

Myanmar's Electoral Landscape

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Executive Summary

Myanmar is preparing to hold national elections in early November 2015, five years after the last full set of polls brought the semi-civilian reformist government to power. The elections, which are constitutionally required within this timeframe, will be a major political inflection point, likely replacing a legislature dominated by the Union Solidarity and Development Party (USDP), established by the former regime, with one more reflective of popular sentiment. The opposition National League for Democracy (NLD) party of Aung San Suu Kyi is well-placed to take the largest bloc of seats.

There have been major improvements in election administration since the deeply flawed 2010 elections and the more credible 2012 by-elections. While the election commission is still widely perceived as close to the government and the USDP, the transparent and consultative approach it has adopted and the specific decisions it has taken suggest it is committed to delivering credible polls. This includes major efforts to update and digitise the voter roll; consultation with civil society and international electoral support organisations on the regulatory framework; invitations to international electoral observers for the first time, as well as to domestic observers; changing problematic provisions on advance voting; and reducing the costs of a candidacy. The broader political environment is also more conducive to credible elections, with a significantly freer media and much improved civil liberties.

There remain major challenges to a credible, inclusive and peaceful election. Much of the periphery of the country is affected by armed conflict, and though there have been important steps toward bringing the six-decade civil war to a close, the process remains fragile and incomplete. The vote could be marred by violence in some areas and will not be possible in others. In central Myanmar, rising Burman nationalism and anti-Muslim sentiment have exploded sporadically into violence, something that could happen again in the politically charged context of an election. In Rakhine state, minority Muslim communities have been disenfranchised by a decision to cancel their identification documents. Electoral security and risk management preparations have become a critical priority of the election commission. Capacity constraints will also come into play. The country has very limited experience of democratic polls, including government staff, security services and election commission staff at the local level. Understanding among the electorate is also very low, and major education efforts will be required.

For the elections to be successful, there must also be broad acceptance of the results. In a context of divergent expectations and, inevitably, winners and losers, this will be a challenge. While reformist government leaders appear reconciled to the prospect of the NLD winning the most seats, it is unclear whether this sentiment is shared by a majority of the old elite. Similarly, it is unclear whether the NLD's base fully understands likely post-election scenarios. With Aung San Suu Kyi constitutionally barred from the presidency and no obvious alternative within its ranks, it is probable that even if the party wins a landslide, it will have to select a compromise candidate for president – potentially a reformist member of the old regime.

The some three months between the elections and the presidential electoral college's decision will be a time of considerable uncertainty, possible tension, and intense behind-the-scenes negotiation. The outcome, and the extent to which it is broadly

accepted, will determine whether there is a smooth transfer of power and whether the next administration will have the broad support necessary to govern or have its legitimacy constantly questioned. Probably the most important factor will be the support – or at least acquiescence – of the military, which retains strong influence over the process. The commander-in-chief has voiced support for the democratic electoral process and has undoubtedly foreseen the prospect of strong support for the NLD. But this does not mean he would be comfortable with all the potential implications of such an outcome.

The elections are coming less than five years into what will continue to be a long and difficult transition for Myanmar. They create a moment of political competition and polarisation in a transition process that requires compromise and consensus. If credible and inclusive, they can help to build confidence that the country is on a new political path and thereby inject fresh momentum into the reforms. Equally, they could damage the delicate set of compromises that has so far kept the process broadly on track. It behoves political leaders on all sides to ensure that they keep this larger prize foremost in their minds.

Yangon/Brussels, 28 April 2015

Myanmar's Electoral Landscape

I. Introduction

The November 2015 elections will potentially be the first credible nationwide polls for decades.¹ Trust in the election commission is low. However, unlike in 2010, when deeply flawed elections were conducted, the commission appears committed to delivering a credible process, and the political environment is far more conducive to this than five years ago. At the same time, there are huge challenges to delivering inclusive, peaceful elections, including ongoing conflict and insecurity in the periphery, rising Buddhist nationalism, disenfranchisement of most Muslim voters in Rakhine state and a lack of knowledge and experience of democratic practices.

The constitutional set-up, which is unlikely to change, contains a number of undemocratic provisions, including those reserving one-quarter of legislative seats for military appointees and blocking Aung San Suu Kyi from becoming the president or a vice president. Thus even if her National League for Democracy (NLD) party wins a landslide, it will have to find an alternative presidential nominee, potentially a reformist member of the former regime.

This report provides a primer on the elections six months ahead of the polls, analysing the technical preparations as well as the broader political environment. It is based on detailed research in Myanmar and draws on Crisis Group's many years of analysis of the situation in the country, including reporting on the 2010 elections and 2012 by-elections.²

¹ For Crisis Group reporting on Myanmar since the present government took power, see Asia Briefings N°144, *Counting the Costs: Myanmar's Problematic Census*, 15 May 2014; N°143, *Myanmar's Military: Back to the Barracks?*, 22 April 2014; N°142, *Not a Rubber Stamp: Myanmar's Legislature in a Time of Transition*, 13 December 2013; N°140, *A Tentative Peace in Myanmar's Kachin Conflict*, 12 June 2013; N°136, *Reform in Myanmar: One Year On*, 11 April 2012; and N°127, *Myanmar: Major Reform Underway*, 22 September 2011; also Asia Reports N°261, *Myanmar: The Politics of Rakhine State*, 22 October 2014; N°251, *The Dark Side of Transition: Violence Against Muslims in Myanmar*, 1 October 2013; N°238, *Myanmar: Storm Clouds on the Horizon*, 12 November 2012; N°231, *Myanmar: The Politics of Economic Reform*, 27 July 2012; and N°214, *Myanmar: A New Peace Initiative*, 30 November 2011.

² Crisis Group Asia Report N°174, *Myanmar: Towards the Elections*, 20 August 2009; Asia Briefings N°105, *The Myanmar Elections*, 27 May 2010; N°118, *Myanmar's Post-Election Landscape*, 7 March 2011; and *Reform in Myanmar: One Year On*, op. cit.

II. Overview of Previous Elections

A. Electoral History

After independence from Britain in 1948, Myanmar experienced a decade of multi-party democratic rule. The first constitution was drawn up in 1947 and came into force at independence. Elections were held under it in 1947 (for the post-colonial government), 1951 and 1956. In 1958, however, following a decade of weak government characterised by political infighting and violence, as well as widespread insurgencies, the military under General Ne Win staged a coup d'état.³ After eighteen months, the military organised elections in 1960 that returned power to civilian hands, but this would not last long.

Against the backdrop of renewed political infighting in Yangon, continued insurgency in the countryside and concerns that Shan state, in particular, might exercise its constitutional right to secession, the military seized power again in 1962. A "Revolutionary Council" was established under Ne Win's leadership, the 1947 constitution was abrogated, and all legislative, executive and judicial power placed in his hands. Radical economic and social policies were instituted with the aim of creating a socialist state isolated from outside influences. The Burma Socialist Programme Party (BSPP) was formed to promote socialist ideology.

The Revolutionary Council banned political parties (except the BSPP), took control of all media, and severely curtailed civil liberties. A new constitution was adopted in a January 1974 referendum, with a reported turnout of over 95 per cent, and a reported 90 per cent voting in favour.⁴ The 1974 charter established a socialist one-party state, with no effective separation of powers. Elections were held the same year, with candidates drawn almost exclusively from the BSPP. Ne Win, who had already given up his military position, became president. Subsequent elections were held in 1978, 1981 and 1985. These were Soviet-style elections, "not presented as a possible redistribution of power, but as an affirmation of the existing power".⁵ The one candidate on offer was almost always from the BSPP.

In 1987, continuing economic decline and increasing hardship led to student protests, the trigger being the government's decision to demonetise much of the currency, without warning or compensation. The following year saw a near total collapse of law and order, with demonstrations across the country, violence increasing and many state institutions ceasing to function. Indiscriminate violence by the security forces to put down a nationwide strike on 8 August 1988 led to thousands of deaths. With unrest continuing, the army seized direct power on 18 September, swiftly and violently cleared demonstrators from the streets and appointed a group of senior military officers to rule the country. The BSPP was dissolved, the 1974 constitution abrogated, and it was announced that multiparty elections (a promise made by the BSPP in its dying days) would go ahead.⁶

³ For detailed discussion of the events, see Mary P. Callahan, *Making Enemies: War and State Building in Burma* (Ithaca, 2003), chapter 7.

⁴ For detailed discussion, see Robert H. Taylor, *The State in Myanmar* (London, 2009), chapter 5. (This is an extended version of his *The State in Burma*, published in 1987).

⁵ *Ibid.*, p. 328.

⁶ For a description of the 1988 events, see Martin Smith, *Burma: Insurgency and the Politics of Ethnicity*, 2nd ed. (London, 1999), chapter 1.

