

Myanmar

Self-Rule

Institutional Depth and Policy Scope

Myanmar, officially the Republic of the Union of Myanmar, is a country in Southeast Asia with a total area of 676,578 sq km and a population of 55,746,253 (CIA, 2014). Since 2011, Myanmar has been divided into twenty-one first tier sub-national administrative divisions. There are seven *pyi ne* (states), seven *taing* (regions), one *pjìdàusunzùnèmjè* (union territory), five *kòbàin ovtçhou khwɿnjgìdèðg* (self-administered zones), and one *kòbàin ovtçhou khwɿnjghtáin* (self-administered division). These first tier units are further subdivided into 67 *kha yaing* (districts), 330 townships, 84 sub-townships, and 16,696 village-tracts and wards.

Taing are regions with a majority of Bamar ethnic descent, while *Pyi ne* are regions where non-Bamar (or Burman) ethnic minorities are the majority. The *taing* were created out of the administrative divisions that existed at Myanmar's independence from Britain. The number of *pyi ne* regions increased from four in 1950 to seven now. The four *pyi ne* that existed in 1950 are: Shan, Kachin, Karen and Karenni. In addition, the Constitution recognized the Chin Hills District as a special district with many of the same rights as the four *pyi ne*,¹ and in 1974 it became a *pyi ne*. The 1974 Constitution also created the final two *pyi ne*, the Mon and Rakhine States. In 2008 a new Constitution created the *pjìdàusunzùnèmjè* (national capital), the *kòbàin*

¹ The Chin Hills District was created to accommodate the Chin people, an ethnic minority in Myanmar.

οστ̣̣̣ου khẉ̣̣njghdèθg, and the *kòbạ̣̣̀ιν οστ̣̣̣ου khẉ̣̣njghtạ̣̣́ιν*; the former is a union territory under direct central control and the latter two are areas governed autonomously by non-Bamar ethnic groups who live within them. We code the *pyi ne*, *taing*, districts, Chin Hills District, *p̣̣̣jìdạ̣̣̀σnzynèmjè*, *kòbạ̣̣̀ιν οστ̣̣̣ου khẉ̣̣njghdèθg*, and *kòbạ̣̣̀ιν οστ̣̣̣ου khẉ̣̣njghtạ̣̣́ιν*.

After achieving independence from the British in 1947, Myanmar was governed by a multi-party system. However, this and successive governments of Myanmar faced multiple insurgencies, including Communist revolutionaries and ethnic separatists. The initial structure of government introduced in the 1947 Constitution was modeled on the colonial administration system of the British. The areas that eventually became *pyi ne* or special districts post-independence (Chin, Shan, Kerrini, Karen and Kachin) were originally governed separately from the rest of Myanmar by the Burma Frontier Service (BFS). The areas not governed by the BFS were governed by the National Legislature and became the *taing* in post-independence Myanmar (Charney 2009, 46).

The 1947 Constitution outlined the powers of each *pyi ne* in separate sections. Each *pyi ne* had a State Council that could pass legislation related to their specific state, and the legislation became official when signed into law by the President of Myanmar (Art 156). However, the President could refuse to sign a bill on grounds that it was unconstitutional (Art. 157), an action that would send the bill to the Supreme Court for a legally-binding ruling (Art. 157).² The *taing* (then known as ‘divisions’) were administrative outposts of the central

² The judges of the Supreme Court were selected by the President and confirmed by the bicameral legislature (Art. 140). However, during this time the Supreme Court was strongly

government and continued (as they were under colonial Myanmar) to be governed by the national legislature, which we interpret as a deconcentrated form of administration.

Below the level of the *pyi ne* were district governments, which served and continue to serve as deconcentrated administration that bridges the *pyi ne* or *taing* government and township governance (Chit Saw and Arnold 2014; Joliffe 2015). The one exception was the Chin Hills District, which had its own Chin Affairs Council and followed the same institutional authority and restrictions as the State Councils. In addition to the Councils, each *pyi ne* and the Chin Hills District had a chief minister who was appointed by the President of Myanmar, but law-making authority belonged to the State Councils (Art. 161). The 1947 Constitution also promised ethnic minority groups the ability to secede from Myanmar after a period of ten years. From 1950 to 1961 the *pyi ne* and the Chin Hills District score 2 on Institutional Depth while the *taing* and districts score 1.

