

Final report

# Key economic issues for Myanmar's peace negotiations

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## Abbreviations

ARSA = Arakan Rohingya Salvation Army  
CPA = Comprehensive Peace Agreement  
CPN-M = Communist Party of Nepal-Maoist  
CSO = civil society organisation  
EAO = Ethnic Armed Organisation  
EIA = Environmental Impact Assessment  
FARC = Revolutionary Armed Forces of Colombia  
FPNCC = Federal Political Negotiation Consultative Committee  
GAM = Gerakan Aceh Merdeka/Islamist Free Aceh Movement  
GoM = Government of Myanmar  
IDP = internally displaced person  
IFIs = international financial institutions  
KIO = Kachin Independence Organisation  
KNU = Karen National Union  
MoD = Ministry of Defence  
MoHA = Ministry of Home Affairs  
MoPF = Ministry of Planning of Finance  
NCA = National Ceasefire Agreement  
NCDDP = National Community Driven Development Project  
NLD = National League for Democracy  
NRPC = National Reconciliation and Peace Centre  
PAC = Parliamentary Accounts Committee  
SAD = Self-Administered Division  
SAZ = Self-Autonomous Zone  
SOE = state-owned enterprise  
SPLM = Sudan People's Liberation Movement  
UNFC = United Nationalities Federal Council  
UPC-21C = Union Peace Conference-21<sup>st</sup> Century Panglong  
UWSP = United Wa State Party

## 1. Executive summary

Increasing attention is now given to the importance of addressing economic issues in peace agreements, as this can help to address root causes of conflict and lay a foundation for a sustainable economic framework. Conversely, if economic issues are not adequately addressed during the peace process, this can drive a return to conflict and create instability. Precisely which economic issues are important to include in peace negotiations and agreements depends on the individual country context. Section 4 of this report outlines eight economic topic areas which we believe to be of most relevance for Myanmar's peace negotiations: local economic planning and development; fiscal federalism; natural resources; housing, land and property rights; investment, trade and business licensing; budget transparency and corruption; illegal trade; and peace dividends.

The peace negotiations that have taken place in line with Myanmar's National Ceasefire Agreement (NCA) have, so far, addressed broad principles under each of five political dialogue sectors (political, security, land and natural resources, social, and economic). The eight key topic areas that we identify in Section 4 have all been covered to some extent in the political dialogue that has taken place under the Nationwide Ceasefire Agreement (NCA) framework, albeit sometimes incompletely and in most cases quite vaguely.

So far, less than half of Myanmar's Ethnic Armed Organisation (EAOs) have signed the NCA, and the signatories account for only around 20% of all EAO troops. There are currently some notable flaws and stresses in the peace process, including serious ongoing conflict and major issues around participation and inclusivity. It is unlikely to be a good idea to proceed too far with political negotiations while many major EAOs are not part of the process, and there is still such limited representation for many non-Bamar ethnic communities in the negotiations.

Myanmar is a highly heterogeneous country, which should make it suitable for quite a high degree of political and economic decentralisation, but authority here remains highly centralised. The NCA acknowledges the need for Myanmar to move to a federal system of government, which will involve a considerable decentralisation of authority. Decentralisation has the potential to: improve political stability and reduce conflict; make the government more accountable, responsive and efficient in providing services to its citizens; and help to reduce abuses of power by officials. However, these benefits are not guaranteed, and if federalism/decentralisation reforms are not well designed they can result in: policy-making and spending allocations favouring subnational elites; increased corruption; unsustainable budget deficits and macro stability; and lower quality and/or less efficient provision of public services.

There is clear scope in Myanmar for a greater decentralisation of powers to enable subnational governments more freedom for economic planning and development. Deciding which government responsibilities should be decentralised can be helpfully informed by the 'subsidiarity principle' – i.e. allocating them to the lowest level of government that can efficiently perform them.

Currently, less than 10% of total government spending in Myanmar is controlled by subnational governments. This is far less than in most other countries, for example: Japan = 60%, Vietnam = 45%, Indonesia = 35%, and Philippines = 25%. Myanmar could benefit considerably from allocating greater expenditure responsibilities to subnational levels; and, again, how to do this can be informed by the 'subsidiarity principle'.

Decentralisation of expenditure responsibilities should not only focus on granting additional powers to states/regions and self-autonomous areas; some functions can be appropriately decentralised to more

local levels of government (e.g. district, township, and ward/village tract). Subnational governments already have authority over tax instruments that are capable of raising considerable levels of revenue, and it does not seem necessary to decentralise additional general taxation powers. However, there is a much stronger case for decentralising authority over certain taxes that are specifically related to natural resource extraction. It will also be necessary to revise the formula used for allocating revenue between different levels of government, and ensuring that this is much more strictly applied than is currently the case.

Myanmar has considerable natural resource deposits, which have been intensively exploited in recent decades, but only a small elite have benefitted. Management of the sector, and the revenues that accrue from it, is still dominated by the Union government, and has been highly corrupt. In addition, natural resource extraction has been accompanied by severe negative environmental and social impacts. This situation has fuelled strong grievances, especially in non-Bamar ethnic areas, where many of the most valuable natural resource deposits are found. Further, natural resource revenues have helped to fund the activities of armed actors on all sides, and given them greater financial incentive to assert territorial authority.

Myanmar would benefit from subnational governments being given greater powers over natural resource management, and control over natural resource revenues. However, it is unlikely to be a good idea to give complete control over natural resource governance to the subnational level. It is also important that the decentralisation of authority over natural resources is accompanied by the introduction of mechanisms that enable greater civic participation in the natural resource sector. It is vital that policies are adopted that challenge the rampant corruption in the sector. Policies that promote transparency and reduce corruption are also badly needed for government budgeting more broadly.

Myanmar's legal framework for land and property rights is unclear, and this has facilitated widespread land grabbing/expropriation throughout Myanmar. The system also fails to adequately recognise shifting cultivation, which is still commonly used in many conflict and EAO-controlled areas. Refugees and internally displaced persons frequently face particular difficulties in demonstrating their land ownership rights. These land-related issues interact with conflict and need to be addressed in the peace negotiations.

For many decades Myanmar has struggled to generate much investment in most sectors of its economy; trade that has taken place within Myanmar and with other countries has been limited; and much of this trade has been unofficial/illegal. Much of the investment and trade that has taken place, especially in conflict and ceasefire areas, has been directed towards natural resource extraction, which has delivered few benefits for local citizens. All types of armed actors in Myanmar have used their influence to ensure that private companies connected to them have priority in gaining permission for trade and investment. In this regard, it is important that the peace agreement includes a clear commitment that all future investment, trade, business permission is decided through a fair, competitive, and transparent process. There also needs to be concerted efforts to tackle the illegal trade in licit products (especially gems and timber), and illegal trade in illicit products (most notably proscribed narcotics).

Programmes designed to deliver 'peace dividends' to local communities have the potential to support the peace process, but are difficult to deliver effectively, and so far some such efforts in Myanmar have not been carried out in a sufficiently conflict sensitive manner.

Given the importance of individual country context, we should avoid trying to 'copy and paste' from how

other countries have incorporated economic provisions in peace agreements. Further, it is often not easy to clearly establish what impact the inclusion (or non-inclusion) of certain economic provisions had on the subsequent success or failure of a particular peace agreement. Nevertheless, Section 5 of this report presents evidence from peace agreements concluded in Colombia, Sudan, Burundi, Nepal, and Indonesia (Aceh). These suggest the importance of: including specific economic provisions in the peace agreement (Nepal); accounting for the technical and managerial capacity of economic governance institutions at different levels of government (Sudan); focusing on principles and policies that are realistic to implement (Burundi); and instituting mechanisms for independent audits of natural resource revenues (Aceh).

## 2. Introduction<sup>i</sup>

In recent decades the benefits of addressing economic issues and strategies in peace agreements have been increasingly recognised – this can help to address root causes of conflict, such as inequalities and access to economic resources; increase the prospect of ‘peace dividends’<sup>ii</sup>; and lay a foundation for a sustainable economic framework that can benefit the majority of the population.<sup>1</sup> Precisely which economic issues are discussed in peace negotiations can depend on factors including, but not limited to the country’s history, political structure, economic structure, and natural resource endowment; combatants’ ideological motivations; the country’s recent conflict history; and the relative negotiating strength of different parties.

If economic issues are not adequately addressed during the peace process, it can drive a return to conflict and create instability in the long run. For instance, the Kachin Independence Organisation (KIO) signed a ceasefire agreement with the military government in Myanmar in 1994. The 17 years of ceasefire led to a significant increase in the extraction of natural resources, including jade mining and logging in Kachin State.<sup>2</sup> However, aside from a small number of Kachin elites, the Kachin people received little benefit from these lucrative natural resource extractions and this intensified their dissatisfaction with the Myanmar government.<sup>3</sup> Dissatisfaction over economic aspects of the agreement – especially the ownership, management, and revenues of natural resource extraction – was a major factor in the breakdown of the ceasefire and resumption of armed conflict in 2011.<sup>4</sup>

The ceasefires signed in the early 1990s were expected by many signatories (including the KIO) to result in substantive political dialogue and reform, but this subsequently failed to happen.<sup>5</sup> The experience of the KIO’s ultimately unsuccessful ceasefire points not only to the importance of discussing economic governance issues in Myanmar’s current peace process, but also to the dangers of failing to follow through with substantive political dialogue and reform.<sup>6</sup> Major reform priorities for Ethnic Armed Organisations (EAOs), and the communities they represent, include: significant additional powers being granted to subnational levels of government as Myanmar shifts to a federal system of government, security sector reform, and a reduction in the Tatmadaw’s (Myanmar’s armed forces) role in Myanmar’s politics, and state executive and administration.

Since the Myanmar state’s abandoning of socialism and the collapse of the Communist Party of Burma in the late 1980s, both the state and opposition armed groups in Myanmar have accepted some form of mixed-capitalist economy as their desired economic model. EAOs’ stated aspirations are primarily focused on ethnic identity and rights and the need for federalism, rather than economic motivations such as poverty, inequality, or a change in the economic system. Nevertheless, there are a number of economic issues that are important to consider in Myanmar’s peace negotiations, and these are outlined in Section 4 of this report.

From the outset of Myanmar’s current peace process, the Tatmadaw has insisted that the 2008 Constitution must be retained. In recent years, Aung San Suu Kyi’s National League for Democracy (NLD) has shifted its position from wanting to replace the 2008 Constitution to wanting to amend it, whereas a number of EAOs and non-Bamar ethnic political parties continue to an entirely new constitution. If the peace process is to be able to deliver the kind of substantive change that is required to achieve a lasting peace agreement, then at the very least some significant amendments to the current

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<sup>ii</sup> I.e. communities in conflict areas experiencing a material improvement in their lives after the conflict is halted.

constitution will be needed. This report is intended to offer an introduction and overview to the key economic issues that can be relevant for Myanmar's peace negotiations. It does not explain in detail for each topic the current constitutional arrangements, nor the constitutional implications of proposed reform options. Nevertheless, a summary of which economic governance powers the constitution currently allocates to state/regional governments is provided in Box 1.

Please note that some of the issues discussed in this document have not been categorised under the 'economic sector' discussions in Myanmar's peace process so far, and have instead been discussed under the 'social sector' or 'land and environment sector'. However, all of the issues discussed below have significant economic dimensions, and in peace negotiations in some other countries, they have been formally designated as 'economic' issues. Therefore, we felt it worthwhile to discuss them here.

