

# Issues related to Natural Resources in a future Federal Myanmar

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# Myanmar's Resources: A Blessing or a Curse?

- Myanmar has a rich endowment of natural resources. Could be central for the country's economic development.
- Resources distributed very different by region with potential major disparities in resource development.
- Large resource endowments can be a “curse”:
  - An object of conflict within the country or a source to fund conflict (40% of civil wars in Africa)
  - Corruption
  - Unbalanced development, with lucrative resource sectors undermining other sectors
  - Environmental damage
- So getting a good constitutional regime for resources and then good policies is a major challenge.

# Natural Resources in Myanmar

- Extractive resources:
  - Most important: Offshore petroleum and jade
  - Significant tin, tungsten, copper, gold, silver, zinc, lead, rubies
- Water:
  - Abundant with ten principal river basins
  - 90% used by agriculture, but hydropower 2/3rds of current electricity and major further potential. Major issues of corruption, environmental damage, worker safety. Mining especially not properly regulated.
- Land:
  - 70% of population is rural, dependent on land for agriculture, forestry, pastorage etc.
  - Issues of tenure rights, history of land grabs by military
- Corruption, pollution, and unsafe work environments are matters of shared regional and national concern. Good resource development requires sophisticated policies and governmental capacity.

# Myanmar's Uncertain Political Context

- The Federal Democracy Charter, declared on March 31, 2021, provides a possible vision for a federal Myanmar, but it is a preliminary view that will need much discussion before there is a Constitution.
- Factors that will bear on this:
  - Transition to post-coup regime
  - Limited fiscal and human capacity for creating new governments
  - Ability to develop consensus amongst democratic forces.
- “Facts on the ground”: military has created a highly centralized and non-transparent regime, though in some areas local militias or corrupt gangs control significant resources

# Factors Influencing Resource Arrangements in Federal and Devolved Systems

- Factors influencing natural resource ownership, management and revenue sharing arrangements in federations:
  - Level of economic and political development
  - Importance of the resources and the regional distribution
  - History whether federation “coming together” or “holding together”
  - Basic architecture of the regime:
    - “dualist”—most powers allocated to one or other government
    - “integrated”—many joint powers, often with state administration
  - Philosophy and mechanisms for sharing revenues generally and resource revenues in particular
- Federations in developing countries tend to give the central government the lead on natural resources

# Resource Ownership, Management and Revenue Sharing in Federations

- Three key elements need to be seen separately:
  - Ownership of resources
  - Instruments for resource management
  - Resource revenue sharing with the context of the broad fiscal regime.
- Natural resource ownership, management and revenue sharing can have very different relations with one another in federations:
  - The government that has ownership does not necessarily manage the resource or get the main fiscal benefits. Sometimes ownership is not clearly stated.
  - Similarly, the government that has the principal management powers may not get the major fiscal benefits.
- In most federations, offshore economic zone lies outside state/ regional boundaries and is a federal responsibility.

# The Significance of Ownership

- Ownership is a limited right. Governments may make rules that determine a property's use and value:
  - What can be built and what uses may be permitted
  - What taxes must be paid
- In a federal constitution, if one level of government “owns” subsurface petroleum or minerals, the importance of that ownership can depend on the rights associated with it. When states/regions “own” the resource, their control or benefits may still be limited.
- The constitutional allocation of management and fiscal powers and of the fiscal benefits from resources can be more critical than “ownership”.

# Objectives of Mineral and Petroleum Management

- Management of extractive resources should balance several objectives:
  - Efficient, effective and timely
  - Predictable: to attract investors
  - Environmental protection
  - Manage social impacts, positive and negative
  - Generate optimal revenues for government
  - Ensure extractive sector activity is integrated into broader macro-economic management
  - Micro-economic: to promote industrial and employment objectives
- The bigger the petroleum or mineral resource, the greater the national interest relating to these objectives.

# Management Powers over Subsurface Minerals and Petroleum

- Technically complex and requires strong governmental capacity, especially dealing with big international companies.
- Five major sets of management issues:
  - Petroleum or mineral rights and their use
  - Revenue matters, including taxation
  - Environmental protection
  - Social and employment impacts
  - Marketing and petroleum transportation (pipelines).
- Federal and regional governments may have different powers which gives both some influence over developments. Federal governments normally have significant revenue, environment, transport and marketing powers, even if states manage petroleum or mineral rights.

# Allocation of Powers over Extractive Resources in Federation

- Extractive resource management in developing country federations tends to be strongly led by the federal government.
- True “joint management” is rare and can be very hard to manage.
- State/regional roles can include
  - Consultation on issuance of rights, environmental and social impacts
  - Some delegated administration and regulation
  - Local benefit plans
- Politically, state/regional government may have working relations with companies beyond legal role.

# Land and Water

- Land and water are very different in nature from extractive resources and play a different economic and social role.
- Politically, the major issues and conflicts around land and water usually relate to their use and development, not revenues for government.
- At the local level, farmers, pastoralists, fishers, and traditional communities may be in conflict with one another or with major outside resource developers and the government.

