



# Majority Rules in Myanmar's Second Democratic Election

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**What's new?** Myanmar's 8 November elections will be a test of de facto leader Aung San Suu Kyi's popularity, and a referendum on her achievements, amid a public health and economic crisis caused by COVID-19. A change in government is unlikely, but the results may exacerbate minority grievances and armed conflict.

**Why does it matter?** Myanmar's electoral system concentrates political power in the hands of the military and the Burman majority, even in areas where ethnic minorities are more numerous. The history of Burman domination of minorities is a major driver of Myanmar's armed conflicts. Elections look set to entrench rather than ease that dynamic.

**What should be done?** Long-term efforts are needed to reform the electoral system to deliver fairer outcomes and amend the constitution to end the military's political role. Recent attempts at both have failed. Meanwhile, the future government should use its executive powers to appoint ethnic party leaders to head local administrations in minority areas.

## I. Overview

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Myanmar goes to the polls on 8 November in the country's second democratic election since the end of military rule in 2011, amid a serious wave of coronavirus infections. Aung San Suu Kyi remains extremely popular with the Burman Buddhist majority, who appear likely to propel her National League for Democracy (NLD) to a second landslide victory. But while the polls constitute an important step in consolidating electoral democracy in a country long associated with dictatorship, a first-past-the-post electoral system and a concentration of seats in the central Burman regions mean that minorities will again have limited representation. The Rohingya are almost completely excluded from participating. The results will likely amplify disaffection with electoral politics among minorities and could in turn stoke the country's numerous armed conflicts. Pending vital but difficult electoral reform, the future government should use its executive powers to ensure that ethnic minorities have a greater say in their own governance and tackle systematic discrimination against the Rohingya, who are denied crucial rights.

The polls will gauge public opinion toward Aung San Suu Kyi and her NLD party in its fifth year in office, at a time when the country is reeling from the economic im-

part of COVID-19 and a surge in cases since mid-August. The government and election commission decided to push ahead with elections as scheduled, in spite of the public health risks and calls by some opposition parties to postpone the balloting. Many citizens are also questioning the government's ability to deliver electricity, jobs, a more equitable economy and – in ethnic minority areas – peace.

These issues appear unlikely to reduce the NLD's margin of victory, however. Aung San Suu Kyi is revered by most of the Burman Buddhist majority, a status she has consolidated through her personal defence of Myanmar at the International Court of Justice, where it faced genocide charges for the violent expulsion of more than 750,000 Rohingya to Bangladesh beginning in 2016. Her very visible leadership of the country's COVID-19 response has further burnished her image. The country also lacks an effective national opposition party, with the military-established Union Solidarity and Development Party (USDP), the NLD's main adversary, having failed to rebrand itself to appeal to voters.

While significant ballot fraud is unlikely, the electoral process has seen many flaws, in part because of a compromised and weak election commission that has shown little sensitivity in dealing with opposition parties, civil society and the enormous challenges posed by the pandemic. Rohingya disenfranchisement, and the armed conflicts in Rakhine State and elsewhere that have led to poll cancellations, will also mar the elections' credibility for the communities concerned as well as international observers. In Rakhine State, there is a risk that cancellations will trigger further armed conflict or political violence. In short, the process will fall far short of democratic standards, even if it will be better than many elections in South East Asia.

In many ways, though, the election's aftermath will be more important than its results. A poor performance for the national opposition will surprise no one, yet the atmosphere will likely be fraught with allegations of unfair incumbent advantage, complaints that have been exacerbated by COVID-19 response measures coming in the way of campaigning. Parties representing ethnic minorities are also expressing high hopes that they can secure a larger bloc of seats, potentially becoming kingmakers. But the first-past-the-post electoral system – particularly ill-suited to Myanmar demographics – combined with a preponderance of seats in the Burman heartland, means that ethnic parties will likely not do as well as they expect.

Such an outcome will confirm many ethnic minority parties and voters in their view that they are structurally excluded from fair representation – more so because the constitution reserves an automatic 25 per cent of seats for the military. Thus, even if the election is moderately well run, with few violent incidents, its outcome may nevertheless be corrosive for peace and inclusivity. If minority people lose faith in electoral politics, some will be more likely to resort to insurgency, putting further strain on an already moribund peace process.

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## **II. Previous Elections**

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After independence from Britain in 1948, Myanmar experienced a decade of multi-party democratic rule. Elections were held in 1947 (for the first post-colonial government), 1951, 1956 and – following an eighteen-month period of military rule – again in 1960. The military seized back power in 1962, establishing a one-party state that

lasted almost five decades. Following huge anti-government demonstrations, which the military brutally crushed, elections were held in 1990. Aung San Suu Kyi and her NLD party captured the public mood, and in spite of widespread repression and the arrest of opposition party leaders, including Suu Kyi herself being confined to her house, the NLD won a landslide victory. The military government, however, in line with its pre-election warnings, refused to hand over power until a new constitution was drawn up.<sup>1</sup>

That new constitution was not completed until 2008. The military government then organised elections in 2010, on a playing field tilted heavily in favour of the military-established USDP. The NLD and a number of allied ethnic parties boycotted the polls. The vote was peaceful, but massive irregularities gave the USDP an overwhelming majority of 79 per cent of contested seats in the national parliament.<sup>2</sup> The constitution, which reserves 25 per cent of seats to appointed military officers, eventually came into force when the new parliament convened in January 2011. Together, the USDP and military held 83 per cent of the seats.

