

## Institution Building in Myanmar

### *The Establishment of Regional and State Assemblies*

#### ABSTRACT

Myanmar has long been rigidly centralized. In 2011, however, 14 regional and state assemblies were established. Drawing on extensive fieldwork, this article evaluates the performance of 10 assemblies toward the end of their initial five-year mandate. It finds little evidence of a territorial dispersal of power.

**KEYWORDS:** Burma, decentralization, governance, institution, Myanmar

FOR MOST OF ITS POSTCOLONIAL HISTORY, the country known currently as Myanmar (until 1989 as Burma) has been rigidly centralized.<sup>1</sup> In the year or two prior to independence in January 1948, limited attempts were made to fashion a system of government that would be sensitive to the urgent social reality of diverse racial and ethnic identities found across the territory. The fractious parliamentary period from 1948 to 1962 also witnessed sporadic moves of this kind. However, any possibility of decentralizing the state was largely eliminated by a March 1962 military coup, which sought precisely to repudiate forceful federalist tendencies inside the country. Although some efforts were then made to address interethnic tensions, they came to nothing, and for close to half a century the nation was ruled on a strictly unionist basis, paralleling

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1. We use Burma and associated names (Burman, Irrawaddy, Karen, Rangoon, and so on) for the period up to 1989, and Myanmar and associated names (Bamar, Ayeyarwady, Kayin, Yangon, and so on) for the period thereafter. This usage is not intended to convey a political message.

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predominant military command structures. Proponents of a territorial distribution of power, seeking formally to allocate governance authority, functions, and funding to sub-national tiers, were often cast as enemies of the state.

Only in May 2008 was decentralization again given any formal political backing, in the provisions for 14 partially elected, partially appointed regional and state assemblies written into a draft constitution endorsed by the people in a patently manipulated referendum. In November 2010, elections for the assemblies finally took place as part of the first national poll in 20 years, and in January 2011 the 14 assemblies were officially inaugurated. Though given a five-year mandate, they had few powers or resources. Nevertheless, among the many changes witnessed in the current transitional period, these reforms remain potentially significant because building territorial institutions for a fractured country is clearly a critical task. In these still-early days, it is therefore important to evaluate Myanmar's early steps in forming regional and state assemblies.

This article does that by examining the performance of 10 regional and state assemblies toward the end of their initial five-year mandate. The first section sets the historical context by surveying decentralization and federalism initiatives in Burma/Myanmar. The second provides institutional context by reviewing the constitutional underpinnings and electoral mandates of the assemblies. The third outlines the methodology used to gather data on 10 of the 14 assemblies. The fourth presents the findings, collected chiefly through interviews with assembly members and community leaders. The fifth considers how the assemblies' shortcomings might be addressed. The final section is a brief conclusion. As Myanmar approaches a November 2015 general election that will reconfigure not only its national parliament but also its regional and state assemblies, the argument presented here is that the 14 assemblies are only slowly finding their feet, and to date are doing little to generate a meaningful territorial dispersal of power. Myanmar remains a strongly centralized state.

## HISTORICAL CONTEXT

Britain's imperial intervention in Burma, through wars fought in 1824–26, 1852, and 1885, established the foundations for modern governance.<sup>2</sup> Crucially,

2. Thant Myint-U, *The Making of Modern Burma* (Cambridge: Cambridge University Press, 2001).

however, those foundations, which saw Burma made a province of the British Raj for most of the colonial period, were not uniform. In the mainly Burman heartland, which the British called Burma Proper (and later Ministerial or Parliamentary Burma), traditional institutions were destroyed and replaced by direct rule. In the peripheral zones, peopled chiefly by minority ethnic peoples, which the British named the Excluded Areas (and later the Scheduled or Frontier Areas), indigenous institutions were maintained and used as conduits for indirect rule on the model developed in India. These distinctions were exacerbated during World War II, when for three years many Burmans, led by General Aung San and the fabled “thirty comrades,” fought on the side of OK the Japanese, while most minority ethnic groups remained loyal to Britain and the Allies.<sup>3</sup>

The result was that experiences of governance in the colonial period were disparate, and expectations of territorial arrangements in the postcolonial era were divergent.<sup>4</sup> While Burman leaders looked ahead to a unified independent nation, minority leaders sought degrees of autonomy stretching even to statehood. The famous Panglong Agreement, concluded in February 1947, sought to address some of these issues, but at no more than a single page in length, it was inevitably open to varied interpretation and myth-making.<sup>5</sup> Indeed, rather than pave the way for a full territorial settlement during independence negotiations with the British in 1947, it set the stage for a descent into civil war in 1948. While the many conflicts that scarred Burma over several decades had an important ideological component through Communist mobilization, they were also forcefully driven by ethnic issues.<sup>6</sup>

The response of state leaders to the interethnic turmoil that enveloped the country from the late 1940s onward was above all military rather than political. The parliamentary interlude from 1948 to 1962 was characterized by open contestation of power, fragile democracy, and weak governance.<sup>7</sup> Gradually the national army gained strength as combat units were reinforced to fight

3. Michael W. Charney, *A History of Modern Burma* (Cambridge: Cambridge University Press, 2009), pp. 46–71.

4. Mandy Sadan, *Being and Becoming Kachin: Histories beyond the State in the Borderworlds of Burma* (Oxford: Oxford University Press/British Academy, 2013).

5. Matthew J. Walton, “Ethnicity, Conflict, and History in Burma: The Myths of Panglong,” *Asian Survey* 48:6 (2008), pp. 889–910.

