

Hpakant's Tragedy: Policy recommendations to gradually reduce the vicious cycle of catastrophe

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Rising human costs in vicious cycle of jade mines incidents in Myanmar have not been resolved. Year after year, devastated landslides in jade mines kill hundreds of human lives. This policy brief discusses essential considerations for the Government of Myanmar in responding to the threats posed by mining collapse in Hpakant.

Introduction: Vicious Cycle of Hpakant's tragedy

Myanmar is the largest jade manufacturer in the world.¹ The highest quality of jade comes from the mines at Hpakant, Kachin State. Hpakant is located in the northern part of Myanmar and is one of the most valuable areas where billions of earning can be made through mining of the world's most exquisite jades. The Hpakant jade mines sector's worth is impossible to determine and has been mired in secrecy for years since these planet's most precious gemstones have been under control by military elites, crony companies, ethnic armed organizations (EAOs) and US-sanctioned drug lords.²

Vicious cycles of life-threatening landslides have been occurred in mining area of Hpakant in Kachin State since 2015. Recent land slide happening in the last July in Hpakant is the latest in the story of fatal accidents.³ Similar disasters had happened in last years and there were many incidents recorded with the total of 38 incidents in 2015 and 58 incidents in 2016.⁴ Three incidents had also been occurred in 2018 with a total of 80 people buried due to the landslides.⁵ There were also 19 landslides in Hpakant and 94 death dead in 2019. All in all,

¹Eiki Berg & Henk van Houtum (2003) "Routing Borders Between Territories, Discourses, and Practices", Regional & Federal Studies

² Global Witness (2015) "Jade: Myanmar's "Big State Secret", https://www.globalwitness.org/documents/18097/Jade_executive_summary_online_lo_res.pdf

³Saw Nang and Richard C. Paddock (2020) "Myanmar Jade Mine Collapse Kills at Least 168", The New York Times, <https://www.nytimes.com/2020/07/02/world/asia/myanmar-jade-mine-collapse.html>

⁴ Min Zar Ni Lin, Francesco Loiacono, et al (2019) "Artisanal jade mining in Myanmar", International Growth Centre, <https://www.theigc.org/project/artisanal-jade-mining-myanmar/>

⁵Hannah Beech and Saw Nang (2018) "Dozens Swept Away in Myanmar Landslide While Hunting for Jade", The New York Times,

incidents at Hpakant from 2015 to 2020 have killed over 1,000 people.⁶ Therefore, the devastated landslides in jade mines kill hundreds of human lives year after year and the years ahead are not still uncertain to terminate the vicious cycles of the bloody crisis.

Historical Context of the Crisis

The crisis is originated from historical legacy. The large-scale mining projects in Kachin State began after signing a ceasefire agreement between KIA (Kachin Independence Army) and the military in 1994. But the agreement was collapsed in 2011 which made the area became an active conflict zone again. In the meantime, the military and the cronies have been running these mining projects and the KIA raises the revenues from mining companies and facilitating illegal jade trade into China through KIA's territory.

Though these issues have appeared on the top of the agenda at the national level of the government, handling the bloody mining crisis has doomed into failure under successive governments. The government under President U Thein Sein took an important step to join the Extractive Industries Transparency Initiative (EITI) in order to manage the oil, gas and mining businesses according to an internationally recognised framework with transparency.⁷ However, Myanmar's jade industry has remained in secrecy. Yet profits from mining is still flowing to arm groups and elites rather than for socio-economic development and environmental management.⁸ Furthermore, there has been a contestation of power between ethnic armed groups and EAOs in mining areas. It is also complex that both government and EAOs are tax collectors due to the fact that the mining areas are located in active conflict zone and several EAOs collect taxes from mining area not under the government's control.⁹ Besides, not only hundreds of mining operations are not allowed to inspect but also they don't follow the legal procedures. According to EITI report (2016), approximately half of jade and gemstone companies' data were disappeared, inadequate and irreconcilable with the government data.¹⁰

<https://www.nytimes.com/2018/07/17/world/asia/myanmar-landslide-jade-mine.html?action=click&module=RelatedLinks&pgtype=Article>

⁶ ASEAN Today (2020) "Jade, civil war and inequality: lessons from Myanmar's latest mining accident" <https://www.aseantoday.com/2020/07/jade-civil-war-and-inequality-lessons-from-myanmars-latest-mining-accident/>

⁷ Myanmar 2015-2016 EITI Report, <https://eiti.org/document/myanmar-20152016-eiti-report>

⁸ Ibid

⁹ Natural Resource Government Institute (2016) "Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues"

¹⁰ Paul Shorte (2018) "Tip-Toeing Toward Transparency: Jade and Gemstone Sector Disclosures in Myanmar, Natural Resource Government Institute", <https://resourcegovernance.org/sites/default/files/documents/myanmar-tiptoeing-toward-transparency.pdf>

