‘Neither war nor peace’: failed ceasefires and dispossession in Myanmar’s ethnic borderlands

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To cite this article: Tom Kramer (2021) ‘Neither war nor peace’: failed ceasefires and dispossession in Myanmar’s ethnic borderlands, The Journal of Peasant Studies, 48:3, 476-496, DOI: 10.1080/03066150.2020.1834386

To link to this article: https://doi.org/10.1080/03066150.2020.1834386

Published online: 09 Dec 2020.

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‘Neither war nor peace’: failed ceasefires and dispossession in Myanmar’s ethnic borderlands

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ABSTRACT
A reform process initiated in 2011 in Myanmar brought hope to end decades of civil war and ethnic conflict. But new ceasefires have not moved into real political dialogue, the ‘peace process’ has stalled, and fighting continues in parts of the country. Economic reforms have favoured foreign investment and local elites, and have had detrimental impacts on communities in ethnic borderlands. The new ceasefires facilitated this, and coupled with economic reforms brought loss of land and related natural resources, and strengthened the central government and the military’s political and economic control over ethnic borderlands. This article argues that this is a continuation of the ‘neither war nor peace’ policy of a previous round of ceasefires in the 1990s, but by different means. In the past this focused on coercion and military pressure, but now these military tactics have been complemented with the use of the new legal framework.

KEYWORDS
Myanmar; ethnic conflict; civil war; ceasefires; landgrabbing

Introduction

Myanmar has suffered from ethnic conflict and civil war since independence in 1948, and the national armed forces (known as the Tatmadaw) have played a dominant role in national politics since it staged a coup d’etat in 1962. In 2011, a reform process started that brought hope at home and abroad that finally a political solution could be found at the negotiation table to more than sixty years of armed conflict. Almost a decade later, newly agreed ceasefires have not moved into real political dialogue, the so-called ‘peace process’ has all but stalled, and fighting continues in many parts of the country, causing new displacement of the civilian population.

Meanwhile, economic reforms initiated in the same period favouring foreign investment and local elites have had detrimental impacts on rural communities in ethnic borderlands.1 The new ceasefires have played a large role in facilitating these negative developments.

1 ‘Borderlands’ can be a subjective term that can be interpreted as implying a marginal or secondary status. They are not borderlands to the peoples who live there: they are very much their homes. Territories often considered to be ‘borderlands’ in Myanmar, which are largely inhabited by non-Bamar peoples, constitute up to half the total land area and generally approximate to the Frontier Areas under the diarchic system of British colonial government. Nevertheless, the term frequently comes up in discussions of Myanmar in different contexts today. First, the country is located on a strategic crossroads between south, southeast and east Asia, and between the Buddhist and Islamic worlds. Many nationalities and cultures transcend both sides of these boundaries. Second, as such academics as Edmund Leach, Willem van Schendel and James Scott have observed, many peoples live in this often highland world that have not
consequences. Rather than bringing peace and inclusive development that respects and promotes social justice and local customs, the ceasefires and economic reforms have brought loss of land and related natural resources and the destruction of local cultures. Legal reforms have further paved the way for these negative developments.

This article analyses why the new ceasefires have not transformed into a lasting political settlement, by comparing them with previous ceasefire attempts and by placing them into the larger conflict dynamics in Myanmar. It will explain the impact of these failed ceasefires on the right to land for rural communities in the ethnic borderlands. It will show how the ceasefires and the economic reforms strengthened the central government and Tatmadaw’s military, political and economic control over ethnic borderlands. It is argued that what is being experienced currently is a continuation of the ‘neither war nor peace’ policy of the first round of ceasefires in the 1990s (Kramer 2009a), but by different means. While in the previous round of ceasefires this involved mostly coercion and military pressure, in the present times these military tactics have been complemented with the use of the country’s new legal framework.

Ethnic conflict and military rule

Myanmar is an ethnically diverse country. The majority Bamar (Burman) population mainly lives in the central plains and river valleys. These areas are surrounded by uplands inhabited by a wide range of other ethnic groups, each with their distinctive culture, language, religion and customs. Upland agricultural systems include customary systems for managing land, water and natural resources. Myanmar is rich in natural resources, such as teak, gold, silver, ruby and jade, and most of these are found in the ethnic borderlands. Ethnic nationality groups make up some 30–40 per cent of the estimated 52 million population, and the ethnic states occupy some 60 per cent of the land area (TNI & BCN 2013, 1).

Following independence from Great Britain in 1948, several ethnic nationality organisations took up arms in self-defence and to press for equal rights and more autonomy. The Communist Party of Burma (CPB) also went underground to launch an armed struggle. Following the 1962 coup, the Tatmadaw abolished parliament and established a one-party state led by the Burma Socialist Programme Party (BSPP). Since that time, the military has played a dominant role in national politics. Armed conflict further escalated after that.

In the following decades, the dominant role of the Tatmadaw in the political arena led to protest movements to gain respect for human rights and the restoration of democracy, culminating in a nationwide movement in 1988. It was brutally crushed, with many...
civilians shot dead by the army and many others arrested and sentenced to long jail terms. Thousands of democracy activists fled to the borderlands under the control of different ethnic armed organisations (EAOs). The protests were also stimulated by the failed economic policies of the so-called ‘Burmese Way to Socialism’ (Turnell 2009).

The new military government, named the State Law and Order Restoration Council (SLORC), abolished the BSPP and introduced a new economic policy. This included liberalising the export of some agricultural products and the tentative start of opening up the country to foreign investment. To back this up, in February 1990 the military government set up the Union Myanmar Economic Holdings (UMEH), the largest business conglomerate in the country, through which most foreign direct investment has been carried out.\(^4\) In 1997, the military government also created the Myanmar Economic Corporation (MEC) to ‘contribute towards the development of the State economy, to decrease defence expenditure by fulfilling the needs of the Tatmadaw, to carry out the welfare of the Tatmadaw service personnel and to implement other necessary matters for the Tatmadaw’.\(^5\) According to Maung Aung Myoe, the aim of the MEC is to build an industrial and technological base for the Tatmadaw (Maung Aung Myoe 2009, 182). The Tatmadaw also cultivated the emergence of a number of local cronies, who used their military connections to obtain licences and permits which allow them to dominate the national economy.