6. Martin J. Smith, *Burma: Insurgency and the Politics of Ethnicity*, 2nd ed. (London: Zed, 1999).

7. John Cady, *A History of Modern Burma* (Ithaca, NY: Cornell University Press, 1958).

insurgencies on multiple fronts.<sup>8</sup> In March 1962, when political elites floated the option of a “federal seminar” to devise a formal settlement, military leaders fearing state fragmentation spearheaded the coup that destroyed Burmese democracy and effectively put an end to territorial debate. While some attempts were made in the mid-1960s to negotiate ethnic issues, none got far. Following the coup, implementation of an army-backed Burmese way to socialism, though never more than utterly ineffective and deeply corrupting, served only to enhance a militaristic focus on centralization and uniformity.<sup>9</sup>

In the state socialist era, the official designation of major national races and subsidiary ethnic groups that survives to this day was enacted in Citizenship Law 1982, which acknowledges eight major national races and 135 ethnic groups nested within them. While many view this formulation as arbitrary and flawed in key respects, in the course of more than 30 years it has taken on a measure of permanence. Controversially used to underpin the 2014 census, it is now hard to contest, not least because many recognize that a debate about nationhood and ethnicity would inevitably be divisive, and could potentially be violent.<sup>10</sup> At the end of the 1980s, when the state socialist order eventually collapsed under the weight of its own internal contradictions, the student-led democracy movement, led mainly by Burmans from the dominant national race, found little common cause with the seven designated minorities, most of which had long fought against the national army.<sup>11</sup> In this fragmentation of the opposition movement could be seen one dimension of the challenge posed to national unity by ethnic diversity.

The outcome of the 1988 crisis was imposition of direct military rule, through a junta that talked about democratization, and even held a general election in May 1990, but did nothing to deliver progressive political reform. Instead, it ignored the landslide victory won by the National League for Democracy (NLD) in 1990, and moved in January 1993 to create a constitutional convention tasked with building the foundations for “discipline-flourishing democracy.” It also reached a series of ceasefire agreements with

8. Mary P. Callahan, *Making Enemies: War and State Building in Burma* (Ithaca, NY: Cornell University Press, 2003).

9. Robert H. Taylor, *The State in Myanmar* (Honolulu: University of Hawai'i Press, 2009).

10. Transnational Institute and Burma Centrum Nederland, *Ethnicity without Meaning, Data without Context: The 2014 Census, Identity and Citizenship in Burma/Myanmar* (Amsterdam: TNI/BCN, 2014).

11. Bertil Lintner, *Outrage: Burma's Struggle for Democracy* (Hong Kong: Review, 1989).

ethnic militias, which delivered a measure of peace to communities long ravaged by violence.<sup>12</sup> For most of the 1990s and 2000s, however, issues of territorial governance registered little advance; the constitutional convention took 15 years to produce a text, and the ceasefire deals were no more than an undertaking to stop fighting.<sup>13</sup> Nevertheless, a fraudulent May 2008 referendum, which overwhelmingly endorsed the constitution drafted by military rulers and their associates, did generate some territorial dispersal of power. While the constitution contains many safeguards for military oversight of Myanmar's democratization process, and is undergirded by a transitional political economy of state-facilitated crony capitalism, it also provides for the formation of 14 regional and state assemblies, from which decentralized governments are drawn.<sup>14</sup>

#### INSTITUTIONAL CONTEXT

Below the central tier of government in the capital, Naypyidaw, the 2008 constitution creates 14 unicameral assemblies (or *hluttaw*) mapped onto Myanmar's seven Bamar-majority regions (previously divisions) and seven ethnic-minority states.<sup>15</sup> Largely from within the assemblies the document creates regional and state executives, as well as a core complement of judicial bodies. In this way, it brings into being a full set of decentralized institutions within Myanmar's 14 regions and states, which in Article 9 are all given "equal status." Article 49 identifies the seven regions as Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi, and Yangon, and the seven states as Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan.

At the regional and state levels, the institution-building process begins with the formation of decentralized assemblies. Article 161 sets out the

12. Smith, *Burma*.

13. Mary P. Callahan, *Political Authority in Burma's Ethnic Minority States: Devolution, Occupation, and Coexistence* (Washington, DC: East-West Center, 2007); Martin Smith, *State of Strife: The Dynamics of Ethnic Conflict in Burma* (Washington, DC: East-West Center, 2007); Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords* (Washington, DC: East-West Center, 2007); Tom Kramer, *Neither War nor Peace: The Future of the Cease-fire Agreements in Burma* (Amsterdam: Transnational Institute, 2009).

14. Lee Jones, "The Political Economy of Myanmar's Transition," *Journal of Contemporary Asia* 44:1 (2014), pp. 144–170.

15. In addition, the 2008 constitution creates five self-administered zones, one self-administered division, and one union territory (comprising Nay Pyi Taw and its surrounding townships). None of these is examined here.

arrangements under three main headings. First, two members are elected per township.<sup>16</sup> Second, additional members are elected when there are concentrations of national races beyond the dominant national race in the region or state. Third, as with the bicameral national parliament, members are nominated by the commander-in-chief of the defense services in the ratio of one appointed active military officer per three elected members. In this way, the memberships of the territorial assemblies are given a basic composition paralleling those found in both houses of the national parliament: 75 percent are civilian politicians elected through standard democratic procedures; 25 percent are serving military officers appointed by the country's top military leader.

Regarding the functioning of the assemblies, Article 167 allows for the formation of committees and bodies, and for the co-optation of "suitable citizens." Article 174 mandates that each assembly convene a regular session at least once a year, and that the interval between regular sessions shall not exceed 12 months. Article 188 gives the assemblies the right to enact laws related to matters prescribed separately in Schedule Two. The sectors into which these matters are grouped are: finance and planning; economic; agriculture and livestock breeding; energy, electricity, mining, and forestry; industrial; transport, communication, and construction; social; and management. Few of the detailed areas listed under these headings are significant. Article 254 sanctions tax- and revenue-raising powers specified in Schedule Five. Since the capacity to tax income is very limited, there is no real fiscal decentralization.<sup>17</sup>

As to regional and state executives, Article 261 specifies that the chief minister shall be chosen by the national president from among the members of the regional or state assembly, and thereby be accountable upward to the president rather than downward to the assembly. Formally, the president's nominee must be endorsed by the decentralized assembly. However, rejection is allowed only if the candidate can be proven not to meet the qualifications

16. In Myanmar, the administrative hierarchy has several levels. Villages are clustered into village tracts. Towns, urban wards, and village tracts are brought together as townships. Townships are grouped as districts. Districts are assembled into either regions or states. The seven regions and seven states collectively form the bulk of the union.

