ELECTION REPORT ☆

Observing Myanmar's 2015 General Elections

Final Report

THE
CARTER CENTER

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Executive Summary

On Nov. 8, 2015, Myanmar held the first general election under the 2008 constitution in which all main political parties, including those that boycotted the election in 2010, chose to participate. The Carter Center observed the election process for over one year, from December 2014 through March 2016. Based on its in-depth observation, the Center reaffirms its congratulations to the people of Myanmar, who exercised their political rights with pride and enthusiasm. Their empowerment and commitment to the democratic process were not only remarkable but crucial to counterbalancing the considerable structural impediments to fully democratic elections. Despite flaws observed, the postelection period confirms the Carter Center's view that 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. The Carter Center encourages the government, Parliament, electoral authorities, and civil society of Myanmar to prioritize political and electoral reform based on internationally accepted democratic standards and offers its continued support for reform.

Jana S. Nolle

The Myanmar Farmers Development Party holds a campaign event in Myaungmya township, Ayeyarwady region.

The Carter Center has maintained a presence in Myanmar since opening an office in Yangon in October 2013. At the invitation of the Union Election Commission (UEC), the Center deployed long-term observers from December 2014 through July 2015 to gather information on the pre-election environment and the ongoing transition process. Following a formal invitation in March 2015 to observe the election—and the announcement of the election date for Nov. 8, 2015—the Center officially began its election observation mission on Aug. 1, with six long-term observers and four core team experts monitoring and reporting on election preparations, the campaign period, and other aspects of the election process. On election day, the Center deployed a total of 62 observers from 25 countries to observe voting and counting in 245 polling stations in all states and regions. The mission was co-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. The

Center continued its field observation in the post-election period, including during the tabulation of results and election dispute resolution. The Carter Center's observation mission was conducted in accordance with the Declaration of Principles for International Election Observation.

Background

The Nov. 8, 2015, general election was a milestone in the transition process launched in 2011. The transition toward democracy was highly controlled, with the military and the nominally civilian government — largely composed of former senior army officers — setting the pace and the direction. Nonetheless, the transition led to an opening of political space. Political parties expanded their activities, and the formerly suppressed opposition party National League for Democracy (NLD) gained parliamentary representation following the 2012 by-elections in which it won all but one seat that it contested.

In parallel to the political transition, steps were undertaken to resolve longstanding ethnic conflict. By August 2013, the government had reached bilateral cease-fire agreements with 14 ethnic armed groups and began working toward a nationwide cease-fire agreement. However, only eight groups signed the accord in October 2015, and some major groups did not participate. Cease-fire signatories were removed from the list of "unlawful associations," creating space for these groups to play a role in democratic politics in the future.

In addition to ethnic conflict, anti-Muslim sentiment and Buddhist nationalism have emerged as a critical feature of politics in Myanmar, particularly in Rakhine state, where about one-third of the population are Muslim, many of whom self-identify as Rohingya. The government does not recognize the Rohingya as an ethnic group. Relations between the ethnic Rakhine Buddhist majority and Muslim minority deteriorated to their worst level beginning in June 2012, when intercommunal violence across Rakhine state left hundreds dead or injured and tens of thousands displaced. To quell violence, the government separated the communities, isolating some 130,000 displaced Rohingya in camps and imposing heavy travel and other restrictions on the Muslim population as a whole.

Constitutional and Legal Framework

Elections were held for the Union Parliament — which has a lower House (Pyithu Hluttaw) and an upper House (Amyotha Hluttaw) — as well as for the unicameral assemblies in each of the 14 states and regions. The 2008 constitution provides the overall framework for these elections. Many weaknesses in the electoral law and its implementation can be traced to provisions of the military-drafted constitution that structurally impact the democratic character of the electoral and political processes. In particular, the military appoints 25 percent of the members of each house of Parliament, giving it a de facto veto over constitutional reform. The military also appoints the ministers of defense, home affairs, and border affairs and appoints 25 percent of state and regional assemblies. These provisions are a fundamental violation of democratic norms and should be amended in order for Myanmar to become fully democratic.

Many weaknesses in the electoral law and its implementation can be traced to provisions of the military-drafted constitution that structurally impact the democratic character of the electoral and political processes.

Other issues of concern with regard to the constitutional framework include the equality of the vote, which is not guaranteed under the current election system; an election management body that enjoys broad authority but lacks guarantees of independence and impartiality and whose decisions are not subject to judicial appeal; unreasonably restrictive provisions on voter and candidate eligibility; and unreasonable restrictions on eligibility for the presidency, which appear to be directed at a particular individual.

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 election legislation contains gaps, in some instances lacks clarity, and gives the UEC overly broad rule-making authority. Significant legal reform is necessary to ensure greater protection of fundamental democratic rights and freedoms. Ratification of core international human rights treaties — in particular the International Covenant on Civil and Political Rights (ICCPR) — would be an important step.

The UEC has overall responsibility to conduct general elections, register political parties, and oversee their activities.

Electoral System and Boundary Delimitation

Three-quarters of the members of the two houses of the Union Parliament and of the 14 state and regional assemblies are elected from single-mandate constituencies under a first-past-the-post system. Special provisions guarantee representation for self-administered units in the upper House and for ethnic groups in state and regional assemblies.

The number of voters varies widely among constituencies, which are based on administrative boundaries rather than on population or voter figures. This results in significant malapportionment and is inconsistent with international standards, as it does not effectively ensure the equality of the vote, an essential element of genuine democratic elections.

Election Management

The UEC has overall responsibility to conduct general elections, register political parties, and oversee their activities. The Carter Center found that the UEC successfully organized the election process despite considerable challenges, including a significant deficit in human and material resources. Although the election administration lacked legal and structural independence, the UEC appeared to exercise its authority without undue influence from other parts of government. Its subcommissions appeared to have conducted their work in good faith (with a few important exceptions) but were dependent on the local government administration. In practice, almost all subcommission members were current or retired local government officials. As a result, while subcommissions generally exhibited a commitment to impartiality, they often lacked credibility with local election stakeholders.

The Carter Center found that the election administration worked in a professional and generally transparent manner and was open to Center observers. Nevertheless, aspects of the administration of the elections lacked adequate transparency, including publication of the electoral calendar and amendments to UEC rules, cancellation of elections in some areas, the advance voting process, and the publication of election results.

One of the most positive initiatives was to convene consultations with civil society and political parties. The UEC also held postelection review meetings in all states and regions and at the union level to identify areas for improvement.

Voter Eligibility and Registration

Citizens have to be at least 18 years old to be eligible to vote. Certain groups of citizens do not have voting rights, including members of religious orders, those serving prison sentences, those declared to be "of unsound mind" by a court, and those who have not been cleared from bankruptcy. Some of these restrictions are inconsistent with the principle of universal and equal suffrage.

The UEC made significant efforts to improve the quality of the voter lists, including a national program to computerize voter lists for the first time. Voter lists were prepared on the basis of government documents that contained many inaccuracies, further compounded by errors in transferring handwritten lists to a digital format. Positively, the commission took the initiative to display the voter lists prior to the legally required

voter list display period to give voters multiple opportunities to check the lists. However, election subcommissions and other government institutions were not required to proactively identify inaccuracies, which placed a substantial burden on voters and contributed to pre-election concern about the quality of the lists. Although measures to provide for voting by migrants and displaced people were positive, some communities remained effectively disenfranchised.

Restrictive and discriminatory citizenship provisions had a serious impact on voting and candidacy rights. In previous elections, holders of temporary registration certificates—who are not considered citizens—had been eligible to vote. In March 2015, these certificates were canceled, and in June, Parliament removed certificate holders from the list of eligible voters. This affected hundreds of thousands of people and had the largest impact upon Muslim populations in Rakhine state, especially Rohingya. An announced citizenship verification process was all but halted in northern Rakhine state. The disenfranchisement of former temporary registration holders without an adequate citizenship verification process in place or the possibility to challenge the cancellation of rights was a serious contravention of fundamental political rights.

Candidate Eligibility and Registration

The constitution and election laws contain numerous criteria for candidate eligibility. The requirements that prospective candidates must reside in Myanmar for at least 10 consecutive years before election day and be born of parents who were both citizens at the time of birth are inconsistent with international standards.

Overall, the candidate registration process resulted in a large number of candidates across a broad range of political parties and gave voters in most constituencies a wide range of choice. Although subcommissions rejected only 99 nominations, restrictive requirements, selective enforcement, and a lack of procedural safeguards and transparency called into question the credibility of the scrutiny process. The pattern of disqualifications at the district level indicated that citizenship requirements were more strictly enforced against certain ethnic and religious populations, in particular Muslims. The UEC reinstated 10 candidates rejected on grounds of citizenship. While the commission's review of disqualifications was a commendable measure, the process was not transparent.

Jana S. Nolle

Voters check their names on the voter list during the September display period in Pathein township, Ayeyarwady region.

Political Space and the Campaign Period

The substantial improvement in the breadth and quality of political space in Myanmar in recent years allowed for a lively and relatively unrestricted campaign period. Although legislation gave authorities substantial discretion to regulate political activity, this discretion was generally exercised in a reasonable and fair manner during the campaign period, and most political party and civil society leaders reported that their activities were rarely restricted or obstructed. However, the legal framework in Myanmar does not adequately protect freedom of expression and association and should be reformed.

The Carter Center observed a wide range of political parties and candidates campaigning across the country, especially the National League for Democracy and the ruling Union Development and Solidarity Party in all areas visited, and ethnic parties in the ethnic states. Small rallies, meetings, door-to-door canvassing, and distribution of pamphlets appeared to be the primary means

of voter outreach. Campaign activity was self-regulated to some extent by Myanmar's first-ever political party code of conduct, signed by 88 of the 91 competing parties. While campaigning began peacefully, there was an increase in isolated incidents of violence closer to election day. More than 15 cases of party supporters being physically attacked or threatened were reported to the police. Despite widespread concern that some groups would seek to stir tensions between communities, nationalist rhetoric appeared to decrease as election day approached.

Although government control over broadcast media continues, the media environment has improved substantially, and media were able to report freely on the election.

Although government control over broadcast media continues, the media environment has improved substantially, and media were able to report freely on the election. However, restrictive and vague media laws remain in place; reporting on sensitive issues can result in retaliation; and journalists enjoy little protection. Consequently, self-censorship is widespread. The content of parties' campaign platform presentations on television had to be approved in advance by the UEC, an arbitrary restriction of freedom of expression.

Campaign Finance

Campaign finance regulation needs improved oversight and transparency. There is no mechanism for monitoring campaign income or expenditures. Candidates who reported that they had stayed within the spending limits were considered to have complied with regulations. Contrary to international good practice, there are no requirements to publish candidate campaign finance reports.

Campaign finance provisions could be strengthened by regulating party and candidate spending in the pre-campaign period, limiting the size of individual donations, requiring the disclosure of donor information for larger contributions in campaign finance reports, instituting a mechanism for auditing campaign finance reports, publishing campaign finance reports, and introducing a range of sanctions for violations of campaign finance regulations.

Voter Education

Election subcommissions did not generally consider proactive voter education part of their mandate, often leaving this task to civil society. An unprecedented civil society voter education effort took place to increase electoral knowledge among the general public. Civil society groups disseminated voter education materials produced by the Union Election Commission and partner organizations and also conducted their own training workshops. Voter education materials were available in Burmese and a wide range of minority languages. However, voter education initiatives could only begin in earnest once the UEC released procedures and instructions. Carter Center observers noted that candidates and parties devoted a substantial part of their campaign activity to voter education, with particular focus on correct voting procedures. Given the wide reach of party and candidate campaigning, this was a primary means by which many voters learned of key aspects of electoral procedure.

Election Day and Advance Voting

According to UEC data, over 69 percent of Myanmar's 34.3 million eligible voters cast ballots. Elections were held across all 14 states and regions, with the exception of seven townships in Shan state and approximately 416 wards and village tracts elsewhere, where voting was canceled because of security concerns. Carter Center observers followed the voting process in 245 polling stations in all states and regions. The Carter Center found that the conduct of voting and counting on election day largely met key international obligations for democratic elections. Some aspects of the process could be improved for future elections, in particular voter education and training of polling staff. However, the lack of

transparency in the out-of-constituency advance voting process for military personnel and the disenfranchisement of hundreds of thousands of former certificate holders did not meet international standards.

Advance voting was an area of concern because manipulation of the out-of-constituency advance vote—particularly the votes of military personnel—was commonly perceived to have been a primary venue for fraud in the 2010 election. Despite recommendations made well in advance of election day, no significant improvements were made to the transparency of the out-of-constituency advance voting process. The UEC did not publish information about the number of requests, voting locations, or the schedule for polling, and observers and party agents were not permitted to observe out-of-constituency advance voting. The conduct of out-of-constituency advance voting, particularly for military personnel, was the weakest aspect of the voting process, and the complete lack of transparency fell well short of international standards. This will be an important area for reform for future elections.

Election Day. Overall, the voting process was well-conducted, with observers assessing it positively in 95 percent of the polling stations visited. This assessment was based on the peaceful environment, the smooth conduct of voting, the uniform practice of checking that voters were on the voter lists, and the impartiality of polling staff. Negative assessments mostly related to overcrowding or disorder, causing delays in voting and in some places potentially compromising the secrecy of the vote. Observers reported 40 instances of election-day irregularities, mostly isolated instances of family voting or unlawful assistance to voters. Polling procedures were generally adhered to, and violations usually appeared to be caused by polling staff's lack of experience rather than malfeasance. Voters with disabilities could cast ballots with assistance if needed, which is in line with regulations, but polling stations were often not easily accessible.

Legislation does not sufficiently regulate vote counting, and there were a number of cases in which a lack of clarity led to errors during the counting process. Still, observers found that these problems did not significantly affect the integrity of the process and assessed the vote count positively in almost all of the 26 polling stations where it was observed. Invalidation of ballots was a notable problem in more than half of vote counts observed, caused by stringent instructions to invalidate double-stamped ballots, even if the intention of the voter was clear. Carter Center observers found that, contrary to UEC guidelines, the results protocols were not always posted at polling stations. Because observers and party agents are not entitled to copies of result protocols, public posting of results at the polling station is a critically important transparency mechanism. Political party agents were present in almost all polling stations visited, and civil society observers were present in some 30 percent.

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Ron Borden

Carter Center observers Mercedes Sprouse, Mary Robinson, and David Carroll, and interpreter Ma Kyawt Thuzar (far left) visit a polling station in Yangon.

Tadzrul Adha

Pa–O National Organization supporters attend a rally inside Mingalar Yarmak Monastery, Hsi Hseng township, Pa–O self-administered zone.

Tabulation and Announcement of Results

The tabulation of results was, for the most part, conducted in a transparent and professional manner, albeit with some inconsistencies. However, these inconsistencies were largely due to ambiguity in the procedures and did not appear to impact the overall integrity of the process. Most Carter Center observers were able to observe the tabulation process adequately, but in four townships they were denied access or were restricted in their ability to observe. In accordance with a UEC instruction, final constituency results were not publicly displayed in many places. This limited the ability of candidates, party agents, and the public to check polling station results against the results forms produced at higher levels, undermining the transparency of this part of the process.

Once it received the official, verified results from the state and region subcommissions, the UEC publicized them in a timely manner, between Nov. 9 and 20. However, it is important that in future elections polling station results be made publicly available, including on the internet, in order to enhance the transparency of the process.

Election Observation

Although the election laws do not explicitly allow for election observation, in an important and positive change the UEC for the first time invited and accredited domestic and international observers to observe the election process comprehensively. The commission adopted observer accreditation procedures and codes of conduct after a series of consultations with civil society and accredited over 11,000 observers from 52 civil society organizations as well as over 1,000 international observers. Accreditation rules were generally consistent with international good practices. Observers had freedom of movement and unimpeded access to most parts of the process. However, the inability to observe out-of-constituency advance voting, and in some places the tabulation of results, fell short of international standards for full transparency. The early invitation to The Carter Center was a positive measure, signaling the intention of the commission to increase the transparency of the 2015 elections. In addition, the UEC took proactive measures to facilitate the Center's observation efforts throughout the country for nearly a year in advance of election day. The Carter Center

commends the commission for its efforts to increase the transparency of the process through inclusion of domestic and international observers.

Election Dispute Resolution

The election dispute resolution process was conducted in an overall transparent and professional manner, consistent with international good practice. The UEC prioritized the resolution of disputes during the campaign period and established mediation committees with political party representatives at each level of election subcommissions, which were reportedly effective in resolving some disputes. Relatively few complaints were filed with the commission in the postelection period, reflecting the decision by most parties to discourage challenges to the results but also reflecting the high cost of filing and the overlapping jurisdiction between the UEC and the police. The tribunals hearing these cases worked in an orderly, professional, and fair manner.

The framework governing election disputes, however, does not guarantee complainants an effective and timely remedy for violations of their rights and falls short of international standards. This is principally because of a lack of provision for appeal to an independent judicial authority, the lengthy deadline for filing cases, the absence of deadlines for resolving cases, the inability to challenge results based on the misconduct of or a decision by election officials, and the excessive filing fees.

Participation of Women and Ethnic Groups

Women's participation in the election process increased over previous elections but has considerable room for improvement. Only 800 of 6,039 candidates (13 percent) were women. A total of 146 women were elected, equaling 13 percent of elected seats at the union level and 12.5 percent at the state and region level. Women were underrepresented in the UEC and its subcommissions.

A wide range of parties representing ethnic minorities competed. However, political representation of ethnic groups decreased somewhat from 2010, as ethnic parties won fewer seats in the national legislature and most state assemblies. In an effort to bolster the UEC's credibility and representativeness, eight additional UEC members from ethnic minorities were appointed in April 2015 and assigned responsibility for particular ethnic states. Representation of ethnic groups on subcommissions varied widely throughout the country, with ethnic groups underrepresented even in the ethnic states.

Women's participation in the election process increased over previous elections but has considerable room for improvement.

The Carter Center encourages the Parliament and the Union Election Commission to consider ways of making greater progress toward equal participation.

Conclusions and Recommendations

The Carter Center congratulates the people of Myanmar for their achievements in improving the electoral process and consolidating the gains made in the transition toward democracy. The Carter Center encourages the new government and the new composition of the Union Election Commission to continue the democratic reform process with a view to electing a fully democratic Parliament with equal participation of all of the people of Myanmar by 2020.

To that end, The Carter Center offers recommendations on the election process as a whole, including constitutional and legal reform, at the conclusion of this report. These recommendations are based on long-term observation and are grounded in international standards and obligations for democratic elections. The Carter Center affirms its support for and partnership with the Union Election Commission, government authorities, and civil society in their efforts to continue and strengthen democratic reform.

The Carter Center in Myanmar

The Carter Center has been involved with Myanmar since 2012, when it conducted several assessment missions to determine how the Center could contribute in a positive way to the ongoing transition, including the potential deployment of election observers.

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 in the country to prepare for the deployment of an election observation mission. In October 2013, the Center established an office in Yangon to continue discussions with the Union Election Commission, civil society, and other stakeholders to prepare the ground for the deployment of long-term observer teams.

From December 2014 through July 2015, at the invitation of the UEC, the Center deployed teams of long-term observers that visited all states and regions in Myanmar to gather information on the pre-election environment and the ongoing transition process. During this period, the Center released two public reports (in March and August 2015) assessing the pre-election political environment, election preparations, and the overall legal and constitutional framework and providing recommendations to improve the electoral process and associated political conditions.

On March 30, 2015, the UEC formally invited The Carter Center to observe the 2015 elections. On July 8, the UEC announced that elections would take place on Nov. 8. On Aug. 1, the Center officially launched its election observation mission and redeployed long-term observer teams to monitor and report on election preparations and the campaign period. The Center released additional public reports in September and October 2015, focusing on the candidate nomination and scrutiny process and the conduct of the electoral campaign.

For the days surrounding the election, the Center deployed a total of 62 observers, who visited 245 polling stations in all states and regions to observe voting and counting. The mission was co-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. Mission members came from 25 countries. The Carter Center released a preliminary statement two days after election day, which provided the Center's first overall assessment of the election process.[1]

In the postelection period, the Center maintained its field observation presence in Myanmar and redeployed long-term observers to assess the postelection dispute resolution process and the response to the results. The Center's findings from the postelection period formed the basis of a public report released in late February 2016.

The Carter Center's mission in Myanmar was funded by the United States Agency for International Development, the United Kingdom Foreign and Commonwealth Office, and the Danish and Norwegian ministries of Foreign Affairs.

1 Available at www.cartercenter.org/news/pr/myanmar-111015.html

Election Observation Methodology

The November 2015 election in Myanmar was the 101st election The Carter Center has observed since 1989. The Center has observed elections in 39 countries. The Center is one of more than 50 intergovernmental and international nongovernmental organizations that have endorsed the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observation, which was adopted at a ceremony at the United Nations in 2005.[2] Endorsing organizations pledge to conduct their election observation missions consistent with the guidelines of the declaration and code of conduct.

The Carter Center believes that international observers play an important supporting role in emerging democracies by providing a credible and impartial assessment of the electoral process—thereby increasing confidence in the results when warranted—as well as by providing recommendations to assist in strengthening and improving the democratic process in the country.

In addition, the Center believes that the quality of election observation can be enhanced by having observers in the field for a substantial period of time both before and after an election. A longer deployment allows valuable relationships to develop with election stakeholders and helps to increase domestic understanding about the role of international observers. In Myanmar, the extended length of the Center's presence has made it possible to conduct thorough observation and analysis not only of the election process but also of the broader political transition.

The purpose of the Center's mission in Myanmar has been to provide a credible and impartial assessment of the electoral process, taking into consideration the ongoing transition to a fully civilian government and the peace process. Through its presence, the Center aims to assist in reinforcing the efforts of domestic observer groups, to provide a foundation for other democratization initiatives in the country, and to demonstrate the international community's interest in, and support for, credible elections.

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The Center's core team maintained relationships and conducted interviews with party leaders, government and election officials, civil society leaders, and members of the international community. A crucial component of the Center's mission was the work of its long-term and short-term observers, who gathered information at the local level throughout the country. Their observations

2 For the text of the declaration, visit www.cartercenter.org/peace/democracy/des_declaration.html

enabled the Center to release detailed public statements and reports on the election process that were widely distributed and covered by local and international media. In total, the Center released four pre-election public reports with recommendations (March, August, September, and October 2015), a preliminary statement two days after election day (Nov. 10, 2015), and a postelection report in February 2016.[3]

Following an invitation from the Union Election Commission and the formal announcement of the election date, the Carter Center's election observation mission launched in August 2015.

Throughout, the Center maintained close working relationships with international organizations that provided assistance to the electoral process and participated in numerous coordination bodies with international and national partners. The Center met regularly with international and domestic observer groups to share information and coordinate the deployment of short-term observers to maximize geographical coverage and minimize duplication.

Criteria for Election Assessment

The Carter Center assesses elections for their compliance with national legislation and international standards for democratic elections, including the International Covenant on Civil and Political Rights (ICCPR). Myanmar has acceded to a few international treaties but is not yet a party to this covenant.[4] Nonetheless, in view of the stated intention of the country's authorities to conduct elections in line with international standards, the Center's assessment of Myanmar's electoral process is based in part on those obligations, particularly Article 25 of the ICCPR.[5] This report also refers to a number of other standards and guidelines for democratic elections.[6] Throughout this report, elements of the election process are introduced with the relevant international standards used to make assessments.

Pre-election Observation and Deployment of Long-Term Observers

The Center has maintained a presence in Myanmar since 2013 and began its long-term field observation work in December 2014 with the deployment of two teams of long-term observers to assess the pre-election environment and the progress of election preparations. Following an invitation from the Union Election Commission and the formal announcement of the election date, the Carter Center's election observation mission launched in August 2015. The Center deployed six international long-term observers and four core team experts. The observers were briefed in Yangon in early September by members of the core team as well as by national stakeholders and representatives of other international organizations. Deployed in multinational teams of two, they observed in all of Myanmar's 14 states and regions. Long-term observers continued their work in Myanmar through March 2016.

During the pre-election period, long-term observers met with political party leaders, election officials, security forces, representatives of marginalized groups, civil society activists, domestic observers, journalists, international organizations, and voters. They interviewed interlocutors on five broad subjects: 1) electoral preparations, including election administration and voter education; 2) political parties, the electoral campaign, media,

3 Carter Center Myanmar reports are available at http://electionstandards.cartercenter.org/latest-news-from-our-election-observation-mission-in-myanmar/.

4 Myanmar ratified the U.N. Convention on the Rights of People with Disabilities in December 2011, the Convention on the Rights of the Child in 1991 (and its Optional Protocol in 2015), and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in July 1997. Myanmar signed the International Covenant on Economic, Social, and Cultural Rights in 2015 but has not yet ratified it.

5 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: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."

6 "Election Obligations and Standards: A Carter Center Assessment Manual," The Carter Center (2014)

Tadzrul Adha

Long-term observer Ben Dunant and interpreter Hein Naing Soe interview people checking a voter list.

and codes of conduct; 3) the legal framework, including candidacy requirements, electoral dispute resolution, and campaign finance; 4) the participation of civil society, marginalized groups, and election observers; 5) pre-election security. They also observed candidate registration, mass meetings, campaign rallies, and election-related dispute hearings. The participation of women was a key issue in all observation work. Observers submitted weekly reports and spot reports as necessary and prepared for the deployment of short-term observers.

Deployment of Short-Term Observers

Just prior to election day, The Carter Center deployed 52 short-term observers to join the core team and long term-observers, for a total of 62 observers from 25 countries. The short-term observers received two days of briefing on the political situation in Myanmar, the electoral framework and preparations, security guidelines, deployment logistics, election-day procedures, and reporting requirements. Their briefing included a mock polling exercise conducted by the Myanmar Independent Living Initiative.[7] Observers also received training on the Center's election monitoring data gathering and analysis system, known as ELMO, which was used to electronically submit observation checklists via handheld tablets.[8] In addition, long-term observers provided the short-term observers with a regional briefing.

7 The Myanmar Independent Living Initiative is a Myanmar nongovernmental organization working to empower and support people with disabilities for their independent living and to advocate and promote the inclusion and rights of people with disabilities. www.mili.org.mm/

8 ELMO is the Carter Center's open-source election monitoring data collection and reporting system. Equipped with ELMO, observers submit data—via tablet, SMS, or directly online—in real time to mission headquarters. The ELMO system organizes observer findings and facilitates analysis. The Center uses ELMO not only for elections but also for human rights monitoring and other processes requiring collection of field data. The Center also supports the development of ELMO as an open-source tool, available for use by other organizations. See getelmo.org.

Observers were deployed to their areas of responsibility in multinational teams two days prior to election day. During this period, they met local election subcommissions, security officials, polling station staff, other international and domestic observers, and other relevant local stakeholders to gain a better understanding of the local election environment.

On election day, Carter Center observers visited 245 polling stations in all states and regions, observing the opening of polling stations, voting procedures, closing of polling stations, and counting of ballots. Each team filled out an electronic checklist with standardized questions at each polling station observed. Using data aggregated through ELMO, the core team staff in Yangon analyzed the conduct of election-day processes. The majority of the observer teams remained deployed for two days after election day to observe some or all of the tabulation process. Observers were debriefed in Yangon before departing on Nov. 12.

The teams closely followed postelection dispute resolution and campaign expenditure hearings at the union and state/regional levels.

Leadership Delegation

A team consisting of high-level political leaders and senior Carter Center staff led the short-term observation delegation to Myanmar. The leadership team consisted of Jason Carter, chairman of the Carter Center's board of trustees; Mary Robinson, former president of Ireland; and Bhojraj Pokharel, former chairman of Nepal's election commission. They were accompanied by Carter Center staff, including David Carroll, director of the Democracy Program; Jonathan Stonestreet, associate director of the Democracy Program; and Frederick Rawski, field office director in Myanmar.

In the days preceding and immediately following the election, the leadership team met the chair of the Union Election Commission and the minister of foreign affairs in Nay Pyi Taw as well as political party leaders, civil society representatives, domestic and international observer organizations and technical assistance providers, and diplomatic representatives in Yangon. On election day, the co-leaders visited polling locations in Yangon region. On Nov. 10, the leadership team presented the preliminary statement of findings and conclusions of the Center's election observation mission at a press conference at the Sedona Hotel in Yangon.

Postelection Day Observation

Following the departure of the short-term observers, the core team and long-term observers continued their monitoring of postelection processes, including the tabulation and announcement of results. The teams closely followed postelection dispute resolution and campaign expenditure hearings at the union and state/regional levels. The long-term observers and core team observed the UEC's postelection review process in Shan, Kayin, and Mon states and in Yangon and Nay Pyi Taw and met a range of stakeholders to hear their views on what could be improved for future elections. The Carter Center released a public report on the postelection process in February 2016.

Long-term observers were present through March 2016, and their findings in the postelection period contributed directly to the formulation of the recommendations presented in this report and presented in draft form at the UEC's national review conference in March 2016.

Historical and Political Background

Myanmar (then Burma) gained independence in 1948, after more than 60 years as a British colony, more than 100 years with parts of its territory under British control, and a brief period of occupation by Japan during World War II. Under its first constitution, the country experienced a decade of multiparty democracy, holding elections in 1947 (for the postcolonial administration), 1951, and 1956. This period was marked by ethnic conflict on the periphery as well as significant political dysfunction, eventually leading to a coup in 1958 orchestrated by General Ne Win. While civilian authority was reinstated through an election in 1960, Ne Win led another coup in 1962, ushering in five decades of military rule.

After taking power in 1962, Ne Win implemented an ideology known as the "Burmese way to Socialism." The 1947 constitution was suspended, power was centralized, and political space was restricted. All political parties were banned except for the state-led Burma Socialist Programme Party (BSPP). Media was controlled by the state, and private businesses were nationalized. Myanmar was left increasingly isolated, which had a devastating effect on the economy and precipitated an exodus of tens of thousands of foreigners, ethnic Chinese, and Indian Burmese. A new constitution, adopted in 1974, nominally shifted power to a legislature, though the BSPP and military officials dominated its ranks.

Demands for Reform and the 1990 Elections

Elections were held in 1974, 1978, 1981, and 1985 but were tightly controlled and held in an extremely restrictive political environment, which included a ban on political parties other than the BSPP. Ne Win served as president until 1981, after which he continued to exercise power as the BSPP chairman. With the economy in shambles and a demonetization of the local currency, protests erupted across the country in 1987. Continued unrest led to Ne Win's resignation in July 1988 and demands for reform, culminating in a nationwide strike on Aug. 8, 1988 (8/8/88), during which security forces opened fire on protesters, killing several thousand.

The military seized power, dissolved the BSPP, and created the State Law and Order Restoration Council, which imposed martial law. Thousands were arrested or fled the country, and Aung San Suu Kyi (a leader of the 1988 protests, founding member of opposition party the National League for Democracy, and daughter of independence hero General Aung San) was placed under house arrest. It was in this highly charged atmosphere that the council announced that elections would go forward in 1990.[9]

9 In 1989, the government changed the name of the country from Burma to Myanmar.

The 1990 pre-election environment was very restricted, with campaign activities circumscribed and leaders of the National League for Democracy in exile or prison. Aung San Suu Kyi was still under house arrest, where she would remain for much of the next 20 years. Given these constraints, many expected the National Unity Party, formed by former leaders of the BSPP, to win. However, the NLD demonstrated widespread popular support, taking nearly 60 percent of the vote and 80 percent of the seats contested.[10] The military government refused to recognize the results, instead stating that they would not relinquish power until a new constitution was drafted and enacted.

Although it established a multiparty system, the constitution granted the military a pre-eminent political role and entrenched a highly centralized state structure.

Myanmar remained a closed, repressive state in which basic human rights and freedoms were denied. Political space and civil society were essentially nonexistent. There were thousands of political prisoners, and ongoing conflict between the military and ethnic armed groups continued to create refugees and displaced people.

The 2008 Constitution

In 2003, the military government announced a "roadmap to a discipline-flourishing democracy," a seven-step process that included resuming and completing the constitution-drafting process, organizing a referendum on the draft constitution, and holding "free and fair elections" for a national legislature. In 2007, demonstrations over the removal of fuel subsidies quickly morphed into Buddhist monk-led anti-government and pro-democracy protests dubbed the Saffron Revolution. A violent government crackdown killed dozens and led to hundreds of arrests. Six months later and after a 15-year wait, the military government released a draft constitution, which was subsequently passed in a constitutional referendum held in May 2008, only a week after Cyclone Nargis killed some 138,000 people and devastated much of the southwest of the country.

The 2008 constitution established a new structure for the state, including upper and lower houses of Parliament, state and regional assemblies, and the framework for elections. Although it established a multiparty system, the constitution granted the military a pre-eminent political role and entrenched a highly centralized state structure. Many viewed—and continue to view—the document as fundamentally undemocratic.

Contentious features of the constitution include the reservation of one-quarter of parliamentary seats for military personnel, ensuring a de facto military veto over constitutional reform (which requires a 75 percent supermajority in the Union Parliament); military control, without civilian oversight, of three of the most powerful ministries (defense, home affairs, and border affairs) as well as a majority of seats on the powerful National Defense and Security Council; and restrictions on who is eligible to become president, designed to preclude Aung San Suu Kyi from serving in the role.

