A new political dialogue framework must be established that can go beyond the 2008 Constitution, and only then can a genuine and inclusive nationwide political dialogue take place.

Karen Peace Support Network
July, 2018

ABOUT KPSN

Karen Peace Support Network (KPSN) is the largest network of Karen civil society organizations in Burma/Myanmar. KPSN member organizations have facilitated humanitarian support for vulnerable conflict-affected Karen communities, internally displaced persons (IDPs), and refugees for decades. KPSN works to empower local Karen communities, raise awareness of the peace process, document human rights issues, and facilitate advocacy for a sustainable and equitable peace in Karen areas of Burma.

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Burma’s Dead-End Peace Negotiation Process:
A Case Study of the Land Sector

July 2018

Front page cartoon
LaiLone
Acronym

AA - Arakan Army
CSOs - Civil Society Organizations
FPD - Framework for Political Dialogue
IDPs - Internally Displaced Peoples
JICM - Joint Implementation Coordination Meeting
JMC - Joint Ceasefire Monitoring Committee
KPSN - Karen Peace Support Network
KNU - Karen National Union
KNLA - Karen National Liberation Army
KIO - Kachin Independence Organziation
KIA - Kachin Independence Army
LDU - Lahu Democratic Union
MNDA - Myanmar National Democratic Alliance Army
NMSP - New Mon State Party
NLD - National League of Democracy
NCA - Nationwide Ceasefire Agreement
ND - National Dialogue
PPST - Peace Process Steering Team
RCSS - Restoration Council of Shan State
TNLA - Ta-an National Liberation Army
TWC - Thematic Working Committee
21CPC - Union Peace Conference (21Century Panglong Conference)
UPDJC - Union Peace Dialogue Joint Committee
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I Executive Summary

It became undeniably clear that Burma’s peace negotiation process would not result in the establishment of "a new democratic federal union" following the second 21st Century Panglong Conference\(^1\) (21CPC), held in May 2017. The objective of the 2nd 21CPC was to create a forum where representatives of the Burma Army, also known as the Tatmadaw, Ethnic Armed Organisations (EAOs), political parties, government, parliament and other stakeholders could negotiate a set of principles to guide the formation of a democratic federal union.

This briefer analyses the peace negotiation process using dialogue over land management powers as a case study, by tracing original demands and negotiations related to land from the Karen ethnic-level national political dialogues held in January 2017 up to the 21CPC in May 2017. The land policy principles “agreed” during the 2nd 21CPC contradict the recommendations developed through Karen national-level political dialogues, which clearly called for local ownership and state land management powers.

Building on the 2008 Constitution, the Burma Army is clearly using the peace negotiation process to further entrench military rule and expand their control into ethnic areas. Since in office, the National League for Democracy (NLD) has reneged on a number of its core election pledges, leading to growing concerns among civil society that the NLD’s decision making is being increasingly influenced/determined by the Burma Army, facilitating the further centralisation of power. The Myanmar government and the Burma Army continue to call on the country’s Ethnic Armed Organisations (EAOs) to sign the Nationwide Ceasefire Agreement (NCA), yet simultaneously the Tatmadaw and its proxy forces are engaged in multiple coordinated offensives against those very same EAOs in Kachin, Karen and Shan States.

The control, management and ownership of land is a major issue within the peace negotiation process. The military-penned 2008 Constitution and existing laws provide the state with absolute power and authority over land

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\(^1\) This was the 3th Union Peace Conference (21CPC) but the 2nd 21CPC. The first 21CPC took place in January 2016 under the Thein Sein government. The National League for Democracy (NLD) renamed it the 21CPC in August 2016 when holding the 2nd 21CPC / 1st 21CPC.
and natural resources. This continued centralisation of powers with the union government is unacceptable to ethnic organisations as it represents the primary cause of conflict. However, the Burma Army has imposed these fundamentally undemocratic powers through the commander-in-chief’s “six-point policy” for the peace negotiation process which demands all EAOs “strictly abide by the existing laws...in accordance with the 2008 Constitution.”

Land tenure and resource access are also tied to opportunities for peace, as they are at the centre of all ethnic groups’ longstanding struggles to secure equal rights and self-determination.

Ethnic political parties and ethnic armed organisations (EAOs) have institutionalised devolved systems of land and natural resource management within their administrative areas. As a case in point, the Karen National Union (KNU), in its own administered areas, has institutionalised land and forest policies, based on federal principles which recognise customary systems of land and natural resource management. Representatives of the KNU and Karen civil society organizations (CSOs) have carried these policies forward to the peace negotiation process, advocating for recognition and respect for these fundamental rights within the framework of a future democratic federal union.

Our findings show that the peace negotiation process is restricted by the 2008 Constitution and any proposals suggested outside these limits are simply blocked by the military while the NLD remains largely silent in this process and does not act on its own election manifesto to establish a federal democratic union. Therefore, this process has effectively come to a dead-end.

KPSN argues that a comprehensive and genuine revision of the flawed process must be made, and a new framework established that replaces the military penned 2008 constitution. Only then can a genuine, inclusive and acceptable nationwide political dialogue take place.

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3 All people’s right to self-determination is protected International Covenant on Economic, Social and Cultural Rights. ICESCR is one of the core International Human Rights Treaties. The Myanmar government ratified the ICESCR on 6th Oct 2017.

4 Karen Environmental Social Action Network (2017) Kawthoolei Land Policy Briefer: Land to the Native People
II. Brief overview of the peace negotiation process

War and not-quite-peace

In September 2011, the Thein Sein government officially called on the leaders of the country’s EAOs to join the government for peace negotiations. The quasi-civilian government’s offer of an “olive branch” to EAOs came just months after the Tatmadaw initiated a series of major offensives against the Kachin Independence Organisation (KIO) and its armed wing the Kachin Independence Army (KIA). The Burma Army’s coordinated, multi-battalion offensives began on June 9th, bringing an end to the 17-year old ceasefire with the KIO. By March 2012, 75,000 men, women and children had fled their homes, most seeking refuge in some 30 camps along the China border. While the Tatmadaw embarked upon a series of brutal military operations in Kachin and northern Shan State, between September 2011 and August 2012 the Myanmar government renewed and secured a series of ceasefire agreements with 13 EAOs, most notably with the Restoration Council of Shan State (RCSS) in December 2011 followed by the KNU in January 2012.

