

MANAGING CHANGE

Executive Policymaking in Myanmar

Su Mon Thazin Aung
Matthew Arnold

May 2018



The Asia Foundation

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About the authors

Dr. Su Mon Thazin Aung is director of training and capacity building at the Institute for Strategy and Policy–Myanmar. Dr. Matthew Arnold is deputy country representative of The Asia Foundation in Myanmar. Dr. Aung holds a PhD in politics and governance studies from the University of Hong Kong. She has published several scholarly articles and book chapters in academic publications including Routledge, *Journal of Contemporary Asia*, and *World Scientific*. Her commentaries on contemporary politics in Myanmar have appeared in journals and magazines such as *Foreign Policy* and *East Asia Forum*. She is also a regular contributor to the *Myanmar Quarterly Journal*. Dr. Arnold received his doctorate from the London School of Economics and has been working on governance-reform issues for The Asia Foundation in Myanmar since 2012. His academic research has appeared in leading journals such as the *Journal of Modern African Studies*, *Asian Survey*, and *Conflict, Security and Development*. He has coauthored two books, *Militias and the Challenges of Post-Conflict Peace* and *South Sudan: from Revolution to Independence*.

About The Asia Foundation

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PREFACE

The formation of a quasi-civilian government in March 2011, led by the Union Solidary and Development Party, headed by President U Thein Sein, marked the beginning of a hopeful but uncertain transition from decades of military rule, a transition that has now seen a peaceful transfer of power with the landslide electoral victory of Daw Aung San Suu Kyi's National League for Democracy in late 2015. That extraordinary achievement buoyed domestic and international expectations that the country would finally be able to enact a range of necessary political and economic reforms leading to democratic governance, strong economic growth, and lasting resolution for longstanding ethnic conflicts.

Much of the early hope for a rapid structural transformation of Myanmar has been tempered, however, by the reality that the basic foundations of effective and inclusive policymaking are often absent. The ecosystem in which policies are defined and implemented has become severely underdeveloped, with few institutions now capable of helping the government to establish, evaluate, and prioritize a reform agenda for this period of transition. This is understandable, given that, for decades, Myanmar's political and administrative systems were run by a very small group of generals. Among the enduring legacies of this are a sluggish bureaucracy that does not participate in policy reforms and has little capacity for working through complex policy problems, a young parliament with a limited and inconsistent role, and a hierarchical political culture that fosters compliance rather than innovation.

What has become clear is that one of the biggest challenges for the government is the technical aspects of policymaking—that is, how to solve technical problems by crafting policies that achieve sustainable, positive outcomes. Establishing the structures and processes for effective policymaking—from empirical research to policy analysis to effective consultation and feedback—is critical to providing fundamental guidance for policy actors, most of whom are grappling with many issues for the first time. Given the marked deterioration of actual policymaking knowledge and experience in Myanmar over the decades of authoritarian rule, it is important to ensure that the concept of “policy” itself is fully defined and understood throughout government and society as the country seeks to rebuild its governance institutions and practices.

This report elucidates this critical challenge to Myanmar's transition, through a detailed introduction to policymaking as it currently stands in the executive branch of Myanmar's Union government in Nay Pyi Taw. Our primary goal is to contribute to a robust public discourse on how policymaking actors and processes in the country can be strengthened, without which it will be difficult for Myanmar to catalyze and sustain a host of reforms critical to democratic governance, economic growth, and peace. This report was authored by Su Mon Thazin Aung, director of training and capacity building at the Institute for Strategy and Policy–Myanmar, and Matthew Arnold, deputy country representative for The Asia Foundation in Myanmar. The report was generously funded by the Australian Department of Foreign Affairs and Trade (DFAT). The opinions expressed in this report are solely those of the authors and do not necessarily reflect those of Australian DFAT or The Asia Foundation.

Dr. Kim N. B. Ninh

Country Representative
The Asia Foundation

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ACRONYMS

AFPFL	Anti-Fascist People's Freedom League
ASEAN	Association of Southeast Asian Nations
BSO	Bureau of Special Operations
BSPP	Burma Socialist Programme Party
CSAC	Central Security and Administrative Committee
CSO	Civil society organization
EAO	Ethnic armed organization
FESR	Framework for Economic and Social Reforms
GAD	General Administrative Department
INGO	International nongovernmental organization
LORC	Law and Order Restoration Council
MDI	Myanmar Development Institute
MDRI	Myanmar Development Resource Institute
MI	Military Intelligence
MISIS	Myanmar Institute of Strategic and International Studies
MoPF	Ministry of Planning and Finance
MPC	Myanmar Peace Centre
NCA	Nationwide Ceasefire Agreement
NDSC	National Defense and Security Council
NGO	Nongovernmental organization
NIB	National Intelligence Bureau
NLD	National League for Democracy
NRPC	National Reconciliation and Peace Centre
NSC	National Security Council
RC	Revolutionary Council
SACs	Security and Administrative Committees
SC	State Counsellor
SCO	State Counsellor's Office
SLORC	State Law and Order Restoration Council
SOE	State-owned enterprise
SPDC	State Peace and Development Council
TC	Trade Council
UPDJC	Union Peace Dialogue Joint Committee
USDA	Union Solidarity and Development Association
USDP	Union Solidarity and Development Party

EXECUTIVE SUMMARY

In 2011, Myanmar entered a phase of democratic transition. As the country emerges from decades of authoritarianism, ethnic armed conflict, contentious civil-military relations, and entrenched poverty, it has a remarkable opportunity to move toward democracy, sustained economic development, and lasting peace. Successfully managing the transition requires more effective policymaking. This report provides an introduction to policymaking in Myanmar. It focuses on policymaking by the executive branch of the Union government in Nay Pyi Taw, rather than within the bureaucracy or out in the states and regions. Its primary goal is to frame a stronger discourse on how policymaking actors and processes in the country can be strengthened.

Policy is generally understood as what government officials choose to do, or not to do, about public problems. Executive policymaking refers to the decisions, commitments, and actions of the senior-most government leaders, particularly those of the executive branch centered around the head of state. A useful concept for understanding executive policymaking is that of the “core executive,” which comprises the organizations and structures that primarily serve to pull together and integrate central government policies or act as final arbiters within the executive if conflicts arise between different elements of government.

Following independence in January 1948, Burma’s government evolved from British colonial rule into a United Kingdom–style state governed via elections and parliaments, with a core executive led by a prime minister. Following the 1962 coup, a military regime embracing socialism took over. This regime lasted until 1988 and had a core executive structured around the BSPP and General Ne Win. Following the 1988 coup, a subsequent SLORC/SPDC military regime established rule by a junta, with a core executive built around generals Saw Maung and Than Shwe. This history represents a stark reality for Myanmar: the country does not have a history of policymaking that is particularly conducive to its current transition towards democracy, with its need for pluralism, transparency, and accountability. Myanmar’s history for nearly 50 years was defined by military dictatorship, and the core executives of the RC/BSPP and SLORC/SPDC regimes can best be understood as “one-man policy coordination.” A debilitating legacy for Myanmar’s contemporary governments is the lack of traditions or government architecture that support more sophisticated policymaking.

After decades of dictatorship, and with the resultant lack of traditions, structures, and processes to support pluralistic policymaking, Myanmar must now define what policymaking should look like in the country as it evolves towards full democracy and economic growth. Although the 2008 constitution contains authoritarian elements, it also allows for significant departures from the governance practices of previous military regimes, including basic approaches to policymaking. Most obviously, there are provisions for elections, an executive branch led by a president, and two houses of parliament. The 2008 constitution defines certain roles and responsibilities for the most powerful government actors—the executive and legislative branches and the Tatmadaw. How these actors interact within the parameters of the 2008 constitution, and their respective interpretations of it, is the most important dynamic shaping policymaking in the country. Most significantly, the highest decision-making power over security matters is still vested in the Tatmadaw.

The composition and functioning of Myanmar’s core executive changed significantly during the five years of the USDP government (2011–2016). Transitioning from a military junta towards democracy required significant structural changes to align with the parameters of the 2008 constitution. From 2011 onwards, Myanmar’s core executive was once again led by a civilian executive, the president, defined by

a constitution and with a cabinet of ministers officially mandated to make policy decisions. A national, bicameral parliament was created, with small but growing powers, and political parties were permitted. The NLD participated in by-elections in 2012; amnesty was granted to most political prisoners; strict media censorship was lifted; and labor associations were allowed. The civil service steadily expanded, and the paramount cadre of permanent secretaries was reintroduced in 2015. The majority of the USDP government's policy decisions were issued through four decision-making channels: (1) the cabinet, (2) the NDSC, (3) President's Office ministers (the super cabinet ministers) and the Myanmar Peace Centre (MPC), and (4) the President's Office. These changes represent U Thein Sein's effort to institutionalize the 2008 constitution. However, the 2008 constitution contains significant ambiguities, and it does not specifically define the composition of the executive branch. This created opportunities for some actors to assert more power while simultaneously limiting others. These dynamics certainly created tensions within the USDP's core executive.

The NLD won the November 2015 election with an outright majority, controlling nearly 80 percent of elected parliamentary seats. The NLD government was officially formed on March 30, 2016. Despite 25 percent of parliamentary seats being reserved for the military, the landslide victory gave the NLD enough seats to select the president and to form a government on their own. However, article 59(f) of the 2008 constitution prohibits individuals with foreign family members from holding the presidency. In response, the NLD government created the position of "state counsellor" for party leader Daw Aung San Suu Kyi. Given the NLD's super-majority in parliament and the iconic political status of "the Lady" in Myanmar, the executive and legislative branches are now in effect operating under the leadership of the state counsellor. This means the state counsellor is the *de facto* leader of the country, and it is widely understood that all the important decisions are made by her and through her office. Considering these developments, the tensions and complexities surrounding this new post of state counsellor have become crucial factors in executive policymaking. Most significantly, these tensions involve the relationship between the NLD government and the Tatmadaw, especially the latter's emphasis on the 2008 constitution and the prominence it gives to the presidency. How these tensions over conflicting interpretations of the 2008 constitution evolve will shape the policy outcomes achieved by the NLD government and determine how the country's political settlement eventually plays out. The more mundane aspects of policymaking, such as technical capacity, bureaucratic structures, and information sharing, are overshadowed by significant questions of constitutional reform, democratization, and civil-military relations.

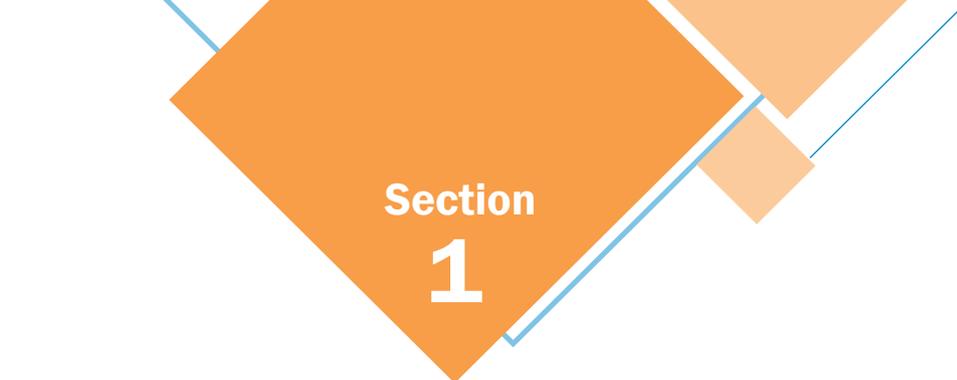
While a long-term political settlement will still require major structural reforms—including the clarification of "democratic-federalism" governance structures and civil-military relations and, ultimately, constitutional reform—practical steps can improve policymaking in the near term. Conceptual frameworks such as the Policy Circle Model and the Policy Coordination Scale can sharpen the understanding of Myanmar's policymaking processes and actors, useful to helping the government and development partners strengthen policymaking in the country. The Policy Circle Model allows for a comprehensive articulation of the policymaking process from beginning to end. By applying this model, practitioners in Myanmar can analyze the strengths and weaknesses of Myanmar's contemporary policymaking efforts, such as how an issue is chosen for policy debate or reform, how government in turn weighs options to address the issue, what formal and informal mechanisms exist to push the issue through the policymaking process, and how policy decisions are ultimately made. Types of policy coordination vary widely, and a useful articulation of this is found in the Policy Coordination Scale, which ranks the different types of coordination capacity of a national government. The lower levels of the nine-point coordination scale represent what might be called the "simpler" competencies, such as the capacity of individual ministries to make simple decisions, while the upper levels of the scale represent the ability of government to direct and manage coherent national strategies. Although somewhat idealized, the scale

gives a sense of the types of policy coordination that can be found in a national government.

In conclusion, executive policymaking in Myanmar should be understood on two axes: (1) the parameters of the 2008 constitution that define the civil-military relationship, and (2) the mechanisms of the state more broadly that already exist, and that could be improved without major constitutional reforms.

Though challenging, improvements to Myanmar's policymaking processes are not impossible. While some changes will have to wait for significant constitutional reform, much can be achieved through improvements to existing structures and processes, with an emphasis on stronger institutionalization. Priorities for government action to strengthen policymaking could include the following:

1. Establish better policymaking as an explicit core-executive priority to strengthen policymaking actors and processes. Commission technical studies to assess how this might best be done. Engage development partners to support this.
2. Prioritize making existing bodies and processes more effective, such as cabinet meetings and the cabinet committees.
3. Better articulate and communicate government reform goals, to allow for improved coordination and delegation within government and to garner support and input from civil society and the public.
4. Strengthen the bureaucracy to make it more supportive of policymaking—for example, by empowering permanent secretaries and key units of the ministries, such as research units, to play stronger roles throughout the policy circle. Socialize both senior leaders and civil servants to be more proactive and assertive in pushing positive change rather than waiting for top-down instructions.
5. Use better, more comprehensive data to support evidence-based policymaking. This means expanding sources of data to include nonstate media and civil society, and encouraging analysis rather than just the reporting of data within the bureaucracy.
6. Diversify the actors involved in policymaking—for example, by encouraging inputs from policy institutes, development partners, and civil society. Solicit more routine policy feedback from state/region governments.
7. Make more effective use of “reform enablers,” including both empowered and technically competent ministers and other senior government leaders as well as senior technical advisors, to initiate and drive policymaking.
8. Consider whether dedicated “coordination ministers” may be useful to catalyze and coordinate reform across priority sectors like the economy, the peace process, local government, and key social services.



Section 1

LITERATURE REVIEW AND RESEARCH DESIGN

In 2011, Myanmar entered a phase of democratic transition. As the country emerges from decades of authoritarianism, ethnic armed conflict, contentious civil-military relationships, and entrenched poverty, it has a remarkable opportunity to move toward democracy, sustained economic development, and lasting peace. Successfully managing the transition requires more effective policymaking.

Following elections in November 2010 and its subsequent formation in March 2011, the government of President U Thein Sein initiated significant reforms, including steps toward decentralization, economic liberalization, and greater public consultation and participation. In the midst of this transition, Myanmar held historic elections on November 8, 2015. The election resulted in a landslide victory for Daw Aung San Suu Kyi's National League for Democracy (NLD). Having won approximately 80 percent of elected seats in the national and the state and region parliaments, the NLD has a broad mandate to push for further democratic reforms. There are high expectations that improvements will occur quickly across all aspects of governance, including establishing effective rule of law, achieving significant economic growth, and making major structural changes to improve public administration.

Today, the country's policy-development environment remains weak and underdeveloped, with few institutions capable of helping governments develop reform agendas. These

problems greatly hindered President U Thein Sein's Union Solidarity and Development Party (USDP) government, and they now challenge the NLD government too. This is understandable, given that, for decades, Myanmar's political and administrative systems were run by a very small group of generals. Among the enduring legacies of this are a weakened bureaucracy that does not fully participate in policy reforms and has little capacity for working through complex policy problems, a young parliament with a limited and inconsistent role, and a hierarchical political culture that fosters compliance rather than innovation.

One of the biggest ongoing challenges for the NLD government will be the technical aspects of policymaking—that is, how to solve technical problems by crafting policies that achieve sustainable, positive outcomes. Establishing the structures and processes for effective policymaking is critical to providing fundamental guidance for policy actors, most of whom are grappling with many issues for the first time. Central to this process is empirical research—which both Myanmar's think tanks and the international community stress—and overcoming the challenge of inadequate capacity to analyze evidence and utilize it in effective policymaking. After decades of misleading information and data generated under highly centralized, autocratic governments, policy based on sound research is crucial to achieving significant improvements in the quality and transparency of the policymaking process.

This report provides an introduction to policymaking in Myanmar. It focuses on policymaking by the executive branch of the Union government in Nay Pyi Taw, rather than within the bureaucracy or out in the states and regions. Its primary goal is to frame a discourse on how policymaking actors and processes in the country can be strengthened, which the authors feel is essential to catalyze and sustain Myanmar's overall transition to full democracy, economic growth, and peace. As such, this report has four interrelated objectives:

- To conceptualize how “policymaking” is best understood in Myanmar’s context
- To detail the key structures and processes that have defined policymaking in Myanmar since independence
- To describe the overall policymaking architecture at present
- To identify useful conceptual frameworks to help key government stakeholders strengthen policymaking processes

The first section of this report presents key terms and concepts from the academic literature related to policy and policymaking, an analysis of how best to apply these concepts in Myanmar’s context, and an explanation of the report’s research methodology. Section 2 explains how policymaking was structured and undertaken in the three governance eras from independence up to 2011. Section 3 provides a detailed analysis of how the USDP government of President U Thein Sein approached policymaking. Section 4 provides initial insights into policymaking by Daw Aung San Suu Kyi’s NLD government. Section 5 introduces two conceptual frameworks useful for understanding Myanmar’s policymaking efforts—the Policy Circle Model and the Policy Coordination Scale. Section 6, in turn, offers some final observations and proposes a national discourse on strengthening policymaking in the country.

1.1 WHAT IS POLICY AND POLICYMAKING?

This paper is not meant as an academic, theoretical treatise on policy and policymaking in Myanmar; rather, it is meant as a practical

introduction for government policymakers and international development partners to help them support reform. Nevertheless, it is still important to introduce some basic terms and concepts used in academic research.

Policy is generally understood as what government officials choose to do, or not to do, about public problems. Public problems are conditions that the public widely perceives as unacceptable, and that therefore require intervention. Among different definitions of “public policy,” scholars generally agree that public policies result from decisions governments make to undertake certain actions or to do nothing.¹ Therefore, this paper conceives of “policy,” viz. “public policy,” as the deliberate choice of government to do something or to do nothing.

Policymaking is the combination of basic decisions, commitments, and actions that public officials make. Such initiatives, decisions, actions, or programs direct the flow of resources that affect the public.² More generally, policymaking can be understood as the process of formulating policies, especially in politics. The basic analysis of policymaking presented in this paper focuses on government involvement, whether at the national, regional, or local level. Thus, it is different from the many initiatives undertaken by civil society or the private sector.

Executive policymaking refers to the decisions, commitments, and actions of the senior-most government leaders, particularly those of the executive branch centered around the head of state. A useful concept for understanding executive policymaking is that of the **core executive**, which comprises “those organizations and structures which primarily serve to pull together and integrate central government policies, or act as final arbiters within the executive [if conflicts arise] between different elements of the government machine.”³

1.2 HOW CAN POLICYMAKING BE UNDERSTOOD IN MYANMAR?

While the study of governance has produced a large body of academic literature on policymaking, this needs explanation in the context of Myanmar. Given the country's history of authoritarianism, there has not been much academic analysis of Myanmar's policymaking processes. Under the authoritarian rule of extended dictatorships, from 1958–1960 and 1962–2011, there was an apparent simplicity to Myanmar's policymaking structures and processes, which were characterized by singular decision-making by senior generals or the junta. However, this situation has changed significantly since the transition began in March 2011.

For the purposes of this report, the term “policy” refers to a set of interrelated decisions by the Myanmar government to do something or to do nothing. Doing something includes passing a new law or regulation or taking some other action as a result of a specific government decision. One example of doing nothing would be a central bank deciding not to raise interest rates, to further encourage economic growth. Thus, the concept of “policy” goes beyond the formal passage of laws, regulations, and executive decrees to include a series of decisions and actions (or inactions) by the Myanmar government to produce certain outcomes or to prevent others, even if there was no official declaration of policy.

Given the country's history, the core executive should be conceptualized relatively narrowly as the “small number of institutions focused on the head of state and composed of very important key individuals who are essential in the formulation, coordination, and decision-making in handling crucial policies of the central government.”⁴ Of critical importance to Myanmar's core executive is the historic role of the military in setting national policy. This report analyzes Myanmar's core executive in order to frame Myanmar's policymaking architecture—the key institutions, actors, and processes at the executive level that guide and ultimately determine policymaking.

Given Myanmar's current transition from authoritarianism towards democracy, there are three individual but interrelated features of the Myanmar context that are worth emphasizing to guide the subsequent analysis in this paper. First, it is important to recognize the powerful impact of the 2008 constitution, which established a comprehensive institutional basis for governance, but also embodies many or even most of the political tensions in the country. Secondly, Myanmar's *critical juncture*, the historic change from a full military dictatorship to a quasi-civilian government in 2011–2012, has played a vital role in determining contemporary policymaking in the country. There was an inherent tension between the new institutional parameters outlined in the 2008 constitution and the transitional government of President U Thein Sein's USDP, composed of ex-generals grown accustomed to doing things a certain way over decades of military dictatorship. Thirdly, informal politics within and among elites still define many of Myanmar's policymaking processes and outcomes. Much of this interaction remains nebulous due to the political significance and involvement of the military. Accordingly, fully accounting for this in policy research is inherently difficult.

1.3 RESEARCH DESIGN AND METHODOLOGY

This paper draws on two main sources of evidence: (1) in-depth and focused elite interviews and (2) archival records and government reports. It builds on the PhD thesis of this paper's lead author, Su Mon Thazin Aung, and the extensive fieldwork and analysis she undertook from 2012 to 2017. Specific interviews conducted subsequently were based on semistructured and open-ended questions that asked respondents for their views on specific issues that they were involved in or aware of. These interviews occurred primarily in the former and current capitals of Myanmar—Yangon and Nay Pyi Taw—as well as in several state and region capitals. Additionally, the research has been informed by ongoing work conducted by The Asia Foundation since 2012. This has entailed extensive research on governance issues, particularly regarding

decentralization and public financial management, followed by routine trainings for government officials and direct support for a wide range of policy reforms, with emphasis on public financial management, urbanization, and decentralization. The Asia Foundation has also provided routine training for policy institutes and government agencies in how to frame and understand policymaking processes in the country, as well as several short briefs that describe policymaking in Myanmar and the role that policy institutes can play in supporting it.⁵ During this work, coauthor Matthew Arnold and other Foundation staff have had the opportunity to engage in numerous meetings discussing the nature and mechanics of policymaking in Myanmar.

In presenting historical analyses of policymaking in Myanmar, both primary and secondary data were used. Primary data included the relevant constitutions, materials from government

archives, and the interviews. Secondary data were drawn from studies of Myanmar. Accounts of contemporary policymaking in transitional Myanmar are based on this study's interviews with former and incumbent ministers and lawmakers, former military generals, and senior government officers. Important documents such as the 2008 constitution; memoirs, speeches, and orders given by the heads of military governments, the USDP, and the NLD; and government archives were examined, along with research literature in the Myanmar language. The term "elite interviews" in this paper refers both to the target group and to the research technique used (mostly semistructured interviews). The target groups were both key policymakers and policy implementers in the USDP and NLD governments. Therefore, some interview participants are anonymous. This type of interview is useful in providing individual insights, first-hand accounts, and rich information.⁶

Section 2

MYANMAR'S HISTORICAL EXPERIENCES WITH EXECUTIVE POLICYMAKING

To unearth the key actors and institutions involved in Myanmar's policymaking history, this section emphasizes understanding the core executive of the three governments in power from 1948 to 2011. The military government from 1990 to 2011 receives special emphasis because of its importance in understanding the policymaking of the contemporary USDP and NLD governments.

