

Myanmar

Note to the File

MYANMAR: NLD AND ELECTIONS

1. The NLD's decision of 29 March 2010, "unanimously without objection", not to re-register the party because the Government's electoral laws are unjust (attached) has implications for the future of the NLD as a political party, for other constituencies potentially, and for any UN political facilitation. The NLD's decision, reached at a joint meeting of the Central Executive Committee and Central Committee on 29 March, follows a statement on 23 March by ASSK's lawyer that "Suu Kyi would not even think of registering under these unjust laws, but she said this is her personal view, not an order or instruction to the party, and she is leaving the final decision to the party". According to several reports, Chairman U Aung Shwe, who had called earlier for the NLD to register, did not attend the meeting (together with members U Lwin and Lun Tin), but instead wrote that he would abide by ASSK's decision. While the NLD has avoided an open split so far, differences of view clearly remain within the leadership on the question of participation in elections, with the possibility that some NLD members may try to run as independent candidates or form a new political party. At this juncture, however, the NLD's highly visible announcement may be motivated by tactical as much as principled considerations. 1 April 2010

2. On the one hand, public comments by U Win Tin and other senior NLD members suggest that the party may have reached a final and uncompromising stand, at the cost of facing dissolution, based on (i) a fundamental opposition to the Roadmap and 2008 Constitution; (ii) an effort to influence other constituencies, including armed ethnic groups, to boycott the elections; and (iii) an effort to de-legitimize the process internationally. Most importantly, this would signal that the NLD has abandoned decisively the strategy that has sustained it for the past 22 years to fight the Government from within the existing legal framework. In communications with OSASG, both the exile NCGUB and US Campaign for Burma have noted that the announcement was driven in part by the risk for the NLD's participation in election to legitimize the process without any gain to the party given the Government's zero-sum game; the need for the NLD to reassert ASSK's leadership by maintaining a unified stance; and the potential alternative for the NLD to retain political influence as a "social movement" by coordinating smaller parties that may be elected to Parliament.

3. On the other hand, it is noticeable that the decision (i) falls short of stating that the NLD will not participate in elections or calling for a boycott; (ii) was not reached with the benefit of full consultations between ASSK and the CEC as per their longstanding request; and (iii) concurrently reiterates the demand for the release of ASSK and political prisoners "as soon as possible and unconditionally". Most significantly, the timing of the announcement – six weeks prior to the 7 May deadline for registration – suggests that this may be a calculated stunt to maximize leverage in order to force concessions from the Government while preserving room for maneuver prior to having to make a final decision. In this regard, both the NCGUB and US Campaign for Burma confirmed that the NLD's decision is not a "shut and closed" case. Specifically, they stressed that the NLD still has time to reconsider its position to register for elections if the UN and the international community press for a "face-saving formula" for both the NLD and the Government that should involve an inclusive process in which ASSK and political prisoners can participate.

4. Under the electoral laws, it is not possible for political parties to remain registered if they decide not to participate in the elections: any party that does not field candidates in at least three constituencies will be de-registered. At this point in the process, however, existing political parties are technically not required to re-register, but simply to file with the Electoral Commission by 7 May to continue their registration. Registered parties then have 90 days from the date of their filing to meet membership requirements and submit lists of members to the Electoral Commission. This suggests that the Electoral Commission and political parties may have until 7 August to resolve any questions related to individual membership, including whether ASSK and NLD members currently in detention fall under the prohibition against persons "serving a prison term as a result of a conviction in a court of law".

5. In light of the above, it is not impossible that the UN may still be called upon to help resolve the current deadlock between the Government and ASSK/NLD, albeit within a limited time window and without clarity about the degree of political flexibility on either side. From the Government's perspective, the political cost of making any concessions to the NLD at this stage under domestic and international pressure may be higher than the cost of letting the NLD boycott the process as a result of not doing so. From the NLD's perspective, the moral cost of participating in the elections without at least obtaining the release of ASSK and political prisoners may be higher than the political cost of boycotting the process. For the United Nations, the dilemma is between not facilitating a deal and being seen as failing to prevent a flawed process; or facilitating a deal and being seen as pushing the NLD into joining a flawed process.

6. Given the Government's propensity to use the UN as a diversion from negative coverage to legitimize the process, it remains essential to seek assurances from the authorities that any direct engagement at this point would be useful to the UN's objectives. Similarly, it would be important to clarify as much as possible the NLD's expectations at this point and scope for any negotiation. In this context, the UN needs to avoid cornering itself against a narrow agenda focused on a single party's hard demands. Rather, any facilitation effort should seek to address the NLD's specific demands within a broader framework of concerns relevant to all key stakeholders – especially armed ethnic groups – as well as to the Government. This could include (i) amnesties for all political prisoners prior to elections, consistent with the principle of a non-discriminatory and inclusive application of amnesty as currently applied only to the SPDC and Government under the Constitution; (ii) allowing ASSK to freely meet and consult with the members of the NLD CEC and other interlocutors of her choice; (iii) clarifying, through dialogue and consultation with all concerned, any ambiguities and concerns arising from the electoral laws and regulations with a view to ensuring an inclusive, participatory and transparent process; (iv) creating conditions ensuring respect for fundamental freedoms and a more open environment; (v) declaring and implementing a nation-wide ceasefire or cessation of hostilities; and (vi) inviting independent international and/or regional observers.