This system fulfilled a number of purposes for the Tatmadaw. It brought much needed income for the military government as well as the army itself. By slowly opening up the economy to foreign investment, it created a strategic position for army-owned companies and aligned businessmen to monopolise benefits from foreign investment. The cash-strapped government asked cronies to carry out projects that were paid for by issuing licences and permits rather than making payments. In the long run, this benefitted both sides. The system also provided extra and secret income directly to the Tatmadaw, which it could use without interference or oversight from the government, and it provided income to ‘active duty’ as well as retired army personnel.

In effect, following the collapse of the BSPP, Myanmar transformed from a socialist command economy to a centrally led capitalist economy, with the military government, the armed forces and a newly emerging group of its favoured businessmen controlling the economy and benefiting the most. According to Ian Brown, ‘[T]he new government saw economic reform primarily as a means to strengthen its political control … [A]s the new business opportunities being created in a more market oriented economy were to be commonly channelled towards the military’s own commercial interests, economic growth would directly enhance the wealth and power of the regime itself’ (Brown 2013, 178). Lee Jones has aptly described this transformation process after 1988 as ‘the constrained transition from state socialism to state-mediated capitalism’ (Jones 2014, 148). Myanmar is a poor country and 70 per cent of the total population is rural (UNFPA 2020). As a result of these new economic policies, the gap between rich and poor grew significantly after 1988 (Eleven Media 2013).

The new military government also introduced some political reforms. In May 1990 the SLORC organised general elections in which the opposition National League for

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\(^4\)The UMEH is owned by the Tatmadaw, with its shares owned by the Directorate of Defence Procurement and by regimental and veteran defence associations. See Maung Aung Myoe (2009, 176–184).

\(^5\)SLORC Notification No.4/97 to form the Myanmar Economic Corporation (MEC), quoted in: Maung Aung Myoe (2009, 182).
Democracy (NLD) won a landslide victory. The army subsequently refused to hand over power and instead started a National Convention to draft a new constitution, which was only finalised in 2008. It provided for a continuation of the dominant role of the army in national politics.\(^6\)

In terms of ethnic politics, the Tatmadaw has promoted a Bamar Buddhist nationalist agenda and has tried to build a unitary state along these lines. It has propagated the idea that what is currently known as Myanmar has been an inseparable geographical unit since ancient times, where different ethnic nationalities have lived together in peace for generations. The Tatmadaw blames ethnic conflict on ‘divide and rule’ tactics of the British Burma colonial administration, and argues that Tatmadaw supremacy is needed to keep the country together and to ‘save the union’.\(^7\)

Ethnic nationality representatives on the other hand reject this notion, and claim successive Bamar kingdoms never had real control over the ethnic borderlands, and that ethnic nationalities only joined the newly formed Union of Burma at independence in 1948 as part of the famous Panglong Agreement, which was signed between Burmese independence leader Gen. Aung San and Kachin, Chin and Shan representatives.\(^8\)

The main grievances of ethnic nationality groups in Myanmar are lack of influence over the political decision-making processes; the absence of basic services and economic and social investment while central governments extracted valuable natural resources from their areas; and what they see as the military government’s Bamarnisation policy, which translates into repression of their cultural rights and traditional practices and religious freedoms. Ethnic nationalities in Myanmar feel marginalised and discriminated against, and the armed resistance movements that emerged during the civil wars that broke out at independence in 1948 are their response to defend their ways of life. They are promoting the formation of a federal union based upon democratic principles. They also want recognition, protection and promotion by the government of their cultures, languages, traditions, and ways of living as well as just and fair natural resource sharing.\(^9\)

Most of the fighting has taken place in the ethnic borderlands, with the population there suffering most. The army practiced its infamous ‘Four Cuts Campaign’, directly targeting the civilian population in conflict-affected territories across the country. This strategy aims at cutting the four links between armed groups and the civilian population (information, food, funds and recruits), and consists of giving relocation orders to villages in contested conflict zones to areas designated by the Tatmadaw, usually near towns or Tatmadaw camps. These areas are then declared ‘free fire zones’, to indicate that anyone

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\(^{6}\)Under the 2008 Constitution, the Tatmadaw automatically receives 25 per cent of the seats of all parliamentary assemblies and appoints the ministers of Defence, Home Affairs and Border Area Affairs. The armed forces also select one of the three Presidential candidates.

\(^{7}\)See for instance the speech by Commander-in-Chief of Defence Services Senior General Min Aung Hlaing at the third meeting of the Union Peace Conference-21st Century Panglong, 11 July 2018: ‘A thorough look at the root cause of the ongoing internal armed conflicts of the country clearly shows that they were not ignited by the Tatmadaw but by the divide-and-rule policy adopted by the British colonialists during the colonial period and the political, ideological, racial and religious differences. The Tatmadaw has no big or small problems with any of the armed groups that appeared throughout the successive periods. Discontents and demands have surfaced only between the governments of the respective periods and the armed groups. All the brethren of our country have lived in togetherness in the same territory since time immemorial’ (Senior General Min Aung Hlaing 2018).

\(^{8}\)The Panglong Agreement was signed in February 1947. For more details see: TNI 2017.

\(^{9}\)This section is based on interviews with a large number of different ethnic nationality representatives from civil society organisations, political parties and armed groups during 1993-2020.
seen there after the deadline would be considered an ‘insurgent’ and shot on sight (Smith 1999, 258–262). Accompanied by gross human rights violations, these campaigns have over the decades displaced hundreds of thousands of ethnic nationality civilians (Naw 2017). Successive military governments have focused on controlling the population through a system based on fear and oppression, rather than providing them with basic services and policies that would enable positive developments. In consequence, many of the ethnic borderlands have never been under the real control of central governments, and government services in these isolated and war-torn areas are limited. Instead, such areas have been governed by customary systems, many of which are still functioning today, despite internal and external threats to their survival. Several of the larger EAOs have policies in place that explicitly recognise these systems. They have also set up administrative departments and are providing basic services to communities in their territories, including health and education.

The first round of ceasefires (1989–2010)

Apart from economic reforms, the new SLORC government made several other policy changes, and revised its strategy towards ethnic armed organisations in the country. In 1989, the CPB collapsed after war weary ethnic Kokang and Wa troops revolted against its predominantly ethnic Bamar leadership and set up new groups along ethnic lines (Linter 1990). Sensing the opportunity to neutralise its largest military opponent, the Military Intelligence (MI) sent representatives to discuss possible truces. The Kokang group, now called the Myanmar National Democratic Alliance Army (MNDAA), was the first to make a ceasefire. The newly formed United Wa State Army (UWSA) and other breakaway groups followed suit and agreed to similar terms (Kramer 2007). While these first ceasefires seemed to have almost come about by chance, the SLORC later made it a cornerstone of its governmental policies.

