

# JOURNAL OF DEMOCRACY

April 2016, Volume 27, Number 2 \$14.00



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## **Burma Votes for Change**

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# Burma Votes for Change

## THE NEW CONFIGURATION OF POWER

*Min Zin*

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Burma's 8 November 2015 general elections—won in a landslide by the opposition National League for Democracy (NLD), led by Nobel laureate Aung San Suu Kyi—have ushered in the second phase of the country's political transition. The NLD won 390 (79.4 percent) of the 491 (due to the cancellation of seven townships) total elected seats in both houses of the Union Parliament. The party's triumph represents a crushing defeat of the incumbent, military-backed Union Solidarity and Development Party (USDP).

Soon after the election results were announced, USDP and military elites signaled their acceptance of the NLD's victory, and a joint eight-member transition committee was set up to prepare for a smooth transfer of power on 30 March 2016. So after five decades of authoritarian rule, political succession will for the first time be conducted according to formal constitutional provisions. The ruling elite's decision to abide by the election outcome shows that the country's emerging institutions—the constitution, parliament, and the party and election systems that were activated only during the political opening in 2010—have the power and capacity to produce real political change despite their obvious democratic deficits.<sup>1</sup>

There is a catch, however. It was the former military junta that first set in motion the political transition and that drafted the country's 2008 Constitution, which unsurprisingly grants the Burmese military (the Tatmadaw) disproportionate prerogatives vis-à-vis any elected civilian government. Thus, even as the military defers to the election outcome, it can still use an array of constitutional provisions to hamstring the in-

coming NLD administration. This could leave the elected civilian politicians in the uncomfortable position of struggling to meet the people's high expectations for good governance and ethnic reconciliation in a country plagued by multiple conflicts, while the military firmly controls security policy and its business oligarchs continue to thrive in the economy.

The NLD's resounding electoral victory has effectively reduced the number of veto players<sup>2</sup> in Burmese politics to two individuals and one collective group: The former are Aung San Suu Kyi and Tatmadaw commander-in-chief Min Aung Hlaing; the latter comprises the country's minority ethnic groups (though they are not a completely unified bloc). Under President Thein Sein (2011–16) and the USDP, there were numerous stakeholders jockeying for influence and potentially blocking reform measures. The new postelection configuration makes change more likely, particularly if the top leaders manage to strategically align their interests.

If the "critical juncture"<sup>3</sup> of Burma's political transition occurred during the early years of Thein Sein's administration (2011–2013), the question now is whether the military will permit key actors to revise or rewrite the rules of game in order to further the political opening. The Tatmadaw would prefer to entrench the existing institutions, especially the constitution, because they enable the military to constrain the democratization process and to anchor in the polity the prevailing iron triangle of power—the Tatmadaw, its business oligarchs, and Burman-Buddhist nationalists. The military seems to favor continuing the ethnic peace process, which hinges on the Nationwide Ceasefire Accord (NCA) inherited from Thein Sein's administration, and appears to be willing to negotiate with the ethnic armed organizations (EAOs) over a somewhat decentralized power-sharing arrangement, possibly even some form of federalism. In short, the military would like to lock in the institutional legacies of the immediate past, but is not totally opposed to making some concessions.

Clearly, Aung San Suu Kyi and the incoming NLD government would prefer to reform the military-drafted constitution, especially Article 59(f), which currently bars Suu Kyi from the presidency due to her children's British citizenship. But will the NLD keep pushing to amend the provision in the next year or two, potentially triggering a constitutional crisis that would give the military grounds to stage a "legal coup"? Or will the new government try to ease the military toward a negotiated reform process that would strengthen democratization by focusing on other critical issues such as poverty reduction and the country's ethnic conflicts, in which the civilian politicians can work and build trust with the military?

Leadership decisions on the timing, pace, and extent of change thus will be extremely consequential in shaping the reform process. Rather

than pushing immediately for institutional autonomy through constitutional reform, the incoming civilian government should uphold the guiding principle of inclusive reconciliation while seeking to further institutionalize the national and subnational parliaments, the NCA, and to empower mediating organizations such as civil society groups and independent media. In other words, the new government should slowly try to shift the orientation of existing institutions away from the military rather than abandoning them altogether. This would ease the military's anxieties about committing to the rules of game and increase the odds of its honoring that commitment, while lowering the risk of a political reversal over the next few years.

### **The Backstory**

In 2011, when the military junta, under the leadership of dictator Than Shwe, handed power over to a pseudocivilian government with former general Thein Sein as president, the plan had been to perpetuate military rule via the USDP.<sup>4</sup> But the Tatmadaw's dream of continuing dominance over a "discipline-flourishing democracy" came to an early end thanks to intense divisions within the regime and an unexpectedly broad reform program initiated by Thein Sein between August 2011 and the end of 2012. How was the president able to enact such bold reform measures despite Than Shwe's careful plans?