The new government that took over in March 2011 embarked on dramatic political and economic reforms and initiated a new peace process with many of the country's ethnic armed groups.<sup>3</sup> Aung San Suu Kyi, who had been released from house arrest following the elections, took a spot in the USDP-dominated parliament following 2012 by-elections in which the NLD won virtually all the contested seats.<sup>4</sup>

The by-elections set the stage for the NLD's landslide victory in the November 2015 general elections. Despite major flaws, including the wholesale disenfranchisement of the Rohingya Muslim minority, a wave of Buddhist nationalist violence in 2012-2014 that pushed the political landscape in a more xenophobic direction, and democratic deficits in the elections framework (such as the 25 per cent bloc of seats reserved for the military – see Section III.B below), these were widely regarded as credible and well run compared with 2010.<sup>5</sup> The NLD won 79 per cent of the elected seats, enough to give the party an overall majority of elected and military seats in the parliament.<sup>6</sup>

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<sup>1</sup> For previous Crisis Group reporting on elections in Myanmar, including more detailed electoral history, see Asia Reports N°s 266, *Myanmar's Electoral Landscape*, 28 April 2015; and 174, *Myanmar: Towards the Elections*, 20 August 2009; and Asia Briefings N°s 157, *Peace and Electoral Democracy in Myanmar*, 6 August 2019; 147, *The Myanmar Elections: Results and Implications*, 9 December 2015; 118, *Myanmar's Post-Election Landscape*, 7 March 2011; and 105, *The Myanmar Elections*, 27 May 2010.

<sup>2</sup> See Crisis Group Reports, *The Myanmar Elections* and *Myanmar's Post-Election Landscape*, op. cit. See also "Unlevel Playing Field: Burma's Election Landscape", Transnational Institute, October 2010.

<sup>3</sup> See Crisis Group Asia Briefing N°127, *Myanmar: Major Reform Underway*, 22 September 2011; and Asia Reports N°s 214, *Myanmar: A New Peace Initiative*, 30 November 2011; and 231, *Myanmar: The Politics of Economic Reform*, 27 July 2012.

<sup>4</sup> See Crisis Group Asia Report N°238, *Myanmar: Storm Clouds on the Horizon*, 12 November 2012, Section II.D.

<sup>5</sup> See Crisis Group Asia Report N°251, *The Dark Side of Transition: Violence Against Muslims in Myanmar*, 1 October 2013; and Asia Briefing N°147, *The Myanmar Elections: Results and Implications*, 9 December 2015.

<sup>6</sup> Crisis Group Report, *The Myanmar Elections*, op. cit., Appendix B.

The party also did well at the regional level, securing an overall majority of elected and military seats in twelve of the fourteen subnational parliaments.<sup>7</sup> Although it scored poorly in Shan and Rakhine States, in both areas the president used his constitutional powers to appoint minority NLD governments, to the anger of local people and ethnic minority parties.<sup>8</sup>

### III. Key Issues Ahead of the Vote

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#### A. *A Majoritarian Electoral System*

The constitution establishes a bicameral Union Assembly (Pyidaungsu Hluttaw) at the national level, made up of a 440-seat lower house (Pyithu Hluttaw) and 224-seat upper house (Amyotha Hluttaw). It also establishes fourteen subnational legislatures, one for each region or state.<sup>9</sup> On election day, voters will cast a separate ballot for each legislature.<sup>10</sup> With one quarter of the seats in all these legislatures reserved for serving military officers appointed by the commander-in-chief, the elections will be for the other three quarters (330 in the lower house and 168 in the upper house).

The first-past-the-post electoral system used in Myanmar since independence amplifies the success of large national parties. Thus, in 2015 the NLD won 79 per cent of the elected seats in the national parliament with 57 per cent of the popular vote, whereas the second-place USDP won only 8 per cent of the elected seats with 28 per cent of the popular vote.<sup>11</sup> There were similar distortions in all previous elections, including in the early post-independence years; such discrepancies are common with first-past-the-post systems around the world.

The distribution of seats also privileges the Burman majority. Some 60 per cent of Union Assembly constituencies are in the Burman-majority regions where large national parties dominate.<sup>12</sup> This distribution is not unfairly skewed in favour of the ethnic majority – rather the opposite, since these areas account for around three quarters of all registered voters. But combined with the first-past-the-post system, it leads to dominance for big national parties representing Burman interests in parliament. Due to recent or historical migration, many ethnic minority areas also have

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<sup>7</sup> In Kachin State, the NLD fell one seat short of an outright majority, but no other party or combination of parties could match its numbers. In Kayah State, the NLD secured exactly half the seats in the local parliament. Crisis Group Report, *The Myanmar Elections*, op. cit., Appendix C.

<sup>8</sup> Ibid. See also Crisis Group Asia Report N°307, *An Avoidable War: Politics and Armed Conflict in Myanmar's Rakhine State*, 9 June 2020, Section III.A.

<sup>9</sup> Myanmar is divided into fourteen first-order administrative units: seven “regions” with a majority Burman population, and seven “states” largely populated by non-Burmans (at least historically) and named after the purported majority group in each.