B. *The 1990 Elections*

The prospect of multiparty elections galvanised political activity, and 235 parties registered with the election commission. The National League for Democracy (NLD), led by many of the most prominent anti-government figures of 1988 and with the charismatic Aung San Suu Kyi as general secretary, quickly became the best organised and most popular. The BSPP reformed as the National Unity Party (NUP). A number of veteran politicians and other prominent individuals established parties, including the pre-1962 prime minister, U Nu. Many ethnically or regionally based parties were also formed.⁷

The elections were held on 27 May 1990. The climate was far from free. The regime continued to rule through martial law, basic freedoms were restricted, and there were few possibilities for parties opposed to the regime to campaign. Many leaders of the NLD, which had become increasingly vocal in its criticisms of the regime, had been arrested in July 1989, as was U Nu. Under these conditions, many doubted the outcome could reflect the will of the electorate. Expecting the vote to be rigged, opposition groups in exile called for the NLD to boycott.⁸ Virtually all diplomats reportedly felt that an NUP victory was a foregone conclusion, particularly given the levels of intimidation.⁹

However, as the elections approached, and repression of opposition parties and intensive NUP campaigning failed to stem support for the opposition, the regime appeared to develop doubts that an acceptable outcome was ensured. Its first secretary, Major-General Khin Nyunt, stated on 12 April that the winning party would have to form a government but that “only if a firm constitution can be drawn up ... will the government be a strong one”, and the military “will continue to carry out the responsibilities of the State while the constitution is being drafted ... even after the elections ... till a strong government has been formed”.¹⁰

93 parties ultimately participated, including the NLD and U Nu's (both of whose leaders were in detention).¹¹ Voting was reported as mostly unproblematic, with apparently no count manipulation, probably in part due to the law requiring votes to be tallied in each constituency in the presence of the candidates or their agents. The result stunned everyone. In a more than 72 per cent turnout, the NLD received almost 60 per cent of votes and won over 80 per cent of the legislature's seats. The NUP won 21 per cent of the vote, which the first-past-the-post system translated into 2 per cent of the seats. In line with its pre-election warnings, the military declared on 27 July that “the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State”, but the military

⁷ See Tin Maung Maung Than, *State Dominance in Myanmar* (Institute of Southeast Asian Studies, 2006), chapter 9.

⁸ Crisis Group interview, individual active in the exiled opposition at that time, Bangkok, February 2009. S. Blaustein, “Burma's surreal police state”, *The Nation* (Thailand), 30 April 1990.

⁹ Smith, *op. cit.*, p. 414.

¹⁰ *Working People's Daily*, 13 April 1990. Quote from Burma Press Summaries, April 1990, p. 10, available at <http://myanmarlibrary.org/docs3/BPS90-04.pdf>.

¹¹ The remaining 142 parties had either dissolved before the election or been de-registered by the Election Commission on various grounds, such as contacts with insurgent groups, boycotting or failing to contest the elections, or failure to contest the minimum three constituencies. See Tin Maung Maung Than, *op. cit.*, chapter 9.

would keep power in the interim.¹² Senior NLD figures, including Aung San Suu Kyi, remained under house arrest. Many observers had not paid attention to the military's pre-election statements that there would be no immediate power transfer, since they assumed the results would be rigged.

A long, halting process to draft a new constitution began on 9 January 1993 with the opening session of the "national convention" selected by the regime to carry out the drafting process.¹³ The process was tightly controlled and freedom of debate severely constrained; the NLD withdrew in protest in 1995. After fifteen years – including many recesses and a long adjournment – a draft was finalised on 19 February 2008. It was announced that a referendum on it would be held in three months, with elections in 2010. The May 2008 referendum reflected the lack of credibility of the process: a stated approval rate over 92 per cent on an over 98 per cent turnout. There were many allegations of irregularities.¹⁴

C. *The 2010 Elections*

The 7 November 2010 elections were contested on a playing field tilted heavily in favour of the military-government-backed USDP. The NLD and a number of allied ethnic parties boycotted. The vote was peaceful, but there was massive manipulation of the count and other irregularities.¹⁵ The USDP won 80 per cent of lower house elected seats, 77 per cent of upper house elected seats and 75 per cent of the state/region elected seats.

The most obvious manipulation occurred with votes cast in advance by those who, for various reasons (defined in law), were unable to vote on election day. There were around six million advance ballots, some 10 per cent of all those cast. Advance votes were collected in a non-transparent way, with allegations of serious irregularities. Their distribution among candidates varied markedly from the distribution on polling day, giving further credence to the allegations.¹⁶

The USDP received a large majority of the advance votes, but this alone did not account for the landslide. They changed the outcome for only 64 of 1,154 seats in the national and regional legislatures, all but one in the USDP's favour.¹⁷ Other blatant forms of manipulation were also alleged. Candidates reported that in some unmonitored polling stations, votes went overwhelmingly to the USDP. In several cases, it was

¹² State Law and Order Restoration Council (SLORC) Declaration no. 1/90 of 27 July 1990, published in Working People's Daily, 29 July 1990.

¹³ The national convention was announced on 24 April 1992 in SLORC Declaration 11/92, which stated it would be convened "within six months". Contrary to initial indications, it included only a small minority of elected representatives from the 1990 election, being composed overwhelmingly of a diverse collection of delegates appointed or approved by the regime.

¹⁴ See, for example, "Reject constitutional referendum", Human Rights Watch, 16 May 2008.

¹⁵ Crisis Group Asia Briefings, *The Myanmar Elections and Myanmar's Post-Election Landscape*, op. cit. "Unlevel Playing Field: Burma's Election Landscape", Transnational Institute, October 2010. The USDP was formed from the government-supported Union Solidarity and Development Association mass membership organisation, which had a vast network of offices across the country set up with state funding.

¹⁶ The total electorate is about 30 million, but voters cast three separate ballots – one each for the upper house, the lower house and their region or state assembly; some minority ethnic voters also cast a fourth ballot for additional minority seats (see section IV.D below). Crisis Group Briefing, *Myanmar's Post-Election Landscape*, op. cit.

¹⁷ Crisis Group analysis of official voting figures.

claimed, the authorities simply changed results to ensure that high-profile USDP candidates won and demanded that other candidates sign off on the amended results.¹⁸

In addition, the first-past-the-post system gave the USDP a significant advantage. It obtained 58 per cent of the votes for all assemblies (national and regional), which translated to 77 per cent of all seats. The second-largest party, the National Unity Party (NUP), got 23 per cent of votes but 5 per cent of seats.¹⁹ Ethnic parties fared relatively well in most of the seven ethnic state assemblies but had few representatives at the national level in comparison with the USDP.

The legislatures convened on 31 January 2011, and the regime handed over power to an administration headed by President Thein Sein on 30 March. The controversial USDP landslide and the fact that Thein Sein was a former senior member of the regime left most observers sceptical. There were few hints that a major transition was coming.

D. *The 2012 By-elections*

On 1 April 2012, by-elections were held for 45 seats.²⁰ These were mostly vacated by USDP legislators who were appointed to executive positions, so were required under the constitution to resign from the legislature. Seventeen parties and seven independents contested seats. Given that the number of seats at stake was a small proportion of the total, these by-elections did not have the potential to shift the balance of power in the legislatures, which continued to be dominated by the USDP. Nevertheless, they were important for two reasons. First, they were seen internationally and domestically as a test of the government's willingness and ability to conduct credible elections. Secondly, they represented a moment of political reconciliation, with Aung San Suu Kyi and her NLD taking part after having boycotted the 2010 elections.²¹

The campaign was freer than in 2010, in part because the reform process had created an environment in which people felt able to engage in politics and speak their minds. There were far fewer constraints on the media, which was mostly supportive of the NLD. In the lead-up to the vote, a number of parties complained of irregularities, but there were no indications of widespread foul play.²² The result was a landslide for the NLD, which won 43 seats, making it the largest opposition party in the national legislature. Aung San Suu Kyi took her constituency of Kawhmu with more than 85 per cent of the vote. The USDP secured only one seat, for which there was no NLD candidate. The Shan Nationalities Democratic Party also took one, defeating the NLD candidate in an upper house constituency in Shan state.

¹⁸ The count took place in each polling station at the close of voting, in the presence of candidates or their representatives, but given the many stations, it was hard for most candidates to have representatives in all of them. Crisis Group interviews, December 2010 and January 2011.

¹⁹ Crisis Group analysis of official voting figures. Comparisons of votes and seats are only meaningful for these two parties, since they were the only ones to contest a majority of seats, and there were large variations in voter populations across constituencies.

²⁰ For more detailed contemporaneous discussion, see Crisis Group Briefing, *Reform in Myanmar: One Year On*, op. cit. Michael Lidauer, "Democratic dawn? Civil society and the elections in Myanmar 2010-2012", *Journal of Current Southeast Asian Affairs* (2012).

²¹ This was the first time Aung San Suu Kyi had sought legislative office (she was under house arrest at the time of the 1990 elections).

²² See, for example, ASEAN 3 April 2012 press release and "Statement Attributable to the Spokesperson for the Secretary-General on Myanmar by-elections", UN, 2 April 2012.

