

Towards “Emergent Federalism” in Post-coup Myanmar

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As a result of the COVID-19 pandemic and the 1 February 2021 coup, Myanmar is facing extraordinary human rights, political and socio-economic crises. At this critical juncture, it is worth re-visiting and re-imagining the type of country Myanmar could be. Federalism has long been considered as the solution to the country’s protracted state-society and centre-periphery conflicts and to enable ethnic minority communities to achieve self-determination. However, discussions about federalism are often framed in terms of revising or replacing the 2008 Constitution in a top-down manner. While constitutional change is necessary, federalism can also be seen as an “emergent” phenomenon, developing from the “bottom-up” out of the existing structures and practices of the ethnic minority communities and the Ethnic Armed Organizations (EAOs). Several EAOs have long-established governance regimes in their areas of control or influence, delivering a range of essential and life-saving public services to their communities. These local frameworks of public administration and services provision can serve as important building blocks of a bottom-up federalism, especially given the collapse of a credible and legitimate Myanmar state. As such, EAOs should be supported to develop their governance and services delivery systems. Arguably, the present multiple crises in Myanmar offers the closest approximation since the 1947 Panglong Conference of the idea that a federal union should emerge out of agreements among sovereign states, i.e. that state formation (and sovereignty) must precede a federal constitutional settlement.

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Recent debates have questioned whether Myanmar is a “failed state”, and/or whether this concept is even relevant for a country like Myanmar.¹ Myanmar has never achieved credibility as a state that citizens in ethnic nationality and conflict-affected areas can positively identify with. Myanmar was a failed nation before it was a failed state. As David Steinberg has recently pointed out, since independence, political leaders have failed to foster a common sense of belonging among Myanmar’s various ethnic groups, especially between the elites from the Burman majority and the ethnic communities which constitute over one third of the 55 million-strong population.²

Nearly all Myanmar’s ethnic politicians are in accord about achieving “genuine federalism”, which has long been regarded as a solution to the country’s state-society and centre-periphery tensions. However, there has been relatively little discussion of what federalism entails, and how to achieve it. In large part inside the country, such ideas were suppressed until the military rule ended in 2010. In the meantime, ideas and frameworks for federalism were kept alive in opposition circles, particularly among the Ethnic Armed Organizations (EAOs) in the 1990s and 2000s. For instance, in the 1990s the National Council of the Union of Burma (NCUB)—an opposition body made up of EAO representatives and exiled politicians—oversaw the development of a series of state-level constitutions for a future federal union. Many of the charters were designed with the help of civil society organizations (CSOs).³

Federalism is a means to an end. In the case of Myanmar, the end is self-determination and justice in the context of a violent and predatory state which has long suppressed ethnic autonomy through protracted armed conflict. Federalism, with its emotional-symbolic weight and potential value as a conflict resolution (or at least conflict management) tool, may be an idea whose time has come once again.

As Milton Friedman observed, “Only a crisis – actual or perceived – produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around.”⁴ Over the past two years, Myanmar has experienced two massive crises: the COVID-19 pandemic, which was followed, and exacerbated by, the February 2021 military coup. These disruptive junctures are likely to be aggravated by the impacts of climate change.⁵ The triple crises have introduced a political landscape in which it is possible to think about federalism in new and creative ways to bring about “real change”. For instance, some of the larger and longer-

established EAOs are in the process of establishing themselves as micro-states that are effectively independent of the Union in many, and politically significant, ways. These developments suggest that the building blocks of a flexible and asymmetrical federalism—with different arrangements in different areas, reflecting the complexity of the situation on the ground—is emerging from the present crises. It remains to be seen whether political elites from the Burman majority community, including politicians from the National Unity Government (NUG), will partner with these ethnic groups to encourage this emergent, bottom-up federalism.

This article begins with an overview of conceptual and historical discussions regarding the nature and significance of federalism in Myanmar, and how this relates to previous attempts to achieve peace in the country. It proceeds to examine different models of federalism, focusing on the concept of “emergent” federalism, built on the existing governance administration and services delivered by some of the country’s major EAOs.

Federalism: A Tool for Nation-building?

Like peace, federalism means different things to different people. Technically, federalism refers to a system of government involving mixed sovereignty,⁶ in the sense that power and authority is divided and shared between a central federal (union) and provincial (state/region) governments.⁷

Federalism has long been seen by the political leaders of Myanmar’s ethnic minority groups as a potentially powerful tool for achieving self-determination. The concept and practice of federalism is related to consociational (elite-pact) approaches to political settlement in multi-ethnic countries.⁸ Related but distinct concepts include “decentralization” and “regional autonomy”.⁹ The latter is a form of decentralization sometimes used when particular groups are concentrated in a specific geographic area, which allows demands for political and cultural autonomy to be more easily accommodated. Regional autonomy can be granted without a federal constitution. Regional autonomy has been *de facto* introduced in certain parts of Myanmar through the designation of “special regions”, especially since the ceasefires of the late 1980s.¹⁰ While critics may point out that the Special Regions under the State Law and Order Restoration Council (SLORC) and State Peace and Development Council (SPDC) military regimes enjoyed little real autonomy, the leaders of the Pa-O National Organization (PNO) have pointed to

the increase in the local delivery (even if partial) of services and development projects in their areas, following their 1994 ceasefire agreement with the junta.

For many conflict-affected communities, federalism is primarily valued as a way to achieve political settlement and prevent the continuation of armed conflict. For ethnic elites, the notion of federalism usually has a stronger attraction than decentralization or regional autonomy, since it putatively involves a fundamental restructuring of Myanmar's legal-constitutional framework. Ultimately, the calls for federalism from Myanmar's ethnic groups come from their deep-seated experience of inequality vis-à-vis the majority Burman community. In contrast, Burman political (and particularly military) elites have historically been very wary of federalism. For example, the military coup of March 1962 was justified by General Ne Win as a way to prevent an imminent disintegration of Burma's national unity brought about by the civilian government's introduction of a federalist system.

