

THE
CARTER CENTER



**ELECTION OBSERVATION MISSION
MYANMAR, GENERAL ELECTIONS, NOVEMBER, 2015**

PRELIMINARY STATEMENT

Nov. 10, Yangon

The Carter Center has had an office in Myanmar since 2013 and established an election observation mission in August 2015 at the invitation of the Union Election Commission. The Carter Center mission was led by Jason Carter, chairman of the board of trustees of The Carter Center; Mary Robinson, former president of Ireland; and Bhojraj Pokharel, former chairman of Nepal's election commission. Six long-term observers and four core team experts were deployed throughout the country in advance of election day to assess election preparations. On election day, a total of 62 observers visited 245 of polling stations in all states and regions to observe voting and counting. Together, mission members came from 25 countries throughout the world. The Carter Center continues to assess the conclusion of vote tabulation and will remain in Myanmar to observe the post-election environment. The Center assesses the electoral process based on Myanmar's legal framework and on international standards for democratic elections. The Center conducts its observation missions in accordance with the Declaration of Principles for International Election Observation, which was endorsed at the United Nations in 2005.

This statement is preliminary; a final report will be published four months after the end of the electoral process.

Executive Summary

The Carter Center congratulates the people of Myanmar, who have exercised their political rights with pride and enthusiasm. Both on election day and in the preceding months, they participated as voters, observers, political party agents, election officials, and civil society activists. Their empowerment and commitment to the democratic process was not only remarkable but crucial to counterbalancing the considerable structural impediments to fully democratic elections.

Overall, the elections were held in an orderly and peaceful manner. On election day, voters turned out in large numbers to cast their ballots, and thousands of civil society observers watched the process throughout the country. Carter Center observers visited 245 polling stations across the nation and found the polling and counting process to be generally well-conducted. While observers saw minor procedural problems, these appeared to be due to limited resources and the lack of experience of polling staff. In 95 percent of the polling stations visited, observers assessed the conduct of both voting and counting positively.

Many important steps have been taken since the 2010 general elections to open political space and to create an environment that the major political parties found as a minimally acceptable basis for participation. The Union Election Commission (UEC) significantly increased the transparency of the electoral process by providing international and domestic citizen observers with access to most aspects of the electoral process, although there were exceptions, particularly out-of-constituency advance voting. Voters had a wide choice of contesting political parties, and candidates and parties were able to communicate their messages freely in most parts of the country. As a result, the elections in most areas were competitive and meaningful. This is a positive advance for Myanmar and an important foundation for the future.

However, Myanmar's transition from authoritarian rule to democracy is incomplete. Additional democratic advances are required to be fully consistent with broadly recognized international standards for democratic elections and governance. The constitutional framework for elections is heavily flawed, limiting the fundamental democratic nature of the elected bodies and undermining public confidence in work of the election administration. Despite improvements over the past few years, there are still constraints on freedom of speech and assembly, including pressure on journalists and some limitations on peaceful protest. Importantly, the government has made progress in ending the armed conflicts that persist in several areas, but violence and its accompanying impact on human rights continue.

In addition, some of the people of Myanmar were excluded from the electoral process, in violation of their fundamental political rights. As many as one million temporary citizenship card-holders, mostly from the Rohingya minority but also from other ethnic minorities, lost their right to vote in the run-up to the elections. In addition to this disenfranchisement, hundreds of thousands of other people were not able to vote, including people in conflict areas, displaced persons, migrants, and clergy. Anti-Muslim discourse negatively affects political life and fundamental equality. These are all issues that civil society and the incoming authorities will need to address to realize Myanmar's aspirations for a fully democratic electoral process.

The conduct of out-of-constituency advance voting lacked transparency, as international and domestic observers were unable to observe these processes. Because of the lack of access, it is difficult to assess various allegations regarding problems with out-of-constituency advance voting. The Center continues to monitor the tabulation of results and has noted a lack of transparency in making preliminary results available at the constituency level. The Center encourages the UEC to publicize these results at constituency and polling station levels as soon as possible, a widely recognized international best practice to ensure transparency and reinforce public confidence.

Despite the flaws, Myanmar appears to be on a positive trajectory toward a peaceful, democratic transition as a result of these elections. To maintain this trajectory, it is important for all actors to engage in a dialogue and consensus-seeking process to identify constructive steps toward lasting peace and national reconciliation.

Additional key conclusions of the Carter Center observation mission include the following:

- **Constitution:** A number of provisions in the 2008 constitution are inconsistent with fundamental democratic standards: The military appoints 25 percent of the members of both houses of the union parliament, giving unelected military parliamentarians a large role in the election of the president and adoption of legislation, as well as veto power over constitutional reform. In addition, the military commander in chief names three ministers (defense, home affairs, and border affairs), who are unaccountable to the president and operate without any civilian oversight.

The dramatic variations in the size of constituencies results in severe distortions of equal suffrage and the equality of the vote across constituencies. In addition, the ability of citizens to stand for president is unduly limited by provisions that are widely seen as directed against the main opposition leader and prevent her from participating in the upcoming indirect presidential election.

