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## Myanmar: Towards the Elections

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### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The bizarre prosecution and conviction of opposition leader and Nobel Peace laureate Aung San Suu Kyi for violating her house arrest has returned attention to repression in Myanmar, as preparations were underway for the first national elections in twenty years, now scheduled for 2010. This further undermined what little credibility the exercise may have had, especially when based on a constitution that institutionalises the military's political role. The UN Secretary-General's July visit, which produced no tangible results, added to the gloom. But while the elections will not be free and fair – a number of prominent regime opponents have been arrested and sentenced to prison terms over the last year – the constitution and elections together will fundamentally change the political landscape in a way the government may not be able to control. Senior Generals Than Shwe and Maung Aye may soon step down or move to ceremonial roles, making way for a younger military generation. All stakeholders should be alert to opportunities that may arise to push the new government toward reform and reconciliation.

At first glance, the obstacles to change seem overwhelming. The 2008 constitution entrenches military power by reserving substantial blocs of seats in the national and local legislatures for the army, creating a strong new national defence and security council and vesting extraordinary powers in the commander-in-chief. It prevents Aung San Suu Kyi from standing for president, even if she were not imprisoned. It is extremely difficult to amend. And while not all regulations relating to the administration of the elections have been announced, they are unlikely to offer much room for manoeuvre to opposition parties.

But the elections are significant because the controversial constitution on which they are based involves a complete reconfiguration of the political structure – establishing a presidential system of government with a bicameral legislature as well as fourteen regional governments and assemblies – the most wide-ranging shake-up in a generation. The change will not inevitably be for the better, but it offers an opportunity to influence the future direction of the country. Ultimately, even assuming that the intention of the regime is to consolidate military rule rather than begin a transition away from it, such processes often lead in unexpected directions.

This report looks at the elections in the context of Myanmar's constitutional history. It examines key provisions of the 2008 constitution and shows how many of the controversial articles were simply taken from its 1947 or 1974 predecessors. Noteworthy new provisions include strict requirements on presidential candidates, the establishment of state/regional legislatures and governments, the reservation of legislative seats for the military, military control of key security ministries, the authority granted to the military to administer its own affairs (in particular military justice) and the creation of a constitutional tribunal.

Criticism of the constitution from groups within Myanmar has focused on military control, ethnic autonomy, qualifications for political office, and the very difficult amendment procedures. The main reaction of the populace to it and the forthcoming elections is indifference, rooted in a belief that nothing much will change. Some of the so-called ceasefire groups – ethnic minorities that have ended their conflicts with the government – are endorsing ethnic political parties that will take part in the polls. These groups take a negative view of the constitution but feel that there may be some limited opening of political space, particularly at the regional level, and that they should position themselves to take advantage of this. There are increased tensions, however, as the regime is pushing these groups to transform into border guard forces partially under the command of the national army.

The National League for Democracy (NLD), winner of the 1990 elections, has said it will only take part if the constitution is changed, and it is given the freedom to organise. Assuming this will not happen, it is not yet clear if it will call for a complete boycott in an attempt to deny the elections legitimacy or urge its supporters to vote for other candidates. A boycott could play into the hands of the military government, since it would not prevent the election from going ahead and would mainly deprive non-government candidates of votes, potentially narrowing the range of voices in future legislatures.

The Myanmar authorities must make the electoral process more credible. Aung San Suu Kyi and all other political prisoners must be released now and allowed to participate fully in the electoral process; politically-motivated arrests must cease. It is also critical that key electoral legislation be promulgated as soon as possible, in a way that allows parties to register without undue restriction, gives space for canvassing activities and ensures transparent counting of votes.

The international community, including Myanmar's ASEAN neighbours, must continue to press for these measures while looking for opportunities that the elections may bring. This will require a pragmatic and nuanced strategy towards the new government at the very time, following a deeply flawed electoral process, when pressure will be greatest for a tough stance. The new Myanmar government, whatever its policies, will not be capable of reversing overnight a culture of impunity and decades of abuses and political restrictions. But following the elections, the international community must be ready to respond to any incremental positive steps in a calibrated and timely fashion. To have any hope of inducing a reform course, it is critical to find ways to communicate unambiguously that a renormalisation of external relations is possible.

