BETWEEN CEASEFIRES AND FEDERALISM: EXPLORING INTERIM ARRANGEMENTS IN THE MYANMAR PEACE PROCESS

Myanmar Interim Arrangements Research Project

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Acknowledgments

The authors and research team would like to thank everyone who contributed to this study, including people from conflict-affected communities, and representatives from government, Ethnic Armed Organizations, civil society groups, political parties, donors, aid agencies, national and international experts.

Thank you to the copy-editor Micheal Woods, and for their comments on drafts (or sections) of the report to Alan Smith, Marie Lall, Beth Moorsmith, Charles Petrie, William Davis, Tom Sheehan, Cate Buchanan, Jared Bissinger and Matthias Rimarzik, and to some EAO leaders who prefer to remain anonymous. Thanks also to Sean Deely and Sai Latt at the JPF.

Imprint

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Acronyms & Abbreviations

3 MDG	Three Millenium Development Goal Fund
ABSDF	All Burma Students' Democratic Front
ADB	Asian Development Bank
ALP	Arakan Liberation Party
ATS	amphetamine-type stimulants
BEWG	Burma Environmental Working Group
BGF	Border Guard Force
CDD	Community Driven Development
CIDKP	Committee for Internally Displaced Karen People
CRED	Committee for Rural Enlightenment and Development
CSO	Community Service Organisation
DKBA	Democratic Karen Benevolent Army
EAO	Ethnic Armed Organisation
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
ENAC	Ethnic Nationalities Affairs Centre
GAD	General Administration Department
GIS	Geographic Information Systems
HURFOM	Human Rights Foundation of Monland
IAs	Interim Arrangements
IAC	Interim Arrangements Committee
IDP	Internally Displaced People
INGO	International Non-Government Agency
IRC	International Rescue Committee
JCB	Joint Coordination Body / Joint Coordination Body for Peace Process Funding
JIAC	Joint Interim Arrangements Committee
JMC	Joint Monitoring Committees
JPF	Joint Peace Fund
KAD	Karen Agriculture Department
KED	Karen Education Department
KESAN	Karen Environment and Social Action Network
KIO	Kachin Independence Organisation
KKO	Khlohtoobaw Karen Organization
KNDO	Karen National Defence Organisation
KNLA	Karen National Liberation Army
KNPF	Karen National Police Force
KNU	Karen National Union
KSEAG	Karen State Education Assistance Group
KTWG	Karen Teacher Working Group
MEC	Myanmar Education Consortium
MIARP	Myanmar Interim Arrangements Research Project
MIMU	Myanmar Information Management Unit
MNEC	Mon National Education Committee
MNHC	Mon National Health Committee

MOCAF	Ministry of Conservation and Forestry
MoH	Ministry of Health
MoU	Memorandum of Understanding
MRDC	Mon Relief and Development Committee
MPSI	Myanmar Peace Support Initiative
MWO	Mon Women's Organization
NCA	Nationwide Ceasefire Agreement
NCCT	Nationwide Ceasefire Coordination Team
NESP	National Education Strategic Plan
NF	Nippon Foundation
NHP	National Health Plan
NLD	National League for Democracy
NMSP	New Mon State Party
NRPC	National Reconciliation and Peace Centre
PI	Pyidaungsu Institute
PNLO	Pa-O National Liberation Organization
PNO	Pa-O National Organization
PPST	Peace Process Steering Team
PSF	Peace Support Fund
RCSS	Restoration Council of Shan State
RDF(SS)	Rural Development Foundation (Shan State)
RPF	Rahmonnya Peace Foundation
SPDC	State Peace and Development Council
SSDF	Shan State Development Foundation
SSPP	Shan State Progress Party
TBC	The Border Consortium
TRG	Tanintharyi Region Government
UNA	United Nationalities Alliance
UNFC	United Nationalities Federal Council
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UPC	Union Peace Conference
UPDJC	Union Peace Dialogue Joint Committee
USAID	United States Agency for International Development
USDP	Union Solidarity and Development Party
UWSA	United Wa State Army
WHO	World Health Organization
WWF	World Wildlife Fund

Executive Summary

The Myanmar Interim Arrangements Research Project (MIARP) was funded by the Joint Peace Fund (JPF)[1], and implemented between October 2017 and October 2018. Researchers spoke to more than 450 people in Shan, Karen/Kayin and Mon States, Tanintharyi Region, Naypyidaw, Yangon and Thailand, including conflict-affected communities, representatives of Myanmar government and Army, leaders and members of Ethnic Armed Organisations (EAOs), civil society organisations (CSOs), political parties, diplomats and donors, and international aid workers and analysts.

The term "Interim Arrangements" (ကြားကာလအတွင်းဆောင်ရွက်ရမည့်အစီအစဉ်များ) is a contested concept, meaning different things to different stakeholders. The MIARP adopted the following working definition of Interim Arrangements:

> ***"Service delivery and governance in conflict-affected areas, including the relationship between EAOs and government systems, during the period between initial ceasefires and a comprehensive political settlement."***

Interim Arrangement refers to EAOs' governance functions, administrative authority and service delivery systems. The issue of which geographic areas are covered by Interim Arrangements is problematic. The Myanmar Army has pressed to restrict EAOs' service delivery and governance functions to areas under armed groups' exclusive control (which in most cases have not yet been demarcated); on the ground however, EAOs' influence and delivery of services and governance functions extend into areas where political and military authority is mixed, and contested with the government and Tatmadaw.

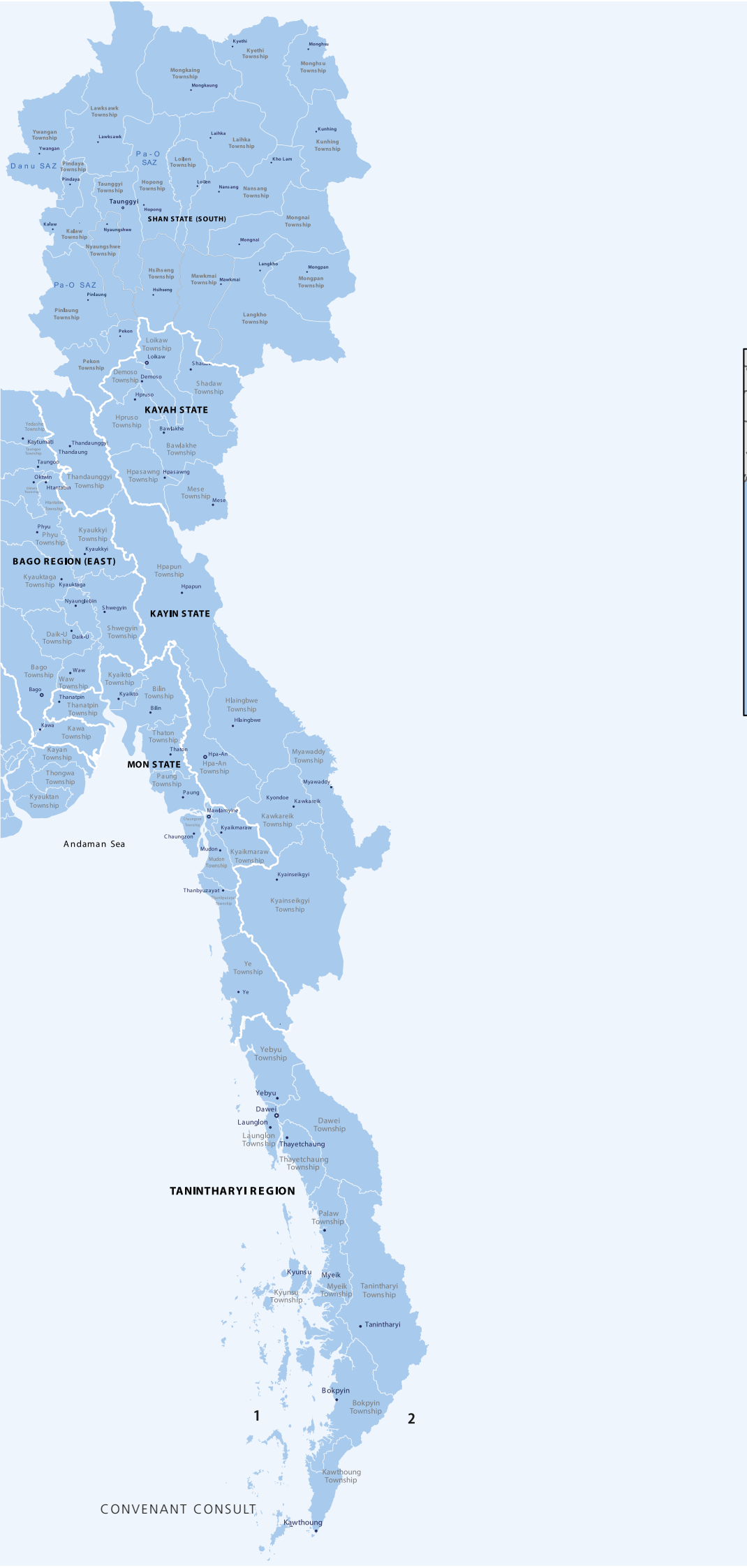
In principle, the "interim" period extends until a comprehensive political settlement has been implemented, which given recent setbacks in the peace process may take many years to achieve. In the meantime, recognition of Interim Arrangements reflects the government's acknowledgement of key EAOs' political legitimacy and administrative responsibilities - at least, for those groups which have signed the Nationwide Ceasefire Agreement (NCA). One of the key recommendations of this report is to support EAOs to exercise governance and administrative authority in a responsible and accountable manner.

The only official text referring to Interim Arrangements is the October 2015 NCA. However, Interim Arrangements are relevant in areas where EAOs have not signed the NCA, and furthermore the NCA text fails to cover the full range of meanings associated with the term.

Although Interim Arrangements are about more than the NCA, Chapter 6 (Article 25) of this agreement does recognize the roles of signatory EAOs in the fields of health, education, development, environmental conservation and natural resource management, preservation and promotion of ethnic cultures and languages, security and the rule of law, and illicit drug eradication. The NCA allows EAOs to receive international aid, in coordination with the government. However, with no agreed mechanism for addressing these goals through the peace process architecture, the NCA has had limited impacts on improving conflict-affected communities' access to equitable and effective governance and services. Furthermore, on the ground in southeast Myanmar, government officials seem to regard EAOs primarily as service delivery actors, and/or private companies, rather than legitimate governance and administrative actors.

For many years, Myanmar's larger EAOs have taken on governance and administration roles in their areas of control, often delivering a wide range of services in partnership with CSOs. In the southeast, groups like the Restoration Council of Shan State (RCSS), Karen National Union (KNU) and New Mon State Party (NMSP) are de-facto governments in relatively small pockets of territory. They also have influence and provide some services in wider areas of "mixed administration", where EAO authority overlaps with that of the government and Myanmar Army. Between them for example, these three EAOs admi-

1 The JPF is a multi-donor trust fund established in 2016 to support the peace process in Myanmar, composed of 11 international donors: Australia, Canada, Denmark, the European Union, Finland, Italy, Japan, Norway, Switzerland, the United Kingdom, and the United States (https://www.jointpeacefund.org/).


SHAN STATE (SOUTH)
KAYAH STATE
BAGO REGION (EAST)
KAYIN STATE
MON STATE
TANINTHARYI REGION
Andaman Sea
Taunggyi
Loikaw
Hpruso
Bawlakhe
Mese
Hpapun
Shwegyin
Thaton
Hpa-An
Paung
Mawlamyine
Kyaikmaraw
Mudon
Thanbyuzayat
Kyainseikgyi
Ye
Yebyu
Dawei
Launglon
Thayetchaung
Palaw
Kyunsu
Myeik
Tanintharyi
Bokpyin
Kawthoung
1
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INDIA
CHINA
LAOS
THAILAND

nister or support more than 2,000 schools, providing ethnic language teaching to vulnerable children who would otherwise often be denied an education. They also work with local partners to provide health services, access to justice and other public goods.[2]

Similar arrangements exist in other parts of the country, both in ceasefire areas where EAOs have not signed the NCA, and in areas of on-going armed conflict. For example, across much of Kachin and northern Shan States, the Kachin Independence Organisation (KIO) and other EAOs provide elements of governance, and life-saving if under resourced services to Internally Displaced People (IDPs) and other highly vulnerable communities.

There are three principal rationales for supporting Interim Arrangements:

1. Effective Interim Arrangements will provide the best outcomes for vulnerable and marginalised communities in conflict-affected areas. Rather than reinventing the wheel, existing EAO and CSO service delivery systems should be supported on a case-by-case basis, recognising best practice (an "appreciative inquiry" approach). Meeting the government's targets for school enrolment and universal health coverage for example, will depend on the work of EAOs and affiliated civil society actors, who should be seen as partners in meeting critical needs and achieving development goals. Chapter 3 explores how these issues play out in relation to specific sectors and issues.

2. Several of Myanmar's EAOs (including NCA signatory and non-signatory groups) enjoy long-standing political legitimacy among the communities they seek to represent. Supporting EAO governance regimes will counter perceptions of the peace process as a vehicle for state penetration into previously autonomous areas, displacing existing EAO authorities and services, without consulting local stakeholders. In order to be conflict-sensitive, aid should be delivered in ways that do not undermine systems associated with EAOs, to the benefit of the government (which is a party to the conflict). Timely peace dividends can best be provided to vulnerable and marginalized communities by working with existing and trusted local service delivery systems.

3. Interim Arrangements could be a key element in building "federalism from below" in Myanmar, supporting effective local governance through equitable practices of self-determination. The administrative functions and services provided by key EAOs (and their civil society partners) should be regarded as the building blocks of federalism in Myanmar - a political solution to decades of armed conflict which key stakeholders have endorsed.

It will be very difficult for conflict-affected parts of Myanmar to move from the current mixture of service delivery systems and governance regimes towards a formalized (federal) system, without better coordination, and substantial political and technical negotiations. However, given the slow pace of the peace process since 2016, Interim Arrangements have been given relatively little attention.

Given that the Political Dialogue element of the peace process appears stalled, it could be useful to identify a small number of political priorities, to help deliver on ethnic stakeholders' key aims. These could be negotiated by EAOs (and political parties) in a „fast track" manner, resulting in a Union Peace Accord that benefits both the government and ethnic stakeholders. Areas for possible progress include education and language policy (recognition of and funding for EAOs' extensive school systems; "mother tongue" teaching in government schools); land issues (recognition of land title documents provided by EAOs; revision of unjust land laws; compensation and restitution for people who have had their land unfairly taken); equitable natural resource management; and addressing forced displacement – i.e. Interim Arrangements. This would not prevent ethnic stakeholders from continuing to campaign for federalism, including changes to the 2008 Constitution.

2 However, many of the country's smaller EAOs control little territory, and deliver few services or governance functions.

Despite occasional positive references, the main constraint on progress regarding Interim Arrangements has been lack of political will on the part of the Myanmar government and Army. Indeed, as this report was finalised (in September 2018), the government seemed to be imposing new restrictions on relationships between EAOs and aid agencies. Furthermore, there are missing connections between debates around governance in ceasefire areas, and constitutional, legal and policy reforms underway in the mainstream political process. As discussed in Chapter 3, actors in the peace process are often absent from discussions regarding legislation and policy changes conducted at the Union level, in Parliament and elsewhere. In part, this is because EAOs are reluctant to acknowledge the political legitimacy of parliamentary and governance systems under the 2018 constitution. If Interim Arrangements are to make significant impacts on peace and development outcomes in Myanmar, it will be important to build connections between the situation in conflict-affected (particularly ceasefire) areas, and the rest of the country. In order to support and be consistent with the peace process, key stakeholders should ensure that their activities do not undermine the NCA, or violate Interim Arrangements provisions.

There is concern among many ethnic stakeholders that international agencies, and particularly major donors, are pushing a "convergence agenda", aimed at merging EAO and civil society service delivery with that of the state. While convergence between EAO and government systems may be appropriate in some scenarios and sectors, for most EAOs and CSOs Interim Arrangements are primarily about the maintenance and support of their independent systems. This is a sensitive topic, given the widespread perception that donors are intent on strengthening government capacities and systems, and extending these into previously inaccessible and/or contested conflict-affected areas. Given the failure of the peace process so far to deliver on ethnic stakeholders' demands for federalism, such concerns are particularly urgent.

Peace-support efforts often struggle with tensions between state-centric aid and development programs, and inclusive and politically sensitive peace-building. Assumptions that weak institutional capacity is at the core of conflict, with a consequent focus on reinforcing state institutions, can result in peace-building activities which marginalise other sources of authority, such as EAOs. This is particularly problematic in the context of Myanmar, where the State is a party to armed conflict, and EAOs have extensive (if often contested) political legitimacy. Rather than adopting an overly technocratic approach, framing key issues in terms of development needs rather than as sites of social and political struggle, donors and diplomats should recognise that many of the issues structuring decades of armed conflict in Myanmar are irreducibly political. This would help to assuage ethnic stakeholders' concerns that the government has an "economic development first" agenda for the peace process in Myanmar, and uses aid as a distraction from demands for political reform.

Chapter 4 makes Recommendations to donors and aid providers (which are also relevant to the private sector), to the government and Tatmadaw, and to Ethnic Armed Organizations.

RECOMMENDATIONS TO DONORS

- Recognize that successful Interim Arrangements, including support to relevant EAOs' governance and administrative functions, will be crucial to achieving Myanmar's development targets, to reaching the most vulnerable communities, and to building the foundations for legitimate and functioning governance institutions within a future federal union.

- Donors and private sector investors should plan investments and interventions in recognition and support of principles established through bilateral ceasefire agreements and the NCA. Development and governance support activities (not just peace-focused assistance) must be provided in ways that do not violate Interim Arrangements, which should be viewed a framework for working in ceasefire areas. These principles can also be used as a guideline where ceasefire agreements are not in place, but where sensitivities around development activities are similar.

› Support the strengthening and reform of EAOs' governance and administrative functions, so that these can be delivered in a responsible and transparent manner, and include such activities in sectorial projects where these are implemented in ceasefire areas.

› Recognize that many stakeholders have concerns about the peace process, and are worried that Interim Arrangements may serve as vehicles for the penetration of centralized government authority into previously autonomous areas, and/or that government may seek to control funding for conflict-affected areas.

› Be sensitive to the reality that ceasefire areas are often still conflict zones, and that normal aid practices should be adapted to avoid creating tensions. Infrastructure and other large-scale projects should be put on hold during the interim period, unless they are deemed to provide crucial local benefits, based on credible consultations with key stakeholders, including relevant communities, CSOs and EAOs. When developing projects in conflict-affected areas, engage in the early design stages with local stakeholders.

› Recognize that EAOs and other ethnic stakeholders may sometimes prefer to keep governance/administration and service delivery activities "below the radar" of scrutiny.

› Recognize the political legitimacy of key EAOs, as partners with the government in the peace process. Undertake conflict-sensitive assessments in order to understand where and how best to support and strengthen EAOs' capacities as responsible governance actors and accountable duty-bearers. Recognition of the EAO's political legitimacy may include signing MoUs and other partnership arrangements. Engage in dialogue with government, in order to achieve acceptance of these outcomes.

› Where appropriate, support increased collaboration between government and local (EAO and CSO) service delivery systems. Learn from coordination and convergence work in the health and education sectors. On request, support government and EAOs to develop terms of reference and capacities in relation to the proposed Joint Interim Arrangements Committee.

› Recognize that there is no "one size fits all" approach to Interim Arrangements. Seek to identify and support good practice (Appreciative Inquiry approach), examples of which are identified in this report.

› Support the Joint (government-EAO) Interim Arrangements Committee, and sub-national bodies, as and when these are convened.

› Monitor and advocate for women's participation in the implementation of Interim Arrangements, according to agreements in the NCA and subsequent Union Peace Conferences.

RECOMMENDATIONS TO GOVERNMENT, AND TATMADAW

› Recognize that Interim Arrangements are a key commitment of the NCA. Implementation of Interim Arrangements will be crucial to maintaining and building confidence in the peace process, and achieving the country's development goals, especially in remote and conflict-affected areas.

› Strengthen capacities at the National Reconciliation and Peace Centre (NRPC). The NRPC should inform State and Region governments and line departments regarding the NCA, and instruct them to consult on relevant issues with signatory EAOs, and also CSOs and conflict-affected communities. The Tatmadaw should issue similar instructions to field commanders, and the General Administration Department should ensure that its personnel likewise understand the NCA and its implications for Interim Arrangements. Government staff should be instructed and educated about the text and meaning of the NCA (and bilateral ceasefire agreements), and how implementation or non-implementation of Interim Arrangements affects the prospects for peace and equitable development in Myanmar.

› Issue directives to relevant State and Regional governments (and at Union level) to recognize land-ownership and community forestry documentation provided by NCA-signatory EAOs, following negotiations with key stakeholders. Explore and negotiate recognition of the existing administrative structures of EAOs including: land, forest, natural resources, agriculture, health care, education, judiciary, customary land ownership systems. Recognition of these administrative systems would help build trust and indicate political will on the part of the Tatmadaw and government.

› Ensure that proposed legislation and new policies at the Union-level are discussed with relevant EAOs and other peace process stakeholders. Legislative reforms should take account of the NCA (in particular Interim Arrangements), and promote coordination and cooperation between the government and EAOs during the interim period. The government and Myanmar Army should demonstrate political leadership in translating high-level Union Peace Conference agreements into the mainstream legislative process.

› Develop an agenda for what the government and EAOs could achieve through a Joint Interim Arrangements Committee. This body could agree principles for Interim Arrangements, with specifics worked out on a state-by-state, group-by-group basis. The process of establishing a Joint IAC should not delay the implementation of Interim Arrangements on the ground.

› Consider establishing multi-stakeholder State and Region-level committees (including government, EAO, CSO, community representatives and private sector actors), to coordinate decisions around aid and development projects and private sector investments. Joint sub-national bodies could support the coordination of aid, and assessment of needs and priorities. Build on successful local arrangements (e.g. in the health sector), which are already delivering positive outcomes for conflict-affected communities. However, these committees should not be viewed as an alternative to increased transparency and legal and legal reforms. Relate sub-national bodies as appropriate to the proposed Joint Interim Arrangements Committee. Joint/sub-national Interim Arrangements bodies could serve as steering committees for pilot projects and other peace-building activities in ceasefire areas.

› Implementation of Interim Arrangements should not be dependent on demarcation of military territory. Doing so could harm provision of services to civilians and undermine the achievement of development goals.

RECOMMENDATIONS TO ETHNIC ARMED ORGANIZATIONS:

› Recognize that, in order to retain credibility as governance actors and the support of conflict-affected communities, it is essential that EAOs continue to strengthen and reform their governance and administrative systems. This is particularly important in relation to regulating business activities, taxation and natural resource management.

› Develop and articulate visions for the immediate and long-term futures of EAO governance institutions, as a basis for serving communities and "building federalism from the bottom up". While constitutional change remains a key objective, progress towards federalism can be made through Interim Arrangements.

› Develop Terms of Reference for the role and mandate of a Joint Interim Arrangements Committee, and urge the government to convene this body. Decide which issues and sectors should come under the remit of a Joint Interim Arrangements Committee, and which are best discussed between individual EAOs and the government on a bilateral basis. The Joint Interim Arrangements Committee could focus on agreeing general principles, with details to be worked out depending on local contexts.

› Relate the Joint Interim Arrangements Committee to proposed sub-national committees, to discuss aid and development projects and private sector investments.

› Clarify and communicate EAOs' expectations and arrangements for engaging with donors and other aid actors: which issues should be addressed to Liaison Offices, to EAO line departments, and/or to EAO headquarters.

RECOMMENDATIONS TO PRIVATE SECTOR

› Recognize that ceasefire areas in southeast Myanmar are not post-conflict areas, and that it is extremely difficult to operate in a conflict-sensitive way, mitigating business risk, reducing negative impacts on the environment and maximizing benefits.

› Recognize that EAOs are de-facto economic governance actors in large parts of southeast Myanmar, and that businesses will have to register with their respective administrations/departments in order to receive permission to operate. Therefore, engage widely with EAOs at both local and headquarter levels.

› Avoid implementing large-scale infrastructure and natural resource extraction projects in conflict-affected areas during the interim period, given the fragile ceasefire situation, lack of rule of law and ongoing human rights challenges, and limited trust on the part of key stakeholders.

› Consult widely with local communities under the principles of Free Prior Informed Consent (FPIC), and apply Finance Corporation (IFC) Performance Standards. Apply the principles of conflict-sensitive business practice (CSBP) and carry out rigorous human rights due diligence (HRDD). Ensure that all business activities meet or exceed the relevant provisions of Myanmar law and regulation, as well as relevant EAO policies.

MYANMAR INTERIM ARRANGEMENTS RESEARCH PROJECT - PHASE 2

The MIARP Terms of Reference with the JPF include developing a second, in-depth phase of the research. The MIARP team proposes that phase two of the project explore Interim Arrangements including in contexts beyond the NCA and southeast Myanmar, as well as looking in greater detail at key issues, and producing concrete and policy-relevant learning through the implementation of pilot projects. Broadening and deepening of applied research on Interim Arrangements would be undertaken in partnership with key stakeholders in the peace process.

1 Chapter 1: Introduction

1.1 THE MYANMAR PEACE PROCESS - BACKGROUND AND OVERVIEW

Since 2011, Myanmar has experienced an unprecedented period of transition, which many hoped would lead to significant progress towards democracy and peace following the 2015 elections and formation of a government led by Daw Aung San Suu Kyi's National League for Democracy (NLD). The new government faced numerous challenges, including the need for constitutional, educational, legal, economic and land reforms, and for capacity building in many sectors. The government has prioritised the peace process with Ethnic Armed Organisations (EAOs), which is highly contested and far from complete.

Armed conflict has been ongoing between successive Myanmar governments and dozens of EAOs for over seven decades. Relations between the central government and the country's diverse ethnic nationality communities have been problematic, arguably since the pre-colonial period and certainly since independence from British rule in 1948. Particularly following the military coup of 1962, ethnic communities have often experienced the government and its armed forces as predatory and violent, with an agenda to impose a unifying national identity derived from the culture, language and values of the Burman *(Bama)* majority community, who constitute about two thirds of the population. Today, most EAOs demand federal and democratic systems of government, and oppose the military-drafted 2008 Constitution, for its centralised and unitary nature, and for providing significant legislative and executive powers to the armed forces.

Shortly after independence, conflicts began between the government and the Karen National Union (KNU) and other ethnic-based and communist armed movements, followed in 1950 by the arrival in Shan State of US-backed Kuomintang forces from China. The Tatmadaw responded to these events with a heavy hand, militarizing parts of the country that had previously been largely autonomous. By the 1960s, the state was under military rule, and a second generation of ethnic armed movements was underway. These events had devastating consequences for civilian communities, and for the possibility of establishing an inclusive union.

In the course of over half a century of armed conflict, several of the larger EAOs developed extensive administrative systems, including departments of education, health, agriculture and justice, and related service delivery systems. These quasi-state regimes vary greatly in effectiveness, but in many areas today are the main political authorities and providers of social services. In EAO-controlled territories, and in many areas of "mixed administration" (where one or more EAOs compete with the Myanmar Army for control of local populations and resources), the state is excluded, or experienced as an intrusive and predatory military force.

While several of the longer-established EAOs demonstrate state-like qualities, others have developed only rudimentary governance and service delivery systems, and many local militias offer few benefits to local communities.[1] While difficult to gauge in a systematic manner, our research indicates that for many conflict-affected communities in the southeast, EAOs enjoy as much, if not more, political legitimacy than the state and its armed forces.[2]

Since the 1970s and 80s, Myanmar's EAOs have lost control over many of their once extensive territories, precipitating humanitarian and political crises in the borderlands, as large numbers of people fled and/or were forcibly displaced. During the 1990s, ceasefires were secured with 17 of the larger EAOs and dozens of smaller factions, bringing relative stability to the north of the country. Conflict and mass displacement continued in the southeast, as the KNU and other groups did not agree ceasefires with the then military government. In this

1 This report uses the term "Ethnic Armed Organisation" to refer to all non-state armed groups presently or historically opposing the Myanmar government and Tatmadaw, on the understanding that (while private economic agendas may be important) these groups are primarily motivated by political grievances and agendas. Therefore EAOs include Border Guard Forces (BGFs: see below) and other militias, to the extent that these are (still) engaged in politics. Such caveats notwithstanding, the majority of EAOs discussed in this report are non-BGF groups, whether or not these have signed the NCA.

2 For a discussion of this topic, see Ashley South, "'Hybrid Governance' and the Politics of Legitimacy in the Myanmar Peace Process," *Journal of Contemporary Asia* 48, no.1 (November 2017): 50-66. Accessed May 2, 2018. DOI: 10.1080/00472336.2017.1387280.

context, increasing amounts of foreign aid were provided to ethnic civil society groups working in partnership with EAOs to support conflict-affected communities, particularly along the Thailand border. There was a re-emergence of civil society networks among and between ethnic nationality communities, in both government-controlled and ceasefire areas and zones of ongoing-armed conflict.

In April 2009 the government proposed that existing ceasefire groups transform themselves into Border Guard Forces (BGFs), under direct Myanmar Army control. Several of the less powerful EAOs accepted transformation into BGFs, including the Democratic Karen Benevolent Army (DKBA, a powerful ex-KNU faction); others became "people's militias", giving them even less political influence, but often also less interference from the Tatmadaw.[3] Most of the stronger ceasefire groups, including the United Wa State Army (UWSA), New Mon State Party (NMSP) and Kachin Independence Organisation (KIO), and some elements of the DKBA resisted transformation into BGFs.

Following elections in November 2010, a military-backed transitional government assumed power in Myanmar, under the 2008 constitution. While this constitution created State and Regional governments and a legislative assembly designed to represent all states equally, it fell far short of EAOs' demands, by keeping most sectors heavily centralised and providing the Tatmadaw with significant powers and little civilian oversight.

From late 2011 through 2012, U Thein Sein's transitional government agreed or reconfirmed ceasefires with ten of the eleven largest EAOs, and in 2013 committed to holding multi-lateral political dialogue including discussion of constitutional reform. The new round of ceasefires focused on southern Shan, Kayah/Karenni, Kayin/Karen, Mon States and the Tanintharyi Region. Elsewhere in the country, the path toward peace was less clear, with heavy fighting over the last seven years particularly in Kachin and northern Shan States. In 2011 the Tatmadaw launched offensives against the Shan State Progress Party (SSPP), and then the KIO, breaking twenty-one and seventeen year old ceasefires respectively, and displacing more than 100,000 civilians.

Previous military governments had negotiated ceasefires in the north, while launching military offensives in the southeast. Since 2011, the situation has been reversed. On 15 October 2015 eight EAOs, mostly based in southeast Myanmar[4], signed the Nationwide Ceasefire Agreement (NCA), together with the President, senior government leaders, and the Tatmadaw Commander-in-Chief. The NCA committed all parties, including the Tatmadaw, to a political dialogue aimed explicitly at forming a democratic and federal system of government. For the EAO signatories, the NCA was seen as the best deal they could achieve in the last months of the U Thein Sein regime, as a means to then push for significant constitutional reform. This significant milestone in the peace process was diminished by the fact that a dozen other EAOs were either barred from or refused to sign the NCA. On 13 February 2018 two more EAOs, the NMSP and the Lahu Democratic Union signed the NCA.[5]

The NCA, with seven chapters and 104 specific provisions, falls somewhere between a ceasefire agreement and a more comprehensive and ambitious political text. In his speech at the NCA signing ceremony in February 2018, NMSP Chairman Nai Taw Mon said that the agreement could only be considered successful if it led to credible political dialogue. Over the following year however, political dialogue stalled, with the government and Myanmar Army unwilling to allow credible consultations between EAOs and ethnic communities. The centralised and militarised nature of the current political order remains the main grievance articulated by EAOs, ethnic political parties and the majority of democratic forces.

Following the NCA, the government/Tatmadaw and EAO signatories established Joint Monitoring Committees (JMCs) at

3 John Buchanan, "Militias in Myanmar", *The Asia Foundation,* (July 2016), AccessedMay22018.https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf.

4 These were the KNU, Democratic Karen Benevolent Army (DKBA), KNU- KNLA Peace Council (KNU-KNLA PC), Restoration Council of Shan State (RCSS), Chin National Front (CNF), Pa-O National Liberation Organization (PNLO), Arakan Liberation Party (ALP) and the All Burma Student's Democratic Front (ABSDF).

5 This occurred after the bulk of MIARP research had been completed.

the Union level, and in Shan, Karen/Kayin, and Mon States and Tanintharyi and Bago Regions. A process of political dialogue was also initiated, with the first Union-level meeting held at Naypyidaw in January 2016. The new NLD-led government initiated follow-up Union Peace Conferences (UPC) in late August 2016, May 2017 and June 2018 (the so-called "21st Century Panglong Conferences", which were actually held in Naypyidaw). The NCA mandated ethnic nationality based ("National") political dialogues for those communities associated with EAOs that had signed the agreement. The Karen, Chin and Pa-O dialogues in early 2017 were fairly successful, with a wide range of stakeholders meeting for the first time in the country's history to agree common positions on a range of issues. Following its ascension to the NCA, the NMSP also held a successful Mon National Political Dialogue in Ye town, in May 2018. However, since 2017 the Tatmadaw has blocked consultations in government-controlled areas, and prevented dialogues in Shan and Rakhine States. Furthermore, it remains unclear if and how concerns and aspirations raised during sub-national political dialogues can be included in the Union-level peace talks; for example, many issues discussed in the Karen political dialogue were omitted from the agenda of the subsequent second UPC.

The May 2017 UPC endorsed the first 37 principles of a proposed Union Peace Accord. However, these mostly followed existing constitutional provisions, and did little to address ethnic nationality leaders' demands for greater autonomy for their states, civilian oversight of the military or more inclusive union-level institutions.[6] A following UPC held in July 2018, led to the agreement of 14 more points, but these explicitly excluded issues related to politics and economics and signified no progress towards constitutional change. Given the lack of progress on political dialogue, many national and international stakeholders have placed their hopes for progress in the peace process on Interim Arrangements.