17. Hamish Nixon and Cindy Joelene, *Fiscal Decentralization in Myanmar: Towards a Roadmap for Reform* (Yangon: Myanmar Development Resource Institute—Centre for Economic and Social Development and Asia Foundation, 2014).

prescribed for the position in the constitution. Article 262 states that regular ministers shall be chosen by the chief minister from among the members of the regional or state assembly, or from beyond its ranks. At the same time, however, it assigns the allocation of portfolios to the national president, who also distributes portfolios among ministers for the leading minority national races within a region or state. It requires the commander-in-chief of the defense services to nominate a serving military officer as minister for security and border affairs. Regarding judicial institutions, Article 266 of the constitution states that the national president shall appoint an advocate-general from among the assembly members.<sup>18</sup>

Following up on these constitutional provisions, the first stage in establishing the new territorial assemblies was holding regional and state elections as part of the November 2010 general election that also brought into being the bicameral national assembly. Well ahead of the poll, the NLD, still the major opposition party, announced that it would not contest elections held under what leader Aung San Suu Kyi in March 2010 dismissed as “unjust” laws.<sup>19</sup> Although a faction later split off to field candidates under the banner of the National Democratic Force and many ethnic parties also sought seats, the outcome was a landslide win for the military-backed Union Solidarity and Development Party (USDP). In the lower house of the national parliament, it won 79 percent of the seats contested through the poll. In the upper house, it won 77 percent.<sup>20</sup>

Results in the territorial assemblies were broadly similar. Out of 661 elected seats across all 14 assemblies, the USDP won 494 (75 percent). The only other parties to register even double-digit seat counts were the National Unity Party (NUP) with 45 (7 percent), the Shan Nationalities Democratic Party (SNDP) with 36 (5 percent), and the Rakhine Nationalities Development Party (RNDP) with 19 (3 percent).<sup>21</sup> As also happened at the national level, military appointees were then added to the assemblies in the specified ratio of one to three, bringing the overall total membership up to 883. Few members

18. Republic of the Union of Myanmar, *Constitution of the Republic of the Union of Myanmar* (2008) (Yangon: Ministry of Information, 2008).

19. Ba Kaung, “Message from Suu Kyi,” *Irrawaddy*, March 12, 2010.

20. Transnational Institute and Burma Centrum Nederland, *A Changing Ethnic Landscape: Analysis of Burma's 2010 Polls* (Amsterdam: TNI/BCN, 2010).

21. The results of Myanmar's 2010 election in terms of seat distribution by political party across the 14 regional and state assemblies are presented in Burma Fund UN Office, *Burma's 2010 Elections: A Comprehensive Report* (New York, NY: Burma Fund UN Office, 2011).

were women—just 25 out of 883 (3 percent).<sup>22</sup> In two regions (Sagaing and Tanintharyi) and four states (Chin, Kayah, Kayin, and Mon), the assembly contained no women at all. In two other regions (Magway and Mandalay) and one state (Rakhine), the assembly had only one female member.<sup>23</sup>

However, hidden behind the USDP's sweeping victory was a rather more nuanced picture in some state (but not regional) assemblies. In Chin State, where the total elected membership was 18, the Chin National Party and the Chin Progressive Party each won five seats, and the Ethnic National Development Party won one. The USDP claimed the remaining seven seats, but still had only 39 percent of elected members. In Rakhine State, where the total elected membership was 35, the RNDP won 18 seats, against 14 for the USDP, cutting the USDP down to 40 percent of elected members. In Kayin State, where the total elected membership was 17, a cluster of electoral victories for small ethnic parties reduced the USDP to 7 seats, or 41 percent of elected members. In Shan State, where the total elected membership was 107, the SNDP won 31 seats and in combination with a series of minor ethnic parties and independents restricted the USDP to 54 seats, or 50 percent of elected members.<sup>24</sup> In no case was USDP control threatened, as the military bloc was almost always supportive. In state assemblies there was nevertheless something of a challenge to USDP hegemony.<sup>25</sup>

The second stage in forming the new territorial assemblies came in January 2011, when elected and appointed members first convened. However, the formal transfer of power from the long-standing military junta (known since 1997 as the State Peace and Development Council) to the new quasi-civilian national government did not take place until March 30, 2011. Thus, creation of the decentralized governments did not happen until then either. Exercising the constitutional power vested in him, incoming President Thein Sein nominated most of the 14 chief ministers on that date. In the first cohort, 13 chief ministers were USDP members; 10 were former military officers. The single chief minister not chosen from USDP ranks was a serving brigadier

22. Paul Minoletti, *Women's Participation in the Subnational Governance of Myanmar* (Yangon: MDRI-CESD and Asia Foundation, 2014).

23. Hamish Nixon, Cindy Joelene, Kyi Pyar Chit Saw, Thet Aung Lynn, and Matthew Arnold, *State and Region Governments in Myanmar* (Yangon: MDRI-CESD and Asia Foundation, 2013), Annex V.

24. Nixon et al., *State and Region Governments in Myanmar*, Annex V.

25. Transnational Institute and Burma Centrum Nederland, *Changing Ethnic Landscape*.



general drawn from the bloc of military appointees in Kayin State, where the president's preferred candidate failed to gain election on the USDP slate.<sup>26</sup>

Mostly, the ministers subsequently chosen by chief ministers to form the core of the regional and state executives were elected assembly members. Only in Chin State were two ministers drawn from the wider community (as provided for in Article 262 of the constitution).<sup>27</sup> Active-duty military officers were also appointed as regional and state ministers for security and border affairs by the commander-in-chief of the defense services. Additionally, national race ministers were appointed by the relevant national minister for ethnic affairs, ranging in number from zero in Chin State to seven in Shan State. Nine regions and states had either one or two such ministers.<sup>28</sup> Among a total of 169 cabinet ministers, 117 (69 percent) came from the USDP and 14 (8 percent) were serving military officers. Unsurprisingly, only four (2 percent) were women: two in Kachin State, and one each in Ayeyarwady and Yangon Regions.<sup>29</sup> Broadly, the portfolios distributed by Thein Sein among these ministers were uniform across the 14 cabinets. Typically, there were 9 regular portfolios, plus a 10th for security and border affairs, plus varying numbers of national race portfolios.