The fall-out from the Tatmadaw’s new strategy was profound. Some of the other EAOs wanted to use the momentum and sign a truce first, hoping that this would in the long run lead to political change. In the meantime, they trusted that they could resettle internally displaced persons (IDPs) and bring development to communities devastated by war. In northeast Myanmar, the Kachin Independence Organisation (KIO) tried to convince its allies to negotiate a joint ceasefire agreement. When they refused, the KIO signed a separate truce in February 1994. At the same time, the Tatmadaw launched military offensives against other EAOs, including the Karen National Union (KNU) and the Karenni National Progressive Party (KNPP) based along the Thai border. These groups wanted to have political dialogue first before entering into a ceasefire agreement.

During the following decade, the first round of ceasefires caused a major transformation of Myanmar’s ethnic borderlands. In the beginning, they had some immediately positive impacts on the lives of rural communities in the affected areas. The end of the fighting reduced the number of conflict-related deaths and killings. The truces also curtailed the most serious human rights abuses against the civilian population. The end of open conflict facilitated the resettlement of refugees and IDPs, and travel and communications eased following the conclusion of the truces. Finally, space for development and reconstruction of war-torn areas increased, and the development of local civil society organisations (CSOs) and space for civil society increased (Kramer 2011).
However, the ceasefires also had some serious negative consequences. First and foremost, there was no follow-up process for political transformation after the truces were agreed upon. Despite attempts by several actors to find ways forward, the ceasefires essentially did not move beyond military truces. Ceasefire groups also complained about the increasing number of Tatmadaw battalions in their regions, raising suspicions about the real intentions of the armed forces. This escalation in military presence also increased human rights abuses by the Tatmadaw, especially confiscation of land, forced labour and extortion of civilians. Furthermore, the agreements were only verbal, and did not include any formal mechanisms to monitor violations. Only the KIO had a written agreement, but it was not made public.¹⁰

‘Neither war nor peace economy’ and transformation of ethnic borderlands

The new economic policy of the SLORC promoted Tatmadaw-controlled companies, local cronies and foreign enterprises to engage in business in the ceasefire regions. The ceasefires gave the Tatmadaw greater political and economic access to and control of border regions. The government created the Ministry of Progress of Border Areas, National Races and Development Affairs ostensibly to develop the ceasefire regions.¹¹ But critics say that most support focused on building roads and bridges, which, they argued, had military purposes since they provided greater access to previously isolated mountain regions.

As part of its strategy to politically neutralise EAOs, the Tatmadaw stimulated ceasefire groups to focus on businesses, and provided them with concessions in their own states as well as in other areas. The Shan State-based UWSA and Pa-O National Organisations (PNO), for instance, were given concessions in the Hpakant jade mine area in Kachin State. With the encouragement of the military government, many of the ceasefire groups set up companies, and started to invest in the ‘legal’ economy. Over time, some of these groups – or individuals within them – became more focused on business than on their prior political projects. This, in turn, led to resentment from local communities, who felt that leaders of these groups had sold out their political principles (Kramer, Russell, and Smith 2018).

From the mid-1990s, the negative repercussions from this business focus continued to mount. The end of the fighting, and the lack of political transformation, provided space for various unsustainable and unregulated business activities in ceasefire regions. The ‘neither war nor peace economy’ that developed in the wake of the truces caused dramatic transformations (Kramer 2009a). Former war areas were now open for large ‘development’ projects promoted by the new economic policies of the military government. These include road construction and upgrading projects in Kachin State and the Wa region, hydropower dams in Shan and Kachin States, and oil and gas pipelines through Shan and Mon States (Buchanan, Kramer, and Woods 2013).

The 1994 ceasefire with the KIO, for instance, was followed by largescale natural resource extraction, especially mining and logging, plans for mega-hydropower dams

¹⁰ For a detailed analysis of the first ceasefire process in the 1990s see: Kramer 2009a.
¹¹ Renamed Ministry of Border Affairs, in Myanmar it is better known by its Burmese acronym ‘Natala’.
on the N’Mai and Mali Rivers, and large-scale land acquisitions for agribusiness in private concessions. These all led to the reallocation of land and resources from local communities to outside investors on a scale previously unheard of. These processes were overseen by the military government and contributed to their greater control over former war areas in Kachin and northern Shan States (Buchanan, Kramer, and Woods 2013; Sadan 2016). This process of increasing the control of the military government over the ethnic borderlands following the ceasefires has been described by Kevin Woods as ‘ceasefire capitalism’: ‘The Burmese regime allocates land concessions in ceasefire zones as an explicit postwar military strategy to govern land and populations to produce regulated, legible, militarized territory’ (Woods 2011, 747). According to the Burma Environmental Working Group, a network of civil society organisations working in conflict-affected areas in Myanmar’s ethnic borderlands: ‘Centralised resource control is fanning the flames of discontent and anger. Resource projects are causing environmental destruction, human rights abuses, and loss of livelihoods, with unique impacts on women’ (BEWG 2017, 2).

With only verbal truces in place and no political follow-up, the uncertainty of the situation facilitated logging, mining, gambling, drugs and human trafficking, and other illicit dealings. This attracted newly emerging Myanmar businessmen aligned with the Tatmadaw as well as Chinese and Thai investors. They concluded business alliances with local Tatmadaw commanders as well as ceasefire groups. In Kachin and northern Shan States, many of the logging, mining and agribusiness contracts were made between Chinese companies and ceasefire groups. Some of these projects involved large financial inputs (Kramer and Woods 2012).

In this ‘neither war nor peace economy’, distinctions between legal and illegal, and legitimate and illegitimate, became increasingly blurred. The Tatmadaw considered EAOs as illegal associations and contact with them as punishable by imprisonment. The first round of ceasefires did not alter this status, but the Tatmadaw encouraged the ceasefire groups to invest in the formal economy. Ceasefire EAOs defended their right to use natural resources in their areas as legitimate and saw the military government itself as illegitimate, as it came to power via a coup d’etat. Thus from their perspective the military government had no right to extract natural resources from the ethnic border regions.

Ceasefire groups used income from these sources to reconstruct their underdeveloped and war-torn regions. Several groups set up legal businesses but few were successful. ‘It is very difficult for all these various armed groups to be involved in legal trading, because it is all in the hands of the Burmese government,’ said a former member of a ceasefire group in northern Shan State. ‘That is why they rely on black market trading. The government is, in a way, stimulating all the armed groups to be involved in this, because they leave them no other way.’