2.1 INDEPENDENT BURMA (1948–1958, 1960–1962)

Burma experimented with democratic governance during its first 10 years of independence, from 1948 to 1958, and briefly again from 1960 to 1962. Upon independence from British colonial rule, the country adopted a parliamentary system in accordance with its postcolonial constitution, which was enacted in September 1947.⁷ Democratic national elections were constitutionally established for a bicameral Union parliament with a lower Chamber of Deputies and an upper Chamber of Nationalities. In a joint session, the two chambers elected a president by secret ballot. The term of parliament was four years, while the president was constitutionally allowed to hold office for a maximum of two five-year terms.⁸ However, the presidency was largely ceremonial. Instead, the prime minister and cabinet played the most significant roles in government. Appointed by the president but nominated by the Chamber of Deputies,⁹ the

prime minister, in turn, nominated the cabinet ministers.¹⁰

During the independence era, the responsibilities and functions of Burma's core executive—comprising the prime minister and the cabinet—and the wider public sector were largely adapted from the British system.¹¹ The overall number of ministries varied from 15 to 30 between 1948 and 1958.¹² In each ministry, the secretary to government, who was the senior-most civil servant, was usually regarded as the official who provided advice and assistance to the minister with regard to policy and administration. Secretaries could be transferred periodically, but the secretaries of defense and foreign affairs were deemed “permanent secretaries,” allowing them to continuously specialize in these areas. The position of “chief secretary,” the senior-most secretary, was reserved for the secretary of home affairs.¹³

While many of the official functions and structures

of Burma's initial core executive resembled those under British rule, the personnel of the civil service changed greatly as foreigners, who held many posts under colonialism, left the country.¹⁴ One of the innovations of the postcolonial core executive was the introduction of three deputy prime ministers—the ministers of foreign affairs, national economy, and social services. These supervised and coordinated government activities within their own respective spheres.

The Anti-Fascist People's Freedom League (AFPFL)¹⁵ assumed power in 1948, with the Buddhist statesman U Nu serving as the first prime minister. The governing party soon experienced serious internal divisions, however, which encouraged communist and ethnic national insurgencies around the country. Debates over the right to secede, which was granted by the 1947 constitution, emerged between some Bamar and ethnic leaders.¹⁶ Disagreement between Karen and Bamar leaders about the boundaries of a new Karen State fueled communal tensions and prompted many Karen soldiers in the Burma Army to revolt.¹⁷ In 1949, a year after independence, the area fully controlled by the central government was little more than the capital, Rangoon.

Even though it faced near continuous crises, Burma's postcolonial state, and hence the core executive itself, largely adhered to the framework of the democratic constitution and thereby avoided any form of overt dictatorship.¹⁸ However, the weak central government and generally deteriorating law and order led the military to assert itself.¹⁹ This was especially obvious in the quick rise of Brigadier General Ne Win, who climbed from a subdistrict commander in northern Burma to deputy prime minister, minister of defense, minister of home affairs, and then supreme commander of the armed forces, all within a year of independence.²⁰ As supreme commander of the armed forces, General Ne Win became the second-most powerful person in government.²¹ While U Nu did not particularly like him, General Ne Win's role within U Nu's cabinet continued to grow.²² While simmering tensions existed between U Nu and General Ne Win, a more serious division emerged within the core

executive itself, resulting in senior leaders leaving the governing AFPFL party.²³ This was not for ideological reasons, however—the split was caused by disagreement between the prime minister and his deputy prime minister, U Kyaw Nyein, over control of senior party appointments. This, in turn, resulted in significant divisions within the cabinet, as well as in parliament.²⁴

In 1958, with profound challenges facing Burma both internally and externally, the core executive started to lose control. Many from the military were unhappy with U Nu's approach to power, and particularly with his using a presidential decree to pass the 1958–1959 budget.²⁵ Ne Win's key allies, Brigadier Maung Maung and Colonel Aung Gyi, asked Prime Minister U Nu, who only survived a parliamentary vote of confidence with the support of minority parties, to hand over power to General Ne Win to form a caretaker government until new elections could be held. In February 1960, the elections were finally held. Although U Nu regained power in this election, in March 1962 General Ne Win staged a second military coup, perhaps because his 18 months of running the caretaker government had given him the confidence to believe he could maintain control.

The 1947 constitution provided the basis for Burma's postcolonial government. However, because the constitution had been drafted quickly when the British gave up colonial rule, it had fundamental flaws that made it difficult to implement, especially for a weak, new government. Although the military stood as a relatively strong institution, other postcolonial key actors, such as political parties like the AFPFL, were weak. Initially, core-executive actors from the military adhered to the constitution, but they gradually lost faith, believing it was too weak to solve Burma's problems with ethnic and communist rebellions. Ne Win decided he could bring a new form of rule to the country, through a socialist ideology and his personal leadership, more effective than civilian rule via elections.

From 1948 to 1958, and 1960 to 1962, Burma was nominally democratic. Citizens enjoyed the right to elect their own representatives

and speak relatively openly, and the news media were relatively free. However, due to the weak constitution and the visibly weak core executive,²⁶ competition arose among the ruling elite, which was exacerbated by communist and ethnic uprisings escalating across the country. Confrontations within the core executive weakened interinstitutional relations between parliament, the cabinet, and the armed forces. Moreover, despite holding a majority in parliament, the AFPFL was ineffective at implementing its programs, because the cabinet, like the party's MPs, was splitting into factions.

After independence, the country's political system was intended to follow the United Kingdom's Westminster model, but it could not function effectively given the many challenges facing Burma, including the loss of experienced colonial administrators, splits in the AFPFL, social and ethnic tensions, and international issues such as the Kuomintang incursion. This disorder caused military leaders to develop doubts about the merits of civilian, democratic rule. After the 1962 coup, "preventing disintegration of the Union" became a popular justification for ongoing military administration. As one retired military general noted, "Democratic Burma was a total mess. During that period, politicians abused their power in exchange [for] support and votes. Weak management of civilian government increased crimes and insurgencies in the country."²⁷

2.2 REVOLUTIONARY COUNCIL AND BSPPP GOVERNMENT (1962–1988)

As mentioned above, on March 2, 1962, the military staged a coup after Prime Minister U Nu initiated negotiations with ethnic leaders to consider their demands for greater autonomy. The military justified the coup by claiming it was necessary to prevent disintegration of the Union.²⁸ U Nu was arrested at his home. Five other ministers, the chief justice of the Supreme Court, and over 30 Shan and Karenni leaders were also taken into custody.²⁹ With socialist inspiration and military backing, the Union Revolutionary Council (RC), later called the Revolutionary Government, officially took power, with General Ne Win as

chairman. This time, in contrast to the 1958 military intervention, General Ne Win made no reference to the constitution or to future elections. The 1962 military coup allowed U Ne Win to assert control over the state machinery in a manner similar to the Burmese monarchy, which had ruled Burma until 1885.³⁰ General Ne Win suspended the 1947 constitution and its federal system, dissolved the bicameral parliament with its state and federal representatives, established a centralized command structure, and essentially ruled via personal decree.³¹ Under the RC, General Ne Win headed the cabinet and concurrently held "supreme legislative, executive, and judicial authority."³² Sixteen other high-ranking officers took over the various ministries.³³ The RC formed five State Supreme Councils, with central military figures in each. These councils replaced the state governments, which, under the preceding civilian governments, had enjoyed some limited autonomy. "The Burmese Way to Socialism" was published on April 30, 1962, and the Burma Socialist Programme Party (BSPP) was officially formed on July 4, 1962.³⁴ Domestic and foreign-owned enterprises were nationalized, and ministries set up new corporations headed by military officers. After 1962, the private sector shrank dramatically and the state administration dominated the economy.³⁵

Over its first 12 years in power, the RC core executive altered the Burmese state significantly. To exercise local control, the RC created the Central Security and Administrative Committee (CSAC), led by a high-ranking military officer, and a hierarchy of Security and Administrative Committees (SACs) at regional and local levels, each headed by a military officer.³⁶ As a component of the CSAC, the RC formed the National Intelligence Bureau (NIB), a small but exceptionally powerful policymaking body, to coordinate intelligence and security-agency activities in the country.³⁷ The assertion of power by the military-led SACs was at the expense of subnational civilian administrators, whose roles became secondary, and many experienced personnel were purged and replaced with military officers.³⁸

In March 1972, the RC abolished the Secretariat, which eliminated this British colonial legacy from Burmese public administration. With the removal of permanent secretaries, the new administrative system gave ministers direct control of their respective departments.³⁹ In April 1972, U Ne Win, accompanied by 20 other senior officers, formally retired from the military, and the RC reorganized the cabinet. But U Ne Win still held power as the prime minister and chairman of the five State Supreme Councils. Brigadier San Yu, who was General Ne Win's right hand, was promoted to military chief of staff. General San Yu also concurrently held the positions of defense minister and deputy prime minister.

In January 1974, a new constitution was adopted that legally made the country a single-party state led by the BSPP.⁴⁰ The new constitution created a 28-member Council of State, whose chairman was the head of state and president. A Council of Ministers was established, which was to be elected by a unicameral parliament (*Pyithu Hluttaw*).⁴¹ In place of the SACs created during the preceding RC period, People's Councils were formed at the state/division, township, and village-tract levels, but their work was a continuation of administrative practices established in 1962.⁴² The power of the NIB grew considerably under the 1974 constitution. It operated under a dedicated law and was attached to the Office of the Prime Minister, who led a supervisory committee comprising the Ministries of Foreign Affairs, Planning and Finance, and Home and Religious Affairs.⁴³

Displaying a trait common to military governments around the world, the RC/BSPP's core executive enshrined "unity" as the top priority of its governing system. Although military officers often claimed that elected civilian government disintegrated easily, the Burmese army itself was not totally united.⁴⁴ The RC/BSPP core executive had factions and interest groups, but General Ne Win ultimately had absolute power. He repeatedly took preemptive action against possible factions by purging or jailing members. General Ne Win's RC/BSPP core executive was thus ultimately held together by force. Unlike the preceding

postcolonial core executive, accountability to the public was not a primary concern.

The first major purge came within a year of the RC taking power. In February 1963, Brigadier Aung Gyi, who was the heir apparent of General Ne Win, left the RC core executive. Although no official reason was given, it appeared to be due to ideological differences pertaining to economic policies. Compared to General Ne Win, Brigadier Aung Gyi was a moderate socialist who proposed a continuing role for the private sector and voiced criticism of the RC's official economic plan, which leaned toward a fully socialist state.⁴⁵

In 1976, General Ne Win undertook a second major purge. With the country facing an economic depression, young military officers were increasingly inspired by a new commander in chief and minister of defence, Lieutenant General Tin Oo. Fearing such support, General Ne Win imprisoned Tin Oo for allegedly having knowledge of a plot by young officers to assassinate him.⁴⁶ General Tin Oo's supporters in the party, the army, and the government were transferred or retired. To further consolidate power, Ne Win dismissed more than 50,000 BSPP party members.⁴⁷

In 1983, the third major purge occurred. Former military intelligence chief General Tin Oo (a different man than the aforementioned lieutenant general), who was joint general secretary of the BSPP, and his Military Intelligence (MI) group were ousted. General Ne Win's motive in removing General Tin Oo and his group was fear of the rising power of MI, although corruption and misuse of state funds were the official reasons for the purge. While such senior-level purges might appear to show General Ne Win as a strong leader, in fact they revealed an inability to maintain the smooth operation of the RC/BSPP's military-led core executive. Moreover, while the RC/BSPP core executive expanded the economic bureaucracy, it was far from successful, as shown by the perpetually weak economy. The severely limited role of the bureaucracy, which had to follow party guidelines and had little say in setting Burma's development agenda, may have contributed to the failure of Burma's state-led development goals.⁴⁸ Bad economic policies and incompetent



The rules for the core executive were made and modified by the supreme leader, General Ne Win, and supported by the formal mechanisms he established.



implementation by a weak bureaucracy were, in turn, compounded by the “top-down, pyramidal control structure” of the RC/BSPP core executive.⁴⁹ The RC/BSPP’s core executive offered no avenues for the constructive exchange of opinions about change. Although General Ne Win spoke about Burma changing with the times, his cadres were kept silent by force and the fear of purges.⁵⁰ Overall, the structure and nature of the RC/BSPP core executive meant that General Ne Win was unable to obtain constructive feedback or alternative policy options from his aides.

The term “sultanism” best describes the regime of the Ne Win era.⁵¹ At its simplest, the extremely dominating style of General Ne Win overshadowed all aspects of governance. The rules for the core executive were made and modified by the supreme leader, General Ne Win, and supported by the formal mechanisms he established. This sultanism was highly problematic for internal core-executive relations and resulted in severe disunity among his key protégés. It also resulted in failures of public-sector management and economic

policy. Moreover, the unitary state demanded by the RC/BSPP core executive catalyzed the ethnic-nationalist insurrections that spread across broader areas after 1962. In response, the RC/BSPP forcefully imposed mechanisms of state control on ethnic minority peoples.⁵² Taken together, a perpetually failing economy and heavy-handed political, economic, and social oppression triggered a nationwide uprising against the core executive in 1988.

2.3 MILITARY GOVERNMENT (1988–2011)

On September 18, 1988, the military staged a coup for the third time in Burma’s modern history. It formed the State Law and Order Restoration Council (SLORC), which was renamed the State Peace and Development Council (SPDC) in November 1997. Immediately following the coup, all “organs of state power,” as defined by the 1974 constitution, including the Pyithu Hluttaw, the Council of State, the Council of Ministers, and the People’s Councils at subnational levels were abolished. There was no longer a constitution or a parliament.

As with the RC, which had a very small coterie of military officers at the time of its formation, the SLORC comprised ten members from Defense Headquarters and nine regional commanders. At SLORC’s inception, real power was held by five of its key members: chairman, Senior General Saw Maung; his deputy, General Than Shwe; secretary-1, General Khin Nyunt and General Maung Aye; and secretary-2, General Tin Oo (a different man than previously mentioned). Additionally, a cabinet was formed of seven SLORC members and two non-SLORC members, but power was still centered within the SLORC itself. The military, primarily, implemented state policies, while the cabinet, whose members were mainly military officers, served as the symbolic institution seen by the world.⁵³

Military Intelligence (MI) had been exceptionally important to the RC/BSPP regime. This remained the case for the SLORC regime’s core executive. Besides MI, two other institutions were at the core

of the junta's policymaking: the Trade Council (TC), and the National Security Council (NSC). A junta vice chairman headed the TC, which comprised eight ministers from key ministries such as Energy, Construction, Electric Power 1, and Electric Power 2.⁵⁴ Until the 2011 transition started, the NSC was one of the highest decision-making bodies of the SLORC/SPDC core executive, second only in importance to Than Shwe's personal decrees after he became head of state in 1992 and assumed the rank of senior general.

The decisions of the NSC were highly confidential. Indeed, during the regime there was no public information even about the existence of this body. There were two categories of NSC meetings: political-affairs meetings, which were usually held twice a week, and security and commerce meetings, which took place once a week. The participants were SLORC/SPDC members who were the senior-most officers from Defense Headquarters, chiefs of the Bureau of Special Operations (BSO), and several cabinet members from ministries such as Home Affairs and Information. Close protégés of the junta were often asked to attend meetings on intelligence information that the Union Solidarity and Development Association (USDA) had obtained. The USDA operated as a social and political organization for the military regime, with local offices spread widely across the country. It later transformed into the Union Solidarity and Development Party (USDP) in March 2010. Depending on the category of the meetings and the topics, NSC participants varied. On average, around 20 participants attended each NSC meeting.⁵⁵

The SLORC/SPDC government perpetuated General Ne Win's authoritarian legacy of stamping out challenges to military rule, including those within the inner circle of the military's decision-making bodies.⁵⁶ In contrast to the Ne Win era, however, purges included senior-most leaders. The chairman of SLORC, General Saw Maung, was forced to retire in April 1992, ostensibly for health reasons. In fact, the major cause of his purge seems to have been his making a commitment to foreign news media that the military would

transfer power to the winner of the 1990 election.⁵⁷ After Saw Maung's dismissal, General Than Shwe assumed paramount control within SLORC and handpicked General Maung Aye for the deputy position. While consolidating power within SLORC, General Than Shwe received support from General Khin Nyunt, then SLORC secretary 1. Some of SLORC's founding members were also asked to retire when they reached the official retirement age of 60, and further purges occurred when General Tun Kyi, General Kyaw Ba, and General Myint Aung, who were contemporaries of Than Shwe, were charged with corruption and placed under house arrest in 1997. It seems that Than Shwe and Khin Nyunt coordinated the 1997 purge.⁵⁸

In 1997, General Than Shwe assigned General Maung Aye to be in charge of both the TC and NSC. He also promoted second- and third-generation regional military commanders to be SPDC members. In order to balance General Maung Aye's power, in 2001, General Than Shwe appointed General Shwe Mann—the youngest and most promising individual among the junta's senior generals—to the newly created position of joint chief of staff (Army, Navy, and Air Force). Meanwhile, also in 2001, General Than Shwe removed the fourth-highest-ranking officer in the SPDC government, General Win Myint, and the deputy prime minister and military affairs minister, Tin Hla, for corruption.⁵⁹ While Maung Aye accrued greater power in the SPDC after 1997, General Khin Nyunt's personal and institutional power as boss of MI also increased after the MI received an upgrade to bureau level in 2001.⁶⁰

After 2001, General Than Shwe, General Maung Aye, and General Khin Nyunt were the three most powerful individuals within the SPDC. However, personal tensions increased steadily between the latter two and among their respective supporters in the military.⁶¹ The army's regional commanders, most of whom were General Maung Aye's followers, routinely complained that promotions for field commanders were overly dependent on feedback and reports from MI staff. More generally, senior military officers felt increasingly uncomfortable with MI, believing

that it acted like an independent agency spying on military officers.⁶² Moreover, General Khin Nyunt was an increasingly popular figure within parts of the international community. Having good communications with Association of Southeast Asian Nations (ASEAN) countries and China, he maintained a relatively positive reputation for his dealings with ethnic armed groups, while it was assumed by most diplomats that General Than Shwe and General Maung Aye were somewhat xenophobic.

In 2003, to control fallout from the Depayin massacre, where opposition leader Daw Aung San Suu Kyi was attacked, General Than Shwe appointed General Khin Nyunt as prime minister to head the cabinet. Although General Khin Nyunt was asked to relinquish his position as MI head, he refused to do so. Tensions between two of the SPDC's senior-most generals, General Maung Aye and General Khin Nyunt, eventually led to the arrest of the latter in October 2004. Not only was the whole MI structure completely dismantled, but the cabinet ministers close to General Khin Nyunt, such as the ministers of foreign affairs, home affairs, and labour, were also sacked. Some MI officers were given prison sentences of up to 200 years.⁶³ Lieutenant General Soe Win, SPDC's secretary 1, became prime minister. After General Soe Win died in 2007, General Thein Sein, SPDC's secretary 1, became the prime minister of the military government.

General Maung Aye, who disagreed with General Than Shwe's use of force during the 2007 "Saffron Revolution," led by Buddhist monks, saw his power slowly diminish after the military reasserted control. Among some senior military officers who supported General Than Shwe, perceptions arose that the damage to the military's image had resulted primarily from General Maung Aye's weak management, which had prevented the military from quickly asserting itself during the protests.⁶⁴ General Maung Aye was forced to relinquish the TC chairmanship to General Tin Aung Myint Oo, SPDC secretary 1. Around the same time, General Than Shwe urged General Maung Aye to relinquish his power at the NSC in order give space to younger military officers and help prepare for political

transition. From 2007 onwards, General Shwe Mann took charge of the NSC, until the SPDC was dissolved.⁶⁵ Thereafter, General Shwe Mann was tapped to be General Than Shwe's successor. From 2001 to 2010, there were some reshufflings within the larger cabinet, but they were not as frequent or significant as those within the SPDC's top positions, where power really resided. The SPDC's core executive prioritized military modernization and money-related industries. This resulted in low investment and poor policy implementation in social-welfare sectors such as education, labor, and health care. Ministers who held the economic-related portfolios were considered to be more powerful than those who were in charge of social welfare.⁶⁶ After General Khin Nyunt's dismissal and the Saffron Revolution, the SPDC government became further isolated, both within and outside of the country. Engagement with opposition leader Aung San Suu Kyi seemed harder than before. Interactions with the international community were also reduced.

The SLORC/SPDC core executive from 1992 to 2011 was in some ways similar to and in some ways different from that of General Ne Win's era. After 1992, General Than Shwe became the most powerful leader and ruled the country without a guiding constitution. The SLORC/SPDC regime of General Than Shwe can also be considered a sultanist regime in which one-man rule dominated the country. General Than Shwe was responsible for everything from initiating strategic policy programs to managing internal core-executive relations. Decisions to recruit, appoint, and purge senior leaders, as well as arbitration among them, were made solely by Senior General Than Shwe. However, compared to General Ne Win, General Than Shwe seems to have been somewhat more open to receiving information from aides. As summarized by a former general who served both General Ne Win and General Than Shwe:

Both dictators, General Ne Win and Senior General Than Swe, chose their closest followers based on "personal loyalties" to leaders at the expense of corruption committed by them. But there is a huge difference between General

Ne Win and General Than Shwe in terms of policy approach. General Ne Win did not have colleagues to discuss the policy issues, and most of the information about the worsening state's economic conditions was barred from General Ne Win by his followers. In contrast, General Than Shwe had a handful of close cadres who told him what was happening outside. He used different sources of information that came from different channels to counter-check his followers.⁶⁷

Overall, whatever the nuances of the General Than Shwe regime, it did not succeed particularly well in resolving the major grievances that had brought about the downfall of the BSPP regime: the economy remained weak, insurgencies common, and the democratic opposition oppressed. With regard to basic functioning, the state remained weak and inefficient. Tax collection was low, and social services were poor, while the government was heavily dependent on natural resources for revenue. Although SLORC/SPDC leaders had attempted to differentiate themselves from the BSPP era, their internal management practices and administrative operations were similar to those of the socialist era, with only slight variations. Active and retired military officers took the seats in most government ministries, departments, and state-owned enterprises.

After 1988, SLORC established Law and Order Restoration Councils (LORCs) at the state/division, district, township, ward, and village-tract levels, and these comprised military officers, General Administrative Department (GAD) staff, and police officers.⁶⁸ However, day-to-day GAD responsibilities were essentially to assist the regional military commanders, and their own civilian administrative role was relatively insignificant.⁶⁹ General Than Shwe's rule effectively ended in March 2011 when he relinquished power to his carefully chosen successor, a USDP government led by the former prime minister, General Thein Sein. Nonetheless, his influence on some ruling elites in the Thein Sein core executive remained.

2.4 SECTION CONCLUSION

This section detailed Burma's historical experiences with policymaking during the three governments that ruled from 1948 to 2011. It emphasized understanding the core executives of these three regimes by outlining the key actors and institutions involved in policymaking. Such retrospection highlights a stark reality: the country does not have a history of policymaking that is particularly conducive to its current transition towards democracy, with its need for pluralism, transparency, and accountability. Myanmar's history for nearly 50 years was defined by military dictatorship, and the core executives of the RC/BSPP and SLORC/SPDC regimes can best be understood as "one-man policy coordination." After gaining independence in January 1948, Burma's government evolved from British colonial rule into a United Kingdom-style state governed via elections and parliaments, with a core executive led by a prime minister. Following the 1962 coup, a military regime embracing socialism took over. This regime lasted until 1988 and had a core executive structured around the BSPP and General Ne Win. Following the 1988 coup, a subsequent military regime established rule by a junta, with a core executive built around generals Saw Maung and Than Shwe.

