

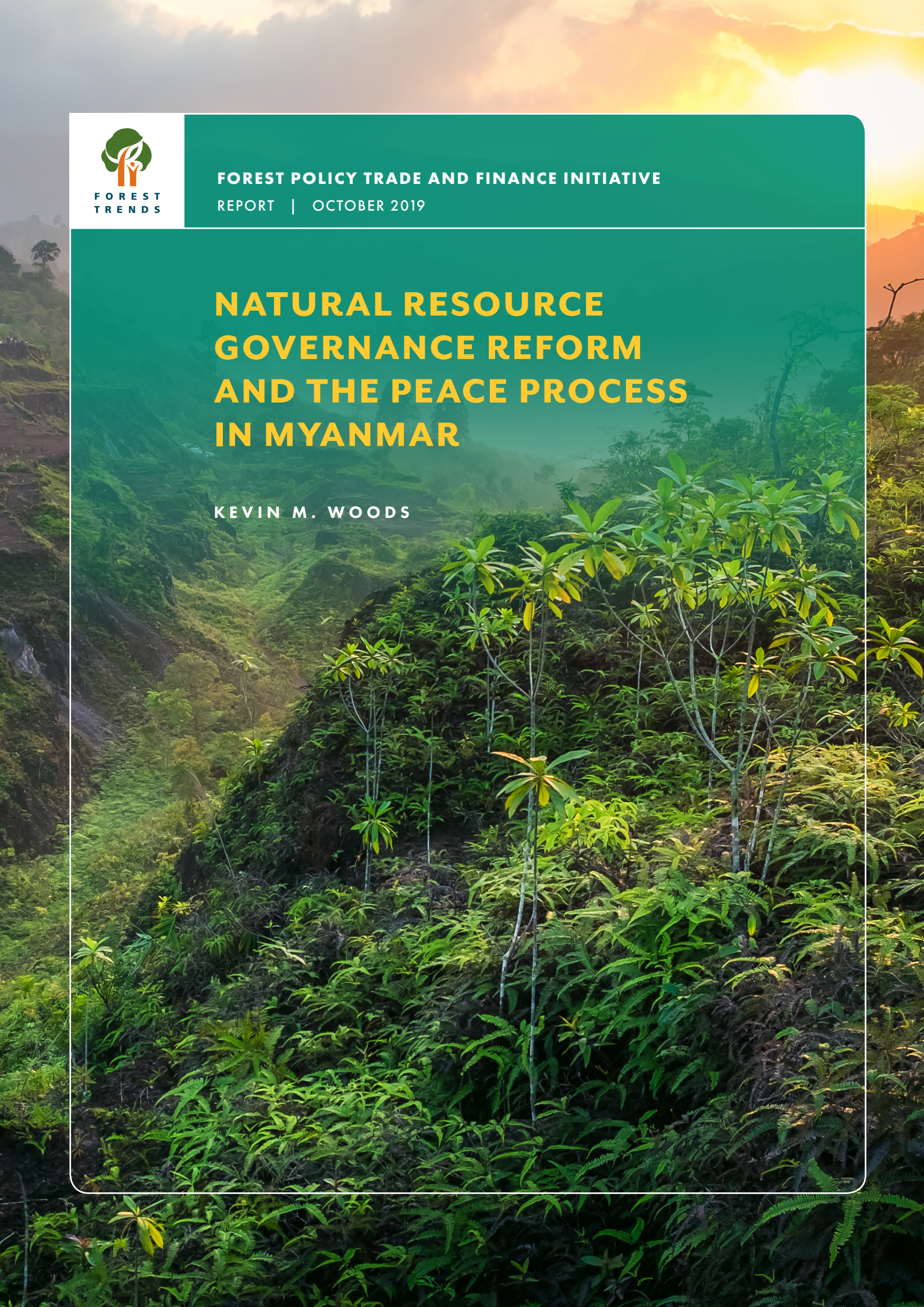


FOREST POLICY TRADE AND FINANCE INITIATIVE

REPORT | OCTOBER 2019

NATURAL RESOURCE GOVERNANCE REFORM AND THE PEACE PROCESS IN MYANMAR

KEVIN M. WOODS



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 principles specific to natural resources, and clauses 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 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, hydro-power, 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 societystakeholders 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.