

THE  
CARTER CENTER



Observing Myanmar's  
2015 General Elections

Final Report

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MAP OF MYANMAR



## **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 Carter 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 was not only remarkable but crucial to counterbalancing the considerable structural impediments to fully democratic elections. Despite flaws observed, the post-election 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.

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 towards 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 it contested.

In parallel to the political transition, steps were undertaken to resolve long-standing ethnic conflict. By August 2013, the government had reached bilateral cease-fire agreements with 14 ethnic armed groups and began working towards a Nationwide Cease-fire Agreement (NCA). However, only eight groups signed the NCA in October 2015, and some major groups did not

participate. NCA 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 inter-communal 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 which structurally impact the democratic character of the electoral and political processes. In particular, the military appoint 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.

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.

### **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 UEC initiatives was to convene consultations with civil society and political parties. The UEC also held post-election review meetings in all states and regions and at 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 UEC 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 persons 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 (TRCs) – who are not considered citizens – had been eligible to vote. In March 2015, TRCs were cancelled, and in June, parliament removed TRC 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 TRC 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 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 UEC's review of disqualifications was a commendable measure, the process was not transparent.

### **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 NLD 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. 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 UEC 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

cancelled 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 TRC 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.

### **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 UEC 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 UEC 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 UEC 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 UEC in the post-election 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 under-represented 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 under-represented even in the ethnic states.

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 towards 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 Carter 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 re-deployed 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 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.<sup>1</sup>

In the post-election period, the Center maintained its field observation presence in Myanmar and re-deployed long-term observers to assess the post-election dispute resolution process and the response to the results. The Center's findings from the post-election 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.

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<sup>1</sup> Available at [www.cartercenter.org/news/pr/myanmar-111015.html](http://www.cartercenter.org/news/pr/myanmar-111015.html)

## **ACKNOWLEDGEMENTS**

The Carter Center thanks the Union Election Commission and government of Myanmar for facilitating the Carter Center's political transition monitoring and election observation mission. In particular, The Carter Center thanks the Union Election Commission for its invitation to observe the elections and for its cooperation throughout the electoral process. The Carter Center appreciates the time dedicated by civil society organizations, political parties, media, and government officials at all levels to engaging with the Carter Center and its observers.

The Carter Center would like to express appreciation to the United States Agency for International Development, the government of Norway, the government of Denmark, the United Kingdom Foreign & Commonwealth Office, and their missions in Yangon, whose generous support allowed the Carter Center to monitor the electoral process from December 2014 through March 2016.

The Carter Center also thanks the Center's long-term and short-term observers for their efforts, the leadership delegation, as well as all the individuals and organizations whose contributions and commitment enabled the observation of Myanmar's historic elections.

Finally, The Carter Center wishes to extend its congratulations to the people of Myanmar for their commitment to building democracy and peace.

## ELECTION OBSERVATION METHODOLOGY

The November 2015 election in Myanmar was the 101<sup>st</sup> 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 non-governmental 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.<sup>2</sup> 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.

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 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 post-election report in February 2016.<sup>3</sup>

Throughout, the Center maintained close working relationships with international organizations providing assistance to the electoral process and participated in numerous coordination bodies with international and national partners. The Center met regularly with international and

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<sup>2</sup> For the text of the declaration, visit [www.cartercenter.org/peace/democracy/des\\_declaration.html](http://www.cartercenter.org/peace/democracy/des_declaration.html).

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

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 few international treaties and is not yet a party to the ICCPR.<sup>4</sup> 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.<sup>5</sup> This report also refers to a number of other standards and guidelines for democratic elections.<sup>6</sup> 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 four broad subjects: 1) electoral preparations, including election administration and voter education; 2) political parties, the electoral campaign, media, 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

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<sup>4</sup> 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.

<sup>5</sup> 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."

<sup>6</sup> "Election Obligations and Standards: A Carter Center Assessment Manual," The Carter Center (2014).

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.<sup>7</sup> 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.<sup>8</sup> In addition, long-term observers provided the short-term observers with a regional briefing.

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.

