Myanmar's Transition

Openings, Obstacles and Opportunities

EDITED BY
NICK CHEESMAN
MONIQUE SKIDMORE
TREVOR WILSON

Myanmar Update Series
College of Asia and the Pacific
The Australian National University

With the world watching closely, Myanmar began a process of political, administrative and institutional transition from 30 January 2011. After convening the parliament, elected in November 2010, the former military regime transferred power to a new government headed by former Prime Minister (and retired general), U Thein Sein. With parliamentary processes restored in Myanmar's new capital of Naypyitaw, Thein Sein's government announced a wide-ranging reform agenda, and began releasing political prisoners and easing press censorship. Pivotal meetings between Thein Sein and Aung San Suu Kyi led to amendment of the Election Law and the National League for Democracy contesting by-elections in April 2012. The 2011 Myanmar/Burma update conference considered the openings offered by these political changes and media reforms and the potential opportunities for international assistance. Obstacles covered include impediments to the rule of law, the continuation of human rights abuses, the impunity of the Army, and the failure to end ethnic insurgency.

ISEAS

ISEAS Publishing
Institute of Southeast Asian Studies
30 Heng Mui Keng Terrace
Singapore 119614

http://bookshop.iseas.edu.sg

MYANMAR
Politics

PIC223h

ISBN 978-981-4414-16-6

9 789814 414166

The **Institute of Southeast Asian Studies (ISEAS)** was established as an autonomous organization in 1968. It is a regional centre dedicated to the study of socio-political, security and economic trends and developments in Southeast Asia and its wider geostrategic and economic environment. The Institute's research programmes are the Regional Economic Studies (RES, including ASEAN and APEC), Regional Strategic and Political Studies (RSPS), and Regional Social and Cultural Studies (RSCS).

ISEAS Publishing, an established academic press, has issued more than 2,000 books and journals. It is the largest scholarly publisher of research about Southeast Asia from within the region. ISEAS Publishing works with many other academic and trade publishers and distributors to disseminate important research and analyses from and about Southeast Asia to the rest of the world.

Myanmar's Transition

Openings, Obstacles and Opportunities

EDITED BY

NICK CHEESMAN

MONIQUE SKIDMORE

TREVOR WILSON

ISEAS

INSTITUTE OF SOUTHEAST ASIAN STUDIES

Singapore

First published in Singapore in 2012 by
ISEAS Publishing
Institute of Southeast Asian Studies
30 Heng Mui Keng Terrace
Pasir Panjang
Singapore 119614

E-mail: publish@iseas.edu.sg
Website: http://bookshop.iseas.edu.sg

ISEAS Library Cataloguing-in-Publication Data

Myanmar's transition : openings, obstacles and opportunities : papers from the 2011 ANU Myanmar/Burma update conference : 16–17 May 2011 / edited by Nick Cheesman, Monique Skidmore and Trevor Wilson.
1. Burma—Politics and government—21st century—Congresses.
2. Journalism—Political aspects—Burma—Congresses.
3. Law—Burma—Congresses.
4. International relief—Burma—Congresses.
5. Burma—Economic conditions—Congresses.
I. Cheesman, Nick.
II. Skidmore, Monique.
III. Wilson, Trevor.
DS530.4 B972 2011 2012

ISBN 978-981-4414-15-9 (soft cover)
ISBN 978-981-4414-16-6 (hard cover)
ISBN 978-981-4414-17-3 (e-book PDF)

Cover photo: Mandalay rush hour at sunset.
Courtesy of Shutterstock.

Typeset by Superskill Graphics Pte Ltd

CONTENTS

CONTRIBUTORS AND EDITORS

Cheesman, Nick (Dr): Lecturer, Department of Political and Social Change, Australian National University, Canberra.

Egreteau, Renaud (Dr): Research Assistant Professor, Hong Kong Institute for the Humanities and Social Sciences (inc. Centre of Asian Studies), University of Hong Kong.

Farrelly, Nicholas (Dr): Research Fellow, School of International, Political and Strategic Studies, Australian National University, Canberra.

Hla Hla Win: Independent consultant, Yangon.

Horsey, Richard (Dr): Independent consultant. Formerly ILO Liaison Officer, Yangon.

Khin Maung Nyo: Senior Research Fellow, Centre for Economic and Social Development, Myanmar Development Resource Institute, Yangon.

Kyaw Min San: Independent lawyer practising in Yangon.

Lall, Marie (Dr): Reader in Education and South Asian Studies, Institute of Education, University of London.

Myint Zan (Dr): Professor, School of Law, Faculty of Business and Law, Multimedia University, Malacca.

Nwe Nwe Aye: Foreign Correspondent, based in Yangon.

Pe Myint: Writer and journalist. Editor in Chief, *The People's Age*, Yangon.

Pedersen, Morten B. (Dr): Senior Lecturer in Politics, University of New South Wales, Canberra.

Simpson, Adam (Dr): Lecturer in International Relations, School of Communication, International Studies and Languages, University of South Australia.

Skidmore, Monique (Professor): Pro-Vice Chancellor, International and Special Projects, University of Canberra.

Thant Myint-U (Dr): Historian and consultant. Author of *The Making of Modern Burma*, *The River of Lost Footsteps: A Personal History of Burma*, and *Where China Meets India*.

Thaung Tun: Visiting Senior Research Fellow, Institute of Southeast Asian Studies, Singapore.