The 1994 ceasefire between the Tatmadaw and the Kachin Independence Organisation (KIO) enabled the extension of the military state’s control over resources and territory in the “post-conflict” areas of Kachin State. During the ceasefire period the Burma Army built up its military capacities, particularly in areas of economic interest. This facilitated the extraction of natural resources at an unprecedented pace and scale, particularly lucrative timber,

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6 The KIO’s ceasefire with the Burmese government was the first written ceasefire, whereas all other ceasefire's preceding this with based upon verbal agreements.
10 Kachin Development Networking Group (KDNG) Lessons from the Kachin “development” experience
jade and gold. The vast majority of people in Kachin and northern Shan State did not see the economic benefits of the ceasefire or the Tatmadaw’s so called developments, which were largely built around these extractive industries. In fact, much of the exploitation of land and resources took place at the expense of local communities who were, in many cases, driven further into poverty.

As in Kachin State, since the 2012 ceasefire significant areas of Karen State have come under growing pressure from large-scale extractive industries, hydropower projects, agribusiness and infrastructure development projects. As elsewhere in Burma, the exploitation of local natural resources and disrespect for land rights by central military authorities are two key causes of armed conflict in Karen State. Hence, while the January 2012 ceasefire and the 2015 NCA opened some space for Karen people to rebuild their lives during pauses in widespread armed conflict, the ceasefire period has also allowed controversial projects to be advanced, leading to new and renewed tensions, cycles armed conflict, land confiscation and the displacement of civilians.

In October 2015, eight out of the 21 EAOs usually recognised in the peace negotiation process became signatories to the NCA. The remaining EAO non-signatories were either prohibited from signing the NCA – the Kokang based Myanmar National Democratic Alliance Army (MNDA), the Ta-ng National Liberation Army (TNLA) and the Arakan Army (AA) – or refused to sign the NCA due to ongoing distrust of Myanmar’s authoritarian military and its quasi-civilian government. In early 2018, the New Mon State Party (NMSP) and the Lahu Democratic Union (LDU) became NCA signatories, yet about 80 percent of the total rank and file of Burma’s numerous EAO remain non-signatories to the NCA.

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**ETHNIC CONFLICT STATUS UPDATE**

<table>
<thead>
<tr>
<th>Nationwide Ceasefire</th>
<th>Bilateral Ceasefires (not signing NCA)</th>
<th>No Ceasefire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restoration Council of Shan State (RCSS)</td>
<td>United Wa State Army (UWSA)</td>
<td>Kachin Independence Organisation (KIO)</td>
</tr>
<tr>
<td>Karen National Union (KNU)</td>
<td>Shan State Progress Party/Shan State Army (SSPP/SSA)</td>
<td>Ta’ang National Liberation Army (TNLA)</td>
</tr>
<tr>
<td>Democratic Karen Benevolent Army (DKBA)</td>
<td>Karen National Progressive Party (KNPP)</td>
<td>Arakan Army (AA)</td>
</tr>
<tr>
<td>All Burma Students’ Democratic Front (ABSDDF)</td>
<td>National Democratic Alliance Army (NDAA)</td>
<td>Myanmar National Democratic Alliance Army (MNDAA)</td>
</tr>
<tr>
<td>Chin National Front (CNF)</td>
<td>National Socialist Council of Nagaland-Khaplang (NSCN-K)</td>
<td></td>
</tr>
<tr>
<td>Pa-Oh National Liberation Organisation (PNLO)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KNU/KNLA Peace Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arakan Liberation Party (ALP)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Mon State Party (NMSP)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lahu Democratic Union (LDU)</td>
<td></td>
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</tr>
</tbody>
</table>

Graphic: The graphic is updated from Myanmar Peace Monitor 2016

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**Burma’s Dead-End Peace Negotiation Process:**
A Case Study of the Land Sector
The NCA was heralded as a “historic gift” by former President Thein Sein who proclaimed at the signing ceremony that “the road to future peace in Myanmar is now open.” Leaders of EAO signatories have invested their hopes in the NCA as a pathway towards genuine and lasting peace in Burma. As the KNU Chairman, Mutu Say Poe expressed; “we who have signed the NCA, can play a role in facilitating a more effective dialogue and meaningful discourse between the government and the remaining ethnic armed groups.”

Yet, while the signing ceremony was celebrated in Nay Pyi Taw, armed conflict intensified in Kachin State and northern Shan State, as the Burma Army expanded military operations against the KIA, TNLA, and MNDAA.

Representatives of the Myanmar government and the Tatmadaw have used the KNU’s engagement in the peace negotiation process to persuade other Ethnic Armed Organisations (EAOs) to sign the NCA. Indeed, as recently as December 2017, the State Counsellor, Aung San Suu Kyi, spoke of the “Karen model” towards peace and unity, with reference to the three Karen EAOs that signed the NCA in October 2015, most notably the KNU.

However, since the 2015 ceasefire was initiated more than 8,500 civilians have been forcibly displaced as a result of Tatmadaw military operations in Karen State. These military operations, authorised at the highest levels of the Burma Army command, have breached the NCA and led to renewed cycles of armed conflict in Hpa-an and Mutraw (Hpapun) districts.

Since it took up office, the NLD-led government has failed to speak out against or condemn the Burma Army for its ongoing offensives against both ceasefire and non-ceasefire EAOs and its widespread and systematic violation of the human rights of civilians in ethnic areas.

12 Slodkowski, Antoni, “Myanmar signs ceasefire with eight armed groups”, Reuters, 8 Oct 2015
III. Governing the Peace negotiation process

III.I. Joint Implementation Coordination Meeting (JICM)

The JICM is the highest-level body mandated to oversee and guide the implementation of the NCA. The first meeting of the JICM was convened on 15-17th Oct. 2015, immediately after the NCA signing ceremony and resulted in the formation of the Joint Monitoring Committee (JMC) and the Union Peace Dialogue Joint Committee (UPDJC). The UPDJC and the JMC are required to report to the JICM. The JICM has a role to break deadlocks in the peace negotiation process when the UPDJC and the JCM are ineffective.

