

# BACKGROUND

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## The U.S. Role in Ensuring that Burma's Fall 2015 Elections Are "Free and Fair"

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### Abstract

*Burma will hold parliamentary elections on November 8, 2015, that will be a test of the country's political reforms. In Burma's own interest, as well as in the interest of U.S.–Burma relations, clear benchmarks must be in place before the election. For this reason it is disconcerting that the Obama Administration has abandoned the well-defined "free and fair elections" benchmark and substituted a new and yet-to-be-clarified election-process requirement for Burma. The U.S. should maintain its traditional "free and fair" standards for all countries, including Burma.*

Burma is set to hold parliamentary elections on November 8, 2015. The elections will be a test of Burma's political reform—a test the U.S. government considers one of the most important for the reform process.

Jonathan Stivers, Assistant Administrator for the U.S. Agency for International Development (USAID), stated that the U.S. government "has made a long-standing commitment to the people of Burma ... a commitment which will continue, regardless of the outcome of the election."<sup>1</sup>

Such unconditional support lowers the political stakes for Burma and limits the leverage that the U.S. has to press Burma for continued reforms. It is in the best interest of Burma and U.S.–Burma relations that clear benchmarks are in place for a successful election.

### U.S. Policy on Burma's Elections

The U.S. government appears to have altered its standards for Burma's elections: Instead of referencing "free and fair elections"—as

### KEY POINTS

- Burma will hold parliamentary elections on November 8, 2015. The elections will be a test of Burma's democratic reforms so far.
- It is in the best interest of Burma and U.S.–Burma relations that clear benchmarks are in place for a successful election. Hence, U.S. support for Burma should be reliable, but not unconditional.
- While the traditional benchmark has 10 standards for what constitutes "free and fair elections" the Obama Administration has established a new benchmark for Burma, for which it has not spelled out clear criteria.
- If the U.S. believes that Burma will fall short of these standards, it does no one any good to simply move the goal posts. Standards should be maintained, and failure to meet them should be acknowledged and carry consequences.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3036>

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detailed by, among others, USAID—the U.S. has tempered its language, requiring merely that elections be “credible, transparent, and inclusive,”<sup>2</sup> and reflect the will of the Burmese people. Deputy Secretary of State Antony J. Blinken noted that the U.S. expects freedom of the press, freedom of speech, and the ability for voters to freely cast votes for any elected official without the threat of violence.<sup>3</sup> USAID officials said that they will be looking for open dialogue with civil society, constitutional reform on the role of the military in parliament, and protection for ethnic and religious minorities.<sup>4</sup> What the new language actually means, however, remains unclear.

### **Burma’s Current Preparedness for 2015 Elections**

While the Obama Administration has not laid out clear criteria for its new benchmark for Burma, USAID has 10 standards for what generally constitutes “free and fair elections.”<sup>5</sup> If the status quo holds, and the Burmese government undertakes no electoral reform in the lead-up to elections, Burma will fail to meet even the minimum requirements of these 10 principles:

**1. Impartial electoral frameworks.** The Union Election Commission (UEC), the primary oversight body for Burma’s elections, is known for its tight-knit relationship with the current ruling Union Solidarity and Development Party

(USDP).<sup>6</sup> The UEC is dependent on the ruling government for staffing and budgetary support and has a history of partiality toward the ruling party dating back to 2010 elections.<sup>7</sup>

**2. Credible electoral administration.** The UEC allegedly allowed ballot-stuffing in past elections. During 2010 elections,<sup>8</sup> advanced votes were added during vote counting on polling day after it was clear that the USDP was losing.<sup>9</sup> The USDP, a highly unpopular party at the time, won more than 80 percent of seats in parliament.<sup>10</sup> The UEC should receive credit for efforts it is currently undertaking to work with civil society, USAID, and other groups to increase transparency during the election process. But election observers should closely watch the administration of voter rolls, tabulation of advanced voting, and the transparency of political party registration—all areas of concern in previous elections.

