



# Constitution Brief

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## About the author

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## About MyConstitution

The MyConstitution project works towards a home-grown and well-informed constitutional culture as an integral part of democratic transition and sustainable peace in Myanmar. Based on demand by Myanmar stakeholders, expert advisory services are provided to those involved in constitution-building efforts. This series of Constitution Briefs is produced as part of this effort.

The MyConstitution project also provides opportunities for learning and dialogue on relevant constitutional issues based on the history of Myanmar and comparative experience.

## About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

# Should Ministers be Members of the Legislature?

*Elliot Bulmer*

## 1. Scope and purpose

This Constitution Brief discusses the appointment of ministers in different systems of government. It focuses on the question of whether ministers should have seats in the legislature. It is tailored to the specific needs of the Myanmar context. The Constitution Brief explores: (i) the appointment of ministers at the union level and (ii) the appointment of chief ministers and ministers at the region and state levels.

## Statement of the Problem

One of the many questions to be answered in the process of designing or reforming political institutions is, 'Should ministers be members of the legislature?' or, put another way, 'Should ministerial office be incompatible with membership of the legislature?'

- In some countries, ministers are chosen from amongst the members of the legislature and then remain members of the legislature while in ministerial office; ministerial office and legislative membership are '*fused*'.
- In other countries, ministers are normally chosen from outside the legislature, or, if members of the legislature are appointed to ministerial office, they must resign their legislative seats; ministerial office and legislative membership are '*separated*'.

Both the '*fused*' and '*separated*' models have their own advantages and disadvantages—although the balance between the pros and cons will depend much on the institutional and political context.

## Note on terminology

Terminology varies between countries. To avoid confusion, this Constitution Brief uses the term 'Minister' generically to include all persons holding ministerial office, of whatever rank, whether they are members of the cabinet or not, even in countries where other terms (such as 'secretary' or 'cabinet member') are more usual. It likewise uses the terms Legislature and Parliament in a generic and interchangeable way for all deliberative-legislative assemblies.

It is usual (although not universal) for ministers in a parliamentary system to be chosen from among the members of the legislature and to retain their legislative seats while in ministerial office

## Structure

Section 2 discusses some general principles that relate the appointment of ministers to different systems of government, e.g. parliamentary or presidential. Sections 3 and 4 examine, respectively, cases for the ‘fused’ and ‘separated’ rules of ministerial appointment—primarily in terms of the relationship and balance of power between the executive and legislature, but also in terms of good governance and accountability. Section 5 discusses some additional institutional and contextual considerations, including bicameralism, restrictions on the number of ministers, the party system, and politicians’ career paths. Section 6 then specifically applies the discussion to Myanmar, with reflections on Myanmar’s unusual ‘Assembly-Independent’ system of government (according to which the President is elected by, but not politically responsible to, the Legislature), the role of the military, and the system of regional and state governance.

## 2. Ministerial appointments and systems of government

### Systems of government

There are three main democratic systems of government, defined by the relationship between the executive and the legislature: parliamentary systems, presidential systems and various types of semi-presidential hybrid:

- In a *parliamentary system* the executive holds office on the basis of the confidence (political support) of the parliamentary majority and can be removed from office by a parliamentary vote of no confidence. There is usually also a symbolic or ceremonial head of state with very limited powers. Examples include Bangladesh, India and Malaysia.
- In a *presidential system* the executive (who typically combines the functions of ceremonial head of state and effective head of government) is separately elected, alongside the legislature, and normally serves for a fixed term. The president and legislature are independent of each other—there is no scope for votes of no confidence, and typically the legislature cannot be dissolved. Examples include Indonesia, Kenya, Liberia and the United States.
- *Semi-presidential systems* are a mixture of the two, with a directly elected president who co-exists with a prime minister who depends upon parliamentary support. These two leaders share executive power in a number of complex ways, depending on constitutional rules and political dynamics.

