

THE  
CARTER CENTER



**Preliminary Findings of The Carter Center Expert Mission to Myanmar  
April – July 2015**

**Introduction and Executive Summary**

On July 8, Myanmar's Union Election Commission (UEC) announced that elections to the national, state, and regional legislatures would take place on Sunday, Nov. 8. The state of election preparedness, the transparency of the process, and the overall political environment are substantially better than they were in the 2010 elections and 2012 by-elections, but significant challenges remain.

A number of important steps have been taken since the release of the Carter Center's previous report in March 2015. The UEC issued procedures for the accreditation of election observers and sent formal invitations to The Carter Center and other international observer organizations. A preliminary nationwide display of the voter list has been completed (revealing substantial weaknesses). Ninety parties have been registered to contest the elections, and 79 of those have signed a political party code of conduct. On July 30, some 7,000 prisoners, including some political prisoners, were released, with the stated intention of including them in the election process.

However, during this period, the military-backed government has on occasion restricted media freedom and the freedom of assembly; the constitutional reform process failed to remove structural barriers to fully democratic elections; and amendments to the electoral law likely will result in the disenfranchisement of hundreds of thousands of former temporary citizenship card holders. While the UEC in particular deserves much credit for the steps that it has taken to date, key aspects of the process remain unregulated or non-transparent, such as advance voting, election dispute mechanisms, election security, and the criteria for cancelling elections in particular constituencies.

Massive flooding in July and August has displaced hundreds of thousands of people and has added to the complexity of the election process. The UEC is taking measures to minimize the impact of the floods on the election process by making adjustments to the timing of the national voter display and candidate registration deadlines.

This report contains recommendations for the UEC, the government, and political parties to address significant issues. The main findings of the report are as follows:

- *Political Space.* Political activity has noticeably increased since March 2015. The code of conduct has the potential to contribute to a more positive campaign atmosphere, though there are questions about how effective its monitoring mechanisms will be. Media coverage of the elections is picking up, though concerns about self-censorship or retaliation for covering sensitive issues are widespread. Discriminatory, and particularly anti-Muslim, speech could increase as campaign activity begins.

- *Election Administration.* There is an urgent need to clarify key aspects of the process, including polling, counting and tabulation procedures; advance voting; voting by internally displaced persons; and election dispute resolution. Voter education initiatives have been delayed by the lack of information on procedures. Commendably, the UEC has continued to engage with civil society and political parties; however, decision making within the UEC could be more transparent. Election sub-commissions are under-resourced, lack capacity, and are generally less engaged with parties and civil society.
- *Voter Lists, Identification and Citizenship.* Despite substantial efforts made to update the voter list, it has been widely criticized for its errors, many inherited from the underlying household and immigration data. The system places a substantial burden on voters to initiate corrections or additions. Unless the government acts immediately, the cancellation of temporary citizenship cards and a stalled citizenship verification process will result in large-scale disenfranchisement of Muslim Rohingya and others.
- *Election Security.* Election security planning has been non-transparent. It remains unclear how proposed election security committees will operate, and the role of auxiliary police in securing polling stations has raised concerns. There is a need for more transparency about the criteria for the cancellation of elections at constituency level or below.
- *Dispute Resolution.* Heightened expectations for electoral success, combined with the absence of reliable polling data and a recent history of electoral malfeasance, create an environment in which parties and candidates could challenge election results. The UEC is developing a structure for addressing issues that arise in the pre-election period, which will potentially reduce postelection disputes. There is a need to elaborate procedures for consideration of pre- and postelection complaints and to provide for timely review in line with international standards.
- *Election Observation.* The government has maintained its welcoming attitude towards international observation, and The Carter Center has freedom of movement and access to election sub-commissions and other official bodies. Questions remain about whether observers will be able to observe out-of-constituency advance voting, particularly in military installations.

This report focuses on developments during the period since the Center's first report was released in March 2015. It relies on the findings of Carter Center field visits to Chin, Kachin, Rakhine, and northern Shan states, and Bago, Magway, Sagaing, Tanintharyi, and Yangon regions. Carter Center observers have now visited all of Myanmar's state and regional capitals. The Carter Center bases its analysis on well-established international obligations and standards.<sup>1</sup>

On March 30, 2015, the UEC extended a formal invitation to The Carter Center observe the general election. The Center accepted the invitation and will formally begin its election observation mission in August 2015.