As the country evolved from a British-style democratic state to a military-led socialist state and then to a military junta, the formal structures of the government, as well as the "rules of the game" among core-executive actors, continuously evolved. Several key dynamics emerged during these evolutions. After independence, splits within the civilian-led government's core executive became one of the major justifications for the military takeover in March 1962 and its subsequent continuation in power without a return to civilian rule. In response to perceptions of weak, ineffective rule via democracy, the sultanist rule of the military dictators, Generals Ne Win and Than Shwe, became entrenched.

Nonetheless, the military regimes of Ne Win and Than Shwe were, themselves, unable to achieve consensus in core-executive relations, despite

junta-imposed “unity.” Disagreements among top generals were settled by purges or imprisonment, based upon the prerogatives of the paramount leaders. Purges occurred routinely up to the highest levels of the regimes. Such coerced unity allowed little room for vibrant and constructive policy debate. Moreover, during both eras, the institutional interests of the military regime, most significantly regime survival, were top policy priorities among the ruling elites. This meant that policy decisions prioritized the narrow interests of the regimes—security issues and higher-value industries—rather than matters of social welfare such as health and education.

The successive core executives of the civilian, RC/BSPP, and SLORC/SPDC governments did not create positive legacies for contemporary Myanmar governments to build upon. More generally, larger issues defining the country’s political settlement, of profound relevance to national policymaking, were never conclusively resolved. These issues include chronically anemic economic growth, frequent ethnic uprisings and civil war, suppression of the media, and prolonged confrontations with civil society and prodemocracy groups.

More specifically, a debilitating legacy for Myanmar’s contemporary governments is the lack of traditions or government architecture that support more sophisticated policymaking. This has serious ramifications for the pace and substance of the transition to democracy and economic growth that include:

- **Rigid hierarchy.** Policymaking was concentrated at the top, with a military dictator making nearly all decisions. Thus, with no ingrained institutional culture of pluralism in policymaking, MPs, the civil service, policy institutes, and other key stakeholders have limited experience being meaningfully engaged in government policymaking.
- **Decisions, not processes.** Given the past limits on decision-making, there is little tradition of working through policy processes. Core-executive decisions were made by the military ruler or, at best, by a small group of generals such as the SLORC/SPDC’s National



General Ne Win did not have colleagues to discuss the policy issues, and most of the information about the worsening state’s economic conditions was barred from General Ne Win by his followers. In contrast, General Than Shwe had a handful of close cadres who told him what was happening outside.



Security Council. Consequently, the current Myanmar government has few defined policymaking processes or tools—such as the routine use of white papers to articulate policy, or dedicated policy units to provide government leaders with policy options.

- **Limited tradition of policymaking.** Policymaking was an inherently secretive endeavor. For the wider government apparatus, and especially for the news media, civil society, and the public, this created great ambiguity about government decision-making and ultimate intentions. Moreover, there was little tradition of using evidence or data to make policy decisions. Consequently, in contemporary Myanmar there is little understanding or appreciation of government policymaking, its significance, or how it is supposed to work. Government information is generally still controversial and almost never seen as neutral.

Section 3

EXECUTIVE POLICYMAKING BY THE USDP GOVERNMENT

Building on the previous section's overview of Myanmar's core executives since independence, this section focuses on how policymaking has been approached since the start of the transition on March 30, 2011. To do this, the section examines the parameters set by the 2008 constitution for policymaking, and then details how the USDP government of President U Thein Sein managed its policymaking from 2011 to 2016. In doing so, this section builds on the concept of constitutionalism: analyzing how the 2008 constitution defines governance arrangements in Myanmar and how these in turn affect policymaking.

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3.1 THE PARAMETERS OF THE 2008 CONSTITUTION FOR EXECUTIVE POLICYMAKING

After decades of dictatorship, and with the resultant lack of traditions for pluralistic policymaking and established structures and processes to support it, Myanmar must now define what policymaking should look like in the

country as it evolves towards full democracy and economic growth. Although the 2008 constitution contains authoritarian elements, it also allows for significant departures from the governance practices of previous military regimes, including basic approaches to policymaking.⁷⁰ The starting point for this process of redefining policymaking is designating which actors should drive government policymaking and explaining how they should interact with one another. Also important is a legal framework specifically for core-executive operations in Myanmar. Since the 2008 constitution does lay out some wider parameters for key institutions and processes, and given the constitution's centrality to Myanmar's transition to democracy, this section of the paper provides a detailed analysis of the key features of the 2008 constitution that shape executive policymaking in the country. These features are as follows:

1. It allows a multiparty system.⁷¹
2. It establishes a bicameral national legislature, the Pyidaungsu Hluttaw (Assembly of the Union), consisting of 440 seats for the Pyithu Hluttaw (People's Assembly or lower house)

and 224 seats for the Amyotha Hluttaw (National Assembly or upper house). However, 25 percent of each house is reserved for MPs appointed by the military—110 in the Pyithu Hluttaw and 56 in the Amyotha Hluttaw.⁷²

3. It creates the positions of president and two vice presidents. The Presidential Electoral College is formed by three groups of Pyidaungsu Hluttaw representatives: elected members of the Amyotha Hluttaw and the Pyithu Hluttaw, and military lawmakers nominated by the military commander in chief. Each group initially elects vice presidential candidates, who can be MPs or persons from outside the parliament.⁷³ Of the three vice presidential candidates, the Electoral College elects the highest vote-getter as president, while the two others become vice presidents number 1 and number 2 based on their respective vote tallies. The president and the two vice presidents may serve a maximum of two five-year terms.
4. Cabinet members are prohibited from being MPs.⁷⁴ If they are members of any political party, the president, vice presidents, and all cabinet members are prohibited from participating in political party activities during their terms of office, starting from the day of their selection.⁷⁵
5. In coordination with the National Defense and Security Council (NDSC), the president has the power to declare a state of emergency and to transfer the executive, legislative, and judicial powers to the commander in chief. This means the legislative functions of parliament are suspended.⁷⁶
6. A bill can become law even if the president does not sign to promulgate and send it back to the Pyidaungsu Hluttaw within the prescribed period with his signature and comments.
7. It creates 14 state and region governments, each led by a chief minister who in turn selects a cabinet of ministers.⁷⁷ Each state and region also has a unicameral legislature, in which 25 percent of the seats are filled by the military. Although not covered in this report, these state and region governments, while still nascent, are playing an increasingly assertive

role in the country's executive policymaking.

The 2008 constitution defines certain roles and responsibilities for the most powerful government actors—the executive and legislative branches and the Tatmadaw. How these actors interact within the parameters of the 2008 constitution, and their respective interpretations of it, is the most important dynamic shaping policymaking in the country. Most significantly, the highest decision-making power over security matters is still vested in the Tatmadaw. Key factors shaping power dynamics include the following:

1. **Powers of the Tatmadaw.** Given Myanmar's long history of military dictatorship, it is not surprising that the 2008 constitution enshrines military supremacy in key ways. Being a military-drafted constitution, it guarantees control over Myanmar's governance to the military at the expense of the official head of state, the president. First and foremost, a quarter of parliamentary seats are reserved for the military. This ensures that the military bloc of MPs holds veto power over any constitutional amendment. Any amendments to the constitution require more than 75 per cent of the votes in parliament. Second, the military has governing authority in security-related areas. Following their nomination by the commander in chief, the president officially appoints the ministers of the Ministries of Defense, Home Affairs, and Border Affairs.⁷⁸ Third, the military holds veto power in the NDSC. The president has the right to declare a state of emergency following coordination with the NDSC. Of the 11 members of the NDSC, the commander in chief, the deputy commander in chief, and the three ministers of home affairs, border affairs, and defense are all active duty officers from the military. The military-nominated vice president is also part of the NDSC, which means that 6 of the 11 members are military aligned.⁷⁹ Lastly, although the president is the head of the state, he or she is not the commander in chief and does not exercise certain powers of the commander in chief over the military.⁸⁰

The significance of the NDSC cannot be overstated. Under the preceding military regime, major policy decisions were made during meetings of the NSC. Imitating this model,⁸¹ the NDSC was established in 2011 in accordance with article 201 of the 2008 constitution.⁸² The NDSC is considered an exceptionally powerful decision-making body of the Myanmar state, and among its many mandates, three key functions are critical:

- As mentioned, the president, with support from the NDSC, may declare a state of emergency.⁸³
- Under a state of emergency, parliament and its legislative functions are suspended.⁸⁴
- The NDSC has the authority to propose to the president and provide approval to the president for the appointment of the commander in chief.⁸⁵

2. **Respective powers of the president and parliament.** The president does not have the power to veto legislation. Parliament can impeach the president and vice presidents when a charge signed by one-fourth of the members of either house of parliament is presented to the leader of that house, and when two-thirds of that house then support proceeding with the charge.⁸⁶ Lawmakers can also be unseated through impeachment by parliament, but the impeachment of lawmakers is an exceptional process under the 2008 constitution.⁸⁷ A minimum of 1 percent of the eligible voters of an MP's constituency must submit a complaint to the Union Election Commission against the lawmaker whom they wish to recall.⁸⁸ However, the process then requires the adoption of a law removing that lawmaker from parliament. This entails cooperation among lawmakers to pass a "right-to-recall" bill—a challenging prospect. To date, no right-to-recall law has been promulgated. Complicating this dynamic is that, hypothetically, and as described previously, if an irreconcilable disagreement emerged between the president and parliament, the president could suspend

parliament with the support of military NDSC members if a state of emergency has been declared.

3.2 COMPOSITION OF THE USDP GOVERNMENT'S CORE EXECUTIVE

Having described the key parameters of the 2008 constitution regarding policymaking, we explore in this section how the government of President U Thein Sein structured itself from March 2011 onwards, and how its core executive undertook policymaking. This section also describes the key organizational structures and decision-making mechanisms and assesses how the practices and procedures established under the 2008 constitution functioned. The core executive of the U Thein Sein government is especially significant today, as it was the first government of the transitional era and, as such, had to interpret the 2008 constitution and begin rearranging Myanmar's government structures so they no longer reported solely to the military.

A number of constitutional provisions guided the structure and formation of the U Thein Sein core executive in March 2011. In basic terms, the President, acting as head of state, resided in Nay Pyi Taw, the capital of the Republic of the Union of Myanmar. The presidential palace accommodated both the President's Office and the offices of the two vice presidents.⁸⁹ Initially, the Union government had 34 ministries, which were headed by 30 ministers and 34 deputies, and this structure was relatively similar to those of the previous military government. By early 2016, however, there were 92 ministers and deputy ministers,⁹⁰ making Thein Sein's government one of the largest in Myanmar's history.⁹¹

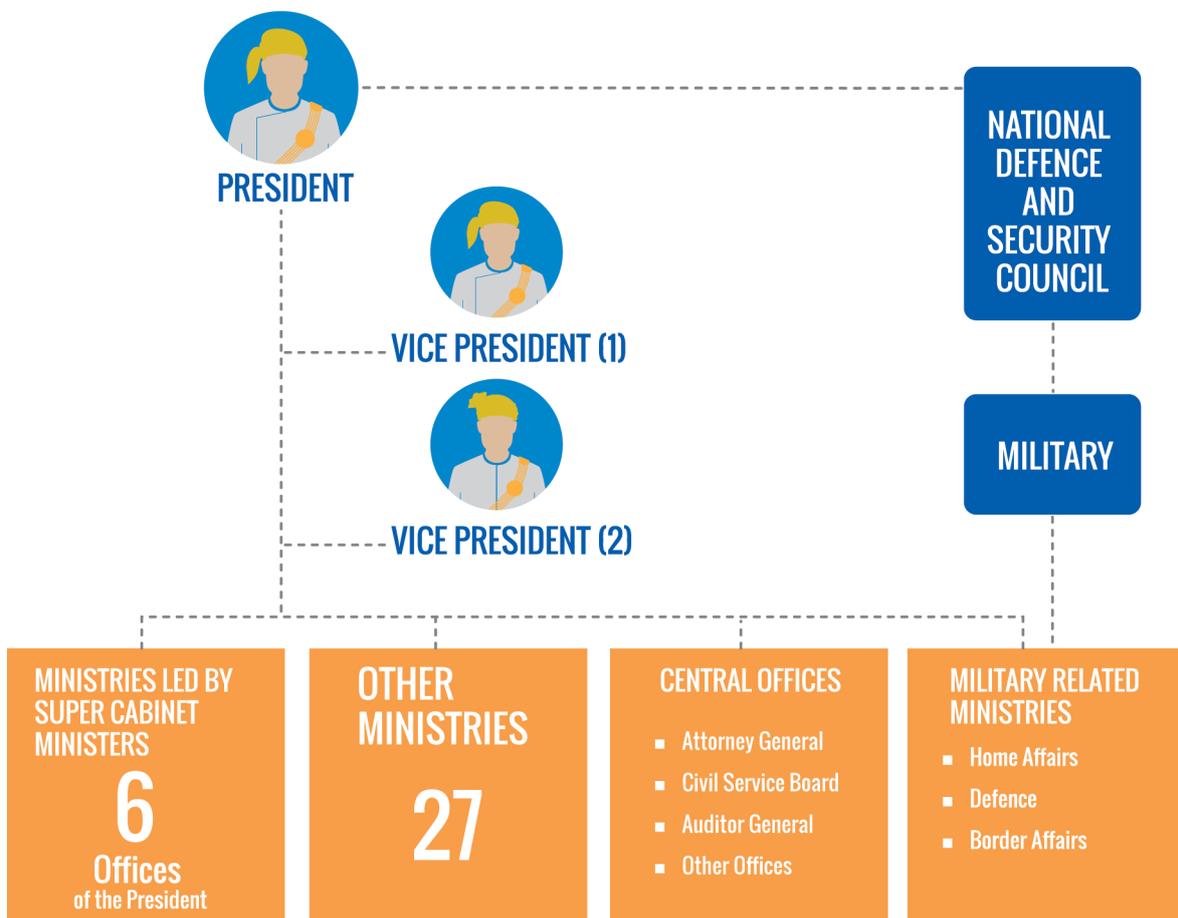
Of particular significance to the Thein Sein government's core executive were "super cabinet ministers," who had their offices in the President's Office. Initially, the President's Office had two ministers who oversaw the office, as well as the Nay Pyi Taw Council. However, in August 2012, Thein Sein created another four ministerial posts in the President's Office to focus on sectoral policy priorities. These were roughly defined as

the peace process, economic reform, public-sector reform, and decentralization. Additionally, there were a number of “central offices” under the executive branch, including the Offices of the Attorney General, the Civil Service Board, and the Auditor General, each with a chairperson with responsibilities similar to a cabinet minister. Among them, only the chairman of the Office of the Attorney General is considered a cabinet member. In addition to ministries and ministers, U Thein Sein created formal and ad hoc committees, working groups, and key bureaucratic positions to share the workload of the president and his ministers.

In September 2013, the president established five cabinet committees, led by the vice presidents and some of the President’s Office ministers, as

well as 28 “delivery units,” headed by the deputy ministers who coordinated sectoral reforms and implementation by the civil service.⁹² Throughout his tenure, U Thein Sein routinely formed smaller standing committees and ad hoc committees. Key positions in the civil service were also reformed. A few months prior to his administration, most notably in April 2015, the president reinstated the administrative position of permanent secretary to oversee affairs in each ministry. This was to make sure that senior civil servants stayed with each ministry to help it function if the ministers and deputy ministers changed when a new government was elected.⁹³ The USDP government also increased the overall size of the civil service. In March 2011 there were 946,699 civil servants, while in April 2016 this number had increased to 1,037,941.⁹⁴

FIGURE 1: Structure of the USDP government at Union level (ca. August 2015)⁹⁵



Interestingly, the USDP government also reached out to quasi-governmental policy institutes to assist with executive decision-making. The Myanmar Peace Centre (MPC), led by President's Office minister number 4, U Aung Min, served as the key facilitator of the president's policymaking with regard to negotiating peace with ethnic armed organizations. Another semigovernmental organization, the Myanmar Development and Resource Institute (MDRI), worked with President's Office ministers numbers 3, 5, and 6 (U Soe Thane, U Tin Naing Thein, and U Hla Tun, respectively) on private- and public-sector reforms and decentralization. The MPC appears to have been deeply embedded in Thein Sein's core executive and involved in its major policymaking processes, as was MDRI to a lesser degree.

In terms of executive policymaking, the majority of U Thein Sein's policy decisions came through four decision-making channels: (1) the cabinet, (2) the NDSC, (3) President's Office ministers and the MPC, and (4) the President's Office. These are each described in greater detail below.

Policy actors during the USDP government

Key actors inside the core executive

- President (NDSC)
- Vice presidents (NDSC)
- Commander in chief (NDSC)
- "Super" cabinet ministers or President's Office ministers
- Some powerful ministers of line ministries
- President's Office
- Semigovernmental think tanks

Influential actors outside the core executive

- Lower-house chairman (NDSC)
- Then-MP and opposition party leader Daw Aung San Suu Kyi
- MPs from USDP and its allied parties

Cabinet. On March 30, 2011, U Thein Sein formed his cabinet with 35 members. This included himself, two vice presidents, 30 Union ministers, the attorney general, and the secretary of the government office. In addition, the president occasionally invited two chairmen from the Union Civil Service Board and the Office of the Auditor General to cabinet meetings.⁹⁶ The majority of cabinet members were retired military officers who had served in the previous government. Only six of 35 cabinet members were career civilians.⁹⁷ Three ministers—defense, home affairs, and border affairs—were active-duty generals, as stipulated in the 2008 constitution. By the end of its five-year term, U Thein Sein's cabinet had expanded to 41, and military-related participation had slightly decreased.⁹⁸ Likewise, the ratio of members who had originally been elected as MPs and had later been appointed as ministers had decreased.⁹⁹ By the end of the USDP government, female participation had increased to 5 percent through the appointment of two women ministers to the 41-member cabinet (see annex 2).

Supporting the cabinet was the Cabinet Office, formally known as the Office of the Union Government, which was located at Government Building No. 18, Nay Pyi Taw. It also housed ministries of the President's Office ministers numbers 5 and 6. Under the USDP government, the Cabinet Office was the prime coordinating mechanism and the forum for formal decisions by the Myanmar executive. Cabinet meetings were usually convened in Building B of the presidential palace. In 2011 and 2012, cabinet meetings were held weekly on Thursdays. In September 2013, cabinet committees were formed, and meetings of the full cabinet were reduced to every two weeks.¹⁰⁰ The weekly cabinet committee meetings reduced the workload of the full cabinet meetings, as the cabinet committees made the majority of administrative decisions that did not concern finance or security.¹⁰¹

During the transitional period, the initial involvement of high numbers of individuals who had worked in similar capacities in the previous regime, and the composition and structure of the USDP government's cabinet, signaled an intention

to maintain stability by keeping the ruling elite in power.¹⁰²

Hence, the cabinet structure resembled that of the previous regime. In practice, however, the President rarely discussed critical policy decisions in cabinet meetings.¹⁰³ Instead, he generally dealt with his “super cabinet ministers” in the President’s Office and individual line ministers on a one-to-one basis. Once the president had made a decision, the respective line minister presented the issues and policy options to the cabinet meetings, followed by his or her action plan for implementing the policy. This encouraged the compartmentalized style of decision-making that characterized the USDP cabinet meetings. With the exception of a few senior cabinet members, ministers paid attention only to their own issues and hardly participated in the discussions of other ministers. Moreover, significant turnover due to ministerial reshuffling and forced resignations countered U Thein Sein’s initial intent to maintain the stability and continuity of the elite. Only eight of 34 ministries experienced no change in minister-level leadership during the five years of the USDP government.¹⁰⁴

National Defence and Security Council.

Under General Than Shwe’s military regime, the National Security Council made as much as 80 percent of that government’s major policy decisions.¹⁰⁵ In contrast, under the U Thein Sein government, NDSC discussions were less active and mostly concerned security and foreign affairs.¹⁰⁶ The meeting schedule for the NDSC evolved over U Thein Sein’s tenure. While the NDSC meetings were initially convened on a weekly basis, its frequency gradually changed to bimonthly.¹⁰⁷ During the final two years of the U Thein Sein government, the number of NDSC meetings had significantly decreased, due to personal conflicts among NDSC members, particularly between President Thein Sein, Lower-House Chairman Thura U Shwe Mann, and Tatmadaw Commander in Chief Min Aung Hlaing.¹⁰⁸ Thus, the efficacy of NDSC meetings under U Thein Sein was questionable. The NDSC meetings were a forum for sharing information about individual policy decisions and soliciting

agreement or minor suggestions, but there was almost no major debate or discussion.¹⁰⁹

President’s Office ministers and the MPC.

Creating ministerial positions in the President’s Office in August 2012 was considered one of the most innovative efforts of the USDP government, going well beyond the structure of the executive as outlined in the 2008 constitution. Officially, these six were ministers without portfolio, and the role of these “super cabinet ministers” was to coordinate with designated line ministries in making policy decisions. In reality, the President’s Office ministers undertook more than coordination: they supervised and oversaw line ministers, especially those who were junior to them. Indeed, these super cabinet ministers became the dominant drivers of policymaking during the USDP government. Although Building No. 18 in Nay Pyi Taw was the official location of the cabinet, Building No. 14, where super cabinet ministers U Soe Thane and U Aung Min had offices, appeared to be the busiest government office in the capital.

While decision-making bodies such as the cabinet and the NDSC were relatively weak in developing policy, the super cabinet ministers, with their informal powers, became dominant in the U Thein Sein government’s core executive. Over the course of U Thein Sein’s administration, of the six President’s Office ministers, U Aung Min and U Soe Thane became known as the president’s closest protégés. The president relied heavily on these two cabinet ministers for policy coordination and major decision-making. U Aung Min was in charge of security and the peace process, while U Soe Thane was highly involved in economic and financial policy and also seemed to influence the president’s policy decisions overall. In addition, chairing cabinet committees increased the power of some of the super cabinet ministers. For instance, of the five cabinet committees, U Soe Thane chaired the Economic Committee that oversaw 17 ministries. This arrangement certainly increased the official power of U Soe Thane relative to other cabinet ministers.

Line ministers generally appeared to work

willingly under the leadership of President's Office ministers, and especially under Soe Thane. There were some tensions, however, as some senior line ministers saw the actions of these two President's Office ministers as occasionally overriding formal protocol and decision-making processes, rather than as merely serving to coordinate between the president and his ministers. As a line minister noted, "They think they are above us. In fact, their positions are just for coordination and not for supervising our work. We are directly responsible [to the] president, in accordance with the 2008 constitution."¹¹⁰ There were also perceptions that U Thein Sein's decisions regarding cabinet composition, including promotions, demotions, and resignations, were highly dependent on individual line ministers' relations with U Soe Thane. U Soe Thane and U Aung Min were criticized at times due to colleagues' perceptions that they were too close to Western diplomats.¹¹¹

Lastly, under the leadership of U Soe Thane and U Aung Min, the Myanmar Peace Centre emerged as the most influential semigovernmental agency. Founded in Yangon in November 2012 with strong international technical support and funding, the MPC was mainly composed of civilian policy advocates who had returned from exile, with U Aung Min as the head. The MPC was set up to host and facilitate peace negotiations, provide technical assistance to the government's peace process team, and serve as a bridge between government officials and nongovernmental organizations (NGOs) working to initiate peace activities. While the MPC did not possess executive power, its close association with these two powerful ministers in the President's Office involved it in decision-making beyond the negotiations with ethnic armed organizations. The MPC enjoyed direct access to decision-making by the president.

