



Democratising Myanmar's security sector

Enduring legacies and a long road ahead

November 2019

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Kim Jolliffe

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Acknowledgements

From the author

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Cover photo: Military representatives attend the regular session of the Union Parliament in Naypyidaw, Myanmar, 25 July 2018.

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Glossary of terms

The military, Defence Services, armed forces and the Tatmadaw: these are all common terms for Myanmar's military and are used relatively interchangeably in official publications. They all refer to the tri-service armed forces of the army, navy and air force, as well as the other departments and units organised directly under the commander-in-chief and administered by the Ministry of Defence, which include military intelligence, the judge advocate general, the inspector general and people's militia, among other bodies. Another distinction between these institutions and other parts of government is that all personnel have a rank that forms part of their title. The definitions are confused, however, by the pre-eminent role that the military plays in politics and administration in Myanmar. There are ranking officers in government who are not explicitly serving under any specific armed service. This report uses the term 'military' as the most general term, particularly when referring to the institution's general role in society, politics or the hierarchy of government. 'Defence Services', which article 3f of the Defence Services Act defines simply as 'the army, the navy and the air force', is used when referring to parts of the constitution or other laws that use the term. Myanmar Armed Forces, the armed forces or the Myanmar vernacular, Tatmadaw (meaning royal or imperial force or army) are used when talking specifically about the tri-service armed forces, people's militia, border guard forces and their operations.

Parliament: this report refers to Myanmar's union-level legislatures collectively as the Union Parliament, or to the lower and upper house, rather than the equivalent Burmese terms *Pyidaungsu Hluttaw*, *Pyithu Hluttaw* or *Amyotha Hluttaw*. Similarly, it refers to the legislatures in general as parliament, rather than *hluttaw*.

Security and justice sectors: the security sector refers to all the state institutions mandated to provide security for the government and the public. The security sector overlaps considerably with the justice sector and there is no strict definition of

where they are separated. This report looks in particular at the armed forces, the police, the prisons, the courts and the intelligence services. The courts are accurately understood more as part of the justice sector than as part of the security sector, but they are central to the way that the latter functions. Myanmar's security sector also arguably includes the General Administration Department and the Ministry of Border Affairs, which carry out security and justice functions. Immigration could also be seen as part of the security sector but is not covered in this report.

Security sector governance: this term refers to the way that power and authority are exercised over the security sector. It relates to the way that all of the aforementioned institutions are run, overseen and scrutinised. It can include all of the formal and informal processes, actors and values that shape the provision of security.

Civilians: civilians are people who do not hold military positions. This can technically include former military officers, of which there are many who hold civilian positions in Myanmar's government. This report therefore sometimes refers to 'lifelong civilians' to emphasise when individuals are civilians with no military background in their career – an important distinction when discussing civil-military relations in Myanmar.

Elected civilians: this report regularly refers to 'elected civilians' or 'elected officials'. This means all civilian officials (see above) whose appointments ultimately trace back to the democratic electoral system. In Myanmar, as in many countries, parliament is elected by voting citizens. Parliament then elects the president, who selects personnel for most executive positions. All officials selected through this process are understood as 'elected' and are contrasted with those nominated by the commander-in-chief, who – although appointed by presidential decree – are not ultimately accountable to the electorate.

Foreword

For three decades, Saferworld has been working with partners to prevent violent conflict and help build safer lives. In many of the countries where we work, the way security is delivered and experienced intersects with a complex web of factors that determine how a country or society can move towards lasting peace. We work with local groups – governments, security services and civil society – to support them to build more peaceful and just societies. Since Saferworld began working on peace and security issues in Myanmar in 2012, it has become clear that without genuine countrywide transformation in the security sector, genuine peace will remain out of reach. Over the past few years we have supported people to make their communities safer – and we draw on these experiences to inform discussions on how the country’s security architecture can become more inclusive, responsive and accountable to all.

This is the third in a series of reports on security sector reform and governance in Myanmar. The first focused on contextualising the complex history and current discourse around security sector reform and analysed the experiences and competing visions of the Myanmar Armed Forces (the Tatmadaw), the National League for Democracy and the multitude of ethnic armed organisations in the country. The second drew relevant lessons from cases around the world, including those of federal models of security sector governance.

This report looks in depth at relations and the division of legal powers between the Tatmadaw and the National League for Democracy, which currently share power in a coalition government. The report also explores the widening space in Myanmar for civilian engagement on security sector governance, including an examination of the institutional cultures and practices of the security and justice bodies. These include changes in the national political system, and in the wider relations between the military and non-state civilian actors such as civil society, policy institutes and universities. Changes have been seen in these areas since 2010, but much more could be done through increased cooperation between government, civil society and international partners.

My hope is that this report will stimulate a nationally led conversation about the importance of civilian oversight to ensure a security sector that is inclusive, responsive and accountable, and that focuses on keeping people safe. It is written to help all actors – especially local organisations and individuals – to understand and address these challenges and to identify more effective and responsive ways to provide support.

Although these are profoundly complex and sensitive issues, we hope this report will make a constructive and useful contribution in support of all those actively seeking positive changes in the security and justice sectors.

John Bainbridge

Myanmar Country Manager, Saferworld

Military servicewomen marching
on the 70th Armed Forces Day,
Naypyidaw, 27 March 2015.
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Executive summary

Since 2010, some moderate steps have been taken towards democratic control of Myanmar's security and justice sectors. At the same time, space has opened for public oversight and political participation in these affairs, allowing civil society, the media, educational institutions and policy institutes to engage. Continuation of both of these trends will be crucial to building a peaceful, democratic and prosperous Myanmar, in which people can live in safety and without fear.

During nearly 50 years of military rule, all of Myanmar's government and economic institutions were under the tight grip of the armed forces. A coercive security apparatus, originally established by British colonialists to protect commercial interests from local resistance, was subsequently placed in the hands of a male-dominated military elite that perceived itself to be surrounded by enemies. These military leaders were predominantly Bamar Buddhists and were inspired by deeply nationalist opposition to colonialism and to all foreign interference.

Heavy public surveillance and restrictions on media, education, civil society and independent policy institutions made public engagement and direct criticism of the state impossible. Meanwhile, the armed forces were untethered from civilian oversight and waged continuous warfare against a vast array of ethnic armed organisations, often targeting entire populations as if they were potential combatants.

The very concept of security (*loun-kyoun-yeh*) became synonymous with 'state security' and the shadowy affairs of an invasive and coercive bureaucracy designed to maintain control and order.

In the late 1980s, Aung San Suu Kyi and her National League for Democracy (NLD) party gained widespread public support for a political agenda to remove the military from politics and place it under the command of elected civilians. As the daughter of the military's founder, she has always emphasised her respect for the military and insisted she has no interest in "splitting" or undermining it, let alone dismantling it as part of a full-fledged revolution.¹ She has consistently said, however, that the military needs to come under civilian control in order to gain the "honour and respect of the people".²

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the constitution can only be meaningfully amended with the approval of more than 75 per cent of the legislatures, giving the military an effective veto.

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The military remained adamant that giving up power too quickly would lead to chaos and instability. Instead, the generals initiated their own roadmap towards ‘disciplined democracy’. In 2008, they established a constitution that, despite creating a ‘multi-party democratic system’,³ enables ‘the Defence Services to be able to participate in the national political leadership role of the state’.⁴ To facilitate this leadership role, the military appoints 25 per cent of the members of parliament (MPs) across all houses,⁵ and has effective powers to select and fire the ministers of defence, home affairs and border affairs and their deputies, who must all be serving military personnel.⁶ Military MPs also elect one of two vice presidents, who can be civilian or military. Perhaps most importantly, the constitution can only be meaningfully amended with the approval of more than 75 per cent of the legislatures, giving the military an effective veto.⁷

These provisions have allowed the military to maintain its position as ‘guardian’ over a steady process of democratisation, and to protect its core ideological and private interests.⁸

Under this constitution, the first government was led by a military-backed party and leading officials were all former generals. The NLD then entered parliament in a 2012 by-election, before winning a landslide victory in 2015. Aung San Suu Kyi is barred from becoming president (due to a clause disqualifying those with foreign spouses), but she has effectively assumed leadership over the entire elected wing of government, in the position of State Counsellor.

The current cabinet has more civilians than any government in over 50 years, but the military remains extremely powerful and is deeply resistant to any change that might threaten its ideological or private interests. At the same time, the entire governance apparatus is stacked with former military officers, whose institutional conditioning has led them to distrust civilian leaders, foreigners and much of society and to obsess over hierarchical order. In some cases, incoming civilians have simply adopted existing approaches and perspectives, or have willingly allowed the military to lead on security affairs, believing that the soldiers are the only ones with the necessary expertise.

However, civilians in government have been steadily increasing their powers over some parts of the security sector, such as through the transfer of the General Administration Department (GAD) from military to civilian control. Additionally, a diverse parliament housing former political prisoners alongside military officials and a growing contingent of women and representatives from non-Bamar

ethnic nationalities is claiming a role in overseeing and scrutinising the activities of the security and justice institutions. In July 2019, the NLD proposed a range of constitutional amendments that would reduce the military’s political powers and potentially allow civilians in government to take greater control of policing and other functions.

This report focuses on the following three main dimensions of security sector democratisation. Changes have been seen in these areas since 2011, but much more could be done through increased cooperation between government, civil society and international partners:

1. Developing the mandate of elected civilians.
2. Transforming the security culture.
3. Protecting and building civic space.

Developing the mandate of elected civilians

Without elected representatives, there is no democracy. The first dimension of democratising the security sector is, therefore, the mandate of elected civilians. This includes the official powers held by elected civilians in the constitution and law, as well as the means and resolve that those officials have to exercise their powers.

The division of powers

In the current system, the military controls many security and justice functions. It leads the armed forces almost autonomously, as article 20b of the 2008 Constitution states: ‘The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.’ The Ministry of Defence is exempt from most budgetary processes applied to all other government departments, allowing it to keep its own bank accounts without direct approval of the finance ministry. The military retains complete autonomy in the handling of justice cases concerning any actions that are considered part of the ‘affairs of the armed forces’, under articles 20b, 293 and 319 of the 2008 Constitution.

Even so, the president (currently Win Myint) is head of state and military officials have numerous times indicated that he is ‘ultimately superior’ to them.⁹ The 2008 Constitution allows the president, with ‘approval’ of the Union Parliament, to ‘declare war or make peace’.¹⁰ The constitution is ambiguous

regarding internal armed conflicts however, which the Myanmar Armed Forces (or Tatmadaw) has regularly insisted are not ‘civil wars’.¹¹ Various comments from the commander-in-chief seem to suggest that the Tatmadaw will seek permission for its actions when it deems it necessary, but is not bound to a clearly legislated protocol.¹²

On 10 December 2011, President Thein Sein issued a written edict ordering the armed forces to halt military offensives against the Kachin Independence Organisation, and the military temporarily withdrew a few days later. However, the NLD-led government has not attempted to make such an order, and has at numerous times instructed the military to use force.

The president also has the power to convene a National Defence and Security Council (NDSC), which could potentially be used by the president to exercise authority over defence and security matters. According to the constitution, the council includes five democratically elected civilians, five serving military officers and the military-appointed vice president. However, the NLD-led government is yet to use the NDSC, seemingly because of concerns that the democratically elected civilians would be outnumbered and that, although the president would be chair, the commander-in-chief would have a more senior position than Aung San Suu Kyi. Instead, the government has at times convened meetings made up of similar members, but with additional civilian officials. These meetings have been typically followed by statements in support of military action.

The military also indirectly controls the police and the prisons via the Ministry of Home Affairs, whose minister is appointed by the commander-in-chief. It is generally understood that the police are fixed under military control due to articles 20c and 338, which place all armed forces under the commander-in-chief and the Defence Services, respectively. However, the exact definition of ‘all armed forces’ is not provided anywhere in law.

Judicial independence is enshrined in article 19 of the constitution. However, the military continues to greatly influence civilian court proceedings, because the judiciary employs high numbers of former military officers and civilian judges who served under the military government, and because a culture of independent adjudication is so lacking that most judges still look for signals from military or political counterparts before making decisions.

There are three primary intelligence agencies, all of which ultimately report to the military. These are the Special Branch, which is under the Myanmar Police Force; the Bureau of Special Investigation, which is under the Ministry of Home Affairs; and the Office of the Chief of Military Security Affairs, which is part of

the military and is under the direct authority of the commander-in-chief.¹³

The NLD’s constitutional agenda

The NLD’s central agenda for democratising the security sector has been constitutional change. Aung San Suu Kyi has insisted, however, that this will be done slowly, carefully and within the realms of existing law. When recommending amendments to the constitution in July 2019, the NLD did not propose any changes to the Defence Services’ ‘right to independently administer and adjudicate all affairs of the armed forces’. However, the party proposed removing article 339, which states that ‘The Defence Services shall lead in safeguarding the Union against all internal and external dangers’, suggesting civilians could take more of a leadership role.¹⁴

The NLD has long called for making the police independent from the military. In 2019, the party proposed requiring any defence personnel appointed to the cabinet (such as the ministers of defence, home affairs and border affairs) to retire from the military, which would place them under more direct civilian control.¹⁵ The party also proposed removing articles 20c and 338, which place ‘all armed forces’ under the commander-in-chief and the Defence Services, perhaps seeing these as a blockage on bringing the police under civilian leadership.¹⁶ For an overview of the main constitutional provisions governing the security sector and suggested amendments, see annex 1.

There does not appear to be any effort of the civilian government to gain control over the country’s intelligence apparatus. The NLD has also given little attention to the prison system. Numerous civil society organisations (CSOs), including the Assistance Association for Political Prisoners (AAPP) and the Independent Lawyers Network of Myanmar, have recommended forming a Ministry of Justice, which could potentially take over corrections (prisons and rehabilitation) as well as parts of the budget and administration of the judiciary.¹⁷

Civilian government finding its role

In lieu of constitutional change, civilians in government have developed a number of means to influence the security sector and establish new norms, while avoiding too much interference in the activities of the armed forces.

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The most direct example is perhaps the transfer of the GAD from the Ministry of Home Affairs to civilian control. The GAD has a clear mandate on ‘rule of law’ and ‘community peace and tranquillity’, especially at the village tract and ward level. It also holds significant influence over the courts and has emergency powers under section 144 of the penal code. The military allowed the transfer of the GAD to take place, demonstrating some confidence to begin handing over powers. This relieves the Tatmadaw of a huge responsibility and does not immediately threaten its core interests. The civilian government has also been attempting to set up a coastguard under its leadership, but this remains under dispute.

In January 2017, the government created the position of National Security Adviser (NSA) ‘to advise the President and the Union Government on internal and external threats by assessing situations from a strategic point of view’, with a particular focus on external relations.¹⁸ The NSA does not currently hold their own office and does not have authority over the military, but could evolve into a more robust civilian-led institution.

The Myanmar Sustainable Development Plan lays out measures to ‘promote greater access to justice’ and to ‘support the security sector to effectively perform its role serving our people and ensuring peace, safety and legal rights of individuals and the national interest are protected’. Despite including tasks for 19 ministries, there is no mention of the Ministry of Defence, demonstrating the constraints faced by the civilian government.

In 2011, President Thein Sein established the Myanmar National Human Rights Commission (MNHRC), which can investigate alleged cases of human rights abuse, review laws, inspect prisons and other institutions, and convene government departments for questioning.

The MNHRC remains relatively weak compared to the security agencies, and the inclusion of ministers on it impairs its independence from the government. Nonetheless, it has assisted in some justice cases involving the military, and has facilitated penal and prison reform in collaboration with civil society, among other developing roles.



Aung San Suu Kyi shaking hands with military chief Senior General Min Aung Hlaing after a ceremony to hand over the country's presidency to new President Htin Kyaw at the presidential palace in Naypyidaw, Myanmar, 30 March 2016.
© Nyein Chan Naing/Pool/Shutterstock

Parliament is developing its oversight role by debating the policies and practices of government and questioning relevant ministries on their affairs. Security ministries and departments have to answer questions from public representatives, and the proceedings can then be published by the media, fostering a much better informed public discourse. Discussion of security issues is regularly limited however, both by party leaders and whips, as well as by the Speaker of the Union Parliament, a former militia leader with close connections to numerous former generals. The oversight and scrutiny norms are slowly being established.

Although parliament is impaired in its ability to properly vet military budgets, it does form a team to do this each year and is able to question the ministers at length, providing some scrutiny. The legislatures are yet to target the main laws directly affecting the rights and responsibilities of the security forces, but have been active in some areas of security legislative reform, particularly relating to crime and to the safety of civilians. The constitution allows for the formation of Defence and Security Committees including military MPs, but these have yet to be activated.

Transforming institutional practices and cultures

Transferring powers from the military to civilians does not automatically create more just and peaceful outcomes. Just as elections alone do not establish a consolidated democracy, the placing of security powers in the hands of elected officials does not automatically transform security practices and norms. In the context of democratisation, it is crucial that elected leaders do not simply inherit the top-down, hard security-centric practices and attitudes of their authoritarian predecessors.

The extent that the security and justice sectors serve the people depends on the laws, directives and policies laid down by the government as well as the internal practices and cultures of the core institutions. Special measures are needed to

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ensure that the diverse needs of all people and communities in the country are served, which requires both gender and cultural sensitivity. It is also better to prevent security, justice and public safety issues than to respond retrospectively with harsh crackdowns or military campaigns. Aung San Suu Kyi has written extensively about the need for fundamental changes to the practice of politics and governance in Myanmar, often emphasising 'democratic values and human rights', and the need to liberate the country from a cycle of fear.¹⁹

Old habits die hard

At around 300,000 troops, the Tatmadaw remains a bloated and infantry-heavy force, whose counter-insurgency approach is dependent on widespread targeting of entire populations with relocation orders and violence, to try and deny insurgents sanctuary and support. Its dominant approaches to warfare are stuck in the past.

Aside from the appalling treatment of civilians and allegations of human rights abuses, existing military approaches have simply proven ineffective and have arguably escalated and prolonged conflicts. A strategy of maintaining ceasefires with the majority of armed organisations and encouraging them to do business and abandon political objectives has – at best – allowed the state to control most natural resources and trade arteries.

However, no significantly large ethnic armed organisation has been defeated in recent decades and the small groups that have been defeated have rarely been properly demobilised, allowing their fighters to join other groups or to simply rebrand.

The military is continuously investing in modernisation efforts in terms of its capabilities and armoury. Particularly since the NLD came to power, this agenda has been framed by Commander-in-Chief Min Aung Hlaing in terms of upgrading the force into a "standard army".²⁰ However, there has not been any explicit agenda to initiate comprehensive reforms as part of the country's democratisation process.

While it is not uncommon for militaries to have their own courts for adjudicating on affairs related to the conduct of their personnel, it is crucial that the cornerstones of the rule of law and access to justice still apply. The Myanmar military's justice system falls far short of these standards. Leaders regularly insist that violent campaigns have been carried out in line with its laws and rules of engagement, suggesting these guidelines condone systematic abuse. Court decisions and sentences are only

occasionally publicised, and proceedings are not held transparently or even made public at a later date. Perhaps most concerning, victims of criminal acts by the security forces do not receive any form of redress, reparation or remedy.

The Tatmadaw is a vast institution with a long history, steeped in internally developed doctrine, and deeply resistant to external interference. The civilian wing of government will not be able to instigate 'root-and-branch' reform of the military any time soon. Any change will be led from within the military, albeit potentially with concerted pressure, encouragement and assistance from others.

In any case, it is unclear whether the civilian government sees significant problems with current military approaches, and key government figures have repeatedly claimed that they do not believe human rights allegations by the United Nations or others are credible.²¹ Despite condemning "all human rights violations", Aung San Suu Kyi has been insistent that she won't "apportion blame" or "abnegate responsibility" to any particular conflict actor.²² Although her government claims to have instructed the Tatmadaw "to avoid human rights violations" and "to carry out operations with great care", her official Facebook page has regularly defended the military and has rejected allegations of sexual abuse by security forces in a post emblazoned with the words 'Fake Rape'.²³

Sustained pressure will be needed over the long term from elected officials and non-governmental actors, such as civil society and the media, for more transparency and scrutiny of the armed forces' conduct to ensure that harm to civilians is minimised and that troops are acting in accordance with the values and desires of the wider population.

Comprehensive and system-wide justice reform

Since the colonial era, Myanmar's criminal justice system has been used primarily as a tool to maintain order and protect the interests of the state. Between 1962 and 2016, an estimated 7,000 to 10,000 people were incarcerated for political activities.²⁴ Today, the police and prison systems remain under the indirect control of the military and employ high numbers of former military officers, particularly in leadership positions.

Transforming this system into one focused on delivering justice in an impartial manner and on protecting the public will require a comprehensive approach that looks at the entire system collectively. So far, reforms have been piecemeal.

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For police to serve the people, it is important that they operate according to civilian-, service- and protection-oriented values, rather than ‘military values inherent to a war context’.²⁵ Militaries are built to use force against enemies of the public. Police are built to protect the public. If police take on military characteristics, then they end up treating the public like the enemy. In Myanmar, an unknown number of police personnel have been rotated in from the military, a practice that was continued as recently as 2014 as part of efforts to reduce the size of the military and to establish a stronger police force in line with the transition to a hybrid democracy. According to research conducted by the Tagaung Institute for Political Studies, the impact has been three-fold: committed career police officers have lost motivation due to a lack of promotional opportunities; the force’s professional expertise has been reduced; and public relations have been damaged.²⁶

The NLD committed in its 2015 manifesto ‘to develop the police force in line with international standards so that it is able to fulfil its duties’.²⁷ Additionally, the Myanmar Sustainable Development Plan states that steps will ‘be taken to strengthen the abilities of law enforcement institutions to deliver personal security, particularly for vulnerable groups’. In practice, the police have continued to act in close coordination with the political interests of the military and government, rather than independently and in service of the law.

The Myanmar Correctional Department falls under the military-led Ministry of Home Affairs and operates 42 prisons, five detention centres and 48 labour camps. The latter serve companies owned by the department as well as private companies.²⁸ In June 2019, there were 85,795 prisoners across the country despite an official prison capacity of just 71,000.²⁹ Many personnel in the prison department, including those in the higher ranks, have been transferred from the military.³⁰

Reportedly, many of the already meagre standards set out in the colonial-era prison manual, such as for diet, are not even met in practice. A survey of 1,621 political prisoners who had served time between 1962 and 2016 found that 72 per cent had been physically tortured while in custody, and numerous sources have reported cases of torture since 2015.³¹ Solitary confinement in so-called ‘dog cells’ where prisoners have to walk on all fours is another common practice.³² Conditions in labour camps are said to be deplorable and over a thousand inmates in such camps died between 2004 and 2014.³³ Prisoners have also been used as forced porters in conflict areas, sometimes as part of highly orchestrated nationwide operations.³⁴

Diversity

The vast majority of military personnel are men, and there are no women in senior public-facing positions. The armed forces are widely considered to be dominated by the Bamar ethnic group, a trend that began in the 1950s and peaked in the 1990s and 2000s. Also of great significance is the dominance of Buddhists, as commanders and their wives are generally required to take part in religious ceremonies and therefore have to be Buddhist.³⁵ Some efforts are seemingly underway to address the first two of these imbalances. Since 2013, women have been recruited as army officers in non-combat roles, having previously been employed solely as nurses. The military leadership claims that it represents all ethnic groups.³⁶ Nonetheless, perhaps quietly recognising a lack of diversity, Min Aung Hlaing has reportedly begun targeting high achievers at universities in ethnic states for enrolment in the Defence Services Academy.³⁷

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Legislating change

While elected civilians in government and parliament have been relatively conservative in legislating reform for the security and justice sectors, there are some developments worth noting. The Peaceful Assembly and Peaceful Procession Law, the 1975 State Protection Law, the 1950 Emergency Provisions Act, and elements of the Ward or Village Tract Administration Law that allowed authorities to make ‘midnight raids’ on persons with unregistered guests, have all been abolished or amended despite significant opposition from the Ministry of Home Affairs.³⁸ Amendments to the Penal Code, the Criminal Procedure Code and the Prison Law are being debated in parliament, having been passed back and forth numerous times between the Ministry of Home Affairs and pro-reform MPs, with assistance from the AAPP and the Myanmar National Human Rights Council.

A 2019 Child Rights Law was a potential breakthrough in legislating the activities of security forces, criminalising the ‘six grave violations’ of children’s rights in conflict³⁹ – as provided in international law⁴⁰ – and banning the recruitment of under 18-year-olds.⁴¹

The Protection and Prevention of Violence Against Women bill has been under debate since 2011, involving concerted activism and pressure from women’s CSOs and a wide range of active parliamentarians and civil servants. However, the law has yet to be approved by the cabinet,

contrasting greatly with the swift passing of four deeply sexist laws in 2015, supposedly with the objective of protecting race and religion.⁴²

The General Administration Department

The civilian takeover of the GAD represents an important first example of elected leaders taking over a military body and explicitly saying that it needs to be reformed to “bring about visible change . . . so that the public increases their trust”.⁴³ Minister of the Union Government Min Thu, who now oversees the department, has initiated an explicit reform agenda,⁴⁴ and referred to the department as a ‘role model for change’.⁴⁵ During consultations in every state and region, he outlined a focus on increasing public participation, ending corruption and changing the mindset of officials. By May 2019, the GAD had started a pilot project and was developing a new manual, overhauling the Institute of Development Administration’s training curriculum, and putting senior staff through professional assessments focused on their ‘willingness for reform’.⁴⁶

Public oversight and engagement in the security sector

For any area of governance, if the objective is to serve the people, then the government institutions involved need to be responsive and accountable to

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Today, people can write, publish, collectively organise and speak in public far more freely. However, the military (and some civilian leaders) have increasingly turned to the civilian courts to shut down free speech and to maintain a sense of fear and risk around discussing certain subjects.

the people. The security sector is no different. If its objective is to keep people safe and to protect their rights and property, it needs to allow for their involvement and oversight.⁴⁷ As argued by Aung San Suu Kyi, ‘Democracy acknowledges the right to differ as well as the duty to settle differences peacefully.’⁴⁸

Furthermore, people have a right to be involved in the security sector. They pay taxes that are used for security purposes; they also live in the areas where security forces operate and are affected by their actions.

Since 2011, the civic space in Myanmar has opened up dramatically. Previously, heavy media censorship and public

surveillance blocked any meaningful public discourse on security affairs beyond what was circulated by official military sources. Today, people can write, publish, collectively organise and speak in public far more freely. Public events and media broadcasts on political subjects including conflict and human rights issues take place regularly. However, the military (and some civilian leaders) have increasingly turned to the civilian courts to shut down free speech and to maintain a sense of fear and risk around discussing certain subjects. In particular, there have been at least 200 cases of so-called ‘defamation’ filed since 2013, many of which are by the military or its supporters responding to criticism of the authorities by civilians.⁴⁹

Educational institutions, civil society, policy institutes and independent media are all crucial to ensuring public oversight and engagement in the security sector. These four sectors are the central focus of a dedicated policy briefing produced by Saferworld, ‘Placing security in the hands of the people: public oversight and civic engagement in Myanmar’s security and justice sectors’.

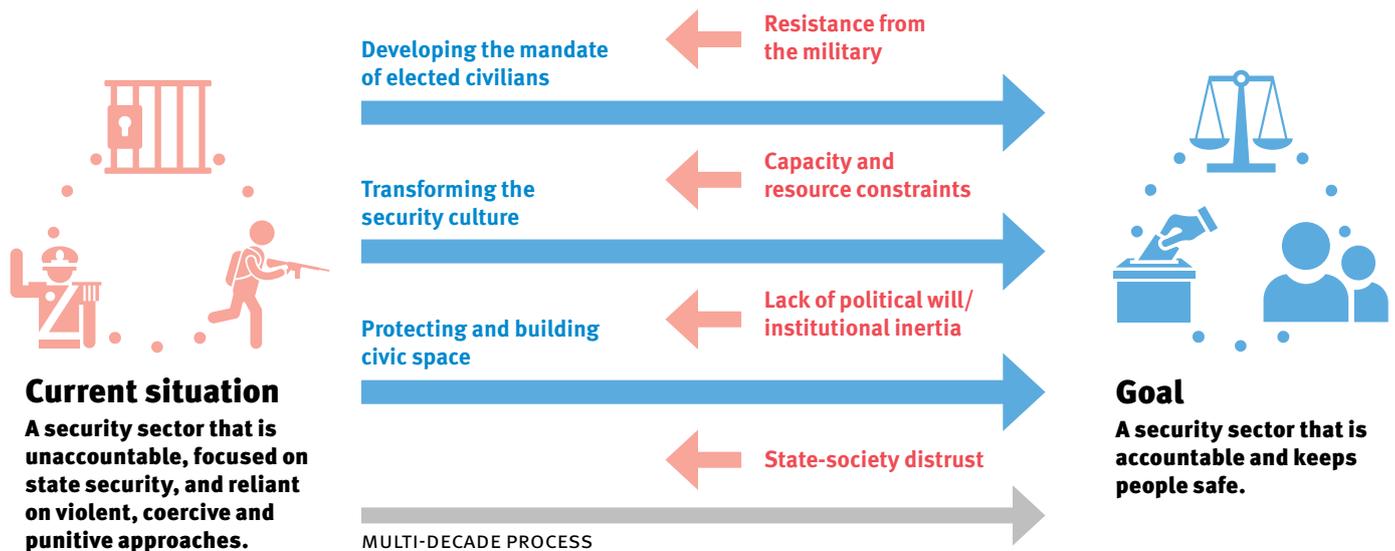
Widening access to education and training on justice and security issues is vital for democratising the security sector. Without capable and technically informed civilian leaders, security decision-making will continue to be monopolised by current or former military officials. Senior military officials are all men, are predominantly Bamar and Buddhist and have been trained primarily in the military’s five universities, which are closed off from the rest of government and society.

Professors at the University of Yangon are trying to initiate a Master of Arts in Security and Strategic Studies, which they hope will begin in 2020. This is a huge leap forward in a country where nobody could openly study political subjects at university between 1962 and 2013. Since 2013, both Yangon and Mandalay universities have offered master’s degrees in political science, including modules on civil-military relations and strategic affairs. There are additionally a vast number of non-formal and private academic institutions that have emerged across the country. These are highly diverse.

CSOs have been central to Myanmar’s democratic transition so far, and include a diverse range of actors in terms of focus, size, funding sources and political background. CSOs support access to justice at the local level, through raising awareness, legal education, and helping individuals to report cases, including particular support for women and other marginalised groups. There are also various CSO initiatives in training judges and lawyers, among other areas of technical assistance.



Figure 1: Three dimensions of security sector democratisation



CSOs have found various ways to influence laws and official policies related to the security sector, most notably on violence against women, child rights, penal reform, media freedom and peaceful assembly. One of the most important roles of civil society is conducting research and advocacy. This includes human rights reporting, often focused on military activities, which numerous ethnic-specific and countrywide organisations have been doing for multiple decades, shedding light on practices that would otherwise be overlooked. Other CSO-led research and advocacy focuses on specific policies and laws and on providing substantive recommendations to government or international agencies.

Policy institutes can contribute to more effective and more evidence-based policies through research, consultations and dialogue among both decision makers and the public. In Myanmar, some policy institutes are essentially CSOs, while others are attached to the government or particular agencies. They tend to prioritise the conduct of rational assessments and seek practical solutions rather than emphasise what they believe to be right or the political demands of specific groups. Such research could be crucial in demonstrating where ingrained institutional practices in security and justice bodies are falling short of addressing the security and justice concerns of the population.

The media is arguably the most important institution for providing public oversight to the security sector. Independent media coverage of military, police and justice sector activities ensures people know and understand when, why and how conflicts are being fought and crime is being tackled. This is essential, both to ensure public support for actions carried out in the public's name, and to make it possible for the

public to voice opposition when they disagree.

Effective media coverage relies firstly on freedom for the media to openly publish information about the relevant agencies' activities. A second necessary condition is journalists having access to reliable information, facilitated by official accounts and being assured access to areas and people affected by security operations.

There have been dramatic improvements in both of these areas since 2011, which could have a significant impact on the level of knowledge and awareness among the population and could inspire the next generation to engage more directly with security affairs. There remain huge restrictions however, mostly as a result of the security culture developed through decades of military rule.

The military persists in trying to cover up human rights abuses by targeting journalists and publishers with lawsuits, and, despite much greater interaction with the media, remains highly secretive about much of its activity.

“ There have been dramatic improvements in [freedom for the media] since 2011, which could have a significant impact on the level of knowledge and awareness among the population and could inspire the next generation to engage more directly with security affairs.

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The way forward

A democratic security sector is accountable to the public and its primary objective is to keep the public safe. There are no guarantees that Myanmar's security institutions are moving in this direction as a necessary outcome of the ongoing political transition. Nonetheless, political changes have

created space for pro-democrats both in and out of government to push in this direction.

This report examines three dimensions of democratising the security sector. Since 2010, there has been moderate progress in all three areas, but as shown in figure 1, this is hindered by various factors.

Myanmar's security and justice sectors could evolve in numerous ways. They could remain largely detached from the civilian government and in service of military leaders' ideological or private interests. Alternatively, they could slowly be democratised, coming under an increased oversight of elected civilians, focusing on keeping people safe, and opening up to wider participation from the public and civil society.

Much depends on whether civilians interested in the public good can successfully claim greater power and influence through a combination of sustained pressure and tactful compromise. Civilians in government, civil society, the media, policy

institutes and educational institutions all have critical roles to play. Progress towards democracy so far has come largely as a result of domestic actions and Myanmar-led initiatives from a wide range of local institutions and individuals.

International partners can also bring key expertise and resources that can be drawn upon by local stakeholders. Creating successful international-local partnerships on these issues will depend on international attention to the local context and the development of mutual trust and understanding.

The work ahead is best viewed, soberingly, as a multi-decade challenge. Sustained action from a wide range of organisations and individuals is needed to bring about generational change. Like democracy, none of these areas of change has a finite end point when it is complete. They are all dynamic and ongoing processes. Future Saferworld research and programming will continue to support these efforts.

Notes

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People stand outside a polling station in Mandalay, Myanmar, 8 November 2015.

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1

Introduction

Since 2010, some moderate steps have been taken towards democratic oversight of Myanmar's security and justice sectors. At the same time, space has opened for public oversight and political participation in these affairs, allowing civil society, the media, educational institutions and policy institutes to engage. Continuation of both of these trends will be crucial to building a peaceful, democratic and prosperous Myanmar, in which people can live in safety and without fear.

As explained by a former political prisoner who is now working for prison reform, “The country needs to move forward while also looking back. We are not stuck in the past, but we need reform so we don’t make the same mistakes again.”⁵⁰

During nearly 50 years of *de facto* military rule,⁵¹ all of Myanmar’s governmental and economic institutions were under the tight grip of the armed forces. A coercive security apparatus, originally established by British colonialists to protect commercial interests from local resistance, was subsequently placed in the hands of a male-dominated military elite that perceived itself to be surrounded by enemies. Heavy public surveillance and restrictions on media, education, civil society and independent policy institutions made public engagement and direct criticism of the state impossible. Meanwhile, the deeply nationalistic armed forces, untethered from civilian oversight, waged continuous warfare against a vast array of ethnic armed organisations (EAOs), often targeting entire populations as if they were potential combatants.

A deeply militarised political culture was instated, where all major government decisions and the majority of institutions, laws and policies affecting people’s everyday lives were focused on the security of the state and the military’s particular view of the national interest. As these military leaders and ideologues were Buddhists from the ethnic Bamar heartlands, and the majority of their stated enemies were armed organisations representing other identity groups, government institutions were largely shaped by Bamar language and culture. The linguistic and cultural identities of other groups were both actively or passively marginalised, and these groups were sometimes treated as a threat to national security.

The last ten years have seen a slow transformation of this culture, with the introduction of a hybrid government system in which constitutional powers are explicitly divided between elected civilians and the military, and with many restrictions on public life and civic engagement being lifted. This has brought into government the national icon Aung San Suu Kyi and her National League for Democracy (NLD), a party whose major platform has focused on ending outright military rule and establishing a 'genuine democratic' government⁵² that will 'fairly and justly defend the people'.⁵³

“

the current cabinet has more civilians than any government in over 50 years and it has been steadily increasing its powers over some parts of the security sector

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In July 2019, the NLD proposed a range of constitutional amendments that would reduce the military's political powers. In the meantime, the current cabinet has more civilians than any government in over 50 years⁵⁴ and it has been steadily increasing its powers over some parts of the security sector, such as through the transfer of the General Administration Department (GAD) from military to civilian control. Additionally, a diverse parliament housing former political prisoners alongside military officials and a growing contingent of women and representatives from non-Bamar ethnic nationalities is claiming a role in overseeing and scrutinising the activities of the security and justice institutions.

However, authoritarian tendencies run deep, and such changes have only been allowed as part of a highly orchestrated, slow and steady transition run by the military – which retains significant autonomy and political powers. While the military has explicitly committed to handing further powers over to elected civilians, it is only willing to do this at its own pace and is deeply resistant to any change that might threaten its ideological or private interests. The entire governance apparatus is also stacked with former military officers, whose institutional conditioning has led them to distrust civilian leaders, foreigners and much of society and to obsess over hierarchical order. In some cases, incoming civilians have simply adopted existing approaches and perspectives, or have willingly allowed the military to lead on security affairs, believing that the soldiers are the only ones with the necessary expertise.

1.1 Conceptualising the democratisation of Myanmar's security sector

This report explores the potential for the democratisation of Myanmar's security sector. It focuses on three main dimensions of security sector democratisation. Changes have been seen in these areas since 2011, but much more could be done through increased cooperation between government, civil society and international partners. These three dimensions are mutually reinforcing and of equal importance. They are:

1. developing the mandate of elected civilians
2. transforming the security culture
3. protecting and building civic space

The first dimension relates to the official powers that democratically accountable civilians hold over the security sector. It relates to both the powers that are provided to elected civilians in the constitution and in law, as well as to the capacity, willingness and political means of elected civilians to use those powers. It also relates to making the processes through which those powers are exercised more democratic, which is affected by the internal politics within parties and by the institutional maturity of key ministries and parliament. This area of change is an entirely local and indigenous process, where international agencies have little influence.

The second dimension reflects the reality that transferring powers to civilians doesn't necessarily lead to more just or peaceful outcomes. It involves security forces and justice institutions decreasing their reliance on threat-based, punitive and oppressive approaches, and moving towards more inclusive, people-centred and gender-sensitive ones, among other significant shifts. It involves using interdepartmental strategies to address the root causes of social and security problems, such as collaboration with the health system on drug harm reduction (rather than cracking down on users) or with the education departments on reducing the narratives that drive intercommunal violence (rather than relying on oppressive states of emergency whenever an issue flares up). Here, international actors can provide crucial assistance, in line with local realities and needs.

The third dimension reflects the reality that, for a security sector to serve the public, it must be

responsive and accountable to that public and to strong independent institutions that represent the vast diversity that exists across society. Such institutions include the media, civil society, policy institutes and education providers, among others. A well-informed and actively engaged public that knows how and why security is being provided is also likely to be more willing to cooperate with the responsible institutions and to participate in reducing harm. At times, however, the public may also back authoritarian, violent or destabilising security responses, so popular sentiments should be moderated by professional institutions and particular protections for under-represented groups. This area of change is primarily a local process, but international actors can assist, protect and advise local organisations and individuals.

Myanmar's security institutions were built over more than 187 years of colonialism, intermittent war, near state collapse and authoritarian rule (see chapter 2). They have operated under a hybrid military-civilian form of government for the past eight years. Even in a best-case scenario, demilitarising these institutions and democratising the policy and practice of security will take many years.⁵⁵

Indeed, the military has long stated it will only step away from power as part of a long and carefully managed transition, viewing itself as a necessary steward of the country's transition to democracy, to ensure that stability and sovereignty are protected.⁵⁶ Meanwhile, Aung San Suu Kyi has also insisted that "We have to do this through negotiation and step by step, keeping in mind our goal of national reconciliation . . . We do not want to encourage the kind of revolutions that turn the country upside down. We will be patient but we will be persistent."⁵⁷

Progress towards democracy so far has come largely as a result of domestic actions and Myanmar-led initiatives from a wide range of local institutions and individuals. Further steps will only be successful if led by actors within the country in ways that are well suited to Myanmar's particular cultural and historical context. Democratisation of the security sector is not, therefore, about introducing Western governance models or blueprints developed by international agencies in other countries. Indeed, Western militaries regularly monopolise key security agendas (such as counter-terrorism), which typically leads to increased violence and insecurity and fails to address root causes.⁵⁸ Aung San Suu Kyi has talked at length about the deep compatibility of Myanmar culture and the goals of democracy and human rights.⁵⁹

International organisations can, however, bring expertise and resources that could be drawn upon by local stakeholders. Creating successful international-local partnerships on these issues will

depend on international attention to the local context and the development of mutual trust and understanding.

1.2 Methodology, structure and limitations

Methodology

This report is based on a literature review and 46 interviews that included 62 individual participants. The literature review focused on English-language published materials, such as books and a more limited number of reports by policy institutes or non-governmental organisations, as well as official government policies and laws. Official and unofficial translations of key Myanmar-language documents were also used.

The interviews were conducted in Yangon, Naypyidaw and through international phone calls. They included current and former government staff, members of parliament (MPs), civil society leaders, Myanmar journalists, and Myanmar researchers and scholars from a wide range of ethnic nationalities. A few leading international academics, analysts and staff from key international agencies were also included. Interviews were semi-structured, focusing on the broad themes of civil-military relations, democratisation and management of the security sector.

Gender balance was not achieved, as 48 participants (77 per cent) were men and only 14 (23 per cent) were women. This was because the people who most organisations selected to speak with us were men, chosen either because of their specific expertise or because they were the leaders (see 'limitations' section on page 4). Where we were able to select our own interviewees, such as MPs and journalists, we ensured a gender balance. In addition to MPs and journalists, women interviewees included university professors, lawyers, leaders of women's organisations, policy analysts, researchers and aid workers, among others. Coincidentally, the balance of national to international participants was also 48 (77 per cent) to 14 (23 per cent).

“Progress towards democracy so far has come largely as a result of domestic actions and Myanmar-led initiatives from a wide range of local institutions and individuals.”

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Structure of the report

This report is divided into six chapters, which are then divided into a total of 17 sections. This chapter is the introduction. Chapter 2 provides key background information: first it traces the evolution of Myanmar's security sector and the establishment of the military as a central actor in politics and statebuilding, through colonisation, decolonisation, the militarisation of the state and the establishment of today's civil-military hybrid regime; second, it looks at civil-military relations today, exploring the relations of Aung San Suu Kyi and Commander-in-Chief Min Aung Hlaing, and the ongoing struggle over the military's role in politics.

Chapters 3 to 5 then explore the three dimensions of democratising the security sector introduced earlier, one by one. Chapter 3 describes how powers over the security and justice sectors are divided, focusing on the extent of civilian versus military control, before outlining the main ways that the civilians in government have sought to establish a mandate. Chapter 4 looks at the challenges of transforming the cultures and practices of security and justice, including the early efforts of civilians working in this area, and the main challenges and changes taking place in the armed forces, the criminal justice system and intelligence services, respectively. With a particular focus on changes since 2011 and remaining challenges, chapter 5 explores four sectors in which public oversight and engagement in the security sector are taking place: education, civil society, policy institutes and the independent media.

Chapter 6 concludes by looking at the potential for further progress in each of the three dimensions of security sector democratisation.

Limitations

This report does not include detailed analysis on contemporary international influences on security sector governance and civil-military relations in Myanmar. Although colonialism and the Second World War are discussed in some detail, the report does not look much at present geo-strategic factors such as the military's relative isolation from the West or its close relations with Russia, China, India and Thailand.

For a report published by an international organisation and written by an international author, critics may argue that this work should reflect more fully the impacts of international factors. Much has been written about the failure of international peacebuilding organisations to acknowledge their own agency in interacting with local conflict environments or to be explicit about the ways that

international actors become part of local political environments once they choose to intervene. However, it could also be argued that the international community has often failed to fully understand internal politics in Myanmar, mostly focusing on international law or on human rights and democratisation theories established elsewhere. This report seeks to provide an account grounded thoroughly in the local context.

However, it does not represent a local perspective on local issues. It was written by a foreign author, albeit with a Myanmar research assistant, and draws primarily on interviews with Myanmar people. To further develop the models for democratising the security sector discussed in this report, much more intensive work with local organisations and individuals will be needed to develop processes owned by local actors.

As noted in the methodology, only 14 out of 62 participants in the research were women, reflecting the gender inequality among people working on security and justice issues in Myanmar. Our findings therefore also risk reflecting this imbalance, by being shaped by perspectives that are more dominant among men than women.

This report does not include much reflection on Myanmar's ethnic conflicts or the related peace process, which have been the focus of most of Saferworld Myanmar's previous reports.⁶⁰ There are critical questions about the federal reform of Myanmar's security and justice sectors, as demanded by ethnic political parties, EAOs and ethnic civil society. These issues are not discussed here simply due to lack of space, but have been central focuses of previous reports and will continue to form a central part of Saferworld's work and future research.