The remainder of this section explores the first two types, which are the most commonly debated systems of government in Myanmar. Under the current constitution, Myanmar does not, however, have any of these commonly-found systems of government. Technically, the system of government at the union level in Myanmar is known as ‘assembly-independent’: this simply means that the executive is elected by the legislature (assembly), but is not dependent on the ‘confidence’ (i.e. the continued political support) of the legislature once elected. Unlike in a presidential system, there is no separate popular election of a president in Myanmar. Unlike in a parliamentary system, there is no procedure to remove the executive by a ‘vote of no confidence’. This is an unusual system, rarely found in other countries. Section 6 discusses the implications of this for the appointment of ministers.

An underlying logic connects the question of whether ministers can be members of the legislature to each of these systems of government. It is usual (although not universal) for ministers in a parliamentary system

Ministers in presidential systems are appointed by the president. They are responsible to the president (not to the legislature) and are subordinate to the president

to be chosen from among the members of the legislature and to retain their legislative seats while in ministerial office. It is also usual (although not universal) for ministers in a presidential system to be chosen from outside the legislature, and for ministerial office and legislative office to be incompatible.

#### Presidential systems

Presidential systems are based on the institutional and political separation of the executive from the legislative power. The executive is led by a president, who is elected by the people and who combines the roles of both head of government (effective political leader) and head of state (ceremonial representative of the nation). The executive and legislative branches are mutually independent and serve for constitutionally prescribed terms: the president cannot dissolve the legislature, and the legislature cannot remove the president without cause (although removal for wrongdoing by impeachment is usually possible).

The main political dynamic in a presidential system is between the president and the legislature; the president leads the executive, but must negotiate with the legislature to enact legislation and pass budgets. Since neither the president nor the legislature can remove the other, there is an ever-present possibility of stalemate or deadlock. This is more likely when a president's party does not have a majority in the legislature. However, even when the president's party controls the legislature, different electoral cycles and electoral pressures (including legislators' sensitivity to local constituency issues in some countries) may require the president to negotiate with legislators to get his or her policy proposals adopted.

Ministers in presidential systems are appointed by the president. They are responsible to the president (not to the legislature) and are subordinate to the president. In some presidential systems, including many Latin American countries, the president's decision of who to appoint is final. In others, presidential nominations require legislative approval. In Liberia and the USA, this approval is given by the Senate; in Kenya, by the lower house; and in the Philippines by a joint committee of both houses. These mechanisms give the legislature the opportunity to scrutinize nominees.

The presidential system usually forbids a person from holding office in more than one branch of government at the same time. Ministers therefore cannot simultaneously be members of the legislature, as this would violate the principle of the separation of the powers. Of course, members of the legislature might be eligible for appointment to ministerial office provided that, on accepting such office, they cease to be members of the legislature (as explicitly stated in the Constitution of Nigeria).

However, there are some exceptions. Some African constitutions either require all ministers to be appointed from amongst the members of the legislature (e.g. Zambia) or allow some or all ministers to be appointed from amongst the members of the legislature (e.g. Ghana), while still holding their parliamentary seats. When adopted in authoritarian conditions, this arrangement can further weaken the legislature, making it dependent by buying off members with the perks and privileges of ministerial office. When adopted in a competitive democratic system, there may be a countervailing effect: ministers who are also parliamentarians may have their own local following and democratic mandate that makes them less dependent on the president.

#### Parliamentary systems

Parliamentary systems (e.g. Australia, Bangladesh, Fiji, India, Malaysia) are based on a relationship of mutual trust and support (technically known as

In those parliamentary systems derived from the British ‘Westminster model’, ... it is standard practice for Ministers to be chosen from among the members of parliament (MPs). The Cabinet is therefore ‘a committee of the legislative body selected to be the executive body’

‘confidence’) between the legislative and executive branches of government. The government is led by a prime minister, assisted by cabinet ministers, who hold office by virtue of the ‘confidence’ (on-going political support) of the party, coalition or bloc holding a majority of seats in the legislature. In a bicameral system, ‘parliamentary confidence’ usually refers only to the support of the lower (popularly elected) House—although there are some (e.g. Italy) where the Cabinet is responsible jointly to both houses.

The Cabinet combines executive and legislative leadership. It gives impetus to the legislative majority in making laws, but at the same time is responsible to the legislative majority for its executive functions. The Cabinet can lead—but only in the direction and to the degree, that the parliamentary majority is willing to follow.