- **Election laws:** Apart from constitutional constraints, the election laws generally provide for an acceptable electoral process when implemented reasonably, as they were in this election. However, the laws give the UEC overly broad authority to regulate the process. Political leaders, legislators, and election authorities – together with civil society – should consider reviewing these laws to ensure greater protection of fundamental democratic rights and freedoms. Ratification of core international human rights treaties would be an important step in this respect.
- **Election administration:** At this stage in the process, the UEC appears to have successfully organized a complex election process despite considerable challenges. Although the election administration lacks legal and structural independence, which has resulted in perceptions of bias, the UEC and its sub-commissions appear to have conducted their work in good faith, with only a few important exceptions. For future elections, the UEC could consider steps to increase the transparency of decision-making, strengthen safeguards for the conduct of advance voting, and enhance the transparency of the tabulation process and the handling of complaints.
- **Voter lists:** The accuracy of voter lists was a major issue of contention throughout the pre-election period. Political parties and civil society groups complained about inaccuracies on the preliminary lists that were posted for public review, while the UEC maintained that it was incumbent on citizens to submit requests for corrections, additions, and deletions to the lists. Center observers did not see significant numbers of voters being turned away from voting on election day, and the accuracy of the lists did not appear to be a significant problem. Nonetheless, the UEC should consider conducting an audit of the voter lists and reviewing procedures for amending the lists in advance of future elections to allay concerns.
- **Candidate registration:** Candidate registration resulted in a wide choice for voters. Nevertheless, arbitrary and discriminatory practices during the scrutiny process led to the disqualification of most Muslim candidates, including two incumbents elected in 2010.

- **Campaign:** Observers found that the electoral campaign was initially subdued, although it became more vibrant as election day approached. The main opposition party held large and open rallies throughout the country, as, to a lesser extent, did the ruling party. Despite the overly restrictive campaign regulations, the election administration applied the rules in a reasonable manner, facilitating the ability of parties and candidates to campaign. However, political space was uneven. In a few constituencies, not all candidates could campaign on an equal basis, and at least two people were arrested for posting satirical material on social media.

The campaign was negatively affected by anti-Muslim discourse. Recent adoption of four “protection of race and religion” laws was a common theme of the ruling party, high-ranking authorities, and a nationalist religious group. The opposition filed complaints with the UEC regarding the misuse of religion in the campaign, but these were not addressed.

- **Out-of-constituency advance voting:** The Center regrets that the casting of ballots by military, other security forces, and civil servants during out-of-constituency advance voting could not be observed. The lack of access to and opacity of this aspect of the balloting process is of particular concern, especially given the apparently large number of out-of-constituency votes in some areas. In order to strengthen confidence in this aspect of the election process, future elections should ensure that parties and observers have full access to all aspects of advance voting.
- **Participation of women:** The number of female candidates was low. Only 800 of 6,039 candidates were women. While the UEC itself has only one female member, and sub-commissions have relatively few female members, at the polling station level the election was largely administered by women. At polling stations visited, women constituted 75 percent of polling staff. Throughout election day, these women demonstrated their commitment to successful implementation of the voting and counting process.
- **Election observation:** Although it was not required by law, the decision of the UEC to invite and accredit international and domestic observers and to provide broad access to the electoral process is a remarkable and positive change, and a bellwether of Myanmar’s commitment to democratic reform. It is also a vital transparency measure that plays a critical role in improving public confidence in the process.

Carter Center observers were on the ground for almost a year before the elections and assessed pre-election conditions and preparations in all states and regions. On election day, Carter Center observers had broad access to all parts of the process, with only a few minor exceptions. Party agents were present in almost all polling stations visited, and domestic observers were present in 30 percent. While it did not impede our work, the obvious surveillance of observers by security forces on election day was unfortunate, and suggests some uncertainty about the commitment to fully transparent processes.

Post-election Observation: While the Center’s observation reports on election day voting and counting processes are broadly positive, it is important to note that several key phases of the electoral process are still to be completed, including tabulation of results in some constituencies, the verification and publication of final official results, and the resolution of any electoral

complaints that are filed. The Center’s mission is ongoing, and observers will continue to assess these processes, with additional reports to be issued about these stages in the days to come.

Statement of Preliminary Findings and Conclusions

BACKGROUND

The Nov. 8 general elections took place in the context of an ongoing process of reform. Since 2010, Myanmar has taken steps to open political space and has increased integration into world affairs. The reform process is constrained by constitutional provisions that give the military control over important civilian institutions and reserve 25 percent of seats in the parliament for unelected military representatives. Respect for fundamental rights, such as freedom of expression and assembly, remains uneven.

Preparations for elections to the national, state, and regional legislatures have been ongoing for well over one year. On July 8, 2015, Myanmar’s Union Election Commission set the date of the elections for Nov. 8. In total, 91 political parties had candidates competing in the elections, including the largest opposition party, the National League for Democracy (NLD), and the ruling Union Solidarity and Development Party (USDP).

