

NATURAL RESOURCES OF MYANMAR (BURMA)

Ownership, Management, Revenue Sharing and Impacts



Ethnic Nationalities Affairs Center (Union of Burma)
တိုင်းရင်းသားလူမျိုးများရေးရာစင်တာ (ပြည်ထောင်စုမြန်မာနိုင်ငံ)



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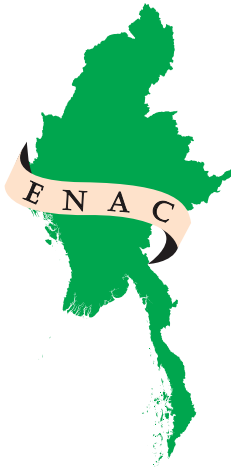


Ethnic Nationalities Affairs Center – ENAC

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ETHNIC NATIONALITIES AFFAIRS CENTER

Established in July 2013, the Ethnic Nationalities Affairs Center (ENAC) is an independent resource, training, and education center supporting the peace process and development of democratic institutions in Myanmar. Our mission is to help achieve sustainable peace, develop democratic institutions and bring about democratic federal union in Myanmar by engaging with political stakeholders, civil society organizations, community-based organizations and the international community. Additionally, ENAC provides technical supports for the peace process in Myanmar.

For more information, please visit <http://www.burmaenac.org/> or contact info@burmenac.org.

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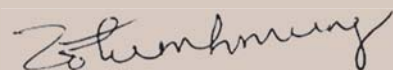
The Ethnic Nationalities Affairs Center (ENAC) believes that to achieve genuine and sustainable peace in Myanmar, the issues of natural resource ownership, management, revenue sharing and impact should be discussed in political dialogues. Of various natural resources in Myanmar, ENAC chose to conduct research on jade and natural gas for this paper. ENAC visited Sittwe and three villages in Kyaukphyu – Mala Kyun, Nhanpae Taung, and Pyar Tae – in Rakhine State to conduct research on natural gas production. ENAC also went to Myitkyina and Hpakant in Kachin State to conduct research on jade production. During these field research trips, ENAC met government officials, political parties, civil society organizations and local ethnic representatives.

Special thanks to U Nyi Pu, Chief Minister of Rakhine State, and Dr. Khet Aung, Chief Minister of Kachin State, for meeting the ENAC research team. ENAC also wishes to thank U H. La Aung, Minister of Natural Resource and Environmental Conservation, Kachin State; U Khat Htain Nan, Chairman of the Unity and Democracy Party of Kachin State; Dr. Manam Tu Ja, Chairman of Kachin State Democracy Party and the leaders of other Kachin political parties; Peace-talk Creation Group (PCG); Technical Advisory Team (TAT); Dr. Hkalam Samson, General Secretary, and other leaders of the Kachin Baptist Church (KBC); U Yup Zau Hkawng, Chairman of Jade Land Myanmar Company, and U Steven Naw Aung from Kachin Development Networking Group (KDNG). ENAC also extends appreciation to Dr. Aye Maung, Chairman of Arakan National Party; U Jockai Khaing from Arakan Oil Watch (AOW); and Daw Nyo Aye and Daw Wai Wai Htun from the Rakhine Women's Network (RWN). ENAC also owes its thanks to local communities and local and international organizations for their contribution to this research paper.

After the research field trips, ENAC conducted three workshops – one with ethnic armed organizations (EAOs) and one with civil society organization (CSOs) in Chiang Mai, Thailand, and one with political parties (PPs) in Yangon, Myanmar - in order to present draft research findings and collect suggestions and feedback from workshop participants. ENAC is thankful to all the leaders and representatives of EAOs, CSOs, and PPs for their feedbacks and additional input to the draft research paper presented.

Furthermore, ENAC is very grateful to Nai Hong Sa for editing the section on armed conflict and peace process in Myanmar; Dr. La Ja for editing the Kachin case study, and Dr. Khin Maung for editing Rakhine case study in this paper. This research paper may not be comprehensive, and any mistakes in this paper are the sole responsibility of ENAC. It should be noted that some facts have been updated and some small errors have been corrected in this English version.

We hope that this research paper, which is focused on the four aspects of natural resources – ownership, management, revenue sharing, and impact – will help, in some way, bring about sustainable peace and emergence of genuine federal democratic union in Myanmar.



Zo Tum Hmung

Executive Director

Ethnic Nationalities Affairs Center

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ABBREVIATIONS

| | | | |
|-------|--|-------|---|
| AA | Arakan Army | MEC | Myanmar Economic Corporation |
| ANP | Arakan National Party | MEITI | Myanmar Extractive Industries Transparency Initiative |
| AOW | Arakan Oil Watch | MIC | Myanmar Investment Commission |
| BGF | Border Guard Force | MNDAA | Myanmar National Democratic Alliance Army |
| BOC | Burma Oil Company | MOGE | Myanmar Oil and Gas Enterprise |
| CEFU | Committee for the Emergence of Federal Union | MOU | Memorandum of Understanding |
| CIA | Conflict Impact Assessment | MPE | Myanmar Petrochemical Enterprise |
| CNF | Chin National Front | MPPE | Myanmar Petroleum Products Enterprise |
| CNPC | China National Petroleum Corporation | NCA | Nationwide Ceasefire Agreement |
| CPA | Comprehensive Peace Agreement | NCCT | Nationwide Ceasefire Coordination Team |
| CSOs | Civil Society Organizations | ONGC | Oil and Natural Gas Corporation |
| DIC | Daewoo International Corporation | PCG | Peace-Talk Creation Group |
| EAOs | Ethnic Armed Organizations | PSLF | Palaung State Liberation Front |
| EC | Ecological Compensation | RGI | Resources Governance Index |
| EIA | Environmental Impact Assessment | RWN | Rakhine Women's Network |
| EITI | Extractive Industries Transparency Initiatives | SAL | Special Autonomy Law |
| EQEG | Environmental Quality Emission Guidelines | SD | Special Delegation |
| FPD | Framework for Political Dialogue | SEAOP | Southeast Asia Oil Production |
| FPIC | Free Prior Informed Consent | SEAGP | Southeast Asia Gas Production |
| GAIL | Gas Authority of India Limited | SIA | Social Impact Assessment |
| GAM | Gerakan Aceh Merdeka | SLORC | State Law and Order Restoration Council |
| HDI | Human Development Index | SSNA | Shan State National Army |
| KDNG | Kachin Development Networking Group | SSPP | Shan State Progress Party |
| KIA | Kachin Independence Army | TAT | Technical Advisory Team |
| KIO | Kachin Independence Organization | TNLA | Ta'ang National Liberation Army |
| KNU | Karen National Union | UDPKS | Unity and Democracy Party of Kachin State |
| KNUP | Karen National Union Party | UMEHL | Union of Myanmar Economic Holdings Limited |
| KRC | Karen Revolutionary Council | UNFC | United Nationalities Federal Council |
| KSDP | Kachin State Democracy Party | UPWC | Union Peacemaking Working Committee |
| KNPP | Karreni National Progressive Party | | |
| KOGAS | Korea Gas Corporation | | |

Map 1: Map of Myanmar States and Regions



POLICY RECOMMENDATIONS

Ownership

1. The native people who have historically resided in and the ethnic people who has consistently resided for many years in a particular State or Region are the ultimate owners of all lands and all natural resources above and below the ground, above and beneath the water, and in the atmosphere of that State or Region because they have inherited such natural resources from their ancestors and because they have consistently lived there for many years.

Management

1. Management rights to natural resources above and below the ground, above and beneath the water, and in the atmosphere of a particular State/Region should be categorized into: co-management rights of the Union and the State/Region, exclusive management rights of the State/Region, and co-management rights of the States and/or Regions. Since natural resource extraction can be concerned with the whole Union, with only one State/Region, and with more than one State/Region, there must be exclusive management power by the State/Region, collaboration and cooperation between the States, or/and Regions, and between Union and State/Region governments.
2. Natural resource extraction (e.g., uranium) that can be detrimental to national interests and has an extensive negative impact on the natural environment must be managed not only by the Union and the State/Regions where they are extracted, but also by the neighboring or related States/Regions that are involved in the chain of production. For natural resource extraction that requires cooperation and collaboration in terms of protecting the national interest, technical capacity, and human resources, there must be collaboration and cooperation between the Union and states/regions.
3. The State/Region government and the local government must have the rights to manage natural resources within their territory because they recognize the needs of their area better than the Union government and because by meeting these needs themselves, their capacity to manage natural resources can be strengthened. Management powers for natural resources should be allotted to the respective State/Region in which it is found.
4. When managing natural resources within a State/Region, traditional natural resource management systems of ethnic nationalities and the special management rights of some ethnic minorities must be recognized and integrated. This is necessary to acknowledge the rights of ethnic nationalities and their natural resource sharing system as well as to preserve their ethnic characteristics.
5. When determining the most appropriate natural resource management system for resources spanning more than one State/Region (eg., China-Myanmar Oil and Gas Pipelines Project, Hydropower Projects), related State/Region governments, and in some cases, the Union government must be involved in the decision making process. Since there can be negative impacts on social and natural environments when extracting natural resources that span more than one State/Region, and transporting and selling them within or outside the country without appropriate management, there should be consultation and cooperation among related State/Region governments.

Revenue Sharing

1. A sharing mechanism must be designed to allot fiscal benefits and tax revenue from the sale of natural resources extracted from a particular State/Region between Union and State/Region governments and between State/Region and local governments within that State/Region. The sharing of resource revenues that have been collected is necessary in order to help less developed States/Regions and to close the development gap and disparate living standards between States/Regions.
2. When determining the percentage of resource revenue that is collected from the State/Region that will be transferred to the Union budget, the relevant State/Region must have the right to decide the ratio or percentage of the contribution they are required to make. However, with regard to the percentage of State's contribution to the Union budget, a minimum level or standard acceptable to the majority must be enacted in the constitution in order to ensure equity among States/Regions within the Union and to help cover the financial needs of the Union government.
3. When sharing resource revenues between the Union and the States/Regions, the producing State must be entitled to the majority of resource revenues. The producing State/Region should receive 70 percent and the Union 30 percent of resource revenues (the tax collected from natural resource extraction). The producing State/Region should have a larger share of resources' revenue because they are likely to suffer the bulk of negative social and environmental impacts of resource extraction rather than the non-producing States/Regions. They will need more funds than non-producing States/Regions to remedy the grievances caused by resource extraction within their State/Region.
4. When sharing resource revenue remaining within a State/Region after contributing to the Union budget, the local areas of production should be entitled to a larger share than the non-producing areas within a State/Region because the producing area is more likely to suffer the negative social and environmental impacts. More funds will be needed by the local production areas to remedy the impact of resource extraction.

Impacts

1. While on the one hand resource extraction can bring about development opportunities and improved living standards in the local areas and State/Region of production, it has negative impacts on social and natural environment on the other hand; therefore, there must be a safeguard policy to minimize the negative impacts of extraction. The safeguard policy should include international standards of concepts such as Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), Conflict Impact Assessment (CIA), Free Prior Informed Consent (FPIC), Ecological Compensation (EC) and Corporate Social Responsibility (CSR). By establishing a safeguard mechanism that allows local community engagement in the implementation process of resource extraction in their State/Region, major negative social and environmental impacts can be effectively controlled and prevented.

Approaches to implement the policy

1. There are two approaches that can be taken to develop the policies recommend above. Natural resource governance policies can be reformed by amending the 2008 constitution or by including a natural resource policy in the peace agreement resulting from the peace processes' political dialogue. If either approach is successfully taken, armed conflict in ethnic areas will be more likely to cease and sustainable peace will be achieved.

EXECUTIVE SUMMARY

As political and security issues should be urgently addressed in Myanmar's peace process, It is important to address issues of natural resource governance in the peace process political dialogue. Due to the ongoing armed conflicts and political instability in natural resource-producing ethnic States, natural resource extraction has not been managed systematically. If natural resource issues are effectively addressed and an agreement on natural resources is reached in the Union Peace Conference, it would be helpful to bring about development in ethnic States and the whole of Myanmar. It is thus necessary to agree on how to address natural resource governance – ownership, management, and revenue sharing – and the social and environmental impacts of natural resource extraction. Once the agreement on natural resource governance is achieved, it should be enshrined in the Union and/or State constitutions.

This research paper explores the natural resource governance of four countries, namely Indonesia, Nigeria, Sudan, and Canada, utilizing published research papers, reports, and media sources. It also examines the governance of oil and gas extraction in Rakhine State and jade extraction in Kachin State through research field visits and interviews. Then, it discusses natural resource governance concepts, including ownership, management, revenue sharing, and the impact of natural resource extraction. In order to present research findings and further collect suggestions, workshops were conducted separately with ethnic armed organizations, civil society organizations and political parties. The concerns and aspirations of leaders and representatives from these various entities were then integrated into this research paper.

The international case studies showcase two approaches to natural resource governance reform – through peace agreements and constitutional amendments. According to the Memorandum of Understanding (MOU) between the Indonesian government and the GAM (the Free Aceh Movement), 70 % of the revenue from the oil and gas production from Aceh region belongs to Aceh region while natural resource management power is shared between the Indonesian government and the Aceh government. However, since the types of tax that can be levied by Aceh government and how it can be levied were not specified, actual implementation has been challenging. In the Comprehensive Peace Agreement between the Sudan and South Sudan governments, ownership of natural resources was not addressed, but was decided to discuss about it later in the referendum for South Sudan independence.

In Nigeria, one of the developing countries examined, natural resource governance has not been reformed through peace agreement. It was rather the result of a political ploy through a constitutional amendment process in which the Nigerian people did not have the chance to fully participate. In Canada, a more industrialized nation, natural resource ownership, management, and revenue sharing by the Provinces has been clearly enshrined in the constitution. In Myanmar, where centralization rule is strong, natural resource extraction lacks transparency and

accountability. Due to rampant corruption, only a small amount of natural resource tax has been collected for use by the Union government. Therefore, although the country produces high-value natural resources, development needs in producing States and the whole country in general remain.

The leaders and representatives of ethnic political parties, civil society organizations, and the local ethnic people who have been interviewed for this research paper believe that natural resources governance – ownership, management, and revenue sharing – should be placed in the hands of the State government. The rights and entitlement of State management has been demanded by multiple stakeholders, but has been ignored by successive governments, exacerbating armed conflict in resource-producing ethnic States, and ultimately hindering the country's peace process. Therefore, it is essential that the topic of natural resource governance should be discussed in the peace process, and a reformation agreement should be enshrined in the current constitution or in the future Union and State constitutions.

Only if agreement on natural resource governance is implemented after being enacted will there be genuine and sustainable peace and the formation of future federal democratic union – dreams longed for by all Myanmar citizens.

CHAPTER 1: INTRODUCTION

When the new government took office after the 2015 election, Myanmar was viewed as a country transitioning to democracy. Among the problems to be resolved, a top priority has been the armed conflicts that have been ongoing for the past 70 years. Historically, non-Burman ethnic peoples lived in nations under their own sovereignties. Burman monarchs colonized the ethnic people's lands by military force and annexed them as parts of the Burman empires.¹ In 1885, imperial British dethroned King Thibaw, the last king of Kongboug Dynasty and named "British Burma" all areas under his control at the time.

The British ruled lower Myanmar directly as Burma Proper and the frontier and other areas indirectly through Sawbwa, Sawke, Sawphyu, and Duwas, the traditional ethnic leaders. They acknowledged Karenni State as an independent State. Together with Burmans, the ethnic peoples decided to seek independence from the British. In order to establish a federal union, they signed the Panglong Agreement on 12th February, 1947; and thus, an independent country named the "Union of Burma" came into existence on 4th January 1948. After gaining independence from the British, various regimes of Burman leaders neglected the principles of ethnic equality, the core concepts of the Panglong Agreement, and created a unitary state rather than a genuine federal union. They also attempted to "Burmanize" the ethnic areas.

In order to gain political equality alongside independence, ethnic people revolted against the oppression of the Myanmar government. Eight months after Myanmar gained independence, civil war broke out in a nationwide revolution which included the Communist Party of Burma. General Ne Win took advantage of the situation and staged a military coup d'état in 1962. Since then, various regimes of military juntas have ruled Myanmar and refused to establish a federal union based on the rights of self-determination, equality, and democracy. Therefore, ethnic peoples took up arms against authoritarianism and have fought for their birthright for over 60 years. Since successive military governments resorted to military means instead of political means to address ethnic issues, civil war in Myanmar is ongoing.

The ongoing civil war continues to challenge the new government that took office in 2016. Political inequalities, discrimination against ethnic people, and centralized control over resource-rich areas remain, prolonging armed conflict. Although natural resources are not the only reason for the central government's armies to retain control over ethnic areas, they are definitely a significant incentive. Unfair sharing of natural resource revenue among States and Regions, corruption, land grabbing, and human right violations continue to cause conflict between the government and citizens and between the government and ethnic armed organizations. Therefore, as evidenced by other transitioning countries the issue of natural resources governance must be resolved by Myanmar peace process.

The 2008 Constitution, written by the previous military government, officially confers immense political power to the military. Under that Constitution, a government led by President U Htin Kyaw took office after the 2015 election. A few months after the new

¹ *The empires that the Burman kings extended were Bagan, Pinya, Ava, Taungoo, Nyaungyan, and Konbaung.*

government came to power, the Union Peace Conference (21st Century Panglong) was convened as a starting point for ongoing political dialogue amongst all political forces, including ethnic armed organizations and the Tatmadaw. The political groups which attended the Conference presented and discussed politics, security, economics and environmental issues. But in-depth discussions and critical resolutions were not made for the presented issues. These issues will continue to be discussed at future political dialogues. Therefore, those groups participating in the political dialogue will need to be prepared to discuss these respective topics, including national resource governance.

Objectives of the Research

As mentioned above, one of the problems that should urgently be addressed by relevant stakeholders is the issues of natural resource governance. But, the knowledge of average citizens and ethnic people about the role of natural resources in ending armed conflict and achieving sustainable peace is still limited. Therefore, this research paper explores the role of natural resources – ownership, management and revenue sharing – in negotiating peace through the Myanmar peace process. It is intended to inform relevant stakeholders about current natural resource governance in Myanmar, to consider comparative peace processes that included natural resource agreements, and to recommend practical approaches to serious resource-governance negotiation during peace process. The ultimate goal is for all of the findings from the research to serve as useful resources for developing inclusive and equitable natural resource governance, sustainable peace, and the emergence of future federal democratic union in Myanmar.

There are seven chapters in this research paper. Chapter 1 presents a summary of the background history of armed conflicts in Myanmar and the objectives of the research. Chapter 2 explains the research methodology and scope for this paper while Chapter 3 provides an analysis on the current situation of Myanmar in regards to peace and natural resources. In Chapter 4, natural resource governance concepts, including ownership, management, and revenue sharing, are explained. Chapter 5 presents international and Myanmar case studies of natural resource governance. Then, Chapter 6 discusses natural resource implications to be considered in the political dialogues for a future federal democratic union. Finally, Chapter 7 provides a conclusion.

CHAPTER 2: RESEARCH METHODOLOGY AND SCOPE

To compile this research paper, the ENAC research team collected and studied academic articles and books on natural resources and reports and statements issued by concerned groups, consulted with relevant experts, analyzed the natural resource policies (See Annex 1) developed by ENAC from various workshops with ethnic stakeholders, and integrated some sections from previous natural resource unpublished research conducted by ENAC. ENAC also conducted field research visits to two of the ethnic, resource-rich States in Myanmar to directly interview primary sources.

Of the many questions asked during the research visits, the four main questions asked of interviewees are as follows:

- Who should have the rights of ownership of the natural resources?
- Who should have the rights to manage natural resources?
- How should natural resource revenue be distributed (between federal and state and regional government)?
- What are the impacts of natural resource extraction in the producing States/Regions/ areas?

In order to answer these questions, the ENAC research team travelled to Rakhine and Kachin States and interviewed local organizations, social organizations, community-based organizations, leaders of political parties, and state government officers. The reason for conducting research in these two specific states is that they are the sites of the most natural resource extraction in Myanmar. The ENAC research team went to Sittwe and Kyaukphyu in Rakhine State and interviewed Arakan Oil Watch (AOW), Rakhine Women's Network (RWN), and the Chief Minister of Rakhine State. The team also visited three villages in Kyaukphyu and met with local farmers who suffer from land grabbing for Rakhine offshore natural gas production and Myanmar-China Oil and Gas Pipelines construction.

After that, ENAC research team went to Myitkyina and Hpa-kant in Kachin State to interview Kachin political parties, the Peace-talk Creation Group (PCG), Kachin Development Networking Group (KDNG), authorities from Kachin Baptist Church (KBC), the Chief Minister of Kachin State, and the Kachin State Minister of Natural Resources and Environmental Conservation. The team travelled to and observed the mining sites at Hpakant as well as the landslide locations. The team interviewed the Hpakant local elders and some businessmen regarding to jade production. Additionally, the ENAC research team met with INGOs from Yangon to learn about their works in Myanmar and reports concerning natural resources.

Due to time limitations and security concerns, the ENAC research team visited only two major resource-producing States and met with only some of the relevant political and social organizations. Only generalized and critical questions were asked to those leaders and representatives. After that, observations from research field trips and interviews were compiled and finalized. Then the team further collected recommendations from ethnic armed organizations (EAOs), civil society organizations (CSOs), and ethnic political parties (EPPs) by conducting three workshops with each separately. This paper do not aim to provide detailed information about natural resources but instead it only

intended to provide relevant leaders with some basic implications and options for natural resource governance when they have negotiations in future political dialogue.

It is crucial to study other natural resource governance systems that have been successfully implemented abroad, rather than only examining natural resource governance in Myanmar. Since there are differences in political, social, and economic contexts, other countries' natural resource governance may not fit perfectly for Myanmar, but these experiences with natural resource issues can provide very useful lessons for Myanmar. In this research paper the case studies of Nigeria, South Sudan, Indonesia, and Canada are analyzed. Recommendations about natural resource governance in Myanmar were made based on both these international and Myanmar case studies.

CHAPTER 3: NATURAL RESOURCES AND PEACE IN MYANMAR

3.1 Armed Conflicts and Peace

To achieve freedom from imperial British and fascist Japan, the Anti-Fascist and People's Freedom League (AFPFL) led by General Aung San campaigned and promised, "We shall fight together against the foreign imperialists who exploits us and the fascists who oppress us in many ways. After we gain independence, we shall enjoy equal rights as siblings." Various ethnic groups joined the struggle and pressured the British to a point when the latter had no choice but to grant independence. However, the British were willing to grant independence only to the Burma Proper areas first and postpone the independence for Frontier areas to a later time. The Shan, Kachin and Chin ethnic groups of the frontier areas, however, wanted independence as soon as possible, and therefore negotiated with General Aung San, the leader of AFPFL. General Aung San and AFPFL leaders were willing to negotiate with the Frontier leaders as they wanted to build a nation with more territory. And thus, the Shan, Kachin, and Chin leaders came together and signed an agreement with AFPFL leaders on February 12th 1947 at Panglong, Shan State in order to establish a genuine federal Union based on the principles of full autonomy, self-administration and national equality for all ethnicities. Unfortunately, before the British could grant independence, General Aung San and some prominent ethnic leaders were assassinated on July 19th of the same year.

After the assassination of General Aung San, U Nu succeeded him as leader of AFPFL. Myanmar gained independence in 1948 and AFPFL's U Nu became the first leader of the newly independent Myanmar. However, U Nu and AFPFL government failed to uphold the principles of national equality, self-determination and autonomy for different ethnic groups in the country. Instead, U Nu's government formed a pseudo-Union with the former Burma Proper maintaining centralized power over the outlying States. When the Karen, Mon, and Rakhine peoples from Burma Proper demanded their own States, like the Kachin and Shan, however, the AFPFL denied their demand and responded using force, giving birth to armed resistance by Karen, Mon and Rakhine. An armed resistance movement in Karenni State, which had been independent since the rule of King Min Dong, was also founded when annexed by the Myanmar AFPFL government. Under a system that disregarded national equality and self-determination for ethnic nationalities, more armed struggles by ethnic groups emerged throughout the country. The AFPFL government's mishandling of the ideologically -different Communist Party of Burma also resulted in armed conflicts with the communist movement. In 1950, the Pa' O ethnic group joined in the armed movement. Amongst the Karen, Mon, Rakhine, and Pa' O national resistance organizations, the Karen resistance movement was strongest as most of the Karen officers served in the British armed forces before Myanmar's independence. As such, the Karen resistance was most effective and Karen State was created by the government in 1951 and expanded in 1953. However, under a centralized government, Karen State was merely symbolic with no true autonomy for the Karen people. Therefore, the Karen people continued their armed struggle after state formation.