The main political dynamic in a parliamentary system is therefore not between different branches of government, but between the governing party or coalition and the opposition. The governing party or coalition sets the policy agenda, controls the administration and takes initiative in legislation. The opposition (which may consist of one or more parties) seeks to hold the government to account, to ask awkward questions, to bring matters to public attention, to ensure that government proposals are properly debated and scrutinized and perhaps to modify, influence, or sometimes delay, them. At the next election the people vote for a new parliament in which the party or parties in power might change, such that the former leader of the opposition becomes the new prime minister.

In those parliamentary systems derived from the British ‘Westminster model’, found in many countries with a history of British colonialism, it is standard practice for Ministers to be chosen from among the members of parliament (MPs). The Cabinet is therefore ‘a committee of the legislative body selected to be the executive body’ (Bagehot 1867); it is an executive committee of the legislature. The prime minister chooses the ministers—but he or she can only choose them from a select group of senior MPs among the majority party or coalition.

In Britain, this remains a matter of political convention, as there is no written constitution—although it is a convention that has been consistently honoured. Other countries that use the Westminster model have been more prescriptive, including the rule that ministers must in normal circumstances be MPs in their written constitutions:

- The Constitution of Australia (S.64) states that ‘...no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.’
- The Constitution Act of New Zealand states that ‘A person may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown only if that person is a member of Parliament...’.

In the interval between parliament being dissolved and the new parliament being elected, there are no MPs. In New Zealand, provisions are therefore made for the continuation in office of ministers who were MPs prior to dissolution. In Australia, ministers can lawfully continue in office for a three-month interval between the dissolution of parliament and the next general election. However, despite these partial and temporary exceptions, ministers must be MPs. The political career path that leads to ministerial office runs directly and exclusively through election to parliament.

In the parliamentary systems of Belgium, the Netherlands and Norway, the positions of minister and MP are incompatible. An MP who is appointed to ministerial office must resign his or her parliamentary seat

Not all parliamentary systems are derived from the Westminster model. A distinct set of parliamentary traditions developed in continental Europe. In Spain, for example, ministers may be chosen from among MPs, and an MP who is appointed to ministerial office retains his or her parliamentary seat; however, ministerial appointments may also be made from outside of parliament. In the parliamentary systems of Belgium, the Netherlands and Norway, the positions of minister and MP are incompatible. An MP who is appointed to ministerial office must resign his or her parliamentary seat (the seat may then, depending on the electoral laws in place in each country, be filled by a substitute from the appropriate party list).

Most of these are old, stable, well-established democracies, which have had their own trajectory of political development over the last two centuries. They are also, notably, constitutional monarchies. The separation of ministerial office from membership of parliament reflects a particular historical epoch in which representative institutions were adopted long before parliamentarism (the political responsibility of the ministers to the legislature and their dependence on legislative confidence) was established. The original intention was to prevent parliament from being co-opted or unduly influenced by the king. Although the king's role is now only ceremonial, the exclusion of ministers from parliament has continued. Today, it is part of a distinctly continental European variation of parliamentarism characterized by proportional representation, multiparty (as opposed to two-party) politics and broad-based coalition governments. Ministers are expected to act not merely as partisan politicians, but as members of a governing coalition that has to reach—and stick to—complex multiparty agreements. The exclusion of ministers from parliament can therefore be seen, in these contexts, as part of a power-sharing arrangement that is intended to depoliticize the executive. In contrast to the Westminster model, this continental European variant of parliamentarism has been less successfully exported to other parts of the world.

Ministers in continental European parliamentary systems may be recruited from among those who have been MPs (and some leading MPs may have an expectation of attaining ministerial office), but sometimes people are appointed to ministerial office from other backgrounds, such as the civil service, business or academia. Merit, in the sense of relevant qualifications, skills and experience, can therefore play a greater role. There is a slightly higher tendency in these countries for some ministers to be specialists, with some policy expertise and background executive-level experience in their area of responsibility. Political balance, however, may still be very important in the selection of ministers (especially in countries that usually have coalition governments made up of two or more parties).