## **Political Space**

*Political Party Code of Conduct.* The signing of a political party code of conduct on June 26 was a positive development. The code has the potential to be an effective tool in creating a positive and tolerant campaign atmosphere. Seventy-nine registered political parties signed the code, the result of eight months of consultations among the parties and with the UEC. The signatories agreed, among

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<sup>1</sup> *Election Obligations and Standards: A Carter Center Assessment Manual*, The Carter Center (2014).

other things, to abstain from using religious and racially discriminatory messages in their campaigns, using state resources, and threatening or coercing voters. The code allows for the use of religious premises “when there is no other place for campaigning.”

It is unclear how information about these commitments will be disseminated or how compliance will be ensured at all levels of party structures. Carter Center field staff met very few sub-national party leaders who were aware that a process for agreeing on a code of conduct was underway, or informed about its content. The code calls for the establishment of a monitoring committee, comprised of representatives of the signatories, to consider allegations of violations and to resolve disputes. Creating an effective committee will be a challenge, especially when addressing controversial subjects such as discriminatory speech or the abuse of government resources. It is unclear how the committee will interact with “mediation” committees that the UEC intends to set up at the state/region, district, and township levels, comprised of an election sub-commission member and a representative of each political party contesting in the relevant constituency.

*Political Party Activity.* Since the release of the Center’s first report in March, field teams have noted an increase in political activity, in the form of membership drives, low-profile public meetings in party offices, donation programs at religious festivals, and trainings for farmers and students. At the township level, election-related activity remains minimal. Local political representatives were rarely able to articulate political party platforms and, for the most part, were waiting for guidance from national party leaders. In some cases, state and regional party representatives were based in Yangon. Most party representatives expressed an intention to campaign vigorously during the campaign period, though many smaller parties raised concerns about their lack of resources relative to the USDP and NLD.

Party representatives and civil society organizations reported that their activities are rarely restricted, despite being subject to burdensome administrative procedures (especially at the township level). There is nonetheless concern that local authorities will unfairly enforce campaign restrictions in favor of a particular party. Parties and civil society sometimes reported intrusive surveillance by the Special Branch police, although the surveillance did not appear to be specifically election-related. In Kachin State, concerns were raised about the possibility that provisions of the Unlawful Associations Act could be used to target members and supporters of Kachin parties.

*The Media Environment.* While space for political reporting has opened up since 2010, during which time many new media outlets have come into existence, journalists continue to work in difficult conditions. Restrictive and vaguely worded laws at the national level (including the Official Secrets Act, Media Law, Printing and Publishing Law, and sections of the Penal Code) make it difficult for journalists to know what falls within the permissible range of publishable speech. Recent arrests of journalists, defamation cases brought by the Ministry of Information, and a tightening of media access to the parliament have raised concerns that the government may further restrict media coverage in the pre-election period.<sup>2</sup>

Media workers at the state and regional level are under-resourced and under-trained, and local media at the township level or below is rare (with exceptions, such as nascent media in Chin and Kachin states). Self-censorship is widespread, and more common than overt threats. However, instances of intimidation were reported to The Carter Center in Bago, Rakhine, and Magway. Fear of social sanction, or criminal liability, were commonly cited as reasons for avoiding politically charged topics. Journalists also reported limited access to government officials and parliamentarians.

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<sup>2</sup> The Universal Declaration of Human Rights, Article 19, states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

*The Role of Religion.* Discriminatory speech, especially on social media, is a concern as the campaign period approaches. There remains a danger that the campaign period could see an increase in speech targeted at Muslim communities. The capacity of the code of conduct and mediation committees to address these issues will be a good indicator of their effectiveness.

At the national level, the Committee to Protect Race and Religion (*Ma Ba Tha*) recently issued a national statement urging voters to choose candidates based on their “race, religion and belief.”<sup>3</sup> In some states and regions, NLD representatives expressed concern that attempts to paint it as a pro-Muslim party could negatively impact its performance at the polls, and fear that speaking out against discriminatory language could lead to retaliation.<sup>4</sup> Buddhist nationalist groups do not appear to have a strong appeal in northern and central Rakhine State. Nonetheless, there is a concern there, as elsewhere, that extremist rhetoric could extend to hate speech directed against Muslims during the campaign period.

