

လွိုင်ကော်
Loikaw

မြစ်ကြီးနား
Myitkyina

ဘားအံ
Hpa An

STATE AND REGION GOVERNMENTS IN MYANMAR

HAMISH NIXON, CINDY JOELENE, KYI PYAR CHIT SAW,
THET AUNG LYNN AND MATTHEW ARNOLD

Policy Dialogue Brief Series No. 1

ရန်ကုန်
Yangon

နေပြည်တော်
Naypyitaw

မန္တလေး
Mandalay

မြောက်ဦး
Myauk-U

ထားဝယ်
Dawei



The Asia Foundation
Improving Lives, Expanding Opportunities



STATE AND REGION GOVERNMENTS IN MYANMAR

HAMISH NIXON, CINDY JOELENE, KYI PYAR CHIT SAW,
THET AUNG LYNN AND MATTHEW ARNOLD

POLICY DIALOGUE BRIEF SERIES
NO. 1

September 2013

This Policy Dialogue Brief is a summarization of the original report, *State and Region Governments in Myanmar* by Hamish Nixon, Cindy Joelene, Kyi Pyar Chit Saw, Thet Aung Lynn and Matthew Arnold. For the full report in English please visit: <http://asiafoundation.org/publication/state-and-region-governments-in-myanmar-report/>

Citation: Nixon, Hamish, Cindy Joelene, Thet Aung Lynn, Kyi Pyar Chit Saw and Matthew Arnold. 2013. *State and Region Governments in Myanmar*. Yangon: The Asia Foundation and Myanmar Development Research Institute – Centre for Economic and Social Development.

ONE: INTRODUCTION

Subnational governance institutions and center-local relations are critical to the future of Myanmar, and since 2011 they have been undergoing significant change. New subnational governments have started to open political space, but they face significant limitations: the executive at state and region level is still dominated by a top-down appointment process; ministers have little control over the administrative apparatus, limiting the effectiveness of the new governments; and state and region budgets are as yet small, and prepared in a way that reinforces central influence. Further reforms are needed to align the new political structures with administrative and fiscal arrangements, broaden the scope of decentralization to more significant areas, and link it with wider democratization, peace and public administration reform processes.

With this in mind, this policy dialogue brief addresses three broad questions:

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

1.1: Defining terms

An analysis of subnational governance institutions and their ongoing evolution requires, first, a comprehensive understanding of the processes involved. The following is a brief synopsis of terms used in this briefing:

- **Decentralization:** the transfer of authority and responsibility for public functions from the central government to subordinate or quasi-independent government organizations.
- **Deconcentration:** a form of decentralization involving distribution of functions to lower tiers of central administrative units on a sectoral or territorial

basis, while retaining accountability upward to the central institution.

- **Devolution:** a form of decentralization involving transfer of powers and responsibilities to units of local government, often elected, with corporate status and some degree of autonomy.

Decentralization can also be analyzed according to its political, administrative, and fiscal dimensions, as defined below:

- **Political decentralization:** Involves the transfer of decision-making power and accountability to local levels. It often involves some form of devolution – the transfer of responsibilities to local governments that have been granted significant autonomy. In “democratic decentralization,” local governments are accountable to local populations through elections and/or other means.
- **Administrative decentralization:** Focuses on distributing managerial responsibilities among different levels of government or administration. It may also take the relatively modest form of deconcentration, in which officials at lower levels are given more authority or discretion but remain accountable to their chiefs at the center. Decentralization could also be combined with the devolution of executive authority to local governments. Decentralization is distinct from delegation, as the latter refers to the shifting of functions to partly or wholly independent organizations outside the core government sector.
- **Fiscal decentralization:** Describes the way in which expenditure responsibilities are assigned and corresponding resources are provided. These resources may be provided by deconcentrating control over central funds to lower levels, or devolving to local government a more comprehensive system of planning and budgeting, supported by assignment of local revenues, central-local transfers, and possibly local borrowing.

This briefing examines each of these dimensions of decentralization as part of a broader analysis of the evolving state of subnational governance in Myanmar.

TWO: STRUCTURES AND LEGAL MANDATES

The Republic of the Union of Myanmar comprises seven states and seven regions named in the 2008 Constitution, six self-administered zones and divisions, and one Union territory containing the capital Nay Pyi Taw and surrounding townships.¹ Urban wards, towns, and village tracts are grouped into townships, where the lowest levels of government offices are generally located. Collections of townships are organized as districts, which in turn form the region or state.² There are 330 townships and 74 districts in Myanmar's states and regions. All villages and village-tracts indirectly elect village heads, which have replaced centrally appointed village administrators.³ Township administrations are headed by the senior official of the General Administration Department (GAD) of the Ministry of Home Affairs, and do not yet have an independent office. Nevertheless, it is at the township level that many key functions of government take place, such as birth registration, land registration, and most forms of tax collection. Districts form a middle tier of administration connecting state/region governments to townships, and are also headed by a senior official from the GAD.

States and regions, despite the terminology distinguishing historically “ethnic” states from majority *Bamar* regions, are constitutionally equivalent. The states tend to have a lower population and population density than the regions, reflecting the situation of states in the “hills” that form the historical borderlands of Myanmar. Five self-administered zones and one self-administered division have a constitutional status similar to that of a region or state, and can form their own indirectly elected and appointed “leading bodies,”⁴ headed by a

chairperson.⁵ An appointed administrative council under the authority of the president manages the Union Territory of Nay Pyi Taw.

2.1: Structure of Myanmar's Subnational Governance Institutions

State and region governments consist of a unicameral, partially elected state/region *hluttaw*, an executive led by a chief minister and a cabinet of ministers, and judicial institutions.