These results were a clear demonstration of the wide support for Aung San Suu Kyi and the NLD. This was an obvious concern for the USDP, as well as for ethnic minority parties given the NLD's victory in several seats with large minority populations who often regard it as a party of the Burman elite.²³

²³ These seats included Mawlamyine (capital of Mon state), Toungoo (which has a large Karen population) and Kalaw (which has a complex ethnic mix).

III. Political Importance

A. *The Reform Process*

The reforms launched by the Thein Sein administration since it took power in 2011 have radically transformed the political landscape, including the electoral environment. Freedom of expression and media freedoms now exist, and opposition parties can operate with relative freedom. The manner in which the 2012 by-elections were conducted raises hopes – and expectations – that the 2015 polls will be similarly credible.

Irrespective of how credibly the elections are conducted, certain provisions of the constitution will have an impact on the outcome. The most significant are:

Military legislators. The military's 25 per cent of seats gives it significant legislative power. After the USDP, it is currently the largest bloc in the legislature, with the ability to influence (but not determine) the outcome of deliberations. Crucially, it can veto constitutional changes, which require a super-majority of over 75 per cent. It also nominates one of the three presidential candidates to be voted on by the presidential electoral college, which is made up of all Union assembly representatives. Since the unsuccessful nominees automatically become the two vice presidents, this guarantees that a person chosen by the military occupies one of the top three executive posts.²⁴ These provisions are undemocratic but were considered by the architects of the constitution as necessary to ensure that the military would have the confidence to relinquish its other powers.²⁵

Presidential qualifications. The constitution sets several requirements for presidential candidates, including being "well acquainted with ... political, administrative, economic and military" affairs. The most controversial is Section 59(f), that a presidential candidate, his/her parents, spouse, children or children-in-law shall not owe allegiance to or be a citizen of a foreign country. This restriction on children and spouses of children (not in previous constitutions) is widely seen as having been drafted to exclude Aung San Suu Kyi, whose two sons are British citizens. Even if the NLD has a majority in the presidential electoral college, it will have to choose someone other than its leader for the presidency – and potentially someone from outside the party.²⁶

Electoral system. The first-past-the-post electoral system used in all post-independence elections introduces substantial distortions. This will significantly disadvantage the USDP, since in many constituencies other parties are likely to be more popular: the NLD in the Burman heartland, ethnic minority parties in the periphery. Something similar to the 1990 is plausible, when the regime-backed National Unity Party won 21 per cent of the vote but only two per cent of the seats. Similarly, in 2012 the USDP gained one of 45 seats from 27 per cent of the votes – and that one because the NLD candidate was disqualified. Even assuming the popularity of the NLD has waned, the distortions inherent in the electoral system mean that it is likely to win most of the seats in central parts of the country. There have been efforts to shift to a more proportional electoral system, but these have stalled. Given the self-interest of the USDP

²⁴ This person cannot be a serving military officer, since they are required to resign any military position on appointment to one of these positions.

²⁵ Crisis Group Briefing, *Myanmar's Military*, op. cit.

²⁶ See Section V.B below. Her British husband is dead, so she would presumably not be barred on this basis.

in having some form of proportional representation, it is surprising that it has been very late, and half-hearted, in pushing for that change. While the issue was raised after the 2012 by-elections, it was mostly pushed by minority ethnic and small democratic parties – at least in part because, for tactical reasons, the USDP did not want to be seen as leading on it.²⁷ The first formal push came from an alliance of ten democratic and minority ethnic parties in a letter to the election commission in July 2012. The commission then asked the Constitutional Tribunal for an authoritative opinion on whether proportional representation would be compatible with the constitution. However, that body resigned en masse in September 2012 before having given its interpretation on this point, and the newly constituted Tribunal did not initially take up the matter.²⁸

After further reflection and research, most minority ethnic parties came to oppose proportional representation as threatening their dominance in their own states. The NLD was also vehemently opposed. The chairman of the election commission warned the legislature on 11 October 2013 that if a change was still envisaged, it had to be decided at the latest by the end of the year, due to the lead time required to implement such a major change.²⁹ Nothing more was heard, and the initiative appeared to have died.

The idea was resuscitated with the approval of two proposals – in the upper house on 4 June 2014 and the lower house on 24 July – to shift to proportional representation for the 2015 elections. The lower house established a committee, with the unexpected support of Aung San Suu Kyi and the NLD, to look into the matter.³⁰ An initial report on 10 September set out three options: the current first-past-the-post system, a fully proportional system and a mixed system with proportional representation in the upper house and first-past-the-post in the lower house. At the urging of the speaker,³¹ a second report set out four additional options on 21 October, including a geographically mixed proposal by which the centre of the country would shift to proportional representation and the periphery retain the current system. However, consideration of these options was cut short, when the speaker revealed on 14 November that the Constitutional Tribunal had deemed all except the current system unconstitutional. The chamber then voted against any change.³²

It is unclear why the USDP failed to push harder and earlier for a more advantageous voting system. It is likely linked to the fact that the country's key leaders – the president and speaker – understood and accepted from the outset that the political liberalisation process they had initiated would fatally damage the USDP's electoral chances. They realise that the party will be useful neither for their political prospects, nor for cementing their reformist legacies.

²⁷ Crisis Group interview, individual close to the USDP, Yangon, July 2012.

²⁸ See Crisis Group Report, *Myanmar: Storm Clouds on the Horizon*, op. cit., Section II.B.

²⁹ "Myanmar's parliament told to make quick decision on electoral system", Radio Free Asia, 11 October 2013.

³⁰ The upper house also established a committee, but the larger lower house took the lead.

³¹ See Global New Light of Myanmar, 1 October 2014, p. 2.

³² "Pyithu Hluttaw approves FPTP electoral system", *Global New Light of Myanmar*, 15 November 2014; "Pyithu Hluttaw rejects PR voting", *Myanmar Times*, 16 November 2014. On 24 November, the upper house made a slightly revised proposal for proportional representation just in that chamber, but this appears prima facie to be covered by the original ruling and in any case could not now be implemented in time for the 2015 elections.

B. *Efforts to Amend the Constitution*

There have been strong calls from many quarters, particularly the NLD, for a review of the constitution, including a petition of five million signatures collected by that party and submitted to the legislature.³³ While the initial focus was on the presidential qualifications section, the NLD subsequently began pushing for changes to the amendment procedure (Section 436), seen as the “master key” that would make it easier to modify any clause.³⁴

The amendment procedure is highly restrictive, requiring a bill submitted to the Union Assembly by at least 20 per cent of representatives and approved by a three-quarters majority. For many of the more important sections, a national referendum is also required, with approval of at least 50 per cent of eligible (not actual) voters.³⁵ These provisions have been retained from the 1974 constitution.³⁶

In July 2013, the legislature established a 109-member joint committee to consider the matter.³⁷ It called for submissions from all with an interest and after six months produced a ten-page report that did little more than tabulate the many submissions. The Union Assembly established a second, smaller committee in February 2014, with 31 members and a more action-oriented mandate to make specific proposals for amendments in the form of a bill. The president and speaker both indicated this would be submitted to the legislative session that ended on 10 April, but this did not happen. It looks increasingly unlikely that any constitutional change will be implemented prior to the elections, despite recent six-party talks that brought together key national leaders to discuss the issue.³⁸

C. *The Peace Process*

After more than six decades of internal armed conflict, the government launched a peace process in August 2011. There was significant initial success in reaching bilateral ceasefires with more than a dozen ethnic armed groups, but it proved much more difficult to agree a nationwide accord. On 31 March 2015, after almost eighteen months of negotiations, the government and armed group negotiators did so, but the text needs to be endorsed by armed group leaders, after which it can be signed, potentially in June. In a context where there have been sporadic clashes across many ethnic areas, particularly Shan and Kachin states, as well as very heavy fighting in the Kokang area, the ceasefire agreement has the potential to inject political momentum into the

³³ “Section 436 petition will receive recognition it deserves, says Speaker”, Mizzima, 13 August 2014.

³⁴ Crisis Group interview, senior NLD lawmaker, Naypyitaw, October 2014. See also “Recommendations for amendments of the 2008 Constitution”, National League for Democracy submission to the Constitutional Review Joint Committee, 2013.

³⁵ Sections of the constitution that can only be changed with the additional step of a referendum include: basic principles; state structure; qualifications for and election of the president and vice presidents; legislative structure; composition of Union and Region/State governments, Leading Bodies, and the National Defence and Security Council; judicial structure; provisions relating to state of emergency; and the constitutional amendment procedures themselves.

³⁶ 1974 constitution, Article 194(a), (b). The 1947 constitution required a two-thirds majority in the joint legislature and had no requirement for a referendum.

³⁷ Pyidaungsu Hluttaw (union legislature) Notification no. 41/2013, 25 July 2013.