### **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

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<sup>7</sup> The Myanmar Independent Living Initiative (MILI) is a Myanmar NGO working to empower and support persons with disabilities for their independent living and to advocate and promote the inclusion and rights of persons with disabilities. [www.mili.org.mm/](http://www.mili.org.mm/)

<sup>8</sup> 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](http://getelmo.org).

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 Carter Center election observation mission at a press conference at the Sedona Hotel in Yangon.

### **Post-Election Day Observation**

Following the departure of the short-term observers, the core team and long-term observers continued their monitoring of post-election processes, including the tabulation and announcement of results. The teams closely followed post-election dispute resolution and campaign expenditure hearings at the union and state/regional levels. The long-term observers and core team observed the UEC's post-election 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 post-election process in February 2016.

Long-term observers were present through March 2016, and their findings in the post-election 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 and more than 100 years with parts of its territory under British control, as well as a brief period of occupation by Japan during World War II. Under its first constitution, the country experienced a decade of multi-party democracy, holding elections in 1947 (for the post-colonial 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 August 8, 1988 (8/8/88), during which security forces opened fire on protestors, killing several thousand.

The military seized power, dissolved the BSPP, and created the State Law and Order Restoration Council (SLORC), 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 (NLD), and daughter of independence hero General Aung San – was placed under house arrest. It was in this highly charged atmosphere that the SLORC announced that elections would go forward in 1990.<sup>9</sup>

The 1990 pre-election environment was very restricted, with campaign activities circumscribed and leaders of the NLD 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 (NUP), 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.<sup>10</sup> The military government refused to recognize the results, instead stating that they would not relinquish power until a new constitution was drafted and enacted.

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<sup>9</sup> In 1989, the government changed the name of the country from Burma to Myanmar.

<sup>10</sup> The election was conducted under a first-past-the-post system.

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

### **The 2008 Constitution**

In 2003, the military government announced a “Roadmap to 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 multi-party system, the constitution granted the military a preeminent 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 the president that were 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 NLD (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 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 NLD 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 towards 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 prohibits 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.<sup>11</sup> With constitutional reform efforts blocked, the 2015 elections were held under the framework established by the 2008 Constitution.

### **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 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 pre-independence commitments made to ethnic groups through the 1947 Panglong Conference and in the 1947 Constitution led to the outbreak of conflict shortly after independence.<sup>12</sup> 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 counter-insurgency campaign, with devastating effects on local ethnic populations. Nonetheless, ethnic armed groups consolidated control over wide swathes of territory, leading to the development of parallel

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<sup>11</sup> 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.

<sup>12</sup> 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.

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.

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 so as 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 towards a Nationwide Cease-fire Agreement (NCA). However, the NCA 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 (KIA), 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 NCA signing date. Only eight groups, however, agreed to sign the NCA, 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 NCA 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.

Since the November 2015 elections, fighting has continued between the Myanmar military and non-signatory 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 NCA (but without the full participation of non-signatories). During the event, Aung San Suu Kyi signaled that the NLD 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 NLD-led government began talks with NCA non-signatories 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 three million people, about two-thirds of whom are ethnic Rakhine Buddhists and one-third of whom are Muslim.<sup>13</sup> 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.<sup>14</sup>

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.

Rohingya have seen a continued erosion of their rights. Some 130,000 remain in internally displaced person camps. They, as well as villagers outside of 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, 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.

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<sup>13</sup> According to 2014 census data, Muslims made up only 1.4 percent of the enumerated population of Rakhine State. If the estimated non-enumerated 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).

<sup>14</sup> 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.

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” (TRCs) – also known as “white cards” – which did not confer citizenship status and left much of the population in legal limbo. Nevertheless, TRC holders were allowed to vote and to form political parties in previous elections.

In September 2014, the parliament barred TRC holders from serving as members of political parties, and in early 2015, the president unexpectedly announced that TRCs would be cancelled. 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 Citizens”).

## 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.<sup>15</sup> The legal framework includes constitutional provisions related to elections and to 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.<sup>16</sup> 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.

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 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.<sup>17</sup>

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

<sup>16</sup> Article 436, 2008 Constitution.

<sup>17</sup> 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.”

