

THE
CARTER CENTER



**Preliminary Findings of The Carter Center Expert Mission to Myanmar
December 2014 – February 2015**

Introduction and Executive Summary

The general elections in Myanmar planned for late 2015 could mark a major step forward in the political reform process that began in 2011. Despite a high level of mistrust in government, the general public appears to have an overall positive view of elections and overwhelmingly intends to vote.¹ Significantly, the government has made a public commitment to inviting international and national election observation organizations to monitor the election process, a notable difference from the 2010 and 2012 elections. The Carter Center, at the invitation of the Union Election Commission (UEC), is conducting an assessment of the pre-election environment in preparation for the deployment of a larger election observation mission. This is the Carter Center's first statement since deploying staff to the states and regions in December 2014.

In this preliminary assessment, The Carter Center finds that there are efforts underway to make the electoral process more transparent and less vulnerable to manipulation. However, a number of key challenges need to be addressed in order to ensure that the elections earn the confidence of voters, political parties, and civil society organizations. The main findings include:

- *Electoral Framework.* Although there are significant weaknesses in the constitution with respect to international standards for democratic elections, the legal framework has the potential to facilitate the conduct of credible elections, provided that regulations address key gaps, such as the advance voting process.
- *Political Space.* While the openness of political space varies among regions and states, political parties, civil society, and the media generally report a freer environment than in 2010 or 2012. While few reported overt harassment or intimidation, there are widespread fears that raising sensitive issues, such as land confiscation and corruption, will lead to retaliation by government, military, or ethnic armed groups.
- *Voting Rights and Political Participation.* The planned expiry of temporary registration certificates is likely to result in the disenfranchisement of certificate holders unless the government acts quickly to enable them to obtain new documents. Most of the affected people are from ethnic groups and religious minorities, and the majority are Rohingya in Rakhine state. This is a significant area of concern.

¹ *Myanmar 2014: Civic Knowledge and Values in a Changing Society*, The Asia Foundation (2014).

- *Communal Tensions.* Though communal tensions did not feature prominently as a concern in the states and regions visited by The Carter Center, anti-Muslim rhetoric was common, and leaders of minority religious communities expressed fear that the election process could give rise to conflict. There is a need for greater efforts on interfaith dialogue and conflict resolution.
- *Improving Electoral Integrity.* A lack of transparency in advance voting, especially by the military, and voting by displaced and migrant populations were identified as problem areas in 2010 and continue to need attention. The UEC's commitment to making these parts of the process fully observable will be important to ensuring the credibility of the election.
- *Election Management.* The rules governing the appointment of members to election bodies at all levels could be substantially improved. There is also a widespread perception that the reliance of election sub-commissions on local government administration undermines their impartiality. At the same time, sub-commissions visited by The Carter Center were open to observation and showed a commitment to conduct their activities in a professional and transparent manner.
- *Elections in Areas of Ethnic Armed Group Control.* Despite concerns about the impact of elections on the peace process, ethnic parties were optimistic that elections would take place. In the areas visited, armed groups indicated that they would not obstruct polling in areas under their control, with exceptions in border townships of Shan and Kayin states. Political space appears to be significantly curtailed in some areas.
- *International and National Observation.* The UEC has committed to inviting international observers to monitor the electoral process and has engaged actively with national observer groups to develop a code of conduct and accreditation process. Carter Center field staff have been permitted broad access with few restrictions.

If conducted in a transparent and inclusive way, the elections present an opportunity to improve public confidence and to demonstrate the government's commitment to democratic reform. To develop the positive steps already taken in this direction, The Carter Center recommends the following:

The Union Election Commission

- There is a need for greater clarity and transparency to build confidence among stakeholders in the election process. The UEC could address this by finalizing remaining by-laws, directives, and working guidelines and publishing them in a timely manner. The UEC could also consider publishing an election calendar, which is standard practice in many countries.
- Regulations and procedures for advance voting and voting for displaced populations should allow full access to observers and party agents, including any advance voting conducted in military and police facilities.
- To ensure that the process is free from discrimination and that each individual is able to exercise the right to vote, the UEC should provide for maximum inclusivity in updating voter lists.

- The recently issued codes of conduct for observers, which the UEC developed with the participation of civil society organizations, are important transparency measures. The accreditation process should commence as soon as possible so that observers can work with the formal recognition of the UEC.
- The UEC should consider increasing the number of women and members of ethnic groups appointed as sub-commission members. This would better reflect the diversity of Myanmar and improve public confidence in the work of sub-commissions.
- The UEC should encourage increased engagement between election sub-commissions and political parties and civil society at the local level. This would build public knowledge about the electoral process and increase confidence in the work of sub-commissions.

The Government of Myanmar

- The freedoms of association, assembly, and expression are vital to a democratic election process and should be fully permitted by authorities at all levels. Requirements for the conduct of public meetings should be simplified so all political parties and candidates have sufficient and equal opportunity to communicate their views. Steps should be taken to ensure that civil society and journalists can work without fear of harassment, obstruction, or retaliation.
- To ensure respect for the fundamental right to vote, the government should ensure that temporary certificate holders who are currently on the voter lists are not disenfranchised by the recent decision to end the validity of these certificates. Administrative actions that could result in the loss of voting rights are a serious matter that should be subject to a fair, transparent, and non-discriminatory review process.
- Freedom of movement for national and international observers should be guaranteed, and security officials should not be permitted to interfere with their activities.

All Stakeholders

- Ethnic armed groups should publicly commit to not obstructing the work of political parties, civil society, observers, journalists, or election sub-commissions.
- Political actors should refrain from using hate speech or discriminatory language. In this respect, the current efforts by political parties to draft a code of conduct are a welcome development. The government should take steps to protect minority communities in areas where tensions are high. Interfaith dialogue should be actively supported.

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This report summarizes the preliminary findings of The Carter Center’s observation mission to Myanmar based on interviews and field trips conducted in Kayah, Kayin, Mon and Shan states, and in Ayeyarwady and Mandalay regions, from December 2014 to February 2015. During these visits, The Carter Center met with a wide array of interlocutors to assess the electoral framework,

the state of election preparations, and the breadth of political space. The Carter Center bases its analysis on well-established international obligations and standards.²

The Carter Center works to advance democratic elections and governance consistent with universal human rights. The Center is credited with making substantial contributions to the professionalization of the field of election observation and assistance; reinforcing the linkage between election observation and human rights; building civil society capacity for monitoring elections and government performance against democratic obligations based in international law; and helping strengthen democratic governance worldwide. The Center has monitored 99 elections in 38 countries since 1989. Carter Center missions are conducted in accordance with the Declaration of Principles for International Election Observation and the accompanying Code of Conduct.

