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Myanmar's 2020 Elections and Conflict Dynamics

By Mary Callahan with Myo Zaw Oo



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ABOUT THE REPORT

Based on more than seventy interviews, surveys of both mainstream and social media in Myanmar, and a desk review of available election-related materials, this report evaluates the environment in which the current electoral cycle, Rakhine conflicts, and the 21st Century Panglong peace process intersect and identifies opportunities for mitigating conflict risks in the lead-up to the 2020 Myanmar election.

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Cover photo: Returning officers count ballots from the April 2017 parliamentary by-elections at a polling station in East Dagon township. (Photo by Aung Naing Soe/Anadolu Agency/Getty Images)

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Summary



In late 2020, Myanmar will hold a general election for more than a thousand seats in its legislative bodies. The lead-up to this election overlaps with the 21st Century Panglong peace process and the possible repatriating of Rohingya refugees in ways that only deepen social tensions. At issue is that the underlying logics of peace processes and elections are at odds: on the one hand, conciliation and compromise; on the other, competition, victory, and defeat.

Myanmar's electoral history favors large parties at the expense of smaller ones and independent candidates, diminishing the prospect that elections might de-escalate conflict. Divisive campaigning is especially likely to detract from the peace process, as it did in 2015. Facebook will be a platform for disinformation, hate, and voter suppression as well as a catalyst for possible offline action. Opposition parties will campaign on defense of the nation, race, and Buddhism from both foreign influences and Islam.

The question of refugee repatriation will likely separate the ruling party from Rakhine ethnonationalists. Women candidates may also be at risk: the percentage of women parliamentarians at the national level increased from 6 percent in 2010 to 13 percent in 2015, but by-elections in 2017 and 2018 included relatively few women candidates. Populist appeals more generally may undermine Bamar and Rakhine support for the peace process, especially given that social media tends to amplify intercommunal polarization.

Communal, religious, and nationalist claims will certainly be center stage during the campaign, raising the possibility that tensions could boil over. The sheer numbers of security actors and forces increase the likelihood of violence that the military and police are ill prepared to prevent. Last, given laws that criminalize defamation, the media will find it difficult to cover the election campaign without risking jail time.



A voter casts an early vote at a township Union Election Commission office in Mandalay, Myanmar, ahead of the November 2015 elections. (Photo by Hkun Lat/AP/Shutterstock)

Introduction

Despite Myanmar's limited experience with democratic elections, almost no one questions whether elections are a legitimate way to confer or transfer power.

In late 2020, Myanmar will hold a general election for more than 1,100 seats in Union, state, and region legislative bodies. The contest will be the sixth election held under the auspices of the 2008 constitution, and the fourteenth since independence in 1947. Administered by the presidentially appointed Union Election Commission (UEC), the 2020 election will likely be a hard fought one, featuring one dominant party (the ruling National League for Democracy), one major former ruling party (the Union Solidarity and Development Party), and dozens more parties at all levels, as well as many ethnic parties. By late 2018, some of the more organized challengers had begun posturing in advance of the polls. If patterns associated with the last general election are any indication, the next year and a half will see much partisanship over most issues given that nearly one hundred parties are expected to compete for votes. Notably, despite Myanmar's limited experience with democratic elections, almost no one questions whether elections are a legitimate way to confer or transfer power.

At the same time, Myanmar is home to a complex conflict environment with a bewildering array of armed antistate forces, localized private militias, border guard units, nationalist and "race and religion protection" groups as well as loosely organized, disenchant-ed citizens who have no redress available through legal or political channels. In addition

to preparations for the election of 2020, the next year and a half will see two high-level, conflict-laden phenomena capture domestic and international attention—the 21st Century Panglong peace process and likely attempts to repatriate Rohingya refugees from Bangladesh to northern Rakhine State, where a relatively new armed Rakhine group has escalated an antistate offensive. In a historical context that has produced a deeply divided society with little in the way of trusted grievance mechanisms, the 2020 election may collide with these two highly contested processes in ways that only deepen social tensions in Myanmar.

This report does not assess electoral security, the peace process, or repatriation. Instead, it both evaluates the complex environment in which the current electoral cycle, Rakhine conflicts, and peace process intersect and identifies opportunities for mitigating conflict risks in the lead-up to the 2020 election. For all three, international expectations are likely to be out of alignment with the practical realities of staging an election, peace negotiations, and reconciliation among communities in Rakhine State.

The 2020 election presents the opportunity for pro-democratic political parties of many stripes to make gains in political power in the Union, at state- and region-level *huttaws* (parliaments) and in self-administered areas. It also carries risks. As one scholar

on elections in conflict situations explains, “Elections in deeply divided societies can bring out both the noblest human ideals and the darkest behaviours.”¹ Unlike in conflict or postconflict settings elsewhere, the rules and timing of the 2020 election are not the product of negotiations among oppositional forces; nor is the election a component of any major domestic stakeholders’ attempts to consolidate a fragile or nascent peace. Refugee repatriation of any scale has few—if any—politically significant backers in Rakhine or Myanmar. Meanwhile, anti-Bamar sentiments among Rakhine are on the rise.² The election timing is constitutionally mandated. The peace process, refugee repatriation, and conflict dynamics are not.

This report is based on a desk review of available election-related materials, surveys of Myanmar mainstream and social media, and more than seventy interviews in Yangon, Mandalay, Sittwe, Bagan, Myitkyina, Hpaan, and Mawlamyaing in Burma, and Mae Sot in Thailand. Interviewees, who were all promised confidentiality, included electoral stakeholders broadly defined, encompassing representatives of election-focused civil society, ethnic armed organizations (EAOs), political parties, the local media, retired military officers, diplomats, donors, and the private sector in Myanmar. This was in large part a listening project, aimed at capturing the views and concerns of those who are committed to a credible and peaceful 2020 election.

KEY ASPECTS OF THE MYANMAR CONTEXT

Myanmar is not a postconflict setting. Rather it is home to ongoing, organized, armed antistate violence and intercommunal tensions.

The timing of the 2020 election is constitutionally mandated. Save a declaration of emergency, the election cannot be moved from 2020.

The timing of the peace negotiations is neither constitutionally mandated nor likely to proceed in a linear fashion. The timing of refugee repatriation is subject to domestic and international political and legal maneuvering.

Contextualizing the 2020 Election

A deeply divided society, Myanmar is home to a population marked by deep-rooted and manifold axes of political, economic, and social polarization—and hence fertile ground for conflict around elections.³ National-level political power has historically been in the hands of small elite groups of Buddhist, lowlander, ethnic Bamar military officers and their inner circle of commercial allies, to the disadvantage of the rest of the population.⁴ Beyond the common sense of suffering, the sense of shared life experience is scant across key divides such as urban dwellers and rural, Buddhists and non-Buddhists, lowlanders and uplanders, as well as between ethnic majority Bamar and non-Bamars, and Burmese speakers and those who do not speak the official language of the state. The reforms since 2011 address some of these inequalities and divisions, but not all of them.

Ethnic identity in Myanmar, arguably the most politically significant marker of difference, is stratified in policy, law, and social norms, first between the ethnic majority Bamar and non-Bamar, and second between those defined as *taingyintha lumyo* (“kind of people who belong in the country”) and those who are not, who include those of Chinese, Indian, Rohingya, and otherwise of allegedly “foreign” descent. The disparities in fortunes across these groups are stark, but variation among ethnicities is considerable. Of the fourteen regions and states in Myanmar, locals living in Rakhine State perceive that they have been dealt the most severe poverty by Bamar-dominant regimes. At the same time, political and civil rights inequalities in Rakhine State are equally glaring between the Rakhine ethnic group and the Rohingya, the latter considered non-*taingyintha* and largely deprived of voting and other rights and of access to land, decent work, free movement, education, and health services.

GRIEVANCE MECHANISMS

Years of political repression have silenced expressions of protest, criticism, and suffering and hindered acts of resistance. Since 2011, reforms that have included improvements in freedoms of association and media have allowed expression of grievance in more public ways, but have not yet fundamentally altered overall dynamics of political and economic power in the country. The 2008 constitution’s move away from power centralized in a single general and toward a dispersal of national political power across multiple institutions (the presidency, the line ministries, the *hluttaws*, subnational governments, the military) has not eliminated the political influence of the military. Neither the constitution nor any other legal or policy framework place the Defence Services under the chain of command of an elected, civilian body or official, including the president.⁵

In the past, the two main ways of mobilizing to seek redress for grievances were organized, armed antistate resistance and unarmed resistance in usually off-the-radar settings, carried out by trusted circles of acquaintances, whether in formal civil society and its many networks or in informal community endeavors. Before 2011, and to a large extent still today, citizens could not depend on institutions that should theoretically have protected their rights, such as the judiciary, township and village (or ward) administrators, and line ministries. Policy, development, and services have long been delivered in a top-down fashion, leaving local recipients to their own devices to deal with the consequences. The absence of trusted dispute settlement mechanisms has rendered individuals and communities defenseless from what has often been arbitrary or random enforcement by state officials and sometimes armed antistate groups. This situation not only fueled support for insurgency in areas

in and around active warfare, but also created a large national reservoir of grievance, distrust, and skepticism against central and local government institutions. Beyond low credibility of such institutions, even interpersonal trust is minimal in Myanmar. A 2018 survey by the People's Alliance for Credible Elections, a domestic observer group, found that only 18 percent of those sampled thought that most people can be trusted and that 77 percent believed that they needed to be very careful in dealing with people.⁶

Throughout Myanmar society, these historical grievances remain strong. Given the cumulative effect of years of repression and violent conflict, they will not fade for some time. Political reforms, initiated in 2011, remain nascent, tentative in some areas and somewhat adrift in others as the National League for Democracy (NLD) party has struggled to govern since taking power in 2016. Institutions and mindsets change slowly. Trust will take time to develop. At present, the administrative and judicial systems still offer little or no respite to those who have suffered from years of military rule or hardships caused by more recent policy decisions. Myanmar is home to a wellspring of legitimate grievances among its citizens, but offers few if any trusted channels through which those citizens can seek justice or accountability. As a result, significant political conflict—in the sense of deeply held differences of opinion, values, and priorities over state-society relations and narratives of national history—will be the norm in the coming ten to twenty years. If conducted in a deliberately credible fashion, the 2020 election might serve as a step in a progressive direction toward the creation of trust in national institutions. Expectations, however, should be tempered around how much any Myanmar election in the near future will yield a grievance redress or conflict mitigation mechanism.