### **Box 1: State/regional economic governance rights under Myanmar's constitution**

Schedule 2 of Myanmar's 2008 Constitution grants legislative authority to state/regional governments across eight sectors: i) Finance and Planning; ii) Economic; iii) Agriculture and Livestock Breeding Sector; iv) Energy, Electricity, Mining and Forestry Sector; v) Industrial Sector; vi) Transport, Communication and Construction Sector; vii) Social Sector; and viii) Management.

The authority granted to state/regional governments under the Finance and Planning sector is fairly clear and specific. However, for most sectors what authority has been granted to state/regional governments is quite vague. For the Economic Sector, although Schedule 2 says that state/regional governments will have authority over economic, commercial, and cooperative matters, for each of these topics it simply states that states/regions have authority 'in accord with law enacted by the Union,' with no further details provided.

Schedule 5 of Myanmar's 2008 constitution specifies the taxes and fees that states/regions are entitled to collect. There are 19 different revenue sources listed in total, albeit some of these are very minor (e.g., salt tax, unclaimed cash, and property). However, there are a number of revenue sources in this list that have the potential for large revenues to be collected, i.e., land taxes, excise taxes, and municipal taxes. State/regional governments also have the right to collect taxes on various forestry products, but these are mostly of quite low value, and the right to collect taxes on teak and other restricted hardwoods belongs to the Union government.

The 2015 amendments also added a list of taxes that can be collected by subnational governments. Some of these taxes include income taxes, commercial taxes, customs duties, petroleum and natural gas, minerals and mining, gems, and air transport.

### 3. Overview of Myanmar's peace process

Myanmar experienced intense conflict during World War II, and internal armed conflict has been occurring in Myanmar since the eve of its independence from British colonial rule, achieved in January 1948.<sup>7</sup> The period 1989-1995 saw the signing of bilateral ceasefire agreements between the Tatmadaw and most of Myanmar's EAOs.<sup>iii</sup> After Thein Sein became President in 2011, Myanmar's government initiated a new process designed to create a multilateral National Ceasefire Agreement (NCA), which was then signed by the government, Tatmadaw, and eight EAOs in October 2015. The first Union Peace Conference was held in January 2016, although this was largely symbolic and no substantive discussions took place at this event.<sup>8</sup>

The NCA covers some basic principles of national unity, embracing diversity, federalism, and military codes of conduct. However, many of the most challenging issues, including a possible form of federalism, how revenue would be shared, the future status of the armed groups, and their possible integration into the military were deferred to the political dialogue, as were some technical military issues on ceasefire monitoring and code of conduct.<sup>9</sup>

Further, the NCA glossed over sharp differences between the Tatmadaw and EAOs as to whether EAOs should disarm before or after agreement is reached on substantial political reform.

The government and the Tatmadaw have insisted that the EAOs must first sign the NCA before joining the peace process. Less than half of Myanmar's EAOs (8 out of more than 20)<sup>iv</sup> signed the NCA in October 2015, with the remainder choosing not to do so or were not permitted to do so – these non-signatory EAOs accounted for roughly 80% of all EAO troops in Myanmar.<sup>v</sup> The non-signatory EAOs that currently make up the United Nationalities Federal Council (UNFC) state that they have not signed the NCA because they cannot come to an agreement with the government on the NCA's technical terms and issues (such as military code of conduct, demarcation, troop relocation, and ceasefire monitoring). On 23 January 2018, it was announced that two UNFC members, the New Mon State Party and the Lahu Democratic Union, would soon sign the NCA – these two groups account for roughly 1% of total EAO troop numbers.<sup>vi</sup> The Federal Political Negotiation Consultative Committee (FPNCC) is currently composed of seven EAOs that account for close to 80%<sup>vii</sup> of all EAO troops in Myanmar. The FPNCC is led by the powerful United Wa State Party (UWSP) and rejects the NCA as the basis for the peace process, and some FPNCC members are currently actively engaged in armed conflict with the Tatmadaw.

The organisation and leadership of the peace process was handed over to the new government, led by the NLD, after the 2015 general election. The new government rebranded the 'Union Peace Conference' to 'Union Peace Conference-21<sup>st</sup> Century Panglong' (UPC-21C). The first UPC-21C was held in August 2016, and the second took place in May 2017.<sup>viii</sup> The eight EAOs that had signed the NCA are allowed

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<sup>iii</sup> N.b. several attempts at broad peace agreements involving political dialogue were also made in the 1940s-60s. For a summary, see, Transnational Institute, *Beyond Panglong*, pp.4-11

<sup>iv</sup> N.b. There is not universal agreement on the exact number of armed groups in Myanmar that ought to be classified as 'EAOs'.

<sup>v</sup> Exact numbers of EAO troops are not available. This estimate is based on the figures provided at: <http://mmpeacemonitor.org/stakeholders/armed-ethnic-groups> [Accessed 18th January 2018]. N.b. at the time of writing (end of January 2018) the future of the UNFC is in doubt, as there are now only two definite members left – the Karenni National Progressive Party and the Arakan National Council. The UNFC membership status of the Shan State Progress Party (which is also a member of FPNCC) is somewhat unclear.

<sup>vi</sup> See above footnote.

<sup>vii</sup> See above footnote.

<sup>viii</sup> N.b. the UPC-21Cs are supposed to occur every six months, but so far in practice they have not been so regular.

to fully participate in the UPC-21Cs, whereas non-signatory EAOs have been accorded observer status only.

In line with the NCA, five sectors have been discussed at the UPC-21Cs: security, political, social, land and environmental, and economic. At the second peace conference, a total of 37 basic principles were signed by the government, the NCA signatory-EAOs, and the Tatmadaw. The economic principles broadly cover four issues: (1) fiscal federalism; (2) trade, investment, and business licensing; (3) regional development policies/economic planning; and (4) budget transparency and corruption.

The peace process initiated by President Thein Sein has raised hopes for achieving meaningful political reform and ending Myanmar's long-running civil conflict. Further, Myanmar's new government has seen some major potential opportunities for achieving a political settlement, including: Aung San Suu Kyi's popularity, political capital, and strong electoral mandate; and increased cooperation from China.<sup>10</sup> However, there are still major tensions and barriers to a sustainable peace being achieved, including (but not limited to):

- A perception among some that the past mistreatment and abuses of citizens by the state has not been adequately acknowledged.<sup>11</sup>
- The peace process being insufficiently inclusive. This includes: i) several important EAOs not being invited/allowed to sign the NCA; ii) a very limited role for civil society organisations; iii) very low levels of participation by women and youth; iv) some ethnic communities do not have an EAO and/or do not have a political party participating in the peace process.<sup>12</sup> Further, 'questions can be asked about how representative armed groups are of communities in their areas.'<sup>13</sup>
- Serious fighting has occurred in Kachin and northern Shan States since the breakdown of the KIO's ceasefire in 2011, 'and over 100,000 civilians have been displaced in the China borderlands amidst repeated violations of international law.'<sup>14</sup> This has hardened opposition among the KIO and many other non-signatory EAOs against signing the NCA.<sup>15</sup>
- Sharp differences between EAOs and the Tatmadaw on their vision for the nature of security sector reform, and the sequencing of such reform. EAOs are strongly reluctant to give up their arms before there are strong guarantees of political and security sector reform, whereas the Tatmadaw is pushing for EAOs to pursue disarmament, demobilisation and reintegration (DDR) at a much earlier stage.
- The Tatmadaw's response to attacks on security outposts by the Arakan Rohingya Salvation Army (ARSA) in August 2017 has been disproportionate and characterised by serious human rights abuses.<sup>16</sup> In response, hundreds of thousands of refugees fled to neighbouring Bangladesh, where there are now around 700,000 refugees from Myanmar,<sup>17</sup> the vast majority of whom are Muslims from Rakhine State.<sup>18</sup> ARSA have declared that they plan to carry on fighting, and recently (5 January 2018) carried out a small scale attack on Myanmar security forces.<sup>19</sup> There is a good chance that violence by the Myanmar state and ARSA can spiral further. In addition, the nationalist sentiment that events in Rakhine have generated among many Myanmar citizens threatens the national peace process as it is likely to make it harder to achieve a national consensus in favour of granting greater political authority and control over economic resources to minority areas.<sup>20ix</sup>
- Tensions between ethnic groups (and their associated EAOs and political parties) that

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<sup>ix</sup> It can be further remarked that Muslims (of all ethnicities) are almost entirely unrepresented in Myanmar politics. Not only are there no Muslim organisations or individuals participating in the peace process, there are no Muslim MPs in any of Myanmar's Union or state/region parliaments. This is despite it being estimated that Muslims comprise 4.3% of Myanmar's population. See, Minoletti, Paul, *Gender and Politics in Myanmar: Women and Men Candidates in the 2015 Elections* (Yangon: Gender Equality Network, August 2017), p.15.

envision federalism as being primarily about increasing powers held by Myanmar's existing seven states (such as the Kachin and Shan), and those that wish to see significant powers granted to lower levels of government or for additional states to be created (such as the Pao, Red Shan, Ta'ang, and Wa).<sup>21</sup>

- 'National Dialogues' having been prevented from taking place in certain states/regions. The recent blocking of the National Dialogue in Shan State has been particularly controversial.
- Divisions between EAOs, particularly between signatories and non-signatories.<sup>22</sup> There have even been armed clashes between the Shan State Army-South (a signatory EAO) and the Ta'ang National Liberation Army (a non-signatory EAO).<sup>23</sup>
- The Union Peace Dialogue Joint Committee being the locus of actual decision-making for recognised participants in the peace process, with hitherto little or no meaningful discussion actually taking place at the UPC-21C events.<sup>24</sup>
- Many EAOs feel that the process is overly dominated by the government and Tatmadaw. One concrete manifestation of this was the UPDJC blocking proposals that were contrary to the 2008 Constitution from being discussed at the last UPC-21C.<sup>25</sup>
- Fears among non-Bamar ethnic leaders that the new government is too close to the Tatmadaw, and this will result in political outcomes that favour the Bamar.<sup>26</sup>
- Currently, the government and Tatmadaw continue to insist that any group that wishes to participate in the political negotiations must sign the NCA.<sup>27</sup> However, trust in the document appears to be in decline among a number of EAOs, and (as noted earlier in Section 2) the FPNCC currently reject this as the basis for negotiations.
- There are fears among EAOs that the Tatmadaw is continuing a 'divide-and-rule' strategy, whereby some EAOs are provided with peace agreements and the areas in which they operate are targeted for 'development' and state expansion, while other EAOs are attacked by the Tatmadaw and armed groups allied with them.<sup>28</sup>
- Myanmar's largest EAO, the UWSP, seems to have little interest in signing the NCA as it already enjoys much more autonomy for the governance of the area under its control than it is likely to receive following the conclusion of the NCA.<sup>29</sup>
- Concerns among many EAOs as to the motivations of international donors that have been funding the peace process and related government activities.<sup>30</sup>
- The new government's National Reconciliation and Peace Centre (NRPC) has limited organisational and technical capacity, and the advent of the new government has been accompanied by a decline in the use of informal channels to organise meetings.<sup>31</sup>

Although this list of possible barriers to achieving peace is daunting, these issues are not necessarily insurmountable. Nevertheless, it is important to recognise that serious conflict is ongoing in several parts of the country, and there are considerable tensions and flaws in the current peace process. As such, it is unlikely to be beneficial for formal negotiations on the five sectors under the NCA to become too advanced at this stage.