In June 2011, three former military commanders who had become government ministers—Soe Thane, Aung Min, and Zaw Min—met privately with Thein Sein. They convinced the president that there was a way simultaneously to create distance from the former dictator, to assert presidential power (which would help to manage rivalries within and among the key institutions), and to get closer to the United States.<sup>5</sup> The ministers, with the help of local think tank Myanmar Egress (whose founders the president received on 4 August 2011), encouraged Thein Sein to reach out to Aung San Suu Kyi, who had been released from house arrest the previous year, and other oppositionists, including some exiled groups. Thein Sein met with Suu Kyi that same month.

After this meeting, the NLD decided to join mainstream politics, which helped to secure the lifting of Western sanctions. In late September 2011, to the surprise of ruling-party insiders, Thein Sein suspended a controversial multibillion-dollar dam project financed and led by a Chinese state-owned company. This move helped not only to win him public popularity but also to convince U.S. policy makers that Burma was ready to rebalance its foreign policy and to move out of China's orbit. U.S. Secretary of State Hillary Clinton's visit to Burma two months later was critical in getting the pariah state accepted back onto the international stage.

Another key factor enabling Thein Sein to carry out his reform pro-

gram was the support of Min Aung Hlaing, the new Tatmadaw commander-in-chief, who was trying to figure out how to position himself in the shifting power configuration. After seeing Thein Sein's impressive achievements in the first year of the quasi-civilian government, Min Aung Hlaing decided to back the president.

Perhaps the most important reason for the success of the reform program was Thein Sein's reliance on technocrats rather than party or military officials to carry out his liberalization initiatives. He was able to disassociate his government from the USDP's agenda by citing Articles 64 and 232(k) of the constitution, which bar the president and other cabinet members from taking part in "party activities during their term of office." This is significant because the USDP was more conservative than Thein Sein and his team of technocrats. For example, the USDP, because it feared a strong showing by the NLD in by-elections in 2012, opposed holding them at all. The president overrode his party's objections, however, in hopes of using the by-elections as proof to the West of his commitment to reform.

Similarly, he made the decision to suspend the China-funded hydro-power dam without first informing his party. Aung Thein Linn, a top USDP leader and MP at the time, told Chinese media that the party opposed some of the president's major decisions, dismissing them as "his own idea, not a resolution by the parliament."<sup>6</sup> When Thein Sein launched his reform program, USDP leaders were caught off guard, and rivalries arose among party elites. These former generals were used to a vertical command structure and seemed not to know who was in the driver's seat during the first few months of the transition to civilian government.

Their fears of a strong NLD win in the 2012 by-elections turned out to be justified. In a sign of what was to come in 2015, the NLD won 43 of the 45 contested seats with Suu Kyi herself among the winners. During the 2012 campaign, Aung San Suu Kyi had made constitutional reform an NLD priority. Several months after the election, she declared her willingness to serve as president, despite being constitutionally ineligible if Article 59(f) were not amended. Amending the constitution requires the approval of more than 75 percent of parliament as well as a national referendum. Since a quarter of parliamentary seats are reserved for the military, the constitution can only be changed with military approval. In November 2013, Suu Kyi called for a meeting with the president, house speaker, and commander-in-chief to discuss the possibility of amending the constitution. Thein Sein, worried about losing more ground after the NLD's 2012 sweep at the polls, rejected her request, and from that point on relations between the two deteriorated quite publicly over the question of constitutional reform.

House Speaker Shwe Mann backed Suu Kyi on the issue, but the Tatmadaw chief sided with the president. Thein Sein and Min Aung Hlaing

effectively used the constitution to fend off Suu Kyi's demand to amend it. Thein Sein invoked Article 64—which prohibits the president and vice-presidents from taking “part in . . . party activities during their term of office from the day of their election”—not only to advance his reform measures but also to defend his claim that he would be violating the constitution were he to urge his party's MPs to amend the constitution. Min Aung Hlaing, meanwhile, cited in all his major speeches Article 20(f), which states that the Tatmadaw “is mainly responsible for safeguarding the Constitution,” signaling that the military would not support constitutional reform any time soon, though he claimed that Article 59(f) was not drafted to target Suu Kyi. Still, he refused her frequent requests for a one-on-one meeting, saying that their political aims were not the same.

Before the 2015 elections, both Thein Sein and Min Aung Hlaing had vowed to respect the rules and procedures laid out by the Union Election Commission as a part of the regime's institutional framework. Thein Sein promised free and fair elections, and Min Aung Hlaing promised to respect whatever results the election commission announced because “it will have been democratically done.” According to a secret internal survey conducted in early 2015, USDP members expected to win fewer than 5 percent of the lower-house seats. Yet despite the party's diminishing confidence in a victory at the polls,<sup>7</sup> the military reiterated its pledge to accept the outcome regardless of who won.