ARMED ANTISTATE VIOLENCE

Myanmar has been home to challenges aimed at the state since before independence. At present, twenty-one major ethnic armed organizations have spent varying numbers of years fighting to replace or reform

the state. Since 2015, ten have signed the Nationwide Ceasefire Agreement (NCA), which constitutes a military truce but has not amounted to a platform for advancement of federal political concessions, nor has it resulted in any degree of disarmament or security sector reform. Some of the other nonsignatory antistate groups—representing perhaps fifty thousand troops under arms in total—had or still hold bilateral cease-fires but continue to present challenges to the state and its allies over the future direction of large swaths of territory. Still other forces, organized as Border Guard Forces as well as local militias, number in the dozens, and sometimes operate on the side of the government's military (the Tatmadaw) and at other times for their own security, pecuniary, and territorial interests.⁷

The histories of ethnic armed organizations that are organized in terms of ethnic nationality identity have followed multiple paths. Some have split several times. Others chose—in previous and current negotiations—to make bilateral cease-fire deals to end the fighting in pockets of territory and to gain access to and control over services and resources. Although the main target of EAOs is the Tatmadaw, in recent years fighting between the EAOs themselves has increased, especially in Shan State, where various groups are fighting over territory, legitimacy, and economic interests, mostly in the northern part of the state. In general, EAOs have widely varying ways (and effectiveness) of recruiting, financing, and regulating people and trade in their areas of operation. Their relationships with registered political parties or other EAOs bearing the same ethnonym are often troubled, contingent, or nonexistent. Communities in and around former and current bilateral cease-fire areas, as well as in territory home to recent warfare, have been hopeful about the present round of peace negotiations. However, they remain wary of claims that development policies or elections will deliver “peace dividends.”⁸

In the 2015 campaign, the armed antistate conflict—along with the peace process of President Thein Sein's administration—was the object of partisan interference

in the lead-up to the election as opposition parties tried to convince armed groups to wait for a new government that might promise more concessions, the likes of which have not materialized. Additionally, the government itself had become preoccupied with electoral politics by late 2014, diverting attention from the peace process. In interviews, both political party and peace process stakeholders predicted that similar dynamics will be at play in the lead-up to 2020. They also suggested that the coming election may weaken the resolve of incumbents to grant concessions as they face opposition that will criticize any such moves. Election activities (voter list compilation, campaign rallies, voting, and so on) may also present targets for violent actors to undermine the credibility of the state and the legitimacy of the democratic process.

Rakhine State will be of particular concern. The 2016 and 2017 attacks on government outposts by the Arakan Rohingya Salvation Army were a direct attack on the state, one that led to a series of disproportionate, large-scale crackdowns on Rohingya communities in northern Rakhine State. The 2017 exodus of 720,000 refugees to Bangladesh has set up an intractable cross-border refugee situation, which has seen some halting and unsuccessful attempts at repatriation. Because Rohingya return is broadly unpopular among heartland Barmans and ethnic Rakhine, any attempts at or even rhetoric about refugee return will be politicized by parties seeking to capitalize on the underlying historical and communal conflicts that led to the violence in the first place.

Since late 2018, violence between the Arakan Army (AA) and the Tatmadaw in Rakhine State has heightened tensions in the fractious region and is likely to continue to do so throughout the lead-up to the 2020 election. The AA is an ethnic Rakhine armed group that has its sights set on autonomy from Myanmar by 2020, as laid out in its sophisticated online mobilization campaign, Arakan Dream 2020. The AA envisions its relationship to the Myanmar state being one of confederation. It operates

ETHNIC IDENTITY IN MYANMAR TODAY

Political parties and ethnic armed organizations (EAOs) with the same ethnonym do not necessarily coordinate, agree, or represent the same constituencies.

Political parties with ethnic names are not necessarily representative of ethnic nationality communities.

Ethnically named EAOs also do not necessarily “represent” local aspirations.

Ethnically named EAO “liaison offices” vary widely in capacity and authority.

The boundaries of ethnic “states” do not align with ethnically self-identifying activists’ aspirations for territorial and political recognition.

Ethnically named “states” are home to heterogeneous populations.

Most nonmajority ethnic groups regard the term “ethnic minority” as derogatory.

Most non-Bamar identity-based groups prefer to be called “ethnic nationalities” or “nationalities.”

Because the repatriation of the Rohingya is broadly unpopular among heartland Bamars and ethnic Rakhine, attempts at or even rhetoric about refugee return will be politicized by parties seeking to capitalize on the underlying conflicts that led to the violence in the first place.

both in northern Myanmar (Kachin and Shan States) and along the western border (northern Rakhine and southern Chin States). Clashes between the AA and the Tatmadaw have intensified since November 2018 in several townships in the north of Rakhine State and parts of southern Chin State. On January 4, 2019—Myanmar’s Independence Day—the AA launched a series of coordinated attacks on four Border Guard Police posts in the north of Buthidaung township in northern Rakhine State. The AA asserted responsibility for the attacks, which left thirteen police officers dead and nine injured. A spokesperson for the group explained: “We [Rakhine] are not independent yet. Today is not our Independence Day.”⁹ After the attack, the civilian NLD government is said to have instructed the Tatmadaw to “crush” the Arakan Army, which has been declared a terrorist group.¹⁰

INTERGROUP VIOLENCE AND DISCRIMINATION

Myanmar is home to other kinds of discrimination, struggle, and violence that will affect the electoral process and are less explicitly political in nature. Such *horizontal violence* includes sectarian and communal violence, workplace conflict, land disputes, and more, and has complex historical roots that long predate the reform processes initiated since 2011. These underlying tensions have erupted into communal violence locally in places such as Sittwe, Lashio, Mandalay, Taunggyi, Bago, Okkan, and Meiktila, causing extensive property damage, fatalities, and community trauma. Communal tensions in particular have been suggested to have been manipulated by so-called dark forces, that is, a range of bad actors seeking to create chaos to advance unknown political and economic agendas.¹¹ But it is impossible to predict the onset or path of communal violence, and numerous small-scale, locally appropriate interventions may have warded off further intercommunal violence. Nonetheless, whether

a function of dark force manipulation or not, Myanmar society is home to latent horizontal conflicts between and among people. These conflicts are geared not at capturing control of the state, but rather at disempowering or threatening individuals and groups along religious, ethnic, or class lines. In the view of some activists and electoral stakeholders, these divisions are likely to be made more stark by partisan competition as the 2020 election approaches.

Gender discrimination has been common across all postcolonial governments and elections in Myanmar. Military rule from 1962 to 2011 all but banished women from positions of authority, and the military itself has had no women in leadership roles. Reforms initiated in 2011 have created openings for women, a trend that appeared to gain some momentum when the percentage of women parliamentarians at the national level increased from 6 percent in 2010 to 13 percent in 2015. However, by-elections in 2017 and 2018 included relatively few women candidates. Across the board, women report that gender stereotypes—for example, that men are more capable of holding public office—persist. For example, only seven of sixty-nine candidates in the November 2018 by-election were women. One observer, referring to the voters, told the media, “They don’t believe in the ability of women leaders.”¹² In 2017, the Asia Foundation reported that “substantial challenges to addressing the gender gap in political participation in Myanmar [remain], given the deeply entrenched social norms in both men and women regarding the role of leadership women can play in government and in society.”¹³ Female political party leaders related in interviews that they faced not only the cultural barriers to political participation, but also believed that they were targeted for online and personal harassment to a degree not experienced by male counterparts.