Tin Htut Oo: Independent consultant based in Yangon. Formerly, Director-General for Department of Agricultural Planning, Ministry of Agriculture and Irrigation.

Turnell, Sean (Professor): Associate Professor of Economics, Macquarie University, Sydney; Editor in Chief, *Burma Economic Watch*.

Ware, Anthony (Dr): Research Fellow, Alfred Deakin Research Institute, Deakin University; Lecturer in Politics, School of Humanities and Social Sciences, Deakin University, Melbourne.

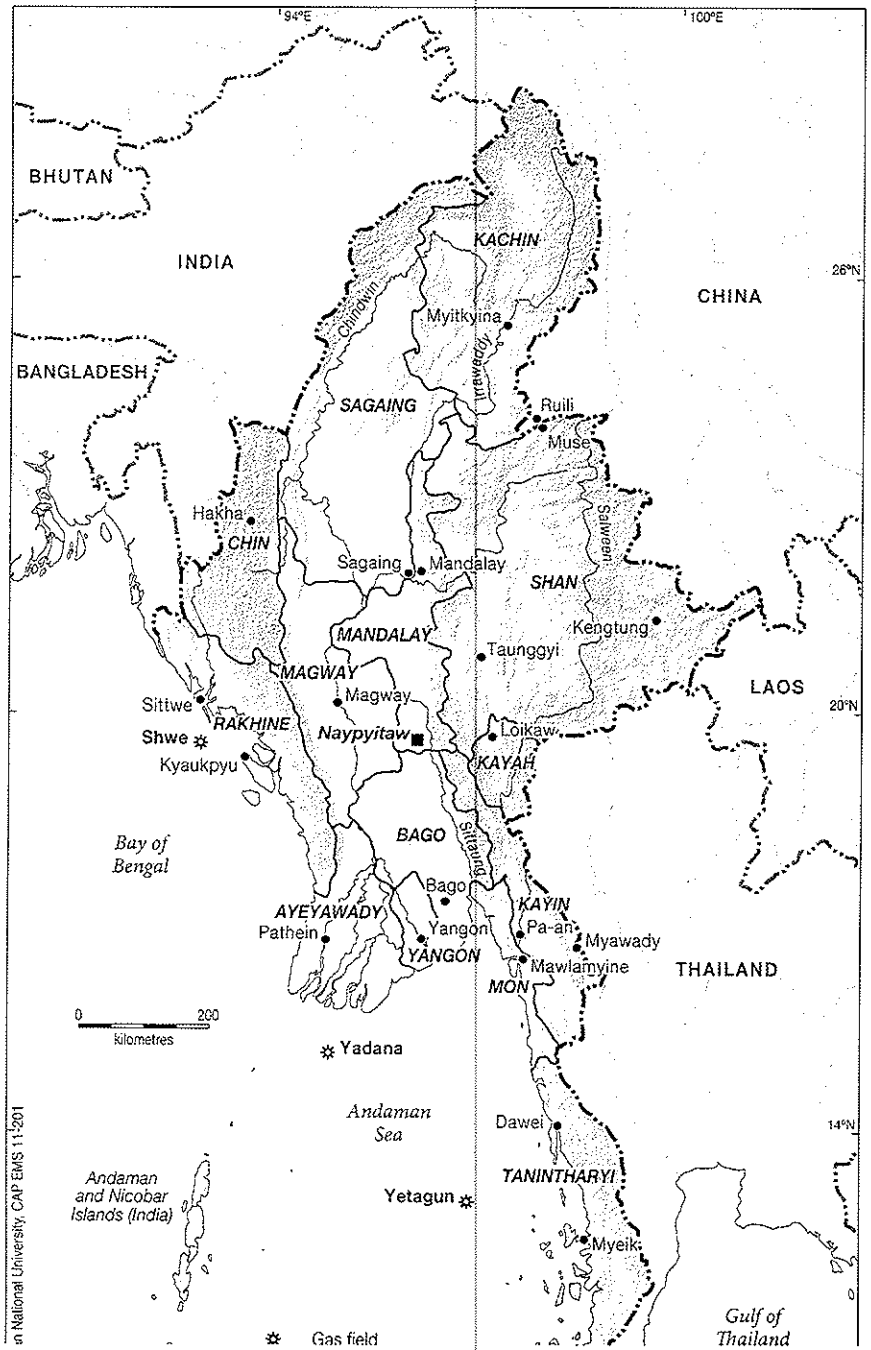
Wilson, Trevor: Visiting Fellow, Department of Political and Social Change, Australian National University, Canberra.

NOTE ON TERMINOLOGY AND GEOGRAPHICAL NAMES

In 1989, the former military regime changed the official romanized name of Burma to Myanmar and changed the names of states, cities, and towns from the names and spellings used prior to that date. Since then, the name "Myanmar" has been used officially by the United Nations, and inside the country today the revised geographical names and spellings are commonly used. The term "Myanmar" is still contested, however, particularly by activists outside the country, but in this publication the editors have decided to use the name "Myanmar" for the period since 1989, and "Burma" for the period when that was the official name of the country. Likewise, the current official geographical names are used for the period since 1989. The people of the country are throughout referred to as "Burmese", except where references are made to specific ethnic groups.

