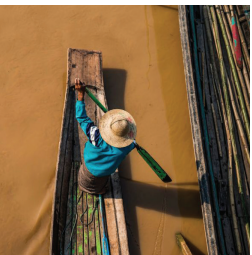


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## A New Look at Federalism in Myanmar

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# Contents

Summary	01
Introduction	03
Federalism – building a state out of nations	05
‘Blueprint’ (top-down) federalism	08
The peace process - 2011-2021: broken promises of federalism	14
Federalism, governance and services - Myanmar’s ‘rebel rulers’	18
The Federal Democracy Charter	24
Ethnic coordination and consultation bodies	27
Federalism, sovereignty and climate change	31
Emergent federalism: implications for support	33
Tentative conclusions	34

## Summary

Myanmar is facing three extraordinary 'triple stress' crises: the Covid pandemic, the February 1, 2021 coup, and climate change (the full impacts of which have yet to be felt). At this critical juncture, it is worth re-visiting and re-imagining the type of country Burma could be.<sup>1</sup>

Federalism has long been considered an important tool for resolving Myanmar's protracted state-society and centre-periphery conflicts and achieving self-determination for ethnic nationality communities. Federalism is a possible means to an end: in the case of Myanmar, enabling self-determination and justice in the context of protracted armed conflicts, in which ethnic nationality (or minority) groups have struggled for decades against a violent and predatory state which has long suppressed ethnic identities, and political, social-economic and cultural autonomy. With its emotional-symbolic weight and potential value as a conflict resolution (or at least conflict management) tool, federalism may be an idea whose time has come, again.

There are already existing and effective forms of sub-state governance in Myanmar, which require creative support from donors, particularly given the coup and illegitimacy of the SAC regime. Myanmar needs Federal Democracy, based on recognition of existing governance administration systems at the state level, which are mostly under the authority of anti-coup ethnic and pro-democracy forces.

Federalism in Myanmar has often been discussed in terms of the need to revise or replace the 2008 constitution, usually in a top-down ('blueprint style') manner. While constitutional change is necessary, federalism can also be seen as an 'emergent phenomenon' – developing from the 'bottom-up', out of the existing practices and existing arrangement of communities and Ethnic Resistance Organisations (EROs) – or Ethnic Armed Organisations (EAOs)<sup>2</sup> – and other political and governance actors which seek to represent and serve them.

This essay takes a 'bottom up' approach, exploring how forms of 'federal practice' already exist, and could be better acknowledged and supported. Some of Myanmar's diverse EAOs and EROs have long-established governance and administration regimes, delivering a range of services to communities in their areas of control or influence (often in partnership with civil society groups and networks). Armed organisations such as the Kachin Independence Organisation (KIO), United Wa State Army/Party (UWSA/P), Restoration Council of Shan State (RCSS), Karenni National Progressive Party (KNPP), Karen National Union (KNU) and New Mon State Party (NMSP), and more recently the Arakan Army (AA), have extensive experience in governance, and delivering services to civilian populations.

These governance-administration roles, combined with the locally owned and delivered health, education and other services provided by ERO line-ministries (often in partnership with CSOs), can be considered the building blocks of a new type of federalism. Other key governance actors, with potential claims to sovereignty – or at least political relevance – in discussing new forms of federalism in Myanmar include sub-national governance bodies, which have emerged in several areas since the coup. Primarily including ethnic stakeholders, these organisations, such as the Kachin Political Interim Coordination Team (KPICT), Karenni State Consultative Council (KSCC) and Mon State Interim Coordination Committee (MSICC), are potentially the most inclusive power-sharing and governance bodies ever established in their respective areas, including participation by key EROs, CSOs, political parties and regular civilians. These bodies may occupy similar structural positions to the People's Administrative Bodies (PABs) which have emerged in many areas of the country where anti-coup People's Defence Forces (PDFs) have been active, opposing the military junta and establishing skeleton opposition administrations (mostly focusing on services delivery, including IDP relief and provision of basic health and education).

The emergence of federalism-from-below in Myanmar is an asymmetrical phenomenon, based on deep-rooted political cultures among long-established ethnic nationality stakeholders and societies, which have played out differently in different parts of the country. In order for federal political arrangements to meet the historic demands of ethnic national communities, it will be important that minority representatives (and 'minorities-within-minorities') are included in decision-making and power-holding forums at the sub-state level. Although EROs enjoy significant legitimacy among the communities they seek to represent, their political credibility needs to be demonstrated to domestic and international stakeholders through responsible and rights-based approaches to local government and services delivery, including natural resource and forest management.

## Introduction

Federalism has long been considered a solution to Burma's protracted state-society and armed ethnic conflicts. Establishing a credible (or 'genuine') federal union remains the key demand of most ethnic nationality political actors in the country. For ethnic nationality elites and communities, self-determination through federalism is a necessary prerequisite of democratization.

Recent debates have questioned whether Myanmar is a 'failed state', and/or if this concept is relevant.<sup>3</sup> However, Burma has never achieved credibility as a state with which the majority of its citizens can positively identify. As David Steinberg has recently pointed out, since independence, political leaders have failed to achieve a common sense of belonging among its various ethnic nations, especially between elites from the ethnic Bama (Burman) majority and ethnic communities, which constitute over one-third of the population (of about 55 million people).<sup>4</sup>

Nearly all of the country's ethnic politicians have committed to achieving 'genuine federalism', which has long been presented as a solution to Myanmar's state-society and centre-periphery tensions and violent crises. Historically, there has been relatively little discussion of what the concept means and how to achieve it. Nevertheless, over the past decade, Ethnic Armed Organisations (EAOs) and Resistance Organisations (EROs) and non-armed ethnic political parties in Myanmar have done considerable work in developing a coherent federal agenda, based mostly on the need to re-work (or replace) the 2008 constitution.

Particularly important in this respect is the Federal Democracy Charter, promulgated by anti-coup forces on 31 March 2021. The Charter was ratified by a (first) People's Assembly, convened between 27-29 January 2022, with a revised version published in March. Chapter 12 of the charter ('Pledge to Build the Federal Democratic Union') ratifies a "federal vision, values, goals, objectives."<sup>5</sup>

As often during periods of dramatic transition, political and structures and alliances are still catching up with realities on the ground. According to the neoclassical economist Milton Friedman, "Only a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes the politically inevitable."<sup>6</sup>

Myanmar has, in the past two years, experienced two massive crises: the global Covid-19 pandemic, followed and exacerbated by the February 2021 military coup. These disruptive junctures are likely to be exacerbated by the impacts of climate change.<sup>7</sup> The triple stressor of Covid, the coup, and climate change have introduced a political landscape in which it is possible to think about federalism in new and creative ways. Some of the larger and longer-established EAOs and EROs have developed the building blocks of federalism and are *en route* to establishing themselves as micro-states, effectively independent of the Union in most ways.

Despite many challenges, these groups arguably now have greater political leverage than in several years. The illegal military coup of 1 February 2021, and subsequent vicious crackdown on the people of Myanmar who have mostly opposed to military takeover represent the best opportunity since Burma's independence to re-examine these questions.

## Federalism – building a state out of nations

Like peace, 'federalism' means different things to means different things to different stakeholders. Technically, federalism refers to a mixed sovereignty<sup>8</sup> system of government, which divides and shares power and authority between a central (Federal/Union) and provincial (State/Region) level governments.<sup>9</sup>

This report examines the types of structure that might emerge at the 'sub-national' level. It leaves aside wider consequential issues such as the relationship between 'emergent' sovereign bodies (often associated with EROs) and the union level government, including the question of EAO representation in that government. Not least among aspects requiring further attention is the importance of representatives or delegates from states having a seat (and say, even a veto) at the federal union level.

Federalism has long been seen as a potentially powerful tool for achieving self-determination for Myanmar's diverse ethnic nationality communities. The concept and practice are related to consociational (elite pact) approaches to political settlements in multi-ethnic countries, where territorial division of power to sub-state nationalities can play a political accommodation role that has conflict resolution dividends.<sup>10</sup> Related but distinct concepts include 'decentralisation' and 'regional autonomy'.<sup>11</sup> The latter is a form of decentralization sometimes used where particular group/s are concentrated in a specific geographic area and are demanding political and cultural autonomy which can be relatively easily demarcated. Regional autonomy can be introduced without a federal constitution, through the introduction of 'special regions' - as arguably has been de facto the case in parts of Myanmar, since the ceasefires of the late 1980s and '90s.<sup>12</sup> (Autonomy under this dispensation being defined in geographic terms.)

For many conflict-affected communities, federalism is valued as enabling (or constituting) a political settlement that might prevent the continuation or recurrence of armed conflict. For ethnic elites in Myanmar, federalism has usually had a stronger attraction than decentralisation or regional autonomy as this would require a fundamental legal-constitutional re-structuring of the central state, as well as devolving power at the periphery. Ethnic actors' calls for federalism in Myanmar come from political cultures and deep-seated experiences of inequality vis-a-vis the Bama majority community. In contrast, Bama (or Burman) political and (particularly) military elites have historically been wary of federalism. In 1962, General Ne Win used concerns about the supposed imminent disintegration of Burma's national unity, through the imposition of federalism by a civilian government, as a pretext for the March military takeover.



Typically, federalism is achieved either through a 'federating process', bringing together independent units to create a union, or through a 'federalising process' (or process of radical decentralisation), wherein the central authority of a single political unit negotiates or renegotiates with local or regional political constituent parts to provide them with constitutional autonomy<sup>13</sup> (as opposed to a 'holding together' type of federalism, as in neighbouring India). I argue that a key dynamic in Myanmar's federalising process is that the segments (state units) are regarded as autonomous, and in effect sovereign.