This report also does not include great detail on the alleged abuses by Myanmar's security forces, which have been the focus of much international research over the years. Military operations and the activities of security institutions are discussed in the context of government decision-making and in how they have shaped the way institutions have evolved. This is not to undermine the lived experiences of the many millions of people who have suffered in these conflicts. These experiences are the focus of Saferworld and the Karen Peace Support Network's 2019 report, 'Security, justice and governance in south east Myanmar: a knowledge, attitudes and practices survey in Karen ceasefire areas'.⁶¹

This report also fails to fully explore the role of religion and particularly the rise of so-called Buddhist nationalism and related popular movements or the effects they have had on public discourse around security and conflict.⁶²

Notes

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- 52 The term ‘genuine democratic’ has been used in numerous speeches. See Lubina M (2018), *The Moral Democracy: The Political Thought of Aung San Suu Kyi* (Warsaw: Scholar Publishing House), p 141, p 257, p 278; National League for Democracy (2015), ‘2015 Election Manifesto: Authorised Translation’ (http://www.burmalibrary.org/docs21/NLD_2015_Election_Manifesto-en.pdf)
- 53 National League for Democracy (2015), op. cit., p 7.
- 54 Su Mon Thazin Aung, Arnold M (2018), ‘Managing Change: Executive Policy Making in Myanmar’, The Asia Foundation, May, p 31. The report observes that 60 per cent of posts in the NLD’s first cabinet were held by individuals who had never served in the military, making it ‘by far the most civilian-dominated cabinet in Myanmar since 1962’. It should be noted however that between 1974–88, the government’s most powerful executive body (the Council of Ministers) included both career civilians and former or active military officers. Nakanishi Y (2013), *Strong Soldiers, Failed Revolution: The State and Military in Burma, 1962–88* (Singapore: National University of Singapore Press), pp 197–198, shows the vast majority of members of the party leadership and the legislature during that period were active or former soldiers. Exact data for the Council of Ministers (or the Council of State) is not available.
- 55 The potential for a revolution or some other shock that causes the state to collapse seems lower than ever with the NLD in power, and there are no signs that the NLD has the capacity or resolve to somehow force the military from power.
- 56 Egretreau R (2016), *Caretaking Democratization: The Military and Political Change in Myanmar* (London: Hurst); Callahan M (2012), ‘The generals loosen their grip’, *Journal of Democracy* 23 (4).
- 57 Institute of Southeast Asian Studies (2018), transcription of the questions and answers of a segment of ‘The 43rd Singapore Lecture by H.E. Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar’, video, 21 August (<https://www.iseas.edu.sg/medias/video-gallery/item/8262-the-43rd-singapore-lecture-by-h-e-daw-aung-san-suu-kyi-state-counsellor-of-the-republic-of-the-union-of-myanmar>)
- 58 Saferworld, ‘Alternative approaches to counter-terrorism’, overview on Saferworld website: <https://www.saferworld.org.uk/peacebuilding-responses-to-terrorism-and-migration/terrorism>
- 59 Lubina (2018), op. cit., pp 73–75. Much of this argumentation focused on its compatibility with Buddhism.
- 60 In particular, for an overview of conflict and security sector negotiations in the peace process, see Saferworld (2017), ‘Security integration in Myanmar: Past experiences and future visions’, July (<https://www.saferworld.org.uk/resources/news-and-analysis/post/722-security-integration-at-the-heart-of-myanmaras-peace-process>); for international examples and analysis see Saferworld (2018), ‘Security Integration in conflict-affected societies: considerations for Myanmar’, August (<https://www.saferworld.org.uk/resources/publications/1185-security-integration-in-conflict-affected-societies-considerations-for-myanmar>)
- 61 Saferworld (2019), ‘Security, justice and governance in south east Myanmar: a knowledge, attitudes and practices survey in Karen ceasefire areas’, January (<https://www.saferworld.org.uk/resources/publications/1194-security-justice-and-governance-in-south-east-myanmar-a-knowledge-attitudes-and-practices-survey-in-karen-ceasefire-areas>)
- 62 East-West Center (2014), ‘Contesting Buddhist Narratives: Democratization, Nationalism, and Communal Violence in Myanmar’ (<https://www.eastwestcenter.org/sites/default/files/private/ps071.pdf>); Wade F (2017), *Myanmar’s Enemy Within: Buddhist Violence and the Making of a Muslim ‘Other’* (London: Zed Books).



A ceremony to mark the 71st Martyrs' Day at the Martyrs' Mausoleum in Yangon, Myanmar, 19 July 2018.

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2

Background

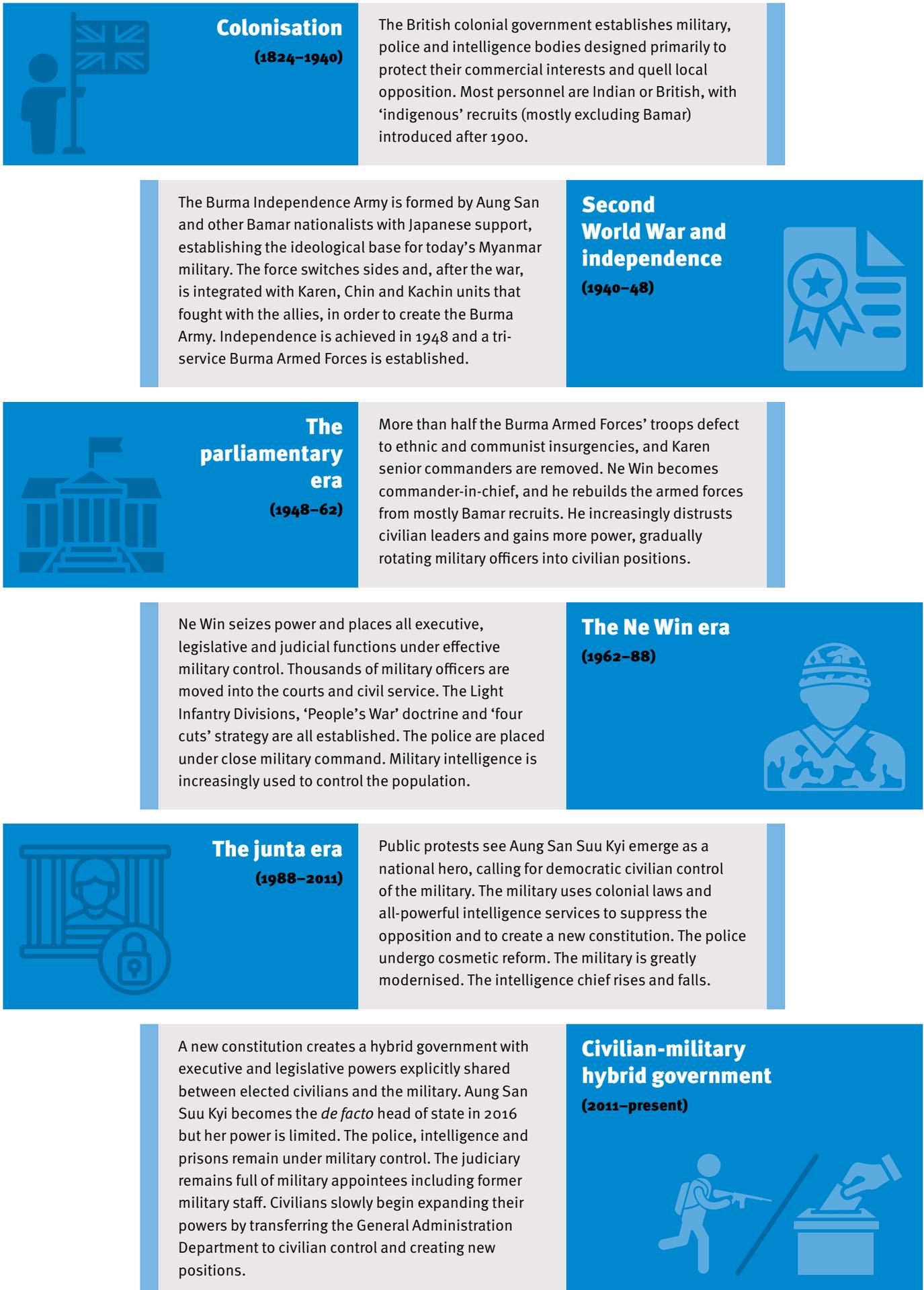
2.1 The making of a militarised state (1825–2015)

This section traces the evolution of Myanmar's security sector and the establishment of the military as a central actor in politics and statebuilding. Colonisation saw the creation of a coercive set of security institutions designed primarily to protect the British state and its commercial interests. Decolonisation then resulted in the rise of a revolutionary movement that would ally with Japanese imperialists and eventually form the ideological base of the country's armed forces, thus imbuing the country's military with a deeply political mindset.

Following independence in 1948, widespread armed conflicts saw the military take an increasingly active role in the country's politics, culminating in a coup d'état in 1962. From then on, the state's coercive apparatus was used and further militarised by a small elite of soldiers, who, through successive regimes, expanded the military into all areas of governance and many aspects of everyday life. They also used the military as the primary instrument to counter insurgencies across the country, regularly targeting civilian populations.⁶³ In this way, the political, economic and social spheres were all transformed into potential battlegrounds, and the concept of 'security' became synonymous with the far-reaching power of a centralised, exclusionary and secretive state.

In the late 1980s, following near regime collapse, a new junta came to power and was immediately in conflict with a new leader, Aung San Suu Kyi, the daughter of the military's original founder and a committed pro-democrat. Following years under house arrest, Aung San Suu Kyi eventually found an entry into politics in the 2010s as the military instated a hybrid system of government in which powers are explicitly shared between civilians and the military. This has allowed for some moderate steps to be taken towards making the security and justice sectors more democratic.

Figure 1: Key stages in the development of civil-military relations and the security sector



Colonial coercion (1824–1940)

In conquering the land that they called Burma between 1825–86, the British established a standing army of mostly British and Indian troops. The colonisers invested little in state institutions beyond the security apparatus needed to defend British commercial interests and properties from the local population.⁶⁴ This included bloody crackdowns on insurrections, such as shootings and the burning of villages. The military also conscripted labour for constructing roads and railways.⁶⁵

From the 1880s onwards, civil and military police were formed and took on the majority of security responsibilities,⁶⁶ facing unusually high levels of crime.⁶⁷ The British also created the Intelligence Bureau in 1886, which eventually evolved into today's Special Branch.⁶⁸

Bamar people (who made up the majority of the indigenous population) were subject to particular marginalisation and oppression by the British state, which judged them as most likely to lead an uprising. As a result, when the state began forming ethnically segregated 'class battalions' from local ethnic groups such as the Karen and Kachin after the First World War, Bamar people were not included.⁶⁹

Marginalisation of the Bamar population soon inspired a wave of anti-British movements, which were guided by a growing sense of a Bamar nationalist identity, encapsulated in the term *do Bama* (meaning 'our Burma' or 'we Burmese').⁷⁰ British security forces, including Karen, Indian and other non-Bamar personnel, were used numerous times to crack down on Bamar-led uprisings, which fomented ethnic divisions.⁷¹ Some of the Bamar nationalist movements formed *tat* – small unarmed militias that were, surprisingly, not directly opposed by the colonial government.⁷² This came alongside the introduction of indigenous elections and university education, which allowed competing political classes representing the Bamar and other ethnic groups to emerge.

The war that made the army (1940–47)

The beginnings of today's Myanmar Armed Forces (or Myanmar Tatmadaw) can be traced back to the Second World War. In 1941, the Burma Independence Army (BIA)⁷³ was formed, led by a student, nationalist and communist leader, Aung San, and made up mostly of irregular recruits from the *tats*. The BIA collaborated with the Japanese and seized the country at astonishing speed in 1942. In doing so, it came up against not just the British and Americans but also against levies they had raised

from the Kachin, Chin, Shan and Karen communities – groups that had also developed their own nationalist identities and claims to independence somewhat separately from the Bamar resistance.⁷⁴ The BIA and Japanese forces were said to have burned down around 400 Karen villages and killed 1,800 people while moving through south-east Myanmar.⁷⁵

Under indirect Japanese rule, the BIA (renamed the Burma Defence Army and then the Burma National Army) was gradually institutionalised, with the establishment of an officer training school and other key infrastructure. With increased organisation, the army also became the heart of a nationalist project, and its leaders proudly saw it as the first military to represent *Do Bama*, or the Bamar 'sons of the soil'.⁷⁶ This highly patriotic and revolutionary independence force became the ideological base for the Myanmar military of today. Aung San remains a national hero among both soldiers and civilians, at least among the majority Bamar population.

In 1944, the Burma National Army switched sides, facilitating a dramatic allied victory in 1945, and was renamed the Burma Patriotic Forces.⁷⁷ The Burma Army was then established under British patronage, with the signing of the Kandy Agreement. Led by Aung San, the army combined the mostly Bamar troops that had fought under him alongside the levies from other ethnic groups, as well as other soldiers who had been part of the pre-war British trained forces. Through months of hard negotiations, Aung San resisted demands for his soldiers to be split up among the predominantly Kachin, Karen and Chin battalions, as many British officials had wanted. Instead the majority of infantry was organised into ethnically segregated Burman (Bamar), Kachin, Karen and Chin battalions.⁷⁸

Aung San then achieved an agreement for Burma's independence and became leader of an interim government. In July 1947, alongside six cabinet ministers, Aung San was assassinated, leaving behind three children, including Aung San Suu Kyi. Politics became increasingly chaotic, as factionalism had emerged not just along ethnic lines but along ideological ones too. In particular, a 'right-wing' clique of mostly Karen commanders considered loyal to the British filled the most senior command positions, while many of the commanders and politicians from the independence movement took on various leftist labels.⁷⁹ The air force and navy were then established in December 1947, completing the tri-service Burma Armed Forces.⁸⁰

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The state that nearly collapsed (1948–62)

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Independence came in January 1948. Within a year, the army had fallen apart, with more than half of its troops defecting to rising insurgencies.⁸¹ Myanmar's first prime minister was a civilian, U Nu, who had not been in the independence armies but had served in the Japanese-run government. In 1949, Ne Win, one of the BIA's initial founders, became commander-in-chief at just 37 years of age, replacing a Karen official, who had been trained by the British.⁸²

Inheriting a dilapidated force, Ne Win began to rebuild. He predominantly recruited Bamar men,⁸³ with training provided by commanders who were trained by the Japanese.⁸⁴ Police and intelligence services were inherited from the British.⁸⁵ In 1951, U Nu set up the Bureau of Special Investigation (modelled loosely on the US Federal Bureau of Investigation), which still exists today.⁸⁶ Through this period, the judiciary remained relatively independent, making decisions in a number of landmark cases that demonstrated its freedom from the political influence of civilian and military leaders.⁸⁷

In addition to expanding his army's strength, Ne Win began claiming greater autonomy from the civilians in government. He sought to bypass the civilian-led War Office, which military leaders felt was slowing down critical decision-making,⁸⁸ as it was staffed by administrators who were detached from the army's 'heroic revolutionary roots'.⁸⁹

After diplomatic efforts failed, a military victory against the US-backed Kuomintang forces that had retreated from China vindicated those in the military who felt civilian leaders were ill-equipped to protect the country. The victory also urged military leaders to consider what it would take to defend the country from a full-fledged foreign invasion. This, they deduced, would depend on them building the state necessary to establish a strong army, and the army necessary to defend a strong state.⁹⁰ At the same time, although insurgencies had been pushed out of most major towns, ethnic political and resistance movements were proliferating in general.⁹¹ The increased militarisation of the state in this period made the chances of negotiated political solutions increasingly unviable.

Ne Win became increasingly nationalist and authoritarian in his mindset and removed more 'moderate' figures from the military leadership.⁹² In 1958, following a failed civilian attempt to assert power through the military police,⁹³ Prime Minister U Nu agreed for the military to take power as a

temporary caretaker government with Ne Win as prime minister.⁹⁴ From then until 1960, Burma experienced its first period of direct military rule. While the cabinet retained civilian ministers, Ne Win placed 94 ranking military officers as lower-level staff throughout numerous ministries,⁹⁵ initiating the creep of the military into civilian departments.

Ne Win then established the Military Intelligence Service, which became a 'powerful secret police force monitoring the activities of ordinary people'.⁹⁶ The military also grew notable economic assets in this period and began to develop its psychological warfare capabilities in campaigns against communists and in defence of Buddhism.⁹⁷ The army then handed power back in 1960, and Ne Win shifted his focus to purging long-term rivals in the military leadership. Military intelligence took an increasingly political role in this era in trying to influence political affairs.⁹⁸

Ne Win's 'socialist' military rule (1962–88)

The military staged a coup d'état in 1962, amid claims that U Nu's leadership was threatening the country's sovereignty.⁹⁹ Tanks took to the streets, dozens of civilian politicians were detained and the military fully took the reins of power.¹⁰⁰

This began nearly five decades of military rule that would leave a deep imprint on the security sector and on the whole of government. This involved not just expanding the size, reach and strength of the security forces, but also the placement of military officers throughout the civilian bureaucracy. Further measures were taken to establish the capacity for applying overwhelming force against insurgents and for a totalised approach to warfare, where all social, economic and political spheres were seen as possible battle spaces for the state against potential competitors.

Within two days of the coup d'état, all national and state-level government institutions were dissolved and all executive, legislative and judicial powers were placed in the hands of the Chairman of the Revolutionary Council, Ne Win.¹⁰¹ By July 1962, Ne Win had established the Burma Socialist Programme Party (BSPP), which would essentially become the state. Within two years, Ne Win made all political opposition illegal and nationalised the vast bulk of the country's economic, educational and cultural organisations.¹⁰² By 1969, over 900 military officers had been seconded to the BSPP or to ministries,¹⁰³ establishing the lasting norm not only of having military officers at the top of government, but also of career soldiers being placed throughout supposedly civilian institutions.

In 1964, all intelligence agencies were brought under military control, as Ne Win established the National Intelligence Bureau.¹⁰⁴ Also that year, Ne Win renamed the British-established Burma Police as the People's Police Force, having previously considered abolishing it altogether.¹⁰⁵ Any progress that had been made during the post-independence democratic era towards making the police an independent service for the public was soon undone as the police once again became a tool for the state to maintain order, as it had been in the colonial era. It also became increasingly militarised in its culture, as military officers were rotated into the leadership. This was likely inspired in large part by Ne Win's fear of the police being positioned against him, as it had been in 1958.¹⁰⁶

Ne Win also undertook a vast reorganisation of the armed forces. He adopted 'People's War' as the central doctrine of the armed forces, and oversaw the creation of the 'four cuts' counterinsurgency strategy, an approach that relied on scorched earth campaigns and mass relocation of civilians to defy support to armed organisations.¹⁰⁷ Ne Win converted the Union Military Police into 27 new infantry battalions and also began establishing Light Infantry Divisions, mobile units that remain central to military operations today.¹⁰⁸ Between 1962 and 1988 the number of battalions grew from 52 to 168; between 1964 and 1988, the number of troops increased from 122,228 to 184,029.¹⁰⁹

Perhaps the most fundamental and lasting changes that Ne Win made were in expanding the reach of the hierarchical and patriotic military into every community. Local governance affairs were placed in the hands of Security and Administration Committees (SACs) at every administrative level, from the Central SAC under the Revolutionary Council down to village-level SACs.¹¹⁰ Tatmadaw officers were embedded in every SAC, with captains placed at the head of every township and battalion commanders at the head of every district. While the Central SAC was under the Ministry of Home Affairs, it was effectively subordinate to the military at senior levels too. In addition to the old administrative responsibilities of the Ministry of Home Affairs, the SACs were also charged with collecting intelligence.¹¹¹ The concepts of security (*loun-kyoun-yeh*) and administration (*aout-gyoke-yeh*) became inextricable, as the central aspects of local governance and maintenance of order.

In 1974, the Revolutionary Council gave way to a nominally 'civilian' one-party state led by the BSPP,¹¹² which was technically superior to the military in terms of budget, human resource management and military command. In practice, however, Ne Win and a number of other retired officers maintained control of both the BSPP and

the military, creating an 'indirect military regime'.¹¹³ Military control was facilitated by the further rotation of some 1,743 additional military officers into the civilian bureaucracy.¹¹⁴

This system continued until 1988 when the BSPP collapsed, following a huge economic downturn that then inspired a widespread political uprising. Ne Win publicly stepped down from the party in July but remained in control, and this cosmetic change did little to appease dissent. Protests reached a climax on 8 August when Ne Win instructed the military to shoot protestors, leading to thousands of deaths. The military failed to establish order, however. Seemingly on the instructions of allies of Ne Win, a coup was then staged by two rising military commanders, Saw Maung and Than Shwe, who continued the violent crackdown. On 18 September, a 19-member State Law and Order Restoration Council (SLORC) was established, led by Saw Maung, creating a junta that would rule until 2011.¹¹⁵

'The lady' and the generals (1988–2011)

Civil-military relations after 1988 became quickly defined by a new national hero, Aung San Suu Kyi, affectionately referred to as 'the lady' by many of her supporters. She was the daughter of Aung San and had been educated in the UK, where she later married. She rose to popularity through public speeches in 1988, calling for democracy and an end to military rule.¹¹⁶ She then collaborated with a number of former military commanders and politicians to found the National League for Democracy (NLD) on 27 September 1988.¹¹⁷ Seen as a threat to the military government, in July 1989 she was charged under the 1975 State Protection Act and placed under house arrest, where she would spend 15 of the next 21 years.¹¹⁸ The country was renamed Myanmar in June of that year.

The NLD won a landslide victory in 1990 but the SLORC insisted on developing a new constitution before handing over power, leading to a protracted period of military rule. In 1992, Senior General Than Shwe replaced Saw Maung as Chairman of the SLORC, which was renamed in 1997 as the State Peace and Development Council (SPDC).¹¹⁹

The military government initiated a national convention in 1993 to draft a constitution, and outlawed all criticism of this political process.¹²⁰ It was eventually boycotted by the NLD, but the military moved ahead.¹²¹ After many stops and starts, in 2003 the SPDC announced plans to oversee a seven-step roadmap to 'disciplined democracy', a multi-party system with significant limits on the powers of elected civilians and a highly privileged place for

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military leaders. In the 2000s, the SPDC began constructing a new capital designed largely in the interests of state security but complete with houses of parliament and other government infrastructure.¹²²

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absolute power to military leaders, the new regime could run the government as it pleased. The military stayed in power in the face of ongoing opposition from the NLD, a pro-democracy exile movement, and dozens of ethnic armed organisations (EAOs) (many of which had also taken up the cause of democracy). Widespread protests in 2007 were cracked down on violently, leading to global condemnation but little change inside the country.¹²³

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The military further developed a ‘guardianship’ ideology in this period. This was based on the belief that, even at the cost of unpopularity, the armed forces had a solemn duty to maintain

peace, tranquillity and order (as it believed it had in 1958, 1962 and 1988), to ensure that the country did not descend into chaos or disintegrate.¹²⁴ This ideology was shaped by increasing condemnation of the military regime by Western governments, some of which were directly or indirectly supporting the democracy movement and entities linked to EAOs. Military ideologues, drawing on nationalist historical accounts, blamed all internal divides on colonialism and claimed that both ethnic and pro-democratic forces were merely stooges of the West.¹²⁵ Far from seeing military rule as opposed to democracy, they believed that a stable transition to true democracy based on Myanmar values depended on military stewardship.¹²⁶

Whether this ideology represents a genuine sense of responsibility, or is simply a necessary story to maintain power for the benefit of the generals, is only partially relevant. Either way, a set of values, ethics and operational principles had been firmly established, which placed the military in direct confrontation with civilians calling for democracy and with much of the international community. This struggle has greatly shaped the way the security sector has evolved since.

Embedding the military into state and society

Security and justice institutions underwent significant changes between 1988 and 2010. From 1998, the so-called ‘socialist’ ideology was dropped

in favour of a new system that was underpinned by a deeply militaristic, and notably nationalist, political doctrine, focused primarily on stability, order and sovereignty. Simultaneously, the military became even more deeply involved in business, as enterprises owned by the Defence Services and companies run by friends of the junta made untold billions in exports of minerals and other goods.¹²⁷

The SLORC/SPDC continued the practice of positioning military commanders at the head of each administrative unit, making them supreme in the handling of all affairs of government.¹²⁸ The General Administration Department (GAD) of the Ministry of Home Affairs took on an invigorated role from then on, becoming the backbone of administrative affairs, particularly at the local level.¹²⁹

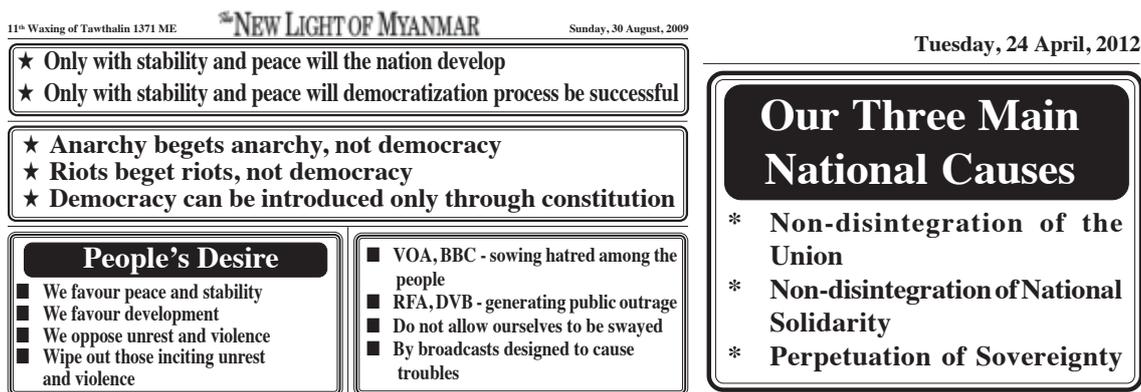
To spread its ideology and try to outflank the popular opposition of the NLD, the military established a mass organisation called the Union Solidarity and Development Association, which used a combination of nationalist ideology and outright coercion to hold mass rallies and distribute written materials. Slogans such as the ‘three main national causes’ and the ‘people’s desire’, which focused on the need to defend the union from being broken apart and the need to ‘crush all internal and external destructive elements’, proliferated in state-owned newspapers and on billboards across the country.¹³⁰ Particularly from the late 2000s, these increasingly reflected the concept of ‘disciplined democracy’ (see figure 2).

The SPDC also continued Ne Win’s practice of embedding military officials throughout the civilian bureaucracy and, from the early 2000s, began giving military training to all civil service personnel.¹³¹ Plain-clothed ‘thugs’ called *Swan Ar Shin* were regularly used by the security forces to disrupt opposition gatherings.¹³²

Central to these designs was not just Senior General Than Shwe but also Khin Nyunt, who was the intelligence chief until his downfall in 2004. As head of the Directorate of Defence Services Intelligence,¹³³ he oversaw a wide-reaching network of around 2,000 personnel embedded throughout the military and government. A major focus of their work was surveilling the NLD and suspected supporters, particularly in universities, instating a palpable climate of fear around all forms of public political action.¹³⁴

Khin Nyunt was forced to resign in 2004, accused of corruption and having seemingly ventured too far outside the chain of command.¹³⁵ By that stage, his intelligence organisation was leading foreign policy, undertaking paramilitary operations in ethnic areas, running cyberwarfare (including through the establishment of an internet service provider),

Figure 2: Newspaper cuttings showing national slogans of the SLORC/SPDC era (the State Law and Order Restoration Council and the State Peace and Development Council).



holding shares in numerous private media companies, hosting academic conferences, publishing books,¹³⁶ and overseeing border and immigration controls.¹³⁷ It was also suspected of being involved in forced disappearances and assassinations of dissidents and ethnic leaders both in the country and abroad.¹³⁸

Another legacy of Khin Nyunt was an attempt to reform the police to counter widespread perceptions that it was corrupt and inefficient. It was renamed the Myanmar Police Force (MPF) and new or updated laws, policies and manuals were developed.¹³⁹ But the new police force was still expected to serve the strategic objectives of the military. According to official statements, the police force was ‘a trained armed organisation’ and was ‘able to safeguard the nation in emergency cases’. Building stronger relations with the public was necessary as part of the defence strategy to ‘defeat a superior enemy’, seemingly in line with the long-used ‘People’s War’ doctrine.¹⁴⁰ Aside from displaying ‘May I help you?’ signs and other cosmetic changes, the lasting effects are questionable and many people still generally see the police force as unreliable, inaccessible and corrupt.¹⁴¹ After Khin Nyunt’s removal, the reform agenda was continued under the leadership of Prime Minister Thein Sein and police chief Khin Yi.¹⁴²

The armed forces underwent a dramatic modernisation programme during this period in terms of their armoury and capabilities, with the rapid development of the country’s defence industries, predominantly through military-owned companies. Procurements were focused primarily on external defence, with missile systems, tanks, aircraft and navy vessels among the most prominent additions.¹⁴³ These advances further confirmed that the military could continue on its own path, relatively immune to internal or international political pressure.

In other respects, however, the military seemingly went backwards. Than Shwe greatly expanded the

number of infantry battalions and heavily militarised most of the country’s non-Bamar regions. Meanwhile, the quality of recruits seemed to decline significantly, and battalions were instructed to become ‘self-reliant’ (to live off the local population), leading to increased human rights abuses.¹⁴⁴ The army continued to rely on ‘four cuts’ counter-insurgency techniques – often led by its Light Infantry Divisions – regularly burning down villages and forcibly relocating tens of thousands of civilians.¹⁴⁵

In another legacy of Khin Nyunt, the military government achieved ceasefires with dozens of EAOs between 1989 and 2010.¹⁴⁶ This enabled the armed forces to fight just a few groups at a time, while allowing other groups to hold territory and do business. Ceasefire groups were then encouraged to transform into people’s militia, which led many to splinter into multiple factions.

The Ministry of Border Affairs was also established for the purpose of developing so-called ‘border areas’ (essentially meaning areas affected by conflict) and the national races (primarily referring to non-Bamar communities), in order to win their support and weaken EAOs.

While this strategy helped the state to gain control of some new territories, the government refused to compromise politically and made inflexible demands for all armed groups to form Border Guard Forces under Tatmadaw command, leading to the breakdown of multiple ceasefires in 2011. The ceasefire period had provided EAOs with much greater financial resources while rampant militarisation and resource extraction had further exacerbated grievances among ethnic communities. As a result, the new conflicts escalated rapidly after 2011 and have arguably presented the Myanmar

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military with a much more intractable threat than it had faced in many decades.

The NLD's vision for a democratised security sector

Ever since she entered politics in 1988, Aung San Suu Kyi's main political platform has been for the civilianisation of government, including the subordination of the military to elected civilians. As the daughter of the military's founder, she has always emphasised her respect for the military and insisted she has no interest in 'splitting' or undermining it, let alone dismantling it as part of a

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full-fledged revolution.¹⁴⁷ Nonetheless, she has consistently said that the military needs to come under civilian control in order to gain the honour and respect of the people',¹⁴⁸ and has emphasised "that an effective army works and specialises in matters relating to defence of the country and its people".¹⁴⁹

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Indeed, from the early 1990s, Aung San Suu Kyi referred to her goals specifically in terms of 'liberal democracy',¹⁵¹ while attempting to localise these ideas and arguing that they are not only suitable but particularly well-suited to Myanmar culture and Buddhist thought.¹⁵² However, throughout her speeches and writings from that time, she provided little on the specific institutional arrangements she wanted to impose, instead focusing on the idea that ending authoritarianism is largely about changing mindsets and achieving a 'revolution of the spirit', rather than 'merely . . . changing official policies and institutions'.¹⁵³

Nonetheless, there have been a number of speeches and documents that clarify Aung San Suu Kyi's agenda for the security sector – these generally follow liberal democratic norms, while emphasising the need for security forces to respect the rights of the people. Other important strands in her comments on the armed forces relate to her admiration for her father and her perception of 'his' Tatmadaw having been a much more trustworthy and honourable one and more oriented in service of the people, compared with the forces of Ne Win.¹⁵⁴

In 1999, the NLD released a policy paper stating that 'the *Tatmadaw* should be a dignified force that protects and fulfills the democratic practices'. It stressed repeatedly that the armed forces should

be under the executive, removed from the other branches of government and excluded from party politics, and that transfers between the military and civilian ministries should be ended.¹⁵⁵ The document further discusses training, human resources and salaries, among other topics, emphasising the need to move towards 'quality not quantity', while calling for compulsory military service to make the force 'truly' a 'people's Tatmadaw'.

Despite her forthright demands for democracy throughout this period, Aung San Suu Kyi sought to avoid direct confrontation and repeatedly sympathised with the military, iterating that she respected the force and even felt bad for its leaders for their constant fear of loss of power. She pursued non-violent struggle, however, 'not on moral grounds, as some believe. Only on practical, political grounds.'¹⁵⁶ In many ways, this was the one thing a coercive state could not easily defeat, because punitive and reactionary approaches by the military seemed to strengthen her popularity at home and abroad, as she became the face of reason and compromise. Another reason for her non-violent approach was her belief that armed struggle would 'perpetrate the tradition that he who is best at wielding arms, wields power . . . [and] would leave in the minds of the people the idea that whoever has greater arms might win in the end. That will not help democracy.'¹⁵⁷

Rule of law was another lynchpin of her political vision. In 1991, she wrote that 'Without a popularly elected legislature and an independent judiciary to ensure due process, the authorities can enforce as "law" arbitrary decrees that are in fact flagrant negations of all acceptable norms of justice.'¹⁵⁸ In 1996, she said, 'lawlessness under a government is far worse than anarchy,' arguing that the law on paper had become meaningless because the country's leaders just used it for their own ends, and stated that 'Law is meaningful and worthy only when it is served in fairness and transparency, to make people understand justice.'¹⁵⁹

The first civilian-military hybrid government (2011–16)

Widely discredited elections were held in November 2010, delivering an overwhelming victory for the military-backed Union Solidarity and Development Party (USDP), a reconfiguration of the junta's Union Solidarity and Development Association. The NLD chose to boycott the elections in protest against the 2008 Constitution, which had been passed in a highly questionable referendum, and which was designed to solidify the military's role in politics and its near autonomy in security and defence affairs.

Among the constitution's basic principles are the flourishing of 'a genuine, disciplined multi-party democratic system',¹⁶⁰ which enables 'the Defence Services to be able to participate in the National political leadership role of the State'.¹⁶¹ To facilitate this leadership role, the military appoints 25 per cent of MPs across all houses,¹⁶² and has effective powers to select and fire the ministers of defence, home affairs and border affairs and their deputies, who must all be serving military personnel.¹⁶³ The armed forces also have operational autonomy, which is detailed in section 3.2. Perhaps most importantly, the constitution can only be meaningfully amended with the approval of more than 75 per cent of the legislatures, giving the military an effective veto.¹⁶⁴ These provisions have allowed the military to maintain its position as 'guardian' over a steady process of democratisation, and to protect its core ideological and private interests.¹⁶⁵

Following the November 2010 elections, Thein Sein – former Prime Minister and *de facto* number four in the former junta – was made president; Shwe Mann, the former number three, was made speaker of the lower house of parliament; and Min Aung Hlaing, a much more junior commander, was made commander-in-chief. Aung San Suu Kyi was released from house arrest days after the election.

President Thein Sein set about introducing a wave of political and economic reforms, most notably opening up the country's media, removing restrictions on public organisation and civil society, releasing political prisoners,¹⁶⁶ inviting back exiled politicians and activists and welcoming foreign aid organisations and investors in a way not seen since 1962. He emphasised the need for rule of law so that 'human rights, liberty and democracy would flourish automatically',¹⁶⁷ and initiated programmes to strengthen the independence of the judiciary, among other policy reforms that affected the security and justice sectors (as discussed in chapters 3, 4 and 5).

There are many explanations for the reasons the military decided to initiate reforms and give up certain powers at this time.¹⁶⁸ The broad factors influencing the military's openness or aversion to democratisation are discussed in section 2.2. Notably, a Defence White Paper released by the military in 2015 highlighted the economic benefits that came from Myanmar attaining 'global recognition . . . Due to her democratization process, transparency and stability of domestic politics'.¹⁶⁹ Perhaps what the military wanted most was 'power without responsibility',¹⁷⁰ meaning the ability to continue business and maintain its superior status in society, while handing over the difficult tasks of running a functioning government.

In addition to the new freedoms these changes created for ordinary people, and for a civil society that had been growing rapidly since 2008,¹⁷¹ this shift also represented a move to a more pluralistic system of government at the very top. Power was shared between the key three leaders, who in turn also opened up to influence from a wider circle of individuals and institutions around them (such as elected MPs, policy institutions and civil society).¹⁷² The new government was, however, still highly exclusionary – of women, of most non-Bamar figures (except those demonstrating exemplary patriotism) and of anyone seen as too critical of the military.

These changes did not necessarily represent the first step in a determined path towards full civilian rule, let alone towards Western-style democracy. However, military leaders did begin to increasingly emphasise their intentions to step away from politics in an organised and determined way, as long as they felt that their idea of stability was being achieved. In particular, they increasingly said that further progress toward democracy depended on ending ethnic armed conflicts. However, from 2011 onwards, these were in fact escalating.¹⁷³

In April 2012, the NLD entered parliament through by-elections that were widely celebrated internationally as a victory for democracy. This was the first time that the NLD had been in government alongside the military, and trust was increasing between Aung San Suu Kyi and members of the military establishment. Aung San Suu Kyi developed a close relationship with the speaker Shwe Mann and entered numerous rounds of negotiation with Thein Sein and Min Aung Hlaing, paving the way for free elections that saw her party take the majority of elected seats in 2015.¹⁷⁴ Thein Sein obediently handed over the reins in a well-orchestrated transfer of power.¹⁷⁵

The NLD's agenda to remove the Tatmadaw from politics continued. In its 2015 election manifesto, the NLD struck a relatively moderate tone, stating that 'The Tatmadaw is an essential institution of the state. The Tatmadaw must be an institution that defends and protects democratic principles and that is honoured by all'.¹⁷⁶ It committed 'To work towards the Tatmadaw and institutions of national defence coming under the aegis', notably not direct control,¹⁷⁷ 'of the executive branch'.¹⁷⁸

2.2 Civil-military relations since 2016

The relations of two people

Since the NLD and military formed a hybrid government in 2016, civil-military relations in Myanmar have essentially become the relations between two people: Aung San Suu Kyi and Commander-in-Chief Min Aung Hlaing. Both oversee highly centralised blocs of power with distinct but overlapping constitutional mandates and believe strongly in their own legitimacy to lead (see figure 3).

The 2008 Constitution formally divided powers between elected civilians and the military and gave neither final decision-making powers over the other; numerous interviewees that we spoke to explained that it is like having two governments side-by-side. The formal and informal powers held by both individuals are summarised in figure 3.¹⁷⁹

Despite being barred from the presidency, Aung San Suu Kyi has been able to secure the majority of cabinet powers within her mandate. As the leader of the ruling party, she was able to hand the presidency to a trusted loyalist, Htin Kyaw, in 2016 and then to replace him with another, Win Myint, in 2018. When Htin Kyaw took office, he nominated Aung San Suu Kyi as both Minister of the President's Office and Minister of Foreign Affairs. The first portfolio, which had been shared by six ministers under the Thein

Figure 3: Formal and informal powers held by Aung San Suu Kyi and Min Aung Hlaing

	Aung San Suu Kyi	Min Aung Hlaing
Formal powers	<ul style="list-style-type: none"> ■ State Counsellor <ul style="list-style-type: none"> □ Second most senior person in the Union Government □ Key office coordinating the business of government ■ Minister of the President's Office ■ Foreign Minister <ul style="list-style-type: none"> □ A seat on the National Defence and Security Council ■ Head of an estimated 21 government committees 	<ul style="list-style-type: none"> As Commander-in-Chief of the Defence Services: <ul style="list-style-type: none"> ■ 'The right to independently administer and adjudicate all affairs of the armed forces' (constitution, article 20b) ■ Power to nominate ministers of home affairs, defence and border affairs ■ Power to nominate 25 per cent of the representatives in all legislatures ■ Effective control of the police, prisons and fire service (via home affairs) ■ Control over all the country's intelligence services, which are under the military, the police and the Ministry of Home Affairs' Bureau of Special Investigation
Informal powers	<ul style="list-style-type: none"> ■ Deferred to by the president and all members of the party, giving her effective power to form the cabinet, direct policy, whip the parliament and elect state/region chief ministers ■ Able to pick National League for Democracy candidates for all constituencies (due to public support for her which typically trumps support for the candidates themselves) ■ Receives passionate support from tens of millions of voters and thousands of party organisers ■ Has moral authority over the country's pro-democracy forces 	<ul style="list-style-type: none"> ■ Is respected and looked to as the voice of the military by thousands of former military personnel now active throughout government departments and the judiciary ■ Has the backing of senior, retired generals ■ Has significant coercive power in the form of intelligence services, auxiliary forces and psychological capabilities

Sein government, ensures that all important government decisions and affairs pass through her office. The second gives her a mandate to hold senior meetings abroad and a place at the table of the National Security and Defence Council.

The NLD then created and handed her the position of state counsellor, which gives her authority to ‘advise the state’ and ‘the right to contact and cooperate with government ministries, departments, organisations, association and individuals’.¹⁸⁰ According to official government protocol, she is recognised as subordinate to the president but senior to the vice presidents and other cabinet members.¹⁸¹ Aung San Suu Kyi is also the chair of an estimated 21 government committees, established to look at a wide range of issues.¹⁸²

On the military side, Min Aung Hlaing remains commander-in-chief until 2022 and faces no noticeable challenges to his power, enjoying the apparent backing of the military’s retired patrons. This gives him control over all armed forces, in addition to the police and multiple intelligence agencies (see chapter 3). However, these ‘two governments’ share one state and are greatly intertwined, leaving significant ambiguity about exactly who controls what. To complicate things further, former military officers are placed throughout all branches of government, most notably the judiciary.

Negotiating the military’s role in politics

Since entering government, Aung San Suu Kyi has retained both her explicit respect for the military as an institution and her agenda to eventually remove it from politics. Speaking in Singapore in 2018, she referred to the need to remove the military’s powers to appoint 25 per cent of parliamentary seats. She said, “We have 75 per cent of rights but 100 per cent of responsibility . . . We must remove unelected representatives from the legislature . . . And there are other parts of the constitution that are not democratic and these also are the parts to do with the powers of the military.”¹⁸³

The NLD’s opposition to the constitution and demands for a ‘genuinely democratic’ one are widely shared and have been central to the party’s popularity.¹⁸⁴ The vast majority of civil society leaders, most other parties and many EAOs are united in calls for constitutional reform.¹⁸⁵

Crucially, however, Aung San Suu Kyi insists this has to be done in a slow and measured way so as to not instigate conflict or a harsh military response. In Singapore she went on to say, “We have to do this through negotiation and step by step, keeping in

mind our goal of national reconciliation . . . We want to do this in a way that will not hurt our people. We have had enough unrest in Burma, we have had enough trouble in our country, people have suffered enough . . . We do not want to encourage the kind of revolutions that turn the country upside down. We will be patient but we will be persistent. We will do it within the framework of the rule of law.”¹⁸⁶ This final sentence could be interpreted in various ways, but seems to reflect the NLD’s willingness to work within the parameters of the existing constitution until it is able to amend it.

The military, however, has continued to be unambiguous in its commitment to remain in politics, and believes it is necessary as a stabilising force as the country makes a transition to multi-party politics. On 28 March 2016, two days before the NLD’s first president, Htin Kyaw, was inaugurated, Myanmar state media published a speech of Commander-in-Chief Min Aung Hlaing with the headline ‘Here to Stay’ in large bold capitals. However, Min Aung Hlaing also indicated the important role of other government institutions, by listing the need ‘to cooperate between the government, the parliament, the military and all nationalities in satisfying the country’s fundamental needs of stability, solidarity and development’ as one of four core priorities.¹⁸⁷

The military has often alluded to the potential for it to eventually step away from politics, or at least to reduce its role, and in fact has always framed its governmental role as ‘temporary’.¹⁸⁸ However, there is currently no agreed timeframe or specific milestones for withdrawal. Min Aung Hlaing and other senior commanders have repeatedly stated that achieving peace is a prerequisite to its complete withdrawal from politics.¹⁸⁹ This allows a huge amount of leeway, as conflicts have escalated in recent years, and solutions to conflict will depend on significant compromises by the military.

The civilian government’s initial approach to this problem was to make building peace with EAOs the central priority of its first term. The military had set peace as a prerequisite to stepping away from power, so a big breakthrough might have been rewarded. It also would have proven that there were benefits to a more civilianised, less violent approach to ending conflicts. Additionally, the peace process already provided a forum and a channel through which the constitution was supposed to be collectively amended. However, since then, the peace process has gone through one crisis after another and the military appears to have

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We have had enough unrest in Burma, we have had enough trouble in our country, people have suffered enough . . . We do not want to encourage the kind of revolutions that turn the country upside down. We will be patient but we will be persistent.