The international community mostly ignored the ceasefires and calls for support to address these issues from CSOs and armed groups. As a result, very little international aid was provided to support the ceasefires and carry out development programmes to provide relief to communities affected by war and promote political support for the

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12 The Unlawful Association Act of 1908. Section 17/1 of the law stipulates that membership or association with an unlawful association can result in three years in prison. This act has been frequently used to imprison political opponents.
13 Author’s interview with former member of ceasefire group based in northern Shan State, Ruili, 20 August 2007.
process. According to an IDP representative from Kachin State: ‘In Kachin State, before the 1994 KIO ceasefire, we experienced two decades of displacement due to the fighting. After the ceasefire began efforts were made to resettle without international support’ (IDP and refugee communities from Mon, Karen, Karenni, Shan and Kachin States 2019).

The lack of proper international support as a follow-up to the ceasefires was among the reasons why ceasefire groups relied on other sources of income. UWSA leaders, for instance, used income from drugs production to develop their war-torn and impoverished region in the first decade after the truce. ‘Frankly speaking, we admit that up to 1998 we had some heroin refineries and amphetamine factories in our Wa region, and we levied tax on them,’ said UWSA Vice-Chairman Xiao Min Liang. ‘But after that we banned all heroin and ATS refineries in our area.’

14 The New Democratic Army-Kachin (NDA-K) used funds from logging for similar reasons. According to its Chairman Zakhung Ting Ying:

We cut logs to get money, so that we can develop our regions and build houses and schools. The Myanmar government is poor. Actually, they should support the people, but they seem to have problems. So we have to sell our natural resources to develop our people. We have to balance. In Kachin State there is nothing but trees. We cut down the trees to get development. This is our right, not other’s people’s right. Are the people who are blaming us for this going to help us if we do not cut?15

However, some local observers criticised this kind of approach. According to a Kachin development worker: ‘The SPDC, KIO and NDA-K all mention that the mining and logging is good for the development of the country, but the profit all goes to the leaders. They have permission from the government, so we say nothing. Our villagers have no power, we have no guns.’

16 Resentment was building. The lack of transparency, the scale of environmental destruction and lack of political follow-up all contributed to negative views among local populations and EAOs about the impact of the ceasefires.

The reliance on natural resource extraction and illicit trade was also the result of the collapse of the national economy. Decades of war and destruction, military rule, economic mismanagement, neglect of investments in the public sector and international isolation all contributed to this socio-economic breakdown. By 1987, Myanmar – historically one of the most prosperous countries in East Asia in terms of trade and production – was designated with Least Developed Country status at the United Nations (Brown 2013). As mentioned above, the nationwide democracy uprising of 1988 was at least partly driven by the economic grievances of the population. As a result, many individuals, political actors, armed opposition supporters and Tatmadaw members all came to rely on other sources of income.

Following the SLORC takeover, control over and management of natural resources by the military government as well as armed groups also became an important source of power and patronage. With limited budgets, the military government used resource diplomacy to reward allies and keep ceasefire groups under control. Armed groups faced similar problems as the government, and also started to award logging and mining concessions to allies as well as to use these as payments for their own projects:

14Author’s interview with UWSA Vice-Chairman Xiao Min Liang, Panghsang, 12 September 2003.
15Author’s interview with NDA-K Chairman Sakhung Ting Ying, Tengchong, 1 June 2002.
16Author’s interview with Kachin development worker, Myitkyina, 25 March 2003.
for instance, by the KIO to hire Chinese companies to build roads (Moncreif and Htun Myat 2001). These practices intensified on both the government and EAO sides after the SLORC was replaced by the successor State Peace and Development Council (SPDC) in 1997.

As a result of these developments, the dispossession and displacement of civilians significantly increased following the ceasefires, especially due to incursions by the Tatmadaw. The Land Investigation Committee, set up in 2012 by then President Thein Sein to investigate land grab cases from 1998 to 2011, concluded in its first report released in 2013 that the Tatmadaw had confiscated some 250,000 acres of farmland from communities (The Irrawaddy 2013). A report on land grabbing in Myanmar that documents cases from 1990 to 2010, by ‘Land in Our Hands’ (or Doe Myay in Burmese), a national civil society network of local organisations working on land issues, found that ‘in almost half of the cases, confiscation directly involved either military alone, or the military in combination with other actors, including local authorities, government ministries and departments, and domestic business elites and companies’ (LIH 2015, 33). According to a report by Human Rights Watch describing the same period, ‘Small farmers bore the brunt as government officials, military commanders, and their cronies seized land for personal and institutional enrichment; authorities promoted development plans without regard for those affected; and the military and ethnic armed groups took advantage of fighting and displacement to grab vast swathes of territory’ (Human Rights Watch 2018, 1).

In Mon State, for instance, following the 1995 ceasefire with the New Mon State Party (NMSP), the Human Rights Foundation of Monland (HURFOM) reported that the Tatmadaw had confiscated almost eight thousand acres of farmland with paddy, rubber, betel nut and orchards during 1998–2002. The families who had been tilling these lands for generations had no opportunity for legal recourse, and were not given proper compensation for their loss, despite their pleas, which were supported by the NMSP. In addition, the affected farmers were forced to work on the lands that were grabbed from them. They also had to build barracks for the army and provide the building materials. According to HURFOM the largescale land confiscation by the army made thousands of civilians landless, jobless and homeless, and many of them became migrant workers in neighbouring Thailand (HURFOM 2003).

**Ceasefire breaking points**

In the midst of these problems, a number of serious breaking points arose in the mid-2000s. The first, and perhaps most crucial, was the purge and dismantling of the once powerful Military Intelligence (MI) service. This followed a power struggle within the Myanmar armed forces between Deputy Commander-in-Chief Senior General Maung Aye and MI Chief General Khin Nyunt. The MI was small in terms of manpower and military strength, but powerful in outreach and influence, making agreements with and providing various permits to ceasefire groups. The scale of these activities often led to frictions with

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17 According to the report, farmlands were confiscated for six different reasons: the expansion of urban areas; expansion of industrial zones; expansion of army battalions and military units; construction of state-owned factories; implementation of state-run agricultural and animal husbandry projects; and land allocation to private companies with links to the military.

