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## Two Cheers for Burma's Rigged Election

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## Two Cheers for Burma's Rigged Election

### ABSTRACT

Burma's recent election was clearly not free and fair. However, it can also be seen as improving a uniquely unrepresentative government, creating greater pluralism, and institutionalizing differences within the ruling junta. Even the rigged election may have created opportunities for further opening in the future.

**KEYWORDS:** Burma, Myanmar, elections, democracy, SPDC

BURMA/MYANMAR'S 2011 ELECTIONS REPRESENTED a great success for the country's military rulers, producing the "right" results with no significant upsets. The military's favored party won an overwhelming majority in Parliament, and former generals and regime loyalists were elected to all the positions of power. Thein Sein, a member of the ruling junta, was elected president, and other members secured powerful positions. These results were achieved through an election process that was clearly not free and fair, and that was roundly condemned by international observers and exiled democracy activists.

Critics have asserted that these rigged elections and the new Parliament will change nothing in the country, which has been a military dictatorship since 1962. They emphasize that the same people who dominated the junta before the election are still running the country. Despite the unfairness of the election, however, this view is short-sighted: it assumes that the institutions created by the country's military rulers will function exactly as they wish, it fails to ask why they saw the need to hold elections in the first place, and it assumes that the elections and the new Parliament are indelibly stained with the original sin of their conception. This view is dangerous insofar as it prevents

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activists, scholars, and others concerned with governance in Burma/Myanmar from recognizing the changes the elections brought and discourages them from looking for opportunities in the new political context. Even undemocratic elections and imperfect democracy may represent an improvement in a sufficiently bad status quo and may also lead to consequences not anticipated by the authoritarian rulers who sponsored them. Tocqueville wrote long ago that “the most perilous moment for a bad government is one when it seeks to mend its ways.”<sup>1</sup> The past 20 years have provided ample proof that the observation is still relevant.

### THE RIGGED ELECTION

The election process was skewed from beginning to end in order to ensure the victory of the Union Solidarity and Development Party (USDP), which was created for the election by the junta, known as the State Peace and Development Council (SPDC). The USDP was allowed to evade, bend, or break the election rules, while the government at every turn obstructed, harassed, and intimidated opposition parties. Prior to the election, the junta created constitutional structures designed to perpetuate its influence, impeded the registration of opposition parties, and hampered their campaigns. During the election, it manipulated early voting, intimidated voters, and closed polling places in areas where the USDP was unlikely to win. After the election, it manipulated the counting of ballots, eliminating a number of opposition candidates who appeared initially to have won.

Even the constitutional ground rules for the election were designed to favor the junta and protect it from an adverse outcome. The Constitution was passed in a controversial referendum in 2008, after 20 years during which the country had no Constitution at all and the junta simply ruled by decree. The Constitution reserves one-quarter of the seats in both houses of the legislature for military representatives appointed by the commander-in-chief, who must be a serving military officer. The president is elected by an electoral college composed of three groups, one each from the upper and lower houses and one appointed by the commander-in-chief. Each group elects a vice president, and then all three jointly elect the president from among the three vice presidents. This guarantees that the commander-in-chief, who has substantial

1. Alexis de Tocqueville, *The Old Regime and the French Revolution*, Stuart Gilbert, trans. (New York: Doubleday, 1955), p. 177.

powers in his own right, will at a minimum get to select one vice president. In addition, certain cabinet posts including the minister of defense and minister of home affairs are reserved for military officers. These provisions would be difficult to change: amending the Constitution requires a three-fourths vote in the legislature, effectively giving the military a veto if its appointed representatives vote as a bloc and they can obtain at least one additional vote.<sup>2</sup>

During the campaign, the SPDC violated its own laws through its support of the USDP, which is an offshoot of a government-organized social welfare organization, the Union Solidarity and Development Association (USDA). Sometimes described as a government-organized non-governmental organization (GONGO), it is actually difficult to regard the USDA as an NGO of any kind because it has always drawn on government financing, personnel, office space, vehicles, and other assets. In addition, it has served as a mechanism for government suppression of opposition activities, most notoriously the 2003 Depayin Incident in which USDA-recruited thugs violently broke up a rally by opposition leader Aung San Suu Kyi.<sup>3</sup> In practice, the USDA always served the purpose of a mass party in an authoritarian state, functioning as a mechanism of social control and mobilization for the government.

The Political Parties Registration law prohibits the use of state property or funds for campaigning. Yet, the USDP, led by then-Prime Minister Thein Sein, benefited from the use of government-owned USDA offices, vehicles, services, and media, as well as the time of government employees. In an effort to reduce the flagrancy of these violations, the government in July 2010 turned all USDA property over to the USDP, in effect privatizing the organization.<sup>4</sup>

Party and candidate registration was made difficult and expensive, deterring many smaller parties. The Amsterdam-based NGO Transnational Institute has calculated that to contest seats in all 498 constituencies represented in the national Parliament would cost US\$250,000 in candidate registration fees alone, far beyond the means of nearly all parties.<sup>5</sup> In addition, there was

2. Constitution of the Republic of the Union of Myanmar, 2008. Yangon, Ministry of Information, <[http://www.burmalibrary.org/docs5/Myanmar\\_Constitution\\_2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution_2008-en.pdf)>.

3. Network for Democracy and Development (NDD), *The White Shirts: How the USDA Will Become the New Face of Burma's Dictatorship* (Mae Sariang, Thailand: NDD, 2006).