### 3. The case for the ‘fused’ rule: ministers being members of the legislature

#### Allowing the people to pre-select the pool of potential ministers

If ministers are appointed from among the elected members of a legislature—and remain within the legislature—this means that everyone holding ministerial office has been elected by the people and is directly accountable to the people. This has a certain democratic quality to it: the ministers are chosen (only) from among those whom the people have elected.

In countries where MPs are elected from geographical constituencies, this means that a minister who is rejected by his or her constituency in an election consequentially loses ministerial office.

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#### Strengthening the Cabinet

Ministers who are members of the legislature—especially members of an elected house—will have a degree of political authority in their own right that derives from winning an election. Depending on the electoral system, they may have a local constituency, in which they can develop a personal following alongside that of their party. If they lose ministerial office, they retain these resources; as a member of the legislature, they still have public standing, prestige and influence—not to mention the salary and privileges that go with being an MP. To be dismissed from ministerial office may be a setback, in such circumstances, but it is not necessarily the end of a political career. This may (depending very much on political circumstances) make ministers less dependent on the head of government, and therefore better able to resist executive autocracy.

#### Availability for questioning/scrutiny

It is common practice in countries where ministers are MPs for the ministers to attend regular ‘question time’ in the legislature. They are physically present and can be confronted, questioned and criticized face to face.

#### Keeping ministers in touch with reality

Ministers who are members of the legislature are forced into physical and social proximity with other MPs. They cannot—try as they might—remove themselves into a closed executive ‘bubble’. It is possible for ministers and backbench MPs to encounter one another informally (in the House, in the division lobbies, in places where MPs meet, eat and drink). Moreover, in district-based electoral systems, ministers who are elected parliamentarians have an incentive to be in frequent contact with their constituents. They are likely to know about local demands, needs and interests.

#### Reducing nepotism and conflicts of interest

If only legislators can be appointed to ministerial office, it is harder for a president to appoint family and friends to office; at least, they would be required to first win election to the legislature. Even if a ‘safe seat’ can be found, this means they have to win some kind of public endorsement.

In contrast, if the president can appoint non-legislators to ministerial office, then it becomes possible to appoint family and friends as ministers, regardless of their qualifications and suitability. This may be prevented, to some extent, in countries where legislative/senatorial confirmation is required.

#### Developing expertise in the legislature

Having ministers in the legislature makes a more competent legislature. When ministers are members of the legislature, there will generally be a number of legislators—both government backbenchers and opposition members—who have had practical experience in the challenges and realities of government. This may make legislators more realistic in their demands, with an insider’s view of what can and cannot be done. It also makes them more effective at scrutinizing laws, as they are better able to see in advance the practical problems that might arise in implementing legislation.

#### Institutional loyalties

Ministers who are first and foremost parliamentarians (who have spent years in parliament before being appointed to ministerial office, who remain in parliament after their appointment and who are in daily contact

If ministers are appointed from outside the legislature, they may be chosen on the basis of their specialist skills, qualifications and experience—enabling the appointment of ‘technocratic’ cabinets

with fellow parliamentarians) are less likely to support any type of extra-parliamentary government. They recognize that their authority ultimately depends on parliament existing and being allowed to function.

Ministers appointed from outside parliament, who do not have the same sense of institutional loyalty to parliament, and who have not been enculturated into the ways and habits of Parliament, are more likely to side with an executive leader against parliament and to be dismissive of the legislature’s distinct roles and privileges.

#### 4. The case for ‘separated’ rule: ministers not being members of the legislature

##### Legislative independence and separation of the powers

A legislature in which large numbers of members hold ministerial offices is likely, all other things being equal, to be a pliant legislature. The power to appoint members of the legislature to ministerial office gives the head of government (whether a president or prime minister) leverage over the legislature. Supporters can be rewarded, and opponents and critics sidelined. This patronage power may weaken the legislature as a co-equal branch of government and weaken the separation of the powers.

This may not be as problematic in a parliamentary system (where the main political dynamic is between the government and the opposition, and where the opposition performs scrutiny and oversight functions) but can undermine checks and balances in a presidential system (where maintaining the mutual independence of the executive and legislative branches is a cornerstone of liberty and good governance).

