

Burma Briefing

Burma's 2020 Election: A Step Forward or a Step Back?



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An apartheid election which will be less free and fair than the last

Burma's 2020 election is being hailed by some as the next big step in Burma's transition to democracy. For the first time in decades there will have been two successive multi-party elections. Following more than 50 years of military rule, this is something to celebrate.

However, there are also significant problems which undermine the dominant narrative of Burma as a country undergoing a transition to democracy. These cannot be dismissed as inevitable bumps in the road in a difficult transition to democracy.

Key points

- Under Burma's military-drafted 2008 constitution, it is impossible for elections to be free and fair.
- Even within the constraints of the constitution, the civilian government led by Aung San Suu Kyi has engaged in activities which will make this election less free and fair than the last one.
- This is an apartheid election, with most Rohingya banned from voting.
- International donors, including the UK, ignored a UN recommendation to review support for the election if Rohingya were excluded, and provided support to the racist government body, the Union Election Commission.
- Aung San Suu Kyi remains constitutionally barred from the Presidency, although she has circumvented this ban through the State Counsellor position.
- Ethnic and religious minorities will suffer most from disenfranchisement and marginalisation in the election.
- In light of the military's refusal to agree changes to the 2008 constitution, and the undemocratic actions and human rights violations by the civilian NLD-led government, the international community needs to reassess its assumption that Burma is undergoing a transition to democracy, and change its approach accordingly.
- The NLD will likely win the election but with a reduced majority. Key to watch will be the percentage of vote going to the military party, the USDP, which in 2015 received almost 30% of the vote.

These problems should set alarm bells ringing about the direction of reforms in Burma and the long term implications they have for democracy and human rights in the country. Rather than this election being an improvement on the last, it will be less free and fair. More people will be disenfranchised in this election than the last, and those disenfranchised are almost all from ethnic and religious minorities.

The greatest shadow over the credibility of the election is the continued banning of Rohingya people being allowed to vote, and the astonishing silence of the international community over this issue. Under the National League for Democracy (NLD) government, the environment this election is being held in is one of less freedom of expression.

- News and human rights websites have been banned for the first time in 9 years.
- A million people have been banned from accessing the internet.
- Media freedom is declining.
- Peaceful protestors are being arrested and there are almost 200 political prisoners.
- There is growing fear among human rights activists in Burma that criticism of the government can result in arrest, jail, fines, and death threats.

The civilian NLD-led government appoints members of the Union Election Commission, which manages the election. Through this Commission and by other means, it has engaged in low level election rigging. This is despite the fact that the NLD are almost certain to win the election without such actions. It is a telling indication of the NLD government's intolerance of criticism and opposition.

- Around 1.5 million voters in ethnic states disenfranchised by short notice and seemingly arbitrary cancellations of voting.
- Opposition parties have had official election statements in state media censored.
- Smaller parties have faced challenges in registering as parties and registering candidates.
- State media gives prominence to the NLD-led government while providing few critical alternative voices from opposition political parties. State media effectively acts as publicly funded propaganda for the ruling NLD government.

- Recommendations made by international observers following the last elections have been almost completely ignored.

Burma is not a constitutional democracy

Burma does not have a democratic constitution, so it is impossible for any election in Burma to be truly free and fair.

- 25% of members of Parliament are chosen by the head of the military rather than by voters.
- The military are independent from the elected civilian government. The elected government has no constitutional control over the military.
- The military appoints the heads of three key government ministries, Defence, Home Affairs and Border Affairs.

The 2008 constitution was drafted by the military to preserve their interests. It enabled them to transition from direct military rule, which was unsustainable for them, to a new hybrid system. The 2008 constitution protects the key interests of the military. They are independent, control the military and security apparatus of the state, and their economic interests are preserved. They have benefitted more than any other body in the country from the transition.

Domestically the NLD, the main political opponent of the military, now operates within the constraints of the military drafted constitution. The threat of a domestic uprising, (which happened on average every ten years during direct rule) is gone.

Since 2010 the military budget has significantly increased and the military have been able to purchase a wide range of more modern weapons, including fighter jets, ships and heavy artillery. The military control the second largest political party in the country, which in 2015 secured almost 30% of the vote.

