

**TRANSNATIONAL** I N S T I T U T E  
**BURMA** C E N T R E **NETHERLANDS**

# DEVELOPING DISPARITY

REGIONAL INVESTMENT IN BURMA'S BORDERLANDS



**Authors**

John Buchanan, Tom Kramer and Kevin Woods

With contributions from Pietje Vervest, Jennifer Franco  
and Joseph Purugganan

**Series Editor**

Martin Smith

**Copy Editor**

Deborah Eade

**Design**

Guido Jelsma, [www.guidojelsma.nl](http://www.guidojelsma.nl)

**Photo credits**

Tom Kramer, Kevin Woods  
KESAN, Paungku

**Cover photo**

Tom Kramer

**Contact**







Transnational Institute (TNI)  
PO Box 14656, 1001 LD Amsterdam  
The Netherlands  
Tel: +31-20-6626608  
Fax: +31-20-6757176  
Email: [Burma@tni.org](mailto:Burma@tni.org)  
[www.tni.org/work-area/burma-project](http://www.tni.org/work-area/burma-project)

Burma Center Netherlands (BCN)  
PO Box 14563, 1001 LD Amsterdam  
The Netherlands  
Tel: +31-20-6716952  
Fax: +31-20-6713513  
Email: [info@burmacentrum.nl](mailto:info@burmacentrum.nl)  
[www.burmacentrum.nl](http://www.burmacentrum.nl)

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## Introduction

The reform process and the subsequent political and economic changes in Burma/Myanmar<sup>1</sup> have sparked great investment interest among governments and the private sector in the region and beyond. Large-scale investment projects are focused on the borderlands, which is where most of the natural resources in Burma – and indeed the Mekong region – are to be found. These areas are home to poor and often persecuted ethnic minority groups. Burma's borderlands are where regional cross-border infrastructure and millennium-old trade networks converge and are some of the last remaining resource-rich areas in Asia. They also include the most isolated and impoverished areas in Burma and in the region, and have seen decades of civil war. The war-torn borderlands are now in the international spotlight as Asia's last frontier.

Burma has entered a pivotal stage in its political and economic development. Following the adoption of a new constitution in 2008, the first national elections in over 20 years were held under the ruling military government, the State Peace and Development Council (SPDC) which had been in power since 1988. A new military-backed government was inaugurated in March 2011, headed by President Thein Sein, an ex-general and former SPDC Prime Minister. The advent of a new quasi-civilian government has caused a significant change in the political atmosphere, raising the prospect of fundamental reforms in national politics and economics for the first time in many decades. The new government has also initiated a peace process to try to finally resolve the country's long-lasting ethnic conflicts. The prospects for far reaching reforms that benefit the entire population are welcomed, although some remain sceptical of the reform's actual effectiveness in practice so far.

After decades of military rule, the reform process is still in its very early stages, and significant challenges lie ahead. The political situation is at a critical juncture. Although tentative peace agreements have been made with an important number of armed ethnic opposition groups, there is renewed conflict with others. The resumption of fighting in Kachin State and northern Shan State during the new Thein Sein government, breaking a 17 year old ceasefire with Kachin Independence Organisation (KIO) concluded with the previous military regime, and the recent government offensive against the KIO headquarters Laiza, are of great concern. The fighting has displaced over 75,000 civilians, and has led to great mistrust among the Kachin population, as well as among other ethnic groups where new ceasefires have come into place, about the real intentions of the new government. For the moment, the new government and political system continue to be dominated by former and serving military officers.

At the same time, there is an emerging civil society and more free media, new political actors to challenge the



status quo and the introduction of more liberal economic reforms. While this transition is taking place, international actors – especially in Asian financial capitals such as Bangkok, Beijing, Hong Kong, Seoul, Singapore, Taipei, and Tokyo – are examining investment opportunities in Burma. They have shown substantial interest in extracting the country's natural-resource wealth, as well as developing – with the help of the World Bank and Asian Development Bank (ADB) – large-scale infrastructure projects to establish strategic 'corridors' to connect Burma to the wider economic region.

These investments will focus largely on Burma's ethnic borderlands, which are at the forefront of domestic and international change. These areas have been at the centre of more than 60 years of civil war in Burma – the longest running in the world – with a large number of ethnic minority armed opposition groups fighting the central government, which has historically been dominated by the Burman majority, for ethnic rights and greater autonomy. Economic grievances among ethnic groups – largely tied to resources being extracted from the peripheral areas where they live to sustain the urban core controlled by the military and business elite – have played a central part in fuelling the civil war.

Foreign investment in these resource-rich yet conflict-ridden ethnic borderlands is likely to be as important as domestic politics in shaping Burma's future. Such investment is not conflict-neutral, however, and has in some cases fuelled local grievances and stimulated ethnic conflict.

It is equally important to address the long-running impasse between the government and ethnic armed groups. Without a political resolution, the prospects for democracy and peace, and therefore for sustainable and equitable development, are grim.

While there are hopes for progressive change, the course of Burma's economic and political evolution remains uncertain. In a break with its isolationist past, in the lead-up to the national elections the previous military government approved an unprecedented level of investment, particularly in ethnic border areas. The foreign-funded mega projects include the Dawei Special Economic Zone (Thailand), the Kaladan Gateway project (India) and the Shwe Gas pipeline (China). Such investments have not, to date, benefited local communities; in fact, they have often led to outright land grabs. The dispossession of lands and the destruction of local livelihoods has been well covered in the Burmese and international media, and the need to resolve this has reached the highest levels of Burma's government.

For the first time in almost half a century, Burma is poised to achieve far-reaching economic growth. The country is touted as Asia's "final frontier" for resources and investment and as Asia's next economic tiger. While

regional investment could potentially foster economic growth and improve people's livelihoods, the country has yet to develop the institutional and governance capacity to manage the expected windfall. After decades of civil war, military repression and economic mismanagement, the government has little capacity to address the country's myriad problems. Officials are slowly coming to terms with the reality of the challenges ahead. At present, very few have experienced any benefits from the nascent economic reforms. The recent economic laws and policies and new urban wealth have not brought about any tangible improvements for the poor.

It is uncertain whether and to what extent the economic reforms will benefit the majority, especially ethnic populations in the borderlands. About 75 per cent of the overall population are subsistence farmers, who are generally not served by roads or electricity. So far, the liberal economic reforms that have been signed into law favour the urban elite and middle-class entrepreneurs, despite the government's stated commitment to pro-poor policies and people-centred development to benefit the farmers who are the backbone of Burma's economy.

Important questions thus remain. Who will most benefit from these economic reforms in the short and long term, and what does that mean for the Burma's political and economic trajectory and for the majority of its population? What will determine whether local peoples benefit from the new revenue streams will be the types of investment, how they are managed, and the overall quality of governance in the affected areas.

If local communities are to benefit from the reforms, there need to be new types of investment and processes of implementation. Following the country's moves towards democratic reforms, the government should direct investment towards people-centred development that benefits household economies. Civil society must be included from the outset in decisions regarding investment projects to ensure that rural households have secure land tenure, and that benefits flow into local economies. Above all, there is a need to resolve conflict through dialogue and reconciliation. These are the hallmarks of a robust and healthy democracy. In their absence, the development of Asia's final frontier will only deepen disparity between the region's poorest and most neglected peoples and the military, business and new political elites whose wealth is rapidly consolidating.



## Assessing Burma's Reforms

The new Thein Sein government has been trying to achieve progress on three main fronts: improving relations with the main opposition party, the National League for Democracy (NLD) led by Aung San Suu Kyi; addressing ethnic conflict; and resolving the economic crisis. This chapter assesses progress on each of these issues, and the implications for Burma's ethnic borderlands.

The reforms appear to be driven by several factors. These include the realisation among the ex-generals leading the new government that Burma, once the rice bowl of Asia and among the most developed nations in the region, is now one of Asia's poorest countries, lagging behind its traditionally poorer neighbours, Bangladesh and Laos. The reforms are also driven by a wish to end Burma's economic and political reliance on China. The new government wants to end its international isolation and develop the country.

The reforms are also an acknowledgement of the failed policies of the past military regimes, although the ultimate objective of the reform process remains uncertain. This is partly because it is difficult to assess how far the national armed forces – the Tatmadaw – have given up their political role. It has always been difficult to assess the internal politics of the Tatmadaw because of their secretive culture. Clearly, some factions in the armed forces oppose the current process or feel that it is moving too quickly and going too far. To date, however – with a few exceptions – they have not tried to stop the political reforms or unseat the new reform-minded government. But in the case of the Kachin state and other contested areas, they have continued to decide and implement operational policies.

### Background

Burma has been afflicted by ethnic conflict and civil war since achieving independence in 1948. Following independence, several ethnic groups launched an armed struggle against the central government to press for equal rights and autonomy, and to defend themselves against what they perceived as a threat to their ethnic identity.

In 1962 the army staged a coup against the democratically elected government and created a one-party state led by the Burma Socialist Programme Party (BSPP). The constitution was abrogated, all opposition was put behind bars, and any attempt to organise was severely repressed. As a result, ethnic nationalities have long felt marginalised and discriminated against by the Burman-majority state and armed forces. The situation deteriorated after the military coup in 1962, with ethnic rights systematically repressed. Tatmadaw-dominated governments refused to take ethnic nationalities' political demands into account, for the most part treating ethnic issues as a military and security issue. This worsened relations between the military government

and ethnic communities, furthering ethnic grievances and strengthening ethnic opposition to the state.

The civil war, which has lasted for over 60 years, has caused great suffering. The fighting has taken place mainly in ethnic minority areas, whose civilian population has experienced the brunt of the war. Tatmadaw campaigns against ethnic armed opposition groups have been accompanied by serious violations of human rights against the civilian population. Tens of thousands of lives have been lost, and hundreds of thousands of people have sought refuge in the forests or in neighbouring countries, notably China, Thailand, Bangladesh and India. Over the years, ceasefires agreed between the central government and different armed opposition groups did reduce open conflict and provided some space for the rehabilitation of war-affected areas, but they failed to lead to political solutions.

Political oppression has taken its toll on all of Burma's peoples. Since the 1962 coup there have been several protests against military rule in urban areas of central Burma. A long-running insurrection by the Communist Party of Burma also continued until the 1980s in the China borderlands, while the deposed Prime Minister U Nu also briefly took up arms against the BSPP government. The largest demonstrations took place in August 1988, following months of unrest, when hundreds of thousands of people took to the streets demanding an end to military rule, the restoration of democracy and multi-party elections. The following month the military government crushed the movement, killing many protesters and arresting many others.

Following the crackdown, thousands of Burman activists fled the cities to the jungle camps of the armed ethnic groups in the border regions. The new regime, the State Law and Order Restoration Council (SLORC), organised general elections in 1990, in which the opposition NLD led by Aung San Suu Kyi won a landslide victory. Rather than accepting the election results, in 1993 the military established a National Convention to draft a new constitution and continued to keep Aung San Suu Kyi under house arrest for long periods of time. Both the SLORC, and its successor the SPDC, refused to enter into a real political dialogue with the NLD or with ethnic political opposition groups for over two decades of rule.

The first ethnic ceasefires were established by the SLORC, which held power from 1988 to 1997 and was superseded by the SPDC. Burma's long-running conflicts continued throughout the SLORC–SPDC era, with no decisive peace process. Nevertheless, after decades of conflict, the SLORC–SPDC ceasefires had a significant impact on the national landscape as well as huge socio-economic implications – some positive and some less so. The truces ended the bloodshed and curtailed the most serious human rights abuses in many areas. They also brought relief for local communities, and allowed for some development

SSA-South soldier



and for the emergence of civil society. However, these military accords were not followed up with a peace process aimed at achieving a political solution. Furthermore, the truces allowed for economic exploitation and the large-scale extraction of natural resources, mainly by favoured government cronies and companies from neighbouring countries, causing environmental damage and destroying local livelihoods.<sup>2</sup>

The ceasefires remained an important policy of SLORC's successor, the SPDC, which held power from 1997 until 2011. In April 2009, however, the SPDC suddenly announced that all ceasefire groups must become Border Guard Forces (BGFs). This controversial scheme to divide groups into smaller separate units under Tatmadaw control provoked great tension between them and the government. Tensions escalated after the Tatmadaw occupied the Kokang region on the Yunnan–China border in August 2009, following an internal conflict within the Myanmar National Democratic Alliance Army, ending a 20-year-old ceasefire. The main ceasefire forces refused to become BGFs before the final deadline of 1 September 2010, and the SPDC announced that it would now consider their status to be the same as during the pre-ceasefire period. In the meantime, fighting continued with the Karen National Union (KNU), Karenni National Progressive Party (KNPP) and Shan State Army-South (SSA-S), which had engaged in occasional talks, but had never achieved formal or stable ceasefires.



## Map I - Administrative Map of Burma





Despite the fact that Burma is rich in natural resources, such as timber, minerals, gems, rivers and agricultural land, the country is one of Asia's poorest. Decades of repression, civil war and government mismanagement have brought the country – among the most developed in the region and the world's leading rice exporter during the British colonial period – to the brink of economic collapse. In 1987 Burma was classified as a Least Developed Country (LDC). Economic reforms introduced by the SLORC and SPDC military governments, which aimed to end the country's self-imposed isolation and attract foreign direct investment (FDI) within a highly centralised and predatory economy, mainly benefited the top-ranking military officers and their business cronies. During this period, FDI was concentrated in the extractive sectors, particularly energy. Large amounts of FDI entered the country via joint ventures with military-owned enterprises, including the Union of Myanmar Economic Holdings (UMEH) and Myanmar Economic Corporation (MEC).<sup>3</sup>

In the last two decades, Burma's export earnings increased dramatically through the sale of natural gas from newly discovered fields in the Gulf of Martaban and the Bay of Bengal. The SLORC–SPDC governments earned billions of dollars from these projects, but did not invest the revenue in developing the country, nor was it properly accounted for in the national budget.<sup>4</sup>

Meanwhile, Burma's population remained largely poor, rural-based and reliant on subsistence farming, with little or no access to public services. The agricultural and fisheries sector account for about a third of the country's Gross Domestic Product (GDP).<sup>5</sup> The public sector, including health and education, has all but collapsed. Governance is weak and there is little rule of law. In short, after five decades of military rule Burma faces enormous political and socio-economic challenges that the government is poorly equipped to address.

## **The New Political Landscape: Moving Towards Democracy?**

### *The 2008 Constitution and the 2010 Elections*

In March 2011, the ruling SPDC transferred authority to a new quasi-civilian government. Thein Sein, an ex-general and formerly SPDC Prime Minister, became the first president under the 2008 constitution.

The new political system was established by the SPDC, led by General Than Shwe (now retired). The 2008 constitution guarantees that the armed forces (Tatmadaw) will continue to play a leading role in national politics for the foreseeable future. The constitution reserves 25 per cent of the seats of all legislative bodies and three ministries for military personnel (Ministries of Defence, Border Areas and National Races and Development Affairs, and

Home Affairs). Under the provisions of the constitution, three newly elected legislatures have been formed: the upper house (Amyotha Hluttaw) and lower house (Pyithu Hluttaw) of the national parliament, with 14 state or region assemblies.

The 2008 constitution fails to address the main grievances and aspirations either of the armed ethnic groups or of the democratic opposition. It was adopted in May 2008, in a controversial referendum held just days after a powerful cyclone devastated the Irrawaddy Delta and Yangon, leaving at least 130,000 people dead. The NLD and some ethnic minority parties that had won seats in the 1990 general elections rejected the 2008 constitution and subsequently boycotted the 2010 general elections. Some new political parties were formed to take part in the elections, including a breakaway group from the NLD and several ethnic minority political parties. These also disapproved of the new constitution and the electoral process, but felt it was important to use the new political openings to promote change. This brought them into conflict with those who boycotted the elections.

Opposition parties and several foreign governments quickly criticised the 2010 elections as neither free nor fair because of the procedures for registering political parties and fraudulent voting. The election laws and registration procedures favoured the military-backed Union Solidarity and Development Party (USDP). Obstacles for opposition parties included a rigorous registration system, high registration costs for candidates, and limited time to form a party and conduct an election campaign. Furthermore, the national Election Committee rejected the registration of the Kachin State Progressive Party (KSPP), which included some former leaders of the Kachin ceasefire armed group, the Kachin Independence Organisation (KIO). This prevented influential Kachin leaders from being able to participate in parliament and the Kachin were left without a party to represent them in the new government system.<sup>6</sup>

In the 2010 elections, the USDP won 75 per cent of the contestable seats at the national level, giving it control of the upper and lower houses of parliament. Many senior members of the USDP are recently retired military officials. Of the 22 parties that contested the 2010 election, 17 are ethnic political parties, which gained 13 per cent of the seats in the upper house and 11 per cent in the lower house.<sup>7</sup> Women occupy less than 2 per cent of seats in the upper house and about 4 per cent in the lower house.<sup>8</sup>

The USDP also has the large majority of seats (over 80 per cent of the elected seats, and more than 60 per cent of the total) in the seven region assemblies for areas inhabited mainly by ethnic Burmans. The USDP is less dominant in the ethnic states, although it still holds the highest number of total seats. In the local parliaments in Chin, Karen, Mon, Rakhine and Shan States, ethnic parties occupy about 25

per cent of the seats.<sup>9</sup> The USDP controls all key posts in these newly formed regional governments.

The introduction of local parliaments in Burma's 14 state and region assemblies could potentially herald the decentralization of political authority. In theory, these assemblies allow for the airing of local issues, including concerns regarding sharing of revenues from natural resources, land governance and foreign investment. To date, however, the assemblies lack institutional and human capacity, have limited understanding of local governance issues, and power is inadequately shared between national and regional bodies. These combined factors have greatly limited their effectiveness.<sup>10</sup>

Ethnic political parties have become vocal about socio-economic development in their respective regions. "With the new local parliament in place we have more space to express ourselves and ask questions to the regional government", according to a representative of the All Mon Region Development Party (AMRDP). However, party officials say that they have not received satisfactory responses to the issues they have raised. They add that the regional government has only a small budget, which limits what it can do: "We are optimistic; in the past we had no chance to raise these issues. However, the needs are so big [in our region] but the budget is so small".<sup>11</sup>

Ethnic parties have raised most of their key concerns in the national parliament, such as the right to teach in ethnic languages in the education system, land rights, sharing of resource revenues and the underdevelopment of their regions, as well as the current peace process (see below). "There is a very great gap between the development of ethnic areas and Burma proper", according to a leader of the Rakhine Nationalities Development Party (RNDP). "The ethnic regions are very poor and backward, and are the least developed in the country. The ethnic peoples are the most oppressed in Burma. The civil war is also taking place in ethnic areas".<sup>12</sup>

#### *The 2012 By-elections*

August 2011 saw a historic meeting between President Thein Sein and opposition NLD leader Aung San Suu Kyi. It was seen as an effort by the new government to reach out to the opposition, build trust and encourage the NLD to take part in the electoral process. The official communiqué stated that they had "frank and friendly discussions" to "find ways and means of cooperation". According to Aung San Suu Kyi, President Thein Sein was sincere and "genuinely wishes for democratic reforms".<sup>13</sup>

In early November 2011, the government amended the Political Party Registration Law to pave the way for the NLD to register as a political party.<sup>14</sup> The NLD subsequently decided to contest the 1 April 2012 by-elections, in which it

won 43 of the 45 seats.<sup>15</sup> Aung San Suu Kyi won the seat for Kahmu Township, Yangon Region, and was subsequently appointed to chair a parliamentary committee on the Rule of Law and Stability.<sup>16</sup> This represented a significant change in the relationship between the NLD and the government. Following the by-elections, Thein Sein and Aung San Suu Kyi met again before she took up her parliamentary seat. Also present were Ministers Aung Min and Soe Thein, who play an active role in Thein Sein's reforms.<sup>17</sup> Thein Sein has subsequently had several further meetings with Aung San Suu Kyi to build trust and mutual understanding.<sup>18</sup>

The NLD has continued to call for the release of all remaining political prisoners, which is one of the major benchmarks of reform for the West and for political lobby groups. Since July 2011, the government has released hundreds of political prisoners, but human rights groups say the release process is not transparent and falls short of releasing all political prisoners.<sup>19</sup>

As yet, the NLD's parliamentary presence is still largely symbolic since the USDP holds most seats. The NLD is unable to bring about changes to the 2008 constitution – one of its main objectives – without USDP cooperation. This political configuration also determines what bills can be passed, which is effectively the basis of political and economic reforms leading up to next national election.