1.2 WHAT ARE "INTERIM ARRANGEMENTS"?

The term "Interim Arrangements" (ကြားကာလအတွင်းဆောင်ရွက်ရမည့်အစီအစဉ်များ) has gained salience in Myanmar as a key element of the peace process. Essentially, the "interim" is the period between signing of bilateral ceasefires and the NCA, and the (yet to be achieved) realisation – and implementation - of a comprehensive political settlement; the "arrangements" are service delivery systems and governance functions in conflict-affected areas, including those implemented by EAOs. The issue of which geographic areas are covered by Interim Arrangement is problematic. On the ground, EAOs' influence, and delivery of services and governance functions, extend into areas where political and military authority is mixed and contested with the government and Tatmadaw.

The term "Interim Arrangements" was first introduced in peace talks with the government by the EAOs. It remains something of a buzzword - a contested concept meaning different things to different stakeholders: government, Myanmar Army, EAOs, conflict-affected communities, and civil society actors. The only official text defining IAs in Myanmar is the NCA (Chapter 6, Article 25) "Tasks to be implemented during the interim period":[7]

> *The Ethnic Armed Organizations that are signatories to this agreement have been responsible in their relevant capacities for development and security in their respective*

6 Two of these Principles are particularly relevant to Interim Arrangements (IAs): (1) To draw and implement the Regional Comprehensive Development Plans by coordinating among the Union Government and Regions and States Governments and Governments of Self-administered Regions/ Zones for the development of human resources and socioeconomic development. (Remark: To undertake the tasks without going against the laws and principles laid down by the Union Government). (2) To draw up suitable plans and programs that can attract domestic and international investment in compliance with the prevailing law and implement these for the socioeconomic development of Regions and States and Self-administered Regions/ Zones. *The Global New Light of Myanmar,* "37 Points Signed as Part of Pyidaungsu Accord," The Global New Light of Myanmar Online, May 30 2017, Accessed May 2 2018, http://www.globalnewlightofmyanmar.com/37-points-signed-as-part-of-pyidaungsu-accord/.

7 United Nations Peacemaker, "Nationwide Ceasefire Agreement Between The Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations," Accessed May 2 2018, https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf.

areas. During the period of signing the ceasefire and political dialogue, we shall carry out the following programs and projects in coordination with each other in said areas.

(1) Projects concerning the health, education and socio-economic development of civilians.

(2) Environmental conservation.

(3) Efforts to preserve and promote ethnic culture, language, and literature.

(4) Matters regarding peace and stability, and the maintenance of rule of law in the said areas

(5) Receiving aid from donor agencies both inside and outside the country for regional development and capacity-building projects.

(6) Eradication of illicit drugs.

The inclusion of Interim Arrangement in the NCA reflects the government's recognition of key EAOs' political legitimacy and administrative competence - at least, for those groups that signed the agreement. In this context, one of the key recommendations of this report is that those EAOs with substantive governance (administrative)[8] functions should be encouraged and supported to exercise this authority in a responsible and accountable manner.

The NCA text recognises the roles of signatory EAOs in the fields of health, education, development, environmental conservation and natural resource management, preservation and promotion of ethnic cultures and languages, security and the rule of law, and illicit drug eradication. The NCA also allows EAOs to receive international aid, in coordination with the government, and potentially provides a basis for more systematic coordination of aid to ceasefire areas.

However, the NCA fails to cover the full range of meanings associated with the term "Interim Arrangements". Furthermore, there is no agreed mechanism for addressing these goals through the peace process architecture; the text remains vague and so has had little impact on the wider political or institutional environments. Interim Arrangements, and the NCA in general, should include all previous bilateral ceasefire agreements, as confirmed in NCA Article 2(c). In practice however, the Myanmar Army seems to regard the NCA as succeeding and subsuming the earlier bilateral ceasefires.

In 2016 the NCA signatory EAOs proposed forming a Joint Interim Arrangements Committee (see below). However, there has been little movement since, and the failure to successfully implement Interim Arrangements represents a significant gap in implementation of the NCA.

It is unfortunate in this context that relevant articles in the preexisting bilateral ceasefires have often been overlooked or ignored. The government and Tatmadaw seem to regard the NCA as taking precedence, despite the preamble of the NCA stating that it: "recognizes, reinforces, and reaffirms all previous agreements". For example, agreements negotiated in January and April 2012 as part of the KNU ceasefire provided some recognition of that organisation's parallel governance arrangements and service delivery functions. However, the Tatmadaw has ignored these documents, which were accepted with little discussion by the previous government's negotiating team (the Myanmar Peace Centre), in the interest of moving quickly to agree preliminary ceasefires.

The Myanmar Interim Arrangements Research Project (MIARP) adopted a broad definition of IAs, going beyond the NCA's rather vague wording, and recognising that NCA non-signatory EAOs also have significant governance functions and service delivery systems. While remaining open to varied understandings of the term, the MIARP provisionally adopted the following working definition for "Interim Arrangements":

8 In Burmese *(Myanmar-saga)* "governance" and "administration" are usually translated by the same word: *ouq chouq ye*.

The situation and future of EAOs' governance and service delivery systems, and the relationships between EAO and government systems, and community and civil society initiatives, during the period of initial ceasefires and a comprehensive political settlement.

This definition was shared with the Joint Peace Fund at the beginning of the project, following our inception workshop. It was subsequently shared with key stakeholders (including translations into Burmese/Myanmar-saga, Sgaw Karen, Mon and Shan languages).

By "governance", we mean relationships between local authorities and communities, including "the various institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods" (Risse 2012).[9] This definition encompasses state and non-state actors, at the national/Union, provincial (State and Region) and local levels, and focuses in particular on EAO political and legal administrative functions.

Transitions from armed conflict to peace are rarely smooth or linear. Myanmar will almost certainly remain affected by oscillating armed conflicts for years to come. Therefore, a broad and inclusive approach to improving governance and service delivery in conflict-affected areas is necessary, both to provide the best outcomes for vulnerable and marginalised communities, and to support an equitable outcome to peace negotiations. Although Interim Arrangements are relevant to all conflict-affected parts of Myanmar, at the request of the JPF the MIARP was mostly implemented in parts of southeast Myanmar under the auspices of the NCA (see Chapter 1.4: Methodology).

International Examples of Interim Arrangements

Unless an existing government successfully defeats insurgents on the battlefield, conflicts end either with regime change or a negotiated long-term settlement. However, such final agreements, often taking the form of a new constitution, take time to implement, and in the interim transitional arrangements may emerge. One example of this would be the transition in South Africa.

It may be premature to start negotiations towards a new political order while numerous issues normally dealt with in a peace agreement have not been satisfactorily addressed. Depending on the type of process, considerable time maybe required to establish political, administrative and security arrangements - as was the case in Cambodia, Iraq and Nepal. The orientation and scope of resulting Interim Arrangements depend on the context and strategies for establishing the new political order, and can be briefly expressed or rather detailed (as in the case of interim constitutions).[10]

Interim Arrangements in Myanmar, with a focus on armed groups' governance functions and service delivery systems, are rather unique. International comparative examples of IAs can be divided into two broad categories: 1) countries that have experienced a robust international transitional authority, and 2) those whose experience has been one where domestic actors never lost sovereignty, even where they had to negotiate with powerful insurgents and/or with international actors during a transition. Kosovo, East Timor, and Iraq are examples that fall under category 1, while such countries as Mozambique, Angola, South Africa and Northern Ireland fall under category 2.

In negotiated settlements, national actors virtually always determine who will rule, and under what kind of transitional arrangements. In countries like Mozambique, Angola, El Salvador, Guatemala and Burundi, the sovereign state retains authority during a transition, often accepting confidence-building measures, constitutional changes and/or some degree of interim power sharing. In other settlements, the constitutional order is preserved with modest reforms and a change in government. In settlements such as those in Nicaragua, South Africa, and Liberia domestic actors determined the form of

9 Thomas Risse, ed. *Governance without a State? Policies and Politics in Areas of Limited Statehood* (New York: Columbia University Press, 2013), 9.

10 Michele Brandt et al, "Constitution-making and Reform: Options for the Process", *Interpeace*, 2011, pp. 67-71. https://www.interpeace.org/wp-content/uploads/2011/09/2011_11_Constitution-Making_Handbook_English.pdf.

transitional authority. International actors had limited involvement, and prioritized adherence to the terms of the agreement and inclusion of potential spoilers.[11]

Interim or transitional arrangements are more prominent when a peace agreement has already been reached, envisioning a significant transformation of conflict by designing new political and legal structures, setting the stage for a constitution-building process. In such contexts, IAs can take the form of interim constitutions, and thus are not always clearly distinct from broader political settlements. Interim Arrangements are then the temporary result of political negotiations aimed at helping a country bridge a given transition. Interim Arrangements might constitute government structures, but they lack (formal) legal supremacy, and do not necessarily set the stage for a constitution-building process. They therefore depend on the voluntary consent of the conflict parties.

The track record of IAs in other peace processes is not encouraging, but in many peace processes some form of power sharing seems inevitable, and special attention should be given to modalities of such partnership arrangements. It is desirable to use the "transitional/ interim" period of peace to establish trust among the conflict parties, and provide a framework within which previous enemies can start working together.

Nevertheless, if IAs are unrepresentative, corrupt or abusive, they can contribute to lack of confidence in the peace process - as in the case of Kenya in the mid-1990s and Nepal in 1951. However, if implemented in a transparent and inclusive way, IAs can influence more permanent arrangements.

The Significance of Interim Arrangements

Without better-defined roles and responsibilities for those armed and non-armed actors that currently undertake governance (administration) and service delivery roles in ceasefire areas, positive outcomes for local communities will remain limited, and opportunities for building trust will be missed. This will be especially important in light of slow progress towards constitutional reform: while official government structures remain heavily centralized, and thus out of touch with the *de facto* power dynamics in ceasefire areas, interim measures are needed to provide some structure and address the needs of society.

The lack of a formal mechanism for managing IAs has resulted in disputes, undermining confidence in the peace process. Several stakeholders expressed fears that the government is delaying meaningful progress towards federalism, while capitalising on ceasefires to expand the state's military and civilian structures into previously semi-autonomous areas, thus "winning the war by other means" (to quote an EAO leader). Key individuals and factions within most EAOs remain deeply sceptical of the entire peace process. Better understanding and supporting of IAs could lead to greater trust in the overall peace process.

The challenges were exemplified in a March 2017 interview with the Kayin State Chief Minister, on the issue of land management, a sector in which the government and KNU have parallel systems:

> ***"The KNU created the land plots in accordance with their land policy, in their control areas. We said they could not manage it like that. As the management of the land is carried out by our government we must be the one who does this. We explained this to them, as well as to the villagers. We try to convince them that there is only one policy."***[12]

11 Charles T. Call. *Why Peace Fails: The Causes and Prevention of Civil War Recurrence* (Washington D.C., Georgetown University Press, 2012), 247-254.

12 Nyein Nyein, "Karen State Chief Minister: IDP Repatriation Before De-Mining Would be Like 'Living in a Prison'", *The Irrawaddy*, March 14 2017. Accessed May 2 2018. https://www.irrawaddy.com/in-person/ka- ren-state-chief-minister-idp-repatriation-before-de-mining-would-be-li- ke-living-in-a-prison.html.

Since the ceasefires, government departments in Karen State and elsewhere have expanded their presence, pushing state authority into areas previously controlled strongly influenced by the KNU. Roads have been built, Village Tract leaders trained, taxes collected, police stations established and government teachers deployed - all without consulting communities, CSOs or EAOs.

At the same time, EAOs have not been without agency. In several KNU areas (e.g. 3 Brigade/eastern Bago Region and 4 Brigade/Tanintharyi Region) the KNU has moved its headquarters from remote areas up in the forested hills to "front-line positions" much closer to government-controlled lowlands. Such "ceasefire state-making" demonstrates that for EAOs like the KNU, the peace process has also been an opportunity to reestablish itself close to communities with which it lost regular contact sometimes decades ago. In addition, private companies, the Tatmadaw and EAOs have also capitalised on the fast-growing ceasefire economy in southeast Myanmar, sometimes undermining local livelihoods and environmental sustainability.[13] These rapid changes have taken place with little coordination or formal negotiation, often creating new tensions and risking renewed conflict.

Contestation over the political legitimacy of the state lies at the heart of Myanmar's armed conflicts, as disputes over the 2008 Constitution show. Successful IAs could be a means of re-negotiating the nature of state-society relations, and developing provisions for future autonomy arrangements in ethnic minority-populated areas - contributing towards "building federalism from below", by supporting locally owned and trusted service delivery and governance regimes. The significance of EAO public service provision is not only about compensating for overstretched or absent state systems, but touches on the identity aspects of the conflict, as for instance when teaching minority languages in EAO-administered schools (see Chapter 3.2). While constitutional change towards federalism remains a crucial over-arching aim for solving conflicts, IAs can in the meantime, make tangible progress towards the same goal.

More immediately, together with EAO Liaison Offices (established under the NCA), IA interfaces represent one of the main ways in which government, NCA signatories, international donors and aid agencies, CSOs and local communities encounter each other in ceasefire areas. Joint bodies - within which government, Tatmadaw, EAOs, CSOs and communities (and possibly international organisations) can discuss and engage on Interim Arrangements - could potentially do much to build trust and collaboration between different stakeholders in the peace process. As one academic observer put it:

> ***"It is important to support local deliberative spaces, where government and EAO policy-makers and power-holders can be exposed (ideally jointly) to communities' concerns and hopes; such meetings have a good track record internationally for reducing corruption."***

Improved IAs will be particularly important in areas of "mixed administration", where authority is exercised by one or more EAOs and the government/Tatmadaw, and/or various Myanmar Army–backed militias (and/or BGFs).[14] In these areas of "hybrid governance" both EAOs and state agencies provide services to and extract resources (e.g. official or informal taxes) from local communities.

The significance of IAs seems to have been recognised by Senior General Min Aung Hlaing, in his speech to the third Union Peace Conference:

13 Many EAO leaders have established local companies under the Myanmar Companies Act, which enable them to participate in government infrastructure tenders and natural resource extraction activities, sometimes regardless of social and environmental impacts (see Chapter 3.5).

14 On the dynamics of "mixed administration" areas see: Kim Jolliffe, "Cease fires, Governance And Development: The Karen National Union In Times Of Change," *The Asia Foundation*, (December 2016): 36-39. Accessed May 2nd 2018. https://asiafoundation.org/wp-content/uploads/2017/03/Policy-Brief_Cease-fire-Governance-and-Development_ENG.pdf. On militias in Myanmar, see: John Buchanan, "Militias in Myanmar", The Asia Foundation, (July 2016), Accessed May 2 2018. https://asiafoundation.org/wp-con- tent/uploads/2016/07/Militias-in-Myanmar.pdf.

> *"Special emphasis should be placed on the implementation of interim period plans described in the NCA. Locals would enjoy the fruits of peace only when the regional development tasks are effectively implemented in ceasefire areas during the ceasefire period through cooperation with local authorities, in accordance with the existing rules and laws."*[15]

Unfortunately, such opportunities have largely been missed, as delivery of the "fruits of peace" has not been undertaken in a joint manner. Nevertheless, in those areas where ceasefires have held, many communities have experienced significant improvements in terms of human security and livelihoods. Civilians can travel more freely in and from ceasefire areas, and livelihoods have begun to improve through better access to farmlands and less predatory taxation by military authorities (especially the Tatmadaw).

Despite these positive aspects, overall confidence in the peace process remains low among ethnic stakeholders. There is furthermore a disconnect between the peace process and constitutional, legal and policy reforms in Myanmar. Actors in the peace process are often absent from debates regarding legislation and policy changes conducted at the Union level, in Parliament and elsewhere.[16] In part, this is because EAOs are reluctant to acknowledge the political legitimacy of current parliament and governance systems under the 2018 constitution. If Interim Arrangements are to make significant impacts on peace and development outcomes in Myanmar, it will be important to build connections between the situation in conflict-affected (particularly ceasefire) areas, and the rest of the country.

The NLD-led government inherited a peace process framed by the NCA, and seems determined to see this through. Daw Aung San Suu Kyi and her advisers reportedly plan to hold one or two more Union Peace Conferences, and then declare the "21st Century Panglong Process" finished. The resulting Union Peace Accord would go to Parliament, and form the background to election campaigns in 2020. Once the Union Peace Accord is completed, the Myanmar Army would likely call more strongly for EAOs to disarm and demobilise. This would be virtually impossible for the main EAOs to accept.

Unlike the U Thein Sein government, which invested significant energy and political capital in trust-building, the NLD government seems not to regard EAOs as important or legitimate political actors. Aung San Suu Kyi and colleagues see political legitimacy as a product of participation in elections; in contrast, most EAOs derive their legitimacy from the long years of armed struggle. Although not universally popular among the country's ethnic nationality citizens, the major EAOs do nevertheless enjoy significant support among the communities they seek to represent. Nevertheless, the government (and presumably the Myanmar Army) need NCA-signatory and other EAOs to support the "21st Century Panglong Process". For the EAOs, pulling out would be a high-risk move, exposing them to accusations of sabotaging the peace process. However, NCA-signatory groups could be getting more out of the process. The principles agreed so far in the last two UPCs are very weak, and do little to address ethnic grievances and self-determination goals. Key ethnic stakeholders have agreed on the need to re-negotiate the Framework for Political Dialogue, with an ambitious plan to achieve federalism and security sector reform by 2030. However, given limited interest on the government or Myanmar Army side, any re-negotiation could end up with another messy and complex framework, which does not really work (or benefits the government and military, which is almost the same thing).

Therefore, it could be useful to identify a small number of priorities, which would help to deliver on some of the ethnic stakeholders' key aims. These could be negotiated by EAOs and political parties in a "fast track" manner, in exchange for continuing to participate in the Political Dialogue, resulting in a Union Peace Accord that could benefit the government *and*

15 Senior General Min Aung Hlaing, "Opening Remarks," *Panglong Conference*, May 24 2017, Accessed May 12 2018. http://www.moi.gov.mm/moi:eng/?q=news/24/05/2017/id-10710.

16 See Tinzar Htun and Mael Raynaud, "Schedule Two of the 2008 Constitution: Avenues for Reform and Decentralization and Steps towards a Federal System," *Konrad-Adenauer-Stiftung*, (May 2018). Accessed 1 June 2018. http://www.kas.de/myanmar/en/publications/52552/ .

ethnic stakeholders. Benchmarks or indicators would need to be established, and should be kept simple. Areas for possible progress could be education and language policy (recognition of and funding for EAOs' extensive school systems; 'mother tongue' teaching in government schools); land issues (recognition of land title documents provided by EAOs; revision of unjust existing land laws; compensation and restitution for people who have had their land unfairly taken); and equitable natural resource management; addressing forced displacement – i.e. Interim Arrangements.

None of the above would prevent ethnic stakeholders from continuing to campaign for federalism, including changes to the 2008 Constitution. In parallel, they could aim for some short-term political objectives, which might build trust and momentum in the peace process. These "peace dividends" would help ethnic communities, and also reinforce faltering local support for EAOs; in exchange, the government might be able to deliver a credible peace process.

A Potted History of Interim Arrangements in the Myanmar Peace Process

Interim Arrangements were placed on the peace process agenda by the EAOs' Nationwide Ceasefire Coordination Team (the NCCT, which did not include the RCSS). Government negotiators led by Minister U Aung Min and the Myanmar Peace Centre accepted the inclusion of IAs in the NCA in principle, but this was one of the last elements of the NCA formally agreed (in March 2015).[17] Reportedly, U Aung Min gave the NCCT an informal agreement that IAs would be respected as a significant element of the peace process, even though the Tatmadaw was unwilling to accept the EAOs' preferred wording.

Appendices 23-27 of the NCA incorporate several IA-related provisions, including reference to land and education. The Appendix also provides more detail about women's participation. Although technically part of the NCA (as per Article 30), the Appendix has been largely ignored.

The motivation of EAO leaders in promoting IAs was threefold: first, to ensure that conflict-affected communities receive adequate assistance and services; second to ensure recognition and continued support for local governance functions and service delivery systems, and; third to prevent the government and Tatmadaw from taking advantage of the ceasefire to push state administration into ethnic areas. Key EAO leaders regarded IAs as a bridge to the implementation of federalism, from the bottom up. According to the KNU Joint General Secretary, the priority for Interim Arrangements should be: *"to support bottom-up federal practice… [and to] encourage local self-administration and decision-making."*

Following signing of the NCA in October 2015, most EAO signatory group leaders were overstretched meeting their commitments to the peace process, and did not prioritize IAs. Limited discussions of Interim Arrangements occurred in the Union Peace Dialogue Joint Committee (UPDJC, the joint body coordinating political elements of the peace process), and in late 2016 the Minister to the State Counsellor, former diplomat U Kyaw Tint Swe, reportedly agreed in principle to set up an IA component of the peace process, complementing political dialogue and monitoring. It was understood that a Joint Interim Arrangements Committee would be formed to sit alongside the JMC and UPDJC.

In March 2017 the eight NCA signatory groups, collaborating in negotiations through the Peace Process Steering Team (PPST), established an internal PPST Interim Arrangements Committee, led by the Arakan Liberation Party's (ALP) Sayama Saw Mra Raza Linn.[18] The PPST IA Committee developed draft Terms of Reference, as a basis for negotiating with the

17 As noted above, key bilateral ceasefires (e.g. with the KNU and CNF) also included provisions related to Interim Arrangements.

18 The choice of the ALP to lead this committee may appear strange, as this EAO has very little in the way of governance authority on the ground or services delivery. However, KNU leaders in particular wanted to share responsibility for implementing the peace process, and hoped to further bind the ALP into the NCA following the government's refusal to allow an NCA-mandated political dialogue in Rakhine State.

government to establish a joint IA committee. However, progress toward institutionalisation of IAs in the peace process has been slow, mostly because of reluctance on the part of the Myanmar Army, which has prioritised the issue of EAO disarmament - and also because EAOs would prefer to keep some of their service delivery and governance/administrative arrangements "below the radar" of state scrutiny and possible control. In the meantime, while some ad hoc arrangements are in place on the ground (see Chapter 3), most state officials do not engage with EAOs on issues of service delivery and governance in ceasefire areas, despite the wording of the NCA. As Myanmar remains a highly centralised state, this is unlikely to change unless specific directives are issued from the central level.

1.3 STAKEHOLDERS' PERCEPTIONS AND POSITIONS

As noted, "Interim Arrangements" means different things to different actors. Many stakeholders, even some closely involved in the peace process, have never heard the term. This section outlines the perspectives of key stakeholders.

Ethnic Armed Organisations

Despite some concerns, EAOs have generally favoured reaching an explicit, negotiated understanding regarding IAs in the peace process. Key EAO leaders interviewed for this research emphasised that this was necessary for the good of local people, as well as to deter government incursions into their territories, and to strengthen local capacities to build federalism "from the bottom up".

Several EAO leaders voiced distrust of the government and Tatmadaw, fearing that they would not invest time in IAs, or would use these to their own advantage. Further complicating matters are differences over IAs within and between some EAOs.

After signing the NCA, over-stretched EAO leaders did not invest much energy in Interim Arrangements until 2017 when the eight NCA signatory groups in the PPST established the Interim Arrangements Committee. By the end of 2017, KNU General Secretary P'doh Tah Doh was arguing for the importance of IAs, complaining that: *"it is not yet being implemented despite the fact it is in the NCA text."*[19]

The larger EAO signatory groups, the KNU and the RCSS, generally view IAs in the context of strengthening and protecting their own and other locally recognized (CSO) governance and service delivery systems, potentially in coordination with the government and donors, but without becoming dependent on state structures. Numerous EAO and CSO leaders said that while they want better relations with the government, the priority is strengthening their own institutions and systems. Nevertheless, according to the RCSS official in charge of IAs: *"Strengthening our organisation's health department is not just about strengthening the organisation. The KNU and RCSS have made it clear that (EAO) organisational existence and IAs are not related to each other."* The KNU General Secretary P'doh Tah Doh Moo expressed a similar view: *"we are not competing with government, but because of the situation and the gaps left by government, we have to do this for the people in our area and for the peace process."* The Pa-O National Liberation Organization's (PNLO) Khun Minn Thein likewise spoke of IAs as benefiting local people and building confidence in the peace process: *"everyone has a different understanding and definition of IAs. It should mean support to our people. Without IAs, peace is not meaningful (for them)."*

Several EAO leaders said that successful IAs could be a key step towards federalism. According to P'doh Tah Doh Moo: *"The government and Tatmadaw don't want to deal with IAs, but just push into and take control of ethnic areas. However, IAs are important to create space for local participation in governance. This can be the beginnings of building federalism bit by bit…. It is about creating space for our people to do things for themselves."*

19 Nyein Nyein, "Central Government Infringing Administration of KNU Regions, Say Leaders", The Irrawaddy, November 10 2017, Accessed May 7 2018. https://www.irrawaddy.com/news/burma/central-govt-infringing-administration-knu-regions-say-leaders.html.

Major-General Baw Kyaw Heh, Vice Chief-of-Staff of the Karen National Liberation Army (KNLA, the armed wing of the KNU), is sceptical about the NCA, but sees an important role for EAO governance and service delivery systems: *"the NCA won't result in federalism; we need to build federalism locally by supporting EAO service delivery and capacities"*. He argued that aid to conflict-affected communities should be provided cross-border, and not from "inside Myanmar", because: *"many NGOs and UN agencies are government tools, being used to take over our areas."*

Both leaders and regular EAO members voiced distrust of the government and Tatmadaw. According to KNU Vice-Chairman P'doh Kweh Htoo Win*: "IAs haven't really begun yet, as the government refuses to engage with us on a Joint IA Committee"*. He believes that the Tatmadaw in particular is unwilling to move ahead on IAs because they do not recognise EAOs' legitimate roles as governance authorities and service providers. P'doh Tah Doh complained that the government and Tatmadaw: *"engage directly with EAOs and related CSOs for implementation of the projects, and they call this 'joint' - but really it's a way of co-opting EAOs services and administration into plans which have already been devised in Naypyidaw"*. He explained there is a similarity between government and many international organisations that want local "partners" in order to implement projects in remote and conflict-affected areas, but are not willing to engage on joint discussions at the level of policy development.

Given these concern, it is not surprising that several EAOs (particularly KNU) leaders cautioned that IAs are not the same as "convergence". There is a concern that donors in particular are seeking to pressure EAO and CSO service delivery systems to merge with those of the government. While this may be one future scenario, several ethnic stakeholders pointed out the importance of maintaining EAO governance and administrative arrangements, and related service delivery systems, regardless of possible convergence with state agencies. According to KNU Joint General Secretary P'doh Steve:

> *"It might be useful to work jointly with government systems on service delivery in 'mixed areas', in order to provide services to conflict-affected communities, build trust and map gaps in delivery. However, working cooperation is not the same as "convergence" - which is still sensitive for many Karen stakeholders."*

Some EAO interviewees said that a joint IA body could be used to agree needs, priorities and policies between EAOs and government, and donors and development partners, as appropriate - for example in relation to education and language policies, and land and natural resource management. If done jointly, and with explicit instructions to operate from senior government and Myanmar Army leaders, such a body could be perceived as more equitable than the current Joint Coordination Body (see Chapter 3.9).

Several EAO leaders stated that some issues and sectors need to be negotiated with government, while others are best kept more low-profile ("beneath-the-radar"), for individual groups and their CSO partners to implement unilaterally. Furthermore, there remain important differences between the larger NCA signatory EAOs (the KNU and RCSS, and since February 2018 the NMSP), and the smaller groups. Only the former have significant governance authority in more than a few small pockets of territory, or much in the way of service delivery (see Chapter 3). It should also be noted that the RCSS and the DKBA political wings and administrative structures are relatively underdeveloped in comparison with the KNU and the NMSP.

There is general agreement among EAO leaders that a broad framework for IAs would be useful, but that specifics need to be negotiated and implemented on a group-by-group and area-by-area basis, depending on varying local contexts. (This could include the three Karen EAOs working jointly on key issues: see Chapter 2.2). There have been few discussions regarding strategies for what issues should be addressed in which way under Interim Arrangements, and/or in political dialogue as part of the peace process. Nevertheless, some EAO and CSO leaders began thinking through how different aspects of topics such as education and language policy relate both to federalism (e.g. which languages should be taught in government schools, and how education should be managed

at the sub-national level) and to IAs (e.g. relationships between government and EAO school systems). Again however, there are different realities and strategies for different ethnic communities, and related EAOs.

Further complicating intra-ethnic relations, three have been tensions and occasional armed clashes between EAOs - both NCA signatory and non-signatory groups (e.g. the RCSS and Ta'ang National Liberation Army/TNLA), and between signatories (e.g. the RCSS and PNLO, and NMSP and KNU: see Chapter 2). It should also be noted that the All Burma Students' Democratic Front (ABSDF), an armed group that grew out of the 1988 democracy uprising and exodus of students to the borderlands, and seeks to represent all of Myanmar, has a different history and identity to other EAOs in the country.

Interim Arrangements are experienced as part of the daily reality of EAOs' local (district and township-level) leaders, but are sometimes less of a priority for leaders at headquarters. Within the KNU, different opinions were expressed regarding about whether the lead on IAs issues should come from district authorities or from headquarters.

The Government

Overall, the MIARP elicited little interest from the government, especially at the Union level. Meetings with government representatives were limited to State/Regional level officials in Karen/Kayin, Mon and Tanintharyi, and one meeting with the government's National Reconciliation and Peace Centre (NRPC).

Some government officials seem relatively more open towards IAs than the military, as was confirmed by numerous EAO interviewees. However, senior staff at the NRPC seemed to know or care little about the situation in ceasefire areas. It was suggested that enquiries should be directed to the Ministry of Foreign Affairs, State Councilor's office, UPDJC or JCB. Reportedly, the NRPC has money (including donations from Myanmar business-people) available to implement projects in ceasefire areas. At the State and Regional level, government officials seemed largely unaware of the NCA's provisions, or at least those which call for engagement with EAOs on issues of governance and service delivery (e.g. NCA Chapter 6). Unless there is significant change in the form of new policy directives at the Union level, this is unlikely to change. In the absence of a recognized agreement, issues in relation to IAs are mostly handled by government line ministries (for examples in the fields of health and education see Chapter 3).

Despite the wording of the NCA, there is little consultation or communication between the government and EAOs regarding service delivery and governance or development issues in ceasefire areas. This can be seen across southeast Myanmar, as the government establishes new sub-townships (see Chapter 3.3), mostly without consulting local communities or relevant CSOs or EAOs. At the sub-national (State/Regional) level, beyond some ad hoc arrangements based on personal relationships, state officials are generally reluctant to engage with EAOs. Some IA-related discussions have taken place through JMC structures, and there are coordination bodies for the sectors of health and education and Mon and Kayin/Karen States (see Chapter 3). However, the latter are still in the relatively early stages of development, and mostly facilitated by international organisations (e.g. the Three Millenium Development Goal Fund, and UNICEF).

The few Myanmar Army officials interviewed for this report all stated that the JMC would be the correct place to address Interim Arrangements. However, the NCA provides the JMC with little role to play regarding Interim Arrangement, beyond coordinating security around access to displaced communities. Furthermore, as the JMC is dominated by the Myanmar Army, EAOs and other ethnic stakeholders are reluctant to see this body given greater authority in relation to IAs. In a worrying development, in September 2018 the government moved to impose new restrictions on relationships between EAOs and foreign and domestic aid agencies.

The Myanmar Army (Tatmadaw)

The Myanmar Army will be key to the successful implementation of Interim Arrangements. Coordination and cooperation

between the government and EAOs, CSOs and local and international aid agencies can be blocked by the Tatmadaw and the powerful General Administration Department (GAD) that it controls (through the Ministry of Home Affairs). In general, the military has shown very little interest in supporting successful IAs. However, in May 2017 Senior General Min Aung Hlaing made an important and potentially encouraging speech on the issue. At the third Union Peace Conference he said in ceasefire areas:

> *"Special emphasis should be placed on the implementation of interim-period plans described in the NCA. It can be seen that the plans have opened the door for ethnic armed groups to coordinate with local authorities in their respective ceasefire regions during the peace dialogue period, in accord with the existing rules and laws... only then, would they have a trust in peace-making process. This is the strength for our peace-making process."*[20]

According to Tatmadaw officials interviewed for this research, IAs come under the remit of the JMC (in which these gentlemen play leading roles). However, the JMC Terms of Reference have little to say about Interim Arrangements, and most EAOs reject this extension of the scope of ceasefire monitoring. The Tatmadaw's restriction of aid agency access in several ceasefire areas in southeast Myanmar in 2018 seems likely to prevent the successful mentation of Interim Arrangements (see Chapter 3.9). Even more worrying, violent Myanmar Army incursions into the northern KNU ceasefire zone during this period threatened to further destabilize the ceasefire, undermining the livelihoods and human security of civilian populations (see Chapter 2.2).

The Burmese term for "Interim Arrangements" *(kyauk kala asiasin)* seems not to be fully accepted by the Tatmadaw, as this suggests further political transition is yet to be negotiated and implemented. Senior Tatmadaw leaders reportedly feel that this could undermine the previous government's "Seven Step Roadmap to Disciplined Democracy", and that there is no further "transition" in prospect through the peace process. According to this interpretation, post-NCA political dialogue would entrench and elaborate the 2008 Constitution, while sticking to the Myanmar Army's "Six Principles" for the peace process.[21]

In negotiations, the Tatmadaw regularly emphasises scenarios under which EAOs are expected to disarm sooner or later, with major political discussions taking place through elections and in Parliament. In the meantime, the Tatmadaw seems to be pushing for an agreement on the demarcation of EAO-controlled territory ("separation of forces"), before discussing IAs. Limiting the relevant geographic area for IAs would restrict service delivery to the public, and the achievement of development goals.