**3. Effective oversight of electoral processes.** Burma has not yet approved all election observers. As of now, the Carter Center, the European Union, the International Republican Institute, and Gender Concerns International are slated to observe elections.<sup>11</sup> If the past is any indication, however, election observers will have limited access to polling.

1. U.S. Agency for International Development, “Supporting Free and Fair Elections,” April 17, 2013, <http://www.usaid.gov/news-information/congressional-testimony/jun-11-2015-aa-jonathan-n-stivers-house-asia-pacific-democracy-asia> (accessed June 29, 2015).
2. U.S. Embassy in Rangoon, “Burma and the U.S. Conclude Successful Second Human Rights Dialogue,” January 16, 2015, <http://www.humanrights.gov/dyn/2015/01/burma-and-the-u.s.-conclude-successful-second-human-rights-dialogue> (accessed June 29, 2015).
3. U.S. Department of State, “Press Conference in Rangoon, Burma,” May 22, 2015, <http://www.state.gov/s/d/2015/242966.htm> (accessed June 29, 2015).
4. U.S. Agency for International Development, “Testimony of Assistant Administrator Jonathan N. Stivers Before the House Subcommittee on Asia and the Pacific,” June 11, 2015, <http://www.usaid.gov/news-information/congressional-testimony/jun-11-2015-aa-jonathan-n-stivers-house-asia-pacific-democracy-asia> (accessed June 29, 2015).
5. U.S. Agency for International Development, “Supporting Free and Fair Elections.”
6. Priscilla Clapp, “Burma: Can the 2015 Elections Overcome the Legacy of 2010?” United States Institute of Peace, March 9, 2015, <http://www.usip.org/olivebranch/2015/03/09/burma-can-the-2015-elections-overcome-the-legacy-of-2010> (accessed June 29, 2015).
7. Sam DuPont et al., “Elections and Political Transition in Myanmar,” Princeton University, Woodrow Wilson School of Public Policy, February 2015, p. 12, <http://www.princeton.edu/sites/default/files/content/Princeton%20-%20Burma%20-%20FINAL.pdf> (accessed June 29, 2015).
8. *Ibid.*, pp. 11 and 30.
9. Clapp, “Burma: Can the 2015 Elections Overcome the Legacy of 2010?”
10. *Ibid.*
11. Ei Ei Toe Lwin, “International Groups to Monitor Elections,” *Myanmar Times*, June 10, 2015, <http://www.mmmtimes.com/index.php/national-news/14959-international-groups-to-monitor-elections.html> (accessed June 29, 2015).

**4. Informed and active citizens.** USAID started a three-year, \$11 million elections and political process assistance program in Burma in 2013.<sup>12</sup> One of the program's primary objectives is to conduct voter education. Despite these activities, a recent study conducted by the Asia Foundation found that knowledge of the electoral process and the Burmese government system was low among the Burmese populace. The study found that 82 percent of the 3,000 persons surveyed could not name any branch of government.<sup>13</sup>

**5. Representative and competitive multi-party systems.** At least 73 political parties are currently registered to compete in the 2015 elections.<sup>14</sup> Burma unquestionably has a multi-party system, but whether each party and its leaders are afforded equivalent privileges is another question entirely. Aung San Suu Kyi, leader of the National League for Democracy (NLD), and the most popular politician in Burma, is barred from the presidency under the citizenship clause in the constitution.<sup>15</sup> The clause specifies that no person can hold the office of president if his immediate family members are citizens of any country other than Burma. Suu Kyi's sons are British citizens. It is believed that the clause was written specifically

to exclude her from the presidency.<sup>16</sup> An effort in parliament to change this was recently defeated.

**6. Effective governance by elected leaders and bodies.** Burma's leaders have failed to protect the basic rights of the Burmese people. Burma is considered one of the 10 most speech-restricting countries in the world, and as of May 2015, Burma retains at least 158 political prisoners—an increase of 128 people since the end of 2013.<sup>17</sup> The military continues to exercise considerable power in parliament, is guaranteed 25 percent of parliamentary seats, essentially giving it a veto over constitutional amendments, which require support from 75 percent of parliament before passage<sup>18</sup>—the most recent effort in parliament having failed to change this rule.<sup>19</sup> The military has been complicit in human rights abuse and restrictions of basic freedoms in Burma.