In contrast to the uniformity imposed on regional and state executives by the centralized choice of chief minister and allocation of ministerial portfolios, the regional and state legislatures created in the early months of 2011 were quite diverse. With the main driver being the number of townships in a jurisdiction, assembly sizes varied widely. At one extreme, Shan State had 143 elected and appointed members, Yangon Region had 123, and Sagaing Region had 101. At the other, Kayah State had only 20 elected and appointed members, Kayin State had 23, Chin State had 24, and Tanintharyi Region had 28. The fact that almost all cabinet members were drawn from within the 14 assemblies meant that in jurisdictions with small populations, and therefore small assemblies, the executive was larger than the legislature. In Kayah State, the assembly of 20 formed in early 2011 had 15 elected members from the USDP and 5 military appointees. Among the 20, 10 USDP members and 1 military appointee were given ministerial portfolios, generating an 11-member executive. Left as ordinary members of the legislature were only

26. Transnational Institute and Burma Centrum Nederland, *Changing Ethnic Landscape*, pp. 51–52.

27. Transnational Institute and Burma Centrum Nederland, *Changing Ethnic Landscape*, p. 54.

28. Transnational Institute and Burma Centrum Nederland, *Changing Ethnic Landscape*, p. 55.

29. Transnational Institute and Burma Centrum Nederland, *Changing Ethnic Landscape*, p. 55.

9 members, of whom a mere 5 were elected. Similarly, in Kayin State a 13-member executive faced an assembly of 10, of whom again just 5 were elected.

Finally, the by-elections that were held on April 1, 2012, were important nationally: this time, the NLD did compete, and won overwhelmingly. Aung San Suu Kyi was returned to the lower house of parliament from the Kawhmu constituency, and instantly became the most prominent member of an NLD bloc of 41 members split between the lower house (37 seats) and the upper house (4 seats). At regional and state levels, however, the by-elections were largely insignificant.

## METHODOLOGY

To evaluate the initial performance of Myanmar's 14 regional and state assemblies, we adopted a three-pronged strategy. First, we drew on interview and focus group material plus documentary analysis gathered across nine months from July 2012 to April 2013 by a set of researchers working for the Myanmar Development Research Institute's Centre for Economic and Social Development and the Asia Foundation. This team conducted a total of 77 semi-structured interviews and focus group discussions in two regions (Ayeyarwady and Tanintharyi) and four states (Chin, Kayin, Mon, and Shan).<sup>30</sup> It looked mainly at regional and state executives, but also necessarily generated data relevant to our parallel analysis of regional and state assemblies. Second, in July and August 2013 we undertook an additional tranche of 20 semi-structured interviews in three regions (Bago, Mandalay, and Yangon) and one state (Kachin), and at the same time updated our documentary analysis.<sup>31</sup> This second tranche drew directly on the methodology used in the first. Third, for the period from August 2013 to July 2015 we monitored the limited coverage of the assemblies in national newspapers to amass supplementary research material. We thereby generated core fieldwork data from five regions and five states covering much of the assemblies' initial five-year mandate.

Missing from our fieldwork data are the four assemblies in Magway and Sagaing Regions and Kayah and Rakhine States. By and large, pragmatic

30. Cindy Joelene participated in all of these interviews and focus group discussions.

31. Maw Htun Aung led all of these interviews, and Ian Holliday participated in some of them.

considerations informed our selection criteria. To begin with, we decided that coverage of more than 70 percent of the decentralized assemblies would generate a sufficient basis for drawing conclusions about them all. Next, we ruled out Magway Region because it is quite homogeneous and dominated by the USDP, making it very similar to neighboring Mandalay Region. We eliminated Sagaing Region because it is large, and has a dispersed assembly membership, and is thus hard to access in the rainy season, when we undertook our second tranche of interviews. We left out Kayah State because it overlaps with Chin State in terms of small size, and with other eastern states in terms of key issues, while also being a more challenging place for fieldwork. Finally, we set aside Rakhine State because of the grave sectarian conflict that erupted in June and October 2012, pitting Buddhists against Muslims and generating security measures and political problems that made it almost impossible to conduct scientific data collection anywhere in the state.<sup>32</sup> Although we did gather a small amount of data about these four assemblies by monitoring national newspapers, they do not form a core part of our analysis.

Within our five regions and five states, our fieldwork focused mainly on elected assembly members contacted through party networks, although in all jurisdictions we also talked to key members of civil society. Inevitably we used snowball sampling methods: in a system no more than a few years removed from a long authoritarian interlude, and thus still characterized by much political sensitivity, it is above all through personal and professional contacts that interviews can be arranged. Within and across the 10 jurisdictions, we sought to ensure reasonably balanced party representation, and we managed to talk to elected members from more than one party in every assembly. However, we did also experience some difficulties in accessing the dominant USDP, with the result that other parties are overrepresented among our respondents. Our interviews mostly took place in party offices, but on occasion they were held in government bureaus. All were conducted in local languages (mainly Bamar but also in minority languages in ethnic states). In each case we used a semi-structured questionnaire (which is reflected in our findings below).

32. Human Rights Watch, *All You Can Do Is Pray: Crimes against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State* (New York: Human Rights Watch, 2013). International Crisis Group, *The Dark Side of Transition: Violence against Muslims in Myanmar* (Brussels: International Crisis Group, 2013).

Across the table from us, we occasionally encountered individuals, but more commonly we talked to small groups of elected assembly members, often supplemented by party officials. The shortest interview ran to 45 minutes and the longest to three hours. Most lasted for more than an hour. We did not record any sessions, but instead took handwritten notes and filled them out as soon as the interview was over. To supplement our fieldwork data, we analyzed primary and secondary documents. We were also handed some documentation by some respondents. One instance was a USDP manual for assembly members. Others were booklets explaining legal issues and administrative matters.