The commander-in-chief also names the ministers for defense, home affairs, and border affairs, putting these ministries outside of civilian oversight. This has consequences for the administration of elections, as subcommissions are heavily reliant on the General Administration Department (GAD) 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.<sup>18</sup>
- *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.<sup>19</sup>
- *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.<sup>20</sup>
- *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.<sup>21</sup> Under 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.<sup>22</sup>

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<sup>18</sup> See section on Boundary Delimitation below for further detail.

<sup>19</sup> See Article 2.3 of the ICCPR and Article 8 of the UDHR.

<sup>20</sup> See section below on voter registration for further detail.

<sup>21</sup> 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.

<sup>22</sup> General Comment 25, 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; and the IPU Declaration on criteria for free and fair elections.

- *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.<sup>23</sup>

## **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 UEC – elections in Myanmar are primarily governed by a set of three election laws,<sup>24</sup> as well as the Law on the Union Election 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 UEC is left to regulate aspects of the process that significantly impact an individual’s right to vote and be elected. These include the timeframe 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.

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<sup>23</sup> 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 ...”

<sup>24</sup> The Amyotha Hluttaw (Upper House) Election Law, Pyithu Hluttaw (Lower House) Election Law, and Region and State Hluttaw Election Law. Apart from provisions on candidate registration and the composition of these parliaments, the three laws are identical.

## 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 therefore at the core of international standards.<sup>25</sup>

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.<sup>26</sup> 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).<sup>27</sup> 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.<sup>28</sup> 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.

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<sup>25</sup> 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.”

<sup>26</sup> As noted above, the commander-in-chief appoints the remaining 25 percent.

<sup>27</sup> 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.

<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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; and in those with more than 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.<sup>31</sup>

For state and region assemblies, each township is represented by two seats; constituencies are therefore 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.<sup>32</sup>

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<sup>29</sup> 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.

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

<sup>31</sup> 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.

<sup>32</sup> ICCPR, Article 25 guarantees “equal suffrage.” UNHRC, General Comment, 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

## 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.<sup>33</sup>

**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, and 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.<sup>34</sup>

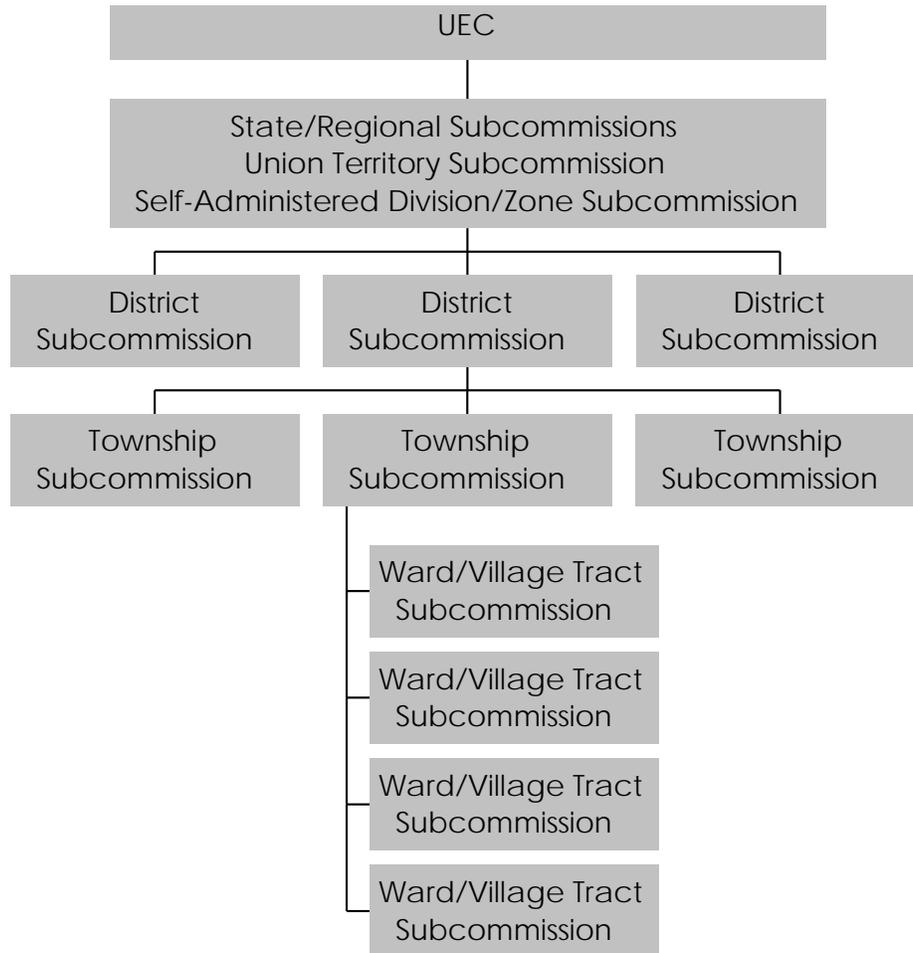
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should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters....” As an example of international good practice, the Venice Commission’s Code of Good Practice 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).”

