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“U.S. Policy on Burma”

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Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to speak about recent events in Myanmar and the ongoing efforts of the people of Burma to advance political and economic change. The nation’s new openings have led to opportunities for organizations like NDI to travel within the country; and in January I traveled to Yangon and Mandalay with a small NDI team to assess the political environment. Earlier this month I participated as part of a two-member U.S. delegation sent to view the April 1 by-elections.

Recent Developments

After decades of military rule and economic stagnation Myanmar is beginning to institute political and economic reforms. In recent months, the country has seen in rapid succession: ceasefire agreements with most of the ethnic groups long at war with the central government; the release of a large number of political prisoners; the easing of restrictions on the media and civil society; amendments to the electoral laws paving the way for the National League for Democracy (NLD) to participate in the political process; and the holding of by-elections in which the NLD won all but one of the constituencies it contested. As a result of the by-elections a new generation of reformers will soon be entering the nation’s legislative chambers.¹ The government also has announced an overhaul of its currency system and recently instituted a managed floating exchange rate. In addition, a new foreign investment law has been introduced in parliament.

The reforms implemented and underway are impressive and should be acknowledged and responded to by the international community. It is equally important, however, to recognize that Burma is at the beginning—not the end—of a reform process and the outcome is not assured. The nation is still grappling with the challenge of transitioning from military rule to a more open political and economic system. The political situation is fragile and much more needs to be done to help ensure that the democratization process continues.

As the nation heads toward national elections in 2015, there is not, for example, a level playing field for the participants in the nation’s political process. Since, according to the 2008 constitution, 25 percent of the seats in the national and regional legislatures are reserved for the military, political forces aligned with the military need to secure only one-third of the contested

¹ On April 23rd the newly elected NLD members of parliament declined to take their seats because of the requirement that they take an oath “to safeguard the constitution”. The oath appears as an appendix to the nation’s constitution and the dispute likely foreshadows further contention regarding constitutional issues.

seats to attain a majority in each chamber. Opposition parties, on the other hand, would need to win twice as many elective seats—two thirds—in order to garner a majority.²

Once elected, the constitution is unclear on the scope of the civilian government's authority over the military. Article 6(f), for instance, states that the defense services are to participate in the national political leadership of the state. Article 20(e) assigns the military the primary responsibility for "safeguarding the non-disintegration of the Union, the non-disintegration of national solidarity and perpetuation of sovereignty."

In addition, while progress has been made in negotiating peace agreements with the nation's ethnic groups, human rights abuses persist, particularly in the border areas. For many who live in remote rural areas, life has not changed. And, while many political prisoners have been conditionally released, others remain in custody. Those that have been released are unsure of their freedom to engage in the political process. Political space has opened for democratic activists, but enforcement of the rights of assembly and expression remains uncertain.

The reform agenda established within government and in the political opposition--requires international engagement and support to help ensure that democratization proceeds.

The April 1 By-elections

The recent by-elections provided the first opportunity in more than two decades for the NLD to compete for public office and the success of the electoral process was an important step toward political reconciliation. The government's invitation to the international community to view the election, coming just a few days before the elections were to be held, was a positive development, although it fell short of international standards for election observing. The Declaration of Principles for International Election Observation, launched at the United Nations in 2005, for example, establishes fundamental standards for observation missions, including observing the pre-election period and deploying a sufficient number for observers to assess an election nationwide. There was no opportunity to observe the campaign period, no legal authority to enter polling stations and no opportunity to view the aggregation of results. At the same time, the invitation for the international community to witness the process was a significant step toward increasing the transparency of the elections and opening Burma to the outside world.

Originally 48 seats were to be contested, but the elections in three constituencies in Kachin state were postponed due to the government's concerns about security. Thus, a total of 45 by-elections were held. These consisted of 37 seats in the lower house (Pyithu Hluttaw); six seats in the upper house (Amyotha Hluttaw); and two seats in the regional Hluttaw. The NLD ultimately fielded 44 candidates and 43 of them were successful.