4. Nayee Lin Latt, "Regime Separates Assets of the USDA and USDP," *Irrawaddy* (found at <<http://www.irrawaddy.com>>), July 8, 2010; Ba Kaung, "Fighting for Scraps," *ibid.*, August 1, 2010.

5. Transnational Institute, *Burma's 2010 Elections: Challenges and Opportunities* (Amsterdam: International Institute, 2010), p. 4.

a total of 665 seats up for election in the 14 state legislatures. The USDP was the only party able to contest nearly all of these 1,163 constituencies in both the national and local legislatures.<sup>6</sup> The second largest party, the NUP, was able to contest 999 seats, about 85% of the total. The next largest parties, the National Democratic Front (NDF) and Shan National Development Party (SNDP) were each only able to contest less than 15% of the seats. An additional deterrent was the significant fine imposed on parties that contested the election but did not win any seats. The approval of party registration applications was slow, and some were denied for apparently arbitrary reasons.<sup>7</sup>

Because of these obstacles and a conviction that the elections would not be free and fair, Aung San Suu Kyi's National League for Democracy (NLD), the leading opposition party and winner of the annulled 1990 election, decided not to register or contest the election.<sup>8</sup> Particularly problematic for the NLD was a requirement that parties not have convicted criminals as members. This would have required the expulsion of Aung San Suu Kyi, who was convicted for violating the terms of her house arrest when she briefly sheltered an American who, in a bizarre incident, swam to her house. The NLD also would have had to expel other party leaders who have been convicted of political crimes.<sup>9</sup>

The government also harassed opposition parties and candidates during the campaign. The most obvious form of harassment was the continued detention of opposition leaders. Aung San Suu Kyi's house arrest was the most prominent example, but many other leaders or potential leaders remain in prison, including Khun Tun Oo and Sai Nyunt Lwin, leaders of the Shan National League for Democracy, which received the second-largest share of the vote in the 1990 election.

6. The government has not released official counts, forcing analysts to rely on reporting by foreign news agencies and exile groups. It appears that the USDP contested all but a handful of the 1,163 total seats in the upper and lower houses of the national Parliament and the 14 regional parliaments. The next largest party was the National Unity Party (NUP), which contested 999 seats altogether. BBC, "Burma Election: The Parties," <<http://www.bbc.co.uk>>, November 4, 2010. Several opposition parties agreed informally not to compete in some constituencies. Ko Htwe, "Pro-Democracy Parties to Avoid Clash," *Irrawaddy*, August 26, 2010; Lawi Weng, "Six Parties Form Pro-Democracy Alliance," *ibid.*, October 5, 2010.

7. Burma News International (BNI), *Hobson's Choice: Burma's 2011 Elections* (Chiang Mai, Thailand: BNI, 2011).

8. NLD, *Special Statement No. 4/03/10*, March 30, 2010.

9. After the election, the new Parliament amended the election law, permitting Aung San Suu Kyi and other NLD members to run. They subsequently participated in by-elections, and many, including Aung San Suu Kyi, were elected.

Although parties were theoretically permitted to campaign, in practice numerous obstacles were placed in their way. For instance, police were present at opposition campaign events, which had a chilling effect because many potential supporters feared getting in trouble with government officials. The exile publication *The Irrawaddy* quoted a member of the SNDP: “As soon as a walkie-talkie beeps, the people know that intelligence personnel are among them, so they leave.”<sup>10</sup>

The government decided in September to close a number of polling places in areas where they could not secure the vote. Most notably, these were areas controlled by various ethnic insurgent groups. Many of these groups have ceasefire agreements with the government, but the military recognized that it would not be able to control many of the polling places in their territory; it was widely assumed that these areas would tend to vote for political parties fielded by minority communities.<sup>11</sup>

These various restrictions led many international observers to condemn the elections even in advance. Human Rights Watch, for instance, wrote that the election “will likely do little to alter the military’s continued political dominance, albeit in ostensibly civilian guise, and a repressive state apparatus that will not change significantly.”<sup>12</sup> Despite its ongoing policy of engagement with Burma/Myanmar, U.S. State Department spokespersons repeatedly said that the election would lack legitimacy and hinted that they would not recognize the election of Senior General Than Shwe as head of state.<sup>13</sup> This eventuality never came to pass because he unexpectedly retired from all formal positions.

The conduct of the election itself was also deeply problematic. Prior to the election, there had been reports of voter lists being inflated with phantom voters. Burmese election law allows voters to cast advance ballots if they will not be present in their home constituency on election day. These ballots are held and counted after the in-person ballots are cast on election day. False

10. Ba Kaung, “Fighting for Scraps.”

11. Htet Aung, “Questioning the EC Definition of ‘Free and Fair,’” *Irrawaddy*, September 17, 2010; Saw Yan Naing and Lawi Weng, “EC Afraid of Losing Poll in Ethnic Areas,” *ibid.*, September 17, 2010; Agence France-Presse (AFP), “Myanmar Deprives ‘Millions’ of Vote in Ethnic Areas,” September 17, 2010; and BNI, *Hobson’s Choice*.

