5.2**). This includes recognizing the existence of ethnic governance systems and protection against encroachment on those administrative and service provision systems (see also South et al. 2019).

Refer to **Annex 2** and **Annex 3** for how the KNU has responded to new challenges since their ceasefire agreement that have been brought about by international conservation projects in areas under their authority. Concerns have been raised by KNU leaders and Kayin civil society leaders and villagers that conservation initiatives will exacerbate the insecurity of land and resource tenure use rights for these populations. “Green grabbing,” or the rezoning of populated landscapes for the intended purpose of nature conservation, has augmented armed conflict dynamics in these cases (see **Box 4** below). In some cases, state-led conservation efforts leading to increased Union government presence have effectively facilitated “soft” counterinsurgency efforts against local minority peoples and EAOs that build on top of periods of military-led “hard” counterinsurgency during decades past (Woods 2019(b)).

Examples such as these show how conservation projects have given Union government agencies funding, technical expertise, and international legitimacy to design and implement programs in EAO-controlled territories. In addition, oftentimes conservation and development projects include components that strengthen existing unitary legislation and assimilate ethnic structures into the national framework, which contravenes KNU’s ceasefire, the NCA, and their own policies. Concerns have been raised by KNU leaders and Kayin civil society leaders and villagers that conservation initiatives will exacerbate land and resource tenure use rights insecurity for these populations.

Several international funds and organizations have supported various forest mapping, land rezoning, and livelihood interventions in Tanintharyi Region, oftentimes without consent from the KNU despite usually carrying out these activities in KNU-controlled territory.¹⁵ This is in breach of the KNU’s ceasefire and the NCA. KNU authorities have officially complained to Myanmar’s central Forest Department and those conservation organizations responsible for some of these infractions. In a few cases, Kayin villagers, who fear losing their forest-based use rights or being evicted entirely by these “green grabs,” have openly protested against conservation activities by outside organizations (see **Box 4**).

Since territorial disputes and political governance arrangements are yet to be resolved, the Myanmar government and international conservation organizations risk amplifying conflict with the KNU (and other EAOs) – and ethnic minority villagers – when advancing mechanisms for state-led conservation. Nature conservation, if done in such a way as to ignore customary historical claims and EAO authority by operating through central government and multilateral agency structures, can generate grievances among local populations – that then can funnel into greater support to EAOs. This threatens to undermine peace and security as well as trust in the peace process.

EAOs should be able to decide whether conservation projects be carried out in their territories. If so, they (and their communities) should be the primary stakeholders in said projects. Any environmental conservation

¹⁵ These problems in part led the WWF Myanmar office to make an official MOU with the central KNU Forest Department, which prioritizes and recognizes KNU authority and governance structures in the KNU areas they seek to work in, among other clauses.



efforts during the interim period should give more support to *community-led* conservation initiatives and other bottom-up mechanisms to conserve and protect natural resources, ecosystem services, and wildlife, while at the same time helps rebuild villagers' own resource-based livelihoods. The Myanmar Union government and international agencies and organizations should recognize and support EAOs' own forest policies and conservation initiatives and efforts within their territorial jurisdictions. These collaborative projects should go through EAOs' parallel administration and governance system. Funding conservation and pro-poor livelihood initiatives in this direction best ensures support for local communities and peacebuilding objectives – which are strongly tied to subnational decentralization trends and customary land and resource ownership and benefit claims. Furthermore, conservation projects should never threaten the right for IDPs and refugees to return, whose historical claims should be given priority (TNI 2017(a)).

Indigenous and Community-Conserved Areas (ICCAs) and other community- and EAO-led conservation initiatives, such as the *Salween Peace Park* implemented in KNU territory, attempt to put conservation and its benefits into the hands of communities as a mechanism to help build more robust local good governance institutions and contribute towards peace building outcomes.

5.2 REDD+ Readiness Program

In 2012, the government of Norway funded the United Nation's REDD+ Readiness program for Myanmar, which helped spearhead a series of funded workshops and programmatic planning for climate change mitigation-related initiatives. The UNDP regional office in Bangkok worked with government stakeholders to write Myanmar's draft National REDD+ Strategy report, which purports two primary policy objectives to achieve national carbon emissions targets: increase the country's forest protected area management system (see Section 5.1) and prevent future forest degradation due to rural forest-based livelihood activities (MONREC 2018:25).

The report identifies smallholder agriculture (and specifically shifting cultivation) and household biomass energy production as the main drivers of deforestation, which appears to be based more on strongly held beliefs in the country and region among bureaucrats than necessarily a reality in all places (see Cairns 2015). The draft report largely neglects the industrial logging and agribusiness sectors as driving what continues to be the world's second highest rate of deforestation and large-scale "land grabs," particularly in ethnic conflict-affected areas (Kissinger 2017).

In addition, the Myanmar government's new National Adaptation Plan incorporated a climate change policy, a climate smart agriculture strategy, and a green growth strategy policy which together aims for 30 percent of the country's total land area to be set aside as state reserved forest, and five percent to be under a strict protected area systems (MONREC, 2017:22; Prescott et al., 2017). The Myanmar government's Climate Change Strategy and Action Plan (2016-2030) report declares that REDD+ related programs could help provide the impetus for reforestation and restoring 50 percent of the country's degraded forests (MONREC 2017:20).

The expected targeted areas for expanding the country's protected area system (PAS) would be in ethnic conflict-affected territories, largely under control of EAOs. The future potential consequences of implementing

Myanmar's REDD+ Readiness program and other related REDD+ projects could exacerbate conflict dynamics in ethnic states if not done in such a way that supports local communities' livelihoods and tenure security, operates through EAO parallel governance and administration systems, and is further supported by a range of integrity mechanisms.

5.3 | EITI and Resource Revenue Transparency

The Extractive Industries Transparency Initiative (EITI) is a global standard for transparency aimed at increasing accountability in the oil, gas, mining, and forestry industries. In July 2014 Myanmar became an EITI candidate country. EITI requires governments to “publish what they receive from extractive companies and companies publish what they pay to governments”¹⁶ as well as the “disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public.”¹⁷ These figures are typically reconciled in an annual public report for each of these different sectors, together with contextual information relating to a range of natural resource governance issues in the country.

Article 25 in the NCA specifically makes mention of the EITI as a standard to follow. EITI standards are a helpful benchmark to promote data transparency and accountability, which offers what are often called “integrity mechanisms” to help achieve good governance in the natural resource sectors. The explicit support of EITI in the NCA should therefore be highlighted more and used in advocacy on streamlining natural resource good governance reform into the peace process.¹⁸

Myanmar produced its first EITI report in December 2015. At the end of March 2018, Myanmar produced its second and third EITI reports which represent Fiscal Years (FY) 2014-15 and 2015-16.¹⁹ In January 2019, the multi-stakeholder group (MSG) and MEITI secretariat released the first MEITI reports for the forestry sector, covering FY 2014-15 and 2015-16.

