

# Burma's 2020 Elections and Ongoing Atrocity Risks Facing the Rohingya Population



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*Cover: Sittwe, March 6, 2015. Courtesy of Paula Bronstein Getty Images Reportage for the United States Holocaust Memorial Museum*

**“If the disenfranchisement of the Rohingya becomes normal, it would be one more step in the genocidal process.”**

— **Wai Wai Nu, Rohingya activist; Executive Director, Women’s Peace Network; and Fellow, US Holocaust Memorial Museum’s Simon-Skjodt Center for the Prevention of Genocide**

## **Introduction**

Burma’s 2020 national elections, scheduled for November 8th, will take place in a fragile context of ongoing risk of genocide for the country’s minority Rohingya population and continuing mass atrocities—including war crimes and crimes against humanity—against other ethnic populations. While the elections themselves may not be a trigger for mass atrocities in Burma, the responses to the elections from within the country and internationally has the ability to either exacerbate or mitigate future atrocity-related risks.

Parliamentary seats at the national and state level will be voted upon in the November elections. Only 75% of the total seats will be contested, as the country’s constitution reserves 25% of seats for the military.<sup>1</sup> At the time of writing, it appears as though most Rohingya within Burma—members of an ethnic and religious minority that has been the victims of genocide—will be denied the right to vote.<sup>2</sup> The approximately one million Rohingya who now live as refugees in Bangladesh will likewise be unable to vote in the elections. At least six Rohingya candidates have been prevented from running for office by the Union Election Commission (UEC), despite some of them having been approved candidates in the past and, in one case, having won a parliamentary seat. These candidates were blocked from running because they were unable to confirm the citizenship of their parents at the time of their birth.<sup>3</sup> The UEC has applied such policies in a discriminatory fashion against Rohingya politicians,<sup>4</sup> raising concerns that key Rohingya politicians will be unable to contest seats in the elections.

This is not the first time the government has denied these rights, and the continued disenfranchisement and exclusion of Rohingya heightens their vulnerability to future atrocities. An election in which a people, who have been the victims of genocide, are denied the right to vote on the basis of their identity, is not a free, fair, or inclusive election. Any foreign government’s praise and support of Burma’s elections would be seen as endorsing a discriminatory process and lending support to the policies and behaviors that contributed to the genocide of the Rohingya and to ongoing risk. Instead, leaders around the world should use their available levers to mitigate atrocity risks, press for inclusivity regarding voting and political participation, and encourage other changes within Burma that advance the protection of the Rohingya and other vulnerable groups.

## Learning from the Past

The Rohingya in Burma were allowed to vote and stand as candidates in national elections in 1990 and 2010—even though the majority had previously had their citizenship revoked. Many Rohingya were given “white cards”—identification cards that allowed them to vote, but did not confer other rights. In 2015, however, the Rohingya were largely disenfranchised after the government canceled the white cards, and after the country’s constitutional tribunal found that white card holders were ineligible to vote. The 2015 elections went forward with the exclusion of over half a million Rohingya who were previously able to participate, and former Rohingya Members of Parliament were not allowed to run.

The US response to Burma’s 2015 elections is instructive today. While US officials recognized the exclusion of the Rohingya in formal statements, the general positive assessment of the election was used to justify increased US engagement, investment, and development assistance in subsequent years. Less than a year after the National League for Democracy (NLD) gained a parliamentary majority in 2015 with Aung San Suu Kyi as the de facto head of government, US President Barack Obama announced in early October 2016 the lifting of major US sanctions against Burma<sup>5</sup> to support the country’s transition to democracy - even though there was no significant change in the treatment of the Rohingya. Days later, the Burmese military launched attacks against Rohingya communities in northern Rakhine State that forced more than 70,000 Rohingya refugees across the border to Bangladesh.<sup>6</sup>

The international community’s lack of a clear and firm response to these attacks in late 2016 may have emboldened the military to conduct an even larger offensive in August 2017. Thousands of Rohingya were killed and more than 700,000 were violently displaced. In late 2018, after a careful legal analysis of the events and the broader history of persecution of the Rohingya in Burma, the US Holocaust Memorial Museum determined there was compelling evidence that the Burmese military committed genocide against the Rohingya.

