EXECUTIVE SUMMARY

State and Region Governments in Myanmar









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Subnational governance institutions and central-local relations are critical to the future of Myanmar, and they are undergoing significant change. This report aims to inform policy-makers, political actors, donors, and other stakeholders about the new state and region structures created under the 2008 Constitution, and their relationship with broader governance, peace and decentralization processes.[1] These new subnational governments have started to open political space, but they face significant limitations. While the presence of partially-elected bodies at this level is a major reform, they face capacity constraints. The executive at state and region level is still dominated by a top-down appointment process, and ministers have little control over the administrative apparatus, limiting the effectiveness of the new governments. State and region budgets are as yet small, and prepared in a way that reinforces central influence. Further reforms are needed to align the new political structures with administrative and fiscal arrangements, broaden the scope of decentralization to more significant areas, and link it with wider democratization, peace and public administration reform processes.

This research is the first phase of an ongoing collaboration between The Asia Foundation and the Centre for Economic and Social Development of the Myanmar Development Resource Institute (MDRI-CESD) on a range of subnational governance issues. It is based on a structured series of seventy-seven interviews and focus group discussions in four states and two regions.[2] The study aims to answer three broad questions:

- What is the constitutional, legal and institutional framework for state and region government, and what is the policy direction of decentralization reform?
- What are the outcomes of these reforms in the states and regions, and how do they vary?
- What challenges, opportunities and ways forward are there to improve subnational statebuilding, service delivery and conflict management?

Structure of state and region governments under the 2008 Constitution

State and region governments consist of a partially elected unicameral legislature called *hluttaw*, an executive led by a Chief Minister and cabinet of state/region ministers, and state/region judicial institutions. The *hluttaw* is composed of two elected members per township, representatives for "national races", and appointed military representatives equal to one quarter of the total. The Chief Minister is selected by the President from among elected or unelected *hluttaw* members, and confirmed by the *hluttaw.*

[1] States and regions are constitutionally equivalent. States cover areas with large ethnic minority populations and are located along Myanmar's borders. Regions encompass majority "Burman" areas.
[2] There are a total of seven states and seven regions in Myanmar, and the study covered Chin, Mon, Shan and Kayin states, and Ayeyarwady and Tanintharyi regions.

The Chief Minister selects the civilian ministers from among *hluttaw* representatives or other candidates, and these are assigned portfolios by the President. The state/region Minister for Border and Security Affairs is a military officer nominated by the Commander-in-Chief. In general, judicial appointment procedures and structures are centralized and limit judicial independence. The President, in consultation with the Chief Justice of the Union, nominates the state/region Chief Justice. There is a state or region Advocate General, nominated by the Chief Minister. A Constitutional Tribunal of the Union considers constitutional disputes between regions, states and the union.

Schedule Two of the Constitution lists areas over which the state or region government has legislative powers; it also assigns the states and regions executive or administrative authority over the same areas, and new responsibilities may be added under union law. These areas are divided among eight sectors, each with specific responsibilities, and several of which are deferred for further definition.[3] In most of the sectors the specified responsibilities are quite narrow, and they also exclude certain major areas such as health and education.

This report analyses state and region government in terms of its political, administrative and fiscal dimensions.

Political decentralization involves the transfer of decision-making power and accountability to local levels. It often involves *devolution*—the transfer of responsibilities to local governments with significant autonomy.

Administrative decentralization focuses on distributing managerial responsibilities among different levels. Administrative decentralization can take the form of *deconcentration*, whereby lower administrative levels are given more authority or discretion but remain accountable to the centre, or devolution in which executive authority is given to full-fledged local governments that are more autonomous from the centre.

Fiscal decentralization describes the way in which expenditure responsibilities and corresponding financial resources are provided to subnational levels. Some discretion over resources may be deconcentrated to lower tiers of central ministries, or more complete control devolved to local government with a system of planning and budgeting, local revenue, central-local transfers, and borrowing.

