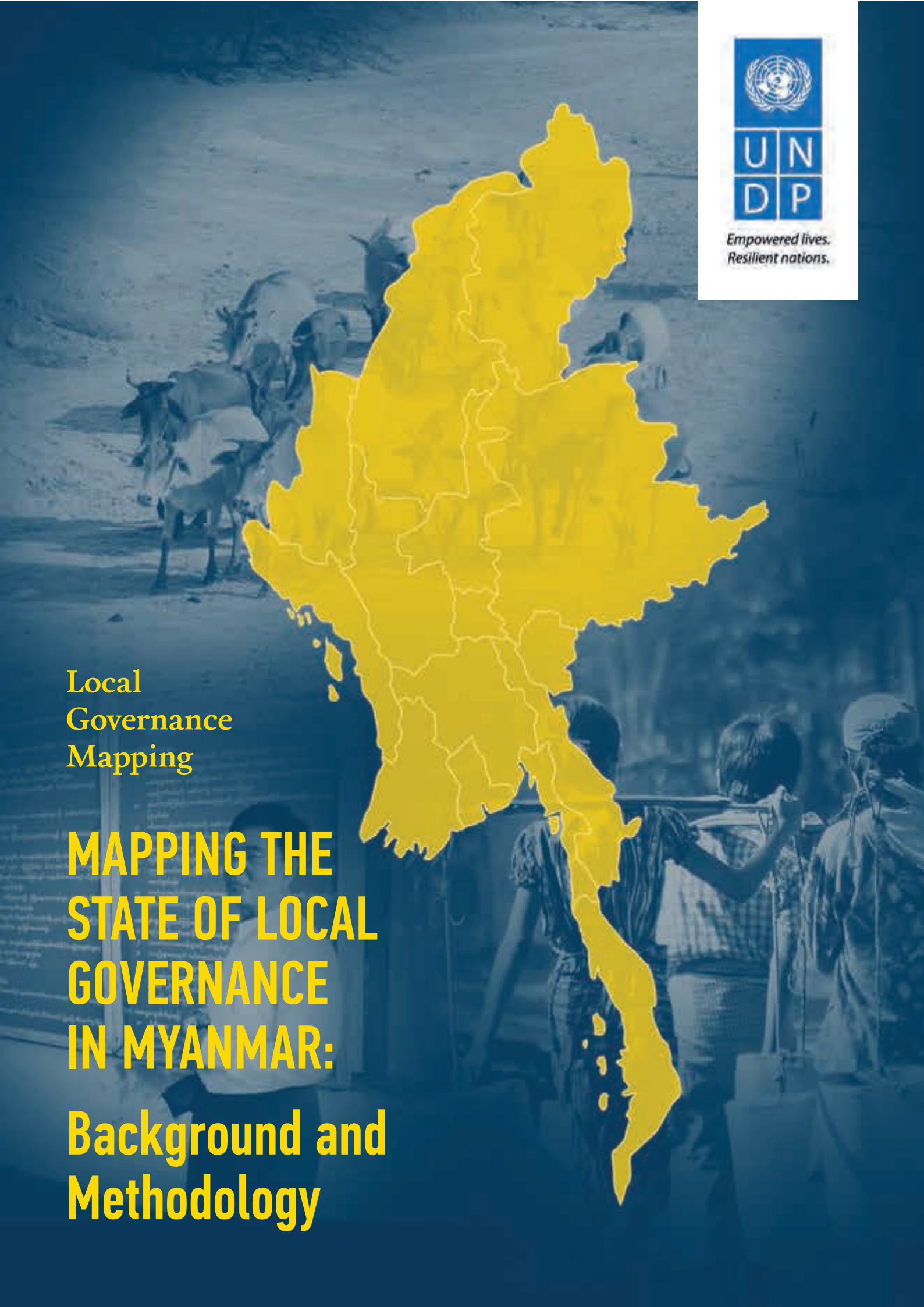

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# MAPPING THE STATE OF LOCAL GOVERNANCE IN MYANMAR:

## Background and Methodology

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Aung Htay Hlaing
Anki Dellnas
Shobhna Decloitre
Emilie Röell
Myanmar Survey Research

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Local Governance Mapping

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UNDP MYANMAR

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# Acronyms

| | |
|---|---|
| **AFPFL** | Anti-Fascist People's Freedom League |
| **BADF** | Border Affairs Development Fund |
| **BSPP** | Burma Socialist Programme Party |
| **CCVFV** | Central Committee for the Management of Vacant, Fallow and Virgin Lands |
| **CD** | Community Dialogue |
| **CRC** | Citizen Report Card |
| **CSO** | Civil Society Organisation |
| **CBO** | Community-Based Organisation |
| **CDF** | Constituency Development Fund |
| **DAO** | Development Affairs Organisation, also DMA |
| **DMA** | Department of Municipal Affairs, also DAO |
| **DoP** | Department of Planning |
| **DRD** | Department of Rural Development |
| **FAB** | Farmland Administration Body |
| **FESR** | Framework for Economic and Social Reforms |
| **FSP** | Frontline Service Provider |
| **GAD** | General Administration Department |
| **GoM** | Government of Myanmar |
| **GSA** | Government Self-Assessment |
| **ILO** | International Labour Organization |
| **Ks** | Myanmar Kyat |
| **LUC** | Land Use Certificates |
| **MCDC** | Mandalay City Development Committee |
| **MDRI-CESD** | Myanmar Development Resource Institute - Centre for Economic and Social Development |
| **MoAI** | Ministry of Agriculture and Irrigation |
| **MoHA** | Ministry of Home Affairs |
| **MoNPED** | Ministry of National Planning and Economic Development |
| **NLD** | National League for Democracy |
| **PRF** | Poverty Reduction Fund |
| **RDF** | Rural Development Fund |
| **SACs** | Security and Administration Committees |
| **SLORC** | State Law and Order Restoration Council |
| **SLRD** | Settlement and Land Record Department |
| **SPDC** | State Peace and Development Committee |
| **TA** | Township Administrator |
| **TDSC** | Township Development Support Committee |
| **TFAB** | Township Farmland Administration Body, also TFMC |
| **TLMC** | Township Farmland Management Committee, also TFAB |
| **TLO** | Township Land Record Officer (see SLRD) |
| **TDAC** | Township Development Affairs Committee, also TMuC |
| **TMAC** | Township Municipal Affairs Committee, also TMuC |
| **TMC** | Township Management Committee |
| **TMuC** | Township Municipal Committee, also TDAC or TMAC |
| **TPIC** | Township Planning and Implementation Committee |
| **TPO** | Township Planning Officer |
| **UEC** | Union Election Commission |
| **USDA/P** | Union Solidarity and Development Association/Party |
| **VPDC** | Village Peace and Development Committee (*Ya Ya Ka*) |
| **VERPs** | Village Elders and Respected Persons (*Na Ya Ka*) |
| **W/VTA** | Ward/Village Tract Administrator |
| **W/VTDSC** | Ward/Village Tract Development Support Committee |
| **YCDC** | Yangon City Development Committee |

# 1. Introduction

In recent years, Myanmar has gone through historic changes in its political, institutional and social organisation and the country has made important steps in its transition towards democratic governance. A new Constitution was adopted in May 2008 and the first general elections under the new Constitution (2008) were held in November 2010, followed by by-elections in April 2012. After decades of authoritarian rule, the new Constitution provided for a transfer of government authority from the military to elected, civilian structures and enunciates principles of democracy, the rule of law and fundamental rights. In addition, the Constitution introduced the separation of powers between the executive branch, the legislature and the judiciary, as well as between different tiers of government: the Union tier; the States and Regions tier, with the capital city forming a separate Union territory, and a number of Self-Administered units enjoying local autonomy in certain areas. However, a tier of local government was not introduced by the new Constitution.[1]

Nevertheless, local governance has become one of the key priority areas of reform for the incumbent government, which has been in place since early 2011. In a widely publicised and debated policy speech to the Union Legislature in June 2012, President U Thein Sein emphasised the important role of sub-national levels of governance – States/Regions, districts and townships – in the reform process and the economic development of Myanmar. This message has been reiterated and expanded since then on numerous occasions. In a similar address of the President in December 2013, he highlighted the responsibilities of lower levels of government,[2] and again in January 2014, he urged the various levels of government to work together towards a 'people-centred' plan to achieve the country's development goals.[3] The President holds monthly speeches on national radio to communicate new reform initiatives taken by the government and has frequently highlighted the importance of local governance in this regard.

This report serves as a background and introduction to the 14 State and Region "**State of Local Governance**" reports prepared by UNDP-Myanmar in collaboration with the General Administration Department (GAD) under the Ministry of Home Affairs. It aims to contextualise the state- and region-specific information provided in each of the individual reports and introduces a framework to look at local governance structures in Myanmar. It also aims to look at local governance comprehensively through various prisms such as historical context and legacies, the constitutional and legal parameters, and service delivery, participation and accountability. In addition, this report introduces and briefly describes the main institutions of local governance, as their specific composition, performance and interrelations are 'mapped' in the State and Region specific reports.

The overall objective of the Local Governance Mapping is to **generate a better understanding** of how governance structures at the local level currently function in Myanmar. It also seeks to provide more clarity on the nature, scope and role of local agents, with a **focus at the township level**, and how the recent reforms have influenced or changed the interactions between citizens and local authorities. Notwithstanding the absence of an overall strategic or legal framework for decentralisation, the government has undertaken several initiatives that are trying to increase the space for citizens in local decision-making. The mapping is an attempt to understand how these initiatives have been perceived by local citizens and what progress has been made in terms of improved service delivery, as well as enhanced transparency and accountability.

1. There are 330 townships, each with one or several towns, approximately 2,781 wards, 13,714 village tracts and 64,910 villages in Myanmar.
2. Address delivered by President U Thein Sein at the meeting on reform to improve management and administrative capacity of the government. New Light of Myanmar. 26 December 2012.
3. Union Government to draw people-centred plan to achieve goals: President U Thein Sein. New Light of Myanmar, 6 January 2014.

The 'mapping' has been carried out throughout 2014. In July 2014, two pilot studies on the State of Local Governance in **Mon** and **Chin** State respectively were released. This was followed by 5 reports for the second phase covering **Ayeyarwady** Region, **Bago** Region, **Tanintharyi** Region, **Kayin** State as well as **Kayah** State. By early 2015, the mapping was finalized in all 14 States and Regions, and the reports were launched at the Myanmar Good Governance Forum in February.

Complementary to these State and Region-focused mapping reports, this report provides a general introduction. Following this **Chapter 1**, that lays out the broader policy and reform context in which local governance reforms take place, in **Chapter 2**, it describes the historical development of local governance arrangements in Myanmar as well as the current constitutional framework within which it operates. In **Chapter 3**, on institutions of local governance and people's participation, the report gives an overview of the present local governance structure as such with a particular focus on the space for interactions between citizens and township administrations. The voice of citizens and their ability to be heard and influence local decision-making are crucial to the development of a consistent and predictable local governance framework. The involvement of citizens in governance is also an important factor for an effective and inclusive delivery of services, which is the focus of **Chapter 4**. The mapping has looked into three sectors - public health, basic education, and drinking water supply - to map to what extent and how citizens have been involved and engaged. The mapping thus seeks to take stock of the most important government initiatives taken so far and what they mean for people on the ground. **Chapter 5** provides an overview of aspects of transparency and accountability, which were also examined in each of the State and Region mapping exercises. Finally, **Chapter 6** describes how the Township Administrators interact with the different committees with space for participation, how the planning is done with regard to the discretionary funds and how projects are implemented under those funding modalities, providing examples from the States and Regions. Finally, the expectations of the local governance mapping and the possible next steps for further reform are summarized **Chapter 7**. The Annexes contain a synopsis of the design behind and the methodology used during the country-wide local governance mapping studies and surveys conducted by UNDP and the Ministry of Home Affairs as well as a full list of townships covered for the mapping, an English translation of the Presidential Notification 27/2013, and a glossary of Myanmar local governance terms.

## 1.1 Local Governance and Decentralisation in Myanmar

Worldwide, a great variety of models exist on how to arrange local governance. Countries also differ by whether they use a uniform system for all areas, or allow a degree of diversity within, including varying degrees of local autonomy. Many countries, including Myanmar, practice different systems in rural and urban areas. Many countries protect an autonomous role for local governments through constitutional provisions, or special local government acts and adhere to a concept of subsidiarity, which means that matters should be handled by the lowest possible level of government that can take care of them effectively. Such systems often enshrine lists of responsibilities in the Constitution. Myanmar follows another model where local governance is essentially an extension of superordinate tiers of government, namely the Union and the State or Regional level.

Townships are the only type of government administrative unit that cover the entirety of the national territory and form the basic units for administration, service delivery and, as electoral constituencies, for political organizations. As municipal matters fall under the legislative and executive competency of States and Regions, a distinct legal sphere of municipal governance has emerged, but it remains integrated into the overall state structures which thus function as

hybrid institutions at the township level. The system in place is the result of historical legacies and has evolved over time through a patchwork of reforms and arrangements, which often makes it difficult for outsiders, as well as local governance actors and citizens alike to clearly understand responsibilities, duties and accountability lines. For most of the time, a hierarchical and top-down chain of command system inherited from both colonialism and decades of military influence on government prevails, but will increasingly be affected by growing demands for elements of representation, downward accountability and public participation. The local governance structures of Myanmar find themselves in this context that is often enough characterized by a degree of confusion and uncertainty, which any analytical overview must also take into account.

Since the establishment of the State and Region governments under the provisions of the Constitution (2008), operating under the direction of the Chief Ministers; and the election of State and Region legislatures (*hluttaws*), certain legislative and administrative powers have been devolved on the basis of constitutional guarantees to these new tiers of government. In essence, this entails a step towards decentralisation to the Region/State levels, even though at the local level the erstwhile basic structure of state administration in the form of districts, townships, village tracts and wards and villages has essentially been retained even after the entry into force of the new Constitution. However, a number of steps have been taken introducing elements of participation and mechanisms for people to interact with local administrations in a more transparent and accessible manner. These will be described in the following Chapters and form the analytical basis for the local governance mapping carried out in the 14 States and Regions.

Decentralisation can take many forms, and is usually a combination of de-concentration, delegation and devolution (see Box 1). For the time being, decentralisation in Myanmar to sub-national levels is for most part best characterised as de-concentration with some elements of delegation, while elements of devolution are still at a rudimentary stage, and then also only at the State and Region level, rather than the local (township) level.

### Box 1: De-concentration, delegation and devolution

**De-concentration** occurs when the central government shifts responsibility for implementing a policy to its field offices while retaining complete administrative control. This transfer alters the geographic and vertical distribution of authority, but responsibility and power remain at the centre. De-concentration does not transfer actual authority to change budgets or decisions made at higher levels to lower levels of government. This approach is often referred to as the weakest form of decentralisation has been followed mainly in the field of health and education policy. Accordingly, in Myanmar, the Union Ministries of Health and Education have placed officers in each of the townships to oversee implementation of the Ministries' policies and responsibilities. Delegation requires the central government to refer decision-making and administrative responsibilities for various public functions to another level of government. This however requires a separate tier of government to exist in the first place. **Delegation** features a principal-agent relationship, with the central government acting as principal and the local institution acting as agent. This aptly describes the limited transfer of administrative and fiscal powers to lower levels of government in some areas. Some administrative and fiscal delegation from Union to State and Region Governments has taken place for specific ministries. **Devolution** represents the strongest form of decentralisation and involves the constitutional or statutory transfer or shift of a portfolio of authority to regional or local governments. Depending on the degree of devolution, the central government might interfere only to a limited extent, if at all.

In federal systems, devolution is constitutionally prescribed and guaranteed. In Myanmar, devolution has been foreseen, to an extent, through the establishment of the sub-national governments and legislatures across the 14 States and Regions, as well as six Self-Administered Areas. In its Schedule Two the Constitution lists the areas where States and Regions have legislative powers and are assigned with the executive and administrative authority over the same areas, combined with certain autonomy to raise and levy taxes and fees.[4] For the time being, however, and as will be described in more detail below, these areas are restricted to quite narrowly defined specific responsibilities, with the important exception of municipal matters, which now fall under the States' and Regions' powers.

The degree of devolution matters for local governance in a number of ways. As will be discussed in later chapters and as is also documented in State and Region Mapping Reports, the fact that education and health are both sectors falling under the legislative and executive (administrative) responsibility of the Union has a major impact on the form of public participation and accountability in these sectors locally as well as the manner in which local governance institutions operate and play their cards.

### Box 2: Political decentralisation, fiscal decentralisation and administrative decentralisation

Decentralisation can also be variously described as political, fiscal and administrative decentralisation. In Myanmar, **political decentralisation** is the most advanced with the formation of States and Region *hluttaws* (directly elected legislatures) and governments as a major achievement, even through the States and Regions remain somewhat integrated with the Union in some important ways. For instance, the heads of the State and Region Governments, the Chief Ministers, are appointed by the Union President, and the States and Regions do not have much room for following their own political agendas. However, the establishment of *hluttaws* in the States and Regions has created new opportunities for debates and discussions. In several States, regional parties with ethnic connotations have gained significant representation.

Some **fiscal decentralisation** has also taken place, notably by the transfer of grants and/or loans from the Union level alongside separate funds for local development. States and Regions also have their own revenues as per constitutionally listed sources of income. Among the development funds, the Poverty Reduction Fund and the newly created Constituency Development Fund may be the most significant.[5] While the volume of decentralised funds remains limited, it should however be noted that they have been growing fast: Still, the overall proportion remains very small - with expenditures by the State/Region at just 6.7 percent of total public expenditures (Ks 832 billion of the total budget of Ks 12,483 billion) in 2012-13[6] this figure rose to 11.8 percent in 2014-15.[7] With only about 3.6 percent of the Union budget earmarked to be allocated to State/Regions to cover their expenditures in the 2013-14 fiscal year, their own revenues cover the remainder of total

4. Schedule Three has special provisions for Self-Administered Areas in this regard, which are treated as a third order of government but only exist in six areas within one State (Shan) and one Region (Sagaing). The areas are Naga in Sagaing Region, as well as Palaung, Kokang, Pa-O, Danu and Wa in Shan State. All are called Self-Administered Zones, except Wa, which is referred to as a Self-Administered Division. There does not seem to be any substantive difference in their powers or institutional structures, however. One significant difference is that a Self-Administered Division is subdivided in districts, then townships, whereas Self-Administered Zones have only townships.
5. Nixon, Hamish and Joelene, Cindy; Fiscal Decentralisation in Myanmar: Towards a Roadmap for Reform. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, July 2014.
6. Ministry of Finance, Budget Department. Cited in Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar: Towards more child-focused social investments, UNICEF 2013. This figure includes State/Region expenditures of own revenues.
7. Nixon, Hamish and Joelene, Cindy, Fiscal Decentralisation in Myanmar: Towards a Roadmap for Reform. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, July 2014.

expenditures by State and Regions.[8] Myanmar's constitution grants sub national governments a series of guaranteed own revenues, but acknowledges the need for redistribution, and provides for a Financial Commission (Section 229). But the Constitution does not provide the criteria or formula on the basis of which such re-distribution decisions shall be made nor does it refer to a law that would regulate such criteria.

**Administrative decentralisation** is not yet very strongly developed. States and Regions are constitutionally entitled to set up their own services but have not done so, and continue to operate with the centralised administrative structure they inherited from earlier unitary eras. This also results in some State/Region ministers operating without budgets and dedicated departmental support, and unclear lines of accountability.[9] For example, the State/Region health and education departments might be supervised by the State/Region Minister of Social Affairs, but the departments are still accountable to their respective Union line ministries at the centre. The line ministries are also handling most human resource management.[10] Government officers in Myanmar belong to a single Civil Service, which is centrally administered, coordinated and trained.

The key positions of government at the local level, from the Secretary of the Region/State government, down to Districts Administrators and Townships Administrators not only all belong to this Union Civil Service but are also all officers of the General Administration Department under the Union Ministry of Home Affairs. Township officers therefore all belong to a superordinate ministry at the Union level, with the exception of those in charge of municipal matters, as these are a State and Region power only. Only Yangon and Mandalay city corporations have their own bodies of employees but these are not involved in general administration, but only take care of specific municipal functions and services. Below the townships, Village Tract and Ward Administrators are assigned certain state functions, but they are not civil servants and are organisationally accountable to the Township Administrators, despite the fact that they have been elected. It is this relative absence of administrative decentralisation that is one of the most defining features of local governance in Myanmar at present, which will continue to determine any future attempts of advancing decentralisation and expanding the role of local governance institutions.

Both the 2008 Constitution as well as the Union Government's main reform agenda, the *Framework for Economic and Social Reforms* (FESR) 2012-15, are explicit regarding a gradual transfer of political, administrative and fiscal responsibilities to the newly established State and Region governments, but do not extend to the wholesale transfer of responsibilities to local-level institutions or even the establishment of a local government as a third tier of government in Myanmar. The FESR mentions that the government is 'considering options for further decentralisation in the medium term'.[11] It is not clear whether this refers to a possible additional delegation to State and Region governments by transferring responsibilities and related functions that are presently under the responsibility of the Union-level ministries (such as education and health), or whether this would (also) include a permanent transfer of responsibilities to township-level institutions or the establishment of a

8. With the beginning of the fiscal year on 1 April 2012, States and Regions began to collect taxes and fees as per their constitutional entitlements (Schedule Five of the 2008 Constitution), and have subsequently been able to increase their incomes from these revenues beginning with the budgets for the fiscal year 2013-14.
9. For a detailed description of the ongoing decentralisation process, especially from the Union to the state/region level, see: Nixon, Hamish et al., State and Region Governments in Myanmar. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, September 2013. For an analysis of the decentralisation within the wider democratisation process see: Brand, Marcus: Democratic Governance in Myanmar: Situation Analysis. UNDP, September 2013.
10. Ibid.
11. Framework for Economic and Social Reform: Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan. Draft, January 2013. Page 33.

local government system with political, fiscal and administrative responsibilities. The fact that the initiative for adopting Municipal Laws and setting up partially-elected Township Municipal Committees in all 14 States and Regions also came from the Union President may illustrate the central role the President has been playing in further advancing decentralisation in Myanmar.

The election of Village Tract/Ward Administrators (VT/WAs) in late 2012 and early 2013 may also be seen as a step towards locally-elected bodies that could be considered representatives of the local community. In many townships elected VT/WAs consider it part of their role to take up community concerns to the Township Administrator. However, rather than creating a downward accountability for the TA, the VT/WAs to a large extent remain subordinate to and are supervised by the TA. In addition to the election of the VT/WAs, recent reforms have also instituted a number of partially elected support committees at the township and village tract/ward level with roles in planning and implementing development projects, whose functioning, outreach and relevance in the local governance framework were mapped in the course of this study across the country. None of these mechanisms are intended to be or can be considered equivalent to 'local self-government' in the sense of international standards and practice in this regard.[12] The emerging practise of broader consultations, a certain degree of community participation and openness could however prepare the ground for more systemic local governance reforms.

The focus of the local governance mapping is the **township level**. The township represents the main interface between the public service delivery system and its people. It is from the country's 330 townships that the vast majority of basic public services are administered (albeit in a majority of cases by central government de-concentrated departments), and it is the lowest level at which public administration and service delivery takes place. Townships are also the basic units of political representation at the various levels of legislatures, as they form the constituencies for the Pyithu Hluttaw, and are either combined or broken up in constituencies for the Amyotha Hluttaw, while for the State and Region Hluttaws, each township is broken into two constituencies to elect representatives.[13] Each township therefore has 4 or 5 elected representatives at the State/Region and Union level. The emerging relationship between these elected members and the state administration at township level, as well as the local communities, is also an important factor to be considered as part of local governance reform agenda.

Will the on-going local governance reform process be limited to an upgrading of the existing township administrative structures through more operational adjustments and improvements of capacities? Or, is this the first step towards a more structural transition, preparing the ground for more fundamental transfers of political and fiscal power to lower-level government institutions, requiring fundamental changes such as the establishment of a separate sphere of government at the local level, governed by an elected council? Are the incipient forms of municipal governance precursors of a more genuine urban self-government that would include elected executives and representative councils based on universal franchise? Will the historical forms of municipal self-governance be revived in the bigger cities and become a model for others to emulate?[14] Will there be room for an asymmetrical approach, providing for different governance structures for urban

12. For some references to international standards, see Chapter 6.
13. Only Naypyitaw Union Territory, which consists of 5 townships, does not have a legislative body equivalent to the State and Region Hluttaws. Its governance structures are entirely appointed by the President, rather than elected. The Naypyitaw Union Territory consists of the city proper, which has four wards, and eight surrounding townships. The President forms a Naypyitaw Council; appoints persons meeting the prescribed qualifications as Chairperson and members of the Council. The Head of General Administration Department of Naypyitaw is ex-officio the secretary of the Naypyitaw Council. The General Administration Department of Naypyitaw is the office of the Naypyitaw Council.
14. The 2014 election to the Yangon City Development Committee (YCDC) could be taken as signs of an asymmetrical approach allowing innovations that are not rolled out simultaneously.

and rural areas, or allowing different forms and degrees of decentralisation in different parts of the country? How much room for diversity will the 2008 Constitution provide to allow States and Regions to proceed at their own pace, and adjust governance models to their own specific circumstances?

These are all questions for which there is currently no convincing answer, as the process of governance reforms remains in flux and an informed debate on these matters is only beginning to take shape in Myanmar. It should not be underemphasized that the country remains in the midst of a fragile process of moving from armed conflict through ceasefires and lasting peace on the basis of a settlement of long-standing ethnic grievances. While the conflict dimension is only abridged here, the local governance mapping sought to reflect these dimensions in each of the 14 State and Region studies presented in separate reports. Likewise, the further steps towards genuine political pluralism and full democratization are as yet unpredictable and contingent on the successful holding of the upcoming elections and a smooth transition from the outgoing government to the next.

At this juncture, there are only few government initiatives along with legal reforms and new mechanisms and practices that create some space for local participation and improve the ability of government to be more responsive to the "voice" of the people. While the role of the township (including its subsidiary structures such as village tracts/wards and villages) as the lowest level of administration is gradually changing in practice, the basis status of the township as an extension of the state and central state administration has not fundamentally changed.[15] It is in this context that the departments situated in the townships across the country are tasked to improve basic local service delivery while playing a new developmental role with the people at the centre of the process.

15. Accordingly, the question whether a township is a juristic person that can hold property in its own name or is able to enter contractual obligations and who would be authorised to enter such obligations on its behalf is for the time being subject to much confusion and uncertainty.

# 2. Historical legacies and constitutional framework for local governance in Myanmar

## 2.1 Historical context

### *2.1.1 Introduction*

In the distant past, communities organised themselves according to local customs and cultural traditions, and central state power exercised by royal courts only marginally penetrated daily life. During the colonial period, however, the British expanded their bureaucratic-administrative system throughout the core areas in the lowlands of British Burma, while leaving the frontier areas largely to their own traditional forms of governance by finding arrangements with local tribal chiefs and clans. The administrative structures they established essentially focused on controlling the local population and extracting human and natural resources. Gradual and tentative efforts to provide more space for participation, introduced in the late 19th century following similar developments in British India, never changed the fundamental relationship between the then colonial state and the people. After independence, the new state authorities basically took over the remnants of this colonial system, alongside its underlying features which, emphasized top-down hierarchies and a predominance of the centre over the periphery.

Myanmar being a large and geographically as well as ethnically diverse country, some form of decentralisation is unavoidable when organising the state. Given the diversity of its population, some form of devolution, whereby selected political, fiscal and administrative functions are transferred to sub-national levels of governance, appears to be a logical choice. It has also been pursued in one form or another ever since the formation of Burma as a separate province of the British Empire in the 1930s. The first post-colonial constitution in 1947, followed by various initiatives in the 1950s also attempted to reflect that to some extent. And yet, for several decades, and until recently, Myanmar has been governed in a highly centralised manner, with elements of de-concentration, but with most decision-making powers retained at the very top. The strong military influence over the state for decades has also contributed to this situation. When Myanmar/Burma was formed as an independent country, federalism was one of the options frequently discussed among its political and ethnic community leaders, but despite promises and some efforts to establish a devolved system of governance, federalism was never fully embraced.

Myanmar's Constitution 2008 largely follows the same logic, and lays once more but in a more explicit manner the foundation for a devolved structure of government – as it establishes 14 States and Regions with elected legislatures and governments alongside certain constitutionally guaranteed legislative and executive powers, and also otherwise displays some of the constitutional characteristics of a federal system.[16] However, with the devolution of legislative powers being rather modest, the culturally-determined mind-set of adhering to a hierarchical chain of command, and the influence the unitary and centralised military maintains over the civilian structures mean that the principles of governance typical for a unitary state are still firmly entrenched. Moreover, as far as decentralisation was concerned, at the time the Constitution was drafted much of the focus was on the States and Regions and relatively little attention was explicitly given to districts, townships or lower levels of governance. Yet, despite this relative silence by the Constitution on local governance and as the 14 *State of local governance reports* reveal with details, a number of significant changes with regards to local governance at the level of townships and below can be observed.

16. This is discussed in more detail in Brand, Marcus, "A Bird in Hand…", 2012. Published in English and Myanmar language by the Forum of Federations in 2013.

In order to be able to put findings from the countrywide mapping into a broader context, it is necessary to be familiar with the experiences of past decentralisation efforts and governance arrangements at the local level during previous periods of Myanmar's history. The major periods that have shaped local governance in this regard are (i) the later British colonial period, (ii) the post-independence parliamentary period, (iii) the period following the 1962 military coup and the establishment of Burmese Socialism, and (iv) the renewed military rule following the 1988 coup until the transfer to civilian authorities in early 2011. Each of these periods has left certain legacies that still shape and inform current structures and attitudes. In general, and as evidenced by various relevant legal documents,[17] the extent of decentralisation to the local level has seen a series of significant ups and downs over the past century all of which have left certain traces in the way local governance is organised and perceived today. Understanding these legacies, which persist to the present day, is important as they will need to be considered when undertaking further and even more far-reaching reforms for local level of governance.

### *2.1.2 The colonial period (from 1826 to 1947)*

The British colonial era began in different parts of Burma at different stages, as early as in 1826 in some parts and in others in 1853 or as late as 1886, and lasted until 1947. Originally, Burma was administered as a part of British India, but became a distinct province of the British Empire in 1937, with the **Government of Burma Act** serving as a proto-Constitution for the emerging institutions of the country, including an elected assembly. The policy of government, as formulated in the legislature and worked out in the Secretariat, the executive branch of government, took effect through a chain of executive service offices distributed throughout the country.

The administrative machinery that evolved gradually under British rule was a pyramidal territorial organization comprising Commissioners, Deputy Commissioners, Sub-divisional Officers, and Township Officers in charge respectively of division, districts, subdivisions, and townships.[18] Each of these officials was responsible for general administration within the area of his jurisdiction, and was the local representative of the central government. Along these were numerous departmental officials performing special functions, whose sphere of work might or might not coincide with the units of general administration. Ordinarily there was a representative at each district headquarters of every specialist service which came into contact with the local people. The challenges of horizontal coordination this structure resulted in were already well understood at the time. A description of these difficulties from J.S. Furnivall, who served in the government of Burma both before and after independence, is worth quoting in full:

> *" The Deputy Commissioner, as the local representative of the Government, was assumed to exercise a general supervision over the work of the specialist officers, and they were expected to keep in touch with him, but they were responsible directly to their own departmental superior and not to the Deputy Commissioner. Thus any formal coordination between the activities of various services was possible only at the headquarters of the Government. The specialist officers knew their own special job but in*

17. Possibly relevant laws from earlier periods are: (1) for the colonial period: the Municipal Act No. 7 of 1874, District Land Tax Act of 1880, Municipal Act No. 17 of 1884, the Upper Burma Municipal Regulation of 1887, the Municipal Act No. 3 of 1898 (towns), the Rangoon Municipal Act of 1922, the Burma Rural Self-Government Act of 1921 (District Councils), the Local Authorities Suspension Act of 1946; (2) for the post-independence period: the 1951, 1953 and 1954 Municipal Acts, the 1953 Democratic Local Government Act (No.28), the 1961 Democratic Local Government Suspension Act; (3) for the socialist period: the 1964 Local Government Suspension Act and the 1984 Municipal Law; and (4) for the SLORC/SPDC period: the 1990 Yangon City Development Law, the 1992 Mandalay City Development Law, the 1993 Township Development Committee Law (Act No.4), the 1994 Government Order 15/94 (Ministry of National Races and Border Areas Development), the 1994 Ministerial Standing Order on Powers Given to the Township Officer, and the 1995 Departmental Instruction for Auctions of Service Licenses.
18. For a detailed description of this system, see J.S. Furnivall, The Governance of Modern Burma (1961).