When it came to NLD government, it adopted a new mining licence in 2016 to freeze the existing jade permits so that jade permits including strong legal frameworks could be renewed.¹¹ In 2018, the government also made up the first nation's first jade and gemstone policy including a set of new guidelines and procedures with the aim of improvement of the social impact, sustainable growth and safety of the mining industry. Nevertheless, the situation could not be improved.¹² In 2019, the NLD government enacted a new gemstone law to allow states and regional government to issue jade extraction permits with the cooperation of the Union Ministry.¹³ However, there have been still hidden license holders and unlawful mining companies' practices can cause several incidents.¹⁴

In recent mining crisis, the government created a committee to investigate solutions for the landslide to avoid future incidents and to assist the families of those wounded and killed during the accident.¹⁵ However, it is apparent that these repetitive similar crises were beyond the performance of the successive governments to handle. Rising human costs in vicious cycle of jade mines accidents in Myanmar have not been resolved until now.

Major drivers behind Hpakant's tragedy

Failure of handling the bloody jade mine collapse is concerned with the *ineffective natural resource governance* which can be regarded as one of the major causes of the landslides because the government appears to be ineffective in formulating mining law, rules and procedures of permitting licences and environmental management. Moreover, the licensing system appears to favour the companies connected strongly with the powerful figures and high-ranking officials. Concerning the licensing system, a jade businessman said that “if there is a big hat involved, they will surely get it”. Hence, cronyism and corruption are also frequently mentioned as a core factor of this failure.

Another major driver of the disaster is *unsuccessful law enforcement towards mining companies*. Large-scale jade companies apply heavy machinery to extract jade as much as

¹¹ ASREAN Today (2017) “Smuggling is Endemic in Myanmar – Jade, Opium and Human Trafficking”, <https://www.aseantoday.com/2017/08/smuggling-is-endemic-in-myanmar-jade-opium-and-human-trafficking/>

¹² ASEAN Today (2019) “Profits over Human Life: Myanmar's Deadly Jade Mines”, <https://www.aseantoday.com/2019/05/profits-over-human-life-myanmars-deadly-jade-mines/>

¹³ IGC report (2019)

¹⁴ ASEAN Today (2020) “Jade, Civil war and Inequality: Lessons from Myanmar's Latest Mining Accident” <https://www.aseantoday.com/2020/07/jade-civil-war-and-inequality-lessons-from-myanmars-latest-mining-accident>

¹⁵ Zaw Zaw Htwe (2020) “Military Sacks its Appointed Kachin Security Affairs Minister After Kachin Jade Disaster” , The Irrawaddy, <https://www.irrawaddy.com/news/burma/military-sacks-appointed-kachin-security-affairs-minister-kachin-jade-disaster.html>

possible in as little time as possible. As a consequence, the surrounding communities suffer from environmental and social impact, landslides, land grabbing and displacement issues, and loss of ecosystem.¹⁶ Moreover, despite the existence of the regulations of the jade mining law, licenses permits are not legally used.¹⁷ Miners also experience difficulties to submit the Initial Environmental Examination (IEE) to get mining licenses according to 2015 EIA procedures. As a result, miners request no permission from the authorities to get approval and there become more illegal miners in the mining projects.

Consequently, nowadays, the artisanal jade sector is rapidly increasing in Hpakant. Although statistics on artisanal jade production is missing, it is expected that there are around 300,000 - 400,000 miners in Hpakant.¹⁸ Hence, **increasing illegal miners** in mining areas are extremely challenging to handle the crisis. Seeking for jade is the backbone of the livelihoods of them. According to the International Growth Centre Report, the majority of the artisanal miners are poor migrants coming from Central Myanmar, Shan State and Rakhine State. Majority of them are not under both central and local authorities. These illegal miners have their own boss and share the profits of jades with their bosses. However, they have to work under high-risk conditions with no protective equipment without legal protections and they are highly vulnerable to landslides.

Finally, the influential role of **China's involvement in jade crisis** is described as an undeniable cause in the failure of handling the disaster because China is a biggest market for Myanmar's jade. In this case, the value of the illegal jade trade is multiple times than the legal trade because Chinese exploits Myanmar's on-going civil war and instability by maintaining its relationship with senior officials from not only KIA but also the military to make a way for corruption.¹⁹ Furthermore, despite the prohibition of foreigners from operating in the jade sector according to law, there are many unofficial Chinese partners with local companies in practice.²⁰ Also, many Chinese traders are allowed to enter into informal jade markets in Hpakant rather than to the official gem market.²¹

All in all, the above major causes of the disaster in Hpakant characterize that this tragedy is a systemic crisis. This crisis reflects the domino effect in which on-going civil war changed Hpakant into an active conflict zone. Consequently, legal enforcement cannot be effectively made for mining activities in this unstable area which create a room for increasing illegal miners