### **Divisions Emerge**

Thein Sein had first launched peace talks with fifteen EAOs in August 2011 with the aim of producing a Nationwide Ceasefire Accord (NCA) and putting an end to sixty years of ethnic conflict. The president and commander-in-chief both devoted considerable time and resources to these negotiations. They planned to make the peace agreement a precondition for constitutional reform and the establishment of a federal state, making unnecessary the four-party dialogue proposed by Suu Kyi. Both Thein Sein and Min Aung Hlaing expected the NCA to boost their legitimacy vis-à-vis Aung San Suu Kyi with regard to Burma's greatest challenge.

Suu Kyi and her ally Shwe Mann found little incentive to jump on the peace bandwagon. Shwe Mann attempted to promote parliament rather than the government as the center of power by invoking Article 228 of the constitution, which requires the government to act on “resolutions passed . . . by [parliament] and report back [to parliament on] the actions which have been taken” and to inform parliament of “matters relating to the general situation of the Union.” The USDP-dominated parliament delegated a significant amount of parliamentary work to various standing committees and commissions, where MPs from different parties could interact openly on a more intimate basis. As Thomas Kean

observes, the strong emphasis on committees forced USDP members to mix with representatives of other parties, which was one of the factors behind “the rise of a parliament with an unusual lack of party divisions and verbal conflict.”<sup>8</sup>

It is also important to note that the Tatmadaw’s 25 percent bloc in parliament contributed positively to the functioning of the legislature. Until 2014, when the military grew increasingly assertive in exercising its extensive prerogatives, the military MPs helped to nurture the body as a source of governance, and even supported an August 2011 opposition motion that called on the president to grant amnesty to political prisoners.

Shwe Mann had discouraged MPs from using the word “opposition” in parliamentary debates, and the new NLD members who joined after the 2012 by-elections largely abided by this informal rule. The speaker’s preference for consensus-based rather than partisan decisions had a downside, however, as it discouraged the parties from developing ideological, policy, and programmatic identities and weakened party institutionalization. When the presidentially appointed Constitutional Tribunal refused to grant parliamentary commissions the legal status of union-level institutions, NLD parliamentarians voted with Shwe Mann and USDP lawmakers in September 2012 to impeach all the judges on the Tribunal, even though this move damaged horizontal accountability and set a bad precedent for the separation of powers. (In the end, all nine judges resigned.) Worse still, in November 2014, two days ahead of President Barack Obama’s visit to Burma, the prodemocracy NLD joined the USDP in condemning the U.S. Treasury Department’s blacklisting of senior USDP leader and MP Aung Thaung for “intentionally undermining the positive political and economic transition” in Burma due to his role in earlier attacks on the country’s democratic opposition.

Nevertheless, the parliament functioned well and was assertive under Shwe Mann’s leadership. A cynical view holds that the speaker, whose dream of gaining the presidency was spoiled in 2011, was simply attempting to build his own power via parliament and the USDP. In the course of establishing this power base and forming a key alliance with Suu Kyi, Shwe Mann could not avoid head-on conflicts with the military, which sided with the president.

Although the military has preferred Thein Sein to Shwe Mann, this does not mean that it has fully supported the president. The escalating conflicts between the president and the speaker, which became both personal and public, validated the Tatmadaw’s distrust of civilian politicians, including its own generals-turned-politicians. The situation recalled Burma’s postindependence parliamentary era, when a split in the ruling party similarly damaged the military’s perception of civilian parliamentary politics.

The Tatmadaw was wary of another such split. In mid-2015, the commander-in-chief wrote a three-page letter to Shwe Mann, detailing

the military's grievances against him. In July, parliament received a petition demanding Shwe Mann's impeachment, and the military began targeting his family's businesses, suspending and investigating radio, telecommunications, and transportation firms run by his sons and one daughter-in-law. (Although the number of signatures was sufficient under the constitution to obtain the speaker's removal, an enabling law had not yet been passed and Shwe Mann was able to keep his position.) When Shwe Mann and his supporters in the USDP rejected more than half the retired senior officers that the military put forward to run on the party's ticket in the November elections, the generals had had enough. Late at night on August 12, the Ministry of Home Affairs, under the direct control of the military, sent some 400 police officers to surround USDP headquarters and remove Shwe Mann from the party leadership.

This drama showed that the military does not have to go through normal institutional channels to change the USDP leadership—purges are still an option. At the same time, however, the events surrounding the internal party coup indicate that, even though political-party institutionalization is weak, state institutions such as the constitution and parliament are strong enough to keep the system going. Hence, the president and the Tatmadaw could not force the parliament to impeach Shwe Mann. Moreover, they did not criminalize or detain the speaker, as used to be the practice in purges. The minimum institutional structure of the state—that is, “the administrative, legislative and regulatory rules that guide the adjudication of conflict”<sup>9</sup>—was respected.

