

**EU EOM MYANMAR
GENERAL ELECTIONS 2015**

FINAL REPORT

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I. Executive Summary (Incl. Key Recommendations)

The 2015 General Elections were the second nationwide elections held under the 2008 Constitution, but the first in which all of the country's main political parties competed. These elections were the first nationwide polls to be held since the initiation of the reform process, under a semi-civilian government, in 2011, and as such were a critical test for Myanmar. The European Union was invited by the UEC to observe the elections of 8 November 2015 and a Memorandum of Understanding between the EU and the UEC was signed on 21 August 2015. The EU EOM was led by Alexander Graf Lambsdorff MEP, a Vice President of the European Parliament.

The legal framework provides some of the conditions for competitive elections, including freedom of association for political parties. However, the framework does not fully provide for the conduct of genuine elections, with limitations concerning the number of seats directly elected to the parliament, the right to vote and the right to stand, as well as an inadequate framework for the resolution of election disputes.

The UEC administered the polls in challenging circumstances. It made a major effort to train some half-a-million staff and reach out to election stakeholders. The UEC also accredited hundreds of international observers and some 12,000 domestic observers. However, election administration at various levels lacked consistency and transparency. The UEC created a computerised voter list for the first time. It was an improvement on previous lists, and should be built on in the future, as some deficiencies were apparent.

In terms of the right to vote, a person had to be a citizen of Myanmar and the Citizenship Act of 1982 established requirements to prove citizenship which imposed burdens that were very difficult to meet for many, and as a result universal suffrage was not properly provided for, and the elections were not as inclusive as they could have been.

The elections were competitive, including over 6,000 candidates. The qualifications to run as a candidate, though, imposed unreasonable limitations on the right to stand, notably with regard to citizenship and residency criteria. The management of appeals during candidate nomination lacked transparency, and some decisions appeared to be arbitrary, with a notable percentage of Muslim candidates being rejected.

The election campaign was largely calm with parties able to hold rallies and public meetings, despite some isolated incidents. Electoral officials generally implemented the regulations on organising events without undue rigour. The campaign regulations imposed some limitations on freedom of expression by excluding certain topics from criticism. The provocative Buddhist nationalist discourse invoked by some parties and a religious movement raised concerns during the campaign. While no action was taken to address this issue, the use of religion in politics is prohibited by campaign regulations and the Constitution.

Media have seen dramatic changes since 2011, with pre-publication censorship abolished and a noticeable increase in the use of social media. At the same time, television and radio remain largely controlled by the state. Further, interlocutors cited restrictions on freedom of expression

due to a restrictive legal framework and widespread self-censorship. During the campaign, state-funded media largely ignored the political contestants. Private, foreign and social media dedicated significant coverage to the election, with a number of them showing a visible preference towards the NLD.

On Election Day, observers reported very positively on the voting process in polling stations, with 95% rating the process as ‘good’ or ‘very good’. In the vast majority of cases, polling stations opened on time and were well prepared. Officials worked hard to administer the process, but procedurally some inconsistent practices and anomalies were noted. Most voters, in polling stations visited, found their names on the voter list, but in 7% of polling stations visited some absences on the list were observed. Voters were able to cast their vote in secret, and, after voting, ink was applied in virtually all cases observed. Domestic and international observers enjoyed access to the process and political party agents were present in the vast majority of the polling stations observed. For the vote count at the polling station, in places observed it was reported to have been conducted in a transparent manner and the result was posted in most instances.

Advance voting can help to ensure those working on Election Day do not lose their right to vote. There was, though, a lack of clear understanding on behalf of electoral officials as to who was allowed to vote in-constituency in advance for these polls, resulting in some inconsistencies, and also in a lack of adequate safeguards for materials. In addition, out-of-constituency advance voting also lacked adequate safeguards and transparency. Observers were denied the right to observe out-of-constituency voting in military barracks.

Observers reported generally positively on the tabulation process and did not observe or receive any serious claims against the outcome. However, some shortcomings were observed, in particular regarding the transparency of the tabulation, the existence of procedural errors and the lack of proper safeguards for the materials during the breaks in the tabulation.

Based on the final announced results and taking into consideration the 25% of seats reserved for the Military in each legislature, the NLD holds 59% of the seats in the Lower House, 60% in the Upper House, and 56% in the State/Region Assemblies, while the USDP holds 7% of the Lower House, 5 % of the Upper House and 9% of State/Region Assemblies.

Women accounted for just under 800 of the more than 6,000 candidates and won 44 seats in the Pyithu Hluttaw, 23 seats in the Amyotha Hluttaw, and 84 seats in state/regional Hluttaws, including six ethnic minister seats. More than 97% of all elected women are members of the NLD. The situation overall represents a distinct improvement over the previous position, as women now comprise approximately 10% of the total membership in all parliamentary assemblies.

Priority Recommendations

- In order to provide for genuine elections, the provision for 25% of seats to be appointed by the Commander-in-Chief, rather than elected by the people, should be dropped.
- Unreasonable restrictions on the right to vote should be amended, bringing provisions in this regard into line with international standards. Namely:

- There needs to be reform of the citizenship law to ensure that persons reasonably qualified for citizenship are able to secure it (in accordance with the Universal Declaration of Human Rights' prohibition on racial discrimination and the Declaration's provisions on the right to citizenship) and are therefore entitled to vote
- Unreasonable restrictions on the right to stand should be amended, bringing provisions in this regard into line with international standards and specifically the Universal Declaration of Human Rights. Namely:
 - The requirement for the parents of a candidate to have both been citizens at the time of his/her birth is an unreasonable requirement and should be dropped.
 - The requirement for continuous residency of 10 years for a parliamentary candidate and 20 years for a presidential candidate are disproportionate and could be decreased to provide for more reasonable and inclusive eligibility criteria.
 - Limitations against a person becoming president in case of their children and/or spouse being foreign nationals are not reasonable and should be dropped.
- The UEC needs to be a truly independent institution. The nomination and appointment mechanism for the Chair and Members of the Commission needs to be transparent and inclusive in order to ensure confidence among stakeholders. For instance, nominations for UEC members could be proposed through a cross-party parliamentary committee.
- Transparency and effectiveness of UEC decision-making and communication must be improved, with prompt publication of decisions and notifications. In particular, decisions of the UEC should be issued in writing and made public as relevant, notifications of procedures must be communicated to lower-level commissions in a clear and timely manner to ensure consistency of implementation.
- For candidate nominations, the rules on documentation required as proof of citizenship and residency need to be clarified to ensure both election administration and prospective candidates have a clear and consistent understanding of what is required, and fair and consistent procedures adopted for the checking of documentation of all candidates.
- Campaign messages for broadcast should not be subject to prior approval and there should not be undue limitations on topics allowed to be covered in the campaign
- The legal framework for media needs to be brought into line with international standards, without undue restrictions on freedom of expression
- Political parties should consider adopting affirmative action policies for the inclusion of women to increase women's participation in party structures, including as candidates
- The handling of election complaints must be timely and respect the principles of fair procedures and provide a guarantee of impartiality. This includes the right to appeal decisions of the UEC and not having the UEC determine complaints against itself.
- All data related to results and any related complaints must be fully and promptly published by the UEC and the UEC should publish full results by polling station
- Careful consideration needs to be given to the practice of advance voting, given prevailing doubts among some stakeholders as to its integrity. If the practice is to continue, the UEC should take full responsibility for all aspects of advance voting, including out of constituency advance voting.

II. Introduction

The European Union was invited by the UEC to observe the elections of 8 November 2015 and a Memorandum of Understanding between the EU and the UEC was signed on 21 August 2015. The EU EOM was led by Alexander Graf Lambsdorff MEP, a Vice President of the European Parliament, from Germany. The mission comprised a core team of nine analysts who were present in Yangon from 26 September; 30 Long Term Observers (LTOs), who were present in-country from 7 October; and 62 Short Term Observers (STOs), who were present from 2-13 November. In addition, the mission was joined by 37 Local Short Term Observers (LSTOs) and a seven-person Delegation of Members of the European Parliament, led by Ana Gomes MEP from Portugal. Overall, observers were drawn from all 28 EU member States as well as Canada, Norway and Switzerland.

On Election Day, observers reported from all Regions and States and Nay Pyi Taw, observing in 553 polling stations. LTOs remained in the field to follow the tabulation process and departed from Myanmar on 23 November. Most Core Team members left by 2 December, though the legal analyst remained until 1 February 2016 to follow the post-election dispute resolution stage. The EU EOM assessed all aspects of the electoral process and the extent to which the election process complied with national laws and international standards for democratic elections. The mission was independent in its findings and conclusions and operated in accordance with the Declaration of Principles for International Election Observation.

III. Political Background

The 2015 general elections were the second nationwide multiparty polls to be held under the 2008 Constitution. As in 2010, 1,171 seats (75%) of the Assembly of the Union and of the Region and State parliaments were open to contest, and the remaining 25% are appointed by the Commander-in-Chief of the Defence Services. However, the 2015 elections were of particular significance as they took place in the context of a democratic transition reform process, initiated in 2011 by a semi-civilian government under the lead of President Thein Sein. The 8 November polls were also a test of credibility of the democratic transition, as the previous 2010 general elections were boycotted by the main opposition party, the National League for Democracy (NLD), and widely considered as flawed.

In many senses, while Myanmar has taken a number of significant steps in its democratic transition since 2011, the country is still emerging from decades of harsh military rule, and the level of trust in the reform process and the willingness of people to take advantage of the freedoms increasingly afforded to them remains tentative. The election was also held in a context of inter-communal violence having taken place in recent years, a marked rise in radical Buddhist nationalism and on-going conflict in some ethnic States as decades-long wars between Ethnic Armed Organisations (EAOs) and the Myanmar military (*Tatmadaw*) continue. However, a National Ceasefire Agreement (NCA) was signed on 15 October 2015. It is a partial agreement,

involving eight of the 15 EAOs invited by the government to participate in the negotiations, but despite only being a partial agreement it represented a major development for the country.

However, despite the signing of the NCA, the UEC, as had been expected, still cancelled the polls in some areas. The UEC stated that the conditions were not conducive to the holding of the polls due to the prevailing insecurity. This affected several hundreds of villages in four ethnic States (Kachin, Kayin, Shan, Mon) and one Region (Bago). The cancellation particularly affected Kachin, with 11 townships partly cancelled, and Shan State, in which the elections were cancelled in seven entire constituencies. The criteria for cancelling elections were not transparent and the decision was not preceded by sufficient consultation with affected political parties and other stakeholders.

The two main contenders were the ruling party, the Union Solidarity and Development Party (USDP), and the main opposition party, the NLD: each of them fielded 1130 candidates in almost all the constituencies of Myanmar, covering all States and Regions. Both parties nominated candidates from minorities to run in ethnic States, although neither of them fielded a Muslim candidate.

The three other major contenders, in terms of numbers of candidates put forward, were: the National Unity Party (NUP) with 757 candidates; the newly-formed National Development Party (NDP) with 355 candidates; and, the National Democratic Force (NDF) with 265 candidates. The parties mostly fielded candidates from the majority Bamar community and focused their efforts largely in the central Regions of the country. In addition, the Myanmar Farmers Development Party was a relatively new party contesting the polls. It competed in all of the Regions and in one ethnic State, Rakhine.