In March 1962, a military-led coup brought a Socialist Revolutionary Council (SLORC) to power, led by General Ne Win. From 1962 until the passing of the 1974 Constitution the SLORC suspended the national constitution and governed through the Burmese Socialist Path Party (BSPP) constitution. Per the 1962 party constitution of the BSPP, which now governed Myanmar, each region was administered by Divisional Supervision Committees. These deconcentrated administrations were formed by the Revolutionary Council Government under Win and tasked with enforcing national BSPP policy at the local level (BSPP 1962, Section 7; Chit

independent of the central government (Thinn 2006). In fact, after taking power General U Ne Win complained that the Supreme Court of the 1947 Constitution was too powerful (Zan 2000).

Saw and Arnold 2014, 8; Jolliffe 2015, 15). At this point, the *pyi ne* were effectively reduced to similar status to that of the *taing* and districts. From 1962 to 1973 all *pyi ne*, *taing*, districts, and the Chin Hills District score 1 on Institutional Depth.

The Council led Myanmar until the new constitution in 1974, which created a one-party state led by General Ne Win. The 1974 Constitution determined that each of the *pyi ne* and *taing* were governed by regional legislative branches known as “People’s Councils” and an “Executive Committee,” composed of members from the “People’s Councils,” which acted as the executive. This Constitution also promoted the Chin Hills District to the status of *pyi ne*, known in English as the Chin State. Unlike the 1947 Constitution, the 1974 Constitution proscribed the same authority structure and rules for all first tier subnational units , so meaningful differences between *pyi ne* and *taing* disappears.³ The 1974 Constitution makes no mention of districts, suggesting that the administrative hierarchy now looks as following: national; states/divisions; townships; wards and village-tracts (C1974, Art.29).^α The 1974 Constitution also introduced a unicameral legislature, the *Pyithu Hluttaw*. The *Pyithu Hluttaw* had the ability to dissolve local People’s Councils for violation of any provision of the constitution, actions undermining national unity, endangering the stability of the central state, contravention of any resolution adopted by the *Pyithu Hluttaw*, and inefficient discharge of duties (Art. 63). From 1974 to 1987 the *pyi ne* and *taing* score 2 on Institutional Depth because

³ Some scholars interpret the 1974 Constitution as indicating that subnational units did not possess any “political or administrative sovereignty or autonomy” (Taylor 2009, 306).

central intervention on policy or local governance issues is possible. Districts score 0 on Institutional Depth from 1974 to 1987.

In response to democratic uprisings and government-sanctioned mass release of violent prisoners, a military coup led to the suspension of the constitution in 1988 (Kingsbury 2005, 118). The military rulers promised a quick return to multi-party democracy (Tun 2011, 70; 2012), and in 1990, SLORC did hold multi-party elections, but then refused to turn over power to the victorious National League for Democracy. SLORC, renamed the State Peace and Development Council (SPDC) from 1997, continued to rule until coming under pressure during the Saffron Revolution protests in late 2007. A constitutional referendum held on May 10, 2008, which paved the way for the democratic transition of 2011 (Tun 2011, 86; 2012).

The 1988 military coup eliminated all existing levels of government. In place of the previous governmental structures, regional “Peace and Development Councils” were created. However, due to distrust of the civilian administration, the SLORC did not give these councils any authority (Nixon and Joelene 2014, 8), and regional authority fell to regional secretaries and local military commanders appointed by the SLORC (Tun 2012). From 1988 to 2010 the *pyi ne* and *taing* score 1 on Institutional Depth.

The 2008 Constitution essentially restored the pre-coup status quo ante, which implied greater authority for both *pyi ne* and *taing*, and the regeneration of the district. All seven *pyi ne* and all seven *taing* regained directly elected regional assemblies and policy scope. These measures were by and large implemented by 2011, and so from 2011, *pyi ne* and *taing* score 2 on Institutional Depth.