Internationally almost all sanctions on military individuals and companies have been lifted, except for arms embargoes and visa bans (holiday bans) on up to 16 individuals imposed by around 30 countries. More than a dozen countries have increased military training and cooperation, and the military are invited to joint military exercises along with countries such as Russia, the USA and Thailand.



The military have no intention of allowing any constitutional change which would make Burma more democratic, as this would loosen their control over the country. In Parliament they have always opposed any significant constitutional change to make Burma more democratic. There is no prospect of this changing.

The NLD government is not entrenching democracy

Within the limits of the constitution there is scope for the civilian government, led by Aung San Suu Kyi, to allow the elections to be more open, free and fair. There is the opportunity for debate about the future of the country, strengthening and entrenching the democratic gains which have been made, even within the constraints of the constitution.

This is not happening. Instead there has been a reverse in freedoms under the NLD government, and flawed and undemocratic decisions taken with regard to the holding of the election.

The civilian government, which had the opportunity within the constraints of the constitution to allow more freedoms, to improve human rights in areas such as freedom of expression, repeal repressive laws and free political prisoners, has done the opposite. Aung San Suu Kyi's government is an authoritarian government and people who criticise the government risk imprisonment.

In its Human Rights and Democracy Report published in 2020, the Foreign, Commonwealth and Development Office stated: "...the space for free expression in Myanmar continued to shrink in 2019."

Although inherently undemocratic and designed to entrench and protect military political influence, there are opportunities within the 2008 constitution to use the new political space to create a climate where democracy and human rights can put down roots. Through laws and in the way it operates as a government, the NLD can expand political space. It can set precedents in the way government operates, repeal repressive laws and bring in new laws guaranteeing human rights. It can introduce a more open, transparent and accountable government.

The significant amount of international aid and other forms of support international donors are providing to the civilian government are largely based on this narrative. Burma is emerging from decades of military rule and needs support as it builds democratic institutions and builds capacity to deliver benefits for the population. This entire narrative falls apart if the ruling party is authoritarian and instead of taking Burma forward in steps towards democratisation and improving human rights, takes it backwards.

The majority of the most serious concerns relating to the credibility of this election are not ones that can be attributed to lack of experience, capacity or resources. They are the result of deliberate decisions by the NLD-led government which are undemocratic and do not respect human rights.

The international community is way behind the curve in adapting its approach from assumptions made four years ago to realities on the ground today. Is the best way to support democracy in



Burma to provide unconditional support, political, financial and expertise, to a government which acts undemocratically and does not respect human rights?

An apartheid election

Aung San Suu Kyi's decision to keep the ban on Rohingya voting in the election is not just undemocratic, it is part of the genocide taking place against the Rohingya. It is astonishing that not only has the international community been almost completely silent on the disenfranchisement of the Rohingya, they have actually gone further and provided support to this Apartheid election.

In addition, the racist Union Election Commission, which receives support from the British government and other donors, banned Rohingya candidates from standing in the election as well as discriminating against other minority candidates.

Following the disenfranchisement of the Rohingya in the 2015 election, the United Nations Fact-Finding Mission on Myanmar made this recommendation regarding the 2020 election:

"The Government of Myanmar should provide that all persons eligible to vote in the 2010 general election, and their children who have turned 18 since then, are eligible to vote in the 2020 general election. Member States and organizations, including the United Nations, should make this a key consideration in, and integral to, the provision of support to the Government of Myanmar in the organization of elections."

This recommendation was ignored by the British government, the EU and other donors. Aid money which taxpayers expect to be helping the most vulnerable and needy is instead assisting an apartheid election, while at the same time Rohingya held in internment camps in Burma, and Rohingya refugees in Bangladesh, live in squalid conditions without enough aid.

Disenfranchisement of ethnic voters

The banning of voting in many ethnic constituencies, ostensibly due to conflict, disenfranchised up to 1.5 million people. This is a greater number than in the 2015 election.

"The narrowing of political space will lead to a widening of the theatre of war."

Sai Wansai, Shan political activist.

Decisions on cancelling voting have been made at short notice, without transparency and in a way that benefits the ruling NLD government and the military party, the USDP.

