

## Introduction

Elections due on 8th November are obviously significant, but they are unlikely to be the major turning point in a transition to democracy that many hope for or have talked them up to be. Rather, they will be another step in the military's carefully planned transition from direct military rule and pariah status to a hybrid military and civilian government which is accepted by the international community and sections of Burmese society.

Burma's 2008 Constitution is designed to present the appearance of democracy, while maintaining ultimate military control. It is also specifically designed for the eventuality of the National League for Democracy (NLD) winning elections and forming a government, without this being a threat to military control. They were not prepared, however, to risk having Aung San Suu Kyi, the most popular and influential politician in Burma, head that government. Clauses were put in the Constitution to prevent this.

A government which is predominantly made up of genuine civilians, which is largely, if indirectly, chosen by citizens, and which has some level of accountability to its citizens, will be an improvement over direct military rule or a military backed government packed full of former generals.

But even if the NLD does win the election and forms a government, the Constitution ensures it will be severely hamstrung, and unable to deliver fundamental democratic reforms which reduce the control of the military over every level of Burmese politics and the economy.

## After the election, regardless of who wins:

- Military appoint Home Affairs Minister, controlling police, security services and much of the justice system. So there could still be political prisoners.
- Military are not under government or Parliamentary control, so they could continue attacks in ethnic states, and use of rape as a weapon of war.
- 25% of seats in Parliament reserved for the military ensures a military veto over constitutional democratic reforms.
- Military dominated National Defense and Security Council more powerful than parliament or government.
- Military have constitutional right to retake direct control of government.
- Military have direct and indirect control over huge proportion of Burma's economy.

Another key factor often overlooked is that these are Parliamentary elections, but Burma has a Presidential form of government. Once Parliament chooses a President, the President and government are independent of and not accountable to Parliament on almost all their policies and actions. The people of Burma can't directly vote for the government they want.

The pro-military Union Solidarity and Development Party will be hoping that the various tactics it has employed to weaken and divide the NLD and other opposition parties in the run up to the election, combined with seats reserved for the military, may allow it to win the election. However, the military are not counting on that. An NLD victory does not mean an end to military control.

## **Not Free and Fair**

The boat sailed on Burma's elections being free, fair, transparent, inclusive and credible a long time ago. The election on 8th November was never going to be free and fair. Under the 2008 Constitution that would be impossible. By the start of this year it was also clear that a whole range of other laws, rules and tactics, many dirty, would be employed which would impact opposition parties. The international community quietly dropped language about free and fair elections.

In its place came language about the elections being credible, inclusive and transparent. How elections that are not free and fair could be credible was never defined. Nor was what a transparent election would look like, but this was assumed to refer to the counting of votes, following ballot boxes being stuffed with advance votes of dubious origin for the pro-military Union Solidarity and Development Party in the rigged 2010 election.

Inclusive elections are also impossible under current conditions, with an estimated 20 percent or more of the population either deliberately disenfranchised, or unable to vote for various other reasons.

As the election campaign draws to a close, problems with the election process are almost too numerous to count. The vast majority cannot simply be attributed to lack of government capacity or experience. The goal has been to weaken the NLD and other opposition parties. The tactic used to achieve this is death by a hundred cuts, rather than the blatant killer blow of ballot stuffing which took place in 2010, and which would destroy the credibility of the elections this time around.

The USA, EU, UK and other countries are feeling vulnerable to criticism that they moved too soon to endorse what has proven to be a deeply flawed

reform process. Personal reputations are at stake. For them, it is vital that there is a perception that the election went smoothly. Therefore, they are likely to focus on the process of voting on the day, rather than the Constitution, laws and myriad other tactics which mean the election has been neither free, fair, credible, inclusive or transparent.

The expected NLD victory will give the impression that Burma has finally achieved a transition to democracy. The military drafted 2008 Constitution is designed to give that impression.

## **It's all in the Constitution**

***“Myanmar cannot be said to have genuine democracy until the 2008 Constitution is amended and Parliament is fully elected by the people.”***

Statement by 257 organisations and networks in Burma, 17th October 2014.<sup>1</sup>

The 2008 Constitution is often treated as a historical document. It is not. Numerous studies and reports attempting to analyse and explain events in Burma since 2010 see it as a document from a past regime, rather than it being the generals' plan for the future.

Convoluting theories and explanations for the reform process are put forward despite the fact that for the very first time the generals actually wrote down their plan and published it for all to see. They also continuously talked about how important the Constitution was to their plans.

In 2011, in his speech to Parliament, President Thein Sein stated clearly:

***“Our country is in the transition to a system of democracy with the constitution as the core.”***

Senior General Min Aung Hlaing, Commander in Chief, Burmese Armed Forces, has stated:

***“The constitution is a country's main law. We did not write this constitution in haste. We gave a lot of time and carefully thought about it.”***<sup>2</sup>

With the excitement and hope the election campaign is generating, it is easy to dismiss those expressing concerns about the elections as being too cynical, but these elections are taking place under a constitution carefully designed by the military to maintain their control. They will still have either influence or control over every level of government in Burma.

## Human rights violations could continue

*“In chapter one of the Constitution, it refers to a ‘genuine disciplined multi-party democracy.’ If it is disciplined, it’s not a genuine democracy.”*

Nai Ngwe Thein, Mon National Party <sup>3</sup>

The 2008 Constitution means that any future NLD government could be powerless to stop some of the most serious human rights violations taking place in Burma today. These include persecution of the Rohingya, the use of rape as a weapon of war, arrests and jailing of political activists and war crimes and crimes against humanity committed by the Burmese Army, including deliberate targeting of civilians in conflict in ethnic states. In all of these areas, the military, not the government, will have ultimate control.

After the election, and when a new government is formed, the military will remain outside the control of both government and the Parliament. If they choose to continue attacks against ethnic groups, an NLD government will be unable to stop them. Associated human rights violations such as rape, targeting of civilians, executions, looting and torture, can all continue with an NLD government powerless to stop them.

The military will appoint the Border Affairs Minister, giving them continuing influence over what takes place in ethnic states, one of the most critical factors in ever achieving peace and stability in Burma.

The military also appoint the Home Affairs Minister, and so will control the police, security services and much of the justice system. Arrests and prosecutions of peaceful activists could continue outside the control of an NLD government.

## Election Facts\*

### Pyidaungsu Hluttaw

Bi-cameral national Parliament, consisting of an Upper House and Lower House

### Amyotha Hluttaw

House of Nationalities - the Upper House

### Pyithu Hluttaw

House of representatives – the Lower House

**14 state and regional parliaments**

**Around 32 million voters**

**93 political parties**

**6,065 candidates**

**1,171 constituencies, with voting in 1,163**

**330 Lower House seats (and a further 110 seats reserved for the military)**

**168 Upper House seats (and a further 56 seats reserved for the military)**

**636 region or state Parliament seats**

**29 seats for national race representatives**

**Almost 41,000 polling stations <sup>4</sup>**

### Candidates:

**323 independent candidates**

**1,151 NLD candidates**

**1,134 USDP candidates**

**5,130 Buddhists**

**903 Christians**

**28 Muslims**

\*The Union Election Commission in Burma has released a series of statistics regarding the election which have been revised and updated several times. Some statements by UEC officials are also contradictory, resulting in many conflicting statistics being published.

Through directly owned companies and via a complex network of associations of various individuals, the military still control a huge proportion of Burma's economy. By appointing 25 percent of seats in Parliament, the Constitution cannot be changed without military approval, even if an NLD government and every other political party in Parliament want to change it.

Above both government and Parliament is the National Defence and Security Council (NDSC). This body is where, constitutionally, real power lies in Burma. It has eleven members. Six are chosen by the Military, so they have a built in majority.