Overall, nearly two-thirds of the parties contesting these elections were minority parties, each representing one ethnic or religious group, while one-third were Bamar or Bamar-majority parties. Ethnic parties ran mostly in ethnic states, where they usually constituted at least half of the contenders. Nearly 2/3 of the ethnic parties fielded candidates in only one or two States/Regions. In all of the ethnic States except one, several ethnic parties from the same community competed against each other. A notable exception was the Arakan National Party (ANP) in Rakhine state, which was a merger of the Rakhine Nationalities Democratic Parties and the Arakan League for Democracy and was successful in the elections. In addition, there were two alliances of ethnic minority parties: the United Nationalities Alliance (UNA), formed in 1990, comprised eight parties, and the Nationalities Brotherhood Federation (NBF), formed in 2011, fielded 710 candidates from 23 parties. There were 309 independent candidates, the majority of whom were in Rakhine, Shan and Yangon.

In terms of candidates from religious minorities, 903 Christian candidates were registered, the vast majority of whom were contesting seats in ethnic States, in many cases fielded by the USDP and the NLD. Among the 28 Muslim candidates registered, most ran in Yangon Region, and a few in Rakhine State. Five of the Muslim candidates ran as independent candidates, others belonged to small parties and two were fielded by the NUP.

IV. Legal Framework

A. International Principles and Commitments

Myanmar has undertaken some international commitments which relate to the electoral process. It has acceded to three of the core international human rights treaties, namely the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. It is also a party to the UN Convention against Corruption. In addition, Myanmar signed the International Covenant on Economic, Social and Cultural Rights in July 2015. Myanmar is not yet a party to the International Covenant on Civil and Political Rights, the principal human rights instrument pertaining to genuine elections. It is subject to the Universal Declaration of Human Rights (UDHR), which guarantees many political rights, and is also subject to extensive customary international law on human rights.

B. Electoral Legislation

The legal framework for the conduct of elections is to be found in the Constitution of 2008, with further detail set out in a series of election laws, in triplicate, from 2010. The laws are the Amyotha Hluttaw (Upper House) Election Act, the Pyithu Hluttaw (Lower House) Election Act, and the Region Hluttaw (Region Assembly) or the State Hluttaw (State Assembly) Election Act, which are almost identical, with slight differences between them relating to the numbers of representatives to be elected and the constituencies from which they are to be elected. Qualifications for office also vary across the three parliamentary bodies. These electoral laws have been subject to minor amendment since their enactment, principally in that former prisoners are no longer barred from running for election, as they initially had been, while entitlements to vote and belong to political parties were removed from the holders of temporary citizenship registration certificates - white cards – preceding this election.

Further elements of electoral law are to be found in the Union Election Commission Act 2010 and the Political Parties Registration Act 2010, while provisions of the Penal Code, of the Civil Procedure Code, and of the Peaceful Assembly and Peaceful Procession Act are also relevant. The UEC has extensive power to make rules and by-laws, while it can also issue notifications, orders and directives, a power which has been widely used. As a result, legal provisions applicable to the elections are spread across a plethora of legal instruments, making the content of the law often difficult to ascertain definitively. Also, while the principal Acts and by-laws are relatively easily accessible, many of the subsidiary instruments have not been disseminated in any way by the UEC, creating difficulty in establishing clearly what the law is which governs any point.

The Constitution of 2008 establishes that the Republic of the Union of Myanmar is an independent sovereign state, divided into seven regions, seven states, and the union territory of Nay Pyi Taw. The guiding national principles are set out as the non-disintegration of the Union, the non-disintegration of national solidarity, and the perpetuation of sovereignty. The political system is defined as a genuine, disciplined multi-party democratic system.

The legal framework for the 8 November elections, while establishing basic structures and rules for the conduct of elections, does not comply completely with international standards for democratic elections. Article 21 (3) of the UDHR provides that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage”. This can be interpreted as requiring that representatives are freely chosen by voters, and that representatives are accountable to voters. The electoral system, which allocates 25% of seats in all Hluttaws to nominees of the Commander-in-Chief of the Defence Forces, undermines the link between the voters and their representatives, as neither house of the Pyidaungsu Hluttaw is completely directly elected.

C. The Right to Vote

The law provides that citizens, associate citizens and naturalised citizens who have reached the age of 18, and have registered to vote, may vote. However, there are deficiencies in the legal protection for full participation and inclusion in the electoral process, undermining universal suffrage.

Section 6 (a) of the Election Acts previously included “holders of temporary certificates”, a provision which was removed by amendment in December 2014. The holders of these temporary citizenship registration certificates, so-called “white cards”, 760,000 of which had been issued, had been allowed to vote in previous elections. The issue and revocation of these certificates was done under the Citizenship Act of 1982, a piece of legislation which establishes requirements to prove citizenship which discriminate on the grounds of ethnicity. The Act imposes burdens precedent to the recognition of citizenship which are very difficult to discharge, and which ignore ties of birth and family. As a result, it is estimated that there are more than 1 million stateless persons in Myanmar, with the vast majority of these being from the Rohingya ethnic group in Rakhine State. There are also persons of Indian, Chinese and Nepali descent who are stateless. Most of these people would be entitled to the citizenship of Myanmar if the law were in compliance with international standards¹ on the right to a nationality, the prohibition of the arbitrary deprivation of nationality, and non-discrimination on the grounds of ethnicity. These putative citizens were not allowed to vote, thereby violating Article 21 (1) of the UDHR, which provides that “everyone has the right to take part in the government of his country”.

The Citizenship Act is contrary to the prohibition on racial discrimination in articles 2, 7 and 15 of the UDHR, and to articles 2 and 7 of the Convention on the Rights of the Child. As the acquisition of citizenship in Myanmar is primarily based on ethnicity, and as this creates “distinction, exclusion, restriction or preference” on the grounds of race, the Citizenship Act of 1982 does not comply with the principle of non-discrimination. The Citizenship Act also lacks any safeguards to prevent statelessness, and thus violates the right of every child to acquire a nationality, as protected by articles 3 and 7 of the Convention on the Rights of the Child, and the

¹ Universal Declaration of Human Rights (Article 2 - prohibition of racial discrimination; Article 15 – everyone has the right to a nationality); General Principles of International Law (prevention & reduction of statelessness); Convention on the Rights of the Child (right of every child to a nationality & right of foundlings to acquire a nationality)

right of foundlings to acquire a nationality. If the Citizenship Act 1982 were compliant with international law, currently stateless populations would be able to exercise their right to vote.

Cycles of internal displacement in Myanmar have been propelled by armed conflict for decades, while catastrophic climactic events have caused some shorter-term displacement. At present there are large groups of internally displaced persons (IDPs) present in Kachin, Shan (north) and Rakhine States², as well as dispersed throughout the south-east of the country. While a project to provide civil documentation in the south-east³ has reached up to 400,000 people in recent years, many IDPs do not have any identification documents and were not registered to vote. Beyond that, birth registration has not been consistently achieved in Myanmar beyond urban areas⁴ and many people lack identification documents. The causes of such a situation are manifold, but the consequence is that there was significant exclusion from voting in the election. Elections also were not conducted in all townships throughout the country, due to reasons of insecurity (see Section on Election Administration, V.B), thereby excluding more persons from exercising their right to vote.

The law also prohibits members of religious orders from voting, thus imposing a legal disability on the grounds of religion, which is discriminatory⁵. This exclusion from participation in political life is in line with the teachings of Theravada Buddhism, which has a special constitutional position and is the majority religion in Myanmar, and as a result the exclusion is acceptable to many. This is, nonetheless, in violation of the right to vote of the ordained members of other faiths, as the Election Act specifies that, in addition to Buddhist monks and nuns, ordained members of Christian religious orders, as well as Hindu, Sanyazi, Mahant and Hindu priests are all denied the right to vote. It should be noted that, while detainees are permitted to vote, and were facilitated to do so, convicted prisoners serving a prison sentence are denied the right to vote.

D. The Right to Stand for Election

A candidate seeking to stand in the general election has to meet certain eligibility criteria. These include being a citizen of Myanmar, having resided in the country for at least 10 consecutive years, being an eligible voter, and having parents that are citizens of Myanmar. Such qualifications to run for election impose unreasonable restrictions on wide classes of persons.

Associate and naturalised citizens are disqualified from running for office. Equivalent to the situation of stateless persons, many naturalised and associate citizens would qualify for full citizenship if the Citizenship Act 1982, and the administrative practices under it, respected fundamental human rights. The requirement for candidacy is not just mere citizenship, but the

² UNHCR estimates: Kachin & Northern Shan – c. 95,000; Rakhine – c. 143,000; south-east Myanmar, no specific IDP figures, but 206 villages of origin of refugees.

³ Conducted by the Norwegian Refugee Council, in co-ordination with the Ministry of Immigration and Population

⁴ UNICEF has been collaborating with the Ministry of Immigration and Population under an EU-funded birth registration project that began in January 2013. The goal of the project is to strengthen the birth registration system throughout the country. National coverage is now reported to be approaching 80% birth registration.

⁵ Universal Declaration of Human Rights: Article 2 – “everyone is entitled to all rights & freedoms... without distinction of any kind, such as ... religion”. Article 18 – “everyone has the right to freedom of thought, conscience and religion”.

parents of a prospective candidate must both have been citizens at the time of his birth. The candidate must also have been resident in Myanmar for ten years consecutively up to the time of the election. This requirement could indirectly exclude many opposition candidates, as they are more likely than pro-government candidates to have been in exile, thereby amounting to indirect discrimination on the grounds of political opinion⁶. Members of religious orders are excluded from running for election, representing a further burden on the grounds of religion.

Qualifications to be satisfied for the office of president are more extensive than those for the parliamentary elections. Persons who have a foreign spouse or child or child-in-law are excluded, while twenty years of continuous residence in Myanmar prior to the election are required. This is in violation of the individual right to participate in the government of the country⁷, and also amounts to indirect discrimination on the grounds of family status⁸.

While the right to stand for election is insufficiently protected in the law in Myanmar, the practical application of the law also fails to meet international standards. Candidate nominations were submitted to UEC district sub-commissions, which then appointed a date for the scrutiny of the nomination papers. The UEC could determine that a putative candidate was ineligible under the requirements of the law, either on their own initiative or based on the objection of any other putative candidate in the same constituency. There is an entitlement to appear in person, and to present documentation to contradict any challenge to candidature. There is, however, no legal guidance as to what documentation is required to determine eligibility. There is also no requirement that decisions be issued in writing, nor any entitlement to the legal reasons for the decisions taken. While an appeal is possible to the state/region sub-commission, there is also no entitlement to an oral hearing of such appeal. Appeals lie wholly within the UEC hierarchy, with the jurisdiction of the courts entirely ousted⁹. This amounts to a denial of the right to a fair hearing¹⁰ on disputed nominations, as the rejected candidate may wish to complain about the actions of the UEC, the body which will be ruling on the matter.

E. Electoral System and Election Constituencies

The Upper House has 224 members, of whom 168 are directly elected and the remainder appointed by the Commander in Chief. Representation in the Upper House is equal across Myanmar's 14 States and Regions, which elect 12 representatives each.

The Lower House has 440 representatives, 330 of whom are directly elected, the remainder appointed by the Commander in Chief. Each of the 330 townships in Myanmar elects one

⁶ UDHR Article 18 – Everyone has the right to freedom of thought; Article 19 – everyone has the right to freedom of expression; Article 20 – Everyone has the right to freedom of association.

⁷ UDHR Article 21 (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

⁸ UDHR Article 2 on non-discrimination on the grounds of other status; Article 7 on equality before the law; Article 16(1) on the right to marry and form a family.

⁹ Constitution of Myanmar 2008 – Article 402 – the resolutions and functions.. of the UEC ... shall be final and conclusive.

¹⁰ 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. 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

representative each. Both elections are on the basis of first-past-the-post. For the lower house, there are major imbalances in the size of townships and therefore in the size of the constituencies (see below).