Some interviewees noted that Tatmadaw leaders oppose granting EAOs authority over clearly demarcated territories, as they want to avoid reproducing the situation in UWSA-controlled Shan State Special Region 2, where the Wa EAO controls a significant border area - including a town with mostly private services, a standing army of some 25,000 men, near complete separation from the Myanmar state, and a political economy largely dependent on neighbouring China.

Civil Society Actors

Myanmar civil society is a vast and diverse collection of actors. Even CSOs working in conflict-affected areas vary greatly in

20 Senior General Min Aung Hlaing, "Opening Remarks," Panglong Conference, May 24 2017, Accessed May 12 2018. http://www.moi.gov.mm/moi:eng/?q=news/24/05/2017/id-10710.

21 Saw Zin Nyi, "Peace Policy Between Tatmadaw And Ethnic Armed Groups Remains Unresolved," Mon News Agency, April 3 2015, Accessed May 12 2018. http://monnews.org/2015/04/03/peace-policy-between-tatmadaw-and-ethnic-armed-groups-remains-unresolved/. The Myanmar Army's six principles are: 1. Ethnic armed groups to have a genuine wish for peace; 2. Keep promises they (EAO) agree to during the peace process; 3. Refrain from reaping benefits from peace agreements; 4. Not to become a burden on the people; 5. Follow the country's existing rules of law; 6. Respect and march towards a democratic country in accordance with the 2008 Constitution.

their relations with EAOs and government, and each other. Some are involved directly in negotiations on behalf of EAOs, as they have the necessary capacity and political capital (despite in some cases being quite critical of EAO leaders and strategies); others are inherently wary of all forces they see as self-serving or interested primarily in power. Some focus mostly on advocacy and policy issues; others are involved primarily in service delivery.

Interviewees from CSOs varied greatly in their knowledge of IAs. Many people associate Interim Arrangements with the NCA; if they are sceptical of the NCA, they also tend to be sceptical of IAs. A leader of one ethnic youth organisation voiced concerns that both EAOs and government: *"want to take advantage - so can they really agree on IAs?"* As a Karen civil society leader put it: *"the government's willingness to engage with IAs will be a good indicator of their seriousness, and the quality of the peace process."*

Numerous CSO leaders emphasised that activities in relation to IAs should be inclusive and provide civil society and communities with meaningful influence. However, in the political dialogue element of the peace process the government has insisted that civil society groups participate through a separate parallel process, rather than being directly involved in the Union Peace Conferences (other than as observers or facilitators). Such directives exacerbate tensions between previous allies, the NLD and activist civil society groups. Furthermore, the official "CSO Peace Forum" has been limited to just three topics: economic issues; social issues; and land and environmental issues.[22]

Many CSO members argued that they were the best-placed actors to implement IA-related projects. Some suggested that CSOs could mediate between international agencies, the government and EAOs, to ensure communities are being listened to and to provide additional technical input. One youth organization member said that government, EAOs and CSOs should work closely together on IAs, because: "the government and EAOs' experience is not the same as locals - all have different perspectives so cooperating between all three actors will bring about better plans."

EAO-linked Institutes

There is a growing body of policy developed by institutions working for, or in cooperation with EAOs. These could play an important role in supporting better understanding and implementation of IAs. Three main organisations work with EAOs to provide technical and logistical support in the peace process: the Pyidaungsu Institute (PI)[23], the Ethnic Nationalities Affairs Centre (ENAC)[24] and the NCA Signatories Ethnic Armed Organizations Support Office. Over the past two years, the ENAC has undertaken a series of consultations to develop positions on a range of issues, including Interim Arrangements aspects of 11 different policy areas. The ENAC recommendations have been adopted by the United Nationalities Federal Council (UNFC, an EAO alliance) and the United Nationalities Alliance (which brings together several "above-ground" ethnic political parties in Myanmar). However, the degree to which these organisations are basing their positions in political negotiations around ENAC-developed policies is uncertain, as EAOs and political parties are often keen to make decisions and develop policies "in house", rather than outsourcing such important and sensitive undertakings to think tanks. Nevertheless, some ethnic CSOs have been quite influential in developing policy positions for EAOs.[25]

Staff at ENAC are concerned that the government may take over IAs (e.g. through the Joint Coordination Body: see Chapter 3.9) if the situation on the ground is made too visible. As noted above, explicit attention to IAs could be counter-productive if it leads to greater control on the part of government or donors. Other ethnic CSO think-tanks have also engaged on the IA de-

22 Lun Ming Man, "Committee Formed to Prepare for CSO Peace Forum", *Myanmar Times,* Nov 8 2016, Accessed May 12 2018. http://www.mmtimes.com/index.php/national-news/23531-committee-formed-to-prepare-for-cso-peace-forum.html.

23 Primarily associated with NCA signatory groups. See: https://www.pyidaungsuinstitute.org/.

24 The ENAC handles the JPF grant for the UNFC's Delegation for Political Negotiation (DPN) and also works as a policy-development body/think tank for UNFC, including engaging with ex-UNFC-members. http://www.burmaenac.org/.

25 Lun Ming Man, "Committee Formed to Prepare for CSO Peace Forum", *Myanmar Times,* Nov 8 2016, Accessed May 12 2018. http://www.mmtimes.com/index.php/national-news/23531-committee-formed-to-prepare-for-cso-peace-forum.html.

bate. For example, the Burma Environmental Working Group envisages a three-phase roadmap towards federalized environmental governance in Myanmar (see Chapter 3.3), from interim matters (issues of immediate importance, before the agreement of a political settlement), through a transitional phase (while developing a federal political structure) into the implementation period, with different roles and responsibilities for State/Region and Union governments. Other important actors include the Technical Assistance Teams that have been set up by some EAOs.

Conflict-affected Communities

Interim Arrangements will only succeed if implemented inclusively, with the participation of conflict-affected communities. According to Charles Call's research,[26] inclusive peace agreements are much less likely to be followed by a recurrence of violence. It is therefore essential that conflict-affected communities are consulted, and participate in decision-making around the peace process.

Where they hold, ceasefires can provide communities with significant improvements in human security and livelihoods. Research conducted among conflict-affected Karen, Mon and Karenni communities in 2012-14 by the MPSI[27] indicated that, before the ceasefires, villagers frequently had to flee, in order to avoid fighting as well as forced conscription and portering by the Myanmar Army - but since the ceasefires, most communities have experienced greatly decreased levels of fear and suffering. Many people said that for the first time in decades they did not have to worry about fleeing to avoid serious human rights abuses.

In some cases, displaced people are beginning to return to previous settlements and attempting to re-build lives long blighted by armed conflict and its impacts (see Chapter 3.8). Many villagers mentioned that before the ceasefire they were unable to travel or visit their farms, or could only do so on payment of bribes to Myanmar Army soldiers. Even then, villagers were restricted in terms of the amount of food or other supplies they could carry when travelling, as the Tatmadaw often accused them of supporting the insurgents. Villagers told terrible stories of abuse at the hands of the Myanmar Army, including multiple beatings and killings.

The great majority of people who spoke to MPSI greatly appreciated changes since the ceasefires, although they worried that piece might prove unsustainable. One villager said that:

> *"Since the ceasefire, I can go to my rice fields and weed regularly, so I got more rice for my family. Now I can also travel freely and unlike before sleep out in the rice fields in a little hut, with- out having to fear for my life. Now the Burma Army still move around, but we don't have to fear meeting them." Another man told MPSI that: "our villagers are like ducklings that have been in a cage for so long, and now they are released. They are so pleased to leave their cage! Our villagers are free to travel day and night, and are more busy and productive them before."*

Despite such positive views, civilians in conflict-affected areas remain extremely vulnerable, facing extensive needs in many sectors (e.g. health, education, livelihoods and food security). Many ethnic nationality communities continue to experience high levels of militarization, with Myanmar Army troops often being perceived and experienced as an occupying and predatory force. A number of villagers interviewed for this research stated that, if the Tatmadaw were to withdraw from some non-strategic positions that are perceived as threatening by communities, this would boost local stakeholders' trust and confidence in the peace process.

In practice, Interim Arrangements (which are rarely called this locally) vary from village to village, and communities' relation-

26 Charles T. Call, *Why Peace Fails: The Causes and Prevention of Civil War Recurrence* (Washington D.C., Georgetown

27 Myanmar Peace Support Initiative, "Lessons Learned from MPSI's work supporting the peace process in Myanmar, March 2012 to March 2014," Accessed May 3 2018, https://reliefweb.int/sites/reliefweb.int/ les/resources/Report_Lessons-learned-supporting-the-peace-process_MPSI_Mar2014.pdf.

ships with authorities are changing, depending on local contexts (see Chapter 2). For conflict-affected communities, the quality of EAO administration and governance was repeatedly stated as important. Communities in ceasefire zones are often unhappy about widespread natural resource extraction (e.g. gold mining and logging) and planned mega-projects (e.g. hydropower dams and cement factories), sometimes carried out in collaboration with local EAO commanders. If Myanmar's EAOs are to retain the support of local communities, and continue credibly to claim political legitimacy, they cannot afford to alienate their support base in the villages. In some post-ceasefire areas, villagers for first time have had opportunities to "pick and choose" between authorities. Communities recovering from decades of conflict sometimes receive government patronage, and move politically closer to state authorities in exchange for local infrastructure development, or in order to gain access to preferred outcomes in justice systems.[28] In some conflict-affected villages (for example, in Tanintharyi Region: see Chapter 2.4), government and Tatmadaw personnel have been asking about local needs, and promising to provide goods and services that the KNU cannot deliver. Such dynamics can cause tensions within and between communities, and between villagers and EAOs.

Foreign Aid and Interim Arrangements

There is considerable interest in Interim Arrangements among the aid community and Myanmar's development partners. This is partly explained by limited progress in the broader peace process, particularly in relation to seemingly stalled Political Dialogue and continued ceasefire violations (mostly on the part of the Myanmar Army). Donors would like something positive to support, in a highly contested peace process. Ultimately however, a lack of political will on the part of the Myanmar government and Army is the main constraint on progress regarding IAs.

There is concern among many ethnic stakeholders that international agencies, and particularly major donors, are pushing a "convergence agenda", aimed at merging EAO and civil society service delivery with that of the state. As one observer put it, this could be seen as "state-building by stealth". While convergence between EAO and government systems may be appropriate in some scenarios, it is important to note that for EAOs and CSOs Interim Arrangements are primarily about the maintenance and support of their independent systems, rather than merging these with the state. This is a sensitive topic for many EAOs and CSOs, given the widespread perception that donors are intent on strengthening government capacities and systems, and allowing these to extend into previously inaccessible, conflict-affected areas.

One foreign aid worker with long-standing connections to Myanmar said that "Interim Arrangements" is a useful concept, because: *"EAO and civil society service provision is valued and trusted by vulnerable, conflict-affected communities"*. He regarded EAOs as duty-bearers, who should be supported in exercising these powers responsibly. (The relationship between foreign aid and Interim Arrangement is further explored in Chapter 3.9.)

1.4 METHODOLOGY

The MIARP was implemented over nine months, between October 2017 and October 2018. Research was undertaken in four main geographic areas: southern Shan (team leader Kim Jolliffe), Karen areas (Tim Schroeder and Saw Sa Shine), Mon areas (Mi Kun Chan Non), Tanintharyi Region (Susanne Kempel with Naw Wah Shee Mu). The lead researcher (who conducted field research in Tanintharyi, Mon and Karen) was Ashley South, with Axel Schroeder in charge of administration.

At the start of the project, inception workshops were held in each of the above locations, and also in Yangon with international and national stakeholders. The project team developed a set of research questions, and a working definition of "Interim Arrangements", which were shared with the JPF and key stakeholders. We adopted a mixed methodology, mostly using key

28 See the discussion of "shopping for justice" in: Brian McCartan and Kim Jolliffe, "Ethnic Armed Actors and Justice Provision in Myanmar," *The Asia Foundation* (October 2016). Accessed May 4 2018, https://asiafoundation.org/ wp-content/uploads/2017/03/Policy-Brief_Ethnic-Armed-Actors-and-Justice-Provision-in-Myanmar_EN.pdf .

informant interviews and focus group discussions. The primary research was supplemented by a literature review.

The MIARP researchers engaged with a wide range of stake-holders and informants, including communities living in EAO-controlled, government-controlled and "mixed administration" areas; Ethnic Armed Organisations (civilians and military officials - at headquarters, district and township levels); Myanmar Army personnel (State/Regional Border Affairs and Security Ministers, and officials from the General Administration Department); government officials at the Union and State/Region levels; CSOs and other civil society actors; political parties; private business people; and international agencies, donors and experts. In total, MIARP researchers spoke to over 450 people, in Shan, Karen/Kayin and Mon States, Tanintharyi Region, Naypyidaw, Yangon and Thailand - broken down as follows:

Based on these interviews and focus group discussions, and a survey of published and "grey" literatures, the team drafted field reports on the four main geographic locations, on the basis of which we developed preliminary analysis and findings, and provisional recommendations. These were discussed with key stakeholders, including in validation workshops in each of the States/Regions. Key findings and recommendations were also triangulated with JPF and other stakeholders, before drafting of the final report.

This report is also available in Burmese/Myanmar language, and the Executive Summary has been translated into Shan, Sgaw Karen and Mon.

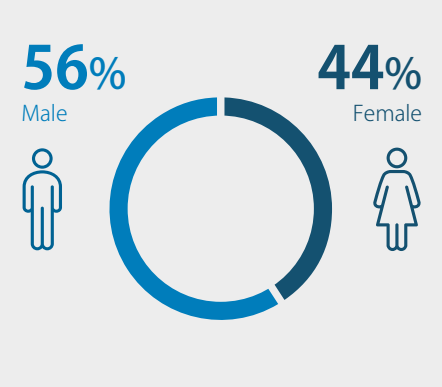
From the outset, it was anticipated that a second phase of the MIARP would focus in depth on some of the issues identified in this report, in partnership with key local stakeholders, and that research would be extended to include other parts of Myanmar (see Recommendations: Chapter 4.4).

INTERVIEW PARTNERS

Male	252
Female	199
Total	**451**

Government	48	11%
EAO	72	16%
CSO/Local NGO	50	11%
INGO	65	14%
Villager	112	25%
Student	85	19%
Religious Leader	5	1%
Business	2	0%
Health worker	2	0%
Teacher/ School Secretary	10	2%
Total	**451**	**100%**

INTERVIEW PARTNERS



မာန်စဝ်လှူးညံ့မာထောစ်အုံဆေါတ်လေင်
သုဂ်ထျာ. ပဝံင်ဖါန်
သဒ္ဒါရောင်ခြည်
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2 Chapter 2: Interim Arrangements and Governance

This chapter examines governance in conflict-affected (primarily ceasefire) areas of southeast Myanmar, particularly in places where EAO and government/Tatmadaw authority overlaps (areas of "mixed administration"). The Annexes at the end of this report explore specific aspects of Interim Arrangements on the ground in greater detail.

Hundreds of thousands of people in southeast Myanmar live in areas controlled by EAOs. Millions more live in areas where EAOs exercise limited authority in parallel or in competition with the state and its armed forces. Some of these EAOs maintain decades-old civilian administrative and service delivery systems, while even the less well-established groups exercise authority over populations of varying sizes. Many people in southeast Myanmar remain subject to ad hoc and patchy governance arrangements, making long-term development strategies difficult to implement, and leaving some communities exposed to abuse, exploitation and neglect. Trust between the government, Myanmar Army and EAOs remains extremely low, as reflected in the lack of progress so far towards formally agreed Interim Arrangements. This is compounded by States and Regional governments in southeast Myanmar seeming to regard EAOs primarily as service delivery actors, and/or private companies, rather than legitimate governance actors, or de facto local authorities.

2.1 SHAN

Context Overview, Peace and Conflict Dynamics

Shan State is extremely diverse, being home to more than a dozen distinct ethnic national movements, eight significant EAOs,[29] dozens of government-aligned Border Guard Forces (BGFs) and People's Militia Forces, and several hundred smaller people's militia. Deep-rooted conflicts exist between non-Bamar groups and the state, with the former feeding off widespread grievances over government oppression and military activities, as well as the practices of Burmanisation alongside neglect of basic civilian needs.

To complicate matters further, there are also significant inter-ethnic conflicts, particularly between the Shan (who are the regional majority and historical political power-holders) and the region's smaller ethnic nationalities, such as Wa, Pa-O, Ta'ang and Kachin. This report focuses particularly on the RCSS and PNLO, and thus on southern Shan State and parts of the north where the RCSS is present. In practice, however, the multiplicity of other armed actors have a significant influence on the dynamics surrounding IAs. The United Wa State Army/Party is a powerful political and military force, while numerous EAOs are in regular armed conflict with the Tatmadaw in the north. Across the entire state, various government-linked paramilitary actors are involved in a wide range of harmful business practices, both licit and illicit, and in some areas regularly abuse and exploit local people for profit.

Governance Authorities

The government controls most towns and major roads in Shan State, but has yet to consolidate control over peripheral areas, where it often competes with EAOs and/or depends on local proxy militias for access. In many rural areas government presence is limited to military patrols, the establishment of administrators for relatively large (and thus only loosely governed) village tracts, and the limited and sporadic deployment of teachers.

The RCSS has firm control over much of the Shan State-Thailand border, where it has five main bases and nearby camps for IDPs.[30] It has varying degrees of influence in territories stretching to the China border, particularly through the central areas of the state. Since its ceasefire in 2011, the RCSS has expanded its territory significantly.

The PNLO controls two large village tracts in Mawkmai Township, but is much smaller and less influential than the decades-old Pa-O National Organization (PNO), a former EAO that now forms a political party and has a large People's Militia Force. The party holds all elected seats on the Leading Body of the official Pa-O Self-Administered Zone, with the militia under nominal command of the Tatmadaw but with a fairly high degree of autonomy.

Relationships Between Governance Authorities

Despite a seven-year ceasefire period, trust and cooperation between the government/Tatmadaw and the RCSS is very low, particularly as a result of territorial disputes.[31] Nevertheless, incidences of combat have reduced from 200 between the bilateral ceasefire and NCA to fewer than 30 subsequent to the NCA. Both sides closely track each other's activities and regularly ask (or coerce) civilians to inform on each other's movements. The Tatmadaw often stops and questions RCSS teachers or health officials, and in many areas the latter still have to hide who they work for. At the same time, the RCSS is distrusting of intrusions into its areas by any government departments and allows very few external development or social actors to work completely independently.

29 These are the Restoration Council of Shan State (RCSS), the Pa-O National Liberation Organisation (PNLO), Kachin Independence Organisation (KIO), Ta'ang National Liberation Army (TNLA), Shan State Progress Party (SSPP), United Wa State Party (UWSP), National Democratic Alliance Army (NDAA), Myanmar National Democratic Alliance Army (MNDAA).

30 These are Loi Tai Leng (RCSS HQ area), Loi Kaw Wan, Law Lam, Loi Kawng Mung Mai, and Loi Sam Sip.

31 The Government has tried to limit the RCSS to just the Homong (Homein) area of Langkho Township, which includes Loi Tai Leng, and the Mong Tan (Hmone Tar) area of Mongton Township, which were demanded as full RCSS-administered areas in 2011 bilateral negotiations. The RCSS insists it has a right to operate across much larger areas.

The government and PNLO enjoy much better relations, as the PNLO is more flexible in allowing government access, although it controls such a remote and small area that the state does not have much of a presence. While the PNO maintains close relations with government, particularly the USDP and Tatmadaw, links between the PNO- PNLO are tepid if stable, and have improved in recent years.

Long-standing conflicts exist between the Shan armed groups and those of other ethnicities. Other ethno-linguistic groups often see Shan movements as hegemonic, seeking a monopoly on political power, while Shan leaders tend to believe that other ethnic groups should cooperate with their vision for a more independent Shan State. Other EAOs view the RCSS as particularly expansive in recent years, and the group has been involved in military clashes with PNLO, TNLA and in the past the PNO/PNA, among others.

Relationships Between Governance Authorities and Communities

Overall, communities in the research areas suffer greatly from poor governance, abuse by armed actors and an overall lack of stability. None of the armed actors in the research area have strong civilian institutions, as all have been focused primarily on either security or business matters. They have thus often been exploitative of local people, and some are outright oppressive. Nonetheless, key individuals in all groups are dedicated to serving their people and to reforming their organisations to this end. Among these are the main people working on Interim Arrangements and service delivery, who generally come from social work backgrounds. There is also notable variety within particular EAOs, and between areas.

Despite their shortcomings, EAOs are regarded by many communities as having a high degree of legitimacy, because many conflict-affected, ethnic nationality people continue to feel that, due to the country's history and situation, "their" ethnic groups needed to be armed for protection and to improve their political situation; and because the main EAOs provide some key benefits, whether cracking down on drugs (as the RCSS has done), providing local justice and order, protection from the Tatmadaw and other actors, or basic social service delivery.

Governance Capacities and Cultures

Across all authorities, capacities for good governance remain low with most actors focused on war/security, business, and power accumulation. The government tends to enjoy better re- sources than EAOs, while the latter have better local knowledge and community relations. Almost all EAOs are dominated by males from military backgrounds. As a result, CSOs and NGOs have struggled to encourage more liberal and people-centred practices, and women are significantly under-represented and marginalised. There are however, key individuals in most EAOs committed to reform, and there are some areas of significant investments from leaders, for example with the RCSS support for education (see below).

The RCSS administrative system divides Shan State into 11 areas, which are governed by more than 20 locally based administrative battalions. These are made up entirely of soldiers, but trained and focused on civilian administration. These units oversee village and village tract authorities in all settlements of over 20 households, which are each led by local villagers appointed by the RCSS. The RCSS has a relatively successful system of establishing local administrative bodies, even in areas where it does not have full control. In new territories, the RCSS will begin by getting buy-in from the elders, following which it appoints and trains administrators and establishes regulations. Its success has come largely from the RCSS's relative popularity, especially as a result of crackdowns on drug use and dealing, along with a policy of not charging ordinary villages taxes, and also in part as a result of RCSS Chairman Yawd Serk, who is seen by many as a powerful and charismatic leader.

Development and social activities in RCSS-influenced areas are coordinated and often implemented by the Shan State Development Foundation (SSDF). Other organisations, including monasteries, cultural and literature organisations and selected CSOs, such as the Rural Development Foundation of Shan State (RDFSS) , also provide support to local people.

Priorities for Improved Governance by Different Stakeh

Most interviewees reflected on the reality that very little has changed fundamentally since ceasefires were signed or the country's supposed transition got underway. As such, they are still pre-occupied by on-going violence and militarization, and their stated priorities relate to either the successful implementation of a basic ceasefire and/or the wider goal of realising serious political change. The most commonly raised issues of concern to communities were education, drugs, local development (including roads and electricity), curbs on unfair taxation (particularly by the Tatmadaw), and the need for rights-based initiatives aimed at empowering ordinary people in the face of exploitative powerful actors.

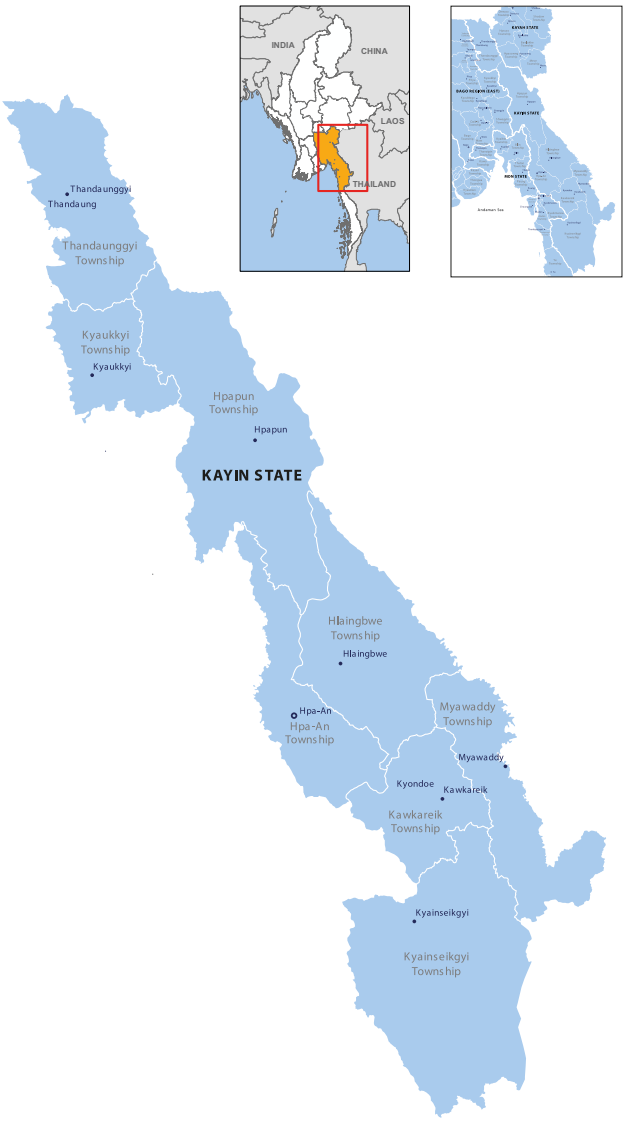
Perceptions of Interim Arrangements

The RCSS focal person on IAs emphasised that these are seen primarily as about serving the people, but also as ways to build local systems for the future goal of federalism. Given the complexity and issues around social and political legitimacy in Shan ceasefire areas, serious considerations are needed about the best way to approach governance strengthening. Most interviewees felt that it would be impractical and damaging to trust in the peace process if the government were to simply expand further into ceasefire areas, although there were problems working with EAO authorities too, as the latter do not have strong civilian institutions in place. Furthermore, many areas remain contested by multiple armed groups.

Nevertheless, almost all stakeholders said that solutions had to come through engagement and education of EAOs, to build trust, introduce new ways of thinking and working, and change institutionalized mindsets. Most people emphasised that this was critical to building a federal system of government with significant local control, as poor governance and a lack of local capacity among EAOs are the direct results of decades of war and centralization, and armed attacks on EAOs and civilian communities Several CSO members argued that civil society actors can be more responsive and legitimate than EAOs or the government. Many suggested that CSOs should play a mediating role between international agencies and EAOs, in to ensure communities are being listened to, and to provide additional technical input.

2.2 KAREN

Context Overview, Peace and Conflict Dynamics



Karen (officially Kayin) State is home to numerous armed actors, including the Tatmadaw, five EAOs[32], local militias and the Karen Border Guard Force (BGF). The state remains heavily contested and militarized, with conflict parties struggling over control of populations and territory. All seven townships in the state host one or more EAOs that challenge the authority of the government.

Ceasefires since 2011 have brought significant improvements for conflict-affected populations, including improved security and freedom of movement, albeit with important reservations. Increased stability has also opened the way for infrastructure development projects and increased service delivery by local and international actors, while the government has been expanding its administration into newly accessible ceasefire areas. However, recent armed clashes between the Tatmadaw and the KNLA's 5th Brigade in Hpa-pun Township (in early and mid/late-2018) threaten to destabilize the ceasefire and have resulted in renewed displacement of civilian populations.

The situation in Karen State and adjoining areas (eastern Bago Region, and parts of Mon State) is in many ways similar to Karen-populated areas of Tanintharyi Region (KNU 4 Brigade: see Chapter 2.4). For a portrait of local realities and concerns in KNU 3 Brigade (eastern Bago Region), see Annex VI.

Governance Authorities

For three decades, the government has been largely in control of all towns and major roads in lowland areas of central Karen State, while in mountainous and borderland regions the state's access has been long restricted due to the terrain and active armed-conflict. Ceasefires since 2011 have enabled the government to expand administration and social service delivery significantly, especially around nine newly designated sub-towns.[33]

The KNU has a presence in all seven townships, and has firm control over numerous border territories, especially in northern Karen State where Taw Oo/Taungoo (2nd Brigade) and Mutraw/Papun (5th Brigade) Districts are located. The seven KNU districts[34] are further divided into townships and village tracts that are overseen by KNU officials. While the KNU only has more-or-less complete military control in remote and mountainous areas, it continues to have a significant influence in lowland ("mixed administration") areas, through its civilian administration and basic social service provision, as well as the ability to project force.

The DKBA is mostly present in "tolerated" (but not clearly demarcated) ceasefire territories in southern Myawaddy and Kya-in Seik-gyi Townships. While the DKBA remains primarily concerned with security and economic resources, since 2012 it has allowed the KNU to re-establish an administration system across most of its area of control (for example education and health services), while the government has also significantly expanded its presence in the DKBA-controlled zones. The KNU/KNLA Peace Council is much less powerful than the KNU or DKBA, and controls a few dozen small villages around its headquarter in To Kaw Ko in Kawkareik and in the Dawna Mountain Range in Northern Myawaddy Township.

The 13 Karen BGFs, which operate under the Tatmadaw, have emerged as powerful armed actors in central and eastern Kayin State (primarily Hlaingbwe, Myawaddy, Kawkareik and Southern Hpa-pun Townships). The leadership of the BGF is heavily involved in economic activities, such as taxation of local populations, border trade, natural resource extractions and large-scale agriculture projects. In some cases, reports indicate that members are also involved in illegal business activities such as gambling and narcotics trafficking.[35]

32 These are: the Karen National Union (KNU); the new Mon State Party (NMSP); Khlohtoobaw Karen Organization/ Democratic Karen Benevolent Army (KKO/DKBA); the KNU/KNLA Peace Council (KPC); and the All Burma Student Democratic Front (ABSDF). On the NMSP in Karen State, see Chapter 2.3.

33 Kim Jolliffe, "Ethnic Armed Conflict and Territorial Administration in Myanmar," The Asia Foundation, (July 2015): 52. Accessed May 12 2018. https://asiafoundation.org/resources/pdfs/ConflictTerritorialAdministration- fullreportENG.pdf.

34 See: Ashley South, *Burma's Longest War: anatomy of the Karen conflict* (Netherlands: Transnational Institute/Burma Centre Netherlands, 2011.)

Relationships Between Governance Authorities

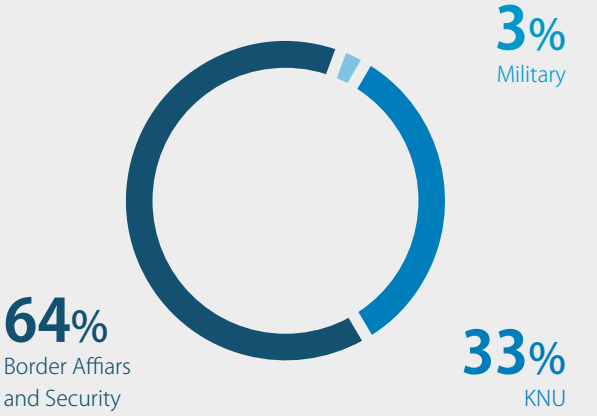
Relationships between governance authorities are extremely diverse and complex, and vary over time and from place to place. The nature of relationships and degrees of cooperation can vary through hostile to neutral to friendly cooperation.

Within the Karen State JMC, complaints about IA related issues outnumbered complaints related to military matters, such as illegal troop movements or code of conduct (see figure 1+2). According to civilian and EAO members, the JMC is far from being a trust-building mechanism and in fact achieves the opposite. The JMC is not able to address or work on policy, but is only able to "trouble-shoot" specific issues which are directly raised with the body. Several informants expressed a desire for the JMC to play a more proactive role in mediating between different service delivery and governance arrangements, or for a specialized body to be created to resolve disputes and sup- port coordination between different actors on the ground.

Overall trust and confidence between the government/Tatmadaw and the KNU remains very low, despite frequent encounters in negotiating sessions and peace talks between high-level leaders. There is some variety among KNU and KNLA leaders in the extent to which they are willing to cooperate with the government and Tatmadaw on issues such as social service provision, development activities and governance. This is due to different geographic, demographic, and historical realties in each KNU district, as well as their view on the ceasefires and development during the interim period. In general however, relationships between governance authorities at the district and township level are much weaker than relationships on higher levels, and range from neutral to hostile.

34 John Buchanan, "Militias in Myanmar", *The Asia Foundation,* (July 2016): 18-20. Accessed May 2 2018. https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf.

FIGURE 1: ISSUES BY STAKEHOLDER



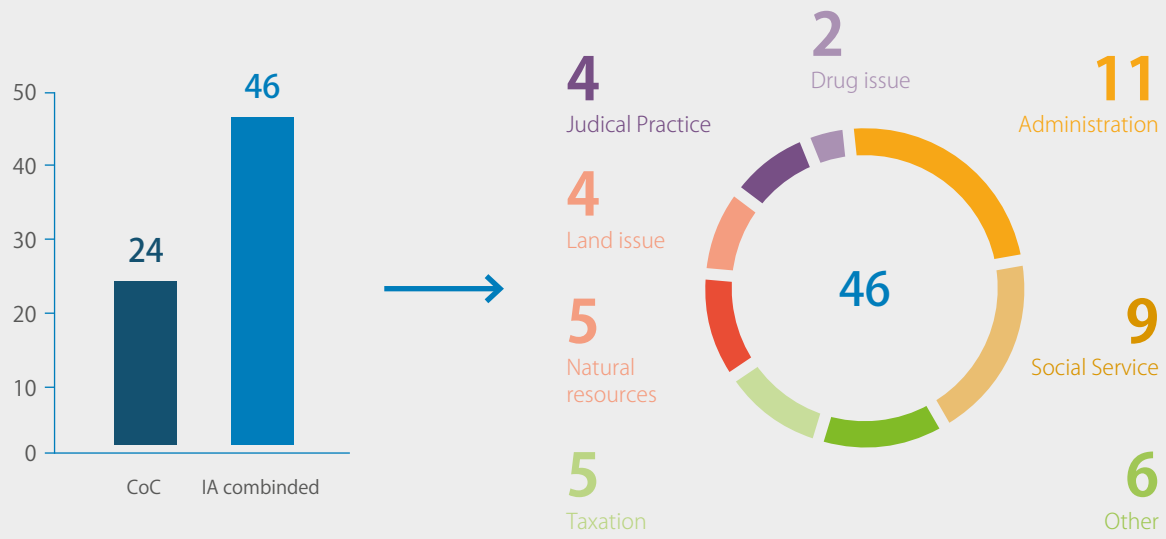
The signing of the NCA has not led to increased coordination and cooperation efforts, and there have been limited high-level discussions on how to implement IAs. Although there have been joint service delivery activities in some cases (e.g. vaccination campaigns, and some discussions on coordination in the health and education sectors: see Chapter 3), issues related to major policies remain unresolved (e.g. land policy, education policy).