Even above the NDSC, the military have the constitutional right to retake direct control of the country for vague and unspecified 'national security' and 'national unity' reasons. Use of this power would be a last resort but it can be used as an effective threat to any future government, limiting its activities for fear of provoking a coup. Even the current government made up of former and serving soldiers has been using this threat to try to suppress criticism.

### Key issues summary

- At least 20 percent of the population deliberately disenfranchised or unable to vote for other reasons
- Only 13 percent of candidates are women: 800 out of 6,074 <sup>5</sup>
- First post-independence election with no Rohingya candidate MPs and where most Rohingya banned from voting
- Most Muslim candidates banned from standing
- No openly gay candidates standing

### Timeline:

#### 8th November:

Elections held

#### 9th November:

Preliminary result announced

#### 16th November:

Old Parliament reconvenes

#### 29th November: (approximately)

Final result of election announced

#### End January 2016:

Old Parliament term expires (Parliament could choose to end sessions before this date)

#### Early February 2016:

New Parliament convenes

#### First half February 2016:

Parliament chooses next President

#### 31st March 2016:

Current Thein Sein led military-backed government term ends

#### 1st April 2016:

New government term begins

### Number crunching

In the Upper House and Lower House of the National Parliament there are a total of 664 seats.

498 are voted on. 116 are reserved for the military. 333 seats are needed to have a majority and choose the President, who then forms the government.

In the 1990 national elections and 2012 by-elections, the NLD gained roughly 82 and 95 percent of the seats contested. If a similar result was repeated in the 2015 elections, this would give the NLD between 408 and 473 seats. This would equate to a majority of between 191 to 256 in the next Parliament.

Although voting is not taking place in some seats, these are in ethnic states where voters are unlikely to vote for either the NLD or USDP. Ethnic MPs could generally, but not universally if from proxy armed ethnic organisations or allied to the USDP through political deals or bribes, be expected to vote with the NLD in any Presidential vote.

In percentage terms in the 1990 and 2012 elections, the NLD received around 60-65% of the vote. The pro-military parties (National Unity Party in 1990, USDP in 2012), received around 20-25% of the vote. The First Past The Post system favours the NLD, but even if Burma had switched to a PR system, if the USDP performed at the top of previous results at around 25% of the vote, they would only have around 124 seats. Combined with the 166 military seats they would still only have 290 seats, 43 seats short of a majority.

A combination of unfair practices during the election campaign, other tactics such as the use of Buddhist nationalism, and the likelihood of ethnic people in ethnic states voting for parties of their own ethnicity mean that the NLD are not expected to do as well as in previous elections. It is worth remembering, however, that the NLD significantly outperformed expectations in both the 1990 and 2012 elections.

## The reforms – transition yes, but not to democracy

Burma is in transition, but there is no evidence that the government or military want democracy. While there have been some reforms in Burma and there is potential for change, there haven't been legal or constitutional reforms yet which reduce the power of the government or military, or guarantee human rights.

The reform process should be seen as part of a carefully planned strategy, beginning with the new Constitution, to manage the change necessary to end sanctions and international pressure and normalise international relations while retaining political and economic control.

The dictatorship understood that significant changes would be needed to achieve these goals, but they have made the minimum number of concessions necessary to enjoy the benefits of international trade and to contain domestic opposition while maintaining political and economic power.

The transition so far is not to democracy but towards some form of continued authoritarian rule, with a modernised economy and the military's power largely unchallenged.

## Militarisation of ministries

Any future NLD government will have to try to implement any policies or programmes through government ministries whose top ranks are dominated by former military personnel.

The recent 'black ribbon campaign' over the appointment of former soldiers to senior positions in the Ministry of Health has highlighted a problem across all ministries.<sup>6</sup> While ministries being run by generals or former generals are not new, there does appear to have been an increase in appointments of former military personnel to senior government ministry positions in the past year.

Militarisation of police, already under military control via the military appointed Home Affairs Minister, has also been increasing. Burma Campaign UK has received reports of an increase in the numbers of former military officers being appointed to senior ranks of the police. This is causing resentment from 'career' police officers.



Credit: Mizzima

## THE ELECTION

### The election process – one hundred cuts policy

International and domestic acceptance of the November 8th election is a critical part of the military's plan to transition from direct military control to a more indirect control. At the same time however, the military want to weaken and divide the opposition. Even with all the constitutional checks to maintain their ultimate control, an NLD landslide on the scale of the 1990 election, led by Aung San Suu Kyi, is too much of a threat to the military.

Constitutional clauses prevent Aung San Suu Kyi from becoming president, but other tactics had to be used to counter the overwhelming popularity of the NLD. Tactics used in the 1990 elections, such as placing Aung San Suu Kyi and other NLD leaders under house arrest or in jail, would not be accepted and were in any case ineffective.

Blatant ballot rigging of the kind that took place in the 2010 elections would also destroy the credibility of the election. Instead, they appear to have adopted an approach of using a hundred small cuts to weaken the opposition. Some of these appear to be centrally organised, others more random or local, but nevertheless either allowed or encouraged by central government. Together, they fit a big picture of myriad measures which impact opposition parties but not pro-military ones.

### Aung San Suu Kyi barred from Presidency

Section 59f and possibly section 59d of the 2008 Constitution bar Aung San Suu Kyi from becoming President. Clause 59f states someone cannot become President if their children have foreign citizenship. Aung San Suu Kyi's children have British and American citizenship. 59d states that the President has to be well acquainted with military affairs. The definition of acquainted, which is not an exact translation from Burmese, is left open and so could be used to try to prevent her Presidency even if section 59f were removed.

The ability of Aung San Suu Kyi to be eligible for Presidency was once seen as critical for the credibility of the election. As with so many other human rights and democratisation benchmarks, this has also been quietly dropped.



The Burmese government successfully played its age old tactic of setting up long-winded processes which could lead to change, which the international community went along with yet again, before delivering no change at all.

### Union Election Commission – rules, laws, bias and incompetence

*“We are not giving full democracy at the moment.”*

Union Election Commission Chairman former general U Tin Aye <sup>7</sup>

The Union Election Commission has been praised by some parts of the international community for its apparent willingness to conduct the election to many international standards. It has also received financial and technical support from the international community.

However, there are a great many concerns about its decisions. Some of these are so clearly discriminatory it calls into question whether international aid and support should have been given to the UEC, as that aid has assisted in the discrimination of ethnic and religious minorities.

Concerns about the Union Election Commission include:

## Voter lists

***“The dead are on the list but those who are alive are not there.”***

Bahan district resident <sup>8</sup>

The issue of mistakes with voter lists has been one of the dominant themes of the election campaign. Despite having had years to prepare, voter lists are a shambles.

Around 32 million people are on the voter lists, but they are full of mistakes. Advance lists were published and displayed to enable people to check and correct the lists, but many people did not do so, either for lack of awareness and understanding of the process, or because of mistrust of the authorities. In June the NLD estimated errors of between 30-80 percent in voter lists.<sup>9</sup>

Many political parties and candidates were also afraid of encouraging voters to check lists for fear of being accused by the UEC of campaigning outside the official campaign period (which had not at that time been announced). The penalties for doing so could include being disqualified from standing and even having the party deregistered. In June two NLD members checking voter lists with residents were arrested for trespassing on charges that could result in three months in jail.<sup>10</sup>

Despite significant international support with technical advice, equipment and finance, voter lists appear to be even worse than in previous elections. U Kyaw, an MP from the National Democracy Party, found his name had been removed from the voter lists when drafts were published. *“I have voted in every election. If even MPs are missing from the lists, then I doubt that ordinary residents are included.”*<sup>11</sup>

The UEC has attempted to shift some blame onto voters, saying they should have checked the lists, but even when people did, mistakes were often not

corrected. People trying to correct mistakes on voter forms complained that it was not always easy to get the required forms, that forms were too complicated, and that in some areas finding a place to copy the household registration certificate that had to be returned with the form could require several days' travel. Many people who did return the form found that on final voter lists they were still missing or that their details were incorrect. Dead people remain on the voter lists even after the UEC has been informed they are dead.

