

Kachin State Natural Resources Development Policy Discussion Paper



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KACHIN STATE NATURAL RESOURCES DEVELOPMENT POLICY DISCUSSION PAPER

Hpakant - Before and after development



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KACHIN DEVELOPMENT NETWORKING GROUP

KDNG was set up in 2004 in Kachin State to promote sustainable development, equality and justice. For the last 10 years it has documented unsustainable exploitation of natural resources, focusing on large scale [mining](#), mono crop [plantations](#) and [hydropower](#).

KDNG also works to promote sustainable development alternatives by working with local organizations and community members to develop local solutions to development problems. In all of this, the organization works to encourage the participation of women in development decisions and activities.

Through these endeavors, KDNG hopes to contribute to the struggle for justice, social reform, and political change for the people of Kachin State and all of Burma.



Contact

Email: - kdngchn@gmail.com

Website: <http://www.kdng.org>

Face book: Kachin Development Networking Group (KDNG)

EMERGENCE OF POLICY DISCUSSION PAPER

This policy discussion paper is based on our experiences and findings of our community research over the last ten years, documenting the impacts of centralized mega development projects on peoples across Kachin state. We did this research together with local communities, including in Hukawng, Hpakant, Putao, Chibwe, Tangphre as well as others. This paper also draws on experiences and solutions from other countries where there has been conflict over natural resources. We hope this paper will contribute to the debate over political solutions to allow the future generations of Kachin state to benefit from its natural resources.

Contents

| | | |
|---------------------|--|-----------|
| Introduction | | 1 |
| Chapter-1 | Vision of Development, Vision of the Future | 3 |
| Chapter-II | Kachin State Challenges | 7 |
| Chapter-III | Lessons from Kachin State: evaluating the current development plan against the past ceasefire outcome | 10 |
| Chapter-IV | The current political structures driving the destructive effects of the development process currently underway | 14 |
| Chapter-V | Solutions to the current destructive natural resource development process and related conflicts | 23 |
| Chapter-VI | Interim Steps | 34 |
| Chapter-VII | Establishing protection mechanisms | 36 |
| Conclusion | | 40 |

ABBREVIATIONS

| | |
|-----------------------|--|
| SLORC | State Law and Order Restoration Council |
| SPDC | State Peace and Development Council |
| KIO/KIA | Kachin Independent Organization/ Kachin Independent Army |
| CPI | China Power Investment corporation |
| KSPP | Kachin State Progressive Party |
| HIV & AIDS | Human Immunodeficiency Virus & Acquired Immune Deficiency Syndrome |
| EITI | Extractive Industries Transparency Initiative |
| SEIA | Social and Environmental Impact Assessment |
| FIEGT | Forest Law Enforcement, Governance and Trade |
| FPIC | Free, Prior and Informed Consent |

INTRODUCTION

Along with the development of the world, there is a constant global demand for energy and natural resources and so natural resources are being exploited and used in development projects all over the world.

“Natural resource development programs” are started by governments and businesses in the name of development for the local community. They promise all kinds of good things as a result of the projects. However, often in the course of implementation the local people suffer new losses while the promises remain unfulfilled. Therefore natural resources can become a curse to people rather than a blessing.

But this unwanted outcome is a man-made disaster and not inevitable. When development programs that do not benefit all people are implemented it is because there are no proper democratic management and political structures. The current political structures in our country allows reckless exploitation of natural resources that does more harm than good, and depletes the resources for future generations. As a result of such exploitation in Kachin State, there is destruction of the environment, harm to public health, abuse of human rights, outbreak of conflict, and increases in inequality.

This policy paper is written to help better understand the source of these problems and to propose different tools to address them. The paper is a call to local citizens to get involved in how resources are distributed and used and to begin to build a new course of development that is more able to be sustained for the next generations.

A handwritten signature in black ink, appearing to read 'TSA JI' followed by a stylized flourish.

TSA JI

General Secretary

Kachin Development Networking Group (KDNG)

CHAPTER - I

VISION OF DEVELOPMENT, VISION OF THE FUTURE

What should development of Kachin State look like? What kind of future do we want? These questions drive how we set up our political systems.

Currently the central and state governments are talking about economic development simply in terms of revenue and how to increase the size of the economy. This approach is too simple. The development goals of Kachin State should be social and economic targets relating to benefits specifically for local people. This should include health, education, local employment, environmental, income generation, and security targets, instead of goals which simply create a lot of income but only benefit a few people.

Material development and human development should advance together. Material development means the development of the country by constructing visible buildings such as schools, hospitals, and farm projects. Human development builds and nourishes peoples' knowledge and intelligence. In the process of this development, people make their own development decisions. Material development can expire in a certain period of time. However, human development cannot be destroyed easily and remains for a long time.