*most services they knew little of the people, and they had no official concern with the affairs of other specialist services in the same area. Hence there was a strong tendency to departmentalism. Both the lack of coordination and departmentalism were aggravated by the frequent transfer of all these officials, and this was a great obstacle to efficiency.*[19]

The primary function of the **Deputy Commissioner** and of all his subordinates in the administrative service, including the **Township Officers**, was to maintain law and order. Although he was nominally responsible for promoting the welfare of the district, he had little time to pay much attention to this branch of his duties. This main duty was reflected down to the village tract and ward level, where village tract and ward administrators were instituted in the late 1800s and whose mandate and powers were laid down in the Village Tract and Wards Act of 1907 ("Village Act"), which in essence remained in place until its amendment by the Union legislature in 2012, with some of its provisions surviving to this day. It was that legislation the established the position of Headman, the precursor of today's Village Tract Administrator. The original Village Act, rather than providing for local self-government, was essentially a tool for exerting strict control over the local population through a variety of measures that would remain in place for another hundred years (see Box 3).

On the whole, this piece of colonial legislation in effect systematically curbed freedoms and violated fundamental rights, provided complete freedom from accountability to the authorities, divided powers between the state and its citizens in exceptionally unequal terms, and created much legal uncertainty for common people. Not only was it not a legal framework for local self-government

### Box 3: Examples of provisions in the Village Act 1907

- Village headmen, who also served as the Chairmen of the Village Committee, were appointed by the central government, as an "election" by the villagers could be overruled by the central authorities. The central authorities also appointed a village policeman.
- The Village Act empowered the Headman to investigate and report anything or anyone suspicious in the village. This also included the power to search and arrest "any person found lurking within the limits of the village tract who cannot give a satisfactory account of himself". He could also arrest and fine people holding public events such as puppet shows and pony cart races not approved in advance by the central government authorities.
- The duties of the Headman included "to collect and furnish guides, messengers, porters, supplies of food, carriage and means of transport for any troops or police posted in or near or marching through the village-tract or for any servant of the Government travelling on duty" except from people not belonging to the labouring class and accustomed to do such work.
- The Headman also had the responsibility to carry out birth and death registration, and take measures for the cure or prevention of contagious diseases, prevention and extinction of fires, slaughter of animals, and general sanitation.
- The Act also contained a lengthy section on the "duties of villagers" corresponding to the headman's responsibilities. Arrivals and departures of people non-resident in the village were to be reported within four hours, punishable by fines and imprisonment.
- The Act also foresaw that except the possibility to appeal to the central government (the Commissioner), an order made under the act was final and could not be liable to be contested by suit or otherwise, and no complaint against a headman or member of a village committee or rural policeman of any act under the Act could be entertained by any Court, unless by the central government.

19. Furnivall, Governance of Modern Burma.

(which it was never meant to be, but which could have allowed local communities to arrange some local affairs for themselves), it also shaped the overall relationship between (primarily rural) communities and state power in a way that provided for systematic human rights violations and a fearful and antagonistic relationship with the authorities.[20]

Maung Maung describes the situation as follows: "In the British days, the Government officer, or even clerks and police constables, represented the British Crown and unchallenged authority. The villager had fear and respect for the headman who, in turn, would fall on his knees before the most junior Township Officer and load the officer's cook with baskets of eggs or tins of cooking oil and the end of the visit. Thus it went, step by step, up the hierarchy."[21]

The introduction of village headmen forged a single chain of authority and command from the Chief Commissioner down to the village headman, thus putting an end to any local autonomy. Local government was merely a (de-concentrated) extension of central government. After 1924, however, villages were given a certain voice in the appointment of the village headmen and a small committee of elders was created to assist him in the trial of petty cases that formerly he had disposed of himself.[22]

Already during the colonial period there was a divergence of local governance arrangements between urban and rural areas. Efforts to reform the colonial system of local governance in urban areas across British India already started in the late 19th century, where the early form and structure of municipal bodies was adopted in 1882.[23] In India, the structure of municipal bodies such as Municipal Corporations, Municipal Councils, and Town Area Committees has essentially remained the same since then.[24] The original concept of British colonial administration was that the administrator was the representative of the colonial power, not the idea that it operates under a council-manager system whereby the executive would be accountable to elected representatives.

In Rangoon (Yangon), representative Municipal Committees were first constituted by law in 1874, and became partly elective in 1884. They were reorganised under the **Municipal Act of 1898**.[25] Town committees with less extensive powers were constituted for the smaller towns. With the **Municipal Act of 1922**, the Municipal Committee of Rangoon was endowed with a higher status as the Rangoon Corporation.[26] Municipal committees in smaller towns were only endowed with partial powers based on the Act, which specified such towns as '**notified areas**.'

20. Because of these circumstances, the post of Village Headman was not necessarily a post looked after by villagers, who often resorted to rotating the unpopular task between them.
21. Maung Maung, The Constitution of Burma, 1961.
22. J.S. Furnivall, The governance of modern Burma, 1961.
23. Based on Lord Ripon's Resolution on local self-government. The beginning of British colonial government policy on decentralisation can be attributed to Lord Ripon who, in a resolution on local self-government on May 18, 1882, recognised the twin considerations of local government: (i) administrative efficiency and (ii) political education. The Ripon Resolution, which focused on towns, provided for local bodies consisting of a large majority of elected non-official members and presided over by a non-official chairperson.
24. The 74th Amendment Act of the Constitution of India (1992) provided for the Twelfth Schedule of the Constitution. The 1992 Act attempted to instil some uniformity in the constitution of the municipal bodies by classifying them as Municipal Corporations for large urban areas, Municipal Councils for smaller urban areas and what are termed Nagar Panchayats, suburban government bodies. The Act listed the functions of urban local units, along with their planning, regulation and development powers. The Act also provided for reservation of one-third of the seats for women and scheduled castes in municipal bodies. Local bodies have to be bestowed with adequate powers, authority and responsibility to perform the functions entrusted to them by the Act.
25. The Burma Municipal Manual, Superintendent, Government printing and Staty; Union of Burma, Rangoon. See in particular Burma Act III, 1898 (1 July 1898), as amended by Act LII, 1950. An online version of the Act is available at http://displacementsolutions.org/wp-content/uploads/the-municipal-act-1898.pdf
26. J.S. Furnivall, The governance of modern Burma, 1961. For more details on the powers, functions and duties of municipal governments at the time see, 'The Burma municipal manual: Containing the Burma Municipal Act 1898 as amended by Burma Act III of 1902 and Burma Act II of 1903, and the general rules, notifications and circulars issued there under", 1 Jan 1904.

In 1921, first efforts were made to extend representative forms of local governance also to rural areas. **Elective District Councils** were created to perform the same functions as the municipal committees in the larger towns. District Councils consisted of a majority of elective members chosen by Circle Boards elected by the local tax-payers together with a minority of official and appointed members. They were charged with the "administration throughout the district of minor roads and waterways, sanitation, hospitals, markets, slaughter houses, veterinary matters, and other matters affecting the well-being of the local public."[27]

During World War II, state authority largely withered away and was substituted by the military control of occupant forces and localized armed resistance groups. On its return from exile, the British government suspended the machinery of local government it had created earlier and transferred to local officials all the functions formerly imposed on District Councils and Municipal Committees, thereby returning to a situation as prevailed before 1921.

### *2.1.3 The post-independence parliamentary period (from 1947 to 1962)*

As J.S. Furnivall described it, the 'steel frame of centralised territorial administration' built up under British rule played a major role in holding the country together against the forces of disruption in the early years of independence. However, as J.S. Furnivall observed, "no satisfactory solution for the three problems of departmentalism, coordination and lack of continuity was ever found under British rule". In taking over the former administrative system, the new government of independent Burma also took over the former problems. The new government also took over the body of laws and institutions that had been created in English, and continued to use English-language laws and terminologies well into the 1960s. Especially because the new government aspired to put much more effort in the promotion of welfare, the inherited problems of departmentalism became even more formidable, also because the number of de-concentrated departments increased.[28] In fact, the 'colonial' structure of state administration did not fit the policy objectives of the new government.

Following a **National Welfare** (*'Pyidawtha' - 'happy land'*) Conference in 1952, plans were devised for the devolution of powers, for the democratization of local administration, for agricultural and rural development, for economic development, for the nationalization of the land, for underdeveloped (i.e. frontier) areas, for housing, transport and communications, for education, and for medical aid and public health. On the basis of the 1947 constitutional provision (Art. 91) on delegating to representative local bodies specified powers in administrative, cultural and economic matters, the parliament of Burma adopted a **Democratic Local Government Act in 1953** (No.28), which was designed to change the manner of representation at the township and district levels, while the arrangements for urban areas were reformed by the **1951**, **1953** and **1954 Municipal Acts** respectively.

Under the Democratic Local Government Act, each village elected a Village Council, normally of five members, each ward in a town elected a Ward Committee of three to five members, and each Ward Committee sent representatives to an Urban Council. The Village and Urban Councils were brought together in the Township Council comprising one representative of each council.

At district level, District Councils were established, whereby four to eight members represented each Township Council. Contrary to the Village and Urban Councils, that were independent entities, the District Councils were made subordinate to a Ministry of Local Government, and entity of the central government.

27. J.S. Furnivall, The governance of modern Burma, 1961.
28. Ibid.

In each township there was to be set up a **Township Welfare Committee** with the Township Officer as Chairman and with members comprising representatives of the specialist services – police, public works, co-operative, agriculture, veterinary, land records, education, medical and fire service together with four members nominated by the Central AFPFL[29] to represent the public. The arrangement was open to criticism in that it was the AFPFL and not the general public that was represented on the committee. Above these Township Welfare Committees was a District Welfare Committee and a Division Welfare Committee, with the Divisional Commissioner as Chairman.[30]

In an early example of the effort to promote "bottom-up" planning, each council was to draw up its own plans with estimates of the expenditure involved. These would be included in the national budget and laid before parliament. Funds would then be allotted to the Divisional Committees in the form of discretionary grants, which they could expend without further reference to the government or further sanction by the Finance Ministry. Despite its design flaws, the system was hailed as a thorough transformation of the system of local governance in the country and was thus expected to fundamentally change the state-citizen relationship. This is evident in the appraisal of the new system in the words of U Maung Maung, Burma's foremost constitutional lawyer at the time:

"Today the headman is the servant of the villagers and the Township Officer is the servant of the local politicians, and so it goes up, step by step, up the hierarchy. The common man is master now, for he has the vote even as the headman of the Township Officer has. Many common men have many more votes than the headman or the Township Officer, and therefore they are more important to the politicians, who depend on votes, than the civil servants."[31]

The Act aimed at giving power to the people to conduct their own affairs. The village would elect its own village council, the town its township council, and so on, and the councils would conduct the business of the village as the case may be, and also decide small disputes or crimes. Maung Maung also wrote: "The permanent administrative officers will become, when the new scheme has started functioning fully, mere secretaries and advisers to the councils. […] The scheme will remove the political centre of gravity from the bureaucratic apparatus to the popular representative organs."[32]

However, the new legislative fr amework for decentralisation was rather ambitious for newly independent Burma's fledgling polity. It would have put Burma at the forefront among countries in the region in terms of democratization of local government, and in the end, the farsighted plans were never to be fully translated into practice. The Democratization of Local Administration Act of 1953 was initially enforced only in a few experimental districts around the country. In 1960, Maung Maung acknowledged that by then the new system of local self-government had not been fully implemented yet, mainly due to the various insurrections and the unsettled political situation into which it had been born. In remote villages, Communists had threatened or murdered members of the village councils. Also in some districts the elections to the district councils had turned out "not to be an expression of democracy but a reflection of the power struggle within the AFPFL, the ruling and dominant party at the time which had split in two rival factions in the

29. The Anti-Fascist People's Freedom League (AFPFL) was the dominant political party at the time. It was founded in 1944 by the Communist Party of Burma (CPB), the Burma National Army (BNA) led by Aung San, and the People's Revolutionary Party (PRP; that later evolved into the Socialist Party), first to resist the Japanese occupation and later the British colonial administration and to achieve independence. Together with its allies, it held about 80 percent of the seats in parliament from 1947 until 1956.
30. Furnivall, Governance of Modern Burma.
31. Maung Maung, Burma's Constitution (1961).
32. Ibid.

mid-1950s."[33] In 1958, the military took over government administration including at local level for a two-year period, followed by elections in 1960, which brought a wing of the erstwhile ruling AFPFL back to power, however only for a short period.

### *2.1.4 The socialist period (from 1962 to 1988)*

In 1962, following the military coup and the suspension of the 1947 Constitution, **Security and Administration Committees (SACs)** were set up at the local level, chaired - at the divisional level- by the regional military commander, and by the (military) Minister of Home Affairs at the Union level. The advances made on sharing of power with locally constituted bodies during the 1950s in terms of decentralisation were abruptly removed by the 1961 and 1964 Democratic Local Government Suspension Act. In the 1960s local governance was firmly placed under military control. In the early 1970s this gradually gave way to the new system of Burmese Socialism, which aimed for a system of interlocking governance typical for the Socialist countries at the time.

The **1974 Constitution**, which was shaped by the ideological construct of Burmese Socialism, for the first time introduced the concept that States and Divisions had the same status in terms of their relationship with the Union government, their institutional structures and legislative and administrative arrangements. The 1974 Constitution was absolutely clear in that these sub-national States and Divisions possessed no political or administrative sovereignty or autonomy, although it was decided to retain the ethnic attributes of the States created earlier. The structure of the state was organised under the concept of 'central leadership and local management' along the lines of the ideological underpinnings of 'democratic centralism' and 'socialist democracy'. The use of English in law and administration was also abolished. The basic units of villages/village tracts and wards, towns and townships were essentially retained as they had been set up in the 1920s, only leaving aside districts which had earlier played a more central role but were abolished as a level of administration in 1972.[34]

Following the 1974 Constitution elected '**People's Councils**' were introduced at all levels of government administration. They replaced but were modelled on the earlier SACs. In the 1960s and 1970s, the Burma Socialist Programme Party (BSPP) was built up as a mass organisation following the same territorial structure as the state itself, while all other parties were banned. From 1974 onwards, the BSPP's role in state administration was firmly entrenched in the Constitution. In the mid-1980s, the party claimed that over 2.3 million people were involved in fortnightly party cell meetings and other Party activities.[35]

The new arrangements also foresaw the holding of elections to the various administrative bodies at different levels. Elections took place four times between 1974 and 1988. For these elections, however, only candidates pre-screened and approved by the BSPP were allowed to participate. While it was not mandatory that a candidate must be a member of the BSPP, in practice most of them were, as the single candidate put up for each position was previously selected by the relevant level Party unit and approved by the Central Executive Committee. At the voting booth, the elector was faced with the choice of either accepting or rejecting the Party's nominee. There were instances when voters turned down the official nominee and an immediate by-election had to be called to fill the vacancy with someone acceptable to both the Party and the local population. The total of 15,940 ward and village tract People's Councils had an average of over ten members each in

33. Ibid.
34. Ibid.
35. Ibid.

1985.[36] Even though it was under the control of a single state party, thousands of people thus had the experience of sitting on local councils discussing and recommending on issues of local concern and providing a form of rudimentary accountability mechanism within the state structure.

The chair and other leading positions of the People's Councils at the Division and State level were often occupied by regional and sub-regional party chairmen. Even though there had been a formal return to civilian leadership, there continued to be a great deal of overlap between the state/division administration, the military and the party personnel at this level, suggesting that control rather than participation was the primary purpose of the state's structure. As Taylor describes it "State and Divisional People's Councils were responsible for passing on the directives of the central state to the subordinate structures and for coordinating the activities of the township People's Councils and state-owned economic enterprises and agencies within their areas. Rather than policy making bodies, they were essentially extensions of the central state's administration."[37]

The township level People's Councils had three functions. One was to control the population. The second was organisation, where the Council served to assist the activities of the Party and other mass organisations. The third was participation and the elective principle with frequent meetings and campaigns serving as the main means of achieving this. The People's Councils had no legislative powers and did not meet to deliberate policy. Rather, they were institutions intended to interpret and carry out the directives of the central state in a manner appropriate for local conditions. From time to time, leading state officials expressed concern that some People's Councils did not follow directives but developed too much local initiative. State and Divisional Councils were charged with checking local initiatives. Also, the central government possessed the power to dismiss elected Peoples Councils for a variety of misdemeanours, including 'inefficient discharge of duties'. This gave the Minister of Home affairs a veto power over all local governance bodies.

At the township and village levels, however, the People's Councils gradually became more genuinely participatory bodies. Though far from being institutions through which all persons had equal access to influence authority, they did provide a mechanism by which much of the state's activities directly affecting the lives of the people was conducted under the supervision of local residents. The local 'self-government' of the socialist period focused on urban services, infrastructure, water and market services. It is important to note that its structures and processes were not entirely dismantled following the end of the socialist period in 1988. In fact one of the more benign legacies of the Socialist system of local governance is that it rebalanced the focus of local administrators back from a pure security focus to a more service-delivery oriented outlook. Even though Township Administrators were firmly anchored in the hierarchy of central government administration, their main task became overseeing activities around service delivery and development, which also involved interaction with the local population in this regard.[38]

One of the features of the 1974 constitutional system was the requirement for elected representatives to report back to their constituents on their activities during the previous year. For the highest state officials, these meetings were 'staid formal affairs with only invited constituency representatives in attendance' whereas for less important figures they were more spontaneous and informal.[39] This is significant, as it represented an attempt to build the appearance of governance structures that

36. Ibid.
37. Ibid.
38. Interview with a retired Township Administrator who served from in this function from the 1970s until the mid-1990s.
39. Taylor, The State in Myanmar.

were accountable to the people, in line with the BSPP's stated ideology. However, the outer forms of downward accountability never amounted to genuine popular feedback that may have altered the overall course of policy, or allowed anyone not connected to the power elite rise up in the ranks of the decision-making hierarchies. Taylor thus concludes that "the lack of responsiveness by the government to public criticisms was one of the reasons given for the ultimate failure of the 1974 constitutional system".[40] Even these elementary participatory elements of the structure were essentially abolished with the suspension of the 1974 Constitution in 1988.

### *2.1.5 The period of SLORC and SPDC military rule (from 1988 to 2011)*

After the military took over the state power in 1988, the **State Law and Order Restoration Council (SLORC)** was formed to assume the responsibilities of the state. The SLORC also formed administrative bodies at different levels, provided authorised powers to departments exercising administrative power under the adoption of Law No. 8/88, and the reorganised the General Administration Department (GAD) under the Ministry of Home Affairs.[41] Elections were held in 1990 to form a new legislature, but its results were never implemented and the SLORC remained in place.[42] On the level of local governance, no elections were held and all positions were appointed by the SLORC, with military officers taking up many positions especially at district level.

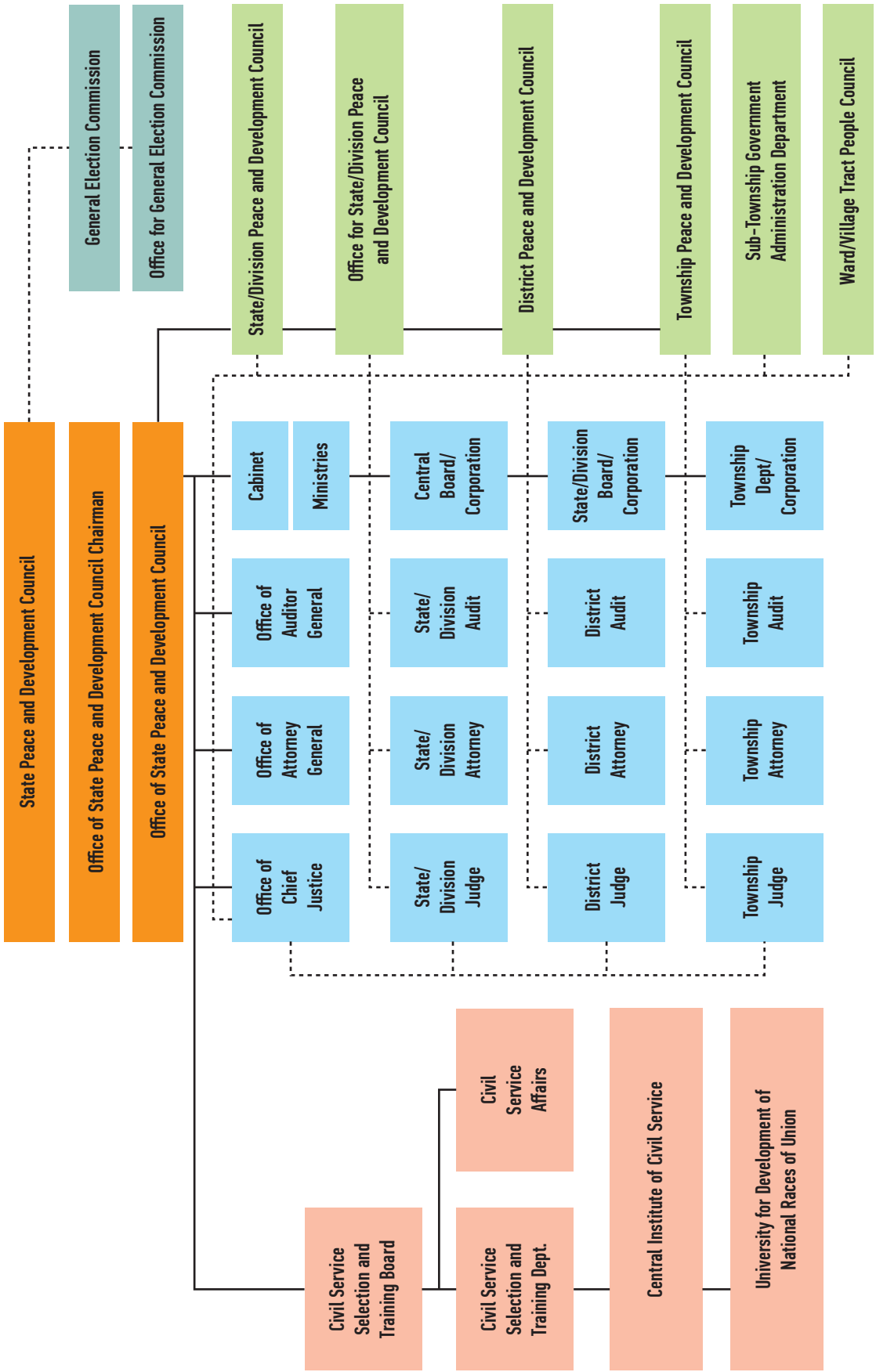
The SLORC was transformed into the State Peace and Development Council (SPDC) on 15 November 1997. Its stated aim was to transform the country's political, administrative, economic and social structures and prepare a new Constitution on the basis of the fundamental premises that the political and economic reforms must not compromise the three principal national causes: 1) non-disintegration of the Union; 2) non-disintegration of national solidarity; and 3) perpetuation of national sovereignty. The SPDC, like the SLORC before it only comprising of military members, was the supreme body of executive and legislative authority and controlled all other state authorities. The head of state was the chairman of the SPDC, who was also the commander-in-chief of the defence forces. In order to implement and materialize the tasks, the SPDC formed State Peace and Development Councils for four levels of government:[43]

- State and Division – headed by military commanders or senior military officers;
- Districts – headed by field grade military officers;
- Townships – headed by township officers from the GAD;
- Wards and village-tracts – headed by reputable persons in the locality.

The township was the highest level of government that was headed by a career civil servant (although many positions in the civil service had also been taken over by military officers). The SPDC exercised its power through a highly hierarchical and centralised government structure at the local administration, which was tightly controlled in all aspects of the affairs of the state. All the decisions were taken through a top-down approach.[44]

40. Ibid.
41. Naylin Oo, "Public Sector Transformation (Reform) In Myanmar", National Institution of Development Administration School of Public Administration, 17 March 2010.
42. The 27 May 1990 elections for 485 seats in a new national parliament resulted in the NLD winning, but were not implemented and did not lead to the formation of a national legislature.
43. The SLORC/SPDC retained the territorial organization of the country as per the situation before the 1988 coup.
44. Oo, 2010.

**Figure 1: Administrative system under the State Peace and Development Council**[45]




45. Ibid.

In 1993, the military regime began to rebuild direct links with the population and established the **Union Solidarity and Development Association (USDA)**. It gradually became the largest state-sponsored mass organisation (claiming in 2005 that it had grown to 23 million members). USDA branches were set up in every township across the country, as in most village tracts and wards. Membership was "essentially compulsory for civil servants and those who sought to do business with or receive services from the state."[46] Division officers of the USDA were often prominent regional businessmen as well as military personnel and civil servants.

The USDA became "a prime articulator of the state's message down to the lowest levels of society" and was also involved in "providing social services and organising community affairs as well as participating in pro-regime rallies and demonstrations".[47] Alongside, the military government also formed or revitalised a number of 'non-governmental organisations' that, however, had no space to openly criticise or question the government, but played a certain role in service provision in social welfare and health facilities.

The USDA remained in place until 2010, when it was transformed into a new political party, the Union Solidarity and Development Party (USDP), which inherited the USDA's assets, networks and leadership. It won a large majority of seats in both the Pyithu Hluttaw and the Amyotha Hluttaw, and emerged as the single largest party in all State and Region Hluttaws, winning absolute majorities in most of them.

### *2.1.6 Summary of the legacies of past decentralisation efforts*

In terms of past decentralisation and local governance reform efforts, Myanmar has several lessons to draw from. Many of the present institutions and practices, even those introduced after 2011, have roots in the past. While most people active in administration today will still be familiar with the Socialist system of People's Councils of the late 1970s and 1980s, and many have backgrounds in the governance structures during the SLORC/SPDC era, other practices still in place today and taken for granted (such as the overnight registration requirements) date back to more than a century and were introduced by British colonial administrators in a context nobody alive can still remember. Already in the colonial period, attempts were made to introduce representative local governance bodies, first in the larger urban centres, then also at the district level. However, Furnivall observed that these bodies were widely considered corrupt and inefficient.[48]

Thereafter, the grand local government democratization reform scheme of the parliamentary government of the 1950s never fully got off the ground and eventually failed in the face of persistent conflict and eventually the military takeover of 1962. Likewise, the "People's Councils" built under Burmese Socialism let people experience elections without democracy, and never delivered substantially in terms of development, service delivery or genuine participation. The local governance system under the SLORC/SPDC entrenched habits of top-down decision-making and military interference in governance systems, with very little accountability or transparency in place.

Certainly, it can be concluded that efforts to design a model of local governance that at the same time responds to the security and development needs of both the state and local communities did

46. Taylor, The State in Myanmar.
47. Taylor.
48. For a similarly critical account of governance in pre-independence Burma, see G.E. Harvey, "British Rule in Burma, 1824-1942" (1947).

not begin in 2011 with the reforms of the incumbent government. As much as the overall structure of hierarchical centralised governance and its territorial units - what Furnivall called the "steel frame of British rule" - is still largely intact as it was established around a century ago, localities across the country have also experienced a long series of efforts aimed at reforming the system. In doing so, the pendulum has swung back and forth between larger elements of participatory and inclusive local self-government and periods of recentralisation putting local communities firmly under a unitary command system.

As such, most if not all, current local governance structures in Myanmar have their roots in this past, and new forms of participation in planning, service delivery arrangements and accountability mechanisms will need to take into account the grown and deeply ingrained practices that have been shaping local governance for decades. It is those, often unwritten, rules of "how things are done" in townships, wards and village tracts that shape most of the expectations of citizens and officers, and the relationships between them. They will also determine, at least in part, the appetite to embrace changes and reforms in local governance in the future.

## 2.2 The present situation: the new Constitutional framework (2008)

The 2008 Constitution, which has been implemented since 2011, is the present primary legal reference framework for governance in Myanmar. It replaced a government by military command that had been in power for a period of almost twenty years. In a clear break from the logic of military rule, the Constitution lays down as one of its basic principles that the "three branches of sovereign power, namely legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves." This horizontal separation of the three branches of sovereign power at the Union level is to be replicated in the Regions/States and the Self-Administered Areas, which share this sovereign power (Section 11). The Executive Head of the Union is the President, while the executive power of the Union is distributed among the Union, Regions and States, and to some extent, among Self-Administered Areas (Section 199 (a) (b)).

The Constitution does not provide for the establishment of local self-government below the Region and State level, neither in rural nor urban areas.[49] Public administration at the local level is mentioned only marginally in the Constitution, where it stipulates that "administration of district and township level shall be assigned to the Civil Services personnel" (Section 288) and that the "administration of ward or village-tract shall be assigned in accord with the law to a person whose integrity is respected by the community" (Section 289).

However, the Constitution is silent about the possibility of installing elected bodies at the local level; it notably does not explicitly foresee nor exclude that ward and village tract administrators can be elected, which is what was agreed on by the Union legislature when it amended the 1907 Ward and Village Tract Administration Act in early 2012. As will be discussed in detail below, the

49. The Constitution mentions the existence of wards and towns only cursorily and the general outlines of local governance as per the basic structure described above appears to be equally applicable to urban areas. The Constitution notably does not include any provision equivalent to its 1947 predecessor which had provided for the possibility of regional autonomy and for "delegating to representative bodies of such regions as may be defined in the law, specified powers in administrative, cultural and economic matters." At present, three towns enjoy a special legal status. Only one, Naypyitaw, is specifically treated as a Union Territory in the Constitution, and is equipped with a unique governance structure under the executive branch. Yangon and Mandalay, the two largest cities in Myanmar, are governed on the basis of municipal laws that date back decades, in part to the colonial era. The respective institutions, the Yangon City Development Committee (YCDC) and the Mandalay City Development Committee (MCDC), therefore existed prior to the coming into effect of the 2008 Constitution. The respective Committees are responsible agencies for the enforcement of municipal by-laws. Essentially, these are arrangements of delegated administrative authority, under the direction and supervision of the executive branch of Union Government, rather than bodies of self-governance and local representation.

recently amended Ward and Village Tract Administration Act now foresees the direct election of Ward and Village Tract Administrators. As these were not elections that fall under the authority of the Union Election Commission as per the Constitution and the relevant laws, the UEC had nothing to do with that election, which was otherwise entirely administered by the General Administration Department under the Ministry of Home Affairs.

The executive power of the Union extends to administrative matters over which the Union Legislature (*Pyidaungsu Hluttaw*) has power to make laws (Section 216), which in the case of Myanmar, is the largest proportion of all possible legislative activity (including residual power over subjects not listed in any of the schedules). Accordingly, Section 249 provides that "the executive power of the Region or State Government extends to the administrative matters which the Region or State Hluttaw has power to make laws", i.e. those listed in Schedule Two of the Constitution. Of greatest relevance to the area of local governance is the inclusion of "municipal affairs" under the powers of the States and Regions.[50]

However, the Constitution also extends to the matters which the Region or State Government is permitted to perform in accord with any Union Law. Additionally, Section 259 states that the Region or State Government shall discharge the functions occasionally assigned by the Union Government. This means that the Union can delegate the administrative functions over what constitutionally falls under Union jurisdiction to the State/Region tier of government, either through a Union Law or through executive decision by the Union Government, which is a technique commonly used in integrated federal systems, where the large part of legislative powers may be in the sphere of the Union/Federation while leaving the bulk of administrative functions and spending power to the sub-national units.

For this purpose of carrying out functions thus devolved, either constitutionally (through Schedule Two), statutorily (through Union laws) or administratively (through Presidential delegations, notifications or orders), the Region or State Governments may, for enabling the performance of the functions to be carried out (a) form Civil Services organizations relating to the Region or State as necessary; and (b) appoint the required number of Civil Services personnel (Section 257). However, the Constitution also stipulates that they have to do so in accordance with the Union Law for Civil Services and in co-ordination with the Union Government in advance. So far, however, it does not appear that any of the States or Regions has formed their own Civil Services organizations. Also, there is no provision in the Constitution that foresees that local bodies could form such services, or even within what parameters they could hire staff for the execution of duties assigned to them.

The Constitution prescribes in detail how the internal organizational set-up of State/Regional Governments ought to be configured. This includes the manner in which townships are integrated into the state structure. It stipulates that the "Head of the General Administration Department of the Region or State is the ex-officio Secretary of the Region or State Government concerned. Moreover, the **General Administration Department** of the Region or State is the Office of the Region or State Government concerned" (Section 260). The General Administration Department is the administrative backbone of the Ministry of Home Affairs, which is not only one of the most powerful Union-level ministries, but also one of the three Ministries which by the Constitution

50. See Schedule Two Section 8. Management Sector which lists "(a) Municipal matters;" as one of the powers under the States and Regions. Similarly, Section 1(e) refers to "Municipal taxes such as taxes on buildings and lands, water, street lightings and wheels." It should be noted that the word 'si-pin-thar-yar-yay' - 'municipal' is sometimes confusingly translated as 'development'. The Myanmar version is however the official version and should be used for authentic interpretation of its provisions.

must be headed by a military officer appointed by the Commander-in-Chief of the Defence Forces. This role of the General Administration Department, which also **manages public administration at the district and township levels**, has been one of the greater sources of confusion when it comes to the degree and modality of devolution and decentralised decision-making, as it is not clear to many stakeholders involved, let alone citizens, whether and in what manner any autonomous decision-making at the State/Region level is possible within this set-up and where accountability lies for administrative action.