Our general impression was that our respondents were frank in talking with us. At the same time, we noted greater openness among regular members than among ministers, and among members drawn from beyond the USDP and NUP, which was the main military-backed party in the 1990 general election and to this day retains links with the defense services. Reinforcing this impression was the excessive formalism of many of our ministerial and USDP respondents, and their desire to stick closely to a description of how the territorial assemblies are supposed to function, rather than how they actually do function. Indeed, some USDP and NUP respondents brought to our interviews well-thumbed, pocket-sized copies of the 2008 constitution, to which they made frequent reference while speaking. Overall, our sense was that these members did not feel entirely comfortable talking through institutional issues. This may have reflected the fact that the government compounds in which we tended to meet regional and state ministers were typically over-policed. Almost everywhere we went, we needed an appointment to enter the compound. Inside, even some of the bureau staff were police officers, though apparently engaged in secretarial work alongside their security duties. Unsurprisingly, the tone of the interviews conducted in these conditions was quite guarded and formal. At the extreme, in Shan State the interview team was followed everywhere by Special Branch officers. Despite these constraints, we gathered rich empirical data from our respondents.

## FINDINGS

Our findings can be grouped into the five main areas of inquiry found in our semi-structured questionnaire: profiles of assembly members; structural

factors facing regional and state assemblies; internal relationships; external relationships; and engagement with key policy issues. While many of our interviews ranged onto territory not captured by the questionnaire, these five areas remained the major topics of interest to our respondents and also to us.

**PROFILES OF ASSEMBLY MEMBERS.** These concern issues such as age, gender, time committed to duties, and so on. The profiles are strikingly uniform. The members of all the assemblies we visited were overwhelmingly mature men from established, or even establishment, families. In regional assemblies, they were broadly Bamar, and in state assemblies they typically came from the dominant ethnic group, though neither of these categorizations was rigid. Strikingly, few members were below the age of 50; many were 60 to 70; few were female. Clearly these skewed profiles partly reflect the landslide won by the USDP in the 2010 general election, and the age and gender composition of a party staffed largely by senior figures from a military background or with close military ties. However, it was not only among USDP (or NUP) members that this kind of profile was found; almost all parties conformed to it. Quite possibly, then, the larger explanation runs deep into the society. It may also reflect the incentives offered to assembly members.

In this regard, it is worth noting that only limited financial resources are made available. Each minister is able to claim housing in a dedicated compound plus a non-accountable monthly allowance of MMK 400,000 (USD 400), and each regular member can claim a monthly stipend of MMK 200,000 (USD 200). However, these allowances have to cover all expenses, including transportation, office rental, secretarial support, and so on. In consequence, some members may be out of pocket each month, and many call on family members such as spouse, children, and grandchildren to help out. The only exception to this broad picture is the USDP, which generally has well-equipped offices in every region and state, and also a scale of allowances for elected and appointed officials from the village and township level up to the national level. Partly as a result, time commitments tend to be lower for USDP members than for all others. By and large, assembly membership is a part-time job for USDP members, but a full-time job for members of other parties. Given the skewed age profile, it is often a retirement project for pillars of the community.

One important issue that needs to be addressed in this profile section is the figure of the chief minister, easily the most significant individual in all

14 regional and state assemblies. As has already been noted, the 14 chief ministers chosen in the first cohort were all men. Moreover, in 13 jurisdictions the chief minister was a USDP member, and in 10 jurisdictions he was a former military officer, usually with personal ties to the region or state in question. In the other jurisdiction, Kayin State, the chief minister was a serving brigadier general. While this choice was largely contingent on an unexpected election reversal for a senior USDP figure, it also almost certainly reflected the security situation inside the state, and in particular the existence of ongoing conflict between the national army and ethnic armed groups. It appeared designed to send a signal about the central government's intention to engage actively in monitoring the conflict and, ultimately, to bring it to an end. A similar conclusion can be drawn from Thein Sein's replacement of Rakhine State Chief Minister Hla Maung Tin following an outburst of violence against international aid agencies at the end of March 2014. Three months later, toward the end of June, Hla Maung Tin, a USDP member, was "allowed to resign," and serving General Maung Maung Ohn, hitherto deputy minister of home affairs in the national government, was nominated in his place.<sup>33</sup>

**STRUCTURAL FACTORS.** These are issues such as the constitutional mandate of authority, actual institutional experience and practice, general administrative support, and so on. As has been noted, the main powers of the assemblies are itemized in Schedule Two of the 2008 constitution, and the resource base is specified in Schedule Five. On both counts, assemblies are heavily constrained. Additionally, in some spheres the legislative division between national and regional or state-level authority is ill-defined and ambiguous. Typically, in these gray zones, the central government tends to dominate. The result is that the residual legislative business with which assemblies can engage tends to be limited. Minor regulatory and licensing issues fall to them, but big strategic questions are beyond their range. Perhaps the sole corrective to this generally bleak picture is that the assemblies are required to endorse a regional or state development plan, which clearly has the potential to become a key vehicle for strategic thinking but is currently a rather formal and meaningless exercise. In 2012 and the first half of 2013, the Chin State

33. In an earlier case dating from November 2011, Khin Zaw was removed from the post of chief minister of Tanintharyi Region for corruption linked to the lucrative rice trade (Radio Free Asia, "Chief Minister Sacked for Bribery," November 27, 2011).

assembly processed no legislation beyond the two areas of required business: passing a budget and endorsing a development plan. In 2013, the various assemblies typically promulgated few laws: Sagaing 27; Mon 21; Tanintharyi 17; Ayeyarwady 15; Mandalay 14; Rakhine 13; Shan 11; Kayah 9; Magway 8; Bago, Kachin, and Yangon 7; Chin and Kayin 6.<sup>34</sup>

Moreover, the decentralized tiers have little control over policy implementation. Initially, the sole administrative resource on which they could call was provided by the General Administration Department of the national Ministry of Home Affairs (which is one of three central ministries headed by an active military officer).<sup>35</sup> Beyond the General Administration Department, they had to rely on field agencies of central ministries coordinated from Naypyidaw, or on state security forces under the control of the regional or state military commander. The Region/State Hluttaw Law 2013 made a slight change to this by allowing each devolved assembly to prepare a budget for its own administrative support functions. Nevertheless, the decentralized assemblies still have little power to appoint or dismiss officials, most of whom are under central control. Together with their small revenue base, the assemblies are thus significantly constrained.