The AFPFL government was soon beleaguered by armed resistance on all sides – waged by the Karen, Karenni, Pa'O, Mon, and Arakan as well as the White Flag Kuomintang, Red Flag Communist Party, and the socialist *Phyithu Yebaw* Party. Later there were two factions within

AFPFL – Thantshin (Clean) AFPFL and Timye (Stable) AFPFL. After Thantshin AFPFL, led by U Nu, won the election, U Nu declared they would bury the hatchet with all of the armed resistance forces in 1958. He also declared amnesty and promised to grant full democratic rights and implement the country's affairs in accordance with the will of the people. U Nu's government invited all armed organizations in Myanmar to exchange arms for democracy and form political parties to compete in political elections. Therefore, the socialist Pyithu Yebaw Party, Pa' O, Mon and Shan ethnic armed resistance organizations, who believed that political movements should be endorsed by the people and who trusted the government's promise for democratic rights, gave up their arms, which they had collected with so much difficulty, and transformed their movements into political parties to run for election in 1960. Afterwards, ethnic political parties' leaders and other elected members of parliament convened in Taunggyi, Shan State to amend the 1947 constitution in order to make it more federal. With the support of the public, a date was set for the approval of the draft constitution amendment in the parliament. Before the amendment could be approved, the Myanmar Tatmadaw led by General Ne Win staged a coup with the support of some leaders from Stable AFPEFL. The Tatmadaw reasoned that federalism will lead to succession and in order to save the Union from disintegration, the Tatmadaw had to take power. The ethnic leaders who believed in democracy, desired peace, and had given up their arms and were committed to resolving political issues in accordance with the will of the people were, in turn, given lengthy prison sentences. Some of the leaders perished in prison as political prisoners.

In 1963, the military government of General Ne Win invited all armed resistance organizations for talks, in which all armed organizations participated. However, the military government under the name of the Revolutionary Council kept demanding armed resistance organizations to give up their arms and, therefore, the negotiations collapsed. In early 1964, a Karen resistance group known as Karen Revolutionary Council (KRC), led by Saw Hunter Thar Mway and Colonel Linn Htin, accepted the government's offer to retain their arms if they remain within the areas designated by the government. Initially, Saw Hunter Thar Myay was given a high-ranking government post and other members of KRC were also given various favors. However, after two years, Colonel Linn Htin was assassinated by the Myanmar Tatmadaw and Saw Hunter Thar Mway was removed from his position. Some KRC members rejoined the resistance movement while others remained under the control of the government. As a result, KRC dissolved. In order open the door for peace, Thakin Soe's Red-Flag Communist Party sent its delegation, led by Thakin Soe's wife, to negotiate with the government. Eventually, Thakin Soe himself went and negotiated with the government. Unfortunately, the Revolutionary Council refused to accommodate his demands and instead arrested and imprisoned him. Thakin Soe, who once was a prominent leader of Communist movement in Myanmar, died in prison and his Red-Flag Communist Party dissolved.

The Revolutionary Council of the military government expanded their armed forces and launched massive military offensives against armed resistance groups. It adopted the "Four Cuts" policy of cutting off ethnic armed resistance groups' access to food, funds, information, and recruitment to weaken the resistance groups. As a result, the Karen National Union Party (KNUP), which was based in Ayeyarwady delta, and the Communist Party of Burma, which was based in Pegu Yoma, lost many of their members in the offensives and were forced to retreat from their territories. However, none of the armed resistance groups was annihilated. The government greatly increased the military budget to expand the armed forces and finance continuous military offensives. Such policies severely damaged the country's economy and violated human rights. The government

ignored ethnic issues and pushed a “Burmese way to socialism,” further enflaming ethnic tension and leading to more ethnic resistance movements.

In 1988, a nationwide uprising broke out that led to the resignation of General Ne Win who subsequently handed over power to his subordinates. Led by General Saw Maung, the new State Law and Order Restoration Council (SLORC) brutally persecuted the people involved in the uprising. In order to deceive people, SLORC announced that they would hold elections and hand over power peacefully to the winning party. The election was held in 1990, but when the party that the military preferred lost, the SLORC refused to transfer power to the victors. Instead, they decided that a constitution must be written before power can be transferred. The military government then took years to write 2008 Constitution, which allows the military to hold on to power. In order to deal with the threats of the armed resistance groups, they negotiated bilateral ceasefires with one after another. The military government allowed Kokang, Wa, and Mongla, which were the earliest groups to have ceasefire with the government, to have full autonomy of their own territories, whereas the military pressured the other armed resistance groups into ceasefires through continuous military offensives. Armed resistance groups that had entered ceasefire agreements with the government were offered various development opportunities while the other groups continued to face government offensives. From the end of 1995, the government adopted a policy that armed resistance groups that had not entered ceasefire agreements with the government must disarm and further pressured them with more offensives. Such tactics were used to divide and conquer the armed resistance groups. In the ceasefire talks, ethnic armed resistance groups highlighted that the ceasefire alone is inadequate and demanded that ethnic problems are addressed through political negotiation. The SLORC reasoned that they were only a military government not elected by the people, so they had no right to make political decision. They then promised to hold political dialogues when the new government came to power after election.

The SLORC took many years to draft a new constitution that would safeguard the military’s role in the political system. During that time, armed groups who had entered ceasefire agreements were allowed to conduct regular business and local development activities. However, the SLORC also increased its military forces in ethnic areas to gain more control. In several situations, some armed group and ethnic leaders were given lucrative business deals by the government and their commitment to the ethnic cause dissipated. The SLORC deliberately attempted to undermine the unity amongst resistance groups. The internal dispute between Kokang groups provided a reason for the SLORC to send a large number of troops to the Kokang territory. The SLORC pressured Palaung State Liberation Front (PSLF), which had a ceasefire with the government, to disarm and disband all their armed forces. In the same year, the SLORC put military pressure on and forced disarmament of some of the Shan State National Army (SSNA)’s troops, also known as the Red Pa’O. In late 2009 after the 2008 constitution was ratified and in preparation for the upcoming election, the ruling military junta pressured elderly members of ceasefire groups to found political parties and enter the election, middle-age members to engage in business and development activities, and younger members to join the Border Guard Forces (BGF) an People’s Militia under Myanmar Army. Ceasefire groups who refused to cooperate were threatened with the label of “illegal organization,” as they were prior to ceasefire agreement. This move by the military was meant to avoid holding political dialogues after the election, when a new government came into power. In this way, many ceasefire groups came under the direct control of the Myanmar Army. The military junta who already had a strong troop presence in the Kokang’s area eventually attacked the Kokang group who refused to transform according to their wishes.

Three major ceasefire groups – KIO, NMSP, SSPP – did not accept the military's demands and later collaborated with the KNU, KNPP, and CNF, who were still fighting the military junta as well, to found the Committee for the Emergence of a Federal Union (CEFU) in November 2010. In February of the following year, ethnic armed resistance organizations held a conference and formed the United Nationalities Federal Council (UNFC). Knowing that it could not defeat the united ethnic resistance organizations by military force, the Thein Sein's government began to initiate political dialogue. Initially, the Thein Sein government was willing to talk separately with each ethnic armed resistance organization. However, UNFC did not accept the government's bilateral approach. Instead, the UNFC demanded that the government negotiate with them as an alliance.

In October-November 2013, the UNFC invited armed resistance groups to meet in Laiza where the Kachin resistance base is located. The Nationwide Ceasefire Coordination Team (NCCT) was founded with a representative from each of the 16 resistance groups. After negotiating for a year and five months, a draft Nationwide Ceasefire Agreement (NCA) was agreed upon by negotiators from both sides with the understanding that it will be submitted to a higher level for any necessary amendments and further negotiation before it could be adopted. The NCCT's top leaders held a meeting and identified areas within the NCA draft for amendment. Consequently the ethnic Senior Delegation (SD) was formed for further negotiation with the government. Eventually, both sides were able to reach agreement on the NCA. However, three of the ethnic armed resistance groups which had participated throughout the NCA drafting process – MNDAA, PSLF/TNLA and AA – were denied the opportunity to sign the NCA.

The SD had negotiated for the inclusion of all ethnic armed resistance organizations that had participated in the NCA drafting process. Since the government was unwilling to accept this policy of all-inclusiveness, the top leaders of the ethnic armed resistance organizations met with the then president Thein Sein and proposed the following: (1) the government shall not attack the three excluded groups; (2) the three groups shall receive humanitarian aid from international donors for refugees and development programs; and (3) the government shall allow the three groups to participate in the political dialogues. However, there was no clear answer from the government. The government continued to attack the three groups, ultimately preventing UNFC from signing the NCA. This was another example of the government tactic to divide and defeat any united ethnic resistance alliances. It showcased a government unwilling to work for genuine peace. In their attempt to “build peace” in the country, successive governments have never resolved political problems in a fair or just manner. The government had only consistently demanded that armed resistance groups disarm and disband. For those groups who had trusted in the government's promises or had been forced to disarm and disband, they soon found themselves without the power to support ethnic justice and natural rights. Therefore, many of these organizations rearmed themselves and now continue their struggle against the government.

Therefore, in order to build genuine peace, new policies and approaches must be adopted. The old Burmanization policies and approaches of the government will not solve today's political problems. A solution will require the adoption of the federal democratic principles that guarantee the equality and dignity of all ethnic nationalities.

3.2 Sharing Natural Resource Benefits

The Republic of the Union of Myanmar is a union in name only and does not have the characteristics of a genuine Union. Instead, Myanmar functions more like a colonial state where the central government monopolizes and controls all natural resources from ethnic regions. Therefore, for non-Bamar ethnic peoples, liberation from a distant colonial power was only replaced by a Bamar colonial ruler. Although various ethnic nationalities sacrificed their lives for independence, only the Bamar came to enjoy the benefits of independence. These are but some of the reasons why ethnic nationalities continue their armed struggle against the government. For instance, the hydropower from Lawpita power plant in Karenni State is distributed to Yangon, Mandalay, and other cities in central Myanmar while Karenni State enjoys no benefits at all. Likewise, gemstones such as ruby and sapphires from Shan State and jade and gold from Kachin State are controlled by the central government. All mining products from many States are also controlled by the central government. The offshore natural gas from Rakhine State and Tanintharyi Region and the forests throughout the country are also controlled by the central government.

Natural resources predate the independence and formation of Myanmar by thousands of years and have been owned and preserved by generations of native people in their respective ancestral lands. Therefore, the native people should have the right to own and manage the natural resources in their regions. Control, ownership, and appropriation by outsiders are tantamount to looting. Appropriation by force is a tactic employed by colonialists. Extraction of valuable minerals such as gold, silver, copper, and brass alters landscapes making it unsuitable for agriculture. The use of toxic mercury in goldmining causes life threatening pollution for the local population. Local farmers lost their lands and their water resources are polluted beyond consumption, ruining their livelihood. Currently, in Hpakant area of Kachin State, many hills disappeared, and water resources in the river system depleted. The central government, corporations, and cronies are the only beneficiaries while the local population is facing numerous difficulties. The damming of streams and rivers for hydropower production causes flooding and has destroyed natural forests, villages, and the agricultural fields of the local population. The weight of a reservoir can trigger earthquakes. High magnitude earthquakes can break the dam and cause serious danger to the population. Therefore, the dam construction at Myit Sone on Ayeyarwady River and along Salween River should not proceed without consultation and consent of the local population. The offshore natural gas from Rakhine State and Tanintharyi Region is controlled by the central government and the construction of refinery plants and pipelines for export damages the farmlands of the local population. Therefore, policies not only prevent local ethnic nationalities from benefitting from natural resources but also create various problems for them and should be replaced.

Myanmar is inhabited by and belongs to the multiple ethnic groups. The people of Myanmar drove out the colonialists in order to reclaim the natural resources of the country, and they also have common responsibility to protect the natural resources now. Therefore, the entire population should have the right to benefit from the country's resources. However, residents of regions where natural resources are produced shall also have the right to manage natural resources because they do not only inherit the benefits of natural resources but also bear the brunt of the immediate negative impacts of resource extraction. They should also be entitled to a larger share of the benefits from resource extraction. There are examples of this system in other countries. Therefore, policies on natural resources that meet the needs of our country must be adopted and implemented.

Myanmar is the home of various ethnic nationalities as they belong. The natural resources from their lands were brought back by battling the imperialist altogether just to regain the possession and they are equally responsible to protect these. That is the reason why every citizen deserves these natural resources. But, the local community must have the rights to manage as these are their inheritance and they are the persons who are most likely to suffer from negative consequences. This kind of system is practiced in many other countries as well. Therefore, policies which are suitable with the background context of a certain country should be amended and enacted.

Although Myanmar produces many high-value natural resources, the living standard of its population remains very low. (See Table 1)

Table 1: 2014 Human Development Index of ASEAN Countries

| Rank | Country name | HDI groups | HDI |
|------|--------------|------------|-------|
| 11 | Singapore | Very High | 0.912 |
| 31 | Brunei | Very High | 0.856 |
| 62 | Malaysia | High | 0.997 |
| 93 | Thai | High | 0.726 |
| 110 | Indonesia | Moderate | 0.684 |
| 115 | Philippines | Moderate | 0.668 |
| 116 | Vietnam | Moderate | 0.666 |
| 141 | Laos | Moderate | 0.575 |
| 143 | Cambodia | Moderate | 0.555 |
| 148 | Myanmar | Low | 0.536 |

Source: UNDP Human Development Index (HDI), 2014

The Tatmadaw plays a crucial role in the extraction, production, and sale of natural resources in Myanmar. It still monopolizes and dominates the Myanmar Oil and Gas Enterprise (MOGE) under the Ministry of Energy, gemstone mining under the Ministry of Mining (MOE), and other important economic activities of the country. The Tatmadaw directly controls the Ministry of Home Affairs, the Ministry of Border Affairs, and the Ministry of Defense and, through these Ministries, interferes in the activities of other Ministries. For example, since the general administrators of States and Regions are appointed by Ministry of Home Affairs, the military is able to manipulate the executive branch of the government. The State-level Departments of Border Affairs is involved not only in the border development activities but also in the transportation of high-value natural resources. The Tatmadaw officials under the Ministry of Defense are believed to also be involved in the resource extraction and appropriation of its resource benefits.

It is important to end the monopoly and dominance of the Tatmadaw and initiate a truly just peace process. However, even in the current political landscape with the new government and the State Counsellor, the Tatmadaw continues to hold political power and reap the benefits from natural resource extraction. People throughout the country had high expectations for the 2016 Union Peace Conference, 21st Century Panglong. However, the Tatmadaw attacked a base of the KIA on the day after the conference and later engaged in the renewed battle with the other ethnic groups, making it difficult to build peace. As the revenue from large-scale jade production in Hpakant of Kachin State is enormous, the Tatmadaw wishes to fully control the region.

Since 2011, the government has introduced some political reforms. Some western countries responded by lifting some trade sanctions against Myanmar. Consequently, massive foreign investments have rolled into the country, especially to the extractive industries. However, as of 2012, 75% of exports are raw materials, signifying little structural change in the country's economy. Although the government enacted Foreign Investment Laws, Land Laws, and Natural Resource Laws to systematically govern the natural resources, due to its weak legislative and regulatory infrastructure in natural resources areas, the government is unable to effectively collect taxes from natural resource revenues to support the national budget. There remains a lack of transparency and accountability among government authorities due to widespread corruption in the country.

3.3 Natural Resource Governance

Since the enactment of the 2008 Constitution, a number of significant laws have been revised and passed. With newly revised laws, the quasi-civilian government led by U Thein Sein worked at a rapid rate to bring Myanmar in line with international standards. It also passed laws related to economy in order to jumpstart economic development. The government passed the Foreign Investment Law in 2012,² the Myanmar Citizen Law in 2013,³ and the Myanmar Special Economic Zone Law in 2014.⁴ When the new government came to power in 2016, it passed the 2016 Myanmar Investment Law,⁵ which updated both the 2012 Foreign Investment Law and 2013 Myanmar Citizen Law. Additionally, the U.S government lifted sanctions⁶ on ten state-owned enterprises and banks. Law amendments, other political changes and sanctions reductions by western countries have made Myanmar moderately attractive for foreign investments. According to the official statistics⁷ about foreign investments, oil and natural gas sector has the largest amount of foreign investment. Foreign investment rose under the U Thein Sein presidency and it is assumed to still continue to rise under U Htin Kyaw's presidency.

In 1963, private enterprises were nationalized and the natural resource sectors of Myanmar were put under the control of government. A market economy was established gradually, some of the state-owned enterprises were privatized and the economy became more open. But according to 2008 Constitution, Article 37 (a-b), "The Union is the ultimate owner of all the lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union. The Union shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces." The authority to manage natural resource

2 *The Foreign Investment Law, enacted in 2012, vastly simplified the process for investment application and offers a number of tax breaks, incentives and guarantees rights and protections for foreign business ventures.* <http://dica.gov.mm/mm/my/243322> (accessed 16 Dec 2016)

3 *The Myanmar Citizen Investment Law, enacted in 2013, aims to establish a level-playing field for local and foreign investors by providing a legal framework and incentives for investment by Myanmar government.* <http://dica.gov.mm/mm/my/243323> (accessed 16 Dec 2016)

4 *The Special Economic Zone (SEZ) Law, enacted in 2014, aims to pay the way for special economic zones in Myanmar, and currently implementing three SEZs: Kyaukphyu in Rakhine State Dawei in Tanintharyi Region and the Thilawa in Yangon region.* <http://dica.gov.mm/mm/my/243328> (accessed 16 Dec 2016)

5 <http://www.mizzima.com/business-domestic/myanmar-investment-law-approved> (accessed 16 Dec 2017)

6 *The US eased economic sanctions on Burma in 2012 and lifted sanctions on 10 state-owned enterprises and banks.* <http://www.bloomberg.com/news/articles/2016-06-14/dealmaking-excitement-builds-over-beers-in-newly-opened-Myanmar> (accessed 16 Dec 2016)

7 http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/yearly_by_sector.pdf (accessed 15 Dec 2016)

Myanmar Sub-national Governance and Roles of Tatmadaw

According to the 2008 Constitution, Myanmar is comprised of seven States with predominately ethnic nationality majorities, seven Regions where the majority of Burmans live, six Self-Administered Zones or Divisions, and one Union territory which includes the capital, Naypyitaw, and interconnected townships. The smallest unit of administration is the village and villages are organized as village-tract. Wards comprise towns in the urban areas. Village-tracts and wards or towns are organized as townships, townships are organized as districts, and districts are organized as State or Region.

For the Executive branch of Myanmar, there are twenty-one Union Ministries. The military appoints Union Ministers for the following three departments, thereby putting them under military control.

(1) Ministry of Home Affairs

There are General Administration, Police and Fire departments under Ministry of Home Affairs. The General Administration Department (GAD) at the regional level is the main backbone of regional administration. The head of GAD has to manage hundreds of general administration staff at the GAD, government offices, and parliaments. Even though the Head of GAD is the secretary for state/regional government, he has to report to the Chief Ministers of state/regional governments.

(2) Ministry of Defense

Ministry of Defense is a department which holds responsibility for defense of the state. Even though the Tatmadaw is under Ministry of Defense, it appoints the Minister of Defense which means the Commander in Chief de facto has more power. The Union of Myanmar Economic Holdings and Myanmar Economic Corporations are the business institutions under Ministry of Defense and they monopolize the natural resource production and the main enterprises of Myanmar.

(3) Ministry of Border Affairs

Ministry of Border Affairs is the ministry that administers the development of border areas and ethnic nationalities of Myanmar. There are two departments: Department of Border Area and Ethnic Nationalities and the Department of Education and Training. International organizations have to cooperate with the Ministry of Border Affairs for their development projects in ethnic areas.

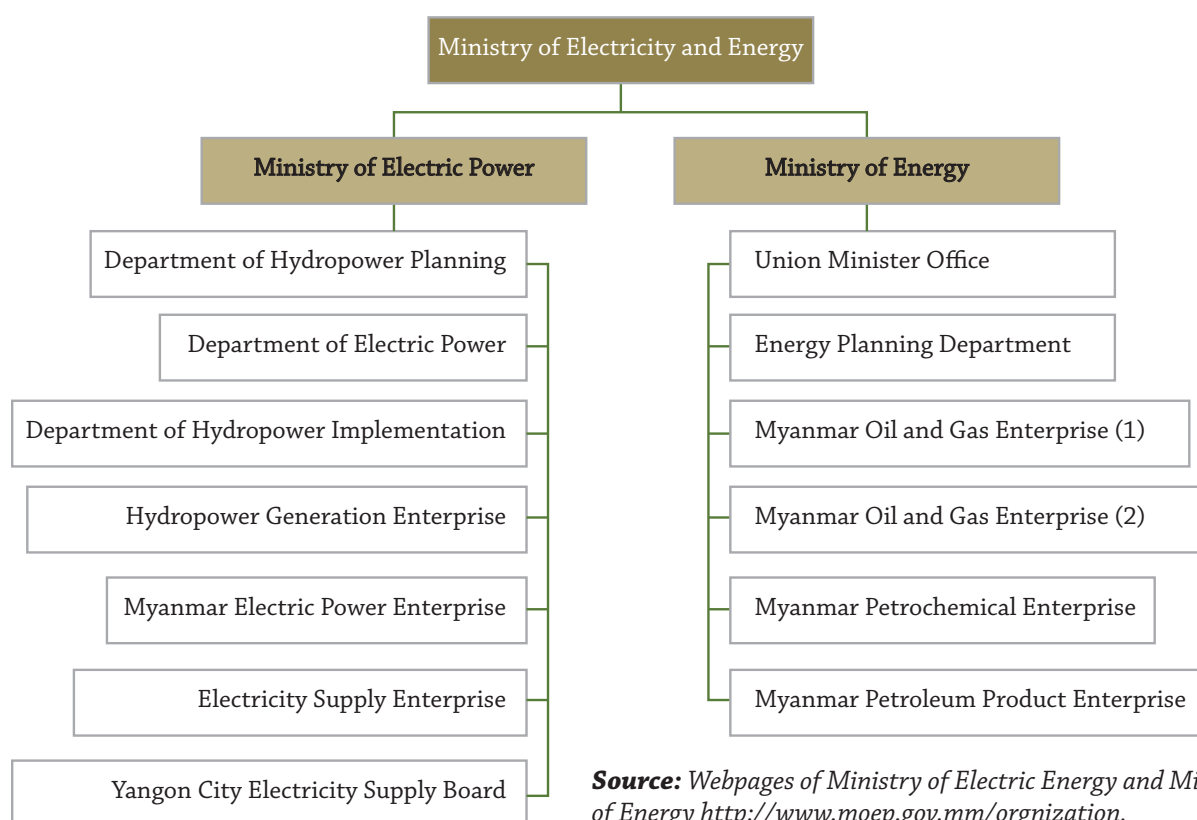
Source: 2008 Constitution (Myanmar), <http://gad.gov.mm/>, <http://myanmarpoliceforce.org/>, <http://www.mod.gov.mm/>, <http://www.mba.gov.mm/>); Adam Smith International and MDRI Institutional and Regulatory Assessment of the Extractive Industries in Myanmar (12 May 2015), (accessed 8 Feb 2017)

collected in the hands of the central government's Union ministers, with responsibilities assigned according to the resource type. Business licenses and tax regulations still apply to state-owned enterprises. Asia Foundations⁸ finds that state and regional government only have authority to manage and tax for low-value natural resources like salt and forest products, signifying some devolution of power. However, state and regions are only given management powers over some resources, still lacking true autonomy on natural resource management overall.

3.3.1 Myanmar Oil and Gas Enterprise

Myanmar Oil and Gas Enterprise is the industry with highest profit margins. A complex combination of colonial-era laws made by the Revolutionary Council from 1962-1988, the laws made by military government from 1988-2011, and the laws made by the quasi-civilian government led by U Thein Sein⁹ govern the oil and gas enterprise. The oil and gas enterprise was previously under the Ministry of Energy, and it is now under the new government's Ministry of Electricity and Energy.¹⁰ (See Fig.1) It is currently governed by the 1989 State-Owned Enterprise Law, the 2012 Foreign Investment Law,¹¹ the Environmental Conservation Law, and the 2016 Myanmar Investment Law.