I was invited by the U.S. government to view the by-elections, along with a colleague from the

² For instance, there are 440 seats in the Pyithu Hluttaw, the lower house of the national legislature. Of these, 110 are reserved for the military. The remaining 330 seats are filled through election. For allies of the military, a controlling majority would be obtained by securing 111 elected seats giving them a total of 221 seats (110 reserved plus 111 elected seats). Opponents of the military would need to win 221 of the 330 contested seats (or two-thirds of the contested seats) in order to have a majority.

International Republican Institute. We constituted the U.S.-based delegation; however the U.S. embassy as well as other embassies in Yangon deployed their staffs throughout the country as the elections approached. Because of the limitations on our ability to observe every aspect of the electoral process, it is not possible to evaluate the by-elections as a whole. However, we were able to see more than we initially expected and polling officials often invited us into polling stations despite the lack of specific legal authority to do so.

Throughout the day we visited nine polling centers in Naypyitaw and the surrounding area. The management of the polls was quite different from center to center, but in general we saw no election-day intimidation of voters or candidates and, despite some significant shortcomings in administration, most of the polling centers seemed to be staffed by well-intentioned officials. Polling agents from the NLD and Union Solidarity Development Party (USDP) were present at every station we visited. Either officials invited us into the station or we had an unobstructed view through doorways and windows. At the closing that we witnessed, the count was conducted in the view of the party agents and was reasonably efficient. But still, a lack of transparency was evident. For example, the final vote count that we witnessed did not include an announcement of the results. We had to obtain that from the NLD party agent. Nor were the results visibly posted on or near the polling station. We saw no international or domestic observers in any of the polling centers we visited.

In one polling center-- the most rural center that we visited--voters had been given a white slip of paper, provided by the USDP that was designed to enable the prospective voter to find his name on the registration list. This was a common practice in some townships and was used by both parties to assist illiterate voters. At this station, however, the slip of paper also contained an illustration of a voter placing a check mark in the box for the USDP. The slip was given to the officials when the voter went to the registration desk at the polling station and the slip was retained by the election officials. Therefore, the polling station now had a record of that particular voter being linked to the USDP. In the other polling stations where a similar practice occurred, the slip did not link the voter with a party and was not retained by election officials. It is not hard to imagine how this practice could be abused--for example by denying entry to someone who did not have a USDP-provided slip. There were other peculiarities about this polling station. We received the least cordial greeting there; in fact, no one would speak to us. The center was surrounded by a gate and at first we were denied entry, but the entrance later opened for us. Since we could not enter the polling station at this location, we could not talk to the polling agents. Indeed, we could not be sure that agents were present. While this might be an isolated instance, it could be the case that in the most remote rural areas similar practices are followed, beyond the scrutiny of any observer.

We also saw another questionable practice in polling that took place on the grounds of the Ace company. The election officials marked the white slips with a green pen. The voter could later take the white slip to a camp that was set up and receive a free meal. It is not clear if this represents a civic-minded gesture to encourage people to vote or was designed to influence the voter's choice.

There were several issues that should be examined going forward:

- While political party agents could observe the polling, non-partisan election monitors did not have the legal authority to enter the polling stations; domestic election monitors were deployed on election day, conducted their activities and reported their findings, but were constrained by their lack of legal status as observers;
- There seemed to have been no effort to ensure that those who voted in advance of election day, as permitted by the election law, did not vote twice-- once in the days preceding the election and again on election day. There was no inking used on either day and we saw no evidence that voters were crossed off the registration list when they voted early; the advance votes were locked in a cabinet at a township office, guarded by election officials and distributed to the proper polling station on election day. The security of the ballots is highly problematic, particularly because the number of advance votes at some stations could affect the outcome of an election;
- The ballots delivered to each station were exactly equal to the number of registered voters. There was no room for error (though the accuracy of the registration list is dubious);
- There were no serial numbers on the ballots and no apparent way of linking a ballot to a polling station; and
- The lack of inking for the advance vote and on election day poses a potential threat of fraudulent voting.