Background

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. Pending the establishment of a formal accreditation process for observers, the Union Election Commission invited the Center to conduct a preliminary assessment of the electoral framework and environment with special attention to the breadth and vigor of political space at the sub-national level.

Since December 2014, the Center has visited Kayah, Kayin, Mon and Shan states, and Ayeyarwady and Mandalay regions, where it met with chief ministers, election sub-commissions, political party and civil society leaders, representatives of religious communities and other stakeholders. The Center has enjoyed freedom of movement with few restrictions. In addition to conducting meetings in state and regional capitals, the Center visited the following townships: Demoso, Loikaw and Shadaw (Kayah); Hpa-an, Hpapun, Kawkareik, and Myawaddy (Kayin); Mawlamyine and Ye (Mon); Hopong, Hsihseng, Kengtung, Mongnai, Mong Phyak, Pindaya and Taunggyi (Shan); Hinthada, Lemyethna, Ngaputaw, Pathein and Zalun (Ayeyarwady); and Kyaukse and Pyinoolwin (Mandalay).

The Center plans to expand the current assessment in the coming months to include the remaining states and regions: Chin, Kachin, Rakhine, and northern Shan states, and Bago, Magway, Sagaing, Thanintharyi and Yangon regions. Given the limited temporal and geographic scope of the assessment to date, the findings in this report are preliminary.

Findings

In the upcoming general elections expected in November 2015, voters will elect the two chambers of the Union Parliament and the assemblies of Myanmar's 14 states and regions. The Union Parliament has planned to consider amendments to the constitution during the current session. If adopted, the constitutional amendments could be put to a referendum as early as May 2015. Many stakeholders have questioned the feasibility of organizing a referendum at such short notice and the possible consequences that this could have on preparations for the elections.

² *Election Obligations and Standards: A Carter Center Assessment Manual*, The Carter Center (2014).

Legal Framework and the Electoral System³

Elections are governed primarily by the 2008 constitution, a set of three election laws, the Law on the Union Election Commission and the Political Parties Registration Law.⁴ These are supplemented by directives, by-laws, notifications, and working guidelines issued by the UEC. The constitution regulates many fundamental aspects of the elections, including the election system, eligibility criteria for voters and candidates, and the structure, membership, and nomination process for electoral bodies. Although the legal framework contains gaps, and in some instances lacks clarity, it has the potential to facilitate the conduct of credible elections, provided that subsidiary acts of the UEC address outstanding issues and that the laws, rules, and regulations are implemented in good faith.

Myanmar has acceded to very few international human rights instruments. Notably, it is not yet a party to the International Covenant on Civil and Political Rights (ICCPR). Nonetheless, in view of the stated intention of the country's authorities to conduct elections in line with international standards, and in view of the fact that the fundamental human rights identified in the ICCPR are generally considered a part of customary international law, the Carter Center's assessment of the legal electoral framework makes reference to the ICCPR (in particular, Article 25). The assessment also refers to a number of other documents and guidelines for democratic elections that are relevant to a democratic election process.

The Union Parliament and the state and regional assemblies are elected under a first-past-the-post system, with the candidate receiving the highest number of votes elected. For the lower chamber of the Union Parliament and for state and regional assemblies, constituencies are based on administrative boundaries of townships.⁵ In the upper chamber of the Union Parliament, each state and region is represented by 12 members.⁶ The upper chamber recently passed legislation that would shift its elections to a proportional representation system, now under review by the constitutional tribunal. Although the electoral system is the sovereign choice of each state, international best practice suggests that changes should not be effected less than a year before an election and should be agreed on in an inclusive process.⁷ Major changes made so close to the date of an election can complicate voter education efforts and the work of electoral bodies.

The legal framework does not regulate all aspects of an election but gives authority to the UEC to regulate a number of important issues. These include the timeframe for holding an election and for voter and candidate registration; the membership and appointment of election sub-commissions; political party campaigning rules; access of election observers; transparency of ballot printing; timeline and eligibility for advance voting; ballot validity rules; tabulation and

³ This is a preliminary analysis and should not be considered a final or definitive legal review.

⁴ These laws were adopted in 2010. The *Amyotha Hluttaw Election Law*, *Pyithu Hluttaw Election Law*, and the *Region Hluttaw or State Hluttaw Election Law* regulate the elections of members of the upper and lower chambers of the Union Parliament and of the state/regional assemblies, respectively. Apart from provisions on candidate eligibility and registration, the three laws are identical.

⁵ For lower-house elections each township corresponds to a constituency, while for regional/state assemblies, each township is divided into two constituencies, which elect one representative each. An ethnic representative is also elected to the assembly of each state and region in which the respective community has a population corresponding to at least 0.1% of the national population.

⁶ Since the number of townships in individual states and regions ranges from 7 and 55, constituencies for elections to the upper chamber of the Union Parliament are drawn by combining or dividing townships. Furthermore, under section 141(a) of the constitution, each Self-Administered Zone or Self-Administered District corresponds to one constituency for elections to the upper chamber of the Union Parliament, thus guaranteeing that these units are represented.

⁷ See the Venice Commission's Code of Good Practice in Electoral Matters, p. II.2.b.

announcement of results; and rules for safekeeping of election materials. The resolution of electoral disputes falls under the UEC's authority; however, the election laws do not establish a clear process for the resolution of disputes regarding all aspects of the election process.⁸ As these issues are important for integrity, enhancing public confidence, and protecting the rights of candidates and voters, the general rules governing them should be regulated by the election laws rather than by subsidiary acts.