Figure 1: The Structure of Ministry of Electricity and Energy



Source: Webpages of Ministry of Electric Energy and Ministry of Energy <http://www.moep.gov.mm/orgnization>, <http://www.energy.gov.mm/index.php/about-ministry/ministry-office/history-of-ministry> (accessed 16 Dec 2016)

8 <https://asiafoundation.org/resources/pdf/NaturalResourcesandSubnationalGovernemntMyanmar.pdf> (accessed 15 Dec 2016)

9 MEITI report available at MEITI website: <http://myanmareitit.org/> (accessed 16 Dec 2016)

10 In 2016, when new civilian government took office, 36 ministries were reduced to 21. Ministry of Electricity and Ministry of Energy were combined into Ministry of Electricity and Energy.

11 The 2016 Myanmar Investment Law is the combination and amendment of the 2012 Foreign Investment Law and the 2013 Myanmar Citizen Law.

Myanmar's oil business began during British colonial rule. From independence until 1963, Burma Oil Company (BOC) had a monopoly on all oil drilling, processing, and distribution.¹² BOC discovered the oil reserves at Yenanchaung and Chauk in 1887 and 1902, respectively, and these regions still continue to produce oil today. Since nationalization of the oil and gas enterprise in 1962, Ministry of Oil and Gas Enterprise (MOGE) controls and supervises all of the oil and gas enterprises via private contract system. Foreign companies can do business through joint ventures with State enterprise. The Ministry of Energy still currently supervises 16 onshore projects and 19 offshore projects through MOGE. Natural gas produced from the Yadana,¹³ Yedagon,¹⁴ Zawtika¹⁵ natural gas projects at Mottama offshore is exported to Thailand and the natural gas produced from Shwe natural gas project offshore Rakhine State is exported to China.

Despite the fact that natural gas production and sales have risen, one must consider the share of energy required for domestic use of a growing population. Currently, most natural gas produced is sold to foreign countries and only a small amount is reserved for domestic use. There is also a high demand for electricity throughout the country, but most cities are not supplied adequately. Income obtained from natural gas sales contributes a great deal to the nation's wealth, but corruption makes it difficult to collect all of the natural resource income taxes due, which are required to support the national budget. Additionally, there is a link between states and regions' development and the amount of budget allocated for each state and region from the total Union revenue. As a result of the lack of revenue collected due to corruption, the states and regions will not be able to adequately support development in their areas. Therefore, corruption must be addressed and development goals and natural resource policies that support the welfare of the people should be established.

3.3.2 Myanmar Mining Enterprise

The other high-earning enterprise in Myanmar is mining, which has been practiced since the times of ancient Myanmar's kings. In the quasi-civilian Thein Sein government, mining was managed by the Ministry of Mine,¹⁶ and when a civilian government took office in 2016, it became a department under the Ministry of Natural Resources and Environmental

12 It is available on Ministry of Electricity and Energy's webpage: <http://www.energy.gov.mm/eng/index.php/about-ministry-office/history-of-ministry> (accessed 15 Dec 2016).

13 The offshore Yadana natural gas field was discovered by MOGE in the Gulf of Mottama in 1982 and extracted by French company TOTAL. The major shareholders are Total Myanmar Exploration and Production, Unocal (United States), PTTEP International Limited (Thailand) and MOGE. Gas exports from the project began in 1998 and will continue for 30 years, until 2028. <http://www.mmtimes.com/index.php/special-feature/151-energy-spotlight/2922-offshore-gas-fieldshtml> (accessed 15 Dec 2016)

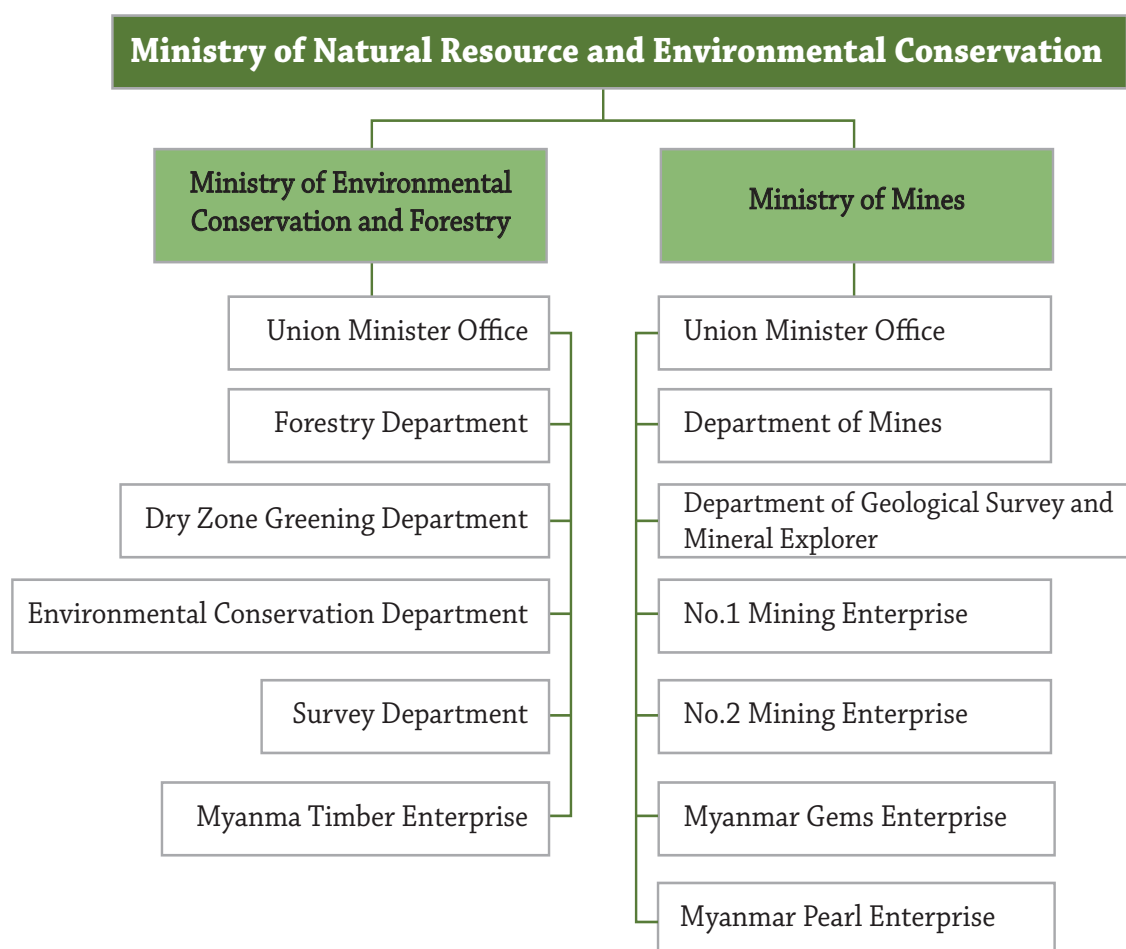
14 The Yedagon natural gas field was discovered by PTTEP of Thailand in the Gulf of Mottama region in 1992. Produced by Petronas and MOGE, PTTEP of Thailand and other foreign companies own the shares. Gas extracted from the project was exported to Thailand since 2000. <http://www.mmtimes.com/index.php/special-feature/151-energy-spotlight/2922-offshore-gas-fieldshtml> (accessed 15 Dec 2016)

15 Zawtika natural gas field was discovered in 2007 and produced by PTTEP. Exports abroad began in 2014 and nearly 80% of the gas extracted from the project is exported to Thailand. <http://www.nationmultimedia.com/news/business/aec/30240373> (accessed 15 Dec 2016)

16 http://www.mining.gov.mm/Minister_Office/3.Minister_Office/Details.asp?submenuID=4&sid=59 (accessed 15 Dec 2016)

Conservation.¹⁷ The current government regulatory apparatus for mining is comprised of a Ministry, 2 Departments, and 4 state-owned enterprises. (See. Fig. 2)

Figure 2: The Structure of Ministry of Natural Resource and Environmental Conservation



Source: In 2016, under the current government, the Environmental Conservation and Forestry Departments were combined into Natural Resource and Environmental Conservation Department. The table above is based on the information from <http://www.moecaf.gov.mm/> (accessed 16 Dec 2016)

The laws governing the mining industry of Myanmar are the 1994 Mining Law, the 1996 Mining By-laws, the 2012 Foreign Investment Law, the 1995 Myanmar Gemstone Law and By-laws, the 1995 Pearl Law and By-laws, the 1992 Salt Enterprise Law and By-laws. Before 1989, mining enterprises were mainly operated by the government and some businessmen who had close relationships with the government. After 1989, foreign investors were invited and policies allowing private enterprises were implemented.

There are over 139 large-scale mining projects¹⁸ currently operating in Myanmar. Valuable minerals such as gold, platinum, copper, lead, zinc, iron, magnesium and industrial minerals

17 When the new government took office in 2016, 36 ministries were reduced to 21 ministries. The Environmental Conservation and Forestry Department and Ministry of Mine were combined into the Natural Resource and Environmental Conservation Ministry. <http://www.myanmar-now.org/news/i/?id=947fc3ae-c8fd-4735-a0dd-9a840f0cf66b> (accessed 15 Dec 2016)

18 Adam Smith International and MDRI's, "Institutional and Regulatory Assessment of the Extractive Industries in Myanmar." http://www.burmalibrary.org/doc21/WB-2015-Extractive_industries-en-red.pdf (accessed 16 Dec 2016)

such as cement, clay, gypsum, dolomite, lime, salt and barite, in addition to gemstones like ruby and sapphire are extracted from Myanmar's mines.¹⁹ However, people never knew about the precise statistics and figures of profitability of the Myanmar mining enterprise. In October 2015, when a report called "Jade: Myanmar's Biggest Secret"²⁰ was published by Global Witness, the whole world became more aware of the immense profits reaped from the jade industry in Myanmar. According to that report, jade business is largely under the control of military officers and drug cartels blacklisted by the United States, whereas the citizens and local communities only reap the merest bit of profit from the industry.

3.3.3 Impacts

Since natural resource production in Myanmar has expanded so rapidly, the negative consequences of such developments have been severe and outweighs any positive impact. The expansion of the natural resource extraction sites into ethnic people's areas is a contributing cause of continuing armed conflicts with ethnic armed organizations and the victimization of local peoples. Projects, nominally for "development" purposes, result in the land grabbing of local people's lands making it more difficult for local population to sustain their way of life as the resources have been extracted and land destroyed. Similarly, offshore natural gas projects in Rakhine earn massive amount of income for the nation, but not for the local Rakhine people. A great number of local Rakhine people have migrated to other places as it is now too difficult to earn enough of a livelihood. Migrations result in a scarcity of labor for local agriculture and undermine efforts to conserve local cultures. The subsequent integration of non-local peoples as labor results in the emergence of social and culture conflicts and causes regional security issues.

Additionally, there are substantial environmental problems arising from the extraction of valuable natural resources such as oil, natural gas, and jade. For example, near the land where Myanmar-China Oil and Gas Pipelines are laid - used to export natural gas extracted from the Rakhine offshore areas to China - the ecology systems have been ruined due to deforestation and soil degradation and the resultant landslides, puddling and blockages of water pathways in rainy season. Excessive jade extraction with heavy machineries in Hpakant, Kachin State has destroyed local forests and mountains. Disposing of mining refuse into Uru River, which flows across Hpakant, has caused the river water become polluted and shallower at an alarming rate. If environmental conservation efforts are not instituted in time, the consequences will be of a great hazard for many generations to come.

According to Article 45 of the 2008 Constitution, "The Union shall protect and conserve natural environment." Article 390 (b) says "Every citizen has the duty to assist the Union in carrying out the following matters."²¹ Moreover, the Myanmar government has promulgated the 2012 Environmental Conservation Law, 2014 Environmental Conservation By-laws, 2015 Environmental Impact Assessment, and 2016 Environmental

19 EITI report of Myanmar Extractive Industries Transparency Initiative (MEITI) See <http://myanmareiti.org/> (accessed 16 Dec 2016)

20 Global Witness, "Jade: Myanmar Biggest Secret" http://reliefweb.int/files/resources/Jade_full_report_online_hi_res.pdf (accessed 16 Dec 2016)

21 (a) preservation and safeguarding of cultural heritage; (b) environmental conservation; (c) striving for development of human resources; (d) protection and preservation of public property, Article 390 of 2008 Myanmar Constitution

Quality Emission Guidelines (EQEG).²² The Myanmar Investment Commission (MIC) demands oil and gas extraction companies to complete environmental impact assessments (EIAs) but people are not aware of these EIAs of the companies. The negative impacts of natural resource extraction on the environment and human rights only receive attention in the reports of environmental conservation groups and social organizations. Due to weak institutional communication between ministries, areas protected by Ministry of Natural Resource and Forestry have even been violated by mining licenses approved by the previous Ministry of Mines.

3.3.4 Transparency and Accountability

Under the previous quasi-civilian government, for the sake of increasing the transparency of the Myanmar's natural resource extraction industry, Myanmar applied for membership in the Extractive Industries Transparency Initiative (EITI)²³ in 2012 and became a candidate for membership in 2014. Myanmar published its first EITI report in 2016²⁴ as part of the process to become a fully-fledged member. The report included data on Myanmar's production of oil, natural gas and minerals and related cash flows, license, and information on companies' assets in 2013-2014. Even though the information in the report is incomplete, it includes more information than was available in the past, allowing others to learn more about Myanmar mining enterprises, which were not at all transparent in the past.

According to that report, less than half of the income from these enterprises flowed into the national budget and the other half flows into the state-owned enterprises. Citizens remain unaware of how funds retained by the state-owned enterprise are managed. Also noteworthy, among the 1258 gem licenses reported in the EITI report, 428 of them went to the Myanmar Imperial Jade gem company owned by Myanmar Economy Holdings Limited. Unfortunately, there is no mention of the true beneficiaries of the profit flowing to this company. The report does call for increased citizen pressure for more transparency in the Myanmar natural resource sector.

While the current civilian government is trying to improve the accountability and transparency of the nation's natural resource sector, according to the US-based Natural Resource Governance Institute's (NRGI)²⁵ 2013 Resource Governance Index (NRGI), Myanmar remains at the bottom of the index ranking of 89 countries. There are many

22 <http://www.dica.gov.mm/mm/my/243330>, <http://www.ecd.gov.mm> (accessed 15 Dec 2016)

23 EITI is a global standard for transparency and accountability in the oil, gas and mining industries. The aim of EITI is to improve open and accountable management of revenues from natural resources. In order to become a member country, there are 7 'requirements', which every country must implement in order to be compliant, including the establishment of a tripartite multi-stakeholder group of government, companies and civil society, and the submission of yearly reports. There are 46 countries currently participating in the EITI globally, including Myanmar. <http://myanmareiti.org/my/content/what-eiti> (accessed 16 Dec 2016)

24 The 2016 EITI report includes data for 2013-2014 fiscal year from 13 oil and gas companies, representing 85% of oil and gas companies, 30 gems companies, representing 13 % of revenues from the Naypyidaw gems emporium in the same year; and 14 firms representing 2% of revenue in the mining sector.

25 The Resource Governance Index (RGI) is measures the quality of governance in the oil, gas and mining sector of 58 countries. The Index assesses the quality of four key governance components: Institutional and Legal Setting; Reporting Practices; Safeguards and Quality Controls; and Enabling Environment. https://eiti.org/sites/default/files/migrated_files/RGI%2520report.pdf (accessed 16 Dec 2016)

unknowns and uncertainties making it difficult to address natural resource issues in Myanmar; the types, amount, and distribution of resources; the amount of legal and illegal natural resource extraction in government controlled areas; the level of extraction in EAO-controlled areas; the extent of military enterprise ownership; and the identity of the persons benefitting from extraction. It has become an obstacle for stakeholders involved in the peace process to effectively negotiate for the best interests of Myanmar and the relevant states/regions.

CHAPTER 4:

CONCEPTS OF NATURAL RESOURCE GOVERNANCE

Political, economic, and social concerns are closely linked to the country's natural resource governance. World Bank defined governance as “utilizing the political, economic and executive powers to arrange the resources of a country for the development of the country.”²⁶ Efficient and effective governance can create a prosperous country while ineffective governance can turn natural resources into a curse. Poor management can threaten not only prosperity, but also stability of peace. Therefore, good governance is essential for a country to benefit from a plentitude of natural resources. Natural resource governance will be explained by examining the aspects of ownership, management, and revenue-sharing, which all have substantial implications for Myanmar's constitution and its peace agreements.

4.1 Ownership

The ownership of natural resources is often a contentious topic. Preventing issues of contested ownership requires a clear elaboration of ownership rights, typically at the constitutional level. This is necessary to settle competing claims of ownership between the state, private citizens or corporations, and any communal or community claims. While ownership of natural resources can be divided amongst private citizens, communities, or the state in many ways, clarity is critical to ensure investor confidence and stability. Alternate approaches include distinguishing between ownership of surface and subsurface resources. However no matter the ultimate division of ownership provision, the ownership issue is an emotionally charged, zero-sum game that does not allow for much political maneuvering during negotiations. Therefore, natural resource ownership should only be considered jointly with issues of natural resource management and revenue-sharing. If the issue of ownership threatens to derail a peace process, it may be necessary to avoid this question until the end of the process when more goodwill between parties has been secured.

4.2 Management

Perhaps more important, and definitely more complex than ownership is the question of management of natural resources. Management provisions in the constitution, legislation, or peace process negotiation agreements determine who has the ability to make and administer laws relating to the development and exploitation of natural resources. This essentially determines the rights and limits of ownership. Example powers of management can include the following: contracting rights; employment and labor regulations; collection of licensing fees, taxes, or royalties; safety and environmental standards; transportation; and import and export tariffs.

Because natural resource management is typically both contentious and extremely complex,

26 (a) preservation and safeguarding of cultural heritage; (b) environmental conservation; (c) striving for development of human resources; (d) protection and preservation of public property, Article 390 of 2008 Myanmar Constitution

explicit provisions in peace agreements and constitutions are necessary. In countries facing conflict and/or federal divisions of power, allocations of powers between levels of government must consider efficiency and capacity, equity, accountability, and national interests. These complex criteria can make it difficult to create provisions with the level of clarity needed to provide the investor confidence needed for successful foreign direct investment and development.

Significant allotment of management powers to states can substantially increase the amount of government accountability to the community. However, there can be efficiency and capacity concerns if the state is not able to effectively implement its management powers. However, there can be efficiency and capacity concerns if the state is not able to effectively implement its management powers. Additionally, national natural resource policies can be complicated – significant inconsistencies may lead to a race to the bottom²⁷ if competition between states is unchecked.

Natural resources that cross state's borders must also be considered. National regulation or interstate mechanisms are usually required to manage resources that cross borders – most typically the case for water, marine resources, or hydrocarbons. While it is most common for national regulations to be used for these cross-border resources, it is possible to separate functions. For example, drinking water provision could be managed at the state level, while the national government regulates pollution and nationwide distribution. Unitization is also an option. States with cross-border resources can make management agreements so there is a single production plan for an oil field, for example. However, the national government should be enabled to enforce unitization agreements to prevent mismanagement.

Allocations of natural resource authority can be symmetrical or asymmetrical between states. Special authority for certain states can reduce conflict, in ethnic areas for example. This can be done in both federal and unitary systems. Concomitantly, the relative richness and development of other states must also be considered if equity between states is to be preserved.

Various constitutional and institutional arrangements can be utilized to best reflect the shared interests in management between state and national governments. Specific responsibilities can be divided between the state and national governments; the state is responsible for exploration and production while the central government is responsible for transportation, refinement, and exportation. Or standards and framework regulations can be created at the national level while the implementation mechanisms are determined and applied by the state government – this is reflective of subsidiarity principles. If there continues to be concern about the transparency of the central planning process, the authority for strategy and reconciling conflicts can be assigned to the legislative body that has regional representation. Intergovernmental or independent commissions would be alternate means for making policy and procedural regulations. To ensure states are empowered, a supermajority of the commission or legislative body can be required to reject any state control proposals.

27 “Race to the bottom” refers to a situation in which governments compete to attract foreign investments. To attract these potential investors, states may amend their laws, especially those regarding economics and taxes. “Race to the bottom” also refers to competition between companies and means competing against one another by cutting the production cost in any way. (laying off, migrating to countries with cheap labor)

4.3 Revenue Sharing

The key questions that must be answered when determining how revenue sharing should be structured are the following: who collects revenues from natural resource? And how are these revenues distributed? In complex multi-stakeholder situations there are often different objectives and concerns at play: concerns over equitable and equal sharing of resources and of solving conflicts. In these situations, it is prudent to treat revenue sharing separately from natural resource management and ownership when considering constitutional provisions and peace process agreements.

Constitutional practice typically enshrines distribution principles and implementation mechanisms. In federal systems, constitutional provisions or regulations on revenue sharing can be quite complex. Often political rationale overcomes economic concerns when there is ongoing conflict or secessionist movement, as it is possible to appease conflicted areas through increased revenue allotments. However, there are many approaches to revenue sharing: in addition to stakeholder concerns, the duties of the relative levels of government must be considered when allotting revenues.

There are three main approaches to revenue sharing in federal systems. The first approach divides the right to collect various taxes between the central and state governments. For example, the state government may collect land taxes, while the central government collects corporate taxes.

In a second approach, one level of government collects all revenue, but a predetermined formula is utilized to reallocate the collected funding between levels afterwards. This formula can consider a variety of criteria and is therefore customizable to the unique situation of the country. It is common that this formula is set through a political process. In Nigeria, for example, the legislature rewrites the formula every five years. Some example criteria include the following: state population; land mass; present and future availability of natural resources; money needed to equalize public services between states; compensation for damages; and national and state expenditures.

Some economists believe this is a less fiscally sound approach, as volatility in commodity prices is transferred to the states. Also, states may fear that the transfer won't be timely or transparent. To counterbalance these legitimate fears, it may be necessary to create constitutional and legal implementation mechanisms and rules to guarantee automatic transfer. Some countries have even outsourced the process to third parties.

Finally, approach three is a mixed system approach. Creativity can be used to combine elements of approaches one and two to most effectively address complex natural resources issues. If this approach is utilized, the weaknesses of both approaches may be present and must be addressed.

CHAPTER 5: INTERNATIONAL AND MYANMAR CASE STUDIES OF NATURAL RESOURCE GOVERNANCE

5.1 International Case Studies

5.1.1 Indonesia



Indonesia is a unitary state with 34 provinces. While generally these provinces do enjoy some form of local governance, they do not typically have any direct control over natural resources and any resultant revenue. However, because of ongoing conflict and a 2005 peace agreement, Aceh province has more autonomy in the management of resources and there has been an increased level of transparency over revenue

distributions. This is especially noteworthy as natural resource management is under the control of the central government for all other provinces. While the specifics of the final natural resources provisions are included below and in the appendices, this section will focus on the actual role of natural resources negotiations during the peace process.

The Aceh insurgency movement was a separatist movement fighting for independence from 1976 until the 2005 peace agreement. After a failed ceasefire in 2002 GAM (the leading independence organization) faced severe government attacks for the next two years, losing half of its membership. At the end of 2004, a massive tsunami devastated the area. GAM then declared a ceasefire so that aid could be sent to those in need. In February 2005, peace talks started in Finland, moderated by the former Finnish president. By July the Indonesian government and GAM announced the end of the 30-year insurgency movement.

Under the agreement, hostilities ceased immediately and GAM was disarmed within four months, ceding over 800 weapons to international monitors. The government removed all non-local military and police from the region. The Aceh Monitoring Mission was set up by the EU and ASEAN to monitor the disarmament and reintegration processes. The government also granted amnesty to exiled GAM members and released over 1,400 political prisoners. The government also assisted in the creation of Aceh political parties and a truth and reconciliation commission was organized. Finally, and most relevant to our purposes, it was agreed that 70 % of the revenue from Aceh natural resources would stay in the province. This was possible because there is a growing understanding in the region that “decentralization” and “federalism” do not equate to separatism. Other provinces in Indonesia are now increasingly interested in Aceh serving as a model for decentralization efforts in the rest of Indonesia.

- 1.3.1 Aceh has the right to raise funds with external loans. Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia.
- 1.3.3 Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh.
- 1.3.4 Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.