The key element in the post-coup Myanmar context, with the collapse of legitimate central state authority, is that in a federalising process, the segments (state units) are regarded as sovereign.<sup>14</sup> This happened when the 13 North American colonies formed a federal union in 1789 and when the German Empire was created in 1871. Although in both cases the states no longer enjoy constitutional independence, key powers (and popular sovereignty) are still closely guarded at the state level.

More uncommon is to federalise a pre-existing 'unitary' state through a process of radical decentralisation. Forms of devolution or regionalisation have occurred in recent decades in the UK and Spain, but interestingly, reflecting past territorial divisions and concepts of nationalities.

A federal constitution has become something of a fixation in ethnic nationality circles in Myanmar, where calls for 'genuine federalism'<sup>15</sup> are widespread, while the details of what is required and how this will be achieved have not always been clearly articulated. As already noted, there are many forms of federalism, and different ways of getting there. The February 1947 Panglong Conference can be seen as a federating moment, in which different leaders from - but not necessarily fully representative of - Shan, Chin, and Kachin communities agreed to form an independent union after the withdrawal of British colonial power (see below). Whether this is how the Panglong Agreement was understood at the time by Aung San and other participants is questionable. However, more than half a century later, approaching federalism in Myanmar would require a process of 'federalising', whereby the present dispensation would be re-negotiated to create a genuine federal union.<sup>16</sup>

In more recent times, the governance-administration roles of Myanmar's longer-established EROs, combined with the locally owned and delivered health, education, and other services provided by their line ministries (often in partnership with CSOs), have already established the building blocks of federalism. It is therefore worth considering federalism as an 'emergent phenomenon', built from actually existing, locally owned, and delivered practices and structures. Arguably, the present crisis offers the best opportunity since the Panglong Conference of the idea that a federal union needs to emerge out of agreements among states, that state formation (and sovereignty) must precede a federal constitutional agreement.

For many EROs, consolidating control in their areas of authority (and adjacent areas of mixed administration) is equally if not more important than overthrowing the State Administrative Council (SAC) junta which seized power on 1 February 2021. This is understandable, given the long-standing aspirations of many ethnic nationality leaders and communities. In this case, the quality of EROs' (rights-based and accountable) governance is crucial to establishing and demonstrating their political legitimacy and administrative effectiveness.

## 'Blueprint' (top-down) federalism

Debates on federalism in Myanmar tend to focus on which powers should remain at the Union level and which should belong to sub-national States, and on the problematics of defining federalism along ethno-territorial lines when ethnic communities are spread across different areas and often live side-by-side. The 1947 constitution of the Union of Burma, promulgated a few months after the Panglong Conference, was federalist in appearance but centralising in practice – not least, because the central government retained budgetary control over ethnic States.

### Ghosts of Panglong: previous attempts at federalism in Burma

The narrative of ethnic politics and federalism in Myanmar is framed by two conferences taking the name of Panglong – a small town in southern Shan State where meetings were held in 1946, and more famously in February 1947. According to Matthew Walton, ethnic nationality leaders' calls for "a return to the spirit of Panglong" encode conflicting versions of this event and its legacy.<sup>17</sup>

After the devastation of the Second World War and before Burmese independence in January 1948, the 1947 Panglong conference was put together in a rush by a handful of ethnic Chin, Kachin, and Shan leaders, and the hero of Burma's independence movement, Gen Aung San (father of Daw Aung San Suu Kyi). Although discussions were by no means inclusive of Burma's diverse ethnic communities (for example Mon leaders were absent, and the Karen sent only observers), agreement was reached that the country's 'Frontier Areas' (the British designation, distinguishing ethnic nationality-populated areas from the Bama-populated lowland interior) would be granted "significant autonomy in matters of internal administration".<sup>18</sup> Aung San needed to reach a minimally inclusive deal with ethnic leaders, in order to persuade the departing British that Burma could proceed towards independence as a single country, including both the Bama majority and minority communities. The war-weary British government did not need much convincing, despite previously holding out the prospect of a separate political trajectory for the country's ethnic minorities, who had received protection and patronage during the colonial period, and often fought with the British during World War II. The Panglong conference was an early example of lowland leaders from central Burma co-opting ethnic elites into an agreement which the latter played little part in devising.

The Panglong Conference has been remembered differently by different actors. For urban-based (predominantly but not only Bama) leaders, this was a moment of unification in defiance of colonialism in the struggle for independence and a new multi-ethnic (although, in practice, Burman-led) union. For ethnic leaders, the conference was primarily significant because of Gen Aung San's promise of full autonomy for ethnic states - with the option of secession for Karenni and Shan States after a 10-year period enshrined in the 1947 constitution (Chapter X: "Right of Secession", amended in 1951; to be triggered by a vote of two-thirds of the respective State Council, followed by a plebiscite). The secession option was effectively curtailed when the Burma Army launched a 'soft' military coup in 1958, installing General Ne Win's 'Military Caretaker Government'.

The Panglong Conference has come to have more symbolic importance in recent years than in the first two decades after independence. Since the 1970s, at least, the elusive 'Panglong Spirit' has come to be regarded as symbolic of a 'federating moment', when majority and minority communities came together to agree on a union. Unfortunately, Burma's history of the next 70 years was one of state centralisation, state-driven conflict, polarisation and distrust, widespread suffering (especially Myanmar Army's human rights abuses) and social and economic deterioration.

In the rushed negotiations towards achieving independence, some ethnic leaders agreed to join the Union on the basis of a constitutional clause allowing the option of secession, indicating the limited degree to which minority elites trusted the idea of Burma as a coherent and attractive entity. Unfortunately, General Aung San was unable to convince most of his comrades in the Burmese Independence Movement of the Justice of Ethnic Autonomy in the new Union. The Bogyoke (General) was assassinated in July 1947, shortly before finalisation of the 1947 constitution. The promises he made to ethnic communities seemed to die with him. Burma was denied the leadership of its most credible politician. The charismatic (if ideologically inconsistent) Aung San never had the opportunity to demonstrate his ability to steer government with the same success that he led the independence movement. There are echoes here of his daughter's challenges in transforming herself from an opposition activist, political prisoner and human rights icon into a stateswoman and political leader.

Sixty-eight years later, the first (so-called) '21st Century Panglong conference' (actually held in the new capital of Naypyidaw) was convened by Gen Aung San's daughter, Daw Aung San Suu Kyi, after her party's landslide victory in the November 2015 elections. 'The lady' presumably saw this Union Peace Conference as completing or at least continuing her father's unfinished legacy. However, the renewed attempt at reaching a grand pact on nation-building in Myanmar was even more superficial and less successful than its predecessor.

### The National Democratic Front

The National Democratic Front (NDF, presently dormant) an ethnic insurgent alliance established in 1976 at the Karen National Union (KNU) headquarters at Mannerplaw. In 1984, the NDF changed its position from principled secessionism (i.e. the advocacy of outright independence) to a demand for substantial autonomy within a proposed Federal Union of Burma. This was an important change in emphasis: Ne Win and the Tatmadaw had accused the insurgents of scheming to wreck the union. Now, ethnic nationalists are aiming at a democratic, federal transformation of the union rather than a total repudiation of the state of Burma.

The NDF was a constituent member of the National Council of the Union of Burma (NCUB), the peak body of the anti-military government opposition in the 1990s (including exiled MPs, and other opposition political and military formations). In the following decade, under the mandate of the NCUB, EROs, ethnic political parties and civil society groups designed state- and union-level federal constitutions for Myanmar and its constituent states, through the Federal Constitution Drafting and Coordination Committee. This culminated in the federal constitution proposed by the United Nationalities Federal Council (EAO alliance) in 2016. More recently, Nationwide Ceasefire Agreement (NCA) signatory EROs, together with the KIO and KNPP, have developed a set of Federal Principles, aiming primarily at state-level self-determination. Members of the Peace Process Steering Team (PPST, which loosely coordinates the 10 NCA signatory EAOs) have continued this process, overseeing state constitution-drafting processes in each of Myanmar's seven States (two in Shan) and in Tanintharyi Region.

## Ethnicity, identity and territory – problems of citizenship in Myanmar

Analysis and commentary regarding peace and politics in Myanmar tend to focus on the relationships and dynamics between the semi-civilian government and Myanmar Army, and/or between the Myanmar government and Army and ethnic nationality (or minority) communities. This heuristic framework of control oversimplifies some key issues relating to pluralism.

Under the 1982 Citizenship Law, access to citizenship has been dependent on membership of a state-recognised national race. As Cheesman argues, access to rights and citizenship being framed through membership of an authorised ethnic community, a *taingyintha*, conceived in essentialised/naturalised and simplistic terms, is extremely unhelpful: "without confronting the 'national races' problem, Myanmar citizenship will remain in crisis" (ibid. p.16). This is apparent in the mapping of ethnicity onto territory. For example, in discussions of federalism, simplistic categories of ethnic identity are often assumed as the factors in self-determination. To address such problematics, the late Chin scholar, Prof Nehginpao Kipgen, proposed the development of a 'non-territorial' federalism, based on access to rights of individuals and communities, wherever they may live in Myanmar.<sup>19</sup> This is what Lijphart (1977) calls "segmental autonomy".