Constitutional Limitations. There are a number of constitutional provisions which structurally impact the democratic character of the electoral and political process. In addition, the constitution has limitations that make systemic electoral reform difficult. Due to the restrictive amendment procedures (constitutional changes require a three-quarters majority in both legislative chambers, and many additionally require approval by a majority of eligible voters in a national referendum), it may be difficult for political actors to reach agreement on fundamental structural changes prior to an election in 2015. Issues of concern about the constitutional framework as they pertain to the elections include:

- *Constituencies.* The system of linking constituencies to townships, in use since independence, creates a direct and understandable link between local constituencies and parliamentary representation. However, the number of voters varies widely between townships,⁹ and the system therefore does not ensure the equality of the vote, an essential element of democratic elections.¹⁰
- *Military Appointments to the Legislature.* The commander-in-chief of the Defense Services appoints one-quarter of the members of each legislative chamber. As constitutional amendment requires a three-quarter majority, the military has a *de facto* veto. Though such a provision may appear reasonable from the perspective of maintaining the continued support of the military for the reform process, it is inconsistent with international democratic norms and best practices.¹¹
- *Authority and Independence of Election Management Bodies.* The UEC is a permanent body composed of at least five members, all directly appointed by the president.¹² It enjoys broad authority in performing its mandate. However, its decisions are not subject to parliamentary or judicial supervision or appeal.¹³ There is evidence that the current appointment system and the dependence of the election administration on executive structures (the General Administration Department at the sub-national level) contribute to a lack of trust in the

⁸ The election laws regulate the adjudication of complaints related to voter registration, candidate registration, and election results. The election laws also list a number of electoral offenses and malpractice and provide for sanctions.

⁹ According to data for the 2010 election, the 10 smallest townships had an average of 2,562 registered voters, while the average for the 10 largest townships was over 247,000. Even within the middle third of constituencies, the number of registered voters ranged from approximately 60,000 to 110,000.

¹⁰ See U.N. Human Rights Committee CCPR General Comment 25, para. 21, and the Venice Commission's Code of Good Practice in Electoral Matters, p. I.2.2.iv.

¹¹ See General Comment 25, para. 7, and the Venice Commission's Code of Good Practice, pt. I.5.

¹² Under Section 398 of the constitution, UEC members must meet certain requirements. Among others, the constitution sets a minimum age of 50, requires UEC members to have served as judges, legal officers, or lawyers for a certain number of years, to be deemed "eminent persons," and to have integrity and experience. UEC members may not be members of political parties.

¹³ See Article 2.3 of the ICCPR and Article 8 of the Universal Declaration of Human Rights. See also the declaration on criteria for free and fair elections unanimously adopted by the Inter-Parliamentary Union (IPU) on March 26, 1994, para. 4(9). Myanmar has been a member of the IPU since 2012.

process. In accordance with international standards, election management bodies must be independent and impartial.¹⁴

- *Voter and Candidate Eligibility.* Citizens who are 18 years old are eligible to vote, with exceptions including members of religious orders.¹⁵ The election laws also grant voting rights to holders of temporary registration certificates.¹⁶ A prospective candidate must be eligible to vote, be 25 years old (30 years old for the upper chamber), have resided in Myanmar for 10 consecutive years, and be born of parents who were citizens at birth. Associate and naturalized citizens and civil services personnel (not including those nominated under the military quota) are ineligible to be elected. The election laws also disqualify anyone who “uses religion for political purpose” or has been in contact with an “unlawful association,” raising concerns with ethnic parties that candidates with past or current links to armed groups could be declared ineligible. Under international law, blanket candidacy or voting rights restrictions based on naturalized citizenship or religion would generally be considered unreasonable.¹⁷
- *Restrictions on Eligibility for the Presidency.* The President is elected by the legislature and not directly. Qualifications for the Presidency have become an issue of contention as the 2008 Constitution (section 59[f]) prohibits anyone with a parent, spouse or child with foreign citizenship from holding the post. This provision, which is widely perceived as having been enacted with Aung San Suu Kyi (whose sons are British citizens) in mind, is inconsistent with Article 25 of the ICCPR, which states that “every citizen shall have the right and the opportunity... to vote and to be elected.”¹⁸

International and National Observation: Access, Accreditation and Codes of Conduct

The Union Election Commission’s public invitation to international observers, including The Carter Center and the European Union, constitutes a meaningful step toward fulfilling the government of Myanmar’s commitment to ensure a transparent election process. Election observation provides an independent assessment of the electoral process. It can enhance the integrity of and public trust in the process and has the capacity to deter fraudulent practices. The Carter Center commends the government of Myanmar, and the Union Election Commission in particular, in this regard.

This stance is a notable departure from the past. In 2010, there was no international observer presence. Several national organizations conducted unofficial observations, but most decided not

¹⁴ General Comment 25, para. 20, specifies: “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.”

¹⁵ This provision could affect some 450,000 people and stems from Myanmar’s interpretation of the separation of state and religion. Similar exclusions exist in other countries in the region, e.g. Thailand and Bhutan.

¹⁶ Section 391 of the Constitution states that a “person who has the right to vote under the law, shall have the right to vote.”

¹⁷ General Comment 23, para 3, states “No distinctions are permitted between citizens in the enjoyment of [Article 25] rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.” See also General Comment 26, para. 4; General Comment 25, para. 15; the IPU’s Declaration on criteria for free and fair elections; and the Venice Commission’s Code of Good Practice, pt. I.1.1.c.iv.

¹⁸ Article 25 of the ICCPR states, “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: ... (b) To vote and to be elected at genuine periodic elections...”

to publish their reports. In 2012, international observers were invited belatedly, without adequate notice to effectively deploy observers. National organizations were able to deploy a limited number of observers but were hampered by a lack of access to the process and the absence of a coherent framework governing observation.

The environment for observers appears to have improved substantially. The UEC has publicly committed to invite international observers, and has initiated a series of consultations with civil society around the establishment of a code of conduct and procedures for accreditation. Several organizations are currently preparing their observation efforts, but pending accreditation, they are not yet actively observing in the field.

Code of Conduct and Framework for Accreditation. The establishment of a framework for observation, absent in both 2010 and 2012, will go a long way toward building confidence in the process. The draft code of conduct for observers and the accreditation procedures for observers were discussed with civil society organizations and with The Carter Center. During the most recent coordination meeting between the UEC and civil society on Feb. 16, contentious issues were openly discussed and largely resolved in an inclusive and transparent manner. The final version of the code was issued on March 19. Civil society organizations and political parties are awaiting the final version of the accreditation procedures, as well as the procedures for observing advance voting by military and other security personnel.