Weak party institutionalization has also been a problem for the NLD. Aung San Suu Kyi has not focused much on this issue, relying instead on her personal charisma and ability to mobilize public opinion to advance her presidential ambitions. Suu Kyi also has devoted little attention to strengthening ties between the NLD and the ethnic organizations and civil society groups that had been its traditional supporters. Key civil society groups now see the NLD as having abandoned its democratic principles, in part due to the party's reluctance to denounce the harsh government crackdowns on public protests such as the student demonstrations in March 2015 regarding an education-reform bill.

In March 2013, Suu Kyi was elected NLD chairwoman at the party's first-ever national congress, where she then singlehandedly selected all other members of the party's central executive committee, disregarding the procedures laid out in the NLD constitution. In 2015, Suu Kyi again set aside democratic principles by excluding Muslims from the NLD's candidate list in order to avoid criticism from Buddhist nationalists. These are just two examples of how the NLD's organizational, ideological, and policy development have been bent to Suu Kyi's will. In the past five years, her authoritarian leadership style, her failure to promote liberal values, and her alliance with Shwe Mann have hurt not only the democracy movement but also her relations with the Tatmadaw.



Since the NLD's success in the 2012 by-elections, a growing Buddhist-nationalist movement has served as a counterweight to Aung San Suu Kyi's constitutional-reform agenda. Viewing the NLD leader

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***The NLD declined to negotiate with like-minded ethnic-minority parties about candidates and voting districts, deciding instead to treat local political groups as outright electoral competitors.***

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as too weak a defender of Buddhism and Burman nationalism, these radicals threw their support behind Thein Sein, and the president (at one time reportedly favored to win a Nobel Peace Prize for his reform efforts) slipped into the embrace of ethnonationalists. Beginning in 2012, the radical contingent stepped up its anti-Muslim campaign, spreading hate and instigating communal violence, yet the government allowed these acts to go unpunished. In 2015, the Association for the Protection of Race and Religion (Ma-

BaTha), which has ties to radical Buddhist monks, succeeded in pressing the government to pass a series of laws on interfaith marriage, polygamy, family planning, and religious conversion. The Tatmadaw has taken advantage of the nationalism issue when convenient, while Suu Kyi has stayed silent about the underlying racism driving anti-Rohingya and anti-Muslim discrimination and violence. She treats these problems as rule-of-law deficiencies rather than taking a clear moral position against violence and politically confronting the fringe movements before they enter the mainstream.

A few months before the November polls, Suu Kyi came under heavy criticism from NLD members and the media for the party's candidate-selection process. Her rejection of credible new-generation recruits such as Ko Ko Gyi, a top leader of the 88 Generation student group who spent over seventeen years in prison for his political activities, prompted unprecedented complaints. It was not an isolated case. The NLD declined to negotiate with like-minded ethnic-minority parties about candidates and voting districts, deciding instead to treat local political groups as outright electoral competitors. In some cases, Suu Kyi's decisions have triggered street protests by NLD activists across the country. Hundreds of local NLD officials have either resigned or been expelled by the party as "punishment" for their refusal to toe the party line. NLD parliamentarians thus owe their political careers to one individual, Aung San Suu Kyi, who prefers to run the party through patron-client networks rather than to promote its institutionalization.

The Tatmadaw, meanwhile, has increasingly viewed Aung San Suu Kyi as "untrustworthy and unpredictable."<sup>10</sup> Her decision to side with Shwe Mann in the split among ruling elites, and her insistence on amending Article 59(f) have not won her any friends in the military. In

a meeting with the French ambassador in July 2015, Min Aung Hlaing implied that if the NLD and Suu Kyi were to win the elections and then push hard to reform the constitution to allow her to gain the presidency, the Tatmadaw would stage a coup as it had previously done in 1958 and 1962.

### The 2015 Election

Aung San Suu Kyi's leadership style has so far been vindicated by the NLD's electoral triumph, which exceeded all expectations, including those of the party itself. The conduct of the elections was generally free, despite the disenfranchisement of approximately half a million Rohingya Muslims and the nontransparent cancellation of voting in some ethnic areas on security grounds.<sup>11</sup> But thanks to the media, civil society groups, and international scrutiny, the level of fear and fraud was relatively low on election day, and the voting process went well.

The public's distrust and hatred of the previous military regime carried over to the USDP government, which continued some of the junta's practices, including land grabbing, corruption, and political crackdowns. Voters registered their disapproval by casting their ballots *against* the incumbents. Also working in the NLD's favor was the first-past-the-post electoral system, which prevented identity voting from gaining traction in most constituencies. Voters worried about the prospect of the NLD being unable to form the new government if they cast their votes for smaller parties, even those of their own ethnic group. In short, the NLD's strategy of countering the campaigns of the ethnic-minority political parties and emphasizing the overarching political cleavage between the prodemocracy NLD and the military-backed USDP proved highly effective.