Section 51 describes a hierarchical structure of the state from the local to the national level:

The Union is constituted as follows:

a) villages are organised as village-tract;
b) wards are organised as town or township;
c) village-tracts and wards or towns are organised as township;
d) townships are organised as district;
e) districts are organised as Region or State;
f) townships in a Self-Administered Zone are organised as Self-Administered Zone;
g) townships in a Self-Administered Division are organised as District and such Districts are organised as Self-Administered Division;
h) if there are Self-Administrated Zone or Self-Administered Division in a Region or a State, those Self-Administered Divisions, Self-Administered Zones and Districts are organised as Region or State;
i) Regions, States and Union territories are organised as the Republic.

On the **boundaries of townships** the Constitution requires the following (Section 54): "Where there arises a situation to alter or form the territorial boundary or change the name of a village, village-tract, ward, town, township or district of a Region, State, Self-Administered Division or Self-Administered Zone concerned, the President shall act, as necessary, upon the recommendation of the Chief Minister of the Region or State concerned."[51]

The importance of **townships as electoral constituencies** is also prescribed in the Constitution, which provides that the *Pyithu Hluttaw* shall be "elected on the basis of township as well as population" and the *Amyotha Hluttaw* "on an equal number of representatives elected from Regions and States." Accordingly, members to the Hluttaws are elected on the basis of a first-past-the-post electoral system with constituencies that are largely identical with townships (in the case of the Pyithu Hluttaw), combinations thereof (the larger states and regions in terms of Amyotha Hluttaw representation) or divisions thereof (the smaller states and regions with fewer than 12 townships). State and Region *hluttaws* are equally elected on the basis of townships as constituencies, with two representatives elected for each township.[52] Townships have been in existence for decades, and differ significantly in population size, which results in a significant degree of malapportionment. Due to the smaller polities in States and Regions, the distorting effect can be even larger there than at the national level.

51. While the boundaries of States/Regions and Self-Administered Areas are specially protected by the Constitution and can only be changed by collaborative legislation (regulated in Sections 52 and 53), the boundaries of villages, village-tracts, wards, towns, townships or districts are treated as purely administrative units which can be changed by the executive alone.
52. Section 161: "The Region or State Hluttaw shall be formed with the following persons: (a) representatives of the Region or State Hluttaw, two of each are elected from each township in the Regions or the States; […]"

### Box 4: Affirmative action to support political representation of minority populations

In recognition of Myanmar's ethnic diversity, the Constitution also foresees a small degree of affirmative action in terms of political representation. The model used goes back to earlier constitutional set-up, which was already included in the 1947 constitution. The principle (enshrined in Section 15) is that "for National races with suitable population, national races representatives are entitled to participate in legislature of Regions or States and Self-Administered Areas concerned."[53] This allows representatives of ethnic groups larger than 0.1 percent of the total population to elect a representative of their own, except in the states already named after their ethnic group and unless the group has already been given a Self-Administered Area in the State/Region concerned.[54] These representatives are elected in a form of non-territorial constituency at the State/Region level, in the course of the respective Hluttaw elections. What is interesting about these representatives is that they automatically, as per the Constitution, become members of the respective state/regional government. However, practice has shown that these representatives face challenges in being accepted by the respective fellow government ministers, and have difficulties in exercising their unclear mandate and due to an absence of funds and government portfolio.

13 of 14 States and Regions have at least one State/Region Hluttaw member elected in a 'national races' constituency who serves at the same time as Minister of National Races Affairs, Chin being the only State that has none. Shan State has the highest number with 7 such ministers, whereas Kachin has 4, Mon and Kayin 3 each, Ayeyarwady, Sagaing and Yangon have 2 each, and all others 1. In all, there are 29 Ministers for National Races Affairs in Myanmar. 19 serve in State Governments, and 10 in Region Governments. All are male. In terms of ethnicity, 5 are representing Bamar, 5 Kayin, 3 Chin, 3 Shan, 2 Rakhine, 2 Pa-O, 2 Lisu, 1 Rawang, 1 Mon, 1 Lahu, 1 Kayan/Padaung, 1 Kachin, 1 Inn, 1 Akha. By political parties, the USDP holds 17 of these ministerial posts (i.e. 59 percent), while the SNDP, NUP and KPP hold 2 each, and the AMRDP, CPP, INDP, KNP, RNPP hold 1 each. One Minister/ethnic constituency Hluttaw member was elected as independent.

It appears that apart from the significant provisions in the 2008 Constitution that represent a shift of powers from the centre to the sub-national level of States and Regions, the level of local governance was not given much attention. The Constitution essentially relegates it to the sphere of administration, and leaves it to the Union Government and the States and Regions to figure out the details of how local governance would fit into the new logic of power-sharing between the two tiers of government. Unlike the 1947 and even the 1974 Constitutions, the 2008 Constitution does not provide for any statutory delegation of powers to bodies of local self-government or any specific model of setting up elected/representative bodies at the local levels. This may have been either deliberate or just an oversight (as the Constitution was eyeing other issues with higher priority), the fact is that the omission has not stopped the incumbent government from beginning and carrying through its local governance reforms and decentralisation agenda in the past three years.

Whether it will provide a sufficiently flexible framework for future reforms that may alter the conditions of local governance more fundamentally and aim at the creation of local government in the proper sense of the term, remains to be seen. Certainly, while such possibilities may not be excluded by the 2008 Constitution, the latter does not provide any constitutional guarantee or protection for an autonomous sphere of local governance, which would provide local entities

53. As a legacy from earlier British and post-independence usage, Myanmar continues to refer to its ethnic minorities as "national races" in the official English translation of its constitution.
54. See Sections 161(b) and (c) and 391(c).

(e.g. cities, townships) with legal tools to defend its self-government against unconstitutional encroachment by higher tiers of government. On the other hand, experience teaches that a solid legal framework alone is no guarantee for an actual transfer of responsibilities and that 'political will' by the leaders of government is often the most important determinant factor for any substantial progress to genuine decentralisation, notably devolution.

Furthermore, the Constitution actually provides considerable room for expanding the State's and Region's legislative competencies, but in particular also administrative activities, most of which would have a significant impact on the townships as the principal administrative units of each State or Region. The **Region or State Legislative List (Schedule Two)** enumerates a number of areas which fall in the legislative and executive competence of the States and Regions, of which many are of key importance for local governance, most notably, as already mentioned, the power over **'municipal matters', 'municipal taxes'** and **'town and housing development'** to the States and Regions.

States and Regions, for example, have the power to legislate on and administer **'local plans'**. In order to promote economic and social development, they can provide their own investments from the Region or State funds and small loans. As long as they remain within the parameters of laws enacted by the Union, they have legislative and executive power over the **economic sector, commercial matters and co-operative matters** undertaken in the Region or State. With regard to the **agriculture and livestock sector**, their legislative powers are significant: The Constitution lists '**agriculture**' in general terms as a power of the States and Regions, as well as related matters such as pests, fertilizers, and agricultural loans and savings. Given that agriculture is still the main area of employment and largest contributor to the economy in most States and Regions, this places significant responsibilities with the State and Region Governments.

The Constitution also includes certain areas of the **energy, electricity, mining and forestry, industrial, transport, communication and construction** sectors among the State and Region powers, such as medium and small-scale electric power production and distribution; salt and salt products; and village firewood plantation, and cottage industries, smaller ports, roads and bridges. Several of the larger States and Regions have already adopted legislation in some of these areas.

The powers in the social sector are less extensive, as the portfolio for **most of health and education policy and services remains as a Union power** with the central government. However, matters on traditional medicine and '**social welfare works**', and in particular '**preventive and precautionary measures against fire and natural disasters**' are matters that lie within the States' and Regions' powers. Also in the cultural sector, States and Regions have legislative and executive power over the preservation of cultural heritage as well as museums, theatres and exhibitions.

The assignment of legislative and executive powers by the Constitution to either the Union or the State and Region tier of government matters for local governance in a number of ways. In order to carry out functions assigned through such legislation, States and Regions are constitutionally empowered to pass the Region or State budget and administer the Region or State Fund. In order to cover their expenditures they can legislate and administer land revenue, excise duty (with some exceptions), and municipal taxes such as taxes on 'buildings and lands, water, street lightings and wheels', fees on certain services of the Region or State, the sale, lease and other means of execution of property of the Region or State; the disbursement of loans in the country from the Region or State funds.[55]

55. Region or State budgets, which include financial transfers received from the Union Fund, are adopted by a simple majority vote in the Region or State Hluttaw.

The inclusion of certain powers in the State or Region legislative list does not in itself mean that the States and Regions also make use of these powers, and that they take on administrative functions in this regard. The **rather cautious and hesitant approach by States and Regions** to their newly-acquired powers is a result of a number of factors. Central government line ministries have been hesitant to relinquish or delegate powers which provide them implementation capacity and funds and well-entrenched attitudes and concepts of hierarchy mean that States and Regions still consider themselves subordinate to the central government, rather than a separate tier of government directly empowered by the Constitution.

So far, the Constitutional Tribunal, which has the constitutional power to adjudicate in disputes between the Union and States and Regions over powers and competencies, has rarely been seized by States or Regions in an effort to expand and protect their space within the power-sharing framework created by the Constitution.[56] Rather than arguing on the basis of constitutional provisions, the prevailing attitude, culturally and politically rooted, is that initiatives from lower levels have to be approved from above. This is perhaps the best way to explain why the main driving force behind decentralisation, strengthening both the level of State and Region governments, but also local governance as such, has been the pinnacle of executive power and the head of State, the President of the Union.

## 2.3 Key local governance reforms in Myanmar since 2011

Since the adoption of the Constitution 2008 and the transfer of political powers to an elected, mostly civilian government in 2011, Myanmar has embarked on an unprecedented programme of governance reforms, with the stated ambition to strengthen the democratisation process focusing on basic public services based on the needs and priorities of its people. This has translated into expectations on good governance and a public service delivery that is more responsive to the priorities of local communities. The role of sub-national and local governance has duly been identified by the Government of Myanmar as an important catalyst in this regard. However, not all developments in this regard were part of a coherent policy of decentralisation, but were at times consequences of other pressures.

One of the first priorities of President U Thein Sein government was to avert international sanctions and repair Myanmar's relationship with the international community. In this context, amending pieces of legislation that had been identified by international bodies as incompatible with Myanmar's international treaty obligations soon emerged as a matter of urgency. The ILO had repeatedly criticized the **1907 Ward and Village Tract Act** which it had identified as enabling the Myanmar government to extract from its citizens what amounted to forced labour, an infraction of treaty obligations resulting from Myanmar's ILO membership.[57] It became necessary to review and amend the 1907 Act[58] and substantive assistance was sought and obtained from the ILO with regard to the forced labour provisions. This process notably did not emanate from a concerted effort to review the manner in which state functions are exercised at the village tract and ward level, the lowest level of interaction between the government and the people.

56. Note however, the Constitutional Tribunal's decision on the Speaker of Mon State Hluttaw vs. The Republic of the Union of Myanmar (Submission No 3/2012) and its preliminary order on the Submission No. 1/2014, which dealt with disputes between the Union and the State and Region tiers of government.
57. Myanmar is a signatory of the relevant Conventions banning slavery and forced labour. An ILO investigation report (1998) stated: "… the provisions of the Village Act and the Towns Act which empower headmen and rural policemen to impose compulsory labour on residents of the labouring class had become obsolete and were no longer applied". The 1998 ILO Report nevertheless concluded that the Myanmar authorities, including local and regional administration, the military and various militias, forced the population of Myanmar to carry out a wide range of tasks, in particular in the years following 1992. Myanmar's military and various militias made systematic and widespread use of civilians to provide logistical support.
58. The Act had been amended in 1955 and 1961, which however resulted only in minor changes.

When the law was up for review, a small party (which has only two members) moved an amendment to the law to require all village level officials to be elected. The motion was accepted by the USDP but soon led to a divergence of opinions between the President's Office and the Pyidaungsu Hluttaw. The disagreement was on whether the W/VT Administrators should be elected through secret ballot or openly, after an agreement in principle was reached that they should no longer be merely appointed by the Township Administrators, as had been the case for many years. The President's Office had recommended removing the provision that leaders of each 10-household group be selected through secret ballot and instead chosen through negotiation. However, legislators narrowly voted down the President's proposal 278 to 236 at a Pyidaungsu Hluttaw session on 22 February 2012, arguing the change would make the selection process undemocratic. To many observers, this episode was a puzzling and surprising development, as it was one of the first open disputes between the *Pyidaungsu Hluttaw* and the President and as the reform of local governance arrangements had hardly been subject of any public debate at that stage. The legislature eventually prevailed, as the President does not possess a veto over legislation, and as the *hluttaw* eventually overrode the objections by the President against the formula preferred by the *hluttaw*.

As a result, ward and village tract administrators are now to be selected through two rounds of voting. The procedure to be followed has been included in the amended **Ward and Village Tract Administration Law of 2012**.[59] After several months of preparations by the General Administration Department, elections to the ten-household representatives and then the Ward and Village Tract Administrators took place without much public or media attention in December 2012.[60]

Following this altercation with the *Hluttaw* on the election of the W/VT Administrators, the President, U Thein Sein, as the head of the executive branch and constitutionally responsible for any of its actions, has taken the lead in pushing for decentralisation in a manner he sees as prescribed by the 2008 Constitution. In an address by the President on 6 April 2012 to Union-level, Region and State ministers he urged greater government decentralisation while at the same time admonishing lower-level organizations to stay within the policy framework set by the central government: "Now, a new system and new era have emerged. So it is required to make changes in ideas and procedures," he was quoted as saying. "Duties and responsibilities have been assigned to the respective ministers of States and Regions. (…) The centralisation has been reduced and States and Regions have been entrusted with rights and powers. They will have to take charge of their own duties."[61]

A gradual shift in responsibilities from the Union level to State and Region governments has been taking place, while at same time, the importance of good local governance is being acknowledged. Both the Constitution and the **Framework for Economic and Social Reforms (FESR) 2012-15** are explicit regarding a gradual transfer of political, administrative and fiscal responsibilities to the State and Region governments, but, as has been explained in the previous section, do not yet extend to the transfer of responsibilities to local-level institutions and the establishment of a local government as a third tier of government in Myanmar. Local *government* refers to specific, semi-autonomous institutions or entities created by national or state constitutions, legislation of a higher level of government or by executive order to deliver a range of specified services to a geographical area. *Local governance* refers to local-level formulation and execution of collective

59. A number of conditions also need to be met for candidates. The procedure is explained in further details below.
60. For more details on the elections, see below.
61. Reported by Ko Htwe in http://www.irrawaddy.org/article.php?art_id=21107 . The article is based on a report of the speech in the official state newspaper *The New Light of Myanmar*.

action. Of relevance here is the framework for citizen-citizen and citizen-state interactions, collective decision-making and delivery of local public services.[62] The constitutional power to legislate and administer on matters relevant to the local level remains divided between the Union and the State and Region level (and where applicable the Self-Administered Areas), and village tracts, wards and townships are recognised as administrative structures under the jurisdiction of State and Region governments.[63]

This is however with the possible exception of municipal governance, i.e. provision of municipal services in urban areas, which fall under the legislative and executive power of the States and Regions through the Ministry of Municipal (Development) Affairs. As will be discussed in more detail below, the President took the initiative to make the States and Regions exercise their legislative powers in this regard in 2013.

In early 2013, the President took the so far most impactful initiative to alter the manner in which local governance is carried out in Myanmar. As the chief executive of the Union and empowered to instruct any executive branch or administrative authority under him on the basis of the Constitution, he issued a number of Orders and Notifications aimed at implementing key aspects of reforms. For the area of local governance, **Presidential Notification 27/2013** (26 February 2013) has been one key reference document for institutional reforms trying to enhance participation and a more bottom up approach to development planning at the local level.

In contrast to the Ward and Village Tract Law, and most other major reform initiatives over the past few years, this move did not involve the Pyidaungsu Hluttaw in any way, as the President chose to go the path of an administrative instruction combined with State and Region legislation, rather than Union legislation to set up the necessary structures and mechanisms. This approach is however also limited in that it cannot run counter to any Union legislation, which is why the Notification also explicitly states that in interpreting and implementing its provisions, it is necessary not to impair any existing law, rules and regulations; powers and duties assigned to various departments and heads of departments by law; or policies and actions laid down by the state concerned with the legislature, the executive, the judiciary and finance.

While the President's constitutional executive powers to not extend to instructing the legislative branch to pass certain legislation, he instructed the executive branch at the State and Region level of draft and table **Municipal Laws**, which were then adopted by the respective State and Region Hluttaws.[64] It was these 14 State and Region Municipal Laws that have allowed the setting up of partially elected Township Municipal Committees.

The main purpose of the Notification is to promote "the development of the national economy in collaboration with regional organizations and private individuals, and to strive to improve the economic, social and living standards of the people".[65] State or Region Governments, the Naypyitaw Council and the Leading Bodies of Self-Administered Divisions or Self-Administered Zones were accordingly assigned to form the following committees by 31 March 2013:
1. **Township Development Support Committees** (*Myo-nae Bwint-Phyo-Toe-Tak-Yay*) (TDSCs),
2. **Ward or Village Tract** (*Yap-kwak, Kyay-ywar Oak-Su*) **Development** (*Bwint-Phyo-Toe-Tak Yay*) **Support Committees** (*A-htauk a-ku pyu cawmati*) (W/VT DSCs)

62. See Shah, Anwar (ed.), Local governance in developing countries. Public sector and accountability series. The World Bank, 2006.
63. Section 288 of the 2008 Constitution states that "administration of district and township level shall be assigned to the Civil Services Personnel."
64. Some State and Regions (e.g. Mon State) had already adopted Municipal Laws earlier, but amended these following the Presidential Notification in order to foresee Township Municipal Committees as specified by the President.
65. The Notification makes reference to Section 36 sub-section (a) and (c) of the Constitution.

Notably, the notification instructed the executive branches of the subnational tiers of Government, not the General Administration Department of the Union Government, to which the Township Administrators formally belong, to form these committees. In the end, it was still the GAD that implemented the instruction, but on behalf of the State and Region Governments, rather than the Union. At the same time, the President instructed the State and Region Governments to "draft and submit to the Region or State Hluttaw of a **new Municipal** (*Si-Pin-Thar-Yar-Yay*) **Law** in order to form a **Township Municipal Committee** (*Myo-nae Si-Pin-Thar-Yar-Yay Cawmati*)."

Finally, he instructed the **Township Management Committee** (*Myo-nae Si-man-khant-kwe-mu Cawmati*), which includes officials from different township-level departments, to meet and consult regularly with the **Township Municipal Committee** and **Township Development Support Committee**.

The members of the committees are both government representatives and representatives from various groups in society.[66] The Notification furthermore details the manner in which Township Development Support Committees (TDSCs) and Ward or Village Tract Development Support Committees (W/VT DSCs) are to be composed, and what functions they ought to carry out, which will be discussed in detail below. For the Township Municipal Committees, which were to be included in draft Municipal Laws to be submitted to State and Region legislatures, the Notification only specified that they should include "persons elected by majority vote from the local people and elder representatives of the township", but left the further details to be defined by the individual States' and Regions' Municipal Laws.

In a similar vein, the President took a number of **additional initiatives during 2013** to further advance the decentralisation agenda. In his address at meeting with Union ministers, State and Region Chief Ministers and deputy ministers of 9 August 2013, the President announced five measures to strengthen State and Region government administrative functioning, including instructions to increase State and Region influence over human resources and further de-concentrate major Union ministries.[67] The changes mentioned were the following:

1. The State and Region governments are to manage, direct, supervise and check the government departments in their regions instead of Union ministries directly controlling them;
2. The State and Region governments are to compile civil servants' performance evaluation reports and submit to Union government and present copies to Union ministries for efficiency of departmental personnel and staff and promotion and transfer to be decided on performance evaluation report;
3. The Education Ministry is not to directly appoint primary education level teachers and such appointments are to be made by State and Region governments;
4. The Health Ministry is to continue training nurses and midwives at central level but to make coordination with State and Region governments in assigning them to their home regions; the State and Region governments to appoint medical staff in remote regions through vacancy announcement in newspapers;
5. Out of the businesses that need direct permission of Union ministries, businesses that State and Region government can permit are to be allowed for local people to engage in, to create jobs for them.

66. The translation of the text of the Notification and the composition of the committees are included in the Annex.
67. President U Thein Sein speech; Nay Pyi Taw, 9 August 2013, http://www.president-office.gov.mm/en/briefing-room/speeches-and-remarks/2013/08/11/id-2536

If implemented, this would fundamentally alter the balance and relationship between State and Region governments and the Union level ministries. According to Section 218 of the Constitution, the President appears to have the right to issue necessary rules on matters to be performed by the Union Government, on allocation of the said matters to the Ministries of the Union Government, and on allocation to the person responsible to act under any law; and in doing so he can allocate his duties regionally or according to the functions of the Government department.

### Box 5: Reforming local governance – Key events 2011 – 2013

- February 2012: Amendment of Ward and Village Tract Act
- March 2012: President sets up Poverty Reduction Fund
- December 2012: VT/WA elections
- February 2013: Presidential Notification 27/2013
- March 2013: Establishment of TDSCs, W/VTDSCs through elections
- 2013: Pyidaungsu Hluttaw sets up Constituency Development Fund
- March 2013 - January 2014: Adoption of Municipal Laws in 14 States and Regions, formation of TMuCs through elections

# 3. Institutions of local governance and people's participation

## 3.1 Institutions of local governance

The administrative structure of Myanmar is outlined in its 2008 Constitution and as mentioned earlier in the text there are 14 states and regions each with their own government and elected parliament. Below the state and region government there are 76 Districts, 330 townships, 84 sub-townships, 413 towns, 3133 wards, 13620 village tracts and 63938 villages.[68]

### *3.1.1 The townships as basic administrative units of local governance*

It appears appropriate to begin an overall description of local governance structures with the fact that general state administration is provided by the **General Administration Department (GAD**[69]), which is part of the Ministry of Home Affairs (MoHA), and one of the three Ministries (in addition to Defence and Border Affairs) which must be headed, according to the Constitution, by a Minister who is a military appointee[70], designated by the Commander-in-Chief. The Ministry's officers head the Secretariats of the 14 Region and State governments, as well as the administrations of the Self-Administered Areas, **and coordinate the activities of the civil services at the district and township level (through District and Township Administrators)**.[71]

The head of the administrative service at the **State or Region level** is the Secretary of the State or Region, who belongs to the GAD and therefore formally reports to the Ministry of Home Affairs, in addition to the Chief Minister of the respective State or Region. **Districts** are administrated by a GAD official, who has similar coordination responsibilities as the Township administrator. There is no actual service delivery at District level and accordingly much fewer departments are located at this level. Districts have a supervisory role of the townships, a role that government is planning to upgrade and strengthen as part of its reform agenda. The **townships** are not an elected level of government, but are local administrative divisions of States and Regions, as well as of the Union Territory of Naypyitaw, thus covering the entire national territory. The Township administrator, responsible for coordination of the departments at the township, is an official of the GAD. They follow the common civil servants training and career, including frequent rotations. However, several other line ministries also have their officers stationed at the township level, and most often operate from separate offices, rather than a single integrated township administrative structure under the TA. Even though the TA is the highest-ranking civil servant at the township level, and tends to enjoy a great amount of respect, the internal systems and decision-making processes of other government departments, are in most cases, under Union Ministries. This system do not allow for a very thorough and strategic form of horizontal coordination. For instance, the Union Health and Education Ministries both deploy their respective officers and assign their own operational budgets to the township level, over which the TA has little influence.

As the mapping of local governance in Myanmar's States and Regions shows, these line ministry departments serve as the service delivery units at the local level, as they continue the final delivery points of services in the areas of health, education, and many aspects of infrastructure development. As the mapping also shows, these departments follow primarily a vertical chain of command via the districts, State/Region departments and ultimately to the Union Ministries, rather than being able to coordinate horizontally make local decisions or reallocation of resources between departments at the township level.

68. GAD homepage http://www.gad.gov.mm/en/content/total-list-districts-townships-sub-townships-towns-wards-village-tracts-and-villages-regions#overlay-context=my/content/
69. For a detailed study on the GAD, its historical development and its functions at the different levels, see 'The General Administration Department – An overview of Myanmar's administrative backbone', by Kyi Pyar Chit Saw and Matthew Arnold, June 2014.
70. The Union Ministers of Defence, Home Affairs and Border Affairs are to be appointed from among military personnel.
71. Schedule One of the Constitution, which lists the legislative powers of the Union, includes 'General administration' as part of the 'Management Sector'. Schedule One, Art 10 (a).

The new "Ward and Village-Tract Administration Law", which was prepared by the Ministry of Home Affairs and regulates the operation of state administration at the local level below townships, essentially extends the system of village tract and ward administration already foreseen in earlier versions of the law for the past century, in that it places the overall authority under a Village Tract/Ward Administrator. One significant difference is that these officials, who are subordinate to the Township Administrator but are not civil servants, are local residents and are now elected by the local population.

Figure 2 illustrates a simplified model of the local governance structure in Myanmar. The left side of the picture shows the elected representatives and the right the representation of different interest groups which both tries to influence the township administration reflected in the middle. The 'township administration' is in a way an imaginary administration as it is not a legal entity. It consists of de-concentrated line ministry departments from either union or state/region level. But through the election of the Ward and Village Tract administrators, representing the voice of the people, and the popularly elected representatives in the township and ward/village tract level committees new accountability lines are emerging and the township administration have to learn how to respond the new situation.

Giving people an institutionalised space to participate in development of their area and to some degree have a say in prioritisation of investments at the local level will unavoidably push decentralisation of certain functions and related decision making powers. Such relocation of tasks across various levels of government need to be matched with allocation of budgets with greater discretion either through vertical reallocation of taxes (e.g. from Union to State budgets to the townships as shown in Fig 2) or on the basis of taxes allocation to the same level (as the case for the Department of Municipal affairs). Whatever system to be chosen from an accountability perspective it is important to get the roles and responsibilities clear and specified. And – equally important - communicated to the people.

### *3.1.2 The Township Administrator: Coordination and development responsibilities*

As the "backbone" of government administration in Myanmar, the GAD administers all general government "management" activities. At the township level, the Township Administrator represents the GAD. Alongside a variety of administrative duties such as registration, tax collection (for land, mineral and excise), land registration, the issuing of permits for various vehicles and use of public space, collation of socio-economic data, local dispute resolution amongst others, the township GAD administration is responsible for coordinating the various departments and the committees established by the Presidential Notification on issues of township development - a function that has become more pronounced with recent changes to the TA's role.[72]

Formerly at the level of a gazetted staff officer, the function of the TA has been upgraded within the national civil service structure to the position of **Assistant Director**, thus making him the most senior civil servant in townships, enhancing the position's township leadership and "steering" role.[73] The selection of civil servants for gazetted officer posts at the State and Region level is done through the Union Civil Service Board (UCSB), and the States and Regions are not recruiting their own civil servants (gazette or non-gazetted) as yet. This should not be understood as that the

72. Interviews with officials in Mon and Chin State and the respective township/ state GAD offices.
73. Since 1989, civil servants are classified into 12 position levels that correspond to the 12 pay scales, six for each of the two main categories: the officer corps (or gazetted officers) and the non-gazetted support and clerical staff. There are six pay scales for the senior officers: 1. Director General; 2. Deputy Director General; 3. Director; 4. Deputy Director; 5. Assistant Director; 6. Staff Officer. The officer corps is supported by clerical, accounts and skilled "other ranks" categories which are also divided into six scales as follows: 1. Office Superintendent; 2. Branch Clerk; 3. Upper Division Clerk (6); 4. Lower Division Clerk grade (4); 5. Record Keeper; 6. Peon.

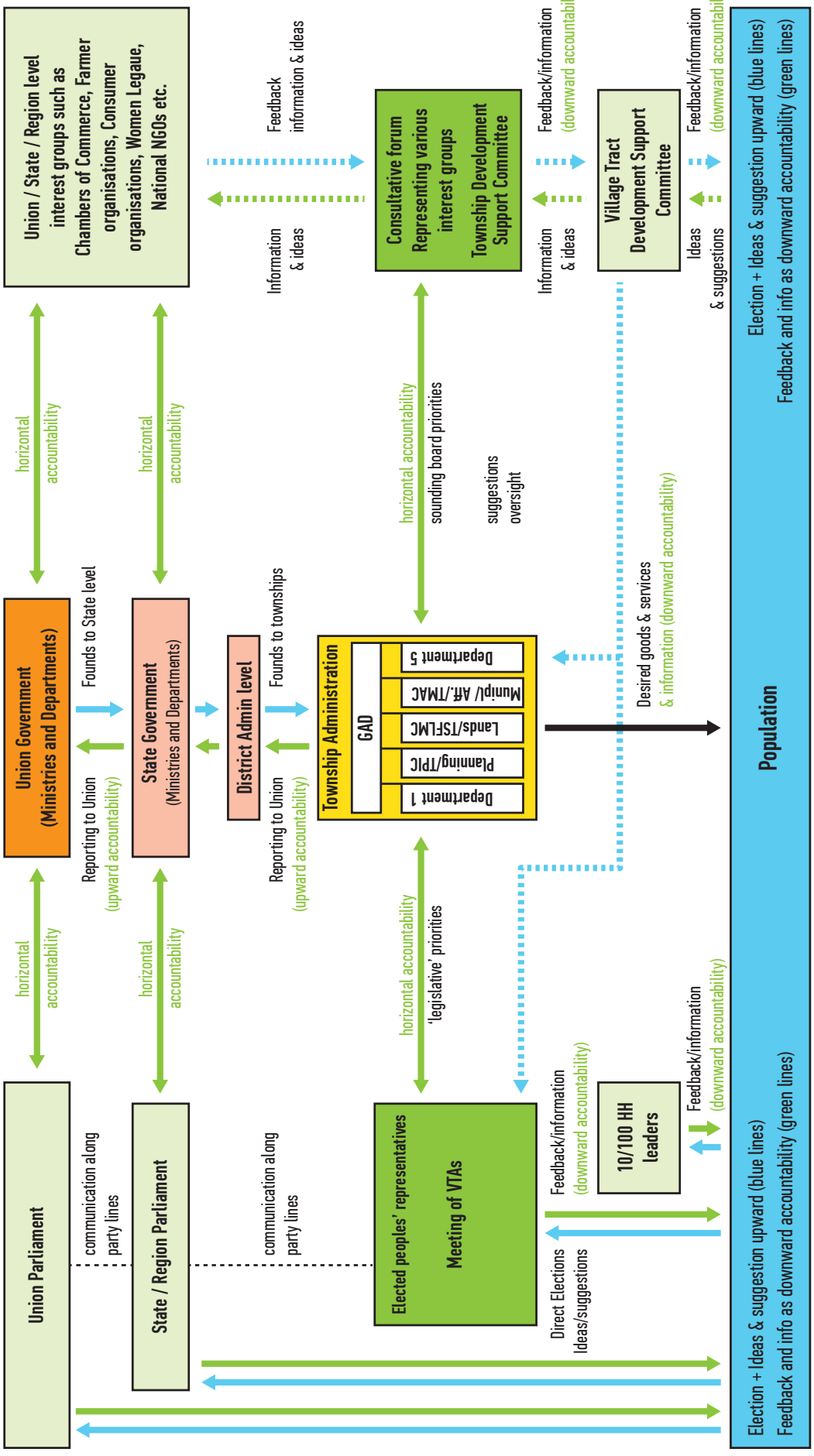



**Figure 2: A local governance accountability model – with different types of roles for the different committees**

TA is purely a representative of the Union Government. On the contrary, following the concept of integrated federal administration, the TA, although belonging to a single Union civil service, executes many functions on behalf of the State or Region Government, and on the basis of State or Region legislation.

The township general administration office serves as a focal point for many people in their interactions with the government. It is the place where key functions such as population and land registration as well as tax collection takes place but the office is also responsible for a range of activities such as data collection, supervision of the village administration, land management, and local dispute resolution. Another important role for the TA is coordination of the various development funds available for the local level. The TA offices[74] comprise of 34 GAD staff regardless of the size and population of the township.[75] Due to the enormous discrepancy in population size between townships, this leads to significant differences in terms of the number of township residents served by the administrative units.

The TA plays a coordinating role, both in co-ordination of the sector ministry departments at township level, by chairing township level committees, first and foremost the **Township Management Committee (TMC)**, as well as having regular consultative meetings with the elected W/VTAs, and appointment of the village clerk. The Township Management Committee is chaired by the TA and comprises members from the line ministries' departments at the township level. The role of the TMC is to co-ordinate with other stakeholders, line-ministries as well as the other committees at township level and to make decisions on township development needs, particularly focussed development projects financed by the funds that are available for development projects, such as the Constituency Development Fund or the Poverty Reduction Fund.[76] The way in which this is done in different States and Regions is analysed in detail in the individual State and Region mapping reports.

74. The offices are often housed in old colonial buildings.
75. Administering the State in Myanmar. An Overview of the General Administration Department (2014) Kyi Pyar Chit Saw and Matthew Arnold The Asia Foundation and MDRI p 32.
76. See the Annex 4 for the required composition of the committees.