Relationships Between Governance Authorities and Communities

Even though the safety and security situation has improved after the ceasefires, conflict-affected communities and their representatives interviewed for this research remain highly suspicious about armed actors' intentions and the on- going peace process. As stated by one civil society leader in northern Karen State: *"landmines are still in the ground, but also in their hearts!"*

Communities and CSOs are aware that the relationship between the armed actors, especially between government/

FIGURE 2: KAREN STATE - JMC COMPLAINT ISSUES 2017



Tatmadaw and the KNU is deteriorating (see above), which makes life especially difficult for people in mixed-administration areas, where people suffer from the lack of coordination efforts in governance as well as overlapping (or absent) service delivery, lack of clear polices, abuses by armed actors and overall instability. Conflict-affected Karen communities show limited trust towards government township administrations and their role in service provision and development, largely as a result of poor service delivery, lack of responsive institutions and the absence of accountability measures. In general, local people have limited knowledge of and information about local governance structures, service delivery standards and the government's - and EAOs' - responsibilities.

Relationships between the KNU and Karen communities across the state depend on the location of each community. People living in towns and in close proximity to urban areas tend to be more critical of the KNU, as they have been living under government administration for many years. Their views regarding the KNU can be rather negative, as they often perceive EAO members as troublemakers, drug dealers or warlords. Nevertheless, many others consider the KNU the "mother organization" of the Karen ethno-political struggle and hope that the organization can provide Karen people with self-determination.[35] As a civil society leader in Thandauggyi said: *"we Karen in this area all belong to the KNU or are their close relatives"*. For communities living under KNU administration, the organization remains the primary governance and security actor, as well as social service provider (in partnership with CSOs). Communities living in "mixed areas" experience a difficult situation as they are subject to overlapping governance systems. While service provision by the government has increased, they continue to rely on the KNU and related CSOs for services including justice provision, land registration and social services. The KNU governance structure remains highly embedded in mixed community areas. However, interviewees told us that some communities

35 Similarly varied observations, depending on geographic location, were made by Karen stakeholders in Tanintharyi (see below).

have started to voice their dissatisfaction with the KNU over various issues, such as taxation, forced recruitment and unsustainable resource extractions.

Governance Capacities and Cultures

The KNU remains a deeply embedded governance actor in many communities, where the government has repeatedly failed to establish stable governance arrangements, and where the Tatmadaw often used brutal counter-insurgency strategies against civilian populations. According to the KNU constitution, its governance system is in principle much more democratic than its government counterpart. However, the KNU-community relationship often remains top-down in nature, with little real dialogue and the absence of clear accountability and oversight structures. In addition, female representation at all levels of governance remains very low.

Governance arrangements in KNU areas are often quite personalized. Networks of families and close associates have in many cases effectively controlled KNU districts and townships for many years, and become embedded in local political economies, demonstrating a traditional ("neo-patrimonial") governance style, within which personal and professional roles and interests are often deeply intermixed. Though district administrations needs to report to the KNU headquarters on a regular basis, in practice district and brigade leaders hold significant autonomy in determining their own priorities, including development and economic activities, as well as revenue raising and expenditure. Interviews with civilian stakeholders revealed that many communities are becoming increasingly frustrated with different KNU district leaderships and their involvement in business activities, with little regard to social and environmental safeguards and benefits for local populations. Nevertheless, throughout the organization there are concerned and committed people, who show a sincere interest in communities' needs and aspirations, and are trying to make the KNU more democratic and accountable. The leaders of social service (e.g. health and education) departments have been trying to improve governance and service delivery in partnership with civil society actors for a number of years. While acknowledging the limited capacity of KNU entities in providing good governance, many Karen still see the KNU as their "mother organization" and hope to see it develop and improve.

Priorities for Improved Governance by Different Stakeholders

Many interviews revealed that communities want to be able to decide their own future without intrusion by armed actors. The contested security and governance environment, as well as limited cooperation on service delivery and IAs, are viewed by many as a major obstacle to development. Stakeholders mentioned that both government and EAOs need to improve their governance capacities, and to adopt more rights-based approaches, and want this to be supported by the international community.

Negative impacts associated with land grabbing for commercial agriculture projects, natural resource extraction and large-scale infrastructure developments such as hydropower and road constructions, are among the greatest challenges for communities. In the absence of clear coordination between the government, the KNU and other EAOs, many communities are left in limbo. Various stakeholders stressed the importance of jointly addressing land tenure security for communities. An acknowledgment of this concern, and subsequent joint actions by the government and EAOs, would help to increase trust and confidence.

Overlapping taxation systems place a heavy burden on communities, and pose a threat to their livelihood, security and opportunities to invest for the future. Overlapping taxation is a symptom of unresolved and ongoing conflict, in the absence of meaningful political solutions to address its root causes. The issue of taxation also remains a source of dispute between the government and EAOs, as the government sees itself as the only legitimate actor in enforcing taxation, especially since the signing of the NCA in 2015. This issue has led to tensions between the actors, and has been brought up at the JMC on numerous occasions - although no solution has

yet been identified. One strategy to discourage EAOs from collecting tax has seen the government encouraging EAOs to establish private businesses in order to receive income through business operations. However, this has been highly controversial, as it increases the number of armed actors in the economy and leads to a potential for further splits and tensions, and corruption.

The majority of the Karen populations in upland areas practice hillside paddy cultivation, and/or engage in orchard cultivation and extraction of forest products. Agriculture practices however, are often outdated and there is a need for low-tech farming innovations and access to markets and financial resources to develop the sector. Off-farm employment opportunities remain limited, and short and long-term vocational skills training for young people are scarce or not at all available. In nearby towns under government administration, small-scale and medium size enterprises provide some job opportunities in the service and construction sectors. Economic interactions between the upland communities and lowland traders and markets remain constrained due to infrastructure constraints, limited trust and confidence between market actors, and the barrier of lines of conflict.

Perceptions of Interim Arrangements

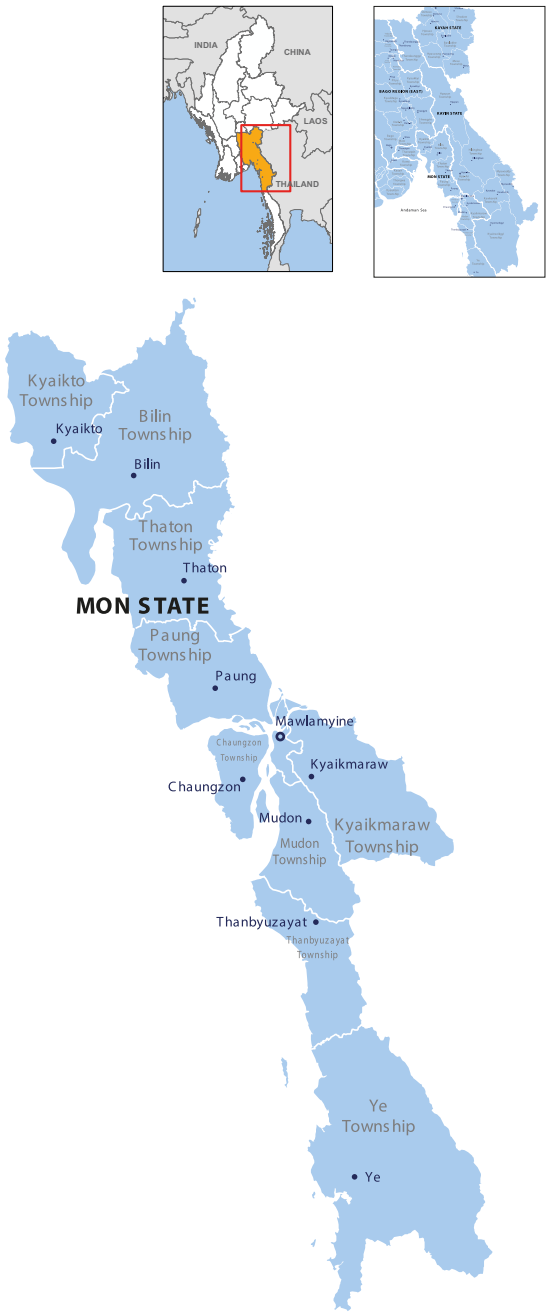
Several KNU leaders stressed that they do not think that the Myanmar Government has an interest in implementing IAs, as the current situation has given the government/Tatmadaw an advantage in extending its administrative system in the absence of clearly defined ceasefire territories. A DKBA officer said that: "the Myanmar Army does not want EAOs to build capacity in the field of local governance and social service provision, as it is aiming for their disarmament in the long-term".

There seems to be an increasing recognition by KNU leaders that IAs should be the pathway to securing ceasefire areas against continued incursions by government administration and service providers, as well as the Myanmar Army. A KNU-affiliated resource person closely connected to the peace process emphasized that IAs cannot effectively be implemented unless they are formalized. She also stressed that the expansion of government administration and social service provision into EAO territories without coordination efforts (and often through the assistance of the international community) creates conflict and further erodes trust between the conflict parties with negative consequence for local populations.

The KNU General Secretary, P'doh Tah Doh Moo, and Justice Department head, P'doh Eh Klu Say, explained that IAs should be partly about forging mutually recognized policies in each sector, in order to avoid conflicts, so that they do not have to negotiate every issue that arises (such as school expansion) on a case-by-case basis. P'doh Eh Klu Say emphasized the need for guidelines around development and service delivery activities in areas of mixed administration, while other KNU department heads stressed that the KNU leadership needs to give direction to the organization in order to address IAs in a systematic way.

One Karen civil society leader noted that: *"IAs are the life of the NCA, or give life to the NCA. Currently, there is no life in the NCA."* Furthermore, he stressed that a careful implementation of IAs would serve as a showcase for federalism and give people on the ground a variety of choices and options. Arguably, both the government and the KNU have so far failed to implement IAs for different reasons. The Kayin State government has no decision-making power and needs to obtain permission from the State Councilor or NRPC in order to go forward, while the KNU has failed to push the issue during political negotiations on national level.

One Karen politician noted that the situation has become more complicated since the NLD government came into office, as NLD officials have limited understanding of the peace and conflict situation, lack military backgrounds (and therefore have limited influence with the Tatmadaw), and have few relationships with Karen EAOs. Hence, the successful implementation of IAs will remain a challenge in the near future. He further stressed that both the government and EAOs need more capacity building in relation to local governance issues, and that equal support to do so should be provided by local and international actors.



Civil society stakeholders stressed that there should be a formalized IA mechanism on a sub-national level, with government, EAOs and civil society working together to implement IAs. Members of CSOs also mentioned the need for both government and EAOs to listen to conflict-affected communities and allow villagers to lead on the local implementation of IAs.

2.3 MON
Context Overview, Peace and Conflict Dynamics

Following its 1995 ceasefire with the government, the New Mon State Party remained in control of 12 (five km diameter) ceasefire zones, constituting three relatively small blocks of territory; the NMSP also exerted varying degrees of influence in adjacent, Mon-populated "mixed administration" areas of Mon and Karen States and Tanintharyi Region. The ceasefire brought fighting to an end, although many of the social and political issues underlying the conflict have yet to be resolved.

In April 2012 NMSP leaders re-confirmed a ceasefire with the new government. The NMSP was therefore in an unusual position, as a ceasefire group from the 1990s that had neither gone back to war (like the KIO)[36] nor remained quiet politically (like the UWSA, at least until 2017).

In 2018 the Mon National Liberation Army (MNLA) has at most 2000 soldiers, including reservists in the villages. The NMSP has been a leading member of the UNFC, particularly through its vice-chairman (and since 1997 Chairman of the UNFC), Nai Hongsa. Like its long-term ally the KIO, the NMSP initially did not sign the NCA. However, on February 13 2018 the NMSP signed the NCA together with the Lahu Democratic Union, believing that this was the "least bad option", in an increasingly dysfunctional peace process.

Following its leading role in signing of the NCA, in 2015 the KNU became more active in Yebyu Township (northern Tanintharyi Region), where the NMSP's Tavoy District had assumed control following the 1995 Mon ceasefire - reigniting a territorial dispute between the two formally allied EAOs. According to the Mon, tensions were sparked when the KNU tried to transport timber through the contested area, leading the NMSP to establish more security gates. Karen villagers claimed that local Mons had started growing rub-

36 Together with the KIO, the NMSP had throughout the 1990s continued to demand a federal political solution to Myanmar's protracted state-society and ethnic conflicts.

ber on their land. In September and October 2016 these tensions came to a head, with small clashes breaking out between the KNLA and the MNLA. Since then, three further clashes have taken place.[37] As a result, the two EAOs formed a liaison committee to manage disputes, and in a meeting hosted by the Tanintharyi Regional government in late January 2018 agreed to avoid further clashes.

During 2017, in the context of pressure on the NMSP to sign the NCA, the Myanmar Army took control of three MNLA bases on the edge of the ceasefire zones, depriving the NMSP of strategic military positions and access to revenues through tax gates. At the time of writing, these bases have yet to be returned.

Governance Authorities

The NMSP provides various elements of governance in its exclusively controlled ceasefire zones, and also in areas of mixed administration. It deploys district and township-level officials, who are rotated regularly and operate under the party's Administration Department. Most NMSP Township Officers are not highly educated, but they have experience of local politics and administrative matters, and usually cultivate good relationship with community members. Sometimes Mon people from government-controlled areas approach the NMSP judicial system for solutions to local disputes, as they believe the Mon system is quicker and fairer than the government's.
Most villagers interviewed in both mixed administration and NMSP-controlled areas believe that only the NMSP can protect them. They say things such as: *"NMSP administrative power should be strong, like the government's, and the NMSP should control and manage Mon areas".* One male interviewee from an NMSP-controlled area stated that: *"the NMSP should continue to hold their arms until the rights of our Mon people are guaranteed."*

Relationships Between Governance Authorities

According to the Mon State Border Affairs and Security Minister in Mawlamyine, the Myanmar Army respects EAOs' authority in their areas of control, and asks for permission if Tatmadaw troops need to travel in NMSP ceasefire areas. Beyond this however, there is little coordination between NMSP and government departments - although sometimes the latter asks permission from the NMSP when they want to implement activities in NMSP-controlled zones (e.g. school building in the NMSP-controlled areas of Krang Batoi area, and vaccination programs).

Leaders from the NMSP Thaton District said that they had difficult relations with the government and Myanmar Army. However, in NMSP Tavoy District the relationship seems to be better, perhaps because NMSP-controlled areas in Thaton District are smaller than in Tavoy District, giving the party less access to resources and communities, and thus less power.

Several informants talked about the importance of Liaison Offices (including the two in Thaton District, which are technically "economic offices", but serve as de facto NMSP embassies in government controlled areas). Liaison Offices have in the past coordinated with the government on local development projects.

Relationships Between Governance Authorities and Communities

Following the 1995 ceasefire, several Mon civil society actors that had previously operated cross-border from Thailand started to base themselves inside Myanmar. Some of these CSOs choose to operate independently of the NMSP (which many nevertheless still support in a general manner), while others cooperate directly with the EAO.

Most people from NMSP-controlled areas still strongly support the NMSP, for example stating that: *"Mon identity and spirit are so strong in our communities."* Most community members do not trust the government, which they perceive as alien, and not

36 Tensions have also re-emerged between the NMSP and Karen BGF (ex-DKBA), when the latter assisted the Tatmadaw in expelling the MNLA from a checkpoint in Kyaikmaraw Township in June 2018.

representing or understanding the Mon community. For example, community leaders from Angdang said that only the NMSP could understand and protect them. However, they were concerned that local NMSP officials are not well qualified and lack administrative skills. The main skills needed were identified as negotiation tactics, legal understanding and awareness, issues in relation to drug control, and administration and management skills.

Mon people in conflict-affected areas talked about the benefits of the ceasefire, which allowed them to travel more freely (although in many places roads are still unusable in the rainy season). Despite improved conditions since the ceasefire, many people worry about their livelihoods, and issue such as the lack of respect for property rights in rural Myanmar. Several CSO members and NMSP officers complained that government did not take action regarding drugs cases, even though this issue is prioritized as a major community concern (see Chapter 3.7). Mon interviewees associated government and police officials with corruption - especially on drug issues - while stating that the NMSP was relatively less corrupt.

A related issue is the lack of Transitional Justice in the peace process and Interim Arrangements. Since 2012, the Myanmar Army has returned 1250 acres of confiscated land to Mon farmers - but this is mostly poor quality land, and according to the Human Rights Foundation of Monland represents only 5-6% of the total confiscated.

Mon women have been relatively prominent in the peace process, particularly in relation to community development and education activities. For example, the Mon Women's Organization has helped to build space for female empowerment and agency, by assisting women to access legal clinics, and following-up on individual cases particularly with local authorities (EAO and government). According to the NMSP Thaton District Chairman: *"We want more women to be involved in administration and leadership, but there are not many so far as they are not interested in politics."* In the meantime, NMSP leaders are concerned that every year fewer young people volunteer to work for the party, because they dislike the discipline, and prefer to focus on income-generating and social activities.

Different Perceptions of Interim Arrangements

Most of the Mon villagers interviewed were not familiar with the NCA and had not heard of IAs, but were concerned mostly about livelihoods, education and the health system. Junior NMSP officers mostly said they await orders from the party leadership, rather than proactively addressing issues that arise locally.

The Mon State Border Affairs and Security Minister said that the NCA, peace process and IAs are all related to the State JMC (on which he serves).[37] He said that the government should control all parts of the country, but because of the peace process and the Tatmadaw's respect for EAOs, there is acceptance of EAO territorial control "for the time being". The Mon State Chief Minister did not talk much about the peace and conflict situation, or the relationship between government and EAOs, but complained about CSOs opposition to some development projects, and civil society groups' supposed reliance on donors.

Taxation and Local Administration Structures

Across southeast Myanmar, there are tensions between the Myanmar Army and EAOs on the issue of taxation, with the Tatmadaw insisting that ceasefire groups should no longer be taxing civilians. This issue was left ambiguous in the NCA, but is covered in the Myanmar Army's "Six Principles" for the peace process. In a number of areas, the Myanmar Army has used the issue of taxation to pressure EAOs (for example, using this as a reason for taking control of NMSP checkpoints in 2017, as part of pressure on the NMSP to sign the NCA).

International Actors

Because of the MPSI-initiated pilot project, which since 2012 has brought together CSOs, NMSP and the community in the Krang Batoi area, villagers in Tavoy District are generally

37 The Tanintharyi Region Border Affairs and Security Minister said the same.

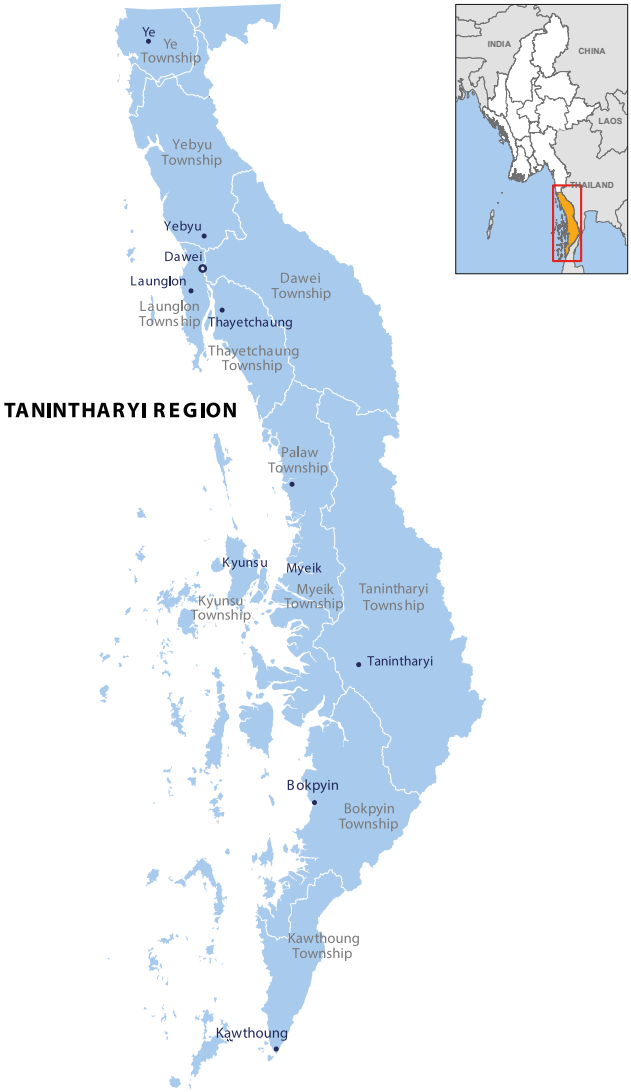
aware of development activities and the roles of aid agencies. Several CSO members and villagers talked about the need for capacity building for the NMSP and its affiliated bodies. Previously, several villages in NMSP-controlled areas received cross-border assistance, having returned from refugee camps in Thailand in the mid-1990s. However, most of this assistance ended several years ago.

2.4 TANINTHARYI

Context Overview, Peace and Conflict Dynamics

The eastern part of Tanintharyi Region is predominantly occupied by Sgaw Karen communities. The majority are Christian, with smaller numbers of Buddhists, and animists living in some more remote villages. The area contains bio-diverse forests of international conservation importance. The western Tanintharyi seaboard is occupied by a mix of Karen, Burmese, Mon and Dawei-Myeik communities. The majority are Buddhist, with smaller numbers of Christians, particularly among the Karen. This lowland area is more integrated with the rest of Myanmar through road, rail and air links - although Tanintharyi Region remains the only one in Myanmar not connected to the national electricity grid, which acts as a significant brake on development.

As in other Karen-populated parts of eastern Burma, Tanintharyi Region has been profoundly affected by decades of armed conflict. A Myanmar Army offensive in 1997 forced many villagers to flee their homes. Until the 2012 ceasefire, more than 10,000 Internally Displaced People (IDPs) were living "in hiding" in remote and forested KNU-controlled or influenced areas. The IDPs faced an acute lack of food, shelter and access to medical care. A further 10,000 civilians fled to Thailand, where most still remain either in refugee camps or as migrant workers. (For more on refugee and IDP issues: see Chapter 3.8). Other villagers were forced by the Myanmar Army to enter tightly controlled "relocation sites" in lowland areas in the western part of the region. In the years immediately after 1997, conditions in the relocation sites were extremely harsh, with widespread use of forced labor, arbitrary detention and other human rights abuses.



Following the 1997 offensive, large areas of the low-lying western zone were granted by the government as concessions to agri-business companies, mainly for palm-oil and (to a lesser extent) rubber production.[38] Villagers report having had to seek work as laborers on land that used to be their own. Land rights problems are exacerbated by the fact that most villagers in rural areas of Tanintharyi Region (as elsewhere in conflict-affected Myanmar) do not have title deeds to prove their ownership.

Since the ceasefire, some villagers who were forcibly relocated by the Myanmar Army have returned to their previous settlements. However, the majority remain in the new villages, where they have better access to markets and government services such as schools and clinics. Many continue to cultivate their former farmlands, travelling regularly between the old and new sites.

The KNU Mergui-Tavoy District (KNLA 4 Brigade) is not contiguous with the organization's other districts/brigades, and historically has been relatively autonomous from central KNU control. Following the ceasefire, the security situation across Tanintharyi Region is generally stable, although clashes have occurred between the KNU and the NMSP in the northernmost Yebyu Township (see above). For a portrait of life along the Tanintharyi River since the ceasefire, see Annex.

Governance Authorities

Prior to 1997, the KNU controlled extensive territory in the forested eastern part of Tanintharyi Region, particularly along the Tanintharyi and Ban Chaung (Poh Klo) River valleys. Since the 1997 offensive, the government has extended its control well beyond the more populous coastal strip. However, much of the central and eastern part of Tanintharyi Region remains under "mixed administration", with villagers interacting regularly with both KNU and government, and the Myanmar Army which has several bases along the Tanintharyi River. The majority of villages visited had a leader affiliated to the KNU, as well as a Village Tract administrator appointed by the government.

In the northernmost Yebyu Township, the NMSP controls territory (contested with the KNU) as part of its Tavoy District (see Chapter 2.3).

Relationships Between Governance Authorities

There has been some cooperation between the KNU and government/Myanmar Army authorities in relation to teacher training, immunization campaigns, and occasionally in pursuing drug dealers. In general however, there is little coordination between the two authorities. Tanintharyi Region government officials say they have no orders or mandate to coordinate with the KNU, although the Border Affairs and Security Minister regularly engages with them through the Region-level JMC. Other Ministers seem to defer to him regarding relations with EAOs. What communication does take place beyond the JMC is normally conducted through the KNU Liaison Office in Dawei.

Several local KNU officials said that their authority was being undermined by the government and Myanmar Army expanding into Karen-populated areas. This takes the form of road-building and service provision (primarily schools and health services), but also through the demarcation of protected forest areas, such as the proposed extension of Lenya National Park (see below).

KNU officials and Karen CSOs expressed frustration that the JMC is not working properly. In the meantime, the Tanintharyi Region government mostly refers issues in relation to the peace process to Naypyitaw, leading to delays and inaction. Furthermore, the new regional government is perceived as weaker in its dealings with the Myanmar Army than its predecessor.

Several KNU officials also expressed frustration that the: "government and army just do as they like, without consulting us." The KNU Toe Teh Hta Township Chairman said: *"What do I want from the government? To leave us alone. However, we welcome international support - if they recognize and work with us."*

38 A recent report by a conservation NGO stated that the previous government had handed over more than 1 million acres to 44 oil palm companies: Sarah Rakowski, "Fauna & Flora International Calls for Oil Palm Moratorium to Protect Myanmar's Rainforest," May 17 2016, Accessed May 5 2018, https://www.fauna-flora.org/news/fauna-flora-international-calls-for-oil-palm-moratorium-to-protect-myanmars-rainforest; see also Aye Nyein Win, "Palm Oil Drive under Review in Tanintharyi", Myanmar Times, July 11 2016, Accessed May 7 2018, https://www.mmtimes.com/business/21301palm-oil-drive-under-review-in-tanintharyi.html.

Many stakeholders (particularly CSOs, but also community members interviewed for this research) expressed concerns about the possible impacts of a deep-sea port and Special Economic Zone being developed north of Dawei town.[39] Before the ceasefire, a road connected Dawei to Myitta town near the 'front-line' between the Myanmar Army and KNLA areas of control. The road now continues to the border settlement of Htee Kee, where a second industrial zone is planned (before 1997, this was the KNU District headquarters). The Ital-Thai company and project backers have proposed up-grading the road to a major highway. Given lack of consultation with, and compensation to, affected communities in earlier stages of the project, there are concerns regarding the impacts of this proposed multi-billion-dollar infrastructure project. The KNU has demanded consultation on the project (particularly the road expansion), and framed this in terms of Interim Arrangements.[40]

A number of KNU and KNLA leaders are involved in the economy through private companies - e.g. the Noble Prince and Sun and Rainbow companies, which in 2017 signed an agreement with Power China International Group to develop an Industrial Estate Project near Htee Kee; and the Tanintharyi Renewable Energy Power Project, which plans to build a dam and small port on the Tanintharyi River.

Relationships Between Governance Authorities and Communities

Villagers interviewed in government-controlled areas (especially in towns) were often critical of the KNU, being particularly unhappy with its tax collection activities and involvement in natural resource extraction (e.g. gold mining), undertaken with insufficient transparency and having negative impacts on local communities and the environment. Nevertheless, there was also widespread acceptance that, through its historic struggle for the rights of Karen people, the KNU had earned a degree of political legitimacy. Most CSOs interviewed for this research said that the KNU is entitled to more international support, as it has an unequal relationship with the more powerful Myanmar government and Army.

In KNU-controlled and "mixed" areas, villagers' attitudes towards the government are often characterized by extreme distrust, fear and hostility. However, there was also often a growing acceptance of services provided by the government (where these were available). Many Karen people expressed a preference for governance by the KNU, and in particular a preference for education and health services to be provided by the EAO, or by independent agencies whose presence was perceived to be less threatening than the government and Tatmadaw. However, many villagers, and even some of its own officials, acknowledged that the KNU has limited capacity to provide adequate governance, and that field-commanders sometimes use their positions to promote private economic interests. Several villagers complained that, although they support the KNU: *"they cannot do much about land issues, for example the palm oil plantations."*

There is a widespread perception among Karen stakeholders (KNU, CSOs, villagers) that: *"the Burmans look down on us"* (to quote one villager among many). One village leader on the Tanintharyi River described how an officer at a nearby Myanmar Army base demanded that he provide a list of village residents. He sent the information instead to the local KNU. When he next met local Myanmar Army commander at a checkpoint on the river, he noted that: *"he looked very cross and obviously wanted to hit me".*

There are concerns among villagers and CSOs about environmental and social damage caused by natural resource extraction, often sanctioned by the KNU. For example, since 2012 a few large and many small gold-dredging rigs have been allowed to operate along the middle stretches of the Tanintharyi River. Villagers complain of water (and noise) pollu-

39 Brennan O'Connor, "Myanmar: The Dawei Special Economic Zone: amid delays, local opposition to the project is growing," The Diplomat, April 11 2016. Accessed May 6 2018. http://thediplomat.com/2016/04/myanmar-the-dawei-special-economic-zone/.

40 KNU, "Karen National Union Statement on the Building of a Two-Lane Highway Connecting Dawei Special Economic Zone and the Thai Border," February 1 2018, https://progressivevoicemyanmar.org/2018/02/01/karen-national-union-statement-on-the-building-of-a-two-lane-highway-connecting-dawei-special-economic-zone-and-the-thai-border/.

tion, and say they get no benefits from mining operations that generate significant income for the KNU and KNLA. However, the KNU limits gold mining only to certain stretches of the river, and does try to ensure miners' compliance with environmental protection regulations. However, due to limited capacities, these are difficult to enforce.

Since the ceasefire, the government is widely considered to be expanding its control into areas that it could not previously access due to the armed conflict. However, road-building and other infrastructure projects are rarely discussed with affected communities, CSOs or the KNU. Myanmar government personnel also have concerns about the KNU's expanded presence in some areas. Two Myanmar government officials complained that, since the ceasefire, the KNU has been extending its authority into areas where previously only the Myanmar government was active, particularly in relation to logging and forestry. Like the government, the KNU has used the ceasefire to consolidate its territorial control. After the ceasefire, the KNU moved its District headquarters to Ahmla on the Tanintharyi River (previously on the frontline of the armed conflict).

Both villages and KNU officials stated that, since the ceasefire, civilians have more freedom of movement and less fear for their personal safety. Many conflict-affected communities are now able to travel to government-controlled areas and access government-provided services, often for the first time in decades. As a result, some KNU officials expressed concern that previously "loyal" communities were less easily controlled by the organization, and increasingly coming under the influence of the government. Some even suggested that Karen communities were being "lost" to the government, which is able to offer more services and expand its reach into Karen-populated areas. Some villagers said that they had supported KNU through many years of hardship, but now KNU leaders were taking advantage of the peace process to get rich, and not providing enough support or protection to villagers.

The District KNU often depends on CSOs to deliver services, yet exhibits distrust of civil society actors' community mobilization and empowerment projects, and advocacy activities that at times include criticism of the KNU (e.g. in relation to natural resource extraction). There are tensions between the District KNU and some CSOs regarding whether the latter should be supporting the KNU in its struggle for self-determination, or primarily working to empower communities.

Education. Several villages along the river have established community schools, employing teachers through voluntary contributions or with support from Church groups. Some villagers expressed concern that school certificates issued by the Karen Education Department (KED) are not recognized by the government. About a third of KED high school students in the district previously attended primary school in government-controlled areas. Students said that KED teachers use student-centered methods which are more advanced than those in government schools. However, the KED has a fairly limited presence in Mergui-Tavoy District, with only a dozen schools directly administered by the KNU, the rest being "mixed" (see Chapter 3.2).

Health. Lack of access to affordable and accessible health services dominated many discussions in the villages. The few KNU health clinics are free of charge, but the expense for transport is often high, especially for villagers living in remote areas. Government health systems are largely absent in eastern Tanintharyi, and where present are too expensive to access due to the high cost of transport, fees and medicines. Instead, medicines are often bought in Thailand and sold through small private clinics (sometimes operated by retired KNU medics).

Priorities for Improved Governance by Different Stakeholders

The KNU District leadership is keen to enhance the organization's legitimacy, based on its long struggle for self-determination and protection of Karen communities. Several KNU officials expressed a strong desire for help with skills training, in order to improve the organization's ability to govern effectively. The priorities for support identified by villagers included: security, pro-

tection of rights (including land rights), health provision, income generation opportunities and education.

Perceptions of Interim Arrangements

Other than some KNU District leaders, very few people had heard of Interim Arrangements. Regional government officials to whom we spoke had received no instruction regarding IAs, and rarely engaged with the KNU or CSOs to discuss projects in "mixed administration" areas. Some government and KNU officials expressed interest in establishing a body that could bring together government, KNU and communities and CSOs, to discuss local priorities and help facilitate implementation of development projects.