During the campaign, incumbents revealed themselves to be lacking any policy-based strategies, relying primarily on personal attacks against Suu Kyi and capitalizing on anti-Muslim sentiment. The NLD also failed to offer any policy proposals, apart from a broadly worded and vague manifesto. The party's campaign slogan was "Let's vote NLD for real change," with Suu Kyi as the personification of "change."

During her round-the-clock campaign, Suu Kyi consistently delivered two important and interrelated messages: First, she urged people to "vote for the party, not the name of the candidate," promising that she would discipline all the NLD candidates if they should fail to follow party instructions. This helped to quiet those who objected to the NLD's candidate selection, as well as those who wanted to consider candidates based on their individual merits. In the end, voters were so disconnected from the individual candidates that an NLD candidate for the Sagaing regional parliament won by a huge margin despite having died two days before the elections. The instruction to choose party over candidate was

**TABLE—PERCENT OF VALID VOTES AND SEATS WON BY MAJOR PARTIES IN BURMA’S 1990, 2012, AND 2015 ELECTIONS**

Major Parties	House of Parliament	1990 <sup>1</sup>		2012 <sup>2</sup>		2015 <sup>3</sup>	
		72% Turnout		68% Turnout		69% Turnout	
		% Valid Votes	% Elected Seats	% Valid Votes	% Elected Seats	% Valid Votes	% Elected Seats
NLD	Upper	59.9	80.8	52.7	66.6	57.7	80.4
	Lower			65.3	100.0	58.7	78.9
NUP	Upper	25.1	2.1	2.9	0.0	1.9	0.0
	Lower			1.3	0.0	1.9	0.0
USDP	Upper	–	–	29.1	16.7	28.2	7.1
	Lower			27.4	0.0	28.3	9.3
SNLD	Upper	1.7	4.7	–	–	1.6	1.8
	Lower			–	–	1.6	3.7
ANP	Upper	–	–	–	–	2.2	7.1
	Lower			–	–	2.2	3.7

*Parties:* NLD—National League for Democracy; NUP—National Unity Party; USDP—Union Solidarity and Development Party; SNLD—Shan Nationalities League for Democracy; ANP—Arakan National Party; unlike the NLD, USDP, and NUP, the SNLD and ANP only run in their respective ethnic states and a few other constituencies in contiguous states and major cities.

<sup>1</sup>The 1990 elections were for the then-unicameral legislature (House of Representatives).

<sup>2</sup>The 2012 contest was a by-election to fill 45 vacant seats.

<sup>3</sup>**In the 2015 general elections, 7 of the 330 elected seats (of 440 total) in the House of Representatives (the lower house) were cancelled, leaving 323 contested seats;** 168 of 224 seats are elected in the House of Nationalities (the upper house).

so ingrained that Shwe Mann, the well-known house speaker with a strong record of working with Suu Kyi, lost to an unknown NLD candidate in Shwe Mann’s own hometown, even though Suu Kyi refused to campaign against him.

Second, Suu Kyi repeatedly told voters to “feel free to take whatever you are offered [by the USDP and other rival candidates], but vote for the NLD.” In this way, she managed to undermine clientelistic voting. This was no small achievement considering that the USDP-controlled government and parliament had sunk huge sums into local pork-barrel projects since 2013. Parliament had allocated roughly US\$102,000 in development funds to each of the country’s 330 townships, and lawmakers made sure to include community improvements in the 2013–14 budget year ahead of the elections. In the 2014–15 budget year, the government launched the Emerald Green Project, worth over \$160 million, which provided a number of villages with \$30,000 for agriculture and livestock improvements. The USDP also doled out plenty of gifts and favors to individuals as well. Most USDP candidates lost anyway.

The election has disrupted the status quo and granted legitimacy to the NLD, and no one in the USDP or military wants to go down in history as a spoiler—not even former dictator Than Shwe, who has pledged

to support the new government. Thein Sein and Min Aung Hlaing both have promised a smooth transition. Aung San Suu Kyi, by contrast, has sent mixed signals. On the one hand, she outlined a flexible postelection program. According to sources inside the NLD, Suu Kyi has laid out her five priorities in the following order: 1) a smooth transfer of power on March 30; 2) ethnic peace negotiations; 3) rule of law; 4) socioeconomic welfare; and 5) constitutional reform. If she keeps to the order of this agenda, it will help the NLD to build trust with the military. On the other hand, just days before the elections Suu Kyi proclaimed publicly that she would “be above the president” and “make all decisions,” that the president would “have no authority,” and that “the constitution says nothing about somebody being above the president.”<sup>12</sup>

In fact, Article 58 of the constitution states: “The President of the Republic of the Union of Myanmar takes precedence over all other persons throughout the Republic of the Union of Myanmar.” Furthermore, as noted above, Article 64 prevents the president from participating in party affairs. Thus Suu Kyi’s plan to rule above the president (as party leader or even as foreign minister) could be interpreted as in violation of the constitution. Min Aung Hlaing has warned repeatedly of the military’s duty, as mandated in Article 20(f), to safeguard the constitution. Other constitutional clauses, especially in Chapter 11 (“Provisions on State of Emergency”), allow the military under certain circumstances to stage a legal coup. Suu Kyi’s position could therefore provide the military with an opening to step in and take over. There is historical precedent: When the military refused to hand over power to the NLD after it won the 1990 elections, the generals justified their actions by citing a statement made by NLD leader U Kyi Maung in an interview with *Asia Week* magazine in which he mentioned the possibility of a Nuremberg-style tribunal in Burma.