For State/Regional Assemblies, each township in the State/Region is divided into two constituencies, so the number per State/Region will vary. A representative is elected from each constituency, again on the basis of first-past-the-post. In addition, the Commander in Chief appoints members to each State/Region Assembly so that they make up 25% of the total number of seats in an Assembly.

In addition, a total of 29 Ethnic Affairs Ministers was elected to State/Region Assemblies in States/Regions where an ethnic community has a population equal to, or greater than, 0.1% of the national population of Myanmar. This does not apply to minorities that are the majority within their State/Region. Ethnic Affairs Ministers are also elected on the basis of first-past-the-post. However, there was a lack of reliable data on ethnic groups ahead of the 2015 elections, as ethnic data from the national census had not been released.

For elections to the Lower House, the Election Act, Article 4, states that the Commission shall designate the number of constituencies and it shall “not designate more than 330 ... in the entire Union”. The administrative divisions are based on the township administrative divisions. In case of there being more than 330 townships, then the law (Article 4d) provides that the Commission can merge townships to ensure that the number of constituencies does not exceed 330. In terms of timing, Article 5c states that: “The commission shall designate the constituencies for the next term at least 60 days in advance prior to the expiry of the term of the Hluttaw”.

For elections to the Upper House, the commission “shall designate only 12 Hluttaw constituencies in each Region or State”. The same timeline as for the Lower House applies. The intention for the Upper House is to provide an equal number of representatives in each Region and State regardless of population size.

There are no references in the law regarding the number of voters per constituency or any reference to a need to conduct a review of the relative sizes of constituencies with a view to ensuring equal suffrage.

V. Election Administration

A Union Election Commission and Sub-Commissions

Election administration is based on a five-tier structure comprising the UEC at the central/national level, and sub-commissions in each of the 14 States/Region, 73 District, 330 Township and 15,740 Ward/Village Tract levels. In addition there were 40,191 polling stations created for voting and counting. The UEC is a permanent body with an undetermined number of members. The Constitution refers to “a minimum of five members” without setting an upper limit and there is no further precision in the Union Election Commission Act.

The UEC consisted of 15 members, including the Chair, nominated by the President¹¹. It is responsible for the appointment of members of subordinate commissions, which are largely comprised of civil servants from the General Administration Department (GAD), which is under the Ministry of Home Affairs, or other ministries. As a result of this, and of the fact that the Chair is a former USDP Member of Parliament (MP), opposition representatives expressed a lack of confidence in the independence of the election management body¹².

The law is lacking provisions regarding the functioning of the commission, the decision making process, the situations where a consensus or qualified majority vote is required, the mode of adoption of internal rules of procedure, as well as the obligation to make decisions public. As a result, the UEC has discretion to decide on a large number of issues having broad responsibility and extensive powers for the management, organisation and supervision of all aspects of the electoral process, including voter registration and designation of constituencies. However, out-of-country and out-of-constituency voting are not under the control of the UEC (see below).

The UEC organised a series of meetings with stakeholders, namely political parties, civil society and domestic and international observers, which was perceived to be positive. However, in a number of respects there was a lack of transparency in that there was a lack of publication of many details related to the process, including data on voter registration, polling station lists and details on advance voting, and only some notifications were made public through the UEC's website, at the discretion of the Chair's office. The work of the UEC was also characterised by an over-concentration of decision-making power in the office of the Chair, including for minor administrative matters.

Sub-Commissions were generally composed of 15 members, nine government employees and six honorary civilian members¹³. EU EOM observers assessed that Sub-Commissions at different levels generally appeared well organised, but the EU EOM encountered difficulties in receiving timely and precise information about voter list figures, polling station lists and advance voting activities. At the same time, due to the decentralised structure of the election administration throughout the country, instructions from the UEC were not implemented in a consistent manner.

The UEC was very active in making preparations for the 8 November elections, particularly with regards to logistics, with the support of the civil administration and the army. The UEC ensured that sensitive and non-sensitive materials were produced and distributed to the polling stations in a timely manner, as noted by EU EOM observers. The UEC launched a couple of information campaigns, including through text messaging, to encourage voters to verify their names in the voter list and another one, launched shortly before Election Day, to inform voters about voting procedures. The UEC produced some 33 million "voting slips". These were primarily intended for voters who lacked ID, but were not intended as a requirement for voting *per se*. Despite a clear directive on the way to deliver the voting slips – to be filled by hand and without a picture

¹¹ These included eight ethnic minority members nominated to the UEC on May 2015 representing the Kachin, Kayin, Chin, Rakhine and Shan ethnic groups.

¹² U Tin Aye, a former general, took up the chairmanship of the UEC in March 2011 after resignation from the Parliament.

¹³ Sub-Commissions were supported logistically by the Election Management and Security Committees, mainly composed of government employees of various departments.

of the voter - they were distributed to the voters in various ways, even during Election Day¹⁴. The slips were also intended to be used for updating the voter list in case of errors in the details of a voter, although after Election Day they remained in the hands of the Township Sub-Commissions.

There is no clear legal provision establishing the end of the Sub-Commissions' activities. After the tabulation period, Sub-Commissions at all levels remained ready to respond to potential complaints, audit candidates' financial reports, produce statistical information for the UEC, prepare final reports highlighting achievements and difficulties encountered throughout the process, as well as making recommendations; and collect and store non-sensitive election material, while awaiting orders from the UEC.

Election Management and Security Committees (EMSC) were organised at State/Region level, comprising government employees of various departments such as GAD, immigration, police, religious, legal, health, military and agriculture. Usually, the Sub-Commissions' civil servant membership and Secretary were also members of the EMSCs. They met regularly to plan the security aspects of the pre- and post-election periods. They also liaised closely with international observers, notably on issues related to the security of movement. The EMSC were chaired by the Regional or State Ministers of Borders and Security Affairs. In Sagaing Region, for instance, there was also a Coordinating Committee comprised of representatives of different stakeholders.

B Cancellation of Polls

The UEC published a series of notifications on 12 October announcing that the vote had been cancelled in five townships and 590 village tracts nationwide, namely in Kachin State, Kayin State, Mon State, Shan State and Bago Region¹⁵. The only official explanation provided by the UEC was the absence of conditions to organise “free and fair” elections in those areas. The number of village tracts where elections did not take place was higher than in 2010, despite the ongoing peace process, but it was not clear that more voters were necessarily affected. This announcement took place a few days before the signature of the Nationwide Ceasefire Agreement on 15 October. Criteria for cancelling voting on security grounds were not transparent and consultations with concerned stakeholders did not take place.

Also on 12 October, during a meeting of the Central Election Mediation Committee, the UEC chair suggested a postponement of the elections nationwide because of the impact of flooding in certain areas of the country. This provoked a flurry of adverse comment, from the NLD in particular, though some other parties, including USDP, were in favour. It was later decided to continue with the polls¹⁶.

¹⁴ The UEC announcement of 22 October 2015 established voter slips had to be issued by Ward or Village tract Sub-Commissions.

¹⁵ UEC Notifications 61 to 65/2015 of 12 October.

¹⁶ In a meeting with the EU EOM, the Chair said his suggestion was due to a variety of factors, including the impact of flooding, concerns about voter registration, security problems in Kachin and Shan States and an “imbalance in the campaign”.

Two weeks later, on 27 October, the UEC issued another notification announcing a new list of locations where elections were not to take place¹⁷. This non-conduct of elections particularly affected Shan State, where polls were cancelled in seven entire townships, seven wards and 334 villages. Due to the fact that many of the cancelled zones were beyond the control of the State, the UEC did not provide a figure on the estimated number of voters excluded from the polls.

On 19 January 2016 military appointees to their 25% quotient of seats in all Hluttaws were announced. Despite the fact that the UEC had cancelled many elections, leaving 19 vacant seats, the military took its full allotment of reserved seats (56 in the Amyotha Hluttaw, 110 in the Pyithu Hluttaw and 220 in state/regional Hluttaws). This means that, until, and indeed if at all, by-elections for these seats are conducted, the military representation is actually greater than the 25% designated in the Constitution.

VI. Voter Registration

Myanmar uses a passive registration system. From December 2014 to the end of July 2015, township Sub-Commissions entered eligible voter data from General Administrative Department (GAD) and the Ministry of Immigration and Population household lists and logbooks into an electronic database. This was the first time the voter list had been computerised in Myanmar.

It was widely acknowledged that these initial lists were not entirely accurate, however, and this created challenges for the registration process. Moreover, this system placed a significant burden on voters to proactively request corrections or additions to the lists. This was particularly an issue in rural areas, where accessibility, information and literacy may have been more problematic. EU EOM observers were informed that the lists were not always displayed or were not easily reachable by rural populations. Problems were also experienced during the inputting and sorting of voter data, which created a lot of criticism among voters and candidates, notably when the system was altered to re-order names according to alphabetical order rather than by household, creating misunderstandings among voters. The UEC acknowledged that the database software should have been tested properly and better tailored to the country's specific conditions. In some Sub-Commissions, such as in Ayeyarwady Region, officials replaced the database provided and worked instead on Excel.

The UEC established mechanisms to allow for inclusions, corrections, and deletions in the voter lists, and provisions were made to facilitate voter transfers between constituencies. In order to update and correct the list, public verification exercises were conducted from March 2015, with lists displayed for voters to check their names and request corrections or additions. There was, though, only a nationwide crosscheck after the end of the May-June display period.

The second and final preliminary nationwide display of the voter list was completed on 10 October, after being extended by several days in certain parts of the country¹⁸. During the display period, the UEC organised a nationwide voter education campaign with the distribution of

¹⁷ UEC Notification 67/2015 of 27 October.

¹⁸ The final places where the display took place (10 October) were Yangon and Kachin States.

pamphlets and posters throughout Myanmar in some 16 different ethnic languages¹⁹. Local observers noted that the public turnout for the verification was “modest”, meaning many people did not check their details. On a number of occasions, the UEC Chairman publicly blamed the voters for not showing up in sufficient numbers to check their data on the provisional lists.

The list was locally adjusted just days prior to Election Day, which represented a major, but very late, effort on behalf of administrators. At the time of writing, the final number of voters had still not been officially announced by the UEC, but it estimated the total number of registered voters to be some 34.3 million persons²⁰.

A shortcoming in the registration system was that proper identification was not required to be included in the voter list. However, millions of citizens lack any form of official identification document. In the absence of an identity document, eligible voters could be added to the voter list on the basis of confirmation of identity by their respective village development committee. This trust-based approach represented a problem for the internally displaced people living in households far away from their original ones.

On Election Day, EU EOM observers reported that there were some instances of people not finding their name, while it is also likely that others, knowing their name was not on the list, will not have attempted to vote. Despite all the allegations and uncertainties, and despite the UEC’s own assertions that there were problems, the final voter lists were probably more accurate than expected, based on the relatively small number of voters turned away on Election Day. This is also a notable improvement over the lists used in past elections.

VII. Registration of Parties and Candidates

The UEC certified a total of 6,074 candidates to contest the 8 November polls, comprising representatives of 91 parties and 309 independent candidates. Of these, 1,745 were running for a seat in the House of Representatives (Lower House), 886 for the House of Nationalities (Upper House), 3,282 for the Region/State Assemblies, and 161 for the election of 29 ethnic affairs ministers. More than half of the candidates (3,324) were Bamar, and the remainder were from minority communities or were of mixed nationalities. Taken as a whole, the polls were competitive. However, there are some concerns regarding the framework for the registration of political parties and the process for the management of candidate nomination.