Supporters of Aung San Suu Kyi's National League for Democracy wave flags outside the party's headquarters in Yangon on the day of the April 2012 by-elections. (Photo by El-BrandenBrazil/iStock)

SOCIAL MEDIA

Myanmar's digital transformation has been unprecedented for its speed, breadth of coverage, and capture of users by Facebook. In 2009, when SIM cards cost \$300 each, less than 1 percent of the country's fifty million people had a smartphone or home internet. Since the political and economic openings began in 2011, a liberalization of the telecommunications market—whereby SIM card prices dropped to about \$1—saw the exponential increase in connectivity. At present, it is estimated that twenty million people now have internet connectivity. For all but a very few, Facebook is the internet. A human rights impact assessment commissioned by Facebook found that

this [expansion] has resulted in a crisis of digital literacy: A large population of internet users lacks basic understanding of how to use a browser, how to set up an email address and access an email account, and how to navigate and make judgments on online content. Despite this, most mobile phones sold in the country come preloaded with Facebook.¹⁴

At this point, for many in Myanmar, Facebook is their main source of information; further, government departments, officials, businesses, and political leaders mainly communicate on Facebook pages when they have no website, press conferences, statements, or other forms of public communication.

The Facebook platform has been used to organize progressive campaigns, such as protests against crackdowns on free speech and assembly. More alarmingly, in Myanmar it has been leveraged to incite offline harm. The clearest example is the violence that broke out in Mandalay in July 2014. According to mainstream media and other sources, the violence was a result of an online news report that alleged that two Muslim teashop owners had raped a Buddhist woman.¹⁵ The teashop was identified by name and location and the full names of the alleged perpetrators and the alleged victim were spelled out. U Wirathu, the firebrand Buddhist

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monk associated with anti-Islamic causes, reposted the article on his Facebook page with the caption “[the] Mafia flame [of the Muslims] is spreading” and that “all Burmans must be ready.” The violence, which occurred the day after Wirathu’s post, resulted in two deaths, numerous injuries, and extensive property damage. Then President Thein Sein’s government blocked access to Facebook in Mandalay in acknowledgment of the platform’s role in the violence.¹⁶ Eventually it emerged that the rape story was false.¹⁷

Facebook’s prominence also ensures that it will be a major source of information—and probably disinformation—in the lead-up to the 2020 election. Political parties and their followers are expected to use its broad coverage to promote their candidates. To date, though, it has been used mostly in nonprogressive ways. In 2015, significant numbers of posts explicitly suggested the NLD and Aung San Suu Kyi herself were in one way or another pro-Muslim. In the 2018 by-election, not only did Burmese Facebook posts target the NLD party and its candidates with disinformation, but Shan-language attacks were also lodged at Shan Nationalities League for Democracy politicians. In an interview for this report, a senior Facebook official reported that the company

was increasing its numbers of Burmese-content reviewers so that community-generated reports of violations of its standards could be processed more comprehensively and quickly. He also said, however, that he was not authorized to state whether or how non-Burmese, minority-language posts might be reviewed. As of early 2019, Facebook had taken down hundreds of accounts deemed guilty of “coordinated inauthentic behavior,” with many linked to the military.¹⁸ On February 5, 2019, it also took down the accounts of four ethnic armed organizations, stating that they represented “dangerous organizations” and therefore violated Facebook’s community standards.¹⁹ However, as of late 2018, Facebook did not have any particular plans in place to defend against possible election-specific, coordinated, politically motivated attacks and disinformation on the platform.²⁰ The risk is significant, therefore, that the parties, the military, EAOs, and their followers will leverage the platform in ways that manipulate voters’ sympathies and online and offline behaviors, such as voter suppression and intimidation.²¹ Moreover, a risk to progressive deployment of Facebook is that the military, which controls the internet portal to Myanmar, may choose to shut down the platform in the lead-up to the election.

Myanmar's Electoral Process

The 2020 election will be the third general election held under the terms of the 2008 constitution. Few changes have been made to the formal electoral legal framework since the 2015 election, which saw the electorate vote overwhelmingly to transfer power to the NLD, then the opposition party. That election was viewed widely by domestic and international observers as a credible milestone in Myanmar's transition to democracy.²² The NLD won 79 percent of elected seats in the Union parliament, 95 percent of the seats in the Bamar-dominated regions, and 45 percent of the seats in the ethnically named states. The former ruling party, the Union Solidarity and Development Party (USDP), was reduced from winning 79 percent of the seats in the flawed 2010 election, to polling just 8 percent in 2015. Ethnic parties performed poorly, tallying only 11 percent of the seats at the Union level and 16 percent in the states and regions.²³

CONSTITUTIONAL STRUCTURE

The 2008 constitution provides the framework for elections in Myanmar, which is supplemented by a series of laws and by-laws about political parties, the Union Election Commission, and elections at different levels of government.²⁴ Election timing is determined by the constitutionally mandated five-year term of the Union Parliament, in which 330 members are up for election to the Pyithu Hluttaw (lower house) and 168 to the Amyotha Hluttaw (upper house); unelected military representatives make up 25 percent of the seats in both houses, 110 in the Pyithu Hluttaw and fifty-six in the Amyotha Hluttaw. Under Article X of the constitution, political parties are obligated to observe the three national causes: “non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of national sovereignty.”²⁵ They must also “accept and practice a genuine

and discipline-flourishing multiparty democratic system.” Notably, the constitution bans the use of religion for political purposes, including campaigning for votes.

The number of election constituencies are defined in the constitution. The Pyithu Hluttaw is made up of “not more than 330” elected members from constituencies to be defined by the Union Election Commission by township or population. The 168 Amyotha Hluttaw members include twelve from each state and region, and seats are reserved for representatives of special administration zones or divisions within some of the states. State and region hluttaws are made up of two members of Parliament (MPs) per township. Constituencies were drawn up in preparation for the 2010 election and have been revised only in rare instances (mainly at the state or region level), although the Union Election Commission in theory could redraw boundaries for any constituencies before an election. No accountability mechanism is in place for constituency revision.

As laid out in the constitution, the presidential selection process is carried out by an electoral college of three bodies that each nominate a vice president: the elected members of the Pyithu Hluttaw, the elected members of the Amyotha Hluttaw, and the combined military members of both houses. After the three nominees have been certified, the Union Parliament (Pyidaungsu Hluttaw) votes to choose the president. Neither the president nor any other elected civilian official has constitutional authority over the military.

Under the 2008 constitution, the UEC, which must have at least five members who are age fifty or older, is responsible for carrying out elections, registering political parties, and supervising their activities. The members



A member of the Union Solidarity and Development Party distributes flyers during a USDP door-to-door campaign in Mandalay in October 2015. (Photo by Hein Htet/EPA/Shutterstock)

are appointed by the president, raising the question of the UEC's independence, although members "shall not be a member of a political party."²⁶ In the lead-up to the 2015 election, the commission expanded to a total of seventeen members, who included a woman and several ethnic nationalities. Under the NLD government, however, the UEC stood at seven (the chair and six commissioners) until March 8, 2019; all were male and all but one Bamar Buddhists. The eight new members added in March are all male, and again all but one are Bamar Buddhists. It has numerous subsidiary subcommissions across the country: fifteen state or regional, including the Naypyidaw Union Territory; seventy-nine district (including six special administrative zones and divisions); 330 township; and 15,870 ward or village tract subcommission. The last are staffed by individuals from the General Administrative Department.²⁷ The Union Election Commission arbitrates all electoral disputes, and appeal is not an option once a verdict has been rendered. In a highly siloed government, the UEC is in a weak position

when it comes to drawing upon the military-controlled ministries and bodies for matters such as electoral security. The Carter Center's report on the 2015 election noted "a lack of clarity about the appropriate jurisdiction of the police, election commissions, and other bodies."²⁸

In February 2019, the NLD leadership in the parliament made a move to create a committee to look into amending the 2008 constitution. As of this writing, the forty-five-member committee has been formed but as yet has proposed no concrete amendments. Soon after the NLD proposal, the USDP put forward a proposed amendment to change the selection of state and region chief ministers from presidential appointment to election by state and region huttaws. Neither move is likely to change the overall autonomy of the military or the specific portions of the constitution that affect the presidential selection process or the responsibilities and makeup of the UEC.

A flawed voter list in 2020 would spark conflict over disputes from losing opposition parties or candidates and undermine the legitimacy of the results in certain constituencies. Surprisingly, the Union Election Commission does not have the budget to update the voter list properly.

ELECTION SYSTEM

Myanmar uses the first-past-the-post, single-member constituency voting system—and has done so in all elections to date.²⁹ To be eligible to vote, citizens must be at least eighteen years old; some groups are ineligible, including members of religious orders, those serving prison sentences, anyone declared of “unsound mind” by a court, and those who have been declared insolvent.³⁰ The 2008 constitution and subsequent election laws require that candidates must have resided in Myanmar for at least ten consecutive years and be born of parents who were both citizens at the time of birth. Campaign and party finance regulations, which have been only minimally enforced, do not allow foreign donations, whether from individuals, businesses, or organizations, to Myanmar parties or candidates; they also ban contributions from religious groups and the use of state resources.³¹ Candidates are permitted to appoint agents to observe polling stations on election day, and a process has been set up to allow both foreign and domestic observation of the polls as well.