MOU between Indonesian government and GAM

Concessions for special Aceh autonomy in natural resource revenue sharing actually first took place as a part of the 2001 Special Autonomy Law (SAL), amongst other decentralizing provisions. These were fairly radical attempts by the government to address the issues most important to the insurgency movement. Unfortunately, weak and corrupt local governments and the backstepping of Jakarta meant that this advancement had little effect on the ongoing conflict. While it would have, and partially did later, set a precedent for 2005 negotiations on natural resources, the process by which the law passed and was presented by the government highly inhibited the enforcement of its fairly progressive content. The SAL was not created as part of the bargaining process with insurgency leaders and civil society, but rather presented as an ultimatum concession the separatist movement must accept. Therefore, GAM came to see SAL as a symbol of the government rather than a possible meeting point between the two parties' positions. This perception was compounded by the fact that the agreement included no monitoring mechanisms, centralized revenue collection before disbursement to Aceh, and no consideration of economic prospects after the depletion of natural resource reserves.

Fortunately, the 2005 peace process participants and mediator learned from the mistakes of the past. The process followed a formula under which "nothing is agreed until everything is agreed." This means a broad outline of a political settlement had to be determined before demilitarization and reintegration would go forward. This was the opposite of the failed previous process in which a ceasefire was agreed upon and then an open political process was to move forward. This approach forced both sides to make creative and major compromises, but it also resulted in broad language that may look past rather than resolve some issues. The final Memorandum of Understanding (MOU) did not radically build on SAL. It did extend Aceh's right to keep 70 % of hydrocarbon profit permanently, rather than previous limit to 8 years.

The natural resource provisions in the 2005 MOU do not seem to have been heavily negotiated, or rather re-negotiated. These provisions were seemingly a mere continuation of the 2001 SAL's aspirations, and a previous lower allotment from a 1999 law. These previous laws, which signaled the acceptance of wealth-sharing by the national parliament, meant that natural resources and other economic issues were not contentious during the 2005 peace process. These items were not discussed until the third of five rounds of peace talks, consensus held, and the issues were even used to push past deadlock on other issues. Additionally, oil and gas revenues were declining by

2005, and therefore decreasingly important to participants. However, the significant decentralization of power is noteworthy and is partially responsible for the cessation of a decades-long civil war. Aceh has been an influx of funds, largely targeted for education and development initiative. There has been some evidence that the provincial government does not have the implementation capacity to make use of the entirety of the funds (33% of the budget was unspent in 2008, for example). However it is yet to be seen how some vague provisions on management will affect Aceh in the future. As the oil fields are depleted, Aceh will need to increasingly diversify its economic portfolio and work with the Indonesian government to creatively manage the process

5.1.2 Sudan



The 2005 Comprehensive Peace Agreement (CPA) in Sudan between the Government of Sudan and the Sudan People's Liberation Movement (SPLM) served as a guide for the interim years before the 2011 referendum on the secession of South Sudan. The management and revenues of oil reserves were a major cause of the civil war and the intricacies of the situation made peace negotiations difficult. In 2003, at the urging of oil

companies, government leaders realized that profits, forging investment, and opportunities to develop the country's natural resources were being missed because of the ongoing conflict. Therefore, oil became a central tenet of the peace process, although it remained deeply political. Negotiating details of a natural resource scheme ultimately became intertwined with other political topics.

The final CPA was comprised of six protocols, one being the Agreement on Wealth Sharing (AWS). The AWS set out principles to govern revenue-sharing, and it also delineated the institutional arrangements for managing natural resources. Two percent of oil revenues, in proportion to production, were first distributed to the producing states/regions (See AWS 5.5). Then 50% of the remaining revenues is allocated to each the government of South Sudan and Sudan. Ownership remained an intensely contentious topic, and, therefore, it was decided to address ownership after the peace process and move forward with discussions about management and revenue-sharing. There was also push-back to revenue-sharing from existing Chinese oil companies in the country. The new mechanism would require cash rather than the original barter system that had been initially organized with the Chinese corporation.

5.5 The Parties agree that at least two percent (2%) of oil revenue shall be allocated to the oil producing states/regions in proportion to output produced in such states/regions.

5.6 After the payment to the Oil Revenue Stabilization Account and to the oil

producing states/regions, fifty percent (50%) of net oil revenue derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan (GOSS) as of the beginning of the Pre-Interim Period and the remaining fifty percent (50%) to the National Government and States in Northern Sudan.

The Comprehensive Peace Agreement between the Government of the Republic of The Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Chapter 3

The AWS has faced many implementation challenges. Fighting has continued in disputed oil-rich areas, the oil commission did not meet regularly after its creation, and there were transparency issues in distribution to South Sudan. However, billions of dollars flowed into South Sudan from the Sudanese government, one sign of a successful peace process that had revenue-sharing as a central issue. The Sudan process shows how successful peace process that had revenue-sharing as a central issue. The Sudan process shows how successful technical agreements can be in actually getting money to flow in the right direction. But it also reaffirms that natural resources are never the only issue to be resolved if peace is to be permanent.

5.1.3 Nigeria



Nigeria is worth briefly mentioning because it utilizes a formula-based approach to revenue-sharing of natural resources. In British Nigeria, resource royalties were largely devolved to the producing region and other regions, with only 20% allotted to the federal government. Several Commissions were created along with a series of new constitutions to reconsider how exactly the needs of the regions were met through

a principle of derivation of revenues. After decolonization, caused by ethnic, economic, and political reasons and exacerbated by international influence, the Biafran War raged in southeastern Nigeria, in the late 1960s. This was followed by about 30 years of military junta rule, until a new democratic constitution was ratified in 1999. The military juntas, through a succession of additional commissions, largely rid itself of the derivation principle by centralizing collection and distributing funds based on need. Currently, the 1999 Constitution, still in effect, provides for a formula-based revenue-sharing mechanism. The relevant constitutional provision requires at least 13 % of revenues to be allocated to the producing state of origin, reflecting earlier derivation principles. However, the rest of the allocations are determined by parliament based on the following criteria to be considered: population, equality of states, internal revenue generation, land mass, terrain, and population density. (Article 162.2) Currently the

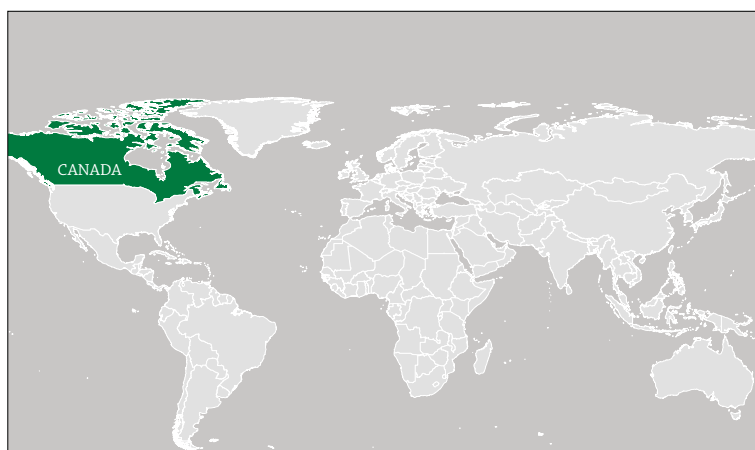
Federation Account, largely comprised of oil revenues, accounts for 82 % of the public sector income. In 2001, after first charges, including the 13% derivation to producing states, about 50% of the account went to the federal government, 25 % to the states, and 21 % to the local governments.

The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federal Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density;

Constitution of the Federal Republic of Nigeria 1999, Article 162.2

The creation of the 1999 constitution was quick, led by the former military government, and it did not fully incorporate Nigerians into the process. A later independent review committee determined that the formula system was rejected by some in favor of the pre-war system of allowing states to more fully own, control, and develop natural resources on their hands. Ultimately, though, the review committee only recommended an increase of the 13 % minimum for the producing state. It is difficult to draw lessons from the Nigerian example, as the transition to democracy and the new constitution was political rather than the result of a peace process with negotiating parties. The natural resource management principles and mechanisms have colonial roots and have continued to remain a contentious part of politics to this day. This is likely exacerbated rather than minimized by the new constitution's assignment of formula creation powers to the legislature, which has been both praised and criticized as an approach to natural resource management.

5.1.4 Canada



Canada is the second largest country in the world. Before it was a federal state, it had been a French then British colony.²⁸ Canada is a British Commonwealth member nation and the first country to have both a federal and parliamentary system. Canada is composed of 10 provinces and 3 territories.²⁹ In the Constitution of Canada, there are clear provisions enumerating the powers of the provinces and the federal government.³⁰

28 Burma Lawyers' Council, "Federal Affairs" (8 August 2012).

29 Ibid

30 University of Alberta, "Oil and Gas in the Canadian Federation" by André Plourde (available at http://buffett.northwestern.edu/documents/working-papers/Energy_10-001_Plourde.pdf) (accessed 7 Jan 2017)

For example, there are clear provisions about the powers belonging solely to the federal and state governments, and also a list of subjects in which the province and federal state have dual authority.³¹

Canada is a country with immense reserves of natural resources. Canada possesses the world's third largest oil reserve (an estimated 171 billion barrels) after Venezuela and Saudi Arabia, claiming a total of 10.3% of the world petroleum.³² Article 109 of the Canadian Constitution clearly stipulates that the province owns its oil, and natural gas, and other natural resources. In addition to the production of non-renewable natural resources, laws assign the power to develop and conserve non-renewable natural resources and forestry resources (Article 92A), and to tax natural resources (Article 92A (4)) to the provincial governments.

In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

- (a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and
- (b) sites and facilities in the province for the generation of electrical energy and the production therefrom, whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Canadian Constitution, Article 92.A, (4)

In Canada, natural resource ownership and management powers are the responsibility of the provinces, which results in some economic inequality between those provinces rich in natural resources and those that are not. To balance this inequality, an equalization policy was set up in 1957 and officially enacted in the 1982 amended Constitution.³³ Through an equalization payment scheme, the federal government supports the provinces that do not reach a minimum income from natural resources. The incomes from provinces rich in natural resources is combined with other incomes sources, then divided up and redistributed to provinces that are poor in natural resources and do not meet minimum income levels. The payment amount depends on the amount of minimum income of a province. Provinces with abundant natural resources and income amounts that surpass the minimum amount do not get additional equalization payments. Provincial governments can decide what to do with these payments without federal government involvement.³⁴

31 Burma Lawyers' Council, "Federal Affairs" (8 August 2012)

32 <http://www.nrcan.gc.ca/energy/oil-sands/18085> (accessed 7 Jan 2017)

33 1982 Canada Constitution Chapter 3, Article 36.2, <http://laws-lois.justic.gc.ca/eng/const/page-16h.html> (accessed 7 Jan 2017)

34 Arakan Oil Watch, "Breaking the Curse: Decentralizing Natural Resource Management in Myanmar", page 50 (<http://arakanoilwatch.org/wp-content/uploads/2016/03/Breaking-the-Curse-Eng.pdf>) (accessed 7 Jan 2017)

5.2 Myanmar Case Studies

5.2.1 Kachin State

The Kachin people were ruled by Kachin Duwas as an independent nation. When Myanmar fell under British colonial rule, some ethnic areas were divided and administered separately.³⁵ Kachin State was ruled under the Hill Tribes Regulations. The British also recruited the brave and proficient Kachin warriors for the British army. Because of this relationship, the Kachin developed a closer relationship to the British than the Burman. However, the Kachin fought for the independence of Myanmar alongside the other ethnic nationalities, including the Bamar. When Myanmar gained independence from the British in 1948, Kachin became a state of independent Myanmar.

Kachin State is in the northern part of Myanmar. China forms its northern and eastern border. India is also on its northern border while Shan State and Sagaing Region forms its southern border. Kachin State is 89,043 square kilometers (34,379.2 square miles) and consists of 4 districts and 18 townships. The capital of Kachin State is Myitkyina, located at the confluence of May Kha and Mali Kha Rivers, the origin point of the Ayeyarwady River. Mt. Khakaborazi (19,296 ft.) and Mt. Gamlang Razi (19,142 ft.), the highest mountains in Myanmar, are located in Kachin State. The population of Kachin State is 1,689,441, as of 2014.³⁶ The majority of the residents in Kachin State are Kachin, but there are also other ethnic groups, including Shan, Bamar, Naga, Gorkka, and Chinese. The majority is Christians, but there are also Buddhists and people of other faiths.

The economy of Kachin State is predominantly agricultural or mining-oriented. Kachin State is a land of abundant natural resources and produces large amounts of gold, silver, copper, amber, iron, lead, jade, coal, timber and other precious minerals. However, political instability under previous governments did not allow these precious natural resources to be sustainably extracted and utilized for the development of Kachin State. The Myanmar's army and Kachin Independence Organization (KIO)/Kachin Independence Army (KIA) have fought in armed conflicts for 56 years, greatly impacting social and economic development of the Kachin people. A sustainable future for the Kachin people will only be attainable if the ongoing armed conflicts come to an end.

Jade Mining

Of the various precious natural resources produced in Kachin State, the jade sector has expanded most over the years, but there continues to be great concern that Kachin State and Myanmar do not receive the due benefits from the industry. This concern was

35 British ruled Burma by dividing several administrative regions. The regions of Karen, Mon, Myanmar (Bamar), and Rakhine majority were combined as "Burma Proper" and directly administered by the British government. They ruled (5) types of regions: Rakhine highland region, Chin highland region, Kachin region under Kachin Duwas and self-administered highland zone which included Thanlwin district, Karen state (Table 1) and highland self-administer zone (Table 2), hill station towns and independent Karenni state. Details can be read in Khou Marko Ban's "Panglong Handbook"

36 The 2014 Myanmar Population and Housing Census Report, Volume 3-A (Kachin State Report)

Map 2: Map of Myanmar - Kachin State



confirmed by the release of “*Jade: Myanmar’s Biggest Secret*” report in 2014 by Global Witness,³⁷ revealing the corruption of Myanmar’s jade industry. According to that report, in 2014, Myanmar’s jade industry was worth an estimated 31 billion USD. But, in official statistics, it is said that only 1.15 billion USD is earned from jade annually. The natural resource sectors of Myanmar, including the jade industry, urgently require reform.

According to historical records, jade was excavated and traded before colonial era under the rule of Kachin Duwas (See Annex 2) as subsistence-level hand-dug mines. In the colonial era and immediately after independence, private jade mining was permitted. However, after General Ne Win staged a coup in 1962 and the Revolutionary Council nationalized private enterprises in 1964, including the jade industry. From 1966 to 1975, jade was extracted under the Trade Corporation No.19 (Gems). In 1990, joint ventures for gem enterprises between the nationalized and private sector companies were allowed in the gem industry. In 2012, when the ceasefire between Myanmar government and Kachin Independence Organization (KIO) failed, and armed conflict resurfaced, the government ordered the cessation of jade mining enterprise. However, in 2014, the mining industry was legalized again. Since 2016, the current civilian government has suspended the issuing of new jade mine license.

The world’s top and highest quality jade is produced in the region around Hpakant in Kachin State. Hpakant is located in Moe Hnyin district, Kachin State and used to be under the control of Myanmar’s second strongest ethnic armed force, the KIA. Jade mining and trade has been minimally carried by local Kachin people before colonial era when the rule of Burman kings has not reached the Kachin mountain ranges. There was only small-scale subsistence jade mining by hand-digging. The machinery was for digging only after the Myanmar and KIO signed the ceasefire agreement in 1994. Investments in the jade industry are still gradually increasing. From 2005 to mid-2012, more than 500 companies entered the market with large machinery, such as bulldozers, backhoes and large trucks.³⁸ Most jade mining ceases during rainy season, but, some mining continues by utilizing water pumps.

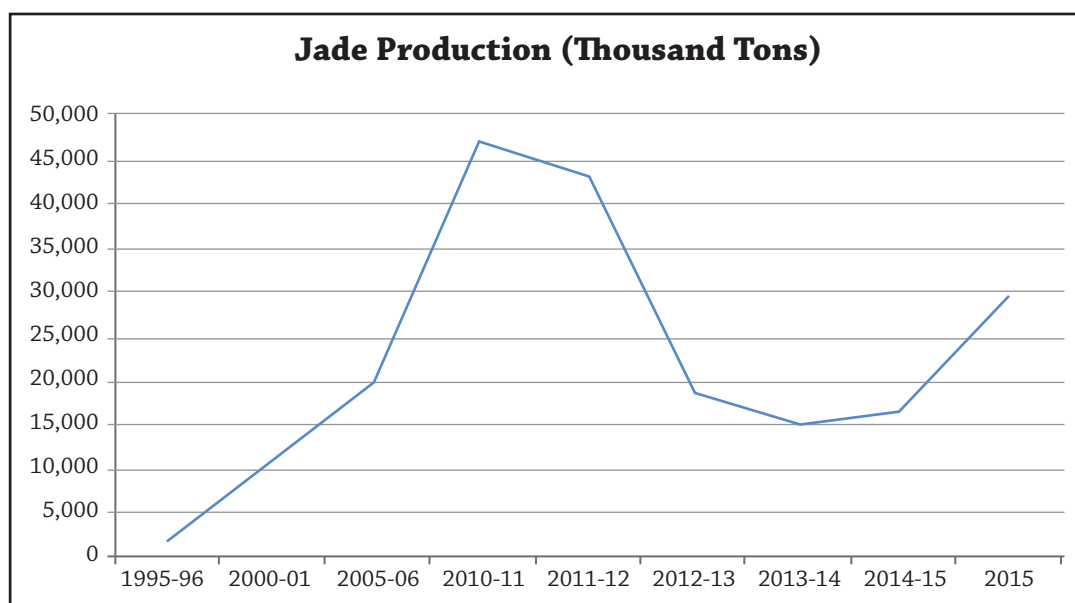
The rate of jade production has risen significantly in the 17 years (1994-2011) of the ceases-fire period between the Tatmadaw and KIA. In 1995-1996, as shown in the following figures, jade of less than 2000 tons was produced legally, jumping to 11,000 tons in the 2000-2001 and 20,000 tons in 2005-2006. The rate of production increased 10-fold within 10 years. According to a report by Harvard’s Ash Center, such increased production was due to the introduction of heavy machinery and absence of armed conflict.³⁹ As a consequence of renewed conflict and resultant production suspension between 2012 and 2014, the rate of jade production plummeted in those years, as shown in Figure 3.

37 Global Witness is a non-governmental organization based in Britain whose mission is to expose corruption and improve transparency in natural resource industries.

38 <http://www.reuters.com/article/us-myanmar-jade-specialreport-idUSBRE98S00H20130929> (accessed 22 Dec 2016)

39 The Ash Center of Harvard Kennedy School, “A Grand Bargain; What it is and Why it is Needed”, http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_eng_oct_24.2016.pdf (accessed on 11 Dec 2016)

Figure 3: Jade Production from 1995 to 2015 (Tons)



Source: Ash Center of Harvard Kennedy School, “A Grand Bargain: What it is and why it is needed” (http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_eng_oct_24.2016.pdf)

Hpakant jades are excavated by private business and joint ventures between the public and private enterprises. Large-scale jade mining businesses that use heavy machinery belong to Chinese and Wa companies. Open-pit jade mining that utilizes heavy machinery 24 hours, 7 days a week means mountains can become valleys within months and whole villages are constantly forced to relocate.⁴⁰ Because these companies operate at such a large-scale, it is very costly to break into the industry,⁴¹ as such, local Kachin people and some Myanmar companies encountered problems when attempting to be competitive. Therefore, many locals try to survive by using smaller machines and by investing in other businesses. Those with few job opportunities from throughout Myanmar come to work as miners. Some miners are legal workers for jade mining companies while others are working as Yaymasay miners.⁴² In some cases, the landslide of tailing cause deaths⁴³ and the lives of Yaymasay miners are often in jeopardy.

40 According to a local person, about 50 mountains in the Hpakant region have disappeared and about 10 villages vanished due to large-scale jade mining. <http://elevenmyanmar.com/local/activists-hpakant-pin-hopes-change-new-government> (accessed on 22 Dec 2016)

41 A large producer can easily invest USD 200 million in equipment, pumps, and permits with running costs of about \$1 million a week. In large-scale jade mining enterprises, at least USD 200 million in equipment, pumps, and permit with running costs of about USD 1 million a week. It is required for startup and labor wages, machinery, and diesel cost around USD 1 million a week. http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_eng_oct_24.2016.pdf (accessed 22 Dec 2016)

42 “Yaymasay” literally means jade recovered from a pile of mine tailings which has not been washed with water yet. “Yaymasay miner” refers to jade miner or scavenger who searches for rough jadestones that are left in the piles of mine tailings that are dumped in designed areas by truck. “Yaymasay miner” who has been in the search for years can easily identify a precious rough jadestone in the pile of mine tailings. (Learned from local residents during the research trip in Hpakant)

43 <https://www.mmmtimes.com/national-news/17754-death-toll-feared-highest-in-a-decade-after-landslide-hits-jade-town.html>, <http://edition.cnn.com/2015/11/22/asia/myanmar-landslide/index.html>, <https://www.mmmtimes.com/national-news/17854-relatives-of-landslide-victims-urged-to-reject-compensation.html>, <https://www.mmmtimes.com/national-news/17980-authorities-introduce-new-safety-measures-in-hpakant.html>, <https://www.mmmtimes.com/national-news/18159-another-jade-mine-disaster-hits-hpakant.html> (accessed 12 Feb 2017)



Digging for raw jade stones by hands
Photo by ENAC



Yaymasay Miners searching for jade stones in a tailings pile
Photo by ENAC



Yaymasay Miners searching for jade stones by hydraulic mining
Photo by ENAC

The reason that investors risk so much money and the Yaymasay miners risk their lives is because of the immense value of jade. When a project successfully unearths a decent gemstone, it could easily cover all production costs for owners, earn large profits, and Yamasay miners can become rich people.⁴⁴ There are several types of jade⁴⁵ found in Hpakant and value varies according to the quality of the jade.⁴⁶ There are three types of jade: imperial jade, commercial jade and utility jade. Imperial jade is the most precious. It is difficult for laymen to accurately estimate the value of jade. Only jade traders with many years of experience, mining experts, and professional assessors can estimate the value of a stone.

The general values of different qualities of gems are shown in following Table (Table 2). These price ranges vary over time.

Table 2: Types of Gemstones and Their Average Values

| Types | Price per kilogram (USD) |
|------------------|--------------------------|
| Imperial Jade | 25,000,000 |
| Commercial Jade | 80,000 |
| Utility Jade (A) | 800 |
| Utility Jade (B) | 75 |
| Utility Jade (C) | 30 |
| Utility Jade (D) | 10 |

Source: Ash Center of Harvard Kennedy School, "A Grand Bargain: What it is and why it is needed" (http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_eng_oct_24.2016.pdf)

Even though Kachin State produces a great amount of precious jade, the domestic market for these stones is not fully developed. Jade is usually exported to Thailand, Hong Kong, and China. Under the authorization of the Myanmar Gemstone Enterprise, large emporiums are held three times a year to sell the jade. However, half of the total amount of the jade produced does not reach the emporium and is exported abroad via the black market to evade taxes, especially to China, where there is great demand for high-quality jadestones. According to a jade industry businessman, sales in the legal jade market are typically avoided because, even if there is a buyer, payments are not made immediately, and therefore, production costs cannot be covered until a later date.⁴⁷ Therefore, illegal markets are likely preferred to ensure quick return on investment and acquire more profit.

44 The production cost of a successful jade mining enterprise is generally less than 10 % of the value of its output. http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_eng_oct_24.2016.pdf (accessed 22 Dec 2016)

45 Types of jade are: အမဲကြော၊ ကြက်သွေးကြော၊ မြေမှန်၊ ခွံဖြူ၊ အသားဆန်း၊ မှော်ဆီအ၊ ခွံဝါ၊ ခွံစိမ်း၊ ခွံဖြူ၊ မနကျောက်၊ black jade၊ ခွံ၊ ခွံဝါ၊ ခွံဖြူ၊ အရည်ကောက်နှင့် ထည်လုံးစိမ်း

46 In the gem trading field, the hue, tone, and clarity of the stone determine its quality.

47 Interview with a local jade businessman in the field research trip to Kachin State

Moreover, some businessmen bribe the appraisal team⁴⁸ to depreciate the jade's value to avoid higher taxes. Due to these kinds of tax evasion, jade revenues contribute only a small amount to the nation's official income and most industry profits go only to private businessmen. Additionally, in Myanmar the jade processing sector is outdated when compared to China's. Although there are gemstone cutting and polishing businesses, they cannot compete technologically with the more developed Chinese production industry. If rough jade stones could be manufactured and processed as finish, value-added products, job opportunities for the local populations and additional profit would be created and circulated.