The atmosphere is less toxic in parts of the country with large Christian populations. In Kachin State, religious leaders appear to play a strong role in promoting political participation, though sometimes with a bias toward ethnic party interests. Church premises are being used to promote voter education initiatives and spread election-related information, and are likely to be used for more explicit political party messaging once the campaign period begins. This contrasts with the environment in Chin State, where church leaders expressed reluctance to play a political role, despite their wide-ranging influence.

### **Regulatory Gaps, Institutional Capacity and Public Knowledge**

*Transparency.* The legal framework for elections gives the UEC broad authority to regulate the process and take decisions on the implementation of election legislation. However, the law does not stipulate how decisions should be taken within the commission, and there is no quorum requirement for UEC sessions and no voting procedures for adopting decisions. Further, there are no requirements for transparency of UEC meetings, the meetings are not open to media or observers, and the minutes of proceedings are not published. This lack of transparency contributes to concerns about the UEC’s preparedness and the status of key procedures and decisions pending before the commission. At the sub-commission level, Carter Center field staff has found that levels of transparency vary. While most state/ regional and township sub-commissions were open to the presence of observers, their activities were often inaccessible to local civil society and the media. There is an urgent need for the UEC to clarify key aspects of the electoral process, including polling, counting and tabulation procedures, the timeline and instructions for advance voting, voting for internally displaced persons, and the election dispute process. The UEC should make prompt decisions on outstanding procedures and disseminate this information to election stakeholders, including its own sub-commissions, and the public.

*Capacity Development and Training.* The UEC has acknowledged that it faces serious capacity issues that impact the management of the elections, and the need for training and capacity building of its staff at all levels. Carter Center field observations have found that election sub-commissions have varied understandings of election legislation, with some lacking knowledge of election procedures and plans, especially at the township level and below. In addition to improved communication within

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<sup>3</sup> Possibly in contravention of the constitution and electoral laws. Article 364 of the 2008 Constitution states, “The abuse of religion for political purposes is forbidden,” and Article 58(c) of the election laws state that it is impermissible to urge anyone to vote or not vote on religious grounds.

<sup>4</sup> Concerns have been reinforced by incidents such as the sentencing of Htin Lin Oo, an NLD information officer, to two years imprisonment for a speech in which he criticized the use of Buddhism to promote extremist viewpoints.

the hierarchy of election bodies, practical trainings on all aspects of the election process could help to address weaknesses in capacity and knowledge. The Carter Center understands that the UEC is preparing trainings on observation accreditation, polling procedures, and dispute resolution. Trainings of sub-commission members on the legal framework have begun, though the training attended by The Carter Center was lecture-style and lacked practical exercises.

*Voter Education and Civil Society Engagement.* Voter education initiatives have been delayed by the lack of information about key aspects of the electoral process. Decisions that can have a major effect on the content of voter education programs are still being made, such as the recent decision to use indelible ink to mark voters' fingers. Lack of clarity around advance voting, polling procedures, and election disputes make it difficult to develop voter education content. Voter education efforts can only begin in earnest once the UEC releases the procedures and instructions.

Civil society, political parties, and the UEC itself all agree that voter education needs are vast and urgent. Recent polling data and Carter Center field observations confirm that at the township level and below there is very little knowledge, and minimal information available, about the electoral process. Civil society organizations and the UEC are preparing large-scale voter education activities, with some voter education and civic education programs underway at the sub-national level. For instance, a large civil society network has been formed in Magway to engage with the regional sub-commission and undertake voter education activities. In Lashio, in northern Shan, some voter education materials have been translated into Burmese, Chan, Jinghpaw, Palaung, and Mandarin. In Rakhine and northern Shan states, organizations are actively engaged in promoting women's political participation and voter education programs targeting women. The UEC also will be launching a mass media campaign in August, in addition to its commendable ongoing consultations with civil society and political parties.

The UEC has continued to exhibit an impressive level of openness and engagement with civil society and political parties through regular meetings in Yangon to discuss draft procedures and answer questions about the electoral process. However, this engagement has not been consistently replicated at the state and regional level, or below. In some areas, such as Rakhine State, Carter Center field staff found that there had been almost no engagement with civil society by local government or election sub-commissions. In others, however – such as Chin State and the Magway and Tanintharyi regions – preliminary engagement with civil society has either begun or is planned for the near future. In Bago, the regional sub-commission informed Center observers that it had held meetings with civil society and political parties in every township within its jurisdiction.

