



# POLICY BRIEF

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Regional politicians from Kayin State receive campaign training ahead of November 2020. CC, Remko Tanis

## Key Issues in the Myanmar November 2020 Elections

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The 8 November 2020 elections are an important milestone in Myanmar and, more broadly, in Southeast Asia. They provide an opportunity for Myanmar to hold a second consecutive election that includes wide national participation and that may help develop fledgling democratic processes. More than 90 parties and 7,000 candidates are competing for national, regional, and local office.

### WHAT IS AT STAKE?

Since the 2015 elections that the National League for Democracy (NLD) swept with almost 80 percent of parliamentary seats, Myanmar's political landscape has undergone many changes, reflecting an increasingly illiberal trajectory. As a result, the NLD's support has waned. A stagnating peace process, increasing levels of armed conflict and growing levels of persecution of journalists and critics have spoilt some voters' once-unwavering support for Aung San Suu Kyi and the NLD. Although the NLD is still expected to win the upcoming elections by a huge margin, it is clear that the 2020 polls will occur in a vastly different political environment from 2015. In fact, by-elections in 2017 and 2018 saw the NLD win only half of the seats. Opposition to the NLD in the ethnic states is particularly notable.

### KEY RESULTS:

On 8 November 2020, Myanmar will hold its second election since the country's gradual liberalization began. Despite presenting itself as a force for liberal democracy five years ago, the National League for Democracy (NLD) has demonstrated its unwillingness to commit itself to the protection of civil freedoms and the expansion of federal governance. It has fallen short of campaign promises by failing to enact meaningful constitutional change, improve economic performance, and address the protracted peace process. Notably, the government has created a climate that represses dissidents and undermines ethnic pluralism. Yet, the NLD's support base remains strong, in part as a result of Aung San Suu Kyi's continued ability to appeal to a Bamar-majority voter base by opposing the military cronyism of past and rooting herself in ethno-nationalist values, as witnessed in her decision to respond to charges of genocide at the International Court of Justice at the Hague. As a result, the NLD's continued dominance over the Union Solidarity Development Party (USDP) is expected to continue. In the ethnic states, the situation is different—here, the ethnic political parties are expected to make gains on the NLD, as their recent merging place them well to take advantage of anti-NLD sentiment that has grown within ethnic minorities over the years because of the NLD's perceived Bamar-centric governance. In addition, a lack of trust in the Union Elections Commission and complications due to covid-19 are significant sources of risk in the running of the 2020 election.

## WILL THE ELECTIONS BE FREE AND FAIR?

For any election to be considered relatively free and fair, it must be held under conditions that, at the very least, allow for freedom of expression, a free media, as well as the possibility that an opposition party may defeat the incumbent. Myanmar has a poor to mixed record on these criteria. In terms of global freedom scores, Freedom House, one of the most important organizations that assesses democracy and freedoms worldwide, ranks Myanmar in 2020 as “not free.” This scoring, which includes both political rights and civil liberties, is a decline from last year’s assessment of “partly free.” Despite the fact that Myanmar is often considered a country in transition toward democracy, it has in recent years pursued a deeply illiberal pattern that has trampled upon freedom of expression, of the media, and of minority rights. Most notable is the fact that the Rohingya remain disenfranchised. Voting will also not be allowed in parts of Rakhine, Shan, Kachin, Karen, Mon, and Chin states, and the Bago region. This effectively denies more than 1.5 million people the vote in areas where opposition ethnic parties are likely to do well.<sup>1</sup> The selectivity of the particular townships chosen, the fact that some of these areas are not conflict-ridden, and the failure of the election commission to clearly explain its rationale, raises serious questions of fairness in the conduct of the elections.

Restrictions on a free media have been especially acute in recent years. Myanmar’s ranking on the Reporters Without Borders (RSF) annual press freedom index has fallen eight places over the past two years, following five straight years of increases.<sup>2</sup> Athan, a local watchdog that focuses on freedom of expression found that, since 2015, 1,051 individuals have been prosecuted under repressive laws and legal provisions.<sup>3</sup> The most notable of these cases include the sentencing of Arakan Nationalist politician Aye Maung to 20 years in prison for stating that the NLD-government treated the Arakan people “like slaves”<sup>4</sup> and the sentencing of Reuters journalists Wa Lone and Kyaw Soe Oo to seven years in prison in 2017 under the Official Secrets Act, ostensibly in response to their reporting on the Rohingya crisis (they have since been released).<sup>5</sup> These Reuters journalists were highlighted as “persons of the year” (among other journalists) in *Time* in 2018. In early 2020,

several media groups were charged under the 2014 counter-terrorism law after publishing interviews with the spokesperson of the Arakan Army.<sup>6</sup> Meanwhile, internet shutdowns that came into place in Northern Rakhine and Chin State in June of 2019 for the most part remain in place.<sup>7</sup>