**7. Inclusion of women and disadvantaged groups.** Elections are unlikely to be inclusive due, among perhaps other things, to a recent decision by the Burmese government to nullify temporary registration cards for the Rohingya minority, as well as for 100,000 Burmese of Chinese and Indian descent.<sup>20</sup> With revoked

12. News release, "USAID Announces Elections and Political Process Assistance Program in Burma," USAID, March 8, 2013, <http://www.usaid.gov/news-information/press-releases/usaid-announces-elections-and-political-process-assistance-program> (accessed June 29, 2015).

13. The Asia Foundation, "Myanmar 2014: Civic Knowledge and Values in a Changing Society," December 11, 2014, <http://asiafoundation.org/resources/pdfs/KNinhAsianPerspectivesMM2014SurveyPresentationFeb2015.pdf> (accessed June 29, 2015).

14. Vikram Nehru, "Myanmar's 2015 Election: The Basics," Carnegie Endowment for International Peace, April 30, 2015, <http://carnegieendowment.org/2015/04/30/myanmar-s-2015-election-basics/i80p> (accessed June 29, 2015).

15. Annie Gowen and David Nakamura, "U.S. Wanted Burma to Model Democratic Change But It's Not Turning Out that Way," *The Washington Post*, July 6, 2014, [http://www.washingtonpost.com/world/us-wanted-burma-to-model-democratic-change-but-its-not-turning-out-that-way/2014/07/06/78321986-367b-4422-a896-69342e8874ac\\_story.html](http://www.washingtonpost.com/world/us-wanted-burma-to-model-democratic-change-but-its-not-turning-out-that-way/2014/07/06/78321986-367b-4422-a896-69342e8874ac_story.html) (accessed June 29, 2015).

16. Rhys Thompson, "Myanmar: Aung San Suu Kyi and the Constitution," *The Lowy Interpreter*, July 3, 2014, <http://www.lowyinterpreter.org/post/2014/07/03/Myanmar-Aung-San-Suu-Kyi-and-the-constitution.aspx> (accessed July 8, 2015).

17. Assistance Association for Political Prisoners (Burma), "158 Current Political Prisoner List in Burma 2015," May 13, 2015, <http://aappb.org/2015/05/currently-political-prisoners-list-and-in-burma/> (accessed June 29, 2015), and Assistance Association for Political Prisoners (Burma), *Annual Report 2013: A Year in Review*, April 7, 2014, <http://aappb.org/2014/04/annual-report-2013/> (accessed July 8, 2015).

18. Walter Lohman, "A Reverse Road Map for Burma Sanctions," Heritage Foundation *Background* No. 2749, December 12, 2012, <http://www.heritage.org/research/reports/2012/12/a-reverse-road-map-for-burma-sanctions>.

19. Hnin Yadana Zaw, "Myanmar Military Retains Veto After Constitution Change Vote Fails," Reuters, June 25, 2015, <http://www.reuters.com/article/2015/06/25/us-myanmar-politics-idUSKBN0P50Q820150625> (accessed June 29, 2015).

20. International Crisis Group, "Myanmar's Electoral Landscape," *Asia Report* No. 266, April 28, 2015, <http://www.crisisgroup.org/-/media/Files/asia/south-east-asia/burma-myanmar/266-myanmar-s-electoral-landscape.pdf> (accessed June 29, 2015).

identification cards, they are excluded from voting. Some have noted that women and young people are particularly vulnerable to exclusion in upcoming elections.<sup>21</sup>

**8. Effective transfer of political power.** In 1990, Burma's armed forces, the Tatmadaw, rejected election results and reaffirmed military rule after the ruling party lost to the NLD.<sup>22</sup> Their Sein's election as president in 2010 was also largely viewed as illegitimate. Burma has not yet proved itself capable of holding credible free and fair democratic elections that result in fulfillment of its citizens' right to change their government. This is not likely to occur as a result of this year's elections either.