The Myanmar EITI (MEITI) process is overseen by an MSG of government, companies, and civil society, and implemented by the National Coordination Secretariat. In early 2015, a National MEITI Office to support the implementation of EITI in Myanmar was established in the Ministry of Finance (now the Ministry of Planning and Finance, or MoPF).

Under the NLD, the Renaissance Institute was established as the MEITI National Coordination Secretariat. A new MEITI MSG was set up in March 2017, comprised of seven government representatives, seven private sector representatives, and nine civil society representatives.

The MEITI forestry data reveals major discrepancies in reporting, which begs more questions than it answers (Forest Trends 2019(b)). Among them:

- Government data in the reports include only a fraction of the forestry sector. For example, Myanmar reported US\$29 million in timber exports to China over FY14-15 and FY15-16. Over the same period, China reported more than US\$550 million in imports from Myanmar.
- The MTE (the SEE that manages the country's timber sector) reported US\$295 million more in profits than the US\$700 million in sales.
- The MTE reported commercial sales tax payments which imply gross sales of more than US\$5.4 billion, in contrast to the directly reported sales of US\$700 million.

¹⁶ <https://myanmareiti.org/en/node/270>

¹⁷ <https://eiti.org/who-we-are>

¹⁸ It should be noted, however, that EITI does not have any standards for consultation with local communities in planning projects. See <https://eiti.org/document/standard>.

¹⁹ These reports cover periods during ex-President Thein Sein's administration, prior to the current NLD administration.



- The MTE reported sales volumes of teak exceeded their reported teak supply by more than 65 percent; there was no explanation for the additional source of the teak logs.
- The MTE and Forest Department (FD) also reported widely divergent production statistics for teak. The MTE reported 104,412 hoppus tons of teak log production, while the FD reported 274,685 hoppus tons, which was more than twice the annual allowable cut (AAC), indicating unsustainable harvesting.

The publication of these MEITI reports represent a major step forward for data transparency. Immediately following the MEITI forestry report launch in July 2019, MONREC ran a workshop to identify the elements and the process for reform to address the shortcomings highlighted in the reports. Civil society must also actively use these findings to push the government to further reform the natural resource sectors and press them to strictly follow their previously made positive commitments. While several inside reformers have been helpful in guiding this process so far, there appears to be considerable economic interest retarding this progress.

The MSG to date has not yet considered how these data findings and the MEITI process will intersect with ethnic armed conflict dynamics and the peace process. MTE has so far resisted reform. Advocacy and reform in response to the MEITI reports must therefore be anchored in conflict sensitivity and help catalyze SEE reform. The best way to ensure that MEITI addresses ethnic armed conflict and conflict financing is to involve more ethnic civil society leaders into advocacy efforts, while also directly engaging EAOs.

5.4 Forest Law Enforcement, Governance, and Trade

The European Union (EU) Forest Law Enforcement, Governance, and Trade (FLEGT) Action Plan sets out a wide range of measures to address illegal logging in the world's forests, including Voluntary Partnership Agreements (VPAs) between the EU and timber-producing countries meant to improve forest governance and define "legal timber" according to producer country laws and regulations. FLEGT processes also seek to improve forest sector transparency, define legal rights to forests and forest products, and ensure participation of marginalized groups in policy processes.

Myanmar began FLEGT engagement in 2013, and an Interim Task Force (ITF) was formed representing government, private sector, and civil society. The UK Department for International Development (DFID) invested considerably in forest governance reform in Myanmar through FLEGT, funding a secretariat in Naypyitaw, but pulled all technical support for FLEGT and severed their MOU with MONREC in August 2018.

While FLEGT continues to be of interest among different stakeholders in Myanmar, it is unclear how the process will address sectoral reforms in the interim period. The loss of central FLEGT funding has left a large gap in technical expertise and financial assistance to support forest sector reforms. Consultation with EAOs on how to define "legal" timber harvested in ethnic territories is also greatly needed, particularly as the Myanmar Forest Certification Committee (MFCC) and Program for the Endorsement of Forest Certification (PEFC) plan to start promoting MFCC timber products as legally and sustainably harvested and compliant with the legality requirements of major international markets such as Europe and the United States – but with great controversy.

6 Implementing Steps of Environmental Peacebuilding

Natural resource good governance reform and the streamlining of the aforementioned mechanisms into the national peace process, as well as less formalized peace institutions and processes, offer a benchmark of what needs to be achieved to deliver a peace dividend. This section focuses on how natural resource decentralization reform both within and outside the formal national peace process can be promoted during the interim period. Specifically, we review two frameworks developed by ethnic civil society networks for supporting local governance and service provision in EAO territories that provide insight into how implementation could proceed. Both frameworks promote existing ethnic institutions and civil society to further build robust local institutions and capacity that works in a practical and efficient way for local ethnic communities in need.



Local researcher (Kachin State)

6.1 Interim Arrangements

Interim arrangements (IAs) in the national peace process have recently generated considerable attention. The only official text defining IAs in Myanmar is in the NCA (Chapter 6, Article 25) under “tasks to be implemented during the interim period.” While the term means different things to different parties, the promotion and implementation of IAs can be understood as a sequenced approach to the decentralization of political governance and development. The IAs thereby offer the crucially important opportunity for EAOs to further commit political will and build more capacity to implement land and natural resource good governance principles during the present interim period and under federalism. The inclusion of environmental conservation in the NCA is noteworthy in giving some institutional backing for pursuing environmental governance reform during the interim period.

The current Interim Arrangements (IAs) offer an important opportunity to commit more political will and build capacity to implement natural resource good governance reforms that contribute to peace, both during the present interim period and under a future federalist structure.

The NGO report on the Myanmar Interim Arrangements Research Project (MIARP) adopted a broad definition of IAs, going beyond the NCA’s vague wording, and recognizing that NCA non-signatory EAOs also have significant governance functions and service delivery systems that should be recognized during the interim period. They defined IAs as “the situation and future of EAOs’ governance and service delivery systems, and the relationships between EAO and government systems, and community and civil society initiatives, during the period of initial ceasefires and a comprehensive political settlement” (South et al. 2018:18). The promotion and implementation of IAs can be understood as a sequenced approach to the decentralization of political governance and development.