³⁸ The 10 April talks included the president, upper and lower house speakers, Aung San Suu Kyi, an ethnic party representative and the commander-in-chief. The government said they agreed an agenda, format and date for next meeting, around 11 May, when the legislature reconvenes. “Myanmar’s high level domestic six-party talks agree on three points”, Xinhua, 10 April 2015.

peace process and reduce tensions on the ground. In many ethnic areas, it could make the political and security environment more amenable for elections, though there are likely to be a number of areas where polling cannot take place.

IV. The Election in Detail

A. *Constitutional and Legal Framework*

The constitution establishes a bicameral Union Assembly (Pyidaungsu Hluttaw) at the national level, made up of a 440-seat lower house (Pyithu Hluttaw) and 224-seat upper house (Amyotha Hluttaw). It also establishes fourteen region/state legislatures. On election day, voters will cast a separate ballot for each legislature. Voters from certain minority ethnic groups may also be entitled to elect a separate ethnic representative to the region/state legislature (see Section IV.D below).³⁹

One quarter of the seats in each legislature are reserved for military representatives appointed by the commander-in-chief. The elections will be for the other three quarters (330 in the lower house and 168 in the upper house). These are legislative elections and do not choose a government – the cabinet is appointed by the president. The Union Assembly serves as an electoral college to choose a president from among three candidates nominated, respectively, by the elected members of the upper house, the elected members of the lower house and the military appointees of both houses. These candidates do not need to be legislators.⁴⁰ The two unsuccessful candidates become the vice presidents, while the president selects the members of the government, who need not be drawn from the legislatures.

The constitution stipulates that the legislative term is exactly five years, and the first session of the new body must be held within 90 days of the election. This year's election cannot take place earlier than the end of October, or much later, in order to give time for the new legislature to be formed by the time the previous five-year term expires.⁴¹ The timeline is as follows:

- early August (latest), election-date announcement, constituency designations;
- August, two-week candidate registration period;
- early September, start of 60-day campaign period;⁴²
- early November, polling day;
- 30 January 2016, current legislative term expires, handover to new body;
- early February, presidential electoral college meets; and
- end March, new administration takes over (the current one's five-year term ends on 29 March).

However, this will be the first transfer of power under the current constitution (the 2011 transfer took place under transitional provisions), so there is no precedent to guide the interpretation and application of the relevant provisions.

³⁹ This is set out in Section 161(b, c) of the constitution. See also the provisions of the 2013 Region or State Hluttaw Law.

⁴⁰ Section 60(c) of the constitution states that candidates shall be elected "from among the Hluttaw representatives or from among persons who are not Hluttaw representatives".

⁴¹ Sections 119 and 123 of the constitution. See also "UEC reaffirms elections in late Oct or early Nov", *Global New Light of Myanmar*, 31 December 2014, p. 3.

⁴² The election commission chair confirmed 60 days verbally to parties (30 days were initially envisaged), but a directive has not yet been issued (the laws and bylaws do not fix duration).

B. *Election Administration and Voting*

The sixteen-member Union Election Commission, established by the constitution and the 2012 Union Election Commission Law (and previously a 2010 law of the same name) administers the polls. The current chair and six members of the commission were appointed by the president on 30 March 2011; a secretary was also appointed.⁴³ There has been some criticism that the chair does not appear to have the required independence and impartiality, since he was elected as a USDP legislator in the 2010 elections (he resigned from the party on taking up his present position), had been a senior member of the military regime and is regarded as being close to the president.⁴⁴ His experience and previous rank, however, give him authority and capability to overcome some of the bureaucratic and logistical obstacles the commission will face.

The six other members initially appointed by the president were all part of the original seventeen-member commission established in March 2010, linking the commission to the deeply-flawed 2010 elections.⁴⁵ However, the 2012 by-elections that were regarded as fairly credible and delivered an NLD landslide were held under the current chair.⁴⁶ The new political context and the chair's approach suggest that the commission is trying to the best of its ability to deliver credible and inclusive elections.⁴⁷ It belatedly addressed concerns over lack of diversity – the chair and all members were Burman Buddhists – by appointing an additional eight members on 3 April from the largest ethnic minorities.⁴⁸

A number of decisions reinforce the sense that the commission is making concerted efforts. These include serious attempts to update and digitise the voter roll, including a pilot process in three townships in 2014 that set a positive precedent and helped build trust with civil society organisations; close collaboration with international electoral support organisations; changes to electoral rules on issues that were problematic in 2010, such as advance voting; and willingness to allow international (including long-term) observers for the first time and following standard international best practices.⁴⁹ According to civil society organisations and international observers, the code of conduct for electoral observation was discussed and finalised in an inclusive and transparent manner, with the commission incorporating a lot of feedback from civil society bodies.⁵⁰

⁴³ “Appointment of Chairman of Union Election Commission”, President Office Order no. 3/2011; “Formation of Union Election Commission”, President Office Order no. 5/2011; and “Appointment of Members of Union Election Commission”, President Office Order no. 5/2011, 30 March 2011.

⁴⁴ See “Petition calls for reforms at Union Election Commission”, *Myanmar Times*, 6 February 2015. Tin Aye was a Lieutenant-General and chief of military ordnance.

⁴⁵ The original appointments are listed in State Peace and Development Council Announcement no. 1/2010, 11 March 2010. On 2010 flaws, see Crisis Group Briefing, *Myanmar's Post-Election Landscape*, op. cit.

⁴⁶ See Crisis Group Asia Briefing, *Reform in Myanmar: One Year On*, op. cit.

⁴⁷ Crisis Group interview, Union Election Commission, Naypyitaw, April 2015.

⁴⁸ President Office Order no. 1/2015, 3 April 2015.

⁴⁹ Crisis Group interviews, Union Election Commission, Naypyitaw, April 2015; international electoral support organisations, Yangon, January-March 2015. The pilot voter list process took place in Tiddim, Myitkyina and Ahlon townships. Crisis Group interviews, state, township and village-tract election sub-commissions engaged in voter-list update, December 2014.

⁵⁰ Crisis Group interviews, organisations at coordination meetings with election commissions, Yangon, February-March 2015. “Preliminary findings of the Carter Center Expert Mission to Myanmar December 2014-February 2015”, p. 8.

New bylaws have been adopted that contain significant improvements.⁵¹ Most importantly, the rules on advanced voting have changed.⁵² There is now provision in some cases for these procedures to be observed by candidates, their representatives and polling station agents (in a way that does not compromise the secret ballot).⁵³ In 2010, there were reports in some constituencies of large numbers of advance votes being brought to polling stations late at night after the other votes had been counted and shifting the results. In 2015, they must be submitted before polling stations close and immediately thereafter be counted separately in the presence of observers, before the main results are known.⁵⁴

The cost of a candidacy has been reduced, from 500,000 to 300,000 kyat (about \$280). In 2010, this was non-refundable, imposing significant burden on parties contesting many constituencies; now, as in 1990, it is a deposit, refunded in full to winners, as well as any candidate who obtains at least 12.5 per cent of the valid vote. The fee for lodging an electoral complaint has been halved, to 500,000 kyat (about \$460), though this is still very high and non-refundable, regardless of the outcome of the complaint. Moreover, voting procedures have been changed, with pens replaced by self-inking stamps for marking ballot papers and introduction of indelible ink to mark voters and prevent double voting.

External factors will also improve credibility of the 2015 elections. The major reforms mean that, unlike 2010, the political environment is one in which people feel relatively free to engage in politics and speak their minds. Greatly improved media freedoms allow for more sophisticated campaigning and detailed reporting of issues, and there has been some – probably insufficient – discussion between local journalists and the commission aimed at improving election reporting.⁵⁵ Huge efforts will be needed to overcome the extremely poor understanding among much of the electorate about the system and what they will be voting for. For example, a recent survey found low interest in politics (though election participation tends to be high); 44 per cent incorrectly believed they directly elect the president (only 12 per cent knew that the Union Assembly does this); and only 4 per cent could name their legislative representative.⁵⁶

There are a number of challenges in ensuring the elections are inclusive. Many citizens do not have identity cards (ID) that make it easier to get on voter lists or to vote. This includes those in remote, conflict-affected areas where government administration is weak or non-existent, and people across the country, particularly migrants, who cannot afford to replace lost cards. It is possible for those without ID to be included

⁵¹ Pyithu Hluttaw Election Bylaws, July 2014 (in Burmese), and the corresponding bylaws for the upper house and region/state assemblies. These automatically entered into force following the prescribed period for the legislature to raise objections (none were raised).

⁵² For detail on manipulation and fabrication of advance votes in 2010, including that many civil servants and employees at state-owned enterprises were told to vote in advance, and these votes were not collected in a transparent way, see Crisis Group Briefing, *Myanmar's Post-Election Landscape*, op. cit., p. 2.

⁵³ 2014 Election Bylaws, Rule 51(b)(vi). The exceptions are advance voting by military personnel away from their constituencies and people outside their constituency, including overseas (since they do not vote at a specified location).

⁵⁴ Crisis Group Briefing, *Myanmar's Post-Election Landscape*, op. cit. 2014 Election Bylaws, Rules 66-71.

⁵⁵ The Interim Press Council and the election commission are preparing a code of conduct on electoral reporting.