## Rivers and Water

- Water is critical natural resource.
- Water issues include sharing, its uses, water quality, flood control, hydropower and ecosystem sustainability.
- Water management is focused on the resource itself, rather than revenue generation, though water pricing can be an issue along with revenues from hydropower.
- Water flows across internal boundaries in federations. There can be conflicts between upstream versus downstream regions/states over sharing, dams, flood control, and pollution.
- Integrated Water Resource Management (IWRM) for river basins is the objective of good policy. Integration across sectors and across internal and even international boundaries

# Water in Myanmar

- Myanmar has abundant water. But with uneven spatial distribution. 80% flows during the monsoon and only 20% in dry season
- There are six river basins, all involving more than one state or region. The Ayeyarwady-Chindwin drains 58% of the territory. The Thanlwin drains 18%. Most basins are connected to neighbouring countries.
- The country's water use is well below potential. Hydropower potential is 15 to 30 times current production, but major dams are highly controversial. Less than half the population has electricity and the electrification plan is would triple production. Huge Myitsone project on hold.
- Irrigation is mainly in the dry uplands. Flood control is a major issue in the delta.

# Water and Rivers in Federal Constitutions

- Some older federations have had major challenges because of split responsibilities for managing river basins.
- Modern federal constitutions different models:
  - Ethiopia & South Africa all rivers federal
  - Spain inter-state federal, within-state rivers to states
  - India major rivers federal but intra-state tributaries state; India also makes “water” (irrigation, canals, power) state
- Federal treaty power can be important lever for federal control of international rivers
- National water policy needs institutional arrangements at basin level and objectives of efficiency and sustainability. Should include aquifers because they relate to surfact water.

# Water Policy and Management Models in Federations

- Few federations have true Integrated Water Resource Management and in some (India, USA) have terrible records. If states have major powers, federal governments hesitate to choose sides and settle conflicts.
- South Africa has a clear federal lead.
- Spain has a National Hydrological Plan and inter-state river basin authorities with governing board, stakeholder boards and management services. Inter-basin transfers have been a source of conflict. basin authorities lack jurisdiction over aquifers.

# Water in a Future Federal Constitution for Myanmar

- Given the inter-national and inter-state nature of water issues in Myanmar, there is a need for a leading role by a future federal government.
- However, water issues impact local communities, so there is a need to involve state/regional and local governments plus civil society in water management.
- The South African and Spanish models could be adapted to the Myanmar context.
- Rivers and water could be a federal or a concurrent responsibility and there could be a role for regions/states in delegated administration

# Land in Federal Constitutions

- Some constitutions give ownership of land to the nation or State, so land rights are conditional. Others affirm private property. Some distinguish private from communal land.
- Private ownership is usually limited to surface rights, with the State owning or controlling sub-surface resources.
- In older federation land is largely a state responsibility (though there may be extensive “federal lands”). More modern constitutions make land a concurrent responsibility (federal and state laws with federal primacy and state administration) or with a federal lead, but some responsibilities at the state or local level.

# Communal and Indigenous Land Rights

- Traditional and indigenous communities typically have close relationship with land and traditional territories.
- Rights of such communities getting more widely recognized. Including with devolved governance.
- Constitutions may make communal property a distinct class or recognize indigenous land rights.
- Bolivia's creates rural native indigenous authorities, with extensive powers over land and resources
- Canada's modern treaties have expanded indigenous lands and codified different classes of land.
- India has 13 Autonomous District Councils in 4 states in Northeast. Own legislatures, executive, courts. Power over land and resources, health, police. But conflict with state governments, complaints of discrimination against non-tribal, corruption and illegal land alienations.

# Land Options for a Federal Myanmar

- History of highly centralized approach, insensitive to ethnic minorities and local interests. 2010-13 several controversial laws; 2015 National Land Use Policy.
- No one best model for land governance in federations.
- Land issues strong local importance, especially with ethnic minorities. Balance needed with national interest in major resource developments.
- Self-administered zones in Shan state and Sagain region some parallels with India's NE. May be more call for self-administered zones.
- Possible lessons from India and Canada on governance structures for tribal peoples, from Peru on conflict dialogue, from Bolivia and others on special tribunals.
- Option of concurrent federal-region/state power over land, with some exclusive regional/state powers.

# Managing Resource and Land Disputes

- A few federations have special courts for land disputes, often with a focus on title.
- Protections of indigenous or communal land rights has often proven weak.
- Peru had many conflicts over rapid growth of extractive sector. Created National Office for Dialogue and Sustainability, closely linked to government agencies. Prior consultation with indigenous peoples. Development roundtables. Overall reduction in conflict with over 150 settlements in 3 years. Revenue sharing.

# Fiscal Issues and Natural Resources

- Petroleum and minerals can be source of major government revenues because cost of development (especially for petroleum) can be small fraction of selling price.
- Water and land usually much less important as a revenue source.
- When extractive resources very important, federal government, especially in developing countries, usually plays leading role because of importance for economy and government finance.