Nick Cheesman,
Monique Skidmore, and
Trevor Wilson

Map of Myanmar



I

Overview

1

INTERPRETING THE TRANSITION IN MYANMAR

Monique Skidmore and Trevor Wilson

The first elections in Myanmar since 1990, held on 7 November 2010, were a significant moment in the country's political life. Admittedly, the elections were organized to ensure continuity of ultimate military control, and to adapt and preserve such control rather than to make a break with the past. Moreover, as has been widely reported, the electoral process was neither free nor open, with unverified "early votes" brought in to decide results in favour of the government party. Another problem was the lack of inclusiveness, because opportunities for popular involvement in the election were restricted by the authorities, with many opposition groups at home and abroad — most notably the National League for Democracy (NLD) — boycotting them. Nevertheless, in spite of all these factors, the elections restored a degree of representative government for the first time in more than two decades, and ended the one-party system that had prevailed for more than four decades.[1]

The changes that followed the elections made the year 2011 even more momentous than observers could have predicted. The "new" civilianized government under President (former General) Thein Sein announced a

series of policy changes that included relaxation of long-standing censorship arrangements; launched several initiatives to start a process of substantive reconciliation involving Aung San Suu Kyi as well as members of the expatriate pro-democracy Burmese diaspora; and supported various practical measures (such as open workshops and seminars) designed to foster participative public policy debate about more significant long-term policy directions for Myanmar. Some of these measures were immediately significant for what they meant for the character of the new government. Other changes, it is foreshadowed, will be gradual, will not threaten overall social and economic stability, and will speed up Myanmar's effective integration into regional cooperation arrangements (to which it had previously been largely a bystander).

The main reason why the elections, which marked the completion of the "Road Map" laid out in 2003 by the State Peace and Development Council (SPDC), were not recognized internationally as a substantial change is that more than two thousand prisoners of conscience remained in detention, including NLD leader Daw Aung San Suu Kyi (who was released a week later) and the leaders of the Shan Nationalities League for Democracy (the second-most successful party in the elections of 1990). It was widely expected that an amnesty would be declared by the authorities, as often happens in Myanmar, but initially the only concession announced was a one-year reduction of sentences, which resulted in a mere 112 political prisoners being released, and this was scarcely acknowledged internationally or in the media. The second reason was the collapse of the ceasefire agreement with the Kachin Independence Organization in June 2011 and the new government's inability to prevent the resumption of fighting between Kachin armed groups and the Burmese Army.

HOW ARE MYANMAR'S NEW POLITICAL ARRANGEMENTS EVOLVING?

New Political Architecture

Myanmar's 2010 elections established the basic composition of the new assemblies at national and regional levels, but left numerous pressing questions about how they would function and to what extent they would be able to exercise the powers vested in them under the 2008 Constitution. Over the period of the assemblies' initial sessions, some of the operating modalities evolved into the semblance of a system. Despite having only

a handful of elected representatives, some opposition parties were able to use their positions creatively to bring about certain changes. It is still not completely clear to what extent the aspirations of regional and ethnic minority groups might be satisfied through the regional assemblies. The assemblies have so far had little impact on the continuing tensions between centre and periphery, which in some specific instances have worsened. It is increasingly evident, however, that the government wishes to effect further political, legal, and economic change through the new assemblies and other institutions.

What has emerged in the assemblies is a pattern of lively parliamentary debate that has included input of ideas and proposals as well as questioning, mostly from non-government representatives, with ministerial spokesmen being pushed by the Speakers to provide substantive and detailed answers to questions. Most of the proceedings are being reported at length in the official media, and other media personnel are no longer banned from the precincts of the assembly. Military representatives have sat more or less as "silent witnesses", neither contributing to nor blocking discussion. How long they will continue in this manner remains to be seen. This and many other questions remain to be clarified. Richard Horsey has been following the evolution of the new institutions closely and in his chapter offers a careful and objective analysis of their initial operations and their potential for development.

Political Space

As far as "political space" is concerned, surprising and welcome developments have been Aung San Suu Kyi's release from detention on 13 November 2010, her freedom since then to meet and communicate with both Burmese and foreigners, and her apparent ability to travel inside the country as she did in 2002–03. An unprecedented development is her freedom to be interviewed frequently by foreign media (although not always by the domestic media, whose coverage of her activities is still occasionally controlled) and her freedom to send video messages abroad, even to the U.S. House of Representatives Sub-Committee on Asia and the Pacific. Also unprecedented is that Aung San Suu Kyi now has personal access to the Internet, and that the National League for Democracy is able to operate a well-designed and up-to-date website (although it is unclear how readily ordinary Burmese people can access this website). This means that for the first time ever it is possible (theoretically at least)

for any interested political observers or participants to understand the full extent of the NLD's operations.

Despite its initial refusal to register as a political party under the new Myanmar Election Law, after the elections the NLD was allowed to carry out a range of educational, training, and low-level capacity-building programmes, documented on its website along with other reports of NLD activity. While these activities are superficially consistent with what a social mobilization organization would carry out on behalf of its members, they are also manifestly political. This has led to high, and perhaps unrealistic, expectations among Aung San Suu Kyi's supporters at home and abroad about the inspirational role she might be able to play as *de facto* leader of the opposition.[2] The government's readiness to tolerate overt political activity by the NLD was unexpected, but it also had its limits, so it was hardly unexpected when, on 29 June 2011, on the eve of her first trip outside Yangon since being released in 2010, the Ministry for Home Affairs formally informed Aung San Suu Kyi that the NLD was engaging in activities that it was not permitted to conduct under the law, and warned that if her in-country travel caused tension, they could not assure her security.[3] Government spokesmen subsequently made it clear that the government wanted the NLD to register as a political party (thereby making these activities legal) and become part of the political process.

