BURMA’S FORGOTTEN FRONTLINE
The Dilemmas of Ethnic Politics, Self-Determination and Democratic Governance:
the Case Study of Kachin

Master of Arts in Law and Diplomacy Capstone Project

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Burma’s Forgotten Frontline

The Dilemmas of Ethnic Politics, Self-Determination and Democratic Governance: the Case Study of Kachin

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No one can talk about Myanmar or Burma today without referring to unprecedented democratic, social and economic reform. International communities and medias seem to connote democracy as the only solution for Myanmar, the country with a history of fifty years of military oppression with more than 140 major ethnic groups. Nevertheless, the concept of democracy itself does not address how political power should be distributed between different levels of government, how to address the nationalization policy, land grabs, the right to cultural preservation and many other factors. There is no democracy without human rights. If we assume that democracy should reflect the major wills and fundamental values of peoples within the state, then human rights and rule of law step in to protect indiscriminately the private sphere of individual, minority and majorities.

Myanmar is at an historic stage in its development. Following adoption of a new Constitution in May 2008, parliamentary elections were held in November 2010 and by-elections contested in April 2012. The transition to civilian rule under the new Constitution was the first step in an on-going series of rapid and far-reaching political and economic reforms. The country now faces the challenge of advancing the unification of multi-nations within the state, and establishing rule of law, access to justice, and political power

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1 The use of Myanmar and Burma in this paper does not signify any political connotation as to recognize the military regime or oppositional party or NLD led by Aung San Su Kyi. “Myanmar” is used in accordance with the timeline when State Law and Order Restoration Council (SLORC) changed country’s official English name from the “Socialist Republic of the Union of Burma” to the “Union of Myanmar” in 1989. “Burma” is used when refer to the pre-1989 context.


3 UNDP Rule of Law and Access to Justice Fast Fact 2013
redistribution while simultaneously maintaining economic stability and democratic values. Ethnic politics and conflict are the core political problems in Myanmar that can hinder its ambitious goal to become ‘a modern developed nation that meets the aspirations of its people for a better life; and to achieve greater integration with the international community by 2020’⁴. Amidst the capital’s international economic engagement, trade, infrastructure projects and energy development spanning nationwide, many people remain poor and marginalized in the ethnic minorities borderlands. This contrast signifies that internal stability in Myanmar and international development progress are becoming closely intertwined.

Recently, international media has shed the light on KIO (Kachin Independence Organization) who signed the tentative peace agreement with the Myanmar government on 30 May 2013 - the last of the fourteen major ethnic armed groups to do so. Previously, KIO had signed ceasefire agreement with the government since 1994 and it was broken down in 2011.⁵ Although the government has demonstrated great political will to settle the conflict and is now pursuing the nation-wide cease-fire with all ethnic groups, all of which are in various stages of talks with Myanmar’s President Thein Sein about greater political divisions of power, there are many factions and a lack of coherence among various ethnic groups in term of their demands for the peace process and the country’s future political system. The Kachin ethnic conflict is one of the longest-running ethnic insurgencies in Myanmar and in the world. Kachin region is located in Myanmar's upper

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⁵ KIA signed a cease-fire agreement with Myanmar’s military regime in 1994, but the agreement broke down in June 2011 when fighting erupted between the government army and KIA soldiers. More than 100,000 people have been displaced in the deadly violence. In December, the military’s use of air strikes against the Kachin Independence Army (KIA) caused an international outcry.

north. Its close proximity to economic giants like China, and its abundant natural extractive resources makes it well placed to help lead the country in its development. However, the people have not been able to fully maximize its advantages because of the ongoing ethnic conflict. Moreover, the KIO plays an important political role as the chair of the alliance, the United Nationalities Federal Council (UNFC) in the alliance of eleven ethnic armed groups. The population of Kachin constitutes just 1.4 percent of the total population (approximately 1,000,000 people) but is regarded by the government as one of the most daunting political threat due to its strong political structure establishment and deep-rooted identity.

This research paper will examine the ethnic conflict and self-determination of the Kachin ethnic group in the last fifty years and its future. The paper is structured into three broad sections. First, it deals with the Kachin’s group identity construction through a historical perspective during the pre and post-colonial period. Second, it explores ways in which international law and its traditional interpretation might respond to self-determination, minority rights and indigenous rights in Kachin’s context and how the peace process is being negotiated with the government. It also will explore the question why territorial autonomy and federalism is a hard question partly because it is all parties’ second choice positioning in the middle between the government unionist and the ethnic secessionist. Third, it draws challenges of their claims whether it is de jure and de facto feasible in political realities by examining the 2008 Myanmar constitution and its governance structures. It aims to explain why autonomy arrangement in paper alone is not a magic wand and does not necessary meaningful for justice and equality. Finally, the paper tries to come up with futuristic forecast and solution of the conflict in the last section. It will tie the dichotomy of the government’s policies and its challenges towards
ethnic groups by exploring three conflicting concepts during the country’s transformation: democracy, economic liberalization and self-determination.
Where Is Myanmar and Why Does It Matter?

Myanmar is a home for over 50 millions people, the majority Burman people make up 69 percent of the total population, with a large number of ethnic groups who live in the mountainous areas or “frontier areas” (the Shan State and the areas primarily inhabited by the Chin and Kachin ethnic groups) comprising around one third of the total population.\(^6\) Since the colonization under Britain, the central lowlands of “Ministerial Burma”, or “Burma Proper”\(^7\) located at the central part of the country, which is controlled from Rangoon or Yangon has been always struggled to establish effective control over the “frontier areas”. Nevertheless, they were administered separately under the authority of hereditary chiefs. Myanmar is also geographically strategic, sandwiched between the great and growing power of China and India as well as contiguous with U.S. ally, Thailand. With its rich and underutilized natural resources, for example the most qualified quality of jade in the world, Myanmar has been always entangled with the rivalry politics of regional and world balance of power. China, India, USA, Japan and the ASEAN countries strive to gain strategic access to its natural resources, to vast economic market and to Indian Ocean as the exit to the Pacific sea.

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\(^6\) The figures are subject to dispute due to its imprecision and manipulation by internal political motivation. The most recent data of indigenous population was collected by civilian government in 1983. Shan 8.5%, Karen (Kayin) 6.2%, Kayah 0.4%, Chin 2.2%, Kachin 1.4%, Mon 2.4%, Arakanese (Rakine) 4.5 %


Kachin under Colonization: the Introduction of Ethnonationalism

War and conquests were endemic before the colonization. The modern concept of territorial boundaries did not exist before the Western conquests. The notion of ‘nation’ was not solidified based on ethnicity or common identity and culture but rather the density of supreme power of Burmese warriors Kings, who played major role in the unification and protection of the nation by conquering local kingdoms and expanding Burmese military power to neighbor lands. \(^8\) This kind of “Mandala System” \(^9\) of sovereignty was the norm during the time, in which power radiated from Burmese king in concentric circles to indefinite distant regions. Local rulers in those areas did not only owe allegiance and pay tribute to the Burmese king but also other several nearby powerful circles, even to the Chinese Emperor in Beijing. Therefor, cultural identity was less important than political power. This was not illogical but rather a common characteristic in South East Asia of the settlement.

Burma was colonized by the British from 1885 to 1948. In order to form the national military force, the British recruited “martial races”, Karen (27.8%), Chin (22.6%) and Kachin (22.9%) into the colonial army as to suppress against discontent since they did not trust the majority Burman, who has resisted their rules. \(^10\) As a result, a majority of these ethnic groups converted to Christianity during this period. By that time, most of the ethnic minorities armed groups remained loyal to the British and were fighting from times to times against the Burmans. It is important to note here that

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\(^8\) Mikael Gravers, 284.
\(^9\) The polities where various centres of power are arranged in shifting, hierarchical relationships
evidently, the serious tension between ethnic minorities and the majority Burman was deep rooted even before the independence of the country in 1948. This is partly because most of other excluded minorities perceived those British back ethnic minorities to have close relationship with the colonial rule.\textsuperscript{11}

The residual influences from the colonial Burma system of divide-and-rule policy in which solid segregation between “Frontiers” and “Burma Proper” helped reify ethnicity and destroying the traditional bond of Mandala system. As a consequence, ethnic minorities became more cohesive entities and led to ethnonationalism demanding for their special rights as collective entities for the first time. In this sense, the colonization brought in with the European concept of modern state and ethnonationalism, which ethnicity and political independence was connected and used as exclusive marker of self identity, synonymous with autonomous and nation state. This concept had never existed before in pre-colonization era where ethnic groups were subject to multiple Mandala systems and had no connection established with territorial self-determination and absolute nation state. The democratic idea of modern state as sovereign people drove a harsh wedge on the pre-dominated Buddhist cosmology, which deeply linked to the monarchy within the old Mandala system. Consequently, the unconscious and scattered ethnic groups were substituted by the mobilization of “imagined communities”\textsuperscript{12} to achieve the socio-political purpose of the colonial state.

\textsuperscript{11} Matthew J. Walton, “Ethnicity, Conflict, and History in Burma: The Myths of Panglong,” \textit{Asian Survey} 48, no. 6 (November/December, 2008), 889.

Who is Kachin?

Kachin State is located in the northern part of Myanmar. It is bordered by China to the north and east and India to the west. The capital of the state is Myitkyin. The term “Kachin” refers to all diverse sub groups who speak variety of languages of the Tibeto-Burman group. Kachin Peoples gradually moved south from their ancestral land in the Tibetan plateau through Yunnan in southern China to arrive in the northern region during the fifteenth or sixteenth centuries. In 1880s, Christianity gained foothold in the northern area of Burman where Kachin people resided. Due to its strategic location as the trade route with china and its abundant resources, the British annexed Kachin hills in 1885 during the third Anglo-Burmese war to facilitate trade with Yunan province. It linked through the British-administered East Bengal and Manipur India in the west. Although some areas of Kachin hills were granted rights to electoral representation in Yangon, the full form colonial administration was not imposed to the ‘frontier areas’ and their ‘tribal peoples’ until 1930s. As a result of the dishonor of the Panlong Agreement by the government, the group of young Kachin nationalists established Kachin Independence Organization (KIO) in 1961 controlling the large areas in Northern Shan State and Kachin State. The KIO’s armed wing the Kachin Independence Army (KIA) is the second largest ethnic armed group in Myanmar. Although KIO became the

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14 Logging, mining (gold, jade), agribusiness (rubber, teak, sugar cane plantation, banana plantation), rare earth reserves, hydro-electric dams such as Myitsone, Tarpain, Chibwe, Pashe, Lakin, Phizaw are the main economic dependence in the area. Particularly, the annual sale of jade which is all from Kachin region comprises 10$ annually and makes up 70 percent or premium jadeite in world supply. However, largest profits go to non-Kachin business interest. Renaud Egreteau, “Jade or JADE? Debating International Sanctions on Burm’s Gem industry, October 13, 2011”, Asia-Pacific Bulletin, no. 132 (2011): 1-2.
15 Kachin area was placed under the category of “Part I or Excluded areas” and “Part II or Partially Excluded Areas” in Myitkyina and Bahamo.
16 An agreement made between General Au Aung San and the major ethnic groups in 1947 to form the Union of Burma, which offered a basis for semi-federal constitution.
largest and best-organized armed opposition groups, intra-ethnic tension existed with fragmentations and splits. KIO reached its own ceasefire agreement with the central government in 1994.

17 Kachin comprises of 12 sub-ethnic groups ex. Jinghpaw, Maru, Rawang, Lashi, Lisu, Daluang and others *Composition of Different Ethnic Groups Under 8 Major National Races in Myanmar*, Document received by Ministry of Home Affairs, Mynamar.
The Identity Construction of Kachin Ethnicity and their Historical Development

Nation: the Role of Buddhism and Mandala System

By the mid-nineteenth century, common language was not necessarily only factor that establish the homogenous Myanmar identity, neither the common history nor culture. To give an example during the Ava Kingdom in late eighteenth century, although they shared some common language, set of legal, political ideas and institutions, they comprised only “partial identity”. People also saw themselves as Buddhists or Muslims. Mikael Gravers, a scholar and specialist on Myanmar, pointed out that in the old kingdom the dominant identity was determined by religion (Buddhist or others), membership, profession and social status (labors or slaves). The relative strength of particular Mandala centres would influence the degree to which populations in the regions identified with culture and implicit ethnicity. Therefore, ethnic like nation is a very fluid concept depending on the subjection under multi-sovereignties of political power and their assigned economic and social role.

Moreover, Buddhism and political/ economic power played significant role in shaping their national identities. For instance, Buddhist cosmology, so called “Dharma-Rule Universe”, played vital role in defining dominant Burman ethnic identity. Some non-Buddhists minorities were considered to be wild and uncivilized. The

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18 The Arakanese, for example, who spoke a near identical language as Mon were lumped together under ‘Myanmar’ defined by the people of Irrawaddy valley, Tai-speaking peoples and Kachin who spoke different language were lumped into ‘Shan’, all the overseas person from the South Asia, West Asia or Europe and South East Asia were all seen as ‘Kala’ or ‘foreigners’ putting Indians equivalent to the British colonizers

19 Known as one of the golden age, consist of the cities of Gold: Thaton, Pagan, Pegu, Ava and Mandalay


22 For example a Tai-speaking petty principality to be subject of a Mon (or Khmer) speaking prince, or Karen animists are subject to trade with Mon or Tai city states.

Christian Burmans\textsuperscript{24} were considered as ‘foreigners’ (\textit{kala}), who have lost their (Buddhist-Burman) nationality. Hence, they were not only people who broke away with the Burman Culture and religion but also the disloyal citizens of the Buddhist Kingdom of Burma.

In this sense, there is no single dominant factor determining the ethnic minorities’ identity construction but the mixed combination of old and newly constructed elements. This concept of dynamic nation contrasts with static ideas commonly argued by Renan, Max Weber and Stalin as mostly primordial with share of glory and cultural cores from the past.\textsuperscript{25} Indeed, it is the mix of “primordial”, “modern” and “instrumental” adoption of new political economic dominance, religion, and social status.

Conceptualization of Modern State: the Creation of Burmans/ non-Burmans

Most Kachin clans had been converted to Christianity with the majority of Baptist and Roman Chatholic. Similarly to other ethnic groups in Burma – Karen and Mon – the Christian missionaries and the colonial administrative structure (i.e. Divine and Rule system and military recruitment) played important role to solidify and re-create the unitary ethnic definition of “Kachin” despite the myriad factions of their sub-groups. In other words, it was the American Baptist missionary who transcribed the previously

\begin{footnotesize}
\begin{itemize}
\item Christian intervention came in 1813 by American Baptist missionaries. Soon after, the religious war between Buddhist and Muslim erupted. Religion was politicized to connect with the ethnic-national identity and fundamentalist nationalism which had to be protected through violence because it generated fear that intimidating Burman identity, the Kingdom and its subjects including minorities, like Karen, Mon and Kachin, who were mostly converted to Christian aka foreigners. The division of labors along the racial lines in politics and economic status and Christian educational policy resulted in unintended opposition. The Young Men’s Buddhist Association (YMBA) was established in response to the Christian dominance

Mikael Gravers, Exploring Ethnic Diversity in Burma, 283.

\item “ethnic identity and nations in many contemporary nations are closely related to and often derived from primordial ethnic, collective cultural cores, composed of myths memories, values and symbols.” “The heritage of glory, the historical constitution community of people, common language, common territory and economic cohesion and psychological make up”

\end{itemize}
\end{footnotesize}
non-literate Jinghpaw language in 1906 and published the first Jinghpaw language newspaper in 1914. The recruitment of Kachin into the colonial army known as “the Kachin Rifles” made the term “Kachin” become more widely used to describe a variety of related ethno-linguistic groups, living in the far north of the colony. However, this process of cherry picking one language over others within Kachin by upholding Jinghpaw domination was contested by non-dominant Kachin alternate groups and other non-Christian Kachin including Buddhist and animist elites. Thus, the printed languages laid the bases for national consciousness for Kachin.

Politically, the ethnonationalist classification of identity further deepened when the British reformed the modern administration in 1930s introducing the “Dyarchy” system based on India model. It positioned Governor General as “Ministerial Burma” to direct rule of Burma Proper with the advice from Ministerial Council. Thereby, number of constituencies based on religious and ethnic line was created to recruit candidates for the Council in the Burma proper.

As a result, the rationalization of modern state and socio-political structure led to the breakdown of the traditional social bonds and the collectivism based on patron-clients relations. It largely integrated lower land Burmese society while neglected the hill tribes peoples, which were governed by the indirect rule of their traditional rulers. In this sense, the northern “frontier areas” were excluded administratively to the central political and economic development leaving the traditional social fabric less disrupted. Thus, it is understandable that while the pan-Burmese identity was growing stronger at lower land,

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26 Jinghpaw in Myanmar, Jingpho in China, and Singpho in India is the dominant group and sometimes have been tensions with other Kachin groups such as Rawang, Lisu, Lashi, Maru and Azi Ashley South, Ethnic Politics in Burma: States of Conflict, 277.
27 Ibid.
28 Thant Myint-U, The Making of Modern Burma, 284
it did not reach expansively to the isolated northern areas. This lowland-highland political ignorance and the ethnonational identity classification transformed predominated fluid ethnic identities to the rigid separation of Burmans and non-Burmans.

**Ethnic National Identity: the Power of Language and Education**

Language and education are powerful tools to consolidate disintegrated ethnic factions into unitary group to garner political loyalty, identification and effective citizenship for the purpose of effective colonial rules.\(^{29}\) Literacy was seen as the minimal full requirement of the citizenship. To achieve this goal, the British not only adopted Burmese as the national language but also enforced western style of educational system on Christianized ethnic groups, namely Chin, Karen and Kachin to increase their literacy rate. As a result, most of the traditional Buddhist monastic schools were largely substituted by Christian churches. Surprisingly, this modernized educational system greatly fostered the emergence of self-consciously distinct ethnic groups who were encouraged to identify themselves in opposition to Burman Buddhist majority.

Evidently, language influentially established unknown bond of the ‘imagined political community’ despite the fact that roughly 140 ethnic groups never see one another before but they can feel the common sense of ethnic homogeneity.\(^{30}\) This stimulated the sense of universal political loyalties, which centered on the political units whose boundary is defined by the script-language. Thus, the mass concept of national consciousness binned the trans-geographical solidarities. As Walker observed that “the masses need to be liberalized from illiteracy in order to achieve the sense of group

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identity.” To put it bluntly, the British did not only modernize Burma but also unconsciously incorporated the ‘objective’ component of nation (i.e. territory and language) as opposed to ‘subjective’ element into the ethnic identity construction.