Why? On the face of it, unless the general shambles is disguising a more targeted effort to disenfranchise supporters of the NLD and other political parties, there does not appear to be a particular electoral advantage to the USDP in voter lists being so badly organised. Indeed, the USDP/ military want these elections to go well, and the current shambles is damaging the credibility of the elections. On the other hand, the voter list shambles is contributing to a general disillusionment in the election from people who have given up expecting things to change. This certainly benefits the USDP/military, which has no genuine enthusiasm for elections or fundamental democratic change.

## UEC impartiality questioned

The UEC is chaired by former general Tin Aye, also a former senior member of the pro-military Union Solidarity and Development Party. He was the sixth highest ranking general in the previous military dictatorship. In an interview with The Irrawaddy he stated that he wanted the USDP to win the election.<sup>12</sup> Although he added he wanted them to win fairly, he is clearly not an impartial chairman. The UEC has been warning political parties not to oppose the government's education policy<sup>13</sup> and warned Aung San Suu Kyi and the NLD that they were violating oaths and contravening constitutional rules by pushing for constitutional amendments.<sup>14</sup>

## UEC banning Muslim candidates

The Union Election Commission rejected 88 candidates for the election. More than a third were Muslims, the majority from Rakhine state and so probably ethnic Rohingya.<sup>15</sup> They even included a sitting MP, U Shwe Maung, who is ethnic Rohingya

from the USDP and was planning to stand as an independent candidate for this election. The Muslim Democracy and Human Rights Party was left with just one candidate, meaning it would effectively be banned as electoral rules state that parties must field at least three candidates. After a domestic controversy and statements of concern from the international community, 11 were reinstated, including two from the Democracy and Human Rights Party.

## **UEC application of electoral rules and laws**

There are many laws and rules regarding the elections. Not all rules are confirmed immediately after being announced, causing confusion and making it difficult for parties to operate. Examples of existing laws include restrictions on content of leaflets, and even requiring the names in advance of everyone attending a public meeting during the election. Election rules are covered by the 2008 Constitution, three different election laws, and Election Commission directives, by-laws, notifications, and guidelines. They are also selectively applied, meaning parties are uncertain what they can and can't do. All these laws and rules make it especially harder for smaller parties to operate.

You also have to be rich to take part. A deposit of \$280 is needed to stand as a candidate in the election, more than many people will earn in an entire year (\$240). Big parties such as the USDP and NLD can find the money to field lots of candidates, but for smaller parties and ethnic parties, it's impossible. The cost of fielding candidates has restricted the ability of parties, especially ethnic parties, to stand candidates everywhere they would like to. This limits the choices and ability of people to vote for the party they wish to. For example, the Kachin State Democracy Party was planning to field 66 candidates but was expected to field only 57 because of costs.<sup>16</sup>

Even after being registered, parties still have to apply separately for permission to canvas and campaign.

Other rules include avoiding speeches that could 'cause disintegration of the Union, fracture national solidarity, infringe the state's sovereignty or insult or destroy the security and stability of the country'.<sup>17</sup>

There was also controversy around the official election broadcasts. The UEC decreed drafts must be submitted 7 days in advance for vetting. Parties were not allowed to insult the army, government or 2008 Constitution.<sup>18</sup> One UEC official said these rules would apply to all speeches.<sup>19</sup>

Candidates have to apply for permission to make speeches. For speeches outside their headquarters, they must apply within 15 days of the candidate list being announced. For speeches at their headquarters, permission is not needed but they must inform the commission two days in advance. They have to apply in person, which in some ethnic states could require weeks of travel.<sup>20</sup>

The final candidate list letting people know if they can campaign as approved candidates was only released three days before the official campaign period began.<sup>21</sup>

The pro-military USDP has not announced any problems with any of its candidates being disqualified.<sup>22</sup>

## **Freedom of Expression**

The election does take place in a more positive environment than in the past. Media is much freer than in the past, even if still not free. There are more non-government organisations which can report on developments around the country and speak out. Social media is widely used in cities and spreads information. People are less fearful of speaking out than in the past.

The international community is more engaged and has a greater presence, and is also sending election observers. Less blatant rigging of the actual count than the 2010 election is expected, and the system for advance votes, which was previously used to secretly stuff ballot boxes, has been changed. However, they could still be used to stuff ballot boxes, with military and civil servants' votes being delivered in time for the main count. The Carter

Center, which has a team of election observers in the country, reported that while its access to areas it has observed during the campaign period has been “relatively unrestricted”, its observers have been denied access to monitor advance voting, including in military installations.<sup>23</sup>

In addition, a raft of repressive laws remain in place, or in the case of the Peaceful Assembly Law have been more recently introduced. These are used to harass, arrest and imprison critics of the government. The promised release of all political prisoners by the end of 2013 did not happen, and numbers of political prisoners have been increasing, with around a hundred expected to be in jail at the time of the election.

During the election campaign, people have even been arrested for sharing jokes about the military on Facebook. Some candidates reported harassment, threats and even assault.<sup>24</sup> Myat Nu Khine, an independent candidate in Phyu, was arrested in October for a protest that happened almost a year ago. She was charged over her alleged involvement in a protest last year calling for an investigation into the fatal shooting by riot police of a local villager during a protest at the controversial Letpadaung copper mine. She is being held in Insein Prison.

***“Of concern is the sense among human rights defenders and civil society actors of increased monitoring and surveillance of their activities, and of increased intimidation and harassment by security personnel and state agents. Since my last visit in January 2015, I observed the continuing arrests and convictions of civil society actors – including students, political activists, workers, union leaders, farmers and community organisers – exercising their rights to freedom of expression, assembly and association. Many face multiple charges and trials in different townships in relation to a single protest. This practice should immediately come to an end. Some with whom I spoke believe that this is deliberately done to ensure that they remain in prison and are excluded from the upcoming elections.”***

Special Rapporteur on the situation of human rights in Myanmar <sup>25</sup>

## The disenfranchised

Burma Campaign UK estimates that the number of people either deliberately disenfranchised or unable to vote for other reasons is likely to be at the very least almost 10 million people, or 20 percent of the population. This is a conservative estimate. The actual figure is likely to be higher.

This figure includes:

- Almost 5 million migrant workers living abroad
- Up to 500,000 Buddhist Monks and Nuns unable to vote
- 600,000-800,000 Rohingya unable to vote
- Around 100 political prisoners can't vote in the election
- 100,000 to 500,000 internal migrants
- 200,000 Rohingya refugees in Bangladesh
- 109,000 in refugee camps in Thailand
- Several million in ethnic areas where there is conflict or which are not under central government control (one million used in this calculation as a conservative estimate. The UEC will not release this data)
- Several million due to voter list errors (just a 10% error rate would disenfranchise 3.2m voters)

The number of people unable to vote in ethnic states could be higher than 3 million. Error rates on voter lists have been estimated at between 30-80 percent. If the lowest NLD figure of 30 percent voter list errors affects the ability of people to vote on the day, 9.6 million voters could be affected. These higher estimates, combined with top estimates of Rohingya disenfranchised and internal migrants, would bring the total number of people unable to vote in the election to 19.7 million, or almost 40 percent of the population.

The number of areas in Burma where the UEC has said voting cannot take place for security reasons has increased since the 2010 election. This is in part an indicator of the true impact on the ground of the ‘peace process’ launched by President Thein Sein. However, some local politicians are also unhappy at some of the decisions made to cancel the vote,

and point out that millions of ethnic people who are highly unlikely to have voted for the USDP have been disenfranchised.