Roles and duties of state governments:⁶

- **Article 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.
- **Article 249.** Subject to the provisions of the Constitution, the executive power of the Region or State Government extends to the administrative matters which the Region or State Hluttaw has power to make laws. Moreover, it also extends to the matters which the Region or State Government is permitted to perform in accord with any Union Law.
- **Article 252.** The Region or State Government shall, in accord with the provisions of the Constitution, submit the Region or State Budget Bill based on the annual Union Budget to the Region or State Hluttaw concerned.
- **Article 254.**
 - (a) The Region or State shall collect the taxes and revenues listed in Schedule Five in accord with law and deposit them in the Region or State fund.
 - (b) The Region or State has the right to expend the Region or State fund in accord with laws.

¹ The six self-administered territories are the zones of Naga in Sagaing Region, and Danu, Pa-O, Palaung, Kokaung, and the Wa Self-Administered Division, all in Shan State.

² This structure of levels parallels that adopted in the highly centralized 1974 Constitution.

³ For details of this process, see Ward or Village Tract Administration Law, Ministry of Home Affairs, Chapter IV, Art. 7-9. For more on institutions of village and village tract governance, see Kempel, Suzanne and Myanmar Development Research. (2012). *Village Institutions and Leadership in Myanmar: A View from Below*. Unpublished report for UNDP.

⁴ The body consists of at least ten members from the state/region *hluttaw* elected from the zone or division itself, and is led by a chairperson. The body sits below the state/region government, and the highest-ranking GAD official in the zone/division serves as the secretary of the leading body. The body has executive authority and legislative powers over ten areas, including development affairs, public health, water, and electricity.

⁵ Constitution of Myanmar, Art. 275-6. Most of the self-administered zones cover areas controlled by cease-fire groups, under conditions previously described by Callahan as “near-devolution.” Callahan, Mary (2007), “Political Authority in Burma's Ethnic Minority State: Devolution, Occupation, and Coexistence.” *Policy Studies* 31: xvi-94.

⁶ Constitution of the Republic of the Union of Myanmar (2008).

- **Article 256.** The Region or State Government:
 - (a) shall, in carrying out the functions of the Region or State Ministries, their subordinate governmental departments and organizations, manage, guide, supervise and inspect in accord with the provisions of the Constitution and the existing laws;
 - (b) may, relating to the performance of the civil service organizations discharging duties in their Region or State concerned, supervise, inspect and coordinate in accord with law.
- **Article 257.** The Region or State Government may, for enabling the performance of the functions to be carried out in accord with the Union Law for Civil Services and in coordination with the Union Government in advance:
 - (a) form Civil Services organizations relating to the Region or State as necessary;
 - (b) appoint the required number of Civil Services personnel.

Legislature: The *hluttaw* is composed of two elected members per township and additional elected representatives for each of the “national races” comprising greater than 0.1 percent of the state/region population, but not already “obtaining” an ethnic state (such as the Karen in Kayin State). The commander-in-chief appoints military representatives equal to one-third of these elected members (and thus one-quarter of the total), the same proportion as in the national legislative institutions. The *hluttaw* elects from its number a chairperson, speaker, and deputy speaker. Schedule Two of the Constitution lists the areas over which the “Region or State Hluttaw shall have the right to enact laws.” These areas are divided into eight sectors, each with specific responsibilities, several of which are deferred for future definition “in accord with the law enacted by the Union.”⁷

Executive: The chief minister and cabinet ministers are drawn from among the members of the *hluttaw*. The appointment process for chief ministers involves the president selecting a state/region *hluttaw* member possessing the required qualifications,⁸ who is then confirmed by the *hluttaw*. As a candidate may only be rejected for proven failure to meet the constitutional qualifications, effectively the selection of the chief minister is entirely in the hands of the president, with the proviso that he or she is a member of the state/region *hluttaw*.⁹ The appointment of state/region ministers is largely in the hands of the chief minister. There are three types of ministerial posts for state and region governments.¹¹ In addition, where elected ethnic representatives are present (according to the provision for dedicated constituencies for groups with 0.1% of the population), these *hluttaw* representatives will be appointed minister of ethnic affairs for their ethnicity.

The Constitution essentially assigns states and regions executive authority over the same areas as those included in the legislative list, though new responsibilities may be added under Union law. State and region cabinet ministers are thus mandated to manage, direct, control, and inspect departments covering these areas in the region or state. As there are more than nine such departments, but typically only nine state and region ministerial portfolios, some ministers cover several domains. In general, there is a mismatch between the executive powers of the state and region government and its organizational structure.

Judiciary: There is no independent judicial service. States and regions have a High Court consisting of a chief justice and three to seven judges. The High Court supervises subsidiary district, township, and self-administered area courts. The state/region chief justice is nominated by the president, in consultation with the chief justice of the Union. Judges are appointed by the chief minister, also in consultation with the chief justice

⁷ Constitution, Schedule Two: The sectors are finance and planning; economic; agriculture and livestock breeding; energy, electricity, mining, and forestry; industrial; transport, communication and construction; social sector; and management.

⁸ Numerous constitutional provisions exist, among them: Candidates must have attained the age of 35 years and be “entitled to be elected as Pyithu Hluttaw representatives as prescribed in Section 120”; they must not breach the provisions under Section 121 that disqualify a person from standing for election as a Pyithu Hluttaw representative; and they must be “loyal to the Union and its citizens.”

⁹ The member selected by the president is usually an elected member, but may also be drawn from the military appointees.

¹⁰ They are (1) civilian, elected to *hluttaw*; (2) military; and (3) ethnic representative.

