

MYANMAR: STORM CLOUDS ON THE HORIZON

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MYANMAR: STORM CLOUDS ON THE HORIZON

EXECUTIVE SUMMARY

Myanmar's leaders continue to demonstrate that they have the political will and the vision to move the country decisively away from its authoritarian past, but the road to democracy is proving hard. President Thein Sein has declared the changes irreversible and worked to build a durable partnership with the opposition. While the process remains incomplete, political prisoners have been released, blacklists trimmed, freedom of assembly laws implemented, and media censorship abolished. But widespread ethnic violence in Rakhine State, targeting principally the Rohingya Muslim minority, has cast a dark cloud over the reform process and any further rupturing of intercommunal relations could threaten national stability. Elsewhere, social tensions are rising as more freedom allows local conflicts to resurface. A ceasefire in Kachin State remains elusive. Political leaders have conflicting views about how power should be shared under the constitution as well as after the 2015 election. Moral leadership is required now to calm tensions and new compromises will be needed if divisive confrontation is to be avoided.

The president has moved to consolidate his authority with his first cabinet reshuffle. Ministers regarded as conservative or underperforming were moved aside and many new deputy ministers appointed. There are now more technocrats in these positions, and the country has its first female minister. The president also brought his most trusted cabinet members into his office, creating a group of "superministers" with authority over broad areas of government – a move perhaps partially motivated by a desire to strengthen his position vis-à-vis the legislature. A dispute over a controversial ruling by the presidentially-appointed Constitutional Tribunal led to impeachment proceedings and the resignation of the tribunal members, highlighting both the power of the legislature, and the risks to a political structure in transition as new institutions test the boundaries of their authority.

The transition has been remarkable for its speed and the apparent lack of any major internal resistance, including from the military. It will inevitably face enormous challenges. The ongoing intercommunal strife in Rakhine State is of grave concern, and there is the potential for similar violence elsewhere, as nationalism and ethno-nationalism

rise and old prejudices resurface. The difficulty in reaching a ceasefire in Kachin State underlines the complexity of forging a sustainable peace with ethnic armed groups. There are also rising grassroots tensions over land grabbing and abuses by local authorities, and environmental and social concerns over foreign-backed infrastructure and mining projects. In a context of rising popular expectations, serious unaddressed grievances from the past, and new-found freedom to organise and demonstrate, there is potential for the emergence of more radical and confrontational social movements. This will represent a major test for the government and security services as they seek to maintain law and order without rekindling memories of the recent authoritarian past.

A key factor in determining the success of Myanmar's transition will be macro-political stability. In 2015, Aung San Suu Kyi's National League for Democracy (NLD) will compete for seats across the country for the first time since the abortive 1990 elections. Assuming these polls are free and fair, they will herald a radical shift in the balance of power away from the old dispensation. But an NLD landslide may not be in the best interests of the party or the country, as it would risk marginalising three important constituencies: the old political elite, the ethnic political parties and the non-NLD democratic forces. If the post-2015 legislatures fail to represent the true political and ethnic diversity of the country, tensions are likely to increase and fuel instability.

The main challenge the NLD faces is not to win the election, but to promote inclusiveness and reconciliation. It has a number of options to achieve this. It could support a more proportional election system that would create more representative legislatures, by removing the current "winner-takes-all" distortion. Alternatively, it could form an alliance with other parties, particularly ethnic parties, agreeing not to compete against them in certain constituencies. Finally, it could support an interim "national unity" candidate for the post-2015 presidency. This would reassure the old guard, easing the transition to an NLD-dominated political system. Critically, this option could also build support for the constitutional change required to allow Aung San Suu Kyi to become president at a future date, a

change that is unlikely prior to 2015 given the opposition of the military bloc, which has a veto over any amendment. Pursuing any of these paths will require that the NLD make sacrifices and put the national interest above party-political considerations. With a national leader of the calibre of Aung San Suu Kyi at the helm, it can certainly rise to this challenge.

Jakarta/Brussels, 12 November 2012

MYANMAR: STORM CLOUDS ON THE HORIZON

I. A BACKWARD STEP

The situation in Myanmar has been evolving rapidly, in a mostly positive direction.¹ Yet, the flare-up in Rakhine State represents a deeply disturbing backward step.² The government has been unable to contain the violence, local authorities and local security forces have in some cases acted in a partisan manner, and extremist rhetoric has gone largely unchallenged by the authorities and the opposition. There are indications that unlike the earlier clashes in June, the latest round of violence consisted largely of attacks against Rohingya and non-Rohingya Muslim communities, organised in advance by extremist elements.³ This is a dangerous situation for a multi-ethnic and multi-religious country that aspires to be a democracy after decades of isolation and authoritarian rule.⁴

A. INTERCOMMUNAL VIOLENCE

The rape and murder of a Buddhist woman by Muslim men on 28 May 2012 was the trigger that led long-simmering tensions between the Buddhist Rakhine and the Muslim Rohingya communities to flare in Rakhine State in June. Dozens were killed, hundreds of houses burned, and 75,000 mostly Rohingya displaced by subsequent intercommunal violence in northern Rakhine State and around the provincial capital of Sittwe. While often cast as a fight between these two distinct communities with longstanding antagonisms, the 3 June murder of ten Muslim pil-

grims in Toungup township, who were not Rohingya, came after the distribution of inflammatory leaflets attacking followers of their religion. It was a worrying development as it cast the tensions as Muslim versus Buddhist and showed how easily the distrust between religions could be manipulated by rising ultra-nationalist sentiments.

The speed with which clashes in the state led to a protest outside a prominent mosque in central Yangon, across from the Sule Pagoda, worried authorities. As violence got out of hand in Rakhine, a state of emergency was imposed there on 10 June and additional troops dispatched to enforce it.⁵ This restored order for only a few months, during which tensions continued to simmer, and small incidents were reported.

Widespread violence erupted again on 21 October in new areas of Rakhine State, in the townships of Kyaukpyu, Kyauktaw, Minbya, Mrauk-U, Myebon, Pauktaw, Ramree and Rathedaung. While Muslim Rohingya did attack Buddhist Rakhine communities in June, those displaced at that time tended to be overwhelmingly from the Rohingya side or Buddhists who had been living in Muslim neighbourhoods that were destroyed.⁶ In this second wave, the attacks appeared to be well-coordinated and directed towards Muslims in general and not just Rohingya, a potentially serious escalation. Thus, Muslim ethnic Kaman communities, who are one of Myanmar's recognised nationalities, were also targeted.⁷

Once again, the violence in Rakhine State quickly reverberated throughout the country. Muslims cancelled public celebrations of Eid Al-Adha on 26 October and on the following day hand grenades were thrown at two mosques in Karen State's Kawkaik township.⁸ The president's office said that between 21 and 30 October 89 people were

¹ For earlier Crisis Group reporting on the changes in Myanmar since the present government took office, see Crisis Group Asia Briefings N°136, *Reform in Myanmar: One Year On*, 11 April 2012 and N°127, *Myanmar: Major Reform Underway*, 22 September 2011; and Asia Reports N°231, *Myanmar: The Politics of Economic Reform*, 27 July 2012 and N°214, *Myanmar: A New Peace Initiative*, 30 November 2011.

² Formerly known as Arakan State, this name is still used by many. The ethnic Rakhine group is also known as Arakanese.

³ Crisis Group interview, diplomat, Yangon, November 2012. See also "Announcement regarding conflicts in Rakhine State", President Office Announcement No. 2/2012, 31 October 2012.

⁴ This report does not analyse in detail either ethnic peace negotiations or economic challenges covered in Crisis Group reports, *Myanmar: The Politics of Economic Reform*, and *Myanmar: A New Peace Initiative*, both op. cit.

⁵ See Crisis Group, "Myanmar Conflict Alert: Preventing communal bloodshed and building better relations", 12 June 2012.

⁶ See "Burma: New Violence in Arakan State", media release, Human Rights Watch, 27 October 2012; and Crisis Group interviews, civil society activist, Yangon, September 2012; civil society activist, October 2012.

⁷ "Fleeing Muslims seek food, shelter after Myanmar sectarian chaos", Reuters, 26 October 2012.

⁸ Lawi Weng, "Two mosques attacked in Karen State", *The Irrawaddy*, 29 October 2012.

killed, 136 wounded, and 5,351 homes burned down, making 32,231 people homeless.⁹ Figures from the border affairs ministry indicate that the impact was overwhelmingly on Muslim communities, with the Rakhine losing some 160 houses, making around 800 homeless.¹⁰

B. POLITICAL UNDERPINNINGS

This second wave of clashes took place amid rising local political tensions. The senior army officer with authority for the region, Lieutenant-General Hla Min, conceded there might be political aims behind the riots.¹¹ There are vague rumours of involvement of those opposed to the national reforms. However, local dynamics demonstrate the violence was not spontaneous and suggest that it has taken place not in defiance of reforms but because of them. The transition has opened up unprecedented space to organise that has been denied for decades, including for long-suppressed nationalist causes. It has allowed sub-national groups to air bitter grievances and issue a call to arms without moderation or censorship. Access to the internet has only aided the spread of these ideas.

In late September 2012 in Sittwe, in what was billed as the biggest ever public meeting of ethnic Rakhine, delegates laid out an ultra-nationalist manifesto approving, among other things, resolutions supporting the formation of armed local militias, enforcement of citizenship laws, removal of Rohingya villages, and the reclamation of land that had been “lost” to them. The conference objected to the plans to reunite communities, issue national identity cards to Rohingya, and the establishment of a liaison office of the Organisation of Islamic Cooperation (OIC) in Yangon.¹²

Monks, women’s groups and youth organisations in early October organised demonstrations in Sittwe against the proposed OIC mission.¹³ These protests were part of a national movement against the OIC led by prominent monks, with thousands protesting in Yangon and Mandalay. In response, the national government reneged on a signed

agreement to allow the establishment of the mission.¹⁴ Many of those outside the region are under the mistaken impression that Buddhist monks and their religion are inherently non-violent, whereas in South East Asia violence has been regularly led by monks and perpetrated by Buddhists.¹⁵ New freedoms have given militant monks the ability to organise and protest; the Rakhine State events has given them a powerful cause. In Rakhine State, they have been present during riots as well as organised blockades and boycotts of Muslim communities.¹⁶

But this militancy was already on the rise. In April, monks carried out attacks on mosques and Muslim businesses in Kachin State.¹⁷ Given their revered position in society and growing politicisation, the quick concession on the OIC office raised concerns.¹⁸ Some fear it will encourage further religious militancy.¹⁹ Perhaps recognising this, the president called on monks to obey the law for the sake of the country’s international image.²⁰ A number of senior monks in Rakhine State and nationally have also spoken out against violence and intervened locally to try to stop it – but these voices of moderation have been in the minority.

There have been expectations that Aung San Suu Kyi would take a clearer stand on the violence and human rights violations. She recently told the media that “people want me to take one side or the other so both sides are displeased because I will not take a stand with them”.²¹ She later issued a joint statement with lawmakers from ethnic minority parties calling for more security forces to be deployed to Rakhine State and called on the government to address the concerns of both communities.²² However, her unique

⁹ See paragraph 2, “Announcement regarding conflicts in Rakhine State”, President Office Announcement No. 2/2012, 31 October 2012.