18 For an analysis of the NMSP ceasefire experience, see, Smith et al. 2020.
regular Tatmadaw commanders. According to a retired army officer familiar with the situation: ‘They felt that some MI field officers were corrupt and abused their power, and became arrogant.’

The impact from Khin Nyunt’s downfall was immediate. The arrest and detention of key MI officers, who had built trust and personal relationships with leaders of the ceasefire EAOs, caused concerns about the future of the ceasefires. Following this, pressure by the military government on ceasefire groups increased, and relationships deteriorated.

A second key issue was the lack of political progress to follow-up from the ceasefires, which culminated in the adoption of a controversial new constitution in 2008. At the time they concluded the truce, ceasefire groups were told by the MI that they could participate in a National Convention that would draft a new constitution where they would be able to put forward their demands. The National Convention first convened in 1993, with most delegates hand-picked by the regime, and there was only limited participation by political parties that had won seats in the 1990 elections. In 1995 the NLD and its ethnic nationality allies walked out of the National Convention in protest against political restrictions. Ceasefire groups that participated saw their proposals, to reduce centralised control and introduce elements of a federal system, all ignored. Instead, the constitution provided the Tatmadaw with a prominent and permanent role in national politics. The constitution was officially adopted in a controversial referendum in May 2008, a few days after cyclone Nargis devastated the Irrawaddy Delta, leaving 130,000 dead and more missing.

A new shock came in April 2009, when the now SPDC government suddenly announced that all ceasefire groups would have to transform into so-called ‘Border Guard Forces’ (BGFs), a new scheme that involved breaking ceasefire groups up into separate units and putting them under Tatmadaw control. Most of the larger ceasefire groups rejected this order, but some of the smaller ceasefire groups were forced to accept. In August 2009, a new crisis developed when the Tatmadaw occupied the Kokang region after several days of fighting, ending a 20-year ceasefire with the MNDAA. The incident caused great concern about the future of the ceasefires, and tensions were high. The UWSA was particularly concerned.

Since this time, the BGF order and attack on the MNDAA have had a profound impact on the peace process in the country. The breakdown of the Kokang ceasefire demonstrated the fragility of peace agreements and that the Tatmadaw does not rule out a resumption of fighting. What little trust there was with the ceasefire groups further

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19 Interview with retired Myanmar Army officer, Yangon, 7 July 2020.
20 In February 2005 the leader of the ceasefire Shan State Progressive Party (SSPP), Hso Ten, was arrested, together with the chairman of the electoral Shan Nationalities League for Democracy, Hkun Htun Oo. Both were sentenced to long jail terms. A few months later another ceasefire group, the Palaung State Liberation Party, was forced to surrender its arms.
21 According to the regime, it was approved by over 90 percent of the voters. Opposition groups contest this and say the referendum was not free and fair and that the constitution does not represent the will of the people.
22 This included the NDA-K, Karen Nationalities People’s Liberation Front and Democratic Karen Buddhist Army. Some small ceasefire groups were forced to transform into ‘Pyithu’ (People’s Militia). These were also part of the Tatmadaw’s counter-insurgency strategy. First launched in the 1960s, they were created to counter the threat posed by insurgent groups and, since the end of the 1960s, also the China-backed CPB. The militia programme has since gone through several phases and under different titles, but still exists. Most of these forces are located in Shan State, and they have been given a free hand to become involved in business activities, including the drugs trade.
23 The confrontation erupted after Tatmadaw troops wanted to search what they claimed was an illegal arms factory run by the MNDAA. The Tatmadaw subsequently supported a rival Kokang faction against the MNDAA leader Pheung Kya-shin, and together ousted him. The rival Kokang faction then agreed to become a BGF. For more details see: Kramer 2009b.
eroded, and many of them put their troops on high alert. Speculation was rife about which group would be the next target of Tatmadaw pressure, especially among those based along the Chinese border. They voiced their concerns in a joint statement, saying that the ‘existing cordial relationship with the SPDC is now tarnished and fallen under a dark period of animosity’.24

By 2010, the ceasefires in the north along the China border looked increasingly unstable, and the risks of escalating ethnic conflict were increasing. At the same time, fighting continued with the KNU, KNPP and Restoration Council of Shan State (RCSS) in the east of the country along the Thai border. At the end of the year, the EAOs formed a new alliance, the United Nationalities Federal Council (UNFC), to try and find ways to break the deadlock and promote the ethnic nationality cause.25 The UNFC included both ceasefire and non-ceasefire groups, who together were looking for ways to break the cycle of conflict.

At the time, the new alliance appeared a political breakthrough, as EAOs have historically been divided over strategy (ceasefires or political solutions first), goals (independence or federalism), and geo-politics (linking with Chinese communists or pro-West Thailand/USA). There have also been conflicts over the years between EAOs in terms of ethnicity, religion, and claims over territory. The Tatmadaw has tried to use these divisions to stimulate conflicts between and within groups.

The military government, however, avoided the UNFC’s conflict resolution proposals, and instead focused on creating a new national political order. Following the 2007 ‘Saffron revolution’ led by Buddhist monks and the Cyclone Nargis devastation, pressures were building on the country’s generals. After introducing the 2008 constitution, the SPDC held national elections in November 2010, which were won by the military-backed Union Solidarity Development Party (USDP). The elections were not free and fair, and there was no level playing field.26 Finally on 30 March 2011, after over two decades of SLORC-SPDC rule, the regime chairman Sen-Gen. Than Shwe dissolved the SPDC and handed over power to a new quasi-civilian government, led by new President Thein Sein, a former general and USDP member.

The second round of ceasefires (2011-present)

The Thein Sein government surprised observers at home and abroad with a political and economic reform programme. This included new talks with EAOs. In the first months in office, little progress was made. In June 2011, the Tatmadaw broke a 17-year old ceasefire with the KIO, and consequently fighting resumed in Kachin and northern Shan State. The renewed fighting displaced tens of thousands of civilians and did little to gain the trust of other ethnic armed organisations (Kramer 2012). But in August 2011 President Thein Sein made a public call for peace negotiations with all EAOs,27 and by February 2012 had signed agreements with many of them.28

24Myanmar Peace and Democracy Front 2009. The temporary front consisted of the UWSA, MNDA, National Defence Alliance Army (Mongla), New Democratic Army – Kachin (later transformed into BGFs) and the Shan State Progress Party / Shan State Army North.

25Its members included the KNU, KNPP and Chin National Front but also several ceasefire groups, such as the KIO, Shan State Progress Party and NMSP.