*Independence and Representativeness.* Election bodies at all levels suffer from a lack of credibility with local election stakeholders, including political parties, civil society, and the media. Although this trust deficit is slowly being bridged,<sup>5</sup> there remains a common perception that election sub-commissions are either biased toward the USDP, or are subject to the control and influence of the local government administration. Efforts to increase the resources and capacity of the sub-commissions, which are almost exclusively dependent on the General Administration Department (GAD) at the local level, could help to alleviate these suspicions in the absence of more formal independence from the GAD (which would require changes in law).<sup>6</sup> The voter list display process has shown that, if properly resourced and trained, election bodies can take on substantial independent responsibility.

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<sup>5</sup> In an effort to bolster the UEC's credibility and representativeness, eight additional members from ethnic minorities were appointed in April. Women remain very poorly represented on the sub-commissions.

<sup>6</sup> The GAD is part of the military-led Ministry of Home Affairs. The GAD plays a wide range of roles, but its main responsibility is the management of the country's public administration structures.

## **Voter Lists, Identification and Citizenship**

*Voter Lists.* Given the UEC's intensive effort to update the voter lists through computerization as well as displays in every ward/village-tract countrywide, the final voter lists are likely to be an improvement over any list used in the past. Nonetheless, the underlying data upon which the lists are based is so flawed that the final lists are also likely to contain substantial errors.

The UEC took the initiative to display the current voter lists in four stages across the country beginning in March, giving voters the opportunity to make corrections, object to the inclusion of names, and request to be included in the lists. This display is in addition to the display of preliminary voter lists that is legally required after the announcement of elections. The UEC estimates that it received correction, addition, or objection forms from less than six percent of voters during the first display.

The initial display revealed a number of errors in the original household and immigration information, as well as anomalies or mistakes resulting from the computerization process. This resulted in public complaints, particularly by the NLD, covered extensively by the media. The UEC subsequently announced a nationwide extension of the initial correction period, although The Carter Center observed that this extension was not consistently applied. Perceived errors or anomalies included the assignment of generic dates of birth when date-of-birth information was missing; spelling and typographical errors resulting from the transcription of handwritten household lists; inclusion of deceased persons; and poor transliteration of ethnic language names. Carter Center observers found that throughout the country, and particularly in ethnic states, there is a widespread assumption that errors are evidence of deliberate attempts at manipulation. Though many of the errors can be easily explained and should not affect voter eligibility, the UEC has been slow to communicate these explanations to the public.

The current system does not require the election commission or other government institutions to identify inaccuracies. This places a substantial burden on the voter, who must take the initiative to make corrections and provide supporting documentation to ensure their inclusion or to remove deceased family members. The process also exposed weaknesses in cooperation between election bodies and other government institutions. In many places, immigration and GAD officials coordinated poorly with one another and with the sub-commissions. Better cooperation will be needed to ease the burden and time required to obtain necessary documentation and improve the accuracy of the lists. However, observers noted that some local officials, including sub-commission members, have taken more initiative than others to proactively check the accuracy of household lists and provide voter information.

In response to the massive flooding affecting Myanmar, the UEC delayed display of the preliminary voter lists by one week. Display of the lists is scheduled to take place during the first two weeks of September.

*Identification.* Government-issued identification is not needed to vote or to be included in the voter list, though observers found this was not always clear to election stakeholders, even sub-commissions. In the absence of identification or registration in a household list, eligible voters can be added to the voter list based on confirmation of their identity by their respective village development committee. Though this may be a necessary measure in a country where a significant portion of the population lacks official documentation, it has the potential to create confusion at the local level, and it is particularly unclear how undocumented displaced populations living away from their communities will prove their eligibility. Carter Center field staff found that election officials

had differing understandings about how eligibility would be established in the absence of documentation, opening the door for possible discrimination against ethnic and religious minorities.

The National Registration Card (NRC) is the primary identification document for citizens. Although not technically required, possessing an NRC remains the easiest way for people to ensure that they are able to vote. This is especially true for displaced populations that cannot otherwise easily prove their status. Though the Ministry of Immigration and Population's Moe Pwint operation appears to be making substantial progress in issuing identification documents in Kachin and Chin states, the initiative is limited to areas under government control. There are also significant migrant worker communities that may have difficulties ensuring that they can vote. Internal migrants will have to prove residence in their current location for 180 days; the residence is certified by the migrant's employer or the local GAD office. Where they do vote, they may be vulnerable to intimidation or undue influence by employers or local political actors. At risk populations identified by Carter Center observers include large numbers of Rakhine migrants working in jade mines in Kachin State, and workers in oil and rubber plantations in southern Tanintharyi.<sup>7</sup>