¹⁰ Border affairs ministry, summary document covering the period 22-30 October.

¹¹ “Authority, resident representatives of UN agencies look into situation in Yanbye [Ramree], Kyaukpyu”, *The New Light of Myanmar*, 29 October 2012.

¹² “Arakan public meeting successfully concludes in Rathaung”, Narinjara Independent Arakanese News Agency, 29 September 2012.

¹³ “Myanmar: Displacement in Rakhine State”, Situation Report No. 10, OCHA, 28 October 2012.

¹⁴ “Buddhist monks march in Myanmar to thwart Islamic office plan”, Reuters, 15 October 2012.

¹⁵ Ian Baird, “Buddhist Monks and Militant Violence in Laos”, Asia Pacific Memo, University of British Columbia, 30 October 2012.

¹⁶ Crisis Group interview, civil society activist, Yangon, September 2012.

¹⁷ “Myanmar Muslims’ properties and houses are being arbitrarily destroyed”, <http://kyawkyawoo.wordpress.com/2012/04/24/attacks-and-distruction-of-myanmar-muslims-masjids-and-properties/>, 17 April 2012.

¹⁸ Crisis Group interview, local political analyst, Yangon, October 2012; Lawi Weng, “OIC blasts government”, *The Irrawaddy*, 16 October 2012.

¹⁹ Crisis Group interview, civil society activist, 30 October 2012.

²⁰ See paragraph 5, “Announcement regarding conflicts in Rakhine State”, op. cit.

²¹ “Suu Kyi says cannot back Myanmar’s Rohingya: BBC”, Agence France-Presse (AFP), 4 November 2012; Statement of Ethnic Representatives and Chairperson, Daw Aung San Suu Kyi, of the Parliamentary Committee on Law and Order and Tranquillity with Regard to the Ongoing Conflicts in Rakhine State, Naypyitaw, 7 November 2012.

²² “Suu Kyi calls for troops to tackle Arakan unrest”, The Associated Press, 8 November 2012.

position in the country means that the expectation will continue for her to break through partisanship and speak much more strongly and clearly against extremist rhetoric and violence, and in support of the fundamental rights of all people in Rakhine State.

C. AN INTERNATIONAL PROBLEM

Myanmar regards the violence in Rakhine as an internal problem, but it has long had an international dimension. The Rohingya, as they call themselves, are not recognised as one of the official ethnic groups by the government, who refer to them as Bengalis. Bangladesh challenges this term and says that they are not its citizens because they have lived within the borders of Myanmar since colonial times, even before Bangladesh itself existed as a nation.²³ In recent decades, operations against what the Myanmar government called “illegal immigrants” led to tens of thousands fleeing to neighbouring Bangladesh as refugees or migrating to countries like Malaysia to work illegally.²⁴ From there, others have sought refuge in third countries. While ready to receive humanitarian aid from the UN and bilateral donors, Myanmar has rebuffed outside political assistance, including from the Association of Southeast Asian Nations (ASEAN). “Myanmar believes it is their internal matter, but your internal matter could be ours the next day if you are not careful”, warned outgoing ASEAN Secretary-General Surin Pitiswan on a recent visit to Kuala Lumpur.²⁵

The violence has drawn much attention and condemnation in the Muslim world – including from Iran, Indonesia, Egypt, Saudi Arabia, Pakistan, Malaysia and the Organisation for Islamic Cooperation. There have been some fears that the problems in Rakhine State could spread violence throughout the region. In July, convicted Indonesian terrorist and radical leader Abu Bakar Ba’asyir, in an open letter from his Jakarta prison cell to President Thein Sein, threatened to conduct jihad against Myanmar if the killing of Muslims did not stop.²⁶ In September, those in-

involved in a recently broken up alleged terrorist ring in Central and West Java were reported by police to have been considering targeting Buddhists as a way to protest against the treatment of Rohingya.²⁷ There have already been attacks on Buddhist temples by Muslims in Bangladesh stirred up by local politicians.²⁸

ASEAN’s Surin predicted the issue could radicalise the region and destabilise even the Malacca Straits.²⁹ While local factors are most important for radicalisation, religiously-inspired violence in Rakhine State could encourage such “revenge” attacks elsewhere in the region. The greatest threat remains to Myanmar’s own internal stability. All the large cities have significant Muslim minorities, and if the violence in Rakhine State evolves into a broader religious conflict, with communities turning on each other across the country, it could be a source of major instability and a serious threat to the reform process.

D. A QUESTION OF CITIZENSHIP

Despite the fact that most Rohingya have lived in the area for generations, it has often been hard for them to obtain proper documents such as birth certificates, marriage records, and therefore citizenship papers. The UN refugee agency (UNHCR) estimates the number of stateless Rohingya at more than 808,000.³⁰ Officially, under the 1982 Citizenship Law, people born of descendants who were in the country before independence in 1948 should become citizens within three generations as successive generations move from being associate or naturalised citizens to full citizens.³¹ If the 1982 law had been applied without active discrimination by local officials against Rohingya, the majority of them would have long ago achieved full citizenship.

In practice, local regulations that restrict marriage make it difficult, time-consuming and costly, especially for the poor, to fulfil the requirements and obtain key documents such as birth certificates.³² Restricting access to birth cer-

²³ Comments by Anup Kumar Chakma, Ambassador of Bangladesh to Myanmar, Workshop on Rehabilitation, Resettlement, Rule of Law and Sustainable Development in Rakhine State, Naypyitaw, 22 September 2012.

²⁴ There is an annual exodus of Rohingya each dry season on boats leaving from both the Bangladesh and Myanmar sides of the border. Many of these boats are not seaworthy, are overcrowded, and do not have navigation equipment. Most head for Malaysia or the far south of Thailand. If intercepted by either of these countries, they often face harsh treatment, and there have been regular allegations of abuses.

²⁵ “Myanmar declined talks offer on violence: ASEAN”, AFP, 30 October 2012.

²⁶ Letter from Abu Bakar Ba’asyir to President Thein Sein, 22 July 2012.

²⁷ Farouk Arnaz, “Depok-Solo terror group gets creative with bomb-assembly”, *The Jakarta Globe*, 24 September 2012.

²⁸ “Rioters torch Buddhist temples, homes in Bangladesh”, AFP, 1 October 2012.

²⁹ “Myanmar unrest could destabilise wider region: ASEAN”, AFP, 30 October 2012.

³⁰ The number includes both persons inside and outside northern Rakhine State. UNHCR Fact Sheet September 2012. The total population of Rakhine State is over 3 million.

³¹ Presentation by U Maung Maun Than, Director-General, Immigration and National Registration Department, Workshop on Rehabilitation, Resettlement, Rule of Law and Sustainable Development in Rakhine State, Naypyitaw, 22 September 2012.

³² See “Fatal policy: How the Rohingya suffer the consequences of statelessness”, document prepared by an international

tificates violates Article 7 of the Convention on the Rights of the Child, which Myanmar ratified in 1991.³³ Prejudice against Muslims and those with dark skin runs deep in Myanmar, which, despite its multi-ethnic and multi-religious nature, has long had a Burman-Buddhist identity imposed on it by successive Burman elites.

The question of citizenship is a complicated one. Many Rohingya have temporary (non-citizen) registration certificates that under the election laws have allowed them to vote and form and join political parties, but they have been denied full citizenship and are thus ineligible – at least in principle – to stand for elected office. Some Rohingya do have full citizenship and have been elected to the local and national legislatures. Tens of thousands of otherwise poorly documented minorities, including Rohingya, were registered to vote for the 2010 election in an effort by the Union Solidarity and Development Party (USDP) to marginalise local ethnic parties.³⁴ Hopes were raised that the undocumented status of the Rohingya might soon end, which only stoked paranoia among the Rakhine fearing marginalisation in their own state.³⁵ A pilot survey in May 2012 was said to have found that some 70 per cent of Rohingya had sufficient proof of descent to be eligible for some form of national identity documents. Fears that this election promise might be fulfilled are thought by some observers to have fuelled recent Rakhine militancy.³⁶

E. MOVING AWAY FROM VIOLENCE

Many have argued that the government had the ability to stop this violence.³⁷ In public discussions in the capital, officials agree that in a democracy the government should be guided by human rights principles and prioritise the protection of communities.³⁸ The reality on the ground is

that the performance of parts of the security forces has been biased and woefully inadequate. Local police and riot police are overwhelmingly made up of Rakhine Buddhists who are at best unsympathetic to Muslim victims and at worst allegedly complicit in the violence. The army, recruited nationally and rotated into the region, has been better at maintaining security, for example preventing attacks against the majority Muslim residents of Buthidaung township, which has a large army presence, and guarding the last Muslim-majority neighbourhood in downtown Sittwe.³⁹

In the latest wave of violence, the army was posted to guard Muslim villages and neighbourhoods, and its role has been generally seen as positive by these communities.⁴⁰ Some soldiers have reportedly been attacked by Rakhine mobs and shot rioters in order to prevent attacks on the areas they were defending. Border affairs ministry officials say criminal law is being applied fairly, but this is disputed by those who have visited the area.⁴¹ Until central authority can be reestablished, people treated equally and criminal law applied fairly, experience from elsewhere suggests it will be hard to resolve the root causes of this conflict.⁴²

Local government and the local security forces (the police and the paramilitary border force known as the “Nasaka”), which are dominated by Rakhine Buddhists, often have a strongly anti-Rohingya agenda.⁴³ Disbanding the Nasaka, which is seen as the most corrupt and abusive government agency in the area, would address both Rohingya concerns of abusive practices and go some way to addressing Rakhine concerns of lax or corrupt border security.

NGO working in Rakhine State, whose name is withheld for security reasons.

³³ According to Article 7 of the convention: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

³⁴ See Crisis Group Asia Briefing N°105, *The Myanmar Elections*, 27 May 2010, Section II.A.3.

³⁵ In part to appease secessionist sentiments among ethnic Rakhine, General Ne Win created Rakhine State from the Arakan Division in 1974.

³⁶ Crisis Group interview, civil society activist, 30 October 2012.

³⁷ See for example “‘The Government Could Have Stopped This’: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State”, Human Rights Watch, August 2012.

³⁸ Police Lieutenant-Colonel Kyaw Win Thein, “Security, Rule of Law, and Stability”, presentation, Workshop on Rehabilita-

tion, Resettlement, Rule of Law and Sustainable Development in Rakhine State, Naypyitaw, 22 September 2012.

³⁹ Crisis Group interview, civil society activist, 30 October 2012.

⁴⁰ Crisis Group interview, Rohingya political representative, Yangon, November 2012; member of investigation commission, October 2012.

⁴¹ Crisis Group interviews, border affairs official, ASEAN diplomat, Naypyitaw, 23 September 2012.

⁴² Jim Della-Giacoma, “What could Myanmar learn from Indonesia? The Malino Accord”, Crisis Group blog “Resolving conflict in South East Asia” (www.crisisgroupblogs.org/resolving-conflict/), 4 September 2012.

⁴³ Crisis Group interviews with a range of individuals, both Myanmar and international, having detailed knowledge of the situation, Yangon and Naypyitaw, September 2012. The army, which has been charged with restoring security since the declaration of a state of emergency in the area, is made up predominantly of people from other parts of the country, and – although there have been credible allegations of incidents of violence and abuse – it has been generally seen as less partisan in its approach.