<sup>33</sup> 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.”

<sup>34</sup> 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:**



**Appointment Process.** The UEC at the union level 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 persons”; and have integrity and experience. UEC 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, UEC members were widely perceived by Carter Center interlocutors as being close to the USDP-led government. Several members, including the chairperson, 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 post-election 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 persons” (commonly referred to as volunteer members).<sup>35</sup> The representation of women on subcommissions was generally low. Ethnic representation on subcommissions visited by Carter Center observers varied widely,<sup>36</sup> though ethnic groups were generally under-represented 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 (GAD), 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 UEC acknowledged that it faced serious capacity issues that could impact the management of the elections and designed a training and capacity-building program 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. As a result, they were functionally and operationally dependent on local government administrative structures, particularly the GAD.<sup>37</sup> Nearly all state/region and township

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

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

<sup>37</sup> The GAD is a 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 on the GAD, see: Kyi Pyar Chit Saw and Matthew Arnold:

subcommissions were located in government administrative offices and were reliant on the GAD 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 GAD (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 GAD 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 UEC 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 voter list updating process. The UEC 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 UEC held nine meetings with civil society groups beginning in March 2014, and seven meetings with political parties beginning in October 2014. At the meetings, the UEC 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 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.

In conclusion, 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 under-representative of the gender and ethnicity of the general population (see the 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 persons entitled to vote are able to exercise that right and that if voter registration is required, it should be facilitated with no obstacles imposed.<sup>38</sup>

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.<sup>39</sup> However, under Article 392 of the constitution, certain groups of citizens do not have the right to vote, including members of religious orders,<sup>40</sup> 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, persons in bankruptcy, and those 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.<sup>41</sup>

**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 people who no longer live 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.

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

<sup>39</sup> Art. 391(a) of the constitution. Until June 2015, persons without citizenship who held Temporary Registration Certificates had the right to vote by law (see section “Disenfranchisement of Temporary Registration Certificate Holders” below).

<sup>40</sup> 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.

<sup>41</sup> 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.”

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 from Sept. 14 to 27.<sup>42</sup> 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.<sup>43</sup>

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 GAD 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.<sup>44</sup> 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. 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.<sup>45</sup> 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.<sup>46</sup>

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<sup>42</sup> 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.

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

<sup>44</sup> See Carter Center Statement on the Electoral Campaign Period in Myanmar, Oct. 27, 2015, [www.cartercenter.org/news/publications/election\\_reports.html#myanmar](http://www.cartercenter.org/news/publications/election_reports.html#myanmar).

<sup>45</sup> 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 3 partially) and resorted to other measures (Excel files) without the ability to track when and by whom changes and corrections were made.

<sup>46</sup> 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

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

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 Hpakant in Kachin State, where there are many Rakhine migrants working in jade mines, an at-risk population.<sup>47</sup>

IDPs were also 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 GAD office. According to the UEC, IDPs 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 IDP concentrations. In some areas, IDP camp managers were permitted to sign the form verifying that an IDP had been residing in that location for 180 days. For election day, polling was arranged within some IDP camps, while in other locations, IDPs 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.<sup>48</sup> 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.