A Registration of Political Parties

The Constitution 2008 provides, in Article 354, that every citizen shall be at liberty in the exercise of the right to form associations and organisations. Chapter X provides for the existence of political parties, but it is couched in restrictive rather than permissive terminology. Article 404 provides that a political party shall (a) set the objective of non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of sovereignty; and (b) be loyal to the State. It is further stated, at Article 406, that a political party shall have the right to organise freely, and

¹⁹ PACE reported observing voter education activities in 36% of display centres visited, PACE Press release 1 October 2015

²⁰ According to UEC estimated figure from 5 November.

to participate and compete in elections. Article 407 stipulates strongly that parties will lose their rights to be registered if they receive support from a foreign government or religious association, or if they abuse religion for political purposes. Indeed the succeeding provision, Article 408, is mandatory in nature, requiring that, if a political party transgresses the listed prohibitions, their registration “shall be revoked”. The Political Parties Registration Act 2010 further elaborates upon the constitutional provisions.

There are restrictions in the law as to the freedom of expression of political parties. There are limitations on the policy positions which they may articulate, including a requirement of espousing respect for and obedience to the Constitution, and contravention of the restrictions will result in deregistration. This is in violation of international standards which protect the freedom of expression²¹. Parties will also lose their registration should their members include persons who, for example, contact members of unlawful associations, or who are involved with narcotic drugs. This imposes an unreasonable requirement that parties maintain a high level of scrutiny of the activities of members at all times, and is unconnected to their party political activity.

The UEC is vested with full power to register, suspend for three years, or entirely deregister political parties. The decision of the UEC is stated to be final and conclusive, ousting the jurisdiction of the courts. This is a breach of natural justice and fair procedures, as the Universal Declaration of Human Rights establishes that everyone is entitled to a fair and public hearing by an independent tribunal in the determination of his rights. At present the UEC has the sole and exclusive power to review its own actions.

B Registration of Candidates

More than 6,100 candidates submitted nominations for the elections, 99 of whom were initially rejected. There were 67 appeals from this process, with 24 of the decisions eventually being reversed²², with the result that there were 75 rejections. The process of adjudicating upon the appeals against rejection of candidature continued for several weeks into the election campaign, thereby putting those involved in this process at a disadvantage compared to their constituency rivals. Earlier deadlines for the submission of nominations to candidature would alleviate this problem.

The rejections resulted in large measure from a more strict interpretation of the citizenship criteria than had been applied in previous elections conducted under identical legal rules. A notable example is provided by the case of U Shwe Maung, a Muslim Rohingya and a sitting USDP MP. He was elected to the Pyithu Hluttaw in 2010 but his application to run for election as an independent candidate this time was rejected on citizenship grounds. The rejection of candidates had a particularly high impact on Muslim candidates, as 32 of the 75 candidates rejected were Muslim. This, in turn, had significant consequences for Rohingya candidates, as one third of the disqualified applicants were from Rakhine State. All six putative candidates of the National Development and Peace Party were disqualified, with the result that the party was

²¹ UDHR Article 19 Everyone has the right to freedom of opinion and expression.

²² While the UEC made a public announcement of the reinstatement of 11 candidates on 23 September, some candidates informed the EOM that written notification of their successful appeal was not received until the second week of October, putting them at a disadvantage in campaigning terms.

unable to contest the election. All of the Muslim candidates in Rakhine were categorised in UEC lists as Kaman, although some may have been Rohingya or of mixed ethnicity. On 3 November a public protest took place against a re-instated Muslim candidate in the constituency of Maung Daw, questioning his right to stand and accusing him of being a Bengali non-citizen, not a Kaman, as stated in the lists.

Just twenty-eight of the more than 6,000 candidates approved to contest the elections professed the Muslim faith, not a single one of whom was elected. This leaves the national parliament without a single Muslim for the first time since independence.

VIII. Election Campaign

A Election Campaign

The campaign was generally active and reached most parts of the country to a greater or lesser extent. Critically, it took place in a calm atmosphere and was largely without violence. The EU EOM observed a large number of rallies and found that, despite the restrictive regulations (see below), in most cases, electoral authorities adopted a flexible approach and in many instances approved rallies and public meetings dispensing with the strict notice period. Freedom of assembly and freedom of movement were enjoyed by political parties, candidates and voters almost everywhere.

Some areas were affected by on-going conflict or communal violence. For instance, no rallies or campaigning could take place in parts of northern Shan following an offensive by the *Tatmadaw* in October; in parts of Kachin and Kayin States due to the lack of adequate security and the aversion of EAOs to the polls, which dissuaded parties from conducting public events or any campaigning activities. In Maung Daw (Rakhine), protests against a Muslim candidate accused of being a non-citizen deterred him from canvassing in the constituency.

The official campaign began on 8 September and concluded at midnight on 6 November. Up to mid-October, campaigning was largely limited to the USDP and the NLD and some of the larger ethnic parties such as the Shan Nationalities League for Democracy and the Shan Nationalities Development Party in Shan State and the Arakan National Party in Rakhine. Campaigning often involved posters, public rallies, concerts, music trucks and motorcycle parades, but the main tool used by all the parties was door-to-door canvassing and the distribution of pamphlets, often including voter education. The USDP and the NLD were the most visible parties and the only ones holding large rallies across the country. The vast majority of independent candidates and smaller parties, including ethnic parties, lacked resources, and reserved campaigning until the last weeks.

The NLD's strategy was based on holding large public events in each of the States and Regions featuring Aung San Suu Kyi or the NLD veteran patron U Tin Oo, but also involving celebrities and popular singers, all urging people to vote for the party. Meanwhile, in most constituencies the USDP campaign put the emphasis on the candidates and their achievements, as a large number were MPs, region/state chief ministers, or former ministers in the Thein Sein

government. Ethnic minority candidates and parties in borderland states largely appealed for votes along ethnic lines with a message tailored to the interests and aspirations of their State. Observers noted a general lack of policy content in campaign messaging, as candidates largely used simple slogans, such as “vote for change” for the NLD, “people’s choice” for the USDP, or “vote for your people” among ethnic parties.

Observers received reports of forced attendance of students and civil servants at USDP rallies in Bago, and several reports of pressure on government workers to attend USDP public events, and to vote for them in Tanintharyi, and witnessed the bussing and mobilisation of thousands of attendees to a PNO rally in Shan state. In Rakhine, local *Ma Ba Tha* leaders acknowledged they attempted to influence voters, and in Mon and Kayin, observers received several allegations of monks trying to dissuade voters from voting for the NLD. There were also allegations of distribution of money and goods in some areas, and some people at a USDP rally in Magway confirmed to EU observers they had been paid to attend the event.

In the midst of the campaign, the radical Buddhist nationalist organisation *Ma Ba Tha* toured the country to mark the passage of four “Race and Religion Protection Laws”. This tour was perceived by NLD to be used as a platform to campaign against the NLD and to call for votes in favour of the USDP. Although they were not part of the electoral campaign, *Ma Ba Tha*’s appeals saw a shift in the political debate, as the themes of development, land rights and national reconciliation gave way to the defence of Buddhism and the preservation of the four laws in the speeches of the USDP, the NDP and the MFDP. At the same time, Aung San Suu Kyi supplemented her calls for constitutional change and federalism with calls for equal rights for all ethnic groups and religious minorities. As campaigning intensified in the last weeks before the polls, an increasing incidence of the radical Buddhist nationalist rhetoric was witnessed by the mission, and the use of religious topics and of anti-Muslim sentiment was observed especially in central Myanmar and to a certain extent, in Mon and Rakhine. Hate speech instances increased in parallel to the intensification of the anti-Muslim rhetoric of *Ma Ba Tha*, and the mission observed instances of racist speech targeting the Muslim community at political rallies of the USDP and MFDP.

Whereas the use of religion for political purposes is prohibited by campaign regulations and by the Constitution, no action was taken by the UEC upon the complaint of the NLD regarding *Ma Ba Tha*’s statements, as the organisation is not a political party. However none of the candidates using hate speech and inflammatory language was warned or sanctioned by the UEC either. Female candidates running in Yangon, Chin, and Mon reported to the mission having been the target of defamation and insults attacking their person through facebook and/or rumours spread in their constituency. The accusations also questioned their Buddhist faith and claimed that they were linked to or married to Muslim people. According to parties, when the sub-commission was informed by the candidate, no effective action was taken to stop the perpetrators.

The Political Parties Code of Conduct (CoC), a set of ethical principles drawn from electoral law, was signed by 88 of the 91 registered parties and was widely disseminated by the parties to their candidates and members. Although not legally binding, the code functioned as a self-regulatory mechanism, commonly used as a reference by the mediation committees of sub-commissions. It effectively diffused tensions among party representatives, helping to resolve

disputes through discussion. During the campaign, the CoC Monitoring Committee felt compelled to remind parties not to “encourage hatred between any religion, tribe, group, gender, language, or community” and “to refrain from any form of intimidation or incitement to violence vis-à-vis any person or group of persons or beliefs”. Although widely seen by the signatories as having had a pacifying impact on the atmosphere of the campaign, due to the moral commitment of the party leaders, the absence of an enforcement mechanism limited its authority at lower levels, and made it ineffective in stopping inflammatory invectives of candidates.

B Campaign Regulations and Environment

While freedoms of association and assembly were provided for in the narrow electoral context, there are some concerns in this regard in terms of the broader context of Myanmar. The Constitution of the Republic of the Union of Myanmar contains restrictive provisions which undermine the freedoms of association, assembly and expression, rights which are of particular concern in the context of the election. The Constitution provides, in Article 354, that every citizen shall be at liberty in the exercise of the rights to (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; to form associations and organisations. These rights are stated to be limited by the requirement that they not be contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality. These limitation provisions are excessively broad, and they have allowed for extensive abrogation of the nominal rights.

There are many laws in force which undermine the rights of association²³, assembly and expression. These include the Right to Peaceful Assembly and Peaceful Procession Act, the Official Secrets Act, the Unlawful Associations Act, and the Electronic Transactions Act. While the content of these laws confers a wide margin of latitude on national authorities in restraining rights, the implementation of these Acts has resulted in more than 100 people being imprisoned for attempts to exercise their rights to peaceful assembly and association and freedom of expression²⁴. There is a widespread consensus across civil society that human rights are being repressed which, as a consequence, had a chilling effect upon the freedom to exercise civil and political rights during the election campaign.

The UEC issued Directive No. 1 of 2014, which regulated the campaign. The rules in the directive are highly prescriptive, appearing, *prima facie*, to limit campaign freedom. Four forms of campaign activity are provided for, namely rallies in a fixed place; mobile rallies, where the candidate tours around making speeches; use of broadcast media; and the publication of written materials. Within 15 days of the approval of candidature, the candidate must apply to the respective sub-commission for permission to conduct campaign activities. Detailed plans of venues for rallies, as well as itineraries for mobile campaigning, must be submitted, and prior approval of all activities must be secured. Electoral authorities, however, adopted a generally

²³ UDHR Article 20 (1) Everyone has the right to freedom of peaceful assembly and association.

²⁴ *Situation of Human Rights in Myanmar* UN General Assembly, Report of the Secretary-General, A/70/332

relaxed approach to the notice requirements, and dispensed with many of the required formalities, particularly abridging the notice periods.

Freedom of expression for election candidates was limited. According to the campaign directive, candidates in their speeches and published materials could not undermine the Constitution, the solidarity of the Union of the Republic of Myanmar, or the dignity of the *Tatmadaw*. Neither could they say anything which provoked conflicts based on race or religion, nor could they tarnish the dignity of rival candidates.