Based on the 2008 constitution, in 2010 three distinct forms of administration were carved out within the existing decentralized framework. The capital, Nyapyidaw, became a union territory (*pyìdàszunèmjè*) is governed by direct central administration under the President and scores 1 on Institutional Depth from 2010 onward. There is a Council, led by a Chairperson, all of which are appointed by Presidential authority and subject to Presidential removal. In the Sagaing Region and the Shan State, five self-administered zones (*Kòbàszn owtchou khwzjnghdèðg*) in Naga, Palaung, Kokang, Pao, and Danu, and one self-administered district (*Kòbàszn owtchou khwzjnghtázn*) in Wa were created to address issues related to non-Burmese ethnic groups residing in otherwise majority Burmese areas. These self-administered zones and districts are relatively small demographically and geographically, but are vested with distinctive legislative authority, and they score 2 on Institutional Depth from 2011 onward.

We now discuss policy scope, beginning in 1950. In the 1947 Constitution, all *pyi ne* Councils were given authority over substantial economic affairs (including agriculture, land use, water use, and the drug trades), local security and judicial administration (including regional and village police), education, and public health (C1947, Schedule 3, List 2, Sect. 2-6). Defense resided with the central state, as well as a range of external affairs and finance policies (Schedule 2, List 1). The Chin Affairs Council had policy authority over culture and education (Ch 9, Part 5, Sect. 3.2), but the rest of the policy authority granted to the *pyi ne* Councils did not extend to the Chin Affairs Council. From 1950 to 1961 the individual *pyi ne* score 3 and the Chin Hills District scores 1 on Policy Scope. From 1950 through 1961 deconcentrated *taing* and districts score 0 on Policy Scope.

Following the 1962 coup and installation of the party constitution of the BSPP, each

region was governed by centrally controlled Divisional Supervision Committees, and so policy scope is zero for all subnational governments.

Under the new 1974 constitution, *pyi ne* regain most of their policy authority under the 1947 constitution, and decentralized governance is extended to *taing*. Each People's Council was responsible for local economic (budgeting, planning, and implementing of economic policy), social (directing, supervising and coordinating public services), and cultural (preserving and promoting traditional culture) policy (C1974, Art. 132). The 1974 Constitution outlined the separate roles of the regional Executive Committees. Executive Committees were tasked with: convening meetings of the People's Council; implementation of People's Council decisions; coordinating the management of public services; and suspending members of the People's Councils if they were charged with treason (C1974, Art. 132). One difference with the 1947 constitution is that subnational governments do not appear to have authority over local policing, nor do they have authority over local government, their institutional set-up, or residual powers. Hence from 1974 to 1987 *pyi ne* and *taing* score 2 on Policy Scope rather than 3. Districts were abolished.

Following the 1988 coup, the Peace and Development Councils were controlled by military appointees (Tun 2012), and *pyi ne*, *taing*, and districts score 0 on Policy Scope until 2011.

The 2008 Constitution restored some policy authority for *pyi ne* and *taing*. Constitutional Schedule 2 enumerates a range of policy areas under regional control, including agriculture and livestock, some energy matters and most issues related to transportation, communication, and construction; and social welfare and town/urban development. However,

industrial, commercial, and other economic matters are designated in a way that makes regional governments subservient to national policy (Schedule 2, Sect. 2 & 5), though land use and investment appear to be included in regional authority (Sect. 1). Education and health care fall exclusively into the national government's list of policy authority. Therefore, we estimate the policy authority of *pyi ne* and *taing* to be relatively limited, and hence score 1 on Policy Scope from 2011.

Districts appear to be deconcentrated, and so they score zero on policy authority.

The 2008 Constitution's separate list of policy authority for the self-administered areas is limited. Schedule 3 of the Constitution lists mostly localized issues, such as fire hazard prevention, pasture maintenance, and forest preservation, that is, issues primarily focused on local infrastructure maintenance. While "public health" is listed in Schedule 3, hospitals and clinics, maternal and child health, traditional medicine and national health all fall under Schedule 1 (national government). No other welfare policies are included in Schedule 3. We judge these competences to be "weak" and hence self-administered areas score zero on policy scope.^β

Fiscal Autonomy

From 1950 to 1961 the *pyi ne* and Chin Hills District had taxation authority over the rates of "duties of excise" on household, opium, hemp, alcohol, trade, employment, animals, boats, entertainment, amusement, and gambling conducted or created within that region (C1947,

Schedule 4, Art. 2), resulting in a score of 1 on Fiscal Authority. The *taing* and districts did not possess similar authority and score 0 from 1950 to 1961.