Membership of ethnolinguistic and faith-based groups or networks are important resources, mobilised by individuals, families, and communities as a key element in helping people to support and love each other, and survive crises ('Resilience' – see below). However, ethnic (and religious and gender) categories and roles can be exclusionary, marginalising individuals and communities which are not part of the ethnic core.

Non-Bama communities make up at least 30% of the Myanmar population. Such estimates are contested and do not take account of the often-problematic situation of the many people in Myanmar of mixed ethnicity/nationality. These issues beg the question of how ethnicity is defined and by whom. Identification with a particular (or mixed) ethnic category (e.g., 'Karen', 'Kachin') may be relatively unproblematic on a day-to-day basis in terms of social orientation. Nevertheless, this risks reinforcing unhelpful essentialisations of ethnic identity. Ethnicity is a fluid category, subject to re-imaginings over time and/or in different contexts.

The classic anthropological study to this effect is Edmund Leach's work on the relationship between Kachin and Shan communities in Upland Burma in the 1950s and the manner in which the two groups shade into each other, depending on local socio-economic and political factors.<sup>20</sup> Leach's work was important in deconstructing fixed, essentialist notions of ethnic identity, in Burma and beyond. However, some Kachin ethnic leaders distrust this analysis, and the suggestion of identity slipping away - stating that such cases of 'ethnic transfer' are very rare.<sup>21</sup>

Myanmar's ethnolinguistic diversity and complexity extend to intra-group dynamics. For example, there are a dozen (or seven, depending on who is counting/classifying and how) Karen ethnolinguistic subgroups consisting of Buddhists, Christians, Animists, and Muslims living in urban, peri-urban, and rural areas. In several communities, particular subgroups have assumed leading roles and reproduced the cultures and languages of specific sub-groups within the community. Such homogenous stylisations are reproduced and promoted as representing (or subsuming) the rather heterogeneous and 'messy' realities of ethnolinguistic communities.

Similarly, Kachin dialects are branches of the Tibeto-Burmese language family. The Kachin in Myanmar are commonly divided into six subgroups: Jingphaw, Zaiwa, Lawngwaw (or Lhaovo), Lisu, Lachik (or Lachid) and Rawang-Nung (with some Nung demanding recognition as a separate group). However, in neighbouring Yunnan province of China, the Jingpo National Minority (minzu) includes Zaiwa (the largest Kachin group in China), but not the Lisu (or Rawang).<sup>22</sup> Among these groups, and particularly in the armed nationalist movement, Jingphaw individuals and elites have often played leading roles, sometimes to the exclusion of other sub-groups. This is a fairly contentious issue in Kachin society, with elites from some groups (such as Lisu and Rawang) resisting incorporation into a pan-Kachin identity modelled on a Jingphaw linguistic-cultural core.

In many parts of Myanmar, ethnic groups such as Karen and Shan coexist with smaller minority communities like the Mon, PaO, and Lahu.<sup>23</sup> This raises questions regarding locally dominant ethnic group identities and interests, and their relationship with such 'minorities-within-minorities'. How does self-determination for the locally dominant (although nationally minority) ethnolinguistic group (or more specifically, for elite-led political organisations seeking to represent such 'imagined communities') fit with the aspirations and rights of local minorities-within-minorities?

Mary Callahan points to the increasing prevalence in recent years of discourse and activism around the identity category of *lu-ney-zu* လူနည်းစု ('minority' or 'smaller races/ethnic groups/races'). Over the past decade, the rise of political activism among smaller ethnic nationality communities in Myanmar has inspired people to mobilise in new ways. Whereas in the past these smaller ethnic groups were self-contained (e.g., had their own churches or monasteries), some are now embracing *lu-ney-zu* identity. In the meantime, it seems likely the new military regime will continue its predecessors' policies of exacerbating and mobilising sub-ethnic complexities and tensions in order to 'divide and rule'.

Having surveyed the history of federalism in Myanmar, we can turn to the failed peace process of the past decade. Understanding the symbolic and political weight of federalism may help the reader to appreciate the sense of frustration and disappointment which so many ethnic stakeholders felt at the unwillingness of governments (and particularly the Tatmadaw) to follow through on vague promises to deliver a federal political settlement to decades of armed and state-society conflict.



## The peace process - 2011-2021: broken promises of federalism

From late 2011 through 2012, the U Thein Sein government and Myanmar Army agreed or reconfirmed ceasefires with ten of the eleven largest EAOs in Myanmar. In a sinister parallel development, in June 2011, the Myanmar Army launched fresh attacks against the Kachin Independence Organisation (KIO), and associated civilian populations, breaking a 17-year ceasefire in northern Myanmar and displacing well over 100,000 civilians.

In October 2015, eight EROs, mostly from the southeast, including the KNU and two smaller Karen factions, as well as the most powerful and vocal Shan armed group, the RCSS, signed the Nationwide Ceasefire Agreement (NCA), together with the then President, senior government leaders, and the Tatmadaw Commander-in-Chief, Senior General Min Aung Hlaing. This significant milestone in the peace process was diminished by the fact that a dozen other EROs (including the KIO) refused to sign, citing the agreement's lack of 'inclusiveness', the Tatmadaw having refused to some EROs to join the NCA (particularly three small EAOs, whose conflicts the Tatmadaw regarded as having started only after negotiations towards the NCA had already commenced). This failure came back to haunt the NCA, with widespread conflict raging across northern and western Myanmar the years following the NCA. Two more EAOs, including the NMSP, signed the NCA in February 2018, which inter alia would supposedly deliver federalism.<sup>24</sup>

Despite some initial success, political dialogue towards negotiating a federal union of Burma was largely suppressed by the Myanmar Army, while ceasefire monitoring and attempts to establish 'Interim Arrangements', in recognition of EROs' services delivery and governance authority, were mostly unsuccessful. Effective ceasefire monitoring was thwarted by the Myanmar Army; effective Interim Arrangements were thwarted by the Tatmadaw and the National League for Democracy (NLD)-led government.

A process of political dialogue was initiated under the NCA, with the first meeting held in Naypyidaw in January 2016. The new NLD-led government initiated its first Union Peace Conferences in late August 2016 and May 2017 (the so-called '21st Century Panglong Conferences', held in Naypyidaw). The NCA resulted in sub-national ethnic-national dialogues for those communities associated with EROs that had signed the NCA. Although in some cases (for example, Shan State) the government and Myanmar Army refused permission for EROs to hold consultations in government-controlled areas, the Karen political dialogue held in Pa'an in January 2017 was quite successful. For the first time in Myanmar's history, stakeholders from the diverse, fragmented and often traumatised Karen community were able to come together and start building common positions on key issues (based on a series of consultations in Karen areas). However, many key concerns and aspirations raised at the sub-national level were not included on the Union-level peace talks agenda which undermined the credibility of such political dialogues. Indeed, when in May 2017 the second Union Peace Conference agreed to the first 37 'principles' of a Union Peace Accord, these did little to address ethnic nationality leaders' demands for a federal solution to Myanmar's state-society conflicts. In the absence of successful dialogue, local governance and service delivery arrangements became particularly important as one of the few potential avenues for progress in the peace process. Due to these and other frustrations, the KNU and RCSS both suspended their participation in joint elements of the peace process in December 2018.

When taking office in April 2016, the NLD government had declared its first priority was to achieve national reconciliation and build peace in the country. Furthermore, Daw Aung San Suu Kyi has spoken approvingly of federalism, a political agenda with which many ethnic politicians identify.<sup>25</sup> However, the NLD-led government acted in many ways similar to previous Myanmar regimes, with a strong centralising instinct and authoritarian political culture (notwithstanding lip service paid to the concept of federalism). For Myanmar EROs and their supporters, however, legitimacy derives from the long struggle for self-determination.

Aung San Suu Kyi's failure to re-imagine Myanmar as a country with which all citizens can identify was the greatest missed opportunity of her tenure (from April 2016 until January 2021). This failure of nation-building betrayed deep structural inequalities in the state, and de-rooted prejudices within the dominant political culture, fuelling long-standing grievances on the part of ethnic communities, deepened and polarised through decades of armed conflict and brutal counterinsurgency. An effort of political re-imagination is required if the state is to be regarded as legitimate by all citizens and national groups. In the past, armed opposition groups were fighting against a Bama-dominated military dictatorship that was despised and shunned across most of the world (although crucially, not by China). However, the EAOs' viability and credibility was challenged following elections in 2010 which produced a quasi-civilian government, and further polls in 2015 which saw the emergence of a semi-democratic government effectively led by State Councillor (as she was appointed in 2016, the 2008 constitution precluding her taking the presidency) Daw Aung San Suu Kyi. Although the NLD-led government was justly criticised for its awful treatment of Rohingya and other Muslim minority communities, the Myanmar regime nevertheless enjoyed more international credibility than its predecessors. (Less so, since the coup.)

The peace process initiated in 2012 by the previous military-backed government of ex-General U Thein Sein placed 'the ethnic question' at the heart of national political debate, for the first time since Burmese independence. Nobel laureate Daw Aung San Suu Kyi's successor government failed to deliver on the promises of peace, or to provide more just and credible policies in relation to Myanmar's ethnic communities - remaining silent (or complicit) as the Myanmar Army drove up to a million Rohingya civilians out of the country in 2017, and failing to make progress in political negotiations with EAOs. Such calculations and positionings were radically disrupted and realigned, following the military coup of February 2021.