<sup>10</sup> Voters from certain minority ethnic groups may also be entitled to elect a separate ethnic representative to the region/state legislature, as stipulated in section 161(b, c) of the constitution. See Crisis Group Report, *Myanmar's Electoral Landscape*, op. cit., Section IV.D.

<sup>11</sup> Crisis Group analysis of raw data released by the Union Election Commission, available at the Myanmar Political Information website.

<sup>12</sup> More precisely, 291 of 498 elected seats, or 58.4 per cent, are in these regions. This number increases as a result of voting cancellations, which are all in conflict-affected states. In 2015, no ethnic minority party won a seat in the Union Assembly in the Burman-majority regions.

large Burman populations, allowing the big parties to pick up additional seats in the states even without support from minority voters.

The result is that two big parties – the NLD and USDP – vie for national dominance by focusing their electoral efforts on Burman voters, while each of a plethora of ethnic minority parties seeks to represent its communal interest.<sup>13</sup> Under the current system, most of the latter parties will win few votes and no seats.<sup>14</sup> A few of the larger ethnic parties could be moderately successful, particularly those that represent geographically concentrated populations, which can benefit from the first-past-the-post system. Some have also sought to bolster their prospects through a series of mergers that allow them to present a more united and credible option for voters. For example, three ethnic Karen parties have merged into a single entity, as have three Chin parties, three Kachin parties and two Mon parties.<sup>15</sup>

The challenge these parties face is demographic. Many of the constituencies they are contesting are multi-ethnic, and vote splitting among different ethnic communities in a given area can tilt the balance in favour of a national party.<sup>16</sup> The expectation of many ethnic parties that they will be able to play a kingmaker role in the next parliament may therefore not be realistic; given its strength and the USDP's weakness, the NLD will likely be in a position to form a government on its own, without the need to garner support from smaller ethnic parties.<sup>17</sup> Such a scenario would enormously disappoint and frustrate the ethnic parties (see Section IV below).

### B. *The Political Role of the Military*

Myanmar's military-drafted constitution enshrines a political role for the armed forces. One quarter of the seats in national and subnational legislatures are reserved for military officers appointed by the commander-in-chief, along with one of the two vice president positions and control of the defence, border affairs and home affairs ministries.<sup>18</sup>

Whichever political party wins the elections will thus be required to share power with the military – a largely autonomous and Burman-dominated institution whose

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<sup>13</sup> Fifty-five of the 94 registered political parties are ethnic minority parties. See "Myanmar: Ethnic Politics and the 2020 General Election", Transnational Institute, September 2020, p. 16.

<sup>14</sup> In 2015, only ten of the 59 ethnic minority parties won a seat in the Union Assembly; five of those won only a single seat each. Crisis Group analysis of 2015 election results.

<sup>15</sup> For a full list, see "Myanmar: Ethnic Politics and the 2020 General Election", op. cit., p. 9.

<sup>16</sup> For discussion of the often competitive, zero-sum nature of inter-ethnic relations, see Crisis Group Asia Report N°312, *Identity Crisis: Ethnicity and Conflict in Myanmar*, 28 August 2020.

<sup>17</sup> The kingmaker scenario has been widely mooted. Crisis Group interviews, political party leaders and electoral support organisations, Yangon, July–October 2020. See also "Will Myanmar's next govt be an ethnic-NLD coalition?", *The Irrawaddy*, 27 June 2020; "A look ahead to Myanmar GE 2020: ethnic parties and storms of discontent", *Southeast Asia Globe*, 20 July 2020; "No more ethnic blank check for NLD: coalition-building in the air?", Shan Herald Agency for News, 18 September 2020.

<sup>18</sup> More precisely, the constitution provides that the military bloc in parliament choose one of the three vice presidential candidates. These candidates compete in a single-round presidential vote in parliament, with the winner becoming president, and the other two becoming first and second vice presidents, respectively. It is therefore possible, but in practice unlikely, that the military candidate could become the president. A serving officer can run for president or vice president but must resign from the military upon taking office. See 2008 Constitution, sections 60, 62–64.

commander-in-chief does not answer to the civilian president or the courts.<sup>19</sup> This feature of Myanmar's system is both undemocratic in principle and problematic in practice, as it creates a dyadic government whose frequent dysfunction stymies progress on key issues such as the peace process, accountability for military crimes or scrutiny of military budgets.<sup>20</sup>

The military justifies its constitutional prerogatives as necessary for national stability – a vision based on its interpretation of the 1950s, the country's last democratic era, which was characterised by chaos resulting from what the military regards as infighting among self-serving civilian politicians.<sup>21</sup> This vision ensured that the military did not use its powers to be maximally disruptive of the civilian government in the last five years, even though its relations with the NLD are often strained.<sup>22</sup> For example, while the military has the numbers in parliament to initiate (but not determine the outcome of) impeachment proceedings against senior executive officials, it has very rarely launched or supported such moves.<sup>23</sup>

One area in which the military has made full use of its political power is constitutional reform – a key NLD pledge ahead of the 2015 elections, repeated in its 2020 manifesto.<sup>24</sup> The military has a veto on charter amendments, which it used to reject virtually all reform proposals introduced by the NLD in parliament earlier in 2020.<sup>25</sup> Any diminution of the military's role will therefore come on its own terms and timeframe. In the meantime, there is a fundamental limit to the extent of change that any election can bring, since the one certainty for any vote is that elected representatives will be sharing executive, legislative and judicial power with the military.