¹¹ The largest numbers are filled by persons with the required qualifications, selected by the chief minister from among the *hluttaw* representatives or other candidates, and then approved by the president. Unlike “civilian” ministries, the state/region minister for border and security affairs is a military officer nominated by the commander-in-chief of the Defense Services.

of the Union.¹² All courts are subordinate to the national Supreme Court, which has final appellate authority over other levels. For issues of constitutional interpretation, including constitutional disputes between regions, states, and the Union, power rests with a separate Constitutional Tribunal of the Union.¹³ The state or region government also includes an advocate general, nominated by the chief minister (with the same *pro forma* approval by the *bluttaw*) to provide legal advice and guidance. The advocate general is accountable to both the president and the attorney general of the Union through the chief minister.

Financial and human resources: Finances for state/region bodies such as the High Court and the advocate general, as well as for those activities in Schedule Two of the Constitution, are included in a state and region budget.¹⁴ There are also offices of Union ministries that operate in the states and regions with centrally determined budgets.¹⁵ Revenue comes from three main sources:

1. Taxes and fees assigned in Schedule Five of the Constitution.
2. Income from those state economic enterprises delegated to a state/region, which is divided and allocated to the state/region fund and to the enterprise.
3. Transfers from the Union government in the form of grants, loans,¹⁶ and the cross-sector local development funds.

There is an auditor general at the state/region level, appointed by the chief minister in the same way as the advocate general.¹⁷ The auditor general's accountability, like that of the advocate general, is unclear, as he or she is subordinate to both the president and the auditor general of the Union via the chief minister. The Constitution states that region or state governments can form civil service organizations as needed, but only according to Union civil service regulations and by coordinating with the Union government in advance.

To date there are no civil service commissions in the states and regions.

2.2: Implications of Subnational Structure

The kind of decentralization pursued in the Constitution does display some elements of devolution, in particular through the formation of state and region governments with partially elected *bluttaws* and political executives, and the right to collect some revenue along with the existence of a state/region budget. However, the powers and responsibilities granted are limited, and the executive responsible for implementing them is ultimately accountable to the president, not to the state/region *bluttaw*. The exact nature of the state and region budget is also evolving, but has some features of a devolved budget, while still being approved as part of Union finances. While various ministries have state- and region-level offices, they do not yet form an integral part of the state/region government, which instead is built around the GAD.

In this sense, *decentralization is proceeding primarily via deconcentration*, in which additional responsibilities and resources are being given to the state and region departments of central ministries, and to the chief minister under the president's authority, but these actors still remain largely accountable to the center. Deconcentration may allow some more responsiveness and improve the efficiency of public services, but in general it does not promote autonomy and downward accountability.

The influence of the military: Military appointees occupy a quarter of the legislative seats in states and regions, limiting democratic decentralization. In addition to protecting the institutional interests of the military, in ethnic states the military presence in the *bluttaw* is likely to decrease the share of seats held by ethnic minorities, as the latter are underrepresented in the military. Moreover, the Constitution ensures that active-duty military appointees of the commander-in-

¹² The state/region *bluttaw* can impeach High Court judges through an investigation and two-thirds vote, but only if initiated by the president or chief minister.

¹³ The president and the speakers of the two national representative bodies appoint the nine members of this body in equal share, and there is no appeal.

¹⁴ This budget is prepared with the participation of the state/region government, including the *bluttaw*.

¹⁵ These include major social sectors such as health and education.

¹⁶ To cover deficits of revenue-generating units considered to be state economic enterprises.

¹⁷ The duties of this post are not specified in the Constitution, but the 2010 State and Region Government Law specifies that they are to audit the state/region budget and report to the *bluttaw*.

chief lead both the Border Affairs and Home Affairs ministries at the national level. These two ministries have powerful subnational mandates and organizational infrastructures in the form of the GAD, overseeing policing and immigration. The state and region minister for border and security affairs is also nominated by the commander-in-chief, and acts both as a minister and a representative of the Defense Services. Many staff in these departments are drawn from the ranks of the military.

Reform: The textual barriers to Constitutional reform imply that the drafters intended for only limited reforms to be introduced in the short-to-medium term. Nonetheless, the Thein Sein government launched a reform program that included the revision of laws, the creation of a parliamentary constitutional review panel, major donor initiatives on subnational governance, and the peace processes. President Thein Sein was a leading influence on the reform environment for subnational governance,¹⁸ a process that was guided by the Framework for Economic and Social Reform (FESR).¹⁹ Within the President Office there were six “President Office ministers,” one dedicated to managing state and region affairs.²⁰ The president also pushed governance reforms further by creating collective bodies at the district, township, village tract, and village levels.

Parliamentary commissions: New national legislative institutions have played an important role in promoting transparency, debate, and discussion. The national Parliament has been exploring options to strengthen decentralization, and the State and Region *Hluttaw* Law was enacted on 5 August 2013, after significant exchanges between the president and the *Pyidaungsu Hluttaw*. Most significantly, in March 2013, a constitutional review committee was formed.²¹ The purpose of the committee was to examine the Constitution carefully and submit

articles to be amended, annulled, or substituted to the national *hluttaws*. Certain constitutional amendments have been made as a result, though major reform remains illusive.

2013 Region or State *Hluttaw* Law: the State Peace Development Council (SPDC) government promulgated the Law Relating to Region or State *Hluttaw* on 21 October 2010, and it was updated by the successor government in 2013. Significant amendments to the law included allowance for a state/region hluttaw office not specified under GAD, the possibility of public attendees at *hluttaw* sessions, proposals for constituency funds and representative offices. These limited provisions have been at least partially implemented since 2013, creating some momentum behind the decentralization drive led by the previous government.