Besides restrictions on the media, freedom of speech and assembly throughout society is also curtailed. Dozens of students have been charged under the penal code due to their criticisms of government. University student groups must seek permission from the administration and the Ministry of Education for any events on campus and must also inform authorities of their roster of invited speakers. Section 66 of the Telecommunications Law, dating from 2013, has been used to surveil and then sue individuals who make online comments that are critical of government. Prominent filmmaker, Min Htin Ko Ko Gyi was sentenced to one year in prison for a Facebook post that allegedly undermined the military. In April 2019, members of a satirical poetry group were detained, and then later sentenced to prison, for a performance on Facebook that criticized the military.<sup>8</sup> Furthermore, unequal access to the media has hampered opposition parties. Four parties canceled the broadcast of their campaign speeches on state media due to censorship.<sup>9</sup>

As a consequence of the illiberal conditions in which this election is taking place, a “No Vote Campaign” has taken hold and has been supported by the All Burma Federation of Student Unions and the All Burma Federation of Trade Unions. The No Vote Campaign seeks a new constitution prior to elections. Aung San Suu Kyi has heavily criticized this campaign, while the Union Election Commission (UEC) has threatened legal action.

A crucial institution that is necessary to ensure that election results are well adjudicated and perceived as fair is the UEC. There are a number of concerns about the impartiality of the UEC. Appointed by the president, the UEC is almost completely made up of septugenarian men—of whom 13 out of 15 are Bamar Buddhist.<sup>10</sup> The USDP has also been critical of the commission under the NLD. A letter sent by the USDP and 25 allies in mid-2019 accused the UEC of a failure to consult with parties in the lead-up to the 2020 election.<sup>11</sup> In late 2019, the

USDP and their allies again criticized the UEC for allowing foreign interference in the elections over their planned use of election equipment provided by the International Foundation for Electoral Systems. The UEC responded by threatening to dissolve the accusing parties for spreading lies and defaming the commission.<sup>12</sup> The combative relationship between the UEC and USDP-allied parties remains concerning, as the UEC's unwillingness to engage with critical actors does little to engender greater trust in the electoral body.

The UEC is generally perceived to act more favorably toward the NLD. The commission disqualified 13 opposition party candidates largely because of alleged failure to prove citizenship. One party representing the Rohingya, the Democracy and Human Rights Party, has had six of its members disqualified. Not one NLD candidate has been disqualified. Furthermore, the UEC's decisions to limit spending for candidates, but not for parties; to establish no restrictions on spending on social media; and to provide no restrictions on donations to politicians all tend to support larger parties, and therefore favor the NLD. The decision to bar the People's Alliance for Credible Elections (PACE) from observing the poll stations is especially troubling. There also remain concerns over several hate speech electoral laws because of their broad language. Certain laws disallow taking part in "actions that could harm union integrity; actions that could harm the dignity of the country or the military."<sup>13</sup> As of 2017, UEC laws also require parties to submit press statements to the commission in order to check for compliance with the constitution.

## THE IMPACT OF COVID-19 ON THE ELECTIONS

On 1 September, Myanmar had less than 900 covid-19 infections. In two months, the numbers have risen by a factor of 50, with infections averaging 1,000 per day in October. As of 1 November, Myanmar had more than 1,280 deaths and over 50,000 infections. Ranked fourth in Southeast Asia in terms of infections, it is now on track to surpass Singapore. With the spike in covid-19 cases since September, public campaigning has been banned in the Yangon area, as well as in Rakhine state. To no avail, opposition parties have called for a postponement of the elections.



As election campaigning is pushed primarily onto online platforms, the NLD stands to benefit the most. Through Aung San Suu Kyi's Facebook page – considered “one of the most popular and influential in the country” with 2.3 million followers – the NLD has a huge advantage.<sup>14</sup> The NLD is also more actively engaged in the digital sphere compared to other parties. Physical campaigning restrictions will furthermore make existing problems of regulating hate speech and misinformation even more pronounced.<sup>15</sup>

The worsening health situation will put greater strains on the country's capacity to manage the elections. The need for many government departments to remain focused on public health will mean that the already daunting task of preparing for the elections may lack both the necessary focus and manpower from government administrators.<sup>16</sup> In the aftermath of the sharp spike in covid-19 cases, the UEC has stated that it will increase polling stations from 40,000 to 50,000. This is a serious task and the failure to address this properly raises the potential risk for the effective conduct of the elections.