⁵⁶ "Myanmar 2014: Civic Knowledge and Values in a Changing Society", The Asia Foundation, 2014.

on the voter list and vote if their township or village-tract authorities attest that they meet citizenship criteria.⁵⁷

A recent decision by the president to invalidate the temporary registration certificates held by most Muslims in Rakhine state (more than half a million), as well as some 100,000 people of Chinese and Indian descent across the country, means that up to a million will not be able to vote unless they can verify eligibility for citizenship.⁵⁸ This severs the last link that many Muslims in Rakhine state feel they have with political life, with potentially serious implications for medium-term stability in that region.⁵⁹ In addition, there are some 100,000 Kachin people displaced and living in camps in Kachin and northern Shan states.⁶⁰ The election commission has committed to ensuring that they do not lose the right to vote, but detailed arrangements have not yet been made.⁶¹

The commission shows willingness to allow a high degree of scrutiny of the election process. The cooperatively developed codes of conduct for domestic and international observers were released on 19 March.⁶² International observers include the U.S.-based Carter Center, which has done long-term observation since December 2014, with freedom of movement for its teams, including in ethnic border areas,⁶³ and the EU, which is expected to deploy observers in August. The Asian Network for Free Elections (ANFREL) is also likely to be invited.⁶⁴ Importantly given the 2010 irregularities, there is provision for the observation of advance voting, though the guidelines are not yet detailed, and military installations are apparently excluded.

Restrictions resulting from the fighting in northern Shan state and disenfranchisement of Muslim communities in Rakhine state are likely to be clear shortcomings. However, it is also important to see the elections from the perspective of the tens of millions who will have the chance to exercise their democratic rights in a way not possible for six decades.

C. *Political Parties*

A large number of parties have registered since March 2010, when the political party law was first issued (for a full list, see Appendix B below). Of the 71 currently registered, 36 did so prior to the 2010 elections, six prior to the 2012 by-elections and 29 subsequently. The election commission has set a 30 April deadline for new parties to begin the process.

⁵⁷ Crisis Group interview, Union Election Commission, Naypyitaw, April 2015.

⁵⁸ President Office Notification no. 19/2015, 11 February 2015.

⁵⁹ Crisis Group Report, *Myanmar: The Politics of Rakhine State*, op. cit.

⁶⁰ There are a further 150,000 displaced people in camps in Rakhine state, but most are Muslim temporary registration certificate holders no longer eligible to vote. Figures from UN Office for the Coordination of Humanitarian Affairs (OCHA), November 2014 (Rakhine) and January 2015 (Kachin, N. Shan). Approximately 50-60 per cent are of voting age.

⁶¹ Crisis Group interview, Union Election Commission, Naypyitaw, April 2015. According to election laws, voters away from their normal residence for at least 180 days may apply up to 30 days before election day to vote at their current location. This is likely to be applied also to internally displaced persons (IDPs).

⁶² Union Election Commission, notifications 1/2015 and 2/2015, 19 March 2015.

⁶³ See "Preliminary findings of the Carter Center Expert Mission", op. cit.

⁶⁴ Crisis Group interview, Union Election Commission staff, Naypyitaw, April 2015.

Two-thirds of the parties represent minority ethnic groups, both the seven major ones that have their own states,⁶⁵ and smaller sub-minorities. At this early stage in the transition and given the long marginalisation of ethnic minority communities, identity politics still holds sway. This means parties tend to form around ethnic identities, not policies. The biggest issue they identify is securing sufficient financial resources, as well as their limited technical and organisational capacity.⁶⁶ Most major ethnic groups are represented by (at least) two parties: those from 1990 that mostly boycotted the 2010 polls but have subsequently re-registered; and newer ones that registered in 2010, so are in the legislatures.

In general, there has been a shift away from 2010 parties, which have a head-start in mobilisation but opposition credentials damaged by perceived co-option in 2010, in favour of the 1990 parties, which are seen in many quarters as more principled and stalwart.⁶⁷ Thus, the All Mon Regions Democracy Party, registered in May 2010, enjoyed strong support in Mon communities, won sixteen legislative seats and became the third-largest ethnic party (fifth-largest overall). But public support in Mon communities and among their leaders seems to be steadily increasing for the Mon National Party, registered in July 2012 as the incarnation of the main 1990 Mon party.⁶⁸ A similar dynamic can be seen in Shan state between the Shan Nationalities Democratic Party (the third-largest party after the USDP and NLD) and the re-registered Shan Nationalities League for Democracy that competed in 1990 and is led by veteran opposition politician Khun Htun Oo.

There is a somewhat analogous situation in the centre of the country. The NLD won a landslide victory in 1990, but boycotted the 2010 elections. An NLD splinter, the National Democratic Force, did contest and won some seats but has now been eclipsed by the NLD, with no prospects of a merger.

There has been recognition among many ethnic political leaders, driven by concerns about disunity and vote splitting, that it would be desirable for 1990- and 2010-era parties to merge. Mon and Shan parties reached tentative agreements, but the necessary personal and political cooperation has remained elusive.⁶⁹ There has been only one successful merger: the Rakhine Nationalities Development Party from 2010 and the Arakan League for Democracy from 1990 (re-registered in May 2012) merged in March 2014 to form the Arakan National Party, and both predecessors were de-registered as agreed with the commission.⁷⁰

Only two parties are likely to contest most constituencies nationwide, the USDP and NLD.⁷¹ The former has considerable incumbent advantage, the latter, massive

⁶⁵ The Chin, Kachin, Kayah, Kayin (Karen), Mon, Rakhine and Shan.

⁶⁶ Crisis Group interview, academic who recently conducted extensive research with ethnic minority political parties in Myanmar, Yangon, March 2015. "Preliminary findings of the Carter Center Expert Mission", *op. cit.*, p. 9.

⁶⁷ Crisis Group interview, academic who recently conducted extensive research with ethnic minority political parties in Myanmar, Yangon, March 2015.

⁶⁸ Crisis Group interviews, Mon state and Tanintharyi region, November 2014. The Mon National Party initially registered as the Mon Democracy Party and changed its name in March 2014. In 1990 it was registered as the Mon National Democratic Front.

⁶⁹ Crisis Group interviews, numerous ethnic political leaders since 2010. Two Chin parties agreed a merger in April 2013 but could not complete it. Both are 2010-era parties. The Chin League for Democracy, a 1990 party, re-registered in July 2014.

⁷⁰ Crisis Group interviews, Rakhine political leaders, Yangon and Sittwe, July 2014.

⁷¹ In a 3 April interview, Aung San Suu Kyi said, "we don't think that boycotting the election is the best choice. But we're not ruling it out altogether. We are leaving our options open". This is likely to

popularity in central Burman-dominated areas, largely due to its iconic leader. The USDP is engaged in concerted efforts to build support by leveraging its advantages: its big national network of offices and staff, provided from state resources pre-2010; its links to the government and civil service; and its many legislators and the constituency funds they control. There are allegations that in door-to-door canvassing in some areas, it has promised access to financial support, including microfinance, for its supporters. The NLD relaunched its party journal (*D-Wave*) in January, established a campaign committee in February and appears confident of victory but in general has been much less active or visible.⁷²

How this will play out is uncertain, but as the USDP is deeply unpopular and closely connected with the old military government, and the NLD has long represented aspirations of many for a better future, it is hard to see the USDP beating the NLD in many constituencies in the centre or ethnic parties in the periphery. With the first-past-the-post system, this could translate into a USDP rout.

D. *Constituencies*

The procedure for delineating constituencies is stipulated in the constitution. There are four types:

Lower house. Each of the 330 townships is a constituency, with the remaining 110 seats reserved for military appointees.

Upper house. Twelve constituencies are designated in each of the fourteen states and regions, a total of 168. These are formed by combining townships into a single constituency or splitting a township into two, taking account of the population of each. The remaining 56 seats are for military appointees.

State/region assemblies. Two constituencies are designated in each township, with approximately equal population,⁷³ but none for the Naypyitaw townships, a Union territory directly administered by the president. As with other legislatures, a quarter of the seats are reserved for military appointees.⁷⁴

Additional minority seats. There are minority constituencies in the state/region assemblies designated in accordance with Section 161 of the constitution (see below). 29 such constituencies were designated in 2010, the boundaries of each being the respective region or state.

be a tactical stance to maintain pressure in advance of constitutional reform discussions and the issuance of campaign regulations. It seems extremely unlikely that the party would boycott polls it is very likely to win. Quote from "Suu Kyi says boycott of Myanmar election an option", Reuters, 3 April 2015.

⁷² "USDP comes knocking in voter outreach push", *The Irrawaddy*, 12 January 2015. "NLD publication to relaunch as weekly paper amid circulation woes", *Myanmar Times*, 28 January 2015; "NLD forms campaign committee", *Myanmar Times*, 13 February 2015.

⁷³ Region or State Hluttaw Election Law, section 4. The township is split along village-tract boundaries.