For several of Myanmar's EAOs/EROs, it was worth experimenting with peace, after decades of conflict and suffering. Following decades of armed conflict, the period from 2011 to 2015 was one of hope that the semi-civilian (military-backed) U Thein Sein administration might be willing to do what its predecessors had not: engage in serious discussions with ethnic nationality leaders about the future nature of the union. For the first time in decades, political negotiations were on the table, including the promise of a federal political settlement to decades of armed and state-society conflict. However, and particularly under the NLD government from 2016, the promises of peace proved elusive. Neither the Myanmar Army nor the NLD were willing to address ethnic communities' key grievances or aspirations. Nevertheless, the peace process was a useful experiment, proving that the Myanmar central government - and particularly the Tatmadaw - are fundamentally unwilling to address ethnic grievances and aspirations, or deliver genuine federalism. The situation since the coup has not improved.

Even if the SAC could consolidate a brutal SLORC-like control, it seems unlikely the junta will succeed in bringing all territory currently defined as 'Myanmar' under its control. The brave resistance fighters of Karenni and Sagaing, Chin and Magwe and elsewhere will doubtless continue their struggle, whatever the odds.

## Federalism, governance and services - Myanmar's 'rebel rulers'

Having emerged in the context of armed conflict and 'underground political economies', EROs face challenges in establishing themselves as responsible governance actors. Although they enjoy significant legitimacy among the communities they seek to represent, the political credibility of EROs also needs to be demonstrated through responsible natural resource and environmental governance.<sup>26</sup>

Myanmar's EAOs (or 'Ethnic Resistance Organisations') vary considerably, ranging in size from a few dozen people to the 25,000-strong United Wa State Army (UWSA).<sup>27</sup> Several groups control extensive territory, and project influence (including through services such as health and education) into adjacent areas of 'mixed administration'. There is a distinction between relatively small and mostly quite remote areas controlled exclusively by EAOs/EROs, and more extensive areas of mixed administration, where authority is exercised variously by one or more armed group and the government, and/or various Myanmar Army-backed militias (often experienced by civilian communities in the form of multiple taxation). These contested areas include zones of ongoing armed conflict, as well as ceasefire areas, the existence of which is formally or informally recognised by the Myanmar Army. In many parts of the country, the situation (pre-coup, at least) could be characterised as a 'negative peace' - with outright and explicit violence mostly ended, but many underlying structural issues driving decades of conflict yet to be resolved.

Since independence in 1948, hundreds of EROs have sought to represent the grievances and aspirations of a wide range of ethnic nationality communities. Since the end of the Cold War and the decline of internal conflicts in most Southeast Asian countries, EROs in Myanmar had become marginalised. Although most EROs remained undefeated militarily, the Myanmar Army had the upper hand in the country's protracted and complex armed conflicts. Already at the time of the coup, the peace process initiated in 2012 was - at best - stalling, with little indication that the Tatmadaw or the NLD-led government was willing to make concessions on key issues, like the delivery of significant federal-political arrangements.

Following the 1 February 2021 coup, and the massive impacts of the Covid-19 pandemic, key EROs have been at the heart of anti-coup resistance and the struggle for a better Burma. Although the NCA is in effect dormant as an ongoing conflict resolution process, the SAC wants to maintain the agreement, as do some EAOs. In the meantime, the latter have a relatively high degree of political capital. In large part, this is due to EROs' delivery of extensive (humanitarian and development) services in conflict-affected areas, which remain under the military-political control of key EROs. (However, many smaller EROs control little territory and deliver few services to communities.)

Several of Myanmar's EROs have developed credible political agendas and demonstrated a long-standing provision of services and governance authority (including access to justice) in their areas of control and authority. With the collapse of credible and legitimate government and governance across much of Myanmar since the coup, many EROs have become the sole providers of severely under-resourced health and education services. For example, the KNU's Karen Education and Culture Department and the NMSP's Mon National Education Committee administer nearly 1500 and 200 schools respectively, while the KNU's Karen Department for Health and Welfare and the NMSP's Mon National Health Committee run over 120 clinics (including quarantine centres). Other EROs have established similarly impressive governance administration and service delivery systems (e.g. the KIO, RCSS and KNPP, and also the UWSA and increasingly the Arakan Army).<sup>28</sup> For several EROs (e.g. the KNU and NMSP), providing access to ('hybrid') justice is a form of 'ceasefire state-making'.<sup>29</sup> These are building blocks of federalism, from the bottom-up. A flexible and asymmetrical federalism may be emerging out of the present crisis. At a minimum, peripheral quasi-states are emerging amid the chaos.

### **Education and federalism**<sup>30</sup>

In many federal systems, education is a state-level responsibility. The development of locally owned and delivered education can therefore be a model for federalism in Myanmar. Many impressive initiatives are already underway, including half a dozen Mother-Tongue Based Multilingual Education (MTB-MLE) school systems administered by EROs and their education wings, known as Ethnic Basic Education Provider (EBEPs).

There are two main reasons for promoting and supporting MTB-MLE education in Myanmar: pedagogic and political. Regardless of the politics, children from minority communities achieve better learning outcomes if they can begin schooling in the mother tongue. Children who are forced to learn in a language they do not speak at home are educationally disadvantaged, and often never catch up with peers from the majority community, who find it much easier to understand what's going on in the classroom. Mother Tongue Based Multilingual Education is acknowledged internationally as the most effective way for children who do not speak the national language (Myanmar saga) to have a fair chance at achieving good learning outcomes. Evidence globally shows this to be the best way of teaching children from minority language communities. Transition to using the national language can occur in primary or middle school, depending on the specific model adopted. Supporting ethnic education is also important for peace-building. One of the main grievances fueling ethnic conflicts in Myanmar is disregard for the identity and languages of ethnic minority/nationality communities in the state education and administrative systems, and ethnic peoples' experiences of marginalisation in the context of a dominant Bamar (or Burman) culture and language ('Burmanisation'). For these reasons, many ethnic nationality communities regard the national education system as a tool of assimilation, and state education has been seen as a 'driver of conflict'. Therefore, EROs and civil society actors have set up their own MTB-MLE systems. These education initiatives owned and delivered by local actors are key elements in self-determination, and building a just and inclusive federal union.

Although terminology varies, ERO education systems are often referred to as Ethnic Basic Education Providers. They serve about 300,000 children, in schools either directly administered by ERO education departments, or (at least before the coup) in community-run and 'mixed' schools, jointly administered by government Ministry of Education (MoE) and EBEPs. After the coup, the CDM movement has been very effective and many schools under junta control are not effectively functioning. Therefore, since 2021 there many fewer 'mixed' schools.

There are ERO-administered or affiliated schools in the conflict-affected areas of Karen, Mon, Kachin and Shan States, and Bago and Tanintharyi Regions. Curricula range from those which largely mirror the MoE syllabus at middle and high school level, but are taught in the ethnic mother tongue (e.g. the Mon model), to those which have many separate elements to the governments (e.g. the Karen school system). In several ethnic education systems, curricula and other elements under review and reform.

Key EBEPs include the Karen National Union's Karen Education and Culture Department (KECD), with 1093 schools, and 90,000-plus students; the New Mon State Party's Mon National Education Committee (MNEC), with 134 Mon National Schools, and 10,324 students; the Restoration Council of Shan State Education Commission (RCSS - EC), with some 350 schools in southern Shan state and some 11,000 students (and additional Shan schools administered by CSOs), the Kachin Independence Organisation Education Department (KIO ED), with 250-plus schools (and additional schools in government-controlled areas under the administration of Kachin education CSOs); and the Karenni National Progressive Party's Karenni Education Department (KnED), with 60-plus schools (many administered in partnership with CSOs). In addition, several of these groups often provide education services to children in refugee camps along the Thailand-Myanmar border.

These EBEPs variously use Mother-Tongue Based and/or Multilingual Education (MTB-MLE) teaching methods, with child-centered methodologies. Significant funding and technical assistance is provided by international donors, but much is supported by communities. Teachers often receive stipends, but are essentially volunteers. At present, EBEP schools are the only functioning basic education providers in the country.

In addition to formal EBEP education systems, a number of civil society groups provide informal (including after-school) and/or part-time education in local languages. Some of these work independently, while others work alongside either EROs/EBEPs, and/or with the MoE. Many are faith-based organisations.<sup>31</sup>

Issues remain regarding the coordination of different education systems and regimes. A fundamental issue to resolve is the relationship between the sub-national (ethnic State or EBEP/ERO) level, and the union level. Union-level roles for a federal government MoE can include coordination, training, teaching resources development, finance (fundraising and distribution) - and possibly also dispute arbitration, and some aspects of quality control. These issues need to be discussed, ideally through a structured process of dialogue and negotiation. Most fundamentally, there is an urgent need for Union-level recognition and accreditation of EBEP teachers and student qualifications. At present, EBEP systems are largely unrecognised by the state of Myanmar, meaning that many children's educational achievements are unrecognised, greatly reducing their options after matriculation (and also limiting options for students to move between EBEP and MoE systems).



These issues need to be addressed in the context of the NUCC, and the Federal Democracy Charter (discussed below). They raise questions regarding the most appropriate relationship between EBEPs and the MoE - meaning the National Unity Government (NUG) 'Democratic MoE' (see below). The most useful approach might be to recognise and support parallel EBEP and MoE systems, with mutual recognition based on the elaboration of common standards and shared learning outcomes (which can be delivered through diverse curricula education administrations). Another important set of questions include how to conceive and support constructive relationships between EBEPs and State-level coordination bodies, which have emerged in a number of areas since the coup.