## WHAT ROLE FOR ETHNIC POLITICS IN THE ELECTIONS?

Despite signaling that relations with ethnic minorities are important to the government, in the past five years the NLD has made little advancement on this front. This has been punctuated by the NLD's failure to achieve progress on peace negotiations started under the past military-led regime and their increasing distance from ethnic political parties (EPP). As a result, the NLD has seen its support in



ethnic states decline. The NLD's formerly collegial relationships with EPPs fell away after it rejected an alliance with the Arakan National Party (ANP) and the Shan Nationalities League for Democracy (SNLD)—the two strongest performing EPPs—following the 2015 elections.<sup>17</sup> Since then, the NLD has opposed decentralization and, in some cases, sought a greater centralization of power.

At the same time, peace talks with Ethnic Armed Organizations (EAOs) have seen little progress. The National Ceasefire Agreement (NCA), put forward and negotiated by the past Thein Sein administration has stalled as fighting amongst non-signatory EAOs and the Tatmadaw has ramped up. The 21st Century Panglong Conferences, which were meant to serve as the main avenue for negotiation, have brought little progress. It has only met four times since 2016, with the most recent in August 2020. The round of talks in 2018 between EAOs and the central government left several NCA signatories discontent with the exclusion of key security and political questions. It culminated in an agreement that was largely a restatement of several points already present in the 2008 constitution. Since then, fighting between the Tatmadaw and the Arakan Army in Rakhine and Chin state has escalated dramatically, while the Karen National Union and the Restoration Council of Shan State, two of the largest NCA signatories, have suspended their participation in talks.<sup>18</sup> Meanwhile, the NLD's poor handling of protests in Kayah and Chin state against the building of statues of General Aung San—a Bamar who was a central figure in Burmese independence—and against the naming of a bridge after him in Mon State have inflamed anti-Bamar sentiments with several large protests taking place following these decisions.<sup>19</sup>

The NLD did put in place an Ethnic Affairs Committee in early 2020 as a means of including greater non-Bamar participation in the party, but many EPPs have derided the committee as a cosmetic and ham-handed attempt at increasing their vote share in ethnic states without increasing substantive non-Bamar participation.<sup>20</sup> Meanwhile, the NLD has reasserted its disinterest in coalition governance. NLD support in ethnic states has resultingly shrunk as it has become seen more overtly as a Bamar-majority party. Notably, a 2019 PACE survey found much lower trust in the state counsellor in ethnic

states compared to in the regions.<sup>21</sup>

## HOW WILL THE ECONOMY AFFECT THE ELECTIONS?

Economic growth and policy reform have been more limited than expected under the NLD government. As a result of a falling international reputation due to the Rohingya crisis and low-quality public infrastructure, foreign investment fell for three years straight from 2016-2019.<sup>22</sup> Economic growth fell to 6.2 percent in 2018 from a highwater mark of 8.4 percent in 2013.<sup>23</sup> It would be incorrect to describe the NLD's performance in the economic arena as a failure—their Ease of Doing Business ranking has risen ten places since 2015<sup>24</sup> and, despite the aforementioned reductions in FDI and GDP growth rates, Myanmar's economy, prior to the arrival of covid-19, was largely in good health.<sup>25</sup> The NLD has also made efforts to put in place economic reform, pushing through the Myanmar Companies Act, the Myanmar Investment Law, and announcing that foreign companies would be allowed to participate in wholesale and retail trading.<sup>26</sup> In 2018, the NLD formed the Ministry of Investment and Foreign Economic Relations, which, taken alongside the other reforms above, has helped streamline the foreign investment process.

At the same time, any positive reforms have consistently been held back by other, more ineffectual changes and an obstinate civil service. As a Yangon-based policy adviser states, the entrenched military elite have created a bureaucratic system designed as “a system of controls, primarily to serve special interests”.<sup>27</sup> The end result is a continually slow and inefficient bureaucracy. Certain policy reforms, too, have been problematic. The NLD's 12-point Economic Policy Agenda was heavily criticized for its lack of actionable mechanisms and use of broad, abstract language.<sup>28</sup> In 2018, the NLD pushed through an amendment to the Vacant, Fallow, and Virgin Land Management Law that attached a two-year prison sentence to occupancy of any “vacant, fallow, and virgin land”—a categorization that includes up to 30 percent of Myanmar's land mass.<sup>29</sup> This has led to protest by farmers, some of whom have formed a new party to contest the 2020 elections on the basis that the NLD has failed to protect farmers' rights and economic interests through their time in power.<sup>30</sup>