⁷⁴ A number of seats equal to one-third of the elected constituencies (thus one quarter of the total in the legislature) are reserved for military appointees, rounded up if not a whole number.

Because constituencies are coextensive with administrative areas, and these vary widely in population, there is significantly uneven distribution of voters:

- This is deliberate in the upper house: the constitution gives all states and regions equal representation regardless of population, resulting in over-representation for most ethnic minority states, which mostly have smaller populations than Burman-majority regions; all ethnic states except Shan are over-represented; all regions except Tanintharyi are under-represented.⁷⁵
- In the lower house, malapportionment is a by-product of the decision to simplify districting by using administrative boundaries for constituencies. This can also mean over-representation for some minorities, since many (by no means all) less-populated townships are in minority areas. A common malapportionment measure is the population ratio of the largest and smallest constituencies, in the lower house, 480:1, very high by international standards.⁷⁶

Such distortions, particularly unintended ones, can undermine the overall fairness of the electoral system and thus its credibility. Malapportionment could also potentially be taken advantage of for campaign targeting or electoral manipulation. All else being equal, it is easier to influence (legally or illegally) voting behaviour of a very small population than a very large one. The smaller constituencies in both houses are therefore likely to be a priority for party agents and election observers. Remedying lower-house malapportionment would require constitutional amendment and a complex redistricting process that could take several years and would introduce other risks, particularly gerrymandering.

The other major concern about constituency designation concerns the additional minority seats. Minority populations of more than about 51,400⁷⁷ in a region or state each have the right to elect a representative to their regional legislature.⁷⁸ These also serve as state/region ethnic affairs ministers for matters relating to their respective ethnic communities. While the influence and powers of these positions are quite limited, they are becoming more prominent, a trend that will likely continue after the elections. In 2010, the process for designating what turned out to be 29 constituencies was not transparent, in three ways:

- It was not clear which ethnicities were eligible to be considered for such seats. There are 135 officially recognised ethnic minority groups, a highly controversial and contested list. Eight are recognised as “major” (the Burmans plus the groups corresponding to the seven ethnic states⁷⁹); the rest are listed as sub-groups of these eight. In some cases the major groups were used (eg, Chin minority seats were designated in Magway and Sagaing regions and Rakhine state, rather than one or more of the 53 Chin sub-groups). In others, the sub-groups were accorded seats

⁷⁵ Four of the seven ethnic states have less than two million people (Kayah 0.3m, Chin 0.5m, Kayin 1.6m, Kachin 1.7m); all seven regions have more than two million, except Tanintharyi (1.4m). All population figures in this report are from the preliminary results of the 2014 census.

⁷⁶ The Yangon township of Hlaingthaya has a population of 687,000, the island township of Cocogyun 1,400. The average township population is 156,000.

⁷⁷ The threshold is set at 0.1 per cent of the population of the country. Provisional results of the 2014 census give this as 51.4 million. A final figure will be released in May 2015.

⁷⁸ Provided, that is, they are not the main group in that region or state and do not already have a self-administered area there.

⁷⁹ Chin, Kachin, Kayah, Kayin, Mon, Rakhine and Shan.

(eg, the Akha and Lahu in Shan state, both listed as Shan sub-groups). Even more confusingly, in Shan state there were minority seats for both Kachin and Lisu, though the latter are listed as a sub-group of the former. According to the election commission, eligibility criteria are the responsibility of the immigration and population ministry.⁸⁰

- It was not clear where the population figures came from to determine whether the threshold for a minority seat was met. In theory, the 2014 census, despite its flaws, could provide a more objective and transparent basis, but this will not be possible since ethnicity data will not be released until 2016 at the earliest – in part because they could be so politically sensitive in the election context. The election commission has said it awaits word from the immigration and population ministry, responsible for providing population figures, but its data are neither systematic nor public, so are lacking in credibility.⁸¹
- It was not clear who was eligible to vote or how this could be determined; it appears there was no separate voter list for these constituencies. Citizenship cards indicate ethnicity but were not always required to be shown to vote, and some cards list multiple ethnicities; no guidance was apparently provided for dealing with this in the context of eligibility to vote for the minority seats.⁸²

As a result of the lack of clarity and the Burmans being the big winners with five of the 29 seats, several ethnic groups have taken matters into their own hands, conducting informal censuses of their populations in different states and regions, with a view to lobbying the election commission to designate minority seats and providing supporting evidence. Mon leaders in November 2014 thus surveyed the Mon population in Tanintharyi region, reportedly identifying 62,000.⁸³ However, some two thirds apparently lacked official supporting documentation, mostly because they had no ID card, but in some cases because their cards indicated a different ethnicity (generally Burman).⁸⁴ The report was submitted to the government, legislature and election commission, with a call to speed up issuing identity cards to those without them, and to ease procedures for those wishing to change the ethnicity on their existing cards.

A further complication is that some people have multiple ethnicities on their identity cards, and it is not clear how this would be dealt with in relation to minority seats. Other groups have also announced plans to count their populations, including in Chin, Karen, Shan and Kaman.⁸⁵ This could lead to a situation where the designation of

⁸⁰ Crisis Group interview, Union Election Commission, Naypyitaw, April 2015.

⁸¹ Crisis Group Briefing, *Counting the Costs*, op. cit.; interview, Union Election Commission, Naypyitaw, April 2015. Census ethnicity data are highly controversial; people could choose from among the 135 groups, and there was also the possibility to identify as “other” or more than one ethnicity. The risk of subdivision was in the minds of ethnic leaders – for example, with a Karen campaign to identify in the census just as “Kayin”, rather than as one of the sub-groups.

⁸² “Ethnicity without Meaning, Data without Context: The 2014 Census, Identity and Citizenship in Burma/Myanmar”, Transnational Institute, February 2014, p. 12.

⁸³ A similar effort by Mon community leaders in Yangon region ended, reportedly due to lack of funding, with only 41,000 Mon identified; the organisers of the effort claim the real total is around 100,000. Efforts were also planned for Bago region, but it does not seem that a count of the Mon population has gone ahead there.

⁸⁴ There have long been anecdotal reports of minority people being identified as Burman on official documentation.

⁸⁵ See, “Ethnicity without Meaning”, op. cit. p. 14.

these seats depends in part on the financial, political or organisational ability to lobby for them.

E. *Security Issues*

Elections in a country still grappling with the legacy of over six decades of civil war and in the midst of a fragile peace process are a fraught task. There will be areas where the security situation prevents voting, as in 2010 and 2012, but also risks elsewhere of electoral violence and other security challenges. The signing of a nationwide ceasefire, possibly in June, would only partially alleviate the risks.

Cancellation for security reasons is a sensitive issue that needs to be handled transparently, or disenfranchisement could impact credibility, particularly if it gives rise to perceptions that minority communities are being selectively disfavoured for political reasons or in a way that could skew results. In 2010, the commission issued notifications a few weeks before the vote listing areas where it would not take place, "as they are in no position to hold free and fair elections".⁸⁶ Most were insecure or conflict areas in the ethnic borderlands, including the four townships in Shan state controlled by the United Wa State Army (UWSA) ceasefire group that did not allow them; two constituencies in the Kachin state legislature; and some 300 village-tracts spread across 32 townships (but no entire constituencies), with Kayin state being most affected. The military informed the commission where voting could not take place, but the detailed reasoning was not disclosed, raising questions whether political rather than security considerations may have been behind some decisions.⁸⁷

Given recent heavy fighting in the Kokang area; clashes in other parts of northern Shan and Kachin states; several no-go areas for the government;⁸⁸ and insecurity in many other border areas, there could be many townships and village-tracts where holding elections would be difficult or impossible. A transparent, accountable process for determining them will be important. According to the commission, two main criteria will be used: whether it has been possible to assemble voter rolls there and whether the commission can move freely to administer the polls.⁸⁹ This could be impacted in some instances by the fact that many members of local election sub-commissions are ex-military.

There will also be security risks in many areas where elections proceed. These could take several forms. There are many tensions between ethnic groups that electoral issues could exacerbate. With the strong tendency for identity politics, obvious flash-points are in mixed-ethnicity constituencies, particularly where the mix approaches 50-50, as in Shan-Pao and Shan-Kachin constituencies.⁹⁰ There is a real risk that some of these tensions could lead to violence.

⁸⁶ "Areas where elections will not be held", five Union Election Commission Notifications, nos. 99/2010-103/2010, 16 September 2010.

⁸⁷ Crisis Group interview, individual working closely with the Union Election Commission, Yangon, February 2015.

⁸⁸ Such areas include parts of Kachin state and potentially the UWSA-controlled area and Mongla township.

⁸⁹ Crisis Group interview, Union Election Commission, Naypyitaw, April 2015. This is in accordance with Section 50 of the 2010 Pyithu Hluttaw (lower house) Election Law (as amended, 2011) and the corresponding provisions of the election laws for the upper house and state/region legislatures.