The most controversial aspects of the electoral system involve the voter list procedures and the provisions for advance voting. In the preparations for the 2015 election, the Union Election Commission created the first digitized voter roll, which was derived from records of citizen residence held by the General Administration Department (GAD) and the then Ministry of Immigration and Population (MOIP).³² The GAD and MOIP data, which in many instances was not up to date or accurate, gave rise to concerns that the derivative voter list was going to disenfranchise voters.³³ However, in the end, after extensive displays of the voter list and updates by UEC subcommission personnel, international observers of the 2015 election concluded that very few voters were turned away on election day for not being included on the list.³⁴ The main challenges to the voter list process

in 2020 include updating the 2015 list to add the five million new youth voters and remove the large number of people who have since died; accounting for the massive, undocumented internal and external migration; and handling requests for transfer of votes and advance votes including from overseas. A flawed voter list in 2020 would spark conflict over disputes from losing opposition parties or candidates and undermine the legitimacy of the results in certain constituencies. Surprisingly, the UEC does not have the budget to update the voter list properly and the Pyidaungsu Hluttaw, despite its criticisms of the UEC, does not see the need to increase the budget to ensure an accurate and inclusive voter list.³⁵

Advanced voting falls into one of three categories: out of constituency but inside the country on election day; out-of-constituency residence in another country with government permission; and in-constituency advance voting made necessary by legally prescribed rationales, such as being elderly or infirm, in custody, or in civil service. Members of the Defence Services are permitted to cast their ballots via advance voting. It was widely thought that the 2010 election was swayed when bags of advance votes arrived—in some instances late in the evening on election day—and brought victory to USDP candidates.³⁶ Since then, advance voting has been tightened up; some observation has been allowed for the process, though not yet for military advance voting. In the 2017 and 2018 by-elections, both the voter list and advanced votes were subjects of public concern. To its credit, the UEC published in January 2019 its new *Strategic Plan (2019–2022)*, which includes public commitments to improve transparency by announcing the dates of advance voting and ensuring that observers and party agents have access. This strategic plan is a public reference framework (though nonbinding) for stakeholders to hold the UEC accountable about what it has committed to doing in 2020.³⁷



Based on open-source data, there were reports of

28

instances of violence during Burma's 2015 elections. These statistics, however, likely represent significant underreporting.

11

incidents involved physical violence against individuals

Instances of Election Violence in 2015

A polling booth official prepares ballot papers for an elderly woman in an advance voting booth in Yangon. (Photo by Mark Baker/AP/Shutterstock)

One further issue for possible election manipulation involves the potential for strengthening of control over constituencies by the movement of military voters to specific areas. For example, observers cited a case in Myitkyina, the capital of Kachin State, after the 2018 by-election, in which the USDP candidate narrowly defeated an ethnic Kachin party rival and an NLD candidate. Because a large military compound was located in the Kachin-2 Amyotha Hluttaw by-election constituency, it was rumored that soldiers and their families were ordered to vote. One pro-Kachin party activist pointed out the lack of any legal prohibitions against the military moving soldiers around to

different constituencies, and of any civilian oversight over any such military actions. Several civil society, media, and political party stakeholders expressed concern that troops could be transferred to constituencies to influence the outcomes of elections. Such movements technically would not be prohibited under the legal framework for elections.

THE MEDIA AND CIVIL SOCIETY

International observer reports on the 2015 election hailed the way in which media and civil society reforms under President Thein Sein created an electoral landscape more open to informed campaign journalism and grassroots mobilization around voter education and citizen empowerment than had existed in the 2010 election.³⁸ Since the NLD came to power in 2016, however, media freedom and freedom of expression have not appeared to be priorities. The government rarely holds press conferences and



11

involved the intimidation
of individuals

6

involved the destruction of
election materials or
infrastructure

generally treats journalists and advocacy groups as adversaries. Both mainstream media and activist reporting have been circumscribed by the frequent use of a variety of punitive security and criminal defamation laws as well as Section 66(d) of the 2013 Telecommunications Act, which holds that “whosoever convicted of any of the following is liable to an imprisonment not exceeding two years or fine or both. . . . Blackmailing, bullying, making wrongful restraint on, defaming, disturbing, exerting undue influence on or threatening a person using a telecommunication network.” According to a 2017 report, since the NLD won the 2015 election, at least 107 criminal complaints have been filed under 66(d); all that went to trial were convicted.³⁹ In such a context, it is difficult to imagine how mainstream media will be able to carry out rigorous campaign coverage—not to mention potential investigative reporting on armed conflict or communal violence—under

the threat of defamation charges and draconian security laws. “We could easily be sued,” said one journalist from a daily Burmese-language newspaper. Another editor reported that his outlet was particularly concerned about 66(d) prosecutions, and effectively self-censored online and print content to protect the news organization.

Similarly, civil society organizations (CSOs) have faced a restrictive environment, though arguably less punitive than what journalists are facing. Throughout the NLD’s term in office, restrictions on public assembly and the holding of meetings have curtailed the freedoms of nongovernmental organizations (NGOs). “They [the NLD] see us as competitors or somehow like an enemy,” noted one Mandalay civil society representative, whose organization has been denied permission to hold meetings aimed at building Bamar support for the peace

The use of winner-take-all voting procedures favors big national parties at the expense of smaller, minority parties. This means that losers in elections may poll very significant numbers but end up with no representation, effectively silencing the voices of all but those who vote for the victorious party.

process. According to another NGO leader in Myitkyina, “They think civil society is where terrorists hide.” Given that civil society was shown to be an effective implementor of voter education in 2015, these restrictions threaten to reinforce what is already recognized to be a “low level of political literacy and knowledge of electoral matters among the general public.”⁴⁰

SYSTEMIC TENSIONS

Several other sources of political and social tension derive from the systemic framework of Myanmar’s elections as well. First, and perhaps most significant, the density of townships in the seven (probably) Bamar-dominated regions ensures that a party that can win big in the Bamar heartland has a good chance of securing the votes needed to control the presidency and thus the government. Across the two houses of the Pyidaungsu Hluttaw, 291 seats are in these regions, and only 207 are in the ethnically named states. Further, nearly all the military MPs are ethnic Bamar. In light of these facts, the constitution of the legislative branch and the electoral college give an impression of Bamar majority privilege.

Second, the delegation of Pyithu Hluttaw and state and region hluttaw seats via township, rather than population, as per the decision by the outgoing State Peace and Development Council’s election commission, results in substantial malapportionment, consequently making the value of individual votes highly unequal.⁴¹ The Carter Center noted that in the 2015 election, Pyithu Hluttaw constituency sizes ranged from a low of 1,408 registered voters (Coco Island) to 521,976 voters (Hlaing Thayar), thus displaying massive distortion of the representativeness of the election results. According to the Carter Center, the average constituency consisted of approximately one hundred thousand voters—with the ten smallest townships averaging about 3,500 registered voters, and the ten largest averaging nearly three hundred thousand.⁴²

Third, the use of winner-take-all voting procedures favors big national parties at the expense of smaller, minority parties. This means that losers in elections may poll very significant numbers but end up with no representation, effectively silencing the voices of all but those who vote for the victorious party. This system is associated in many countries with the common practice of *tactical voting*, in which voters select not the candidate who best represents their interests, but rather the one who is likely to win. It is especially associated with protest-vote dynamics, in which voters act to defeat an identifiable opponent. In 2015, the NLD’s success in ethnic nationality areas—roughly, the ethnically named states—was likely the result of some measure of tactical voting against the Union Solidarity and Development Party. Voters appeared determined to ensure a change away from the party associated with twenty-three years of military junta rule.

Finally, several representatives of civil society, the media, and opposition political parties have noted with concern the absence of systematic consultative outreach on the part of the Union Election Commission. They contrast this with what they remember of the UEC under the former general, U Tin Aye, in the lead-up to the 2015 election. The lack of consultation may have been a result of the small size of the present UEC, or—one elections implementor suggested—perhaps the general lack of such public-facing experience of most UEC members. The current UEC members have had little exposure to the kind of meetings in which they might be criticized or pressed for reform, whereas political parties and CSOs often field articulate, assertive representatives for these kinds of dialogues. The absence of consultation and transparency has yielded notable distrust in the UEC. As one opposition political party leader put it, the UEC is “there to do the bidding of the NLD.”

Peace, Conflict, and the Election

Myanmar's macro-reform processes around elections and both Union-level and Rakhine State peacebuilding are the focal points for national and international attention as the 2020 election approaches. These three elite-driven processes are unfolding and will continue to do so in an arena of highly contested and divisive politics that derives from decades of repression, trauma, and senses of exclusion often perceived to be based on identity. Each process has attracted separate sets of powerful economic, military, political, ethnic, and social leaders all vested in gaining traction for their agendas on one or more of the platforms. The goals of these stakeholders vary, some hoping to promote large-scale reform, others seeking to reverse it, and still others wanting to maintain the status quo.

Over the next two years, the peace process, Rakhine conflicts, and the election campaign will generate risks given their high-profile nature and the likelihood that they will take a decade or more to produce significant results, create different winners and losers, and will be too nonlinear and iterative for most stakeholders.

Specifically, the election process is likely to monopolize the attention of government elites and their electoral opposition to the detriment of any moves to grant concessions at or bring big new ideas to the peace negotiation table, or to leverage political will behind the kinds of progressive reforms that would be necessary to attract Rohingya refugees to return to Myanmar in significant numbers or to satisfy Rakhine ethnonational aspirations.