III.II. Joint Ceasefire Monitoring Committee (JMC)

Formed on the 18th October 2015, the JMC is responsible for implementing the military provisions of the NCA, preventing the recurrence of armed clashes, and resolving armed conflicts. According to the ToR for the JMC, the committee has a mandate to operate at the Union-, State- and local-levels and is chaired by a high-ranking general from the Tatmadaw, currently Lieutenant General Yar Pyay, while the Vice-Chair is held by a high-ranking general from one of the EAOs.

III.III. Union Peace Dialogue Joint Committee (UPDJC)

The UPDJC was established on the 18th October 2015 and has a broad and influential mandate within the framework of the peace negotiation process. On the 16th December 2015, the JICM approved the Framework for Political Dialogue (FPD) drafted by the UPDJC. According to the FPD, the UPDJC is responsible for holding and overseeing the implementation of the political dialogue process and organising the 21CPC, renamed as the 21st Century Panglong by the NLD in August 2016.

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16 Joint Monitoring Committee makes 15 decisions on second day meeting, New Light of Myanmar, 10 May 2018, accessible: http://www.globalnewlightofmyanmar.com/joint-monitoring-committee-makes-15-decisions-second-day-meeting/

The UPDJC is represented by members of government, parliament, Tatmadaw, EAOs, and political parties. The committee is chaired by the State Counsellor, Daw Aung San Suu Kyi and has three vice chairs, including Vice Chair no.1, Minister for the Office of the State Counsellor, Vice Chair no.2, Union Peace Commission Chairman, and a vice chair representing EAOs.18

The UPDJC has a secretariat, the members are split between three blocks; the first block is represented by members of the Tatmadaw, government and Hluttaw; the second by EAOs; and the third by political parties.19

The UPDJC-secretariat is mandated to coordinate the efforts of the Thematic Working Group (TWCs) to submit policy paper and then to deliver those papers to the UPDJC for decision making and approval of a single draft text policy paper. It also has organizational responsibilities to carry out the work of implementing decisions by the UPDJC. The final responsibility of the UPDJC is to submit the Union Accord, resulting from the 21CPC, to the government for ratification in the Pyidaungsu Hluttaw.

IV. The “Five Gate” Framework for Political Dialogue

The NCA was ratified by the Pyidaungsu Hluttaw on 8th December, 2015. Chapter Five of the NCA establishes the political roadmap for the Myanmar government and EAOs to abide by, including: Signing of the NCA; drafting and adopting the Framework for Political Dialogue (FPD); holding national political dialogue based on the FPD; and holding the 21CPC.

The UPDJC drafted the FPD which consists of nine chapters and 17 articles.20 The FPD provides further details for the political roadmap laid out under the NCA. The stated objective of the FPD is:

... [B]uilding a democratic federal union in line with the result of a political dialogue aiming at the non-disintegration of the union, the non-disintegration of national solidarity and the perpetuation of sovereignty based on liberty, equality and justice in conformity with the Panglong Spirit, fully ensuring the right to democracy, national equality and self-determination.21

18 BNI (2016) DECRYPTING MYANMAR’S PEACE PROCESS, P. 43
19 BNI (2016) DECRYPTING MYANMAR’S PEACE PROCESS, P. 46
20 BNI (2016) DECRYPTING MYANMAR’S PEACE PROCESS, P. 42
Chapter 3-4 of the FPD lays out the process for political dialogue, and Chapter 5 establishes the “Agendas for Political Dialogue”, which are broken down into five thematic areas of politics, economics, social, security, and land and the environment. Chapters 6-7-8 of the FPD lay out the mechanisms for the peace negotiation process and the establishment of a future “Union Accord”.

The FPD calls for representatives of the Myanmar government, Hluttaw, Tatmadaw, EAOs, registered political parties, ethnic representative, civil society organizations and others to participate in the national level national-level political dialogues. During these dialogues or consultations, participants negotiate and agree upon a series of sector specific principles with the aim that they may form part of a future Union Accord. However, in accordance with the FPD, the principles resulting from these dialogues face a series of reviews and revisions before the ratification of a future Union Accord. The review process passes five stages coordinated through the following platforms: The Technical Working Committees (TWCs); the Union Peace Dialogue Joint Committee Secretariat (UPDJC-S), the Union Peace Dialogue Joint Committee (UPDJC), the 21CPC, with the final ratification in the Pyidaungsu Hluttaw.

In this report, KPSN refers to these stages in the dialogue process as the “Five Gates” to draw attention the top-down and restrictive mechanisms established under the FPD, and their implications for the peace negotiation process.
National-level Political Dialogues

The national-level political dialogues represent the entry point for inputs into the dialogue process, especially from communities and civil society. Although these are referred as “national-level” dialogues they are held at the sub-national level.

Participants in the national-level political dialogues include representatives from government, Burma Army, registered political parties, EAOs, ethnic representatives, civil society organisations (CSOs), and “other appropriate individuals”. These dialogues are divided into three categories:

1. Ethnic based – EAO-led multi-stakeholder conferences
2. State/Region based – State and Region government-led multi-stakeholder conferences
3. Issue based – CSO-led multi-stakeholder conferences

The objective of the national-level political dialogues is to set down policies covering five thematic areas of politics, economics, social, land and environment, and security. The policies developed during these dialogues are then delivered to the “five thematic working committees”, positioned under the UPDJC secretariat.

IV.I. 1st GATE: The Five Thematic Working Committees

The five Thematic Working Committees (TWC) are organised according to the five thematic areas. Each TWC consists of 15 representatives, five from each of the main groupings: government/Hluttaw/Tatmadaw; EAOs; and political parties.\(^2\)

The role of the TWCs is to debate and draft five separate sets of policy recommendations based on the results of the national-level political dialogues. During the debate review, cutting and drafting process of the thematic policy recommendations, Tatmadaw representatives have used the 2008 Constitution and existing national legislation to block and cut out recommendations that are not in line with existing legislation, including the 2008 Constitution.