⁹⁰ For example, Maukme township: "Pao leader frets over soldiers' alleged detention by Shan rebels", *The Irrawaddy*, 22 September 2014; "Talks between Shan, Pao break down", *Myanmar Times*, 24

There are also risks of violence due to competition between two (or more) parties seeking to represent the same ethnic population, particularly where one has closer links to or greater support from an armed group. The constitution and electoral laws prohibit parties from links with illegal organisations or armed groups, punishable by deregistration,⁹¹ so they are careful to avoid such declared or public links, though this may change if the nationwide ceasefire is signed, as it provides that armed group signatories will be removed from the unlawful associations list. But current illegality does not mean discreet or informal links do not exist, and even without them, some armed groups may prefer one party.

This could potentially result in pressure, intimidation or violence toward parties or voters. For example, the leader of the legislature's largest ethnic party, the Shan Nationalities Democratic Party, has claimed that the rival Shan Nationalities League for Democracy is supported in some areas by the Shan State Army–North armed group, leading to intimidation of its members.⁹² The National League for Democracy has claimed it will not be able to contest constituencies in the Pao self-administered zone due to Pao National Organisation threats.⁹³

Finally, it is not inconceivable that an armed group may choose election day for attacks with no electoral agenda, so as to get the maximum publicity and to damage the government politically. This happened on the eve of the 2010 polls, when a Karen splinter group struck the border towns of Myawaddy and Pyathonzu.⁹⁴

November 2014; and “‘Red Shan’ caught between violence in Kachin State conflict”, *Myanmar Times*, 16 November 2012.

⁹¹ Section 407(b) of the constitution.

⁹² See “Five years ago, people were afraid of politics”, *Myanmar Times* interview with SNDP chairman, 23 March 2015.

⁹³ For background, see “NLD members threatened at gunpoint to resign in east Burma”, *The Irrawaddy*, 23 May 2013. The Pao National Organisation is both an armed ceasefire group and a registered political party established by the group.

⁹⁴ “Burma’s new government: Prospects for governance and peace in ethnic states”, Transnational Institute, May 2011.

V. Prospects for a Credible Election

A. *The Vote*

There are major challenges in delivering a credible, inclusive and peaceful election. The signing of a nationwide ceasefire would improve trust and security on the ground but not remove the difficulties in some conflict-affected areas. In Rakhine state and parts of central Myanmar, there have been serious intercommunal and inter-religious tensions in recent years, which could resurface in the politically charged atmosphere of an election. More broadly, the electorate's trust in government institutions is low, and the election commission is widely perceived as lacking impartiality and being politically close to the government and hence to the USDP – at the national level but even more so locally.

However, the commission appears determined to deliver the most credible elections that it can, and has been impressively transparent and consultative. Security appears to have become a priority not only for it, but also for the security services and the government. At the annual Armed Forces Day parade on 27 March, the commander-in-chief, Senior General Min Aung Hlaing, pledged the military's support for credible democratic elections and warned it would not tolerate instability or armed threats to the polls.⁹⁵ The president had earlier asked armed group leaders for their support in ensuring peaceful elections.⁹⁶

Apart from conflict and security risks, the main challenge the commission faces is capacity. The stakes for many individuals and parties are very high at this moment of political transition. Irregularities are likely, and even with strong will, the capacity of the commission and local sub-commissions could be severely stretched. There is little experience of democratic elections among the administration and the electorate and a low level of knowledge, a particular issue given the complexity of the electoral laws, which require the collaboration of several government entities. Voter education will be critical.

Even if the process is generally credible, acceptance of the results will depend on how these match expectations as much as on the credibility of the process. Unlike in previous elections, when results were published in hardcopy in supplements to the state newspapers some days after the vote, there will be results management and media centres to facilitate their release as quickly and broadly as possible. The first results will likely come from urban areas in the centre of the country – probably NLD strongholds, which would give that party an initial favourable surge. When more remote, particularly ethnic constituencies begin reporting, the NLD's lead may be reduced. This could give rise to perceptions of manipulation and impact negatively on acceptance of the results in some quarters.⁹⁷

B. *What Happens Next*

Nevertheless, there are no fundamental reasons why the election commission cannot deliver broadly credible polls within the constraints set by the constitution. Whether the process as a whole is so seen depends on more than the polls, however. Many will

⁹⁵ "Myanmar army commander pledges successful elections", Associated Press, 27 March 2015.

⁹⁶ "President meets with ethnic armed groups, hopes for quick ceasefire accord", *The Irrawaddy*, 5 January 2015.

⁹⁷ Crisis Group interview, international electoral assistance organisation, Yangon, March 2015.

judge this on the extent to which the elections further the reform process, in particular on who runs the country next. Many tensions could surface in the more than four months between election day and when power is transferred to the new administration. There are obvious sources of tension in this period, linked to expectations of constituencies:

The USDP and the old elite. The elections are a major political inflection point, when the USDP will see its dominance in the legislatures ended. Its precise decline is impossible to predict, but the fact that it is closely associated with the unpopular authoritarian past, the popularity of Aung San Suu Kyi and the NLD, better-organised ethnic minority parties, and the distortions inherent in the first-past-the-post system could combine to deliver a dramatic defeat. Though the current reformist leaders of the government, legislature and military seem reconciled to this, it is far from clear how the USDP as a whole and the old conservative elite will react. The long period between the elections and transfer of power will provide plenty of time for the implications to sink in.

Aung San Suu Kyi, the NLD and supporters. There is likely to be a disconnect between the results and the leadership of the country. Aung San Suu Kyi's NLD is well-positioned to be the largest party in the legislature, possibly by a considerable margin. Whether or not it wins two-thirds of the elected Union Assembly seats – the threshold for an outright majority once military appointees are factored in – the size of its bloc will probably mean that its presidential nominee will prevail. Yet, the constitutional provisions mean she is ineligible for that role, and this is unlikely to change before the elections. The NLD acknowledges that it has no “number two”, meaning that its presidential candidate will probably come from outside its ranks, most likely a reformist member of the old military regime. How Aung San Suu Kyi, the NLD and its supporters react to a situation in which they won a resounding victory but could not directly take power would have a big impact on perceptions of the electoral process and the credibility of the new administration.

The military. It initiated the transition and continues to back it. It has supported the elections and pledged to ensure they are not undermined, but its expectations are unclear. Some speculate that it wishes to ensure its own bloc of seats, together with a non-trivial USDP bloc, would be sufficient to keep the old elite in power, though there is no evidence to support such conjecture and some contrary indications. The military has not been a close ally of the USDP, voting against it on many key legislative issues and critical of what it sees as petty political jockeying not in the national interest.⁹⁸ It has taken no obvious steps to boost USDP electoral chances – to the contrary, voting against proportional representation in the upper house.⁹⁹ The military could conceivably be ready to accept a large NLD victory, provided Aung San Suu Kyi remains barred from the presidency, and a compromise candidate is selected.

There has been much speculation about possible coalitions, but Myanmar has a quasi-presidential, not a parliamentary system. It is not the winning party that forms a government, but rather the president, who must cease party-political activities on assuming the post. He is chosen indirectly by the union assembly acting as an electoral col-

⁹⁸ See Crisis Group Briefings, *Myanmar's Military and Not a Rubber Stamp*, both op. cit

⁹⁹ See “Burma's upper house votes to change electoral system”, *The Irrawaddy*, 13 June 2014; and “Electoral change motion reveals true political colours”, *Myanmar Times*, 23 June 2014.

lege. A coalition needs to hold only for that vote. Even this is not necessary, since with only three candidates for president, the one receiving the vote of the largest party is likely to win, even without a coalition.

The period between announcement of election results in early November and the electoral college, likely in February, will be one of considerable uncertainty, possibly tensions. This is when messy, potentially divisive horse-trading will occur over who will become president, with whose support and what quid pro quos.

VI. Conclusion

Trust in government among the electorate is low, as is the perceived independence and neutrality of the election commission. However, the increasingly transparent and consultative way in which it is working and its decisions suggest it is trying to ensure a credible and inclusive election, though the challenges, in a context of a fragile peace process and newly opening political space, are enormous.

The stakes are high. The main ethnic minority parties are likely to further consolidate their power in the borderlands. The NLD, competing in its first general election since the abortive 1990 polls, is well-placed to dominate nationally. This would be a major shift in the political landscape, away from the USDP-dominated legislature and with a significant impact on the old elite. While the current leadership appears reconciled to this, how the broader elite will react is uncertain.

The several months between the elections and the transfer of power could be fraught. With Aung San Suu Kyi constitutionally barred from the presidency and no other obvious candidate within her party, a compromise nominee will likely have to be sought. How she, her party and its supporters will respond – with criticism, compromise or confrontation – will have a major impact on the tone and direction of future politics.

The challenge is to hold credible and peaceful elections, but also to manage the transition to a new political power structure. It is an opportunity to reinforce the reform process, or a moment when zero-sum politics could imperil it.