2.3: The Administrative Dimension

Administrative decentralization entails the assignment of responsibilities and functions to lower-level bodies, and is thus related to the structure of the executive authority. Deconcentration of central responsibilities is taking place within some Union ministries, resulting in a mixed model of administrative decentralization.

Departments: As interpreted in practice by states and regions, the division of responsibilities defined by Schedule Two results in a division between two kinds of departments. The first are departments with activities in Schedule Two, and therefore in the state/region departments, covering some, but not all, of the activities formerly under a given Union ministry.²² These departments are not standalone state/region ministries corresponding to the cabinet portfolios of ministers in the state and region governments, nor do they fit neatly within the structure of Union ministries.²³ These

¹⁸ The President Office has acted as a *de facto* hub for setting national decentralization policies, providing guidance to state and region governments, and acting as an information broker and communications channel between state and region governments and Union government ministries.

¹⁹ The FESR is a 10-point reform strategy drafted at the Center for Economic and Social Development to support the president’s policy approach to people-centered development. The framework emphasizes development of laws and regulations surrounding decentralization, and suggests adding more areas to the initial list of decentralized responsibilities, possibly including health and education.

²⁰ The other President Office ministers are (1) chairman of the Nay Pyi Taw Council and administrative work; (2) hluttaw; (3) peace process and politics; (4) economic reform; and (5) planning. Minister U Hla Tun has held the portfolio since the beginning of the Thein Sein government and acts as the president’s representative on matters regarding decentralization.

²¹ Membership: 52 representatives from USDP, 25 from the military, seven from NLD, and representatives from 16 other parties (109 representatives in total).

²² For example, in the Ministry of Construction, the state/region government nominally controls the departments of Housing Development and of Maintenance of Roads, Buildings and Bridges, but not other departments of that ministry.

²³ This has occurred, in part, because these state/region departments are not newly constituted administrative units staffed by state/region civil servants. Instead, they are pre-existing departments within the centralized ministerial structure of Myanmar that have nominally been placed under state/region authority.

overlapping responsibilities result in confusing accountability relationships.²⁴ Even where state/region-level functions are concerned, because the leaders of the ministry offices at the state/region level are still part of a central ministry hierarchy, central ministers still see themselves as having control over their whole ministries. Fundamentally, while there are state and region ministers, there are, as yet, no state and region ministries for them to lead.

A second class of departments consists of those units that, despite being physically located in the states and regions, remain directed by, and accountable to, their corresponding Union ministry due to their exclusion from the Schedule Two legislative list.²⁵ As the state/region government has no formal authority over these sectors, any interaction between it and the concerned Union departments is informal. This does not mean, however, that the state/region government does not attempt to influence or interact with these departments.²⁶ This process has led to frustration and a perception inside the state and region governments that they are not trusted or respected by the departments.²⁷ Where relationships function well, it is generally because of good personal relations.

Administrative deconcentration in health and education ministries: Recently there have been much-needed and long-awaited active efforts to deconcentrate the health and education ministries. The structure of different-sized state and region departments has been rationalized; region and state heads have increased in rank from assistant director to director, and staff numbers have gone up. In terms of human resource management, the authority to promote and transfer different levels of staff is now deconcentrated to districts (for middle and high school heads and township

education officers), and townships (for primary and middle school teachers).²⁸ However, authority to hire and fire staff, and for procurement and budgeting (including for operating expenditures) still rests with the Union ministry. State and region health departments also reported being given greater responsibilities. One regional department described similar arrangements with respect to human resource management: the ability to promote and transfer but not hire and fire.

The General Administration Department (GAD): At the state/region level, the GAD provides administrative and coordination functions for the region/state government and the region/state *hluttaw*, as well as Union ministries and state/region departments.²⁹ The senior GAD administrator for each state and region is the executive secretary of the state/region government (deputy director general level). He or she supervises several hundred GAD employees, who staff a general administrator office, a state/region government office, and a state/region *hluttaw* office. The latter two offices provide support to the chief minister, his cabinet, and the state/region *hluttaw*. The executive secretary is directly accountable to the Ministry of Home Affairs, but in practice is expected to report to the chief minister.

The GAD is also the bureaucratic core of Myanmar's vertical subnational state structure below the state/region level. The district administrator is a GAD officer. In turn, the district level supervises the respective townships, which are the critical building blocks of administration in Myanmar. A township administrator, also a GAD officer, manages the townships. The role of village tract and ward administrators is very important, as they represent the direct interface between the central state and most of the Myanmar population.

²⁴ It is, therefore, ambiguous where accountability lies in this system, though human resource management provides a useful insight into who is ultimately responsible. During 2013, there was discussion of an executive order to move some responsibility for managing the human resources of state/region departments to state and region governments, though these initiatives have only been partially realized. However, for the most part, appointments and promotions continue to be "biased towards Nay Pyi Taw-based persons." (Focus group discussion, state ministers.)

²⁵ Three examples include the Health and Education Departments, which have the greatest number of staff and facilities in the states and regions, and the mining sector, an important sector in three of the states and regions studied.

²⁶ For example, in some regions or states, these departments provide reports to the state/region government on an ad hoc basis, and the state or region ministers make suggestions and proposals to these departments.

²⁷ In general, directors of several Union departments at this level felt that state and region governments "don't know the rules and regulations of the departments" and have unrealistic expectations of how responsive they could be.

²⁸ Township education officers are also asked to contribute to planning and budgeting by identifying staffing and school facility needs, a process aided by increases in the education budget and new information management systems.

²⁹ For example, all state/region meetings are recorded by the office of the region or state government, which is the GAD office. 2010 Region/State Government Law, Art. 50.