Tens of thousands of NRCs have been distributed in Rakhine, though in Muslim communities, obtaining citizenship documentation has been a struggle. For example, representatives of the Kaman community, a Muslim minority recognized by the government, reported being neglected by the Moe Pwint program and having to pay large bribes to obtain NRCs. The position of those persons (largely Rohingya) without NRCs in northern Rakhine and/or confined in camps near Sittwe is even more difficult. Concerns about discriminatory or arbitrary requirements to obtain documentation also extend beyond Muslim communities. In Kachin State, committees responsible for assessing citizenship and issuing identification were said to be making determinations using subjective information, such as physical appearance.

The UEC has recently announced its intention to issue voter registration cards to those who have lost their identification documents due to the flooding. Although the UEC deserves credit for taking measures to ensure that those affected by the floods will be able to vote, voter education and polling staff training on the new documents will be needed to avoid confusion on election day. Some parties have raised concern that a new form of identification could create avenues for fraud.

*Disenfranchisement of Temporary Citizens.* In February 2015, the government declared that temporary registration certificates (TRC), which conferred a limited form of "temporary" citizenship, would be invalid at the end of March.<sup>8</sup> The Constitutional Tribunal subsequently ruled that a legislative provision allowing TRC holders to vote in a proposed national referendum was unconstitutional and, in June, the parliament amended the election laws to remove "holder of temporary certificate" from the list of eligible voters. This was done despite the fact that the vast majority of former TRC holders were eligible voters in previous elections.<sup>9</sup> Though there are many hundreds of thousands of former TRC holders spread across Myanmar, including a large number of people of Chinese and Indian descent, the cancellation will have the largest impact upon Muslim populations in Buthidaung, Maungdaw, and Sittwe townships of Rakhine State.

The government has since begun the process of replacing TRCs with new temporary identity documents while the citizenship status of former TRC holders is being verified. As of mid-June,

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<sup>7</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 41.1, states, "Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation."

<sup>8</sup> TRCs were formerly provided to people whose citizenship status had not yet been determined.

<sup>9</sup> Electoral laws issued in 2010 stipulated that temporary certificate holders were eligible to vote. They participated in the 2008 constitutional referendum as well as elections in 2010 and by-elections in 2012.

Carter Center staff found that there was little knowledge about the function of the new documents, including among township-level immigration officials in Rakhine, and a lack of information or reluctance to discuss the issue in other areas, such as northern Shan State. While most did not object to the issuance of new temporary documents, Rakhine political actors, including the Arakan National Party, made it clear to Carter Center observers that they would vigorously object to voting rights for Rohingya.

Officially, the government has been undertaking a citizenship verification process of former TRC holders. The Rakhine State Election Commission told The Carter Center that those who were granted citizenship through the verification process prior to the election would be included on the voter list. But as a practical matter, the verification process has all but halted in the northern townships of Rakhine, where the majority of Rohingya resides. Muslim citizens confined to IDP camps may also face difficulties in exercising their right to vote. The election sub-commission and local administration in Sittwe, for its part, claims that the lack of cooperation and mistrust of the process, which requires people who self-identify as Rohingya to identify as Bengali, has made it difficult to ensure that even citizens living in the camps will appear on the final voter list.

As The Carter Center stated in its March 2015 report, the cancellation of voting rights without due process constitutes a serious contravention of political rights. The decision to disenfranchise former TRC holders immediately prior to the election, without having a timely, transparent, and fair process for verifying citizenship firmly in place, or a process for challenging the cancellation of rights, runs counter to a number of provisions of international human rights documents and good practice.<sup>10</sup> The effects of the decision also appear to be discriminatory, as they disproportionately impact members of religious and ethnic minorities, particularly Rohingya, most of whom are already marginalized from the political process and living in conditions that prevent them from exercising their full civil and political rights, including basic freedom of movement.<sup>11</sup>

### **Election Security**

*Security Planning.* Security planning, both for polling day and the post-election period, is underway at the national level, but the planning process has been non-transparent and therefore difficult to assess. A directive – not yet made public – has reportedly been issued by the government that authorizes the establishment of election security management committees, chaired by the state or regional Minister of Border and Security Affairs, with membership including GAD officials, police, military, and a representative of the election sub-commission. The announced recruitment of tens of thousands of auxiliary police for election day security has raised concerns, as it is unclear how these auxiliaries will be recruited or deployed and what the scope of their authority will be.