The TMC is required to seek advice from the other committees in the township, (namely, the Township Development Support Committee (TDSC) and the Township Municipal Committee (TMuC). These committees must meet at least once a month, to discuss township development, the selection of development projects, capital investment plans and public or private infrastructure works. The role and function of those committees is described in more detail below.

### *3.1.3 Village Tract and Ward Administrators*

The lowest tier of the official government administrative structure in Myanmar is the Village Tract Administration in rural areas and the Ward Administration in urban areas. Each township is made up of areas designated as village tracts (in rural areas) and wards (in towns). Generally, each township has at least one town, but could have more. Some village tracts are 'single village tracts' and some contain as many as six to eight villages.

The village tract administration reports directly to the township-level administration and in most areas is administered by a Village Tract Administrator, a clerk or secretary and a number of 100-household leaders, which are sometimes referred to as Village Administrators.[77] The VAs and 100-household leaders are responsible mostly for one village while some villages, often larger ones, might have two or three 100-household leaders responsible for less or more than 100 households. They all report directly to the VTA. The VAs and 100 household leaders are assisted in administrative tasks by 10-household leaders, which are sometimes called area leaders. The arrangements for wards in urban areas follow the same model. In this report, the function of Village Tract Administrators and Ward Administrators are therefore described and analysed in combination (i.e. VT/WAs), except where specific rules and procedures apply.

77. The VTA is known formally in Myanmar as Oak Su Oak Chote Yayemhu and the VA as Kaye Ywar Oak Chote Yayemhu. Prior to 2010 the titles were Oak Su Oakkatha and Kaye Ywar Oakkatha respectively.

### Box 6: The village as the basic unit of rural social organisation

For most ordinary people, the village is the most important unit of social organization. This is evident in the significant differences between villages on the same tract, in terms of capacity, cohesion and institutions. Hence, the village can be defined as the basic unit for analysis of the local space.[78] Already in 2010, an in-depth study on local governance arrangements in Ayeyarwady and Mandalay Regions had identified two distinct institutions that together formed the village administration as the most important defining feature of the local governance context in Myanmar until the changes introduced since 2011.[79] Many of these however continued to exist, often with other names, until the present time. The first is, what was then still called the **Village Peace and Development Committee (VPDC)**, locally known as the Ya Ya Ka. The second is the set of formal recognized elders in the village, locally known as the Na Ya Ka, also known as **Village Elders and Respected Persons (ERPs)**. Though both of these committees were formally recognized, both locally and in the eyes of the administration, there was little in the way of formal guidelines.

The VPDC was the only formal institution that is found in every village. At the village level, the VPDC included three main types of position holders, 10-household leaders, 100-household leaders and the tract level representatives, also known as the president, chairman or 'member one'. All of these VPDC members were commonly known as Ya Ya Ka as they were all part of the official administration. There were however important differences in status between these formal leaders. Ten-household leaders were recognized but had relatively limited standing within the village, and their role was limited to participating in village meetings. The importance of the 100-household leaders varied according to their number in the village, which generally ranged from one to three, and whether the village was home to 'member one' or the tract chairman.[80]

The rules of selection of VPDC members were not clear. Officially, the township authorities nominated these positions, yet there was cause to suggest that the recommendations of non-officials from the village and tract level were taken into account. There also seemed to be a lack of consistency in the rules of selection. In the Dry Zone (i.e. Mandalay, Magway) the official selection process had been changed in 2007 resulting in a complete re-selection of village leaders. Under that new system, all villages nominated their proposed candidates for tract president, and the final decision was made at the tract level by the local Brigadier. The new procedures indicated a greater role for Elders and Respected Persons than previously. The selection process was overseen by the military authority, USDA mobilizers from the township, and the police. This does not seem to have been the case in the Delta (i.e. Ayeyarwady).

The role of the VPDC extended far beyond enacting official township orders. As the formally recognized village leaders, the senior Ya Ya Ka supported villagers in various ways: helping them resolve conflicts, mobilizing and managing funds for community development, and mediating between the village and township officials. The importance of the VPDC was largely a reflection of the fact that important and powerful social leaders tended to occupy these positions, and that there was a strong interface between the VPDC and embedded local relations and structures more generally.

Another important feature of the local governance structure identified in 2010 was the degree of formal recognition that was given to the group of elders (ERPs) at the village level. In every village

78. Powis, What Lies Beneath.
79. Ibid.
80. Ibid.

they found a cluster of 3–11 elders who were widely recognized as advisers to the VPDC. The leading elders had a similar stature to the leaders from the VPDC. Although regional variations were significant, it was even common to find that some of the ERPs in a village were formally recognized by the local administration, thus creating a distinction within the VERPs between formal leaders (Na Ya Ka) and informal leaders (Yat Mi Yat Pha). As with the VPDC, the actual rules of formation and their roles were far from clear. Many of the senior VERPs had previously been VPDC members.

When the SPDC was dissolved in early 2011 and handed over power to the elected Government of Myanmar, local PDCs at the district, township and village tract/ward level were also dissolved. The **2012 Village Tract and Ward Law** provided for the election of Village Tract/Ward Administrators (VT/WA) while retaining the traditional mandate and functions of this position and only a marginal role for the VT/WAs to act as elected representatives of the people in their tracts/wards. As outlined in the Law, the VT/WA is responsible for the maintenance of law and order in the village tract/ward; disciplinary matters; monitoring development projects; helping with rural development and poverty reduction; informing and assisting government agencies on crime prevention; submitting requests for public events to the TA; monitoring overnight guests; issuing entertainments licenses, registration of deaths and births, maintaining irrigation works; collecting land revenue and carrying out additional duties assigned by the TA and government departments in accordance with the law.[81] The elected VT/WA receives a subsidy directly from the GAD, working with the support of a paid village clerk.

Tasked with attending regular meetings at the township level, in particular the meeting of VT/WAs, the fact that the VT/WAs have been elected may be seen as an **element of representation** of their constituents in this forum. The VT/WA was formerly selected and recruited by the TA, but following the enactment of the 2012 Law, the VT/WA is now elected through a specific procedure outlined in the law, following a screening of the qualifications of interested candidates by the TA. Although the original incentive to amend the Ward and Village Tracts Act was not to reform local administration per se, when the Hluttaw got the opportunity to look into it, proposals were made to change the manner in which Administrators were identified, and quickly gained ground within the Hluttaw. As a result, administrators are now to be selected through two rounds of secret voting. The procedure to be followed has been included in the amended Ward and Village Tract Act:

- **Step 1:** Township Administrators (i.e. the GAD) appoint a supervisory body of five respected residents to oversee the voting process in each ward and village tract. The body has to combine all households in the ward or village tract into groups of 10, with each group holding a secret ballot to select a nominee.

- **Step 2:** From the leaders of each group of 10 households, an administrator for each ward and village tract will be selected by and among them through secret ballot.

Candidates for the position of VT/WA must fulfil a number of **criteria**:[82]

a. Citizens born of parents who are both citizens;
b. Attained an age of 25 years;

81. *Ward or Village Tract Administration Law.* Ministry of Home Affairs, 2012. Chapter 4, clause 13.
82. Section 5 of the Ward and Village-Tract Administration Law (2012).

c. Having received a fair level of education;
d. Having sufficient means for a living;
e. Person consecutively residing in the relevant ward or village tract for at least ten years and residing in the relevant ward or village tract at the time of performing duty. Exemption: if the candidate is a local retired government servant, the required period of residency within the relevant ward or village tract can be reduced;
f. Person who is respected by the society and has dignity;
g. Person who is in good health and has the ability to perform the assigned duty;
h. Person who is desirous to perform the duty with enthusiasm for the benefit of the Union and the community;
i. Person who's family members are persons of good morality, simple and honest;
j. Person who is not an active government civil servant still performing duty;
k. Person who is not a member of an armed organisation or a person who is not participant in or does not communicate with unlawful organisations.

Candidates can be members of political parties, but must not carry out any functions for their party while in office.

After several months of preparations by the GAD, **elections** to the ten-household representatives and then the Village Tract and Ward Administrators took place in December 2012.[83] Political parties generally did not mobilize or campaign for these elections. The VT/WAs were thus appointed by the Township Administrators with the approval of the District Administrators. Their term is "the same as that of the Pyithu Hluttaw" and they can be re-elected but cannot serve more than three terms.[84] VT/WAs can be dismissed by the TA (with the approval of the District Administrator) for breaches of laws or ethics or if a circumstance arises that would disqualify them from holding the position.

No representative or consultative elected body comparable to the Ward and Village Tract People's Councils of the 1974 Constitution, have been foreseen in the revised Village Tract and Ward Act of 2012. The role of the elected Ward and Village Tract Administrators notably also does not foresee any role in planning processes or development spending, which remains in the hands of the GAD through the TA as well as the respective government line agency representatives at the township level. The later establishment of Ward and Village Tract Development Support Committees on the basis of the 2013 Presidential Notification do not automatically create a new accountability line for the W/VTA, which could only be done by a change in the law, not through an executive instruction.

However, it should be born in mind that the legal distinctions between different forms of committees may not be fully understood at the local community level in all instances. At the level

83. There has not been an official report on these elections, which were also not observed by any independent observer groups. The references here are drawn from newspaper reports, such as "Preparations begin for ward, village administrator vote", by Win Ko Ko Latt, Myanmar Times, 10 December 2012. At least one representative of an ethnic party represented at the State and Union Hluttaw level stated that the GAD kept the process very closely under its control, and the ethnic parties failed to seize these elections as an opportunity for advancing their representation in government. The Rakhine State Hluttaw has formed an investigation team in December 2012 after it had received many complaint letters about election fraud for the posts in the state. Media has reported that a number of administrators are unable to take over their positions in several wards and village-tracts due to the complaints of local residents. Most of the complaints filed by local residents were that the township authorities had handpicked the candidates for the posts of their ward or village-tract administrators according to their own will. Moreover, it is not known whether any women were elected as Ward or Village Tract Administrators.
84. It is presently uncertain whether this means that all W/VTAs will have to be re-elected at the end of 2015, at the same time as the general election, when the 5-year mandate of the current Pyithu Hluttaw will expire. Having the W/VTA elections coincide with the general elections would have implications on the role national political parties play in this regard and also on the manner in which the elections are held. So far, whereas general elections are organised by the Union Election Commission with the assistance of the GAD, and governed by national election laws, the W/VTA elections were organised by the GAD alone.

of wards ad village tracts, deliberative and decision-making mechanisms have taken a variety of forms and adopted many different labels over time, but may not have changed all that much, given that they always remained connected with or an outgrowth of social dynamics at the community level.

One of the few recent studies examining the functioning of administrative processes as well as social realities at the village and village tract level is the report "Village Institutions and Leadership in Myanmar: A View fr om Below".[85] Th is study was one of the first to explore the nature of village level governance in Myanmar. It maps and analyses structures and dynamics at the nexus between traditional, state and externally facilitated institutions that influence and govern village communities. Th e study provides a foundation for discussion about engagement with village level institutions and leaders for development and local governance purposes, but also aims at informing the broader debate on expanding democratic governance to the local level.

One remarkable insight fr om the study is how little the local administrative structures have changed over time, and to what extent the basic concept set up in 1907 had survived the major shifts in politics and governance at the top level. Generally, respondents interviewed for the study referred to only smaller changes to the village administrative system during BSPP and SLORC/SPDC rule. The SLORC/SPDC renamed the village tract administrative body 'Village Tract LORC' (and subsequently Village Tract PDC). This body generally included a chairman, a clerk and two executive members.

However, the study also found a large degree of heterogeneity in terms of how consistently central government instructions and models were followed, and describes stark variances as to the how uniform the village tract and village administrations are, the position they occupy in local society, how the members/leaders are selected and the level of influence they have. Before the general legislative elections in 2010, notably, VT/WAs and 100-household heads in some areas were required to be members of the USDA. When, in early 2011, the SPDC handed over power to the newly elected civilian government, this resulted in a title change from Village Tract PDC to 'Village Tract Administrations', and the Chairmen renamed as Village Tract Administrator (VTA) mirroring similar changes at the township, district and State or Region levels. To what

85. Th is study was undertaken on the initiative of UNDP Myanmar to inform the programme formulation for its new Country Programme and supported through a grant from DFID Myanmar.. An earlier similar study of relevance is the report 'What Lies Beneath: An Operational Analysis on Leadership and Institutions at the Local Level in Myanmar' (World Bank, 2008).

extent the recent elections of December 2012 brought significant changes to the VT/WA level is unknown, but it can be assumed that there is a large degree of continuity from who occupied these offices before 2012. In some cases, however, individuals not previously connected to local governance structures were elected, including a small number of women. It requires a lot more in-depth research to exactly understand the trends and the changes, if any, in the manner in which W/VTAs understand the relationships with their communities.

The new Ward and Village Tract Law stipulates that local administrators have to be elected from a pool of local candidates, albeit nominated by a limited group of officials and according to tight criteria. The law was revised in a period still marked by a non-transparent process, which allowed for little public debate and only marginal international expertise to be reflected. It therefore provided only for a limited progress in local community empowerment and maintains a large degree of central government control over the local administrative levels. The townships and districts, notably, remain an administrative level of government, not a tier of elected self-government.[86]

## 3.2 Townships in Myanmar and the planning process

Like the institutions of local governance in Myanmar, the concept of "planning" has to be understood in its specific historical context and in the manner it is understood by both officials and citizens involved in the process. The scope of this report does not permit to go into the detail of how planning and public sector budgeting is legally prescribed and organised in practice. However, a brief overview of the different bodies and institutions at the township level is necessary to understand the changes that have recently been made in an effort to make township planning more "bottom-up' and "people-centred". Th e township and ward/village tract committees established 2013 play an important role in this process.

The **Township Planning Office or Department of Planning (DoP)**, a de-concentrated department under the Union Ministry of Planning and Economic Development, is responsible for collecting the data and information required to inform the national development planning process. Three types of plans exist, an annual, a five-year and a twenty-year plan. In its present form and function the Township Planning Office seems to be a remnant of the centralised planning system of the past, translating national production targets into local targets, and monitoring progress towards achieving these targets throughout the year. Although this differs per township and per State or Region, the Township Planning Offices in general do not provide real planning support to the sector departments, partly because planning per se still takes place at the Union level, while most departments at the township level have no planning responsibilities related to operational budgets.

The **Township Planning Officer (TPO) chairs a Township Planning and Implementation Committee (TPIC)**[87], whereas the TA serves as secretary. The TPIC can include representatives from the various line departments and representatives fr om the business sector and/or civil society.[88] The TPIC was established already in 2011/12 in a way a predecessor to the committees formed in 2013 to play a role in the formal planning process, collecting and feeding information "bottom-up" from the village level in the form of a township plan, which is sent on to the district

86. It should also be noted that the Mayor of Yangon, for instance, is a member of the Yangon Regional Government, not directly elected by the people.
87. See Van' t Land Gerhard and Steffensen, Jesper mission report from UNDP/UNCDF program formulation May 2012.
88. Sources: Ministry of National Planning and Economic Development, UNICEF, UNDP Local Governance Mapping.

and the State/Region Planning Implementation Committee for review and consultation with the relevant line departments. The State or Region Government and Hluttaw review the plan and submit it on to the Union-level through the Ministry of Planning and the **Union Planning Commission** (chaired by the President and with the 14 State and Region Chief Ministers represented as members) before being sent on to the Union legislature for approval.

The TPIC was perhaps one of the earliest attempts by the present government to inject elements of participation and bottom-up inputs into the local governance processes. However, as neither the TPIC not the Planning Ministry is involved with any actual funding decisions or implementation activities, the government realized that it would have to shift its focus on (a) making actual funds available for decision-making at the local level and (b) create participatory forums to take part in the decision-making process in regard to these funds. The TPIC continues to exist at the township level, but during the mapping it was noted that the committee lies dormant in many cases. Instead, the Planning Office has been observed to rely on other means of garnering information and suggestions for development priorities from villages, such as consulting with the VT/WAs, through their membership of the TMC and in some cases, through collating written plans developed by the villages.

A **township plan** is currently a plan describing sector-wise production or delivery targets on an annual basis. There is no recognition of the township as a geographical area with specific advantages or challenges that impact the plan. Neither is there an overview of the total budget allocation for the township. There is no identification of main development challenges or description of possible actions to address the challenges. No criteria for selection of projects exist and the beneficiaries are not mentioned at all. The plan only describes targets for various sectors e.g. crops in the agricultural section, animal and animal products in another section and electricity targets in another. From those types of target based production plans it is difficult to imagine what participation in township level planning actually means. It thus remains far away from an integrated or area-based planning process.

## 3.3 Decentralised funds for local development

The distribution of fiscal resources is the key to understanding decentralised/devolved systems of government. Many Constitutions (both federal and unitary) lay down lists of fiscal resources various levels of government can draw on to finance their expenditures. In rare cases sub-national governments can carry out their administrative and service delivery functions entirely on the basis of own resources. Initial data show that for so early in the process of decentralisation an impressive portion of the State and Region budgets is being raised from local revenues.[89] Most government systems are also characterized by a degree of inequality in terms of economic performance and income, and are therefore dependent on some form of redistribution in order to achieve equality in terms of services and other outcomes. Myanmar's constitution grants sub-national governments a series of guaranteed own revenues[90], but implicitly acknowledges the need for redistribution, and provides for a Financial Commission (Section 229). However, the Constitution does not provide any criteria or formula on the basis of which such re-distribution decisions shall be made nor does it refer to a law that would regulate such criteria.

89. Nixon, Hamish and Joelene, Cindy, Fiscal Decentralisation in Myanmar: Towards a Roadmap for Reform. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, July 2014.
90. These revenues are listed in Schedule 5 of the Constitution. These include taxes on land, excise, dams, motor vehicles and vessels, and local production of minor forest products and salt. Various service fees, fines and tolls are also included, as well as the proceeds from properties and those State Economic Enterprises (SEEs) that are run by the region or the state.

Up to the fiscal year 2015/16 there was no **overarching mechanism in place to address the fiscal or economic disparities** across States and Regions, as well as within States and Regions between townships, or between urban and rural areas. Budget and planning processes did not display any systematic or consistent equalizing element. Large disparities in subnational revenue generating capacity exist, but are only gradually coming to the forefront with better availability of fiscal data and statistics. Likewise, own revenues per capita of the different States and Regions, or their sub-units, are either not available, or are not yet part of the public debate on economic development and the fiscal planning process. Persistent fiscal inequalities will result in inequalities in social indicators and will increasingly translate into political pressures, in particular as States and Regions will diverge from the overall political course at the Union level. Starting from fiscal year 2015/16 the State and Region budgets are formula based, trying to address inequalities across the States and Regions. The formula has three criteria; poverty level, population and GDP. How the poverty level is calculated was not known by the time this report was written. Further approaches to address such inequities are better information management, transfer systems, the role of the central government and further research and analysis.

Historically, planning, budgeting and related decision-making has taken place at higher levels within the vertical structures of sector ministries, while the lower levels of government (below the State or Region, while functionally still part of the central government) focused more on the actual implementation of services and functions. This continues to be the case today for the key departments that are responsible for the bulk of government expenditures, including the education and health ministries. Funding for these sectors flows, as earlier mentioned in the report, from the Union budget to the State or Region level in a de-concentrated manner with no distinct planning or decision-making responsibility assigned to lower levels.[91]

However, an increasing amount of resources is now also streaming down from the Union to the State or Region level through two additional channels. Firstly, **grants and loans** are given to support specific departments[92] under State or Region Government purview, supplemented by taxes and other revenues collected locally. Secondly, **special funds** have been made available for spending on local infrastructure development, with State or Region governments, elected *Hluttaw* members and townships being able to at least participate in the selection of projects. The introduction of these funds, while still modest in terms of financial volume, represent one of the most significant policy initiatives of the current government and constitute perhaps the most significant change in terms of governance and decision-making at the township level.

In the different States and Region there are for the moment several funding schemes available for local development.[93] Out of those the following four are the main funds provided by Government for local development:

1. The Poverty Reduction Fund (only rural areas)
2. The GAD Rural Development fund (only rural areas)
3. The Border Affairs Development Fund (only in States/areas affected by conflict)
4. The Constituency Development Fund (equally in all townships)

91. Nixon, Hamish and Joelene, Cindy, Fiscal Decentralisation in Myanmar: Towards a Roadmap for Reform. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, July 2014.
92. These State/Region budgets are intended to finance the following departments: Law, Livestock and Fisheries, Immigration, Revenue, Forestry, Electricity Distribution, Information, Communications and Postal Services, Cooperative Affairs, Firefighting, Municipal Affairs and the Planning Department.
93. The Asia Foundation outlines a detailed description of the various funds available for local development in its forthcoming publication *Local Development Funds in Myanmar.*

Since 2012-13, States and Regions have been receiving funds from the **Poverty Reduction Fund (PRF)**, a Presidential initiative that was initially budgeted and executed under the GAD. This grant was allocated through an equal share of Ks 1 billion across States and Regions with the exception of Chin State which received Ks 3 billion, thus resulting in drastic per capita disparities, but justified, in the case of Chin, with much higher human poverty levels in several indicators. These funds were the first more or less unconditional funds transferred to the States and Regions from the Union level, with the only condition being that the spending should be aligned with eight broad poverty reduction categories.[94]

In 2013-14, the States and Regions had direct drawing rights to the PRF, which was reflected in the State and Region administrative budget (outside the MoHA budget line), although the GAD retained secretarial responsibility for its execution. In 2014-15, the available amount was dramatically increased and the allocation now differs significantly between different States and Regions. Each State or Region enjoys relative autonomy to decide on the distribution of the PRF among townships. While some distribute the fund on the basis of equal shares regardless of population size or poverty indicators, some States and Regions have been more innovative using formula-based allocation criteria between townships.

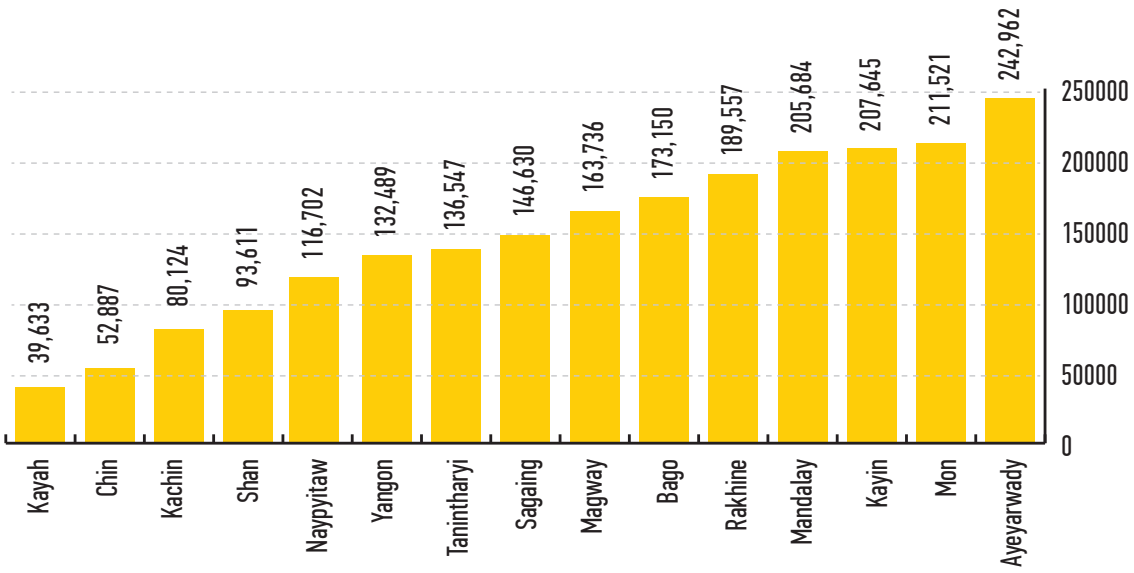
Under this fund, the TA and his staff are supposed to collect project proposals during the combined TDSC/VTAs meetings at the township level. Only projects in village tracts, rather than in urban wards, are considered under this fund. The VTA or VTDSC has to prepare a project proposal and if necessary engage an engineer to draft a plan and make realistic cost estimates. Projects can be for school and health facility renovation, road improvement or bridges, water facilities and electricity connection. The projects are small (maximum between Ks 2-3 million each, i.e. approximately 1,000 USD) and should be implemented by the village tract itself under supervision of the VTA and usually require contributions from the community members in the form of labour. After consultations are held, the TA sends the list of selected projects to the GAD at State or Region level, whom decides on the total budget available per township and selects and approves individual projects and informs the TA of its decision.

The TA announces approved projects during the combined monthly TDSC/ VTAs meetings and the GAD finance officer informs each village tract on the financial details. The TA is the drawing officer, while the Deputy TA is controlling officer.[95] The money for the fund is released in four instalments to the township GAD office and the TA distributes the money in four instalments to the VTAs. The VTAs submit progress reports during each VTA meeting. There is however no clear monitoring protocol in place. Most projects were completed within a period of three months as most of them were small maintenance projects. The auditor checks a sample of projects after completion.

In addition, a number of other small discretionary funds exist that are allocated through different mechanisms. For instance, the Department of Rural Development (DRD) and the Ministry of Border Affairs each have funds for certain priority areas.[96] Needs-based proposals are prepared at the township level (led by the GAD and co-ordinated by the TMC), for submission to the State or Region cabinet but no comprehensive strategy for equitable allocation across states and regions

94. Namely: Development of: Agricultural production sector; Livestock Breeding and Fish and Meat Production; Rural productivity and cottage industries; Micro saving and credit enterprises; Rural cooperative tasks; Rural socio-economy; Rural energy; Environmental Conservation.
95. The drawing officer can authorise payment if the necessary conditions are met and sign cheques, the controlling officer has to check the legitimacy of the payment and countersign any cheque.
96. Nixon, Hamish and Joelene, Cindy, Fiscal Decentralisation in Myanmar: Towards a Roadmap for Reform. Myanmar Development Resource Institute - Centre for Economic and Social Development (MDRI-CESD) and the Asia Foundation, July 2014.

Figure 3: The average township population size in the 14 States and Regions and the Union Territory ranges from around 40,000 (Kayah) to around 240,000 (Ayeyarwady)




and across townships is still to be developed. The small **GAD Rural Development Fund (RDF)** has been getting less significant over the years and since it is rather small and has the same criteria and procedures as the Poverty Reduction Fund is often combined into a Rural Development and Poverty Reduction Fund.

The **Border Affairs Development Fund (BADF)** of the Ministry of Border Affairs is available for a selected number of townships in all States (those with a significant part of the population being of one of the ethnic minorities or former conflict areas). The type of projects considered is similar to those for the Poverty Reduction Fund (small infrastructure maintenance) but usually more substantial in volume (average costs of a project is Ks 30 million, or 30,000 USD). In those townships where there is no border affairs office (they are usually only in the District capital), the GAD collects project proposals through its VTA/TDSC meetings, checks if these are not included in other funding, and passes them on to the District Border Affairs office. The Ministry of Border Affairs decides on the selection and implementation. In case the village-tract implements the project, the money is distributed via the GAD to the VTAs involved, but is booked as Border Affairs expenditure. If a contractor implements the project, the Ministry of Border Affairs conducts the tender at State level and contracts and supervises the contractor.

The **Constituency Development Fund (CDF)** was established by the Pyidaungsu Hluttaw (Union legislature) in 2013.[97] Representatives fr om the two houses of the Pyidaungsu and State and Region hluttaws are allowed to select township development activities in their constituencies to a maximum of Ks 5 million kyats (5,000 USD) per project.[98] Priorities for these projects are to be water supply, renovations of rural roads and bridges, renovation of school buildings, renovation of buildings related to health and other township needs. The implementation of CDF projects is to be done by **Township Development Implementation Bodies** consisting of the **four** ***Hluttaw*** **representatives** from the area within the township.[99]

97. Initially, the President refused to sign the law and sent it back to the Pyidaungsu Hluttaw with comments that the law was unconstitutional due to its granting the *hluttaw* executive power to implement development activities. However, the *hluttaw* proceeded to promulgate Order No. 83/2013 and No. 86/2013 with minor amendments.
98. Each township has one member representing it in the Pyithu Hluttaw. For the election of members in the Amyotha Hluttaw, each State or Region has 12 constituencies, which are either combinations (for the larger States and Regions) or fractions (in the case of States with fewer than 12 townships) of townships. Each township elects two representatives to the State or Region Hluttaw.
99. Presidential Notification 27/2013.

In 2013/14 each township received 100 million Kyat (100,000 USD) from the CDF irrespective of the population or size of the township for the implementation of small projects. This means that the amount of money available per capita differs significantly between townships, depending on their population size (see Figure 4).

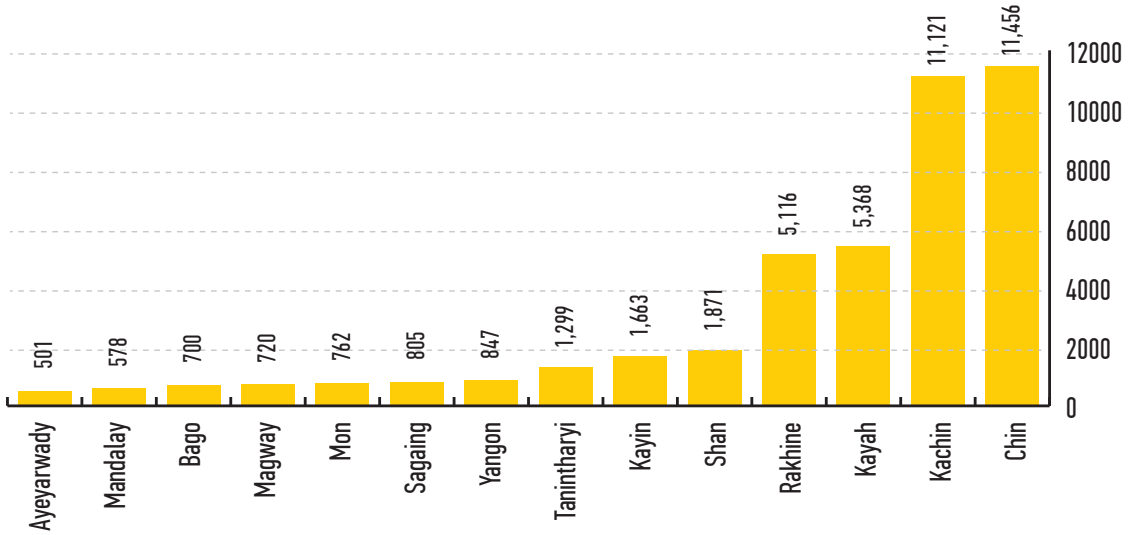



**Figure 4: Funds available for local development by state/regions FY 2014-15 (per capita)**

For this fund both village-tracts and wards could submit proposals. Since the fund was announced only at the end of 2013, there has only been one round of submitting project proposals and implementation. The project criteria are more or less the same as for the Poverty Reduction Fund. Hluttaw members elected from the township are involved in the discussions about the selection and prioritisation of projects (and are controlling officers together with the Rural Development Officer). The selection procedure is similar to that of the Poverty Reduction Fund only in this case the budget ceiling of 100 million Kyats is known beforehand. The final approval for the selected projects comes from the State or Region Chief Minister since it is part of the State/Region recurrent budget. Project progress monitoring is the same as for the PRF projects.

Also under this category are **funds from development partners** including a US$80 million block grant from the World Bank, under the National Community Driven Development project, which is dispersed in collaboration with the DRD from the Union level down via the township to the village tract, where a project committee and the Village Tract Development Support Committee make decisions on projects. The World Bank has recently decided to upscale this support with another US$400 million. The Asian Development Bank also has provided a US$22 million fund for Community Block Grants.

What all these funds have in common is that they can be accessed directly by local communities and require some form of a participatory and transparent process of decision-making, as well as project implementation and monitoring. The following section describes the various committees that have been set up in this regard, and how they have been able to change the level of people's participation at the local level.

## 3.4 Consultative and support committees

As part of the above-mentioned reforms led by the President and as prescribed in the February 2013 Presidential Notification, a number of committees have been established with members

elected or selected to represent various interest groups and to provide a consultative forum for the township executive management as well as the village tracts/wards in fulfilling their functions. Notably, these have not altered the legal fr amework for local governance, based primarily on the Constitution and the Ward and Village Tract Law of 2012, and have not affected the legal accountability mechanisms for Township Administrators, department heads at the township level, or W/VTAs. Neither can they be considered democratic representative bodies at the township or ward/village tract level. However, the fact that partially elected committees made up of community members are now formally involved in local development decision-making processes has somewhat changed the dynamics between rotating central state officials deployed to different communities and the communities they ought to serve. The committees play an increasingly important role as the bridge between the administration and the people. The President has established an award to the best performing TDSC and TMuC to further encourage good performance and better outreach to the people.[100]

The **Development Support Committees** have only been established recently, and their representativeness and thus democratic legitimacy has been questioned.[101] In most cases, the general population is as yet unaware of them and their work.[102] Some good examples on how the committees try to enhance accountability and information is by putting up posters where all the members of a certain committee are listed together with information on whom they represent. Risks of elite capture also exist if the accountability of members of these committees is not further enhanced and if more stringent rules on transparency and conflict of interest mitigation are not introduced. And yet, as the mapping of local governance has shown in many townships among the States and Regions examined, the creation of these committees has already had positive effects on the manner in which Township Administrators interrelate with the communities in townships, and a stronger consideration of the needs and preferences of local communities is beginning to take hold in some areas.