An outcry at the apparent bias in the way voting was cancelled by the UEC prompted minor changes to which areas voting is cancelled in.

However, the changes still benefitted the NLD. These changes also highlighted the arbitrary nature of the cancellations. While in some areas it was obvious that it would not be possible to hold elections, other areas with conflict were not initially included, while some areas without recent conflict were.

Smaller parties deliberately disadvantaged

Smaller political parties face huge challenges in registering as parties and candidates.

Representatives of smaller political parties have told Burma Campaign UK that there are several election laws as well as UEC directives that are inherently unfair and disadvantage smaller political parties. On top of this they are selectively applied to the disadvantage of smaller parties.

A COVID election

The holding of an election in the midst of a global pandemic has been controversial. Aung San Suu Kyi's civilian government and the Union Election Commission, appointed by the NLD government, have been adamant that there should be no delay.

Opposition parties, including the military political party, Union Solidarity Development Party (USDP), have called for delays in the election. Exactly how the election can be delayed is the subject of disagreement, as the constitution does not allow the government to pick and choose election dates outside a two - three month window. An election would need to be delayed for at least a year to be post-pandemic. Analyst Richard Horsey has suggested that the Constitutional Tribunal could declare it constitutional to delay the election in light of the pandemic, if the government took a case to them. While technically this would appear outside their remit, in practice it is likely the Tribunal would do as the government asked, especially if there was also military support.

Lockdowns and other COVID-19 related restrictions have meant even more restrictions on political parties' election activities. These rules also appear on occasions to have been applied selectively against smaller parties and in favour of the NLD. The inability to hold rallies and other political activities places a disproportionate disadvantage on smaller parties with fewer resources. With the governing NLD directly controlling state newspapers, television and radio stations, the NLD have an even greater advantage.

Opportunities that need more support

Despite all the challenges put in place by the military and the NLD-led government, the majority of people in the country do of course welcome the election. After decades of direct military rule people

want to be able to exercise their democratic rights. Most human rights and ethnic activists also see the election as an opportunity to build democracy, try to have their voice heard, promote their agendas, put forward alternative policies, and challenge the racist nationalism of the two main ethnically Burman dominated parties. During this election it has been welcome to see a handful of political parties and independent candidates promoting a vision for Burma which is more progressive and tolerant.

While international donors should obviously not become involved with individual political parties, if the British government and other donors want to see the development of democracy and human rights in the country, they should be doing much more to support civil society which is actively working towards achieving that goal. Organisations documenting human rights violations and advocating for change need to be given more support.

The refusal of the Burmese government to allow many such organisations to legally register is a deliberate attempt to weaken these organisations. If donors only support registered organisations, it amounts to the British government and other donors giving the government of the day veto power on British aid spending decisions regarding human rights. This must not continue.

Little improvement in gender imbalances

In the previous election in 2015, only 13 percent of the 6,200 candidates were female and in 2020 the rate has increased to just 15.6 percent of over 7,000 candidates initially approved (more than 1,300 have had candidacies revoked by the UEC since August, most as members of the Union Democratic Party which was dissolved by the UEC after its leader faced criminal charges.)

The Inter-Parliamentary Union reported on 25 September that Myanmar ranked 167 out of 191 countries for female representation in the national lower house.

A small number of ethnic political parties have made commitments to ensure a certain percentage of their candidates are women, but the main political parties have made no such commitment and show no genuine commitment in addressing women's participation.

A report, 'Gender and Political Participation in Myanmar', published by the Enlightened Myanmar Research Foundation in October 2020 indicated that the National League for Democracy has 19 percent female candidates, the Union Solidarity and Development Party has 10 percent.

It is notable and disappointing that Aung San Suu Kyi in four years of government did not appoint a single woman other than herself as a Union Minister in the government.

Disenfranchisement of other groups

In addition to the disenfranchisement of voters in areas where there is conflict or recent conflict, and the disenfranchisement of the Rohingya, millions more also face effective disenfranchisement.

This includes hundreds of thousands of people internally displaced by conflict in ethnic states, almost all of the 5 million migrant workers abroad, half a million religious clergy including monks and nuns, political prisoners, tens of thousands of refugees in camps in Thailand and hundreds of thousands of Rohingya in camps in Bangladesh.