C Campaign Finance

There is a ceiling of ten million Kyats (circa. 7,600 Euro) for election expenditure by each candidate. This sum is considered by most candidates and parties, with the exception of the USDP and the NLD, to be more than enough, and even impossible to reach in most cases. Some political interlocutors, however, consider the spending limit as being too low in the case of candidature to the Amyotha Hluttaw, as constituencies may sometimes be comprised of four or five sizeable townships, whereas constituencies for all other parliamentary assemblies are smaller.

Detailed records of expenditure must be submitted within 30 days of the date on which the candidate was declared to be elected. Donations-in-kind are not included. While spending by political parties on behalf of candidates will be detailed in the expenses returns of the individual candidates, there is no requirement that political parties submit detailed statements of accounts dealing with the campaign period. Their legal obligation is to submit annual accounts. Candidates may be disqualified for failure to submit accounts of election expenses, while spending in excess of the limits can also be the basis for an election petition challenging results.

Under the Election Acts of 2010, as they stood in November 2015, disqualification was to be both for the current term of the pertinent Hluttaw, and for the subsequent term, meaning that disqualifications would exclude candidates from the elections in 2020. On 18 January 2016, however, the Pyidaungsu Hluttaw passed the Election Acts – Third Amendment, Act Number 7 of 2016, which reduced the period of disqualification to the term of the current Hluttaws only. This had immediate effect, thus greatly reducing the significance of the disqualification sanction.

A total of 175 candidates, and 32 election agents, were recommended for disqualification arising out of the November 2015 elections. Not a single person amongst them had been elected, so no seats were in jeopardy. The cases arose from: Yangon 34 candidates and three election agents; Bago six candidates; Ayeyawady 20 candidates and five election agents; Chin one candidate; Sagaing one candidate and one election agent; Mandalay 17 candidates and three election agents; Magway six candidates and one election agent; Shan 27 candidates and eight election agents; Mon five candidates and two election agents; Taninthayi seven candidates and three election agents; Kayah 23 candidates and two election agents; Kachin 25 candidates and four election

agents; Rakhine three candidates. There were no cases in Kayin and Nay Pyi Taw. At the time of writing, no decisions had been made in any of these cases.

IX. Domestic and International Election Observation

A Domestic Observers

Based on figures provided by the UEC after the election the UEC, at national and sub-commission levels, accredited a total of 11,445 domestic observers, representing 52 organisations. This involved a range of organisations, including some very small grass-roots bodies and others, such as PACE, which created a nationwide network for a large-scale observation. PACE also issued pre-election reports on the conduct of the campaign.

In addition, a number of organisations conducted thematic observation, including media monitoring, gender-based observation and youth-oriented observation.

There was a degree of uncertainty regarding the modalities for domestic observers on Election Day, with the UEC not clear as to whether it was providing for static (the preference of the domestic observers) or mobile observation. In the event, this was left to the discretion of polling station officials and domestic observers generally gained reasonable access to the process, based on the findings of the EU EOM (see below)

B International Observers

This was the first time that international observers have been allowed in Myanmar. The UEC accredited 468 international observers from six organisations, the three largest of which were the EU EOM, Carter Center and Anfreil. In addition, a total of 526 observers from 36 diplomatic missions were accredited as well as 183 persons from election assistance providers.

X. Media and Elections

A. Media Environment

Myanmar's media landscape has experienced dramatic changes since 2011, with a gradual easing of the strict control which prevailed during military rule. Pre-publication censorship was abolished in August 2012, accompanied by a large-scale release of political prisoners, including journalists and writers. As a result, a relatively vibrant media scene has emerged with a number of privately-owned newspapers and a flourishing online media presence. In addition, the country enjoys steady and rapid growth of mobile phone penetration, boosted by significantly reduced prices of SIM cards, leading to an increase in internet users, notably via Facebook.

However, despite the general feeling that media freedom has improved, Myanmar still suffers from some serious challenges. National broadcast media are the main source of information, especially in rural areas, as the country lacks more developed local and community media. And

while the sector has experienced the entry of new media groups²⁵, major domestic television and radio stations remain controlled by the state, the military or close affiliates of the ruling authorities. State-owned *Myanma Radio and Television (MRTV)* is considered the most important broadcast outlet, with a national territorial outreach.²⁶

Since 2014 various media organisations and freedom of expression advocates indicate deterioration in the media environment. Recent reports, including the UN Special Rapporteur on the situation of human rights in Myanmar,²⁷ as well as submissions for the 2nd cycle of the UN Universal Periodic Review, suggest that persons expressing critical opinions face an increasing level of intimidation or surveillance.

The threat of harassment or imprisonment has led to a climate of uncertainty, fear and widespread self-censorship on a number of topics, including the military, Buddhist nationalism, the plight of the Muslim population and corruption. A number of EU EOM interlocutors have confirmed the existence of such practices during the election campaign. There are currently five journalists imprisoned in the country, all of whom were convicted in 2014. In addition, one journalist was killed last year in military custody after being arrested while covering clashes between military forces and an armed rebel group; the first death of a journalist in Myanmar in seven years.

In 2012, the Press Council Interim replaced the country's censorship board, Press Scrutiny and Registration Division. In a response to initial criticism that government nominees dominated, the body was restructured to include representatives of private media and journalist associations. In 2014, the Council, in cooperation with journalist associations introduced a national Code of Conduct. The permanent Council has just been elected after three years, on 21 October. However, composition of the Council has again raised concerns due to the lack of respected journalists, and the continued influence of the Ministry of Information.

B. Legal Framework for the Media

There are a number of media-related laws, and media-related legislation is gradually changing from that of the old-era, however, concerns have been expressed that in many aspects restrictive provisions are at odds with international standards on freedom of expression.²⁸

²⁵ Shwe Than Lwin Media, owner of free-to-air *MNTV - Myanmar National TV*, and *SkyNet*, a provider of paid satellite channels, as well as of Shwe FM.

²⁶ The MRTV was for several years under direct control of the Ministry of Information. Over the years it has created its affiliate channels, such as MRTV-2 (now military-owned *Myawady*), MRTV-3 (now *MITV - Myanmar International TV*) as well as MRTV-4 (semi-state owned). The broadcaster currently runs various channels, including parliamentary Hluttaw Channel as well as National Races Channel, available through digital packages.

²⁷ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 23 March 2015, available at

<http://www.ohchr.org/EN/countries/AsiaRegion/Pages/MMIndex.aspx>

UN Human Rights Council, Universal Periodic Review, Myanmar 2015, contributions for the summary information, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MMSession23.aspx>

²⁸ See two joint submission to the Universal Periodic Review of Myanmar, available at <https://www.article19.org/data/files/medialibrary/37916/ARTICLE-19,-MJA,-MJN-&-MJU-Joint-Submission->

While the Constitution protects freedom of expression (Article 354), at the same time there are various problematic provisions, *inter alia* too narrow scope of the right, the permissible limitations of it are too broad and also the fact that the right is not guaranteed to all people, but is limited to citizens only. Also, the Constitution provides no explicit protection for the right to freedom of information.

The Penal Code represents one of the most restrictive legislative tools used to curb freedom of expression. A number of its criminal prohibitions, in particular the provisions on sedition (Article 124a and 505b), insulting religion (Articles 295a, 298) and criminal defamation (Articles 499 – 502), pose a permanent threat to journalists and whistleblowers. In addition, other media-related laws, including the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 2004 Electronic Transactions Act and the 2013 Telecommunications Act also contain provisions with potentially criminal consequences.

In the lead-up to the election, several Facebook users were detained on criminal charges. At least four different users faced defamation claims, in particular from the military, including its Commander-in-Chief, prompted by allegedly insulting posts.

Cases include a satirical post likening new army uniforms to Aung San Suu Kyi's *htamein*, the female version of a traditional sarong *longyi*, suggesting that officers wear it on their heads. On 12 October, Chaw Sandi Tun, an NLD activist was charged under Article 66(d) of the Telecommunications Law, later added to a defamation charge under Article 500 of the Penal Code. The Telecommunication Law carries a penalty of up to three years in prison. A similar provision was used in two other cases. On 14 October, Patrick Khum Jaa Lee, an aid worker, was detained after being accused of sharing photos discrediting the Commander-in-Chief, and on 5 November, Maung Saungkha, a poet was arrested after weeks in hiding after he posted a verse suggesting he had a tattoo of the president on his genitalia.

Amidst claims of a selective approach against civil society activists and supporters of the opposition, a USDP secretary in Ayeyawady was arrested on 20 October for posting a doctored picture of the NLD leader and charged under the same Article 66(d) of the Telecommunication Law. He was released on bail but was rearrested on 25 November.

Two weeks after Election Day, Kyaw Kyaw, the owner of the Yangon's Kyaw Printing House, and four of his colleagues were detained and paid a fine of 1 mil. MMK (740 Euro) each, after pleading guilty to publishing materials which could damage national security according to the 2014 Printing and Publishing Act. They face up to two years in prison after they made a contract to publish a calendar containing quotes from government officials in the 1950s and 1960s using the term Rohingya, and describing the minority as a distinct ethnic group. On the contrary, many interlocutors highlighted to the EOM the lack of any condemnation by the government of inflammatory anti-Muslim sentiments often expressed on social media, including in the lead up to the polls.

There are several election laws in place, but they do not regulate the conduct of the election campaign in the media. Thus, the Press Council Interim, assisted by civil society and international community, developed the *Election Guidebook* as a set of detailed media requirements. Also the 2014 Code of Conduct remained applicable during the elections. As reiterated in the Guidebook, media were strictly required to respect balanced, impartial and fair coverage in their news and current affairs programmes; while, by the Code, they should reflect the range of political opinions in society and enable free and open debate on matters of public concern. The Council was responsible for adjudicating election-related complaints concerning the media within three working days.²⁹

On 27 August, the UEC announced that each registered party would be granted two free-of-charge 15-minute slots to air a political address on state radio and television, as well as space in state newspapers, between 9 September and 6 November. However, the decision contained a list of limitations on what should be avoided, with the authorities and military exempted from criticism, as well as speeches that could cause the disintegration of the Union, damage national solidarity, or misuse religion for political purposes. In addition, the scripts had to be sent to the UEC for approval at least seven days prior to the scheduled broadcast.

The EU EOM was informed that 85 of the 91 registered parties took advantage of the opportunity to air a political address on state television. However, state media decided to air the second round of broadcasts on its digital parliamentary Hluttaw channel instead of the main, nationwide accessible, terrestrial *MRTV*. Further, both state funded newspapers terminated publication of party presentations after the first round, reducing the information on contestants available to voters.

C. Media Monitoring Findings

The EU EOM commenced its qualitative and quantitative media monitoring on 1 October, with a focus on five television channels,³⁰ eight radio stations,³¹ seven daily newspapers³², four weekly newspapers³³ and two online media.³⁴

EU EOM media monitoring showed that only some media offered a diverse and comprehensive coverage to help voters to make an informed choice. While the campaign was visible on a national level, most of the local media offered only low-key coverage, mainly due to their underdeveloped and limited capacity.

State-funded media, including *MRTV*, *Myanma Radio*, newspapers *Kyaymon* and *Myanma Ahlin*, still the most important source for a significant part of population, largely failed to cover the

²⁹ The News Media Council received just one formal complaint, concerning the Voice newspaper.

³⁰ MRTV, MRTV4 (state-owned), Myawady TV (military-owned) and DVB and MNTV (private)

³¹ Myanma Radio (state-owned), Cherry FM, Padamyar FM, Mandalay FM, Shwe FM (private) and BBC, Radio Free Asia and Voice of America (foreign service stations)

³² Kyaymon, Myanmar Ahlin (state-owned) and Eleven, Democracy Today, Standard Time, Voice and 7 Days (private)

³³ Eleven, Myanmar Times, Voice and 7 Days (private)

³⁴ www.irrawaddy.org, www.mizzima.com

political campaign. Instead, they adopted a formal and process-oriented approach, with a focus almost entirely on activities of the UEC and ruling authorities, in particular the President.

