

Democratisation in Myanmar: Glue or Gloss?

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This article examines democratisation in Myanmar (Burma) during the period 2012-17. It analyses how the National League for Democracy (NLD) achieved an electoral victory in 2015, and whether factors such as populism or ultra-nationalism in domestic politics helped the party. It also questions whether Myanmar has a new democratic culture. In particular, is the change to a civilian NLD government likely to have a lasting structural and institutional political impact? What does this mean for domestic governance and for society?

I argue that this political transition in Myanmar is the “new normal”, in which state actors and institutions are trying to shift from an authoritarian to a quasi-civilian model and where the economy is transforming from military-capitalism to crony-capitalism. However, at the same time, Myanmar is far from becoming a liberal democracy—the great majority of people continue to demand a fuller version of democracy and greater political autonomy, through federalism. This article points to the obstacles and opportunities confronting the political leadership of Myanmar domestically and on international fronts. It addresses the role of multiple stakeholders who are supporting (or seeking to thwart) democratic transition and the establishment of the rule of law in Myanmar,¹ and it argues that civilian control over the military is a prerequisite for democratisation in Myanmar.

INTRODUCTION

The literature on democratisation is extensive, and it is conceptualised through multiple theoretical and methodological lenses. These include the process of open-ended democratisation,² consolidated democratisation,³ the transitional democratisation

¹ Nick Cheesman, *Opposing the Rule of Law: How Myanmar's Courts Make Law and Order* (Cambridge: Cambridge University Press, 2015).

² L. Whitehead, *Democratisation: Theory and Experience* (Oxford: Oxford University Press, 2002).

³ Samuel Huntington, *The Third Wave: Democratisation in the Late Twentieth Century* (Norma: University of Oklahoma Press, 1991); Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore and London: Johns Hopkins University Press, 1996).

model,⁴ and illiberal democracies.⁵ Myanmar in 2018 would appear to be an illiberal democracy. Certainly democracy is developing—the state is transforming from a closed to a free market economy and from a handpicked single party to a multi-party political system with contested elections. Its legal and judicial systems should also become credible, transparent and accountable, although there is considerable lag in this area.⁶

However, the fact is that the citizens' pre-2016 aspirations for economic growth, peace management and the creation of a middle-class as well as civil liberties, justice and political freedom have not been met. Nehginpao Kipgen⁷ argues that the role of the military and the National League for Democracy as an institution in the democratisation of Myanmar need to be emphasised. Commentators have paid much less attention to the role of the NLD⁸ and the so-called “88 generation” (then-student activists supporting anti-regime protests in 1988), who are assumed to be the champions of democratisation in Myanmar.

This article argues that democratisation in Myanmar is the “new normal” and that it takes the form of a legitimacy battle between the elected political representatives and the unelected military appointees to government. The framework for the struggle is the 2008 Constitution, which supports neither liberal virtues nor democratic culture. The NLD, which holds majority government, is permitted to manage legislative power by the 2008 Constitution, while crucial executive (such as Ministry of Home, in particular, General Administration Department [GAD], Ministry of Defence and Ministry of Border Affairs) and judicial powers remain controlled by the military. Consequently, popular participation in policy-formulation and decision-making remains absent, and equally, the leadership of ethnic armed organisations (EAOs) and many other political actors are maintaining the status quo, or are pursuing peace management but dancing to the tune of elites across the political spectrum. For these reasons, Myanmar's democratisation—as measured by a host of international indicators—is clearly not moving toward constitutional democracy, parliamentary democracy, or a free market economy. This essay argues that civilian control over the military is a prerequisite for democratisation to advance in Myanmar.

⁴ Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

⁵ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York/London: W.W. Norton, 2003).

⁶ Janelle Saffin and Nathan Willis, “The legal Profession and the Substantive Rule of Law in Myanmar,” in *Constitutionalism and Legal Change in Myanmar* (Hart Publishing, 2017).

⁷ Kipgen Nehginpao, *Democratisation of Myanmar* (London: Routledge, 2015).

⁸ The NLD's official position is to support a centralised democracy and federalism; ideologically it has not clearly internalised a liberal democratic model and social liberal norms.