The Union Parliament is scheduled to elect a new president before Thein Sein’s term ends at the end of March. MPs will select the president from among three nominees—one each put forward by the upper and by the lower house of parliament (both of which are controlled by the NLD), and one by the military MPs. On March 10, the lower house nominated Htin Kyaw, Suu Kyi’s high-school classmate and longtime loyalist. The upper house chose retired army officer Henry Van Thio, an unknown NLD MP from Chin State. These choices confirm speculation that the new leader would be a “puppet president” whom Suu Kyi can fully control. There also remains the possibility that Suu Kyi could continue her attempt to suspend Article 59(f) in the next couple of years, allowing her to assume the presidential mantle. This would most likely incite a military response, however. According to military sources whom I have interviewed, the Tatmadaw intends to cooperate with the incoming NLD administration but will guard against any constitutional-reform efforts. In a February 28 speech, Min Aung Hlaing said that “democracy is being established in line with the constitution,” and that

the military would abide by the law, but “the Tatmadaw is mainly responsible for protecting democracy rather than implementing it.” By this, he meant that the military would protect the constitution. The military announced its opposition to amending Article 59(f) in a *Myawaddy Daily* article cleverly timed to appear on February 1, the day the first session of the new parliament convened. Contrary to the old Burmese saying that “there is no room for two lions to dwell in the same cave,” the military-drafted constitution forces both the Tatmadaw and the NLD to cohabit in the polity. The military will not defer to the NLD; rather it will claim parallel power. Min Aung Hlaing has called on the NLD to act for “the betterment of the country with a reciprocal arrangement,” meaning a power-sharing deal rather than a full transfer of power to the winning party.

### The Way Forward

The military has made the peace process with the ethnic groups its main political project. After the election, Min Aung Hlaing spent two-thirds of a second closed-door meeting with Aung San Suu Kyi and NLD leaders lecturing them about the importance of the negotiations with the EAOs and briefing her on the Tatmadaw’s plans for disarmament, demobilization, and reintegration (DDR) and security-sector reform (SSR). Despite ongoing battles with Kachin and Shan States and with other ethnic-resistance armies, the government concluded the NCA last October. Eight of the fifteen EAOs negotiating with the government signed on, and the first national political dialogue called for by the NCA took place in January 2016.

Suu Kyi’s legitimacy could help the NLD administration to convince most nonsignatory EAOs to join the NCA. The Tatmadaw, however, views its conflicts with the EAOs as intricately linked with geopolitics. China is known to have strong patronage ties to the EAOs along its border with Burma, especially the 30,000-strong United Wa State Army (UWSA)—the most powerful rebel group in Burma. Senior military and government officials have alleged that the insurgency by the Kokang (an ethnic-Chinese group in northeast Burma) along the Sino-Burma border resumed in early 2015 because the Chinese supplied it with arms, logistical support, and even former Chinese soldiers. In a March 2015 operation against the Kokang, a Burmese warplane strayed onto China’s side of the border and dropped up to three bombs, killing four Chinese citizens. In response, the Chinese army launched in June 2015 an air and ground live-fire drill along the border with Burma, accompanied by a no-fly zone.

Since early 2015, the Tatmadaw has claimed to be defending Burma’s integrity and sovereignty rather than simply engaging in counterinsurgency campaigns against ethnic rebel groups. By casting local civil conflicts in broader geopolitical terms, the Tatmadaw tries to establish that

it is indispensable. Since the election, Min Aung Hlaing has focused his speeches mainly on the crucial role of the army in safeguarding the constitution and national security. He also has warned that the Tatmadaw must guard against foreign influence and efforts to gain geopolitical advantage at Burma's expense.

Beijing has been courting Suu Kyi and expects to refresh its relations with Burma once she is in charge. China is likely to press ethnic rebel groups such as UWSA, the Kokang, and other groups in northeastern Burma to deal with the NLD government in peace negotiations, and it is ready to increase economic and other aid if Suu Kyi allows Chinese investment projects in Burma (with some contract renegotiations) and cooperates with regard to Chinese interests. It is unclear, however, to what extent the military would tolerate a situation in which civilian politicians are controlling border affairs and foreign policy (historically the military's domain). A senior officer told me that the Tatmadaw would be pleased if Aung San Suu Kyi managed to bring nonsignatory EAOs, especially the UWSA, into the peace process, but the military will not allow her to take the lead on federalism and related security matters. Meanwhile, the military can still escalate conflicts in the west and northeast of the country, creating managed instability in order to justify its indispensable role in security and its participation in "the National political leadership role of the state," as is enshrined in Article 6(f) of the constitution.