In sum, the language-of-power via standardized educational system did not create only Burman and ethnic groups’ political royalties to the ruler but also unexpected solidification among geographically scattered ethnic group themselves. The ability to exchange and communication across myriad ethnic groups within Kachin and others make their previous identities visible through the “imagined community” of language.

Panlong Agreement 1947: the Shift of Minority Rights and the Ethnic Uprising

“If Burma gets one kyat (Burma’s currency) then you (ethnic groups) will get one kyat”

General Aung San

General Aung San proceeded to London in 27 January 1947 for series of meeting with British Government resulted in the signing of Attlee-Aung san Agreement without consulting or inviting the ethnic representations. Back home, Kachin and Shan leaders cabled warnings that they would regard this agreement as non-binding. He finally participated in Panlong Agreement with the idea that the creation of new country should be a state building out of multi nations not a unitary nation-state. This marked the

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33 His famous promise to the hill tribes during the second Palong conference.
34 Matthew Walton, Ethnicity, Conflict, and History in Burma: The Myths of Panglong, 889-910.
35 Martin Smith, 78.
36 In the submission of the Union constitution to the AFPFL at Jubilee Hall on May 1947, he said “When we build our new Burma, shall we build it as a Union or a Unitary State? In my opinion it will not be feasible to set up a Unitary State. We must set up a Union with a properly regulated provision to set up the rights of the ethnic nationalities.”
important shifting point in term of an attempt to bargain with the minorities’ rights and minimal definition of right to self-determination. It was the first time that Shan, Kachin and Chin, as representatives from the frontiers, were allocated in theory some autonomy of their in internal administration and an equal share in the country’s wealth in return of the support of the formation of the Union of Burma. However, The Agreement also excluded larger groups of minorities such as the Karen, Mon, Arakanse, Wa, Naga and Karenni due to their political and geographic distance where most of those excluded ethnics lived in part of central Ministerial Burma while Shan, Kachin and Chin are territorially concentrated in the borderlands of the North. The exclusion prompted the strong dissent among other ethnic groups which further deepened by the first 1947 constitution. Consequently, this was the major push factor for other ethnic groups to rebel against the union government and went underground to take up arms after independence. The Karen, Mon and Karenni, Pao, Rakhine and Rohingyas dissatisfied with their excluded rights to self-determination in the 1947 constitution and further


Aung San’s view on nation was heavily based on Stalin’s definition as a nation is a collective term applied to a people irrespective of their origin, living in close contact with one another and having common interests and sharing joys and sorrows together for such historic periods as to have acquired a sense of oneness though race, religion and language are important factors, it is only their traditional desire and will to live in unity through weal and woe that binds a people together and makes them a nation and their spirit of patriotism. Only Shan and Burman met this criteria of nation in his view.


36 At the second Panlong Agreement on February 6, 1947. Kachin and Chin agreed several foundational principles for federating with Burma, including internal autonomy, the desire for Kachin state, the right to secession and the proposal of the formation of a Supreme Executive Council of the United Hill Peoples. However, on July 1947, Aung San’s assassination left the spirit of ethnic minorities in myth and completely extinguished by the military coup in 1962 by Ne Win.

Matthew J. Walton, 7.

37 They are seen as powerless and irrelevant. For example, in case of Wa and Naga, the unionist leaders labeled them as too primitive and uncivilized to assist in the drawing up of Burma’s constitution.

38 In order to form a political union among multi-ethnic nations within the territory, the 1947 Constitution included the constitutional right to secede to make the entry easier for ethnic groups to join the union. Section 201, 202, 203, 204, 205, 206 of Chapter X “every state shall have the right to secede from the Union accordance with the conditions hereinafter prescribed”.

pursued the separatism as a goal, while the Communist Party of Burma (CPB) wanted the communist revolution. In contrast, the privileged ethnic groups, namely Kachin and Chin Rifles chose to remain loyal to the union and were deployed against the rebellious Communist Party and Karen forces to prevent the breaking up of the country. As a result, Burman’s internal conflict during 1950s escalated into violent struggle between the coalition of minor ethnic and communist ideological armed groups on one side, against the coalition of Burman-dominated civilian, major ethnic supporters and the military on the other side.

After the independence, the policy of “Burmanization” and the resurgent of the Burma’s armed force (Tatmadaw) with its prestige of anti-colonial struggle over its national territory had been intensified and remained central policy throughout the U Nu’s civil administration (1948-late 1950s). It was followed by the coup d’état in 1962 by General Ne Win’s Burmese way to socialism (1962 - 1988) and another military coup staged in 1988 by General Khin Nyunt (1988 – 2004).39 The re-indigenization of the country, its administration, society, culture and economy had been a key policy agenda of all post-colonial Burman leaders.40 It granted the upper hands to the Burman-Buddhist majority and the central government’s promotion of political stability through the adherence of all minority groups to the ideology and history of the Burman-Buddhist obedience. The apex of ethnic minorities struggled with the core dominated Burman gave rise to the “ethnocratic tendencies” in which the state act as an agency for that community in promoting its ethnic values as the core component of the nationalist ideology. For instances, the recruitment to the state élite positions in the Tatmadaw, civil

39 Rajat Ganguly, Autonomy and Ethnic Conflict in South and South-East Asia (Abingdon, Oxon ; New York: Routledge, 2012), ix, 166. 181.
40 Ibid., 182
services and government is disproportionately and overwhelmingly from the majority Burman ethnic group. The changing of the name from Burma to Myanmar reflected the same ethno monopolistic view to incorporate heterogeneous ethnic groups into one unitary state instead of referring to one Burman ethnic majority.41 This concept of “ethnocratic tendencies” coupled with sacrosanct “Mahar Myanmar” mentality42 is expressed through the inter-communal violence today between Buddhist and Muslim in Rakhine State, where the police officers engaged as perpetrator.43 In the early 1960s, Shan, Kachin and Chin also turned to rebel and entered into civil war against the union because of their dissatisfaction due to the exponentially growing Burmanization and the imposition of Buddhism as the state religion. 44

During the military junta in post 1962, two parallel options were applied to consolidate the unitary state. First, the military pursued harsh counter-insurgency warfare operations and the combination of loose recognition of Burma’s multi-ethnic-linguistic society. Second, Tatmandaw’s battalions have systematically used brutal military strategies to suppress KNU, KIO, CPB movements, for example the “Four Cuts” policy and the Ka Kwe Ye (KKY) Program.45 Military government had a firm grip on power and

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41 Some people may confuse that the change from Burma to Myanmar implies more inclusive ethnic groups because it does not only refer to the dominant Burmese people that belong to the country. However, some literatures suggest that by referring to the country as Myanmar is not necessary a good thing, it casts the homogenous shadow of the unitary state over their distinct separated ethnic identity. In other words, their sense of separations during under the name Burma were forced to conceived as one with Burmese in one nation paradigm.

42 Peoples who still believe and interpret history only from their narrow nationalistic Myanmar perspective that linear progression of Myanmar, save the colonial interlude of a century from a Buddhist kingdom originating in Pagan to today's modern nation-state are considered as a Mahar similarly to Adolf Hitler’s Nazi theory of the superiority of the Aryan race.


44 Martin Smith., 192

45 Four cuts policy was principally conducted by Burmese troops in ethnic areas to cut off funds, food, recruits, and the intelligence from rebels, the KKY program allowed locally organized militias to stem larger ethnic separatist groups through smaller armed outfits formed by local warlords. They are encouraged to run taxing and smuggling with local autonomy to fight as proxies for the Burmese army.
control over land, resources and people. The nationalization policies of teak production, mining and other major industries have generated wealth to many majority Burman groups connected to the regime.\textsuperscript{46} In parallel, although the ethnic plurality was more accepted in the second 1974 constitution but only as a cultural subordinate to the essential unifying role of the centralized Burman state.\textsuperscript{47} As a result, the expansion of state sponsored para-military networks have inflamed inter-ethnic and center-periphery tension ever since. This fueled the stronger unification of major separatist groups (Kachin, arens and Shans) to fight and could praise some achievements on territorial autonomy.

After the severe socio-economical consequence of Burmese way of socialism since 1962 eventually led to the 1988 democratic uprising (known as the event of 888). This has shifted the Burma’s political configuration for General Khin Nyunt. He opted to negotiate the ceasefire strategies to gradually marginalize the separatism with the ethnic secessionist groups as a means to benefit from sharing/ taxation of trade and resources extraction in the ceasefire group controlled-areas. The ethnic groups like Kachin and Wa also gained from the lucrative commercial dynamism of the Burma’s neighbors booming economy. Between 1989 – 1995, seventeen ceasefire agreements were negotiated\textsuperscript{48}. The political economy of peace and business opportunity for the crony of junta served as efficient instrument for the short-term semi-pacification and stability throughout the 1990s. However, it did not resolve the ethnic conflicts, which erupted again shortly after General Than Shwe took back power in 2004.

\textsuperscript{46} Sharing the Wealth ‘s post military rule and national resources (accessed 27 October, 2013); available from http://smallwarsjournal.com/jrn/\textsuperscript{47}art/sharing-the-wealth-burma’s-post-military-rule-and-national-resource-governance

Jean-Pierre Cabestan and Aleksandar Pavković, \textit{Secessionism and Separatism in Europe and Asia: To have a State of One’s Own} (Abingdon, Oxon; New York: Routledge, 2013), 264. 184.

The creation of seven ethnic states: Karen, Mon, Arakan, Chin, Kachin, Shan and Karenni with no power of self-determination like in 1947 constitution. However, in 1982 Citizenship law, ethnicity was accepted into the list of citizenship.

\textsuperscript{48} CPB, Kokangs, Palaungs, some Shan and Karen groups, KIO, Mong-Tai

Therefor, it is important to understand the Burmese ethnic conundrum through the historical pre and post independence to recognize the Burmese nationalism today that first brewed under ethnic Burman compulsion for both anti-colonial resistance and identity pride restoration. The past asymmetric relationship between the ethnic groups, whether originally indigenous or brought along with the British to run the colony (Indian, Chinese and Westerners) and the favored newly Christianized native ethnic minorities (Karen, Kachin and Chin) on one side, and the oppressed dominant Burmans on the other grew the hostility and resentment of Burmans’ chauvinism even before the independence of the country.

As mentioned earlier, the ceasefire with the government in 1994 temporarily ended the armed conflict with the government in Kachin areas. During almost two decades of ceasefire from 1994 – 2011, KIO enforced *de facto* administrative authority over the territory under its control and functioned as local government. They have built up its headquarters in Laiza close to Chinese border. It has its own armed force (KIA) as well as other administrative bodies such as Departments of Health, Education, Agriculture, Hospitals and schools which taught in Kachin language. The local public finance largely depends on extractive industries, for example jade, gold mining and logging. Throughout the history, KIO has been always agreed to participate in the ‘political roadmap’ laid out by the central government. They participated in “National Convention” to draft the new 2008 constitution with the expectation to be part of government’s national process. On the contrary, the National Convention neglected to include KIO’s nineteen-point proposal into the future constitution as well as other similar proposals jointly submitted by thirteen ceasefire groups.

According to 2008 constitution, most of ethnic groups were uncomfortable with

49 The programme was instituted after the 2008 constitution, which stated that ‘All the armed forces in the Union shall be under the command of the Defence Services’. As a result the government decided to transform all ethnic ceasefire groups into what became known as Border Guard. The programme is not popular among major ethnic groups and now entangling with the problem of corrupted organization and entanglement in drug trafficking. *The Border Guard Force, Burma Center for Ethnic Study, Briefing Paper No. 15* (accessed by November 27, 2013); available from [http://burmaethnicstudies.net/pdf/BCES-BP-15.pdf](http://burmaethnicstudies.net/pdf/BCES-BP-15.pdf).

50 *A Tentative Peace in Myanmar’s Kachin Conflict*, Crisis Group Asia Briefing N 140, 12 June 2013, 5.
many clauses regarding the supremacy of the union military. For instances, the limited autonomy of ethnic groups, the border force security scheme and difficulty of constitutional amendment as limitations for the federalism. The analysis on the limitations of quasi-federal constitution would be examined in the next governance section of this paper. The tension boiled over during 2010 when there were series of confrontations followed by the government’s declaration of ceasefire to be ‘null and void’ in 2011. The government used myriad of counter-measures economically, politically and militarily to put pressure on KIO. The military ordered the closure of KIO liaison offices and applied economic pressure blocking KIO trading routes referring to them as ‘insurgent’ and ‘terrorist’ through public medias. As a result, this led to the widespread anger and disillusionment among Kachin population. Ever since, clashes occurred regularly in several part of Kachin and northern Shan state. The inability of the president to effectively control the armed forces from taking offensive action towards Kachin State raised the question of whether the central government has control over the generals in the battlefield and underscores the significant fragmentation between the

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51 The constitution prohibits all ethnic groups from retaining armed-force, Section 338 of the constitution reads “all the armed forces of the Union shall be under the command of the Defense Services”. In 2009, the new section was released detailing how ceasefire groups should transform their armed units into “Border Guard Forces”

2008 Constitution of the Republic Union of Myanmar

52 For example, Dr Tu Ja, the former senior leader of KIO resigned to led the Kachin State Progressive Party in 2010 elections was denied for the political party registration due to the fact that the provision prohibits parties from having contacts with organizations in revolt with arms against the state. Section 12(a) (iii) of the 2010 Political Parties Registration Law. On the contrary, Kayin Buddhist Army who opted for another stance accepting the Border Guard Force proposal succeeded through the registration.


53 Resulted in over 100,000 civilians have been displaced from their homes by ongoing fights between the Kachin Independence Army (KIA) and Myanmar military. About 58,282 IDPs are sheltering in Kachin-controlled areas along the Chinese border.


54 In February 2011, the KIO shot and killed Myanmar army battalion commander. In June 2011, the clash erupted between government troops and KIO resulted in KIO representative in liaison office killed. In December 2012, Myanmar army launched attack on a base nia KIO’s Laiza headquaters with helicopters gunships and fighter jets on the dispute to take over the hill771, the longstanding Myanma’s army base at Lajayang

Several rounds of peace talks have been resumed but remained stagnant until the quasi-civilian government of Thein Sein appointed the new chief negotiator Minister Aung Min in 3 May 2012. However, the bargaining on a Force-Separation Agreement bogged down the negotiation. KIO sought assistance from China to mediate talk with the government. The breakthrough meeting took place in Myitkyina in May 2013 having China and UN as international observers. Both parties reached the significant step on signing of the seven-point agreement. Although the agreement was interpreted by some agencies as “ceasefire” agreement, KIO denied the claim as “ceasefire” as it had failed miserably before. International communities were very positive and receptive of this successful so-called “ceasefire” in their perceptions.

The seven-points agreement incorporates three concerns that have been long contested by KIO: the separation of forces, a monitoring and verification mechanism of ceasefire violations, and political dialogue. However, similar to 1994 ceasefire, the agreement did not address the revenue sharing for ethnic populations to benefit from its resource bonanza. In the meeting on 10 October 2013, the government and KIO failed to agree on a permanent cease-fire accord but signed a new preliminary agreement aimed at reducing hostilities and laying the groundwork for political dialogue helping to resettle a

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56 There are several factors that China may have taken into account to intervene such as 1). border security issue and refugee flows across border, 2). commercial interest due to the rejection of Myitsone dam and difficulties in Latpaduang copper mine in Kachin area, energy corridor at Kyaukpyu pipeline 3). Geostategic issue to galvanize over US on the issue
57 1). Move forward with a political dialogue; 2). Take steps to achieve “de-escalation and cessation of hostilities”; 3). Establish joint monitoring committees; 4). Undertake relief, rehabilitation and resettlement of internally displaced persons; 5). Continue discussions on repositioning of troops; 6). Establish a KIO technical team in the Kachin State capital Myitkyina to facilitate more effective peace discussions; and 7). Invite the same group of observers to attend the next meeting, with any additional observers being invited only after consultation between the parties.
thousand of displaced persons. The issue of security concern, especially the demand to have the federal army seems to be one of the major factors of the repeated failures of agreement. 59

It can be concluded that the zone of possible agreement between the government’s position and KIO along with UNFC’s is incongruent. Ones urged the government into accepting a federal union that guarantees political autonomy and effective participation agreed since the Panglong Agreement 1947. The others drawn up based on 2008 constitution which dictates a “one nation, one national armed forces” policy and reserves a quarter of parliamentary seats for the military. Moreover, there is the lingering problem of two level games where UNFC is not the unitary organization but consist of fragmented umbrella of ethnic groups. KIO as the chief of UNFC insisted that signing of Nationwide Ceasefire Agreement (NCA) would be possible under the condition that all ethnic members unanimously agree upon. 60

**China’s role in Kachin conflict and implication on natural resources**

China is bounded to Myanmar with long border, particularly the Kachin State with deep political, economic and social ties. China’s policy towards Myanmar and ethnic conflict has been aloof and distant since the ethnic conflict has not resulted in significant damage to China’s interests. It is important to point out that for China, border tranquility, the protection of Chinese investments and the prevention of expanding US

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59 “Laiza Agreement” the ethnic leaders formed a 13-member joint peace negotiation team that will represent the ethnic armed groups in negotiations with the government peace drew up included political dialogue with the government, a move toward a federal union in Myanmar when dialogue begins, and an agreement to form a federal army. *Myanmar Peace Talks Fail to Nail Down Cease-Fire Agreement* (accessed October 24, 2013); available from http://www.rfa.org/english/news/myanmar/nationwide-ceasefire-11052013180515.html

influence are the top three considerations for all border regions. Therefore, any deviation from this line of status quo will trigger China to interfere and re-establish their secured interests. For instances, China intervened in August 2009 on Kokang conflict (one of the ethnic groups in Kachin State) which had created the largest refugee crisis around 37,000 refugees into Yunan, China’s border since the Sino-Vietnam War and the recent intervention in the Kachin negotiations in 2013 to protect its national interests.

