



### Is the NCA dead?

Given the coup d'etat by the Tatmadaw on 1 February 2021, many are saying that the Nationwide Ceasefire Agreement (NCA) is dead, and that the ethnic armed organizations (EAOs) should give up the peace process. They say, *It was not working. Why waste time? They should instead throw in their lot with the newly formed National Unity Government.*

First, the NCA is a legal agreement ratified by Parliament binding the Tatmadaw and the Government of Myanmar to resolve political problems through dialogue rather than using force. The fact that the Tatmadaw is using force against political dissenters and the NLD did not in the past negotiate in good faith does not make the agreement invalid. Rather, the 2015 NCA is a document that can be used by the ethnic armed organizations (EAOs) to hold the Tatmadaw and future governments of Myanmar legally accountable.



Senior-General Min Aung Hlaing and Vice Senior-General Soe Win – signing the NCA.



Similarly, the 1947 Panglong Agreement endorsed the concepts of self-determination and equality. It was never implemented but the concepts were incorporated into the 1960s Federal Movement. The Tatmadaw tried its best to kill the concept of federalism by seizing power and by banning the word from Myanmar's political vocabulary. But seventy years later, the Government of Myanmar and the Tatmadaw had to agree that Federalism and Democracy were the two key concepts for solving the never-ending civil war.

### Why did all the EAOs not sign the NCA?

The NCA was drafted by the Nationwide Ceasefire Coordination Team (NCCT) of 16 plus two EAOs<sup>1</sup> and negotiated with the government's Union Peacemaking Work Committee (UPWC) – comprising the Thein Sein Government, the Pyidaungsu Hluttaw (Union Parliament) and the Tatmadaw. The NCCT was led by the New Mon State Party (NMSP), the Karen National Union (KNU) and the Kachin Independence Organization (KIO).

On 31 March 2015, the NCCT and UPWC formally agreed to the final text of the NCA. Six months later, only eight EAOs (not including the NMSP and KIO) signed the NCA.

What happened? Why did the KIO and NMSP<sup>2</sup> not sign? It is a matter of speculation. Reportedly, they met with Daw Aung San Suu Kyi (DASSK), the then opposition leader. She apparently urged them not to sign until she came to power. Not wanting to give credit to the Thein Sein government, the KIO and others did not sign. They believed that she would be making extra concessions. When she did not, the KIO continued to not sign.

### Was the NCA flawed?

Observers agree that the NCA in spite of its name, is not a typical ceasefire agreement. Only Chapters 3 & 4 of the seven chapters actually dealt in any way with a ceasefire. Even then, many of the issues related to a ceasefire were to be further negotiated. The

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<sup>1</sup> Arakan Liberation Party, Arakan National Council, Arakan Army, Chin National Front, Democratic Karen Benevolent Army, KIO, KNU, KNU/KNLA Peace Council, Karenni National Progressive Party, Lahu Democratic Union, Myanmar National Democratic Alliance Army (Kokang), NMSP, Pa-O National Liberation Organization, Palaung State Liberation Front (now merged with the Ta-ang National Liberation Front), Shan State Progress Party, and Wa National Organization (now merged with the United Wa State Party) plus the All Burma Students Democratic Front and the Restoration Council of Shan State which were not members of the NCCT but agreed to the common position. The UWSP, the National Democratic Alliance Army (Mongla) and the National Socialist Council of Nagaland – Kaplan (NSCN-K), did not participate.

Note: The NSCN-K was more interested in the establishment of a united Nagaland straddling the Myanmar-India border than in reaching an accommodation with the Government of Myanmar. The Tatmadaw seized the HQ of the NSCN-K in 2019 after the death of its leader S S Kaplan. The USWP and NDAA came into being after the collapse of the Communist Party of Burma. They have had a ceasefire with the Tatmadaw since 1989. They enjoy a rare degree of autonomy and have large well-equipped armies. It is unrealistic to expect them to endorse federalism and democracy, or to sign the NCA.

<sup>2</sup> The NMSP and LDU signed the NCA in 2018.



main focus of the NCA was on the holding of a political dialogue to resolve the civil war. This is because of the long history of ceasefires with the Tatmadaw that did not move beyond ceasefires and never resolved any political issues that the EAOs wanted dealt with. The NCA was not perfect but both sides had agreed that it was adequate to move the peace process forward by beginning a political dialogue.