President's Office. The President's Office is located in the presidential palace in Nay Pyi Taw and is generally understood to be a formal coordinating body for handling the affairs of the president. By the end of the USDP government, there were approximately 350 officials working in the President's Office and the Vice Presidents' Offices (160 in the presidential palace, with

the rest in Building No. 18).¹¹² Key units in the President's Office included the President's Directorate Office and the directorate offices of vice presidents 1 and 2. The President's Directorate Office was one of the most important workplaces of the executive branch, as it enjoyed direct access to the president for ad hoc decisions. Government communications were also a prominent role of the President's Office. Key individuals such as the President's Office deputy director, U Zaw Htay, assisted the president in obtaining information and supporting media relations. President Thein Sein also appointed 19 individuals to form an advisory board. Located in the presidential palace, the board advised the president on political, economic, social, legal, education, and health issues and religious affairs.¹¹³ Most of the members possessed close connections with both the previous military regime and the USDP government, and they included retired government employees.¹¹⁴

3.3 PRACTICAL FUNCTIONING OF THE USDP GOVERNMENT'S CORE EXECUTIVE

Having provided an overview of how President Thein Sein structured his core executive, it is now possible to review how it functioned in practice. The core executives of some countries possess extensively codified governing institutions. In Myanmar, however, there is no designated legal framework for core-executive operations.¹¹⁵ From 1988 to 2008, there was no formal constitution in Myanmar. More importantly, consecutive dictatorships had lasted more than five decades, and the personal decrees of the junta leaders often became the unwritten code of conduct for core-executive operations. These were military regimes, and the military training that senior government officials had received throughout their careers resulted in an unwritten code of conduct that guided core-executive operations. These included principles such as seniority (based on cohorts of officers who had completed their training together), confidentiality, secrecy, and loyalty. Moreover, significant acculturation across Myanmar's system of governance to the norms of military organization shaped how actors within the core executive related to one another.¹¹⁶

These unwritten conventions do not mean that the core executive under President Thein Sein operated without formal rules, however. The 2008 constitution was officially the guiding set of principles for core-executive operations. Nonetheless, the constitution contains significant ambiguities that allowed some institutional practices from the past to persist and different constitutional interpretations to be used opportunistically at the start of the transition in early 2011. These primarily concerned the relationship between the elected civilian government and the military respecting the selection and dismissal of senior government officials.¹¹⁷

Additionally, while the 2010 Union Government Law was drawn from the 2008 constitution and provides a loose code of practice for ministers, it also contains ambiguities descended from the 2008 constitution—i.e., its own origins. This ambiguity sometimes created leeway for senior leaders like the super cabinet ministers to provide their own interpretations, which increased their informal power. In contrast to the executive-level leaders in the core executive, the civil servants working to support them did have dedicated guidance in the form of laws and regulations.¹¹⁸

Although many of the USDP government’s senior members had been part of the previous junta, including the president himself, tensions within the core executive and other leading policy actors were significant during the government’s five-year term. Most notably, tensions between the president and Thura U Shwe Mann, speaker of the lower house, steadily escalated, as did conflicts between their respective supporters within government and the governing USDP. As described in section 2, tensions within the Myanmar core executive have not been unusual historically. The settlement mechanism for such tensions was different from those of the past, however. Previously, Senior General Than Shwe could be seen as the arbiter of internal disputes, with his decisions being final for all the actors involved.¹¹⁹ In contrast, starting in 2011, the USDP government had to begin institutionalizing its



2008 constitution was officially the guiding set of principles for core-executive operations. Nonetheless, the constitution contains significant ambiguities that allowed some institutional practices from the past to persist and different constitutional interpretations to be used opportunistically at the start of the transition in early 2011.



actions by making them more compliant with the 2008 constitution. Thus, the 2008 constitution became the fundamental guide, not only for the formal operations of the core executive, but also for settling disputes, such as purging executive members or attempting to unseat the head of parliament. (Read more in section 3.4, “The role of parliament in the policymaking process.”)

The flow of policymaking through the USDP core executive is represented in figure 2, below. The diagram shows both the formal policymaking process, which can be considered a purely orthodox route through the President’s Office and the cabinet, as well as informal variations that effectively bypassed most of the orthodox route. Within the civil service, when an issue arose at the departmental level, it might or might not require the core executive’s involvement, depending on the issue’s complexity and the mandate of the respective minister. If the issue could be settled at

Major policy outcomes for USDP government

- Suspension of major Chinese-backed dam project in Myitsone
- Nationwide Ceasefire Agreement with eight signatories
- Bringing opposition party into mainstream politics
- Ending international pariah status, easing sanctions, and receiving debt relief
- Release of most political prisoners and the return of many exiles
- Removal of most media censorship
- Economic growth increased from 5.6 percent in 2011 to 7.3 percent in 2016
- Increase in net foreign direct investment
- Adoption of the Peaceful Assembly Law

the ministerial level, the department would seek approval from the minister (or, after April 2015, the permanent secretary). The relevant director general would then take charge of the matter until the issue exited the government machine.

If the minister or the permanent secretary considered that core-executive involvement was required, that ministry would submit the issue to the President's Office for further instruction. The President's Office would reply, stating whether submission to a cabinet committee meeting was required. If a cabinet committee decided in its turn that the issue should be submitted to the full cabinet, further back-and-forth was required between the President's Office, the respective ministry, and the cabinet, with the Union Government Office providing coordination.¹²⁰ Eventually, following a decision by the cabinet, with sign-off from the president, the decision was reported back to the ministry for implementation. During the Thein Sein government, as mentioned previously, the NDSC met relatively often regarding issues of national security. Pertinent issues

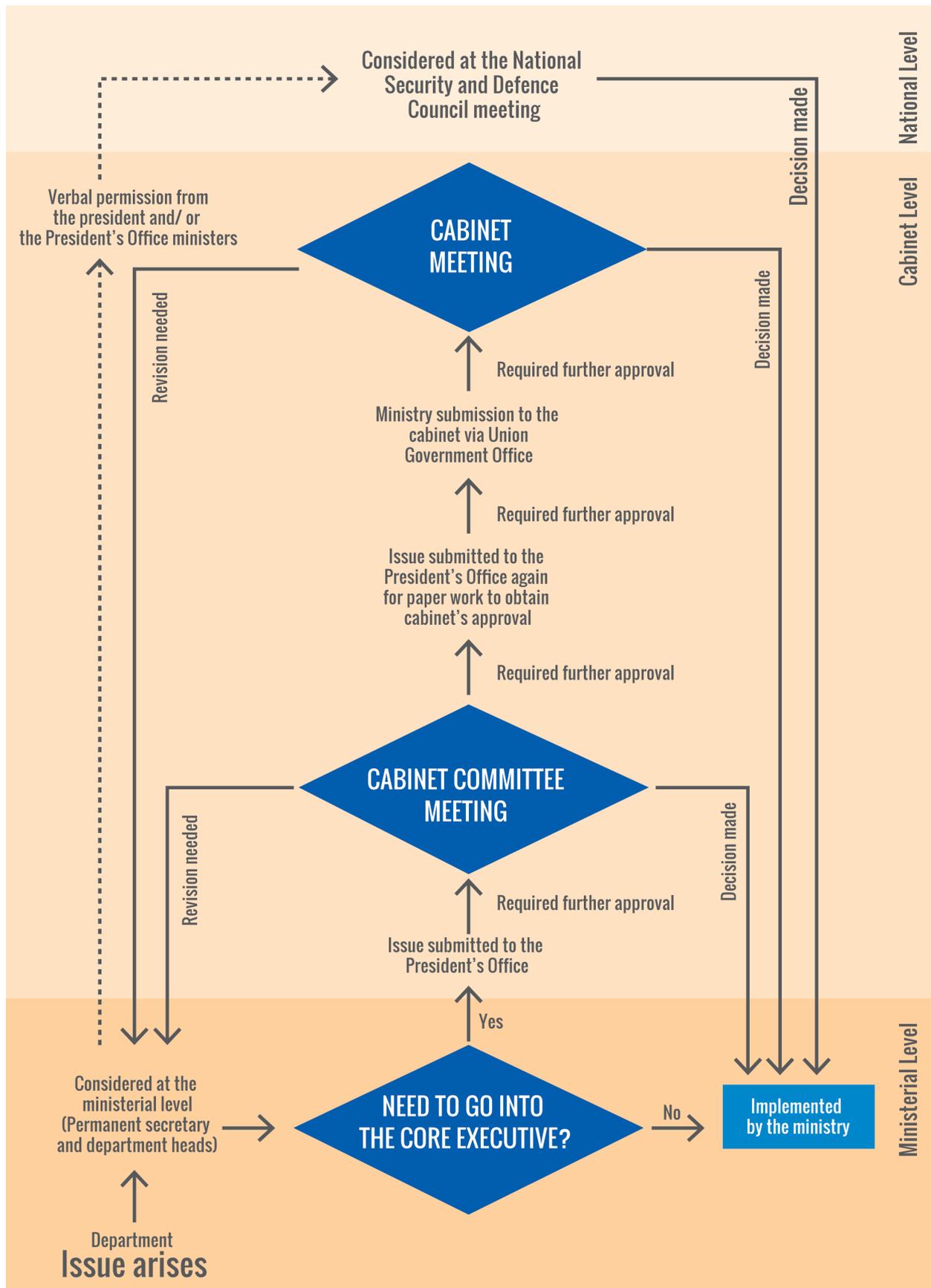
included bouts of communal conflict and pressing matters within the peace process, such as the use of the term "federalism." Issues going to the NDSC could, at times, bypass the orthodox route, working through the cabinet and its committees.

Issues involving dynamic interactions among senior leaders did not always take the orthodox, formal route through the policy process. If the issue was deemed particularly urgent, a minister could choose to take a shorter route, which was to submit the issue directly to the Cabinet Office and wait for the cabinet to discuss it. This usually took anywhere from a few days to a few weeks, depending on the complexity of the issue. Actors who were closer to the president or to President's Office ministers usually used this unorthodox approach, seeking informal approval or acknowledgment from the President's Office minister (or in some cases from the president) before submitting an official request to the cabinet. Depending on the urgency of the matter, and on personal relationships with President's Office ministers (the super cabinet ministers), verbal approvals could be obtained on many issues from President's Office minister U Soe Thane, or on certain issues from U Aung Min, U Tin Naing Thein, or U Hla Tun. To follow up, an official submission to the cabinet would retroactively formalize a decision.

3.4 THE ROLE OF PARLIAMENT FOR THE USDP GOVERNMENT'S CORE EXECUTIVE

Political divisions emerged between President Thein Sein and lower-house speaker Thura Shwe Mann towards the end of 2011 and persisted until the end of the USDP government's five-year term, as each used his respective institution—the presidency and parliament—to assert dominance over Myanmar's political space. These personal tensions between two powerful party leaders exacerbated tensions within the USDP, influencing the wider dynamics of the political transition and affecting policy reforms initiated by both the executive and legislative branches from 2011 to early 2016. In parliament, military MPs supported most of the legislation introduced by the

FIGURE 2: Policy flow through the USDP government and core executive¹²¹



executive. Hence, President Thein Sein was largely successful at driving the legislative process. From 2011 until January 2016, 203 out of 232 pieces of approved legislation—87 percent—were instigated by the executive, whereas lawmakers contributed just 29 successful bills, approximately 13 percent. Tensions between U Thein Sein and Thura U Shwe Mann reached their peak in 2015 over the latter’s calls to amend the 2008 constitution, leading to his removal as head of the USDP in July 2015.¹²²

Despite these dynamics, the president was not

always successful in transforming bills into law or, conversely, in stopping them. As explained previously, the president does not have total veto power over bills, and under some circumstances parliament can proceed without the president’s agreement. From 2011 to 2016, parliament approved 10 laws without President Thein Sein’s signature. On those occasions, military MPs sided with the president and voted against the majority, but they could not prevent the legislation from passing. More generally, the 2011–2016 USDP parliament was not just a rubber-stamp parliament that supported the government regardless of its

TABLE 2: Legislation amended, passed, or repealed by parliament, March 2011 to January 2016¹²³

Period of administration	Numbers of bills approved	Number initiated by executive	Number initiated by legislature	Percentage initiated by executive
February 2011–December 2011	15	15	0	100%
January 2012–December 2012	24	23	1	96%
January 2013–December 2013	37	35	2	95%
January 2014–December 2014	57	54	3	95%
January 2015–January 2016 ¹²⁴	99	76	23	77%
Total	232	203	29	87%

TABLE 3: Legislation approved without the president’s signature¹²⁶

No.	Name of legislation	Legislation number
1	Pyithu Hluttaw Act of 2012	23/2012
2	Amyotha Hluttaw Act of 2012	24/2012
3	Law Relating to the Region or State Hluttaw	22/2013
4	Law Amending the Pyidaungsu Hluttaw Law	2/2014
5	Development Fund Law for Pyidaungsu Hluttaw Law	9/2014
6	Law on the Application for Writs	24/2014
7	Law Amending the Constitutional Court Law	46/2014
8	The Law Amending the Pyidaungsu Hluttaw Development Monetary Fund Law	48/2014
9	Law Relating to Emoluments and Allowances of the Representatives of the Pyithu Hluttaw, the Amyotha Hluttaw, Region or State Hluttaw, and the Members of the Leading Body of Self-Administered Division and Zone	1/2015
10	Law Relating to National Budget Use	42/2015

policies, and it was very active in discussing bills and questioning the government.¹²⁵

3.5 SECTION CONCLUSION

The composition and functioning of Myanmar's core executive changed significantly during the five years of the USDP government. Transitioning from a military junta towards democracy required significant structural changes to align with the parameters of the 2008 constitution. From 2011 onwards, Myanmar's core executive was once again led by a civilian president, defined by a constitution, and with a cabinet of ministers officially mandated to make policy decisions. A national, bicameral parliament was created, with small but growing powers, and political parties were permitted. The NLD participated in by-elections in 2012; amnesty was granted to most political prisoners; strict media censorship was lifted; and labor associations were allowed. The civil service steadily expanded, and the paramount cadre of permanent secretaries was reintroduced in 2015. The majority of the USDP government's policy decisions were issued through four decision-making channels: (1) the cabinet, (2) the NDSC, (3) President's Office ministers (the super cabinet ministers) and the MPC, and (4) the President's Office. These changes represent U Thein Sein's effort to institutionalize the 2008 constitution. However, the 2008 constitution contains significant ambiguities, and it does not specifically define the composition of the executive branch. This created opportunities for some actors to assert more power while simultaneously limiting others. These dynamics certainly created tensions within the USDP's core executive.

Given these dynamics, several key themes emerged from the USDP government's policymaking experiences:

- **Super cabinet ministers.** One of the most significant actions of President Thein Sein was the August 2012 appointment of super cabinet ministers, formally designated President's Office ministers, to coordinate the ministries. Within President Thein Sein's cabinet, this created ambiguities regarding the mandates and the hierarchy of ministers

responsible for making government policy. Regardless, the approach allowed President Thein Sein to consolidate his presidency around a few highly empowered allies to push some important policy reforms, such as initiating the peace process and economic reforms.

- **Executive-legislative rivalries.** Tensions emerged between the executive and legislative branches, provoked by the personal relations of President Thein Sein and Speaker Thura U Shwe Mann. These tensions significantly affected policy outcomes between 2011 and 2016 as jockeying between these powerful leaders shaped how their respective institutions performed. In July 2015, the situation reached a climax in disputes over proposed constitutional amendments, resulting in the removal of Thura U Shwe Mann from the USDP leadership. Arguably, these tensions led to a more assertive parliament in 2011–16, but they also created friction between branches of government and with the Tatmadaw over how government should approach major policy decisions such as constitutional reform.
- **Constitutional ambiguities.** Operationalizing the 2008 constitution over the course of the USDP government revealed ambiguities in the charter. Key examples included parliament's decision to push for the impeachment of all the Constitutional Tribunal's judges; the involvement of the president in removing his rival, Thura U Shwe Mann, from the USDP leadership; and the creation of new executive-branch positions such as the super cabinet ministers. To some extent, this was to be expected as the country transitioned from dictatorship towards democracy, but the presence of such tensions in a government with such close ties to the military portended the challenges awaiting governments without such close relations. Going forward, constitutional ambiguities are likely to hinder what should be routine policymaking efforts, as the basic parameters of government are still open to debate and interpretation.

Section 4

EXECUTIVE POLICYMAKING BY THE NLD GOVERNMENT

The historic November 2015 election allowed the National League for Democracy (NLD) to assume power and form a national government on March 30, 2016, and all 14 state and region governments thereafter. At the time of this writing, the NLD government has completed only its second year, and its approach to policymaking is still emerging. There have been several significant features and trends, however, that provide valuable insights into the government's policymaking. This section confines itself to discussing how the NLD managed the transition from an opposition political party to the party of government, and provides a general overview of the composition of the NLD's core executive. Emphasis is placed on understanding the role of NLD leader Daw Aung San Suu Kyi within the core executive, given that she is barred by the 2008 constitution from assuming the presidency.

4.1 REIMAGINING THE CORE EXECUTIVE

The NLD won the November 2015 election with an outright majority, controlling nearly 80 percent of elected parliamentary seats. Despite 25 percent of parliamentary seats being reserved for the military, the landslide victory gave the NLD enough seats to select the president and to form a government on their own. However, article 59(f) of the 2008 constitution prohibits individuals with foreign family members from holding the presidency. Because the NLD leader, Daw Aung San Suu Kyi, has two sons who are British citizens, she is ineligible to hold the presidency. According to political observers, after the election she met with the previous military junta head, Senior General Than Shwe, and the incumbent military commander in chief, Senior General Min Aung Hlaing. Presumably these meetings were to discuss the NLD forming a government. Despite these discussions and the NLD's landslide

victory, article 59(f) was not amended before the formation of the NLD government. Party leader Daw Aung San Suu Kyi stated that she would govern "above the president" and, indeed, lead the NLD government.¹²⁷

The NLD government was officially formed on March 30, 2016. U Htin Kyaw, one of Daw Aung San Suu Kyi's closest NLD confidantes, was selected as the president, garnering 360 out of 652 votes in the Assembly of the Union. U Myint Swe, a former general, and previously the chief minister of Yangon Region, was the presidential nominee of the military MPs. He received 213 votes in the Assembly of the Union and became vice president no. 1. With the remaining 79 votes in the Assembly of the Union, Henry Van Thio, an NLD parliamentarian and the presidential nominee from the National Assembly, was named vice president no. 2. While the USDP had steadily increased the size of government,

Policy actors in the NLD government

Key actors inside the core executive

- State counsellor / foreign minister (NDSC)
- Commander in chief (NDSC)
- Minister of State Counsellor's Office
- Senior staff from State Counsellor's Office
- Key ministers
- President and vice presidents (NDSC)

Influential actors outside the core executive

- Legal Affairs and Special Cases Assessment Commission
- NLD party leaders and parliament speakers

the NLD moved quickly to reduce it, an explicit goal in its election manifesto. To do this, the NLD consolidated the USDP ministries, reducing their number to 21. At the time of formation, in March 2016, 18 ministers were appointed to lead the 21 ministries, and all deputy-minister positions were initially eliminated. Daw Aung San Suu Kyi was appointed to head four ministries: the President's Office, Foreign Affairs, Electric Power and Energy, and Education.¹²⁸

Notably missing from the NLD government's plan were the President's Office super cabinet ministers, positions that had been central to the functioning of the USDP government's core executive.

More politically and constitutionally significant, given that Daw Aung San Suu Kyi could not hold the presidency, were moves by the NLD to interpret the 2008 constitution to allow her to fill the executive role she deemed suitable. Operationalizing what it meant to be "above the president" was constitutionally challenging and

risked tensions with the Tatmadaw. In response, the NLD government created the position of "state counsellor" for Daw Aung San Suu Kyi. On March 30, 2016, NLD lawmakers submitted the State Counsellor Bill, which would empower Daw Aung San Suu Kyi to coordinate parliament and the executive branch. Military MPs repeatedly complained that the draft bill was unconstitutional and, referring to the 2008 constitution's article 11, said it would destroy the checks and balances between the legislative and executive branches.¹²⁹ Despite the refusal by military MPs to participate in the vote, the State Counsellor Bill was approved by both houses of parliament, on April 1 and 5, 2016, and Daw Aung San Suu Kyi became state counsellor in addition to her other ministerial positions. On April 5, 2016, within a week of the new government's formation, two of the ministries under Daw Aung San Suu Kyi, the Ministry of Education and the Ministry of Electricity and Energy, were assigned to other individuals, and a dedicated ministry was created for the Office of the State Counsellor. She remained the country's foreign affairs minister, as it guaranteed her a seat in the NDSC.

On March 21, 2018, President U Htin Kyaw resigned and was subsequently replaced by U Win Myint, who had been speaker of the lower house of parliament and is a close confidante of Daw Aung San Suu Kyi. The two vice presidents remained the same. As of March 30, 2018, there were 23 ministers and 24 ministries, including three military-related ministries. For a full listing of ministries and their evolution from the USDP government, see annex 1.¹³⁰ Interestingly, despite initially eliminating all deputy ministers, the NLD government eventually appointed 16 deputy ministers. Like the USDP government, the NLD's choice of ministers did not privilege its own lawmakers or party members. The appointments included individuals from the NLD and the USDP, former government officers, and independent professionals. The Myanmar Peace Centre, the prominent semigovernmental organization under the USDP government, was replaced with a new governmental organization, the National Reconciliation and Peace Centre (NRPC), which was formed by the President's Office with a

mandate to provide technical support to the peace process.

Similar to the USDP government's approach, which established the MDRI as a semigovernmental policy institute to support economy-related ministries, the NLD government set up or expanded several semigovernmental think tanks under different ministries. The Myanmar Development Institute (MDI) was established, under the Ministry of Planning and Finance, with financial support from the government of Korea.¹³¹ The Myanmar Institute of Strategic and International Studies (MISIS), an existing institution formed by former diplomats and government officials, works closely with the Ministry of Foreign Affairs, which is led by Aung San Suu Kyi.

While the NLD government did institute some major changes in the structure of its core executive—most notably by creating the state counsellor position and its attendant ministry—the formal coordination offices of the core executive remain basically the same. For instance, the presidential palace in Nay Pyi Taw still houses the President's Office and the offices of the two vice presidents. Instead of the six President's Office ministers under the USDP government, the NLD government now has just one President's Office minister, who is also the state counsellor and the minister of foreign affairs. Civil servants who had previously supported Thein Sein's super cabinet ministers, although relatively few in number, now support the State Counsellor's Office and the NRPC. Figure 3 gives a rough picture of the NLD government's core executive as it looked in early 2018, approximately two years after the government's formation.