### C. *Rohingya Disenfranchisement and Discrimination*

Myanmar's state institutions and election system have failed the Rohingya. Although they were allowed to vote in elections and by-elections from the country's independence up to 2012, the vast majority were disenfranchised in 2015, and will be again in 2020. In February 2015, following several years of intense anti-Muslim and anti-Rohingya hate speech and violence, then-President Thein Sein cancelled Temporary

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<sup>19</sup> Crisis Group Report, *Towards the Elections*, op. cit., Section III.

<sup>20</sup> See Crisis Group Asia Briefing N°143, *Myanmar's Military: Back to the Barracks?*, 22 April 2014.

<sup>21</sup> See Mary P. Callahan, *Making Enemies: War and State Building in Burma* (Ithaca, 2003).

<sup>22</sup> Crisis Group interview, Myanmar political analyst, Yangon, June 2020. These strained relations have come about in part due to the poor chemistry between Commander-in-Chief Min Aung Hlaing and State Counsellor Aung San Suu Kyi. Crisis Group interviews, well-informed Myanmar sources, Yangon, October 2020. They have also arisen over substantive issues such as the push for constitutional change (see below) and the establishment of the state counsellor position for Aung San Suu Kyi, to circumvent the constitutional bar on her assuming the presidency. See Crisis Group Asia Report N°282, *Myanmar's New Government: Finding Its Feet?*, 29 July 2016, Section III.B.

<sup>23</sup> The only two instances in the current government's term are the impeachments of the Kayah State chief minister and the Rakhine State minister for municipal affairs, which both had support from elected lawmakers (in the Kayah case, including NLD representatives). See "NLD chief minister of Myanmar's Kayah State impeached", *The Irrawaddy*, 1 September 2020; "Impeached Rakhine minister slams secretive investigation", *Frontier Myanmar*, 3 January 2018.

<sup>24</sup> NLD Election Manifesto 2020 (Burmese), on file with Crisis Group. See also "Myanmar's ruling party vows to reform military in election manifesto", *The Irrawaddy*, 2 September 2020.

<sup>25</sup> "Military rejects NLD bid to strip generals of their constitutional veto power", *Myanmar Now*, 13 March 2020.

Registration Certificates (or “white cards”) – the only kind of identification document that most Rohingya held.<sup>26</sup> In practice, this move denied most Rohingya the right to vote. A Constitutional Tribunal decision then specified that only citizens had the right to vote, thereby disqualifying most Rohingya, who are denied citizenship by discriminatory application of the law.<sup>27</sup> The Myanmar military has since violently expelled more than 750,000 Rohingya to Bangladesh, but an estimated 600,000 remain in Rakhine State.

There are now three Rohingya political parties registered with the election commission, although they are not allowed to include the word “Rohingya” in their party names. Candidates are also required to identify as “Bengali”, a pejorative term implying recent immigration from Bangladesh, when most Rohingya have lived in Myanmar for generations.<sup>28</sup> These parties are a legacy of the time when the Rohingya were able to vote. They have kept up their official registration despite the disenfranchisement of most of their community, as an important reminder of their past status and as a way to maintain a platform for Rohingya politicians.<sup>29</sup>

Of the thirteen candidates put forward by Rohingya parties, four were rejected by the election commission on spurious grounds – by being asked to provide proof of their parents’ citizenship at the time of their birth, when no such documentation existed.<sup>30</sup> Another two Rohingya candidates were disqualified on similar grounds after being initially accepted and having their names printed on the ballots in their constituencies in Rakhine State and Yangon Region.<sup>31</sup> The commission likewise vetoed a further two Rohingya who had applied as independent candidates. These rejections follow the pattern seen ahead of the 2015 elections, when authorities also blocked most Rohingya candidacies.<sup>32</sup>

This disenfranchisement fits into a broader picture of anti-Muslim discrimination in this and previous elections. Overall, 23 per cent of Muslim candidates in the 2020 election were rejected – compared with just 0.3 per cent for other religious groups –

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<sup>26</sup> Temporary Registration Certificates (or “white cards”) were given to Rohingya in the 1980s when they came to renew their identification cards, instead of the citizenship cards most should have been issued. Crisis Group Report, *The Dark Side of Transition*, op. cit.; and Elliot Brennan, “Citizenship, ethnicity and electioneering in Myanmar”, Lowy Interpreter, 8 April 2015.

<sup>27</sup> “Tribunal rules white card voting rights unconstitutional”, *Myanmar Times*, 12 May 2015.

<sup>28</sup> These parties are the National Democratic Party for Development; the National Development and Peace Party; and the Democracy and Human Rights Party. A voter education app developed by the election commission with the support of international donors and implementers created a controversy when a Myanmar human rights organisation pointed out the dangers of including candidates’ race and religion data, particularly the racist identification of Rohingya candidates. See “Ethnic identifiers in Myanmar election app criticized”, Associated Press, 1 October 2020.