Millions are believed to be affected but no numbers have been published by the UEC. 600,000 people under United Wa State Army (UWSA) control are unable to vote as immigration officials refused to go to the area to provide them with identification.<sup>26</sup>

In Karen State, despite armed ethnic groups signing two separate ceasefires, there will be no polling stations in parts of Hlaingbwe, Hpa-an and Thandaunggyi townships, as part of these areas are under the control of ethnic armed organisations. However, there has not been armed conflict in most of this area since the ceasefire. A total of half a million people live in the area. How many people lost their vote through this decision was not stated by the UEC.<sup>27</sup> Some put the figure at 100,000.

In some areas there is justification for the cancelation where ethnic armed groups have not given access and warned the UEC not to operate.<sup>29</sup>

Almost 500,000 Monks and Nuns in Burma are constitutionally barred from voting.<sup>30</sup> While there can be legitimate arguments for separating politics and religion, that should not mean that members of religious orders should have their right to vote removed. In any case, the government/military are using Buddhist nationalism for political purposes, to try to bolster their own support and undermine support for the NLD.

Fewer than 19,000 overseas workers registered to vote in the elections.<sup>31</sup> An estimated 10 percent of the population of Burma, 5 million people, are working abroad, according to the International Organization of Migration. Around 2 million are registered and 3 million unregistered.<sup>32</sup> Many of those working in neighbouring countries are only on temporary passports, and holders of these documents were not allowed to register to vote at embassies.

Burmese people working abroad also cited bureaucracy, uncertainty over the deadline to register, a lack of documentation required, and embassies not being proactive in informing

people about the registration, as reasons for low registration. Chaos and mistakes with voting forms for the few who have registered at embassies abroad has been widely reported. In a random sample of people attempting to vote at the Burmese Embassy in London, 30 percent reported they had been unable to do so.

Between 100,000 to 500,000 internal migrants may be unable to vote because they are not on voter lists where they now live.<sup>33</sup>

Thousands of political exiles are also unable to vote in these elections. Many have not felt it safe to return, have not been given documents that would enable them to return and to vote, are not allowed joint citizenship and are unwilling to give up the security of foreign citizenship when reforms are backsliding, or are still banned from the country. Those exiles who have returned and received documentation are barred from being candidates as candidates have to have been residing in Burma for the previous ten years.

## The Rohingya

***“I am deeply disappointed by this effective disenfranchisement of the Rohingya and other minority communities.”***

United Nations Secretary-General  
Ban Ki-moon <sup>34</sup>

***“In any other country, the rejection of an entire class of candidates would render the contest itself undemocratic.”***

Charles Santiago, Malaysian MP and Chair of  
ASEAN Parliamentarians for Human Rights <sup>35</sup>

Although President Thein Sein has been praised as a courageous reformer by much of the international community, since becoming President he has significantly stepped up repression of the Rohingya. Earlier this year the withdrawal of temporary registration cards, which had largely been issued to many ethnic Rohingya, effectively removed their right to vote. This was one of the last rights they had left.

The 2015 elections will be the first since Burma regained independence where most Rohingya are disenfranchised and Rohingya are not able to stand as candidates to be MPs.

Even Rohingya MP U Shwe Maung was disqualified, despite being a sitting MP. U Kyaw Min, who won a seat in the election in 1990, was also rejected.

There were around 5 Rohingya MPs in the first Parliament during U Nu's time. U Kyaw Min was elected MP in the 1990 election. In the 2010 election 3 national and 2 state MPs were ethnic Rohingya.

## Proxy parties?

The use of arms-length or proxy parties to divide the opposition and create political allies is not new in Burma. In these elections there is speculation that this tactic is being used again by the government. Some believe that the National Development Party, formed by former presidential advisor Nay Zin Latt is such a party. Members of the party deny this.<sup>36</sup> Despite only being formed a few months before the election, it will be the fourth largest party in the election in terms of candidates, numbering 354. This number requires significant financial resources and organisational support.

The third largest party is the National Unity Party (NUP), which ran on behalf of the military in the 1990 elections. It is fielding 763 candidates.

With the USDP fielding the second largest number of candidates after the NLD, at 1,134, three of the four biggest parties in terms of candidates are connected to the military.

Former armed ethnic organisations which long ago split from their mother organisations and sided with the Burmese government have also formed parties and are competing in the election. These parties, nominally independent, can be expected to side with the military/USDP in parliament as required. They are also targeting the NLD in the election campaign. One example of this is Zakhung Ting Ying, an MP who is leader of the New Democratic Army–Kachin (NDAK), who sent a letter to NLD candidates in September, instructing the party to avoid campaigning in NDAK areas.<sup>37</sup>

## 'Development' projects

Using 'development' to undermine support for the democracy movement in Burma has been a key tactic of the current government. On coming to power President Thein Sein stated: *"If the nation enjoys economic growth, the people will become affluent, and they will not be under influence of internal and external elements."*<sup>38</sup>

While Rangoon and Naypyidaw show signs of a growing economy, and government revenues have increased, most ordinary people across the country have yet to see nationwide benefits of economic reforms. An electoral bounce the USDP hoped might come from economic growth is therefore also unlikely to materialise.

At a constituency level though, 'development' projects are being carefully targeted to try to win electoral advantage.

**"There is no level playing field, not only in the political context, but in any field.... There is no equality for the political parties, either the opposition or the ethnic parties, in competing with the ruling Union Solidarity and Development Party in terms of budget. As they are in power, they initiate regional development [projects] with the national budget. If you travel across Burma, you will see villages named as a "USDP village."**

Aung Moe Zaw, Democratic Party for a New Society<sup>39</sup>

Burma Campaign UK has received reports from across the country that the building of roads, wells, health centres and other facilities, using a combination of government and USDP funds, private funds of business people/cronies with government links now standing as USDP candidates, or USDP taking credit for facilities provided by international aid agencies, is having a positive impact on USDP levels of support in some constituencies.

## Buddhist Nationalism

***“The Special Rapporteur is concerned to see continuing examples of harsh application of the law against anti-government protests, while those voicing support for government policies are not subject to similar restrictions or sanctions.”***

Yanghee Lee, Special Rapporteur of the situation of human rights in Myanmar <sup>40</sup>

Unable to compete with the popularity of Aung San Suu Kyi and the National League for Democracy, President Thein Sein and his government have tried to use Buddhist nationalism to build their own support and undermine the NLD. Thein Sein hasn't just ridden the wave of Buddhist nationalism, he has encouraged and facilitated it.

President Thein Sein has been more vocal against the Rohingya than any Burmese ruler in a generation. He has backed those calling for all Rohingya to be expelled from Burma, asking the UN to help find third countries for Rohingya to be settled in. He has publicly defended U Wirathu, one of the leading voices against the Rohingya and Muslims generally. He has flat out rejected reforming the 1982 Citizenship Law, which is incompatible with international law and violates Burma's UN treaty obligations.

He asked Parliament to pass the four so-called 'protection of race and religion laws' which discriminate against Muslims, women and other minorities. He was quick to sign them into law and helped Ma Ba Tha, the Buddhist nationalist group, to hold their Nuremberg style rally in Rangoon celebrating the passing of the laws. His party is fielding no Muslim candidates.

The use of Buddhist nationalism by Burmese politicians seeking popularity is not new, but Thein Sein has unleashed dangerous forces which are one of the greatest threats to a future democratic and peaceful Burma.

The NLD appear to be in a lose lose situation regarding their approach to the use of Buddhist nationalism by the government/USDP. From the start of the renewed rise in Buddhist nationalism in 2011, the attacks against the Rohingya in 2012, and the spreading of hate and then violence against all Muslims across Burma in 2013, the NLD has failed to put forward an alternative narrative and vision for Burma, either staying silent or kowtowing to the hatred and prejudice promoted by Rakhine nationalists, the 969 movement and Ma Ba Tha.

An explanation often given is that the NLD has to stay silent for electoral reasons. Their silence has left the field open for nationalists to grow and promote hatred and to attack the NLD. As a result, many Muslims are very disappointed in the approach of the NLD and no longer plan to vote for the party. The NLD are losing the support of Muslims at the same time as losing support because they have been branded as being pro-Muslim.