12. Human Rights Watch, *Universal Periodic Review Submission: Myanmar (Burma)*, <<http://www.hrw.org>>, July 1, 2010.

13. Ba Kaung and Lalit K. Kha, “U.S. Won’t Accept Than Shwe as Burma’s Civilian Ruler,” *Irrawaddy*, August 31, 2010; Department of State, *Daily Press Briefing*, <<http://www.state.gov>>, September 24, 2010.

registrations thus allowed for the falsification of advance votes, which could be used to skew the final totals and provide reliable majorities for USDP candidates. Several candidates who had appeared to be winning suddenly found their victories reversed by advance votes.<sup>14</sup> This technique supplemented more overt manipulation, including bribing or intimidating voters before the election or at the polling stations.

Such rampant violations support Aung San Suu Kyi's assertion that the real problem with the election and the new government is lack of rule of law.<sup>15</sup> There are no mechanisms through which to hold the government accountable for its actions, even when it violates its own rules. Her quixotic suggestion that the NLD should sue the government for violations of the Political Parties Registration law may have been meant to highlight the continuing lack of legal accountability, or simply to try to maintain visibility as events increasingly appeared to pass her by. However, it also illustrates the fundamental problem she and other democracy activists face: where is rule of law to come from? How can Burma/Myanmar develop the institutions necessary for democratic governance and accountability in a context in which no such institutions exist? Systems of accountability do not emerge full-grown from the heads of activists. They need to be developed and nurtured. Burma/Myanmar's judiciary and police forces would require significant rehabilitation, and it is difficult to see how this could happen without the consent and cooperation of the military leadership and the government.<sup>16</sup> Yet if the goal is the removal of the current government, why would it cooperate in the creation of such institutions? This fundamental paradox has been at the heart of the country's 20-year-long impasse.

What is most remarkable about the current moment is thus not that the elections were seriously flawed—this was inevitable—but that they happened at all. Prior to the election, the junta was in the strongest position it had ever enjoyed. When it was formed in 1988, the junta faced multiple crises. The

14. "Vote List Fraud Exposed," *Irrawaddy*, October 29, 2010; Htet Aung, "Advance Voting Abuses Rampant," *ibid.*, November 4, 2010; Associated Press (AP), "Complaints Mount on Eve of Elections," *ibid.*, November 6, 2010; "Burmese Opposition Says Voter Being Cheated," *The Nation* (Bangkok), November 7, 2010, <<http://www.nationmultimedia.com>>; Hein Zaw, "Winners Become Losers One Day after Election," *Irrawaddy*, November 11, 2010; Ba Kaung, "Election Day Marred by Fraud, Intimidation," *ibid.*, November 8, 2010; B. D. Prakash, "The Mechanics of Manipulation," *ibid.*, December 2010; BNI, *Hobson's Choice*.

15. AP, "Burma Designates Constituencies for 'Parliament,'" *Irrawaddy*, August 12, 2010.

16. Neil A. Englehart, "Is Regime Change Enough for Burma? The Problem of State Capacity," *Asian Survey* 45:4 (July/August 2005).

economy was crippled by a currency devaluation, there were protests in the streets, and insurgencies posed a severe threat to the central government. By the 2010 election, the military had more than doubled in size to 400,000 troops, the Communist insurgency had collapsed, and the government had negotiated ceasefire agreements with most of the remaining ethnic rebel groups. In addition, the democratic opposition was crippled. This position of relative strength was probably an important reason that officials were willing to call elections in the first place.

The SPDC seems to have calculated that it could withstand modest changes in the status quo if it could improve its international and domestic legitimacy. Initially, it appeared that the change was too modest to achieve this increased legitimacy, given the international condemnation and lack of enthusiasm among voters. Yet, it would be short-sighted to think that this decision will be without consequences, some anticipated by the junta but many not. Scholars and activists interested in democracy in Burma/Myanmar need to be sensitive to the changes wrought by the election, rather than simply condemning the new Parliament as a continuation of military rule. The process was certainly meant to perpetuate military dominance, but it also generated significant changes in the political landscape.

### THE ELECTION AS PROGRESS

The real question is not whether the election was free and fair, which under the circumstances was always impossible; it is rather whether the election created opportunities that will make future progress more likely. Did it create conditions more favorable to the establishment of the rule of law and accountability than those that existed prior to the election? To make this judgment, one must appreciate the country's uniquely weak position in terms of civil and political rights.

After independence in 1948, there was a decade of democracy in Burma, dominated by local bosses affiliated with the Anti-Fascist People's Freedom League (AFPFL). This was a time of corruption and civil war. AFPFL bosses were often given government administrative positions that enabled them to control their localities, making central government officials effectively powerless to intervene in local affairs. Exploiting their positions, these local bosses controlled smuggling, the black market, and other criminal activities. Often they captured control of police forces and military units as well as controlling



militia groups and gangs of thugs. These sources of local power allowed them to dominate local politics, buying or intimidating voters and rigging elections. Despite regular elections, the quality of this democracy was poor, and the exercise of civil rights for most voters, particularly in rural areas, was severely curtailed.<sup>17</sup> The situation resembled that described by O'Donnell in some Latin American countries, where local powers negate or coopt the authority of the national government. They create "systems of private power (or better, privatized power, since some of the main actors hold state positions), where some rights and guarantees of democratic legality have close to nil effectiveness." In such areas, "[T]he obliteration of legality deprives the regional power circuits, including those state agencies, of the *public*, lawful dimension without which the national state and the order it supports vanish."<sup>18</sup>

This chaotic period ended with the 1962 coup that brought Ne Win to power. There has been no real democracy and little in the way of civil rights since that time. The only politics between the 1962 coup and the 2010 election was factional conflicts within the military and violent conflict with insurgent groups.<sup>19</sup> After the Ne Win regime collapsed in 1988, the country was ruled by a military junta, initially called the State Law and Order Restoration Council (SLORC), and then, after a reorganization in 1997, the SPDC. There was no Constitution for a full 20 years between 1988 and the 2008 referendum, and no way to hold the political leadership accountable for its actions.