In this paper, I will focus on the latter case of China’s role in Kachin conflict and its implication in natural resources management. Politically, the active confrontation between the government and Kachin could disrupt the China’s border security as there were estimated around 7,000 and 10,000 Burmese refugees in Yunnan in June last year. China also needs to strengthen its own influence over Myanmar and the KIO could be China’s effective and loyal ally to press Myanmar Government to respect China’s national interests. The China attempted to engage in active diplomatic dialogues between Kachin and Myanmar governments assuming the role of middle man and providing the venue for the negotiation, which later successfully resulted in the break through of the Preliminary Agreement with Kachin in May 2013. Moreover, China also concerns the so-called “internationalization of the Kachin conflict” will tilt the balance of power in the region towards the west, particularly the United States. As a result, it will obstruct the use

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63 Kachin had hoped for the involvement of multiple international participants in the negotiation to avoid the same deficiency of binding mechanism and international guarantors, including UN, UK and US. China rejects the involvement of other foreign powers, particularly the United States, in an area adjacent to the Chinese border that could affect Chinese national security. Finally, as a compromise, China stepped back and allowed UN as the only international observer in the Kachin dialogue. Yun Sun, 9.
of Myanmar’s strategic access as a corridor into South Asia and the Indian Ocean.64

Economically, China has significant interests in the natural resources of the Kachin and Shan states. China emphasizes Myanmar as an important hydropower supplier to energy-thirsty southwestern China.65 Furthermore, China’s strategic oil and gas pipeline project, built by the China National Petroleum Co. from the deep-water port of Kyaukphyu (Sittwe) in Myanmar to Kunming, the capital of Yunnan province, passes through the Shan state, but is located close to the conflict zones in lower Kachin and upper Shan states.66 This is strategically important for China’s access to oil from Middle East and African circumventing the Strait of Malacca’s higher cost from transportation, piracy and terrorism. China will gain more than loses by the internal stability and peace in ethnic areas. However, the illegal trade and the massive of natural resources exploitations in the conflict areas undermines the incentive for peace both by funding the fighting and by strengthening the economic vested interests that a cease-fire will hurt.67

Therefor, the strategy behind China’s policy towards the Kachin conflict is not monolithic. The Chinese military and Beijing government wish for the friendly relation between two countries and to restore and stability in the conflict areas as the conflict is hindering of the progress of economic investment in the Kachin state. The dynamic of

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65 Yun Sun, “China’s Strategic Misjudgment on Myanmar”, *Journal of Current Southeast Asian Affairs*, 1/2012. For example, the largest Chinese investment project in Myanmar, the controversial $3.6 billion Myitsone Dam, is located in upper Kachin state. A smaller hydropower project invested by Chinese Datang Group, the Dapein Dam, is also located in Kachin state but closer to the Chinese border.

66 Please see Annex I

67 Illegal trade of jade and timber has prospered to a new level as a result of the instability. The official jade production plunged by more than 50 percent in fiscal year 2012/2013. However, the official data do not catch the estimated $1 billion of unofficial and illegal trade of jade orchestrated by Kachin, Burmese and Chinese traders. The timber trade and the transport of logs from the Kachin state to Yunnan has thrived in the past two years amount to 2 million cubic meters of logs during the first 10 months of 2013 despite the Sino-Myanmar agreement to halt the illegal. Yun Sun, “China, United States and Kachin Conflict,” 7.
resources management and revenue sharing between the ethnic group and the government therefor becomes the vital key interest that will determine the future of the peace and China’s prime politico-economic interests. The fair revenue sharing and the respect of minority/indigenous rights to preserve and exploit their own natural resources freely are the most fundamental requirements, if succeeded will yield more secured foreign investment for China.

Where are Minorities and Indigenous Rights in Myanmar for Kachin?

Indigenous? or Minorities?

It is important to clarify that the concept of “minorities” and “indigenous” rights are not clear-cut but deeply intertwined. The different approaches of addressing ethnic groups in Myanmar either as minorities or indigenous people would considerably affect the framing of legal frameworks and supporting arguments for their goals. From literature reviews, hill tribe peoples in Myanmar always referred interchangeably between “ethnic minorities” and “indigenous peoples”.

First, the Tatmandaw (military regime) and majority Burmese refer to the ethnic groups as “races” which is lu-myo (literally translated as ‘people type’) implies the concept of differentiation rooted in the belief of objective, verifiable, fixed, and blood-borne lineage. Claims about non-Bamar lu-myo identities are often expressions of shared cultural roots and reflect deep reservoirs of injustice, suffering and distrust. At the time of the unification of the country, Aung San tried to galvanize supports from the ethnic groups for the union and recognized them as the same race as Burman, for instance

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he stated that “Burmans and the ethnic groups belong to the same race, blood and home”69. However, ethnic groups generally consider Burmans as showing little regards to their history and culture. At the same time, the government has been trying to redefine the “ethnicity” of minorities along with the Buddhist Barmar since independence. The minorities’ territorial claims based on ethnic or race has been feared by the government as the basis for separatism of break up of the union.

Second, international legal definition of “indigenous peoples” and “minorities” are still in murky areas and not objectively defined.70 For instance, it is unclear whether when the ethnic indigenous individual would lose their legal rights and obligations as indigenous person whether by practicing non-indigenous culture or expelled or voluntary integrate into the dominant group. However, both concepts share some common elements, for examples the groups-based ethnic distinction from majority, the notions of separateness, discrimination and sense of belonging to their identified subjectivities. Indigenous peoples also claim right to self-determination and cultural rights as well as minority. Nevertheless, there is one character that distinguishes them from minorities. Indigenous peoples in general do not claim for independent secession but for political autonomy and self-governance to maintain their cultural identity and way of lives, therefor they do not pose national security threat to the territorial integrity of the state like minorities. In other words, most of the claims for self-determination by indigenous

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69 Martin Smith, 74.
70 ICCPR Article 27 refers to minorities as “ethnic, religious or linguistic minorities” similar to the UN Sub-commission on Prevention of Discrimination and Protection of Minority though unresolved on the definition of minority as a group or persons and what rights they the state should promote, while the Permanent Court of International Justice refers to minority as “community”. Some states refer to indigenous population to fall within ethnic minorities. ILO Convention 169 refers to indigenous as “tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community” and some territorial attachment as “indigenous on account of their descent from the populations which inhabited the country…at the time of conquest or colonization or the establishment of present state boundaries”. The UN Indigenous Study defines besides the historical continuity to the individual basis which recognizes “indigenous person is one who belongs to those indigenous populations through self-identification as indigenous and is recognized and accepted by these population”.

peoples are for social or cultural purposes. The demands for autonomy or self-government are only limited in specific areas of competence such as full control over land and natural resources such as Inuit, Saami, American Indian and others. Nonetheless, indigenous self-determination can be realized in many ways ranging from full independence to various forms of autonomy as well.

In case of Myanmar, Kachin and other ethnic groups constitute indigenous peoples by definition of International Labour Organisation, Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) [hereafter ILO Convention 169]. They pre-dominated the hill areas before the conquer of the Burman King and colonization of the British with distinctive social, political, economic and cultural way of lives. Nevertheless, the situation for indigenous peoples in Myanmar is quite different from others, particularly the Kachin and Karen. Since they are very well organized, heavily armed and are provided financial supports by foreign countries, they pose great security threat to the central government. It is important to recognize that indigenous and rights of minorities are overlapping. Indigenous peoples can claim broader categories of rights beyond cultural and social rights.\(^7\) Therefore, both concepts and rights would be applied in analysis of this paper.

The Absence of Minority and Indigenous Rights

When Burma gained independence in 1948, there was no established international legal concept of minority rights, self-determination or indigenous rights since minorities and self-determination were pervasively seen as dangerous element for liberal values as

\(^7\) In the letter of KIO to UN Secretary General, 26 September 2011, KIO referred to themselves as “indigenous”, in the means time, they use “minority rights” when asserting the claims.

Letter from KIO to UN Secretary, September 26, 2011.
witnessed in the case of Nazi Germany. Both socialist and liberalist countries denied the rights of minorities as not to repeat the path of multi-nations breaking into various states like the former USSR. The collective group concept contradicts both with individual social-contract of Western democracy and the class-based of Eastern Marxism. Moreover, it was the natural fear for all countries that the recognition of the right of minorities will undermine national unity and encourage the separatism like in post Versailles period (i.e. Albania, Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland and Romania). Those socialists and liberalists insisted that to sustain progress and civilization, it required assimilating the ‘backward’ minorities to the energetic majorities.\(^{72}\) Undoubtedly, Myanmar also followed this path as will elaborated further.

There was the continuity of reinforcing idea of legal concept of minority rights minorities in various treaties since the Treaty of Westphalia 1648 on the jurisdiction over religious minorities and later incorporated in various post 1919 treaties\(^ {73}\). There was significant principle of international supervision over treaty obligations relating to minority rights in the League of Nations (L.N.) system. The L.N. approach was to resolve the territorial-political problems posed by the existing minority groups within the state by the boundary adjustments to reflect a true nation-state. U.N. perceived self-determination as to resolve the problem of colonialism\(^ {74}\). The minority rights were again reaffirmed and crystalized in Article 27 of the International Covenant in Civil and Political Rights (ICCPR) 1966 traditionally addressing on cultural, religious and linguistic rights.\(^ {75}\)

\(^{72}\) Will Kymlicka, *The Rights of Minority Cultures*, 387.

\(^{73}\) Since the Polish Minorities Treaty 1919 and further reaffirmed in Genocide Convention, UN Charter Article 1 (2), UDHR (1948) Article 2, UNESCO Convention Against Discrimination in Education (1960) Article 1(c) and 5 (1)(c) and CERD (1969) Article 2 (2).


\(^{75}\) Article 27. ICCPR “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own
However, minority groups today seek broader political and economic goals as a result of cultural resurgence amidst the telecommunication and technologies that facilitate the dominant identity over minorities.

Indigenous rights were much recently developed in legal aspect in 1990s. However, the consideration of indigenous peoples dates from the colonialism since 19th century mainly from Americas, Europe and Latin-America though with no international legal relevance unlike minority rights. The first multilateral treaty addressed issue of indigenous rights was adopted by International Labor Convention No. 107 in 1957, which recognized the indigenous rights concerning workers’ rights, working conditions and land ownership. The indigenous rights have been slowly developed in last four decades as “common normative understanding”. The Working Group on Indigenous Population of the UN Sub-commission on Prevention of Discrimination of Minorities spent more than 20 years (1985 - 2007) to finalize the non-binding United Nations Declaration on the Rights of Indigenous Peoples (UNDRI) in 2007. ICCPR Article 1 and 27 and International Convention on the Elimination of All Forms of Racial Discrimination (CERD) also provide relevant rights indirectly address to indigenous peoples.

The view regarding minority and indigenous rights from the perspective of colonial power in case of UK over Burman before granting the independence was not coherent between the leader who opposed to it and the British government officers on the

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76 Hurst Hannum, 76.
77 Ibid., 77.
79 ICCPR Article 1 and Committee on Elimination of Racial Discrimination, General recommendation No. 23, supra note 17, para. 4 calling on state to take certain measures to recognize and ensure the right of indigenous peoples
Winston Churchill was aware of the reckless nature of the colony’s multi-ethnics state driving toward independence. However, the government expressed readiness to work with Aung San and his party (the Anti-Facist People’s Freedom League: AFPFL) to preserve ethnic diversity as well as the union. The good colony-ethnic relationship developed during the colonization and their loyalties to the British in fighting against the majority Burmans and the Japanese occupation in 1942 made the British officers in Burma to be very sympathized to the minorities in favor of their autonomy as Federated Dominion of Burma. The British white paper of 1945 supported this position that “no decision would be made on behalf of the people of the frontier areas without their consent.” This shows that the British, in some extent, did take obligations to respect human rights and ensure equal treatment.

However, the recognition of minority rights, particularly the right to self-determination by British government and General Aung San was later strongly obstructed by other excluded ethnic groups’ rebellions and communist factions after independence. Moreover, the Kachin and Shan negotiation with the British about the possibility of Kachin joining with China and Shan with Siam (Thailand) were neglected and objected by AFPFL as well. To put it starkly, minority rights were still respected to the extent that it does not destabilize the territorial integrity and the unity during the formation of the country. As a result, Kachin opted to be integrated into the Union of Burma while remaining some senses of separation in form of federalist state according to the spirit of

80 Matthew Walton, 8.
81 Churchill’s comments are cited in Josef Siverstein, Burmese politics: the Dilemma of National Unity (New Brunswick, N J.)
82 They were to be placed under a “special regime under the governor until such time as their inhabitants signify their desire for some suitable form of amalgamation of their territories with Burma proper” Ibid.,
83 Martin Smith, 73.
the Panlong Agreement. This goal was halted when Aung San was assassinated followed by the military coup and the rise of socialism in 1962.
VI

The Regime Complex of Interdependencies: Political Autonomy, Democratic Governance and Natural Resources Revenue Sharing

The government shifted towards the new “quasi-federalism” system with unprecedented decentralization of power under the new 2008 Constitution of the Republic Union of Myanmar. Nevertheless, from Kachin and other minorities’ point of view, delegation of powers alone is not sufficient to protect minorities’ rights. They require also the transfer of powers and the functions to the territorial autonomy that are exercised by the locally elected representatives. The important issues here vary from institutional dimension (legislative, administrative distribution, effective participation, budget power, federal umpire) to substantive dimension (competences and responsibilities). Genuine federalism with political autonomy and self-government are seen as the compromising solution for ethnic groups to retrieve their indigenous rights and right to self-determination. However, it is still unclear how far does self-autonomy in federal system thrive in order to satisfy KIO vice versa the government?

In the next part, I will explore briefly the theoretical concept and the relation between federalism and autonomy. What does Kachin really wants in term of their demands? What does it really mean giving the context of 2008 quasi-federalist constitution and its significance to ethnic groups? How the historical developments influence the practices of quasi-federal system and mindset of the Myanmar elites today.

To answer such questions, the analysis will be framed on the basis of three major

challenges for Kachin and other ethnic minorities vis-à-vis the central government: political autonomy, democratic governance and revenue sharing from natural resources. They are not completely separated but are mutually connected and self-reinforcing to one another.

I. Political autonomy

Federalism, Autonomy and Self-government: the Struggle of Neo-nationalist VS Neo-unionist in 2008 Constitution

Federalism and autonomy are used interchangeably in many literatures of self-determination. Although the definition is closely related, sometimes co-constituted each other and combined, they are not identical.\(^\text{85}\) It is important to point out that there is no complete coherent concept of the federalism. However, the core definitions contain two crucial elements, which are summarized well by Professor Ronald Watt and Markku Suksi, prominent constitutional law scholars; “a federation is a more or less symmetrical transfer of exclusive law-making powers, on the basis of the constitution, to two or more entities at sub-state level… The power of the federal level are often enhanced by a preemption doctrine according to which federal law has supremacy over state law”\(^\text{86}\) Autonomy, on the contrary, “involves a singular entity at unitary state with asymmetrical feature state through the transfer of exclusive law-making powers on the basis of special provisions. The resulting division of power is one where the national

\(^{85}\) For instances, Canada, India and Russia, which although federations, also encompass some entities with special power as special territorial autonomies in the framework of federal state
\(^{86}\) Ibid., 91. For more definitions of federation see Watt, Benedikter.
level retains residual powers, while the sub-state level relies on enumerated powers.”

Therefor, it could be assumed that there is no supremacy clause in operation between state and federal relation implying the exclusive nature of the legislative powers at the sub-state level, whereas the underlying principle for federations is the equality of the constituent units with the supremacy of federal government relationship over state.

By the definition above, Myanmar does not fall into the category of classical federation but “modified federation” where there is a bi-cameral legislature with a regional chamber. The federal level holds residual powers and sub-state level holds enumerated powers. To explain further, the Union holds such residual powers according to Section 98 of 2008 Constitution. It is entitled to legislate and administer all other matters that are not explicitly listed for states according to Section 188. For instance, Kachin as well as other States/ Regions assume exclusive responsibilities and administration on finance and planning, commerce, agricultural and livestock breeding sector, energy, electricity, mining and forestry sector (except large scale electric power production and distribution), local industrial sector, transport, communication and construction sector, social sector (including social welfare work, traditional medicine, preservation of cultural heritage, museum and exhibitions). Nevertheless, the Union Legislative List in Section 96 provides residual power over defense and security, foreign affairs, macro-economic issues, major natural resources (like petroleum and natural gas), special industrial zones, dams management, educational curricular and judicial sector.

On positive aspect, this is the major shift of where power lies from central

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87 Ibid.
88 Section 188: “The Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List.”
See Annex II
Section 98: “The legislative power is vested in the Pyidaungsu Hluttaw relating to other matters not enumerated in the legislative list of the Union, Region or State and Self-Administered Division Leading Body or Self-Administered Zone Leading Body.”
government in previous constitutions (1948 and 1978) devolving power to local level of governments. Nonetheless, there remain some constraints and controversial characteristics in 2008 constitution as some scholars put it as “quasi-federalism”. This is one among the key issues of major concerns for Kachin that caused KIO and UNFC to reject the negotiation of the final peace process based on the current political framework of 2008 Constitution. They want the constitution revised or completely rewritten to reflect a real federal system and Panlong Agreement not piecemeal handouts as a pre-condition to participate in political dialogue.

In fact, the idea of autonomy and self-government within the federal system is not completely new concept. It was introduced during the colonization period. Hill tribes (Karen, Shan, Arakan, Chin, Kachin and Naga) people in the ‘Frontier Areas’ had been long enjoyed some level of autonomy by the governance of hereditary ruler and chiefs who controlled all civil, criminal and financial affairs under the loose control of the British and ‘Burma Proper’. The Kachin made the trip to Yangon in 1925 to put case for their separation from Burma but never succeeded. Kachin State unlike Shan and Karenni abandoned the right to secession in return to the inclusion in new Kachin State of the Myitkyina and Bhamo cities. This idea of territorial autonomy was reiterated in the Panlong Agreement 1947, a major demand from ethnic groups including Kachin is to remain territorial autonomy as integral part of the sovereign Union of Myanmar. In this sense, federalism was at heart of the decision of ethnic leaders’ decision to join together to form a modern Union of Burma with the reserved proportional seats of each major

89 Marin Smith, 43.
90 Ibid, 47.
91 See Annex III
ethnic groups after independence.92

From government perspective, it was not surprising that Burmese elites perceive the right to self-determination as an expression of right to secession of “nations” according to Leninist principle built into the 1974 Soviet-style Constitution. This implanted idea of the precarious self-determination coupled with the uprising of democratic movement in 1988, 1991 and the ongoing ethnic insurgencies have served as priori to prioritize national unity over right to self-determination and other indigenous rights. As a consequence, when it comes to federalism and the drafting of 2008 constitution, Myanmar’s military leaders remain polarized in their views towards federalism confusing with Leninist’s self-determination, which can be seen as both the savior and the destroyer of the unitary state.93 Thereby, it was the compromise and the balance over pull and push factors among multi players’ advocacies on classical federalism, autonomy and unionism under the military regime that shaped the constitutional structure today. This preponderant fear of federalism as secession is widely reflected in several clauses in 2008 Constitution accentuated for the superiority of unitary state, for example, a clause in the constitution stipulates “non-disintegration of the union of national solidarity and perpetuation of sovereignty”.94 After more than 50 years, the Burmese leaders realized that devolution of power is in fact a deterrent power against secession. It may take another 10 years for them to realize that devolution alone is not enough.