Declaration of the United Nations Conference on the Human Environment

Stockholm, 1972

Principle 1

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

UN Declaration on the Right to Development 1986

Declaration on the Right to Development

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

This is how we envision the future:

- all people in Kachin State are physically secure and do not need to run from violence
- all people can improve the quality of their lives, and the gap between the rich and poor decreases
- people experience limited harm from natural resource use and receive maximum local benefit
- all people receive an agreed standard set of social services such as education and health care
- all people participate in local governance and decisions without restriction
- the natural resources of Kachin State can be used by and benefit generation after generation

In order to achieve our vision, our mission is:

- To help build a genuine federal democracy
- To implement a development process in which affected peoples are involved
- To improve the transparency of natural resource extraction and development projects among local people, government, and business companies

- To see that local people receive the benefits of natural resources in Kachin State through the ownership and management of their own natural resources and therefore amend the constitution so that:
- A state government that is elected by the people has the right to directly manage natural resource extraction and development projects and allows local people to have decision making power
- A state government allows affected people the right to a referendum for large scale projects to determine local consent
- The state government collects taxes and shares revenues from natural resources, the majority of which remain in Kachin State, putting local people first
- Kachin State education, economic, health, and infrastructure development programs are implemented with natural resource taxes and revenues from the Kachin State or lower level government bodies

CHAPTER - II

KACHIN STATE CHALLENGES

In 1988 the Chinese government changed its border trade policy with Myanmar. A series of agreements, to strengthen the Tatmadaw and implement development projects, followed. China also loaned over USD one billion to the Myanmar State Law and Order Restoration Council (SLORC) without charging interest.¹ During these warming ties, Chinese leaders visited Myanmar and determined that Kachin State had many natural resources that could be used for the development of Yunnan Province in China.

It was under the China-Burma border trade development program period that the Kachin Independence Army/Kachin Independence Organisation (KIA/KIO) and Burmese government had to sign a ceasefire agreement in 1994.² Without political talks first, “development programs” went ahead. For the proceeding seventeen years, logging and mining rampantly increased. Burmese troops swarmed in and

¹ http://www.asiapacificms.com/articles/myanmar_chinese_connection/

² <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-Myanmar%20The%20Military%20Regimes%25%2020View%20of%20the%20World.pdf>

occupied Kachin State, forming companies with business partners. The natural resources, especially in the Hpakant area, were scraped from the earth, causing great environmental upheaval and a myriad of health disasters.

In 2006 the State Peace and Development Council (SPDC), without consulting the local residents, granted Yuzana Company a total of 200,000 acres in the Hugawng Valley to establish mono-crop plantations and processing factories.³ Also in 2006, the then Prime Minister General Thein Sein (now President) made an agreement in Beijing for the China Power Investment Corporation to build the giant Mali-Nmai confluence dam (6,000 MW) and six other dams in Kachin State. Ninety percent of the power from the dams will be exported to China, leaving irreparable harms in Kachin State.⁴

Myanmar's military government cooperated with the Chinese government on many such “development programs” that did not include local participation in decisions or management of resources, and there were many losses in Kachin State. Social problems and environmental destruction became seriously alarming.⁵

When these problems occurred, there were no avenues for political talks with the Burmese government. The KIA/KIO submitted nineteen facts about the rights of the local people to the National Convention in 2006. At the convention, they were promised that the submission would be officially recorded. In 2010, the Kachin State People's Party (KSPP)

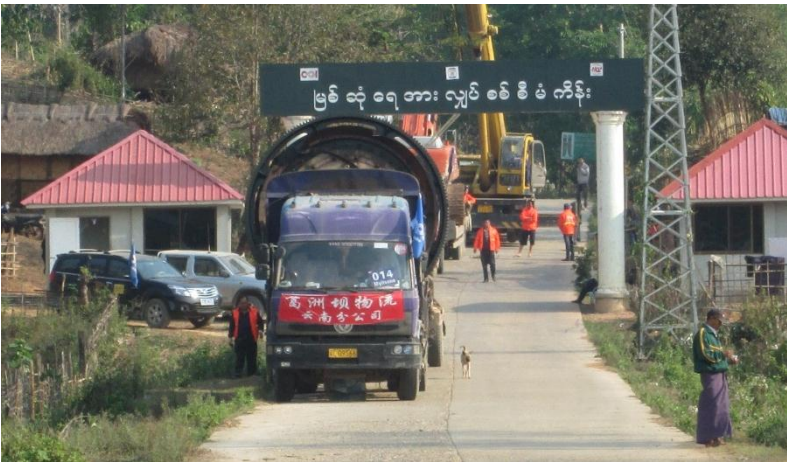
³ <http://www.kdng.org/images/stories/publication/TyrantsTycoonsandTigers.pdf>

⁴ <http://www.kdng.org/images/stories/publication/DammingtheIrrawaddy.pdf>

⁵ <http://www.kdng.org/images/stories/publication/TyrantsTycoonsandTigers.pdf>;
http://www.kachinwomen.com/images/stories/publication/driven_away.pdf;
http://www.aidsdatahub.org/dmdocuments/HSS_2009_report_Myanmar.pdf

was formed under the leadership of Dr. Manam Tu Ja and they tried to participate in the national election. But KSPP was not recognized as a political party. Elections were not allowed at all in Sumprabum and Njang Yang townships of Kachin State.

While these rights abuses continued, the military government tried to force the KIA/KIO to turn into a border guard force under Burma's Army (the Tatmadaw). Therefore, right after the election on June 9, 2011, the KIA and the Tatmadaw began to fight each other again. Over 100,000 people in Kachin State have had to abandoned their homes and villages and remain displaced. This is the result of development programs going ahead without a peace that implements solutions to political problems⁶.