## 4. Key economic issues for Myanmar's peace negotiations

### 4.1 Local economic planning and development

#### Background and current situation

Although some limited decentralisation has taken place since 2011, governance in Myanmar remains highly centralised. Myanmar is a highly heterogeneous country (e.g., ethnicity and languages; natural resources; geography, land types and climate), and so one-size-fits-all development policies are inappropriate and will not maximise Myanmar's development potential. Although it is possible for a central government<sup>x</sup> to create different development policies for different subnational areas, for many aspects of economic governance this can be done more effectively by subnational governments; subnational governments are closer to the citizens in their area and so should be able to understand their specific needs more easily, and it can also be easier for their citizens to hold them to account.

The economic agreement from the second UPC-21C, held in May 2017, addressed the issue of local economic planning and development. According to Article 5 of the Basic Principles for Federal Economy, economic planning and management rights shall be shared between Union, state/regional and SAD/SAZ governments. It was also agreed that the Union, states/regions and SAD/SAZ shall coordinate to design and implement regional comprehensive development plans for human capital and socioeconomic development (Article 1 of Local Development Policies).<sup>32</sup> It is positive that local economic planning and development issues were addressed in some way in the agreement, but this was done in a very vague manner.

#### Reform needs and options

Issues to include in local development policies can be drawn from a wide range of ministries and departments, potentially covering topics such as agriculture, livestock and fisheries; industry; education and training; trade and investment promotion; health; transport; communications infrastructure; business regulations; investment approval; energy; and tourism. Deciding which government functions and responsibilities should be decentralised can be informed by the 'subsidiarity principle' – i.e., decentralising functions and responsibilities to the lowest level of government that can efficiently perform them. Following the subsidiarity principle is commonly seen as best practice for deciding which responsibilities to allocate to national and subnational governments, and, for example, is followed by the European Union. Which level of government is able to most efficiently provide a particular service is influenced by whether there are 'externalities' and what 'economies of scale' are available – these key economic concepts are explained in Box 2.

Significant economies of scale in government service provision typically exist when the production, management, and/or regulation of a service or economic activity is highly complex and requires considerable technical knowledge. In these cases, a higher level of government will normally be able to perform the task more efficiently. For example, it is usually more efficient for higher levels of government to build and operate large power plants, and to negotiate and manage contracts with private producers in this sector. Where significant economies of scale exist for performing a particular government function, it is generally not advisable to decentralise this function. Conversely, if economies of scale are limited or non-existent, it is often beneficial to decentralise.

Externalities in the provision of government services occur when citizens outside of a particular political

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<sup>x</sup> Please note that throughout Section 3 'government' is used in the broad sense of the word, and includes the parliament as well as the executive.

unit are affected by the services provided/decisions made by the government of that particular political unit. Where significant positive externalities exist, decentralisation is likely to result in underspending on a public service. For example, the road from Pyin Oo Lwin to Muse runs only through Shan State but acts as a key route for many products imported from China to states and regions across Myanmar. As such, there are significant positive externalities available from improving this road – i.e., goods being cheaper and a wider range of goods being available for consumers of other states/regions. Thus, if Shan State has sole responsibility for maintaining and improving this road, it has less incentive to invest in it than the Union government, and decentralising full responsibility for this road is likely to result in insufficient spending on maintaining and improving this road. Please see Box 2 for further explanation and some other examples of externalities.

A key aspect of local development planning is to try to promote and regulate investment. Recent legislative changes mean that investments of less than 5 billion kyat can now be approved by state/regional governments. It may be desirable to decentralise further authority over investment approval, and in making this decision, a consideration of economies of scale and externalities is again useful. Many investment approval decisions are quite straightforward. However, in cases where an investment will result in significant costs being imposed on some citizens (for example, by causing pollution or requiring that households relocate), the potential costs and benefits need to be assessed carefully, and the government must ensure that any citizens that are negatively affected are adequately compensated.

Assessing costs, benefits, and appropriate compensation can be complicated, and in these cases higher levels of government are likely to have economies of scale. And, if the negative impacts of an investment affect citizens in more than one political unit (such as a state/region), it is not appropriate for a single political unit (e.g., state/region) to have total control over the investment approval decision. If significant economies of scale and/or externalities are present, then decentralisation is unlikely to be efficient. However, it is important to acknowledge that in Myanmar there is a low level of trust among many citizens in the central government's willingness to listen to citizens on investment decisions, or to adequately compensate those who are negatively affected. Because of this, there may be strong pressures to decentralise decision-making even for cases where significant externalities and/or economies of scale are present.

### **Key takeaway points**

- There is considerable scope for greater powers over local economic planning and development to be assigned to subnational governments.
- Deciding which government functions and responsibilities to assign to subnational governments can be usefully informed by the 'subsidiarity principle' – i.e., decentralising functions and responsibilities to the lowest level of government that can efficiently perform them.

## Box 2: Externalities and economies of scale

**Externalities:** Externalities occur when the production or consumption of a good or service affects not only the producer and consumer, but also other citizens. Externalities can be 'positive' (i.e., other citizens benefit) or 'negative' (i.e., costs are imposed on other citizens).

Examples of positive externalities include:

- Vaccination – if you are vaccinated, not only do you benefit from not being able to catch the disease, but others also benefit because you cannot pass the disease on to them.
- Education – if you are more educated, not only do you benefit, but your friends, relatives, neighbours, colleagues, and acquaintances also benefit from the additional knowledge that you pass on to them.

Examples of negative externalities include:

- Pollution – if a factory or mine pollutes the water, air, and/or ground, this imposes costs on other citizens including negative health effects, and reduced income earning opportunities.
- Congestion – if you drive your car, this can result in increased congestion, making the journey time slower for others. Particularly in large cities such as Yangon, Manila, and Jakarta, congestion can become a major problem.

Where there are positive externalities, the government should try to encourage production/consumption, and in many cases the government can provide an appropriate public service themselves (e.g., vaccinations, education). Where there are negative externalities, the government should impose regulations that reduce production/consumption. When externalities occur only locally, it is often appropriate for subnational governments to regulate, promote production/consumption, or directly provide services. However, when externalities occur outside of the subnational unit where production/consumption takes place, then that subnational unit should not have complete authority over this service. For example, it would not be a good idea to give the Shan State government complete control over the Shan State section of the River Salween/Thanlwin – if companies operating in Shan State pollute this river, it also affects citizens downstream in Kayah, Kayin, and Mon States, and so they should be able to have some influence on how the river is managed in Shan State. Managing the interests of citizens from different parts of Myanmar will require significant governance reform, as hitherto decision-making has been strongly controlled by the central government, with little input from communities and sub-national decision-makers.

**Economies of scale:** 'Economies of scale' refers to how the size of a government body affects how efficiently it can provide a particular service. In some situations, large government units are more efficient, for example: i) when drafting complex laws or regulations, it is often more efficient for a single national government to employ/hire relevant experts that can draft the law than for lots of subnational governments to do this separately; ii) when negotiating with private companies to purchase a good or service, national governments can often negotiate a lower per-unit price. However, there are also several ways in which larger units of government can reduce efficiency and raise costs. For example, as the size of government increases, and more workers and layers of administration are added, communication becomes slower, reducing efficiency. In socially/ethnically diverse countries it is common for preferences to vary between subnational areas, and in these cases citizen welfare is improved by providing different types of services in different areas. Large national bureaucracies typically struggle to respond to these different preferences, whereas subnational governments are often more responsive.

## 4.2 Fiscal federalism

### Background and current situation

As described in Section 4.1, Myanmar's state remains highly centralised, and further decentralisation of powers is both needed and likely as Myanmar moves to a federal system. In addition to its potential to improve political stability and reduce conflict in Myanmar, greater decentralisation can potentially help to make the government more accountable, responsive, and efficient in providing services to its citizens; and can also help to reduce abuses of power by officials (including corruption).<sup>33</sup> However, it is vital to understand that decentralisation reforms are not guaranteed to be successful, and if poorly designed, can result in negative effects such as: policymaking and spending allocations favouring subnational elites rather than the majority of citizens; increased corruption; unsustainable budget deficits and macroeconomic instability; and lower quality and/or less efficient provision of public services.<sup>34</sup>

As discussed in Box 1, Schedule 5 of Myanmar's constitution lists 19 different categories of own-source revenue as being under the authority of states/regions, including land taxes, excise taxes, municipal taxes, and taxes on certain forestry products. The constitution gives state/regional governments the authority to legislate on and requires them to provide services for multiple subcategories under each of eight broad sectors: finance and planning; economic; agriculture and livestock breeding; energy, electricity, mining and forestry; industrial; transport, communication and construction; social; and management. However, there is currently a lack of clarity on how responsibilities are divided between ministries and departments at Union and state/region levels, and in practice, spending decisions are still largely controlled by the Union level.<sup>35</sup> The powers and responsibilities of Myanmar's five Self-Autonomous Zones (SAZs) and one Self-Administered Division (SAD) are fairly similar to those of the states/regions, although not quite as extensive – for example, any laws that they pass must comply not only with Union laws but also the relevant state/regional laws.<sup>36</sup>

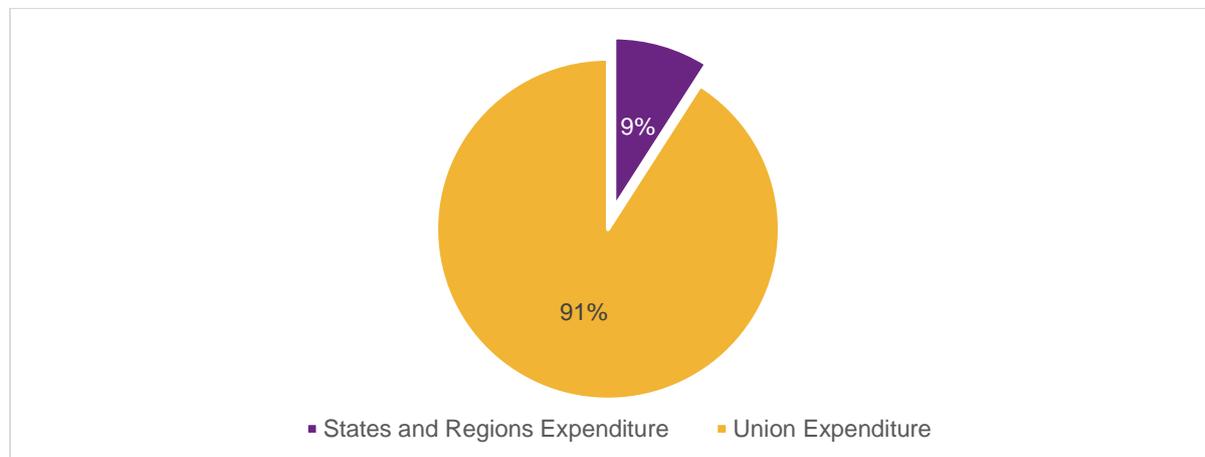
District level authorities do not have control over expenditure allocations or revenue collection, and their role is focused on monitoring, administration, and reporting. Township-level departments are responsible for carrying out much of the Government of Myanmar's (GoM's) service provision and tax collection, but decisions on how their budgets are allocated are still largely made at Union and, to a lesser extent, state/region levels. Development Affairs Organisations (DAOs) and City Development Corporations (CDCs) are responsible for providing a range of municipal services in urban areas and have considerable autonomy over how they collect and allocate revenues. Ward and Village Tract Administrators have a role in providing basic public services and are typically able to collect informal taxes to pay for specific services.