The 2010 Elections and 2012 By-Elections

In 2010, Myanmar held its first elections since 1990, and the first under the framework of the 2008 constitution. The military government formed the Union Solidarity and Development Party (USDP) as a civilian vehicle to contest the elections. Several dozen parties registered, representing a variety of ethnic groups and interests, though the National League for Democracy (with Aung San Suu Kyi still under house arrest and numerous leaders in jail or in exile) and many other parties boycotted the polls. As in previous elections, political space was highly

10 The election was conducted under a first-past-the-post system.

restricted. Myanmar did not allow international observers, and the elections were generally viewed as illegitimate, featuring widespread irregularities, particularly in the advance voting process. The USDP won nearly 80 percent of elected seats in the national Parliament. Thein Sein, a former military general and head of the USDP, was elected president through a parliamentary electoral college.

Following the 2010 election, Aung San Suu Kyi was released from house arrest, and in early 2011, the government embarked on a series of political and economic reforms, releasing hundreds of political prisoners, increasing freedoms of press and assembly, and enacting regulatory reforms. In this context, the National League for Democracy decided to participate in by-elections in 2012 to fill 45 seats vacated by parliamentarians pulled in to the executive administration. The NLD won 43 of the 44 seats it contested, and this time the NLD was allowed to take up its seats. Although this was only a small fraction of the overall seats in Parliament, the by-elections represented a step toward acknowledging the legitimacy of the main opposition party.

Subsequent opposition efforts to amend the 2008 constitution were not successful. The NLD collected 5 million signatures—nearly 10 percent of Myanmar's total population—in support of changing the provision that requires a 75 percent supermajority to amend the constitution (with hopes of amending the provision that prohibited Aung San Suu Kyi from serving as president), but the petition was dismissed by President Thein Sein and the military. Recurrent proposals for talks among the president, the commander in chief of the defense services (Tatmadaw), the speakers of both houses of Parliament, an ethnic representative, and Aung San Suu Kyi also yielded little. With support from the speaker of the lower House, an amendment bill was debated in Parliament but failed to garner sufficient military support to overcome its de facto veto.[11] With constitutional reform efforts blocked, the 2015 elections were held under the framework established by the 2008 constitution.

Jana S. Nolle

Union Solidarity and Development Party supporters wave as they drive by in a parade during the campaign period.

Ethnic Conflict and Cease-Fire Negotiations

Decades of unresolved ethnic conflict also shaped the political context in which the 2015 elections were held. Home to one of the longest-running civil wars in the world, Myanmar's border areas have been in a perpetual state of conflict since shortly after independence, as ethnic armed groups fight to achieve a federal system of government that grants greater autonomy and local control over natural resource exploitation as well as protection for ethnic identity, culture, and language.

The failure to implement preindependence commitments made to ethnic groups through the 1947 Panglong Conference and in the 1947 constitution led to the outbreak of conflict shortly after independence.

The roots for ethnic discontent were sown prior to independence, with the majority (Bamar) and most minority ethnic groups supporting opposite sides during World War II. The failure to implement preindependence commitments

11 On June 25, 2015, Parliament voted to amend Article 59(d) to change the wording of the requirements for president to having "defense" experience rather than "military" experience as previously required, but the change would require a nationwide referendum to take effect.

made to ethnic groups through the 1947 Panglong Conference and in the 1947 constitution led to the outbreak of conflict shortly after independence.[12] Continued fighting and the possibility that some ethnic groups might secede from the union provided part of the justification for the military coups led by Ne Win in 1958 and 1962. Throughout the 1960s, the military pursued a brutal counterinsurgency campaign, with devastating effects on local ethnic populations. Nonetheless, ethnic armed groups consolidated control over wide swaths of territory, leading to the development of parallel administrative structures that taxed local populations; exploited natural resources; and, in some cases, engaged in drug production and smuggling in order to support their operations.

The cancellation of elections in hundreds of village tracts — mainly in Kayin, Shan, and Kachin states — fueled the perception that the government propagated conflict to create a pretext to deny ethnic groups political representation.

Beginning in the late 1980s, the government began brokering bilateral cease-fire agreements with the armed groups. Some of the cease-fire agreements subsequently broke down, and bilateral deals were never reached with other groups. The cease-fires did not represent a political solution, but they did come with perks that enabled some ethnic armed groups to formally establish autonomous "special regions" and to gain access to government development assistance.

While some ethnic groups saw the 2010 elections as an opportunity to gain influence within Parliament, much skepticism remained over government intentions, particularly under the framework of the 2008 constitution, which the military continued to use to justify its role in politics as essential to protecting the integrity of the union. The cancellation of elections in hundreds of village tracts — mainly in Kayin, Shan, and Kachin states — fueled the perception that the government propagated conflict to create a pretext to deny ethnic groups political representation. Despite the constraints, ethnic parties fared relatively well, winning 15 percent of the seats. Prospects for peace were bolstered further when President Thein Sein signaled his intent to achieve a nationwide peace agreement during his administration.

Beginning in 2011, the government sought to reconfirm prior cease-fire agreements, broker new agreements, and end conflict and negotiate agreements with those groups whose cease-fires had broken down. Between September 2011 and August 2013, the government reached bilateral agreements with 14 separate armed groups and began working toward a nationwide cease-fire agreement. However, the negotiation process proved more complex than the government anticipated, particularly as open conflict between the military and a number of ethnic armed groups continued into 2015 — notably with the Kachin Independence Army, one of the most influential and well-resourced armed groups, after a 17-year cease-fire broke down in 2011.

In March 2015, negotiators agreed on a draft text, though many ethnic armed group leaders remained concerned over the exclusion of a number of armed groups from the negotiating process and the fact that conflict continued in some areas. With the elections approaching and the window of opportunity for reaching a deal closing, the government set Oct. 15 as the agreement signing date. Only eight groups, however, agreed to sign the cease-fire accord, and major groups — including the Kachin Independence Organization, the United Wa State Army, the Shan State Progressive Party, and the New Mon State Party — did not participate. Groups that signed the accord were removed from the list of "unlawful associations," which criminalizes engagement with such groups, creating the space for these groups to play a role in democratic politics in the future.

12 At the 1947 Panglong Conference, representatives from some ethnic groups (such as the Kachin and Shan—but not the Karen, who only sent observers) agreed to the formation of the Union of Burma with the understanding that they would be given a high level of autonomy and control over the resources in their areas.

Since the November 2015 elections, fighting has continued between the Myanmar military and nonsignatory ethnic armed groups as well as among ethnic armed groups in parts of Shan and Kachin states. Nonetheless, in January 2016, the inaugural meeting of the Union Peace Conference took place in Nay Pyi Taw, attended by the signatories of the national cease-fire agreement (but without the full participation of nonsignatories). During the event, Aung San Suu Kyi signaled that the National League for Democracy would support the ongoing dialogue process but that the details of the framework for political dialogue would have to be re-examined after the transfer of power to an NLD-led government. In July 2016, the league-led government began talks with parties that did not sign the cease-fire agreement about possible participation in a second meeting of the Union Peace Conference, expected to take place in August 2016.

Rakhine State and Communal Conflict

In addition to ethnic conflict, anti-Muslim sentiment and Buddhist nationalism have emerged as a critical feature of politics in Myanmar, particularly in Rakhine state. Rakhine is Myanmar's westernmost state, bordering Bangladesh to the north, as well as its poorest. It has a population of just over 3 million people, about two-thirds of whom are ethnic Rakhine Buddhists and one-third of whom are Muslim.[13] Most of the Muslim population trace their lineage to South Asian immigration to Myanmar during British colonial rule. Many of these people self-identify as "Rohingya." The Rohingya are not officially recognized as an ethnic group, and the government does not use the term to refer to this population.

There have been sporadic clashes between Rakhine Buddhists and Muslims dating back to World War II, though the communities have also lived side by side for long periods without conflict. Relations deteriorated to their worst level beginning in June 2012 with outbreaks of communal violence between Buddhists and Muslims across Rakhine state, killing or injuring hundreds and displacing tens of thousands—the vast majority Rohingya. To quell violence, the government separated the communities, isolating displaced Rohingya in camps and imposing heavy travel and other restrictions on the Muslim population.[14]

Since then, mistrust has increased. The ethnic Rakhine community in particular has been resistant to accepting the Rohingya as legitimate residents of Rakhine state, and individuals are susceptible to significant social pressure to conform to this view. Many ethnic Rakhine also mistrust the motives of the ethnic Bamar-dominated Myanmar government. While the USDP government was relatively effective in preventing further conflict in the short term, this came at the expense of possible reconciliation in the future. Moreover, the USDP government tolerated growing Buddhist nationalism and anti-Muslim sentiment across Myanmar, which triggered several incidents of anti-Muslim violence in the Bamar heartland between 2013 and 2014.

Since the November 2015 elections, fighting has continued between the Myanmar military and nonsignatory ethnic armed groups as well as among ethnic armed groups in parts of Shan and Kachin states.

Rohingya have seen a continued erosion of their rights. Some 130,000 remain in internally displaced person camps. They, as well as villagers outside the camps (who number in the hundreds of thousands), continue to face restrictions on their movement and access to livelihoods, health, and education. The oppressive restrictions,

13 According to 2014 census data, Muslims made up only 1.4 percent of the enumerated population of Rakhine state. If the estimated nonenumerated Muslim population in northern Rakhine state is included, this figure rises to approximately 35 percent. The 2014 Myanmar Population and Housing Census, The Union Report: Religion, Census Report Volume 2-C (July 2016)

14 There are other Muslim ethnic groups in Rakhine state, in particular the Kaman. The Kaman are officially recognized and have citizenship rights, but some also face restrictions similar to those placed on the Rohingya.

extreme poverty, and lack of prospect for improvement have led to large outflows of Muslims from Myanmar, leading to the "boat crisis" in 2015 in which thousands of migrants were stranded off the coast of Indonesia and Malaysia.

The key challenge facing the Rohingya relates to their citizenship status. Many trace their roots in Myanmar back generations and had previously held citizenship documentation. For much of the past 20 years, however, most held temporary registration certificates—also known as "white cards"—which did not confer citizenship status and left much of the population in legal limbo. Nevertheless, certificate holders were allowed to vote and to form political parties in previous elections.

In September 2014, the Parliament barred temporary registration certificate holders from serving as members of political parties, and in early 2015, the president unexpectedly announced that temporary registration certificates would be canceled. The Parliament subsequently amended the election laws to remove "holder of temporary registration certificate" from the list of eligible voters. This troubling denial of political rights, along with the dismal humanitarian situation, remained a major concern for The Carter Center and the international community throughout the period of observation. (See section "Disenfranchisement of Temporary Registration Certificate Holders.")

Electoral Institutions and the Framework for the Elections

It was in this political and historical context that The Carter Center undertook its assessment of the 2015 election. This section analyzes the regulatory framework for elections and the work of the relevant institutions in organizing the elections and assesses them against international standards and good practices for democratic elections. The main areas of assessment are the constitutional and legislative framework, the electoral system, constituency boundary delimitation, election management, voter registration, candidate registration, and voter education.

Constitutional Framework

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national law and international obligations.[15] The legal framework includes constitutional provisions related to elections and fundamental rights, legislation relating to elections and election rights, and bylaws and regulations issued in accordance with legislation.

The 2008 constitution provides the overall framework for the conduct of elections. Many, though not all, of the weaknesses in the electoral law and its implementation can be traced to constitutional provisions. The constitutional framework was designed by the military regime to ensure that the military maintains substantial control of government and the pace of future reform efforts.

There are a number of constitutional provisions that structurally impact the democratic character of the electoral and political processes. In addition, the restrictive amendment procedures make systemic electoral reform difficult, as 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.[16] Because the military controls 25 percent of both houses of Parliament, these limitations guarantee an essential role for the military, regardless of the outcome of elections.

There are a number of constitutional provisions that structurally impact the democratic character of the electoral and political processes.

Major issues of concern identified by The Carter Center as they pertain to the constitutional framework for elections include:

- *Military Appointments to the Legislature and Key Ministries*. The commander in chief of the Defense Services appoints one-quarter of the members of each legislative chamber. While having members of Parliament who

15 ICCPR, Article 2; U.N. Human Rights Committee, General Comment 25, paras. 5, 7, 9, 19, 20

16 Article 436, 2008 constitution

Tadzrul Adha

Posters in Loikaw, Kayah state, remind voters to check the accuracy of the voter list.

are not directly elected in the upper House of Parliament is a practice in some countries, the appointment of members to the lower House is inconsistent with international democratic norms, which specify that the will of the people as expressed in genuine elections is the basis for government authority.[17]

The commander in chief also names the ministers for defense, home affairs, and border affairs, putting these ministries outside civilian oversight. This has consequences for the administration of elections, as subcommissions are heavily reliant on the General Administration Department of the Ministry of Home Affairs, responsible for government administration at all levels.

- *Equality of the Vote*. 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, and therefore, the system does not ensure the equality of the vote, an essential element of democratic elections.[18]
- *Authority and Independence of Election Management Bodies*. The constitution gives the president wide authority in appointing the members of the Union Election Commission. Although the Parliament must approve the appointments, it can reject them only on narrow grounds. The constitution does not in this sense provide sufficient guarantees for the independence and impartiality of the election administration. In addition, UEC decisions are final and are not subject to parliamentary or judicial appeal. Election management body decisions affecting fundamental rights should be subject to appeal.[19]
- *Voter Eligibility*. The constitution provides that citizens who are 18 years old are eligible to vote, but Article 392 specifies important exceptions to voting rights, some of which do not appear to be reasonable grounds for restricting voting rights under international standards.[20]
- *Candidate Eligibility*. Articles 120, 152, and 169 of the constitution require that a candidate be 25 years old (30 years old for the upper House), have resided in Myanmar for 10 consecutive years, and be born of parents who were citizens at birth. The citizenship requirement discriminates against those who are citizens under Article 345(b) of the constitution ("associate citizens" and "naturalized citizens"), since they are ineligible to be candidates.[21] Under

17 Article 21 of the Universal Declaration of Human Rights states, "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections ...." See also the ICCPR, Article 25, and General Comment 25, para. 7, 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."

18 See section on Boundary Delimitation for further detail.

19 See Article 2.3 of the ICCPR and Article 8 of the UDHR.

20 See section on Voter Registration for further detail.

21 Article 345 gives citizenship to any person who is (a) "born of parents both of whom are nationals of the Republic of the Union of Myanmar"; or (b) "already a citizen according to law on the day this Constitution comes into operation." Under the 1982 Citizenship Law, associate citizens are those who lived in Myanmar before 1948 and whose parents were not citizens at the time of their birth but who applied for citizenship under the 1948 citizenship law. Naturalized citizens are those who lived in Myanmar before 1948 but applied for citizenship under the 1982 law.

international law, no distinctions are permitted between citizens in the enjoyment of electoral rights. Blanket candidacy rights restrictions based on naturalized citizenship are generally considered unreasonable.[22]

- *Restrictions on Eligibility for the Presidency*. The constitution (59[f]) prohibits anyone with a parent, spouse, or child with foreign citizenship from holding the post of president of Myanmar. This is an unreasonable restriction—given that it appears to be directed at a particular individual—and should be reconsidered.[23]

Legislative Framework

While the constitution regulates many fundamental aspects of the elections—including the election system, eligibility criteria for voters and candidates, and the structure and nomination of the Union Election Commission—elections in Myanmar are primarily governed by a set of three election laws[24] as well as the law on the commission and the political parties registration law, all adopted in 2010. These are supplemented by UEC bylaws, rules, instructions, and guidelines.

The election legislation contains gaps, in some instances lacks clarity, and gives overly broad rule-making authority to the UEC. The commission is left to regulate aspects of the process that significantly impact an individual's right to vote and be elected. These include the time frame for holding an election and for voter and candidate registration, the membership and appointment of election subcommissions, political party campaigning rules, access of election observers, transparency of ballot printing, timeline and eligibility for advance voting, ballot validity rules, tabulation and announcement of results, and rules for safekeeping of election materials. In addition, the election laws do not establish a clear process for the resolution of electoral disputes, which falls under the UEC's authority. While some of these aspects may appear to be "technical" points, they are important for the integrity of an election, enhancing public trust, and protecting candidate and voter rights.

The legislative framework also contains laws unduly limiting political space. Most notably, the peaceful assembly and procession law and the ward and village tract administration law, both passed in 2012, and sections of the colonial-era penal code give excessive discretion to authorities to regulate activity by political parties and citizen groups.

Apart from constitutional constraints and the overly broad rule-making authority given to the UEC, the election laws generally provide for an acceptable electoral process when implemented reasonably, as they were in this election. However, significant legal reform is necessary to ensure greater protection of fundamental democratic rights and freedoms. Political leaders, legislators, and election authorities—together with civil society—should consider addressing the need for constitutional reform and reviewing election legislation. The authorities of Myanmar should prioritize ratification of core international human rights treaties.

Electoral System

The essence of a genuinely democratic election is that voters can freely choose their representatives and hold them accountable for the exercise of power. Although no specific electoral system is prescribed by international law, an electoral system that will "guarantee and give effect to the free expression of the will of the electors" is at the core of international standards.[25]

22 General Comment 25, para. 3, states, "No distinctions are permitted between citizens in the enjoyment of [Article 25] rights on the grounds of race, color, 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; and the IPU Declaration on Criteria for Free and Fair Elections.

23 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 …"

24 The Amyotha Hluttaw (upper House) election law, Pyithu Hluttaw (lower House) election law, and Hluttaw (region and state) election law. Apart from provisions on candidate registration and the composition of these parliaments, the three laws are identical.

25 UDHR, Article 21(3), and ICCPR, Article 25. See also UNHRC, General Comment 25, para. 21: "Although the [ICCPR] does not impose any particular electoral system, any system operating in a state party must be compatible with the rights protected by Article 25 and must guarantee and give effect to the free expression of the will of the voters."

A polling officer gives a voter her ballot at a polling station in Yangon.

Ron Borden

In accordance with the framework established by the constitution and election laws, voters elect 75 percent of the members of the two houses of the Union Parliament and of the assemblies of Myanmar's states and regions.[26] Elections are held in single-member constituencies under a first-past-the-post system, with the candidate receiving the highest number of votes winning. Representatives are elected for five-year terms. The upper House of the Union Parliament has 168 elected members, and the lower House has 330 elected members. The number of seats in each state/region assembly varies depending on the number of townships in that state/region.

At the state/regional assembly level, there is a provision for representation of ethnic minorities through reserved seats, termed "ethnic ministers." To qualify for a reserved seat, an ethnic minority must have a population in a state or region of at least 0.1 percent of the country's total population (51,400 people, based on 2014 national census data).[27] Ethnic minorities that are the majority ethnic group within their state or region do not get a reserved seat. (For example: There is no reserved seat for the Shan ethnic group in Shan state, but voters of Shan ethnicity living in Mandalay have the right to elect a Shan ethnic minister for the Mandalay regional assembly.) There are also no reserved seats for ethnic minorities that live within a state or region where that ethnic group already has a self-administered district/zone.[28] To determine eligibility to vote for ethnic ministers, election subcommissions were instructed to use the ethnicity of the voter's father. As a result, citizens with parents from two different ethnic groups can only vote for the ethnic minister of their father's ethnicity.

In late 2014 and early 2015, Parliament considered introducing a proportional system for elections to the upper House, but no changes were introduced prior to the 2015 elections. While the use of the first-past-the-post electoral system is consistent with international standards, aspects of Myanmar's electoral system, particularly the set-aside of 25 percent of seats in the legislatures for unelected military personnel, are clearly inconsistent with international standards.

26 As noted, the commander in chief appoints the remaining 25 percent.

27 Only ethnicities that are among the 135 officially recognized "national races" set out in the 1982 citizenship law are eligible for ethnic ministerial seats. The accuracy of these categories is heavily contested, and several groups living in the country are unrecognized.

28 Such as the Danu, Kokang, Pa–O, and Pa Luang self-administered zones and the Wa self-administered division in Shan state, and the Naga self-administered zone in Sagaing region.

Constituency Boundary Delimitation

Under international standards, constituency boundaries should be drawn in such a way that the principle of equal suffrage is preserved, so that every voter should have roughly equal voting power.[29]

In Myanmar, constituencies are drawn on the basis of administrative boundaries rather than on population or number of registered voters. For the lower House of the Union Parliament, constituencies are based on administrative boundaries of townships. The system of linking constituency boundaries to administrative boundaries has been in use since independence. While this creates a direct link between constituencies and parliamentary representatives, the number of voters varies widely among townships. In the 2015 election, lower House constituency sizes ranged from 1,408 voters to 521,976 voters.[30] While the average constituency size was 105,524 voters, the 10 smallest townships had an average of 3,574 registered voters, and the 10 largest townships averaged over 297,000. Even within the middle third of constituencies, the number of registered voters ranged from approximately 72,000 to 127,000.

Each state and region has 12 members in the upper House of the Union Parliament. Constituencies for the upper House are drawn by combining or dividing townships. For states/regions with fewer than 12 townships, larger townships are divided in two; in those with more the 12 townships, smaller townships are combined to form a constituency. The UEC determines which townships should be joined or divided to form constituencies. For this election, the UEC used population data from the 2014 national census as a basis. Further, each self-administered zone or self-administered district corresponds to one constituency for elections to the upper House to guarantee that these units are represented.[31]

For state and region assemblies, each township is represented by two seats; therefore, constituencies are drawn by dividing the township in two. Because of variations in the size of townships, the size of the assembly constituencies within a state and region also varies significantly.

Utilizing administrative boundaries rather than actual population or voting population to define constituencies has resulted in significant malapportionment and does not effectively ensure the equality of the vote, an essential element of genuine democratic elections. This aspect of the electoral system is inconsistent with international standards and good practice.[32]

Utilizing administrative boundaries rather than actual population or voting population to define constituencies has resulted in significant malapportionment and does not effectively ensure the equality of the vote, an essential element of genuine democratic elections.

29 UNHRC, General Comment 25, para. 21: "The principle of one person, one vote must apply, and within the framework of each state's electoral system, the vote of one elector should be equal to the vote of another.... The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely." See also, U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 103.

30 According to the UEC, the lower House constituencies (townships) with the highest number of voters are Hlaing (521,976), Bago (338,710), and Hpa-An (324,238). The constituencies with the lowest number of voters are Injangyang (1,408), Ko Koe Kyun (1,570), and Soon Pra Boon (2,029).

31 The 2008 constitution created five self-administered zones and one self-administered division, each associated with a non-Bamar ethnic majority group in the area and with a slightly different administrative structure than the normal district/township/ward structure found in most parts of the country.

32 ICCPR, Article 25 guarantees "equal suffrage." UNHRC, General Comment 25, para. 21, "...The principle of one person, one vote must apply, and within the framework of each state's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters...." As an example of international good practice, the Venice Commission's Code of Good Practice in Electoral Matters, 2.2.1, 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)."

Election Management

An independent and impartial election management body that functions transparently and professionally is recognized as an effective means of ensuring that citizens can participate in a genuinely democratic electoral process. It is also the responsibility of an election management body to take necessary steps to ensure respect for fundamental electoral rights as defined in international and national law.[33]

The current system does not provide for political balance or pluralism of the election administration and gives opposition parties little input into the composition of the election management body.

Structure. In Myanmar, the Union Election Commission has responsibility to conduct general elections, register political parties, and supervise their activities. The union level commission sits in the capital, Nay Pyi Taw. Subcommissions function at the state/regional, district, township, and ward/village tract levels, corresponding to the administrative structure of the country. The commission enjoys broad authority in performing its mandate and is not subject to parliamentary or judicial supervision. Decisions of the UEC are not subject to appeal.[34]

Appointment Process. At the union level, the Union Election Commission is a permanent body appointed by the president and approved by Parliament. The constitution and the UEC law provide that the commission must be composed of at least five members. (No upper limit is stipulated.) The commission overseeing the 2015 election was composed of 15 members. Only one was a woman.

The constitution requires that UEC members be at least 50 years old; have served as judges, legal officers, or lawyers; be deemed "eminent people"; and have integrity and experience. Members may not be members of political parties. Parliament has little discretion in confirming appointments, as it can only reject nominees for not meeting a constitutional requirement.

The current system does not provide for political balance or pluralism of the election administration and gives opposition parties little input into the composition of the election management body. Although the UEC worked in an impartial and professional manner in the 2015 election, members were widely perceived by Carter Center interlocutors as being close to the USDP-led government. Several members, including the chairman, had formerly held high-ranking positions in the military, government, or USDP. This initially affected public confidence in their work.

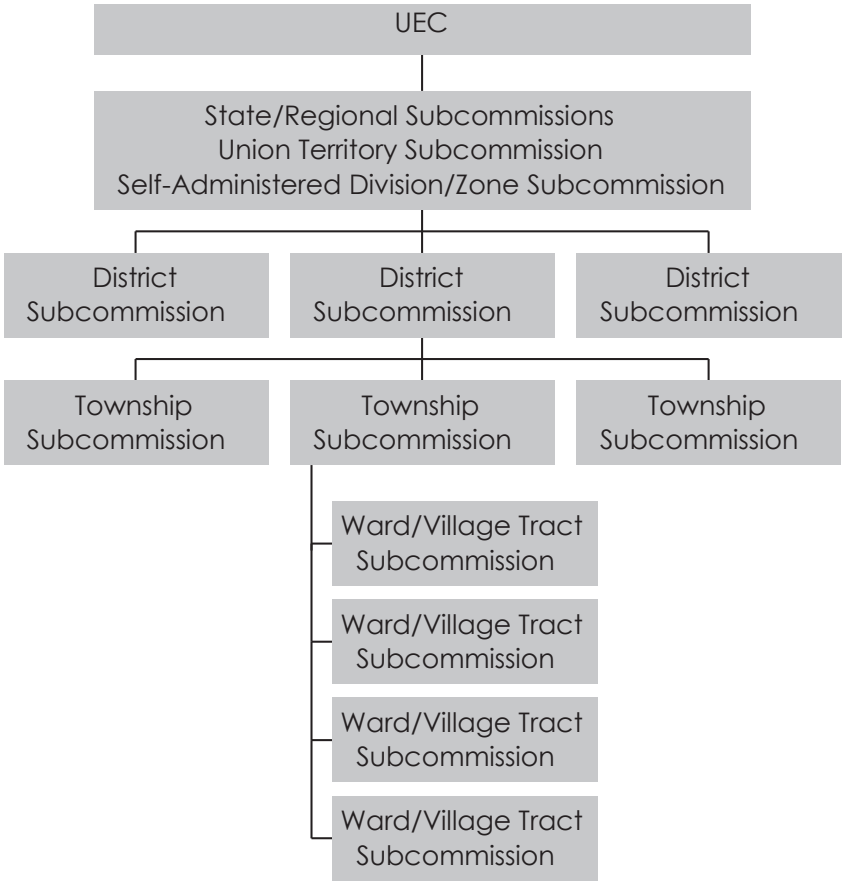
In an effort to bolster the UEC's credibility and representativeness, the president appointed eight additional members in April 2015, joining the seven existing members. The additional members were from ethnic minorities and were assigned responsibility for particular ethnic states. These commissioners also played a prominent role in the postelection tribunals adjudicating complaints originating in the ethnic states.

All subcommission members are appointed directly by the UEC. Polling station staff are appointed by the respective township subcommission. The election laws do not set out specific rules governing the nomination process for subcommissions. Subcommissions are also generally composed of 15 members—nine from the local government administration at the respective level and six "trusted people" (commonly referred

33 UNHRC, 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."

34 Article 2.3 of the ICCPR obliges state parties to "develop the possibilities of judicial remedy" for violations of the rights and freedoms recognized by the Covenant. Article 8 of the UDHR states that "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." According to the Declaration on Criteria for Free and Fair Elections unanimously adopted by the Inter-Parliamentary Union (IPU) on March 26, 1994, national legislation "should ensure that complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts." The Union Parliament of Myanmar has been a member of the IPU since 2012.

The Election Commission Structure



to as volunteer members).[35] The representation of women on subcommissions was generally low. Ethnic representation on subcommissions visited by Carter Center observers varied widely,[36] though ethnic groups were generally underrepresented even in the ethnic states.

In preparation for the 2015 elections, the UEC created an open recruitment system for staffing 600 membership positions in subcommissions but relied heavily on public servants at the township and lower level, the majority of whom came from the general administrative department, the ministry of education, ministry of health, and other government ministries with a presence at the township level. In practice, members were almost always current or retired local government officials.

Independence and Capacity. At the union level, the UEC had its own staff, budget, and other material and human resources at its disposal and appeared to exercise its power without any obvious undue influence from other parts of government. UEC staff at the union level, while lacking in electoral experience, exhibited professionalism. Early in the process, the commission acknowledged that it faced serious capacity issues that could impact the management of the elections and designed a training and capacity-building program

35 Neither the election laws nor the UEC law makes any reference to volunteer members on subcommissions. In townships visited by Carter Center field staff, most volunteer members were retired civil servants.

36 The regional subcommissions of Mandalay and Ayeyarwady (which has a substantial Karen population), for instance, had no ethnic minority representation.

for its staff at all levels. Still, Carter Center observers found that election subcommissions had varied understandings of election legislation, with some lacking knowledge of election procedures and plans, especially at the township level and below.

Though the situation varied across the country, subcommissions at lower administrative levels generally had substantially less capacity, as they lacked sufficient human and financial resources.

The Carter Center found that the Union Election Commission and its subsidiary bodies conducted their activities in a professional and generally transparent manner.

As a result, they were functionally and operationally dependent on local government administrative structures, particularly the General Administration Department.[37] Nearly all state/region and township subcommissions were located in government administrative offices and were reliant on the General Administration Department for most material and human resources.

Carter Center observers found that while subcommissions generally exhibited a commitment to conducting their activities efficiently and impartially, they often suffered from a lack of credibility with local election stakeholders, due in part to their perceived (and actual) lack of independence from the local administration, whose officials were very often associated with the USDP. There was a widespread perception that subcommissions were either biased toward the USDP or subject to the control and influence of local officials. In the pre-election period, efforts to increase the resources and capacity of the subcommissions did little to alleviate these suspicions in the absence of more formal independence from the General Administration Department, which would require changes in the law.

Following the 2015 election, the government decided to make the position of township level subcommission chair into a permanent election commission staff position, giving them more independence from the General Administration Department and reducing conflicts of interest. This was a positive step toward increasing the independence and capacity of electoral bodies at the township level.

Transparency. The Carter Center found that the Union Election Commission and its subsidiary bodies conducted their activities in a professional and generally transparent manner. Center observers were able to meet with commission members throughout the country and were offered access to observe subcommission activities, such as the process of updating the voter list. The commission was generally willing to share information with The Carter Center and other observers, though relevant information was not always available at the union level (including, for instance, timely information on the number and location of polling stations). A number of steps that would have further increased transparency were never taken, such as the publication of an election calendar, the timely publishing of amendments to UEC bylaws and instructions to election subcommissions, and the publication of election results by polling station, including on the internet.

One of the most positive UEC initiatives was the convening of a series of consultations with civil society and political parties. The commission held nine meetings with civil society groups beginning in March 2014 and seven meetings with political parties beginning in October 2014. At the meetings, it updated attendees on electoral preparations, provided a venue to coordinate voter education activities, and elicited feedback on the draft accreditation procedures for national and international observers. These national-level meetings, which took place in Yangon, were followed by state and regional stakeholder meetings before the election. The level of consultation

37 The General Administration Department is part of the Ministry of Home Affairs and plays a wide range of roles, ranging from tax collection to land management and assorted registration and certification processes. Its main responsibility is the management of the country's public administrative structures. For details, see: Kyi Pyar Chit Saw and Matthew Arnold: Administering the State in Myanmar. An Overview of the General Administration Department, https://asiafoundation.org/resources/pdfs/GADEnglish.pdf.

in Yangon was not fully replicated at the state and regional level but was a notable improvement on past practice.

Not all parts of the process were transparent, however. The law does not stipulate how decisions should be taken within the commission itself, and most decision making was done behind closed doors in meetings that were not open to the media or observers. The minutes of UEC meetings were not published, though some subcommissions were willing to share meeting minutes with The Carter Center upon request.

The Carter Center found that the UEC successfully organized a complex election process despite considerable challenges—including a significant deficit in human and material resources. Although the election administration as a whole lacked legal and structural independence, which resulted in perceptions of bias, the UEC and its subcommissions appeared to have conducted their work in good faith, with only a few important exceptions. Nevertheless, there were areas of UEC decision making that lacked adequate transparency, and the membership of all electoral bodies remains underrepresentative of the gender and ethnicity of the general population. (See section on Women's Participation.)

Voter Registration

In order to meet the principle of universal suffrage, international standards state that it is incumbent on countries to ensure that all people entitled to vote are able to exercise that right and that if voter registration is required, it should be facilitated with no obstacles imposed.[38]

Under the constitution and the election laws, citizens who are at least 18 years old and have the right to vote according to the law are eligible to vote.[39] However, under Article 392 of the constitution, certain groups of citizens do not have the right to vote, including members of religious orders,[40] 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 a foreign citizenship. Some of these restrictions, particularly on clergy, people in bankruptcy, and those

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A voter from Kayin state checks his name on the voter list.

serving prison sentences regardless of the severity of the crime, should be reconsidered as they are inconsistent with the principle of universal and equal suffrage "without unreasonable restrictions" enshrined in Article 25 of the ICCPR.[41]

Preparation and Updating of Voter Lists. Significant efforts were made by the UEC and its subsidiary bodies to improve the quality of the voter lists. Nonetheless, the voter lists contained substantial errors largely attributable to inaccuracies in the underlying data sources and, to a lesser extent, errors in transferring handwritten lists to a digital format.