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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.

<sup>47</sup> 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](http://www.themimu.info/sites/themimu.info/files/documents/18-Sector_Map_Gov_IFES_Pyithu_Hluttaw-Transferred_Votes_MIMU1363v01_11Jan16_A3.pdf).

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

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 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.

**Disenfranchisement of Temporary Registration Certificate Holders.** Until June 2015, people with temporary registration certificates (TRCs) 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.<sup>49</sup>

In February 2015, the president declared that TRCs would be invalid at the end of March. The Constitutional Tribunal subsequently issued an opinion that a legislative provision allowing TRC 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 TRC 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 TRCs, the government announced that they would be replaced with new temporary identity documents until the citizenship status of former TRC 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 TRC holders who were disenfranchised or even if any former TRC holders were able to have their citizenship verified and be re-registered to vote.

Muslim citizens confined to IDP 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

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<sup>49</sup> TRCs (or “white cards”) temporarily but indefinitely conferred some rights held by Myanmar citizens to persons who had not been determined to have Myanmar citizenship.

that little effort had been made by officials to ensure that eligible Muslim voters' names appeared on the final list.

The disenfranchisement of 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, was a serious contravention of fundamental political rights.<sup>50</sup> 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.<sup>51</sup>

### **Candidate Registration Process**

The effective implementation of the right to stand for elective office ensures that voters have a free choice of candidates.<sup>52</sup> Therefore, any conditions placed on political party and candidate-registration processes should be reasonable and nondiscriminatory.<sup>53</sup> 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.<sup>54</sup>

**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 persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements.<sup>55</sup>

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<sup>50</sup> 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.

<sup>51</sup> 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."

<sup>52</sup> ICCPR, Article 25 (a). UNHRC, General Comment 25, para. 15.

<sup>53</sup> UNHRC, General Comment 25, paras. 15–17.

<sup>54</sup> 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.

<sup>55</sup> 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. 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 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."

In addition to associate citizens, naturalized citizens, and persons 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 persons 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.

**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.<sup>56</sup> 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.<sup>57</sup> In total, 99 nominations were rejected – most for failure to meet the citizenship, age, and residency requirements.<sup>58</sup>

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 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

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

<sup>57</sup> 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.

<sup>58</sup> 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.

multiple citizenship verification processes<sup>59</sup> or the candidate's parents were in possession of Citizenship Scrutiny Cards, which were issued in earlier processes to document verified citizenship.<sup>60</sup> In at least two cases, the rejected candidates had already served in the legislature. The UEC subsequently reinstated one candidate.<sup>61</sup>

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.<sup>62</sup> 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.

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.<sup>63</sup> 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

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<sup>59</sup> 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.

<sup>60</sup> 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.

<sup>61</sup> 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.

<sup>62</sup> 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.

<sup>63</sup> More than two-thirds of disqualifications occurred in Yangon Region (34) and Rakhine State (29).

rejected candidates. The UEC decided that 11 of the rejected candidates were in fact eligible, including 10 candidates rejected on citizenship grounds.<sup>64</sup> 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.<sup>65</sup> 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 TRC 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 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.<sup>66</sup> 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.

Overall, the candidate registration process resulted in a large number of candidates across a broad range of political parties.<sup>67</sup> 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 choices. 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.

## **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.<sup>68</sup>

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

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

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

<sup>66</sup> 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.

<sup>67</sup> Breakdown of candidates by legislature: upper house – 886; lower house – 1,745; state/region – 3,282; ethnic minister (all states and regions) – 161.

<sup>68</sup> ICCPR, Article 25(b); and UNHRC, General Comment 25, paragraph 11.

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.<sup>69</sup>

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 non-state 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 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

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<sup>69</sup> Myanmar 2014: Civic Knowledge and Values in a Changing Society, The Asia Foundation (2014); IFES Pre-Election Survey in Myanmar, 6 November 2015.

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 benefitted 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.

## **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.

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.<sup>70</sup>

### **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 (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.<sup>71</sup> Nonetheless, most political party and civil society leaders reported that refusals were infrequent and that their activities were only rarely obstructed.