4.2 COMPOSITION OF THE NLD GOVERNMENT'S CORE EXECUTIVE

With this overview of how the NLD government restructured its core executive under the leadership of Daw Aung San Suu Kyi, we can now consider the organization of key actors. These actors are (1) the state counsellor, (2) the cabinet,

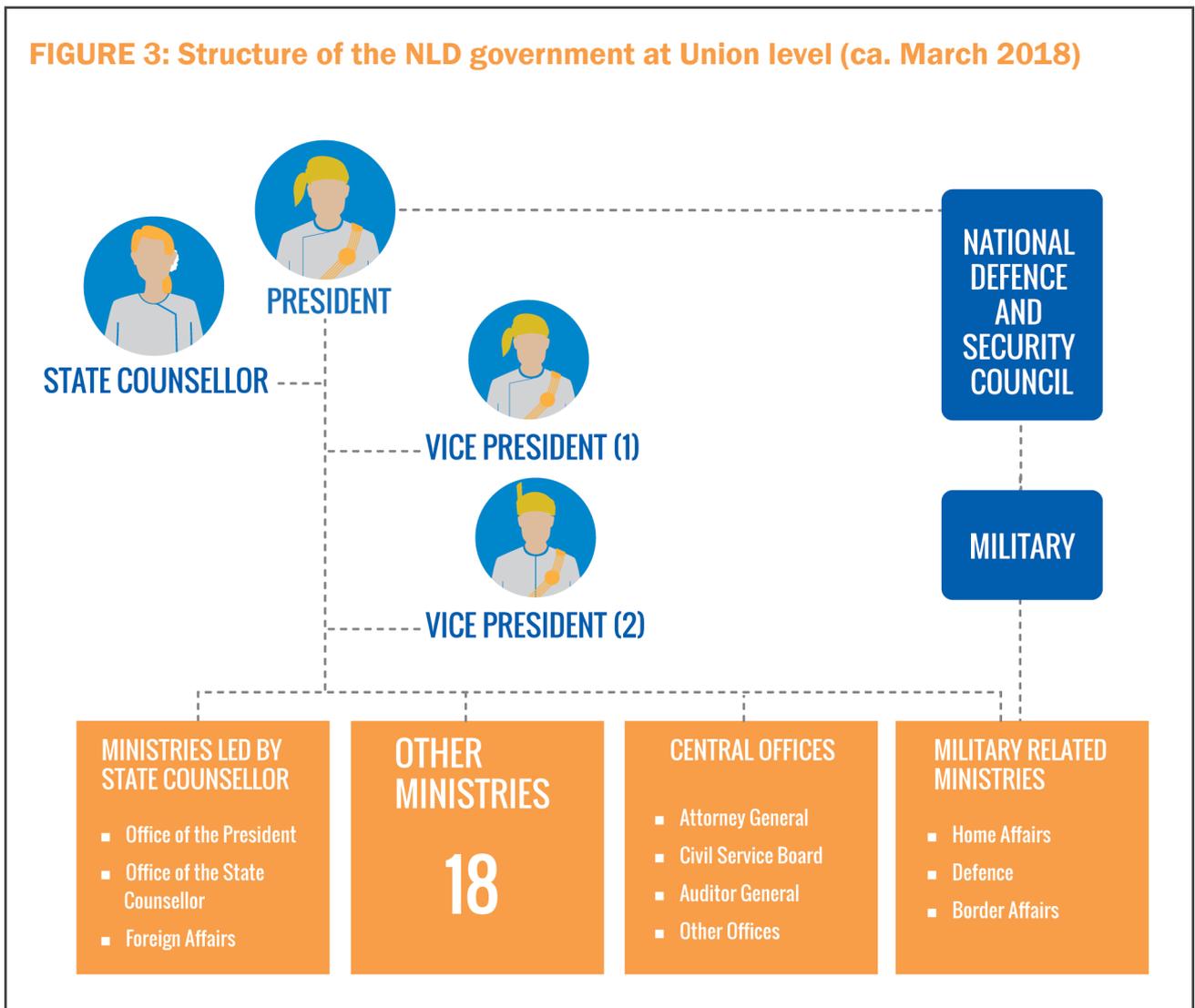
and (3) the NRPC and individual advisors.

The state counsellor. According to official government protocol, the president holds the highest rank, the state counsellor (SC) ranks second, and the two vice presidents rank third and fourth. However, State Counsellor Daw Aung San Suu Kyi is currently the de facto head of government in Myanmar. While President U Htin Kyaw certainly had important roles, these were mostly ceremonial. It is not clear if President U Win Myint will play a notably different role than his predecessor, and the SC is widely recognized as the individual who drives government action. The SC's term, as defined in the State Counsellor Law, is the same as the president's, to the end of the current parliament's five-year term.

The State Counsellor Law gives the SC overarching leadership of both parliament and the executive branch, and the SC is accountable to parliament. The law guarantees the SC's "right to contact government ministries, departments, organizations, associations, and individuals and makes her accountable to the Pyidaungsu Hluttaw."¹³² Apart from being heavily involved in the day-to-day running of the country, the SC is regarded as the ultimate decision-maker and final arbiter of the government, especially for non-security-related decisions. It appears that the SC receives information from, and consults with, the ministers of the military-led ministries on issues relating to national security. This includes ceasefires with ethnic armed organizations and communal conflicts in Rakhine State. Periodically, the SC meets with the commander in chief, General Min Aung Hlaing, to discuss matters related to negotiations with ethnic armed groups.

In addition to her paramount role as SC, Daw Aung San Suu Kyi concurrently acts as minister of foreign affairs and minister of the President's Office. As minister of foreign affairs, Daw Aung San Suu Kyi is one of the 11 members of the National Defense and Security Council. Also, as needed, crucial business of government automatically passes through the Ministry of the President's Office for scrutiny, coordination, and decision-making. Therefore, by holding the position of

FIGURE 3: Structure of the NLD government at Union level (ca. March 2018)



minister of the President’s Office, Daw Aung San Suu Kyi has the de jure authority to control the basic flow of business through government. These three roles—SC, minister of the President’s Office, and member of the NDSC—ensure that Daw Aung San Suu Kyi is paramount in Myanmar’s government. Additionally, Daw Aung San Suu Kyi chairs or sits on over a dozen executive-level committees, covering everything from the coordination of aid spending to management of the peace process. Some political analysts have warned of potential negative consequences of this concentration of power and diversity of roles.¹³³

The Ministry of the State Counsellor’s Office is located at Government Building No. 20 in Nay Pyi Taw. This newly established ministry of the SC is specifically designed to support national reconciliation, domestic peace, national development, and the rule of law.¹³⁴ The Ministry

of the President’s Office is located at the presidential palace in Nay Pyi Taw. Under the NLD government, these two ministries work closely together under the leadership of Daw Aung San Suu Kyi. They provide a team of civil servants who support the SC in implementing her decisions, but also serve more widely as the central coordination body for the line ministries. The Ministry of the State Counsellor’s Office is now widely considered the most powerful ministry in the NLD government. While most routine government business still passes through the customary channels of the Ministry of the President’s Office, the most important and sensitive issues now pass through the Ministry of the State Counsellor’s Office.

Cabinet. The Cabinet Office (the Office of the Union Government) remains at Government Building No. 18, Nay Pyi Taw, as it was under

the USDP government. Cabinet meetings also take place at this address (Building B of the presidential palace), as was the case under the previous USDP government. However, the NLD government has made dramatic changes in the size of government. The 36 ministries under the USDP government, which were led at their peak by 96 ministers and deputies, were initially reduced to 21 ministries. The NLD initially cut 15 ministries

by combining ministries with similar areas of operation (see annex 1 for details).

On March 30, 2016, the Union government was formed with 23 individuals, including the president, two vice presidents, and 18 individuals who led 21 different ministries, including the attorney general and the secretary of the Union Government Office. The majority of cabinet

TABLE 4: Chairs and joint chairs held by Daw Aung San Suu Kyi as of March 30, 2018

No.	Position and agency	Type of agency
1	State counsellor, Union Government of Myanmar	Executive
2	President's Office minister, Union Government of Myanmar	Executive
3	Foreign Affairs minister, Union Government of Myanmar	Executive
4	Chair of Economic Cabinet Committee	Standing committee*
5	Chair of Foreign Affairs Cabinet Committee	Standing committee
6	Chair of National Security, Stability, and Rule of Law Cabinet Committee	Standing committee
7	Chair of the National Reconciliation and Peace Centre	Working committee / government think tank
8	Chair of the Union Peace Dialogue Joint Committee	Standing committee
9	Chair of the Central Committee for Holding the 21 st Century Panglong Conference	Working committee**
10	Chair of the Joint Coordination Body for Peace Process Funding	Working committee
11	Chair of the Development Assistance Coordination Unit	Working committee
12	Chair of the Central Committee for Implementation of Peace and Development in Rakhine State	Working committee
13	Chair of the Committee to Scrutinize Ex-citizens of Myanmar to Identify Myanmar Citizenship	Working committee
14	Chair of the Central Committee for Implementation of Border and Ethnic Affairs Development	Working committee
15	Chair of the Union Enterprise for Humanitarian Assistance, Resettlement, and Development in Rakhine	Working committee
16	Joint chair of the SME Development Central Committee	Working committee

*Standing committees are permanent panels that are identified as such in government procedures. A standing committee is composed of members who hold very senior positions, such as minister or deputy minister, within the executive branch.

**Working committees or special committees are established by the president or the President's Office through separate resolutions in order to conduct specific business, such as investigations.

ministers (14 of 23), as well as the president, were civilians (see Annex 3, NLD cabinet composition). Of the military-related cabinet members, three were active officers from the military-related ministries. Six ex-military members were vice president no. 1 (nominated by the military MPs), vice president no. 2 (nominated by the NLD MPs from the National Assembly), two former USDP ministers, the attorney general, and the cabinet secretary. Therefore, civilians comprised 60 percent of the first NLD cabinet, making this by far the most civilian-dominated cabinet in Myanmar since 1962. Soon after the government was formed, three additional ministers were appointed. These were the minister of education and the minister of electricity and energy, appointed in April 2016, and the minister of the State Counsellor's Office, appointed in May 2016. Therefore, after May 2016, the NLD government comprised 22 ministries. In November 2017, two more ministries were created, the Ministry of the Union Government and the Ministry of International Cooperation. At the end of a two-year period, there were 24 ministries and 23 ministers.

The NLD government relies mainly on unelected individuals for its cabinet positions, rather than on elected MPs. Cabinet members include former civil servants, medical doctors, writers, and business owners. In the spring of 2016, only 35 percent of NLD cabinet members came from parliament. Two years later, in early 2018, the percentage of elected MPs in the cabinet had decreased even further, to 21 percent, as detailed in annex 3. The NLD cabinet also lacks gender balance, despite the fact that a woman leads the country. Although she plays multiple roles in the Union government, the SC has been the only female cabinet member since the NLD government took office (see annex 3).

The cabinet meets every two weeks on a Thursday. Although the meeting is formally regarded as a decision-making forum, the NLD cabinet appears to play a relatively insignificant role in policy decisions. Depending on the complexity and importance of the matter, line ministers present their issues to the state counsellor, who is also the minister of the President's Office and the



First is the overwhelming legitimacy of State Counsellor Aung San Suu Kyi, a prominent opposition leader for almost 30 years and a Nobel Peace Prize laureate. Ministers, many of whom are fairly new to the government system, may be too intimidated by her importance and renown to take much



ultimate decision-maker. Unsurprisingly, the country's de jure leaders (the president and two vice presidents) appear to play insignificant roles in major policy decisions. Rather than acting as a forum for debate, the cabinet is a place where ministers inform the SC and other cabinet members of their plans of action for their portfolios. As a result of this lack of discussion and debate during cabinet meetings, there is limited coordination among ministers.¹³⁵

The cabinet-committee system introduced by the previous USDP government has been retained by the NLD government, with cabinet-committee meetings held weekly. The SC chairs three key cabinet committees—on the economy; foreign affairs; and national security, stability, and rule of law. Delivery-unit teams, which were led by deputy ministers under the USDP government, have been discontinued by the NLD. However, the submissive culture of cabinet and cabinet-committee meetings has continued from previous governments, and may be even more extreme for two reasons. First is the overwhelming legitimacy

of State Counsellor Aung San Suu Kyi, a prominent opposition leader for almost 30 years and a Nobel Peace Prize laureate. Ministers, many of whom are fairly new to the government system, may be too intimidated by her importance and renown to take much action. Second, the dramatic decrease in the number of ministries, and the lack of deputy ministers in most, has increased the workload of ministers and keeps them constantly busy. Ministers spend their time dealing with administrative matters such as signing documents and making routine decisions—tasks that were previously assigned to deputy ministers. As an example of the greater workload, due to the SC combining two technically demanding ministries, the Ministry of National Planning and the Ministry of Finance, into the Ministry of Planning and Finance, that minister now oversees 21 different departments.¹³⁶ Overloaded ministers are less able to develop long-term strategic plans related to their ministries.

Further, according to some observers, Daw Aung San Suu Kyi has increasingly empowered key ministers to oversee important government priorities, such as the peace process, and to play wider coordinating roles across other ministries. U Kyaw Tint Swe, minister of the State Counsellor's Office, plays a leading role in the peace process. U Thaug Tun, who acted as national security advisor and was promoted to the cabinet as minister of Union government, increasingly plays a role in which he is positioned to coordinate the work of other ministries.¹³⁷

National Reconciliation and Peace Centre. The NLD government established the NRPC in July 2016 to replace the MPC, which was the powerful, semigovernmental think tank that the USDP government set up to support the peace process. The NRPC is effectively a working committee of 13 individuals: the SC, the minister of the State Counsellor's Office (SCO), the chair of the Preparatory Committee for the Union Peace Conference–21st Century Panglong, civilian and military-appointed ministers, military generals, ethnic parliamentarians, the attorney general, and the deputy minister of the SCO. There are three significant differences between

the NRPC and MPC. First, the NRPC now functions more as a normal government body, whereas the MPC functioned as a semigovernmental organization that exempted participants from rigid bureaucratic procedures and provided greater remuneration to staff. Second, while the MPC included many academics and technical experts who had returned from exile, there are fewer academics and technical experts in the NRPC. Third, unlike the high-level mandate of U Aung Min, the super minister who headed the MPC, the NRPC's mandate to play a leading role is less clear. There are a few individuals, however, who help with the SC's decision-making regarding the peace process, both within the NRPC and outside of it. Some of these are foreign experts, while others are Myanmar nationals with diplomatic experience.

4.3 OTHER POLICY ACTORS AND INITIAL POLICY PRIORITIES

Outside of the core executive, a range of other actors play important policymaking roles. Firstly, it is important to highlight that the NDSC has not played a strong role in the policymaking of the NLD government. Although NDSC meetings were held approximately monthly under the USDP government, no NDSC meetings have been held since the NLD took power in 2016. Two NDSC-like meetings did take place in the NLD's first year, but they did not follow official NDSC procedure, and their decisions could not be recorded as official acts of the NDSC. Although the Tatmadaw since early 2016 has repeatedly urged the NLD government to hold NDSC meetings, doing so is the prerogative of the president, who appears to have decided that there currently is no need, despite the situation in Rakhine and the ongoing peace process. The lack of NDSC meetings indicates that trust between the NLD government and the military needs to develop further. Shaping this relationship is the fact that the military holds six of the 11 seats on the NDSC, and they stand to win in any disagreement.

Parliament's role has also shifted somewhat from the USDP era. Most significantly, the personal rivalries between President Thein Sein and

Speaker Shwe Mann during the USDP government do not exist between Daw Aung San Suu Kyi and the speakers of the lower and upper houses of parliament.¹³⁸ The state counsellor's unique position allows her to play an especially strong role in both the executive and legislative branches, and with her own history as an MP, Daw Aung San Suu Kyi has continued to be the leading actor shaping the priorities and functioning of parliament. In this way, divergent policy priorities are not as evident in the NLD government as they were for the USDP, when President Thein Sein and Speaker Thura U Shwe Mann used their respective institutions to posture against one another.

Since March 2016, parliament has focused on a range of NLD priorities. These include rescinding authoritarian-era laws used to oppress political activists, such as the 1975 State Protection Law and the 1950 Emergency Provisions Act. The Telecoms Law was also amended, to reduce prison terms for those convicted under article 66(d) and to ban third parties from filing cases. The Peaceful Assembly and Procession Law, which had been used to imprison activists, was replaced. Parliament also abolished provisions requiring private households to register overnight guests, which had been used to harass political activists, from the Ward or Village Tract Administration Law. Laws also were passed to protect citizens' rights to privacy and security, such as by prohibiting unwarranted household searches and arrests and disallowing surveillance of individuals and their private communications without the approval of the president or Union ministers. Parliament passed the Senior Citizens Law, to improve the well-being of the elderly, and The Companies Act, which improved the environment for foreign investors. Parliament has also approved some bureaucratic measures, such as changing Myanmar's fiscal year in late 2017.

Another policy actor of growing importance in the NLD era is the Legal Affairs and Special Cases Assessment Commission. Although it existed previously (see the box below), the Commission has drawn significant attention because it is chaired by Thura U Shwe Mann. That Daw Aung San Suu Kyi chose to give a senior ex-general

Initial policy outcomes for the NLD government

- Multiple 21st Century Panglong Conferences to support peace process
- Additional signatories to the Nationwide Ceasefire Agreement
- Establishing mechanisms to respond to the humanitarian crisis in Rakhine State
- Removal of some onerous authoritarian-era regulations, such as one requiring registration of overnight guests in households
- Amendment of the Foreign Direct Investment Law and the Company Act

of the SPDC/SLORC junta, a leading member of the USDP, such a prominent role during the NLD government has been one of the more exceptional political developments since Myanmar's transition began in 2011. This commission has been increasingly important for the current parliament, driving much of parliament's agenda with its assessments of parliamentary bills. Thura U Shwe Mann has also played a ceremonial role, routinely representing the government in meetings with visiting international dignitaries.

Before concluding, it is important to outline some of the key policy goals of the NLD government. The government's work, of course, is ongoing, and it is not possible to give a comprehensive account of policy outcomes, but initial efforts can be described, and the NLD's election manifesto gives some insight into the party's policy priorities.¹³⁹ The manifesto pledged to improve the lives of Myanmar's people through the following priority policy areas:

1. *Ethnic affairs and internal peace*—encompassing the party's ambition to further the peace process and deliver a federal Union with balanced development across all states and regions
2. *Constitutional amendments*—encompassing the party's ambition to protect human rights

and democratic standards and to establish a federal democratic Union

3. *Good governance*—encompassing the party’s ambition to establish a system of governance that is fair and just
4. *Freedom and security*—encompassing the party’s ambitions with regards to economic development; support for workers, women and youth; strengthening the education and health systems; and protecting the environment

During its first two years in power, the NLD government was sometimes criticized by the media and civil society for not developing clearer policy strategies. In contrast to the USDP government, which had launched the Framework for Economic and Social Reforms (FESR) by its second year, the NLD government did not share

a comprehensive national development plan.

While some sectoral plans were developed, such as for economic reforms, they did not generally articulate comprehensive or detailed government policy goals. At the time of this writing, the NLD government was preparing a National Sustainable Development Plan, to be coordinated by the Ministry of Planning and Finance, that will presumably outline detailed goals and activities across a wide range of development sectors.

4.4 SECTION CONCLUSION

During the first two years of the NLD government, some initial policymaking themes have emerged that are worth considering in comparison to the preceding USDP government. The NLD government has introduced or retained a range of executive

The Legal Affairs and Special Cases [or Issues] Assessment Commission was first formed in November 2011 in the USDP-led Pyithu Hluttaw. A legal advisory body, its mandate is to provide support to the speaker and assist parliamentary committees in their work. It can also advise and liaise with the Union government and the President’s Office on any legal issues. The commission received Union-level status under the USDP government, but it did not have the power to submit bills.

Under the USDP government, the commission rapidly evolved into a powerful body, advising the two speakers on various legislative issues and the review of existing legislation. Controversies emerged, however, over the opacity of the commissioners’ work and their personal loyalty to the USDP speakers. Ordinary Union-level legislators and parliamentary committee members have also felt bypassed and marginalized by the work of the commission. The NLD legislature renewed its mandate on March 1, 2016, despite objections from some military-appointed parliamentarians. It designated 35 members, including former USDP parliamentarians defeated in the 2015 polls. Thura U Shwe Mann, the former speaker of the Pyithu Hluttaw, was appointed as its new chair. Members enjoyed legal protection to perform their functions, serving as an advisory body to parliament.

The commission became one of the most powerful engines of parliament under the NLD government. As of January 2016, less than 10 months after its formation, the commission had reviewed over 395 bills, 198 of which required amendment, repeal, redrafting, or deactivation. While the commission’s duties and authority were curtailed in November 2017, it still has significant power to negotiate and cooperate with relevant government departments and agencies in drafting bills. With U T Khun Myat, former USDP lawmaker and close ally of U Shwe Mann, becoming the speaker of Pyithu Hluttaw in March 2018, the commission can be expected to play an increasingly important role for the remaining three years of the NLD government.

Source: Egretreau, R. 2017. *Parliamentary Development in Myanmar: An Overview of the Union Parliament, 2011–16*. Yangon: The Asia Foundation.

policymaking actors: the state counsellor, the minister of the State Counsellor's Office, the State Counsellor's Office itself, and the wider cabinet. In contrast to the USDP government, the NLD government has not created official super cabinet minister or coordinating-minister positions within an empowered President's Office or anywhere else, but it has more recently shown signs of vesting certain individuals, such as the minister of the State Counsellor's Office, with greater authority to coordinate actions across government. In contrast to the USDP government, and for better or worse, there are no major frictions between the executive and the legislative branches. In response to the 2008 constitution's provisions that prohibited Daw Aung San Suu Kyi from being president, the state counsellor and the State Counsellor's Office were created and are now the central actors in national policymaking.¹⁴⁰ Given the NLD's super-majority in parliament and the iconic political status of "the Lady" in Myanmar, the executive and legislative branches are now in effect operating under the leadership of the state counsellor. This means the state counsellor is the de facto leader of the country, and it is widely understood that all the important decisions aside from defense and security matters are made by her and through her office.

Considering these developments, and in contrast to the preceding era of USDP government with its dominant presidency, the tensions and complexities surrounding this new post of state counsellor have become crucial factors in executive policymaking. Most significantly, these tensions involve the relationship between the

NLD government and the Tatmadaw, especially the latter's emphasis on the 2008 constitution and the prominence it gives to the presidency. The Tatmadaw regards the 2008 constitution as the "rules of the game" for government and the country's political actors. It is likely that the Tatmadaw accepted the transfer of power from the USDP to the NLD party because the 2008 constitution preserves the military as the country's most powerful institution. Therefore, the military will act to safeguard its institutional power under the charter, and views the role of president as extremely important. Daw Aung San Suu Kyi's famous declaration that she would be "above the president" obviously creates stark tensions between the Tatmadaw and her elected government over who exactly should drive policymaking in the country.

How these tensions over conflicting interpretations of the 2008 constitution evolve will shape the policy outcomes achieved by the NLD government and determine how the country's political settlement eventually plays out. The more mundane aspects of policymaking, such as technical capacity, bureaucratic structures, and information sharing, are overshadowed by significant questions of constitutional reform, democratization, and civil-military relations. This does not mean that the NLD government cannot improve its approach to policymaking, but it must consider multiple needs, working to strengthen the current structures and competencies of key policymaking agencies while also accepting that the transitional nature of Myanmar means major structural reforms still lie ahead.

Section 5

FRAMING A STRONGER DISCOURSE ON POLICYMAKING IN MYANMAR

By analyzing their core executives, the previous sections of this paper have examined how Myanmar’s contemporary governments have approached executive policymaking, particularly the transitional governments led by the USDP and NLD since 2011. This section suggests ways to further refine a conceptual understanding of Myanmar’s policymaking processes and actors, to help the government and development partners strengthen policymaking in the country. Note that this section is concerned with practical improvements to policymaking in Myanmar. While a long-term political settlement will still require major structural reforms—including the clarification of “democratic-federalism” governance structures and civil-military relations and, ultimately, constitutional reform—practical steps can improve policymaking in the near term.