Decades of military rule have been disastrous for the country. Purging and undermining the civil service and judiciary in order to neutralize them as sources of potential opposition, the military has exacerbated problems of corruption and incompetence, leading to an inability to deliver basic services and make coherent policy. Tax collections have plummeted from an already low 10% of gross domestic product (GDP) in the 1970s to 2% in 2001, according

17. See John Cady, *A History of Modern Burma* (Ithaca, N. Y.: Cornell University Press, 1958); Manning Nash, "Party Building in Upper Burma," *Asian Survey* 3:4 (April 1963); Melford Spiro, *Anthropological Other or Burmese Brother? Studies in Cultural Analysis* (New Brunswick, N. J.: Transaction Publishers, 1992); Balwant Singh, *Independence and Democracy in Burma, 1945–1952: The Turbulent Years* (Ann Arbor: University of Michigan, Center for South and Southeast Asian Studies, 1993); Mary P. Callahan, *Making Enemies: War and State Building in Burma* (Ithaca, N. Y.: Cornell University Press, 2003); Englehart, "Is Regime Change Enough for Burma?"

18. Guillermo O'Donnell, "On the State, Democratization, and Some Conceptual Problems: A Latin American View with Glances at Some Post-Communist Countries," *World Development* 21:8 (August 1993), p. 1359.

19. Kyaw Yin Hlaing, "Power and Factional Struggles in Post-Independence Burmese Governments," *Journal of Southeast Asian Studies* 39:1 (February 2008).

to the most recent reliable data available; even the World Bank considers the tax collections alarmingly low.<sup>20</sup> At the same time, the military has made itself indispensable, as seconded officers educated in the military's separate educational system provide the most competent and well-trained administrators in the crippled civil service.

The SLORC held an election in 1990, which was won in a landslide by the NLD under Aung San Suu Kyi despite SLORC harassment and government favoritism for its own NUP.<sup>21</sup> The SLORC refused to recognize the results of the election, did not convene Parliament, arrested many elected members of Parliament (MPs), and placed Aung San Suu Kyi under house arrest. The military then ruled by decree for over 20 years, unchecked by any constitution, legislature, judicial system, or even a civil service capable of informing or moderating its policies. Sanctions by the U.S. and E.U. were ineffective at bringing about change or even seriously handicapping the regime.<sup>22</sup> The economy continued to stagnate because of inept policymaking and insecure property rights, but new natural gas revenues improved the regime's balance sheet. Neighboring countries, including China, India, and the ASEAN (Association of Southeast Asian Nations) states have been happy to trade with Burma/Myanmar despite the sanctions.

In this context, it is remarkable that the military sought any change at all. Before the election, it was in a position of total dominance. Prior to the 2008 constitutional referendum—the product of a process begun in 1990 and stalled for over a decade—there was no legal basis to challenge any government activity whatsoever, and no organized group was able to do so. There was no Constitution, no legislature, no political parties, and the judiciary and civil service were corrupt and subservient.

20. World Bank, *Myanmar: Policies for Sustaining Economic Reform* (Washington, D.C.), October 16, 1995; see also Englehart, "Is Regime Change Enough for Burma?"

21. The NLD won 59.9% of the vote in the 1990 election, while the NUP won only 21.2%. The highly disproportionate SMPD (single member plurality district) electoral system translated this into 392 NLD seats in the 492-seat legislature, with only 10 going to the NUP. See James F. Guyot, "Myanmar in 1990: The Unconsummated Election," *Asian Survey* 31:2 (February 1991), p. 210. This extremely disproportionate result may have contributed to the SLORC's decision not to recognize the election results. The SMPD was retained for the 2010 election, in which similar disproportionality appears to have helped the USDP. Since raw vote counts have not been released, however, it is impossible to determine exactly how disproportional those results were.

22. Morton B. Pedersen, *Promoting Human Rights in Burma: A Critique of Western Sanctions Policy* (New York: Rowman and Littlefield, 2008).

At the same time, the regime was dangerously alienated from society. The military had formerly been an avenue for social mobility, but the officer corps has assumed an increasingly caste-like character, with extensive intermarriage. Officers' children receive a special education and other benefits. Promotion from the lower ranks has become unusual. In the meantime, the rank and file has been poorly paid and badly treated, lowering morale.<sup>23</sup>

Furthermore, the country's intelligence apparatus appears to be less effective since the 2004 purge of former security chief Khin Nyunt. Most important, the 2007 Buddhist monk-led protests, the so-called "Saffron Revolution," illustrated how far the intelligence apparatus had deteriorated: the dissent caught the government completely by surprise, and it resorted to extensive arrests and torture to find the ringleaders.<sup>24</sup> The 2007 demonstrations shocked the junta, not just because they signaled widespread opposition but also because their vehemence posed a spiritual threat. Many members of the junta are notoriously superstitious and subscribe to an interpretation of Buddhism that suggests that sufficient generosity to the Buddhist clergy can erase the negative karmic effects of officials' sins. If the clergy refuse to cooperate by accepting donations and performing the appropriate ceremonies, however, the generals will be condemned to exhaust their spiritual power (*pon*) in this life and suffer for their actions in future lives.<sup>25</sup> The "Saffron Revolution" was therefore more profoundly threatening for many members of the junta and their families than purely political demonstrations would have been.