The administrative dimension

Unclear administrative and accountability relationships: The division of responsibilities defined by Schedule Two has created a blurry distinction between those state and region departments that are meant to report to the state/region government, and the state/region-level offices of union ministries that do not. The formally decentralized state and region departments have an ambiguous (and changing) relationship with both their "parent" union ministries, and the new state/region government. They do not form stand alone administrative units, and they do not correspond neatly with the state/region ministerial portfolios. The status of

[3] The sectors are: Finance and Planning; Economic; Agriculture and Livestock Breeding; Energy, Electricity, Mining and Forestry; Industrial; Transport, Communication and Construction; Social; and Management.

their civil servants is ambiguous, with human resource management still being handled by the corresponding union ministry and the national civil service organization. In effect, the state and region government has ministers, but does not yet have its own ministries.

Dependence on the General Administration Department: The General Administration Department (GAD) of the military-led Ministry of Home Affairs forms the administrative Office of the Region/State Government, and the workings of the state/region government are dependent on the support of this unit. This entails GAD staff providing administrative, coordination, and back office functions for the state/region government as well as the state/region *hluttaw* and state/region departments. Recent reform directives from the President are aimed at resolving some of these ambiguities, but significant challenges remain in bringing clarity to the accountability relationships involved.

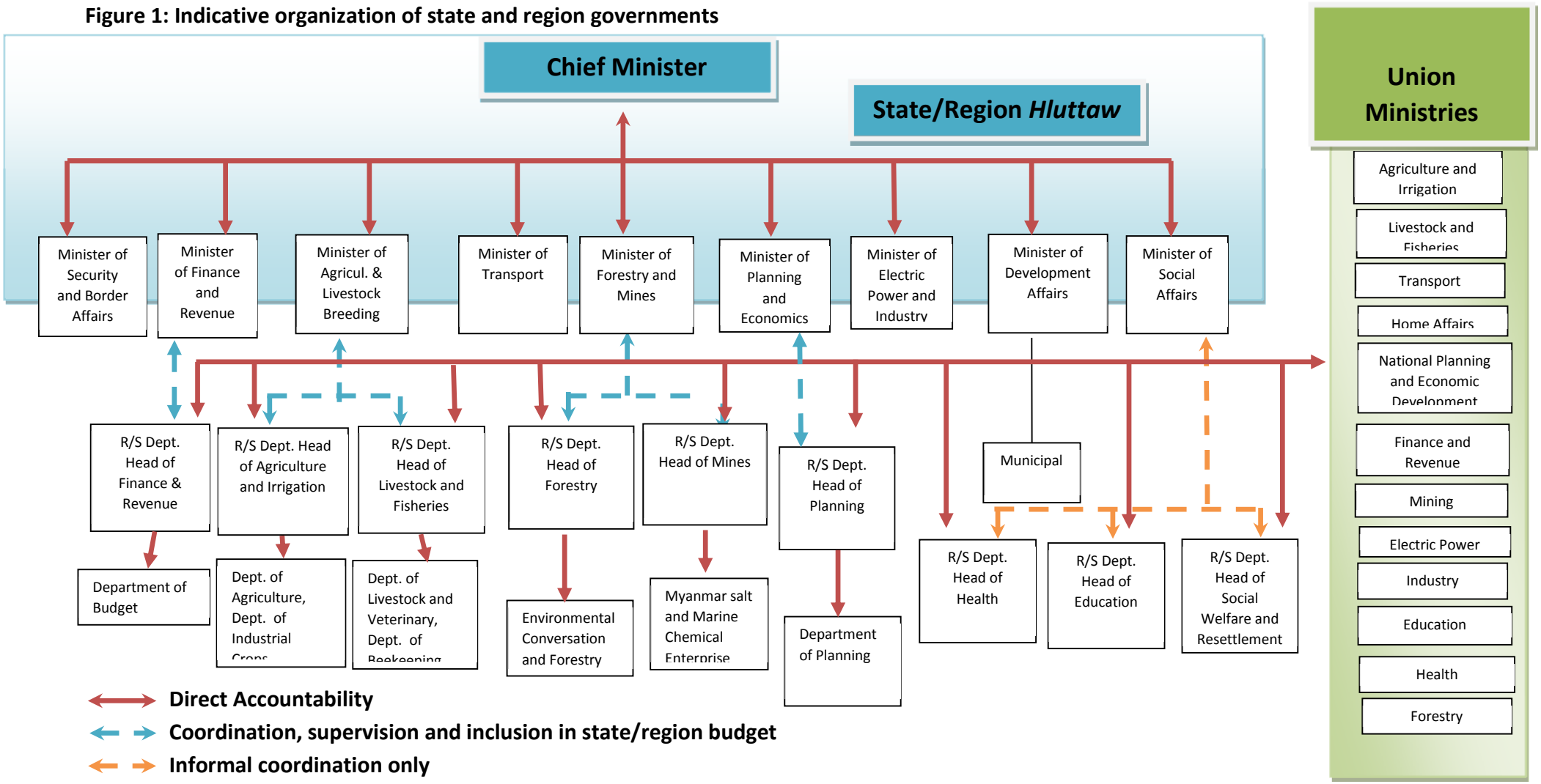
Limited scope of decentralized functions: Alongside these state/region departments, many of the more significant departments and ministries remain centralized such as health and education, although many of these union ministries are pursuing significant reforms to give more authority to their state/region offices. The lack of political and fiscal devolution of these areas means that issues of clear, local concern—responsive delivery of services, ethnic identity, and the management of natural resources—are outside the political framework of state and region government.