As long as Suu Kyi avoids triggering a constitutional crisis by pushing to amend Article 59(f), hostile confrontations between the new civilian government and the military can probably be contained, but establishing democratic civilian control over the military institutions will remain a challenge for a long time. According to the constitution, the military will continue to maintain a quarter of the seats in parliament, to appoint the heads of three key security ministries, and to dominate the National Defense and Security Council, which functions as a supreme locus of political power. Moreover, the military could cripple the new government through the General Administrative Department, which is the backbone of public administration and does everything from tax collection to land management and rural development, as well as issuing registrations and certifications. This department is under the direct control of the military-appointed minister of home affairs.

Another big challenge is poverty, which still plagues 25.6 percent of the population. The poor are highly vulnerable to such shocks as adverse weather and communal violence. Despite average economic growth of 7 percent a year since 2011 and foreign direct investment of \$8 billion in the 2014–15 fiscal year, few citizens have begun to feel the benefits. Most of the investment has flowed into the oil, gas, and jade industries, as well as telecommunications. The new government should focus on developing job-generating sectors such as manufacturing, tourism, and agriculture. Yet these all are linked entirely to land policy, and as the

Word Bank notes, the rules and procedures for obtaining, keeping, and transferring land-use rights are complicated, nontransparent, and uncertain, in ways that benefit the oligarchs backed by the military.

Since the mid-1990s, the public interest has suffered at the hands of entrenched state-business alliances and their rent-seeking and predat-

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***There is no guarantee that progress in democratization will resolve other critical issues that the government must tackle—center-periphery relations, civil-military relations, and state-business relations.***

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ory resource-exploitation activities. Most notorious is the rampant land grabbing across the country by the military and its cronies. Two sprawling conglomerates, the Union of Myanmar Economic Holdings Ltd. and the Myanmar Economic Corporation, are multi-billion-dollar entities investing in almost every sector of the economy—from beverages, to steel, to jade and gems. Both companies, along with dozens of other Bur-

mese firms and individuals are under U.S. sanctions, due to their ties to the junta.

Despite the NLD's vows of zero-tolerance of corruption, a senior NLD leader has said that the party will compromise with the military on economic matters and guarantee that military enterprises can continue to operate. The Tatmadaw's business cronies are confident that they are the only local partners capable of working with the foreign investors. In December 2015, news broke that a crony on the U.S. blacklist (Tay Za, labeled in 2008 by the U.S. Treasury Department as "an arms dealer and financial henchman of Burma's repressive junta,"<sup>13</sup> who owns several businesses including the Asia Green Development Bank) was sponsoring a three-day training session for NLD parliamentarians. Suu Kyi and the NLD leadership do not seem to see any ethical quandary in this kind of behavior.

Some of the military regime's business allies will redeem themselves by engaging in responsible business practices, earning them removal from Western blacklists. This should be welcomed and encouraged. But many key oligarchs will continue their questionable activities, including involvement in the illicit drug trade, land confiscation, money laundering, and tax evasion. If the ethnic peace process achieves only a truce, without an agreement on a democratic federal union, then warlords—jointly run by Tatmadaw regional commanders, a motley crew of insurgents and militias, and business cronies on both sides (some with international capital)—will pillage local resources. The country will then experience a decentralization of cronyism, which will likely be worse than the current centralized cronyism that the people know so well.

So far, the military seems to be standing its ground on the constitution, and locking in some key policy paths, such as the NCA-mandated

peace process. There is no guarantee that progress in democratization will resolve other critical issues that the government must tackle—center-periphery relations, civil-military relations, and state-business relations. In addressing all four challenges (democratization, ethnic peace, civilian control of the military, and economic development), the incoming civilian leadership must uphold as a guiding vision the inclusive principle of reconciliation, but in the short term, it must work through existing institutions rather than pushing right away for constitutional reform.