Typically, federalism is achieved either through a "federating process", in which (at least nominally) independent units are consolidated into one singular political entity, or through a "federalizing process", in which the central authority of a political unit grants constitutional autonomy to its local or regional constituent parts.¹¹ The latter can also be described in terms of a process of radical decentralization. The key element of the federating process is that the individual constituent units are regarded as sovereign,¹² as is the case of the 13 North American colonies that formed a federal union in 1789 or when the German Empire was created in 1871. More uncommon is the federalization, or radical decentralization, of a pre-existing "unitary" state. Recent examples would include devolution in the United Kingdom (UK) and the adoption of a nominal form of federalism in Spain.

There are thus many forms of federalism and different ways of getting there. The February 1947 Panglong Conference can be seen as a "federating moment" for Myanmar, in which leaders from the Shan, Chin and Kachin communities agreed to form an independent union with Ministerial Burma after independence from Britain. Whether this is how the Panglong Agreement was understood at the time by Burma's independence leader General Aung San and the other participants is questionable, as shall be discussed later.¹³ Moreover, while the 1947 Constitution of the Union of Burma was federalist in appearance, the arrangement was one of centralization in practice, not least because the federal government

retained budgetary control over the ethnic states. In some sense, Burma followed the model of the UK—recognizing the existence of sub-nations within the sovereign territorial state, but with power firmly entrenched in the capital.

More than half a century after the Panglong Agreement, it now seems that advancing federalism in Myanmar instead requires a “federalizing” process, whereby the constitutional framework has to be re-negotiated to create something approaching a genuine federal union.¹⁴ Arguably, the present crises offer the closest approximation since the Panglong Conference of the idea that a federal union must emerge out of an agreement between the constituent sub-states—that state formation (and sovereignty) must precede a federal constitutional agreement.

Contemporary debates about federalism often revolve around how power and responsibility should be divided between the union and the sub-national states, how the (nominally sovereign) ethnic states should be represented in the union-level government, and how to ensure autonomy for ethnic minority communities that are spread over different areas, rather than living within cleanly-demarcated ethno-territorial lines. Instead of engaging directly with these questions, I want to discuss federalism as an “emergent” and “bottom-up” phenomenon, built on existing local practices and structures. In short, the roles of Myanmar’s longer-established EAOs in governance and administration, combined with the local delivery of health, education and other services provided by the EAOs’ line ministries (often in partnership with CSOs), can represent the building blocks of a new type of federalism for Myanmar.

Ghosts of Panglong

The narratives of ethnic politics and federalism in Myanmar have been substantially framed by the two Panglong conferences held in 1946 (under British auspices), and more famously in February 1947. The conference was named after the small town in southern Shan State where the meetings were held.

After the devastation of the Second World War, the 1947 Panglong Conference was put together in a rush by the hero of Burma’s independence movement, General Aung San (father of Daw Aung San Suu Kyi), and a handful of ethnic Chin, Kachin and Shan leaders. Although the discussions were by no means fully representative of Burma’s diverse ethnic communities (Mon and Karen leaders were absent or arrived late as observers only), an agreement was reached

that the country's "Frontier Areas" would be granted "significant autonomy in matters of internal administration".¹⁵ The Frontier Areas was a British colonial designation for regions dominated by ethnic minorities, in contrast to the Burman-populated lowland interior. Aung San needed to reach a deal with ethnic minority leaders in order to persuade the departing British that Burma could proceed towards independence as a singular country which included both the *Bama* majority and ethnic minority communities. The war-weary colonial government did not need much convincing and granted Burma its independence in January 1948. The UK did so despite having previously held out the prospect of a separate political trajectory for the country's ethnic minorities, which had received British protection and patronage during the colonial period. The Panglong Conference was an early example of how lowland leaders from central Burma co-opted ethnic minority elites into an agreement in which the latter had little influence or agency over.

For *Bama* leaders, Panglong represented a moment of unification in which a new multi-ethnic (although in practice, Burman-led) union came together to defy colonialism and struggle for independence.¹⁶ The conference is, however, remembered rather differently by the ethnic minority communities. Matthew Walton observed that calls for "a return to the spirit of Panglong" by ethnic minority leaders is encoded with conflicting understandings of the conference and its legacy.¹⁷ For ethnic leaders, Panglong's primary significance was General Aung San's promise of full autonomy for ethnic states, with the option of secession if necessary after a ten-year period, as enshrined in the 1947 Constitution. The possibility of secession indicated the limited trust ethnic minority elites had in the idea of Burma as a coherent and inclusive entity. The secession option was, however, effectively nullified when the Burma Army launched a "soft" (or supposedly "constitutional") military coup in 1958, installing General Ne Win's military caretaker government.

The Panglong Conference has come to have more symbolic and political importance in recent years than in the first two decades after its passage. Since the 1970s at least, the "Panglong spirit" has come to be regarded as symbolic of a "federating moment", when the majority and minority ethnic communities came together to form a union. Unfortunately, Burma's history over the next 70 years following Panglong was one of inter-ethnic and state-society conflict, aggressive centralization and assimilation, increasing polarization and distrust, and widespread suffering and socio-economic deterioration.

In part, the “Panglong spirit” has remained elusive because Aung San was never able to convince most of his comrades in the Burmese independence movement of the justice of ethnic autonomy in the new union. Aung San was assassinated in July 1947, shortly before the finalization of the new constitution. The promises he made to ethnic minority communities (apart from the secession clause in the constitution) died with him. Burma was thus denied the leadership of its most credible politician. The charismatic, if ideologically inconsistent, Aung San never had the opportunity to demonstrate his ability to govern with the same success as he led the independence movement.