When thinking about revenue collection and service provision at subnational levels, it is important not only to consider the government but also all kinds of armed groups and communities themselves. EAOs are quite diverse in the extent of their service provision and which services they prioritise (e.g., infrastructure, education, health, etc), but some EAOs are extensively involved in providing a wide range of services to citizens.<sup>37</sup> As well as providing security, some Border Guard Forces (BGFs) and militias have a limited role in providing other services.<sup>38</sup> EAOs' revenue primarily comes from informal taxation, negotiated payments for investments made in areas under EAO control, and/or revenues arising from the black economy. Myanmar's militias, BGFs, and Tatmadaw units have also raised revenue through these means.

Throughout Myanmar, it is common for communities themselves to fund and organise the delivery of a range of basic public services with no input from the government, EAOs, or non-governmental

organisations (NGOs) based outside of the community. It is also common for communities to raise additional funds to supplement public services that are provided by the government, for example by building fences around schools or donating furniture to health clinics.

**Figure 1: state/region and Union expenditure as a percentage of total expenditure**



Source: <http://budget.omimyanmar.org/#tab-2240-4> (Accessed 16 January 2018)

As can be seen in Figure 1, official data from 2016/2017 showed that in Myanmar, state/regional governments' expenditure was around 9% of total budgeted expenditure.<sup>39</sup> This is far less than in most other countries, for example: Japan = 60%, Vietnam = 45%, Indonesia = 35%, and Philippines = 25%.<sup>40</sup> More than one-third (36%) of state/regional expenditure in Myanmar is allocated to road building, with relatively little allocated to other departments.<sup>41</sup> Even though very little government expenditure is controlled by state/regional governments, they rely heavily on transfers from the Union government to finance their spending: Union transfers here finance 75% of sub-national spending, compared to an international average of around 35% -- this indicates that state/regional governments collect very little revenue.<sup>42</sup> For the last few years, Myanmar's Union government has in theory been using a formula to determine budget allocations to state/regional governments. This formula is based on population size, GDP per capita, poverty rate, number of townships, land area, per capita tax collection, and urban population as a share of total population. However, in practice the formula has not been strictly applied.<sup>43</sup>

Fiscal federalism/fiscal decentralisation is one of the economic dimensions of Myanmar's peace negotiations. Article four of the Basic Principles of Federal Economy agreed at the UPC-21C held in May 2017 states that finance and taxation shall be distributed fairly and equitably between the Union government, state/regional governments, and SAD/SAZs. This is a positive aspiration, but it is important to note that it has little substantive value, because there is no objective way of defining what 'fair' or 'equitable' is.<sup>44</sup>

### **Reform needs and options**

Political factors will influence which expenditure responsibilities and revenue sources become decentralised. To give just one example, subnational control over education policy and management has great political salience in non-Bamar ethnic areas, due to the military government's long suppression of non-Bamar languages and non-Bamar cultures.<sup>45</sup> However, it is important to consider not only the political, but also the fiscal aspects of decentralisation – subnational authorities need to have appropriate revenue sources to fund their expenditure responsibilities, and subnational authorities need to be able to spend public revenues productively and efficiently. As discussed in Section 3.1, when

deciding which expenditure functions to decentralise it is often beneficial to follow the ‘subsidiarity principle’ – i.e., decentralising service provision to the lowest level of government that can efficiently provide it.

Plans for a federal Myanmar should not only consider allocating expenditure responsibilities to states/regions, SAZs and SAD; for some functions it may be appropriate to decentralise to a lower level – e.g. District, Township, DAO/CDC, and even Ward/Village Tract. For decentralisation of service provision to be meaningful and effective, it is also necessary for there to be administrative and political reform, particularly reforming the role and lines of accountability of the General Administration Department (GAD). Currently, the state/region GAD exert a lot of influence on budgeting at state/region level, but in practice are accountable to the Union Ministry of Home Affairs (MoHA) rather than the state/region government. The World Bank has suggested two possible options for remedying this problem: i) reassign GAD staff so that they are under the direct control of state/region governments; ii) assign GAD staff to different responsibilities and allow state/region governments to recruit and manage their own administrative departments.<sup>46</sup> The GAD has an even stronger role in budgeting at Township level, and is again primarily accountable to the Union MoHA, with citizens having extremely limited ability to hold them accountable – making Township governance more accountable to its citizens is a prerequisite for Township authorities becoming more effective service providers.<sup>47</sup>

When deciding which government services to decentralise, instead of assigning whole sectors to a particular level of government, it is generally better to assign specific functions. For example, in the education sector it could perhaps be most efficient to decentralise the management of primary schools to District or even Township level, but it would not be efficient to decentralise the management of universities to such a low level. Within the scope of the peace negotiations, it will not be feasible to decide exactly which level of the state should have the responsibility for providing every specific function, rather the discussion is likely to focus on a few particularly important sectors and functions, and agree to a principle to guide the other decisions – again, the subsidiarity principle could be beneficial to agree to as a guiding principle. In addition, a mechanism should be set up which allows for a rules-based review of whether functions are assigned to the correct level of government, so that if any are inefficiently assigned, this can subsequently be rectified in a transparent manner.

It is vital that funding arrangements are designed to match expenditure responsibilities, i.e. subnational governments should have access to sufficient revenue (through taxation and transfers) to provide the services they are mandated to provide. There does not seem to be much need to decentralise additional ‘general’<sup>xi</sup> taxation powers in Myanmar – state/region governments, and the DAOs and CDCs that operate under their authority, already have control of a considerable range of tax instruments, including land/property taxes. Subnational entities are currently failing to collect much revenue, but this is primarily due to them having weak incentives and capacity to collect tax, rather than not having legal authority over enough general tax instruments.<sup>48</sup> Policy and administrative reform to raise subnational tax collection should include: allowing subnational entities to retain budget surpluses at the end of the financial year; ensuring that allocations to state/region governments in the supplementary budget are rules-based, and the formula governing transfers is applied more strictly; adjusting the formula; improving auditing and parliamentary oversight of subnational budgets; and increased digitisation of tax collection.<sup>xii</sup>

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<sup>xi</sup> N.b. here ‘general’ is used to refer to taxes that apply to all sectors of the economy, for example income tax, profit tax, customs duties, land/property taxes, and user fees charged by DAOs and CDCs. This definition does not include taxes that are specific to particular sectors, such as mining or forestry.

<sup>xii</sup> For further discussion of why these reforms are needed and how to implement them, please see: Giles

There is also a need for policy and administrative reform to enable subnational governments to improve their planning and budgeting, including that the budget cycle be extended so that subnational governments have considerably more time to plan and budget for the next financial year – currently this period is only six months.<sup>49</sup> In addition, political reforms that make subnational governments more accountable to their citizens would also be likely to incentivise subnational governments to collect more revenue.

Although it does not seem to be necessary to decentralise additional general taxation powers, there is a clear political need for subnational governments to receive a greater share of the state revenues that accrue from natural resource extraction – why and how to do this is discussed in Section 3.3.

### **Key takeaway points**

- The level of fiscal decentralisation in Myanmar is currently extremely low, and greater responsibility for service provision should be granted to subnational governments. For this to be effective, it needs to be accompanied by political and administrative reform, especially at state/region and Township levels.
- Subnational governments already have authority some significant general taxes (e.g., land/property taxes, municipal user fees, and excise taxes), but due to bad structural incentives and inefficient administration, they are currently collecting very little revenue. It does not seem necessary to assign additional general taxation powers to subnational governments, but it would be appropriate to do so for certain forms of taxation on specific sectors (e.g., mining, logging of hardwoods).

## **4.3 Natural resources**

### **Background and current situation**

Resource deposits and mining activity are widespread across Myanmar, and particularly large mineral deposits are found in states/regions such as Kachin, Mandalay, Sagaing, and Shan. Myanmar has significant deposits of a wide variety of valuable deposits, but most prominent are jade, rubies, sapphires, gold, nickel, copper, and limestone. Myanmar also has considerable onshore and offshore oil and gas reserves.<sup>50</sup>

Schedules 2 and 5 of the 2008 constitution grant some limited authority over natural resource management and revenue to state/regional governments (e.g. some aspects of small-scale mining and certain species of timber), but most authority is listed as being under the control of the Union government.<sup>51</sup> Additionally, almost all of the budgeted government revenues that accrue from natural resource extraction currently go to the Union government.<sup>52</sup> Further, large-scale corruption means that much of the vast revenues are never recorded in Union or state/region government budgets.<sup>53</sup> In recent decades, in addition to being highly corrupt, decision-making on natural resource extraction has been extremely top-down, with little or no consultation of local people.<sup>54</sup> This situation has fuelled strong grievances, especially in non-Bamar ethnic areas, where many of the most valuable natural resource deposits are located. In addition, natural resource revenues have helped to fund the activities of armed actors on all sides, and given them greater financial incentive to assert territorial authority.<sup>55</sup>

Myanmar's jade industry is particularly valuable and is centred on the Hpakant area in Kachin State.

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Dickenson-Jones and others, *Intergovernmental Fiscal Relations in Myanmar: Current Processes and Future Priorities in Public Financial Management Reform* (Yangon: JICA & CESD, July 2016), pp.21-22, 35-41; Paul Minoletti, *Fiscal Decentralisation and National Reconciliation in Myanmar: Key Issues and Avenues for Reform* (Yangon: International Growth Centre, 2016), p.22.

Estimates by Global Witness for 2014 suggest that although the total value of official sales of jade for that year was only around 3.5 billion USD, the value of all jade sales was almost ten times as much, and was equivalent to almost 50% of Myanmar's official GDP, or 21,000 USD per Kachin State inhabitant.<sup>56</sup> Following the 1994 ceasefire between the military government and the KIO, jade mining in Kachin State grew dramatically, as did the mining of other minerals and logging. Despite the boom in natural resource extraction, local residents experienced few tangible benefits – for example there was little improvement in government service provision.<sup>57</sup> Jade concessions have typically been sold in a highly corrupt manner, and most (albeit not all) of the concessions have gone to businesses owned by non-Kachins.<sup>58</sup>

The environmental and social impact of jade mining has been 'catastrophic': mountains have been replaced with craters, forests and wildlife have disappeared, and high levels of pollution have resulted in water becoming unsafe to drink.<sup>59</sup> The growth of the jade mines has also brought considerable social problems, including drug addiction, increased sex work and gambling, extremely high rates of HIV and Hepatitis C, and tensions between locals and the many migrants that have come from elsewhere in Myanmar to work in the mines.<sup>60</sup> Mining has also been accompanied by land grabbing from local citizens.<sup>61</sup> Although the Hpakant jade industry is especially large and valuable, and some of the impacts have been particularly extreme here, the tensions that are present here are also commonly felt in other geographical areas/extractive sectors.