Township and ward/village tract subcommissions prepared the voter lists, which included eligible citizens residing within their respective borders on the basis of government-issued "household lists" (otherwise referred to as form 66/6) and log books maintained by immigration officials. These household lists and log books contained many inaccuracies, including duplicates, the names of deceased individuals, and the names of

38 ICCPR, Article 25(b); and UNHRC, General Comment 25, para. 11

39 Article 391(a) of the constitution. Until June 2015, people without citizenship who held Temporary Registration Certificates had the right to vote by law. (See section "Disenfranchisement of Temporary Registration Certificate Holders.")

40 The provision regarding members of religious orders 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.

41 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."

people who no longer lived in those communities. The quality of the lists also varied significantly from place to place because of the decentralized process for maintaining and updating them.

The voter lists that were used in previous elections were not computerized. For the 2015 election, the UEC launched a national voter list update program, with the support of the International Foundation for Electoral Systems (IFES). Positively, the UEC took the initiative to display the voter lists prior to the legally required national voter list display, which took place Sept. 14–27.[42] During the display periods, voters were given the opportunity to make corrections, object to the inclusion of names, and request to be included in the lists. Those who sought to be included but had no identification and were not on a household list could have their identity and eligibility verified by the village development committee.[43]

Although measures to provide for voting by migrants and IDPs were positive, some communities nonetheless remained effectively disenfranchised.

One weakness of the system was that it did not require the election commission or other government institutions to proactively identify inaccuracies. This placed a substantial burden on voters, who had to take the initiative to make corrections and provide supporting documentation to ensure their inclusion or to remove deceased family members. The process also exposed weaknesses in cooperation between election bodies and other government institutions. In many places, immigration and General Administration Department officials coordinated poorly with one another and with the subcommissions.

The initial display revealed a number of errors in the original household and immigration information, as well as anomalies or mistakes resulting from the computerization process. This resulted in public complaints covered extensively by the media. The UEC subsequently announced a nationwide extension of the initial correction period, although The Carter Center observed that this extension was not consistently applied.[44] Perceived errors or anomalies included the assignment of generic dates of birth when date-of-birth information was missing; spelling and typographical errors resulting from the transcription of handwritten household lists; inclusion of deceased people; and poor transliteration of ethnic language names. Though many of the errors could have been easily explained and should not have affected voter eligibility, the UEC was slow to communicate these explanations to the public.

The UEC acknowledged technical and human errors in the preparation of the lists but claimed to have promptly addressed these issues. A number of subcommissions decided to stop using the official software in favor of ad hoc measures, which did not have the same safeguards.[45] 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.[46]

Transfer of Voting Location and Internally Displaced Voters. Procedures for transferring voting locations lacked clarity and were sometimes burdensome, especially for migrant workers and internally displaced people (IDPs). Although measures to provide for voting by migrants and IDPs were positive, some communities nonetheless remained effectively disenfranchised.

42 The preliminary display of voter lists started in March 2015. The lists were displayed in the states and regions on a rolling basis as the digitalization of the lists was finalized. The Carter Center observed the process in areas visited by long-term observers.

43 A village development committee is a committee of respected elders from the community who have a consultative function in local village administration and general knowledge about the residents of the village/ward.

44 See Carter Center Statement on the Electoral Campaign Period in Myanmar, Oct. 27, 2015, www.cartercenter.org/news/publications/election_reports.html#myanmar.

45 According to the UEC, subcommissions in 34 townships in Ayeyarwady, Mandalay, Rakhine, and Yangon regions stopped using the official database software to maintain the lists (31 fully and three partially) and resorted to other measures (Excel files) without the ability to track when and by whom changes and corrections were made.

46 Out-of-country voting was organized at Myanmar diplomatic offices abroad, in cooperation between the UEC and the Ministry of Foreign Affairs. Voters who wished to vote abroad had to actively register with a Myanmar diplomatic office. Problems reported in connection with out-of-country voting related mainly to voter lists and ballot distribution. The Carter Center did not observe the out-of-country voting process.

During the national voter list display and up until Oct.10, those who had lived in their current place of residence for at least 180 days could request to transfer their voting location from their permanent residence to their current residence. The request form (form 3A) had to be signed by the person's employer or the local government office. This requirement made transfer voters, particularly migrant workers living and working in government-run factories, mining, and other operations, vulnerable to intimidation or manipulation by their employers or government officials. In a few areas, an unusually large number of requests to transfer were processed, including in Hpakant in Kachin state, where there are many Rakhine migrants—an at-risk population—working in jade mines.[47]

Internally displaced people also were required to prove residence in their current location for at least 180 days in order to transfer their voting location, as certified by the migrant's employer or the local General Administration Department office. According to the UEC, displaced people used the same form to transfer their voting location as other internal migrants. In practice, arrangements for IDP voting varied, and the UEC was unable to provide an overview of the arrangements made in different areas with large concentrations of displaced people. In some areas, camp managers were permitted to sign the form verifying that an internally displaced person had been residing in that location for 180 days. For election day, polling was arranged within some camps, while in other locations, displaced people were added to the voter list at a polling station in a nearby village.

Identification and Voter Slips. A large portion of the population in Myanmar does not have any form of official identification documentation.[48] Government-issued identification was not needed to vote or to be included in the voter list, because eligible voters who lacked such documentation could be added to the voter list based on confirmation of their identity by their respective village development committee.

Despite voter education initiatives, there remained a widespread misperception that official identification was a requirement. It was particularly unclear how undocumented displaced populations living away from their communities could prove their eligibility. Carter Center field staff found that election officials in different parts of the country had inconsistent understandings about how eligibility is established in the absence of documentation. In some cases, this ambiguity, which left substantial discretion in the hands of local officials, opened the door for discrimination against ethnic and religious minorities.

In response to concerns about the widespread lack of identification, specifically the difficulties faced by communities displaced by massive flooding during the 2015 monsoon season, the UEC decided to issue voter identification slips. The slips were available a week before election day for voters to pick up at election subcommission

Ron Borden

A voter hands her voter slip to a polling officer for verification.

47 See Myanmar Information Management Unit, Map of Transferred Votes in the 2015 Elections, at www.themimu.info/sites/themimu.info/files/documents/18-Sector_Map_Gov_IFES_Pyithu_Hluttaw-Transferred_Votes_MIMU1363v01_11Jan16_A3.pdf.

48 According to the 2014 census data, approximately 27.3 percent of the population (over 11 million people) lack identity documents. The 2014 Myanmar Population and Housing Census, Census Report Volume 2, Ministry of Immigration and Population (May 2015), Table G-1, p. 207

or local government offices. In some places, they were distributed door to door by election officials. Although the UEC explained in public announcements and voter education materials that the slips would not be required in order to vote, the issuance of the slips introduced further uncertainty about election-day identification requirements, with many perceiving possession of the slips as mandatory. On the positive side, 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. Carter Center observers saw only a few voters turned away on election day because they lacked voter slips or proper identification, and the accuracy of the lists overall did not appear to create significant problems.

Carter Center observers saw only a few voters turned away on election day because they lacked voter slips or proper identification, and the accuracy of the lists overall did not appear to create significant problems.

Disenfranchisement of Temporary Registration Certificate Holders. Until June 2015, people with temporary registration certificates were eligible to vote by law and were included on voter lists in previous elections, including the 2008 constitutional referendum, the 2010 elections, and the 2012 by-elections.[49]

In February 2015, the president declared that temporary certificates would be invalid at the end of March. The constitutional tribunal subsequently issued an opinion that a legislative provision allowing temporary certificate holders to vote in a proposed national referendum was unconstitutional. In June 2015, the Parliament amended the election laws to remove "holder of temporary certificate" from the list of eligible voters. The decision affected hundreds of thousands of former temporary registration certificate holders. While this included a large number of people of Chinese and Indian descent, the cancellation had the largest impact upon Muslim populations in Buthidaung, Maungdaw, and Sittwe townships of Rakhine state. Most of these people self-identify as Rohingya.

Following the cancellation of temporary registration certificates, the government announced that they would be replaced with new temporary identity documents until the citizenship status of former certificate holders could be verified. Generally, Carter Center staff found that there was little knowledge about the function of the new documents, including among township-level immigration officials in Rakhine state. The Rakhine state election subcommission told The Carter Center that those who were granted citizenship through the verification process prior to the election would be included on the voter list. But as a practical matter, the verification process was all but halted in the northern townships of Rakhine state, where the majority of Rohingya reside. The authorities did not provide information about the number of certificate holders who were disenfranchised or even if any former holders were able to have their citizenship verified and be reregistered to vote.

Muslim citizens confined to internally displaced people camps also faced difficulties in exercising their right to vote. Local election and administration officials in Sittwe expressed reluctance to enter Rohingya communities or IDP camps to facilitate access to the voter list update process, claiming a lack of trust and cooperation by the Muslim community. Muslim community leaders, in turn, reported that little effort had been made by officials to ensure that eligible Muslim voters' names appeared on the final list.

The disenfranchisement of former certificate 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—was a serious contravention of fundamental political rights.[50] The effects of

49 Temporary registration certificates (or "white cards") temporarily but indefinitely conferred some rights held by Myanmar citizens to people who had not been determined to have Myanmar citizenship.

50 See Article 8 of the UDHR; UNHRC General Comments 18, 25, 26 (para. 4), and 31; and the IPU Declaration on Criteria for Free and Fair Elections.

the decision also appeared to be discriminatory. Though not the only group of former temporary certificate holders, the cancellation had the largest impact upon the Rohingya populations in Buthidaung, Maungdaw, and Sittwe townships of Rakhine state, most of whom were already marginalized from the political process and living in conditions that prevented them from exercising most civil and political rights, including basic freedom of movement.[51]

Candidate Registration Process

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.[52] Therefore, any conditions placed on political party and candidate registration processes should be reasonable and nondiscriminatory.[53] According to international standards, individuals are entitled to have decisions affecting fundamental rights taken by a competent, independent, and impartial tribunal in a fair and public hearing.[54]

Candidate Qualifications. The constitution and the election laws set out the eligibility requirements for candidates standing in general elections. In addition to being eligible to vote, a prospective candidate must be at least 25 (for the lower House and state/regional assemblies) or 30 years old (for the upper House), must have resided in Myanmar for at least 10 consecutive years before election day, and must have been born of parents who were both citizens at the time of birth. The residence and the parental citizenship requirements are inconsistent with international standards, which indicate that people who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements.[55]

In addition to associate citizens, naturalized citizens, and people who do not have voting rights, certain categories are not eligible to be candidates. These categories include, inter alia, those "who owe allegiance to a foreign government" and civil service personnel. The election laws also disqualify anyone who "uses religion for a political purpose," as well as any "person against whom there is credible evidence of contact with an organization declared as an unlawful association under any existing law, organization and people designated by the state to have committed terrorist acts, insurgent organization or its members in revolt with arms against the state." Some of these provisions could result in subjective and inconsistent interpretation.

Candidate Registration. Candidates can run on behalf of political parties or can stand as independents. Prospective candidates submit nomination forms with their basic data to the relevant district subcommission (state/regional subcommission for those running for an ethnic ministerial seat) and pay a 300,000 Kyat (around $240 USD) registration fee. Officially, political parties are not involved in the nomination process and do not submit a list or any documentation to the election commission. In practice, the party leadership plays an important, often decisive, role in identifying candidates (particularly within the larger national parties). Nominees indicate which political party they represent, if any. If two nominees indicate the same political party in the same constituency, the subcommission checks with the central committee of the party to confirm which candidate it supports.

51 Article 26 of the ICCPR states, "All people 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 people equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

52 ICCPR, Article 25 (a). UNHRC, General Comment 25, para. 15

53 UNHRC, General Comment 25, paras. 15–17

54 The UDHR (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 and obligations..." See also the ICCPR (Article 14.1). U.N. HRC General Comment 32 notes that a tribunal must be independent of the executive branch (para. 18). Although Myanmar is not yet a party to the ICCPR, the authorities have stated their intention to conduct elections in line with international standards.

55 Furthermore, General Comment 25, para. 15, states: "Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. People 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 IPU Declaration on Criteria for Free and Fair Elections states that everyone "shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall [...] not be inconsistent with the State's international obligations." The Venice Commission's Code of Good Practice in pt. 1.1.c.iv recommends that where residency requirements exist, "the requisite period of residence should not exceed six months."

Although the number of disqualified candidates was relatively small, restrictive requirements, selective enforcement, and a lack of procedural safeguards called into question the credibility of the scrutiny process.

Candidate Scrutiny Process. When the candidate nomination period ended on Aug. 18, election subcommissions had received 6,189 candidate nominations representing 93 political parties and 313 independent candidates.[56] District election subcommissions subsequently "scrutinized" nominations to ensure that they met the legal requirements for candidate eligibility. Scrutiny of candidate eligibility was conducted by the district subcommission (or state/regional subcommission for ethnic ministers) from August 18–31, 2015. Nominees were to appear at a given date and time for the review of documentation and for the consideration of objections from other candidates. Rejected nominees had seven days to appeal to the state/regional subcommission.[57] In total, 99 nominations were rejected—most for failure to meet the citizenship, age, and residency requirements.[58]

Although the number of disqualified candidates was relatively small, restrictive requirements, selective enforcement, and a lack of procedural safeguards called into question the credibility of the scrutiny process. Proving the citizenship of parents—particularly in Myanmar where people have historically had difficulty obtaining identity documents and where citizenship itself has been redefined multiple times—can be an onerous task. Subcommissions at the district and state/regional level strictly enforced the citizenship provisions of the law in certain cases, including cases in which a candidate and his or her family had previously been subject to multiple citizenship verification processes[59] or the candidate's parents were in possession of citizenship scrutiny cards, which were issued in earlier processes to document verified citizenship.[60] In at least two cases, the rejected candidates had already served in the legislature. The UEC subsequently reinstated one candidate.[61]

The pattern of disqualifications by the district-level subcommissions indicated that citizenship requirements were more strictly enforced against certain ethnic and religious populations. Of the 61 disqualifications for reasons of citizenship, the majority were candidates from Muslim or ethnic parties, or were independent candidates of South or East Asian descent. 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.[62] Multiple subcommissions acknowledged that not all candidates were equally scrutinized on citizenship grounds and that they sought to identify individuals for scrutiny based in part on indications of foreign ancestry in application documents, or at times, physical appearance alone.

56 These figures include candidates for both houses of the Union Parliament, as well as state and regional assemblies.

57 Candidates seeking to contest for one of the seats reserved for an ethnic group in a state or regional assembly appeal decisions of the respective state subcommission directly to the UEC.

58 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.

59 Based on the 1982 citizenship law, a citizenship verification process began in 1989. Those who went through the process received citizenship scrutiny cards if they were found to be full citizens (as opposed to associate or naturalized citizens: those who acquired citizenship status in their lifetime or were not born to two citizens, including one full citizen). Identity cards issued previously could not be used as proof of citizenship, even though the government regularly treated bearers as citizens. Additional citizenship verification was also conducted at various times, including for those who sought civil service positions, joined the military, or wanted to study law, medicine, engineering, or other professions.

60 Multiple candidates informed The Carter Center that they and their parents had citizenship scrutiny cards. One candidate showed Carter Center observers copies of government-issued documents stating that his parents and all grandparents were born in Myanmar, which apparently proved that the candidate met all citizenship requirements. However, the Rakhine state subcommission rejected the candidate's appeal.

61 U Shwe Maung, a Rohingya politician and USDP member of the lower House of Parliament, applied to stand for re-election as an independent candidate in Maungdaw township in northern Rakhine state. Daw San San Myint, a member of the Yangon regional Parliament, applied to stand for re-election on behalf of the New National Democracy Party. Both had been elected in 2010. The UEC ultimately reinstated Daw San San Myint.

62 The Democracy and Human Rights Party and National Development and Peace Party, predominantly Rohingya parties fielding candidates in northern and central Rakhine, had 15 and seven candidates disqualified respectively—the largest number of disqualifications for a single party.

The initial scrutiny and the appeals processes lacked adequate due-process safeguards. This was evident in relation to the determination of citizenship. Immigration officials played an unclear role in determining residency and citizenship. Election officials provided contradictory explanations about when, how, and upon what basis those determinations were made. Documents establishing the citizenship status of a nominee's parents were not requested at the time of application. Candidates were not always given the opportunity to be present and defend themselves, and the appeals process lacked uniformity, with subcommissions taking different approaches. The Yangon region and Rakhine state subcommissions, for instance, conducted paper-only reviews of lower decisions and did not have clear procedures for notifying appellants.[63] Of 67 appeals to the state and regional election commissions, 13 candidates were subsequently registered, but only one disqualification based on citizenship was overturned.

Review and Appeal of Candidate Disqualifications. The UEC chose to exercise its authority under Article 53 of the election laws to review decisions of lower-level commissions for 18 rejected candidates. The UEC decided that 11 of the rejected candidates were in fact eligible, including 10 candidates rejected on citizenship grounds.[64] The UEC's review of disqualifications was a commendable measure. However, the process was not transparent, and the UEC did not explain why other cases were not reviewed or what the determining factors were in the decision to register or not register the candidates reviewed. At least seven of the reinstated candidates were Muslim, although only one was from the 29 initially rejected in Rakhine state.[65] The disqualification of nearly all Muslim candidates in Rakhine state limited representation possibilities for the Rohingya population, already largely disenfranchised by the cancellation of voting rights for former temporary registration certificate holders.

Although the state/regional subcommission is the first and only level of appeal in most candidate eligibility cases, the UEC is the appellate body for those rejected to run for ethnic minority seats at the state and regional level ("ethnic ministers"). Notably, the UEC did hear the appeals of three prospective candidates whose nominations to run in the elections for ethnic seats were rejected.[66] In formal hearings on these cases, which were open to observers, the UEC overturned the subcommissions' decisions, finding that neither the constitution nor the election laws imposed an ethnicity requirement that would prevent the candidates from contesting.

The Union Election Commission decided that 11 of the rejected candidates were in fact eligible, including 10 candidates rejected on citizenship grounds.

Overall, the candidate registration process resulted in a large number of candidates across a broad range of political parties.[67] At the conclusion of the scrutiny process, including withdrawals and the deaths of two candidates, 6,074 candidates were registered, representing 91 political parties and 310 independent candidates. This gave voters in most constituencies a wide range of choice. Nonetheless, The Carter Center found that there was a lack of transparency and due-process safeguards in the appeals process, and inconsistent—and discriminatory—application of eligibility requirements, particularly for Muslim candidates. In addition, there are a number of overly restrictive limitations on candidacy rights.

63 More than two-thirds of disqualifications occurred in Yangon region (34) and Rakhine state (29).

64 The 11th candidate was originally rejected for not meeting the minimum age requirement.

65 Of the five political parties fielding mostly Muslim candidates in Yangon, only the National Solidarity Congress Party had candidates reinstated.

66 The nominations were rejected on the grounds that the father of the candidate was not of the ethnicity of the reserved ethnic seat that they sought to contest. The subcommissions had based their original decisions on a UEC instruction that the father's ethnicity should be used when determining which voters are eligible to vote for an ethnic seat. The UEC ruled that the instruction did not apply to candidate eligibility. As a result, the three appellants were able to run as candidates for the ethnic seats but ineligible to vote in the election for those seats.

67 Breakdown of candidates by legislature: upper House—886; lower House—1,745; state/region—3,282; ethnic minister (all states and regions)—161

Voter Education

Comprehensive and effective voter education is essential to inform the electorate of their rights and to clarify procedures ahead of election day, thus ensuring that citizens can exercise their electoral rights.[68]

Prior to the election, members of political parties, civil society, and government, in all states and regions visited by observers, commented on the low level of political literacy and knowledge of electoral matters among the general public. This was particularly the case in ethnic minority borderlands, such as Kachin, Shan, Chin, and Kayin states, where a widespread lack of Myanmar language proficiency and isolation borne of decades of civil conflict and repression inhibited knowledge of mainstream political affairs as well as ordinary interaction with the government. Public opinion surveys conducted in 2014 and 2015 revealed an overwhelming intention to vote but also a low level of awareness about important aspects of the electoral and governance system, including the voting system and the division of power at the union level.[69]

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Union Solidarity and Development Party campaigners go door to door in Bago region showing sample ballots and explaining voting procedures.

The UEC consistently exhibited openness and willingness to engage with civil society and political parties through regular meetings in Yangon to discuss draft procedures and answer questions about the electoral process.

An unprecedented collective voter education effort was launched across Myanmar by a large number of civil society groups, both national and locally based, many of which were recently formed and lacked experience. The energy was notable, as was the number and range of the civil society actors involved, including many ethnic minority organizations and networks. They disseminated posters, pamphlets, and other publicity materials produced by the UEC and partner organizations and delivered their own training workshops in wards and villages. Carter Center observers found voter education materials to be available in a wide spectrum of recognized ethnic minority languages, along with Chinese in border districts.

However, voter education initiatives were sometimes delayed by the lack of information from the UEC about key aspects of the electoral process, including advance voting, polling procedures, and election disputes. Voter education efforts could begin in earnest only after the UEC released the procedures and instructions. Furthermore, observers found the reach of these activities—particularly training workshops and physical outreach campaigns—to be limited in rural areas, especially those with a risk of conflict and the presence of nonstate armed groups. In northern Shan state, several civil society groups engaged in voter education drives admitted that they conducted their workshops only in the main townships, and not in villages, where voter education needs were highest but where the presence of competing militias undermined security.

The UEC consistently exhibited openness and willingness to engage with civil society and political parties through regular meetings in Yangon to discuss draft procedures and answer questions about the electoral process. Election subcommissions were not proactive in voter education and

68 ICCPR, Article 25(b); and UNHRC, General Comment 25, para. 11

69 Myanmar 2014: Civic Knowledge and Values in a Changing Society, The Asia Foundation (2014); IFES Pre-election Survey in Myanmar, Nov. 6, 2015

did not generally consider it part of their mandate, beyond delivering materials to civil society groups for distribution. However, subcommissions at state/regional and township level did hold stakeholder meetings with political party and civil society representatives to present updates on local electoral preparations and clarifications on electoral law and procedure.

Prior to the start of the official campaign period, the level of engagement with civil society and political parties by subcommissions varied substantially among states and regions—from very low in Rakhine state to notably high in Bago, Magway, and Thanintharyi regions—but became more regular and consistent across Myanmar as the election approached. Candidates, political parties, and civil society groups told observers that subcommissions were approachable and helpful during the campaign period, often in contrast to earlier periods where subcommissions were distrusted or considered opaque.

Despite a lack of proactive voter education from subcommissions, which were happy to leave this task to civil society groups, observers noted that candidates and political parties devoted a substantial part of their campaign activity to voter education, with particular focus on correct procedures for casting votes. These activities included public demonstrations during door-to-door campaigns and distribution of print materials. This complemented the efforts of civil society groups and, given the wide reach of party and candidate campaigning, was the primary means by which many voters learned of key aspects of electoral procedure.

Voter education activities contributed to the raising of voters' awareness and knowledge of electoral procedures. This was particularly important in a context in which many people had never previously voted, due to the country's political history. The work of civil society, political parties, and candidates in this respect was commendable, as was the UEC's willingness to engage with civil society and political parties. However, voter education efforts would have benefited if the UEC had shared relevant information with civil society and political parties in a timelier manner and if UEC subcommissions had played a more active role in providing voter education. For future elections, increased voter education is needed on ballot marking (to reduce the number of invalid ballots), voter registration, and voter identification.

Jana S. Nolle

Polling staff attend a training session in Bago region.

Pre-election Political Space and the Campaign Period

This section assesses the overall environment for the election and the ability of political parties, candidates, voters, media, and civil society organizations to exercise fundamental election-related political rights. The main areas of assessment are political space in the pre-election period; the conduct of the election campaign, including the media; and campaign finance regulation.

Space for popular engagement with a range of issues has expanded since 2011, which led to a lively and open campaign period.

Democratic reforms have had an uneven effect at the local level in Myanmar. Many rural areas are still mired in poverty, conflict, and limited rule of law, particularly in the ethnic minority borderlands. However, changes to laws governing association, political participation, and media—alongside a more liberal approach from local authorities—have contributed to a proliferation of political parties, civil society, and new media. Space for popular engagement with a range of issues has expanded since 2011, which led to a lively and open campaign period.

The transformation in the range of permissible speech and political activity is incomplete, however. Fundamental freedoms of association and assembly continued to be limited in the pre-election period. On election day, over 90 prisoners of conscience remained incarcerated, and hundreds were awaiting trial for political actions, including activists arrested during the election period. Positively, one of the first steps of the new government was to drop charges against 199 such prisoners on April 8, 2016, and then to pardon an additional 83 on April 17.[70]

Political Space in the Pre-election Period

In the years preceding the 2015 election, the overall political space in which political parties, civil society, and journalists operate has expanded, and it continues to improve. Political parties have been able to develop networks of branch offices, expand their memberships, and publicize themselves by erecting signboards, printing journals, and hosting public meetings. Civil society organizations have proliferated, and local media has grown through the country.

However, under existing laws and regulations, local governments retain substantial discretion to prohibit or limit public activity, including requiring township permission for the erection of signboards, holding of public events, and opening of offices. While the environment in which political parties and civil society groups now operate is an improvement over the historical norm, it remains insecure. The government, and the military through the Ministry of Home Affairs

70 According to the Assistance Association for Political Prisoners (Burma), another 48 political activists had charges against them dropped through the remainder of April. For further detail see http://aappb.org.

(whose General Administration Department is the first point of contact between citizens and the state), retain hold of legal and administrative levers capable of shutting down political space. On several occasions during the campaign period, political parties and civil society organizations faced protracted negotiations—and sometimes refusals—for staging high-profile activity in urban spaces, including parks, streets, and market areas. In Bago and Mandalay regions, for instance, township authorities refused to allow pre-campaign celebrations of independence hero Bogyoke Aung San's centenary without giving clear reasons.[71] Nonetheless, most political party and civil society leaders reported that refusals were infrequent and that their activities were only rarely obstructed.

In the year preceding the election, there were several high-profile government crackdowns on nonviolent dissident activity and speech, which countered otherwise positive trends in the growth of political freedom. These events included the violent dispersal by police of a student demonstration in March 2015 against a new education law, resulting in the arrest of over 100 students; the arrest in October 2015 of two people for making satirical posts about the military on social media;[72] and the two-year prison sentence handed down in June 2015 to an NLD information officer for "wounding" religious feelings (in accordance with the penal code) after delivering a speech criticizing Buddhist nationalist groups in October 2014.[73]

The media environment also improved substantially after the initiation of the transition, with a proliferation of new media at the national and local levels. This expanded public sphere allowed for a lively exchange of views and information around the election, although poor media reporting standards allowed misinformation and inflammatory rumors to gain traction faster and spread further than previously possible. In contrast to a dynamic print media environment, the government maintained tighter control of the broadcast media, leaving them vulnerable to arbitrary restrictions, as occurred during the broadcasting of speeches by individual political parties on state TV at the beginning of the campaign period.[74]

Restrictive and vaguely worded media laws remain in place, and reporting on sensitive issues can result in retaliation or arrest. The official secrets act; media law, printing, and publishing law; and sections of the penal code do not offer protection for journalists working in the public interest. Journalists expose themselves to risks in reporting on corruption and abuse of authority, due to defamation cases periodically brought by officials—a risk exacerbated by a weak court system. Self-censorship is widespread, although its extent varies across the states and regions. On several occasions, journalists covering the election reported that government officials were inaccessible and that collecting information from government sources was burdensome or impossible.

A troubling aspect of the more open media environment is the problem of discriminatory speech (largely directed at the Muslim minority), which has proliferated with social media and mobile phone access.

A troubling aspect of the more open media environment is the problem of discriminatory speech (largely directed at the Muslim minority), which has proliferated with social media and mobile phone access. Journalists (and others) are vulnerable in an environment of assertive

71 Bogyoke Aung San was the father of Aung San Suu Kyi.

72 Patrick Kum Jaa Lee and Chaw Sandi Htun each received six-month prison sentences. 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."

73 Htin Lin Oo was included in the presidential pardon of 83 prisoners and released from prison on April 17, 2016.

74 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."

Buddhist nationalism—led by the conservative monks group, the Association for the Protection of Race and Religion (Ma Ba Tha)—which stigmatizes Muslims and those who promote acceptance of religious minorities. In Mandalay, home to monasteries associated with Ma Ba Tha, interfaith activists told Carter Center observers

In total, 91 political parties contested the election.

that their names and identities had been publicized and defamed on social media, making them fearful of reprisals. In central Rakhine state, where ethno–religious nationalism was stoked by anti-Muslim violence in 2012 and 2013, a journalist had to temporarily exile himself from the community after writing an article critical of the use of religion in politics, which prompted a campaign of intimidation led by local monks.[75] These cases are symptomatic of wider sensitivities around religious identity.

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Mon National Party supporters dance during their campaign event in Mudon township, Mon state.

Surveillance by "special branch," a plain-clothed department of the Myanmar police under the Ministry of Home Affairs, remains a common feature in the lives of political party and civil society leaders and journalists. Activities of the special branch in monitoring the population overlap with those of military intelligence. Officers from both bodies regularly tried to attend Carter Center meetings with local stakeholders and to request detailed information from Carter Center staff. The unchecked capacity of the special branch and military intelligence to intrude into the lives of private citizens has yet to be challenged by any reform initiative. Their ubiquity at the local level sustains an atmosphere of intimidation, even if it is usually indirect, and inhibits citizens in their exercise of civil and political rights.

The opening of political space since 2011 and the proliferation of political parties, civil society organizations, and media created an environment that allowed for a lively and open election campaign. However, the full exercise of political rights was constrained by restrictive legislation, the substantial discretion of local government to prohibit or limit public activity, and several high-profile government crackdowns against nonviolent dissent and speech in the year preceding the election. Further liberalization of political space is needed to secure an environment in which peaceful political and civic activities can be conducted without fear of repercussions.

The Campaign Period

In addition to being inclusive and transparent, a genuinely democratic election requires a campaign period in which rights such as freedom of opinion and expression, freedom of association, freedom of movement, security of the person, and access to information are respected and upheld by all stakeholders of the election.[76]

Political Parties. In total, 91 political parties contested the election. The two largest parties—the NLD and the USDP—staged by far the highest-profile campaigns and contested all but a few seats nationwide. A total of 59 parties representing ethnic minorities competed. There was a division between those ethnic minority parties that joined the NLD in boycotting the 2010 elections and a larger number that competed

75 The same journalist appears to have been the target of an attack in March 2016 when an explosive went off at his home and office.

76 ICCPR, Articles 9, 12, 19, and 22; and UNHRC, General Comment 25, para. 25, which states: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."

in 2010, usually for the first time. Consequently, most of the major ethnic minority groups had multiple parties competing for their vote. This risked splitting the ethnic minority vote, which in a first-past-the-post system can result in lower representation of ethnic minority parties.[77] A significant exception was in Rakhine state, where the Arakan League for Democracy merged with the newer Rakhine Nationalities Development Party to form a unified ethnic Rakhine party, the Arakan National Party (ANP).

Other parties included those formed by breakaway members of the National League for Democracy, such the National Democratic Force, which won seats in 2010; parties that promoted a Buddhist–nationalist line, such as the National Development Party founded in 2015; and parties representing the marginalized and largely stateless Rohingya Muslim population from Rakhine state, such as the National Democratic Party for Development and the Democracy and Human Rights Party.

Regulation of Campaigning. The election campaign period began on Sept. 8. While there was a web of potentially restrictive legal provisions in place, in practice authorities generally exercised this discretion in a reasonable and fair manner during the campaign period. Political space actually appeared to be more open from previous months, largely due to the greater ease of conducting rallies and events in public places, which formerly required protracted negotiations with local authorities and no guarantee of success, particularly in urban areas.

A campaign directive first issued in July 2014 (and amended in 2015 to extend the campaign period to 60 days) allotted substantial arbitrary powers to the UEC and election subcommissions. In granting permission for proposed campaign activity, they could determine when and where an event could take place and could force cancellations on ill-defined grounds of "security, rule of law, and tranquility." Moreover, candidates were required to provide their entire 60-day campaign plan to the relevant subcommission within 15 days of candidate confirmation. The directive also limited freedom of speech, including proscriptions on the use of any speech or action that damaged the "dignity of the country" or the "dignity of the military," harmed "peaceful learning," or prevented "civil servants from fulfilling their responsibilities."

Despite these stringent regulations, candidates across Myanmar told Carter Center observers that their campaign plans had not been refused or altered. Commendably, the official requirement to submit in advance a full 60-day campaign plan was often not enforced.[78] Instead, plans submitted to subcommissions ranged in length from a month to individual, one-day event submissions. In a significant number of cases, candidates reported being able to a stage events after requesting permission only a day or two in advance. Instances where proposed activity from competing candidates clashed appeared to be resolved fairly—often on a first-come, first-served basis, with the candidate who applied later being asked by subcommissions to reschedule or relocate. Procedures for requesting permission were not considered overly cumbersome by most candidates, with the exception of those from small ethnic parties, such as in Kayah state, who struggled because of limited organizational capacity.

Of the 91 registered political parties, 88 signed the code of conduct in June 2015, after eight months of consultations among parties and with the Union Election Commission.