SECURITY IN THE 2020 ELECTION PROCESS

Although historically, with one exception, the six elections held under the auspices of the 2008 constitution have not been characterized by much in the way of

overt electoral violence, the possibility remains of such a development in the 2020 electoral process. The starkest exception was in 2010, when the Democratic Karen Buddhist Army (DKBA) Brigade 5 attacked government troops and seized government buildings on election day, and the next day attacked Three Pagodas Pass.⁴³ After the violence, the commander of the Brigade 5 justified the actions to *The Irrawaddy*: "We heard that the Burmese military regime forced the residents of Myawaddy to vote. People didn't want to go, and we heard that the junta threatened them with guns. So, we deployed our troops in Myawaddy for security."⁴⁴

In 2015, nothing on that order occurred, but twenty-eight incidents were reported in open-source data as "election violence."⁴⁵ Nearly three quarters of these incidents were characterized as physical violence against or intimidation of individuals, while the others consisted of the destruction of election materials or infrastructure.

The European Union's 2015 observation mission noted regular allegations in "northern Shan State that ethnic armed groups used their influence to favor certain parties by mobilizing turnout for campaign events (alongside more serious allegations, also difficult to verify, of threats and intimidation)."⁴⁶ The report concluded that the occurrence was a rare one, highlighting the exception in which government-aligned Kachin militia leader Zakhung Ting Ying made threats aimed specifically at preventing NLD candidates from campaigning in the area of Kachin State where he was a candidate.⁴⁷

Hence, in the lead-up to 2020, election-related conflict not only should be understood more generally to include physical violence, intimidation, and destruction of property that is related to campaigns or voting, but also should

Peace processes and electoral processes embody fundamentally different logics: the former are about building bridges between opposing groups; the latter generate party- and candidate-led attempts to outshine their opponents and sow division.

be conceptualized within the broader environment in which vertical, armed, antistate violence as well as horizontal violence among communities and interest groups are likely. The two major flashpoints that might affect or be affected by the electoral process are related to the peace negotiations and the conflicts in Rakhine State.

PEACE AND ONGOING CONFLICT

The 21st Century Panglong peace process, in part inherited from President Thein Sein's government and in part reconfigured by the NLD government since 2016, is at a low point. Neither the signatories of the Nationwide Ceasefire Agreement nor the nonsignatories sense a commitment on the part of either the government or the military to advancing a viable peace agreement in a timely fashion. The largest two signatories—the Karen National Union and the Restoration Council of Shan State—have suspended participation in the formal process, and local media are portraying the NCA-centric negotiations as stranded or deadlocked.⁴⁸ In the meantime, low-level fighting continues in northern and northeastern Myanmar, where the Tatmadaw is fighting EAOs, despite the military's announcement on December 21, 2018, of a four-month unilateral ceasefire in Kachin and Shan States.⁴⁹ In addition, signatories and nonsignatories are fighting each other in these areas; in one instance, signatories are even fighting each other. In southern Chin and northern and central Rakhine States, the Tatmadaw is also embroiled in battle with the Arakan Army, which is part of an alliance with nonsignatory EAOs from the north.⁵⁰ Little evidence suggests that this live combat will abate.

With a vow to hold three more Union peace conferences (UPCs) before 2020, Aung San Suu Kyi's government appears to be foundering, having shepherded through fifty-one so-called federal principles from previous UPCs, most of which simply restate provisions in the existing

constitution or laws already on the books. In addition, no significant UPC debates have been allowed on matters of decentralization of authority or control over natural resources, security sector reform, or other matters of central importance to the signatory EAOs. The NLD is keen to leverage whatever sort of Union Peace Accord it can pull together to present to its parliamentary majority for ratification before the 2020 election. The substance may stretch no further than the fifty-one principles and will garner only more resentment among EAOs.⁵¹ At the same time, the military has insisted on a nonsecession commitment, which was not part of the original NCA, from the EAOs, which is a nonstarter for most, particularly when the signatories' requests do not even make peace conference agendas.

If the election environment of 2015 is any indication of what is to come, campaign politics will soon take elite and popular attention away from the peace process. Peace processes and electoral processes embody fundamentally different logics: the former are about building bridges between opposing groups; the latter generate party- and candidate-led attempts to outshine their opponents and sow division to shore up party bases. In 2015, peace negotiators from the government side ran out of time as opposition political parties, including the NLD, held out hopes to the EAOs that a better deal would be available after a new government was formed.

In the 2015 election, ethnic armed organizations either disengaged from the electoral process or chose not to officially support parties sharing their ethnonym, instead quietly putting out indications that were read by electorates as guidance to support the NLD. For example, several Kachin party representatives and activists in Myitkyina noted that the Kachin Independence Organization's nonsupport for Kachin parties and



Military delegates attend the July 2018 closing ceremony of the third session of the 21st Century Panglong in Naypyidaw. (Photo by Hein Htet/EPA-EFE/Shutterstock)

messaging through key elders and other leaders led to NLD victories in some constituencies in Kachin State. It is not clear to date how signatory and nonsignatory EAOs will respond to electioneering over 2019 and 2020; some smaller signatories are reportedly considering fielding political parties, but the challenges to doing so—while staying engaged in the Panglong process—are many. The recent mergers by multiple Kachin, Mon, Chin, and Karen parties into single-ethnicity parties may present a more obvious target for popular ethnic support in 2020. However, much depends, observers in these areas say, on the ability of the merged parties to field locally acceptable candidates.

The “spectre of populism” also overshadows the peace process, as Ashley South recently argued in *Frontier*. Opposition to the ruling NLD will include populist-style, nationalist political campaigning that focuses on the defense of the Union, nation, race, and Buddhism from

“foreign influences.” South notes that this kind of rhetoric could mobilize ethnic Bamar communities, who have little understanding of or empathy for ethnic nationality communities living in conflict-affected areas, against ethnic armed organizations. According to South's analysis, “the peace process could be cast [via disinformation campaigns] as having ‘sold out’ the Bamar majority and undermined the integrity of the Union.” South argues that EAOs are commonly portrayed on social and mainstream media as figures in the drug trade, which only further undermines popular empathy with EAO demands of the peace process.⁵² A Mandalay-based public intellectual similarly noted the lack of interest in the peace process among Bamar heartland residents. He said, “They watch *Amay* [mother] Suu give the opening speech at every Panglong (Union Peace) Conference, and they think she has already made peace. It's done for them. So why are the ethnic groups making trouble?”



Union Election Commission officials count ballots at a polling station in Yangon following the April 2017 by-elections, the first test of the popularity of Aung San Suu Kyi's National League for Democracy since it came to power. (Photo by AP/Shutterstock)

Finally, ongoing conflict raises the possibility of postponements of elections among constituencies that the ministries of Defence, Home Affairs, and Border Affairs certify as unstable. In 2015, the UEC made two announcements that elections would not be held in certain areas due to security concerns. First, on October 12, 404 village tracts in Bago Region and Kachin, Kayin, Mon, and Shan States, as well as five townships in Shan State, were postponed. In the Shan State townships, polling was postponed because the areas were under the effective control of the Wa and Kokang EAOs, rather than experiencing active conflict. On October 27, a second announcement was made that the election would be postponed in all wards and village tracts of two more townships in Shan State (Kyethi and Monghsu) because of ongoing armed conflict between the Tatmadaw and the Shan State Army-North.⁵³

No clear process, criteria, or consultation mechanism exists for designating constituencies to be left out of the polls other than the constitutional allowance of postponement “due to natural disaster or due to local security situation.”⁵⁴ Lacking any transparency, the decision-making process leads to suspicions that postponements have been or will be politically motivated, aimed at either disenfranchising certain populations or lowering the number of civilian seats in the Pyidaungsu Hluttaw, thus by default raising the proportion of military seats in the legislature. What is important here is less the conspiracy theory that the military is looking to increase its clout in the presidential selection process or in legislative proceedings, and more that the absence of any consultation or explanation of cancellations has only further deepened distrust in the system, particularly among the ethnic nationality populations that could possibly be disenfranchised. The areas most likely to be declared off-limits would be parts of Shan

Public displays of criticism of NLD government attempts at repatriation—or even an inclination toward repatriation—likely will not remain limited to Rakhine State locations, but instead will be used by opposition political parties to promote populist agendas elsewhere in the country.

and Kachin States, and possibly parts of Rakhine State and southern Chin State, assuming the continued or expanded presence of the Arakan Army.

REPATRIATION AND RAKHINE STATE

Under immense international pressure to do so, the government is on the record as having approved in principle the return of Rohingya refugees from Bangladesh, where close to a million live in squalid camps. In a sealed June 2018 agreement with the UN Development Program and the UN High Commissioner for Refugees, the Myanmar government committed to “creating conducive conditions for the voluntary, safe, dignified and sustainable repatriation of refugees from Bangladesh and for helping to create improved and resilient livelihoods for all communities living in Rakhine State.”⁵⁵ In early November 2018, the Myanmar and Bangladesh governments agreed on an initial return of some two thousand refugees, the Myanmar side promising to process 150 per day. On November 15, the date the process was to begin, no Rohingya were willing to return. In response, the UN High Commissioner for Human Rights said, “We are witnessing terror and panic among those Rohingya refugees in Cox’s Bazar who are at imminent risk of being returned to Myanmar against their will.”⁵⁶ As of this writing, no Rohingya have returned through the formal process; Myanmar government officials are blaming Bangladesh for sabotaging their efforts.⁵⁷ Nonetheless, the Myanmar government continues to affirm its commitment to return via a process that involves verification of identity, a period of stay in a transit camp, and uncertain destinations for eventual resettlement.