26The election law and procedures greatly favoured the USDP and provided huge challenges for opposition parties. See: TNI-BCN 2010.
The Thein Sein government then proposed that all groups should sign a ‘Nationwide Ceasefire Agreement’. During the negotiations, the government stated that political dialogue could only take place afterwards. The government also included a provision in the text that signatories would be taken off the list of ‘illegal organisations’. In March 2015, a draft text was agreed by all sides. However, the text was not accepted at an EAO summit in June. The main stumbling block was the refusal of the government to include all groups as NCA signatories. The government refused to include the MNDA, Ta’ang National Liberation Army (TNLA) and Arakan Army in the NCA agreements. This proved to be unacceptable for many other ethnic armed groups. The Thein Sein government decided to push ahead with a partial NCA, which was signed on 15 October 2015 by only 8 groups, of which only two had significant political and military strength: the KNU and the RCSS. Most of the larger EAOs did not sign the NCA.

The Thein Sein government also initiated reforms to liberalise the economy. These attracted great enthusiasm from investors in the West and in Asia, who saw great opportunities in what they described as Asia’s final resource frontier (Buchanan, Kramer, and Woods 2013). The government promised investment would benefit the population – especially the poor. But in order to achieve its objectives, the government adopted a number of legal reforms that mostly benefited foreign investors and local elite business interests with links to the Tatmadaw rather than the general population (Buchanan, Kramer, and Woods 2013).

In the November 2015 elections, the NLD won a landslide victory and formed a new government. There was great hope that the new NLD government would finally start an inclusive peace process and political dialogue. However, the party faced many challenges. The NLD had not developed a clear vision or policy for peace and a future democratic and federal Myanmar. In addition, the Tatmadaw remained a strong force in national politics. The NLD government decided to follow the NCA process and asked non-signatory groups to join the NCA without first addressing the underlying obstacles that had frustrated the peace process up until now.

From this point, ceasefire politics again became very complicated. As a follow-up from a Union Peace conference initiated by the Thein Sein government under the NCA, the NLD government in August 2016 organised a ‘21st Century Panglong Union Peace Conference’ (UPC). This was a reference to the 1947 Panglong Agreement that had brought the ‘Union of Burma’ into being. It was at this historic meeting that the principles for ethnic unity, 28The new agreements all contained four basic points: end the fighting and reach a ceasefire; establish liaison offices; inform each other in advance in case of troop movements outside each others’ areas; and conduct further talks in the future. Some also contained pledges on working together on issues such as drug control, education, development and the resettlement of group members.

29The infamous ‘Article 17/1’. This was an old demand from EAOs since anyone in contact with these groups, including representatives from civil society groups and political parties, could potentially be arrested and face jail terms of up to five years. The Unlawful Associations Act, [India Act XIV, 1908], 11th December 1908.

30It comprised 7 chapters, 33 articles and 86 clauses.

31The delegates decided to propose a number of amendments, including clauses related to the provision of humanitarian aid and development programmes in conflict-affected areas.

32Including the KIO, TNLA, SSP, UWSA and the New Democratic Alliance Army (Mongla) in the north near the China border, as well as the KNPP and NMSP located in regions adjacent to the Thai border.

33The 2008 Constitution stipulates that the Tatmadaw controls 25 per cent of the seats in national and regional parliaments. In addition to control of three ministries, it also has the final say on security-related issues.
union and autonomy were agreed. Two further UPCs have since been held. At these meetings, 51 points related to politics, economics, social affairs, land, natural resources and environmental issues have been agreed upon as part of a Union Peace Accord that are to be ratified by the national parliament as part of the peace process in the future.

EAO representatives, however, who participated in the process complain that these agreed points do not reflect their inputs. During the different working groups, Tatmadaw representatives effectively blocked all points that they claimed were not in line with the 2008 constitution, existing laws or the Tatmadaw’s own ‘six principles for peace’. In the land sector, for instance, this banning prevented important issues from being included such as the acknowledgement, respect and protection of ethnic customary systems as well as the right to land for IDPs and refugees. EAO representatives thus fear ending up with a Union Peace Accord that provides them with no essential new provisions that go beyond the 2008 constitution and existing laws. Meanwhile discussions on military affairs, ostensibly designated as thematic area in the peace process, are regarded as security issues and therefore also excluded by the Tatmadaw.

It is little surprise, then, that many ethnic-based CSOs have been disappointed, as can be seen in the following statement made by the Karen Peace Network – a network of ethnic Karen civil society organisations working on peace and social justice issues:

The control, management and ownership of land is a major issue within the peace negotiation process … The military-penned 2008 Constitution and existing laws provide the state with absolute power and authority over land and natural resources. This continued centralisation of powers with the union government is unacceptable to ethnic organisations as it represents the primary cause of conflict … Land tenure and resource access are also tied to opportunities for peace, as they are at the centre of all ethnic groups’ longstanding struggles to secure equal rights and self-determination. (Karen Peace Support Network 2018)

Following this impasse, cracks appeared in the formal peace process and armed conflict further increased with non-ceasefire and non-NCA groups. After the first 21st Century Panglong Conference, the Tatmadaw stepped up military operations in the Kachin and northern Shan States, where the KIO, MNDA, Ta-ang National Liberation Army (TNLA) and Arakan Army (AA) developed a new ‘Northern Alliance’. In a key geo-political region, the government specifically ruled out alliance members from the NCA process except for the KIO. The Tatmadaw also sought to clamp down with draconian force on an emerging Rohingya movement that attacked several government border posts, witnessing over 750,000 refugees flee into Bangladesh in the following years (ICG 2016 and Amnesty International 2017). At the same time, the AA – which is supported by the Rakhine majority population – has been able to expand its presence in Rakhine

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34 These were called ‘21st Century Panglong Peace Conferences’. The first one took place August-September 2016, a second in May 2017, and a third in July 2018.
35 For more details see: Karen Peace Support Network 2018. The six principles of the Tatmadaw are:

(1) To have a keen desire to reach eternal peace;
(2) To keep promises agreed to in peace deals;
(3) To avoid capitalizing on the peace agreement;
(4) To avoid placing a heavy burden on local people;
(5) To strictly abide by the existing laws;
(6) To ‘march’ towards a democratic country in accordance to the 2008 constitution.
State, where fighting with the Tatmadaw led to the displacement of over 100,000 Rakhine civilians.36