Following visits by former U.S. President Jimmy Carter in April and September 2013, the government of Myanmar invited The Carter Center to establish a presence to prepare for the deployment of an election observation mission. From December 2014, the Center deployed long-term observer teams that visited all states and regions in Myanmar to gather information on the pre-election environment and the transition process. On Aug. 1, 2015, the Center officially began its election observation mission at the invitation of the UEC.¹ The Center has published four reports on its observation work.²

The Carter Center assesses elections against international standards for democratic elections, including the International Covenant on Civil and Political Rights (ICCPR). While Myanmar is not yet a party to the ICCPR, in view of the stated intention of the country’s authorities to conduct elections in line with international standards, and given that the fundamental human rights in the ICCPR are generally considered a part of customary international law, the Center’s assessment of the electoral process is based in part on those obligations. The assessment also refers to a number of other standards and guidelines for democratic elections.

ELECTORAL SYSTEM AND LEGAL FRAMEWORK

In the Nov. 8 general elections, voters elected members of the two houses of the Union Parliament and the assemblies of Myanmar’s 14 states and regions. The parliament and the state and regional assemblies are elected from single-member constituencies under a first-past-the-post system, with the candidate receiving the highest number of votes elected. In the upper

¹ On March 30, 2015, the UEC invited The Carter Center to observe the 2015 general elections.

² <http://electionstandards.cartercenter.org/latest-news-from-our-election-observation-mission-in-myanmar/>

chamber of the Union Parliament, each state and region is represented by 12 members.³ For the lower chamber of the Union Parliament and for state and regional assemblies, constituencies are based on administrative boundaries of townships.⁴ While this creates a direct link between constituencies and parliamentary representatives, the number of voters varies widely among townships.⁵ Constituency sizes range from 1,408 voters to 521,976 voters. The system therefore does not ensure the equality of the vote, an essential element of genuine democratic elections.⁶

General elections in Myanmar are governed primarily by the constitution (adopted in 2008), a set of three election laws,⁷ the Law on the Union Election Commission, and the Political Parties Registration Law, all of which were adopted in 2010. These are supplemented by by-laws, rules, and regulations issued by the UEC. The legal framework contains gaps, in some instances lacks clarity, and gives overly broad rule-making authority to the UEC.

Significant legal reform is necessary to provide an adequate basis for conducting fully democratic elections. There are a number of constitutional provisions which structurally impact the democratic character of the electoral and political process. In addition to the delimitation of constituencies, these provisions include military appointments to the legislature, voter and candidate eligibility, the authority and independence of election management bodies, and restrictions on eligibility for the presidency.

The commander-in-chief of the Defense Services appoints one-quarter of the members of each legislative chamber. This provision conflicts with fundamental international democratic standards and principles.⁸ The commander in chief names three ministers (defense, home affairs, and border affairs), putting these ministries outside of civilian oversight. This is important for the administration of elections, as sub-commissions are heavily reliant on the General Administration Department of the home affairs ministry.

The newly formed legislature will indirectly elect the president. Despite calls for a constitutional amendment prior to the election, the prohibition of anyone with a parent, spouse or child with

³ Constituencies for elections to the upper house are drawn by combining or dividing townships. Under Section 141(a) of the constitution, each Self-Administered Zone or Self-Administered District corresponds to one constituency for elections to the upper house, thus guaranteeing that these units are represented.

⁴ 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 percent of the national population.

⁵ According to the UEC, the lower house constituencies (townships) with the highest number of voters are Hlaing (521,976), Bago (339,710), Hpa-An (304,727). The constituencies with lowest number of voters are Injyang (1,408), Ko Koe Kyun (1,570), Soon Pra Boon (2,029).

⁶ The U.N. Human Rights Committee General Comment 25, para. 21, provides that “the vote of one elector should be equal to the vote of another.” The Venice Commission’s Code of Good Practice in Electoral Matters, 2.2.1, provides for equal voting power and states with regard to the number of voters or residents per constituency, “The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).”

⁷ The Amyotha Hluttaw (Upper House) Election Law, Pyithu Hluttaw (Lower House) Election Law, and the Region and State Hluttaw Election Law. Apart from provisions on candidate registration, the three laws are identical.

⁸ See the ICCPR, Art. 25, and the accompanying General Comment 25, para. 7, which states “Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.” See also the Venice Commission’s Code of Good Practice, pt. I.5.

foreign citizenship from holding the post has not changed.⁹ This provision, which is widely perceived as having been enacted to prevent the candidacy of opposition leader Aung San Suu Kyi (whose sons are British citizens), is an unreasonable restriction on the right to be elected.¹⁰

The electoral legal framework also does not provide sufficient guarantees for important steps of the electoral process, giving overly broad authority to the UEC to regulate aspects of the process that significantly impact an individual's right to vote and be elected. These include the timeframe for voter and candidate registration, the formation of election sub-commissions, campaign rules, access of election observers, transparency of ballot printing, advance voting, and procedures for tabulating results. The election laws do not establish clear procedures for resolution of electoral disputes.

Local elections planned for 2016 provide an opportunity for the further empowerment of the people at Myanmar to review and amend election laws and other legislation affecting this fundamental level of governance.