⁶ Lessons from the Kachin “Development” Experience, Analysis of Kachin State development based on research from 2005-2012, Kachin Development Networking Group (KDNG)

CHAPTER - III

LESSONS FROM KACHIN STATE: EVALUATING THE CURRENT DEVELOPMENT PLAN AGAINST THE POST-CEASEFIRE OUTCOMES

After the 1994 ceasefire agreement in Kachin State, the military government continued to abuse the rights of local indigenous people. They and others exploited people and overlooked environmental destruction. The local people and natural environment were directly affected by the “development” plan based on the exploitation of natural resources. The gap between the poor and the rich and among the authorities and their subordinates become wider and there were many consequences to families and the society. Those local residents in the mining and development project areas suffered the most.

Tragically, the current Thein Sein government, backed by many international donors and investors, is attempting the same process again. It is aiming for a national ceasefire first followed by implementing large scale economic development with a reliance on the extractive industry sector. At the same time it is ignoring political dialogue and the resolution of constitutional issues such as management and revenue sharing of natural resources⁷.

⁷ Lessons from the Kachin “Development” Experience, Analysis of Kachin State development based on research from 2005-2012, Kachin Development Networking Group (KDNG)



Hpakant - 2014

The process of promoting large scale development without addressing the unequal land and natural resources power structure, as we have already seen in Kachin State, will only fuel further conflict and cause more misery. Even now, land confiscation, destruction of natural heritage sites, and forced displacement as a result of economic development is continuing despite the ongoing peace process.

So we can see the result of this peace process so far is similar to the previous one. The solution is clear: first address constitutional inequalities before beginning large scale development so that Kachin State peoples can benefit from the development of our resources. These non-renewable resources must be developed only when our political structures are ready to ensure that the process does minimal harm and resources are used sustainably.

Currently we are not ready.

The negative impacts of this centralized top down development

(a) Social Impacts⁸

1. People are forced to relocate because their lands are confiscated.
2. Full compensation fees are not paid to the owners of the confiscated land.
3. Local people face hardship day by day because their professions have changed.
4. Homemakers and wives are particularly suffering from the livelihood impacts.
5. Children lost their chance to pursue education.
6. Bribery between the authorities and the rich has increased.
7. The number of gambling casinos has increased.
8. Family problems have increased. Many divorce cases occurred.
9. Drug abuse and narcotic drug trade increased, smuggling, robbery theft have multiplied
10. The sex industry and trafficking have increased⁹; HIV/AIDS and other sexually transmitted diseases increased and spread¹⁰.
11. Malaria, diarrhea, tuberculosis, and cancer cases continue with limited treatment.
12. People, especially in mining areas, suffer from physical injuries, disabilities, and death.
13. Mental illnesses and physical disabilities increased.

⁸ [http:// www.kdng.org](http://www.kdng.org). Kachin Development Networking Group published reports “ Valley of Darkness, Damming The Irrawaddy, Tyrants, Tycoons and Tigers

⁹ http://www.kachinwomen.com/images/stories/publication/driven_away.pdf

¹⁰ http://www.aidsdatahub.org/dmdocuments/HSS_2009_report_Myanmar.pdf

14. In mining areas, expecting mothers suffer from mental illness, and children are born with birth defects due to mercury, cyanide, and chemically toxic wastes.
15. Skin diseases also increased from various pollutants.
16. Undemocratic management of natural resources fuels civil war. The number of internally displaced persons increased due to the civil war.

(b) Environmental Impact¹¹

1. Forests are depleted. Herbal plants are becoming extinct.
2. Extreme weather has occurred, the Snow mountains are melting; many different kinds of floods have occurred.
3. River banks eroded, changing the flow of waterways. Landslides and soil erosion streams and lakes dried up. Grazing lands disappeared
4. The air and water became polluted. Rivers, streams, and lakes are polluted by chemical wastes such as mercury and cyanide
5. Hotspots of biodiversity are being destroyed.
6. Natural resources are being depleted.

¹¹ [http:// www.kdng.org](http://www.kdng.org). Kachin Development Networking Group published reports “ Valley of Darkness, Damming The Irrawaddy, Tyrants, Tycoons and Tigers

CHAPTER - IV

THE CURRENT POLITICAL STRUCTURES DRIVING THE DESTRUCTIVE EFFECTS OF THE DEVELOPMENT PROCESS

A. Constitutional inequities

Myanmar's current constitution places the majority of governance powers firmly in the hands of the central (Union) government and gives a large, unchecked role to the military. State and regional governments are only partially elected and have extremely limited powers. Below is a summary of the inequities entrenched in the constitution.

- Military representatives appointed by the Commander-in-Chief are guaranteed 25 percent of national and state/regional legislature seats
- Active military personnel head up the Home Affairs and Border and Security Affairs ministries
- Non-military seats in the state legislature are elected but representation is not based on population (2 per township)

- The state legislature has extremely limited powers to enact laws according to Schedule Two of the constitution (see annex page 44, 45, 46). The state legislature is excluded from enacting laws dealing with most areas of natural resource use and social service provision
- The state Chief Minister is nominated and effectively selected by the president in Naypyidaw; this person can be an elected representative but can also be a military representative from the legislature
- The Chief Minister appoints state ministers; state ministries are not separate entities but are built around the General Administration Department which is under the military controlled Home Affairs Ministry
- The Chief Justice of the state is nominated by the president in Naypyidaw; it is quite difficult for the state legislature to deny or remove the Chief Justice. The state judicial branch is therefore essentially under the central government's executive branch.
- Township authorities are not elected but headed by the General Administration Department of the military-controlled Ministry of Home Affairs (many key functions of government happen at the township level)

B. Centralized management of natural resources

The economic development plans being conducted in Myanmar today are the result of a “top-down” policy process.

