

Myanmar 2018: Staged Democracy as a Method, State Capture as a Purpose

13. 7. 2021 | Ondřej Čákl

The article below had been written in 2019 after many of my visits to the Republic of the Union of Myanmar and its purpose was to channel out my fascination with the "splendid isolation" the Myanmar army (Tatmadaw) locked the state into by creating original and complex staged democracy. It seemed so perfectly tailored, that the image of state capture efficiently demotivated any hope for improvement of the national integrity and democracy for Myanmar in the nearest future. But it motivated a feeling of certain predictability of that façade democracy, and especially, it supported the belief, that the Tatmadaw has no intention or motivation to actively, openly interfere with the civilian government. Was the image of state capture, I painted in 2019 so thoroughly, also perfectly wrong? Even after lost election in 2020 this system ensured that the army would have been able to keep the business-as-usual running, so why its leader did chose the coup, which destroys even the army's business interests? Does this very fact discredit my conclusions? The answer to this question is actually not "yes it does". Unfortunately. We still are unable to say, why the disaster started and that makes our attempts to help the victims of it even more frustrating.

9 January 2019 | **One of the goals of organizations as Transparency International is to promote and disseminate democratic principles in countries where they do not enjoy their presence, not even to the extent we are endowed by them in the Czech Republic. Since around 2008, Myanmar (Burma) has been undergoing a transition from a military regime to a hybrid democracy. At least it looks like it from the outside. But as the headline suggests, we still only have to look for reasons for optimism.**

Ensuring the non-functioning of institutions

From the outside, the Republic of the Union of Myanmar also appears as a state built on pillars that correspond with the concept of a modern state as we know it, for example, from Europe. There is an government, parliament and a system of courts, state apparatus with many institutions designed to ensure the administration of individual areas, there is a non-governmental sector of civil organizations, the media, private, semi-state and state business, in Myanmar.

Yet, a closer look at any of these institutions will reveal that none of them work according to the notion that we have about the state administration. More precisely, those pillars that constitute national integrity in other countries are not only dysfunctional in Myanmar (and each of them produces the opposite of what we expect from it), but each, to its own specific extent, even accelerates the degradation of the others – the individual elements literally *maintain* each other's dysfunctions. Let's show a typical example.

Anti-Corruption Commission

Our key to understanding the national integrity of Myanmar is the anti-corruption agenda, so let's have a look at functioning of the pillar that is empowered to suppress corruption here. [\[1\]](#)

The Myanmar state Anti-corruption Commission (ACC) is an independent body of executive power, which has been established in order to investigate and even punish corruption by law (No. 23, 2013). [\[III\]](#) The institution currently has 12 members and a competent administrative apparatus. Members of council are appointed by president and chairmen of the lower and upper houses of parliament. They are recruited from the ranks of civil servants, judges, i.e. people who have established themselves thanks to more or less intensive collaboration with the army. One third of the council is made up of former army officers. [\[III\]](#)

The law allows anyone who has witnessed corruption to file a complaint to the commission. It also requires the commission to punish the abettor if the complaint is found to be unfounded. Despite the danger that the complaint will turn against the whistleblower, the commission is inundated with thousands of complaints, the relevance of which is negligible, and their investigation beyond the capacity of the institution. [\[IV\]](#)

Of course, the commission does not perform any executive powers. They must call police in case of a need for "raid" on corrupt officials. However, Burmese NGOs document cases where police interventions are disclosed to the prosecuted persons in advance, so that only the least puppet culprits end up in police handcuffs, or not even those. Thus, the police (as one of the pillars) often rather contributes to sabotaging the commission's work. But this is just a particular shortcoming, not a systemic failure.

The systemic problem can be found elsewhere: the department is agile in investigating cases heading to the high political levels, but *it's not allowed to touch their military forces*. This conclusion is not just based on commission's activities: It is an official statement and stance. However, Tatmadaw has an indisputable political influence in the Union, see below. As an insurance against entry into military spheres works also the fact that any judicial proceedings and investigations that would affect the army are automatically taken over by military jurisdiction, according to the 2008 constitution. [\[V\]](#)

On the contrary, if the complaint filed with the commission contains serious evidence of corruption concerning any representative of the current military power, this complaint falls into hands of people who:

1. may have an interest in not investigating it,
2. may have an interest in silencing the whistleblower.

Thus, Myanmar's independent anti-corruption organizations are kept in the corner so far, since their findings have little chance of being applied in the correctional processes and may actually trigger the persecution of their authors. This applies especially to journalists. [\[VI\]](#)

However, the very existence of the commission gives the impression that an institutional struggle is being waged against corruption in Myanmar, and what is more important, the work of the commission is effectively involved in the political situation. [\[VIII\]](#) This makes it impossible for the fight against corruption to become authentic. On the contrary, the anti-corruption commission's activities support institutionalized "big corruption" in Myanmar (i.e. misuse of public authority for individual political interest).