In a significant move, to make it possible for the NLD to agree to register, the government agreed to amend the 2008 Election Law to take account of NLD criticisms of the law. As a result, on 17 November 2011, the NLD revoked its refusal to register as a political party and stated that it would also put up candidates for future elections. When the government announced that by-elections for forty-eight seats that had become vacant would be held on 1 April 2012, the NLD announced that it would contest the by-elections and that Aung San Suu Kyi would herself stand as a candidate for the first time. It is difficult to overstate the momentous change in Myanmar's political future that these actions may bring, especially when one considers that twelve months earlier such actions were almost impossible to conceive. At this stage, how Aung San Suu Kyi and the NLD will carry out their role as a minority opposition party in the parliament remains to be seen, but there is no doubt that the political dynamics will change significantly. It will also bring Myanmar closer to "democracy", although building effective democratic institutions and habits across society and the country may take time to achieve.

Importantly, as far as politics is concerned, Aung San Suu Kyi and the NLD have already been allowed to disagree publicly with Myanmar government policy on some major issues, adding another new element of public policy debate not seen in Myanmar/Burma for many decades. Two specific issues, on which such open dissent would not previously have been tolerated, are the continuation of Western sanctions against Myanmar,[4] which the NLD publicly said should be maintained, and the International Commission of Inquiry on Human Rights Abuses, which Aung San Suu Kyi has announced she and the NLD supported.[5] In addition, Aung San Suu Kyi has called for an (unprecedented) nation-wide ceasefire with ethnic groups, and for urgent action to protect the environment, in particular the Irrawaddy River. Normally, on such major issues Burma's military rulers have not been willing to brook any opposition. The September 2011 announcement by President Thein Sein that he would suspend the Myitsone Dam on the upper Irrawaddy came as a surprise — for Burmese people perhaps more than anyone else — especially when the president justified his decision as needing to take account of the wishes of Burmese people, a statement not uttered in Burmese politics for at least fifty years.

At this stage, the NLD has begun to re-open the offices it set up across the country in 2002–03 as an integral part of its operations, but it is not entirely clear to what extent the NLD wishes to recreate a network of offices throughout the country. Aung San Suu Kyi is clearly holding back in her criticisms of government policy, but for how long is this sustainable? Presumably she will not be able to stand silent while the Burmese Army ruthlessly attacks insurgent groups, or tries to stamp out freedom of speech and assembly (which are supposedly permitted under the new constitution). If political activities continue to be permitted, to what extent will the NLD be able to influence national policies and national politics through these activities? If they are not permitted, what difference will this make, including for the NLD itself? The situation is constantly evolving during this rapid period of reform in the Burmese political space.

A major uncertainty is to what extent, and in what manner, the government will accept amendments to the 2008 Constitution. Aung San Suu Kyi has made clear in her victory speeches upon being elected to parliament that she intends ultimately to seek the removal of the role enshrined for the military in the political process by making changes to the constitution.

National Reconciliation

One of the longstanding demands of the government has been to set up a genuine process of national reconciliation. Until 2011 there was no clear indication of how the broader process of national reconciliation, in which all groups would participate, might be advanced in order to open up badly-needed opportunities for socio-economic progress at the grass-roots level. A most significant development was President Thein Sein's decision in August 2011 to meet Aung San Suu Kyi, something that had been consistently rejected by his hard-line predecessor, Senior General Than Shwe. In another important public statement in September 2011, President Thein Sein called on members of the exile community to return to Myanmar to participate in the national reconciliation effort. This is the first time such a public appeal has been made, but it has been taken up by a few leading critics of the military regime, including Dr Thant Myint-U, whose foreword in this publication sets out some views on how Myanmar's national reconciliation agenda might proceed.[6] Debate about national reconciliation and the possibility of a return to Myanmar of the Burmese political diaspora has raged through Burmese cyberspace over the past months. These incipient reforms have not yet gained the solidity and irreversibility that would be required to build trust among expatriate activists and yet this process proceeds apace.

It is now clear that one of the greatest problems inherited by the "new" government is the SPDC's failure to negotiate broader arrangements with the ethnic groups with which it had negotiated ceasefires in the 1990s. It failed to build on the preliminary understandings it had with some groups, such as the New Mon State Party or insurgent groups in Shan State. The serious consequences of the SPDC's ill-advised attempts to force groups such as the Wa and the Kachin to transform their militia into "border guard forces" without reassurances and guarantees about regional "power sharing" are now being felt. It is highly likely that tense situations in some ethnic areas could deteriorate further into civil war. Nicholas Farrelly, in his chapter on developments in Kachin State, correctly sees political, economic, and security issues as being intertwined, and suggests that the Kachin are not ready to agree to fundamental concessions along the lines insisted on by the Tatmadaw (the Burmese Army). If this pattern were repeated with other minority groups, it could leave a tenuous dual political structure in place for some time, parallelling the unworkable dual

economic structure (formal economy vs informal economy), depending on the success or otherwise of the 1 April 2012 unification of Myanmar's multiple exchange rates.