#### *Future Prospects*

Although changing the 2008 constitution is a key objective for opposition parties, only the military-backed USDP currently has sufficient seats in the national legislatures to do so, if the Tatmadaw representatives support it.<sup>20</sup> Burman opposition political parties also seek to make the constitution more democratic. For ethnic opposition groups (political parties and armed groups), the main goal is to establish a federal state based on democratic principles, safeguarding their political, socio-economic, cultural and religious rights. Government initiatives to address opposition grievances and introduce amendments to the constitution will be an important indicator of its willingness to undertake substantive political reform.

The next general election, scheduled for 2015, will therefore be an important measure of progress towards achieving democracy and ethnic rights. The NLD victory in the by-elections was clearly a great setback for the USDP. If the 2015 elections are genuinely free and fair, the USDP is unlikely to win a significant number of seats. Aware of this, the USDP has recently sought to reshape itself as "the people's party", hoping that this will help bolster its chances against the NLD.

The "first past the post" system also makes it very difficult for smaller parties to win seats – not only ethnic minority parties but also smaller Burman democratic parties –

because it favours larger centrally-based parties among the Burman-majority. The current election law makes it expensive to register candidates. Apart from the USDP and the NLD, few parties will have sufficient resources to present many candidates and to organise election campaigns.

### **Ethnic Conflict: New Ceasefires and Prospects for Peace**

Since the end of 2011, the government has concluded peace talks with all major ethnic armed opposition groups in the country. With some important exceptions, the talks appear an important first step towards achieving national reconciliation and peace. By February 2012, initial peace agreements had been reached with most ethnic armed opposition groups. Ending the civil war is important to bring about peace and political stability. It is also a prerequisite for the large-scale development and infrastructure projects proposed by the government and neighbouring countries, many of which are to be located in Burma's ethnic borderlands.

The new ceasefire talks initiated by the Thein Sein government appear a welcome breakthrough. It is the first time that all major ethnic armed opposition groups have been included. Furthermore, the government dropped earlier preconditions and its main negotiator, Aung Min, recognized that the previous ceasefires failed because the people did not benefit from them. He also made clear that the government has now dropped earlier demands for

armed groups to become BGFs, downsizing their armed forces and becoming subordinate to the Tatmadaw.<sup>21</sup> Aung Min has taken a more conciliatory approach than previous military governments, focusing on building trust. It is significant that the new agreements are in writing, unlike the informal verbal truces of the past, when only the KIO had a written agreement. Furthermore, some of the details of the new agreements have been made public through government media. Critically, however, Aung Min was not initially brought into ceasefire talks with the KIO.

Through Aung Min's liaison, the current negotiations are projected as the first phase of a larger government-led initiative in which security issues will be addressed initially at the local level and political concerns will be discussed at the national level.<sup>22</sup> The agreements contain four common elements: a cessation of fighting; establishment of liaison offices; prior information of troop movements outside agreed zones; and a commitment to future talks. Some also contain pledges on working together on issues such as drug control, education, development and the resettlement of group members.<sup>23</sup>

In addition, Aung Min told the armed ethnic groups that there would be talks "at the national level on socio-economic recovery/development plans".<sup>24</sup> The discussion of business is also a component of several ceasefire negotiations. Some of the projects considered are the creation of Special Economic Zones (SEZs), plans for enhanced border trade, and business concessions, but there is little detailed



Kachin refugees in Mai Ja Yang



information about these projects.<sup>25</sup> This underlines the need for greater transparency regarding business deals related to ceasefire negotiations to ensure that they benefit local communities.

Socio-economic development is important to rebuilding war-torn and neglected ethnic areas. Economic development alone will not resolve ethnic conflict, however, and, if it is undertaken in inappropriate and inequitable ways, may provoke new conflicts. Following the truces of the 1990s, the SLORC-SPDC government promised aid and development to those groups agreeing to ceasefires. The uncertainty of the situation instead created a "ceasefire economy"<sup>26</sup> where all parties to the conflict made deals with companies from neighbouring countries – especially China and Thailand – to exploit the natural resources in Burma's borderlands. Large-scale and unsustainable logging and mining severely damaged the environment and local livelihoods.

Development projects should benefit local communities and allow them and their representatives to decide whether these projects go ahead and how they are managed. Failure to do so will both undermine conflict resolution and national reconciliation and also create new ethnic grievances, thus contributing to Burma's cycle of conflict. These issues are especially important now that several large-scale development projects in ethnic areas, financed by foreign investment, are either already in progress or planned by the government.

### **Ethnic Armed Groups with New Ceasefire Agreements**

The leaders of 13 armed groups have met with government representatives and agreed in principle to end hostilities, open liaison offices, provide information about troop movements, and continue with peace negotiations. According to media reports, seven groups have established liaison offices in government-controlled areas.<sup>27</sup> Those marked with asterisk also had ceasefires with the previous SLORC-SPDC government.

1. United Wa State Army\*
2. National Democratic Alliance Army \*
3. Kloh Htoo Baw (formerly, Democratic Kayin Buddhist Army Brigade 5)\*
4. Restoration Council of Shan State (RCSS) (also, Shan State Army-South)
5. Chin National Front
6. Karen National Union
7. Shan State Progressive Party/Shan State Army (also, Shan State Army-North)\*
8. New Mon State Party\*
9. Karen National Liberation Army Peace Council\*
10. Karenni National Progressive Party
11. Arakan Liberation Party
12. Pa-O National Liberation Organization<sup>28</sup>
13. National Socialist Council of Nagaland - Khaplang

The ending of a 17-year ceasefire with the KIO in Kachin State and northern Shan State in June 2011 therefore represents a major failure of national politics under the new government, and a clear reminder that the ethnic conflicts will not be easily resolved. The KIO and government officials continued to meet, but there is no political settlement in sight at time of writing. Instead, following the ceasefire breakdown<sup>29</sup>, the government maintained offensive operations, eventually launching the largest and most expensive campaign (including unprecedented aerial attacks) in recent history, targeted at KIO territories in northeast Burma. The KIO responded with guerrilla warfare. Since the resumption of fighting against the KIO, over 75,000 civilians have been displaced across the region, most of them seeking refuge in KIO-controlled territory along the border with China.<sup>30</sup>

The KIO leaders say that during the long years of ceasefire they were promised a political dialogue, but that this never materialised. Instead, the SPDC demanded that the KIO become BGFs, and the national Election Committee refused to register the KIO-backed KSPP for the 2010 elections, excluding them from the political process. The leaders believe that this exclusion was quite deliberate, even though the KIO had attended the National Convention and cooperated with the SPDC's "political roadmap".<sup>31</sup> In addition, the KIO points out that the ceasefire agreement with the previous military government was broken by the current quasi-civilian government when the Tatmadaw attacked KIO positions on 9 June 2011. The KIO wants any new agreement to include a political settlement.<sup>32</sup>

How political reconciliation will be achieved in the light of the recent violence in which hundreds of lives have been lost and important KIO territories seized is far from clear. Other ethnic groups are watching with great concern. There have also been sporadic clashes during the past eighteen months between the Tatmadaw and other armed groups that have agreed new ceasefires. In particular, the Tatmadaw has continued military operations against the Shan State Progressive Party/Shan State Army (SSPP/SSA) despite having agreed to a new ceasefire. Such events raise serious questions about the prospects for peace and reconciliation in the country, and about the ability of the negotiating teams to coordinate their ceasefire plans with the commanders of frontline military units.<sup>33</sup>

In the Rakhine state, too, in northwest Burma there have been ethnic concerns about the role of the security services in communal violence during 2012 in which 147 people died and more than 110,000 were displaced.<sup>34</sup> All communities suffered, including the majority Rakhines, but most of those displaced or fleeing into exile were minority Muslims, especially ethnic Kamans and the largest population group in the far north of the state often known as Rohingya. These events followed a government ceasefire

USDP headquarter in Nay Pyi Taw



with the small Arakan Liberation Party in the Bangladesh-India borderlands.

As in northeast Burma, however, many inhabitants fear that the real government agenda is not politics but ethnic marginalization and land control for the increasing numbers of state and business economic projects underway. Subsequent injuries by local riot police to protestors, including Buddhist monks, against a controversial copper mine near Monywa in November 2012 in a Burman-majority part of the country highlighted that coercive behaviour by the security services towards local communities is not simply an ethnic minority issue.<sup>35</sup>

Against this backdrop, concerns have steadily mounted during the past year regarding the degree of devolution of power from the military leadership of the country to newly-established representative institutions under the new political system. Many citizens and opposition groups are worried about the lack of civilian control over military affairs. Most notably, President Thein Sein several times announced that he ordered the Tatmadaw to cease offensive activities against the KIO, but army commanders continued the attacks nevertheless.<sup>36</sup> This has only exacerbated fears. Either Thein Sein does not have full control or he has been concealing the government's real intentions.

It will be vital therefore that the President's national authority and real ethnic policies are clarified soon because the perception is growing that, although modernising change is undeniable and the new ceasefires have been welcomed, the post-SPDC government is also continuing

discriminatory attitudes and practices towards ethnic minorities of the former regime. Without true ethnic peace, Burma's instabilities will only continue.

### **Economic Reforms: Reducing Poverty?**

After decades of relative isolation, the new government is in the process of liberalising the economy and implementing reforms to attract foreign investment. The international community has shown great interest, fuelling the onset of a gold rush, with Burma being portrayed as "probably the best investment opportunity in the world right now".<sup>37</sup> According to Nobel Prize-winning economist Joseph Stiglitz: "In many ways it [Burma] is well-positioned to provide enormous investment opportunities. The fact that there has been so little investment in the past means the potential returns are very high".<sup>38</sup> This description of Burma as Asia's final resource frontier has attracted the interest of foreign investors, predominantly Asian but also based in the West.

In his inauguration speech in March 2011, President Thein Sein announced that the government would invite foreign investment to develop the country and its people: "We will make sure that fruitful results of the prudent plans will go down to the grassroots level".<sup>39</sup> Since then, the government has stressed that poverty reduction is integral to its economic reforms. In May 2011, the government organised a high-profile conference on poverty reduction in the capital, Nay Pyi Taw. At the event, the President's Economic Adviser U Myint noted, "The plight of the poor

New freedoms: local journalists at NLD benefit concert in Yangon



in the country is getting wider recognition. Political will to do something about it is growing”.<sup>40</sup> At a recent national dialogue between the government and representatives of civil society on land tenure and land-use rights, reform-minded ministers constantly stressed the need for people-centred development and to listen to people’s demands.<sup>41</sup>

To date there is no discussion on how to achieve these goals, and what development model would be best suited for Burma and its peoples. The main policy goals seem to be to attract foreign investment in any sector and to industrialise Burma’s agricultural sector in order to increase agro-industrial commodity exports. The sale of natural resources, particularly oil and gas, remains the most important source of government revenue. The government does not appear to appreciate that not all investment will be good for the nation or its peoples.

The International Financial Institutions (IFIs) and foreign governments have endorsed economic liberalisation as the path to national development. According to an IMF statement: “Replicating the success of Foreign Direct Investment (FDI) in the energy sector in other sectors would contribute significantly to private sector development,

help diversify the economy, and open up new export opportunities”.<sup>42</sup> Government officials have consulted experts from foreign governments and IFIs to discuss a broad range of reforms aimed at promoting economic growth and reducing poverty. One of the priorities is to address the lack of technical capacity to manage national monetary and financial policies. In August 2012, the World Bank and the Asian Development Bank opened offices in Yangon as part of their increased engagement with the country, having left after the crackdown on democracy activists in 1988. World Bank officials say they are in the process of receiving its board’s approval to offer up to \$85<sup>43</sup> million in grants for community-driven development programmes and expanding its technical assistance programmes.<sup>44</sup> The ADB announced that it had completed a needs assessment in several sectors and “will expand its analytical work in selected priority sectors, and provide technical assistance initially for capacity building and institutional strengthening”.<sup>45</sup>

The ADB’s recent economic report for Burma gave an overly optimistic forecast for the country’s short-term economic growth. Moreover, it indicated that, if Burma’s economy sustains growth of 7–8 per cent per year, it could



become a middle-income country by 2030. This would be partly achieved by opening the country's rich resources, including agricultural lands, to foreign investment. The report also advises that the government should improve infrastructure and human capital, and diversify into industry and services.<sup>46</sup> The ADB report offers a more glowing analysis of the government's ability to create a favourable investment climate than Western economic analysts have done.<sup>47</sup>

There is also a need for a critical discussion among all key stakeholders in Burma about the negative role IFIs have played in relation to inclusive development, drawing on experiences from other parts of the world.

In November 2012, after months of debate, the parliament finally approved the Foreign Investment Law (FIL). It allows for up to 100 per cent foreign ownership, but with special restrictions in some sectors, such as agriculture, livestock breeding and fisheries. The Myanmar Investment Commission (MIC) is the agency that approves investments in restricted sectors.<sup>48</sup> Earlier drafts of the law reportedly restricted full foreign ownership and established high capital requirements for domestic firms engaged in joint ventures with foreign companies.<sup>49</sup> The full ramifications of the law remain unclear since several key by-laws and regulations structuring the investment climate have not been made public.<sup>50</sup>

While representatives of dozens of foreign companies have travelled to Burma to assess business prospects, the anticipated increase in FDI has not yet materialized. Current

investment flows continue to primarily target the extractive sectors rather than spreading out into sectors in which people in Burma could potentially benefit more, such as manufacturing. This is due to concerns that the investment climate continues to entail large political and economic uncertainties and risks, and the delay in the promulgation of the FIL.<sup>51</sup> While this law provides potential investors with more clarity over issues such as ownership and tax exemptions, the by-laws defining guidelines for officials and implementation practices remain issues of concern. Other obstacles include the lack of communication and physical infrastructure, including the lack of reliable electricity and poor road networks.

Aung San Suu Kyi has voiced concern about the lack of adequate legal mechanisms regulating foreign investment, particularly the rule of law. "Investors in Burma, please be warned – even the best investment law would be of no use whatsoever if there is no court clean enough and independent enough to be able to administer these laws justly", she said. "Good laws already exist in Burma but we do not have a clean and independent judicial system. Unless we have such a system it is no use having the best laws in the world".<sup>52</sup>

Essential economic change will not be easy. Burma's economy has long been dominated by arbitrary and predatory practices. As one foreign scholar observed in 2010: "Instead of functioning amidst formal rights and laws, economic activity in Burma exists according to a set of parallel rules of the informal economy - rules determined by arbitrary procedures for dispute settlement, nepotistic patron-client relationships between the military, state and business, extra-legal allocations of natural resource concessions and of licenses to engage in external activity, and by a governing apparatus that is as unpredictable as it is predatory".<sup>53</sup> Even with the new government's intention to attract more foreign investment, it is not yet clear what improvements will be made to existing business and regulatory practices.

The key question is whether the country's economic reforms will benefit only a few, or create a development model that will benefit the majority, including Burma's ethnic groups, and bring about sustainable and equitable development that is both sensitive to conflict and environmentally friendly.

Poster of NDF opposition party in 2012 by-election campaign





## Ethnic Nationalities at the Crossroads

Burma's reform process could have dramatic consequences for its ethnic peoples. A wide range of ethnic groups inhabit the borderlands, each with their distinct language, culture and customs. Ethnic nationalities feel marginalised and disenfranchised, and their regions have suffered decades of war and underdevelopment.

The political impact of the reforms on the ethnic borderlands is likely to be very significant, with new rounds of ceasefire agreements and the beginning of political dialogue. At the same time, the prospects of the country opening up for massive foreign investment will also have a profound impact on the lives of ethnic peoples. The key questions are whether these communities will see the benefit of the anticipated economic changes and how they will cope with their impact.

Ethnic nationalities are at the crossroads of the economic developments taking place in Burma and the region at large. The experiences of development efforts in ethnic regions during the ceasefires of the early 1990s underline the risks, and these communities have much to lose from the current reform process. In addition, foreign investment has had a direct impact on Burma's ethnic conflicts. The mistakes of the past should not be repeated. Borderland communities could benefit from investment in their areas if they are actively involved in designing regional and national development plans.

### Ethnic Diversity

Burma is one of the world's most ethnically diverse countries. Most of the population, which is ethnically Burman and predominantly Buddhist, lives in the central plains and valleys. In contrast, most ethnic minority groups, which make up 30 to 40 per cent of the estimated population of 60 million, live in the rugged hills and mountains surrounding the central lowlands, where they traditionally practised upland swidden cultivation. Many non-Burman groups were originally animists, but significant numbers converted to Christianity more than a century ago, especially among the Chin, Kachin, Kayah and Karen populations. Some minority groups, such as the Mon, Rakhine and Shan, are Buddhist, and live in the valleys and plains where they once had powerful kingdoms. Some of the ethnic minority groups living in the borderlands are also Buddhist, such as the Pwo Karen, Pa-O and Palaung. A significant Muslim population suffers discrimination both by the government and by the general population. The most abused is the Muslim community, especially those calling themselves Rohingya, in the northern Rakhine state.

The former SPDC regime officially recognised 135 different

Pa-O woman



ethnic groups under eight major “national ethnic races”.<sup>54</sup> These figures are questionable, however, as there are no reliable population figures. The country’s first national census in decades will not be conducted until 2014, a contentious government-led but internationally supported project, to be completed just before the 2015 national elections.

Under the 2008 constitution, Burma is administratively divided into seven regions and seven states: Chin, Kachin, Karen, Kayah (or Karenni), Mon, Rakhine and Shan. The ethnic states comprise 57 per cent of Burma’s territory and the majority ethnic population of each state is reflected in its name. The majority Burman population inhabits the seven regions (formerly called divisions). The regions and states are not mono-ethnic and cannot be seen as representing a whole ethnic group. There is a substantial non-Burman population in some of the regions, such as the Karen in the Irrawaddy Region and Tanintharyi Region. Shan State has many other ethnic groups, such as the Akha, Lahu and Intha; there is a significant Shan population in Kachin State; and many Burmans live in the cities and larger towns in the ethnic states.

The government has also designated six new ‘self-administered areas’ for some ethnic groups that do not form a majority in their state or region. These are the Naga Self-Administered Zone in Sagaing Region; the Danu,

Pa-O, Palaung and Kokang Self-Administered Zones in Shan State; and the Wa Self-Administered Division also in Shan State. Other distinct ethnic groups do not enjoy this special status.