The Peace Process under Semi-civilian Rule (2011–20)

From late 2011 through 2012, the U Thein Sein nominally-civilian government and the Myanmar armed forces (Tatmadaw) either agreed to or reaffirmed ceasefires with ten of the 11 largest EAOs in Myanmar. In a sinister parallel development, in June 2011 the Tatmadaw launched fresh attacks against the Kachin Independence Organization (KIO) and the civilian population, breaking a 17-year truce in northern Myanmar and displacing well over 100,000 civilians.

In October 2015, eight EAOs, mostly from the southeast—including the Karen National Union (KNU) and two smaller Karen factions, as well as the most powerful Shan armed group, the Restoration Council of Shan State (RCSS)—signed the Nationwide Ceasefire Agreement (NCA), together with the then-president, senior government leaders and the Tatmadaw commander-in-chief, Senior-General Min Aung Hlaing. This significant milestone in the peace process was diminished by the fact that a dozen other EAOs (including the KIO) declined to join the agreement due to its lack of “inclusiveness”, as the Tatmadaw (specifically Min Aung Hlaing, the commander-in-chief and the 2021 coup-leader) had refused to allow some EAOs to join the NCA. This failure would come back to haunt the agreement, with widespread conflict raging across northern and western Myanmar in the years following the NCA. Two more EAOs, including the New Mon State Party (NMSP), signed the NCA in February 2018.

The NCA offered a basis for political dialogue to begin, with the first meeting of parties to the agreement held in Naypyidaw in January 2016. This was followed by the Union Peace Conference meetings in August 2016 and May 2017. The conference was initiated by Daw Aung San Suu Kyi (the daughter of Aung San)

after her National League for Democracy (NLD) secured a landslide victory in the November 2015 elections. Convened 68 years after the original meeting, the talks were regarded as the “21st Century Panglong”—even though the sessions were held in Myanmar’s new capital, Naypyidaw. In invoking the Panglong name, Daw Aung San Suu Kyi appeared to imagine the Union Peace Conference as the completion, or at least the continuation, of her father’s unfinished legacy. However, her attempt to reach a grand nation-building pact in Myanmar was even more superficial and less successful than her father’s, as she clumsily ignored the perspectives and deeply-held agendas of ethnic participants.¹⁸

Importantly, though, the NCA and the Union Peace Conference enabled ethnic communities (whose EAOs were signatories of the NCA) to consult their members and engage in internal dialogue about their futures in Myanmar. The Karen community’s dialogue session, held in Pa’an in January 2017, was quite successful. For the first time in Myanmar’s history, stakeholders from the diverse, fragmented and often traumatized Karen community were able to come together and start building common positions on key issues, after having consulted ethnic residents living in different Karen areas. (In some places such as Shan State, the government and Tatmadaw refused permission for the EAOs to hold consultations in government-controlled areas.) Nevertheless, many key concerns and aspirations raised at the sub-national level were not included in the agenda of the union-level peace process, undermining the credibility of the talks. For instance, the first 37 “principles” of a Union Peace Accord finalized during the May 2017 meeting of the Union Peace Conference did not sufficiently address the ethnic minority leaders’ demands for a federal solution to Myanmar’s state-society conflicts. Due to these and other frustrations, the KNU and the RCSS suspended their participation in the peace process in December 2018.

When Aung San Suu Kyi and her NLD government took office in April 2016, there was optimism about advancing the peace process. The NLD government had declared that achieving “national reconciliation” and building peace in the country was its top priority. Furthermore, Aung San Suu Kyi had spoken approvingly of federalism.¹⁹ However, the NLD government acted in similar ways to the preceding ruling regimes, with a strong instinct for centralization and an authoritarian political streak (notwithstanding the lip service paid to the idea of federalism). It quickly became clear to many that Aung San Suu Kyi’s “national reconciliation”

was primarily focused on the relationship between the NLD and the Tatmadaw. In dismissing the importance of the EAOs in the “national reconciliation” process, she failed to recognize that many of these organizations command significant political legitimacy among their respective communities by dint of their armed struggle. Her reluctance, and the Tatmadaw’s refusal, to genuinely engage with their political demands or make concession on key issues—such as improving Myanmar’s current federal arrangement—caused the peace process to stall and ultimately fail.

Aung San Suu Kyi’s failure to re-imagine Myanmar as an inclusive country where all, regardless of their ethnic identity, are equal citizens is perhaps the greatest missed opportunity of her tenure from April 2016 to January 2021.²⁰ The failure to advance the nation-building project betrayed the deep structural inequalities within the state, exposed the prejudices of the dominant (Burman) political culture, and amplified the long-standing grievances of the ethnic minority communities.

Hence, despite some initial success, the political dialogue to develop a new federal framework for Myanmar have been largely thwarted. The Tatmadaw rejected any mechanism for ceasefire monitoring. Meanwhile, attempts to establish “Interim Arrangements”, which would recognize the EAOs’ provision of services and governance authority in their localities, were opposed by the Tatmadaw and the NLD government. Overall, neither of them had the political will to deliver a just and lasting peace.

Return to Conflict and Militarization Post-coup

The 1 February 2021 coup has thrown the faltering peace process into further disarray. EAOs are unwilling to recognize the legitimacy of the new State Administration Council (SAC) as an interlocutor, while several key EAOs are at the forefront of the anti-junta resistance. Although junta leaders have expressed their desire to maintain the NCA, the Peace Process Steering Team (consisting of the ten EAOs which are signatories of the NCA) formally announced on 7 July 2021 the suspension of the NCA as a multilateral peace negotiation framework. However, the individual EAOs are free to negotiate bilaterally with the Tatmadaw. A number of the NCA signatories have maintained behind-the-scenes contacts with the SAC’s Peace-Making Central Committee, the National Solidarity and Peace-Making Working Committee, and the National Solidarity and Peace-Making Negotiation Committee. It remains to be seen

whether the NCA signatories will seek to maintain or build on the agreement in their future dealings with the SAC. If the NCA is regarded as dormant (rather than dead), it could still form the basis of future negotiations on a tripartite peace agreement covering political dialogue, ceasefire monitoring and the implementation of Interim Arrangements.