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<sup>70</sup> 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>.

<sup>71</sup> Bogyoke Aung San was the father of Aung San Suu Kyi.

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;<sup>72</sup> 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.<sup>73</sup>

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 (see below).<sup>74</sup>

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. Journalists (and others) are vulnerable in an environment of assertive 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 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

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<sup>72</sup> 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.”

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

<sup>74</sup> 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.”

religion in politics, which prompted a campaign of intimidation led by local monks.<sup>75</sup> These cases are symptomatic of wider sensitivities around religious identity.

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. Special Branch's activities 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 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.<sup>76</sup>

**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 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.<sup>77</sup> A significant exception was in Rakhine State, where the Arakan League for Democracy (ALD) merged with the newer Rakhine Nationalities Development Party (RNDP) to form a unified ethnic Rakhine party, the Arakan National Party (ANP).

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<sup>75</sup> 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

<sup>76</sup> ICCPR, Articles 9, 12, 19, and 22; and UNHRC, General Comment 25, paragraph 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."

<sup>77</sup> For instance, the Shan Nationalities League for Democracy (SNLD), which boycotted in 2010, competed in many constituencies against the newer Shan Nationalities Democratic Party (SNDP), which won seats in 2010.

Other parties included those formed by breakaway members of the NLD, such as the National Democratic Force (NDF) which won seats in 2010; parties that promoted a Buddhist-nationalist line, such as the National Development Party (NDP) 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 (NDPD) and the Democracy and Human Rights Party (DHRP).

**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 a full 60-day campaign plan in advance was often not enforced.<sup>78</sup> 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 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.

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

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<sup>78</sup> Article 21 of the 1966 ICCPR guarantees the right of peaceful assembly without undue restrictions. Paragraph 12 of the 1996 UNHRC General Comment No. 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.”

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 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 (see election dispute resolution, below).

**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 NLD 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 GAD, 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 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. (See “Post-Election Complaints” below for more on this case.)

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.<sup>79</sup> 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.<sup>80</sup> One civil society media monitoring organization, the Myanmar Institute for Democracy (MID), 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.<sup>81</sup> However, MID 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.

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<sup>79</sup> ICCPR, Article 19. UNHRC, General Comment 25, paragraph 25.

<sup>80</sup> Myanmar Press Council (Interim), “Election Guidelines for Media during Election.”

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

However, the control that the government retains over the broadcast media permitted one notable and arbitrary restriction of freedom of expression.<sup>82</sup> 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.”<sup>83</sup> Limitations on the content of speeches, together with the requirement to have them approved in advance, constitute a serious restriction on freedom of expression.<sup>84</sup>

**Election Cancellations and Campaigning in Areas Under Armed Group Control.** The ongoing peace process resulted in the signing of a Nationwide Cease-fire Accord (NCA) by the government and some ethnic armed groups on October 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 NCA, 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 NCA, the Shan State Army-South.

On October 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.<sup>85</sup> In the latter five townships, polling was canceled for reasons of non-state armed group control (by powerful ethnic Wa and Kokang militias) and the absence of viable government structures, rather than active conflict. On October 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.<sup>86</sup> 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 non-state armed groups – which are particularly active in Shan, Kachin and Kayin states – had a broader negative 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

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<sup>82</sup> 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.”

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

<sup>84</sup> 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.”

<sup>85</sup> UEC announcement 61-65/2015 of October 12, 2015.

<sup>86</sup> UEC announcement 67/2015 of October 27, 2015.

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,<sup>87</sup> the passive approach of the government toward extremist Buddhist rhetoric and activism did not inspire confidence. Members of the NLD in particular 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 the erection of billboards that resembled those of election candidates and was 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.

**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

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<sup>87</sup> 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.

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 USDP.

## **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.<sup>88</sup>

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 UEC 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, 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

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<sup>88</sup> UNHRC, General Comment 25, paragraph 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.”

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.

**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.<sup>89</sup> 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.<sup>90</sup>

Subcommissions make recommendations on the disqualification of candidates who did not submit reports in a timely manner. In the post-election period, campaign finance tribunals established by the UEC considered the disqualification of 175 non-elected candidates for failure to submit campaign finance reports on time, and recommended disqualification of 159 candidates.<sup>91</sup> 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.