There is also a need for more research and development - including language-use mapping; and developing teaching materials and training for smaller ethno-linguistic groups, including minorities-within-minorities. How best to support the educational and socio-political rights of children from communities in areas where the local majority group constitute a minority across the union? These considerations may point towards a rights-based <sup>32</sup>, rather than strictly ethnic-territorial, conception of federalism and self-determination.

Non-territorial autonomy (NTA) could provide important guarantees and provisions for minority (and minority-within-minority) communities, wherever they live. In practice, this may look like a strong rights-based approach, without necessarily reference to federalism and decentralisation/autonomy. Relevant NTA measures in union and state-level constitutions, would provide important guarantees and provisions for minority (and minority-within-minority) communities. According to Sumit Bisarya, Protecting Ethnic Minorities within Minorities (International IDEA, 2020), "The scope of responsibilities of NTA institutions varies, but generally they cover sectors relating to cultural identity - for example education, language and the preservation of cultural history. In terms of powers, some NTA institutions may only have the right to be consulted (pp. 4-5).

### Confederalism - The Arakan Army

Established in 2009, by 2016 the Arakan Army (AA) had become the dominant ERO in western Myanmar. The extraordinary growth of the AA, with its promotion of "the way of Rakhita" (or "Arakan dream 2020") vision, of restoring Arakan's sovereignty through adopting a "confederationist" approach to self-determination, was a major game-change in Myanmar's ethnic and politics.<sup>33</sup> The AA aspires to a high degree of autonomy within Myanmar, based on the historic independence of Arakan. In practice, this may be similar to the de facto independence achieved by the UWSA following its 1989 ceasefire.<sup>34</sup> In the middle- to long-term, this is unlikely to sit well with the Myanmar Army, given the latter's strong rhetorical commitment to conserving the unity of the state.

The AA plays something of a bellwether role in post-coup Myanmar. Since the coup, this ERO has been able to expand its presence and influence considerably in Rakhine State, including through the provision of governance administration and services to many communities - developments which the junta has (for the time being at least) largely acquiesced to. In late August 2021, the AA established District Courts and salaried judges in its areas of control. By this time, the United League of Arakan (ULA, the AA's political wing), had established some governance authority in 15 out of Rakhine State's 17 Townships. It is noteworthy that, since the coup, the AA has continued efforts to present itself (domestically and internationally) as a responsible and credible governance actor, including by offering a degree of protection and support to the Rohingya community (at least those remaining within the country, mostly in IDP camps). The AA's bold moves towards Arakanese self-determination constitute a highly significant work in process.<sup>35</sup>

It may be only a matter of time until the struggle for Arakan returns to an armed phase. It seems likely that sooner or later the Tatmadaw will turn against the AA - in which case the AA may decide to strike first.

## The Federal Democracy Charter

On 7 July 2021 the Peace Process Steering Team (PPST, consisting of the 10 NCA signatory EAOs) formally announced that the NCA, as a multi-lateral agreement, was suspended. Since then, both the PPST and individual NCA signatory groups have met with the SAC, although few significant political negotiations have taken place.

If the NCA is regarded as dormant (rather than dead), it could still form the basis of future negotiations towards a tripartite peace agreement (political dialogue, ceasefire monitoring, and interim arrangements). However, any engagement with the SAC into would be highly controversial, and might result in a political backlash against those involved.

In a major political development following the coup, a group of elected (mostly NLD) MPs established the Committee Representing Pyidaungsu Hluttaw (CRPH) on 5 February 2021. The following month (31 March), the CRPH launched a Federal Democracy Charter. Two weeks later, a National Unity Government was announced, with a broad make-up demonstrating significant attempts to include a wide range of stakeholders. The first part of the Federal Charter contains much to support ethnic nationality and EROs leaders' claims to self-determination.<sup>36</sup> However, the second part of the charter, covering interim governance arrangements, mostly reinforced the authority of (mostly NLD) MPs elected in November 2020, in an attempt to ensure that the transition can maintain electoral and constitutional legitimacy. This significantly diminished the Charter's standing among many ethnic stakeholders, who - notwithstanding their opposition to the coup - remain wary of the NLD's 'parliamentary dictatorship'. Between 2016-20, the NLD-led government tended to reinforce existing power structures at the central state level; under Daw Aung San Suu Kyi's leadership, there was talk of federalism, but in practice greater centralisation. Ongoing discussions between several EROs, CRPH members and civil society actors in the National Unity Consultative Council (NUCC) seem to have resolved some of these issues.

According to the revised Federal Democracy Charter (March 2022), the NUCC is the peak policy body of the anti-coup opposition.<sup>37</sup> Established on 8 March 2021, the NUCC is composed of CDM and strike committees, CRPH parliamentarians and political parties, some EROs (not the AA or UWSA), state-based coordination committees and consultative councils, and some CSOs. Among the most important (sovereign) tasks of the NUCC is to convene People's Assemblies, to debate and endorse policies and strategies.<sup>38</sup>

In the meantime, the National Unity Government (NUG, established 16 April 2021) has demonstrated considerable inclusiveness, by appointing significant numbers of ethnic nationality and women ministers (particularly deputy ministers).<sup>39</sup> This helps to build trust with EROs and other ethnic stakeholders, many of whom support the NUG, at least indirectly.

According to the revised Federal Democracy Charter (March 2022), the NUG should be referred to as the Transitional National Unity government (author's italics). This is an important nuance, indicating the NUG's subordination to the NUCC. As defined in the charter, the 'Transitional NUG' has an important role to play as a 'light touch' federal coordinating body. Ultimately however, authority rests with the ethnic states, and - if they can hold on - with other sub-national governance entities, such as PDFs and PABs.

## Resilience

'Resilience' is the ability of individual, family, community, nation (or ERO) to withstand and recover from shocks and cope with crises. Resilient people and organisations cope with shocks and return to or improve previous standards of living and human security.<sup>40</sup> Organic and durable communities and organisations are resilient, drawing on technical (including traditional knowledge), cultural capital (including participation in and mobilisation of ethnolinguistic networks), and spiritual values (membership of faith-based groups). Participation in ethnolinguistic and faith-based networks is a key element in identity/belonging and an important resource for resilience.

Faith-based networks, humanitarian responses, and political and community development activities have relevance beyond the local. In many cases, these community and CSO activities can be seen as the building blocks component units of federalism. In order to overcome the woeful inadequacies of the 2008 constitution, Myanmar requires an 'elite-level' federal political settlement to address structural aspects driving decades of armed ethnic and state-society conflict. However, as well as such 'blueprint' approaches, it will be necessary to build capacity and concrete examples of federalism 'from the bottom-up'.

This kind of indigenous political sociology returns us to the need to re-think 'ethnic and federalist essentialism' in Myanmar.<sup>41</sup> Essentialised concepts of ethnicity do not always reflect the complexities and nuances of individual or collective social identity and lived realities. As well as excluding those of mixed heritage, such notions can be rather unhelpful when trying to unpack ideas of belonging and citizenship in a multi-ethnic country like Myanmar (including the dilemmas of minorities-within-minorities). Furthermore, when simplified notions of ethnicity are mapped onto territory, this can be a recipe for the disasters of 'ethnic cleansing' and inter-state armed conflict. Thus, the sometimes-frustrating cul-de-sac of discussions regarding federalism in Myanmar.

More useful might be to start by asking after different stakeholders' desired outcomes (endpoints) in relation to ethno-nationalist struggles - the goal (presumably) of self-determination. Federalism, in different forms and meanings, can contribute as a useful tool or means towards achieving self-determination, but should not be fetishised as an end in itself.<sup>42</sup>

## Ethnic coordination and consultation bodies

In some areas, similar roles may be played by Peoples Administrative Bodies associated with the anti-junta PDFs - especially in Bama-majority places where EROs do not operate. In their liberated areas, some PDFs and PABs have already assumed responsibilities for law enforcement, public works and some education provision, often under the guidance of the NUG. In several areas, PDFs have been cooperating closely with longer-established EROs. In some cases, there is a clear command-and-control relationship between these actors. In lowland areas of Myanmar, will be a great challenge for PDFs to maintain their positions, unless or until the SAC junta is comparatively defeated.

Another new set of stakeholders are the ethnic coordination bodies. So far since the coup, these have been established in Kachin (the first), Mon, Karenni, Chin and Shan States, and in Tanintharyi: the Kachin Political Interim Coordination Team (KPICT), Ta'ang Political Consultative Committee (TPCC), Interim Chin National Consultative Council (ICNCC - one of two Chin Ethnic coordination bodies, close to the CNF), and Karenni State Consultative Council (KSCC), Mon State Interim Coordination Committee (MSICC), two such bodies in Shan State<sup>43</sup>, and one still in the process of emergence in Tanintharyi (Tanintharyi Consultative Council). There is no Karen ethnic coordination body. In part, this reflects the long-standing complexity of Karen society and politics (including diversity within the community, and several Karen EAOs, some aligned to the Myanmar Army); in part, to the related issue of the Karen community (and KNU) not being based in a single (Karen/Kayin) State, but spread across seven states and regions in southeast Myanmar.