While US government officials recognized the discrimination against the Rohingya and other minorities, promoting democracy—not protecting vulnerable groups from future atrocities—was the central pillar of US-Burma policy. Advancing democracy does not on its own constitute an atrocity prevention strategy, which involves understanding the motivations of perpetrators and discouraging them from using mass violence. The flawed 2015 elections were a key point at which the US and other governments could have more clearly stressed the importance of addressing the longstanding persecution, violence, and exclusion the Rohingya suffered.

This year, foreign governments have another chance to put forward a strong and clear policy message, and avoid endorsing again a flawed, discriminatory process. The US government has already disbursed nearly \$10 million dollars in election-related assistance in the lead up to the 2020 elections, and much more has been disbursed to broader democracy and governance programs.<sup>7</sup> Similarly, the European Union has allocated more than €5.3 million in development assistance to directly fund electoral processes in Burma in 2019 and 2020.<sup>8</sup> This funding for electoral assistance as part of a broader democracy and governance strategy, which supports both government systems as well as civil society actors, is important.

However, it would be more effective if backed by a broader strategy to develop an environment in which these actors can successfully build a more inclusive country.

To date, the US Administration has not publicly and strongly criticized the disenfranchisement of the Rohingya from the elections. Members of the US Congress, however, have spoken out about their concerns regarding Burma's elections. The House Committee on Foreign Affairs passed a resolution, H.Res. 1121, which urges the Burmese government to hold "free, fair, inclusive, transparent, participatory, and credible" elections in November 2020. A companion resolution, S. Res. 701, has been introduced (but not passed) in the US Senate. Now, regarding election-related support and messaging, the US and other governments should clearly articulate concerns regarding the ongoing risk of genocide for Rohingya in the country, and publicly state that an election that excludes more than a million voters, many of whom have voted previously, is not a truly democratic election.

## Atrocity Risk Around Burma's 2020 Elections

The election itself may not be a direct trigger for mass atrocities, but if it goes ahead as is, it will solidify divisions and deeper marginalization of the Rohingya, keeping them at risk of mass atrocities, including genocide.

The risk for mass atrocities—widespread or systematic attacks against civilians - leading up to and during the election is relatively low. Civilians continue to be harmed, however, in smaller numbers in ongoing conflict across the country, including in Rakhine State.

The Burmese government knows that the US and other governments view elections as a crucial marker for political development and diplomatic engagement. The military remains the only institution with the history and capacity to commit mass killings or other atrocities, but right now the military is motivated to keep the elections relatively peaceful.<sup>9</sup> An election that goes well has the ability to solidify the benefits the military created for itself in the country's 2008 constitution, including a veto-proof 25 percent of parliamentary seats and control of key government ministries. Some believe that the military will be more concerned about its image in the lead up to the elections than at other points in the recent past, and will be less likely to commit new atrocities on a mass scale in the pre-election period—although it is continuing its violent attacks on civilians across the country.

The international community should pay close attention to the post-election period in order to prevent immediate risk of atrocities. This is when the military may not feel the same pressure regarding its image, and when the international community may turn its focus away from the situation.

## Specific Issues to Watch in the Period Surrounding the Election

Disenfranchisement, shrinking space for civil society, and hate speech all heighten vulnerabilities of the Rohingya and other groups, and contribute to creating permissive environments for perpetrators to commit crimes. There has been significant attention paid to hate speech in Burma, particularly on Facebook, but the reason why hate speech has such a profound and harmful impact on vulnerable communities is because these other important factors—disenfranchisement and restrictions on civil society—figure so prominently in the country.

### Disenfranchisement

Disenfranchisement was one of the policies that preceded the genocide against the Rohingya community. The disenfranchisement of the Rohingya is—and has been—an administrative and legal policy that signals the government’s general denial of the existence of the group. When Rohingya are purposely kept out of the democratic process, they have no opportunity to make their voices heard or advance their interests, and their exclusion reinforces their status as “foreigners” in the minds of people throughout Burma. As seen in the post-electoral period in 2015, their disenfranchisement was a key part of the official political and social exclusion of the Rohingya community, which prompted little outcry internationally, and even official acceptance domestically, as the mass atrocities of 2016 and 2017 approached. The disenfranchisement of the Rohingya has given credence to extreme Buddhist nationalists and has set the groundwork for further dehumanization, denial of existence based on identity, and impunity for the commission of violent crimes against religious minorities.