The growing anti-Muslim movement in Burma has had an impact on all Muslims in the country, not just the Rohingya. It is likely that there will be no Muslim MPs in the next Parliament. More than 100 candidates were rejected by the UEC, a large proportion of which were Muslim.<sup>41</sup>

The Democracy and Human Rights Party, which has Muslim members, initially had 17 of its 18 candidates rejected. But after a review two were reinstated. If they had not been, the Muslim party would have been effectively banned as parties have to field a minimum of three candidates.

11 Muslim candidates were reinstated following domestic and international criticism. It was a classic tactic used by regimes in Burma. Take two steps back, one forward and receive praise despite things still being worse than before. ASEAN Parliamentarians for Human Rights was not fooled, stating:

*“This seems like a token effort to appease international observers, rather than a genuine attempt to address the disenfranchisement of hundreds of thousands of people based on their religion and ethnicity.”* <sup>42</sup>

The UEC now lists only 28 out of 6,065 candidates who are Muslim, or 0.5 percent of candidates. Muslims make up around 5 percent of the population.

Prejudice against Muslims and fear of Muslim candidates sparking anti-Muslim protests which lead to violence and disrupt the election have been cited by some as reasons for the barring of most Muslim candidates. Certainly the much feared anti-Muslim violence ahead of the election has not materialised. However, the solution to the violence is to stop those provoking hatred and violence from doing so, not banning the people they target from exercising their democratic rights.

Prejudice against Muslims is the more likely reason for candidates' disqualification in Arakan/Rakhine state, where the highest number of Muslim candidates were disqualified.

The two main political parties, the USDP and NLD are not fielding any Muslim candidates. An NLD official admitted that it was NLD policy not to have Muslim candidates. Aung San Suu Kyi later claimed that they did have one Muslim candidate, but their candidacy was rejected by the UEC.

The National Unity Party, the third largest party in terms of candidates, has two Muslim candidates.<sup>43</sup> Other Muslim candidates are for smaller parties and unlikely to win.

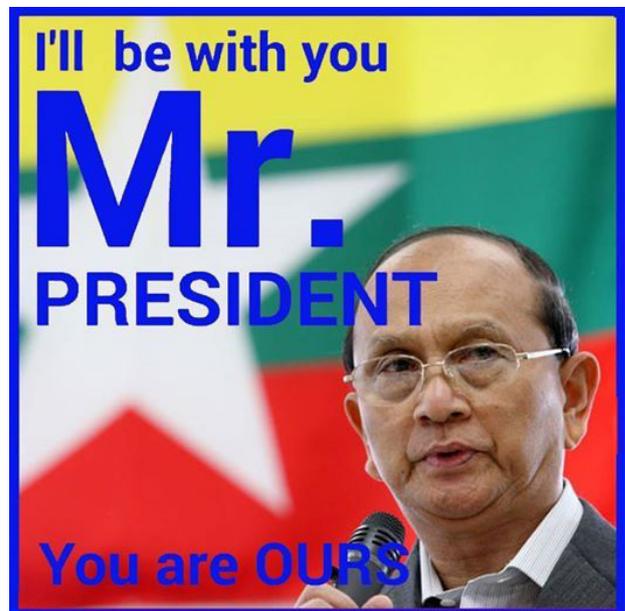
One anti-NLD tactic during the election which has been reported to Burma Campaign UK has been to send people with a list of questions to NLD meetings and rallies. The questions cover issues such as the so-called race and religion protection laws, and citizenship for Rohingya (called Bengalis in the questions), all designed to portray the NLD as pro-Muslim.

### **Ma Ba Tha – What impact on NLD?**

The Association to Protect Race and Religion, known as Ma Ba Tha, has been one of the most effective tools the military backed government have used to try to undermine support for the NLD. The extent of that impact is yet to be seen, and may be mitigated by the First Past The Post system.

Ma Ba Tha does not operate independently of the government. The use of arms-length or nominally independent organisations which in one way or another act in support of the government agenda, but giving them deniability at the same time, is a tactic they have used for decades.

Ma Ba Tha operates with a freedom no other organisation in the country enjoys. It appears to have no limitation on resources. One of the main beneficiaries of its activities is President Thein Sein and his military-backed government. Ma Ba Tha leaders openly criticise the NLD and support President Thein Sein. Thein Sein has not just benefitted from the wave of Buddhist nationalism, he has helped create it.



A poster displayed on U Wirathu's Facebook page

Ma Ba Tha replaced the 969 movement - which had also been used, facilitated and encouraged by President Thein Sein - as the 969 brand became too directly associated with violence. Anti-Muslim riots in 2013 were tarnishing the reformist image Thein Sein was trying to promote. 2014 was a critical year, with ASEAN meetings, President Obama visiting, and a plethora of world leaders pledging to attend a planned nationwide ceasefire ceremony. New anti-Muslim tactics were adopted. There was a sudden and dramatic drop in anti-Muslim incidents. After President Obama visited Burma, anti-Muslim activities increased again and the four race and religion bills, which had been stalled in Parliament for some time, began to move through Parliament again.

**“...we are campaigning for the USDP. Plans are under way to start the activities in a few days in order to get votes for the current government.”**

Ma Ba Tha leader. <sup>44</sup>

Despite Ma Ba Tha's successful promotion of the four so-called race and religion bills, and high-profile individual cases such as three people convicted for uploading an image of Buddha on Facebook, it was only when they held a Nuremburg style rally in Rangoon in October 2015 that a lot of observers seemed to wake up to their true scale and the danger they posed.

The start of the election campaign was also when their anti-NLD agenda began to receive more attention. In fact, most Ma Ba Tha activities in the past year were not in Parliament or Rangoon, but right across the country. They have been systematically travelling the length and breadth of Burma, visiting townships, cities and remote areas, preaching their message of hate. Their messaging has been consistent wherever they go. They preach hatred of Muslims, and they tell people that if they vote NLD, Muslims will take over the country. They have been doing this day in, day out, across the country, for more than a year.

The impact this will have on votes on 8th November is impossible to guess. NLD candidates report regularly being asked about NLD support for Muslims. Aung San Suu Kyi has also been asked about it on almost every campaign rally across the country. Ma Ba Tha's message is having an impact on the campaign. In a country where prejudice against Muslims is widespread and socially acceptable, using the prejudice to 'smear' the NLD is an effective tool.

However, the impact may be mitigated by the First Past The Post system. In the 2012 by-elections the NLD received an average of almost 70 percent of the vote in the seats it contested. So even if Ma Ba Tha cost the NLD 10-15% of its vote, the NLD would still win a majority of votes in most constituencies and so would still win the same number of seats.

However, combine any potential impact of Ma Ba Tha's anti-NLD propaganda with the myriad other ways the military-backed government is trying to undermine NLD support, and the overall impact could affect the number of seats the NLD wins.

## Media

Media in Burma is not free. Promised legal reforms to censorship and other media laws and regulations did not happen. Where reforms did take place, they did not meet international standards. Whilst there are now many newspapers which are privately owned, all TV and radio stations - which is where most people get their news, rather than newspapers or the internet - are directly controlled by the government.

Media were being made to sign pledges relating to reporting the election. U Myint Kyaw, a member of the Myanmar Press Council (interim) told Mizzima news that *“The Information Ministry's instructions are a restriction on media.”*

Press associations in Burma have criticised state-run media of bias during the election campaign after a front-page article in several Government-backed papers was widely perceived as promoting President Thein Sein and the Union Solidarity and Development Party (USDP).