And the very same principle of sustained non-functioning and counter-productivity can be found in other institutions.

Catalysis?

I used this term to show that in addition to the counter-productiveness of institutions, another phenomenon is visible in Myanmar: institutions are locking themselves into inoperability *mutually*.

In the case of anti-corruption commission, judicial system is the catalyst here. Classical courts are hopelessly pervaded with bribery, and therefore inherently produce injustice rather than seek justice. Above all, the whole system contains the obsolete component of military courts with constitutionally declared powers over military cases (Article No. 319).

As long as Myanmar system has this ingredient, commission's actions will always be counterproductive. And vice versa. Until the commission investigates the impulses directed to the army as well as the ones leading to civilian government, it engages itself to the dualism of judiciary authorities, which has devastating consequences for balance of powers in the state. (See below.)

Non-institutional governance

If Myanmar's institutions were to represent real power in the state, Myanmar would have to be a special case of chaos and anarchy, since the institutions here do not have the *de facto* strength, robustness and efficiency needed for a real distribution of executive power. Pillars that are supposed to ensure national integrity and balance of power in other countries serve as a façade here. But the situation in Union is very far from chaos and anarchy. It is clear that ruling is somehow taking place here. So how and who does rule here?

Let us not pretend that the answer to this question isn't obvious and well known. In fact, the country is still ruled by the Tatmadaw. It's the answer to the question of "how", what is far more interesting and sad.

Distribution of power-governance in Myanmar

A. Parliament, ministries, state apparatus

The army is guaranteed 25 % of seats in the bicameral parliament by the constitution (2008). The Tatmadaw places its representatives on these seats. The army has non-negotiable control over three ministries (defense, interior, "border affairs"), too. Ministries are also occupied by military proponents in executive positions (these people have ties to the army in all imaginable forms – former servicemen, current servicemen, people with military contacts, etc.). These officials represent the "heritage" of the apparatus.

Last year, there has been a new illegitimate and unjustified *occupation* of the entire state administration by army personnel. Their entry into office does not follow any publicly known rules and their only function seems to be "present". Therefore, they also have been nicknamed "parachute guys".

Although the NLD Democratic Party won the 2015 elections, and some of its legislative outputs could lead to an improvement of the situation, their implementation stops at the level of delegated ministers, since their deputies are already those officials loyal to the army – see above.

Classical imperatives of *depoliticization* and *stabilization* of state administration which are desired and recommended in other countries, cannot be applied here, because a political will does not find implementation in specific policies and measures on its way through a monolithic apparatus. Thus, a little politicization in important posts would, on the contrary, be beneficial. The same applies to stabilization. There was already done a lot for stabilization of the administrative structures, and some change is rather desired: revocability and rotation of officials at least.

Last but not the least feature of good administration, *professionalization*, is desired in Myanmar too.

B. Legislation

The ruling NLD does not fulfill the hopes of its voters, who more or less reasonably expected a more or less sophisticated effort to disrupt the army's rule. However, the NLD's legislative practice shows, in addition to dilettantism and incompetence, a miraculous sense of counter-productivity – the land reform that Myanmar has been waiting for more than eight years, can serve as an example. Currently proposed form of reform will lead to a deterioration in relations among land users and an increase of unrest in the ethnic states of Union (to say the least).[\[VIII\]](#)

The attempted school reform this year (2019) have de facto doomed an entire graduating class of Myanmar students to failure without bringing more hopeful prospects for the coming years. (This year, the US baccalaureates were introduced, but without any corresponding preparation of the curriculum, teaching and didactics. The educational system, which after 1964 fell into a form reminiscent of the Austro-Hungarian education of the eighteenth century, couldn't prepare the students for such a form of testing.)[\[IX\]](#) And so on.

C. Business

The most important commodities of the Union are mineral resources (natural gas, oil, jade, precious metals and minerals). The military leaders, who controlled their exports until the 1960s and privatized their ownership, tailored a situation in which mineral wealth is exploited either by military-owned companies or by companies whose activities are regulated through the army.

One of the most effective instruments of this regulation is an institution of state-owned enterprises (SOEs). However, powers, functions and impact of the SOEs go far beyond what we refer to by the same term in Europe.