1. THE NATIONAL LEAGUE FOR DEMOCRACY VICTORY IN 2015

Against the background sketched above, how did the National League for Democracy achieve a convincing victory in the 2015 general elections in Myanmar?

The National League for Democracy victory in 2015 came against a backdrop of struggles for democracy in Myanmar that had continued for decades. Since its independence, Myanmar (Burma) has had four types of political regimes: Westminster-style democracy (1948-58, 1960-62); the first generation junta as well as the care-taker government and the Burmese Socialist Program Party (1959-60, 1962-88); the second generation junta (1988-2011); Thein Sein's quasi-civilian administration (2012-15); and finally, Aung San Suu Kyi's national reconciliation government (2015-).

Myanmar's democratisation is widely understood to have commenced on 30 March 2011, when (then) President U Thein Sein moved the military junta to a hybrid civil-military administration model. It comprised 36 ministers and deployed policy reforms such as releasing political prisoners and opening the economy by adjusting the foreign exchange rates and allowing the entry of (wholesale) foreign banks. However, Thein Sein's administration failed to win domestic legitimacy, due to the deficits in its accountability, policy credibility and regulatory transparency.

One of the factors propelling Thein Sein's initiative was that the equilibrium of power in Myanmar had changed decisively after Aung San Suu Kyi was released from her house arrest on 30 November 2010. Daw Suu, as she is referred to in Myanmar, re-entered politics through a by-election in 2012 and the multi-party general elections in 2015, in which her party, the NLD, gained both international and domestic legitimacy. Although democratisation as a movement had initially begun with the student-led uprisings in 1988, and had achieved some traction under Thein Sein's administration in 2012, it was Aung San Suu Kyi and the leadership of the NLD who became the decision-makers for the democratic forces, due to the popular trust they enjoyed—as evidenced by the popular vote in contested elections in 1990, 2012 and 2015.

That Aung San Suu Kyi increasingly became the most trusted leader in Myanmar society, despite having faded from public view for decades, is not surprising. Over the long years of her house arrest, her international legitimacy did not diminish. In the wake of decades of military rule she was the only seasoned civilian leader in Myanmar politics who had gained both domestic and international legitimacy among Myanmar's political elites. Both the leadership of the NLD and the military understood how to utilise her legitimacy and popularity in the political marketplace. For her part, between the campaign periods of the 2012 by-election and the 2015 general elections, Daw Suu changed herself from democracy fighter to pragmatic politician tackling issues of the state.

In the lead-up to the 2015 elections, the leadership of the NLD recruited to the party 111 former political prisoners: young activists who had gained a Western liberal education, and those who were IT-savvy professionals from civil society. In the process, the NLD divorced its previous “88-generation” leaders and those from other ethnic political parties, including Burmese Muslims. Within this new cohort of recruits, the NLD tactically reached out to many female democracy activists and became the party that had the largest female proportion of members among the 93 parties contesting the elections. Daw Suu de-blacklisted the former generals who had once arrested her, and rebranded “cronies” as “tycoons” in 2016.

There were five key strategies that the NLD deployed to contest the 2015 election:

- a. Using the charismatic image of Daw Suu as a major policy “product” of the NLD;
- b. Ousting native Muslim candidates from the party in order to please ultra-nationalists and populists;
- c. Positioning the party as the key to influencing national policy—not the individual candidate’s ability, character or capacity;
- d. Using a door-to-door campaign strategy borrowed from Australian and New Zealand election campaign models; and
- e. Campaigning on a platform of amending the 2008 Constitution, instituting federal democracy, pursuing national reconciliation, and embracing an anti-corruption policy.

Having campaigned on a nationalist platform, the NLD’s failure to address the citizenship rights of the Burmese Muslim and Rohingya minority is not surprising. However, having taken office, its failure to decisively address the humanitarian crisis in Rakhine State has caused it, and Daw Suu, enormous reputational and moral damage internationally.

During the transition of power in 2016, the NLD deployed three strategic decisions in order to combat article 59(f) of the 2008 Constitution, which barred Daw Suu from becoming President of the state. These were: (a) the legal team of the NLD strategically designed the *State Counsellor Act*, which allowed its leader to become the de facto leader of the state; (b) Daw Suu boldly claimed that she would stand above the President after the election; and (c) Daw Suu established a “national reconciliation government” with the assistance of a former general, Thura U Shwe Man of the Union Solidarity and Development Party (USDP).