Access to Sub-Commission Meetings and Activities. The Carter Center has been warmly welcomed by election sub-commission staff in all states, regions, and townships visited. In Mandalay Region and Shan State, the Center observed the voter list updating process at the township level. There was inconsistency regarding access to meetings of sub-commissions and/or to their meeting minutes, with some sub-commissions offering and some denying access, and others making access contingent on permission by the UEC and/or formal accreditation. Most sub-commission members expressed willingness to discuss policies and procedures, and to facilitate access to monitor the process. In some cases, sub-commissions informed The Carter Center that they were waiting for further instruction from the UEC (for instance, in relation to advance voting, citizenship eligibility, or voting for displaced populations).

Geographic Access and Freedom of Movement. Carter Center field staff enjoyed broad access to the states and regions they visited, facilitated by both the UEC and sub-national government officials. With very few exceptions, field staff were granted permission to conduct visits at the township level without interference. This included visits to border townships and restricted areas. In certain townships in Kayin and Shan states, Carter Center staff were closely monitored by Special Branch police. The Carter Center has not yet traveled extensively in areas with an ethnic armed group presence, though representatives of armed groups expressed an intention to allow observers to travel to areas under their control.

Political Space: Civil Society, Political Parties, and the Media

Political parties, civil society organizations, and the media in the areas visited all reported a freer environment as compared to 2010 or 2012. In many townships there is little political activity, an absence of civil society organizations, and minimal local media. As a result, the boundaries of permissible political activity have yet to be fully tested. Although overt harassment and intimidation appear rare, political party, civil society, and media representatives all expressed fear that addressing sensitive subjects, such as land confiscation, could lead to retaliation.

Framework Governing Political Party Activity. The election laws do not specifically regulate election campaigning, although the UEC has drafted (but not yet adopted) a Directive on the Right of Hluttaw Candidates to Rally and Campaign.¹⁹ According to the draft directive, the campaign period will be 30 days, though the UEC has publicly stated that the campaign period would be extended to 60 days. On Jan. 16, the UEC issued a statement that the directive would not apply to pre-election “canvassing.” This has created some confusion among party representatives. The directive also sets out other requirements (including advance approval for campaign events) and restrictions (including on content critical of the army, religion, and the nation). In practice, the liveliness, freedom, and equality of the election campaign will depend, to a large extent, on the implementation and interpretation of this directive by the UEC and its sub-commissions. The UEC should ensure that the final directive does not result in restrictions on important freedoms critical to genuinely democratic elections.

Political Party Activity. There has been minimal political activity to date at the sub-national level, and party platforms are undeveloped. The Union Solidarity and Development Party appears to be the most actively engaged at the community level, lending support to health and development initiatives, though legal aid initiatives by the National League for Democracy were also observed in Mandalay Region. Concerns were raised in several locations about the potential for confusion between USDP-branded and government-supported development projects. The presence of ethnicity-based parties renders the political landscape more diverse in the states. Many ethnic party representatives told The Carter Center that they were actively considering forming electoral alliances, or questioning past affiliations. Political activity is expected to increase as the elections approach and the framework for party activity becomes clear.

Restrictions on Political Party Activity. Political parties did not report major restrictions on their movement or activities at the township and village tract/ward level, although few parties are actively conducting events. However, party representatives did complain about advance notice requirements for public events. At the national level, party leaders expressed confusion about what party activities are and are not allowable prior to the official campaign period. At the state and regional level, this appeared to be less of a concern. Smaller parties felt that a lack of financial resources left them at a disadvantage vis-à-vis the larger parties.

Political parties are required to submit detailed plans for public events and trainings (including a list of participants and topics to be discussed) to the township sub-commission at least one week in advance. In the absence of a UEC regulation covering pre-election activity by parties, these activities are subject to the discretion of the local authorities, which some parties perceive as being exercised arbitrarily. Though local-level discretion has the potential to curtail party activities, it appears that permission is rarely denied. In some states and regions, more permissive arrangements have been agreed upon. In Mon State, for example, parties stated that they do not need to seek advance approval for public meetings (which observers corroborated in their visit to Ye Township). One party in Kayah State also reported securing a multi-month blanket approval for their activities, including opening offices and putting up signboards.

Nonetheless, parties reported that they are sometimes subject to arbitrary and inconsistently enforced restrictions at the township and ward/village tract level. Restrictions on the distribution of signboards are particularly common, with some parties limited to one signboard per village (in Mandalay) or, in some instances, one signboard for every 10–20 villages (in parts of Kayah). Many party members reported that senior party officials and party activities were subject to

¹⁹ Draft UEC Directive No. 1/2014 of July 1, 2014.

surveillance by Special Branch police. Several parties reported that their activities were significantly curtailed in areas with an armed group presence.

Political Space for Civil Society Organizations. Civil society organizations in the areas visited also reported a much-improved environment since 2010, with few restrictions on their activities. Carter Center staff also witnessed several sizable public protests – addressing issues such as ethnic rights and land seizures – an indication of the increased political space. However, there was a violent crackdown on student protestors in Letpadan and Yangon on March 10, with dozens of protestors injured and over 100 detained. There was a noticeable absence of civil society activity in certain townships, especially those located in the border areas of Shan and Kayah states and in other areas with an armed group presence, such as within the Pa-O Self-Administered Zone.

Civil society in all of the states and regions visited reported needing to secure prior approval for implementing their activities and sometimes facing bureaucratic delays in gaining permission. However, as with political parties, denial of permission appears to be rare, and in many areas, more permissible arrangements have been negotiated locally. In Shan State, civil society groups reported that although they face bureaucratic delays in gaining approval, their applications were rarely rejected. In Kayah State, permission requirements do not appear to be strictly enforced, and some organizations reported receiving only a verbal warning for implementing activities without prior approval. In Mon State, several civil society organizations reported that they had a good relationship with local government.

Despite the more permissive environment, civil society representatives in all states and regions visited expressed concern about the possibility of retaliation by government (and in some areas, by armed groups or political parties) for addressing sensitive subjects. In Mon, Kayah, Shan and Mandalay, civil society groups reported harassment and intimidation for focusing on sensitive issues, particularly human rights abuses and land confiscation. Civil society activists are often under surveillance by Special Branch personnel, though direct interference is uncommon.