Issues that the TWCs are unable to resolve are submitted to the UPDJC secretariat, along with the policy papers covering the five thematic areas.

**IV.II 2nd GATE: The Union Peace Dialogue Joint Committee Secretariat**

The 15-member UPDJC Secretariat is mandated to coordinate the efforts of the TWCs to submit policy papers and then to deliver those papers to the UPDJC for decision making and approval of a single text policy paper.

**IV.III. 3rd GATE: The Union Peace Dialogue Joint Committee**

The 48-member UPDJC is mandated to debate, cut, re-draft and approve the five thematic policy recommendation papers into a single text policy submitted by the TWCs through the UPDJC secretariat. The UPDJC holds a powerful mandate within the peace negotiation process, particularly in relation to its control over the single draft text presented to the 21CPC.

The FPD, drafted by the UPDJC, provides no opportunity for stakeholders from the national-level political dialogues to review the single draft text produced by the UPDJC. So far, this top-down structure has worked in favour of Tatmadaw and Myanmar government representatives on the UPDJC who used the 2008 Constitution and other existing legislation to block and reduce policy proposals produced at the national-level political dialogues, effectively rendering the proposals from these dialogues redundant.

The results of national-level political dialogues, which are supposed to be at the core of discussions at the 21CPC, are vetted by the UPDJC. Thus, the UPDJC acts as the gatekeeper between the national- and union-level dialogues.
IV.IV. 4th GATE: The Union Peace Conference (21CPC)

The 21CPC is the highest-level platform within the FPD. The objective of the 21CPC is to provide a platform for the debate and approval of the Union Accord.

The 21CPC is supposed to be attended by 700 participants: 75 from government, 75 from parliament, 150 from the Tatmadaw, 150 representatives from EAOs, 150 from registered political parties, 50 ethnic representatives, and 50 relevant stakeholders.

According to the FPD, the 21CPC will negotiate and approve the single text draft submitted by the UPDJC. The approval of resolution during the 21CPC related to land and environment, social or economics require a “vote of at least above 50% of each group and the vote of at least above 65% of all those who attended the conference.” However, Chapter 6, Article 6.2 of the FPD states that agreements on matters related to federal, security reform, and national security require a yes vote from over 75% of “each group attending the 21CPC”.

IV.V. 5th GATE: Pyidaungsu Hluttaw

Following debate, negotiation, and agreement at the 21CPC, the Union Accord is submitted to the Pyidaungsu Hluttaw for approval and ratification.

According to the FPD, the parts or whole of the Union Accord shall be submitted to the Pyidaungsu Hluttaw for approval. The final approval of the Union Accord is therefore bound by parliamentary law, established under the framework of the 2008 Constitution.

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23 Framework for Political Dialogue, Chapter 6, Article 6.3 (Unofficial translation)
24 Framework for Political Dialogue, Chapter 8, Article 13 (Unofficial translation)
V. Land in the Peace Negotiation Process

Since 2012, a series of new land laws have been passed which further entrench centralised ownership, management, and control over land. These laws contradict the longstanding calls of ethnic organisations for the decentralisation of land governance. This continues to have a profoundly negative and restrictive impact on the country’s peace negotiation process.

The land related legal reform process currently taking place in parliament has actively ignored the opportunity to resolve the deep-rooted land conflicts across the country, that could lay the foundations for long lasting peace in the country. Ethnic communities have sought to address this crucial issue through the peace negotiation process, however, parliamentary reforms on land related legal frameworks continue to jeopardise the peace negotiations process, and opportunities towards equitable and just solutions to the land issue, by further entrenching centralised control of land.

Burma’s central government, be it military or quasi-civilian, has long pursued monopoly power over the ownership and management of land and natural resources. Successive Burmese military junta’s have attempted to bolster this totalitarian project, using a mixture of armed force and legislation. Today, the state has extensive powers over land in the country, enshrined within Article 37 of the 2008 Constitution and other land related legal frameworks, such as the 2012 Vacant, Fallow and Virgin Land Law. The latter was promulgated just months after the KNU and the government signed the 2012 ceasefire, and contravened important clauses of the agreement.

The centralization of power with the military-state has facilitated widespread dispossession and displacement of the country’s small-holder farmers from their ancestral lands. A 2015 study by the Land In Our Hands network indicates that the Burma Army is the leading entity responsible for land confiscations, accounting for 47.7% of all land confiscations surveyed, while government departments were involved in 18.8%, and companies in 13.9%.

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25 Land In Our Hands (LIOH) is a network of Civil Society Organisations, farmers unions and local communities working of land issues across the country.

The Burma Army has relied heavily upon force of arms to confiscate land and resources. Beginning in the 1990s, the Tatmadaw military campaign also known as the “Four Cuts”, forced hundreds of thousands of people in Karen State from their land and homes. Tens of thousands of Karen people fled across the border into Thailand, while tens of thousands more hid in the forests of Karen State. During this period, the Burma Army established a network of military facilities deep in KNU territory, consolidating control over large areas of land and resources. In Karen State, 71.8% of all surveyed land confiscations began in the 1990-99 period, and 86.6% of all land confiscated was inherited customary lands.27

In the context of widespread land insecurity, EAOs, CSOs and local communities have called for the establishment of devolved federal systems of land and natural resource management.28 For example, during the last four decades, the KNU has been practicing land management and governance systems, operating outside of the administrative control of central government. The first KNU Land Policy was adopted in 1974 and has been adapted with input from civil society organizations (CSOs) and local communities. The current KNU Land Policy focuses on community-based decision making over land use and management, founded upon recognition of the customary tenure rights of all ethnic peoples.