The Rohingya crisis was the final wake up call for the international community that all was not going well with the reforms in Myanmar. Violence erupted in Rakhine State in 2012 during the Thein Sein government, but the situation dramatically escalated in 2016. The NLD government denied accusations of largescale human rights violations by the Tatmadaw against the civilian Rohingya population (Smith 2019). An ‘Independent International Fact-Finding Mission on Myanmar’, set up in 2017 by the UN Human Rights Council to investigate the situation in Rakhine, Kachin and Shan States since 2011, concluded:

The gross human rights violations and abuses committed in Kachin, Rakhine and Shan States are shocking for their horrifying nature and ubiquity. Many of these violations undoubtedly amount to the gravest crimes under international law. They are also shocking because they stem from deep fractures in society and structural problems that have been apparent and unaddressed for decades. They are shocking for the level of denial, normalcy and impunity that is attached to them. The mission concludes that these abusive patterns are reflective of the situation in Myanmar as a whole. (UN Human Rights Council 2018, 19)

The mission report recommended that ‘senior generals of the Myanmar military should be investigated and prosecuted in an international criminal tribunal for genocide, crimes against humanity and war crimes’ (UN Human Rights Council 2018, 1). Following this, the Gambia filed a case against Myanmar at the International Court of Justice (ICJ) at the end of 2019 for breaching its obligations under the 1948 Genocide Convention. In a public hearing, Myanmar’s State Counsellor Aung San Suu Kyi denied the accusations. However, in January 2020 the ICJ ordered Myanmar to take all measures within its power to protect the Rohingya from genocide, including incitement to commit genocide, and to prevent the destruction and ensure the preservation of evidence related to allegations (ICJ 2020). In May of this year, Amnesty International concluded that the Myanmar government failed to abide by the ICJ order (Amnesty International 2020).

Pressure further mounted upon the Myanmar government when in November 2019 the International Criminal Court authorised an investigation into alleged crimes within its jurisdiction against Rohingyas in Myanmar (ICC 2019).

For many communities in the conflict-affected areas in the ethnic borderlands, the allegations sounded all too familiar. For decades they have suffered from similar patterns of abuse by the Tatmadaw. These have never been properly investigated, and, as Shan community groups recently stated, victims and survivors are ‘still waiting for justice’ (SHRF 2020).37

All of these events raise serious questions about the prospects for peace and reconciliation in the country. Increasing numbers of EAOs have complained about NCA violations by the Tatmadaw (Network Media Group 2020; Swe Lei Mon 2019; Lawi Weng 2017). The NLD government was also accused of not adhering to the agreement (Gelbort 2018). There is a perception among EAO representatives that the NLD government does not

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36CSOs estimated that some 100,000 civilians had been displaced due to fighting between the Tatmadaw and the AA that started in early 2019 (Human Rights Watch 2020. See also: Smith 2019).

37This refers to the killing of 56 civilians by the Tatmadaw during a Four-Cuts operation in 1997 in Kunhing Township in central Shan State: ‘To this day, there has been no justice for these massacres, nor for the torture, rape and killing of hundreds of other civilians by the Burma Army during their 1996–1998 clearance operations, which uprooted over 400,000 people in 15 townships’.
understand grievances and aspirations among the different ethnic nationality peoples. In particular, they feel the NLD’s policy of seeking national reconciliation is only focusing on its relations with the Tatmadaw – and not with ethnic groups and the broader population. As a result, trust in the process is eroding among ethnic-based CSOs in conflict-affected areas. As the Karen Peace Support Network concluded: ‘Building on the 2008 Constitution, the Burma Army is clearly using the peace negotiation process to further entrench military rule and expand their control into ethnic areas’ (KPSN 2018, 4).

Legal reform and dispossession in the ethnic borderlands

After coming to office in 2012, the Thein Sein government was eager to attract more foreign investment. In order to boost financial inflows, the government quickly adopted a number of laws that prioritised business interests over those of subsistence farmers and the rural poor. As many of the country’s resources are located in ethnic states and conflict-affected regions, these areas were most negatively affected. Of particular concern for local communities are the 2012 Farmland Law and the 2012 Vacant, Fallow and Virgin (VFV) Land Management Law and its 2018 amendment. The Farmland Law regulates the buying and selling of land with land use certificates. In a country like Myanmar, where many farmers and people who live, work and depend on the land have no formal documents, and where opportunities and mechanisms to get these are restricted, this results in excluding large numbers of people from obtaining such a title. The Vacant, Fallow, and Virgin Land Management Law (VFV Law) further legally allows the government to reallocate villagers’ farm, forest and other lands to domestic and foreign investors. As very few farmers in these areas have official land use certificates, under the VFV law most farmers have no formal land use rights (Transnational Institute and Burma Centrum Nederland 2013).

Since their adoption, these new land laws have set the legal framework for large-scale land grabs. The laws – following up on earlier iterations dating back to the colonial era as well as in the SLORC-period – aim to turn land solely into a commodity, and declare all farmers without official land titles from the government as squatters. The new land laws do not recognise ethnic traditional customary and communal tenure systems at all. Shifting cultivation is also not included as a legal farming system. These measures mostly affected lands that have been managed by ethnic communities for generations, using traditional customary systems. These systems are informal and unwritten, and often include communal lands that are used for various purposes (Franco et al. 2016). Overnight, millions of people in the country were criminalised for living on their ancestral lands and practising customary systems, but without formal land titles from the government. In the past few years, these new laws have been widely used by companies and the Tatmadaw to grab lands throughout the country, and especially in ethnic regions (Kramer 2015).

This means that the large majority of Myanmar’s population in the ethnic borderlands – especially but not only in conflict-affected areas – have no formally recognised land tenure rights. According to one media report: ‘Nearly one-third of Myanmar’s land is considered by the government to be vacant, fallow or virgin land, amounting to over 45 million acres. Seventy-five per cent of that land is found in ethnic states. And many of these states have thousands of people displaced by conflicts that cannot
return home to apply for a permit’ (VOA 2018). In summary, the promulgation of these laws was a massive political and economic land grab by the central government that has only had very limited control over large parts of these ethnic borderlands previously.