The fiscal dimension

State and region budgets are small and lack transparent allocation criteria: Fiscal decentralization is taking place in a mixed and limited way. There is a state/region budget that comprises the income and expenditures of those departments and state economic entities that are associated with the state and region government. The scope of this budget remains small—probably under five percent of public spending when both transfers and local revenues are included. This state/region budget is also not fully devolved, in the sense that control over budget composition and priorities is still limited and centralized. There is limited scope for the state/region to prioritize between sectors, and the budget is subject to central review in the Union Financial Commission. On the other hand, the development of more predictable, transparent, and rule-based intergovernmental fiscal institutions can go a long way towards strengthening fiscal autonomy. States and regions are already collecting significant revenues, but local tax policy and administration is still underdeveloped and there is room to support further improvements.

Some devolved cross-sector development funds: The introduction of a cross-sectoral "poverty reduction" grant has been an important innovation that creates a need for planning and prioritization within states and regions. At this early stage, implementation of the grant has varied, and currently there is no real rational basis for its allocation across the country, other than giving an equal share to most states/regions. However, this grant creates an opportunity for both central and state/region stakeholders to work together to develop a sound, transparent, and rule-based inter-governmental fiscal system linking the centre with the states and regions.

Figure 1: Indicative organization of state and region governments



The political dimension

Important new state and region political space: The formation of state and region governments is a major development. However, a centralized executive appointment process limits the political autonomy of these new governments. Chief Ministers participate in the state/region *hluttaw*, but they are accountable ultimately to the President, not to their assemblies. They also choose their cabinets. On the other hand, the establishment of *hluttaws* in states and regions has created new opportunities for debate and discussion. In ethnic states, regional and ethnic parties have gained significant representation, but the impact of appointed military representatives is, as yet, unclear. So far representation in state/region government has been limited almost entirely to men.

Political opportunity hampered by administrative and fiscal limitations: In general then, this potential political space for meaningful and peaceful contestation has remained very limited. Most states and regions have passed very few laws dealing with local issues. *Hluttaws*, particularly in smaller states and regions, tend to be marginalized by the cabinet and relatively inactive. Hampered by administrative and fiscal limitations, the potential for state/region representatives to be a conduit for local priorities, a check on central and local executive power, and a channel for grievances, is still underdeveloped.