93 Janelle Saffin, a former Australian parliamentarian who is a human rights advocate for Myanmar commented on the examples of the Soviet Union, Socialist Czechoslovakia and Socialist Yugoslavia. It is, however, notable that federalism did not thrive under such conditions, but rather contributed to the ultimate breakup of such countries in the process of their eventual democratization. Australian Federal MP Janelle Saffin to teach Myanmar politicians about Federalism (accessed March 8, 2014); available from http://www.myanmartodaynews.com/2013/04/29/australian-federal-mp-janelle-saffin-to-teach-myanmar-politicians-about-federalism/.
94 Marcus Brand, 41.
As we have seen that the caveat of such boundary of some kind between federation and territorial autonomy is not very firm but fluid and subject to interpretations and the shaping influence from political environment at period of times. In the following part, different characteristics of so-called de jure “quasi federal state” but not de facto genuine federalism will be explored as to understand ethnic groups’ concerns and why they reject the constitution.

**2008 Constitution: the Way Forward?**

Myanmar has overall 3 constitutions along 50 years of instability path towards democracy. The first 1948 Constitution drafted after the independence was genuinely more federal. The 1974 constitution was only marginally - as its dogmatic socialist one-party state with unicameral - overshadows the federal system with the centralization of power at People’s Council. During the military rule from 1988 to 2011, there was no constitution enforced and all power vested in the junta. The 2008 constitution was ratified in the days following cyclone Nargis in May 2008 by an alleged 92 percent of the population, out of a total 98 percent who turned out to vote according to the ruling junta. The constitution came into force later in 2011.

The constitution provides bicameral national legislature, the Pyiduangs Hluttaw (Union Assembly), which is made up of a 440-seat lower house, the Pyithu Hluttalw (People’s Assembly), and a 224-seat upper house, the Amyotha Hluttaw (National Assembly). There are unicameral legislatures in each 7 States and 7 Regions as well as

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95 1947 constitution provided multi-party elections with some proportional federalism and a bicameral legislature was enforced during democratic period of 1948 – 1962. 


other self-administered zones for other ethnic groups within the States and Regions. Three-quarters (25%) of the seats in both houses as well as in State/Region are reserved for the military officers appointed by commander-in-chief. The Pyithu Hluttaw and the Amyotha Hluttaw are generally equal in status. The two chambers meet jointly as the Pyidaungsu Hluttaw for specific constitutionally-mandated reasons (such as budget decisions) and when the two chambers cannot agree on the content of a draft law. The President as the Head of the Government and the Head of State is not elected directly by the people, but indirectly through the election from three caucuses made up of the two chambers and the *Tatmandaw*. The constitution separates clearly between national-level powers: executive and legislative posts. Elected legislative members who are subsequently appointed as members of the Union government have to resign from their seats. The following parts will discuss further in details the elements of each separation of powers: legislative, executive and judicial branch.

a) Executive Power

The 2008 Constitution lays down the framework for 14 states/regions have to exercise their executive and legislative power. The executive power of the Union is vested in the President. All executive actions of the Union Government shall be taken as action in the name of the President. The President may designate the Ministries of the Union Government as necessary with the approval of the Pyidaungsu Hluttaw, and designate the number of the Union Ministers as necessary (Art. 202). The President also appoints Union Ministers with the approval of the Pyidaungsu Hluttaw, as well as Chief Ministers of Regions/States with the approval of the respective State/Region Hluttaw.

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97 The military representatives, elected representatives from Pyitu and Amyotha each nominated vice-presidents. Then, the Pyidaungsu would select one among 3 vice presidents to be the president.
Such approval can however only be withheld if the Union Ministers/ Chief Ministers of Regions selected by the President do not meet the formal criteria listed in the Constitution for that office.

President U Thein Sein reiterates his statements in many forums for the greater government decentralization. The President announced five measures to strengthen State and Region government administrative functioning, including instructions to increase state/region influence over human resources and further deconcentrate major union ministries.98 The appointments of primary education level teachers in region/state are appointed by region/state governments not directly by the Ministry of Education. Moreover, The Health Ministry is to continue training nurses and midwives at central level but to make coordination with region/state governments in assigning them to their home regions.99 The Constitution also provides that the Union Government authorities are to assist sub-national tiers of government in implementing their constitutional powers.

Interestingly, what missing here is an equivalent right of the general public to claim effective remedies against unlawful administrative actions. In principle, the 2008 Constitution provides that the prerogative writs are available to claimants and applications can be brought before the Supreme Court.100 Nevertheless, the Courts are not considered by general public as an effective instrument to get grievances remedied. The weak rule of law analysis would be addressed further in the next section.

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98 In his address at meeting with Union ministers, region/state chief ministers, and deputy ministers of 9 August 2013, For instances, the Region/State governments are to manage, direct, supervise and check the government departments in their regions instead of Union ministries directly controlling them. President backs constitutional reform in anniversary speech (accessed March 30, 2014); available from http://www.mizzima.com/mizzima-news/myanmar/item/11026-president-backs-constitutional-reform-in-anniversary-speech.

99 Ibid.

100 According to the Common Law Tradition, the available remedies which a judge can grant by way of judicial review of administrative acts are certiorari, prohibition consists of restraining a body from acting unlawfully in excess of jurisdiction and mandamus i.e., an order directed to a public body to perform its public duty as specified in the law according to Section 388 of 2008 Constitution.
b) Legislative Power

The exercise of sovereign power is shared by Union, Regions, States and Self-Administered Areas. Most importantly, the constitution guarantees the equal representation of States/Regions in the Second Chamber of the Union Parliament (Amyotha Hluttaw) and disproportional representation of smaller Regions/States in the First Chamber (Pyithu Hluttaw or House of Nationalities). This is one of the most important elements of federal systems for sub-national constituents to represent in the Second Chamber where all Regions and States are equally represented. In fact, these provisions bear indirect affirmative actions towards ethnic minorities over Burmans since the States (population based on ethnic minorities) have smaller population than Regions and combined together one third of the population but hold half of the seats in Second Chamber. Moreover, the electoral legislation equates electoral constituencies with townships in the First Chamber, with only a marginal correction for a number of larger ones. This creates significant imbalances in terms of voters represented by Member of Parliament, and contributes to the disproportionality of the electoral result already exacerbated by the use of the first past the post system. It also guarantees the national races representatives in the Regions/States and obligation towards government to assist them to the actualization of cultural rights.

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101 Section 11 of the 2008 Constitution
102 Under 2008 Constitution:

Article 15: guarantees the National races representatives are entitled to participate in legislature of Regions or States and Self-Administered Areas concerned. Article 17 (c): such representatives are to be permitted to participate, mainly, to undertake their National races affairs.

Article 22: the duty of the government to assist :(a) to develop language, literature, fine arts and culture of the National races;(b) to promote solidarity, mutual amity and respect and mutual assistance among the National races;(c) to promote socio-economic development including education, health, economy, transport and communication, so forth, of less-developed national races.
As a consequence from the flow of disproportional representation from the second chamber, the participation in federal legislation gives slightly disproportional weight to the State/Regions Chamber.\textsuperscript{103} This signifies more power to small constituent units in the participation in election of federal organs for example in the context of impeachment of the President. In term of competence and responsibility, the constitution designates some enumerated to the States/Regions and residual power to the Union level. This implies that the reserved power still remains with the union and is limited for the States and Regions. This is the similar arrangement with Spain on Catalonia, where the devolution of power comes from previous more centralized unitary regime as also the case in Myanmar. In other words, the Union level would not have the constitutional power to enact legislation in an area specifically included in the Region/State list and subject matters.\textsuperscript{104} This is similar to the ‘transferring model’ of sub-state entities like in Canada where central authority devolves to the local certain specified powers while everything else by implication, reserved to the centre. As opposed to the ‘retaining model’ in US, all power is devolved to the sub-ordinated entities except certain powers tilting balance of power against the centre.\textsuperscript{105}

States and Regions in Myanmar thus have the constitutional power to pass their own budget laws, including debt. Furthermore, the Constitution provides a framework for dividing fiscal resources between the Union and Regions/States. There are series of guaranteed own revenues in the Region/States level. Most importantly, changes in the

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\textsuperscript{103} See Annex IV
\textsuperscript{104} See Annex II
\textsuperscript{105} McFadden and Lazarowicz, 120
boundaries of Regions/States, Self-Administered Divisions and Zones as well as lower levels of government require consent of the units concerned. In this sense, both the Regions/States and the Self-Administered Areas are fairly well-protected against unilateral changes by the Union. This distinguishes Myanmar from the general decentralized unitary state, which may devolve great amounts of functions to the lower level of sub-national units but still can unilaterally change them, for instance South Tyrol in Italy and Scotland in UK.106

c) Judicial Power

The constitution lays out clear hierarchy of norms to be applied in cases of conflict of laws. Constitutional Tribunal was established to adjudicate disputes between tiers and units on the basis of the Constitution. The judicial branch of government is shared among the Union subjects, makes the state/region high courts accountable to their respective Hluttaws, but provides a single (Union) legal framework within which State/Region level judicial institutions are to function.107 Structurally, the Supreme Court is the apex of the Burmese judicial system and is the final court of appeals. The judiciary is otherwise formed by 14 State and Region High-Courts, 67 District and Self-Administered-Area Courts, 324 Township Courts, and special courts. This is the similar setting in Catalonia, Spain.108 The further analysis will be provided in the following Democratic Governance section.

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106 Hurst Hannum, 433.
107 Section 315 – 318 of the 2008 constitution.
108 Local Catalan courts had exclusive competence with respect to issues arising under regional laws (except for constitutional challenge), civil actions and appeals concerning local law, inter regional conflicts were resolved by the national judiciary. Michel Seymour and Alain Gagnon, eds., *Multinational Federalism : Problems and Prospects* (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2012), xii, 288.
Positive Democratic Driven VS Negative Authoritarian Push Back

As illustrated above, there are number of positive changes on the devolution of power from the central government to the sub-national units towards federalism. Rights of “national races” (the term used in the constitution as ethnic groups) are guaranteed in the constitution up to some level as membership of legislative standing committees and their ministerial positions in States/Regional level of governments. They can have a significant impact on people’s lives on various issues such as land, including allocation of land and agricultural loans, local business (small business loans and some taxation), cultural promotion, transportation, administration of justice, tourism and municipal issues. The States and Regions have authority to manage their public finance to collect taxes, fees and series of their own revenues.109 However, some criticisms remain that State level ministry representatives lack any real power as the chief Minister of States/Regions are appointed by the President as pointed out earlier.

There are also other negative elements that are untypical for federal structures, which demonstrate the underlying power of the executive branch at the union level of government.110 First, although the approval from the sub-national level constituents are needed for further changes on territorial boundaries, there is the absence of a specific requirement for States/Regions to approve constitutional amendments that affect them,

109 These revenues are listed in Schedule 5 of the Constitution. (Please see Appendix II)
110 The term of the subnational assemblies coincides with that of the union parliament;(Art. 168) that the term of the Chief Ministers is the same as that of the President,(Art 262) whom they are also responsible to;(Art. 262) the power of the President to dismiss Chief Ministers;(Art. 264(b)) the power of the President to select candidates for the post of Chief Minister from among State/Region Assembly members whom the State/Region Assemblies need to approve; (Art. 261) and the strictly formulated parameters for organizing the institutions of government at the state/regional level, which do not allow for any region-specific adjustments; (Art. 161) and the seemingly rigid establishment of Myanmar language as the only official language.(Art. 450).
particularly many provisions relating to basic structures and functioning of states.111 Second, flowing from the previous one is the overriding power reserved for the military at all levels of government through the reserved quotas in the Assemblies as well as the centralization of national defense.112 The 25% seats quota in parliament reserved for the military also means that making any amendments will be difficult to pass without their approval.113 Third, most importantly, in a state of emergency, all provisions for human rights and democracy can be overturned.114 Fourth, on the judicial power, the President has exclusive power to appoint judges and control financing of the court system, and the power to dismiss lower court judges – the parliament also has substantial power on financing and impeachment of judges.115 This implies large power on the majority Burman who is dominated in the Pyiduangsu (Peoples’ Assemblies). Furthermore, there is no independent process for appointing lower court judges – they are selected by government-appointment processes that are the same for appointing civil servants. Moreover, the issue of revenue sharing and division of power are minimally addressed.

In this sense, it can be concluded that the right to nullification and veto of the constituent governing bodies against the Union government are limited. They retain

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111 In order to change the national/ local governance structures at any level, it needs to pass national referendum and 75% votes in bicameral parliament. This means some military member of parliaments (holds 25% seats) needs to vote in favor.
112 In the executive of the Union, Regions, States, Union Territory, Self-Administered Areas and districts, the Commander-in-Chief nominates Defence Services personnel to undertake responsibilities of defence, security, border administration, “and so forth” (Article 17, 2008 Constitution)
113 Section 436: (a) describing the basic principles and the state structure with an additional referendum with the support of half of those who have the right to vote. Both of these rather unusually high thresholds have been retained from the 1974 Constitution. It that articles could only be amended with a 75-percent majority in parliament.
114 Constitution provides the Commander-in-Chief with a constitutional power to take over control of the state, as it states that if there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence, the Commander-in-Chief of the Defence Services has the right to take over and exercise State sovereign power in accord with the provisions of this Constitution (Article 40(c))
115 Section 331 of the 2008 constitution: retain power for the president to impeach any Chief of Justice of High Court of Regions/ States and National level.
federal relationships in normal times with specific areas and unitary only in crisis moment. Although this kind of unitary emergency character also commonly exists in other countries like Scotland in relation to UK, Eritrea and others, there are less proportionally represented by the military. Therefor, it does not negate the fact that Tatmandaw and executive power at central level remain significant power over their sub-national constituents on broader scopes and ranges concerning structural and institutional arrangements or any other issues that they see as anathema for national unity and territorial integrity.

In the broad spectrum of the power-relationship between federal and autonomous Regions/States, the so-called equal ‘coordinate status’ (Catalan, Spain and South Tyrol, Italy) lies at one side, and the ‘subordinate status’ (Scotland, UK) lies on the other. Myanmar may be positioned somewhere in between them as the country that have some exclusive competence devolved to the constituent states. However, the power of the Region/State is yet to be equally uniformed as in the genuine federation but largely reserved residual power to the military and the major Burman legislators as the superior hierarchy.

II. Democratic Governance

Weak governance is the core structural problem in Myanmar. First, the law is abused and is incompetent to serve as mechanism to deliver justice. Law is used as an oppressive tool by the government as a system of ‘rule by law’ not ‘rule of law’. Second, the impotent judicial system with discriminatory access to justice has been implanted in Myanmar’s society for more than five decades. Third, there are rampant problems across judiciary and public administration due to the lack of institutional and individual capacity
buildings, which hinder the ability to implement and enforce the law. Fourth, the parliamentarians do not have experiences and do not understand the process of legislative review. Often, they speedily pass the laws without any deliberation and discussion. Fifth, the widely corrupted and partial judicial system renders uncertainties in access to justice, especially for ethnic minorities who are often neglected justice. Sixth, the legal education in the country is underdeveloped and has been heavily regulated on content control by the government.116

In this paper, I will focus on rule of law aspect, as it is one of the most important aspects of democratic governance since injustice is the root cause of the renewed cycles of instability. Most importantly, the secured rule of law environment is the fundamental basic needs that can re-create incentive, specialization, and interdependence of individuals and resources for people to seize socio-economic opportunity. It will also provide securities of transaction and attract foreign investors by guaranteeing them the return of investment from business in the secured environment. Therefor, it is in primary interest for the government of Myanmar to implement reform policy on rule of law and judicial system not only as a way to foster rapid economic development but also do in the manner that benefit individual and collective rights of vulnerable groups i.e. minorities and indigenous peoples.

Rule of law reform is also the subject of political discussion among Burman elites. President U Thein Sein gives statements and speeches in various occasions emphasizing on the inception of “good governance and clean government”117. Moreover,

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116 The findings were the result of the field research by the author who spent three months in Myanmar during May – July 2013 working on rule of law reform with UNDP. These finding are incorporated into the UNDP Democratic Governance analysis 2013.

117 It is resonated in the Union Government of Myanmar Framework of Economic and Social Reform 2012 focusing on public administration reform, access of information, transparency, control of corruption and rule of law.
Aung San Su Kyi, the leader of NLD Party was appointed for the first time to lead the Parliamentarian Committee on Rule of Law Reform, which is the only committee that the chair does not come from the USDP military backed party.

a) Judiciary

The judicial system of Myanmar today is essentially inherited from the prior 1974 Socialist Constitution where there was no check and balance among executive, legislative and judicial branch of the government. Judiciary was seen as the integral part of the government under direct supreme control of the military regime. The new 2008 Constitution significantly changed, first and foremost, that the judiciary shall be independent, and on an equal status with the executive and the legislative branch of government. It is the first time after the first Supreme Court in 1948 that the Supreme Court has the power to issue the writs, which significantly constitutes the primary tool for Supreme Courts in South Asia to promote the effective protection of constitutional rights. It is also able order the government to carry out certain measures if it finds that the constitution so requires.

On 22 January 2013, the President signed the Constitution Tribunal Amendment Bill, which allows Parliament to challenge the Tribunal’s decisions and requires the President to consult with the two Speakers of Parliament before appointing the Tribunal’s

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118 Article 19 describes the basic principles under which the judiciary should operate: (a) to administer justice independently according to law; (b) to dispense justice in open court unless otherwise prohibited by law; (c) to guarantee in all cases the right of defence and the right of appeal under law.

119 Compare, most importantly Article 32 of the Indian Constitution with Article 378 of the 2008 Myanmar Constitution. Article 32 of the Indian Constitution says that “the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by [the Constitution’s Part III on Fundamental Rights]” is guaranteed.” A more detailed comparative analysis will show that the substantive fundamental rights provisions in India’s Constitution are a lot more extensive than those in the 2008 Constitution of Myanmar, but this inclusion of writs nevertheless represents one of the most significant positive changes in Myanmar’s legal order from the perspective of human rights and the rule of law.

Chair. However, the executive power remains control over the judiciary as the President
nominates the Chief of Justice of the Supreme Court, a third of the Constitutional
Tribunal’s nine members and the financing of Myanmar’s Court System.\textsuperscript{120} The other six
are nominated three each by Pyithu Hluttaw and Amyotha Hluttaw with the approval of
Pyidaungsu Hluttaw. These deem to the criticism of controlling over the judiciary by the
parliament and executive branch due to the majority of the Pyidaungsu are from either
military or military backed USDP Party.