While many subnational governance structures have experienced significant changes, the GAD has seen limited reforms. The main step the GAD has taken in response to the current decentralization trend appears to be the promotion in rank of the staff serving at the region/state level and below.³⁰ The Constitution clearly states, “The General Administration Department of the Region or State is the Office of the Region or State government concerned.” A key issue of interpretation may be whether the state/region government office includes the *bluttaw* office. Regardless, the issue highlights a broader tension emerging between legislators at both national and local levels who are seeking additional institutional resources and freedom of action vis-à-vis the administrative machinery of the state.

2.4: The Fiscal Dimension

Just as the Constitution and subsequent reforms have introduced a new “distribution of political powers among different institutions,” a previously highly centralized, top-down, and opaque fiscal system has been opened up to a range of new actors and institutions through a combination of delegation, deconcentration, and devolution.³¹ Important aspects of planning and budgeting have been moved from their former home at the head of the SPDC (and subsequently the Office of the President) to the ministries of Finance and Revenue and of Planning and Economic Development. National representative institutions and subnational governments now participate in the preparation of the budget, and line ministries and their subnational offices play a greater role in spending it. This pluralization of influences is a major driver of change in public finances.

The reforms have been accompanied by a significant reorientation of public expenditure away from the military and towards social spending.³² State and region health and

education directors confirm that these increases in social sector budgets have been felt at the local level. However, major challenges remain. The introduction of significant delegation and deconcentration without supporting regulations or controls is a risk to financial accountability. The preparation of the Union budget is divided between the two ministries concerned with finance and planning, and is not coupled with performance-based planning and budgeting frameworks.³³ It is therefore difficult to gain an accurate picture of aggregate public expenditures, or to promote transparency and accountability. The subnational fiscal system is also changing rapidly, and the definition of state/region expenditure assignments under the Constitution is still quite vague.³⁴ The introduction of taxes and fees has varied from place to place, and in the future these may need to play a larger role in supporting fiscal autonomy for states and regions.

State and region budgets: Beginning with the 2012-13 fiscal year, regions and states have had separate budgets from the Union, though the Union budget continues to include significant transfers to these local budgets. These budgets cover those expenditure responsibilities that are constitutionally assigned to states and regions, which in practice are interpreted as those in Schedule Two. This situation is somewhat confused, as not all the activities of a given ministry are included in the lists, and those left out are undertaken without a clear, rules-based framework.

³⁰ The township administrator is now at assistant director level, rather than the level of a staff officer. Moreover, there has apparently been an effort to increase GAD staff serving at the state/region level, though numbers are unknown.

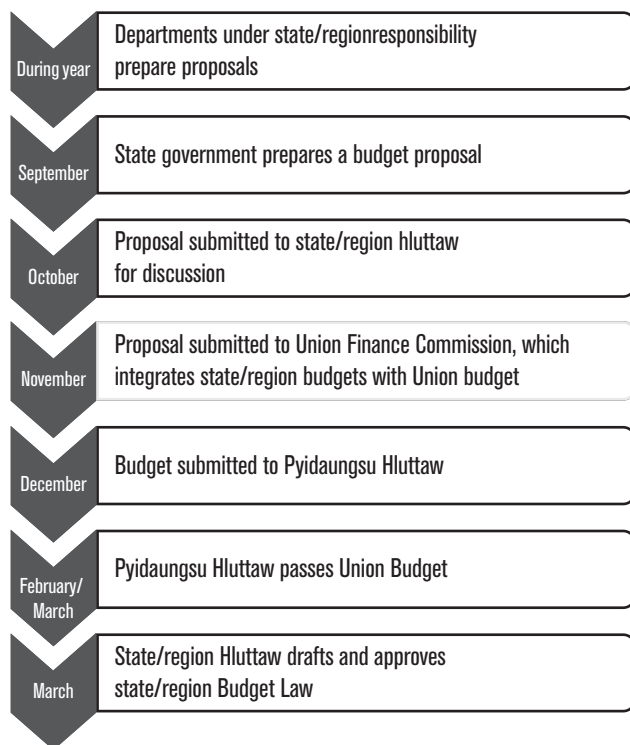
³¹ UNDP (2012), *Democratic Governance in Myanmar: Preliminary Situation Analysis* (Yangon: United Nations Development Programme), p. 6; World Bank (2013), *Republic of the Union of Myanmar – Public Financial Management Performance Report* (Yangon: World Bank), 97.

³² Between the 2011-12 and 2012-13 fiscal years, the share of the Union public budget spent on the military fell by 10 percent, while the share for health and education grew by about two percent (meaning health and education budgets themselves actually increased by over 38 percent).

³³ In addition, large shares of national revenues and expenditures – particularly those relating to the military and various state economic enterprises – are not reported in the budget.

³⁴ Schedule Two provides guidance, but as a legislative list it falls short of clearly delineating the expenditure and service-delivery responsibilities of states and regions, making estimations of their fiscal needs difficult.

State/region budget preparation process



The process for state/region-level budget preparation is illustrated above. Given the limited exposure of officials to budgeting at the state/region level, governments have tended to use whatever skills they have on hand to process the budget proposal, resulting in a range of different approaches to the steps in this process.

The Union Financial Commission plays a significant role in this process, in that it is the only institutionalized forum for interaction on fiscal issues between the state/region level and the Union government. The Commission acts to integrate Union and state/region budget proposals, and recommends “supplementary finance” for states and regions from the Union Fund. The structure of the Commission remains an important constraint on the potential fiscal devolution implied by the existence of state and region budgets, particularly if its deliberations are not rules-based.