Aung San Suu Kyi, in 2018

”

successfully brought it closely in line with its existing political strategy.¹⁹⁰

In 2019, the NLD shifted its focus to amending the constitution via parliament, by establishing a 45-member cross-party Joint Committee for Amending the Constitution.¹⁹¹ The military denounced the move as unconstitutional, as it was not prescribed in the detailed amendment process in the 2008 charter, but was not able to stop the committee from moving ahead.¹⁹²

In July, the committee issued a report that included 114 amendments recommended by the NLD in addition to 3,651 more from other parties.¹⁹³ On the political front, the NLD recommended reducing the share of military MPs in both houses of the Union Parliament from fifteen per cent to ten per cent and then to five per cent over the next three election cycles.¹⁹⁴ The party also made recommendations that would require any defence personnel appointed to the cabinet (such as the ministers of defence, home affairs and border affairs) to retire from the military.¹⁹⁵ It also recommended reducing the share of MPs needed to amend the constitution to just two-thirds, which would remove the military's veto over further charter change.¹⁹⁶ The substance of recommendations that relate to the security and justice sectors are discussed in chapter 3.

Parliament began debating the suggested amendments in July 2019, with 78 military MPs immediately informing the speaker that they wished to raise issues regarding it, in addition to 47 elected MPs from various parties.¹⁹⁷ The Union Parliament then formally approved the report in a vote, allowing the committee to begin drafting a constitutional amendment bill after consulting with government and judicial officials at various levels of government.¹⁹⁸

The military's willingness to take steps towards increased democratisation and civilianisation versus entrenched authoritarianism and militarisation is influenced by a wide range of factors, summarised in figure 4.¹⁹⁹ Its reasons for taking steps towards democratisation include: a desire for public approval; a fear of being overthrown through an internal coup or popular uprising (as happened to Ne Win); the need to diversify economic relations (for example, to remove sanctions and liberalise the economy) to stimulate growth and decrease dependence on China; a vision of a more developed and modern nation (perhaps akin to other South East Asian countries that have liberalised economically but still have politically active militaries); and increasing difficulties of ruling by coercion due to regional economic integration and technological change.

Reinforcing the military's unwillingness to give up power too fast are: entrenched business interests; an aversion to any limitations on its combat operations (driven by practical considerations and its desire to destroy enemies without restrictions); fears that a weak government (as the 1950s government was perceived to be) will lead to chaos, instability or even the secession of certain states; internal pressures on commanders to demonstrate strength to their subordinates; and fears of commanders being jailed for past crimes or disenfranchised of their family's wealth and status by political opponents.

The most civilian cabinet since 1962

Meanwhile, the running of government remains the most immediate forum for institutional civil-military relations. While the president is the head of state and head of government, the commander-in-chief nominates three serving officers to be the ministers of defence, border affairs and home affairs, and has effective control over the appointment of one of two vice presidents via the military MPs.²⁰⁰ The rest of the cabinet is appointed by the president. The commander-in-chief does not hold a cabinet position but is superior in the military chain of command to the military cabinet ministers. As a result, the exact delineation of authority is not clear and likely depends to some extent on informal relations.

The NLD cabinet is the most civilian cabinet that Myanmar has had since 1962 or even earlier.²⁰¹ In March 2018, 68 per cent of cabinet members were lifelong civilians (neither military or former military),²⁰² compared to 22 per cent of President Thein Sein's cabinet members at the end of his term in 2016. Those military-affiliated members of the NLD's cabinet included three active military officers appointed by the commander-in-chief, in addition to six former military officers now holding civilian posts.²⁰³ The lifelong civilian ministers included former civil servants, medical doctors, writers and business owners.²⁰⁴

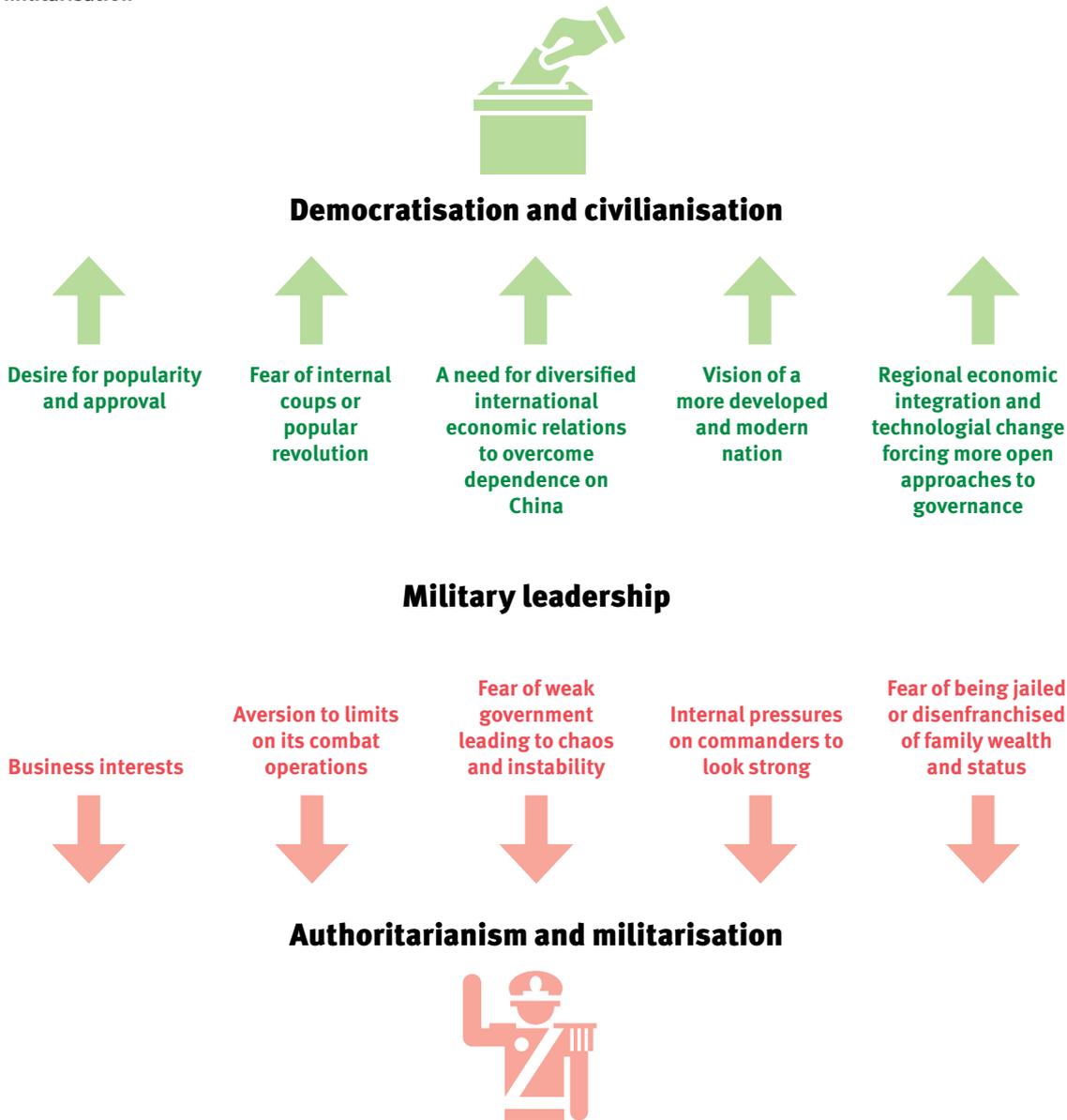
The cabinet remains extremely gender imbalanced, with Aung San Suu Kyi the only woman. President Thein Sein's cabinet had two women ministers – including the country's first in 60 years, who was appointed in 2012 – as well as six women deputy ministers.²⁰⁵ Twenty-five per cent of the cabinet members in March 2018 had been elected as MPs.²⁰⁶

Aung San Suu Kyi has control over the administration, as all important affairs of government pass through the Ministry of the State Counsellor's Office or the Ministry of the President's

IN MARCH 2018

68%
OF CABINET
MEMBERS
WERE
LIFELONG
CIVILIANS –
COMPARED
TO 22%
IN 2016.

Figure 4: Factors pulling military towards either democratisation and civilianisation or authoritarianism and militarisation



Office (of which she is minister). These two offices share a few hundred civil servants, many of which were inherited from the previous administration’s Ministry of the President’s Office.²⁰⁷

The Ministry of the State Counsellor’s Office is led by a career diplomat, Kyaw Tint Swe, a school friend of Aung San Suu Kyi’s who has significant influence over all government workings and the flow of information. He is one of a number of men who held positions during the period of military rule and under Thein Sein to whom Aung San Suu Kyi has given influential roles. Others include Thaug Tun, a former diplomat who has taken on numerous positions (see section 3.3 for details on the National Security Adviser); Zaw Htay, a former major, who served as assistant to successive prime ministers of the military government and then in the office of President Thein Sein; and Min Thu, a former Air Force

Colonel with a master’s in Defence Studies, who served in the president’s office and who is now Minister of the Union Government, which oversees the GAD.

Such figures – in addition to Shwe Mann and his loyalists – have likely played a critical role in navigating the intricacies of the government system and the people-politics at play. With the military operating with such little transparency, inside knowledge is absolutely central to the civilian government’s ability to monitor security affairs. However, numerous interviewees explained that reliance on such figures has meant that government decisions are influenced by the same world view and attitudes as previous governments, and that this is sometimes in tension with the democratic priorities of lifelong NLD members and supporters.

IN 2015

314 ELECTED MPS (64%) DECLARED THEMSELVES BAMAR OR HALF BAMAR

FOLLOWED BY
SHAN (7%),
RAKHINE (6%),
CHIN AND
ZOMI (5%) AND
KAREN (5%)

Relations between the civilian and military members of the cabinet are said to be smooth and functional, despite Aung San Suu Kyi's stated agenda to eventually remove military commanders from the cabinet. The whole cabinet meets every second Thursday,²⁰⁸ and other special meetings sometimes include the state counsellor, the president and military-appointed ministers, for information sharing and joint decision-making on their portfolios.²⁰⁹ In 2018, speaking in Singapore, Aung San Suu Kyi said that the three military men in her cabinet "are all quite sweet" when responding to a question about the potential for a coup, adding, "We have to be pragmatic, and our relationship with the army is not that bad."²¹⁰

Importantly, these three ministers are formally subordinate to the president by law and therefore to Aung San Suu Kyi by protocol. Even Min Aung Hlaing has emphasised that "those union ministers represent the government in their functions [and] abide by the policy of the government led by the president," adding that "The Tatmadaw has no authority to adopt the policy for them."²¹¹ This relatively well-established line of command appears to have been crucial in ensuring working relations are smooth, in contrast to the unclear hierarchy between the state counsellor and commander-in-chief. Nonetheless, these ministers still have to report to the commander-in-chief and are ultimately dependent on his favour to keep their jobs.

The politics of the Union Parliament

Following the 2015 election, across the two houses that make up Myanmar's union-level parliament,²¹² 390 seats (59 per cent) went to the NLD, 166 seats (25 per cent) were allocated to unelected military officers and 108 (16 per cent) were held by other parties. Among these, 41 seats (6 per cent) went to the military-backed USDP and most of the others went to ethnic political parties. Among the elected representatives in both houses are 23 retired military officers²¹³ and 123 former political prisoners,²¹⁴ most of whom served time under the previous military government.

Based on figures from the general elections in 2015, only 67 MPs (13 per cent) are women, which is double the figure of the 2011–16 parliament. This is despite the fact that 40 per cent of all political party members in the country are women,²¹⁵ demonstrating the barriers women face in rising to leadership positions despite active participation.²¹⁶ Only 12 of the military's 166 representatives are women, which is a notable increase from two when the parliament formed.²¹⁷

Three hundred and fourteen elected MPs (64 per cent) declared themselves Bamar or half Bamar, followed by Shan (7 per cent), Rakhine (6 per cent), Chin and Zomi (5 per cent) and Karen (5 per cent).²¹⁸ Eighty-eight per cent of the elected MPs are Buddhist and 11 per cent are Christian. There are no Muslims in parliament, following the NLD's decision not to field Muslim candidates.²¹⁹ There may have been small changes in subsequent by-elections.

The speaker of the lower house, which contains nearly two-thirds of all representatives, is T Khun Myat, who was head of the Kutkai Special Militia under the command of the Myanmar military while also serving in the Union Attorney General's office through most of the SLORC/SPDC era. He sat for the USDP in his first term but has been an independent since 2015. He took the speaker position from Win Myint, who was inaugurated as president in March 2018. As lower speaker, he is also the over-arching speaker for both houses for the latter 30 months of the parliament's 60-month term. He is largely seen as a knowledgeable and balanced professional and someone who moderates the interests of the military and the NLD. However, there is much speculation about his allegiances to Shwe Mann, who recently formed a new party to contest the 2020 elections.

The speaker of the upper house is NLD MP Mahn Win Khaing Than, a loyalist whose grandfather served on the interim cabinet led by Aung San Suu Kyi's father and was assassinated alongside him in the 1940s. Notably, T Khun Myat is Kachin and Mahn Win Khaing Tan is Karen, so both are among a number of senior non-Bamar politicians who have never been associated with ethnic political movements.

Interviewees described the mood in parliament as largely an extension of the relationship between Aung San Suu Kyi and Min Aung Hlaing, due to high levels of discipline within both blocs. Military MPs almost invariably vote unanimously,²²⁰ and the NLD whip ensures high levels of obedience to the party line. The military front bench has major generals and brigadier generals who typically signal voting intentions with exaggerated hand gestures to ensure that all follow.²²¹ Members of the NLD whip committee have regular morning meetings with party leaders, ministers or representatives of the state counsellor's office to decide on how to guide their MPs. Party discipline is not unusual in modern democracies and is arguably necessary in transitional contexts, as it has been for the NLD to maintain a strong position given the limits it faces from the constitution and from a lack of experience in government.²²²

The USDP and a number of aligned ethnic parties typically side with the military on highly politicised or security-related issues, but have much greater flexibility on other topics. Numerous other ethnic

Figure 5: Composition of the Union Parliament (2019)

parties are broadly aligned with the NLD to varying degrees, while others, along with independent MPs, are more autonomous.²²³

Relations between civilian and military MPs are reportedly marred by the closed nature of the military. While the large majority of civilian MPs live in the Naypyidaw Municipal Guest House, USDP MPs live in the USDP compound, and military MPs live in a military compound dozens of miles outside of the city. Numerous MPs made unverifiable claims²²⁴ that military MPs who become ‘too friendly’ with other MPs are typically rotated out. As a result, they are reluctant to sit together with civilian MPs in the house or to have social or functional meetings and gatherings. However, military MPs sometimes attend joint workshops and meetings when invited. Min Aung Hlaing has emphasised that military MPs should not be seen as the opposition, but rather as a stabilising or moderating force,²²⁵ arguing that “They only give advice in the legislative process. They can never make decisions.”²²⁶

Civilian MPs face high levels of surveillance by security authorities under the command of the military. Parliament security is provided by a specialised unit of the MPF. According to MPs interviewed for this report, members of the intelligence agencies are also often among them. Additionally, military intelligence officers frequently track the movements of elected MPs – sometimes taking photos of them – both in Naypyidaw and

when they are visiting their constituencies. This issue has been raised numerous times during parliament questions with the Minister of Defence, including once in May 2019 when the question, “Is it appropriate for military and intelligence officials to be regularly monitoring members of parliament?” was put to the Deputy Defence Minister, who claimed it was “just routine surveillance”.²²⁷ Additionally, the three director generals and many of the administrative staff who oversee the management of the speaker’s office are former military, some of whom maintain loyalties to current and former speakers from a military background.²²⁸

Friends or foes: how stable are civil-military relations?

On the surface, relations between the civilian and military officials in government appear amicable, with the commander-in-chief stating that the military will “collectively take part in all the activities of Daw Aung San Suu Kyi for the good of our country”.²²⁹ The present arrangement at least provides stability – what the military desires most. Aung San Suu Kyi has emphasised ‘national reconciliation’ as her central aim, insisting that this depends on trust building and negotiation with the military rather than overt political pressure. This has essentially ensured that the ideological, institutional and private interests of the military remain largely untouched. There has



Aung San Suu Kyi shakes hands with Commander-in-Chief Min Aung Hlaing as they pose for the media prior to a meeting at the military headquarters in Naypyidaw, Myanmar, 2 December 2015.

© Lynn Bo Bo/EPA/Shutterstock

been no talk of transitional justice and only minor steps towards increased regulation and taxation of corporations owned by or linked to the military. From a strategic perspective of the military, Aung San Suu Kyi is a relatively predictable and known player who is able to keep rigid discipline over the majority of pro-democracy forces.

Furthermore, the two sides have been relatively aligned on issues considered to be of greatest concern to national security or in the national interest.²³⁰ The civilian government has repeatedly avoided criticising military conduct in Rakhine State, despite widespread international condemnation,

and in some cases has directly defended its approach.²³¹ Both sides have focused on strengthening regional ties, cooperating primarily with China and India rather than prioritising a hard pivot towards the West.²³² Key figures in Aung San Suu Kyi's cabinet served as diplomats, military commanders or government officers in the military governments before 2011. They, and to some extent Aung San Suu Kyi herself, share many cultural, historical and epistemological world views with their military counterparts.

This alignment creates the appearance of a unified bloc, particularly to Western observers who are more

used to politics revolving around explicit criticism and argumentation.²³³

However, Aung San Suu Kyi and Min Aung Hlaing rarely meet directly, and important government decisions are seemingly made with little coordination between the two figures. Interviewees for this report described it as a ‘cold war’ of sorts and pointed to the lack of recognition each figure has for the other’s legitimacy as a leader – Aung San Suu Kyi’s position is seen as being in tension with the constitution, while Min Aung Hlaing is unelected.²³⁴

Visible clashes between Aung San Suu Kyi and Min Aung Hlaing take place every few months, often taking the form of tit-for-tat jibes, leading to sudden and poorly communicated decisions on important affairs of state. For example, in December 2018 the military’s surprise announcement of a ceasefire with more than half a dozen EAOs was followed the next day by an apparent retort from the civilian wing, which announced the immediate transfer of the GAD from the military-led Ministry of Home Affairs over to civilian control (see section 3.3).²³⁵

Additionally, the NLD’s creation of the Joint Constitution Amendment Committee reportedly came about without any prior groundwork to convince the military. Some have argued this was primarily a political act of confrontation – aimed at provoking the military into exposing its opposition to democratic reform, in order to help the NLD’s 2020 election campaign, rather than a constructive step forward in relations. Some interviewees asserted that direct and transparent high-level negotiations between the NLD and the military would have been more effective.

Perhaps one of the most defining events in relations between the civilians in government and the military was the assassination of NLD lawyer Ko Ni. Ko Ni was a constitutional expert and architect of the state counsellor position. He also conducted much of the analysis that led to a slew of proposed amendments

to the 2008 Constitution in 2014. He was killed in February 2017 in a plot involving numerous former military officers. Following over 100 court hearings,²³⁶ two former soldiers were sentenced to death and two others received prison time, while the alleged mastermind remained at large.²³⁷ It is impossible to measure the impacts of this killing, but an NLD-led government with him still involved would likely have been much more confident and legally informed.

Overall, however, the current balance of power appears relatively stable, despite the vast security, development and other challenges the country faces. This sense of job security is added to by the public’s overwhelming support for Aung San Suu Kyi, and has provided the NLD-led government with a grace period in which a failure to immediately deliver transformative changes is unlikely to greatly reduce its appeal.

This has led to a situation where there is minimal pressure on either side to initiate policies, develop a strong political agenda or make significant political concessions to other political actors, such as ethnic parties or civil society groups. Additionally, due to a lack of formal recognition from the military, Aung San Suu Kyi faces an extremely difficult balance between being seen as too confrontational when she does try to lead, and being seen as weak and ineffectual when she doesn’t.

This has arguably allowed the military to operate more or less as it pleases, both in security affairs as well as in business. This contrasts with the Thein Sein era, in which the government was under huge pressure to avoid internal dissent and to convince the West of its reformist credentials in order to lift sanctions.

“

Aung San Suu Kyi faces an extremely difficult balance between being seen as too confrontational when she does try to lead, and being seen as weak and ineffectual when she doesn’t.

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Notes

- 63 Support for these and other claims is provided throughout the main body of this chapter.
- 64 Callahan M (2003), *Making Enemies: War and State Building in Burma* (Washington: Cornell University Press), pp 24–25; Nakanishi (2013), op. cit., pp 32–38.
- 65 Callahan (2003), op. cit., p 26.
- 66 Selth A (2013a), 'Police Reform in Burma (Myanmar): Aims, Obstacles and Outcomes', Griffith Asia Institute, Regional Outlook Paper no. 44, p 7. The police were nearly twice the size of the military. Following the separation of Burma from India in 1937, part of the military police was reformed into the Burma Frontier Force, a police service for the 'frontier areas' that covered much of the territory making up modern Myanmar's states.
- 67 Callahan (2003), op. cit., pp 29–30. The military (including occasional reinforcements from India) was sporadically brought in to assist crackdowns on local resistance. A prominent example was the Saya San rebellion of the early 1930s, which ended with 3,000 dead or wounded and 8,000 arrests. Smith M (1999), *Burma: Insurgency and the Politics of Ethnicity* second edition (London: Zed Books), p 91.
- 68 Selth A (2019), *Secrets and Power in Myanmar: Intelligence and the Fall of General Khin Nyunt* (Singapore: ISEAS Publishing), p 26.
- 69 Traditional leaders in most Shan, Kachin, Chin and other 'ethnic' areas were allowed to stay in power and raise their own armies, and they actually benefited from protection by colonial forces in return for loyalty and taxes. Meanwhile, after the First World War, the state began recruiting Karen and numerous other groups. In 1938, out of 10, 365 troops stationed in the country, around 3,000 were Indians and nearly 3,000 more were Karen, Chin or Kachin.
- 70 Walton M (2013), 'The "Wages of Burman-ness": Ethnicity and Burman Privilege in Contemporary Myanmar', *Journal of Contemporary Asia* 43 (1), pp 1–27.
- 71 Smith (1999), op. cit., pp 44–48.
- 72 Callahan (2003), op. cit., pp 37–40.
- 73 The name of this army in Burmese was 'Bamar Lutlatye Tatmadaw'. The original was therefore the same word that is now officially known as 'Bamar', which is the vernacular of Myanmar and which is also the official term used for the majority ethnic group. Exhibits at the Defence Services Museum in Naypyidaw refer to it as the 'Burma Independence Army'. It is often translated in English as the 'Burmese Independence Army'. However, as Burmese is often now used to refer to all ethnic groups, this is a slight misrepresentation. See also: Guyot D H (1966), *The Political Impact of the Japanese Occupation of Burma* (New Haven: Yale University Press).
- 74 Callahan (2003), op. cit., pp 45–54.
- 75 Ibid, p 75.
- 76 Ibid, pp 54–67.
- 77 Ibid, pp 45–68; Guyot (1966), op. cit.
- 78 Callahan (2003), op. cit., pp 87–113.
- 79 Ibid, op. cit., pp 120–121. See also: McEnery J M (1990), *Epilogue in Burma, 1945–48* (Tunbridge Wells, Kent: Spellmount).
- 80 Maung Aung Myoe (2009), *Building the Tatmadaw: Myanmar Armed Forces Since 1948* (Singapore: Institute of Southeast Asia Studies), pp 87–88.
- 81 Among these were ethnic armed movements, including the Karen National Union, as well as the Communist Party of Burma, led mostly by Bamar, including former allies of Aung San.
- 82 Callahan (2003), op. cit., pp 114–144; Selth A (2001a), *Burma's Armed Forces: Power without Glory* (Norwalk: East Bridge), pp 10–11. The head of the air force was also Karen and was also replaced at this time. These dismissals coincided with the upsurge in fighting between the state and the Karen National Union, though these commanders did not have any affiliation with the Karen National Union at that time or even after they were dismissed. They were largely seen as 'right wing' and too close to the British.
- 83 Callahan (2003), op. cit., p 173.
- 84 Interview with leading scholar of the Myanmar Armed Forces.
- 85 Selth (2013a), op. cit., pp 7–8. The two police services at that time were the Burma Police and the military police, which was renamed the Union Military Police. The Burma Police included embedded intelligence units, the Special Investigation Department (today's Special Branch) and the Criminal Investigation Department (which retains the same name).
- 86 Selth A (1998), 'Burma's intelligence apparatus', *Intelligence and National Security* 13 (4), pp 33–70, p 38.
- 87 Myint Zan (2000), 'Judicial Independence in Burma: No March Backwards Towards the Past', *Asian-Pacific Law & Policy Journal* 5 (1), pp 13–17.
- 88 Callahan (2003), op. cit., p 160. The War office has been described as 'a hybrid of a Department of State and a military HQ'.
- 89 Ibid, p 170. Further tensions grew at the same time within the military between actively combatant field officers and those handling administrative and support roles in the War Office.
- 90 Ibid, p 171; interviews with Myanmar and foreign scholars of the Tatmadaw, May and June 2019.
- 91 Martial law and the build up of forces precipitated the beginnings of Shan armed resistance and a separate movement led by Shan politicians and traditional princes calling for a federal system of government. Meanwhile, though the Karen National Union and its various allies had been pushed out of most towns, they had laid down firm roots throughout rural lower Burma.
- 92 Nakanishi (2013), op. cit., pp 84–91.
- 93 Callahan (2003), op. cit., p 186.
- 94 Ibid, p 186–197.
- 95 Ibid, p 191.
- 96 Selth (1998), op. cit., p 38; O'Brien H (1991), *Forgotten Land: A Rediscovery of Burma* (London: Michael Joseph), p 107.
- 97 Callahan (2003), op. cit., p 193–194. Also in this period, the military caretaker government negotiated the dissolution of the Karenni and Shan princes.
- 98 Selth (1998), op. cit., p 37.
- 99 Nakanishi (2013), op. cit., pp 88–91.
- 100 Ibid, pp 88–91; Taylor R H (2009), *The State in Myanmar* (Singapore: National University of Singapore Press), original version printed in 1987, entitled *The State in Burma*, pp 293–296.
- 101 Taylor (2009), op. cit., p 296; Myint Zan (2000), op. cit., pp 17–20. This included the abolition of the supreme courts and high courts and created a chief court under a known loyalist, and greatly weakened the lower-level courts.
- 102 Taylor (2009), op. cit., p 295.
- 103 Nakanishi (2013), op. cit., p 160.
- 104 Selth (2019), op. cit., explains that the National Intelligence Bureau was responsible for 'coordinating the activities of the country's various intelligence and security agencies', including: the Military Intelligence Service that he had created; the Bureau of Special Investigation, which had previously reported directly to the civilian prime minister; and the Criminal Investigation Department and Special Investigation Department, which were both part of the police force under the Ministry of Home Affairs, as they both are today (with the Special Investigation Department now known as the Special Branch).
- 105 Selth (2013), op. cit., p 7.
- 106 Selth (2016), 'The potential for Army-Police rivalry in Myanmar', *The Interpreter*, 2 February (<https://www.lowyinstitute.org/the-interpreter/potential-army-police-rivalry-myanmar>)
- 107 Selth (2003), op. cit., pp 90–91; Maung Aug Myoe (2009), op. cit., pp 24–26; Nakanishi (2013), op. cit., pp 232–234. The 'People's War' concept was inspired by Mao Tsetung, Che Guevara and experiences in the Czech Republic and Yugoslavia. This essentially viewed the entire population as a mobilisable force. It focused on establishing village-level 'people's militia', and engaging all political, social, economic, military and public management spheres of government activity to deny insurgents support from the people living in the areas of their operations. Somewhat ironically, what started from a realisation that insurgents are more popular due to violent and predatory behaviour of local Tatmadaw units soon developed into an extreme version of just that, as the 'four cuts' policy was introduced and became focused on brutal scorched earth tactics aimed at devastating entire communities in areas where the enemy was operating.
- 108 Selth (2001a), op. cit., p 159.
- 109 Nakanishi (2013), op. cit., p 217.
- 110 Ibid, pp 151–153; Taylor (2009), op. cit., pp 315–316.
- 111 Nakanishi (2013), op. cit., pp 151–153.
- 112 The constitutional drafting process was nominally fully inclusive of 'the people', as thousands of documents were submitted from a wide range of people's associations. However, as Nakanishi points out, they were most likely 'not reflected in the drafting process'. Nakanishi (2013), op. cit., p 173.
- 113 Ibid, p 216, pp 228–232. This complex approach was necessary as a means to maintain control without provoking too much dissatisfaction from either the party or the serving military leadership.
- 114 Ibid, p 161.
- 115 Ibid, pp 273–274. See also: Maung Maung (1999), *The 1988 Uprising in Burma* (New Haven: Yale University Press); Holliday I (2011), *Burma Redux: Global Justice and the Quest for Political Reform in Myanmar* (Hong Kong: Hong Kong University Press), pp 54–58.
- 116 Lubina M (2018), *The Moral Democracy: The Political Thought of Aung San Suu Kyi* (Warsaw: Scholar Publishing House), pp 203–204.
- 117 Among the military commanders were Aung Shwe, Tin Oo, Aung Gyi and Kyi Maung, all of whom had served for varying lengths under Ne Win.
- 118 Human Rights Watch (2010), 'Burma: Chronology of Aung San Suu Kyi's Detention', November 13 (<https://www.hrw.org/news/2010/11/13/burma-chronology-aung-san-suu-kyis-detention>)
- 119 Holliday (2011), op. cit., pp 59–60.
- 120 Egretreau (2016), op. cit., p 33: 'the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions, enacted by the SLORC in June 1996, was meant to punish any criticism of the National Convention and the constitution drafting process controlled by the military junta between 1992 and 2008. The junta had ruthlessly used that legislation, which imposed sentences up to 20 years and the confiscation of the offender's property, to suppress dissent.'

- 121 Between 1995 and 2008, the party boycotted the junta's National Convention on the grounds that the process did not give the party enough influence, in spite of its landslide victory in 1991. The convention allowed very little influence to opposition parties or to ceasefire-holding ethnic armed organisations that also attended. Specifically, the NLD was only given 15 per cent of seats despite having won a vast majority of votes in the annulled 1990 election. The NLD insisted that a 'genuine democratic constitution' was its primary aim. McClellan P (1995), 'NLD may boycott NTN'L Convention', 22 November (<http://www.burmalibrary.org/reg.burma/archives/199511/msg00163.html>)
- 122 Preecharushh D (2009), *Naypyidaw: The New Capital of Burma* (Bangkok: White Lotus).
- 123 *National Public Radio* (2007), 'Myanmar Anti-Government Protests Turn Deadly', 26 September (<https://www.npr.org/templates/story/story.php?storyId=14715135&t=1569248540642>)
- 124 Callahan M (2012), 'The generals loosen their grip', *Journal of Democracy* 23 (4), October; Callahan M (2015), 'National Security and the Military in Post-junta, Constitutional Myanmar', in *The United States and Japan: Assisting Myanmar Development* (Washington DC: Sasakawa Peace Foundation), pp 41–55; Egretreau (2016), op. cit.
- 125 Yawngwhe S (2013), *Maintaining the Union of Burma: The role of the Ethnic Nationalities in a Shan Perspective* (Bangkok: Chulalongkorn University).
- 126 Egretreau (2016), op. cit.; Callahan (2012), op. cit.; Selth A (2013b), 'Burma's Security Forces: Performing, Reforming or Transforming?', Griffith Asia Institute, Regional Outlook Paper no. 45 (https://www.griffith.edu.au/_data/assets/pdf_file/0026/118907/Regional-Outlook-Paper-45-Selth-web.pdf)
- 127 McCarthy G (2019), *Military Capitalism in Myanmar: Examining the Origins, Continuities and Evolution of "Khaki Capital"* (Singapore: Institute for Southeast Asian Studies), pp 12–19; Bunte M (2017), 'The NLD-Military Coalition in Myanmar: Military Guardianship and Its Economic Foundations', in P Chambers, N Waitookiat (eds.), *Khaki Capital: The Political Economy of the Military in Southeast Asia* (Copenhagen: NIAS Press), pp 93–129.
- 128 Under the SLORC/SPDC, the governance concepts of administration and security remained intertwined as people's councils were replaced with Law and Order Restoration Councils, later renamed Peace and Development Councils, at township, district, and state and division levels.
- 129 Taylor (2009), op. cit., pp 451–452. Callahan (2012), op. cit., p 122, argued that 'The Tatmadaw, its notorious intelligence agencies, the police, and local authorities viewed any criticism, opposition, or even advocacy as outbreaks of "politics" posing threats to "national security." The frequently used method for countering such "threats" was a harsh crackdown whose justification lay in the military's image of itself as saviour and guardian of the nation.' See also pp 120–122.
- 130 Holliday (2011), op. cit., pp 61–65.
- 131 Interview, Yangon, May 2019, and additional information provided by a security expert from Myanmar. The civil service training was said to be inspired by fears of a US-led invasion, and seemingly draws on the 'People's War' concept.
- 132 Copley E (2007), 'Myanmar junta uses gangs not guns to crush dissent', *Reuters*, 30 August (<https://uk.reuters.com/article/uk-myanmar-gangs/myanmar-junta-uses-gangs-not-guns-to-crush-dissent-idUKBKK30876420070830>)
- 133 Selth (2019), op. cit., pp 8–9. This body is also known as the Military Intelligence Service, as established by Ne Win in the 1950s. The exact reasons for or timing of the apparent name change are unclear. Selth (1998), op. cit., p 45. In 1983, Khin Nyunt had been tasked by Ne Win to rebuild the country's intelligence apparatus following an assassination attempt (which killed 21 people) on the President of South Korea by North Korea on Burmese soil.
- 134 Selth (2019), op. cit., pp 12–13. In 1991, there was an estimated one 'spy' for every 27 students in Myanmar universities. Fears of being heard while criticising the government were widespread among the general population. In the face of significant criticism from the international community over democratic and human rights concerns, the intelligence services began to treat foreigners with particular suspicion and stated this publicly, while foreign diplomats and other residents were put under heavy surveillance. Despite not having full arrest powers by law, the agencies' ability to take people in for questioning, before handing them over to the police as part of procedure, essentially gave them such powers.
- 135 Selth (2019), op. cit. In some ways, his ouster reflected the intra-military tensions of the 1950s between field commanders like Than Shwe and career officers who had never been in combat, like Khin Nyunt.
- 136 Selth (2019), op. cit., pp 14–21. These activities were carried out through the Directorate of Defence Services Intelligence or through the Office of Strategic Studies, which then both merged in 2001 to create the Defence Services Intelligence Bureau, a more senior body.
- 137 The Directorate of Defence Services Intelligence enjoyed significant influence over the Area Immigration Control Command, known as NaSaKa, which only staffed around 1,200 troops but which was positioned in key locations. Selth (2019), op. cit., pp 32–33.
- 138 *Ibid*, pp 14–15.
- 139 Selth (2013), op. cit., p 9. The Myanmar Police Force Maintenance of Discipline Law was passed in 1995 (and amended in 1997). A new code of conduct was established in 1999. The British era manual was updated and officially translated by 2001 and various 'public relations' initiatives began.
- 140 *Ibid*, p 10.
- 141 A 2016 survey found the police and the courts to be among Myanmar's least trusted institutions. Welsh B, Kai-Ping Huang (2016), 'Myanmar's Political Aspirations & Perceptions 2015 Asian Barometer Survey Report', Center for East Asia Democratic Studies, National Taiwan University, March (<http://www.asianbarometer.org/pdf/MyanmarReport2016.pdf>)
- 142 Selth (2013), op. cit., p 10.
- 143 Maung Aung Myoe (2009), op. cit., pp 105–135.
- 144 Selth A (2018), 'The Defence Services', in A Simpson, N Farrelly, I Holliday (eds.), *Routledge Handbook of Contemporary Myanmar* (London: Routledge), pp 25–34, p 32.
- 145 For reports by successive UN Special Rapporteurs on Human Rights in Myanmar, published multiple times per year since 1992, see United Nations Human Rights website: http://ap.ohchr.org/documents/dpage_e.aspx?m=89
- 146 Jolliffe K (2015), 'Ethnic Armed Conflict and Territorial Administration in Myanmar', The Asia Foundation (<https://asiafoundation.org/publication/ethnic-armed-conflict-and-territorial-administration-in-myanmar-full-report/>)
- 147 Selth A (2001b), 'Burma's Armed Forces Under Civilian Rule: A Return to the Past?', Technical Advisory Network of Burma, Working Paper 02–01, May.
- 148 *Ibid*, p 4. The quotes come from Aung San Suu Kyi in 1998.
- 149 This comment was made in a public statement by Aung San Suu Kyi on 2 September 1998. It was translated and published in the BurmaNet News, under the sub-heading 'The General Secretary's, Daw Aung San Suu Kyi's Request' (<http://www.burmalibrary.org/reg.burma/archives/199809/msg00446.html>)
- 150 Huntington S P (1957), *The Soldier and the State* (London: Harvard University Press).
- 151 For her most direct defence of liberal democracy, see Aung San Suu Kyi (1991), 'In Quest of Democracy', in M Aris (ed.), *Freedom from Fear and Other Writings* second edition (London: Penguin Books).
- 152 Lubina (2018), op. cit., pp 228–253, pp 236–238.
- 153 *Ibid*, p 223. See also pp 196–203. Her political ideology was also underpinned by an understanding of how authoritarianism produces fear in the population and within leaders, creating an antagonistic and paranoid relationship between society and the state. Fear, she said, leads people to ask fewer questions of the authorities, which then creates a cycle whereby 'those in power get more oppressive and the people get more frightened'. Quote from Lubina (2018), p 215.
- 154 Selth (2001b), op. cit.
- 155 Committee Representing the People's Parliament (1999), 'Commemorating the completion of one year since the establishment of the Committee Representing the People's Parliament elected in the 1990 Multi-Party General Elections', September, pp 92–93 (<http://www.ibiblio.org/obl/docs4/CRPP-Report.pdf>). The paper also stated that the 'Announcements, teachings, speeches, and policies of *Bogyoke* Aung San, the architect of Burma's independence and the leader of the whole nation, regarding the Tatmadaw will have to be taken seriously as a guide for implementation of reforms.'
- 156 Lubina (2018), op. cit., p 192.
- 157 *Ibid*, p 193.
- 158 Aung San Suu Kyi (1991), op. cit., p 176.
- 159 Lubina (2018), op. cit., p 197. As noted on p 196, in 1989 Aung San Suu Kyi argued that authoritarianism is like threatening children with punishment rather than explaining an issue to them 'so that they understand themselves. This kind of teaching by intimidation is now so prevalent that the rulers who govern us don't try to explain things to ordinary people, but, instead, use threats to control them.'
- 160 Article 6d of the 2008 Constitution.
- 161 Article 6f of the 2008 Constitution. These 'Basic Principles of the Union' also include the former junta's 'three national causes', which relate to maintaining sovereignty and avoiding disintegration of the union.
- 162 See chapter 4 of the 2008 Constitution.
- 163 Article 17b of the 2008 Constitution states that the commander-in-chief will nominate defence personnel to serve at every level of government 'to undertake responsibilities of the defence, security, border administration, and so forth'. See also articles 232b(ii), 234b and 235c(ii).
- 164 Crouch M, Ginsburg T (2016), 'Between Endurance and Change in South-East Asia: The Military and Constitutional Reform in Myanmar and Thailand', *Annual Review of Constitution-Building Processes: 2015*, Institute for Democracy and Electoral Assistance, p 69. 'The Constitution sets out two different levels of amendment, depending on the provision concerned. Both tiers require more than 75 per cent approval in the Union Parliament. Tier 1 is the higher threshold: it requires more than 75 per cent approval in Parliament plus a nationwide referendum with the votes of more than half of those who are eligible to vote (section 436(a)). This approval process applies to most of the provisions on the powers of the government and the military'.
- 165 Egretreau (2016), op. cit.
- 166 International Crisis Group (2011), 'Myanmar: Major Reform Underway', September (<https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-major-reform-underway>)
- 167 Selth (2013a), op. cit., p 5.