Moreover, the court decisions are not available to the public in other venues or
forms besides the physical copy at the Attorney General Office. More than 1,000 lawyers
have suffered reprimands, suspensions, and disbarments in last 20 years, primarily for
actions taken viewed as opposing the government – hundreds of lawyers remain
disbarred. The UN Special Rapporteur on Human Rights in Myanmar expressed the
similar concern on the need of the proactive measures to improve people’s understanding
of their legal rights, access to the courts and other relevant institutions as a means of
redress, including through the setting up of a national system of legal aid and the
establishment of citizens advice offices.\textsuperscript{121}

\textbf{b) Other Judicial and Quasi-Judicial Bodies}

As briefly addressed earlier, the Constitution establishes a Constitutional Tribunal
of the Union with the functions as umpire between disputes arising between the Union,

\textsuperscript{120} See the report of the International Bar Association’s Human Rights Institute (IBAHRI), “The Rule of Law in
\textsuperscript{121} This is guaranteed by the Myanmar Constitution’s Article 21 (a) guarantees the right of every citizen to equality,
liberty and justice.
Regions, State and Self-Administered Areas and the compliance of the law under the constitution. The Constitutional Tribunal has begun to play a visible role in the recent disputes between different state organs (e.g. the president and the parliament).

On access to justice, there are at present no nationwide statistics of people accessing and using the courts, or an analysis for what reasons they do so. Some INGOs and Think Tank Institutions have taken step to conduct the report on access to justice and rule of law in some states, e.g. the International Bar Association’s Human Rights Institute (IBAHRI) and United States Institute of Peace (USIP). The findings show that courts were not a reliable way of securing justice. Police is perceived as highly corrupted. They considered legal action to be unduly expensive, and frequently identified alternative avenues of redress, e.g. church or monk. Nevertheless, local government officials, the village elders and the police are considered to be more reliable than the judiciary.

The Attorney-General assumes a special position as Ministry of Justice in Myanmar, as his functions comprise a number of aspects that are crucial for the emergence of the rule of law in the country. The Attorney-General’s functions are manifold and include tendering legal advice to the President, the Speakers, or any Ministry, including on matters relating to international law; appearing on behalf of the State at the Supreme Court; prosecuting criminal cases; and representing the State in civil

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122 Section 322 of the constitution reads (a) interpreting the provisions under the Constitution; (b) vetting whether the laws promulgated are in conformity with the Constitution or not; (c) vetting whether the measures of the executive authorities are in conformity with the Constitution or not; (d) deciding constitutional disputes between the Union, Regions, States, and a Self-Administered Area; (e) deciding disputes arising out implementing Union Law by a Region, State or Self-Administered Area; (f) vetting and deciding matters intimated by the President; (g) and other functions and duties conferred by laws enacted by the Pyidaungsu Hluttaw.

123 On 24 February, the Attorney-General on behalf of the President had submitted a case (1/2012) to the Constitutional Tribunal, asking the tribunal’s resolution about “whether defining of committees, commission and boards formed by respective Hluttaws as Union level organization in the provisions of the laws of the respective Hluttaws is in line with the constitution (or) whether committees, commissions and boards founded by the Pyidaungsu Hluttaw, Pyithu Hluttaw and Amyotha Hluttaw with the rights vested to them in the constitution can be considered as Union level organization.” The final verdict faces criticism that it tilts the balance of power towards the Union by saying that Committees, commissions and groups formed by respective Hluttaws are, however, parliamentary organizations only, and their designation as Union level organizations would violate the provisions of the constitution.
cases. According to UNDP Democratic Governance analysis, it lacks of personnel and basic skills to do their job legally and technically, for example the little knowledge of international law, ICT, English and computer skills.124

These issues on rule of law are critically important for ethnic groups to understand the importance of law and aware of their rights and duties obligated to them. The cultural changes must be two-way process. On one hand, judges need to shift to a culture where they are expected to adhere to the rule of law and explain in written rulings the reasoning for their decisions. They should perform as independent agency from the administrative instruction from the central government like in the past. On the other hand, citizens and ethnic groups need to step out from old paradigm of the fear of the government and aware of the legal benefits and rights ought to be protected. The 2008 constitution may not be the sole cause of all problems by itself as the weak system of rule of law has accumulated from the militaristic and socialist development of the previous constitutions and history. The successful rule of law reform needs to address both at constitutional structures and institutional capacity buildings. It needs to encompass legislative, access to justice, judicial, legal education and administrative reform as well as technical training and other capacity buildings.

III. Natural Resources and Revenue Sharing: the End Game to Ethnic Conflict?

At national level, the subject of control over natural resources is the subject of concern of any government, whether it recognizes any form of territorial autonomy or not. Governments tend to assert sub-soil, ocean or river natural resources as a part of state patrimony to be exploited by the central government deems best in the interest of national

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124 2013 UNDP Democratic Governance Analysis, 45.
economic development. This is also true in Myanmar where the 2008 Constitution explicitly states that “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” with its sole right to enact necessary law to utilize them. This is not something surprising but a common position for governments with territorial autonomy for instance, Greenland and Nicaragua.

At individual level, the so-called “collective rights” will have meaning only exercised in concert with others. It aims to protect the interest of not only individuals but also “peoples” as collective groups who make up that society. Among myriad of collective rights, right to control over natural resources, healthful environment and right to development stand out in the context of Kachin. They should be protected to develop their clean natural resources and utilize freely for their socio-economic benefits.

Like many other countries with large endowment of natural resources, Myanmar has been entangled with the symptom of “resources curse” resulted in poor economic development and governance performance. In 2012, the government announced that it would become a party to the Extractive Industry Transparency Initiative (EITI), which greatly involves multi-stakeholders such as private sectors, civil societies and

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125 Article 37 of 2008 Constitution
37. The Union:
(a) 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;
(b) shall enact necessary law to supervise extraction and utilization of State-owned natural resources by economic forces;
(c) shall permit citizens right of private property, right of inheritance, right of private initiative and patent in accord with the law
126 Like in Article 6 of the Declaration of Principles states in Nicaragua. Both Danish and Greenland Landsstyre seem to retain veto over development policy or specific proposal concerning Greenland’s natural resources. The government describes mineral exploitation as being administered in accordance with the principles of equality and joint decision-making between Denmark and Greenland.
Hurst Hannum, 208.
127 ICESCR Art. 1(2) guarantees rights to freely dispose their natural wealth and resources, Art. 25 rights freely utilize their natural wealth and resources, ICCPR, Art. 1(2) and 47 protect the inherent rights of all peoples to utilize fully and freely their natural resources, UNDRIP addresses the “proper management of environment in the preamble” and Art. 29 guarantees protection and conservation of environment.
government. President Thein Sein acknowledged the need for better governance in natural resources management to “ensure that these resources are developed and managed in a transparent manner for the sustainable benefit of our people.” In 2013, the Revenue Watch Institute, the international non-profit ranked Myanmar last among the 58 countries on the resources governance.

Most of the natural resources are within the ethnic states, namely Kachin and Shan State such as jade, hydroelectricity and copper. Although there are no precise estimates of the value of informal investment, an estimated 65 per cent of all approved FDI (post-1988) in Burma has gone to the Rakhine, Shan and Kachin States. Raw materials are substantial and dominate the export sector of Myanmar. In 2011/12, official data report $9.1 billion in exports of which nearly 75% are in identified products. Its products’ market value is worth far more than its cost of production. Therefore, the control of the resource is very valuable. This led to the long duration of ethnic conflicts between the government and ethnic groups to compete for political and economic interest. Since 1990s, the Tatmandaw and Myanmar government used “economic counterinsurgency” strategy through “economic cooptation” and lucrative business concessions to many rebel leaders during the ceasefire periods. The monopoly of rent from extractive resources has been exclusively directed to military and private gain for associated elitist businessmen, while suppressing the effective self-government

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128 The initiative requires companies working in the oil, gas and mineral sectors to declare any payments to the government, while the government also has to declare its revenue from extractive industries. The G8-endorsed protocol for revenue reporting, is overseen by a non-governmental secretariat based in Oslo, Norway, which assists the standard’s implementation and effectiveness in resource-rich developing countries. 


of ethnic groups. The changing dynamic of conflict after ceasefire in 1994 with KIO allows for the foreign business interest, especially Thailand and China, to benefit greatly in the political economy of peace. However, it was to be far more successful to weaken the rebels since ethnic leaders benefited very little from such deals. On the contrary, it heightened the conflict between local communities and central government as the following examples will elaborate further. The feeling of isolation and irrelevance of the affected communities are considerably reinforced. The common theme here is the lack of local input and the imperatives from indigenous societies over the state imperative in economic development.

Today, the government and Tatmandaw are fully aware that returning to the previous style of oppression or even maintaining current levels of resource extraction would prove unstable amidst the rapid political and economic reform. 2008 Constitution has geared the country’s engine towards the sharing of power to states/ regional levels. Land and natural resources are exponentially potential area to be re-emerging ethnic conflict if revenue sharing and taxation are not well managed in the fair manner that will benefit the ethnic groups. Three examples of existing revenue sharing structure from jade, hydro-electricity and copper will be further explored here to illustrate the dynamic relation between the control of natural resources, economic development and ethnic conflicts area in Kachin.

132 The KIO lost control of the opportunities to tax companies operating the lucrative jade mines in Hpa-kant in western Kachin State, thereby losing access to their main financial lifeline. Furthermore, the military government granted jade-mine concessions to new companies with which it had links. The military government enabled regional military commanders to grant logging and mining concessions to Chinese businessmen. Agribusiness development led to vast scale of land grabbing and private concessions.


133 Hurst Hannum, 446
a) Jade

First, jade has very low cost of production well under their sale prices. This gives rise to high profits that are normally taxed. In Myanmar existing structure of jade sales, there are two official markets, which are Nay Pyi Taw emporium and Mandalay/Yangon sales. Besides, there is also unofficial trade to the market in China, which amounted to approximately 3,434 millions USD per year.\textsuperscript{134} The taxes amount to low share of actual production and sales. In other words, jade taxes were only 20\% of official emporium sales and less than 10\% of total jade sales.\textsuperscript{135} In this structure, a small amount (7-10\%) was paid to KIA/KIO groups. The revised structure suggested by the research publication from Harvard Ash Center for Democratic Governance and Innovation by Professor David Dapice recommended that the sharing structure should allow a 50\% share of revenues for business and the other half for government side. On government side, the newly elected State government should recapture a sixth of the sales (around 16\% of revenues) or up to $1 billion a year equally with Union government and State Infrastructure Fund.\textsuperscript{136} This structure actually yields more revenues to the central government comparing to the existing structure as well since all the “protecting” payment from jade producer to insurgent groups would be transferred to Ministry of Finance.

b) Hydroelectricity

Second, hydroelectricity is another area of potential revenues for the States/Regions and government as the government prioritized the hydroelectricity


\textsuperscript{135} only about $550 million out of $2.65 billion in Nay Pyi Taw emporium sales in 2011 and several times that in unofficial sales outside of formal channels.

\textsuperscript{136} Ibid., 15.
investment to strengthen the infrastructure for national economic development. The hydroelectric power development sector is currently the second-largest investment recipient after the oil/gas sector.\textsuperscript{137} The previous government has signed an agreement with Chinese and local companies to allow the construction of 10-12 thousand megawatts of capacity in Kachin state with 90\% sending back to Southern Grid in Yunan, China leaving 10\% for domestic consumption.\textsuperscript{138} However, the tension erupted between government and ethnic groups since Kachin and affected people were not included in the contract negotiation. As a consequence, President Thein Sein had to suspend one of the largest dam projects, the 4100 MW Myitsone Dam in Kachin in 2011 due to intense objection by locals. The potential for increasing revenue is that the renegotiation of the contract can include Kachin State in decision making process with the output available to the local market to boost the electrification of the country. Thus, some scholars propose 25\% of sales taxes to be applied and distributed equally between Kachin and Union government. This will amount to 146 millions USD each for state and central governments. Moreover, some output should be available at market price to help electrification in Myanmar. All electricity could be sold at about 7 cents per kWh, close to the current wholesale price in Yunnan to induce competition in supply side.\textsuperscript{139}

c) Copper

Third, in case of Letpadaung copper mine in Sagaine region was also strongly opposed by the local communities and Buddhist monks due to the excessive land

\textsuperscript{137} Myanmar’s Natural Resources: Blessing or Curse? (accessed March 31, 2014); available from https://www.boell.de/en/2013/12/11/myanmars-natural-resources-blessing-or-curse.

\textsuperscript{138} The Southern Grid pays 7-8 cents per kWh as a wholesale price for most of its power. Tom Kramer and Kevin Woods, 8.

\textsuperscript{139} Ibid.,
confiscation and environmental destruction. The current mining law dated back in 1994 protects companies but provides very few rights to landholders. This law has no provisions for Environmental Impact Assessments, Social Impact Assessments, or community consultation.\textsuperscript{140} The Chinese company invested 1 billions in capital in mining and the Union of Myanmar Economic Holdings, Limited (UMEHL), which owed by the Ministry of Defense and linked to military, that had acquired the mining rights. UMEHL negotiated a 51\% share of after-tax profits and the Chinese company received 49\%, with the government getting only about 9\% of profits in taxes and royalties.\textsuperscript{141} The question arose whether UMEHL should pay half or even all of the profit to the Ministry of Finance as some scholars suggest.

In the following part, I seek to elaborate more on what lessons Myanmar can learn from other countries, both in federal system and territorial autonomy, in term of natural resources’ revenue sharing.

Similar to Myanmar, Sudan had been struggled for federalist system and autonomy led to protracted civil war the creation of the new state in 2011. Under the Comprehensive Peace Agreement of 2005, South Sudan was granted regional autonomy with guaranteed representation in national power-sharing government and 50\% of Sudan oil’s proceed. A Peace Agreement signed in 2005 between Indonesian government and of and the Gerakan Aceh Merdeka (GAM) stipulated autonomy for Aceh state as well as sharing 70\% of oil and gas revenues. Alaska’s constitution claims “common heritage rights” of ownership of oil and other minerals for the people of the state as a whole and

\textsuperscript{140} Myanmar’s Natural Resources: Blessing or Curse? (accessed March 31, 2014); available from https://www.boell.de/en/2013/12/11/myanmars-natural-resources-blessing-or-curse.

\textsuperscript{141} The difference is not in the share of the foreign company but in the share going to the government – it has dropped from 50\% to less than 9\% of profits as in the previous negotiated contract with Ivanhoe, the Canadian company who withdrew in 2007 and taken over by Wanbao from China David Dapice, 9.
establishes a permanent fund for oil and natural gas revenues. At least 25% of the revenues received by the State of Alaska are deposited into the Alaska Permanent Fund, which is then re-invested. Residents of the state of Alaska in US receive investment money from Alaska’s budget or divided equally among its citizens in an annual dividend payment. This public dividend fund model of revenue sharing is gaining more popularity in several countries such as Iraq and Ghana. Brazil shares gas and oil revenues with states and municipalities producing states receive approximately 50% of royalties and 40% of special participations, while producing municipalities receive approximately 17% of royalties and 10% of special participations.

As we can witness here, the benefit-sharing models varies by contexts and ethnic groups. The common elements from the successful revenue sharing from other countries are the control over project, environmental protection, and revenues transparency. In Myanmar, there is a huge potential source of taxes base from underground finances of natural resources, which are not yet tapped nearly as much as in official channels. The underlying problem is that the lack of “popular participation” of indigenous people on both the process of decision making whether how resources will be utilized and how the benefits will be shared. Moreover, strong rule of law and effective Supreme Court are required for check and balance the newly created self-governance structure in State/Regional level. Transparency is the key here to establish trust with the ethnic groups in the development areas paving the way to the peace building. Though EITI initiatives does

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143 From 1982 through 2009, the dividend program paid out about $17.5 billion to Alaskans through the annual distribution of dividend checks (in 2008 each individual received roughly US$2,000). Dividends represent an important source of income for some Alaskans, particularly those in rural Alaska and have a significant impact on the state’s economy
Alaska Permanent Fund Corporation. See: http://www.apfc.org/home/Content/dividend/dividend.cfm
144 See The World Factbook: Brazil, Central Intelligence Agency (last updated June 2009)
cover revenue transparency, it does not meant to address any other environmental cost and guarantee the positive protection of the right to development for indigenous people with “free, prior and informed consent” of the affected communities.\textsuperscript{145} In the later section, it will further elaborate on the indigenous rights as guaranteed by international legal norms and how the government will use this new quasi-federalism model to mitigate the “resources curse”.

\textsuperscript{145} UNDRIP Article 10.
The Regime of Self-determination in International Law

The international legal concept of “self-determination” was rooted from the mandatory system of the League of Nations under Article 22 but the word “self-determination” was not formally established until 1960s when it was often referred in the UN’s documents. The concept of self-determination in international law is not clearly defined and varies due to the socio-economic contexts in different periods of time that mutually shape its practice and definitions.

During the mandatories system of the League of Nations, under article 22 of L.N., it recognized that “there should be applied the well-being and development of such peoples”. However, it still maintained subjugation under the control of colonial powers known as “a sacred trust of civilization” by different categories of mandatory administrative system. Therefor, minorities became international concern for their protection in a minimal way as to maintain the colonization without addressing territorial question and autonomous arrangements. The most important shift over times from WWI to World War II was the emergence of the notion of “self-government” stated in the Chapter XI and XII of U.N. Charter on Non-Self Governing Territory and International Trusteeship System, Article 73 and 76 which obliged the mandatory countries to promote “political, economic, social and educational advancement of the inhabitants, respect of human rights and equal treatment” but most importantly, it was the first time

\[1\text{46}\text{. Namely in GA Res 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), UNGA Res 1541, Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e (1960) and Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of U.N., GA Res 2615 (1970)}\]
taking into account the “progressive development towards self-government or independence and to take due account of the political aspiration of the people” which had never been existed before during the Mandate system of League of Nations.\textsuperscript{147}

First, at the earlier age, the concept of self-determination was only applied to the territories of former defeated empires such as the Austro-Hungarian and Ottoman empires. It was the means dividing power in Europe by the victorious states.\textsuperscript{148} During 1960s – 1970s, the interpretation of self-determination by international organizations as in the cases of Congo, Nigeria and Cameroon has shown that it was interpreted very narrowly as the right to independence from colonies that disregarded the rights of self-determination for ethnic peoples. This narrow application was reiterated evidently in 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Declaration on Colonial Countries), in which the question of whether the right to self-determination exists outside the context of decolonization arose. In this Declaration, it solely applies to “colonial peoples” who live under alien domination with no legal form of a state.