100. In May 2015 it was announced that Myitkyina, Monywa and Pakokku were receiving this award.
101. In the State and Region level local governance mappings, civil society organizations have frequently made this point.
102. This was one of the consistent survey findings from the township level mapping of local governance across States and Regions.

**The Township Development Support Committee (TDSC)**, in Myanmar language *Myo-nae Bwint-Phyo Toe-Tak-Yay A-htauk a-ku pyu Cawmati*, includes the Deputy TA and the Executive Officer (EO) of the DMA (to represent the government), as well as 7 "individuals from various social and business organizations and local people elected by majority vote." The members are to be drawn from various groups such as business association, community, worker and farmers groups, with a chairman elected by majority by the Committee members.[103] The Township Development Support Committee shall be formed with a minimum of 7 members and a maximum of 9 members in the following manner:

| | |
|---|---|
| Person elected by majority by the Committee members | Chair |
| Person elected by majority of elders and respected persons from urban and rural areas (myo-mi myo-pha) | Member |
| Representative of the community (lumu a phwat a si) | Member |
| Representative of business association | Member |
| Representative of workers | Member |
| Representative of farmers | Member |
| Deputy Township Administrator, General Administration Department | Member |
| Executive Officer, Township Municipal Committee | Member |
| Person elected by the representatives of the business association, the community and elders and respected persons | Secretary |

**Table 1: Composition of the Township Development Support Committee (TDSC)**

The membership in the TDSC therefore consists of different types of members: (1) the two **government representatives**, i.e. the Deputy TA and the Executive Officer of the Township Municipal Committee, who serve as simple members but *ex officio*, and as per the duration of their function in the township. The Deputy TA certainly serves under the instructions and under supervision of the TA. (2) Then, as a second category, are the members representing various segments of the community. One member each is "elected by majority of **elders and respected persons** from urban and rural areas" (*myo-mi myo-pha*), one as "representative of the **community** (*lumu a phwat a si*)", one as "representative of **business association**", one as "representative of **workers**" and one as "representative of **farmers**". While this is reminiscent of earlier forms of collective representation practiced during the socialist period, it also leaves a number of questions open, and therefore created a degree of uncertainty in the implementation of these provisions, which was additionally done to some extent in a rush during March 2013.

For instance, it is not clear whether the members are to serve as "representatives" of their respective constituencies, and whether these constituencies retain some form of right to recall their representatives. It is not clear how the "community" representative ought to be elected, and who would be eligible to be a candidate. It is also not clear what exactly is meant by the categories of "business association", "farmers", "workers", as the previously strictly controlled professional organizations of the socialist era are no longer as distinct and operational as they used to be. It is not clear whether the TDSC members, once appointed, owe some form of accountability to their respective constituencies. As for the person elected by elders and respected persons, it is not clear whether the person elected also has to come from within the group of elders and respected persons. The precise role of the Secretary is also not quite clear from the Notification. Moreover, the Notification does not state anything about a term of the committee, or rules related to qualification of its members or termination of membership. Most of the committee members understand their time as equal to the election term.

103. Presidential Notification 27/2013.

These and other questions all affected the manner in which these provisions were implemented when the TDSCs were first set up. There was hardly any publicity about these committees and the process of candidate selection and appointment of members, which is one of the reasons why the committees are practically unknown. Moreover, the modalities of the formation of these committees appear to have differed significantly from one township to another, and between States and Regions, and were highly contingent on local circumstances. While it is still a commendable move in the right direction to include community representatives in local development related decision-making, a lack of clarity and conformity in forming these committees, and unclear rules of conflict of interest, transparency and accountability may hamper these committees from being seen as expressing the true interests of the local community and being considered representative and legitimate.

The Presidential Notification furthermore describes the duties and functions of the TDSC as follows:

a. **Carrying out the affairs of township development** in collaboration with community leaders (*yap-mi yap-pha*) and local residents, finding answers on what should be done for the development of the township and for the social and economic development of the people residing in the township area,
b. **Supporting and collaborating in carrying out development matters**, giving **advice on the township development** and for the social and economic development of the people **to the township departments** without impairing the responsibilities assigned to them in accordance with laws and regulations,
c. Consulting and addressing the requirements of social and economic development and the activities of **rural and urban development submitted by the people** from various levels of the Wards or Village Tracts at the meeting with **Township Management Committee**,
d. Giving **advice on the requirements for drawing up a project** for development and on the examination of whether investment projects, if any, have any adverse social, economic or environmental impact,
e. **Encouraging and collaborating to develop small and medium-sized enterprises** by the expansion of co-operative societies, companies, public enterprises and business associations, and cooperating to promote the productive sector overall as the efforts of the private sector are the key to township economic development,
f. **Making suggestions on measures that can be taken by cooperating with Government Departments at the township level** and measures that can be taken by consulting within the Committee for the development of education, health and human resources,
g. Cooperating in carrying out **action plans for rural development and poverty reduction**,
h. Collaborating in activities carried out through international assistance in the township area in order to effectively support the social and economic development of the community,
i. **Assisting in solving problems related to any real damages**, if any, of the people in the township by submitting matters to the Township Management Committee.

There is also an additional provision that requires the Township Management Committee to invite the Township Development Support Committee (and the Township Municipal Committee) to receive **advice** from them **on the plans of township development projects, investment projects, and infrastructure such as roads, bridges, water supply and electricity** which are going to be carried out through the **government's budget or by private investment**.

From this enumeration, it is clear that the Notification does not intend to create a new body of township governance, but rather a consultative body that can make suggestions, provide advice, and assist the TA and the respective township level departments. When they are mandated to cooperate and collaborate in order to solve problems in thee township, this probably does not give them any formal implementing role as a legal entity that can carry out activities in its own name. As consultative bodies the TDSC does not have any staff nor does it have any budget. Their role with regard to the various development funds is not explicitly mentioned in the Notification, although the provision on infrastructure projects gives them a role in the planning process. The lack of clarity in this regard is perhaps the reason why the roles TDSCs play in different States and Regions, and from one township to another, differ significantly and are a function of specifically local dynamics, power relationships and personality factors. While it is probably an advantage to leave room for flexibility and adjustments to local realities across the country, such an absence of detail and clarity in the precise role of TDSCs and its members with regard to the disbursement of development funds represents a certain obstacle to expanding this type of funding beyond the current capacity. Moreover, it appear that from the formulation in the Notification, the TDSC would have a say on any infrastructure project, even privately funded ones, and that there role should not be limited to those funded on the basis of development funds.

Similarly, the **Ward and Village Tract** (*Yap-kwak, Kyay-ywar Oak-Su*) **Development** (*Bwint-phyo Toe-tak-yay*) **Support Committees** (*A-htauk a-ku pyu cawmati*) (W/VTDSC) are only roughly outlined in the Notification. State and Region governments were also obliged to establish W/VTDSC within the same period as the TDSCs, i.e. by March 2013. The W/VTDSCs shall be formed with a minimum number of 5 members and a maximum of 7 members based on the size of the ward or village tract and the number of (sub-)villages. In contrast with the TDSCs, most of the 5-7 members are elected from the people of the Wards or Village Tracts and only one from among the 10/100 household heads.

| | |
|---|---|
| Person elected by majority vote from among people of the Ward or Village Tract | Chair |
| Persons elected as leaders by majority vote of people if there are (sub-) villages | Member |
| Representative elected by majority vote from among the 10 and 100 household heads | Member |
| Representative elected by majority vote of Ward or Village Tract | Member |
| Person elected by majority vote of among members | Secretary |
| Clerk of Ward or Village Tract | Additional Secretary |

**Table 2: Composition of the Ward and Village Tract Development Support Committee**

The W/VTDSCs have only one member who is a government representative, namely the Ward or Village Tract Clerk, who is an official of the GAD under the TA's authority. The other members are all community representatives, with **one person elected by majority vote from among people** of the Ward or Village Tract, who serves as the Chair of the W/VTDSC, additional persons elected as leaders by majority vote of people if there are (sub-) villages, and another simple member representative elected by majority vote of Ward or Village Tract. Only one member is a representative elected by majority vote from among the 10 and 100 household heads, who are themselves elected as per the Ward and Village Tract Law of 2012. One of these elected members is elected by majority vote among the members to serve as secretary. This means that W/VTDSC is considerably more 'democratic' in that its membership is much less restricted than that of the TDSC, and in that election by the community play a bigger role, in particular for electing its chairman. The different committees are also complementary to each other by having both interest groups and popularly elected entities participating in local decision making.

There are however, also some aspects with regard to the formation of the W/VTDSCs that are less than clear. For instance, it is not clear in what manner the elected W/WTAs, elected in 2012 on the basis of the 2012 Ward and Village Tract Law, interrelate with these support committees. Can W/VTAs be members of the W/VTDSC? Can 10/100 Household Heads also be elected as community representatives in addition to the one member already assigned to this group? Can persons be members of different committees simultaneously? I.e. can someone be a member of the W/VTDSC, the TDSC and or the Municipal Committee at the same time? Is active party membership allowed? Do the restrictive candidacy requirements in place for W/VTAs also apply for membership in the W/VTDSC? Also, there are also many aspects left open, including any reference to a term of the committee, or rules related to qualification of its members or termination of membership. As with the TDSCs, it may not be a major problem that such questions have not been addressed in the Notification, as the role of the W/VTDSCs is for the moment rather marginal and many people have yet to learn about their existence. However, as the role and visibility of such committees increases, it may be necessary to clarify some of these aspects in order to ensure fairness and transparency, and eliminate the space for arbitrary decisions in this regard.

The main task of the W/VTDSCs is described as follows:

a. **Collaborate with, giving advice to and supporting the Ward or Village Tract Administrator in carrying out the duties** assigned by the Ward and Village Tract Administration Law,
b. Carrying out activities which can be done at the level of the ward or village tract by **consulting on what should be done for social and economic development** of the local residents in the ward or village tract and for rural development,
c. **Submitting issues** which cannot be solved at the level of the ward or village tract to the meeting of **Township Management Committee**,
d. Cooperating in **action plans for rural development and poverty reduction**,
e. Making **suggestions to the meeting of the Township Management Committee to develop forests** with shifting cultivation and fuel wood plantations in accordance with the rules and regulations of the Forest Department to prevent a shortage of water for drinking and farming in a village tract where it is necessary and to conserve the environment,
f. **Carrying out activities** to make **new generations** fond of and follow literature, culture and customs, and nurturing youth to become strong and healthy human resources through disseminating health education and undertaking actions for all local people to have a chance to be literate, to ensure school-aged children are able to be at school, and to increase the number of persons in primary, secondary, upper-secondary and graduate schools,
g. Educating and actually participating in **measures** to induce the local people of the ward or village tract to be persons who observe the law and live in accordance with the law.

With regard to infrastructure developments, the TDSC and the TMuC shall invite the W/VTDSCs and "give explanations to them in order to inform the public", and thereafter, if required such Committees shall seek further consultation and collaboration in a meeting with the Township Management Committee. This gives the W/VTDSCs a degree of influence over infrastructure projects, both publicly and privately funded, but also an obligation to communicate to the wider public in this regard.

The tasks of the W/VTDSCs are otherwise quite different from those of the TDSCs. While the TDSC has a relationship with the Township Management Committee, to which it can give suggestions and where it can bring up issues, and therefore indirectly to the Township Administrator, the role of the W/VTDSC is much more directly related to the function of the W/VTA who it is explicitly

mandated to collaborate with, give advice to and support. This notably does not make the W/VTA formally accountable to the W/VTDSC, as the accountability and supervision of the W/VTA remains with the TA, as per the Ward and Village Tract Administration Law.

As the TDSC, the W/VTDSC can also submit issues directly to the Township Management Committee. It is not stated how this is to be done, but in any case there does not seem to be any need to approach the W/VTA, or the TDSC first (as is the case with regard to infrastructure projects), but rather the access is a direct one according to the Notification. Presumably, the W/VTDSC would be represented through its Chairman or could submit written communications to the TMC based on collective decisions.

Interestingly, the W/VTDSC is also given a number of tasks of a more political/educational nature. These notably include health education, literacy campaigns and measures aimed at increasing school attendance. It is not clear from the Notification whether there is any connection with government programmes in this regard, which would be under the responsibility of the service delivery departments of health and education at the township level. Moreover, when carrying out the mapping, no distinct role of the W/VTDSC in this regard could be ascertained, which may also be due to the relatively recent establishment of these committees. Given their proximity to the communities which elected most of their members, these committees might therefore be able to play a useful role in the future in terms of making health and education related initiatives more effective and more connected to community concerns and demands.

## 3.5 Municipal committees

> *Because municipal work is very important in improving the livelihood and living standard of the people and in developing townships and villages, it should not be handled only by a small group of officials. In the Municipal Act that was enacted public representatives were involved in Municipal Committees and their activities. I would like to instruct responsible officials to start studying what kind of laws, rules, and regulations might need to be adopted in order to elect public representatives for Municipal Committees and to specify the roles public representative should play in running township municipalities.*[104]

Following on this speech made in 2012, The 2013 Presidential Notification instructed all States and Regions, as well as the Naypyitaw Council and the Leading Bodies of Self-Administered Areas, to set up the development support committees as mentioned above. However, it also instructed State and Region Governments to draft Municipal Laws which were to foresee the establishment of **Township Municipal Committees** (*Myo-nae Si-Pin-Thar-Yar-Yay Cawmati*, or TMuCs)[105] across all townships in Myanmar. The Subsequently, all State and Region Governments drafted such Municipal Laws, which were then adopted as State and Region legislation by the respective State and Region Hluttaws. Based on these 14 Municipal Laws, TMuCs were created in all 14 States and Regions for those areas designated by the Municipal Laws as municipal areas of townships. In Naypyidaw's 5 townships, they were created based on a decision of the Naypyitaw Council, a body appointed by the President.

104. Presidential Speech 26/12/12.
105. There has been considerable confusion with regard to the terminology and the best-fitting literal translation into English in this regard. Si-Pin-Thar-Yar-Yay is most often literally translated as 'municipal', but its meaning can also be broader and be translated as 'development'. This is for instance the case with the Yangon City Development Committee, which used Si-Pin-Thar-Yar-Yay in its Myanmar version. Development more generally (as in economic development, infrastructure development, human development, etc.) is Toe-tak-yay in Myanmar. The official translation of the 2008 Constitution, which includes Si-Pin-Thar-Yar-Yay - 'municipal affairs' into the competencies of States and Regions in Schedule Two, also confusingly uses "development matters". What "municipal affairs" means in the Myanmar context has been well defined in Municipal Laws, by-laws, manuals and practice since the late 1800s and is well-known in practice. In order to be as clear as possible and faithful to the true meaning of Si-Pin-Thar-Yar-Yay this report uses the term 'municipal' as the closest and most accurate English translation. It should be born in mind, however, that alternative translations also exist, which is why the TMuC is at times also referred to as Township Develooment Affairs Committee (TDAC) or Township Municipal Affairs Committee (TMAC).

Although the TMuCs are included in the Presidential Notification alongside the township and ward and village tract development support committees, they are not themselves to be defined or described as such. Rather they are a hybrid of a classical Municipal Committee with executive functions and a consultative body integrated in the State and Region administrative structures. What they have in common with the newly established development support committees is that they are partially elected, and are to be included in development decisions affecting the local area and therefore aim to open up spaces for participatory and representative governance at the local level.

The Presidential Notification states generally that the TMuC is to comprise "persons elected by majority vote from the local people and elder representatives (myo-mi myo-pha) of the township". However, contrary to the development support committees, the Presidential Notification makes no further reference to how the TMuCs are to be constituted or its members elected. This is clearly left up to the discretion of the State and Region legislatures, which defined the composition of the TMuCs in their respective Municipal Laws. It is perhaps instructive to look at an example of one State, Mon State, which established its TMuCs as follows:[106]

The TMuC shall be formed with the following persons:

**Table 3: Composition of the Township Municipal Committee**

| | |
|---|---|
| A person elected by town's elders | Chairperson |
| A person elected by the community-based organizations | Member |
| An experienced person elected by the town's elders | Member |
| A town elder elected by the town's elders | Member |
| Deputy Administrator of the General Administration Department | Member |
| Deputy Staff Officer of the Rural Development Department | Member |
| Executive Officer of Township Municipal Committee | Secretary |

### Box 7: The powers of the municipal committees according to the Municipal Law[107]

The TMuC has a wide range of **tasks and duties**, powers and authorities. It oversees and carries out a range of urban infrastructure projects (planning, water, sanitation, drainage, power supply, roads and bridges, market places, parks, sport grounds, swimming pools, bathing beaches and recreation centres, cemeteries, incinerators, bus terminals, landscaping and tree planting and cutting, etc.), it oversees and regulates the functioning of markets, stalls, manufacturing industries and restaurants, slaughter houses, ferries and harmful works, takes measures against fire, flood and natural disasters, manages and supervises vehicle traffic, it owns municipal buildings, it oversees the construction and supervision of privately-owned buildings in the township municipal area, it evicts and resettles squatters, supervises and inspects guest houses, motels, inns and hostels not approved by the ministry of hotels and tourism, controls the keeping, breeding of removal of animals in the township municipal area, and it can cause the arrest and handover of persons with mental disorder, lepers and beggars. It can also perform environmental conservation and can carry out sanitation public health and greening tasks.

106. A comparative analysis of the composition of TMuCs on the basis of the 14 Municipal Laws will be included in a synthesis report covering all 14 States and Regions. The individual States and Regions State of Local Governance Reports include in their Annexes overviews of the composition of various committees, including the TMuCs. These references are from an unofficial translation of the Law Amending the Mon State Municipal Law (Mon State Parliament Law No.5/ 2013), 15th Waning of Tabaung, 1374 ME (10th April, 2013).
107. This analysis is based on the Mon State Municipal Law of 2013. However, it also largely corresponds with the powers of municipal committees as per the 1898 Municipal Law, the 1922 Yangon Municipal Law and the other 13 States' and Region's Municipal Laws adopted in 2013 and 2014. The Municipal laws from the different states and regions show little difference.

The TMuC can inspect the construction and maintenance of any government-owned buildings; it can prohibit and manage trespassing on the township municipal affairs committee's lands as well as on the roads in the township by any persons, organizations and departments. The TMuC can order owners or occupiers to carry out works in houses, well, dams, pipes, tanks, etc. if necessary. It can suspend construction and renovation of buildings and reconstruct and demolish it if necessary.

In order to **finance** its activities, the TMuC can (with the approval of the State/Region government) create and amend taxes, set the tax rates and levy them. It can earn revenue by renting buildings and houses or other means. It can levy taxes on buildings and lands, water, lampposts, garbage and a community toilet tax. It can collect taxes on vehicles, animals that carry people and cargo and pet dogs, as well as service charges.

It can furthermore organize itself administratively as required; can spend the revenues it collects through a budget it draws up and as approved by the State/Region Government. It can coordinate with respective governmental organizations, and it can be entrusted by the respective State or Region with additional powers and tasks.

Moreover, it can take administrative action to ensure its orders, instructions, prohibitions, license withdrawals, etc. are observed. It can, through the Executive Officer, fine administrative penalties, and bring charges at the court. Penalty provisions are included in the Municipal Law. Infractions of municipal by-laws and orders can lead to hefty fines and jail sentences.

If anyone is not satisfied with the TMuC's orders or decisions they can appeal to the Municipal Affairs Minister via the Director of the State/Region municipal committee within 15 days from the date that order or decision has been made. If anyone is unsatisfied with the Minister's order or decision they can make an appeal to the Chief Minister within 30 days. The Chief Minister's decision is final and conclusive.

This indicates that the members of the TMuC in Mon State were not directly elected by the local residents, but that they are elected by elders and community-based organisations. It also includes three state officials. The Mon State Municipal Law further states that the formation of the TMuC shall be based on the representation of people and region, which could mean that the various members have to be representative of the different localities comprised in the municipal area. Municipal committees can be formed for one township or for a group of contiguous townships. Within the townships a municipal boundary designates the township's municipal areas. In most townships in Myanmar, there is at least one town which is in turn divided into wards. These normally form the municipal area if a municipality is established by law. The remainder of the township area is divided into village tracts, which in turn are made up of villages. In some cases, however, all of the township area is urban in nature and subdivided into wards. In such cases, several townships can be aggregated into a City Corporation, and the townships function more like urban boroughs (for more details on city corporations in Myanmar, see Box 8 below).

As a legacy of the early colonial type of municipal governance, the law foresees a strong supervisory role of the government, which can review and revise any decision, resolution, budgets and action of the municipal councils. During the British era, this role was exercise by Commissioners and Deputy Commissioners. This function was later transferred to the President of the Union following independence, and remained the hands of the central government until the adoption of the 14 Municipal Laws. One of the most significant changes brought by these Municipal Laws was that they transferred the oversight and supervisory function over municipal committees to

the State and Region Governments, which henceforth are the final arbiter over municipal affairs. The Chief Ministers are the final appeals body for municipal committee decisions, and the State or Region Government's Minister of Municipal Affairs is the highest department in the system municipal committees have to deal with in terms of municipal affairs. There is not equivalent ministry at the Union level and no administrative appeal is possible to the Union government on municipal matters.

The Law furthermore specifies that the State government shall designate qualification and termination of members of the TMuC and the term of the committee. Theoretically, it is quite possible that the same person is a member of both the TMuC and the TDSC, as there are no provisions about the incompatibility of such positions.

The TMuC and the TDSC are connected by the fact that the Executive Officer of the TMuC is automatically a member of the TDSC. However, in the case of the TMuC, the Executive Officer, who serves as TMuC Secretary, shall implement the Committee's resolutions.[108] This is not the case with the TDSCs, where the Executive Officer is only a simple member, and an elected community representative serves as its Secretary.

There are a few functions, which the TDSCs and the TMuCs share. Like the TDSCs, they are also required to serve in an advisory function to the Township Management Committee (Myo-nae Si-man-khant-kwe-mu Cawmati) for township development. As with the TDSCs, there is a provision that requires the TMC to invite the TMuC to receive advice from them on the plans of township development projects, investment projects, and infrastructure such as roads, bridges, water supply and electricity which are going to be carried out through the government's budget or by private investment. TMuCs in turn are required to consult the Ward Development Supportive Committees on infrastructure development and thus communicate information to the public.[109] The TMC, which includes officials from different township-level departments, shall meet and consult with the TMuC at least once a month and assign duties in order to carry out development matters of the township.

The brief overview of the powers and competencies of TMuCs presented in Box 7 shows that there are important differences, which distinguish the TMuC from the development support committees described earlier. The TMuC is more orientated towards municipal services and has executive powers in addition to its representative and consultative role. Importantly, the State or Region government can designate a fund allocation of the TMuC based on tax revenues of respective townships, and the TMuCs have their own administrative structures and staff.

At the State or Region Government level, a State or Region Municipal Committee shall be formed in order to supervise and coordinate the TMuCs' works. The State or Region government shall appoint a Municipal Affairs Minister as the chairperson of the State Municipal Committee. This is also a feature that is unique to the TMuCs and is not the case with the purely consultative development support committees.

108. Likewise, the Director of the State Municipal Committee, who serves as Secretary of the State Municipal Committee is responsible to the Committee for implementing its resolutions.
109. As TMuCs comprise urban areas, there will not be any village tracts in municipal areas.

### Box 8: Municipal governance through corporations in Yangon and Mandalay

Yangon and Mandalay, the two largest cities in Myanmar, have been governed on the basis of municipal laws that date back decades, in part to the colonial era. The respective institutions, the **Yangon City Development Committee (YCDC)** and the **Mandalay City Development Committee (MCDC)**, therefore existed prior to the coming into effect of the 2008 Constitution. The respective Municipal Committees (or "City Development Committees"[110]) are responsible agencies for the enforcement of Municipal Committee by-laws. To implement the powers extended by the various acts, the Committee can issue necessary rules, orders, directives and procedures. The recently passed Municipal Laws of Yangon Region and Mandalay Region reflect the existence of these City Development Committees.

In the areas covered by city corporations, **townships** have the function of boroughs. They are still also sub-divided in wards, and otherwise follow the structures and procedures in place for township administration. I.e. each has a Township Administrator, a TMC, a TDSC and WDSCs. However, the new Municipal Laws adopted by the 14 States and Regions had to make particular arrangements for TMuCs in such areas in order to make them compatible with the existing city corporations.

In Yangon, the Committee is empowered to "lay down the policy, give guidance, supervise or implement" a number of functions and responsibilities: civil projects; administration of lands; civil registration; construction, repairing and demolition of buildings; demolition and re-settlement of squatter huts; construction and maintenance of roads and bridges; traffic regulation; gardens, parks, playgrounds and recreation centres; water supply; sanitation; public health; markets and roadside stalls; firefighting and prevention. In addition, YCDC is in charge of other duties as per the 1922 Municipal Act, such as disposal of the dead, animals, slaughter-houses, drains, naming and numbering of streets. The Committee can, however also be delegated additional tasks from the central government.

To carry out its tasks, the YCDC has been provided with considerable financial autonomy. In contrast to non-corporate townships, where TMuCs administer the property of a single township's municipal area, in a City Corporations, both assets and functions are pooled at the level of the corporation. As a legal entity, it can acquire and hold moveable and immoveable property or any interest therein, whether within or without the limits of the City, and borrow. The Committee has the power to establish organizational set-up necessary to carry out its functions and can hire its own service personnel.

Representative Municipal Committees were first constituted by law in 1874, under British colonial administration, and became partly elective in 1884. They were reorganised under the **Municipal Act of 1898**. Town committees with less extensive powers were constituted for the smaller towns. In 1922, the **Municipal Committee of Rangoon**[111], was endowed with a higher status as the **Rangoon Corporation**[112]. As per the 1922 Rangoon Municipal Corporation Act three fourths of the (up to) 40 councillors had to be elected from the general body of electors and the

110. Although the Myanmar version uses '*Yangon Myo-taw Si-pin-thar-yar-yay Cawmati*', which literally means Yangon City Municipal Committee, this has since the early 1990s been translated as "Development Committee" rather than Municipal Committee. As the YCDC is well known by its English acronym, and its English name is well-established, this report also uses the term 'development' rather than 'municipal' to minimize the risk of confusion.
111. Rangoon is the old, colonial name of Yangon.
112. J.S. Furnivall, The governance of modern Burma, 1956.
113. Detailed qualification criteria aimed at preventing the election of persons who may have a conflict of interest due to their profession or holdings.

remainder nominated by the executive or elected by local authorities in a special procedure.[113] Every year, the Corporation elected one of its members to be Mayor. On the basis of the 1947 constitutional provision on regional autonomy, the parliament of Burma adopted a Democratic Local Government Act in 1953, which changed the manner of representation at the township and district levels, but left the arrangements for larger urban areas in place.

On 14 May 1990, the **Yangon City Development Law**[114] formally established the present form of YCDC, delegating wide responsibilities to this body, including city planning, land administration, tax collection, and development.[115] However, the YCDC is also still responsible for duties stipulated in the 1922 Rangoon Municipal Act, as amended.[116] The YCDC and raises its own revenues through tax collection, fees, licenses and property development.[117] Yangon City Development Committee (YCDC) consists of 20 departments, with headquarters in the Yangon City Hall. The committee's chairman also acts as the city's mayor. The present chairman is the Minister of Development Affairs in the Region Government of Yangon Region.

According to the 1990 YCDC Law, the Chairman of the SLORC shall form the YCDC comprising a minimum of 7 members and a maximum of 15 members, or more,[118] "made with suitable citizens". As after 2011 the executive functions of the SLORC/SPDC was transferred to the President of the Union, according to this law he would have complete discretion on how to appoint a leader, who serves as the mayor of Yangon, and members of the YCDC. However, as municipal affairs are now a power of the States and Regions, Yangon Region adopted a new Municipal Law in 2014. As a consequence of following the Presidential Notification of 2013, the new Municipal Law for Yangon Region had to alter the legal framework for municipal governance and foresee a degree of democratic representation. YCDC has announced an election of committee members in December 2014.[119]

In Mandalay, a **Mandalay City Development Committee (MCDC)** has similar functions and structural features to the ones in Yangon. A Mandalay City Development Law (1992), and the general Development Committee Law (1993) serve as the current legal basis. With the adoption of the Mandalay Region Municipal Law these arrangements have been revised.[120] Also in Mandalay, an election of committee members is to be held in May, 2015.

The above overview shows that the committees established in 2013, including the development support committees and the municipal committees, have begun to integrate well with the more established structure of hierarchical top-down management represented by the TAs and the W/VTAs. The manner in which these committees have been set up, and the relative novelty associated with the new arrangements, mean that there is still a large degree of inconsistency and uncertainty, and a certain amount of confusion in this regard, both among the governance actors themselves and among the general public. As municipal affairs is now a matter regulated by 14 different Municipal Laws, it is also likely that there will be increasing disparities between States and Regions with regard to the manner in which municipal committees are elected, and the way

114. The State Law and Order Restoration Council, The City of Yangon Development Law (The State Law and Order Restoration Council Law No. 11/90) (14 May 1990).
115. The YCDC is organised as follows: Chairman (Mayor), Vice-Chairman (Vice-Mayor), Secretary, Joint-Secretary, Committee Members. The YCDC is responsible for waste management (including collection and treatment), business licenses and registries, water supply, roads and bridges, environmental regulations, maintenance of public property (including parks, heritage sites), street lighting and fire fighting.
116. Law Amending the City of Yangon Municipal Act (1991).
117. In the 2011-2012 budget year, YCDC had an estimated deficit of Kyat 5 billion, because of high spending on road construction and purchase of waste collection vehicles.
118. "If necessary, the number of members may be increased."
119. The details on local governance arrangements in Yangon, as well as the YCDC municipal elections, will be dealt with in the Yangon Region State of Local Governance Report.
120. The details on local governance arrangements in Mandalay will be dealt with in the Mandalay Region State of Local Governance Report.

in which they interact with the vertical state administration and the people in their localities. Their autonomous role is as yet barely visible, partly due to the novelty of these arrangements and partly due to the fact that the elections to these committees effectively limited the number of potential candidates to a small fraction of the population.

However, in the context of Myanmar's history and the overall fragility of its political transition process, it is encouraging to see that related to township development planning a practice is emerging that indeed has made local governance more participatory, more inclusive and more transparent. The members of the different committees meet regularly, some even on a weekly basis and discuss township development priorities covered by the funds dedicated to local development (CDF, PRF and rural development funds). With the exception of municipal matters, the sector planning remains a Union level activity and the committees are not much involved, even though the terms of the Presidential Notification would give them a good basis to argue that they should have a certain role in that regard as well. What is promising is that in several cases even line departments of Union ministries have taken approaches that aim at broader consultation and more openness in decision-making and planning.

The mapping of the local governance situation in various States and Regions has shown that not only do township level committees meet and consult with each other; also the Ward and Village Tract Support Committees meet with the TDSC and provide input through the VTA. The TMC is also meeting with the committees on a regular basis to get suggestions and inputs from the committee members. Another emerging trend is that the TDSC and TMuC in several States and Regions together with elected Hluttaw members are managing the CDF. In late November 2014, an addition to the requirements was added saying that all projects funded by the CDF need to be signed off by the chair of TMuC and TDSC to avoid overlap. All of this is only possible because of a large degree of goodwill to make such complex systems work. In many places in the governance machinery, there are officials who want to do a better job of serving their communities and use the existing legal and administrative framework to their advantage. In Rakhine, the GAD State Secretary has been innovative and invites the chair of the TDSC and the TA in each of the townships for State level meetings to share experiences on how to best implement a more people centred and bottom up approach in planning. Although they often appear improvised and incoherent, such innovative arrangements resulting from the initiative of township level officials bear the potential of finding more responsive and locally-adjusted solutions for governance challenges.

These are all steps in the right direction towards in a more inclusive and responsive form of local governance, but there are still a number of factors that inhibit the emergence of good operational routines and a fairer and more accessible selection/election process of the various committee members. From a gender perspective the committees are far from representative. There are extremely few women members serving on these committees, which in combination with the fact that none of the TAs and only a negligible number of VTAs (41 out of approximately 16700) are women means that women are effectively excluded from local governance across the board. There have been only few ideas on how to encourage and enable women to take up a role as committee members. In areas where minorities and marginalized communities live, they have equally not been able to effectively participate in these committees, which tend to draw from groups of people who are already well-respected and well-established (i.e. elders, social organizations, etc.). The manner in which this excludes the poorest of the poor and prevents them from getting a fair hearing in government channels has yet to be properly examined but should not be ignored.

### Box 9: Land Management Committees

There are a number of other committees of great relevance to local communities, especially in rural areas, which function under the auspices of the local governance structures already described. These are administrative committees that take legally binding decisions that affect the rights and entitlements of individuals. The most important of these are the committees related to land, which deserve to be mentioned separately here, also to clearly distinguish them from the participatory and consultative committees described earlier.