<sup>29</sup> Crisis Group interviews, Rohingya political leaders, Yangon, 2015–2020.

<sup>30</sup> Crisis Group interview, expert on Myanmar citizenship law, Yangon, August 2020. See also “Election commission accused of discrimination after rejecting Rohingya candidates”, *Myanmar Now*, 20 August 2020.

<sup>31</sup> Crisis Group interview, electoral support expert, Yangon, October 2020. See also “Myanmar election app goes offline, has been criticized over label for Rohingya”, Reuters, 2 October 2020; “Myanmar election officials disqualify two more candidates”, Radio Free Asia, 14 October 2020.

<sup>32</sup> Ibid. See also “Ethnic Politics and the 2015 Elections in Myanmar”, Transnational Institute, September 2015.

leaving 30 Muslim candidates of a total of 6,969 standing for election nationally.<sup>33</sup> In 2015, more than 80 Muslim candidates had been vetoed, leaving just 28 contesting.<sup>34</sup>

#### D. *Representation of Women*

Myanmar is largely governed by old men. The president and two vice presidents are male, as is the entire 24-member cabinet – with the sole exception of Aung San Suu Kyi.<sup>35</sup> All nine members of the Supreme Court are men, as are all fifteen members of the election commission.<sup>36</sup> The national parliament has only 75 women MPs at present, who actively participate in legislative affairs but represent only 11 per cent of all MPs, one of the lowest proportions in the world.<sup>37</sup>

The main reason for the quasi-absence of women from parliament is that political parties do not field many female candidates. In 2015, only around 15 per cent of the NLD's candidates were women, compared with 6 per cent for the USDP; some ethnic parties did better, with a few fielding up to 25 per cent women candidates. A number of the major parties had since committed to fielding more women, but most have failed to make major strides.<sup>38</sup> This time around, the NLD has timidly increased its proportion of female candidates to 18.8 per cent, and the USDP to 10 per cent. Overall, only 16 per cent of the candidates running for election at national and subnational levels are women.<sup>39</sup>

A number of research projects in recent years have sought to identify the obstacles to greater women's legislative representation in Myanmar.<sup>40</sup> Key barriers include cultural factors that privilege male political leaders; the difficulty of balancing women's traditional family responsibilities with the demands of public office; and the dominance of men in party leadership positions.<sup>41</sup> Female candidates are still often expected by parties to promote "women's issues" (and younger candidates, "youth issues") rather than to provide a valuable perspective on a wide range of political and policy questions.<sup>42</sup> Beyond targets, political parties should create opportunities for

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<sup>33</sup> Crisis Group analysis of election commission candidate data; and note verbale, Myanmar Embassy in Brussels, 4 September 2020.

<sup>34</sup> "Ethnic Politics and the 2015 Elections in Myanmar", Transnational Institute, op. cit., p. 13.

<sup>35</sup> For the list of cabinet ministers, see the Myanmar President's Office website. The attorney-general, also a cabinet member, is male as well.

<sup>36</sup> See Myanmar's Supreme Court of the Union website and its Union Election Commission website (Burmese).

<sup>37</sup> Data from the Inter-Parliamentary Union's Parline database, which, as of August 2020, ranks Myanmar 162nd of 188 in percentage of women in national parliaments worldwide.

<sup>38</sup> See, for example, "USDP opens door to women candidates", *Myanmar Times*, 30 November 2018. One of the exceptions is the Shan Nationalities League for Democracy, which is fielding almost 30 per cent female candidates. See "Is a Shan party pointing the way forward? A look at the SNLD's big plans for Myanmar", *Frontier Myanmar*, 4 October 2020.

<sup>39</sup> Crisis Group analysis of election commission candidate data.

<sup>40</sup> See Netina Tan, Paul Minoletti, Elin Bjarnegård and Aye Lei Tun, "Party Building and Candidate Selection: Intraparty Politics and Promoting Gender Equality in Myanmar", Enlightened Myanmar Research Foundation, 18 April 2020; "Gender and Politics in Myanmar: Women and Men Candidates in the 2015 Elections", Gender Equality Network, August 2017.

<sup>41</sup> Ibid. Also Crisis Group interviews, female and male politicians, Yangon, July-September 2020.

<sup>42</sup> Ibid. See also "New ethnic faces dot Myanmar's 2020 election landscape", *The Irrawaddy*, 26 August 2020.



women to meaningfully participate in all aspects of party work and politics, including but not limited to roles as candidates and party leaders.<sup>43</sup>

#### E. *COVID-19, Conflict and Voting Cancellations*

The election commission has the legal power to cancel voting in part or all of a constituency for security reasons.<sup>44</sup> Ahead of the 2010 and 2015 elections, the commission issued notifications a few weeks before election day, listing areas where voting would not take place – both some whole constituencies and parts of others.<sup>45</sup> Most were areas to which the electoral authorities had no access (such as the United Wa State Army-controlled enclave in Shan State) or where armed conflict was underway (particularly at that time in Kachin, Kayin and Shan States).

On 16 October, the commission issued cancellation notifications listing the areas where voting will not take place.<sup>46</sup> Nine townships in Rakhine State have been totally cancelled, and a further four partially cancelled, meaning that a majority of Rakhine voters will not have an opportunity to cast ballots.<sup>47</sup> Even if there are valid security reasons, many Rakhine people will be angered by the widespread cancellations and the fact that these will skew results in the state in the NLD's favour. There is also a risk that the cancellations will prompt the Arakan Army to escalate armed conflict or political violence ahead of the polls.