Despite their dominance, the military leaders of Burma/Myanmar see an uncertain future; the political reforms they have undertaken are intended to secure that future while surrendering as little real power as possible. Yet, it is unclear whether they will be able to control the new institutions they have created, which are radically different than the system of poorly institutionalized but total authority that preceded them.

23. Andrew Selth, *Burma's Armed Forces: Power without Glory* (Norwalk, Conn.: Eastbridge Books, 2002).

24. Kyaw Yin Hlaing, "Challenging the Authoritarian State: Buddhist Monks and Peaceful Protest in Burma," *Fletcher Forum of World Affairs* 32 (Winter 2008).

25. Bruce Matthews, "The Present Fortune of Tradition-Bound Authoritarianism in Myanmar," *Pacific Affairs* 71:1 (Spring 1998); Ingrid Jordt, *Burma's Mass Lay Meditation Movement: Buddhism and the Cultural Construction of Power* (Athens, Oh.: Ohio University Press, 2007).

### Changes in the Status Quo

The 2008 Constitution and the 2010 election process changed the status quo markedly. They forced the SPDC to permit the formation of opposition political parties while creating institutionalized divisions within the regime. These changes have increased the pluralism of the political system, which prior to the election was effectively nil. Furthermore, the military leadership will have to work through a (mostly) elected legislature, rather than ruling by decree. These changes set in motion new dynamics that the regime may not be able to control.<sup>26</sup>

The election process compelled the junta to permit the legal formation and operation of opposition political parties. Since 1990, the only opposition party that functioned at all was the NLD, which was subject to greater or lesser restrictions according to the whim of the SPDC. The NLD was banned as a political party in the run-up to the 2010 election because of its refusal to register for the election. The decision to boycott the election was controversial even within the NLD, and ultimately prompted a split within the party. A new party, the National Democratic Force (NDF) was formed by renegade NLD leaders who disagreed with Aung San Suu Kyi and wished to contest the election. In the end, it emerged as the fourth largest party in the People's Assembly, albeit with only eight seats, all from Yangon (see Table 1). A number of other opposition parties sprang up to contest the election, a hopeful sign given the desperate need for rejuvenation of the opposition leadership and the decrepit state of the NLD even before it was banned.<sup>27</sup>

26. Note that the structure of the new political system could potentially create checks within the government, although under current conditions it seems unlikely that this potential will be realized. There are two houses of Parliament, which are largely coequal. In the lower house, or People's (Pyithu) Assembly, seats are allocated by population, while in the upper house, or Nationalities (Amyotha) Assembly, they are allocated in equal numbers to each state or region. Both must pass legislation for it to become law; if one house passes a bill and the other does not, they sit in a joint session to break the deadlock, with the larger People's Assembly carrying more weight because it has nearly twice as many members as the Nationalities Assembly (Constitution of the Republic of the Union of Myanmar, Article 95 [b]). In practice, however, the newly elected state and regional assemblies seem to be taking a more active role in defining relations with the central government than the Nationalities Assembly. Surprisingly, the Constitution does not provide for a presidential veto: the president can return bills to Parliament for reconsideration, but Parliament can affirm them with a simple majority vote (*ibid.*, Article 106).

27. The NLD had been unable to recruit new members or elect new officers for years until the preparations for the election began. As a result, its Central Committee consisted almost entirely of octogenarians and was rapidly dying off. The election of a new Central Committee ameliorated this situation somewhat. See Khin Hnin Htet, "New NLD Central Committee Holds First Meeting,"



Since the election, the government appears to be tolerating the NLD as an NGO. Regime critic Benedict Rogers reports that the NLD office in Yangon is now “the busiest place in Rangoon.”<sup>28</sup> Aung San Suu Kyi was released from house arrest subsequent to the election and has embarked on a series of energetic public appearances, rapidly reasserting her relevance. The blatant vote-rigging produced a solid majority for the USDP, but opposition parties were permitted to win some seats and sit in the new Parliament. The legitimacy of the opposition parties as representatives of their constituents has thus been implicitly recognized.

Furthermore, Burma/Myanmar’s ethnic minority groups now have formal representation in the government for the first time since 1988. Roughly speaking, the country’s regions (formerly called divisions) are dominated by the majority Burman ethnic group, while the states have substantial ethnic minority populations.<sup>29</sup> As Tables 1 and 2 show, the USDP won seats in all the regions and states. The majority of the opposition parties, on the other hand, catered to ethnic minority voters and won seats in areas where voters from their targeted groups were concentrated. The USDP won 93% of the People’s Assembly seats in the regions but only 55% in the states. The USDP share of the lower house (Pyithu Hluttaw, People’s Assembly or House of Representatives) seats even fell below 50% in Shan and Rakhine States, which have particular concentrations of minority groups. The pattern in the upper house, the Nationalities Assembly (Amyotha Hluttaw), is similar, as seen in Table 2. In the upper house, the USDP won just under 60% of the seats in the states as compared to 94% in the regions. The USDP fell below 50% of the seats only in Rakhine State, holding just at 50% in Chin, Kachin, and Karen States. In both the People’s and Nationalities Assemblies, the anomaly is the Yangon Region. There the NLD splinter, the NDF, picked up one-third of the seats in the Nationalities Assembly and 18% of the seats in the People’s Assembly.