Within the assemblies themselves, the chief minister has considerable power. Nominated by the president, the chief minister in turn nominates ministers and seeks confirmation from the assembly. Broadly, he then controls assembly business, even though formally the regional or state legislature has oversight powers over the regional or state executive. Indeed, such is the preponderance of the chief minister and his cabinet that the assemblies find it difficult to exercise such powers. In one case toward the end of 2012, Hsan Hsint, speaker of the Ayeyarwady assembly, led a failed attempt to impeach the regional government for allegedly infringing on the rights of assembly members. His complaints to journalists revealed how much the regional executive disdained the regional legislature.<sup>36</sup> In another case, in August 2014, Myint Swe, chief minister of Yangon Region, unveiled a surprise USD 8 billion city expansion plan.<sup>37</sup> He was soon forced to backtrack and present

34. Data generated by the authors from publicly available sources.

35. Kyi Pyar Chit Saw and Matthew Arnold, *The General Administration Department: An Overview of Myanmar's Administrative Backbone* (Yangon: MDRI-CESD and Asia Foundation, 2014).

36. Win Ko Ko Latt, "Ayeyarwady Hluttaw Moves to Sack Govt," *Myanmar Times*, October 1, 2012.

37. May Kha, "Rangoon Expansion Plan Criticized for Poor Transparency," *Irrawaddy*, August 25, 2014.

the issue for debate at a special session of the regional assembly.<sup>38</sup> However, widespread public anger, reinforced by investigative journalism, was decisive in making this happen.<sup>39</sup> Overall, then, the current situation is that assemblies are quiescent. They usually meet twice a year for sessions of three or four days (in rare cases up to 10 days), chiefly to fulfill their constitutional duties of passing a budget and a mandated range of laws.<sup>40</sup> Some hold special sessions, but this remains unusual.

The assemblies also have committees, however, and these are generally more active. The three standing committees in every assembly are bills, ethnic affairs, and scrutiny. While the chairs are key figures, they tend to be ministers, thereby reinforcing the control of decentralized governments over decentralized assemblies. In addition, some assemblies have created up to 10 ad hoc committees, each with a life span of one year. In Yangon Region, however, no ad hoc committees have been formed. Standing and ad hoc committees draft bills and receive and respond to complaints. They also undertake field visits to gain a better understanding of key political issues in a region or state.

Finally, in some state assemblies, structural problems have arisen in appointments of ethnic ministers. Article 161 of the 2008 constitution provides for ethnic minorities within state assemblies to gain ministerial representation when their population is greater than 0.1 percent of the total national population (or roughly 50,000 people). In both Shan State (with seven ethnic ministers) and Kachin State (with four), however, the presence of several such minorities means that the provision is triggered frequently, with the result that something akin to a divide-and-rule strategy seems to be gaining ground across the two states. Moreover, these minorities then appear to be cast as outsiders rather than insiders within the state, leading to controversy and resentment among people coming under this designation.

Looking for instance at Kachin State, the four national race ministers appointed under Article 161 represent the Bamar, Lisu, Rawang, and Shan peoples. No great controversy attaches to the ministers for the Bamar and Shan peoples, for each speaks for a minority in Kachin State that has majority

38. May Kha, "Rangoon Mayor Defends Controversial City Expansion Plan," *Irrawaddy*, September 23, 2014.

39. Myint Swe was so angry about reports in the *Irrawaddy* that he placed it on a personal blacklist (Kyaw Zwa Moe, "The Dangers of Reporting on Nepotism," *Irrawaddy*, September 13, 2014).

40. *Irrawaddy*, "Can't They Spare Time for the People?" September 10, 2014.



status in other parts of the country. Separating out the Lisu and Rawang peoples for special representation is, however, problematic. Officially, the Kachin national race embraces 12 subsidiary ethnic groups.<sup>41</sup> Giving special status to 2 of the 12 undermines the coherence of the national race, allows the 2 to claim privileges not enjoyed by the other 10, and at the same time diminishes the status of the 2 within Kachin State by imposing on them a separate identity. In a part of the country already having a deeply complex relationship with the wider nation, this essentially artificial layer of complexity is resented.<sup>42</sup> Parallel problems arise in Shan State, which has 33 official ethnic groups and seven ethnic ministers.

INTERNAL RELATIONSHIPS. These comprise intra-institutional links, inter-party contacts, civilian–military relations, and so on. As noted earlier, in all 14 jurisdictions the regional or state government is the driving force, leaving the assembly little autonomy. Moreover, size appears to have minimal impact, for even large assemblies in large regions (Sagaing) and large states (Shan) are tightly controlled. To date, experience shows that the one factor that can make a difference is the role of the speaker. In Ayeyarwady Region, Hsan Hsint of the USDP was appointed inaugural speaker, and as has already been seen, quickly proved to be a dynamic individual keen to assert power on behalf of the assembly. Within a couple of years, however, he was promoted to religious affairs minister in the national government in Naypyidaw, and the assembly reverted to the type established by all of its counterparts.<sup>43</sup> The received wisdom among media commentators was that state leaders did not want regional and state assemblies to be assertive and powerful, at least in their first five years of operation.

One key internal relationship problem that helps explain the balance of power between the chief minister and the speaker is that in each decentralized assembly the chief minister uniformly holds a higher previous (or at present in Kayin State and Rakhine State, current) military rank than the speaker, making it almost impossible for the speaker to assert any authority.

41. Unofficially, many local people believe that the correct number of ethnic groups in Kachin State is not 12 but 6, and that the larger number is either an honest mistake or, more darkly, an attempt by national policymakers to undermine historic ethnic affiliations.

42. Sadan, *Being and Becoming Kachin*.

43. In June 2014, Hsan Hsint was removed from his ministerial post for not performing his duties efficiently, and was charged with corruption (“Burma’s President Sacks Religious Affairs Minister,” *Irrawaddy*, June 20, 2014).

Moreover, the chief minister is advantaged by operating in both the decentralized executive and the decentralized legislature. By contrast, the military appointees in decentralized assemblies, collectively occupying 25 percent of all seats, are not active politically. Rather, they are almost entirely reactive, tending to speak only on constitutional or military matters and taking their lead from key figures, such as the security and border affairs minister. Broadly, the military appointees are a conservative force in the assemblies, keeping business strictly to what is permitted by the constitution. Like the generally governing USDP, but unlike the more unruly opposition parties, which often have little discipline, they usually vote in a rigid manner. On one occasion in the Yangon Region assembly, on the issue of licensing trishaw drivers, the military bloc split between army members, who voted with the regional government, and air force and navy members, who joined other assembly members in voting against it. The split was sufficient to overturn an executive-backed initiative. However, this was a minor legislative case, and in many respects is the exception that proves the rule.