International Actors

There are three main international environmental conservation NGOs operating in Tanintharyi Region: the World Wildlife Fund (WWF), Fauna and Flora International (FFI) and the Wildlife Conservation Society. All work closely with the Union and Regional government, and the WWF has signed a Memorandum of Understanding with the KNU's Forest Department – an approach which supports implementation of the NCA.[41] It will be interesting to see if other international organizations follow this precedent, implicitly accepting the KNU's political authority. There is a perception among many local stakeholders (villagers, CSOs and KNU) that the government and its international conservation partners have a top-down approach to environmental conservation, based on removing human settlement from protected areas, rather than understanding and supporting communities' contributions to conservation. Furthermore, there are concerns that the government seeks to use environmental conservation and the demarcation of protected forests as a way of extending its authority into areas which have long been under KNU control, and which the latter regards as sovereign territory, where villagers have never previously lived under government control.[42] For example, in July 2018 the KNU complained that a US$21 million UNDP "Ridge to Reef" conservation project, to be implemented by FFI, would threaten the "land and livelihoods" of local communities in Tanintharyi. According to Padoh Mahn Ba Tun, head of the KNU's Kawthoolei Forestry Department: *"each step of the project has had faults, and without participation of local communities it will not be successful."* It is understood that UNDP is currently reviewing the project.[43]

Local KNU leaders are concerned that NGOs often implement projects in Karen-populated, conflict-affected areas, without properly consulting local communities, CSOs or the EAO. District KNU leaders cite the World Bank's Community Driven Development project in Tanintharyi Township as an example of a project which was implemented without properly consulting communities or the KNU. According to a District KNU leader:

> ***"The government and NGOs want to provide services here without consulting us, but they can't because we are the authority in this area. They have to ask permission from us because we have been struggling to support and protect the people in this area for many years."***

2.5 TRENDS

For many years, Myanmar's larger EAOs have assumed governance and administration roles in their areas of control, often

41 The Mergui-Tavoy District KNU requires international agencies to sign MoUs if working in areas of KNU control or influence. The District Secretary's strategy is to work with communities on "bottom-up" environmental conservation, using such activities to reinforce KNU's claims to sovereignty.

42 Two new or extended government-demarcated protected areas are in the planning stages, neither of which has been discussed substantially with the KNU (Tanintharyi and Lenya National Parks): Su Myat Mon, "Karen group says plan to protect forests ignores people's rights," *Frontier Myanmar*, April 11 2018. Accessed May 8 2018. https://frontiermyanmar.net/en/karen-group-says-plan-to-protect-forests-ignores-peoples-rights.

43 Thompson Chau, "Conservation must not 'expand govt administration', KNU warns", Myanmar Times, Accessed May 8 2018. https://www.mmtimes.com/news/conservation-must-not-expand-govt-administration-knu-warns.html.

delivering a wide range of services in partnership with CSOs. Groups like the RCSS, KNU and NMSP remain the de-facto governments in relatively small and often remote pockets of territory, while also exerting influence and providing some services in areas of mixed administration contested with the government and Myanmar Army (a phenomenon often experienced by communities in the form of multiple taxation). Similar situations exist in other parts of the country, both in ceasefire areas where EAOs have not signed the NCA, and in areas of on-going armed conflict.

Relationships between state and non-state actors vary between conflict and cooperation, and sometimes collaboration around private business interests. Such areas of overlapping "hybrid governance" represent emerging political complexes, where state and non-state systems, regimes, cultures and institutions and actors coexist, interact and compete for authority.[44] The peace and conflict context in Myanmar is also characterized in places by (sometimes criminalised) governance vacuums. Such dynamics are particularly characteristic of borderlands, where most of Myanmar's EAOs have their strongholds. According to recent analysis by Conciliation Resources:

> *Borderlands are often areas of highly contested authority and hybrid governance structures. A key challenge for peace-building interventions is to identify who exercises authority and through which structures, as well as the levels of legitimacy that these have among communities… Authorities and institutions in borderlands are often hybrid: state/non-state, formal/informal, licit/illicit, and military. They may take on the function of public authority while simultaneously claiming to be independent or in direct opposition to the state... Identifying local understandings of authority and legitimacy are essential to discerning which actors or institutions organise political and economic life*[45]

Meeting the government's stated targets for inclusive education, universal healthcare and other development goals will depend on the work of EAOs and affiliates, especially in remote areas of hybrid governance, beyond the state's reach. Non-state (EAO) governance authorities require support to provide accountable, transparent and effective governance, and appropriate local services to communities, during the probably lengthy period between the agreement of ceasefires and implementation of a negotiated political settlement to decades of armed and state-society conflict.[46] Chapter 3 explores how these issues play in relation to specific sectors and issues.

44 On "hybrid governance" see: Anna Jarstad and Roberto Belloni, "Introducing Hybrid Peace Governance: Impact and Prospects of Liberal Peacebuilding," Global Governance 18 no.1, (January 2012): 1–6, and Ashley South, "'Hybrid Governance' and the Politics of Legitimacy in the Myanmar Peace Process," Journal of Contemporary Asia 48, no. 1 (November 2017): 50-66. DOI: 10.1080/00472336.2017.1387280.

45 Sharri Plonski and Zahbia Yousuf, "Bringing in the Margins: Peacebuilding and Transition in Borderlands," Conciliation Resources, (November 2017). Accessed May 7 2018. http://www.c-r.org/downloads/Bringing%20in%20the%20margins,%20Peacebuilding%20and%20transition%20in%20borderlands.pdf. Plonski and Yousuf argue that international peace-building actors need "to develop greater context sensitivity and to move away from the idea of a single model of the state rooted in the Westphalian tradition" (ibid p. 4).

46 Promoting EAO governance along state-like, "rational-bureaucratic" lines can be critiqued as a neo-colonial enterprise, requiring indigenous actors (EAOs) to reinvent themselves in the image of the (troubled) Western state model. Arguably, this could undermine the integrity and vitality of local societies, with their networks of traditionally oriented social and political capital.

3 Chapter 3: Key Sectors and Themes

This chapter examines key sectors and themes related to governance and service delivery in conflict-affected (primarily ceasefire) areas of southeast Myanmar. The sections broadly follow Article 25 (Chapter 6) of the NCA, which recognizes signatories' roles in the fields of health, education, development, environmental conservation and natural resource management, preservation and promotion of ethnic cultures and languages, security and the rule of law, and illicit drug eradication - plus some additional topics identified by stakeholders. Due to constraints on space, and in order to keep the focus on governance and service delivery, this report does not focus on issues under the mandate of the JMC, such as military coordination or landmines. The Annexes at the end of this report explore aspects of Interim Arrangements in greater detail through case studies.

3.1 HEALTHCARE

As is the case across Myanmar, healthcare is drastically underfunded in ceasefire areas even compared to other services. The Ministry of Health's National Health Plan 2017-2021 notes:

> *Myanmar currently allocates only 3.65 percent of its total budget on health, which is extremely low by global and regional standards. As a result, out-of-pocket spending by households remains the dominant source of financing for health. There is a huge dependence on private sector providers in all areas. Furthermore, among some ethnic communities, healthcare providers complain of receiving less funding than their counterparts in the field of education.*[47]

In ceasefire areas in southeast Myanmar, ethnic and community-based health organisations (including the health departments of the KNU, RCSS, NMSP, KNPP, PNLO and other EAOs) provide primary care to hundreds of thousands of vulnerable persons who would have otherwise have gone largely underserved. These organisations employ more than 3,000 staff and administer more than 232 clinics and mobile ("backpack") teams.[48] They have partly filled the gaps left by the government. Many local healthcare actors see their role as crucial to creating a federal system, by building up local institutions and personnel, and have an explicit agenda to establish a highly decentralised health system in Myanmar.[49]

The ethnic and community-based health organisations in this network include:

- The KNU's Karen Department of Health and Welfare (KDHW)
- The NMSP's Mon National Health Department (MNHD)
- The RCSS's Shan State Development Foundation (SSDF) and RCSS Health Department
- The PNLO-linked Pa-O Health Working Committee (PHWC)
- A coalition of Kayah State-based EAO and militia health wings, called the Civil Health and Development Network
- The Mae Tao Clinic (in Mae Sot)
- The Backpack Health Worker Team
- The Burma Medical Association

While some EAOs have had health departments for decades, the quality and reach of these services have been boosted significantly since the Mae Tao Clinic was established on the Thailand-Myanmar border in the late 1980s, providing a gate-

47 Ministry of Health and Sport, "Myanmar National Health Plan 2017-2021," December 15, 2016, Accessed May 8 2018. http://www.myanmarhscc.org/wp-content/uploads/2017/04/Myanmar-National-Health-Plan_Dec2016.pdf.

48 See Bill Davis and Kim Jolliffe, "Achieving Health Equity In Contested Areas Of Southeast Myanmar," The Asia Foundation (July 2016). Accessed May 8 2018. https://asiafoundation.org/wp-content/uploads/2016/10/Achieving-Health-Equity-in-Contested-Areas-of-Southeast-Myanmar_Policy-Brief.pdf.

49 Health Convergence Core Group (HCCG),"A Federal, Devolved Health System for Burma/Myanmar (Draft)," March 2014, Accessed May 8 2018. http://hiswg.org/wp-content/uploads/2015/02/HCCG-Policy-paper-draft-Eng_March2014.pdf. This outlines the Health Convergence Core Group's "vision for a decentralized effective health system."

way for international donors and technical specialists to assist local organisations in conflict-affected areas of Myanmar. These services are predominantly funded by international donors, and so are free at the point of use. Nonetheless there remain huge gaps, particularly in access to affordable secondary and tertiary care, for which these localised systems depend on referrals to health facilities in Thailand or those run by the Myanmar government.

The government also provides crucial services in some ceasefire areas, but is impaired by geographic and security impediments, poor funding and restrictive policies, that make it difficult to hire staff locally and embed services at the heart of the community.[50] As in most rural areas, government services in ceasefire regions are limited to poorly staffed and resourced rural or sub-rural health centres, typically situated in villages along major roads. In some communities, government services are not fully trusted by non-Bama people, as the staff come from outside and are perceived as linked to the Tatmadaw.

In some areas, armed conflicts continue to impair the proper delivery of services by both government and EAO-associated providers. Medics linked to EAOs face questioning by Tatmadaw soldiers, and such intimidation has increased significantly since the NLD came to power. According to the RCSS-led Shan State Development Foundation, which runs 16 clinics in addition to services provided by dozens of community and "backpack" health workers in more remote areas:

> *There is still some harassment from the Tatmadaw. They question our medics about funding, how they're working and so on, so they cannot tell the truth (about who they work for). The medics just say (they are) from the community.*

Some EAO authorities actively block or impair government services in their areas (for example the KNU's Mudraw District, NMSP ceasefire zones and the majority of areas controlled by the RCSS). Communities in ceasefire areas also develop their own "self-help" services, which range from basic drug dispensaries through to effective primary care facilities run by locals with professional training as community health workers or auxiliary midwives. For example, in a mixed government-RCSS controlled village in Hsipaw Township, the community depends on a clinic organised under the guidance of the local monastery, funded through a village banking system. Similar clinics exist in other areas.

It is not uncommon for countries to have multiple health providers. Therefore, while the state retains the ultimate responsibility to ensure a basic package of care to every woman, man and child, it is rarely, if ever, the only actor providing care, and its primary role is often to create a policy environment that enables other actors to provide services.[51] This reality is recognised in the Ministry of Health's 2016 National Health Plan (NHP), which was developed in consultation with other providers, including the health departments of EAOs, and is focused largely on decentralisation of health services. This positive development would probably have been impossible if not for an explicit "convergence" agenda led by the ethnic and community-based health organisations in the southeast since 2012, despite on-going issues of trust with the government. The efforts of key individuals among these providers and international agencies have been invaluable in achieving levels of coordination and improved mutual understanding that would have been unimaginable in 2012, when ceasefires were signed. Thus, "convergence" is further advanced in health than in other sectors.

The existence of ethnic and community-based health organisations in Myanmar should be seen as an asset to the MoH, as it moves on a long path to provide "universal health care"

50 In particular, government health workers have to complete university before going to medical college, which requires high competency in Myanmar language as well as the necessary resources and personal circumstances.

51 "Decentralisation" here refers to the delineation of decision-making power, financing and responsibilities to a wider set of actors, detached or only loosely connected to the state, rather than to a process of political devolution to lower levels of government.

by 2030. Local organisations have the experience, territorial access, local connections, local knowledge, and linguistic skills among their staff to reach populations that the government is simply not equipped to serve currently. Nevertheless, there are a number of shortfalls across ethnic, private, and government services that mean people remain underserved:

- A lack of formal recognition for ethnic health workers and facilities;
- On-going surveillance and intimidation of health workers and persons receiving services;
- Low and inconsistent financing to all systems (government and ethnic);
- Inadequate accreditation, quality control and regulation of providers;
- Under-resourced health facilities, lacking equipment, technology and medicines;
- Poor coordination between providers creating unnecessary competition of services and risking duplication or even mutually counterproductive health practices;
- Limited referrals between systems, reducing access to secondary and tertiary services that are only available in highly populated and well-connected settlements (i.e. towns).[52]

In theory, these issues are best addressed through the development of a modern healthcare system, in which all citizens are served and all service providers work under a common policy framework and ideally a common financing system. The NHP, together with the forward-thinking efforts of ethnic and community-based health organisations on health system development and on "convergence" with the government, represent hugely positive steps towards such a system. Key achievements include:

- Increased policy collaboration;[53]
- Tentative, informal recognition of ethnic health workers and facilities by the MoH, allowing greater space at the local level for health operations, despite on-going tensions and surveillance by the Tatmadaw;[54]
- Joint government-EAO delivery of some services, including immunizations for tuberculosis, with support from UNICEF and the International Rescue Committee (IRC);[55]
- Increased engagement and sharing of information about respective health systems and health issues, allowing some coordination on tackling malaria, emergency response (e.g. cholera outbreaks) and on positioning of clinics to maximise coverage and avoid duplication;
- Increased referrals between ethnic clinics and government hospitals and some progress towards establishing formal mechanisms for this;[56]
- Steps towards formal accreditation of ethnic and community-based health workers.

Despite some positive steps, there remain significant challenges. Firstly, the political context adds layers of complexity to the task of integrating ethnic organisations in ways that do not apply to private or other non-state providers. Much of government still views ethnic health actors with suspicion (and in the case of the Tatmadaw continues to actively ha-

52 This is essential to providing people in cease re areas with an adequate package of care. While visiting Shan State, the MIARP team documented a very recent case where, during child birth, the baby was coming out hands first in a village near Kali, and it took more than 5 hours to get the mother to a hospital in Kunhing town.

53 Including the participation of ethnic health leaders in the development of the NHP; the KNU's Dr. Marta providing input to the Malaria Technical Strategy Group; and various actors gaining increased involvement in state-level and township-level planning.

54 This has allowed, for example, the KNU to establish more stable Village Tract Health Centres in mixed controlled areas, while the SSDF has established 11 clinics in RCSS territories away from borders. The KNU, RCSS, KNPP, PNLO and NMSP each have health or social development offices in their respective state capitals.

55 Kayah State-based EAOs were the first to cooperate with the government on this, though some felt like they were simply being used as guides, or even "medical border guard forces". The KNU negotiated permission to deliver the vaccinations independently, allowing them to develop key capacities and to reach areas such as Mudraw District and Tanintharyi Region (4 and 5 Brigades) where government access is forbidden. The NMSP gave permission to government health workers to enter their area to provide care.

56 In one symbolically important case the wife of an RCSS soldier was reportedly referred to a hospital in Taunggyi from a local clinic.

rass them); at the same time, the ethnic organisations insist that they will only fully align with the government system following the established of a highly decentralised "federal" health system, which is currently not in the government's plans. Ethnic and community-based health organisations cannot simply be ordered to fall in line with government-established regulations overnight, not least because they operate in territories where the government's jurisdiction is questionable and often disputed by EAOs.

There are also significant practical challenges involved, given the constantly changing security environment, lack of infrastructure and core differences between the different workforces in use. While the government system remains quite traditional in focus, ethnic and community-based organisations have often followed (and pioneered) methods that are better adapted to more remote and poorly resourced areas.[57]

Progress on all of these issues will depend on significant trust building and simply cannot be rushed. Cooperation on the ground may in some cases move faster than high-level, better publicised cooperation, as the latter involves entrenched political conflicts and positions. At the same time, health professionals at the local level often describe a lack of high-level cooperation as being restrictive to local level relations, as they cannot act without explicit approval or even direction. Trust building between government and EAO-linked providers usually depends on the passion and commitment of individuals to look beyond immediate political differences in order to serve local people and improve healthcare outcomes.

57 These include the training of community health workers to work in their own communities, as well as "task-shifting", a process recognized by the World Health Oganization (WHO) as a: "process of delegation whereby tasks are moved, where appropriate, to less specialized health workers... (to improve) health care coverage by making more efficient use of the human resources al- ready available and by quickly increasing capacity while training and retention programs are expanded." (http://www.who.int/healthsystems/task_shifting/en/).

3.2 EDUCATION

Myanmar has the greatest linguistic diversity in mainland Southeast Asia, with six language families, over 100 distinct languages and a great many dialects.[58] Since the 1960s, the suppression of minority languages within a centralizing, militarized state dominated by members of the Burman (Bama) majority has been one of the main grievances underlying ethnic conflict.[59] In response to this, and the lack of available education in rural areas, ethnic nationality actors have developed separate education systems, in order to preserve and reproduce minority languages and cultures. Some of these alternative education actors have come from the civil society sector, particularly Christian and Buddhist associations, and Literature and Culture Committees, while others were developed by EAOs.

Initial EAO systems emerged during the chaotic early years of the civil war (in the 1950-60s), before being standardised in the 1970s. Since the 1980s, and particularly with an increase of external support following the 1988 democracy uprising in Burma, non-state education regimes expanded, especially in the Karen, Mon and Kachin areas.[60] These education systems offer schooling in the mother tongue and often support the poorest and most marginalised sectors of society. Some use curricula fairly closely modeled on that of the government (Ministry of Education), while in other cases syllabi diverge significantly from those in state schools. By 2018, an estimated 300,000 of Myanmar's most vulnerable children were receiving education in schools provided - or at least supported - by EAO education systems, or affiliated civil society actors.

58 While Shan State probably has the greatest variety, linguistic diversity per capita is even greater in Chin State.

59 See Ashley South and Marie Lall, "Language, education and the peace process in Myanmar," Contemporary Southeast Asia 38, no.1 (2016): 128-153; and Marie Lall, Understanding Reform in Myanmar, People and Society in the Wake of Military Rule (London: Hurst, 2016) Ch.6.

60 Shan civil society provides non-government schools in several areas under the authority of - and funded by - Shan EAOs (including local militias). There are also some 200 schools in RCSS-controlled areas, mostly close to the Thailand border.

Many teachers in these systems have for decades had to live in fear of violent suppression on the part of the state and its armed forces.

Dozens of interviewees talked about the importance of education, both in its own right and in order to promote development and political participation - and also, especially in Shan State, to keep youth away from drugs. Ethnic political leaders in particular talked about the importance of using education to preserve and promote ethnic languages.

Across southeast Myanmar, CSOs are also involved in various non-formal education projects. These include adult and adolescent ethnic language literacy activities, as well as various training activities. The majority of what follows however, focuses on "basic" education, the term used in Myanmar for formal, mandatory education from kindergarten through high school.

Education provision and the promotion of ethnic languages, cultures and literatures varies considerably across southeast Myanmar, depending on local context. Ethnic nationality communities living in conflict-affected areas often want their children to study in and become literate in their mother tongue. This can raise issues regarding what constitutes "mother tongue" in multi-lingual contexts, and which languages (or dialects) should be used in situations where more than one community shares the same school and resources. The great majority of parents interviewed for this and other research projects consider it important for their children to study Burmese (Myanmar-saga - the Union language).

Multi-lingual education (MLE) systems teach one or more ethnic languages, plus Burmese - and where appropriate also English (although in northern Myanmar the international language of preference may be Chinese). In Mother-Tongue Based (MTB) teaching systems, schooling starts in the mother-tongue (L1), and then shifts to the "union language" (L2, Burmese). Discussion of MLE and MTB teaching and schooling in conflict-affected areas of southeast Myanmar involves two sets of issues: teaching in government schools; and the status and future of non-state (EAO or community-administered) schools, and their relationships with government institutions. Further issues relate to the provision of vocational and non-formal education.

Although the government's National Education Strategic Plan has relatively little to say about ethnic language teaching[61], the Ministry of Education is committed to "Education for All" and an inclusive approach to teaching in Myanmar schools.[62] The government's goals of inclusive education mean that children from non-majority language speaking (ethnic nationality) communities should learn in their mother tongue (L1), at least in the early years of schooling. Regardless of political considerations, teaching in ethnic nationality languages in the early years of schooling is essential to achieving equitable and successful outcomes in basic education. It is therefore encouraging that State and Regional Education Offices across the southeast have started to allow ethnic language teaching in government schools. However, the situation on the ground is not always clear, and depends on the attitude of State/Region and Township Education Officers, and individual head-teachers. In some cases (e.g. parts of Mon State), ethnic languages are used during school hours; more commonly, ethnic language teaching occurs outside of school hours. This is problematic because pupils are often tired and not motivated to learn, if subjects are not included in the regular school day and do not count towards final grades (which are already extremely difficult to achieve, leading to a high failure and dropout rate among schoolchildren in Myanmar). As the MoE begins to deliver Local Curriculum Content in government schools, this will include teaching in ethnic nationality languages, as well as instruction about local cultures and contexts.

61 The NESP's stated priorities include to: *"support and promote nationalities' languages and cultures, including curriculum development, and implementation and monitoring by state and region governments to support primary-aged children who speak different languages"*.

62 Marie Lall and Ashley South, "Power Dynamics of Language and Education Policy in Myanmar's Contested Transition" in *Comparative Education Review* 62, no. 4, (2018).

While teaching ethnic languages in government schools (particularly during school hours) is a step in the right direction, this still some way from MTB teaching international best practice, which requires teaching a range of subjects through the mother-tongue (not just the ethnic language as a taught subject).[63] It should be noted also that in many areas, whatever official guidelines may be, government and other teachers have for practical reasons long used local languages as a medium of instruction.

Relations between government and non-government schools vary considerably across the southeast.[64] The two most established EAOs in this region, the KNU and NMSP, both administer extensive school systems. The KNU's Karen Education Department (KED) supports over 1,500 schools - of which about half are primarily administered by the community, and half directly run by the KED; many community-administered and some KED schools also receive support from the government ("mixed schools"). In addition, there are dozens of Christian mission schools, as well as several tertiary education institutes, some of which are linked to the KED. The KED, along with its affiliate organization the Karen Teacher Working Group (KTWG), provides teacher stipends, pre-service and in-service teacher training, administrative support and schooling materials.[65]

Around half of the KED-administered or supported schools teach the KED curriculum. This is a multi-lingual (in places MTB) system, teaching primarily in the Karen language (mostly the Sgaw dialect), with parts of the curriculum diverging significantly from that of the government. Therefore, children who graduate from KED curriculum schools are not always fluent in Burmese, and can have difficulty accessing government education systems, or going on to work and live in government-controlled areas.

A number of Karen educators expressed frustration at donors' lack of flexibility, and unwillingness to understand and support what is regarded locally as a very successful education system. The Director of the KTWG expressed a preference for receiving aid directly from donors, rather than through the government or other third parties. She was concerned that otherwise the government would exercise undue influence on Karen education. Other KTWG and KED personnel expressed similar sentiments. Nevertheless, both KTWG and KED leaders said they would be willing to receive support from the government under appropriate circumstances.

There are about 34,595 school-age children in the 10 Karen and Karenni refugee camps in Thailand, and many over 18-year-olds in various tertiary education institutes. These are closely linked to the KED (and Karenni) education system inside Myanmar, although some have recently started using government curricula and exams. Refugee children face barriers in transferring to government schools, including lack of Burmese language skills and appropriate documents.[66]

Inside Myanmar, "mixed" schools generally have both government-supplied and KED-aligned teachers, with the latter also receiving support from local communities.[67] They use a combination of KED and government curricula. Particularly since the 2012 KNU ceasefire, a number of mixed schools have come under pressure to re-orientate themselves as government schools.[68] As one District-level KED official put it:

63 This is currently provided for in the Myanmar Education Law, which states: *if there is a need, an ethnic language can be used alongside Myanmar as a language of instruction at the basic education level.*

64 See Ashley South and Marie Lall, "Language, Education and the Peace Process in Myanmar", *Contemporary Southeast Asia 38,* no.1 (2016).

65 KED and KTWG cooperate in the Karen State Education Assistance Group (KSEAG).

66 World Education, "Refugee Integration Education Review", December 2017, Accessed May 8 2018. https://www.worlded.org/WEIInternet/inc/common/_download_pub.cfm?id=19389&lid=3.

67 It should be noted that government education also often carries additional "informal" costs.

68 Between 2012 and 2016: "the number of MoE teachers in KSEAG schools has almost tripled from 1,574 to 4,718 … leading to the creation of 379 new mixed schools in just a few years. Among these schools, 285 use only the KED curriculum, 553 use mixed KED and MoE curricula, and 666 use only the MoE curriculum" (From Kim Jolliffe and Emily Speers Mears, "Strength in Diversity: Towards Universal Education in Myanmar's Ethnic Areas," The Asia Foundation (October 2016). Accessed May 8 2018. https://asiafoundation.org/wp-content/uploads/2016/10/Strength-in-Diversity-Toward-Universal-Education-Myanmar-Ethnic-Area.pdf).

"The government sends teachers to "mixed" schools in conflict-affected areas, and these transform to become government schools, teaching more Burmese language and Karen only after school. This makes students less motivated to learn their mother tongue. This has been going on for some time - but more intensively after the ceasefire. Our local teachers cannot compete with the government teachers, who are better paid and qualified, and often the government steals our local teachers, as they can pay better salaries. We need proper funding, so that we can attract and retain better-qualified teachers. It is not difficult to find teachers, but we need money to pay them."

Such issues arise when new government teachers are posted to remote areas, together with support for school and classroom repairs and provision of teaching materials. While often welcomed by communities, who greatly value education for their children, the expansion of government education activities orientates local schools more towards the state. Such developments can be quite divisive for communities, as there are widespread concerns that changes in school "ownership" contribute towards the "Burmanisation" of education, and penetration of state-controlled structures into previously semi-autonomous areas.

There have been some productive meetings between the KED and the Kayin State Education Department, resulting in the establishment of bi-annual education sector coordination meetings. There is a need for further discussions regarding student transfers between EAO to government schools. The KED insists that the government should recognize its teachers' qualifications, and those of students who graduate from the Karen education system. So far, the government has only been willing to consider bridging support for KED students wishing to enter the state system. Resolving these issues will be particularly important in the context of the possible repatriation of potentially more than 100,000 refugees from Thailand (see Chapter 3.8). Progress on these issues will likely require political negotiations and agreement with MoE at the Union level, in addition to ongoing discussions at the State level.

Many of these issues are also relevant to the situation of Shan and Mon schools in southeast Myanmar. The NMSP's Mon National School system, administered by the Mon National Education Committee (MNEC), consists of 225 schools, teaching over 25,000 students - including three high schools and nine early childhood schools. Of these, 132 are directly organized by the MNEC, and the rest "mixed" (shared with the government). The MNEC curriculum follows that of the government quite closely, but uses Mon language almost exclusively in the primary level, shifting to a mixture of Burmese and Mon instruction in middle school, then with high school teaching mostly in Burmese (with extra modules on Mon history and language). The MNEC model offers "the best of both worlds": a locally owned and delivered MTB school system, which is integrated with the government system. Mon National School graduates regularly sit government matriculation exams, and successfully enter the state higher-education system. The Mon school system could be seen as a building block of (and model for) federal education in Myanmar. (For more on Mon National Schools, see Annex.)

Over the past three years, the MNEC has enjoyed improved relations with Mon State and Township education officials. The MNEC currently chairs the Mon State Education Sector Group, and together with Mon CSOs has had substantial input into the development of Mon language education materials to be used in government schools. Some MNEC teachers have been able to benefit from participation in government-organized (UNICEF-supported) teacher training activities, and have received limited support from the Ministry of Education (e.g. textbooks and exercise books, and about 100 small school grants). Such progress is only possible when local relationships are strong. For many communities however, there is still widespread mistrust of the state, and a strong preference for services to be provided through EAOs and affiliated CSOs.

In Shan State the situation is particularly complex, with no overarching EAO education system. As in other parts of the country, many Shan schools are supported and mostly administered by communities, with some input from government and/or EAOs. The two main Shan EAOs – the RCSS and SSPP - both operate education systems, which have undergone considerable improvement in recent years.

The RCSS administers and funds several hundred schools, either directly or indirectly. More than half of these are categorized as Shan National Schools, and use the RCSS's own curriculum from Grades 1-6. The others are categorized as monastic or government schools, and have additional teachers for Shan literacy. In 2017 the RCSS established an Education Commission to reform and develop the system, including updating and standardizing the curriculum. The majority of schools use Shan as the language of instruction, although some use Burmese - particularly in schools with non-Shan students (one school was said to include children from 10 different ethnic nationalities).

The RCSS does not receive any significant support from international donors. Nevertheless, the Rural Development Foundation of Shan State (RDFSS) contributes towards some teacher salaries, with the majority of funding comes from the RCSS. The RDFSS supports more than 500 schools across Shan State with training and basic materials, including many monastic and community schools as well as RCSS and SSPP schools. Shan CSOs are also active in education, such as Kaw Dai, which runs three primary schools and one high school in an area controlled by a government-aligned Shan militia,[69] and the Shan Youth Network, which has an English language program in Hsipaw Township, and coordinates support for teachers in remote locations.

Unsurprisingly, in more firmly government-controlled areas education tends to be exclusively under the state, although at times teachers aligned with the local EAO are provided by ethnic education departments together with some teaching materials. Government-supplied teachers rarely speak local languages, which can lead to resentment by local communities. While locally hired government teachers usually speak local languages, they are sometimes perceived (including by MoE) as second-class educators, lacking proper qualifications and training.

69 The militia was formerly the 7th Brigade of the SSPP/SSA (also known as SSA- North) but converted into a People's Militia Force in 2010.

3.3 INFRASTRUCTURE PROJECTS, ENVIRONMENTAL CONSERVATION, LAND AND NATURAL RESOURCE MANAGEMENT

Since the political and economic transition initiated by the U Thein Sein government in 2011, Myanmar has become the seventh largest recipient of aid globally (up from 79th place in 2010). While assistance under the State Peace and Development Council was limited primarily to health and humanitarian projects, Myanmar has actively courted international support for its reforms, with international aid agencies responding with significant debt forgiveness and new programs.[70] While the border areas of southeast Myanmar have historically been remote from the centers of political and economic power in Myanmar and Thailand, new infrastructure projects especially in the transportation and energy sectors have now been committed to the region, including conflict-affected areas. Infrastructure projects are funded through government budgets (union and state), international aid mostly from Japan, the Asian Development Bank (ADB), as well as Thailand and private sector initiatives. At the forefront of these are ADB's "Greater Mekong Sub-region East-West Corridor Program" in central Karen State, various planned large-scale hydropower projects on the Salween River, and the Dawei Special Economic Zone in the Tanintharyi Region.

While there is a great need for economic development in the southeast, large-scale investments such as new roads, dams, and mines have the potential to increase existing tensions significantly, at times leading to renewed armed conflict.[71] "Development" projects under successive military governments, and to a lesser extent since, have frequently been undertaken by the Tatmadaw or by "crony companies" associated with senior military commanders, with little regard

70 Thomas Carr, "Supporting the Transition: Understanding Aid To Myanmar Since 2011," The Asia Foundation, (February 2018). Accessed May 12 2018. https://asiafoundation.org/wp-content/uploads/2018/04/Supporting-the-Transition_ENG.pdf.

to social and environmental safeguards. In fact, allocation of resource concessions has led to "state-society conflict induced displacement" in the past, which continues to this day. It is therefore not surprising that many communities remain very skeptical about state-led development projects and some civil society groups have called for a full moratorium on large-scale development projects until a comprehensive peace settlement and federal system of government are in place.[72]

These concerns are also shared among EAOs, as state expansion through development projects in ceasefire areas without consultations and cooperation on higher-level has created a continued uncertainty and has damaged confidence in the peace process. In fact, examples from Kachin State during the 17-year ceasefire show that military-state building in ceasefire areas is rooted in the territorial expansion of state agencies and their military branches, facilitating claims to authority and power over land, resources and people.[73]

While development projects can lead to conflict, they can also lead to benefits for local communities if implemented in a sensitive way, including a meaningful influence over the decision-making process. Many communities have welcomed the construction and upgrades of roads and bridges, which has significantly eased their access to markets, towns and social services and has improved livelihoods. On the other hand, communities are concerned that expanding trade infrastructure increases large-scale and inequitable land acquisitions, and resource concessions (predominantly agribusiness, logging, mining and large-scale hydro-power) can drive land grabbing. In addition, there is also a fear that improved road networks will strengthen the military's presence in contested areas and will lead to renewed conflict. This concern is also shared by EAOs. In other places, new road developments have triggered violent armed clashes, as in the case of the new stretch of the Asia Highway near Kawkareik in 2015, where renewed fighting erupted over taxation disputes and security issues between the Tatmadaw and the DKBA.[74] In early and mid/late-2018 several clashes also broke out between the Tatmadaw and the KNLA 5 Brigade in the KNU's Mutraw District (Hpa-pun Township), over a Tatmadaw road-upgrade project, which had been explicitly rejected by the district-level KNU authorities, leading on one occasion to the displacement of 14 villages and over 2,300 people, and the killing of a Karen civilian.[75]

Responses to government-led development initiatives vary between EAOs, and even within EAOs, as the example of the KNU shows. While northern KNU areas (Taw Oo and Mutraw Districts) have been particularly resistant to government/Tatmadaw infrastructure development projects and service delivery, such projects have sometimes been welcomed and even supported by KNU districts in central Karen State (Doo Tha Oo, Hpa-an, and Dooplaya).[76] Here local KNU officials ensure that the KNU benefits from such government-led infrastructure projects, either through the taxation of construction companies or through the direct involvement of KNU affiliated companies in these projects.