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*Democratic Voice of Burma*, January 19, 2010, <<http://www.dvb.no>>. However, the democracy movement continues to have an unhealthy dependence on a single charismatic leader in the person of Aung San Suu Kyi.

28. Benedict Rogers, “Redefining the Skewed Vocabulary,” *Democratic Voice of Burma*, <<http://www.dvb.no>>, September 20, 2011.

29. This distinction goes back to British colonial rule, when most of what are now the seven states were indirectly ruled through local native authorities governing what were referred to as “native states.” The majority Burman areas were ruled directly and called divisions. The 2008 Constitution changed the colonial term “division” to the less divisive-sounding “region.”

TABLE 2. Nationalities Assembly (Amyotha Hluttaw) Election Results

	Burman/National Parties				Ethnic Minority-based Parties														
	USDP	NUP	NDF	Ind.	SNDP	UDPKS	PNO	WDP	TNP	KDDP	KPP	PSPD	CPP	CNP	AMRDP	RNDP	Total	% USDP	
<i>States</i>																			
Kachin	6	3	—	1	1	1	—	—	—	—	—	—	—	—	—	—	12	50	
Shan	7	—	—	—	2	—	1	1	—	—	—	—	—	—	—	—	12	58	
Karen	6	—	—	—	—	—	—	—	1	1	3	—	—	—	1	—	12	50	
Chin	6	—	—	—	—	—	—	—	—	—	—	—	4	2	—	—	12	50	
Mon	8	1	—	—	—	—	—	—	—	—	—	—	—	—	3	—	12	67	
Rakhine	5	—	—	—	—	—	—	—	—	—	—	—	—	—	—	7	12	42	
Kayah	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
<i>Regions</i>																			
Sagaing	11	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	92	
Mandalay	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
Magway	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
Ayeyawady	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
Yangon	8	—	4	—	—	—	—	—	—	—	—	—	—	—	—	—	12	67	
Bago	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
Taninthayi	12	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	12	100	
<i>Total</i>	129	5	4	1	3	1	1	1	1	1	3	4	4	2	4	7	168	77	

SOURCE: Ibid. to Table 1.

NOTE: KDDP = Kayin State Democracy and Development Party. 56 seats are appointed by the commander-in-chief.

The NUP represents a particularly interesting manifestation of the new, nascent pluralism. It won 12 seats in the People's Assembly, making it the third largest party in the lower house, and five in the Nationalities Assembly, making it the second largest party there. The NUP was originally formed as the regime's favored party in the 1990 election, and it is often described as the successor to Ne Win's Burma Socialist Program Party (BSPP), which was dissolved in 1988. Its current leader, Tun Yi, is a former BSPP central committee member and a former deputy commander of the armed forces. The NUP remains dominated by networks linked to the now-deceased Ne Win rather than to Than Shwe.<sup>30</sup>

Yet, the SPDC's support for the USDP in effect transformed the NUP into an opposition party in the 2011 election. NUP members had to go out of their way to explain that the party was not in alliance with the USDP. As such, it represents the institutionalization of a major fault line within the military.<sup>31</sup> The election also created a new division within the junta. The Constitution required that only civilians run for the elected seats in the legislature, with serving military officers restricted to the appointed seats. Junta members who ran for the USDP therefore had to resign their commissions. This means that the junta is now institutionally divided between current and former officers. These groups now have divergent interests.

The civilian MPs can no longer follow a military career to promotion and greater power, and they need to worry about securing re-election. Rigging the results achieves that end for them with a minimal investment of resources. If they cannot rig elections, however, they would need to find some other way to attract votes, for instance, by providing services to constituents or adopting more popular policies.

The serving officers, however, are primarily concerned with the legitimacy that elections can confer on their rule. Blatant vote-rigging undermines that legitimacy. To obtain the legitimacy payoff, serving military officers will wish to minimize vote-rigging, or at least disguise it more effectively. Less electoral corruption, however, will mean that elected MPs will have to be less responsive to the policy preferences of the serving officers. These two groups

30. "Election Pits Ne Win Loyalists against Than Shwe's Regime," *Irrawaddy*, October 27, 2010.

31. Notably, an NUP candidate in Ayeeyawady Region filed a complaint with the Election Commission alleging USDP fraud in the advance voting. Htet Aung, "NUP Files Complaint against USDP Vote Rigging," *Irrawaddy*, November 6, 2010. Many other opposition candidates were threatened with legal action by the Election Commission if they filed complaints. See Lawi Weng, "Warnings Silence Opposition Candidates," *ibid.*, November 23, 2010.



thus now have differing incentives that are institutionalized in the structure of the new political system.

Perhaps the most acute symptom of tensions between active and former military officers has been the dispute between military commanders and the state and regional governments about the disposition of business concessions. Many of the state and regional governments are led by former military officers who have longstanding interests in their regions. Newly appointed regional military commanders, meanwhile, wish to establish economic roots in the areas under their control as military officers before them have done.<sup>32</sup>

Perhaps the most fundamental change is that the junta can no longer rule by decree, as the SPDC has done for the past 20 years. Legislation will have to be passed by the legislature. The USDP dominates that body, with 79% of the elected seats in the lower house. These MPs will presumably vote as a bloc with the 25% of the legislature appointed by the military, giving them 84% of the total seats in the lower house: the government will have no difficulties passing bills. The next largest party, the SNDP, holds only 5% of the elected seats (see Table 1). There are, however, indications that differences within the military may make their way onto the floor of the Parliament. In August 2011, some military officers offered support for opposition requests that the government issue a general amnesty for all of the country's 2,100 political prisoners. Such a move would presumably include former head of military intelligence Khin Nyunt, who has been under house arrest since 2004.<sup>33</sup> He is associated with the Ne Win wing of the military.