The ethnic coordination committees are generally led (sometimes 'from the back') by EROs, with varying degrees of participation and input from civil society and ethnic political parties. They can be seen potentially as constituent bodies of the NUG, grounded in local political and civil society and with claims to significant legitimacy in their own right. Working with communities, on key issues (e.g. education, climate change adaptation, land issues), ethnic coordination bodies could be key elements in developing a federal union 'from the bottom-up'. These are concrete, emergent examples of state-level governance. Further research should be conducted on the understanding and attitudes towards federalism of Bama communities. If representatives of the majority community are not well prepared for the concept and diverse practices of federalism, this could be presented by unscrupulous and divisive politicians as somehow undermining the union - all the more so, when it comes to 'emergent federalism'. An important recent development in this respect is the emergence of a new Burman identity-based armed group: the Bama Peoples Liberation Army, which has been recognised by the influential Northern Alliance of EAOs.<sup>44</sup>

Not all of Myanmar's new governance structures are explicitly ethnic in orientation. Another important recent phenomena has been the emergence of PABs organised to resist and oppose the SAC junta's administrative structures. In many cases, PAB members are drawn from local leadership pools, who may also be involved in the previous government (and current junta's) governing structures. Often coexisting with – and to a degree, militarily protected by – PDFs, these bodies can be seen as potential building blocks of a federal union, generally aligned at least in principle and rhetoric with (if rarely receiving much concrete support from) the NUG. Although in many cases they may consist mostly of aspirations expressed through social media, several PABs have emerged as local governance actors, focusing on services delivery, including IDP relief and provision of basic health and education. A key question is how long they can persist, given the onslaught of violence directed by the Myanmar Army against anti-coup protesters (PDFs, but also regular civilians more than one million of whom have been displaced since the coup).<sup>45</sup> These emergent bodies and structures may be particularly relevant in Bama-majority areas (such as Sagaing and Magwe Regions), which have seen widespread resistance against the SAC regime, experiencing armed conflict for the first time in many decades (and thus not having cultures or recent experience of the presence of non-state armed groups).

### The Karenni State Consultative Council

Since 2021, the Myanmar Army has been attacking civilians and anti-coup resistance forces in Karenni, including through indiscriminate air attacks which have killed many women and children. In the absence of credible or legitimate central government, the KSCC - and other State-based consultation and coordination councils – can be regarded as sovereign authority in the Karenni homelands.

State-level consultative bodies can be seen as constituent bodies of the NUG. Working with communities on key issues (e.g. education and awareness raising, climate change adaptation, land issues, humanitarian relief), state-level consultation and coordination bodies could be key elements in developing a federal union 'from the bottom-up'. Also important is what kind of representation the leaders of State-level (nominally sovereign) governments could have, at Union level (at the federal centre).

Such issues are particularly resonant historically in Karenni: formal independence of the three townships of Western Karenni was recognised by the British and king Mindon Min of Burma in 1875, a decade before the colonial annexation of Upper Burma. Given the right of Karenni to secession under the 1947 constitution, the post-coup period in Myanmar is one where sovereignty has reverted to the independent Karenni state - which may (or may not) choose to join an emergent federal union.

Leaders of the KSCC (established 9-4-21) include many young women and men who before the coup were working with CSOs and national NGOs. The KSCC includes – with varying degrees of enthusiasm – all EAOs in Kayah State; the KNPP is particularly active. As of April 2022, the KSCC administered nearly 200 mostly IDP schools in Karenni State, as well as a range of health and other services. However, given Tatmadaw's massive and violent onslaught, capacities remained stretched.



Some 18,000 fighters are registered with the Karenni National Defence Force (KNDF), the PDF which works closely with KSCC. However, in April 2022, only about 10% had modern weapons. At least a dozen of these young men and women had sacrificed their lives for freedom, in the first fortnight of April alone. Although KNDF forces were driven back from some frontline positions during the 2022 dry season, as of mid-April they had begun driving back the Myanmar Army in some key positions, retaking strategic parts of Huprso Township.

In late 2021, some state-level consultative bodies began considering whether to declare themselves as provisional governments, incorporating existing governance and administrative, and service delivery departments - further promoting the notion of an emergent 'federalism from below'. Some of these committees or councils claimed territory beyond the state sanctioned borders of the current States. For example, the KSCC administers 19 townships, including in southern Shan State, northern Karen State and eastern Naypyidaw Special Region (where many Kayan people live). The re-examination of territorial and administrative divisions will require diplomacy. Similar challenges exist in other areas. For example, many Kachin nationalists consider that the 'Kachin sub-state' in northern Shan should be combined with the existing Kachin State. There is less enthusiasm considering redrawing the existing Kachin State boundaries, for example to allow more autonomy to Shan-Ni or other communities. In the meantime, townships in the KSCC administration include those exclusively under the authority of a single EAO, and 'mixed' townships, with more than one EAO and PDF present - e.g. Karenni National Progressive Party, Karenni Nationalities People's Liberation Front and KNDF battalions.

## Federalism, sovereignty and climate change

Myanmar contains the largest forest reserves in mainland Southeast Asia, including ERO-controlled areas in the north of Kachin and Shan States (KIO and other EROs) and Tanintharyi Region in the south (KNU).<sup>46</sup> Under the stewardship of local communities and EROs, these are globally important biodiversity hotspots. Nevertheless, over the years, damage has occurred even in some of the most remote areas due to unregulated logging and mining activities. Some EROs have, though, in some cases and especially in recent years, been relatively good managers of Myanmar's forests, which increasingly are recognised as 'the lungs of the world'. In addition, sustainable community forestry management practices and traditions have played a key role in maintaining Karen, Kachin, and other forests for many generations. This local agency includes an implicit claim to sovereignty. Indigenous community and ERO forest governance and natural resources management are cornerstones of emergent federalism in Myanmar.

For the KNU, for example, forest management is expressed through the policies and practices of the KNU's Kawthoolei Forest Department (KFD).<sup>47</sup> Working with CSOs and communities, the KFD has developed a range of people-centred natural resource and environmental conservation policies and strategies. This is an example of the KNU acting as a responsible government in its areas of authority, protecting the forest and supporting community-based development and livelihoods, in the face of an aggressive and militarised central government state of Myanmar, with many crony companies seeking to exploit the ethnic homelands (including under the previous NLD-led government).

One of the greatest challenges facing Myanmar's EROs is to focus on conserving the natural environment and supporting sustainable local livelihoods, rather than cashing in on natural resources while they can (so-called 'natural resource fatalism'), through granting logging and mining and other environmentally and socially destructive concessions. If Myanmar's EROs can position themselves as protectors of the forest, together with indigenous communities, and regulators of activities therein, they can move away from previous negative associations as primarily interested in income generation through resource extraction (the proceeds of which have sometimes gone to private individuals, rather than the organisations in question). In this way, EROs can move along the spectrum from warlords towards responsible local governance actors.

If sustainably managed, forest resources can contribute hugely towards future income generation for Karen communities and authorities, including added value through the potentials of biotechnology patents. As globally important carbon sinks, Myanmar's forests are also crucial to mitigating climate change, and reducing the risk of massive future temperature changes (above 1.5°C globally). As custodians of the forest, EROs and local indigenous communities have key roles to play in the global struggle to address climate change. There is an urgent need to support them.

Given the crucial role of forests in mitigating climate change and providing local resources for adaptation, EROs should play important roles in the management of climate change governance (as acknowledged in the NCA Article 25 on Interim Arrangements<sup>48</sup>). However, the previous government's climate change responses and architecture tended to be top-down and technocratic, with only limited consultation of local stakeholders... and then the coup.

This centralised and state-centric approach reflects Myanmar's authoritarian political cultures, and the historical marginalisation of ethnic nationality communities. The current crisis in Myanmar presents new opportunities, including for building a new type of federalism from the bottom-up and improving Disaster Risk Reduction.

Carbon credits or other incomes (including from future biotechnology patents) derived through conserving and protecting the natural environment and resources are likely to become increasingly valuable. In the future, Karen and Kachin forests may be sources of incredible commercial value due to patents on emerging knowledge regarding the extraordinary diversity and beneficiaries of these thriving natural ecosystems. These are global assets under the stewardship of Karen and other ethnic nationality communities. Thus the importance of community-based indigenous forest management (including as a sovereignty claim). Although borrowing against the future is inherently risky, Myanmar's sub-national ERO authorities (the building blocks of federalism) may one day be more financially viable (and sustainable) than they are at present.

## Emergent federalism: implications for support

Federalism in Myanmar is often discussed in terms of constitutions, roadmaps, and other formalized 'top-down' aspects. Having the right constitution is clearly important, as can be seen from the great problems over the past decade-plus regarding the 2008 constitution, which needs urgent reform or replacement. However, some aspects of an asymmetrical and flexible 'emergent federalism' are already present in the country. As described and analysed here, several of the country's longer-established EAOs have developed credible political agendas and enjoy widespread legitimacy among the communities they seek to represent. At least a dozen of the larger EROs control territory or deliver significant services to their communities. These are the building blocks of federalism, emerging from the bottom-up, based on the ownership and participation of local communities and other key stakeholders.<sup>49</sup>

Historically, this type of emergent state-building resembles the patchwork of (sometimes federated) principalities (or *muang*), established across Shan State since pre-colonial times and reproduced in Karenni and elsewhere. Burma's political cultures run deeply.

Donors, diplomats, and the aid industry should support EROs to be credible and rights-based political actors and governance administrators. However, until the time of the coup, most (still limited) donor funding to EROs' service delivery systems has been provided through their line departments. In the process, there is a risk of ERO health and education departments (for example) being transformed into CSOs. This is a distortion of EROs' political mandate and risks de-politicising ethnic actors' struggles for self-determination. It is important for EROs to resist the aid industry's depoliticisation of struggles in Myanmar and the insidious re-definition of sites of inherently political struggle as 'technical problems', which supposedly can be solved through the application of donor money and technical support ('The Anti-Politics Machine'<sup>50</sup>). This depoliticisation is particularly unhelpful in the present Myanmar context, where underlying issues (driving humanitarian, protection, and development needs) are fundamentally political in nature, and where people are risking their lives on a daily basis.