There are also concerns about Aung San Suu Kyi's increasing closeness with China. While Chinese investment through its Belt and Road Initiative (BRI) stands as an important source of investment, past experiences with BRI projects have left many citizens wary of Chinese involvement. The Myitsone Dam is the prime example of this, a largescale BRI project that was suspended in 2011 because of protests by locals. Xi Jinping's visit in January of 2020—the first by a Chinese head of state since 2001—served to demonstrate Aung San Suu Kyi's willingness to court Chinese money and has the potential to become a salient issue for the elections.<sup>31</sup>

The pandemic has upended the state of the economy. In a report in June, the World Bank forecast that Myanmar's economy will only grow 0.5 percent this year. In its downside scenario, GDP growth could even contract by -2.5 percent.<sup>32</sup> Given the sudden spike of covid-19 cases since mid-August, the World Bank's downside scenario appears to be more likely. Garment exports, remittances, and tourism have all declined sharply, while trade with China – Myanmar's most important trading partner – has also been hurt. With the lockdown in the Yangon area, millions of workers in the informal economy have seen their livelihoods collapse. Food insecurity has emerged as a key concern, especially with very minimal social spending on the part of the government. A UNICEF report estimates that the poverty rate in Myanmar could rise from 24 percent in 2017 to a lower-case scenario of 29.9 percent or a higher-case scenario of 35.8 percent. In either case, this is a severe impact on Myanmar's poor.<sup>33</sup> This is especially unfortunate given the fact that poverty rates were on a downward trend until 2017-2018. It remains to be seen how the worsening of the economy during the pandemic will affect support for the NLD, particularly in the Yangon area.

## CONSTITUTIONAL AMENDMENT

Constitutional amendment was another central promise of the NLD in their 2015 election run-up. However, over the past four years, the topic has largely served political ends with little progress being made toward impactful constitutional changes. Amendment has become a popular catchall topic over the past few years, with nearly all relevant political actors making efforts to enact some kind

of change to the 2008 constitution. Written by the then military-led junta, the constitution is designed to maintain the military's autonomy and prevent the erosion of their influence by reserving at least 25 percent of seats for themselves in the national assembly, known as the Pyidaungsu Hluttaw.<sup>34</sup> Because a 75 percent supermajority in the Pyidaungsu Hluttaw is required for constitutional amendment, the military's guaranteed seats have effectively provided them with a veto on any sort of reform. Constitutional amendment was central in the NLD's 2015 election manifesto.<sup>35</sup> This push culminated in the formation of the Joint Committee on Amending the 2008 Constitution in February of 2019, which saw a total of 3,765 proposed amendments across all 15 chapters of the constitution from 13 different political parties.<sup>36</sup> While the Tatmadaw and the USDP both submitted recommendations to the committee, they opposed the results on the basis that the recommendations were too far-reaching. For the most part, the military was in steadfast opposition to many of the central tenets of the NLD's proposals, which included changes that would allow Aung San Suu Kyi to occupy the presidency and would reduce the number of military officials in the parliament over a period of 15 years.<sup>37</sup>

Out of the seven amendment bills tabled in March, two were put forth by the NLD-led joint committee, and the rest by the military and USDP. In the end, all parties could only agree to alter slightly the words “the elderly” and “the disabled” and remove some minor redundancies.<sup>38</sup> The tepid outcome has been blamed on the NLD's failure to hold any sort of meaningful negotiations with other parties throughout the year-long amendment process. The joint committee, for example, failed to include any of the recommendations from EPPs, despite them having put forward the majority of recommendations.<sup>39</sup> Despite their supermajority, the 75 percent requirement for support has put heavy constraints on the possibility of constitutional change, but it has also been exacerbated by the NLD's inability or unwillingness to negotiate.

## CONCLUSION

The NLD's failure to address key issues that it had campaigned on in 2015 – peace with ethnic states, economic development, and constitutional reform

– as well as other critical concerns, such as the current dire conditions stemming from the pandemic, suggest that the November elections will be a greater test for Aung San Suu Kyi's party than were the 2015 polls. With the merging of several ethnic parties and the numerous mis-steps of the NLD in ethnic states, there is room for opposition parties to gain ground against the NLD. Nonetheless, Aung San Suu Kyi continues to maintain strong support, especially in the Bamar community. Her unprecedented appearance at the International Court of Justice in the Hague in December 2019, in order to rebut claims of genocide, have reinforced ethno-nationalist ideals that play well in the Bamar heartland. The general political climate of repression against critics of the government has furthermore made it difficult for the opposition to gain traction. The NLD will again dominate the polls, but its victory this time will occur in a country lacking in democratic euphoria, critical of the past five years of governance, and deeply concerned about the rapid growth of a deeply pernicious pandemic.

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