From 1962 to 1973 all tax authority rested with the central BSPP. The 1974 Constitution continued the centralized trend by vesting the national legislature with all taxation authority (Art. 47), and after 1988 all tax authority rested with the SLORC/SPDC. While Schedule 5 of the 2008 Constitution specifies a range of taxes to be collected by *pyi ne* and *taing* governments, there is no indication that the regions can alter the rates or bases of these taxes. The 2008 Constitution makes no mention of tax authority in the self-administered areas. From 1962 to 2018 the *pyi ne*, *taing*, districts, the Chin Hills District (prior to becoming a *pyi ne* in 1974), *pjìdàszunèmjè*, *kòbàin oστçhou khwɿnjghdèθg*, and *kòbàin oστçhou khwɿnjghtáin* all score 0.

Borrowing Autonomy

Borrowing authority in Myanmar has always remained under central government control. From 1950 to 1961 authority over borrowing is defined as belonging to the national parliament (1947 C, Third Schedule, Art 2; Art. 4). From 1962 to 1973 all government authority rested in the central BSPP. The 1974 Constitution placed borrowing authority with the national legislature (Art. 47). Following the 1988 coup through 2008 Constitution all government authority rested with the SLORC/SPDC. The only source of borrowing for subnational units after adoption of the 2008 Constitution is the national government (Nixon et al. 2013, 9). The *pyi ne*, *taing*, districts, Chin Hills District (prior to becoming a *pyi ne* in 1974), *pjìdàszunèmjè*, *kòbàin oστçhou khwɿnjghdèθg*, and *kòbàin oστçhou khwɿnjghtáin* score 0 on Borrowing Autonomy throughout

the period.

Representation

The 1947 Constitution established that each *pyi ne* and the Chin Hills District would be governed by a directly elected Council (Ch. 4). Executive power was in the hands of a regional minister appointed by the President of Myanmar. From 1950 to 1961 the *pyi ne* and Chin Hills District score 2 on Assembly and 0 on Executive. *Taing* and districts score 0.

From 1962 to 1973 (BSPP regime), the *pyi ne*, *taing*, and all districts score 0 on Assembly and 0 on Executive.

The 1974 Constitution reinstated directly-elected “People’s Councils” and instituted “Executive Committees” elected by and accountable to the People’s Councils (Ch. 10). Hence from 1974 to 1987, the *pyi ne* and *taing* score 2 on Assembly and 2 on Executive.

The 1988 military coup eliminated this representative infrastructure and replaced them with directly elected “Peace and Development Councils,” which had very little legislative authority. Executive authority was conducted by a “regional secretary” who was appointed by the military and acted as an extension of the central government. From 1988 to 2010, the *pyi ne* and *taing* score 2 on Assembly and 0 on Executive.

The 2008 Constitution created directly elected *pyi ne* and *taing* councils (Art. 161). The councils govern alongside a Chief Minister, who is appointed by the President from among eligible elected councilors (Art. 261). Hence the President is limited in his choice by the outcome of the direct elections to the Council, and this results in each *pyi ne* and *taing* scoring 2 on Assembly and 2 on Executive from 2011 to 2018.

The 2008 Constitution also provided for distinct representation of the self-administered zones and division. These assemblies, referred to as “leading bodies,” are composed of at least ten people including the elected members of the *pyi ne* or *taing* councils who are from the townships in the self-administered area (Art.276). These locally-elected representatives serve alongside Defense Services personnel representatives nominated by the central government, though the local representatives typically should comprise the majority of any assembly. Each leading body will select a Chairperson from its membership (Art. 276, Sect. E). From 2011 to 2018 the self-administered areas score 2 on Assembly^β and 2 on Executive. No comparable roles are delineated for districts, except a brief mention that their administration will be “assigned to Civil Services personnel” (Art. 288), and so they continue to score 0 on Assembly and Executive.

Shared-Rule

The districts, except for the special status Chin Hills District from 1950 to 1973, have no shared rule throughout the period.

Law Making

The 1947 Constitution created a bicameral parliamentary system with the Chamber of Nationalities as the upper house and the Chamber of Deputies as the lower house. In addition, each of the *pyi ne* representatives in both chambers of the bicameral national parliament were all also members of that specific *pyi ne* regional legislature known as the State Council (Art.