# Kinds of fiscal levies on natural resources

- Some revenues are specific to the resource sector:
  - royalties, license fees, proceeds from production sharing, payments from a national oil or mining company.
- Others taxes are imposed on the extractive resource sector as well as other sectors:
  - corporate income tax, value added or sales taxes, environmental taxes (carbon tax), export taxes.
- Many federal governments largely control all levies on petroleum—both sectoral and general levies. They many even determine the value of levies, such as royalties, assigned to states that own the resource (India, Malaysia) or jointly own it (Pakistan, Russia)
- Fiscal levies are also a management tool: they can affect the pace and nature of resource development. If both federal and region/state governments can impose levies, both can influence resource development.

# Revenue sharing and fiscal transfers

- All federal governments raise more revenues from taxes, levies, and borrowing than they spend directly on their own programs. In many developing country federations almost all revenues are raised at the federal level.
- In all federations, some federally raised revenues go to the states:
  - Revenue sharing: By giving state governments a set, direct share of *some* or *all* revenues raised by the federal government. These revenue may go into a national account, and not appear in the federal budget
  - Fiscal transfers: By federal government making transfers from its budget to state governments. Transfers are normally discretionary, but may be negotiated/agreed and be unconditional or conditional (for particular programs).
  - Federations may have only revenue sharing, only fiscal transfers, or both (eg. India has general revenue sharing, but also special transfers).
- Some federations have revenue-sharing for the basic activities of state governments plus fiscal transfers relating to specific programs that may be priorities.

# How Revenue Sharing Works

- Federations with revenue sharing usually have a National Account (held by the Central Bank) into which all revenues to be shared flow.
- This account is outside the federal budget.
- Revenues flow, according to a formula, from the National Account to the federal and state governments.
- There can be a special share of resource revenues for producing states.
- Some part of resource revenues may also be assigned to a stabilization fund and a savings fund, which can be important for long-term economic management.
- But all remaining revenues, resource and non-resource, are pooled and shared by formula
- General sharing formula is guided by principles or criteria but is not fixed in constitution.

# How to decide on revenue sharing and transfers

- Constitutions can be permissive or directive regarding general revenue sharing and transfers:
  - Broad principles: Germany (uniform standards), Canada (reasonably comparable services and taxes), S. Africa (equitable sharing)
  - Factors to consider: Nigeria (population, equality of states, area, fiscal capacity)
  - Commissions to recommend: India, Nigeria, Pakistan, South Africa (or outside constitution: Australia)
  - Upper house: May give role for states (Ethiopia, Germany, South Africa)
- Sharing needs to be flexible over time as the relative needs of federal versus state governments vary, so some federations have five-year arrangements (Canada, India). Federal governments usually have the final decision on general revenue sharing arrangements.
- However, some federal constitutions specify a precise share of some resource revenues for producing states (Nigeria) and even for producing states and municipalities (Brazil)

# Experience with Special Sharing for Extractive Resource Revenues

- Some federations give certain resource revenues to the states or give them a share of resource revenues.
- Nigeria and Brazil give fixed percentages of resource revenues to producing states—this has caused major disparities when oil prices are high
- India, Malaysia and Pakistan give royalties to the states, but the federal government decides their level and keeps them small.
- Australia, Canada and USA producing states control the resources and main taxes—this has caused significant disparities in revenues available to different states.
- Brazil, Nigeria and Peru give local communities some share of revenues. In Brazil and Peru this has caused major disparities.

# Should producing states get a special share of resource revenues? Derivation vs. equity

- Arguments for:
  - They may “own” or feel they own the resource
  - Compensation for environmental damage and infrastructure costs
  - Compensation for loss of a depleting resource
- Arguments against:
  - Can cause major fiscal disparities across regions
  - Dollar is a dollar: why just for resources?
  - Big shares can make federal management of economy more difficult
  - Federal government more able to manage big swings in revenue
- As a political matter, often strong demands by producing states for a special share. Question then becomes how big a share? Could be a large share of small revenues but a much smaller share of big revenues. Avoid rigid percentages to limit avoid major disparities.

# Fiscal dimensions of land and water

- Land and renewable resources don't usually generate major government revenues, but they can be:
  - Forestry, offshore fishing licenses
  - Hydropower
- Water use, especially by agriculture, can be wasteful and environmentally harmful if there is no charge.
- Taxes on land and property often important source of revenue for local governments

## Some Key Conclusions

- Extractive resources, land and rivers and water are different and may need different constitutional, fiscal and management arrangements
- Ownership, management and revenue sharing are related. Ownership is not always important, so being clear on management and fiscal arrangements is key
- Some special sharing of resource revenues with producing regions/states may be good, but it needs to be designed as part of the general fiscal regime and should avoid big disparities
- Mechanisms for conflict resolution can be helpful and can be built into the legal structure
- Resource wealth can be a curse as much as a blessing. Good management and transparency are key.