Proper management is essential to ensure the jade industry successfully benefits the people. The jade mining industry is currently regulated by the Myanmar Gemstones Enterprise under the Ministry of Natural Resource and Environmental Conservation (previously under the Ministry of Mining), per the 1994 Myanmar Mines Law, 1995 Myanmar Gemstones Laws and By-laws. The Myanmar Gemstones Law was recently amended under the previous quasi-civilian government of U Thein Sein in 2013 and again in 2016, by the current civilian government. There are concerns about extending the license periods provided for in the past Gemstone Law. Under the former legal provisions, licenses to mine were issued for a maximum of 5 years. But, in the current law,⁴⁹ companies owning over 500 acres receive licenses for 10 years, medium-scale production companies can get 5-year licenses, and companies excavating less than 30 acres are allowed 3-year licenses.⁵⁰ As Articles 41 and 42 of the revised Myanmar Gemstones Law seem to deprive the Yamasay miners' mining rights, there have been protests demanding the amendment of the revised Law.⁵¹

Currently, jade mining department is staffed by a total of 102 employees (Annex-3) for 13,487 jade blocks (Annex-4).⁵² On average, one government official supervises 132 blocks undoubtedly ineffectively. Strict monitoring for negative environmental impacts, such as reckless rock mining, disposal of mine tailings, and digging for stones without a license, is impossible. "Although jade mining department (Lonekhin) is given the authority (Annex-5), the Hpakant local general administrator⁵³ is handling issues in practice" Moreover, the Kachin State Border Affair Minister and Minister of Defense convene meetings with the influential elders of Hpakant once a week to influence Hpakant area in the name of security. There are bribes given to authorities by some jade businessmen.⁵⁴

48 This refers to the official valuation body assigned by government to appraise a raw gemstone before it is sold. It determines the price of the extracted raw jadestone to excise the gem tax.

49 Myanmar Gemstone Law Second Amendment, Pyidaungsu Hluttaw no.23, 29 January 2016

50 <http://www.myanmar-now.org/news/i/?id=a4b38da2-ca4b-48eb-8a83-0ed616a90609> (accessed 22 Dec 2016)

51 <http://www.dvb.no/news/hpakants-jade-foragers-rally-for-mining-rights/71931> (accessed 22 Dec 2016)

52 Unpublished official documents

53 At the township level and above, the Myanmar Ministry of Home Affairs directly assigns the general administrators. These administrators are typically from a military background or communities that are closely associated with military.

54 Interview with a local person while during the field research trip to Hpakant

And, since jade mining is gradually expanding to other areas, there are impacts on the social affairs and the environment of the entire Hpakant area. The number of migrant miners from throughout the country has increased and accidental deaths, crime and drug abuse have become a part of everyday life. Thousands of Yaymasay miners finding jade in the piles of mine tailing are using their earnings to purchase drugs, becoming addicted and subsequently committing crimes to get more drugs. Women who cannot find jade become sex workers and drug dealers.⁵⁵ In addition to narcotic drug addictions and HIV infection, high crimes rates in Hpakant threaten the safety of local population.

Environmental deterioration is another consequence of unbridled mining. Mountains and valleys from Hpakant disappear within short amounts of time as heavy machinery digs around the clock. According to the local people, Hpakant has become a town, and the region has lost 50 mountains since 2013.⁵⁶ Some villages disappeared overnight as some large companies compensate and evict local populations. Natural disasters such as floods and landslides, during rainy season can no longer be adequately prepared for and threaten local populations. And due to the disposal of mining waste, the Uru River has become polluted and dries up in summer. This may amount to a violation of the human rights of local villages near Uru River that depend on the river for drinking water.

The civilian government still cannot properly handle the jade mining problem in Hpakant region. In early January 2016, the permit for importing mining vehicles and machinery were suspended. New licenses⁵⁷ for jade mining were also suspended while the large companies that obtained licenses from the previous government continue extracting jade as fast as they can. To extract as much jade as possible, they do not sort or cleanse the jade and just pile it in their company's ward. Instead of preventing natural disaster via the "Dig in front, throw back and fill"⁵⁸ (*Shaesar, Noutpyit and Pyanphot*) system of digging, which prevents soil damage and environmental degradation, corporations only focus on getting the gemstones and neglect the provided regulations. Hpakant has not been appropriately developed because excessive extraction of jade and tax evasion. Although Hpakant is populous, roads in the town are full of holes and blowing dust is commonplace. Regulatory reform is solely needed to save Hpakant.

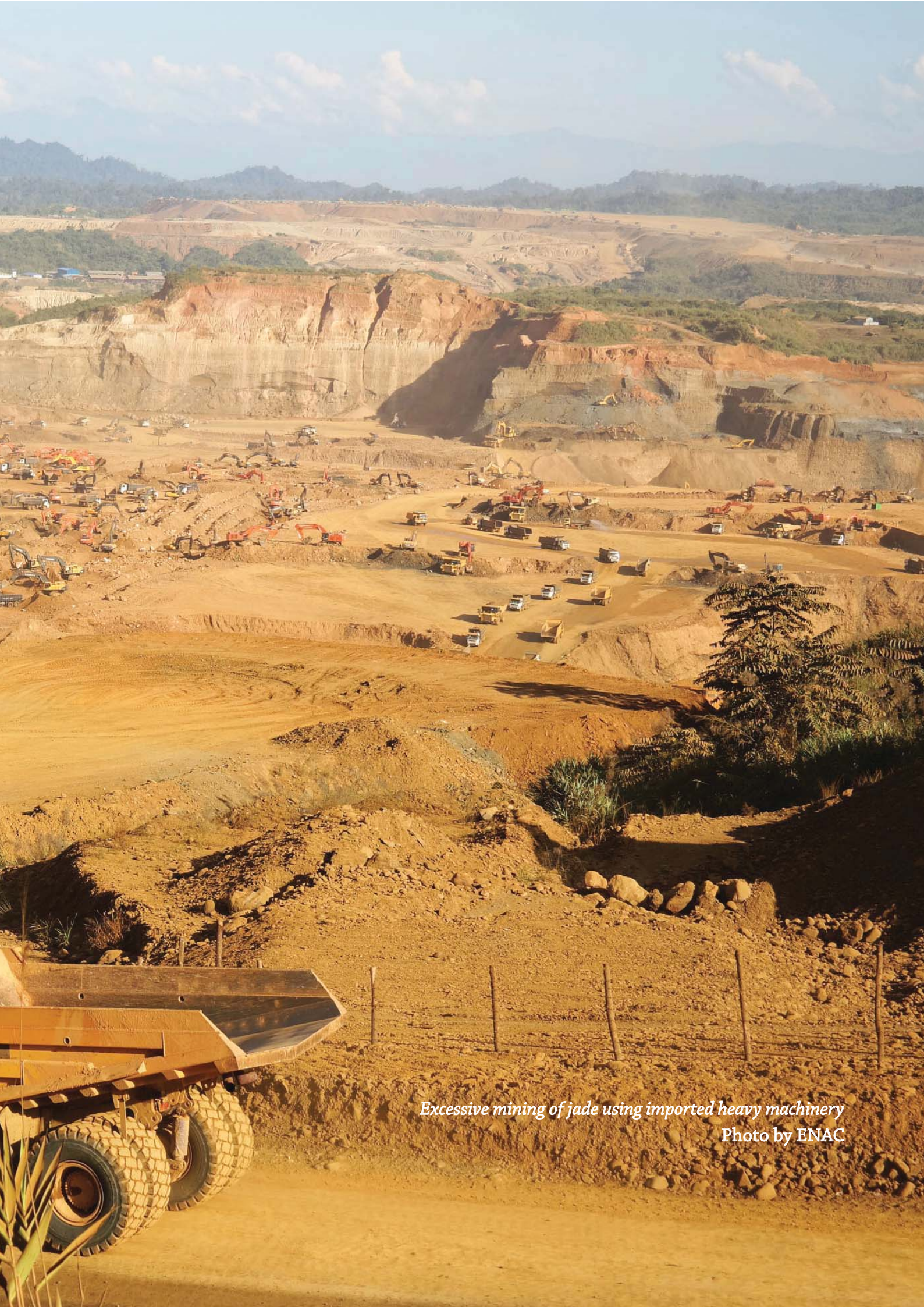
55 <http://www.rfa.org/english/news/myanmar/kachin-state-political-parties-call-for-policy-on-natural-resource-extraction-05272016145812.html> (accessed 22 Dec 2016)

56 http://www.ygnnews.com/2013/08/blog-post_8799.html (accessed 22 Dec 2016)

57 <https://www.mmmtimes.com/business/21593-jade-mining-permit-extensions-suspended.html> (accessed 22 Dec 2016)

58 In the "Shaesar, Noutpyit and Pyanphot" mining, the first step is digging out layers of lands on the designated area until the tough layers of lands called black rock is reached. The dug up debris or tailings is then piled up in a permitted mining block. After the gemstones is extracted by removing the tailing, the empty pit is left with the rock or earth wall before digging another designated mining block or area the tailings from which is used as landfill for the first pit. Since the tailings do not need to be disposed far away from the area, it save time and transportation cost. Such mining method of digging and filling backward can restore the original quality of land at least 70%. (For more detail, read "Recommendation for the systematic development of the country previous natural resource (jade and mineral) production and economic sector and the protecting the national interests' by U Nay Win Tun, Chairman of Ruby Dragon Mining Development Foundation)





Excessive mining of jade using imported heavy machinery
Photo by ENAC

Natural Resource Ownership, Management and Revenue Sharing

“Jade: Myanmar’s Biggest Secret” by Global Witness demonstrates how the vast majority of the billions of dollars earned by the jade industry each year does little to supplement the national budget, instead enriching a select few. Therefore, political leaders from Kachin State and Kachin people all over the country and around the world are highly concerned about natural resource governance in their state. The Kachin people are also worried about their future generation since armed conflict between KIA and the Tatmadaw reignited. In 2015, three Kachin political parties⁵⁹ and civil society organizations met and formulated new, joint natural resource policies. These Kachin leaders ultimately issued a joint statement demanding sustainable natural resource extraction policies, financial support for the State’s natural resource governance, and for transparency and accountability from the government.⁶⁰ Moreover, there key stakeholders formed a common understanding on natural resource ownership, management, and revenue sharing.

The ENAC research team went to Kachin State to learn about the views of local political parties and organizations on natural resources and the situation in Hpakant. The research team met with leaders of Kachin political parties, representatives of the PCG, leaders of religious institutions and civil society organizations, and government officials, including the Kachin Chief Minister and the Natural Resource and Environmental Conservation Minister to gain insight on the impact of natural resource extraction. These key stakeholders were also asked about their views on natural resource ownership, management and revenue sharing. Although there are some varied opinions on how revenue should be shared, interviewees expressed quite similar views overall. Even though no detailed natural resource policies have been formulated by individual political parties, their views are expressed in the natural resource development policy paper published by Kachin Development Networking Group KDNG.⁶¹

Ownership

When it comes to natural resource ownership, Article 37 (a) of the 2008 Constitution stipulates that the Union owns all natural resources in the country. The Union supposedly refers to a nation of many ethnic nationalities, all equally Myanmar citizens. However, in reality, central authorities have claimed ownership of natural resources for themselves. Local residents report that the central authorities act as if they are the ultimate owners of all natural resources in the country. For example, local communities and state governments are not consulted when the central government designated mining blocks and issues licenses in their areas. Kachin leaders expressed to the research team that the predominant view in Kachin State is that all natural resources in Kachin

59 Representatives from Kachin State Democracy Party, Kachin Democracy Party, and Kachin National Congress participated in the forum.

60 <http://www.rfa.org/english/news/myanmar/kachin-state-political-parties-call-for-policy-on-natural-resource-extraction-05272016145812.html> (accessed 22 Dec 2016)

61 KDNG, “Kachin State Natural Resources Development Policy Paper,” June 2015 (available at <http://www.kdng.org/2015/06/17/kachin-state-natural-resources-development-policy-discussion-paper/>) (accessed 12 Jan 2017)



Forests and Mountings vanishing from jade mining
Photo by ENAC

State belong to every Kachin citizen or to the native people⁶² of the region where the natural resources are found. According to historical evidences, the Kachin Duwas who are leaders of local ethnic Kachin people had been the owners of the natural resources extracted from Kachin State until 1962.

Even under the current civilian government, there are still continued demands by the Kachin people for ownership of their inherited natural resources. A workshop on natural resource governance was held in Myitkyina on March 1st, 2016,⁶³ attended by 103 leaders and representatives from 61 Kachin civil society organizations, political parties, and religious institutions. Workshop participants released a statement consisting of 8 declarations of the Kachin people on issues related to natural resources extraction in their state. The second declaration directly states that the ultimate owners of all natural resources in Kachin State are the people of Kachin State. The current government must acknowledge these ownership rights of the Kachin people as these statements represent the opinion of the Kachin people. Kachin ownership should also be enshrined in the Constitution.

- The people of Kachin State are the ultimate owners of all natural resources above and below the ground, above and beneath the water and in the atmosphere in Kachin State.

**Statement by Kachin people on
“Natural Resource Governance in
Kachin State” (7 March 2016),
Declaration # 2**



62 The native people in Kachin State here refer to 'Rudimashar'. Accurate definition of 'Rudimashar' cannot be obtained yet. They are sometimes referred to the Kansee Duwas from Marit Tribe.

63 Statement of the Kachin people on "Natural Resources Governance in Kachin State", 7 March 2016



The Uru River polluted by dumped tailings of jade mines
Photo by ENAC

In article 37(b) of 2008 Constitution, it is stipulated that the Union is empowered to manage natural resources. Although it is implied that the Union represents all citizens, natural resource management demonstrates a highly centralized process in reality. Management powers, such as providing regulations for natural resource management, licensing of the project sites, supervision of extraction, and taxation are controlled by the central government. After the current civilian government took office, it appointed state-level Natural Resource and Environmental Conservation Ministers to manage natural resources, but in reality, these positions have little ability to enforce regulations. There have been instances where the Minister only became aware of pertinent natural resource issues after the other government agencies already addressed them. For example, Hpakant gemstone extraction permits have been assigned directly by commission letters from Naypyidaw without consulting with the state-level natural resource minister, through the normal process.

It is necessary for natural resource management authority to be transferred from the central government to the state governments. The state government elected by the Kachin people should be fully empowered to handle the management of natural resources in Kachin State. Kachin leaders believe that state constitutions must be written to enshrine these management rights. It is also a common view of Kachin leaders that the rights to explore, extract, and sell natural resources should be legitimized and guaranteed in both the future Union and state constitutions. One of the Kachin leaders pointed out that when considering which management system is most appropriate, there is no need to be worried about management capacity as the performance of the Union government demonstrates its capacity no better than the states'. What really matters are the tangible benefits of effective development at the state level. If authority is granted to the states, they will be able to perform the tasks well.

Myanmar's official collected revenue from natural resource is less than what should be flowing into the nation's coffers. Management issues – an imbalance between permitted projects and assigned employees, the lack of opportunity for local elders to be involved in the management process, low participation of technical experts, and high involvement of military officers – cause an impediment to effectively tackling the rampant tax evasion and corruption problems. According to the current legal structure, only the central government is allowed to collect taxes in natural resource trade. But before 1994, Hpakant used to be a KIA controlled area, and it is assumed that KIA is still influential and collecting some taxes from jade.

It is important to understand the taxation scheme that applies to the gemstone sector. During 1990-1994, through Production Sharing Contract, joint ventures between the public and private sectors were allowed, a 20% gem tax was levied,⁶⁴ and an additional 10% commercial tax was excised for sales with foreign currency. However, when excising taxes, production costs paid by business owners were not considered. In 1995, the

⁶⁴ The gemstone tax (locally known as Twin-Wa-Khon) refers to a tax imposed by Myanmar Gemstone Enterprise on raw gemstones obtained from the production of gemstones. The gemstone tax rate for a raw gemstone is based on value of it appraised by Myanmar Gemstone Enterprise

Myanmar Gemstone Law and By-law were promulgated and continued the excise tax with the previous categories and types. In 2016, the Myanmar Gemstone Law was amended for the second time. According to the 2016 law, gemstone enterprises have to pay a special goods tax and a commercial tax. Since businesses are still required to pay income taxes and signature bonuses, the gemstone enterprises are now affected by four different taxes. (Annex 6)

Revenue Sharing

Under the current natural resource revenue-sharing system in Myanmar, revenue is not reserved for the areas of resource production. Natural resource revenues are mingled with revenues collected from other sectors in the national budget and an amount is subsequently allocated to regions and states based on their development needs. It is currently impossible to determine what percentage of the Union revenue represents natural resource income. Because Kachin State produces such large amounts of high-value natural resources, there are assertions in Kachin State that the regions/states of production deserve special benefits. Local Kachin political leaders believe the opinions of the Kachin people should be taken into account when determining how natural resource revenues should be shared, but due to the current political situation, it may be too early to determine the details of an appropriate system. However, much can be learned from the various methods and systems used by other nations, and these lessons should be considered before determining what is best for Myanmar. All local leaders want a system that includes the natural resource profits that their people deserve.

Previously, jade enterprises retained 60% of income for business owners and 40% was collected by the government; then the rates were altered, so 75% was retained by business owners and 25% collected by the government. This was done to incentivize investors and attempt to mitigate tax evasion. In 2016, the Union Tax Law and Myanmar Gemstone Law were amended for a second time, increasing rates and adding new taxes (See Table 3). These taxes reflect the assignment of profits between business owner and the government. These rates need to be analyzed and reevaluated in addition to how the revenue is divided amongst the Union and states/regions. In the current legal landscape, natural resource revenue sharing between the Union and the states/regions is not clearly delineated. Kachin leaders' views on this lack of clarity were collected. Some of the leaders generally proposed that natural resources revenue collected from Kachin State should be shared 70% for the state and 30% for the Union or 60% for the state and 40% for the Union.⁶⁵ It is assumed that among the rights to benefit between the states, the states that produce more natural resources deserve more profit than non-production states. Although the Ethnic Affairs Department of the Amyotha Hluttaw proposed a natural resource revenues-sharing model under quasi-civilian government of U Thein Sein, consideration and discussion on the proposal was deemed "unconstitutional" and prohibited.⁶⁶ As the current system of resource sharing is neither transparent nor accountable, it results in the loss of large amounts of revenue for the government. Therefore, success stories from other countries should be analyzed to find a system that can benefit all of Myanmar for generations to come.

⁶⁵ There are leaders who could not accept the resource revenues sharing proportion of 20%-80% or 80%-20% between the Union and the states. (Interviews with Kachin political party leaders during the research field trip to Kachin State)

⁶⁶ Interview with a Kachin leader during the research field trip to Kachin State

Table 3: Changes in Jade Revenue retained by Private Enterprise and Government

| Category | Private Enterprise | Government | Tax imposed |
|--------------------|--------------------|------------|--|
| Then (Before 2016) | 60% | 40% | <ul style="list-style-type: none"> • Gemstone Tax • Commercial Tax • Income Tax |
| Now (After 2016) | 75% | 25% | <ul style="list-style-type: none"> • Special Goods Tax • Commercial Tax • Signature Bonus • Income Tax |

Revenue Sharing

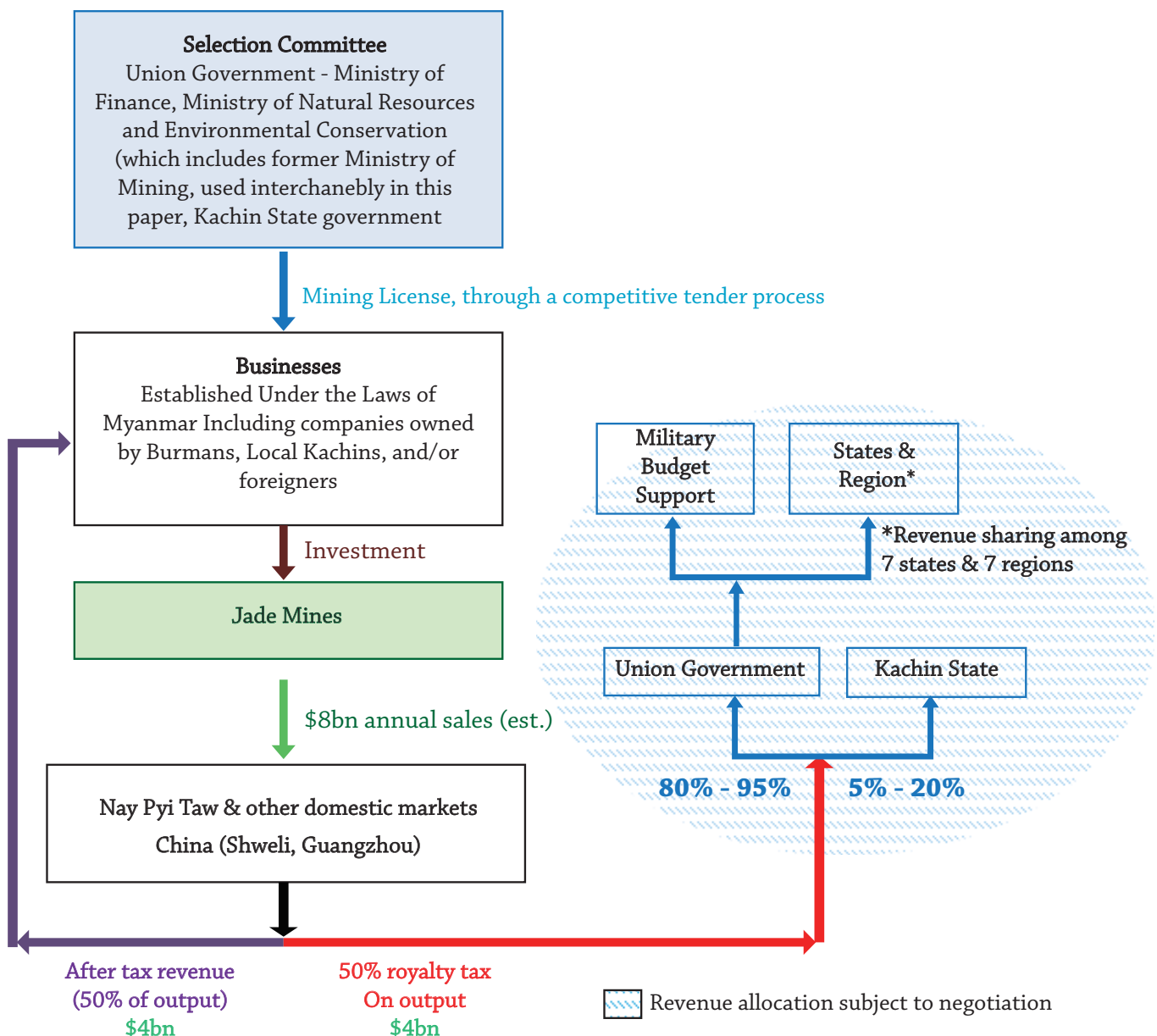
▪ Option - 1

A revenue sharing method for jade proposed by the Harvard Ash Center (see Figure 4) is briefly reviewed here. According to this method, the Selection Committee comprised of Union Government (from the Ministry of Finance and Ministry of Natural Resource and Environmental Conservation) and Kachin State government representatives, issues the licenses and permits for jade mine sites to gemstone mining enterprise that are registered in Myanmar. The jade produced from these projects will be sold domestically and abroad and the government and the business owner will share the profits, 50% for each. This kind of sharing is called a Production Sharing Contract and it does not actually consider production costs. The production costs can be covered in case valuable gemstones are found; otherwise private enterprises will find it difficult to operate. Even with the valuable gemstones are discovered, the prospect of immediate sale at the gemstone markets is not always guaranteed, possibly encouraging illicit rather than legal trading. Therefore, new methods of systematically deducting the production costs should be adopted by negotiating with the private enterprises.

When dividing the jade revenue collected by the government, a certain percentage must be negotiated and reserved for Kachin State. Current laws do not require a share of jade revenue for Kachin State, but it should be seriously considered. Only then, may the Kachin people realize how much natural resources can benefit their people and support the development of their state. The Ash Center's method suggests negotiating the Union share of the remaining natural resource revenues to be distributed to the states and regions and portion for the military budget. This method aims to incorporate the collaboration of the Tatmadaw to ensure taxes are fully collected. This could be quite controversial because it considers Tatmadaw – an institution under the Ministry of Defense – as a privileged institution in the revenue-sharing scheme. The budget for Ministry of Defense should only be decided by Pyidaungsu Hluttaw and a guaranteed percentage of natural resource revenue should be reserved.

Furthermore, it is crucial to provide a certain threshold percentage of revenue for the jade-producing locales in this method. The division should prioritize the interests of the producing area. Adequate amounts of jade revenue should be devolved to the production area to systematically remedy damages from environmental disasters and social problems resulting from excessive production through open-pit mining. Though it is still young, if the current civilian government can bring about successful reform of the jade industry to aid Kachin State and producing areas in the State, the ongoing armed conflicts between the Tatmadaw and KIO may come to an earlier end.