More stringent regulations for hosting public rallies were in place in urban centers such as Yangon and Mandalay. In the latter, designated campaign areas and campaign hours were in force but did not appear to prevent campaign activity across the commercial and residential zones of the city. Such restrictions were not in force in small or medium-sized towns. Certain iconic public

77 For instance, the Shan Nationalities League for Democracy, which boycotted in 2010, competed in many constituencies against the newer Shan Nationalities Democratic Party, which won seats in 2010.

78 Article 21 of the 1966 ICCPR guarantees the right of peaceful assembly without undue restrictions. Paragraph 12 of the 1996 UNHRC General Comment 25 states: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."

spaces, such as People's Park in Yangon and the Manau festival grounds in Myitkyina, the Kachin state capital, were denied by authorities as sites for large-scale NLD rallies. In both cases, the league was able to find less desirable venues elsewhere.

Campaign activity was largely self-regulated by Myanmar's first political party code of conduct. Of the 91 registered political parties, 88 signed the code in June 2015, after eight months of consultations among parties and with the UEC. 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 associated code of conduct monitoring committee, which was established under the code and included representatives of the signatory political parties, played a role in promoting respect for the code of conduct. The committee made trips to Mandalay region and Shan and Rakhine states and released two public statements but did not appear to play an active role in mediating specific disputes. To help resolve conflicts at the local level, the UEC established mediation committees with representatives of political parties. These committees were involved in the resolution of a few disputes, resulting in the withdrawal of criminal complaints.

Conduct of Campaigning. The campaign period was initially subdued but picked up considerable momentum over time. The Carter Center observed a wide range of political parties and candidates campaigning across the country, 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. The USDP also held large rallies attracting crowds of thousands. The larger national parties used a range of media, and their rallies were complemented with decorated vehicles, concerts, and dance troupes. Large-scale rallies by smaller, state/regional or ethnic parties were rare. Indeed, for all parties, small rallies, meetings, door-to-door canvassing, and distribution of pamphlets appeared to be the primary means through which candidates reached voters, given the overwhelmingly rural distribution of the population. With the exception of active conflict zones in parts of Kachin and Shan states, voters had access to a wide range of competing candidates and views.

While campaigning began peacefully, there was a gradual increase in incidents as election day neared, most of which were isolated and did not significantly escalate tensions. During the campaign, police received reports of over 100 incidents, including more than 15 cases in which party supporters were physically attacked or threatened. The NLD informed The Carter Center of five cases in which National League for Democracy supporters were physically attacked or threatened, including a machete attack in Yangon on NLD candidate U Naing Ngan Lin.

At the village level, local leaders played an authoritative role in facilitating campaigning. Particularly in villages where parties do not have resident coordinators, candidates depended on these authority figures, whom they notified in advance, to inform and convene local communities to attend campaign events. This role was played most commonly by village tract administrators, who operate under the General Administration Department, although the role was frequently assumed by senior Buddhist monks and other clerical authorities—especially where Buddhist monasteries were used as campaign venues despite restrictions on campaigning by members of religious orders. In ethnic minority areas with a history of conflict, including large sections of Kachin, Shan, Kayah, and Kayin states, ethnic armed group commanders played a

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Political party campaign signs are displayed near a local market in Ye township, Mon state.

facilitating role, and their consent was often essential for candidates to campaign.

This informal authority opened the possibility of favoritism in determining which candidates had access to rural communities. However, candidates interviewed by The Carter Center mostly claimed to enjoy fair access, with administrators and senior monks generally acting without bias. Nevertheless, there were regular claims in northern Shan state that ethnic armed groups used their influence to favor certain parties by mobilizing turnout for campaign events—alongside more serious allegations, also difficult to verify, of threats and intimidation. Only in rare cases did this extend to the obstruction of the campaign activities. One instance involved verified threats and alleged violence perpetrated on behalf of government-aligned Kachin militia leader Zakhung Ting Ying, aimed specifically at preventing NLD candidates from campaigning in a remote area of Kachin state where he was a candidate.

Carter Center observers noted that women were actively involved in campaigning, especially in door-to-door canvassing and smaller grass-roots campaign activities. As the head of the party and a revered figure, Aung San Suu Kyi was a focal point of the NLD's countrywide campaign. However, women were not otherwise prominently featured in campaign events or in campaign materials.

Media Coverage of the Campaign. International obligations related to the media and elections include freedom of expression and opinion and the right to seek, receive, and impart information through a range of media.[79] While The Carter Center did not conduct comprehensive media monitoring, the mission found that the media were generally able to work in a free environment during the election period, allowing voters access to competing points of view.

Apart from the more general legislative limitations on media discussed above, there were no specific provisions governing the conduct of the media during the election, though the Myanmar Press Council developed guidelines that called on media not to allow their coverage to be dominated by any one party.[80] One civil society media monitoring organization, the Myanmar Institute for Democracy, found that most individual media outlets did not provide voters balanced coverage of the campaign, with private media giving greater coverage to the NLD, and state media favoring the USDP in terms of tone and depth of coverage.[81] However, the institute found that the media as a whole provided basic information about election contestants.

Media were able to report freely and critically on the election process and enjoyed good access. In contrast to risks faced by journalists in reporting on certain sensitive topics—land seizures, the military's role in governance, Buddhist nationalist movements—there were no reports of journalists facing arrest for reporting on the electoral process. Journalists interviewed by The Carter Center also reported improved access to election officials and to details on electoral preparations.

However, the control that the government retains over the broadcast media permitted one notable and arbitrary restriction of freedom of expression.[82] Each political party was given the opportunity to present its platform to the public on television. 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."[83] Limitations on the content of speeches, together with the requirement to have them approved in advance, constitute a serious restriction on freedom of expression.[84]

79 ICCPR, Article 19. UNHRC, General Comment 25, para. 25

80 Myanmar Press Council (Interim), "Election Guidelines for Media During Election"

81 The Myanmar Institute for Democracy released three media monitoring reports in the campaign period.

82 The UDHR, 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."

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

84 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 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."

National League of Democracy supporters gather at a campaign event in Thanatpin township, Bago region.

Ahmed Farag

Election Cancellations and Campaigning in Areas Under Armed Group Control. The ongoing peace process resulted in the signing of a nationwide cease-fire accord by the government and some ethnic armed groups on Oct. 15, 2015. Active fighting continued in some areas, affecting the election process. In parts of Shan and Kachin states, an otherwise peaceful campaign environment deteriorated with the resumption of hostilities between the Tatmadaw and ethnic armed groups that had not signed the cease-fire agreement, including the Kachin Independence Army, the Shan State Army-North and the Ta'ang National Liberation Army. There were also clashes between the army and one of the signatories to the national cease-fire agreement, the Shan State Army-South.

On Oct. 12, the UEC announced that elections would not be held in certain areas due to security concerns, a decision affecting 404 village tracts in Bago region and Kachin, Kayin, Mon, and Shan states, as well as five entire townships in Shan state.[85] In the latter five townships, polling was canceled for reasons of nonstate armed group control (by powerful ethnic Wa and Kokang militias) and the absence of viable government structures, rather than active conflict. On Oct. 27, a second announcement was made that the election would be canceled in all wards and village tracts of two more townships in Shan state, Khethi and Monghsu, due to intensive conflict between the Myanmar Army and the Shan State Army-North.[86] Although there are legitimate security issues in these areas, the lack of consultations and the use of vague criteria in making the determination raised suspicions in some affected areas and in the media that some of the cancellations were motivated by political rather than security reasons. As a result of the cancellations, seven lower House seats in the Union Parliament and 14 Shan state assembly seats remain vacant.

The presence of nonstate armed groups—which are particularly active in Shan, Kachin, and Kayin states—had a broader negative

85 UEC announcement 61-65/2015 of Oct. 12, 2015

86 UEC announcement 67/2015 of Oct. 27, 2015

effect on political space during the campaign. The climate of insecurity that their presence fostered inhibited candidates from campaigning across rural tracts of Kachin and Shan states. In the Pa–O self-administered zone of southern Shan state, for instance, there were reports of intimidation by the Pa–O National Army against candidates who were competing with its affiliated party, the Pa–O National Party — including death threats, throwing stones at vehicle convoys, and the damaging of campaign posters. Candidates from other parties claimed they did not feel sufficiently safe to campaign in many villages and could only distribute pamphlets via local proxies. The relative insecurity in these areas affected national parties considerably more than ethnic parties, which could rely on informal local networks, had better relations with armed groups, and faced less of a language barrier.

Religious Intolerance During the Campaign Period. During the months leading up to the campaign period, Carter Center observers noted widespread concern that Buddhist nationalist groups would seek to influence voters or stir tensions between communities during the campaign. Although the constitution and electoral laws are strict on forbidding the mixing of religion and politics,[87] the passive approach of the government toward extremist Buddhist rhetoric and activism did not inspire confidence. In particular, members of the National League for Democracy expressed their concern at being targeted as anti-national or unsupportive of Buddhism.

Ma Ba Tha organized a program of rallies celebrating the passage of the protection of race and religion laws, which took place in every state and regional capital (except for Chin state) in September and early October and attracted crowds in the thousands. The timing of these events in the middle of the campaign period was accompanied by erecting billboards that resembled those of election candidates, considered provocative by many.

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. Carter Center observers were shown material from Ayeyarwady region and northern Shan state, some with the imprint of Ma Ba Tha, which accused the NLD and Aung San Suu Kyi of being anti-Buddhist. However, no incidents of religiously motivated violence were observed by or reported to observers during the campaign, and Ma Ba Tha did not follow up its rallies with any comprehensive grass-roots activity. If anything, nationalist rhetoric appeared to subside somewhat as the campaign progressed.

In conclusion, it is clear that there has been a substantial improvement in the breadth and quality of political space in Myanmar in recent years, allowing for a vibrant and relatively unrestricted campaign period. For the most part, the authorities exercised their discretion in a reasonable way, consistent with international good practice. However, the legal framework in Myanmar does not adequately protect freedom of expression and association and should be reformed. Harassment of journalists and human rights defenders must also end for the political environment to conform with the requirements of international human rights standards. Racially and religiously provocative language remained a problem, and there was a lack of transparency in decision making around election cancellations.

Ron Borden

Posters showing voting procedure are displayed outside a polling station in Yangon.

87 Article 364 of the 2008 constitution states, "The abuse of religion for political purposes is forbidden," and Article 58(c) of the election laws states that it is impermissible to urge anyone to vote or not vote on religious grounds.

Campaign Silence. Campaign silence periods are legally mandated in many countries to provide voters with time to reflect about how they will cast their vote, as well as to create a "cooling off" period in which tensions that may have been created during a campaign may be reduced or managed. Myanmar's campaign silence period began at midnight on Nov. 6. The Carter Center observed that the campaign silence period was respected across the country. Candidates suspended their campaigns at the appropriate hour and campaign materials were 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, a campaign theme of the ruling Union Solidarity and Development Party.

The Carter Center observed that the campaign silence period was respected across the country.

Campaign Finance

Transparent and fair regulation of campaign finance is an important means for the state to balance the rights of citizens to participate in public affairs and the need for equity among candidates and parties.[88]

In Myanmar, campaign finance regulations are defined in the election laws and in UEC bylaws. The regulations limit campaign spending and funding sources, require submission of campaign finance reports, and provide for disqualification of candidates as a possible sanction for failure to submit reports. Although the commission has supervisory authority to monitor compliance with the laws and regulations governing campaigning, there is no mechanism for monitoring campaign income or expenditures, limiting the effectiveness of these regulations. There are no requirements for pre-election disclosure of campaign finance information, and only basic information emerged in the campaign finance disclosures that candidates were required to submit after the election.

Funding Sources and Campaign Expenses. By law, candidates can spend up to 10 million Kyat (approx. $8,000 USD) on their campaigns. Funds can come from contributions from Myanmar citizens, companies, or from a political party as well as from the candidate's personal funds or income. There is no public funding. There are no limits to the size of individual contributions and no requirement to disclose the names of donors making large contributions; nor are there any restrictions on party campaign spending separate from the funds directly allocated to a candidate. Smaller parties complained that the lack of a clear distinction between party and candidate spending unfairly advantaged candidates from larger parties. Very few candidates, even from the large national parties, considered that the campaign spending limit inhibited their campaigns. Many claimed to have spent only a fraction of this amount—especially ethnic parties, very few of whose candidates used the more high-profile campaign methods of the NLD and USDP, such as decorated vehicle rallies.

While the law explicitly prohibits vote buying or the providing of goods or services free of charge, there were widely circulated allegations that wealthy, high-status candidates (largely independents or from the USDP) had disbursed large sums, in the form of donations or minor development projects, in their constituencies immediately prior to the campaign period. Carter Center observers encountered several such reports in Kayah state, which due to severe malapportionment had some of the country's smallest allocations of voters per constituency (potentially maximizing the impact of any "vote buying" tactics). Carter Center observers noted campaign activities prior to the start of the official campaign, and the absence of any regulation of expenses related to these activities limited transparency and fairness.

88 UNHRC, General Comment 25, para. 19: "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party." The U.N. Convention Against Corruption, Article 7.3: "Each state party shall also consider taking appropriate legislative and administrative measures ... to enhance transparency in the funding of candidates for elected public office and ... the funding of political parties."

Reporting, Auditing, and Disclosure. The law states that candidates and their agents have 30 days from the announcement of results to submit their campaign finance reports to the election subcommission that registered their candidacy. Reports are open to public scrutiny, but voters wishing to inspect the reports or receive a copy must pay a small fee.[89] The UEC does not audit campaign finance reports or monitor expenditures. This limits accountability as candidates are considered to have complied with regulations if they submit a report stating they stayed within the spending limits. Contrary to international good practice, there are no requirements to publish candidate campaign finance reports or make any information on the campaign contributions and spending available to the general public.[90]

Subcommissions make recommendations on the disqualification of candidates who did not submit reports in a timely manner. In the postelection period, campaign finance tribunals established by the UEC considered the disqualification of 175 nonelected candidates for failure to submit campaign finance reports on time and recommended disqualification of 159 candidates.[91] Hearings were open to the public, observers, and the media and appeared to be conducted fairly. The tribunal members took into consideration documented justifications for the failure to submit campaign finance reports in a timely manner. The UEC informed The Carter Center that the mandate of campaign finance tribunals was limited to assessing the timely and adequate submission of the relevant documents. The tribunals did not question the accuracy or completeness of the content of the submissions.

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Supporters of the Mon National Party gather at a campaign event in Mudon township, Mon state.

For future elections, campaign finance provisions could be strengthened through several reforms. These include regulating spending by political parties and candidates in the pre-campaign period, limiting the size of individual donations, requiring the disclosure of donor information for larger contributions in campaign finance reports, instituting a mechanism for auditing campaign finance reports, publishing finance reports, and introducing a range of sanctions for violations of campaign finance regulations.

89 On Jan. 18, 2016, Parliament amended the law to reduce the sanction for failure to disclose from disqualification for the current and subsequent election period to disqualification for the current period only. The practical consequence is that those sanctioned will be barred from contesting seats in by-elections prior to 2020 but will be eligible for the 2020 general election.

90 The United Nations Convention Against Corruption, para. 7.3

91 UEC Announcement No. 5/ 2016, dated Feb. 26, 2016. If a candidate has appointed an agent, that agent must also submit a campaign finance report. Subcommissions may also recommend that candidate agents be disqualified from participating in future elections for failure to report. For these elections, the tribunals considered the disqualification of 32 agents and advised the UEC to disqualify 24 agents.

Voting, Counting, and Tabulation

The quality of voting operations on election day and the respect for fundamental electoral rights are crucial in determining the extent to which a country has upheld its obligations to conduct democratic elections. In this respect, core obligations under international law require that elections be held by universal suffrage, by secret ballot, free of coercion, and in accordance with the principle of "one person, one vote."[92] Collectively, these measures help to ensure that the will of the people is expressed freely, that a cast ballot cannot be connected with a voter to avoid intimidation and political retribution, and that each ballot cast has equal value. Myanmar largely met these important standards in the Nov. 8 election, with the important exceptions of the transparency of the out-of-constituency advance voting process for military voters, the disenfranchisement of hundreds of thousands of former temporary registration certificate holders, and the structural inequality of the size of constituencies.

According to figures published by the UEC, over 69 percent of Myanmar's 34.3 million eligible voters cast ballots during the November 2015 general elections.[93] Elections were held across all 14 states and regions, with the exception of seven townships in Shan state and approximately 416 wards and village tracts in Bago region and Kachin, Kayin, Mon and Shan states, where voting was canceled because of security concerns.[94]

The Carter Center observed the voting process from the beginning of the advance voting period through the release of results. The Center deployed 62 observers to all 14 states and regions and Nay Pyi Taw union territory to observe the campaign silence period and the opening, polling, counting, and tabulation processes. In accordance with the Center's observation methodology, observers were deployed in teams of two or more, with each team jointly submitting detailed

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An outdoor polling station is set up the day before election day in Shan state.

92 UDHR, Article 21(3); ICCPR, Article 25(b); UNHRC, General Comment 25, para. 20: "States should take measures to guarantee the requirement of the secrecy of the vote during elections... This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted and from any unlawful or arbitrary interference with the voting process." UNHRC, General Comment 25, para. 21: "The principle of one person, one vote, must apply...."

93 According to the UEC website, 23.91 million votes were cast out of 34.29 million eligible voters, or 69.72 percent. http://uecmyanmar.org/index.php/2014-02-11-08-31-43/884-1-12-2015-pyithuhluttaw

94 UEC announcement 61-65/2015 of Oct. 12, 2015, and 67/2015 of Oct. 27, 2015

checklists for each visit, using the Center's ELMO election observation software. The observations detailed in each checklist were aggregated at the central level.

Advance Voting

While not obligatory under international standards, advance voting promotes universal suffrage, the right and opportunity to vote, and the participation of voters who would not otherwise be able to vote on election day. However, it is essential that sufficient integrity and transparency measures be in place to guarantee the rights of advance voters and ensure their votes are properly counted.

Advance voting was a focus for observers and political parties since manipulation of the advance vote—particularly the votes of military personnel—was commonly perceived to have been a primary method for fraud in the 2010 election. In Myanmar 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."

Despite recommendations made by The Carter Center and others well in advance of election day, no significant improvements were made to the out-of-constituency advance voting process for military personnel. This part of the election process 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 military advance voting. Therefore, the Center could not assess the degree to which these ballots were cast in secret, by the actual voter, without intimidation.

Observers and candidate agents were given the opportunity to observe the advance voting that took place within constituencies 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. In one township in Bago region, 129 cast ballots were canceled because it was discovered that people ineligible to vote in advance had voted. Party agents and observers were not given access to review advance-voting requests or information on the number and source of requests. Lack of available information about both within-constituency and out-of-constituency advance voting also increased mistrust within the electorate about the process.

According to figures published by the UEC, over 69 percent of Myanmar's 34.3 million eligible voters cast ballots during the November 2015 general elections.

Throughout the election period, Carter Center observers consistently heard stakeholders raise concerns about the advance-voting system. Some assessed the advance-voting process as the most problematic aspect of the election. Failure to provide transparency during out-of-constituency voting increased the already strong perception that the process was a vehicle for fraud. This was particularly true in constituencies with a large military presence: for instance, constituencies where regional command centers are located (such as Taunggyi and Kengtung in Shan state or Ann in Rakhine).

The conduct of out-of-constituency advance voting, particularly for military personnel, was the weakest aspect of the voting process. The complete lack of transparency fell well short of international standards. This will be an important area for reform for future elections.

Election Day

Process. Over 41,000 polling stations opened for voters to elect 1,150 representatives to Myanmar's national and state/regional legislatures. Voters cast ballots for candidates to the lower House, the upper House, their state or regional assemblies, and, if eligible, for any state/regional ethnic affairs ministers being elected in their constituency. Polling stations were managed by 15,870 ward or village tract election subcommissions. A polling station officer, deputy polling station officer, and at least eight other staff members were responsible for each polling station. The regulations required a minimum of 10 polling staff but allowed for a larger number of staff members to be posted at stations with more than 300 registered voters.

Voters presented identification—which could include the voter slips issued by the UEC—but absent documentation, voter identity could be established by someone else affirming the identity of the voter. Voter names were then crossed off the voter list. Voters received a separate ballot for each race. They marked the ballot with an inked stamp and placed it in the designated ballot box for that race before receiving the next ballot and repeating the process. Ballots were cast in private to maintain secrecy, and according to regulations, voters with disabilities could cast their ballots with assistance. Finally, voters' fingers were inked to prevent multiple voting, an innovation for this election.

Ballots were counted at the polling station. Copies of the result protocols were to be posted at the polling station, but there was no provision for party agents or observers to receive copies of the protocols. Result protocols were tabulated at the township subcommissions. Township results were then sent to the state/region subcommissions. In locations where two townships were combined to form an upper House constituency, the township results first went to the district subcommissions. State/region subcommissions reviewed lower-level subcommission results and released official results for the state/region. The UEC also publicized official results.

Opening. Polling staff members arrived at polling stations to prepare before doors opened at 6 a.m. on election day. Opening procedures involved setting up the polling station and filling out protocols to verify that all materials had been

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Voters queue in the early morning before the polling station opens in Yangon.

received, including the voter lists, ballots, ballot boxes, ballot box seals, ink and stamps for marking the ballots, indelible ink for marking voters' fingers, secrecy screens, and other materials. Carter Center observers were present at 24 polling station openings.

Overall, polling stations opened on time and with few problems. Carter Center observers positively assessed the implementation of opening procedures—as well as the overall election environment and process—at all of the polling stations where opening was attended. Only at one station visited did voting begin later than 6:30 a.m., reportedly due to a lack of preparation and late arrival of party agents. Observers received no reports of polling stations not opening on election day or of official complaints relating to polling station openings. There were no significant complications caused by missing or insufficient materials at opening at stations visited.

Ballot box security was the main area where polling station staff did not fully comply with procedures during opening. At 17 percent of stations observed throughout election day, polling staff did not use the proper number of seals or did not record seal numbers on applicable forms. Observers found that in 8 percent of stations visited throughout election day there were problems with ballot box seals: either only two seals had been applied, seals had broken, or another problem prevented staff members from fully following procedures.

Voting. Carter Center observers visited 245 polling stations in a nearly even number of urban (51 percent) and rural (49 percent) locations. Early in the day, Carter Center observers noted a high level of enthusiasm and long lines at polling stations. Voters waited up to three hours for the chance to cast their ballots in some places. By noon most long lines had shortened, and voters were no longer waiting for more than a few minutes. Political party agents were present in 97 percent of polling stations visited, and in 75 percent there were party agents from both NLD and USDP present. Civil society observers were present at 30 percent of stations visited. Sixty-two percent of polling staff at stations visited were female.

Overall, Carter Center observers reported that the voting process was well-conducted, with observers assessing the conduct of voting positively in 95 percent of the polling stations visited. This assessment was based on the peaceful environment, the smooth conduct of voting, the uniform practice of checking voter identity, the impartiality of polling staff, and the presence of adequate materials in most polling stations.

Observers found that voter identification procedures largely adhered to regulations, and security mechanisms to prevent identity-based fraud appeared to be effective. Many voters presented voter slips, which lacked security features, as their sole means of identification. However, observers received no verifiable reports of multiple voting, voter impersonation, or related malfeasance. Observers found that ink was consistently and effectively applied to voters' fingers in 97 percent of polling stations visited. However, in only half of polling stations visited did officials consistently check voters' hands to see if they had already voted, reducing the effectiveness of inking.

Overall, Carter Center observers reported that the voting process was well-conducted, with observers assessing the conduct of voting positively in 95 percent of the polling stations visited.

Alleged voter list inaccuracies and omissions were a major concern of stakeholders during the pre-election period. However, on election day, there were no reports of significant numbers of people being turned away from voting due to list inaccuracies. At only 7 percent of polling stations observed were people turned away due to their name not being on the voter list, and at each of these stations only a small number of people were affected. At eight stations, the voter list was not displayed outside as required. There were no official complaints about registration problems at polling stations where Carter Center observers visited.

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A voter's finger is inked at a polling station in Yangon in order to prevent multiple voting.

Voter slips helped facilitate the voting process, including aiding voters in finding their names on the voter list. However, there were instances where polling station staff did not understand that the slips were not mandatory. Observers received reports at 13 polling stations about voters being turned away for not having a voter slip. Similarly, there were several polling stations where voters were turned away because staff were not aware of provisions allowing for a third party to vouch for the identity of voters without identification.

There were no cases of missing or insufficient materials disrupting or substantially delaying voting at polling stations visited, although 37 polling stations visited throughout election day reported some degree of missing materials. Most of these cases involved noncritical materials, and polling station staff told observers that they worked with their relevant subcommissions to find solutions.

Observers assessed the voting process negatively at 5 percent of stations visited. This was mostly due to overcrowding or disorder, causing delays in voting and, in some places, potentially compromising the secrecy of the vote. Circumstances disruptive to voting were reported at 16 percent of stations visited, but these were usually not serious enough to call into question the integrity of the voting process at that polling station. Observers cited improper queue management, crowding, and general lack of order inside polling stations as the main causes of disruption. Significant disorder was observed inside only five polling stations (2 percent of stations visited). Poor layout of polling stations and lack of space affected the flow of voters and affected the voting process to some degree at 6 percent of stations visited.

Observers also reported 40 instances of election-day irregularities. Most were isolated instances of family voting or unlawful assistance to voters. Party agents were observed exceeding their authority and facilitating the voting process at two stations, and at one station a polling official was alleged to be telling voters to vote for a specific party. There were also observations of voters in possession of multiple voter slips at two stations. Observers reported that a total of seven official complaints about irregularities and problems had been lodged at polling stations visited. At its Nov. 9 press conference, the UEC announced that there had been 48 violations nationwide on election day, including impersonation and intimidation of voters.

Carter Center observers noted an inadequate voter understanding of procedures at nearly 12 percent of stations visited. This was at least partially the cause of many disruptions or problems observed, including voter confusion about navigating the voting process, violation of secrecy requirements, and high numbers of invalid ballots due to voters not stamping them correctly. These issues highlight the need for improved voter education in advance of future elections.

Significant efforts were made leading up to the elections to improve access for people with disabilities and to raise awareness of the necessity to facilitate their full participation. The Myanmar Independent Living Initiative worked with the UEC to introduce requirements at the polling station to assist voters with physical disabilities. Despite these efforts, much remains to be done to improve access. At least 40 percent of polling stations visited by Carter Center observers had inadequate access for people with disabilities to vote independently. In stations that were not accessible, stairs and steps, or lack of a ramp, were

the main obstacles. A number of other stations were inaccessible due to their location at the end of unpaved paths or on steep inclines.

Overall, the voting process on election day largely met core international standards, based on the assessments of Carter Center observers. Registered voters were able to vote, and voter identification measures appeared to prevent multiple voting. Secrecy of the vote was generally respected. Observed violations of procedure were isolated and usually appeared to be the result of lack of experience of polling staff rather than malfeasance. For future elections, measures should be taken to improve polling staff awareness of voter identification requirements and other regulations, management of the flow of voters inside polling stations, and voter education on ballot marking. Efforts to improve access for voters with disabilities should be continued.

Closing and Counting. The accurate counting of votes plays an indispensable role in ensuring that the electoral process is genuinely democratic and reflects the will of the voters. International obligations require that the vote counting process be fair, impartial, and transparent.[95] Myanmar's existing legal framework does not sufficiently regulate the procedures for counting. In practice, the Center observed a number of cases where the lack of clear procedures led to disorder during the counting process. Still, observers found that these problems did not significantly affect the integrity of the process and assessed the counting positively in 25 of the 26 polling stations (96 percent) where the closing and counting processes were observed.

Polls closed at 4 p.m., and in accordance with the law, all voters waiting in line were allowed to vote. Carter Center observers found that in 24 of the 26 stations visited there were no voters in line at closing, and that at the remaining two stations visited there were fewer than 10 voters in line. Polling staff then implemented closing procedures. Unused ballots were first canceled by drawing a mark from top to bottom on each, and polling staff members canceled unused ballots at all but one station observed. Witnesses were then appointed to watch the counting process, a process followed in 18 of the 26 stations visited. Party agents were present to observe the count at nearly all stations observed, and 20 of the 26 stations visited had party agents present from both NLD and USDP. Citizen observers were present at eight of the 26 stations visited.

Although it did not compromise the overall integrity of the process, observers found that ballot counting did not always closely adhere to procedures in six stations visited. Counting was described as disorderly and rushed in several instances. At one station, two races were counted at once.[96] At another station, ballot counting was rushed, and ballots were not properly displayed to observers and agents. In three stations, the rush to finish the count led to repeated mistakes. At one of these stations recounting was needed; at a second station ballots were placed onto the wrong piles; and at the third station, staff did not properly reconcile missing ballots before completing forms. There were also instances of party agents taking part in the counting or otherwise interfering with the process.

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Carter Center observers Jason Carter and Mary Callahan and interpreter Khin Phyo Tint ask a polling officer questions at a polling station in Yangon.

95 UDHR, Article 21; ICCPR, Article 25(b); UNHRC General Comment 25, para. 20

96 Counting procedures mandated that one race be counted at a time, starting with the advance votes for all races, followed sequentially by the lower House, upper House, the state/regional assembly, and any ethnic representative race that was held in that constituency.

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A polling officer in Shan state counts ballots after polling stations have closed.

Invalidation of ballots was a notable problem in more than half of polling stations observed. Stringent instructions meant polling station staff members had to invalidate ballots that were double stamped, even if the intention of the voter was clear. At one polling station, observers noted more than two dozen instances where ballots were invalidated for double stamping, although the intention of the voters was clear.[97] Another frequently observed problem that led to ballot invalidation was the ink of the stamp transferring to the other half of the ballot when folded. Stamping procedures were identified as difficult for voters in more than 10 percent of stations visited by observers—further evidence of the need for more effective voter education initiatives.

After each race was counted, results were recorded into forms 16 or 16(A).[98] In most stations observed, these forms were completed properly and signed by station staff and witnesses. Copies of the forms were then sent to the township subcommission, ward/village tract subcommission, and kept at the polling station to be placed in records and posted. There were no reported cases of subcommissions not receiving proper protocols. However, Carter Center observers found that, contrary to the UEC's polling station guidelines, the results protocols were not always posted at polling stations visited on election night and the days after election day.[99] This was corroborated by other observer groups.[100] Because observers and party agents are not entitled to copies of results protocols, public posting of results at the polling station is an important transparency mechanism.

At the end of the counting process, all materials had to be properly packed, sealed, labeled, and then sent to the township subcommission. There were few problems with missing or insufficient materials needed for closing, counting, and transporting voting materials. There were also no significant problems reported to observers about the transport of materials to the township level.

Myanmar's existing legal framework does not sufficiently regulate procedures for the vote count. Although Carter Center observers assessed the vote count overwhelmingly positively in polling

97 In most instances where double stamping led to invalidation, the voter had apparently stamped on top of the first stamp in order to accentuate their first stamp.

98 Form 16 is for polling station staff to record the number of votes received by each candidate in the upper House, lower House, and region/state assembly races. Form 16(A) is for polling station staff to record the number of votes received by the ethnic representative candidate for the state/region assembly race.

99 Working Guidelines for the Polling Booth Officer, Deputy Polling Booth Officer, and Polling Booth Team Members, Article 5(d) (16)

100 The People's Alliance for Credible Elections (PACE) estimated that form 16 was not posted in 7 percent of polling stations. PACE 2015 Elections Observation Report, p. 54, available at http://pacemyanmar.org/wp-content/uploads/2016/02/PACE-Final-Report-Myanmar-Elections-2015-English.pdf

stations visited, they noted instances where the lack of clarity of procedures led to disorder during counting and instances in which procedures were not followed. Invalidation of ballots due to stringent instructions on ballot validity was a notable problem in more than half of the counts observed. More detailed regulations and additional training are needed to improve this important aspect of the electoral process.

Tabulation of Results

The tabulation of results plays a crucial role in ensuring that the electoral process reflects the will of the voters. International obligations require that the tabulation processes be fair, impartial, and transparent.[101] The presence of observers and party representatives during the aggregation and tabulation processes is an integral part of ensuring the transparency and integrity of an election.[102] International good practice is for results to be posted publicly as soon as they are determined in order to ensure transparency.[103]

The Carter Center observed the tabulation process in 22 townships, and the counting of out-of-constituency advance votes in three districts.[104] While in practice tabulation was for the most part conducted in a transparent and professional manner, the lack of procedures or instructions contributed to inconsistency in the conduct of tabulation. In some townships, Carter Center observers noted confusion among staff members about tabulation instructions and/or disorder. These inconsistencies did not appear to impact the overall integrity of the process.

The majority of Carter Center observer teams reported that they were able to observe the aggregation and tabulation process adequately. However, in four townships observers were denied access to the process or were restricted in their ability to observe effectively. Most notably, in Kengtung township in eastern Shan state, tabulation took place behind closed doors in the township election subcommission office, and candidate agents and observers were denied access. Carter Center observer access to tabulation was also restricted in Tedim in Chin state, Kalaw in Shan state, and Mrauk-U in Rakhine state.

Domestic election observers were granted access to the tabulation process in most places where Carter Center observers were present. However, Carter Center observers found that domestic observer access to the tabulation process was restricted in Kengtung in Shan state and Tedim in Chin state. The People's Alliance for Credible Elections (PACE) assessed the tabulation process as "open to observation" in the 41 township centers where they deployed observers but noted that their observers were not always given access to the polling station results forms.[105]

Domestic election observers were granted access to the tabulation process in most places where Carter Center observers were present.