This policy opens a pathway to devolved, federal governance of land, forestry, fisheries, water, and related natural resources, where ultimate ownership of these resources is held by the ethnic nationalities, not the Union government. The key principles of the KNU Land Policy offer a stark contrast to the land related principles outlined in the 2008 Constitution, and the Union government’s existing land related legal frameworks. The 2008 Constitution, drafted by the Tatmadaw, concentrates decision making, management power and ownership over land and related natural resources within the Union government. The existing legislation drafted under the 2008 Constitution, governing land are highly centralized, and exclude possibilities for the formal recognition of existing devolved systems of land and natural resource management.

Restitution of land to the many tens of thousands of people who have suffered housing, land and property losses as a result of displacement and land confiscation is an essential element of the peace negotiation process. However, according to a recent report by Displacement Solutions, “there is no distinct ‘right to housing and property restitution’ as yet in Myanmar law,”29 while the 2015 NCA “does not address restitution directly, nor develop proposals in this regard.”30 The ongoing corruption within Burma’s bureaucracy and the central government’s refusal to negotiate an equitable and just resolution to systemic and widespread land insecurity continues to represent an insurmountable obstacle to genuine political dialogue in the peace negotiation process.

Below, KPSN provides an analysis of the land policy recommendations resulting from the Karen National-level Political Dialogue, and its journey to the 21CPC under the peace negotiation process structure.

VI. Karen National-level Political Dialogue on Land and Environment

As outlined above, “Land and environment” is one of the five thematic issues identified as key to political dialogue in the peace negotiation process.

In 2017, at the national-level political dialogue31 in Hpa-an, local stakeholders, including CSOs, local communities, political parties and Karen EAOs delivered their land policy recommendations for inclusion in the future “Union Accord”. However, according to the mechanisms and structure of the peace negotiation process, these land policy recommendations must pass a five-stage screening process, which KPSN has termed the “five gates” [See “Five Gates” Chart on p. 12]. This process has allowed the Tatmadaw to censor the policy recommendations made by local stakeholders.

31 The Karen land policies were presented and accepted in the Karen State National Dialogue (ND) which took place in Hpa-an, Karen state from January 17 to 20, 2017. This Karen state ND was attended by approx. 300 persons and draft policy papers were finalized by representatives from the Karen National Union (KNU), Democratic Karen Benevolent Army (DKBA), KNU/KNLA Peace Council, Karen political parties, Karen religious leaders, Karen delegates from upper Burma, Mon State, Karenni State, Bago, Yangon and Ayeyarwaddy Regions, Karen CSOs, Karen Women, Karen youth, Karen scholars and special invited Karen guests.
These key principles highlight the vision of the Karen people and the foundations of any future devolved federal system of land governance. Yet, the recommendations negotiated and agreed during the Karen national political dialogues were censored and cut before reaching the 2nd 21CPC, first under the Land and Environment Working Committee, and second under the UPDJC-S, and the UPDJC.

VI.I. 1st GATE: Land and Environment Working Committee

Following the submission of the land policy recommendations to the Land and Environment working committee in the lead up to the 21CPC, Burma Army representatives blocked and rejected the core land related proposals resulting from the Karen national political dialogues, invoking the 2008 Constitution and existing laws.

The extreme limitations placed on meaningful political dialogue over important issues related to land ownership, management and governance are exposed by the uncompromising position adopted by Burma Army representatives during Land and Environment Working Committee negotiations.
The below excerpts are taken from a meeting that took place in Nay Pyi Taw, at the National Reconciliation and Peace Centre (NRPC), from May 7-9, 2017, at the “2nd Land and Environmental Sector Negotiation Meeting”. We have highlighted the land policy positions of the Karen and other ethnic national political dialogues versus the Burma Army positions that were recorded as official notes from this meeting. See Annex 2 for the Burmese language origin.

<table>
<thead>
<tr>
<th>Ethnic National Dialogues Position</th>
<th>Burma Army Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>The legal framework of land ownership and management must be decentralized and in line with the traditional customs and culture of the people in the state and shall include land and natural resources under and above the ground.</td>
<td>According to Union Parliament procedure – 1/ section (5); Union government is mandated to manage land for agriculture and poultry. Therefore, according to policy and law, the Shan customary land practices cannot be applied. (We [Burma Army] do not agree).</td>
</tr>
<tr>
<td>Local indigenous people have the right to collectively use and manage their communal land and the land surrounding their villages, such as pasture land, forest, lake, seasonal islands and sacred land</td>
<td>The Union is the owner of all the land and sea, resources under and above the land, water, and space. (We [Burma Army] do not agree).</td>
</tr>
<tr>
<td>Policies and mechanisms must be established to solve the problem of managing transboundary land and natural resources between states and countries.</td>
<td>It is not in the constitution, so we [Burma Army] do not agree.</td>
</tr>
<tr>
<td>States of a Federal Union must have rights to adopt and implement land and environment policies that are suitable to their state.</td>
<td>The Union is mandated to protect the environment. The Union[central] government is the only authority with a mandate to manage land. (We [Burma Army] do not agree).</td>
</tr>
</tbody>
</table>
The positions of the Tatmadaw have clearly demonstrated that it will block policy recommendations proposed during the peace negotiation process that it claims are not consistent with the 2008 constitution and existing laws.

VI.II. 2nd GATE: The Union Peace Dialogue Joint Committee Secretariat

The heavily censored principles resulting from the first round of cuts under the Land and Environment Working Committee were then submitted to the UPDJC-S.

The mechanisms established under FPD have been designed to protect the current framework and the results of political dialogues from effective civilian or independent third-party oversight. All five gates of peace negotiation process have operated as a “black box”, and while it has been possible to see the proposals that have “gone in” and the proposals that have “come out”, there has been no substantive transparency regarding the negotiations taking place within each gate rendering the process unaccountable.

VI.III. 3rd GATE: The Union Peace Dialogue Joint Committee

The approval of any policy proposal for submission to the 21CPC requires the agreement of all members of the UPDJC. Although the original Karen ND Land and Environment policy recommendations contained 69 points, the single text document covering the entire national dialogue process, presented to the 21CPC, contained just 41 points, with just 11 focusing on the land sector. However, none of the 11 land principles submitted to the 21CPC by the UPDJC reflected the original policy proposals received from the National level political dialogue.