Figure 4: Provisional Future Structure of Jade Revenues (Subject to Negotiation)



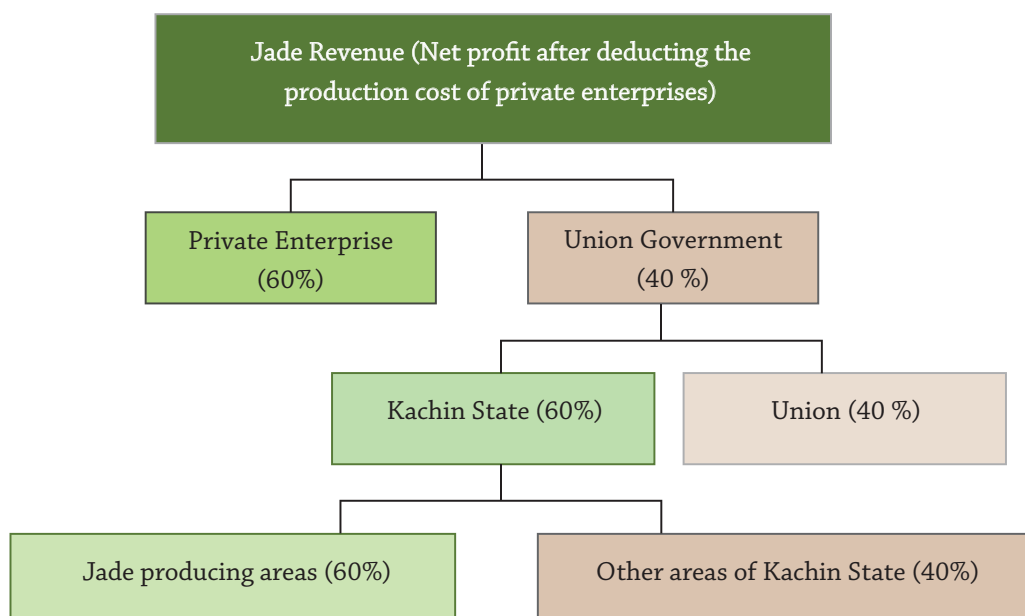
Source: Harvard Ash Center's "The Grand Bargain: What it is and why it is needed." P14 http://ash.harvard.edu/files/ash/files/20160815_a_grand_bargain_mmr_v24.10.2016.pdf (accessed 16 Dec 2016)

▪ Option - 2

As a second possible method for revenue-sharing, a suggestion from a Kachin leader is presented for consideration and analysis. As shown in the following figure (See Fig. 5), no public-private partnerships would be allowed in this model, which would allow only private businesses. As the figure shows, net profit (after deducting production costs) is shared 60% to the business owner and 40% to the government. And, of that 40% revenue that goes to the government in taxes, it is divided 60% and 40% between the state/region government and the union government, respectively. The 60% of government revenue that goes to the state/region governments should be split symmetrically, 60% to the local jade-producing regions and 40% to the Kachin State government. This kind of revenue-sharing method is interesting and worth further exploration and discussion with the Kachin people.

By privatizing both state-owned enterprises and joint venture between the state and the private sectors, private businesses would be able to earn more profits and thereby incentivize further private investment. This shift would reduce the burden on state-owned enterprises, which are currently operating at a loss. The 6:4 ratio for jade revenues is likely to be accepted by the local community and Kachin people in the jade-producing areas. But the percentage allocated to other states/regions is highly asymmetrical and would not adequately address the development gap between states/regions. Additionally, because natural resources are nonrenewable, other economic opportunities should be developed for local communities, rather than relying solely on natural resources.

Figure 5: Future Jade Revenue Sharing Scheme



Impacts

As mentioned above earlier, jade extraction via open-pit production method has negative environmental and social impacts, and these negative impacts are only worsening. Even though Kachin civil society organizations, political parties, and religious institutions have advocated for policies to control and reduce these adverse effects (See Annex 7), the current government has not effectively addressed local concerns. Therefore, it is necessary to determine and implement effective methods to control the rampant greed of these business owners with licenses from the Thein Sein government, who take the advantage of the regulatory loopholes and lack of enforcement to extract as much jade as they can, as fast as they can. Only in this way will the people and all other living creatures that rely on environment and environment itself be saved.

- To ensure “free, Prior, Informed and Content” with local community before issuing operational permission for any projects.

*Statement of Kachin People on ‘Natural Resource Governance in Kachin State’
(7 December 2016), Declaration # 5*

5.2.2 Rakhine State

According to traditional Rakhine histories, Rakhine existed as an independent nation for over 5000 years (3323BC – 1785 AD) with four dynasties: Dannavati, Vesali, Lemro and Mrauk U. The Burman kings attacked and colonized Rakhine in 1784, Rakhine lost its sovereignty, and the Rakhine dynasty came to an end. The Burman kings annexed Rakhine as their colony and ruled there for many generations. When the British expanded its colonies worldwide, Britain and Myanmar went to war three times, and the whole nation of Myanmar came under British rule in 1885. After the Burman monarchy ended with the introduction of the British rule, Rakhine State survived under successive imperial, democratic, and military governments, like other States in Myanmar.

Rakhine State is located in the western part of Myanmar and is 14,200 square miles. Bangladesh lies to the northwest, Chin State to the north, Ayeyarwady Region to the east, and the Bay of Bengal lies along the western and southern border. Rakhine State consists of 5 districts, 17 townships and 3 sub-townships. Sittwe is the capital of Rakhine State. According to the 2014 census, the total population of Rakhine is 3.2 million people,⁶⁷ the second most populated state in Myanmar after Shan State. In Rakhine State, there are major ethnic populations of Rakhine, Chin, Bengali and others. The majority of residents are Buddhists, but there are also Muslims, Christians, Hindus, and Animists.⁶⁸

⁶⁷ The 2014 Myanmar Population and Housing Census, Census Report Volume 3-K (Rakhine State Report)

⁶⁸ The projects include Laymyo Hydropower project (Mrauk-Oo township), Kaladan Multi-modal project, Titanium production project (Maungdaw township), Neputaung project (Taungkoke township), Special Economic Zone project and Myaday Island deep-sea port project (Kyaukphyu township), Hotel zone and agriculture project (Manaung township), Thahtaychaung hydropower project (Thandwe township), Annchaung hydropower project (Ann township), Kyaukphyu-Kumin railway and Myaday deep-sea port project

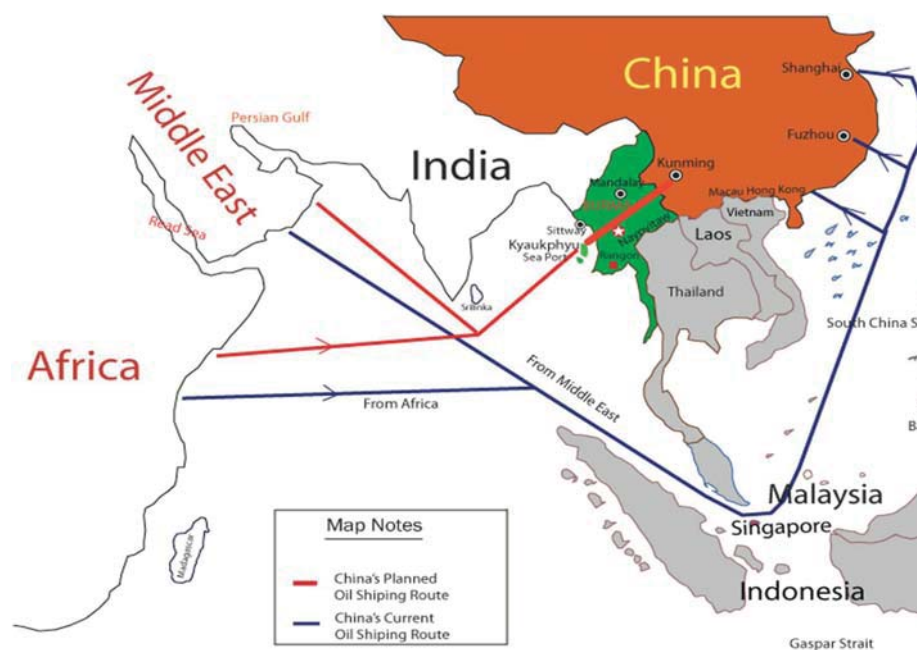
Map 3: Map of Myanmar - Rakhine State



Rakhine state is rich in natural resources. Along the Bay of Bengal, there is 360 miles of Rakhine coastline, including large strategically-located islands, the Rakhine Yoma mountain range, deep forestation in the interior, and rivers and lakes throughout the State, all providing a rich source of natural resources. The economy of Rakhine State is predominantly based on agriculture and fisheries. In the past, there has been little domestic or foreign investment in Rakhine State due to poor infrastructure caused by the terrain, resulting in a less developed area compared to other states in Myanmar. In recent years, high-value natural resources such as oil and natural gas, have been discovered off the Rakhine coast, eventually leading to massive foreign investment in the Rakhine region. Currently deep-water port projects, special economic zones, hotel zones, farming projects, mining projects, and hydropower projects are being implemented throughout Rakhine State as in the name of ongoing development initiatives.

Rakhine is one of the states earning high amounts of foreign revenue for Myanmar by exporting natural gas from the Shwe gas fields to China and through other large-scale investments within Rakhine State. However, Rakhine remains the second poorest and least developed State in Myanmar after Chin State.⁶⁹ Local communities often protest these projects as there are never transparent and public consultations with the community before implementation. Although profits gained from high-value natural resources should ideally be used for the development of resource producing States, the present natural resource governance system of Myanmar is not transparent. Investments are negatively impacting the people of Rakhine State and continue to destroy the natural environment and ecosystem.

Map 4: Map showing the strategic geographical location of Rakhine State



Source: Arakan Oil Watch

69 https://www.unicef.org/myanmar/Rakhine_State_Profile_Final.pdf (accessed 22 Dec 2016)

Oil and Natural Gas from Rakhine offshore area

Myanmar has a total of 101 oil and gas blocks,⁷⁰ mainly governed by the Myanmar Oil and Gas Enterprise (MOGE) under the Ministry of Energy. Japanese, French, and American oil and gas companies began exploring offshore Rakhine in 1996, but these initial attempts at exploitation are little known as they failed. Natural gas from the Yetagun natural gas field was initially discovered and exported to Thailand in 1988 and natural gas from the Shwe gas field was first exported to China in 2004, opening the eyes of the international community to the abundance of natural resources in Myanmar. Rakhine State's strategic geographical location on the Bay of Bengal and plentitude of resources make it an economically strategic area, attractive to the international community. Consequently, the international community is now competing to invest in the Rakhine region.

To ensure energy for their population, China has increasingly invested in the area. For example, at Pa'del or Myaday Island in Kyukphyu, Rakhine 12 mega oil storage tanks were built and oil that China bought from Africa and the Middle East will be stored in these tanks. Via this transportation route through an oil pipeline crossing Myanmar, the Chinese can avoid the dangerous Malaca Strait. The Myanmar-China Oil and Gas Pipeline, a controversial natural resource project, was built from 2011-2013, originating in Kyaukphyu, Rakhine State, western Myanmar and terminating in Kunming, Yunnan Province of southern China. The pipeline crosses a total of 21 townships in Rakhine

Map 5: Map showing the Myanmar-China Oil and Gas Pipelines



State, Magway Region, Mandalay Region, and Shan States. According to media sources, 500 million cubic feet of natural gas will be produced each day from Shwe natural gas reserve in Rakhine State, and 80 % of the reserve (400 million cubic feet) will be exported to China for 30 years. The remaining 20 % (100 million cubic feet) is meant for domestic use and 20 % of that share (20 million cubic feet) will be allotted to Kyukphyu town, where the pipeline originates.⁷¹ The oil pipeline connected in parallel with the natural gas line will export 22 million tons of crude oil from the storage tank at Myaday Island, Kyaukphyu. Myanmar will be allowed to buy 2 million tons per year⁷² (See Table 4). The fees paid for crossing nearly 800 kilometers of Myanmar land with a pipeline will supply Myanmar with \$13.81 million per year.

Table 4: Annual Energy Shares from Myanmar-China Oil and Gas Pipeline Project, 30 Years

| Country | Crude Oil | Natural Gas |
|---------|-----------------|------------------------|
| China | 20 million tons | 12 billion cubic meter |
| Myanmar | 2 million tons | 1 billion cubic meter |

Note: Myanmar will have to buy for the energy share for Myanmar.

The pipeline project is a 30-year joint venture of Chinese National Petroleum Corporation (CNPC) and the Myanmar Oil and Gas Enterprise (MOGE) which was under Ministry of Energy. The project has three objectives: (1) strengthening the China-Myanmar relationship; (2) creating domestic job opportunities; and (3) developing domestic energy security.⁷³ The objectives and profits sound alluring and have given hope to local communities. Unfortunately, local communities passed through by the pipeline area have suffered as a result of land grabbing, low compensation for lost land, loss of livelihood, the inability to find new job opportunities, and environmental destruction.

The Rakhine people want to know how the foreign investment in their region is going to contribute to local development in Rakhine State. Unfortunately, the information about the project is in the hands of a non-transparent government and local communities have not been consulted or given consent. Government accountability for the subsequent problems caused by the project is far from enough. Some of the foreign companies only have direct contact with the government and avoid communicating with local communities. These companies want to extract natural resources as fast as possible by taking advantage of communities unaware of their rights and the loopholes in Myanmar laws and regulations. Especially under the military governments that have ruled for decades, they have obtained economic concessions from the military government and exploited the economy.⁷⁴

71 <http://www.ramree.com/2014/05/02/state-half-oil-gas-revenues-conference-suggests/> (accessed 22 Dec 2016)
No other sources mentioned this.

72 <http://www.frontiers-capital.com/2012/11/12/myanmar-china-gas-pipeline/> (accessed 22 Dec 2016)

73 Ibid

74 Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar Economic Corporation (MEC) monopolized important enterprises in Myanmar including energy, mineral, and gemstones since the time of the State Law and Order Restoration Council (SLORC) and State Peace and Development Council (SPDC).

Foreign Investment and Myanmar-China Oil and Natural Gas Pipeline

■ **China National Petroleum Corporation (CNPC)**

CNPC is a Chinese state-owned oil and gas corporation and the largest integrated energy company in China. It engages in oil and gas exploration, extraction and production operations in nearly 70 countries. Since 2001, CNPC started to invest in Myanmar. Currently, it operates two onshore oil and gas development and production projects, one deep-water exploration project, and also provides oilfield services and construction of chemicals facilities and pipelines in Myanmar.⁷⁵ In 2008, CNPC and Myanmar signed an MoU to build the oil and natural gas pipelines that will cross Myanmar and to export natural gas produced from Block A-1 and A-3 of Shwe natural gas sites off the coast of Rakhine State.

■ **Daewoo International Corporation (DIC)**

The Daewoo International Corporation (DIC) is South Korea's leading export trading company, trading primarily in chemicals, textiles, metals and steel. It is a large international corporation invested in oil and natural gas exploration and extraction in Peru, Oman, Vietnam and Russia. DIC has been present in Myanmar since the early 1990s. Its investments in Myanmar ranges from a car assembly plant to timber and clothing manufacturing, to gas extraction. In 2000, Daewoo secured an exploration contract for the rights to oil and gas in the A-1 Rakhine offshore block. DIC holds a 60% share of the project after having sold stakes to Indian ONGC Videsh (20%), the Gas Authority of India Limited/GAIL (10%) and South Korean KOGAS (10%). In 2004 it applied for Rakhine offshore block A-3 and now owns 100% share of that project.⁷⁶

■ **Myanmar Oil and Gas Enterprise (MOGE)**

Myanmar Oil and Gas Enterprise (MOGE) is one of the three state-owned enterprises⁷⁷ under the Ministry of Energy. Established in 1963, it operates in oil and natural gas exploration, production, and distribution via a pipeline network of 2488 kilometer long. MOGE also regulates production sharing contracts and foreign investment in the industry.⁷⁸ MOGE officials are, as in other state-owned enterprises of Myanmar, current and former generals and military officers connected to the Tatmadaw. They are responsible for the land

75 http://www.cnpc.com.cn/en/Myanmar/country_index.shtml (accessed 22 Dec 2016)

76 <http://www.shwe.org/daewoo/> (accessed 22 Dec 2016)

77 These three enterprises are Myanmar Oil and Gas Enterprise, Myanmar Petrochemical Enterprise, and Myanmar Petroleum Product Enterprise.

78 Adam Smith International and MDRI, "Institutional and Regulatory Assessment of the Extractive Industries in Myanmar," p37, (available at: <http://documents.worldbank.org/curated/en/504691467992478731/pdf/96445-v2-WP-P145465-Box391444B-PUBLIC-ENGLISH-Institutional-Regulatory-Assessment-Extractive-Industries-Myanmar.pdf>) (accessed 22 Dec 2016)

grabbing of farmlands for the Myanmar-China oil and gas pipeline project, threatening those farmers who refused to take the compensation for the land, neglecting the demands of local people.

■ **Myanmar-China Oil and Gas Pipeline**

Myanmar-China Oil and Natural Gas Pipeline was built jointly with four countries -- China, Myanmar, South Korea and India -- and 6 companies. They established two individual companies called SEAOP and SEAGP⁷⁹ with the shared task to build the pipeline. CNPC and MOGE own the shares of SEOP while China, South Korea, India and Myanmar all own the shares in SEGP.⁸⁰ As shown in Table 5, CNPC owns the majority of the shares in both SEAOP and SEAGP. Therefore, it wields most of the decision-making power in project planning, construction, operations, expansion, and maintenance.⁸¹

Table 5: The Shareholders of Myanmar-China Oil and Gas Pipelines

| SEAGP | Share | SEAOP | Share |
|----------------------------------|--------------|--------------|--------------|
| CNPC-SEAP | 50.9000% | CNPC-SEAP | 50.9% |
| Daewoo International Corporation | 25.0410% | MOGE | 49.1% |
| ONGC Videsh Ltd | 8.3470% | | |
| MOGE | 7.3650% | | |
| GAIL India Ltd | 4.1735% | | |
| KOGAS | 4.1735% | | |

The width of the oil and gas pipeline is 30 feet, and it is nearly 800 kilometers in length. The building cost of the pipeline was nearly \$5 billion.⁸² The Myanmar-China oil and natural gas pipeline saves energy import costs for China and thereby serves as an important energy channel for energy security in China. Although there are also some benefits for Myanmar as a whole, there was no consultation with local communities, leading to protests by local residents and non-government organizations since the planning stages. To appease these communities, the companies implemented corporate social responsibility policies to build schools, clinics, reservoirs, and power plants for the villages crossed by the pipeline. However, mechanisms to prevent the negative impacts on the livelihood and environments of local communities have not made public.

79 SEAOP stands for South-East Asia Oil Pipeline Co., Ltd and SEAGP stands for South-East Asia Gas Pipeline.

80 http://usa.chinadaily.com.cn/business/2013-07/28/content_16844673.htm (accessed 22 Dec 2016)

81 Myanmar-China Pipeline Watch Committee, "Finding Social Justice along Myanmar-China Oil and Gas Pipelines", Burmese version, p7-8, 6 Jan 2016

82 <https://www.chinadialogue.net/article/show/single/en/6183-China-Myanmar-oil-and-gas-pipelines-a-5-billion-problem-> (accessed 22 Dec 2016)

Kyaukphyu and Ann

The Myanmar-China Oil and Gas Pipelines cross two States and two regions in Myanmar, passing through two townships in Rakhine State -- Kyaukphyu and Ann. Kyaukphyu is located in Yannbyae Island and has a population of about 200,000. In 2009 and 2011, China and Myanmar signed MoU to build Kyaukphyu Economics and Technology Development zone. It was agreed to develop the special economic zone with deep-water port, railway, airport and industrial zones. But, neither the companies nor the government consulted or notified the local farmers and fishermen about the project. According to a recent report entitled "Danger Zone" by the Arakan Oil Watch (AOW), the second largest mangrove forests growing along the coastal area of Kyaukphyu and Yannbyae could be destroyed and thousands of people's social life and health conditions might be negatively affected because of this industrial zone. Even now, after the Myanmar-China Oil and Gas Pipeline has finished, some of the local people have not yet been compensated for the land that was confiscated from them. It appeared that the investments flowing into Kyaukphyu have done nothing to assist the job sectors of the local people, agriculture and fishing.

Ann is another town crossed by the pipelines. The headquarter of the Tatmadaw's Western Command is located in this town. This military headquarter used to be located on the coastline near Sittwe, but later moved to Ann as it is a stronger defense position geographically. The Tatmadaw has gradually expanded their base in Ann while prohibiting local people from traveling through Rakhine's Yoma mountain range within Ann township. According to local Kyaukphyu farmers, military bases cover nearly half of Ann's area.⁸³ It was also reported that the Western Commander controls many lucrative business in Rakhine State.⁸⁴ There are cases where local Rakhine residents' farmlands were grabbed for military use.⁸⁵ It is assumed that the Tatmadaw is firmly based in this area because it is so rich in valuable natural resource and lies at a crucial point, geographically. Such overt military occupation is also likely why local Ann voices were not heard protesting the Myanmar-China Pipeline Project.



83 Cited from the quote of local farmers from Malakyun, Nann Pae Taung, and Pyar Tae villages in Kyaukphyu township

84 Supply and Command by AASYC, July 2006 (Available at: http://burmacampaign.org.uk/media/shwe_gas.pdf) (accessed 22 Dec 2016)

85 <https://democracyforburma.wordpress.com/2009/10/13/the-burmese-military-junta-has-been-constructing-a-tunnel-bunker-in-ann-township-in-arakan-state-since-the-beginning-of-this-year-for-storing-fighter-jets-said-a-military-source/> (accessed 22 Dec 2016)



A scenery of farmland in Kyaukphyu

Compensations for some of the farmland taken for the oil and gas pipelines in Kyaukphyu has yet to be distributed.

Photo by ENAC



A house in a village of Kyaukphyu Township

Although valuable natural gas is found in Kyaukphyu, Rakhine State remains the second poorest state in Myanmar.

Photo by ENAC

Natural Resource Ownership, Management and Revenue Sharing

In partnership with foreign corporations and in the name of development, the Myanmar government is selling the natural resources of Rakhine abroad. Rakhine people continue to frequently demonstrate their frustration by conducting workshops and signing petitions for parliament, marching peacefully, and issuing policy statements through their political parties⁸⁶ (See Annex 8). Rakhine people continue to advocate for their rights and associated benefits concerned with the natural resources produced from Rakhine State.

Ownership

The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union.

2008 Constitution, Article 37 (a)

There is a common understanding on Rakhine natural resources amongst local Rakhine people, Rakhine political party leaders, representatives of Rakhine civil society organizations, and Rakhine youth and women's organizations. Rakhine natural resources should be in the hands of Rakhine people. Rakhine natural resources should be in the hands of Rakhine people. All onshore and offshore natural resources from Rakhine should be owned by Rakhine people. It is believed that Rakhine people are the original owners. They believe that article 37 (a) of the 2008 Constitution should be amended.

Management

The Union shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces

2008 Constitution, Article 37 (b)

Moreover, natural resources from Rakhine State should be controlled and managed only by Rakhine State. It has been consistently advocated by the Rakhine people that all natural resources should be managed, explored, extracted, produced and sold by Rakhine State government, which was elected by Rakhine people. Since the current government took office after 2015 election, there are state-level natural resource and environmental conservation departments, but the power to manage high-value natural resources are still in the hands of the central government. Before emergence of a genuine federal democratic nation, as advocated for by the ethnic nationalities, Article 37 (b) of the 2008 Constitution should be amended to decentralize powers to the states/regions.

⁸⁶ Paper submitted by Arakan National Party to Union Peace Conference – 21st Century Panglong, 2016, p7

Revenue Sharing

Rakhine people are willing to share the profits they gain from producing and selling high-value natural resources such as oil and natural gas with underdeveloped states/regions that do not produce natural resources. However, disagreements remain on the appropriate mechanisms and amount to share. There are also claims that any mutual agreements on a sharing system should be enshrined in the Rakhine State constitution by the decision of the elected Rakhine State government or Rakhine State parliament.

