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Democracy on a Leash

Aung San Suu Kyi's victory may be historic, but Myanmar's military is still in charge.

By Jared Genser

The returns from Myanmar's parliamentary election show there will be an overwhelming victory for longtime democracy leader Aung San Suu Kyi and her National League for Democracy, enabling them to form the next government. But the oddest feature of the election is that Suu Kyi herself, who led her party to a landslide victory, cannot become president. This reality is just one visible symptom of the even more difficult struggle that lies ahead. It is very much a critical and open question if the military will feel compelled to cede any ground in light of the new government.

The Myanmar military, or Tatmadaw, is surely disappointed that it did not block Suu Kyi from obtaining the 67 percent vote that she needed to control a majority of the parliament. This result is required because under Myanmar's Constitution, 25 percent of the seats in the upper and lower House are appointed by the military. As a result Suu Kyi will control the parliament, which will appoint the new president. Yet the military anticipated and planned for this possibility years ago, including disqualifying constitutionally anyone whose spouse or children had benefited from a foreign nationality from serving as president, a provision designed just for her. Even if she will be "above the president," no meaningful reform to restore a genuine democracy will be possible without the military's support.

To understand the very unusual situation that Suu Kyi will find herself in, one must look back on the country's recent history. As the military realized that its path, including an extraordinary economic reliance on China, was going to be unsustainable, it decided to manage the reform process to secure the soft landing it referred to as "disciplined democracy." But the military never intended for Myanmar to be a Western-style democracy. It wanted the government to have a civilian face but fully preserve its strong prerogatives.

In April 2008, the then-military junta of Myanmar released its long-awaited draft constitution. It was drafted with no input from the National League for Democracy or ethnic political parties. And on May 10, 2008, in the wake of Cyclone Nargis hitting the country, a referendum was held and the military claimed that 98 percent of eligible voters turned out and over 92 percent voted “yes.” That constitution set the framework for last Sunday's vote, ensuring that the best any political party could achieve, regardless of its electoral success, would be to enter into a power-sharing arrangement with the military.

In fact, the 2008 constitution was written to ensure that Myanmar's civilian government would be, at best, democracy on a leash.

Under the constitution, the Myanmar military is a fourth branch of government; it sets its own budget independent of the president and parliament; it appoints the defense, home and border affairs ministers; and it has the right to veto decisions of the executive, legislative and judicial branches of the government. In fact, the civilian government has no oversight over the military, which "has the right to independently administer and adjudicate all affairs of the armed forces."

It should be up to the Myanmar people to decide if national reconciliation requires justice and accountability for decades of human rights abuses perpetrated by the military, which included crimes against humanity, war crimes and ethnic cleansing. But the constitution provides permanent immunity for all members of prior military governments. In addition, and perhaps most disturbing, the constitution cannot be amended without a greater than 75 percent vote in both houses of parliament, which makes changing the constitution impossible without the support of the military.

Suu Kyi and the new National League for Democracy government will have substantial power to realign budgetary priorities to the needs of the people, appoint cabinet ministers, repeal repressive laws, sign treaties and represent the government around the world. But on the most central challenges facing the country, the military remains in control. And given that the judiciary in Myanmar was built by and is loyal to the military, there will be additional means for central reforms to be blocked.

For example, Suu Kyi has spoken about the need for her new government to foster national reconciliation between the Burman, who comprise 68 percent of the population, and ethnic minority groups that suffered wide-ranging mass atrocities under the prior military junta. Yet ethnic groups have complained vociferously that the constitution empowers the central government to appoint the governors of the states and regions of the country.

In addition, despite much of the natural resources of the country being in ethnic minority areas,

the constitution says that all above and below land rights belong to the central government. Ethnic minorities want autonomy within a federal Myanmar to make decisions for themselves and revenue-sharing on natural resource projects. But it is impossible for a National League for Democracy government to resolve these issues permanently in light of the constitution.

Furthermore, the military controls not only the army but the intelligence service and national police. It also controls the prisons and all matters relating to immigration. Thus, while theoretically the parliament and executive branch could reform the 1982 Citizenship Act, which denaturalized the Rohingya people, there is no legal route to compel the home minister to implement any adopted reforms. The military can also continue to commit human rights abuses against civilians, and neither Suu Kyi nor her government will have the power to stop such attacks. And, under the constitution, the military even has the right to declare a state of emergency, assume the responsibilities of the other branches of government and suspend any or all civil and political rights of the Myanmar people if it feels the new civilian government is threatening its role.

In countries where the rule of law prevails, national militaries are subject to the control of civilian governments. But in Myanmar, the military can exercise virtually unlimited power, and it also has all of the weapons by which to enforce its control. While Suu Kyi's electoral victory is historic, particularly in light of the many years she fought the military junta and sacrificed so much under house arrest, it is premature to declare victory. There are many struggles that lie ahead.

Jared Genser previously served as Aung San Suu Kyi's international counsel during the latter years she was under house arrest (2005-2010). He is also a U.S. News contributor.