Two laws related to the management of land, the **Farmland Law** and the **Vacant, Fallow and Virgin Lands Management Law**, were approved by the Union Legislature on 30 March 2012. They regulate procedures for registering various types of land and foresee recourse to higher instances within the administrative structure, but at the expense of the possibility to take a land-related case to court.[121] The 2012 Farmland Law established a **Farmland Administration Body (FAB)** as a line agency within the Ministry of Agriculture and Irrigation (MoAI). It is also called **Farmland Committee**. The Minister of MoAI is the chairperson; the Deputy Minister of MoAI is deputy chairperson; the Director General of Settlement and Land Record Department (SLRD) is the secretary. This structure is replicated at the State or Region level where the Chief Minister of the State or Region is the chairperson of the Committee; and the head of SLRD at the State or Region level is the secretary. These FABs at Union, State or Region, district, township, ward and village tract levels, are entrusted with the responsibility to consider applications for land use registration and resolve land disputes.[122] They reviewing applications for the use of farmland; formally recognize and approve rights to use farmland; submitting approved rights to use farmland to the SLRD for registration; conduct valuations of farmland for tax and acquisition compensation purposes; issuing warnings, imposing penalties or rescinding use rights if conditions for use of farmland are not met; and, resolve disputes that arise over the allocation and use of farmland use rights.

The **Township Farmland Administration Body (TFAB)**, also called Township Farmland Management Committee (TLMC), is chaired by the TA and the head of the township SLRD (under the Ministry of Agriculture) is the secretary. It has a legal basis for adopting administrative decisions and handling disputes related to farmland use and registration as outlined in the 2012 *Farmland Law*. The Ward/Village Tract Land Committees serve as technical sub-committees.
Under the new Farmland Law, the TFAB issues Land Use Certificates (LUC) to farmers recognizing their, and registered by the SLRD. Independent observers have acknowledged some improvements but have also found that the laws provide weak protection for the rights of smallholder farmers and the equal rights of women to register and inherit land, and inadequate safeguards for the majority of farmers who are smallholders and the security for farmland.[123] The Government retains power to rescind farmland use rights leaving smallholders vulnerable to dispossession of their land-use rights.

Disputes that cannot be resolved at one level are elevated upwards to the State or Region level, where the decision of the FAB is final (if carried out to the letter on the law and in good faith).[124] There is no existing "sounding board" for this committee as such, nor an oversight body with popular representation.

121. This exclusion of judicial recourse may be a violation of the fundamental right to judicial recourse and may therefore be quite possibly unconstitutional.
122. The Farmland Law, 30 March 2012.
123. There have been a few improvements compared to previous laws such as recognition of non-rotational taungya (a form of shifting cultivation whereby forest land is cleared through burning, and is therefore also known as slash-and-burn-agriculture) as a legitimate land-use and recognition that farmers are using vacant, fallow and virgin lands without formal recognition by the Government. Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law, Robert Oberndorf (2012).
124. Ibid.

For non-farmland, i.e vacant, fallow and virgin lands, including forests, the **Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV)** is established by the VFV Law as a national level multi-ministerial committee formed at the President's discretion. The Minister of MoAI is appointed as Chairperson of the CCVFV; and the Director General of the SLRD acts as the Secretary of the CCVFV. The VFV law is virtually identical to the more recent Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land (1991). The Law creates a mechanism where public citizens, private sector investors, government entities and NGOs may submit an application to the newly created CCVFV to lease VFV lands for agriculture developments, mining, and other purposes allowed by law. The law allows the CCVFV to grant what can be considered as long-term leases on State land. VFV land that is leased may not be mortgaged, sold, sub-leased, divided or otherwise transferred without approval of the Government.[125] There is no independent dispute resolution mechanism in relation to the lease and use of VFV lands nor are appeals of administrative decisions to the judicial branch of Government permitted.

125. Ibid.

# 4. Local governance and service delivery

## 4.1 Introduction to local service delivery in Myanmar

The Local Governance Mapping focuses not only on more general governance structures at the local level; it also covers people's perceptions of performance in local service delivery in the areas of public healthcare, primary education and drinking water supply. These sectors are commonly used to assess local governance system and the progress of decentralisation reforms elsewhere, as they offer insights in the way in which different levels and tiers of government cooperate and coordinate with each other, the manner in which funds and information flow, the way in which public goods that are considered essential are delivered to the citizens by their state institutions, and the way in which such services are provided with any degree of predictability, equity and consistency throughout a country.[126] The performance of local governance institutions in these areas also has direct impacts on social inequalities and pro-poor outcomes. And each of these areas provides opportunities for learning through innovations as well as incentives for either promoting or resisting change.[127]

In Myanmar and elsewhere in the world, the **public health sector** has traditionally been characterized by centralisation, which is due to the high degree of specialization, the critical role of quality and timeliness, and the high level of knowledge required to participate in the health care system at all levels. Another constraining factor has been the top-down, centrist bias in the influential Health for All (HFA) paradigm, used to build dominating central government health ministries in many countries. The World Health Organization (WHO) has broadly supported such an approach and has been traditionally uncomfortable with decentralisation.[128] In addition, most global initiatives that focus on health challenges - including the Millennium Development Goals - assume a strong central role for ministries of health.

Some countries that have decentralised service delivery in the health sector have experienced initial problems such as staff opposition, leading to breakdown of deployment and other personnel mechanisms; mismatches between health-care funding and spending requirements; ambiguity in responsibilities and premature delegation of functions, leading to deteriorating service quality; and disruptions in reporting, accountability, and quality control. Medium-term concerns have often included rising system costs. Specifically, downsizing administrative units may yield designs for key health functions that are neither technically efficient nor cost-effective because of diseconomies of scale.[129] On the positive side, decentralisation of certain functions in the health sector, especially implementation and service-delivery related, has given some local authorities and other stakeholders greater leeway to adapt or even replace once-standard methods for delivering and financing health services. And these greater discretionary powers have led to numerous local innovations in health planning, service delivery, and financing.

Most analysts in this field have been supporting the WHO's recommendation that countries phase in devolution under central guidance, subject to stringent criteria, with health ministries continuing to take responsibility for specialized services, medical and drug supplies, basic education and training, and other key functions (WHO 1995). In Myanmar, however, health services is not

126. See for instance, East Asia Decentralizes, World Bank (2005), which analysed the state of decentralisation reforms in five countries in East Asia on the basis of these three sectors.
127. See also UNDP, A User's Guide to Measuring Local Governance (2009), prepared by the UNDP Oslo Governance Centre, available at http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/oslo_governance_centre/governance_assessments/a-users-guide-to-measuring-local-governance-.html
More information on this Guide and relevant links can be accessed at http://localdemocracy.net/2013/12/18/undp-measuring-local-governance/
128. East Asia Decentralizes, World Bank (2005).
129. Ibid.

a devolved function as the constitutional framework (Schedule One) place the responsibility for public health among the duties and powers of the Union tier of government. Decentralisation in the health sector has therefore not featured on the government's reform agenda for the time being (for more detail on this sector, see below).

Likewise, the **education** sector is a branch of government where decentralisation is complicated as is by no means seen as a policy panacea. Choosing an appropriate design for transforming an education system through decentralisation is difficult, as many examples fr om across the region show. The main benefits of decentralisation lie in reinforcing accountability among those responsible for delivering services - between the central government and local governments, between governments and school personnel, and between school personnel and the communities they serve.

The biggest risk in decentralising education is that large inequalities in the distribution of resources among geographical regions can produce large disparities in education outcomes. Transferring fiscal responsibilities to local areas and relying on local resources and expertise is likely to widen educational gaps unless there are strong mechanisms in place that guarantee that national standards are uphold. In an ethnically diverse context such as Myanmar, the question of who controls and influences curriculum development, teacher appointments, and language education are of course politically sensitive and have therefore featured prominently in discussions on state structure and decentralisation in debates ever since Burma was formed as an independent state in 1947. Like public health, education remains a power assigned to the Union tier of government as per the 2008 Constitution (see below).

Service delivery in **drinking water provision** is almost by definition a responsibility of local governance structures. Local/municipal infrastructure development is an area that avails itself almost ideally as a starting point for decentralisation reforms and has been used as such in many developing countries around the world. Although the role of the central government remains important as a source of funding, technical expertise and the maintenance of standards, decentralisation strategies often include participatory choices in (small-scale) infrastructure investments, not simply to better respond to local service needs but as a deliberate seedbed for democratic participation in governance, with the intention of strengthening civic commitment to the entire decentralisation program. The payoff is judged only partly by whether infrastructure services improve; equally important is whether mechanisms for public participation in decision making strengthen citizen involvement in governance.[130]

As will be described in more detail below, in Myanmar the responsibility for local drinking water provision now falls within the competency of municipal committees in urban areas, where they exist, and therefore the responsibility of municipal development structures at the State or Region Government level, which is due to the fact that 'municipal matters' are now a power of State and Region Governments to legislate on and administer. They have done so by adopting 14 different Municipal Laws which each place the responsibility for municipal drinking water provision in the authority of municipal committees. In rural areas, the general rural development responsibilities of the state continue to fall under the duties of Union Ministries and Union development funds, albeit administered and managed by the respective departments at the State or Region government level (see below). For rural areas, provision of drinking water is a responsibility of the Department for Rural Development.

130. East Asia Decentralizes, World Bank (2005).

## 4.2 Local service delivery of basic healthcare

"**National Health**" is included in Schedule One of the Constitution, which gives exclusive legislative and administrative powers to the Union tier of government for public health. As hardly any decision-making power has been delegated to lower levels in the Ministry of Health, the planning and budgeting in the health sector also remains very centralised and is mainly taking place at the Union level.

In 2012-13, the Myanmar government's budgeted spending for health was 5.7 percent of total government spending, amounting to just 0.76 percent of GDP, at Ks 392,197 million. Indications are that the allocation of health spending continues to be based on incremental year-on-year growth, rather than a review of health conditions and needs.[131] After decades of stagnation in the budget for public health, the national health budget has increased over the last three years from MMK 92 billion in 2010-2011 to MKK 652 billion as budgeted for 2014-2015.[132] While this is a substantial increase, government expenditures on health as part of total government spending at present still only amount to half of the average amount spent by similar countries in the region on health care.

Besides increasing the public health budget, the Government of Myanmar has started a more structural measure to improve the quality of public health care. In its Framework for Economic and Social Reforms (FESR), which is the Government of Myanmar's major policy document for the 2012-2015 period, it mentions "the government also recognizes the importance of quickly updating its overall health strategy, reviewing current health policies and strengthening the National Health Law."[133]

Funded by the Union budget, the State or Region government does not have a line budget item or individual minister portfolio for health, which typically sits with the Minister of Social Welfare. Budgeting and planning remain at the Union level, with township health administration in charge

131. Towards more child-focused social investments: Snapshot of Social Sector Public Budget Allocations and spending in Myanmar. UNICEF, 2013.
132. Myanmar Times 5 May 2014.
133. Government of Myanmar, 2013. Framework for Economic and Social Reforms, page 30.

of actual service delivery through various public health facilities as well as collecting data on outputs, basic health indicators and proposals upwards to the Union-level ministry for review, where the decision-making takes place. Procurement of medicines has been decentralised now to the State or Region level, but decisions on capital spending still take place at the Union ministry, as does the vast majority of decision-making on human resources.[134]

Of the eight departments that comprise the Ministry of Health, the **Department of Health (DoH)** is by far the most important in terms of budget (it spent 91 percent of the total ministry budget in 2012-13).[135] This occurs primarily through **capital investments and staff costs** which are borne at the township level, through the **township health departments**, headed by **Township Medical Officers**. This is where the bulk of the responsibility lies for the management of health facilities, public health programmes, medical supplies and public health education.

In most townships, the **Township Medical Officer (TMO)** plays both a medical and an administrative role, being responsible for staff planning, quality supervision of all health facilities, the distribution of medical supplies, as well as for collecting health baseline data. In larger townships across Myanmar, the duties of the TMO are split between the TMO, who is in charge of the hospital and all medical affairs, and the **Township Health Officer (THO)**, who is in charge off all public health matters and the provision of medical supplies to all health facilities. The TMO/THO can recruit support staff for the various health facilities directly if there is a vacancy, but is not in charge of hiring and firing or the transfer of medical staff between health facilities. The office also collects health data, plans the need for essential drugs for each health facility, supervises the various health facilities, pays the salaries of health staff, keeps staff records, and assists the District Health Office with information gathering. There is a corresponding health committee at the township and village tract levels.

One major change in the health service delivery process has been the delegation of the procurement of medical supplies from the Union to the State or Region and district level, which is now handled and managed by the **State or Region Department of Health (DoH)** for more efficient allocation. As a result of these changes, the TMO can now transfer medical supplies between health centres in order to deal with acute shortages. The TMO is not involved in the planning and implementation of capital investments (new RHCs, renovations, etc.), which is all dealt with by the MoH at the State/Region and Union level. As a result of this centralised planning system in the Ministry of Health, the ability of the TMO to coordinate planning with other sector departments and with other health service providers in the township is very limited.

Overall, the sector is characterized by continued centralisation in terms of health policy and service delivery. Only gradually have some service delivery functions been delegated to State or Region Government or township level officials. The overall direction of progress has however been made clear by the President in his address to State and Region Governments of 9 August 2013, where he mentioned, among other things, that the Union Health Ministry is to continue training nurses and midwives at central level but to make coordination with State and Region governments in assigning them to their home regions; the State and Region governments were instructed to appoint medical staff in remote regions through vacancy announcement in newspapers. Even so, public health remains a vertically organised national system, and there is as yet only a marginal role for the general township administration and the support committees in terms of health service delivery.

134. Subnational Governance in Myanmar and its Implication for Child Rights, UNICEF January 2014.
135. Ministry of Finance and Revenue. From: Towards more child-focused social investments: Snapshot of Social Sector Public Budget Allocations and spending in Myanmar. UNICEF, 2013.

This is despite the fact that the Presidential Notification 27/2013 also enables the TDSCs to make suggestions on measures that can be taken by cooperating with government departments at the township level and measures that can be taken by consulting within the committee for the development of health. Also the W/VTDSCs were given the responsibility to disseminate health education. The powers of municipal committees traditionally include a number of important public health tasks and responsibilities and have been included in the powers of TMuCs in the various Municipal Laws passed by States and Regions in 2013 and 2014. These health related functions have however only begun to be considered by the various committees, and have so far not been integrated into the general public health system under the auspices of the Union Ministry of Health.

Nevertheless, the satisfaction with the health situation was noted as rather good in the local governance mapping. In particular, many communities appear to have seen tangible positive changes in this regard within the past three years. Clearly, there has been an effort to be more service oriented, to have a more inclusive and socially sensitive approach to health service delivery and to provide some basic services and medicines for free. Although there are some important exceptions to this general trend, and although the overall health standards still lag far behind what could be expected, this is a noteworthy trend that gives the government reason to believe that higher resource allocation combined with higher quality performance and attention to vulnerabilities does indeed deliver a higher rate of approval by citizens. The fact that many health services are also provided by the private sector certainly also plays a role in this regard.

## 4.3 Local service delivery of primary education

The Constitution of Myanmar guarantees that "the Union shall provide a free, compulsory primary education system." However, there is no overarching policy document that presents the strategy and concrete approach of how government wants to transform the sector. Together with "national health", a number of education-related responsibilities are listed in **Schedule One** of the Constitution.[136] A study from 2013 has found that the inclusion in Schedule One is held as "meaning that the State and Regional Hluttaw cannot enact any legislation in that sector. Nor is there formal provision for the State governments to have a role in education, or practical means for them to do so".[137]

In 2012-13, budgeted spending for education was 11 percent of total government expenditure and 1.46 percent of GDP, amounting to Ks 51.38 trillion. The education budget has increased significantly between 2010-12 (Ks 310 billion) and 2012-13 (Ks 639 billion),[138] of which around 90 percent is spent on basic education. The education sector is known for a number of systemic problems: enrolment rates are low, pass-through rates from primary middle school poor, and as observed in a recent sector study, "the education system is characterized by poor quality, out dated pedagogy and insufficient geographic coverage, with rural and border areas being poorly served. Roughly half of Myanmar's children do not complete primary school."[139]

136. Schedule 1, Section 9. "Social Sector": (a) Educational curricula, syllabus, teaching methodology, research, plans, projects and standards; (b) Universities, degree colleges, institutes and other institutions of higher education; (c) Examinations prescribed by the Union; (d) Private schools and training; […]
137. Zobrist, Brooke and McCormick, Patrick. A Preliminary Assessment of Decentralisation in Education: page 8-9.
138. Ibid.
139. Zobrist, Brooke and McCormick, Patrick. A Preliminary Assessment of Decentralisation in Education: Experiences in Mon State and Yangon. Subnational governance in Myanmar Discussion Papers. Centre for Economic and Social Development (MDRI-CESD), December 2013.

In addition to the above-mentioned budget increases, the education sector is under revision. Based on the initial outcomes of a "Comprehensive Education Sector Review" several reforms are already being implemented or prepared. Regarding the management of education the CESR observed it its recent report:

1. "The relevant ministries, administrative bodies and schools are not fully serving their intended functions without appropriate coordination and demarcation of roles to serve for a unified and coordinated purpose;

2. The existing laws and policies have become outdated and do not reflect the realities of the education sector today".[140]

A recent report entitled "A Preliminary Assessment of Decentralisation in Education"[141] concluded that: "the existing education administration structure does not allow each locality to respond to their local needs."[142] Although the scope of this study was limited its main conclusion was very clear: "This study indicates that there has been little decentralisation within the Ministry of Education. There has been limited, unclear "de-concentration," resulting in a certain amount of responsibility shifting to lower levels of administration (like minor school repairs, small scholarships, etc.), but people at these lower levels do not have decision-making authority commensurate with, or related to, their responsibilities. Government policies concerning education and decentralisation have not been clearly defined. Instead, the institutional and organizational culture in the Ministry of Education continues to be top-down".[143] As a result, "the provision of these services represent a form of deconcentration, meaning that people at the lower levels have more work and responsibilities, but which give them no greater authority—only more work".[144]

140. JICA 2013; Data Collection Survey on Education Sector in Myanmar Final Report. February 2013. Page 10.
141. Zobrist, Brooke and McCormick, Patrick. A Preliminary Assessment of Decentralisation in Education.
142. Ibid., page 11
143. Ibid., page 4.
144. Ibid., page 19.

The starting point for improving service delivery on primary education at the local level is therefore characterized by huge challenges. The local governance mapping sought to examine how the various officers and bodies at the local level are dealing with these challenges, and what the perceptions of the communities are in this regard. The township education office, headed by the **Township Education Officer (TEO)**, is in charge of coordinating all education activities at the township level, the township education office pays the salaries of all education staff via the headmasters, is involved in the selection, recruitment and training of daily salary teachers, keeps an overview of staff flow and advices the higher levels offices on vacancies and staff planning. In addition, it carries out school inspections, deal with serious complaints that cannot be handled by the headmasters and maintains the education database of the township.

The job of the TEO is one of the most demanding jobs in the township. Together with a few assistants, the TEO manages roughly 60-70 percent of all civil servants in the township including their salary administration; monitors the quality of all levels of education; collects relevant educational baseline data and, resolves a multitude of practical issues especially with regard to the structural shortage of teachers in the more remote areas. This is despite the fact that the TEO's autonomy and ability to respond to these problems is very limited, due to the centralised way in which the Ministry of Education is organised. As a result of the centralised planning system, and similarly to the TMO, the TEO is very limited in coordinating planning with other sector departments and with other education service providers in the township beyond very practical coordination of educational activities such as anti-drug campaigns that are carried out jointly with the TMO or THO at primary and secondary schools.

Within the Ministry of Education, planning, budgeting, and decision-making remains centralised, with little budgetary discretion at the township level. In setting budgets, the Ministry uses a formula-based allocation system which includes numbers of classrooms and students to allocate funds, for which the township offices are required to collect information on key output indicators from schools.[145]

However, there have been a number of changes which signal a trend to giving more responsibilities for service-delivery related tasks to lower levels within the education system. There is a small discretionary budget for school principals for specific expenses, which schools can spend with the approval of the TEO.[146] It has also become easier for the TEO to recruit local teachers to deal with acute staff shortages, especially in the more remote townships or villages. The TEO can recruit teachers on a daily wage basis (meaning that they are not part of the civil service, they do not receive any additional benefits like pensions, and are not paid during school holidays). Also, in many cases Parent Teacher Associations (PTAs) have been activated to take initiatives to improve the standards of education service delivery at the local level, and have begun to collaborate more effectively with township education officials.

The President, in an announcement to State and Region Governments of 9 August 2013, has decided that the Union Education Ministry is not to directly appoint primary education level teachers and that such appointments are to be made by State and Region governments. The Presidential Notification 27/2013 also enables the TDSCs to make suggestions on measures that can be taken by cooperating with government departments at the township level and measures that can be taken by consulting within the committee for the development of health. Also the W/VTDSCs were given the responsibility to disseminate health education.

145. Towards more child-focused social investments: Snapshot of Social Sector Public Budget Allocations and spending in Myanmar. UNICEF, 2013.
146. Ibid.

In light of the history of underperformance and the magnitude of challenges facing the Myanmar public education sector, it is encouraging to see that the mapping conducted in several States and Regions identified not only significant changes, but also that improvements have been noticed and appreciated by citizens. In particular, the improved quality of teaching (appointment of more and better qualified teachers) and improved infrastructure (construction of extra classrooms and school buildings) and the improvement of school equipment over the last few years were frequently mentioned by respondents. Most respondents also felt that their children were treated in the same ways as all the other children. While these represent only a start of a more responsive and people-oriented service delivery in the public education sector, such small steps provide confidence that continued reform efforts, which also make full use of the potential of local solutions, and shared responsibilities between local governance actors and families, can produce results that can further advance education performance in Myanmar.

## 4.4 Local service delivery for drinking water

Providing safe and reliable access to drinking water is one of the main functions associated with modern government. What is sometimes even referred to as a right to water, is included in all relevant human development goals and standards. In Myanmar, 83 percent of the population have access to water from an improved source, but access can be uneven and differs greatly by season, physical and geographic location and in terms of the quality of the water obtained.[147]

It is almost by definition a responsibility of local governance structures to build the necessary infrastructure and to ensure that the facilities are maintained, and that all people have equitable access to such a source. As in many other countries, the building and maintenance of local or municipal water infrastructure development is recognized as an area that avails itself almost ideally as a starting point for decentralisation reforms. Interestingly, drinking water services now fall under the responsibility of different governance structures depending on whether it occurs in urban or rural areas. In some areas of Myanmar the private sector has also emerged as an important provider of drinking water.

In the water sector, responsibility for local service delivery of drinking water is divided between municipalities for urban supply, and the **Department of Rural Development (DRD)** for rural supply. The institutional framework is complicated, with the DRD emerging as a new department under the **Ministry of Livestock, Fisheries and Rural Development** at the township level in October 2013. In municipal areas, municipal committees now have the legal power and mandate to ensure drinking water supply (as per the Municipal Laws of the 14 States and Regions), whereby the Region or State Governments have an important oversight and support role, which they exercise through **Departments of Municipal Affairs (DMA)**.

Serving as a department supporting and controlling the work of Township Municipal Committees, the DMA falls directly under the responsibility of the State/Region Minister for Development Affairs who chairs a State or Region Municipal Affairs Committee. As municipal affairs are a matter included in Schedule Two of the Constitution, which makes it a legislative and administrative competency of the States and Regions, there is not superordinate Ministry or corresponding entity at the Union government level. The municipal committees are responsible for delivering

147. For more detailed overviews of the drinking water sector in Myanmar, see "Myanmar: Urban Development and Water Sector Assessment, Strategy, and Road Map" - Institutional Document, Asian Development Bank, August 2013. See also Hiroshi Sakai, Yatsuka Kataoka, and Kensuke Fukushi, 'Quality of Source Water and Drinking Water in Urban Areas of Myanmar', in The Scientific World Journal, Volume 2013 (2013).

a range of urban services (including water and sanitation). They do so by availing themselves of the services of the DMA, which are provided both at the State or Region level and within the township administrations themselves, where a Municipal Committee Executive Officer is in charge of implementing the municipal council's duties. Municipal Committees have their own budgets, which they put together drawing from own revenues in the form of taxes, fees and rents, and make their expenditures, including capital investments, on this basis. They can also take loans for infrastructure investments. Citizens in municipal areas interact with Township Municipal Committees in charge of service delivery. They can also approach their respective TDSCs or WDSCs. In a number of State and Region, and due to the fact that municipal committees have only recently been established in many towns around the country where little if any experience in municipal governance exists, the DMA has been operating as a centralised, revenue-generating department, which receives funds from the State or Region government budget and is accountable to the State/Region Minister for Municipal Affairs and ultimately Chief Minister.[148]

The new structures have resulted in some challenges to delivery of water at the township level. In the short-term, staffing remains a concern for newly established DRD offices in townships, where a large number of vacancies exist. And as the DMA can only spend 30 percent of its revenue on staff salaries, a number of departments are not able to afford salaries for the sanctioned staff. In a number of areas, the DMAs have been managing water supply in rural areas as the DRD establishes its new structures.

Given this drastically reorganised governance structure in terms of providing water supply in urban and rural areas, it was interesting to see that water supply ranks relatively high, on average, among the priorities of communities examined as part of the local governance mapping. Another important insight was that demands for better, more reliable and higher quality water supply differed significantly from one location to the next, and did not always appear to correspond with stated government priorities for infrastructure development or related planning decisions or funding allocations. This signals that the need for better information collection, community consultation, feedback mechanisms and responsive needs-based planning mechanisms may be even greater in the area of water supply than in health or education. Accordingly, the assessment by communities as to whether the water supply situation had improved or not in recent years differed starkly and was highly contingent on recent infrastructure upgrades.

It is therefore encouraging to see that the Presidential Notification 27/2013 recognises the need for enhancing public input in infrastructure decisions related to water supply. Accordingly, the TMC shall invite the TDSC and the Township Municipal Committee to receive advice from them on the plans of township development projects, investment projects, and infrastructure on water supply (amongst other things) which are going to be carried out through the government's budget or by private investment. Also the W/VTDSCs are entitled to make suggestions to the TMC with regard to preventing a shortage of drinking water.

148. See also, Bissinger, Jared and Maung Maung, Linn. Subnational Government and Business in Myanmar. Subnational governance in Myanmar Discussion Papers. Centre for Economic and Social Development (MDRI-CESD), December 2013.

# 5. Accountability and transparency

## 5.1 Definitions and background

Accountability, representation and transparency lie at the heart of any improvements in government delivery of public goods and services at the local level. Indeed, the entire rationale for giving a central role to local governance institutions in service delivery is largely predicated on the greater potential for accountability in local government than in central agencies or NGOs.[149] Generally, accountability can be understood as comprising of two elements:[150]

- **Answerability**: the duty of local public officials or agents to inform and explain their actions to their principals (citizens, citizen representatives or other public officials acting on behalf of citizens);
- **Enforcement**: the capacity of principals to impose, or at least threaten, sanctions on power-holding agents that have failed to fulfil their public duties.

The question of who is accountable to whom and what ways and means are available to enforce such accountability are central to any governance analysis of the relationship between state and citizens in any given context. The effectiveness of accountability is dependent not only on the legal and institutional framework, but on the political context in which laws and institutions are placed. Accountabilities are also never simple relations, but are often complex and mutual.[151]

In order to disentangle some of this complexity, three main dimensions of accountability can be distinguished, which have been considered in this mapping of the state of local governance:

- **Downward accountability**, of local governance institutions to citizens;
- **Horizontal accountability** within local governance institutions and administration;
- **Upward accountability**, of local governance institutions to superordinate central and regional governments.

In the context of decentralisation, the dimension of accountability most often discussed is the **downward accountability** of elected local governments to citizens, voters, and community members under their jurisdiction. Although participation in elections plays only a small part in ensuring accountability, electoral mechanisms can have a powerful effect on the downward accountability of local governments. In Myanmar, no elected local government exists, as has already been mentioned. Instead, the TA carries out his duties as a representative and under orders of the central government only, and is only duty-bound to consult with some partially elected bodies. On the level of village tracts and wards, the indirect election of VT/WAs through a system of household representatives could be seen as an emerging system towards greater accountability downwards – if the elected VTA is primarily accountable to the ones that have elected him or her for office. Moreover, there are no means for the general public to hold their VT/WAs formally accountable once they are elected. The only avenue they have is social and political pressure.

Likewise, the downward accountability of the committees at the local level has not been developed very far. Despite the fact that the Presidential Notification 27/2013 foresees an electoral element in forming the development support committees at the township and ward or village tract level, and in the municipal committees, the actual manner in which their members are elected, indirectly

149. Delivering the Goods - Building Local Government Capacity to Achieve the Millennium Development Goals. A Practitioner's Guide from UNCDF Experience in Least Developed Countries, October 2005.
150. Ibid.
151. See Ojendal, J and Dellnas, A (eds) The Imperative of Good Local Governance. Challenges for the Next Decade. UN University Press (2013).

through elders and/or social organizations that in themselves lack democratic legitimacy, means that these committees hardly function as downward accountability mechanisms.

Comparative experiences have shown that direct elections of local administrators sometimes result in an over-dominant chairperson or mayor who, because of the relative strength of their power base, overshadows and deters the other councillors, thereby discouraging real local democratic debate and activity and weakening accountability. The presence of national MPs as *ex officio* members of local bodies can also overshadow local elected officials and undermine local accountability.[152]

And yet, given Myanmar's historical context and the fact that for more than two decades there has been practically no downward accountability whatsoever, all of the above-mentioned changes represent moves in the right direction. The fact that a range of office-holders are now elected, rather than appointed in a top-down manner, already constitutes a systemic change in the modus operandi of governance institutions. This could be seen most clearly in the fact that despite the much more narrowly defined legal parameters, most W/VTAs consider themselves accountable towards their communities, from which they were elected. The fact that each township has at least 4 elected Hluttaw members at the Union and State or Region level also helps to engrain a sense of downward accountability in the state machinery.

Another dimension of accountability, and one that deserves more consideration than it usually receives, is the **horizontal accountability** of local civil servants (the local executive branch) to locally elected officials, as well as other branches of government, in particular the judiciary. As the elements of formal downward accountability are not yet fully developed in Myanmar, it could be hoped that horizontal accountability provides more opportunities in comparison. While there are beginnings of accountability relationships between elected members and the administrative branch of government, in particular where Hluttaws have been exercising their parliamentary control functions over the executive (through questions, investigations, special committees, etc.) the corrective role of the judicial branch so far leaves much room for improvement.

The 2008 Constitution of Myanmar lays down as one of its basic principles that the "three branches of sovereign power, namely legislative power, executive power and judicial power are separated, to the extent possible, and **exert reciprocal control, check and balance** among themselves." This horizontal separation of the three branches of sovereign power is to be replicated in the Union, Regions/States and the Self-Administered Areas, which share this sovereign power (Section 11 of the constitution).

The first and foremost possibility to appeal against an administrative decision is to take the case to the next level in the administrative hierarchy, in the hope that a higher-ranking officer would quash or amend the decision of the subordinate. However, in practice such decisions are rare and are often seen as arbitrary and inconsistent, as they do not have to provide reasons and are often not communicated in writing. In such a situation, the judiciary's constitutional power to issue writs appears to be the only effective option for a person whose rights have been affected by an administrative decision to seek justice. And yet, courts are generally not considered a reliable way of securing justice, in particular against decisions by the executive. Respondents in recent justice sector surveys considered legal action to be unduly expensive, and frequently identified alternative avenues of redress, e.g. seeking the assistance of a priest or a monk. What is more, it appears that local government officials and police are considered to be more reliable than the judiciary.[153]

152. Ibid.
153. See more details from the report of the International Bar Association's Human Rights Institute (IBAHRI), "The Rule of Law in Myanmar: Challenges and Prospects", December 2012 and the report of United States Institute of Peace, "USIP Burma/Myanmar Rule of Law Trip Report June 2013", by USIP Rule of Law Center.

Virtually all local governance institutions are **upwardly accountable** to higher tiers of local and central government, although the precise nature of this accountability varies fr om country to country. Such upward accountability enables upper tiers to verify that local governance institutions are complying with major policy goals, monitor or track local governance institutions expenditure and revenues, and ensure that they operate within the framework of their statutory mandates. To make this possible, local governance institutions must provide upper tiers of government with timely and accurate information.[154] In the design of monitoring systems, comparative experience should be taken into account, which shows that high levels of central control tend to emphasize compliance with rules and procedures rather than focus on responsiveness and service outputs and outcomes.[155] In Myanmar, the legal framework does not provide for any autonomous sphere of local governments, in fact, local government structures could not really be described as local governments at all. Where powers are statutorily delegated, such as in the case of the Municipal Laws with regard to the powers of the municipal committees, this is counterbalanced with strong control and oversight functions by higher levels, in this case the Minister of Development Affairs within the respective State or Region Government. Whereas there has been a trend towards decentralising powers and responsibilities to the levels of State or Region Governments, there has not been a softening of the strongly entrenched principles of upward accountabilities within government structures.