- 168 For a particularly engaging and lucid account of these changes and the factors that motivated them, see Egreteau (2016), op. cit. See also: Tin Maung Maung Than, 'Myanmar's Security Outlook and the Myanmar Defence Services', chapter 7 (http://www.nids.mod.go.jp/english/publication/joint_research/series7/pdf/07.pdf); Callahan (2013), op. cit.
- 169 Naypyitaw (2015), 'The Republic of the Union of Myanmar Defence White Paper', p. 10.
- 170 Phrase provided by an international analyst. Interview, March 2019, Yangon.
- 171 Kramer T (2011), 'Civil Society Gaining Ground', The Transnational Institute, November (<https://www.tni.org/en/publication/civil-society-gaining-ground>)
- 172 As noted by Callahan (2012), op. cit.: 'Despite many measures that exist for protecting the military from civilian interference in national security affairs, it appears that the concentration of authority in one senior general has ended. Although there has been no major shift in the demographic characteristics of personnel in elite positions (men, Burman, retired, or active-duty military officers), a new political fluidity has changed how the ruling elite governs.' While many observers have noted that Than Shwe remained extremely powerful behind the scenes – and to some extent was just playing these lower-level leaders off each other to remain in control – it is inconceivable that he remained in control of day-to-day government decisions across all these new institutions. In other words, while this shift represented a retirement plan that allowed the senior general to maintain the power necessary to protect himself and his family, and to continue to influence some key decisions, it also created a much more decentralised system of government that vested decision-making power in a much wider set of actors.
- 173 Jolliffe K (2018), 'Peace and Reconciliation', in A Simpson, N Farelly, I Holliday (eds.), *Routledge Handbook of Contemporary Myanmar* (Oxon: Routledge).
- 174 Egreteau (2016), op. cit.; Callahan (2012), op. cit.
- 175 This greatly weakened the USDP, which won only a few seats and has since become a marginal political actor. It has, however, maintained offices and networks across the country that could become more mobilised in the future.
- 176 National League for Democracy (2015), op. cit., p. 7.
- 177 Committee Representing the People's Parliament (1999), p. 92. The use of 'under the aegis' is notably softer than demanding the military come under direct command of the president, as the party had in 1999. Despite referring to a 'genuine multi-party democratic system' and to basic 'democratic standards', the manifesto did not commit to removing the military from politics. National League for Democracy (2015), op. cit., p. 6.
- 178 National League for Democracy (2015), op. cit., p. 8.
- 179 Lubian (2019), op. cit., p. 191–192. As Lubian notes, 'Since the very beginning of Suu Kyi's involvement in Burmese politics, she had to play along with the rules established by the military. However, in order to get the power she needed to find a way to force the generals to relinquish the power (or at least to make concessions).' She has persisted in this basic struggle consistently for three decades.
- 180 Unofficial translation from article 5 of State Counsellor Law (Pyidaungsu Hluttaw Law No. 26/2016). See also: The Republic of the Union of Myanmar President Office (2016), 'President signs State Counsellor Bill into law', April (<http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/04/07/id-6237>)
- 181 Su Mon Thazin Aung, Arnold (2018), op. cit., p. 28.
- 182 Interviews, Yangon, Bangkok, March and April 2019. The exact number of committees could not be determined in this research.
- 183 Institute of Southeast Asian Studies (2018), transcription from the questions and answers of a segment of 'The 43rd Singapore Lecture by H.E. Daw Aung San Suu Kyi, State Counsellor of the Republic of the Union of Myanmar', August.
- 184 In 2014, the NLD collected over five million signatures in a petition calling for constitutional reform, and participated in a USDP-led process that ultimately forced the military to block a handful of key amendments. Ferrie J, Aung Hla Tun (2014), 'Myanmar opposition party says 5 million sign petition to change constitution', *Reuters*, 22 July (<https://www.reuters.com/article/us-myanmar-constitution-idUSKBN0FR0XT20140722>)
- 185 For context on the constitutional demands of ethnic armed organisations, see Saferworld (2017), op. cit.
- 186 Institute of Southeast Asian Studies (2018), op. cit.
- 187 *Global New Light of Myanmar* (2016), 'Here to Stay', 27 March (<http://www.globalnewlightofmyanmar.com/here-to-stay/>)
- 188 Egreteau (2016), op. cit., p. 15, pp. 22–23.
- 189 For a recent and lengthy statement on this, see: *Eleven Media Group* (2019), 'Tatmadaw will get out of the politics only when eternal peace is achieved', 24 February (<https://elevenmyanmar.com/news/tatmadaw-will-get-out-of-the-politics-only-when-eternal-peace-is-achieved/>); Nyein Nyein (2019), 'Military Vows to Remain in Politics as Long as EAOs Exist', *The Irrawaddy*, 26 February (<https://www.irrawaddy.com/news/burma/military-vows-remain-politics-long-eaos-exist.html>). In 2015, Min Aung Hlaing said, 'It will depend a lot on the country's unity, its peace and stability. To specify an exact time is difficult.' Thiha (2015), 'Myanmar not ready for reduced military role in Parliament: Army chief', *Consult-Myanmar*, 21 January (<https://consult-myanmar.com/2015/01/21/senior-general-min-aung-hlaing-myanmar-not-ready-for-reduced-military-role-in-parliament-army-chief/>)
- 190 Min Zin (2019), 'The Tatmadaw's Evolving Peace Process Preferences and Strategy', Institute for Strategy and Policy.
- 191 The full name of the committee was 'The Joint Committee to Amend the Republic of the Union of Myanmar Constitution (2008)'.
- 192 Htet Naing Zaw (2019), 'Military "Never Said" it Opposes Amending Constitution: Commander-in-Chief', *The Irrawaddy*, 31 January (<https://www.irrawaddy.com/news/burma/military-never-said-opposes-amending-constitution-commander-chief.html>). There is nothing barring parliament from forming a committee, however; it will just have to follow procedure when it comes to actually tabling amendments. For months, the 45-member committee, including representatives from 14 political parties and military MPs – who largely remained silent – deliberated the constitution article by article.
- 193 In July 2019, the committee presented its report to parliament. The report contained 3,765 recommendations in total, including 114 from the NLD and ten from the USDP, but none from the military. The most active parties in the committee were the Shan Nationalities League for Democracy (1,112 recommendations), the Arakan National Party (858) and the Mon National Party (642). Most recommendations related to making the charter more federal and more democratic.
- 194 See recommendations related to articles 109b and 141b in International Institute for Democracy and Electoral Assistance (2019), 'Proposals by Political Parties, Clusters and Individual Representatives (Members of Parliament) for changes, additions, removals and additional articles', July (<http://constitutionnet.org/vl/item/report-joint-committee-amend-republic-union-myanmar-constitution-and-annex>). The NLD also recommended changing article 6f to reduce the remit of the Defence Services from having a 'national political leadership role of the State' to a 'national political role of the Union in accordance with the desire of the people'.
- 195 See recommendations related to articles 17b, 232(ii) and 234c in International Institute for Democracy and Electoral Assistance, op. cit. The NLD also recommended removing article 17b, which determines that ministers and deputy ministers nominated by the commander-in-chief from among defence personnel are considered part of the executive. However, the party did not recommend any changes to the actual process by which these figures are appointed, under articles 232b(ii) and 234b. The NLD may believe that removing 17b would make it possible for the president to avoid following the commander-in-chief's recommendations but that is not clearly evident from the text. It appears that the NLD has therefore focused on requiring these ministers to resign from military service to take the positions. Numerous other parties including the SNLD and ANP recommended abolishing these procedures altogether.
- 196 See the NLD's recommendations related to article 436 in International Institute for Democracy and Electoral Assistance, op. cit.
- 197 *Eleven Media Group* (2019), 'More than 120 MPs to debate charter amendment report', 25 July (<https://elevenmyanmar.com/news/more-than-120-mps-to-debate-charter-amendment-report>)
- 198 San Yamin Aung (2019), 'Myanmar Parliament Approves Constitutional Amendment Committee Report', *The Irrawaddy*, 25 June (<https://www.irrawaddy.com/news/burma/myanmar-parliament-approves-constitutional-amendment-committee-report.html>)
- 199 In a 2015 Defence White Paper, the Tatmadaw noted that promoting multi-party politics, international economic cooperation and development are crucial to improving national security. Naypyitaw (2015), op. cit., pp. 19–20.
- 200 To form the Union Government following election of the Union Parliament, three presidential candidates are selected: one by elected representatives in the lower house, one by elected representatives in the upper house and one by the unelected military representatives. The entire Union Parliament then votes to elect one of the candidates as president and the other two become vice presidents.
- 201 See endnote 2 of this report; also Su Mon Thazin Aung, Arnold (2018), op. cit., p. 31.
- 202 The figure was 61 per cent in the NLD's original cabinet formed in March 2016.
- 203 This information is taken from pie charts in Su Mon Thazin Aung, Arnold (2018), op. cit., pp. 58–59.
- 204 *Ibid*, p. 31.
- 205 Shwe Shwe Sein Latt, Kim N.B. Ninh, Mi Ki Kyaw Myint, Lee S (2017), 'Women's Political Participation in Myanmar: Experiences of Women Parliamentarians 2011–2016', The Asia Foundation, April, pp. 3–4 (https://asiafoundation.org/wp-content/uploads/2017/05/Womens-Political-Participation-in-Myanmar-MP-Experiences_report-1.pdf)
- 206 Su Mon Thazin Aung, Arnold (2018), op. cit., p. 31.
- 207 *Ibid*, p. 29.
- 208 *Ibid*, p. 31.
- 209 Interviews, Yangon and Naypyidaw, April and May 2019.
- 210 Institute of Southeast Asian Studies (2018), op. cit.
- 211 *Myawady* (2016), op. cit.
- 212 Myanmar's parliaments (*hluttaw*) consist of a bicameral Union Parliament (*Pyidaungsu Hluttaw*), which contains an upper house, the House of Nationalities (*Amyotha Hluttaw*) and a lower house (Pyithu Hluttaw). There are also parliaments (*hluttaws*) for every state and region.
- 213 Egreteau (2017a), 'Parliamentary Development in Myanmar, An Overview of the Union Parliament, 2011–16', The Asia Foundation, May, p. 23 (<https://asiafoundation.org/wp-content/uploads/2017/05/Parliamentary-Development-in-Myanmar.pdf>)
- 214 Interview with the Assistance Association for Political Prisoners, Yangon, March 2019.
- 215 Shwe Shwe Sein Latt, Kim N.B. Ninh, Mi Ki Kyaw Myint, Lee S (2017), op. cit., p. 2.

- 216 Those women who do manage to reach these positions tend to be exceptional in their qualifications and their level of activity. Many also have or had influential fathers in politics. These exceptional qualities and the reasons for lower representation of women are discussed in: Gender Equality Network (2017), 'Gender and Politics in Myanmar, Women and Men Candidates in the 2015 Election', August, pp 2–5 (https://www.genmyanmar.org/system/research_and_publications/rap_file_engs/000/000/023/original/Gender_and_Politics-Full-English.pdf)
- 217 Data provided by Renaud Egreteau by email, July 2019.
- 218 Egreteau R (2017b), 'Negotiating Parliamentary Oversight of the Security Sector in Myanmar', *ISEAS Perspective* 37, Yusof Ishak Institute, June, p 21.
- 219 Ibid, p 21.
- 220 Front-bench MPs with higher ranks.
- 221 As of January 2018, the bicameral Union legislature included 'three major generals, 12 brigadier generals and 11 colonels'. Asian Review (2016), 'Myanmar military chief revamps his parliamentary team', January 27 (<https://asia.nikkei.com/Politics/Myanmar-military-chief-revamps-his-parliamentary-team>)
- 222 Egreteau (2017a), p 35.
- 223 During interviews in Yangon and Naypyidaw in May 2019, numerous politicians claimed that smaller parties – which are predominantly ethnic parties – find it much harder to get their questions and motions onto the parliamentary agenda and some MPs feel they are actively discriminated against by the speakers.
- 224 Interviews, Naypyidaw, May 2019.
- 225 He said that they are there to present the “dos and don'ts” and raise what is “unlawful”. *Myawady* (2016), op. cit.
- 226 See: Thiha (2015), op. cit.
- 227 Interviews, Naypyidaw, May 2019. According to state media, 'In replying to a question raised by U Khin Zaw of Kawthoung constituency on the legality of military and security personnel's surveillance of Hluttaw representatives, Deputy Minister of Defence Rear Admiral Myint Nwe said surveillance of Hluttaw representatives were [sic] just routine surveillance that does not violate the personnel rights of the individual and was not in the same manner or aim of conducting surveillance on suspected threats to the State, State leaders, properties and the public.' *Global New Light of Myanmar* (2019), 'Second Pyithu Hluttaw 12th regular session holds fifth-day meeting', 11 May, p 2 (http://www.moi.gov.mm/npe/nlm/sites/default/files/newspaper-pdf/2019/05/11/11_May_19_gnlm.pdf)
- 228 Sources specifically noted allegiances to former speakers Shwe Mann and Khin Aung Myint as well as to current lower house speaker T Khun Myat. Interviews, Yangon and Naypyidaw, May 2019; email correspondences with international researcher, July 2019.
- 229 *Myawady* (2016), op. cit. At the press conference, Min Aung Hlaing said “As regards my meetings with Daw Aung San Suu Kyi, our endeavours during the current second term bear witness to the results of our talks. The Tatmadaw will lend a helping hand in all positive endeavours. We all will collectively take part in all the activities of Daw Aung San Suu Kyi for the good of our country. The Tatmadaw will provide cooperative support.”
- 230 According to a government official with close connections to the cabinet, “The bottom line is the national interest; to preserve the national identity. They have the same red lines regarding these threats. But how you [they] approach it is different.” Interview, undisclosed location, May 2019.
- 231 See section 4.2 of this report.
- 232 Myat Myat Mon (2019), 'Trends in China-Myanmar relations: 2018 Year in Review', January (<https://teacircleoxford.com/2019/01/31/trends-in-china-myanmar-relations-2018-year-in-review/>); Nian Peng (2018), 'China and Myanmar's budding relationship', East Asia Forum, August 24 (<https://www.eastasiaforum.org/2018/08/24/china-and-myanmars-budding-relationship/>). According to a government official interviewed for this study (Yangon, May 2019), the NLD sees investment from China as potentially useful in securing another election victory, and as necessary given reticence of Western countries to engage due to moral concerns regarding the Rohingya.
- 233 Onishi J, Bliss R E (2006), 'In search of Asian ways of managing conflict', *International Journal of Conflict Management* 17 (3), pp 203–225 (<https://www.emeraldinsight.com/doi/abs/10.1108/10444060610742326?journalCode=ijcma>); John Ng, “Smiling Tiger, Hidden Dragon”...Why Asians Avoid Conflict', Leadership.com.sg (<http://www.leadership.com.sg/partnership/why-smiling-tiger-hidden-dragon-why-asians-avoid-conflict/>)
- 234 Interviews, Yangon and Naypyidaw, March, April and May 2019.
- 235 Rather than allowing the civilian administration some of the much-desired credit for this breakthrough in the peace process, the military informed the president's office just hours before. Although the GAD decision had been a long time coming and was broadly accepted by the military, the suddenness of the move was unexpected.
- 236 Ye Mon (2019), 'Ko Ni murder trial reaches climax', *Frontier Myanmar*, 29 January (<https://frontiermyanmar.net/en/ko-ni-murder-trial-reaches-climax>). The International Court of Justice has found that 'Lines of inquiry related to the political motivations for the killing, particularly considering the military links of many suspects, do not appear to have been pursued satisfactorily, nor impartially, given military involvement in the investigation.'
- 237 Htun Htun (2019), 'Court Hears Sentencing Appeals for U Ko Ni Murder Conspirators', *The Irrawaddy*, 25 June (<https://www.irrawaddy.com/news/burma/court-hears-sentencing-appeals-u-ko-ni-murder-conspirators.html>)



Members of parliament arrive to attend a regular session of the lower house of parliament on 18 August 2015 in Naypyidaw, Myanmar.

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3

Developing the mandate of elected civilians

Without elected representatives, there is no democracy. The first dimension of democratising the security sector is, therefore, the mandate of elected civilians. This includes the official powers held by elected civilians in the constitution and law, as well as the means and resolve that those officials have to exercise their powers.

Following 50 years of direct military rule and with a constitution in place that was designed to secure the military's autonomy, the bar for measuring progress in this area is set very low. The commander-in-chief retains near autonomous control of the armed forces and, via his appointment of the Minister of Home Affairs, oversees the prisons and all intelligence services. It is simplistic to suggest however that civilians in government have no influence at all over the security sector. Over the past ten years, there has been notable progress in making the sector more transparent and subject to elected leaders.

By enacting the 2008 Constitution, the military handed over significant powers to elected officials, despite retaining much control for itself. President Thein Sein then developed and expanded the mandate of the elected wing of government before overseeing elections. As the first lifelong civilian and most popular politician to hold such a senior position in government since the 1960s, Aung San Suu Kyi and her government have pioneered and established new norms for explicit power sharing between the military and democratically elected officials.

3.1 Who controls the security and justice institutions?

This section outlines the institutional arrangements for control and oversight of the state's main security and justice institutions, with a particular focus on the civilian-military division of power. A table of the most important constitutional provisions and amendments proposed by the National League for Democracy (NLD) is provided in annex 1.

The armed forces

Myanmar's Armed Forces (also known as the Defence Services or by the Myanmar vernacular term, Tatmadaw) is effectively a state within a state. Article 20b of the 2008 Constitution, which is among the charter's 'Basic Principles of the Union', states that 'The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.' Articles 20c and 338 state that the commander-in-chief 'is the Supreme Commander of all armed forces' and that 'armed forces in the Union shall be under the command of the Defence Services' respectively.

This applies to the tri-service forces of the army, the navy and the air force as well as to the military courts (organised under the Judge Advocate General) and the army's intelligence branch (Office of the Chief of Military Security Affairs). It also includes thousands of militia of varying sizes, including 23 Border Guard Forces and at least 15 People's Militia Forces,²³⁸ and is often interpreted to include the police. Article 20b and numerous others throughout the charter protect the armed forces from any significant interference from civilian officials and allow them to independently create and follow their own laws, to independently adjudicate on purported crimes by personnel in act of service, and to administer their budget much more independently than other government bodies.

Nonetheless, the president is head of state and military officials have numerous times indicated that he is 'ultimately superior' to them.²³⁹ When speaking to a delegation from the United Nations (UN) Security Council, Min Aung Hlaing said, "Though I am the head of the Tatmadaw, our country has the president. And we Tatmadaw take actions under the leadership of the president. Our Tatmadaw is under the guidance of the Myanmar government. We only take action according to the mandate given by the

law and we are not authorized to do anything beyond the boundaries of law."²⁴⁰

Tatmadaw leaders regularly emphasise the prevalence of the law in this way, underlining that they are not simply rogue actors but that, while the president has greater authority and responsibility overall, his interference in military affairs could still be deemed unconstitutional. This suggests that – in lieu of constitutional reform – much comes down to the ability of civilians in government to establish new norms, and to leverage the *de facto* authority that the president's supremacy and their democratic mandate provides them and which the military cannot completely ignore.

The chain of command over Myanmar's armed forces is further confused by the unclear relationship between the Commander-in-Chief of the Defence Services and the Union Government. The commander-in-chief is supreme over all armed forces but does not hold a cabinet position or have any clear line of authority between himself and the president. The Minister of Defence (currently Lieutenant General Sein Win) is subordinate to the president according to the constitution and protocol, but is nominated and can effectively be fired by the commander-in-chief.²⁴¹ His ministry is the main formal go-between for the military and the government, representing the latter both in the cabinet and when called for questioning in parliament. However, as a lieutenant general, he holds the fourth-highest rank in the Myanmar Armed Forces, and is therefore junior not only to the commander-in-chief but also to the deputy commander-in-chief and to the chief of general staff. He is equivalent to the commanders of the Bureau of Special Operations – the highest-level field units of the army, of which there are six. His ministry is essentially administrative in function, with four departments covering the Minister's Office, accounts (for managing the official budget), international and internal affairs, and procurement.²⁴²

War powers

As surmised by Andrew Selth, 'Aung San Suu Kyi and her government have no control over the operational deployments of the armed forces.'²⁴³ It would therefore be incorrect to deem her or other civilians in her government as ultimately responsible for any particular operation or its outcomes. Yet civilians in government do have numerous channels and semi-formalised powers to demand greater accountability and involvement in military decision-making, if they can find the political space to do so.

The 2008 Constitution gives the president – with 'approval' of the Union Parliament and in coordination with the National Defence and Security

Council (NDSC) – the power ‘to take appropriate military action’ in the event of ‘an aggression against the Union’. It further allows the president, with just the assent of the Union Parliament, to ‘declare war or make peace’.²⁴⁴ These are crucial sovereign powers, placed explicitly in the hands of the president and parliament. Globally, the requirement of parliamentary approval tends to reduce the likelihood of a country to go to war. An effort to reduce international conflicts is in line with article 42a of the constitution, which states, ‘The Union shall not commence aggression against any nation.’²⁴⁵ Indeed, Myanmar has not declared war with any foreign state since its independence in 1948.

However, the constitution is ambiguous regarding internal armed conflicts, which the Tatmadaw has regularly insisted are not ‘civil wars’. It claims ‘civil wars’ ended in 1949, when the Karen National Union (KNU) was pushed out of Yangon.²⁴⁶ This claim potentially obstructs the president or parliament from being able to declare war or make peace with ethnic armed organisations (EAOs). The daily military operations against EAOs (ironically still including the KNU) are instead seemingly viewed not as acts of war but as regular activities of the armed forces, which the Defence Services have ‘the right to independently administer and adjudicate’.²⁴⁷ Additionally, article 339 states that ‘The Defence Services shall lead in safeguarding the Union against all internal and external dangers’, which would seemingly reinforce the military’s claim to autonomy in fighting insurgents.

In somewhat ambiguous comments in 2016, Commander-in-Chief Min Aung Hlaing indicated that although the military takes action based on ‘prescriptions’ from the government, “In connection with the matters which are within its own rights, the Tatmadaw has to take measures in its own way.” But, he said, the military “always presents all the cases which should be submitted”, before going on to emphasise that the president is the head of the state and is ultimately his superior. He ended by saying, “There are also types of work which are carried out through coordination. In cases which need permission but not submission, we always seek permission.”²⁴⁸ These comments are notably vague, but seem to suggest that the Tatmadaw will seek permission when it deems it necessary, but is not bound to a clearly legislated protocol.

On 10 December 2011, President Thein Sein issued a written edict ordering the armed forces to halt military offensives near the headquarters of the Kachin Independence Organisation, except those conducted in self-defence.²⁴⁹ Ongoing offensives were drawn down after a few days, but picked up ferociously over the following year. This suggests the

main impact of the order was to help Thein Sein position himself as a peacemaker, rather than to greatly impact the situation on the ground.²⁵⁰ In May 2018, an official from the defence ministry claimed that the military would obey any order from President Win Myint, including to halt military offensives.²⁵¹

However, the NLD-led government has not attempted to make such an order, at least not through a public written edict. Rather, it has instructed the military to use force numerous times. Perhaps the most striking example was on 7 January 2018, when a meeting of civilian and military officials was convened in response to attacks by the Arakan Army on four Border Guard Police posts in Rakhine State, which had taken place three days earlier on Independence Day. Following the meeting, the government spokesperson announced that “The president’s office has instructed the military to launch an operation to crush the terrorists.”²⁵²

The defence budget

Financial regulations published by the Ministry of Planning and Finance exempt the Ministry of Defence from budgetary processes applied to all other government departments, and state that ‘financial matters for the Ministry of Defence shall be applied under existing laws, rules and procedures issued by the Ministry of Defence’.²⁵³ While the ministry’s budget is included in the standard union budget bills – broken down by current expenditure, capital expenditure, debts and other headline categories – no further documentation is typically provided on how the money will be spent. The Ministries of Home Affairs and Border Affairs are subject to the same scrutiny as other ministries.

The rules also allow the defence ministry to keep its own bank accounts without direct approval of the finance ministry, unlike most other government entities. Furthermore, the ministry’s budget is not subject to an audit by the Union Auditor General. The Ministry of Defence is instead required to keep its own monthly financial statements and then submit an account for the whole year to the treasury at the end of the financial year. Nonetheless, parliamentarians do check the budget and have a mandate to question representatives of the minister about it and request overall reductions (see section 3.2).²⁵⁴

In the 2018–19 budget year, the Ministry of Defence received a budget of Myanmar Kyat (MMK) 3.3 trillion, the biggest in the country’s history and 13 per cent of the total government budget.²⁵⁵ Of this, MMK 1.8 trillion was for recurrent expenditures and MMK 1.4 trillion was for capital expenditures.²⁵⁶ Much of the capital expenditure is likely earmarked for purchasing military equipment as part of the

IN THE 2018–19 BUDGET YEAR, THE MINISTRY OF DEFENCE RECEIVED **A BUDGET OF MMK 3.3 TRILLION, THE BIGGEST IN THE COUNTRY’S HISTORY** AND 13% OF THE TOTAL GOVERNMENT BUDGET

military's ongoing modernisation efforts. In real terms, this defence budget is around 2.35 times that of 2011–12, which was the first under the parliamentary system. Defence spending has stayed relatively stable as a proportion of overall spending, so this rise is a result of an overall increase in the government budget, thanks largely to growth in gross domestic product.²⁵⁷

The government's ability to gain leverage over the armed forces via the budget process is further impaired by the military's access to significant off-budget income as a result of commercial businesses owned by the Ministry of Defence.²⁵⁸ These include the Union of Myanmar Economic Holdings Limited, the Myanmar Economic Corporation and other smaller ventures. These companies and three affiliates are all among the country's top 25 tax-paying firms, though it is speculated that much of their income goes untaxed.²⁵⁹ They are also indirectly subsidised by the government budget, as soldiers are encouraged to give a portion of their annual (on-budget) salary to buy shares in these companies, supposedly to provide returns to them

when they retire (actual pensions are also on budget).²⁶⁰ In addition, the military is thought to receive subsidised or free electricity, fuel and other goods from local-level government facilities, which effectively shifts defence costs onto the budgets of other ministries.²⁶¹ Greater oversight of the defence budget will be central to any future attempts to bring the armed forces under democratic control. If managed in the

public interest, military spending can also have long-term benefits to the overall economy of the country. Such spending can create jobs, lead to exports, and boost research and development.

Military justice

Under articles 20b, 293 and 319 of the 2008 Constitution, the military retains complete autonomy in the handling of justice cases concerning any actions that are considered part of the 'affairs of the armed forces'.²⁶² The charter also establishes permanent courts martial (military tribunals), and places the final decision on all appeals with the commander-in-chief, rather than with the country's Supreme Court.²⁶³ These articles align with the 1959 Defence Services Act, which stipulates that personnel committing serious crimes such as homicide or rape 'while on active service' are to be tried by courts martial, rather than civilian courts.²⁶⁴ The constitution stipulates that both the police and the military can have their own laws for human resource matters, separate from those governing other civil servants.²⁶⁵

Additionally, article 445 of the constitution guarantees that no proceeding shall be 'instituted' against any member of the former military government 'in respect to any act done in the execution of their respective duties', seemingly barring any attempt to seek justice for crimes committed by security forces during that period. Just before the end of his term, President Thein Sein passed a law to give all presidents immunity from future criminal action.²⁶⁶

Potential constitutional reforms

When submitting its recommendations for constitutional amendments in 2019, the NLD did not propose any changes to article 20b, which gives the Defence Services 'the right to independently administer and adjudicate all affairs of the armed forces', and potentially makes unconstitutional any attempt by the civilian administration to legislate or dictate the affairs of the military. This article was also not included in a list of amendments developed by the party in 2014.²⁶⁷

The NLD's decision not to amend it suggests that the party is focused on removing the military from politics, while allowing it to continue to lead on defence and security affairs independently, perhaps due to a belief that this is all that can be achieved in the near term. Numerous other parties proposed removing the article completely, giving this authority to the Minister of Defence or to the president, or to make such affairs subject to law.²⁶⁸

The NLD recommended removing articles 20c and 338, which place 'all armed forces' under the commander-in-chief and the Defence Services. This move would mean certain units could be decoupled from the military and placed under civilian control or even that the civilian government could establish new security forces.²⁶⁹ The NLD also proposed removing article 339, which states that 'The Defence Services shall lead in safeguarding the Union against all internal and external dangers', suggesting civilians could take a leadership role in such affairs²⁷⁰ despite still being unable to interfere in the affairs of armed forces as per article 20b. The Shan Nationalities League for Democracy (SNLD) recommended a long list of additions to article 338, stipulating that the military comes under full democratic control and budget scrutiny in addition to numerous amendments ensuring it is representative and protective of all ethnic nationalities and races.²⁷¹ Only cosmetic changes were suggested to the provisions regarding military justice.²⁷²

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The police

The Myanmar Police Force (MPF) – which is the only police force in the union and which covers all states and regions – is under the Ministry of Home Affairs, whose minister is nominated and can be removed by the commander-in-chief, according to the constitution.²⁷³ Offences committed by police, which include threatening witnesses and torture, are handled by police courts, as per the 1995 Myanmar Police Force Maintenance of Discipline Law.²⁷⁴

The NLD has long talked about the importance of an independent police force. In the party's 2015 manifesto, it stated its aim 'To make the police independent, so as to enable them to carry out their duties in accordance with the law, and under the rule of law'.²⁷⁵

While it is common around the world for police forces to become militarised during periods of conflict or authoritarianism, the formalised position of the police under the military in Myanmar is unique, and is seemingly related to the military's wish to avoid events such as in 1958, when the civilian-led union military police were used to resist a military coup.²⁷⁶

It is generally understood that the police are fixed under military control due to articles 20c and 338, which place all armed forces under the commander-in-chief and the Defence Services respectively.²⁷⁷ However, the exact definition of 'all armed forces' is not provided anywhere in law. The only constitutional provisions specifically about the police say that it is a union – rather than a state or region – responsibility,²⁷⁸ and that personnel will be subject to specific laws on areas such as appointments and promotions, rather than to the same laws as other civil servants or personnel of the Defence Services.²⁷⁹

In theory at least, this suggests that the police could be transferred to another ministry without changing the constitution, as was done with the General Administration Department (GAD). However, the military may claim that the fact that the police force holds arms means that it is one of the armed forces and that such a move would be unconstitutional. Forest rangers under the Forest Department cannot carry arms and rely on the MPF's Forest Police for protection.²⁸⁰

In July 2019, the NLD proposed requiring all defence personnel nominated by the commander-in-chief to become ministers of defence, home affairs and border affairs to retire from military service, which would place the Ministry of Home Affairs effectively under civilian control.²⁸¹ Perhaps also recognising articles 20c and 338 as a blockage to making the police force independent, the NLD proposed removing both of them in July 2019.²⁸² The concept

of 'police independence' to which the NLD manifesto aspires is generally interpreted to include not just independence from military influence but independence from all forms of political influence.

Independence requires striking a fine balance.²⁸³ On the one hand, it means that the police must impartially apply and enforce the law in a universal and indiscriminate manner, rather than serving the interests of the ruling party, the executive branch, the military or any other actor. On the other hand, it requires that all police activity 'is open to observation by a variety of oversight institutions' and that the force cannot just act in its own interest.²⁸⁴ This calls for a range of strong institutions, norms and laws to counterbalance powers over and throughout the police force without allowing it to become a tool of any particular political institution.

The SNLD has recommended forming separate union-level and state-level police forces, in line with its federalist agenda,²⁸⁵ as have numerous EAOs.²⁸⁶

Intelligence services

Intelligence services in Myanmar have been used to maintain internal order and control since the colonial era. This function was particularly developed between 1980–2004, when the intelligence services were headed by General Khin Nyunt. It is surprising therefore that there is very little public information or discourse about the intelligence services and how they might fit into (or go against) the democratisation agenda.²⁸⁷

There are three primary intelligence agencies, all of which ultimately report to the military. These are the Special Branch, which is under the MPF; the Bureau of Special Investigation, which is under the Ministry of Home Affairs; and the Office of the Chief of Military Security Affairs (OCMSA), which is part of the military and is under the direct command of the commander-in-chief. Some other MPF bodies also play intelligence roles.²⁸⁸ It is not entirely clear how the activities of the three formal intelligence agencies overlap or if there are conflicts between their mandates. Their structures and main activities are discussed in chapter 4.

The Ministry of Foreign Affairs has a role in collecting open-source intelligence on international affairs, but defence attachés are appointed by the military.²⁸⁹ For internal intelligence, the GAD plays a role in information collection and now reports to the civilian government (see page 43). Without this, the civilian government would seemingly be reliant on its own informal networks (for example, through the NLD party) and on whatever official briefings it is able to receive from the military and its subordinates. The

National Security Adviser could conceivably play some kind of intelligence role but does not have any serious logistical support or much recognition from the military (see section 3.2).

There does not appear to be any effort by the civilian government to gain control over the country's intelligence apparatus. There is nothing clearly laid out in the constitution regarding intelligence. Requiring the Minister of Home Affairs to retire from the Defence Services, as recommended by the NLD, would bring the Special Branch and the Bureau of Special Investigation under nominal civilian control.²⁹⁰ However, removing the OCMSA from the military would be an unlikely goal, as it is a core element in military operations.

There have been some rumours that the military plans to re-establish a National Intelligence Bureau to coordinate all intelligence agencies.²⁹¹ There would likely be an interest from the civilian wing of government to have a civilian-led coordination mechanism, but there are no signs that it has the necessary influence, and this could be seen as an infringement on the military's constitutional autonomy.

The judiciary

On paper, Myanmar's civilian courts – responsible for all civil and criminal cases not involving the military, as well as any that are voluntarily referred by the Judge Advocate General – are relatively independent and, unlike other branches, are not formally subject to military control.²⁹² Judicial independence is enshrined in article 19 of the constitution, among the 'Basic Principles of the Union'. It has also regularly been a stated priority

of the NLD in its manifestos and other documents over the years.²⁹³

The Judicial Strategic Plan includes enhancing judicial independence as a central aim.²⁹⁴

In practice, the military continues to greatly influence court proceedings, both because the judiciary employs high numbers of former military officers and civilian judges who served under the military government, and because a culture of independent adjudication is so lacking that most judges still look for signals from military or political

counterparts before making decisions. The nature and impacts of this residual military-influenced culture within the judiciary are discussed in greater detail in chapter 4.

Research was not conducted into the Myanmar Constitutional Tribunal for this report.²⁹⁵ The tribunal could have significant implications for how the division of powers between civilians and the military is interpreted. While much currently rests on the implicit power balance that greatly favours the military, attempts to amend the constitution could also be influenced by legal deliberations. For example, matters such as the placement of the police, powers to declare war or make peace, or exactly what is included in 'all affairs of the armed forces' are not necessarily as set in stone on paper as they currently appear in practice. The NLD and numerous other parties have proposed abolishing the constitutional tribunal and handing its powers to the Supreme Court.

Corrections and proposal for a Ministry of Justice

Myanmar's prisons – mostly constructed in the colonial era – are administered by the Corrections Department of the Ministry of Home Affairs and so are under military control.

Numerous interviewees – including lawyers, civil society representatives and one MP – raised the possibility of forming a Ministry of Justice, which could potentially take over corrections as well as parts of the budget and administration of the judiciary, though there is no clear unified plan among those advocating for the change.²⁹⁶ The creation of a Ministry of Justice through constitutional amendments was proposed by the Arakan National Party and the Mon National Party in July 2019, but not by the NLD. Such a move would not necessarily require constitutional change, however.

A Ministry of Justice would potentially take over some of the functions of the Union Attorney General (UAG), the leading justice official in the executive branch, who appoints public prosecutors in all courts.²⁹⁷ The current UAG is Tun Tun Oo, a former infantry commander who later became a military lawyer before being appointed Deputy UAG under Thein Sein. Numerous sources claimed that cases brought to the courts by military or government officials are rarely independently scrutinised by the prosecutors, and are often processed as a matter of routine. Like many judges, these officers act largely as functionaries in a system rather than as independent officers charged with interpreting the law and acting in the public interest. Furthermore, many appear to have adopted the military government mindset, seeing cases of public protest or criticism of public officials as threats to stability and order, rather than as important parts of a democratic society.²⁹⁸

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The Ministry of Border Affairs

The Ministry of Border Affairs is one of three military-led ministries and its role is primarily to implement development activities as part of counter-insurgency efforts. It was established first as a committee in 1989 and then was upgraded to the Ministry of Progress of Border Areas, National Races and Development Affairs in the 1990s. It took its current name in 2011. The committee still exists today and is headed by Aung San Suu Kyi, suggesting she at least has strong coordination over the department. The department appears to have reduced in influence over recent years, for example with the Rural Development Department being rotated out in 2013.

At the state and regional level, there are Ministers of Border Affairs and Security, who are nominated by the commander-in-chief and who remain uniformed military personnel while in office. Like other state or regional ministers, they do not have ministries underneath them; they effectively play a coordination role between their respective government and the relevant state- or regional-level departments of union ministries. These ministers can be convened by the president-appointed civilian chief ministers, who head state or regional governments, and are placed within their cabinets. However, they also report to the regional military commands and potentially upward to the commander-in-chief.

3.2 Civilian government finding its role

Within the constitutional and political constraints, the NLD-led government and parliament have developed a number of means to influence the security sector, establish new norms, and carve out a role for civilian oversight and leadership.

The Union Government

Myanmar's executive branch, which includes both elected civilians and uniformed military officers, is the main body responsible for developing and implementing policy in line with the law and subject to oversight from parliament and the judiciary. It is therefore an important space for civilians to engage in security decision-making and – within the constraints of the constitution – assert some degree of leadership over such affairs. While carefully

respecting the constitutional freedoms enjoyed by the military, the NLD-led government has taken numerous important steps towards expanding its security role. However, the party has also been criticised for not taking full advantage of the powers it does have.

The National Defence and Security Council

Article 201 of the constitution provides for the formation of an NDSC. The structure of the body is clearly stipulated, to include five democratically elected civilians, five serving military officers and the military-appointed vice president (see figure 5).²⁹⁹ Decisions of when to convene the NDSC or exactly how to use it are at the discretion of the president, who is the chair. Among the stipulated members is the Minister of Foreign Affairs, meaning that Aung San Suu Kyi has a rightful seat at the table, but not in an explicit leadership role.

The council has never been formally convened since the NLD took power. This contrasts greatly with previous governments. Under the pre-2011 military government, the equivalent National Security Council was thought to be responsible for around 80 per cent of government decisions. Under Thein Sein, the NDSC was initially convened weekly but became increasingly less regular throughout his term.³⁰⁰

Numerous interviewees speculated, as have commentators, that successive NLD-appointed presidents have been reluctant to convene the council because of concerns that the democratically elected civilians would be outnumbered and that, although the president would be chair, the commander-in-chief would have a more senior position than Aung San Suu Kyi.³⁰¹ Instead, they have at times convened meetings made up of similar members, but with additional officials (see figure 5). These have sometimes but not always included the commander-in-chief, particularly when discussing major national security issues like conflicts in Rakhine State.³⁰² In July 2019, the NLD recommended amending article 201 to add deputy speakers of both houses (viewed by the NLD as equivalent to the deputy commander-in-chief) and to remove the Minister of Border Affairs, ensuring a majority of civilians.³⁰³

An NLD-aligned civilian could also potentially be added to the NDSC under current law, as the 2010 Union Government Law stipulates that 'The secretary of the Union Government', a position that doesn't clearly currently exist, 'shall be the ex-officio secretary of the National Defence and Security Council', but any changes would have to be carefully managed or the military would likely claim they were unconstitutional.

Figure 6: National Defence and Security Council (NDSC) members and additional officials included in unofficial security meetings chaired by the National League for Democracy (NLD)-led government

Members of the NDSC	Included in unofficial security meetings
1. The President: Win Myint	■ Minister of the State Counsellor's Office: Kyaw Tint Swe (9 June 2018 and 7 January 2019)
2. Vice President: Myint Swe	■ Minister of International Cooperation: Kyaw Tin (9 June 2018 and 7 January 2019)
3. Vice President: Henry Van Thio	■ Union Attorney General: Tun Tun Oo (9 June 2018 and 7 January 2019)
4. Speaker of the Pyithu Hluttaw: T Khun Myat	■ Minister of the Office of the Union Government: Min Thu (9 June 2018 and 7 January 2019) ³⁰⁴
5. Speaker of the Amyotha Hluttaw: Mahn Win Khaing	■ Union Minister of Investment and Foreign Economic Relations and National Security Adviser: Thaug Tun (7 January 2019 only)
6. Commander-in-Chief of the Defence Services: Min Aung Hlaing	■ Union Peace Commission Chairman: Tin Myo Win (7 January 2019 only)
7. Deputy Commander-in-Chief of the Defence Services: Soe Win	■ Chief of Military Security Affairs: Lieutenant General Soe Htut (7 January 2019 only)
8. Minister of Defence: Sein Win	
9. Minister of Foreign Affairs: Aung San Suu Kyi	
10. Minister of Home Affairs: Kyaw Swe	
11. Minister of Border Affairs: Ye Aung	
	Constitutional amendments recommended by NLD
	■ Deputy Speaker of the Pyithu Hluttaw: currently Tun Tun Hein
	■ Deputy Speaker of the Amyotha Hluttaw: currently Aye Tha Aung
	■ Removed: Minister of Border Affairs: currently Ye Aung

The majority of roles conferred to the NDSC in the constitution relate to approving presidential decisions in extraordinary circumstances, such as when severing diplomatic ties, granting amnesties or invoking states of emergency. NDSC approval is also required to allow the military to conscript citizens, which it currently does not.

What is perhaps more significant is the potential for the NDSC to be used as a coordination body between civilians and the military for developing joint strategies, policies and positions on security affairs. Many interviewees emphasised the need for more regular coordination as a means to build trust and to encourage more routine joint decision-making. If trust is developed, these meetings could provide civilians with access to more regular briefings on, and greater influence over, the activities of the security forces. Some interviewees suggested that the NDSC could be used as a forum for more explicit formal negotiations on issues like constitutional reform that require regular close communication between the state counsellor and the commander-in-chief. If used strategically, the NDSC could

effectively be the most powerful organ of the state and would be chaired by the civilian government.

There is potential to more formally define the role of the NDSC by creating an NDSC law. This was attempted during the Thein Sein era but the law never made it to parliament, as it was likely considered too sensitive to reach an agreement on. It would be difficult for civilians to push this through in today's political climate but, if approached sensitively, it could be a key opportunity to redefine what security means to the government. Power to pass the law would officially lie within the powers of the NLD, barring any constitutional disputes.

The National Security Adviser

On 10 January 2017, civilians in government created a new position of National Security Adviser (NSA) to the Union Government, 'to advise the President and the Union Government on internal and external threats by assessing situations from a strategic point of view'.³⁰⁵ The man appointed was Thaug Tun, a long-term diplomat trusted by Aung San Suu Kyi. He was later appointed Minister of the Office of the

Union Government and then transferred again to become Minister of Foreign Economic Relations. Both of these positions were newly created ministerial portfolios.³⁰⁶ He has maintained the position of NSA throughout, and is regularly introduced in state-run media with this title.

The NSA is a completely novel position in Myanmar and is seemingly the first explicitly security-focused position created by a Myanmar civilian administration since the 1960s.³⁰⁷ However, it relies on a secretary seconded from another ministry and does not currently hold its own office or clear institutionalised mandate. It is primarily a policy-making and external relations role and numerous sources confirmed that the military still reports directly to the president's office when communicating with the civilian government.³⁰⁸

The NSA's main externally facing activities have so far focused on mitigating the damage done to the government's international reputation – and subsequently its economic opportunities – as a result of human rights concerns in Rakhine State and the situation of Rohingya refugees in Bangladesh. Thaung Tun personally had to play a similar role when serving as the Director General of the Ministry of Foreign Affairs and in other positions under the military government, often rebutting accusations of the junta's human rights abuses while championing the government's economic development successes.³⁰⁹

At the 2018 Shangri-La Dialogue, an annual regional meeting of leading defence and security officials, he insisted that the root cause of the 2016–2017 displacement of over 800,000 Rohingya people, who he refers to simply as “Muslims”, was “terrorism” and lamented “unverified allegations” and “unhelpful pressures” from the international community on the issue.³¹⁰ While his tone is notably more diplomatic than his military counterparts, he has been careful to stay broadly within the official military line of diverting attention away from the military's alleged crimes while blaming displacement on the Arakan Rohingya Salvation Army and emphasising that non-Muslim communities have equally suffered from the conflict. Thaung Tun's later role in forming and leading a Ministry of Foreign Economic Relations further suggests that his primary function in government is in building foreign economic ties, in part as a response to the downturn in international relations.

His role has been broader than that, however. Within months of being appointed as NSA, Thaung Tun travelled to Beijing to meet China's Minister of State Security and Foreign Minister, and then to Yunnan to discuss Myanmar's peace process and other affairs.³¹¹ He also attended the first annual Security Chiefs Meeting of the Bay of Bengal Initiative for

Multi-Sectoral Technical and Economic Cooperation, which includes seven other nation states.³¹² In May 2018, he summoned the ambassador of Bangladesh in order to object to Bangladesh's apparent construction of military bunkers near the border between the two countries.³¹³ This report suggests he must have access to some form of intelligence, whether from his own networks, from the local government or from the military and police.

It is not yet clear whether the NSA role will evolve into a more robust civilian-led institution to help the government develop and oversee the implementation of security policy, or if it will remain a more limited position with predominantly political and economic objectives.

Security, justice and defence policy-making

Policy agendas with clearly defined priorities and implementation plans are a crucial tool in exercising leadership and control over the full breadth of government functions. In particular, written policies signed off by the responsible ministries can help to commit departments and personnel to specific tasks or approaches and ensure regular monitoring of progress. Policy processes that then lead to new laws can permanently bind government bodies to these objectives and approaches. Policy development is typically led by a particular ministry, or by a committee chaired by a minister, meaning that such processes can give specific ministers coordinating power across multiple ministries.

The NLD-led government has made some progress in developing policies on internal security and justice issues, but has avoided probing into areas still considered the preserve of the military. In the Union Government, there are no constitutional restrictions on civilians setting policies or drafting laws that the military-led ministries should follow, as these powers are defined in schedule 1 of the constitution, which does not separate civilian and military powers explicitly. The extent to which the military-led ministries follow government policies, and the extent to which the policies are grounded in the practical realities of those sectors, depends on significant buy-in and participation of those ministries. Additionally, when it comes to the activities of armed forces, the military could refer to article 20b, which grants it autonomy to reject government policies or potentially to block new laws.

Meanwhile, the military has no established system for producing publicly available defence and security policies. There are no national security strategies or reviews as used in other countries. Military doctrine is developed internally, and the National Defence College plays a major role in educating officers in defence and security policy and strategy (see chapter 5). The Tatmadaw True Information Team

liaises with the media and puts out occasional publications in response to international criticism. Additionally, a Defence White Paper dated 2015 was sent to numerous foreign embassies in 2016, but this was a one-off, and sources indicated that the document was not yet fully approved for release.

The NLD-led government's initial approach to gaining some leadership in addressing the highly sensitive situation of the stateless Rohingya people in Rakhine State – where it knew the military would resist great interference – was to establish an international commission led by Kofi Annan, hoping that the clout of such a figure would help the government chart a new course. However, on the day before the commission issued its report, there were outbreaks of violence that spiralled into the region's most intense conflict in decades, with unprecedentedly serious human rights allegations.³¹⁴ This seemingly brought the military and the government closer together on the issue and in tension with international opinion.

The Myanmar Sustainable Development Plan, signed by Aung San Suu Kyi, provides 'an overall framework for coordination and cooperation across all ministries, and all States and Regions to forge a common path towards the emergence of a prosperous, peaceful and democratic Myanmar'.³¹⁵

The plan makes 'peace and stability' the first of three core pillars and duly notes many of the political disputes and structural inequalities that drive conflict.³¹⁶ One of five strategies under this pillar is to 'promote greater access to justice, individual rights and adherence to the rule of law', which includes sub-strategies to 'develop a comprehensive justice

sector reform strategy' and to 'support the security sector to effectively perform its role serving our people and ensuring peace, safety and legal rights of individuals and the national interest are protected'.

However, the document is also a striking reflection of the constraints faced by civilians in government to set agendas for the military-led ministries or to even mention the role that military affairs and operations play in achieving peace or the impacts they have on

human security. Despite including tasks for 19 ministries, there is no mention of the Ministry of Defence. The strategies related to the security sector carefully refer to 'supporting' it, rather than reforming or even improving it. Meanwhile, the preamble emphasises 'strengthened state capacity to ensure security and stability' as the first in a list of conditions necessary to achieve durable peace, and the only mention of security and justice in conflict-affected areas refers to bringing 'the rule of law to

conflict-affected areas so that development efforts can be undertaken in an effective and rights-based manner'. This reflects the state's ingrained focus on economic development as a priority in conflict areas and seems to neglect the many other reasons for improved rule of law – most importantly the protection of women, children and men.³¹⁷

The NLD-led government has also continued policy development processes started during the Thein Sein era, including the National Drug Harm Reduction Policy, the National Crime Prevention Strategy and the Judicial Strategic Action Plan. The first two were overseen by the military-led Ministry of Home Affairs, and were rare examples of a strong cross-governmental approach. Some of their key tenets are discussed in chapter 4.

The Myanmar National Human Rights Commission

In 2011, President Thein Sein established the Myanmar National Human Rights Commission (MNHRC), the first body of its kind in the country's history. This came just months after the president's inauguration speech, where he became the first leading government official in Myanmar to even refer to the need to address human rights issues in the country. A few years later in 2014, the role of the commission was enshrined in law,³¹⁸ demonstrating how bodies initially established by the executive can be constituted in law with the involvement of parliament at a later date. The MNHRC board of commissioners includes a number of stipulated ministers and two civil society representatives, and consists of a mixture of civilians and former military figures.³¹⁹

The MNHRC can investigate alleged cases of human rights abuse, review laws, inspect prisons and other institutions, and convene government departments for questioning. These activities primarily feed into reports and recommendations that it presents at regular intervals to the executive and at biannual parliamentary hearings. This provides a degree of civilian oversight, including over the activities of the police and the prison department, which are under the military-led Ministry of Home Affairs. The MNHRC has also provided training in human rights to government, police and military personnel, often exposing them to these concepts for the first time.