At the sub-national level, it appears that very little has been done in the way of risk assessment or security preparation. In most places visited by Carter Center observers, local election bodies defer security-related questions to the police, and in some areas, disclaim any responsibility for election day security. In most areas visited, election bodies and other local government officials were unaware of national plans for the establishment of new security committees. In many areas, police or election

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<sup>10</sup> See Article 8 of the Universal Declaration of Human Rights; U.N. Human Rights Committee General Comments 18, 25, 26, and 31, and the IPU declaration on criteria for free and fair elections.

<sup>11</sup> Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Although Myanmar is not yet a party to the ICCPR, the country’s authorities have stated their intention to conduct elections in line with international standards.

authorities indicated that they have inadequate resources to secure all polling stations. Local officials generally could not provide clarity on the use of auxiliary police or other volunteers.

The lack of transparent security planning about potential violence is disturbing, particularly in areas with a history of communal and ethnic tensions. Since the 2012 by-elections, there have been outbreaks of anti-Muslim violence in Rakhine State in 2012 and in other parts of Myanmar in 2013 and 2014, including in Mandalay. As the campaign period approaches, it is possible that nationalist groups and political parties will seek to build support by appealing to voters on religious grounds, heightening tensions in an already tense political atmosphere. This could be particularly true in Rakhine State, where many expect Buddhist nationalism and illegal immigration to be major campaign themes. There could also be tension on election day in areas such as Thandwe township, where nationalist groups and ethnic Rakhine political parties appear to underestimate the number of eligible voters among the Kaman Muslim population.

*Ethnic Conflict and Cancellation of Polling.* The UEC has the authority to cancel elections “due to the local security situation,” but has not yet announced any decisions in this respect.<sup>12</sup> Ethnic parties and armed groups are likely to be skeptical of decisions to cancel polling in constituencies where they have support – particularly in Kachin State, where parties are wary of the political motives that may underlie the cancellation of elections in certain areas. For this reason, any UEC decision to cancel polling should be undertaken as transparently as possible. While some cancellations may be necessary for legitimate security reasons, last-minute and non-transparent cancellations could create security risks and affect the credibility of elections, especially in constituencies where ethnic parties expect to perform well. Carter Center staff did find some evidence that sub-commissions in conflict areas had been consulted on potential cancellations by the UEC. Most ethnic armed groups have indicated that they would not obstruct polling, a finding consistent with the Center’s first report. In some areas, however, ethnic militias (both allied and opposed to the government) pose an intimidation risk, such as in parts of Shan and Kachin states.<sup>13</sup>

## **Dispute Resolution**

Government officials tend to downplay the risk of conflict, while political parties and civil society are often focused on the potential for violence on polling day. In fact, the post-electoral phase may also be a volatile period. Political parties’ heightened or unrealistic expectations for electoral success combined with the absence of any reliable polling data, and a recent history of electoral malfeasance, create a scenario in which many parties and candidates could be disappointed by the results. Indeed, national party leaders predict that they will perform strongly throughout the country. Many ethnic parties have a strong expectation that they will sweep their constituencies. Establishing a transparent election dispute mechanism – and educating the public, candidates, and party leaders about it – should be a priority for the UEC.

The UEC has yet to release procedures on dispute resolution, but it has shared an informational handout with political parties and civil society and has indicated that formal procedures will soon be released. The law provides for appeals of decisions regarding inclusion in the voter list, candidate registration or deregistration, and observer accreditation, but it does not provide a mechanism to complain about other violations during the pre-election period. Allegations of violations can be reported to the UEC or its sub-commissions, which can investigate on their own initiative, but there is no requirement to respond and no timeline for review. Further, because there is not a clear

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<sup>12</sup> Pursuant to the Section 399 (e) of the constitution and the election laws.

<sup>13</sup> For instance, in the Pa-O Self-Administered Zone and Liolen District in southern Shan State, parts of eastern Shan State under the control of the RCSS and ethnic Lahu militia, constituencies within the Palaung SAZ in northern Shan, and northeast Kachin State, where ethnic Rawang militia are present.

distinction between criminal offenses and those that the UEC can address, there is concern that the UEC may refer most matters to the police.