Yangon/Brussels, 28 April 2015

Appendix A: Map of Myanmar



Appendix B: List of Registered Political Parties

	Party Name	Reg. No. ¹⁰⁰
1	88 Generation Student Youths (Union of Myanmar)	17
2	All Mon Regions Democracy Party	13
3	All Nationalities Democracy Party (Kayah State)	64
4	Asho Chin National Party	55
5	Bamar People's Party	46
6	Chin League for Democracy	75
7	Chin National Democratic Party	21
8	Chin Progressive Party	26
9	Danu National Democracy Party	57
10	Dawei Nationalities Party	70
11	Democracy and Human Rights Party	63
12	Democracy and Peace Party	14
13	Democratic Party (Myanmar)	6
14	Ethnic National Development Party	33
15	Federated Union Party	71
16	Inn National Development Party	27
17	Kachin Democratic Party	72
18	Kachin National Democracy Congress Party	68
19	Kachin State Democracy Party	67
20	Kaman National Progressive Party	36
21	Kayah Unity Democracy Party	65
22	Kayan National Party	7
23	Kayin Democratic Party	51
24	Kayin National Party	78
25	Kayin People's Party	9
26	Kayin State Democracy and Development Party	41
27	Khami National Development Party	37
28	Khumi (Khami) National Party	76
29	Kokang Democracy and Unity Party	4
30	Lahu National Development Party	3
31	Lisu National Development Party	69
32	Modern People's Party	23
33	Mon National Party	58
34	Mro National Democracy Party	80
35	Mro National Development Party	1
36	Mro Nationalities Party	52
37	Myanmar New Society Democratic Party	49

¹⁰⁰ Some registration numbers are missing because parties have been de-registered for failing to contest a minimum three constituencies in the 2010 elections or 2012 by-elections, or in a few cases due to mergers. Registration numbers are not re-used.

38	Myanmar Farmers' Development Party	61
39	Myanmar National Congress Party	50
40	Myanmar Peasant, Worker, People's Party	79
41	National Democratic Force	38
42	National Democratic Party for Development	31
43	National Development and Peace Party	42
44	National League for Democracy	47
45	National Political Alliance	19
46	National Prosperity Party	66
47	National Solidarity Congress Party	62
48	National Unity Party	2
49	New National Democracy Party	44
50	New Society Democratic Party	77
51	Pao National Organization	5
52	Peace and Diversity Party	25
53	People's Democracy Party	43
54	Phalon-Sawaw [Pwo-Sgaw] Democratic Party	30
55	Rakhine National Party (Arakan National Party)	74
56	Rakhine State National Force Party	8
57	Shan Nationalities Democratic Party	15
58	Shan Nationalities League for Democracy	56
59	Shan State Kokang Democratic Party	60
60	Taaung (Palaung) National Party	12
61	Tai Lai (Red Shan) Nationalities Development Party	53
62	Union Democratic Party	24
63	Union of Myanmar Federation of National Politics	18
64	Union Pao National Organization	73
65	Union Solidarity and Development Party	32
66	United Democratic Party	16
67	Unity and Democracy Party of Kachin State	40
68	Wa Democratic Party	29
69	Wa National Unity Party	10
70	Wunthanu Democratic Party	22
71	Zomi Congress for Democracy Party	59

(Table reflects the situation as of 23 April 2015.)

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 125 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown, and Dean of Paris School of International Affairs (Sciences Po), Ghassan Salamé.

Crisis Group's President & CEO, Jean-Marie Guéhenno, assumed his role on 1 September 2014. Mr. Guéhenno served as the United Nations Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013.

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April 2015

Appendix D: Reports and Briefings on Asia since 2012

As of 1 October 2013, Central Asia publications are listed under the Europe and Central Asia program.

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Stirring up the South China Sea (I), Asia Report N°223, 23 April 2012 (also available in Chinese).

Stirring up the South China Sea (II): Regional Responses, Asia Report N°229, 24 July 2012 (also available in Chinese).

North Korean Succession and the Risks of Instability, Asia Report N°230, 25 July 2012 (also available in Chinese and Korean).

China's Central Asia Problem, Asia Report N°244, 27 February 2013 (also available in Chinese).

Dangerous Waters: China-Japan Relations on the Rocks, Asia Report N°245, 8 April 2013 (also available in Chinese).

Fire on the City Gate: Why China Keeps North Korea Close, Asia Report N°254, 9 December 2013 (also available in Chinese).

Old Scores and New Grudges: Evolving Sino-Japanese Tensions, Asia Report N°258, 24 July 2014 (also available in Chinese).

Risks of Intelligence Pathologies in South Korea, Asia Report N°259, 5 August 2014.

South Asia

Sri Lanka's North (I): The Denial of Minority Rights, Asia Report N°219, 16 March 2012.

Sri Lanka's North (II): Rebuilding under the Military, Asia Report N°220, 16 March 2012.

Talking About Talks: Toward a Political Settlement in Afghanistan, Asia Report N°221, 26 March 2012.

Pakistan's Relations with India: Beyond Kashmir?, Asia Report N°224, 3 May 2012.

Bangladesh: Back to the Future, Asia Report N°226, 13 June 2012.

Aid and Conflict in Pakistan, Asia Report N°227, 27 June 2012.

Election Reform in Pakistan, Asia Briefing N°137, 16 August 2012.

Nepal's Constitution (I): Evolution Not Revolution, Asia Report N°233, 27 August 2012 (also available in Nepali).

Nepal's Constitution (II): The Expanding Political Matrix, Asia Report N°234, 27 August 2012 (also available in Nepali).

Afghanistan: The Long, Hard Road to the 2014 Transition, Asia Report N°236, 8 October 2012.

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Sri Lanka: Tamil Politics and the Quest for a Political Solution, Asia Report N°239, 20 November 2012.

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Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013.

Drones: Myths and Reality in Pakistan, Asia Report N°247, 21 May 2013.

Afghanistan's Parties in Transition, Asia Briefing N°141, 26 June 2013.

Parliament's Role in Pakistan's Democratic Transition, Asia Report N°249, 18 September 2013.

Women and Conflict in Afghanistan, Asia Report N°252, 14 October 2013.

Sri Lanka's Potemkin Peace: Democracy under Fire, Asia Report N°253, 13 November 2013.

Policing Urban Violence in Pakistan, Asia Report N°255, 23 January 2014.

Afghanistan's Insurgency after the Transition, Asia Report N°256, 12 May 2014.

Education Reform in Pakistan, Asia Report N°257, 23 June 2014.

Afghanistan's Political Transition, Asia Report N°260, 16 October 2014.

Resetting Pakistan's Relations with Afghanistan, Asia Report N°262, 28 October 2014.

Sri Lanka's Presidential Election: Risks and Opportunities, Asia Briefing N°145, 9 December 2014.

Mapping Bangladesh's Political Crisis, Asia Report N°264, 9 February 2015.

Women, Violence and Conflict in Pakistan, Asia Report, N°265, 8 April 2015.

South East Asia

Indonesia: From Vigilantism to Terrorism in Cirebon, Asia Briefing N°132, 26 January 2012.

Indonesia: Cautious Calm in Ambon, Asia Briefing N°133, 13 February 2012.

Indonesia: The Deadly Cost of Poor Policing, Asia Report N°218, 16 February 2012 (also available in Indonesian).

Timor-Leste's Elections: Leaving Behind a Violent Past?, Asia Briefing N°134, 21 February 2012.

Indonesia: Averting Election Violence in Aceh, Asia Briefing N°135, 29 February 2012.

Reform in Myanmar: One Year On, Asia Briefing N°136, 11 April 2012 (also available in Burmese and Chinese).

- The Philippines: Local Politics in the Sulu Archipelago and the Peace Process*, Asia Report N°225, 15 May 2012.
- How Indonesian Extremists Regroup*, Asia Report N°228, 16 July 2012 (also available in Indonesian).
- Myanmar: The Politics of Economic Reform*, Asia Report N°231, 27 July 2012 (also available in Burmese and Chinese).
- Indonesia: Dynamics of Violence in Papua*, Asia Report N°232, 9 August 2012 (also available in Indonesian).
- Indonesia: Defying the State*, Asia Briefing N°138, 30 August 2012.
- Malaysia's Coming Election: Beyond Communalism?*, Asia Report N°235, 1 October 2012.
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- A Tentative Peace in Myanmar's Kachin Conflict*, Asia Briefing N°140, 12 June 2013 (also available in Burmese and Chinese).
- The Philippines: Dismantling Rebel Groups*, Asia Report N°248, 19 June 2013.
- The Dark Side of Transition: Violence Against Muslims in Myanmar*, Asia Report N°251, 1 October 2013 (also available in Burmese and Chinese).
- Not a Rubber Stamp: Myanmar's Legislature in a Time of Transition*, Asia Briefing N°142, 13 December 2013 (also available in Burmese and Chinese).
- Myanmar's Military: Back to the Barracks?*, Asia Briefing N°143, 22 April 2014 (also available in Burmese).
- Counting the Costs: Myanmar's Problematic Census*, Asia Briefing N°144, 15 May 2014 (also available in Burmese).
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