Militarisation and Burmanisation in ethnic states

A surprise to many in the 2015 election was the strong showing for the military party, the USDP, in some ethnic states. Two factors influenced this outcome, military bases and military retirement villages.

The increase in militarisation in ethnic states since Burma's so-called peace process began means more soldiers likely to vote for the military USDP are in ethnic states.

The military also establishes settlements for retiring soldiers in or on the borders of ethnic states, often close to military bases. This is a similar strategy to that employed by the Roman Empire, where retired soldiers were rewarded with land, often in countries they had conquered, thereby creating a loyal population in occupied lands. This can result in local ethnic people oppressed by the Burmese Army ending up with an MP from the military USDP, thanks to votes from military bases and retired soldiers settled in their state. Local people see this as part of the process of Burmanisation of their land and ethnic identity.



Rethinking future policy

There isn't a government in the world engaged in Burma which can make any credible claim to having an effective policy which promotes human rights and democracy in Burma. They universally fell for the sham military reform process, genocide is ongoing on their watch, and elections supposed to be a major milestone in Burma's democratic transition are less free and fair than the last.

Yet still the British government and others are resistant to any fundamental rethink of their failing approach.

The response of the British government and other donors to the reversals in democratisation taking place in Burma should be more engagement, not disengagement.

That engagement must be based on the realities on the ground and not on four year old hopes and assumptions on how reforms in Burma would play out.

Aung San Suu Kyi and her government are part of the problem, not the solution. They cannot keep getting a free ride despite all the human rights violations they are responsible for.

The impact of silence and tick box diplomacy on human rights in Burma is that the NLD government knows it can safely ignore the British government and others over human rights concerns. They have learned from experience that regardless of what they do, even genocide, they will still receive British aid and support.

They knew they could get away with banning Rohingya from the election and pay no price. They knew they could restrict freedom of expression and pay no price. They knew they could engage in undemocratic practices in the holding of the election and pay no price.

Instead the Rohingya, ethnic minorities, human rights and democracy activists, journalists and others pay the price of international silence and inaction, facing disenfranchisement and jail.



Recommendations

- No future support should be given to the Union Election Commission as long as it employs racist policies against minorities, the Rohingya are disenfranchised, and the UEC acts in a biased and unfair manner.
- No future support should be provided to the government of Burma or any government body for the holding of an election until key conditions are met. These should include the Rohingya having their right to vote restored and the government taking action to allow elections to be free and fair, without restrictions on freedom of expression and the media. Clear benchmarks with a timeline should be set for improvements for future support to be given.
- Support should be increased for civil society, especially civil society documenting human rights violations and advocating for human rights, and international election monitoring.
- Direct and indirect financial support to the government of Burma should be reviewed in light of its appalling human rights record.
- A more robust approach on human rights needs to be taken with the NLD-led government in Burma.
- The British government should implement all of the recommendations of the United Nations Fact-Finding Mission on Myanmar, rather than cherry-picking recommendations which are less diplomatically challenging (and effective).
- The British government should encourage the government of Burma to also implement the UN Fact-Finding Mission recommendations rather than only focussing on Rakhine Commission and ICOE recommendations.

Recommended further reading:

A Vote With No Confidence – Progressive Voice

https://progressivevoicemyanmar.org/wp-content/uploads/2020/10/26_2020_Election_Briefer_FINAL_compressed.pdf

Dismissed & Denied - Network for Human Rights Documentation (ND-Burma)

<https://nd-burma.org/dismissed-denied-civic-rights-undermined-in-the-2020-pre-election-landscape-by-the-network-for-human-rights-documentation-burma-shows-disregard-of-political-and-civic-rights-by-election-stakeholders/>

Majority Rules in Myanmar's Second Democratic Election – International Crisis Group

<https://www.crisisgroup.org/asia/south-east-asia/myanmar/b163-majority-rules-myanmars-second-democratic-election>

Myanmar's Elections Won't Be Free Or Fair - Andrew Nachevson, Foreign Policy

<https://foreignpolicy.com/2020/10/27/myanmar-elections-not-free-fair-democracy-nld-aung-san-su-kyi-rohingya/>

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