When Myanmar was permitted to contest elections in 2015, the people of Myanmar terminated Thein Sein’s quasi-government by voting to change their political system on 8 November 2015. No analyst in Myanmar predicted that the NLD

would win so significantly. Yet, the 2015 election had vastly different consequences than the 1990 election: the NLD effectively took state legislative power from the USDP. Under the 2008 Constitution, Aung San Suu Kyi established a national reconciliation government with a cabinet of 21 ex-public servants and military generals. Aung San Suu Kyi was officially assigned the role of the State Counsellor of Myanmar on 6 April 2016, which, in accordance with the *State Counsellor Act*, permitted her to communicate directly with state regulatory agencies and made her accountable to the Parliament.

2. A NEW DEMOCRATIC CULTURE IN MYANMAR?

The dramatic shift in political power in 2015 has not immediately resulted in a new democratic political culture. Both Thein Sein's administration and Aung San Suu Kyi's government appealed to populism and ultra-nationalism in order to win the elections. Neither administration has sought a secular state or any separation between religion and state (in this case, the special status accorded to Buddhism under the Constitution); nor have they promoted democratic norms and religious tolerance. Both governments have supported the "crony" business model linked to wealthy supporters of the military, who have been given privileged business opportunities by the government. Due to the ideological struggle between a disciplined democracy and a centrally-controlled democracy, public and private sector managers face huge challenges, including the lack of meritocracy, accountability, democratic norms and liberal practices (including diversity and equity) in the conduct of public and private enterprises.

Although the NLD-led Parliament amended many laws and regulations in its inaugural year in office (2016-17), rent seeking, bribery, cronyism and poor governance by elites in both the private and public sectors remain the norm in Myanmar. This is compounded by the deficit of trust and social capital in every layer of society. Decades of surveillance by the military in Myanmar have meant that lack of trust in Myanmar is the most socially corrosive issue for every pillar of the society. Thus, a bright spot in the 2015 election was the fact that the NLD declared itself strongly committed to integrity, anti-corruption issues and the rule of law for 2015-18.

The problem for the NLD, however, is that it has either been unwilling or unable to undertake public administrative reform or introduce a robust labour market policy to date. The result is that the state's public agencies are personally manipulated by elites, rather than institutionally flourishing, serving the people. The mission and performance of the state's service delivery agencies, such as the courts, law enforcement agencies and state-owned enterprises, are distorted. High-ranking bureaucrats in these public agencies do not want to change from their autocratic behaviours to democratic business conduct. Since 90% of senior decision-makers in public

regulatory institutions and 80% of ambassadors are ex-military personnel, it is not surprising that policy institutions have not changed their mindset and management culture towards one that serves the people. The capacity of the NLD government to effect immediate change in these public regulatory institutions is minimal.

Certainly, many global policy think tanks and development aid agencies have been supporting Myanmar's political parties' institution-building and policy-formulation capacity since 2012. However, a foundational issue is that all of the political parties are currently formed and led by Yangon elites, with the support of, or active involvement of, ex-generals aided by business tycoons or former cronies. With the exception of the NLD, no political party in Myanmar has an anti-corruption policy or financial transparency policy, and the political parties have never released their financial statements, budgets or policies for either their party or the national budgets. The political parties are competing for political power on the basis of rent seeking, populism and ultra-nationalism rather than meritocracy, accountability, strategy, policy competition and ethical debates. As a result, the political parties' official policies are so similar to each other that there are no obvious policy choices, strategies or outcome differences visible to the voting public.