### Marginalisation

Ethnic minorities in Burma have long felt marginalised and discriminated against. Their main grievances are lack of influence in the national and local political decision-making processes; the absence of equitable economic and social development in their areas; and what they see as the Burmanisation policies of successive governments, which translate into the repression of their cultural rights and religious freedom. In many cases they have resorted to armed opposition.

Resentment, suspicion and mistrust are rife among and within ethnic groups in Burma. Ethnic minority organisations have been deeply suspicious of all Burman-dominated governments, claiming that they made no sincere attempt to resolve the ethnic crisis. These grievances increased after Ne Win came to power in 1962 and set up a one-party state under the BSPP. Ethnic minority organisations feel that Ne Win’s policies, officially aimed at national unity, enlarged the gap, further increasing suspicion and misunderstanding between ethnic minorities and Burmans.

Following Ne Win’s takeover, successive military-dominated governments argued that Tatmadaw supremacy is necessary to keep the country together and to “save the union”. However ethnic minority leaders contend that the ruling generals sought to enforce a unitary state based on a central Burman identity, and they thus accuse them of chauvinism and a policy of ‘Burmanisation’.

During these long years of conflict, the goals of different ethnic minority groups have varied. Today, most ethnic minority organisations reject separatism, preferring a federal state based on democratic principles that safeguard their political, economic and cultural rights. The key aspirations are self-determination, equality, equitable development and revenue sharing, and devolution of power and authority.

The lack of economic development in the resource-rich ethnic areas is one of the primary grievances among ethnic communities, along with historical resistance to military state-building efforts in their territories. Despite the investments in resource extraction in the borderlands, local activists complain that the profits have not been reinvested in promoting local development. There is little physical and communication infrastructure, and most communities lack electricity. Many investments take place in the absence of consultation with community leaders. Even when community leaders do take part, they are often



ineffective in representing the interests of the community. There is also widespread disregard for the social and environmental impacts of investment projects. Moreover, the profits benefit only the local elites, government and military officials, businessmen and members of armed groups, who do not represent local communities.

The social and cultural rights of ethnic minorities in Burma deteriorated rapidly after the 1962 coup. The BSPP banned the use of their languages in the education system. Publications in ethnic minority languages, including newspapers and books, suffered the same fate. After 1988 a number of state colleges in ethnic minority states were upgraded to university status, but local leaders claim that such change is in name only.

Many armed opposition groups have set up education departments to teach their own languages. For example, following a 1995 ceasefire, the New Mon State Party (NMSP) extended adult-literacy and various capacity-building activities to areas in Mon State, including areas outside NMSP control. The NMSP promoted Mon National Schools, teaching in the Mon language. Most of the students come from government-controlled areas, where teaching in minority languages is not allowed beyond fourth grade. The Mon Literature and Buddhist Culture Association and the Mon Literature and Cultural Committee have been able to expand and systemise their activities after the ceasefire.<sup>55</sup> In Shan State the Shan Literature and Cultural Committee have also been very active and other ethnic groups have established similar organisations.

### The Humanitarian Dimension

Burma is a poor country by any standard, and ranks near the bottom of the UNDP Human Development Index (HDI).<sup>56</sup> Although much of the country's flow of investment is in the borderlands, local communities, particularly in conflict zones, lag behind the national average on many socio-economic and development indicators. According to a 2011 Household Survey conducted by the UNDP, poverty was highest in ethnic areas: Chin State (73 per cent), Rakhine State (44 per cent), Tanintharyi Region (33 per cent) and Shan State (33 per cent). Ethnic states also scored significantly worse on a wide range of indicators, including access to health care, safe drinking water and sanitation, mortality and morbidity rates, as well as literacy rates and school attendance. Overall, Rakhine State and Chin State fare the worst.<sup>57</sup>

While there are no systematic socio-economic data on border areas, several smaller studies reveal the different standards of living across the country. For example, a 2006 academic study of mortality rates in conflict zones in the Mon, Karen and Kayah (Karenni) States found infant and child mortality rates were "significantly higher than estimates for Burma as a whole".<sup>58</sup> In 2005, a nutrition

survey in Shan State found that in the Kokang area 62 per cent of children under five years of age exhibited stunted growth, while the figures in the Wa and Lashio areas in Shan State were 58 per cent and 41 per cent respectively.<sup>59</sup>

According to a survey conducted by The Border Consortium (TBC), 59 per cent of people in rural communities in southeast Burma are living in poverty. The situation was reported to be especially serious in areas affected by conflict in northern Bago Region and Karen State. Overall, in the surveyed areas almost 50 per cent of the population had no citizenship documentation, nearly 75 per cent lacked access to safe drinking water, nearly half had no proper sanitation facilities, and one in three children between the ages of five and 12 did not regularly attend school.<sup>60</sup>

Since the 1960s, in its military campaigns against armed opposition groups, the Tatmadaw used the "Four-Cuts" (Pya Lay Pya) strategy, so called because it aimed to cut off the four links between the insurgents and the civilian population – food, finance, intelligence and recruits. The military campaigns directly targeted the civilian population, resulting in the forced relocation of hundreds of thousands of people to special sites near the army camps. The campaigns were often accompanied by gross human rights abuses, including extra-judicial and summary executions, torture, rape, the confiscation of land and property and forced labour.<sup>61</sup> As a result, tens of thousands of lives have been lost, and hundreds of thousands of villagers sought refuge in the forests or in neighbouring countries.

Over half a million people are currently displaced in the conflict areas in the eastern part of the country along the Thai border. An estimated 138,000 ethnic minority refugees are living in camps in Thailand. Following the breakdown of the Kokang ceasefire in September 2009, some 37,000 refugees fled to China, although most have since returned.<sup>62</sup> The renewed fighting in Kachin State since June 2011 has resulted in the displacement of about 75,000 people,<sup>63</sup> and in 2012, an estimated 400,000 people were still internally displaced in southeast Burma due to the ongoing conflict. Following the new ceasefires in these regions, some 37,000 of them moved back to their villages, although it remains unclear whether they will be able stay.<sup>64</sup>

During 1991 and 1992, about 250,000 minority Muslims fled to Bangladesh following a Tatmadaw campaign. Most of them have since been repatriated to Rakhine State by the United Nations High Commissioner for Refugees (UNHCR), but they face restrictions on their movement, forced labour and administrative barriers to marriage, and many are not recognised as Burmese citizens.<sup>65</sup> Some 35,000 Rohingya refugees remain in Bangladesh.

In early June 2012, the ethnic situation again deteriorated when an angry mob of Buddhist Rakhines killed 10 Muslims, having mistakenly accused them of being involved in the rape and murder of a Rakhine woman,

Logging yard from the Myanmar Timber Enterprise (MTE)



which state media said occurred on 28 May, allegedly by three other Muslim men. Following the murders, violence between the two communities flared up throughout May 2012 and again in October, with the security services perceived as favouring the Buddhist side.<sup>66</sup> According to the government, the unrest resulted in 167 dead, 223 injured, over 10,000 houses destroyed and the displacement of over 110,000 people who moved into camps.<sup>67</sup> Indeed President Thein Sein initially said that Muslim inhabitants who could not prove “at least three generations” of citizenship in the country should be expelled abroad, before apparently backtracking.<sup>68</sup> For the present, the future of as many as 800,000 Muslim inhabitants, many of whom live in deep poverty, remains very uncertain.

### **The Kachin Ceasefire and Development for Peace?**

The ceasefire agreement between the military government and the KIO in early 1994 was welcomed by local communities at the time, as it put an end to the fighting

and bloodshed, curtailed the most serious human rights abuses, and provided space for resettlement of displaced communities and the rehabilitation of war-affected areas. Many new and unexpected threats to peace and prosperity have since arisen, however. These experiences provide important lessons about the relationship between the changing dynamics of conflict and the role of foreign business interests that are relevant for the current ceasefire process.

Following the ceasefire, the KIO lost control of the opportunities to tax companies operating the lucrative jade mines in Hpa-kant in western Kachin State, thereby losing access to their main financial lifeline. Furthermore, the then military government granted jade-mine concessions to new companies with which it had links. The KIO then turned to the only other valuable resource within their territorial control: timber. The combination of valuable timber stands in the KIO’s border areas, the KIO’s need for revenue to support a standing army and development projects, and China’s growing demand for timber following a newly



imposed ban on domestic logging, resulted in massive deforestation along the Yunnan border. Moreover, greater control by the military government over Kachin State and northern Shan State enabled regional military commanders and local military officials to grant logging concessions to Chinese businessmen.<sup>69</sup> Burma's forest coverage was down to 24 per cent in 2008 from 57 per cent in 1962. The main causes of deforestation are excessive harvesting, rampant illegal logging, increasing use of firewood, as well as out-of-balance upland swidden cultivation.<sup>70</sup>

Timber was not the only source of revenue for the parties in conflict. Apart from jade, Kachin State also possesses great mineral wealth, in particular gold. The Tatmadaw officials awarded most of the mining concessions to Chinese companies, although tax was also paid to the KIO in areas where they had influence. The gold extraction, predominantly via hydraulic operations along riverbanks, started to spread along major rivers and their tributaries in government-controlled areas, especially along the Irrawaddy River around Myitkyina, the capital of Kachin State. According to one report, by 2002 the military government had offered mining concessions amounting to nearly 20 per cent of the area of Kachin State. In Hukawng Valley in western Kachin State, the number of major gold-mining sites rose from 14 in 1994 to 31 in 2006.<sup>71</sup> While mining caused severe ecological degradation, the social costs were also high. The mines attracted migrant workers from all over Burma, and a significant number started

to use opium and heroin, which were cheap and readily available, especially in Hpa-kant. The common practice of sharing unclean needles among the many injecting drug users in the area is one of the main causes of the country's epidemic of HIV and AIDS. The mining town also had a large commercial sex industry, and low levels of condom use further contributed to the spread of HIV.<sup>72</sup>

Following the 1994 ceasefire, the second wave of large-scale resource extraction by foreign companies is in mega hydropower projects. Seven major dams are planned for the N'Mai and Mali Rivers, including the now suspended Myitsone dam on the confluence of both rivers into the Irrawaddy River. Chinese state corporations have financed all seven dams to generate electricity for China.<sup>73</sup> There are also several Chinese-financed dams in northern Shan State.

Furthermore, after the ceasefire several large-scale conservation zones were initiated that curtail local land use and livelihood activities. The Wildlife Conservation Society created the world's largest tiger reserve – the Hukawng Valley Tiger Reserve – that is part of the massive Northern Forest Complex that occupies nearly all of the northwest area of Kachin State. When these zones were created, local people were prohibited from all forms of hunting – an important source of food and part of the local culture – and other forestland uses were greatly curbed.<sup>74</sup> The conservation project came under further criticism by



Farmers in Shan State



## The “Curse” of Resource Determinism

Academic studies on the impact of natural resources on economic development and governance refer to the so-called “resource curse”. This typically refers to the paradox that many countries with large endowments of natural resources, such as oil and gas, tend to perform worse in terms of economic development and governance than those with fewer natural resources. Some of the associated ills include slower economic growth, weak democratic development and corruption. Scholars have also identified a statistical association between the presence of natural resources and the increased likelihood of both the onset of civil war and its duration.

These studies have informed policy-makers’ understanding of the interactions of resource wealth with economic development, governance and civil conflict, and sometimes these insights have guided policies. There has been a tendency, however, to exaggerate the role of resources in accounting for a variety of economic and political problems, rather than other factors or pre-existing conditions. The “curse”-like effects of resource endowment are not inevitable or predetermined, but reflect possible outcomes, tendencies or risks that may be addressed through the effective management of resources.

A “resource curse” framework provides only a limited explanation for why a given resource-rich country should have poor development outcomes. Its underpinnings are largely based academic studies applying advanced statistical methods to analyze data from a large number of countries. This approach identifies statistical relationships between resources and various outcomes. One of the tenets of the “resource curse” is the increased likelihood of slower economic growth as government revenue becomes more reliant on resource commodities. This type of statistical analysis identifies a common tendency among several countries, but does not identify the cause of slow economic growth in a specific country.

In fact, many oil-producing countries achieve high health, income and education outcomes. The people of Norway, a major oil producer, enjoy one of the highest standards of living in the world. The economies of other oil-producing states, including Brunei, Argentina, Qatar, United Arab Emirates, Kuwait and Mexico, also fare reasonably well.

Oil-producing states have experienced vastly different development outcomes. The cases of Indonesia and Nigeria provide a good comparison. Thirty years ago, both countries shared a comparable dependency on oil revenues and had similar per capita incomes. In contrast to Nigeria, Indonesia implemented a series of reforms aimed at addressing poverty and macro-economic stability. Over this three-decade period, income inequality in Indonesia has remained stable, while in Nigeria it has increased, and Indonesia’s per capita income is now roughly four times greater than that of Nigeria. Resource wealth alone cannot account for their different trajectories.

Not all resource-endowed countries suffer symptoms of the “resource curse”. Effective institutions may mitigate any adverse effects of resource dependency. In Norway, for instance, the government’s sovereign wealth fund for managing investment from oil revenue deflects the potential “resource curse”. Clearly, strategies for managing resources must take into account a country’s specifics rather than simply replicating what has worked elsewhere. These specifics include the country’s history, the ethnic and political context and institutional development.

When considering the implications of Burma’s reliance on resources to explain its current situation, it is important to consider a wide range of factors. Many of the dynamics affecting Burma’s political and economic development date from long before the recent increase in resource revenue. The damage to the economy from World War II and decades of civil war, along with the military’s mismanagement of the economy, are just some of the factors to take into account.

local groups when in 2006 the military government granted Yuzana Company, owned by the prominent Burmese businessman Htay Myint, a concession of almost 81,000 hectares to establish mono-crop plantations (cassava and sugarcane) that partly overlapped with the tiger reserve. "Bulldozers have razed forest areas, animal corridors, and farmlands of ethnic people living in the valley for generations", says a report by the Kachin Development Networking Group, adding that, "Local people have been forced from their homes into a relocation camp".<sup>75</sup>

The final wave of resource grabbing during the ceasefire period is agribusiness. Since the mid-2000s, there has been a significant spike in large-scale land acquisitions in private concessions, mainly to Chinese businessmen or to local companies acting as a front. China's opium-substitution programme is behind this recent surge in Chinese agribusiness projects in the Kachin and northern Shan States. The Beijing-initiated policy, which is implemented by Kunming government agencies, provides subsidies and waives import fees to Chinese companies that cultivate agricultural crops in northern Burma (and Laos).<sup>76</sup> While the policy is intended to provide an alternative for ex-poppy farmers, it has led directly to the widespread dispossession of smallholder farmers in Burma, and has mainly benefited

Chinese companies and local authorities.<sup>77</sup> In addition, well-known Burmese companies are also vying for agribusiness deals, such as the concession obtained by Yuzana Company that will feed China's domestic biofuel market.<sup>78</sup>

These waves of diverse resource extraction, production and conservation have reallocated land and resources from the local ethnic population to outside investors. This process was in part facilitated by the military government, in asserting greater control over areas in Kachin State and northern Shan State. The end of the fighting also provided the greater stability conducive to investment and extraction. The displaced Kachin who returned to their homes during the initial ceasefire period have since been repeatedly dispossessed of their lands and livelihoods. Kachin leaders, activists and farmers speak of new and unexpected threats since the ceasefire: loss of land and therefore livelihoods because of concessions that extract, produce and conserve nature for non-Kachins. In addition, the local population has come under increasing duress from greater Tatmadaw presence.<sup>79</sup>

As the Thein Sein government is negotiating new ceasefires with armed opposition groups across the country, there is great concern that the Kachin disaster may be repeated. The

Before the 2011 ceasefire breakdown: Burma Army and Kachin leaders in traditional Manao dance



peace process excludes many important local stakeholders and avoids the most crucial element to genuine peace – political dialogue. There are fears that new business deals will again exploit the region's natural resources without bringing any positive development for local communities.<sup>80</sup> One Karen leader, reflecting on the current round of ceasefire negotiations with the KNU, privately warns of a new era in the ethnic borderlands: "Before villagers are afraid of fighting; but now after ceasefires we are afraid of development".

Equally concerning, the way in which the KIO and Kachin people were excluded in the reform process from the SPDC to Thein Sein governments before the Tatmadaw launched its recent offensive to apparently impose a military solution has only increased beliefs that it is Kachin lands and not the people that the government was interested in all along.

### Foreign Investment and Ethnic Conflict

Neighbouring countries have profited greatly from Burma's political instability, which has allowed Chinese and Thai companies to play different groups off against each other. Furthermore, the weakness of the Burmese state and the uncertainty of the situation encourage serious corruption at the local level by army and government authorities as well as the local commanders of ceasefire groups. As a result, natural resources are being extracted at low costs and large profits for Chinese and Thai companies and authorities, with very little reinvested into the area. Other powerful non-political actors are also benefiting (mostly economically) from the political instability in Burma and the continuing conflict. These include foreign interests such as Chinese and Thai logging companies and illicit drug traders, who saw no benefit in peace and reconciliation.

Resentment has grown among the local population in Kachin State against Chinese investment and resource extraction since the 1994 ceasefire, especially logging and gold mining, but later also the hydropower projects, especially the Myitsone Dam. In March 2011, the KIO wrote an open letter to China's president Hu Jintao asking to stop the Myitsone Dam, warning that it could lead to "civil war" if not handled properly. According to a Kachin representative, there had been growing local pressure on the KIO to stop the dam. "They said you have guns, why don't you do something. So indirectly this also contributed to the conflict. Investment did not cause domestic conflict, but indirectly it pushed the KIO to act".<sup>81</sup> Following increasing public pressure, in September 2011 President Thein Sein announced the suspension of the Myitsone Dam (see Chapter 4).

The ceasefire with the KIO in Kachin State broke down in June 2011 when Tatmadaw troops attacked KIO positions near another hydroelectric dam close to the Chinese border. KIO sources claim the Tatmadaw regional commander in

Kachin State had on several occasions asked the KIO to withdraw from positions leading to the dam in order to provide the government access.<sup>82</sup> "The conflict in Kachin is not just about ethnic issues, but also about resources", says a Kachin peace activist, adding, "The recent fighting started at the Taiping Dam in June 2011. It is both for political and economic reasons".<sup>83</sup>

Fighting then spread to northern Shan State, which has a significant Kachin population and where the KIO is also active. Some local media reports suggested that the continued fighting between the Tatmadaw and the Kachin and Shan armed groups stems in part from the military's interest in consolidating control over areas where Chinese companies have invested in hydropower projects and in oil and gas pipelines that will have major implications for long-term geo-politics and economics in the region.<sup>84</sup> Local communities echo the view that the resumption of fighting is directly related to foreign investment. According to a Kachin NGO worker: "People feel the military offensive is because of the pipeline, to move the KIO out of that area".<sup>85</sup>

Local communities in Karen State have also expressed concerns about the role of large-scale economic projects in conflict areas following a new ceasefire with the KNU in 2011. Participants at a people's forum organised in Karen State in October 2012, attended by thousands of Karen people affected by conflict, stated that the central government "is using the peace process to push forward unregulated development projects without proper safeguards or policies". They called on the government and the KNU to improve the ceasefire and peace process and include local organisations in the decision-making process to promote sustainable peace and development in the country. "Large-scale economic investment must be suspended during the peace negotiations", the statement said. "The government and the KNU must first address the issue of local ownership of natural resources".<sup>86</sup>

It is therefore crucial that foreign investment does not create or exacerbate existing conflict. Just as in the debate on the role of aid in conflict situations, foreign investors should develop conflict-sensitive strategies and adhere to the principle of "do no harm". They must also prevent ethnic communities from being further marginalised, as this will lead to new grievances and fuel conflict. Foreign investors need to have a thorough analysis of the conflict. According to a representative of a grassroots organisation: "Business played a part in the current conflict situation. Most of the foreign investment is in ethnic regions, which are conflict areas. Our conflict is very complex, and foreign investors need to understand this. It is our domestic problem, but it is also affecting our neighbouring countries".<sup>87</sup>





## A New “Great Game”: Changing Regional Dynamics

The reform process in Burma and the subsequent endorsement of the NLD along with Aung San Suu Kyi's call for countries to remove sanctions has opened the door for substantial foreign investment in the country. The prospect of peace in the ethnic border regions gives further opportunities for large-scale foreign investment, international trade and regional infrastructure projects.