In what could be a landmark case, the MNHRC assisted a widow in seeking justice for the unlawful killing of her husband by a Myanmar Army captain. The MNHRC was instrumental in having the perpetrator transferred to a civilian court, where he was dealt a ten-year jail sentence in May 2019.³²⁰



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However, very few cases reported to the MNHRC actually get resolved, particularly those that involve the military, and the commission has no powers to enforce its recommendations. It also appears to have gained little space to directly investigate military actions or inspect military facilities,³²¹ and even its prison visits have to be pre-announced. The commission's inclusion of ministers impairs its independence from the government and it cannot get involved in any case currently with the courts. These are among the reasons that it falls short of the Paris Principles and has been accredited with a 'B' by the UN Office of the High Commissioner of Human Rights.³²² Most strikingly, the MNHRC's only response to military campaigns in Rakhine State in 2016 and 2017 was to examine the activities of the Arakan Rohingya Salvation Army, without mention of the actions of state security forces,³²³ despite calls for impartial action from 24 domestic human rights organisations.³²⁴

MNHRC training has primarily focused on low-level personnel and has reportedly been based on theory – rather than providing practical skills, developing procedures or enforcing new rules.³²⁵ As one interviewee who knows the institution well explained, the commission's training and reporting practices “can help, but very slowly. We don't have time for that slow process”.³²⁶ This is particularly the case, given the vast extent of human rights issues ongoing in the country. MPs and some civil society organisers, however, explained that the institution was slowly improving and becoming more independent.

The MNHRC has played an important role in collaboration with the Assistance Association for Political Prisoners, an organisation that was long operating only in exile or underground during the years of direct military rule (see section 4.3). Additionally, the MNHRC has shown some openness to consultations with, and questioning from, civil society organisations (CSOs) compared to other government departments dealing with sensitive issues.³²⁷ Continued pressure from CSOs and other advocates could lead to further reform of the MNHRC and make it an increasingly important platform for civilian oversight and for public participation in security issues.

Government committees

Committees play a key role in Myanmar's political and governance culture. Both the Union Solidarity and Development Party (USDP) and NLD-led administrations have routinely established committees for specific cross-ministerial issues, which have taken on various forms. These are often led by cabinet ministers and include representatives from multiple other ministries and departments and

sometimes officers from the military, police or other authorities. Committees are often used to lead the development or implementation of a specific policy, but may also be used to coordinate routine activities.

The ministers leading these committees gain some seniority over the other officials in that committee.³²⁸ However, they cannot necessarily instruct ministries to implement new decisions, and still have to send most requests through the offices of the state counsellor or president, particularly if their proposed actions are complex, resource-intensive or politically sensitive.³²⁹

Numerous committees deal with security-related issues. Two notable examples, in terms of their focus on human security and human rights issues, are the National Committee on Prevention and Response to Conflict-Related Sexual Violence, and the Committee for Preventing Grave Violations against Children in Armed Conflicts. Both have been formed as a result of concerted pressure from CSOs and resultant pressure from UN bodies.

These committees are both chaired by the Minister of Social Welfare, Relief and Resettlement, Win Myat Aye, a man who is also serving as head of the Myanmar National Committee for Women's Affairs. Win Myat Aye is a lifelong civilian who never served under previous governments, which represents a significant first for someone coordinating security issues. However, he is not an expert on gender issues and at times has shown a lack of understanding of the issues raised by women's organisations and women MPs,³³⁰ despite claiming that women's rights are one of his central priorities.³³¹

Win Myat Aye has also been placed in charge of numerous committees focused on Rakhine State and related to security issues there. These have generally not included direct military involvement and seem to be part of an effort by the civilian government to take responsibility for social welfare and rehabilitation among other issues. The committees have been widely criticised however, as the government's plan for the repatriation of Rohingya refugees remains at risk of leading to forced returns,³³² while clear information about their activities has been sparse.

Parliamentary oversight of the security sector

Democratising the security sector depends on active parliamentary engagement. Legislatures made up of elected members are central to any democracy. They provide representation to constituencies from across the country. They are elected directly and are responsible for passing the laws that the executive

has to enforce (and respect) and that the judiciary has to interpret. They provide oversight and scrutiny to the whole process of government through the prior approval of government budgets and the questioning of government departments, among other functions.³³³

Discussions and questions on security issues

A central aspect of parliament's oversight role is its ability to openly debate the policies and practices of government and to question relevant ministries where necessary. This can apply checks and balances to the whole work of government, including that of security authorities. For decades, security sector decisions were made by leading individuals or very small committees, without wider scrutiny. Although discussion of security issues remains restricted by party discipline and the speakers, government practices are now subject to attention and scrutiny from elected officials. These parliamentary discussions can then be published by the media, fostering a much better-informed public discourse on what the security agencies are doing.

All MPs have the right to submit bills (drafted laws), motions (proposals which are then discussed by parliament to decide whether to take certain further actions) and questions (directed at specific ministries or other bodies of government, on specific areas of their activities or policies). The speaker selects some questions (called asterisked questions) to be put directly to relevant ministers in parliament, while non-asterisked ones are responded to by the ministry to the MP in writing. For MPs who want to discuss security issues, the first barrier they have to overcome is their own party leadership. In the NLD, all motions, bills or questions are proposed first to the eight-member whip committee.³³⁴ They then often go to the Central Executive Committee of the party or even to the state counsellor, and MPs have to await permission before submitting them to the speaker.³³⁵

The next barrier is the speaker: proposals have to be submitted to the speaker for advanced consideration. They should reach the floor within ten days but are sometimes carried over from one parliamentary session to the next, so can take months. The current Speaker of the Union Parliament T Khun Myat is relatively strict, as his predecessors have been too. MPs often have their proposals returned with feedback or requested changes and they sometimes have to go through multiple waves of editing before they are accepted. In other cases, proposals are simply rejected by the speaker or the influential civil servants around him, on stated grounds.

One MP explained that the word 'security' (*Loun-kyoun-yeh*) is removed from any proposal put to the

speaker, unless it comes from senior politicians or military representatives (for example, from the NLD or military blocs on behalf of their leaders). This MP had a motion rejected for use of the term 'human security'. They were reportedly told by the speaker that security is the responsibility of government and is not within parliament's 'checks and balances' mandate.³³⁶ To directly block a proposal, the speaker has to demonstrate that it violates parliament guidelines. However, he is said to often demand excessive edits to motions he is not happy with so that they are repeatedly carried over into later sessions and do not easily make it to the floor.

Questions can be directed at any government ministry (or to 'responsible ministries' in general) including those led by the military. Ministries are then required to respond by letter or, in most cases, to send a minister to parliament to answer questions directly from MPs. The MP can ask follow-up questions, which are considered crucial to getting beneath the surface of complex issues, as the responses to the initial questions are often rehearsed. Active and sustained questioning is therefore considered a necessary skill for MPs to develop in order to elicit the necessary information. MPs explained that asking the military sensitive questions is seen as politically risky as it often results in the generals simply talking up their achievements without revealing much of substance or being placed under serious pressure. MPs are often also reluctant to ask too many difficult questions, due to the climate of fear characterised by heavy surveillance by military intelligence and the country's history.

On 10 May 2019, an NLD MP attempted to ask the Deputy Minister of Defence "whether the Tatmadaw is under [the command of] the Union Government, and whether there are conflicts between the government and the ethnic armed organisations". He was seemingly trying to clarify whether the conflicts were between the military and EAOs or whether the civilian government was a direct party to them. He later explained to journalists, "There is a public view that the government and the Tatmadaw are at odds." The speaker did not allow the question to be asked during the parliamentary session and instead referred it to the ministry for a written response.³³⁷ This appears to have been an individual rather than a party initiative. According to another MP, one reason such questions are so rare is because civilian MPs know that the military will simply emphasise the ways that they are already under civilian control, and that this will lead to the public believing that the NLD is to blame for military activities.

Questions about land issues or humanitarian concerns involving military activities are often

permitted but those directly about military operations or conflict-related human rights abuses are considered more sensitive. According to one MP from an ethnic political party, these questions were more regular in the early sessions of this parliament, but due to regular rejections by the then speaker and now President Win Myint, most MPs stopped asking them. Committee meetings are reportedly more open with discussions sometimes focusing on security affairs, in particular where they involve functional issues related to that committee's focus, but also when there are pressing questions of national security.

Legislating security affairs

The inclusion of the 'Union Defence and Security Sector' in schedule 1 of the constitution gives the Union Parliament powers to create, amend or repeal laws on defence and security affairs, including in a number of specific areas such as the defence of the union, defence industries, arms, war declarations, law and order, and policing. The NLD's majority gives it the *de jure* power to pass most laws unilaterally. However, as noted previously, article 20b provides that 'The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.'

Article 20b could seemingly be used to claim that any legislation related to the armed forces (including the police) that the military disagrees with is unconstitutional. Given the current balance of power within the executive, which typically leads in developing the legislative agenda,³³⁸ there will not likely be any major legislation governing defence and security affairs without significant prior negotiation and agreement between the civilian and military arms of government.

The main laws directly affecting the rights and responsibilities of the security forces remain untouched since 2011. These include the 1945 Police Act, the 1959 Defence Services Act (amended in 2010), the 1960 Defence Services Rules, the 1995 Myanmar Police Force Maintenance of Discipline Law,³³⁹ the 2010 Military Service Law, the 2010 Reserve Forces Law, the 2010 Buildings and Works of Defence of the Union Law, and the 2010 Use of Transport Relating to the Defence Services Law.

Nonetheless, there are many more active areas of legislative reform that affect security and justice issues, particularly those relating to crime and to the safety of civilians. These are discussed in chapter 4.

Vetting security budgets

For the budget vetting process, MPs are selected to join around 20 teams (of 15 members each) and are given responsibility to scrutinise the budgets of one

or several ministries, grouped into teams according to subject (team two oversees the defence budget).³⁴⁰ They then submit analysis and necessary questions for the ministries to the public accounts committee in their house and then to the bicameral Joint Public Accounts Committee of the Union Parliament. The Joint Public Accounts Committee is a functionary body that conveys the analysis and criticism to the ministries and makes requests for changes.³⁴¹

The Ministry of Defence and other military-led ministries are said to be generally open to questions and to providing further breakdowns of some budget lines orally or on unofficial documents, such as their spending on factories or other non-combat operations. However, they are much more reluctant to provide information on large international procurements, among other sensitive topics. MPs are often more likely to hear about procurements from media reports or statements from foreign governments selling military equipment to the Myanmar military, than they are to hear about it from the military directly.

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The inclusion of the 'Union Defence and Security Sector' in schedule one of the constitution gives the Union Parliament powers to create, amend or repeal laws on defence and security affairs

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While the defence budget process has helped to establish norms and processes that could lead to further scrutiny over years to come, there has been very little pushback or criticism from parliament overall, which numerous sources claim is as much a result of low capacity as a lack of will. For the 2018–19 budget, the NLD made cuts wherever possible across the entire budget. Only 1.12 per cent (MMK 1.7 billion from capital expenditures) of the defence budget was ultimately cut, which reportedly was taken from the military factories that make cakes, cookies and football equipment for the soldiers. According to one MP, “We asked for them to make cuts wherever they could and the ministry representative said this is what they could do. His voice was very soft and humble, so we just agreed.”³⁴² Overall, there is little interest among MPs in scrutinising the budget further, and they would likely only do so as part of a wider party strategy.

The military also has the ability to request 'special funds' under a law that was passed by the outgoing junta shortly before the 2010 election. This fund is regularly used but, according to interviewed MPs, only in cases of natural disaster that the military needs to respond to.

The (latent) Defence and Security Committees

The 2008 Constitution provides for each of the two houses in the Union Parliament to form a Defence and Security Committee 'when the occasion arises to have studies made and submitted on defence and

security matters or Military affairs'. These committees must include military MPs but can also include other MPs.³⁴³ Each house can independently 'determine the number of members, duties, powers, rights, and terms' of these committees.³⁴⁴

To date, such committees have never been formed by either house. Generally, committee formation and selection is controlled by the respective speakers, with MPs getting no direct choice or even clear warnings about their selection for, or movement between, committees. Egretau has noted how important similar committees were in post-Suharto Indonesia, where they steadily built up their expertise and influence over time.³⁴⁵

These committees could potentially help to build trust between the military and civilians in discussing defence and security issues, provide a space in which civilian politicians can learn more about defence and security affairs, and become a first step towards security policy-making by elected representatives. The NLD called for abolishing these provisions in July 2019, perhaps so that defence and security committees would fall under ordinary parliamentary protocols.

The Arakan National Party and SNLD suggested removing the mandatory inclusion of defence personnel, with the SNLD also suggesting only upper house members be included.³⁴⁶

There are numerous active committees that have to engage on justice and security affairs, including those focused on ethnic affairs and peace, and those responsible for human rights, women's rights, child rights and citizens' rights, among others.³⁴⁷ These committees not only facilitate a more regular and intimate discourse between

representatives from different blocs and with differing perspectives, but also allow stronger and more developed positions and agendas to be developed before proposals are put to the wider parliament or communicated to other wings of government. These functions could be highly constructive in encouraging more functional and more inclusive defence and security decision-making.

Claiming new civilian powers

The General Administration Department: a civilian coup?

On 21 December 2018, government spokesperson Zaw Htay announced that the GAD was to be moved out from the military-led Ministry of Home Affairs and placed under the civilian-led Ministry of the Office of the Union Government.³⁴⁸ This represents a huge

step in the reduction of the military's influence on the day-to-day affairs of government.

The GAD is known as the 'administrative backbone' of government and plays a particularly influential role in numerous parts of the justice and security sectors.³⁴⁹ Since at least the Ne Win era, the concept of 'administration' has been closely connected to the provision of security and justice. At union and state levels, the GAD acts as the central coordination body between departments and ministries, and plays auxiliary administrative and secretarial roles for numerous government bodies.³⁵⁰ At district, township and village tract/ward administrative levels, the GAD is the central governance body, with its 'administrators' at each of these levels acting as leaders among all other departments. These administrators act as chairs or secretaries on all committees and can collect taxes, manage excises and permits, convene personnel from other departments (including the police), have the final say on issues such as land disputes, grant or restrict travel permissions and instate certain states of emergency, among other powers.

The first two of the GAD's four stated objectives are 'rule of law' and 'community peace and tranquillity',³⁵¹ giving it a clear mandate in justice and security affairs. This includes an important and informal role at the village tract, ward and village levels. As the vast majority of justice cases are never reported to the official courts and are instead handled at the local level, low-level GAD officials often act as *de facto* judge and jury, frequently negotiating compensation for aggrieved parties. The GAD appears to be particularly powerful in the case of land disputes, of which there are many in rural Myanmar, often involving allegations of confiscations by powerful individuals or companies.³⁵²

The GAD also has indirect influence over district and township courts, despite the on-paper independence of the judiciary, largely as a result of the hierarchical governance culture that has been so ingrained through decades of military rule.³⁵³ At these levels, the GAD can convene judges and police officers and so has a large degree of informal influence. The department also has a mandate to collect information on security issues, such as population movements, specific incidents and demographic data to report to Naypyidaw.³⁵⁴

Most significantly perhaps are the GAD's emergency powers, which allow it to bypass the judiciary and unilaterally invoke section 144 of the Criminal Procedure Code to instate curfews and restrictions on small gatherings in response to presumed 'emergencies'.³⁵⁵ Using this and other parts of its mandate, the GAD regularly assists military objectives, instating curfews (such as in northern



As the vast majority of justice cases are never reported to the official courts and are instead handled at the local level, low-level GAD officials often act as *de facto* judge and jury, frequently negotiating compensation for aggrieved parties



Rakhine State) or blocking humanitarian and media access, among other measures.

Assuming control of the GAD appears to have been a major coup for the civilian government, raising questions about why the military was willing to let it happen. The process began during the term of President Thein Sein. While considering numerous options for the future of the GAD, including the introduction of a township administration law that would have created elections for township administrators, Thein Sein requested that the Ministry of Home Affairs conduct an enquiry to determine whether there would be any constitutional issues in moving the GAD over to another ministry. The review concluded that there would be no such issues, but the Minister of Home Affairs, Lieutenant General Ko Ko, advised against it and the plan was shelved.³⁵⁶

The institutional wheels had started turning however and once the NLD took power, there was a broad understanding that the shift would happen at some stage. It was largely a question of when the military felt comfortable enough to take this next step in its slow retreat from governance and politics. While the move could have been seen as risky from the military's point of view, it also relieves it of huge responsibility and does not immediately threaten its core interests, such as the ability to conduct military affairs autonomously or to maintain business interests and assets. It also potentially helps the military to deflect accusations that the slow pace of reform under the current government is a result of blockages created by the military's control of the GAD.

A loose agreement to make the shift was secured by November 2018 and that month, Min Thu – a former Air Force Colonel and Deputy Minister of the Office of the President – was hired as Minister of the Office of the Union Government.³⁵⁷ The announcement to immediately move the department on 21 December 2018, however, came as a surprise to the military as a specific date had not been set in advance. This sudden decision was reportedly a retort from the civilian government to the military's decision earlier that day to announce a unilateral ceasefire with all EAOs in Kachin, Shan and Kayah States, without giving any credit to the civilian government or even giving prior warning.³⁵⁸ The official agreement was then made on 28 December 2018 at a cabinet meeting.³⁵⁹ The former Permanent Secretary and Director General of the GAD, Tin Myint, was appointed as Deputy Minister of the Office of the Union Government the following week.³⁶⁰

The coastguard

Myanmar is in the process of establishing a coastguard, which could be placed under direct

civilian control with the navy playing a supervisory or coordination role. At the time of writing, debates are ongoing about exactly where the new body will be placed. The move has the potential to be a first example of an important security institution being formed as a non-military entity and under the direct purview of elected civilians. It also could be a crucial step towards a better coordinated, professionalised, multi-departmental approach to properly defined security needs.

On 26 January 2019, the Minister of Transport and Communication Thant Zin Maung told reporters that a coastguard would be formed under civilian control. He said it was a necessary addition to the country's security sector, to protect sea trade routes, offshore drilling sites and the natural coastal environment. It is also intended to handle 'non-traditional security threats' related to trafficking of humans or illicit goods, illegal immigration and unregulated fishing.³⁶¹ He said, "The president's office wishes to establish it as a civilian department", and that it would be placed under his ministry.

Discussions have continued since then, mostly under the National Level Central Committee for the Administration and Management of Natural Resources in Coastal Areas, which is chaired by the military-appointed Vice President Myint Swe. It has now emerged that the navy will play a key role in overseeing the service, through an integrated command centre including multiple departments, but it is still unclear whether it will be organised directly under the navy and therefore under the Ministry of Defence or if it will be under a civilian ministry but with the navy coordinating its activities. The Minister of Defence reportedly announced that the body would fall under his ministry in March.³⁶² However, numerous sources insist this is still under discussion.

The need for a coastguard is uncontroversial and all parts of government agree with the plan. The service would be responsible for patrolling and policing waters up to 15 kilometres from the shore and would deal with a range of tasks that require specific training, budgeting and equipment. The move has been encouraged by MPs in numerous coastal towns, who have observed the regular passage of smugglers (of contraband and people) and international criminals, some of whom have reportedly established a regular presence on small islands off the coast. The move is also inspired by the growth of oil and gas drilling, as well as planned port services off-shore, and is therefore in the interests of corporate and state revenue.³⁶³

There is some dispute between those with the unconventional view that the navy has the most relevant experience and those who insist the coastguard needs to be run by a civilianised body.



Aung San Suu Kyi speaks with military generals during the presidential handover ceremony in Naypyidaw, Myanmar.

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International best practice would certainly require the coastguard to be separate from the military, as it would not be dealing with enemy combatants but with both foreign and Myanmar criminals, as well as with victims of trafficking or other civilians. The coastguard would also need to be able to make arrests, collect evidence, build criminal cases and carry out other non-military tasks that navies are not typically equipped to handle. For example, a single case might involve people without immigration documents, vehicle licences or other permits, the possession of illegal contraband, and people wanted for international crimes. Handling such cases effectively requires in-depth knowledge of relevant laws and the ability to coordinate directly with other departments such as immigration, customs, police and the courts.

It is quite possible that military leaders are increasingly seeing the benefit of having functional and professionalised security and justice institutions, especially in roles that require international coordination, and that they understand this involves civilians having a direct role and a level of decentralisation from the military. However, there is likely to be significant resistance from parts of the military that see security functions as essentially coercive and under their purview.

There could also be constitutional questions, as the coastguard would probably need to bear small arms or even light weapons, which might require it to fall under the commander-in-chief.³⁶⁴ However, in January 2019, the Minister of Transport and

Communication insisted that this would not be a problem and that the forestry and immigration departments have set precedents for a civilian-led coastguard to do the same.³⁶⁵

It is also still unclear exactly how the coastguard's mandate will be separated from the Maritime Police Force, which is part of the MPF. That body is currently responsible for both the country's inland waterways and its 2,080-kilometre coastline. The Maritime Police Force is part of the newly formed integrated command centre,³⁶⁶ and is reportedly happy with the initiative to form a coastguard.³⁶⁷ It is possible that some personnel will be moved across from the maritime police or that the police will maintain a distinct coastal role in direct coordination with the coastguard.

The result of the coastguard initiative could set some interesting precedents for Myanmar's security sector, firstly due to the potential for it to be a civilian agency, but also because of how much emphasis is being placed on the need for a coordinated interdepartmental approach. This indicates that, regardless of who ultimately controls the body, it is at least being conceived with a specific public-service mandate – and a practical approach – in mind, rather than as a pet project of a specific leader or as another tool of the military. Perhaps most importantly, it could also help to develop norms around civilians and the military negotiating and compromising to establish a body with joint oversight, based on the public interest and requests from elected MPs.

Notes

- 238 For a comprehensive overview of these various forces, see Buchanan J (2016), 'Militias in Myanmar', The Asia Foundation.
- 239 See *Myawady* (2016), 'Excerpts from the meeting with local media that reflect the stance and actions of the Tatmadaw', 17 May, p 18; Htet Naing Zaw (2018), 'Tatmadaw Will Cease Operations in Kachin on Govt's Order: Defense Secretary', *The Irrawaddy*, 30 May (<https://www.irrawaddy.com/news/tatmadaw-will-cessate-operations-kachin-govts-order-defense-secretary.html>)
- 240 Website of Senior General Min Aung Hlaing (2018), 'Discussions between Senior General Min Aung Hlaing and permanent envoys of UNSC', May (<http://www.seniorgeneralminaugnhlaing.com/2018/05/discussions-between-senior-general-min.html?q=UN+Security+council>)
- 241 See section 2.3 of this report.
- 242 Website of the Republic of the Union of Myanmar President Office, 'Ministry websites' (<http://www.president-office.gov.mm/en/?q=cabinet/id-6208>)
- 243 Selth (2018), op. cit., p 28.
- 244 Article 213 of the 2008 Constitution.
- 245 Article 42a of the 2008 Constitution.
- 246 For example, see Myratt Kyaw Thu (2019), 'Tatmadaw warns journalists against calling domestic conflicts "civil wars"', *Myanmar Frontier*, 18 January (<https://frontiermyanmar.net/en/tatmadaw-warns-journalists-against-calling-domestic-conflicts-civil-wars>) This period is also framed as the 'civil war' period in official publications and museums. The period also saw conflicts with various 'pocket armies' and Kachin communist defectors led by Naw Seng. It excludes not only the seven decades of EAO conflicts that have taken place since 1949 but also the 40-year conflict with the Burma Communist Party.
- 247 Article 20b of the 2008 Constitution.
- 248 *Myawady* (2016), op. cit., p 18.
- 249 Ba Kaung (2011), 'President's Ceasefire Order Fails to Stop Offensive', *The Irrawaddy*, 28 December (https://www2.irrawaddy.com/article.php?art_id=22741)
- 250 Interviews, Yangon, May 2013; Myitkyina, October 2013.
- 251 In response to a question on whether the military would obey such an order from the president as it had under Thein Sein, Permanent Secretary of the Ministry of Defence Brigadier General Aung Kyaw Hoe said, "The Tatmadaw is under the leadership of the state. The President is the head of the country. If he gives an executive order, we are ready to obey. There is no reason we won't obey it." Htet Naing Zaw (2018), 'Tatmadaw Will Cease Operations in Kachin on Govt's Order: Defense Secretary', *The Irrawaddy*, 30 May (<https://www.irrawaddy.com/news/tatmadaw-will-cessate-operations-kachin-govts-order-defense-secretary.html>)
- 252 The official state media report referred more loosely to discussions on Myanmar's international relations and national security, an analysis of the situation after the Tatmadaw made its ceasefire announcement, and on the topic of Rakhine State and border security matters. *Global New Light of Myanmar* (2019), 'Coord meeting on international relations, national security, held at Presidential Palace', 8 January (<https://www.globalnewlightofmyanmar.com/coord-meeting-on-international-relations-national-security-held-at-presidential-palace/>)
- 253 Ministry of Planning and Finance (2017), 'Regulations on Financial Management of Myanmar' https://www.mopf.gov.mm/sites/default/files/upload_pdf/2018/10/Financial%20Rules%20and%20Regulations.pdf
- 254 During the budget session of parliament, which ends in September each year, around 20 budget teams are formed to oversee specific areas of the budget. The defence ministry's budget is under team two.
- 255 It was also approximately 13 per cent of the total budget in the 2018–19 budget year, though an increase was requested and granted halfway through the year as it was for numerous other ministries.
- 256 Marginally more detail was given in the breakdown of the 2017 budget, when 51.5 per cent was earmarked for salaries and allowances, while 29 per cent would go to 'vehicles, warships, armoured cars and heavy weapons'. Htoo Thant, Thin Lynn Aung (2016), 'Few alterations to 2016 budget in amended draft', *Myanmar Times*, 27 July (<http://www.mmmtimes.com/index.php/national-news/nay-pyi-taw/21584-few-alterations-to-2016-budget-in-amended-draft.html>). Note that this article gives the figure of 1.2 trillion, but states that this is unchanged from the previous budget; however it states that the original budget was 2.75 trillion, as provided in Naypyitaw (2015), op. cit., p 43. The 1.2 trillion figure appears to be a typo.
- 257 Meanwhile the approved 2018–19 budgets for the other military-led ministries – the Ministry of Home Affairs and the Ministry of Border Affairs – were MMK 432.9 billion and MMK 129.3 billion respectively.
- 258 This challenge is discussed extensively in Bünthe (2017), op. cit.
- 259 McCarthy (2019), op. cit., p 21.
- 260 Ibid.
- 261 Interviews, Yangon, Naypyidaw and Bangkok, May and June 2019.
- 262 Article 20b provides that 'The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.'
- 263 See articles 293(b) and 319 of the 2008 Constitution.
- 264 See section 72 of the Defence Services Act (1959), as amended. See also the International Commission of Jurists (2018), 'Achieving Justice for Gross Human Rights Violations in Myanmar: Baseline Study', January, p 11 (<https://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf>)
- 265 Articles 291 and 292 of the 2008 Constitution.
- 266 Htoo Thant (2016), 'Presidential immunity secured', *Myanmar Times*, 29 January (<https://www.mmmtimes.com/national-news/nay-pyi-taw/18726-presidential-immunity-secured.html>)
- 267 Kyaw Zwa Moe (2019), 'Making Myanmar's Constitution Democratic', *The Irrawaddy*, 22 February (<https://www.irrawaddy.com/opinion/commentary/making-myanmars-constitution-democratic.html>)
- 268 International Institute for Democracy and Electoral Assistance (2019), 'Proposals by Political Parties, Clusters and Individual Representatives (Members of Parliament) for changes, additions, removals and additional articles', July (<http://constitutionnet.org/vl/item/report-joint-committee-amend-republic-union-myanmar-constitution-and-annex>)
- 269 The NLD recommended maintaining article 337: 'The main armed force for the Defence of the Union is the Defence Services'.
- 270 Quote from article 339 of the 2008 Constitution. Details of amendments provided in International Institute for Democracy and Electoral Assistance, op. cit., p 179.
- 271 International Institute for Democracy and Electoral Assistance, op. cit., pp 179–180.
- 272 The NLD suggested changing 'other law' to 'military law' seemingly to formalise what is already protocol and to effectively reinforce military independence. The SNLD recommended adding a further sentence indicating that the courts martial would not have jurisdiction over civil cases involving defence personnel, which is already protocol.
- 273 Articles 17b, 232b(ii), 234b and 235c(ii) of the 2008 Constitution.
- 274 International Commission of Jurists (2018), op. cit., pp 12–13, p 18.
- 275 National League for Democracy (2015), op. cit., pp 7–8.
- 276 Selth A (2016), 'The potential for Army-Police rivalry in Myanmar', *The Interpreter*, 2 February (<https://www.lowyinstitute.org/the-interpreter/potential-army-police-rivalry-myanmar>)
- 277 For example, see Selth (2013a), op. cit., p 14; Kyaw Zwa Moe, op. cit.
- 278 See schedule 1 of the 2008 Constitution.
- 279 Articles 290–292 of the 2008 Constitution. According to the Minister of Home Affairs, speaking in parliament in 2012, "Police manual, Police Act, Police Disciplinary Law and Police Code of Conduct have been prescribed under Section 292 of the constitution. In addition, rules and regulations, orders and directives are issued. Based on developments of the country, orders and directives will be issued if they are needed." See minutes (2012), 'Third regular session of the first Amyotha Hluttaw continues for 14th day', *Burma Library*, 14 March (<http://www.burmalibrary.org/docs13/AH-NLM2012-03-14-day14.pdf>)
- 280 Htet Khaung Linn (2016), 'Rangers face violent loggers to save Bago's shrinking forests', *Frontier Myanmar*, 9 August (<https://frontiermyanmar.net/en/rangers-face-violent-loggers-to-save-bagos-shrinking-forests>)
- 281 It appears these ministers would still have to be nominated by the commander-in-chief from among defence personnel, but this might be down to interpretation. See Selth A (2001b), op. cit.
- 282 International Institute for Democracy and Electoral Assistance, op. cit., p 5, p 179.
- 283 There are no universal standards for police independence. Some useful academic contributions on the concept in other countries using English Common Law include Stenning P (2007), 'The idea of the political "independence" of the police: International interpretations and experiences' in M E Beare and T Murray (eds.) (2007), *Police and Government Relations: Who's Calling the Shots* (Toronto: Toronto University Press); Roach K (2018), 'Balancing Police Independence and Political Responsibility for the Police: Some Recent Developments in Australia, Canada, and the UK', *Policing: A Journal of Policy and Practice*, August.
- 284 Organization for Security and Co-operation in Europe (2008), 'Guidebook on Democratic Policing', May, p 25 (<https://www.osce.org/secretariat/23804?download=true>). The document continues, 'Oversight institutions may include the executive (policy control, financial control and horizontal oversight by government agencies), the legislature (members of parliament, parliamentary commissions of enquiry), the judiciary, as well as human rights commissions, civilian complaint review boards or independent ombudspersons. Furthermore, the media can play an important role in providing the public with information on police activities. Ultimately, democratic police services can be distinguished by their submission to, and acceptance of, outside supervision and examination and the degree of openness of these examinations.'
- 285 International Institute for Democracy and Electoral Assistance, op. cit., p 183.
- 286 Saferworld (2017), op. cit.
- 287 Selth A (2019), 'Myanmar's intelligence apparatus under Aung San Suu Kyi', *The Interpreter*, April (<https://www.lowyinstitute.org/the-interpreter/myanmar-s-intelligence-apparatus-under-aung-san-suukyi>)

- 288 Ibid.
- 289 Ibid, p 200.
- 290 Selth (2001b), op. cit.
- 291 Selth (2019), op. cit., p 20.
- 292 Some observers, such as Melissa Crouch, have criticised the 2008 Constitution for the level of power it provides to the executive branch in selecting supreme and high court judges. While a proper assessment was not undertaken for this study, expert interviewees indicated they did not see these processes as extreme infringements of the independence of the judiciary. Crouch M (2016b), 'The Judiciary in Myanmar: Beyond Reform?' (<http://www.austlii.edu.au/au/journals/UNSWLRS/2016/10.pdf>)
- 293 National League for Democracy (2015), op. cit., p 7; Committee Representing the People's Parliament, op. cit.
- 294 The Supreme Court of the Union (2018), 'Judicial Strategic Plan (2018–20)', pp 17–18 (<http://www.unionsupremecourt.gov.mm/sites/default/files/supreme/stplan2018eng.pdf>)
- 295 See more on the constitutional tribunal in Crouch M (2018), 'Dictators, Democrats, and Constitutional Dialogue: Myanmar's Constitutional Tribunal', *International Journal of Constitutional Law* 16 (2).
- 296 A detailed case for a Ministry of Justice is made in Ko Bo Kyi (2018), 'The Case for Penal Reform in Burma'. This paper was produced for the National Endowment of Democracy's Reagan-Fascell Fellowship (http://files.clickdimensions.com/nedorg-aureu/documents/thecaseofpenalreforminburmareport_final.pdf). The general concept was raised by numerous lawyers, MPs and civil society representatives during interviews in Yangon and Naypyidaw, May 2019.
- 297 Attorney General's Law (2010), article 14.
- 298 Interviews with lawyers, civil society and international experts, Yangon and Naypyidaw, May 2019.
- 299 Myint Swe, the current military-appointed vice president, is retired from the military, where he served as a lieutenant general – so he is technically a civilian. The constitution does not require those appointed to president or vice president to step down from the military, so in other circumstances the civilian-military make-up of the NDSC could be different.
- 300 Su Mon Thazin Aung, Arnold (2018), op. cit., p 19. A key reason that the NDSC meetings dwindled was because of worsening relations between the president and commander-in-chief and the speaker Shwe Mann.
- 301 These reasons were put forward by numerous interviewees for this study and have also been noted by Selth A (2018), op. cit., p 28.
- 302 Such meetings with the commander-in-chief include one in June 2018 where the threat of the International Criminal Court was discussed. *Global Light of Myanmar* (2018), 'Meeting held to discuss Rakhine issue, national security, international relations', June (<http://www.burmalibrary.org/docs24/GNLM2018-06-09-red.pdf>). There was another meeting on 7 January 2019 in response to Arakan Army attacks on police posts, when the president's office reportedly called for the military 'to crush the insurgents'. Mratt Kyaw Thu (2019), 'Govt stirs Rakhine anger with warning about Arakan Army', *Frontier Myanmar*, 14 January (<https://frontiermyanmar.net/en/govt-stirs-rakhine-anger-with-warning-about-arakan-army>); *Global New Light of Myanmar* (2019), 'Coord meeting on international relations, national security, held at Presidential Palace', January (<https://www.globalnewlightofmyanmar.com/coord-meeting-on-international-relations-national-security-held-at-presidential-palace/>)
- 303 See recommendations for article 201 in International Institute for Democracy and Electoral Assistance, op. cit. Amendments were proposed by the NLD in 2014 that would have had a similar effect. Kyaw Zwa Moe, op. cit.
- 304 At the June 2018 meeting, Min Thu still held the position of Deputy Minister of the President's Office.
- 305 See website of The Republic of the Union of Myanmar President Office (2017), 'Appointment of National Security Advisor to the Union Government', 10 January (<http://www.president-office.gov.mm/en/?q=briefing-room/orders/2017/01/11/id-7112>)
- 306 As noted by The Asia Foundation, Thaung Tun 'increasingly plays a role in which he is positioned to coordinate the work of other ministries'. Su Mon Thazin Aung, Arnold (2018), op. cit., p 32.
- 307 The position was reportedly formed on advice from the Indian government (email correspondence, July 2019), while interviewees linked to the Tatmadaw had assumed it was based on the US equivalent (interview, Yangon, April 2019).
- 308 Interviews, Yangon and Naypyidaw, April and May 2019.
- 309 Referring to a meeting with Thaung Tun in 2004 about a US human rights report on Myanmar, a US diplomatic cable leaked by WikiLeaks in 2010 summarised his delivery as a 'standard' Myanmar government response to foreign criticism of its human rights practices and policies, including: questioning the integrity of the messenger; steering clear of irrefutable abuses; emphasising efforts to achieve 'national unity' and to build new bridges and highways; and throwing in an "inflated figure or two". On at least one occasion, Thaung Tun was required to play down claims of nuclear weapons development. See 'Public library of US diplomacy' on WikiLeaks website: https://wikileaks.org/plusd/cables/o4RANG00N370_a.html
- 310 Institute for International and Strategic Studies (2018), '17th Asia Security Summit: The IISS Shangri-La Dialogue. Special Session 3: The Security and Humanitarian Crisis in Myanmar's Rakhine State', provisional transcript, 2 June (<https://www.iiss.org/-/media/images/dialogues/sld/sld-2018/documents/security-and-humanitarian-crisis-in-myanmars-rakhine-state-sld18.ashx?la=en&hash=4663620F9D9AAf4AEA011035DB7419ADF72E99BB>)
- 311 The Republic of the Union of Myanmar, Ministry of Information (2017), 'National Security Advisor to Government visits China' (<https://www.moi.gov.mm/moi:eng/?q=news/14/11/2018/id-10472>)
- 312 Ibid.
- 313 Nyan Lynn Aung (2018), 'Government objects to construction bunkers on border by Bangladesh', *Myanmar Times*, 14 August (<https://www.mmtimes.com/news/government-objects-construction-bunkers-border-bangladesh.html>)
- 314 See the reports of the UN's Independent International Fact-Finding Mission, on the United Nations Human Rights Council website: <https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx>
- 315 The Government of the Republic of the Union of Myanmar Ministry of Planning and Finance (2018), 'Myanmar Sustainable Development Plan 2018-2030', August (https://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf)
- 316 Within this is a wide range of goals patching together initiatives started by previous governments, or from other policy documents, along with new approaches. The preamble to that section duly notes distrust between groups, grievances, exclusion and marginalisation as drivers of conflict, but does not mention ethnic rights, self-determination or federalism. These are the key issues raised by ethnic activists, politicians and armed organisations.
- 317 Burke A, Williams N, Barron P, Jolliffe K, Carr T (2017), 'The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development', The Asia Foundation. See also: Jolliffe K (2017), 'Ceasefires, Governance and Development: The Karen National Union in Times of Change', The Asia Foundation.
- 318 The 2014 law is available in English from the Burma Library website: http://www.burmalibrary.org/docs23/2014-03-28-Myanmar_Human_Rights_Commission_Law-21-en.pdf
- 319 According to one source, the civilians and the former military commissions are not generally in tension with one another and in some cases the military figures have proven to be more ambitious and willing to challenge the status quo. They said that it is key to have people who are really passionate about human rights and willing to take risks. As in most parts of government, these people remain few and far between.
- 320 Lawi Weng (2019), 'Army Officer Jailed for 10 Years for Killing Civilian Who Failed to Present ID Card', *The Irrawaddy*, May (<https://www.irrawaddy.com/news/burma/army-officer-jailed-10-years-killing-civilian-failed-present-id-card.html>)
- 321 According to CSO network Progressive Voice, 'It is clear that the MNHRC has neither the political will, nor sufficient independence from the all-powerful Myanmar Military, to adequately protect the rights of the victims of the military's abuse.' Progressive Voice (2018), 'Return to Sender: MNHRC Enabling Law Must be Returned to Parliament for Structural Reform', August, p 12 (https://progressivevoicemyanmar.org/wp-content/uploads/2018/10/MNHRC_Report_English_Web.pdf)
- 322 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2015), 'Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)', November (<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>). See also Progressive Voice website for details of the Myanmar National Human Rights Commission: <https://progressivevoicemyanmar.org/mnhrc/>
- 323 Myanmar National Human Rights Commission (2017), 'Statement by the Myanmar National Human Rights Commission with regard to the terrorist attacks that occurred in Maung Daw and Buthidaung townships of Rakhine State, Statement No. (11/2017)' (<http://www.mnhrc.org.mm/en/statement-by-the-myanmar-national-human-rights-commission-with-regard-to-the-terrorist-attacks-that-occurred-in-maung-daw-and-buthidaung-townships-of-rakhine-state-statement-no-112017/>)
- 324 Equality Myanmar (2019), 'MNHRC Must Take Stand on Extrajudicial Killings of Rakhine Villagers', 15 May (<https://equalitymyanmar.org/mnhrc-must-take-stand-on-extrajudicial-killings-of-rakhine-villagers/>)
- 325 Interview with person who has worked closely with MNHRC, undisclosed location, April 2019.
- 326 Interview, undisclosed location, April 2019.
- 327 Important critiques of the MNHRC have been published by the civil society network Progressive Voice, which notes, 'In practice, the MNHRC has taken steps in recent years to engage further with civil society, including making a commitment to develop regular communication with the organisations that authored this report... This is a welcome improvement over the years and it is recommended that the MNHRC maintains, deepens, and institutionalises this engagement with a wider range of civil society groups who are working to improve various human rights situations.' See Progressive Voice (2018), op. cit., pp 20–21.
- 328 Su Mon Thazin Aung, Arnold (2018), op. cit., discuss this dynamic in relation to Soe Thane's relative seniority compared with other ministers due to his committee positions under the USDP government.
- 329 This analysis is based on a combination of interviews carried out for this report and analysis provided in Su Mon Thazin Aung, Arnold (2018), op. cit., pp 17–19 and pp 31–32.
- 330 Interviews, Yangon and Naypyidaw, April–May 2019.
- 331 San Yamin Aung (2017), 'Social Welfare Minister: "I Will Always Campaign for Gender Equality"', *The Irrawaddy*, 8 March (<https://www.irrawaddy.com/in-person/social-welfare-minister-will-always-campaign-gender-equality.html>)

- 332 International Crisis Group (2018), 'Bangladesh-Myanmar: The Danger of Forced Rohingya Repatriation, November (https://d2071andvipowj.cloudfront.net/b153-bangladesh-myanmar_o.pdf). In July 2019, a delegation of 35 Rohingya refugees told the Myanmar government they would not return without recognition of their group as an ethnicity. Ruma P (2019), 'Rohingya tell Myanmar they refuse to return without recognition', *Reuters*, 28 July (<https://www.reuters.com/article/us-myanmar-rohingya-bangladesh/rohingya-tell-myanmar-they-refuse-to-return-without-recognition-idUSKCN1UNoGD>)
- 333 For a comprehensive account of the evolving role of Myanmar's union legislatures, see Egreteau R (2017a), 'Parliamentary Development in Myanmar: An Overview of the Union Parliament, 2011–2016', The Asia Foundation, May.
- 334 Interviews, Naypyidaw, May 2019. See also Egreteau (2017a), op. cit., p 35; Ei Ei Toe Lwin (2016), 'NLD "iron rules" stifle new parliamentarians', *Myanmar Times*, 25 April.
- 335 According to Egreteau (2017a), op. cit., p 35, as of 2017, no bill or motion had been submitted to parliament without prior Central Executive Committee permission. However, in interviews for this study, one MP explained that a small minority of 'rebels' have done so.
- 336 See Egreteau (2017a), op. cit., p 38, for a discussion of the (sometimes oversimplified) use of English and Burmese terms related to checks and balances.
- 337 Htet Naing Zaw (2019), 'Lawmaker Blocked from Asking about Gov't-Military Ties on House Floor', *The Irrawaddy*, 13 May (<https://www.irrawaddy.com/news/burma/lawmaker-blocked-asking-govt-military-ties-house-floor.html>). See also the state media report by the Global New Light of Myanmar, which did not specify the content of these questions but just referred to the raising of additional questions: *The Global New Light of Myanmar* (2019), 'Second Amyotha Hluttaw 12th regular session holds fifth-day meeting name', May (https://www.moi.gov.mm/npe/nlm/sites/default/files/newspaper-pdf/2019/05/11/11_May_19_gnlm.pdf)
- 338 Egreteau (2017a), op. cit., p 31, argues that the NLD-led executive has dominated the legislative agenda and notes 'In most democratic legislatures, especially in parliamentary systems, there is an informal "90 percent rule," according to which the government controls at least 90 percent of the legislative agenda, and at least 90 percent of what is discussed in parliament is thereafter adopted.'
- 339 This law was amended in 1997.
- 340 These teams are not legally constituted. This system has instead emerged and been refined over the years, as a means to smooth the process.
- 341 The JPAC is split into four groups, which are each assigned a number of budget vetting teams.
- 342 Interview, Naypyidaw, May 2019.
- 343 Article 115b of the 2008 Constitution.
- 344 Article 115c of the 2008 Constitution.
- 345 Egreteau (2017b), op. cit., p 5.
- 346 International Institute for Democracy and Electoral Assistance (2019), op. cit., pp 62–63.
- 347 These include the Pyithu Ethnic Affairs and Eternal Peace Committee, the Pyithu Justice and Legal Affairs Committee, the Pyithu Citizens' Fundamental Rights Committee, the Pyithu International Relations Committee, the Amyotha Ethnic Affairs Committee, the Amyotha Citizens' Fundamental Rights, Democracy and Human Rights Committee, and the Amyotha Women's and Child Rights Committee, among others.
- 348 *The Irrawaddy* (2018), 'Govt Announces Transfer of Military-Controlled Dept to Civilian Ministry', 21 December (<https://www.irrawaddy.com/news/govt-announces-transfer-military-controlled-dept-civilian-ministry.html>)
- 349 In May 2019, the Ministry of the Office of the Union Government told a meeting of senior staff that the GAD "is the administrative backbone of the country".
- 350 Kyi Pyar Chit Saw, Arnold M (2014), 'Administering the State in Myanmar: An Overview of the General Administration Department', The Asia Foundation, October.
- 351 General Administration Department website: <http://www.gad.gov.mm/en/objective-and-motto>
- 352 International Commission of Jurists (2018), op. cit., p 29.
- 353 Ibid, p 29; Crouch M A (2016a), 'The Everyday Emergency: Between the Constitution and the Code of Criminal Procedure in Myanmar', in A Harding (ed.), *Constitutional Change and Legal Reform in Myanmar* (Hart Publishing/Bloomsbury); UNSW Law Research Paper no. 2016–01, p 11.
- 354 Kyi Pyar Kyt Saw, Arnold (2014), op. cit., p 12.
- 355 Crouch (2016a), op. cit., pp 11–14. Such states of emergency have been in place continuously in Maungdaw and Buthidaung Townships of Rakhine State since 2012. Amnesty International (2017), "'Caged without a roof", Apartheid in Myanmar's Rakhine State' (<https://www.amnestyusa.org/wp-content/uploads/2017/11/Caged-without-a-Roof-Apartheid-in-Myanmar-Rakhine-State-FINAL.pdf>)
- 356 Interviews, Yangon, Naypyidaw, via online call, March–May 2019.
- 357 Thaug Tun had previously been moved out of that position to take over the new Ministry of Investment and Foreign Economic Relations.
- 358 Interviews, Yangon, Naypyidaw, March–May 2019.
- 359 *The Global New Light of Myanmar* (2019), 'Union Minister U Min Thu meets GAD staff in Kayah State', January (<http://www.globalnewlightofmyanmar.com/union-minister-u-min-thu-meets-gad-staff-in-kayah-state/>)
- 360 Nan Lwin (2019), 'GAD Chief Appointed Deputy Union Gov't Office Minister', *The Irrawaddy*, 3 January (<https://www.irrawaddy.com/news/gad-chief-appointed-deputy-union-govt-office-minister.html>)
- 361 Htet Naing Zaw (2019), 'Gov't Plans to Set Up Coast Guard under Civilian Control', *The Irrawaddy*, 3 January (<https://www.irrawaddy.com/news/burma/govt-plans-set-coast-guard-civilian-control.html>); Xinhuanet (2019), 'Myanmar to establish coast guard force', January (http://www.xinhuanet.com/english/2019-01/22/c_137765608.htm)
- 362 Htoo Thant (2019), 'Defence submits coast guard plan to parliament', *Myanmar Times*, 14 March (<https://www.mmimes.com/news/defence-submits-coast-guard-plan-parliament.html>). Follow up discussions with staff from the newspaper and a member of parliament who questioned the minister confirmed that this is what the minister said. However the state media report on the same discussion was more ambiguous, and numerous government and military-linked sources insisted that it was still possible that it would be placed under civilian control (interviews, Yangon, May 2019; email and telephone correspondence, June 2019).
- 363 Interviews, Yangon, May and June 2019. See also the official article in state media on the Ministry of Information website: <https://www.moi.gov.mm/moi:eng/?q=news/14/03/2019/id-17011>.
- 364 One international expert suggested that, at the very least, the military would reserve the right to call the coastguard under its command in an emergency.
- 365 It was not possible to verify whether officials in these departments are able to carry weapons or not. However, they generally rely on the police for armed protection so the minister may have been mistaken. See Htet Khaung Linn (2016), op. cit.
- 366 See the departments included in the official state media article on the Ministry of Information website: <https://www.moi.gov.mm/moi:eng/?q=news/14/03/2019/id-17011>
- 367 Interviews, Yangon, May 2019.