In Tanintharyi Region (KNLA 4 Brigade), the KNU has recently called on the government to negotiate the resumption of

71 Adam Burke et al, "The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," The Asia Foundation, (2017). Accessed May 12 2018. https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreas- MyanmarReport.pdf.

72 For example, see: Karen Peace Support Network, "Burma's Dead-End Peace Negotiation Process: A Case Study of the Land Sector". Accessed September 13 2018. https://www.burmalink.org/burma

73 Kevin Woods, "The Commercialisation of Counterinsurgency: Battlefield Enemies, Business Bedfellows in Kachin State, Burma," in *War and Peace in the Borderlands of Myanmar: The Kachin Ceasefire 1994-2011*, ed. Mandy Sadan (Denmark: Nias Press, 2016) p. 115. s-dead-end-peace-negotiation-process-a-case-study-of-the-land-sector/.

74 Lawi Weng and Min Kha Pan, "Clashes Continue on Asia Highway Between DKBA, Govt Troops," *The Irrawaddy,* Jul 9 2015. Accessed May 9 2018. https://www.irrawaddy.com/news/burma/clashes-continue-on-asia- highway-between-dkba-govt-troops.html.

75 Nyein Nyein, "Tatmadaw Kills Indigenous Karen Community Leader, Local Groups Say," The Irrawaddy, April 9 2018. Accessed May 9 2018. https://www.irrawaddy.com/news/burma/tatmadaw-kills-indigenous-karen-community-leader-local-groups-say.html.

building a two-lane highway between the Thai border and the Dawei Special Economic Zone, explicitly citing the NCA and the need for consultations in order to ensure benefits to local communities while protecting their security, culture and the natural environment.[77] It remains to be seen how the government will respond to this demand and if negotiations will take place, as parliament approved the road upgrade in late March 2018.

Natural resource extraction is a major driver of Myanmar's national economy, with much of the country's natural resource base located in conflict-affected areas. Hence revenue sharing of natural resources is one of the central issues in peace negotiations and decentralization efforts ("natural resource federalism"). The Tatmadaw, EAOs, Border Guard Forces, militias and local governance officials all benefit directly from resource extraction, and for some of the EAOs (e.g. the KNU) it is their greatest revenue earner. Natural resource extraction has and is often carried out at the expense of the local populations (see Chapter 3.5) who rely on the ecosystems of intact forest and rivers for their livelihoods, as well as land under customary law that has often been granted to others under the 2012 Virgin Fallow and Vacant Land Law. In fact, local leaders and civil society organizations often stress concerns over unsustainable natural resource extractions, and question who benefits and who loses from such activities. When natural resource projects only benefit local and national elites, and the wealth accumulates elsewhere, pre-existing grievances and perceptions of injustice naturally increase.[78]

The absence of demarcated ceasefire areas leads not only to conflict over natural resources, but also to multiple rent-seeking from armed actors and civilian authorities in contested areas. In the absence of clearly defined IAs, environmental and social impacts of natural resource extractions remain unregulated and no effective revenue and benefit-sharing model exists between the state and EAOs.

For the government, Myanmar legislation applies country-wide (including the 2012 Environmental Conservation Law, the 2015 Environmental Impact Assessment procedure, tax and labor laws etc.). However, in practice enforcement is weak even in non conflict-affected areas, and much more difficult to implement in conflict-affect areas or not possible (see Chapter 3.5). Meanwhile, the growing presence of government agencies in former KNU villages, and the growth of ceasefire economies since 2012, has incentivized the KNU to increase efforts in titling the farmland and forests of communities in its control areas, as well as in DKBA-controlled areas (since relations between the two groups have improved).

The Preamble of the KNU Land Policy updated in 2016 states that it:

> *Envisions recognition, restitution, protection and support of the socially legitimate tenure rights of all Karen peoples and longstanding resident village communities, resulting in improved political and ecological governance of tenure of land, forests, fisheries, water, and related natural resources. This aspires toward greater self-determination in the context of a decentralized federal Union of Myanmar.*

76 Kim Jolliffe, "Ceasefires, Governance And Development: The Karen National Union, In Times Of Change," The Asia Foundation, (December 2016). Accessed May 2 2018. https://asiafoundation.org/wp-content/uploads/2017/03/Policy-Brief_Cease re-Governance-and-Development_ENG.pdf.

77 Thompson Chau, "KNU makes four demands on Dawei-Thai border highway," Myanmar Times, February 7 2018. Accessed May 8 2018. https://www.mmtimes.com/news/knu-makes-four-demands-dawei-thai-border-highway.html.

78 Adam Burke et al, "The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development," *The Asia Foundation* (2017). Accessed May 12 2018. https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf.

79 KNU Central Land Committee, "Kawthoolei Land Policy Briefer 2017," Accessed May 8th 2018. http://ww.kesan.asia/index.php/resources/summary/8-policylaws/116-kawthoolei-land-policy-briefer.

By end of 2017, the Karen Agriculture Department (KAD) has issued 68,530 land certificates to villagers, covering a total of 372,303 acres.[79] Meanwhile, the Karen State government provided certificates across four districts: Hpa'an, Myawaddy, Kawkareik and Hpapun.[80]

The KAD described a clear tension between the two systems, and the authorities that administer them. The fundamental difference is that the KNU policy recognizes that people own the land (up to a limit of 30 acres), while the Government only grants land-use rights. A second difference is that communal land ownership is more strongly protected under the KNU, which also allows for local variations.

Given the variation among mixed-control villages, the KNU Central Executive Committee has not been able to set definitive rules for managing the extension of government administration. As such, it is often up to KNU township-level officers to make their own decisions with regards to cooperation with the government.

The 2016 Community Forestry Instructions allows communities to lease forests for 30-year periods, with the possibility to renew. While they are required to maintain a certain level of tree stock, the Instructions allows communities to plant and harvest cash crops and timber, even teak, which was property of the state until recently. The head of the KFD said that, when given an option, most mixed-control communities opt to register their forests with the KNU, while a smaller proportion driven by their motivation for more income choose to register with the Government. As of 2017, the KNU has established 147 community forests, with 115 of them already registered, totaling 116, 949 acres.[81]

3.4 SOCIO-ECONOMIC DEVELOPMENT AND LIVELIHOODS

Ceasefires and the peace process in southeast Myanmar are helping to transform the lives of conflict-affected communities, with many displaced people having returned to their previous settlements and rebuilding their lives (see Chapter 3.8). Increased security and a reduction in predatory taxation, along with improved[81] freedom of movement, have resulted in enhanced livelihoods, as access to markets and farmlands has subsequently improved.

Nevertheless, following decades of armed-conflict and food insecurity, the effects of serial displacement and poverty continue to affect populations in remote upland border areas, despite abundant natural resources in these regions. While there is a growing emphasis on supporting the domestic economy (as well as regional connectivity through regional integration of economies, trade, infrastructure, and energy), many conflict-affected communities - especially in the uplands - remain poor and excluded from political and economic decision-making. Rectifying this to ensure their inclusion remains a challenge.[82]

The majority of communities living in areas affected by armed conflict in southeast Myanmar are engaged in the agriculture sector, and many continue to rely on subsistence and smallholder farming for their livelihood, including through shifting hillside ("swidden") paddy cultivation, collection of non-timber forest products, livestock raising and orchard cultivation. In many areas however, income diversity is at a low level, and thousands of smallholder farmers largely rely on a single income sources. In Tanintharyi Region for example, income from betel nut is not

80 SLRD official non-disclosed data as of January 2016.

81 KNU Central Land Committee, "Kawthoolei Land Policy Briefer 2017," Accessed May 8th 2018. http://ww.kesan.asia/index.php/resources/summary/8-policylaws/116-kawthoolei-land-policy-briefer.

82 Myanmar Peace Support Initiative (MPSI), "Lessons Learned from MPSI's work supporting the peace process in Myanmar: March 2012 to March 2014," Accessed May 10 2018. https://reliefweb.int/sites/reliefweb.int/ les/resources/Report_Lessons-learned-supporting-the-peace-process_MPSI_Mar2014.pdf.

only subject to an unstable market, but also at the mercy of local betel nut traders who operate cartels that conspire to fix a low price and frequently indenture families to years of servitude to repay very small loans. Research findings indicate that the vulnerability level of IDP households (31%) is above the national average (24%).[83] The additional low level of livelihood diversity in many communities is contributing to household vulnerability.

Decades of conflict and instability, as well as limited income opportunities, have resulted in large-scale labor migration to neighboring countries, especially Thailand, and remittances continue to be a lifeline for communities strapped for cash and short of food. The experience of displacement often leads to feelings of powerlessness and up-rootedness, which appears to predispose people to substance abuse and multiple forms of addictions. For instance, qualitative research in Kayah state indicates that the vulnerability level through addictions is significant (see Chapter 3.7).[84]

Ceasefires have seen an increased presence of international and local development organizations in the southeast, with livelihood projects including micro-finance and agriculture projects. According to the Myanmar Information Management Unit (MIMU), livelihood support is the third main sector of assistance in the southeast, with 32 agencies implementing 43 projects in 1,978 villages (as of September 2017). Livelihoods projects are followed by the agriculture sector, with 42 projects under implementation through 36 agencies in 1,202 villages.[85]

There is a great need for these interventions, as agriculture will continue to be the main local employment sector for years to come, and economic gains will depend on transportation infrastructure (see above: Chapter 3.3), improved agriculture practices (including low-tech farming innovations), access to markets and value chains, financial resources and vocational skills building. The agriculture sector holds unique prospects for improvements in wellbeing for a significant proportion of populations in the southeast. Conflict-affected areas would benefit most from integrated agriculture development programs that focus on high value, low weight, non-perishable crops that can provide short-term returns, such as coffee, cardamom, tea and various non-timber forest products. Since some of these crops at this point do not contribute to significant income diversity of rural households, it seems to be necessary to further assess the means for a successful integration of innovative crops in suitable regions.

Increased economic growth and sustainable livelihoods depend on a successful implementation of the current ceasefires. Land tenure security remains a great challenge for communities, particularly as the central government currently does not recognize any form of customary land management system nor EAO related land titles (e.g. KNU land titles), despite the acknowledgment of these in bi-lateral ceasefire agreements (an issue discussed further in the Annex). This greatly jeopardizes land security and household investments during the interim period, and pushes communities to seek other income sources and coping mechanisms (e.g. work migration).

Furthermore, communities in "mixed administration" areas remain subject to competing governance systems that collect (or extract) taxes on agriculture products and productive assets. Where multiple governance systems overlap, this becomes a heavy burden for local communities. For example, communities in Hlaingbwe Township, Karen State reported that they are subject to taxation by the government and multiple armed actors, including the KNU and the Tatmadaw-aligned Karen BGF. Armed actors also collect annual taxes on productive assets such as vehicles and tools. Taxation has become a major issue of conflict between the various actors, and has often been referred to the JMC at the State/Region level (primarily by the Tatmadaw). In addition, local entrepreneurs in Karen State reported that it is almost

83 Myanmar Information Management Unit (MIMU) and Peace Support Fund (PSF), "Situation Analysis Of Southeastern Myanmar: September 2016," Accessed May 10 2018. https://reliefweb.int/sites/reliefweb.int/files/resources/Situation_Analysis_southeastern_Myanmar_MIMU-PSF_Sep2016_low-res.pdf.

84 Matthias Rimarzik, "Vulnerability Assessment on Barriers Hindering the Access to Adult Education, with Emphasis on Vocational Training and Literacy, Kayah State, Myanmar," MIMU, Accessed May 8 2018. http://www.themimu.info/node/69043?- width=600&height=600.

85 Myanmar Information Management Unit (MIMU), "Overview of the Sep 2017 3W for Southeastern Myanmar," MIMU, (2017). Accessed May 10 2018. http://themimu.info/3w-maps-and-reports

impossible to operate a small or medium sized business in contested areas without aligning oneself with an armed organization.

Without increased cooperation and coordination on rural development and livelihoods between government departments and EAO counterparts, efforts to improve income situations of conflict-affected communities will remain constrained and limited. Interventions should help improve trade and value chains for conflict-affected communities in southeast Myanmar, and bring together local government and EAO officials to facilitate economic engagement.

Currently, there is no official framework for EAOs to participate in and influence decision-making around livelihood projects exists. (For a case study of a cement factory in Southeast Myanmar, see Annex V.)

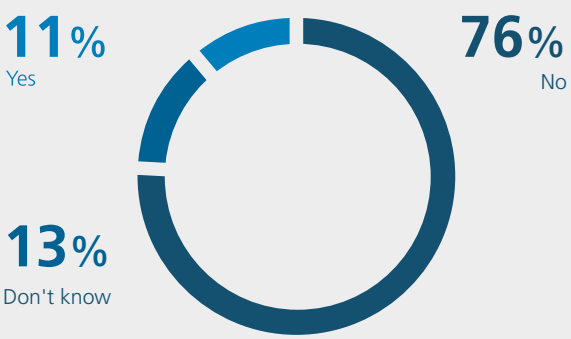
3.5 PRIVATE SECTOR

The cessation of armed-conflict across southeast Myanmar since 2012 has opened up many previously inaccessible areas to private business initiatives, including large tracts of productive land and rich natural resource deposits. Both foreign and domestic businesses have moved into these areas and are engaging in sectors including agribusiness, mining, road constructions, hydropower and tourism.

As noted in Chapter 3.3, while the government regards legislation as applicable across the country, enforcement is weak, even in non conflict-affected areas, and much more difficult to implement in conflict-affected areas. In the latter, businesses need to receive permission from the government as well as from EAOs and local militias. In the absence of clear IAs related to private business activities in ceasefire areas, responsible businesses avoid investing in these areas. Unfortunately, the gap is filled by businesses that are less concerned about the high socio-political risks involved in operating in contested areas, but are drawn by opportunities of making high returns, with little concern for social and environmental sustainability and benefits for – or risks to – local communities. A presence in contested areas is often secured through alignment with an armed actor, that often involves paying-off local leaders or involving military or EAO affiliated companies in order to receive protection and access.

Many projects are moving forward before the government and EAOs have reached agreements on key questions of economic governance during the interim period, including resource sharing, property and land rights, and rules and regulations that form the regulatory environment for business. Economic reforms and policies at the national level, including new investment laws, are detached from the peace process, with little or no input from key stakeholders other than discussion on economic governance in the UPDJC and UPC. The existing legal and regulatory framework is opaque and arbitrary, centralizes decision-making, lacks mechanisms for local input, and provides for little enforcement of regulations. These problematic aspects of the current framework have already contributed to negative consequences from projects in conflict-affected areas, including contested land acquisitions and unsustainable and environmentally damaging resource extraction. A recent study in the Tanintharyi Region by Covenant and partners revealed

FIGURE 3: DO PRIVATE BUSINESSES HAVE A POSITIVE IMPACT ON YOUR COMMUNITY?*



* Baseline survey in 10 Karen IDP Villages in Tanintharyi Region (2017)

that many conflict-affected communities regard private sector activities as not having a positive impact and as a source of tensions in their communities (see Figure 3).

Despite these challenges and the absence of equitable and sustainable IAs, the government (supported by some donors) has started to promote investment in the southeast, without acknowledging the complex socio-economic environment, the risks related to the peace process, or recent and renewed armed clashes. Many forums and fairs present the southeast, as a post-conflict environment "open for business", which is far from the truth.[86]

Even though more sophisticated EAOs, such as the KNU, have departments concerned with economic development and the private sector, there has been little coordination and cooperation between these and government departments. In most cases, private businesses maneuver between the government and EAOs, trying to secure both stakeholders' approval. These arrangements are mostly made at the local level, without much enforcement of environmental and social safeguards. In many areas, small and medium sized companies involved in natural resource extraction are operating illegally while paying bribes to government, Tatmadaw and EAO officials. For example, gold mining is often undertaken in areas of EAO or "mixed" authority, with little transparency regarding how deals are made and where the money goes, or concern for negative environmental impacts. Unless EAOs can demonstrate good governance in relation to environmental and natural resource management, they risk alienating the communities upon which to rely for long-term support.[87]

In 2012 the KNU established an Economic Committee, in order to better respond to the changing economic situation after the ceasefire, and to ensure better regulation of private business activities in its administered areas and to encourage good governance. The establishment of an economic governance system continues to be a challenging and urgent task, given the need for increased coordination and cooperation with the government, and for monitoring of the private sector (and of KNU District leadership decisions).

Rapidly changing realities on the ground, and lack of formally agreed IAs regarding economic governance, are resulting in a range of responses from economic actors. Some EAO leaders are actively involved in new businesses, having formed companies or joint ventures with Burmese and foreign businesses. They are joining a complex economic environment dominated by military and government officials alongside local and (trans) national elites. The establishment of EAO-aligned businesses has also been actively encouraged by the government and Tatmadaw, in order to prevent EAOs from collecting taxes from businesses in their areas of influence. This is not a new phenomenon, having for example long been the case in ceasefire areas in northern Myanmar, where the military, through establishing business links with ethnic leaders, created a tenuous equilibrium founded on the distribution of rents. Interviews with state/region government officials during the MIARP indicate that decisions on investment projects in ceasefire areas with the involvement of EAO aligned companies are subject to approval by the NRPC and State Councilor's office.

Such developments can create tension between the public duties of EAO leaders and their private interests - conflicts of interest that have long characterized Myanmar government officials and are endemic in many business sectors in Myanmar. One of the key challenges in relation to the private sector and IAs therefore is the potential of private investment to influence the decision-making of EAO leaders and government officials. Some EAO leaders have been skeptical of new projects during the interim period, before the political dialogue (specifically discussion of natural resource federalism) allows more equitable private sector projects to move forward.

New business interests in ceasefire areas also add complexity to conflict resolution initiatives, as new actors bring another

86 Such an "Investment Fair" was held in Hpa-an, Karen State, in November 2017.

87 In Shwegyin Township in April 2018 it was reported that 60 illegal small and medium sized gold mining outfits were operating, while only 2 companies had a permission from the Union government: Hein Ko Soe, "The Sacking of Bago Region Minister U Kyaw Min San," Frontier Myanmar, (April 12 2018). Accessed May 10 2018. https://frontiermyanmar.net/en/the-sacking- of-bago-region-minister-u-kyaw-min-san.

set of interests and goals. Businesses that develop projects in conflict-affected areas have financial interests to protect, which they often attempt to advance through connections in government circles. If businesses do not act in a transparent and socially acceptable manner, their activities can spur negative reactions among local communities, especially if they perceive that projects are exploitative or have no benefits.

The introduction of new business interests into conflict-affected areas brings additional complexities while failing to address the core challenge, which is the lack of legitimate economic institutions (both formal and informal rules and norms) governing business activity. The creation (or reform) of these institutions should come through engagement with EAOs, government, local communities and other stakeholders. The challenge is how to facilitate the transition from a "conflict economy" to a sustainable "peace economy" in ways which benefit local populations, and provide them with influence over the institutional arrangements that will govern business development. These issues need to be discussed within a political dialogue framework, although a start can be made during the interim period, in order to bring positive changes to conflict-affected populations.

3.6 SECURITY, STABILITY, RULE OF LAW AND CIVILIAN PROTECTION

In any political environment, the provision of security and justice are among the most important responsibilities of governing actors. For the Tatmadaw, defending the nation's sovereignty is the most critical and highly prioritised role of the state armed forces. Myanmar's EAOs use their security forces both to defend from the Tatmadaw, and to establish their authority.

Chapter 6 of the NCA includes reference to IAs to include: "Matters regarding peace and stability, and the maintenance of rule of law". It is not yet clear what this might include. Conceivably it could relate to at least two dimensions of issues:

1. Conflict-related security issues: related directly to the conflict environment, such as the positioning and conduct of forces and their relations with local communities;
2. Justice provision: management of basic policing functions and the handling of civil and criminal cases, which are important in all environments but that are deeply affected by presence of EAO and militia authorities in ceasefire areas.

Conflict-related Security Issues

It is sometimes difficult to determine whether specific cases fall under the JMC or are more relevant to IAs. This could present challenges for any future Joint Interim Arrangements Committee in determining its mandate. Core JMC responsibilities such as troop conduct and demarcations substantially affect the security and protection of people in ceasefire areas. Militarization remains widespread across southeast Myanmar, including relatively stable ceasefire areas. Particularly visible examples include the Tatmadaw's establishment of a new Regional Command in Shan State[88] and a large-scale training facility in Kayah State,[89] both in 2011 while negotiations with EAOs were underway. Since ceasefires, the Tatmadaw has expanded the number of bases in areas which were previously difficult access, constructed helicopter pads, upgraded bamboo fortifications to concrete bunkers, and established improved infrastructure for more regular supply of its most forward positions. Such expansion has triggered a series of clashes in northern Karen State, culminating in the displacement of over 2,000 people in March 2018 and the killing of a CSO worker (see Chapter 2.2).

Abuse of civilians by local power holders is another critical area of justice and security that falls loosely within the mandate of the JMC, but which has not been addressed adequately. For most ordinary people in conflict-affected areas, such issues are chief among their "peace and stability" concerns. The specifics of abuses perpetrated against civilians are well documented

88 This is the Central Eastern Command. According to Shan data, the number of battalions under the command has increased from 27 to 38 since 2011, seemingly to put pressure on the RCSS and SSPP. Meanwhile, the Tatmadaw Eastern Command has around 47 battalions and the Triangle Command 45 (in addition to Tatmadaw Light Infantry Divisions, which are stationed across the country but periodically moved for counterinsurgency operations).

89 Military Advanced Training School No. 14.

elsewhere, including by the UN[90] and by local human rights organisations, such as Karen Human Rights Group,[91] the Human Rights Foundation of Monland[92] and the Shan Human Rights Foundation.[93] While many forms of abuse have reduced dramatically since the ceasefires, the widespread placement of troops from all sides in and near civilian settlements leaves people vulnerable, particularly to intimidation, extortion, sexual abuse, forced labour, other forms of exploitation and beatings and killings (particularly of village leaders). In Shan State especially, the multiplicity of armed groups representing different ethnicities means that even where one group has signed a ceasefire with the government, insecurity can continue. Village leaders or other representatives appointed to take instructions and requests from authorities are often the most at threat in mixed control areas.[94]

Justice Provision: Policing and Handling of Criminal and Civil Cases

Across Myanmar, the vast majority of civil and criminal issues are handled by village tract/ward administrators or village level leaders.[95] Only the most serious cases are referred to higher authorities such as government or EAO officials. In conflict-affected areas, the jurisdictions of different authorities overlap, and affected parties or local leaders will choose which authority to report cases to. All of the EAOs in southeast Myanmar have some form of justice system, but these vary greatly in sophistication and scope. The KNU and NMSP have relatively formal systems with codified laws based on colonial era common law, designated judiciaries (nominally independent in the case of the KNU), detailed procedural guidelines, and rudimentary prisons. The KNU has a police force with over 600 personnel, while the NMSP uses soldiers for policing duties.[96]

The RCSS justice system is much more basic, with no codified laws or designated judiciary. Its administrative battalions only become involved in narcotics cases, in incidents of serious violence or murder, or in cases that involve the organization's personnel. Beyond that, local leaders have discretion to choose whether to report cases to the RCSS at all. The PNLO justice system is also very basic, reflecting the small size of its territory.

Available research, including interviews conducted for this study, suggests that many people in these areas prefer if possible to report cases to the EAO representing their own ethnic group.[97] One Shan village-head explained: "If the issue is big enough then we report it to the armed groups (RCSS or SSPP), but never to the government." Similar perspectives, confirming pre-existing research, were shared by people in Mon State regarding the NSMP.[98] This is partly a reflection of extremely low trust in the government justice system, even in most government-controlled towns and cities.[99] For cases involving powerful actors, for example land grabs, villagers are likely to report cases to whichever authority is deemed to have the most pow-

90 See reports by the UN Special Rapporteur on Human Rights in Myanmar here: http://ap.ohchr.org/documents/dpage_e.aspx?m=89.

91 http://khrg.org/reports.

92 http://rehmonnya.org.

93 See: http://www.shanhumanrights.org/.

94 According to the director of the Shan Women's Action Network, many villages in Shan State rotate such responsibilities between families on a daily basis. She said that these people: "are always in the middle: both sides punish them. Sometimes the EAOs set them up, and get the villager to tell the Burmese to walk into an ambush. They are under a lot of pressure to get the information right. They are sometimes killed."

95 See: My Justice Myanmar, "Searching for Justice in the Law," Accessed May 13 2018. http://myjusticemyanmar.org/sites/default/ les/Policy%20 Brief%20Final_ English_0.pdf; Saferworld, "Making Big Cases Small and Small Cases Disappear", Accessed May 13 2018, https://www.saferworld.org.uk/resources/publications/1100-making-big-cases-small-and-small-cases-disappear-experiences-of-local-justice-in-myanmar. See also, Saferworld (2018), "Security, justice and governance in south east Myanmar: A knowledge, attitudes and practices survey in Karen ceasefire areas".

96 Brian McCartan and Kim Jolliffe, "Ethnic Armed Actors and Justice Provision in Contested Areas of Myanmar," *The Asia Foundation,* (October 2016). Accessed May 4 2018. https://asiafoundation.org/ wp-content/ uploads/2017/03/Policy-Brief_Ethnic-Armed-Actors-and-Ju- stice-Provision-in-Myanmar_EN.pdf.

97 This is among many important and important findings of a recent "Everyday Justice" research initiative by the Danish Institute for International Studies. An edited volume compiling much of the research is available at: http://journalofburmesescholarship.org/issue-2.html.

98 Ibid.

er to take action, but this often depends on them having the right networks and connections to EAO structures and leaders.

The government has no laws or procedures regarding how local officials should handle cases involving EAOs, or how and when they should be referred to the police - who in any case are mostly restricted to towns and enjoy limited trust. This is particularly so in conflict-affected areas, where police are often considered by local residents to be closely associated with the military, and rarely have officers who can speak local languages. Even where people are able to access the government systems, courts are considered to be slow, costly, ineffective and subject to out-of-date laws. Women's groups explained that while they have tried to support victims of sexual and gender-based violence to gain justice through the courts, this has been cumbersome and costly and rarely successful, particularly when powerful men are involved. Other interviewees complained that the police only seem to get involved in cases where there is potential to receive large bribes.

Village-level justice systems typically follow customary laws and practices, which usually involve the establishment of committees of elders to determine the details of the case and to decide on some form of compensation or punishment. A Shan village head in a mixed administration area explained:

> *"When we have a communal problem, or a theft, then the people have to get together and solve it ourselves. We use traditional methods. We don't use the law according to the book. It depends on the elders. We don't have a judge, we call the people and decide about the punishment."*

As has been found in existing research,[100] these systems are believed to maintain relative order and stability, and they are welcomed locally because they do not attract attention from higher authorities. According to a Shan CSO representative:

> *"In the villages (in RCSS areas), there is no police station, so they have to go to the head (of the village) and they solve it using traditional methods they have used many years. They can do it quickly, much more efficiently than through the police."*

However, village justice practices often serve marginalised groups poorly and are not necessarily impartial: much depends on the character of village leaders and elders. According to the leader of one women's organisation:

> *"All village leaders and judges are men. Women don't even attend the meetings…. Some women said they are not happy with what the village head has done but they don't have (an) idea to go anywhere else. There is no mechanism to complain even if they are not happy with the answer."*

Another women's group leader explained:

> *"Village level system is really traditional and not good for women. They cannot access justice…. sometimes I don't know if it is fair for everyone or not. For example, she gets raped and then they have to get married, but if the man doesn't want to be married to her, it's suddenly a problem. Sometimes the customary systems don't really provide justice."*

There is currently very little coordination between EAOs and the government on justice; indeed, the government and most EAOs have neither formal referral mechanisms from the village tract level to higher authorities, nor coordination between systems. At the local level, EAOs sometimes refer cases to the government, for example a recent rape case was referred to the NMSP in an area where it had local power. Increased formal cooperation could improve access to justice for local people and build trust between local authorities, but will differ in every area. In most EAO areas the

99 Ibid

100 Ibid

government would have to at least informally recognise the local authorities and find ways to cooperate on equal terms. This would require formal instructions from the Union level. In at least one area (DKBA), there are currently negotiations with the government to establish local police stations.

The aid community has yet to provide significant external assistance to EAO justice systems, and has struggled to find viable ways to work with the government system, particularly in areas where it is not fully trusted or readily used by local people. Indeed, there are significant risks working with any authority on such issues in ceasefire areas, as they relate so closely to the local balance of power and the basic safety of local people. Nonetheless, there is scope to begin piloting such initiatives as training and technical support for EAO authorities, and particularly for the local level authorities actually handling the majority of cases. It is crucial that such assistance is based on strengthening and improving existing systems, which despite imperfections, have seemingly been ingrained as the way of life. Efforts to make existing systems more impartial and available to vulnerable groups could be particularly important. In areas where the legitimacy of authorities is hard to determine, external actors providing assistance could partner with trusted CSOs.

3.7 ILLEGAL DRUGS

Use and abuse of, and trafficking in, illicit drugs is a serious problem across Myanmar, including in the southeast. In Shan areas the main problem is heroin and "yaba" (methamphetamine) misuse. In addition to health impacts, the heroin trade distorts political economies at the local and national levels, and encourages corruption among state and EAO officials. After declining for some years, opium poppy cultivation has significantly increased again since 2006. In Mon and Karen areas concerns focus primarily on highly addictive methamphetamines - or amphetamine-type stimulants (ATS), also known locally as ya ma ("horse medicine", and in neighboring Thailand as ya ba or "crazy medicine").

The heroin business is closely linked to rural livelihoods and political economies through the production of the raw material opium, which is also used as a traditional medicine. However, ATS production is a criminal enterprise with little connection to rural livelihoods. Production of ATS requires precursor chemicals and a protected space within which to produce the drug. Although accurate information is hard to come by, members of some armed groups in northern Myanmar seem to have switched from heroin to ATS manufacturing, much of which is exported across Southeast Asia and China.[101] The majority of Myanmar's ATS production still takes place in non-state (EAO and militia) controlled spaces of Shan State, although reportedly some methamphetamine production also takes place in southeast Myanmar in areas under the control of local armed groups.

The main EAOs in southeast Myanmar have anti-drugs policies, which are mostly quite strictly enforced. However, there are "rogue elements" who do not follow directives, and derive income from the drugs trade. People in Mon and Karen States reported problematic ATS usage as having become worse over the past 5-10 years, in the context of ceasefires in the peace process. Fewer concerns were reported in this respect in Tanintharyi Region.

A number of interviewees expressed concern that EAOs - particularly Myanmar Army-aligned BGFs - are implicated in ATS supply. Several BGFs have significant political and financial resources, which are perceived as having been reinforced through the peace process and resulting economic opportunities; this is true also for the Tatmadaw.

Whether justified or not, several interviewees stated that EAOs with ceasefire agreements are rewarded by being allowed to traffic drugs, and that government authorities (the police and Myanmar Army) "turn a blind eye" to such activities. Enforcement officials are subject to widespread bribery and threats by drug-trafficking gangs (particularly elements

101 Tom Kramer, "The Current State of Counter-narcotics Policy and Drug Reform Debates in Myanmar," *The Brookings Institute,* (2016). Accessed May 14 2018. https://www.brookings.edu/wp-content/uploads/2016/07/Kramer-Burma- nal.pdf.

of the Karen BGFs, and militias in Shan State). Association with the drugs business is highly detrimental to the perceived legitimacy and political credibility of EAOs in Myanmar, which position themselves as political representatives and leaders of their respective ethnic communities.

In areas directly under the control of the major EAOs (particularly the RCSS, KNU and NMSP ceasefire zones), drug abuse is reportedly less widespread. Leaders of the main EAOs in the southeast said that this is because of stronger community cohesion ("social capital") in their areas. However, data in this respect is lacking. It seems probable that in in rural and peri-urban communities with strong local leaders and relatively high levels of intra-community trust, illicit drugs are less readily available.

In 2014 the KNU Central Standing Committee agreed penalties drugs-related crime, ranging from small fines up to 15 years in prison. The KNU guidelines are quite detailed, including for example a requirement that those using prescription medicines should have a doctor's certificate. However, KNU officials concede that they find it difficult to deal with drugs users and dealers, often not knowing what to do with offenders once they are apprehended by the Karen National Police Force (KNPF).[102] The Karen Department of Health and Welfare (KDHW), which oversees the KNU's health system, identifies drug problem as a priority area for supporting Karen people's welfare. The KNU would like to build treatment centres to this end, but funding and expertise are very limited.

In 2017 NMSP officials reported a surge in families requesting the party's intervention in drugs cases in their areas authority. A Thaton District official stated that:

> *"The parents of youths come to our office every day and ask us to put their sons in our cells due to their addiction to drugs... Even though parents request (a spot for their children) we can't accept any more inmates."*[103]

In southern Shan state, the RCSS has a very active anti-narcotics unit. People arrested for drug use are often sent to "rehabilitation centres", which reportedly, in some cases, function as anti-drugs "boot-camps," sending recruits to the RCSS. Communities affected by conflict and drug use expressed appreciation for the RCSS's anti-drugs policies and practices. The RCSS has had some discussions with UNODC and other agencies about crop-substitution programmes (which have a patchy record in other parts of the country), and has established its own plans for alternative livelihoods at more than a dozen sites - so far, without international support.

The PNLO also has anti-drugs policies, but attempts to implement alternative crop and other counter-narcotics strategies have been limited due to lack of funds and technical capacities. In several parts of southeast Myanmar, CSOs are keen to get involved in public health and education and counselling activities in relation to problematic drug use, but have received little support to do so. Article 25 of the NCA specifically commits signatories to eradicating drugs. However, international experience indicates that eradication of drugs is never effective on its own, and can often exacerbate the problem. In addition (or alternatively), social welfare and political approaches are also necessary.