Second, it is hard and extremely rare for ethnic people to claim the right to self-determination as a reason for secession since this galvanized the disruptive character against world peace during the post WWII. It is intelligible that international communities placed world peace over justice in their “hierarchy of values” paradigms. Many UN resolutions explicitly expressed acceptance of the superiority of the notion of “territorial integrity” and “national unity”, which the state often uses to trump over the

\textsuperscript{147} During the mandatories system of the League of Nations, under article 22 of L.N., although recognized that “there should be applied the well-being and development of such peoples” but still maintained subjugation under the form of “a sacred trust of civilization” by the colonial powers through different categories of mandatory administrative system. Therefor, minorities became international concern for their protection in a minimal way as to maintain the colonization without addressing territories question and time-frame of the mandatory states.

\textsuperscript{148} Hurst Hannum, 43.
“collective rights of people.” The higher hierarchical value of sovereignty was also reflected in the draft of the League of Nations’ Charter concerning the right to self-determination proposed by Woodrow Wilson, which stated that “the contacting parties accept without reservation that principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary”. Although it was not eventually included into the final document, it implies some intentions of the framers on the rejection of the right to self-determination as territorial secession per se. Similarly, at regional level, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States cited UNGA resolutions 1514 (XV) and 2625 (XXV) concluded that the right to self-determination could never justify disrupting the territorial integrity of the a sovereign state.

Third, the national self-determination from nineteenth century to post 1945 period carries the limited paradigm of one-people homogenous ethnic territory. It was not meant to apply to various ethnic, religious and linguistic realities. The fact is that not every country that became independence has one single ethnic composition. It is myopic not to take into account the real world situation of ethnic heterogeneous compositions of those countries such as Myanmar, Sri Lanka and India. In this case, we often see the limitless consequence of ethno-political fragmentations and disintegrations later on since right to

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150 Hurst Hannum, 97.
self-determination was recognized to be given to the whole peoples in unity not to ethnic
groups.\textsuperscript{151}

Fourth, it not only deals with the demand of peoples concerned, but is also
consistent with the geopolitical and strategic interests of the great powers. Successful
external self-determination usually requires exterior power to support the national
secession, for instances the breaking up of the Socialist Federal Republic of Yugoslavian
or even the Crimea secession movement in Ukraine today.

Last but not least, the argument for “remedial secession” applies only to the most
extreme case with flagrant or massive discriminatory violations of human rights against
the ethnic group minorities such as Kosovo and Bangladesh. The right of minorities or
indigenous people to self-determination as secession is not accepted in international law.
Being subscribed as minorities or indigenous peoples does not automatically allow for
national secession unless they make the case for it.

In sum, the regime of self-determination in international law is very much state-
centric and realist in nature. It is largely driven by power politics of realist interests and a
few powerful countries. In this context, as expressed in obligations in various UN
Resolutions, the colonizers are obligated to impose standards and norms of self-
determination to the colonized countries. Admittedly, positivism in international law
retains the upper hand in this regime. It does not recognize the right of national groups to
separate themselves from the state. On the contrary, it is exclusively for the state under
attributed sovereignty to decide. This positivist concept negates the naturalists’ argument,
which claims that the indigenous people have the inherent rights to determine their own

\textsuperscript{151} UNGA Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples (1960),
Paragraph 5 refers to “…transfer all powers to the peoples of those territories” but without “any distinction to race,
creed and color”. This could be the exclusion of objectively distinct of ethnic, religious and linguistic minorities which
sometimes overlap with race, creed and color.
political, economic and cultural system, which stems from their objectively defined identities with their legitimate ancestral lands and historical territories.

Turning back to the case of Kachin people in Myanmar, they constitute an ethnic minority or indigenous peoples within the existing state, and thus have yet to acquire the right to independence or self-determination as interpreted by U.N. under international law. Kachin also does not constitute the Non-Self-Governing territory (NSG) within the definition of UNGA Resolution 1541 and therefor does not have options to claim for “independence, free association or integration within independent state or the emergence into any other political status freely determined by a people”. Self-determination for Kachin today as the right to secession is obsolete and has been re-defined as self-autonomy and self-government. Its objective is to establish the “genuine federal” (not “independent”) state as an expression of nationhood. However, while the ethnic groups try to carve federal states out of nations, the government follows the Western European model to build “a nation out of unitary state” by assimilation and integration.

In this vacuum of international law on right to minority, self-determination and indigenous peoples, the Kachin and other ethnic groups in the former ‘frontiers’ have been long suffered from unfair assimilation and the infringement on minority rights, especially in political and economic sphere. The assimilationist policy as a part of “Burmese Way to Socialism” by General Ne Win in 1962 clearly illustrates as an example, which briefly mentioned in the previous historical part.

The question raised here is that whether it is really useful for the government, especially in multi-ethnic countries like Myanmar, to adopt the principle of self-determination with its myriad dilemmas. It is controversial that the expansive undefined

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152 It clarifies that non-self governing territory under Chapter XI of the U.N. Charter can achieve “a full measure of self-government”.
definition of “peoples” in international legal documents largely applies beyond indigenous and ethnic groups to Bengalis immigrants, descendants from the British colonies, non-citizens and others. The requirement does not only legally oblige a state party to promote positive rights and protection for indigenous people, but also for private actors such as foreign investors and businessmen, in order to ensure the survival and continued development of the cultural, religious and social identity of the minorities.

This means that it not only extends jurisdiction over any international and national investors but also obliges them to positively protect minorities in accordance with such rights. This becomes even more controversial when coupled with the new International Investment Law, which aims to facilitate lawful land confiscation on resource-rich ethnic occupied areas to develop extractive industries and agro-business. Undoubtedly, from a government perspective, the concept of disruptive self-determination is anathema to a national integrity and the blossoming of economic investment nowadays.

In sum, ethnic minorities and indigenous peoples have never benefited from the developed legal concept of minority and indigenous rights developed during 1960s. Its ambiguous definitions and potential threat to the integrity of the country contribute to the legal limbo as government (pre and post independence) seeks to avoid its full enforcement.


154 General Comment No. 23: The rights of minorities (Art. 27), UN Doc. CCPR/C/21/Rev.1/Add.5 (1994) the “acts of other persons”.

Myanmar’s Obligations to International Human Rights Treaties

In current day, Myanmar is not the party of most of the international human rights treaties neither ICCPR, UNESCO Convention Against Discrimination in Education nor CERD but a party to CEDAW. At regional level, the ASEAN Human Rights Declaration adopted in 2012, the first of human rights standard of its kind in Asian, addresses nothing on rights of minority and indigenous peoples as collective group. Moreover, its derogation clause in Article 8 and 40 even make self-determination far beyond reaching as it opens the back door allowing cultural relativism to sneak in.156

Strictly speaking, Government of Myanmar has no binding international obligations to promote positive rights for minorities. The only exception is the 1948 Universal Declaration of Human Rights (UDHR), which is recognized as customary international law with binding obligation to any state. However, it refers to the principle of non-discrimination as negative individual rights not positive collective rights as such.157 Notwithstanding such facts, the closest affinity between international legal obligation on minority rights and the government of Myanmar is the non-binding resolution of the United Nations Declaration on the Rights of Indigenous Peoples 2007 (UNDRIP), which Myanmar is a signatory state. Even though the declaration is not clear in standard and its application158, it guarantees combinations of individual and collective

156 ASEAN Declarations of Human Rights Article 8 provides:
“The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society”
Article 40 provides: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act aimed at undermining the purposes and principles of ASEAN.”
In this case, the “purpose and principles of ASEAN” refer to ASEAN Charter Article 2: “territorial integrity and non-interference in internal affairs”
157 UDHR Article 2, 7, 18,19, 26, and 27 embodies principle of right to education, non-discrimination, cultural rights, freedom of expression and freedom of religion and language.
158 For examples, whether what constitutes the destruction of the culture according to Article 8, whether the right to land in Article 26 is too expansive applying to anytime and anywhere?, whether the right to own, use and develop in Article 26 apply to the recent occupation and whether how to demarcate the land according to Article 27.
rights such as equality and free from discrimination (Article 1, 2), right to preserve cultural identity including language, religious, customs, and education (Article 8 - 14), right to public participation (Article 5, 18, 19), collective rights to land tenure and development (Article 25, 26), right to development with free and informed prior consent (Article 23, 32), and most importantly the right to (internal) self-determination including self-government and autonomy (Article 4). It also imposes non-binding obligation on state to seek effective measures or special measures in consultation with indigenous peoples to improve social and economic conditions, including legislative measures to guarantee indigenous rights. This is less worrisome for the government in term of the slippery slope of claiming right to self-determination to independent secession since it would not be permissible under Article 46, which forbids any interpretation of the Declaration that construed as impair the territorial integrity. This supremacy of territorial integrity over self-determination was also recognized by the Myanmar delegate at the time of the adoption.

As I addressed earlier that indigenous peoples’ claims and rights under international law overlap with those ascribed to other rights of minority. Minority rights mechanisms have been a very useful tool to advance some key aspect of indigenous peoples’ right based-claims. UNDRIP, though not legal binding instrument, it serves as

159 UN Declaration on the Rights of Indigenous Peoples, 61/295, 2 October 2007
160 Article 13
161 Article 46 (1) reads “authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”
162 Aye Thidar Myo said that her Government was pleased to see that the Declaration included reference to self-determination and understood that such rights referred to activities, which did not impair the territorial integrity or political unity of States. Her delegation had voted in favor of the Declaration and would seek to implement it with flexibility
the first aggregated broad basic guidelines on what rights do indigenous people could have or enjoy as both collective and individual.

In this paper, I will focus on the three cross cutting themes on indigenous rights regarding the right to full and effective participation, equality and non-discrimination which are also recognized as customary international law. It is important to note that the effective participation for persons belonging to minorities do not only cover to “public life” but also “cultural, religious, social, and economic life”. The analysis will be gleaned mainly from the Lund Recommendations, UNDRIP and the practice of Advisory Committee (AC) of the Framework Convention on National Minorities (FCNM) by the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) as well as other international human rights treaties and norms. At the end of this section, it will further explore whether the rights of indigenous peoples and minorities are successfully enforced in the local context regarding Kachin and other ethnic groups in Myanmar.

a) Right to Equality

Drawing experiences from internal armed-conflicts all around the world, diverse plurinational countries are not likely to suffer only from violent conflict but also the ethnic exclusion, segmentation and incohesion that are powerful and robust in predicting civil wars.\textsuperscript{163} To resolve the ethnic conflict is to reduce such gap of inequality between the dominant majority and oppressed minority. However, the premature recognition of collective right of minority without securing their fundamental rights as individual “human” is shortsighted. In other words, it would be extremely difficult for minority to

claim for minority or indigenous rights without recognizing the fundamental principle of equality and non-discrimination.

The **equality principle** is well established in customary international law and reiterated in various international treaties and norms, thus creates binding effect on non-parties.\(^{164}\) It has been repeated in many rulings of the human rights courts. One of the most significant one is the dissenting judgment in the South West Africa Cases stated that “*what are equal are to be treated equally and what are different are to be treated differently*”. Thus, in order for minorities to have equal access to the enjoyment of their rights, certain individuals or groups of individuals may require that additional positive or special measures - sometimes different from what is considered to be normal or standard - are taken for their benefits. (Weller and Nobbs 2010, viii, 318)\(^{165}\) In this sense, states have obligations to undertake “*positive or special measures*” in order to promote full and effective equality in all areas of life between majority and minority as well as providing them conditions to transmit, maintain and develop their culture and essential elements of indemnity.\(^{166}\)

**b) Right to Effective Political Participation and Non-discrimination**

It is impossible for states to be completely neutral in terms of ethnic, religious, linguistic or cultural preferences. As a process of country unification and post-colonialism identity construction, most states make and unambiguous, symbolic,

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\(^{164}\) ICCPR 2.1 an accessory equality provision Art. 26 and 25: non-discrimination linked with right to political participation, African Charter of Human rights art. 1 and 24, European Convention for the Protection of Human Rights and Fundamental Freedoms Art. 14 and 12, CEDAW and CERD article 5, FCNM Art. 5 and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Art. 1 and 4


\(^{166}\) General comment 18 and 23 on discrimination, Human Rights Committee as well as Article 27 ICCPR clearly articulated states’ obligation to take positive measures.
affirmation of the dominant position of the majority’s religion, ethnicity, culture or more commonly language in its national constitution. Myanmar is no exception to this. Lund recommendations also reiterated this assumption that “absolute state neutrality in terms of religious, linguistic, or cultural preferences is impossible”. International human rights law contains nothing preventing state from having cultural, religious or linguistic preferences unless such preferences will amount to violation to fundamental human rights such as freedom of religion and non-discrimination. In this circumstance, the “effective” participation for minorities kicks in to frame divergences of preferences by majority in a way that is beneficial to minorities’ interest as to prevent the escalation of the ethnic tensions and discrimination. The commentary by AC of the FCNM also underscores that the lack of effective participation in public life can lead to the exclusion of all sorts of rights and benefits including those pertaining to economic and social domain.167

Besides, the Lund Recommendation also elaborates further the definition of the “effective participation” as the participation that is not symbolic or formal but also achieves its objectives.168 There are two foundational doctrines that underpinning the effective political participation: non-discrimination in law and in fact169 and the respect and promotion of distinct cultural minority identity.170 Therefor, it is a positive obligation for states to create the conditions necessary for the effective participation of minorities in

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169 United Nations Human Rights Committee in General comment 18. “implies any distinction, exclusion, restriction or preference which is based on the ground such as race, colour, sex, language, religion, political or other opinion, national pr social origin, property, birth and other status…and which has the purpose of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing of all rights and freedoms”
cultural, social and economic life and in public affairs, in particular concerns matters directly affecting them.

Within the crux of participations, right to take part in conduct of public affairs at all levels, right to vote and equal access to stand for elected office and equal access to civil service are primary the major ones. Most importantly, the notion of public affairs is not restricted to the formal political institutions of a state but also social and civic activities, which plausibly extends to non-citizens as well. These rights are guaranteed in various international human rights treaties and frameworks, as well as UNDRIP in article 5, 18 and ILO convention Art. 6.1.b. They highlight the right to “participate fully in the political, economic, social and cultural life in decision-making in matters which would affect their rights through representatives chosen by themselves”.

Furthermore, UNDRP Art. 19 further stress the state obligation to obtain indigenous peoples’ “free, prior, and informed consent” (FPIC) in relation to the state measures having a major impact on indigenous territories. This norm of indigenous participation has been reinforced and elaborated in number of international human rights bodies. UNDRIP article 29 also recognizes the “rights to conservation and protection of the environment and the protective capacity of their lands” with the “just and fair redress to mitigate adverse environmental impact”. Therefor, participation-consultation

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171 HRC general comment 18 (p. 98) = respect and ensure to all persons within the its territory and subject to its jurisdiction the rights recognized in ICCPR, Art. 21, UDHR and Art. 25 ICCPR, ACHR, OSCE, ECHR (p.103), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
172 Article 5, 18 of UNDRIP. It is also reflected in ILO convention Art. 6.1.b
173 ILO convention article 6.1.a, 7(1)
“(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;”
“...shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”
UNDRP Article 19, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”
principle is crucial for ethnic minorities to exercise their effective rights to development for programmes or plans that may affect their livelihoods, possession of lands and environment.

c) Self-determination as Self-governance

Although the right to autonomy has not been confirmed by international legal standards, minority self-governance and autonomous regimes have been cautiously referred to in the political commitments of the OSCE Copenhagen Document and the UN Declaration on Minorities.\textsuperscript{174} Support for devolution of powers and local self-government is also reaffirmed in the general principle of subsidiarity of European Charter of Self-Government which states that decisions shall be taken by those authorities closest to those who are effected them.\textsuperscript{175} Furthermore, UNHRC has interpreted public participation rights under ICCPR in the context of self-determination. It is a fundamental right on which other rights depend on.\textsuperscript{176} The Right to self-determination in Article 3 of UNDRIP reproduces the self-determination clause common in ICCPR and ICESCR Art. 1. Moreover, UNDRIP gives them ‘the right to autonomy or self-government in the matters relating to their internal or local affairs’ and recognizes the collective rights (Art. 4) “to maintain and strengthen their distinct political, social and cultural characteristic”. Therefore, right to self-determination is a necessary condition for ethnic group or

\textsuperscript{174} Zdenka Machnyikova and Lanna Hollo, 144.
Copenhagen document emphasizes that protection and promotion of the ethnic, cultural, linguistic and religious identity of national minorities has in state practice also been achieved through appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minority para 35, Copenhagen document. In UN Declaration for Minorities Art. 2.3 refers to the right of persons belonging to minorities to “participate effectively in decision on national and, where appropriate, regional level concerning the minority to which they belong”\textsuperscript{175}
\textsuperscript{176} Art. 4 of European charter of local self-government ,
Art. 25 and Art. 27
minorities to materialize their right to development as peoples to freely choose its economic and social system without outside interference.

d) Cultural autonomy

Cultural autonomy arrangement is seen as another means for rectificatory justice. It is used as an instrument to accommodate the past historical injustice of ethnic minorities by granting the autonomy on cultural rights such as language, identity and practice of their religions. The problem is that how far can these arrangements go in order to allow ethnic communities to retain their way of lives, while simultaneously equip them with ability to access the Burman majority economic opportunity? How would Kachin and other ethnic groups balance their cultural identity such as languages and way of lives in the manner that will not reversely discriminate themselves to benefit from the Burman economic globalization?

The level of cultural governance thus plays significant role in term of improving of the group members’ livelihood. It also constitutes important part for power sharing in peace agreements as the conflict resolution mechanism in many troubled areas of the world.177 Cultural autonomy cuts across issues around self-determination at heart of human freedom to conduct their lives as they see fit according to their cultural values. First, culture occupies an important position in the formation of human identity i.e. ethnic identity, which associates to particular forms of law in a given society assigned to that individual in relations to social and economic factors. For example, the stateless Bengali or Rohingya in the north western of Myanmar could attain socio-economic minority’s rights if the majority accepts their cultural identity. Second, the culture if oppressed, it

contributes to the sense of loss, social distance, estrangement, which leads to the disenchantment and the desire to break away from the majority.\textsuperscript{178}

In this sense, Lund Recommendation and other international human rights treaties and norms recognize the self-governance of cultural minorities both with territorial arrangements and non-territorial arrangements as alternative outcomes for the substitution of territorial nationalism or secession\textsuperscript{179}, particularly in the areas of education, religion and language. ICCPR Article 27 recognizes the collective rights to “enjoy their own culture, to profess and practice their own religion, or to use their own language”. Article 15 in Lund Recommendations talks about asymmetrical forms of governance, which means asymmetrical devolved power to regions or communities that exhibit distinct cultural identity in plurinational state\textsuperscript{180}. Moreover, Article. 18 highlights the preservation of minority language as it reserves the right to use of vernacular names while addressing state institutions and to be addressed through their vernacular names and the right to submit petition in vernacular language.