5.1 UNDERSTANDING THE POLICY CIRCLE MODEL FOR MYANMAR

This section introduces a conceptual framework, the Policy Circle Model, first introduced by academics, that allows for a comprehensive articulation of the policymaking process from beginning to end.¹⁴¹ By applying this model, practitioners in Myanmar can analyze the strengths and weaknesses of Myanmar’s contemporary policymaking efforts, such as how an issue is chosen for policy debate or reform, how government in turn weighs options to address the issue, what formal and informal mechanisms exist to push the issue through the policymaking process, and how policy decisions are ultimately made. The value of the Policy Circle Model is that it permits comparison between idealized, best practices and current practices in Myanmar.

This illustration of the Policy Circle Model shows the five stages that policymakers continually work through, to varying degrees of success, in any given country. This section will detail each stage and place it in the context of contemporary Myanmar. The intent is to guide future discussions of how Myanmar’s own policy circle can be strengthened.

Agenda setting: how an issue arises as a policy consideration for government

This stage of the Policy Circle Model focuses on recognizing political, economic, social, and other problems that require government intervention. Problem recognition and issue selection are the two main components of the agenda-setting stage. Both the general public and special-interest groups are concerned with a wide range of topics,

FIGURE 4: Policy Circle Model



especially those that are prominent in the news media, but not all public issues are placed on the government’s policy agenda. Instead, the government selects issues to address based on its overall policy goals. Sometimes the issues that government chooses to address will differ considerably from the public’s agenda, while at other times the two may be largely in sync.

Different groups of actors attempt to influence both the public’s and the government’s agendas and the process of issue selection. Depending on the type of government—authoritarian, democratic, or hybrid—and the government’s policymaking practices, the policy actors that set the state agenda may differ. Under Myanmar’s military governments prior to 2011, the military dictator and his close circle of senior generals were the policy actors who set the government agenda. During these regimes, the public had little or no influence on problem recognition and issue selection by the government. The influence of nonstate news media, think tanks, civil society organizations (CSOs), and international nongovernmental organizations (INGOs) was inconsequential. Thus, in the decades of military rule, the issues on the public’s agenda were largely different from the issues on the state’s agenda.

Under military rule, most of the public agenda was unaddressed by the government. While the public wanted better health care, education, and living conditions and also lower commodity prices, the military government focused on big infrastructure projects, such as building the new city of Nay Pyi Taw, and increasing the military budget to ensure the durability of the military regime. With the start of the democratic transition in 2011, more of the public agenda was reflected in priorities of the USDP-led transitional government. The budget for health care in FY2010–2011 was MMK 92 billion, but as the transition began, the health-care budget for FY2012–2013 increased significantly, to MMK 390 billion.¹⁴² Under the USDP government, the influence of nonstate actors on the government’s agenda setting and issue selection slowly began to grow. Nonstate news media and CSOs, national and international think tanks and research organizations, and international diplomats and business groups, which had long been silenced or ignored, started to play significant roles in ascertaining the public agenda and shaping the state agenda.

After 2011, the range of actors involved in setting the policy agenda expanded significantly. The newly established Union and state/region parliaments became a check-and-balance



Within the executive branch, the USDP government's policymaking mechanism expanded from the unitary sultanism of the military governments to include numerous key ministers. Ministers of the President's Office and several other line ministers in the inner circle of President Thein Sein, as well as the semigovernmental Myanmar Peace Centre, were influential in setting the USDP government's agenda.



mechanism that influenced the selection of issues on the government agenda. Within the executive branch, the USDP government's policymaking mechanism expanded from the unitary sultanism of the military governments to include numerous key ministers. Ministers of the President's Office and several other line ministers in the inner circle of President Thein Sein, as well as the semigovernmental Myanmar Peace Centre, were influential in setting the USDP government's agenda. Under the NLD government, the key actors defining the government's policy agenda are those close to the state counsellor—the minister of the State Counsellor's Office, the minister of Union government, and senior staff in the State Counsellor's Office and the

President's Office. In parliament, the Commission for the Assessment of Legal Affairs and Special Issues, whose head, Thura U Shwe Mann, works closely with the state counsellor, also plays an increasingly prominent role in prioritizing issues for policy consideration, such as which laws should be reformulated or designed anew. The role of the military is more significant in security-related policymaking, such as negotiating ceasefire agreements and defining the peace process.

Policy formulation: how policies are designed

During the policy formulation stage, alternative policy options to solve issues requiring government action are developed for consideration by the core executive, which will then select the best one. Key considerations are a policy's economic and social costs, political acceptability, and likely effectiveness.¹⁴³ Policy analysis is carried out at this stage when formal and informal actors seek information that will allow them to pursue their policy goals. For effective policy formulation, good-quality data is crucial at this stage. Incomplete data, questionable projections, and unreasonable assumptions will result in ineffective policy design and ultimately in failure to resolve the actual issue.

Since 2011, and depending on the policy issues that were placed on the government's agenda, the major policy actors working on policy formulation have been the president, the state counsellor, the vice presidents, and ministers and their deputies, as well as state/region governments, career civil servants, and legislatures. The formation of the cabinet under the NLD government and the creation of the newly consolidated Ministry of Planning and Finance (MoPF) are institutionally significant for developing and reforming government policies. The role of this newly consolidated ministry is to coordinate with different ministries and develop the country's national plans based on annual, short-term (five-year), and long-term (20-year) goals. The USDP government had previously developed the Framework for Economic and Social Reforms, which identified policy priorities for the period

When the government's agenda reflects the public voice: the Myitsone Dam project, 2011

The Myitsone Dam project was the first policy issue handled by the USDP government that reflected influence on the public agenda by the independent news media and CSOs. The \$3.6 billion dam project, which would send 90 percent of its power to China, was initiated by a 2006 agreement between the Myanmar government and China Power Investment Corporation (CPI). Public concerns arose that construction of the dam would displace thousands of people and adversely affect Myanmar's river system and rice-growing areas. Located at the confluence of the Mali and N'Mai Rivers, the project would also damage one of the world's eight biodiversity "hotspots." As a result of these issues, the construction of the dam became a serious concern for many citizens and local leaders in Kachin State (International Rivers 2011) but raising these concerns did not cause the military government to stop or review the project.

After March 2011, however, the USDP government faced strong opposition from the public and especially from the Kachin community, long-standing opposition leader Aung San Suu Kyi, and CSOs and their partners inside and outside the country (Mang 2011). The USDP government, however, had no legal obligation to address the issue. Public opposition could not force the government to stop the project, and some key cabinet members intended to continue it. The highest level of the government did appear to be influenced by the public agenda, however. President Thein Sein's government made the decision in September 2011 to suspend the dam project during their term of office (Su Mon Thazin Aung 2017). To earn legitimacy, the USDP core executive considered it imperative to address an issue that was clearly important to the public. This was the first issue the USDP government selected that reflected public sentiment. After five years of suspension under the USDP government, the issue of the dam arose again for the newly elected NLD government, which must decide either to resume the project, end it, or suspend it for its term in office. At the time of this writing in March 2018, the NLD government had made no decision.

2012–2015.¹⁴⁴ Although the long-term, 20-year plan is still in the process of implementation, there has been no continuation of FESR implementation under the NLD government, although the planned Myanmar Sustainable Development Plan might play a similar role in the future.

Overall, this situation highlights a challenging problem for Myanmar: extensive planning tools exist within Myanmar's bureaucratic structures and processes, but it is unclear how an elected government prioritizes its own policy goals, weighed against election promises, and then embeds them in the larger state machinery. According to interviews conducted with several mid-level officials from Union ministries, routine administrative policies—be they laws, bills, orders, or instructions—are mostly initiated by

individual ministries.¹⁴⁵ Those routine plans and projects are then sent to the MoPF to become part of the government's wider national policy.¹⁴⁶ Rather than addressing sector-specific policy issues as part of the government's wider reform efforts, individual ministries attempt to address issues in their respective sectors incrementally. For instance, there is no well-articulated policy expressing the Union government's approach to market principles—whether free market or interventionist. In September 2016, the Ministry of Hotels and Tourism called its decision to limit hotel licenses in some areas of the country part of the government's interventionist approach.¹⁴⁷ Two months later, the minister of commerce referred to free-market economic theories to justify government "inaction" on rising food prices as noninterventionist.¹⁴⁸ In general, then, there is

a weak link among Union ministries in formulating policies to address major policy problems, and government policy formulation is largely uncoordinated across ministries.

Since 2011, CSOs and other interest groups have become active contributors to policy formulation, contributing a great deal of information pertaining to specific problems and their preferred solutions. For instance, in 2011, environmental groups and local CSOs gathered data on the risks of continuing the Myitsone Dam project in Kachin State. In another example, the NLD party, while in opposition under the USDP government, gathered five million signatures from citizens across the country to support their proposed amendments to the 2008 constitution. The NLD then urged President Thein Sein to hold four-party talks between himself, heads of both houses of parliament, the military commander in chief, and opposition leader Aung San Suu Kyi. Both examples show that interest groups and political parties can play an important role in policy formulation on some issues, but these groups must submit their policy proposals to a formal actor, be it the relevant ministry or parliament, if they are to be implemented in action or law.

Policy legitimation: turning options into actual government policy

Policy legitimation, or adoption, can be understood as the selection and endorsement of policy decisions by legal authority. In Myanmar, depending on the type of policy, the endorsing authority may be either the Union or state/region legislatures or the Union or state/region governments. For more routine and administrative matters, individual ministries or government agencies such as the Union Election Commission can legitimate policy decisions. Ultimately, policy legitimation comes from a process of political interaction and debate that includes major interests and the airing of key issues and controversies.¹⁴⁹ Depending on the complexity of the policy issue, this form of debate can happen in or outside of a legislative body or within the executive branch itself.¹⁵⁰ Additionally, it is important that policy-legitimation processes



Rather than addressing sector-specific policy issues as part of the government's wider reform efforts, individual ministries attempt to address issues in their respective sectors incrementally.



receive public consent and support. Policies that are adopted without such support face serious implementation problems and risk outright failure.

In Myanmar's policymaking, as in many other countries, some policy decisions are easier to make, such as reforming an individual ministry's regulations, while others are distinctly harder, as they require developing a new law or new regulations or establishing a new government program. A bill becomes law after the Union parliament approves it and the president signs it. This, however, can be problematic when there are differences between the executive and the legislature that create tensions and blockages in policymaking processes. For example, as discussed previously, under certain circumstances the 2008 constitution allows a bill to be converted into law with parliamentary approval alone, even if the president refuses to sign the bill. Thus, the 2008 constitution diminishes presidential power over lawmaking, especially when there is friction between the executive and parliament. Notably, under the USDP government, President Thein Sein refused to sign 10 bills that parliament nevertheless successfully enacted.¹⁵¹

Unorthodox policy legitimization: Myanmar's peace process

Myanmar has one of the world's longest-running civil wars, pitting the national government and military against a range of EAOs, in some cases since the early days of independence. In August 2011, the USDP government and multiple EAOs entered into talks to resolve their conflicts, setting in motion a national peace process. Under the previous military governments, ceasefires with EAOs were negotiated directly by the military. With the reintroduction of parliamentary democracy, the USDP government created its own dedicated team to negotiate peace between the military and EAOs. These efforts drew some complaints from members of parliament, who objected to their lack of transparency, the absence of parliamentary involvement, and the use of foreign funds to support the process (*Burma News International* 2014). Nevertheless, in October 2015, the USDP government and eight EAOs signed the Nationwide Ceasefire Agreement and established the Joint Monitoring Committee, to monitor compliance with terms of the ceasefire, and the Union Peace Dialogue Joint Committee (UPDJC), to pursue ongoing political dialogue. Comprising 16 representatives from the government, the military, parliament, political parties, and signatory EAOs, the UPDJC became the key decision-making body of the peace process. The NCA laid out a comprehensive "roadmap" for the peace process, consisting of seven steps: (1) sign the NCA, (2) draft and adopt a Framework for Political Dialogue, (3) conduct a national political dialogue based on the Framework, (4) hold a Union Peace Conference, (5) sign the Pyidaungsu (Union) Accord, (6) submit the accord to the Pyidaungsu Hluttaw (Union parliament), and (7) implement all provisions of the Pyidaungsu Accord.

Seven hundred participants attended the USDP government's first Union Peace Conference in January 2016. EAOs that had not signed the NCA were excluded. The Union Peace Conference has convened twice more since the NLD government took office, now designated the "Union Peace Conference–21st Century Panglong," and two new EAOs, the New Mon State Party and the Lahu Democratic Union, have signed the NCA. Fighting continues, however, between the military and EAOs that have not signed. It is essential that this fourth step of the roadmap achieve genuine policy legitimization among the broadest range of stakeholders, because agreements signed at the Union Peace Conference will attempt to establish the foundations of a sustainable peace, including the future shape of federalism in Myanmar. Once the Union Peace Conference has produced an agreement, step six—submission to the Union parliament—will be largely symbolic, leaving little for lawmakers to debate and amend.

The second 21st Century Panglong Conference arrived at 37 basic principles, but they were not adopted without controversy. Some participants, especially the EAOs and the ethnic political parties, questioned the government and military commitment to the NCA, the lack of transparency, and the domineering role of the UPDJC in formulating the 37 principles. They also disagreed with the rule excluding nonsignatory EAOs from the national political dialogue (step three of the roadmap) and the Union Peace Conferences. Certainly, a process of policy adoption/legitimation that excludes the voices of EAOs collectively representing an estimated 80 percent of EAO armed strength in Myanmar is problematic on its face. What is more, the majority of these nonsignatory EAOs do not intend to sign the NCA, and have pushed the government to accept an alternative framework. While the Union parliament may adopt and legitimize the 37 principles of the Union Peace Conference, successful implementation of the roadmap to peace will remain a dubious prospect as long as it is unable to integrate the voices of these dissenting national stakeholders.

In contrast to some of the USDP's more overt tensions, NLD MPs have generally maintained strong intraparty cohesion.¹⁵² Where tensions have existed, they have typically been between the NLD and military MPs. Prominent examples have included military MPs' boycott of the vote to create the state counsellor position, their refusal to extend the term of the Legal Affairs and Special Cases Assessment Commission chaired by Thura U Shwe Mann, and tensions over the defense minister's request to the Pyithu Hluttaw to label the "northern alliance" of ethnic armed organizations a coalition of "terrorist organizations." The most notable lack of policy legitimation concerns the NLD's long-standing goal of constitutional reform. Changing the 2008 constitution requires that more than 75 percent of MPs agree. Given that 25 percent of MPs are military appointees, any proposal to change the constitution significantly will likely be voted down. With the likelihood of defeat in a parliamentary vote, the NLD government has yet to initiate any constitutional-amendment efforts since taking office. This leaves a key NLD electoral promise unfulfilled. Thus, the 2008 constitution continues to play a critical role in setting the parameters for policy legitimation and adoption in Myanmar. On the other hand, no bill proposed by the NLD government or NLD lawmakers has been rejected by parliament. Despite objections from the military MPs, the NLD government has still been able to enact laws with majority support in parliament.

Lastly, it is important to frame a major policy issue that will be particularly challenging for legitimation—the national peace process. The current "rules of the game," as set by the 2008 constitution, are questioned by key stakeholders, namely ethnic armed organizations (EAOs). This means that major decisions coming out of the peace process negotiations can be considered "extraconstitutional" or "extraparliamentary," as they are not made within the confines of the current constitution and in fact may require a new constitution or major amendments to the current one. In such a situation, although parliamentary endorsement may occur at a later step, it may be largely symbolic, as the agreements were made through the peace process rather than

in parliament. Whether policy is developed extraconstitutionally or through parliament, it is important that the policy adoption and legitimation process receive public consent and support. Policy adopted without such legitimation faces serious problems at the implementation stage. At worst, it will largely negate any chance of success during the implementation process.

Policy implementation: how policies are put into practice

Implementation follows once a policy has been formally legitimated. It consists of the set of activities required to put the policy into effect.¹⁵³ A bill becoming law is just the beginning of government activity that will affect real life for citizens and businesses. At this crucial stage, insufficient state administrative capacity can result in an implementation gap between the policy's intention and the actual results. A state's administrative capacity consists of four different faculties: delivery capacity (the ability to deliver public goods and services effectively), coordination capacity (the ability to mobilize and align the state's functions), regulatory capacity (the ability to execute the control functions of the state), and analytical capacity (the ability to gather and analyze information from various sources).¹⁵⁴ Administrative capacity by itself is an incomplete indicator of the government's ability to implement policy. Successful implementation of a policy or program also requires good coordination between departments and the use of a well-designed "policy instrument," a tool used by the government to pursue its policy goals. Several scholars have offered typologies of policy instruments. Bridgman and Davis (2013) identify four types:¹⁵⁵

- Regulation—using legislation and regulatory authority
- Economics—using the spending and taxing powers of government
- Advocacy—informing, educating, or persuading
- Direct action—delivering services

Depending on the government's administrative capacity, the right combination of these instruments can provide a coherent implementation strategy. On the other hand, weak

administrative capacity, lack of coordination, or the wrong combination of the four policy instruments will produce incoherent policy implementation and failed policies, as has often been the case in Myanmar's contemporary policymaking efforts. Long-standing practices of militarization and central economic planning have left Myanmar with poor capacity to deliver public goods and services (poor delivery capacity), coordinate government agencies (poor coordination capacity), effectively enforce rules and regulations (poor regulatory capacity), and gather and analyze information under various policy frameworks (poor analytical capacity).

Particularly challenging for both the USDP and the NLD governments, but particularly for the latter, has been adjusting the size and focus of the bureaucracy and its political leadership to achieve desired reforms. The NLD's 2015 election manifesto promised a policy of "spending less and saving more" by forming "lean and effective government" and broadening the tax base. In the face of weak administrative capacity, however, policy implementation has been much harder than expected. The government reduced the number of ministries to 21 from 36 and eliminated all deputy-minister positions, claiming it would save nearly MMK 5 billion (USD 4.13 million) over its five-year term. The newly appointed ministers, most of them unfamiliar with the administrative functions of government, quickly found themselves overloaded with additional duties by the consolidation of ministries and the elimination of deputy ministers.

Under the USDP government, deputy ministers had been responsible for making administrative decisions, while ministers generally handled political issues. After downsizing, however, the NLD's ministers had to handle both political and administrative duties themselves, resulting in chronic operational challenges. The NLD government also sought to broaden its revenue base through improved tax collection, but despite an information campaign on state-owned media urging citizens to pay their taxes, the government was unable to achieve significant improvements, due to low administrative capacity. A weak tax-compliance system, persistent bureaucratic red

tape, and systemic corruption largely thwarted the tax effort. Despite reducing spending on cabinet positions, the NLD government did not achieve its intended result of reducing government spending, nor was it able to significantly improve tax revenues, and the FY2017–18 budget included higher spending *and* higher deficits. As a result, after a year in office, the NLD government was forced to review its small-government and spending-less policies. In judging the feasibility of effectively implementing a policy, then, it is important to consider both the right combination of policy tools and the state's capacity to use them.

Another ongoing theme of policy implementation that is significant throughout Myanmar's entire policy cycle is the proclivity for forming special committees and commissions. Committees and commissions are a common tool of policymaking around the world, but in Myanmar, where the bureaucracy is weak and elected officials are still generally inexperienced, these committees and commissions can be an obstacle rather than an aid to policymaking. As seen in the illustration below, a Burmese newspaper article from 1961, this has been an open debate in the country for decades. It may often be more effective to conduct policymaking and implementation through the regular order of cabinet meetings and parliamentary committees than to form dedicated commissions that bypass the formal, institutional structures of government. While special policymaking bodies may be called for in exceptional circumstances, frequent special committees and commissions can marginalize and weaken the formal structures of government. Complicating this, however, are the previously highlighted civil-military tensions stemming from the 2008 constitution, such as the strained relations over the role and convening of the NDSC. Under such circumstances, an elected government may wish to form special committees or commissions to retain influence over the national policy agenda.

Policy evaluation and termination: assessing the effectiveness of a policy

During these last two stages of the policy circle, an

assessment is made to evaluate whether a policy is functioning well and, if it is not, to terminate or revise it in an appropriate manner. Policy analysts search for evidence that an implemented policy is meeting its goals and objectives.¹⁵⁶ The effectiveness of an implemented policy can be measured not only by its tangible outcomes but also by whether the public sees it as legitimate and effective and hence supports it. Some policies may be working well, but if they are controversial and lack public support, the government should review them. A policy evaluation is generally conducted to examine the effects of a policy and to evaluate its necessity, efficiency, and validity in order to improve the planning and implementation process.

This stage of Myanmar's policy circle is particularly weak. Under the military regimes, there was a reluctance to admit to policy failures, much less to systematically adjust weak policies. More generally, as discussed before, there is no strong analytical capacity for rigorous policy evaluation either in the ministries, in oversight bodies such as parliamentary committees, or in outside commissions. As a result, policy evaluations that do occur in Myanmar tend to be ad hoc and informal rather than formal processes relying on established government mechanisms, and they do not appear to have made a significant contribution to government policy decisions.

There have been examples of evaluations that resulted in changes to underperforming policies in Myanmar, and there have been examples of sticking to policies despite their acknowledged failure. As discussed above, the NLD's small-government policy did not work well in its first year, and after evaluation, the government decided to revise the policy and hire deputy ministers in the government's second year.¹⁵⁷ This move increased the capacity of the government's senior ranks both to manage routine government functions and to push for some reforms. In contrast, although many state-owned enterprises (SOEs) have been losing money for decades, as repeatedly highlighted in economic assessments and government budget documents, the USDP and the NLD governments both have allowed money-losing SOEs to stay in

business, regardless of their negative outcomes and lack of public support.

5.2 ACHIEVING BETTER POLICY COORDINATION IN MYANMAR

The Policy Circle Model provides a useful conceptual framework for understanding policymaking processes involving a wide range of actors, including the public. The core executive of any government needs to ensure internal coordination. The concept of policy coordination within a country's core executive can be understood as the "bringing together of diverse elements into a harmonious relationship in support of common objectives."¹⁵⁸ Emphasizing aspects of policy coordination within the core executive can help us to understand the inherent complexities and ambiguities of policymaking overall, which is essentially a political and social process. This means studying the relationships of the various actors within the core executive, and then the relationships of the core executive with other state and nonstate actors.¹⁵⁹ It is also useful to consider policy coordination in terms of "vertical" and "horizontal" interaction. Horizontal interaction, such as the interaction between ministers, occurs between actors of parallel capacity, power, and rank. Vertical interaction, such as that between a president and ministers, or ministers and senior civil servants, occurs between actors at different levels of the government hierarchy.

There is a wide range of types of policy coordination. A useful articulation of this is found in the Policy Coordination Scale, which ranks the different types of coordination capacity of a national government.¹⁶⁰ The lower levels of the nine-point coordination scale represent what might be called the "simpler" competencies, such as the capacity of individual ministries to make simple decisions, while the upper levels of the scale represent the ability of government to direct and manage coherent national strategies. Although somewhat idealized, the scale gives a sense of the types of policy coordination that can be found in a national government. The various levels are not mutually exclusive, however;

FIGURE 5: Policy Coordination Scale of Hay and Wright (2002)



indeed, “the components of coordination capacity are cumulative in the sense that the higher level of coordination functions depend on the existence and reliability of the lower ones.”¹⁶¹ In sum, the more levels of policy coordination that are routinely achieved, the better the overall functioning of the government.

This paper has chronicled how the nature and patterns of policy coordination under both the USDP and the NLD governments have changed significantly from those of previous, military regimes. Both governments have been, in effect, “transitional,” as Myanmar has indeed been moving towards democracy since 2011. There are now more actors involved in policymaking, with greater transparency and public engagement, than there have been for decades. However, Myanmar’s transition is dependent on achieving extensive policy reforms to overcome decades of dictatorial rule, economic decline, and civil war. Strengthening the ability of Myanmar’s senior policymakers—its core executive—is therefore imperative for the whole country. This means improving horizontal coordination between ministries as well as vertical coordination between the chief executive and ministers.