Civil society organizations are critical to promoting electoral participation and to informing voters about the electoral process and their rights and responsibilities. While many civil society leaders expressed interest in providing voter education, few organizations are actively planning election-related activities at this stage. Many organizations remain unregistered, sometimes deliberately out of concern that registration will bring increased government surveillance. As a consequence, organizations in several states and regions, otherwise interested in engaging with the sub-commissions around voter education initiatives, have expressed reluctance to do so, despite the fact that civil society organizations do not have to be registered with the government or accredited by the UEC in order to engage in voter education activities. The UEC informed The Carter Center that sub-commissions would be instructed to meet with civil society on at least a monthly basis. Increased engagement of sub-commissions with civil society would be a welcome step toward developing cooperation on voter education initiatives.

The Media Environment. Journalists in the areas visited reported an improved situation over prior years, though not to the same degree as political parties or civil society organizations. Local media is under-developed, with most people getting their news from national media sources, and there is no noticeable focus on election-related activity. At the national level, the UEC has actively engaged with the media, and has announced that it will produce a media guidebook on elections in partnership with the Myanmar Press Council (Interim). To date, there appears to have been little engagement between media and sub-commissions below the union level.

Journalists in all states and regions visited expressed concern about harassment and the threat of defamation charges for reporting on sensitive topics – especially the role of the military in politics, land confiscation, and corruption – and cited numerous local and national cases of physical harassment (such as journalist Ko Par Gyi’s arrest and subsequent death in military custody in Mon State). Media outlets reported close monitoring and informal questioning by Special Branch police, but far less interference than in the past. In Shan, Kayin and Mon states, journalists reported that it was difficult to cover political developments for lack of access to government officials and state parliamentarians.

Self-censorship is reported to be common, especially around sensitive topics such as land confiscation and corruption. The Carter Center heard numerous claims that officials had issued warnings to journalists not to cover controversial topics, and one unconfirmed report of an active censorship board at the township level. Journalists in Shan, Kayin and Mon states and in Ayeyarwady Region expressed reluctance to address sensitive issues. Female journalists expressed a particularly acute need to self-censor and to be cautious not to upset cultural and political norms favoring men. Media freedom is crucial to an informed electorate. The Carter Center encourages the UEC to continue its efforts in this respect through clear directives to sub-commissions to facilitate journalist’s access to electoral processes. Government and security officials should not harass, intimidate, or restrict journalists from their reporting.

Election Management: Capacity and Independence of Electoral Bodies

Despite the weaknesses in the regulatory framework governing the UEC and its subsidiary bodies, The Carter Center has been impressed by the openness of the UEC and its sub-commissions to the possibility of scrutiny by observers, as well as what appears to be a serious commitment to conducting their activities as efficiently and impartially as possible. Voter list updating is underway in many areas, but voter education has yet to start in earnest. On difficult questions (advance voting, voter identification, displaced populations), sub-commissions are waiting for instruction from the union level.

At the national level, the UEC has acknowledged many of the issues that need to be addressed in order to improve the management and thus the quality of elections. These issues include technical and technological weakness, professional skills of staff, limited budget, few permanent regional secretariat staff, gender imbalance, weak cooperation with civil society, weak application of laws and rules, and the need for many procedures to be developed. In order to address these issues, the UEC adopted a strategic plan in 2014, drawn up in consultation with civil society organizations and political parties.²⁰

Perceived Independence of Election Sub-Commissions. At the state/region and township levels, perceptions that the sub-commissions lack independence from local government (itself perceived as closely associated with the USDP) feed concerns that the sub-commissions are not impartial. In all six states and regions visited, political parties and civil society expressed concern that sub-commissions might not act independently if put under pressure by local government officials.

In keeping with an October 2014 UEC directive, sub-commissions at the region/state, district, and township levels generally are composed of 15 members, nine from government departments

²⁰ See *Union Election Commission Myanmar, Strategic Plan 2014–2018*, p. 7. The UEC is one of a few election management bodies in the region that has adopted such a strategic plan.

at the respective level and six “trusted persons” (commonly referred to as volunteer members).²¹ The overwhelming majority of sub-commission members are serving or retired civil servants, contributing to a perception that sub-commissions lacked independence from primarily USDP-led local administrations. Though members are formally appointed by the UEC, many people, including sub-commission members, stated that as a practical matter, nominations come almost exclusively from local government officials.

While the UEC is a permanent body with its own staff, sub-commissions are functionally and operationally dependent on government structures, especially the General Administration Department (GAD), which is part of the military-led Ministry of Home Affairs.²² In all areas visited, sub-commission offices at the state/region and township levels were co-located with local administration offices. In several places, sub-commission members expressed dissatisfaction that they lacked independent material and expert resources. They were aware of the negative public perceptions to which their perceived dependence on the GAD contributed. The UEC’s strategic plan identifies strengthening the quality of sub-commission staff and the recruitment process as priorities. While the relationship between the sub-commissions and the GAD is consistent with current law, these factors were regularly cited by political party and civil society members as reasons for their lack of trust in the sub-commissions.

Ethnic and Gender Diversity. Women are under-represented among members of state and regional sub-commissions, with between one and three women members sitting on commissions in areas visited by The Carter Center. Representation of women at the township level is similarly poor, though there are positive exceptions (such as six women members in Zalun Township in Ayeyarwady; and five in Kyaukse in Mandalay, and in the Pa-O SAZ in Shan State). Given the underrepresentation of women in elections, politics, and governance, the UEC has started working on a number of initiatives to increase women’s participation. The UEC finalized a draft of its gender policy and circulated it on March 10 to 20 civil society organizations for comments.

Ethnic representation on sub-commissions varied more widely (from zero to six ethnic members in the townships visited), though ethnic groups were under-represented even in the states. The Mandalay and Ayeyarwady (which has a substantial Karen population) regional sub-commissions had no ethnic representation. The UEC has requested that the president appoint 8 additional UEC members before the election. These members will be based in the states and regions for which they are responsible, rather than in the capital. If drawn from the ethnic groups of the respective states as planned, this would result in a welcome diversification of membership.

Voter Education and Civil Society Outreach. There is a consensus among stakeholders met by The Carter Center that, given low levels of knowledge regarding elections, especially at the village level, substantial voter education efforts are needed. For instance, according to a recent survey, 44 percent of eligible voters believe that the president is directly elected, although this is not the case.²³ The ability of the UEC and sub-commissions to coordinate their voter education efforts with those of civil society will be crucial to the success of a voter outreach program.