Longer-term, new models of EROs' funding are required. In a future federal union of Burma/Myanmar, EROs might finally be constitutionally recognised as key elements in sub-national government administration. However, the interim period between ceasefires and reaching such a political settlement is likely to be lengthy and contested. Therefore, EROs should consider reforming their fundraising and financial administration systems, in order to prepare for future transitions. The present situation represents a unique window of opportunity within which donors can support EROs' capacity building as a contribution towards good governance in Myanmar during a period when engaging the central government (military junta) is not possible.

## Tentative conclusions

Myanmar needs Federal Democracy, based on recognition of existing governance administration systems at the state level, which are mostly under the authority of anti-coup ethnic and pro-democracy forces. The importance of emergent federalism notwithstanding, additional structural elements of a political settlement to Myanmar's decades-long armed and state-society conflicts are necessary too. In order for federal political arrangements in Myanmar to meet the historic demands of ethnic national communities, it will be important that minority representatives are present (with a veto in some cases) in key decision-making and power-holding forums at the federal union level (as well as at the state-level). Bottom-up federalism is necessary, but if Myanmar is to retain any coherence as a political entity, ethnic representatives will need authority also at the federal union level.

Given the realities outlined in this paper, Myanmar could be an important case study, or pilot for recognising ERO/EAO legitimate authority - even sovereignty. The challenge is to develop partnerships which enable EROs to govern and provide services in an accountable, rights-based and inclusive manner – particularly in relation to potentially marginalised communities, such as minorities-within-minorities, in addition to their prime ethnic constituencies. Given the strong aspirations and demonstrated commitment to human rights and democracy of EROs like the KNU, KIO and NMSP, it will be difficult to find a better country than Myanmar for exploring and piloting such an approach.

These arguments could also be extended to PDFs and associated (so far, relatively ad hoc) governance bodies, sometimes termed People's Administrative Bodies. In this case, the flexible and asymmetrical model of 'emergent' federalism could be applied across the country, at least in areas not under the Myanmar Army's jackboots. Potentially, this could move towards solving the 'problem' of Bama federalism, taking equitable account of the situation of the majority community, who live across most of the country's Regions, and thus do not have a State of equivalent size and concentration to those of many ethnic communities.

To be sustainable, successful and equitable, these forms of local governance have to be rooted in the trust of communities. It is particularly important that EROs are supported to develop funding models which are not primarily dependent on natural resource extraction. Only by moving away from logging, gold (and other commodity) mining and other environmentally damaging activities can EROs demonstrate to their core constituencies (ethnic nationality communities) and partners (CSOs and international organisations, including aid donors) that they are seeking to govern in the best interests of their areas and people. This major re-structuring should be approached in an inclusive manner, in dialogue with key stakeholders. This can include working with EROs, communities and CSOs to develop and promote existing forest governance and natural resources management - for climate change mitigation and adaptation, to support sustainable livelihoods, and as key elements of local authority in a federal system.

### **The Salween Peace Park** <sup>51</sup>

Self-determination, federalism and indigenous rights combine in locally managed conservation initiatives, or Indigenous and Community Conserved Areas (ICCAs). The most politically and environmentally significant ICCA in Myanmar is the Salween Peace Park - a 5,500-square-kilometre conservation area in the highlands of northern Karen State (in the KNU Mudraw District/KNLA 5 Brigade). The Salween Peace Park is based on the Karen indigenous kaw land governance system, under the authority of the KNU, facilitated by KESAN (the Karen Environmental and Social Action Network, an award-winning national NGO). According to KESAN, the project "aims to expand the conversation around 'governance' in Burma beyond mere management of resources, but to address issues of militarization, conflict, displacement, resource capture, and destructive development, and through this contribute to conflict transformation." Such forms of 'hybrid governance' can be seen as the building blocks of federalism in a new Burma.

## References

- 1 In June 1989, the then State Law and Order Restoration Council (SLORC) military junta re-named the state *Myanmar Naing-ngan*. At the same time, a number of other place names were changed - e.g. Rangoon became *Yangon*, Pegu became Bago, Moulmein became Mawlamyine; the names of several ethnic groups were also re-cast - e.g. the Karen became officially known as Kayin (a Burmese exonym). In some cases, these changes represented a 'Burmanisation' of indigenous names; in others, the new word more closely resembled local pronunciation than had the old colonial-era Romanization. Until the apparent reforms of a decade ago, the terms 'Burma' and 'Myanmar' were understood and used quite differently among different communities in and from the country. The use of 'Burma' signified a rejection of the military government's legitimacy. Most opposition groups used the colonial-era name for the country. Although the heat has gone out of the debate in recent years, many exile opposition actors still prefer 'Burma'.
- 2 Particularly since the February 2021 military coup, several groups and analysts have started using the phrase 'Ethnic Resistance Organisation' (ERO), preferred by some of these groups (including for example, the KNU). For now, I choose to retain the term 'EAO', as this terminology is more inclusive and less normative (all EROs are EAOs, but not all EAOs are EROs - e.g. UWSA).
- 3 Crisis Group, *Myanmar on the Brink of State Failure* (9-4-21).
- 4 David Steinberg, *Myanmar: Failed State or failed nation?* (Frontier Myanmar 11-8-21).
- 5 In a bid to shore up some support, the SAC has called for "establishment of a union based on democracy and federalism", based on the 2015 Nationwide Ceasefire Agreements (NCA - see below): Global New Light of Myanmar, *The Speech Made by SAC Chairman on the Occasion of Six Months since SAC Has Taken State Responsibilities* (2-8-2021).
- 6 Milton Friedman, *Capitalism and Freedom* (1982, Preface).
- 7 Ashley South, *Ethnic Armed Organisations and Climate Change in Myanmar* (Search for Common Ground, 14-12-2021: <https://www.sfcg.org/tag/myanmar-reports/>).
- 8 'Sovereignty' relates to concepts and practices of legitimate political order. Euro-centric (Hobbesian) notions of sovereignty can be supplemented or challenged (de-centred) by indigenous conceptions and practices - as discussed in the Karen context of the Salween Peace Park by Tomas Cole, *Liberation Conservation: The Salween Peace Park and the Politics of Possessing the Earth in Southeast Myanmar* (EBA Dissertation Brief 2021:02, February 2021, Expert Group for Aid Studies, Sweden).
- 9 Alan Smith, *Burma/Myanmar: struggle for democracy and ethnic rights*, in Kymlicka & He (eds), *Multiculturalism in Asia* (Oxford UP 2005); Alan Smith, *Thinking about Federalism* (Covenant Consult and Ethnic Peace Resources Project Yangon 2019).
- 10 The classic text on consociationalism is Arend Lijphart's *Democracy in Plural Societies* (1977). The main elements of consociational democracy are ruled by 'grand coalition', the provision of minority vetoes, proportional representation in decision-making (and in the allocation of funds and services) and segmental autonomy - or federalism. If a high degree of cooperation and goodwill can be achieved between elites, then 'unity in diversity' may be accepted and even celebrated. The literature and limited practical examples of consociational democracy have generally focused on inter-communal issues and political structures at the level of the nation-state (e.g. Austria, Belgium, the Netherlands and *Switzerland*; and in the Asian context, Lebanon from 1943-75 and Malaysia from 1955-69: *ibid.* Chs. 2 & 5). However, consociational analysis and engineering may also be applied at the level of a particular community, such as the Karen, Kachin, or Chin (the model seems to be particularly relevant to relatively more diverse upland societies). Rather than trying to change Karen society, for example, by attempting to engineer greater intra-Karen unity and re-form the political and social nation's norms and values, a consociational approach would aim to work with local elites, to build models of

cooperation within and between different sectors of the community. The diversity of ethnic society is thereby recognised as a strength, rather than a source of anxiety and perceived weakness. As Alan Smith notes (1995), "Consociationalism and federalism overlap".