The NCA and IA framework give EAO signatories the right to manage their administrative territories (including natural resources) during the interim period (see **Section 3.5.2**).²⁰ These rights should translate into providing

²⁰ However, it should be noted that IAs do not cover those areas where EAOs have not signed the NCA, which is in fact where most EAO soldiers operate.



Technical Assistance (TA) to EAO's for further building their capacity on natural resource good governance and management. The IAs thereby offer the crucially important opportunity for EAOs to further commit political will and build more capacity to implement land and natural resource good governance principles during the interim period.

The UPDJC has also discussed IAs, and in late 2016 the Minister to the State Counsellor reportedly agreed in principle to set up an IA component of the peace process. It was understood that a Joint Interim Arrangements Committee (JIAC) would be formed to sit alongside the JMC and UPDJC, which even NCA-signatory EAOs supported.

However, progress toward institutionalization of IAs in the peace process has been slow, and lack of implementation of IAs is a significant gap in implementation of the NCA itself. South et al. (2018) claims this is “mostly because of reluctance on the part of the Myanmar Army, which has prioritized the issue of EAO disarmament – and also because EAOs would prefer to keep some of their service delivery and governance/ administrative arrangements ‘below the radar’ of state scrutiny and possible control [by the government]” (2018:22-23). Furthermore, while some ad hoc arrangements are in place on the ground, most government officials do not engage with EAOs on issues of service delivery and governance in ceasefire areas, despite the wording of the NCA.

The implementation of IAs will be particularly important in areas of mixed administration, where authority is practiced by one or more EAOs as well as the government and/or Tatmadaw, various militias, and/or BGFs. In these areas of “hybrid governance”, both EAOs and government agencies provide services to and extract resources (via official or informal taxes) from local communities (South et al. 2018:20).

6.2 Civil Society-led Frameworks to Support Good Governance

6.2.1 “Traffic Light” model

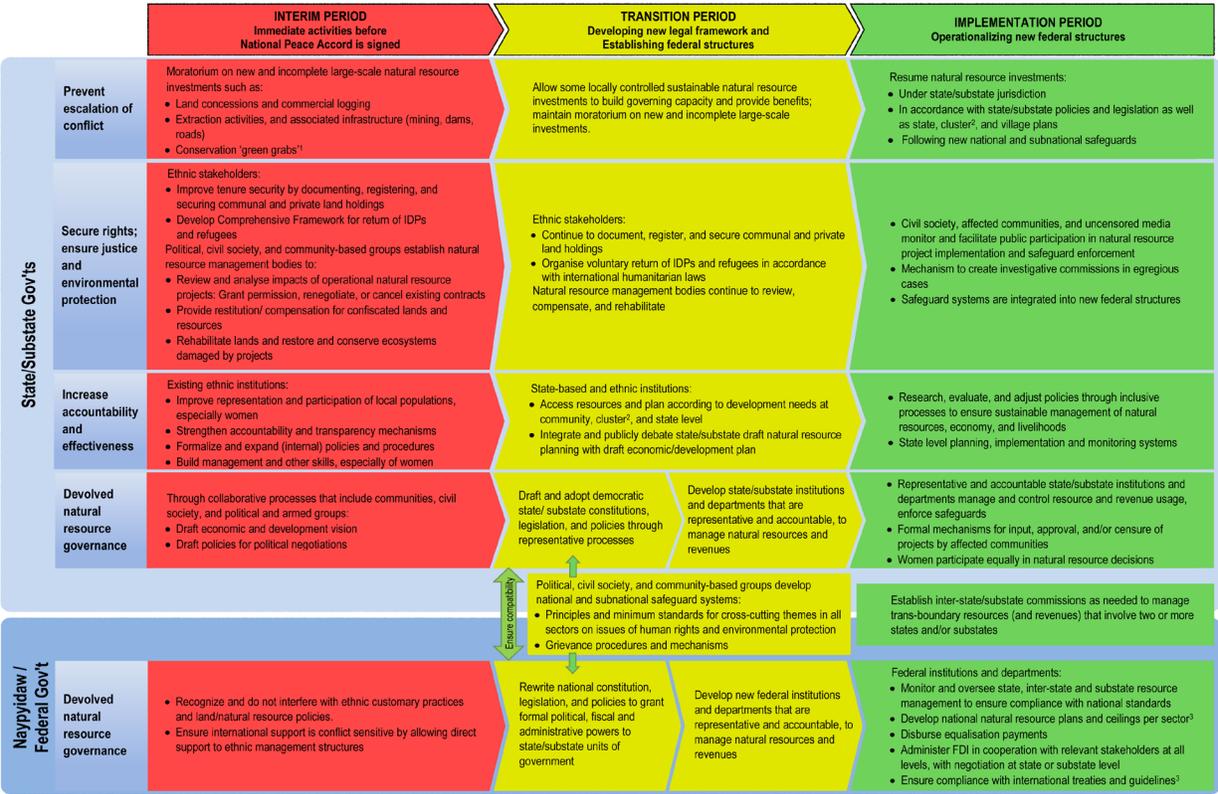
The Burma Environmental Working Group (BEWG), a network of ethnic CSOs, promotes a model which includes three sequential steps in environmental peacebuilding: safeguarding the rights and tenure of conflict-affected communities; preventing further environmental destruction; and, decreasing the potential for continued armed conflict (BEWG 2017; see **Figure 5** below). These steps are meant to build local governments' capacity to establish and implement development priorities that are appropriate for their respective populations, in the hopes of strengthening lasting peace while also supporting sustainable, local economic development (BEWG 2017:83).

Chronologically, the steps are divided into three phases:

- 1** the interim period, where many actions are forbidden (shown as red color, or “no-go” in Figure 5);
- 2** the transition period, where new federal and state institutions are created and constitutions and legislations are ratified, and cautious steps can be taken (yellow color);²¹ and,
- 3** the period during which federalism and its structures are being operationalized (green color).

²¹ However, state constitutions and legislations are already currently being developed during the interim period.

Figure 5 | “Traffic light” for resource engagement strategies



Source: BEWG 2017

Specific actions are proposed for states and regions, for the whole Union, and to the future federal government in Naypyitaw.

During the current *interim period*, BEWG (2017) recommends:

- A moratorium on all new large-scale investments in ethnic conflict-affected territories to avoid undermining future options.
- Documentation and mapping of customary resource tenure rights, including for IDPs and refugees.
- Development of a systematic land and resource rights framework for IDPs and refugees.
- Investigation, review and monitoring of active or potential resource conflicts by independent third parties and strengthening of ethnic resource management institutions.
- Drafting of EAO policies for political negotiations in close collaboration with communities and civil society representatives.