154). The Chamber of Nationalities consisted of 125 seats divided by ethnic group populations, with 53 filled by representatives from the Burmese territories (the *taing*) and 72 seats carved out for representatives of the *pyi ne*: 25 seats for the Shan State, 12 for the Kachin State, 8 for the Special Division of the Chins, 3 for the Karenni State, 24 for the Karen (not specified as coming from the Karen State) (C 1947, Schedule 2). So the allocation of seats appears to tilt towards reflecting population strength rather than territoriality, and we judge this chamber not to employ the region as a unit of representation (L1).

The 1947 Constitution outlined special bilateral powers for the Shan State. In particular, the Shan State Council could veto national policy that conflicted with local Shan policy (Art, 92). This ability was not extended to the other *pyi ne* or the Chin Hills District.

From 1950 to 1961 the Karen, Karenni, and Kachin *pyi ne* and the Chin Hills District score 0 (0, 0, 0, 0, 0, 0) on Law Making. The Shan state, however, has bilateral law making: it is the unit of representation (L1=0.5), and is consulted and can veto national legislation affecting the region (L5=0.5, L6=0.5). The Shan *pyi ne* scores 1.5 (0.5, 0, 0, 0, 0.5, 0.5) on Law Making from 1950 to 1961. From 1950 to 1961 all *taing* score 0.

Beginning with the 1962 coup, all government decisions were made by the centralized BSPP. The 1974 Constitution created the unicameral *Pyithu Hluttaw* with population-based constituencies. The regions played no role in the composition of the national legislature. The 1988 coup brought an end to the *Pyithu Hluttaw* and no national legislature existed again until 2011. From 1962 to 2010 the *pyi ne*, *taing* and Chin Hills District (distinct from the *pyi ne* until 1974) score 0 (0, 0, 0, 0, 0, 0) on Law Making.

The 2008 Constitution called for the creation of a new bicameral legislature, the *Pyidaungsu Hluttaw*. The lower house with 440 seats, the *Pyithu Hluttaw*, is based on the principle of popular representation; the upper house with 224 seats, the *Amyotha Hluttaw*, is based on the principle of regional representation. The *Amyotha Hluttaw* is composed of 12 directly elected representatives from each region and state, and this representation must include one representative from each of the self-administered zones and divisions within their respective regions/states and the union territory. The chamber has also 56 members of the national armed forces (C 2008, Art. 141). The *Amyotha Hluttaw* can review legislation originating in the *Pyithu Hluttaw* (C 2008, Art. 159), but its own general set of powers and authority are much more circumscribed as its much smaller size renders it powerless to stop the *Pyithu Hluttaw* from dominating majority votes of the *Pyidaungsu Hluttaw*. Given this distinction in composition and authority, from 2011 to 2018 the *taing* and *pyi ne* score a) 0.5, b) 0, c) 0.5, d) 0, e) 0, f) 0 on Law Making.

Each of the self-administered zones and district has its own representative in the *Amyotha Hluttaw*, but there are no special provisions for these zones to be consulted, let alone being able to veto, national legislation that may affect them. . Hence, they score 0.5 on L1, but 0 on all others.

Executive Control

No routinized meetings, bilateral or multilateral, between central and regional governments have existed in Myanmar since independence. While the ministers for the *pyi ne* and Chin Hills District during the period of 1950 to 1961 were appointed by the central government, there

was no legal basis for routinized meetings between the regional ministers and the central state during the period. All national policy has been under the authority of the central government. The *pyi ne, taing*, and Chin Hills District (prior to 1974) score 0 on multilateral and bilateral Executive Control throughout the period. There is also no consultation with the leading bodies of the self-administered areas.

Fiscal Control

The central government has never been required to consult with subnational governments concerning the distribution of national tax revenues. All national tax policy has been under the authority of the central government. Under the 2008 Constitution, the *Pyidaungsu Hluttaw* votes on the budget, which includes the allocation of funds to regions (Art. 230). However, as the much smaller chamber, consent of the *Amyotha Hluttaw* is not required to pass the budget. The *pyi ne, taing*, and Chin Hills District (prior to 1974) score 0 on multilateral and bilateral Fiscal Control until 2010. From 2011, *pyi ne* and *taing* score 1 on multilateral fiscal control. There is also no consultation with the leading bodies of the self-administered areas.