Thus far, natural resource ownership, management, and allocation of revenues has not been directly addressed in the UPC and UPC-21Cs. At the May 2017 UPC-21C 10 principles were agreed under the land and natural resources sector,<sup>xiii</sup> but these focused on land policy, land rights, and environmental protection. Natural resource ownership, management, and allocation of revenues was also not explicitly addressed under the economic sector.<sup>62</sup>

### **Reform needs and options**

It is clear that Myanmar would benefit from greater powers over natural resource management, and control over natural resource revenues, being granted to subnational governments. However, it is less easy to say precisely how much authority should be granted to subnational governments, and how much should be retained by the Union government. There are strong political pressures for Myanmar to grant considerable levels of resource ownership, management, and authority over revenues to subnational governments.<sup>xiv</sup> However, it can be noted that subnational governments often have weak capacity to negotiate and enforce complex contracts with large mining, oil and gas companies; and national-level governments tend to be better equipped to manage the volatility of natural resource revenues.<sup>63</sup> Therefore, it is unlikely to be a good idea to devolve complete control over natural resource governance to Myanmar's subnational governments. It is vital that the roles and responsibilities for natural resource governance of each level of government are clearly defined.<sup>64</sup>

In most federal countries natural resource revenue rights are shared between national and subnational governments, and there is some revenue transfer between the different levels of government. By and large, general taxes like corporate income taxes and withholding taxes are paid to the national government while mineral-specific taxes such as royalties are paid to the state or provincial government,

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<sup>xiii</sup> N.b. this sector is sometimes translated into English as the 'land and natural resources sector', and sometimes as the 'land and natural environment sector'. According to the Framework for Political Dialogue, agreed in December 2015, this sector will discuss: i) matters relating to management and distribution of land and natural resources; ii) matters relating to protection of the environment and natural disasters.

<sup>xiv</sup> An alternative approach would be for the Union government to retain most of its current authority over the ownership and management of large natural resource projects and commit to sharing a certain percentage of revenues with subnational governments – this type of approach is used in countries such as Brazil, Indonesia, Norway, and the Philippines. See, Andrew Bauer, Paul Shortell, and Lorenzo Delesgues, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues* (Natural Resource Governance Institute, February 2016), p.23.

though details vary.<sup>65</sup>

Currently in Myanmar, there is weak technical capacity at both Union and subnational levels of government for negotiating and enforcing complex contracts, and managing volatile natural resource revenues. Going forward, it would be easier and less expensive to raise capacity on complex technical issues only at the Union level rather than also having to do this for multiple state/region governments. If significant powers over complex technical issues are granted to Myanmar's subnational governments, then considerable capacity building efforts will be required to avoid large-scale inefficiency, corruption, and exploitation of local people and governments by powerful businesses. 'In some cases, training and capacity-building – including managerial capacity and systems – may need to precede a transfer in responsibilities.'<sup>66</sup>

It is important that granting greater powers over natural resource governance to subnational governments is accompanied by the introduction of mechanisms for civic participation in decision-making over issues such as the granting of licenses, how revenues should be allocated, and environmental and social monitoring. Otherwise, the current situation of top-down decision-making from Naypyitaw may simply be replaced by top-down decision-making by authorities at state/region or SAA level.

For Myanmar to benefit from its large natural resource endowment, it is also vital to challenge the rampant corruption in the sector, which requires that: i) more comprehensive and detailed information is published on the natural resource revenues received by Myanmar's government(s); ii) the natural resource extraction and trade that is currently totally unrecorded in government figures is brought under government oversight, recorded and details are published, and appropriate revenues are collected.<sup>xv</sup>

Sharing natural resource revenues between the Union and subnational governments will require designing a transfer scheme, that has clear rules and a formula<sup>xvi</sup> determining how the revenues are shared between Union and subnational level(s). Key considerations for designing a transfer scheme include:

- Deciding on the objective(s) of the transfer scheme.<sup>xvii</sup>
- Deciding which revenue streams to share.<sup>xviii</sup>
- Whether to make the revenue-sharing formula 'derivation-based', 'indicator-based', or a combination of both.<sup>xix67</sup>

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<sup>xv</sup> N.b. The recent announcement that MOGE will publish details of its 'Other Accounts' in the 2018 EITI report is a positive step in this regard. See, Myanmar Times, '*MOGE to reveal Other Account details in second EITI report*', 4<sup>th</sup> October 2017 [<https://www.mmtimes.com/news/moge-reveal-other-account-details-second-eiti-report.html>], Accessed 23<sup>rd</sup> November 2017]

<sup>xvi</sup> N.b. for the last few years Myanmar's Union government has in theory been using a formula to determine budget allocations to state/region governments, but in practice the formula has not been strictly applied. See, Section 3.2.

<sup>xvii</sup> Possible objectives include: ensuring that subnational governments have sufficient funding to meet their expenditure responsibilities; reducing inequalities between different areas; compensating producing areas for the negative impacts of extraction (e.g. environmental damage, relocation of communities, negative public health effects); conflict mitigation and prevention; acknowledging certain groups' (such as ethnic groups) right to benefit from extraction of a resource from an area that is seen as belonging to that particular group.

<sup>xviii</sup> These can include: royalties, signature bonuses, profit taxes, property taxes, border taxes, fines and penalties, production entitlements, dividends from government equity.

<sup>xix</sup> 'Derivation-based' systems link the size of transfers to the size of natural resource revenues coming from each subnational area, i.e. areas that generate higher natural resource revenues receive a higher share of revenues. 'Indicator-based' systems allocate revenues according to a formula based on specific goals aimed at improving equity between different sub-national areas – common indicators for such systems include: poverty, wealth/income levels, access to public services, education levels, environmental damage, and subnational governments' potential to collect tax revenues. Globally, derivation-based systems are more common than indicator-based systems, especially in less developed countries.

It seems probable that some kind of initial agreement on a revenue-sharing formula, or at least the principles to guide it, will be part of Myanmar's peace agreement. EAOs' and ethnic political parties' representation in the peace process should *hopefully* enable sufficient voice for non-Bamar ethnic communities in the peace agreement (although this is by no means guaranteed). It is important to ensure that provisions are in place to guarantee that subnational governments, and the citizens they represent, are able to actively participate in the decision-making on any future changes to the transfer scheme.

Effectively managing natural resource revenues is more difficult than most other forms of tax revenues, for several reasons: i) global commodity prices are highly volatile, meaning that future revenues from natural resources are hard to predict, which makes it difficult to plan future government spending; ii) natural resource revenues tend to be 'pro-cyclical', i.e. if not handled carefully by the government they can exaggerate economic booms and busts; iii) natural resource revenues can limit economic diversification, resulting in an economy becoming overly-reliant on this sector, which tends to increase inequality and make the economy more prone to recessions and unemployment.<sup>68</sup> As noted above, for Myanmar to benefit from its large natural resource endowment, considerable capacity building is needed for governments at Union and subnational levels on how to cope with volatile commodity prices, how to avoid pro-cyclical spending, and how to encourage economic diversification.

To help manage its natural resource revenues, Myanmar's Union government may want to create Stabilisation or Sovereign Wealth Fund(s). In the future, if a greater share of and/or control over extractive natural resource revenues is granted to subnational levels, then subnational governments in areas with particularly large resource endowments may also want to create such a fund. A Sovereign Wealth Fund is a state-owned investment fund that has been widely adopted by natural resource-rich countries, and has been utilised very successfully by countries such as Botswana and Chile.<sup>69</sup> These funds aim to smooth government spending and mitigate macroeconomic instability caused by the volatility of resource revenue. Stabilisation/Sovereign Wealth Funds offer significant potential benefits for managing natural resource revenues, but they are by no means always successful, and '...are often used as channels for patronage and corruption.'<sup>70</sup> Without improved transparency, accountability, and technical capacity, introducing such funds in Myanmar is unlikely to have much positive effect.

In January 2016 the Government of Myanmar (GoM) issued a new set of rules that require all new investment projects that could have negative social and/or environmental effects to first conduct an Environmental Impact Assessment (EIA).<sup>xx</sup> This is highly significant for natural resource investments, and represents a significant change from the previous situation whereby little or no consideration was given to the environmental and social costs borne by local populations as a result of natural resource extraction. The new regulatory regime is therefore welcome, but careful attention needs to be paid to ensure that it is adequately implemented.

As discussed below in Section 3.5, there is a pressing need to improve the transparency and fairness of business licensing procedures in Myanmar – this is especially true for licensing in the extractive natural resource sector. Another important issue for reforming natural resource governance in Myanmar is to improve land management, including creating an effective 'cadastre', i.e. a comprehensive record of which individuals and organisations own land, and the right to collect minerals from underneath the surface of the land, throughout Myanmar. For a cadastre to be effective it is important that there is close cooperation and communication between Union and subnational governments, and mechanisms for

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<sup>xx</sup> N.b. this is sometimes also referred to as an Environmental and Social Impact Assessment (ESIA).

ensuring this takes place ought to be prescribed in the law.<sup>xxi</sup>

### **Key takeaway points**

- Natural resource extraction has expanded rapidly in recent decades, but management of natural resource extraction has been extremely centralised and highly corrupt. Residents in areas from which natural resources have been extracted have experienced few benefits, but a number of economic, environmental and/or social costs.
- Myanmar would benefit from greater powers over natural resource management and revenues being granted to subnational governments. Nevertheless, it is important to acknowledge the capacity constraints mean that subnational governments can face particular difficulties for managing for certain aspects of natural resource governance, and certain responsibilities can often be more efficiently managed by national level governments.

## **4.4 Housing, land, and property rights**

### **Background and current situation**

Housing, land, and property rights are crucial to the livelihoods of people throughout Myanmar. People living in conflict and post-conflict areas are often heavily dependent on agriculture and access to forest resources, and protecting these resources is key to their support of the peace process. Sustainable investment, be it local or international, benefits from clear property rights systems. In addition to being of great economic importance, land also has considerable symbolic and emotional value, and traditional methods of land ownership and management are essential aspects of traditional culture for numerous ethnic groups.<sup>71</sup> Most importantly, the structure and enforcement of housing, land and property rights is a political issue whose resolution is a precondition for a consolidated peace process.

There are several land and property rights issues that require attention through the framework of the peace process. Many of these issues stem from the fact that despite reform efforts, the prevailing legal framework in Myanmar is unclear. In addition to formal property rights, local institutions also provide informal real property rights across various geographic locations (including areas controlled by EAOs). Working to clarify and ultimately harmonize different formal and informal systems should be a key goal of the peace process.

One consequence of the current uncertainty around property rights systems is widespread land grabbing/expropriation throughout Myanmar. Although ultimately beneficial, ceasefires can create new opportunities for such practises to take place. Communities in conflict areas are generally keen to see an end to hostilities, but there is also a fear that peace may result in a loss of their land rights.<sup>72</sup> This wariness is understandable – not only is there widespread historical experience of land grabbing, but Myanmar’s legal system currently fails to adequately recognise the land rights of those that practice shifting cultivation, variations of which are commonly used in many conflict and EAO-controlled areas – the 2012 Vacant Fallow and Virgin Lands Management Law is particularly problematic in this regard.<sup>73</sup> Additional major problems related to land ownership in ceasefire areas include many citizens’ lacking formal documentation to ‘prove’ their ownership, and refugees and Internally Displaced Persons (IDPs) being unable to demonstrate continuous occupancy of their land.<sup>74</sup>

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<sup>xxi</sup> For further discussion of land management and how to operate a cadastre, please refer to, Andrew Bauer et al, *Natural Resource Federalism: Considerations for Myanmar* (Yangon: Natural Resource Governance Institute, January 2018), p.26-32.