BEWG also recommends the immediate further strengthening of the rule of law throughout the country, especially in consideration of ceasefire commitments and anti-corruption matters related to land and resource governance. Land and resource contracts should be made transparent to allow for review by the public, and in the case of any wrongdoing, legal action.²²

²² The EITI process could be especially helpful in supporting the greater disclosure of existing contracts.



For the Union government in Naypyitaw, BEWG (2017) recommends that any new and existing laws and policies recognize land and resource rights and customary management practices of ethnic populations. SEEs should be reformed in line with the country's political and economic restructuring, which the EITI process also supports. Overall BEWG (*ibid*) argues that the overarching political governance structures should further democratize and be better aligned with federalism.

BEWG's *transition period* (yellow color) seems to be inclusive of the IA period. Many of BEWG's recommendations for this period therefore could be applied, at least to some extent, to the current interim period; for example, to conduct land and resource assessments, as well as to review and plan at the state, landscape, and community levels in order to better prepare for management under a federal political structure. With a resource moratorium still in place, natural resources and their extraction continue to be reassessed, monitored, and protected. At the Union level, BEWG recommends developing international best practice for safeguarding the environment and communities, together with grievance procedures and mechanisms. At the Union and state/region levels, institutions, policies, and legislation on land and resource-related topics should be developed in full collaboration with EAO leaders, ethnic civil society, and community representatives.

The operationalization of new federal structures, on the other hand, would proceed only after political federalism has been constitutionally supported and enacted at all levels. Recommended activities during the interim / transition period are meant to help transition more smoothly to the third and final phase of achieving peace.

6.2.2 "Rocket Ship" model

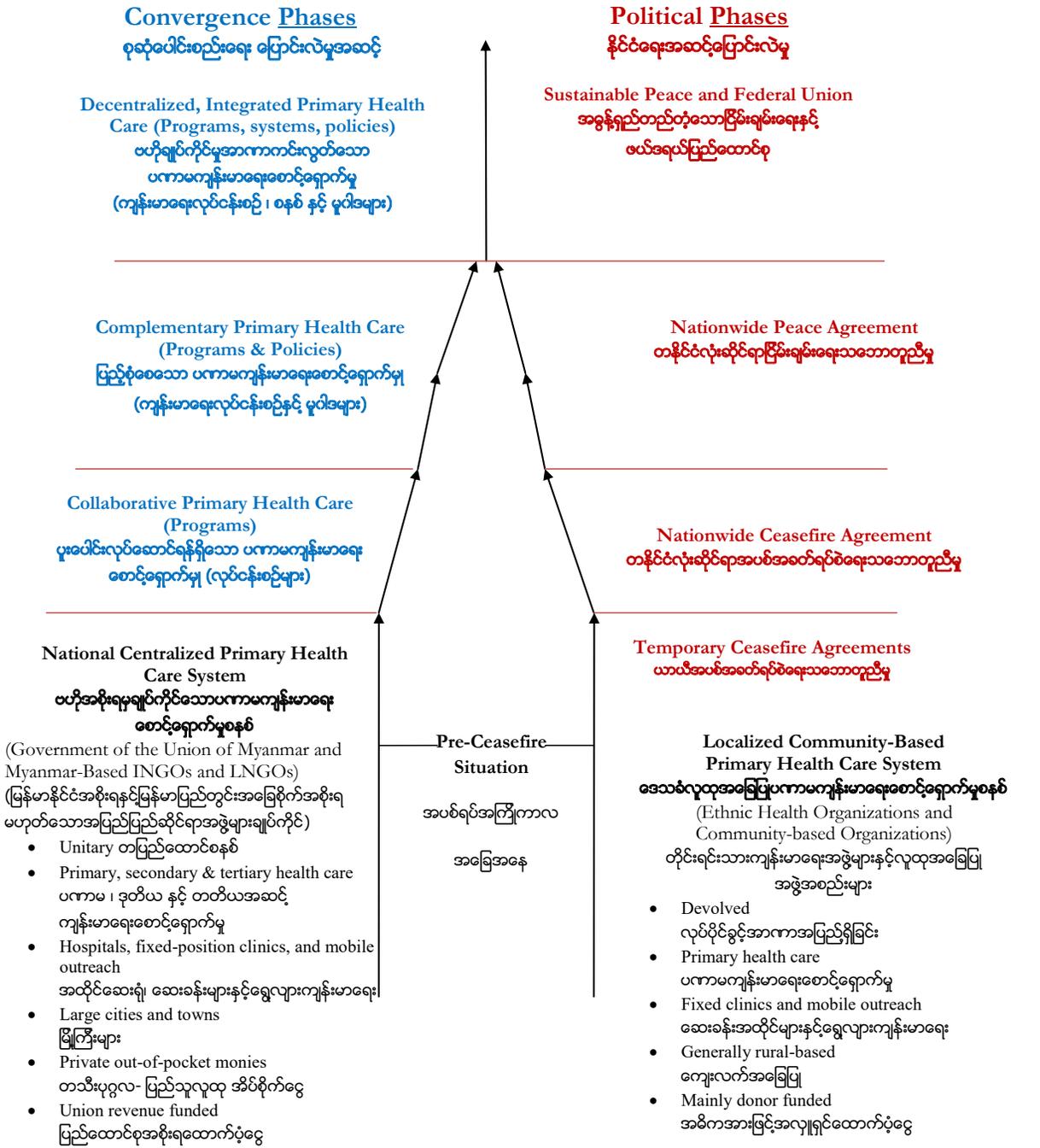
The Health Convergence Core Group's (HCCG) "rocket ship" model (**Figure 6**) demonstrates how Union- and community-level systems (in this case, healthcare provision), converge from one political phase to the next. This convergence, HCCG argues, should align with the steps of the peace process, with coordination and collaboration between ethnic and government health systems.

However, convergence cannot be rushed or imposed. Ethnic and community health organizations follow a decentralized health systems model, with local communities determining priorities and interventions. This stands in contrast to government health systems (and natural resource sectors), which remain highly centralized, with limited roles for state and district-level officials, and (as yet) no formal recognition of ethnic and community health systems (HISWG 2015:12). It is imperative that international actors trying to help build peace do not prematurely create financial incentives to the two warring sides or make arrangements that bypass political negotiations and agreements.