The appearance of the President during prime time on the main television channel of the country was very noticeable, with numerous programmes, features and promotional songs highlighting the country's progress under his rule. During the campaign he was also significantly covered in the context of the signature of the NCA. In the evening news programmes, the President was always presented in his official capacity - exclusively in a positive or neutral manner – as he toured the country, and on many occasions USDP flags and colours surrounded his visits and, as such, blurred a line between State and the contesting party.

MRTV devoted 31 percent of its TV and 36 per cent of its radio political news coverage to the president as well as 28 percent and 23 percent, respectively, to the UEC. State newspapers, comparably with *MRTV*, offered their readers almost identical coverage, with a vast focus on the President and the UEC– receiving 73 and 68 per cent of combined coverage in *Myanma Ahlin* and *Kyaymon* dailies.

Positively, the state broadcaster aired numerous voter education spots, aimed to increase election awareness. However, in the final week of the campaign, *MRTV* created a series of spots comparing stability achieved under President Thein Sein with disturbing images of violence and chaos in Egypt as a consequence of change. A longer, more explicit version, of the spots was aired from 6 November, including on Election Day.

Two other monitored, freely available channels, *MNTV* and *MRTV-4*, took a similar approach, by largely avoiding the political contestants, and instead focusing on the formal process and related activities conducted by the UEC. The UEC received 67 and 64 per cent of mostly neutral coverage, respectively. On army-owned *Myawady TV*, the military dominated the coverage, with some 48 per cent of exclusively neutral and positive information.

In stark contrast to the state media, *DVB*, a satellite TV channel, foreign radio services, online media and several newspapers presented a wide range of contestants, including from the ethnic states, providing for more comprehensive coverage. Nevertheless, a number of monitored media focused on NLD and USDP, with a visible preference for the NLD, both in space and tone. As a final part of its series of regular topics-based political debates, on 4 November *DVB* organised a first national debate with representatives of six major parties participating, whereas some other electoral contestants, as well as the public and civil society, interacted from the audience.³⁵

In the post-election period, particularly throughout the first days, most of the monitored media dedicated the bulk of their political coverage to continuous reporting of election results, including of the UEC press conferences. In particular, *MNTV* provided its viewers with live coverage of regular official announcements conducted by the central election administration body several times a day. Extensive coverage was also afforded to the findings of national and international observers, although state-owned media did focus largely on the positive aspects of the various reports.

³⁵ NDF, NLD, NUP, USDP and two ethnic states-based parties, ANP and SNLD participated. The debate was aired daily between 4 and 7 November.

State-owned media, including the broadcaster *Myanma Radio and Television* as well as newspapers *Kyaymon* and *Myanma Ahlin*, were rather constrained in their reporting, with virtually no reporting of election contestants' reflections and post-election views, including the NLD, the landslide election winner. Far more vivid coverage was presented by the non-state media, predominantly newspapers, and also online and some broadcasting outlets (*DVB* television and foreign radio stations). Their post-election focus was on the results and various political parties, dominated by the victorious NLD representatives and supporters, and personalized by significant coverage of Aung San Suu Kyi. Celebratory and almost pompous reporting was visible by some media, in particular *Eleven News Media Group*. While private media reported on NLD and Aung San Suu Kyi's election success and the transfer of power, state newspapers showed her picture for the first time only on 14 November, almost one week after Election Day.

XI. Participation of Women

Myanmar acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1997. The obligations under this Convention require the State to achieve the participation of women, on equal terms with men, in the political life of the country. The Constitution, enacted subsequently, provides that there shall be equality before the law for all citizens, irrespective of sex. It has been criticised³⁶, however, as not being compliant with the definition of equality in CEDAW, as it lacks an effective constitutional guarantee of substantive equality, and there is no clear prohibition on indirect discrimination.

Beyond the Constitution, there is in existence an extensive body of customary and religious law which imposes different treatment on women, eroding their personal rights within the sphere of home and family. CEDAW noted³⁷ that the persistence of adverse cultural norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes, were perpetuating the disadvantage of women. A high prevalence of violence against women was also noted. The legal position of women further deteriorated during 2015 due to the enactment of four so-called "race and religion laws" which have imposed significant legal disabilities on women. This is particularly the case with the Myanmar Buddhist Women's Special Marriage Act³⁸, which treats Buddhist women wishing to marry outside their faith differently from all other individuals intending to marry; and the Health Care for Population Control Act³⁹, which confers the power on government officials to restrict women to giving birth at 36 month intervals.

In the National Strategic Plan for the Advancement of Women (2013-2022) the Government of Myanmar committed itself to achieving equality between women and men. However, despite this, and despite an earlier call from CEDAW to incorporate special temporary measures such as quotas in electoral law, no such provisions yet exist. Women are drastically under-represented in public office in Myanmar.

³⁶ Committee on the Elimination of All Forms of Discrimination against Women - Concluding Observations of the Committee 2008 CEDAW/C/MMR/CO/3, page 2

³⁷ *Ibid*, page 6

³⁸ Signed into law by the President on 26 August 2015

³⁹ Signed into law by the President on 19 May 2015

In the out-going parliament women's level of representation was very low, with Myanmar ranked lowest in the ASEAN region. For instance, six of the fourteen out-going state/region assemblies did not have a single woman amongst them. There were just two women among the thirty-six member cabinet, there was no woman on the Supreme Court bench, while one of the 15 UEC commissioners was female.

For the 2015 polls, women accounted for just under 800 of the more than 6,000 candidates for elections, with parties fielding women in greater numbers for the state/regional elections rather than for the national elections. Women won 44 seats in the Pyithu Hluttaw, 23 seats in the Amyotha Hluttaw, and 84 seats in state/regional Hluttaws, including six ethnic minister seats⁴⁰. More than 97% of all elected women were members of the NLD. Not a single woman was elected to the State Hluttaws in Chin, Kayah and Rakhine States. Amongst the 25% military nominees announced on 19 January 2016, there were just two women nominated to the Amyotha Hluttaw, none to the Pyithu Hluttaw, and one woman amongst all of the military members of state/regional Hluttaws. The situation overall represents a distinct improvement over the previous position, as women now comprise approximately 10% of the total membership in all parliamentary assemblies. As a consequence, Myanmar will no longer be at the bottom of the table for the membership of women in parliament within the ASEAN region.

Given the prevailing electoral system, the power to promote the participation of women in public life, and thus to enhance gender equality, therefore principally lies with political parties. While the imposition of a quota system is complex within the FPTP system, electoral laws could be drafted which include requirements that political parties promote women, by including a reasonable number as candidates and in winning seats, among other options. Measures could also be enacted to encourage the participation of women in political life, promoting their integration into mainstream political party structures and developing their capacity as candidates.

XII. Participation of Persons with Disability

According to the 2014 census, Myanmar has more than 2.3 million persons with disabilities, accounting for 4.7% of the total national population. Ratification of the Convention on the Rights of Persons with Disabilities in 2011 represented a significant milestone in the promotion of equality for this community. On 5 June 2015 the President signed the Persons with Disabilities Rights Act into law, attempting to give effect to the Convention through transposition into domestic legislation. Enabling regulations are still awaited in order to give full effect to the provisions of the new Act. Nonetheless, the law clearly states that persons with disabilities have the right to vote and the right to be candidates in any parliamentary election. It imposes an obligation on the authorities to facilitate the exercise of voting rights by persons with disabilities.

The UEC consulted representatives of persons with disabilities during the course of their electoral preparations. Minor amendments to electoral law allowed voters with disabilities to use trusted friends in casting their vote, freeing them from potential family pressure. Polling station

⁴⁰ These figures represent circa 13% of the directly elected members of all parliamentary assemblies.

manuals contained two pages of advice for staff detailing their responsibilities in making their polling stations accessible, and in assisting persons with special needs to cast their votes. EU EOM observers noted, however, that one in four of polling stations observed were not accessible to voters with disabilities. A few model polling stations, facilitating optimal access, were put in place, but the number of these only just reached double figures. It was, nevertheless, a positive initiative which could be developed more widely in the future. Trial use of a tactile Braille ballot guide (TBG) was observed by the EOM in a polling station set up in a school for those with visual impairments in Yangon, 54 of whom were reported to have voted using the TBG. Again, this is a positive initiative which could be extended in the future.

All voter education materials of the UEC included images of persons with disabilities as voters, and sign language was incorporated in television broadcasts. Disabled persons organisations engaged in extensive education work with their own community, encouraging people to vote, and to vote in person on Election Day rather than use the facility of advance voting. The Myanmar Initiative for Independent Living convened two fora with election candidates, in Yangon and Mandalay, in which candidates were encouraged to include disability rights within their election manifestoes. The first person readily identifying himself as a person living with a disability, U Saw Thura Aung Kyaw, was elected in Bago to the regional Hluttaw on behalf of the NLD.

XIII. Electoral Dispute Resolution

A. Pre-Election and Campaign Period

Extensive powers to adjudicate upon complaints and appeals in all matters pertaining to the elections have been conferred on the UEC. The law creates exclusive competence for the UEC in areas such as deciding on the registration of political parties and on the nomination of candidates. There is a provision in the Constitution⁴¹ which exempts the decisions of the UEC from judicial review, so the decisions of the UEC are final and conclusive in all matters within its competence. This undermines rights of access to justice⁴², to fair procedures and to guarantees of impartiality in administrative and judicial action, and is arguably in violation of the Basic Principles of the Union in Articles 19 and 21 of the Constitution⁴³.

There are also lacunae in the law, most significantly in the limited regulation of disputes during the campaign period, and in the absence of powers of administrative sanction during this time. There is no clear legal role stipulated for the UEC in receiving complaints during the election period, or in adjudicating upon them. In contrast to the detailed rules which govern adjudication of disputed nominations and objections to results, there are no rules regulating the submission of complaints during the election campaign, and no forms exist for submission of complaints. The

⁴¹ See footnote 9

⁴² See footnote 10

⁴³ Constitution 2008 Art. 19: The following are prescribed as judicial principles: (a) to administer justice independently according to law; (b) to dispense justice in open court unless otherwise prohibited by law; (c) to guarantee in all cases the right of defence and the right of appeal under law. Art. 21(a) Every citizen shall enjoy ... the right of justice.

UEC, nonetheless, advised stakeholders that it would receive complaints⁴⁴, and many complaints were submitted to the UEC at all levels of its administration. The approach of the UEC to these complaints, however, was to attempt to minimise their significance. The EOM experienced great difficulty, both at the state/region and Union level, in establishing the existence of complaints, and in ascertaining the response of the UEC to them. On 20 October the UEC released information on a small number of complaints which had been received to 10 October, but no information was released on their specific determination, or on any campaign complaints subsequent to this date. As the bulk of campaign activity took place subsequent to 10 October, this information was insufficient and inadequate.

The UEC established mediation committees at both the Union level and decentralised throughout the country. Some recourse was made to these mediation committees to respond to complaints, but it was limited in that some district committees met only once, and the number of complaints recorded was low. While the mediation committees offered an alternative to invoking the criminal law to deal with complaints, this approach was unsatisfactory in that the UEC simply requested non-repetition of the complained of behaviour. No enforcement action was taken, as the law did not provide for such action to be taken. A Political Parties Code of Conduct was signed by 88 of the 91 parties participating in the elections, as well as by some independent candidates. This was a voluntary agreement which lacked sanctions. No complaints could be made under it, and no enforcement action was possible. The absence of monitoring and enforcement powers during the campaign period was a deficiency in the legal framework.