At the May 2017 UPC-21C it was agreed under the land and natural resource sector agreement that there would be a countrywide land policy that: is balanced and supports people-centred long-term durable development; is based on justice and appropriateness; reduces central control; incorporates human rights, 'international', democracy and federal norms; is transparent; prioritises the desires of local people and facilitates the main requirements of farmers. The agreement also specified that all nationals, regardless of gender, have the right to own and manage land in accordance with the land law; and that 'the nation' can withdraw land concessions that have been granted, but is not being worked on for its original purpose. Points one and two of the social sector agreement described the need for refugees and IDPs to be able to return to their place of origin, or settle in other places in dignity and safety; and for systematic programmes to be set up and implemented to achieve a long-term durable solution for refugees and IDPs, without discrimination and following international norms of human rights.<sup>75</sup>

### **Reform needs and options**

Citizens' land rights need to be protected, including recognising traditional forms of land ownership and management. The Karen National Union (KNU)'s land policy (first published in 2016) provides a useful example of how different forms of land use and ownership can be recognised by the relevant authorities. Unified land policies, including both formal and informal institutions and across different ethnic groups, should be a key component of the peace process. Currently, responsibility for various aspects of real property rights are scattered across 10 different ministries.<sup>76</sup> Technical support will be required to assist Myanmar's land amendment process, and this process should have a clear vision linking land reform and consolidation of the peace process.

Within a unified land policy, works needs to be done towards the restitution of previously expropriated land, including both land expropriated by private or government development initiatives and land expropriated in the context of Myanmar's civil conflict. Myanmar's 2016 National Land Use Policy specifically states that further attention is required to the needs of people who have, '...had to abandon the area where they previously resided due to illegal land confiscation, civil war, natural disasters or other causes.'<sup>77</sup> One option would be to set up a national level institution, such as a Myanmar Restitution Organization, to serve in a coordination role within the peace process.

### **Key takeaway points**

- The prevailing legal framework for land and property rights in Myanmar is unclear, which has contributed to widespread land grabbing throughout Myanmar.
- Myanmar's legal system currently fails to adequately recognise the land rights of those that practice shifting cultivation.
- Much work needs to be done to deliver the restitution of previously expropriated land in Myanmar, including land that was expropriated by private or government development initiatives, and land expropriated in the context of civil conflict.

## **4.5 Investment, trade, and business licensing**

### **Background and current situation**

Raising the level of investment and trade is key for raising productivity, generating economic growth and increasing employment. Unfortunately, for many decades Myanmar has struggled to generate much investment in most sectors of its economy, and for example over the period 2000-12 the rate of domestic investment was lower than in any other ASEAN country.<sup>78</sup> Myanmar ranks a lowly 171 out of 190 countries on the World Bank's Doing Business Index, which measures how easy it is to operate a legitimate business.<sup>79</sup> Many factors have negatively affected the investment climate including conflict,

political instability, corruption, insecure property rights, burdensome and ineffective business regulation, a badly functioning financial sector, poor quality infrastructure, and inadequate education of the population.<sup>80</sup>

Trade within Myanmar and between Myanmar and other countries has been limited, and much of the trade that has occurred has been unofficial/illegal.<sup>81</sup> Further, a lot of the trade and investment that has taken place in recent decades has benefited a small number of well-connected individuals at the expense of ordinary citizens. These problems have been particularly acute in Myanmar's conflict and post-conflict areas.

The influence wielded by all types of armed actors present in conflict and ceasefire areas often enables them to ensure that private companies that are linked to them receive priority in gaining permission for trade and investment. Having an uncompetitive licensing and tendering process tends to reduce economic efficiency as it is likely to encourage corruption and is unlikely to result in the best available company being awarded the license/tender. Further, the obvious unfairness of these practices can increase citizens' hostility and mistrust towards the Tatmadaw, GoM, EAOs, BGFs, and militias.<sup>82</sup>

Historically, many EAOs have tended to oppose investment in large infrastructure projects in the areas under their control, due to the fear that – without inclusive and equitable political and economic reform – it will expand GoM/Tatmadaw's reach into these areas and/or that local communities will suffer the downsides (such as relocation, environmental damage, forced labour), while receiving few of the benefits (such as increased income, or improved electricity supply).<sup>83</sup> Meanwhile, private companies operating in most sectors of the economy have been wary of investing in conflict or post-conflict areas due to the difficulties and risks involved, and government investment in these areas has also been low or non-existent.

Over the last few decades' investment in EAO-controlled and mixed-authority areas has primarily been directed towards natural resource extraction, particularly minerals and logging. These sectors generate relatively little employment, are associated with high levels of environmental damage, and in the case of mineral extraction rely on a finite resource that will run out someday.<sup>xxii</sup> One of the key challenges for Myanmar is to create an investment climate that promotes investment in sectors that are more sustainable and create higher levels of employment – such as agriculture, manufacturing and tourism.

Until the recent introduction of rules requiring that new investments be subject to an EIA (see Section 3.3), GoM's investment approval process typically failed to account for the social and economic costs that would result from the investment. Overall, the GoM's investment approval process was non-transparent, open to corruption, and unresponsive to citizens' needs. Additionally, few EAOs have had clear policies governing investment and trade in areas under their control, and their decisions on investment approval have tended to be ad-hoc and non-transparent. Approval decisions on smaller investment projects in EAO-controlled areas have often been made by local level decision-makers rather than EAOs' central offices, and joint investments and business projects have sometimes been made by local Tatmadaw and EAOs commanders even in the absence of a ceasefire agreement between their groups.<sup>84</sup> Details of the investment agreements made between EAOs and domestic and foreign investors are not well-known, but joint-ventures seem to have been used quite often. Joint-ventures between private investors and the 'holding companies'<sup>xxiii</sup> controlled by Tatmadaw have also

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<sup>xxii</sup> N.b. Further, although logging can be sustainable, with forests re-growing, the lack of effective forest management means that much although logging in Myanmar has been unsustainable, and many areas that previously held valuable forest resources are now totally depleted.

<sup>xxiii</sup> I.e. Myanmar Economic Corporation (MEC) and Union of Myanmar Economic Holdings Limited (UMEHL).

been extremely widespread.

Improved trade linkages between Myanmar's border areas and central plains have the potential not only to raise income and reduce poverty, but also facilitate trust building between different communities and ethnic groups as they interact more frequently and benefit from trading with one another. However, for these economic and peace building benefits to materialise it is essential that trade is conducted fairly and that local communities (not just local elites) benefit.<sup>85</sup>

Trade, investment, and business licensing were included in the economic sector agreement at the May 2017 UPC-21C. It was agreed to set up a law to prevent monopolies (Article two of the Basic Principles for Federal Economy), and to draw suitable plans and programmes for attracting domestic and international investment within states/regions and SAD/SAZs (Article two of Local Development Policies).<sup>86</sup> Prevention of monopolies is a positive step and ought to be expanded to address uncompetitive licensing and tendering processes more broadly.

### **Reform needs and options**

The factors that influence the level of trade and investment are numerous and varied,<sup>xxiv</sup> and it will not be appropriate to directly address all of these in Myanmar's peace negotiations. However, it would send a powerful positive message to Myanmar's citizens if the peace agreement includes a clear commitment that any businesses connected to Tatmadaw, EAOs and militias do not receive preferential claims to be partners for joint ventures on investment projects, and that all investment projects are allocated through a fair, competitive and transparent process. Similarly, the allocation of trade and business permits also needs to be made through a fair, competitive and transparent process.

Tax breaks for investors should not be used as a method to try and promote investment in Myanmar. Tax rates in Myanmar are already fairly low, and in business surveys tax rates are not ranked as one of the most severe barriers to business/investment.<sup>87</sup> Therefore, providing tax breaks is likely to make only a small difference to the amount of investment. Whereas, addressing the factors that are commonly mentioned as a major barrier to investment in Myanmar (e.g. education and training of the workforce; improved electricity supply; better infrastructure) requires significantly increased spending by Myanmar's Union and subnational governments, and increased tax revenue is required to finance this spending. Tax breaks will reduce the level of tax revenue that can be collected, and can facilitate corruption.

GoM's new EIA policy provides a useful framework for evaluating the expected environmental and social impact of new investments, and it is important that this policy is adequately enforced. Additional measures are also required to challenge corruption within government bodies responsible for making investment approval decisions, and to give citizens more voice in the investment-approval process.

The processing of gemstones within Myanmar can be encouraged by imposing a tax on the export of raw gemstones – such a policy is likely to be particularly effective in Myanmar for jade.<sup>88</sup> Other policies that can be used to promote trade in a way that benefits ordinary citizens include providing technical and vocational education and training, and for the government to have active labour market policies that help connect workers to new jobs.<sup>89</sup>

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<sup>xxiv</sup> Key factors that influence the level of investment in an economy (by both domestic citizens and foreigners) include: workers' knowledge and skills; access to finance; transport costs; energy cost and reliability; communication infrastructure; secure property rights, political stability and absence of conflict; the cost and ease of complying with laws and regulations; the level of corruption; tax rates.

### **Key takeaway points**

- Myanmar's poor investment climate has meant that the rate of investment has been very low, and most investment has focused on natural resource extraction, which generates relatively few jobs compared to other sectors and is associated with considerable environmental and social costs.
- All investment, trade, and business licensing and tendering processes need to be made competitive, with armed actors and crony businesses no longer receiving preferential treatment.
- Tax breaks for investors should not be used as a method to try and promote investment in Myanmar.

### **4.6 Budget transparency and corruption**

Section 4.3 highlighted the lack of transparency, and high levels of corruption around natural resource revenues in Myanmar. A lack of transparency and high levels of corruption also affect other types of revenues in GoM's budgeting. There are a lack of clear rules specifying whether expenditures should be recorded under GoM departments or state-owned enterprises (SOEs), and it seems that expenditures are sometimes shifted arbitrarily between them.<sup>90</sup> A lot of government spending is not recorded in the budget, making it difficult to allocate resources efficiently, and making it easier for corruption to take place. Such 'off budget' spending is typically channelled through 'other accounts', and the scale of this is vast – for example, for financial year 2011/12 the World Bank estimated that GoM operated over 13,000 other accounts in total, and that 44% of total budgeted revenue and 28% of total budgeted expenditure was channelled through these accounts.<sup>91</sup> Myanmar is currently ranked 136 out of 176 countries on Transparency International's Corruption Perceptions Index.<sup>92</sup>

Very little of the budget data that GoM collects is published, which limits transparency. Further, the budget of the Ministry of Defence (MoD) is highly confidential, with even the Ministry of Planning of Finance (MoPF) having very little information on MoD's revenues and expenditure. This is in notable contrast to Myanmar's other ministries, which are required to submit very detailed information on their spending to the MoPF.

Article 6 of the Basic Principles of Federal Economy agreed at the May 2017 UPC-21C, stated that transparency and accountability mechanisms will be established for all economic projects in Myanmar.<sup>93</sup> This is positive, but it is important that provisions specifically referring to transparency and accountability of all aspects of government budgets are added, not just for 'projects'.