## **RECOMMENDATIONS**

### **To Members of the Association of South East Asian Nations (ASEAN):**

1. Make clear to Myanmar authorities that ASEAN member states support the release of political prisoners; enactment of timely and reasonable administrative regulations for registration of political parties; permission for domestic and foreign election monitors to be present throughout the country no less than a month before the scheduled polling date; and a green light for freedom of movement for print and broadcast journalists from ASEAN countries.
2. Consider offering, as and when appropriate, parliamentary exchanges with the newly elected government, assistance in setting up parliamentary committees and other steps that might push the door open a little wider.
3. Outline for Myanmar authorities the steps they would have to take for the elections to be perceived as credible.
4. Build on the positive example set by ASEAN following Cyclone Nargis by acting as a "diplomatic bridge" between Myanmar and the international community – explaining the latter's concerns to Myanmar and viceversa.

### **To Western Governments:**

5. Articulate clear expectations for the electoral process and highlight where it fails to meet international standards.
6. State clearly what the West expects of Myanmar in order for relations to improve; send clear messages before the post-election government is in place that a process of normalising relations is possible; and indicate that positive steps will be met with timely, calibrated responses.
7. Suspend restrictions on high-level bilateral contacts with the new government, along with restrictions on its members' travel, to enable the diplomatic exchanges that will be required in order to communicate the necessary messages.
8. Maintain the targeted financial sanctions against individual leaders, while keeping them under review so that they can be adjusted in light of developments.

### **To the UN Secretary-General and the relevant agencies of the UN System:**

9. Keep an active good offices process, including the personal engagement of the Secretary-General as well as the efforts of his Special Adviser, so as to be in a position to take advantage of any unexpected opportunities that may arise. A multi-level political presence on the ground can be valuable in this respect.
10. Consider providing relevant and appropriate electoral assistance, while abiding by UN standards, including technical discussions with the Myanmar authorities at an early stage on international expectations and experiences from other countries.
11. Begin, through relevant bodies (such as the United Nations Development Programme) and in cooperation with other international institutions (such as the World Bank), activities aimed at strengthening the capacity of civilian institutions of governance. This should be implemented in an incremental manner, based on careful assessments of the space for conducting such activities.

### **To the Myanmar Government:**

12. Release Aung San Suu Kyi and all other political prisoners.
13. Desist from pre-election arrests and prosecution of perceived political opponents or dissidents.
14. Promulgate fair administrative laws and regulations relating to the conduct of the election as

soon as possible.

15. Minimise restrictions on the registration of political parties and on canvassing activities and put in place procedures to ensure the transparent counting of votes.

16. Give greater importance to the ethnic dimension of the political situation, including by:

a) implementing a nationwide ceasefire and ensuring and facilitating humanitarian access to former conflict areas;

b) taking steps to reduce tensions with ethnic political and ceasefire organisations and giving them assurances about their political and military status in the lead-up to the elections; and

c) committing to select chief ministers from among the elected representatives of state legislatures.

**To Other Stakeholders in Myanmar, including the Political Opposition:**

17. Encourage the broadest possible participation in the election process, even if individual parties or organisations choose not to participate.

18. Encourage full participation of the electorate in campaigning and voting.

**To Donors, Non-Governmental Organisations and Institutes:**

19. Support the provision of in-country civic education to the Myanmar electorate if possible, as well as through exiled media organisations and international Burmese-language radio stations.

20. Support the exposure of new legislators to the workings of other legislatures, particularly those in the region and in other countries that are emerging or have recently emerged from authoritarian rule, in order to build capacity and work towards normalising relations.

21. Be prepared to respond quickly to opportunities to rebuild and/or reform key political and economic institutions, as well as social infrastructure, if or when opportunities arise.

22. Provide humanitarian and development support to ethnic regions, particularly special autonomous areas.

**Yangon/Brussels, 20 August 2009**

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