3. EXTERNAL EVALUATIONS OF MYANMAR'S DEMOCRATIC PROGRESS

The NLD's first two years in office have yielded relatively few structural changes that advance democracy. The reasons for this lie in part in the glacial progress on constitutional reform. The loss of constitutional advisor U Ko Ni, who was assassinated in 2017, is also a contributing factor. Currently, no one can freely contest the highest office in the land, including Aung San Suu Kyi, who is banned by Section 59(f). Minority rights have not advanced and the federal aspirations of ethnic groups who are majorities in some States have not been realised. Nor are there any meaningful policy debates between the political leaders in Myanmar. Democratisation in the form of free elections and partial freedom of the media has taken place; however, democratic values, civil liberty, minority rights, and religious tolerance are far from being embedded in political or public life. In particular, Myanmar's political elites have marginalised minorities such as Christians, Hindus and Muslims.

The political intervention of the military in the polity, the economy and the society is largely unchecked, due to the lack of democratic accountability in both national and sub-national governments. Ordinary people do not trust the military, in part because of the control they exercise over public institutions. The critical issues for political transformation in Myanmar are the need to both professionalise the armed forces and to institute civilian, rather than military, leadership of policy institutions.

These issues are reflected in international assessments of Myanmar’s transition. According to surveys by the *Asian Barometer*⁹ and The Asia Foundation,¹⁰ the majority of people in Myanmar expected a new democratic political culture, but they do not know how to develop better governance or how to make regulatory institutions function well in Myanmar’s political system.

Table 1: Selected international indicators and indexes of Myanmar.

Year	Human Development Index	Life expectancy at birth	Freedom Index	GDP per capita ¹	Fragile States Index	Press Freedom Index	Corruption Perceptions Index
2012	149th	65.5	6.5	1,175	21st	169th	172nd
2013		65.7	5.5	1,171	26th	151st	157th
2014	150th	65.9	5.5	1,260	24th	145th	156th
2015	145th	66.1	6.0	1,138	27th	144th	147th
2016	145th	66.1	5.5	1,195	26th	143rd	136th
2017	n.a.	n.a.	5.0	n.a.	35th	131st	n.a.

Note:

1. GDP per capita is based on US\$ and calculated by the World Bank.

As the table above shows, Myanmar’s freedom index¹¹ fluctuated between 6.5 in 2012 and 5.0 in 2017 and it has been included in the list of “partly free” and “not free” countries. With regard to freedom of information, Reporters without Borders (RSF) ranked Myanmar between 174th in 2011 and 137th in 2018 out of 180 countries in its Press Freedom Index.¹² With respect to integrity and corruption, Transparency International (TI)¹³ ranked Myanmar as the 3rd most corrupt country in 2011-12 and has continually ranked Myanmar as one of the most corrupt countries for many decades. With respect to human development and income, the life expectancy at birth and GDP per capita in Myanmar is the lowest among the

⁹ Asian Barometer Survey, “Myanmar’s Political Aspiration & Perceptions 2015,” 2016.

¹⁰ Asian Society, *Myanmar 2014: Civic Knowledge and Values in a Changing Society* (San Francisco: The Asia Foundation, 2014).

¹¹ Freedom House produces annual freedom indexes of countries on a seven-point scale (from 7.0, which means “Not Free”, to 1.0, which means “Free”), accessed 6 May 2018, <https://freedomhouse.org/report/freedom-world/2017/myanmar>.

¹² The Press Freedom Index is compiled by Reporters Sans Frontiers, accessed 6 May 2018, <https://rsf.org/en/myanmar>.

¹³ The Corruption Perceptions Index is designed by Transparency International, accessed 6 May 2018, <https://www.transparency.org/country/MMR>.

countries of the Association of Southeast Asian Nations (ASEAN), and it has been included in the list of fragile states¹⁴ for decades.

4. WHAT DOES THIS MEAN FOR DOMESTIC GOVERNANCE AND SOCIETY?

Currently, it could be fairly argued that Myanmar is a country with two governments, as the State Counsellor's administration is given so little power to govern the country. According to Section 291 and 292 of Myanmar's 2008 Constitution and section 3 of the Civil Servant Law (2010), both the military and the police force are excluded from the scope of this law (and thus the oversight of the State Counsellor). Furthermore, the State Counsellor herself has compounded this structural weakness by adopting an autocratic style of governance, without consulting an inclusive political team, advisors or technocrats. Aung San Suu Kyi personally took the chairpersonship of 16 national-level committees and four ministries, a portfolio of unusual size and complexity. There is no clear answer as to why no one dares to question her, or why no one has emerged as having more ability and capability than her.