For its part, the new Myanmar government has stated its wish to resolve outstanding differences with any ethnic groups through negotiation rather than by using force — although its readiness to deploy the army in strength, as in the past, has also been demonstrated. In addition to negotiations with leaders and groups in Kachin State, a series of high-level negotiations has been held with Mon, Shan, and Karen groups that still oppose the government, and several provisional ceasefires have been agreed. So far (as at time of writing), fighting has not necessarily stopped, and more comprehensive "peace" agreements have not yet been concluded. Realizing that its insistence on incorporating ethnic militia into the Burmese army was a key sticking point, the government appears to have dropped this 2010 proposal. It is more than fifteen years since the central government successfully concluded any significant agreement with ethnic groups, and over the period since then none of the parties has distinguished themselves as they strive to settle their differences.

The prospects for early, peaceful solutions to these long-standing ethnic tensions do not seem very good, and they could prove a major impediment to wider political progress. While Aung San Suu Kyi has called for a nation-wide settlement of these disputes, it is far from clear that she will be able to contribute effectively to finding a solution unless all concerned can agree on a new strategy for this purpose. The presence of ethnic representatives in the new assemblies, and the creation of regional assemblies, does not so far seem to have helped consolidate any "peace process."

MYANMAR'S ANTI-DEMOCRATIC INHERITANCE

Where is the Army?

It is reasonable to ask where the army stands in relation to all of these developments. It seems obvious that the army continues to play a key role in the background, at least exercising some kind of reserve power. While overseas activists continue to warn about the behind-the-scenes power still held by Than Shwe, there is no hard evidence for this; nor is there any hard evidence for the existence of a secret "Supreme State Council" through which ultimate military control could be systematically imposed.

One interpretation of the current pace of the reform is that President Thein Sein feels secure that he is not liable to suffer a coup from within the ranks of the military. However, the speech made by the head of the army, General Aung Myint, at Armed Forces Day ceremonies (27 March) made clear he sees an ongoing role for the military in the parliament.

Against the backdrop of the elections and the laborious work of building a new national assembly in the capital, Naypyitaw, the military has so far given no explicit sign that it intends to release its grip on the tools it has used to repress popular aspirations for genuine change and retain effective control over the state apparatus. Despite the absence of any manifest serious threats to state unity and stability, national security — which is equated with the predominance of the armed forces — remains the top national concern. This was made graphically clear when, just days before the new parliament convened, the SPDC announced as a *fait accompli* the budget that it had approved for 2010–11 and 2011–12, locking in military expenditures at more than 50 per cent of state outlays. Also the large military economic corporations — Union of Myanmar Economic Holdings and Myanmar Economic Corporation — continue to control large segments of the economy with little or no disclosure or accountability.

Building Foundations for Democracy

Most of the foundations for democracy do not exist in Myanmar: government in Myanmar is still heavily circumscribed by secrecy and lack of transparency; there is no developed sense of political rule as a participative process; and Burmese society in general still carries many signs of an authoritarian, "top-down" society. Consultative mechanisms and public policy debate remain alien concepts, and their absence underlines how far removed "democracy" is from Myanmar. The checks and balances that are now an inherent part of modern democratic societies, and which are not viewed as obstructive or problematic phenomena, are still regarded with mistrust by the rulers of Myanmar, and it is not clear how progress can be made towards building an understanding and acceptance that such measures are basically beneficial. Some of these features are now being developed, but there is a long way to go, and the highly restrictive "mindset" of decades of authoritarian rule is proving hard to throw off.

This is especially the case at lower levels, where, for example, in the recent by-elections, local vote-rigging occurred, in contradiction to statements made by President Thein Sein about the need for free and fair elections and despite the presence of international monitors.

Chronic features of most government processes in Myanmar — such as lack of transparency and accountability, non-responsiveness, and absence of integrity — continue to raise profound doubts about how quickly and how far the formal return to constitutional and parliamentary government might enhance prospects for improved governance. Few in the country have any memory or experience of participatory government or are acquainted with the types of consultative processes associated with democratic change in many other parts of the world. In her chapter, Lall describes how even the concept of citizenship has not yet fully evolved.

Although the country has formally returned to constitutional and parliamentary rule, it is still not entirely clear to what extent state agencies will adhere to the provisions of the constitution. In the absence of effective rule of law, the formal rearrangements of law-making and law-enforcing institutions under the new constitution will do little to bridge the vast gaps between what exists on paper and what happens in reality. The establishment of a National Human Rights Commission in September 2011 is an important first step, but effective mechanisms to protect basic civil rights are also needed. What further steps can be taken to protect fundamental rights? What meaningful measures can be taken at an early stage to establish some minimal conditions for the emergence of the rule of law? What can be done to ensure greater respect for property rights, so as to protect citizens against wanton confiscation of land and extortion of money and assets?

Moreover, the military as an institution operates largely above the law, and state security personnel still enjoy virtual impunity for human rights abuses carried out in the name of national security. So far there is no indication that army leaders will be prepared to negotiate over control of the state or allow for any true contest or verification of their policies and programs, nor is there as yet any sign that they will be disposed to tolerate compromises that might involve different parties conceding ground to ensure outcomes that can really command wider support. Can the new assemblies play any role in effecting changes that might lead to wider political and social reforms aimed at protecting rights?