Whatever the powers and responsibilities assigned to states and regions, their share of the national budget remains quite insignificant compared to spending that is budgeted by the Union government. Moreover, state and region budgets vary widely across the country in both an absolute and a per capita sense.³⁵ There does not appear to be any consistency in this amount between states and regions, or between smaller and larger entities, except that Yangon is advantaged in its regional budget.³⁶

Fiscal deconcentration in Union ministries: As discussed, there is significant reform taking place through administrative and fiscal deconcentration within Union ministries.³⁷ Starting with the Poverty Reduction Fund in 2013, the government’s initiatives to release development funds to the state/region level are a significant step in fiscal deconcentration, as they represent the only fully devolved resources from the Union to the state/region level. The fund derives from the Ministry of Home Affairs’ budget and is administered locally by the GAD, further adding to the influence of that unit over state and region affairs. How different states and regions have been spending these funds offers insight into devolved decision-making and priority-setting at that level.³⁸

Revenues: State and region governments are assigned certain revenue sources, detailed in Schedule Five, which include excise taxes and taxes on land, dams, motor vehicles and vessels, and local production of minor forest products and salt. Various service fees, fines, and tolls are also included, as well as the proceeds from properties and state economic enterprises (SEEs) that are run by the region or the state. It is again the GAD that collects most, though not all, of these revenues, typically at the township level. In part due to the small size of state and region budgets, locally collected taxes and fees cover a significant portion of the budget: 58 percent on average.³⁹ The implication of this

³⁵ It should not be surprising that budgets are higher in larger states and regions. However, when calculated on an estimated per capita basis, the level of spending in the FY 2012-13 state and region budgets varies from a minimum of about 6,000 kyat per head to over 37,000 kyat.

³⁶ It is crucial to emphasize that these figures are preliminary and do not reflect the total flow of resources to any given state or region, but only the spending per capita captured in the tiny state and region budgets.

³⁷ It should be remembered that deconcentration may permit more administrative and fiscal responsibility for local departments, but it does not make these departments more accountable to local populations.

³⁸ For more, see Bart Robertson, Cindy Joelene and Lauren Dunn. (October 2015). *Local Development Funds An Initial Review*. Yangon: The Asia Foundation and Myanmar Development Research Institute – Centre for Economic and Social Development.

³⁹ As per 2012-13 budget laws. Some smaller states and regions, like Chin State (25 percent), show less fiscal capacity, and this may also be a reason for additional support through the local development funds.

average figure is that expenditure and revenue decentralization are actually proceeding somewhat in balance, albeit slowly. This is an important strength of the process to date and a potential foundation for improvements in fiscal autonomy in the future.

The relative importance of the different revenue sources varies from place to place, as would be expected. SEEs are an important source of revenue – about 20 percent of the revenue reported for state and region governments comes from SEEs, and approximately 15 percent of public expenditures also comes from these sources. From April 2013 to March 2014, the Myanmar Oil and Gas Enterprise (MOGE) deposited more into its “other accounts” (US \$1.4 billion) than Union-level expenditures on health (US \$750 million) or education (US \$1.1 billion).⁴⁰ Fees and “other income” collected by various departments are also more important than taxes. For those taxes that are assigned to states and regions, it appears that the tax system has not been regularized in most places. Private-sector respondents noted that tax rates and procedures at local levels were not publicized and were at the discretion of collectors, and tax avoidance was common. It is apparent that tax administration is a weak spot for state and region governments.

Assessing fiscal decentralization: Fiscal decentralization is generally assessed across four pillars:

- 1) **Expenditure assignment:** determines whether appropriate responsibilities are given to subnational governments, if they are clearly defined, and if they are suited to the context. Subnational institutions in Myanmar undertake a range of minor functions that are relatively non-controversial, and avoid significant service responsibilities such as health and education. The total fiscal decentralization under this system is very small – on the order of five percent.
- 2) **Assignment of revenues to support these functions:** Although at an early stage of decentralization, an impressive portion of the local budget is being raised locally. However, there is a

long history in Myanmar of revenue collections being reported simply to meet targets assigned from the top, and evidence suggests this pattern continues.⁴¹

- 3) **Intergovernmental transfers:** Myanmar currently has a mixed set of intergovernmental fiscal arrangements. By far the majority of public spending is still budgeted by the Union ministries. A few of the ministries are deconcentrating some fiscal authority to subnational service delivery units. A second, small amount forms a semi-devolved state and region budget. Finally, cross-sector transfers in the form of the local development funds are an important step towards subnational fiscal autonomy, but are small in comparison with other spending.
- 4) **Local borrowing:** Union support for the operating deficits of activities considered to be enterprises is currently the only debt incurred by state and region governments. The distinction between grants and loans, and what expectations of repayment exist, are unclear.

2.5: The Political Dimension

Political decentralization entails shifting decision-making power and accountability to lower levels of the state, and as such, it is the dimension most closely related to questions of self-determination and autonomy – a key topic in the ongoing political reconfiguration of Myanmar.

Chief ministers: Appointed by President Thein Sein, the backgrounds of the previous 14 chief ministers reflect a desire to consolidate government power at the state/region level by assigning these positions to military loyalists. Following their success in the 2015 general election under the present Constitution, the leadership of state and region governments has been handed to the National League for Democracy (NLD) which had the power to elect the president – a point of contention for many of the ethnic minority groups. The chief minister nominates the cabinet ministers for the region or state,

⁴⁰ Patrick R.P. Heller, and Lorenzo Delesgues. (January 2016). *Gilded Gatekeepers: Myanmar's State-Owned Oil, Gas and Mining Enterprises*. Yangon: Natural Resource Governance Institute.

⁴¹ Interview, region finance minister.

and assigns departments and ministries to them in coordination with the president. In respect to fiscal affairs, the chief minister is the sole local representative on the Union Financial Commission, and thus the only one who can influence the final shape of the state and region budget allocation. The chief minister is also responsible for signing laws submitted by the region or state *hluttaw* and the self-administered territories' leading bodies. Contrasting executive leadership styles characterized other states and regions.⁴² In general, however, the chief minister takes a leading role in determining policy across cabinet portfolios.