In Myanmar, SOEs take form of a self-appointed protector, which is allowed to transfer a significant part of the proceeds of its activities to its own accounts (i.e. not subject to the state), have the prerogative to engage in a given activity (e.g. mining), issue certificates to all other private entities in the sector, including foreign ones, have a role of supervisor and controller. Their pyramid-shaped management is uniquely manned by military exponents. State-owned enterprises are established in all areas of economic performance. [\[X\]](#)

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It is paradoxical that SOEs military plenipotentiaries are largely involved in attracting foreign entities – in the field of mining, mainly from China – and abuse their authority for self-enrichment: some Chinese companies have agreements with the state that attribute to them 99 % (!) the revenues from mining, while Myanmar state only one percent. It is useless to speculate how high a bribe for a representatives of the Burmese SOE responsible for the contracting had been, since real losses of the state can be calculated in billions of dollars a year, according to official documents published by the Myanmar government.

The situation has one very important aspect: wealth is not spread across the Union. For example, the famous "Myanmar" jade is mined only in one state of the Union: the Kachin state. Thus, Kachins not only fundamentally subsidizes the union's budget, and get back only a meagre percentage of revenues, but *witnesses* environmental, economic and social disasters committed on their territory. [\[XI\]](#)

However, Tatmadaw is the centralizing force. From this point of view, we must look at the "reconciliation process" (national peace and reconciliation) – the official government agenda. For the people of Kachin state, political pressure for reconciliation with other Myanmar states and, above all, with central Burma, has the bad taste of abuse described above. [\[XII\]](#)

D. Public opinion, media

Media companies are in hands of military exponents. In Myanmar, there is no independent print media that publishes relevant information obtained with the pursuit of objectivity. In a country plagued by religious and ethnic conflicts, in recent years, thanks to its "strange involvement" in ethnic cleansing, the military has managed to build an image of a guarantor of stability and a fragile truce between Myanmar's religious and ethnic groups. [\[XIII\]](#) It is likely that to consolidate this image, the military is willing to at least tolerate, if not even stage, violence between these groups.

Installation as method, state capture as purpose

Consider all the above as typical examples of its kind. A description of their application in other sectors of government (the judicial "system", the system of political parties, even, to some extent, the non-governmental sector) would show the same features.

Thus, pillars of the functioning of the state in Myanmar are *installed* by the army so that they effectively fulfill the purpose the military pursues: the perfect maintenance of control over the Republic of the Union of Myanmar without the use of costly military actions. State is an instrument in the hands of the army here, its institutions are not meant to function for the benefit of the state, they are designed and manned to function to maintain the army's control over the country.

From this point of view, it is actually wrong to describe them as *dysfunctional* – it is necessary to admit that unfortunately they work perfectly for the given purpose. Thus, Myanmar is one of the examples of "state capture", privatization of the public interest and thus "grand corruption". (Abuse of power at the highest systemic level, which is conducted for the benefit of a narrow group of people at the expense of the public and concerns the state as a whole), which impresses with its frightening "rigor" and ingenuity with which the pillars of the state are used for an inauthentic mission.

When there is nothing to lean on

At the moment, the non-governmental sector is the only area that partially. There are hundreds of organizations across Myanmar that promote community life, defend human and civil rights, defend natural resources, organize cultural life, etc. These organizations successfully unite and support each other. What's missing are those pillars of the state on which their efforts should be based.

In countries where the other pillars of the state fulfill their original purpose at least to some extent, civil society can work to strengthen them and, in case of threat or error of one, use the others to correct it. (If, for example, a political representation does not work to the satisfaction of the electorate, another can be chosen, if some part of the state apparatus does not work, pressure for correction can be created through the media; if the media make mistakes, they can be moved to correction through the courts, in case of court misconduct they can be referred to a higher court, etc., etc.) Of course that's not the case in Myanmar.

What should the civil society do since it cannot rely on any of the other pillars of integrity?

1. Avoid attempts to use the primary, authentic functions of institutions. If they turn to the Myanmar institutions today with an issue that is within their competence, it may, paradoxically, trigger processes that threaten their own submitter (it comes under the spotlight as a "querulant") and which will very surely lead to the opposite of the desired goal. (Publication of information on institutional mischief will lead to persecution of publicists, i.e. journalists or civil society actors, rather than to a remedy; the initiative to an Anti-Corruption Commission will be used by those who commit corruption to improve their cover-up techniques; trying to resolve a dispute in court will lead to strengthening the corruption of judges, etc.)
2. Creating a strategy of rebuilding these institutions, so that they can gradually change their authentic functions. Each of the pillars of the state deserves a detailed survey and a plan for correcting the functioning. Of course, life in the state cannot be stopped until its institutions are built. But the strategic rebuilding of institutions must become a part of a daily life.

In a few areas the strategy is taking shape, at least:

It is possible and necessary to develop a detailed analysis of each sector and to outline concrete measures of limiting the military power and strengthen institutional functioning as pillars of democratic identity.