F. THE RISKS OF SEGREGATION

The violence has led to a separation of Muslims and Buddhists in two ways. First, because communities have moved or fled from areas where they are in a minority and therefore feel vulnerable – particularly Rohingya, but also Rakhine. Secondly, because the security forces have in some cases enforced the separation of communities to contain the violence – for example, preventing Rakhine people from entering the principal remaining Rohingya quarter of Sittwe, and restricting access to the main market by Rohingya.

The majority of the displaced people are Muslim Rohingya from urban and peri-urban Sittwe, who have been moved to camps outside the city, as well as Rohingya newly-displaced in other parts of the state in the most recent wave of violence. The Rakhine Buddhist and Rohingya communities have been essentially segregated, including with separate displacement camps. Unlike the Rakhine camps, which are open, the Rohingya camps around Sittwe are de facto closed, with the population unable or unwilling to travel into the city for work or go to the market. Most of the Rohingya neighbourhoods of Sittwe were bulldozed in the days following the violence, including structures that had been damaged or destroyed by fire, but also some structures that were still sound. There have been indications that the local authorities may not allow the original Rohingya residents to return to these areas, and that they might invoke colonial-era legislation that empowers them to reclaim areas damaged by fire as state-owned land.⁴⁴

Thus, though there is no official policy of long-term segregation, some of the actions of the local authorities raise serious concerns. The more extreme voices in the Rakhine community are calling for segregation or even the expulsion of the Rohingya. An important test of the direction in which the situation is evolving will be if some reintegration – or at least, a degree of intercommunal interaction – can take place, but current indications are worrying. Although the central government has stated that camps for internally displaced communities should be temporary and that people should have the possibility to return to their former neighbourhoods, the reality on the ground looks very different.⁴⁵ As an experienced humanitarian

worker put it, “there is nothing more permanent than a temporary shelter”.⁴⁶

At the same time, any return of people to their original areas has to be voluntary, and cannot happen until they feel secure in doing so. As a priority, it is incumbent on the donor community to provide adequate humanitarian support, which is not yet forthcoming;⁴⁷ and on the government to ensure free unfettered access to the area, including for the resumption of pre-existing programs for vulnerable communities, which it has not yet done.

Any increased segregation of communities, particularly if accompanied by the denial of other fundamental rights to the Rohingya population, would make it exceedingly hard to address the underlying tensions and promote communal harmony. Without such progress, the violence is likely to reignite in the future, which would be to the detriment of both communities, and of the country as a whole. It will also make it much harder to address the fundamental issues: the Rohingya’s basic rights and citizenship status and the Rakhine’s sense of fear about demographic pressures. The strength of these fears among mainstream Rakhine society should not be underestimated or ignored.

The end of military rule has altered some of the dynamics at play. Both communities have been victims of central government repression or neglect over decades. The military regime was particularly fearful of the emergence of ethno-nationalist movements that could challenge its authority over the ethnically diverse country. Over successive decades it pursued a centralisation strategy that concentrated political power in the hands of a Burman elite and imposed a Burman-Buddhist identity on the country.⁴⁸ Now, as Myanmar emerges from decades of authoritarian rule, nationalism is on the rise. This includes aspects of ethno-nationalism, as ethnic communities find their voice, organise, and identity politics starts to take root – something that has contributed to rising tensions in Rakhine State.

⁴⁴ Ibid.

⁴⁵ For example, the opening remarks of Vice President Sai Mauk Kham at the Workshop on Rehabilitation, Resettlement, Rule of Law and Sustainable Development in Rakhine State, Naypyitaw, 22-23 September 2012 (reported in summary form in “Complex rehabilitation tasks for restoring normal socio-economic lives of victims in Rakhine State will take time”, *New Light of Myanmar*, 23 September 2012, p. 2.

⁴⁶ Comment by a senior official from the UN Office for the Coordination of Humanitarian Affairs (OCHA) at the Workshop on Rehabilitation, Resettlement, Rule of Law and Sustainable Development in Rakhine State, Naypyitaw, 22 September 2012.

⁴⁷ A “Rakhine Response Plan” drawn up by international humanitarian agencies called for \$32.5 million to address urgent humanitarian needs for the period July to December 2012, which does not take account of additional needs created by the latest round of violence and displacement. As of 5 November, less than half of this amount had been covered, with \$11 million disbursed or pledged by donors, with another \$4.9 million allocated by the UN’s own Central Emergency Response Fund. See “Myanmar: Displacement in Rakhine State”, Situation Report No. 12, OCHA, 6 November 2012.

⁴⁸ See Crisis Group Report, *Myanmar: A New Peace Initiative*, op. cit.

Thus, in the lead-up to the 2010 elections, the USDP and the regime wanted to prevent the Rakhine Nationalities Development Party from gaining a majority in the state legislature. They therefore courted the Rohingya by issuing them with voter registration cards and making promises of citizenship. Rakhine politicians saw this as a direct challenge, and combined with a resurgent Rakhine nationalism and pre-existing anti-Rohingya sentiments, this contributed to rising tensions and an increase in individual incidents of provocation or violence between the communities over the last two years.⁴⁹

G. THE GOVERNMENT'S RESPONSE

It is in this very complex environment that the “investigation commission” on Rakhine State – established on 17 August 2012 by President Thein Sein to look into the clashes – will have to carry out its work. The commission has a broad mandate, covering the causes of the violence, the official response, how to resolve the situation, and suggestions for reconciliation and socio-economic development of the area. It also has a very broad composition, including Muslim, Christian, Hindu and Buddhist religious leaders, academics, civil society leaders, lawyers and politicians – although none of the Muslim members specifically represent the Rohingya community. The commission also comprises a number of former dissidents, including 88 Generation student leader Ko Ko Gyi and the comedian and social critic Zarganar. The commission was given three months to complete its work, although it is likely to need more time, and may not submit its final report until the end of 2012.⁵⁰

The commission's work could be very important, not only as it attempts to define a constructive broad-based approach for Rakhine State, but also potentially in catalysing a national reflection on some of the broader issues of identity and diversity that the intercommunal violence raises. Whether it will succeed in achieving either of these goals is far from clear. With the exception of the lack of Rohingya members, the commission is fairly representative of the diversity of the country, including several Muslim members, which gives it some legitimacy. This diversity will also make it a huge challenge to reach consensus on the difficult issues. The report could end up being a lowest-common-denominator text that avoids controversial issues; or it may end up reflecting a majority view that is seen as partisan and is not conducive to reconciliation. The emergence of a “Buddhist solidarity” lobby around the Rakhi-

ne issue – with Buddhist monks and a segment of the Burman elite demonstrating in support of Rakhine Buddhists⁵¹ – does not augur well for the development of a more open society that is accepting of the diversity of the country.

H. A THREAT TO ALL COMMUNITIES

This also raises the question of whether intercommunal tensions elsewhere in the country could turn violent. Myanmar has a history of intercommunal strife, particularly vis-à-vis the Indian community (Muslim and non-Muslim) and the Chinese community. The most serious incidents have occurred in the context of particular situations, such as in the 1930s during the global depression and amid anger over unchecked migration from British India, or in the 1960s amid efforts by China to radicalise the Chinese population in Myanmar at the time of the Cultural Revolution.⁵² In 2001, anti-Muslim violence broke out in central Myanmar, triggered in part by the destruction of the Bamiyan Buddhas in Afghanistan by the Taliban, and Buddhist monks in the central Myanmar town of Taungoo called for the destruction of mosques in retaliation.⁵³ In general, though, Myanmar's populations of Chinese and Indian descent are well-integrated and intercommunal tensions or violence of the level seen in Rakhine State seem unlikely.

The possible exception would be tensions with recently-arrived Chinese migrants in Mandalay and the north. Over the last twenty years, many people from south-west China have come to Myanmar to pursue business opportunities. Their access to credit and business networks in China has put them at an advantage over local businesses, many of which have been displaced as a result. This more recent Chinese population, unlike older Chinese communities, has generally not integrated well, leading to tensions with locals. Also, many of the recent Chinese migrants have bribed government officials to obtain citizenship papers, while those who have lived in the country for decades still have only temporary identification that does not give them the same rights and access to services as citizens.⁵⁴ There is clearly a risk of intercommunal violence, something that the Chinese government has long been concerned about.⁵⁵ There are no current indications of tensions

⁴⁹ Crisis Group interview, head of an organisation that monitors the human rights situation in Rakhine State, Yangon, September 2012.

⁵⁰ Crisis Group interviews, several members of the commission, Yangon and Naypyitaw, September 2012.

⁵¹ The demonstrations against the opening of an OIC liaison office in Yangon, when some protesters referred to the need to “safeguard Buddhism”, are an example of this. See Section I.B and “Myanmar won't allow OIC to open liaison office”, Associated Press, 15 October 2012.

⁵² See Robert Taylor, *The State in Myanmar*, 2009, p. 198.

⁵³ See Human Rights Watch, “Crackdown on Burmese Muslims”, July 2002.

⁵⁴ Crisis Group interview, Myanmar academic, Yangon, September 2012.

⁵⁵ Crisis Group interview, Yangon, September 2012.

being higher than in the past, however, and it seems that the violence in Rakhine State may have taken some of the focus of discontent away from the Chinese community.⁵⁶

But Myanmar should not be complacent. The experience of others in the region and the country's own past suggest that communal tensions can be exploited and inflamed for political gain. In particular, there is a real risk that the violence in Rakhine State will take on a more explicitly Buddhist-Muslim character, with the possibility of clashes spreading to the many other areas where there are minority Muslim populations. This would have very serious consequences for stability and reform.

II. MUCH POLITICAL PROGRESS

The president and the legislatures are pushing forward with wide ranging reforms of politics and the economy. The reforms are being consolidated from the top down as the political landscape becomes more complex, with growing tensions between the executive and the legislature, President Thein Sein working to consolidate his position, Aung San Suu Kyi growing into her new role, and Western governments re-engaging after decades of keeping their distance due to sanctions policies.

A. CONSOLIDATION OF THE REFORM PROCESS

In a speech to the UN General Assembly on 27 September 2012, President Thein Sein reaffirmed his commitment to pursuing further democratic reform. The speech was carried live on Myanmar state television and radio, allowing the people of Myanmar to hear the president's message and indicating that his words were not merely for international consumption.⁵⁷

It was a stark contrast to the manner in which Myanmar has been governed for decades. The president made clear that he and his government were working in the service of the people, saying that he felt "greatly privileged and honoured to dutifully serve the people as their president at this crucial time in the history of our nation". Describing the changes as "tangible and irreversible", he stated that the country was "leaving behind the system of authoritarian government" and "fostering a new political culture of patience and dialogue". He stressed the need to ensure that economic development did not widen the gap between rich and poor. He envisaged a country where citizens' rights were protected, the environment was preserved, international labour standards were respected, and investments in energy and the extractive sector were transparent.

The very positive way in which he spoke of Aung San Suu Kyi indicates a further warming of relations between the two. He referred to her as a "Nobel laureate" and congratulated her "for the honours she has received in this country in recognition for her efforts for democracy" – a reference to the Congressional Gold Medal and other awards that she collected during her visit to the U.S.