Assessing decentralization to Myanmar's states and regions

In sum, the actual reach of administrative responsibilities and confusion over executive structures, the small size and central oversight of the budget, and the restrictions on political autonomy, all mean that Myanmar is still a very centralized country. Second, there are imbalances in the degree of decentralization across the administrative, fiscal and political dimensions. While political decentralization faces limits due to continued top-down influence and the participation of appointed military officials, it also shows real potential to channel political participation. Some of most important factors limiting this space for political action in states and regions are related to weaknesses in the administrative and fiscal dimensions. A danger is that this imbalance results in inadequately empowered local governments and contributes to a crisis of public expectations.

It is still early in the decentralization process, and the emergence of new local political and institutional space is already increasing the awareness and interest of diverse groups in further decentralization. This interest is not limited to ethnic minority or regional parties, but is shared by local branches of national parties and local officials themselves. Increasingly, civil society organizations and the local media already openly discuss subnational governance issues.

Reform environment

The political economy of further decentralization to states and regions depends on contestation over constitutional issues. Does the Constitution provide the final word on the structures and the responsibilities of state and region government, with the remaining work being to flesh out these provisions in law and regulation, and support the capacity of the relevant institutions? Or is there

space for substantial reinterpretation and amendment of the Constitution, allowing for adjustments to the basic direction of decentralization policies? Or, even further, is the Constitution unable to address the most important issues facing the system, and therefore in need of renegotiation?

The restrictive provisions for amendment of the Constitution suggest that the drafters intended that the current distribution of authority would be an end, rather than a starting point. However, there is significant and growing interest in further strengthening of subnational governance institutions from many sides of the political spectrum, and many possibilities for deepening reform and even constitutional change.

Within the President's Office, there are six "President Office Ministers", and Minister U Hla Tun generally acts as the President's representative on matters regarding decentralization. The stated intentions of President Thein Sein's subnational governance policies have been to spur economic development, focus administrative reforms on state and region governments, and enable political reforms to support nascent peace processes with ethnic armed groups.

The government's Framework for Economic and Social Reform (FESR) emphasizes development of laws and regulations surrounding decentralization, the possibility of adding areas to the existing list of state/region responsibilities, and stresses the need for a more "comprehensive" policy on decentralization. In August 2013, the President announced five significant public administration reform initiatives to bring more order to the confused accountabilities among state and region departments, ministers and *hluttaws*. These include increasing state/region influence over human resources and further deconcentrating major union ministries,

On the legislative side, in March 2013 the union parliament, *Pyidaungsu Hluttaw,* unanimously approved a "Constitutional Review Committee" to examine the Constitution carefully and to submit which articles should be amended, annulled and substituted. Committee membership is proportional to party representation in the *Pyidaungsu Hluttaw*. The openness with which the question of constitutional amendment is being discussed is, in itself, remarkable, and if the committee is empowered, it could potentially become an avenue to help break the deadlock over the Constitution among the main political currents in Myanmar.

The union parliament has also passed a new Region or State *Hluttaw* Bill replacing the 2010 State Peace and Development Council (SPDC) law. The 2013 law introduces potentially significant changes, including permitting a state/region *hluttaw* office that is not necessarily GAD controlled, allowing for public attendance at *hluttaw* sessions, and proposing that representatives should have constituency funds and independent representative offices. These latter two changes are viewed as unconstitutional by the President, as is the right to create bodies of *hluttaw* members and others to address "other matters" not prescribed in the Constitution. These points of contention are interesting echoes of national controversies over the autonomy and influence of the legislative branch.

Decentralization and the peace process

The attitude of the armed actors in the country—on all sides—towards the potential and perils of further decentralization will be central to the success or failure of Myanmar's transition, and state and region governance cannot be addressed without considering its impact on the peace process. The government peace roadmap involves armed groups joining the political process as parties under the constitution, while opposition proposals envision a fundamental renegotiation of the relationships between groups. Decentralization to states and regions within current constitutional constraints cannot provide the degree of political autonomy, security, or share of national wealth that the non-state armed groups in conflict or cease-fire with the government desire in order to agree sustainable peace agreements.