Burma is seen as the missing link in regional development, and regional integration is high on the agenda. This will depend on Burma opening up its ethnic borderlands and ending the decades-old civil war. There is also growing global interest in engaging with Burma. There have been many high-profile visits to the country, praising the reform process and promoting economic cooperation, trade and investment. A new “great game” is in the making.<sup>88</sup>

### From Battlefields to Marketplaces

Burma's borderlands are entering the latter stage of a 20-year transition from “battlefields to marketplaces”. For decades Thailand had tacitly supported the ethnic insurgencies in Burma along its border, from which it had benefited economically and as a perceived defence against the spread of communism. With the end of the Cold War, however, the Thai government announced a new policy: to turn Indo-China from a “battlefield into a market place”. Thailand formally declared that the communist threat was over, and that it aimed to be the hub of regional economic development. Many governments in Southeast Asia expanded their priorities from the previous emphasis on national security to include a greater concern for regional economic linkages.

The same policy applied to Burma. Hence it sought to normalise formal relations with its neighbours and to promote trade and investment. For policy-makers in Bangkok, the insurgencies along the Thai border had outlived their usefulness. The “liberated areas” were no longer seen as a buffer zone but as an obstacle to regional economic development. But in Burma, until recently, internal politics delayed a similar reorientation of policy priorities.

After the 1962 coup, General Ne Win's military government implemented a series of sweeping economic reforms, known as the Burmese Way to Socialism, which aimed to create a self-reliant economy. This included the nationalisation of many businesses, precipitating the mass exodus of the largely ethnic Chinese and Indian entrepreneurial class; the demonetisation of large currencies; and the attempt to establish co-operatives and farming collectives.<sup>89</sup>In fact, the inward-looking economic policies that were intended

to promote national development crippled the economy. In response to the shortages of goods, illegal trade took root, especially along the border with Thailand.

From the late 1980s, the border areas experienced a fundamental politico-economic shift that opened them up to greater cross-border investment and resource extraction. The initial impetus for such change was the post-Ne Win government's partial liberalisation of foreign investment and trade laws. At the same time, the government initiated a series of ceasefire agreements with armed ethnic groups and began gradually to consolidate its control of several key border crossings. Together, a cessation in large-scale conflict, increased involvement of government officials in local affairs, and greater access by cross-border investors facilitated the acceleration of resource-extraction deals in these areas.

The decline in conflict in the 1990s and 2000s did not,

however, lead to any significant economic development in border areas.<sup>90</sup> Rather, local elites and neighbouring countries profited from the political instability in Burma. One estimate of the value of the trade of undocumented goods put the figure at over \$1 billion in 2006 and over \$870 million in 2008.<sup>91</sup> Furthermore, the lack of effective mechanisms and governance for managing natural resources encouraged corrupt practices by government officials, business people and members of ceasefire groups. As a result, natural resources have been extracted and then exported, and cheap manufactured have been imported across the borders with Thailand and China.

Burma's neighbours are all keen to expand their economic interest in the country. Its major investors – China, Thailand, India and South Korea – continue with plans for further investment, which centre on resource extraction and production, especially for oil and gas, mining and agribusiness.

### Regional Investment Figures

Reliable statistics on actual foreign investment are either not published or do not exist.<sup>92</sup> According to the Economist Intelligence Unit: “There have not been any published figures on actual FDI inflows for some time, but it is likely that the rise in approvals in recent years has translated into an upturn in actual inflows”.<sup>93</sup> Anecdotal evidence suggests that foreign investment in Burma flows principally through informal channels, at least for smaller sectors such as agribusiness, and employs local investors as proxies.<sup>94</sup> This mechanism makes it hard to estimate the total value of foreign investment and means that FDI grossly understates its true level. Nonetheless, an examination of approved FDI provides a basis for identifying economic trends and analysing investment patterns. It is important to note, however, that approved FDI does not reflect the amount of actual foreign investment – not just because it does not take into account informal foreign investment through local proxies, but also because many projects that receive official approval are either delayed or never implemented.

Of the \$36 billion FDI approved since 1988, 40 per cent has been for generating electric power and 38 per cent for oil and gas projects. The manufacturing sector has attracted only 5 per cent.<sup>95</sup>

In Financial Year (FY) 2010/11, approved FDI to Burma reached its highest mark since the economic liberalisation of the late 1980s. (See Table 1 for the trends in FDI over the past five years.) According to government figures, approved FDI reached almost \$20 billion, roughly equal to the total investment in the previous two decades. Of the total approved FDI in FY 2010/11, the oil and gas sector accounted for \$10.2 billion, the energy sector \$8.2 billion, and the mining sector for \$1.4 billion. Investment in these three sectors accounted for over 90 per cent of all approved FDI in FY 2010/11 FY.<sup>96</sup>

**Table 1: Approved FDI, FY 2007/8 to FY 2011/12** (Millions of dollars, rounded to nearest million)

Year	2007/08	2008/09	2009/10	2010/11	2011/12
FDI	206	985	330	19,999	4,644

*Source: Central Statistical Organisation (CSO), Burma government, 2012*

Regional investors play a leading role in Burma's economy (see Table 2). China and Thailand comprise over half of formal recorded investment, followed by South Korea and Hong Kong.<sup>97</sup> In FY 2010/11 China surpassed Thailand in terms of overall investment due to a spike in investments in the oil and gas sector.

**Table 2: Official FDI investment by selected countries FY 2007–FY 2012**

(Millions of dollars, rounded to nearest million. Only includes major investing countries)

	Total	China	Hong Kong	India	Japan	S. Korea	Malaysia	Singapore	Thailand
2007/08	206			137		12		38	16
2008/09	985	856			4	-4			15
2009/10	330	3	6				237	27	15
2010/11	19,999	8,269	5,798		7	2,676	77	226	2,146
2011/12	4,644	4,346		73	4	26	52		
2012*	388	194	63		1	13		21	

\* April–June 2012

Source: Central Statistical Organisation (CSO), Burma government, 2012

Recent FDI trends suggest that Burma is likely to continue receiving investment in the extractive sectors, especially in energy (oil and gas) and power (hydropower dams) projects.<sup>98</sup> Recent FDI has concentrated on two mega projects, both in ethnic borderlands: the Dawei Special Economic Zone (SEZ) in Tanintharyi Region and the Shwe Gas Project in Rakhine State.

### Economic Corridors and Regional Linkages

Over the last decade, the remote border regions of Burma have become increasingly integrated into a regional transport network. The coordination of the upgrading and construction of roads, ports and railways reflects the strategy by regional institutions and governments to facilitate cross-border linkages among commercial centres in the region. The ADB, with financial support from Japan, has played a pivotal role in the development of “economic corridors” within the Greater Mekong Subregion (GMS).

The Greater Mekong Subregion Economic Cooperation Program was launched in 1992, when Burma, Cambodia, China, Laos, Thailand and Vietnam agreed on an ADB-supported regional cooperation programme, focused on improving economic relations. According to the ADB, which acts as the programme’s secretariat, priority infrastructure projects worth around \$10 billion have either been completed or are underway. Among these are the upgrading of the Phnom Penh (Cambodia)–Ho Chi Minh City (Vietnam) highway and the East–West Economic Corridor that will eventually extend from the Andaman Sea to Da Nang.<sup>99</sup> By September 2011, the GMS programme reported it had invested some \$14 billion mainly on subregional infrastructure-related projects.<sup>100</sup>

The 2012–2022 Greater Mekong Subregion Strategic Framework notes that the strategy is nearing completion, with major road links now in place in all countries except Burma. The focus of the new framework is on ensuring that all GMS countries are connected to a GMS rail network by 2020, integrating the energy and power markets, and improving telecommunication linkages and information and communication technology (ICT) applications.<sup>101</sup>

The East–West Economic Corridor, or simply the Asia Highway, is an ADB-coordinated project to develop a land

route linking the Indian Ocean with the South China Sea. The proposal is to develop a road network running from the port of Da Nang on the coast of Vietnam via Mukdahan in Laos and Savannakhet and Mae Sot in Thailand, to Myawaddy and Hpa-an in Burma’s Karen State, and ending in Moulmein in Burma’s Mon State. The corridor extends for 1,320 km as a continuous land route between the Andaman Sea in the Indian Ocean and the South China Sea. The corridor links up with other ADB-coordinated road projects. All roads along the route already exist, but Burma’s need to be upgraded.

The North–South Economic Corridor runs from Kunming, the provincial capital of Yunnan, to Bangkok, one route via Burma’s Shan State and another via Laos. China was keen to promote investment in Burma long before the current reform process started. China was the most important political and economic ally of the previous military government, as well as its main supplier of arms. The regime relied on China as its political and economic lifeline partly because of Western sanctions. China’s role as a major regional investor was first articulated in a 2001 Beijing policy known as “zou chu qu”, literally translated as “to go out”. Motivated by a host of factors linked to the country’s economic reform and diplomatic changes, including China’s lack of raw materials to fuel its economic growth, the aim was to transform China from being a recipient of foreign investment into a major overseas investor.<sup>102</sup>

China’s policy on Burma is driven mainly by economic and security considerations. China’s “energy diplomacy” aims to secure access to oil and gas through the construction of the overland gas pipeline from the deep-sea port at Kyaukphyu in Burma’s Rakhine State on the Bay of Bengal to Yunnan’s capital Kunming. In May 2011, the China Railways Engineering Corporation and the Myanmar Union Ministry of Rail Transportation signed a memorandum of

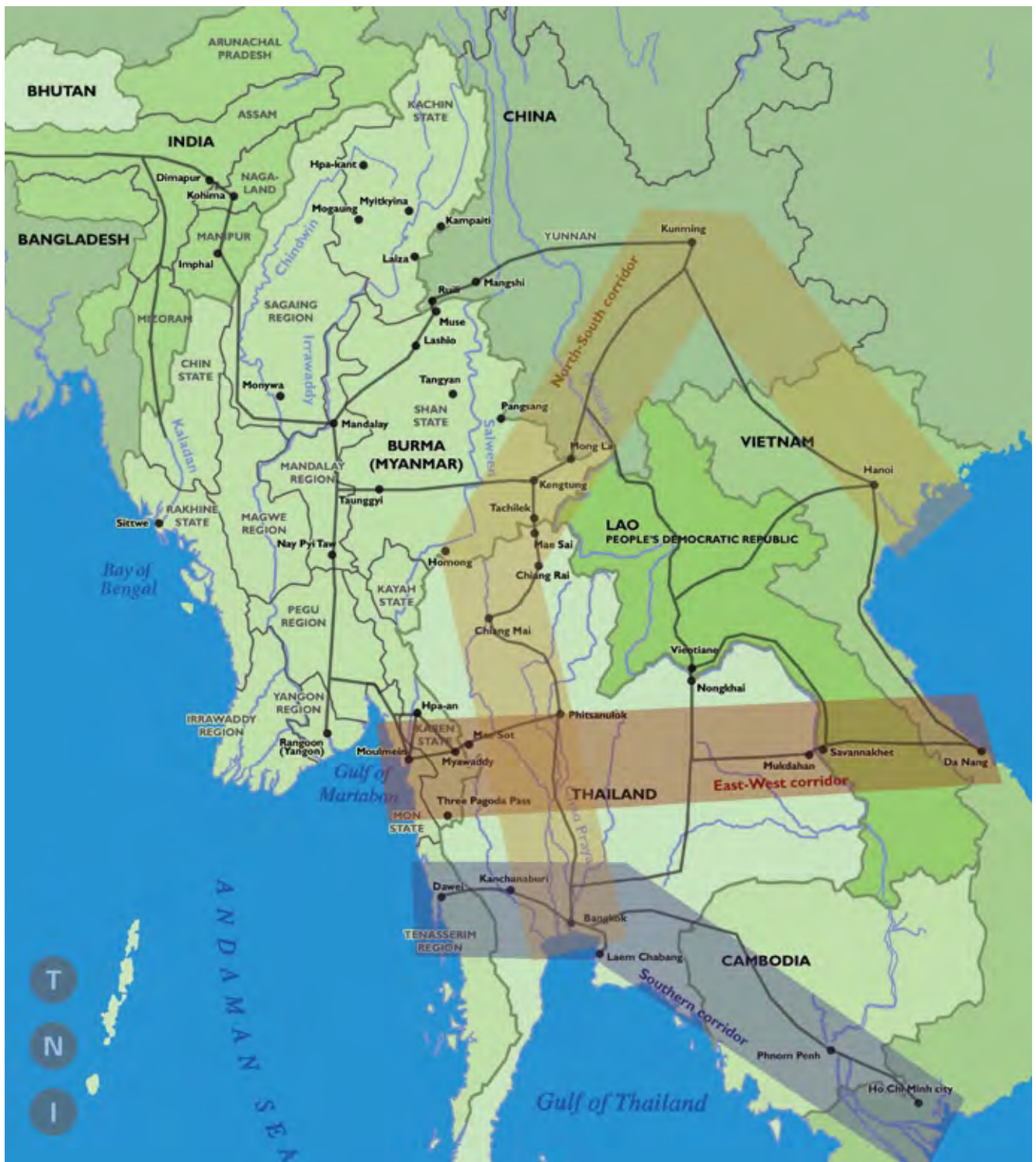


understanding (MoU) for the construction of an 810 km railway along the same route. The link will provide the means to transport Chinese imports and exports to areas in the Indian Ocean and beyond. The whole project is estimated to take five years and to cost about \$20 billion.<sup>103</sup> Chinese investors have also financed a port facility at Kyaukphyu in Rakhine State, which is intended to link up with oil and gas pipelines traversing Burma to southwest China.

The Southern Corridor is an existing road network, which runs roughly parallel to the East–West Economic Corridor

and leads from Ho Chi Minh City on the south coast of Vietnam via Phnom Penh in Cambodia to Thailand’s Eastern Seaboard and Bangkok. There are plans to extend this network to Dawei to link with the Indian Ocean as part of the Dawei SEZ. Plans are also underway to develop railway links with Thailand, including rebuilding along the line of the infamous Burma Death Railway, leading from Kanchanaburi via Three Pagoda Pass to Thanbuzayat in Mon State, as well as to build a new railway from Kanchanaburi to Dawei.<sup>104</sup> The construction of a high-volume port near Dawei is intended to serve as a channel

**Map 2 - Economic Corridors and Regional Linkages**



## ASEAN Economic Integration and Investment Protection

Joseph Purugganan, Focus on the Global South/EU-ASEAN FTA Campaign Network

The Association of Southeast Asian Nations (ASEAN) has made significant strides over the years towards its own vision of regional integration, that of building a community based on “durable peace, stability and shared prosperity in the region”. The ASEAN Charter embodies its values and principles and defines the structures and mechanisms necessary to realize its vision of one regional community. Its three pillars of cooperation are politics and security, economy, and socio-culture. While these form the backbone of the ASEAN Charter, economic issues clearly are a top priority, as articulated in the ASEAN Economic Community (AEC) Blueprint.

In response to Burma's recent political reforms, ASEAN has granted Burma the right to hold its rotating chair position in 2014, for the first time since it was granted membership status in 1997. This decision has been hotly contested among ASEAN member states. Burma's full integration into ASEAN also means that new sources of economic packages will become available to its leaders, which will bring new sources of finances – as well as the associated impacts.

The centrepiece of ASEAN's approach to economic integration has been its pursuit of free trade agreements (FTAs). As of January 2012, ASEAN member states now account for 174 FTAs in different stages of development. For Burma, six FTAs have been signed, while another ten are already in effect. Six of Burma's FTAs are under ASEAN (with Australia and New Zealand, India, Japan, South Korea and China), which are all in effect. A further two are under negotiation: EU-ASEAN FTA (talks temporarily suspended) and the Bay of Bengal Initiative for Multi-sectoral Technical and Economic Cooperation (BIMSTEC) FTA. The final two are undergoing consultations and studies: the Comprehensive Economic Partnership for East Asia (CEPEA/ASEAN+6), and the East Asia Free Trade Area (ASEAN+3).

Recent efforts in the ASEAN region to further open up trade in goods and services through these bilateral and regional FTAs are preceded by economic reforms in each country. Over the years, ASEAN member states have undertaken considerable reforms in their investment policies, from being generally restrictive of foreign participation towards a more liberal regime that encourages and gives incentives to foreign investors. Regulations covered by these reforms deal with the entry and establishment of investments, restrictions on the level of foreign ownership, performance requirements, and special treatment and incentives for foreign investors.

Investment rules and disciplines are prominent in ASEAN FTAs. One of the most controversial provisions in the FTA investment chapters concerns investor–state dispute resolution, which provides extensive rights and privileges to foreign investors over the respective government. These rights are enforced through investor–state dispute settlement (ISDS) , which operate outside the national courts and are in the hands of private lawyers and arbitrators. Civil society organisations globally have denounced the ISDS as being far from neutral.<sup>109</sup>

These investor rights and privileges have found their way into almost all new FTAs, including those signed by ASEAN. They are also enshrined in Bilateral Investment Treaties (BITs). Burma currently has signed only a few BITs, such as with China and Laos, but more are expected as Burma seeks to attract FDI.

for inter-regional trade by providing an alternative route to the Straits of Malacca.

The Japanese government has also taken steps to improve its economic relationship with Burma, announcing that it has waived its \$3.72 billion debt and overdue charges, which will allow for further extension of Japanese assistance and investment through the Japan International Cooperation Agency (JICA). The waiving of another \$2.16 billion in overdue charges is contingent on continued reforms.<sup>105</sup> The government also announced plans to provide over 600 billion yen (\$7.4 billion) over the next three years to countries in the Mekong region, including Burma, for infrastructure projects,

including high-speed rail, port and water-supply projects.<sup>106</sup> Japan further announced that it would lend \$615 million to Burma for three infrastructure projects related to the Japanese-led SEZ at the Thilawa port just south of Yangon. The project is led by a consortium of Japanese companies including Mitsubishi, Sumitomo and Marubeni.<sup>107</sup>

India continues to engage with Burma as part of its “Look East” initiative aimed at increasing economic ties with Southeast Asia and China. The Indian government has financed the refurbishment of a port at Sittwe in Rakhine State and the dredging of the Kaladan River in Chin State as part of the transport linkage between Calcutta and



northeast India by way of the Rakhine and Chin States in Burma. Bangladesh has begun work on a \$250 million project to extend the railway line from Chittagong to the border with Burma.<sup>108</sup>

### From Pariah State to Global Partner

In the past two decades, Europe and the USA followed a policy of political and economic isolation of Burma to promote democratic change and respect for human rights. Their focus was primarily on events in former capital Yangon, where opposition leader Aung San Suu Kyi became an international icon in her peaceful campaign for democracy and human rights. The ethnic issue was seen as secondary, and often only in terms of victims (refugees and internally displaced persons) rather than as a political problem that needs a political solution. There were few efforts to end the fighting or to support the earlier ceasefire agreements from the late 1980s. For most Western countries, the positions taken by Aung San Suu Kyi were the dominant factor in forming foreign policy.<sup>110</sup>

Apart from taking part in the political process and participating in the 2012 by-elections, the NLD has also reversed its position on sanctions. Since 1996, Aung San Suu Kyi had called on the international community to impose sanctions on Burma to promote democracy and human rights. In a videotape shown at the European Parliament in July 1996, she said: “What we want are the kind of sanctions that will make it quite clear that economic change in Burma is not possible without political change.”<sup>111</sup> Following her plea, many Western countries imposed economic and political sanctions on Burma.