The president indicated that he placed "a high priority on achieving a lasting peace in the country", noting that "the cessation of all armed conflicts is a prerequisite for the

⁵⁶ Crisis Group interviews, Mandalay, September 2012.

⁵⁷ The full text of the speech in English was published in *New Light of Myanmar*, 28 September 2012, p. 1.

building of genuine democracy”. He gave a commitment that the ceasefire agreements and confidence-building measures would be followed by “national level peace negotiations”. Speaking of the need for further dialogue to address the ongoing conflict in Kachin State, he stressed that “any loss of life and property from either side in the conflict [is] a loss for the country”.

He acknowledged the intercommunal violence in Rakhine State and gave assurances that “people inhabiting our country, regardless of race, religion or gender, have the rights to live in peace and security”. He stated that the government would facilitate the provision of relief assistance impartially to both communities and said that “we will do our utmost to solve this issue in line with international norms”. However, the extent to which this reflects the current realities on the ground can be questioned (see Section I above).

This was the latest in a series of key speeches by the president, starting with his inaugural address in March 2011, that have set out an increasingly bold and far-reaching reform agenda, and have discussed in an open way some of the topics that were taboo for the previous government.

Key developments in the second half of 2012 include the following:

- Two additional amnesties of prisoners, on 3 July and 17 September, which included approximately twenty and 90 political prisoners, respectively.⁵⁸ Estimates of the number of political prisoners vary, since all the high-profile detainees have been released, and those remaining are either less well-known, or there is less certainty about their political prisoner status. Approximately 200 to 300 were thought to remain imprisoned prior to these releases, some of whom were arrested on criminal or terrorism charges.⁵⁹ The government has indicated that it is engaged in a process of ongoing evaluation of remaining cases, which led to the July and September releases.
- Adoption of regulations for the recently-enacted Peaceful Assembly and Peaceful Procession Law that set out the procedures for applying for a permit to hold a demonstration, grounds for refusal and the procedure for appeal. These were issued on 5 July by the home ministry and a few days later around 200 farmers staged a demonstration in Yangon over land seizure, the first

such legal protest to be held in the country since the 1962 military coup.⁶⁰

- In the course of July, Myanmar announced that it was “seriously considering” acceding to the Ottawa convention on landmines,⁶¹ and that it was preparing to join the Extractive Industries Transparency Initiative (EITI) and was committed to implementing its provisions.⁶²
- On 7 August, NLD leader Aung San Suu Kyi was appointed as chair of the newly-formed lower house Committee for Rule of Law and Peace and Stability.⁶³
- On the eve of the 8 August anniversary of the brutally-repressed 1988 nationwide uprising against military rule, two senior ministers, with the approval of the president, travelled to Mandalay to meet the 88 Generation student leaders and give them a donation towards the costs of the commemoration they were planning to hold the following day.⁶⁴ In previous years, it had been impossible to hold any public commemoration of the uprising, and those involved in planning underground events faced arrest. This represented a significant step towards reconciliation and official recognition of the violent events of 1988.
- On 27 August, Myanmar announced that it had removed around one third of the names (foreigners and Myanmar exiles) from its 6,000-name immigration blacklist,⁶⁵ and in a display of transparency it posted on the president’s website the list of those whose names had been removed. Over the following days, a number of high-profile exiles returned home, including the activist Maung Maung and former Student Army commander Moe Thee Zun – both of whom had been previously sentenced to death in absentia.⁶⁶ The return to the

⁵⁸ See *New Light of Myanmar*, 3 July 2012, p. 16; and 18 September 2012, p. 16.

⁵⁹ Crisis Group interviews, 88 Generation student leader, Yangon, March 2012; NLD Central Executive Committee member, Yangon, September 2012.

⁶⁰ “Ministry enacts protest by-laws”, *Myanmar Times*, vol. 32, no. 635, 16-22 July 2012; and “Farmers hold first official protest in Rangoon”, *Democratic Voice of Burma*, 16 July 2012.

⁶¹ Remarks by the Myanmar foreign minister during a meeting with the Convention’s president, Prak Sokhonn of Cambodia, during the ASEAN foreign ministers meeting on 11 July in Phnom Penh.

⁶² “Myanmar reaffirms intention to implement the EITI”, press release, EITI International Secretariat, Oslo, 18 July 2012.

⁶³ See *New Light of Myanmar*, 8 August 2012, p. 7.

⁶⁴ “88 Gen marks anniversary in MDY”, *Myanmar Times*, vol. 32, no. 639, 13-19 August 2012.

⁶⁵ See “Black-listed Myanmar citizens get green light”, *New Light of Myanmar*, 28 August 2012, p. 16.

⁶⁶ Other well-known exiles who returned include Naing Aung (also a former leader of the Student Army) and Aung Moe Zaw (exiled head of a student political party). See Min Zin, “The exiles return”, *The Irrawaddy*, 9 September 2012. Subsequently, communist party leader Kyaw Zaw and his family accepted an invitation to return home from exile in China. Kyaw Zaw was one of the legendary “30 Comrades”, who fought for the country’s independence under the leadership of Aung San; he

country of such prominent hardline exiles is a further strong sign of how far the government is ready to go in reaching out to its former adversaries.

There has also been a further liberalisation of the media. On 20 August, the government announced the abolition of media censorship.⁶⁷ Previously, newspapers, periodicals and all other printed works needed to be pre-approved by the censorship board and faced strict controls on the subjects they were allowed to cover. (The blocking of political content on the internet ended in 2011.) The government indicated that it plans to shift the state media over to a public service model, which it said can help “create a greater sense of national identity, foster democratic and other important social values, provide quality educational and informational programming, and serve the needs of minority and other specialized interest groups”.⁶⁸ An editorial in the state media gave assurances that now that “draconian censorship” had been abolished, it would aim to serve the public and “help our once-isolated country reunite again with the global family”.⁶⁹ A prominent regional media representative stated that “no ASEAN member has undergone such swift change in such a short time, especially in the media sector”, suggesting that Myanmar could soon have a freer media environment than most countries in the region.⁷⁰

B. TENSIONS WITH THE LEGISLATURE

Since the start of the political transition, the legislatures have emerged as a key centre of reform and a serious check on the executive. This has at times led to tensions between President Thein Sein and Lower House Speaker Shwe Mann coming out into the open. One example, in early 2012, was over the issue of civil service salaries.⁷¹ The most recent case, and one that could potentially have far-reaching consequences, was over a ruling by the Constitutional Tribunal. This disagreement reached a level where there was even talk by some legislators of impeaching the president.

passed away on 10 October 2012 at a hospital in southern China, before he had the chance to return.

⁶⁷ See *New Light of Myanmar*, 21 August 2012, p. 7; see also “Myanmar removes controls on the media”, AFP, 21 August 2012.

⁶⁸ The newly-appointed information minister, Aung Kyi, speaking at a public service media conference in Yangon in September 2012, which included participation from the exiled media. See “Perspective on forthcoming public service media-PSM”, *New Light of Myanmar*, 6 October 2012, p. 16.

⁶⁹ “The New Light of Myanmar: Your newspaper”, *New Light of Myanmar*, 18 October 2012, p. 8.

⁷⁰ Kavi Chongkittavorn, “Burma’s new media can shake-up ASEAN”, *The Nation* (Bangkok), 1 October 2012.

⁷¹ For a discussion, see Crisis Group Briefing, *Reform in Myanmar*, op. cit., Section V.A.

The discussion of the impeachment of the president himself throws Myanmar’s new power dynamics into sharp relief. The competition between the executive and the legislature is happening despite the president and most of his cabinet having been appointed from among the ranks of the USDP. This makes it clear that the USDP cannot be considered a “ruling party”.⁷² Given party representatives were willing to discuss invoking an extraordinary constitutional provision that is intended for the gravest of situations – presidential impeachment – in the context of what was a relatively minor dispute, it shows that the country has a long way to go to develop a mature democratic process with stable institutions.

The details of the case are as follows. On 2 February 2012, the attorney general, acting on behalf of the president, submitted a question to the Constitutional Tribunal concerning the status of the committees and commissions established by the legislature. At issue was whether they could be considered to have “Union-level” status as that term is used in the constitution – that is, a status equivalent to the cabinet, Supreme Court, Constitutional Tribunal, civil service board, election commission and so on. This status would both give them the right to summon ministers to appear before them and provide their members with material benefits not available to officials of lower-level institutions. The attorney general submitted arguments that they should not be considered to have that status.

The dispute had been brewing since the first legislative session in 2011. A large group of ministers then complained to the president about the considerable amount of time they had to devote to appearing before the legislature to answer questions that they often considered to be routine or facile. Over subsequent sessions, the cabinet increasingly sent deputy ministers to answer questions in the upper and lower houses. The main reason for the dispute had to do with whether legislative committees and commissions would also have the status to summon ministers. The executive apparently resented the power that the legislature had, and felt that having to appear before its numerous subsidiary bodies – which currently number more than 30 – would be onerous.⁷³

⁷² Indeed, the fact that under the constitution the president and his cabinet must resign their legislative seats upon taking up office, and suspend party-political activities during their terms, means that legally the majority party is not a ruling party.

⁷³ Two other explanations have been mooted for the dispute. One is that this was a “tit-for-tat” move by the president after the legislature had earlier blocked a budget allocation for the Myanmar National Human Rights Commission, which the president had set up. The legislature’s grounds for doing so were that the commission could not be considered a “Union-level” body, as it had been established without the constitutionally-mandated approval of the legislature. Sources who have de-

The issue of facilities accorded to members of “Union-level” institutions may also have had some influence on the dispute. Since the first sitting, legislators have been upset about the very poor standard of accommodation and other facilities provided for them in Naypyitaw. The budget for these was under the control of the executive, and this created a perception among elected representatives that it did not respect their status. These grievances apparently increased the level of anger over the Constitutional Tribunal case on the status of legislative bodies.⁷⁴ The way the tribunal delivered its verdict on 28 March only made matters worse.⁷⁵ According to an elected representative, the tribunal summoned the deputy speakers of the upper and lower houses, and read them its verdict, while they stood in front of it. It was taken as a sign of great disrespect that no chair was provided, “like a judge handing down a sentence on the accused”.⁷⁶ In its judgment that legislative bodies did not have “Union-level” status, the tribunal used convoluted legal reasoning that appeared to ignore some key legal precedents.

Elected representatives, irrespective of party affiliation, were incensed. There was a perception that the tribunal had been pressured by the president to reach this conclusion, and that this was part of a broader pattern of attempts by the executive to constrain the legislature. A number of representatives began to discuss the possibility of impeaching the tribunal. Seeking to forestall impeachment, Lower House Speaker Shwe Mann urged the lawmakers to attempt to reach a solution through negotiations with the president.⁷⁷ When these negotiations were inconclusive, impeachment proceedings against the tribunal were initiated, and the speaker wrote to the president, suggesting that he forestall this by urging the tribunal members to resign.⁷⁸ The president refused and suggested that rather than impeach them, it would be more appropriate for the

legislature to amend the constitution in order to accord Union-level status to its bodies.⁷⁹

The president’s reply further angered many elected representatives, with some even saying that if he continued to defend the tribunal, they would consider impeaching the president himself.⁸⁰ While it is not clear that there was sufficient support in the legislature to take such a step, or a real willingness to do so, the fact that impeachment of the president was being openly discussed showed the extent of tensions between the legislature and the executive.