The need to negotiate these "big picture" questions does not mean that strengthening state/region governments cannot influence the peace process. Issues such as education policy, oversight of development projects, and management of mining concessions are important dimensions of conflict in Myanmar. However, these significant ethnic and identity issues and state/region level influence over major resources or development projects currently remain outside the framework of decentralization to states and regions.

Broadening the scope of state/region responsibilities and strengthening the role of state and regional governments are priorities that may be partly shared between state/region governments themselves, ethnic and regional parties, and non-state armed groups. State level discussions about these issues may support the broader peace process by suggesting solutions to problems that are specific to a given area, and build confidence and trust. Many conflict areas have some form of shared or contested authority and non-state service delivery regimes. Discussions to connect the state service sector with these regimes could potentially relieve conflict-affected communities, while building confidence and trust among the parties.

Such actions have to be carefully considered in terms of their impact on the negotiations, and in general, subnational governance reforms and international programmes should be carried out in coordination with the stakeholders in the peace process. On the other hand, should progress occur in the peace process, all stakeholders need to be ready for the changes this might imply for subnational governance reforms.

Recommendations

There is a broad consensus among the civilian central government and the parliament, state/region governments, political parties, and civil society that further development of decentralization reforms to states and regions is needed. The research presented in this report suggests areas that need to be prioritized if further improvement is to occur. Given the range of challenges and the political significance of many of these reform areas, it is crucial that processes emerge to foster a more detailed and broader-based consensus on the direction of decentralization policy and strategy. These processes must have national and subnational representation, as well as diverse governmental and non-governmental participation, and need to connect with the parliament's constitutional review, and to the peace process.

Table 1: Summary of recommendations

Rationalize state and region government administration and human resources
• **Further clarify the roles and responsibilities of the state and region departments** • **Separate state/region departments from union ministry structures; create programmes and incentives for relocating civil servants** • **Consider creating state/region civil service organizations** • **Support state and region ministers' and departments' independence from the General Administration Department**
Deepen the deconcentration process within union ministries
• **Policy framework for line ministries to further deconcentrate responsibilities across administrative levels** • **Capacity support to line ministries as they deconcentrate, and to state and region ministry offices as they take on new tasks** • **Ensure resources for functions at state/region level are available and transparent; modest budget deconcentration** • **Ensure offices engage in participation and outreach with state and region governments and *hluttaws*, as well as civil society and communities**
Broaden the scope of state and region government responsibilities
• **Consider including aspects of education policy and provision, including hiring and language of instruction in state/region legislative or administrative list** • **Foster more state and region participation in the management of significant natural resources, and approval and oversight of natural resource concessions and projects, possibly involving state and region authorities in EITI**
Strengthen public expenditure management, budgeting and resource allocation
• **Strengthen tax policy and administration at state and region level** • **Improve union public financial management capacity for fiscal projections** • **Revise allocation of the Poverty Reduction Fund & develop intergovernmental fiscal arrangements** • **Ensure donor programmes support state and region planning, budgeting and monitoring capacities** • **Support Union Financial Commission to develop and apply transparent fiscal policies** • **Improve clarity of national accounting standards and budget presentation**
Develop a transparent and rules-based intergovernmental fiscal system
• **Consider wealth sharing arrangements including what should be included, who collects, and the formula** • **Consider the overall transfer system, including what functions must be financed, what equity and policy goals are important, and what will encourage good governance, revenue and service performance.** • **Policies for management of foreign financial flows in relation to states and regions**
Strengthen the political autonomy of the state/region government
• **Support state and region *hluttaws* to function more effectively in legislative and oversight roles, especially for small *hluttaws*** • **Consider how to increase the Chief Minister's accountability to state/region** • **Comprehensive communication and constituency engagement strategies at the state/region level**

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