### Was the NCA dictated by the Tatmadaw?

Definitely not. From 2011 to 2015, the main drivers of the NCA were the EAOs, especially the KIO. They wanted to make sure that the Thein Sein peace talks would not be a repeat of the Khin Nyunt ceasefires, and that there would be a political dialogue to resolve the issue of ethnic rights. Initially, the Tatmadaw had only wanted ceasefires as in the past. They had also refused to negotiate with the EAOs collectively. But President Thein Sein made it very clear that the peace negotiations were a political affair which, under the 2008 Constitution, was the President's mandate. The Tatmadaw had to defer to the President and agree not only to negotiating collectively with the NCCT but also to agree to a political dialogue on the civil war. The NCA was, therefore, something demanded by the EAOs.

This changed in 2016 under the democratic government of DASSK. Senior-General Min Aung Hlaing succeeded in convincing the State Counsellor that the peace process is a security affair because the EAOs carry arms. Under the 2008 Constitution, this gave the Tatmadaw the upper hand in making decisions regarding the peace process. Negotiations came to a standstill and were salvaged only in 2020 when it was decided that the negotiations would be postponed until after the 2020 elections. The manipulation of the NCA by both DASSK and the Tatmadaw took place mainly during the democratic period.

### How was the NCA manipulated?

First, the peace infrastructures and procedures established by the NCA were ignored or bypassed by DASSK or the Commander-in-Chief. The EAOs had difficulty in holding their counterparts to the process agreed to in 2015. The Tatmadaw had manipulated the Joint (Ceasefire) Monitoring Committee from the beginning but the political dialogue portion looked to be on track until DASSK unilaterally excluded political parties that did not win in the 2015 elections. Given the 90+ registered political parties, it may have made sense to reduce the number of political parties to a more manageable 24 or so. However, in Myanmar where smaller minorities cannot ever hope to win in a First Past The Post electoral system, it had the practical effect of disenfranchising them. Third, civil society which, according to the NCA, is an integral part of the peace process was excluded. Civil society organizations were assigned a separate Civil Society Peace Forum to discuss the



peace process but had no official mechanism with which to access the peace negotiations. Fourth, DASSK would often veto or suggest alternatives after decisions had been made by the peace negotiators. The Commander-in-Chief did the same. Given their political stature, few dared to challenge them, thus making the negotiations untenable.

### Is the NCA totally discredited and useless?

Some believe that the 2008 Constitution was invalidated by the 1 February 2021 coup. The establishment of the Provisional Government on 1 August 2021 is considered as further proof that the 2008 Constitution is no longer applicable. Given this situation, some argue that the NCA negotiated by a 2008 Constitution mandated government and parliament is no longer valid. It can be argued that the NCA is a treaty signed by the EAOs with the state of Myanmar. It is binding on the state and all governments of the state of Myanmar are obliged to comply with it. This is borne out by the fact that the NLD government of DASSK continued from the USDP government of Thein Sein to negotiate with the EAO NCA signatories. The NCA, therefore, is still valid even if the 2008 Constitution is no longer valid. Any government of Myanmar is obliged to comply.

### NCA as a tool

Another fact that critics of the NCA ignore or miss completely is that the NCA is an extra-parliamentary political process by which the 2008 Constitution could have been amended. The EAOs and the Tatmadaw had even discussed reducing the number of Tatmadaw seats in parliament in exchange for the EAOs reducing their strength. Had the DASSK government pursued this line, they could have amended the 2008 Constitution. Instead, the NLD government sought to change the constitution by going head-to-head with the Tatmadaw in parliament. With the military holding 25% of the seats and the requirement of more than 75% of the vote to amend the constitution, it proved to be a futile strategy.

Another way the EAOs are now trying to use the NCA is to bring the current political crisis to an end. The main principle of the NCA is to use dialogue rather than force to resolve political problems. According to the NCA, such a dialogue must include all relevant stakeholders. And lastly, but most importantly, the dialogue partners must protect civilians. If these principles could be applied to the current crisis, it would stop the killings and all relevant stakeholders would be able to work out their differences. EAOs also want to bring in ASEAN and NCA Witness Countries – UN, EU, China, India, Thailand and Japan – to oversee the process to ensure that a just and fair solution can be found. The current situation may not allow a dialogue to take place but it may work in the future.