Obviously, these problems did not affect the outcome of the elections. However, if they persist they could pose more substantial issues in the 2015 electoral contests when much more is at stake and tensions among the political rivals are heightened. The problems identified are not difficult to remedy, but addressing them effectively will require that the Union Election Commission be receptive to reviewing its procedures and drawing on regional and global best practices. The Commission is appointed by the government and its independence is, therefore, suspect. Election reform will undoubtedly be high on the list of priorities for the newly elected members of the national legislature.

The Way Forward

While the April 1 by-elections and the reforms that preceded them were significant and important steps, reformers inside and outside of government will undoubtedly be debating an ambitious reform agenda, which includes:

1. **Addressing the Ethnic Conflicts.** While ceasefire agreements are in place with almost all of the ethnic groups, this 60-year-old problem persists, threatening the stability of the country and jeopardizing democratization efforts; cease fire agreements will have to become peace agreements and they will likely be ultimately debated in parliament.
2. **Constitutional Development.** Aung San Suu Kyi has identified the need to address the constitutional imbalance between civil and military authority, such as removing the reserved military seats from the constitution, as a top priority. Some reformers in

government have acknowledged that addressing this and other constitutional concerns will be needed to achieve national reconciliation. Reformers have indicated an interest in Indonesia, which also reserved temporarily military presence in the parliament, as a model for constitutional development in this area. Federalism and other means for decentralizing power to help resolve ethnic conflicts will likely be discussed in the context of constitutional change.

3. **Electoral Reform.** There is a growing recognition that steps must be taken to remedy shortcomings in election administration, including securing the independence of the Union Election Commission. This will become increasingly important for enhancing public confidence in the electoral process as the 2015 elections approach.
4. **Establishing the Rule of law.** An independent judiciary is needed to protect the rights of those participating in the political process and ensure the equal application of the laws.
5. **Strengthening the Legislative Process.** Shwe Mann, the speaker of the lower house of parliament, has indicated that he is receptive to assistance in modernizing parliament so that it can address more effectively the problems of corruption and economic development. Parliament will face new challenges as it adapts to a new multi-party political environment where the rights of the opposition will have to be recognized in the country's legislative chambers. The new legislature also faces the challenge of addressing the balance of power between parliament, the executive and the military.
6. **Political Party Development.** The nation's political parties are seeking assistance in adjusting to the new political environment. The victory of the NLD may well be a reflection of the overwhelming popularity of Aung San Suu Kyi, rather than the party's institutional strength. The USDP too must adjust and modernize to meet the demands of a more competitive political system.
7. **Civil Society Strengthening.** There has been little experience in Myanmar with an active civil society and civil society activists are pressing for reforms so that they can operate within the framework of the law. For example, many civil society groups are operating in the absence of legal registration; they are also seeking assistance to build their capacity to operate, particularly in the area of democratic development, which in the past has not been recognized as a permissible civil society activity.
8. **Media Access.** To establish a level playing field for all of the participants in the political process, access to the media will be essential. There was little coverage of the by-elections in the media and no laws that require equal treatment of the candidates.
9. **Human Rights Monitoring.** Human rights violations continue throughout the country, particularly in the ethnic areas. Monitoring and reporting on the human rights situation can help focus attention on, and raise public awareness of this issue.
10. **Developing a Telecommunications Policy.** Economic and political development depends in part on the ability to connect citizens throughout the country in a cellular network that is affordable and reliable. Currently, no such network exists, though reformers in and out of government have identified this as a pressing need. Such a cellular network would be important for the rapid transfer of information by election

observers in the national elections of 2015.

Mr. Chairman, the challenge confronting the international community is in how to calibrate a response to the changes that are occurring. That response needs to support the reforms that are taking place and encourage further democratization, while also recognizing that the transition process is a work in progress and that the reforms to date must be expanded and sustained.

NDI hopes that the international community will continue its efforts to help reformers inside and outside of government in pursuing their goals and fulfilling the aspirations of the Burmese people.

Thank you.