State and region cabinet ministers: The state and region cabinets consist of: (1) civilian ministers selected by the chief minister and assigned portfolios by the president; (2) the border and security affairs minister selected by the commander-in-chief; (3) any ethnic affairs ministers present in that region or state; and (4) the chairpersons of any self-administered territory.

Cabinet composition:⁴³ In general, the norm has been for all region/state ministers, other than the military officer named to Border and Security Affairs, to be drawn from the elected *hluttaw* representatives.⁴⁴ The complete list of ministerial candidates and chairpersons is sent to the state/region *hluttaw* for its approval, and as with the chief minister himself, the *hluttaw* can only reject candidates if it can prove that they do not have the qualifications specified in the Constitution. If the *hluttaw* rejects any candidate, the chief minister can submit a new nomination list. After approval, the list is sent to the president for formal assignment of the ministers in cooperation with the chief minister. The appointments of the advocate general, the chief justice, and the judges of the High Court are in the mandate of the chief minister, through similar appointment processes. It is significant that while the list of candidates is primarily in the hands of the chief minister, the

assignment of individuals to specific portfolios has considerable input from the president.

Cabinet roles and functioning: The semi-parliamentary structure of state and region governments has led to some ambiguity about the role of the cabinet in relation to the *hluttaw* as a whole. In almost all the states and regions, *hluttaw* members who were not in the cabinet complained of limited participation by cabinet members in their routine deliberations. A related issue raised in smaller states and regions is that, once appointed, the cabinet includes a large proportion of the members of the *hluttaw*.⁴⁵ These *hluttaw* members noted that this situation contributed to their marginalization from decision-making. The imbalance between the cabinet and *hluttaw* in smaller states and regions appears to reduce the effectiveness of the *hluttaw* as a representative body. There are also inconsistencies in the perception of the role of the state/region ministers for ethnic affairs, which may temper their ability to represent ethnic concerns. In most cases, they were considered part of the cabinet, though with somewhat subordinate or limited portfolios.

Hluttaw roles and functions: Formally, the *hluttaw* is empowered to carry out a range of vaguely defined discussions on central and local issues, make proposals, and legislate in those areas specified in Schedule Two of the Constitution. In practice, *hluttaws* have a common view of their functions, but vary widely in their performance of them, due to their varying capacities and relations with the cabinet, chief minister, and departments. *Hluttaw* functions can be divided into four broad categories:

- 1) **Channel local grievances:** *Hluttaw* members view themselves as more closely connected to the population than other officials, but most *hluttaw* members lamented that they had few avenues to act directly.⁴⁶ *Hluttaw* members report that grievances are predominantly local, often related to local

⁴² Some cabinets held meetings every two weeks, while one smaller cabinet had met only once in the previous six months.

⁴³ The cabinet make-up for each state and region has been held consistently at 10 portfolios. These are standardized across the country, along with a varying number of ethnic affairs ministers, according to the number of groups that meet the population criterion. This produces cabinets ranging from 10 members in Chin State, which has no elected national race representatives, and thus no ethnic affairs minister, to 17 in Shan State.

⁴⁴ Exceptional cases exist in which the chief minister can appoint unelected representatives, as the Constitution does not require that either the chief minister or his or her cabinet must be elected. The chief minister also formally appoints the chairpersons of any self-administered zones/divisions within their state/region after their selection by the leading bodies.

⁴⁵ In States like Kayin and Chin, there are only four civilian *hluttaw* members remaining once the cabinet and military representatives are excluded.

⁴⁶ *Hluttaw* members lamented that their courses of action were limited to suggesting that people register claims with the General Administration Department, or to sending the issue up to some higher authority.

natural resources, but civil society organizations and private-sector actors said they would rarely consider this channel for grievances due to their lack of confidence in this process.

- 2) **Question cabinet ministers:** In theory, in every state and region the *hluttaw* can form a “Government’s Guarantees, Pledges, and Undertaking Vetting Committee,” to review the actions of the region or state government and, in particular, the questions, pledges and guarantees made by the *hluttaw*. Also providing “checks and balances” on the cabinet. The extent to which these committees have been established varies enormously across states/regions.
- 3) **Make proposals to higher authorities:** Proposals deal either with suggestions about local priorities or with policy changes that do not require legislation, such as local development projects or issues falling outside the state and region legislative list. There is a widespread view that most suggestions need to go from the state or region to the Union level to see any action, so proposals often involve a petition to a higher official in Nay Pyi Taw.
- 4) **Legislate in Schedule Two areas:** While some form of local legislation has been passed in all states and regions, the depth, nature, and quantity of legislative activity have varied quite widely. States and regions are required to pass the annual budget into law, and are directed to prepare a regional development plan outlining local priorities. In this sense, all the *hluttaws* have passed laws during their first term, though most states have not passed many laws that go beyond “routine” actions. Reasons for the limited and narrow legislative activity include both a lack of experience and capacity, and ambiguity over what is permissible under the Constitution and Schedule Two.

Public outreach by state and region *hluttaws*: There are two types of communication channels commonly pursued by state/region governments and *hluttaws*: direct engagement by *hluttaw* representatives and cabinet members with their constituencies, and public outreach through formal and informal communication

mediums such as national newspapers, gazettes, local journals, and local television broadcasts, as well as government websites and Facebook. *Hluttaw* representatives, including cabinet members, often mentioned efforts to meet the public during visits to their constituents’ villages. However, the extent and success of communication has varied depending on the personal interests and prerogatives of individual *hluttaw* representatives.