The Constitution of 2008 prohibits the abuse of religion for political purposes. Article 364 provides that “the abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity, or discord between racial or religious communities or sects is contrary to this Constitution.”

While this provision clearly indicates that religion may not be abused in the political sphere, its reach goes much beyond this. It is not explicitly limited to political parties, but refers to political purposes. Beyond that, the prohibited acts in the second sentence are not qualified by any limitation to a political domain. Regardless of whether the second sentence is qualified by the first or not, the term political in the first sentence could be clearly read as indicating the public sphere. In addition, in past criminal cases, provisions of the Penal Code dealing with provocation have been applied to hate speech which provoked violence against members of particular religious groups. Despite extensive public information circulating alleging abuse of religion during the election campaign period, no comment was made by the UEC on the matter. Neither was any action taken by the police.

B. Post-Election Disputes

Questions relating to the validity of an election fall within the jurisdiction of the UEC. Petitions may be lodged by an unsuccessful candidate or by a voter. An unsuccessful candidate filing a complaint must demonstrate either that he obtained the majority of the votes, or that he would have done so had the other candidate not engaged in malpractice. Rules of standing are quite

⁴⁴ The UEC published the *Election Dispute Resolution Booklet* in July 2015 and the *Election Dispute Resolution Manual* in October 2015

generous in relation to the individual voter, in that he does not have to have any particular interest in the matter, and may bring a petition alleging unfairness in the election. An election petition must be presented to the UEC within 45 days of the date upon which the candidate was formally declared to be elected. A non-refundable fee of 500,000 Kyats (c. 370 Euro) is payable upon filing the petition. If there is more than one petitioner in the action, each has to pay 500,000 Kyat. The respondent has the opportunity to defend himself. However, should he wish to counterclaim against the applicant, he must also pay a fee of 500,000 Kyats.

The UEC constitutes election tribunals *ad hoc* to adjudicate upon election petitions. These tribunals are comprised of three members, either three commissioners of the UEC, or one member of the UEC and two “suitable citizens”, to examine election petitions. In 2010 all election tribunals were comprised of three UEC commissioners, while in 2012 the composition was one commissioner plus two other people, principally former UEC staff members. Forty-five petitions were filed in 2015, the election tribunals to adjudicate upon which were all composed entirely of UEC commissioners.

Election tribunals have the power to find that an election was invalid, based on findings of malpractice or interference in the election. If the applicant who initiated the case is not satisfied with the decision of the election tribunal, he may appeal to the UEC within fifteen days, upon payment of another fee. The UEC must then decide either to approve or vary the decision of the election tribunal, and must publish its decision in the official *Gazette*. Decisions of the UEC are final and conclusive in this matter, with the jurisdiction of the courts ousted. There is no time limit for the determination of election objections, undermining access to effective and timely legal remedies.

The legal provisions dealing with election petitions do not meet international standards of fair procedures and access to justice. The decision-making body can be composed either entirely of UEC members, or of a mix of one UEC commissioner, as chairperson, sitting with “two suitable citizens who are experts in law”. While election tribunal members may not be members of political parties, there is no requirement of independence from the UEC in the appointment of members. The Universal Declaration of Human Rights establishes that everyone is entitled to a fair and public hearing by an independent tribunal in the determination of his rights. At present the UEC has the sole and exclusive power to review its own actions, in violation of principles of natural justice and administrative law.

The right to a fair and public hearing in the determination of rights at all stages of the election process, from nomination through to challenges to results, should be vindicated and provided for by law. All adjudication processes within the UEC must be made subject to explicit guarantees of fairness of procedures, namely respect for the fundamental principles of *nemo iudex in causa sua* and *audi alteram partem*, that is, that, in administrative law, the decision-maker should be impartial, and that both sides must be heard. While the election rules stipulate, in Chapter 14, that the Code of Civil Procedure is to be followed in the hearing of election objections, this alone is inadequate to ensure fairness of procedures. A judicial body, such as a court, would be best suited to ensuring access to justice in the adjudication of contested election results. Time-limits for the adjudication of election disputes are also needed to ensure that remedies are timely and effective.

Forty-five election petitions were filed in the wake of the 8 November elections, challenging the victories of forty-five candidates in ten of the fourteen states and regions. The UEC established an election tribunal in each affected state and region, all of which were comprised of three commissioners of the UEC. This was in clear violation of the principle of *nemo iudex in causa sua*, as elaborated above, as these election tribunals were not independent of the UEC. The subject matter of many of the petitions filed was that of alleged bias and illegality on the part of UEC staff at various levels throughout the country. The structure created to administer electoral justice, in the form of election tribunals, amounted to a denial of access to justice due to the lack of independence of the decision-maker, with the UEC essentially adjudicating upon itself. The high fees proved to be an insurmountable barrier preventing some of the smaller ethnic parties from taking cases, while the fact that cases were conducted in Nay Pyi Taw imposed a financial burden on all parties involved in cases, requiring that witnesses travel to Nay Pyi Taw to give evidence.

Twenty-five of the cases overall were initiated by unsuccessful USDP candidates, eighteen of which were against the NLD, with the other seven having been taken against ethnic parties. Unsuccessful NLD candidates took ten cases, seven against the USDP, two against ethnic parties and the last one against an independent candidate. Eight cases were taken by ethnic parties, one against the USDP, three against the NLD, and four cases in which both parties were from minority ethnic groups. Single cases were taken by an independent candidate (against another independent) and by an individual voter (against the NLD). Of the 20 cases which related to seats in the Pyidaungsu Hluttaw, 12 of these were initiated by the USDP, eight of which represented challenges to NLD victories. Two cases were taken by the NLD, one against the USDP and one against an independent. Four cases were taken by ethnic minority parties, while one case was initiated by an independent candidate and one by a voter.

Electoral law provides that the Code of Civil Procedure and the Evidence Act are to be adhered to in the conduct of hearings. This was done in practice, in large measure due to the involvement of lawyers from the Offices of the Attorney General and the Union Judiciary, who assumed effective direction of the conduct of election tribunals. There was clear rigour in the application of the law, as observed during the procedural stages of the hearings. The progress of the election tribunals was extremely slow. Attenuated rules of practice, applied in dedicated courts affording precedence to electoral disputes over all other matters, would greatly enhance the timeliness of the delivery of electoral remedies. The establishment of such courts within each state/region would render electoral justice more accessible and more affordable for all parties.

XIV. Polling and Counting

A Overseas Voting

Overseas Voting began on 13 October in embassies in more than ten countries. Some 34,000 persons registered to vote, with many based in Singapore. There are many millions living outside of the country, notably in Thailand, but most of these lack proper documentation or are ineligible under current criteria. The Ministry of Foreign Affairs (MFA) administered the process. The

MFA informed the EU EOM that some 4-5,000 forms requesting the vote had not been filled out correctly (such as no local address, meaning identification of the respective township was not possible), resulting in the total being reduced to some 29,000. However, the MFA also informed the EOM that there were significant administrative problems, with ballots being sent to the wrong places, late distribution of materials and poor training of embassy staff. The UEC extended the deadline for overseas voting to 23 October to try to address this. Overall, the numbers involved were not significant, but it attracted a lot of attention and was a poor start for the UEC. On 23 October, the UEC Chair publicly apologised to the international diplomatic community for the “lack of experience and time to prepare the operation”.

B Advance Voting

The Law establishes that certain categories of voters unable to attend their polling station on Election Day could request an advance vote. Advance voting was a very sensitive issue, following allegations of fraud during the 2010 elections. Although the legal framework establishes the process to a degree of detail, the UEC is not in control of the exact timing, duration and location of the advance voting. An added concern is that the UEC never knew the exact number of advance voters prior to the count of the advance ballot papers, as this aspect of the process was implemented at township rather than Union level.

For the administration of out-of-constituency advance voting, the UEC had to rely on institutions such as civil service institutes, embassies, military barracks and universities to administer the process, resulting in a lack of transparency and an inconsistent application of procedures. Official figures on advance voting were not made available prior to Election Day. Relating to the out-of-constituency advance vote, advance ballot papers had to be delivered by 4 p.m. on the day of the election, and be counted at Township Sub-Commission level⁴⁵. The EU EOM requested authorisation to observe advance voting of military personnel in military barracks but was not given permission by the UEC to do so, although the Memorandum of Understanding signed with the EU explicitly made reference to observation of all stages of the election process⁴⁶.

In-constituency advance voting took place on 6 and 7 November at Ward/Village Sub-Commission offices for Government, Union, State and Region staff and also for individuals with a duty to perform on election day, as well as for certain categories of homebound voters. On 20 October, the UEC issued a notification extending the period of in-constituency advance voting from the 29 October to 7 November to allow, inter alia, the Union, Region and Province level officers, the members of District Election Commission, Governmental officers and other categories of citizens serving on election day such as polling station staff, security forces, etc. This unforeseen extension, while not against the law, caused unnecessary uncertainty in the electoral process with regard to potential procedural misunderstandings both from the electoral officials and the voters, as well as logistical implications and challenges for ballot security and integrity (see below for the observer assessment of advance voting).

⁴⁵ According to the Section 71 (a) of Amyothar/Pyithu/ Region and State Hluttaws Electoral Rules.

⁴⁶ According to the UEC's Procedures for International Observers issued in June 2015, advance voting was an observable part of the electoral process.

EU observers followed the in-constituency advance voting from 29 October and reported that, contrary to the in-constituency advance vote scheduled for the 6 and 7 November, officials appeared unfamiliar with procedures, allowing a broader range of persons to vote than envisaged in the regulations, which resulted in invalidation of undue advance ballot papers in some instances⁴⁷. In a number of instances the types of integrity checks and ballot security measures foreseen for regular voting were not evident, for instance with ballot boxes unsecured and not entirely closed. The UEC defended the transparency of the process with the argument that lists of applicants for advance voting were displayed at polling station and Township Sub-Commission level.

Out-of-constituency advance voting required a voter to place their ballot in an envelope, indicating their name and the township of destination for the ballot. The use of just a single envelope did not adequately protect the identity of the voter.

C Polling and Counting

Election Day was generally calm and peaceful. EU EOM observer reports indicated a high voter turnout; according to UEC data, the voter turnout was 69 per cent⁴⁸.

EU EOM observers reported very positively on the voting process in polling stations, with 95 per cent rating the process as ‘good’ or ‘very good’. Polling stations observed mostly opened on time, a late opening was seen in 12 cases, but the delays were minor. All essential election material was delivered to polling stations, and taking into account the large number of polling stations in the country, it demonstrated that the UEC was logistically well prepared. In many instances there were long queues, which created some organisational problems, managed by polling staff. Party agents were present in the vast majority (90 per cent) of the polling stations observed. On Election Day, EU observers found domestic observers present in 27 per cent of polling stations visited. Most voters found their names on the voter list and many had the voting slips to help with identification. However, in 7 per cent of polling stations visited there were reports of some persons not finding their name on the list.

Some 40,300 members of a civilian Special Police supported the regular security forces over the election period, namely election day⁴⁹. Observers did not report any problems with the Special Police. Training was imparted to all the members of the Special Force and they were allocated to polling stations, with one per station. They were not armed and were instructed to intervene in a polling station only if requested to do so by the polling station Officer. They carried with them

⁴⁷ An example is Pyawbwe Township, Yamethin District. District sub-commission found out advance votes were wrongfully cast. Some 17 advance ballot boxes were annulled but voters could vote again on election day. Idem with Shwegyin Township Sub-Commission, Bago District, where 129 ballot papers were annulled but voters allowed to vote again.