Final constituency results (form 19) were not displayed in numerous places, in accordance with a UEC instruction issued on Nov. 4 that township-level results not be publicly displayed before being verified at the union level.[106] The lack of public display of form 19 limited the ability of candidates, party agents, and ordinary citizens to independently corroborate polling-station results against the forms produced at the township and district level.

101 UDHR, Article 21; ICCPR, Article 25(b); UNHRC General Comment 25, para. 20

102 UDHR, Article 21; ICCPR, Article 25(b); UNHRC General Comment 25, para. 20

103 UNHRC General Comment 34 to Article 19 of the ICCPR, para. 19, states, "To give effect to the right of access to information, States parties should proactively put in the public domain government information of public interest." Further, para. 18 states that Article 19 is to be read in conjunction with Article 25 to ensure access to information on public affairs. As an example of good practice, the Venice Commission's Code of Good Practice in Electoral Matters, section 3.2.xiv, states, "Results must be transmitted to the higher level in an open manner."

104 Carter Center observers observed these processes from Nov. 8–10.

105 PACE 2015 Elections Observation Report, p. 55, available at http://www.pacemyanmar.org

106 PACE estimated that by Nov. 9, form 19s were posted in "slightly more than half" of tabulation centers observed. PACE 2015 Elections Observation Report, p. 13

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Polling staff count results at a polling station in Shan state.

The Carter Center found that the legal framework does not sufficiently regulate the procedures for tabulation of results. While in practice tabulation was for the most part conducted in a professional manner, an absence of procedures or instructions contributed to inconsistency in the conduct of tabulation. Moreover, some subcommissions did not provide full access for observers, undermining the transparency of the process. A review of tabulation procedures, as well as increased training for subcommissions, would help address these issues for future elections.

While in practice tabulation was for the most part conducted in a professional manner, an absence of procedures or instructions contributed to inconsistency in the conduct of tabulation.

Announcement of Results

Following the tabulation of results, township and district-level subcommissions sent the results to the state and region subcommissions for verification and official release. Once it received the official results from the state and region subcommissions, the UEC publicized these results in groups of constituencies multiple times per day, beginning Nov. 9, with the last results from remote areas announced on Nov. 20.[107] The Carter Center found that constituency results were released in a timely manner, despite some criticism in the media about delayed reporting of results from certain constituencies. However, it will be important in future elections that polling station results be made publicly available in order to enhance the transparency of the process.

The NLD emerged as the biggest winner in the elections, taking more than 79 percent of the elected seats in the upper and lower houses and a majority of seats in 10 of the 14 state and regional assemblies.[108] The USDP won 8 percent of elected seats in the upper and lower houses.[109] With the exception of the National Unity Party, which won a seat in the upper House, nonethnic national parties did not win seats in the national legislature, including those that had held seats in the previous legislatures, such as the National Democratic Force.

Ethnic parties won far fewer seats in the national legislature and state assemblies than expected. Forty-five of 55 ethnic parties that fielded candidates for the national Parliament did not win a single seat, and none won an outright majority at the state level. The Arakan National Party and Shan Nationalities League for Democracy (SNLD) were the most successful ethnic parties in the election. The ANP won 22 seats in the national legislature, and a plurality (23 of 47 seats) in the Rakhine state assembly. The SNLD won 15 seats in the national legislature and a plurality in the Shan state assembly. In most areas, however, it appears that ethnic populations voted overwhelmingly for the NLD. Most ethnic party leaders called for acceptance of the results and smooth transition of power.

No Muslim candidates, from any party, won a seat in the upper or lower houses of Parliament or in the state and regional assemblies.

107 Complete results by constituency (in Burmese) are available at www.uecmyanmar.org/eng/.

108 The NLD won 255 lower House seats and 135 upper House seats, giving the party a total of 390 seats in the national legislature. The NLD won a majority of state/region assembly seats in Kayah, Kayin, Mon, Ayeyarwady, Bago, Magway, Mandalay, Sagaing, Tanintharyi, and Yangon.

109 The USDP won 30 lower House seats and 11 upper House seats, giving it a total of 41 seats.

Participation of Women in the Electoral Process

Although Myanmar is a party to relatively few international human rights documents, the country has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This convention commits Myanmar to eliminate discrimination against women in the political and public life of the country and to ensure that women have the right to vote, to be candidates, to participate in public policy, and to participate in nongovernmental organizations, all on equal terms with men.[110]

Political Participation

A total of 146 women were elected in the November 2015 elections (67 at the union level and 79 at the state and regional level), equaling 13 percent of elected seats at the union level and 12.5 percent at the state and regional levels. Of the 29 ethnic affairs ministers elected, five are women (17.2 percent). Although the number of women elected is low relative to fully equal participation, this does represent an advance from the previous Parliament.

The participation of women as candidates followed a similar dynamic. Some 800 of 6,039 candidates were women, or 13 percent. This represents an improvement over the 2010 elections, when there were just over 100 women candidates, but considerable scope remains for increasing the participation of women.[111]

A total of 146 women were elected in the November 2015 elections (67 at the union level and 79 at the state and regional level), equaling 13 percent of elected seats at the union level and 12.5 percent at the state and regional levels.

Carter Center observers noted that women were actively involved in campaigning, especially in door-to-door canvassing and smaller grass-roots campaign activities. As the head of the party and a revered figure, Aung San Suu Kyi was a focal point of the NLD's countrywide campaign. However, women were not otherwise prominently featured in campaign events or in campaign materials. Women did participate in large numbers as party agents and civil society observers on election day.

Election Administration

Women were underrepresented in electoral bodies, reflective of the overall lack of representation throughout government institutions. The UEC in Nay Pyi Taw had only one female member, Dr. Daw Myint Kyi, while state and regional subcommissions visited by The Carter Center generally had one to three women members (out of a total

110 CEDAW, Article 7

111 Figures for the number of women candidates in 2010 vary by source, ranging from 101 to 127.

of 15 members). Representation of women at the township subcommission level was similarly poor, though there were positive exceptions (such as six women members in Zalun township in Ayeyarwady and five in Kyaukse in Mandalay and in the Pa–O self-administered zone in Shan state). This contrasts greatly with the composition of the polling station staff on election day, which was overwhelmingly female in many places. In 75 percent of the polling stations visited, Center observers found that officials were predominantly female, due largely to the fact that polling staff were drawn from teachers.

In the pre-election period, the UEC developed initiatives to increase women's participation. The UEC finalized a draft of its gender policy and circulated it to civil society organizations for comments in March 2015. The policy called for measures to be taken to address gender equality across all pillars of the UEC's work. Acknowledging the country's international obligations under CEDAW to ensure gender equality both in law and in practice, the UEC policy set out to address gender equality when restructuring commission offices and in recruitment and to introduce sexual harassment and discrimination policies and trainings. The UEC policy included commitments to a voter registration system that would not disadvantage women, to maximizing the participation of women as voters and candidates, and to ensuring access to information through targeted voter education materials.

In summary, women's participation as candidates and their representation in elected bodies increased over previous elections, but there is considerable scope for improvement. The Carter Center encourages Myanmar's Parliament, political parties, and civil society to make significant progress toward the international standard of equal participation. Measures for consideration could include political party and campaign finance provisions to encourage women's participation, especially the provision of public funding; training for women who are considering participation as candidates in future elections; and a government policy to improve the representation of women in the UEC, in subcommissions, and in leadership positions at the state, regional, and union levels of government.

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Voters arrive at a polling station in Shan state.

Election Security

The right to security of the person includes the protection of voters, candidates, polling officials, and observers from coercion, intimidation, and violence.[112]

Security planning in the pre-election period was difficult to assess. A directive—never made public—was reportedly issued shortly before the election that authorized the establishment of election security management committees. The committees were chaired by the state or regional minister of border and security affairs, with membership including General Administration Department officials, police, military, and a representative of the election subcommission. Carter Center observers confirmed that committees had been formed throughout the country, though their role in practice was not clear. In most places visited by Center observers, local election bodies referred security-related questions to the police and generally disclaimed responsibility for election day security. The recruitment of 40,000 "special" police for election-day security also raised concerns, as the recruitment process, qualification requirements, training, and scope of their authority for these auxiliary police were never made adequately clear to the public or observer groups.

Election day was largely peaceful across Myanmar where polls opened, and except in the areas where elections had been canceled, the environment allowed voters to exercise their right to vote. Although fighting between armed groups and the government flared around election day in some areas in Kachin and Shan states, there were no reports of fighting preventing voters from going to the polls where they opened. Nor were there reports of insecurity in areas where polling had been canceled, despite local dissatisfaction in some areas with the lack of transparency in the decision-making process for cancellations.

No major disturbances or incidents, and only a few minor incidents at isolated polling stations, were reported on or around election day. In most areas, unarmed temporary "special" police were posted (one officer per polling location) and played a supportive role to the full-time police. There were no reported instances of special police interfering with the process, and they appear to have conducted their work professionally.

The election was conducted in a way that ensured the security of voters, with no major security incidents in areas where polling took place—consistent with international standards. However, the lack of transparency around the decision-making process that led to cancellations, ostensibly for security reasons, and the opaque operating procedures for local security committees fell short of international good practice.

112 ICCPR, Articles 9 and 25; UNHRC, General Comment 25: "People entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."

Election Observation

The transparency provided by election observation is an important component of electoral integrity. The right of citizens to participate in the public affairs of their country is a key international obligation for democratic elections.[113] Election observation is an established form of citizen participation in public affairs and is a crucial transparency measure to promote confidence in the electoral process.[114]

Although the election laws do not explicitly allow for election observation, domestic and international organizations were able to observe the election process in Myanmar comprehensively for the first time.[115] This was an important development since election observation can enhance the integrity of and public trust in the election process and has the capacity to deter fraudulent practices. In March 2015, the UEC adopted accreditation procedures and codes of conduct for domestic and international observers, after a productive series of consultations with civil society organizations.

The early invitation to The Carter Center was a positive measure signaling the intention of the UEC to increase the transparency of the 2015 elections over previous elections. In addition, the UEC took proactive measures to facilitate the Center's observation efforts throughout the country for nearly a year in advance of election day.

Ron Borden

After casting her ballot, a voter has her finger inked by polling station staff in Yangon.

Access for Civil Society Observer Groups

The UEC accredited 52 civil society organizations and 11,445 individual domestic observers, a significant number for a country where there was virtually no prior experience in observation activities. In an inclusive and consultative process,

113 ICCPR, Article 25(a); UNHRC, General Comment 25, para. 8

114 UNHRC, General Comment 25, para. 20

115 For the 2012 by-elections, Myanmar invited the Association of Southeast Asian Nations, United States, European Union, and a number of other observers. However, invitations were issued very late, effectively limiting observation to election-day proceedings. See "Burma's April 1 Parliamentary By-Elections" www.ifes.org/~/media/Files/Publications/Reports/2012/Burma_April1_Parliamentary_By-Elections.pdf.

Ron Borden

Carter Center observer Jason Carter fills out an ELMO checklist on a tablet at a polling station in Yangon.

the UEC developed accreditation regulations and granted accreditation to all domestic organizations that applied.[116]

Several domestic observer organizations deployed long-term observers both prior to and after election day. PACE deployed 129 long-term observers to 129 townships to observe the campaign environment and aspects of the voter list update before the election and the complaints adjudication process after the election. Other organizations that deployed long-term observers included Charity-Oriented Myanmar (35), Hornbill Organization (10), and Peace and Justice Myanmar (13).

On election day, domestic observers deployed across all states and regions, some as part of large national networks such as PACE and others as part of state or regional-based organizations. Groups frequently present at stations visited by Carter Center observers included PACE, Creative Home, Charity-Oriented Myanmar, Ethnic Youths Network Group, Election Education and Observation Partners, and the National Youth Congress. Most domestic observer teams deployed to a single station where they remained from the opening through counting. Carter Center observers met civil society observers at 35 percent of stations visited for opening, 30 percent of stations visited during voting, 31 percent of stations visited during counting, and 45 percent of subcommissions visited during tabulation.

No major problems were reported with domestic observer access in stations during opening, polling, and counting. However, in a few cases, polling station staff were unsure about the level of access that they should give to observers. At one station visited, a polling station staff member initially told observers that domestic observers would only be allowed to observe counting but subsequently reversed his position and granted access to the entire process. Both international observers and civil society observer groups were denied access to the tabulation process in several townships.

116 The UEC refused to accredit two individual observers on the grounds that they were not citizens.

Political party agents also played a strong role in making election day transparent. Carter Center observers found party agents present at almost all polling stations visited and the large majority of tabulation centers visited.

The approach of the government and the UEC to both domestic and international observers was usually consistent with international standards and good practice.

International Observation

The UEC invited international observers in a timely manner and actively worked with observer groups that expressed interest in monitoring the elections. The commission drafted and implemented comprehensive accreditation procedures and a code of conduct for international observers, in consultation with observer groups.[117]

The Union Election Commission accredited over 1,000 international observers to monitor the elections.[118] In addition to The Carter Center, the European Union Election Observation Mission and the Asian Network for Free Elections conducted long-term observation and election-day observation. Gender Concerns International; the Institute for Peace and Democracy; and the Australian People for Health, Education, and Development Abroad deployed observers to conduct election-day observation. The Association of Southeastern Asian Nations also sent representatives from electoral management bodies from countries in which the association participates as well as from the association's secretariat to observe and report on the elections. Many embassies in Myanmar also deployed personnel to witness and report on the elections.

The approach of the government and the UEC to both domestic and international observers was usually consistent with international standards and good practice. The rules governing accreditation were developed in a consultative manner, and their substance was generally in line with international good practices. Observers had freedom of movement and access to most parts of the process without obstruction. However, the inability of observers to access the out-of-constituency advance voting process—especially military voting—and, in some places, the tabulation of results fell short of international standards for full transparency.

117 Accreditation procedures were defined in the "Procedures for International Election Observers in Observing the Hluttaw Elections" (Notification 7/2015) and in the "Code of Conduct for International Observers," issued on March 19, 2015 (Notification 2/2015).

118 This includes those deployed by international observer organizations (468), election assistance providers (183), and the diplomatic community (526).

Election Dispute Resolution

Effective electoral dispute resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process. The efficiency of such mechanisms, including the provision of a fair and public hearing before a tribunal, is essential to ensuring that effective remedies are available to redress violations of fundamental rights.[119]

The legal framework for the resolution of election disputes in Myanmar does not guarantee complainants an effective and timely remedy for violations of their rights. The election laws provide for the appeal of decisions relating to inclusion in the voter list, candidate registration or deregistration, and observer accreditation but do 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 subcommissions, which can also investigate on their own initiative, but there is no requirement to respond and no timeline for review. Violations of the law can also be reported to the police. Local mediation committees formed shortly before the election also played a role in resolving disputes in a few cases.

The UEC made an effort to increase the transparency of the official process, educate political parties about the mechanisms available for raising disputes, and introduce conflict mitigation bodies, such as local-level mediation committees. As part of this effort, the UEC published an election dispute manual and discussed dispute resolution in multiple consultations with civil society and political parties. While the manual was aimed at political parties and election subcommissions rather than the general public, it did set out clear procedures and expanded on the commission's role as guarantor of the implementation of the law. Nonetheless, there was a lack of clarity about the appropriate jurisdiction of the police, election commissions, and other bodies.

Police Complaints and the Role of Mediation Committees

Violations of election laws can be, and most often are, reported to the police. Unfortunately, the law does not clearly distinguish between criminal offenses and those that the UEC can address. As a result, many matters that could have been addressed and remedied by the UEC were instead reported to the police.

After the election, law enforcement officials announced that over 400 complaints alleging violations of the election law and election-related criminal activities had been filed with law

119 ICCPR, Article 2(3): "Each state party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by people acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted." UNHRC, General Comment 32, para. 25: "The notion of fair trial includes the guarantee of a fair and public hearing."

enforcement throughout the election period.[120] Investigations were still underway months after the election, including high-profile cases involving physical attacks upon campaigners and the alleged misuse of religion during the campaign period.

The UEC saw the resolution of disputes as a priority during the campaign period. To resolve conflicts, the UEC established mediation committees with representatives of contesting political parties at each election subcommission level. These committees were reportedly effective in resolving some disputes, resulting in the withdrawal of criminal complaints. For example, in Kachin state, agreements were reached to allow candidates to access an armed-group-dominated area. Disputes were effectively resolved in Rakhine state between the ANP and the USDP, in Ayeyarwady between the NLD and a subcommission member, and in Shan state between two Shan ethnic parties. The Carter Center also noted that mediation committees played a role in addressing a number of postelection disputes in Mandalay region and Shan state.

Postelection Complaints

For postelection complaints and appeals, the UEC established election tribunals on an ad hoc basis. Candidates or voters could file a challenge to election results alleging a violation of the election law within 45 days of the official announcement of results. Complainants and those wishing to file a counterclaim had to pay a 500,000 Kyat filing fee (approximately $400 USD).

The tribunals established for the adjudication of these challenges could be composed of three election commissioners or one commissioner and two independent experts. Decisions of the tribunals could be appealed to the UEC, whose decisions are final and not subject to judicial appeal. This lack of appeal to an independent judicial authority is not in accordance with international standards guaranteeing the right to an effective remedy and should be addressed in future election reforms.[121]

After election day, 45 official complaints were submitted to the UEC. (One case was subsequently withdrawn.) The complaints were submitted by candidates from a variety of parties, with the largest number submitted by the USDP and NLD.[122] Complaints involved elections in 14 lower House seats, six upper House seats, and 25 state or regional assembly constituencies, with the largest number coming from Shan and Kachin states.[123] The relatively small number of complaints reflected the decision by most parties, in particular the NLD and USDP, not to challenge the results on a significant scale, despite media allegations of election-related violations in some areas. The number of incidents that resulted in complaints was also affected by the associated costs and the overlapping jurisdiction between the UEC and the police. There is no cost to file a criminal complaint.

The complaints alleged a wide variety of violations of electoral and criminal laws. A single complaint often made multiple allegations, and in some cases, the same or similar allegations were the subject of multiple complaints.[124] In accordance with the law, complaints were publicly posted for the required 15-day display period. However, complaints were generally inaccessible to the public because they were only posted at the

120 Violations of the election laws are punishable by up to one year's imprisonment and up to a 100,000 Kyat ($80 USD) fine. The imprisonment of an elected parliamentarian could result in a vacant seat, necessitating a by-election.

121 The UDHR, Article 8: "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." The UDHR, Article 10: "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...." The ICCPR, Article 2: "...any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...." The ICCPR, Article 14.1: "...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

122 USDP (26); NLD (8); Wa National Unity Party (3); SNLD (2); independent candidates (2); Pa–O National Organization (1); ANP (1). Two complaints were also filed by voters.

123 Shan (9); Kachin (8); Sagaing (7); Rakhine (6); Yangon (6); Magway (3); Mandalay (3); Bago (1); Chin (1); Kayin (1)

124 Allegations included: violation of polling procedures by electoral staff; illegal campaigning during the day of silence or election day; threats and intimidation of candidates; the misuse of religion (primarily in anti-NLD campaign materials); the presence of unauthorized people in polling stations; irregularities in the counting of advance votes; defamatory statements or materials; undue influence of military commanders on the votes of military personnel; mishandling of invalid votes; challenges to the citizenship of candidates; use of village development funds on behalf of a candidate; fraudulent candidate registration; and voting by unregistered voters.

UEC office in Nay Pyi Taw, although respondents were notified by letter.

Although the law allows for up to two of the three seats on a tribunal to be filled by outside legal experts, all of the tribunals were composed exclusively of UEC commissioners. The UEC informed The Carter Center that outside legal experts were not readily available and expressed concern that outside experts could delay the process due to a lack of familiarity with election laws and procedures. The use of independent legal experts, particularly for cases involving alleged misconduct by election officials, could have increased the capacity, credibility, and independence of the tribunals.

The length of the process and the absence of a timeline for review limited the effectiveness of the dispute resolution process.[125] As a result of the 45-day filing deadline and the lack of deadlines for review, successful challenges could result in the removal from office of a candidate after the new assembly has convened.[126] By late March 2016, after the new legislatures had sat and after the end of the term in office of the UEC members appointed in 2011, judgments had been rendered in only two cases. The remaining cases were handed over to the new UEC.

Most of the hearings took place in the UEC offices in Nay Pyi Taw. The hearings were open to media, domestic and international observers, and interested public. Carter Center observers attended approximately 150 hearings. Domestic observers from Peace and Justice Myanmar and Charity-Oriented Myanmar, as well as international observers from the European Union, attended a number of cases. In general, the public did not attend hearings in Nay Pyi Taw, though more people were present at witness hearings conducted at the state level. There was a high turnout from members of the public in several high-profile cases.

The proceedings were run in an orderly and professional manner, with the assistance of the office of the attorney general on technical issues, although there was a general lack of understanding about the rules of the process by both complainants and respondents. Tribunal members made an effort to conduct the hearings in a fair manner. In some cases, hearings were adjourned to allow time for a complainant to find legal representation or for respondents to prepare counterclaims. All parties were able to call witnesses and submit evidence in support of their claims, and tribunal members conducted the hearings in an impartial manner. Some rules, such as deadlines for the submission of countercomplaints, appeared to be applied inconsistently across different tribunals and cases.

The length of the process and the absence of a timeline for review limited the effectiveness of the dispute resolution process.

Challenges to election results are treated as complaints against the winning candidate in that constituency. As a result, all challenges have a respondent. Although not specified in the law, UEC and judiciary officials explained that the failure of a winning candidate to respond to a challenge would result in the satisfaction of the complaint, overturning the results. The law does not clearly provide for the challenge of the results based on the misconduct of election officials or a decision of an election commission. This further limits the participants' right to an effective remedy.

Access to the dispute resolution mechanism was substantially limited by the filing fees associated with making a complaint and the holding of the majority of hearings in Nay Pyi Taw.[127]

125 Election disputes not reviewed in a timely manner may not provide for effective remedy in accordance with Article 2 of the ICCPR. The Declaration on Criteria for Free and Fair Elections, Article 4(9) says, "States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process..."

126 On June 24, 2016, a UEC tribunal overturned the result of the election of sitting parliamentarian (and New Democratic Army–Kachin militia leader) Zakhung Ting Ying. He appealed the tribunal's decision.

127 UNHRC General Comment 32 to Article 14 of the ICCPR: "The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.... Similarly, the imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under Article 14, para. 1" (paras. 10 and 11).

Ron Borden

Mission co-leader Bhojraj Pokharel speaks at the Carter Center press conference on Nov. 10, 2015.

Numerous potential complainants told Carter Center observers that the high filing fee played a significant role in their decision not to file a complaint.[128] Complainants also bear all costs related to travel to Nay Pyi Taw for themselves, their lawyers, and any witnesses they choose to call—a burden compounded by the uncertainty in the length and timing of hearings and the frequent number of adjournments on procedural issues. Interlocutors informed Carter Center observers that the cost of bringing a witness to Nay Pyi Taw ranged from 50,000 Kyat to 300,000 Kyat (approximately $40–$250 USD) per person per night.

In March 2016, the UEC held hearings in 12 cases at the state level (four in Shan state and eight in Kachin state). This was a welcome development and greatly reduced costs for the disputing parties in these cases. It also appeared to be a successful effort to facilitate witness testimony.

The state-level hearings were accessible, attracting larger public turnouts than hearings held in Nay Pyi Taw, and they proceeded without obstruction. Both sides were able to present and cross-examine witnesses, including those in sensitive cases. For instance, in one case in Kachin state, witnesses offered testimony that a militia associated with winning independent candidate Zakhung Ting Ying had threatened and physically assaulted opposition candidates. The UEC tribunal's eventual verdict on the case overturned the result of Zakhung Ting Ying's election to Parliament, awarding the seat to his opponent, U Yaw Na. In another case in Shan state, serving military personnel were called to testify about the conduct of elections inside a military installation.

Although the proceedings themselves were conducted in a professional manner, at least one witness fled from a hearing in Kachin state, allegedly due to threats made against his family. This same witness attended a later hearing in Nay Pyi Taw, at which he requested the tribunal's assistance in safeguarding his family. He was advised to seek help from the police. This case highlights protection issues in the handling of sensitive cases,

128 Although still a prohibitive amount for Myanmar, the UEC amended election bylaws prior to the election to reduce the fee from the initial 1 million Kyat.

particularly those implicating armed groups, in the absence of witness protection mechanisms.

In conclusion, the postelection dispute resolution process was conducted in an overall transparent and professional manner, consistent with international good practice. The framework governing election disputes, however, falls short of international standards—principally, the lack of provision for appeal to an independent judicial authority, the absence of deadlines for resolving cases, and the excessive fees that create an unnecessarily high barrier to filing complaints.

Postelection Consultations

Commendably, the Union Election Commission conducted a series of meetings in all states and regions to review the election process in order to identify areas for further improvement.[129] The two-day meetings, which The Carter Center observed in Kayin, Mon, and Shan states, Yangon, and Nay Pyi Taw, included both internal subcommission discussions and consultations with civil society and political parties. The process culminated in a union-level review conference Feb. 29–March 1, 2016, which international and civil society observer groups attended and at which they presented recommendations. The outcomes of this consultation process have the potential to be an important resource for electoral reform efforts by the incoming legislatures and election commission.

129 In line with its Strategic Plan 2014–2018, the UEC conducted a series of consultations about the elections in state and regional capitals between December 2015 and February 2016 in partnership with IFES.

Recommendations

In advance of future elections, The Carter Center makes the following recommendations, many of which would require amendment of the constitution and/or passage of legislation:

To the Government of Myanmar and the Union Parliament

Constitutional Framework

As part of any constitutional reform effort, the rights related to participation in the public affairs of the country should be clearly enshrined, all undue restrictions to these rights removed, and the independence of the administration of these rights guaranteed. Specifically:

- All members of at least one house of Parliament should be elected by direct vote. Reserved seats for military appointees should be phased out.
- The appointment mechanism for the election management body should be reviewed to ensure that it guarantees independence and impartiality.
- To ensure equality of the vote, constituencies should be based on population or number of registered voters rather than solely on administrative boundaries.
- To ensure universal suffrage, unreasonable restrictions on the right to vote should be removed, including the abrogation of Article 392.
- Provisions on candidate eligibility and citizenship should be amended to remove discriminatory provisions based on citizenship.
- There should be provision for the appeal of Union Election Commission decisions to a judicial authority.

The prohibition of anyone with a parent, spouse, or child with foreign citizenship from holding the post of president should be reconsidered.

Ratification of International Treaties and Conventions

Myanmar should sign and ratify the International Covenant on Civil and Political Rights and other international human rights documents setting out the standards for democratic elections, political participation, and other rights and freedoms.

Freedom of Association, Assembly, and Expression

To ensure an environment conducive to the conduct of democratic elections, the freedoms of association, assembly, and expression enshrined in the constitution should be guaranteed in practice. Candidates and political parties should be permitted to campaign without undue limitations or burdensome requirements for prior approval. Conditions for holding campaign events should be limited to notifying relevant authorities in time for law enforcement to make necessary security preparations. No prior approval of the content of speeches should be required for contestants to use free media time.

Protections that allow civil society and journalists to work free from fear of harassment, obstruction, or retaliation should be elaborated in legislation. Defamation should be decriminalized, and civil liability should be limited and proportional to the harm.

State media should be required to have balanced coverage of election contestants, and all contestants should have equitable access to public and private media.

Political parties, media, and civil society, including election observers, should not be subject to interference or surveillance by security forces and should be able to work free of intimidation. The activities of the "special branch" in surveillance of these groups should be ended.

Election Administration

Election laws should be amended to regulate parts of the electoral process that are currently within the discretion of the UEC, including:

- The timeline for elections and campaigning
- The appointment and membership of election subcommissions
- Advance voting, including voter eligibility for advance voting
- The determination of the validity of ballots
- The tabulation and management of results
- The supervision and audit of campaign expenditures

The independence of subcommissions could be enhanced by creating more independence from the General Administrative Department. This could be achieved through additional budgetary allocations for separate office space and staff.

To ensure a balanced, impartial election administration at all levels, new procedures for appointment of subcommission members should be devised to ensure that the composition of the election subcommissions is gender-balanced and representative of the ethnic diversity of Myanmar. Consideration could be given to involving representatives of civil society or establishing professional commissions.

The transparency of all advance-voting processes, including military voting, should be established by law. This should include provision for observation of advance voting.

Resolution of Electoral Disputes

Decisions of the Union Election Commission affecting fundamental rights should be subject to appeal before a court of law, including decisions on the right to participate in the process and the adjudication of challenges to election results.

There should be a review of the postelection dispute resolution system. Accessibility could be improved by providing a forum for bringing disputes that is convenient for the participants, eliminating the filing fee, and minimizing participant travel. The effectiveness of the system could be improved by introducing timelines for the review of disputes, including resolution prior to the first session of the newly elected bodies and a requirement for written response from the adjudicating body.

Women's Participation

The Carter Center encourages Myanmar's Parliament, political parties, and civil society to make significant progress toward the international standard of equal participation: in particular that more women become candidates and that greater numbers of women be elected. This could include measures such as incentives for campaign finance for women candidates and incentives for political parties to support training of women candidates.

There should be consideration of introducing gender requirements in appointments of election commissioners at all levels.

Voter and Candidate Eligibility

All unreasonable restrictions on voter eligibility should be removed, including denial of the right to vote to clergy and those who declare bankruptcy.

Legislation affecting citizenship should be brought in line with international standards. The legal status of habitual residents of Myanmar, especially former temporary registration certificate holders, should be resolved and equal access to citizenship ensured through a nondiscriminatory process.

Verification of citizenship and processing of identity documents should be conducted in a timely, fair, nondiscriminatory, and transparent manner.

Undue restrictions on the right to stand for office should be removed, including the lengthy residency requirement and the blanket restriction based on naturalized citizenship. Electoral legislation should be changed to ensure that there are due process safeguards in the candidate scrutiny process and that there is a right to appeal disqualification to a judicial authority.

Election Observation

Election legislation should provide for election observation and should guarantee access of observers to the entire electoral process.

To the Union Election Commission

Transparent and Effective Election Administration

The UEC could increase outreach to political parties and voters in a number of areas. These include publishing an electoral calendar, notifying the public about all UEC decisions, clarifying the criteria for cancellation of elections for security reasons, improving public information on election-day identification requirements, and providing voter education on the complaints and appeals process.

To achieve a more uniform application of the law and efficient administration of the elections, the system for managing internal communication between the UEC and the subcommissions should facilitate the prompt communication of all decisions, procedures, and instructions to subcommissions and encourage subcommissions to seek guidance from superior election commissions.

Voter Lists

The UEC should take more proactive responsibility for updating the voter lists to lessen the burden on the voter and improve the accuracy of the lists. Duplicate or erroneous entries should be investigated. The process of verifying entries should be observable. Voter lists extracted from the digital voter register should periodically be displayed for public scrutiny. A consistent method of displaying the list will limit voter confusion.

The UEC should ensure that the new digital voter register is accurately maintained. To this end, the UEC should update the voter register at regular intervals, using its own data as well as information provided by other government agencies. There should be adequate staffing at the UEC and subcommissions to support voter list operations.

To minimize disenfranchisement due to conflict, procedures for internally displaced people to transfer their voting location or vote for the elections in their place of origin should be adopted. The UEC should enhance efforts to ensure that internally displaced people and migrants are included in the voter list.

Candidate Registration and Scrutiny

The UEC should ensure that procedures for the scrutiny of candidate eligibility are uniformly applied to all candidates in a nondiscriminatory manner, including identifying what documents will be the basis for decisions. Determinations of ineligibility should be reasoned and rejected candidates given the opportunity to be present at appeal. In cases where allegations of discrimination arise, the UEC should exercise its discretion to review subcommission decisions.

Campaigning and Campaign Finance

Allegations of the misuse of religion in the campaign should be promptly addressed. If these cases are not within the jurisdiction of the UEC, candidates should be informed of the appropriate forum for bringing such complaints.

The effectiveness of campaign finance regulations would be enhanced through the introduction of a monitoring mechanism, regulation of spending by political parties and candidates in the pre-campaign period, limiting the size of individual donations, disclosure of donors who contribute amounts above a certain threshold, the publication of campaign finance reports, and introduction of a range of sanctions for violations of campaign finance regulations.

Voter Education

Voter education outreach should be increased in future elections, building on the positive cooperation with civil society in this election. In cooperating with civil society, the UEC should ensure that these organizations have relevant information about rules and procedures in a timely manner. The UEC—and in particular its subcommissions—should be more proactive in reaching out to voters directly. Greater voter education will be particularly beneficial in increasing awareness of voter list issues, voter identification, and marking of ballots.

Advance Voting

A review of advance-voting procedures should be conducted to make the process less vulnerable to fraud and increase public confidence in this part of the voting process. Measures could include:

- Posting of the lists of voters requesting to vote in advance, including military personnel
- Introducing accounting measures for the ballots sent out and received
- Allowing for auditing of the advance-voting requests
- Publicizing the number of requests and places where advance voting will take place
- Inking of in-constituency advance voters
- Enforcement of the requirement that advance voters be crossed off the voter list used on election day

All advance voting, including the casting of ballots, should be fully open to observation by accredited observers and party/candidate agents.