**Equal
opportunity
For
women in
leadership role**

4

Transforming institutional practices and cultures

Transferring powers from the military to civilians does not automatically create more just and peaceful outcomes. Just as elections alone do not establish a consolidated democracy, the placing of security powers in the hands of elected officials does not necessarily transform security practices and norms. Constitutional changes or administrative tweaks that give popular politicians more control over security institutions do not automatically make those institutions work in the interests of the people.

The extent that the security and justice sectors serve the people depends on the laws, directives and policies laid down by the government as well as the internal practices and cultures of the core institutions. Special measures are needed to ensure that the diverse needs of people and communities in the country are served, which requires both gender and cultural sensitivity. This relates not just to proportional recruitment of women and minorities, but also to the mainstreaming of awareness of their particular needs throughout policies and practices. Security and justice institutions must also seek to reduce the use of force to the minimum extent possible and ensure its use is legitimate and proportionate. This is relevant to military, police, intelligence, prisons, courts and all other relevant bodies.

Security, justice and public safety issues are better prevented than responded to retrospectively. Preventing violence, crime or other problems from emerging or escalating will ensure less harm to public welfare than relying on punitive and ‘hard’ security responses to concerns that have already become unmanageable. First, this requires interdepartmental collaboration so that agencies for education, healthcare, social welfare and others can work together to address the underlying causes of security and justice issues and use the appropriate means to reduce the harm they cause. Second, this approach requires regular and consistent cooperation between authorities and people living in the areas they serve to identify and ‘address neighbourhood concerns beyond a narrow focus on individual crime incidents’.³⁶⁸ Similarly, insurgencies and organised crime are often best addressed by focusing on structural and underlying causes, while reducing government crackdowns and military campaigns to focus only on high-profile targets and matters of strategic necessity.

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In the context of democratisation, it is crucial that elected leaders do not simply inherit the top-down, hard security-centric practices and attitudes of their authoritarian predecessors. This can happen where there are few resources available to re-hire and re-train civil servants or to reform institutional guidelines. Where civilian politicians have only ever experienced authoritarian governments, they might emulate their practices. Changing such habits requires investment in the development of new skills, new policies and a strategic focus from the civilian government on holistic reform.

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As recommended by one Myanmar policy analyst, “The civilian government should seriously consider developing its own definition of security, drafting a security policy and importing a whole-of-government approach to tackling security issues.”³⁶⁹

Aung San Suu Kyi has written extensively about the need for fundamental changes to the practice of politics and governance in Myanmar, often emphasising ‘democratic values and human rights’ and the need to liberate the country from a cycle of fear.³⁷⁰ During military rule, she repeatedly emphasised that such concepts could and should be applied to the Myanmar context and argued against claims from military rulers that these concepts were somehow ‘counter to the national culture’ or that the Myanmar people are ‘as yet unfit for democracy; therefore an indefinite length of time has to pass before democratic reforms can be instituted’.³⁷¹

She has focused on the changes that need to come from within each individual – ‘a revolution of the spirit’ – particularly to overcome fear and the many other psychological burdens imprinted by authoritarianism.³⁷² She argues that such personal liberations will cumulatively ‘change a nation where reason and conscience are warped by fear into one where legal rules exist to promote man’s desire for harmony and justice while restraining the less desirable destructive traits in his nature’.³⁷³

One downside of this focus on how ‘ordinary people’ can lead political transformations,³⁷⁴ is that there is relatively little in Aung San Suu Kyi’s speeches and writings on the concrete changes in policy and institutions needed to build a government based on such values.

This chapter explores the practices and cultures that characterise Myanmar’s main security and justice institutions. In particular, it looks at the militarised and state-centric aspects of these institutions, as well as at the extent to which they are gender and culturally sensitive, among other themes. The chapter also examines how and where officials

in recent governments have attempted to transform extant practices and cultures or where they have simply inherited them. Each section includes light analysis of the potential direction that reforms could take, including some reflection on relevant principles from other contexts.

4.1 Early efforts at civilian-led reform

While elected civilians in government and parliament have been relatively conservative in their security and justice reform efforts, there are some developments worth noting. First, there have been piecemeal efforts at legislative reform that have seen active engagement from multiple parties in parliament. Second, there is the agenda to reform the General Administration Department (GAD), which the government has referred to as a ‘role model for change’, perhaps subtly suggesting such an approach could be applied to other departments and agencies in the future. The subsequent sections look in more detail at the specific sectors of the armed forces, the criminal justice system and the intelligence services.

Legislating change

Since 2011, there have been some notable areas of legislative reform that have affected security and justice issues, particularly those relating to crime and to the safety of civilians. In addition to the legal impacts, these processes have helped to establish new norms and have set new precedents for civilians to take a lead on setting the parameters for security and justice authorities to work within.

The Peaceful Assembly and Peaceful Procession Law was passed in 2011. Despite greatly improving the extremely repressive junta-era legislation it replaced, it allowed authorities to continue to undermine important freedoms. Following concerted activism from civil society groups, and much confrontation between the Ministry of Home Affairs and the military on one side and the National League for Democracy (NLD) (largely aligned with the Union Solidarity and Development Party – USDP) on the other, it was amended in 2013 and then again in 2016.³⁷⁵

The NLD-led parliament has repealed the 1975 State Protection Law, the 1950 Emergency Provisions Act, and elements of the Ward or Village Tract

Administration Law that allowed authorities to make ‘midnight raids’ on people with unregistered guests, and which were being used to harass activists (and Rohingya people in Rakhine State). The latter amendment was pushed through despite significant opposition from the Ministry of Home Affairs.³⁷⁶

The passing of the 2014 Counter-Terrorism Law, which was drafted with international assistance,³⁷⁷ demonstrates the need for close engagement of capable civilians in ensuring that security legislation is in the best interests of the safety of the entire public. On the one hand, the law is a step towards improved rule of law, as it transparently lays out a vast array of legal definitions of different types of terrorism and the steps needed to protect the people affected. This is relatively progressive as many countries have not explicitly defined terrorism, leaving far too much to interpretation. Given the military’s ability to respond to supposed threats unilaterally, any attempt to legislate its responsibilities in handling defence affairs should be seen as a positive step to build on. On the other hand, police have since attempted to use the law to target a former Rohingya MP who called on the military to stop violence against Rohingya people in the aftermath of the attacks in 2016 and 2017 by the Arakan Rohingya Salvation Army.³⁷⁸ Arakanese politicians have also called for the law to be used to segregate Buddhists and Muslims in Rakhine State, though there is nothing in the law that would clearly permit this.³⁷⁹

In July 2019, a new Child Rights Law was passed, replacing an earlier one from 1993. This was a potential breakthrough, as seemingly the first comprehensive piece of legislation that places direct limits on security forces, including the army, for the protection of fundamental rights. Chapter 17 of the law criminalises the ‘six grave violations’ of children’s rights in conflict,³⁸⁰ as provided in international law,³⁸¹ bans recruitment of under 18-year-olds, and requires the government to take ‘all appropriate measures to promote physical and psychological treatment and recovery, education, [and] social reintegration’ for recruited minors.³⁸² The law stipulates that military personnel violating the law are tried in courts martial, upholding the military’s judicial separation. Even so, it is a rare example of civilian institutions at least establishing the law, which the military courts have to interpret.

Some of the most progressive legislative reform processes related to justice and security have involved civil society organisations (CSOs), but the laws have often been difficult to push through. The Protection and Prevention of Violence Against Women bill has been under debate since 2011, involving concerted activism and pressure from women’s CSOs and a wide range of active

parliamentarians, civil servants and other actors. A bill was completed in 2015 that – if it passes – would represent an important step in ending archaic and indefensible provisions in existing laws that permit rape within marriage among other shortfalls in the current legislation.³⁸³ The bill fails to meet the standards demanded by some women’s organisations,³⁸⁴ but would be a big step in protecting women from domestic violence, sexual violence and workplace harassment (including prescribed sentences for offences), and ensuring survivors have access to medical support.³⁸⁵

The law has been stuck with the cabinet and despite numerous announcements, has yet to be put back to parliament. This failure to push the legislation through contrasts greatly with the swift passing of four deeply sexist laws in 2015, supposedly with the objective of protecting race and religion.³⁸⁶ This reflects the enormous gender imbalance in government institutions and the deep lack of understanding or prioritisation of the protection needs of women, and is also greatly influenced by conservative religious interests. The Minister of Social Welfare and Resettlement, whose ministry has led the process from the government side, has promised the law will be passed in 2019.³⁸⁷

A cyber-security bill is also being developed and discussed in parliament, with some involvement of the Myanmar Centre for Responsible Business and the World Bank.³⁸⁸ Key debates have reportedly centred on tensions between the ‘security’ interests of the state and the privacy rights of the individual, as seen in other countries.³⁸⁹ According to the Ministry of Home Affairs, a Myanmar Police Forces Law is also approaching enactment.³⁹⁰ Finally, numerous ethnic parties have an agenda to amend the Unlawful Associations Law, which is regularly used to punish people accused of contacting ethnic armed organisations (EAOs), but it is unclear if this will be granted due attention under the current government.

Amendments to the Penal Code, the Criminal Procedure Code and the Prison Law are being debated in parliament, with close involvement of the Ministry of Home Affairs and of some MPs who are former political prisoners and who therefore have crucial personal experience of being oppressed and abused under these laws. This process has been aided by the Assistance Association for Political Prisoners (AAPP) and the Myanmar National Human Rights Council via engagement with MPs on the Public Affairs Committee, among others (see section 4.3).

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The General Administration Department

Following the transfer of the GAD over to the civilian-led Ministry of the Union Government in January 2019, Minister Min Thu immediately announced an

explicit agenda to reform the GAD.³⁹¹

He has since referred to the GAD as a 'role model for change' and as part of a transition.³⁹² This is an important first example of the elected wing of government taking over a military body and explicitly saying that it needs to be reformed to "bring about visible change . . . so that the public increases their trust".³⁹³ Consultations immediately began with GAD staff from every state and region and, encouragingly, focused on reforms that reflect many of the major criticisms often levied against the department, and against the local government in general.

The minister emphasised three points that were key to making the GAD more representative to the public. The first point was to promote public participation by meeting "the people", seeking their advice and responding to

their needs. The second point was to "be rid of personal benefits and corruption", a goal that will be pursued by embedding corruption prevention units in GAD offices. The third was for individual staff to take on the "right mindset" to be "brave" and open to reform, in the knowledge that it is in the best interests of the public.³⁹⁴ He also instructed staff that they need to understand their role in peacebuilding when "working closely with ethnic people",³⁹⁵ and that they had a key role to play in decentralisation as part of building a democratic federal union.³⁹⁶

While some observers worry that the shift is just a shallow signal to the electorate that the NLD is 'doing something', so far the steps taken by Min Thu appear relatively robust and substantive. By May 2019, a pilot project had begun in which at least one township in every state and region was selected to test the implementation of reforms, a new manual was being developed, the Institute of Development Administration's training curriculum was being overhauled, and senior staff were undergoing professional assessments focused on their 'willingness for reform', among other concrete actions.³⁹⁷

However, there has so far been no mention of addressing gender or ethnic inequality within the GAD, despite this being emphasised in the government's 2017 Civil Service Reform Plan.³⁹⁸ There are currently no women township

administrators across the whole country and there are very few women village tract administrators.³⁹⁹ While figures are not available for the number of non-Bamar and non-Buddhists in the GAD, there is a widespread perception that the department is extremely exclusionary and almost uniformly Bamar Buddhist.

Another important question is whether the GAD will continue to maintain its formal and informal involvement in security and justice affairs.⁴⁰⁰ Will it continue to be the main body responsible for instituting emergency powers under section 144 of the Criminal Procedure Code, or will they be assumed by another body under the military?⁴⁰¹ Will the GAD still be able to convene security personnel at the local level? Will the GAD's transfer detract from the military's powers to informally influence the courts? Perhaps most importantly, will the GAD remain subservient to the military informally, or will it take on a new institutional culture?

Some of these questions will be answered explicitly through the review and amendment of the 19 laws, ten by-laws and dozens of written orders and directives that frame the GAD's powers and mandate.⁴⁰² Importantly, some legal powers are held directly by the department while others are officially prescribed to the Ministry of Home Affairs. Other answers will depend much more on implicit negotiation between the military and civilians at various levels, and will evolve over time.

4.2 The Myanmar Armed Forces

The Myanmar Armed Forces (Tatmadaw) is a vast institution with a long history, and is steeped in doctrine and traditions that have been developed internally over many decades.⁴⁰³ All forms of external interference have been staunchly resisted. The chances of the civilian wing of government being able to instigate and lead root-and-branch reform of the military any time soon are, therefore, basically nil. Similarly, there is no immediate space for internationally assisted 'security sector reform' programmes focused on the military.

Any change in the near term will be led from within the military, albeit potentially with concerted pressure, encouragement and assistance from others. The military is continuously investing in modernisation efforts (see box 1). Particularly since the NLD came to power, Commander-in-Chief Min

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Aung Hlaing's hallmark agenda has been to upgrade the forces into what he calls a "standard army".⁴⁰⁴ In essence, this refers to the military capabilities of the armed forces being brought up to a modern international standard.⁴⁰⁵ It includes enhancements of military technology and training and, despite the novel term, is largely a continuation of the modernisation agenda initiated by Than Shwe in the early 1990s. While the Tatmadaw's equipment, skills, doctrine and priorities are constantly evolving, there has not been any explicit agenda to initiate comprehensive reforms as part of the country's democratisation process. Indeed, the Tatmadaw sees itself primarily as a reliable and stabilising force, rather than as an agent of change.

Although he appears to have used the term "professional" on one occasion,⁴⁰⁶ Min Aung Hlaing has been careful not to suggest that the armed forces could become "professionalised" in the Western academic sense,⁴⁰⁷ which involves a military being apolitical and beholden to implementing policies defined and led by civilians.⁴⁰⁸ Neither does his agenda include an explicit focus on human rights or international humanitarian law.⁴⁰⁹

Box 1: Tatmadaw's modernisation agenda

Since the late 1980s, a major focus of the armed forces has been on modernisation of the force to keep up with regional militaries and potential global competitors.⁴¹⁰ For a country that only accepts support 'with no strings attached' and which has prioritised retaining neutrality in most global conflict theatres,⁴¹¹ the military has been relatively successful in these aims. It has steadily grown its air force fleet in recent years and has begun assembling jets in-country, with cooperation from foreign companies, in addition to building tanks, rocket launchers and a vast number of small arms and light weapons.⁴¹² The military has also built at least three frigates (organised into two classes), which entered service in 2008, 2014 and 2015 respectively, in addition to corvettes, fast attack craft and other military vessels.⁴¹³

To demonstrate these capabilities, the military has organised or taken part in numerous military exercises in recent years, including its first tri-service exercise in nearly 20 years in 2018,⁴¹⁴ in addition to a navy exercise in March 2019⁴¹⁵ and numerous joint exercises with India in 2018.⁴¹⁶

In its 2015 election manifesto, the NLD stated that 'The Tatmadaw must be an institution that defends and protects democratic principles and that is honoured by all' and it committed 'to work towards a Tatmadaw that is trusted, respected and relied upon by the people'.⁴¹⁷ However, the NLD has given very little detail over the years on what its priorities for military reform would be.

Internal armed conflicts

Counterinsurgency affects the public in Myanmar more directly than any other type of military operation, due to the military's regular focus on people thought to support armed opposition groups. Aside from the treatment of civilians and allegations of human rights abuses, existing military approaches have simply proven ineffective and have arguably escalated and prolonged conflicts, threatening not just the security of people in conflict areas but sometimes national security too.

Since the late 1980s, the Tatmadaw's over-arching strategy has been to maintain ceasefires with the majority of EAOs while fighting a few at a time – targeting them with heavy campaigns every dry season to stop them from becoming too powerful or expansive. Using strategic concepts developed in the 1960s and based on British and Japanese scorched earth tactics, these operations have generally targeted populations deemed to support armed groups by relocating them to designated areas or clearing them out through force.

Millions of people have been displaced over multiple generations and uncounted thousands have been killed or have suffered severe violence. Local and international organisations have documented widespread – purportedly 'systematic' – human rights abuses.

Tatmadaw forces are regularly found to have burned villages, raped women, tortured men accused of supporting insurgents, destroyed community food stores, and laid landmines in civilian settlements and farms, among other egregious forms of violence.⁴¹⁸ Such abuses are most regularly associated with the army's ten Light Infantry Divisions, which are mobile units, each with ten infantry battalions and embedded artillery dispatched especially for counterinsurgency operations. They are typically used for 'clearance operations' to drive out all civilians and combatants from designated areas where the insurgents are thought to be residing. The total number of Myanmar servicemen killed or injured in these conflicts each year is unknown, but represents a huge burden.

Box 2: Border Guard Forces, people's militia and 'economic development'

Since at least the Second World War, locally raised militia under loose central command have been a key part of the way military leaders have maintained stability and control. From the 1960s onwards, the military began establishing formalised militia or local defence units, providing them with business and trade opportunities in return for loyalty. Many of these were former EAOs that agreed to transform in return for these benefits. In many cases, they were formed by individual leaders who split from their mother organisations. As a result, their primary function has been to simply stop fighting and thus weaken the armed resistance, rather than to fulfil any specific security responsibility once reorganised.

Today, there are at least 23 Border Guard Forces (BGFs), and at least 15 People's Militia Forces (PMFs), in addition to hundreds of smaller 'people's militia'. The BGFs and PMFs were formed in 2009 and 2010 as part of the transition to the 2008 Constitution. All ceasefire groups at that time were ordered to come under the Myanmar military's command. Most refused, precipitating a widespread outbreak of conflict in the north of the country. Those that were formed have typically engaged in business and in many cases have become difficult for even the Myanmar military, let alone local civilian authorities, to control.⁴¹⁹

Each BGF has 326 troops and contains 32 regular Myanmar military officers and support personnel within its ranks. PMFs also fall under the command of the Myanmar military but retain greater autonomy and do not have Myanmar military officers within their ranks. Some of these units are connected directly to local ethnic political parties or individual politicians who are usually independents or in the military-backed USDP.⁴²⁰ Many of these militia, such as the Kawng Kha militia that has been allied with the Tatmadaw since 1991, have been at the heart of a booming methamphetamine trade across the Asia-Pacific that is estimated to be worth between USD\$30.3 and \$61.4 billion annually.⁴²¹

From a military perspective, this has – at best – served to contain EAOs and block them from challenging the state's primacy in major towns or its ability to control most natural resources and trade arteries. However, no significantly large ethnic armed organisation has been defeated in recent decades and the small groups that have been defeated have rarely been properly demobilised, allowing their fighters to join other groups or to simply rebrand. Meanwhile, popular distrust of the Myanmar state has only increased and people from many affected communities have come to believe that the only way to gain protection is through the formation of or support for insurgencies or militia. Tatmadaw campaigns have caused mass migration into neighbouring countries and over the long term have created new strategic challenges. In particular, large diaspora populations from targeted ethnic nationalities have formed and are calling for serious international action against the Myanmar state with support from international allies.

Military campaigns in Rakhine State in 2016 and 2017 created huge strategic challenges for the Myanmar government, doing great damage to the government and military's international relations⁴²² and leaving a refugee population of nearly one million stuck near the border in Bangladesh, an increasingly hostile neighbour. While purported links of international Islamist terrorist networks to the Rohingya population or the Arakan Rohingya Salvation Army seem relatively tenuous, the risk of such links emerging now appears higher than ever, with such deep grievances among the displaced population and so much international attention on their plight.

Conclusive peace settlements have not been achieved with the ceasefire groups, as the military has been unwilling to make political compromises. It has instead sought to convert these groups into people's militia and Border Guard Forces, giving them economic concessions and allowing them to maintain arms in return for political loyalty (see box 2). These state-backed forces have been allowed to amass significant wealth and power, often engaging in harmful businesses such as illegal narcotics⁴²³ and poorly regulated exploitation of natural resources.⁴²⁴ Meanwhile, economic development is regularly promoted by the government as the solution to conflict.⁴²⁵

Additionally, many EAOs with ceasefires have maintained political opposition to the state, while continuing to control vast territories and run huge businesses. For as long as ceasefires remain temporary and fail to become lasting political settlements, the risks of returning to conflict remain ever-present.

The military's modernisation agenda does not seem concerned with modernising approaches to counterinsurgency. As a result, despite increased use of the air force and some other minor developments in recent years, the military still seems reliant on ruthless 'clearance operations' and regular indiscriminate shelling in order to deny insurgents new strongholds, with little consideration for long-term strategy. These operations are not only ethically problematic – they are barely effective and represent a highly reactive and costly approach. Modern counterinsurgency operations – which are far from peaceful and can still involve infringements on human rights and harm to civilians – typically involve far greater emphasis on the social, political and economic dimensions of conflict and seek to prevent outbreaks in violence by addressing grievances and distrust among local communities. Myanmar's counterinsurgency remains ineffective and stuck in the past.

Identifying an NLD position on military operations

Since early in the NLD's term, Aung San Suu Kyi has given moral backing to Tatmadaw operations numerous times, predominantly in cases when the military has been directly attacked.⁴²⁶ However, she and her government have been reticent to take a direct and explicit position on the armed forces' conduct and approach to warfare. In the face of significant international pressure following heavy violence in Rakhine State in 2016 and 2017, Aung San Suu Kyi stated:

"It is not the intention of the Myanmar government to apportion blame or to abnegate responsibility. We condemn all human rights violations and unlawful violence. We are committed to the restoration of peace, stability and rule of law, throughout the state. The security forces have been instructed to adhere strictly to the Code of Conduct in carrying out security operations, to exercise all due restraint, and to take full measures to avoid collateral damage and the harming of innocent civilians. Human rights violations and all other acts that impair stability and harmony and undermine the rule of law will be addressed in accordance with strict norms of justice."⁴²⁷

These words are seemingly the closest the government has come to condemning military conduct but they very explicitly avoid blaming the armed forces. In 2018, speaking on the topic in Singapore, Aung San Suu Kyi did not even do this, instead focusing on her view that "Terrorism should not be condoned in any form for any reason."⁴²⁸ The following month, in Vietnam, she admitted, "The situation [in Rakhine State] could have been

handled better", but said that she believed "for the sake of long-term stability and security, we have to be fair to all sides".⁴²⁹

A generous reading of this ambiguity would suggest she does not approve of the military's actions but that she respects the constitutional limitations on her, and continues to prioritise building trust and 'national reconciliation' over taking direct action. Importantly, it is unknown where she gets her information about the military's activities and whether she sees UN accounts as credible. Meanwhile, her official Facebook page has regularly defended the military and has rejected allegations of sexual abuse by security forces in a post emblazoned with the words 'Fake Rape'.⁴³⁰ Her spokesperson, former army major Zaw Htay, has also categorically rejected UN findings on the situation,⁴³¹ as has her National Security Adviser Thaug Tun.⁴³²

In June 2019, a government spokesperson announced that, "in line with previous instructions", the president's office had told the armed forces that operations in Rakhine State against the Arakan Army "must be conducted in accordance with the law. Secondly, the military must avoid human rights violations. And thirdly, the operations must be carried out with great care."⁴³³ He also said, "The president's office has instructed the office of the military chief to use all necessary force, including the use of helicopters."⁴³⁴ Apart from this recent example, which was not recorded in state media or in any publicised edict,⁴³⁵ the NLD has so far appeared lacking in will or authority to influence the activities of the armed forces.

It is worth noting that President Thein Sein was seemingly able to restrain the military in a number of ways during his term; the number of checkpoints in conflict areas decreased significantly as did intrusive patrols conducted by the armed forces.⁴³⁶ The army also seemed to become less reliant on the burning of villages in armed conflicts during this period, appearing to represent a shift in favour of more humane practices.

Troop conduct and military justice

It is not uncommon globally for militaries to have their own courts for adjudicating on affairs related to the conduct of their personnel. Even so, it is vital that the cornerstones of the rule of law and access to justice still apply. Namely, laws need to be fair, well publicised and rooted in the protection of fundamental rights; all individuals and institutions

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need to be held accountable when they violate laws; judicial proceedings need to be impartial, free from political interference, transparent and subject to monitoring; and, importantly, there needs to be redress for all victims.

Currently, the Myanmar military's justice system falls far short of these standards. Relevant laws prohibit many of the most serious crimes, but are out of date and are not applied evenly. Court decisions and sentences are only occasionally publicised, and proceedings are not held transparently or even made public at a later date.⁴³⁷ Such practices make those cases where sentences are publicised seem like public relations exercises,⁴³⁸ rather than the result of impartial and consistent judicial procedure. In a recent high-profile case, seven soldiers originally sentenced to ten years' imprisonment for the killing of ten Rohingya men and boys were released after seven months. Meanwhile, two journalists who reported on the case were held for even longer, before being released in an amnesty the following year (see section 5.4).⁴³⁹

Due to a lack of transparency, it is not known how regularly troops are punished for harming non-combatants. Military officials routinely emphasise the importance of troop discipline and have noted

this as a significant part of the 'standard army' agenda. They also make repeated public references to their internal code of conduct and rules of engagement, but neither of these documents are publicly available nor enshrined in laws subject to scrutiny by parliament. Military leaders have also often insisted that military operations, including those that displaced over 800,000 Rohingya people in 2016 and 2017, are conducted in accordance with those rules.⁴⁴⁰ This suggests that the tactics that have led to human rights abuses are in line with protocol, rather than the rogue actions of poorly

disciplined troops on the ground – but there is no way of elected officials or the public knowing either way.

Perhaps of most concern, victims of criminal acts by the security forces do not receive any form of redress, reparation or remedy, such as compensation, public apology or psycho-social support. Indeed, they and their family members are commonly harassed, threatened, or are themselves charged with defamation by the military or government for speaking out about the case.⁴⁴¹

Since the 2008 Constitution came into effect, a number of cases have been handed from the military courts to the civilian courts, with the military seemingly classing the alleged criminal acts as

having not been carried out 'in service'. These include the case of a captain who was sentenced to ten years for the murder of a man who was unable to produce an ID card,⁴⁴² in addition to cases involving the rape of a 15-year-old girl and the killing of a six-year-old girl.⁴⁴³ In another case, two soldiers accused of killing seven civilians, were first sentenced for twenty years on military charges – deserting their battalion and stealing weapons – before being referred to the civilian courts to be tried for the killings.⁴⁴⁴

These cases have generally been referred to civilian courts following demands, pressure and public exposure by CSOs, or, in at least one case, the Myanmar National Human Rights Commission.⁴⁴⁵ However, none of these cases have provided redress for victims and key information has regularly been withheld from the public. Given the early release of those involved in the previously mentioned Rohingya case,⁴⁴⁶ it is possible that soldiers involved in these other cases have already been released, without the victims or public being informed.

Myanmar's military justice system epitomises many of the problems – and necessary solutions – at the heart of civil-military relations in Myanmar. While most pro-democrats and rights advocates have long focused on the need for constitutional and legal powers to be transferred from the military to civilians, it must be understood that this alone will not fix the many deep-seated institutional practices that pervade the military and that are now embedded even in civilian institutions.

Beyond questions of command and control, improvements in military conduct will depend on a transformation of the values and ethics within the military, and the reform and proper implementation of its code of conduct and rules of engagement. Militaries around the world hold significant powers to conduct their affairs without direct civilian involvement. Their conduct is largely determined by the extent to which they share society's values and maintain close relations with civilian institutions and the public, to ensure that their role as public servants is widely respected and appreciated throughout their ranks.

In addition to internal or externally imposed discipline, conduct is affected by recruitment, such as levels and forms of prior education and the socio-economic status of commissioned and non-commissioned personnel. Training too has huge impacts on conduct, particularly tactical training, training on civilian protection, legal training, political education and levels of hazing by commanders or among soldiers.⁴⁴⁷ Conduct also depends on the values and world views that are communicated and taught, such as views about the nation, society, gender, ethnicity, religion and views

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about soldiers themselves (as military professionals or as political actors) and their missions and duties (stated and implied).

Conduct is further affected by the work culture, including forms of welfare (and views of who is providing it – their society or their commanders?), service hours and job demands, frequency of rotations away from the frontline, protection provided (for example, medical evacuations and rations), punishments for leaving, access to complaint mechanisms, unionisation rights, and the legal rights of soldiers (are they the same as civilians?). It is also impacted by who gets promoted, what types of actions are rewarded professionally and what kinds of leaders are seen to be rising through the ranks.

Diversity

The military has reportedly set objectives to achieve greater gender and ethnic balance among its personnel. The vast majority of military personnel are men, and there are no women in senior public-facing positions. Since 2013, the military has been recruiting women as officers in non-combat roles in the army, and possibly to other services. Between 1961 and 2013, women were employed solely as nurses; women make up the majority of, if not all, military nurses. In nursing roles, women start as second lieutenants after graduation and can continue up to the rank of lieutenant colonel. The women recruited as army officers since 2013 also enter as second lieutenants and can presumably be promoted to the same ranks as men.⁴⁴⁸ There have also been some efforts by the Suu Foundation to further increase women's participation in the military.⁴⁴⁹

Article 352 of the 2008 Constitution prohibits discrimination 'based on race, birth, religion and sex' with regard to recruiting civil service personnel, but then clarifies: 'However, nothing in this section shall prevent appointment of men to the positions that are suitable to men only'. This ambiguous statement apparently gives the government freedom to discriminate against women, without clear criteria given for what such positions entail. It was quite possibly created for security positions, given that the security culture is dominated by men.⁴⁵⁰

The armed forces are widely considered to be dominated by the Bamar ethnic group, an imbalance that began in the 1950s and peaked under Than Shwe.⁴⁵¹ This concern has been raised by EAOs in peace negotiations. Despite public claims that the military represents all groups,⁴⁵² Min Aung Hlaing has reportedly begun targeting high achievers at universities in ethnic states for enrolment in the Defence Services Academy, perhaps quietly

recognising there is a problem.⁴⁵³ These issues are potentially more about political and cultural identity than they are about race. Most individuals who have graduated from a government high school and completed officer training are likely to be fluent in the Myanmar language and to broadly share a political identity with their Bamar counterparts. Ethnic grievances and marginalisation, however, are most deeply felt among people who have been marginalised from the Myanmar state.

Doctrine and strategic assessment

If, over time, elected civilians are able to gain more influence over security sector policy, the core assessments guiding military policy will likely evolve. Global evidence suggests that poor civil-military relations regularly lead to poor strategic assessment and response, so this could have a beneficial impact.⁴⁵⁴

The Tatmadaw remains committed to maintaining peaceful relations with its neighbours and to not commencing 'aggression against any other nation',⁴⁵⁵ a position that the civilians in government would likely agree with. However, the military's perception of its strategic environment has been shaped by what is arguably an excessive fear of foreign elements seeking to destabilise the country. Stemming from the colonial experience and concerns about Western interference or even a potential invasion in the 1990s or 2000s, these extreme fears remain today.⁴⁵⁶

As a result, the armed forces have kept themselves relatively isolated from other militaries around the world, viewing all political opposition and ethnic resistance movements as foreign stooges. It has also made the military extremely reactive and defensive in the international arena, often unable to handle complaints and questions from other nation states or international bodies about its actions, and viewing all interference in its affairs as malicious attacks.

The spread of the Tatmadaw into the political and economic spheres and its focus on internal order has led to a force that is bloated and dominated by infantry. There is little official public information about the armed forces,⁴⁵⁷ but Andrew Selth estimated in 2018 that the combined strength could be 300,000,⁴⁵⁸ which is lower than previous decades.⁴⁵⁹ Dividing this figure by the country's known population of 51 million suggests there is one military personnel for every 170 people, a ratio that is even more pronounced in sparsely populated and highly militarised areas like Kayah State and much of

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The spread of the Tatmadaw into the political and economic spheres and its focus on internal order has led to a force that is bloated and dominated by infantry.”

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**BETWEEN
1962–2016
7,000–10,000
PEOPLE ARE
ESTIMATED
TO HAVE BEEN
INCARCERATED
FOR POLITICAL
ACTIVITIES**

Kachin State. In 2009, Maung Aung Myoe noted that around 90 per cent of military personnel were in the army, and that two out of three army battalions were infantry.⁴⁶⁰ While most modern forces use infantry sparingly and only when person-to-person combat is necessary, Tatmadaw foot soldiers are stationed throughout the country, with battalion headquarters in almost every town.⁴⁶¹ In conflict areas – which are mostly rural – infantry battalions or outposts are widespread, mostly along major roads and on strategic mountain positions. There is, however, an apparent agenda in place to make the military more efficient and smaller in terms of personnel.⁴⁶²

A core aspect of Myanmar's military doctrine is 'People's War' – a Maoist concept that has been at the heart of Tatmadaw thinking since the 1950s, but which could come into tension with the move towards democracy.

'People's War' renders every man, woman and child as a potential resource in conflict, and recognises that people can be either mobilised in defence of the state or turned against the state by its enemies. The main objective here is 'To form a modern people's defence system for national defence comprising the entire people based on internal elements without depending on foreign assistance'.⁴⁶³ The idea is currently enshrined in articles 20d and 340 of the constitution, which state that 'The Defence Services has the right to administer for participation of the entire people in Union security and defence.' The NLD has not recommended changing this article, though some other parties have sought to amend or remove it. It is also reflected in the constitutional duty of all citizens 'to uphold' the military's three national causes, which relate to the 'perpetuation of sovereignty' and 'non-disintegration of the union'.⁴⁶⁴ Any people or organisations seen to be going against these tenets are treated with great suspicion.

4.3 The criminal justice system

Comprehensive and system-wide reform

"Some people think the law is there to punish wrongdoers. Some people think it is there to curtail their liberty. It is neither."

Aung San Suu Kyi, 2018⁴⁶⁵

Since the colonial era, Myanmar's criminal justice system has been used primarily as a tool to maintain

order and protect the interests of the state. Under military rule, it became beholden to the military, with lawmakers, police, state prosecutors, courts and prisons all acting as functionaries in a system of control, focused on punishing those who pose a threat to the interests of a small elite or the bureaucracy it depends on. Between 1962 and 2016, between 7,000 and 10,000 people are estimated to have been incarcerated for political activities.⁴⁶⁶

As argued by Aung San Suu Kyi, 'Law as an instrument of state oppression is a familiar feature of totalitarianism. Without a popularly elected legislature and an independent judiciary to ensure due process, the authorities can enforce as "law" arbitrary decrees that are in fact flagrant negations of all acceptable norms of justice.'⁴⁶⁷

Her government has since developed a policy that 'seeks to make the law more transparent and consultative, producing legislation that is in the interest of all our people, administered fairly and impartially, with respect for human rights, and without discrimination so that no person is above the law and every person may benefit equally from its administration'.⁴⁶⁸

Today, the police and prison systems remain under the effective control of the military, via the Ministry of Home Affairs, and employ high numbers of former military officers, particularly in leadership positions. While law-making, prosecution and the courts have been removed from military control, they contain many serving or former military personnel and remain heavily influenced by the practices of former governments.

Transforming this system into one focused on delivering justice in an impartial manner and on protecting the public will require a comprehensive approach that looks at the entire system collectively. Many public concerns require justice and security authorities to also work with other government systems, such as health and education departments.

Ko Bo Kyi from the AAPP has made this case for the penal system, arguing that the 'government must undertake comprehensive penal reform in order to address past human rights abuses, prevent further abuses and ensure democracy in [Myanmar] is achievable and sustainable'.⁴⁶⁹ A colleague of his at the AAPP explained that while constitutional reform was crucial in the long run, much could be done in the meantime by parliament and civilians in government to "repeal the bad laws" and reform the criminal justice system. Ko Bo Kyi has focused on the need for the creation of a Ministry of Justice under civilian leadership to lead this reform effort.

Crucially, some military officials and institutions under the military's portfolio have shown much greater openness to reform in the areas of justice

than those of military affairs. The Ministry of Home Affairs has collaborated with civil society and international agencies in numerous initiatives, including with the AAPP on issues of prison reform.

Two recent government policies, both developed through processes led by the Ministry of Home Affairs, demonstrate positive steps towards a cross-governmental approach to justice reform. The first was the National Drug Control Policy, launched in February 2018, and the second was the National Crime Prevention Strategy, launched in May 2019.

Both were developed through committees with significant input from CSOs and other ministries, and benefited from assistance from the UN Office on Drugs and Crime and other international agencies. Both have also promoted new and relatively progressive, rights-based and gender-sensitive approaches.

The drug policy demonstrates a huge step for Myanmar towards non-punitive, health-based and human-centred approaches to the issue of illegal narcotics. The process included around 15 civil society and non-governmental organisations. Furthermore, the work plan requires input and coordination from a wide range of departments from both military-led and civilian-led ministries, and so provides a good basis for improving interdepartmental cooperation.⁴⁷⁰

Despite initiatives to inform and prepare authorities at the state level, many of the old approaches have continued – most visibly the routine arrests of drug users and a focus on low-level dealers.⁴⁷¹ Officials involved in drawing up the policy explained that while the development was a huge success, implementation has been limited. Indeed, just a week before the policy was launched, an amendment to the 1993 Narcotic Drugs and Psychotropic Substances Law was enacted by the Union Parliament, largely reinforcing many of the outdated punitive approaches that the policy had moved away from. This was despite efforts from many involved in the policy development process to lobby against it. Many MPs were reportedly unwilling to shift in what felt like a radical direction.⁴⁷² Nonetheless, the policy remains in place and the law is not so restrictive that it makes the policy redundant. A more concerted and better funded, cross-ministerial effort to roll out necessary training and oversee changes in practice is seemingly needed.⁴⁷³

The National Crime Prevention Strategy is the first of its kind, recognising the need to take a preventive and holistic approach to tackling crime, rather than relying purely on punitive and law-enforcement focused approaches. It directly assigns ten government bodies with responsibilities aimed at reducing society's overall vulnerability to crime.

Speaking at 'Myanmar Police Force Day' in 2017, Vice President Myint Swe, who is nominated by the military, noted, "As social problems, community problems, economic problems and drug problems" all affect crime and risks of terrorism, "it is important for the police force to cooperate with the judiciary sector as well as education, health, housing settlement, job search sectors, media, local and foreign non-governmental organisations and civil organisations in all sectors."⁴⁷⁴

The crime prevention strategy lays out sub-strategies ranging from the education and nurturing of children and young people through to the 'capacity development and empowerment [of] the Myanmar Police Force to enhance its duties and functions in a democratic regime'.⁴⁷⁵ It also provides for cooperation with EAOs that have signed the Nationwide Ceasefire Agreement on 'rule of law enhancement'.⁴⁷⁶ According to international experts involved in the process, it is not as progressive as the drug control policy but represents a huge step forward.⁴⁷⁷ Concerningly, it does not include a comprehensive focus on gender-based violence or related crimes, though it does commit to designating 'trafficking of women and children as a first priority crime'.

The police

The civilian government has demonstrated some interest in working to improve the effectiveness of the police; this is something it hasn't even broached with the military. The government's Myanmar Sustainable Development Plan states that steps will 'be taken to strengthen the abilities of law enforcement institutions to deliver personal security, particularly for vulnerable groups, using new and innovative approaches such as community policing and other cross-border collaborations'.⁴⁷⁸ Similarly, the NLD's election manifesto states an aim 'to develop the police force in line with international standards so that it is able to fulfil its duties'.⁴⁷⁹

The Myanmar Sustainable Development Plan provides no detail on what this entails however, and numerous sources explained that civilians in government have stepped away from direct involvement in police reform efforts. Reform efforts have instead been led by the Ministry of Home Affairs, including through high-profile and internationally supported programmes such as the European Union-funded MyPol,⁴⁸⁰ and the UN Office on Drugs and Crime, among others.⁴⁸¹

It should be noted that even at the height of military rule in the 2000s, efforts were made to modernise

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Crucially, some military officials and institutions under the military's portfolio have shown much greater openness to reform in the areas of justice than those of military affairs.

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the police force and to introduce a community-based policing model.⁴⁸² While military leaders may see the benefits of having a more functional and public-facing force under their control, making the police an independent and impartial institution that lets no one act above the law will require significant commitment from the authorities along with a political will that has so far been lacking.⁴⁸³

Structure and size

The Myanmar Police Force (MPF) suffers from severe understaffing. There are only 85,000 personnel, 15,000 of which are ranking officers. According to the Ministry of Home Affairs, demand and budget allocation provide for twice that amount and the police have been trying to recruit as rapidly as possible but are limited in the numbers they can enlist and train.⁴⁸⁴ Police presence remains particularly scarce in most rural areas.⁴⁸⁵ Despite this, the force seems to have grown by almost one-third since 2014.⁴⁸⁶

Around two-thirds of all the MPF's personnel are organised under its 15 state, region and Naypyidaw commands and are responsible for everyday policing. These 'local' police are under centralised command and all wear the same uniforms and follow the same protocols. They are, however, predominantly funded and directed from Naypyidaw as all executive and legislative powers over policing are provided to the Union Government and Union Parliament by the constitution.⁴⁸⁷

There are 16 specialist units or bodies for particular responsibilities and jurisdictions, such as the Division Against Transnational Crime, the Maritime Police, the Traffic Police and the Forestry Police. Among these are two paramilitary bodies: a 'Security Command' including at least 34 Police Security Battalions (popularly known as *Lon Htein*), as well as the Border Guard Police, which is stationed only in Rakhine State.⁴⁸⁸ Ten of the *Lon Htein* battalions are also in Rakhine State, while the others are in Naypyidaw, Yangon and Mandalay, but can be



Police officers specially recruited for election duties stand in line as they begin a physical training session on 22 October 2015 in Mandalay, Myanmar.