STRENGTHENING CHECKS ON THE EXERCISE OF POWER

Absence of the Rule of Law

Observers are increasingly focusing on the absence of the rule of law as a major unresolved issue for Myanmar. This problem has been singled out by the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomás Ojea Quintana, as well as by Aung San Suu Kyi. Among the obvious problems, strong military influence is still exerted in relation to judges, as demonstrated by the appointments of new senior judges. It is not yet clear whether these judges will be better or worse than their predecessors, but any negative consequences in terms of independence and fairness of judgements will emerge in time. The large-scale amnesties of prisoners (including a number of political prisoners) by the new government during 2011 drew attention to the distorted pattern of sentencing "offenders" to excessively harsh sentences for relatively trivial, and often minor or technical, offences, and releasing some later at executive discretion, while other languish in prisons for years. (Some political prisoners who have been released, such as Ashin Gambara, the monk leader of the "Saffron Revolution", continue to be subjected to petty harassment by the security authorities.)

As a practising lawyer, Kyaw Min San looks at some of his direct experience with the functioning of the courts. He asks about the possibilities for change under the new administration, and draws attention to three key issues that require urgent attention: the status, composition and budget of the Supreme Court; the lack of authority of the courts, and the external pressures they face; and judicial corruption. Nick Cheesman takes up the last of these three issues and looks at the culture of corruption in Myanmar's courts through a discussion of the language used to buy and sell legal cases. From the point of view of a comparative legal scholar, Myint Zan considers the establishment of a Constitutional Tribunal in Myanmar — an innovation in a former British colony — and examines its role with reference to that of the Supreme Court. Their chapters are preliminary attempts at exploring some of the problems that will be faced in Myanmar by persons concerned to establish a rule of law.

It is disturbing to see how little international assistance Myanmar has received for capacity-building related to the justice system. Few

international agencies have undertaken programmes on legal capacity-building, and no bilateral Western donors have dared to risk criticism from overseas Burmese activists by even contemplating such programmes. Perhaps some assistance in these areas may now be possible, especially since they have been flagged by Aung San Suu Kyi as being in need of urgent attention.

The Need for a Comprehensive Human Rights Strategy

The prevalence of serious human rights abuses in Myanmar is a continuing concern. Ordinary citizens are still at risk of being imprisoned for trivial acts of resistance or for acting within their legal rights to represent community and public concerns about the corruption and excesses of state officials. The new National Human Rights Commission faces a big challenge in investigating complaints from citizens and changing the pattern of violation of normal citizens' rights. Observers have expressed concerns about the Commission's independence and whether it will have the resources to function effectively, yet Western sanctions are not likely to be terminated until more decisive action is taken by the Myanmar government.

Myanmar's initial appearance in January 2011 before the Human Rights Council, to undergo its universal periodic review, was an opportunity to assess whether improvements in human rights practices were likely to be introduced any time soon. The result, however, was particularly negative — with ninety-nine of the Council's "recommendations" accepted by the Myanmar government and ninety-two rejected — and therefore quite disappointing.[7] This suggests that eliminating human rights abuses is not a high priority for the new government, and underlines how difficult it will be to move forward in this area where changing the behaviour of the army is the critical requirement.

The rights of workers to form unions, to strike, or to take other action to demand reasonable wages and conditions are now guaranteed under new legislation that entered into effect at the end of 2011. In the past two years, some workers have carried out strikes and won some wage increases in a way that has not happened in Myanmar for more than two decades. President Thein Sein identified workers' rights as important for ongoing development tasks, but it is not clear how any improvements in this area will be followed through and how thoroughly the new laws will be applied.

What steps can be taken to protect fundamental rights and establish some minimal conditions for the emergence of the rule of law? What can be done to ensure greater respect for property rights, so as to protect citizens against wanton confiscation of land and extortion of money or assets? Can the new assemblies play any role in effecting changes that might lead to wider political and social reforms aimed at protecting rights?

A Greater Role for the Media

Another key issue relates to concerns about the role of the media in Burma. Until now, scholars and observers of the various Burmese media have considered media inside the country and media outside the country as separate entities. This division of inside/outside is no longer relevant as an analytical paradigm, but it continues to aggravate differences and create tensions between aid donors. It is especially unhelpful as a framework for understanding the role of the media at the present time, when, since the beginning of the twenty-first century, technological change has introduced new forms of electronic media at a rate that has been almost revolutionary.

Under the old inside/outside paradigm, the Democratic Voice of Burma (DVB) is considered to be an expatriate media organization operated through foreign countries. However, when one considers that more than two-thirds of DVB's audience is inside the country, as are many of their journalists and reporters, it is clear that the paradigm no longer applies. In his foreword, Thant Myint-U describes a fracturing of the military's former political authority and practices. There is similarly a fracturing of the old authoritarian-style saturation propaganda on one hand and the crude and heavy-handed attempts to stop media leaking across national boundaries on the other. This is not a one-way process where media organizations outside the country broadcast inside the country. There is clearly a decentralization of the production and transmission of information through networked structures as citizen journalism and social media are combined.

In view of the expansion of information media in Myanmar over the past decade — characterized by fertile and diverse origins, new forms, widespread audience reach, portability, transmittability, and avid consumption — new analytical criteria, such as audience reach, persuasive impact, political impact, and degrees of censorship, are needed in order to understand the actual and potential effects of Burmese media as they operate today.