Instead of natural resource revenues being distributed by the central government to Rakhine State and the other states/regions interviewees asserted that the Rakhine people believe that Rakhine State government should distribute any shared revenue with the central government and other, less-developed states as it sees it. The Rakhine people believe that Rakhine State should receive at least 50% of the profit, and often cite a plan where the state gets 70% and Union receives 30%. And when the state distributes funds to townships, the producing areas should receive more than the non-producing area. It is said that “since the peoples from producing areas are more likely to suffer from environmental and ecological destruction and the subsequent adverse effects, funding is needed to remedy these short-and-long-term effects.”

In the future federal democratic nation where states will have rights to self-administer their areas, natural resource policies like those mentioned above are needed in Rakhine State. According to Article 37 (a-b) of 2008 Constitution, the Union owns all of the natural resources of the nation and can enact laws to extract and utilize natural resources. In chapter 15 of the Constitution, Schedule 2 provides a list of powers belonging to the regions and state legislatures, showing that there is no authority for the state to manage natural resources. Rakhine people also said that Article 37(a-b) should be amended to give states more authority to manage natural resources. Moreover, although there have been demands on the moratorium of the extraction, production and sales of high-value natural resources and large-scale foreign investments during Myanmar's peace process, the natural resource industry has only grown every day

Impacts of Myanmar-China Oil and Gas Pipelines

There are many cases of land grabbing from farmers on traditionally-owned land for construction of the pipelines and operation buildings. Some of the local farmers' land was not forcibly grabbed, but they were negatively affected by the pipeline's environmental impact; debris dug out to build the pipelines destroying crops; increased landslides during rainy season because of digging; the interruption of water flows, causing flooding or increased aridness. All of these issues create huge obstacles for farming. There are a lot of social impacts on the lives of farmers by the deterioration of natural environment ecosystem which they depend on.

When they acquired the land of some farmers for the pipeline project, they gave compensation or sympathy payment to the farmers for their acquired farmland. They also said that within 3 years of the pipelines being installed, they would be able to return to farm on the land again. But, there was no preservation and conservation for the ruined soil and it became impossible for farmers to farm on this land. Land prices

are expensive and it is not possible for farmers to buy another piece of land. Compensation is not even enough for the livelihood of their family and when some farmers, who did not want to accept compensation asked for their land to be given back in its original condition, they were met with threats that they would be sued for interfering in duty. There are still some farmers who still do not accept the compensation or sympathy payment from the pipeline company for the acquired land grabbed by Myanmar Oil and Gas Enterprise (MOGE) and the pipeline company.

Not only that, it was also heard from Kyaukphyu local farmers that while Myanmar government and foreign companies are trying to implement Kyaukphyu Special Economic Zone in Kyaukphyu, there are a lot of land purchases. It is generally known that most of the buyers are rich people and it is suspected that the buyers might be connected to the companies. These buyers do not do any farming or grow any crops on the bought land and leave them vacant which results in low production of rice from Rakhine and there are concerns that there might be rice scarcity in the future. Some local people earn their livelihood by fishing in the creeks and lakes within their area, but rich people are buying the creeks and small lakes so local people are not even allowed to fish in these areas anymore.

Although there were hopes that the pipeline project would create job opportunities for local people, in reality; local people only have lower paid jobs such as carrying rocks, digging soil, cooking, janitor and security. Local people report that they are not even considered for jobs with higher pay than these. There are no vocational schools for local people to work in foreign investment in their own area. It can be asserted that they do not give a fair amount of compensations to the farmers for the short term and they certainly do not consider the long term consequences either. It appears that they do not ask what the local people really want and are just trying to cover up by building schools, clinics, reservoirs and some power plants.

Due to several attempts and demands made by Rakhine people to get electricity 24 hours a day by carrying out numerous protests, petitions, the Pipeline Company and MOGE provides electricity to some of the villages through which the pipeline has crossed. Even among these villages, only the villages along the road get electricity and other villages do not. Kyaukphyu local farmers said it is like they are brewing hatred between the local farmers. There are many times when requests made for receiving profits from natural resources produced from their own region were ignored and some local people gave up asking for their rights.

Transparency and Accountability

The present natural resource extraction management system is suspiciously complicated and citizens cannot easily get information for natural resource extraction projects. As there is no transparency in the project development process and local populations are not consulted when for mega natural resource extraction, human rights violations are inevitable; land grabbing, no compensation for lost land and traditional businesses; unreasonable amount of compensation; compensation agreements not in the native language of the local peoples; deterioration of the environment without addressing negative impacts; silencing the protests of the local people.

- The Extractive Industries Transparency Initiative (EITI) is a global Standard that encourages open and accountable management of revenue from natural resource industries.

Myanmar EITI website

Pipeline projects and other project disguised under the title of regional development have poor accountability. So, it only benefits the businessmen and politicians who are close to the previous military government and it is like a natural resource curse for local Rakhine people. It could be put forward that Rakhine people are abandoned economically despite the abundant amount of natural resource and good economic opportunities in their state. This was pointed out when civil society organizations and international communities were critical when Myanmar applied to be an EITI⁸⁷ member, in 2014, under U Thein Sein regime. Even though Myanmar became an EITI member State, there is an assumption that it could probably not enforce ownership of the Rakhine natural resources by Rakhine people, right to manage and direct sharing of the profit which Rakhine people really want and might continue to expand to explore, extract and sell the natural resources under centralized system by using it as a way by central government to let more foreign investment come into the region.

CHAPTER 6: IMPLICATIONS

6.1 Research Findings: Implications for Natural Resource Governance in Myanmar

The research findings, based on the four research questions, from the international and Myanmar case studies are summarized below.

Ownership

Regarding natural resource ownership, the original and ultimate owners are clearly enshrined in the constitutions or peace agreements of some countries. In unitary countries (e.g. Indonesia, Papua New Guinea, and Myanmar) there is often a provision in the constitution stating that natural resources are owned by the central government. In federal countries, there are a variety of ways to assign ownership: the natural resources are owned by the federal government (e.g. Nigeria, Iraq and Venezuela), relevant state government (e.g. Canada and UAE), or shared between the national government, state government, and private enterprises (e.g. Russia) (See Annex 9). Sometimes, there are no provisions about natural resource ownership (e.g. Sudan). In article 37 (a) of Myanmar's Constitution, it is said that the Union owns all of the natural resources in the country. Political parties, civil society leaders and other local ethnic leaders from two ethnic States have expressed their desire that natural resources ownership be in the hands of their state government. They believe that only the local ethnic nationalities from the producing regions should be the ultimate owners. They want to enshrine this right in the constitution of future federal union and its states.

Management

The power to manage natural resources via legislation varies amongst countries. Some countries (e.g. Nigeria and Venezuela) clearly allot this power to the Union government, while in some countries (e.g. Canada and UAE), the state government is given control, and in some countries (e.g. Iraq, Russia and Sudan) the power is shared by both the national and state governments. In Indonesia, one of the case studies for this research, natural resources management powers are given to the upper house of parliament, but the Aceh province government has the power to manage their natural resources jointly with Indonesia government (See Annex 10). In Myanmar, according to 2008 Constitution, the right to legislate on natural resources is largely granted to the Union (PyidaungSu Hluttaw) (Schedule 1; Article 37 (b) and 96).⁸⁸ Although states and regions have some legislation and management rights (Schedule 2; Article 188),⁸⁹ the right to manage the high-value natural resources such as oil, natural gas, and jade remains in

⁸⁸ Article 96, "The Pyidaungsu Hluttaw shall have the right to enact laws for the entire or any part of the Union related to matters prescribed in Schedule One of the Union Legislative List." (2008 Constitution of Myanmar)

⁸⁹ Article 188 "The Region or State Hluttaw shall have the right to enact laws for the entire or any parts of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List." (2008 Constitution of Myanmar)

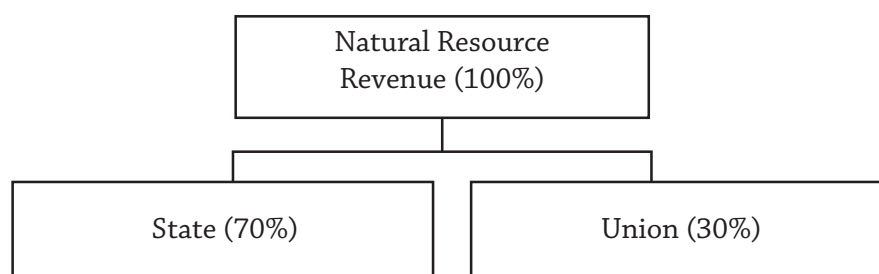
the hands of the Union government. The local ethnic leaders and people believe the authority to manage natural resources should belong to the state governments, and this should be enshrined in the Constitutions of future federal nation and its states.

Revenue Sharing

Regarding revenue-sharing systems, in some countries (e.g. Indonesia, Nigeria, Sudan, Iraq and Venezuela) the Union government collects the revenue, in some countries (eg. Canada, Sudan, Russia and Papua New Guinea) the state government collects the revenue through its taxation powers and in some countries (eg. UAE, Iraq) the state government has the right to obtain the revenue. The revenue from natural resources is shared in a variety of ways, usually by an agreed upon percentage rate (e.g. In Aceh, 70 % of local oil and natural gas revenues are retained for the state government) or by a formula (e.g. In Nigeria, at least 13 % of revenue is reserved for oil-producing states) or by peace agreement (e.g. In Sudan and South Sudan, 2% of the net profit of oil was reserved for the producing state and rest of the revenue was split equally between the Sudanese and South Sudanese governments). In some countries (e.g. Canada, Iraq, Russia, Sudan and Papua New Guinea), there is no fixed rate for revenue sharing. Natural resource revenue is typically shared by the national government to the state government, as usually the central government manages the revenue sharing process. However, in UAE, some of the pre-negotiated revenues are shared from state to the central government (See Annex 11). In Myanmar, general revenues are distributed by the Union government to states. There is no separate distribution of natural resource revenues; instead, these revenues are combined with other revenue and shared to state and regional governments based on indices. Due to corruption, the revenues collected for the national budget are lower than expected.⁹⁰

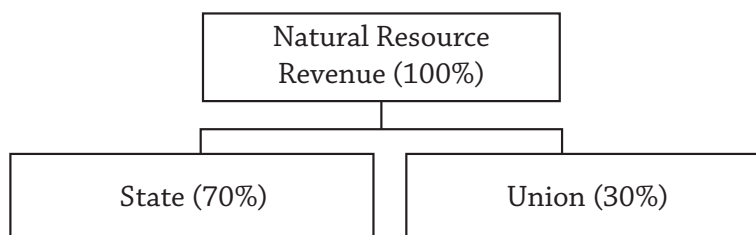
Some of the options for natural resource revenue-sharing suggested by those interviewed in the field study include the following:

■ **Option 1:** Natural resource revenues are shared 70% to the producing state/region and 30% to federal government.

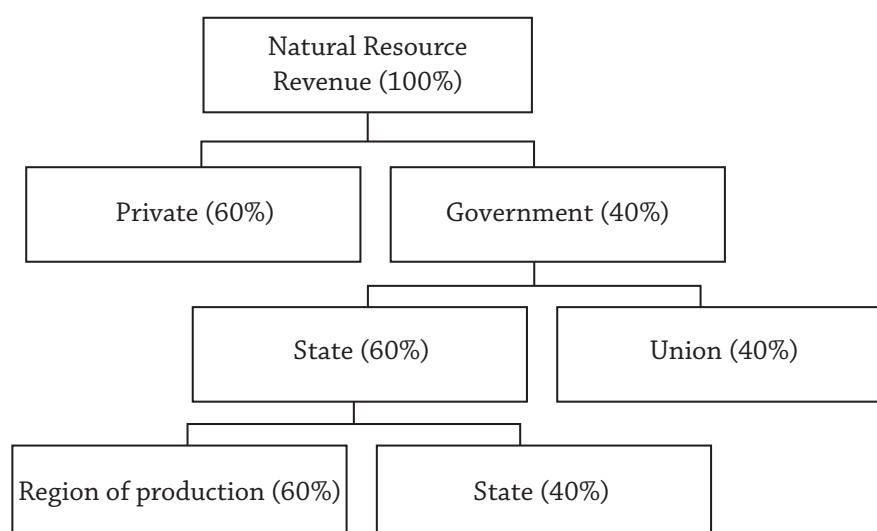


⁹⁰ According to official statistics, the revenue from extractive industries for the fiscal year 2013-14 is USD 1.15 billion, but the official publication by the Chinese government for the import of high-value gemstones from Myanmar in 2014 is USD 12.3 billion. The estimates of Global Witness for jade production (legal and illegal) for that year was USD 31 billion, and the estimates by the Ash Center of Harvard University for jade revenue was USD 8 billion.

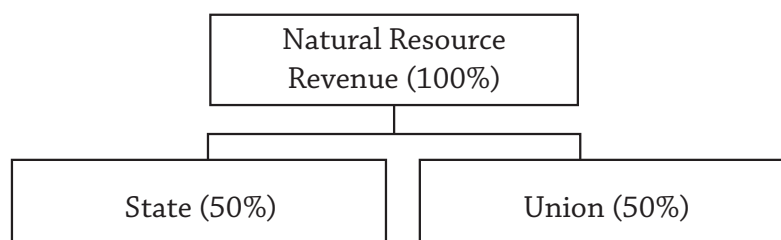
■ **Option 2:** Natural resource revenues are shared 70% to the producing states/region and 30% to the federal government. Then, the 70 % revenue allocated to the producing state/region can further be shared with other states/regions.



■ **Option 3:** The net profit (in which the production has been deducted) from natural resource production is initially divided between private enterprise (60%) and national/federal government (40%). The 40% revenue allocated to the national government is then further divided between federal and state government: 60% to the states/region and 40% to the federal government. Finally, the portion devolved to the state is divided between the producing areas (60%) of the state and the state (40%).



■ **Option 4:** The net profit from natural resource production is shared 50% each between states and the Union.



Impacts

In addition to sharing natural resource revenue, it is important that the environmental and social impacts of natural resource extractions are systematically managed. Although this research paper did not study the impacts of natural resource extraction in other countries, according to the experiences of the two states in Myanmar that were chosen as local case studies in this paper, it is clear that environmental and social impacts are currently not addressed in line with international standards – transparency, accountability and rule of law are weak. In Rakhine State, the MOGE confiscated lands from local farmers for the Chinese government's CNPC, and the Korean Daewoo companies forcibly acquired land from local farmers to build oil storage tanks and construct oil and gas pipelines. These types of land confiscation are disastrous to the livelihoods of the farmers. In Hpakant, Kachin State, the environmental and social problems worsen daily due to the excessive open-pit extraction of jade by heavy machinery. Although local communities advocate for the government to address these environmental and social impacts repeatedly, their requests are consistently neglected.

Discussion of natural resource ownership, management and revenue sharing is necessary to facilitate the institution of peace via political dialogue. Economic, finance, and technical experts should be involved throughout the negotiations on these issues. It is important to ensure that all negotiating parties have a basic understanding of natural resources and the current situation in each state/region of Myanmar. The relevant political stakeholders must initially agree upon basic principles for natural resource negotiation. Moreover, technical experts should provide analysis on the advantages and disadvantages of the proposals by the negotiating parties. Then, final agreements on natural resource governance and its impacts must be included in the peace agreement. Subsequently, amendment of the 2008 Constitution or the development of a future federal constitution should secure the provisions agreed upon in the peace agreement. Genuine peace will only be reached if it is enacted and implemented.

6.2. Workshop discussions: Implications for Natural Resource Governance in Myanmar

When discussing natural resource ownership, management, revenue sharing, and extraction impacts, stakeholders generally have a common understanding of the changes that must be made. Some disagreements remain when considering terminology and definitions; it is recommended that such technical issues should be discussed after securing agreement on broader principles. Common understandings and the remaining areas of disagreement gained from three workshops are presented below.

Ownership

It is firmly believed that all natural resources in a state belong to the native peoples of that state and the ethnic nationalities who have been resided in that state for many years. The ethnic nationalities who have been resided in the area for many years own all the natural resources. However, since the term “native people” can refer to various populations in different states and regions, it is recommended that the term is defined

only by the relevant states/region. For example, the term “Rudimasha” in Kachin State refers to the native people in Kachin State, and the term “Rudimasha” need to be defined only by Kachin State. In discussions about defining “native people,” participants generally thought people who settled an area before 1823 or to people who reached there the earliest after 1823 or native people who lived there between 1947 and 1960. Ethnic nationalities who have consistently lived in a state of Myanmar for 60 years are generally regarded as “native people”.

Management

It is generally accepted that some powers to manage natural resources in a state/region should reside exclusively with the state/region, some should be jointly shared by the state/region and union governments, and some should be jointly shared between states/regions. However, stakeholders agree that the majority of the natural resource management authority should reside in the hands of the relevant state/region government and the local government in the state/region; ethnic nationalities should also retain special traditional authority to manage natural resources. The Union and the state/region government should jointly manage natural resource extraction which affects the interests of the whole nation and let the relevant state/regional government manage those concerns only affecting that state/region. Natural resource extraction that affects more than one state/region, should be managed by those state/region governments concerned and, in some cases, the Union government may be consulted. To ensure these power divisions are respected, natural resource management powers should be secured in the constitutions of both the union and the states/regions.

Revenue Sharing

Ethnic stakeholders believe that the national revenue collected from natural resource extraction should be shared between the Union and state/region governments, and the state/region where resources are extracted and produced must be able to retain the majority of the revenue and benefits from their area. Some participants believed that each state/region parliament should determine these shares and it should not be determined in the current peace process.

Some proposed ratios of natural resource revenue sharing include the following: State/region 80% and Union 20%, state/region 70% and Union 30%, state/region 60% and Union 40%. Although there was no in-depth discussion on what the specific amount or percentage of the entitled revenue division should be between the state and union governments, there was a proposal that 20% of the state/region revenue share should be reserved for the producing area and 80 % to the non-producing areas within the producing state. In Sudan, a case study in this research paper, a certain share is first reserved for the producing area and the remaining revenue is then split between producing state and the Union. This is a model that worth considering for future resource revenue sharing in Myanmar.

Moreover, workshop participants have discussed that states/regions should prioritize native people and the sustainable development of their communities when spending the entitled natural resource revenue. Windfall resource revenues from natural resource

must be spent properly and accountably. If a state/region wishes to share their portion of the natural resource revenue with other states/regions, then it should be able to do that. Revenues can be shared between state/region and Union and amongst states/regions. Since natural resource revenues can be shared from union to states or from states/regions to states/regions, it is important to select a sharing system that is most appropriate for Myanmar.

The long-term benefits of natural resource revenue were also discussed. It is recommended that in order for the resource benefits be enjoyed for generations, natural resources funds should be maintained by the union and states/regions. Moreover, by reserving the revenues from high-value natural resources, natural resource revenue information can be made more transparent.

Impacts

It was also discussed that while the extraction and sale of natural resources can bring about economic and social development of a region, there should be a mechanism in place to control the negative environmental and social impacts of the industry. Some of these mechanisms may include the following: environmental impact assessments, social impact assessments, conflict impact assessments, free prior informed consent, budget to address ecosystem impacts, and corporate social responsibility initiatives. If these mechanisms that allow local participation are implemented, huge environmental and social damages will effectively be prevented and controlled.

Approaches to Implement the Policies

There are two ways to ensure the natural resource policies presented above are implemented and enforced. These two options are the following: 1) amending the 2008 Constitution and 2) reaching agreement on natural resource extraction in the peace process' political dialogues and enshrining these policies in the resultant peace governance. It is generally accepted that either by one of the approaches or both, reforms on natural resource governance should be carried out. When advocating for reform, it is important for relevant stakeholders to be united by a common position, and if implemented successfully, armed conflicts in ethnic states are more likely to end and sustainable peace to be achieved.

CHAPTER 7: CONCLUSION

Most of the analyses found in this paper are based on the in-country situation during the time of the U Thein Sein government (2011-2015). The current civilian government continues to implement the natural resource extraction projects that operated during the U Thein Sein era. To date, no effective review has been conducted by the current government on natural resource law and projects that was approved and implemented by the U Thein Sein government in Myanmar. Even though millions of dollars has been reaped from the jade mining industry in Kachin State, only a small amount flows into the national and Kachin State budgets, while there are many unfulfilled development needs to ensure a decent living standard for those in local jade-producing areas. This situation is found in Rakhine State; the profits received by Rakhine State from oil and natural gas are minimal and the problems with caused by land grabbing have not been solved yet. Although abundant natural gas is found offshore Rakhine, Rakhine State remains underdeveloped and the second poorest state, and has not come out of being the second poorest state.

In this research paper, two states are examined rather than a comprehensive study of all natural resources in the country. However, the findings from these two states can provide valuable lessons for other states and regions and be helpful when considering future resource governance in the country. In Rakhine State, enormous problems remains: inaccessibility to the memorandum of understanding between the Myanmar government and foreign corporation for mega development projects in Rakhine State; implementation of the projects without public consultation with local communities; land grabbing resulting from project implementation; lack of transparency and accountability; and damage to livelihoods and the environment. In Kachin State, citizens start to question the capacity and intention of the government because taxes on jade mining are not effectively collected and environmental damage has not been addressed. If these issues persist, the international community is likely to label Myanmar as a country cursed rather than blessed by its resource.

In conclusion, the highly centralized natural resource sector needs to be appropriately governed. As seen in other countries, resource rights (ownership, management and revenue sharing) should be prescribed in the constitution. In countries where natural resource governance was not addressed in the constitution, these rights were secured in peace agreement. The present Myanmar peace process is far from encouraging, but it is important that political negotiations continue. Natural resource governance is a topic that should be discussed and negotiated. If stakeholders can reach an agreement on resource governance, it will help reduce armed conflict between them. From there, the current Constitution should be amended in accordance with peace agreement. Only then will the emergence of a future federal union and sustainable peace be secured.

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ANNEX 1: NATURAL RESOURCES POLICIES (DRAFT)

Source: *Ethnic Nationalities Affairs Center (ENAC), “Sectorial Policy Recommendations for Building Future Federal Democratic Union (Draft)”, page 23-26*

Goals

Ethnic nationalities’ right to ownership, use, management and decision making over natural resources within the respective State must be included and enacted in the State Constitution created in line with the Federal Democratic Constitution.

Guiding Principles

1. Large-scale investment projects, special economic zones, extraction and use of valuable natural resource that are potentially harmful to the wellbeing of local ethnic communities must be halted until a “Union Peace Accord” is achieved.
2. When managing natural resources, local indigenous communities must have the right to sustainably manage and have decision making power over natural resources under the governance of a Federal Democratic Union.
3. Local communities must be prioritized when providing information and obtaining free consent, in line with FPIC, for large-scale projects, including special economic zones, and valuable resource extraction.

Policy Recommendations

1. Ethnic peoples are the ultimate owners of all natural resources in the respective State.
2. A law ensuring the right of local ethnic peoples to practice their traditional management systems over natural resources above and below the ground, above and beneath the water, and in the atmosphere must be enacted.
3. Local ethnic communities, the government of the Federal Democratic Union, and State and local governments must cooperate together when managing natural resources.
4. The State government must have the right to extract and directly receive revenue from natural resources, and control, manage, and make decisions over natural resources in the respective State, and this must be enacted in the constitution of the Federal Democratic Union.
 - **Rule of Law & Framework for Management** – (1) A clear strategy must be created for inclusive and transparent management of extraction and sale of natural resources. (2) Laws to effectively control natural resource management must be enacted and practiced. (3) There must be effective cooperation between Federal and State governments for appropriate taxation from the sale of natural resources, including petroleum, natural gas, and coal extraction.
 - **Surveying & Licensing** – (1) During geographical surveying and information collection, background history and latest facts and information must also be included. (2) The licensing process must be based on consideration of environmental and social risks. (3) There must be transparency at every stage of the licensing process.