For example, it is still possible to use the NLD's parliamentary majority to introduce amending laws for state-owned enterprises and thus gradually correct their functioning.

It is possible to politicize the performance of the authorities to a strictly defined and reasonable extent.

It is possible to stimulate formation of new independent on-line media.

It is possible to expand anti-corruption legislation to match the nature and scale of the problem in Burma, at least on paper. The anti-corruption commission is inclined to continue to develop the legislation - it is possible to take advantage of its willingness.

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It is possible to train representatives of NGOs in areas of democratic integrity so that they are sovereign partners for the government in the expert debate on setting specific policies. NGOs could and should mediate the demands of civil society.

Indeed, civil society in Myanmar can and should, as in any other state, formulate strategies and demands for the government and submit them to the authorities for acceptance and discussion.

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Basic insight

[i] overview article on corruption in Myanmar:

globalinvestigationsreview.com/chapter/1147535/myanmar-anti-corruption-reforms-and-initiatives

Anti-Corruption Commission (ACC)

[ii] official website of Myanmar Anti-Corruption Commission:

www.accm.gov.mm/acc/index.php?route=common/home

[III] Article illustrating turn in development of the ACC between 2014/15. It captures the situation before the appointment of the new chairman and members of the council.

www.mmtimes.com/opinion/11440-anti-corruption-commission-needs-reform.html

[IV] Official figures on the number of ACC cases can be found e.g. in this article:

www.mmtimes.com/news/anti-corruption-drive-dodges-political-donations-and-criminal-liability.html

[in] The inviolability of military forces is ensured by articles 293 (b) and 319 of the Constitution:

www.irrawaddy.com/news/burma/analysis-military-immunity-forgotten-amid-corruption-crackdown.html

The limited competence of the commission is also a frequent motive in the speeches of its president:

www.rfa.org/english/news/myanmar/corruption-interview-10012018172808.html

[GOI] Among several cases where the publication of information has turned against civil activists, there's a case of Eleven Media journalists who reported the misuse of public funds in the case of Yangon municipal contract based on the official conclusions of the parliamentary commission. Although journalists only cited official parliamentary documents, they were charged and detained under the infamous article 505b (which resembles something like the "anti-spreading alarm act" and

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the "state Defamation Act" and was introduced by the British colonial administration to suppress national outbursts in the 19th century.) www.irrawaddy.com/news/lawyer-eleven-media-journalists-says-govt-stalling-mediation.html

On other common legislative instruments of suppression of democracy in today's Myanmar, see for example here: www.burmalibrary.org/docs13/Penal_Code-articles.pdf

[vii] One of the often-mentioned successes of the commission is the resignation of the head of Food and Drug Administration, which the exile media writes about, for example Irrawaddy.com:

www.irrawaddy.com/news/burma/anti-corruption-commission-files-case-fda-chief.html

Legislation

[VIII] An analysis of Land Acquisition Act is provided by the Myanmar Centre for Responsible Business here: www.myanmar-responsiblebusiness.org/news/draft-land-acquisition-act.html

Fears that reforms that were supposed to give ethnic groups a foothold for the traditional use of the land on which they live will actually turn the other way-to the benefit of (Army) development companies, sums up the Anglo-language weekly Frontier Myanmar: frontiermyanmar.net/en/farmers-activists-demand-overhaul-of-land-laws

[IX] A very interesting perspective on Myanmar's education reform is presented by a study created for the needs of the Cambodian (!) parliament in 2017: www.pic.org.kh/images/2017Research/20170523%20Education_Reform_Myanmar_Eng.pdf

Distribution of power

[x] A Brief article on the history and nature of SOE written from the perspective of a potential investor:

www.brookings.edu/blog/up-front/2015/09/16/state-owned-enterprises-and-the-future-of-the-myanmar-economy/

[xi] Global Witness' unique investigative report is dedicated to the exploitation of Kachin jadeite: www.globalwitness.org/jade-story/

[XII] This article in the exile media is devoted to the interesting connection between the military totalization of territorial and system power and the process of national reconciliation Irrawaddy.com:

www.irrawaddy.com/news/burma/peace-process-will-remain-in-deadlock-if-single-army-issue-cannot-be-resolved.html. Yet, compare with the paradox "reconciliation must not jeopardize the unification of the country", ibid.: www.irrawaddy.com/news/burma/military-chief-says-national-peace-deal-must-guarantee-non-separation.html.

[XIII] The modus essendi and operandi of the Myanmar army (Tatmadaw) is somewhat unscrupulously, but in essence apt, described by the New York Times article: www.nytimes.com/2018/01/27/world/asia/myanmar-military-ethnic-cleansing.html