For post-election complaints and appeals, election tribunals will be established on an *ad hoc* basis by the UEC. The UEC has the discretion to appoint three election commissioners to serve on the tribunal, or one commissioner and two independent experts. It will cost 500,000 kyat (about US \$500) to file a complaint (a 50 percent reduction from 2012). There is no deadline for review of complaints by the election tribunal, which in previous elections resulted in untimely decisions. Although the legal framework for the elections provides the right to appeal decisions of the election commissions or the election tribunal to the UEC, decisions of the UEC are final and not subject to judicial review, which is not in accordance with international standards guaranteeing the right to an effective remedy.<sup>14</sup> International good practice favors the appointment of independent experts, minimizing the cost to file a complaint, and providing an independent avenue to appeal.

### **Election Observation**

*International and National Observers.* The government has maintained its welcoming attitude towards international election observation and has issued formal invitations to The Carter Center, the European Union, and several other organizations to deploy observation missions. Carter Center field teams continue to enjoy freedom of movement and access to election sub-commissions and other government bodies. The UEC has also promulgated regulations governing accreditation procedures for national and international observers. The UEC developed the procedures in a series of consultations with civil society and the international community. Although there are concerns about the need to submit personal data of national observers, the potential cost and logistical complications of accreditation, and a request for detailed deployment plans, the procedures go a long way toward establishing a coherent observation framework.

National observer organizations, including several nationwide networks and an array of sub-national observer organizations, have begun planning their activities and identifying observers and partner organizations. It will be very difficult for observers to effectively cover the more-than 40,000 polling stations on election day, especially in remote parts of the ethnic states. National observer groups are under-resourced, and political parties have not adequately planned for or trained party agents, though some training efforts are underway.

A concern for international observer organizations is the requirement to submit an observation plan that specifies the areas where each individual observer will observe, which could limit freedom of movement and access to polling stations. Requiring observers to indicate where they will be observing or limit them to observing according to a pre-determined plan is contrary to international observation methodology and defeats the surprise element essential to credible observation.

*Observation of Advance Voting.* Observers and political parties are still awaiting the publication of procedures governing advance voting. Manipulation of the advance vote – particularly the votes of military personnel – was commonly perceived as a main venue for fraud in the 2010 election. The

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<sup>14</sup> The Universal Declaration of Human Rights states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8), and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (Article 10). The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

accreditation procedures explicitly authorize observation of advance voting. However, instructions on facilitating observation of the process are needed in order to guarantee observer access.

There are two forms of advance voting: *within constituency* voting for homebound voters and those in hospitals and detention centers, and *out of constituency* voting for military servicemen, trainees, students, and citizens living abroad who will be outside their home constituency on election day. For all advance voting, voter lists will be posted and the counting of advance voting ballots will be open to observation. However, while the actual voting process can be observed for *within constituency* advance voting, UEC officials have questioned the feasibility of observing the casting of advance ballots by military, trainees, and students because there will be no set schedule for when these institutions will receive ballots, and because voting will be organized on an *ad hoc* basis as ballots are received. Guaranteeing access to observe all aspects of advance voting, within and out of constituency, is essential for effective observation and for the transparency of the voting process, and would constitute a major confidence-building measure.<sup>15</sup>

*Freedom of Movement.* Carter Center field teams continued to enjoy broad freedom of movement throughout the country, including in all townships in Rakhine State (with the caveat that state-level approval was needed to visit Maungdaw and Buthidaung townships), and townships in Kachin and northern Shan states under government control and not directly affected by ongoing conflict. Carter Center observers have not been required to seek special permissions prior to visiting townships not identified as a security risk.

For the most part, Carter Center observers have been welcome by election bodies, political party representatives, civil society, and community leaders. It was widely agreed that the presence of international observers could act as an effective deterrent against fraud and manipulation. In meetings throughout the country, and in a recent meeting with parliamentarians in Nay Pyi Taw, the need for observers to prioritize their deployment to more isolated rural areas was emphasized.

Although police surveillance rarely acted as an obstruction to the Center's work, Special Branch police contacted interlocutors after Carter Center visits, and on several occasions, intervened to seek information directly from Carter Center national staff or insisted on attending meetings. Monitoring by Special Branch or military intelligence was particularly acute in Bago, Magway, and Tanintharyi regions, surprisingly more so than in areas identified as conflict-prone, such as parts of central Rakhine, Kachin and northern Shan states. The Carter Center urges the UEC and other relevant authorities to ensure that observers and political parties can work without interference by security forces.