If we look at the national level, the Naypyidaw government does not allow the Kachin State government and the residents of Kachin State to participate in the decision making and management of the state's resources or the distribution of economic/social benefits.

For example, top quality jade, “A” and “B” grades, are not allowed to be sold or bought within Kachin state as this only can be through Naypyidaw. Only lower grades of jade are allowed to be sold or purchased within our state¹².

Development plans are decided between the Naypyidaw government and local or overseas companies. These actors are not accountable to the needs of local people or for the problems of environmental destruction. This centralised Naypyidaw structure performs very badly in terms of all global rankings related to natural resource development (see chart below).

It is evident that the local people do not gain benefits from the current development projects. For example, it is China that will receive 90 percent of the electricity generated by the Mali-Nmai confluence dams project, and the Naypyidaw government will get the payments from China, while local people are displaced and lose their farms.

¹² Vol: 2 No: 2 Kachin State Chief Minister said to Myitkyina journal published in March 30-April 9, 2015.

Myanmar's Central Government's Current Ranking in Natural Resource Governance and Other Related Indicators

| Metric | Ranking |
|--|---|
| Human Development Index (UN Development Programme, 2012) | 149 of 187 countries (low human development) |
| Civil and Political Freedom rating (Freedom House, 2013) | Not Free (though improving civil and political rights) |
| Press Freedom Index (Reporters without Borders, 2014) | 145 of 177 countries (+24 positions from 2012) |
| Corruption Perception Index (Transparency International, 2013) | 157 of 177 countries |
| Index of Economic Freedom (Heritage Foundation, 2014) | 162 of 178 (overall score 46.5 'repressed', +7.3 from 2013) |
| Resource Governance Index (Revenue Watch Institute, 2013) | 58 of 58 countries |

There are three main powers to consider when discussing control over natural resources. These are:

1. Ownership
2. Management
3. Collection and sharing of revenues

Within the current 2008 constitution, these three main powers over natural resources are completely centralized.

1. Ownership

Chapter 1, Article 37(a) says that all natural resources are owned by the central (Union) government and not the local people.

Chapter One, clause 37(a): “The Union (Naypyidaw) is the ultimate owner of all the land, and natural resources above and below the ground, above and beneath the water and in the atmosphere within its territorial boundary”

2. Management

Also the power to manage natural resources, to make laws and enforce laws for natural resource development and the power to say no to destructive projects, is only at the central government level. This is made clear in Chapter 1, Article 37(b).

Chapter One 37(b) “The Union shall enact necessary laws to supervise extraction and utilization of State owned natural resources by economic forces”



Local anti-Myitsone dams event - 2014

This means that under the 2008 constitution, even if all Kachin State MPs, including Tatmadaw MPs and the Chief Minister decided to permanently cancel the Myitsone Dams project, they would not be able to do so because only Naypyidaw can decide this.

3. Revenues collected and used by central government

Currently in Burma nearly all natural resource revenues are collected by the central (Union) government and it is unclear how much if any of these funds are shared back to the states. The Kachin State government has very limited ability to collect its own taxes and mainly relies on the Naypyidaw government for revenues. As discussed above, due to Schedule 2 of the constitution, the Kachin State government is also virtually powerless to spend any taxes or revenues of its own design. The central government, together with corporations and international agencies, is making all the decisions about how to spend tax revenues, bypassing state and local governments and receiving little input from local people.

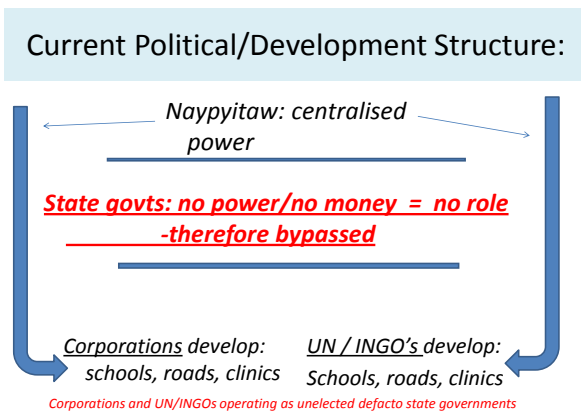
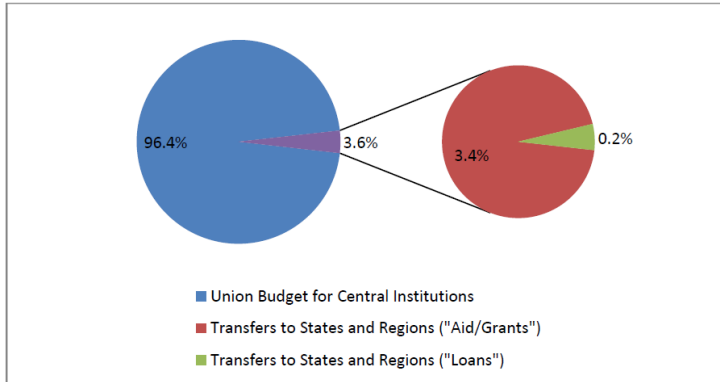


Figure 10: Share of the union budget transferred to state/region budgets, FY 2013-14

Source: Union Budget Law FY 2013-14.

Box: Approaches to natural resource revenue collection¹³

There are three main ways to collect and share revenue from natural resources.