##### Time management

Being a member of a legislature is a busy job. In addition to plenary debates and committee work, members have to stay in touch with constituents, interest groups and party activists. They may have to travel a long way between the legislature and their home constituencies. Being a minister is also a full-time job. Trying to combine these two roles can lead to even highly competent people being overstretched, and neglecting one or both of these roles. If ministers are members of the legislature, however, it is possible to manage these time demands through conventional arrangements such as allowing a fellow MP of the minister’s party to handle much of the minister’s constituency casework.

##### Qualifications, experience and profile

Having to appoint ministers from among MPs significantly reduces the pool of available candidates. There may be insufficient members with the right skillset or personal profile. If ministers are appointed from outside the legislature, they may be chosen on the basis of their specialist skills, qualifications and experience—enabling the appointment of ‘technocratic’ cabinets. Moreover, the ability to draw ministers from outside of parliament may make it easier to ensure balanced geographic, religious, ethnic or gender representation at the ministerial level.

#### 5. Additional institutional and contextual considerations

##### Bicameral legislatures

A bicameral legislature is one with two distinct houses or chambers. In most Westminster-derived bicameral parliamentary systems, the prime minister must be a member of the popularly elected lower house, but other ministers may be appointed from either the lower or upper house. Where

the upper house is wholly or partly appointed, rather than elected, this provides an alternative mean by which those with the skills, qualifications and experience necessary to be ministers may be brought into ministerial office without first having to win an election. However, this arrangement also diminishes some of the advantages of drawing ministers only from elected MPs; persons appointed to parliament in order to hold ministerial office may not enjoy public legitimacy.

- In Malaysia, the prime minister must be appointed from the lower house, but other ministers may be appointed either from the lower house or from the Senate (which consists of 26 members indirectly elected by state legislatures, and 44 members appointed by the head of state acting on the advice of the prime minister).
- In the Bahamas, where the Senate is wholly appointed (the majority on the advice of the prime minister, the minority on the advice of the leader of the opposition), up to three ministers, including the attorney-general, may be appointed from the Senate.

#### Limited external appointments

Some constitutions require most ministers to be members of the legislature, but also provide an opportunity to appoint some ministers from outside the legislature. This arrangement can be found in both parliamentary systems such as Bangladesh and presidential systems like Ghana:

- In Bangladesh, the prime minister and nine-tenths of the ministers must be chosen from among the elected members of the unicameral parliament, but up to one-tenth of the ministers may be chosen from outside parliament.
- In Ghana, a majority of the ministers must be appointed from among MPs, but the remainder (a minority) may be appointed from outside parliament.

These rules allow some ministers to be chosen on the basis of their special skills or experience, while retaining the principle that most of the ministers must be chosen from amongst the members of the legislature. The ability to appoint an attorney-general from outside parliament may be particularly useful, since this position requires specialist legal qualifications and experience. It might happen that no one is available from among the members of Parliament of the governing party who is able to fill that office. The Constitution of Fiji addresses this problem by a specific rule that enables the attorney-general to be appointed from outside parliament if no suitable MP is available for the governing party.

#### Restrictions on the payroll vote

The term ‘payroll vote’ refers to MPs who, because they hold ministerial office (and are therefore said to be on the government’s payroll) are expected, under the rules of collective ministerial responsibility, to always vote with the government.

In a well-functioning parliamentary system, non-ministerial (‘backbench’) MPs who belong to the governing party or coalition (and who therefore routinely support the government, but who are not themselves members of the government) are a vital part of the system of checks and balances. They play a crucial role in criticizing, improving and amending the government’s legislative proposals, because their votes, on which the government depends, cannot entirely be taken for granted. However, these members lose influence if the payroll vote is too large, and the legislature

becomes a ‘rubber stamp’—that is, a purely formal and theatrical part of the process, without real deliberative or veto powers.

To prevent the overexpansion of the payroll vote from crippling the legislature’s independence in this way, several constitutions limit the total number of ministers. The principle is that while ministers must be appointed from among MPs, no more than a certain number of parliamentarians can at any time be ministers:

- In India, this limit is set at 15 per cent of the total. This may be appropriate for a large, national parliament.
- In Vanuatu, a much smaller country with a smaller parliament, the number of ministers, including the prime minister, must not exceed one-third of the MPs.
- In Belize, the rule is that not more than two-thirds of the members of the House of Representatives from the majority party may hold ministerial office; so if, as at present, the majority party holds 19 of the 31 seats in the House, then not more than 12 of them may hold ministerial office.