Education is also a key instrument for the intergenerational continuity of the cultural minorities. Article 15 of Lund recommendation and UNESCO Convention against Discrimination in Education recognizes the rights of cultural minorities to carry out their own educational activities and teach in their own vernacular language. Furthermore, according to UNDRIP Article 13 and 14, it is an obligation of states “to take effective measure to ensure indigenous peoples can understand and be understood in political, legal and administrative proceeding and access of children to education in their own culture and language.” This protection is not only important mechanism for

\textsuperscript{178} Yash Ghai, 642.
\textsuperscript{179} Section III Self-governance: Art. 14-15 of Lund Recommendations
\textsuperscript{180} Yash Ghai, 644.
ensuring the participation of cultural minorities in state governance and for rectifying an historical injustice, but also a catalyst for accommodating the languages of cultural minorities within de facto plural nation states.

**e) Participation in Social and Economic Life**

Some scholars argue that economic empowerment of minorities and the concomitant reduction of economic inequality, leads to increased participation of minorities in public life.¹⁸¹ On the other hand, others may argue that by securing the right to political participation at the central level of policy decision-making is the way to direct impact in term of economic benefits to their groups. Neither explanation is wrong. The point here is that it does not really matter which right, socio-economic or civil-political, comes first but they are both mutually independent and reinforced. The indivisible paradigm of equality could not be addressed solely by the prism of effective political participation. More attention should be accorded to the questions of social and economic opportunity, which is central importance to minority for harmoniously integrated into societies since integration theme is not understood only as ‘inclusion in public affairs but also cultural, social and economic life’ ¹⁸²

The explicit standards delineating the terms of minority participation in social and economic life are contingent on the interpretation of other norms, such as related minority specific rights standards or as well as general human rights norms in global and regional level.¹⁸³ Lund recommendations paragraph 12 suggests establishing advisory and

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¹⁸¹ Kristin Henrard, 526.
¹⁸² AC commentary on the Framework Convention for the Protection of National Minorities (FCNM) Ibid., 537.
¹⁸³ For example Lund Recommendations by High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE), and the Commentary on the Effective Participation of Persons
consultative body between minorities and government to address issues such as housing, land, education, language and culture. Right to development over land with the affected peoples based on principle of FICP of any development project is guaranteed under article 32 of UNDRIP. The section of self-governance includes reference to social and economic dimension in non-territorial and territorial arrangements: setting educational standards and determining curricular for teaching in minority languages, cultures, for non-territorial arrangements, and economic development, health, housing and other social services for territorial arrangements. Moreover, paragraph 6 in the section on ‘participation in decision making’ emphasizes “special measures for minority participation in the civil service” aiming to promote the equal access and employment if persons belonging to minorities in public service.\textsuperscript{184} This is also resonated in article 5, 20 and 21 of UNDRIP right to maintain and develop their distinct political, economic, social institutions without discrimination to the improvement of their economic and social conditions.

Economic and social participation are important because most of the direct and indirect discrimination predominantly occur in relation to economic and social life such as unemployment among ethnic groups, lack of access to health care, the monolinguialism used in social services, the access to housing, the lack of or reduction of education in minority language, the integration of minorities into normal school and others.\textsuperscript{185}

\textsuperscript{184} Lund Recommendations, Section III self-governance, A. non-territorial arrangements and B. Non-territorial Arrangements

\textsuperscript{185} Kristin Henrard, 546.
The Application to Myanmar’s Context, Why They Fail?

In Myanmar 2008 constitution, it clearly upholds *de jure* the principle of equality and non-discrimination. Nonetheless, the effective participation of ethnic groups in term of political and socio-economical arenas is *de facto* limited in the level of implementation due to the weak enforcement institutions, lack of experiences and personnel and deep mistrust attitude between ethnic groups and central government. The following analysis will provide some major challenges to explain why it is not easy to attain the guaranteed rights mentioned the previous section.

First, Kachin ethnic’s demand of autonomy and self-government does not yield benefit for the government on strong pareto improvement but the win-loose situation. As mentioned earlier that the occupied area of Kachin State is concentrated with the resources rich for extractive industries. Increasing autonomy for the Kachin would conversely reduce the government’s income and access to natural resources, particularly the difficulty to attract international investment in the region as happened in the case of suspension of Myitsone Dam construction in Kachin Area. This may affect the economic viability of the country thought not to the level that jeopardize the existence of the state.

Second, the continuity of cultural assimilationist approach, which has long been used since the colonization era under the Pax Britanica and after independence. In

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187 The Myitsone Dam, designed to be one of Southeast Asia’s largest dam. In 2011 the government suspended the 6,000-megawatt Myitsone Dam invested by China, which was slated to flood over 700 square miles and displace tens of thousands of people. The largest of a planned $20 billion, seven dam engineering mega-project, this dam galvanized local opposition against increasing Chinese influence. *Sharing the Wealth Burma’s post military rule and national resources* (accessed 27 October, 2013); available from [http://smallwarsjournal.com/jrnl/art/sharing-the-wealth-burma’s-post-military-rule-and-natural-resource-governance](http://smallwarsjournal.com/jrnl/art/sharing-the-wealth-burma’s-post-military-rule-and-natural-resource-governance)

188 There was considerable movement of peoples, which resulted in significant changes in ethnic composition in many part of Burma, for example, Mon and Karen were swamped by the Indian immigrants estimated population of more than one million in 1931.
1950s–1960s, the Myanmar leaders have consolidated this notion of ‘old world pluralism’\(^{189}\) that gave rise to “ethnocratic tendencies” as illustrated earlier in the first section. As a result, the minority rights to preserve cultural identities, practice their own religions and language were severely obstructed both in practice and symbolic ways. Kachin people today can not express their opinions, control their resources, practice their culture, use their language, or religion freely outside of the KIO controlled area. This is not kind of political Union that Kachin had agreed to join when they first signed the Panlong Agreement with the belief that they can have their identity equally respected elsewhere as the majority Burman.

Third, the government was reluctant to fully push forward the peace deal because of the ‘precedents’ and the ‘package deal’ problem. Although KIO declared publicly that they would not enter into deal with government unless the other ethnic groups under UNFC agree upon them, this umbrella group is not inclusive. There remains the excluded other ethnic groups outside UNFC which may claim for the same level of precedents of concessions that the government will potentially settle with UNFC and KIO. Moreover, the territorial diversity in autonomy, especially when comes in package deal may not be beneficiary for the Union State of Myanmar now as it is heavily encouraging the international investment and economic development which requires some degree of centralization of power.

Fourth, the notion of equality is guarantee on the surface but strictly limited in practice as it sets high bar to gain the protected status as citizen of the state. The 2008 constitution explicitly recognizes the equality and non-discrimination principle. The

\(^{189}\) Will Kymlicka, 9.
preamble and article 21 (a) reads “Every citizen shall enjoy the right of equality”, and Article 348 reads “The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.” It applies only to the lawful citizen of the states. This is not something surprising as it is the common practices in other countries as well. However, the ingrained prejudice against immigrants during the UK colony especially Indian greatly influences the current 1982 citizenship law that intentionally excludes all “non-indigenous” minorities like Rohingya and Persons of Indian Origin (PIOs) who have lived in the country more than four generations. Kachin, Shan, Karen are fortunate enough to be included in 1982 citizenship law which listed 135 “national races”. The law set up higher threshold thus can be seen as indirect discrimination towards the arbitrary defined as “non-citizens” for example, it limitedly entitles citizenship status only to the person born with parents both of whom are nationals of the Republic of Myanmar.

Fifth, in term of political participation, ethnic groups are granted de jure unprecedented rights to take part in public affairs at all levels. The military regime and its quasi-civilian government still reserve residual power to intervene and utilize constitutional mechanism to balance the excessive devolution of power to the ethnic constituents when it deems to jeopardize their interest and power. According to the 2008 constitution, there are two additional elements on ethnic representatives compared to its 1974 predecessor, which divined to seven ethnic states and seven regions. First, sections 49-56 and sections 274-283 created ethnically-defined “self-administered zones”, that

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191 While all persons born on Burmese soil were considered citizens under the country's earlier 1948 citizenship law, provided one parent was Burmese, General Ne Win's seizure of power in 1962 led to policies of 1982 citizenship law that further excluded communities whose ancestors entered the country after 1823 when the British annexation began. Activists call for review of Myanmar citizenship law (accessed 27 March, 2014); available from http://www.irinnews.org/report/97966/activists-call-for-review-of-myanmar-s-citizenship-law.
transcend the seven older single-ethnic-named states.\textsuperscript{192} Second, It also provided for further minority “national race” representation on a population basis in the legislatures. Sections 161 (b) and (c) guarantees ethnic representation quotas for 29 reserved seats in all regional/ state parliaments in these territories whose other non-major ethnic population constitutes at least 0.1 percent of the national populace (approximately populations of 60,000 or more) to have the right to elect their representatives to their constituent legislatures except in the states already named after their ethnic group or are given a Self-Administered Area in the State/Region concerned.\textsuperscript{193} Once elected, these races ("lu-myo") representatives were then named as “national races affairs ministers” in the state and region parliaments. However, they are \textit{de facto} powerless to influence directions of the agenda setting as they are under the shadow of the Regional Ministers who are appointed by the president. At national level, while the Union Assembly and both speakers of the two houses are dominated by the USDP, the oppositional party representatives are included on all committees and commissions, thus produced more discussions on the ethnic conflict and citizenship.

The equal access to stand for elected office is reaffirmed in the Chapter 10 of the constitution the right to organize freely and participate and complete in the elections.\textsuperscript{194} In practice, there are public criticism on the lack of transparency on party registration

\textsuperscript{192} Voters will cast three separate votes: one for an upper house candidate, one for a lower house candidate, and one for a candidate to the regional legislature. Some voters will also have the opportunity to cast a fourth vote, for a candidate representing their minority population. The self-administered zones were allotted to Danu, Kokang, Palaung and Pa-O in the Shan state and Naga in the Sagaing region. A larger “self-administered division” was created for the Wa in Shan state.


\textsuperscript{193} Seven other taingyinthar lu-myo (national races) gaining electoral representation among 29 such reserved seats, in the 2010 election in the legislatures for states and regions where they were smaller minorities. These were Akha, Bamar, Intha, Kayan, Lahu, Lisu and Rawang.


\textsuperscript{194} Section 406 of 2008 Constitution.
process, the cost of the registering of the candidates and the limited time for parties to organize their political rally. For example, in the recent 2010 election, a total of 42 parties registered with the Election Commission but three Kachin parties were disapproved of their initial applications without the reasons announced to the public. However, it was widely known that it was due to the refusal of the KIO group to transform its armies into Border Guard Forces (BGF) under direct command of the central government. Even the registration of Kachin as individual candidate was blocked on the grounds that he and other founders were former members of the KIO. In 2010, all prospect political parties were given a mere two weeks’ notice of the deadline for registering candidates. Moreover, it is important to note that all parties have no political experiences to institutionally organize themselves, as there had been no election for two decades. The 500$ non-refundable registration fee for each candidate means that most small and middle-size parties have not been able to register or reduces their numbers of candidates. Therefor, contesting all 1,163 national and regional seats would require approximately US$580,000, prior to any campaign expenses. This is in effect indirect discrimination of state practice and law that seems to be neutral on the surface against small ethnic parties to effectively and freely participate to stand for election.

Sixth, in term of cultural autonomy, while the right to profess religion, language and preserve distinct culture are fairly protected in the constitution, it is subject to the trump power of public order, morality and health. The constitution obliges state to assist

195 Manam Tuja, was rejected by UEC to form the Kachin State Progressive Party in 2009 in a bid to compete in the 2010 elections. His party finally got approval in October 2013. Tuja’s bid to establish political party is finally approved (accessed 10 April, 2014); available from https://www.dvb.no/news/tujas-bid-to-establish-political-party-is-finally-approved-burma-myanmar/34070

196 Two-thirds of registered parties (24 out of 37) represent specific ethnic populations; more than half of the parties have 11 candidates or less (that is, they will contest in fewer than one percent of the total number of elected seats); only 4 parties nominated candidates in more than 10 per cent of the 1,163 seats.

and "take effective measures" to enable the promotion and development of cultural minority self-governance in accordance with article 22 of the constitution. Yet it is contradictory that Burmese is the only official language stipulated according to the constitution, despite the fact that there are more than 100 different languages spoken by the country’s ethnically diverse population. Medias and government’s delivery of services in other languages are prohibited in States/Regions. The Myanmar Government also prohibits education beyond elementary school in any other language except the constitutionally recognized official language. This is different from other countries in Europe where it is written, for example in the constitution of Scotland and Spain that the minorities’ ethnic autonomous Regions/Provinces can recognize more than one dominant ethnic language as official language. In contrast, 2008 Constitution does not stipulate the use of vernacular languages as the language of local administration.

Seventh, in term of socio-economic participation, the surge of foreign economic investment for the country and the deep entanglement of military cronies and militias in the political economy of cease-fire remain the major challenge to achieve effective socio-economic participation by ethnic minorities. The consultation mechanism between the

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197 Section 22 of 2008 Constitution reads The Union shall assist:
(a) to develop language, literature, fine arts and culture of the National races;
(b) to promote solidarity, mutual amity and respect and mutual assistance among the National races;
(c) to promote socio-economic development including education, health, economy, transport and communication, so forth, of less-developed National races.
198 UNPO Celebrates International Mother Tongue Day (accessed 10 April, 2014); available from http://www.unpo.org/article/16883#sthash.Ym3weT4T.dpuf.
199 Catalan and Castillian (Spanish) were official languages of Catalonia, Castillion as language of communications, Catalan as language instruction in school, but gov reserved the right to fund Castilian-language schools if it so desire ex. Spain the constitution 1978: the autonomies may use vernacular languagues (Basque, Valencian, Catalan and Galician ) as the language of government and administration. However, Spanish is the official language. Ephraim Nimmi, “Cultural Minority Self-governance” in Asymmetric Autonomy and the Settlement of Ethnic Conflicts, eds., M. Weller and Katherine Nobbs, 636.
200 In 2014, Burma’s ethnic groups have established an education network organization to preserve ethnic minority linguistic rights in Burma. The organization, the Myanmar Indigenous Network for Education (MINE) pursues the “multilingual language policy for the Union” which would include their mother tongue’s language as the language of instruction in schools. New Group To Enshrine Mother Languages in Education (accessed 10 April, 2014); available from http://karennews.org/2014/02/new-group-to-enshrine-mother-languages-in-education.html/.
ethnic groups and central government was developed for the first time as provided in the article 167 of the constitution. The Union Parliament Farmland and Other Lands Investigation Commission was the prominent one set up to investigate last-long controversial issue of land grabbing cases as illustrated earlier in details. Nevertheless, in practice, the Commission cannot accept any land grab cases prior year 1988 as well as any case deemed “legal” land dispossession to the laws in effect at the time – mostly the 1991 Wastelands Law and the two new land laws enacted in 2012. Besides, Pyithu Sit (people’s militias) and Border Guard Forces (BGFs), which are backed by military and its crony businessmen remain tremendously powerful as the extended counterinsurgency branch of government to enforce large-scale land concessions. The notorious land confiscations in Kachin and Shan states for hydroelectric power dams and agribusiness development clearly violated the basic of FPIC principle which is embedded in the ILO Convention and UN Declaration for Minorities rights. Moreover, the extraction-oriented economy has given rise to severe ecological degradation especially in Kachin and Shan areas. It has disrupted local farming communities whose subsistence relies on access to upland fields and forests. The surge in agribusiness investments, for example, has greatly affected local food security, land tenure and access to local resources areas.

Eighth, Kachin and other ethnic groups also have less opportunity to be employed

201 Section 1667 (a) of 2008 Constitution: The Region Hluttaw or the State Hluttaw may, if necessary, form Committee and Bodies with the Region or State Hluttaw representatives concerned to study and submit legislation, national races affairs vested by the constitution


204 For example, mining operations have drained water resources, caused severe soil erosion and polluted rivers with mercury (gold mining) and other chemicals. The report also notes that logging “has also been shown to be directly responsible for floods, soil erosion, landslides, sedimentation build-up behind dams, river siltation, increased dry season water, stunted farm productivity and declining topsoil fertility”. Burma Environmental Working Group (BEWG), 2011. Burma’s Environment: People, Problems, Policies. Chiang Mai, Thailand.

in public services despite the expanding role of State/Regional administrations. The constitution guarantees the negative obligation of state not to discriminate on appointing or assigning duties to civil service personnel based on race, birth, energy and sex.\textsuperscript{206} However, it does not provide positive special measures or affirmative action in term of ensuring the ethnic groups’ equal access to employment in public service as recommended in Lund recommendation.

For indigenous peoples, satisfaction of collective right as a group is a necessary condition or a prerequisite for the materialization of the individual rights. Right to self-determination is the right of “peoples” that enables ethnic groups like Kachin to effectively participate in domains of social, political, economic and cultural aspects. Up until today, Kachin has not revealed their details of demands and negotiation results to the public. In the marathon 16 series of negotiations since the Preliminary Agreements with Kachin in 2013, the outcomes have been simply the agreements to agree more. Not much was discussed on the progress in term of details on how and what kind of genuine federal state and self-determination would be.\textsuperscript{207}

The recent round of negotiation between Negotiators from the government’s Central Peace Making Work Committee and the rebel groups' 16-member National Ceasefire Coordination Team (NCCT) in April 2014, both sides agreed on a first draft of a nationwide cease-fire accord.\textsuperscript{208} Nonetheless, the key parts of wording still remained

\textsuperscript{206} Section 352 of 2008 Constitution reads “The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex.”

\textsuperscript{207} One of the KIO negotiator said “We’ve had 16 meetings with the government but they don’t want to agree to our proposals for federalism or self-determination. This is why they [the talks] have carried on for a long time.” \textit{While Talks Continue, KIO Keeps War Footing} (accessed 10 April, 2014); available from \url{http://www.irrawaddy.org/burma/talks-continue-kio-keeps-war-footing.html}

\textsuperscript{208} \textit{Myanmar Government, Ethnic Rebels Agree on First Draft of Nationwide Cease-Fire} (accessed 10 April, 2014); available from \url{http://www.rfa.org/english/news/myanmar/nationwide-ceasefire-04082014195002.html}
elusive. From various sources of domestic media reports and regional new agencies, it can be concluded that there are some sticking points that are the roadblocks towards the successful cease-fire agreement. First, the sharing of Kachin State extensive natural resources, which the government side has always declined to discuss. Second, the Border Guard Force (BGF) Scheme on which the ethnic groups and Kachin has been reluctantly to compromise.