Thiha Saw, the chairman of the Myanmar Journalists Association, said that there was media bias on both sides: *“The principles of ‘AIR’ – accuracy, impartiality and responsibility – still haven't been fully realised by private media, let alone government outlets. The government media is still partisan and biased towards the USDP.”* <sup>45</sup>

## Other election issues:

### Divided opposition

A total of 93 parties are standing in the election. While in part this reflects the ethnic diversity of Burma, it also represents an opposition that is divided. Although a monolithic NLD would be unhealthy in any future democracy, the military has consistently used divide and rule tactics to try to prolong their rule.

The NLD must also shoulder some responsibility for the lack of a unified opposition front or coalition. Past alliances between the NLD and ethnic parties have effectively been abandoned by the NLD, and the NLD approach towards smaller ethnic parties has caused anger and disappointment.

Whereas the NLD had previously supported tri-partite dialogue involving the military, NLD and ethnic parties, in 2011 Aung San Suu Kyi began unilateral discussions with President Thein Sein.

Ethnic parties were also disappointed when Aung San Suu Kyi failed to speak out about human rights violations by the Burmese Army after it broke ceasefires in Shan State and Kachin State. Aung San Suu Kyi also offered to mediate between ethnic groups and the military, a significant shift from the previous perception that ethnic people and the NLD were in a struggle against a common enemy.

When Aung San Suu Kyi performed an abrupt u-turn and decided to come under the Constitution and take part in the 2012 by-elections, it caused further friction with ethnic parties. The 1990 election generation of ethnic parties had boycotted the 2010 election, in part because the NLD had asked them to. The abrupt change of policy left them with no time to register as parties and take part in by-elections. Many of these parties suffered internal problems and splits as a result of their decision to boycott the 2010 elections. They felt insult was added to injury when the NLD ruled out electoral pacts and competed ruthlessly for seats in ethnic states in 2012.

Aung San Suu Kyi has spoken of having good relations with the United Nationalities Alliance (UNA), made up of ethnic parties which took part in the 1990 elections. Privately UNA members have described meetings as being more about receiving instructions than co-operation. In July 2015, NLD officials reportedly told UNA members that they would not stand candidates against ethnic allies who were members of the Committee Representing the Peoples Parliament, an alliance between the NLD and ethnic parties following the 1990 elections.<sup>46</sup> This promise has not been kept.<sup>47</sup>

The NLD also caused controversy by rejecting all but one of the members of the 88 Generation Peace and Open Society who applied to be NLD candidates. NLD leaders had been asking 88 Generation members to stand as their candidates since 2012. 88 Generation leaders had also discussed this with Aung San Suu Kyi. However, when around twenty 88 Generation members put forward their names to be NLD candidates, only one was accepted. The decision to exclude others, including high profile members such as Ko Ko Gyi, was made personally by Aung San Suu Kyi and caused widespread shock and disappointment within the country. 88 Generation members had not expected to be rejected and the decision by the NLD came too late for 88 Generation members to form their own party.

## **Ethnic political parties**

The parliamentary battle for ethnic and regional parliaments has been largely ignored by the international community.

Ethnic parties in Burma are also divided. Very generally, for the main ethnic groups, ethnic political parties can be divided into three main groups.

### **1990 generation**

Ethnic parties which took part in 1990 elections and boycotted in 2010. They cooperate under the members of the United Nationalities Alliance. They reject the current constitution and want to see significant constitutional change as soon as possible.

### **2010 generation**

These are ethnic parties which took part in 2010. They have largely come together in the Nationalities Brotherhood Federation. They are generally seen as more willing to compromise and less willing to strongly challenge the military and government. They want change to the constitution but are more willing to work slowly within the constitution for gradual change.

### **Armed ethnic organisations**

Political party wings of armed ethnic organisations, most of which are still banned, and which are not taking part in the elections.

Civil society organisations have expressed disappointment at the lack of unity between parties from the same ethnicity. For example, in June 2015 ethnic Mon civil society organisations called on all Mon political parties to collaborate. Their statement said: *“If Mon representatives are to be in competition with each other, we believe they cannot win over influential big parties as Mon voters ballots will be divided.”*<sup>48</sup>

In Rakhine/Arakan state there is one example of two ethnic parties merging, where the Rakhine Nationalities Development Party and Arakan League for Democracy merged to form the Arakan National Party. The Rakhine Nationalities Development Party was implicated in ethnic cleansing of the Rohingya in 2012, according to evidence gathered by Human Rights Watch.<sup>49</sup> This single example of unity from ethnic parties from the same ethnicity is expected to contribute to a sweeping victory of the Arakan National Party in the state, and the possible control over the state government. While this is potentially positive in terms of protecting ethnic Arakan/Rakhine rights and culture, it also represents a significant danger for the ethnic Rohingya living in the state.



A Rohingya village on fire after attacks in October 2012  
© 2012 Private

Militarisation of ethnic states by the Burmese army, which increased after provisional ceasefires were signed from 2011 onwards, could also have an

impact in election outcomes. For example, in Papun, Karen state, there are 3,000 civilians on the voter list, but also an estimated 2,000 soldiers and also civil servants.<sup>50</sup> Political parties have not been allowed to canvas soldiers and civil servants. In the 1990 elections some military townships voted for the NLD. In the 2010 election, soldiers and civil servants were reportedly only given the option to vote for the USDP or had their votes given to the USDP without having a say. The presence of these soldiers could be enough to swing victory away from candidates favoured by local people.

## Ethnic Parliaments and politics

A fully comprehensive briefing on ethnic perspectives for the election has been produced by Burma Partnership, and is available at: <http://www.burmapartnership.org/2015/10/elections-for-ethnic-equality-a-snapshot-of-ethnic-perspectives-on-the-2015-elections/>

Around forty percent of Burma's population is believed to be non-Burman. The ethnic groups and minorities, many with different languages, religions, customs, cultures and different economic challenges and circumstances, have had their lives largely ruled by ethnic Burman dominated central governments since independence. This will not change even if the NLD win the election.

It is expected that the election will highlight the deep ethnic divisions in Burma. The two main political parties in Burma are dominated by ethnic Burmans and widely seen by most ethnic people as Burman parties. Most people in ethnic states are expected to vote on the basis of ethnicity where given a choice to do so. The lack of clear or specific policies from the NLD and most political parties is likely to exacerbate this trend.

The approach of the NLD on ethnic conflict and to ethnic political parties, described earlier in this briefing, has heightened the perception by many ethnic people of the NLD as a party for ethnic Burmans.

Aung San Suu Kyi's refusal to specifically speak out on Burmese Army human rights violations in ethnic states, her expressing her fondness for the

armed forces,<sup>51</sup> and her closeness to Speaker Shwe Mann (who won his Thura medal committing war crimes against civilians in Karen state) have all heightened the perception of the NLD being a party for Burmans.<sup>52</sup>

The NLD is aware of this perception, and has deliberately targeted high profile ethnic activists, persuading them to stand as its candidates.

The 2008 Constitution, combined with ceasefire agreements which favour the central government, has led to a significant increase in central government/military control over ethnic states since 2010.

The Constitution does not delegate any significant powers to state and regional Parliaments. Burma Campaign UK has spoken with ethnic MPs from regional Parliaments who express deep frustration at their inability to achieve change through Parliament.

Even if an ethnic party won a majority in its state or region, it would still be up to central government to choose the Chief Minister, who in turn would choose other ministers. As with the national Parliament, Ministers are not accountable to regional or state Parliament for their general actions or policies. It could be hoped that a future NLD President might feel obliged to appoint a Chief Minister from the majority party in the regional or state Parliament.

Burma Campaign UK has spoken with many ethnic people living in ethnic states who don't see the election as having anything to do with them. They do not see themselves as Burmese and are not interested in what is going on in Burma. They identify themselves by their ethnicity and just want to be left alone by central 'Burman' governments.

## **Shwe Mann and USDP/military politics**

Current Parliamentary Speaker, former general Shwe Mann, is no democratic reformer. He was directly involved in human rights violations. He won his Thura medal for his time in Karen State, where soldiers under his command committed war crimes.