This concept of convergence could be applied to the reform of land and natural resource governance within the peace process, but only if a certain number of procedures have been followed and approached with caution so not to further fuel conflict. Donors and organizations should build programs based on local organizations' analyses and requests for need rather than try to impose peacebuilding agendas. They should recognize and work through these parallel EAO structures, support federalist aims, and provide funding directly to these systems. This strategy maps well onto BEWG's "traffic light" model on the three

Figure 6 | “Rocket ship” for resource management strategies

Health Convergence Core Group (HCCG)
Primary Health Care Convergence Model (Burma/Myanmar) – Draft
 October 2014
 ကျန်းမာရေးပေါင်းစည်းမှု အမတ်အင်အားစု (အိတ်ချီစီစီ)
 ပဏာမကျန်းမာရေးပေါင်းစည်းခြင်းပုံစံ (မြန်မာနိုင်ငံ) - မူကြမ်း
 အောက်တိုဘာ ၂၀၁၄



Source: HISWG (2015)



political phases of the peace process and the sequential steps in managing land and natural resource sectors through these stages. As the country moves sequentially through the peace process, there may be a gradual step-by-step convergence process between EAO and Union administration management and cooperation. This could include local agreements on interim arrangements between the warring sides which serve to respect and protect the interests of communities and their land and resources.

6.3 IDPs' and refugees' land and resource rights

IDP and refugee return and resettlement deserves particular attention, and direct engagement during the IA period. A process is needed whereby land and use rights can be recognized and conflicts resolved equitably, since Myanmar is already in a situation where there are multiple claims to the same land. Proper management of land and resource use rights for IDPs and refugees who have returned or will do so in the future will help mitigate potential future conflict and restore rural livelihoods during the interim period (TNI 2017(b)).

Since KNU's ceasefire, for example, Kayin villagers who have returned to their original villages to check the local security situation have found their land dramatically altered. Many of the original Kayin village sites that had been cleared by military operations had since been demarcated as oil palm concessions. In other cases, businessmen have established rubber plantations in and around forcibly cleared Kayin villages. Villages that used to be in what are now forest reserves could be barred from being re-established, especially if those areas are reinforced as state forests or designated as national parks. Historical land use claims by Kayin IDPs and refugees who wish to return to their original settlements present new challenges.

Nine key common principles and recommendations, developed in 2016 by a diverse group of ethnic CSOs and community leaders working with conflict-displaced communities in Myanmar, provide a potential blueprint for addressing the needs of IDPs and refugees (see TNI 2017(b):28-29). Projects should rely on international guidelines and principles related to land- and resource-related rights, such as the Pinheiro Principles and the UN Food and Agriculture Organization's (FAO) Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security. These could be applied in parallel with Myanmar's National Land Use Policy (NLUP) and EAOs' land and forest policies. When engaging in demining, land rights principles should be followed, as covered by the eight core principles developed by Displacement Solutions (2014).

Natural resources, including timber, gems, oil and gas, and hydropower, are the mainstay of Myanmar's economy, generating billions of dollars each year. They are also inextricably linked to Myanmar's history of armed conflict, in which parties to the conflict have fought (and in many cases, still fight) over the right to control and benefit from these valuable resources, many of which are located in or transported through conflict-affected territories. But instead of resource exploitation driving violence and armed political conflict, natural resource governance reform holds promise for improved prospects for peace – but only if reform addresses these drivers of conflict.

Where natural resources are properly governed, sectors such as forestry and extractive industries can create jobs, boost local economies, mitigate climate change, strengthen local use and ownership rights, and raise revenues for public services such as health and education. Achieving good governance is particularly important – yet also challenging – in countries recovering from armed conflict: exploitative actors can operate without many legal and regulatory checks, exacerbating local rights abuses and inequity in the distribution of costs and benefits from natural resources, and increasing the likelihood of conflict recurrence. Given these risks, resource conflict economies can undermine prospects for peace and security. Only a small fraction of peace agreements address resource governance, and those that do are inadequate or poorly implemented.

Myanmar's peace process has not, as of yet, included much discussion of issues related to the ownership and governance of natural resources and the sharing of their benefits, in part because of the Tatmadaw's efforts to block discussion of reform options. Issues more specific to land have received some attention, however, as adopted as future Union Accord principles, which have some limited cross-over with natural resources. But many of the land principles promote further state centralization, thereby retarding federalist aims.

The different stakeholders in Myanmar's peace process have competing positions over the governance of natural resources. EAOs are fighting for self-determination and political federalism, an important component of which is the right to own, benefit from, and govern land and natural resources. The government, on the other hand, is working to formalize land and natural resource rents and further direct revenues to the Union government, and simultaneously away from EAOs, as part of further building the state in the country's ethnic resource-rich frontier. The Tatmadaw, which holds the most power in deciding how peace process negotiations proceed and what topics are discussed, continues to derail pathways towards resource federalism.

Given the military and government's political and economic interest in maintaining the status quo, they are likely to promote revenue sharing and deconcentration of administration responsibilities – but not fiscal or political power or accountability – to subnational jurisdictions. A lack of direction towards resource federalism in Myanmar will likely lead to further grievances, continued corruption, and spoilers from parties seeking to dismantle peacebuilding efforts.



CSO sector FLEGT (Tanintharyi)

A lack of direction towards resource federalism in Myanmar will likely lead to further grievances, continued corruption, and spoilers from parties seeking to dismantle peacebuilding efforts.



Yet so far, there is little mention of natural resources in any of the individual ceasefires with EAOs or the NCA, and only land is addressed – albeit inadequately – in the Union Accord principles. The lack of any political resolve on benefit sharing and ownership rights to land and natural resources therefore continues to undermine peace and security.

7.1 Engagement Strategies and Recommendations

Fully addressing natural resource governance reform in the peace process deserves immediate attention. It will not be easy, given the money and competing vested interests at stake. The IAs under the NCA is one strategic entryway to start streamlining resource governance reform mechanisms into the national peace process, although this would only cover those jurisdictions of EAOs which have signed the NCA – which is limited in territory and number of EAOs. A multi-pronged approach will therefore be needed in order to maximize targets influenced and effective outcomes reached. Subnational natural resource good governance and management, whether in government, mixed, or EAO-controlled territories, should receive particular support, although each of these types of authority systems should be recognized and dealt with as parallel systems of authority and governance during the interim period. These engagements should be consistent with long-term federal goals and ensure that programs do not prematurely try to converge these parallel political systems and by-pass what are ultimately political processes.

Meanwhile, fostering greater linkages between these administrative scales (national, subnational, and local) and territories (government, mixed, EAO) will help build “constituencies for change” that can apply greater pressure at top levels to address natural resource governance reform, both within the formal structures of the national peace process as well as outside of it. International environmental governance mechanisms already taking place in Myanmar should cease to operate in a top-down manner – such as exclusively through multilateral agencies and the Union government – in their development and implementation of their programs and projects. Programs and projects should not be presented to ethnic stakeholders as merely “project validation” workshops, oftentimes with financial incentives to sign off on projects. In order to continue to garner support and funding, these international environmental governance mechanisms must be more anchored in the peace process in order to help pave more pathways for the conflict resource economy to be addressed and resource federalism aims supported.