Furthermore, it remains unclear whether large segments of other, non-Rohingya Muslim communities will be allowed to exercise their citizenship rights through voting.<sup>10</sup> Small groups of Hindus, Muslims, or Christians who do not have the proper citizenship cards despite having lived in the country for generations may be excluded. Additionally, hundreds of thousands of internally displaced people, including members of Rakhine, Kachin, Shan, and other ethnic minority groups, may not be able to exercise their vote in 2020. In 2015, for example, nearly half a million voters in ethnic states were kept from voting for reasons relating to ongoing conflict or border access.<sup>11</sup> Ethnic leaders expressed concern about the lack of transparency around canceled voting in these areas, and raised questions about whether security or access issues were truly driving those decisions.<sup>12</sup> The same questions remain relevant today. The UEC announced in mid-October 2020 that voting would be cancelled in 9 of 17 constituencies in Rakhine State, and in 5 townships in Shan State.<sup>13</sup> The disenfranchisement of minority communities, including displaced populations across the country, will be a stain on the elections. The special targeting of the Rohingya, however, is especially problematic as it is uniquely characterized by discriminatory practices aimed at keeping the entire group from fairly participating in the election.



## Shrinking Space for Civil Society

A robust civil society can mitigate atrocity risk by documenting early warning signs, sharing information broadly among the population, countering hate speech, and informing the world about emerging risks. Strong civil society leaders can come together across ethnic or religious lines to promote peace, resilience, and reconciliation. Since the NLD gained an electoral majority in 2015, however, civil society and independent media are operating in an increasingly restricted environment in Burma. Independent information, especially important around national elections, has been routinely suppressed. Journalists have been arrested and imprisoned for reporting on military crimes, as well as for openly criticizing or simply reporting the facts about NLD officials.<sup>14</sup> The situation has shown no sign of improving as the elections approach.<sup>15</sup> Burmese officials have cracked down on individuals and organizations who document military crimes, or who share information with the broader public - this increasingly restricted civil society space erodes the particular resiliency and preventive power that civil society organizations may be able to play.

Additionally, while the US government and other U.S.-based donors have supported civil society organizations in Burma, a small fraction of that support is going to Rohingya-led organizations, or organizations who are advocating for rights and protections for the Rohingya community. As a result, the civil society organizations who are receiving support are operating in a restricted environment, and may not even be the best placed groups to mitigate the risks facing the Rohingya.

## Hate Speech

Hate speech, especially that put forward by public officials or other elites, can indicate a willingness to conduct or promote violence.<sup>16</sup> Hate speech has flourished in Burma, and political opposition leaders as well as journalists and civil society leaders who promote pluralism and human rights, or who oppose the military's crimes, have faced threats that limit their ability to speak out.<sup>17</sup> Some concerning hate speech approaches incitement to violence, which is an internationally-recognized crime.

The military-backed Union Solidarity and Development Party (USDP) and other allied political parties, for example, may promote incendiary rhetoric and misinformation during its candidates' campaigns.<sup>18</sup> Meanwhile, the Burmese government has used laws that criminalize speech to bring defamation lawsuits that limit the free speech of activists and independent media. These actors often serve as the most reliable checks on false and misleading narratives, and the limitations on their ability to do this work creates a dangerous silencing effect. As a result, the election period could be characterized by widespread misinformation and hate speech. Such content may make people less inclined to question the military's actions, or to more widely support acts of mass violence in the future.

## Conclusion

Burma's elections are a key moment to refocus the US and other governments' approaches to addressing mass atrocities in Burma. A sustainable democracy cannot be built when communities are disenfranchised on the basis of their identity. As the period from 2015 to the present has shown, the disenfranchisement of the Rohingya heightened their vulnerability and contributed to creating an environment where mass atrocities could occur.