In an audio speech to the World Economic Forum in Davos in January 2011, Aung San Suu Kyi called on existing and new investors in Burma “to put a premium on respect for the law, on environmental and social factors, on the rights of workers, on job creation and on the promotion of technological skills.”<sup>112</sup> During a visit to India in November 2012, she stated Burma needs investment in the energy sector, but stressed the need for “responsible investment that is not only sensitive to the environment, but also secures the future of our country.”<sup>113</sup> The change in Aung San Suu Kyi’s position helped pave the way for many countries to ease their sanctions on Burma, and for foreign companies to consider investing in the country.

Following the reform process of the Thein Sein government, and especially the entry of the NLD into the national political process, Western governments have reversed their isolationist policy. There is now great interest in engaging with Burma in the political and socio-economic fields. From a pariah state that was shunned by the international community, Burma has practically overnight become the world’s newest destination for foreign dignitaries and global business partners.

Promotional material from Italian-Thai Company on the Dawei project



The European Union (EU) and the USA have suspended almost all sanctions apart from an arms embargo, removing obstacles for companies from these countries to invest in Burma. In April 2012, just after the by-elections, the EU agreed to suspend many of its economic sanctions for one year.<sup>114</sup> Sanctions imposed by the Canadian government were also relaxed on imports, exports, investment, technical data and financial transactions.<sup>115</sup> In July, the Australian government lifted its remaining travel and financial sanctions.<sup>116</sup> In August, the US government lifted financial and investment sanctions<sup>117</sup> and normalized bilateral relations, which included the appointment of its first Ambassador (Derek Mitchell) to the country in almost two decades and the resumption of development assistance through the opening of the new US Agency for International Development (USAID) office in Yangon.<sup>118</sup>

Subsequently, there have been many high-level, Western diplomatic visits to Burma to meet with government officials, Aung San Suu Kyi, and ethnic nationality leaders. The December 2011 visit of US Secretary of State Hillary Clinton was followed by visits from Britain’s Foreign Secretary William Hague, Australia’s Foreign Minister Kevin Rudd, and France’s Foreign Minister Alain Juppé. Various European prime ministers also visited the country during 2012. Perhaps the most politically potent visit was from the newly re-elected President Barack Obama in November 2012, the first such visit from a serving US president. On the eve of Obama’s visit, in support of Burma’s continuing reform process the USA removed the import ban on all products from Burma except jade and rubies, and offered new opportunities for Burmese and US businesses.<sup>119</sup>





## Foreign Investment in Ethnic Areas

As already described, formal and informal investments in Burma's ethnic areas have been almost exclusively in resource extraction. This has had a detrimental impact on local communities. Instability and the lack of effective regulatory mechanisms has provided opportunities for rapacious, large-scale resource extraction, such as mining, hydropower dams and logging, as well as illegal cross-border trading.<sup>120</sup> The impact on local communities has been severe, and the benefits few and far between. Furthermore, where the government has backed such ventures, there has often been greater militarisation both to maintain security and in some cases so that the government can regain control over the territory.

Rather than investment projects catalysing development by offering socio-economic benefits to local communities, many border areas suffer some of Asia's poorest living standards. However, as the political space for civil society widens there has been increasing active resistance and organising against various foreign investment projects. Such dissent was previously prohibited. People's struggles over land and livelihoods are beginning to take centre stage in local and national debates.

Foreign investment in Burma's ethnic areas occurs both as formal FDI and through informal channels. Foreign investment in hydropower and in oil and gas projects goes through formal channels as these sectors are controlled by the state and entail massive investment. The remaining foreign investment is largely informal, involving local proxy investors to facilitate resource-extraction and production deals, such as Chinese agribusiness in the north and palm-oil development in Tanintharyi Region.<sup>121</sup>

It is difficult to ascertain the extent of informal investment given the lack of data and the reluctance of businesses to disclose details. Chinese cross-border agricultural investment in northern Burma, using local elites as proxies, provides insight into this pattern of investment. The use of a local partner allows investors to avoid FDI regulations and government oversight. FDI also often entails much higher taxes and fees compared to joint ventures or wholly-rented Burmese concessions, and foreigners have to pay more bribes to pass through many bureaucratic layers.<sup>122</sup>

Although there are no precise estimates of the value of informal investment, an estimated 65 per cent of all approved FDI (post-1988) in Burma has gone to the Rakhine, Shan and Kachin States.<sup>123</sup> Kachin State has received about 25 per cent, or \$8.3 billion, Rakhine State ranks second with \$7.5 billion, and Shan State received \$6.6 billion. Some large-scale mining projects and all mega hydropower dams have been the focus of FDI in northern Burma (Kachin and Shan States) by Chinese companies, many of them with government backing. For logging

and now agribusiness – the newest form of investment in northern Burma – Chinese companies mostly work through local proxies, which means that the investment does not appear as FDI.<sup>124</sup> Most FDI in Rakhine State is in oil and gas projects.

Foreign investments in the oil, gas and hydropower sectors are by state-owned enterprises (SoEs) that are wholly or partially financed by governments in the region. These include the government-owned Gas Authority of India Limited and Oil and Natural Gas Corporation Videsh, the government-owned China National Petroleum Corporation (CNPC) and China Power Investment Corporation (CPI). The Korean Gas Corporation is partially owned by the South Korean government.<sup>125</sup> As one researcher on investment in Burma notes: “State firms operate differently than private firms and can have different objectives. They are essentially arms of foreign policy rather than firms trying to maximize profit”.<sup>126</sup> This financial support makes the investments less risk-averse than wholly private-sector investment, which follows profit-oriented imperatives. State-supported investments tend to be oriented towards longer-term goals such as securing access to energy rather than to short-term profit.

### **The Foreign Investment Law**

After months of debate, the Foreign Investment Law (FIL) was finally approved on 1 November 2012. The law includes some measures to regulate foreign investment to the advantage of domestic companies, much to the dismay of international investors. However, the law includes significant liberalisation measures to encourage a new phase of FDI into the country, especially in the extractive sectors.

The FIL identifies some “restricted” sectors for investment, which carry certain extra, although ambiguous, precautions. In addition, investment is restricted across all sectors if it is detrimental to traditional ethnic cultures and customs or is damaging to public health, natural resources, the environment or biodiversity. Also significant is a rather ambiguous statement that foreign investment in agriculture should not be carried out if Burmese citizens are deemed by the Myanmar Investment Commission (MIC) to be capable of undertaking that agricultural activity. The final noteworthy exemption is that projects based on foreign investment must be conducted at least ten miles (16 km) from Burma’s international borders, except in SEZs. However, if a project is deemed beneficial to citizens, especially to ethnic nationalities, then it may be approved by the Pyidaungsu (Union) government, which can waive these restrictions.

The MIC can, then, allow foreign investment in restricted sectors if it considers it is in the national interest, especially for ethnic minorities. The MIC thus holds considerable

power over the approval and direction of foreign investment. More details will emerge after the FIL by-laws are passed, which will be under the Ministry of National Planning and Economic Development, where the MIC is placed. State and regional governments are not required to give consent to investments within their jurisdiction, despite decentralisation measures set out in the new constitution. The central government must be informed of large investments but does not need to give special approval.

For the specific case of foreign investment in land, land-use rights are granted up to a total of 70 years, which contravenes the new Vacant, Fallow and Virgin Land Law (see overview below), which stipulates a maximum of 30-year leases for agribusiness. Moreover, the FIL allows foreign investors more than a 70-year lease if they get permission from the central government, provided the land in question is in the less developed areas of the country that lack communication, and that the project promotes Burma’s overall economic development. The role of the MIC in approving and directing FDI is much like the position of the Central Farmland Management Committee and the Central Committee for the Management of Vacant, Fallow and Virgin Lands, both chaired by the Minister of Agriculture and Irrigation under the new land laws (see below). The absolute power invested in these committees in directing investments and land concessions runs counter to Burma’s new democratic reforms and commitments, and presents major obstacles to the inclusion of civil society in people-centred development.

### **Special Economic Zones (SEZs)**

The government is promoting industrial zones to encourage investment in sectors such as manufacturing in which there has been less investment than other sectors. The government enacted the Special Economic Zone Law (SEZ Law) on 27 January 2011 to provide the legal mechanism, with advice from governments in the region interested in investing in the future SEZs. The government is developing SEZs and industrial zones in several border regions.<sup>127</sup> While these plans had been in the pipeline for at least a decade, this renewed effort follows the new round of ethnic ceasefires. It is envisaged that the SEZs and the polluting industries they plan in order to promote Burma’s industrial sector will move the economy beyond its reliance on exporting raw materials and natural resources and importing of high-value goods.

Three large SEZs are underway at Dawei in Tanintharyi Region, Kyaukphyu in Rakhine State, and at the port of Thilawa just south of Yangon. Another seven are planned, of which three will be located in Karen State (Hpa-an, Myawaddy and Three Pagoda Pass) and four will be in Nay Pyi Taw, Mandalay, Shan State and Rakhine State.<sup>128</sup>

The Dawei SEZ is the first in the country. In 2008, a MoU was signed by the Thai and Burmese governments to establish the project, and the government granted the development rights to the Italian–Thai Development Public Company Limited, Thailand's largest construction company. The 205 km<sup>2</sup> SEZ is scheduled to be ready by 2018, and will include a deep-sea port, a shipyard, an industrial estate including a petrochemical complex, an oil refinery and gas-separation facility and steel mills. The project also includes a road and railway connection to Bangkok and the Laem Chabang Industrial Estate on Thailand's Chonburi seaboard, thereby linking the Indian Ocean and the South China Sea. The project also is part of the ADB's greater vision to establish economic corridors in the GMS region (see Chapter 3). If it goes ahead as planned, the project will cost over \$50 billion, and will be the largest industrial complex in Southeast Asia.

On the same day that the SEZ Law came into force, the government also passed the Dawei Special Economic Zone Law (DSEZ Law). This provides several incentives for foreign investors, including up to 75-year leases for large-scale industry, low taxation rates, exemption from import duties on raw materials, machinery and equipment, no restrictions on foreign shareholding, relaxed foreign exchange control and government security support.<sup>129</sup> In response to land grabs by companies and the government, and in opposition to dirty industries being relocated to Dawei from investors' countries, grassroots organisations in Dawei emerged as the development began (see more information below).

The two companies leading the development of the Kyaukphyu SEZ are the CITIC Group (a Chinese government-owned investment company) and Htoo Group of Companies (headed by Tay Za, among Burma's wealthiest businessmen, who was close to the former military regime). Plans include the construction of petrochemical plants funded by foreign investors.<sup>130</sup>

In October 2012, the government announced plans to establish another seven industrial zones, bringing the total number to 25.<sup>131</sup> In November 2012, a garment factory was opened in the new Hpa-an Industrial Zone, located seven miles (11 km) outside Hpa-an, near the Thai border. The government hopes that the SEZs will develop border regions, turning these long-neglected war-torn areas into regional trade centres. According to Karen State Chief Minister Zaw Min: "The zone is close to the city and near the airport, the [Salween River] and the general vicinity of the proposed East-West Economic Corridor road linking Vietnam, Cambodia, Thailand, Myanmar, Bangladesh and India".<sup>132</sup> In Burma's western region, President Thein Sein recently stated that: "Rakhine State is the back gate of Myanmar with commercial opportunities with Western countries, the Middle East nations, ASEAN fellows as well as India and Bangladesh". He remarked that several countries, including China and landlocked countries near

northeast India, are interested in using ports in Rakhine State: "We should turn the Rakhine State to the trade centre of the region".<sup>133</sup>

The Thein Sein government suggests that the SEZs will provide jobs for returning migrants, refugees or even demobilised soldiers from armed groups. Thai government officials hope that the SEZs will be an incentive for refugees to return,<sup>134</sup> and that by providing employment they will stem the influx of Burmese migrant workers.<sup>135</sup>

Concerns about the SEZ Law have been raised in the national parliament regarding the lack of benefits to the country overall or to the local population surrounding the SEZs, as well as on the grounds of environmental degradation and industrial pollution.<sup>136</sup> These debates are only just beginning because the planning of the SEZ projects and the drafting of relevant legislation were neither transparent nor inclusive, and because the process has reflected the interests of well-connected domestic businessmen and political elites.

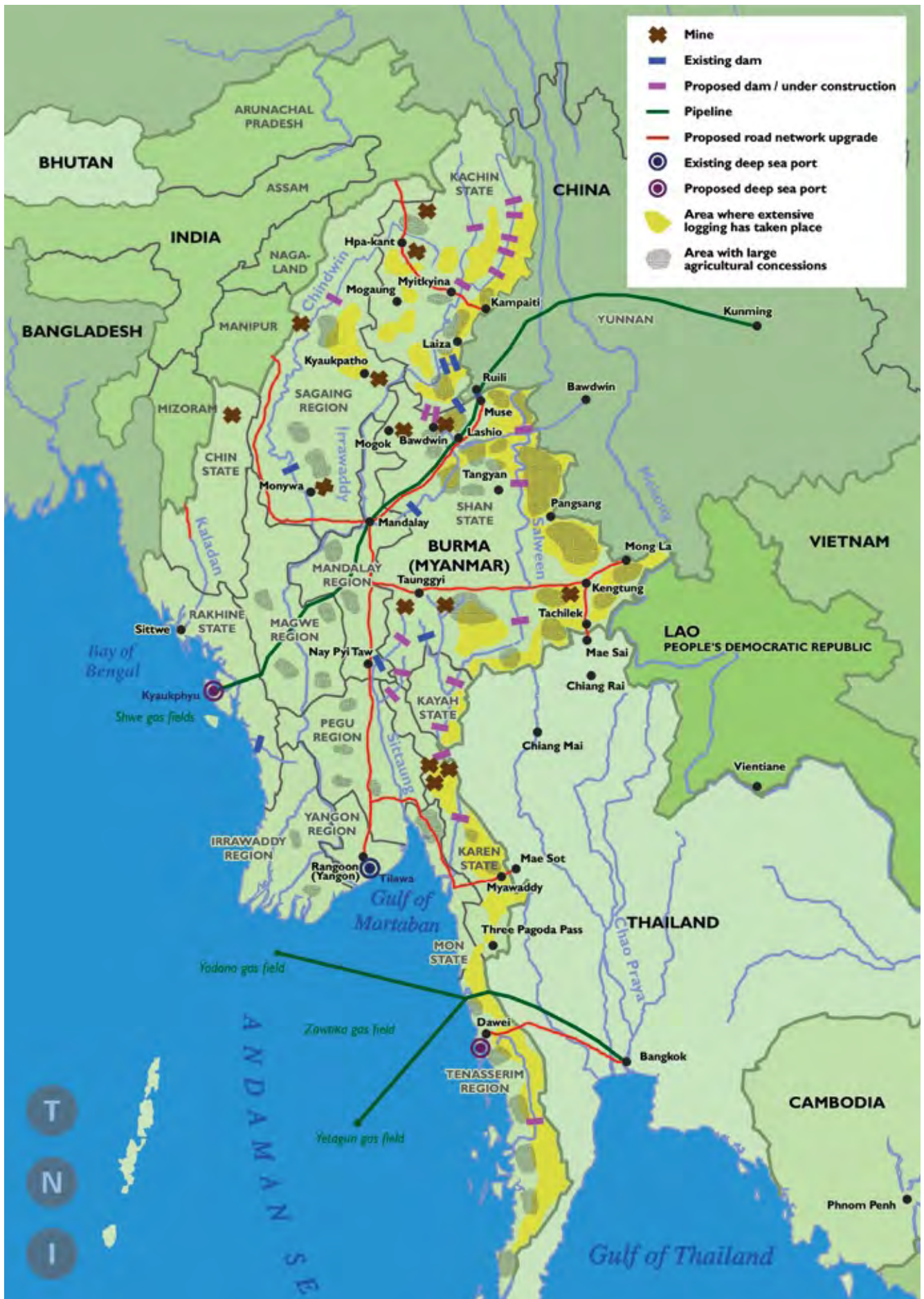
## The Oil and Gas Sector

Most foreign investment in Burma is in the oil and gas sector, which provides a major source of revenue.<sup>137</sup> The lack of transparency makes it unclear how much of this revenue reaches government agencies.<sup>138</sup> The export of natural gas currently accounts for 13 per cent of Burma's GDP, making it the most lucrative industry in the country.<sup>139</sup> The two largest fields – Yadana and Yetagun – came on-stream in 1998 and 2000 respectively. The Yadana project is a joint venture between Burma's state-owned energy company, the Myanmar Oil and Gas Enterprise (MOGE), with Total Oil (France), Unocal (now a subsidiary of Chevron, US), and PTT Exploration and Production (PTTEP Thailand). The Yetagun project was initially developed in a partnership with MOGE, Premier Oil (UK) and Nippon Oil (Japan). Thailand purchases gas from both fields. The Tatmadaw manages the security for these projects, which has resulted in greater militarisation in the areas along the pipeline. The army has been accused of human rights violations along the pipeline corridor. The military government earned huge amounts from the two projects but invested very little of this revenue in Burma's development. In addition, the money has yet to be accounted for in the national budget.<sup>140</sup> According to a recent report by Arakan Oil Watch on revenue transparency, gas revenues were for many years recorded at the much lower official exchange rate of roughly 6 kyat per US dollar versus the market exchange rate (800 to 1,000 kyat per US dollar), meaning that billions of dollars remain unaccounted for.<sup>141</sup>

The more recently developed Shwe gas fields off the coast of Rakhine State are expected to double Burma's revenue from natural gas.<sup>142</sup> One estimate predicts that the government will receive at least \$1 billion per year for the



### Map 3 - Investment in Burma's Borderlands



This map gives an overview of the approximate locations of the major investment projects in Burma's border regions.