²¹ Neither the election laws nor the UEC law make any reference to volunteer members on sub-commissions. In township visited by Carter Center field staff, most volunteer members were retired civil servants.

²² The Ministers of Border Affairs, Defense and Home Affairs are nominated by the Commander-in-Chief of the Defense Services from among defense services personnel. The GAD plays a wide range of roles, ranging from tax collection to land management to assorted registration and certification processes. Its main responsibility is the management of the country’s public administrative structures.

²³ *The Asia Foundation*, pp. 30.

At the national level, the UEC has conducted a series of public consultations with civil society and political parties on issues such as the voter list updating process and voter education. These consultations constitute an unprecedented confidence-building initiative, and though mistrust remains, this is a welcome effort to introduce a new level of transparency to formerly opaque institutions.

Currently, there appear to be few voter education activities underway at the sub-national level. For the most part, sub-commission members said that they are awaiting instructions from the UEC before they begin voter education. The sub-commission in Shan State indicated it would start voter education once the UEC has announced the election date, while the sub-commission in Kayin State stated that it would wait until the voter lists had been updated. In Mon, there appears to be more engagement among government, the sub-commission, and civil society, though no major initiatives are underway.

In most places, there was very limited engagement between commissions and civil society on any issue (with several exceptions at township level). Some civil society organizations felt they lacked information and guidance from the election administration, with a few saying that the UEC and sub-commissions were not cooperative. Sub-commissions often expressed an intention to engage more actively with civil society only after receiving further guidance from the UEC and after the finalization of accreditation procedures and the code of conduct.

Improving Electoral Integrity: Voter Eligibility, Registration, and Advance Voting

One legacy of the 2010 elections is a widespread suspicion that government, including electoral bodies, may manipulate the vote, or turn a blind eye to misconduct on the part of the larger parties (or in some cases, parties associated with armed groups). Many questions remain unanswered, particularly in relation to advance voting (including in military installations), voting for displaced persons, and voting by persons without valid forms of identification. Nevertheless, preparations for the 2015 elections are substantially different than for previous elections, and the UEC is in the process of developing policies that should address many of these concerns, including an ambitious initiative to improve the quality of voter lists.

Voter List Updating. Voter lists are prepared by township and ward/village tract sub-commissions, which must include eligible voters residing within their respective borders and remove those who are ineligible.²⁴ Any voter can request inclusion and can request that ineligible voters be removed from the list. Decisions of ward/village tract sub-commissions can be appealed to the respective township sub-commission, whose decision is final.²⁵

The voter lists that were used in previous elections were not computerized, and there is general agreement that they were of poor quality. In light of this and the limited time available to update the voter lists, the UEC launched a national voter list update program, with the support of the International Foundation for Electoral Systems (IFES). The program began in November 2014 in Yangon and has since been expanded to the Union Territory of Nay Pyi Taw, the regions of Mandalay, Ayeyarwady, Magway, Sagaing, and Bago, and to Shan and Chin states. As of late February 2015, the voter list update was in progress in 59 townships across eight states and regions, which corresponds to 36 percent of all townships in these areas and 17 percent of townships nationwide. A total of 3.1 million voters have been included in the database to date.

²⁴ The election laws do not provide any deadlines for updating the voter lists, leaving regulation to the UEC.

²⁵ Under the election laws, the UEC “has the power to call for the proceedings and documents of each Sub-commission relating to election matters *suo motu* as it deems fit, study and decide as may be necessary.”

The preliminary voter list update program is scheduled to finish in July, with preliminary voter list display phases foreseen between March and July for townships and village tracts/wards that have completed data entry. The new voter lists will be displayed again at the village tract/ward level during a nationwide display period in August, offering voters a final opportunity to check their records and request changes before the voter list is finalized.

Overall, the process of updating the voter list appeared to be proceeding professionally and according to schedule in the townships visited, with particular efficiency in southern Shan State and Mandalay Region. While delays were reported in some areas, they do not seem to be putting the overall timetable at risk. Electricity supply problems, which were reported to The Carter Center at multiple locations, have been dealt with efficiently by the UEC and sub-commissions, with generators supplied to affected townships.

The Carter Center was able to observe and/or gather basic information about the process in all six states and regions visited. With one exception (where a sub-commission informed The Center that lists could be viewed only at the end of the process), field staff were invited to observe without hindrance wherever the process was underway. Except for one township in Mandalay Region, civil society organizations did not appear to be playing a monitoring role, which was carried out exclusively by government and sub-commission staff.²⁶

Citizenship and Voter Eligibility. The election laws state that full citizens, associate citizens, naturalized citizens, and holders of temporary registration certificates (TRCs) are eligible to vote. However, there has been a heated debate about whether holders of TRCs (so-called “white-card holders”) should be excluded from electoral rights. The number of white card holders is not known, but estimates range from 600,000 people to over one million. The vast majority are people who self-identify as Rohingya, a mostly Muslim ethnic group concentrated in Rakhine State who are officially considered “Bengali.” However, considerable numbers from other ethnic groups also hold TRCs.

At state and regional levels, confusion surrounding the issue of TRCs was apparent in the lack of uniformity in the way sub-commissions visited by Carter Center field staff handled the inclusion of white-card holders during the voter list updating process. Most sub-commissions were maintaining white-card holders in the updated voter lists, while two township sub-commissions stated that they would not be included.

The ambiguity ended Feb. 11, 2015, when the president’s office announced that TRCs would expire at the end of March. TRC holders will now be required to hand them over to the authorities, where they will be “scrutinized in accordance with the laws, rules and regulations concerned.”²⁷ The Constitutional Tribunal subsequently ruled that only citizens are eligible to vote in the proposed constitutional referendum – a ruling that may also have consequences for the constitutionality of the election laws.

The Carter Center notes that TRC holders had the right to vote in the 2010 and 2012 elections. International human rights norms afford a high level of protection to fundamental rights, and the limitation or revocation of rights require due process and must not have a discriminatory effect. If the decision to set an expiration date for TRCs results in the cancellation of voting rights,

²⁶ The UEC has agreed that civil society organizations can observe the process of updating the voter lists and intends to issue them a letter of acknowledgment, as it did during the voter list update pilot project in 2014.