**9. Consensus-building for democratic reform.** Burma has undergone a significant political transformation and politicians have verbally expressed their commitment to democratic reform. However, the passage of certain discriminatory race and religion bills, the government's continued intransigence on constitutional reform, and ongoing persecution of the Rohingya undermines consensus and the move toward transition.<sup>23</sup>

**10. Sustainable local engagement.** The Burmese government has done a better job engaging with local election observers and civil society in the lead-up to 2015 elections than in the past.<sup>24</sup> Elections observers should be able to offer voter education, observe day-of electoral processes, and be active participants in civil society ahead of elections. Local observers should also have the freedom to report on and express alternate views about the election process and results. It will be hard to say whether local engagement

is sustainable until campaigning and elections are underway.

### What the U.S. Should Do

Burma has promised much action on democratic reform, but follow-through has been lacking. Increases in political prisoners, exclusion of minority groups, and failure to undertake constitutional reform suggests that the 2015 election may be just another sign of regression in the reform process. The U.S. government should closely observe the lead-up to the elections, and the election day itself, as vital parts of evaluating the staying power of Burma's reforms. The U.S. should:

- **Establish clear benchmarks for an acceptable election process in Burma.** USAID's 10 standards for free and fair elections should be the goal for Burma's elections. If the U.S. believes that Burma will fall short of these standards, it does no one any good to simply move the goal posts. Standards should be maintained, and failure to meet them should be acknowledged and carry consequences, including the potential for limiting U.S.-Burmese diplomatic engagement.
- **Chart a course for U.S.-Burma relations post-2015 elections.** The U.S. has played, and will likely continue to play, an integral role in Burma's reform process. With any country undertaking reforms, there are peaks and valleys. There should be watchfulness during the valleys and cautious commendation during the peaks. However, continued decline in the reform process should be met with a candid and practical acknowledgment of failures. The U.S. should decide what the consequences will be if Burma fails to conduct successful elections. The bulk of the sanctions regime has been lifted or waived.

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21. DuPont et al., "Elections and Political Transition in Myanmar."

22. David Scott Mathieson, "Happy Birthday to Burma's Military," Human Rights Watch, April 7, 2010, <http://www.hrw.org/news/2010/04/07/happy-birthday-burmas-military> (accessed June 29, 2015).

23. Olivia Enos, "U.S. Should Not Stand by While Government in Burma Undermines Religious Liberty," Heritage Foundation *Issue Brief* No. 4373, April 3, 2015, <http://www.heritage.org/research/reports/2015/04/us-should-not-stand-by-while-government-in-burma-undermines-religious-liberty>, and Karin Roberts, "Rohingya Refugees from Myanmar Have Been Persecuted for Decades," *The New York Times*, May 12, 2015, [http://www.nytimes.com/2015/05/13/world/asia/myanmar-rohingya-refugees-rakhine-burma.html?\\_r=0](http://www.nytimes.com/2015/05/13/world/asia/myanmar-rohingya-refugees-rakhine-burma.html?_r=0) (accessed June 29, 2015).

24. San Yamin Aung, "Political Parties Sign Election Code of Conduct," *The Irrawaddy*, June 26, 2015, <http://www.irrawaddy.org/burma/parties-sign-election-code-conduct.html> (accessed June 29, 2015).

The list of sanctions and remaining statutory authorities, however, offers a menu of options, including more targeted sanctions, to bring pressure again to bear.<sup>25</sup>

- **Reiterate the long-held appeal to the “free and fair” standard** and lay out the U.S. understanding for what exactly it means. Legislation has been introduced in the Senate to do just this.<sup>26</sup>

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25. Lohman, “A Reverse Road Map for Burma Sanctions.”

26. Senate Resolution 116–A Resolution Providing for Free and Fair Elections in Burma,” Congress.gov, March 26, 2015, <https://www.congress.gov/bill/114th-congress/senate-resolution/116> (accessed June 29, 2015).