On 5 February 2021, shortly after the coup, a group of Members of Parliament (MPs) elected in November 2020, who are mostly from the NLD, established the Committee Representing Pyidaungsu Hluttaw (CRPH). On 31 March, the CRPH launched a “Federal Democracy Charter”, before announcing the formation of a National Unity Government (NUG) two weeks later. While the first section of the Charter includes commitments to support ethnic minority communities and their claims to self-determination, the second section clearly reinforces the newly-reelected NLD government’s pre-eminent claim to legitimate authority. This has significantly diminished the Charter’s standing among many ethnic minority stakeholders, who notwithstanding their opposition to the coup and the junta found this kind of “parliamentary dictatorship” unacceptable. Such concerns have been exacerbated by the perception that some NUG ministers were behaving in a rather offhand and entitled manner in their interactions with their ethnic minority counterparts from the EAOs and CSOs.²¹

There are also ongoing discussions between some EAOs, CRPH members and various CSOs in the National Unity Consultative Council (NUCC), which is intended to function as the “peak body” for the anti-junta opposition. The preference of several EAOs is for the NUCC to act as a “People’s Assembly” consisting of the CRPH and representatives from other political parties, EAOs and CSOs. This NUCC, in its capacity as the umbrella body of anti-SAC forces, would then appoint the NUG to serve as a provisional government. However, this aspiration remains difficult to achieve as veteran NLD politicians remain unpersuaded about recognizing the legitimacy and sovereignty of EAOs.²²

As we shall see, in the absence of an effective peace process, the existing practices of local governance and service delivery arrangements may instead be an important potential avenue for progress towards a federal solution in Myanmar.

“Confederationism”: The “Wa Model” and the Arakan Army

Since Myanmar’s independence in 1948, hundreds of EAOs have

sought to represent the grievances and aspirations of a wide range of Myanmar’s ethnic minority communities.²³ However, the end of the Cold War, which punctuated the decline of internal conflicts in most Southeast Asian countries, have seen the EAOs in Myanmar becoming increasingly marginalized. Although most EAOs remain undefeated, the Tatmadaw has generally had the upper hand militarily.

Myanmar’s EAOs vary considerably, ranging in size from a few dozen people to the 25,000-strong United Wa State Army (UWSA).²⁴ According to Bertil Lintner, the UWSA is “the largest and best-equipped military non-state actor in the Asia-Pacific region”.²⁵ The UWSA, which exercises control over the Wa Special Region, has significant political and economic resources at its disposal and maintains its own independent political agenda.²⁶ Beyond the UWSA, several other EAOs also control extensive territory, while projecting their influence over adjacent areas of “mixed administration” (often by providing public services such as health care and education). These areas include both ongoing conflict zones and ceasefire sectors, the existence of which is formally or informally recognized by the Tatmadaw. In many parts of the country, the (pre-coup) situation could be characterized as a “negative peace”, where outright and explicit violence have mostly ended, but with many of the underlying structural issues that drove the decades of conflict yet to be resolved.

Many of the EAOs have a relatively high degree of legitimacy and political capital among the ethnic minority populations they seek to represent.²⁷ In addition to the political agendas they have developed over several years, this is due to the extensive humanitarian and development services the EAOs are able to deliver on the ground in areas under their control (which are often conflict zones). Far from being exclusively (or perhaps in addition to being) local warlords motivated by self-interest, several of Myanmar’s EAOs have demonstrated their long-standing capacity to function as providers of essential public services and a source of governance authority (including ensuring access to justice) in their areas of control. With the collapse of credible administration and legitimate government across much of Myanmar following the coup, many EAOs have become the sole providers of severely under-resourced health and education services. For example, the KNU’s Karen Education and Culture Department and the NMSP’s Mon National Education Committee administer some 1,500 and 200 schools respectively, while the KNU’s Karen Department for Health

and Welfare and the NMSP's Mon National Health Committee manage over 100 and over 20 clinics (including quarantine centres). Other EAOs have similarly established impressive administrative systems and service provision frameworks, including the UWSA, the KIO, the RCSS and the Karenni National Progressive Party (KNPP). For several EAOs such as the KNU and the NMSP, providing access to ("hybrid") justice is a form of "ceasefire state-making".²⁸ Among the EAOs, the UWSA and the KIO have arguably developed the most comprehensive and sophisticated system of administration and governance in their territories, making them akin to "states within the state" in Myanmar.

The Arakan Army (AA) seems keen to reproduce the Wa model. The AA's ambitions to secure a high degree of autonomy in Rakhine State—as was granted to the UWSA following its 1989 ceasefire agreement—are however unlikely to sit well with the Tatmadaw. The AA, though only established in 2009, emerged as the dominant EAO in western Myanmar by 2016. The extraordinary growth of the AA was a major game-changer in Myanmar's ethnic politics. By mid-July 2021, the AA's political wing, the United League of Arakan (ULA), had established some form of governance authority in 15 out of Rakhine State's 17 townships, with plans to develop a state-wide Rakhine justice system. The AA's efforts to restore Arakan's sovereignty included visionary slogans such as "the Way of Rakhita" (or "Arakan Dream 2020"). Significantly, the AA adopted a "confederationist" approach to self-determination, in which a sovereign Arakan State could determine whether to form a federal union with others. The confederationist approach seems intended to confer a higher degree of sovereignty and autonomy to the constituent sub-unit than was previously signified through the discourse of federalism; confederationism implies that the choice to join (and also leave) a political union ultimately lies in the hands of these constituent entities.