That these attempts will occur in the lead-up to a hard-fought election ensures that they will be politicized by parties seeking to capitalize on the underlying historical and communal conflicts that led to the violence in the first place. Protests against repatriation like that in

Sittwe on November 25, 2018, by monks and a Rakhine CSO, will present ethnic Rakhine and USDP parties with opportunities to galvanize anti-NLD government sentiment ahead of the 2020 election.⁵⁸ Such public displays of criticism of NLD government attempts at repatriation—or even an inclination toward repatriation—likely will not remain limited to Rakhine State locations, but instead will be used by opposition political parties to promote populist agendas elsewhere in the country. These are the kinds of public events that could get out of hand, should there be misunderstandings or infiltration by provocateurs. Hence, a threat of communal violence results from the concurrence of the refugee repatriation process and the election.

Even without refugee repatriation, Rakhine State is home to the most volatile aspects of the intersection of the peace and electoral processes. Not a party to the formal Panglong process, the Arakan Army has seen its popularity in central and northern Rakhine State on the rise, having captured the imagination of many Rakhine people through its pursuit of #ArakanDream2020 and the Way of Rakhita, which is a call for a nationwide armed revolution by the Rakhine people in 2020.⁵⁹ This has occurred alongside the decline of Rakhine ethnonationalist political parties, which won the most seats in the state hluttaw in 2015, but were sidelined when the NLD installed its own minority government.⁶⁰ The Arakan National Party, which came out of a merger of two parties for the 2015 election, has split into three. As the International Crisis Group noted in January 2019, the “belief among ethnic Rakhine that politics is failing them” is now prevalent.⁶¹ Rakhine civil society and political party leaders expect the armed antistate violence to continue throughout the campaign period. As one Rakhine political party leader observed, “We will be just like Shan State. The government will decide to cancel elections because of security.”

Conclusion and Recommendations

Myanmar's 2020 election process holds the promise of deepening one component of the larger democratic reform project—that is, the regular selection by the electorate of representatives to local and national parliaments. A recent survey found interest in politics running at a little less than 40 percent of those sampled, but elite electoral actors are gaining greater fluency with the mechanics and architecture of Myanmar's election system.⁶² It was also apparent in numerous interviews for this report that despite legitimate concerns about the practices and patterns of elections historically in Myanmar, questioning was limited on whether elections are a legitimate way of conferring or transferring political power. Even the harshest critics of the present government and the military are for the most part committed to participation in the constitutionally mandated election of 2020.

That said, it will be important for the international and domestic communities to be aware of the challenges that Myanmar's complex conflict environment present over 2019 and 2020, the two years leading up to the 2020 election and the subsequent selection by the electoral college of a president. During that period, government decisions and nondecisions on all manner of issues will be put under a microscope because opposition parties will likely try to gain support from any disenchantment they can foster with the electorate. As was the case in the lead-up to the 2015 election, government progress on major reforms will likely be slow as the NLD's attention turns to fighting off electoral challenges from opposition political parties.

Two concurrent phenomena—the Panglong peace negotiations and the Rakhine State conflicts—are likely to color and be colored by the partisan politics in the

run-up to the 2020 election. Little progress will likely be made on either front because powerful stakeholders lack the will or the capacity to deliver the concessions that EAOs, the Rohingya, and the Rakhine require to buy into what the government has on offer. The peace process writ large and conflict mediation efforts in Rakhine State are both likely to be politicized by opposition political parties, some of which may disparage online and offline the EAOs, Rohingya, and other vulnerable communities, in the pursuit of populist appeals along the lines of national race protection and sovereignty claims.

All of this suggests that the domestic audience and the international community should adjust expectations by recognizing that Myanmar's complex history and politics make it unlikely that the 2020 election will prove to be any kind of resolution to what have been decades-old sources of trauma, suffering, and conflict.

To ensure the integrity of Myanmar's 2020 election amid ongoing vertical and horizontal conflicts, the government, political parties, civil society, the media, Facebook, and foreign donors should be committed to supporting the formal and informal organizations working on the elections so that Myanmar's electoral experience continues to deepen in progressive, democratic, and peaceful ways.

Legal frameworks, including both electoral laws and the 2008 constitution, should be revised to improve the operating environment for voters, candidates, political parties, the media, civil society, and others committed to electoral reform over the short, medium, and long term. For example, the 2008 constitution should be amended to ensure the political independence of the Union Election Commission. The legal codes should establish transparent processes, with

Political parties should ensure membership, leadership, and candidate selection reflect the ethnic, religious, and gender diversity of the country.

opportunities for appeal beyond the UEC, around the UEC decisions, constituency delineation (particularly Upper House constituencies, which are not based on townships), advance voting, tabulation and aggregation of results, and cancellation of elections in whole constituencies and partial cancellations of ward and village tracts within a constituency for security purposes. The Penal Code, myriad defamation laws, Official Secrets Act, and Section 66(d) of the Telecommunications Act should be amended to decriminalize defamation and protect the free press in campaign-related coverage, and to provide for the protection and freedom of civil society to participate in voter education and observation of elections, especially in remote or conflict areas. Legal requirements should be broadly interpreted to guarantee access of observers to the entire electoral process, including voter list preparation and, in particular, advance voting by the military. Finally, the UEC should use whatever legal authority it can to reduce the large gap between the smallest and largest constituencies by reapportionment of some percentage of seats where malapportionment is most significant.

Reforms to and by the Union Election Commission should be a priority. The president should use his appointment authority to make the membership of the UEC more reflective of the ethnic, religious, and gender diversity of the country. A more diverse UEC should increase its consultations with political parties, civil society, NCA signatories, and the media not only at the Union level but also in districts, townships, and village tracts and wards; the conduct of press conferences on a regular basis would go a long way to increasing knowledge about and trust in the process. Given the prominent role social media is expected to play, the UEC should develop a mechanism to counter electoral hate speech and calls for violence, give proper training to UEC members, publicly denounce hate speech, and conduct monitoring and

respond to hate speech in a timely manner. Finally, the UEC should seek to improve the procedures and training of UEC-led mediation committees to be more professional and impartial in arbitration of misunderstandings between candidates (alternative dispute resolution).

Political parties must rein in partisan behavior that has the potential to escalate conflict in the lead-up to the 2020 election. Parties should recommit and sign a revised code of conduct to not use violence, intimidation, threats, or hate speech in any aspects of electoral campaigning. Further, parties should not seek to leverage the peace process or conflict mitigation efforts in Rakhine State for the sake of partisan gains. Additionally, political parties should ensure that membership, leadership, and candidate selection reflect the ethnic, religious, and gender diversity of the country.

Civil society organizations should carve out as much space as possible to support the deepening of peaceful, progressive electoral reforms in Myanmar. As they did in 2015, CSOs should provide nonpartisan voter education and observation to the largest extent possible, in accordance with the regulatory framework. CSOs with deep roots in and trust from local communities should be encouraged to de-escalate conflict in communities where tensions threaten the integrity of various aspects of the electoral process, such as by countering disinformation and hate speech, encouraging dialogues to promote social cohesion, and promoting women's participation both as a value in itself and as a modality of conflict prevention and management. CSOs should publicly encourage candidates and parties and their supporters to denounce hate speech, and should convene workshops for other NGOs to develop strategic, targeted methods for preventing violence among members of their communities (youth, religious leaders, and so on).

Facebook should develop greater understanding of the dynamics of the Myanmar conflict and electoral environments. To that end, the company should staff an office inside the country with Myanmar conflict and elections experts to work with the CSOs that monitor Facebook. The company should dramatically increase its support to CSOs to expand digital literacy in communities at risk of disinformation campaigns. Additionally, given the linguistic diversity of Myanmar and the established record of campaign attacks in non-Burmese languages, Facebook should fund CSOs to carry out content monitoring in other Myanmar languages and to hire content reviewers for non-Burmese languages. Finally, Facebook's election unit should understand that working with the election commission, which Facebook typically does in other countries, is not a nonpartisan activity, given the way in which the UEC is appointed by a president from the majority party.

The Myanmar and foreign media have important roles to play in promoting both the peace and electoral processes, despite restrictions on their activity. The media should develop a code of conduct for covering election-related news with the objective of reducing electoral conflict, tension, and violence, as well as commit to halting—where it can—the spread of disinformation and hate speech. The mainstream media should call on candidates to craft and sign onto a code of conduct for peaceful campaigning, but remain neutral in reporting both the peace and electoral processes.

The Myanmar Police Force should commit to improving the protection of the rights, freedoms, and safety of candidates, observers, poll workers, and voters equally. It should also revise, update, and socialize the police code of conduct among officers and new recruits. For electoral security committees, representatives and input from the UEC, political parties, CSOs,

and community and faith leaders should be included to help plan more inclusive and community-led security planning from the start of the campaign period to the announcement of the results.