VI.IV. 4th GATE: The Second 21st Century Panglong

The 2nd 21CPC took place in Nay Pyi Taw from May 24–29, 2017. During the conference, participants were only allowed to discuss the officially recognized land principles contained within the single draft text submitted by the UPDJC.

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32 “Basic principles regarding federal system Economy Policy suggested by Secretaries of UPDJC to UPDJC”, Ratified at the 10th UPDJC meeting of May 12, 2017
The 2nd 21CPC concluded with a 37-point paper\textsuperscript{33} that was signed by only one representative from each of the five groupings – government, parliament, military, political parties and EAOs – and six witnesses.

The 37 principles “agreed” during the 2nd 21CPC remain illegitimate as the process for reaching agreements on these principles was not transparent and no vote was taken to approve the resolutions, as required under Chapter Six of the FPD.

\textbf{VI.V. 5th GATE: Parliament}

The 37-point agreement resulting from the 2nd 21CPC were submitted to parliament, and, subject to parliamentary law, has now been ratified and become the first part of the basis for a future “Union Accord”.

\textbf{VI.VI. The Ten Principles of the Land Sector Vs. Existing Myanmar Legislation}

The purpose of the 21CPC is to establish agreements that will form the basis of a future federal democratic country. However, the ten-point agreement for the land sector, resulting from the 2nd 21CPC failed to integrate any of the federal policy recommendations submitted via the Karen National-level Political Dialogues.

In fact, each of the ten points concerning the land sector agreed during the 2nd 21CPC directly refer to controversial articles from existing land related legal frameworks (See Table, page 23).

\textsuperscript{33} State Counsellor’s Office, “37 Points Signed as Part of Pyidaungsu Accord”, 30th May 2017; accessible http://www.statecounsellorgov.mm/en/node/904
<table>
<thead>
<tr>
<th>Point no.</th>
<th>2nd 21CPC: Ten Point Agreement for Land Sector</th>
<th>Existing National Legislation and Policy of Myanmar</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A countrywide land policy that is balanced and support people centred long-term durable development.</td>
<td>National Land Use Policy: Chapter 1, Article 6 (d,e,f)</td>
</tr>
<tr>
<td>2</td>
<td>Based on justice and appropriateness</td>
<td>National Land Use Policy: Chapter 3, Article 8 (b,g,o)</td>
</tr>
<tr>
<td>3</td>
<td>A policy that reduces central control</td>
<td>National Land Use Policy: Chapter 3, Article 8 (n)</td>
</tr>
<tr>
<td>4</td>
<td>Include human rights, international, democracy and federal system norms in drawing up land policy</td>
<td>National Land Use Policy: Chapter 2, Article 7(e); Chapter 3, Article 8 (d)</td>
</tr>
<tr>
<td>5</td>
<td>Policy on land matter should be transparent and clear</td>
<td>National Land Use Policy: Chapter 2, Article 7 (b)</td>
</tr>
<tr>
<td>6</td>
<td>In setting up policy for land development, the desire of the local people is a priority and the main requirements of the farmers must be facilitated.</td>
<td>National Land Use Policy: Introduction, Article 3</td>
</tr>
<tr>
<td>7</td>
<td>All nationals have a right to own and manage a land in accordance with the land law. Women and men have equal rights</td>
<td>(right to private property and inheritance) 2008 Constitution: Chapter 1, Article 37 (c) (use rights) 2012 Farmland Law: Chapter 2, Article 6 (a[v]); Chapter 3, Article 9 (a,b) (men and women equal) National Land Use Policy: Chapter 2, Part 10, Article 75 (a,b,c,d,e,f,g,h)</td>
</tr>
<tr>
<td>8</td>
<td>Both women and men have equal rights to manage the land ownership matters in accordance with the land law</td>
<td>National Land Use Policy: Chapter 2, Part 10, Article 75 (a,b,c,d,e,f,g,h)</td>
</tr>
<tr>
<td>9</td>
<td>If the land right granted for an original reason is not worked on in a specified period, the nation can withdraw the granted right and concede it to a person who will actually do the work</td>
<td>Vacant Fallow and Virgin Lands Management Law: Chapter 6, Article 16 (b); Vacant Fallow and Virgin Lands Management Law – By Laws: Chapter 6, Article 51 (b)</td>
</tr>
<tr>
<td>10</td>
<td>To aim toward protecting and maintaining the natural environment and preventing damage and destruction of lands that were social, cultural, historical heritages and treasured by ethnic nationals</td>
<td>National Land Use Policy: Chapter 2, Article 6 (a)</td>
</tr>
</tbody>
</table>

See Annex 3 for the agreed ten land principles at 21CPC, the Burmese language origin

NOTE: The translation of the “2nd 21CPC Ten Point agreement for Land Sector” is sourced from the President’s Office.
These “agreed” principles on land, clearly indicate the extensive and systemic constraints on the current peace negotiation process and the debilitating lack of political will on the part of the central government and the Burma Army to engage in genuine political dialogue.

The land related principles “agreed” at the 2nd 21CPC contradict the core principles developed through Karen national-level political dialogues, which called for local ownership and state land management powers. The results of the land and environment policy process provide evidence that, despite many meetings, discussions and debates, and an enormous amount of time and money spent, the Burma Army is committed to blocking all policy proposals by invoking the 2008 Constitution and existing laws.

VI.VII. EAO leaders outline the limits of current peace negotiation process

EAO leaders taking part in discussions over the five thematic issues under the FPD have expressed frustration with the restrictions and limitations imposed during the process. According to KNU leaders involved in the dialogue process, a common obstruction across all five sectors is the Tatmadaw’s invocation of the 2008 Constitution and existing laws to mark the red lines, beyond which no negotiation or meaningful political dialogue can take place.

Padoh Nay Tha Blay, Head of Karen Agriculture Department and a member of the Land and Environment Working Committee of UPDJC, provided KPSN with the following insights:

“During our political dialogue regarding the land sector, we put forward key issues based on policy recommendations from the Karen ND, covering ownership, management, and protection of land, but these key articles were blocked.