ELECTION ADMINISTRATION

The UEC is a permanent body currently composed of 15 members, all directly appointed by the president. It enjoys broad authority in performing its mandate. However, its decisions are not subject to parliamentary or judicial supervision or appeal.¹¹ Carter Center observers found that the current appointment system and the dependence of the election administration on executive structures (the General Administration Department at the sub-national level) contributed to a lack of trust in the process. In accordance with international standards, election management bodies should be independent and impartial.¹²

Sub-commissions at the region/state, district and township levels generally are composed of 15 members, nine from government departments at the respective level and six “trusted persons” (commonly referred to as volunteer members).¹³ Though members are formally appointed by the UEC as a practical matter, nominations come more or less exclusively from local government officials. While commissions generally exhibited a commitment to conducting their activities efficiently and impartially, they suffered from a lack of credibility with local election stakeholders, including political parties, civil society, and the media.

The law gives the UEC the power to regulate the electoral process and take decisions on the implementation of legislation, but it does not stipulate how decisions should be taken within the commission. 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. In practice,

⁹ Article 59(f) of the 2008 Constitution.

¹⁰ 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 ...”

¹¹ 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.

¹² General Comment 25, para. 20, specifies that “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.”

¹³ Neither the election laws nor the UEC law make any reference to volunteer members on sub-commissions. In townships visited by Carter Center field staff, most volunteer members were retired civil servants.

the lack of transparency of decision-making process contributed to increased suspicion among the general public and political parties and did not help raise voter awareness.

At the same time, the UEC took a consultative approach on a number of important issues in an effort to improve confidence in the election. This included working with international election assistance providers, such as IFES, as well as working with civil society and political parties on election observation, voter education, and campaign regulation.

VOTER ELIGIBILITY AND REGISTRATION

Under the constitution, citizens who are at least 18 years old are eligible to vote. Certain groups of citizens do not have the right to vote, including members of religious orders,¹⁴ those serving prison sentences, those declared to be “of unsound mind” by a competent court, those who have not been cleared from bankruptcy, and those who have assumed foreign citizenship. These additional restrictions on eligibility should be reconsidered as they appear to challenge the principle of universal and equal suffrage “without unreasonable restrictions,” as enshrined in Article 25 of the ICCPR.¹⁵

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. 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.¹⁶ The effects of the decision also appeared to be discriminatory. Though not the only group of former TRC holders, the cancellation had the largest impact upon the Rohingya populations in Buthidaung, Maungdaw, and Sittwe townships of Rakhine state, most of whom are already marginalized from the political process and living in conditions that prevent them from exercising most civil and political rights, including basic freedom of movement.¹⁷

Voter lists were prepared by township and ward/village tract sub-commissions, which must include eligible citizens residing within their respective borders on the basis of government-issued household lists and immigration log books. These log books were often not accurate. The voter lists that were used in previous elections were not computerized, so for this election the UEC launched a national voter list update program, with the support of International Foundation for Electoral Systems (IFES). Positively, the UEC took the initiative to display the voter lists

¹⁴ This specific provision is estimated to affect some 450,000 people. It 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.

¹⁵ General Comment 25, para. 10, further states: “The right to vote [...] may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote.”

¹⁶ 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.

¹⁷ Article 26 of the 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.”

twice prior to the legally required display of preliminary lists, giving voters the opportunity to make corrections, object to the inclusion of names, and request to be included in the lists.¹⁸

Despite substantial efforts, the compiling and updating of the voter list was a subject of public criticism throughout the process, though most of the specific allegations about errors remained unsubstantiated. Many of the allegations were the result of the public not understanding voter list procedures and the UEC not explaining the efforts they took to address problems. The NLD, which repeatedly criticized the lists in the media, informed the Center of three official complaints filed with the election commission.

The UEC acknowledged technical and human errors in the preparation of the lists, but claimed to have promptly addressed these issues. A number of sub-commissions decided to stop using the official software in favor of *ad hoc* measures, which did not have the same safeguards.¹⁹ In a positive contrast to the lack of public communication regarding errors in the voter list, the UEC publicly and thoroughly explained how they addressed the problems with out-of-country voting.²⁰

The Center observed all stages of the voter list display and found there was a widespread perception that errors were the result of attempts at manipulation. The current system does not require the election commission or government institutions to identify and correct inaccuracies. This placed a substantial burden on individual citizens, who had to take the initiative to make corrections and provide supporting documentation.

Internally displaced persons and migrants had to prove residence in their current location for 180 days to transfer their voting location; the residence is certified by the migrant's employer or the local GAD office. Where they did vote, they may have been vulnerable to intimidation or undue influence by employers or local political actors. In a few areas, unusually large amounts of requests to transfer were processed, including Hpakan in Kachin state where there are large numbers of Rakhine migrants working in jade mines, an at-risk population.

In part because of the concerns that some people lacked government-issued identity documents, especially people displaced by flooding during the summer, the UEC issued voter slips in the week before election day. The slips assured voters that they were on the voter lists, facilitated the location of their names on the lists, and served as identification on election day.

VOTER EDUCATION

The UEC conducted a series of public consultations with civil society and political parties on issues such as the voter list updating process and voter education initiatives. These consultations built confidence and contributed to a new level of transparency. However, this engagement was not consistently replicated at the state and regional level, or below. Despite UEC voter education and public outreach initiatives, the general public lacked understanding of important elements of

¹⁸ The preliminary voter list display and other election preparations in almost all states and regions were significantly affected by severe flooding in almost all states and regions from the end of July into September.