As anticipated, no voting will occur in the Shan State enclaves controlled by the United Wa State Army and the National Democratic Alliance Army (Mongla), where the election commission has no access; one other township in Shan State, the site of recent fighting between the Myanmar military and the Restoration Council of Shan State armed group, was also cancelled. There have also been some partial cancellations in other conflict-affected parts of the country. The election commission is also legally empowered to postpone voting in areas of natural disaster, which it could invoke for COVID-19 hotspots, although there are so far no indications that it plans to do so.<sup>48</sup> It is possible that some of the cancelled seats could be filled in by-elections if and when security conditions improve.<sup>49</sup>

As in the past, the decision-making process around cancellations is not transparent, resulting in considerable controversy and demands by ethnic parties and candidates that the commission give as much advance notice of cancellations as possible,

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<sup>43</sup> Crisis Group interviews, MPs, candidates and gender specialists, 2015 and 2020. For more detailed recommendations, see "Party Building and Candidate Selection", op. cit.

<sup>44</sup> Pyithu Hluttaw Election Law, section 50, and the corresponding section of the laws relating to the Amyotha Hluttaw and State/Region Hluttaw.

<sup>45</sup> "Areas where elections will not be held", five Union Election Commission Notifications, nos. 99-103/2010, 16 September 2010; and Union Election Commission Notifications nos. 61-65 and 67/2015, 12 and 27 October 2015.

<sup>46</sup> Union Election Commission notifications nos. 292-297/2020, 16 October 2020.

<sup>47</sup> Crisis Group analysis of 2015 voter list data suggests that at least 60 per cent of voters in Rakhine State are likely disenfranchised as a result of the cancellations.

<sup>48</sup> Pyithu Hluttaw Election Law, section 50(a), and the corresponding section of the laws relating to the Amyotha Hluttaw and State/Region Hluttaw.

<sup>49</sup> This scenario came to pass after the 2015 elections, when six seats that were cancelled in Kyethi and Monghsu townships in Shan State were filled in the 2017 by-elections, as a result of improved security.

given the cost and potential security risks of campaigning in conflict-affected areas.<sup>50</sup> In Rakhine State, the cancellation announcement risks triggering further attacks by the Arakan Army, which is likely responsible for the abduction at gunpoint of three NLD candidates in Toungup township in the south of the state while they were campaigning on 14 October.<sup>51</sup>

#### IV. Consequences for Conflict and Cohesion

While the vote itself promises to be largely peaceful, the post-election period looks set to be divisive and highly confrontational. Another embarrassing defeat at the hands of the NLD for the USDP and other national opposition parties is likely to trigger an avalanche of electoral complaints – of improper use of state resources by the incumbent party, other violations by candidates (such as non-compliance with COVID-19 restrictions) and unfair decisions by the election commission itself. Opposition parties already appear to be preparing the ground for such complaints, collecting evidence of perceived NLD transgressions and writing to the election commission to allege unfair practices.<sup>52</sup> Few of these challenges are likely to be upheld, however, as the commission is not an impartial body; it is appointed by the sitting president, and there is no right of further appeal or judicial oversight of its decisions.<sup>53</sup>

The pre-election surge in COVID-19 cases will add extra impetus to these complaints. Over the last few months, many opposition parties have called for the elections to be postponed due to the pandemic. If cases or deaths spike in the weeks following the polls, they may accuse the authorities of having recklessly ignored the public health risks, casting a further shadow on the elections' legitimacy – more so because of the election commission's lack of impartiality.<sup>54</sup>

The determination of the government and election commission to press ahead with the polls in spite of the worsening public health situation has forced much of the campaigning online – and prevented any in-person campaigning whatsoever in Rakhine State or Yangon Region due to stay-at-home orders. The digital campaign amplifies the NLD's incumbent advantage, through its highly visible government functions and because Aung San Suu Kyi's Facebook page is one of the most popular and influen-

<sup>50</sup> See, for example, "UEC urged to promptly announce Arakan townships not holding elections", Development Media Group, 12 October 2020.

<sup>51</sup> "Three NLD candidates snatched by armed men while campaigning in Rakhine", *Myanmar Now*, 14 October 2020.

<sup>52</sup> Crisis Group interviews, electoral experts, Yangon, July-September 2020. See also, for example, "30 political parties demand meeting with UEC for general election", *Eleven Media*, 18 June 2020; "NLD accused of exploiting virus for political gain", *Myanmar Times*, 7 August 2020.

<sup>53</sup> The constitution (section 398) and the 2012 Union Election Commission Law provide that all members of the commission be appointed by the sitting president for the duration of his or her five-year term of office. While commissioners may not be party politicians (they may not be MPs, members of political parties or civil servants), or have a financial conflict of interest (such as another paid position), there are no explicit requirements of impartiality and no legislative or other confirmation process. Only the president may initiate impeachment.