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.

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<sup>89</sup> 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.

<sup>90</sup> The United Nations Convention Against Corruption, para. 7.3.

<sup>91</sup> UEC Announcement No. 5/ 2016, dated February 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.”<sup>92</sup> 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 TRC 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 Nov. 2015 general elections.<sup>93</sup> 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.<sup>94</sup>

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 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

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<sup>92</sup> 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....”

<sup>93</sup> 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>.

<sup>94</sup> UEC announcement 61-65/2015 of October 12, 2015, and 67/2015 of October 27, 2015.

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 Carter 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.

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 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.

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 was 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.

Voter slips helped facilitate the voting process, including in 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 non-critical 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 persons 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 persons 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.<sup>95</sup> 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

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

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 – 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.<sup>96</sup> 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.

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.<sup>97</sup> 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).<sup>98</sup> 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

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<sup>96</sup> 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.

<sup>97</sup> 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.

<sup>98</sup> 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.

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.<sup>99</sup> This was corroborated by other observer groups.<sup>100</sup> 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 transport 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 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.<sup>101</sup> 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.<sup>102</sup> International good practice is for results to be posted publicly as soon as they are determined in order to ensure transparency.<sup>103</sup>

The Carter Center observed the tabulation process in 22 townships, and the counting of out-of-constituency advance votes in three districts.<sup>104</sup> 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.

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<sup>99</sup> Working Guidelines for the Polling Booth Officer, Deputy Polling Booth Officer and Polling Booth Team Members, Article 5(d) (16).

<sup>100</sup> 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>.

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

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

<sup>103</sup> 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, paragraph 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."

<sup>104</sup> Carter Center observers observed these processes from Nov. 8 – 10.

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.<sup>105</sup>

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.<sup>106</sup> 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.

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.

### **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.<sup>107</sup> 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

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

<sup>106</sup> 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.

<sup>107</sup> Complete results by constituency (in Burmese) are available at [www.uecmyanmar.org](http://www.uecmyanmar.org).

regional assemblies.<sup>108</sup> The USDP won 8 percent of elected seats in the upper and lower houses.<sup>109</sup> With the exception of the National Unity Party (NUP), which won a seat in the upper house, non-ethnic 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.

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<sup>108</sup> 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.

<sup>109</sup> 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. The CEDAW 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.<sup>110</sup>

### **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 level. 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.<sup>111</sup>

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 each. 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

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<sup>110</sup> CEDAW, Article 7.

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

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 in union, state and regional levels of government.

## ELECTION SECURITY

The right to security of the person includes the protection of voters, candidates, polling officials, and observers from coercion, intimidation, and violence.<sup>112</sup>

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 GAD 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.

In conclusion, 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.

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<sup>112</sup> 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.<sup>113</sup> 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.<sup>114</sup>

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.<sup>115</sup> 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.

### **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, the UEC developed accreditation regulations and granted accreditation to all domestic organizations that applied.<sup>116</sup>

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 Organisation (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 like 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 (COM), Ethnic Youths Network Group, Election Education and Observation Partners (EEOP), and the National Youth Congress. Most domestic observer teams

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<sup>113</sup> ICCPR, Article 25(a); UNHRC, General Comment 25, paragraph 8.

<sup>114</sup> UNHRC, General Comment 25, paragraph 20.

<sup>115</sup> For the 2012 by-elections, Myanmar invited the Association of Southeast Asian Nations (ASEAN), 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](http://www.ifes.org/~media/Files/Publications/Reports/2012/Burma_April1_Parliamentary_By-Elections.pdf).

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

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. As mentioned above, both international observers and civil society observer groups were denied access to the tabulation process in several townships.

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

### **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 UEC drafted and implemented comprehensive accreditation procedures and a code of conduct for international observers, in consultation with observer groups.<sup>117</sup>

The Union Election Commission accredited over 1,000 international observers to monitor the elections.<sup>118</sup> In addition to The Carter Center, the European Union Election Observation Mission and the Asian Network for Free Elections (ANFREL) 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 (APHEDA) deployed observers to conduct election-day observation. The Association of Southeastern Asian Nations (ASEAN) also sent representatives from electoral management bodies in ASEAN-participating countries, as well as from the ASEAN 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.