¹⁹ According to the UEC, sub-commissions in 34 townships in Ayeyarwaddy, Mandalay, Rakhine and Yangon regions stopped using the official database software to maintain the lists (31 fully and 3 partially) and resorted to other measures (Excel files) without the ability to track when and by whom changes and corrections are made.

²⁰ The Carter Center did not observe the out-of-country voting process.

the voting process. Civil society played a large role in educating the general public. Voter education initiatives were sometimes delayed by the lack of information from the UEC about key aspects of the electoral process.

CANDIDATE ELIGIBILITY AND REGISTRATION

The right to stand for election is limited to citizens who meet the minimum age requirements, have resided in Myanmar for the 10 consecutive years prior to nomination, and are citizens whose parents were also citizens at the time of his/her birth. These eligibility requirements are restrictive and not consistent with international standards and good practice.²¹ Blanket candidacy restrictions based on naturalized citizenship are generally considered unreasonable.

Election sub-commissions received 6,189 candidate nominations representing 93 political parties and 313 independent candidates.²² District election sub-commissions subsequently “scrutinized” nominees to ensure that they met the legal requirements for candidate eligibility. In total, 99 nominations were rejected – most for failure to meet the citizenship, age, and residency requirements.²³ Although the number of disqualified candidates was relatively small, the scrutiny of eligibility was an arbitrary process that lacked procedural guarantees to equal treatment.

This was particularly evident in relation to the determination of candidate citizenship, as inconsistent procedures were applied regarding scrutiny of the citizenship of candidates’ parents. Further, the pattern of disqualifications by district-level sub-commissions indicates that citizenship requirements were more strictly enforced against certain ethnic and religious populations.²⁴ Of the 61 disqualifications on citizenship grounds, a majority were candidates from Muslim or ethnic parties, or were independent candidates of south or east Asian descent.²⁵

Sixty-seven of the disqualified candidates chose to appeal the decision and 13 were subsequently reinstated.²⁶ Although the UEC held public hearings for the appeals of three ethnic minister candidates, sub-commissions failed to ensure the right to due process. Candidates were generally not given the opportunity to be present and state their case, and the appeals process lacked uniformity, with sub-commissions taking different approaches, including a cursory paper review without notifying the candidate.²⁷ This is inconsistent with international standards, which state

²¹ Para. 15 of General Comment 25 to Article 25 of the ICCPR states, “Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” The Venice Commission’s Code of Good Practice in Electoral Matters pt. 1.1.c.iv recommends that where residency requirements for voting or candidacy exist, “the requisite period of residence should not exceed six months.”

²² These figures include candidates for both houses of the union parliament, as well as state and regional assemblies.

²³ According to the UEC, 61 nominations were rejected for citizenship-related reasons, 12 for failing to meet the age requirements, and eight for failure to meet residency requirements. Other reasons included inaccurate or duplicate party affiliation, failure to show proof of retirement from a civil service position, and providing false information.

²⁴ Multiple sub-commissions acknowledged that not all candidates were equally scrutinized on citizenship grounds and that they sought to identify individuals for scrutiny based on indications of foreign ancestry in application documents, or at times, physical appearance alone.

²⁵ Five of the six political parties fielding mostly Muslim candidates, including those representing Rohingya and Kaman, lost more than half of their candidates, and at least two Muslim independent candidates were disqualified.

²⁶ This included 10 disqualifications overturned on appeal to state/regional sub-commissions, and three candidates for ethnic minister whose disqualifications were reviewed by the UEC.

²⁷ Paper reviews were conducted in Yangon and Rakhine where more than two-thirds of disqualifications occurred.

that individuals are entitled to have decisions affecting fundamental rights taken by a competent, independent, and impartial tribunal in a fair and public hearing.²⁸

Commendably, the UEC intervened and reviewed decisions on 18 disqualified candidates.²⁹ The review resulted in an additional 11 candidates being reinstated, including some from minority groups. However, not all such cases were reviewed, and no explanation was provided for why other cases were not reviewed or what the determining factors were in the decision to reinstate or not reinstate candidates. Almost all Muslim candidates in Rakhine state remained disqualified.

POLITICAL SPACE AND THE CAMPAIGN

The openness of political space has improved considerably in a short time, but still remains uneven. On occasion, fundamental freedoms of association and assembly continue to be limited. There are currently over 90 prisoners of conscience incarcerated and claims of over 400 people currently awaiting trial for political actions, including activists arrested in the election period.

Civil society is functioning in a notably more open environment and reported few restrictions on their activities. Since December 2014, The Carter Center has observed several sizable public protests addressing issues such as ethnic rights and land seizures, indicating increased political space. One notable departure is that the rights of students to organize and demonstrate are severely restricted. Arrests of student protesters continued in the election period.

Political parties also reported a freer environment than in 2010 or 2012. Generally, political parties and candidates were able to conduct their campaign activities freely, despite overly restrictive requirements for candidates to seek pre-approval for public gatherings.³⁰ Concerns about the burdensome requirements governing the submission of campaign plans were addressed in part by the UEC, which clarified that candidates could begin campaign activities while approvals were still pending, and by sub-commissions taking a lenient approach to enforcing the requirements.