1. The central government collects all taxes and revenues and shares a portion or percentage back to the state or lower level governments based on an agreed upon formula (formula based revenue sharing).
2. Both state and central governments have the right to directly collect taxes and revenues directly on different activities or aspects of natural resource projects.
3. A mixed system with components of both 1 and 2.

There have been recent discussions in parliament to institute a “formula based revenue” system where the central (Union) government would continue to collect all the taxes but

¹³ N. Haysom, S. Kane, Negotiating Natural Resources for Peace, 2009

would be required to share back a certain portion to the state or sub-national government. Since this system allows the central government to give or withhold money from the state governments, it can increase the political control by the central government. For this reason, a formula-based revenue system has been problematic in other peace processes, especially where natural resources have been a source of conflict.

“The greatest stumbling block in obtaining agreement to formula-based revenue-sharing systems is...the often-well-founded fear of provincial governments that the transfer of their fair share of natural-resource revenues from a central account will not be timely, transparent or free from political interference. Indeed it may have been past discrimination in the sharing of natural-resource wealth that served as the root source of conflict. This lack of trust has manifested itself in the context of negotiations in Sudan, Iraq and Indonesia”¹⁴

C. Proposed protection mechanisms cannot be fully implemented at the state and local levels

The current laws in Myanmar are weak and there are virtually no external checks to prevent the over-exploitation of resources and the negative impacts of development projects. Mechanisms that have been proposed, if implemented under the current constitution, will leave locally-affected peoples little political avenues to be heard. Currently, with a powerless state government, residents in Kachin State are at a severe disadvantage as they are forced to directly

¹⁴ Ibid

negotiate with the central government for solutions within their state. If the state and local governments had real decision making powers around natural resources, residents could utilize protections mechanisms like transparency regulations contained in the Extractive Industries Transparency Initiative to engage the local government. However such protection mechanisms by themselves do not address the main constitutional inequalities of natural resource ownership and management powers. Without such powers at the state level, local protection mechanisms cannot be used with local governments and have little use.

D. Freedom of information and expression are restricted

For limited protection mechanisms such as Free Prior Informed Consent or EITI to work properly, there must be freedom of movement and information. The media must be allowed to investigate and disclose information without restriction, and people must be allowed to participate in public debates and forums¹⁵. In Kachin State this is currently impossible due to ongoing fighting. In more peaceful areas, these freedoms are also not guaranteed as there is continued harassment and intimidation by central authority structures such as the military, police, and government officers.

¹⁵ Training manual for indigenous peoples on Free, Prior and Informed consent (FPIC)
Published by AIPP 2014.

CHAPTER - V

SOLUTIONS TO CURRENT DESTRUCTIVE NATURAL RESOURCE DEVELOPMENT PROCESS AND RELATED CONFLICTS

1. Immediate constitutional reform

“In divided societies, constitutions or peace agreements are often called upon to resolve issues of control over the development of local natural resources that are intimately linked to conflicts based on issues of identity and local autonomy. Clarifying responsibilities for natural resources can also help to reduce the opportunities for corruption and graft by limiting the discretion of government officials to insert themselves into regulatory processes. In both of these types of circumstances, it may be necessary for the constitution to devote greater detail to the allocation of authority over natural resources than is usually the case. This is to reassure and provide clarity to the parties on the nature of the national compact they are entering into, to forestall future conflicts that could result from ambiguous provisions, and to set up a

framework to resolve any resulting disputes.”¹⁶

A constitution should clearly establish legal rights to the nation’s natural resources in order to provide the foundation for proper natural-resources management and development, and social peace. The 2008 constitution must be re-written or replaced to address the issue of natural resources, specifically in the areas of ownership, management, and revenue collection. At the same time, the army must be brought under the control of a civilian government and the state governments must be completely directly elected.

Integrating natural resources powers into constitutional reform



Constitutions can prevent national peace agreements from being easily changed at the expense of minorities

¹⁶ N. Haysom, S. Kane, *Negotiating Natural Resources for Peace*, 2009.

A. Ensure Kachin State has full ownership of all natural resources and this is written into the federal and state constitutions

If there are no proper and clear ownership rights to the natural resources in the constitution, problems will arise between the central, state, and local governments and it can lead to renewed conflicts. Only when there is a clear ownership right will the political situation be resolved, investors will be convinced to invest, and people can improve the quality of their lives. The ownership rights stated in the current 2008 constitution in Chapter 1, Clause 37 (a) must be changed in a federal constitution from:

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

To



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

In addition, ownership rights for Kachin State should also include the following principles:

- (a) One must have the right to own one's land and property, (and/or) ethnic groups must have the right to common ownership.

- (b) If the property belongs to the people by customary law, all the local residents must be allowed to use it.
- (c) Local people must be granted permission to extract the natural resources on their own land.

It is important to note that although clarity of ownership rights can reduce conflict, the establishment of a clear system of managing resources and collecting revenues from resources can be even more critical.