The public provision of **information**, by whatever means, can serve as a catalyst for broadening accountability and enable local citizens and others to track local governance activities and thus increases the extent to which local governance officials become more accountable. Information on local governance activities and resources (inputs, planning, budgeting, expenditure, etc.) is essential both at the local level – to inform local constituents and encourage meaningful public participation in the political process – and at the central level – to monitor and supervise local activities funded (at least partially) by central sources.[156]

## 5.2 Accountability and transparency in the Myanmar local governance context

In addition to information about local governance practice and performance, local citizens often need to be informed about key aspects of the norms that apply to the conduct of local governance institutions (laws, regulations, etc.). Higher tiers of government, both central and sub-national, are also accountable to local governance institutions (providing backstopping and mentoring, for example); to strengthen this, lower levels need information. The availability and communication of information should therefore be a key concern of decentralisation efforts. The State of Local Governance study therefore systematically inquired about the **availability and accessibility of local governance related information** and the performance of local governance institutions including the newly created support committees in this regard.

Ways to improve local governance institutions' record keeping can include rules ensuring that: (1) minutes are kept and filed; (2) budgets are filed; (3) records of tenders and bids are kept; (4) payment certificates are kept and filed; and that (5) accounts are kept and filed. In Myanmar, local governance institutions are generally doing well in this regard, however with the caveat that much of this record keeping is done in antiquated technology rather than computerized, and also

154. Delivering the Goods.
155. This characterization of upward accountability may not be universally accurate in as much as it focuses on providing 'higher levels' of government with information. In more advanced systems of local governance, in particular in European countries, systems with elected local governments often protect the autonomy of their specific mandate by law.
156. Delivering the Goods. Building Local Government Capacity to Achieve the Millennium Development goals. A Practitioner's Guide from UNCDF's experience in Least Development Countries.(2007)

that it mainly serves upward accountability and the occasional review by the Auditor General's Office, which are however generally not accessible to the general public and even elected Hluttaw members find it often difficult to get access to such documentation.

Formal accountability systems falling under the various categories outlined above are underpinned by social accountability, which is harder to describe and more dependent on local particularities and contexts. In 2010, a study found that the synergistic relationship between the Village PDC and the ERPs was the most important and complex aspect of village governance in Myanmar, and that accordingly, accountability did exist, the most important being the **checks and balance between the formal and informal village leaders**.[157] In some cases, local demands were successful in petitioning the township administration to remove unpopular village leaders. While certain social accountability mechanisms, in particular in the form of oversight by a group of elders as they exist in Myanmar, can serve as a corrective to formally unaccountable local governance institutions to some extent, they are not a substitute for effective accountability mechanisms. Moreover, the fact that with the new committees, which in many cases draw on elders and respected persons from the community, a degree of mixing between the formal and informal structures of authorities has occurred, with long-term effects that are as yet unclear.

The study notably also found it important to highlight the extent to which the Village PDCs/ ERPs were dominated by the **economically powerful 'elites'** in the village, and that at times this group could be an important means to reinforce exclusion of poorer groups in the village. Cases of corruption were normally dealt with internally, usually through the informal elders stepping in to put pressure on the formal leaders. Many villages were found to have highly evolved **systems of dispute resolution** or methods to deal with social issues or petty crime. However, the capacity of informal systems of accountability is weakest where there are divisions or factions between core leaders. It was also found that the demands of dealing with multiple external aid providers tends to put additional pressure on accountability systems and rarely resulted in greater transparency.[158]

This traditional state of affairs, in combination with rules that foresee a formal participatory role of local businesses and interest groups in the support committees, bears a **significant risk of elite capture** of the emerging local governance institutional framework. The risk of elite capture is one of the key governance risks that could mitigate the posited advantages of decentralisation, which include capture, clientelism, capacity constraints, competition over the balance of power between levels of government, and weaknesses in the interregional information flows that are critical for effective competition. Elite capture refers to "actions of individuals, groups, or firms either in the public and/or private sectors to influence the formation of laws, regulations, decrees and other government policies to their advantage through the illicit and non-transparent provision of private benefits to politicians and/or civil servants."[159] Elite capture distorts the chain of accountability between politicians, service providers, and constituents through asymmetries of political influence. It thrives in an environment where highly concentrated interest groups - especially powerful firms and families - dominate the market for political influence, and where political competition is weak. Local economies tend to be more homogeneous, more concentrated, and less competitive than the national economy, creating fertile ground for dominant economic actors to engage in state capture.[160]

157. Powis, What Lies Beneath (2010).
158. Ibid.
159. See amongst others Ojendal, J & Dellnas, A. The Imperative of Good Local Governance. Challenges for the Next Decade of Decentralisation UN University Press (2013).
160. East Asia Decentralizes - Making Local Government Work, World Bank (2005).

The accountability of local governance institutions - like that of the national government - depends largely on the strength of countervailing institutions, such as the **legislature and judiciary, non-judicial independent institutions of accountability, media and civil society groups**, to provide effective inputs and monitor policies. Many of the institutions normally expected to serve as checks on state capture are weaker at the local level than at the national level, especially in developing countries. In Myanmar, the executive branch tends to enjoy a position of privilege vis-à-vis other branches of state power, and independent institutions, although formally guaranteed in the 2008 Constitution, have yet to assert themselves. Countervailing powers representing a broader range of public interests, such as the media and NGOs, are generally less developed in local jurisdictions. Myanmar at present features all of these trends to a varying extent at the level of local governance. The local governance mapping aims to provide more specific data and context to this issue in different localities, which should allow the situation in Myanmar to be compared with other countries. This in turn should be aimed at developing the most effective approaches to ensuring accountability for governance at the local level in Myanmar itself.

## 5.3 An emerging role for civil society

Around the world, decentralisation and local governance reforms have increasingly focused on possibilities for civil society to play a role in service delivery, transparency and accountability, and a partner for local governance institutions. Civil society should be understood in the broadest sense here, as it could comprise a multitude of different organizations with a wide variety of capacity, relationships with state bodies and representativeness of the community in which they operate.

Civil Society Organisations at the national level have started to play an increasingly important role in pushing and sustaining the democratisation process in Myanmar. At the township level, CSOs (excluding (I)NGOs) have been active for a long time and have focused mainly on activities such as burial societies, healthcare, pensioners' groups for former soldiers, and have primarily been drawing on local funding and resources. However, during the periods of one-party and military rule the ability of these organisations to distance themselves from the authorities or even criticize them in public was limited or non-existent. These organisations played an important complementary role in bringing at least some basic education and health services to the people during decades of underinvestment, although their outreach was often limited.

Almost every ward or village tract features a number of organisations that have existed for many years, and have in the past been associated with formal institutions in a manner that could be described as corporatist. The Parent Teacher Associations, Woman's Affairs Committees and Maternal Child Care Committees are among the most common. There used to be an unwritten rule that the Women's Affairs Committee and the Maternal Child Care committees were headed by the wives of the formal village leaders. Traditional women's associations, which are clearly distinct from the formal, state-supported women's associations, as well as youth associations also have a long tradition in some parts of the country.

Socio-religious groups are common across Myanmar, and are important factors affecting local decision-making and communal life in ways that are not captured in laws and regulations or official reports. In Buddhist areas such non-state organisations often take the form of Board of Trustees for temples. In Christian or Muslim communities, the respective organizations and community leaders also often play an important role in local dynamics, which may include decisions on development affairs and infrastructure investments, fund-raising initiatives and collective labour efforts and the like. Lastly, the role of political parties should also be mentioned, not only in terms of putting up candidates during elections for legislative bodies, but also in terms of community mobilization or even to some extent service and social welfare providers. The USDP, which emerged from the USDA mass organization, as well as the NLD and a number of ethnic parties should be mentioned as playing a certain role in this regard.

The relationships between the national government and CSOs differ hugely between various countries, as does the balance between them in relation to who provides what kinds of services. In Myanmar, this has been characterized by a somewhat antagonistic dynamic between the state and CSOs to date. That relationship is however emerging and will be affected through initiatives such as the drafting of the *Law on Associations* (for which revisions are ongoing). After decades of exclusion from the public space, CSOs now expect to face fewer constraints to participate in advocacy and civic support.

State institutions and many representatives of the prevailing power structures continue to eye CSOs with a degree of suspicion. Disagreements around the initial requirements for a costly registration process suggest that there is some way to go before CSOs can operate freely. "As a result of the often bitter and acrimonious relations in the past, especially in areas related to the legal sector, human rights, community relations, transparency and accountability, it is understandable that attitudes on both sides are still characterised by caution and mistrust."[161] So, while CSOs do recognise the importance of civic education and lobbying or advocacy activities to address the structural issues underlying the marginalised position of some of the groups they are working for, they are often reluctant to take on these additional functions, especially in more isolated communities.

Looking again at the historical background that has shaped the existing context of civil society in Myanmar, it is instructive to review recent studies on the particular roles civil society plays at the local level. Research has revealed a large number of **'single purpose' interest groups** that were supported by external sources and which, in contrast to the village administration, are limited to a specific set of activities. The high number of interest groups and committees at the village level in Myanmar has been found to not so much imply a richness of institutionalized participation, but rather as evidence of ineffective efforts to shape social organizations from two distinct sources: the state and non-governmental organizations.[162]

161. Brand, Marcus: Democratic Governance in Myanmar: Situation Analysis. UNDP, September 2013. Page 121.
162. Powis, What Lies Beneath.

The newly mandated participation of CSOs/NGOs has opened up a number of opportunities for broader participation in local governance in Myanmar, but has also raised a number of questions, and created certain risks, which should be addressed without hesitation. Experience around the world shows that the formal and selective involvement of CSOs/NGOs in local development processes has not resolved the issue of participation, because - instead of representing a consensus of lower-level priorities - CSOs/NGOs have more often proved to be splintered advocacy groups for particular priorities. At the same time, CSOs/NGOs also must be willing to see themselves as partners with local government rather than antagonists, and local officials must be open to input from institutions outside the political and governmental technical sphere. CSOs/NGOs and citizens gain the power of accountable oversight only if they can measure performance against quantified targets, which is more broadly related to the question of accountability.

The **media** can play an important role within civil society in terms of providing accountability vis-à-vis government authorities, including at the level of local governance. Again, in this regard, Myanmar has just emerged from an era where media was at best considered a propaganda tool by the government, rather than an independent source of accountability and a defender of the public's right to information about the operations of the state. The availability of information, like other changes taking place in the country, has been transforming positively and steadily in Myanmar for the past three years, albeit from a very low starting point. At the same time, there still remain numerous challenges that must be addressed. This includes some laws and regulations from previous eras, which have in the past been used to muffle media and free expression, entrenched attitudes and mind-sets among holders of authority, and capacity challenges among government, media and civil society organizations.

There is now recognition that a free and independent media can become a key pillar of the democratic reform process (although there are still restrictions in place which limit the full potential of this as described above). In a major policy speech of 2 March 2012, President U Thein Sein identified the media as "the fourth estate, [which] can ensure liberty and accountability with the check and balance system in accordance with democratic practices".[163]

Given that the press was one of the most guarded and restricted areas in the past decades, this was a radical change from the previous situation, and journalists and editors began to feel a steady decline in the level of censorship since 2011. It should be noted that only on 20 August 2012, the Government of Myanmar stopped pre-publication screening and censoring media before publication by the Press Scrutiny and Registration Division (PSRD). Only from 1 April 2013 onwards, daily newspapers could be published freely.

These changes have however been most vigorously felt at the national level and in the more advanced urban societies of the larger cities of Myanmar. Media generally remains underdeveloped in rural and remote areas. There are intentions to make more information more widely available to rural communities, which, judging from the feedback received so far is not very well served, further underscoring the rural-urban divide. Some efforts have also been made to increase information available in minority languages.

From the consultations held with government interlocutors the understanding about the dissemination of information – whether about services, or about parliamentary sessions – occurs in three ways: through announcements in newspapers and TV; through engagement with elected

163. *The New Light of Myanmar*, Vol. XIX, Number 316, Friday, March 2 2012.

representatives in the respective constituencies; and through information disseminated by local representatives of line ministries. It is still relatively rare that journalists by themselves take up stories related to local governance. When they do they often display a lack of familiarity with the structures or the legal framework, which may further add to confusion rather than clarification.

In conversations with various officials at township level, in particular the TAs, the mapping found that there was a certain reluctance to engage openly with media at the local level, and a lack of familiarity of how to do it. Both government officials and communities at times expressed frustrations over a lack of interest on the one hand, and a lack of a pro-active information strategy on the other. Media was generally not considered a practical vehicle for transmitting information between local governance authorities and communities at the local level, with personal communications, in particular through intermediaries in the form of the W/VTA and the 10/100 household heads being considered the preferred conduit.

It is questionable whether this would be an effective manner of further broadening and accelerating the information flow between the state and communities at the local level and some form of media role may need to be actively developed. There are some good examples of innovative and creative approaches found by State or Region governments or even township administrations, with electronic media, including social media, playing an increasingly important role. Some of these examples are discussed in the individual State and Region state of local governance mapping reports.

# 6. Participation, planning, budget execution and accountability

The individual State and Region State of Local Governance reports illustrate how a wide variety of practices has already emerged across Myanmar in terms of how the different rules and procedures, structures and mechanisms are used. Here, only a few general trends should be highlighted in order to put the rather static and descriptive overview above into a more tangible context of actual governance at the local level in Myanmar. This relates primarily to how the TA interacts with the different committees with regard to space for participation, how the planning of expenditures and activities is done especially regarding the discretionary funds and how projects are implemented under those funding modalities. While is rather generic, it aims to provide examples from the States and Regions.

One key determinant of the effectiveness of the new committee structures is the **composition of these committees** and the manner in which their membership was decided. In each case, as the representative of the State and Region governments in the townships, the TAs played a crucial role in organising the selection/election process and putting the committees together. The TAs are also represented through their subordinates in the committees themselves.[164] Besides, the TAs also had a critical influence over the election of the W/VTAs and supervise these as their subordinates. TAs are Union Civil Service staff members of the General Administration Department and rotate around the country, with terms of about 2-3 years in a township. They are not likely to speak any of the local dialects or languages as they will in most cases not originate from the location they serve in. They are therefore dependent on a lot of information from key informants within the governance structures.

The W/VTAs, 10/100 household heads and the members of the various committees, i.e. the development support committees and the municipal committees, are local people. They will have multiple relations locally, and their main economic interests will be connected to their status of the local community. However, the *Hluttaw* members elected from the various township constituencies may not necessarily be based in the actual townships, especially if they are members elected to one of the Union legislatures.

The analysis of the local governance mapping findings shows that the manner in which TAs have proceeded with regard to forming the various development support committees differs widely. CSOs have been generally sceptical about the representativeness and legitimacy of the committees thus formed. It has already been mentioned that women are starkly absent from practically all of these structures, and it is likely that minority communities and marginalized people are similarly poorly represented. One CSO stated that "the TDSC is formed by the TA and not with persons elected by citizens". "The TA directly selects members from township elders, and the TDSC is not a legitimate representation of the community," said another civil society representative.

Given the fact that the members were selected from only a small pool of citizens, while the establishment of these committees was not made known to the people through a campaign, it is therefore not unexpected that an overwhelming majority of people interviewed as part of the survey in different States and Regions had never heard of either the TDSC or TMuC. A serious question therefore arises as to how these committees can claim to represent the interests of citizens (or groups of citizens) if citizens do not know of the existence of these committees, do not know who its members are and are not aware of whether or how these committees represent their interests. This would not be so much of a problem if the TDSCs would have regular contact

164. The Deputy Township Administrator is an ex officio member of the TDSC. The Ward or Village Tract Clerk is a member and additional secretary of the W/VTDSC.

with or access to information from the communities, either directly or through intermediaries, but according to the TDSC members interviewed this is not taking place systematically. Moreover, even if people knew about the committees and their members, they would have very little influence over who gets elected, as only the W/VTDSC provides for a degree of general election for some of its members, while the other positions are largely controlled by elders and respected persons and representatives of 'sectors' which cannot claim to have any democratic legitimacy.

A possible lesson from this early phase of establishing the support committees is that more efforts should be made to ensure democratic representativeness, a more balanced composition of its membership, with a particular focus on women and possibly marginalized communities and a more transparent process of selecting and appointing members. From the Notification itself it is not clear how long the mandate of these committees will be, but it is likely that they could as easily be abolished or changed by a Presidential Notification as they were established in the first place. With regard to TMuCs that would not be the case, as they are now established on the basis of Municipal Laws in each State or Region. They could however, be changed if the State or Region legislatures amend their respective Municipal Laws.

The way in which TAs and TMCs interact with the various support committees in terms of **project identification and selection** differs significantly based on location. Here, there is a significant difference between the role of the committees in terms of projects funded by the various development funds, and in terms of other projects directly financed by the Union or State or Region Governments, or even the private sector. For the development funds, in most townships, the TA scrutinizes the list of proposed projects coming from the combined VTA/TDSC/TMuC meeting, decides on prioritisation (with varying degrees of input from the committee members), checks the list for possible duplications with sector plans[165] and makes any other adjustments he thinks are necessary before submitting it to the State- or Region-level GAD. Generally, no indicative budget ceilings are provided to the TA.

The State- or Region-level GAD announces the approved projects, but does not normally provide the TA nor the TDSC with a justification as to why some projects were rejected and others were approved, or why budgets for individual projects have changed. No clear selection or prioritisation criteria that might be used at the State level were known to the TAs, except that the GAD usually favours smaller size projects in order to be able to provide at least some support to as many village tracts as possible. This makes it very difficult for committee members to explain such decisions to their "constituencies" as well. The committee members on the other hand acknowledged that their voices were still too weak to demand more explanations.

In some States and Regions, TDSC members have mentioned that according to them they play only a very limited role in the actual selection process of projects for the various development funds even though their role is in line with Notification 27/2013 that the "TMC must meet, coordinate and seek advice from the TDSC". Since there are no clear instructions or operating guidelines for the TDSC and TMuC it is in practice up to the discretion of the TA to decide the extent to which he wants to involve the committees in these consultation and decision-making processes.

In others, the TDSCs have split themselves up in sub-committees of two members each for the identification and later on monitoring of projects for the various development funds. Each of the

165. E.g. if the Ministry of Education has budgeted already for the renovation of a school that is also proposed under the Poverty Reduction Fund.

sub-committees will visit a selection of village tracts/wards to meet with the VT/WDSC, the VT/WA to discuss and identify potential projects and visit the actual project sites, take pictures and reach consensus on the proposed project for each village tract/ward.

Formally, discussions on the allocation of decentralised funds should be led and executed by the TMC, a meeting of township managers, which was established in part to co-ordinate stakeholders and make decisions on township development needs. Chaired by the TA and with members drawn from a set composition of departments,[166] the TMC is obliged to seek advice from the consultative committees in the township (the TDSC and the TMuC) at least once a month, incorporating their perspectives when setting the township's socio-economic investment priorities. What emerges in some townships is that the TMC is not always the driving entity for this process—despite its executive responsibility to do so. Rather, there are examples of the TDSC actually leading the formation of priorities for proposals related to available development funding.

In some cases the TDSC even appears to be carrying out executive responsibilities vis-à-vis the allocation of development funds: Members spoke of performing their role in working with VTAs and compiling priorities and proposals from the community to bring to the GAD. In some townships, there are no specific meetings for the TMC to gather and make decisions at, but members do join larger meetings comprising other township committee members and department representatives where township priorities appear to be ratified. In others, the TMC has emerged as the key managerial body and forum for discussing and approving development priorities. The interpretation by the committees of their role seems to be contingent on local personality dynamics, but also a result of a lack of clarity among members on objectives. Non-government members of the TDSC professed to be unclear on their responsibilities and the standard operating procedures that govern the committees' tasks, and none had received any training.

Also the **meeting formats** do not follow any particular guidance and are often the result of local improvisation and based on practical considerations. In many townships, regular large assembly-style gatherings including representatives from township committees and township departments appear to be the favoured format for sharing of information and facilitating co-ordination on township development priorities.

Across different States and Regions, there appear to be significant shortcomings in terms of **information flow** with regard to the work of the township administration and the role of the various support committees. Even a member of a TDSC asked in the context of the mapping survey "how can we be involved in the decision-making process if we even lack essential information about these funds and the way in which they should be used?" In a number of townships, TDSC members highlighted a lack of information on development plans as being an impediment for executing their consultative function.

It should be noted that it is in practice very difficult for the TDSC members to visit all the village tracts to collect and scrutinize project proposals, which means that they rely on the information provided by VTAs. Moreover, the committee members do not know the overall budget ceiling available especially for the Poverty Reduction Fund for their township on forehand, which makes it very difficult for them to prioritise projects. As one committee member said: "We have no knowledge about budgets for development projects so we cannot prioritise". As was already

166. See Annex 4 for national guidance on composition of township committees.

stated above, such budgets ceilings are not provided by the State- or Region-level GAD to the TA beforehand in order to retain more flexibility regarding the actual approval after all the proposals have come in. The actual selection of projects can therefore differ significantly from the ones that the TDSCs have proposed or even the TA has submitted to the State- or Region-level GAD. This lack of information results in long lists of potential projects that could be considered without actual prioritisation taking place.

The situation is also rather incoherent with regard to **project implementation and monitoring**. In some States and Regions, besides playing an active role in project selection, the TDSCs are also actively involved in progress monitoring. The same sub-committees that visited the village tracts during the project selection visit the project sites again during implementation and/or after completion of the projects. In some States or Regions, the TA even makes transport available to the TDSC to implement these tasks. In other States and Regions, the TDSCs are not (yet) actively involved in the progress monitoring of the development projects that are implemented either. VTAs send in progress reports to the TA and both the TA and the Chief Minister personally check on progress and completion when they are visiting the area. In some States, the Chief Minister visits townships on a regular basis and holds a grand meeting with all VTAs to discuss progress on these projects. The 2013 Notification does not explicitly prescribe that the TDSC should be involved in project monitoring, but it would certainly enhance the visibility of the committee and increase their involvement while it will at the same time relieve the TA of doing so personally and could make the whole process more transparent.

Across the States and Regions analysed so far, it becomes clear that while some inconsistency and uncertainty as to the new institutions and procedures exist, the overall trend has been that state and non-state actors have begun to **work together more collaboratively** and in a more inclusive and transparent manner than was the case before. According to one Deputy TA "there are both weaknesses and strengths of the new committee by involving citizens. The weakness is that more time is required to reach a consensus as many people with different views are now in the committee. In the past Heads of Department did their jobs simply by following the instructions from their boss without having to consult outsiders. However, the strength is that more views of outsiders – citizens – are heard for consideration to be reflected in the development activities. Departmental staff may come and go at any time but native citizens are bound to stay there with full knowledge of the locality. This is a plus point for involving citizens in the committees".

In conclusion, it should be acknowledged that after years of top-down decision-making, this is only the first year in which citizens or stakeholder groups, through these committees, are consulted by government and that it will therefore take time for all parties involved to play their new role effectively. While the total combined budgets of the development funds per township are still rather small, the planning and implementation of development fund projects could play an important role in the on going reform process at the township level. A number of aspects should be considered in this regard:

1. The results are important to show citizens that the **government is serious** in improving participation and service delivery;
2. The utilisation of these funds generate very important potential **learning processes** for all stakeholders involved as they are related to:

- **Collaborative planning** takes place with respect to these projects (e.g. TA and VT/WAs need to work closely together).

- **Integrating** the results from **citizen consultations** can become a factor in planning at the community and at the township level.
- **Government-citizens dialogue** takes place with a focus on balancing local needs with national priorities starts to materialize (e.g. between TA and TDSC).
- **Management and accounting** of public funds that are spent locally becomes more transparent.
- **Citizens'** involvement in project **monitoring** helps good governance and management integrity.

As can be expected from such a momentous change after decades of misgovernance, there are many teething problems of the new bodies, there is still a degree of mistrust and there are many open questions as to the details on how exactly these new bodies and processes of local governance should work. These can however all be addressed and ultimately overcome if there is a political will to learn from lessons, if there are real incentives for local governance actors to innovate and find practical solutions that work for the benefit of the people, and if there are mechanisms in place to document, analyse and improve on the experiences made so far. The structures and procedures in place now are most likely not the last word in this regard, and perhaps only constitute the first steps towards a more participatory, genuinely democratic form of local governance, in which voices of local citizens are effectively reflected in all government bodies and programmes.

This will take time to achieve. Myanmar's history of local governance shows that many efforts have been made in the past, and no one system has been able to establish itself for a longer period. Local governance arrangements need to be flexible enough to take into account changing social and economic realities. It will be important to build on what works, and identify the areas that do not work so well in a frank and forward-looking manner. This overview and the associated State and Region State of Local Governance mapping reports aim at precisely that – identifying room for improvement while also acknowledging where actual progress has been made.

# 7. Annexes

# ANNEX 1: Designing a local governance mapping for Myanmar

## A1.1 UNDP support to local governance reforms in Myanmar

It is with the twin objectives of improved service delivery and good governance in mind that UNDP and the Government of Myanmar have agreed to work together during the present Country Programme period (2013-2017) to strengthen democratic governance in Myanmar, not only as a means towards improved service delivery and more equitable growth but also as an end in itself.

UNDP support this process through the promotion of effective governance institutions and systems that are responsive to public needs, that deliver essential services and promote inclusive growth, and that are accompanied by inclusive political processes to enable citizens to be able to hold public officials to account. Through its local governance component (Pillar 1) of the Country Programme Action Plan,[167] UNDP has committed itself to support capacity development of state/region governments and township administrations in Myanmar, in order to **'contribute to more efficient and responsive local institutions that deliver services in an accountable and sustainable manner to respond to both immediate livelihood needs and to promote human rights during Myanmar's transition'**. To do so, four key support areas were selected:

1. Support sub-national governments and township administrations regarding:
   - Participatory, responsive planning and budgeting
   - Enhancing local service delivery capacities
   - Establishment of baseline and information systems
2. Support interaction and engagement of civil society organizations and media in local development, through:
   - Strengthening of engagement capacities (for local development planning/monitoring)
   - Assessing information needs and enhancing access to information to bolster the local dialogue on development (e.g. township community centres/ engagement platforms)
   - Capacity building for local media (e.g. training/ community radio)
3. Supporting access to finance as well as strengthening of local institutions supporting employment services, vocational training and rural entrepreneurship.
4. Livelihood support to foster peace building and social cohesion at the community level in remote and high poverty areas, and for communities emerging from conflict.

## A1.2 Designing a Local Governance Mapping for Myanmar

The Local Governance Mapping is one of the first activities undertaken to seek clarity on how the local governance actors function within the context of the current reforms, and to assess their potential capacity needs in this regard to adjust to new demands of people-centred service delivery. In order to improve the collective understanding and knowledge, **UNDP together with the General Administrations Department under Ministry of Home Affairs (MoHA)** have **developed a methodology** aiming at better understanding of the dynamics of local governance, primarily at the township level, with an emphasis on those areas where government interacts with the people.[168] To what extent have the reforms so far enabled government actors to be more

167. As described in the Local Governance Programme project document. UNDP Myanmar 2012.
168. In addition, an **Advisory Committee** comprising representatives of the Ministry of Home Affairs (mainly GAD) and the Ministry of National Planning and Economic Development (Project Appraisal Department, Central Statistical Organization, FERD) has been established to ensure compliance with government policies, to advise on the evolution and suitability of the methodology for the Myanmar context and help to disseminate the findings and stimulate further dialogue.

responsive to the needs of people, and ensure that it drives a people-centred development? At the same time, have the initiatives taken from the government so far created the space and improved the ability of the people of Myanmar to participate and have a voice in local decision making? And despite the changes being applied in a uniformed fashion in State and Regions across the country, what differences are emerging as a result of uniquely local solutions to local problems? What are the **lessons that can be learned from this early stage** to improve responsiveness and engagement with the people and how can states and regions learn from each other? These are questions the mapping tries to explore and get a better understanding of.

The mapping started with two pilot studies in **Mon** and **Chin** States, which were selected as pilots based on previous agreement with state-level governments, and on the premise that they capture the diversity of Myanmar's States and Regions.[169] The pilot study was completed in Mon and Chin States in October 2014, and extended to **Ayeyarwady, Bago, Kayin, Kayah** and **Tanintharyi** commencing in April 2014. The aim was to cover all States and Regions (**Kachin, Magway, Mandalay, Rakhine, Shan, Sagaing** and **Yangon**) by the end of 2014 or early 2015.

The key objectives of the Local Governance Mapping are to:

- Provide an overview of the dynamics (institutions, processes, procedures and how they are functioning in practice and perceived by the people) of local governance in general and for basic service delivery (for a selected number of key basic services), with a specific focus on the township and the village tract/ward level.
- Identify areas where capacity development is needed both of government and non-government stakeholders (service providers).

169. While Chin State is Myanmar's poorest and remote with a low population density, Mon State is the country's third wealthiest, accessible, and has a high population density. Mon State's poverty incidence in 2010 was among the lowest in the country at an estimated 16.3% of households, while Chin State's was the higheast at 73.3%, against the national average of 25.6%. See for more detail: Integrated Household Living Conditions Survey, 2009-2010. UNDP Myanmar, 2011.

It should be noted that regarding basic local services (primary education, basic health care and water for household consumption), the mapping is limited to examining **specific issues of governance** (i.e. service provider – service, user relationships, people's perceptions on quality and the capacity for government to assess and respond to local demands) as opposed to the coverage or quality of these services *per se*. A detailed sector analysis is beyond the scope of the mapping, but has been undertaken by a number of other research institutions and development partners to document the institutional and political dynamics that underpin State or Region governance and public service delivery. The mapping strives to complement existing research efforts by viewing issues of governance uniquely from the perspective of the people of Myanmar, and the frontline administrators and service providers who directly engage with them.

The results from this study can be used by:

- Government and non-government actors at township and State or Region levels to identify challenges, bottlenecks and understand capacity needs;
- Union ministries and State or Union governments to monitor the impact of the ongoing reform process and understand the extent to which these are translating into a) improved responsiveness of government actors to local needs and b) space and capacity of the people to participate in local decision-making.
- Development partners, to inform their programming and to fine-tune their capacity development support activities for lower-level government institutions.

The body of data emerging from the mapping is intended to support the ongoing reform process in Myanmar. To this end, the outcomes of the mapping will be made available for users in the following formats.

- Summary reports for 14 State and Regions.
- Database of survey data, which will be made available online.
- A synthesis report comprising Phase 1, 2 and 3 results (all 14 State and Regions), capturing emerging trends and cross-comparative analysis on key themes.
- The State of Local Governance in Myanmar
- A number of thematic reports outlining more details on specific aspects of local governance in Myanmar

It is anticipated the final results of the mapping will be presented at an upcoming Myanmar Good Governance Forum to be convened in collaboration with the Ministry of Home Affairs, scheduled for early 2015.

In 1996 the world's governments agreed that sustainable development of human settlements can be achieved "through the effective decentralisation of responsibilities, policy management, decision-making authority and sufficient resources, including revenue collection authority, to local authorities, closest to and most representative of their constituencies".[170] There are no binding legal norms for local government at present, but international human rights law provides important parameters, and there is considerable convergence among genuine constitutional democracies on decentralisation and local community empowerment as a core component of democratic

170. Habitat Agenda, para. 177. Heads of State or Government met at the United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey from 3 to 14 June 1996 and adopted the Istanbul Declaration and Habitat Agenda. The Habitat Agenda also recommends "Governments should examine and adopt, as appropriate, policies and legal frameworks from other States that are implementing decentralisation effectively".

governance.[171] Effective decentralisation is today regarded as an element of good governance and an expression of democratic practice. It is also a prerequisite for effective and efficient public administration. It is recognized that elected local authorities, alongside national and regional authorities, are key actors in democratic governance and administration. They collaborate with national and regional authorities but also have their own autonomous spheres of public action. Local democracy thus constitutes an essential element of democracy itself whatever the form of the State, whether federal, regionalized or unitary.[172]

171. The best known guidelines elaborated within the UN are the "Guidelines on decentralisation and strengthening of local authorities" which were, after a decade of research and focused debate, approved by the Governing Council for UN-HABITAT in 2007 and acknowledged by the UN General Assembly. They have served as a codification of international standards and best practice for countries undergoing democratic transition and decentralisation in recent years in countries around the globe, and could thus also inform the broader debate about the future of local governance in Myanmar. In addition, comparative experiences on other countries' trajectory on the path to further decentralisation and devolution can stimulate a more informed and participatory approach to future legislative reforms and also make international standards and good practice better known to the wider public.
172. Guidelines on decentralisation and the strengthening of local authorities", UN-HABITAT Governing Council of the United Nations Human Settlements Programme, 2007.

# ANNEX 2: Methodology

## A2.1 Guiding principles for methodology design

The transfer of functions and responsibilities to lower level government in Myanmar is still ongoing, and there is only partial clarity on how far the reform will go in terms of decentralising basic service delivery. In light of this, the methodology focused on **mapping** the dynamics of local governance and governance issues around basic service delivery. Furthermore, the methodology was designed to predominantly make use of **qualitative data**, related to experiences and perceptions of citizens, government staff and other stakeholders. The methodology was also conceived in line with the reform principles and objectives of the government to stimulate active involvement of citizens and non-government stakeholders in the process. To this end, the mapping is a multi-stakeholder exercise involving government staff, politicians, committee members, Civil Society Organisations (CSO), the business sector, and others as appropriate.