Last but not least, the lack of trust of each party and different sequences of negotiation whether it will be based on the unaccepted political 2008 Constitution which ethnic groups view it as undemocratic or the reformed constitution. In other words, although the 2008 constitution introduces myriad of benefits from the quasi-federalist structure, it does not cast white shadow over the cost of black mist that it was drafted undemocratically and structurally embedded the military regime into the future political mechanism.

Overall, the result of fifteen years drafting of 2008 constitution has introduced new paradigm shift to the recognition of collective rights for the first time with unprecedented devolution of power from federal union to Ethnic States/Regions. Nevertheless, there is still the miss-matching gap between the rights guaranteed in law and implementation in fact. The failure of transferring rights of indigenous peoples and minorities as embedded in the constitution reflects the ongoing conflict of power between

209 The ethnic armed groups want to include the terms “revolution,” “civil war,” “ceasefire,” “federal” and “autonomy” while the government side, for its part, wants to replace the term “civil war” with “armed conflict.” The Burma Army has also insisted that the word “federal” is not used.


211 The programme was instituted after the 2008 constitution which stated that ‘All the armed forces in the Union shall be under the command of the Defence Services’. As a result the government decided to transform all ethnic ceasefire groups into what became known as Border Guard Forces (BGF).

the desire to appease centralist tendencies on one hand and to appease more radical commands from minority nationalists on the other. This is where the criteria used to create the autonomous arrangements in states/regions were derived from. The powerful conservative centralists do not want to take into account the differentiations of historical contexts, cultural identities, asymmetrical arrangements that give a tailored-made genuine self-governance and autonomy to different 14 major ethnic groups knowing that by giving all too much too one, or in this case the Kachin, would trigger the same demands to others. Moreover, the ambience of fear around the ambiguous definiteness of the expanded scope of the legal right to self-determination that can lead to slippery slopes of territorial secessions are still haunting in the centralists’ mind. This coffee for all symmetric federalism on paper simply is not good enough to redress the 60 years long historical injustice.
VI

Conclusion: Ethnic Landscape in Myanmar in 30 Years

“What is democracy? Unless and until there is equality between one man and another, one class and another and one race and another, it is not real democracy”

General Aung San
Jubilee Hall Conference, May 19, 1947

As I have illustrated in the paper, the primary marker of individual and collective ethnic identity during pre-colonization was highly based on the socio-political position under the Mandala system and religion. This system was destroyed by the British introduction of the modern concept of the “state” via its “divide and rule” and administrative systems. Ethnonationalism slipped through to fill the identity vacuum caused by the British standardization of common language and secular education as a way to exploit labors in liberal economic activities of the colonizer. This cycle seems to be something new but in fact reflects the modern history of World War I, II and the end of the Cold War where ethnonationalism has continued to reshape European borders and identities. This process was reaffirmed by the globalized modern market and democracy. The liberal nationalist values emerged in modern states and weakened individuals’ traditional bonds to social units. Furthermore, colonial rule played an important role in consolidation the Christianized ethno-religious sentiments and their dominant language to construct Kachin ethnic identity as well as other groups. Conversely, it reified the we/they relations, between the low land majority Burman and upland non-Burman
minorities. At the time of independence in 1948, there were merely international legal supports for minorities or indigenous rights or if available, were interpreted in a very limited way.

It is obvious that Kachin’s claim to independent secession is not politically or economically viable in today’s international context. Right to self-determination as secession, by the interpretation of UN’s actions in the past 30 years, requires an outrageous high threshold of human rights violations, exhaustion of less destructive remedies and very specific international-contextual support for justification as we have seen in cases of Congo, Biafra, Somalia and Bangladesh.

The doctrine of self-determination could potentially be a modern mask for a new tribalism. It is not clear whether a world with ethnically homogenous states would be more peaceful and minority rights would be better protected. There is no guarantee that ethnic homogenous states would have higher tolerance towards differences than the heterogeneous ones as we have seen from the cases of Nazism, Israel against Arab states and others. Diversity in itself does not equate to equality. The international human rights treaties and norms such as UNDRIP and the Lund Recommendation are not likely to achieve perfect equality between minorities and the majority. However, they do help to create a more or less level playing field between them. Although international human rights laws and norms could not help much in solving the ethnic conflict, they help prevent conflict escalation and aggravating tense situations. At the very least, the protection of rights of minorities and indigenous peoples could prevent the abuse of hard power in solving ethnic conflicts, as the world witnessed in the massive bloodshed in Lebanon during 1975-1990 or Iraq in last decade. These facts raise the question as to
whether the transformation from a post-unitary to a federal state with self-autonomy and self-government is a possible alternative. Furthermore, if possible, is it desirable?

In multinational states with different ethnic nations, federalism is always seen as a device for bringing different nations together to preserve them, simultaneously developing their homogenous feelings of common nationality within the unified state\textsuperscript{212}. On paper, the 2008 Constitution should be given credit for introducing the new chapter of devolution of power towards quasi-federalism, the principle of non-discrimination and equality. In practice, this pledge has not been fulfilled. In other words, rights guaranteed for indigenous peoples in Myanmar in terms of effective political participation are well protected in law. They can enjoy some positive rights provided by the central government and are well represented at various political levels. Moreover, they retain negative power to legislate matters with respect to their own territory including taxation if there is no superseding federal legislation. This is a comparatively better situation than the Maori in New Zealand and the Lappish in Finland, who have no veto power for internal self-determination against the federal government.\textsuperscript{213} However, what makes Myanmar different and unique from other countries that provide autonomy and federalism for indigenous peoples and minorities are its specific \textbf{political, economic and cultural constructions.}

First, for Kachin, military cronies and cross-border illegal economic activities - especially China and Thailand profit from the armed conflict – and have further undermined the prospect for peace negotiation. Second, the political dynamics within and among the four Burman-majority political forces (the government, the military, the

\textsuperscript{212} Michael Burgess, “Multinational Federalism in Multinational Federation” in \textit{Multinational Federalism : Problems and Prospects}, xii, ed., Seymour and Gagnon, 28.

\textsuperscript{213} Hurst Hannum, 248.
parliament and the democratic opposition) remain firm and influential in all levels of the political landscape. Third, there is a disconnect between the national and local governments. The lack of understanding and incompetence of the local level administrative bodies, the weak rule of law and ineffective enforcement make them could not adjust to the swift economic and political reform stipulated by the reformist leader.

Turning back to Kachin, there still remain some challenges that gravely hinder the KIO’s goal of self-autonomy and self-government. First, granting such right to self-determination to Kachin does not yield positive economic outcome to Myanmar as a whole. Second, forced assimilation stigmatizes ethnic peoples and still being enforced in some areas. Third, precedents set by Kachin could be counter-productive for excessive diverse autonomous territories. Fourth, there is lack of trust and political will in terms of the government’s sincerity to implement a genuine federal system. Fifth, and most importantly, the weak governance and constitutional limitations give expansive authority to the army to interfere in every level of governance structures.

Domestically, although President U Thein Sein affirmed that 2008 Constitution must be amended to make it more democratic\(^{214}\), the military has been firm on its position of keeping section 436(a), which gives the military (holds 25 percent of all seats) an effective veto over constitutional change, as it states that amendments need 75 percent of both houses. Meanwhile, the opposition National League for Democracy (NLD) has cooperated with the 88 Generation and has been pushing forward to amend section 436.\(^{215}\) Another challenge lying ahead is the upcoming census, which is scheduled to be

\(^{214}\) A part of the speech marking the third year anniversary of his reformist government Suu Kyi, Shwe Mann Want to Discuss Constitution With President, Army Chief Footing (accessed 10 April, 2014); available from http://www.irrawaddy.org/burma/suu-kyi-shwe-mann-want-discuss-constitution-president-army-chief.html.

\(^{215}\) 88 Generation is the pro-democracy movement. They are the major former students who led the country’s 1988 democratic revolution against military junta that almost toppled the government and brought Suu Kyi to prominence.
concluded before the 2015 election. The last census was conducted in 1983 under a military dictatorship.\textsuperscript{216} In Kachin’s point of view, the census will undermine the peace process and be designated to dilute their ethnic identity and political power.\textsuperscript{217} On the contrary, the Paluung ethnic group in Shan state complained that their group is being bundled together with larger neighboring ethnic groups instead of being allowed their own category.\textsuperscript{218} The Rohingya seems likely to be excluded from the census list as they were in 1983.\textsuperscript{219} KIO and United Wa State Army (UWSA) already have boycotted the census for its flawed categorization of ethnic groups. In this sense, census politics will directly affect the “ethnic,” and “national race” identity, which are the basis for claims of rights for autonomy and self-governance in a federal state. The politicization of census could further complicate the ethnic conflict issues that flow to sub-minorities. The issue of the right of minor ethnic minorities to opt out from the territorial autonomy of the ethnic majority is merely addressed in any level. This ethnic tension from within would potentially become another political flash point in the foreseeable future if not properly addressed to find the balance among many ethnic states, communities and individuals.

\textsuperscript{216} The 1983 census was criticized of undercounting of Muslim population, which could have been larger than 4 percent as previously reported. See Annex V.

\textsuperscript{217} The Kachin nationalist movement has always considered that there are six or seven ethnic Kachin sub-groups, and even the lavish new “National Landmarks Garden” in Nay Pyi Taw counts only six, but the census demarcates eleven (codes 102-112). This means that ethnic identities will appear diffused. Chin, Kachin, Karen, and Shan, called on their peoples to only self-identify by their collective name (e.g. Kachin, code 101) rather than sub-group, dialect or clan identities that the census code lists. While those who do not identify themselves as one of the “national races” would be allowed to categorize themselves as “other” and provided a write-in blank.


\textsuperscript{219} Poorly Planned Census in Disarray as Calls for Postponement Grow (accessed 10 April, 2014); available from http://www.burmapartnership.org/2014/04/poorly-planned-census-in-disarray-as-calls-for-postponement-grow-stronger/.
The crucial question here is how to strike the balance between meaningful diversity and a hasty and dysfunctional state in situations where economic grievances and disparities cut across the country and ethnic nationalities are at the crossroads of economic development. It is hard for Myanmar to achieve all at this nascent stage of country reform. Democracy, federalism, and economic reform each have their own processes that sometimes converge and diverge. The key issue is whether how democratic reform will operate vis-à-vis the federal system and economic reform. It is evident that the government maintains economic liberalization as the first priority over quasi-federalism and disciplined democracy. However, like democracy, economic development alone will not resolve ethnic conflict. The government does not seem to appreciate that not all foreign investment is good for its peoples. If not properly managed, it comes with uncompensated social and environmental costs to the local indigenous peoples, which can lead to the escalation of ethnic conflict.

The negotiation between Kachin as well as other ethnic groups and the government primarily focuses on each party’s primary interest: the natural resources revenue sharing scheme on one hand for the Kachin, and the transformation of the KIA military to Border Guard Force (BGF) on the other for the government. To create the momentum needed for a successful negotiation, both parties need to re-conceptualize the zone of possible agreements that they can work on.

Eventually, minority and indigenous rights in practice are politically feasible in limited terms. It seems more plausible in Myanmar context for the government to address

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220 In November 2012, after months of debate, the parliament finally approved the Foreign Investment Law (FIL). It allows for up to 100 per cent foreign ownership, but with special restrictions in some sectors, such as agriculture, livestock breeding and fisheries.
the most fundamental human rights principles of non-discrimination and equality. Moreover, non-controversial matters such as cultural autonomy in terms of the right to practice religion, language and education should be pushed forward since they do not jeopardize territorial integrity. Neither the government nor the Kachin can gain everything they want. The government needs to make sure that political and socio-economic participation is effective in practice as guaranteed in the constitution. The rapid influx of international development assistance for institutional capacity building and skill trainings for civil officers should be properly managed to facilitate this process. Kachin also has to accept that the BGF concession is not necessarily a bad thing since they would still retain control over the local police force and it is a small sacrifice to gain other valuable self-governance.

In the long term, the lingering problem of ethnic politics, particularly the Kachin conflict, will continue to cast a dark shadow over the democratic, political and economic reform by the Thein Sein government. Ethnic conflict is seen as an important issue but has never been a top priority for the government over others. It is time to recognize that the relationship between democratic governance, economic development and human rights (collective as well as individual) is deeply intertwined. One cannot go far by picking one and leaving the others behind. The ethnic politics of self-determination is a crucial determinant factor that will facilitate or obstruct successful grand political and economic reform. These are not easy choices for the government neither for Kachin to defuse the ethnic ticking time bomb in the foreseeable future.
Annex I

* Source: Transnational Institute, Burma Program, the Netherlands

Map 3 - Investment in Burma's Borderlands

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

SCHEDULE FIVE
Taxes Collected by Region or States
(Refer to Section 254)

1. Land revenue.
2. Excise revenue.
3. Water tax and embankment tax based on dams and reservoirs managed by the Region or State and tax on use of electricity generated by such facilities managed by the Region or State.
4. Toll fees from using roads and bridges managed by the Region or State.
5. (a) Royalty collected on fresh water fisheries.
   (b) Royalty collected on marine fisheries within the permitted range of territorial water.
6. Taxes collected on vehicles on road transport and vessels on inland waterway transport, in accord with law, in a Region or a State.
7. Proceeds, rent fees and other profits from those properties owned by a Region or a State.
8. Fees, taxes and other revenues collected on services enterprises by a Region or a State.
9. Fines imposed by judicial courts in a Region or a State including Region Taya Hluttaw or State Taya Hluttaw and taxes collected on service provision and other revenues.
10. Interests from disbursed by a Region or State.
11. Profits returned from investment of a Region or State.
12. Taxes collected on extraction of the following items from the forests in a Region or a State:
   (a) Taxes collected on all other woods except teak and other restricted hard woods;
   (b) Taxes collected on firewood, charcoal, rattan, bamboo, birdnests, cutch, thanetkha, turpentine, eaglewood and honey-based products.
13. Registration fees.
14. Taxes on entrainments.
15. Salt tax.
16. Revenue received from the Union Fund Account.
17. Contributions by development affairs organizations in a Region or State concerned.
18. Unclaimed cash and property.
19. Treasure trove.

Annex III
Text of the Panglong Conference

A conference having been held at Pang-long, attended by certain members of the Executive Council of the Governor of Burma, all Saohpas and representatives of the Shan States, the Kachin Hills, and the Chin Hills, the members of the conference, believing that freedom will be more speedily achieved by the Spans, the Kachins and the Chins by their immediate co-operation with the interim Burmese Government, have accordingly and without dissentients agreed as follows:—

1. (I) A representative of the Hill peoples selected by the Governor on the recommendation of representatives of the Supreme Council of the United Hill peoples, shall be appointed a Counsellor to be Governor to deal with the Frontier Areas.

2. (II) The said Counsellor shall also be appointed a member of the Governor’s Executive Council without portfolio and the subject of Frontier Areas brought within the purview of the Executive Council by constitutional convention as in the case of Defence and External Affairs. The Counsellor for Frontier Areas shall be given executive authority by similar means.

3. (III) The said Counsellor shall be assisted by two Deputy Counsellors representing races of which he is not a member. While the two Deputy Counsellors should deal in the first instance with the affairs of their respective areas and the Counsellor with all remaining parts of the Frontier Areas they should by constitutional convention act on the principle of joint responsibility.

4. (IV) While the Counsellor in his capacity of member of the Executive Council will be the only representative of the Frontier Areas on the Council, the Deputy Counsellor (s) shall be entitled to attend meetings of the Council when subjects pertaining to the Frontier Areas are discussed.

5. (V) Though the Governor’s Executive Council will he augmented as agreed above, it will not operate in respect of the Frontier Areas in any manner which would deprive any portion of these areas of the autonomy which it now enjoys in internal administration. Full autonomy in internal administration for the Frontier Areas is accepted in principle.

6. (VI) Though the question of demarcating and establishing a separate Kachin State within a unified Burma is one which must be relegated for decision by the Constituent Assembly, it is agreed that such a State is desirable. As a first step towards this end, the Counsellor for Frontier Areas and the Deputy Counsellors shall be consulted in the administration of such areas in the Myitkyina and the Bhamo Districts as ate Part 2 Scheduled Areas under the Government of Burma Act of 1935.

7. (VII) Citizens of the Frontier Areas shall enjoy the rights and privileges which are regarded as fundamental in democratic countries.
8. (VIII) The arrangements accepted in this agreement are without prejudice to the financial autonomy now vested in the Federated Shan States.

9. (IX) The arrangements accepted in this agreement are without prejudice to the financial assistance which the Kachin Hills and the Chin Hills are entitled to receive from the revenues of Burma and the Executive Council will examine with the Frontier Areas Counsellor and Deputy Counsellor(s) the feasibility of adopting for the Kachin Hills and the Chin Hills financial arrangements similar to those between Burma and the Federated Shan States.
Annex IV

* Source: UNDP Democratic Governance Analysis 2012
## Annex V

### TABLE 3.3

Racial Composition of Myanmar’s Ethnic States based on 1983 Census (in percentages)

<table>
<thead>
<tr>
<th></th>
<th>Chin State</th>
<th>Kachin State</th>
<th>Kayin State</th>
<th>Kayah State</th>
<th>Mon State</th>
<th>Rakhae State</th>
<th>Shan State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bamar</td>
<td>0.8 (0.8)</td>
<td>29.3 (29.1)</td>
<td>14.1 (14.1)</td>
<td>17.5 (20.6)</td>
<td>0.7 (0.7)</td>
<td>11.1 (11.4)</td>
<td></td>
</tr>
<tr>
<td>Chin</td>
<td>94.6 (94.1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>3.2 (3.1)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Kachin</td>
<td>28.1 (37.6)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Kayah</td>
<td>—</td>
<td>57.1 (51.3)</td>
<td>6.4 (5.4)</td>
<td>15.7 (12.7)</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Kayin</td>
<td>—</td>
<td>—</td>
<td>55.9 (54.1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Mon</td>
<td>—</td>
<td>17.7 (17.7)</td>
<td>—</td>
<td>—</td>
<td>1.2 (1.2)</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Rakhae</td>
<td>4.4 (3.7)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Shan</td>
<td>24.2 (24.5)</td>
<td>3.0 (8.8)</td>
<td>16.6 (14.8)</td>
<td>—</td>
<td>—</td>
<td>76.4 (75.2)</td>
<td></td>
</tr>
</tbody>
</table>

*Notes: — denotes less than 1 per cent or negligible

* Bangladesh comprised 24.3 per cent according to the 1983 Census.
The figures in parentheses are estimates based on more recent data published in 2001.
The figures do not add up to 100 due to the presence of non-indigenous races in all states.