“The resolution of ownership is often the most contested aspect of constitutional negotiations on natural resources. However, ownership is often misunderstood as resolving the related issues of the management, control and sharing of revenues from natural resources.”¹⁷



Villagers demanding to regain control over farm lands and resources – Hpakant 2014

¹⁷ N. Haysom, S. Kane, Negotiating Natural Resources for Peace, 2009

B. Ensure Kachin State has full management, legislative, and enforcement powers over natural resource development, including licensing

“The allocation of legislative and executive authority over natural resources determines who has the ability to make and administer laws relating to the development and exploitation of natural resources. This is potentially much more important than the question of ownership because the power to legislate and regulate natural-resources development determines the rights and the limits of the rights, of ownership”¹⁸

Currently the development process is a top-down one handled by the Naypyidaw government and business companies. The local state governments and local people have no right to take part in it. This kind of development program brings more harm than benefit to local people and creates conflict. A “bottom to up” development process engages local people in decision making and provides benefits to the local citizens.

If people are not engaged in the process of managing their own natural resources, more political problems will emerge and peace in the country may be affected. Therefore, the Kachin State government must have the right to manage the natural resources in the state. Moreover, the local government and the local people must get involved in the management. Local constitutionally-based management

¹⁸ *ibid*

powers over land and natural resources can protect minorities by bringing decision making power closer to the affected peoples.

“The range of issues covered by the allocation of regulatory authority includes: contracting authority and procedures; licensing, taxation and royalty regimes; employment practices; safety and environmental standards; transportation networks; labour laws, import and export permits and tariffs; and almost any other matter that can affect the development of the natural-resources sector.”¹⁹

Specific aspects of management can be divided between the central and state governments, for example certain standards on environment or safety could be set at the national level.

Management powers give legislative and executive authority over natural resources; they determine who has ability to make and enforce laws on the development and exploitation of natural resources. In this way, management rights are more important than ownership because the power to legislate and regulate natural-resources development determines the rights, and the limits of the rights, of ownership. Therefore Clause 37 (b) of Chapter 1 of the current 2008 constitution must be changed in a federal constitution from:

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

To



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

¹⁹ ibid

More accountable:

*In general, assigning executive and legislative authority to state or provincial governments is considered likely to improve accountability because regional governments can better determine the needs and preferences of their populations. Provincial [state] authorities also have a direct interest in making the most of their region's resources, whereas if an authority to develop natural resources is given to the national government, dominant groups at the centre may not have an interest in promoting a particular province's development.*²⁰

Lessons from Aceh²¹:

One of main reasons for the Acehnese conflict – sharing of revenues of oil and gas production – has been resolved at least on paper. Aceh now receives 70 per cent of the net profit and the central government 30%.

However, lack of detail on who will manage resources in the MoU has been said to complicate its implementation. A former GAM negotiator and now Governor of Aceh remarked that the MoU does not “mention who will regulate and govern [hydrocarbon revenue sources], or who has the authority to give licenses for new explorations. The LOGA says only that the central and Aceh governments will manage the resources jointly. We should have made it right in the MOU”

²⁰ N. Haysom, S. Kane, Negotiating Natural Resources for Peace, 2009.

²¹ A. Wennmann, J. Krause, Resource Wealth, Autonomy, and Peace in Aceh, 2009

Natural resource management rights for Kachin State should be based on the following principles:

- (a) A fully democratically elected Kachin State government must have its own administrative, legislative, and judicial power to manage resources within the state and the right to delegate management powers to local levels of government.
- (b) A fully democratically elected Kachin State government must have the right to manage and administer development plans based on its natural resources.
- (c) The central government and foreign companies must not directly manage resource extraction and related development projects or control the process. The Kachin State government should not be dependent on the central government in this regard but stand on its accord.
- d) A fully democratically elected Kachin State government may further devolve management powers to township or other local government entities to best address the needs of local populations needs.
- (e) All levels of government must recognize the management of the natural resources by the local people according to their customary law as the situation requires.
- (f) Detailed natural resource management powers must be written into both the federal and Kachin State constitutions.

C. Ensure Kachin State has the power to collect revenues from the state's natural resources

Taxes and revenues on the use of natural resources must be collected by a democratically elected Kachin State government and the process clearly and transparently explained to the residents of the state. If the local and state governments do not use the revenues according to the wishes of local populations, officials can be voted out. In this way, the government will be more transparent and accountable to the needs of local people.

“The advantage of this kind of [local tax collection] system, particularly in relation to divided societies, is that it can circumvent the distrust between regions and the national government by giving provincial [state] governments the power to raise revenues directly from natural resources”²²

Natural resource revenue rights for Kachin State should be based on the following principles:

- (a) The Kachin State government must collect taxes and revenues from the extraction and use of natural resources and related development projects. The majority of the revenue should remain and be used within Kachin State. A portion can be shared to the central (Union) government for national use.

²² N. Haysom, S. Kane, Negotiating Natural Resources for Peace, 2009

- (b) The collected tax revenues for Kachin state should be further divided among local government bodies²³. Every level of government, local, state and union must be democratically elected.
- (c) The Kachin State government must use the revenues to design, implement, and manage social, educational, health, and infrastructure development programs with the collected natural resource taxes. Local government entities should also play a role in determining such programs.
- (d) The revenue provided to the central (Union) government should support an “equalization fund” to provide revenue to the poorer states of Burma for their health, education and development programs.

The following guidelines should be followed in the collection and distribution of revenues from natural resources: ²⁴

- (a) People living in the area of natural resource extraction or the related development project must receive a dividend of the profits.
- (b) Tax collection must support the people’s economy and reduce their poverty.
- (c) The largest percentage of the profits should not go to foreign investors.
- (d) The local people must be provided employment. Training and job opportunities should be opened to them.