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deployed elsewhere. Also included in those 16 bodies are the Special Branch and the Criminal Investigation Department (see more on intelligence in section 4.4).

In service of whom?

For police to serve the people – at least outside of conflict contexts – it is crucial that they operate according to civilian-, service- and protection-oriented values rather than ‘military values inherent to a war context’.⁴⁸⁹ Militaries are built to use force against enemies of the public. Police are meant to protect the public. If police take on military characteristics, then they end up treating the public like the enemy. In particular, police must: have powers and capabilities to arrest people in keeping with the basic rights of citizens; be able to interpret the law with some sophistication; be able to coordinate effectively with the courts; and have other skills that are specific to a professional police

force and that are very different from the skills necessary to conduct military operations.

In Myanmar, an unknown number of police personnel have been rotated in from the military, a practice that was continued as recently as 2014 as part of efforts to reduce the size of the military and to establish a stronger police force in line with the transition to a hybrid democracy.⁴⁹⁰ Many high-ranking police officers are from the military, as a rotation typically leads to an automatic promotion to a higher rank (the military and its personnel are treated as more senior to personnel in all other services). According to research conducted by the Tagaung Institute for Political Studies, the impact has been three-fold: committed career police officers have lost motivation due to a lack of promotional opportunities; the force’s professional expertise has been reduced; and public relations have been damaged.⁴⁹¹

In the current government, the police have continued to act in close coordination with the political interests of the military and government, rather than independently and in service of the law. This has been visible in specific cases, such as the apparent framing by the police of two Reuters journalists who were charged under the Official Secrets Act, as well as in the police's general tendency to obediently follow procedure whenever the military files charges against its critics or other opponents.⁴⁹²

Additionally, *Lon Htein* security battalions and other police units continue to use significant force in public protests and other situations.⁴⁹³

In 2012, these units used white phosphorus to crack down on demonstrations against the Letpadaung mine.⁴⁹⁴ This appeared to be linked to the military becoming less involved in quelling unrest than it had been in the past.⁴⁹⁵

Since 2016, Border Guard Police and civil police have been particularly involved in military-led clearance operations in Rakhine State, where civilians have been targeted.⁴⁹⁶ This is, in part, a result of those forces having been treated as military targets by the Arakan Rohingya Salvation Army and the Arakan Army, demonstrating the challenges of separating the police from military affairs while conflicts are ongoing. All security forces appear to also have powers to detain someone for more than 24 hours 'without the remand of a competent magistrate' in the context of 'precautionary measures taken for the security of the Union', as per the constitution.⁴⁹⁷ The NLD and numerous other parties have sought to amend this article.

Diversity and accessibility

Modernising the police force will also depend on recruiting and promoting more women. In 2018, around seven per cent of MPF personnel were women – far short of the force's target of 25 per cent.⁴⁹⁸ This was a big increase on 2013 when the proportion was around two per cent,⁴⁹⁹ and 2014 when it was around four per cent,⁵⁰⁰ demonstrating that some progress is being made towards this target. But there is still only one woman of colonel rank, in addition to one other who has retired, while 20 are lieutenant colonels.⁵⁰¹

Senior women officers have argued that women are better suited to certain tasks, ranging from the well-documented advantages in handling gender-based violence or trafficking of women cases, through to their ability to gain greater cooperation from men in highly charged situations like football matches, and to the benefits more women could provide for raising trust with the public in general.⁵⁰² As well as ensuring women are able to rise to higher ranks, other specific reforms are needed to enable gender equality, such

as providing separate facilities like dressing rooms, addressing ongoing gender-based violence within the force, removing prohibitions on servicewomen getting married in their first two years of service, and ensuring that women officers are able to patrol at night (particularly as this is when many cases of gender-based and sexual violence take place that might require women officers).⁵⁰³

There is no available data about the ethnic or religious composition of the police. Some interviewees highlighted that the service is often perceived by non-Bamar people to be dominated by the ethnic majority.⁵⁰⁴ As most senior police officers come from the military, these officials are almost invariably Buddhist and predominantly Bamar. In 2013, there was reportedly an effort underway to increase recruitment from non-Bamar ethnolinguistic groups,⁵⁰⁵ which has likely continued to some extent. This will be vital to removing barriers faced by non-Bamar communities, particularly those in more remote areas. The problem goes much deeper, however, as police coverage remains extremely low in rural areas, particularly in conflict-affected regions. Customary or at least informal justice practices are the norm in most villages, and only the most serious cases are typically reported to the police, usually requiring a referral from village or village tract authorities. Extending police services (and better access to justice) to rural communities will depend on a much more sophisticated and progressive approach from the government to learning about and integrating services with existing practices in these communities, in a conflict-sensitive way.

Hiring locally in some areas might depend on training specialisations for people who have not completed government education or who are not fluent in the Myanmar language. Additional efforts are also needed to make policing services as accessible as possible for people who do not speak Myanmar well.

The judiciary

As a party politician interviewed for this report explained, "The problem in this country is that the military can sue the people at any time but the people can never sue the military."⁵⁰⁶

His comment referred to two issues in the judiciary. On the one hand, the military has free reign to handle all justice complaints internally, as discussed in chapter 3. On the other hand, the military retains significant influence over the civilian courts and continues to use them as a tool to deflect criticism and target its critics.

**IN 2018,
AROUND
7%
OF MYANMAR
POLICE
FORCE
PERSONNEL
WERE
WOMEN**
AN INCREASE
FROM
2013 (2%) AND
2014 (4%)
BUT THERE
IS ONLY
1 WOMAN OF
COLONEL
RANK AND
ONLY 20 ARE
LIEUTENANT
COLONELS

The independence of the courts was completely overturned by successive military governments between 1962 and 2011.⁵⁰⁷ Under the military government of 1988–2011 in particular, judges became functionaries whose job it was to carry out government policy, and who were compelled to follow the direct instructions of military officers.⁵⁰⁸ Judges ceased to see themselves as independent actors charged with interpreting the law and making impartial decisions.

Today, many judges and staff are former military officers, or at least they have served for a long time under the military government. As a result, the courts are regularly used by the military and occasionally by the civilian wing to stifle criticism by the media and activists (see chapter 5). The military culture that pervades the courts has also slowed down judicial and justice reform efforts, and the formal justice system remains widely under-used by the general public.⁵⁰⁹

The Chief Justice Htun Htun Oo⁵¹⁰ and two other justices of the Supreme Court have spent most of their careers in the principal office of the military justice system – that of the Judge Advocate General – and held the rank of lieutenant colonel.⁵¹¹ Among the other six justices, three served the civilian courts under successive military-led governments and three were advocates (senior lawyers). Htun Htun Oo served as Deputy Chief Justice from 2007 until 2011, when he was appointed as Supreme Court Justice by President Thein Sein.⁵¹² All justices on the Supreme Court are men.

Among the 53 judges serving in state or regional high courts, 18 (34 per cent) are women, three come from the Judge Advocate General's office, and the vast majority served in the civilian judiciary under former military governments.⁵¹³ There are also a reportedly high, but unknown, number of former military officers acting as staff throughout the courts at all levels, many of whom were transferred over from the Judge Advocate General's office in the late SLORC/SPDC era or under Thein Sein.⁵¹⁴

Although judges have been informed to take more independent decisions since 2011, they regularly look to politicians or security officials for signals, make decisions that they think will be in line with policy, accept bribes in return for specific decisions, uncritically accept police or prosecutor advice or, increasingly, act in response to public pressure from social media. Particularly in high-profile political cases, even if judges are not being leaned on directly by politicians or military commanders, they are likely to follow their will. The GAD – until previously under the control of the military – also has significant informal influence over the courts.⁵¹⁵

Supreme Court or High Court judges can only be removed from their positions if they reach the age of 70, resign, are promoted, pass away or are impeached. In theory, civilians in government have notable powers to pursue impeachment on various grounds, including the broadly defined charge of 'inefficiency in office'.⁵¹⁶ While the Supreme Court announced that it took disciplinary action against 160 legal officers in 2016, only three lost their jobs (two of whom were judges) and it is unclear what action was taken against the others.⁵¹⁷

A more comprehensive agenda is needed to instate a completely new judicial culture, with strong signals from politicians that the role of judges is to interpret the law in a fair and impartial manner.

Additional efforts are needed to stamp out corruption and to ring-fence the courts from direct pressure from the military or public officials. The government's Judicial Strategic Plan (2018–22), supported by the US Agency for International Development and numerous international agencies, emphasises enhanced independence as one of five key pillars but makes no explicit mention of military influence in the courts.⁵¹⁸ Similar proposals have also been laid out in the Myanmar Sustainable Development Plan highlighting that 'our courts must be independent, and trials must be open and fair',⁵¹⁹ mirroring NLD election pledges.⁵²⁰

In 2015, lawyers and CSOs started a 'yellow ribbon campaign' to end appointments of former military personnel to the courts.⁵²¹ As a result, the courts reportedly agreed to halt the appointment of 300 former military staff who had been earmarked to fill vacant positions. Since then, the NLD has also seemingly prioritised independent civilian judges in its appointment to the Supreme Courts. Out of five justices appointed by the NLD-led government, three were previously independent advocates, one was a civilian regional law officer and the other was a civilian officer in the Supreme Court. Two positions remain vacant and the NLD is said to have rejected multiple recommendations made by the Chief Justice.⁵²²

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A more comprehensive agenda is needed to instate a completely new judicial culture, with strong signals from politicians that the role of judges is to interpret the law in a fair and impartial manner.

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Corrections

Out of all the country's security and justice institutions, the colonial legacy is possibly imprinted most deeply on the country's prisons, as they appear to have never been targeted with modernisation efforts. The Myanmar Correctional Department (also known as Myanmar's Prison Department) falls under the military-led Ministry of Home Affairs and its

IN JUNE 2019
THERE WERE
85,795
PRISONERS
BUT OFFICIAL
PRISON
CAPACITY WAS
71,000

IN 2017,
AVERAGE
FLOOR SPACE
FOR CELLS
WAS
REPORTEDLY
JUST

11.96
SQUARE FEET
FOR MEN AND

15.3
SQUARE FEET
FOR WOMEN

facilities are old-fashioned, poorly resourced and massively overcrowded. The prisons primarily serve to enhance the coercive power of the state, rather than acting as centres for rehabilitation. This reflects a penal system that remains predominantly about the imposition of authority, rather than about public safety.⁵²³

Myanmar currently operates 42 prisons, five detention centres and 48 labour camps. The latter are officially designated as 18 manufacturing centres and 30 'agricultural and livestock production camps', and serve companies owned by the department as well as private companies.⁵²⁴ In June 2019, there were 85,795 prisoners across the country despite an official prison capacity of just 71,000.⁵²⁵ In 2017, the average floor space for cells was reportedly just 11.96 square feet for men inmates and 15.3 square feet for women inmates.⁵²⁶

Following riots in six prisons in May 2019 and subsequent pressure from parliament and the Myanmar National Human Rights Commission (MNHRC), the Ministry of Home Affairs has begun efforts to introduce a parole system to reduce overcrowding.⁵²⁷ These riots were sparked by perceptions of unfair practice in the way the government pardoned thousands of prisoners earlier that month, and were seemingly aggravated by overcrowding.⁵²⁸

Approximately 50 per cent of prisoners are jailed for drug offences – many of which are for possession of small amounts for personal use.⁵²⁹ While there have been efforts to transition to other approaches of drug harm reduction, progress has been slow and the police continue to focus on rounding up users as a staple activity. There are also an unknown but significant number of women in prison for sex work and other offences that can often be addressed more effectively through non-punitive approaches that focus on protection, public health, counselling and awareness raising.⁵³⁰

Many personnel in the prison department, including those in higher ranks and some wardens, have been transferred from the military.⁵³¹ As with the police, transfers usually provide military personnel with an upgrade in rank, as the military is considered superior to the other services. A high number of lower-level staff, such as wardens, have inherited their positions from older family members, so that the family can keep hold of provided accommodation. The prison department apparently struggles to recruit new people as it is an unattractive, poorly paid and barely professionalised career path.⁵³²

Wardens continue to use a colonial-era prison manual (revised in 1950 and 1968⁵³³), much of which is drastically outdated,⁵³⁴ and training is provided internally within the department. A former political

prisoner working on prison reform explained that many of the already meagre standards set out in the manual, such as for diet, are not even met in practice.⁵³⁵ Prisons continue to be legislated by the 1894 Prisons Act, despite ongoing efforts to amend it.

Treatment of prisoners is particularly bad. An AAPP survey of 1,621 political prisoners who had served time between 1962 and 2016 found that 72 per cent had been physically tortured while in custody and numerous sources have reported cases of torture since 2015.⁵³⁶ Solitary confinement in so-called 'dog cells' where prisoners have to walk on all fours is another common practice.⁵³⁷ Conditions in labour camps are said to be deplorable, and the Ministry of Home Affairs reports that over a thousand inmates in such camps died between 2004 and 2014.⁵³⁸ According to article 359 of the constitution, hard labour is permitted if imposed as punishment for a crime.

Prisoners have also been used as forced porters in conflict areas, sometimes as part of highly orchestrated nationwide operations.⁵³⁹ Labour is reportedly used by private companies that have contracts with the prisons but this is poorly regulated and there is very little public information available. Prison wardens also regularly demand ad hoc labour from prisoners in ordinary prisons.⁵⁴⁰

There have been some slow improvements since 2011 but they have been limited. Prisons are discussed much more openly in parliament and official data is increasingly given to the media. The Minister of Home Affairs has openly admitted the problem of overcrowding on many occasions, and there have been improvements in access to education and healthcare for prisoners. Healthcare initiatives have been assisted by international organisations, for example.⁵⁴¹

The MNHRC has been able to conduct ten prison visits, but only with advanced notice. The commission has also been working with the AAPP to reform the prison system and is having some slow but important successes (see section 5.2). The Supreme Court has also undertaken prison inspections.⁵⁴² There are efforts underway to introduce a parole system to reduce overcrowding.⁵⁴³ This would be a crucial step, but much broader reforms to the penal system, including vast reductions in arrests for drug offences, seem equally as important.⁵⁴⁴

4.4 Intelligence services

Myanmar's intelligence agencies all remain under the military's control and are regularly used for political activities, both internally and externally. As noted previously, there has been no apparent effort by the NLD to bring these agencies under civilian control and it is unknown whether there has been any effort to encourage their reform.⁵⁴⁵

The military's primary intelligence body is the Office of the Chief of Military Security Affairs (OCMSA). The current chief is Lieutenant General Soe Htut.⁵⁴⁶ The OCMSA is said to have seven departments covering: information and public relations; politics and economics; drugs and economic research; combat and EAOs; training; external military security; and management and administration.⁵⁴⁷ According to Andrew Selth, through the OCMSA, the military appears to have recuperated much of the capacity and influence enjoyed by Khin Nyunt's intelligence services, only they now do it under much more centralised control.⁵⁴⁸ In May 2019, MPs questioned the Minister of Defence on whether it was appropriate for military intelligence to constantly surveil them, which apparently includes regularly taking photos, even when they are back in their constituencies.⁵⁴⁹

The Special Branch, which falls under the MPF, is seemingly the primary agency responsible for internal intelligence. In 2015, the Special Branch had 2,500 personnel, and seven per cent were women (an imbalance the service was said to be trying to address).⁵⁵⁰ The branch has a command centre in all states and regions, and is organised into five departments: the security department, the intelligence department, five 'company forces', the international relations department and the management and training department.

The branch has long focused on monitoring student movements, political opposition and religious organisations. Most CSOs are more familiar with the Special Branch than any other intelligence service, as its officers regularly attend report launches and other events or ask for details about visits by foreigners or other activities. The branch also provides security for diplomats (and their premises), for high-level personnel and for politicians in-office.

There are indications that the Special Branch rarely shares information with the rest of the MPF but instead reports directly to the Deputy Minister or Minister of Home Affairs.⁵⁵¹ The branch does train the MPF however on intelligence and security. This could risk imbuing those staff with a more coercive and

suspicious attitude towards the public, given the branch's historic focus on suppressing student and political movements. The MPF's Criminal Investigation Department also plays an intelligence role, often in collaboration with the Special Branch.⁵⁵²

Since 2011, the government has shifted from its previous efforts to censor and heavily control internet use, to liberalising it and monitoring it for subversive activity, using powers provided by the 2013 Telecommunications Law, such as 'powers of warrantless entry and emergency interception under broad circumstances not subject to prior judicial review'.⁵⁵³ This law and others are then regularly used by the military or police to take activists and journalists to court for their online communications or public activities (see chapter 5).

Military intelligence (mostly likely under OCMSA) appears to also be involved in online operations, particularly to shape public and international discourse on issues related to Rakhine State. In December 2018, Facebook removed 425 Facebook pages, 17 Facebook groups, 135 Facebook accounts and 15 Instagram accounts, which it said an investigation had found to be connected to the Myanmar military and linked to 'ethnic violence', 'hate' and 'misinformation'.⁵⁵⁴

The Bureau of Special Investigation is primarily involved in high-profile criminal cases, particularly financial crimes, and it reportedly handled 528 cases in 2018.⁵⁵⁵ It works closely with the Anti-Corruption Commission⁵⁵⁶ and numerous other bodies,⁵⁵⁷ mostly playing an investigation role. It also cooperates with international agencies on high-profile cases,⁵⁵⁸ and has cracked down on unlicensed currency trading.⁵⁵⁹ The MPF has a Financial Intelligence Department, which is tasked with countering money laundering, but its exact relationship to the Bureau of Special Investigation is unclear. In June 2019, the Director General of the bureau, Maung Maung Kyaw, announced that 90 per cent of the country's money laundering cases were related to drug offences.⁵⁶⁰

Notes

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- 403 Among the three services, the army (Tatmadaw Kyi) is officially superior to the navy (Tatmadaw Yay) and the air force (Tatmadaw Lay) 'by taking a leading role of the entire Armed Forces'. Naypyitaw (2015), op. cit., p 25. This is reflected in the automatic placement of the commander-in-chief of the army as the deputy commander-in-chief of the entire Defence Services.
- 404 This term has been used in successive Armed Forces Day speeches since 2015 by the commander-in-chief and vice commander-in-chief. It is also used at the graduation ceremonies of cadets and at other training functions.
- 405 It is sometimes stressed that this is necessary in order to defend the country against international aggression, and is often justified in the context of past experiences of colonialism. For example, see the website of the Office of the Commander-in-Chief of Defence Services: <https://cincds.gov.mm/node/99>.
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- 435 Ibid.
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- 438 See Selth (2018), op. cit., p 33.
- 439 *The Irrawaddy* (2019), 'Circumstances of Release of 7 Soldiers in Rohingya Massacre Remain Unclear', 27 May (<https://www.irrawaddy.com/news/burma/circumstances-release-7-soldiers-rohingya-massacre-remain-unclear.html>)
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- 458 Selth (2018), op. cit., p 25. See also: Selth A (2009), 'Known Knowns and Known Unknowns: Measuring Myanmar's Military Capabilities', *Contemporary Southeast Asia* 31 (2), August, pp 272–95.
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- 460 Maung Aung Myoe (2009), op. cit., pp 201–202.
- 461 The most stationary forces are organised under 14 regional military commands. These are: the Northern Command, which covers Kachin State; the North Eastern Command, which covers northern Shan State; the Eastern Central Command, which covers central Shan State; the Eastern Command, which covers southern Shan State and Kayah State; the South Eastern Command, which covers Kayin and Mon States; and the Southern Command, which covers Tanintharyi Region. The army also oversees 21 military operations commands (MOCs), consisting of ten mechanised infantry battalions, as well as at least seven regional operations commands which oversee four infantry battalions each. One of these MOCs is an airborne infantry unit. Equivalent in the order of battle to Light Infantry Divisions, MOCs are also deployed across the country for specific operations, but tend to be more stationary overall. All of these infantry units are provided with air support as needed, as well as with backing from specialised artillery, intelligence and other support units.
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- 474 The Republic of the Union of Myanmar President Office (2018), 'Vice President U Myint Swe addresses 54th Myanmar Police Force Day in Nay Pyi Taw', 10 February (<http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/10/02/id-9037>)
- 475 National Crime Prevention Strategy (2019), p 8.
- 476 Ibid.
- 477 Interviews with two international agencies, Yangon, May 2019.
- 478 Myanmar Sustainable Development Plan, p. 12. It goes on to state, 'In doing so, further crime prevention efforts, including progressive measures to combat drug harm, the dismantling of criminal networks and the protection of social capital in families and within communities, will be taken.'
- 479 National League for Democracy (2015), op. cit., pp 7–8.
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- 484 *Myanmar Times* (2019), 'Myanmar in urgent need of more police', 15 March (<https://www.mmtimes.com/news/myanmar-urgent-need-more-police.html>). The article quotes the deputy minister saying that they trained 7,800 personnel in 2018. However, numerous other sources confirmed the police force only has a training capacity of between 400 to 800 personnel per year. The article also claimed that 70 per cent of police personnel are in Yangon and Mandalay, which is also incorrect. A similar figure for total personnel is provided in: *Frontier Myanmar* (2018), 'Wanted: More female police officers', 26 February (<https://frontiermyanmar.net/en/wanted-more-female-police-officers>). This is in contrast with a much higher figure from 2018, which – following corroboration through discussion with experts – appears to be incorrect: Toe Wai Aun, Htoo Thant (2018), 'Police to go high-tech in fight against crime', *Myanmar Times*, 2 October (<https://www.mmtimes.com/news/police-go-high-tech-fight-against-crime.html>)
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- 498 *Frontier Myanmar* (2018), op. cit.
- 499 Selth (2013a), op. cit., p 9.
- 500 Unpublished review of the Myanmar Police Force.
- 501 *Frontier Myanmar* (2018), op. cit.
- 502 These reasons were all given by police officers or experts in *Frontier Myanmar* (2018), op. cit.
- 503 Most of this information comes from *Frontier Myanmar* (2018), op. cit.
- 504 Interviews, Yangon, March and May 2019.
- 505 Selth (2013a), op. cit., pp 11–12.
- 506 Interview, Yangon, May 2019.
- 507 See Myint Zan (2000), op. cit., for a chronological account of independence in Myanmar's judiciary.
- 508 Myint Zan (2000), op. cit. Information was also gained from interviews with Myanmar lawyers and two international experts.
- 509 My Justice (2017), 'Searching for justice in the law: Understanding access to justice in Myanmar', British Council (https://www.myjusticemyanmar.org/sites/default/files/MJS%20Report_FINAL_online.pdf)
- 510 Not to be confused with the Union Attorney General, Tun Tun Oo.
- 511 Profiles of all the Supreme Court Justices can be found on The Supreme Court of the Union website: <http://www.unionsupremecourt.gov.mm/?q=content/3012>. In the following article, they are said to have all held the rank of lieutenant colonel: *Radio Free Asia* (2015), 'Myanmar Lawyers Launch Campaign to End Military Appointments to the Judiciary', 11 September (<https://www.rfa.org/english/news/myanmar/lawyers-launch-campaign-to-end-military-appointments-to-the-judiciary-0911201515320.html>)
- 512 His predecessor, Aung Toe – who had served for the whole SLORC/SPDC era – stepped down due to old age.
- 513 See profiles listed by state or region on The Supreme Court of the Union website: <http://www.unionsupremecourt.gov.mm/?q=content/3012>. The three former military judges are the chief justices of Kayah and Mon State, and a judge in Rakhine State. All are men.
- 514 Interviews, Yangon, May 2019. Reportedly, 20 such officers were hired to the Supreme Court in 2015. *Radio Free Asia* (2015), op. cit. Many of these are lower-level staff, so their profiles are not published on the government websites.
- 515 International Commission of Jurists (2018), op. cit, p 29.
- 516 Crouch (2016b), op. cit., p 4. See also articles 302 and 311 of the 2008 Constitution.
- 517 Htet Naing Zaw (2018), '160 Legal Officers Disciplined in 2017, Supreme Court Says', *The Irrawaddy*, 2 May (<https://www.irrawaddy.com/news/burma/160-legal-officers-disciplined-2017-supreme-court-says.html>)
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- 519 Myanmar Sustainable Development Plan, p 12.
- 520 National League for Democracy (2015), op. cit., p 7.
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- 523 Ko Bo Kyi (2018), op. cit.
- 524 See figures published in state media: *The Global New Light of Myanmar* (2019), 'Improved rights for prisoners through Parole System', 6 June (<http://www.globalnewlightofmyanmar.com/improved-rights-for-prisoners-through-parole-system/>). However, the names given for different types of facilities have been mistranslated. Proper translations were determined through corroboration with interviews and other secondary sources. Agricultural and livestock production centres have also been referred to as "career training centres" by a retired prison department officer. See: Swe Win (2016), 'Exclusive: Abuse and corruption exposed in Myanmar's prison labor camps', *Reuters*, 1 September (<https://www.reuters.com/article/us-myanmar-prisons/exclusive-abuse-and-corruption-exposed-in-myanmars-prison-labor-camps-idUSKCN1758R?il=0>)
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- 530 This was argued by representatives of two CSOs – one working with the prison system and another working on women's protection. See also: Open Society Foundations, 'Laws and Policies affecting Sex Work' (<https://www.opensocietyfoundations.org/uploads/f6ae725c-4344-47b1-bc32-abec41f791c3/sex-work-laws-policies-20120713.pdf>)
- 531 Separate interviews with two members of the Assistance Association for Political Prisoners, Yangon, March and May 2019; and one other former political prisoner, Yangon, May 2019.
- 532 Interviews, Yangon, March and May 2019.
- 533 The 1968 version of the Burma Jail Manual is available here: https://www.policinglaw.info/assets/downloads/1968_Jail_Manual_Burma.pdf
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- 535 Interview, Yangon, May 2019.
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- 543 *Eleven Media Group* (2019), 'Home Affairs Ministry plans to implement the parole system', 4 June (<https://elevenmyanmar.com/news/home-affairs-ministry-plans-to-implement-the-parole-system>)
- 544 For an incisive case for penal reform in Myanmar, see Ko Bo Kyi (2018), op. cit.
- 545 *The Interpreter* (2019), 'Myanmar's intelligence apparatus under Aung San Suu Kyi', 12 April (<https://www.lowyinstitute.org/the-interpreter/myanmar-s-intelligence-apparatus-under-aung-san-suu-kyi>)
- 546 Soe Htut took over from Lieutenant General Myat Tun Oo in 2016. He is now Chief of General Staff of the Armed Forces, the military's third most senior post, having risen rapidly in the ranks. Soe Htut is also the current Commander of the Bureau of Special Operations, which oversees the military's regional commands. For an example of a recent official reference, see Indian Navy (2017), 'Commander-in-Chief of Myanmar Armed Forces visits ENC' (<https://www.indiannavy.nic.in/content/commander-chief-myanmar-armed-forces-visits-enc>)
- 547 This information was provided by an anonymous source via email, who listed the departments as follows:
1. Information and Public Relations Department
 2. Politics and Economic Department
 3. Drug and Economic Research Department
 4. Combat and Ethnic Armed Groups Department
 5. Training Department
 6. External Military Security Department
 7. Management and Administration Department
- This contrasts slightly with information provided by a purported former officer in the Office of the Chief of Military Security Affairs, who leaked information under the name Moe Zay Nyein in 2014. According to Selth op. cit. (2019), pp 115–166, there were six departments for training, administration, internal, external, counterintelligence and information – with the internal department holding the most staff. This department was then further divided into operations, ethnic affairs, the navy, the air force, economic research, narcotics, security and administration. These are all the departments we know of, but this information is difficult to verify.
- 548 Selth (2019), op. cit., p 118.
- 549 Interviews, Naypyidaw, May 2019. See also *Global New Light of Myanmar* (2019), 'Second Pyithu Hluttaw 12th regular session holds fifth-day meeting' 11 May (http://www.moi.gov.mm/npe/nlm/sites/default/files/newspaper-pdf/2019/05/11/11_May_19_gnlm.pdf)
- 550 Selth (2019), op. cit., p 122.
- 551 Ibid, p 123.
- 552 Ibid, p 124.
- 553 Dean K (2017), 'Myanmar: Surveillance and the Turn from Authoritarianism?', *Surveillance & Society* 15 (3/4), Tallinn University, p 501 (<https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/view/6648/6451>)
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- 555 Nay Yaing, Aung Min Thein (2019), 'Most money laundered from drugs: BSI boss', *Eleven Media Group*, 28 May (<https://elevenmyanmar.com/news/most-money-laundered-from-drugs-bsi-boss>)
- 556 Moe Moe (2018), 'Anti-Corruption Investigation of Finance Minister Nearly Complete', *The Irrawaddy*, 23 May (<https://www.irrawaddy.com/news/burma/anti-corruption-investigation-finance-minister-nearly-complete.html>)
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- 558 Consult–Myanmar (2018), 'Anti-Drug Squad, BSI cooperating on Malaysia seizure of drugs worth \$18m', 7 June (<https://consult-myanmar.com/2018/06/07/anti-drug-squad-bsi-cooperating-on-malaysia-seizure-of-drugs-worth-18-m/>)
- 559 Toe Wai Aung, Htin Lynn Aung (2018), 'Unlicensed forex traders hauled in for questioning', *Myanmar Times*, 26 September (<https://www.mmtimes.com/news/unlicensed-forex-traders-hauled-questioning.html>)
- 560 Htet Naing Zaw (2019), '90 Pct. of Money Laundering Cases Tied to Drugs', *The Irrawaddy*, 28 June (<https://www.irrawaddy.com/news/burma/90-pct-money-laundering-cases-tied-drugs.html>)

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A woman holds a sign that says 'Judicial reform is our cause' at a protest on the rule of law in Yangon, Myanmar, 12 October 2018.

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5

Public oversight and engagement in the security sector

Public oversight of the security sector can make it more effective, legitimate and accountable. For any area of governance, if the objective is to serve the people, then the government institutions involved need to be responsive and accountable to the people. The security sector is no different. If its objective is to keep people safe and to protect their rights and property, it needs to allow for their involvement and oversight.⁵⁶¹ It is simply not possible for security to be provided in the interests of the public in a top-down and paternalistic fashion, without the public's involvement. Doing so only makes sense if the objective is to keep the state, or the interests of particular elites, safe from the people.⁵⁶²

As argued by Aung San Suu Kyi, ‘Democracy acknowledges the right to differ as well as the duty to settle differences peacefully. Authoritarian governments see criticism of their actions and doctrines as a challenge to combat . . . Regimented minds cannot grasp the concept of confrontation as an open exchange of major differences with a view to settlement through genuine dialogue. The insecurity of power based on coercion translates into a need to crush all dissent.’⁵⁶³ Even Commander-in-Chief Min Aung Hlaing has noted that “Democracy is a negotiation of different views from multiple directions and it is the way to live cohesively with the same attitudes”, before emphasising the rules-based nature of Myanmar’s “disciplined democracy”.⁵⁶⁴

People have a right to be involved in the security sector. They pay taxes that are used for security purposes, including the wages of security personnel. They also live in the areas where security forces operate and they are affected by their actions. Ensuring that the public know how and why security is being provided can also help to ensure that the public is willing to cooperate with the responsible institutions, for example to report incidents to the police and to provide information that will help in ongoing cases.

Interviewees emphasised the particular need to engage people in security sector issues during the early stages of democratisation. For decades, much of the public and much of civil society pinned all their political hopes on the National League for Democracy (NLD). Now that the NLD is in government, it is important that the public gains the political awareness to develop priorities and demands according to their needs. This is essential to growing a mature democracy.

Public oversight and engagement depend on civic space. Media, civil society, political opposition, educators, lawyers, scholars and activists must be able to operate openly and freely. Such actors are crucial to increasing the transparency, accountability and responsiveness of government institutions. They ensure that the public has access to information and that the public is being listened to by government.

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about the military or other security affairs was published unless it came from official military sources. There was no public debate about security issues. Public events on politics, let alone demonstrations, were completely banned and small gatherings of up to five people were often officially prohibited. Intelligence agencies harassed and courts regularly jailed NLD supporters and other political activists. By 2011, there were over 2,000 political prisoners in jail.⁵⁶⁵

Today, people can collectively organise and speak in public far more freely.

Public events and media broadcasts on political subjects including conflict and human rights issues take place regularly. Newspapers are no longer subject to pre-censorship and privately owned daily newspapers are permitted. People can speak openly on the majority of topics. Civil society organisations (CSOs) can hold workshops and report launches far more freely than before. Parliament sessions are broadcast on television, as are numerous sessions of the country's peace process, where even the state's armed opponents have been able to speak directly to the public about their concerns and political visions.⁵⁶⁶

However, the military (and some civilian leaders) have increasingly turned to the civilian courts to shut down free speech and to maintain a sense of fear and risk around discussing certain subjects. While far fewer political prisoners are in jail,⁵⁶⁷ activists and journalists are regularly forced to go through lengthy court proceedings and face harassment for doing their jobs.

There have been at least 200 cases of so-called 'defamation' filed since 2013, many put forward by the military or its supporters responding to public criticism of the authorities by civilians.⁵⁶⁸ These include a number of cases against people in conflict areas who have tried to raise awareness of human rights abuses by the military.⁵⁶⁹ The law fails to define exactly what constitutes defamation and it does not take into account whether statements are true or if they are voiced as the opinions of an individual.⁵⁷⁰ Cases against the media are discussed in section 4.3.

Although the public enjoys far greater freedom to hold public events and rallies, these rights have also been increasingly curtailed again in recent years. Peaceful protesters have to go through lengthy proceedings to get permission to protest and can be arrested and imprisoned for not following protocol.⁵⁷¹ The organiser of a movement criticising the police's handling of a child rape case and calling for improved justice for abused minors has had defamation charges brought against him by the police, and had a bank account closed down on the advice of the Criminal Investigation Department.⁵⁷² In May 2019, riot police with batons and plain-clothed 'vigilantes' were alleged to have violently broken up a peace rally in Yangon.⁵⁷³

Individuals and organisations respond differently to the restrictions imposed by government. Some have sought to work slowly and pragmatically, keeping safe and gradually breaking down barriers. Others have sought to demand their rights and have not shied away from confronting the powers that be. Both approaches will continue to play complementary roles in creating pressure and providing solutions for progress towards a more democratic and just security sector.

It should be noted that the public might sometimes back authoritarian or violent approaches to security, as has been seen at times with the rise of hate speech on social media in Myanmar.⁵⁷⁴ Also, it is important that public influence does not simply reinforce power imbalances in society, for example with minorities or women being marginalised by the most dominant voices. In particular, majoritarianism needs to be moderated through legal and political protections for under-represented groups. Politicians and authorities have a responsibility to serve the public and represent their interests broadly, not to follow the demands of particularly vocal groups.

The following sections of this report explore four sectors in which public oversight and engagement in the security sector are taking place: education, media, civil society and policy institutes. In all four areas, while space to engage with the military, police and other security actors has grown notably since

2011, there remain significant restrictions and challenges as a result of the enduring legacy of authoritarianism.

5.1 Education

‘Intellectuals are very important in any society. Because they are the ones who . . . are provoking people, opening them to new ideas, pushing them along new heights . . . There will always be clashes between the authoritarian mind and the questioning mind. They just cannot go together.’

Aung San Suu Kyi, 1992⁵⁷⁵

Every single objective and challenge discussed in this report depends on improved access to education about security issues and security sector governance. As one independent educator explained, “The priority [for study] has to be on the concept of security. The military has monopolised the concept. It should represent all the people in the country. It cannot be used just as a tool by the military to control.”⁵⁷⁶

Education is firstly needed to raise the basic awareness of all people to encourage new norms and a new relationship with the government, in which people know their rights and know the government’s basic responsibilities. The same educator went on, “Myanmar is a very closed society, and when people do engage in political discussions, they often only know the buzzwords, like federalism or democracy. They don’t know the meaning behind the words.”⁵⁷⁷

The country needs capable civilian leaders of all kinds who are able to engage in technically informed discussions on security sector issues. This is crucial to ensuring proper leadership, policy-making, budgeting and political oversight of the security sector. A former political prisoner-turned-scholar explained, “The capacity and capability among civilian parliamentarians is very limited . . . We need security experts in all sectors. Not just for the military and police. Not just for those with arms.”⁵⁷⁸ As one politician emphasised, “While you can easily count the number of civilian scholars of security, the military MPs are very highly trained and educated, mostly in Russia. There is a huge gap [in capacity on security] and this is a big problem.”⁵⁷⁹

Myanmar is not the only country where men from military backgrounds are given an inordinate amount of control over security affairs, simply because it is assumed that they are the only ones with the right

knowledge and experience. This attitude is particularly prevalent in Myanmar however, across the government, parliament, judiciary and the wider public. It is crucial that the next generation of leaders includes women and people of more varied backgrounds who are able to engage confidently and authoritatively in the world of security.

A lack of security knowledge has also impaired the authority of elected civilians to take the lead in government. A former senior civil servant explained, “We need more dynamic ministers than these civilians. They suffered a lot [under the military] so it is not their fault. But they cannot control the military bureaucrats. They don’t have the authority to do their work.”⁵⁸⁰

There is also the need for a diverse cohort of civilian security scholars who can study defence, policing, correction, justice and other security concepts and practices both in this country and around the world. Such scholars can then produce a body of literature and take part in public discourse on these topics with a sufficient amount of depth to affect policy and attitudes. Currently there are very few civilian military or security sector scholars, most of whom have been educated abroad. Numerous politicians and CSO leaders noted that Myanmar scholars have been a key resource to members of political parties and various stakeholders in the peace process, showing how important their practical contributions can be.

Civil society leaders, aid workers, activists, journalists, lawyers and other active members of society can also benefit greatly from increased education on security concepts, either through short courses or by undertaking relevant degrees. To be able to make technically informed recommendations and arguments, CSOs working on human rights, justice, gender, protection, local governance, budget oversight and a wide range of other common topics could vastly benefit from improved knowledge of security sector governance.

One former political prisoner who now runs a CSO that provides political education explained that he was inspired by reading about political science and civil-military relations for the first time while in prison. “I realised we don’t know anything about this”, he said. “We just had grievances regarding the government but didn’t know about the systems and structures. So I decided it would be very good to teach activists about this because activists don’t naturally have that knowledge.”

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Finally, the classroom can be a highly fertile space for growing understanding between civilians and the military. Cross-pollination between civilian and military education institutions and joint study is crucial to fostering common understanding and values. Without this, civilian and military leaders will continue to hold divergent perspectives on the country's priorities and approaches to solving problems.

Public universities

Professors at the University of Yangon are trying to initiate a Master of Arts in Security and Strategic Studies, which they hope will begin in 2020. This would represent a huge leap forward in a country where nobody could openly study political subjects at university between 1962 and 2013. Since then, the universities of Yangon and Mandalay have both been providing master's degrees in political science, and they have included modules on civil-military relations and strategic affairs.

Public universities in Myanmar are undergoing reform but academic freedom is still restricted by a highly centralised process of financing and approving curriculum and classroom material. Most subjects, even at master's level, are taught through rote learning (essentially the memorisation of passages of text), and the majority of higher education students are part-time.⁵⁸¹

However, these new courses – both in the international relations departments of their universities – are starting to break these barriers. The master's in Security and Strategic Studies will have eight modules, tentatively including Myanmar's security outlook and defence policy, civil-military relations and human security, in addition to numerous other modules on regional security and defence challenges. The curriculum is still awaiting approval, in what has reportedly been an arduous process, and the department is taking time to make

other preparations. The course will be available to people with professional experience, and the hope is to include civilian and military officials, alongside those from civil society and young students coming from undergraduate programmes. It will be open to men and women, providing a rare opportunity for women to undertake an education in security after so many years of this only being possible through the military – a path that has been predominantly open to men.⁵⁸²

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Some [independent institutions] could be well placed to initiate the teaching of more technical subjects related to security sector governance and justice delivery.

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Senior professors at the department have given lectures at the Defence Services Academy and lecturers from the military universities give lectures

in return. However, there are many challenges to building stronger relations. A leading professor explained, “We are taking responsibility for [building civil-military relations]. We are civil servants and it is difficult. I invited a retired military officer but the students don't like him so they asked very difficult questions . . . so he is reluctant to return. We have to build understanding. This course will be very important for that.”⁵⁸³

A senior scholar of military affairs emphasised how hard it is to build trust with the military and said that new civilians studying the topic would struggle to persuade military officials to listen to them as this requires significant relationship and trust building. A related challenge is the paucity of publicly available data and the closed nature of the military in allowing access to even the most basic information about its structure, doctrine or priorities.

In another positive development, the government has made it compulsory for all law and international relations students in public universities to study human rights law.⁵⁸⁴ Democracies rely on independent lawyers with strong knowledge of warfare, rules of engagement, policing and other aspects of security to develop legal analyses, to write public commentaries and to potentially open cases with the courts where it appears that laws may have been broken. Lawyers have a critical role to play in interpreting the constitution and the existing laws that govern security forces and practices. These institutions cannot be effectively reformed through internal and top-down strategies. In democracies especially, they rely on expert criticism and scrutiny.

Non-formal and private education

There are many non-formal and private academic institutions that have emerged across the country. These are highly diverse. Some are private liberal arts colleges, which include foreign-owned private entities only recently permitted by law. Many others have been set up by CSOs, including some by foundations or organisations that have long provided education in exile, particularly in Thailand. Before 2011 there was a large number of higher education institutions on the Thailand-Myanmar border that attracted hundreds of students to undertake diplomas and to study development, politics and other topics in a freer environment.

Many independent institutions teach human rights and gender rights and other topics that overlap significantly with human security issues. Some could be well placed to initiate the teaching of more technical subjects related to security sector governance and justice delivery. The Yangon School of Political Sciences and the Peace Leadership and Research Institute are impressive examples.

The latter provides a graduate diploma in Peace Leadership, which includes a number of modules that touch on security issues, particularly relating to conflict settings.⁵⁸⁵

Educating the military

There are five education institutions under the military that offer academic degrees – including Bachelor of Arts, Bachelor of Sciences, Master of Arts and medical doctorates – in addition to dozens of pre- and post-commission training institutions. The most prominent institution is the Defence Services Academy, which takes high school graduates and provides bachelor degrees. This academy was where the careers of most of today’s high-ranking officers began.⁵⁸⁶

The most advanced educational institution is the National Defence College (NDC), where senior officers can undertake master’s programmes, including political and other strategic subjects such as international relations and law, in addition to advanced training on military doctrine and strategy.⁵⁸⁷ This is where the Myanmar military’s doctrine and policy is generated and developed. Military education institutions, including the NDC, have slowly started opening up to police colonels and officers from the General Administration Department (GAD). Some may eventually open to civilian government officials. At the same time, officers or former officers are increasingly studying in civilian institutions both in Myanmar and abroad. In 2019, Aung San Suu Kyi gave a lecture at the NDC on behalf of the Ministry of Foreign Affairs.⁵⁸⁸

The vast majority of foreign training and education comes from Russia and China, which annually take thousands of officers – as they have for years. The Asia Pacific Centre for Security Studies became the first Western institution to give workshops at the National Defence College in recent years,⁵⁸⁹ while some other foreign officials have given guest lectures. Hosting these lectures apparently reflects a realisation among some senior officers that “the world is changing and that we need to open up”.⁵⁹⁰ The British and Australian governments have also provided training to mid-ranking military officials in human rights, though the British initiative was stopped due to public opposition following the violence in Rakhine State.⁵⁹¹ International study trips, arranged by a wide range of international organisations, also provide an important avenue for military personnel to study, often alongside civilian counterparts.

5.2 Civil society

CSOs in Myanmar include a diverse range of actors – from the traditional to the progressive, from small community organisations to vast national ones. Some receive foreign aid and many raise money from their own communities. During military rule, CSOs included those in exile calling for regime change, those working secretly within the country, and those who found space to work on social issues while avoiding explicit political positions.

It is essential that diverse organisations and individuals genuinely interested in the public good engage in security sector governance so that priorities are set according to the public’s core needs, rather than to the security of the state or to the government’s or military’s specific interpretation of the national interest.

CSOs have been crucial in shaping Myanmar’s transition towards democracy so far. Despite such rigid control being enforced by the military, they have regularly opened up spaces to ensure that political changes are guided by the interests of the wider public and that marginalised groups are heard. They are already playing essential roles in the security sector, and there is potential for this role to expand significantly.