Voting, Counting, and Tabulation

To limit potential disenfranchisement of eligible voters, election-day voter identification requirements should be clarified and communicated to the public well in advance of election day. If the use of voter slips continues, procedures should be formalized and uniformly applied.

To increase the transparency of the tabulation process, procedures for the township subcommissions should be elaborated. The procedures should require full access for observers and candidate agents to observe the whole process. Results protocols should be immediately posted at the polling station and township levels, and results should be made available online by polling station.

Disability Rights and Access

Efforts to increase accessibility of polling stations to people with disabilities should continue. Locations identified as having limited or no access should be reconsidered or appropriate accommodations made.

Training and Capacity-Building

To build the capacity of polling station staff and make the process more efficient, authorities should consider an enhanced training program that provides opportunities for polling station staff to seek clarifications on the procedures. Particular attention should be placed on counting procedures, the determination of ballot validity, and voter identification requirements. The conduct of out-of-country voting could be improved through joint capacity-building efforts between the UEC and the Ministry of Foreign Affairs.

Appendix A

Acknowledgments

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Appendix B

The Carter Center Delegation and Staff

Mission Leadership

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Bhojraj Pokharel, Nepal, Former Chief Election Commissioner of Nepal

Mary Robinson, Ireland, Former President of Ireland

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Stefan Krause, Germany, Electoral/Legal Analyst

Elijiah Lewien, United States, Observer Coordinator

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Steve Ross, United States, Reporting Officer

Myanmar National Staff

U Htay Aung, Logistics Officer and Driver

Minn Tent Bo, Election Assistant

Hlwan Moe Kyaw, Observation Assistant

Kyaw Khine Minn, Interpreter

Tort Reign, Interpreter

Hein Naing Soe, Interpreter
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Su Mon Thant, Leadership Assistant
Ma Kyawt Thuzar, Leadership Assistant
Khin Phyo Tint, Program Assistant
Kay Thwe Win, Finance and Administrative Officer
Hnin Wit Yee, Finance and Administrative Assistant

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T. Kumar, Sri Lanka
Manel Lahrabi, Tunisia
Casey Margard, United States
Vikram Nehru, India
Thibaut Noel, France
Steve Nothern, United States
Ghanashyam Ojha, Nepal
Dan Ostrander, United States
Dawn Ostrander, United States
Liza Prendergast, United States
Vanessa Roncal, Philippines
Ashraf Shuaibi, Palestine
Shivanand Sivamohan, Malaysia
George Smith, United States
Arild Stenberg, Norway
Karen Sullivan, United States
Paul Sullivan, United States
Yun Sun, China
Ajereboh Jespa Tichock, Cameroon
Maya Tudor, Germany
Emil Shakir Uulu, Kyrgyzstan
Mindy Walker, United States

Appendix C

Terms and Abbreviations

Amyotha Hluttaw	Upper House of the Legislature
ANP	Arakan National Party
BSPP	Burma Socialist Programme Party
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally displaced person
IFES	International Foundation for Electoral Systems
IPU	Inter-Parliamentary Union
Ma Ba Tha	Association for the Protection of Race and Religion
NLD	National League for Democracy
PACE	People's Alliance for Credible Elections
Pyithu Hluttaw	Lower House of the Legislature
SNDP	Shan Nationalities Democratic Party
SNLD	Shan Nationalities League for Democracy
Tatmadaw	Myanmar's Armed Forces
UDHR	Universal Declaration of Human Rights
UEC	Union Election Commission
UNHRC	United Nations Human Rights Committee
USDP	Union Solidarity and Development Party

Appendix D

Statements

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 System[3]

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 Kayin 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.

THE
CARTER CENTER

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

Introduction and Executive Summary

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

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

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

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

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

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

- *Election Administration.* There is an urgent need to clarify key aspects of the process, including polling, counting and tabulation procedures; advance voting; voting by internally displaced persons; and election dispute resolution. Voter education initiatives have been delayed by the lack of information on procedures. Commendably, the UEC has continued to engage with civil society and political parties; however, decision making within the UEC could be more transparent. Election sub-commissions are under-resourced, lack capacity, and are generally less engaged with parties and civil society.

- *Voter Lists, Identification and Citizenship*. Despite substantial efforts made to update the voter list, it has been widely criticized for its errors, many inherited from the underlying household and immigration data. The system places a substantial burden on voters to initiate corrections or additions. Unless the government acts immediately, the cancellation of temporary citizenship cards and a stalled citizenship verification process will result in large-scale disenfranchisement of Muslim Rohingya and others.

- *Election Security*. Election security planning has been non-transparent. It remains unclear how proposed election security committees will operate, and the role of auxiliary police in securing polling stations has raised concerns. There is a need for more transparency about the criteria for the cancellation of elections at constituency level or below.

- *Dispute Resolution*. Heightened expectations for electoral success, combined with the absence of reliable polling data and a recent history of electoral malfeasance, create an environment in which parties and candidates could challenge election results. The UEC is developing a structure for addressing issues that arise in the pre-election period, which will potentially reduce postelection disputes. There is a need to elaborate procedures for consideration of pre- and postelection complaints and to provide for timely review in line with international standards.

- *Election Observation*. The government has maintained its welcoming attitude towards international observation, and The Carter Center has freedom of movement and access to election sub-commissions and other official bodies. Questions remain about whether observers will be able to observe out-of-constituency advance voting, particularly in military installations.

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

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

Political Space

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Gaps, Institutional Capacity and Public Knowledge

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

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

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

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

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

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

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

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

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

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

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

Voter Lists, Identification and Citizenship

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

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

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

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

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

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

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

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

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

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

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

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

[7] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 41.1, states, "Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation."
[8] TRCs were formerly provided to people whose citizenship status had not yet been determined.
[9] Electoral laws issued in 2010 stipulated that temporary certificate holders were eligible to vote. They participated in the 2008 constitutional referendum as well as elections in 2010 and by-elections in 2012.

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

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

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

Election Security

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

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

[10] 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.

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

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

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

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

Dispute Resolution

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

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

[12] Pursuant to the Section 399 (e) of the constitution and the election laws.

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

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

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

Election Observation

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

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

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

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

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

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

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

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

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

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

Recommendations

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

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

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

The Union Election Commission

- To promote increased public confidence in the election process, the UEC could take steps to improve its outreach to political parties and voters in a number of areas. These include publishing an electoral calendar and releasing increased information about the voter list update process, the criteria for cancellation of elections in constituencies for security reasons, election day identification requirements, and the complaints and appeals process.

- To increase confidence in the quality of the voter lists, the UEC should ensure that approaches to confirming eligibility are consistent and should clarify voter registration procedures for displaced and migrant populations. The UEC could increase public outreach to explain the nature and reason for errors in the voter list.

- To ensure the transparency of the process, all advance voting should be fully observable, including the casting of ballots. This applies in particular to the conduct of advance voting in military installations.

- UEC decisions on other outstanding procedures, including those governing polling, counting and tabulation, advance voting, voting for internally displaced persons, voter identification, and the election dispute process should be finalized as soon as possible.

- The effectiveness, independence, and public confidence in the dispute-resolution system could be strengthened by disseminating information to the public, thoroughly investigating reported violations, and providing a timely response to complaints. For postelection disputes, civil society and political party input in the appointment of independent experts to election tribunals should be allowed, and there should be a timely response to all complaints.

- The UEC should work with national observer groups to ensure that minor deficiencies in application documents are not a basis for denying accreditation, and that the groups are guaranteed unhindered access to all steps of the electoral process. Observers should have flexibility to determine where they observe.

The Government of Myanmar

- To ensure that the cancellation of temporary citizenship cards does not result in large-scale disenfranchisement of previously eligible voters, the citizen verification process should be conducted in a timely, fair, and transparent manner. The authorities should take any other measures necessary to prevent disenfranchisement, particularly of religious and ethnic minorities.

- The government should ensure that all parties are able to campaign freely and on an equal basis, including by reducing bureaucratic and administrative requirements. Political parties and observers should not be subject to interference or surveillance by the government or security forces.

- The government should take steps to promote a free environment for journalists to cover election-related issues. Journalist access to government officials should be increased. The authorities should also refrain from pre-emptive or punitive use of defamation lawsuits and other legal action against journalists.

- In recognition that the success of the election is a shared responsibility, the government should direct the General Administration Department and other government offices to cooperate more actively with election sub-commissions.

- The role and membership of election security committees and auxiliary police should be clarified, including how they will be recruited, trained, deployed, and supervised.

Political Parties

- Political parties should sign the code of conduct and disseminate information about its commitments to all levels of party structures, supporters, and the public.

- Political parties should respect the commitments made in the code of conduct, including refraining from using religious and racially discriminatory language. Monitoring committee(s) will be most effective if established well in advance of the start of the election campaign.

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

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

Please visit www.cartercenter.org to learn more about The Carter Center.

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Carter Center Issues Statement on Candidate Scrutiny Process and Campaign Environment in Myanmar

ATLANTA — The Carter Center election observation mission has deployed field teams to observe the electoral campaign, which officially started on Sept. 8. The first week of campaigning, as observed by the Center in three states, was peaceful, and parties report being able to conduct their campaign activities without significant difficulty. The Center remains concerned that strict enforcement of campaign regulations, and recently announced limitations on political speech, could have a negative impact on pre-election political space.

The Carter Center also monitored the candidate nomination, scrutiny, and appeals process, including meeting with election commission officials and disqualified candidates. Overall, the process facilitated the registration of a large number of candidates across a broad range of political parties. However, candidate scrutiny lacked due process in some districts, and disqualification of candidates had a disproportionately negative impact on ethnic and religious minorities, in particular on Muslim candidates. Commendably, the Union Election Commission (UEC) intervened and reinstated some candidates, including from minority groups. Not all such cases were reviewed, though, and almost all Muslim candidates in Rakhine state remain disqualified.

Candidate Scrutiny Process

When the candidate nomination period ended on Aug. 18, election sub-commissions had received 6,189 candidate nominations representing 93 political parties and 313 independent candidates.[1] District election sub-commissions subsequently "scrutinized" nominees to ensure that they met the legal requirements for candidate eligibility. In total, 99 nominations were

[1] These figures include candidates for both houses of the Union parliament, as well as state and regional assemblies.

rejected – most for failure to meet the citizenship, age, and residency requirements.[2] Although the number of disqualified candidates is relatively small, restrictive requirements, selective enforcement, and a lack of procedural safeguards call into question the credibility of the process.

The requirements, set out in Article 120 of the constitution and Article 8 of the election laws, that a candidate must have resided in Myanmar for the 10 consecutive years prior to nomination, and be a citizen whose parents were also citizens at the time of his/her birth, are restrictive and not in line with international standards and good practice.[3] Proving the citizenship of parents – particularly in Myanmar where people have historically had difficulty obtaining identity documents and where citizenship itself has been redefined multiple times – can be an onerous task. Sub-commissions at the district and state/regional level strictly enforced the citizenship provisions of the law in certain cases, including cases in which a candidate and his or her family had previously been subject to multiple citizenship verification processes[4] or the candidate's parents are in possession of Citizenship Scrutiny Cards.[5] In at least two cases, the disqualified candidates had already served in the legislature (though one was subsequently reinstated by the UEC).[6]

The pattern of disqualifications by the district level sub-commissions indicates that citizenship requirements have been more strictly enforced against certain ethnic and religious populations. Of the 61 disqualifications for reasons of citizenship, a majority were candidates from Muslim or ethnic parties, or were independent candidates of south or east Asian descent. 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

[2] According to the UEC, 61 nominations were rejected for citizenship-related reasons, 12 for failing to meet the age requirements, and 8 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.

[3] Paragraph 15 of the U.N. Human Rights Committee (UN HRC) General Comment to Article 25 of the International Covenant on Civil and Political Rights (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."

[4] Based on the 1982 citizenship law, a nationwide citizenship verification process began in 1989. Those who went through the verification process were issued Citizenship Scrutiny Cards if they were found to be full citizens (as opposed to associate or naturalized citizens – those who acquired citizenship status in their lifetime or were not born to two citizens, including one full citizen). Identity cards issued previously could not be used as proof of citizenship, although bearers were regularly treated as citizens by the government. Additional citizenship verification was also conducted at various times, including for those that sought civil service positions, joined the military, or wanted to study law, medicine, engineering, or other professions.

[5] Multiple candidates informed Carter Center observers that they and their parents have Citizenship Scrutiny Cards. One disqualified candidate showed observers copies of government-issued documents stating that his parents and all grandparents were born in Myanmar, which apparently proves that he meets citizenship requirements. However, the candidate's appeal was rejected by the Rakhine state sub-commission.

[6] U Shwe Maung, a Rohingya politician and USDP member of the Lower House, applied to run as an independent candidate in Maungdaw Township in northern Rakhine State. Daw San San Myint, a member of the Yangon Regional Parliament, applied to run on behalf of the New National Democracy Party. Both were elected in 2010. Daw San San Myint was ultimately reinstated by the UEC.

were disqualified.[7] Multiple sub-commissions acknowledged that not all candidates were equally scrutinized on citizenship grounds and that sub-commissions sought to identify individuals for scrutiny based on indications of foreign ancestry in application documents, or at times, physical appearance alone.

Both the initial scrutiny and the appeals processes lacked adequate due process safeguards. This was particularly evident in relation to the determination of citizenship. Immigration officials played a role in determining residency and citizenship, though election officials provided contradictory explanations about when, how, and upon what basis those determinations were made. Documents establishing the citizenship status of a nominee's parents are not requested at the time of application. Candidates were not generally given the opportunity to be present and defend themselves on appeal, and the appeals process overall lacked uniformity, with sub-commissions taking different approaches. The Yangon region and Rakhine state sub-commissions, for instance, conducted only paper reviews of district sub-commission decisions and did not have clear procedures for notifying appellants.[8] Of 67 appeals to the state and regional election commissions, 10 candidates were subsequently registered, but only one disqualification based on citizenship was overturned.

According to international standards, individuals are entitled to have decisions affecting fundamental rights taken by a competent, independent, and impartial tribunal in a fair and public hearing.[9] As election sub-commissions are partially composed of state administration officials, and as no appeal of their decisions to a court is possible, decisions to reject candidacy were not taken or reviewed by a tribunal.

Union Election Commission Review of Candidate Disqualification

The UEC chose to exercise its authority under Article 53 of the election laws to review decisions of lower-level commissions for 18 disqualified candidates. The UEC decided that 11 of the disqualified candidates are eligible and should be registered, including 10 candidates that were disqualified on citizenship grounds. The UEC's review of disqualifications is a commendable measure. However, the UEC has not explained why other cases were not reviewed or what the determining factors were in the decision to reinstate or not reinstate the candidates reviewed.

At least seven of the reinstated candidates are Muslim, although only one is from the 22 initially disqualified in Rakhine state. The disqualification of almost all Muslim candidates running in Rakhine state further limits representation possibilities for the Rohingya population, already largely disenfranchised by the cancellation of voting rights for former temporary citizenship card

[7] The Democracy and Human Rights Party and National Development and Peace Party, predominantly Rohingya parties fielding candidates in northern and central Rakhine, had 15 and 7 candidates disqualified respectively – the largest number of disqualifications for a single party.
[8] More than two-thirds of disqualifications occurred in Yangon region (34) and Rakhine state (29).
[9] 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 and obligations...." See also the ICCPR (Article 14.1). U.N. HRC General Comment 32 notes that a tribunal must be independent of the executive branch (para 18). Although Myanmar is not yet a party to the ICCPR, the authorities have stated their intention to conduct elections in line with international standards.

holders. Of the five political parties fielding mostly Muslim candidates in Yangon, only the National Solidarity Congress Party had candidates reinstated.

Although the state/regional sub-commission is the first and only level of appeal in most candidate registration cases, the UEC is the appellate body for those rejected to run for seats reserved for ethnic minorities. Notably, the UEC did hear the appeals of three prospective candidates whose nominations to run in the elections for ethnic seats in state and regional parliaments were rejected.[10] In formal hearings open to observers, the UEC overturned the sub-commissions' decisions and found that neither the constitution nor the election laws imposed an ethnicity requirement that would prevent the candidates from contesting.

Campaign Environment

The first week of the campaign period was generally subdued, with larger political parties – particularly the United Solidarity Development Party (USDP) and National League for Democracy (NLD) – holding campaign events and processions outside of Yangon. Carter Center field teams observed campaigning in Kachin, Kayin, and Shan states. These campaign events and rallies were peaceful and without incident. Political party representatives continue to express their commitment to abide by the code of conduct, and Carter Center observers have not observed any obvious violations to date. However, The Carter Center has learned of a limited number of complaints that have been filed alleging campaigning before the official campaign period and other violations of campaign rules.

To date, it appears that parties have been able to conduct their campaign activities freely, despite an overly restrictive requirement under the UEC's political party campaign directive that candidates seek pre-approval for public gatherings, processions, and the use of loudspeakers. The requirement to apply for permission rather than to notify authorities is an undue restriction on the freedom of assembly.[11] The directive requires candidates to submit detailed campaign plans no later than 15 days after their registration. Strict adherence to this requirement has been hampered by the fact that candidate lists were only finalized four days before the start of the campaign period, though some election officials have indicated that they would be flexible in the enforcement of these provisions. Independent candidates and smaller parties have expressed concern about their capacity to submit detailed plans, with some choosing to forgo public rallies entirely in favor of smaller meetings or social media campaigns.

A recent announcement regarding political party access to state media is of significant concern. On Aug. 27, the UEC, which is responsible for arranging free air time on state media, announced

[10] The nominations were rejected on the grounds that the father of the candidate was not of the ethnicity of the reserved ethnic seat that they sought to contest. The sub-commissions had based their original decisions on a UEC instruction that the father's ethnicity should be used when determining which voters are eligible to vote for an ethnic seat. The UEC ruled that the instruction did not apply to candidate eligibility. As a result, the three appellants will now be able to run as candidates for the ethnic seats but will be ineligible to vote in the election for those seats. They will remain eligible to vote in the other elections.

[11] General Comment No. 25 to the ICCPR (para. 12) states: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected." The OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly recommend that any "legal provision should require the organizer of an assembly to submit a notice of intent rather than a request for permission."

that political parties must apply for permission seven days in advance to give a speech on state television or radio, and scripts of speeches must be pre-approved by the UEC in coordination with the Ministry of Information.[12] The announcement included restrictions on what political parties can say in television and radio speeches, including broadly worded prohibitions on statements that defame the military, encourage "protest against the government," or damage security, rule of law, and tranquility. These prohibitions, together with the requirement to have campaign speeches approved in advance, constitute a serious restriction on freedom of expression and are likely to increase self-censorship.[13]

Political parties continue to raise concerns about potential manipulation of the advance voting process, especially advance voting conducted at military installations. The UEC has not yet issued regulations regarding observation of this process, including the observation of the casting of ballots by military, police, and civil servants.

Recommendations

Government of Myanmar

- All necessary measures should be taken to ensure that the rights to freedom of assembly and expression are respected, including enforcing existing laws and regulations in a manner that minimizes restrictions on candidates' ability to campaign freely, and access the media without fear of censorship, intimidation, or retaliation.

Union Election Commission

- To ensure that all eligible candidates can stand in the election, the UEC should exercise its discretion to conduct a review of the remaining decisions of sub-commissions to disqualify candidates on citizenship grounds. The UEC should also publicize the basis of its decisions and should review the candidate scrutiny procedures used to determine whether they were applied in a consistent and equitable manner that did not unfairly disadvantage ethnic and religious minorities.

- The Carter Center reiterates its previous recommendation that advance voting be fully observable, including the casting of ballots. This applies in particular to the conduct of advance voting in military installations.

Political Parties

- Political parties should abide by the political party code of conduct, paying particular attention to its provisions prohibiting the use of religious and racially discriminatory

[12] There is no provision for free airtime for independent candidates.
[13] Article 19 of the ICCPR and the accompanying General Comment No. 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. Further, General Comment No. 37 states, "A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution."

language, and use local mediation mechanisms to avoid or resolve disputes during the campaign period.

Background

Following visits by President Carter in April and September 2013, The Carter Center established an office in Yangon in October 2013 at the invitation of the government of Myanmar. Between December 2014 and July 2015, the Center conducted a political transition monitoring mission to make a preliminary assessment of the pre-election environment. The Center released two monitoring reports with recommendations (March and August 2015).

The Union Election Commission invited The Carter Center to observe the 2015 general elections on March 30, 2015. On Aug. 1, the Center officially established an election observation mission and requested accreditation. The election observation mission is composed of a four-person core team based in Yangon and six long-term observers deployed to the states and regions. The long-term mission will be reinforced by a larger delegation of short-term observers that will arrive on Nov. 3.

The Carter Center is assessing Myanmar's electoral process against the domestic electoral legal framework and against international obligations derived from international treaties and international election standards. The Carter Center, as an independent observer organization, will inform Myanmar's authorities and people of its findings through the release of a preliminary statement of findings and conclusions shortly after election day, followed by a comprehensive final report in the months following the polls.

The Carter Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observation. Adopted at the United Nations in 2005, the Declaration of Principles and the accompanying Code of Conduct provide guidelines for credible international election observation. The declaration has been signed by 50 organizations and is available at www.cartercenter.org/documents/2231.pdf.

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Carter Center Statement on the Electoral Campaign Period in Myanmar
Oct. 27, 2015

Executive Summary

The campaign period, which began on Sept. 8, has been peaceful and relatively unrestricted in areas observed by The Carter Center. While parties and candidates have generally been able to conduct their activities without obstruction, political space remains uneven. There have been instances of intimidation and restrictions in some areas with an armed group or military presence, and reports of several physical attacks against party members. Campaign rules for the most part have been enforced reasonably and without causing substantial problems for parties and candidates. Party representatives and community members continue to voice concerns about the potential for nationalist and religious rhetoric to exacerbate communal tensions. The arrests of two civil society activists for posting comments about the military on social media contribute to concerns about the openness of political space.

The voter list, the display of which ended on Sept. 27 in most parts of the country, remains a subject of public criticism, though many of the specific allegations about errors appear to be unsubstantiated. The Union Election Commission (UEC) has acknowledged technical errors and adjustments, and problems with out-of-country voter lists have been widely reported in the press. The impact of voter list issues remains to be seen. The announcement of cancellations of elections in a larger-than-expected number of villages has raised concerns about disenfranchisement, and the majority of the population in northern Rakhine state remain excluded from participation in the election.

Carter Center teams continue to enjoy nearly unrestricted freedom of movement and access, but with a noticeable increase in surveillance in some areas. The Carter Center has not been given permission to observe the casting of ballots in out-of-constituency advance voting.

The statement offers several recommendations for the government and the UEC:

Government

- The two activists arrested for posting satirical material online should be released. Measures should be taken to ensure that political party activists, candidates, and the media are not subject to harassment.

- The police and other security services should be instructed to implement election security plans in a manner that is non-discriminatory and that does not interfere with the activities of candidates, media, or observers.

Union Election Commission

- The UEC should act on complaints submitted by political parties and candidates, including in cases alleging the misuse of religion during the campaign, and provide timely responses. The UEC should work with law enforcement authorities to ensure election violations are promptly investigated.

- Voter identification requirements should be broadly publicized, including that voter slips are not mandatory for voting.

- There should be greater transparency about voter list technical problems and measures that have been implemented to address them. The criteria used to determine the areas where elections cannot be held should be made public.

- Polling station officials should be instructed to exercise their discretion to limit access to polling stations in a way that does not obstruct the observation of voting and counting by domestic observers in a manner consistent with their methodology.

- In the interest of transparency and the integrity of the process, The Carter Center reiterates its previous recommendations that advance voting, including out-of-constituency advance voting by military and other security forces, be made fully observable for international and domestic observers and party agents.

This is the Carter Center's second statement on the election campaign period,[1] covering the campaign through Oct. 20. It is based on Carter Center field observations from Ayeyarwady, Bago, Magway, and Mandalay regions, and Kachin, Kayah, Kayin, Rakhine, and Shan states.

Campaign Environment, Complaints and Political Space

Political party and candidate activity has increased since the opening weeks of the campaign period. The Carter Center has observed a wide range of political parties and candidates campaigning across the states and regions, with active campaigning by the opposition National League for Democracy (NLD) and the ruling United Solidarity Development Party (USDP) in all areas visited and by ethnic and regional parties and candidates in the ethnic states.[2] Campaign activity is expected to peak during the first week of November before the campaign silence period begins.

[1] See *Carter Center Issues Statement on Candidate Scrutiny Process and Campaign Environment in Myanmar, Sept. 25, 2015,* www.cartercenter.org/news/pr/myanmar-092515-pre-election.html

[2] Ninety-one parties have been registered, of which 79 have signed a political party code of conduct.

Small rallies and meetings, door-to-door canvassing, and distribution of pamphlets appear to be the primary means through which parties and candidates are reaching voters. In urban centers, parties utilize decorated vehicles with sound systems playing music and party messages. The Carter Center has observed large NLD rallies with tens of thousands of attendees, including an Oct. 11 rally between Bago and Yangon, and an Oct. 17 rally at Thandwe in Rakhine state. The Center also observed large USDP events attended by several thousand people in Ayeyarwady and Bago regions, and by the Pa-O National Organization in the Pa-O Self Administered Zone. All rallies and events observed have been peaceful and without incident.

The UEC addressed concerns about burdensome requirements governing the submission of campaign plans in part by clarifying that candidates could begin campaign activities while approvals were still pending. Sub-commissions have also taken a lenient approach to enforcing the requirements. The interpretation and enforcement of campaign rules has varied widely, with sub-commissions requiring different levels of detail in campaign plans and showing varying levels of flexibility. Nonetheless, enforcement of campaign rules does not appear to have caused significant problems or delays for parties or candidates in any of the areas visited.

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.[3] Particular concern was expressed about the Committee to Protect Race and Religion (*Ma Ba Tha*) rallies celebrating the passage of the so-called "protection of race and religion" laws, culminating in a rally in Yangon on Oct. 4 with approximately 20,000 attendees.[4] Although the rallies passed without incident, there have been at least four official complaints 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.

The Carter Center has learned of 40 official campaign-related complaints filed with election commissions nationwide. 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. In some areas, observers noted a reluctance to file complaints. In addition, 94 incidents have been reported to the police, including a number of cases where party supporters were physically attacked or threatened. In response, 78 cases were opened, of which 62 are pending investigation.[5] 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 NLD informed The Carter 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.

Although campaigning has been mostly peaceful and unrestricted, political space throughout the country remains uneven. In areas visited, not all parties have had equal opportunity to

[3] The 2008 Constitution, Political Party Registration Law, and election laws prohibit the use of religion for political purpose. Parties also committed not to use racially or religiously discriminatory language in the code of conduct.
[4] The four laws include legislation restricting polygamy, interfaith marriage, and religious conversion, and providing for the imposition of population control measures.
[5] According to a report from the Myanmar Police Force, presented by the UEC at a meeting on Oct. 20.

campaign.[6] For instance, in Zigon township in Bago region, candidates from two parties complained to observers that they were forced to remove signboards in constituencies in which senior government officials are contesting. In others, signboards were reportedly removed by rival parties or after objections by *Ma Ba Tha* supporters. The NLD also made an official complaint that it had been denied access to campaign on Coco Island, a remote island constituency in Yangon region, after which a boat was eventually arranged to transport candidates to the island. In some areas, political parties have reported that Special Branch police closely monitor their activities, and The Carter Center has observed plainclothes security forces at multiple campaign events.

Two activists were arrested in mid-October for making satirical posts about the military on social media.[7] Both remain in jail awaiting trial on criminal charges.[8] Although the military has mostly avoided involvement in the election campaign, Commander-in-Chief Senior General Min Aung Hlaing urged members of the military to support candidates who have sympathy for the military, can "systematically protect race and religion", and who are free of the influence of foreigners, widely interpreted as a reference to NLD leader Aung San Suu Kyi's British family ties.[9]

Political space also has been restricted 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 (*pyi thu siq*) militia has seriously restricted the ability of national parties to campaign effectively, particularly in rural areas. In Kachin state, the New Democratic Army-Kachin prohibited NLD candidates from campaigning, though the issue was partly resolved through a meeting of the state-level mediation committee – one of several cases in which disputes were brought to the recently formed mediation committees.

The UEC-established mediation committees have been effective in resolving some issues. In addition to the Kachin case, complaints raised by the Arakan National Party were brought to the Rakhine state-level mediation committee, after which the USDP agreed to remove contentious signboards. In Loilen district in Shan state, The Carter Center observed a meeting of the mediation committee in response to a dispute between Shan ethnic parties, though it was unclear if the matter was effectively resolved. The UEC claims that mediation committees were integral in resolving other cases.

[6] International standards for democratic elections prohibit discriminatory treatment on the basis of political opinion and require equality of suffrage, which extends to equality of opportunity (see the International Covenant on Civil and Political Rights, ICCPR, Articles 2 and 25).
[7] Human Rights Watch, *Burma: Activists Charged for Mocking Military Online* (Oct. 17, 2015).
[8] Article 19 of the ICCPR protects freedom of speech. U.N. Human Rights Committee General Comment 34 defines the limits of potential grounds for restriction, specifically prohibiting restrictions on "criticism of institutions, such as the army or the administration."
[9] The statement was made in a meeting of ranking officers on Oct. 20 and subsequently posted on the general's official Facebook page.

Voter List and Identification

The national display of the voter list concluded amidst widespread allegations of errors, although many allegations are unsubstantiated. The UEC acknowledges that there were some technical difficulties with the software used to maintain the voter list and human errors when preparing and printing the lists for the national display, but claims to have promptly addressed these issues. Some sub-commissions decided to stop using the official software in favor of *ad hoc* measures, which are unlikely to have the same safeguards, such as the ability to track when and by whom changes and corrections are made.[10] Problems with out-of-country voting lists have been widely reported in the press.[11] The overall seriousness and scope of voter list issues is unclear.

The Carter Center observed the most recent display of the voter list in Kachin, Kayah, Kayin, Rakhine, and Shan states, and in Ayeyarwady region. The display opened on Sept. 14 and closed on Sept. 27 in nearly all places observed. However, in flood-affected areas of Ayeyarwady, Magway, Mandalay, and Sagaing regions and Chin state, the display was extended for up to two weeks. The decision to display the names in alphabetical order rather than by household created confusion in some areas but was viewed as an improvement in others. The civil society observer organization People's Alliance for Credible Elections (PACE) deployed 110 observers to observe the voter list display in 864 locations across the country. PACE found the process to be absent of intimidation or prejudicial treatment of voters but noted that procedures were not consistently applied and that there was a lack of voter engagement in the process.[12]

Election day voter identification requirements have not been clearly communicated to the public. The UEC has stated that it plans to issue voter slips to all voters one week before election day. Though the UEC has confirmed that the new voter slips will not be required in order to vote, the planned issuance of the slips could create further uncertainty about identification requirements.

Cancellations and Disenfranchisement

On Oct. 13, exercising its legal authority to cancel elections in areas affected by natural disaster or insecurity, the UEC announced that elections would not be held in 404 village tracts in Bago region and Kachin, Kayin, Mon and Shan states because of security concerns.[13] The UEC did not consult with political parties on the areas considered for cancellation, and there is no opportunity to appeal the decision. A lack of transparency about what criteria were used in making the determination has raised suspicions in some of the affected areas and in the national media, though many of the cancellations do appear to be in areas with legitimate security issues. As a result of the cancellations, five lower-house parliamentary seats and ten Shan state parliament seats will remain vacant, adding to existing concerns about disenfranchisement.

[10] According to the UEC, sub-commissions in 31 townships in Ayeyarwady and Yangon regions stopped using the official database software to maintain the lists and have resorted to other measures such as the use of Excel files.
[11] The Carter Center is not observing the out-of-country voting process.
[12] PACE Voter List Update Monitoring: Key Findings, available at: http://pacemyanmar.org/wp-content/uploads/2015/10/PACE-Keyfindings_-Eng_Sep-30.pdf.
[13] UEC announcement 61-65/2015 of Oct. 13, 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.

In northern Rakhine state, following amendments to the election law earlier this year that disenfranchised temporary citizenship card holders, only a small minority of the population will have an opportunity to vote. Carter Center observers visiting Maungdaw District found that authorities have made little attempt to ensure that voter lists were displayed in Muslim Rohingya-majority villages, or that voter education programs reached the population in those villages. A pre-election security crackdown targeting Muslim communities in northern Rakhine state has exacerbated an already tense environment. Nonetheless, the authorities informed the Center that they do not expect conflict on election day and welcomed the presence of observers.

Observation and Access to Advance Voting

The UEC has maintained its welcoming attitude towards international and domestic election observation. Carter Center observers have received accreditation in a timely and professional manner and have continued to enjoy freedom of movement throughout the country. However, observers have also experienced sometimes intrusive surveillance by state security of their activities during the campaign period.

A significant number of Myanmar civil society organizations have begun domestic observation activities. To date the UEC has accredited 28 organizations that collectively project deployment of almost 11,000 observers, and over 9,000 individuals have already been accredited. Some domestic observers are concerned that their access to polling stations may be unnecessarily limited on election day by polling officials restricting access in order to prevent overcrowding.[14]

It is now apparent that observers will not have access to the casting of ballots during out-of-constituency advance voting, including in military installations. The UEC has also informed The Carter Center that there will be no centrally gathered information available on the number of advance voting requests, or schedules for out-of-constituency advance voting. It is unfortunate that observers are not able to observe fully this part of the process. In order for observers to effectively monitor out-of-constituency advance voting and comment on the integrity of the process, they must be able to observe the actual casting of the ballots so as to assess the degree to which ballots are cast in secret, by the actual voter, without intimidation.