- 11 Yash Ghai (2000, p.8).
- 12 Ashley South, *Ethnic Politics in Burma: States of Conflict* (Routledge 2008).
- 13 According to Alan Smith, a federal constitution reflects "a voluntary cooperative effort by autonomous state entities to establish by constitution a joint central administration" (1995).
- 14 "Where the 'federalising' process is at work, segments have been territorially based ... providing a constitutional basis for power to be held by geographically defined majorities... especially where these 'states' are designed to match or express real local or regional communities with established identities": Ibid.
- 15 For example: *Statement of Ethnic People, Civil Society Organizations and Networks Calling for a Genuine and Just Peace* (7-6-2013).
- 16 This notwithstanding the long-standing historical claims to sovereignty on the part of Karenni and Shan leaders, who objected to Tatmadaw demands to withdraw the right to secession at the third Union Peace Conference in May 2017.
- 17 Matthew J. Walton, *Ethnicity, Conflict, and History in Burma: The Myths of Panglong* ('Asian Survey', Vol. 48 No. 6, November/December 2008, pp. 889-910).
- 18 The Panglong Agreement granted "significant autonomy in matters of internal administration", at least for the Shan and Kachin (and future Karen) States, with no specific mention of federalism.
- 19 Nehginpao Kipgen, *The Quest for Federalism in Myanmar* ('Strategic Analysis', 2018, Vol. 42, No. 6, 612-626).
- 20 Edmund Leach, *Political Systems of Highland Burma: a study of Kachin social structure* (London, G Bell & Son 1954).
- 21 Interview with Kachin politician (12-11-21).
- 22 Mandy Sadan, *Being and Becoming Kachin: histories beyond the State in the borderworlds of Burma* (London: OUP/British Academy, 2013). There are also about 10,000 Singhpo (Jingphaw) in north-east India.
- 23 For example, there are five Townships in Karen State with significant Mon populations.
- 24 NCA Chapter 1, *Basic Principles*: "1. In order to achieve lasting and sustainable peace, we agree to implement this Nationwide Ceasefire Agreement in accordance with the following basic principles:  
a. Establish a union based on the principles of democracy and federalism in accordance with the outcomes of political dialogue and in the spirit of Panglong, that fully guarantees democratic rights, national equality and the right to self-determination on the basis of liberty, equality and justice while upholding the principles of non-disintegration of the union, non-disintegration of national solidarity and perpetuation of national sovereignty."
- 25 For example, on 7 June 2017 while visiting Canada, Aung San Suu Kyi said, "I'm happy ... to study the federalism of Canada because it is where we're trying to go. We're trying to build up a democratic federal union": Aung San Suu Kyi, Justin Trudeau talk federalism for Myanmar (Straights Times, 8-6-2017).
- 26 Which is not to say that all ethnic nationality citizens regard EAOs positively; see Ashley South, "Hybrid Governance" and the Politics of Legitimacy in the Myanmar Peace Process ('Journal of Contemporary Asia' 2017).
- 27 Many of Myanmar's 1000 or so non-state armed groups are little more than local militias with superficial nationalist agendas and strong economic interests, often in criminal activities including the drugs trade, with deep ties of patronage and control to the Myanmar Army. Nevertheless, some militias provide some basic services to communities under their control (and/or act as local powerbrokers, dispensing state patronage),



enjoying varying degrees of trust from the community. Somewhere between EAOs and local militias are Border Guard Forces.

- 28 The UWSA and KIO have arguably developed the most comprehensive and sophisticated 'states within the state' in Myanmar.
- 29 Helen Kyed and colleagues explore the plurality and complexity of justice systems and cultures in Myanmar, including the importance of localised, non-formal solutions and customary informal dispute mechanisms and the roles of (some) trusted EAO justice systems. However, issues of access and inclusion remain, including in EAO justice systems: Helene Maria Kyed (ed.), *Everyday justice in Myanmar: Informal resolutions and state evasion in a time of contested transition* (NIAS Press, 2020).
- 30 This section is based on a presentation to the Spring Flowers International Conference on Myanmar (February 5-12, 2022), and an article in the Irrawaddy: *Education and Federalism in Myanmar* (The Irrawaddy, 11-2-2022).
- 31 Key Myanmar Education CSOs include Literature and Culture Committees, mostly working in government-controlled areas. In addition, several CSOs work in conflict-affected areas (often in partnership with EBEPs), as well as in areas of mixed administration and in fully government-controlled areas. Many private, often faith-based schools, follow the MoE curriculum (for example monastic schools). Most of these activities have been unable to continue after the coup – for now at least.
- 32 Or 'non-territorial federalism', as proposed by the late Prof Nehginpao Kipgen (see comments above).
- 33 A 'confederate' approach implies a sovereign Arakan State could join with others to form a federal union.
- 34 In late May 2022, the UWSA was among other ceasefire groups to meet with the junta leader, Min Aung Hlaing. They subsequently released a strong statement, calling for political negotiations, while making it clear that the Wa would not get involved in disputing the coup. The UWSA declared that it would not leave the union of Myanmar, but "except for national defence and diplomacy, we will manage ourselves", and asked for the creation of an autonomous Wa State: *Text of Speech of Wa State Delegation* (no date).
- 35 In an April 2022 press conference Maj-Gen Twan Mrat Naing, the AA Chief-of-Staff, said "The right to self-determination and sovereignty is at the heart of our national movements. We will see whether a Federal Union of Myanmar will have the political space for the kind of confederation that our Arakanese people aspire to": Gaung, *Arakan Army Looks for a New Political Path in Myanmar* (Development Media Group 21-3-2022).
- 36 "The member states of the Union and the people in these states are the original owners of sovereignty. The Federal Democracy Union is established with member states which have equal rights and right to self-determination in full" (*Federal Democracy Charter*, Paert 1, Chapter IV, Part II).
- 37 The revised *Federal Democracy Charter* (March 2022) Chapter on "Interim Constitutional Arrangements" identifies the NUCC as the principal body for convening and implementing decisions of a People's Assembly, composed of: "a. Elected members of parliament, including the CRPH; b. Political parties; c. Unions; women's groups; Civil Society Organizations, including those working on affairs of youth and minorities; civil disobedience movement groups fighting against dictatorship, including civil servants; and strike groups; d. The Ethnic Resistance Organizations; and e. Interim State/Federal unit representative and Ethnic-based organizations/ councils."
- 38 *Announcement of the National Unity Consultative Council* (NUCC 16-11-21).
- 39 The mandate and role of the NUG has been much debated and contested, and is a 'work in progress'. In principle, the NUG is accepted by many anti-coup actors as an executive for governance of Myanmar in the absence of a legitimate central government – at least, in those areas which are not controlled already by autonomous EAOs. The NUG is a relatively inclusive body, with several ethnic nationality CSO and EAO leaders in (albeit often

- deputy) ministerial positions; also unusually for Myanmar, it includes relatively large numbers of women in key leadership positions (in line with in line with UN Security Council Women, Peace and Security resolution 1325).
- 40 Resilience can be understood in terms of capacities: Absorptive capacity prepares for or mitigates the impacts of negative events through coping mechanisms that focus on essential basic structures and functions. Adaptive capacity brings about longer-term change, including through adapted and diversified livelihoods and farming techniques. *Transformative capacity* goes beyond existing absorptive and adaptive abilities, making the existing system unsustainable. See Ashley South and Liliana Demartini, *Towards a Tipping Point? Climate Change, Disaster Risk Reduction and Resilience in Southeast Myanmar* (ActionAid Myanmar 2020).
  - 41 Lagai Zau Nan analyses the traditional Kachin (Jingphaw) concept of *Awmdawm*, as an indigenous norm of sovereignty (vis-à-vis outsiders – e.g. the Burman state) and freedom (potentially at least, in terms of internal dynamics and democracy of Kachin society): Lagai Zau Nan (2020), "*Awmdawm* (Freedom) as a Kachin Political-Theological Discourse, Political Theology" (DOI: 10.1080/1462317X.2020.1845480).
  - 42 For a discussion, see Alan Smith, *Ethnic Conflict and Federalism: the case of Burma* (paper presented at the Swiss Peace Foundation international conference, 'Federalism against Ethnicity? Institutional, legal, and democratic instruments to prevent or resolve violent minority conflicts', Basle, Switzerland, 27-29 September 1995).
  - 43 A forthcoming conference is due to adopt a constitution for Shan State (drafted by the Committee for Shan State Unity), and move towards establishing a Shan Federal Council (under the influence of the RCSS). It remains uncertain whether and how non-Shan groups (e.g. the Ta'ang and Wa) will participate in this process: RCSS Prepares For Shan State Conference (S.H.A.N. 7-2-22).
  - 44 Nan Oo Nmay, *Bamar People's Liberation Army receives support of major rebel groups on one-year anniversary* (Myanmar Now 18-4-22).
  - 45 UN High Commission for Human Rights findings, reported in *The Guardian*, *Widespread abuses since Myanmar coup may amount to war crimes, says UN report* (16-3-22).
  - 46 See *Ethnic Armed Organisations and Climate Change in Myanmar* (Search for Common Ground, 14-12-2021): <https://www.sfcg.org/tag/myanmar-reports/>
  - 47 See *Towards equitable and sustainable land governance in Southeast Myanmar* (Covenant Consult August 2021).
  - 48 Myanmar Interim Arrangements Research Project, *Between Ceasefires and Federalism: exploring interim arrangements in the Myanmar peace process* (Covenant Consult 2018).
  - 49 Although EAO leaders often frame self-determination in terms of the ethnic community, their positions in the *Federal Principles* (mentioned above) are based on geographic states and regions. One of several necessary debates regarding federalism in Myanmar is if and how existing state/region boundaries might be re-drawn, and the attendant risks. Many thanks to Dr Sai Oo for highlighting this important point (personal correspondence 25-11-21).
  - 50 In *The Anti-politics Machine* James Ferguson (1990) argues that development aid can de-politicise contentious issues by framing these as amenable to technical solutions implemented by government in partnership with aid professionals, rather than sites of political struggle. This liberal peace-building approach was apparent in Myanmar before the coup, where donors had been keen to strengthen a state lacking capacity and reach, rolling out market-friendly "good governance" policies and in effect delivering the "anti-politics machine".
  - 51 The Salween Peace Park was awarded the UN's Equator Prize in September 2020, the same year one of its founders (Paul Sein Twa from KESAN) won the Goldman Environmental Prize (the "Nobel Prize for nature").

## About Us

PeaceRep is a research consortium based at Edinburgh Law School. Our research is rethinking peace and transition processes in the light of changing conflict dynamics, changing demands of inclusion, and changes in patterns of global intervention in conflict and peace/mediation/transition management processes.

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