Following the coup, the AA continues to play a key role as something of a bellwether indicating the degree to which EAOs are willing to engage with the SAC—with what political and political-economic advantages, and moral and political costs. The AA has been able to expand its presence and influence considerably in the Rakhine State, including improving its governance administration and provision of services to many communities—for the time being at least, the junta has turned a blind eye. In late August 2021, the AA established district courts and employed salaried judges in its areas of control. It is noteworthy that, since the coup, the

AA has persisted with efforts to present itself (both domestically and internationally) as a responsible and credible governance actor. These actions include offering a degree of protection and support to the Rohingya community, especially those that remain within Myanmar in the Internally Displaced People (IDP) camps.

Myanmar’s Emergent, Bottom-Up Federalism

Federalism in Myanmar is often discussed in terms of constitutions, roadmaps and other “top-down” aspects. Having the right constitution is clearly important, as can be seen from the political turmoil arising out of the Tatmadaw’s flawed 2008 Constitution. However, instead of searching for a new federalist framework, it may be useful to start from the many federal-like structures and practices of local autonomy already present in the country. As described and analysed here, several of the country’s EAOs have developed credible political agendas and enjoyed widespread legitimacy among their respective communities. At least a dozen of the larger EAOs control a substantial amount of territory and are responsible for delivering important public services to their communities. Their practices are the building blocks of a “bottom-up”, flexible and asymmetrical federalism, based on the local community’s sense of ownership and participation in their own governance. This type of emergent state-building resembles the historical patchwork of (sometimes federated) principalities (or *muang*), that were established across Shan State since pre-colonial times, and then reproduced in Karenni and elsewhere.²⁹ This return to indigenous political sociology should prompt us to review and resist essentialist ideas about ethnicity and federalism in Myanmar.

In short, essentialized concepts of ethnicity do not reflect the complexities and nuances of individual and/or collective social identity and lived realities. Ethnic essentialism in Myanmar is partly the result of the 1982 Citizenship Law, which stipulates that access to citizenship is dependent on membership in a *taingyintha*, or a state-recognized “national race”. As Nick Cheesman argued, the issue of “Myanmar citizenship will remain in crisis” as long as it continues to be dependent on the official list of “national races”, which is often conceived in essentialized and simplistic terms.³⁰ This becomes apparent when ethnicity is mapped upon territory in discussions of federalism, where simplistic categories of ethnic identity are often assumed as the factors in self-determination.

Non-Burman communities make up at least 30 per cent of the Myanmar population. Such estimates are contested and do not take into account those who are of mixed ethnicity/nationality. This highlights how ethnic (and religious and gender) categories and roles can be exclusionary, marginalizing individuals and groups who do not fit within its parameters—thus raising the question of how ethnicity is defined, and by whom. Identification with a particular ethnic category (e.g., “Karen”, “Kachin”) may be relatively unproblematic on a day-to-day basis. However, it can reinforce the unhelpful essentialization of ethnic identities in Myanmar, missing out on how ethnicity is a fluid category which can be subject to re-imagining over time and/or in different contexts. Edmund Leach’s anthropological investigation of the relationship between the Kachin and Shan communities in Upland Burma in the 1950s revealed the manner in which the two groups mingle with each other, in response to local socio-economic and political factors (an analysis which is resisted by some ethnic nationality politicians in Myanmar).³¹ Leach’s classic work was important in deconstructing fixed and essentialist notions of ethnic identity, both in Burma and beyond.

Myanmar’s ethno-linguistic diversity and complexity extends to intra-group dynamics. For example, there are a dozen (or seven, depending on the method of classification) Karen ethno-linguistic subgroups consisting of Buddhists, Christians, animists and Muslims, living in urban, peri-urban and rural areas. In several communities, particular subgroups have assumed leading roles, allowing them to reproduce the cultures and languages of their specific subgroups within the broader ethnic community. As a result, these homogenous stylizations are taken to represent the entire community, effectively erasing (or subsuming) the “messy” heterogeneous realities of the group in question.

Similarly, Kachin dialects are branches of the Tibeto-Burmese language family. The Kachin in Myanmar are commonly divided into six subgroups: the Jingphaw, the Zaiwa, the Lawngwaw (or Lhaovo), the Lisu, the Lachik (or Lachid) and the Rawang-Nung (with some Nung demanding recognition as a separate group). However, in neighbouring Yunnan Province in China, the Jingpo National Minority (*minzu*) recognizes the Zaiwa (the largest Kachin group in China), but not the Lisu (or the Rawang).³² Among these groups, Jingphaw individuals and elites have often played leading roles. This is a fairly contentious issue in Kachin society, with

some groups (such as the Lisu and the Rawang) resisting their incorporation into a pan-Kachin identity anchored in a Jingphaw linguistic-cultural core.

Furthermore, in many parts of Myanmar, ethnic groups such as the Karen and Shan coexist with smaller ethnic minority communities like the Mon, the Pa-O and the Lahu.³³ Mary Callahan has pointed to the increasing discursive and political salience of *lu-ney-zu* (လူနည်းစု, or “minority”, “smaller races/ethnic groups”) as an identity category. Some are now embracing the *lu-ney-zu* identity. These developments, including the rise of political activism by Myanmar’s smaller ethnic minority communities, raise questions about how the identities and interests of ethnic minority communities are conceived and represented, especially given the inherent diversity and fluidity of such groups. How should we understand the self-determination claims of elite-led ethnic political organizations seeking to represent such “imagined communities” in light of the dominance of certain subgroups?³⁴ Are aspirations and rights of the communities that are effectively “minorities within minorities” properly represented and safeguarded?

Among Myanmar’s ethnic minority circles, there is a fixation with designing a “top down” federal constitution and the idea that “genuine federalism” is *the* solution to Myanmar’s troubles. However, such discourse tends to be essentialist about federalism in the sense that the details of what federalism requires and how it would be achieved are rarely explained or articulated. More useful would be to ask how the different stakeholders conceive of their desired outcomes in relation to their ethno-nationalist struggles and flesh out concretely what self-determination would look like in practice. In other words, instead of looking at federalism as a grand abstract vision and fetishizing it as an end in itself,³⁵ the discussion must extend to interrogating federalism’s various forms and meanings and identifying how best to establish federalism in Myanmar to serve as a means or tool for achieving self-determination.