He had expected to become president when Senior General Than Shwe stood down, but was appointed speaker of Parliament instead after the 2010 elections. Since then, he has been positioning himself to become President after the 2015 election.

He has been presented as having strengthened the influence of Parliament, but if this did happen, it was only because he used Parliament to try to promote his own influence. His closeness to Aung San Suu Kyi was a strategic calculation for his own personal ambitions, not because he believes in democracy and human rights. He is praised for supporting proposals to remove the Parliamentary military veto from the Constitution, but he knew full well it would not pass. The vote was about positioning himself for after the next election, when Parliament is likely to have an NLD majority.

In June 2015 Shwe Mann tried to effectively expel Thein Sein and his core group of supporters from the USDP by amending the Union government law so that Thein Sein and his people could only run in the election as independent candidates, not USDP members. The draft law passed in the lower house chaired by Shwe Mann but it failed to pass in the upper house, led by Speaker Khin Aung Myint.<sup>53</sup>

The internal power struggle between Shwe Mann and Thein Sein came to a head when Shwe Mann was ousted as chairman of the USDP in August. Media headlines and comment articles describe his downfall as being a 'setback' or 'blow' to reforms.

This ignores not only his history, but also his actions as Speaker, ranging from his blocking ratification of the convention against torture, to his recent support for banning media from observing Parliament. The military came down on the side of Thein Sein, probably also unhappy at the closeness of Shwe Mann to Aung San Suu Kyi.

However, this was never a battle over policy or a struggle between 'hardliners' and 'softliners'. It was a power struggle between two former generals, both with appalling records on human rights, who both wanted to be President.

## Women

Only 13 percent of candidates are women: 800 out of 6,074. Only around 15 percent of NLD candidates in the election are women, down from 30 percent in 2012. The USDP is even worse: only 6.2 percent of its candidates, 72 out of 1147, are women.<sup>55</sup>

When Kyaw Swar Soe, who heads the Myanmar Farmers' Development Party (MFDP), was asked why his party didn't have more women candidates, he answered, "*saoq thone ma kya bu*", an insulting term which has been literally translated to mean 'severely incompetent' or alternatively translated as the equivalent in English to mean "*fucking useless*."

NLD central committee member Nan Khin Htwe Myint told The Irrawaddy that the party had difficulty finding suitable female candidates, partly because women are already overwhelmed with responsibilities such as taking care of the kitchen and "*changing the flowers for Buddha*." Because of these duties, she said, "*women can't give full time like men, though there might be a few exceptions*."<sup>56</sup>

The Union Election Commission told The Woman's Party that they could not call themselves The Woman's Party, initially giving no explanation and refusing to register them if they refused to change their name.<sup>57</sup> They finally backed down and changed their name.

Women's issues have not featured strongly in the election campaign, but this is in the context of an election campaign with little substantial debate on policy issues on any subject.



Susanna Soe, one of the few women candidates, on the campaign trail

## Proportional Representation

Until some western think tanks and analysts started promoting the idea of proportional representation (PR) three years ago, it had never been high on the political agenda in the country.<sup>54</sup> Although those promoting PR led their case on the argument that it would be a fairer system for ethnic minorities, these same NGOs and individuals also had a long history of hostility towards the NLD and Aung San Suu Kyi, and were separately arguing that a landslide NLD victory in elections could be dangerous as the military might feel threatened by it. PR would be a highly effective method of reducing the number of elected NLD MPs.

After some debate most ethnic parties rejected the idea of PR. The concentration of ethnic people in particular states and regions meant that many ethnic parties benefitted from First Past The Post. They also saw that it could reduce seats held by democratic parties and increase seats held by the pro-military USDP.

Perhaps the most interesting question about the debate is the lack of interest in PR at the high levels of the military and USDP. Based on previous election results, PR would not give the USDP a majority in Parliament even with the inclusion of military seats, but it would significantly weaken the NLD presence in Parliament. Although lower rank USDP MPs supported moves to adopt PR, as they faced losing their seats, there was no significant effort at a higher political level to push it through. Technical problems were highlighted but these could have been overcome if the political will was there to do so. Nor does a system of PR appear to have been seriously considered during the national convention which drafted the principles of the constitution. Why not?

It could be that the military leadership resigned itself to an NLD government at some point as being inevitable, so decided not to bother with PR. They designed the 2008 Constitution for this eventuality. But given the myriad large and small tactics that the government/military are using to undermine NLD support during the current election, PR would seem like an obvious choice to weaken the opposition. There are numerous theories as to why the military/USDP leadership did not go for PR, but these are all speculation. The real reason is still unknown.

## AFTER THE ELECTION

***“Winning the election doesn’t mean anything. We cannot change the 2008 Constitution in the Parliament.”***

Nai Ngwe Thein, Mon National Party <sup>58</sup>

***“I don’t think the military would seize power. It already has power.”***

Thu Wai, Democratic Party (Myanmar) <sup>59</sup>

The old Parliament carries on until the end of January 2016. New MPs won’t take their seats until February 2016. The first task of the new Parliament is to choose the president. MPs split into three committees, two of elected MPs, one of military MPs. Each committee chooses a Vice-President. Then Parliament jointly votes for one of the three Vice Presidents to become President. This process should happen by mid-February 2016, but could be delayed with disputes or deal making within Parliament.

The months-long gap between the election and the new Parliament sitting gives larger parties putting forward presidential candidates plenty of time to try to secure support from smaller parties. There are fears that the USDP is more likely than other parties to engage in vote buying, either literally, or through promises of future policies or positions. There has already been speculation of some kind of discussions between the Arakan National Party and USDP regarding the Chief Minister position in Rakhine state.

The President doesn’t have to be an elected Member of Parliament, and if they are, they have to resign from Parliament. Current President Thein Sein chose not stand as an MP in this election, but is still expected to be the candidate for the pro-military USDP. If he is chosen as their candidate and does become President, he would be an unelected President.

The President then chooses most government ministers. These ministers also don’t have to be MPs, and have to resign as MPs if they are

appointed as a minister. (The head of the Army chooses the Defence Minister, Home Affairs Minister and Border Affairs Minister).

After choosing a President, Parliament has no legal power over the President or government ministers. It is up to them if they want to go to Parliament to explain policies.

## Who will be President?

### Thein Sein?

Thein Sein is the frontrunner to be the USDP candidate for Presidency after the 2015 elections. He has consistently dropped hints that he wants a second term. Shwe Mann, who had hoped to be the USDP candidate for the Presidency before falling out of favour with the military, is unlikely to become President on a USDP ticket.

### NLD?

With an NLD election victory most likely, the NLD will be able to nominate its own candidate for the Presidency and it should win a vote in Parliament to ensure that its candidate becomes President.

Aung San Suu Kyi runs the NLD in a very centralised way and within the NLD members say there is “no number two”. U Tin Oo has been spoken of as a possible candidate and is perhaps the only NLD leader apart from Aung San Suu Kyi who is known and respected by the majority of NLD supporters in the country. However, he is almost 90 years old and has said he does not want the job. U Win Htein is another NLD leader whose name has been suggested as a candidate, but critics have cited his ill health. He is 74 years old.

As Burmese voters go to the polls, those voting for the NLD are left in the bizarre position that they still don’t know who the party they vote for will put forward as President.

### Shwe Mann?

There had been speculation that Aung San Suu Kyi had made some kind of confidential deal with Shwe Mann, USDP MP, a former general and Speaker of Parliament, with whom she has formed a close working relationship. Rumours that this could involve

her agreeing to Shwe Mann becoming President in some kind of coalition government or power sharing deal were met with hostility from within the NLD.