Construction of Thaukyekhat-2 hydropower dam near Toungoo in Karen State (KESAN)



next 30 years. The field was developed as a MOGE joint venture with Daewoo International (South Korea), Oil and Natural Gas Corporation (India), Korean Gas Corporation (South Korea), and Gas Authority of India Limited (India). The China National Petroleum Company (CNPC) has exclusive purchasing rights. The pipeline passes from the Rakhine coast through central Burma and northern Shan State to Yunnan, China, and is being condemned by local communities in Burma along its path.<sup>143</sup> According to one estimate, Burma's gas fields have confirmed recoverable reserves of around 540 billion cubic metres (bcm), which at current prices and rates of production could potentially generate approximately \$3–5 billion annually for the next 30 years.<sup>144</sup>

The Zawtika project, the newest offshore natural gas investment, is a joint project between MOGE and PTTEP (Thailand). The project involves the construction of a 290 km pipeline (70 km onshore in Tanintharyi Region and 220 km offshore in the Gulf of Mottama). In May 2012, PTTEP (Thailand) announced plans for expansion into Burma, including investment of \$2–3 billion, mainly for the Zawtika project.<sup>145</sup>

### Hydropower and Coal

Burma's power sector is the second largest destination for foreign investment. In the border areas, the sector is dominated by mega hydropower projects, but coal-powered electrical plants also play an important role. The region's growing demand for energy has had a dramatic effect on

recent foreign investment in hydropower, encouraged by the minimal regulations in Burma governing the impacts of dam construction. Investment in this sector comes from China, Bangladesh, India and Thailand.<sup>146</sup> In FY 2010/2011, 33 per cent of all foreign investment in Burma was in the hydropower sector.<sup>147</sup>

Burma is attractive to foreign investment in the hydropower sector because of its plentiful undammed rivers and less stringent regulations. As a report from the Burma Environmental Working Group cautions, "Building dams inside Burma offers an opportunity to acquire cheap electricity for neighbouring countries, while investors are not accountable for the negative economic, social and environmental impacts of the dam building".<sup>148</sup> Most of the dams are located in war zones or ceasefire areas where there is already political conflict, and the construction of dams in areas contested by armed ethnic groups requires security. Environmental groups and academics alike have argued that dam projects, much like other large-scale infrastructure projects in the country, lead to renewed conflict as military units are deployed to wrest the territory from armed ethnic groups and then to maintain security.<sup>149</sup>

Burma's ethnic regions are thus the preferred location for mega hydropower dams. The total cost of the nearly 50 dams that are either built, planned or have MoUs is estimated at more than \$35 billion. They are expected to generate 40,000 megawatts and produce annual revenue of \$4 billion.<sup>150</sup> Up to 90 per cent of the energy generated will be exported to China and Thailand rather than supplying local populations who lack electricity. The remaining 10



per cent will be divided between household use and the growing demand from the commercial sector for use in infrastructure projects.<sup>151</sup>

The main mega dams in various stages of planning and building include a series of dams in Kachin State (the controversial Irrawaddy Myitsone Dam – presently suspended – and six other dams planned for the Mali and N'Mai Rivers); the Shweli Dam in northern Shan State; a series of dams on the Salween River in Shan State and along the Thai border;<sup>152</sup> and the Tamanthyi Dam in northern Chin State on the Chindwin River.

While many of the existing and planned hydropower projects are located in border areas, they also affect downstream communities as well as those living in the vicinity of the dam site. At present, there are 25 operational dams in Burma, according to the Burma Rivers Network (BRN).

Foreign investment in coal-derived electricity production is more limited. In 2008, only 3 per cent of Burma's electricity was produced from coal.<sup>153</sup> At present, there are only two coal-fired power plants in Burma, one of which is located in Tigyt near Taunggyi in southern Shan State.<sup>154</sup> Although the plant has provided some electricity to Tigyt village, local livelihoods have been adversely affected and the ash produced poses health hazards.<sup>155</sup> The project is a joint venture between the government and the China National Heavy Machinery Corporation and the Eden Group of Burma under the supervision of the Energy Ministry. In the face of growing criticism, the government recently suspended the planned construction of a coal-fired electricity plant near Dawei as part of the SEZ. However, there are plans to construct seven new coal-fired power plants across the country.<sup>156</sup>

## Mining

Burma's border areas possess rich deposits of gems and minerals. These include jade, rubies, pearls, diamonds, sapphires, gold, silver, tin, iron, lead, wolfram, coal, rare metals and other gemstones. Burma is the world's largest producer of jade, and it possesses over 90 per cent of the world's rubies. Among the most famous are the jade mines at Hpa-kant in Kachin State, the ruby mines at Mogok and silver mine at Bawdwin in Shan State and the copper mine at Monywa in Sagaing Region (the site of country's best-known protest against land grabs).

There is only limited information about investment in Burma's trade in minerals. Mining projects vary in terms of their contractual agreements and extraction methods, and the sector encompasses formal and informal investment. One estimate based on official figures values annual exports of pearls, sapphires, jade and rubies at over \$60 million. Industry experts place a far higher figure on their value.<sup>157</sup>

There is substantial FDI in the mining sector. A recent media report citing official government figures indicated that it amounted to approximately \$2.8 billion, with local investment totalling over \$12 million.<sup>158</sup>

The increase in large-scale mining in Burma – mainly in border regions – began in the early 1990s. The lack of effective regulations and poor implementation have allowed for ecologically catastrophic and unsustainable mining practices.<sup>159</sup> These have resulted in the destruction of community riversides, toxic pollution of rivers and damage to miners' health.<sup>160</sup> In some communities, modern extraction techniques have displaced traditional artisanal mining practices, contributing to significant loss of household income. Moreover, researchers have found that the provision of mining concessions in border regions occurs in conjunction with increased militarisation.<sup>161</sup>

Until recently, mineral deposits in border areas remained untapped because of the lack of infrastructure and continued conflict. In particular, conflict areas in Karen State and Bago Region possess many valuable mineral resources.<sup>162</sup> Reports indicate that foreign investors, including Chinese companies, are backing gold-mining concessions in Karen areas, particularly near Papun. Foreign investors seem poised to take advantage of new ceasefire agreements with ethnic armed groups whose territories contain vast mineral wealth. Some fear that mining concessions are being allocated as part of the peace process with KNU leaders. Other mining projects are reportedly already operating in areas in the Karen State near the Thai border.<sup>163</sup>

Smaller informal investment also takes place in the mining sector, much as in the other resource-extraction sectors. For example, in the case of Lashio, Chinese investors employ brokers to gain informal concessions from local militia leaders. Of the estimated 18 local mines in the Shan State, nearly all are informally financed by ventures with Chinese companies. Many of the companies partner with subsidiaries of Hong Kong companies located in Guangzhou or Yunnan Provinces. According to one estimate, there are over 100 hydraulic and open-pit mines in the Kachin State, particularly for gold mining, in which Chinese companies often use Chinese labour.<sup>164</sup> Although Chinese companies dominate the mining sector, other countries also invest in Burma's mines. For example, Myanmar Pongpipat Ltd. is a Thai company engaged in a joint venture with the Ministry of Mines operating the Heinda tin mine, located near Dawei, Tanintharyi Region.<sup>165</sup>

One particularly high-profile mining project in Burma is the open-pit copper mine in Monywa in Sagaing Region. Opened in 1980, it has the largest deposit of copper in Southeast Asia. The mine produced copper worth \$112 million in 2006 and \$160 million in 2007. Significantly, the project is a joint venture between the military-owned Union of Myanmar Economic Holdings (UMEH) and China's Wan Bao Company, a subsidiary of state



owned arms manufacturer North China Industries Corp (NORINCO). The mine project began expanding recently, and in July 2012 local protests over the continued land grabs demanded its closure and were violently suppressed (see below).<sup>166</sup>

In October 2012, the government announced the suspension of renewals for large-scale gold-mining operations along Burma's major rivers, but said that it will continue to permit smaller-scale operations.<sup>167</sup> It is unclear how this directive will be implemented and what its implications are.

## Timber

After 1988, Burma's border regions adjacent to Thailand and China experienced an upsurge of large-scale, unsustainable logging. Thai and Chinese companies received official permission from the then SLORC government to harvest valuable timber stands in areas controlled by ethnic armed groups. During this time, Thailand and China passed environmental laws limiting domestic logging, which led companies from the two countries to source from nearby Burma in order to meet growing demand for tropical wood. Global Witness estimated that before the 2006 bilateral agreement to ban cross-border timber trade between Burma and China, 1 million cubic metres of wood

were trafficked each year across the border with Yunnan Province.<sup>168</sup> This trade continues, albeit at far lower rates, although a possible increase in the volume exported via Yangon may partially offset this decline.<sup>169</sup>

After the ceasefires with various armed ethnic groups whose territories are rich in valuable forests, the timber sector became a lucrative destination for informal foreign investment, mostly by Chinese, Indian and Thai companies. Chinese and Thai logging companies received concessions both from the government and ethnic armed groups in areas along their respective borders with Burma. Ethnic regions along the Chinese border (Kachin and Shan States) and the Thai border (Karen, Kayah and Shan States, and Tanintharyi Region) experienced the most intensive logging.<sup>170</sup>

Many logging concessions were in areas controlled, wholly or partially, by armed ethnic groups rather than by the central government. Some of these logging concessions were part of ceasefire agreements with ethnic leaders who were granted lucrative business ventures by the military government, as in the case of the KIO.<sup>171</sup> In other cases, the government awarded logging concessions to foreign companies in areas not under government control, but with permission from armed groups, in return for a cut of the profit. As a result, Burma has the notoriety of having one of the highest deforestation rates in the world.<sup>172</sup> It is also one of the only countries that still permits log exports without any processing,<sup>173</sup> although the Burma Forestry Ministry has announced it will ban such exports in 2014.<sup>174</sup>

While China may be one of the most high-profile investors in the timber sector, in the last decade India has become the largest importer of Burmese wood. Previously, large volumes of timber were smuggled to China overland, whereas exports to India are shipped from Yangon and are officially registered.<sup>175</sup> Another emerging trend is that the large-scale agricultural concessions provide access to new sources of timber ('conversion timber'), which may in part explain why these concessions are so profitable.<sup>176</sup>

## Agriculture

Burma is primarily a country of smallholder farmers. Agriculture accounts for 36 per cent of the nation's GDP and more than half of all employment.<sup>177</sup> Agriculture is an especially important source of income in the country's ethnic regions where most households practise farming and there are few other employment opportunities. Official figures suggest that FDI in the agricultural sector is relatively small, amounting to only \$138.75 million in FY 2010/11.<sup>178</sup> This figure vastly underestimates the true extent of foreign investment in the sector. Informal foreign investment is financing most of the country's industrial crops such as rubber, maize, paddy, sugarcane, jatropha and palm oil.



Oil palm concession in Tanintharyi Region

A recent TNI report illustrates that informal Chinese agro-investment in northern Burma, driven by China's opium-substitution programme, is having wide-ranging negative socio-economic and political impacts.<sup>179</sup> "In the Wa region, one Chinese businessman from Hainan was known as the 'Rubber King', and now there is over 133,000 hectares of rubber", said a local development worker who used to work in the area. "The Chinese companies signed contracts with the local authorities in the Wa region. They just looked at the map, and just picked areas with elevation that are suitable for rubber".<sup>180</sup> All villagers are forced to work on these rubber plantations, and the arrangements further strengthened the power of the Wa authorities, as most plantations are owned by local leaders. "The situation for local communities changed dramatically, as from farmers they became plantation workers", he said. Now most land is planted for rubber and there is not enough land to produce rice, so local communities depend for rice from outside the Wa region, including from China.

During the early 1900s, Burma was known as the "rice bowl of Asia" because it was the world's largest rice exporter. Demand for rice slumped in the Great Depression in the early 1930s. Farmers went into debt and lost their land, after which rice production has never really recovered. Today, Burma's paddy yields are typically much lower than in other countries in the region, due in part to government mismanagement and also to farmers' lack of capital.<sup>181</sup> The higher yields in neighbouring countries suggest that Burma could increase productivity if smallholder farmers had the right policy support, low-interest loans, access to irrigation and more secure land tenure.

The promotion of commercial farming is part of the government's strategy to revitalize Burma's agricultural sector by boosting exports. The overhaul of the agricultural sector faces resistance, however, even from within the government. The recent legislation on land and foreign investment will allow domestic and foreign investors to purchase land-use titles or acquire long-term leases of agricultural land.<sup>182</sup> This sends conflicting messages on how it is intended to reform the sector and the role that foreign investment can play. The agricultural sector in Burma is being advertised as Asia's next land frontier, which holds great potential for investors.<sup>183</sup> The land reform being pushed by the government envisages no role for smallholder farmers in local and national economic development, despite representing 75 per cent of the country's population.

By 2001 more than 400,000 hectares had been allocated, involving nearly 100 companies. By 2011, more than 204 companies had been allocated nearly 800,000 hectares of private agricultural concessions, over half of them in Tanintharyi Region and Kachin State. In Kachin State 15 Burmese companies have officially been granted a total of nearly 240,000 hectares (mostly for rubber and sugarcane); Tanintharyi Division has 36 companies with over 270,000

hectares (palm oil); Shan State South has 12 companies with over 26,000 hectares (maize, rice, rubber); and Shan State North has 17 companies with over 20,000 hectares (rubber). Kachin State and northern Shan State have seen the country's highest increase in concessions, mainly because of the significant increase in Chinese concessions for rubber production, supported by China's opium-substitution programme.

In March 2012, parliament approved two laws that established new regulations for the reallocation, management and use of agricultural lands.<sup>184</sup> For the first time in Burma's history, land has become a commodity with land-use titles to be bought and sold in a commercial land market. The 'Farmland Law' and the 'Vacant, Fallow and Virgin Land Management Law' together create the legal conditions for the increased commercialization of agricultural land and foreign purchase of land-use titles. The laws were first proposed by U Htay Oo, the former Minister of Agriculture and Irrigation and now a senior member of the USDP. Reports claim that they were hastily pushed through parliament, encouraged by U Myint Hlaing, the former Northeast Regional Military Commander and current Minister of Agriculture and Irrigation, along with U Htay Myint, an elected MP and owner of the Yuzana Company.<sup>185</sup> His holdings in the company, which is involved in several high-profile cases of land dispossession, makes him one of Burma's largest private landowners.

The new laws empower state officials to grant land-use rights to private entities for land classified as 'vacant'. In conjunction with the FIL, foreign investors can lease land from the government or the private sector for up to 70 years.<sup>186</sup> A discrepancy exists in the duration of land leases between the land laws and the FIL, which allows the state to classify land as 'vacant', even though farmers are cultivating it in accordance with their customary systems. Farmers who do not have land titles – the vast majority – are designated as 'squatters'. They can face penalties if they refuse to leave their land, and are denied legal redress.<sup>187</sup> These laws and the new investment opportunities they create contradict the government's claim to support people-centred development and pro-poor economic policies.<sup>188</sup>

Government policy aims to promote the development of the agricultural sector through mechanisation and market mechanisms. The two new land laws are designed to support the shift towards an export-led, large-scale agro-industrial sector in which land-use rights are allocated to domestic and foreign agribusiness. This push to commercialised agriculture could threaten the security of smallholders, migrant farm labourers, and overall national and local economic development.<sup>189</sup> It also raises doubts about the government's capacity to reduce poverty.

The new land laws and promotion of large-scale industrial agriculture raise serious concerns about the potential impacts on smallholder farmers, particularly the outright

### Local Voices on Chinese Investment

There is now widespread solidarity across civil society against investments in large-scale resource extraction that harm the environment, instigate land grabs and are detrimental to local populations and their livelihoods. Public expression of these grievances in the local media has focused on Chinese investment projects, which has spurred Chinese investors and government officials to review their investment practices in Burma. A substantial amount of Chinese investment is located in Kachin State and northern Shan State, where the conflict has recently flared up.

However, among affected communities and civil society organisations there is equal concern and criticism on the activities of companies from other neighbouring countries like Thailand (Dawei Deep Sea Port) and India (Kaladan project). The following examples of different views on Chinese investment in Burma are taken from interviews conducted by TNI in Yangon, Nay Pyi Taw and Mandalay during August 2012.

*The Burmese are not very happy with the behaviour of Chinese companies. They only cause land grabbing for many projects. Chinese companies do not know and do not care about CSR [corporate social responsibility]. We need socially responsible investment.*

*Our people have a negative feeling to Chinese investment. People feel business is monopolized by the Chinese. In Mandalay many signboards are in Chinese. In northern Shan State I saw workers, all of whom were Chinese. Why not Burmese labourers? And are these Chinese labourers coming here officially? Will they go back? This is what people are worrying about.*

*We do not want any foreign companies to take advantage of this weak government. This holds for companies from all countries, including the USA, the EU and China.*

*The answer is not to get Chinese investment out. We can choose friends but not neighbours, and we need a good relationship. Previously, foreign investment only was made with the government, and no civil society organisations and local communities were involved. Now the government is changing, so we need to adapt. Our only request to Chinese people is to consult with civil society organisations and local people.*

*After the ceasefire many Chinese came to Kachin State for natural resource extraction, logging, mining and land grabbing. Local people wonder where they can live and how they can survive. We live sustainable and do small things. The forest is our supermarket. But now these big machines are coming and operate 24 hours a day, making noise and poisoning the environment. This all happened after the ceasefire. During these 17 years we felt we lost everything.*

*The biggest challenge is the Myitsone Dam. If it continues, it will be opposed by 90 per cent of the people. The EIA [Environmental Impact Assessment] was not done in a proper way, it is limited in scope, and only focuses on biodiversity, and was not made transparent. Is the construction of the Myitsone Dam in the interest of China or Burma? People think, honestly, it is only for China's interest.*

*The Myitsone Dam is a national issue. The Chinese pipeline project has a different location and different problems. It is not as serious as the Myitsone Dam. But it does not mean that we like it. In whose advantage is the 'one country two ocean policy'?*

*I am concerned about the sale of natural gas offshore in the Bay of Bengal of Rakhine State. These natural resources belong to us, the Rakhine people, and at least the Rakhine people should have a stake in it. But the proceeds do not go to us, these only go to the central government. I want the Chinese government to make sure that these concerns are included in the agreement.*

dispossession of their land and resource-use rights. Since many farmers do not possess formal land titles they are susceptible to being classified as squatters. The loss of cultivation rights is likely to exacerbate rural landlessness, poverty and associated problems, such as rapid rural-urban migration and environmental degradation, all of which jeopardize local and national food security. Farmers in Burma's ethnic borderlands, where most have only customary land-use rights, are the worst affected. Most of them practise traditional upland swidden cultivation

(taungya), which the government does not formally recognize. Many communities in conflict areas often have no formal land titles, and customary rights are not always respected due to highly mobile populations fleeing war zones.

Before 2013, there were only a few high-profile cases of FDI in the agricultural sector, although this is now changing with many more agribusiness firms striking deals with the government on large-scale agricultural concessions. In



2004, China Yunnan Corporation and Burma's Ministry of Agriculture initiated an investment project for the production of citronella oil in Hlegu Township, Yangon Region. The Myanmar Industrial Crops Development Enterprise and China's Wuhan Kaidi Holding Investment Co. have been granted a 200,000-hectare concession in Homalin and Phaungpyin Townships in Sagaing Region to cultivate maize, sugarcane and jatropha for use as feedstock. Another 200,000-hectare concession in Sagaing Region has been awarded to the Ministry of Agriculture, Great Wall Co. (a Burmese company), and China's State Development and Investment Corporation for sugarcane, cassava and maize for biofuel production.<sup>190</sup>

The new agribusiness investors in Burma are predominantly from China, India, Malaysia, Thailand and Vietnam. Companies from these countries are almost entirely interested in producing and processing palm oil and rubber. Thailand and Malaysia are interested in investing in southern Burma, mainly Tanintharyi Region, for rubber and palm oil. Malaysia is relying on its large state-backed companies (e.g. Felda Global Ventures Holdings) to obtain large-scale rubber concessions in Tanintharyi Region,<sup>191</sup> whereas Thai companies (e.g. Sri Trang Co. and Thai Hua Rubber Co.) are interested in both rubber concessions and middle-stream latex-processing from rubber trees.<sup>192</sup> These processing plants would be built in major rubber-producing areas in southern Burma, particularly in northern Tanintharyi Region, as well as in connection to the Dawei SEZ (financed in part by Thailand).<sup>193</sup> Moreover, it is expected that a new border gate at Mawdaung on the Tanintharyi Region–Thai border will open in 2013, which will facilitate the export of agricultural commodities to Thailand. Vietnam is also increasing its agricultural investments in Burma, facilitated by government-backed companies such as the Vietnam Rubber Association (VPA). For example, in April 2010, the Vietnamese government signed a MoU for a 48,000-hectare rubber concession in southern Rakhine State, although the government has blocked site visits because of continuing communal conflict.<sup>194</sup>

### Challenging Foreign Investment

Despite decades of military rule and civil war, Burma has a dynamic and diverse civil society. The wide range of informal groups, emerging grassroots networks and formal organisations, reflects the country's great ethnic and cultural diversity. Civil society has grown significantly in the last two decades. In ethnic regions, this was mainly driven by the series of ceasefire agreements in the 1990s, and by efforts to fill the gap created by the lack of government services. New threats to the environment and livelihoods in Burma's border regions further stimulated its growth. Following Cyclone Nargis in May 2008, which devastated the Irrawaddy Delta and left an estimated 130,000 people dead, the space for civil society opened up still further.<sup>195</sup>

The new political system and recent political reforms have created yet more space for civil society. Local organisations have been able to engage with the government on key policy issues relating to foreign investment, including on the environment and land rights, and provide analysis and policy advice. Furthermore, since President Thein Sein signed a new law in December 2011 allowing peaceful demonstrations provided permission is sought five days in advance, there have been various protests against foreign investment projects.<sup>196</sup> Key demands from local communities and the organisations representing them are for proper transparency, consultation and compensation procedures and practices. Some local communities have rejected certain foreign investment projects outright.