Campaign finance regulations set limits to campaign spending and sources of funding and have severe penalties for failing to submit finance reports. However, there is no mechanism for monitoring fundraising or campaign expenditures, limiting the effectiveness of the regulations. Smaller parties complained that the lack of a clear distinction between party and candidate spending unfairly advantages larger parties.

While the campaign was relatively subdued at the beginning, political parties became notably more active in the final two weeks before the election. The Carter Center observed a wide range of political parties and candidates campaigning across the states and regions, with active campaigning by the NLD and the USDP in all areas visited and by ethnic parties and candidates in the ethnic states. The NLD held large rallies throughout the country, including a rally attracting some 100,000 people in Yangon; USDP also held some large rallies. However, small

²⁸ Universal Declaration of Human Rights (Article 10) states, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights....” see also the ICCPR Article 14.1 and General Comment 32 notes that a tribunal must be independent of the executive branch (para 18).

²⁹ Under Article 53 of the election laws, the UEC has the authority to review decisions of the sub-commissions.

³⁰ UEC Directive 1/2014. A notable exception was the rejection of NLD’s request to hold a campaign rally in a central park in Yangon.

rallies, meetings, door-to-door canvassing, and distribution of pamphlets appeared to be the primary means through which candidates reached voters.

For the first time, political parties came together to agree on a code of conduct for the campaign. Of the 91 registered political parties, 88 signed the code. The signatories agreed, among other things, to abstain from using religious and racially discriminatory messages in their campaigns, using state resources, and threatening or coercing voters. The related monitoring committee met to discuss violations and issued two statements.

The use of religious rhetoric and the absence of efforts from authorities to reach Muslim communities further isolated this religious minority and limited their participation in political life. In all states and regions visited, observers heard concerns from parties and community members about the potentially disruptive use of nationalist and religious rhetoric during campaigning.³¹ Particular concern was expressed about activities of the Committee to Protect Race and Religion (*Ma Ba Tha*) in celebration of the passage of the so-called “protection of race and religion” laws. At least seven official complaints were filed alleging the misuse of religion during the campaign, including dissemination of *Ma Ba Tha* materials targeting particular candidates. Parties have not received an official response to these complaints.

Although campaigning was mostly unrestricted, political space was more limited in certain areas under ethnic armed group control. In Kachin, Kayin and Shan states, armed groups threatened to restrict political parties from campaigning, or stated that they could not guarantee the security of candidates. In the Pa-O and Palaung Self-Administered Zones in southern Shan state, both NLD and USDP complained that they could not effectively campaign. In northern Shan state, the presence of both anti-government armed groups and pro-government militia seriously restricted the ability of national parties to campaign effectively, particularly in rural areas. In several areas of the country, political parties reported that Special Branch police closely monitor their activities, and the Center observed plain-clothes security forces at multiple campaign events.

Campaigning began peacefully, but there was a gradual increase in incidents as election day neared. During the campaign, police received reports of over 100 incidents, including more than 15 cases where party supporters were physically attacked or threatened. NLD supporters were the most frequent targets of attacks, including incidents that interrupted campaign events and a violent attack on an NLD candidate. The NLD informed the Center of five cases in which their supporters were physically attacked or threatened, including one incident in Kachin state that resulted in the interruption of a campaign event.

The UEC has not disclosed the number and nature of complaints filed at the union level or provided observers with information on the number of complaints received by sub-commissions nationwide. The Center learned of at least 47 official complaints filed with election commissions in the pre-election day period.³² This included one complaint from NLD on the president's involvement in the campaign. To resolve conflicts the UEC established mediation committees

³¹ 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.

³² The complaints, mainly submitted by the USDP and NLD, claim the destruction of campaign materials, obstruction of campaign activities, the use of false information, and other campaign violations.

with representatives of political parties. These committees were effective in resolving some disputes and resulted in the withdrawal of multiple criminal complaints.³³

FREEDOM OF EXPRESSION AND THE MEDIA ENVIRONMENT

While space for political reporting has opened up since 2010, The Carter Center noted a number of limitations on the freedom of expression in the pre-election period. This included arrests of journalists, the filing of criminal defamation cases, and a tightening of media access to information.³⁴ 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. Self-censorship is widespread and more common than overt threats.

Other restrictions on the freedom of expression were also noted during the campaign period. For instance, two activists were arrested in mid-October for making satirical posts about the military on social media. Both remain in jail awaiting trial on criminal charges.³⁵

Each political party was given the opportunity to present its platform in an address to the public on public television.³⁶ However, the content of the speeches had to be approved in advance by the UEC in cooperation with the Ministry of Information, and candidates were restricted from defaming the military or encouraging “protest against the government.”³⁷ Limitations on the content of speeches, together with the requirement to have them approved in advance, constitute a serious restriction on freedom of expression.³⁸

There were no specific provisions governing the conduct of the media during the election. The Myanmar Press Council developed guidelines that called on media not to allow their coverage to be dominated by one party.³⁹ Media monitors found that media continued to exhibit their political biases and did not provide voters balanced coverage of the campaign. While in general the environment does not guarantee freedom of expression and access to information in Myanmar, in the context of the election media were able to report critically on the process and had unhindered access to the election commissions at all levels.