Over the past twelve months within post-election Myanmar all sorts of challenges to the media's traditional role have been occurring, often at the same time — a fracturing of the military state, parliamentary reforms, changes in the political economy, and the decentralization of information provision and control. During 2011 press controls were substantially lifted, and no longer represent the everyday problem they were in the past for all but internal political reportage. Nwe Nwe Aye and Pe Myint are experienced journalists, and their chapters illustrate the significant problems and issues facing the media in the period ahead.

Pe Myint writes of the widespread phenomenon of local journals in Burma and describes the stormy responses of Burmese readers of local journals, beginning in 2008, when well-known writers and writer-politicians began writing about the constitutional and electoral processes. Local journals began to introduce political affairs sections, and by 2010, Pe Myint writes, "journalists ... seized the chance to report political news for the first time". In analyzing the incremental press freedom of the past few years, Pe Myint speaks of the one true remaining censor, "the censor that has taken root in the minds of writers and journalists" — the kind of censor that it will take some time to fully remove.

In her related chapter, Nwe Nwe Aye describes issues that the media will not be able to report freely and fairly for some time. She concentrates upon corruption, mismanagement, criminal negligence, and the reportage of legal cases, and argues that the current weak link between freedom of expression and the rule of law could in the coming years be significantly strengthened through increasingly freer media.

The mooted abolition of the Press Scrutiny Board and the granting of new media licences suggest that further censorship reforms can be expected, and the lifting of much of the censorship surrounding reportage of the NLD and Aung San Suu Kyi has been widely welcomed inside the country. For each of the many significant post-election reforms, however, it is possible to find examples of increased or ongoing repression, and the jailing of *Myanmar Times* co-owner Ross Dunkley, the continuing censorship of certain political activities, as well as (from time to time) the jailing of journalists and writers, demonstrates how much further the country needs to proceed along the path of reform.

More opening-up of the media, including to normal international presence, seems likely to occur, and this could act as a more effective check on abuse of power than would have been imagineable before 2011. At the end of March 2012, in an unprecedented move, the Ministry of Information sponsored a conference of domestic and overseas Burmese

media representatives to discuss many of these issues prior to redrafting the media laws. If this is followed through properly, it promises a new and more acceptable environment for journalists and proprietors alike, as well as substantially greater transparency.

ECONOMIC CROSS CURRENTS

Myanmar's economic development continues with little rhyme or reason and there is only minimum reform. It is hardly surprising that this should be one of a small number of areas where the new president has chosen to seek independent advice. Economists Sean Turnell and Khin Maung Nyo observe Myanmar from somewhat different vantage points, but agree on the policy failures that generate many worries about the future. Since 2005, the significant windfall from mounting off-shore gas revenues seems to have resulted in no transfer of financial resources to the national budget, although some skills transfers could eventually be beneficial for the oil and gas sector. Privatization seems to have been pursued opportunistically rather than strategically, leaving numerous state-owned enterprises under military control, and their loss-making nature is a significant drain on the national economy.

Ironically, the former military regime's business cronies continue to reap the benefits of receiving substantial transfers of state assets with little or no transparency, and apparently without any guarantees about ongoing governance or the realisation of financial returns for the people. Operating outside normal international rules and procedures, a situation that has been exacerbated by the operation of Western sanctions, these firms meet few environmental, labour, accountability, or fiscal requirements. The business "Wild West" that results is not effectively moderated by any Chinese or ASEAN presence in the economy. Egreteau describes how the jade industry has developed outside normal controls and despite sanctions. How these "lawless" businesses can eventually be integrated into the regional production supply chains or transformed into responsible investments remains unclear. The fundamental weakness and under-developed state of the financial sector threaten to undermine reform.

Such rapid changes pose particular challenges for international aid donors who need to understand their significance for current and future assistance flows. Thant Myint-U suggests that substantial international assistance for capacity-building will be needed in order for the necessary

economic reforms and policy shifts to happen, pointing out how expertise in this area has been hollowed out. In his chapter, Adam Simpson suggests that the Asian Development Bank could have the ability to undertake a major coordinating and facilitating role, even though its role so far has been limited. While President Thein Sein's appointment of outside economic advisors is regarded as a positive move, the ability of these advisors to design and oversee the reformist policies cannot be taken for granted. In general, there is no dissent among observers from the proposition that economic capacity-building in any sector would be most beneficial.

The urgent need for a strategic approach to agricultural reform to allow full Myanmar's natural and workforce assets is spelled out by Tin Htut-Oo. The main economic challenge remaining — but not covered in this conference — is elimination of military dominance of the economy, through its control over state-owned enterprises and through its corporations, Myanmar Economic Corporation and Union of Myanmar Economic Holdings. Long known for acting beyond the law and for lack of transparency, the military-economic complex of Myanmar is increasingly contributing to corruption and the distortion of state finances. However, as yet no programme for removing this behemoth has been devised.

SHOULD THE NATURE OF INTERNATIONAL ASSISTANCE CHANGE?