There is also new space for local media to report critically on these large-scale development projects and the local and national protests against them. Press freedom expanded following a government announcement in August 2012 that it would no longer require local media to submit copy prior to publication for scrutiny by the state censorship authorities.<sup>197</sup>

Partly in response to growing public pressure, in September 2011 President Thein Sein unexpectedly announced the suspension of a large Chinese-led hydropower project in Kachin State. The decision to suspend the Myitsone Dam, located at the confluence of the Irrawaddy River near the provincial capital of Myitkyina, came after a rare instance

Campaign material by local groups against coal mine as part of Dawei project



Protest in Yangon against Monywa copper mine



of a nationwide, environmental campaign. The project would have significant social and environmental impacts on nearby and downstream communities. The design included the creation of a 766 km<sup>2</sup> reservoir, which had already displaced some 20,000 people.<sup>198</sup> Moreover, the contractual terms of the project were that almost 90 per cent of the power generated would go to China. The project was jointly managed by the Chinese Power Investment Corporation (CPI), Asia World Company (a Burmese company) and the government's Myanmar Electric Power Enterprise. The Myitsone Dam, designed to be one of Southeast Asia's largest, would cost \$3.6 billion, and was designed to produce 6 gigawatts.<sup>199</sup>

The campaign against the dam by local communities and Kachin groups representing them began in 2007, soon after the project was announced. They protested against the relocation of thousands of people and the destruction of an important Kachin cultural site. "The Myitsone area is located at the heart of Kachin culture", said a local Kachin activist. "In the relocation village there are no livelihoods. The compensation they receive is not suitable, because the land is far away and the quality of the houses is bad. The Chinese company gives compensation through other people, and thus people wonder how much the company has really given. Nobody knows the exact compensation rate".<sup>200</sup> It remained very much a local issue until early 2011, when the campaign was picked up in Yangon, especially by civil society groups, journalists, writers and artists. The focus of the campaign shifted from being a Kachin issue to a Burmese national issue as the Irrawaddy River also flows through the Burman heartland.

The President's decision to suspend construction of the dam for the duration of his term until 2015 was welcomed

by the Burmese population, although some sceptics felt that the government might revisit its decision later. Nevertheless, recent government decisions to derail major foreign resource-extraction projects in Burma represent a shift in relations between the central government and the population, as well as with neighbouring countries. Halting the unpopular Myitsone Dam sent a clear signal that Burma wants to improve its relations with the international community and reduce its reliance on China as a main strategic ally.

Protest has also taken place against the plans for the massive Dawei SEZ on Burma's southern coast. The Dawei Development Association (DDA), a network of individuals and organisations, is opposing the project. "They will grab large amounts of land, and destroy the forest, the environment and livelihoods of the people", said a local DDA activist. "We face a lot of problems because of this project. We do not see it as development".<sup>201</sup> Official figures say that over 30,000 people will be relocated to make way for the project. According to the DDA, however, "the total displaced population from the road link related development could reach up to 50,000 people".<sup>202</sup> Furthermore, a recent report argues that many more people may lose their land due to direct and indirect land grabs by a more powerful class of foreign and domestic elites who are speculating on the region's potential economic growth and the subsequent rise in the demand for property.<sup>203</sup>

Local organisations have raised concerns about the health, livelihoods and environmental consequences of the proposed petrochemical industrial development at Dawei SEZ. "These foreign companies do not communicate directly with us; they use former government officials and ex-military officers", says a DDA representative. "UMEH



[Union of Myanmar Economic Holdings, owned by the Tatmadaw] is very powerful, and the regional and local government cannot refuse what they ask for. The Thai company also uses KNU officers for communication, and local people can also not oppose them. There are also many problems about compensation. And villagers will not be able to find work in this project, which only needs high-skilled labour”.<sup>204</sup> A 2012 study by DDA and the Southern Society Development Network, both based in Dawei, concluded that: “The lives of local people have been affected greatly by the project. Many people did not see any positive effects from the project, but only negative effects”. The study also revealed that people were reluctant to give up their land where they had lived for generations.<sup>205</sup> The Dawei Project Watch, a group of local young ethnic Karen, Mon and Tavoyan activists, called on the government to “postpone and review the Dawei SEZ project to make sure that local heritage sites, and the livelihoods of the local people, are not destroyed”.<sup>206</sup>

In January 2012, four months after the suspension of construction of the Myitsone Dam, Burma’s Minister of Electricity Khin Maung Soe announced the cancellation of a proposed 4,000 megawatt coal-fired power plant in the Dawei SEZ due to its potential environmental impact. “We made the decision to halt this project after reading the concerns about the environmental impact of this plant in local media reports”, he said.<sup>207</sup> The Thai-financed power plant was intended to fuel the Dawei SEZ project.

Another major source of local protest is land grabbing in general – from agribusiness deals to mining concessions to infrastructure hubs. Land grabs are prominently covered in local press and are now of concern to the government. In the case of land grabs by agribusiness ventures, Burmese land-rights activists organised an event in opposition to the government-sponsored agribusiness fair, the “2<sup>nd</sup> Commercial Farm Asia”, held in Yangon 11–12 October 2012, intended to showcase Burma as Asia’s last frontier for agricultural investment.<sup>208</sup> Those attending included land-rights lawyers, social activists, 88 Generation student activists, farmers’ representatives and ethnic political party leaders, to discuss land grabs in Burma. They drafted a letter of solidarity for those present at the protest gathering, and a letter of global solidarity with 100 signatories, which were presented to the organisers of the fair.

Although many protests against land grabs in 2012 received national and in some cases international attention, perhaps the most high-profile and symbolic opposition by local communities broke out against the copper mine in Monywa in Sagaing Region. Local farmers criticised the mining project for causing environmental destruction and confiscation of over 3,000 hectares from 26 villages surrounding the Letpadaung mountain range. It is reported that about 200 households from four nearby villages have already been relocated. Local farmers complained that there has been no transparency for the project, and that

people signed the contract because they were afraid of being arrested. “We do not want to receive compensation for our farmland for three years of output; this land was given to us by our fathers and grandfathers,” said a local farmer.<sup>209</sup> “We were forced to move to a new area, we do not know how we will survive there. We are getting poorer and poorer. We lost our land, our religious building, and our culture. The company also disposed the chemical waste from the mine into the Chindwin River. Many people live there and will be affected”.<sup>210</sup>

The protesters were briefly arrested in August 2012, but the movement gained support from nearby communities as well as from national-level political activists, including the 88 Generation student movement. The protest against the Monywa copper mine soon became a national cause, rather like the campaign against the Myitsone Dam had done, with the Lower House of Parliament passing a motion calling for an independent enquiry.<sup>211</sup>

At the end of November 2012 the government sent in riot police to quell the protest. Many were injured: 70 people sustained severe burns, including many monks. Photos of the injured monks were widely circulated, provoking widespread criticism of the government’s response. Solidarity protests broke out in other parts of the country, and some activists were arrested.<sup>212</sup> The government later formally apologized to senior Buddhist monks for the injuries that had been sustained, but the violence of the government response led to questions about the sincerity of its reform agenda and its tolerance of peaceful demonstrations.<sup>213</sup>

Subsequently, the government formed a commission headed by Aung San Suu Kyi to investigate the violence and advise if the project should continue. “Before implementing government projects we need a process of transparency”, she stated. “But also”, she warned, “if we unilaterally break off ongoing projects [with foreign firms], we stand to lose international trust”.<sup>214</sup>

The issue of how to handle the Monywa copper mine is complicated, as it involves several important dilemmas. These include concerns from the local population on community participation and democratic process; financing of the Tatmadaw; land grabbing and displacement of local communities; environmental protection; growing anti-Chinese sentiments among the population; and the role of Burma as a reliable international partner for foreign investment. Meanwhile the local population at the site aimed for the expansion of the Monywa mine refuses to leave. The case has thus become a major test for the Thein Sein government as well opposition leader Aung San Suu Kyi. Actors in Burma and abroad are watching closely how they will balance local, national and international interests. A critical stage in Burma’s economic transformation is just beginning.





## Challenges for Equitable Development

Burma is rich in resources but weak in the institutions and governance needed to effectively manage and regulate foreign investment so that it benefits the people and the nation. This situation makes it more likely that the country will squander its natural resources. In the absence of effective institutions and good governance, the extraction-oriented economy has given rise to severe ecological degradation and misallocation of resources, with few benefits to local communities.

This undermines efforts to achieve equitable and sustainable economic development, and gives rise to grievances, especially among ethnic nationalities living in border areas. The situation is characterized by inadequate enforcement and regulation capacity, non-inclusive decision-making processes and limited transparency.

### Ecological Destruction

Foreign investment in border areas has focused on the extraction of non-renewable resources such as minerals and timber, and the construction of mega-infrastructure projects such as hydropower dams. The projects have been undertaken in ways that have contributed to environmental destruction, which has disrupted local farming communities whose subsistence relies on access to upland fields and forests.

The extent and range of environmental degradation varies. A recent report prepared by the Burma Environmental Working Group documents some of the environmental impacts of foreign investment. For example, mining operations have drained water resources, caused severe soil erosion and polluted rivers with mercury (gold mining) and other chemicals. The report also notes that logging “has also been shown to be directly responsible for floods, soil erosion, landslides, sedimentation build-up behind dams, river siltation, increased dry season water, stunted farm productivity and declining topsoil fertility”<sup>215</sup>

There are serious environmental concerns about the massive increase in mono- plantations managed by foreign companies. The surge in agribusiness investments in northern Burma, for example, has greatly affected local food security, land tenure and access to local resources. Land encroachment and clearings are resulting in the loss of forest biodiversity and increased soil erosion, not to mention villagers’ loss of access to forest products. There is evidence of illegal logging in order to clear land for agricultural plantations. The rubber plantations have also had a negative impact on how villagers plan the use of their land, because it is being divided into protected forest, village-use forest and permanent agricultural

Fenced in agricultural concession in Shan State



land. “We had a contract about this, with a map”, says an aid worker in the Wa region, “but when the rubber came nobody remembered these”. International NGOs say that there are already ecological problems because of rampant deforestation, which is partly related to rubber plantations, and water resources are decreasing. The rubber plantations reduce local biodiversity. According to an international aid worker in the Wa region: “Local people say whole resources are dying out”.<sup>216</sup>

### Land Grabbing

Land is the newest investment commodity. The agribusiness sector has been eyeing Burma’s vast lands, and the promotion of large-scale agricultural concessions by the Thein Sein government presents new challenges to communities’ access to land and to the security of their livelihoods.

Land confiscation for agribusiness in northern Burma, for example, is fuelled by China’s opium-substitution programme, which has impinged on the livelihoods of many communities, some of whom are upland farmers who previously cultivated poppies. The main factor behind this development in Burma’s northern borderlands is Chinese investment, which is adapting to new opportunities.<sup>217</sup> The acquisition of land for agribusiness is expected to become one of the biggest threats to local access to land and to people’s livelihoods as the country’s new land laws, government promotion of private industrial agriculture and the Foreign Investment Law (FIL) all take effect.

Land management and the land-use rights of smallholder farmers are becoming increasingly important in Burma, given their implications for the well-being of local communities and the country itself. Projects for the development of infrastructure and the production and extraction of resources entail land grabs. Land acquisition and compensation procedures lack transparency and adequate regulation, and have generated widespread allegations of corruption and irregularities. Across the country, individuals have increasingly voiced their grievances with regard to land-confiscation procedures.<sup>218</sup> There is regular coverage of land-rights issues in Burma-based and exile media, including reports on corruption and farmer’s protests, as well as heated debates in parliament. Media reports, corroborated by NGO studies, indicate that land acquisitions for development projects are causing widespread social, economic and political instability.<sup>219</sup>

In July 2012 a bill was passed to establish a Land Acquisition Investigation Commission to improve the government’s handling of land grabs. Although the commission has no decision-making power, the members are responsible for accepting cases of land conflict and submitting a summary report to the President’s office within one year. After a few months, more than 2,000 cases had been received.<sup>220</sup> Individual MPs are also constantly receiving complaints about land conflicts from their constituents. One MP stated in July 2012 that he had received over 250 complaints from farmers about the confiscation of their farmlands.<sup>221</sup> MPs from ethnic political parties as well as the Burman-majority National Democratic Force (NDF) and National Unity Party (NUP) have repeatedly stressed in parliament



## Key Features of “Good” Land Policy

Jennifer Franco, TNI

Whether it is under state, public or community jurisdiction, land is key to pro-poor policy and governance both because of its geographical scope and because the livelihoods of the rural poor depend on it. With the increasing pressure on land, there is growing concern about how to ensure that the rural working people enjoy full and effective access to land. Official recognition of the land rights of the rural working people, especially the most vulnerable and marginalised, is frequently a source of contention, often involving struggles for state recognition not just for their land rights but even their “right to have rights”. This links the issue of land and rights to a wider nation-building project, since land is both essential for sustaining rural livelihoods and is the basis of the social, political and cultural inclusion and identity of all rural dwellers.

In determining what kind of policy is best suited for the formal and informal land sectors, it is vital to consider the past and present socio-cultural relations with the land. The distinction between private and public, state and/or community is mainly a formal or legal one, devised by government authorities in an earlier era as a means to claim control over “frontier” lands and populations. Rarely do the distinctions drawn up by city-based bureaucrats accurately reflect complex rural realities. With the passage of time and as societies evolve the formal or legal distinction becomes blurred. Amidst overlapping and competing claims, societies often develop their own, socially legitimate ways to regulate land use on the basis of who has what rights to which land for how long and for what purposes.

There are three fundamental aspects to “good” land policies. The first is social history: what social relations and access rights have evolved over time, and who was included or excluded? The second is the basis for allocating land: who should get how much of which land, for how long and for what purposes? The third aspect concerns achieving social change in contexts marked by inequality: where it is necessary to transfer or reinforce access to land, how should this be done? In short, the first aspect is a matter of de facto claims; the second of de jure rights; and the third concerns strategies for just change.

A pro-poor land policy must recognize the existing rights of the rural poor and explicitly seek to strengthen their control over land. Land policy is never neutral – it either reinforces or undermines the status quo. The outcomes of land policy are shaped not only by their design, but also by how they are promulgated and put into practice. Legislation can result in multiple outcomes because no land policy is self-interpreting or self-implementing. Four broadly distinct policy paths are possible: (a) concentration; (b) non-distribution; (c) distribution; and (d) redistribution. Concentration and non-distribution cannot be pro-poor because they are characterized by land concentration and rural poverty. Distribution and redistribution can be pro-poor and are therefore likely to indicate “good” land policy.

A land policy that does not explicitly and operationally problematize land concentration cannot be expected to produce pro-poor outcomes. But beyond design, it matters crucially how and to what extent people on the ground adopt, interpret, implement, and recognize the authority of the policy. Hence, effective public participation in all phases of consultation and decision-making – especially informed participation of the rural poor – becomes essential to developing good land policies.

Finally, there is a need for criteria to inform the policy-making process to increase its capacity to produce pro-poor land policies and outcomes. First, pro-poor land policy-making must be class-conscious, with a commitment to ensuring that benefits go to the landless and land-poor classes. If it recognizes the diverse interests of landless and land-poor populations – such as landless peasants, rural labourers and indigenous communities – a land policy is better able to anticipate its differential impact among the rural poor. This is important in situations where there are many claimants to a limited supply of land. Second, it recognizes the gender dimension of property rights, which involves the distinct land rights of women as peasants, rural labourers, forest dwellers or pastoralists. As farmworkers, farmers, herders and firewood gatherers, poor rural women typically have their own connections to land resources – independent of men within the household – entitling them to specific land rights. Third, it promotes the territorial rights of ethnic groups, as peasants and as a distinct people. Land reform policies have generally been blind to ethnic dynamics. Encroachment into indigenous territory has taken place via colonization, resettlement and extractive industries, undermining indigenous peoples’ access to the land. Fourth, it should be historical. Many land conflicts are historically grounded, so redressing these social injustices is important in its own right. A social justice perspective is crucial since if a land policy leaves the sources of conflict unresolved or creates new grievances, these dynamics will constrain, if not undo, its long-term success.



the threats posed to farmers by land confiscation. Most political parties and community-based organisations acknowledge the potential benefit of investment, but key issues of concern remain for land-acquisition procedures. These MPs and other emerging voices from civil society are demanding that development projects follow a transparent, inclusive process and protect the land-use rights of smallholder farmers.

The lack of formal land tenure and use rights – which is further aggravated by the two new land laws – threatens the livelihoods and food security of smallholders in upland areas. In many ethnic communities customary laws govern the right to use land. However, state officials seldom respect customary rights and the state does not legally recognize traditional upland swidden cultivation (*taungya*). The conflict between state and customary laws and practices in land management creates the conditions for the farmers to be dispossessed of their lands in upland ethnic regions.

Procedures for land acquisition lack transparency, accountability and an adequate regulatory framework for compensation. For example, land seizures for the expansion of the airport at Kyaukphyu in Rakhine State have prompted complaints about the discrepancy between government compensation and the value of the land. Similar concerns are expressed elsewhere. For instance, the Dawei Project has required the acquisition of large tracts of land, but procedures for land acquisition lack transparency, are inconsistent and do not meet international standards.<sup>222</sup> Affected communities often complain about intermediaries engaged in land speculation and corrupt practices.

### Over-Reliance on Resource Economy

Foreign investment can potentially have spillover benefits that support economic growth. These include the transfer of technology and skills, increased employment through the creation of linkages to firms upstream (searching for and extracting raw materials) and downstream (processing materials into finished products for sale), and increased access to capital and foreign markets. Some countries have succeeded in diversifying their economy by spurring growth in other sectors thanks to government requirements that foreign investors develop linkages with these sectors. As discussed earlier, investment in Burma has concentrated in the extractive sectors rather than in less resource-exploitative sectors, such as manufacturing, tourism and service industries. This is in part because local firms are often uncompetitive due to a lack of technology and capital, as well as a lack of domestic competition since the government has tended to permit a small group of cronies to create monopolies.