Hence, while Myanmar no doubt needs a blueprint for a federal political settlement at the elite level, this should be complemented with efforts to build the necessary capacity to pursue federalism “from the bottom-up”. This could include the drafting of state-level constitutions (which should involve all relevant stakeholders, similar to the NCUB process in the 1990s) and enhancing the EAO’s local administration and governance capabilities.

Sustaining Myanmar's Bottom-Up Federalism

To support and sustain this emergent, bottom-up federalism in Myanmar, renewed attention must be paid to building up EAO's governance and administrative capacities as well as their political credibility. For many EAOs, consolidating control over and ensuring the efficient administration of their areas of authority and adjacent areas of mixed administration are equally, if not more, important than overthrowing the SAC. The EAOs generally derive their legitimacy not only from their long-running struggles for self-determination, but also the successful provision of essential public services to their communities. However, having emerged in the context of armed conflict and informal (or "underground") political economies, these EAOs often still must establish their political credibility (especially to international audiences) as responsible governance actors. The international community can productively engage the EAOs to encourage them to pursue accountable and rights-based governance.

Administratively, the EAOs should be urged to establish or enhance their respective communities' "ethnic coordination bodies". Since the coup, numerous such bodies have emerged. The first was the Kachin Political Interim Coordination Team (KPICT). This has been followed by the Ta'ang Political Consultative Committee (TPCC), the Karenni State Consultative Council (KSCC), and the Mon State Interim Coordination Committee (MSICC). The Interim Chin National Consultative Council (ICNCC), which is closely affiliated to the Chin National Front (CNF), is one of the two rival Chin ethnic coordination bodies. The Karen do not yet have an ethnic coordination body. This partly reflects the long-standing complexity and internal diversity of Karen society and politics, and the fact that the presence of the Karen community and the KNU are spread across seven states and regions in southeast Myanmar, rather than solely in the Kayin State.

Generally led by the EAOs (sometimes from the background), these ethnic coordination committees engage and work with their respective communities to develop the community position(s) on key issues, such as education, land and even climate change adaptation. There are also varying degrees of participation and inputs from CSOs and ethnic-based political parties. Because most of these bodies are grounded in their respective ethnic communities, they command significant legitimacy in their own right and can be seen as constituent bodies of the NUCC. (In fact, some members of the various ethnic coordination bodies also serve in the NUG.) These

ethnic coordination bodies, in providing a platform and voice for the ordinary members of their ethnic communities, could thus become a key element in developing a federal union from the bottom-up.

Meanwhile, the EAOs will need to find new models of funding for the longer-term future. This would help to entrench their capacity to function as local governance authorities, especially in a future, truly federal Myanmar. However, with such a political settlement unlikely to be reached anytime soon, the EAOs should urgently consider reforming their fund-raising and financial administration systems. The aftermath of the coup provides a unique window of opportunity, since donors reluctant to engage the SAC junta could instead be convinced to support the EAO’s capacity-building efforts to deliver good governance in Myanmar. One possible and important area of reform is how the provision of public services provision are funded. Up till the coup, most of the (still limited) donor funding to the EAOs for essential public services were channelled either through the EAOs’ line departments (such as health or education) or, more often than not, partner CSOs or international NGOs. This funding process risks transforming the EAOs’ line departments into CSOs, which are ostensibly non-political. This distorts the EAOs’ political mandate and contributes to the depoliticization of the groups’ struggles for self-determination. The aid industry’s approach insidiously redefines the provision of public services to ethnic minority communities from being the site of political struggle into a “technical problem” of public administration, which supposedly can be solved through donor money and technical expertise.³⁶ It is thus important for EAOs to resist the aid industry’s depoliticization of their ethno-nationalist struggles, particularly since the underlying issues which compels the EAOs to assume these humanitarian and development roles are fundamentally political in nature.

Another way for the EAOs to demonstrate their political credibility to domestic and international stakeholders is through the responsible governance of natural resources and the environment. Myanmar forest reserves, which include the KIO-controlled areas in the north of Kachin State and the KNU-controlled Tanintharyi Region in the south, are the largest in mainland Southeast Asia. These are globally important biodiversity hotspots. Nevertheless, over the years, damage has occurred, even in some of the most remote areas, due to unregulated logging and mining activities. Some EAOs and the local communities have been relatively good stewards of the forests under their responsibility. In addition, sustainable community forestry management practices and traditions have played a key

role in maintaining the forests in Karen, Kachin and other states and regions for many generations. This local agency includes an implicit claim to sovereignty.

For example, the KNU handles forest management through its sub-unit, the Kawthoolei Forestry Department (KFD).³⁷ Working with CSOs and local residents, the KFD has developed a range of people-centered natural resource and environmental conservation policies and strategies.³⁸ This is an example of the KNU acting as a responsible local government in protecting the forest and supporting the community's development and livelihoods against an aggressive and militarized central government whose cronies are seeking to exploit the resources in the ethnic homelands (including under the NLD government).

Myanmar's EAOs face the temptation of cashing in on natural resources while they can, by granting logging, mining and other concessions that are environmentally and socially destructive. However, if the EAOs can instead focus on conserving the natural environment and supporting sustainable local livelihoods, they would be able to position themselves as protectors of the forests and rebut allegations that they are primarily interested in generating incomes through resource extraction (the proceeds of which have sometimes gone to private individuals, rather than the EAOs). In this way, the EAOs can move along the spectrum from being mere local warlords (or self-interested conflict entrepreneurs) to being responsible local governance actors.

Moreover, as carbon sinks, Myanmar's forests are crucial to mitigating climate change and its impacts. The EAOs should therefore be supported in their role as custodians of the forest. One way would be to allow the EAOs to fulfill their key roles in the management of climate change governance, through protecting Myanmar's old-growth forests, as acknowledged in the NCA Article 25 on Interim Arrangements.³⁹ The climate change policy framework of the previous NLD government tended to be top-down and technocratic, with limited consultation with local stakeholders—reflecting the long-standing centralization and authoritarian political culture of the Myanmar state and the historical marginalization of ethnic minority communities.