Drugs issues featured in the outcome documents of the Karen National Dialogue, convened in January 2017 in the Karen State capital of Hpa'an. Although there are many issues crowding the Political Dialogue agenda, the government and Tatmadaw have restricted to discussion to just a few issues. In the July 2018 UPC these included some coverage of drugs issues. In the meantime, communities continue to be deeply concerned about perceived rapid increases in problematic drug use.

102 Following the KNU's 16th Congress in April 2017, the KNPF was re-organized. On 25 February 2018 the 6 Brigade KNPF was re-launched with a major drug-burning ceremony: http://karennews.org/2018/03/new-karen-police-office-opens-by-destroying-speed-pills-and-opium.

103 HURFOM, "Thaton District jail cells overflowing with young drug users," *Mon News Agency,* (Sept 9 2017), Accessed May 14 2018. http://mon-news.org/2017/09/09/thaton-district-jail-cells-over owing-with-young-drug-users/.

There is a significant mismatch between local (community and EAO) perceptions of ATS use as a major crisis, and the relative lack of interest in the issue on the part of the government and international development agencies (beyond some engagement from those working on HIV/AIDS, plus UNODC and one specialized INGO). This helps to explain the relative lack of research on ATS production and use in Myanmar.[104]

Among EAOs, the main focus of addressing drugs issues has been through criminalization, often with very punitive approaches. However, EAO legal systems are quite rudimentary (see Chapter 3.6), and law enforcement personnel are mostly unable or unwilling to address supply-side issues. Although KNU District/Brigades, and also the NMSP and DKBA, operate rudimentary prison systems, these operate in an ad hoc manner in relation to treating drug users, at best sometimes providing detox ("cold turkey"), often on request from parents in situations of involuntary detention.[105] Thus the Health Departments of EAOs play roles in the treatment of problematic drug users.[106]

Engagement with these issues could be somewhat easier under the amended 1993 Narcotic Drugs and Psychotropic Substances Law, and Myanmar's first National Drug Control Policy - although the former remains quite punitive, retaining jail terms for people caught with even small amounts of drugs.[107] Consideration of legal issues raises important questions regarding the degree to which EAOs (and associated CSOs, and conflict-affected communities) have knowledge of or interest in Myanmar legal and policy issues, and issues and dynamics of Union-level reform.

Among CSOs in government-controlled and mixed areas, the main focus is on harm-reduction and treatment. However, necessary resources and skills are in short supply. In general, CSOs in the southeast would prefer to see a decriminalization of small-time drugs use, and more focus on rehabilitation and treatment of users (including through counseling). However, many stakeholders also regard the drugs problem as very serious, and worry that decriminalization may lead to more widespread usage.

There has been some (very limited) cooperation between KNU and NMSP and the Myanmar police force in relation to drugs issues (and between EAOs and the Thai police force).[108] On occasion, and particularly if the perpetrators are ethnic Burmans, EAOs have handed arrested drug dealers over to Myanmar authorities. Occasionally, interactions in this respect are handled through EAO Liaison Offices. In order to address what is perceived as a growing problem, it will be necessary to provide resources and training in order to help government and EAO authorities respond compassionately to the needs of problem drug users, and their families and communities.

3.8 FORCED MIGRATION: REFUGEES AND IDPS

For numerous interviewees, coordinating support for forcibly displaced people should form a key element of Interim Arrangements. Over the decades, hundreds of thousands (if not millions) of people in have fled their homes in southeast Myanmar, as a direct or indirect consequence of decades of armed conflict and associated human rights abuses (including various types of "development-induced displacement").

There are around 100,000 verified (and tens of thousands unregistered) refugees in ten Karen and Karenni shelters along

104 The relative lack of focus on ATS may also partly be explained by the lack of a proven medical treatment regimes for methamphetamine abuse, in comparison to heroin addiction, which is amenable to methadone treatments.

105 The most humane and effective forms of detox are medically supervised and voluntary; forced detoxification can be devastating (and deadly) for its victims.

106 The RCSS has a policy to move towards the decriminalization of small amounts of drugs for possession only.

107 Renaud Cachia, "Will Myanmar Complete its Transition Towards an Evidence-based Approach to Drug Control?" *The Transnational Institute,* (March 20 2018). Accessed May 14 2018. https://www.tni.org/en/article/will-myanmar-complete-its-transition-towards-an-evidence-based-approach-to-drug-control.

108 Although the Mon State Chief Minister has reportedly criticized the NMSP for overstepping the mark in responding to drugs issues.

the Thailand border[109], plus around 2.5 million migrant workers from Myanmar currently living and working in the kingdom. Around the time of the 2012 KNU ceasefire, The Border Consortium (TBC)[110] and its CSO partners estimated that around 400,000 people were living as Internally Displaced Persons (IDPs) in southeast Myanmar.[111] Many remain displaced, including up to 40,000 people across 3 sites in areas under the control of the NMSP[112] (about 10,000 of whom were forcibly repatriated from Thailand in 1996); and around 6,200 people in five IDP camps in RCSS territory near the border, and several thousand people are at Ei Thu Hta camp in KNU territory. Beyond these camps, many IDPs spend some time "in hiding", having fled from violence and seeking to avoid Myanmar Army patrols and associated human rights abuses. There is also a much larger and dispersed IDP population living in a variety of different contexts across the southeast, including in areas controlled by EAOs, and government forces and Tatmadaw-aligned militias, as well as in areas of mixed administration.[113] These IDPs stay in monasteries, other people's homes, or on public land such as market places, and very few have received consistent international support.

Since the ceasefires in the southeast, there have been occasional clashes (particularly in 2015-16) between the DKBA, KNU and Tatmadaw-aligned BGFs in central Karen State, often in the context planned large-scale infrastructure projects (see Chapter 2.2). Nevertheless, since the 2012 KNU bilateral ceasefire, and the NCA in 2015, the security situation across the southeast has stabilized. However, this cannot be guaranteed in the future - as illustrated by Myanmar Army incursions into northern Karen State (KNU 5 Brigade, Papun District) in 2018.

Furthermore, despite the improved security situation in many areas, few displaced people in southeast Myanmar have found lasting - or "durable" - solutions[114] to their plight. Until a political settlement is in place that includes guarantees respect for basic rights, civilians across southeast Myanmar will remain highly vulnerable to further abuses, and the possibility of new bouts of forced migration. Nevertheless, it is important to recognize and support the agency, dignity and persistency of displaced communities, and their efforts to rebuild lives under the most difficult of circumstances.

In the context of ceasefires, IDPs seem to be returning to previous locations, to begin the difficult task of re-building lives and communities. Often, IDPs are resettling in order to reclaim their land, to prevent it being misappropriated by powerful private sector or political interests (e.g. parts of Tanintharyi Region: see Chapter 2.4, and Annex on TP Village, in Tanintharyi Region).[115] According to one Karen social and religious leader: *"the refugees should start going home to Burma now, to re-claim their land."*

Thus far, relatively few refugees have officially returned home. However, since 2013 some 12,000 people have "spontaneously" moved from the refugee camps in Thailand to Myanmar, and many families have undertaken "go and see"

109 The Border Consortium, "2017 Annual Report", (2017), Accessed May 15 2018.

110 World Education Thailand and Save the Children, "Pathways to a Better Future: A Review of Education for Migrant Children in Thailand," (2014). Accessed May 15 2018. http://thailand.worlded.org/wp-content/uploads/2016/04/MESR-Full-Report.pdf. MESR-Full-Report.pdf.

111 Since the 1980s, The Border Consortium has (under various names) been the main NGO (consortium) supplying food and material needs to refugees from Myanmar who reside in Thailand. One possible solution for some of the refugees is "local integration" among the Thai-Karen community, as parts of the Thai economy continue to rely on migrant workers.

112 The Border Consortium, "Refugee and IDP Camp Populations: October 2012." Accessed May 14 2018. http://www.theborderconsortium.org/media/11741/2012-10-oct-map-tbbc-unhcr-1-.pdf.

113 For a typology of forced migration in Myanmar, see: Ashley South and Kim Jolliffe, "Forced Migration and the Myanmar Peace Process," New Issues in Refugee Research, UNHCR, (February 2015). Accessed May 15 2018. http://www.unhcr.org/54f588cb9.pdf.

114 Core Group on Durable Solutions, "Framework for Durable Solutions for Refugees and Persons of Concern," UNHCR, (May 2003), Accessed May 15 2018. http://www.unhcr.org/partners/partners/3f1408764/framework-durable-solutions-refugees-persons-concern.html.

115 The concept of refugees and IDPs "returning home" is problematic, in a context where numerous individuals and families have moved multiple (sometimes more than a hundred) times, over periods of several decades.

trips, with some family members establishing a presence in areas of return. So far, the small number of returns officially "facilitated" by UNHCR have not been notably successful. Despite the government's stated intention to ensure a safe, dignified and sustainable refugee return, Myanmar authorities have yet to engage substantively with mandated agencies, EAOs or refugee communities - either as part of a tripartite arrangement with the UNHCR and the government of Thailand, or through negotiations in the peace process. In the meantime, the KNU and partner CSOs have identified some 25 possible sites of refugee return in border areas, most of which are in areas more-or-less under KNU control. Return scenarios have been discussed with refugee camp leaders, although it is not clear that refugees have been much consulted.

The biggest challenge to durable solutions for forced migrants is continued militarization, and the presence and conduct of military actors - particularly the Tatmadaw - close to areas of possible return. In particular, military bases located close to civilian settlements, in areas from which people have fled, generate great fear and mistrust among civilian communities. In the absence of significant demilitarization in conflict-affected areas, ceasefires remain fragile. A commitment to reduce Tatmadaw expansion in ceasefire areas would demonstrate a significant break from the past and boost confidence among forced migrants.

The challenges faced by displaced people include widespread landmine contamination throughout southeast Myanmar, and the phenomenon of secondary settlement (displaced peoples' land being occupied by other vulnerable groups, as well as by predatory military and business interests). Together with access to education, health and other services, a key factor in forced migrants' decisions regarding if and how to begin rebuilding their lives is access to appropriate livelihoods, and above all to land.[116] In principle, refugees and IDPs could access land through restitution of previous landholdings, and/or or through compensation and land re-allocation - legal-political solutions which should be addressed with some urgency in peace talks. Land issues could be "fast tracked" in political negotiations, and would not have to wait for a final negotiated settlement.[117]

In the meantime, NGOs supporting refugees in Thailand are increasingly constrained in their ability to help due to greatly reduce donor funding.[118] Refugees therefore experience a growing "push factor", and many believe that the international community is trying to drive them back to Myanmar before they are ready to return in safety and dignity. This is in a context where the durable solution of resettlement in a third country has been foreclosed for the great majority of refugees.

Conflict-affected communities are often characterized by high levels of mutual trust and social capital, in the form of self-help and other self-protection activities. Previously, much of the aid to these local networks was provided cross-border from Thailand; increasingly, such assistance can be provided from inside the country, although not all parts of the southeast are yet accessible to agencies without substantial presence and networks in conflict-affected border areas. Furthermore, key international actors (for example UNHCR) lack official permission to operate in southeast Myanmar (UNHCR has an MoU with the Ministry

116 In Tanintharyi Region in 2016, after the Regional Minister for Karen Affairs had told IDPs that they could return to their land, villagers faced a lawsuit by Asia World and another company accusing them of illegally accessing land granted for palm oil plantations. See: Su Phyo Win, "Homecoming brings new cast of problems for Tanintharyi IDPs," Myanmar Times, (Oct 4 2016), Accessed May 15 2018. http://www.mmtimes.com/index.php/national-news/22880-homecoming-brings-new-cast-of-problems-for-tanintharyi-idps.html.

117 According to the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, solutions to extended Housing, Land and Property rights crises can be considered under the headings of "restitution" (return of property, or equivalent land and assets) or "compensation" (financial recompense in recognition of asset loss - which may be more appropriate when there are multiple competing claims for particular pieces of land). The "right to return" (restitution) is also recognized in the National Land Use Policy (paragraph 38 and 74), and the KNU's Land Policy. Furthermore, Article 1(k) of the NCA references property rights. One of the major challenges in the peace process is who should address these issues, and how. For an overview of these issues, see: José Arraiza and Scott Leckie, "A Vision for Restitution in Myanmar," Forced Migration Review 57 (February 2018). Accessed May 15 2018. http://www.fmreview.org/ sites/fmr/ les/FMRdownloads/en/syria2018/arraiza-leckie.pdf, who call for a comprehensive and nationwide restitution program.

118 Due to lack of funds, TBC support to the Karen IDP settlement at Ee Tu Hta was withdrawn in late 2017.

of Social Welfare only for Kachin State), greatly restricting the access of protection-mandated organizations. In this context, it will be important to continue supporting CSOs that are grounded in and trusted by vulnerable communities. Access to assist IDPs is one of the tasks assigned to the JMC. However, refugee and IDP issues have not been prominent in the peace process - although these are included under the "Social Issues" thematic areas of the official Political Dialogue.

The KNU and affiliated CSOs have developed policies in relation to forced migration in and from Myanmar. However, these issues have yet to be addressed substantively at the Union level.

3.9 AID ISSUES

Before 2010, Myanmar received relatively little foreign aid. However, foreign assistance has increased significantly since the military-backed U Thein Sein administration assumed power in 2011. According to The Asia Foundation: "Myanmar was the seventh-largest recipient of international aid in 2015 … (and) the third-largest recipient per capita in the region, behind only Cambodia and Laos." (The country had been only the 79th largest recipient of aid in 2010.) [119] Recent figures indicate that in: "November 2016, donors reported 522 projects underway, with a combined budget of US$8.6 billion, of which US$2.3 billion had been disbursed."[120]

It can be difficult to measure the proportion of foreign aid provided for peace-building[121] activities. Among other issues are questions of whether this should include all activities in conflict-affected areas or just projects specifically focused on promoting peace.

Peace-support efforts often struggle with tensions between state-centric aid and development programs, and inclusive and politically sensitive peace-building. Five years ago, in a ground-breaking report The Asia Foundation analyzed how peace support initiatives often fail to engage with the issues affecting communities, by adopting an overly technocratic approach (Parks, Colletta, and Oppenheim 2013).[122] More recently, Denney and Barron (2015)[123] have argued that donor assumptions that weak institutional capacity is at the core of conflict, with a consequent focus on reinforcing national-level state institutions, can result in peace-building activities which marginalize other sources of authority, such as armed groups. This is particularly problematic in a context such as Myanmar, where the state is a party to armed conflict, and EAOs have extensive (if often contested) political legitimacy.

Adopting a technocratic approach, framing key issues in terms of development needs rather than as sites of social and political struggle, can be counter-productive, and risks reproducing the "anti-politics machine" (a phrase coined by James Ferguson, 1994).[124] Under such conditions, politics becomes reconfigured as a development challenge, often to be solved through economic development. Rather, donors and diplomats should recognise that many of the issues structuring decades of armed conflict in Myanmar are irreducibly political.

Many CSOs are concerned that the government and Myanmar Army have an "economic development first" agenda for the

119 Thomas Carr, "Supporting the Transition: Understanding Aid to Myanmar Since 2011", *The Asia Foundation,* (February 2018). Accessed May 12 2018. https://asiafoundation.org/wp-content/uploads/2018/04/Supporting-the-Transition_ENG.pdf.

120 Ibid pp.5 and 9.

121 This section derived from Ashley South, "Hybrid Governance" and the Politics of Legitimacy in the Myanmar Peace Process," *Journal of Contemporary Asia* 48, no.1 (November 2017). DOI: 10.1080/00472336.2017.1387280.

122 Thomas Parks, Nat Colletta and Ben Oppenheim, "The Contested Corners of Asia: Subnational Conflict and International Development Assistance," The Asia Foundation, (2013). Accessed May 15 2018. https://asiafoundation.org/resources/pdfs/ContestedCornersOfAsia.pdf.

123 Lisa Denney and Patrick Barron, "Beyond The Toolkit: Supporting Peace Processes In Asia," The Asia Foundation, (October 2015). Accessed May 15 2018. https://asiafoundation.org/resources/pdfs/SupportingPeaceProcessesinAsia.pdf.

124 James Ferguson, *The Anti-Politics Machine: "Development", Depoliticization, and Bureaucratic Power in Lesotho.* (Minneapolis: University of Minnesota Press, 1994); see also Stefan Bächtold, "The Rise of an Anti-politics Machinery: Peace, Civil Society and the Focus on Results in Myanmar", Third World Quarterly 36, no. 10. (August 2015). Accessed May 22 2018. DOI: 10.1080/01436597.2015.1063406.

peace process in Myanmar, and uses aid as a distraction from demands for political reform. Parks, Colletta and Oppenheim (2013, 55) challenged the assumption that economic growth and improved levels of development and service delivery can reduce violent conflict in the absence of political and institutional transformation, cautioning that post-conflict aid projects generally "focus on development outcomes such as improving livelihoods, health, and education, and on local economic growth", without addressing the underlying dynamics of conflict.

Illustrating this point, Karen CSOs have complained about Japanese aid to infrastructure development projects in southeast Myanmar, which promote the extension of state authority into previously semi-autonomous and conflict-affected areas, without consulting local communities or other stake- holders, such as the KNU.[125] The risk here and elsewhere is that donors will support (state-led) implementation of large-scale infrastructure development projects, without addressing the underlying causes of long-standing conflict in these areas, or consulting with key stakeholders. Similarly (as noted above), projects implemented by the UNDP and FFI have been criticised by CSOs for strengthening the state in conflict-affected areas, while largely ignoring key local stakeholders (including the EAOs) and downplaying the political causes of poverty and environmental problems.

It can be difficult for donors and diplomatic actors to engage with non-state armed groups (EAOs), in an international context where recognized governments are generally considered the sole sovereign power. However, NCA signatory groups have been removed from the list of "unlawful associations" (colonial era law 17/1), and should be recognised as partners in peace with the government.

More can be done to support peace-building initiatives which help to build trust and confidence, while testing key stakeholders' sincerity and abilities to deliver peace dividends (see MPSI 2014). Given the indigenous nature of the peace process in Myanmar, the international community is limited to a supporting role. The primary political responsibility lies with political and military actors - particularly the government and EAOs, but also CSOs and political parties. Aid agencies working in conflict-affected areas get to know the stakeholders, and do more to understand how their programs operate in specific contexts, and interact with local and national political dynamics, and how they are perceived by affected communities.

Conflict-affected areas of Myanmar are in desperate need of economic security and sustainable livelihoods. However, lasting peace can only be achieved if the government and its development partners take the political roots of conflict seriously, and engage with credible political authorities representing the concerns and interests of comfort-affected communities. In part, this can be achieved through building forums in which different stakeholders (government, EAOs, communities and aid agencies) collaborate jointly in identifying and prioritizing needs, and the best ways to address these. (For an overview of the relatively successful UNDP Township Democratic Local Governance Project in Mon State, see Annex.) More problematic are initiatives designed specifically to change the balance of power in Myanmar's complex conflict and peace processes.

In 2013 President Thein Sein appointed Nippon Foundation (NF) Chairman Yohei Sasakawa as a peace envoy to Myanmar. Over the next three years, the NF donated $10 million for infrastructure projects in KNU and PNLO areas; another $200 million is reportedly committed for future assistance, as part of some $7.3 billion (800 billion Yen) of Japanese aid to Myanmar over five years.

Japanese aid to Myanmar clearly has geo-political dimensions beyond the scope of this report. It has mostly focused on infrastructure development, and is often implemented without consulting affected communities.[126] Unlike earlier rounds of assistance (mainly rice and solar lights, which was supplied

125 Karen Peace Support Network, "Critique of Japan International Cooperation Agency's Blue Print for Development in South-Eastern Burma (Myanmar)" (September 2014). Accessed May 15 2018. http://www.burmapartnership.org/wp-content/uploads/2014/09/critique_of_japan_international_cooperation_agencys_blueprint_for_development_in_south-eas- tern_burmamyanmar_full_report_english_2.pdf.

126 Ibid

to all EAO ceasefire groups), since 2015 NF support has been provided only to NCA signatory groups only, as directed by the government – an example of how foreign aid can be explicitly designed to affect the outcomes of domestic politics. These concerns illustrate the importance of donors understanding that the government is a party to the conflict, just as much as EAOs.

The JCB

According to the Myanmar Development Assistance Policy (consultation draft, 28-9-2017, Section 2.2):

> *The first objective of the Economic Policy of the Union of Myanmar is to support national reconciliation and the emergence of a united federal democratic union... all development assistance should be designed and delivered in such ways as to align with and support Myanmar's nationally owned peace process and national reconciliation efforts.*

The same document (Section 4.5.2.1) specifies the mandate of The Joint Coordination Body for Peace Process Funding (JCB), which is intended to:

> *Determine priority sectors for peace process funding; review and approve programs that are submitted to the JCB; and identify possible sources of funding for those priority sectors and approved programmes. (…) Wherever possible, decision-making shall be by consensus. When consensus cannot be reached, the Chair shall have the final decision.*

The JCB is comprised of 10 members from the government and 10 from EAOs (both NCA signatories and non-signatories). [127] However, the JCB's role and responsibilities are contested, and regular meetings have not taken place. Moreover, body is hardly "joint", as the chairperson makes decisions in cases where consensus cannot not be reached.[128]

After four months of discussions, on 23 February 2017 the JCB approved budgets for peace process implementing bodies. $2.5 million was allocated for the NRPC, $6.5 million for the JMC and $4.7 million for the NCA Signatory EAOs Support Office.[129] These JCB decisions were reportedly dominated by the government, with Daw Aung San Suu Kyi personally scrutinizing roles and budgets, including support for the EAOs which sat across from her at the negotiating table.[130] Key EAOs and other stakeholders are concerned that the JCB represents an attempt by the government to control funding to the peace process, and worry that should Interim Arrangements receive more prominence, this could lead to their capture by the state. As one ethnic peace negotiator put it: "the government wants use the JCB to control the peace process and the EAOs."

Some donors and diplomats have been quite explicit in demanding that EAOs toe the government line. For example, in mid-2017 a senior KNU official told of being put under pressure by Western embassies to merge the KED education system with that of the government.

… and the JPF

A number of EAO interviewees suggested that the Joint Peace Fund should be more *joint* in nature. When originally conceived, the idea was explained as creating a fund to be jointly owned by government and EAOs. In practice however, the

127 Decision taken at JCB meeting on February 23 2017 (information provided by one of those present).

128 Joint Coordinating Body for Peace Process Funding - Duties and Responsibilities, 6.b: "In JCB meetings, parties shall negotiate thoroughly and strive to reach consensus. If, despite striving for consensus, it has not been possible to reach a decision, the decision of the Chairperson shall be final."

129 Nyein Nyein, "Joint Coordinating Body Approves Peace Process Budget Proposals," The Irrawaddy (Feb 24 2017). Accessed May 15 2018. https://www.irrawaddy.com/news/burma/joint-coordinating-body-approves-peace-process-budget-proposals.html.

130 Ibid

JPF has been dominated by donors, who are perceived as supporting the government side in the peace process (at least by default, if not by design).

3.10 GENDER ISSUES

In the post-NCA landscape, in which peace-building between the government and EAOs has stalled, the need remains for Interim Arrangement at the sub-national level which reflect the women's concerns and realities in Myanmar's ethnic areas. Chapter Six (Article 23) of the NCA indicates several areas of governance that should function under Interim Arrangement, including "projects regarding the health, education and socioeconomic development of civilians." The gender dimension of such arrangements must be made clear, and considered an important issue to all parties involved in the peace process. To ensure that women's experiences and needs are considered during the interim period, the government and EAOs should integrate specific actions on gender equality in the implementation of the NCA.

Quotas are on area where commitment and action is needed. Women's inclusion rates at all levels of politics and governance, including in southeast Myanmar, remain woefully low. The inclusion of women is minimal in government Township administration, in the General Administration Department and in leadership at the Village Tract/Ward level.[131] Also, EAO decision-making bodies and local administrations show low levels of women's inclusion. For example, the NMSP has only one woman among 32 Central Committee members, and there are no women Central Executive Committee members. In the KNU, there is only one female representative among the 11 Executive Committee members, and only three women in the 55 strong Central Standing Committee. The RCSS and other EAOs have similarly low levels of women's inclusion.

Article 23 of the NCA states the need to include a reasonable number of women in the political dialogue process, so far the number of women participating - while it has increased from 8% to 22% - has not reached 30%. This is the international standard established in treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action. Often referred to as the "international bill of rights for women", the CEDAW is a comprehensive and binding international human rights treaty. Countries that ratify CEDAW (including Myanmar) agree to take concrete steps to create or modify legislation and policies to improve the status of women, and tackle underlying social and political inequalities that perpetuate unbalanced gender power relations.[132] All signatories to CEDAW agree to institute temporary special measures, including quotas, to increase women's participation in public life.[133] Despite this, among the UPDJC's five thematic working committees (Politics, Economics, Security, Social, and Land and Environment), only the social sector has reached 33%of women's participation - perpetuating the stereotype regarding women as only having skills for social issues.[134]

Women are differently affected by conflict than men, as gender-based violence (GBV) impacts women's lives in ways that are particularly detrimental to their reproductive and psychological health. Within the NCA, issues of protecting women from GBV are seldom mentioned, and there is no adequate dispute mechanism for bringing perpetrators of GBV to account. Health systems should also support the special needs

131 Paul Minoletti, "Gender (in)Equality in the Governance of Myanmar", The Asia Foundation, (May 2016). Accessed May 22 2018. https://asiafoundation.org/wp-content/uploads/2016/09/Gender-in-Equality-in-the-governance-of-myanmar_Policy-Brief_ENG.pdf; and Paul Minoletti, "Women's Participation in the Subnational Governance of Myanmar", The Asia Foundation, (June 2014). Accessed May 22 2018

132 CEDAW focuses on three main areas: civil rights and the legal status of women, reproductive rights, and cultural factors influencing gender relations. A summary of Myanmar's (qualified) CEDAW accession and ratification can be found at: http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights.

133 For full text see: www.refworld.org/docid/52dcfeb84.html.

134 Alliance for Gender Inclusion in the Peace Process, "Women, Peace and Security Policy-Making in Myanmar: Context and Recommendations" (Yangon 2015).

of women in conflict situations, providing quality reproductive healthcare and support services for women those who will need special assistance due to the effects of GBV.

During the interim period, peace actors and those supporting them should emphasize aspects of the women peace and security policy agenda. Another international mechanism for achieving this is United Nations Security Council (UNSC) Resolution 1325, which acknowledges the disproportionate impact of armed conflict on women and girls, and the connection between gender equality and women's participation in peace and security activities. As the founding resolution of the Women, Peace and Security framework, UNSC Resolution 1325 was the result of decades of civil society advocacy and activism, based on the conviction that peace is only sustainable if women are fully included, and that peace is linked with equality between women and men.[135] Donors supporting Interim Arrangements should develop and enforce strong policies supporting gender equality, at the project design and implementation phases, and should implement Monitoring and Evaluation strategies geared toward measuring gender equality impacts and results outcomes.

135 Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), "UNSC Resolution 1325".

4 Chapter 4: Recommendations

Successful Interim Arrangements would help to meet the widespread needs of conflict-affected communities in an effective and conflict-sensitive manner, and provide governance measures necessary for achieving development goals.[136] Implementation of Interim Arrangements would also address ethnic stakeholders' concerns that the peace process serves to undermine EAOs' authority. Successful Interim Arrangements could help to build federalism in Myanmar "from the bottom up".

Interim Arrangements are about more than the Nationwide Ceasefire Agreement. Nevertheless, supporting Interim Arrangements is central to implementation of the NCA (particularly Article 25), and would complement the work of the Joint Monitoring Committee. Interim Arrangements also include issues not covered by the NCA, and are relevant in areas where EAOs have not signed the NCA. Furthermore, successful implementation of IAs could encourage other EAOs to sign the NCA.

Together with the following Recommendations, we suggest using the MPSI checklist: "Considerations when Planning and Implementing Projects in Conflict Affected Areas".[137]

4.1 RECOMMENDATIONS TO DONORS

- Recognize that successful Interim Arrangements, including support to relevant EAOs' governance and administrative functions, will be crucial to achieving Myanmar's development targets, to reaching the most vulnerable communities, and to building the foundations for legitimate and functioning governance institutions within a future federal union.
- Donors and private sector investors should plan investments and interventions in recognition and support of principles established through bilateral ceasefire agreements and the NCA. Development and governance support activities (not just peace-focused assistance) must be provided in ways that do not violate Interim Arrangements, which should be viewed a framework for working in ceasefire areas. These principles can also be used as a guideline where ceasefire agreements are not in place, but where sensitivities around development activities are similar.
- Support the strengthening and reform of EAOs' governance and administrative functions, so that these can be delivered in a responsible and transparent manner, and include such activities in sectorial projects where these are implemented in ceasefire areas.
- Recognize that many stakeholders have concerns about the peace process, and are worried that Interim Arrangements may serve as vehicles for the penetration of centralized government authority into previously autonomous areas, and/or that government may seek to control funding for conflict-affected areas.
- Be sensitive to the reality that ceasefire areas are often still conflict zones, and that normal aid practices should be adapted to avoid creating tensions. Infrastructure and other large-scale projects should be put on hold during the interim period, unless they are deemed to provide crucial local benefits, based on credible consultations with key stakeholders, including relevant communities, CSOs and EAOs. When developing projects in conflict-affected areas, engage in the early design stages with local stakeholders.
- Recognize that EAOs and other ethnic stakeholders may sometimes prefer to keep governance/administration and service delivery activities "below the radar" of scrutiny.
- Recognize the political legitimacy of key EAOs, as partners with the government in the peace process. Undertake conflict-sensitive assessments in order to understand

136 Supporting IAs would contribute towards the 2016 World Humanitarian Summit's call for bridging of humanitarian, development and peace building activities. See: https://www.agendaforhumanity.org/summit.

137 Myanmar Peace Support Initiative, "Lessons Learned from MPSI's work supporting the peace process in Myanmar: March 2012 to March 2014," Accessed May 10 2018. https://reliefweb.int/sites/reliefweb.int/files/resources/Report_Lessons-learned-supporting-the-peace-process_ MPSI_ Mar2014.pdf.

where and how best to support and strengthen EAOs' capacities as responsible governance actors and accountable duty-bearers. Recognition of EAO's political legitimacy may include signing MoUs and other partnership arrangements. Engage in dialogue with government, in order to achieve acceptance of these outcomes.

› Where appropriate, support increased collaboration between government and local (EAO and CSO) service delivery systems. Learn from coordination and convergence work in the health and education sectors. On request, support government and EAOs to develop terms of reference and capacities in relation to the proposed Joint Interim Arrangements Committee.

› Recognize that there is no "one size fits all" approach to Interim Arrangements. Seek to identify and support good practice (Appreciative Inquiry approach), examples of which are identified in this report.

› Support the Joint (government-EAO) Interim Arrangements Committee, and sub-national Interim Arrangments bodies, as and when these are convened.

› Monitor and advocate for women's participation in the implementation of Interim Arrangements, according to agreements in the NCA and subsequent Union Peace Conferences.

4.2 RECOMMENDATIONS TO GOVERNMENT, AND TATMADAW

› Recognize that Interim Arrangements are a key commitment of the NCA. Implementation of Interim Arrangements will be crucial to maintaining and building confidence in the peace process, and achieving the country's development goals, especially in remote and conflict-affected areas.

› Strengthen capacities at the National Reconciliation and Peace Centre (NRPC). The NRPC should inform State and Region governments and line departments regarding the NCA, and instruct them to consult on relevant issues with signatory EAOs, and also CSOs and conflict-affected communities. The Tatmadaw should issue similar instructions to field commanders, and the General Administration Department should ensure that its personnel likewise understand the NCA and its implications for Interim Arrangements. Government staff should be instructed and educated about the text and meaning of the NCA (and bilateral ceasefire agreements), and how implementation or non-implementation of Interim Arrangements affects the prospects for peace and equitable development in Myanmar.

› Issue directives to relevant State and Regional governments (and at Union level) to recognize land-ownership and community forestry documentation provided by NCA-signatory EAOs, following negotiations with key stakeholders. Explore and negotiate recognition of the existing administrative structures of EAOs including: land, forest, natural resources, agriculture, health care, education, judiciary, customary land ownership systems. Recognition of these administrative systems would help build trust and indicate political will on the part of the Tatmadaw and government.

› Ensure that proposed legislation and new policies at the Union-level are discussed with relevant EAOs and other peace process stakeholders. Legislative reforms should take account of the NCA (in particular Interim Arrangements), and promote coordination and cooperation between the government and EAOs during the interim period. The government and Myanmar Army should demonstrate political leadership in translating high-level Union Peace Conference agreements into the mainstream legislative process.

› Develop an agenda for what the government and EAOs could achieve through a Joint Interim Arrangements Committee. This body could agree principles for Interim Arrangements, with specifics worked out on a state-by-state, group-by-group basis. The process of establishing a Joint IAC should not delay the implementation of Interim Arrangements on the ground.

› Consider establishing multi-stakeholder State and Region-level committees (including government, EAO, CSO, community representatives and private sector actors), to coordinate decisions around aid and development projects and private sector investments. Joint sub-national bodies could support the coordination of aid, and assessment of needs and priorities. Build on successful local arrangements (e.g. in the health sector), which are already delivering positive outcomes for conflict-affected communities. However, these committees should not be viewed as an alternative to increased transparency and legal reforms reforms. Relate sub-national bodies as appropriate to the proposed Joint Interim Arrangements Committee. Joint/sub-national Interim Arrangements bodies could serve as steering committees for pilot projects and other peace-building activities in ceasefire areas.

› Implementation of Interim Arrangements should not be dependent on demarcation of military territory. Doing so could harm provision of services to civilians and undermine the achievement of development goals.

4.3 RECOMMENDATIONS TO ETHNIC ARMED ORGANIZATIONS:

› Recognize that, in order to retain credibility as governance actors and the support of conflict-affected communities, it is essential that EAOs continue to strengthen and reform their governance and administrative systems. This is particularly important in relation to regulating business activities, taxation and natural resource management.