³³ For example, in Kachin agreements were reached to allow candidates to access an armed group dominated area. Disputes were effectively resolved in Rakhine state between the Arakan National Party and USDP, in Ayeyarwaddy between NLD and a sub-commission member, and in Shan state between two Shan ethnic parties.

³⁴ 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.”

³⁵ Human Rights Watch, *Burma: Activists Charged for Mocking Military Online* (Oct. 17, 2015). Article 19 of the ICCPR protects freedom of speech. General Comment 34 defines the limits of grounds for restriction, specifically prohibiting restrictions on “criticism of institutions, such as the army or the administration”.

³⁶ There is no provision for free airtime for independent candidates.

³⁷ UEC Announcement No. 52/2015, dated Aug. 27, 2015.

³⁸ Article 19 of the ICCPR and General Comment 37 state that any restriction to the right to freedom of expression shall be narrowly defined and for the sole purpose of respecting of the rights or reputations of others or protecting national security or public order, or public health or morals. General Comment 37 states, “A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”

³⁹ Myanmar Press Council (Interim), “Election Guidelines for Media during Election.”

SECURITY

Though communal tensions did not feature prominently in the pre-election period, anti-Muslim rhetoric was common, and leaders of minority religious communities expressed fear that the communal tensions could increase in the post-election period and give rise to conflict. In northern Rakhine state, unannounced household searches by police in Muslim communities exacerbated an already tense environment.

The National Ceasefire Agreement was signed on Oct. 15 by eight of the ethnic armed groups active in the country as part of the effort to bring an end to ongoing armed conflict. In some areas, however, armed conflict restricted or prevented opportunities for participation in the elections. The UEC announced that elections would not be held in over 400 village tracts in Bago region and Kachin, Kayin, Mon, and Shan states because of security concerns.⁴⁰ A subsequent cancellation of elections in two townships in Shan state impacted over 100,000 voters. Although there are legitimate security issues in these areas, the lack of consultations on the issue and the use of vague criteria in making the determination raised suspicions in some of the affected areas and in the national media. As a result of the cancellations, seven lower house seats in the union parliament and 14 Shan state assembly seats will remain vacant.

PARTICIPATION OF WOMEN

Women's overall participation in the election process has scope for improvement. Only 800 of 6,039 candidates were women (13 percent), although the head of the largest opposition party, Aung San Suu Kyi, is a woman. Women were actively involved in campaigning for parties and candidates. They also participated in large numbers as party agents and civil society observers.

Women are under-represented in election administration bodies. UEC itself has only one female member, and state and regional sub-commissions have between one and three women members each. With a few exceptions, representation of women at the township level is similarly low. At the polling station level, the election was largely administered by women. In 75 percent of the polling stations visited, Center observers found predominately female staff, who demonstrated their commitment to successful implementation of election day.

ELECTION OBSERVATION

The UEC made a commendable and genuine effort to open the election process to observation. The UEC's public invitation to international observers constituted an important step toward fulfilling the government's commitment to ensure a transparent election process. This was a notable departure from previous elections where international observers were not invited and access for domestic observers was severely limited. In consultation with civil society and international organizations, the UEC created a framework that facilitated the observation of most of the process, although the out-of-constituency advance voting process for military voters was a notable exception. Carter Center observers enjoyed nearly unrestricted freedom of movement and access; however, there was a noticeable increase in surveillance shortly before election day.

⁴⁰ UEC announcement 61-65/2015 of 13 October 2015: 212 village-tracts in Kachin State, 94 village-tracts in Kayin State, 41 village-tracts in Bago Region, 1 village-tract in Mon State, and 56 village-tracts in Shan State.

The UEC accredited 31 civil society organizations that collectively planned deployment of nearly 12,000 observers, a significant number for a country where there was virtually no prior experience in observation activities. In an inclusive process, accreditation was granted to all domestic organizations that applied and the UEC only rejected two individual observers for not being citizens.

For the most part, Carter Center observers were welcomed by election bodies, party representatives, civil society, and community leaders. Although police surveillance rarely impeded the Center's work, Special Branch police contacted interlocutors after observer visits, and on several occasions, intervened to seek information directly from staff, or insisted on attending meetings. Monitoring by police or military intelligence was particularly acute in Bago, Magway, and Tanintharyi regions, surprisingly more so than in areas identified as conflict-prone.

ELECTORAL DISPUTE RESOLUTION

The legal framework for the resolution of election disputes does not guarantee complainants an effective and timely remedy for violations of their rights. The UEC worked to address this by educating political parties about the mechanisms for raising disputes and introducing conflict mitigation bodies (mediation committees).

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. The UEC did not disclose the number and nature of complaints filed at the union level or the efforts taken to address them. The UEC also did not provide observers with information on the number of complaints received by sub-commissions nationwide; this decreased the transparency of the process.

For post-election disputes, which in previous elections has been the means by which political parties raise violations noted throughout the process, election tribunals will be established by the UEC to hear challenges. The process is protracted because complainants have 45 days following the announcement of the results to file a complaint, and there is no timeline for the review. It costs 500,000 Kyat (about US \$500) to file a complaint. 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. This is not in accordance with international standards guaranteeing the right to an effective remedy.⁴¹

⁴¹ 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."