Aung San Suu Kyi appeared to put such speculation to rest when she confirmed on July 11th that the NLD would put forward a candidate for the Presidency from within the NLD.<sup>60</sup> However, a possible comeback for Shwe Mann was left open with media organisation Irrawaddy reporting Aung San Suu Kyi adding: *"[The presidential candidate] must be an NLD member. If [the presidential candidate] is not now, [he or she] must be [an NLD member] later."*

Leading candidates for the Presidency from the two main political parties in Burma all have military backgrounds.

## Challenges for an NLD government

Summarising challenges faced by any future NLD government would require several briefing papers even if they were forming a government under a genuinely democratic constitution. The fact that if they do form a government it will be under the 2008 Constitution, which gives ultimate political control to the military, makes their task even more challenging.

On the positive side they will be able to repeal repressive laws, enact new laws, and for the first time there will be civilian control over key parts of the state, such as appointing state and regional chief ministers, choosing supreme court judges, the head of the electoral commission and human rights commission, and most ministries. They will have more control over the budget, but not over military spending. The NLD could decide to operate a more open and transparent style of government. An NLD government will also have legitimacy and represent the true will of the people, even if it does not have full authority.

However, they will have many challenges, some self-inflicted. Their lack of experience will be exacerbated by the failure to develop detailed policy programmes whilst in opposition. The centralisation of control by Aung San Suu Kyi and her refusal to appoint 'shadow' ministers or officials as is common in many countries has stopped potential NLD ministers gaining experience and expertise on

key policy issues. Aung San Suu Kyi's centralised approach to decision making would be a handicap in any normal government but this could cause even greater problems in running an effective government if she does plan to still lead the country despite not being President, as she stated in an interview in October 2015.<sup>61</sup>

This lack of capacity could also mean a future NLD government becomes reliant on foreign 'experts' who in fact have their own agendas which do not match the aspirations of the people of Burma. This could include advice on opening up the economy for foreign business interests, the promotion of health insurance rather than universal healthcare, or a focus on fossil fuels rather than moving to renewable energy. They will also have to manage expectations from people for economic change that are far higher than even the most capable and experienced government could deliver.

The NLD will have to work with ethnic parties and people who are more mistrustful of the NLD than they were in the past. Below the surface among some senior NLD leaders there is also deep prejudice towards ethnic people which ethnic leaders are well aware of. The return of the 1990 generation of political parties to Parliament, which are more experienced and which take a stronger stance in demanding rights and protection for ethnic people, will present more of a challenge for the NLD if it tries to obstruct change.

The NLD has appeared to pander to prejudice against Muslims rather than challenge it, leaving many Muslims without much hope that the NLD will do much to stop growing anti-Muslim activities and repeal anti-Muslim laws if they become the government.

Human rights challenges already described in this briefing as a result of their lack of control over the military, police, security services and much of the justice system mean that rape as a weapon of war, arrests and jailing of activists, and attacks on ethnic civilians could all continue. Without military agreement, which is unlikely to be forthcoming, there can be no changes to the Constitution to make Burma more democratic or enable a lasting peace settlement with ethnic groups.

## Conclusions

Most attention on the elections due on 8th November has been on the process, or the politics of who the next President might be. Very little attention has been paid to the carefully constructed 2008 Constitution, which gives the military ultimate control over the country regardless of who wins the election and who is President.

Where attention is paid to the constitution it is on the clause which stops Aung San Suu Kyi becoming President, and on the 25 percent of seats in Parliament reserved for the military. The Constitution goes much further than these two issues in terms of ensuring military control. The military are embedded in every level of governance in Burma, and they cannot be removed unless they choose to go. There is no sign of that.

Within Burma among the less politically active, there is very little awareness of this level of control. Many think that after the elections, Aung San Suu (Mother Suu) will solve their problems. Even some MP candidates seem unaware of the level of control the military can exercise should it deem its interests are threatened.

Many parties and candidates standing in the election are well aware of these challenges though. Even these deeply flawed elections and constitution are, for many, an improvement on the previous situation. They take the view that something is better than nothing, rather than holding out for what they actually want. Some hope that new freedoms will become an unstoppable force that the military will not be able to control, although reversals in reforms in the past two years make that seem more unlikely now.

There is a genuine fear among many people in Burma that there will be a repeat of 1990 election and that the military will not accept the result. This time around, the military don't need to do that. Since reforms began, the military have not and will not need a coup as they never lost control and won't after the election, even if the NLD win and form a government.

The election can be viewed in two ways.

On the one hand, it could lead to the first government in decades which has been chosen by the people. That new government will have the opportunity to implement policies and laws which could lead to significant improvements in the lives of ordinary people.

On the other hand, the elections represent a key step in the military's transition plan from direct military rule and pariah status to a hybrid system of government with a democratic face but where the military still have ultimate control. The elections will entrench long-term military control while at the same time leading to a relaxation of international pressure to end that control.

Both of these are true.

And as is usually the case of most analysis of Burma, both of these views are from a central Burma/government and a largely ethnic Burman perspective.

For Burma's many ethnic groups and religious groups, the elections represent something very different.

For the Rohingya, they are another step in their continuing repression, having their right to vote and stand as candidates taken away. Many Rohingya expect things to continue to get worse, regardless of who wins the election.

For Muslims, they represent a very worrying negative development, with mainstream parties rejecting Muslim candidates and the UEC rejecting dozens of Muslim candidates.

For Burma's main ethnic groups, the election won't bring them any closer to their dreams of having their rights protected, and more autonomy to control their lands and natural resources. Genuine dialogue leading to a political settlement including a federal system and lasting peace will be no closer, as the military still control decision-making in this area. In fact, under the 2008 Constitution the opposite has happened, and central government control over ethnic states has increased.

The significance of this cannot be overstated. It is at the root of many of the problems Burma has faced since independence. This issue is continually kicked down the road as being best addressed after various elections, talks, ceasefires etc, when in fact failure to address it is at the root of why conflict, dictatorship and many other related problems have happened. It was discussions over giving some autonomy to some ethnic groups which helped trigger the military coup in 1962.

It comes down to perceptions of the very identity of the country. Is Burma a multi-ethnic, multi-religious country, or a Burman Buddhist country? For the military and all central governments since independence, Burma is a Burman Buddhist country. For Burma's ethnic groups, making up forty percent of the population, Burma is a multi-ethnic and multi-religious country.

These elections have not moved Burma closer to a harmonious society where people of different races and religions are seen as equal. The government/USDP has deliberately exacerbated these tensions, and the NLD has failed to stand up to prejudice and present an alternative, tolerant vision for the country. The election is likely to expose growing ethnic and religious divides within the country.

Another group for whom these elections do not represent progress are the victims of human rights violations. Talk of the need to be pragmatic and accept there may be a long, slow transition - even decades-long - means accepting that human rights violations, many of which break international law, will continue for possibly decades. This is not acceptable. Human rights cannot wait 20-30 years. Political prisoners in jail can't wait, the next woman raped by the Burmese Army can't wait and the next Rohingya mother watching their child die because of lack of healthcare cannot wait. The international community may be prepared to accept a long slow transition to democracy in Burma, rather than using their leverage for faster change, but they must not continue to stand by and do nothing while numerous violations of international law continue.

## **Further information:**

### **Media:**

Burma News International - News from ethnic states: <http://www.bnionline.net/>

Democratic Voice of Burma: <http://www.dvb.no/>

Irrawaddy: <http://www.irrawaddy.org/election>

Mizzima: <http://mizzima.com/>

Myanmar Now: <http://www.myanmar-now.org/>

Myanmar Times: <http://www.mmtimes.com/index.php/election-2015.html>

### **For election results:**

Democratic Voice of Burma: <http://elections.dvb.no/>

### **Human Rights:**

ALTSEAN - Bulletins and briefings: <http://www.altsean.org/>

Burma Partnership - Regular updates and analysis from civil society: <http://www.burmapartnership.org/>

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[www.burmacampaign.org.uk/burma-briefing](http://www.burmacampaign.org.uk/burma-briefing)

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