²³ Published by centre for trade and policy development (CTPD)/Policy brief on mineral revenue sharing mechanisms/reflection for Zambia/ copy©right CTPD 2013.

²⁴ Published by Christian Aid and SOMO, January, 2011/ Tax justice advocacy

- (e) Working people must be paid a minimum wage which is to be democratically determined within Kachin State to allow sufficient income for their survival



If the states' main income is from the central government, are they really free to use it how they want? Tax collection and use must happen at the state and local levels.

CHAPTER – VI

INTERIM STEPS

A. Halt large scale resource extraction and related development projects during peace process to minimize conflict

Political resolution, particularly around natural resource management rights, in Kachin State is essential for ending the conflict. If mega development projects are started before political resolution, there will be more conflict between the government and ethnic armed groups and more conflict between the government and local communities. This will have subsequent social impacts on communities and lead to environmental destruction. Therefore there must be a moratorium on all new projects involving an area larger than 50 hectares.

Large scale mono-crop plantations and factories have been established within the boundaries of the Hugawng Tiger Reserve. Therefore to avoid further exploitation of resources under the charade of a designated conservation area, there must also be a moratorium on the establishment of any conservation areas or parks until constitutional reform is instituted and local governments can properly manage conservation areas.

Existing projects must be re-negotiated under the new constitution.

B. Allow and protect unrestricted civil participation

It is vital that civil society and community-based groups play their role by monitoring the use of natural resources and implementation of the new constitution and laws.

1. Community-based groups must raise awareness among local people to know and understand their rights.
2. The media and other monitoring groups must operate freely to provide information
3. Local communities must have the right to organize referendums on large scale natural resource development projects to determine their consent.

People must have freedom of expression and the right to protest if the company and government confiscate land, exploits the community, or only consider their own economic profits.



local peoples' referendum on the Myitsone Dams project- 2014

CHAPTER –VII

ESTABLISH PROTECTION MECHANISMS

Protection mechanisms that enable the disclosure of information, third party assessment, and monitoring of resource extraction and related development projects are necessary. They can help prevent abuse of power by the government and companies. Mechanisms such as those below should be understood properly by the local community, and local people should be involved in their implementation. In addition, in order for these mechanisms to work, an independent, functioning judicial system and media are needed.

These protection mechanisms must be enshrined in state and local laws by the time the re-written constitution comes into effect so that Kachin State civil society can immediately engage the state government on these natural resource issues.

Development project contract: Every natural resource extraction and development project must have a publicly available project contract.²⁵

- a) A mechanism must be put in place to allow public input into the contract negotiations.
- b) The benefits to be gained by the local people must be included in the contract.
- c) The taxes to be collected, what percentage of the tax money will be spent for the local community, and the process for sharing of revenue must be written in the contract.
- d) The contract must include how much compensation money will be paid to the local people for their losses.
- e) The contract must include provisions for mitigating and paying for environmental damage and social impacts.
- f) Government agencies or companies found to deceitfully persuade threaten, or force the local people to sign agreements will be punished.
- g) Properties and houses that will be destroyed must be compensated according to current values and values of future lost income.
- h) The process of land rehabilitation and restoration of the environment must be included in the contract

²⁵ Mining contracts. How to read and understand them, January 2014.
<https://www.documentcloud.org/documents/1279596-mining-contracts-how-to-read-and-understand-them.html>

Environmental Protection Law: When the natural environment is destroyed, development is not possible. The rich, the poor, the educated, and the uneducated all need a place to live: we all depend on the environment. An environmental protection law must be written to prevent and regulate environmental damage, and to ensure that developers restore the ruined environment.

Land Policy: A proper land policy concerning Kachin State must be established and documented. The law concerning land ownership, land management, and land use must be written down. Natural resource development projects must be conducted in accordance with future local and state land use laws.

Social and Environmental Impact Assessment (SEIA): Before development programs and extraction of natural resources, an external party must conduct research on the environmental and social impacts; this research must be publicly available before the project is approved. There should be a period of public comment on the research that contributes to the decision about whether or how the extraction or program goes ahead.

Extractive Industry Transparency Initiative (EITI): An external organization must monitor the government and companies so that there will be no concealment and full transparency. This must be done at the state level where the state has the management and ownership powers, otherwise the EITI process will have no role except at the national level.

Forest Law Enforcement Governance and Trade (FLEGT): International trade agreements such as the FLEGT should take into special consideration the specific situation in Myanmar in

order to effectively prevent over-logging of forests. Illegality is clear in some democratic countries but in Myanmar, the meaning of “illegal” is still unclear. Currently local people in Kachin state have no legal rights to make decisions or be involved in the management of their natural resources, pushing their activities into the “illegal” category. At the same time, businessmen and cronies with links to Nay Pyi Daw and the military are allowed to cut down forests legally.



“legal” 200,000 acre crony mono-crop plantation in the middle of world largest Tiger Reserve - Hukawng

CONCLUSION

Today, we need to find solutions to the key problems by understanding what is happening among us. We must learn from history so that we do not repeat the same mistakes again and again. Policies concerning development must be in the hands of the people and development that will sustain over generations should be prioritized. It is useful to apply international criteria to natural resource extraction and development programs underway. But, the rights of local peoples to implement the programs are vital and must be written in to the federal and state constitutions.