Many civil society representatives explained that they can offer valuable expertise to the government, if only the government would ‘use them’ more. They have thematic expertise and well-developed soft skills that most civil servants do not have. Through greater collaboration, the government could benefit from these resources.

Since the Nationwide Ceasefire Agreement was signed in 2015, the most direct and explicit civil society engagement with the security sector has been through the peace process. However, the military and ethnic armed organisations (EAOs) have not allowed CSOs to join the official Security Sector Working Group, so engagement has only been possible through research, advocacy and technical assistance from the outside. There are a number of policy institutions that have focused directly on topics like security sector reform or civil-military relations, which are covered specifically in the next section.

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There are a wide range of CSO activities supporting access to justice at the local level, through raising awareness, legal education and helping individuals to report cases. There are also various CSO initiatives in training judges and lawyers, among other areas of technical assistance. The Myanmar Sustainable Development Plan recognises the 'important role played by civil society organisations in advancing justice and the rule of law'.⁵⁹²

The Gender Equality Network has conducted training for 1,200 officers from the Police Anti-Trafficking in Persons Division, demonstrating a breakthrough example of a CSO directly training the security forces on a crucial area of reform.⁵⁹³ Numerous women's organisations in particular have supported survivors of sexual and gender-based violence, often facing huge difficulties in successfully achieving justice. A leader of one such organisation emphasised the

need for much greater gender awareness raising among lawyers and judges, the majority of whom are men.

CSOs have found various ways to influence laws and official policies related to the security sector, most notably on violence against women, child rights, prison reform, penal reform, media freedom and peaceful assembly. These organisations have faced continuous pushback from the military, military-led ministries and some civilian officials, who are resistant to radical changes. Nonetheless, steady progress has been made – elected representatives have slowly been

brought on board to tackle complex and sensitive issues and their attitudes have incrementally shifted.

Perhaps the most prominent examples of CSO-led change have been around the National Strategic Plan for the Advancement of Women. This was a huge and unprecedented achievement resulting from concerted advocacy by women's organisations and networks from the late 2000s until the plan was officiated in 2013. These CSOs undertook widespread consultations across the country, which were used to inform relentless public pressure, closed-door advocacy and technical assistance workshops targeting government committees and parliamentarians. They also used advocacy to solicit significant assistance and additional pressure on the government from the UN and international non-governmental organisations.

The Protection and Prevention of Violence Against Women bill was an extension of this process but it has yet to be approved by the Union Government, despite promises that it will be passed in 2019. Women's organisations continue to push for this law

to be passed and for legal reform. The Women's League of Burma in particular is calling for national mechanisms on women, peace and security.⁵⁹⁴ The 2019 Child Rights Law has also benefited greatly from CSO engagement and tireless efforts from particularly active (mostly women) MPs. The law signifies an important breakthrough in the protection of children against the security forces, among other crucial elements.

In recent years, the Assistance Association for Political Prisoners (AAPP) has been promoting prison reform through research and policy development and through cooperation with MPs, the Ministry of Home Affairs and the Myanmar National Human Rights Commission (MNHRC). The initiative has included several joint workshops involving government staff, MPs and others to develop policies and raise awareness of the key challenges. The AAPP is calling for integrated and comprehensive reform of the penal system rather than piecemeal changes, which is crucial as so many of the challenges are interrelated. In particular, the organisation is pushing for a shift in culture away from prisons being places of punishment and towards a much greater focus on rehabilitation.

The AAPP is among numerous CSOs that – in addition to the Independent Lawyers Network of Myanmar – are demanding the creation of a Ministry of Justice. The ministry would oversee the prison department so that it is separated institutionally from the police, and it would be responsible for administering and managing the budget of the judiciary. The AAPP is also calling for legislative and operational reforms to ensure prisoners are not exploited, have access to healthcare and education and are segregated more carefully, along with other measures that prioritise prisoners' rehabilitation and their return to society. It is also seeking to end the use of hard labour, with labour being restricted only to the management of prisons or tasks with direct vocational benefits. Its agenda includes better training and improvements in job satisfaction for prison staff, as well as establishing an independent monitoring body and a reliable complaints mechanism. It is also working to improve the prisoner release process to make the pardon system more systematic and to introduce post-release assistance. In addition, the AAPP is promoting the use of alternatives to detention and imprisonment as much as possible,⁵⁹⁵ including the introduction of a parole system, which the government has now begun.⁵⁹⁶

A draft amendment bill for the Prison Law has been passed back and forth many times between MPs and responsible ministries. AAPP has been advising MPs and the drafters in coordination with the MNHRC. Interviewed AAPP staff explained that the bill has

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been incrementally brought in line with the organisation's aims but that it remains insufficient with some aspects still shaped by old practices.⁵⁹⁷ Amendments to the prison manual have also been made in line with AAPP recommendations, but the document is still not finalised or in use. The AAPP has also been calling for the passing of relevant international treaties, as a way to encourage international recognition and support and to help frame a comprehensive reform agenda.

Civil society campaigning has contributed to softening some aspects of the Telecommunications Law and the Peaceful Assembly Law, both of which prescribe certain freedoms but are also often used by the police and courts to curtail them. As one AAPP member explained, "80 per cent of our recommendations to these laws get passed, but the most important parts are always in that other 20 per cent".⁵⁹⁸

One of the most essential roles of civil society is conducting research and advocacy. This includes human rights reporting, often focused on military activities, which numerous ethnic-specific and countrywide organisations have been doing for multiple decades, shedding light on practices that would otherwise be overlooked. With the rise of social media and the liberalisation of conventional media, such reporting has become increasingly important in informing the public about the suffering of people in conflict-affected areas and exposing how the military conducts its operations. CSOs have also used this space to raise public awareness of humanitarian blockages and other issues related to government policy. Other CSO-led research and advocacy focuses on specific policies and laws and on providing substantive recommendations to government or international agencies.

CSO cooperation with MPs on budget transparency and scrutiny as well as training for the public on civic engagement have served to strengthen civilian oversight of the military-led ministries. These areas of work could be expanded to more explicitly include security budgeting or monitoring the activities of the police force in the future.

5.3 Policy institutes

Policy institutes can be defined as independent or semi-independent organisations that support the development of policies for government or other actors playing governance functions. They do this particularly by conducting research and written

analysis on topics of public concern.⁵⁹⁹ Some are essentially CSOs, while others are attached to the government or to specific agencies. Others may work for the interests of a particular market sector.

Independent policy institutes form a distinctive segment of civil society that focuses more explicitly on supporting sound, evidence-based policy decisions, rather than partisan positions and causes, although the line between the two is blurred. Policy institutes also tend to prioritise the conduct of rational assessments and seek practical solutions, rather than emphasising what they believe to be right or to voice the political demands of specific groups.

A researcher from one Yangon-based policy institute explained, "We just find [in government] there are no new ideas. All the old ideas are circulated, it's like they are swimming in dirty water."⁶⁰⁰ New ideas are especially needed in the context of reforming the security sector, where traditional hard security approaches, developed through years of military rule, often fall short of addressing the security and justice concerns of the population.

It is vital that such work is conducted by organisations with professional and independent researchers who are from Myanmar and understand the Myanmar context. Such researchers can write directly in local languages and help develop the country's indigenous academic culture. Policy institutes also have a particularly important role to play in contexts where democracy is relatively new and where the expectations on elected civilians are high, but where government officials lack experience and competence. They can be called upon to provide their expertise and knowledge to busy MPs and government staff, who often lack the time to do in-depth research and learning of their own.

There are dozens of policy institutes in Myanmar, most of which emerged after 2011. Some were established by academics or practitioners who studied or trained abroad. They include bodies connected to the state, such as the Tatmadaw-linked Thayninga Institute for Strategic Studies and the Ministry of Foreign Affairs-affiliated Myanmar Institute for Strategic and International Studies. There is also the NLD-affiliated Renaissance Institute and Bayda Institute.

Independent policy institutes in Myanmar include the Tagaung Institute for Political Studies, the Institute for Strategy and Policy, the Salween Institute, the Myanmar Institute for Peace and Security Studies, the (separate) Myanmar Institute

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for Peace and Security, the Burma Centre for Ethnic Studies, the Yangon School for Political Studies and the Open Myanmar Institute, among others.

A central role of these policy institutes is to provide research to support evidence-based policy-making. This includes collecting evidence on the impacts of existing policies; for example, to examine how samples of the public are affected. They survey public perceptions, opinions or practices in relation to specific issues. They conduct comparative studies, looking at examples from other countries that might be relevant to Myanmar. They can also monitor new initiatives or reform processes to

understand what works and what doesn't. There is potential for government departments to partner with them to independently monitor specific activities.

In addition to research, some policy institutes in Myanmar facilitate dialogues between government and non-governmental organisations and individuals, allowing them to learn from each other outside of formal settings. They also provide training on core governance skills to government staff, political parties or peace process negotiators, either in one-off sessions, through courses on specific topics or through ongoing coaching. Institutes



Reuters journalist Kyaw Soe Oo leaves Insein court after his verdict announcement in Yangon, Myanmar, 3 September 2018.

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officially linked to government – or independent ones with strong networks – can obtain information not usually openly available in order to inform public discourse.

Some policy institutes also engage in public awareness raising; for example, the Institute for Strategy and Policy organises television talk shows with experts discussing topical issues. As one Myanmar researcher explained, “Democracy without a well-informed public is very dangerous.”⁶⁰¹ Providing reliable information and encouraging more in-depth intellectual engagement with security issues and appropriate responses is particularly

important where hate speech is on the rise and specific religious or ethnic minorities are labelled as a security threat.

Interviewees from numerous policy institutes, however, mentioned that they have found it hard to gain significant influence with the current government or military, which remain relatively closed and unreceptive to outside advice. They could gain increased leverage over coming years as their capacity develops and if a more sophisticated and policy-oriented culture emerges within government.

5.4 Independent media

The media is arguably the most important institution for providing public oversight to the security sector. Independent media coverage of military, police and justice sector activities ensures people know and understand when, why and how conflicts are being fought and crime is being tackled. This is crucial both to ensure public support for actions carried out in their name, and to make it possible for the public to voice opposition when they disagree.

Free and independent media coverage helps to keep abusive and corrupt practices in check, regularly informing the government and the general public of wrongdoing or questionable actions. Media reports also help inform the public of large expenditures of taxpayers' money on vehicles, weapons and equipment. This type of reportage helps to inform voter decisions and, over time, ensures that elected politicians are acting in the public interest.

Security authorities can also benefit from cooperation with the media. Public announcements on serious criminal cases are often used to encourage witnesses to come forward and provide helpful information. The media is also used to shape the public image of the security forces, to build trust and attract recruits.⁶⁰²

According to editors of two prominent Myanmar newspapers, there is a lot of public interest in the military and in security, and so the media is particularly engaged in trying to report on these issues. Another Myanmar journalist explained that this is especially important during the transition away from authoritarianism, as public information has been used for so long as psychological warfare to control the population rather than serve them.⁶⁰³ Prior to 2011, state publications contained regular disinformation and blanket labelling of all underground and foreign media sources as 'enemies sowing hatred'. The military still regularly talks in terms of official authorities being the only ones who know 'the truth' on security affairs,⁶⁰⁴ but a much greater diversity of accounts and viewpoints is now freely published.

Effective media coverage of security and justice affairs relies on two key elements, which are discussed in the following sections. The first is freedom for the media to publish information about the relevant agencies' activities. The second is journalists having access to reliable and accessible information, facilitated by official accounts, and being assured access to areas and people affected by security operations.

There have been dramatic improvements in both of these areas since 2011, which could have a significant impact in the level of knowledge and awareness among the population and inspire the next generation to engage more directly with security affairs. However, there also remain huge restrictions, as a result of the security culture developed through decades of military rule. The military persists in trying to cover up human rights abuses by targeting journalists and publishers with lawsuits, and, despite much greater interaction with the media, remains highly secretive about much of its activity.

Media freedom

Myanmar had a strong independent press before 1962, but it was wholly dismantled during the reign of Ne Win. Independent newspapers emerged again in the 2000s but were subject to heavy censorship, particularly on security and military issues, which no one could report on unless relaying official government press releases. Through that period, media in exile flourished but was hard to access and put consumers at risk of punitive action from the authorities.

It was a breakthrough therefore when President Thein Sein liberalised the press again, starting in 2011. As a first step, the government began circulating more open information on military issues – for example, about official releases of child soldiers. In August 2012, pre-publishing censorship was abolished and the Press Scrutiny and Registration Division was completely dissolved the following year. Exiled media organisations, such as the Democratic Voice of Burma, were then able to return in 2012 and set up operations in-country. Key laws were enacted or amended, including the Telecommunications Law in 2013, the Media Law in 2014, and the Printing and Publishing Law in 2014. In particular, following a rapid increase in the availability of mobile phones with data connections around 2014, access to social media also boomed.

The impacts of this shift are hard to measure but are palpable to any adult who lived in the country before and after the change. Private daily newspapers and a number of radio and television news stations are now available. They report on military operations and defence procurements, on the achievements and the misconduct of the police, and on the management of prisons, among other issues. Openly quoted sources include ordinary people directly affected by events, independent analysts, anti-government activists, government spokespeople, leaders of EAOs and Myanmar military commanders.

Media consumers are far more informed on such matters today than they were before 2011.

However, the military has remained hyper-sensitive to reporting on some issues and has used a wide range of laws to crack down on free reporting. Particularly since the NLD came to power, this has created a chilling effect, forcing many editors to instruct their staff to back off from certain issues and report with great caution.⁶⁰⁵ Sensitive issues include both human rights abuses by the military (especially in what are considered serious national security contexts) as well as reporting on corruption by high-level military officers. Indeed, some new laws have been used or misused against journalists, most notably the defamation clause (66d) of the Telecommunications Law,⁶⁰⁶ under which more than 200 cases have reportedly been opened since 2013, with many brought by military officers.⁶⁰⁷

There are five other laws that contain defamation clauses, with defamation poorly defined and not excepting cases where articles clearly express opinions or even taking account of whether the information is true.⁶⁰⁸ Other laws used against journalists or their informants when reporting on military issues include the Penal Code, the Official Secrets Act, the Aircraft Act and the Unlawful Associations Act.⁶⁰⁹ The most prominent recent case was that of Reuters journalists Wa Lone and Kyaw Soe Oo, who were charged under the Official Secrets Act for investigating the military's killing of ten Rohingya civilians. They were allegedly set up by a police officer, who later confessed in court to giving them classified information as part of a sting operation.

There was also the more banal but exemplary case of a columnist and an editor of *The Voice* who published a satirical piece about a heroic action movie that aired on state television to improve the military's image. The pair had numerous charges filed against them and they were detained multiple times, before the case was dropped. In another case, at the time of writing the editor of DMG Media Group, based in Sittwe, Rakhine State, remains in hiding due to charges under the Unlawful Associations Act and has had family members harassed by the Special Branch, seemingly in relation to reporting on conflict in Rakhine State.⁶¹⁰

As noted in section 4.3, most judges and government prosecutors (who can deliberate and decide whether to bring most of these cases to court) tend to see themselves as mere functionaries of the state and very rarely reject or even question cases that are put forward by military officers. Some members of the civilian government have also brought defamation cases to court. There has been no explicit agenda from the NLD to stop these kinds of cases. Only minor revisions were made to the

Telecommunications Law in 2017 and much more could be done by the government to make judges more independent and prosecutors better prepared to consider cases based primarily on the public interest.

Newspaper editors explained that they also faced additional threats from extreme segments of the public for criticising certain military or government activities. The most controversial reports have been those on military violence against the Rohingya people. Some audiences have echoed government claims that media reports on military actions in Rakhine State are untrue. Others have denounced the media for criticising or even questioning the military, arguing that harsh military responses are necessary to defeat "terrorism",⁶¹¹ often following the lead of pseudo-Buddhist nationalist organisations that claim the religion is under threat from Islam.⁶¹²

Media outlets also face public backlash for disparagement of the NLD in general, as the party's loyal supporters refuse to accept criticism. Before the Telecommunications Law was reformed in 2017, many of the cases filed under the law were not by those supposedly being defamed but by their supporters.⁶¹³ These included numerous cases of criticism of Aung San Suu Kyi, as well as of the nationalist leader U Wirathu. These cases demonstrate the necessity for improved awareness (not just among the authorities but also among the general population) of the importance of a free press in order to improve governance, and for the need for the publication of more varied opinions on public figures.

Access to information

Access to official information from the military and police, as well as access for journalists to conflict areas, has improved greatly since 2011, despite many continuing limitations. Today, journalists have a directory of phone numbers provided by the military so that they can contact official spokespersons or specific command centres to request information. They can use this channel to get official versions of events or to ask for clarifications on key decisions and actions. The Myanmar Media Press Council has also organised seven meetings between the press and the military as well as three sessions of 'four pillar talks' between representatives of the executive, parliament, the judiciary and the media.⁶¹⁴

The military's main body for publishing communications regarding major national security issues is the True Information News Team, which was

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established during the violence in Rakhine State in 2017. While Major General Soe Naing Oo is the chair, Brigadier General Zaw Min Tun has been the most accessible and regular spokesperson. Journalists explained they are relatively open but do not always pick up the phone and are typically only willing to give official accounts on specific events, occasionally answering questions about bigger political issues at organised press conferences. While it is certainly an important step to have direct access to official spokespersons on official government positions, there are still significant concerns about the veracity of information provided. In a press pack issued in August 2018 for example, the True Information News Team released photos that weren't from Myanmar, falsely claiming they show Rohingya (referred to as 'Bengalis') committing abuses and immigrating en masse into Myanmar.⁶¹⁵

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While the Myanmar public remains poorly informed about military activities in Rakhine State and elsewhere, it is impossible to properly gauge related public opinion and priorities.

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Access to conflict areas has also improved, as freedom of movement along main roads – even into conflict areas – has improved in general. Even so, journalists still get stopped and questioned when travelling, and they sometimes have cameras and other equipment examined. In recent years, they have regularly been blocked from entering the most sensitive areas in Rakhine State and have only been able to visit on highly orchestrated junkets where they have little freedom to report.⁶¹⁶ The Unlawful Associations Act in particular is used to limit

reporting in conflict areas, as article 17(1) outlaws contacting members of illegal groups, including some EAOs. This law is not uniformly applied and media outlets regularly print comments from EAO leaders. However, it is used at times to crack down on specific individuals or outlets and to maintain a climate of caution.

The most severe case was the 2014 killing of Ko Par Gyi, who was shot dead while in military custody after being arrested in the territory of the Democratic Karen Buddhist Army. The journalist was a long-term activist, freelancer and supporter of Aung San Suu Kyi and was verifiably not a member of the EAO. However, a military court reportedly acquitted the two soldiers who had killed him on this basis and his family is yet to find justice.⁶¹⁷ Such cases mean that only the bravest journalists (and fixers) can travel into conflict areas. Meanwhile, the Tatmadaw has allowed only a few independent journalists or photographers to be embedded with them to closely observe operations.

There are also huge constraints on getting official information on military spending. The media generally depends on reports from foreign news outlets to find out about the latest Tatmadaw procurements, and such issues are shrouded in great secrecy. As noted earlier, this is compounded by the very limited information available in the official budget.

The rapid liberalisation of online media has also led to the spread of unreliable information published by partisan organisations and individuals from all sides of Myanmar's many conflicts. Memes containing incorrect information, including photos of dead bodies that have been doctored or lifted from other countries, are widely shared.

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Members of the Union Parliament attend a regular session in Naypyidaw, Myanmar, 5 February 2019.
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The way forward

A democratic security sector is a security sector that is accountable to the public and that aims to keep the public safe as its primary objective. There are no guarantees that Myanmar's security institutions are moving in this direction as a necessary outcome of the ongoing political transition. Nonetheless, political changes have created space for pro-democrats both in and out of government to push in this direction.

As noted by Renaud Egreteau, all we know is that Myanmar remains on a slow, military-led transition from direct military rule to 'something else'.⁶¹⁸ From here, the country could remain in a hybrid system for many years, backsliding into military or civilian-led authoritarian rule – perhaps under a 'hard line' nationalist party, among other eventualities. Or it could continue to progress towards a more democratic and open system of government.

Similarly, the security and justice sectors could evolve in numerous ways. They could remain largely detached from the civilian government and in service of military leaders' ideological or private interests. Alternatively, they could be slowly democratised, coming under increased oversight of elected civilians, becoming focused on keeping people safe, and opening up to wider participation from the public and civil society.

Much depends on whether civilians interested in the public good can successfully claim greater power and influence through a combination of sustained pressure and tactful compromise.

Civilians in government, civil society, the media, policy institutes and education providers all have critical roles to play.

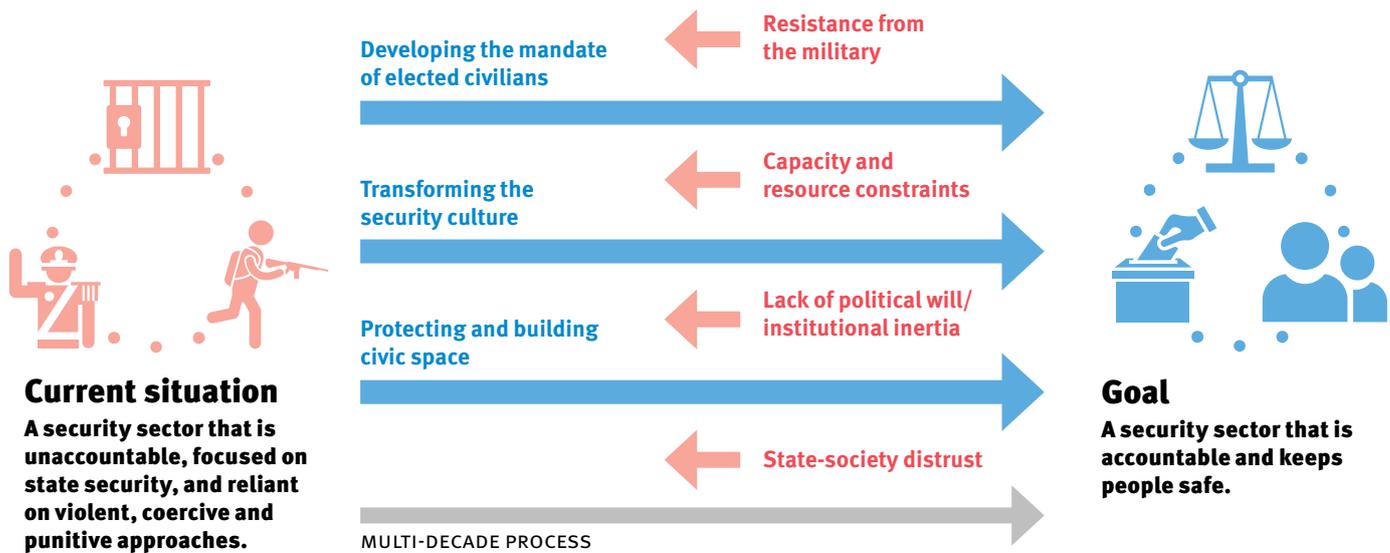
Since 2010, there has been moderate progress in all three of the dimensions of democratising the security sector that have been looked at in this report. The work ahead is best viewed, somewhat soberingly, as a multi-decade challenge. Sustained action from a wide range of organisations and individuals is needed to bring about generational change. Like democracy, none of these areas of change has a finite end point when it is complete. They are all dynamic, ongoing processes.

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Much depends on whether civilians interested in the public good can successfully claim greater power and influence through a combination of sustained pressure and tactful compromise.

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Figure 7: Three dimensions of security sector democratisation



As shown in figure 7, progress in all three dimensions is hindered by various factors. First, there is resistance from the military, which continues to prioritise its own ideological and private interests over those of a collective and inclusive public vision. Second, the government and society at large face huge capacity and resource constraints, and few civilians have in-depth knowledge of security and justice affairs. Third, there is limited political will to challenge the military or to experiment with modern (and sometimes foreign-seeming) approaches, and as a result there is a default inertia throughout the apparatus of government. Finally, there remains deep distrust between the state and society, which means that some parts of government continue to treat the public as a risk that needs to be managed or, even worse, as an enemy. In return, the public remains in fear of the state and people tend to view security as none of their business.

6.1 Developing the mandate of elected civilians

Without elected representatives, there is no democracy. For government to be truly accountable to the public, government powers and responsibilities must be placed in the hands of officials whose jobs depend on public approval. As long as security sector powers and responsibilities

lie with unelected military leaders rather than elected civilians, the sector will continue to be unaccountable to the public and beholden to military interests.

The Myanmar military has long insisted that such arrangements are necessary to protect the country's sovereignty and to ensure that the transition to a more democratic system is orderly and stable. It has recently repeated that it is willing to give up its constitutional powers in a controlled manner, once there is peace. However, there is no set timeframe or even agreed milestones by which such progress can be measured. Elected civilians and the military remain in a painstakingly slow tug-of-war in which the former is steadily pulling rights and responsibilities away from the latter, while carefully avoiding a dramatic fall.

The security mandate of civilians is most obviously restricted by the constitution, which secures the military's role in politics and its autonomy in defence affairs, and which can only be amended with military approval. Behind the technicalities of getting an amendment bill passed is the superior hard power and financial wealth of the military, and its staunch protectionism over the charter. Making the constitution more democratic will require elected civilians to increase their political influence and authority, while continually negotiating compromises with the military.

Shifting this power balance will depend on the ability of the National League for Democracy (NLD) and other civilian parties to maintain popular support and exercise effective control over the machinery of government, as well as on their capacity to demonstrate leadership and legitimacy to take increasing responsibility for security affairs.

Seeking compromises may depend on more direct negotiations between Aung San Suu Kyi and Min Aung Hlaing, as seen prior to 2016 and as repeatedly recommended by participants in this research. The military will unavoidably continue to protect its interests, meaning that it will need to be convinced that any changes serve those interests or are necessary to manage popular demands.

The NLD's proposal to gradually decrease the military's portion of seats demonstrates a pragmatic attempt to establish an agreed, gradual timeframe for the military's withdrawal from politics. It is less gradual than it seems however, as the military's veto on further constitutional amendments would be immediately removed. The military is unlikely to accept this exact proposal, and remains staunchly opposed to the work of the Joint Constitution Amendment Committee in general. However, civilians should continue to push for a mutually agreed timeline for withdrawal.

In lieu of significant constitutional change, civilians in government have expanded their role within their existing mandate in a number of ways and will likely continue to do so. The most obvious example has been the transfer of the General Administration Department (GAD) – an institution that plays a central coordination role in justice affairs and that often assists military objectives – over to the Ministry of the Union Government. The earlier creation of the state counsellor position gave Aung San Suu Kyi some authority over the entire executive branch, including the three military-led ministries. The creation of the National Security Adviser position did not come with significant explicit powers but could be seen as a litmus test for the development of civilian security institutions and has at least allowed the civilian arm of government to more explicitly coordinate the security powers already within its mandate. Policy initiatives have also been used, such as the Myanmar Sustainable Development Plan, which directly tasks two of the military-led ministries on justice reform and pledges 'support to the security sector' to serve the people and ensure peace and safety.

The president and state counsellor have attempted to assert some authority in what are considered important national security issues, such as conflicts in Rakhine State and relations with China. The civilian arm of government has taken the lead with China, holding regular bilateral meetings. It has approached the situation in Rakhine through the convening of security meetings with members of the National Defence and Security Council (NDSC) plus additional civilian cabinet appointees. In these meetings, civilian leaders have typically ordered strong military action, seemingly aiming to demonstrate a position of leadership, and signalling their alignment with the military on these issues.

In parliament, elected civilians both in and out of the NLD have forced regular discussion of security issues and have been instrumental in the repeal or partial amendment of repressive laws, as well as in changes to legislation on violence against women, prison management, counter-terrorism, penal and criminal procedure, child rights and cyber-security, among others. Oversight of the military budget has been limited by fiscal rules, in line with constitutional provisions that explicitly give the Ministry of Defence greater budgetary autonomy than other ministries. Other security and justice functions are subject to greater scrutiny however, and the military does have to answer questions and enter discussions on its budget. Parliamentary questions are also used to question the Ministry of Defence on its activities and perspectives, but these remain heavily moderated by the speakers and party whips.

The civilian government will likely continue to incrementally transfer powers to civilians through administrative tweaks, but will be constrained by military resistance. For every loophole in the constitution or other legal workaround that can be found, the military will find potential responses that could impair civilian agendas.

For example, the president and parliament hold significant war powers on paper, while the position of the police under the military is not necessarily as fixed as is often assumed. A more assertive, president-led NDSC could potentially give the head of state significant influence over security decisions. New laws and increased budget scrutiny could also be used to enforce greater control over the Ministry of Home Affairs and Border Affairs, if not the Ministry of Defence, without any need for constitutional change. There do not appear to be any official blocks on civilians establishing new intelligence bodies or on attempting to transfer existing ones (at least non-lethal armed services) over to civilian control. However, civilian incursions into any of the military's affairs have the potential to open up new battlegrounds in competition, and so will continue to be approached with extreme caution by the NLD and will only take place incrementally.

Another fundamental dimension of elected civilians gaining influence over security affairs is access to information about the military and its operations. All intelligence services in the country currently fall under the command of the military, reporting directly to the commander-in-chief, the Ministry of Home Affairs or the police. It is unclear what briefings and updates civilian leaders are privy to. Many people interviewed for this report indicated that civilians in government lacked knowledge of the military's inner

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In lieu of significant constitutional change, civilians in government have expanded their role within their existing mandate in a number of ways and will likely continue to do so.

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workings and that their analysis of the security environment was extremely weak, presenting a significant hindrance to their ability to assert leadership. The systematic development and review of security policies and strategies by the civilian government would also depend on much greater access to information.

Non-governmental individuals and organisations can also help strengthen the power of civilian institutions over the security sector. Most immediately, civil society organisations (CSOs) and policy institutions could be drawn on much more readily by the government to assist in developing and implementing policies and in training government staff. Independent lawyers also have crucial roles to play in interpreting the constitution and existing laws and in making the legal case for future changes. Education institutions, including

those with courses emerging on security affairs, can enrol government staff and associates too.

International influence in this area is naturally limited as these are essentially domestic political questions. Overt foreign interference is likely to encourage pushback and scepticism from the military and even from many of the civilians in government. Nonetheless, international organisations and donors can provide resources and expertise to respond to requests from local government and non-governmental institutions, particularly to assist in developing policies, providing training or funding the implementation of activities.

Sustained international assistance for the development of democratic institutions is therefore of great value.

officials does not necessarily transform security practices and norms. Civilian officials regularly adopt overly aggressive approaches to conflicts, highly punitive approaches to crime, and authoritarian approaches to corrections and intelligence gathering.

To create a security sector that is accountable, trusted and in service of the population, additional efforts are needed, both inside and outside of government, to transform institutionalised cultures and practices. To a large extent, the specific norms and values that underpin a country's security sector need to be developed in that country, and they have to reflect the norms and values of its society. Therefore, the exact changes needed cannot be prescribed based on international experiences or by foreign actors. Nonetheless, the following paragraphs outline some of the major themes that were raised during the research for this publication, many of which do reflect international norms and standards.

First is the introduction of more gender-sensitive policies, budgets and practices. This most obviously relates to vast issues around sexual and gender-based violence, both in terms of crimes allegedly committed by security forces in conflict areas as well as in the police and courts' capacity and readiness to protect women from all forms of gender-based violence. Significant and sustained pressure from women's organisations and other CSOs has been key in raising some awareness of these issues among the relevant institutions and parts of government. However, the Protection and Prevention of Violence Against Women bill remains unpassed – meaning, for example, that rape is still legal within marriage and that there is little protection for women in conflict areas – while the practices of the relevant authorities largely remain unchanged. Gender-sensitive budgeting at the parliamentary and intra-departmental levels is also key to ensure that gender-specific issues are being given necessary attention.

Women are greatly under-represented in all security forces. Hiring of women has increased and a continuation of this trend will be a necessary step towards more balanced gender representation and improving the potential for more gender-sensitive approaches. Equally important is removing the barriers women face to promotion and inclusion in all areas of security governance. Relatedly, ethnic and religious minorities are under-represented across security institutions. For example, in some areas enlisting non-Bamar locals into the police might depend on more decentralised hiring practices with more flexibility on levels of formal education in the government system, and introducing the use of local languages.

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6.2 Transforming institutional practices and cultures

As reiterated throughout this report, transferring powers to elected civilians does not automatically lead to a more peaceful, just or even a more democratic security sector. Just as elections alone do not establish a consolidated democracy, the placing of security powers in the hands of elected

Myanmar's armed forces continue to focus on the modernisation of their capabilities and armoury, while neglecting the modernisation of the strategies and tactics used in internal warfare. Rampant burning of villages and designating large residential areas as battle spaces have led to widespread abuses and have done little to weaken or defeat EAOs, most of which are highly receptive to negotiating a conclusive end to conflict, provided it involves meaningful political compromises towards a genuinely federal system of government. Meanwhile, the strategy of encouraging EAOs to focus on business and to become state-backed militia has created highly unaccountable security forces, and has led to rampant extraction of wealth and resources from the public.

Reforming the conduct of the armed forces will largely depend on a change in the values and ethics within those forces, and on changes in doctrine, training and institutional habits. This is difficult for civilians to enforce even in complete democracies, and even more so in Myanmar where the military develops much of its ideology in the echo chamber of its own universities, and where training is conducted almost entirely internally. Having a military that acts in accordance with the interests of society depends not just on oversight mechanisms but on building strong civil-military relations so that military personnel at all ranks share common values with the rest of society and are proud to represent their country. All possible opportunities must be taken by civilians in government and among wider civil society to increase coordination and dialogue with the military, to engage in common discourse through formal and social media, and to undertake joint civil-military education and training.

Systemic and integrated reform to the justice system is needed so that criminal charges are reserved for those who pose an actual threat to the safety, health or property of the public, and so that authorities are focused on reducing harm and rehabilitating offenders rather than on purely punitive approaches. A focus on preventing, rather than responding to crime, by using healthcare, education, development and other approaches, and by ensuring police maintain close and trusted relations with local people, is also key to reducing harm. Purely coercive and 'hard' security approaches – not to mention heavy surveillance – tend to increase distrust between the state and society and can trap offenders in a cycle of dependence on criminal activity. Reforms to make policing and general administration more decentralised could also help to make security policy and practices more responsive to public needs and concerns.

To its credit, the Ministry of Home Affairs has shown significant openness to reforms along these lines, particularly in its leadership in developing the National Crime Prevention Strategy and the National Drug Control Policy, among other initiatives. The ministry has also received training from the Myanmar National Human Rights Commission, numerous CSOs and international agencies on new practices and concepts. It has been engaged in prison reform efforts too, negotiating back and forth with MPs, the human rights commission and, less directly, with the Assistance Association for Political Prisoners. The ministry has also increased transparency and regularly makes public statements about its activities and the challenges it faces, such as with prison overcrowding and police recruitment.

An overarching objective of transforming the security culture should be to make the sector more transparent and consultative. While there are sometimes credible reasons to withhold information from the public – for example, where it pertains to ongoing court cases or where releasing it might compromise intelligence efforts – these circumstances should be well defined in law and based on reasonable grounds. Allowing the public to know what the security institutions are doing and why is essential for ensuring they are serving public interests. This relates to how security institutions conduct themselves and to how they spend public funds. Central to this aim will be reform of the intelligence services to undo the legacy of authoritarian rule, under which their primary job was to monitor the public and to suppress popular dissent.

Consultations with the public should be part of developing national strategies and laws, as well as part of routine practice at the local level.

Topics could include their experiences of interacting with the police, seeking justice through the courts, and integrating former prisoners into society. Consultations can also help to gain public buy-in to ensure they cooperate with new systems and approaches and understand how to use new services.

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6.3 Public oversight and engagement in the security sector

Finally, democratising the security sector will depend on a lively civic space, in which a wide range of individuals and institutions can engage on security issues without fear of undue retribution from the state. The whole of the security sector could benefit greatly from opening up to increased input and criticism from civil society and the public. Additionally, more civilian security specialists are needed, both inside and outside of government, to encourage and support reforms. This will require improved formal and informal education in these sectors.

A key trait of authoritarian regimes that lingers in many of Myanmar's government institutions is to view all criticism as a threat and to view all critics as subversive elements looking to harm the state and its core interests. In Myanmar in particular, critics are often suspected of being in the service of foreign actors or of being corrupted by foreign ideas.

Since the NLD came to power, the civic space has faced new threats, particularly in relation to defamation charges filed by members of the security forces against their critics. The NLD-led government, through its judicial reform agenda, has the opportunity to ensure all such cases are handled appropriately and in the public interest by public prosecutors under the Union Attorney General, and that judges then make independent and impartial decisions based solely on their interpretation of the laws, rather than just following cues from the military or government officials.

Indeed, criticism can be entirely constructive and can be used by strong democratic institutions to create a more effective government that is well adapted to the diversity of needs across society. Government resources are thin across all sectors, in terms of human capacity, finance and time. Civil society research and advocacy, for example, can provide important data and can help to guide better policies. Expert opinions can also be called upon more systematically through formal coordination mechanisms.

CSOs have been at the forefront of pushing for changes to the security culture (and for governance culture more broadly) and will continue to be. CSOs have been central to the ongoing efforts for drug harm reduction, penal reform, countering violence against women and protecting the rights of children.

They have also long been the primary actors documenting human rights abuses and other issues in conflict areas, including the activities of state security forces. CSOs directly assist survivors of sexual abuse or other crimes to access justice, and more widely raise awareness of channels available to people to seek justice or to report their concerns. CSOs provide alternative education channels, allowing for young people to study topics such as human rights, justice affairs and civil-military relations.

Formal education in Myanmar is also improving in the provision of courses on civil-military affairs, national security, military strategy and other critical topics. These courses will benefit MPs and government officials currently in office, and will also contribute greatly to the long-term goals of democratisation.

Beyond the constitution and the power of the military, the lack of capacity among civilians on security affairs hinders their ability to gain more influence over the security sector. This will be a long-term challenge, but over the next generation the demographic make-up of security professionals in government could change dramatically, which will, in turn, alter the dominant cultures and practices. Policy institutes have a crucial and complementary role to play in fostering a culture of using evidence to develop security and justice policies, encouraging the government away from old ideologies and ingrained practices and towards new and more effective approaches.

Independent media coverage is also necessary for creating a democratic and accountable security sector. To make educated decisions, voters need to know what the government is doing, how funds are being spent, how conflicts are being fought and how crimes are being tackled. They also deserve to know how their taxes are being spent, and what security forces are doing or planning in the areas where they live. Media coverage can also facilitate greater public cooperation with government initiatives, such as in preventing crime or collecting evidence on specific cases. Media criticism, if managed well by government and parties, can improve public relations and can help inform better policies in the future.

It is hoped that this report will support the many government bodies and independent organisations involved in reforming Myanmar's security sector to sustain progress towards more democratic, accountable and effective security and justice sectors. Future Saferworld research and programming will continue to support these efforts.

Notes

Annex 1

Constitutional provisions determining control of security and justice institutions, and amendments proposed by the National League for Democracy (NLD)

Sector	Relevant provisions in the 2008 Constitution	Amendments recommended by the NLD in July 2019
Politics	Articles 109b and 141b provide that the military will hold 25 per cent of all seats in the Union Parliament.	Amend articles 109b and 141b to reduce the share of military members of parliament (MPs) in the lower house of parliament from 25 per cent to 15 per cent, then to ten per cent, and finally to five per cent over the next three election cycles.
	Articles 17b 232b(ii), 232b(iii), 232j(ii), 234b and 234c provide that the commander-in-chief nominates the union-level Ministers for Defence, Home Affairs and Border Affairs and that they remain ranking military personnel.	Abolish article 17b, which broadly places such officials within the executive, and amend 232j(ii) to require any defence personnel appointed to the cabinet to retire from the military. No amendments are proposed to 232(ii), 232b ii), 234b or 234c, which stipulate the nomination process.
	Article 436 provides that constitutional amendments require approval of more than 75 per cent of the Union Parliament representatives (giving the military an effective veto).	Amend article 436 to reduce the share of MPs needed to amend the constitution to just two-thirds, which would remove the military's veto.
The armed forces	Article 20b states that 'The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.'	No amendments are proposed.
	Article 20c and 338 place all armed forces under the Defence Services and the commander-in-chief.	Abolish articles 20c and 338.
	Under articles 20b, 293 and 319 of the 2008 Constitution, the military retains complete autonomy in the handling of justice cases concerning any actions that are considered part of the 'affairs of the armed forces', and permanent courts martial are established with the commander-in-chief having the final decision on all appeals.	Amend article 319 to specify that courts martial will adjudicate according to the 'Constitution and the military law' (previously 'Constitution and the other law').
	Article 339 states that 'The Defence Services shall lead in safeguarding the Union against all internal and external dangers.'	Abolish article 339.
Police	Articles 20c and 338 place all armed forces under the Defence Services and the commander-in-chief, which is often interpreted to include the police and could be a block on police coming under civilian leadership, either by removing it from the Ministry of Home Affairs or changing the ministerial selection process.	Abolish articles 20c and 338.
	According to current protocol (not the constitution), the police fall under the Ministry of Home Affairs. Articles 17b 232b(ii), 232b(iii), 232j(ii), 234b and 234c provide that the commander-in-chief nominates the Minister of Home Affairs, and that they remain ranking military personnel.	Abolish article 17b, which broadly places such officials within the executive, and amend 232j(ii) to require any defence personnel appointed to the cabinet to retire from the military. No amendments are proposed to 232(ii), 232b(ii), 234b or 234c, which stipulate the nomination process.
Judiciary	Judicial independence is enshrined in article 19 of the constitution, among the 'Basic Principles of the Union'.	No amendments are proposed.

Sector	Relevant provisions in the 2008 Constitution	Amendments recommended by the NLD in July 2019
Intelligence	Articles 20c and 338 place all armed forces under the Defence Services and the commander-in-chief, which could block any attempts to establish armed intelligence agencies or to move existing ones under civilian control.	Abolish article 17b, which broadly places such officials within the executive, and amend 232j(ii) to require any defence personnel appointed to the cabinet to retire from the military. No amendments are proposed to 232(ii), 232b(ii), 234b or 234c, which stipulate the nomination process.
	According to current protocol (not the constitution), military intelligence is under the Office of the Chief of Military Security Affairs. Article 20b of the 2008 Constitution states that 'The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces.' This protects military intelligence from civilian interference.	No amendments are proposed.
	According to current protocol (not the constitution), the Bureau of Special Investigation is under the Ministry of Home Affairs, and the Special Branch is part of the police. Articles 17b 232b(ii), 232b(iii), 232j(ii), 234b and 234c provide that the commander-in-chief nominates the Minister of Home Affairs, and that they remain ranking military personnel.	Abolish article 17b, which broadly places such officials within the executive, and amend 232j(ii) to require any defence personnel appointed to the cabinet to retire from the military. No amendments are proposed to 232(ii), 232b(ii), 234b or 234c, which stipulate the nomination process.
Corrections	According to current protocol (not the constitution), the Corrections Department falls under the Ministry of Home Affairs. Articles 17b 232b(ii), 232b(iii), 232j(ii), 234b and 234c provide that the commander-in-chief nominates the Minister of Home Affairs, and that they remain ranking military personnel.	Abolish article 17b, which broadly places such officials within the executive, and amend 232j(ii) to require any defence personnel appointed to the cabinet to retire from the military. No amendments are proposed to 232(ii), 232b(ii), 234b or 234c, which stipulate the nomination process.
	There are no provisions directly restricting corrections being removed from the purview of the commander-in-chief, meaning it could probably be moved to another ministry, as was the General Administration Department.	No amendments are proposed.
National Defence and Security Council	Article 201 of the constitution provides for the formation of a National Defence and Security Council. The structure of the body is clearly stipulated, including five democratically elected civilians, five serving military officers and the military-appointed vice president. These are the president; two vice presidents; Speaker of the Pyithu Hluttaw; Speaker of the Amyotha Hluttaw; Commander-in-Chief of the Defence Services; Deputy Commander-in-Chief of the Defence Services; Minister of Defence; Minister of Foreign Affairs; Minister of Home Affairs; Minister of Border Affairs.	Amend article 201 to add the deputy speakers of both houses, and remove the Minister for Border Affairs, ensuring a majority of elected civilians.
Parliamentary national defence and security committees	Articles 115b provides for each of the two houses in the Union Parliament to form a Defence and Security Committee 'when the occasion arises to have studies made and submitted on defence and security matters or Military affairs'. These committees must include military MPs but can also include other MPs.	Abolish article 115b. (This would seemingly bring defence and security committees under ordinary parliamentary protocols.)
Coastguard	No relevant provisions. A coastguard does not currently exist but has been proposed by the Ministry of Transport and Communications. Article 20c and 338 place all armed forces under the Defence Services and the commander-in-chief, which could block the formation of a coastguard under civilian control.	Abolish articles 20c and 338.

About Saferworld

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity. We are a not-for-profit organisation working in 12 countries and territories across Africa, Asia and the Middle East.

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