The methodology addresses both the supply and demand side of governance and service delivery. From the supply side (institutions, service providers) it examined the ability and capacity of government institutions to be responsive to local needs. On the demand side (service users, citizens), the mapping ascertained the peoples' and civil society's current capacity to hold government to account and to play a constructive role in the governance process. Given the nascent character of participatory practices in Myanmar, the methodology not only seeks to map, but also at the same time raise the awareness and enhance basic capacities of the involved actors (government staff, citizens and CSOs) to work together and resolve the complexities faced by townships and States and Regions on issues of governance.

## A2.2 Mapping tools and indicator selection

The mapping methodology draws upon the UNDP Oslo Governance Centre's long-running work on local governance assessments.[173] For Myanmar, a combination of two tested methodologies was chosen to meet the above-mentioned guiding principles:

- The **Local Governance Barometer (LGB)**, which has been applied in countries such as South Africa, Malawi, Zambia, Liberia and Egypt, which are characterised by a limited availability of reliable administrative and statistical data on the service delivery process and the quality of governance. The LGB uses a set of localised governance indicators that are used by various stakeholder groups to "score" performance on governance measures at the local level. It emphasises awareness raising and constructive dialogue around governance and presents an overview of governance strength and weaknesses; and

- A combination of the **Citizen Report Card (CRC)** and **Community Score Card (CSC)** techniques as developed in India and Bangladesh that seek to provide citizen feedback on the quality of service providers, and strengthening the capacity of service users to engage in a constructive dialogue with service providers and administrators about the quality of service delivery.

173. For a summary of such initiatives and global cases studies, see: "A User's Guide to Measuring Local Governance." UNDP Oslo Governance Centre, July 2009.

These methodologies are well suited for countries that are seeking to enhance active citizen participation, as is also the case in Myanmar.[174] In line with the emphasis on driving participation in local governance, the mapping exercise focused more on what can be called the "interactive" dimensions of governance, i.e., on those indicators that describe and analyse the interaction between stakeholders, related to accountability, transparency and participation, and less on indicators that describe and analyse the internal functioning of government (such as financial management, administrative checks and balances, for instance).

## A2.3 Analytical framework: Good governance, responsiveness and voice

Defined as "the exercise of economic, political, and administrative authority to manage a country's affairs at all levels, [whereby] governance comprises the mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences,"[175] good or democratic governance can be premised on core principles of:

1. **Effectiveness and efficiency** in implementation of all projects and programmes;
2. Openness and **transparency** in decision-making and adherence to the principles of rule of law;
3. **Accountability** of various stakeholders;
4. Active **participation** of citizens in planning and decision-making processes.

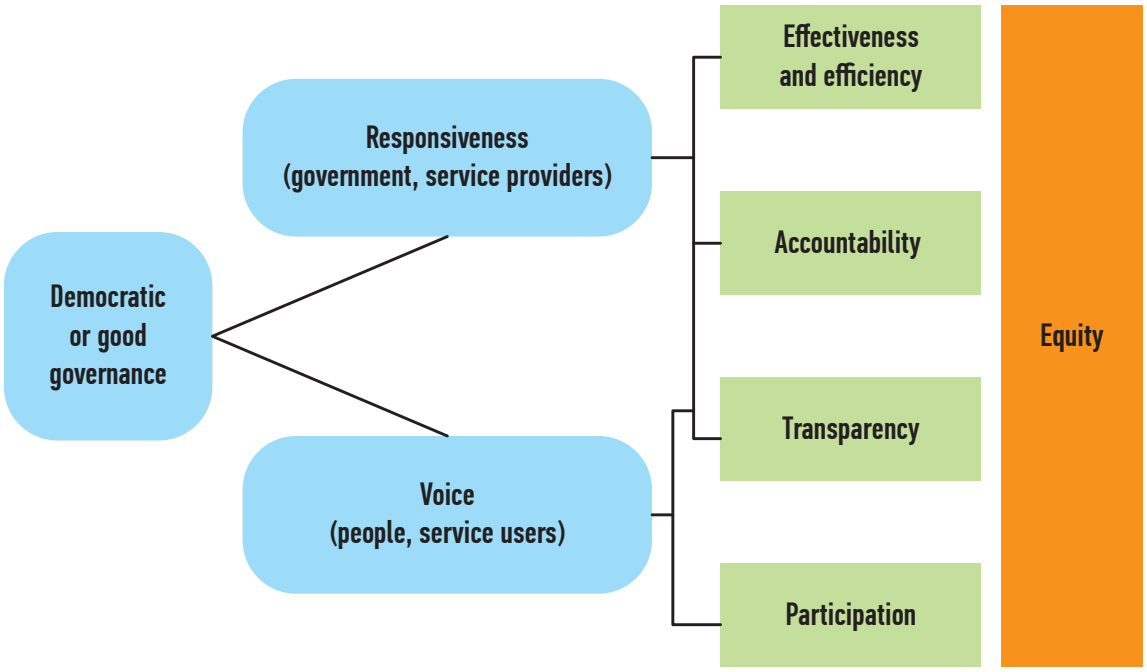
In all cases, **equity** in access to resources, opportunities and decision-making processes for all citizens, regardless of their age, sex, ethnicity/religion, or other affiliation is an important consideration.

In line with the emphasis on driving participation in local governance, the Local Governance Mapping focuses more on what can be called the "interactive" dimensions of governance, i.e., on those indicators that describe and analyse the interaction between stakeholders, related to accountability, transparency and participation, and less on indicators that describe and analyse the internal functioning of government (such as financial management, administrative checks and balances, for instance). Figure A1 below indicates how core reform themes of improving (supply-side) "responsiveness" and enhancing (demand-side) "voice" relate to good governance principles.

Within each of the tools that have been developed for mapping governance at the various levels (community, township, state/region), these principles have been translated into practical questions to capture local governance dynamics, rather than a subjective interpretation of the issue. For example, community respondents were not asked to speak directly to governance issues (i.e. "Do you think your township administration is transparent?"), but were asked several questions about whether and in what way they are informed by the township administration about new projects, new regulations, elections etc.

174. The emerging local governance mapping methodology for Myanmar was discussed and endorsed during the "National Workshop on Good Local Governance and People Centred Services" held in the capital city of Nay Pyi Taw on 17-18 August 2013, in the presence of H.E. U Hla Tun, Union Minister at The President's Office and H.E. U Tin Naing Thein, Lt. General Ko Ko, Union Minister for the Ministry of Home Affairs. Senior staff members from the Ministry of Home Affairs and the Ministry of National Planning and Economic Development, along with several Chief Ministers from the state/region governments, members of the Union Parliament, academia and representatives of civil society also participated in the workshop.
175. see p 6 "Definition of basic concepts and terminologies in governance and public administration" . United Nations Economic and Social Commission. Note by the Secretariat (2006).

Figure A1: Myanmar Local Governance Mapping framework

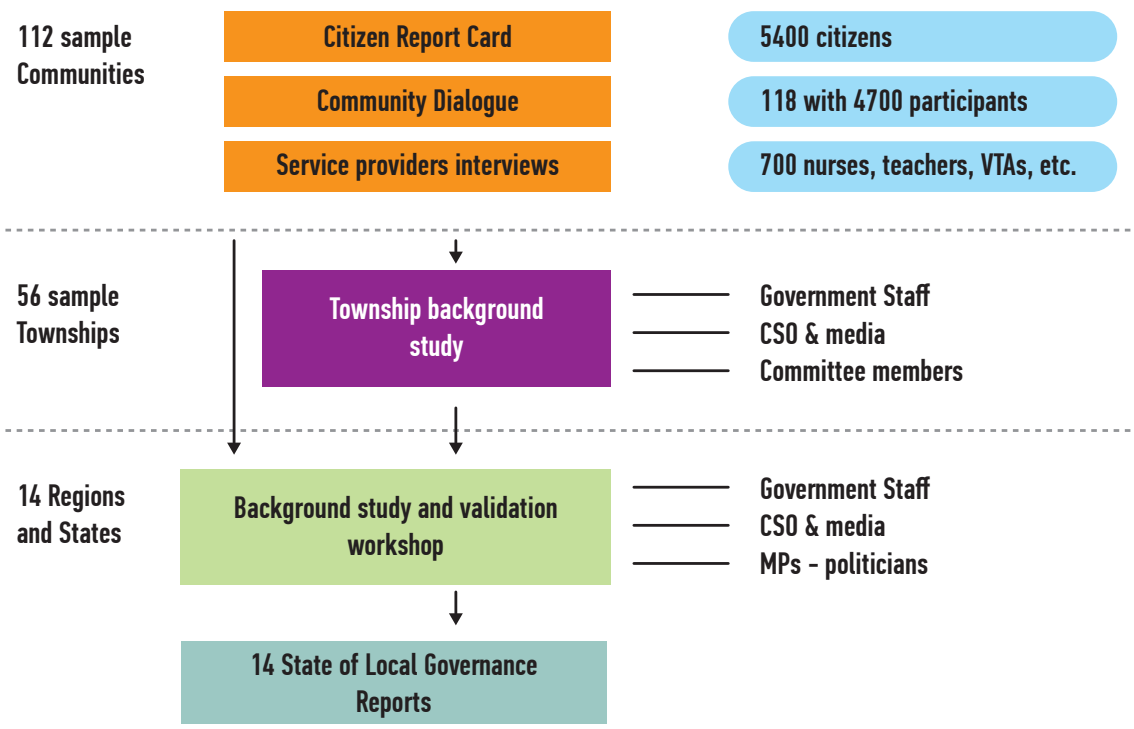



## A2.4 Data collection: A three-step approach

In order to obtain a holistic perspective of the dynamics of local governance below the States and Regions, the Local Governance Mapping adopted a three-step approach at the ward/village-tract, township and State and Region levels (see Figure A2 below). At the same time, while incorporating these three levels and by also including the views of citizen, civil society and government stakeholders, a "360 degree" perspective on the quality of governance at the local level was envisioned. The methodology also represented an opportunity to introduce ideas and concepts at the lower levels of administration to facilitate engagement between government and the people, in the form of multi-stakeholder dialogues to discuss governance issues and agree on local priorities, standards and action points related to local development.

Figure A2: UNDP's Local Governance Mapping methodology in Myanmar

Source: UNDP Myanmar.



### *Step 1: Community-level Mapping: Community survey (Citizen Report Card), Frontline Service Provider interviews and Community Dialogue*

A total of 118 sample communities, 56 townships and 5400 citizens were interviewed. The questionnaire focused on the core principles of local governance, and the satisfaction and experiences of people using basic services provided by government (such as primary healthcare and primary education). (See Annex 3 for a full list of the townships covered in the mapping).

In addition to the service users, **Frontline Service Providers (FSP)** including 700 school principals, teachers, healthcare facility managers, healthcare staff and the Village Tract/Ward Administrators (VT/WAs) in these wards/villages were also interviewed, focusing on the service delivery process and their interaction with service users. These interviews were not intended to replace more technical sector assessments, which lie beyond the capacity or scope of the mapping exercise.[176] Instead, they provided a means of addressing issues of basic public service delivery in a way that is tangible for respondents, through a governance lens.

Similar issues were also discussed collectively in 118 **Community Dialogues (CD)**, which was held in each of the selected villages/wards, in which different groups present in the community (including women, youth and elders) participated alongside frontline service providers and the VT/WA. The objective of this exercise was to collectively identify issues of governance emerging in relation to service delivery and local administration, and to agree on solutions that could be implemented at the community level.

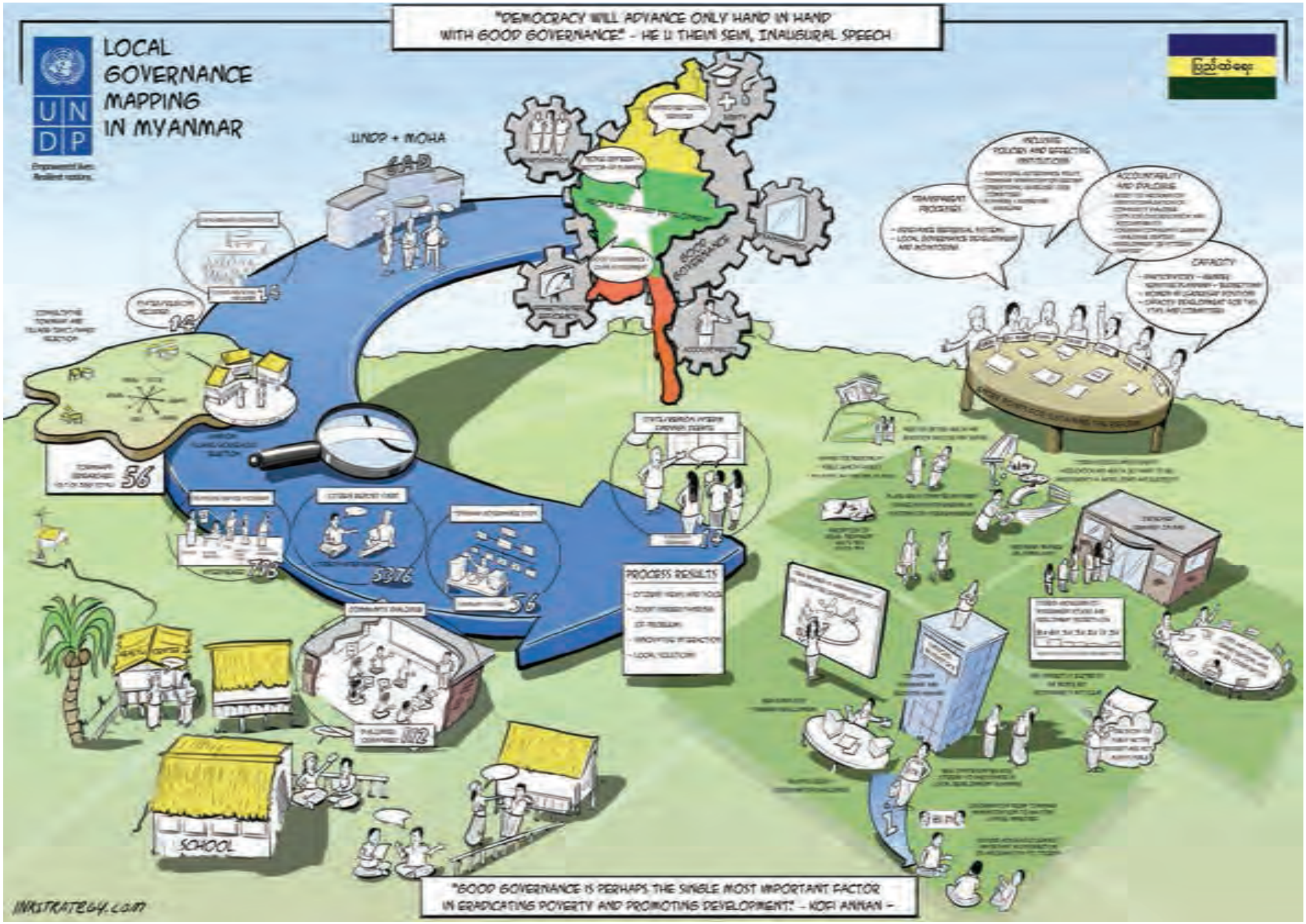
### *Step 2: Township-level Mapping*

To deepen the understanding of the functioning of township governance in the state, a **background study** was conducted at the township level, where semi-structured interviews were held with key government staff and CSO representatives focusing on the manner in which local governance actors in different townships had interpreted and implemented the recent reforms. This research provided further context to the insights gathered at the community level, and allowed for some analysis on the manner in which reforms are being implemented, and the extent to which the objectives to drive government responsiveness and improve opportunities for constructive engagement by communities are being achieved.

### *Step 3: State/Region-level Mapping:*

To complete the 360-degree mapping of governance at the local governance level, discussions were held with relevant actors at the State and Region level using open interviews with a view to assess perceptions and experiences on the functioning of government at the local level, and to reflect on their own role vis-à-vis lower level government institutions.

176. A number of these are currently taking place to inform capacity building initiatives and programme design in Myanmar. A preliminary social assessment has been conducted by MSR for the Ministry of Education to inform the Myanmar Decentralizing Funding to Schools Programme, supported by the World Bank. In addition, a Comprehensive Education Sector Review (CESR) initiated by the Ministry of Education (MoE) is underway with the support of development partners, with view to develop recommendations for the government and a costed education plan.


"DEMOCRACY WILL ADVANCE ONLY HAND IN HAND WITH GOOD GOVERNANCE" - HE U THEIN SEIN, INAUGURAL SPEECH
LOCAL GOVERNANCE MAPPING IN MYANMAR
UNDP + MOHA
PROCESS RESULTS
SCHOOL
"GOOD GOVERNANCE IS PERHAPS THE SINGLE MOST IMPORTANT FACTOR IN ERADICATING POVERTY AND PROMOTING DEVELOPMENT." - KOFI ANNAN -
INKSTRATEGY.com

### Box A1: An innovative methodology and novel tools for Myanmar

The mapping methodology has been developed particularly for the Myanmar context and draws on various local government assessment methodologies and frameworks that have been tried and tested in different parts of the world. It combines a variety of tools – citizen report cards, frontline service provider interviews, community dialogues at the grassroots level, and governance self-assessments, along with an extensive background study that includes secondary data collection, key informant interviews and focus group discussions, at the township and state/region levels.

Such tools not only facilitated the gathering of data and information on the dynamics of local governance, but they also served to introduce new methods of engagement by government of the community at both the village tract/ ward and township level.

#### Community Dialogues

Community Dialogues were held in each village tract/ward and brought together between 25-45 stakeholders representing the government (service providers, administration staff, etc.), committee members, and citizens. Lasting about three hours, each Community Dialogue began with an introduction to the process, following which the participants were split into two groups – one including government staff, committee members and service providers, and the other comprising citizen representatives. Each group was asked to respond to a limited number of questions, mostly ranking questions about their level of satisfaction with services or governance arrangements. The groups were then brought together to discuss the results and try to resolve their differences. In many cases, a discussion that started with mistrust ended with a pledge towards openness and collaboration.

## A2.5 Sampling

By selecting townships across each of the States and Regions, the mapping team aimed to extrapolate state-specific trends and also provide insights on the differences that may exist between urban and rural areas, remote and accessible townships, and rich and poor townships. Due to the lack of a reliable sampling framework and of population distribution data the research team used the following criteria for township selection:

- **Population size**, demographics and density: Balance between large and small townships, as well as rural and urban.
- **Economic activity/ level of development:** Diversity in economic activities and level of economic development.
- **Accessibility:** Th ere should be two easy accessible, two less accessible, and two relatively remote townships.
- **Ethnic mix/minority populations:** All townships should preferably have a mix of different population groups. At least one township should have a significant population of ethnic or religious minority groups.
- **Peace and conflict:** If safety/security is acceptable than one post-conflict township should be included.
- **Security situation:** Researchers/surveyors should be able to travel through the township without any major security concerns.

Within each of the selected townships one urban and one rural village tract/ward was selected randomly. Within each of these village-tracts/wards 48 households were randomly selected using a transect methodology. In order to ensure that 50 percent of the respondents were female, the enumerators were instructed to alternate between male and female respondents.

While the study is not strictly based on statistical analysis, efforts were made to follow certain criteria to make the data representative and balanced.[177] The total sample size of the pilot study for the Community Survey of 576 respondents per State and Region was considered sufficient to draw valid conclusions for the whole population of that State or Region with a high confidence level and a negligible margin of error. In each township, about 100 respondents were interviewed, which raises the error margin to about 10 percent (based on average population size per township), but is also adequate to get a sense of local issues, experiences and perceptions, which are necessarily also context specific. The number of frontline service provider interviews – VT/WAs, primary school principals, teachers, healthcare facility managers and healthcare staff - was necessarily limited to those working in the sampled village tracts and wards. The survey included all key frontline service providers involved in the delivery of core services, from which clear trends for each township and across the State or Region can therefore be identified from these key informant interviews.

Overall, the community-level survey presents a snapshot of the opinions on peoples' experiences and perceptions related to governance in general and related to the delivery of basic local services in general. Combined with structured dialogue with community, township and state-level actors and verification from outcomes at the Community Dialogues and the response of local actors to interim findings, subsequent reports for each State or Region present an **integrated analysis on the current dynamics of local governance**, with respect to the responsiveness of government, and the ability of people to express their voice in local decision-making.

177. See for an explanation of statistically relevant sample sizes: http://www.surveysystem.com/sscalc.htm

# Annex 3: Full list of townships covered for the Local Governance Mapping

| State/Region | Township |
|---|---|
| Mon | Chaungzon |
| | Kyaikmaraw |
| | Paung |
| | Bilin |
| | Ye |
| | Thanbyuzayat |
| Chin | Falam |
| | Matupi |
| | Mindat |
| | Paletwa |
| | Thantlang |
| | Tonzang |
| Ayeyarwady | Pathein |
| | Zalun |
| | Labutta |
| Bago | Taungoo |
| | Padaung |
| | Zigon |
| Tanantharyi | Myeik |
| | Thayetchaung |
| | Bokpyin |
| Kayin | Hpa-An |
| | Haingtwe |
| | Kawkareik |
| Kayah | Hpruso |
| | Loikaw |
| | Mese |
| Magway | Pakokku |
| | Gangaw |
| | Mindon |
| Mandalay | Meiktila |
| | Thazi |
| | Thabeikkyin |
| Sagaing | Monywa |
| | Kanbalu |
| | Kalewa |
| | Lahe |
| Rakhine | Kyauktaw |
| | Rethedaung |
| | Thandwe |
| | Gwa |
| Kachin | Puta-O |
| | Tanai |
| | Myitkyina |
| | Momauk |
| Shan | Hopang |
| | Hsihseng |
| | Lashio |
| | Namtu |
| | Kengtung |
| | Monggping |
| | Nyaungshwe |
| | Nansang |
| Yangon | Taikkyi |
| | Thongwa |
| | North Okkalapa |

# Annex 4: Presidential Notification No. 27/2013

**Assignment of duty to form**
**Township and Ward and Village Tract Development Support Committees**
**(Notification No. 27/2013)**[178]
order
The Republic of the Union of Myanmar
The President's Office
Notification No. 27/2013
26 February 2013

Assignment of duty to form Township and Ward or Village Tract Development Support Committees

1. In accordance with Section 36 sub-section (a) and (c) of the Constitution, for the development of the national economy in collaboration with regional organizations and private individuals, and to strive to improve the economic, social and living standards of the people, State or Region Governments, the Naypyitaw Council and the Leading Bodies of Self-Administered Divisions or Self-Administered Zones are assigned to form the following committees;

a. Formation of a **Township Development Support Committee** (*Myo-nae Bwint-Phyo-Toe-Tak-Yay*), including two township-level staffs from government departments, as well as individuals from various social and business organizations and local people elected by majority vote.
b. Drafting and submission to the Region or State Hluttaw of a new Municipal (Si-Pin-Thar-Yar-Yay) Law in order to form a **Township Municipal Committee** (*Myo-nae Si-Pin-Thar-Yar-Yay Cawmati*) including persons elected by majority vote from the local people and elder representatives (*myo-mi myo-pha*) of the township,
c. Formation of a **Ward or Village Tract** (*Yap-kwak, Kyay-ywar Oak-Su*) **Development** (*Bwint-Phyo-Toe-Tak Yay*) **Support Committee** (*A-htauk a-ku pyu cawmati*) to facilitate the development works of wards or village tracts by supporting the Ward or Village Tract Administrator,

2. The **Township Development Support Committees** and **Ward or Village Tract Development Support Committees** shall be formed at the same time in Self-administered Divisions or Self-administered Zones, the Naypyitaw Council, States and Regions by 31 March 2013.

3. The **Township Management Committee** (*Myo-nae Si-man-khant-kwe-mu Cawmati*), which includes officials fr om different township-level departments, shall meet and consult with the **Township Municipal Committee and Township Development Support Committee** at least once a month and assign duties in order to carry out development matters of the township. Matters which cannot be solved by the Township Management Committee shall be submitted to higher levels.

178. This is an unofficial translation prepared by Maythida Aung and Marcus Brand for the purpose of helping non-Myanmar speakers understand the normative framework for ongoing local governance reforms in Myanmar. For any official reference, readers are strongly advised to use the original version as published by the President's Office and available on its website.

### Township Development Support Committee

4. The Township Development Support Committee shall be formed with a minimum of 7 members and a maximum of 9 members in the following ways;

| | | |
|---|---|---|
| a. | Person elected by majority by the Committee members | Chair |
| b. | Person elected by majority of elders and respected persons from urban and rural areas (myo-mi myo-pha) | Member |
| c. | Representative of the community (lumu a phwat a si) | Member |
| d. | Representative of business association | Member |
| e. | Representative of workers | Member |
| f. | Representative of farmers | Member |
| g. | Deputy Township Administrator, General Administration Department | Member |
| h. | Executive Officer, Township Municipal Committee | Member |
| i. | Person elected by the representatives of the business association, the community and elders and respected persons | Secretary |

5. The duties and functions of the Township Development Support Committee are as follows;

a. Carrying out the affairs of township development in collaboration with community leaders (yap-mi yap-pha) and local residents, finding answers on what should be done for the development of the township and for the social and economic development of the people residing in the township area,
b. Supporting and collaborating in carrying out development matters, giving advice on the township development and for the social and economic development of the people to the township departments without impairing the responsibilities assigned to them in accordance with laws and regulations,
c. Consulting and addressing the requirements of social and economic development and the activities of rural and urban development submitted by the people from various levels of the Wards or Village Tracts at the meeting with Township Management Committee,
d. Giving advice on the requirements for drawing up a project for urban development and on the examination of whether investment projects, if any, have any adverse social, economic or environmental impact,
e. Encouraging and collaborating to develop small and medium-sized enterprises by the expansion of co-operative societies, companies, public enterprises and business associations, and cooperating to promote the productive sector overall as the efforts of the private sector are the key to township economic development,
f. Making suggestions on measures that can be taken by cooperating with Government Departments at the township level and measures that can be taken by consulting within the Committee for the development of education, health and human resources,
g. Cooperating in carrying out action plans for rural development and poverty reduction,
h. Collaborating in activities carried out through international assistance in the township area in order to effectively support the social and economic development of the community,
i. Assisting in solving problems related to any real damages, if any, of the people in the township by submitting matters to the Township Management Committee.

### Ward and Village Tract Support Committee

6. Ward or Village Tract Support Committees shall be formed with a minimum number of 5 members and a maximum of 7 members based on the size of the ward or village tract and the number of (sub-)villages in the following ways;

| | | |
|---|---|---|
| a. | Person elected by majority vote from among people of the Ward or Village Tract | Chair |
| b. | Persons elected as leaders by majority vote of people if there are (sub-)villages | Member |
| c. | Representative elected by majority vote from among the 10 and 100 household heads | Member |
| d. | Representative elected by majority vote of Ward or Village Tract | Member |
| e. | Person elected by majority vote of among members | Secretary |
| f. | Clerk of Ward or Village Tract | Additional Secretary |

7. The duties of the Ward and Village Tract Supporting Committee are as follows:

a. Collaborating with, giving advice to and supporting the Ward or Village Tract Administrator in carrying out the duties assigned by the Ward and Village Tract Administration Law,
b. Carrying out activities which can be done at the level of the ward or village tract by consulting on what should be done for social and economic development of the local residents in the ward or village tract and for rural development,
c. Submitting issues which cannot be solved at the level of the ward or village tract to the meeting of Township Management Committee,
d. Cooperating in action plans for rural development and poverty reduction,
e. Making suggestions to the meeting of the Township Management Committee to develop forests with shifting cultivation and fuel wood plantations in accordance with the rules and regulations of the Forest Department to prevent a shortage of water for drinking and farming in a village tract where it is necessary and to conserve the environment,
f. Carrying out activities to make new generations fond of and follow literature, culture and customs, and nurturing youth to become strong and healthy human resources through disseminating health education and undertaking actions for all local people to have a chance to be literate, to ensure school-aged children are able to be at school, and to increase the number of persons in primary, secondary, upper-secondary and graduate schools,
g. Educating and actually participating in measures to induce the local people of the ward or village tract to be persons who observe the law and live in accordance with the law.

8. As **Hluttaw representatives** are representatives elected by the local people of relevant townships, the Township Management Committee shall receive recommendations from such representatives on matters of township development or on investments which can have a negative impact on the social or economic situation and the environment, and when necessary such representatives together with the Township Development Support Committee are to be invited to attend the meetings of the Township Management Committee in order to receive such recommendations.

9. Th e Township Management Committee shall invite the Township Development Support Committee and the Township Municipal Committee to receive advice from them on the plans of township development projects, investment projects, and infrastructure such as roads, bridges, water supply and electricity which are going to be carried out through the government's budget or by private investment. Such Committees shall invite the Ward or Village Tract Support

Committees and give explanations to them in order to inform the public, and thereafter, if required such Committees shall seek further consultation and collaboration in a meeting with the Township Management Committee.

10. In interpreting and implementing or consulting on the above-mentioned facts, it is necessary not to impair the following:

a. Any existing law, rules and regulations
b. Powers and duties assigned to various departments and heads of departments by law
c. Policies and actions laid down by the state concerned with the legislature, the executive, the judiciary and finance.

Sd…
Thein Sein
President
The Republic of the Union of Myanmar

# Annex 5: Glossary of Myanmar local governance terms

| English term | Myanmar | Transliteration |
|---|---|---|
| Ward | ရပ်ကွက် | Yap-kwak |
| Village | ကျေးရွာ | Kyay-ywar |
| Village Tract | ကျေးရွာအုပ်စု | Kyay-ywar Oak-Su |
| Township | မြို့နယ် | Myo-nae |
| Town | မြို့ | Myo |
| District | ခရိုင် | Kha-yaing |
| Municipal | စည်ပင်သာယာရေး | Si-pin-thar-yar-yay |
| Development | တိုးတက်ရေး | Toe-tak-yay |
| Municipality | စည်ပင်သာယာနယ်နိမိတ် | Si-pin-thar-yar-nae-ni-mate |
| City | မြို့တော် | Myo-taw |
| Urban | မြို့ပြ | Myo-pya |
| Rural | ကျေးလက် | Kyay-lak |
| State | ပြည်နယ် | Pyi-nae |
| Region | တိုင်းဒေသကြီး | Tai-day-tha-gyi |
| Township Administrator | မြို့နယ်အုပ်ချုပ်ရေးမှူး | Myo-nae-oak-choke-yay-muu |
| Village Tract Administrator | ကျေးရွာအုပ်စုအုပ်ချုပ်ရေးမှူး | Kyay-ywar-oak-su-oak-choke-yay-muu |
| Ward Administrator | ရပ်ကွက်အုပ်ချုပ်ရေးမှူး | Yap-kwak-oak-choke-yay-muu |
| Village Clerk | ရပ်/ကျေး စာရေး | Yap-kyay-sa-yay |
| 10/100 Household Head | ဆယ်အိမ်မှူး/ရာအိမ်မှူး | Sae-eain-muu/yar-eain-muu |
| General Administration Department | အထွေထွေအုပ်ချုပ်ရေးဦးစီးဌာန | A-htway-htway-oak-choke-yay-oo-see-htar-na |
| Township Management Committee | မြို့နယ်စီမံခန့်ခွဲမှုကော်မတီ | Myo-nae Si-man-khant-kwe-mu Cawmati |
| Township Development Support Committee | မြို့နယ်ဖွံ့ဖြိုးတိုးတက်ရေးအထောက်အကူပြုကော်မတီ | Myo-nae Bwint-Phyo Toe-tak-yay-ah-htauk-ah-ku-pyu- Cawmati |
| Township Municipal Committee | မြို့နယ်စည်ပင်သာယာရေးကော်မတီ | Myo-nae Si-pin-thar-yar-yay Cawmati |
| Elders and respected persons, people with dignity, educated or wealthy persons | မြို့မိ၊ မြို့ဖ | Myo-mi Myo-pha |
| Yangon City Development Committee (YCDC) | ရန်ကုန်မြို့တော်စည်ပင်သာယာရေးကော်မတီ | Yangon Myo-taw Si-pin-thar-yar-yay Cawmati |
| Municipal Law | စည်ပင်သာယာဥပဒေ | Si-pin-thar-yar-ou-pa-day |
| Mayor | မြို့တော်ဝန် | Myo-taw-won |
| Municipal Court | စည်ပင်သာယာတရားရုံး | Si-pin-thar-yar-ta-yar-yone |
| State Peace and Development Council (SPDC) | နိုင်ငံတော်အေးချမ်းသာယာရေးနှင့်ဖွံ့ဖြိုးရေးကောင်စီ | Naing-ngan-taw-aye-chan-thar-yar-yay nint Bwint-phyo-yay Kaung-si |

United Nations Development Programme
No.6, Natmauk Road, Tamwe Township
P.O. Box 650, Yangon 11211
Myanmar

www.mm.undp.org

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