- **Accountability** – (1) Agreements made for development projects must be made public, including to ethnic communities. (2) The companies investing in respective projects must be transparent about their share of ownership and size of their investment in the project. (3) Accurate financial and investment information must be made public.
5. The ratio of revenue sharing between the government of the Federal Democratic Union and the State governments, from natural resource extraction, must be precisely stated in the constitution of the Federal democratic Union.
 - **Taxation** – (1) There must be a clear and stable taxation system with progressive taxation. (2) The Tax income must be well documented. (3) To strengthen financial management and tax investigation, independent audit commissions must be created and implemented
 - **Revenue sharing and management** – (1) to stabilize high annual expenditures, financial income from abroad or other sources must be included and managed by State and Federal governments in their budgets. (2) Sharing of income revenue and tax collected from natural resource extraction including a revenue sharing formula with ethnic States, must be enacted and implemented. (3) The amount of tax to be collected from government-owned and any army-owned businesses must be clearly defined and implemented.
 - **Government-owned business** – (1) Government-owned natural resource extraction businesses must also be transparent and accountable in accordance with laws governing other businesses. (2) There must be laws, which clarify roles and duties, and prohibit misuse of public money, weak management and corruption and effective enforcement mechanisms.
 6. When carrying out investments and projects related to natural resources, all levels of government must first ensure that Environmental Impact Assessments (EIA), Social Impact Assessments (SIA), Health Impact Assessments (HIA), Conflict Impact Assessments (CIA) and other assessments are carried out in order to obtain public consent to implement the projects.
 - **Managing negative impacts** – (1) There must be clear policies mandating impact assessments. (2) Before the implementation of projects, local ethnic communities must have the right to prior information, and their consent must also be attained. Local ethnic people must have the right to express their views on the projects. (3) In addition to providing necessary protection for the security of the local public, including women, from the areas near the projects, there must also be treatment and rehabilitation services for impacted communities after the closure of extractive projects. (4) Environmental Impact Assessments (EIA), Social Impact Assessments (SIA), Health Impact Assessments (HIA) and Conflict Impact Assessments (CIA) and other assessments implemented by local indigenous communities must be publicly recognized.
 7. The right must be given to form independent monitoring commissions, composed of CBOs, CSOs and experts, to investigate the extraction and sale of natural resources.
 8. Revenues generated from natural resources must be spent on health, social, education and other development work in ethnic areas – (1) Priority must be given to investment in health and education services. (2) Basic infrastructure required for development of local communities must be built. (3) Management of local development project funds must be closely overseen.

9. Compliance of international companies and investors with natural resource management laws and regulations must be closely monitored.
 - **The Role of International Companies** – (1) Companies must follow international standards of social accountability and responsibility during project implementation. (2) In the investment process, the consent of local ethnic communities is of primary importance. (3) If the national investment law is found to be weaker than international standards, then international norms must be followed when implementing projects.
 - **The Role of the International Community** – (1) International donor groups must support projects implemented with consent of all stakeholders. (2) Monitoring and implementation must be carried out in line with international standards.
10. Natural resource education must be included in the school curriculum.
11. To prevent excessive natural resource extraction over a short period of time, policies to minimize damage to the ecosystem must be enacted.

ANNEX 2: THE LEGEND OF JADE DISCOVERY

Jade was first discovered by Du Jan Naw Hpwi Tsen, the wife of Jeng Reng Duwa. One day while on a trip to pick leaves (which were typically used to pack food) with her followers, she came across a parade of wild elephants and had to hide from them in a safe place. The elephants were headed to the same areas where Du Jan Naw Hpwi Tsen wished to pick leaves. When coming out of her hideout after the elephants were gone, she found glittering green rocks on the path the elephants had treaded.

Although she passed by the path every day on the way to the fields, she had never seen such big rock glittering. Now she could see them because the moss covering this rock was removed after the parade of wild elephants. When she arrived back home, she told her husband about the rocks. Her husband Duwa thought that the rocks could be used as a chair for their tribe's shaman, so he asked his servants to retrieve it.

As the Duwa's wife had no chair, she also used the rock as a chair when she weaved. So, the rock was used both by Duwa's wife when weaving and as a chair for the shaman at the spirit festival called Nat Pwe. One day, when Wangli Min and Tung Chu Chya, the Chinese traders for the Duwa, arrived to buy rubber, they saw the rock the Duwa's wife was sitting on and bought it from her for 300 silver coins, which was all they had brought with them. The Duwa's wife, who did not know the value of the rock, joyfully reported to the Duwa that the Chinese traders must have made a mistake by purchasing the rock for so much money. However, the Duwa thought that the traders' purchase of the worthless rock for lots of money is illogical and suspected his wife's relationship to those two Chinese traders.

When those two Chinese traders returned to the Duwa and his wife, they said that the Chinese king was thankful to the Duwa's family and gave the Duwa an passed additional 200 silver coins. Then, the traders asked permission to extract more jade, and the Duwa granted the Chinese extraction rights and imposed a 10% tax. According to traditional folklore, the jade quarry uncovered by the elephants' footprint was called Magwi Hkang Maw. Other quarries were uncovered by dogs' footprints and called Gwi Hka Maw.

Source - *Lungseng Duwa Hkyeng La Awn, Lung Tsit Seng Hprat (October 2016)*

ANNEX 3: STAFF OF THE GOVERNMENT'S JADE MINING DEPARTMENT (LONEKHIN)

| No | Department | Director | Deputy Director | Assistant Director | Deputy Assistant Director | Assistant Manager | Staff | Total |
|----|---|----------|-----------------|--------------------|---------------------------|-------------------|-------|-------|
| 1 | Jade Mining Department (Lonekhin) | | | | | | | |
| | (a) Management/Maintenance | 1 | 1 | - | - | 3 | 17 | 22 |
| | (b) Maintenance/Transportation | - | - | 1 | - | 1 | 14 | 16 |
| | (c) Supervision | - | - | - | 1 | 1 | 4 | 6 |
| | (d) Measurement/Inspection | - | - | 1 | 1 | 2 | 8 | 12 |
| | (e) Evaluation (Pha Ka) | - | - | 1 | - | 2 | 5 | 8 |
| | (f) Evaluation (La Kha) | - | - | 1 | - | 2 | 5 | 8 |
| | (g) Ton (3000) | - | - | - | - | - | 3 | 3 |
| 2. | Jade Mining Department, camp office (Khan Nee) | - | - | - | 1 | 2 | 4 | 7 |
| 3 | Jade Mining Department, camp office (Moe Nyin) | - | - | 1 | - | 2 | 10 | 13 |
| 4 | Jade Mining Department, camp office (Myitkyina) | - | - | - | 1 | 1 | 5 | 7 |
| | Total | 1 | 1 | 5 | 4 | 16 | 75 | 102 |

ANNEX 4: PRIVATE AND JOINT VENTURE MINING BLOCKS BY GEMSTONE TRACTS

| No | Gemstone Tracts | Private Mining Blocks | Joint Venture Mining Blocks |
|----|-------------------|-----------------------|-----------------------------|
| 1 | Lonekhin/Hpakant | 6,929 | 305 |
| 2 | Maw Luu , Maw Han | 6,209 | - |
| 3 | Nant Yar Sate | 44 | - |
| | Total | 13,182 | 305 |

Note: The above two tables shows the number of staff and mining blocks of Jade Mining Department (Lonekhin) under Myanmar Gem Enterprise of Ministry of Natural Resources and Environmental Conservation. (adapted from the unpublished government report, 1.4.2015-31.7.2016)

ANNEX 5: THE FUNCTIONS AND DUTIES OF JADE MINING DEPARTMENT (LONEKHIN)

1. Designation of jade mining blocks in prospective jade reserve areas; Report to relevant higher authorities; grant permits for mining blocks, inspect whether rule, orders and directives are observed;
2. Report to the Valuation Body raw jade stones extracted from permitted mining blocks; Impose tax on raw jade stones after its value is assessed; Ensure all entitled tax payment are paid;
3. Ensure that joint venture between state and private enterprises comply with rules and regulations when mining gemstones; with the Area Supervision Team closely supervise extracted raw jade stones in order to prevent waste and damages;
4. Transport taxed raw jade stones from private enterprise and joint ventures and the captured raw jade stones to Naypyidaw for sale at the emporium;
5. Implement maintenance procedures to preserve underground gems museum that exhibit a jade stone of 300 tons;
6. Cooperate with relevant departments to minimize environmental damages from jade mining; Ensure the stable flow of water in the Uru River; and take preventative measures to guard against the collapse of discarded mining tailings.
7. Ensure in accordance with laws, that no raw jade is extracted without permission and no raw jade is smuggled out of the country and sold abroad.

ANNEX 6: TAXES IMPOSED ON GEMSTONES

| No | Types of Tax | Article | Calculation | Tax Rate |
|----|----------------|--|---|----------|
| 1 | Royalty | 1995 Myanmar Gemstone Law, Article 27(a) (i) | Based on the value assessed by the Valuation Body | 20% |
| 2 | Special Goods | 2016 Union Tax Law, Schedules in Article 11 (a) | (a) Jade, Ruby, Sapphire, emeralds, diamonds and other previous stones (rough) (import from foreign countries) | 15% |
| | | | (b) Jade, Ruby, Sapphire, emeralds, diamonds and other previous stones (finished gemstones, jewelry and material made from gemstones) (import from foreign countries) | 5% |
| | | 2016 Union Tax Law, Schedules in Article 11 (b) | (a) Jade, Ruby, Sapphire, emeralds, diamonds and other previous stones (rough) (import from foreign countries) | 20% |
| | | | (b) Jade, Ruby, Sapphire, emeralds, diamonds and other previous stones (finished gemstones, jewelry and material made from gemstones) (import from foreign countries) | 5% |
| 3 | Commercial Tax | 2016 Union Tax Law, Article 36 (a) (ii) and Article 14 (c) | Assessed on exporting, manufacturing, selling and trading | 5% |
| 4 | Income Tax | 2016 Union Tax Law, Article 21 | Assessed on the total net profit of a company | 25% |
| 5 | Service Fees | 2016 Myanmar Gemstone Law, second amendment, Article 28 | Assessed on the actual sales of a gemstone | 3% |

ANNEX 7: STATEMENT OF KACHIN PEOPLE ON 'NATURAL RESOURCE GOVERNANCE IN KACHIN STATE'

Date: March 7, 2016

On March 1, 2016, 103 leaders of Kachin State from 61 organizations from civil society organizations, political parties, and religious organizations met at Myitkyina, Kachin State to discuss “Natural Resource Governance in Kachin State”. The following statements were agreed collectively at the forum.

1. To institute federalism, self-determination in no time with administration, judiciary, and legislation put in place in Kachin State level, which the central government endorse the state minister elected by the Kachin State Hluttaw.
2. The people of Kachin State are the ultimate owners of all natural resources above and below the ground, above and beneath the water and in the atmosphere in Kachin State.
3. To constitute the ultimate management authority of natural resource extraction, taxation and management, revenue sharing to Kachin State government.
4. To stop all project operation and natural resource extraction in ethnic areas without conflict resolving politically; which provoke conflicts in ethnic areas.
5. To ensure “free, Prior, Informed and Content” with local community before issuing operational permission for any projects.
6. To disclose all information transparently and educate the people, on grievance mechanisms in natural resource extraction, taxation, licensing processes revenue sharing in respect of “Right to Know” of the people.
7. Accountable and monitor corruption, environmental degradation, armed conflict social problems occurs due to natural resources.
8. Avoid recommending without acknowledging and analyzing of local context, history and culture regarding revenue sharing mechanism and ratio in Kachin, from local and international researchers and experts.

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Endorsing Organizations

1. Kachin Cultural and Literacy Committee (Manaw Park)
2. Kachin Development Networking Group (KDNG)
3. Hugawng Farmers’committee
4. Kachin Peace Network (KPN)
5. Kachin Women Peace Network (KWPN)
6. Kachin Women Association Thailand (KWAT)

7. Uak Thon
8. Myusha Social Development Society (MSDS)
9. Independent Christian Church Home Mission
10. Lachid Culture and Literacy Central Committee
11. Nau Shawng Education Network (NSEN)
12. Mung Chying Rawt Jat (MRJ)
13. Town Church-Geis (Myitkyina)
14. Anglican Church (Myitkyina)
15. Sadung Baptist Church
16. Chipwi Baptist Church
17. Roman Catholic Church (Myitkyinar)
18. Moe Nyin Kachin Baptist Church
19. Myanmar Council of Churches (Mitkyina)
20. Lisu Development Party
21. Kachin State Democracy Party (KSDP)
22. Kachin Democratic Party (KDP)
23. Thingnai Baptist Church Central Committee
24. My Sha Zin Lum Hpung
25. Mali Yang Buga Hkalup Hpung
26. Sadung Baptist Church
27. Humanitarian Institute (HI)
28. Htoi Gender
29. Ram Hkye
30. Kachin State Farmers Network
31. Kachin Alliance (USA)
32. Wunpawng Ninghtoi (WPN)
33. Civil Society Network for Peace Kachin (CSNeP Kachin)
34. Loi Yam Bum Community Development Organization (Moh Nyin)
35. Mingala Foundation (Wai Maw)
36. CHAD
37. KBZ Social Service Group (Moegaung)
38. Bhamaw Youth Network
39. Zinlum Bhamaw
40. Htoi Shalat Social Service group (Hpakant)
41. 88 Generation (Moe Nyin)
42. Gender and Development Institute-Myanmar (Kachin State Office)
43. Kachin Development Foundation (USA)
44. Kachin Relief Fund (England)
45. Kachin Women Union
46. Kachin Women Association
47. Hkalup Hpung Madung (Maisak Wang)
48. Washawng Buga Hkalup Hpung
49. All Kachin Youth Union
50. Kachin Legal Aid Network (Shingnip)
51. KBC Hkrumra Committee
52. Kachin Lawyers Group
53. Pyoe (Myitkyina)
54. Galile IDP camp (Myitkyina)

ANNEX 8: ARAKAN NATIONAL PARTY NATURAL RESOURCE SECTOR POLICY PAPER

Source: *Policy Paper submitted by Arakan National Party at the Union Peace Conference
– 21st Century Panglong, Page 7*

1. All natural resources belong to the ethnic national states where they exist. The relevant ethnic nationalities states retain the natural resource governance rights.
2. The relevant ethnic nationalities states have not only the rights to extract, control and manage its natural resources but also the rights to collect revenues and share such revenues with the federal government.
3. Concerning rights to own, manage and benefit from natural resources, no differentiation of the schedules between ethnic nationalities states and federal government must be made. All natural resources will be managed by the relevant ethnic nationalities states: after the state-entitled percentage agreed upon is deposited into the state's financial account, the percentage to share with federal government will be transferred to the federal budget.
4. The percentage of resource revenue to contribute to federal budget will be transferred only after securing the approval of the ethnic nationalities state's parliament.

ANNEX 9: OWNERSHIP OF NATURAL RESOURCES IN SELECTED COUNTRIES

| Unitary States | |
|----------------------|---|
| Indonesia | The State [Article 33.2] Sector of production which are important for the country and affect the life of the people shall be under the power of the State. (3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people |
| Papua New Guinea | The State Ownership of natural resources for Bougainville Island to be determined in the future.[Part I, Article 2.2] The sovereignty of Papua New Guinea over its territory, and over the natural resources of its territory is and shall remain absolute. |
| Federal States | |
| Canada | The Provinces [Article 109] All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Province of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same |
| Nigeria | Government of the Federation [Article 44] The entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive economic Zone of Nigeria shall vest in the Government of the Federation. |
| Iraq | The People [Article 111] Oil and gas are owned by all the people of Iraq in the regions and governorates. |
| Russia | Private, state, municipal and other forms of ownership [Article 9.1] The land and other and other natural resources shall be used and protected in the Russia Federation as the basis of life and activity of the peoples living on their respective territories. (2) The land and other natural resources may be in private, state, municipal and other forms of ownership. |
| Sudan | Not designated [Comprehensive Peace Agreement, Wealth Sharing Protocol Article 21.1] Without prejudice to the position of the parties with respect to the ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of these resources. |
| United Arab Emirates | Public Property of the individual Emirates [Article 23] The natural resources and wealth in each Emirate shall be considered to be the public property of that Emirate. [...] |
| Venezuela | The Republic [Article 12] The mining deposits and of hydrocarbons, [...] existing in the national territory, under the bed of the territorial sea, in the exclusive economic zone and the continental platform, belong to the Republic, are goods of the public dominion and, therefore, inalienable and imprescriptible. |

Source - “Negotiating natural resources for peace: ownership, control and wealth –sharing” by Hd Briefing paper, October 2009, 11 (http://comparativeconstitutionsproject.org/files/resources_peace.pdf)

ANNEX 10: ALLOCATION OF AUTHORITY FOR NATURAL RESOURCES IN SELECTED COUNTRIES

| National Priority | Regional Priority | Shared/Divided Priority | Asymmetrical |
|--|--|---|--|
| Nigeria - National Parliament has exclusive legislative authority over mines and minerals, including hydrocarbons. [Section 39 of the Exclusive Legislative List] | Canada Provincial legislatures and governments are given exclusive authority to make laws related to exploration for non-renewable natural resources; development, conservation and management of non-renewable and forestry resources. [Article 92] | Iraq The federal government, together with the producing regional and provincial governments, are given the responsibility to formulate strategic policies to develop Iraq's oil and gas wealth to achieve the highest benefit to the Iraqi people. [Article 112.2] | Indonesia Council of Representatives of the Regions (Upper House of Parliament) given exclusive responsibility for legislation related to the management of natural resources and other economic resources. [Chapter VIIA 22D Sections 1 and 2] |
| Venezuela National Public Power (Federal Government) has responsibility for the governance and management of mines and hydrocarbons. [Article 156.16] | United Arab Emirates Each emirate has full control over its natural resources and other wealth. [Article 23] | Russia Joint jurisdiction of the Russian Federation and the subjects of the Federation over use and management of land, mineral resources, water resources, and other natural resources as well as protection of the environment. [Article 72.1.C and Article 72.1.E] | Law on the Government of Aceh provides for joint management of oil and gas resources between Government of Indonesia and Provincial Government of Aceh. [Section 160 Article 5] |
| | | Sudan National Petroleum Commission (NPC) established with representatives of National Government, Government of Southern Sudan and state governments. NPC given responsibility for formulating public policy, development strategies, and negotiating and approving all oil contracts. [Comprehensive Peace Agreement, Wealth Sharing Protocol, Article 3.2] | Papua New Guinea Natural resources included in the National Legislative Power. Natural resources and land included in powers and functions to be transferred to the Bougainville Autonomous Government when it feels it has the need and capacities. [Article 290.2.zd] |

Source - "Negotiating natural resources for peace: ownership, control and wealth –sharing" by Hd Briefing paper, October 2009, 14 (http://comparativeconstitutionsproject.org/files/resources_peace.pdf)

ANNEX 11: TREATMENT OF NATURAL-RESOURCE REVENUE-SHARING IN SELECTED COUNTRIES

| National Revenue-sharing | Power of Taxation | Regional Control |
|--|--|---|
| Indonesia Requires implementing legislation [Article 18.A.2] Legislation requires 15% of oil revenues and 30% of gas revenues to be transferred to the originating provinces. Special arrangements for Aceh that allow it to receive 70% of its oil and gas revenues. [Section 181 Article 1.B of the Law on the Governing of Aceh]1 | Canada Provinces have the exclusive right to levy a range of taxes and royalties on earnings from natural resources. [Article 92.A4] Federal government is able to levy corporate income taxes. [Article 91.3] | United Arab Emirates – Emirates required to contribute a negotiated portion of their annual revenues to the Union Budget. [Article 127] |
| Iraq Federal government, together with producing provinces and regions, is given the authority to manage oil and gas extracted from present oil and gas fields, provided that it distributes these revenues in proportion to the population distribution and specifying an allotment for previously disadvantaged areas. [Article 112.1] | Iraq Constitution does not specify a power of taxation, but states that non-enumerated authorities revert to regions and provinces. Local governments could therefore theoretically tax oil and gas operations. [Article 115] | Iraq Constitution is silent on future oil and gas fields, potentially implying regional control of these revenues. [Article 115] |
| Nigeria Formula for distribution of oil revenues is decided by Parliament every five years. Constitution requires that population, equality of States, internal revenue generation, and land mass be taken into account in allocation formula with a minimum of 13% reserved for oil-producing states. [Article 162.2] | Russia Russian Federation and states jointly establish of common principles of taxation [Article 72.1.i], with this to be regulated by federal law [Article 75.3]. In practice, states able to levy corporate profit taxes on oil and gas companies | |
| Sudan Net oil revenues split equally between Government of Sudan and Government of Southern Sudan with 2% of oil reserved for producing states in accordance with their proportion of production. [Comprehensive Peace Agreement, Wealth Sharing Protocol Article 5.5-5.6] | Sudan National government is able to levy business-profit taxes and states are able to levy land-property taxes, royalties and excise taxes. [Comprehensive Peace Agreement, Power Sharing Protocol, Schedule A.35, Schedule B.12 and Schedule C.39] | |

| | | |
|---|---|--|
| Venezuela Requires 15-20% of national budget to be transferred to the states. [Article 167.4] and envisions special allotments for states with hydrocarbon and mining activities [Article 156.16] | Papua New Guinea National government will support Bougainville in the goal of becoming financially self-reliant; once this occurs the two governments will establish a revenue-sharing formula. [Article 324] | |
|---|---|--|

1 Drafters considered giving Aceh the right to collect natural-resource revenues directly, keep its 70% share and to forward the remainder to the central government but ultimately chose to provide for greater transparency on the handling of revenues originating in Aceh (use of an external auditor on the collection and allocation of revenues originating in Aceh). [Section 181 and 194 of the Law on Governing Aceh]

Source - "Negotiating natural resources for peace: ownership, control and wealth – sharing" by Hd Briefing paper, October 2009, 22 (http://comparativeconstitutionsproject.org/files/resources_peace.pdf)

ANNEX 12: PROFILE OF LOCAL VILLAGERS INTERVIEWED DURING FIELD STUDY TO THREE VILLAGES IN KYAUKPHYU, RAKHINE STATE

| Village1 | |
|--------------------------------------|---|
| Village Name | Malakyun |
| Houses | 260-270 |
| Education (school) | a branch middle school |
| Economy | Seasonal farming (cucumber, eggplant, chili etc. |
| Local farmers and people interviewed | <ol style="list-style-type: none"> 1. U Soe Thwin (Village administrator) 2. U Hnin Tun 3. U Wai Phyu 4. Daw Ngwe Kyi 5. U Wai Khin 6. U Tin Shwe Lay 7. U Aung Saw Nu (Ohne Taw Village) 8. Daw Kyi Kyi Nyunt (Kone Shin village) 9. U Kyaw Thaung 10. U Naing Naing Tun 11. U Khin Maung Yi 12. U Soe Lwin 13. Daw Hnin Hnin Nu 14. Ko Hla Htun (Lake kamaw village) 15. U Maung Yaung |

| Village 2 | |
|--------------------------------------|--|
| Village Name | Nann Pae Taung |
| Houses | 89 |
| Population | - |
| Education (School) | A branch middle school |
| Economy | Seasonal Farming (cucumber, Eggplant, Chili etc.,) |
| Local farmers and people interviewed | Note: About 12 people were interviewed, but their names were not recorded. |

| Village 3 | |
|--------------------------------------|--|
| Village Name | Pyar Tae |
| Houses | 135 |
| Population | Over 600 (estimated) |
| Education (School) | A branch middle school |
| Economy | Seasonal crops and paddy farming |
| Local farmers and people interviewed | Note: About 20 people were interviewed, but their names were not recorded. |

ANNEX 13: FIELD STUDY AND WORKSHOPS PHOTOS

Photo Records of Research Trip to Kachin State



Kachin State Natural Resource and Environmental Conservation Minister H.La Aung and ENAC research team members



Kachin State Chief Minister Dr. Khet Aung and ENAC research team members



Peace-talk Creation Group and ENAC research team members



Technical Advisory Team (TAT) and ENAC research team members



Steven Naw Awng from Kachin Development Networking Group and ENAC research team members



Chairman of Kachin State Democracy Party Dr. Manam Tu Ja and ENAC research team members



Dr. Hkalam Samson, General Secretary from Kachin Baptist Church (KBC) and ENAC research team members



Chairman U Khat Htain Nan from Unity and Democracy Party of Kachin State and ENAC research team members



Leaders of Kachin political parties and ENAC research team members

Photo Records of Research Trip to Rakhine State



*ENAC Executive Director Zo Tum Hmung interviewing
Rakhine State Chief Minister U Nyi Pu*



*Chairman of Arakan Oil Watch U Jockai Khaing and
ENAC research team members*



*Chairman of Arakan National Party Dr. Aye Maung and
ENAC research team members*



ENAC research team interviewing the farmers/villagers from Malakyun Village



Members of Arakan National Party and ENAC research team members



ENAC research team interviewing the local farmers from Nann Pae Taung Village, Kyaukphu



ENAC research team interviewing the local farmers from Pyar Tae Village, Kyaukphu

Photo Records of Natural Resource Research Paper Workshops with Key Stakeholders



*Workshop with EAOs Leaders and Representatives
(11-12 January 2017)*



*Workshop with CSOs leaders and representatives
(13 -14 January 2017)*



*Workshop with political parties
(16-17 January 2017)*



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