As in other resource-oriented economies, foreign investment in Burma's extractive sectors provides a major source of government revenue, but the investment has

not served as a catalyst for economic growth, increased employment or public services. One contributing factor is that the oil industry and some other extractive sectors require highly skilled labour that is not readily available in Burma. As one Yangon-based journalist notes, "Even in the oil and gas sector, Burmese companies do things like provide catering services or building construction, rather than higher value and profitable activities."<sup>223</sup> Rather than promoting the absorption of migrant labour, there has been large-scale migration to neighbouring countries, partly in response to the fact that the extractive sector has involved dispossession of land.

Since the quasi-liberalisation of the economy in the late 1980s, foreign companies with advanced technology and large capital stocks have been able to take on a large role in the mining sector. The methods of extraction vary, but these firms have often displaced local miners.<sup>224</sup> As a result, even in Burma's largest sectors, such as oil and gas, hydropower and mining, foreign investors have achieved a dominant position.

The recent upsurge of formal and informal foreign investment in the agricultural sector has not contributed to food security or provided employment in local communities, which was the government's justification for promoting agro-industrial development. On the contrary, smallholder farmers are losing their land and may not even find on-farm wage labour. For example, Chinese investors have imported unskilled labour from China for many of their projects located near the border.<sup>225</sup> The internal migration of unskilled labour (predominately Burman) from the Central Dry Zone of Upper Burma and the Delta region – many of whom lost their farms after Cyclone Nargis – in search of on-farm wage labour, has aggravated social problems in ethnic areas, as is the case in Kachin State for rubber management and in Tanintharyi Region for palm-oil plantations.<sup>226</sup>

### Lack of Transparency, Corruption and Abuse of Power

Foreign investment in the extractive sector provides a significant percentage of government revenue. However, the government's regulatory policies and practices, particularly in the lucrative extractive industries, do not meet international standards. Transparency International, which focuses on corruption-related issues, gave Burma 1.5 in its annual Corruption Perception Index, which scores countries from 0 (highly corrupt) to 10 (very clean). Burma ranked 180 out of 183 countries in its 2011 survey of global perceptions of corruption, ahead of only Somalia and North Korea.<sup>227</sup> The lack of transparency has a detrimental impact on many aspects of economic development. Moreover, recent reports claim that the previous and current governments have not disclosed how gas revenues enter the country or how they are managed.<sup>228</sup>

The lack of sound institutions and good governance impedes transparency, allowing revenue to be siphoned off for private use. It is often far cheaper for investors to bribe officials in a resource-producing country than to purchase resources on the global market. The current accounting mechanisms are too weak to deter corruption. As one Yangon-based local NGO worker notes, “These are the people’s resources, not just those of a few powerful people”.

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In the logging sector, for example, the harvesting of valuable teak without appropriate accountability has both degraded the environment and allowed for the misappropriation of revenue. As one Yangon-based environmental worker notes, “These resources are a one-shot deal and they have been squandered”.<sup>230</sup> The revenue generated from the extraction of non-renewable resources could have funded social and economic projects to support longer-term development in affected communities.

Among other things, the opaqueness of the auction process for entering into contracts with foreign investors results in undervaluing the assets. The absence of competitive open bidding precludes a market-based assessment of their value. In a more transparent bidding processes, the granting of concessions to foreign companies would establish the market’s estimation of prices as well as competition for resources, which closed bidding does not. This would probably raise the market value of Burma’s natural resources, generate more government revenue, and allow for better monitoring of revenue flows and investors’ compliance with contract regulations regarding their environmental and social commitments.<sup>231</sup>

Related to the transparency of contracts, communities are also calling for free, prior and informed consent (FPIC). Many have complained that they are not considered as stakeholders in the contract process, being excluded from

decision-making and given no information about projects. They are pressing for a more inclusive decision-making process in which they are consulted as stakeholders from the outset. This must also include specific measures, they argue, for local benefits to accrue without corruption, such as local officials siphoning off compensation packages.

In the agriculture sector, another transparency-related issue involves the informed consent of farmers engaged in contract farming – an emerging phenomenon in Burma.<sup>232</sup> One concern is whether farmers fully understand their contractual agreements with agribusinesses. The obligations and risks often fall disproportionately to the contract farmers rather than the investors. This stems in part from lack of awareness of contractual obligations and also from illiteracy.<sup>233</sup>

### Weak Institutions and Regulations

The flow of foreign investment into Burma’s borderlands without appropriate management of its impact challenges local livelihoods. The government has updated environmental protection laws and regulations, but does not yet have the capacity or political will to ensure that such foreign investment is properly regulated.<sup>234</sup>

The production of environmental and social impact assessments (EIAs and SIAs) before projects get underway can be a useful means to identify and address the potentially detrimental aspects of investment before it is too late. However, Burma’s new EIA law is inadequate, while the institutional and governance context is not conducive to ensuring that any EIA meets international standards.<sup>235</sup> A local environmental NGO worker warned, “The organizations executing assessments lack the capacity necessary to do them correctly”.<sup>236</sup> While new laws and policies in Burma that are intended to protect citizens’

Monywa copper mine (Paungku)



rights are to be welcomed, there is a need to focus on building robust institutions and good governance in order to ensure sound investment policies. As the one report cautions, “Though Burma does have some legislation related to the protecting people and the environment, the country lacks the necessary adequate administrative and legal structures, standards, safeguards and political will to enforce such provisions”.<sup>237</sup>

Many of the projects financed by foreign investors do not meet their own domestic legal standards. For instance, Thai and Chinese companies began logging in areas along Burma’s borders after these countries had banned domestic logging on environmental grounds. There are national and international guidelines to regulate foreign investment, but they are non-binding and difficult to apply in Burma given its poor governance and the continuing conflict in border areas. The Chinese government has released various guidelines for Chinese investment abroad, for example, but to date there have been no improvements in Chinese investment practices in Burma.

Urging Transnational Corporations (TNCs) in the extractive sector in Burma to meet Corporate Social Responsibility (CSR) standards could in theory help to direct more benefits to local communities. However, the real issues are the socio-economic effects of decades of poor, top-down development and the politico-economic origins of local grievances regarding the investment projects.

Furthermore, there has been rising criticism of CSR in recent years, mainly because of its voluntary nature. While the rights of TNCs are protected through trade and investment frameworks, these corporations face no binding obligations. Social movements and NGOs are therefore increasingly calling for regulations and for corporate accountability. These would include rules on how corporations can be structured; their social and environmental impacts; and their dealings with their workforce and other stakeholders. This is the only way a democratic society can determine and enforce what corporate behaviour it finds acceptable or unacceptable.<sup>238</sup>

### Excluding Communities from Participation

Burma’s political reforms have outpaced its economic reforms. Moreover, economic reforms have tended to be developed in a piecemeal manner that reflects the drawn-out deliberations on new legislation as well as pressures from various political and economic interests. The current economic policy process has involved only the elite rather than all stakeholders. While the appointment of a committee of economic advisers is an important step in improving the government’s technical capacity, the process is far from inclusive. After almost five decades, the establishment of a



Upland rice terracing cultivation

semi-representative parliament provides a new forum for elected representatives to air grievances. However, public participation is as yet not required in decision-making processes concerning large-scale development projects. As a result, the projects and the regulations that govern them fail to benefit from the input of the communities affected by them. “The government needs to look at lessons from other countries, create its own pilot project, and create its own system, if it can’t learn from others”, recommended one Yangon-based NGO worker. In the past, policies, most notably in agriculture, were designed without local input. A land activist added the simple adage, “The government needs to learn from the farmers”.<sup>239</sup>

There has been a lack of consultation with local communities about the distribution of the costs and benefits of foreign investment. As a result, local communities bear a disproportionate amount of the costs and few of the benefits. One example is the case of electricity. Burma is an energy-rich country with massive natural gas and hydropower capacity. The government has sought foreign investment to develop its energy sector. But border communities, including areas affected by hydropower projects, bear the brunt of the costs, such as relocation to marginal lands, but receive nothing in return. Despite its resource endowments and the high level of investment, per capita electricity consumption in Burma is less than 5 per cent of neighbouring Thailand. The peoples of Burma, including the borderlands, deserve to benefit from their country’s resource wealth and, as the pace of economic change increases, this need is becoming ever more urgent.





## Conclusions

Burma's resource-rich ethnic borderlands are entering a new period of investment and development. The opening up of the country has sparked great interest in large-scale international investment and regional infrastructure projects. The ethnic borderlands include Burma's most isolated and impoverished areas, which have seen decades of civil war, and are now in the international spotlight as Asia's "last frontier". Since 1988, about 65 per cent of all approved FDI in Burma has been in the Rakhine, Shan and Kachin States.

The current media focus on recent political changes in Burma overshadows the impact of economic reforms and regional investment in the border areas. In reality, it is economic issues that will continue to play a pivotal role in shaping domestic politics, and in Burma's regional and international relations.

Burma's political and economic reforms, alongside a new round of ceasefire agreements with ethnic armed opposition groups in the border areas, offer new promises but also old threats. Following a first round of ceasefires in the 1990s, the borderlands became the target of rapacious resource extraction by all parties to the conflict. These investments were often accompanied by greater militarisation in the vicinity of the investments, permitting the government to gain greater control over the area as well as to protect the investments, and were accompanied by human rights abuses. Unregulated large-scale resource extraction has had severe consequences for local communities, which rely on access to a healthy environment for their subsistence needs. Investors, domestic and foreign alike, have focused on short-term profits without consideration for the environment, local communities or the country.

The presence of armed groups and deep-seated, unresolved political conflict poses challenges for the sustainable development of border areas. There are many parties to the conflicts, including the Tatmadaw and armed ethnic opposition groups, but also dozens of militia groups with no political agenda. These groups have competing territorial claims, and impose taxation and forced labour on local communities. These threats discourage production and at times lead people to flee, and push vulnerable communities into less sustainable practices in more fragile agro-ecological zones.

The new ceasefire negotiations between armed ethnic opposition groups and the Thein Sein government will largely determine the nature of their political and economic relations. The previous practice of giving economic concessions to leaders of armed groups, such as resource-extraction or import licenses, in exchange for ceasefire support, will not achieve positive economic development or lasting peace.

Ethnic conflict has ravaged the country since independence and will take time to resolve. Local ceasefire agreements are important first steps, but to end the civil war and achieve lasting peace talks must move beyond establishing new ceasefires. The process needs to be based on inclusive political dialogue at the national level in order to address the main ethnic grievances and aspirations. Long-term sustainable economic growth requires more equitable arrangements, ensuring that benefits accrue to local communities. This depends on political dialogue to resolve outstanding differences between the military and ethnic political opposition groups.

Peace and a political solution to the ethnic conflicts are therefore important conditions for fostering forms of foreign investment that will support development for local communities and the nation. Failure to achieve peace and justice will undermine the current reform process and lead to a continuation of Burma's cycle of conflict. The current Tatmadaw offensives in Kachin State and northern Shan State are thus of great concern for the whole country and should end immediately to be followed by urgent and inclusive attention, both political and humanitarian.

There is a need for far-reaching governance reforms – at all levels – in order to break the pattern of investment only in large-scale resource extraction, with its detrimental impacts on communities and their environment. Only genuine political peace and improved governance will enable investment and economic development that are both sustainable and not exclusively in the extractive sectors. Improved governance must include strengthening the rule of law, reducing red tape, curbing corruption, and reforming monetary and currency policy. Burma also needs far better physical and communication infrastructure, in particular reliable access to electricity, in order to promote investment in non-extractive sectors.

The recent economic reforms aim to create a more hospitable climate for FDI – although the policy process has provoked a protectionist backlash by national entrepreneurs – by clarifying the rights of foreign investors. But this has come at the expense of expanding rights to the peoples of Burma and neglecting measures to improve the management of foreign investment so that communities benefit. In fact, the new land laws have systematically undermined farmers' traditional land-use rights, particularly in the uplands, which encompass a large part of the borderland regions, in order to provide the legal framework for large-scale investment in land. Furthermore, legislation on foreign investment and SEZ gives corporations, domestic and foreign, more secure land rights than enjoyed by the people of Burma. Land grabs have become one of the most prominent national issues since reforms began. The politics of agrarian reform will determine whether the country's political and economic changes will benefit the population overall, or only the urban elites.

Rather than providing a basis of support, poorly managed foreign investment may foster continued resentment towards investors and the government. If the proceeds of investments are unfairly distributed, and/or the projects have adverse impacts on local communities, popular grievances may be directed at government officials, business associates of influential government figures, foreign entrepreneurs, and even ethnic populations and organisations. There is a need for investment procedures to ensure greater transparency and community input so that they support people-centred development. If not, grievances regarding investment projects in the borderlands may fuel further local and national resentment and possibly give rise to continued conflict.

This report underlines that the potential for foreign investment to play a positive role in the lives of people in the borderlands may well be squandered. Some of the key challenges to overcome in ensuring the equitable and sustainable economic development of border areas include the lack of an adequate framework for regulating foreign investment, the inability of the government bureaucracy to manage such inflows of capital, an untested legal landscape, land grabbing, increased militarisation, environmental degradation, the exclusion of communities from participation in development, inadequate compensation, forced labour, bribery and continuing armed conflict. Moreover, the structural conditions created by a more liberal economy will favour the urban elite at the expense of the rural poor.

Rather than fast-tracking economic reforms with input only from national elites, foreign governments and global investors, the government should encourage debates at the community, regional and national levels regarding an approach to development that would allow for peace and prosperity for all of Burma's peoples. If the government truly follows democracy, as citizens hope is supported by the current president, then investment in Burma could truly benefit the majority. But this will happen only if the government invests in its people and puts their interest first.

## Endnotes

- 1 In 1989, the military government changed the country's official name from Burma to Myanmar. There are alternative forms in the Burmese language, but their use has become a politicized issue. Myanmar is not commonly used in the English language, and therefore Burma is used in this report. This is not intended as a political statement.
- 2 See Kramer, 2009; Woods, 2011a.
- 3 UMEH is among the largest national companies in Burma. The Directorate of Procurement of the Ministry Defence owns 40 per cent of its shares. The remaining 60 per cent are owned by regional army commanders and active and retired military officers. UMEH owns a large number of businesses. See Win Min, 2004.
- 4 EarthRights International (ERI), 2009.
- 5 Department of Agriculture (DAP), Ministry of Agriculture and Irrigation (MoAI), 2009.
- 6 TNI-BCN, 2010a.
- 7 Ibid.
- 8 Hanna Hindstrom, "Burma lags in female political participation", *Democratic Voice of Burma*, 8 March 2012.
- 9 TNI-BCN, 2010a.
- 10 Aung Tun, "Era of reform neglects decentralization", *Myanmar Times*, 16–22 July 2012.
- 11 Interview with AMRDP representatives, Moulmein, 21 September 2011.
- 12 Interview with representative of the Rakhine Nationalities Development Party (RNDP), Yangon, 15 June 2011.
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## List of Abbreviations

ADB	Asian Development Bank
AMRDP	All Mon Region Democracy Party
ASEAN	Association of Southeast Asian Nations
BGF	Border Guard Force
BIT	Bilateral Investment Treaties
BSPP	Burma Socialist Programme Party
CNPC	China National Petroleum Corporation
CPI	China Power Investment Corporation
CSR	Corporate Social Responsibility
DDA	Dawei Development Association
DSEZ	Dawei Special Economic Zone
EIA	Environmental Impact Assessment
EU	European Union
FDI	Foreign Direct Investment
FIL	Foreign Investment Law
FPIC	Free, Prior and Informed Consent
FTA	Free Trade Agreements
FY	Fiscal Year
GDP	Gross Domestic Product
GMS	Greater Mekong Sub-region
HDI	Human Development Index
IDP	Internally Displaced Person
IFI	International Financial Institutions
JICA	Japan International Cooperation Agency
KIO	Kachin Independence Organisation
KNPP	Karenni National Progressive Party
KNU	Karen National Union
KSPP	Kachin Solidarity Progressive Party
MEC	Myanmar Economic Corporation
MIC	Myanmar Investment Commission
MOGE	Myanmar Oil & Gas Enterprise
MoU	Memorandum of Understanding
MP	Member of Parliament
NDF	National Democratic Force
NGO	Non-Governmental Organisation
NLD	National League for Democracy
NMSP	New Mon State Party
NUP	National Unity Party
PTTEP	PTT Exploration and Production
RCSS	Restoration Council of Shan State
RNDP	Rakhine Nationalities Development Party
SEZ	Special Economic Zone
SIA	Social Impact Assessment
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
SSA-S	Shan State Army – South
SSPP/SSA	Shan State Progressive Party – Shan State Army
TBC	The Border Consortium (formerly Thailand Burma Border Consortium)
TNC	Transnational Corporation
UMEH	Union of Myanmar Economic Holdings
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
USDP	Union Solidarity and Development Party



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Burma has entered a pivotal stage in its political and economic development. The advent of a new quasi-civilian government has raised the prospect of fundamental reforms. This has sparked great investment interest among governments and the private sector in the region and beyond, to extract the country's natural-resource wealth, and to develop large-scale infrastructure projects to establish strategic 'corridors' to connect Burma to the wider economic region. The country is touted as Asia's "final frontier" for resources and investment and as Asia's next "economic tiger".

These large-scale investment projects focus on the borderlands, where most of the natural resources in Burma are found. These areas are home to poor and often marginalised ethnic minority groups, and have been at the centre of more than 60 years of civil war in Burma – the longest running in the world. These war-torn borderlands are now in the international spotlight as regions of great potential but continuing poverty and grave humanitarian concern.

Such investment is not conflict-neutral and has in some cases fuelled local grievances and stimulated ethnic conflict. Economic grievances among ethnic groups – often tied to resources being extracted from the borderlands to sustain the government and business elites – have played a central part in fuelling the civil war.

While regional investment could potentially foster economic growth and improve people's livelihoods, the country has yet to develop the institutional and governance capacity to manage the expected windfall. Burma is emerging from decades under military rule, and the foreign-funded mega projects have not, to date, benefited local communities. Land-grabbing has increased, and the recent economic laws and new urban wealth have not brought about tangible improvements for the poor.

If local communities are to benefit from the reforms, there need to be new types of investment and processes of implementation. The government should direct investment towards people-centred development that benefits household economies. There is a need to resolve conflict through dialogue and reconciliation. These are the hallmarks of a robust and healthy democracy. In their absence, the development of Asia's final frontier will only deepen disparity between the region's most neglected peoples and the new military, business and political elites whose wealth is rapidly increasing.

This publication is part of a joint TNI-BCN project that aims to stimulate strategic thinking on addressing ethnic conflict in Burma and to give a voice to ethnic nationality groups who have, until now, been ignored and isolated in the international debate on the country. In order to respond to the challenges of political change, TNI and BCN believe it is crucial to formulate practical and concrete policy options and define concrete benchmarks on progress that national and international actors can support. The project aims to achieve greater support for a Burma policy that is pragmatic, engaged and grounded in reality.

The Transnational Institute (TNI) was founded in 1974 as an independent, international research and policy advocacy institute, with strong connections to transnational social movements and associated intellectuals concerned to steer the world in a democratic, equitable, environmentally sustainable and peaceful direction. Its point of departure is a belief that solutions to global problems require global co-operation.

BCN was founded in 1993. It works towards democratisation and respect for human rights in Burma. BCN does this through information dissemination, lobby and campaign work, and the strengthening of Burmese civil society organisations. BCN advocates a political solution to the ethnic crises in Burma.