Recommendations

Government

- The two activists arrested for posting satirical material online should be released. Measures should be taken to ensure that political party activists, candidates, and the media are not subject to harassment.

- The police and other security services should be instructed to implement election security plans in a manner that is non-discriminatory and that does not interfere with the activities of candidates, media, or observers.

[14] The methodology of most domestic observer organizations requires each observer to stay in a single polling station all day.

Union Election Commission

- The UEC should act on complaints submitted by political parties and candidates, including in cases alleging the misuse of religion during the campaign, and provide timely responses. The UEC should work with law enforcement authorities to ensure election violations are promptly investigated.

- Voter identification requirements should be broadly publicized, including that voter slips are not mandatory for voting.

- There should be greater transparency about voter list technical problems and measures that have been implemented to address them. The criteria used to determine the areas where elections cannot be held should be made public.

- Polling station officials should be instructed to exercise their discretion to limit access to polling stations in a way that does not obstruct the observation of voting and counting by domestic observers in a manner consistent with their methodology.

- In the interest of transparency and the integrity of the process, The Carter Center reiterates its previous recommendations that advance voting, including out-of-constituency advance voting by military and other security forces, be made fully observable for international and domestic observers and party agents.

Background

Following visits by President Carter in April and September 2013, The Carter Center established an office in Yangon in October 2013 at the invitation of the government of Myanmar. Between December 2014 and July 2015, the Center conducted a political transition monitoring mission to make a preliminary assessment of the pre-election environment. The Center has released three public reports with recommendations (March, August, and September 2015).

On March 30, 2015, the Union Election Commission invited The Carter Center to observe the 2015 general elections. On Aug. 1, the Center officially established an election observation mission and requested accreditation. The election observation mission is composed of a four-person core team based in Yangon and six long-term observers deployed to the states and regions. The Carter Center will deploy teams of short-term observers during the first week of November to all states and regions of Myanmar to observe voting on election day. The Center will release a preliminary statement on mission findings on Nov.10. A comprehensive final report will be issued in the months following the polls.

The Carter Center is assessing Myanmar's electoral process against the domestic electoral legal framework and against international obligations derived from international treaties and international election standards. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation.

The Center thanks the Myanmar election officials, government officials, political party members, civil society members, individuals, and representatives of the international community who have facilitated the Center's efforts to observe the election process.

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FOR IMMEDIATE RELEASE
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Carter Center Election Observation Delegation Arrives in Yangon Wednesday

YANGON — The Carter Center's election observation mission enters a new phase Wednesday with the arrival of more than 50 short-term observers in advance of the Nov. 8 general election. The delegation will be co-led by former President of Ireland Mary Robinson, former chairman of Nepal's Election Commission Bhojraj Pokharel, and incoming chairman of the Carter Center's Board of Trustees Jason Carter.

"This election is an important one in Myanmar's ongoing democratic transition," said Carter. "As impartial observers, we're here to report on what we see before, during, and after election day, and the extent to which those things meet international standards for democratic elections. We're honored to be a part of this exciting moment in Myanmar's history."

The Carter Center established its office in Yangon in October 2013 and is observing the elections at the invitation of the Union Election Commission. The Center began conducting long-term observation in December 2014. Following the official announcement of the election date, the mission formally became an election observation mission in August 2015, with a four-person core team and six long-term observers.

The team has monitored the conduct of the campaign and electoral processes throughout the country. With the arrival of the short-term observers on Wednesday, the team will include more than 60 accredited observers from 25 countries. After a series of briefings in Yangon, observers will deploy to all of Myanmar's states and regions to work in multinational teams to assess the voting, counting, and tabulation processes of the elections.

The Carter Center, as an independent observer organization, will inform Myanmar's authorities and people of its findings through the release of a preliminary statement of findings and conclusions on Nov. 10, followed by a comprehensive final report in the months following the polls. The Center's observers will assess Myanmar's electoral process against the domestic electoral legal framework

and against international obligations derived from international treaties and international election standards. The Carter Center conducts its election observation in accordance with the Declaration of Principles for International Election Observation and the accompanying code of conduct. This will be the 101st election observed by The Carter Center.

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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 Injangyang (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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NEWS
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FOR IMMEDIATE RELEASE
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Jimmy Carter Congratulates Myanmar on Sitting of New Legislatures; Carter Center Continues its Post-Election Observation

ATLANTA — The Carter Center congratulates the people of Myanmar on the sitting of the newly elected union and state/regional legislative assemblies. The results of the historic elections on Nov. 8, 2015, delivered a strong mandate to incoming representatives to press forward with Myanmar's ongoing transition from authoritarian rule to democracy.

"With the sitting of the new assemblies, Myanmar is experiencing another historic moment in its democratic transition," former U.S. President Jimmy Carter said. "Many challenges lie ahead. The peace process is incomplete; ethnic and religious divisions persist; and restrictions on freedom of speech and assembly remain. I encourage the incoming legislators to use this opportunity to advance reforms and fully commit the government to democratic principles and human rights."

President Carter visited Myanmar in April and September of 2013. The Carter Center has been observing the political and electoral environment in Myanmar since 2014 and deployed a delegation of more than 60 observers during the November 2015 general elections. In its preliminary statement, Carter Center observers assessed the conduct of voting and counting as positive in 95 percent of the polling stations visited on election day and acknowledged the important efforts of the Union Election Commission to make the electoral process more transparent. It noted, however, that aspects of the electoral and constitutional framework are inconsistent with recognized international standards for democratic elections.

The Carter Center continues to deploy observers to assess the post-election environment and monitor the complaints tribunal process being conducted by the Union Election Commission. Later this year, the Center will release its final report on the observation of the 2015 elections, which will include detailed recommendations for the new government and legislators to consider while pursuing further reform of the electoral framework.

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THE
CARTER CENTER

Carter Center Statement on the Post-Election Environment and Complaints Resolution Process in Myanmar
Feb. 28, 2016

Executive Summary

This is the Carter Center's first statement on the post-election period, following its preliminary statement issued on Nov. 10, 2015. It is based on monitoring by three teams of Carter Center long-term observers in Kachin, Kayin, Mon, Rakhine and Shan states, Mandalay and Yangon regions, and Nay Pyi Taw Union Territory from November 2015 – February 2016. It also draws on the findings of the Center's short-term observers regarding the tabulation of results throughout Myanmar.

In its preliminary statement on the Nov. 8 elections, The Carter Center congratulated the people of Myanmar for successfully exercising their political rights and noted that additional advances will be needed for future elections to be fully consistent with broadly recognized international standards for democratic elections.[1] Since election day, The Carter Center has observed the tabulation and announcement of results, the ongoing electoral dispute-resolution process, Union Election Commission-led post-election reviews, and the broader post-election environment across the states and regions.

With the important exception of fighting among the Myanmar military and ethnic armed groups, the post-election environment has been peaceful. Most political leaders called for an acceptance of the results and a smooth transition of power. The Union legislatures and state and regional assemblies met for their first sessions and elected their leadership. The Union Election Commission has addressed post-election complaints in a transparent manner, despite significant structural weaknesses in the legal framework. These legal issues include the absence of an appeal mechanism beyond the UEC and the length of the complaints-resolution process. In addition, the legal provisions for campaign finance could benefit from a thorough review. Commendably, the UEC is engaging in a post-election review process with stakeholders with a view towards further improvement in future electoral cycles.

The Carter Center is now in the process of preparing its final report and recommendations for submission to the new government as well as the Union Election Commission, once its new

[1] *Carter Center Congratulates Myanmar People on Election, Urges Key Democratic Reforms,* www.cartercenter.org/news/pr/myanmar-111015.html.

commissioners have been appointed. It is important that electoral reform initiatives remain a priority for the incoming legislatures and government.

Tabulation and Announcement of Results

The Carter Center teams observed the aggregation and tabulation process in 22 townships, and the counting and tabulation of out-of-constituency advance votes in three districts.[2] In most of the areas observed, tabulation was conducted in a transparent and professional manner. However, in several instances, observers were denied access to the process or were restricted in their ability to observe effectively. In Kengtung township in eastern Shan State, tabulation took place behind closed doors in the township election sub-commission office, and candidate agents and observers were denied access. Carter Center observers' access to tabulation was restricted to some extent in Tedim in Chin State, Kalaw in Shan State, and Mrauk-U in Rakhine State.

Final constituency results (Form 19) were also not consistently displayed, and in numerous places, not displayed at all.[3] This was in accordance with an instruction issued by the UEC on Nov. 4 that township level results not be publicly displayed before being verified at the Union level. International good practice[4] is for results to be posted publicly as soon as they are determined in order to ensure transparency. In addition, Carter Center observers noted that individual polling stations did not always display Form 16, containing polling-station results, contrary to the UEC's polling station guidelines.[5] This limited the ability of candidates, party agents, and ordinary citizens to independently corroborate polling-station results against the forms produced at the township and district level.

Following verification, the UEC released election results in timely manner, despite some criticism in the media about delayed reporting of results from certain constituencies. The UEC announced results for groups of constituencies multiple times per day, beginning on Nov. 9, with the last results from remote areas announced on Nov. 20.[6] The National League for Democracy (NLD) won over 79 percent of the elected seats in the upper and lower houses, and a majority of seats in 10 of the 14 state and regional assemblies.

Post-Election Environment

The Carter Center continued to observe the post-election environment at state and regional levels through February 2016. Concerns that the decisive victory of the NLD could result in a backlash

[2] Carter Center observers observed these processes from Nov. 8 – 10.
[3] The People's Alliance for Credible Elections (PACE) estimated that by Nov. 9, Form 19s were posted in "slightly more than half" of tabulation center observed, PACE 2015 Elections Observation Report, p. 13, available at http://pacemyanmar.org/wp-content/uploads/2016/02/PACE-Final-Report-Myanmar-Elections-2015-English.pdf.
[4] Para. 19 of the United Nations Human Rights Committee General Comment No. 34 to Article 19 of the ICCPR states, "To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest." Further, para. 18 states that Article 19 is to be read in conjunction with Article 25 to ensure access to information on public affairs. See also Section 3.2.xiv of the Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe, which states, "results must be transmitted to the higher level in an open manner."
[5] Working Guidelines for the Polling Booth Officer, Deputy Polling Booth Officer and Polling Booth Team Members, Article 5(d)(16). PACE estimated that Form 16 was not posted in 7 percent of polling stations (p.54).
[6] Complete results by constituency (in Burmese) are available at www.uecmyanmar.org.

by Union Solidarity and Development Party (USDP) supporters or Buddhist nationalist groups, or that losses by ethnic parties could substantially increase tension in some ethnic states, did not materialize.[7] National leaders, including Daw Aung San Suu Kyi, President Thein Sein, Acting Chair of the USDP Htay Oo, Commander-in-Chief Min Aung Hlaing, and several ethnic party leaders made strong public statements that they would respect the results and cooperate to ensure a smooth transition to a new parliament and government. The Union legislatures and state and regional assemblies sat for the first time in early February.

At the state and regional level, Carter Center field teams found that an overall atmosphere of calm prevailed, with nearly all local political leaders expressing an intention to respect the results. This appeared to be the case even in areas where pre-election tensions were high. Center observers found little evidence, for instance, that local tensions had been aggravated by a USDP victory in Meikthila, Mandalay Region, or by a strong electoral performance by the NLD in Thandwe in Rakhine State. The lack of transparency in the advance voting process, particularly in areas with a large military presence, remained a major point of criticism by political parties.[8]

An important exception to the overall peacefulness of the post-election atmosphere has been the continued fighting in parts of Shan and Kachin states. In November, the Myanmar army resumed offensives against the Shan State Army-North in central Shan State, though subsequent negotiations appear to have prevented further clashes. Sporadic fighting also took place between the Myanmar army and the Ta'ang National Liberation Army in northern Shan state, the Kachin Independence Army in southern Kachin State, and the Arakan Army in Kyauktaw township in Rakhine State. In February, fighting between the Restoration Council for Shan State/ Shan State Army-South and the Ta'ang National Liberation Army displaced several thousand people in northern Shan State. The inaugural meeting of the Union Peace Conference, attended by signatories of the Nationwide Ceasefire Agreement, took place –Jan. 12-16 in Nay Pyi Taw, but political dialogue is not expected to get fully underway until the appointment of a new government.

During post-election visits to Kachin, Kayin, and Shan states, local ethnic leaders and community members expressed concern and uncertainty about the impact of the election results – including the poor showing of ethnic parties – on the ongoing peace process. Ethnic party leaders, particularly in Rakhine and Shan states, expressed strong opinions that the next chief minister be appointed by the next president from the non-Bamar majority ethnic group in their states.[9]

[7] With the exception of the Arakan National Party and Shan Nationalities League for Democracy, which won 22 and 15 seats respectively in the national legislatures and a plurality of seats at the state level, ethnic parties fared poorly. Forty-five of the 55 ethnic parties that fielded candidates for the national parliament did not win a single seat, and none won an outright majority at the state level.

[8] Military voters who were outside of their constituency on election day could vote in advance. Such voting was not open to observation by political party agents or by international and domestic observers. Concerns about out-of-constituency advance voting were particularly acute in constituencies where the USDP won by a small margin, for instance, Hpa-pun district in Kayin State. However, advance voting appears to have been a decisive factor in only a small number of constituencies.

[9] The ANP leadership demanded that the chief minister of Rakhine State be appointed by the ANP or it would act as an opposition party in the state assembly. In Rakhine State, ANP members were elected to both speaker and deputy speaker positions in the state assembly. In Shan State, the SNLD was unable to secure either position, both of which went to the USDP with the support of military assembly members.

Commendably, the UEC has conducted a series of meetings throughout the country to review the election process in order to identify areas for further improvement. The two-day meetings, which The Carter Center has observed in Kayin, Mon and Shan states, Yangon and Nay Pyi Taw, have included both internal sub-commission discussions, and consultations with civil society and political parties. This process will culminate in a Union-level review conference on Feb. 29 and Mar. 1, at which international and national observer groups have been invited to present recommendations. The outcome of this consultation process has the potential to be an important resource for electoral reform efforts by the incoming legislatures and election commission.

Election Dispute Resolution

A challenge to election results on the basis of a violation of the election law can be filed by a candidate or a voter within 45 days of the official announcement of results for the constituency in question. Complainants and those wishing to file a counter-claim must pay a 500,000 kyat filing fee (approximately $US500). For the adjudication of post-election disputes, tribunals are established by the UEC and can be comprised of three election commissioners or one commissioner and two independent experts. Decisions of the tribunal can be appealed to the UEC, whose decisions are final and not subject to judicial appeal, a practice that is not in accordance with international standards guaranteeing the right to an effective remedy.[10]

The effectiveness of the dispute-resolution process is further impacted by the length of the process and the absence of a timeline for review. As a result of complainants having 45 days to file and the lack of deadlines for review, successful challenges could result in the removal from office of a candidate after the new assembly has convened, contrary to good practice.[11] As of mid-February, judgments had been rendered in only two cases.[12] New election commission members are also expected to be appointed after the new president takes office, which could create further delays if the tribunals on which they sit have not yet finished their work.

In total, 45 official complaints were submitted to the UEC (one case was subsequently withdrawn). The complaints were submitted by candidates from a variety of parties, with the

[10] 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). It also says, "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."

[11] Election disputes that are not reviewed in a timely manner so as to allow the protection of the rights of the parties may not provide for effective remedy in accordance with the ICCPR, Article 2. For example, the Venice Commission notes that time limits for lodging and deciding appeals must be short, suggesting three to five days for each process in the first instance. Code of Good Practice in Electoral Matters, para 95. www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev-e.aspx.

[12] On Feb. 11, a UEC tribunal found that there was insufficient evidence to support the allegation of an irregular number of invalid votes and dismissed the complaint filed by U Win Ko from the Pa-O National Organization against Dr. Daw Than Nwe from NLD (Pyithu Hluttaw, Taunggyi constituency, Shan State). On Feb. 23, a tribunal dismissed a second case for lack of evidence. The complaint, filed by an SNLD candidate, alleged that an NLD candidate for a Shan ethnic seat in the Mandalay regional assembly was ineligible because he was not of the Shan ethnicity.

largest number submitted by the USDP and NLD.[13] Complaints involved elections for 14 lower house seats, six upper house seats and 25 state or region assembly constituencies, with the largest number coming from Shan and Kachin.[14] They allege a wide variety of violations of electoral and criminal laws. A single complaint often makes multiple allegations, and in some cases, the same or similar allegations are the subject of multiple complaints. The allegations range from threats and intimidation during the pre-election period to violations of polling procedures on election day and irregularities in the counting and tabulation processes.[15] In accordance with the law, complaints were publicly posted for the required 15-day display period. Complaints were generally inaccessible to the public because they were only posted at the UEC office in Nay Pyi Taw, although respondents were notified by letter.

The relatively small number of submitted complaints reflects the decision by most parties, in particular NLD and USDP, not to challenge the results on a significant scale. Parties were public about this decision, despite media reports of election-related violations in some areas. The number of incidents that resulted in complaints was also affected by the associated costs and the overlapping jurisdiction between the UEC and the police on a number of these matters. There is no cost to file a criminal complaint. The Carter Center also noted that mediation committees established in the campaign period played a role in addressing a number of post-election disputes in Mandalay and Shan State, though the effectiveness of these interventions is unclear.

Access to the dispute-resolution mechanism has been limited by the filing fees associated with making a complaint and the choice of the UEC to hold most hearings to date in Nay Pyi Taw.[16] Numerous potential complainants told Carter Center observers that the high filing fee played a significant role in their decision not to file a complaint. Complainants also bear all costs related to travel to Nay Pyi Taw for themselves, their lawyers, and any witnesses they choose to call – a hardship compounded by the uncertainty in the length and timing of hearings, and the frequent number of adjournments on procedural issues. In four cases, the UEC has scheduled hearings at the Shan state level, three to take place in Lashio and one in Taunggyi in March.

Hearings have been open to media, domestic and international observers, and interested members of the public. The Carter Center has observed hearings in 18 cases. The proceedings have been run in an orderly and professional manner, with the assistance of the Office of the Attorney General on technical issues, although there is a general lack of understanding about the rules of

[13] USDP (26); NLD (8); Wa National Unity Party (3); SNLD (2); independent candidates (2) Pa-O National Organization (1); Arakan National Party (1). Two complaints were also filed by voters.
[14] Shan (9); Kachin (8); Sagaing (7); Rakhine (6); Yangon (6); Magway (3); Mandalay (3); Bago (1); Chin (1); Kayin (1).
[15] Allegations made in the complaints include violation of polling procedures by electoral staff; illegal campaigning during the day of silence or election day; threats and intimidation of candidates; the misuse of religion (primarily in anti-NLD campaign materials); the presence of unauthorized persons in polling stations; irregularities in the counting of advance votes; defamatory statements or materials; undue influence of military commanders on the votes of military personnel; mishandling of invalid votes; challenges to the citizenship of candidates; use of village development funds on behalf of a candidate, fraudulent candidate registration; and voting by unregistered voters.
[16] The U.N. Human Rights Committee General Comment No. 32 to Article 14 of the ICCPR states that "the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way…. Similarly, the imposition of fees on the parties to proceedings that would *de facto* prevent their access to justice might give rise to issues under Article 14, para. 1" (paras. 10 and 11).

the process by both complainants and respondents. Some rules appeared to be applied inconsistently– such as deadlines for the submission of counter-complaints. Despite a degree of confusion about the applicable rules and procedures, tribunal members made an effort to ensure that the hearings were conducted in a fair manner. In some cases, hearings were adjourned to allow time for a complainant to find legal representation, or for respondents to prepare counter-claims. In substantive hearings, lawyers for the complainants and respondents were given an opportunity to question witnesses brought before the tribunal.

Although the law allows for the use of independent legal experts as tribunal members, all of the tribunals are composed only of UEC commissioners.[17] The use of independent legal experts, particularly for cases involving alleged misconduct by election officials, could increase the capacity, credibility, and independence of the tribunals in view of the absence of any appeal mechanism beyond the UEC.

In addition to challenges filed with the UEC, over 400 complaints alleging violations of the election law and election-related criminal activities were filed with law enforcement throughout the election period. Investigations are underway, including into high-profile cases involving physical attacks upon campaigners and the alleged misuse of religion during the campaign period. Violations of the election law are punishable by up to a one-year imprisonment, and up to a 100,000 kyat fine. The imprisonment of an elected parliamentarian could result in a vacant seat, necessitating a by-election. To date, there has been only one case in which a conviction may result in a seat becoming vacant.[18]

Campaign Finance Disclosure

Candidates that contested in the elections had 30 days from the announcement of the election results to submit campaign finance reports to the sub-commission that registered their candidacy. In total, 175 candidates (none of whom were elected) failed to meet that deadline, risking disqualification in future elections.[19] The UEC convened special tribunals to review the cases and determine what sanction, if any, is warranted. To date, the tribunals have opened 147 cases and, as of mid-February, issued judgments disqualifying more than 60 candidates. Less than a quarter of those failing to submit on time were present at their scheduled hearing. Of those who did attend the hearings, most explained that they were unable to make a timely submission because of medical issues, travel commitments, mistakenly submitting the documentation to the wrong office, or a general lack of awareness about the requirement. The tribunal members for the

[17] The law allows up to two of the three seats on a tribunal to be filled by citizen legal experts. The UEC informed The Carter Center that outside legal experts were not readily available and expressed concern that outside experts could delay the process because of a lack of familiarity with election laws and procedures.

[18] On Jan. 28, U Hla Aung Nyunt (ANP), the elected candidate for the Rakhine State assembly seat of Minbya-2, was given a six-month jail sentence by the Myebon township court for threatening a woman and her family for allegedly assisting the USDP candidate. The decision is subject to an appeal to the district court.

[19] On Jan. 18, the parliament amended the law to reduce the sanction for failure to disclose from disqualification for the current and subsequent election period to disqualification for the current period only. The practical consequence of the change is that those failing to disclose will only be barred from running in elections for seats contested in by-elections prior to 2020.

most part appeared open to consider any properly documented justification for the failure to submit, or to minimize costs associated with submitting further evidence (offering evidence by letter or telephone, for instance). The UEC informed The Carter Center that the mandate of campaign finance tribunals is limited to assessing the timely and adequate submission of the relevant documents. It is not conducting an audit of the content of the submissions.

Recommendations

Union Election Commission

- As possible, minimize additional costs for complainants, including the relocation of hearings to states and regions where appropriate.
- Ensure that cases are heard without delay to minimize the impact on the rights of the complainants and defendants.
- Make decisions available on the UEC website for public review in a timely manner.
- For future elections, the tabulation process should provide for the public availability of all results forms as soon as they are completed to ensure independent verification of results. The process of tabulating results should be fully accessible to accredited observers.

Union Legislatures

- Place reform of the election laws, including improvement of the post-election dispute system and campaign finance regulation, on the 2016 legislative agenda.

Background

Following visits by President Carter in April and September 2013, The Carter Center established an office in Yangon in October 2013 at the invitation of the government of Myanmar. Between December 2014 and July 2015, the Center conducted a political transition monitoring mission to make a preliminary assessment of the pre-election environment. The Center began its election observation mission in August 2015 and observed the election process in all states and regions of Myanmar. The Center released four pre-election public reports with recommendations (March, August, September, and October 2015), as well as a preliminary statement two days after election day, on Nov. 10, 2015. A comprehensive final report will be issued following the conclusion of the electoral process.

The Carter Center is assessing Myanmar's electoral process against the domestic electoral legal framework and against international obligations derived from international treaties and international election standards. The Center's observation work is conducted in accordance with the Declaration of Principles for International Election Observation.

The Center thanks the Myanmar election officials, government officials, political party members, civil society members, individuals, and representatives of the international community who have facilitated the Center's efforts to observe the election process.

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"Waging Peace. Fighting Disease. Building Hope."

A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. The Carter Center has observed 101 elections in 39 countries throughout the world, using international democratic election standards as the basis for making its assessments and recommendations.

Please visit www.cartercenter.org to learn more about The Carter Center.

Appendix E

Deployment Plan

Team	Observers	Nationality	State/Region	Location
1	Antonetta Lovejoy Hamandishe	Zimbabwe	Ayeyarwady	Pathein
	Ahna Machan	United States		
2	Mindy Walker	United States		Hintada
	Thibaut Noel	France		
3	Ajereboh Jespa Tichock	Cameroon	Bago	Bago City
	Dan Ostrander	United States		
4	Ahmed Farag	Egypt		Pyay
	Ying Zhu	United States		
5	Anubhav Ajeet	Nepal	Chin	Tedim
	Richard Frank	United States		
6	Kirsten Mogensen	Denmark	Kachin	Myitkyina
	Dawn Ostrander	United States		
7	T. Kumar	United States	Kayah	Loikaw
	Shivanand Sivamohan	Malaysia		
8	Jana S. Nolle	Germany	Kayin	Mayawaddy
	George Smith	United States		
9	Siro Gopallawa	Sri Lanka	Magway	Magway City
	Paul Sullivan	United States		
10	Tadzrul Adha	Malaysia	Mandalay	Mandalay City
	Karen Sullivan	United States		
11	Marini Bint Daud	Indonesia		Mandalay City
	Yun Sun	China		
12	Crispy Kaheru	Uganda	Mon	Ye
	Dayna Brown	United States		
13	Maša Janjušević	Serbia	Rakhine	Mrauk
	Casey Margard	United States		
14	Luvy Rocha Rappaccioli	Nicaragua		Maungdaw
	Arild Stenberg	Norway		
15	Abdoulaye Kourouma	Guinea		Thandwe
	Mike Best	United States		

16	Emil Shakir Uulu	Kyrgyzstan	Sagaing	Monywa
	Liza Prendergast	United States		
17	Ben Dunant	United Kingdom	Shan	Kyaingtong
	Vikram Nehru	India		
18	Ashraf Shuaibi	Palestine		Lashio
	Martha Brooks	United States		
19	Ludivine Estienne	France		Kalaw
	Manel Lahrabi	Tunisia		
20	Steve Nothern	United States	Tanintharyi	Myeik
	Vanessa Roncal	Philippines		
21	Ghanashyam Ojha	Nepal	Yangon	Yangon City
	Maya Tudor	Germany		
22	Mary Robinson	Ireland		Yangon City
	David Carroll	United States		
23	Jason Carter	United States		Yangon City
	Mary Callahan	United States		
24	Bhojraj Pokharel	Nepal		Yangon City
	Frederick Rawski	United States		
25	Jonathan Stonestreet	United States		Yangon City
	Tye Tavaras	United States		
	Eli Kilgore	United States		

Appendix F

Checklists

5. Advance Voting

Myanmar 2015

User/Team	
Observation Time	
1. Administrative Area:	☐ Ayeyarwady ☐ Bago (East) ☐ Bago (West) ☐ Chin ☐ Kachin ☐ Kayah ☐ Kayin ☐ Magway ☐ Mandalay ☐ Mon ☐ Nay Pyi Taw ☐ Rakhine ☐ Sagaing ☐ Shan (East) ☐ Shan (North) ☐ Shan (South) ☐ Tanintharyi ☐ Yangon
2. What ward are you in?	
3. What day did you observe Advance Voting?	
4. Number of registered voters:	
5. Number of In-Constituency Advance voters (by time of observation)	
6. Were the advanced voters being added to Form 13?	☐ Yes ☐ No ☐ Not observed
7. Was the Ward/Village Tract official signing the ballots before issuing them to voters?	☐ Yes ☐ No ☐ Not observed
8. Were advanced voters using a stamp to vote? *The use of a pen is acceptable.*	☐ Yes ☐ No
9. Were the Sub-Commission officials checking the voters names on the voter lists?	☐ Yes ☐ No
10. Were any domestic observers or candidate agents present to observe the voting?	☐ Yes ☐ No ☐ Not observed
11. Any other comments?	

1. Opening

Myanmar 2015

elmo

User/Team	
Observation Time	
1. Administrative Area:	Ayeyarwady Bago (East) Bago (West) Chin Kachin Kayah Kayin Magway Mandalay Mon Nay Pyi Taw Rakhine Sagaing Shan (East) Shan (North) Shan (South) Tanintharyi Yangon
2. What ward are you in?	
3. What is the number of the Polling Station?	
4. Is the station in an urban or rural area?	Urban Rural
5. Record your GPS location: *If using a tablet, press the button which says "Record Location" and wait for the GPS coordinates to be recorded.*	
6. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the polling station? *Select "Not Applicable" if you did not observe any prohibited or disruptive circumstances.*	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Bussing activities Other Not applicable
7. Start of Observation (station):	
8. If present, please indicate the Polling Station Officer's gender: *If the Polling Station Officer is not present now but comes back before your departure, please adjust this answer.*	Female Male
9. Number of staff working at the polling station:	
10. Number of FEMALE staff present (excluding Polling Station Officer):	
11. Number of registered voters:	
12. What is the number of registered military personnel?	
ANSWER ONLY IF Question #12 is equal to 0 13. Is this because?	No voters of this type No information
14. What is the number of voters who voted in advance OUT of constituency?	
ANSWER ONLY IF Question #14 is equal to 0 15. Is this because?	No voters of this type No information
16. What is the number of voters who voted in advance IN constituency?	
ANSWER ONLY IF Question #16 is equal to 0 17. Is this because?	No voters of this type No information
18. Which, if any, prohibited or disruptive circumstances did you observe in the station? *Select "Not applicable" if you did not observe any prohibited or disruptive circumstances.*	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Police Auxiliary Police Other Not applicable
ANSWER ONLY IF Question #18 does not include "Not applicable" 19. If any issues, please describe: *What were the prohibited/disruptive circumstances and how did they affect the process?*	
20. Were any of the following materials missing, insufficient, or	Voter lists Ballot papers/counterfoils Stamps

incorrect? *Select "Not applicable" if all materials are present, sufficient, and correct.*	Indelible ink Booths/screens Forms Seals Tamper-evident bags Other Not applicable
ANSWER ONLY IF Question #20 includes "Other" 21. If 'other', please describe:	
ANSWER ONLY IF Question #20 does not include "Not applicable" 22. If materials are missing, insufficient, or incorrect, please describe:	
23. Does the station appear to be accessible to physically challenged persons, including the elderly? *The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.*	Yes No
ANSWER ONLY IF Question #23 is equal to "No" 24. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
25. Did the polling station open during your observation?	Yes No
ANSWER ONLY IF Question #25 is equal to "No" 26. If 'no', please describe: *Why did the polling station fail to open on time?*	
ANSWER ONLY IF Question #25 is equal to "Yes" 27. At what time did the polling station open?	
28. If the polling station opened MORE THAN 30 MINUTES late, what are the reasons for delay? *If the polling station opened less than 30 minutes late, check not applicable*	Missing materials Absent polling staff Unrest Other Not applicable
ANSWER ONLY IF Question #28 includes "Other" 29. If 'other', please describe:	
30. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. INADEQUATELY - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). NOT AT ALL - The procedure was omitted or was not followed meaningfully. NOT OBSERVED - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.*	I have read and understand the definitions.
31. Is the voter list posted outside the polling station?	Yes No
32. Is there a separate list of military voters posted with the voter lists?	Yes No
ANSWER ONLY IF Question #32 is equal to "Yes" 33. If yes, how many voters are listed?	
34. Is Form 13 with the names and signatures of in-constituency advance voters posted outside polling station?	Yes No
ANSWER ONLY IF Question #34 is equal to "Yes" 35. If yes, how many voters are listed on Form 13?	