Thus, there are five major reasons why democratic governance has not been able to develop in Myanmar to date. The first is that the institutional capacity and ability of the NLD's transitional management has been limited and inadequate. Myanmar has countless policy problems that are a legacy of its 56 years of military junta rule. Predictably, the NLD is inexperienced in governance and has failed to invest in the education of both the party and its next-generation leaders. Of the existing leadership, a few party bosses are trained professionals, while the majority lacks management experience. One result is that only a few party leaders' management style is consistent with a democratic culture and genuine policy openness, while most are concerned with modes of behaviour and control that look more like socialist centralisation. It is typical for the majority of party leaders to claim that he/she has been given "authority or an order from above", meaning Aung San Suu Kyi. Such claims are difficult to verify and it is true that Aung San Suu Kyi used a similar management style when she was an opposition leader. However, after becoming the leader of the state, how is it possible—or desirable—for Myanmar to be governed through orders that "comes from above", rather than through promoting democratic culture and practices in the state? Consequently, Myanmar has a leader, but there is no strategic institution or policy team to implement policy and strategy. Presently, the politicians who represent the NLD are unable to deliver any of the

¹⁴ The Fragile States Index is jointly produced by the Fund for Peace and *Foreign Policy*, and the ranking are based on twelve indicators of state vulnerability, comprising four social issues, two economic issues and six political issues.

policy objectives outlined in the 2015 election manifesto, due to weaknesses in both the party and its capability. Moreover, a huge risk in Myanmar's democratisation is the utter reliance on a 73-year-old individual who is apparently making most of the policy decisions of the state. Thus, Myanmar's democratisation needs robust institutions, technocrats, advisors and bureaucrats.

The second reason for Myanmar's current state of affairs is that the State Counsellor's government has become an instrument of a political system that allows the military to take the driver's seat and the NLD the passenger seat. Myanmar effectively has two governments, with two ministries for international or foreign affairs, two ministries for government administration, and two ministries for the President. At the same time, a political legitimacy struggle is taking place among the 93 registered political parties in urban areas and the ethnocentric politicians (including the 22 ethnic armed groups) in frontier areas. This legitimacy struggle undercuts Myanmar's peace-making process by creating a severe tension between natural resources distribution and the settlement of constitutional issues. Because of this legitimacy struggle and the disparity in income across regions in the country, the State Counsellor's government faces bureaucratic resistance. The majority of bureaucrats do not respect the NLD's policies and have not changed from their old dictatorial manner to adopt good governance or ethical business practices. An example of administrative corruption is the difference between the highest official monthly salary of state bureaucrats (such as director general or managing director), which is MMK500,000 (US\$371 per month), and their unofficial income, which is more than MMK100,000,000 (US\$74,239 per month). It has suited the ministers of Daw Aung San Suu Kyi's cabinet to put all the legal, political and administrative burdens on her. It has suited them because the ministers do not want to take democratic accountability and legal responsibility. Senior bureaucrats, such as decision-makers and policy-makers (such as director generals, the governor and board of the central bank, and managing directors) within public policy institutions, too, have neither coordinated nor complied with the NLD manifesto and election promises.

The third current challenge is the collapse in public trust at all levels of the state, exacerbated by an assassination, which we can assume to have been a deterrence strategy. U Ko Ni, a respected legal scholar and a constitutional advisor of Daw Aung San Suu Kyi and the NLD, was assassinated on 29 January 2017 at Yangon International Airport. No convincing investigation and prosecution has been carried out and both elected and non-elected politicians are affected by this; trust in Myanmar's law enforcement agencies is low. The ripple effect of this is that a majority of ethnic armed organisations are not engaging with the state-led peace-making process, due to a deficit of trust among the players in the system. Trust is the scarcest commodity among the political actors in Myanmar's democratisation.