²⁷ See *The Global New Light of Myanmar*, February 12, 2015.

especially for a large number of people through an administrative procedure, this would run counter to a number of provisions of international human rights documents and good practice.²⁸ Moreover, it does not appear that those affected can seek an effective legal remedy against this decision (as required by Article 2.3 of the ICCPR). At this stage, it is unclear how the voting rights of white-card holders who applied for citizenship and are waiting for a decision on their eligibility for citizenship will be affected. TRC holders may find that they have no valid form of identification after March 31, 2015.

The TRC issue affects not only voting rights, but also the ability to be members of political parties. A September 2014 amendment to the Political Parties Registration Law changed the criteria for being a party member in a way that excludes white-card holders and associate citizens. Naturalized citizens, as well as TRC holders and associate citizens, were excluded from being founders of political parties. In addition, political parties were tasked with removing white-card holders from their membership or risk deregistration. Only 22 of 70 parties registered at the time had submitted updated membership lists to the UEC by the initial deadline of Dec. 31, 2014.

Displaced and Migrant Populations. There are certain other categories of voters whose ability to vote may be adversely affected by unclear procedures and/or lack of identity documents. They include internally displaced persons, returnees who had sought refuge abroad, as well as migrant workers (i.e. those who temporarily move to other parts of Myanmar in search of employment opportunities). Under the law, these voters are allowed to register up to 30 days before election day at their place of (temporary) residence if they have lived there for at least 180 days. With regard to IDPs and migrant workers, most sub-commissions indicated that they would apply this provision, although a few said they needed clarification from the UEC or appeared to be unsure about the procedure. It is not clear how IDPs and returnees who do not possess identity documents can be issued replacement documents.

Finally, it remains to be seen how sub-commissions will exchange information about voters who re-register at their temporary place of residence. This is relevant insofar as voters who register in a different place should be (temporarily) removed from the voter list in their original place of residence in order to avoid duplicate records and possible irregularities. Several political party stakeholders expressed concern that the number of eligible voters omitted from the voter list because of displacement or lack of identification may be so high that the situation cannot be remedied during the official scrutiny period. This problem seems particularly acute in areas of Kayin State, and in eastern Shan State, where many residents and displaced populations do not possess national registration cards. In eastern Kayin State, there is estimated to be more than 100,000 people living in camps near the Thai border in areas outside of government control. Sub-commissions and political party and civil society representatives in Kayin expressed doubt to Carter Center staff that this population would be able to vote, despite government efforts to issue national registration cards to the displaced population. It is currently unclear how these populations can be effectively included in the voter list updating process.

Advance Voting. The election laws entitle voters who are unable to come to their assigned polling station on election day to obtain an advance ballot. Such voters include those who cannot come to their polling station for health or mobility reasons, and those who are away from their place of residence, such as military servicemen, their families, students, and trainees who are

²⁸ See Articles 2 and 26 of the ICCPR; Article 8 of the Universal Declaration of Human Rights; U.N. Human Rights Committee CCPR General Comments 18, 25, 26, and 31, and the IPU declaration in criteria for free and fair elections.

outside their home constituency, and the overly broad “other voters including civil services personnel who are out of the relevant area on duty” (section 46).

Without clear rules in place for how advance voting will be conducted, political party and civil society representatives in all states and regions visited, as well as some sub-commission members, raised concerns about the transparency of advance voting. Party officials, and several candidates who ran in 2010 and 2012, attribute their losses to the manipulation of advance votes – particularly those of military personnel and their families – citing lack of transparency about who appears on advance voter lists, and a lack of access to the advance voting sites for observers and party agents. Constituencies with a large military presence may be particularly vulnerable (for instance, Kengtung Township in eastern Shan State hosts 30 military bases).

In the absence of instruction from the UEC, sub-commissions have varying interpretations of the rules surrounding advance voting, with many assuming that advance voting will be conducted as it was during past elections. In one township in Mandalay Region with a large number of military and police bases, The Carter Center was informed that the number of voters on advance voting lists would be supplied to party representatives but not be made public. One state sub-commission stated that the number and names of those voting in military installations could not be disclosed due to security reasons. One township sub-commission stated that there would be no voting in military and police facilities and that personnel serving there would be included in the regular voter list.

There was little clarity about whether and how international and national observers would be given access to the advance voting process (though in draft observer accreditation procedures, advance voting is specifically mentioned among those aspects of the election process that can be observed). In meetings with The Carter Center, the UEC has committed to issuing guidelines to ensure the transparency of advanced voting. Establishing these guidelines as soon as possible is important as a means to build confidence in the election process.

The Peace Process and the Feasibility of Elections in Contested Spaces

Despite uncertainties and confusion surrounding the ongoing nationwide ceasefire negotiations and their relationship to the election, most ethnic parties and armed group representatives expressed optimism that elections would take place. Some questions remain as to whether elections can take place in areas under the control of ethnic armed groups, or where conflict with the Myanmar Army is still taking place (such as in northern Shan State). The fact that fundamental constitutional and peace process-related questions have not been answered has also created ambivalence among some ethnic parties.

Overall, ethnic political parties in the states and regions visited expressed greater levels of trust in the political process than in 2010 and appeared enthusiastic about contesting elections and confident that they would perform well. In Kayah, Kayin, and Mon states, parties have established or are contemplating cross-party electoral alliances. At the same time, state and township level party representatives commonly voiced concern that electoral politics could undermine or displace ceasefire negotiations, which they identified as their top priority.

Most ethnic armed groups in states visited appear to have no intention of obstructing the elections, with some expressing willingness to facilitate the setting up and securing of polling stations. In the 2010 elections and 2012 by-elections, the UEC cancelled polling in a number of

constituencies.²⁹ Several party representatives raised objections to past decisions and expressed concern about possible cancellations in 2015, although they welcomed recent UEC outreach, such as Chair U Tin Aye's visit to Kayin State to meet with Karen leaders.

Representatives of armed groups in Kayah, Kayin, and Mon states expressed support for elections in the areas under their control or expressed commitment not to obstruct the process. Local representatives of the Democratic Karen Benevolent Army, Karen National Liberation Army, Karen National Liberation Army-Peace Council, Karenni National Progressive Party, and Kayan New Land Party, indicated that they would cooperate with the UEC and its sub-commissions and facilitate logistical support. The New Mon State Party was more muted in its support for elections but also expressed an intention to permit polling to take place. While security remains a concern in a limited number of village tracts in border townships (for instance, in Hpa-pun and Myawady townships in Kayin State, and border townships in southern and eastern Shan State), these issues are not likely to pose the same challenges as in the past.