### **Reform needs and options**

Budget transparency can be enhanced by: implementing clear rules that specify how revenues and expenditures should be recorded; bringing all government revenues and expenditure 'on budget'; requiring the MoD to submit much more detailed information on its revenues and expenditure to the civilian government; and making much more of GoM's budget data publicly available. Measures to increase transparency help citizens, civil society organisations (CSOs) and political parties to hold GoM accountable, and should help to reduce corruption. However, significantly reducing corruption also requires that active anti-corruption measures are taken, including strong punishment of corrupt civil service staff.

Improving transparency and fighting corruption also requires raising the power of the Parliamentary Accounts Committees (PACs) found in the Union and state/region parliaments. These committees should be a key mechanism for parliamentary oversight of all government revenues and expenditures, and reformed PACs have played important roles in tackling government corruption in other developing countries.<sup>94</sup> However, in Myanmar when the PACs wish to investigate an issue they have hitherto had

very limited ability to get ministries and the government administration to comply with their requests for information. This situation makes it almost impossible for the PACs to be effective.<sup>95</sup> It is important that PACs at both Union and state/region levels be given greater authority so that they can demand any information they require from ministries.

### **Key takeaway points**

- Myanmar's government budgets are beset by corruption and a lack of transparency.
- Much government spending remains 'off-budget'. Reform is needed so that all expenditure is recorded in the budget, and this information is published.
- The MoD (unlike other ministries) submits no detailed on its spending to the MoPF – MoD should be required to submit the same level of spending detail as other ministries.

## **4.7 Illegal trade**

### **Background and current situation**

Illegal (or 'black-market' trade) covers both the trade in illicit products (such as proscribed narcotics and endangered animal species) and the illegal trade of licit products. All types of armed actors in Myanmar, as well as various government officials, have long profited from taxing illegal trade passing through their areas. During the 1970s and 1980s armed groups operating along the Thai and Chinese borders were able to illegally tax imports of basic consumer goods that fed the huge black market created by the Ne Win government's failed attempt at autarchy. From the late 1980s onwards this revenue source dwindled, as Tatmadaw offensives brought more border crossings under GoM control, and GoM's restrictions on imports were relaxed somewhat. Although the opportunity to (illegally) tax imports of basic consumer goods declined, armed groups of all kinds were able to continue taxing exports of timber and gems, often in an unregulated/illegal fashion. And, the expansion of logging and mining activities from the 1990s onwards ensured that large revenues were available from these sources.<sup>96</sup>

Myanmar is a major producing country of illicit narcotics, being the world's second largest illicit producer of opium, home to numerous heroin refineries, and a large-scale producer of methamphetamines.<sup>97</sup> Shan State is the largest centre for illicit narcotic production and trade in Myanmar, and many vested interests are involved, albeit that certain Tatmadaw-backed militias and certain EAOs have been particularly prominent.<sup>98</sup> Numerous other armed actors are also involved in the trade to varying degrees elsewhere in Myanmar. However, it should be noted that some EAOs have adopted strong anti-drug trade and use policies, particularly in recent years.<sup>99</sup>

The large scale of illegal narcotics production in Myanmar has fuelled armed conflict within the country, and the exportation of narcotics is unpopular with many of the country's neighbours. Further, it has contributed to very high rates of drug addiction in certain parts of the country, with attendant negative social, health and economic impacts on drug addicts and other members of their communities. The easy availability of illegal narcotics and high rates of addiction in certain communities (perhaps most notably Shan and Kachin States) has severely damaged citizens' trust in the government, and some citizens from non-Bamar ethnic groups perceive this to be a deliberate strategy by the Tatmadaw/GoM to weaken their ethnic communities. This breakdown in trust is problematic for achieving lasting peace.

At the May 2017 UPC-21C it was agreed under the social sector to prevent and eradicate drug trafficking; and that such action should consider national, political, security and rule of law issues (point 4).

## **Reform needs and options**

There is a clear need for Myanmar to take more effective action against the drug trade, and given the involvement of armed actors in this trade this ought to be addressed in the peace negotiations. However, it is important to appreciate that opium production has long been an important source of income for many households living in upland areas, and strategies aimed at reducing opium production should be designed so that these households' income does not drop dramatically.<sup>100</sup> Unfortunately, the vast revenues that certain groups received from the illegal narcotics trade gives them a strong vested interest in blocking effective action against the trade, and this is a significant barrier to achieving peace.

As discussed in Section 4.3, there is a clear need to reform the trade in natural resources, so that revenues from activities such as mining and logging are recorded in government records, and appropriate taxes are collected. The same is true for the large trade in other licit goods that is currently unofficial/unrecorded.

## **Key takeaway points**

- Myanmar is a major producing country of illegal narcotics, most notably opium/heroin and methamphetamines. Shan State is the largest centre for illicit narcotic production and trade of Myanmar, and many vested interests are involved, albeit that certain Tatmadaw-backed militias and certain EAOs have been particularly prominent.
- The close connection between the illegal drug trade and the activities and interests of multiple armed actors strongly suggest that the drug trade ought to be addressed in the peace negotiations, but vested interests are likely to try and block effective action against the illegal trade.

## **4.8 Peace dividends**

### **Background and current situation**

Myanmar's ceasefires and peace process are more likely to deliver lasting peace if communities in (former) conflict areas experience a material improvement in their lives after the conflict is halted. Such 'peace dividends' can include a reduction in arbitrary taxation, improved public services, and/or improved opportunities for employment and income generation. GoM has recently increased its efforts to provide peace dividends in the form of economic recovery and social services in conflict-affected areas. For example, since 2015 the government has provided local development grants through the National Community Driven Development Project (NCDDP) in seven conflict-affected Townships. The project will expand to seven more conflict-affected townships in 2018. The State Counsellor also agreed to pay for food, education, and healthcare for 6,200 Shan refugees and displaced populations who are living at one of the signatory EAOs controlled areas.<sup>101</sup> However, these efforts are perhaps somewhat limited given the level of need.

In non-state controlled areas, EAOs have often provided a wide range of public services through parallel governance systems. Such service provision can include health, education, emergency relief, agricultural support, infrastructure, and justice.<sup>102</sup> GoM's expansion of service provision and state presence in conflict areas can be perceived as an attempt to control the EAOs' territories through 'development programmes', and if not handled carefully can intensify mistrust between citizens in ceasefire areas, EAOs, GoM and NGOs.<sup>103</sup>

As yet, peace dividends have not been comprehensively addressed in the discussions at the UPC and the UPC-21Cs. However, as previously mentioned in Section 3.4, the social sector agreement did address the need for systematic programmes to be set up and implemented to achieve a long-term

durable solution for refugees and IDPs. Further, international donors and GoM had been engaging with some non-signatory EAOs on a bilateral basis to try to provide programmes that can deliver peace dividends.

### **Reform needs and options**

Having effective and sensitive programmes to deliver peace dividends in conflict/post-conflict affected areas is highly desirable, and international donors should try to provide funding for such efforts. However, it is important to acknowledge that it is difficult to successfully deliver effective and sensitive peace dividend programmes, and to be aware of the risks that associated state expansion can pose to peace. It may be desirable to address the issue of peace dividends collectively through the peace process (including at the UPC-21Cs), or alternatively it may be more appropriate for international donors and the Myanmar government to negotiate these programmes on an individual basis with EAOs and community representatives from the populations in areas in which the EAOs operate.

Efforts to provide peace dividends ought to pay special attention to the needs of ex-combatants for reintegrating into peacetime society, and to supporting the return of IDPs and refugees. It is beneficial for communities to receive peace dividends fairly quickly after ceasefires are agreed, and therefore much of the work to deliver peace dividends should take place before a final peace agreement is achieved. Nevertheless, it is also desirable to include some provisions in the peace agreement itself to promote longer-term peace dividends.

### **Key takeaway points**

- Programmes intended to deliver peace dividends in conflict/post-conflict affected areas are needed, but are difficult to implement well. Those engaged in providing such programmes need to be acutely aware of the risks that state expansion can pose to peace.
- Efforts to provide peace dividends ought to pay special attention to the needs of ex-combatants for reintegrating into peacetime society, and to supporting the return of IDPs and refugees.

## 5. International Experience

In recent decades it has become increasingly common for peace agreements to include economic provisions – for example, an analysis of 27 peace agreements concluded between 1990-2006 found that all of those agreements included economic provisions, whereas this was the case for only half of those concluded between 1990-98.<sup>104</sup> We now have the opportunity to learn from many other countries' experiences with including economic provisions in peace agreements. However, we should avoid trying to 'copy and paste' from other countries, because which economic provisions are included and how is highly specific to individual country contexts. As previously noted in Section 2, relevant aspects of the country context can include, but are not limited to: the country's history, political structure, economic structure, natural resource endowment; combatants' ideological motivations; the country's recent conflict history; and the relative negotiating strength of different parties. It should also be noted that it is often not easy to clearly establish what impact the inclusion (or non-inclusion) of economic provisions had on the subsequent success or failure of a peace agreement. Bearing in mind these caveats, the remainder of this section presents evidence from: Colombia, Sudan, Burundi, Nepal, and Indonesia.

### 5.1 Colombia

Colombia's 2016 peace agreement between the central government and the Revolutionary Armed Forces of Colombia (FARC) includes an extensive range of economic provisions. These provisions reflect FARC's revolutionary leftist stance, which has a particular focus on the rights of rural peasants, and the centrality of economic reform to the FARC's ideological appeal and claims to legitimacy. The large scale of the trade in illicit narcotics (primarily cocaine) in Colombia, the close involvement of multiple armed actors in this trade, and the dependence of many rural farmers on coca production, resulted in significant attention also being given to the drug trade in the agreement.

Below are listed just the main economic issues in Colombia's 2016 peace agreement, and some of the key sub-headings under each issue – the agreement itself is extensive and includes many specific details under each sub-heading:

- Chapter 1 includes the following principles designed to achieve 'Comprehensive Rural Reform':
  - Structural transformation
  - Comprehensive development of rural areas
  - Equality and a gender-based approach
  - Well-being and quality of life
  - 'Prioritisation' – e.g. agrarian policy should particularly try to help the most deprived and vulnerable
  - A comprehensive approach to rural development
  - 'Reinstatement' – i.e. those who have been dispossessed or displaced should recover the property that they have lost
  - Land titling
  - The right to nutrition
  - Benefit, impact and measurement
  - Sustainable development
  - 'State presence' – i.e. the state must have a broad and effective presence in rural areas
  - Democratisation of appropriate use of and access to land
- Chapter 3 includes:
  - Identification of needs for the process of economic and social reincorporation for ex-combatants

- Guarantees for a sustainable social and economic reincorporation for ex-combatants
- Cessation of tax collection by non-state forces
- Tackling illegal mining, drug trafficking, extortion, contraband, people trafficking, money laundering
- Prevention of and fight against corruption
- Chapter 4 focuses on the 'Solution to the Illicit Drugs Problem', including:
  - Voluntary crop substitution programmes
  - Public Health and Drug Use Prevention Programmes
  - Tackling the production and selling of narcotics<sup>105</sup>

It is currently too early to say whether Colombia's peace agreement will deliver a lasting peace that meets the needs of its citizens. It is important to remember that the inclusion of detailed provisions does not necessarily mean they will be implemented, for example Guatemala's 1996 peace agreement between the central government and the left-wing Guatemalan National Revolutionary Unity armed movement included many detailed economic provisions, but many of the targets included in the peace agreement have not been met, and inequality and poverty remain very high in this country.<sup>106</sup>

As mentioned in Section 1, and in contrast to Colombia and Guatemala, in Myanmar there is not a sharp difference between EAOs' and the government's desired economic model.

