

Extracts on the elections from the Report to the UN General Assembly of the Special Rapporteur on the situation of human rights in Myanmar (A/65/368), 15 September 2010

Developments in the election context

14. According to the Universal Declaration of Human Rights, “the will of the people shall be the basis for the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. Genuine elections according to international standards, or what many observers have been characterizing as credible elections, would have to be transparent, inclusive, participatory, free and fair.

15. Essential conditions for credible elections include the freedom of expression and freedom of assembly and association. However, despite consistent calls for the Government to guarantee these rights, the electoral framework and its implementation by authorities appear to have further restricted these fundamental freedoms.

16. On 8 March 2010, the Government of Myanmar released the long-awaited election laws. They are the Law of the Union Election Commission, the Political Party Law Registration, Law of the Election of Pyithu Hluttaw, Law of the Election of Amyothar Hluttaw and Law of the Election of Regional or State Hluttaw. It has been noted that the Political Party Registration Law departs significantly from the 1988 party registration law. Particularly problematic has been the restriction on “persons currently serving a prison sentence” joining or remaining members of political parties, as many opposition figures and activists remain imprisoned after being tried by flawed courts. This provision, in effect, poses a limitation to the right to freedom of peaceful assembly and association.

17. While new parties did not face any registration deadline, existing parties were required to apply to the Election Commission by 7 May 2010 in order to continue their registration. Both the National League for Democracy (NLD) under Aung San Suu Kyi, which won the overwhelming majority of legislative seats in the 1990 election (392 of 492), and the next largest winner of parliamentary seats, the Shan Nationalities League for Democracy (23 seats), whose key leaders — Chairman Khun Tun Oo and Secretary Sai Nyunt Lwin — as well as numerous members are also in prison, were automatically deregistered after choosing not to continue their registration on condition of removing their leadership.

18. The Special Rapporteur has highlighted in previous reports that prisoners of conscience who were convicted in a court of law in Myanmar did not enjoy a fair and public trial by an independent and impartial tribunal as required by the Universal Declaration of Human Rights. In fact, their trials were conducted in a manner inconsistent with Myanmar’s own laws. According to the Government’s letter of 2 September 2010, “The judicial principles prescribed in section 2 of the

Judicial Law (2000) and article 19 of the Constitution of the Republic of the Union of Myanmar (2008) stipulated to administer justice independently according to law, to dispense justice in open court unless otherwise prohibited by law, and to guarantee in all cases the right of defence and the right of appeal under law". However, in the cases of prisoners of conscience, their trials are often closed-door hearings within prison compounds, without legal representation or in circumstances where access by their defence lawyers has been obstructed.

19. In his previous reports, the Special Rapporteur indicated several domestic laws that restrict the principles of freedom of association and assembly, most importantly, the Unlawful Association Act (1908), the State Protection Act (1975) and sections 143, 145, 152, 505, 505(b) and 295(A) of the Penal Code. With regard to freedom of opinion and expression, the Television and Video Law (1985), the Motion Picture Law (1996), the Computer Science Development Law (1996), the Electronic Transactions Law (2004) and the Printers and Publishers Registration Act (1962) have been used to prevent freedom of expression. The Special Rapporteur has noted that these laws are in contravention of international law, including articles 19 and 20 of the Universal Declaration of Human Rights, articles 13 and 15 of the Convention on the Rights of the Child and International Labour Organization (ILO) Convention No. 87, which explicitly calls upon Governments to ensure the full enjoyment of freedom of expression and association. As a State party to these conventions and a State Member of the United Nations, Myanmar should have ensured compliance of its domestic laws with its international obligations, according to the principles of the Vienna Convention on the Law of Treaties.

20. In his 19 August 2010 letter to the Government, the Special Rapporteur asked the Government about its progress on his recommendation to implement the four core human rights elements, including the review of national legislation to ensure its compliance with international obligations. The Government replied: "Concerning the revision of domestic laws, article 446 of the Constitution states that existing laws shall remain in operation insofar as they are not contrary to the Constitution until and unless they are repealed or amended by the Pyidaungsu Hluttaw, and those laws which are contrary to the Constitution will cease to exist. The ministries concerned are now reviewing all domestic laws including the 11 laws that you had recommended in the report and have made progress and will continue to do so." The Special Rapporteur commends the Government on its reported progress in this important task. However, he would like to encourage the Government to ensure that the revision of laws be in accordance with international standards and not only in adherence to the Constitution. The Special Rapporteur also recommends that the Government abstain from operationalizing these laws while such revision is in process.

21. In addition to these long-standing restrictions on the freedoms of expression, assembly and association, new election regulations further hamper the enjoyment of these fundamental human rights. According to new election laws and directives, electoral crimes are punishable by a year in prison and a fine. Citizens were recently reminded that the 1996 "Law Protecting the Peaceful and Systematic Transfer of State Responsibility" is still in force. The law provides for 5 to 20 years in prison for anyone who "incites, delivers speech or makes oral or written statements that

undermine the stability of the State, community peace and tranquillity and prevalence of law and order”. Any organization that violates the law can be suspended.

22. On 20 July 2010, the Press Scrutiny and Registration Board administered by the Ministry of Information issued a directive calling for the “correct and complete quoting of the Constitution, electoral laws and [their] rules” at penalty of loss of publishing licences. The directive reportedly has had a chilling effect on journalists, who are now afraid to address matters related to the Constitution and elections.

23. Genuine elections, as mandated by the Universal Declaration of Human Rights, require an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly and impartially. However, the 17 members of the Union Election Commission were appointed by the Government without any public consultation. Moreover, the decisions of the Commission cannot be appealed to any court. While, according to the Union Electoral Commission Law, the Commission has the duty and power to form election tribunals to enable examination of election-related disputes, the same law states: “The decisions and performances of the Commission relating to the following matters shall be final and conclusive: (a) works relating to election; (b) appeals and revisions relating to the decisions and orders of the election tribunals; (c) performances under the Political Party Registration Law”.