Conclusion

With the COVID-19 pandemic, and the disastrous 1 February 2021 coup, Myanmar is facing extraordinary crises. At this critical

junction, it is worth re-visiting and re-imagining the type of country Myanmar could be. Federalism can be a tool for achieving ethnic minorities’ long-standing aspirations towards self-determination. While this will require constitutional change at the top, we must not overlook the “bottom-up federalism” that is emerging from the existing and actual local structures and practices of autonomy. For federalism to be a genuine political solution to Myanmar’s chronic and debilitating state-society and center-periphery conflict, it must accommodate the structure, practices, and interests of the ethnic minority stakeholders. Hence, discussions of federalism should acknowledge and build on the impressive and extraordinarily resilient governance administration and public services delivered by the EAOs to their communities. Moreover, donors, diplomats and the aid industry should support the EAOs to become credible and rights-based political actors and governance administrators—especially in terms of their capacity to coordinate and properly represent their respective communities, the modes of funding to finance their provision of public services, and their ability to be responsible stewards of the forests that they manage.

NOTES

- ¹ “Myanmar on the Brink of State Failure”, *Relief Web*, 9 April 2021, <https://reliefweb.int/report/myanmar/myanmar-brink-state-failure>.
- ² David Steinberg, “Myanmar: Failed State or Failed Nation?”, *Frontier Myanmar*, 11 August 2021, <https://www.frontiermyanmar.net/en/myanmar-failed-state-or-failed-nation/>.
- ³ Ashley South, *Ethnic Politics in Burma: States of Conflict*, 2nd ed. (London, UK: Routledge, 2010), Chapter 6.
- ⁴ Milton Friedman, *Capitalism and Freedom* (Chicago, Illinois: University of Chicago Press, 1962).
- ⁵ Ashley South and Liliana Demartini, “Towards a Tipping Point? Climate Change, Disaster Risk Reduction and Resilience in Southeast Myanmar”, *Actionaid*, 29 July 2020, <https://myanmar.actionaid.org/publications/2020/towards-tipping-point#downloads>.
- ⁶ “Sovereignty” relates to concepts and practices of legitimate political order. Eurocentric (Hobbesian) notions of sovereignty can be supplemented or challenged (decentered) by indigenous conceptions and practices, as discussed in the Karen context. See Tomas Cole, *Liberation Conservation: The Salween Peace Park and the Politics of Possessing the Earth in Southeast Myanmar*, EBA Dissertation Brief (February 2021), https://eba.se/wp-content/uploads/2021/03/EBA-DDB-2021_02-webb_tillganp.pdf.
- ⁷ Alan Smith, “Burma/Myanmar: Struggle for Democracy and Ethnic Rights”, in

Multiculturalism in Asia, edited by Will Kymlicka and Baogang He (Oxford, UK: Oxford University Press, 2005); Alan Smith, *Thinking about Federalism* (Yangon, Myanmar: Covenant Consult, 2019).

- ⁸ The classic text on consociationalism is Arend Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, Connecticut: Yale University Press, 1977). The main elements of consociational democracy are rule by “grand coalition”, the provision of minority vetoes, proportional representation in decision-making (and in the allocation of funds and services) and segmental autonomy, or federalism. The basic idea is that if a high degree of cooperation and goodwill can be achieved between elites, then “unity in diversity” may be accepted, and even celebrated. The literature and limited practical examples of consociational democracy have generally focused on inter-communal issues and political structures at the level of the nation-state e.g., Austria, Belgium, the Netherlands and Switzerland; in relation to the Asian context, Lebanon from 1943–75 and Malaysia from 1955–69. However, consociational analysis and engineering may also be applied at the level of a particular community, such as the Karen, Kachin or Chin. Rather than trying to change Karen society by engineering greater intra-Karen unity or reforming their socio-political norms and values, a consociational approach would aim to work with elites to build models of cooperation within and between different sectors of the community. The diversity of ethnic society might then become its strength, rather than a source of anxiety and perceived weakness. In this way, federalism can be something which emerges from communities, rather than being imposed from above. As Alan Smith notes, “Consociationalism and federalism overlaps”. See Alan Smith, “Ethnic Conflict and Federalism: The Case of Burma”, paper presented at the Swiss Peace Foundation Conference, Basle, Switzerland, 27–29 September 1995.
- ⁹ Yash Ghai, *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge, UK: Cambridge University Press, 2000), p. 8.
- ¹⁰ South, *Ethnic Politics in Burma*, Chapter 5.
- ¹¹ According to Alan Smith, a federal constitution reflects “a voluntary cooperative effort by autonomous state entities to establish by constitution a joint central administration”. See Smith, “Ethnic Conflict and Federalism: The Case of Burma”.
- ¹² Alan Smith similarly argues that “Where the ‘federalising’ process is at work, segments have been territorially based ... providing a constitutional basis for power to be held by geographically defined majorities ... especially where these ‘states’ are designed to match or express real local or regional communities with established identities”. See Smith, “Ethnic Conflict and Federalism: The Case of Burma”.
- ¹³ See Mathew Walton, “Ethnicity, Conflict, and History in Burma: The Myths of Panglong”, *Asian Survey* 48, no. 6 (2008): 889–910.
- ¹⁴ This is notwithstanding the long-standing claims to sovereignty on the part of Karenni and Shan leaders, who objected to the Tatmadaw’s demands to withdraw the right to secession at the third Union Peace Conference in May 2017.
- ¹⁵ The 12 February 1947 Panglong Agreement granted “significant autonomy in matters of internal administration”, at least for the Shan and Kachin (and

future Karen) States, with no specific mention of federalism.