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<sup>117</sup> 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).

<sup>118</sup> 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.<sup>119</sup>

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 enforcement throughout the election period.<sup>120</sup> Investigations were still underway months after

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<sup>119</sup> 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 motion of fair trial includes the guarantee of a fair and public hearing."

<sup>120</sup> 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.

the election, including into 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 post-election disputes in Mandalay Region and Shan State.

### **Post-Election Complaints**

For post-election 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.<sup>121</sup>

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.<sup>122</sup> 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.<sup>123</sup> 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.

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<sup>121</sup> 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."

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

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

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.<sup>124</sup> 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 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.<sup>125</sup> 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.<sup>126</sup> 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

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<sup>124</sup> 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 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.

<sup>125</sup> 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...”

<sup>126</sup> 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.

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.

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.<sup>127</sup> Numerous potential complainants told Carter Center observers that the high filing fee played a significant role in their decision not to file a complaint.<sup>128</sup> 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 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.

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<sup>127</sup> 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).

<sup>128</sup> 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.

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

In conclusion, the post-election 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 which create an unnecessarily high barrier to filing complaints.

## POST-ELECTION CONSULTATIONS

Commendably, the UEC conducted a series of meetings in all states and regions to review the election process in order to identify areas for further improvement.<sup>129</sup> 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 on Feb. 29 and March 1, 2016, at which international and civil society observer groups attended and 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.

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<sup>129</sup> 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;
  - In order to ensure the equality of the vote, constituencies should be based on population or number of registered voters rather than solely on administrative boundaries;
  - In order 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; and
  - 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 which 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 the provisions for election 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 post-election 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 non-discriminatory 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 persons 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 IDPs 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 non-discriminatory 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 station to persons 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.

## **TERMS AND ABBREVIATIONS**

<b>ALD</b>	Arakan League for Democracy
<b>Amyotha Hluttaw</b>	Upper House of the Legislature
<b>ANFREL</b>	Asian Network for Free Elections
<b>ANP</b>	Arakan National Party
<b>APHEDA</b>	Australian People for Health, Education and Development Abroad
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BSPP</b>	Burma Socialist Programme Party
<b>COM</b>	Charity-Oriented Myanmar
<b>DHRP</b>	Democracy and Human Rights Party
<b>EAG</b>	Ethnic Armed Group
<b>EEOP</b>	Election Education and Observation Partners
<b>GAD</b>	General Administration Department
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IDP</b>	Internally displaced person
<b>IFES</b>	International Foundation for Electoral Systems
<b>IPU</b>	Inter-Parliamentary Union
<b>KIA</b>	Kachin Independence Army
<b>LTO</b>	Long-Term Observer
<b>Ma Ba Tha</b>	Association for the Protection of Race and Religion
<b>MID</b>	Myanmar Institute for Democracy
<b>MILI</b>	Myanmar Independent Living Initiative
<b>NCA</b>	Nationwide Ceasefire Agreement
<b>NDF</b>	National Democratic Force
<b>NDP</b>	National Development Party
<b>NDPD</b>	National Democratic Party for Development
<b>NLD</b>	National League for Democracy
<b>NUP</b>	National Unity Party

<b>PACE</b>	People's Alliance for Credible Elections
<b>Pyithu Hluttaw</b>	Lower House of the Legislature
<b>RNDP</b>	Rakhine Nationalities Development Party
<b>SLORC</b>	State Law and Order Restoration Council
<b>SNDP</b>	Shan Nationalities Democratic Party
<b>SNLD</b>	Shan Nationalities League for Democracy
<b>STO</b>	Short-Term Observer
<b>Tatmadaw</b>	Myanmar's Armed Forces
<b>TRC</b>	Temporary Registration Certificate
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UEC</b>	Union Election Commission
<b>UNHRC</b>	United Nations Human Rights Committee
<b>USDP</b>	Union Solidarity and Development Party