This restriction on the number of ministers is not limited to parliamentary systems. In presidential systems that allow ministers to be sitting MPs, similar rules may apply. The effect, likewise, may be to prevent the president from undermining the legislature’s independence by appointing a large number of MPs to ministerial office. For example, Ghana has a maximum cabinet size of 19.

#### Party systems and party discipline

As always in questions of institutional design, much depends on the nature of the party system and the intensity of party discipline. In a parliamentary system with strong party discipline, having to appoint ministers from among MPs will be less of a constraint on the head of government; members will fall into line, and support the party leadership, regardless of whether they are appointed to ministerial office. If party discipline is weak, leaders have to be more careful about who they exclude or offend. In a presidential system, the same dynamic will emerge as long as the president is the leader of the majority party in the legislature: simply put, strong party discipline means a strong president. When the president is not the leader of the majority, the opposite will be the case: if ministers are members of the legislature, the president can use the power of appointment selectively, taking advantage of weak parties (or of a plethora of small parties) to pick off the opposition, co-opt support and build a pro-presidential coalition.

#### Political careers: what does it mean to be ‘in politics’?

Countries in which ministers are also MPs tend to have only one ‘career track’ for politicians. They first become an MP, and then work their way up through the hierarchy of ministerial office, starting as a junior minister and perhaps ending up in the Cabinet. Alternative paths to political advancement—such as developing subject-matter expertise and perhaps becoming chair of an important select committee—do sometimes exist, but the ministerial route is the normal one for those who are ambitious.

Federal systems may have parallel union-/state-/regional-level ‘career tracks’ through the state/regional legislatures and the union legislature. For example, the former chief minister of an Indian state, Narendra Modi, went on to become Prime Minister of India.

The governing principle of an assembly-independent system is that the president should be acceptable to the legislature, having been chosen by it, and should therefore reasonably expect support from the legislature, but without depending on legislative confidence

In countries where ministers are chosen from outside the legislature, in contrast, different career paths exist. Someone might become a minister without ever having been, in the usual sense of the word, a politician—and might move between ministerial office and the civil service, business, or other fields of work. Meanwhile, membership of the legislature provides a political career in its own right: very few US senators, for example, would give up a Senate seat for a Cabinet portfolio. These different career paths have profound implications—for the type of people who are likely to become ministers, the skillsets they bring to the office, how they spend their time and the incentive structure under which they operate.

## 6. Reflections for Myanmar

### The ‘assembly-independent’ system

In an ‘assembly-independent’ system, executive power is vested in a president who is elected by, but is not politically responsible to, the legislature. The governing principle of an assembly-independent system is that the president should be acceptable to the legislature, having been chosen by it, and should therefore reasonably expect support from the legislature, but without depending on legislative confidence. It provides a similar separation of powers to that found in a presidential system, but without the direct election of the president and without the risk of divided government.

Myanmar’s assembly-independent system has three additional unusual features. First, the manner of electing the president is unique. The president is elected by parliament from a shortlist of three candidates: one chosen by the elected members of the upper house, one by the elected members of the lower house and one by the military members; the two nominated candidates who are not elected to the presidency become vice presidents. Second, limits on who can be elected resulted in 2015 in the establishment of the ‘state counsellor’ position, who holds key political, if not constitutional, responsibilities. Third, the ministers responsible for defence, home affairs and border affairs must be chosen on the proposition of the military commander-in-chief. Myanmar’s commander-in-chief also has powers related to security and emergency powers that would elsewhere usually be vested in the president. Taken together, these amount to a relatively weak presidency, both in terms of formal powers and democratic legitimacy.

Article 232 of Myanmar’s 2008 Constitution stipulates that union ministers may be selected from either ‘among the Hluttaw representatives’ or ‘among persons who are not Hluttaw representatives’ (but who are qualified for election to the *Pyithu Hluttaw*, the lower house). If a member of the *Pyithu Hluttaw* is appointed as a minister, his or her seat becomes vacant and a by-election must be held. Therefore, the rules on ministerial appointments in Myanmar are most similar to those typically found in presidential systems. Parliament must vote to confirm ministerial appointments, but its political discretion is limited; it can only refuse an appointment if the potential appointee is objectively unqualified for office.