The government and military representatives to the UPDJC have colluded in using the Tatmadaw’s 2008 constitution to block our policy recommendations.”
Concerning the security issue, Tatmadaw proposed only Disarmament, Demobilization, and Reintegration and didn’t include Security Sector Reform.
Saw Weldone a member of the Economic Working Committee of UPDJC explained that:

“From our Economic Working Committee, we submitted our proposed economic principles received from the Karen National Dialogue through our public consultation but all of our proposed principles were not passed and accepted. The principles that were agreed during the negotiation did not reflect and inline our proposed federal principles but all were under the 2008 constitution framework.

Tatmadaw always dominated the whole debate and discussion. If they don’t agree, we can not move forward with the discussion and they only agree to the principles and points that are in line with the 2008 constitution. This has become a great concern for the whole peace process.

Pa Doh Saw Hser Pwe, Joint General Secretary of the KNU and a member of the Social Sector Working Committee of UPDJC explained that:

“EAOs representatives were weak in negotiating their proposed principles and political party representatives were not able to negotiate effectively. From military side, they only discussed from the same position. They would only discuss if they were advantageous, if not, they wouldn’t. It was also appeared that the government and parliament were on the same side with the military during the negotiation.”
Criticisms of the current political dialogue process are not limited to the KNU. In an interview given after the 2nd 21CPC, Col. Sai Nguen, Secretary 3 of the Restoration Council of Shan State/Shan State Army (RCSS/SSA), stated that:

“The general EAO opinion is that some of the outcomes of this conference regarding federal principles are incomplete. They merely represent a minority view. That is why we proposed that the basic principles of federalism, debated and agreed at the 21st Century Panglong Conference, should only be included in a Union agreement, as a collection of opinion for the time-being, but not as a signal of a final agreement.

On the other hand, our negation counterparts [Burma Army and NLD] will not accept our proposal, but rather they insist that the NCA’s ‘pathway to peace’ is the only way; They argue that the entire peace process cannot proceed if we don’t sign.

“We don’t mind if the peace process collapses,” was one uncultured statement [by the Burma Army] used during the talks. At that point, we called for a break, then discussed among ourselves [EAO representatives] as to what the next move should be. Although some of the EAOs, including RCSS, did not agree with signing, we respect the majority opinion and the Terms of Reference. That’s why we signed the documents – out of necessity.34

34 Sai Aw, “Who is navigating the peace process ship?”, Shan Herald Agency for News, 2nd June 2017, Interview with Col. Sai Nguen, Secretary 3 of the Restoration Council of Shan State (RCSS); accessible http://english.panglong.org/2017/06/02/who-is-navigating-the-peace-process-ship/
VII. Postponement of 3rd 21CPC

The 2nd 21CPC was the first of the country’s “peace conferences” to open space for discussions on the five key topics - political, social, land and environment, economy and security - and negotiations on the principles of the Union Peace Accord. The 37 principles, signed by one representative from government, parliament, military, political parties, EAOs, and six witnesses, remain highly controversial, most notably as the agreement failed to adhere to the voting protocol established under the FPD.35 Other major obstacles within the conference centred around fundamental political issues including the “non-secession” clause.36 However, in the lead up to the 2nd 21CPC and following its conclusion major restrictions have marred the peace negotiation process, including the Tatmadaw’s blocking and censoring of national political dialogues.

On 17th December 2017, in Panglong Town, Shan national political dialogues were subjected to serious restrictions by the Tatmadaw forces and political dialogue meetings were shut down by central government troops.37 Due to the Tatmadaw’s continual blocking of Shan national political dialogues, the RCSS issued a statement on 8th January 2018 declaring its decision to temporarily postpone its plans for national political dialogue with Shan communities. On 12th January, the Peace Process Steering Team (PPST), a bloc represented by eight EAO NCA signatories, released a statement arguing the 21CPC should proceed only after the political dialogue process had taken place at all levels.38

The Tatmadaw’s obstruction of the national political dialogue process and unwillingness to engage in meaningful negotiations towards the establishment of a genuine democratic federal union has caused multiple postponements to multiple the 3rd 21 CPC.39 Currently, no date has been set for the 3rd 21CPC. It remains unclear whether the conference will in fact take place, as it has yet to be seen if genuine commitment to “inclusive political dialogue” exists amongst key stakeholders in the peace negotiation process.

35 Framework for Political Dialogue, Chapter 6, Article 6.3 (Unofficial translation)
36 Constitution of the Republic of the Union of Myanmar (2008) Article 10: No part of the territory constituted in the Union such as Regions, States, Union Territories and Self-Administered Areas shall ever secede from the Union. It is argued this basic principle is not compatible with federalism.
The Burmese Peace Negotiation Process
VIII. Burma Army Breaching the 2015 NCA

Since the 2015 ceasefire was initiated more than 8,500 civilians have been forcibly displaced as a result of Tatmadaw military operations in Karen State. These military operations, authorised at the highest levels of the Burma Army command, have breached the NCA and led to renewed cycles of armed conflict in Hpa-an and Mutraw (Hpapun) districts.

Beginning in September 2016, armed clashes between the Tatmadaw Border Guard Force (BGF) and a faction of the Democratic Karen Buddhist Army (DKBA) forced more than 6,000 villagers from their homes in northern Hpa-an. Some 5,500 people are currently living in basic shelters at two Internally Displaced Persons (IDP) camps in Myaing Gyi Ngu, a large village in northern Hpa-an District, located on the eastern bank of the Salween River.

Coordinated Burma Army operations in the KNU-controlled Ler Mu Plaw area of Mutraw’s Luthaw township have forced more than 2,400 civilians to flee their land and homes and seek refuge in the surrounding forests. These operations are clearly in breach of the NCA and have provoked multiple armed clashes with the KNLA.