Kachin State natural resources development policy
discussion paper prepared by

Kachin Development and Networking Group (KDNG)

Appendix 1: Guiding principles of a sustainable approach to development

Natural resources include the land, flora and fauna, minerals under and above the ground, underneath and in the rivers, lakes, and oceans, and the creatures in them, birds, and fish, organic and in organic materials, microorganisms and everything found in the people's homeland. The above-mentioned natural resources exist in the ecology system. They

cannot be isolated. If a certain species is destroyed, it will have domino effects on others. In the same way, other species will grow strong and gain benefits from some items being developed. Therefore, local inhabitants, the natural environment and natural resources are interrelated in the process of a development plan. Therefore long-term benefits, not only short-term benefits, must be considered when natural resources are managed and development programs implemented.

| Before resources extracted or development project implemented | During extraction and implementation | After extraction and implementation |
|--|---|---|
| <p><i>To prevent undo harm and inform affected peoples:</i></p> <p>Companies must sign an agreement to be liable for any known or unknown future harms of its project.</p> <p>Free, Prior and Informed Consent (FPIC) must be ensured for every project:</p> <p>Government authorities and the companies must explain the project plan and expected impacts to the local community clearly.</p> <p>The affected community must be provided information about the advantages and disadvantages of the development programs.</p> <p>There must be a mechanism for the input of local people, for example a comment period before project implementation.</p> <p>The local people must be informed beforehand about the land acres to be purchased for the development program and the number of buildings to be confiscated or destroyed.</p> | <p><i>To monitor what is being done, ensure equity, and address harms:</i></p> <p>There must be a grievance procedure and means of redress for harms incurred during project implementation (At the time of actual implementation of the development projects, the negative impact on the local people and their problems must be solved) Project implementation must be monitored and regulated to prevent undo harm, and violators punished.</p> <p>Media and independent agencies and civil society groups must be allowed to investigate project sites openly.</p> <p>There must be industries set up in Kachin State to process these resources to create jobs and value inside Kachin State.</p> <p>Financial reports concerning the taxes and benefits to the public must be publicly released.</p> <p>The percentage of the profits and total amount spent for the development of the local community must be publicly disclosed.</p> | <p><i>To evaluate long term impacts and prevent long term damage:</i></p> <p>Any natural environment being destroyed must be restored to the original state to the fullest extent possible.</p> <p>Wastes must be properly stabilized and disposed.</p> |

Table 2: Allocation of authority for natural resources in selected countries

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

188

SCHEDULE TWO
Region or State Legislative List
(Refer to Section 188)

1. Finance and Planning Sector

- (a) The Region or State budget;
- (b) The Region or State fund;
- (c) Land revenue;
- (d) Excise duty (not including narcotic drugs and psychotropic substances);
- (e) Municipal taxes such as taxes on buildings and lands, water, street lightings and wheels;
- (f) Services of the Region or State;
- (g) Sale, lease and other means of execution of property of the Region or State;
- (h) Disbursement of loans in the country from the Region or State funds;
- (i) Investment in the country from the Region or State funds;
- (j) Local plan; and
- (k) Small loans business.

2. Economic Sector

- (a) Economic matters undertaken in the Region or State in accord with law enacted by the Union;
- (b) Commercial matters undertaken in the Region or State in accord with law enacted by the Union; and
- (c) Co-operative matters undertaken in the Region or State in accord with law enacted by the Union.

3. Agriculture and Livestock Breeding Sector

- (a) Agriculture;
- (b) Protection against and control of plants and crop pests and diseases;
- (c) Systematic use of chemical fertilizers and systematic production and use of natural fertilizers;
- (d) Agricultural loans and savings;
- (e) Dams, embankments, lakes, drains and irrigation works having the right to be managed by the Region or State;
- (f) Fresh water fisheries; and
- (g) Livestock breeding and systematic herding in accord with the law enacted by the Union.

4. Energy, Electricity, Mining and Forestry Sector

- (a) Medium and small scale electric power production and distribution that have the right to be managed by the Region or State not having any link with national power grid, except large scale electric power production and distribution having the right to be managed by the Union;
- (b) Salt and salt products;
- (c) Cutting and polishing of gemstones within the Region or State;
- (d) Village firewood plantation; and
- (e) Recreation centers, zoological garden and botanical garden.

5. Industrial Sector

- (a) Industries other than those prescribed to be undertaken by the Union level; and
- (b) Cottage industries.

6. Transport, Communication and Construction Sector

- (a) Ports, jetties and pontoons having the right to be managed by the Region or State;
- (b) Roads and bridges having the right to be managed by the Region or State; and
- (c) Systematic running of private vehicles within the Region or State.

7. Social Sector

- (a) Matters on traditional medicine not contrary to traditional medicine policies prescribed by the Union;
- (b) Social welfare works within the Region or State;
- (c) Preventive and precautionary measures against fire and natural disasters;
- (d) Stevedoring;
- (e) Having the right of management by the Region or State, the following:
 - (i) preservation of cultural heritage;
 - (ii) museums and libraries.
- (f) Theatres, cinemas and video houses; and
- (g) Exhibitions such as photographs, paintings and sculptures.

8. Management Sector

- (a) Development matters;
- (b) Town and housing development; and
- (c) Honorary certificates and awards.

Flood in Hpakant city Photo: Jinghpaw Kasa website



KDNG
Kachin Development
Networking Group

Email: kdngchn@gmail.com

Website: <http://www.kdng.org>

Facebook: Kachin Development Networking Group (KDNG)