Combined with a new foreign investment law and areas opening up following the ceasefires, the impact of these new regulations is having a devastating impact on many local communities. Outsiders from central Myanmar and neighbouring countries have started to buy land and exploit natural resources without consultation and approval from local communities – and in connivance with the local authorities. At the same time, no solid structure has emerged from the peace process that could start to address these problems. There is no ceasefire monitoring by independent bodies, no mechanism for communities to bring forward complaints or grievances, and no dispute settlement mechanism. A report by the Karen Human Rights Group concluded that business and development projects increased significantly after the reforms of the Thein Sein government and the KNU ceasefire in 2012:

While the cessation of armed conflict has made the area more accessible to investment and commercial interests, eastern Myanmar remains a highly militarised environment. In this context, where abundant resources provide lucrative opportunities for many, and a culture of coercion and impunity is entrenched after decades of war, villagers understand that demand for land carries an implicit threat. (KHRG 2013, page 7)

As a result, communities are left with few options how to resist and address the great challenges coming to them as a result of the new laws and ceasefires. According to a Karenni IDP representative, over 50 acres of land in Hpruso Township were registered under the name of a Tatmadaw commander after the VFV law amendment: ‘These laws should be for the people, but now they benefit only a small group of people’ (TNI 2019). Other areas face similar problems. ‘Land is important to secure our life and to feed ourselves,’ said a Mon IDP representative. ‘The Mon region has no active fighting but there are many landgrabbing issues and impacts from the VFV law. We have no VFV land in Mon area, but the government keeps on enforcing this law on us. Many government projects are planned in the villages of origin of Mon IDPs. Our key demand is that we cannot accept this VFV law. We do not have VFV land in our area’ (IDP and refugee communities from Mon, Karen, Karenni, Shan and Kachin States 2019).

The VFV law also has had several negative consequences for civilians in active conflict zones. In Kachin State, companies were using the VFV law to grab land and register it as their own from communities who were displaced due to the resumption of fighting since 2011.38 According to a Kachin IDP representative:

[With] the ceasefire breakdown in 2011, largescale displacement started again. Previously (during the Four Cuts period)39, we used to hide in the jungle and go back to our villages. But since the resumption of fighting in 2011 we cannot do this anymore: our land is being taken for banana tissue culture and other industrial crop plantations. We don’t want to lose our ancestral lands, we want to protect them, but people are now desperate. While the Myanmar government is blocking humanitarian aid by the UN to IDP camps in non-

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38Ibid.
39Begun in the 1960s, the ‘Four Cuts’ is a Tatmadaw counter-insurgency operation by which regional clearance programmes are carried out to remove civilian populations from areas where armed opposition groups are considered to be active.
government-controlled areas, companies are coming and offering money to IDPs in exchange for using their land. The companies can extend their leases up to 30 years... We are in crisis, everything is unclear and confusing, and meanwhile the companies keep coming and doing business. (IDP and refugee communities from Mon, Karen, Karenni, Shan and Kachin States 2019)

Conclusion

Two ceasefire processes in Myanmar during the past thirty years have failed to transform into an inclusive peace process that can produce a lasting political agreement. During the first ceasefire period, truces were agreed with all EAOs along the China border, while fighting raged in the eastern borderlands adjacent to Thailand. These ceasefires never moved beyond military truces, and there was no political follow-up. Ceasefire groups were invited to join a National Convention to draft a new constitution, but their inputs were ignored and the final version enshrined a prominent role for the Tatmadaw in the country’s political future. In the post-2011 reform landscape, this situation has reversed. New ceasefires were agreed with the KNU and RCSS in Karen and Shan States adjacent to the Thai border, while fighting has resumed with the KIO in Kachin and northern Shan State along the China border. In fact, conflict only increased in this period, and expanded to Rakhine State. It also saw the strengthening of two EAOs, the TNLA and AA, after they had been excluded from the formal peace process by the Tatmadaw. For communities living in these conflict areas today, the words ‘peace process’ therefore ring hollow. It is a virtual reality that they are not truly part of.

Although the two ceasefire periods differ from each other in several ways, and have had different impacts on the ground, they are part of the same broader ‘neither war nor peace’ strategy by the Myanmar armed forces to have greater access to and control of the country’s ethnic borderlands and resources therein and to weaken and ultimately defeat the ethnic armed organisations. This strategy is being implemented not only by military but also by political and economic means. As L Gum Ja Htung, a Kachin researcher, has argued, ‘land grabbing in ethnic areas is interconnected with militarisation strategy and economic development because it has been used as a process of military state-building to control ethnic areas’ (L Gum Ja Htung 2015, 1).

In response, neither the USDP nor the NLD governments have adopted laws that address the grievances of ethnic nationality groups and reflect their aspirations, thereby contributing to peace and reconciliation. On the contrary, reforms have facilitated the dispossession of ancestral lands and natural resources in the ethnic borderlands. During the first round of ceasefires, this mostly took place by the Tatmadaw and its cronies using coercion and military pressure. In the post-2011 context, new ceasefires and legal reforms have been instrumental in accelerating this. According to a Karenni land activist: ‘First they grabbed our lands by military force. Now they grab it by using the law.’ This is the key difference with the previous ceasefire period. As one ethnic community leader concluded: ‘The VFV Law Amendment is like a declaration of war on us’ (TNI 2018). Together with the new ceasefires the new legal framework forms a toxic mix that is pushing millions of farmers in ethnic borderlands off their ancestral lands while facing...

Comment from a Karenni land activist at a TNI meeting, Chiangmai, 26 April 2019.
unprecedented land grabs by the Tatmadaw, government cronies and foreign investors. ‘Peace is very dangerous,’ summarised a Karen CSO representative.41

The right to land and natural resources is also a key issue in the political negotiations between the Tatmadaw, NLD government and the EAOs. Failure to properly address this issue and recognise and protect ethnic customary systems, as well as the right to land for IDPs and refugees, greatly contributes to the existing conflicts. The deepening land crisis is in itself a serious obstacle in the current negotiations to find peace. As a senior Karenni leader stated:

Until now the government and the army never recognise the problems we raise. They just press us to go along with them, and accept the things they want. They never compromise with us. Even the NLD government is no different … They should talk about justice and good governance. But instead they are sending farmers to jail, using so-called laws and so-called rule of law. What good laws did they make? It did not benefit the people.42

Acknowledgement

My deep appreciation goes to all the people in Myanmar who were willing to spend their valuable time to answer my research questions. I am also indebted to the late Sittipong (‘Sam’) Kalayanee for first introducing me to Myanmar’s ceasefires and explaining their significance to me. Many thanks also to Martin Smith, Pietje Vervest and Minka Nijhuis for the many conversations and correspondence we have had over the years on political and conflict dynamics in Myanmar.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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