Ever since 2008, when the ruling generals unreasonably and unwisely sought to block or restrict certain international assistance after Cyclone Nargis, pressures for ending such government interference and for allowing freer delivery of international assistance have increased substantially. Significantly, these pressures have come as much from inside Myanmar as from outside, witness the proliferation since 2008 of local humanitarian non-government organizations (NGOs), over which the authorities no longer exercise complete control as they did in the past. These NGOs — especially those like the assertive and controversial Myanmar Egress[8] — seem increasingly to be a permanent feature in the assistance world, are more openly than ever before pushing for change and reform, and are offering themselves as partners for international donors with a more activist reform agenda. The shifting or reprioritizing of aid funding has subsequently caused a sense of crisis within parts of the aid industry located on the Thai-Burma border, and this situation is likely to be exacerbated

as the possibility that the Thai refugee camps may close looms over the next several years.

Meanwhile, continued formal insistence by the Myanmar government on maintaining its tight control of humanitarian aid deters many international donors, whose generosity will not outweigh their distaste for what they see as self-serving policies that do not give priority to alleviating the plight of ordinary people. Improved access for foreign media personnel and researchers could overcome chronic problems associated with a lack of reliable information and excessive government secrecy. Denial of freer access is counterproductive for everyone, since it results in mostly negative press for the government and hampers informed debate about the country internationally. The lifting of many of the restrictions on the flow of information could encourage agencies that have formerly been reluctant to get involved in Myanmar to consider initiating projects. Using the example of the European Union, Thaung Tun sets out why opportunities for more creative engagement should not be passed over.

Can international assistance contribute more effectively to encouraging an environment that might improve the prospects for genuine political, economic, and social change? To what extent can international agencies get involved beyond purely humanitarian endeavours? In what ways, and through which organizations, can assistance be delivered to strengthen capacity and enhance governance without providing unintended support for the military? Can strategically designed and targeted interventions realistically introduce or consolidate more far-reaching and sustainable improvements? The recent announcement that Burma will take the Chair of ASEAN in 2014 is clearly designed to encourage further reforms.

The many questions raised above speak to the main themes for the 2011 Myanmar/Burma Update. Morten Pedersen calls for "principled engagement" as a guiding philosophy for expanded future international assistance, while Adam Simpson and Anthony Ware demonstrate how multilateral agencies such as the Asian Development Bank, as well as non-government organizations, respectively, might expect to make a larger contribution in the future.

A consistent theme of all the contributors to this publication is the need for capacity-building in all forms. General indications are that the "new" Myanmar government may be prepared to consider assistance in areas that were previously taboo. Assistance that strengthens institutions, both government and non-government, would help to extend and

embed reforms, and would simultaneously underpin democratic and participative processes for the future. It will take time for the results of such a transformation to become clear, but any delay in pursuing the transformation will only increase the human and practical costs.

Notes

1. Thirty-eight parties were registered in the 2010 elections and thirty-seven ran candidates.
2. For example, an opinion piece in the pro-democracy journal *The Irrawaddy* called on Aung San Suu Kyi "to reunite and reinvigorate the disparate groups that make up Burma's opposition movement and inspire the country's oppressed masses to once again actively participate in the cause of freedom and democracy". "Suu Kyi Must Return to Her Strength", editorial, *Irrawaddy*, 20 April 2011 <http://www.irrawaddy.org/article.php?art_id=21139> (accessed 24 July 2011).
3. See "Home Affairs Ministry sends letter to U Aung Shwe, Daw Aung San Suu Kyi informing they are to act in accord with law", *New Light of Myanmar*, 29 June 2011, p. 9. An accompanying article, "Right to make choice still in the hand", published under the name of Pyae Sone Aung, hinted at suggestions about concerns for Suu Kyi's personal security, and warned the NLD it should stop "trying to politically test the patience of the government", in order "to avert unnecessary consequences". *New Light of Myanmar*, 29 June 2011, pp. 8–9 <http://www.burmalibrary.org/docs11/NLM2011-06-29.pdf> (accessed 21 May 2012).
4. The NLD decision was announced on 8 February 2011 after the party carried out a review of their position and, in particular, of whether or not sanctions harmed the livelihoods of ordinary Burmese citizens. See <http://www.burmapartnership.org/2011/02/sanctions-on-burma/> (accessed 21 May 2012).
5. Aung San Suu Kyi's statement in support of a Commission of Inquiry was announced in the message she sent to the U.S. House of Representatives Sub-Committee on Asia and the Pacific on 22 June 2011. A report and links are available at: <http://www.burmapartnership.org/2011/06/aung-san-suu-kyi-supports-un-commission-of-inquiry-on-burma/> (accessed 21 May 2012).
6. One of the top activists to return to Myanmar after the 2010 elections was Dr Zaw Oo, former head of the Burma Fund in Washington. Articles by Zaw Oo have now been published in Myanmar for the first time. Another expatriate leader, Dr Zarni, visited Burma in 2004 in an early but unsuccessful attempt to create another channel of communication to the Myanmar leadership. Zarni now remains implacably opposed to any half-way measures for achieving democracy.

7. See the Human Rights Council official summary of Myanmar's position which is available at <http://www.upr-info.org/spip.php?page=backend-breves> (accessed 21 May 2012). These summaries are useful for comparison purposes, but do not necessarily describe the empirical human rights situation in any country.
8. According to its own website, Myanmar Egress "was set up in 2006 by a group of Myanmar nationalists committed to state building through positive change in a progressive yet constructive collaboration and working relationship with the government and all interest groups, both local and foreign". See <http://www.myanmaregress.org/about.html> (accessed 21 May 2012).

II

Introduction