EXTERNAL RELATIONSHIPS. These range across links with constituents, party organizations, civil society bodies, the public and private sectors, the media, and so on. On the whole, none of these relationships is well developed. Links with constituents are limited by the tight security surrounding many assembly compounds, and the general difficulty of accessing them without a formal appointment. At present, none of the assemblies is welcoming to constituents, and none has anything as basic as a visitors' gallery. While some committee members undertake field visits, they are not extensive. Often they are made in response to complaints lodged either at the national level and filtered down through the system, or at the decentralized level itself. However, these attempts at engagement are typically limited, and the assemblies as a group are widely seen as detached from their constituents. Some assemblies have tried to address this problem through use of the media. The assemblies in Ayeyarwady Region, Shan State, and Tanintharyi Region all maintain Facebook pages, for instance, and Tanintharyi has a dedicated cable television line for live transmissions from the regional assembly in Dawei, plus a website in the planning stage. Other assemblies have a live feed to a media room within the assembly compound. From its fifth session onward, the Kachin State assembly issued its own newsletter. Some individual members, especially from opposition parties, are keen to talk to journalists.

Broadly, links with party organizations are strong in the case of the USDP and weak in all other cases, reflecting the pattern found in voting records inside the assemblies. Although the parties are gradually establishing representative offices in the regions and states, these are not tied to the assemblies. Links within the public sector are generally top-down, as has already been explained. One organization brings together the speakers of all 14 regional and state assemblies, and links them collectively to the national parliament. Other than that, however, there are no formal links from the decentralized tiers into the political center. Links with the private sector are highly underdeveloped, with the two spheres seen as entirely separate. Links with civil society bodies are underdeveloped to the point of being a rarity. It can even be argued that the assemblies have no direct linkage with civil society. Indeed, if anything the links are negative, with assembly members even from opposition parties expressing a lack of trust in civil society organizations and believing them to be financially corrupt. This reflects a more general impression within the political class that civil society organizations are typically amateur charities rather than professional service providers.

Thus, although such organizations have substantial support at grass-roots levels, they are not supported at the political level, and are certainly not viewed as potential partners. Only in June 2014 was an attempt made to bridge this gap. Then civil society groups announced that on a two-month cycle over the next two years they planned to hold a people's forum in each of Myanmar's 14 regions and states, beginning with Mon State that month. The aim was to debate policy issues for presentation to the state government and assembly, and to monitor implementation progress.<sup>44</sup> In the first year of this planned initiative, little appeared to have come of it. Perhaps the only domain in which links are being actively sought is with the media. In general, however, the major media outlets are not interested in the regional and state assemblies, devoting almost all of their coverage to national affairs.

Looking beyond Myanmar, the assemblies have some informal international contacts, with ministers occasionally getting the chance to travel overseas on experience-sharing missions, and with some global bodies implementing programs that have implications for decentralized assemblies. One instance is an initiative to empower female politicians, launched by Phan Tee Eain (Creative

44. Yen Snaing, "Civil Society Plans 'Regional People's Forum' in Every State, Division," *Irrawaddy*, June 17, 2014.

Home), a local NGO founded in 2009. This initiative targets institutions at all levels of the governance hierarchy and is not restricted to regional and state assemblies.

ENGAGEMENT WITH KEY POLICY ISSUES. This is a category we used to gauge the importance of regional and state assemblies in the policy context of their designated territories. It starkly revealed how marginalized they are. When government officials sought to tackle headline problems of sectarian violence in Rakhine State and ethnic conflict in Kachin State, the state assemblies played no substantial role, being at best confined to logistical arrangements for peace and reconciliation processes. In dealing with contentious matters of economic development focused on a Chinese-backed copper mine project at Letpadaung in Sagaing Region, the regional assembly was similarly unimportant. When a proposed Chinese-backed mining project in the Mwe Taung Phar Taung area, on the border of Chin State's Tiddim Township and Sagaing Region's Kale Township, became mired in controversy, the speaker of the Chin State assembly sought to play a role as mediator, but was prevented from doing so by the lack of a constitutional mandate.<sup>45</sup> In planning for urban development in Yangon and Mandalay, the two regional assemblies were squeezed out of the policy process by national and municipal authorities. When the national parliament passed a Development Funds Law in March 2014, it vested control of the MMK 33 billion (USD 33 million) allocated to small-scale constituency projects in elected members of parliament from Myanmar's 330 townships, not in the decentralized assemblies.<sup>46</sup>

During the period covered by our research, the only significant exception to this generalized bypassing of regional and state assemblies was found in Mon State. There, in April 2014, the state assembly endorsed a plan to formalize the teaching of the Mon language in all government primary schools across the territory, signaling the first break with a uniform Bamar-language policy imposed on the entire country following the 1962 coup.<sup>47</sup>

45. Ei Ei Toe Lwin, "Chin Urge Transparency on Mwe Taung Mining Project," *Myanmar Times*, September 20, 2013.

46. Bart Robertson and Cindy Joelene, *Local Development Funds in Myanmar: An Initial Review* (Yangon: MDRI-CESD, Asia Foundation and ActionAid Myanmar, 2015).

47. For background analysis, see Marie Lall and Ashley South, "Comparing Models of Non-state Ethnic Education in Myanmar: The Mon and Karen National Education Regimes," *Journal of Contemporary Asia* 44:2 (2014), pp. 298–321.

Students may also elect to study the ethnic Kayin or Pa-O languages.<sup>48</sup> Possibly, this will prove to be a pointer to future engagement with issues of culture and education by regional and state assemblies. To date, however, it stands as a solitary instance of policy impact.