To that end, the NLD must support the effective functioning of the national and regional parliaments, the NCA and the national political dialogue, and mediating bodies such as an anticorruption commission, political parties, civil society, and the media. The NCA-mandated national political dialogue is of paramount importance because it provides the essential platform for inclusive state- and peace-building. Moreover, the Tatmadaw links constitutional reform (that is, military withdrawal from politics) to the progress of the NCA and the “maturity of democracy,” a vague term that the military often defines in terms of political stability. The good news, however, is that the Tatmadaw has set a timeline of three to five years for finalizing peace negotiations<sup>14</sup> and five or ten years for possible military withdrawal from politics.<sup>15</sup>

In reality, however, it will be virtually impossible to implement such key NCA provisions, for instance Article 20(g), as SSR and DDR in so short a time. Even the possibility of a dramatic and all-inclusive truce will remain elusive. The country’s prodemocracy forces and minority ethnic groups should nonetheless back the peace process and adopt immediate, medium, and long-term goals, not expecting a happy ending from a timeline that can at best achieve only some medium-term goals (for example, achieving a ceasefire with all major nonsignatory EAOs, consensus on the type of federal union the country will have, and SSR and DDR guidelines). The international community should help civilian domestic forces to press the Tatmadaw to set a parallel timeframe for its departure from politics and the economy. A strong commitment on the part of the civilian government and the EAOs to implement the NCA would serve as an incentive as well as a constraint for the Tatmadaw to do the same. By contrast, if the new government and the ethnic minorities focus exclusively on reforming the constitution, it will certainly lead to a deadlock.

The NLD’s vigorous support of the NCA and national political dialogue along with efforts to strengthen the parliament and other existing institutions can help to unlock the present constitutional stalemate. If the NLD leadership promotes inclusiveness and seeks genuine reconciliation rather than ad hoc bargains of political convenience, the national political dialogue could result in real progress toward building a federal democratic union. Whether that happens will depend largely on the leadership and political craftsmanship of Burma’s key stakeholders—the NLD, the Tatmadaw, and the ethnic armed organizations.



## NOTES

The author wishes to thank Camilla Buzzi and John Buchanan for incisive comments on an earlier draft of this essay.

1. My analysis is influenced by Kevin J. O'Brien, "Chinese People's Congresses and Legislative Embeddedness: Understanding Early Organizational Development," *Comparative Political Studies* 27 (April 1994): 99.

2. Veto players are those "individual or collective decision-makers whose agreement is required for [a] change of the status quo"; see George Tsebelis, "Veto Players and Institutional Analysis," *Governance* 13 (October 2000): 441–74.

3. Giovanni Capoccia and R. Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59 (April 2007): 341–69.

4. Author's interview with Retired Lieutenant General Tin Aye, chairman of Union Election Commission, October 2013.

5. Author's interviews with Soe Thane, November 2013; with Aung Min, November 2013; and with Zaw Min, August 2014.

6. Zhang Zhe and Ye Weimin, "Myanmar MP: Some People Want to Set Up a Puppet Regime in Myanmar," *Southern Weekend* (China), 17 July 2012 (for an unofficial translation, see [www.burmanet.org/news/2012/07/17/southern-weekend-china-myanmar-mp-some-people-want-to-set-up-a-puppet-regime-in-myanmar---zhang-zhe-and-ye-weimin](http://www.burmanet.org/news/2012/07/17/southern-weekend-china-myanmar-mp-some-people-want-to-set-up-a-puppet-regime-in-myanmar---zhang-zhe-and-ye-weimin)); Author's interview with Aung Thein Lin, October 2013.

7. Dan Slater, "The Elements of Surprise: Assessing Burma's Double-Edged Détente," *South East Asia Research* 22 (June 2014): 171–82.

8. Thomas Kean, "Myanmar's Parliament: From Scorn to Significance," in Nick Cheesman, Nicholas Farrelly, and Trevor Wilson, eds., *Debating Democratization in Myanmar* (Singapore: Institute of Southeast Asian Studies, 2014), 43–74.

9. Craig L. Arceneaux, "Bounded Missions: Military Regimes and Democratization in the Southern Cone and Brazil," (University Park: Pennsylvania State University Press, 2001).

10. Author's interview with a senior military official who requested anonymity, July 2015.

11. International Crisis Group, "The Myanmar Elections: Results and Implications," Asia Briefing No. 147, Rangoon and Brussels, 9 December 2015.

12. Andrew Marshall and Timothy McLaughlin, "Myanmar's Suu Kyi Says Will Be Above President in New Government," Reuters, 5 November 2015, [www.reuters.com/article/us-myanmar-election-idUSKCN0SU0AR20151105](http://www.reuters.com/article/us-myanmar-election-idUSKCN0SU0AR20151105).

13. "Treasury Action Targets Financial Network of Burmese Tycoon and Regime Henchman Tay Za," U.S. Treasury Department press release, 5 February 2008, [www.treasury.gov/press-center/press-releases/Pages/hp807.aspx](http://www.treasury.gov/press-center/press-releases/Pages/hp807.aspx).

14. Author's interview with the government's senior peace negotiator, February 2015.

15. "Interview: Retiree Than Shwe Exerts 'No Influence Whatsoever' on Myanmar Politics," 20 August 2015, Radio Free Asia, [www.rfa.org/english/news/myanmar/influence-08202015151523.html](http://www.rfa.org/english/news/myanmar/influence-08202015151523.html).