ADVANCE VOTING

The election laws allow voters who are unable to come to their assigned polling station on election day to obtain an advance ballot. There are two forms of advance voting: 1) *within constituency* voting for homebound voters, those in hospitals and detention centers, and those traveling on election day, and 2) *out-of-constituency* voting for military servicemen, police, trainees, students, and citizens living abroad who will be outside their home constituency on election day. Advance voting is also permitted for the broad category, “other voters including civil services personnel who are out of the relevant area on duty” (Article 46).

The out-of-constituency advance voting process for military personnel lacked transparency. The UEC did not make publicly available information about the number of requests, the locations of voting, or the schedule for polling. Despite multiple requests, The Carter Center and other international observers, as well as domestic observers and party agents, were not permitted to observe the casting of ballots during out-of-constituency advance voting and assess the degree to which ballots were cast in secret, by the actual voter, without intimidation. This is particularly unfortunate, as manipulation of the advance vote – particularly the votes of military personnel – is commonly perceived as a main venue for fraud in the 2010 election.

Observers and candidate agents were given the opportunity to observe the advance voting that took place within the constituency starting on Oct. 29. Where observed by the Carter Center, the administration of within-constituency advance voting did not consistently adhere to procedures. Voter lists were not always checked, ballots were not properly signed, and secrecy was not always ensured.⁴²

The counting of advance ballots was conducted transparently. However, at no point were candidate agents or observers given access to review advance voting requests or information on the number and source of requests. This led to allegations of abuse of the process, particularly in Shan, Kachin, and Kayah, where problems resulted in three complaints from candidate agents.

VOTING

The Carter Center observed that the campaign silence day was respected across the country and noted that campaign materials had been taken down as required. However, throughout the day on Nov. 7, state media continued to air “get out the vote” advertisements that prominently featured the president, and called voters to vote for stability.

On election day, polls opened on time, and Center observers noted a high level of enthusiasm and long lines at polling stations. While voters waited up to three hours for the chance to vote in some places, few polling stations were observed to have ineffective queue management or significant disorder.

Almost all of the 245 polling stations visited by Center observers were assessed positively (95 percent). Opening procedures were conducted transparently, and all but one polling station

⁴² In one township in Bago region, 129 cast ballots were cancelled because it was discovered that people ineligible to vote in advance had voted.

observed opened on time. Overall, voters were able to cast their ballots in secret, although in almost 10 percent of visits, the secrecy of the vote was compromised by overcrowding, poor polling station layouts and incidents of multiple family members voting at the same time. Civil society observers were present in almost a third of polling stations visited. Party agents were present in 97 percent of polling stations visited – in 75 percent there were party agents from both USDP and NLD.

For the first time, voters in Myanmar had their fingers linked after voting, an important safeguard against multiple voting. Observers found that the ink was consistently applied but in only half of the polling stations visited were the officials consistently checking voters' hands to see if they had already voted. Voters frequently presented voter slips as the sole means of identification. Although the slips lacked security features, in conjunction with the inking of voters' fingers, the introduction of the slips was a reasonable temporary solution to voter identification concerns. Not all polling station staff understood that these documents were not mandatory, as observers saw voters being turned away for not having a slip in 13 stations.

Significant efforts were made to improve access for persons with disabilities and to raise awareness of the necessity to facilitate their full participation in the process. The Myanmar Independent Living Initiative worked with the UEC to introduce requirements at the polling station for voters with physical disabilities. Center observers found over 60 percent of stations visited to be accessible.

The environment for polling was conducive to voters exercising their right to vote. The auxiliary police recruited to provide security did not interfere in the process, with two exceptions where the Center observed them intimidating voters. Relatively isolated irregularities were observed at 40 polling stations. The majority were instances of family voting or unlawful assistance to voters, although there were observations of voters in possession of multiple voter slips. The UEC announced that nationwide there were 48 violations on election day, including impersonation and intimidation of voters.

COUNTING

The existing legal framework does not sufficiently regulate the procedures for counting and tabulation. In practice, the Center observed a number of cases where the lack of clear procedures led to disorder during the counting process. Still, Center observers found that these problems did not significantly affect the integrity of the process and assessed the counting positively in almost all polling stations observed. One notable issue was the invalidation of ballots, as stringent instructions meant that in the majority of stations observed, ballots were invalidated although the will of the voter was clearly identifiable. Party agents were present at almost all counts observed, while civil society observers were present in almost one third.

TABULATION OF RESULTS

Following the counting process there was a notable decrease in the transparency of the process. Results protocols were generally not posted at polling stations as required. Because observers and party agents are not entitled to copies of result protocols, public posting of results at the polling station is an important transparency mechanism. On Nov. 4, the UEC issued an instruction that sub-commissions were not to post township level results prior to verification by

the respective state and regional sub-commission. This decision caused significant concern. Carter Center observers were unfortunately obstructed in the tabulation process in a few cases. Teams were denied access in two townships (in Tedim, Chin State; and in Kentung, Eastern Shan State) and could not meaningfully observe in central Rakhine State. Party agents were present in most tabulation centers observed, while civil society observers were present in nearly half.

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