A fourth constraining issue is the mismanagement of the crisis in Rakhine State, which has diminished the State Counsellor's international legitimacy, perceived trustworthiness and moral authority, due to the complete absence of a robust strategy and responsive policy actions. Myanmar's government took no action against human rights violators, while approximately 6,700 Rohingya have allegedly been killed, and more than half a million Rohingya were fleeing to neighbouring Bangladesh. Historically, none of Myanmar's political leaders had effectively engaged with, or resolved Arakan (Rakhine) issues. Although the global media was saturated with coverage of Rohingya issues, no domestic media reported on the crisis, apart from Yangon-based news outlets such as *Democratic Voices of Burma* (DVB) and *Frontier Myanmar*.

Most of the state's public policy agencies have bitterly rejected discussions of human rights and democracy, even within the Rakhine State legislature. However, the conflicts and problems of Rakhine State have to be resolved by political means, by the elected leaders of the country—whether the current leadership of Myanmar likes it or not. An obvious solution to the Rohingya issue is to grant long-term Rohingya residents citizenship.

While the State Counsellor at present shows no sign of embracing such a policy solution, it is also true that she remains a leader who could help to deliver this, notwithstanding her diminished political credibility and charismatic reputation in the global arena. Pragmatically, singling out the State Counsellor for censure is not a pathway to solution of Rakhine issues and arguably even inflames the chauvinism that is currently hijacking Myanmar's democratisation.

The fifth issue is that the people of Myanmar remain unsatisfied with the country's economic growth under the State Counsellor's government. Even though Freedom House ranked Myanmar as a "partly free" country in 2017, the economic transformation of Myanmar is ranked at 122 out of 129 by the Bertelsmann Stiftung's Transformation Index.¹⁵ The World Bank's Doing Business Index¹⁶ ranked Myanmar's ease of doing business at 182 out of 189 in 2014, 177 out of 189 in 2015, improved it to 167 out of 189 countries in 2016, and then dropped it to 171 out of 189 in 2018. Due to a lack of job creation and employment policies by the government and the local business community, there are estimated to be 2,478 people leaving monthly for work in neighbouring economies in 2016-18. As a result, there are both skilled and unskilled labour shortages in the domestic labour market, which

¹⁵ The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 120 countries, accessed 6 May 2018, https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Myanmar.pdf.

¹⁶ The Doing Business Index of the World Bank assesses how easy or difficult it is for a local business to establish and run a small to medium-sized business when complying with relevant regulations in 189 countries and territories, accessed 6 May 2018, <http://www.doingbusiness.org/data/exploreconomies/myanmar>.

encourages increases in wages and the cost of production and labour. Substitutes in the domestic labour force include young girls, children and the elderly, while working-age adults leave in large numbers for middle-income economies. Due to a lack of skill-enhancing training in Myanmar, the quality of products and services cannot compete with international outputs and services in the regional markets. The state's foreign trade and international economic policy is weak; the country has a trade deficit with its neighbours and continues to export raw materials and primary products.

One economic cost of the nationalist sentiment in Myanmar has been that half of the international tourists booked to visit in 2017 cancelled their visit. The grand total of visitors arrival to Myanmar in 2015 was 4,681,020; this dropped to 2,907,207 in 2016, according to visitors data from the Ministry of Tourism.¹⁷ Multilateral partners such as the European Union postponed visits by their trade delegations and many multinational corporations boycotted investments in Myanmar in 2017 due to Myanmar's ineffective management of the Rakhine crises. Bright spots remain banking, communication and infrastructure, such as electricity, roads and telephone and communication in 2016-18, due to foreign investments by multilateral investors and development partners.

CONCLUSION

Presently, Myanmar is transitioning from a military dictatorship to an illiberal democracy. Politicians in Myanmar will need to manage the impact of ultra-nationalism and populism if Myanmar is to become a consolidated democracy. Unexpectedly, no political leader has dared to call for the implementation of a liberal democracy or for market transformation. Hence, Myanmar today is illiberal—democratising without democrats and reforming without reformers. Equally, the civilian politicians of Myanmar need to assert oversight and management of the security sector and the armed forces. Without these structural changes, Myanmar's political system will continue in a fairly repressive pattern, supported by non-amendment of the constitution—at least until a new political game-changer appears.

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¹⁷ "Myanmar Tourism Statistics 2016," accessed 6 May 2018, <http://tourism.gov.mm/wp-content/uploads/2017/08/Myanmar-Tourism-Statistics-2016-1.pdf>.