## Recommendations

Burma and the United States both have national elections in November 2020. The US elections will capture the attention of international media, including social media companies, potentially diverting necessary attention from risks to civilians around the elections in Burma. Those concerned about atrocity risk in Burma, including governments, civil society organizations, activists, and others will need to follow specific steps now in order to properly monitor risk in the lead-up and aftermath of Burma's elections. Additionally, while the US government and other U.S.-based donors have supported civil society organizations in Burma, a small fraction of that support is going to Rohingya-led organizations, or organizations who are advocating for rights and protections for the Rohingya community. As a result, the civil society organizations who are receiving support are operating in a restricted environment, and may not even be the best placed groups to mitigate the risks facing the Rohingya.

### For the US and Other Governments:

- Express in clear terms the unacceptable disenfranchisement of the Rohingya people from Burma's elections. Officials should issue statements before the election outlining the criteria for fair and credible elections and publicly address any shortcomings on those criteria after the election.
- If the elections disenfranchise the Rohingya based on their identity, the US and other governments should in both public statements and in private communications to the Burmese government condemn such an exclusion and stress the need for all communities in Burma to benefit from any democratic process.
- Closely monitor the involvement or exclusion of Rohingya voters and candidates from the election, trends in hate speech targeting Rohingya and other minorities, and arrests or charges levied against civil society and members of the media during the lead-up and immediate aftermath of the election. Support civil society organizations within Burma who are doing this essential work.
- Press the Burmese government to develop a measurable and time-bound policy that restores citizenship rights of the Rohingya, as well as Burmese Muslims and other ethnic minority communities that have been disenfranchised. Withhold additional non-humanitarian assistance until such benchmarks for improvement have been met.
- Support the next generation of civil society actors from diverse backgrounds, from both within Burma and from refugee communities. In particular, support Rohingya-led organizations within Burma and elsewhere to develop future leaders within the community.
- Dedicate more resources for justice and accountability, including international justice efforts as well as grassroots transitional and transformative justice programs for civil society.

### **For the Burmese Government:**

- Ensure that Rohingya are able to vote in the 2020 election, including by using previous voter roll lists to identify those eligible to vote.
- Ensure that refugees outside of Burma are able to vote in the 2020 election.
- Recognize as eligible for citizenship qualification purposes any previous candidate or elected official standing as a candidate for election.
- Amend, or repeal and replace, the 1982 Citizenship Law so that citizenship status is not based on ethnicity and complies with democratic and human rights principles and laws.
- Stop arresting, harassing, or prosecuting journalists and others who share news, opinions, or otherwise exercise their freedom of speech.

### **For Civil Society Organizations:**

- Whether based in Burma or elsewhere, closely monitor the involvement or exclusion of Rohingya voters and candidates from the election, trends in hate speech targeting Rohingya and other minorities, and arrests or charges levied against civil society and members of the media during the lead-up and immediate aftermath of the election. Share information with officials in the US and other governments, as well as social media companies.

### **For Social Media Companies:**

- Dedicate significant resources, including staff with proper contextual and language expertise, to monitoring hate speech on social media platforms in the lead-up and the aftermath of Burma's 2020 elections.
- Monitor threats against well-known activists and take down content that violates the platform's policies, so that the threatened individuals themselves do not need to review harmful content and flag for removal.

## REFERENCES

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<sup>1</sup> Constitution of the Republic of the Union of Myanmar (2008), arts. 109, 141.

<sup>2</sup> Only small numbers of Rohingya will be able to vote, including those who have acquired naturalized citizenship or have undergone previous formulations of a citizenship scrutiny process.

<sup>3</sup> Al Jazeera, “Rohingya Politicians Excluded From Myanmar’s Upcoming Election,” August 25, 2020.

<sup>4</sup> The UEC’s restriction levied against Rohingya politicians - that they could not prove the citizenship status of their parents at the time of their birth - has been applied to candidates from Rakhine State, where most Rohingya live, more strictly than to other candidates.