Engagement on a direct, individual level appears to be the most common medium. Large-scale public meetings, in which government actors interact with civil society and the general public, seem to occur when instigated and framed by the program interests of an international actor. Public outreach by state/region governments and *hluttaws* through formal communication channels (national newspapers, gazettes, and websites) is largely via the Union government, specifically the Ministry of Information.⁴⁷ Within states and regions, reporting by regional newspapers on state/region government activities and *hluttaws* is also fairly routine.

Political parties at the state/region level: The functioning of local political parties will be an important determinant of whether political demands can be channeled productively under the new governance structures. Ethnic political parties, unsurprisingly, channel their efforts to driving the push to federalism. More surprising is that many local branches of national parties – the USDP in particular – also showed considerable interest in further political decentralization. Following their successful campaign in the general election in November 2015, the NLD’s position on these issues will be examined closely as they implement governance reforms.

2.5: Decentralization and the Peace Process

The positions on decentralization of armed actors on all sides will be central to the success or failure of Myanmar’s transition and peace process. Under the current system, both significant ethnic and identity issues, and state/region-level influence over major resources or development projects, remain outside the framework of decentralization to states and regions. Issues such as

⁴⁷ Minister of Information U Ye Htut has been highly active on social media, leading to his nickname as the “Facebook minister.”

education policy and language of instruction, oversight of development projects, and management of mining concessions are important dimensions of conflicts in Myanmar. Broadening the scope of state/region responsibilities to include these types of issues – natural resources, local economic development, and education policy – and strengthening the role that regional governments and other actors play, should be priorities in upcoming negotiations.

THREE: POLICY CONSIDERATIONS

The issues above reveal policy areas that require reform. The following is a list of key policy recommendations for Myanmar's government to consider.

Rationalize state and region government administration and human resources. Further clarify the roles and responsibilities of the state and region departments, and separate state/region departments from Union ministry structures. Programs and incentives for relocating civil servants should be explored, and state/region civil service organizations should be considered. Although the constitutional role of GAD as state/region government office is a challenging obstacle, independence from GAD should be supported for state and region ministers and departments.

Deepen the deconcentration process within Union ministries. Policy frameworks should be designed to further deconcentrate line ministries' responsibilities across administrative levels. Capacity support should be provided to line ministries as they deconcentrate, and to state and region ministry offices as they take on new tasks. Resources for functions at the state/region level should be predictable and transparent, and modest budget deconcentration should occur, taking care to avoid unfunded responsibilities. Union ministry offices should pursue outreach and participation with state and region governments and *hluttaws*, as well as with civil society and communities.

Broaden the scope of state and region government responsibilities. Consider including aspects of education policy in the state/region legislative, including hiring and language of instruction. Consider increasing state and region participation in the management of significant natural resources, including the approval and oversight of concessions and projects for natural resource extraction and development, possibly involving state and region authorities in EITI. Modifying Schedule Two should be explored.

Strengthen the management, budgeting, and resource allocation of public expenditure. Strengthen tax policy and administration at the state and region level, and improve Union-level public financial management capacity for fiscal projection. Revise the allocation of local development funds and develop intergovernmental fiscal arrangements. Ensure that donor programs support state and region planning, budgeting, and monitoring capacities, and support the Union Financial Commission to develop and apply transparent fiscal policies. Improve the clarity of national accounting and budget presentation.

Develop a transparent and rules-based intergovernmental fiscal system. Consider wealth-sharing arrangements; decide what should be included, who collects, and the formula. Consider the overall transfer system, including what functions must be financed, what equity and policy goals are important, and what will encourage good governance, revenue, or service performance. Policies on foreign financial flows to states and regions should be explored.

Strengthen the political autonomy of the state/region governments. Support state and region *hluttaws*, especially small ones, to function more effectively in legislative and oversight roles. Consider how to increase the chief minister's accountability to the state/region. Revise state/region-level strategies for constituency engagement and communications.

FOUR: KEY QUESTIONS AND FURTHER READING

Discussion Questions

- How should the government of Myanmar be prioritizing fiscal, administrative, and political decentralization reform initiatives?
- Considering the capacities of state/region legislatures, at what pace should the new government move forward with decentralization initiatives?
- To what degree can decentralization to states and regions address the main issues driving and perpetuating existing ethnic conflicts within Myanmar?
- How can subnational governance reforms support the peace process in areas of contested or shared authority, and parallel administrative structures and services, managed by non-state armed groups?

Further Reading

Callahan, Mary. 2007. "Political Authority in Burma's Ethnic Minority State: Devolution, Occupation, and Coexistence." *Policy Studies* 31: xvi-94.

Pedersen, Morten B. 2011. "The Politics of Burma's Democratic Transition: Prospects for Change and Options for Democrats." *Critical Asian Studies* 43(1): 49-68.

South, Ashley. 2012. *Prospects for Peace in Myanmar, PRIO Paper*. Oslo: Peace Research Institute Oslo.

Steinberg, David I. 2012. "The Problem of Democracy in the Republic of the Union of Myanmar: Neither Nation-State Nor State-Nation?" *Southeast Asian Affairs Volume 2012*: 220-240.

UNDP. 2012. *Democratic Governance in Myanmar: Preliminary Situation Analysis*. Yangon: United Nations Development Programme.

World Bank. 2013. *Republic of the Union of Myanmar – Public Financial Management Performance Report*. Yangon: World Bank.



The Asia Foundation

Improving Lives, Expanding Opportunities

**No.17, Thu Khi Tar Street
Pyi Thar Yar Residence Lane 1
15 Ward, Bauk Htaw, Yankin Township
Yangon, Myanmar**