## 5.2 Sudan

In 2005 the Comprehensive Peace Agreement (CPA) was signed between Sudan's central government and the Sudan People's Liberation Movement (SPLM). The SPLM sought far greater autonomy for South Sudan, and the CPA established: i) a six-year period during which the South Sudanese would have considerable regional autonomy and the opportunity to participate equitably in the national government; ii) the opportunity for South Sudanese citizens to vote in an independence referendum at the end of the six-year period.<sup>107</sup> The border between North and South Sudan straddles a large number of existing and potential oilfields, and land ownership there is highly contested and politicised.<sup>108</sup> Accordingly, and under intense pressure from foreign countries, the Sudanese government and the SPLM agreed to a resource revenue sharing agreement, under which oil revenues would be split 50:50 between North and South Sudan.<sup>109</sup>

The CPA also established a new set of economic governance institutions for North and South Sudan, including the: National Land Commission; National Revenue Fund National Petroleum Commission; Bank of Southern Sudan; Southern Sudan Reconstruction and Development Fund; National Reconstruction and Development Fund; and Multi-Donor Trust Funds for North Sudan and South Sudan.<sup>110</sup>

Implementation of the CPAs economic provisions was severely hampered by a lack of technical expertise and management capacity among South Sudanese officials working in the new economic governance institutions.<sup>111</sup> This highlights the importance of capacity in economic governance institutions, something that is particularly relevant for reform of natural resource governance in Myanmar (see Section 3.3).

Sudan's CPA did not solve the issue of exactly where the border between North and South Sudan lies, and which territory has ultimate ownership rights over the various oilfields. South Sudan voted almost unanimously in favour of independence in the 2011 referendum, but the country remains very economically undeveloped and has been beset by internal political conflict and disputes with neighbouring (North) Sudan.

### 5.3 Burundi

In 2000 the Arusha Peace Accords were signed between Burundi's central government and the National Council for the Defense of Democracy – Forces for the Defense of Democracy, which at the time was the largest opposition armed group operating in Burundi.<sup>112</sup> The primary focus of these peace accords was on reform to the political system and the army, with ethnic Tutsis seeking guarantees for their political representation, and ethnic Hutus seeking a reformed army that was not so Tutsi-dominated.<sup>113</sup> However, the accords also included a fairly detailed protocol on 'Reconstruction and Development'. This protocol includes general principles to guide economic reconstruction; and provides detailed economic activities to assist the return of IDP's and refugees, including the distribution of land to returnees and their property rights.<sup>114</sup>

Land issues were highly significant in Burundi – the country suffered from a land shortage, and in addition between 2000-2008 there were 260,000 returning refugees and IDPs that needed to be reabsorbed. Accordingly, it was important that the peace agreement tackled land issues.<sup>115</sup> However, these were not addressed in '... a realistic or implementable way', due to there being insufficient arable land available for Burundi's population, and the state being too weak to properly enforce the new rules on land ownership.<sup>116</sup> This indicates the importance of stakeholders in Myanmar's peace negotiations focusing on principles and policies that are realistic, given the country's socio-economic conditions and level of state capacity.

### 5.4 Nepal

Following a 10-year civil war, the Communist Party of Nepal-Maoist (CPN-M) and the Government of Nepal signed the Comprehensive Peace Agreement (CPA) in Nepal in 2006. This agreement consists of the following general principles on economic recovery: the protection and promotion of national industries and resources, the provision of land and economic protection to socially and economically backward classes, the severe punishment of corruption, and employment and income generation opportunities.<sup>117</sup> As in Colombia (see Section 4.1), the inclusion of these principles in the peace agreement reflect CPN-M's leftist stance, and that socio-economic inequality had been a major contributing cause to Nepal's Civil War. However, in contrast to Colombia's 2016 peace agreement, the economic principles included in Nepal's CPA were broad, general, and do not include any detailed provisions for implementation.<sup>118</sup>

The failure to include specific economic provisions in the CPA has had a number of side effects in Nepal, and seems to have contributed greater difficulties to the country's post-conflict transition. After signing the CPA, a general election was held, and the CPN-M won more seats than any other party, but did not have an outright majority. The CPN-M government then started the discussion on economic issues, but its proposed economic reform programme was opposed by the other parties. This friction threatened the success of the peace process and delayed agreement on a new constitution. Further, it caused a delay in providing economic compensation for conflict-affected populations, which probably contributed to increased political tensions and post-conflict violence.<sup>119</sup>

It is important to note that the CPN-M's parallel administrative structure continued to exist in rural areas after the signing of the CPA. For example, even though the CPN-M's leadership gave up its parallel administrative structure, some CPN-M's members continued to collect taxes in rural areas which contributed to an outbreak of violence again in late 2007.<sup>120</sup> Myanmar's EAOs have set up parallel

governance systems, through which they collect taxes and provide public services. It is therefore important to discuss the integration of the EAOs' governance system and the government's system in the peace process, and this is relevant for discussions on all/most of the five sectors outlined in Myanmar's NCA.

## 5.5 Indonesia (Aceh)

In 2005, Indonesia signed a peace agreement with the Islamist Free Aceh Movement (Gerakan Aceh Merdeka, or GAM) from Aceh province. This agreement ended almost 30 years of civil war, in which GAM sought self-determination for Aceh. The peace agreement granted a status of self-governance for Aceh province and includes specific provisions, including on economic issues. The Memorandum of Understanding between the Government of Indonesia and the GAM includes the following concrete economic programmes:

- Aceh is entitled to raise funds through external loans.
- Aceh has the right to set and raise taxes to fund its public functions. Aceh has the right to conduct trade and business both inside and outside the country and to seek foreign direct investment and tourism to Aceh.
- Aceh has the right to manage fishing in the territorial sea surrounding Aceh.
- Aceh has the right to keep seventy per cent of the revenues from all current and future natural resources extraction activities within and surrounding its territory.
- Aceh develops and administers all seaports and airports within its province.
- Aceh enjoys free trade with all other parts of the Indonesia.
- Aceh enjoys direct access to foreign countries, by sea and air. The Government of Indonesia commits that there will be transparency for the collection and allocation of revenues between the Central Government and Aceh by agreeing to an outside auditor verifying this activity and to communicate the results to the head of the Aceh administration.<sup>121</sup>

In the negotiations, GAM were able to get the central Indonesian government to grant them a very large share of natural resource revenues, including offshore reserves – this is quite unusual, as in most countries offshore reserves are exclusively controlled by the central government.<sup>xxv</sup> The commitment by both sides to have an independent auditor to verify natural resource revenues is a potentially useful mechanism for dealing with mistrust between national and subnational levels of government.<sup>xxvi</sup>

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<sup>xxv</sup> Other countries in which subnational governments have some control of share reserves include Australia, Brazil, Canada and Italy. See, Andrew Bauer et al, *Sharing the Wealth*, p.36.

<sup>xxvi</sup> Having annual independent audits of revenue collection and revenue transfers is a key recommendation of a global report on natural resource revenue sharing by the Natural Resources Governance Institute and the United Nations Development Programme. See, Andrew Bauer et al, *Natural Resource Revenue Sharing* (NRGI & UNDP, September 2016), p.77.

## 6. Conclusion

Myanmar's history and present situation means that certain issues related to political and security sector reform are particularly important for the peace negotiations, and these deservedly receive the most attention. However, a number of economic, social, land, and natural resource-related issues are highly pertinent to achieving lasting peace in Myanmar, and it is important that these are also addressed in the peace process. Effectively addressing key economic issues can help to address the root causes of conflict, and lay a foundation for a sustainable economic framework that benefits Myanmar's citizens. Conversely, if economic issues are not adequately addressed in the peace process, this can create instability and make conflict more likely.

The peace negotiations that have taken place in line with Myanmar's NCA have, so far, addressed broad principles under each of five political dialogue sectors (political, security, land and natural resources, social, and economic). The principles discussed potentially cover most of the important economic issues, but many of them are still quite vague. There is much work to be done to introduce more specific requirements to ensure that such principles can provide a firm basis for achieving the necessary economic reforms. However, there are currently some notable flaws and stresses in the peace process, including serious ongoing conflict and major issues around participation and inclusivity. It is unlikely to be a good idea to proceed too far with political negotiations while many major EAOs are not part of the process, and there is still such limited representation for many non-Bamar ethnic communities in the negotiations.

Myanmar is a highly heterogeneous country (e.g., ethnicity and languages; distribution of natural resources; geography, land types, and climate), and so is particularly suitable for many governance functions to be handled by subnational levels of government. However, despite some recent limited decentralisation in Myanmar, governance here remains far more centralised than in most other countries and there is a clear need for further decentralisation of many governance functions. A useful guiding principle for allocating most governance functions between different levels of government is the 'subsidiarity principle' – i.e., assigning functions to the lowest level of government that can efficiently perform them. Some functions of government can be best provided by levels of the state below states/regions and SAD/SAZs, albeit that political and administrative reform is required to make these local levels of government more accountable to their citizens.

Subnational governments in Myanmar already have control over a considerable range of tax instruments, and it does not seem necessary to decentralise additional general taxation powers. However, there is scope to assign additional taxation rights over mining and logging to subnational levels of government, albeit that certain elements of natural resource taxation can probably still be best managed by the Union government. Extensive natural resource extraction in Myanmar over the last few decades has brought few benefits but many costs to local people, and it is important that peace negotiations pay close attention to reform of this sector. In addition to assigning greater revenue rights to subnational levels, it is vital to reform revenue sharing, licensing, management, environmental and social monitoring, opportunities for citizen participation, and transparency mechanisms. Reducing the currently high level of corruption is essential in the natural resource sector, and also in other key areas of economic governance, such as government budgeting, and business licensing, investment approval, and government tendering.

Illegal trade is extremely prevalent in Myanmar -- both the trade in illicit products (such as prescribed narcotics and endangered animal species), and the illegal trade in licit products (such as gems and timber). This illegal trade has fuelled armed conflict within Myanmar, is problematic for Myanmar's

relations with other countries, and has resulted in highly negative social and health impacts within Myanmar. Although there are strong vested interests opposed to taking effective action against illegal trade, it is important that such efforts are made. However, it is important that strategies aimed at reducing opium production are designed so that household income of small opium producers does not drop precipitously.

In recent decades there has been large-scale land grabbing in Myanmar, and the legal system is currently highly deficient in protecting citizens' property rights. Further, the land rights of those that practice shifting cultivation are not properly recognised in law. Shifting cultivation is relatively common in conflict and EAO-controlled areas, and IDPs and refugees are particularly likely to have lost their land rights. Accordingly, peace negotiations need to ensure that citizens' land rights are protected, there is restitution of expropriated land to its original owners, and that IDPs and refugees land and housing needs are adequately addressed.

Policies designed to deliver peace dividends to communities in conflict areas have the potential to contribute to a lasting peace, and international donors should try to support such efforts. However, effectively delivering such programmes is far from easy, and considerable care needs to be taken to ensure that an expansion of the state does not intensify mistrust between local citizens, EAOs, GoM, and IFIs and NGOs. Efforts intended to provide peace dividends need to pay special attention to the needs of ex-combatants and returning IDPs and refugees.

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## Endnotes

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