Foreign donors, embassies, and election reform implementors have important roles in deepening the hold of democratic electoral institutions and processes in Myanmar. Above all, they should support the continued development of formal and informal institutions and processes that are aimed at ensuring the integrity and peaceful conduct of the 2020 election. This requires donors, political officers, and reform implementors to shed purely technical mindsets around electoral support and to commit to context knowledge that will engender context-appropriate approaches, such as working through trusted partners (rather than new ones with little understanding of the complexity of the conflict and election environments). Donors should fund civil society initiatives to expand civic and voter education and long- and short-term electoral observation, particularly in areas where both horizontal and vertical conflict threaten to disrupt the election cycle. At the same time, donors and implementors should avoid support for any processes or projects that could interfere with voter list updates and election reforms (such as the Ministry of Labor, Immigration and Population's planned 2019 interim census).⁶³ Foreign election stakeholders should use all available opportunities to advocate to the government, political parties, civil society organizations, and major media outlets for these reforms aimed at ensuring a peaceful, credible election. Finally, foreign donors and implementors should recognize the risks of disengagement or reprogramming of funding away from work with the electoral management personnel and the election commission, which include missed opportunities to advance liberal democratic reforms over the short and medium term.

Notes

1. David Gillies, "Introduction: Electoral Democracy and the Paradoxes of Peacebuilding," in *Elections in Dangerous Places* (Montreal: North-South Institute, 2011), xxii.
2. Bamar refers to the ethnic nationality group that has historically been considered the majority population.
3. Alvin Rabushka and Kenneth A. Shepsle, *Politics in Plural Societies: A Theory of Democratic Instability* (Columbus, OH: Merrill, 1972).
4. Drawing mostly on colonial-era census figures projected forward, it has been common to describe the ethnic makeup of Myanmar as 65 percent Bamar (also Burman), but this number reflects no reliable data. The 2014 Population and Housing Census, technically supported by the UN Population Fund, collected data on ethnicity via a deeply flawed methodology. The ethnic results, which the census director warned could "shatter the state's peace and stability," have never been made public. Dr. Nyi Nyi, quoted in Pyae Thet Phy, "Census Data Could 'Shatter' Transition Stability, Says Official," *Myanmar Times*, February 24, 2016.
5. The Myanmar Police Force is in a more ambiguous position. The police are administered by the minister of home affairs, one of three cabinet officials constitutionally mandated to be appointed by the commander-in-chief (CINC) and to be serving as officers—thus placing the police within the chain of command of the CINC. However, the minister is also a member of the cabinet, which serves the president.
6. People's Alliance for Credible Elections (PACE), "Citizens' Mid-Term Perceptions of Government Performance," September 2018, 49–51.
7. John Buchanan, *Militias in Myanmar* (Yangon: The Asia Foundation, July 2016).
8. The most systematic research that demonstrates these attitudes in cease-fire areas is from Saferworld and Karen Peace Support Network, *Security, Justice and Governance in Southeast Myanmar: A Knowledge, Attitudes and Practices Survey in Karen Ceasefire Areas*, Yangon, January 2019.
9. Khine Thu Kha, Arakan Army spokesperson, quoted in "Rakhine rebels kill 13 in Independence Day attack on Myanmar police posts," *The Guardian*, January 6, 2019, www.theguardian.com/world/2019/jan/06/rakhine-rebels-kill-13-in-independence-day-attack-on-myanmar-police-posts.
10. Sithu Aung Myint, "Rakhine Nationalism and the Rise of the Arakan Army," *Frontier*, February 7, 2019, <https://frontiermyanmar.net/en/rakhine-nationalism-and-the-rise-of-the-arakan-army>.
11. On dark forces, see, for example, Gwen Robinson, "On the Road with Myanmar's Reformist President," *Myanmar Times*, November 27, 2013, www.mmtimes.com/in-depth/8881-on-the-road-with-myanmar-s-reformist-president.html; see also Stephen Gray and Josefine Roos, *Intercommunal Violence in Myanmar: Risks and Opportunities for International Assistance* (Yangon: Mercy Corps, 2014).
12. Aye Thandar Aung, quoted in Pearlie Li, "Research shows women's political participation in Myanmar is declining," *Mizzima News*, December 29, 2018, <http://mizzima.com/article/research-shows-womens-political-participation-myanmar-declining>.
13. Shwe Shwe Sein Latt, Kim N. B. Ninh, Mi Ki Kyaw Myint, and Susan Lee, *Women's Political Participation in Myanmar: Experiences of Women Parliamentarians, 2011–2016* (Yangon: The Asia Foundation and Phan Tee Eain, 2017), https://asiafoundation.org/wp-content/uploads/2017/05/Womens-Political-Participation-in-Myanmar-MP-Experiences_report-1.pdf.
14. Business for Social Responsibility, "Human Rights Impact Assessment: Facebook in Myanmar," October 2018, 12, https://fbnewsroomus.files.wordpress.com/2018/11/bsr-facebook-myanmar-hria_final.pdf.
15. The most complete account of these events is found in the Independent International Fact-Finding Mission on Myanmar, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, A/HRC/39/CRP.2* (New York: UN Human Rights Council, September 17, 2018), 330–31, www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_CRP.2.pdf.
16. Timothy McLaughlin, "How Facebook's Rise Fueled Chaos and Confusion in Myanmar," *Wired*, July 6, 2018.
17. Zarni Mann, "5 Accused of Sparking Mandalay Riots Sentenced to 21 Years Jail," *The Irrawaddy*, March 19, 2015. Nearly four years later, in 2018, Facebook finally took down U Wirathu's account. See Laignee Barron, "Nationalist Monk Known as the 'Burmese bin Laden' Has Been Stopped from Spreading Hate on Facebook," *Time Magazine*, February 28, 2018, <http://time.com/5178790/facebook-removes-wirathu>.

18. Simon Lewis, "Facebook Takes Down More Myanmar Accounts over Military Links," Reuters, December 19, 2018, www.reuters.com/article/us-facebook-myanmar/facebook-takes-down-more-myanmar-accounts-over-military-links-idUSKBN1OIOBX.
19. "Facebook Targets 'Dangerous' Armed Groups in Latest Myanmar Bans," Reuters, February 5, 2019, www.reuters.com/article/us-myanmar-facebook/facebook-targets-dangerous-armed-groups-in-latest-myanmar-bans-idUSKCN1PU0WC. This move by Facebook provoked considerable criticism from ethnic nationalities (not just the ones who share the ethnicity of the EAOs targeted) who wondered why Facebook targeted these four and not the dozens of other armed, non-state groups inside the country. Questions were raised about why Facebook decided that some ethnic aspirations are somehow more dangerous than others.
20. Facebook reported in a Skype interview that it would likely hand over responsibility for managing risks and opportunities around the Myanmar election to the Facebook elections unit. When this information was shared with one political party leader, the latter noted that Myanmar's election will coincide with those in the United States in 2020 and is unlikely to get the attention required to minimize Facebook harm to the Myanmar election.
21. VK, a Russian social media platform, has become more popular in the aftermath of Facebook's ban of the military commander in chief, Sen. Gen. Min Aung Hlaing. He initially moved his considerable Facebook presence to VK, a social media expert revealed in a Yangon interview, and a few hundred thousand Burmese-language accounts were subsequently created. It is quite possible that electoral interference may be leveraged on VK. At present, the commander-in-chief appears to be maintaining a relatively sophisticated web presence (www.seniorgeneralminhlaing.com.mm/en/).
22. Carter Center, "Observing Myanmar's 2015 General Elections, Final Report," Atlanta, 2016, 5.
23. For a complete analysis of results, see International Crisis Group (ICG), "The Myanmar Elections: Results and Implications," Briefing no. 147, Yangon/Brussels, December 9, 2015.
24. For a systematic overview of the legal framework, see Democracy Reporting International, *Manual on the Legal Framework for Elections in Myanmar*, n.d., www.stepdemocracy.eu/wp-content/uploads/2016/10/DRI-MM-EIDHR-Manual-on-Legal-FW-Election-v4-EN-2016.pdf.
25. These slogans date back to the early period of the military junta (1988 to 2011) and represent the boundaries the military will not allow to be crossed by the civilian government or the peace process.
26. Constitution of the Republic of the Union of Myanmar (2008), Sec. 398 (b)(7).
27. "Union Election Commission and the UEC Shwe Li Information Centre," Myanmar Electoral Resource and Information Network, <https://merin.org.mm/en/union-election-commission>. As of December 28, 2018, the GAD was transferred from under a military-controlled ministry (Ministry of Home Affairs) to a civilian-controlled one (Ministry of the Union Government), meaning at minimum a symbolic shift, if not a substantive one, removing military influence over elections. So far, all signs suggest few major changes in the way GAD operates, but if the government does undertake an overhaul of the GAD, local election officials could find themselves more under the direct control of the NLD government, thus raising issues regarding impartiality.
28. Carter Center, "Observing Myanmar," 68.
29. Proposals to shift some or all of Myanmar's elections to proportional representation (PR) were first raised after the 2012 by-election, but given more serious consideration in Naypyidaw in 2014, as the 2015 election approached. However, debate on a range of proposed PR reforms halted after the Constitutional Court ruled all but the existing voting system to be unconstitutional. For an account of these events, see ICG, "Myanmar's Electoral Landscape," Asia Report no. 266, Yangon/Brussels, April 28, 2015, 7–8.
30. The prohibition of voting by monks, in particular, has significant consequences for some constituencies, such as in Mandalay city, Pakkoku, and other centers of Buddhist monastic education. It is thought that Myanmar is home at any given time to three hundred thousand to four hundred thousand monks.
31. For information on campaign finance, see Institute for Democracy and Electoral Assistance, "Myanmar," 2018, www.idea.int/data-tools/country-view/209/55.
32. The Ministry of Labor was appended to MOIP in 2016, to become the Ministry of Labor, Immigration, and Population.
33. For voter list inclusion, much hinges on the possession of an up-to-date household list. If a voter checks the voter list display and finds her name missing, she has to produce her household list or other form of identification to demonstrate residence in that particular constituency. If—as is the case for Myanmar's many internal migrants—she is on a household list in another constituency, she must return to the local administrative office in that location, apply to remove her name from the household list there, and then return to her present constituency area to apply to have her name placed on the household list there. Once that requirement has been satisfied, the GAD at the ward or village level will transmit the information to the election commission to add her name to the voter list. This is an onerous and—for some—expensive process that disincentivizes self-updating of the voter list. Election observers noted that separate from this process, village development committees could confirm the residence and identity of potential voters to add their names to the voter list. As the EU Observation Mission noted, this "trust-based