24. On 21 June 2010, the Union Election Commission issued directive 2/2010, which requires a party to seek permission for any gathering outside its headquarters seven days in advance, a provision more restrictive than regulations in 1990 which only required permission for gatherings of over 50 persons in public spaces; requires the party to include, in its application for permission, the planned place, date, estimated starting and finishing time, number of estimated attendees and names of speakers with their addresses and national registration card numbers; and prohibits parties from marching to the designated gathering point and venue holding flags or marching and chanting slogans in procession. Other directives, including one on the publication and distribution of written materials, were also issued. At the time the election date and candidate registration deadline were announced, 47 parties had applied to register and 41 were approved.

25. Numerous political parties have complained of official harassment and intimidation. According to the Rakhine Nationalities Development Party, it sent letters of complaint to the Union Election Commission and its state branch office on 20 August 2010 that since early August local, Special Branch and anti-crime police had questioned party leaders’ families and had been monitoring the party by taking photos of party statements and slogans on the notice board of party headquarters. On 28 July, it was reported that the Democratic Party submitted the list of its 1,400 members to the Election Commission which then passed the list to the Special Branch Police. The party complained to the Election Commission of official intimidation after Special Branch officers visited party offices and members’ homes in Yangon’s Hlaing and Kyeemyindaing Townships and asked for curricula vitae and photographs.

26. Despite the absence of any restriction on former prisoners of conscience in the election laws, four members of the National Democratic Force (NDF) were ordered by the Election Commission in July to submit letters of appeal seeking permission to participate in the elections owing to their prior convictions on treason. On 7 August 2010, they were told that their appeals were incomplete and a second appeal would be necessary with the inclusion of pledges that they would protect the 2008 Constitution, would not oppose the Government and would make no contact with illegal associations. One of the four, party leader Khin Maung Swe, said: “Since the Commission said it would report to ‘superiors’ about our appeal letters, this shows that the Commission itself is not independent.” On 25 August 2010, Khin Maung Swe announced that he was withdrawing from the election.

27. Prohibitive costs and time pressure to register members and field candidates appear to be restricting parties’ ability to contest elections. There are significant non-refundable costs to registration — approximately US\$ 300 per party and US\$ 500 per candidate — which are not deposits but fees that pose an economic barrier to participation and real hardship given the impoverished state of most people in Myanmar, where the average income per person is only US\$ 459 a year. In essence, these conditions resulting from the electoral framework and their implementation amount to a limitation of the citizen’s right to take part in the government of his or her country, directly or through freely chosen representatives, as required by international human rights standards.

28. Political parties have complained that, owing to the short period allowed for candidate registration and their lack of funding, they will be able to compete for only a limited number of the 498 seats in the national parliament and 665 at the State or regional level. One quarter of the seats in all the legislatures are reserved for members of the military to be appointed by the commander-in-chief. The election laws stipulate: “If there is only a single Hluttaw candidate in a constituency, election for such constituency shall not be held, and the relevant region or State subcommission shall declare such candidate to be the Hluttaw representative”.

29. The Chair of the Union Democratic Party, Phyo Min Thein, resigned on 5 August 2010 on grounds that the elections would not be free or fair. According to Khin Maung Swe of NDF, the party had to cut back on the number of constituencies in which it will field candidates. Although the Union Kayin League reportedly had intended to field candidates throughout the country, the party had difficulty meeting its membership quota of 1,000 members by presentation of their signatures to the Election Commission by the deadline of 21 August 2010, 90 days after its registration was approved. It is reported that on 10 August the party submitted its list of 1,500 party members to the Election Commission office in Naypyidaw, but many of the names were rejected for having incomplete forms. As a consequence, the party was only able to resubmit a list with just over 500 members and thus is considered a regional party able to run only in Irrawaddy Division.

30. Although the Election Commission will formally approve candidates on 10 September 2010, preliminary reports following the 30 August 2010 deadline to register candidates show that the pro-Government Union Solidarity and Development

Party (USDP) and National Unity Party (NUP) are together fielding some 77 per cent of candidates: USDP has over 1,000 candidates and NUP, 990. In contrast, NDF has initially registered only 161 candidates, the Shan Nationalities Democratic Party only 157 and the Union Democratic Party only 50.

31. Genuine elections require a fair playing field. However, there have been questions raised about USDP adherence to election laws. In April, the Prime Minister, Thein Sein, and 26 other senior generals with ministerial portfolios resigned from the military and registered with the new party. As civil servants are not allowed to form parties, some have questioned whether this was legal despite the Government ruling that ministers are in fact not civil servants.

32. The Union Solidarity and Development Association (USDA) was established in 1993 as a mass social organization with the junta leader, Senior General Than Shwe, as its patron. According to reports, USDA had some 20 million members with compulsory membership by civil servants. In July 2010, USDA was dissolved and its funds were transferred to USDP. Some observers argue that these assets are government property. The party was also reported earlier to be spending public money in townships in Yangon Division through such means as building roads, bridges and health clinics in order to gain political advantage. There are also reports of agricultural loans to farmers in Kungyangone Township at the rate of 50,000 kyat (about US\$ 50) per acre by USDP, apparently conditional upon their signing a statement vowing to join and vote for the party, a practice allegedly being used in other areas as well.

33. The Special Rapporteur recalls that while the Universal Declaration of Human Rights recognizes the right to freedom of peaceful assembly and association, at the same time, it stipulates that no one may be compelled to belong to an association.

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