¹⁶ For some, it was the re-unification of a mostly fictitious multi-ethnic entity which supposedly pre-existed the colonial era.

¹⁷ Walton, “Ethnicity, Conflict, and History in Burma”.

¹⁸ This perspective has been communicated to the author by several minority ethnic interlocutors from the EAOs and CSOs friends, including at least three individuals directly involved in the peace negotiations with the NLD government.

¹⁹ For example, on 7 June 2017 during her visit to Canada, Aung San Suu Kyi said that “I’m happy ... to study the federalism of Canada because it is where we’re trying to go. We’re trying to build up a democratic federal union”. See Rukhshan Mir, “Suu Kyi, Trudeau Talk Federalism for Myanmar”, *Urdu Point*, 8 June 2017, <https://www.urdupoint.com/en/world/suu-kyi-trudeau-talk-federalism-for-myanmar-148936.html>.

²⁰ This missed opportunity might be an indication of the extent of Aung San Suu Ky’s challenge to transform herself from an opposition activist, political prisoner and human rights icon to a stateswoman and government leader—in (almost) an echo of how her father did not get the chance to transition from being the leader of the Burmese independence movement to the head of an independent, unified Burma.

²¹ This was based on information provided to the author by minority ethnic interlocutors of EAOs and CSOs that were working with the NUG and the CRPH from August to October 2021.

²² Author interviews with KNU, NMSP and KIO leaders, Chiang Mai, September and October 2021.

²³ In 1984, the National Democratic Front (NDF)—an ethnic insurgency alliance established in 1976 at the KNU headquarters in Mannerplaw, and one of four NCUB member groups—changed its position from one of principled secessionism (i.e., the advocacy of outright independence) to a demand for substantial autonomy within a proposed Federal Union of Burma. This was an important shift as Ne Win and the Tatmadaw had previously accused the insurgents of scheming to wreck the union. With the adjustment, the ethnic nationalists were instead aiming at a democratic, federal transformation of the union, rather than a total repudiation of Burma as an entity.

²⁴ Many of Myanmar’s 1,000 or so non-state armed groups are little more than local militias with superficial nationalist agendas that are primarily concerned with preserving their economic interests, often by engaging in criminal activities such as the drug trade. Most have deep ties of patronage to the Tatmadaw. Nevertheless, some militias do provide some basic services to communities under their control, and/or act as local powerbrokers in dispensing state patronage, thus enjoying varying degrees of trust from the community. Somewhere between the EAOs and these local militias are the Border Guard Forces (EAOs which were forcibly transformed into militias under more-or-less direct Myanmar Army control, in 2010).

²⁵ Bertil Lintner, *The Wa of Myanmar and China’s Quest for Global Dominance* (Chiang Mai, Thailand: Silkworm Books, 2021), p. 1.

- ²⁶ With its communist-inspired ethos, strongly authoritarian political culture and close links to Beijing, the UWSA is sometimes seen as a proxy of China.
- ²⁷ Which is not to say that all minority ethnic citizens regard the EAOs positively. See Ashley South, “‘Hybrid Governance’ and the Politics of Legitimacy in the Myanmar Peace Process”, *Journal of Contemporary Asia* 48, no. 1 (2017): 50–66.
- ²⁸ Helene Kyed and her colleagues explore the plurality and complexity of justice systems and cultures in Myanmar, including the importance of localized, non-formal solutions and customary informal dispute mechanisms as well as the roles of (some) trusted EAOs’ justice systems. However, issues of access and inclusion remain, including in the EAOs’ justice systems. See Helene Maria Kyed, ed., *Everyday Justice in Myanmar: Informal Resolutions and State Evasion in a Time of Contested Transition* (Copenhagen, Denmark: NIAS Press, 2020).
- ²⁹ South, *Ethnic Politics in Burma*, Chapter 5.
- ³⁰ Nick Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya”, *Journal of Contemporary Asia* 47, no. 3 (2017): 461–83.
- ³¹ Edmund Leach, *Political Systems of Highland Burma: A Study of Kachin Social Structure* (London, UK: G. Bell & Sons, 1954).
- ³² Mandy Sadan, *Being and Becoming Kachin: Histories beyond the State in the Borderworlds of Burma* (London, UK: Oxford University Press/British Academy, 2013). There are also about 10,000 Singpho (Jingphaw) residing in north-east India.
- ³³ For example, there are five townships in Karen State with significant Mon populations.
- ³⁴ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, UK: Verso, 1983).
- ³⁵ For a discussion, see Smith, “Ethnic Conflict and Federalism: The Case of Burma”.
- ³⁶ James Ferguson, *The Anti-politics Machine: “Development”, Depoliticization and Bureaucratic Power in Lesotho* (Cambridge, UK: Cambridge University Press, 1990).
- ³⁷ Covenant Institute “Land Policy in Areas of Mixed Control in Myanmar: Towards Equitable and Sustainable Land Governance in Southeast Myanmar”, October 2021, http://www.eprpinformation.org/wp-content/uploads/Land-Policy-1_English_final.pdf.
- ³⁸ For an overview of indigenous forest management, see *Protecting Myanmar’s Forests*, <https://kesan.asia/resource/protecting-myanmars-forests/>. This short film was presented at the COP-26 Climate Conference (in the Indigenous Peoples Pavilion) on 5 November 2021. It shows how Karen and Kachin indigenous peoples protect Burma’s forests against the military junta and other threats. This inspiring film features Dr Tu Hkawng (National Unity Government, Minister for Natural Resources and Environmental Conservation) and Saw Paul Sein Twa (KESAN, the 2020 Goldman Prize Winner), and explains how indigenous people fight climate change and sustain both human communities and ecosystems.
- ³⁹ Myanmar Interim Arrangements Research Project, *Between Ceasefires and Federalism: Exploring Interim Arrangements in the Myanmar Peace Process* (Yangon, Myanmar: Covenant Consult, 2018).