- approach” did not serve internally displaced people well, as they are living far from their villages (European Union, *EU EOM Myanmar General Elections 2015: Final Report*, 2015, 17, www.eods.eu/library/myanmar_final_report_en.pdf).
34. The EU election observation mission reported that in 7 percent of polling stations observed, voter names were said to have been missing from the list (European Union, *EU EOM Myanmar*, 5).
 35. Written communication with election implementor, February 14, 2019.
 36. Toshihiro Kudo, "Results of the 2010 Elections in Myanmar: An Analysis," IDE-JETRO, Tokyo, January 2011, www.ide.go.jp/library/English/Research/Region/Asia/pdf/20110107.pdf. Kudo concludes from election results data that thirty races went to the USDP as a result of advanced voting.
 37. UEC, *Union Election Commission Strategic Plan, 2019–2022* [in Burmese], Naypyidaw, 2019, www.uecmyanmar.org/download.php?download_link=/upload_document/pdf/laws/691.pdf.
 38. European Union, *EU EOM Myanmar*, 23–27; Carter Center, "Observing Myanmar," 49–50.
 39. Only eleven of these were made under the former USDP government; the remaining ninety-six were made under the NLD. Complainants were overwhelmingly public officials, party or business leaders, and the military; defendants tended to be human rights defenders, artists, journalists, and activists who were expressing concerns about corruption or wrongdoing by people in power. Of the twenty-one cases that had proceeded to trial, all were convicted, most sentenced to six months in prison. Fifty-one cases were awaiting trial; nineteen were under active investigation; eleven were settled out of court; and five were dropped for lack of evidence. Nearly all the complaints were made for defamation, which is not defined in that law. Assuming a standard definition of defamation, two-thirds of those defamation complaints were groundless because they did not involve expressions that asserted facts (Free Expression Myanmar, 66(d): No Real Change, Yangon, December 2017).
 40. Carter Center, *Observing Myanmar*, 41.
 41. Technically, the use of townships for the Pyithu Hluttaw is not required by the constitution, which states that the “not more than” 330 elected representatives come from districts constituted “on the basis of township as well as population or combining with an appropriate township which is contiguous to the newly-formed township if it is more than 330 townships.” Constitution of the Republic of Myanmar (2008), Sec. 109. However, the constitution (Sec. 161 (a)) prescribes state and region hluttaws to be constituted by two representatives per township, thus making it more difficult to move beyond a township-based model.
 42. Carter Center, "Observing Myanmar," 29.
 43. “DKBA-5,” Myanmar Peace Monitor, www.mmpeacemonitor.org/conflict/159-dkba-5.
 44. Col. Saw Lah Pwe, quoted in Kyaw Zwa Moe, “Election Reignites Ethnic Tensions,” *The Irrawaddy*, November 10, 2010, www2.irrawaddy.com/opinion_story.php?art_id=20037.
 45. Maung Ne Lynn Aung, “The Impatient Optimist,” Personal Blogger, <http://blog.ihubgroup.com/category/election-violence>. These statistics represent significant underreporting.
 46. European Union, *EU EOM Myanmar*, 49; see also Thuta Linn, “Election Commission Postpones Hearing into NLD Complaint against NDAK Chief,” BNI Online, December 24, 2015, www.bnionline.net/en/2015-election/kachin-state/item/1378-election-commission-postpones-hearing-into-nld-complaint-against-ndak-chief.html.
 47. Sithu Aung Myint, “The Sunset of a Notorious Warlord,” *Frontier Myanmar*, October 2, 2016, <https://frontiermyanmar.net/en/the-sunset-of-a-notorious-warlord>.
 48. See, for example, Min Naing Soe, “NCA Needs Review for Stranded Peace Process,” Eleven Media, November 19, 2018, www.elevenmyanmar.com/news/nca-needs-review-for-stranded-peace-process.
 49. Office of the Commander in Chief of Defence Services, “Statement on Ceasefire and Eternal Peace,” December 22, 2018; Tatmadaw True News Information Team, “Warning for the Statement on Ceasefire and Eternal Peace,” *Myawaddy Daily*, January 26, 2019, 18.
 50. ICG, “A New Dimension of Violence in Myanmar’s Rakhine State,” Briefing no. 154, Yangon/Brussels, January 24, 2019.
 51. In its early days in office, the NLD government appeared to be squarely focused on peace as a means of opening up the 2008 constitution to an amendment process, though the NLD’s objectives were probably at odds with what ethnic organizations were seeking in terms of constitutional reform.
 52. Ashley South, “Populist Threats to the Peace Process,” *Frontier Myanmar*, November 23, 2018, <https://frontiermyanmar.net/en/populist-threats-to-the-peace-process>.
 53. European Union, *EU EOM Myanmar*, 50. Although Kyethi and Monshu were canceled in 2015 for security concerns, by-elections were successfully held in both townships in 2017 with special arrangements made by the Union Election Commission to accommodate voters to travel to “safe” polling stations.
 54. Constitution of the Republic of Myanmar (2008), Sec. 399 (e).
 55. “UNHCR and UNDP Sign a Memorandum of Understanding (MOU) with Myanmar to Support the Creation of Conditions for the

Return of Refugees from Bangladesh,” Joint UNHCR/UNDP press statement, June 6, 2018, www.unhcr.org/news/press/2018/6/5b1787e64/unhcr-undp-sign-memorandum-understanding-mou-myanmar-support-creation-conditions.html.

56. Michelle Bachelet, quoted in “Rohingya Return to Myanmar: Confusion and Fear in Refugee Camps,” BBC News, November 15, 2018, www.bbc.com/news/world-asia-46217505.
57. “Bangladesh to Blame if Refugee Returns Delayed: Myanmar Gov’t,” *Mizzima*, November 12, 2018, <http://mizzima.com/article/bangladesh-blame-if-refugee-returns-delayed-myanmar-govt>.
58. “Protest in Myanmar’s Rakhine State Opposes Rohingya Return,” *Bangkok Post*, November 25, 2018, www.bangkokpost.com/news/asean/1582066/protest-in-myanmars-rakhine-state-opposes-rohingya-return.
59. Ye Min Zaw, “What Does the Arakan Army Bring to Rakhine State?” *The Irrawaddy*, January 11, 2019, www.irrawaddy.com/opinion/guest-column/arakan-army-bring-rakhine-state.html.
60. According to the 2008 constitution, the president has the authority to name state- and region-level chief ministers regardless of the outcome of the hluttaw elections in those areas.
61. ICG, “A New Dimension of Violence in Myanmar’s Rakhine State,” Asia Briefing no. 154, Yangon/Brussels, January 24, 2019, 1.
62. PACE, “Citizens’ Mid-Term Perceptions,” 47–49.
63. Pyae Thet Phyo, “Census to Include Areas Not Under Government Control,” *Myanmar Times*, December 5, 2018, www.mmtimes.com/news/census-include-areas-not-under-govt-control.html.

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In late 2020, Myanmar will hold a general election for more than a thousand seats in its Union, state, and regional legislative bodies. The run-up to the election overlaps with two high-level events—the 21st Century Panglong peace conference and the possible repatriation of as many as hundreds of thousands of Rohingya refugees now in Bangladesh—that increase the risk of social tensions deepening. Divisive campaigning will take attention away from the peace process, just as it did during the 2015 election. Communal, religious, and nationalist claims will be center stage, raising the possibility that tensions could boil over. The military and police, however, are ill prepared to address potential violence. This report evaluates the environment in which all these factors intersect and identifies opportunities for mitigating the risk of conflict.

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