41 The current Democratic Karen Buddhist Army (DKBA) was part of the original DKBA which split from the KNU/KNLA in 1994 and allied itself with the Burma Army. A further split took place in 2010 when the larger DKBA force agreed to government demands for the force to come under the command of the Tatmadaw as a Border Guard Forces (BGFs). The larger faction, led by commanders based in Myawaddy and Myaing Gyi Ngu, formed 12 BGFs (#1011–#1022), while numerous other commanders refused to do so, realigned with the KNU and reverted to fighting the Tatmadaw. The latter faction signed a ceasefire with the government in September 2011 and renamed itself the Khlohtoobaw Karen Organization/Democratic Karen Benevolent Army (KKO/DKBA), in April 2012 (Joliffe, Kim (2017), “Ceasefires, Governance and Development: The Karen National Union in Times of Change”, The Asia Foundation, p.7) Renewed fighting broke out in 2015 between the KKO/DKBA and the Tatmadaw and BGFs due to rising tensions spurred by the Asia Highway project. The fighting faction within the KKO/DKBA was dismissed in mid-2015 and in 2016 resurrected the army’s original name, the Democratic Karen Buddhist Army.


43 KPSN (2018) The Nightmare Returns
A KNU statement released on 16th March 2018 called on the Tatmadaw “to withdraw the Military Operations Commands (MOCs) and the battalions under them ...and to guarantee the security of Internally Displaced Karen people.” The statement also read: “Whilst efforts are being made for the conclusion of the NCA, this is breaching the terms of the NCA.” On 5th April, 2018, Saw O Moo, an indigenous Karen land rights defender and peace advocate, was gunned down by Tatmadaw troops on his way home from a community meeting in the Ler Mu Plaw area. Saw O Moo had attended the meeting to help mobilise humanitarian relief and assistance for internally displaced Karen people, including his own family.

Although the JMC has a mandate to prevent the recurrence of armed clashes, the Tatmadaw’s most recent military advances across the ceasefire lines have not been addressed according to agreements reached under the NCA. The KNU has attempted to resolve the incident by calling on the JMC to fulfil its mandate and mediate a solution to the current breach of the NCA, to avoid an escalation of armed clashes and displacement of civilians in the ceasefire area. However, the Tatmadaw refused to attend a meeting hosted by the JMC to settle the ongoing territorial dispute.

44 KNU Supreme Headquarters Kawthoolei, “Karen National Union Position Statement on Tatmadaw military activities in sending military forces into Mutraw District (Papun) to build a road base for military use, during the implementation of the ceasefire” 16th March 2018
IX. Conclusion

To date, all aspects of the peace negotiation process, from the national political dialogues to the 21CPC, have been dictated by the Tatmadaw. The Tatmadaw’s stranglehold on political dialogue smothers opportunities for reaching negotiated resolutions to the root causes of conflict, foreclosing chances for genuine and sustainable peace in Burma. The dead end reached under the current peace negotiation process is not merely the result of technical limitations, its roots are political.

The Tatmadaw’s coordinated, multi-battalion military operations in KNU-controlled areas of Karen State serves as a grave indictment of the “Karen model” for peace. All signatories to the NCA, including the Tatamadaw, are bound by a common agreement to pursue peaceful resolutions to “political conflicts through political dialogue instead of force of arms.”\(^{45}\) The Tatmadaw has repeatedly breached this principle, along with numerous other articles of the NCA, while mechanisms supposedly designed to provide a pathway to sustainable peace and the establishment of a democratic federal union have so far failed.

The Burma Army is using the NCA and the peace negotiation process as an instrument to support the extension of centralised control over ethnic areas of the country. As long as the Burma Army’s predominance within central government remains unchallenged, peaceful, equitable and sustainable resolutions to land tenure issues will remain beyond reach of any peace negotiation process.

\(^{45}\) NCA (2015) Chapter 1, Basic Principles, Article 1 (b)
X. KPSN Recommendations

To the Government and Tatmadaw:

1. A new framework must be set up where political dialogue, negotiations and resolutions are not constrained by the 2008 constitution
2. The Tatmadaw should halt all military offensives and implement a unilateral nationwide ceasefire, followed by inclusive political dialogue with all ethnic stakeholders including the Federal Political Negotiation and Consultative Committee (FNPCC) and the United Nationalities Federal Council (UNFC)
3. There must be a moratorium on large scale development projects during the peace negotiation process, until a new federal constitution is operationalized
4. There must be no restrictions on EAOs holding consultations with communities, and on EAOs holding meetings among themselves
5. The NLD government must return to its original goals and begin fighting for its election manifesto that the 2008 constitution will be amended “to guarantee ethnic rights and establish a federal democratic union”

To International donors, the Myanmar government, and the Tatmadaw:

1. All existing ethnic managed governance structures such as those implementing health, education, land and natural resources management, and judicial matters shall be recognized and acknowledged by the Myanmar government, UN agencies, and any other donors to Burma
2. International support for refugees and IDPs that was cut off should be immediately reinstated, and provided according to international standards
3. Donors should ensure funding provided to the peace negotiation process will eventually lead to genuine and meaningful political change, rather than reinforcing the status quo
4. Financial and/or technical support shall be provided carefully to the land reform process under the Parliament/Hluttaw to ensure that the support in any way does not contradict and undermine opportunities for democratic federal reform of the country’s land sector.
Annex 1 for the land policy recommendations delivered during the 2017 Karen National-level Political Dialogue (Burmese language origin)
Burma’s Dead-End Peace Negotiation Process: A Case Study of the Land Sector
Annex 2 see below for the Burmese language origin of the May 7-9, 2017 Land and Environmental Sector negotiation meeting note
Burma's Dead-End Peace Negotiation Process: A Case Study of the Land Sector
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A new political dialogue framework must be established that can go beyond the 2008 Constitution, and only then can a genuine and inclusive nationwide political dialogue take place.

ABOUT KPSN

Karen Peace Support Network (KPSN) is the largest network of Karen civil society organizations in Burma/Myanmar. KPSN member organizations have facilitated humanitarian support for vulnerable conflict-affected Karen communities, internally displaced persons (IDPs), and refugees for decades. KPSN works to empower local Karen communities, raise awareness of the peace process, document human rights issues, and facilitate advocacy for a sustainable and equitable peace in Karen areas of Burma.

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