The legislature moved ahead with impeachment proceedings against the tribunal and on 6 September, when it became clear that there was sufficient support for the move, the members of the tribunal resigned pre-emptively.⁸¹ Lower house representatives of both the Union Solidarity and Development Party (USDP) and the National League for Democracy had voted in favour of impeachment, while the unelected military bloc had opposed the move. A new Constitutional Tribunal will now have to be appointed by the president (the nine members to be appointed are selected in equal number by the lower house, the upper house, and the president himself).

For those close to this struggle, it set an important precedent as “the legislature has flexed its muscles and won its first victory”.⁸² But the way in which that victory was achieved raises a number of questions. First, there is still uncertainty as to how the legislature will seek to achieve its ultimate goal of obtaining “Union-level” status for its committees and commissions. Although the tribunal has resigned, its verdict stands, and it is not clear how it would be reversed. The alternative suggested by the president of amending the constitution seems unlikely to be pursued at this time as the military bloc explicitly ruled out this possibility during the impeachment debate. Any constitutional amendment would require a 75 per cent supermajority and thus support from at least some military representatives.

Secondly, the position of the military bloc in the legislature on this issue reveals an interesting divergence of interests between the military and the USDP. By throwing its weight behind the president, the military has demonstrated that its overriding concern remains stability rather than party politics. It also reflects that the commander-in-chief, Min Aung Hlaing, appears to have shifted his polit-

tailed knowledge of the matter say, however, that for the legislators this was not a key factor. The other explanation is that this dispute was related to the allowances and facilities accorded to members of Union-level bodies (including official residence, government vehicles, personal staff and so on), but this does not appear to have been a key factor either.

⁷⁴ Crisis Group interview, NLD elected representative, Yangon, September 2012; Crisis Group interview, senior government adviser, Yangon, September 2012.

⁷⁵ “Constitutional Tribunal of the State delivers final verdicts”, *New Light of Myanmar*, 29 March 2012, p. 10.

⁷⁶ Crisis Group interview, elected lower house representative, Yangon, September 2012.

⁷⁷ See “Speaker requests patience of parliamentarian; row over Union level organization definition to be sent to president”, *New Light of Myanmar*, 15 August 2012, p. 16.

⁷⁸ See “It is up to two agencies to choose whatever political line of struggle of their own volition as both are independent ones formed in line with the constitution”, *New Light of Myanmar*, 21 August 2012, p. 1.

⁷⁹ *Ibid.*

⁸⁰ Crisis Group interview, lower house elected representative, Yangon, September 2012.

⁸¹ “Resignations of chairman and members of Constitutional Tribunal of the Union allowed”, Myanmar President Office Order No. 29/2012, 6 September 2012.

⁸² Crisis Group interview, Yangon, September 2012.

ical allegiances from his former military superior, Lower House Speaker Shwe Mann, to President Thein Sein.⁸³

Third, the tribunal impeachment has provided a clear demonstration of the enormous powers of the USDP-dominated legislature. With over half of the seats, the party has the ability to impeach any public official if it is able to secure the support of an additional 10 per cent of representatives – either from the military bloc or, as in the tribunal case, other parties – to reach the required two-thirds majority in both houses. It is likely that the threat of impeachment could be used again to pressure the executive.

In October 2012, the USDP held its first party congress, re-electing Thein Sein as chairman. Since under the constitution he is prohibited from taking any active role in party politics during his term as president, the vice-chairman and lower house speaker, Shwe Mann, will serve as acting head of the party.⁸⁴ In recognition of the enormous challenges that the USDP will face in moving away from its links with the old regime, he told delegates that he would reshape it into a more democratic institution as the “people’s party”.⁸⁵ An ally of Shwe Mann, Maung Maung Thein, was moved into the powerful general secretary position. Some of the more controversial members of the party were moved aside, including former Yangon mayor Aung Thein Lin. The party’s regional structures were also overhauled.⁸⁶

C. CONSOLIDATION OF THE PRESIDENT’S POWER

On 1 July, the president accepted the resignation of Vice-President Tin Aung Myint Oo.⁸⁷ On 15 August, the commander of the navy, Admiral Nyan Tun, was sworn in as the new vice president-2 (the other vice president, Sai Mauk Kham, took over as vice president-1 following the resignation of Tin Aung Myint Oo). Nyan Tun was selected by the commander-in-chief of the armed forces, Vice Senior General Min Aung Hlaing, who under the constitution chooses one of the two vice presidents. Nyan Tun relinquished his military position once his appointment as vice president took effect, as the constitution requires. He has a reputation as a political moderate.

In late August and early September 2012, following the appointment of the new vice-president, President Thein Sein carried out his first major cabinet reshuffle since coming to office. A number of ministers who were seen as conservative or ineffective were removed or sidelined. The information minister, Kyaw Hsan, was given the much less influential cooperatives portfolio, and his successor, Aung Kyi, is regarded as dynamic and reform-minded. Dr Winston Set Aung, an internationally-experienced development economist and formerly an economic adviser to the president, has been appointed deputy minister of national planning. In total, twenty ministers were reshuffled, two resigned and twenty deputy ministers were appointed.⁸⁸ The new social welfare minister, Dr Myat Myat Ohn Khin, made history as the first ever female cabinet member. A further four female deputy ministers were selected. The number of academics and technocrats has also increased. Ethnic representatives have, however, expressed concern that none of the cabinet members belong to minority communities.⁸⁹ (A list of current members of cabinet is provided in Appendix B.)

The most significant change was the creation of a de facto “super-cabinet” with the appointment of four new ministers inside the president’s office:

- ❑ *Soe Thane*. Formerly industry minister and a key adviser to the president, and one of the architects of the reform process, along with Aung Min. He has authority over international relations, economic development, trade and investment (and he continues to head the powerful Myanmar Investment Commission).
- ❑ *Aung Min*. Formerly rail transportation minister, where he was another close adviser to the president on reform, and architect of the peace process. His responsibilities cover domestic affairs, national security, the peace process and non-governmental organisations (NGOs).
- ❑ *Tin Naing Thein*. Formerly national planning and economic development minister, who now has responsibility for coordinating reform strategy, donor coordination and (in consultation with Soe Thane) budget and finance.

⁸³ Both constitutionally, and de facto, the commander-in-chief has substantial power and largely independent authority over most military matters.

⁸⁴ “I’m running USDP, says U Shwe Mann”, *Myanmar Times*, 22 October 2012.

⁸⁵ *Ibid.*

⁸⁶ Crisis Group interview, Western political analyst, Yangon, October 2012.

⁸⁷ For a detailed discussion, see Crisis Group Report, *Myanmar: The Politics of Economic Reform*, op. cit.

⁸⁸ See President Office Order Nos. 21/2012 and 22/2012 (27 August), 23/2012 and 25/2012 (28 August), 27/2012 (29 August), 28/2012 (31 August), 30/2012 and 32/2012 (7 September), all reproduced in the *New Light of Myanmar* on the day following their issuance.

⁸⁹ Crisis Group interview, head of a local NGO, Yangon, September 2012; and “Minorities still neglected, say ethnic MPs”, *The Irrawaddy*, 4 October 2012. See Appendix B for a list of current members of the cabinet.

- ❑ *Hla Tun*. Formerly finance and revenue minister and now covering decentralisation and coordination of state/region budgets.⁹⁰

The real powers in the president's office are Soe Thane and Aung Min, who have been given authority over broad swathes of government. These "super-ministers" were described by a senior government adviser as "like vice presidents in all but name".⁹¹ They have considerably more power than the two vice presidents who – apart from their membership of the National Defence and Security Council and the Financial Commission – have largely ceremonial roles.

The motivation for appointing these "super-ministers" seems clear. President Thein Sein needs people who are competent, trusted and invested in the change process – both to advise him on the way forward and to ensure the successful implementation of reform measures. This is a major challenge given that he has inherited a cabinet and government bureaucracy from the old authoritarian regime. The reshuffle sends a strong signal that he expects full support from ministers for his reform agenda.

The reshuffle has strengthened the president's authority and provided fresh impetus for reform. The creation of the super-cabinet also makes it clear that the president does not have full confidence in cabinet members and their ministries to do the job. Some observers also noted that parts of the reshuffle were as much about loyalty to the president as they were about competence.⁹²

The creation of a super-cabinet also reflects tensions between the executive and the legislature. By bringing trusted ministers into his inner circle, and vesting them with broad powers that are not constitutionally mandated or subject to legislative approval, Thein Sein could be said to be creating something of an "imperial presidency".⁹³ The same can be said regarding the powerful role of some government advisers, who are outside of civil-service structures. Even if this is regarded as necessary or at least understandable in the present context given the reformist credentials of the president and his super-ministers, it may not necessarily be in Myanmar's interests in future. For a country with a long history of authoritarian leadership,

establishing a precedent for so much power being concentrated in the president's office may not be desirable.

D. EVOLUTION OF AUNG SAN SUU KYI'S POLITICAL POSITION

Aung San Suu Kyi has continued to refine her approach as she makes the difficult transition from leader of the struggle against military rule to opposition politician and legislator. It was her bold decision to meet President Thein Sein in Naypyitaw in August 2011, and subsequently declare that he wanted "to achieve real positive change", that gave domestic and international credibility to the president's reform plans.⁹⁴ Her decision to bring the NLD into the formal political process by registering the party, contesting the April 2012 by-elections and taking up seats in the USDP-dominated legislature showed her willingness to make difficult political choices that were not popular with all of her constituents.

Some have questioned her political positions on a number of controversial issues such as the Kachin conflict and intercommunal violence in Rakhine State, saying that she has failed to take a clear stand against human rights abuses.⁹⁵ She has been criticised for her words of caution to potential investors at the World Economic Forum in Bangkok in May 2012, and similar comments in Europe in June, which were seen as contradicting President Thein Sein's push for job-creating foreign direct investment.⁹⁶ The timing of her overseas visits, which have sometimes coincided with those of the president, had a potential to upstage him and create tensions with the old guard.

Her U.S. trip in September 2012 has allayed some of these concerns. It demonstrated her willingness to make significant adjustments to long-held positions in recognition of the changing political realities. During this trip she voiced strong public support for the lifting of sanctions, the first time that she had made an unequivocal call to this effect. This helped to ensure congressional support for a further easing of U.S. restrictions, which was announced following a meeting between Secretary of State Clinton and President Thein Sein in New York.⁹⁷

⁹⁰ The two pre-existing ministers in the president's office, Thein Nyunt and Soe Maung, remain in their positions, performing largely administrative functions.

⁹¹ Crisis Group interview, Yangon, September 2012.

⁹² Crisis Group interview, well-connected religious leader, Yangon, September 2012.

⁹³ Crisis Group interview, Myanmar political analyst, Yangon, September 2012. The term "imperial presidency" is used to describe the strengthening of the modern presidency in the U.S., particularly under presidents Nixon and Reagan.

⁹⁴ For a detailed discussion, see Crisis Group Asia Briefing N°127, *Myanmar: Major Reform Underway*, 22 September 2011, Section II.A.