Natural resource governance reform must be directly addressed by the different stakeholders and agencies within the UPDJC. It is very important that the NCA-S EAO Office draft natural resource governance policy position papers and associated principles to submit to the UPDJC. The policy positions should resonate with the demands of ethnic civil society networks and EAO and EAO-affiliated institutions. Issues related to the governance and management rights of the production, extraction, taxation, and trade of natural resources need to be addressed in some fashion, including use and ownership rights and the sharing of benefits.

More technical assistance should therefore be provided to the NCA-S EAO Office’s Land and Environment WC on natural resource governance decentralization reform. Global principles should be reviewed by experts, and lessons learned from other post-conflict, resource-rich countries should be provided as case

studies. This should also include a review of resource policies that belong to EAO NCA-signatories (e.g., KNU), the UNFC, and outcomes from (sub-)national-level political dialogues that specifically address natural resources. Likewise, principles developed by the Economic Working Committee should build synergies with the land and natural resource-related principles. This is especially the case for fiscal decentralization and benefit sharing for resource rents. All of these documents should be made available to the public to encourage wider dialogue and understanding of the peace process and its outputs.

Support should also be provided to EAOs in their negotiations in the UPDJC on resource-related principles to be adopted under the Union Accord so to better ensure these principles support their resource federalism aims.

Even if these guidelines are followed, this leaves the majority of EAOs and their soldiers and jurisdictions not covered, as these EAOs have not signed the NCA. This is not an insignificant point. Following only the NCA and IA framework misses much of the country's EAOs and conflict-affected areas. Stakeholders must therefore work both within and outside the confines of the NCA in order to maximize engagements with different EAOs and their jurisdictions.

A summary of engagement strategies for each stakeholder reviewed in this report is provided below.

International governments and donors

- Do not invest in or fund large-scale infrastructure development or conservation projects in EAO jurisdictions that go through multilateral or government agencies.
- Provide direct support to local organizations that work closely with EAOs on the implementation of land and natural resource governance in EAO jurisdictions.
- Support international environmental governance mechanisms in such a way that supports the resolution of conflict and the clarification of land and resource ownership and use rights.

National and subnational government

- Consider a moratorium on large-scale infrastructure development and conservation projects in EAO jurisdictions that go through multilateral or government agencies.
- Clarify the government's position on land and natural resource governance decentralization with regard to federal structures ("resource federalism").
- Recognize weaknesses of the existing Framework for Political Dialogue (FPD) and engage in a significant review process with ethnic stakeholders.
- Provide technical assistance (TA) to Union government agencies, senior officials, and Union and state/region MPs on natural resource good governance decentralization and how to support in legislation within a federal framework.
- Recognize properly allocated land and community forest titles issued by EAO agriculture and forest departments within EAO jurisdiction.
- Continue to support MONREC and other relevant government departments and agencies in preparing options for natural resource governance within federal structures in line with the peace process.
- Encourage "political will" and provide TA to Union government and associated business associations on SEE reform.



EAOs and EAO-affiliated institutions

- Help further facilitate the development of land, natural resource, environmental, and economic policies for EAOs and EAO-affiliated organizations.
- Facilitate workshops to provide TA on adopting and implementing integrity mechanisms in EAO policies and governance capacities.
- Help implement existing EAO land and resource policies in EAO jurisdictions.
- Develop a progressive road map to sequence engagements over time between EAO and government administrations and jurisdictions on natural resource governance.
- Provide TA to EAO leaders engaged in peace negotiations on strategies to better ensure their demands for resource federalism are captured in future Union Accord principles.

Ethnic minority civil society organizations and CSO leaders

- Provide further TA on different facets of resource federalism at national and subnational levels in government and EAO jurisdictions.
- Provide further support in subnational dialogues for UPDJC's land and environment as well as economic thematic areas, and help link these consultative inputs into UPDJC policy positions on land, natural resources, and economy.
- Assist CSOs and customary leaders who work closely with EAOs in implementation of bottom-up resource federalism.

Ethnic political parties

- Develop and publicize detailed subnational laws and policies on land and natural resource good governance that include integrity mechanisms.
- Provide a comprehensive analysis on Union laws and policies related to land, natural resources, and fiscal governance with regards to subnational relevance.

National peace process structures and national peace institutions

- Work closely with UPDJC decision makers on ensuring a more equitable and fair platform to vet and adopt principles for the Union Accord.
- The sections in the NCA relating to interim arrangements should be adhered to, specifically in relation to land and natural resource management and governance.
- Provide further TA and policy support to the NCA-S EAO Office on developing a natural resource policy position paper that resonates with the positions of ethnic civil society and EAOs on resource governance.
- Ensure that requested subnational dialogues proceed in accordance with the FPD.

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Annexes

Annex 1 Union Government of Myanmar Laws and Policies

1. Land Laws and Policies

The National Land Use Policy (NLUP) was adopted by the NLD soon after taking office in 2016. The NLUP, when passed by parliament, included several clauses that recognized and supported local customary agricultural land use rights, including officially sanctioning shifting cultivation as a traditional upland agricultural land management practice. The NLUP is not yet being implemented or much referenced by civil society, however. Instead, the VFV Law (see below) is being pushed by government to be implemented, despite many clauses contravening those articles in the NLUP that protect local land rights – not to mention the NCA that forbids land confiscation.

In 2012, two new land laws came into effect: the *Farmland Law and the Virgin, Fallow and Vacant (VFV) Law*. The Farmland Law effectively commodified land in Myanmar for the first time since colonialism. While the state retained its ownership over land (as per the Constitution), the law allowed for the issuing of land use certificates to denote use rights that could be bought, sold, and transferred. The VFV Law, on the other hand, categorized those lands that lack formally recognized land use rights as VFV, which then entitled the government to allocate the use rights to the private sector as more “efficient” users (Oberndorf 2012). These VFV lands, however, are oftentimes inhabited and cultivated by traditional farming communities but without formal government recognition. Most of the millions of VFV marked lands are located in conflict-affected areas and / or ethnic minority areas with populations who rely on customary practices and authority (LIOH 2018). In addition, much of the VFV land is actually under tree cover, thus increasing the risk of creating a new and major driver of deforestation should these lands be allocated for clearance (Kissinger 2017). Each of the laws have their own committees at the central, state / region, and township levels, with subnational levels accountable to Naypyitaw.