<sup>54</sup> "Myanmar rejects calls to postpone election despite virus surge", Reuters, 21 September 2020.

tial in the country.<sup>55</sup> In the seven townships of Rakhine State where the government continues to impose an internet shutdown, no campaigning of any kind has been possible, prompting one assessment to say that “election campaigning ended before it began”.<sup>56</sup>

The first-past-the-post system and concentration of seats in the central Burman regions means that minorities will inevitably have limited representation, even if ethnic parties improve slightly on their 2015 results. Disaffection is therefore set to grow among minorities who already feel that the winner-takes-all electoral system equates to “Burmans take all”, confirming their view that they are structurally excluded from fair representation.<sup>57</sup> This perception is dangerous given that these grievances are among the drivers of the decades-old armed conflicts in various parts of the country.

It is difficult to see any near-term resolution of this issue, which stems directly from the military-drafted constitution. In the longer term, one obvious solution is for Myanmar to modify its electoral system by putting in place some form of proportional representation, under which seats would be allocated partly or wholly on the basis of a party's total proportion of votes. Election system reform is, however, notoriously difficult everywhere, and it was debated in Myanmar in 2012 without success.<sup>58</sup> It faces the inherent difficulty that the sitting government will logically be reluctant to change the very system that brought it to power – an obstacle that only grows when the ruling party benefits from an overwhelming majority in parliament, as is expected for the NLD following this election.

Myanmar's constitutional tribunal has also ruled that proportional representation would be inconsistent with the constitution, and so would require amendment of the charter, a remote prospect at present given the military's veto power.<sup>59</sup> That veto would also have to be overcome in order to remove or reduce the military's political and legislative role, a fundamental flaw in ensuring fair democratic representation.

In the meantime, however, it is possible for the government to use its executive powers to ensure that ethnic minorities have a greater say in their own governance. Presently, even in places with high concentrations of ethnic communities represented by a popular party – a prerequisite for minority success in a first-past-the-post system – the perception of structural exclusion is ubiquitous and risks fuelling further conflict. This sense of injustice largely stems from the Union government's actions following the 2015 elections. In Rakhine State, particularly, its decision to impose a minority NLD government despite the local success of the Arakan National Party has shaken many ethnic Rakhines' faith in the benefits of electoral democracy. The NLD's

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<sup>55</sup> The page has 2.3 million followers and is by far the most significant influencer on the topic of the elections. The NLD page also has dramatically more followers and influence than any other political party page. See data and analysis by the Myanmar Tech Accountability Network.

<sup>56</sup> “‘Having to run with your legs tied’: Rakhine parties cry foul over election curbs”, *Frontier Myanmar*, 25 September 2020.

<sup>57</sup> For detailed discussion, see Crisis Group Report, *Identity Crisis*, op. cit.

<sup>58</sup> “Consequences of election system rest on basic causes regarding principles, religion, ethnic affairs, race, language and social standing of the people of the country”, *New Light of Myanmar*, 28 July 2012, p. 16.

<sup>59</sup> “Pyithu Hluttaw rejects PR voting”, *Myanmar Times*, 16 November 2014.

move strengthened popular support for the Arakan Army insurgency, which has since become the deadliest conflict the country has experienced in decades.<sup>60</sup>

This time around, the president should appoint representatives of ethnic minority parties as the chief ministers of states where those parties win the plurality of votes. The political symbolism of such a move would be powerful, without much cost for the NLD at the national level. Beyond restoring a measure of faith in electoral democracy in some conflict-affected parts of the country, the gesture could also open the way to more constructive dialogue with ethnic leaders on decisions in Naypyitaw that affect their areas – consultations which seldom happen at present.

## **V. Conclusion**

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The 8 November elections are likely to produce a predictable result – a second five-year term for State Counsellor Aung San Suu Kyi as de facto leader in uncomfortable cohabitation with the military. This arrangement will continue to frustrate key reforms that the state counsellor wants to secure to bring the military under civilian control. It will also further entrench majority Burman dominance of the political system, increasing majority-minority tensions and grievances, and potentially exacerbating armed conflict.

Thus, while the election result is not very much in doubt, it will be deeply contested and divisive. The government's decision to proceed with the polls during an upsurge in COVID-19 cases will add to the controversy – because the pandemic hampered campaigning and gave the NLD a massive incumbent advantage, because it will likely suppress turnout, and because it could have serious public health ramifications when the voting is over.

Democratic elections and peaceful continuation or transfer of power are of vital importance in a country that had neither for many decades. But elections are unlikely to resolve the most difficult legacies of the authoritarian period, including armed conflict, minority rights, the Rohingya crisis and a constitution that has enshrined an electoral system ill-suited to Myanmar's demographics. Addressing these problems requires a civilian government with the vision to do so as well as the ability to reach an accommodation with the military. The November elections are unlikely to produce that result.

**Yangon/Brussels, 22 October 2020**

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<sup>60</sup> See Crisis Group Report, *An Avoidable War*, op. cit.

Appendix A: Map of Myanmar



## Appendix B: Reports and Briefings on Asia since 2017

### Special Reports and Briefings

*Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid*, Special Report N°3, 22 March 2017.

*Council of Despair? The Fragmentation of UN Diplomacy*, Special Briefing N°1, 30 April 2019.

*Seven Opportunities for the UN in 2019-2020*, Special Briefing N°2, 12 September 2019.