This section will examine the degrees of the Policy Coordination Scale, explaining the different types of coordination capacity that a national government may ideally possess, and applying this to the context of Myanmar. As with the Policy Circle Model, efforts to improve policymaking in Myanmar can benefit from this conceptual framework to guide practical discussions of strengthening existing policymaking.

Level 1: Independent decision-making within ministries. Ministers of the USDP and NLD governments have enjoyed a higher degree of freedom to make independent decisions within their ministries than ministers of the military governments. Unlike those governments, in which ministers acted as policy implementers rather than policy initiators, ministers of the transitional governments could introduce policies and bills on nonpolitical, administrative issues on their own initiative. Although decision-making has been liberalized compared to the past, there is still room for improvement, particularly on cross-sectoral issues. Ministerial workloads have increased due to the establishment of state/region governments in 2011 and the consolidation of ministries by the NLD government. Formal

coordination within ministries occurs at executive committee meetings, which are attended by permanent secretaries and directors general, who receive information on cross-departmental issues. These senior civil servants are therefore aware of cross-departmental issues within the same ministry, while more junior civil servants only focus on duties within their own departments. Therefore, at the middle and lower levels of Myanmar's bureaucracy, departmentalization and compartmentalization persist in terms of information sharing and policy coordination. An inherited bureaucracy that is often unaccountable and corrupt, compounded by overlapping and archaic regulations, still poses a challenge to effective, independent decision-making within the ministries. Measured against the Policy Coordination Scale, however, Myanmar's current policymaking efforts do exhibit some competencies at this level, and with some refinement it would be relatively easy to strengthen them further.

Level 2: Formal and informal communication of information with other ministries. During the transitional governments, information has flowed mostly through formal channels between ministries. This flow has generally taken the form of presidential decrees, Union government instructions, inter-ministerial meetings and workshops, ministerial orders, and so on. The flow of information between civilian-led ministries and military-led ministries has at times been limited, particularly security-related information. There is evidence of “departmentalism,” in which ministers, deputy ministers, and senior civil servants have access primarily to information about their own activities and programs, and securing information about government efforts elsewhere requires formal requests. The exceptions to this are senior civil servants and ministers in a few select ministries and offices—the Ministry of the President's Office under the USDP government and the Ministry of the State Counsellor's Office under the NLD government. Ministries are now routinely asked to provide information to parliament as well as the public, due to the arrival of media openness in late 2011. This has generally enhanced

interministerial information flow. Nonetheless, informal communication between ministries remains weak. This in turn has impeded both vertical and horizontal coordination. After decades of dictatorship, overcoming a “need-to-know” mindset in government will take time, but interministerial communication is certainly a competency that could be strengthened relatively easily.

Level 3: Bilateral consultations with other ministries. Although minister-to-minister communication has been apparent during the transitional governments, interministerial consultations between civil servants has remained weak. A ministry may consider advice or suggestions from another ministry on minor matters, but suggestions for major changes usually require a higher authority. If a major policy shift is in question, perhaps to coordinate policies between ministries, ministry staff report to their minister, and that minister consults a higher authority—the president or a super minister under the USDP, or the state counsellor under the NLD government.

Level 4: Avoiding public divergence between ministries. The government's ability to speak with one voice was relatively weak in the first half of the USDP government. Individual ministers announced their own policy initiatives, sometimes contradicting other ministers. This was mostly because an explicit reform agenda had not been established during the initial days of the USDP government. During the second half of its term, the government developed some mechanisms to maintain one voice and launched the FESR. The deputy minister of information or the ministers and senior civil servants of the President's Office acted as the president's spokespeople, conveying the government's positions to the public through traditional and social media. Under the NLD government, a senior civil servant from the State Counsellor's Office, who held a similar position in the USDP government, makes official statements through social media and press releases.¹⁶² It is notable that both governments seem to have built their communication strategies around individuals

rather than institutions. In both, the Ministry of Information's role has in key ways been secondary to the roles of spokespersons in the President's Office and the State Counsellor's Office. In the future, it will be important to better institutionalize government communication strategies based on more explicit government plans and policy goals.

Level 5: Interministerial search for agreement. This stage is particularly important for successful policy coordination. Generally, when they exist, policy disagreements are most likely to be raised and discussed in cabinet-committee meetings. These were most often chaired by vice president 1 or 2 or a super minister under the USDP government, and by the state counsellor or vice president 1 or 2 under the NLD government. Due to Myanmar's recent history of military dictatorship, heavy compartmentalization practices still exist, meaning that most line ministers refrain from voicing their opinions on issues that are not directly relevant to their respective ministries. Instead of discussing divergent views during cabinet and cabinet-committee meetings, individual ministers are generally quiet and rarely involved in extended policy discussions. Disagreements have been resolved mainly through direct engagement with the super cabinet ministers or the president himself during the USDP government, and with the state counsellor and the minister of the State Counsellor's Office under the NLD government. Going forward, it may be useful to have more active discussions and debates among ministers during such meetings.

Level 6: Arbitration of interministerial policy differences. Unlike during the military regime, when arbitration of policy differences was in the hands of the junta leader, the transitional governments have left more room for several key actors to influence the head of the state's policy decisions or to offer other policy options. For instance, Minister of Industry U Soe Thane, who later became a super minister, was able to support President Thein Sein's decision to suspend the Myitsone Dam project. Under the NLD government, the ability of cabinet ministers to influence the state counsellor's decisions is



Unlike during the military regime, when arbitration of policy differences was in the hands of the junta leader, the transitional governments have left more room for several key actors to influence the head of the state's policy decisions or to offer other policy options.



still relatively limited. When it is impossible to reconcile disagreements, an ongoing tradition of Myanmar's core executives has been to simply remove ministers from their posts. Over the course of the USDP government, the role of super cabinet ministers in arbitrating and coordinating policy direction for the government gradually increased, particularly after some of President Thein Sein's more vocal ministers were removed in the early years of that government. In a similar vein, the state counsellor has played the dominant role in arbitrating any policy disagreements, and more generally in setting the pace and direction of policymaking for the NLD government. At the time of this writing, two years of the NLD government's term have passed, and it appears that cabinet reshuffling will have been less frequent than during the USDP government. In the future, as Myanmar's democracy deepens, practices such as rigorous debate in cabinet meetings or the

involvement of technical bodies to assess policy options based on evidence may replace current practices such as removing ministers when disagreements arise or simply acquiescing to the senior-most leader.

Level 7: Setting limits on ministerial discretion. According to the 2008 constitution, vice presidents no. 1 and no. 2 play a lead role in setting the budget for Union ministries and the state/region governments. Control over budget decisions is an exceptionally powerful tool for limiting ministerial discretion. To date, however, the vice presidents have not been notably visible in major budget decisions during either transitional government. The president and his super cabinet ministers, in consultation with the minister in charge of a given sector, drove budget decisions under the USDP government, while the state counsellor has become the point person in major budget decisions under the NLD government. In the future, the annual budgeting processes will likely be key to delimiting the power of individual ministers to push their own policy agendas. Whether vice presidents will play a more leading role, as the 2008 constitution allows, remains to be seen. Additional means may emerge to delimit ministerial action, such as more detailed national development plans and frameworks.

Level 8: Establishing core executive priorities. The first half of the USDP government's term focused on trying to differentiate itself from the previous military regime. Clear priorities were economic liberalization, amending some repressive laws and regulations, and starting negotiations with ethnic armed organizations. After President Thein Sein declared his ambition for a second term, government priorities shifted towards national development projects and policies that would boost public support for the USDP in the 2015 election.¹⁶³ Political reforms, such as further media liberalization, gradually stalled over the second half of the USDP government's term, especially in the year before the 2015 election.¹⁶⁴ A core priority of the NLD, expressed in its 2015 election manifesto, was amending the 2008 constitution. Upon assuming power, however, the NLD did not

make this a government priority. Instead, the NLD government has prioritized the peace process and the NCA. Moreover, security and humanitarian challenges in Rakhine State have required the extensive involvement of senior-most leadership. In general, then, setting policy priorities, and sticking to them, has achieved only mixed success in Myanmar. While the USDP government had the FESR framework by 2012, the NLD government has been widely criticized for its lack of explicit and comprehensive national development plans after two years in power. In the future, developing a concrete national plan that sets short-term, medium-term, and long-term policy objectives and strategies is imperative for the NLD government. Hopefully, the planned Myanmar Sustainable Development Plan will help in this regard.

Level 9: Determining and adjusting overall government strategy. The 2008 constitution divides the prerogatives of executive policymaking between the president, as the official head of state, and the military commander in chief. The president's policy-coordination role, as the paramount actor, is largely confined to nonsecurity matters, while security issues are the constitutionally mandated domain of the military. As in other democracies around the world, the goal of political parties like the NLD or the USDP is to win elections in order to govern. This means they must promote policies that the public generally cares about. The military, on the other hand, is committed to preserving its powers under the 2008 constitution. This split in both constitutional prerogatives and institutional imperatives ultimately decrees what policy initiatives a civilian government can pursue on its own and what issues require collaboration with the military.

This makes Myanmar's policymaking at the highest level a distinctly awkward endeavor, as some of the most significant policy issues confronting the country since 2011 have underscored. The USDP government prioritized establishing a national peace process and achieved some success towards the end of its terms with the signing of the NCA. This was possible because the military made some

concessions.¹⁶⁵ Highly political and sensitive security discussions between the president and the commander in chief, conducted through the NDSC mechanism, resulted in adjustments to the government's overall strategy. Arguably, much of this movement was made possible by the close relationship and shared history of the USDP and the Tatmadaw. The NLD government has continued to focus on the NCA process, signing additional ethnic armed organizations to the agreement and holding political dialogues with those that have signed. Meanwhile, conflict in Rakhine has dramatically emerged as a dominant political, security, and developmental issue for the NLD government. Yet, in its first two years, the NLD has not convened a single meeting of the NDSC to discuss policy towards Rakhine or the peace process.

What this highlights is the complicated posturing of elected government and the military under

the parameters of the 2008 constitution. Creating new executive positions, such as that of state counsellor, may give the elected government some flexibility, but it does not change the basic parameters of the constitution or the real need to work with the military to develop effective policy across large swathes of the national agenda. Institutional mechanisms like the NDSC create paranoia in the elected government that it might further lose control over the direction of national policy. Nevertheless, three key ministries are led by the military, notably the General Administration Department of the Ministry of Home Affairs, which is the backbone of local administration across the entire country. Even on nonsecurity issues, then, elected civilian government in Myanmar must still find ways to work constructively with military-led ministries if it wishes to see change.

Section 6

CONCLUDING CONSIDERATIONS

The previous section introduced two conceptual frameworks—the Policy Circle Model and the Policy Coordination Scale—to help key stakeholders in Myanmar better frame future discourses on how executive policymaking could be improved. This concluding section will offer some final observations to highlight key points for such a discourse.

Executive policymaking in Myanmar should be understood on two axes: (1) the parameters of the 2008 constitution that define the civil-military relationship, and (2) the mechanisms of the state more broadly that already exist, and that could be improved without major constitutional reforms. While Myanmar is still in a state of transition, there are several interrelated tensions that will continue to shape how policymaking processes play out and how they may be strengthened. First, competing interpretations of the 2008 constitution, over who is empowered to set executive policies and what offices and means are at their disposal, are likely to persist. Second, the extent to which elected governments can manage and reform the machinery of the state, especially in the military-led ministries, will continue to be a source of contention.

In this general context, ongoing political jockeying over how the constitution might ultimately be reformed will make more immediate efforts to improve the state's existing policymaking architecture difficult. There will continue to be political tensions over the convening of executive policymaking bodies defined in the 2008 constitution, such as the NDSC, as well as the

establishment of executive offices not specifically named in the constitution, such as super cabinet ministers and the state counsellor. Massive changes to government structures precipitated by the 2008 constitution have inevitably led to disruptions of policymaking, and Myanmar's current leaders did not inherit a particularly useful tradition of policymaking from the preceding decades of military dictatorship. On top of this, the country has attempted to institute changes across a massive range of issues—a national peace process, democratization, and economic liberalization among others. Such an ambitious reform agenda would be daunting for leadership in any country, including those with long-established traditions and structures to support effective policymaking.

Though challenging, improvements to Myanmar's policymaking processes are not impossible. While some changes will have to wait for significant constitutional reform, much can be achieved through improvements to existing structures and processes, with an emphasis on stronger institutionalization. This means efforts to bolster the capacity of existing structures and processes, allowing wider participation, and using more

and better evidence. There is a pressing need for Myanmar’s government and its international development partners to consider more targeted support to improve policymaking in the country. This report has attempted to frame a wider discussion on this topic, but the next step would be to adopt improved policymaking as an explicit national priority—as a reform in itself. Two areas are worthy of special consideration: strengthening horizontal coordination mechanisms within the core executive, and “joined-up government” initiatives throughout the policy circle of the state machinery.

A common method in other countries to better coordinate policymaking is what the academic literature terms the “hierarchical approach.”¹⁶⁶ This entails creating more effective structures and mechanisms within the core executive to establish collective priorities and coordinate policy design and implementation across ministries.¹⁶⁷ Common activities under this approach include:

- strengthening the core competencies of key policymakers, such as the offices of presidents and prime ministers;¹⁶⁸
- establishing “coordinating ministries” that pull together a range of relevant ministries across sectors when useful; and
- emphasizing and strengthening traditional ministerial structures to better respond to specific issues within their sector.¹⁶⁹

Coordinating ministers have become increasingly common in Southeast Asia. For example, in Indonesia, which has been undergoing a democratic transition for almost two decades, strengthening policy coordination required the creation of four different coordinating ministries for key sectors: maritime affairs; political, legal, and security affairs; economic affairs; and human development and culture. These coordinating ministries facilitate policy discourse on cross-sectoral issues and manage the resolution of any disagreements across ministries. In a similar manner, Singapore’s government, which is widely considered to be one of the most efficient in the world, established three coordinating-minister posts for major government priorities: security and defense, economic and social policies, and

infrastructure.¹⁷⁰ As described previously, the USDP government did create cabinet super-minister posts, but these were not continued by the NLD government. Perhaps it is an option worth reconsidering.¹⁷¹

Applying concepts of joined-up government, also referred to as “whole-of-government” approaches, may also have value in strengthening policymaking in Myanmar.¹⁷² The reality, after decades of military dictatorship, is that policymaking has been an insular effort by exceptionally few people at the top of a rigid hierarchy. Moreover, the bureaucracy itself became overly compartmentalized during the dictatorships, with collaboration and innovation generally discouraged by the basic nature of authoritarian government. In a changing Myanmar, there is a need for more effective government, and fundamental to this is getting government ministries and agencies to work well together. The common objective of joined-up-government initiatives is to encourage collaborating, coordinating, and integrating service delivery.¹⁷³ In practical terms, joined-up-government initiatives can focus on several key themes:

- **Structure.** In order to make the existing policymaking mechanisms work better, it is important to emphasize traditional ministerial structures as a starting point and to make them as effective as possible. Examples include fully utilizing key roles such as the presidency and the vice presidencies to support government priorities, strengthening cabinet committees and subcommittees to more effectively coordinate ministerial portfolios, and creating incentives for ministers to be more active and assertive in policy coordination. Within the ministries, there is also value in establishing cross-departmental working groups and interagency task forces to improve policy implementation across ministries or to resolve multisectoral policy issues.
- **Reform enablers.** While existing institutions are weak, and new institutions are still evolving, the roles of individuals can be critical. Implementing a government’s vision requires more than political popularity. It necessitates “reform champions” and “change

agents” among government leaders—be they vice presidents, ministers, or cabinet members—who can provide clear, shared objectives and targets for government to achieve its strategic goals. These senior leaders will generally have strong technical backgrounds and can help set reform priorities and goals across sectors and ensure collaboration between ministries, working directly to overcome obstructions within the wider bureaucracy and the existing inefficiencies of policymaking processes. Additionally, senior technical advisors who assist government leaders—such as the president, the state counsellor, and individual ministers—can be effective change agents. They can help political leaders identify specific reforms or set reform priorities across sectors, and they can also improve collaboration among ministers on government policy goals by providing technical guidance. Senior technical advisors can obtain and channel technical support from governmental and semigovernmental advisory groups, policy institutes, and technical experts. This is especially useful when such support provides government policymakers with a range of policy options to consider.

- **Evidence-based policymaking.**

Myanmar’s long history of dictatorship, during which information was manipulated or obstructed, means that contemporary governments need much more extensive and reliable information sources. Expanding the evidence base of empirical information and ensuring that government leaders and the civil service enjoy broad access to it are critically important for creating synergies and fostering collaboration across government. Useful evidence for policymaking includes public finance data and information on development indicators, such as those regarding health, education, and economic growth. Research by policy institutes complements greater data access, and together these can help inform senior policymakers across the policy circle—for example, in making major policy decisions and monitoring policy implementation and effectiveness.

In summary, priorities for government action to strengthen policymaking in Myanmar could include the following:

1. Establish better policymaking as an explicit core-executive priority to strengthen policymaking actors and processes. Commission technical studies to assess how this might best be done. Engage development partners to support this.
2. Prioritize making existing bodies and processes more effective, such as cabinet meetings and the cabinet committees.
3. Better articulate and communicate government reform goals to allow for improved coordination and delegation within government and to garner support and input from civil society and the public.
4. Strengthen the bureaucracy to make it more supportive of policymaking—for example, by empowering permanent secretaries and key units of the ministries, such as research units, to play stronger roles throughout the policy circle. Socialize both senior leaders and civil servants to be more proactive and assertive in pushing positive change rather than waiting for top-down instructions.
5. Use better, more comprehensive data to support evidence-based policymaking. This means expanding sources of data to include nonstate media and civil society, and encouraging analysis rather than just the reporting of data within the bureaucracy.
6. Diversify the actors involved in policymaking—for example, by encouraging inputs from policy institutes, development partners, and civil society. Solicit more routine policy feedback from state/region governments.
7. Make more effective use of “reform enablers,” including both empowered and technically competent ministers and other senior government leaders as well as senior technical advisors, to initiate and drive policymaking.
8. Consider whether dedicated “coordination ministers” may be useful to catalyze and coordinate reform across priority sectors like the economy, the peace process, local government, and key social services.

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Annex 1

NLD UNION MINISTRIES AND CHANGES FROM USDP GOVERNMENT

No	Ministry under NLD government	Changes made from Ministry under USDP government
1	Ministry of Foreign Affairs	No Change
2	Ministry of Office of the President	Incorporate Ministry of President's Office No. 1 to 6
3	Ministry of Home Affairs	No Change
4	Ministry of Defence	No Change
5	Ministry of Border Affairs	No Change
6	Ministry of State Counsellor's Office	New Creation
7	Ministry of Information	No Change
8	Ministry of Office of the Union Government	New Creation
9	Ministry of Religious Affairs and Culture	Incorporate Ministry of Religious Affairs and Ministry of Culture
10	Ministry of Agriculture, Livestock and Irrigation	Incorporate Ministry of Agriculture and Irrigation and Ministry of Livestock and Rural Development
11	Ministry of Transport and Communications	Incorporate Ministry of Transportation, Ministry of Rail Transportation, and Ministry of Communication and Information Technology
12	Ministry of Natural Resources and Environmental Conservation	Incorporate Ministry of Mines and Ministry of Natural Resources, Environmental Conservation and Forestry
13	Ministry of for Electricity and Energy	Incorporate Ministry of Electric Power and Ministry of Energy
14	Ministry of Labour, Immigration and Population	Incorporate Ministry of Labour, Employment and Social Security, and Ministry of Immigration and Population
15	Ministry of Industry	No Change
16	Ministry of Commerce	Incorporate Ministry of Commerce and Ministry of Cooperatives
17	Ministry of Education	Incorporate Ministry of Education and Ministry of Science and Technology
18	Ministry of Health and Sports	Incorporate Ministry of Health and Ministry of Sports
19	Ministry of Planning and Finance	Incorporate Ministry of National Planning and Economic Development, and Ministry of Finance
20	Ministry of Construction	No Change
21	Ministry of Social Welfare, Relief and Resettlement	No Change
22	Ministry of Hotels and Tourism	No Change
23	Ministry of Ethnic Affairs	New Creation
24	Ministry of International Cooperation	New Creation