› Develop and articulate visions for the immediate and long-term futures of EAO governance institutions, as a basis for serving communities and "building federalism from the bottom up". While constitutional change remains a key objective, progress towards federalism can be made through Interim Arrangements.

› Develop Terms of Reference for the role and mandate of a Joint Interim Arrangements Committee, and urge the government to convene this body. Decide which issues and sectors should come under the remit of a Joint Interim Arrangements Committee, and which are best discussed between individual EAOs and the government on a bilateral basis. The Joint Interim Arrangements Committee could focus on agreeing general principles, with details to be worked out depending on local contexts.

› Relate the Joint Interim Arrangements Committee to proposed sub-national committees, to discuss aid and development projects and private sector investments.

› Clarify and communicate EAOs' expectations and arrangements for engaging with donors and other aid actors: which issues should be addressed to Liaison Offices, to EAO line departments, and/or to EAO headquarters.

4.4. RECOMMENDATIONS TO PRIVATE SECTOR

› Recognize that ceasefire areas in southeast Myanmar are not post-conflict areas, and that it is extremely difficult to operate in a conflict-sensitive way, mitigating business risk, reducing negative impacts on the environment and maximizing benefits.

› Recognize that EAOs are de-facto economic governance actors in large parts of southeast Myanmar, and that businesses will have to register with their respective administrations/departments in order to receive permission to operate. Therefore, engage widely with EAOs at both local and headquarter levels.

› Avoid implementing large-scale infrastructure and natural resource extraction projects in conflict-affected areas during the interim period, given the fragile ceasefire situation, lack of rule of law and ongoing human rights challenges, and limited trust on the part of key stakeholders.

› Consult widely with local communities under the principles of Free Prior Informed Consent (FPIC), and apply Finance Corporation (IFC) Performance Standards. Apply the

principles of conflict-sensitive business practice (CSBP) and carry out rigorous human rights due diligence (HRDD). Ensure that all business activities meet or exceed the relevant provisions of Myanmar law and regulation, as well as relevant EAO policies.

4.5 MYANMAR INTERIM ARRANGEMENTS RESEARCH PROJECT - PHASE 2

The MIARP Terms of Reference with the JPF include developing a second, in-depth phase two of the research. The MIARP team proposes that phase two project explore Interim Arrangements including in contexts beyond the NCA and southeast Myanmar, as well as looking in greater detail at key issues, and producing concrete and policy-relevant learning through the implementation of pilot projects. Broadening and deepening of applied research on Interim Arrangements would be undertaken in partnership with key stakeholders in the peace process.

Annexes

I) TP VILLAGE, PALAW TOWNSHIP

TP Village and surrounding hamlets were relatively stable until 1997, when a huge Myanmar Army offensive forced them to flee into the jungle. Very few people went to Thailand; most spent the next 15 years in small groups "in hiding" up in the forested hills. Conditions were very tough, with little if any outside support beyond the occasional rice distributions by the Committee for Internally Displaced Karen People (CIDKP, the KNU's relief and development wing), plus what people were given by or could borrow from fellow villages, or friends and family in the lowlands, and very rarely medical assistance. On a number of occasions, I have asked people from this area whether they lost family members or close friends during the fighting years. On average, about one in three people had a family member or close friend killed by the Myanmar Army between 1997-2012. Understandably therefore, trust in the ceasefire remains limited, with villagers afraid of the Myanmar Army, and suspicious of the government. As one villager explained: *"I was arrested by the Myanmar Army for no reason, and tortured repeatedly. Therefore, I'm still frightened of them"*. Another villager said: *"I am willing to forgive and forget, in order to get peace - but if such violations happen again it would not be acceptable"*.

By 2014, large numbers of people were moving back down out of the hills to resettle around TP Village - although others remained back in the hills, unwilling to trust the peace process. Those who returned often did so in order to reclaim their lands. During the period of armed conflict this had been a "front-line" area, which in a way protected the land. However, villagers were concerned that after the ceasefire, well-connected private companies and others would come in and take their lands. Such concerns were exacerbated by the fact that villagers had no government-issued land documents (although some had KNU-issued documents) - a situation which persists today. Therefore, they wanted to return to their old settlements, while they still could.

Illustrating the degree of distrust of government, shortly after people started returning to TP Village "local government officials" donated 20 bags of rice to the villagers - which they fed to the pigs, fearing it might be poisoned. Nevertheless, over the course of two phases, the pilot project supported several hundred people to return to TP Village - providing basic food, WATSAN, community mobilization and information activities, and supporting two teachers at the school which villages built soon after coming back.

TP Village is situated at the lower foothills leading up into the more heavily forested KNU-patrolled hills. When we first visited, this involved a one and a half hour (increasingly bumpy) drive east from Palaw followed by a half-hour walk. Five years later, the whole drive took less than an hour. Although the road deteriorated further as we drove up into more rural areas, it was much better than before.

In the past, there was a fair amount of timber coming out of the hills, mostly through local arrangements negotiated with field-level KNU personnel. Reportedly, there has been much less logging in the last two years. The road took us through government controlled villages, into the mixed administration "buffer zone", and thence into KNU-controlled/mixed areas. The villagers were all Karen (mostly Sgaw dialect speakers), and look like many in rural southeast Myanmar, with standard-issue government school buildings etc. There was an air of relative prosperity with a lot of betel nut and other plantations. As we kept going, Karen friends noted that the government had put in new electricity poles in villages where previously there were none. This was still in government-controlled areas, and as we moved east into the foothills, schools and other communal buildings were more likely to be made out of wood and bamboo. Further still the road became more rutted and the electricity poles were still without cables. Apparently these villages were scheduled to receive electricity soon. After passing through more villages, with houses mostly made of bamboo and wooden poles, we arrived in TP Village, where the road stops (although there are motorbike tracks to the local KNU base). By late 2017, there were are around 800 people settled in TP Village, and in surrounding satellite settlements - reflecting the preference of many Karen people for living in small hamlets or clusters of houses (or in some cases individual households). I was told that others were still living

up in the remote hills in very small clusters. These are the people who still don't trust the peace process, and (reportedly) have fewer livelihood and other options in the lowlands, lacking formal education or Burmese language skills.

After two unannounced incursions in 2012-13, as a result of which many of the villagers fled temporarily, the Myanmar Army had not visited since. Several villagers expressed their fear of the Tatmadaw, and anxiety that the Myanmar Army may return. If the Tatmadaw is in the area, village leaders send messages to the local KNU. Very few villagers knew about the ceasefire or peace process, beyond the fact that the fighting had stopped. Only a couple of community leaders who had attended trainings had heard of the NCA. One told us that: *"we asked KNU leaders how long the ceasefire will last, but they couldn't answer.*" According to another villager: "the Interim period should last at least 10 years." Several people expressed the view that: *"it would be good if government and KNU could work together"*, but they did not think that this was likely.

There are no schools in the outlying villages, although some people in remote hamlets send their children to TP Village, where a new primary school has been constructed by the government. At the villagers' request, there are five government teachers - most being Karen, although the headmaster is a Burman from Dawei. He doesn't speak any Karen, but says he is quite happy and welcome in the village, and has no fear of the KNU. There are also two teachers from the local community supported by the KED (with very small stipends), who teach in Karen until 9am every day, when instruction switches to the Burmese language government syllabus. Villages mostly expressed satisfaction regarding this mixed system, saying they thought it was important that their children learn Burmese as well as Karen. After finishing primary school, some children go to a dormitory in Palaw town (government middle school), with a few who can afford it to going to Dawei or Myeik.

Regarding governance, a number of villages expressed opinions such as: *"we are Karen, and we prefer to be ruled by our KNU – but we have many needs and cannot complain if the government comes to help us*". There was a general feeling that the people do not trust the government and would much prefer to see KNU authority in the area, but also recognition that the Regional government has in fact done quite a lot for them: as well as the school and road, there has been distribution of solar panels and occasional visits from health workers. According to a village leader: *"the government is more powerful than the KNU - and that isn't fair. We would prefer to receive services through, or at least under the authority of, the KNU."* In relation to access to justice, as much as possible, disputes are resolved within the community, but: *"if it is a big crime, for example murder or rape, we will turn to the KNU - although there is not much of this sort of thing around here"*. According to another villager: *"before the ceasefire, we all suffered and struggled together, and we villagers helped the KNU, while they protected us - but now we only see them drive past in their new cars.*"

Female-headed households have a tough time: "but we all help each other out". However, when asked for examples, one middle-aged widow admitted that she mostly has to fend for herself: *"because everyone is poor, and everyone is busy"*.

Villagers practice slash-and-burn ("swidden", or shifting cultivation) rice farming, with no resources to cultivate irrigated rice, despite having plenty of flat land nearby and a large stream. The KNU has issued land documentation, but the government hasn't come to measure people's lands, or recognized KNU title deeds. Two years ago, a company from Malaysia came to look at a possible lead mine. Villagers are worried that the company may return. Some think that the KNU managed to persuade the company to go away, while others are worried that local KNU leaders may be planning something together with the company.

About half of the community voted in the 2015 elections, the others not having the ID cards necessary to do so. Reportedly, local government (Village Tract) officials occasionally visit, but TP people have not been involved in any local elections. When I asked if there had been any changes since 2016, under the NLD government, I was told: *"no - they have done nothing for us."* According to one woman: *"during the elections we got many visits from Burmans who made us promises, but*

now we don't see so them. Before, the USDP government did much more for us, such as building roads and bridges which are very useful."

On the way back to Dawei, we passed several Karen villages along the main car road, which had been forced to move there in the late 1990s, during the big Myanmar Army offensive. Afterwards, much of the land around these forced relocation villages was taken over by companies to make oil plantations. Whereas before people were living in forced relocation sites, in great fear and under terrible circumstances, these places today look like organic villages. Many people return back to their old farms up in the hills during the weekdays, coming back home at weekends. Most reportedly don't want to return permanently to their old villages, because here by the roadside they have better access to services, health and education etc.

II) MON NATIONAL SCHOOLS

The Sangha (Buddhist monks) has been involved in education and preserving Mon language, history and culture for centuries. Since the 1995 NMSP ceasefire, monks have expanded their Mon Summer Literacy and Buddhist Culture trainings, and last year nearly 50,000 school-age boys and girls attended these short courses in the period before and after Thingyan.

The NMSP's Mon National Education Committee (MNEC, established in 1972) has developed a mother-tongue-based education system, in which Mon language is used almost exclusively at the primary level, transitioning to Burmese *(Bama saga)* at middle school, and mostly Burmese in high school (with some continued lessons in Mon). The MNEC curriculum more-or-less follows that of the government, with additional units on Mon culture, history, and language (see Chapters 2.3 & 3.2). Graduates of the MNEC's Mon National Schools speak fluent Mon, but can also sit government matriculation exams in Burmese. Each of the three MNEC high schools has an "associate school" relationship with a local government high school, allowing students to switch between the two systems (facilitated by the two curricula being quite similar). These relationships are informal, and depend on the goodwill of local head-teachers and education officials.

The 1995 NMSP ceasefire allowed the Mon National School system to expand into government-controlled areas, and today some 70% of MNEC schools are in government-controlled or mixed areas. On occasion, Myanmar Army and government officials have closed down Mon National Schools, particularly during periods of political tension. Nevertheless, over the past few years the MNEC has developed a constructive relationship with the Mon State Education Officer particularly with relevant Township Education Officers. Mon teachers have been able to attend government teacher training activities, and occasionally to receive support (including supplies donated by UNICEF) through their government counterparts. Furthermore, the MNEC has participated in Mon State education coordination forums, and taken the lead in developing Mon language materials for use in government schools. In some cases, under the Ministry of Education's "Local Curriculum Content" policy, Mon language is being taught in government schools, although only as a taught subject, and not as a medium of instruction. More common is the teaching of Mon language after school hours, which - while a step in the right direction – reflects the continued marginalization of Mon children's mother tongue.

III) PEACE AND TRUST IN THE KAREN HILLS[138]

Keh Der and Qui La Village Tracts in the eastern Bago hills, are part of of the KNU's Lerdoh Township, Kler Lwee Htoo District (KNLA 3 Brigade) - an area designated by the government as Kyauk Kyi Township, Bago Region. I first visited this area in 2008 as part of a five-week trek. During the first part of this mission we travelled through the KNU-controlled hills staying in Karen villages. On the latter part of the trip, we were moving cautiously through jungle areas that had been cleared as part of the Myanmar Army's "Four Cuts" counter-insurgency campaign. I met with villagers who had fled from Ler Wah

138 Derived from: Ashley South, "Peace and Trust in the Karen Hills", The Irrawaddy, February 14 2017

village in the lowlands a couple of years previously, and were now living a precarious existence in hiding in the hills, frequently shifting location to avoid Myanmar Army's "hunt and kill" patrols. Previously, down in the Ler Wah valley, they had been irrigated rice farmers, with enough of a crop to live year-round, and often a small surplus. Now, as upland swidden farmers, they could not cultivate more than six months of rice per year. I later visited the site of Ler Wah village, which had been abandoned two years previously under threat of intense violence by the Myanmar Army, and was now overgrown and desolate.

In April 2012, following a ceasefire between the KNU and government (which was originally negotiated in January that year), I accompanied Charles Petrie to the Kyauk Kyi area, to help initiate the first Myanmar Peace Support Initiative (MPSI) pilot project, under the mandate of Norwegian support to the peace process (as requested by the new Myanmar government and the KNU). We travelled with Myanmar government and Army officials to the frontline at Mu They, before being handed over to the KNU and walking through landmined areas into the Keh Der Village Tract. We spent two days talking to villagers, confirming the findings of a needs assessment undertaken in the area by the CIDKP. On the basis of this assessment the first phase of the pilot project was launched. In material terms, this looked like a short-term humanitarian relief project. However, as part of the project, MPSI facilitated a series of consultations on the frontlines at Mu They, bringing together - for the first time - conflict-affected communities, Myanmar government and Army officials, KNU/KNLA personnel, and representatives of the international community. It was extraordinary to hear the Keh Village Tract leader - a diminutive but tough animist IDP, who spoke only Sgaw Karen - sitting just a few yards from the Bago Region Border Affairs and Security Minister, and telling him how much the villagers appreciated the peace process, that there were huge and positive changes underway, but also asking whether (an active service Myanmar Army Colonel) could: *"guarantee that you will not burn down our villages again?"* The Minister was nonplussed, and for a moment it seemed that this sensitive encounter would not turn out well. However, he calmed down and said that he recognized the lack of trust, and that: *"we will not burn down your villages again - but I know that you don't believe this, so we'll have to meet again like this, and learn to trust each other."*

A few weeks later, once the project was underway, MPSI facilitated a further consultation, with another encounter between these two gentlemen. At this point, the villagers had been walking down from Keh Der (the KNU controlled project area), across the "frontlines" at Mu They, to collect supplies at a nearby Myanmar Army garrison (which was as far as supply trucks could reach, during the rainy season). They were being questioned along the way by Tatmadaw soldiers - not aggressively, but in a way which frightened villagers who had only ever previously met Myanmar Army soldiers (or indeed any Burman person) in the context of violent encounters, usually with the Burmese military trying to kill the Karen villagers for being "KNU sympathizers". Therefore, these encounters were intimidating for the project beneficiaries, as the Village Tract Chairman explained. Again, the Minister was unhappy, blustering that the Myanmar Army was like a parent, and had the right to question its children. However, after a while he again calmed down, and issued instructions to the Light Infantry Division Operations Commander not to bother the villagers with further questions. Afterwards, the Minister embraced the Karen IDP Leader, and said that it was brave of him to raise such issues, and they would learn to trust each other. I have been privileged to witness just a few such inspiring moments - but it remains a challenge to "scale up" from such local instances of trust and peace-building to achieve something that can be generalized to other areas.

As part of an MPSI mission to this area in 2014, we headed out onto the lake that was created when the government built a dam on the Shwekyin River in 2008-09 - the year after my "cross-boarder" visit. The abandoned village I had visited at that time was now under the lake, with no hope of return for the villagers - none of whom had been consulted (or even informed), let alone compensated for the loss of their land when the dam was built.

Five years later

When I first visited Keh Der, the village was still abandoned. There was one small hut operating as a staging post on the journey up into the hills, to where the original Keh Der villagers had fled nearly 40 years ago. In the years since, they had been living in small settlements in KNU-controlled areas, moving frequently to avoid Myanmar Army patrols. On many occasions villagers were abused and killed by both the Tatmadaw (which made little distinction between civilians and insurgents), with many dozens of well-documented instances. Back in 2012, we were told in one of the first villages we visited that a good indicator of the peace process was that they could now store rice in the village, rather than having to hide it at different hidden locations in the jungle. I asked why villagers hadn't fled to the refugee camps in Thailand (easier to access in the 1980s than subsequently), and was told that they wanted to stay close to their ancestral lands. I was struck by the dignity of these villagers, and their strong (animist) commitment to locality.

In 2013, the year after the KNU ceasefire, displaced villagers started returning to Keh Der and other villages in the area, testing out the reality of the peace process. While some remained in hiding up in the hills, these pioneers were beginning to re-build their communities. Villagers in these two village tracts are Sgaw-speaking, and mostly animists, with just a scattering of Christians (and as far as I could tell, no Buddhists). No one I spoke to would admit to speaking Burmese. It was cold up there, very beautiful and still heavily forested, isolated from lowland Myanmar.

Villagers repeatedly stated their fear of the Tatmadaw. I was told several times that local people therefore value landmines, which they perceive as defending their fields and communities from Myanmar Army incursions. Many returning villagers had access to potential farmland, but were unable to cultivate this due to security concerns, including Myanmar Army occupation of farmland, and also because of lack of access to the tools and resources necessary to re-start cultivated rice farming after so many years in the hills.

One young man told me: *"If there is real peace, I can live in my own village on my own land, and can be safe and secure. However, we still fear the army, and worry about the future."* These fears were exacerbated by a Myanmar Army incursion into the area in 2013, despite a KNU request not to proceed, which resulted in a firefight leaving one Karen soldier dead and one injured.

A middle-aged woman told me: *"we dream of peace, and the ceasefire is a good start - but we still fear the Myanmar Army."* Many people worried that the ceasefire could break down, and/or that the peace process will facilitate improved access to their communities for the feared Tatmadaw. There- fore, most villagers strongly oppose upgrading of the nearby road from Kyauk Kyi to Mu They. This is a militarily strategic route, with a long history of Tatmadaw forced labor and associated human rights abuses, which allows Myanmar Army access into remote, conflict-affected areas. A village headman told me: *"Before, we were scared for our lives - and although things have improved, we are still scared of the Myanmar Army and worry that the road construction will allow them to occupy our farmlands. The ceasefire is an improvement, but we do not yet have sustainable peace."* The KNU has formally requested the Myanmar Army not to upgrade the road. For now, there is an agreement that the road will be improved only as far as Kah Pe village. (However, on several occasions in 2017 and 2018 the Myanmar Army used this road to push into neighboring KNU Papun District - 5 Brigade - causing villagers to flee, and killing a local community worker.)

As they do not speak Burmese or English, Karen villagers in the Bago Hills have little access to news and information sources. Most expressed little knowledge of the NCA. Only two among the many I asked knew the name of the President of Myanmar. Some were aware of elections in 2015, but none had participated, explaining that this was not their business, but something related to the distant and feared Myanmar government. The widespread perception seems to be that the elections took place in another country - government-con- trolled Myanmar - and were therefore of little relevance to Keh Der and Qui Lah villagers. Many people said they had heard of Daw Aung San Suu Kyi, but didn't know much beyond that "she is trying her best".

Several people expressed variations on a typical villager's comment: *"The KNU government and Myanmar government should clearly delineate positions, so that we know where we are safe - in KNU controlled areas."* In response to questions about legitimacy, villagers said things like: *"We are Karen people living under the KNU government. We do not live under the Myanmar government, and are not subject to them"*. In a fire-side discussion with village elders from Qui La, I was told quite unambiguously: *"We support the KNU. We want the Myanmar Army to withdraw and their government to leave us alone."*

Before the ceasefire, very few people visited government controlled areas. Such visits were dangerous and secret, accompanied by much risk and fear. Since the ceasefire, only a minority of villagers have ventured into government-controlled areas, to visit markets and/or relatives, but numbers are increasing and less fear is reported. In time, people in this area may learn to identify with and trust the central government. However, such confidence can be built only slowly, and will depend greatly on demilitarization (particularly reduced presence of the Myanmar Army).

IV) LIFE AND LIVELIHOODS ON THE TANINTHARYI RIVER[139]

The Tanintharyi River gives its name to the southernmost Region of Myanmar, through which it flows more-or-less north to south, before bending and flowing out to the sea at Myeik. This is the KNU's Mergui-Tavoy District (KNLA 4 Brigade: see Chapter 2.4).

The middle sections of the river were under KNU control until February 199,7 when a huge Tatmadaw offensive overran the area south of Myitta, down through the old district headquarters at Minthamee Htee (Htee Kee) and the big village on the river at Minthamee Hta (Htee Hta). Over the next few months, the Tatmadaw established bases further down the river in areas that had once been KNU strongholds. Most of the civilian population fled, either into hiding as Internally Displaced Persons (IDPs) in the dense jungle and steep hills to the west of the river, or into Thailand. Many ended up in the refugee camp at Tham Hinn, near Suan Pung in Ratchaburi Province; others settled as "externally displaced persons" in Thai Karen villages along the border.

After the KNU ceasefire of January 2012, some people started moving back to the river valley. For example, the village of HH was abandoned in 1997. A few months after the 2012 ceasefire, at the end of the rainy season, it was re-established as the main KNU administrative hub on the middle stretch of the river, the headquarters of the KNU's Ler Muh Lah Township, one of six making up the District. The following year the KNU built a clinic, a hospital, and a high school. This remains the only KNU high-school in the District, although there are nearly 200 "mixed" schools in Tanintharyi Region, with teachers provided by both the government and KNU.

The rehabilitation of HH and four other KNU administrative villages in Tanintharyi Region has been supported by Japan's Nippon Foundation, which has financed the building of 100 new houses for KNU family members in each of these locations. Other international organizations (INGOs, UN agencies and donors) have also started working in areas that were previously inaccessible due to the years of armed conflict. These include many areas of mixed administration. Knowingly or otherwise, their programs tend to support the extension of state authority into areas where the Myanmar government is still regarded by local Karen communities as alien and illegitimate. This can undermine trust in the peace process on the part of local stakeholders.

I returned to HH in April 2014, after my only previous visit in 1996. I was there again to celebrate Karen New Year on 29 December 2016. The journey downriver from the new KNU District headquarters at Ahmla (a little to the south of Htee Hta) took about nine hours in a long-tail boat, made from a dugout log with side planks and a long and noisy "scorpion

139 Derived from: Ashley South, "Christmas and Karen New Year on the Tanintharyi River", *The Irrawaddy,* January 11 2017. http://www.irrawaddy.com/opinion/guest-column/christmas-and-karen-new-year-on-the-tanintharyi-river.html.

tail" engine. We stopped overnight along the way at two Karen villages to celebrate Christmas (which occurs on different days in different villages among Karen Christian communities). At this time of year the river is still quite high, so we could motor through the shallows and rapids. When we made the journey back in April, we often had to get out of the boat to walk around these navigational hazards while the skillful boatmen picked their way through the rocks. Although much of this stretch of the river was logged in the 1990s, the forest is growing back. As we headed south the banks became more heavily wooded, with good forest cover in the hills and mountains extending up from the river to the east and west (with stretches of pristine forest remaining in the interior). We saw hornbills, different types of monkeys, a huge monitor lizard, many beautiful flashing blue and gold kingfishers, an elephant poking its head from the foliage to drink from the river, a wild chicken which flew across the river in front of our boat, many eagles and buzzards, and swallows darting down to the surface of the river to catch insects - and later in the trip two Asiatic black bears kept by villagers as pets.

My strongest impression was the incredible fortitude, great generosity and loving welcome of the villagers, who were returning to re-establish their old settlements after two decades in hiding in the jungle or living precariously on the edges of Thai society. We encountered very few people who had returned from the refugee camps in Thailand, but large numbers who had moved back down to the riverside villages from hiding sites deeper in the forest, and also many people who had spent most of the last 20 years as undocumented "illegal migrants" in the Thai-Karen border villages. We heard stories of suffering and fear from the former. One lady told us of her family's experience in 2002, when two of her brothers were murdered on separate occasions in the same week by Myanmar Army soldiers, and whose sister died later that month in childbirth, while on the run in the jungle. People returning from Thailand told us that they were fed up of living in fear and insecurity across the border, and wanted to return to their home villages and re-build their lives in the freedom of Kawthoolei (the Karen homeland). The struggle and effort involved in re-building their villages was huge. These are poor people, with very few material possessions and wearing old and often tattered clothes, living in mostly bamboo houses, doing swidden rice farming supplemented by food from the jungle and the river.

The Tanintharyi River is still magnificent along most of its length, as there is no industrial activity on its banks, and so far no hydropower projects have disturbed its flow. However, since the ceasefire, there have been increasing activities on the part of gold-miners. On my most recent visit, six large rigs the size of buses operated along the middle stretches of the river, and many dozens of smaller rafts. These cause disruption through stirring up sediment, and longer-term damage through changing the flow of the river - particularly the larger mining rigs, which have thrown up mile after mile of piled rocks and stones along the riverbanks, disrupting the river during the rainy season. In addition, the use of mercury presents a very serious threat to the health of living organisms including the returning human population. As one villager told me: *"if I could, I would pick up those gold-mining rigs and throw them over to the other side of the mountains, so we never have to see them again."*

Aware of these concerns, the District KNU limits gold mining to certain stretches of the river. The KNU also allows far less logging along the river and in the adjacent forests than in previous years. In 2016 private companies associated with individual KNU leaders agreed a Memorandum of Understanding with a Chinese company to develop an industrial zone at the old KNU headquarters of Htee Kee, with linked hydropower and road-building projects on and across the river. The latter aspect could have significant impacts on local environmental and social dynamics, but the MoU was negotiated with little transparency or input from the local community.

This project illustrates a dilemma faced by the KNU. In the context of the ceasefire and NCA, the government and Myanmar Army is restricting the KNU's ability to raise taxes from villagers, as it had in the long years of armed conflict. While, for the time being at least, the KNLA no longer has the same need to replenish stocks of ammunition, the KNU is faced with unprecedented organizational and personal costs, including expenses to support its role in the peace process. For the District KNU, gold mining and other such projects are essential sources of funding - although some KNU leaders, and many civil society

actors and community members, question whether this income counterbalances the social and environmental damage caused by such projects. The challenge for the KNU is to demonstrate that it can be an effective and credible government in areas under its control, by protecting the environment and regulating business activities. It is no easy task for the KNU to transform from an insurgent organization, with a skeletal administrative structure offering limited health and education services to conflict-affected communities, and re-imagine and reposition itself as a local government. It is yet to be seen whether the KNU will be able to maximize the advantages of its presence on the ground, during the period between the ceasefire and the negotiation of a comprehensive political settlement to end decades of conflict.

V) MWIN LWIN MOUNTAIN: CEMENT PROJECTS IN KAREN AND MON STATE

Karen and Mon State are home to numerous picturesque karst limestone mountains. One is Mwin Lwin in northern Thaton Township, in Mon State on the border with Karen State. The mountain has significant cultural and religious value, as well as being important to the livelihoods of local Karen communities. This is part of KNU's Thaton (Tha Oo) District (KNLA 1 Brigade), and is an area of mixed administration. The ceasefire has brought increased security, freedom of movement and development to communities - although the area remains heavily militarized. A new road connecting the southern and northern parts of the township was built after the ceasefire. In early 2015 the Yangon-based Phyu Min Tun Company started mineral testing at Mwin Lwin Mountain, after securing permission to establish a cement factory from the Department of Mines. A one-year feasibility study was planned to take place in April 2016, after the exploratory stage. The project is backed by the German multinational cement giant Heidelberg Cement.

In order to get public support from surrounding villagers, the company made promises of job-creation and social service delivery, including the construction of schools and health clinics. In addition, it was reported that the company paid money to local KNU officials and households (300,000 kyat per household), in order to win their support and signatures on an endorsement letter. The Department of Mines required the company to gain approval from both the KNU and local communities in order to proceed, and so the company promised the KNU District leadership monthly revenues once the project was completed.

In early 2016 public concerns about the project increased, due to fears regarding the negative social and environmental impacts, and reported also because of threats by company officials. A Min Lwin Area Environmental Conservation Committee was formed with the help of Karen CSOs, and opposition to the project gained momentum, with several negative news articles published in April 2016.[140]

While the company secured the support of the project from the KNU District leadership, the KNU Central Economic Committee (at headquarters) decided, shortly after the mineral prospecting license had expired, to indefinitely suspend drilling at the Min Lwin Mountain. The company has since engaged the KNU Central Economic Committee numerous times in order to re-start the project, without any success. The KNU claims that the company has failed to gain wider acceptance for the project, and has violated principles such as "Free Prior Informed Consent". In early 2018 the Min Lwin Area Environmental Conservation Committee urged the Mon State Government to finally cancel the project.[141]

The Min Lwin Mountain case highlights the complex political economy in conflict-affected areas of Myanmar, and the practices of private sector companies that sometimes operate with little regard to local communities' inclusion in decision-making and resource-sharing. It also illustrates the absence of Interim Arrangements regarding resource management, and attempts by the KNU to exercise good local governance. According to interviews with KNU leaders conducted in mid-2017, the Mon State Government and the KNU Thaton District have

140 For example: http://www.mizzima.com/news-domestic/min-lwin-mountain-cement-factory-harmful-claims-report

141 http://karennews.org/2018/02/locals-to-urge-union-govt-to-meet-their-demands-on-min-lwin-mountain-project/

never discussed this project together, despite it having a value of hundreds of millions of dollars.

VI) COMMUNITIES IN JEOPARDY: UNRESOLVED LAND TENURE CHALLENGES

In November 2017 the Kawthoolei Land Seminar was convened at the KNU headquarter in Lawkeelar (Lay Wah). The seminar was organized by the KNU Central Land Committee, the Karen Peace Support Network and the Karen Environmental and Social Action Network, and was attended by over 370 participants from 53 Karen Organizations, including CSOs, political parties and EAOs, as well as a few international organizations and resource persons. Though the Karen State NLD was invited, nobody from the party attended the meeting. The biggest ever event of its kind, the seminar promoted public awareness concerning land challenges across Karen areas, giving community representatives a space to share their experiences about land tenure issues during the peace process, build trust among stakeholders, strengthen the KNU land governance system and identify ways forward and solutions to address land problems across southeast Myanmar.

A joint statement was issued by the seminar organizers, outlining land tenure challenges during the interim period, and the government's reluctance to address these while encouraging investment with little regard to potential consequences for the environment or the local population. The statement pointed out that the 2012 Farmland Act and Vacant, Fallow and Wasteland Act, and the 2014 Special Economic Zone Investment Law, are threatening the livelihoods of the people through extraction of natural resources, planting of mono-crops on hundreds of thousands of acres of land, and massive building projects which expand the government's administrative power.[142]

The statement elicited a response from the Kayin State Border Affairs Minister, who issued a protest letter to the KNU Headquarters and the KNU Liaison Office in Hpa'an, saying that the statement was not acceptable because it had stained the government's dignity. Furthermore, he accused the KNU of breaching the NCA, which obliges signatories to: "*Avoid hostile propaganda, defamatory, untruthful or derogatory statements, both within and outside the country*."

In a response, P'doh Mahn Mahn of the KNU Central Land Committee invited the government to start a consultation and cooperation process with the KNU, in order to address pressing land issues. As of late 2018, there had not been any progress on this issue. Land cases continue to be referred to the JMC on an individual basis, without addressing deeper policy issues, thereby leaving communities exposed to land grabbing and vulnerable to displacement.[143]

VII) TOWNSHIP DEMOCRATIC LOCAL GOVERNANCE PROJECT, MON STATE[144]

The UNDP-implemented Township Democratic Local Governance Project aims to give local people a voice in the planning and budgeting of township public service delivery, through engaging with elected representatives, Ward and Village Tract administrations, Hluttaw members, civil society actors and EAO representatives. The three-year project is implemented in 5 townships in Bago Region and 10 townships in Mon State, with a budget of approximately USD 15 million.

In Mon State the project not only provides capacity development for government township administrations, but one work-stream also engages the KNU and the NMSP. The UNDP supports government Township Administrations to engage with and involve EAO administrations in mixed administration areas, in order to establish development plans, and coordinate on issues related to inclusiveness and public service

142 http://karennews.org/2017/11/karen-groups-voice-opposition-to-development-projects-that-plunder-ceasefire-areas/

143 http://english.panglong.org/2017/11/21/karen-land-ownership-and-land-use-complaint-statement-angered-the-military/

144 UNDP, "FAST FACTS, Township Democratic Local Governance Project" (December 2017).

delivery. It is also envisioned to support the KNU and NMSP to develop capacities on democratic local governance. In Mon State the project is funded by the Swiss Agency for Development and Cooperation (SDC), and implemented in partnership with Oxfam, which works to increase civic engagement and women's participation.

While it is too early to measure the success and impact of the project, important initial steps have been made to facilitate engagement between EAOs and the Mon State government. Both have welcomed the project, and in the case of the KNU and government, joint coordination and planning meetings at Township and District level have been successfully incremented. Time will tell if these efforts can be sustained, and lead to a new working relationship between the former conflict actors. However, the project is not implemented in a vacuum, and its success will depend on engagement between EAOs and the government/Tatmadaw on other issues (e.g. political dialogue, JMC). In addition, not only should government administrations be supported, but EAO governance functions must also be strengthened and reformed. An unbalanced approach could potentially cause harm, and increase conflict over governance issues in an already fragile environment.

The inclusion of EAOs in the project has been of utmost importance to SDC, in order to ensure conflict-sensitivity, and to build trust and confidence during the interim period. The agency's approach and recognition of the importance of Interim Arrangements has been informed by years of working in southeast Myanmar.

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