⁹⁵ See, for example, Alex Spillius, "Aung San Suu Kyi facing backlash for silence on abuses", *The Telegraph* (London), 26 July 2012; and Andrew R.C. Marshall, "Suu Kyi's perilous pivot from icon to party boss", Reuters, 4 October 2012.

⁹⁶ See, for example, Vikram Nehru, "Aung San Suu Kyi must transition too", *The Wall Street Journal*, 20 June 2012.

⁹⁷ See Hillary Clinton, "Remarks with Burmese President Thein Sein before their meeting", New York, 26 September 2012.

Relations between Aung San Suu Kyi and President Thein Sein, which have always been cordial, appear to have warmed further in recent weeks. They met twice in Naypyitaw during the fourth session of the legislature, on 12 and 22 August. No details of these meetings were released. They also met on the sidelines of the UN General Assembly in New York on 25 September. This meeting took place on the president's initiative, and was given front-page coverage in the Myanmar state media.⁹⁸

In her U.S. Congressional Gold Medal acceptance speech, Aung San Suu Kyi paid tribute to the president, saying:

Our task of building a nation that offers peace and prosperity, and basic human rights protected by the rule of law to all who dwell within its realms ... has been made possible by the reform measures instituted by President U Thein Sein. Our President, our very young but rapidly maturing legislature, and the vast majority of our people, are committed to democratic values that will enable us to fulfil our potential and to take our rightful place in the modern world.⁹⁹

She also paid tribute to Minister Aung Min, who had travelled to the U.S. to be present at the award ceremony. She noted that she was "particularly encouraged by the presence of minister U Aung Min, who has been leading peace talks in our country, and whose presence reinforces my faith in the future of reform and reconciliation".¹⁰⁰ The award ceremony was given prominent coverage in the Myanmar state media.¹⁰¹ The following week, Thein Sein congratulated her on the award in his speech to the UN General Assembly (see Section II.1 above).

Following her election to the legislature in April 2012, Aung San Suu Kyi has also built good working relations with Lower House Speaker Shwe Mann. They meet regularly to discuss legislative issues. Her closer relations with the speaker may be part of the reason why the president and his senior ministers have been reaching out to her; in addition to more regular meetings with the president, she is also meeting regularly with ministers Soe Thane and Aung Min.¹⁰² Good relations between the president, the lower house speaker and Aung San Suu Kyi are critical for the stability and success of the reform process.

⁹⁸ See "President Thein Sein in New York", *New Light of Myanmar*, 27 September 2012, p. 1.

⁹⁹ Aung San Suu Kyi, Congressional Gold Medal Acceptance Address, U.S. Capitol, Washington DC, 19 September 2012.

¹⁰⁰ Ibid.

¹⁰¹ See "Daw Aung San Suu Kyi delivers an address at ceremony to accept Congressional Gold Medal", *New Light of Myanmar*, 21 September 2012, p. 16.

¹⁰² Crisis Group interviews, senior government adviser, Western ambassador, Yangon, September 2012.

E. IMPROVED RELATIONS WITH THE WEST

The West has moved quickly to begin dismantling sanctions on Myanmar and end its diplomatic isolation. The European Union (EU) suspended all its sanctions on the country in April 2012, with the exception of the arms embargo.¹⁰³ The EU plans to lift trade barriers for Myanmar goods by restoring access to the generalised system of preferences.¹⁰⁴ This is expected to be a formality but as it is being done through the legislative process, it still could take twelve to eighteen months, although with retroactive effect.¹⁰⁵ The EU has also moved to bolster diplomatic ties, with High Representative for Foreign Affairs Catherine Ashton visiting Myanmar in April 2012 "to open a new chapter in the relationship"; she also opened a new EU office in the country.¹⁰⁶ In September, European Council President Herman Van Rompuy met the president at the UN General Assembly in New York, together with Ashton.

The U.S. has likewise suspended the majority of its sanctions, mostly by President Obama exercising his executive authority, in close consultation with Congress. This includes the authorisation of new U.S. investment, export of financial services, and resumed lending and technical assistance by the international financial institutions. The U.S. also removed Myanmar officials from its visa ban list. Surprisingly, however, Congress voted in August 2012 to renew a ban on the import of all Myanmar products into the U.S. that was due to lapse this year – in seeming contradiction with moves to authorise new U.S. investment.¹⁰⁷ The following month, Secretary of State Clinton announced during a meeting with President Thein Sein in New York that the U.S. will "begin the process of easing restrictions on imports" – a move that was facilitated by Aung San Suu Kyi's public call for sanctions to be lifted.¹⁰⁸ There have so far been no indications as to when Myanmar will be able to benefit from preferential tariffs under the U.S. generalised system of preferences.

U.S. diplomatic engagement with Myanmar has also been stepped up. Following the landmark visit to the country by Secretary of State Clinton in November 2011, President Thein Sein has met with her on two subsequent occasions.

¹⁰³ "Council Conclusions on Myanmar/Burma", 3159th European Union Foreign Affairs Council meeting, Luxembourg, 23 April 2012.

¹⁰⁴ "European Commission proposes to reinstate trade preferences to Myanmar/Burma", EC press release, Brussels, 17 September 2012.

¹⁰⁵ Crisis Group interview, member, GSP Council Working Group, Brussels, 17 October 2012.

¹⁰⁶ "Catherine Ashton visits Burma/Myanmar to open a new chapter in the relationship", EC Press Release, 27 April 2012.

¹⁰⁷ "US Congress reauthorizes import ban on Myanmar", Reuters, 2 August 2012.

¹⁰⁸ Clinton, "Remarks with Burmese President ...", op. cit.

He travelled to Cambodia in July 2012 specifically to meet her, at a business forum promoting greater U.S. investment in South East Asia.¹⁰⁹ Calling the easing of sanctions “a milestone in the relationship between our two countries”, she announced that she was sending a delegation of more than 70 American business leaders to Myanmar.¹¹⁰ The president met her again in September, on the sidelines of the UN General Assembly. After a high-ranking U.S. delegation including senior military officers visited mid-October for a human rights dialogue with the government and leadership, it was indicated that the Myanmar armed forces would be invited to observe the annual Cobra Gold military exercise in Thailand in what has been called a “carefully calibrated re-engagement with Myanmar’s military”.¹¹¹ U.S. political engagement will receive a major boost when President Obama visits Myanmar in November 2012.¹¹²

A number of EU countries are also moving to reestablish defence attachés in their embassies in Yangon and have pursued informal military-to-military contacts. For example, retired general Sir Mike Jackson, prominent former commander of the British army, travelled to Naypyitaw in September and met with the deputy commander-in-chief of the Myanmar military.¹¹³

III. SOCIAL TENSIONS

The reform process continues to gather momentum, and it seems highly unlikely that anyone would have the ability or the motivation to turn back the clock to the authoritarian days of the past. Despite this clear direction, there are huge challenges, and the process is unlikely to be smooth or straightforward. The deep wounds from decades of authoritarianism are now being exposed. People’s expectations are rising, including for improved livelihoods and an end to injustices and abuse by local power-holders – and they are beginning to organise and find their voice. Addressing these issues while continuing to reform or rebuild the institutions needed to create a more democratic, prosperous and peaceful nation will be extremely difficult. The challenge of ending the conflict in Kachin State and forging a sustainable peace in the country as a whole was addressed in detail in an earlier Crisis Group report.¹¹⁴

A. RISING SOCIAL TENSIONS

The easing of authoritarian controls has created the space for the population to air grievances, the ability to organise in a way that was not possible before, and the opportunity to have a real influence on government policies and decisions. This potent mixture has led to “an exponential growth in civil society activity”¹¹⁵ and a new sense of purpose in these organisations.

So far, this trend has been regarded positively by the government and most of the prominent and well-established civil society organisations. At least at the leadership level, it is official policy to be responsive to the needs of the population, and civil society is regarded as an important channel of information about community concerns. This reflects a recognition that there is a lack of capacity in many areas and civil society organisations can be a source of technical and policy advice.¹¹⁶ In the past, they were only able to operate by maintaining constructive relations with government and avoiding overly confrontational stances, which was in any case a prerequisite for having influence on decision-making. In the new more open environment, these organisations have seen their influence grow. They generally describe a harmonious relationship with the authorities: they feel that government, at the highest levels, is accessible and receptive to their ideas and shares simi-

¹⁰⁹ A senior adviser to the president confirmed that his intention in making this trip was to meet Clinton. Crisis Group interview, Yangon, September 2012.

¹¹⁰ Hillary Clinton, “Remarks at the U.S.-ASEAN Business Forum”, Siem Reap, Cambodia, 13 July 2012.

¹¹¹ Jason Szep and Andrew R.C. Marshall, “U.S. to invite Myanmar to joint military exercises”, Reuters, 19 October 2012. The delegation included Lieutenant-General Francis Wiercinski, the commanding general of the U.S. army in the Pacific.

¹¹² “Statement by press secretary on the president travelling to Asia”, U.S. mission to ASEAN, 9 November 2012.

¹¹³ Ibid.

¹¹⁴ Crisis Group Report, *Myanmar: A New Peace Initiative*, op. cit. Another recent Crisis Group report looked at the challenges associated with economic reform, see *Myanmar: The Politics of Economic Reform*, op. cit.

¹¹⁵ Crisis Group interview, expatriate working closely with civil society, Yangon, September 2012.

¹¹⁶ Crisis Group interview, presidential adviser, Yangon, May 2012.

lar values and objectives to their own.¹¹⁷ They have also been able to provide channels to senior policymakers for smaller or more newly established organisations.

This cooperative relationship has been seen in the development of a new NGO law. The existing 1988 Law Relating to Forming of Organisations¹¹⁸ was adopted shortly after the 1988 coup with the aim of restricting the formation or continued functioning of organisations not sanctioned by the government. Following the convening of a seminar in January 2012 to compare different models for NGO registration in the region, the matter was raised in the legislature. In August, a prominent civil society network convened a public hearing session in Naypyitaw for legislators, in advance of a parliamentary debate on the issue. Following this debate, the legislature decided on the drafting of a new registration law “suitable for the current era”, and the urgent amendment of existing procedures. The civil society network was asked to provide the necessary inputs for the bill, which will be prioritised in the October-November 2012 legislative session.¹¹⁹

But even this very constructive interaction between government and civil society faces challenges. First, the issues are becoming more contentious as civil society gains greater confidence and begins to push the boundaries further. This will inevitably lead to tensions with the government or with powerful interests within it or the military. Farmers are beginning to challenge land confiscations made by the military in the past, and victims of abuses by the military and police are speaking out. Recently, peace activists planned to hold a demonstration in front of the War Office in Naypyitaw to protest ongoing fighting in Kachin State (but the authorities prevented them from doing so).¹²⁰

Secondly, it is inevitable that some in civil society are uncomfortable about being too close to government, for fear of being co-opted. There is a feeling in some quarters that “with Aung San Suu Kyi taking a softer line, and the 88 Generation pursuing a constructive approach, there is no real opposition any more”.¹²¹ In such a context, it is likely that groups will begin to emerge that take a more confrontational approach. It is telling that the 88 Generation has

expressed concern about the involvement of people with old-style confrontational ideologies in the campaign against the controversial Monywa copper mine (discussed in Section III.B below), and giving this as one reason for their trip to the area.¹²²

The emergence of the first worker and farmer unions for 50 years is a key development for the empowerment of workers in Myanmar. Following the adoption of the Labour Organisation Law, which came into force on 9 March 2012, over 180 unions have legally registered,¹²³ exposing how little experience of social dialogue there is among government, employers or workers. Coupled with serious unaddressed grievances on the part of workers, this could lead to the emergence of labour organisations and movements that are radicalised or co-opted by political or other agendas – as happened in the 1930s.¹²⁴

The extent to which social and labour movements will become radicalised is not yet clear, nor how the authorities would react to this. However, the government is certainly concerned about the fact that new-found freedoms combined with deep-seated grievances are a potentially explosive mix. This is perhaps one reason why the authorities have sent clear signals that demonstrations that are outside the scope of the new law are not acceptable – although they have generally not prevented such protests from taking place.¹²⁵ Individuals involved with (unauthorised) demonstrations against electricity shortages in May 2012 have been charged by police, as have participants in a peace rally in Yangon in September 2012 that was denied permission by the authorities.¹²⁶

B. THE MONYWA COPPER MINE

One particularly striking current example of social tensions involves a copper mine in Monywa, in central Myanmar. The mine was formerly a joint venture between Ivanhoe, a Canadian mining company, and the state-owned Mining Enterprise No. 1. Ivanhoe divested its stake in

¹¹⁷ Crisis Group interviews, leaders of several prominent civil society organisations and local NGOs, and with expatriate working closely with civil society, Yangon, September 2012.