In addition, there appears to be a nascent reform effort in the military. The commander-in-chief, Min Aung Hlaing, is seen as relatively free of corruption and human rights abuse and has supported President Thein Sein's initiatives so far. A recent International Crisis Group report suggests that "part of the reason for his support for the president may be that he wants to restore the reputation of the armed forces and considers that the best way of doing so is to focus on building a professional military in a reformed political environment" and that he may also have ambitions to succeed Thein Sein as president.<sup>34</sup>

32. See Yan Pai, "Military, Regional Govts at Odds over Business Concessions," *ibid.*, May 27, 2011.

33. Ko Htwe, "Military Factions Join Opposition to Demand Amnesty," *ibid.*, August 29, 2011.

34. International Crisis Group, *Myanmar: Major Reform Underway*, Jakarta/Brussels, <<http://www.crisisgroup.org/-/media/Files/asia/south-east-asia/burma-myanmar/B127%20Myanmar%20-%20Major%20Reform%20Underway.pdf>>, September 22, 2011, p. 14.

Before the election, however, the SPDC could make policy by securing agreement among its dozen or so members and the powerful regional commanders. Now the junta will need to take the additional step of convincing the legislature. If the question is whether the new government of Burma/Myanmar will be an exemplary democracy, the answer is clearly no. Any such expectation would be absurd given how the country has been governed since 1988. The real question is whether the new government represents progress and might serve as the basis for incremental improvements. Here the answer is a qualified yes. Given the military government's complete freedom from accountability before the constitutional referendum of 2008, any change is an improvement. Even a rigged election may represent progress if what went before was bad enough.

The NLD leadership and the exile activist community have been very vocal in international media reports, and thus their point of view, that the election represents no significant change, has dominated. However, there are local actors who recognize the need for some process of transition, which may necessarily have to begin with small, incremental steps. As Vice Chairman Dr. Min Hla Aung of the AMRDP put it, “[W]e hope that the changes our people hope to achieve will gradually come through the election process. Change will not come overnight. It takes time.”<sup>35</sup>

### Signs of Progress?

Since Thein Sein became president in 2011, a number of startling changes have occurred in Burma/Myanmar, including reduced censorship and greater governmental transparency. Some observers see these as signs of real change, while others dismiss them as window dressing. Given the country's past history of abrupt policy shifts, it is probably wise to reserve judgment, but it is tempting to see these developments as products of the deeper structural changes discussed above.

The significant reduction of censorship has been the most striking change for scholars of Burma/Myanmar, long accustomed to trying to infer the meaning of events from a handful of highly politicized sources. In June 2011, the government announced that in a major change of policy, articles on some topics could be published in the popular press without pre-screening by the Press Scrutiny and Registration Division of the Ministry of Information.

35. Ba Saw Tin, “Election Chance for Change,” *Irrawaddy*, August 6, 2010.

This did not change the rules about what content could be published, but it shifted the initiative from the censors, who formerly approved all articles, to the publishers, who could print what they liked but might be subject to post-publication sanctions.<sup>36</sup> Subsequently, journalists were allowed to cover the activities of Aung San Suu Kyi and even to publish interviews with her, something that had been forbidden for years.

In September 2011, the government unblocked a number of foreign Internet news sources, allowing significantly greater access to outside information. This included exile opposition websites for the Democratic Voice of Burma and *The Irrawaddy*. The Democratic Voice of Burma was, however, quick to point out that Internet penetration of the country is limited, and the government continues to arrest its journalists working within the country.<sup>37</sup>

Transparency about government policies has increased significantly as well. For instance, the government published its proposed budget for the first time in over 30 years and permitted debate about it in Parliament, at least some of which has been reported in the press.<sup>38</sup> Transparency has increased in the other direction as well, as MPs have been able to introduce outside perspectives into government deliberations. For instance, one Shan MP in the People's Assembly collected information on abuses by government troops in his constituency and distributed it to the president, cabinet, Speaker of the Assembly, and state-level ministers.<sup>39</sup> Prior to the election, such an action would have been unthinkable, and there would have been no government forum in which such information could be distributed.

Such positive developments must be counterbalanced against reports of a behind-the-scenes power struggle within the government. Thein Sein is usually cast as the leader of the more reformist faction, while Vice President Tin Aung Myint Oo is seen as the leader of the more conservative faction.<sup>40</sup> Such reports are often based on rumor and must be treated cautiously. However, they are also eminently plausible and, in fact, are precisely what one would expect given the divisions within the military noted above. This scenario also conforms to scholar Kyaw Yin Hlaing's argument that factional struggles within the government become most acute when there is a power vacuum at

36. Ko Htwe, "Burmese Journalists Cautious on New Censorship Policy," *ibid.*, June 9, 2011.

37. Naw Noreen, "News Websites Unblocked," *Democratic Voice of Burma*, <<http://www.dvb.no>>, September 16, 2011.

38. Ko Htwe, "Burma to Run US\$3.2 Billion Deficit," *Irrawaddy*, August 23, 2011.

39. Idem, "Shan MP Accuses Burma Army of Rape, Abuses," *ibid.*, August 19, 2011.

40. See, for instance, Larry Jagan, "Burma's Octopus Strangles Reform," *ibid.*, July 7, 2011.

the top, in this case resulting from Senior General Than Shwe's withdrawal from day-to-day politics.<sup>41</sup>

## CONCLUSION

The universal ideal of free and fair democracy is a social construction that makes strong assumptions about the nature of the states that are expected to embody and enforce it.<sup>42</sup> It assumes that they conform to the model of a modern state with all its sovereign capacities to make and enforce law. Yet, the real world is much sloppier: many places fail to meet that standard. In Burma/Myanmar, the legal system and judiciary are impotent, the civil service incompetent and corrupt, and the military government too reliant on coercion. In such a context, the creation of social conditions that will permit democracy to flourish is at least as important as changing the institutions of government and the individuals who head them.