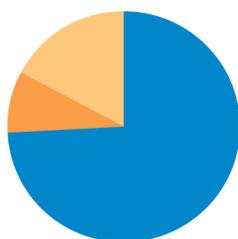
Annex 2

USDP CABINET COMPOSITION

2011 vs. 2015

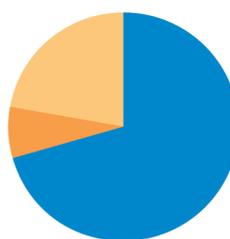
CIVILIAN / MILITARY

2011



Ex-military · 26
Active military · 3
Civilian · 6
Total · 35

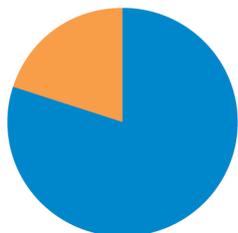
2015



Ex-military · 29
Active military · 3
Civilian · 9
Total · 41

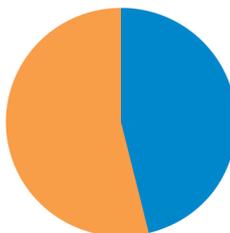
PARLIAMENTARIANS / NON-PARLIAMENTARIANS

2011



Parliamentarians · 28
Non-parliamentarians · 7
Total · 35

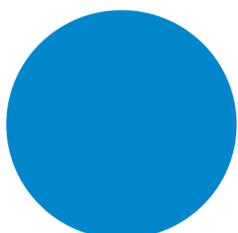
2015



Parliamentarians · 19
Non-parliamentarians · 22
Total · 41

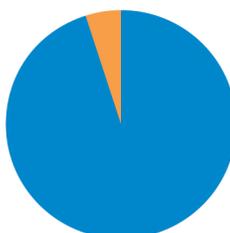
MALE / FEMALE

2011



Male · 35
Female · 0
Total · 35

2015



Male · 39
Female · 2
Total · 41

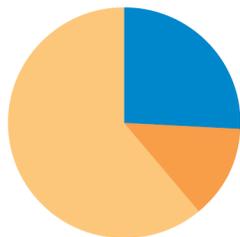
Annex 3

NLD CABINET COMPOSITION

March 2016 vs. March 2018

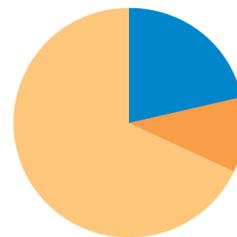
CIVILIAN / MILITARY

March 2016



Ex-military · 6
Active military · 3
Civilian · 14
Total · 23

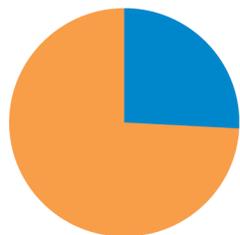
March 2018



Ex-military · 6
Active military · 3
Civilian · 19
Total · 28

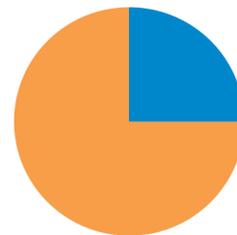
PARLIAMENTARIANS / NON-PARLIAMENTARIANS

March 2016



Parliamentarians · 6
Non-parliamentarians · 17
Total · 23

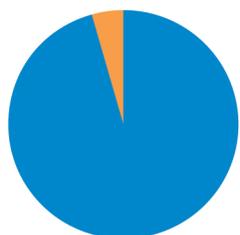
March 2018



Parliamentarians · 7
Non-parliamentarians · 21
Total · 28

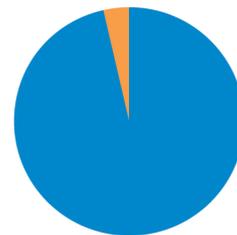
MALE / FEMALE

March 2016



Male · 22
Female · 1
Total · 23

March 2018



Male · 27
Female · 1
Total · 28

ENDNOTES

1. Howlett and Ramesh 1995, 4. Also see Dye 1972, Jenkins 1978, and Anderson 1984.
2. Gerston 2008, 3.
3. Rhodes 1995, 12.
4. Su Mon Thazin Aung 2017, 11.
5. To see these briefs: *Strengthening Government Policymaking in Myanmar* at <https://asiafoundation.org/publication/strengthening-government-policymaking-myanmar/> and *Strengthening Policy Institutes in Myanmar* at <https://asiafoundation.org/publication/strengthening-policy-institutes-myanmar/>.
6. Interviewees, engaged both for Su Mon Thazin Aung's PhD thesis and specifically for this paper, included cabinet super cabinet ministers, Union ministers, chief ministers, the directors general of the President's Office, Central Statistics Office, the deputy director general of the President's Office, permanent secretaries of the ministries, some former and current MPs, former and current government officials, journalists, and subject-area experts.
7. Placing priority on a system of checks and balances, and making a clear commitment to social progress, the 1947 constitution was similar to the American, British, French, and Yugoslavian constitutions (Cady 1960, 560; Holliday and Su Mon Thazin Aung 2017), and established a model with separation of powers, similar to that of the United Kingdom.
8. Furnivall 1960, 34.
9. The Chamber of Deputies was the lower house of the bicameral Union Parliament of Burma during the independence period from 1948 to 1962.
10. These ministers were, in turn, formally appointed by the president (Holliday and Su Mon Thazin Aung 2017).
11. Cady 1960, 560.
12. Saw Myint Maung 2013, 105.
13. Furnivall 1960, 63.
14. Holliday and Su Mon Thazin Aung 2017. Independent Burma suffered from a shortage of trained administrators because foreigners, mostly Indians, took many of the government positions under British rule. Over six months, from October 1947 to April 1948, nearly 58 percent of top-level civil servants resigned (Taylor 2009, 268).
15. In the Myanmar language this was known as *Pha-Sa-Pa-La*.
16. Before independence, the British asked Burman leaders to resolve the political status of ethnic minorities living in the frontier areas. The widely respected nationalist leader General Aung San developed the mutually acceptable political structure of a federal union, in which ethnic leaders would enjoy autonomy over internal affairs (Fink 2009, 17). Also, the 1947 constitution stipulated the right to secede from the Union within 10 years (articles 201 and 202).
17. Fink 2009, 19.
18. Trager 1966.
19. Taylor 2015.
20. However, the rise of Ne Win was not welcomed by some ministers within the core executive. Rumors started to circulate among the socialist-inspired ministers about a "drastic cabinet shake-up, presumably involving ousting the socialists" (Taylor 2015, 123). Therefore, the socialist core executive members prepared to leave their positions if Ne Win took over the government. The Pyithu Yebaw Tat (People's Volunteer Organization—PVO) members also decided to leave, with the majority joining the revolt of the Burma Communist Party (BCP). Meanwhile, Ne Win, backed by Prime Minister Nu, attempted to negotiate with the BCP, the PVO, and the Karen National Defense Organization (KNDO) in order to give their members posts in Nu's cabinet (Trager 1966, 112–113). Although the socialist ministers resigned from the cabinet, Nu did not give their positions to the rebels.
21. Taylor 2015.
22. According to Taylor (2015, 160), Nu saw Ne Win as someone he wanted to control as well as someone he wanted to befriend. Nu once openly told the British ambassador that he could not trust Ne Win, whom he considered a "complete opportunist," and said that Ne Win would join the Communists if there was a chance

that the Communists would win (Taylor 2015, 161). However, Deputy Prime Minister Kyaw Nyein appeared to support Ne Win. Kyaw Nyein was the one who initiated the idea of making Ne Win defense minister in July 1948, soon after Nu's cabinet was formed.

23. At Nu's insistence, the Socialists, Kyaw Nyein, and Ba Swe left the cabinet in 1958. The governing AFPFL party leaders who had their own power bases split into the Clean AFPFL and the Stable AFPFL. The party chairman, Prime Minister Nu, and a deputy prime minister (Thakin Tin) led the Clean AFPFL, which was also known as the Nu-Tin Alliance. Ba Swe, a former prime minister, directed the Stable AFPFL, and together with Deputy Prime Minister Kyaw Nyein formed the Swe-Nyein Alliance. The two factions engaged in serious mudslinging, "running the gamut from corruption to nepotism, favoritism and lust for power to licentiousness, adultery, kidnapping and murder" (Sein Win 1959, 27).
24. Trager 1966, 175. Using their executive powers, both groups began to recruit supporters. Within the 30-member cabinet, the lineup was evenly balanced, with 15 on each side. Of the 32 parliamentary secretaries, Swe-Nyein had 22, while the other 10 aligned with Nu-Tin (Sein Win 1959).
25. Sein Win 1959; Taylor 2015.
26. Aung-Thwin and Aung-Thwin 2013.
27. Interview with a retired major general from the former SPDC government, December 6, 2015, Yangon.
28. Win Min 2010, 160.
29. Lintner 1994, 169.
30. Ibid., 170.
31. Charney 2009, 108–111; Holliday and Su Mon Thazin Aung 2017.
32. Trager 1966, 199.
33. Under the RC core executive led by General Ne Win, there was a layer of loyal, second-generation officers who had been involved in the 1958–60 caretaker government, including Aung Gyi, Tin Pe, and Kyaw Soe, and some officers from the Third and Fourth Burma Rifles. The RC also included some civilians who were closer to the military, such as Dr. Maung Maung (a lawyer and writer) and Ba Nyein, who was known to be a dedicated Marxist (Lintner 1994, 171).
34. Steinberg 2010, 63.
35. Mutebi 2005.
36. Ibid., 11.
37. Selth 1998.
38. Steinberg 2010, 66.
39. Taylor 2009, 313.
40. Holliday and Su Mon Thazin Aung 2017; Taylor 2009, 316–318.
41. Holliday and Su Mon Thazin Aung 2017; U Kyaw 2014, 134.
42. Kyi Pyar Chit Saw and Arnold 2014, 9.
43. Selth 1998.
44. Callahan 2007.
45. Taylor 2015, 263.
46. Win Min 2010, 161.
47. Fink 2009, 42.
48. Tin Maung Maung Than 2007, 313.
49. Ibid., 323.
50. Ibid., 323.
51. Thompson 2003.
52. Steinberg 2010, 70.
53. Steinberg 2010.
54. Interview with TC member, December 14, 2013, Yangon.
55. Interview with a former cabinet minister of the military government, December 14, 2013, Yangon.
56. Selth 1998.
57. Win Min 2010.
58. Ibid., 166.
59. Ibid.

60. Dittmer 2010.
61. Interview with a former cabinet minister of the SPDC government, December 14, 2013, Yangon.
62. Interview with a retired senior military officer, December 12, 2013, Yangon.
63. Win Min 2010, 172.
64. Interview with a retired minister of the SPDC government, March 12, 2016, Yangon.
65. Interview with a retired senior military officer, March 12, 2016, Yangon.
66. Interview with a former cabinet minister of the SPDC government, December 14, 2013, Yangon.
67. Interview with a former military general of the SPDC government, December 14, 2013, Yangon.
68. Kyi Pyar Chit Saw and Arnold 2014.
69. Mutebi 2005, 16.
70. Su Mon Thazin Aung 2016, 59.
71. Article 6(d). This provision differs distinctly from the core intent of the 1974 constitution.
72. This aspect differs dramatically from the components of the 1947 parliamentary constitution and the 1974 socialist, “one-party system” constitution.
73. 2008 constitution, article 60.
74. Union MPs who are selected as cabinet members have to give up their seats, which then results in by-elections being held.
75. 2008 constitution, article 64 and article 231(k).
76. 2008 constitution, article 417 and 418(a).
77. Schedule II of the 2008 constitution identifies the legislative and executive mandates of the state and region governments, while schedule V identifies their revenue assignments.
78. 2008 constitution, article 232.
79. 2008 constitution, article 201.
80. 2008 constitution, article 342.
81. It also draws on the BSPP National Defense and Security Committee formed by the Pyithu Hluttaw according to the 1974 constitution (article 54b).
82. Information provided by the President’s Office, July 2015. Note that the secretary of the Government Office serves as the secretary for the NDSC and is responsible for filing and recording relevant documents for the president’s personal archives.
83. 2008 constitution, article 417.
84. 2008 constitution, section 418(a).
85. 2008 constitution, article 342.
86. Impeachment would proceed only when the charge is supported by not less than two-thirds of the total number of representatives of the hluttaw concerned [article 71(c)].
87. Reasons to recall MPs include (1) high treason, (2) breach of any provision of the 2008 constitution, (3) misbehavior, and (4) “disqualification prescribed in this Constitution” for the hluttaw representative.
88. 2008 constitution, article 396(b).
89. Some staff members of the President’s Office were also located at the No. 18 Government Office (also known as the Cabinet Office).
90. In total, there were 36 ministers and 56 deputies in the 36 ministries.
91. The largest cabinet was established on November 15, 1997, with 40 ministers. However, each ministry appointed only one deputy minister, unlike the USDP government, where most of the ministries had two deputy ministers.
92. Data from the President’s Office, March 20, 2016.
93. Ultimately, 44 senior officers, most of whom were retired military officers or individuals with military affiliations, were appointed as permanent secretaries and deputies to serve the ministries and the central offices. Data from the President’s Office, March 20, 2016.
94. Data from the Office of the Civil Service Board, April 1, 2016.
95. August 12, 2015, should be remembered as an important day in Thein Sein’s government, as he staged a “minicoup” against his ruling party by removing the temporary chairman, Shwe Mann. On the night of August 12, 2015, in order to prepare for the 2015 election campaign, Thein Sein substantially reshuffled the cabinet in order to transfer some key ministers to his ruling USDP management team. From August 13, 2015,

until March 30, 2016, the ministers who left the cabinet did not put much effort into new policy initiatives, therefore becoming “lame duck” ministers. Although President Thein Sein’s term ended on March 30, 2016, the illustrations in this paper are from the period up to August 12, 2015, the last day of the active cabinet under the USDP government.

96. Interview with two former cabinet ministers, August 25, 2015, Yangon.
97. The vice president no. 2, four cabinet ministers, and the attorney general were all career civilians. Among these six civilians, the minister of health and the attorney general had previously worked for the military government, and the other four cabinet members were ruling USDP members.
98. Twenty-nine retired and three active military officers out of 41 cabinet members.
99. From 80 percent (28 previous MPs out of 35 cabinet members) to 41 percent (19 previous MPs out of 41 cabinet members).
100. Interviews with two senior staff members of the President’s Office, December 2013 and August 2014.
101. Interviews with Union ministers who participated in cabinet meetings.
102. Kudo 2011.
103. Interviews with seven cabinet ministers, December 14–26, 2013, August 15–25, 2014, and July 20, 2015, in Nay Pyi Taw and Yangon.
104. Nine individuals resigned and were purged. These were Vice President No. 1 Tin Aung Myint Oo; Union Auditor General Lun Maung; Minister of Electrical Power 1, Zaw Min, and 2, Khin Maung Myint; Minister of Communications, Post, and Telegraph Thein Tun; Religious Affairs Minister Myint Maung, in 2012, and the new minister, Hsan Hsint, in 2013; Minister of Information Aung Kyi; and Minister of Health Pe Thet Khin, in 2014.
105. Interviews in Nay Pyi Taw and Yangon with seven incumbent ministers and ministers of the previous government, December 14–26, 2013, August 15–20, 2014, July 15, 2015.
106. The nature of NDSC meetings was highly confidential, and apparently there were no guiding principles or code of conduct for NDSC members to follow, and no meeting minutes could be recorded or shared by any members except the president.
107. The estimated number of NDSC meetings held in 2011 and 2012 was around 30 each year, and this fell to 20 meetings in 2013 after tensions between the president and the head of parliament started to rise. In 2014, the number of NDSC meetings rose slightly, to 22. This could have been an attempt by both sides to rebuild the relationship. However, during the last year of the USDP government, the conflicts between the president, the military commander in chief, and the parliament head were rising. Therefore, the number of NDSC meetings convened was fewer than 20 during the last year of the USDP government.
108. Interviews with an NDSC member, three President’s Office ministers, and three cabinet ministers, August 14–26, 2014, and July 15, 2015, in Nay Pyi Taw and Yangon.
109. Interviews conducted August 14–20, 2014, and July 15, 2015, in Nay Pyi Taw with an NDSC member and ministers who participated in both NSC and NDSC meetings.
110. Interview with two cabinet ministers, December 26, 2013, and August 15, 2014, Nay Pyi Taw.
111. Interviews with an incumbent minister and former ministers of the USDP government, August 20, 2014, and July 15, 2015, in Nay Pyi Taw and Yangon.
112. The presidential palace housed 26 officials from the President’s Directorate Office (*Oo-See-Yone*), 46 officials from the Directorate Offices of Vice Presidents 1 and 2 (*Du-Tha-Ma-Ta-Oo-See-Yone*), 13 officials from the Research and Development Department, and 19 individuals from the Office of the President’s Advisory Board. In addition, staff of the Ministries of the President’s Office Nos. 1 and 2 shared an office at the presidential palace. This information provided by the President’s Office, April 2016.
113. It was initially formed under Notification No. 1/2011. On August 18, 2014, the team was expanded to include the Religious Affairs Committee.
114. For example, political advisors Ko Ko Hlaing (a retired military officer) and Than Swe (a retired ambassador to the United States) seemed to play crucial roles in making security-related policy decisions. An exception was the economic advisor, Dr. U Myint, who served a largely symbolic advisory position. He was known to be close to opposition leader Aung San Suu Kyi. Other advisors were academics who had returned from exile, such as Dr. Kyaw Yin Hlaing and Dr. Zaw Oo. Interviews conducted with two of the president’s advisors, retired ministers, and the deputy director general of the President’s Office, December 20, 2013, August 22, 2014,

and July 15, 2015, in Nay Pyi Taw and Yangon.

115. Statutes, to some degree even in the constitution, lay down detailed rules of procedure. Likewise, the British core executive operates with a formal code imposing great confidentiality, although this code is not fully disclosed to the public (Burch and Holliday 1996, 56).
116. Actors who served a long apprenticeship in other parts of the Myanmar government machine, whether as military officers or civil servants, needed no major acculturation to become familiar with core executive practices. For new entrants or juniors entering the core executive in recent years, the values and practices of the system have been learned from experience and from their seniors. These institutional practices were transmitted to new core-executive actors and built into day-to-day business.
117. For instance, the grounds for dismissal of the Constitutional Tribunal and for termination of ministers were unclear. Lawmakers claimed that the Tribunal's decision that "parliamentary commissions are not equivalent to Union-level organizations" violated the 2008 constitution by reaching an incorrect decision, and all member judges resigned in August 2012 after lawmakers had moved to impeach them. This move by parliament was widely criticized, with many arguing that lawmakers lacked clear impeachment grounds (Nardi 2014). Some ministers also received overwhelming public criticism; however, no major action was taken. Other ministers, such as former religious affairs minister Hsan Sint, were asked to resign or even put into prison for no clear reasons.
118. These included (1) the Public Servants Inquiries Act 1850, (2) the Burma Official Secrets Act 1923, (3) the Government Servants' Conduct Rules 1940, (4) the Discipline and Appeal Rules 1941, (5) the Civil Service Regulations, and (6) orders and instructions occasionally issued by the government (Khin Maung Win 2011).
119. The disciplining decisions were sometimes top-down and made within the president's small inner circle. The removal of the prime minister, Lieutenant General Khin Nyunt, from his position in 2004 was typical of the top-down and coercive dispute-settlement mechanism of the Myanmar core executive under Senior General Than Shwe. For details, see Win Min 2010.
120. The President's Office writes an official notification to the ministry for submission to the cabinet meeting. Thereafter, the ministry submits the issue to the cabinet through the Union Government Office. Once the Union Government Office receives the letter from the ministry, it submits it to the cabinet meeting.
121. Su Mon Thazin Aung 2016.
122. Several attempts made during the Thein Sein administration, by both the executive and legislative branches, to amend the 2008 constitution represented competition between parliament and the president. These efforts to amend the constitution arguably escalated disputes between U Thein Sein and Thura U Shwe Mann, and concomitantly between the latter and the military. In mid-2015, the military showed its serious discontent by writing a three-page grievance letter to Shwe Mann (Min Zin 2016). Additionally, in July 2015, Shwe Mann was subject to a recall petition by some 1,700 military constituents from his district in Nay Pyi Taw (Lawi Weng and San Yamin Aung 2015). These military voters accused him of breaking laws during his unsuccessful attempt to amend the 2008 constitution in a way that would have shaken the military's grip on power. Nonetheless, the recall attempt was unable to unseat Thura U Shwe Mann, as the required enabling law—i.e., the right to recall—was not passed. While the right to recall was yet to be passed, Thura U Shwe Mann was removed from the USDP leadership. On August 12, 2015, the state-run TV channel announced a reshuffling of the cabinet involving the reassignment and retirement of high-profile ministers and deputies. A few hours later, on the late night of August 12, 2015, the ministry of home affairs beefed up security with 400 police officers around USDP headquarters in Nay Pyi Taw and removed Shwe Mann from the party leadership together with his key allies, including Aung Ko and Maung Maung Thein.
123. Office of the Amyotha Hluttaw, July 18, 2016.
124. Parliament sessions under the USDP government ended on January 31, 2016.
125. For more detail on this, please see Egretau 2017.
126. Information gathered from Office of the Amyotha Hluttaw, October 2015; President's Office, May 2016.
127. Marshall and McLaughlin 2015.
128. Previously, under the USDP government, these four ministers led 10 separate ministries.
129. Article 11 states: (a) The three branches of sovereign power namely legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves. (b) The three branches of sovereign power, so separated are shared among the Union, Regions,

States and Self-Administered Areas.

130. Ei Ei Toe Lwin and Htoo Thant 2016 and Tin Htet Paing 2016
131. Note that efforts to start MDI had begun under the USDP government with encouragement from the government of Korea.
132. Global New Light of Myanmar 2016.
133. International Crisis Group 2016.
134. Tin Htet Paing, *Irrawaddy*, 6 May 2016.
135. Multiple interviews with senior government officials as well as political observers.
136. Interview with the director general of the Ministry of Planning and Finance, Nay Pyi Taw, January 6, 2017.
137. National security advisor was a new role established in January 2017.
138. Although the constitution prohibits Union ministers from communicating with their political party, the State Counsellor Law indirectly supports such a link through relationships in parliamentary committees.
139. National League for Democracy, Election Manifesto 2015.
140. Article 59(f) of the 2008 constitution prohibits an individual from being a presidential candidate if his or her family members, spouses, children and their spouses are foreign citizens.
141. Assorted versions of the Policy Circle Model have conceptualized policymaking cycles of between five and seven stages. The model proposed by Howlett and Ramesh (2003), for example, has five stages: agenda setting, policy formulation, adoption (or decision making), implementation, and evaluation.
142. UNICEF 2013.
143. Kraft and Furlong 2012, 94.
144. The FESR was intended to serve as a bridge between the Fifth Five-Year Plan (FY2011/12–FY2015/16), the reform-oriented National Comprehensive Development Plan (2011–2031), and future five-year plans that will support the National Comprehensive Development Plan.
145. Interviews with directors general of Ministry of President’s Office and Ministry of Planning and Finance (November 2015 and December 2016, Nay Pyi Taw) and the director and deputy director of Ministry of Labor, Immigration and Population (July 2016, Nay Pyi Taw).
146. Historically, the MoPF has not been a powerful ministry and it is questionable whether it can now develop effective policies and plans for individual ministries that ensure that those ministries’ priorities are in line with the government’s wider policy agenda.
147. Zin Thu Tun 2016.
148. *Irrawaddy* 2016.
149. Woodhouse and Lindblom 1993.
150. Note that when the “rules of the game” set by the 2008 constitution are currently in question, policy endorsing the outcomes of discussions and debates with ethnic armed groups (EAGs) could be considered “extraconstitutional.” In such a situation, though formal discussions are required and parliamentary endorsement at a later step is necessary, these may be symbolic, with the actual decision-making occurring outside parliamentary processes—i.e., in the peace-process forums.
151. Su Mon Thazin Aung 2017.
152. There have also been some executive-legislative tensions in the states and regions. This has been particularly true in Rakhine State, with examples including the Rakhine parliament’s decision to impeach the state municipal affairs minister and the decision by the Rakhine government not to support a state parliamentary investigation of a deadly riot in Mrauk-U Township in January 2018. Within Yangon Region, there were also tensions between the Yangon regional government and some NLD lawmakers of the regional parliament over implementation of new city and transportation projects. However, executive’s disagreements with military MPs, non-NLD lawmakers, and/ or NLD lawmakers did not stop the government turning its preferred options into its policy.
153. Jones 1984, 166.
154. As defined by Lodge and Wegrich 2014.
155. Bridgman and Davis 2013.
156. Kraft and Furlong 2012.
157. At the state/region level, another visible policy termination was the suspension of high-rise construction projects in Yangon in early 2016 because of allegations of corruption and abnormalities in the construction

- permitting process.
158. Seidman 1970, 205.
 159. Elgie 2011.
 160. Hayward and Wright 2002, 17.
 161. Metcalfe 1994, 281.
 162. The director general of the State Counsellor's Office, U Zaw Htay, who previously worked as deputy director general of the President's Office under the USDP government, was the key person airing government's views on various issues and communicating with the public via social media.
 163. Su Mon Thazin Aung 2017. For instance, the government made various policy concessions to monks and provided aid to farmers in exchange for nationwide support.
 164. Fisher 2015 and Su Mon Thazin Aung 2017.
 165. For instance, accepting the use of the long-forbidden word "federal" in the formal ceasefire documents.
 166. Scholars and practitioners such as Peters (2005) suggested three approaches to dealing with coordination problems. These are (1) a hierarchical approach, establishing top-level government coordination structures; (2) a network approach, which involves relinquishing the state's authoritative powers to the interested and affected parties in order to achieve greater agreement within a policy area; and (3) a market approach, which relies on market mechanisms to coordinate programs. The hierarchical approach is seen more commonly than the other two, as they are more applicable to public programs that are marketable or involve significant networks of private actors.
 167. Mackie and Hogwood 1986.
 168. Peters, Rhodes, and Wright 2000.
 169. Peters 2005.
 170. These were in the form of two deputy prime ministers and a cabinet minister, who acted respectively as coordinating minister of security and defense, coordinating minister of economic and social policies, and coordinating minister of infrastructure.
 171. Five cabinet committees with ministerial portfolios and 28 delivery units led by deputy ministers were clearly seen as efforts to coordinate using the hierarchical approach (see section 3.2). Nonetheless, this momentum did not carry forward to the administration under the NLD government. Despite the continuity of cabinet-committee structure, delegation and empowerment were missing, because three out of five committees were chaired by the SC alone. Delivery units were, however, unable to continue under the NLD government.
 172. The term "joined-up government" is associated with the reform agenda of New Labour in Britain, and a similar concept is employed in other countries, such as New Zealand, Canada, Australia, Finland, Ireland, and Singapore.
 173. Efficiency Unit 2009.



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