*Seven Priorities for the New EU High Representative*, Special Briefing N°3, 12 December 2019.

*COVID-19 and Conflict: Seven Trends to Watch*, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

### North East Asia

*China's Foreign Policy Experiment in South Sudan*, Asia Report N°288, 10 July 2017 (also available in Chinese).

*The Korean Peninsula Crisis (I): In the Line of Fire and Fury*, Asia Report N°293, 23 January 2018 (also available in Chinese).

*The Korean Peninsula Crisis (II): From Fire and Fury to Freeze-for-Freeze*, Asia Report N°294, 23 January 2018 (also available in Chinese).

*The Case for Kaesong: Fostering Korean Peace through Economic Ties*, Asia Report N°300, 24 June 2019.

### South Asia

*Pakistan: Stoking the Fire in Karachi*, Asia Report N°284, 15 February 2017.

*Afghanistan: The Future of the National Unity Government*, Asia Report N°285, 10 April 2017.

*Sri Lanka's Transition to Nowhere*, Asia Report N°286, 16 May 2017.

*Sri Lanka's Conflict-Affected Women: Dealing with the Legacy of War*, Asia Report N°289, 28 July 2017.

*Countering Jihadist Militancy in Bangladesh*, Asia Report N°295, 28 February 2018.

*China-Pakistan Economic Corridor: Opportunities and Risks*, Asia Report N°297, 29 June 2018 (also available in Chinese).

*Building on Afghanistan's Fleeting Ceasefire*, Asia Report N°298, 19 July 2018 (also available in Dari and Pashto).

*Shaping a New Peace in Pakistan's Tribal Areas*, Asia Briefing N°150, 20 August 2018.

*Sri Lanka: Stepping Back from a Constitutional Crisis*, Asia Briefing N°152, 31 October 2018.

*After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence*, Asia Report N°302, 27 September 2019.

*Getting the Afghanistan Peace Process Back on Track*, Asia Briefing N°159, 2 October 2019.

*Twelve Ideas to Make Intra-Afghan Negotiations Work*, Asia Briefing N°160, 2 March 2020.

*Raising the Stakes in Jammu and Kashmir*, Asia Report N°310, 5 August 2020.

*Pakistan's COVID-19 Crisis*, Asia Briefing N°162, 7 August 2020.

*Taking Stock of the Taliban's Perspectives on Peace*, Asia Report N°311, 11 August 2020.

### South East Asia

*Building Critical Mass for Peace in Myanmar*, Asia Report N°287, 29 June 2017 (also available in Burmese).

*Buddhism and State Power in Myanmar*, Asia Report N°290, 5 September 2017 (also available in Burmese).

*Jihadism in Southern Thailand: A Phantom Menace*, Asia Report N°291, 8 November 2017 (also available in Malay and Thai).

*Myanmar's Rohingya Crisis Enters a Dangerous New Phase*, Asia Report N°292, 7 December 2017 (also available in Burmese).

*The Long Haul Ahead for Myanmar's Rohingya Refugee Crisis*, Asia Report N°296, 16 May 2018 (also available in Burmese).

*Myanmar's Stalled Transition*, Asia Briefing N°151, 28 August 2018 (also available in Burmese).

*Bangladesh-Myanmar: The Danger of Forced Rohingya Repatriation*, Asia Briefing N°153, 12 November 2018.

*Fire and Ice: Conflict and Drugs in Myanmar's Shan State*, Asia Report N°299, 8 January 2019 (also available in Burmese).

*A New Dimension of Violence in Myanmar's Rakhine State*, Asia Briefing N°154, 24 January 2019 (also available in Burmese).

*Building a Better Future for Rohingya Refugees in Bangladesh*, Asia Briefing N°155, 25 April 2019.

*An Opening for Internally Displaced Person Returns in Northern Myanmar*, Asia Briefing N°156, 28 May 2019 (also available in Burmese).

*The Philippines: Militancy and the New Bangsamoro*, Asia Report N°301, 27 June 2019.

*Peace and Electoral Democracy in Myanmar*, Asia Briefing N°157, 6 August 2019.

*Myanmar: A Violent Push to Shake Up Cease-fire Negotiations*, Asia Briefing N°158, 24 September 2019.

*A Sustainable Policy for Rohingya Refugees in Bangladesh*, Asia Report N°303, 27 December 2019.

*Southern Thailand's Peace Dialogue: Giving Substance to Form*, Asia Report N°304, 21 January 2020 (also available in Malay and Thai).

*Commerce and Conflict: Navigating Myanmar's China Relationship*, Asia Report N°305, 30 March 2020.

*Southern Philippines: Tackling Clan Politics in the Bangsamoro*, Asia Report N°306, 14 April 2020.

*Conflict, Health Cooperation and COVID-19 in Myanmar*, Asia Briefing N°161, 19 May 2020.

*An Avoidable War: Politics and Armed Conflict in Myanmar's Rakhine State*, Asia Report N°307, 9 June 2020.

*Rebooting Myanmar's Stalled Peace Process*, Asia Report N°308, 19 June 2020.

*COVID-19 and a Possible Political Reckoning in Thailand*, Asia Report N°309, 4 August 2020.

*Identity Crisis: Ethnicity and Conflict in Myanmar*, Asia Report N°312, 28 August 2020.



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