If we fail to recognize the limitations imposed by the country's history and social context, there is a danger that we will make the universal ideal into the enemy of progress. This has happened repeatedly in Burma/Myanmar over the past two decades. U.S. and E.U. sanctions were never relaxed at any point under the junta, despite the fact that it periodically made what were, for its members, significant concessions. These include releasing Aung San Suu Kyi from house arrest, allowing the NLD to reopen branch offices and recruit new members, and cooperating with the U.S. on counter-narcotics issues. Rather than acknowledging these gestures, the U.S. and E.U. responded with new demands. When this undercut potential reformers and prompted the frustrated junta to revert to the status quo ante, international condemnation intensified, and the U.S. and E.U. further tightened sanctions. This failure to respond positively was extremely costly to U.S. credibility in particular: it undermined the position of intelligence chief Khin Nyunt, the primary proponent of improving relations with the West. He was subsequently purged.<sup>43</sup>

Failure to recognize that these very flawed elections might present opportunities likewise endangers that progress. The military might very well

41. Kyaw Yin Hlaing, "Power and Factional Struggles in Post-Independence Burmese Governments," *Journal of Southeast Asian Studies* 39:1 (February 2008).

42. Neil A. Englehart, "The Consequences of a Constructed Universal: Democracy and Civil Rights in the Modern State," in Mahmood Monshipouri, Neil A. Englehart, Andrew J. Nathan, and Kavita Philip, eds., *Constructing Human Rights in the Age of Globalization* (Armonk, N. Y.: M. E. Sharpe, 2003).

43. Pedersen, *Promoting Human Rights in Burma*.

at some future point decide that its surrender of absolute control was a mistake and disband the fledgling institutions it has created. International condemnation increases the chances of this happening, while recognizing the limits of the junta's reform, and the risks it has taken in the process, reduces those chances.

Reporting on widespread apathy about the election in rural areas, an *Irrawaddy* magazine reporter concludes that "to the general public . . . expectations of an election being free and fair were but a distant pipe dream."<sup>44</sup> This eminently pragmatic attitude is one that activists and some governments could learn from. There was no chance that an election organized by the military regime would really bring democracy to the country. The question to ask is not whether it will attain the ideal of free and fair democratic competition but whether it represents progress from the status quo. What is most remarkable is that the SPDC voluntarily surrendered its total control of the system, creating a more pluralistic set of institutions. It still dominates these institutions—but not completely. That in itself is an important shift in the status quo.

The SPDC would never have initiated reform if its members did not believe they could control the process, but it is never possible to foresee the ultimate end of such initiatives. This is why Tocqueville noted the special danger faced by reforming regimes, and why it is a serious mistake to regard politics in Burma/Myanmar after the election as simply more of the same. It is true that the same people are in power, but that does not mean that the fate of the new institutions is determined by the original sin of their conception. As Weber notes, "[I]t is not true that good can only follow from good and evil only from evil, but often the opposite is true. Anyone who fails to recognize this is, indeed, a political infant."<sup>45</sup>

The elections are over. Dismissing their importance and failing to recognize their potential impact will condemn activists to irrelevance and academics to anachronism. The question now for academics and activists alike is what opportunities the election creates for change in Burma/Myanmar.

### Postscript

Since this article was written in the Autumn of 2011, reforms have continued at a rapid pace in Burma/Myanmar. Aung San Suu Kyi and other NLD

44. Moe Thu, "Rural Folks Disinterested in Election," *Irrawaddy*, September 4, 2010.

45. Max Weber, "Politics as a Vocation," in H. H. Gerth and C. Wright Mills, ed., *From Max Weber: Essays in Sociology* (New York: Oxford Weber, 1946), p. 123.

members have been elected to Parliament, the government has engaged in renewed peace negotiations with insurgent groups, and the U.S. has relaxed some sanctions and appointed an ambassador to the country. At the same time, activists and human rights groups complain that abuses continue, that too little has been done to justify changing policies toward Burma, and that former members of the junta remain in control. A great deal of the reporting on these issues is framed in terms of personalities: much of the credit has gone to Thein Sein for his progressive policies, and there has been intense scrutiny of Aung San Suu Kyi, Tin Aung Myint Oo, and the nearly invisible Than Shwe. What is critical, however, is not so much the dispositions of the political actors involved as the institutional changes they are creating through their actions. The most heartening development in Burma/Myanmar is not that Thein Sein has proven more moderate than those who had tracked his military career would have predicted or that Aung San Suu Kyi has decided to relax her adamant opposition and join the reform process, but rather that the most important political actors are institutionalizing forums where they can come together to discuss their differences. It is these institutions, rather than the personalities, that will decide the fate of the country in the long term.

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