36. Did the polling station receive the required number of voter lists?	Yes No
37. Did the polling station receive a ballot box with advance voting ballots?	Yes No
ANSWER ONLY IF Question #37 is equal to "Yes" 38. If yes, was the box properly sealed?	Yes No Not observed
ANSWER ONLY IF Question #37 is equal to "Yes" 39. Were the ballots in envelopes in the ballot box?	Yes No
40. Did the voter lists already have the names of the out of constituency advance voters crossed off?	Yes No Not observed
41. Did the Polling Station announce the number of out of constituency advance voters?	Yes No Not observed
ANSWER ONLY IF Question #41 is equal to "Yes" 42. If yes, what is the number?	
43. Did the Polling Station cross off the voter lists the names of people that voted in advance within the constituency?	Yes No Not observed
44. Did the Polling Station announce the number of within constituency advance voters?	Yes No Not observed
ANSWER ONLY IF Question #44 is equal to "Yes" 45. If yes, what was the number?	
46. How closely did BALLOT INVENTORY procedures adhere to regulations? *This should include the signing of the ballot papers in advance by the presiding polling station officer per regulations*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #46 is equal to "Inadequately" 47. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #46 is equal to "Not at all" 48. Please describe the reasons for not choosing Fully or Adequately:	
49. How closely did EMPTY BALLOT BOX DEMONSTRATION adhere to regulations?	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #49 is equal to "Inadequately" 50. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #49 is equal to "Not at all" 51. Please describe the reasons for not choosing Fully or Adequately:	
52. How closely did BALLOT BOX SEALING procedures adhere to regulations?	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #52 is equal to "Inadequately" 53. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #52 is equal to "Not at all" 54. Please describe the reasons for not choosing Fully or Adequately:	
55. Which parties/candidates were represented by agents?	USDP NLD NUP NDP DP NDF SNDP SNLD PNO MFDP ANP KNP KPP MNP Other
56. Which election observation groups were present?	EU ANFREL APHEDA Diplomatic PACE National Youth Congress Creative-Home Ethnic Youths Network COM Peace and Justice Myanmar EEOP Other Domestic Other International

57. Which, if any, of the following groups did not have sufficient access to the process?	☐ Candidate/Party agents ☐ International observers ☐ Domestic observers ☐ Polling staff ☐ Other ☐ Not applicable
ANSWER ONLY IF Question #57 does not include "Not applicable" 58. If any, please describe: *How were groups denied access and what was the impact?*	
59. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)? *Select 'Not Applicable' if no interference was observed.*	☐ Candidate/Party agents ☐ International observers ☐ Domestic observers ☐ Polling staff ☐ Media ☐ Voters ☐ Security ☐ Local officials ☐ Religious/traditional leaders ☐ Other ☐ Not applicable
ANSWER ONLY IF Question #59 does not include "Not applicable" 60. If any interference, please describe: *How were groups causing interference and what was the impact?*	
61. End of Observation (Station):	
62. Were there any officially lodged complaints? *If applicable, near the end of your observation, ask the Polling Station Officer if present or ask observers from other organizations or party/candidate agents.*	☐ Yes ☐ No
ANSWER ONLY IF Question #62 is equal to "Yes" 63. If 'yes', please describe: *Who filed complaints? What were the reasons? How were they addressed?*	
64. Were there any problems reported to you by those present rather than those observed directly by you? *(e.g., agents, observers, voters)*	☐ Yes ☐ No
ANSWER ONLY IF Question #64 is equal to "Yes" 65. If 'yes,' please describe: *Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.*	
66. How would you evaluate party/candidate agents' performance?	☐ Adequate ☐ Inadequate ☐ Not observed/observable
ANSWER ONLY IF Question #66 is equal to "Inadequate" 67. Please describe the reasons for not choosing Adequate:	
68. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process POOR - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.*	☐ I have read and understand the definitions.
69. What is your team's evaluation of the implementation of procedures by staff at this station? *This evaluation should be based upon the procedures evaluated*	

earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #69 is equal to "Poor" 70. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #69 is equal to "Not Credible" 71. What were the main reasons for not choosing Very Good or Reasonable?	
72. Before moving ahead, please review the following definitions regarding the overall assessment of the OPENING ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD – No significant problems were observed with the implementation of procedures or environment. The process was fully transparent. REASONABLE - Observed problems did not affect significantly the integrity or transparency of the opening process, but there is room for improvement. POOR – Significant problems with any of the following may have compromised the integrity of the process: Errors in implementing opening procedures; Polling staff subject to intimidation or interference; Observers restricted. NOT CREDIBLE - Observed problems with the opening likely compromised the integrity of the process.*	☐ I have read and understand the definitions.
73. What is your team's overall assessment of the election environment and process at this station?	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #73 is equal to "Poor" 74. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #73 is equal to "Not Credible" 75. What were the main reasons for not choosing Very Good or Reasonable?	
76. Any other comments?	

2. Polling

Myanmar 2015

elmo

User/Team	
Observation Time	
1. Administrative Area:	Ayeyarwady Bago (East) Bago (West) Chin Kachin Kayah Kayin Magway Mandalay Mon Nay Pyi Taw Rakhine Sagaing Shan (East) Shan (North) Shan (South) Tanintharyi Yangon
2. What ward are you in?	
3. What is the number of the Polling Station?	
4. Is the station in an urban or rural area?	Urban Rural
5. Record your GPS location: *If using a tablet, press the button which says "Record Location" and wait for the GPS coordinates to be recorded.*	
6. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the polling station? *Select "Not Applicable" if you did not observe any prohibited or disruptive circumstances.*	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Bussing activities Other Not applicable
7. Start of Observation (station):	
8. Please indicate the Polling Station Officer's gender: *If the Polling Station Officer is not present, ask another worker.*	Female Male
9. Number of staff working at the polling station:	
10. Number of FEMALE staff present (excluding Polling Station Officer):	
11. Number of registered voters:	
12. What is the number of registered military personnel?	
ANSWER ONLY IF Question #12 is equal to 0 13. Is this because?	No voters of this type No information
14. What is the number of voters who voted in advance OUT of constituency?	
ANSWER ONLY IF Question #14 is equal to 0 15. Is this because?	No voters of this type No information
16. What is the number of voters who voted in advance IN constituency?	
ANSWER ONLY IF Question #16 is equal to 0 17. Is this because?	No voters of this type No information
18. Approximate number of voters who have voted by time of arrival: *If the number of voters is not directly recorded by the polling staff, it may be necessary to ask the presiding officer or other staff to estimate the number of voters or calculate by other means.*	
19. Which, if any, prohibited or disruptive circumstances did you observe in the station? *Select "Not applicable" if you did not observe any prohibited or disruptive circumstances.*	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Police Auxiliary Police Other Not applicable
ANSWER ONLY IF Question #19 does not include "Not applicable"	

20. If any issues, please describe: *What were the prohibited/disruptive circumstances and how did they affect the process?*	
21. Were any of the following materials missing, insufficient, or incorrect? *Select "Not applicable" if all materials are present, sufficient, and correct.*	☐ Voter lists ☐ Ballot papers/counterfoils ☐ Stamps ☐ Indelible ink ☐ Booths/screens ☐ Forms ☐ Seals ☐ Tamper-evident bags ☐ Other ☐ Not applicable
ANSWER ONLY IF Question #21 includes "Other" 22. If 'other', please describe:	
ANSWER ONLY IF Question #21 does not include "Not applicable" 23. If materials are missing, insufficient, or incorrect, please describe:	
24. Does the station appear to be accessible to physically challenged persons, including the elderly? *The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.*	☐ Yes ☐ No
ANSWER ONLY IF Question #24 is equal to "No" 25. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
26. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. INADEQUATELY - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). NOT AT ALL - The procedure was omitted or was not followed meaningfully. NOT OBSERVED - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.*	☐ I have read and understand the definitions.
27. How closely did CHECKING FOR INK procedures adhere to regulations? *When entering, the Polling Station security checks the left little finger of the voter for ink*	☐ Fully ☐ Adequately ☐ Inadequately ☐ Not at all ☐ Not observed
ANSWER ONLY IF Question #27 is equal to "Inadequately" 28. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #27 is equal to "Not at all" 29. Please describe the reasons for not choosing Fully or Adequately:	
30. How closely did VOTER IDENTIFICATION procedures adhere to regulations? *Voter goes to election desk, shows the voter identification slip or any other form of documentation to the Voter List Checker. Eligible forms of ID: NRC Card, any identity card (Staff ID, Student ID, Driver's License) that contains your personal information, or Voter Identification Slip. If the voter has no ID, a polling station official can*	☐ Fully ☐ Adequately ☐ Inadequately ☐ Not at all ☐ Not observed

vouch for the identity of the voter to ensure a ballot is provided.

ANSWER ONLY IF Question #30 is equal to "Inadequately" 31. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #30 is equal to "Not at all" 32. Please describe the reasons for not choosing Fully or Adequately:	
33. Were any voters turned away for not having IDs or voter slips?	Yes No
34. Were those without IDs given the chance to have a polling station official vouch for them?	Yes No Not observed
35. Were any voters turned away just because they did not have a voter slip?	Yes No
36. How closely did SIGNING VOTERS LIST procedures adhere to regulations? *The Voter List Checker checks voter list. The voter will sign behind his/her name on the voter list.*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #36 is equal to "Inadequately" 37. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #36 is equal to "Not at all" 38. Please describe the reasons for not choosing Fully or Adequately:	
39. How closely did BALLOT ISSUING procedures adhere to regulations? *Voter proceeds to the Ballot Paper Issuer, who hands the ballot paper to the voter after the voter signed on the section of the counterfoil of the ballot paper. If not able to sign, the voter is asked to thumbprint. The voter checks if the ballot paper has the signature of the Polling Station Officer. If the signature is missing or the ballot is spoiled, notify the Ballot Paper Issuer before stepping away and receive a new ballot paper.*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #39 is equal to "Inadequately" 40. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #39 is equal to "Not at all" 41. Please describe the reasons for not choosing Fully or Adequately:	
42. Did you observe any voters trying to return ballots that were spoiled (torn, stained, mistake in voting)?	Yes No
ANSWER ONLY IF Question #42 is equal to "Yes" 43. If yes, was it a result of the voter's action or a polling station member's action?	
44. How well did the voters seem to understand how to stamp the ballot?	Very Well Well Not Well Not at all
45. How closely did BALLOT CASTING procedures adhere to regulations? *After casting each ballot (one by one), the voter will fold the ballot paper and place it in the ballot box with the appropriately colored lid. For PYITHU HLUTTAW (Lower House) ELECTION: The voter will place the ballot paper in the ballot box with the GREEN lid. For AMYOTHA HLUTTAW (Upper House) ELECTION: The voter will place the ballot paper in the ballot box with the BLUE lid. For REGION/STATE ELECTION: The voter will place the ballot paper in the ballot box with the PURPLE lid. For ETHNIC REPRESENTATIVE ELECTION: The voter (if*	Fully Adequately Inadequately Not at all Not observed

eligible) will place the ballot paper in the ballot box with the lid with NO COLOR.	
ANSWER ONLY IF Question #45 is equal to "Inadequately" 46. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #45 is equal to "Not at all" 47. Please describe the reasons for not choosing Fully or Adequately:	
48. Did polling station members collect the voter slips from voters who had them?	Always Rarely Never Not observed
49. How closely did INKING FINGERS procedures adhere to regulations? *The Polling Station Members are charged with asking the voters leaving the polling booth whether they have finished voting and to ink the voter's left little finger nail if they have finished voting. (Ink any other finger nail if the voter does not have a little finger)*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #49 is equal to "Inadequately" 50. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #49 is equal to "Not at all" 51. Please describe the reasons for not choosing Fully or Adequately:	
52. How closely did ASSISTED VOTING procedures adhere to regulations? *Polling station members are instructed to interact with voters respectfully and prepare for easy voting access for elderly, disabled, and illiterate voters and those who are in poor health. They should treat people equally without any discrimination against their religion or ethnicity.*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #52 is equal to "Inadequately" 53. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #52 is equal to "Not at all" 54. Please describe the reasons for not choosing Fully or Adequately:	
55. Which, if any, of the following ineligible voters were allowed to vote?	Person with no ID no voter slip and NO vouch Voters with spoiled ballots Voters already marked on voter list Voters already inked Underage persons Security personnel - unauthorized Other Not applicable
ANSWER ONLY IF Question #55 does not include "Not applicable" 56. Please describe, including any 'others' noted:	
57. Which, if any, of the following eligible voters were NOT allowed to vote?	Person with no ID no voter slip and vouched Polling staff EMB members Domestic observers Party/candidate agents Security personnel - authorized Journalists - national Other Not applicable
ANSWER ONLY IF Question #57 does not include "Not applicable" 58. Please describe, including any 'others' noted:	
59. Are ballot boxes correctly sealed? *All seals should be correctly applied and ballot boxes should be secure*	Yes No

from tampering.	
ANSWER ONLY IF Question #59 is equal to "No" 60. If 'no', describe:	
61. Are additional polling materials secured from potential theft or misuse? *Additional materials should be stored compactly and out of the way of traffic in the polling station. Disorganized or poorly stored materials are vulnerable to tampering.*	Yes No
ANSWER ONLY IF Question #61 is equal to "No" 62. If 'no', describe *storing materials*	
63. Is the polling station layout in accordance with regulations? *Refer to the printed diagrams of polling station layouts provided.*	Yes No
ANSWER ONLY IF Question #63 is equal to "No" 64. If 'no', describe: *polling station diagram*	
65. Does the polling station layout effectively facilitate the flow of voters? *The layout should allow voters to move through the process without skipping steps or crossing paths with other parts of the queue.*	Yes No
ANSWER ONLY IF Question #65 is equal to "No" 66. If 'no', describe:	
67. Are voters able to cast their ballots in secret? *Secrecy of the ballot should not be undermined or violated because of crowding or exposed booths.*	Yes No
ANSWER ONLY IF Question #67 is equal to "No" 68. If 'no', please describe:	
69. Was the number of staff working in the polling station appropriate for a timely and orderly process?	Yes No Not observed
ANSWER ONLY IF Question #69 is equal to "No" 70. If 'no', describe:	
71. How long did a typical voter have to wait in the queue before entering the polling station? *If there is no queue, enter 0, otherwise, ask the second or third voter in line how long they have waited so far to inform your estimate. Provide your answer in minutes. For example, if a voter waited 1.5 hours, enter 90 (minutes).*	
72. Which, if any, of the following irregular processes did you observe?	Multiple voting Ballot stuffing Interruption of voting Voter intimidation Illicit assistance Family voting Possible vote buying/selling Violation of secrecy of the ballot Other Not applicable
ANSWER ONLY IF Question #72 does not include "Not applicable" 73. If any irregularities, please describe: *Please comment on the frequency and severity of the irregularities, noting the extent of their impact on the voting process.*	
74. Which parties/candidates were represented by agents?	USDP NLD NUP NDP DP NDF SNDP SNLD PNO MFDP ANP KNP KPP MNP Other
75. Which election observation groups were present?	EU ANFREL APHEDA Diplomatic PACE National Youth Congress Creative-Home Ethnic Youths Network COM

	Peace and Justice Myanmar EEOP Other Domestic Other International
76. Which, if any, of the following groups did not have sufficient access to the process?	Candidate/Party agents International observers Domestic observers Polling staff Other Not applicable
ANSWER ONLY IF Question #76 does not include "Not applicable" 77. If any, please describe: *How were groups denied access and what was the impact?*	
78. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)? *Select 'Not Applicable' if no interference was observed.*	Candidate/Party agents International observers Domestic observers Polling staff Media Voters Security Local officials Religious/traditional leaders Other Not applicable
ANSWER ONLY IF Question #78 does not include "Not applicable" 79. If any interference, please describe: *How were groups causing interference and what was the impact?*	
80. End of Observation (Station):	
81. Were there any officially lodged complaints? *If applicable, near the end of your observation, ask the Polling Station Officer if present or ask observers from other organizations or party/candidate agents.*	Yes No
ANSWER ONLY IF Question #81 is equal to "Yes" 82. If 'yes', please describe: *Who filed complaints? What were the reasons? How were they addressed?*	
83. Were there any problems reported to you by those present rather than those observed directly by you? *(e.g., agents, observers, voters)*	Yes No
ANSWER ONLY IF Question #83 is equal to "Yes" 84. If 'yes,' please describe: *Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.*	
85. How would you evaluate voters' understanding of voting procedures?	Adequate Inadequate Not observed/observable
ANSWER ONLY IF Question #85 is equal to "Inadequate" 86. Please describe the reasons for not choosing Adequate:	
87. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process POOR - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.*	I have read and understand the definitions.
88. What is your team's evaluation of the implementation of	

procedures by staff at this station? *This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.*	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #88 is equal to "Poor" 89. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #88 is equal to "Not Credible" 90. What were the main reasons for not choosing Very Good or Reasonable?	
91. Before moving ahead, please review the following definitions regarding the overall assessment of the ELECTION ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD - The environment and process fully allowed voters to exercise freely their right to vote. The process was fully transparent. REASONABLE - The environment and process were acceptable in ensuring that voters could freely exercise their right to vote. Any observed problems did not affect significantly the integrity or transparency of the process. POOR - For some voters, the environment or process was not conducive to the free exercise of the right to vote, equality, or transparency. Observed problems may have compromised the integrity of the process. NOT CREDIBLE - The environment or the process prevented voters from freely exercising their right to vote or affected the fairness of polling. Observed problems likely compromised the integrity of the polling process.*	☐ I have read and understand the definitions.
92. What is your team's overall assessment of the election environment and process at this station?	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #92 is equal to "Poor" 93. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #92 is equal to "Not Credible" 94. What were the main reasons for not choosing Very Good or Reasonable?	
95. Any other comments?	

3. Closing/Counting

Myanmar 2015

User/Team	
Observation Time	
1. Administrative Area:	Ayeyarwady Bago (East) Bago (West) Chin Kachin Kayah Kayin Magway Mandalay Mon Nay Pyi Taw Rakhine Sagaing Shan (East) Shan (North) Shan (South) Tanintharyi Yangon
2. What is the number of the Polling Station?	
3. Is the station in an urban or rural area?	Urban Rural
4. Record your GPS location: *If using a tablet, press the button which says "Record Location" and wait for the GPS coordinates to be recorded.*	
5. Were there obstacles or barriers on the way to the polling station that could have inhibited general access?	Yes No
ANSWER ONLY IF Question #5 is equal to "Yes" 6. If 'yes', describe: *Describe the barriers to public access and to what extent it affected voter franchise. Examples of barriers might include distance from villages or a dysfunctional bridge.*	
7. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the station? *Select "Not Applicable" if you did not observe any prohibited or disruptive circumstances.*	Intimidation Violence Significant disorder Police Other Not applicable
8. Start of Observation (station):	
9. Please indicate the Polling Station Officer's gender: *If the Polling Station Officer is not present, ask another worker.*	Female Male
10. Number of staff working at the polling station:	
11. Number of FEMALE staff present (excluding Polling Station Officer):	
12. Number of registered voters:	
13. What is the number of registered military personnel?	
ANSWER ONLY IF Question #13 is equal to 0 14. Is this because?	No voters of this type No information
15. What is the number of voters who voted in advance OUT of constituency?	
ANSWER ONLY IF Question #15 is equal to 0 16. Is this because?	No voters of this type No information
17. What is the number of voters who voted in advance IN constituency?	
ANSWER ONLY IF Question #17 is equal to 0 18. Is this because?	No voters of this type No information
19. Did you observe the official closing of the polling station?	Yes No
20. At what time was the closing of the polling station announced?	
21. Approximately how many voters were waiting in the queue at the time of closing?	0 1-10 11-25 26-50 51-100 More than 100
22. Did you observe the last vote at the polling station?	Yes No
23. Were all eligible persons in the queue at the time of closing	Yes No Not observed

allowed to vote?	
24. Did the polling station make a list of the voters in line?	Yes No Not observed
25. Were all voters prevented from joining the queue after closing?	Yes No Not observed
26. Which, if any, prohibited or disruptive circumstances did you observe in the station? *Select "Not Applicable" if you did not observe any prohibited or disruptive circumstances.*	Intimidation Violence Significant disorder Police Other Not applicable
ANSWER ONLY IF Question #26 does not include "Not applicable" 27. If any issues, please describe: *What were the prohibited/disruptive circumstances and how did they affect the process?*	
28. Were any of the following materials missing, insufficient, or incorrect?	Ballot envelopes Bags Voter list(s) Stamps Light source Forms Batteries Rubber bands Pens Other Not applicable
ANSWER ONLY IF Question #28 includes "Other" 29. If 'other', please describe:	
ANSWER ONLY IF Question #28 does not include "Not applicable" 30. If materials are missing, insufficient, or incorrect, please describe:	
31. Were witnesses appointed? *Polling Stations are supposed to select 4 voters and 6 Polling Station members to be witnesses for the count.*	Yes No
32. Did anyone refuse to be a witness?	Yes No
33. Were any observers, domestic or international, asked to be witnesses?	Yes No
ANSWER ONLY IF Question #33 is equal to "Yes" 34. If yes, please describe	
35. Does the station appear to be accessible to physically challenged persons, including the elderly? *The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.*	Yes No
ANSWER ONLY IF Question #35 is equal to "No" 36. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
37. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. INADEQUATELY - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). NOT AT ALL - The procedure was omitted or was not followed meaningfully. NOT OBSERVED - Due to circumstances other than those described by the*	I have read and understand the definitions.

above, the observer was not able to assess the procedure.	
38. How well did the COUNTING OF ADVANCE BALLOTS adhere to procedures?	Fully Adequately Inadequately Not at all Not observed
39. How closely did the RECONCILIATION OF BALLOT ACCOUNTS procedures adhere to regulations? *This typically includes: * determining the total of number of voters who voted according to the voter's list; * unsealing the ballot box and counting the number of ballots; *reconciling the number of ballots in the box with the number of voters according to the voters' list or other record of the total number of persons who cast ballots;*	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #39 is equal to "Inadequately" 40. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #39 is equal to "Not at all" 41. Please describe the reasons for not choosing Fully or Adequately:	
42. How closely did BALLOT VERIFICATION AND SORTING adhere to regulations? *Determining valid and invalid*	Fully Adequately Inadequately Not at all Not observed/observable
ANSWER ONLY IF Question #42 is equal to "Inadequately" 43. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #42 is equal to "Not at all" 44. Please describe the reasons for not choosing Fully or Adequately:	
45. Number of valid ballots:	
46. Number of invalid ballots:	
47. Were any ballots invalidated when the will of the voter was clear?	Yes No
ANSWER ONLY IF Question #47 is equal to "Yes" 48. If yes, please describe.	
49. Were any determinations of valid/invalid contested?	Yes No
ANSWER ONLY IF Question #49 is equal to "Yes" 50. If yes, how many?	
51. Were any ballots invalidated for having two stamps on or near the same place?	Yes No
ANSWER ONLY IF Question #51 is equal to "Yes" 52. If yes, please describe.	
53. How closely did BALLOT COUNTING adhere to regulations?	Fully Adequately Inadequately Not at all Not observed
ANSWER ONLY IF Question #53 is equal to "Inadequately" 54. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #53 is equal to "Not at all" 55. Please describe the reasons for not choosing Fully or Adequately:	
56. Were ballots counted in the prescribed order?	Yes No
57. How closely did COMPLETION OF FORM 16 & 16A adhere to regulations?	Fully Adequately Inadequately Not at all Not observed/observable
ANSWER ONLY IF Question #57 is equal to "Inadequately" 58. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #57 is equal to "Not at all"	

59. Please describe the reasons for not choosing Fully or Adequately:	
60. Number of objection forms received:	
61. How closely did POSTING OF RESULTS (at station) procedures adhere to regulations?	Fully Adequately Inadequately Not at all Not observed/observable
ANSWER ONLY IF Question #61 is equal to "Inadequately" 62. Please describe the reasons for not choosing Fully or Adequately:	
ANSWER ONLY IF Question #61 is equal to "Not at all" 63. Please describe the reasons for not choosing Fully or Adequately:	
64. Did the witnesses have an opportunity to sign the results?	Yes No Not observed
ANSWER ONLY IF Question #64 is equal to "No" 65. If 'no', please describe:	
ANSWER ONLY IF Question #64 is equal to "Yes" 66. If 'yes', did any witnesses elect not to sign the results?	Yes No Not observed
ANSWER ONLY IF Question #66 is equal to "Yes" 67. If 'yes', please describe:	
68. Which parties/candidates were represented by agents?	USDP NLD NUP NDP DP NDF SNDP SNLD PNO MFDP ANP KNP KPP MNP Other
69. Which election observation groups were present?	EU ANFREL APHEDA Diplomatic PACE National Youth Congress Creative-Home Ethnic Youths Network COM Peace and Justice Myanmar EEOP Other Domestic Other International
70. Which, if any, of the following groups did not have sufficient access to the process?	Candidate/Party agents International observers Domestic observers Polling staff Other Not applicable
ANSWER ONLY IF Question #70 is not equal to "Not applicable" 71. If any, please describe: *How were groups denied access and what was the impact?*	
72. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)? *Select 'Not Applicable' if no interference was observed.*	Candidate/Party agents International observers Domestic observers Polling staff Media Voters Security Local officials Religious/traditional leaders Other Not applicable
ANSWER ONLY IF Question #72 does not include "Not applicable" 73. If any interference, please describe: *How were groups causing interference and what was the impact?*	
74. End of Observation (Station):	
75. Were there any officially lodged complaints? *If applicable, near the end of your observation, ask the Polling Station Officer if present or ask observers from other organizations or party/candidate agents.*	Yes No
ANSWER ONLY IF Question #75 is equal to "Yes" 76. If 'yes', please describe: *Who filed complaints? What were the reasons? How were they addressed?*	
77. Were there any problems reported to you by those present rather than those observed directly by you?	Yes No

(e.g., agents, observers, voters)	
ANSWER ONLY IF Question #77 is equal to "Yes" 78. If 'yes,' please describe: *Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.*	
79. Were any of the parties/candidates/agents/observers not satisfied with the process?	Yes No
ANSWER ONLY IF Question #79 is equal to "Yes" 80. If 'yes', please describe:	
81. How would you evaluate party/candidate agents' performance?	Adequate Inadequate Not observed/observable
ANSWER ONLY IF Question #81 is equal to "Inadequate" 82. Please describe the reasons for not choosing Adequate:	
83. LOWER HOUSE RACE	
83.1. Enter PARTY and VOTES for top three LOWER HOUSE candidates:	
83.2. Number of ballots received:	
83.3. Number of unused ballots:	
83.4. Number of ballots in box:	
83.5. Number of spoiled ballots:	
83.6. Number of valid ballots:	
83.7. Number of invalid ballots:	
83.8. What is your team's evaluation of the counting process for the LOWER HOUSE race?	Very good Reasonable Poor Not Credible
84. UPPER HOUSE RACE	
84.1. Enter the PARTY and VOTES for the top three UPPER HOUSE candidates:	
84.2. Number of ballots received:	
84.3. Number of unused ballots:	
84.4. Number of ballots in box:	
84.5. Number of spoiled ballots:	
84.6. Number of valid ballots:	
84.7. Number of invalid ballots:	
84.8. What is your team's evaluation of the counting process for the UPPER HOUSE race?	Very good Reasonable Poor Not Credible
85. STATE/REGION RACE	
85.1. Enter the PARTY and VOTES for the top three STATE/REGION candidates:	
85.2. Number of ballots received:	
85.3. Number of unused ballots:	
85.4. Number of ballots in box:	
85.5. Number of spoiled ballots:	
85.6. Number of valid ballots:	
85.7. Number of invalid ballots:	
85.8. What is your team's evaluation of the counting process for the STATE/REGION race?	Very good Reasonable Poor Not Credible
86. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that	

you understand the definitions and refer back to this page if needed. *VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process POOR - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.*	☐ I have read and understand the definitions.
87. What is your team's evaluation of the implementation of procedures by staff at this station? *This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.*	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #87 is equal to "Poor" 88. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #87 is equal to "Not Credible" 89. What were the main reasons for not choosing Very Good or Reasonable?	
90. Before moving ahead, please review the following definitions regarding the overall assessment of the COUNTING ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD – No significant problems were observed with the implementation of procedures or environment. The counting process was fully transparent. REASONABLE - Observed problems did not affect significantly the integrity or transparency of the counting process, but there is room for improvement. POOR – Significant problems with any of the following may have compromised the integrity of the results: errors in implementing counting procedures; Counting staff subject to intimidation or interference; Observers restricted. NOT CREDIBLE - Observed problems with the counting likely compromised the integrity of the results.*	☐ I have read and understand the definitions.
91. What is your team's overall assessment of the election environment and process at this station?	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #91 is equal to "Poor" 92. What were the main reasons for not choosing Very Good or Reasonable?	
93. Any other comments?	

4. Aggregation

Myanmar 2015

elmo

User/Team	
Observation Time	
1. Administrative Area:	Ayeyarwady Bago (East) Bago (West) Chin Kachin Kayah Kayin Magway Mandalay Mon Nay Pyi Taw Rakhine Sagaing Shan (East) Shan (North) Shan (South) Tanintharyi Yangon
2. Polling Station ID:	
3. Locality description:	
4. Record your GPS location: *If using a tablet, press the button which says "Record Location" and wait for the GPS coordinates to be recorded.*	
5. Were there obstacles or barriers on the way to the tabulation center that could have inhibited access?	Yes No
6. If 'yes', describe:	
7. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the tabulation center?	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Police Auxiliary Police Other Not applicable
8. Which, if any, of the following prohibited or disruptive circumstances did you observe INSIDE the tabulation center?	Prohibited campaigning Prohibited campaign material Ineffective queue management Intimidation Violence Significant disorder Police Auxiliary Police Other Not applicable
9. Start of Observation (station):	
10. Does the station appear to be accessible to physically challenged persons, including the elderly? *The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.*	Yes No
ANSWER ONLY IF Question #10 is equal to "No" 11. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
12. Please describe the RECEIPT OF MATERIALS.	
13. Please describe the process for DATA RECORDING/ENTRY.	
14. Please describe the process for TABULATION.	
15. If observed, please describe the process for PROCLAMATION/DISPLAY OF RESULTS.	
16. If observed, please describe the process for RECOUNT.	
17. Total number of polling station results this tabulation center is responsible for: *Leave blank if unknown/not observable.*	
18. How many out of constituency advance voters does the township have?	
19. How many student/trainees/detainees patients out of	

constituency advance voters (Form1-1)?	
20. How many military personnel and military family members out of constituency advance voters (Form 1-2)?	
21. How many out of country advance voters (Form 1-3)?	
22. How many ballots were sent out for advance voting?	
23. How many ballots did the township receive back?	
24. What were the results of advance voting? *List the party (use party initials) and number of advance out of constituency votes received for the top two candidates for each race--Upper house, Lower house, and the two State/Regional races.*	
25. Number of polling station results received to date: *Leave blank if unknown/not observable. Include TOTAL number of results quarantined.*	
26. How many polling stations require a recount? *Leave blank if unknown/not observable.*	
27. Please describe (e.g. overall situation, PS IDs):	
28. How many recounts of polling station results have taken place to date? *Leave blank if unknown/not observable.*	
29. How many recounts confirmed the earlier tallies? *Leave blank if unknown/not observable.*	
30. Were there any results that should have received scrutiny but did not?	Yes No
ANSWER ONLY IF Question #30 is equal to "Yes" 31. If 'yes', describe:	
32. Which parties/candidates were present at the center?	USDP NLD NUP NDP DP NDF SNDP SNLD PNO MFDP ANP KNP KPP MNP Other
33. Which election observation groups were present?	EU ANFREL APHEDA Diplomatic PACE National Youth Congress Creative-Home Ethnic Youths Network COM Peace and Justice Myanmar EEOP Other Domestic Other International
34. Which, if any, of the following groups did not have sufficient access to the process?	Center staff Candidate/Party agents International observers Domestic observers Media Security Other Not applicable
ANSWER ONLY IF Question #34 does not include "Not applicable" 35. If any, please describe: *How were groups denied access and what was the impact?*	
36. Did you observe any interference leading to negative impact on the tabulation process? If so, which, if any, of the following groups interfered (negatively)? *Select 'None' if no interference was observed.*	Center staff Candidate/Party agents International observers Domestic observers Media Security Local officials Religious/traditional leaders Other Not applicable
ANSWER ONLY IF Question #36 is not equal to "Not applicable" 37. If any interference, please describe: *How were groups causing interference and what was the impact?*	
38. End of Observation (Station):	
39. Were there any officially lodged complaints? *If applicable, near the end of your observation, ask a sub-commission member.*	Yes No

40. If 'yes', please describe: *Who filed complaints? What were the reasons? How were they addressed?*	
41. Were there any problems reported to you by those present rather than those observed directly by you? *(e.g., agents, observers, voters)*	☐ Yes ☐ No
ANSWER ONLY IF Question #41 is equal to "Yes" 42. If 'yes,' please describe: *Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.*	
43. How would you evaluate party/candidate agents' performance?	☐ Adequate ☐ Inadequate ☐ Not observed/observable
ANSWER ONLY IF Question #43 is not equal to "Adequate" 44. Please describe the reasons for not choosing Adequate:	
45. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process POOR - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.*	☐ I have read and understand the definitions.
46. What is your team's evaluation of the implementation of procedures by staff at this station? *This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.*	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #46 is equal to "Poor" 47. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #46 is equal to "Not Credible" 48. What were the main reasons for not choosing Very Good or Reasonable?	
49. Before moving ahead, please review the following definitions regarding the overall assessment of the AGGREGATION ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. *VERY GOOD – No significant problems were observed with the implementation of procedures or environment. The aggregation process was fully transparent. REASONABLE - Observed problems did not affect significantly the integrity or transparency of the aggregation process, but there is room for improvement. POOR – Significant problems with any of the following may have compromised the integrity of the results: errors in implementing aggregation*	☐ I have read and understand the definitions.

procedures; Election staff subject to intimidation or interference; Observers restricted; Sensitive materials not secured. NOT CREDIBLE - Observed problems with the aggregation likely compromised the integrity of the results; OR, There are significant, unexplained differences between counting results and aggregation results.	
50. What is your team's overall assessment of the election environment and process at this station?	☐ Very good ☐ Reasonable ☐ Poor ☐ Not Credible
ANSWER ONLY IF Question #50 is equal to "Poor" 51. What were the main reasons for not choosing Very Good or Reasonable?	
ANSWER ONLY IF Question #50 is equal to "Not Credible" 52. What were the main reasons for not choosing Very Good or Reasonable?	
53. Any other comments?	

Appendix G

Invitation to Observe

H.E Ambassador Mary Ann Peter

Chief Executive Officer

The Carter Center

Dated: 30th March, 2015

Invitation for Election Observation

The Union Election Commission has declared the General Elections to be held either in late October or early November 2015.

In this regard, the UEC invites the esteemed Delegation of the Carter Center to send the delegates for Election Observation in 2015.

Your consideration to send a mission is highly appreciated.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Tin Aye

Chairman

Union Election Commission

Office No. 22, Nay Pyi Taw

Republic of the Union of Myanmar

UNION ELECTION COMMISSION
NAY PYI TAW

The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.

Martin Frank

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