<sup>5</sup> Executive Order (E.O.) 13742, Oct. 7, 2016. The E.O. cited “historic elections in November 2015” as one reason for ending the national emergency with respect to Burma, which had been in place since 1997. The content of the E.O was previewed in a joint statement between Burma and the White House, released after a meeting between President Obama and Burmese State Counsellor Aung San Suu Kyi on September 14, 2016.

<sup>6</sup> Vivian Tan, Over 168,000 Rohingya Likely Fled Myanmar Since 2012 - UNHCR Report, May 3, 2017.

<sup>7</sup> Much of this funding for electoral support has been through the USAID-funded Consortium for Elections and Political Process Strengthening program (CEPPS), and additional funds have been allocated but not yet dispersed. This figure does not include support from the National Endowment for Democracy, the US State Department’s Bureau of Democracy, Human Rights, and Labor, and other sources, as those grants are not exclusively related to electoral support. A total of \$58 million and \$27.5 million have been obligated for “Government and Civil Society” development aid in 2019 and 2020 respectively, thus far. USAID Foreign Aid Explorer, last updated Sept. 2, 2020.

<sup>8</sup> These figures represent the EU’s specific designation of “Electoral Process” support, which form a portion of overall Democracy and Governance support. These figures can be referenced at: [https://www.idea.int/sites/default/files/reference\\_docs/International-IDEA-Programme-and-Budget-2019.pdf](https://www.idea.int/sites/default/files/reference_docs/International-IDEA-Programme-and-Budget-2019.pdf) and [https://www.idea.int/sites/default/files/reference\\_docs/International-IDEA-Programme-and-Budget-2020.pdf](https://www.idea.int/sites/default/files/reference_docs/International-IDEA-Programme-and-Budget-2020.pdf).

<sup>9</sup> While the military has in the recent past launched widespread and systematic attacks against civilians following attacks by the Rohingya group ARSA, it appears unlikely that ARSA or a similar group would have the capacity to conduct a targeted attack on the state during the period around the election.

<sup>10</sup> The The Burmese Human Rights Network have documented a large number of non-Rohingya Burmese Muslims facing ongoing discrimination, administrative hurdles, and corruption in obtaining proper citizenship documents, thus rendering them ineligible to vote despite the fact that they should legally be able to do so. Burma Human Rights Network, “Existence Denied,” (2018).

<sup>11</sup> Transnational Institute, The 2015 General Election in Myanmar: What Now for Ethnic Politics? (2015), 5.

<sup>12</sup> *Ibid.*

<sup>13</sup> Thompson Chau, “Voting in Over Half of Rakhine Cancelled, Hitting Arakan Party.” Myanmar Times, Oct. 17, 2020.

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<sup>14</sup> Some high profile examples of cases of arrests, charges, imprisonments related to challenging the NLD, military, or hate speech include: (1) Ngar Min Swe, 7 years for social media posts critical of ASSK, (2) Wa Lone and Kyaw Soe Oo, Reuters Journalists, for reporting on Inn Din massacre, (3) Journalist Swe Win, for defamation against Wirathu, (4) Filmmaker Min Htin Ko Ko Gyi, for military criticism on Facebook, and (5) Peacock Generation Satirical Theater Troupe, for satire performance criticizing military.

<sup>15</sup> Article 19 notes that vaguely worded measures enforced by the Union Election Commission are chilling free speech from political parties and others in the lead-up to the November 2020 elections. Article 19, Briefing Paper: The Rights to Freedom of Expression in the Context of Myanmar's 2020 General Election (April 2020).

<sup>16</sup> Scott Straus, *Fundamentals of Genocide and Mass Atrocity Prevention* (2016), 78.

<sup>17</sup> For example, hate speech on Facebook has increased against the Democracy and Human Rights Party, a leading registered Rohingya party, and the party's chairperson, U Kyaw Min. Ultra-nationalist groups and other political parties are the key spreaders of hate speech against the party online.

<sup>18</sup> Some analysts fear that the USDP may resort to nationalistic views of race and religion to garner support and divert voters from the ruling NLD. Hunter Marston, "The Hate Speech Threat to the 2020 Election." *Frontier Myanmar*, April 6, 2019.

**The Simon-Skjodt Center for the Prevention of Genocide**

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