The VFV law was amended in October 2018, whereby farmers were given six months to register their farmlands if they are categorized as VFV. Millions of farmers, however, lack knowledge of the law or if their lands are categorized as VFV lands. They usually lack the capacity and logistical means to fill out the required forms and fulfill other administrative processes. The implementation of the VFV Law is viewed as a process by which the Union government will legally be able to allocate land away from poor minority farmers in conflict affected areas to private companies backed by the Union government and military, as seen in previous decades. With this concern in mind, the KNU released a public statement in November 2018 strongly stating that such a law and its implementation goes against the NCA and will further undermine peace and security in Kayin populated areas.

2. Forestry Law

The new Forestry Law (2018) adds two main components to its 1992 predecessor: (1) the encouragement of establishing private plantations by affording additional rights to legal land owners; and (2) community

forestry. Whereas community forestry was previously supported by the government under the 1995 Community Forestry Instructions, the new law provides legal support to establish and regulate community forests – which fall under a joint forest management arrangement with the Forest Department. However, there is no chapter or even article that specifically details or defines community forestry, how it’s regulated, nor whether commercial extraction is allowed. Forest Rules have also been drafted.

Absent from the 2018 Forest Law and the draft Forest Rules are any substantial recognition of individual villager or rural community use or management rights to forests or forest-based products (Kissinger 2019). Local rights are mentioned in a few limited cases. For example, Article 6 states that the government “*may* recognize the natural forest and mangrove conserved customarily (traditionally) by the local people” (author’s italics) when establishing a state forest reserve. However, based on the use of the word “may”, there is no legal necessity for the government to respect customary forest use, access, and / or management. In addition, Article 6 states that a Scrutiny Board that is to be established when demarcating a state forest reserve should include local communities, but otherwise offers no legal protection to local communities when customary forests are slated to be regazetted as state forest reserves. Article 17 does, however, state that no permit is needed for extraction of forest produce when it’s for personal use and a minimal amount is extracted.

All teak is still owned by the state (Article 8), with exceptions (with permits), such as when planted on a private plantation or in a community forest. In addition to the establishment and management of state forest reserves threatening local customary forest use, access, and management rights, Article 16 adds that those entities with a permit for commercial extraction shall carry out forest plantations or natural regeneration. However, if this were to take place, the land used could be on community lands, thereby further infringing on local tenure rights. In short, the 2018 Forest Law does not afford any tenure security to locals over their forests apart when designated an official community forest.

3. Investment Law

A new Investment Law was passed in 2016, followed by Investment Rules the year thereafter. The law does not create a legal framework that provides for the decentralization of power. The Investment Law requires the MIC to prohibit certain categories of investment, 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 (see Article 41). However, these provisions have not yet been implemented in practice.

The Myanmar Investment Commission (MIC) is the central body responsible for approving and regulating investments in Myanmar. The executive branch of the central government appoints MIC’s eleven members, almost all of whom are from the central government. The Director General of the Directorate of Investment and Company Administration (DICA) and the Chairman of the MIC indicated in 2016 upon passing the Investment Law that, “state and divisional governments will also manage some areas [of investment]” (Kyaw Hsu Mon 2016). But the MIC is only mandated under this law to “co-ordinate” with the region / state governments to allocate authority for investments (see s 24(h)), although no specifics are given on how that is to proceed and be managed. There is a provision for the MIC to open branch offices locally (see Article 28), which may be used as a means to transfer some administrative functions to state and regional levels (*i.e.*, deconcentration).

4. National Energy Policy

Energy policy and planning remains completely centralized, with no new legislative moves to decentralize the production, management, or distributive benefits of energy (hydropower, oil and gas, coal).



During former President U Then Sein’s administration, the National Energy Management Committee, which oversaw the country’s energy plans and policies, comprised of seven central government ministries. The Asia Development Bank (ADB) funded and managed institutional capacity building of this committee, as well as commissioned Myanmar’s Energy Master Plan in 2015. This committee has since been disbanded under the NLD, although no known committee has replaced it.

5. Environmental Conservation Law and Rules

Under the Thein Sein administration, the Environmental Conservation Law was ratified in 2012, and the Environmental Conservation Rules in 2014. They legally require MONREC to do Environmental and Social Impact Assessments (ESIAs) and draw up a corresponding Environmental and Social Management Plan for all new projects. While having a legal framework for environmental conservation is welcomed, it further centralizes the role of the Union government in regulating and monitoring environmental conservation and ecological health. The law and rules do not provide for access to information, public participation, nor right of review or appeal (BEWG 2017:80). Moreover, Article 36 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.” There are no provisions that encourage the decentralized regulation of investments that may compromise ecological integrity, and instead give all regulatory powers to the Union government, particularly MONREC.

Annex 2 KNU principles of international development engagement in KNU 4th Brigade

KNU's Mergui-Tavoy District (Tanintharyi Region, 4th Brigade)

People's Development Cooperation Policy

1 October 2014

selected sections

Overall Guiding Principles

- The delivery of humanitarian assistance shall be in accordance with the international norms and standards, shall respect human rights.
- There shall be no discrimination with respect to race, religion or gender.
- It shall not cause conflict within the local community or the organization.
- The delivery of humanitarian assistances shall be based on the needs of the local community.
- The delivery of humanitarian assistances shall aim for long-term development, and the local community and organizations shall be allowed to participate in the management of it.
- It shall help in raising capacity of the local population.
- Without affecting the political aims and objects of the KNU and area security, it shall be performed according to the policy laid down.
- Permission shall be obtained either from the central, district, or departmental authorities, who are part of the KNU administrative system.
- It shall be of help to the mechanism of work of the department under the administration of the KNU.
- The delivery of humanitarian assistance shall be in consonant with progress of the peace process.
- Any humanitarian, conservation and development must base on the principle of grassroots empowerment, self-reliance and sustainable. All programmes must be people-centered and sustainable, preparing Mergui-Tavoy local people to be managers of their own environmental, health, education and development programs.
- The KNU shall inspect and review, in accordance with the policy that has been stated, project related work, grant of permission, termination, withdrawal of permission, extension, etc. as necessary.

Eligibility

- All intervention programs must comply with the KNU Central Authority's overall guiding principles.
- Any program which does not support the peacebuilding process, or which could create further conflict, will be rejected or postponed by the KNU MTD (Mergui-Tavoy District) [4th brigade area in Tanintharyi Region].
- All programs must address prioritized needs as identified in this policy, or as identified by the independent needs assessments conducted in cooperation with local CBOs.