The main exceptions to this pattern were the unequivocal statements of the Restoration Council of Shan State/Shan State Army-South that they would not permit polling to take place in the parts of Shan State under their control prior to the signing of a nationwide ceasefire agreement. A representative of the ethnic Kokang National Democratic Alliance Army also stated that elections would not take place in Mongla Special Region 4 in eastern Shan State (where elections also did not take place in 2010). There are reportedly no political parties present in the area and only a nominal government presence.

Though few questioned the likelihood of elections moving ahead, several parties and civil society representatives reported restrictions on their activities and harassment in areas with an ethnic armed group presence. For instance, parties reported needing to inform the Karenni National Progressive Party of their activities in advance (though they also noted that there are fewer restrictions than in 2010) and also reported restrictions and harassment within the Pa-O Self-Administered Zone and in Loilin District of southern Shan State. These allegations are concerning, particularly given the uncertainty surrounding who would provide security during the election in these areas.

The De-Stabilizing Effects of Communal Tensions

Communal tensions did not feature prominently in the states and regions visited by The Carter Center. Religious and government leaders, widely respected and very influential, were generally quick to distinguish the situation in their communities from that in Rakhine. Nonetheless, there was widespread acknowledgement that a further politicization of religion as the election approaches carried a risk of violence. Initiatives to preempt violence or address underlying tensions appeared to be few and far between, and none appeared to address possible election-related tensions specifically.

The overall appeal of extremist movements advocating religious discrimination or violence appears to be uneven and is difficult to assess. Although anti-Muslim views were heard in all of the states and regions visited, there seemed to be little overt support for discriminatory or violent action. Muslim communities were described as generally integrated into local communities.

²⁹ Section 399(e) of the constitution allows the UEC to “[postpone] elections of the constituencies where free and fair election cannot be held due to natural disaster or due to local security situation.” Section 50 of the election laws and section 8(f) of the UEC law contain similar provisions.

The clear outlier was Mandalay, where anti-Muslim rhetoric was more common and more likely to be intermixed with political speech than in the other states and regions visited. For instance, Carter Center staff was informed that in some townships, patronizing Muslim businesses was actively discouraged, and human rights defenders reported being defamed and intimidated, including on social media, for their perceived pro-Muslim sympathies.

Representatives of the Muslim community commonly expressed a sense of vulnerability, if not fear, and in two instances declined to speak with The Carter Center out of concern that it could lead to retaliatory action against them. Political party representatives – often, but not exclusively, from the NLD – commonly alleged that other parties, and in particular the USDP, had sought to portray them as pro-Muslim, and expressed concern that this could impact them negatively with the electorate. Election-related campaigning could exacerbate latent tensions.

The UEC expressed its concern to The Carter Center about the possibility of hate speech during the campaign and noted that it is working with political parties to develop a code of conduct that will regulate this issue, among others.

Interfaith Initiatives. Although uncommon, there are limited community-based efforts to preempt inter-communal violence and encourage interfaith dialogue. In some parts of Shan State, for example, “peace meetings” are convened bi-annually to promote inter-communal harmony, and several organizations described an interfaith forum that meets every few months. Another long-standing interfaith dialogue group also meets in Kayin State, though its effectiveness was called into question. In Mandalay Region, civil society-led peace committees were put into place after the violence in Meiktila in 2013.³⁰

Recommendations

Overcoming the electoral challenges facing Myanmar, in particular building confidence in the electoral process, will be a long-term endeavor. The government and the Union Election Commission have taken steps to open up the process, including through provision for national and international observation. To further develop the positive steps in this direction, and to promote respect for fundamental rights inherent in a democratic system, The Carter Center recommends the following:

The Union Election Commission

- There is a need for greater clarity and transparency to build confidence among stakeholders in the election process. The UEC could address this by finalizing remaining by-laws, directives, and working guidelines and publishing them in a timely manner. The UEC could also consider publishing an election calendar, which is standard practice in many countries.
- Regulations and procedures for advance voting and voting for displaced populations should allow full access to observers and party agents, including any advance voting conducted in military and police facilities.

³⁰ In March 2013, at least 44 people died in anti-Muslim violence in the town of Meiktila, Mandalay Region, following the killing of a Buddhist monk. See *The Dark Side of Transition: Violence Against Muslims in Myanmar*, International Crisis Group (1 October 2013).

- To ensure that the process is free from discrimination and that each individual is able to exercise the right to vote, the UEC should provide for maximum inclusivity in updating voter lists.
- The recently issued codes of conduct for observers, which the UEC developed with the participation of civil society organizations, are important transparency measures. The accreditation process should commence as soon as possible so that observers can work with the formal recognition of the UEC.
- The UEC should consider increasing the number of women and members of ethnic groups appointed as sub-commission members. This would better reflect the diversity of Myanmar and improve public confidence in the work of sub-commissions.
- The UEC should encourage increased engagement between election sub-commissions and political parties and civil society at the local level. This would build public knowledge about the electoral process and increase confidence in the work of sub-commissions.

The Government of Myanmar

- The freedoms of association, assembly, and expression are vital to a democratic election process and should be fully permitted by authorities at all levels. Requirements for the conduct of public meetings should be simplified so all political parties and candidates have sufficient and equal opportunity to communicate their views. Steps should be taken to ensure that civil society and journalists can work without fear of harassment, obstruction, or retaliation.
- To ensure respect for the fundamental right to vote, the government should ensure that temporary certificate holders who are currently on the voter lists are not disenfranchised by the recent decision to end the validity of these certificates. Administrative actions that could result in the loss of voting rights are a serious matter that should be subject to a fair, transparent, and non-discriminatory review process.
- Freedom of movement for national and international observers should be guaranteed, and security officials should not be permitted to interfere with their activities.

All Stakeholders

- Ethnic armed groups should publicly commit to not obstructing the work of political parties, civil society, observers, journalists, or election sub-commissions.
- Political actors should refrain from using hate speech or discriminatory language. In this respect, the current efforts by political parties to draft a code of conduct are a welcome development. The government should take steps to protect minority communities in areas where tensions are high. Interfaith dialogue should be actively supported.