If Myanmar develops towards a parliamentary system in the future, in which ministers are chosen on the basis of parliamentary confidence, this would require several changes to the constitution—including the ability to remove ministers by a vote of no confidence and probably a rule enabling the dissolution of parliament and the calling of new elections in certain circumstances. Such a package of reforms might reasonably be accompanied by a change to the ministerial appointment rules, such that ministers would be appointed from among the elected members of

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the legislature and would remain in the legislature while in ministerial office. This fusion—although not practiced in all parliamentary systems—highlights the mutual dependence of the legislative and executive branches, and may help to sustain and develop parliamentary democracy.

Alternatively, if Myanmar were to develop in the direction of a presidential system, this could be achieved primarily by amending the presidential election rules (to allow for the direct election of the president). In this case, the current rules on ministerial appointments are probably sufficient, since the ministers (at least, the civilian ministers) would derive their democratic legitimacy not from parliament but from the elected president.

#### States and regions

At the level of the states and regions, Myanmar's system of government is not really 'assembly-independent', because the state and regional legislatures have no direct or effective role in choosing their chief ministers; the chief minister's authority rests on his or her appointment by the president. Reforming the state and regional systems of government therefore has two dimensions: one related to the balance of powers between the legislature and the executive, and the other linked to the distribution of powers between the union level and the state/regional level. Allowing the state and regional legislatures (or their elected members) to elect the chief minister would both strengthen the legislature and result in more political decentralization to the states and regions.

In other respects, however, the same principles that apply to the union level also apply to the state or regional level. If the intention is to move towards a presidential-style, separation-of-powers democracy at the state and regional level, then it would be consistent—with both the rationale of a presidential system and the normal practice of most presidential democracies—for the state and regional ministers not to simultaneously hold seats in the legislature.

If the intention, however, is to move towards a parliamentary-style democracy at the state and regional level, then it would be most consistent with parliamentary principles and practice to require state and regional ministers not only to be chosen from the state or regional legislature but also to retain their legislative seats while in ministerial office. Of course, there are parliamentary systems (such as the continental European examples discussed above) in which ministers do not sit in parliament, but these have their own distinct constitutional and political traditions that have been ingrained over time. In a country where parliamentarism is new, and where there is a deliberate move in that direction, making ministers sit in the legislature may help reinforce and embed the close and harmonious relationship between the executive and the legislature on which a parliamentary system of government depends.

Whichever method of selecting a chief minister, and of appointing state and regional ministers, is chosen, it is important for the state and regional legislatures to develop a sense of their own functions and roles—not as subordinate bodies to the chief minister, but as co-equal partners in government.

Lastly, it is not strictly necessary to have the same system of government at the union and state/regional levels. It would be unusual, but a country could, for instance, decide to have a presidential democracy at the national level and parliamentary systems at the state and regional level. The Philippines has recently considered this approach.

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## Bibliography

- Bagehot, W., *The English Constitution* (London: Chapman & Hall, 1867)
- Böckenförde, M., Hedling, N. and Wahi, W., *A Practical Guide to Constitution Building* (Stockholm: International IDEA, 2011)
- Bulmer, W. E., *Presidential Legislative Powers* (Constitution Building Primer No. 15) (Stockholm: International IDEA, 2017)
- Carey, J. M. and Shugart, M. S., *Presidents and Assemblies: Constitutional Design and Electoral Mechanics* (Cambridge: Cambridge University Press, 1992)
- Lijphart, A. (ed.), *Parliamentary versus Presidential Government* (Oxford: Oxford University Press, 1992)
- Sartori, G., *Comparative Constitutional Engineering: An Enquiry into Structures, Incentives and Outcomes*, 2nd ed. (New York: New York University Press, 1997)
- Yong, B. and Hazell, R., *Putting Goats Amongst Wolves: Appointing Ministers from outside Parliament* (London: University College London, 2011)

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