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- All activities of NGOs should provide practical support to specific elements of ceasefire and peace agreements between the KNU and the government.
 - Nature conservation programs, especially the establishment of wildlife sanctuaries, national parks, or reserve forests, which shall cause territorial, administrative and customary land and natural resources tenure disputes which could eventually lead to fueling conflict shall be postponed by the KNU MTD. These programs shall be implemented only after the resettlement of IDPs and refugees to their native villages, and once there is an enforceable ceasefire and political agreement in place between the KNU and the government of Burma/Myanmar.
 - Existing KNU conservation areas will be managed by the KNU MTD in cooperation with local people, CBOs, Conservation Alliances Tanawtheri (CAT) – a network of civil society organizations, and supported by international NGOs and the Government of Burma/Myanmar.
 - The KNU MTD authorizes CAT – a networks of civil society organizations formed in August 2014 – to lead and coordinate on matters related to nature conservation and environmental protection activities.
 - Environmental awareness and community-based conservation programs are still eligible for implementation after discussion with local people and approval from the KNU MTD District Authority.
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Annex 3 KNU emergency declaration [on logging and conservation]**Karen National Union (KNU)**

Headquarter
Kawthoolei
www.khuhq.org

Date: October 7, 2017

Statement on the first emergency meeting of Central Executive Committee after the 16th Congress of Karen National Union (KNU)

1. The first emergency meeting of central executive committee after the 16th congress of Karen National Union (KUN) was successfully held on October 4-7, 2017. Among 55 members, just 47 members from central executive committee and 2 special guests attended for this meeting.
2. In the emergency meeting, the Karen National Union (KNU) present and discuss on the facts that come from the review of the implementing of nationwide ceasefire agreement and peace process, and discuss on policy of transition period, development perspective, the matter of national level political discussion, and current Burma's political situation.
3. The emergency meeting of central executive committee decided to be able to do better political approach on current Burma's political negotiation and peace process; to be systematically organize and implement regarding inter-organizational building, political discussion process, and mobilize the community; and to draft the policy to solve the challenges that face current transitional period.
4. Furthermore the committee decided that the time is not ready to run for development and investment projects using high-tech until there are no protection laws that can prevent and save from severe negative impact to environment and local people.
5. According to the KNU's forest department policy, it will preserve and ban logging from wildlife sanctuary areas which protect under its control. Moreover, building and preserving national wildlife and sanctuary areas at Tavoy [Tanintharyi] region in KNU brigade 4 control areas, can bring a problem for current peace building, therefore KNU will protect this according to its policy.
6. According to the future plan that set up from the 16th KNU Congress, the KNU will organize a meeting and finding solution with the respective groups to achieve genuine peace.

*Central Executive Committee
Karen National Union (KNU)*



Annex 4 Land policy recommendations agreed to by Kayin stakeholders and KNU leaders at the Kayin National-level Political Dialogue in 2017²³

Submitted to The Union Peace Conference—21st Century Panglong 2nd Session
Land and Environment Sector
Submitted by First Ethnic-based Conference (Kayin) related to National-level Political Dialogues
(unofficial English translation provided by Forest Trends)

Basic Principles / Policies

1. The term land is inclusive of all soil, forests, sources of water, fishery/aquaculture and all of what nature provides, including all products from natural resources.
2. The people of the country are the rightful owners of land in the country.
3. It should recognize the rights to own land and land use / tenure rights and related local customary land management practices of indigenous people / ethnic groups and local communities according to their traditions.
4. All of the ethnic groups and the populace as a whole hold rights to own land, and are entitled to the possession of this land within a certain limit. According to customary practice, the farmer who cultivates agricultural products must have the right to own their agricultural land and garden land.
5. Local indigenous people have the right to collectively use and manage their communal land and the land surrounding their villages, such as pasture land, forest, lake, seasonal islands and sacred land.
6. The wider populace and ethnic groups have land tenure rights and management rights that allow for the equal right to sell, mortgage, exchange, lease and inherit land in order to utilize land.
7. In case of land acquisition for public purpose, such as for development and economic project, it is mandatory to declare, negotiate and have consultations with project-affected people and gain the consent from the local community in a transparent and accountable manner. In addition to offering land as compensation at a similar market value for the land lost and/or other damaged properties and assets, the affected persons must also receive assistance to help restore their livelihoods and standards of living.
8. The development project must be implemented with the minimal damage to the ecosystem and the natural environment, including cultural heritage.
9. Women should have the equal right as men to hold land tenure and management rights.
10. The Government must recognize local land ownership rights and protect property owners from trespassing, illegal settlement and land use, and forced land acquisition.
11. States of a Federal Union must have rights to adopt and implement inclusive land and environment policies that are suitable to their state.
12. State governments must have the rights to decision making on land management, including land registration and solving problems related to land.
13. Land administration system and land dispute mechanism system must be in place in each respective state and region. The body to establish these mechanisms must constitute not only government institutions but also representatives from the Farmers' Union, women and youth organizations, and legal experts, and be based on community participation and involvement.
14. It must identify and stipulate the policies and mechanisms which solve issues related to international cross-border disputes, internal migration management, and other potential land disputes and conflicts.

²³ Source: KPSN 2018:35

Annex 5 12 points on land and environment adopted as principles in the Union Accord

Land and natural environmental sector agreement (29 May 2017, as published in the *Global Light of Myanmar*, 30 May 2017)

1. A countrywide land policy that is balanced and support people centered long-term durable development.
2. Based on justice and appropriateness
3. A policy that reduce central control
4. Include human rights, international, democracy and federal system norms in drawing up land policy.
5. Policy on land matter should be transparent and clear.
6. In setting up policy for land development, the desire of the local people is a priority and the main requirements of the farmers must be facilitated.

Ownership Right

7. All nationals have a right to own and manage a land in accordance with the land law. Women and men have equal rights.

Management Right

8. Both women and men have equal rights to manage the land ownership matters in accordance with the land law.
9. If the land right granted for an original reason is not worked on in a specified period, the nation can withdraw the granted right and concede it to a person who will actually do the work.

Preventive Program

10. To aim toward protecting and maintaining the natural environment and preventing damage and destruction of lands that were social, cultural, historical heritages and treasured by ethnic nationals.
[note: final two points agreed on 17 July 2018 in Part II of the Peace Accord at the Union Peace Conference, cited in *Global New Light of Myanmar* 17 July 2018]
 11. Only citizens can own land in the country, and foreigners and illegal settlers must not own it directly or indirectly.
 12. In conducting and implementing land-use project work, assessments must be made not to damage the natural environment, not to have social effect, not to have health effect and to conduct coordination work with the local people.
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Forest Trends works to conserve forests and other ecosystems through the creation and wide adoption of a broad range of environmental finance, markets and other payment and incentive mechanisms. This report was released by Forest Trends' Forest Policy, Trade, and Finance program, which seeks to create markets for legal forest products while supporting parallel transformations away from timber and other commodities sourced illegally and unsustainably from forest areas.

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