## ANALYSIS

An evaluation of Myanmar's 14 regional and state assemblies toward the end of their initial five-year mandate can only conclude that they have made a slow start. Assembly members comprise a narrow and unrepresentative segment of the general population, and most are at both the start and finish of their political careers. Structural factors work to the disadvantage of the decentralized assemblies, which operate in the shadow not only of the national executive and legislature (which in turn are dominated by military and former-military figures), but also of the decentralized governments (over which the central tier has considerable leverage). Internal relationships are constrained, with the chief minister (appointed by the president) able to control most important issues and thereby keep the assemblies on a tight leash. External relationships are underdeveloped, leaving the assemblies largely disconnected from the wider society in which they should be embedded, and to which they should relate in significant ways. Engagement in key policy issues is minimal. Largely overlooked by the media and mainstream political actors, all of which prefer to focus on the national level, the assemblies have made an inauspicious start. Compounding these general problems are particular difficulties faced by small assemblies in small jurisdictions. It is hard to argue that Kayah and Kayin States have functioning legislatures. At best, then, this institution-building project is a work in progress.

There are nevertheless some glimmers of light. The sheer demonstration effect of creating a functioning tier of government at the regional and state level is starting to play out. Just as Myanmar's "rigged election" in 2010 elicited "two cheers," in that it at least took a step in the right direction and created the conditions for future institutional development, so too might regional and state assemblies.<sup>49</sup> Indeed, in statements made by leaders at all

48. Lawi Weng, "Mon State to Allow Ethnic Language Classes in Govt Schools," *Irrawaddy*, April 10, 2014.

49. Neil A. Englehart, "Two Cheers for Burma's Rigged Election," *Asian Survey* 52:4 (2012), pp. 666–686.

levels of the political system, there is now not only an acceptance of these bodies but also a desire to build them up and invest powers and resources in them. Even some USDP regional and state ministers and members argue for further decentralization, on the basis of experience to date, and the point is slowly being picked up by national figures.

In July 2013, a new Region/State Hluttaw Law made minor changes to legislation enacted in October 2010 by the outgoing junta. In August 2013, Thein Sein called publicly for greater powers to be decentralized, and subsequently wrote to all 14 regional and state assemblies inviting them to send him a letter of complaint if the chief minister failed to implement their decisions. In February 2014, a UN agency announced that it was adding to its support for the national parliament a program to build capacity in regional and state assemblies.<sup>50</sup> Most significantly, in July 2015 a second round of largely failed attempts to amend the constitution did generate some progress for decentralized assemblies. While a proposal allowing them to elect their own chief ministers was voted down, successful amendments saw 34 lawmaking powers added to Schedule Two of the constitution, and 20 tax-raising powers added to Schedule Five. These will permit the assemblies greater oversight of tourism, industrial zones, and wildlife protection, and will give them limited tax-raising powers on income, commerce, and customs.<sup>51</sup>

Nevertheless, for regional and state assemblies to move from their current recessive and reactive position within the wider political system to something more meaningful, considerable reform will be necessary. In particular, key issues of capacity and autonomy will have to be addressed. To function as real decentralized legislatures, the assemblies must be allowed at a very basic level to gain a minimum size even in small jurisdictions. More broadly, to undertake decentralized functions, the assemblies require greater administrative capacity and enhanced resources for ordinary members. They also need to be enabled to address real citizen needs in areas such as health, education, poverty eradication, and regional economic integration. At present, municipal mandates focus excessively on infrastructure projects and can often secure, under this heading, top-up funding from the national level. In many places, the result has been a mushrooming of public works projects such as

50. United Nations Development Programme, "UNDP Steps up Support to Myanmar's State and Regional Parliaments," *UNDP in Myanmar*, February 10, 2014.

51. Yen Snaing, "Charter Push for Decentralization, Stronger Parliament Falters," *Irrawaddy*, July 9, 2015.

markets, small roads, and office buildings. While many of these projects are valuable, they do not confront the most fundamental social development needs of citizens. Linked to these requirements is the need to loosen rigid controls. On the one hand, the constitution is deeply constraining. On the other, with the appointment of chief minister and the allocation of ministerial portfolios all currently vested in the president, lines of accountability inevitably flow upward rather than downward. This places significant limitations on the assemblies' capacity for independent action, and turns them into little more than rubber-stamp institutions.

Major reforms are thus needed to make the assemblies real working parts of the Myanmar political system, and to give them the kind of presence that might be of interest to regional and state media. Small changes that could easily be made include establishment of a system for citizen consultation on draft bills that would link the assemblies more closely to grass-roots communities, and enhancement of assemblies' capacity by encouraging them to consult experienced individuals from key sectors affected by proposed legislation. Larger changes include allowing the assemblies to elect their own chief ministers, withdrawing from them military appointees (known to represent an entrenched political establishment), substantially enhancing their tax collection powers, and enabling them to allocate natural resource extraction licenses within their jurisdictions.

While waiting for necessary constitutional reform to take place, minor but significant change could be introduced soon after Myanmar's November 2015 general election. The choice of chief minister, currently vested in the president, could for instance be undertaken in a new manner. Even without revision of the relevant constitutional clause (Article 261), the incoming president chosen by indirect election in the aftermath of the national poll could inform all 14 regional and state assemblies that they should nominate their preferred candidate for chief minister, and that he (or conceivably she) will then merely endorse the choice. This would be one simple way of enabling the state and regional assemblies to grow as institutions, despite continuing deadlock over constitutional reform.

## CONCLUSION

As Myanmar approaches its November general election, it faces a wide array of governance challenges. Alongside everything else, the task of constructing

a meaningful tier of government in the country's 14 regions and states may not seem especially important. To date, progress has certainly been poor. However, at a fundamental level this remains a deeply fractured society, riven by ethnic tension and conflict. Additionally, in the mainly Bamar core just as much as in minority ethnic states, the experience of centralized, authoritarian rule is still recent and therefore dominant. In these circumstances, it is essential that determined efforts be made to invest in the decentralized tier, build it up, and point the way to a genuine territorial dispersal of power. Indeed, thoroughgoing reform of the country's 14 regional and state assemblies would send positive signals to the ethnic nationality groups with whom the government is seeking to build trust through the ongoing peace process, and could thereby play a key role in generating a long-awaited solution to Myanmar's divisive ethnic conflict.