¹⁶ Global Witness (2016) "Defenders of the Earth",
<https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/>

¹⁷ Frontier Myanmar (2018) "New Mining Rules Tinkering at the Edges",
<https://www.frontiermyanmar.net/en/new-mining-rules-tinkering-at-the-edges-says-mcrb/>

¹⁸ Global Witness (2015)

¹⁹ Luv Puri (2020) "Act with China no Guarantee of Peace",
<https://www.tribuneindia.com/news/comment/pact-with-china-no-guarantee-of-peace-110383>

²⁰ NRG (2018)

²¹ IGC (2019)

and different illegal activities. Therefore, causes of the crisis are intertwined with each other and the disaster of jade mines is seriously necessary to take multi-perspective considerations to make a positive development.

Recommendations

Although the above mentioned factors of ineffective natural resource governance, inadequate law enforcement, cronyism and corruption issue, poverty issues and Chinese exploitation with illegal jade trade play a crucial role in Hpakant's issue, all of these cannot be resolved without sound rule of law in the area. Without rule of law in this area, law cannot be enforced, corruption cannot be eradicated and Chinese unethical involvement cannot be stopped. Therefore, establishing rule of law in this area by addressing the major causes in parallel are urgently needed to avoid unnecessary deaths from further landslides. As rule of law cannot be enforced immediately, short-term and long-term policy implications are necessary to provide effective governance and sound rule of law in the area. For short-term considerations:

Evaluation and strengthening of the current legal framework: The current mining laws and policies for mining industry has many drawbacks such as challenging for jade miners to follow the rules and regulations of the government, lack of clear roles and responsibilities of official persons to handle the crisis. To be more effective, the government and respective ministries and committees should make a strong collaboration vertically and horizontally to approach the Hpakant's crisis from political, economic, social and environmental dimensions because the nature of crisis is at the intersection of political, economic, social and environmental arenas.

Enhancing collaboration between central and local authorities: To be effective formulation and implementation of rules and regulations in mining activities, both national and state governments need to make sure that roles and responsibilities of them are clear, simple and specific without duplications to tackle corruption, illegal mining and other related activities in Hpakant.

Cooperation with Military institution to tackle the crisis: As the crisis area is located in conflict zone, the role of military is of great importance to give oversight of mining companies and miners whether they do mining activities in line with standards of legal terms and conditions. Hence, the government should consider cooperating with military to combat unlawful activities in mining areas.

Creating a committee involving all stakeholders: There are many stakeholders in mining sectors involving national government officials, state government officials, military institutions, investors, miners, traders, sellers, brokers, community leaders of Hpakant. The committee including multi-stakeholders should be formed to access up-to-date data and information, to increase transparency and accountability among them, and to make effective decisions together to prevent the similar tragedy in the future.

Supporting voices of community: Communities in Hpakant are suffering from unlawful actions of mining activities. Thus voices of communities are crucial to make effective laws and policies so that they are protected from harmful consequences of mining activities. Moreover, they can be effective watchdogs to cover illegal things happening in Hpakant and the government can get grass-root level support to strengthen the implementation of mining rules and regulations by supporting voices of the Hpakant's community.

In addition to short-term considerations for Hpakant's tragedy, long-term solutions are also essential to build rule of law in this area because *rule of law* will be under the water as long as a sustainable peace cannot be achieved in Myanmar. The intersections of conflicting interests between mining companies tied to armed groups and military are at the centre of the nature of the systemic incidents in mining areas. As the mining area is located in active conflict zone, there has been power contestation between military and ethnic armed groups. Amidst their contestation, it will be challenging for the government to overwhelm their historic power competition in order to effectively enforce the rules and regulations of the mining industry in order to stop the further landslides.

The emphasis on achieving peace to rebuild the rule of law in this issue is hugely fundamental to *advance civil-military relations*. Military domination should not be ignored to consider under the context of Myanmar. Concerning EAOs, the termination of the war between them and the military is directly related with whether a federal nation can be built and power sharing and resource sharing between national level and state level under *federal principles* can be implemented in the future. In this case, it is directly interrelated with **constitutional amendment** because it is crucial for the adoption of a strong federal framework.

In conclusion, short-term measures are urgently needed to resolve the problem as quickly as possible. Also, the existence and occurrence of jade mine crisis reflecting diverse factors such as historic legacy, lack of natural resource governance, corruption, cronyism, environmental mismanagement is not an isolated issue that can be alienated from other aspects of rule of law, civil-military relations, peace process and constitutional amendment. Therefore, it should be understood as related to these considerations to investigate long-term solutions for the end the vicious cycles of jade blood crisis in the future of Hpakant.

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