Borrowing Control

The central government has never been required to consult with subnational governments concerning national borrowing. All borrowing policy has been under the authority of the central government. The *pyi ne, taing*, and Chin Hills District (prior to 1974) score 0 on multilateral and bilateral Borrowing Control throughout the period. There is also no consultation with the leading bodies of the self-administered areas.

Constitutional Reform

In the 1947 Constitution, either chamber could initiate constitutional amendment proceedings, but passage could only occur through a 2/3 majority vote of the combined two chambers (C1947, Art. 209.3). Since the second chamber was not based on regional representation, regions did not have control over general constitutional reform.

However, the constitution had special rules for amendments to the representation of the *pyi ne* populations and special rights of the Karen and Chin populations. In order to pass, all amendments applying to the Karen or Chin people required the same 2/3 majority but further required that a majority of the representatives of the Karen or Chin were present and voted for the amendment (C1947, Art. 209.4c-209.5). We conceive this as a form of bilateral constitutional control that is equivalent to requiring a regional referendum to approve such amendments (Art. 209.4c). Hence this results in a bilateral constitutional reform score of 3 for Karen, Karenni, and the Chin Hills District from 1950 to 1961.

After the 1962 coup, the central government could unilaterally reform the constitution. From 1962 to 2010 the *pyi ne* and the Chin Hills District score 0 on multilateral and bilateral constitutional reform. Due to the absence of a majority in any legislative chamber able to initiate or veto constitutional reform during this time, all *taing* score 0 on multilateral and bilateral constitutional reform.

The 2008 Constitution stipulates that most constitutional amendments require approval by 3/4 vote of the full *Pyidaungsu Hluttaw* (Art. 437), of which the regional representatives in

the *Amyotha Hluttaw* comprise 25.3%. This means that by the slimmest of margins, regional representatives can veto constitutional amendments if they vote as a single block.

Amendments related to specific passages of the Constitution – including the first chapter that enumerates the number and designations of the *pyi ne* and *taing* and how executive and legislative power will generally be shared – must be put to national referendum and confirmed by a simple majority to come into effect. However, this does not erode the authority of the *Amyotha Hluttaw* to block constitutional change, and hence we score 3 for multilateral constitutional reform for *pyi Ne and taing*.

The *pyi ne, taing*, and the self-administered areas do not enjoy bilateral control over constitutional reform.

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Self-rule in Myanmar

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
Taing	I	1950-1973	1	0	0	0	0	0	1
	I	1974-1987	2	2	0	0	2	2	8
	I	1988-2010	1	0	0	0	2	0	3
	I	2011-2018	2	1	0	0	2	2	7
Pyi Ne	I	1974-1987	2	2	0	0	2	2	8
	I	1988-2010	1	0	0	0	2	0	3
	I	2011-2018	2	1	0	0	2	2	7
Karen	I	1950-1961	2	3	1	0	2	0	8
	I	1962-1973	1	0	0	0	0	0	1
Karenni	I	1950-1961	2	3	1	0	2	0	8
	I	1962-1973	1	0	0	0	0	0	1
Kachin	I	1950-1961	2	3	1	0	2	0	8
	I	1962-1973	1	0	0	0	0	0	1
Shan	I	1950-1961	2	3	1	0	2	0	8
	I	1962-1973	1	0	0	0	0	0	1
Districts	II	1950-1973	1	0	0	0	0	0	1
	II	1974-2010	0	0	0	0	0	0	0
	II	2011-2018	1	0	0	0	0	0	1
Chin Hills District	II	1950-1961	2	1	1	0	2	0	6
	II	1962-1973	1	0	0	0	0	0	1
Pjidaunzunèmjè	II	2010-2018	1	0	0	0	0	0	1
Kòbàin outèhou khwɪnjəhdèθə	II	2010	1	0	0	0	0	0	1
	II	2011-2018	2	0	0	0	2	2	6
Kòbàin outèhou khwɪnjəhtáin	II	2010	1	0	0	0	0	0	1
	II	2011-2018	2	0	0	0	2	2	6