¹¹⁸ State Law and Order Restoration Council Law No. 6/88 of 30 September 1988.

¹¹⁹ Crisis Group interview, head of a civil society network, Yangon, September 2012; see also “NGO registration law to be drafted”, *The Irrawaddy*, 17 August 2012, and “Hluttaw agrees to amend NGO law”, *Myanmar Times*, vol. 33, no. 641, 27 August-2 September 2012.

¹²⁰ Ibid.

¹²¹ Crisis Group interview, head of a prominent local NGO, Yangon, September 2012.

¹²² Crisis Group interview, prominent civil society leader involved in the campaign, Yangon, September 2012. This part of Myanmar was traditionally a strong support base for the Burma Communist Party, and several recently-released political prisoners with communist backgrounds are from the area.

¹²³ Figures as of September 2012. Crisis Group interview with the International Labour Organisation liaison officer in Myanmar, Yangon, 19 September 2012. The law was adopted in 2011, but only came into force once implementing regulations had been drawn up.

¹²⁴ In the 1930s, labour movements became closely linked to and partly organised by a resurgent Burmese nationalist movement.

¹²⁵ That is, the Law Relating to Peaceful Gathering and Peaceful Procession of 2 December 2011.

¹²⁶ “Officials press charges against ‘electricity protestors’”, *Democratic Voice of Burma*, 9 October 2012.

2007.¹²⁷ The government eventually signed a cooperation agreement in 2010 with a subsidiary of Chinese defence company Norinco to develop the project, in partnership with the Union of Myanmar Economic Holdings Limited military conglomerate.¹²⁸ A recent report by Myanmar's auditor general alleged corruption in the ministry of mining between 2009 and 2011.¹²⁹ The mining minister was appointed as the new auditor general in the recent cabinet reshuffle.

Following its entry, Norinco moved to develop the long-delayed second phase of the mining project. This required the requisitioning of land and the planned eviction of some 26 villages from the site. While compensation was paid and new housing offered at another location, the villagers have complained that these were inadequate and many have refused to move. Environmental concerns have also been raised.¹³⁰

In recent months, local people have been demonstrating against the mine expansion, and the campaign has assumed national prominence. The combination of factors involved has a particular national resonance: alleged land grabbing and unfair compensation, strong-arm tactics by the authorities, environmental concerns, and the involvement in the project of the Myanmar military and a Chinese company. These are similar to the factors that led to the national campaign against the Myitsone hydropower dam in Kachin State.¹³¹

So far, the campaign has been focused on obtaining a better outcome for the local population affected by the project and ensuring that environmental standards are upheld, rather than trying to block the project. The 88 Generation group of former student activists has travelled to the area to advocate on behalf of detained villagers and to push for negotiations to settle the dispute.¹³² A more radical move-

ment against the mine could develop, and demonstrations could take on an overtly anti-Chinese character. Already, demonstrators have burned coffins labelled with the name of the powerful Myanmar military conglomerate that owns the mine, and placards written in Chinese have been waved at rallies.¹³³ Protests have included as many as 10,000 people, and locals armed with sticks and knives have reportedly prevented police from arresting protest leaders.¹³⁴

Popular perceptions in Myanmar are that China had long colluded with the former military regime, providing political backing while exploiting Myanmar's natural resources. The Monywa copper project is seen as having all of these elements – an allegedly corrupt deal reached between the former regime and a Chinese arms manufacturer to extract natural resources without regard for the impact on the local population – and it is likely to face ongoing controversy. More generally, Chinese projects in Myanmar will continue to receive a high degree of public scrutiny, and because of the history and perceptions involved, are likely to attract criticism. These companies will have to make strong credible efforts at public outreach and corporate social responsibility, something that they have not been effective at doing in the past. There is increasing recognition of this in various parts of the Chinese government, which have been increasingly reflecting on these issues following the cancellation of the Myitsone dam, and increasingly vocal opposition to other Chinese projects in Myanmar.¹³⁵

¹²⁷ "Ivanhoe Mines announces 2006 financial results", Ivanhoe Mines press release, 30 March 2007; "Ivanhoe Mines receives proceeds of US\$103 million from Monywa Trust", Ivanhoe Mines statement, 3 August 2011.

¹²⁸ "Chinese weapons maker signs Myanmar deal", *The Wall Street Journal*, 23 June 2010.

¹²⁹ "Myanmar ministries accused of corruption", *Financial Times*, 15 March 2012; "In battling mine project in Myanmar, 2 'Iron Ladies' rise", *The New York Times*, 26 September 2012; "UMEHL negotiates big mining project with locals", *Eleven News*, 29 September 2012. The mining ministry has rejected the allegations of corruption.

¹³⁰ "In battling mine ...", *The New York Times*, op. cit.

¹³¹ See Crisis Group Report, *Myanmar: A New Peace Initiative*, op. cit., Section III.C.

¹³² Crisis Group interview, Myanmar social activist involved in the campaign, Yangon, September 2012; see also "In Monywa, protesters find they are not alone", *Myanmar Times*, 15 October 2012.

¹³³ Crisis Group interview, head of a local Myanmar NGO, Yangon, September 2012.

¹³⁴ "Burmese police search for mine demonstration leaders", *Mizzima News*, 7 September 2012.

¹³⁵ Crisis Group interview, Chinese commerce ministry official, Beijing, April 2012.

IV. PROSPECTS FOR A STABLE TRANSITION

The most important consideration for Myanmar's near-term prospects is whether the macro-political environment will remain conducive to a stable transition process. Inter-communal violence, continued fighting in Kachin State,¹³⁶ and rising social tensions are creating many challenges. If these can be effectively addressed, the immediate future for the reform process looks positive, with President Thein Sein consolidating his authority and committing to further reforms, and Lower House Speaker Shwe Mann continuing to push progressive lawmaking. The next general elections in 2015 will be a critical moment, as they have the potential to fundamentally reshape the political landscape. With Aung San Suu Kyi's National League for Democracy competing for seats across the country for the first time since the abortive 1990 elections, it is certain that the balance of power in the legislatures will change.

A. THE RISKS ASSOCIATED WITH SINGLE-PARTY DOMINANCE

There can be little doubt that with Aung San Suu Kyi's enormous popularity, the NLD will emerge as the dominant party in any free and fair elections in 2015. As in 1990, when the NLD secured almost 60 per cent of the vote and over 80 per cent of the seats, the plurality (or first-past-the-post) voting system gives a considerable advantage to a dominant party. The NLD's April 2012 by-election landslide suggests that the party is again likely to win a large majority of the elected seats.

However, a landslide victory by the NLD in 2015 may not be in the best interests of the party or the country. The stability of the transition and its ultimate success depend on ensuring the broadest possible buy-in from all segments of society. An NLD landslide risks marginalising three important constituencies in the legislatures: the old political elite, in the form of the USDP; the ethnic political parties; and the non-NLD democratic parties. The by-election results, which were for a small but not completely unrepresentative set of seats, highlight this. The NLD won 43 of the 45 seats contested. The USDP won only one – and this is in all likelihood only because the NLD candidate was barred from standing. Several of the seats were in ethnic areas, only one of which was won by an ethnic party. No other democratic party came even close to winning a seat.¹³⁷

The risks in such a situation are clear. If the post-2015 legislatures fail to represent the true political and ethnic diversity of the country, tensions are likely to increase. The main task of the government and legislature in the coming years will be one of nation building. This requires an inclusive “big tent” approach rather than prioritising party-political interests. The marginalisation of non-NLD democratic forces will only make this more difficult. This is particularly true of the 88 Generation group, who has a strong national constituency. Its members have not yet established a political party, but are likely to do so prior to the 2015 election. Their relations with the NLD are reported to be “difficult”, and the NLD has apparently been reluctant to discuss any strategic alliance between the two – with the expectation rather being that the 88 Generation should join the party.¹³⁸ In general, the NLD is dismissive of other democratic parties, particularly those that chose to contest the 2010 elections.¹³⁹

Of even greater concern would be a marginalisation of ethnic political parties. This would revive “memories of how first-past-the-post elections marginalised minority parties in the parliamentary era (1948-1962) and favoured large, centrally-based parties among the Burman-majority”.¹⁴⁰ It could also threaten the ethnic peace process, which is predicated on convincing ethnic armed groups that they can effectively pursue their objectives in the political arena – that is, the legislatures – rather than through armed struggle. But in many areas, ethnic parties will find it a challenge to win against the NLD, particularly in the many mixed-ethnicity constituencies where the vote will split along ethnic lines. The NLD may be headed for a confrontation with conservative ethnic politicians, as happened in Shan State in 1990.

The marginalisation of the current political elite also poses considerable risks. The military has the comfort of a guaranteed 25 per cent of legislative seats, and the veto this provides over changes that would threaten its essential interests. This is the main reason why it has been prepared to allow the reforms to go ahead and has supported many of them. The old elite, represented by the USDP, has no such guarantees and faces the prospect of losing most of the seats that it currently holds. This will affect the interests of a large group of people who retain considerable political influence, and who remain deeply scepti-

¹³⁶ For a detailed discussion of the Kachin conflict and the challenges of forging ethnic peace in Myanmar, see Crisis Group Report, *Myanmar: A New Peace Initiative*, op. cit.

¹³⁷ Crisis Group Briefing, *Reform in Myanmar*, op. cit., Section IV.

¹³⁸ Crisis Group interviews, prominent individual close to the 88 Generation leaders, and head of a local NGO, Yangon, September 2012. Relations are difficult in part due to what is seen as a paternalistic or patronising attitude on the part of the NLD.

¹³⁹ Crisis Group interviews, NLD Central Executive Committee member, Yangon, September 2012; representatives of the NLD and other democratic parties from 2010 to 2012.