## **Recommendations**

With the announcement of the election date and the beginning of candidate registration, there is an increased need for measures that will provide information to voters, candidates, political parties, and observers. Increased transparency and timely decisions on procedures will build public confidence and reduce the scope for electoral disputes. With the voter list update process nearing finalization, it is also important for the authorities to take measures to ensure that the voter lists are as accurate as possible and that every effort is made to ensure that voters are not disenfranchised. In addition, it is critical for the conduct of democratic elections that political parties, media, observers, and voters are able to conduct their activities and to exchange views freely. Based on its field observations, international democratic election standards, and election observation experience in 100 elections

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<sup>15</sup> U.N. Human Rights Committee General Comment 25, para. 20 states, "There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes."

worldwide, The Carter Center offers the following recommendations in an effort to assist the UEC and other stakeholders in further improving the electoral process.

### *The Union Election Commission*

- To promote increased public confidence in the election process, the UEC could take steps to improve its outreach to political parties and voters in a number of areas. These include publishing an electoral calendar and releasing increased information about the voter list update process, the criteria for cancellation of elections in constituencies for security reasons, election day identification requirements, and the complaints and appeals process.
- To increase confidence in the quality of the voter lists, the UEC should ensure that approaches to confirming eligibility are consistent and should clarify voter registration procedures for displaced and migrant populations. The UEC could increase public outreach to explain the nature and reason for errors in the voter list.
- To ensure the transparency of the process, all advance voting should be fully observable, including the casting of ballots. This applies in particular to the conduct of advance voting in military installations.
- UEC decisions on other outstanding procedures, including those governing polling, counting and tabulation, advance voting, voting for internally displaced persons, voter identification, and the election dispute process should be finalized as soon as possible.
- The effectiveness, independence, and public confidence in the dispute-resolution system could be strengthened by disseminating information to the public, thoroughly investigating reported violations, and providing a timely response to complaints. For postelection disputes, civil society and political party input in the appointment of independent experts to election tribunals should be allowed, and there should be a timely response to all complaints.
- The UEC should work with national observer groups to ensure that minor deficiencies in application documents are not a basis for denying accreditation, and that the groups are guaranteed unhindered access to all steps of the electoral process. Observers should have flexibility to determine where they observe.

### *The Government of Myanmar*

- To ensure that the cancellation of temporary citizenship cards does not result in large-scale disenfranchisement of previously eligible voters, the citizen verification process should be conducted in a timely, fair, and transparent manner. The authorities should take any other measures necessary to prevent disenfranchisement, particularly of religious and ethnic minorities.
- The government should ensure that all parties are able to campaign freely and on an equal basis, including by reducing bureaucratic and administrative requirements. Political parties and observers should not be subject to interference or surveillance by the government or security forces.
- The government should take steps to promote a free environment for journalists to cover election-related issues. Journalist access to government officials should be increased. The authorities should also refrain from pre-emptive or punitive use of defamation lawsuits and other legal action against journalists.

- In recognition that the success of the election is a shared responsibility, the government should direct the General Administration Department and other government offices to cooperate more actively with election sub-commissions.
- The role and membership of election security committees and auxiliary police should be clarified, including how they will be recruited, trained, deployed, and supervised.

### *Political Parties*

- Political parties should sign the code of conduct and disseminate information about its commitments to all levels of party structures, supporters, and the public.
- Political parties should respect the commitments made in the code of conduct, including refraining from using religious and racially discriminatory language. Monitoring committee(s) will be most effective if established well in advance of the start of the election campaign.

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A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. The Carter Center has observed 100 elections in 38 countries throughout the world, using international democratic election standards as the basis for making its assessments and recommendations.

Following visits by President Carter in April and September 2013, the government of Myanmar invited The Carter Center to establish a presence to prepare for the eventual deployment of an election observation mission in advance of the 2015 general election. The Center established an office in Yangon in October 2013.

Between December 2014 and July 2015, the Center conducted a political transition monitoring mission to make a preliminary assessment of the pre-election environment with special attention to the breadth and vigor of political space at the sub-national level. Carter Center observers visited all of Myanmar's state and regions, including the capitals and many townships (see [map](#)), where they met with chief ministers and local administrators, election sub-commissions, security personnel, political party and civil society leaders, representatives of religious communities, journalists, and other stakeholders. The Center released its first report on its political transition monitoring in March 2015.

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