¹⁴⁰ “Burma at the Crossroads: Maintaining the Momentum for Reform”, Burma Policy Briefing no. 9, Transnational Institute, June 2012, p. 8.

cal of the NLD's willingness to accommodate their concerns. It is even conceivable – if very unlikely – that an overwhelming victory by the NLD in 2015 could provoke a 1990-type scenario where the existing power structures feel existentially threatened to such a degree that they refuse to implement the result, or even seek to trigger a military coup.¹⁴¹

The prospect of too easy a victory could also be detrimental to NLD interests in another way. The party needs to transform itself from a grassroots movement opposed to military rule, to a political party that is ready for the responsibilities of government. This includes building a cohesive, democratic party structure, which will be a huge challenge given entrenched institutional habits, weak capacity and lack of relevant experience. Recently, serious cracks in the party were exposed, with some 500 members in the city of Patheingyi resigning in protest at the perceived sidelining by the party leadership of prominent local organisers.¹⁴² The party-building process will be all the more difficult if there is no electoral imperative to push through such reforms. The NLD's main asset is Aung San Suu Kyi, and many voters will vote for its candidates because they will see it as a vote for her, not necessarily for an individual candidate or the party's policies.¹⁴³ This eases the difficult task for the NLD of candidate selection or developing detailed policymaking capacity. But it may mean that the quality of its candidates and policies suffers.

B. OPTIONS TO MINIMISE THE RISKS

The NLD's approach is to seek the largest possible electoral mandate in 2015, aiming to win the maximum number of seats, including by fielding candidates in all constituencies. Aung San Suu Kyi has suggested that the party has an obligation to do so, in order to give everyone the opportunity to vote for an NLD candidate.¹⁴⁴ In a mature democratic system, such tactics would be natural and expected. But in a transition situation, a different approach may be expedient – one that gives as many groups as possible a stake in the politics of the country. If the NLD

wishes to promote inclusiveness and reconciliation, and ease the concerns of other constituencies about a landslide victory, it has several options:

Proportional representation. The electoral system could be changed to introduce some form of proportional representation. This is a topic of considerable discussion in political circles in Myanmar. It would be an obvious way to ensure that minority parties (and the USDP) receive a number of seats that more accurately reflect their popularity, by removing the “winner-take-all” distortion inherent in the current plurality system. It is common for countries in transition to change their electoral systems. One example is post-Apartheid South Africa, where Nelson Mandela's African National Congress made a conscious decision to prioritise reconciliation and inclusion over maximising seats, and changed the electoral system from first-past-the-post to a proportional representation system.¹⁴⁵

Switching to a more proportional system for the lower house would probably require the amendment of the constitution.¹⁴⁶ For the provision in question, this would entail a 75 per cent vote in favour in the legislature, followed by a simple majority in a national referendum.¹⁴⁷ In the case of the upper house, some proportional system based on fourteen multi-member constituencies corresponding to the states and regions appears not to be ruled out.¹⁴⁸ The elections commission has asked the Constitutional Tribunal, prior to the resignation of its members, to advise on the compatibility of the constitution with proportional representation.¹⁴⁹

The NLD is opposed to the introduction of a proportional system, and a few ethnic parties have reservations – particularly those that have strong majorities in their areas; most other parties are favourable towards the idea. Whether such a change could be introduced prior to 2015 is uncertain. Changing the electoral system is a complex process that should enjoy broad consensus from across the political spectrum and may take some time. Furthermore, it is not clear whether there is any appetite within the military bloc to open up the thorny issue of changing the constitution, because it risks also opening up the question of their guaranteed 25 per cent of legislative seats – and at least

¹⁴¹ A number of different people interviewed by Crisis Group in Yangon in September 2012 voiced this concern, including the head of a social organisation who has close connections to senior USDP figures, a senior government adviser, a Western ambassador, and the head of a local NGO.

¹⁴² “NLD members in Patheingyi to resign”, *Myanmar Times*, 29 October 2012.

¹⁴³ An NLD representative told Crisis Group that in his by-election campaign, he found that many rural voters did not know who he was. He told them: “I work with Aung San Suu Kyi. If you like her, then vote for me”. Crisis Group interview, Yangon, September 2012.

¹⁴⁴ Crisis Group interview, member of the NLD Central Executive Committee, Yangon, March 2012.

¹⁴⁵ See Andrew Reynolds et al., *Electoral System Design: The New International IDEA Handbook*, 2005, p. 62.

¹⁴⁶ The constitution does not mandate a first-past-the-post system, but it does stipulate that representatives are elected from single-member constituencies based on townships. See 2008 constitution, section 109.

¹⁴⁷ 2008 constitution, section 436(a).

¹⁴⁸ 2008 constitution, section 141.

¹⁴⁹ “Consequences of election system rest on basic causes regarding principles, religion, ethnic affairs, race, language and social standing of the people of the country”, *New Light of Myanmar*, 28 July 2012, p. 16.

some military representatives would have to vote in favour of the measure in order to obtain the constitutionally-mandated supermajority. Beyond this, it is conceivable that NLD opposition to such a move could easily motivate a majority of voters to oppose the measure in a referendum.

Coalition building. Another possibility would be for the NLD to form an alliance with some other parties – most importantly, ethnic parties, but also possibly some non-ethnic democratic parties – which would agree not to field candidates to compete against each other in certain constituencies. This would reassure those parties that an NLD victory, which many would not be opposed to in principle, would not come at their own expense. The NLD did not pursue such an approach in the by-elections, and does not favour it in general, on the grounds that it would unfairly deprive some constituents of their right to vote for the NLD.¹⁵⁰ If it is not ready to reconsider its position, a compromise might be that it opts not to field candidates in upper house constituencies in ethnic areas. This would be in line with the spirit of the upper house as an *Amyotha Hluttaw* (“chamber of nationalities”) reflecting the ethnic diversity of the nation.

Bridge building. The third option would be for the NLD to take steps to reassure other parties and their constituents that an NLD victory will not represent a threat to their interests. Verbal assurances are unlikely to be effective. Rather, the NLD would need to engage in bridge building with other political forces, particularly the old guard. One way of doing so would be the forging of an “elite pact” between Aung San Suu Kyi and the current leadership. For example, the NLD could support President Thein Sein to remain president on a temporary basis after the 2015 elections, pending constitutional changes that would allow Aung San Suu Kyi to assume the presidency. This would give confidence to other stakeholders, especially the old guard and the military, that there would be continuity in the transition process. Such a confidence-building step would also improve the prospects of the military voting for the constitutional changes necessary for Aung San Suu Kyi to be able to become president. It seems unlikely that those changes will be introduced prior to 2015, and there are currently no other obvious candidates for president within the NLD.

V. CONCLUSION

The Myanmar government and legislature have demonstrated that they possess the vision and leadership to move the country decisively away from its authoritarian past. But they will inevitably face major challenges, including containing and resolving the intercommunal conflict that has engulfed Rakhine State and reaching a ceasefire in Kachin State. The country must deal with a bitter legacy: in addition to forging a sustainable peace after decades of ethnic conflict and rebuilding a dysfunctional economy, it must come to terms with intercommunal violence and address rising social tensions over grievances both past and present.

On the Rakhine State violence in particular, decisive moral leadership is required by both President Thein Sein and Aung San Suu Kyi to prevent it spreading and contribute towards long-term solutions. This is a time when political leaders must rise to the challenge of shaping public opinion rather than just following it. A failure to do so will be to the detriment of the country, and can also do serious damage to the reputations of the government and the National League for Democracy.

The 2015 elections will be a major test of whether the current top-down transition – what could be called “reform-by-decree” – can survive the emergence of a new politics. There is a serious risk of instability if existing power holders feel threatened by their inevitable loss of political power (which is different from a serious risk of a return to authoritarianism, which is unlikely), or if important constituencies are marginalised. It will be necessary for the NLD to ensure that its expected electoral success in 2015 does not come at the expense of the broad representation needed to reflect the country’s diversity and ensure an inclusive and stable transition – whether by introducing some form of proportional representation, reaching a transitional national unity agreement with the current government, or building coalitions with other parties.

Pursuing any of these paths will require that the NLD make sacrifices and put the national interest above party-political considerations. With a national leader of the calibre of Aung San Suu Kyi at the helm, there is no reason to think that the party would be unable to make such courageous decisions.

Jakarta/Brussels, 12 November 2012

¹⁵⁰ Crisis Group interview, member of NLD Central Executive Committee, Yangon, March 2012.

APPENDIX A
 MAP OF MYANMAR



APPENDIX B

MYANMAR CABINET FOLLOWING THE RESHUFFLE

Portfolio	Office holder	Office holder's previous position
Agriculture & Irrigation	U Myint Hlaing	Chief, Air Defence (Lt-Gen)
Border Affairs	Lt-Gen Thein Htay	Deputy Minister Defence
Commerce	U Win Myint	President, Chamber of Commerce
Communications, Posts & Telegraphs	U Thein Tun	Deputy Minister (same ministry)
Construction	U Kyaw Lwin	Deputy Minister Construction
Cooperatives	U Kyaw Hsan	Minister for Information
Culture	U Aye Myint Kyu	Deputy Minister Sports
Defence	Lt-Gen Wai Lwin	Quartermaster General
Education	Dr Mya Aye	Rector, Mandalay University
Electric Power	U Khin Maung Soe	Chair, Yangon Electric Supply Board
Energy	U Than Htay	Deputy Minister Energy
Finance & Revenue	U Win Shein	Deputy Minister (same ministry)
Foreign Affairs	U Wunna Maung Lwin	Ambassador/PR in Geneva
Forestry	U Win Tun	Managing Director, Myanmar Timber Enterprise
Health	Dr Pe Thet Khin	Rector, Yangon University of Medicine 1
Home Affairs	Lt-Gen Ko Ko	Chief, Bureau Special Ops 3
Hotels & Tourism	U Htay Aung	Deputy Minister (same ministry)
Immigration & Population	U Khin Yi	Police Chief
Industry	U Aye Myint	Science & Technology
Information	U Aung Kyi	Minister for Labour/Social Welfare
Labour	U Maung Myint	Deputy Minister Foreign Affairs
Livestock & Fisheries	U Ohn Myint	Minister for Commerce
Mines	Dr Myint Aung	Member, Union Civil Service Board
National Planning & Economic Development	Dr Kan Zaw	Deputy Minister (same ministry)
Rail Transportation	Maj-Gen Zeyar Aung	Northern Commander
Religious Affairs	Thura U Myint Maung	(same)
Science & Technology	Dr Ko Ko Oo	Deputy Minister (same ministry)
Social Welfare, Relief & Resettlement	Dr Daw Myat Myat Ohn Khin	Deputy Minister Health
Sports	U Tint Hsan	Chairman, ACE Construction Company
Transport	U Nyan Tun Aung	Deputy Minister (same ministry)
President's Office	1. U Thein Nyunt 2. U Soe Maung 3. U Soe Thein 4. U Aung Min 5. U Tin Naing Thein 6. U Hla Tun	Minister for Border Areas Judge Advocate General (Maj-Gen) Minister for Industry Minister for Rail Transportation Minister for National Planning & Economic Development Minister for Finance & Revenue
Attorney-General	Dr Tun Shin	Deputy Attorney-General

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

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