⁴⁸ The lowest turnout was recorded in Kayin State, which had 46pc, followed by Mon State with 51pc and Tanintharyi Region with 62pc. Yangon (65pc), Shan (66pc), Rakhine (68pc) and Kachin (68pc) all came in below average. Chin State had the highest turnout with 79pc, followed by Magwe (76pc), Ayeyarwady (75pc), Kayah (74pc), Sagaing (74pc), Mandalay (73pc) and Bago (71pc). Turnout was almost the same in each house of parliament. Based on UEC figures reported in the Myanmar Times, 3 December 2015

⁴⁹ This includes 400 from Kachin, 62 Kayah, 1,207 Kayin, 1,308 Chin, 269 Mon, 2,577 Rakhine, 1,139 Shan, and 1,565 from other ethnic groups.

the contact numbers for their relevant police stations, township administrators, and district administrators.

Voters were able to cast their vote in secret (83 per cent) and polling staff worked well on the whole to administer the process in an effective way. However, crowded conditions in some places may have impacted on secrecy. Observers did report 14 cases of local officials involved with the management of the process in the polling station. The most widespread procedural violation observed concerned a lack of safeguard against multiple voting: in 57 per cent of polling stations observed, voters were not always checked for traces of invisible ink, and in 3 per cent, ink was not always applied. EU EOM observers noted group voting in 22 per cent of polling stations observed.

For the vote count in the polling stations, observers reported that it was conducted in a transparent manner, with party agents and domestic observers present in most places observed. Observers sent in 5 reports where they rated the process in negative terms, largely due to officials conducting the count inconsistently and not adhering to the formal regulations in all respects. Results were posted at the polling station in the vast majority of cases observed.

Problems were more evident with the advance voting. EU observers followed the in-constituency advance voting from 29 October in 91 locations. Their evaluation about the voting procedures was very good (28 per cent), good (58 per cent), and bad (13 per cent). They reported that officials appeared unfamiliar with procedures, allowing a broader range of persons to vote than envisaged in the regulations⁵⁰. In many instances the types of integrity checks and ballot security measures foreseen for regular voting were not evident, with ballot boxes, for instance, unsecured and not entirely closed. In three cases, unauthorized people, mainly representatives of the civil administration, interfered with the work of the polling station officials. On the positive side, candidates' representatives were found in 60 per cent of the counts observed. Domestic observers were noticed in only 11 per cent of the observations.

Out-of-constituency advance voting lacked transparency and, due to the modalities for military voting, the regular procedures were not applied. The out-of-constituency ballot paper count was followed by EU EOM observers in 20 townships. It was assessed as very good in four reports (20 per cent), good in nine reports (45 per cent), bad in six reports (30 per cent) and very bad in one report (5 per cent). The observed Sub-Commissions had received advance ballot papers before 4 p.m. but in eight cases the tamper-evident envelopes and bags were not properly closed. Regarding specific aspects of the count, EU EOM observers negatively assessed some aspects of the Sub-Commissions' understanding of and adherence to procedures in eight cases. Moreover, neither international nor domestic observers were authorised to observe the out-of-constituency voting.

EU EOM observers attended the tabulation process in 33 out of the 330 Township Sub-Commissions. The observation teams visited 26 Sub-Commissions more than once during 8 and 9 November. The reports were mostly positive, but in three cases they qualified the tabulation as "bad". The EU EOM noted some shortcomings in particular regarding the transparency of the tabulation, the existence of procedural errors and the lack of proper safeguards for the materials

⁵⁰ Instances in Pyawbwe Township, Yamethin District, Mandalay Regio or Shwegyin Township, Bago District, Bago Region.

during the breaks in the tabulation. In half of the cases, observers did not have a clear view of the tabulation sheets, and five observation teams reported that they were not granted full cooperation by the Sub-Commission authorities.

Several other deficiencies were also noted during tabulation, namely the absence of voters/witnesses or the necessary quorum in terms of Sub-Commission membership to carry out the tabulation process according to the procedure in 76 per cent of cases. In no instance did observers note alterations of election results, yet corrections were made to some polling station results sheets in case of mathematical errors. NLD representatives were identified in 56 per cent of the observed tabulations, USDP in 28 per cent and representatives from other candidates were identified in 35 per cent of Sub-Commissions visited. Domestic observers were identified in 72 per cent of observations. The presence of unauthorised persons was noted in five tabulations, however, they were not observed to be interfering in or directing the work of the Sub-Commission members.

On 23 November, the Shan State Sub-Commission announced a change of winner for one Amyotha Hluttaw seat. The inclusion of six uncounted polling stations overturned the results leading to the victory of the Ta-Arng (Palaung) National Party candidate to the detriment of the USDP one. The UEC endorsed the Sub-Commission decision and announced the final result one day later⁵¹.

Different from previous elections, and despite the absence of a legal deadline for the announcement of final results, the UEC decided to publish the results on a rolling basis to enhance stakeholder confidence in the transparency of the process. The UEC established a results working group and two Results Media Centers were opened, at the UEC headquarters in Nay Pyi Taw and the UEC Yangon Information Center, with the support of the international electoral assistance projects. Starting on 9 November, the UEC announced results several times per day as they were validated by the results working group. Results sheets were sent by fax to the UEC by the State/Region Sub-Commissions. Working in non-stop shifts, two groups of UEC workers performed mathematical crosschecks to determine the accuracy of the received results. When cleared, another group prepared electronic charts that were displayed at the Results Media Center.

The validation process was initially carried out without full access for observers, but was later opened up to observers and media which is a significant transparency measure. Daily press conferences were held by the UEC commissioners or the Chairman himself to take questions from the media. Questions mainly related to alleged irregularities in the election process, but did not appear to be based on concrete details. UEC commissioners challenged such questions on a number of occasions, requesting the media representatives to provide names and locations and publicly encouraging the affected voters to lodge complaints to the relevant Sub-Commissions in case of a substantiated claim.

⁵¹ The Namhsan Township Sub-Commission omitted the results from 6 polling stations falling under its area of responsibility. The error was subsequently detected by the Palaung National Party and corrected at Muse District Sub-Commission level.

The Nay Pyi Taw Results Media Center was closed on 15 November, one week after Election Day, with 99 per cent of the results announced, which exceeded the initial expectations of the UEC. The last results announced from Kachin State were released on 28 November by the UEC⁵². This delay was caused by the logistical difficulties, including poor phone communication, encountered by the election authorities to transport and transmit the election materials.

XV Results and Post-Election Environment

On 30 November, the UEC publicly issued some statistics about the 8 November election. All in all, the voter lists used on election day comprised 34,295,334 eligible voters served by 40,191 polling stations. Voters were distributed in 323 constituencies for the Pyithu Hluttaw (out of 330), 168 constituencies for the Amyotha Hluttaw, 659 constituencies for the State and Regions' Hluttat (out of 660). Some 3,720,546 voters also voted for the 29 ethnic Ministers. Official turnout figures for the Pyithu Hluttaw, Amyotha Hluttaw and State/Regions Hluttaw were 69.72, 69.82, and 69.36 per cent respectively.

On a negative note, 3,992,761 ballot papers were declared invalid during the counting, all elections included. This indicates the invalidation criteria set up by the UEC were extremely rigid. Polling procedures contained numerous examples of cases where ballot papers should be declared invalid, even though the will of the voter was perfectly clear. This high number of invalid ballots also illustrates the need to redouble voter information efforts, especially after the introduction of innovative elements such as the marking stamp used on Election Day.

Based on the final announced results⁵³, and taking consideration of the 25% of seats reserved for the Military in each legislature, the NLD holds 59% of the seats in the Lower House, 60% in the Upper House, and 56% in the State/Region Assemblies, while the USDP holds 7% of the Lower House, 5 % of the Upper House and 9% of State/Region Assemblies.

In terms of the directly elected members:

- NLD won a sizeable majority in all the legislatures, with 255 seats or 79% in the Lower House, 135 or 80% in the Upper House, 475 or 75% in region and state parliaments, and 21 or 72% of Ethnic Affairs Minister seats.
- The Union Solidarity and Development Party (USDP) is the second largest party with 30 and 11 seats (9% and 6,5%) in the two houses of Parliament, 74 seats (12%) in the State and Region Assemblies, and 2 Ethnic Affairs Ministers (7%).

⁵² UEC notifications 92, 93 and 94 from 28 November proclaiming the winning candidates for 8 seats at State Hluttaw, 1 for Amyotha Hluttaw, and 2 for Pyithu Hluttaw.

⁵³ These results include the change that happened after the recount made for the Upper House Constituency Nr5 in Northern Shan State. The seat initially attributed to the USDP candidate Sai Sar Lu was devolved to the Ta'ang National Party candidate U Nyi Sein on 24 November, whose victory by 199 votes was certified by the UEC.

- Ethnic parties and candidates represent the third largest ‘bloc’, with 38 seats in the Lower house (12%), 22 in the Upper House (13%), 80 in the Region and State Assemblies (13%) and 6 Ethnic Affairs Ministers seats (20%).
- Out of 309 independent candidates, only 5 were elected, all in the ethnic states⁵⁴.
- 123 Christians were elected, most of them in ethnic states. None of the 28 Muslim candidates was elected.

In some aspects, 2015’s NLD victory is more far-reaching than in 1990 elections: the party lead by Aung San Suu Kyi won 100% of the seats of all the parliaments in Magway and Tanintharyi regions, and more than 90% in the rest of central Myanmar, while it ensured a 2/3 majority or more in all ethnic states but Rakhine and Shan. In addition to a comfortable majority of the two Union houses, all but three state/region parliaments are now under NLD’s full control. As for the USDP, the majority of its high-profile candidates were defeated (Thura Shwe Mann, U Htay Oo, among others), and in their theoretical stronghold, Nay Pyi Taw, they only won one seat out of the 8 constituencies for the Lower house, but no Upper House seat. Out of the 13 USDP chief ministers who contested, only four were successful. Out of the 170 retired military officers contesting (150 for USDP) only 28 were elected.

Now only two amongst the Bamar-majority parties, NLD and USDP, are represented in the Lower House, and three in the Upper House, with the NUP having one elected candidate. In Region and State Assemblies, the NLD and the USDP are the Bamar-majority parties represented, except for the one seat won by the Democratic Party (Myanmar) in Mandalay.

There are now less ethnic parties represented in the Union Parliament than in 2010. The Arakan National Party (ANP), and, to a lesser extent, the Shan Nationalities League for Democracy (SNLD), are the only ethnic parties left with a sizeable number of MPs. The successes of ethnic parties are largely confined to the Region and State Assemblies. However, even so, an ethnic party only holds the majority in one State Assembly, which is the ANP in Rakhine. The cancellation of the elections in seven townships in Shan has had an adverse impact on the representation of the Wa parties and the SNLD in the Lower House and the Shan State Assembly, the only local assembly in the country where the USDP has the potential, together with the Military, to hold the majority of the seats.

The post-election environment remained calm except for non-election-related conflict in northern Shan and Kachin states, where the Army launched new attacks against Ethnic Armed Organisations. In all the other regions and states, while the first announced results indicated a likely NLD victory, the EU EOM reported a peaceful atmosphere marked by the total absence of celebrations or street demonstrations by NLD supporters, except initially in Yangon. They were instructed by the party not to celebrate ostentatiously in order to avoid provoking the authorities until after the final results and the transfer of power, reflecting the relatively low-profile approach to victory adopted by Aung San Suu Kyi.

The results were accepted almost unanimously, including by parties close to or backed by the military, i.e. the USDP, the NUP and the NDP. The NLD and several ethnic parties (ANP,

⁵⁴ Two in the Upper House, one in the Lower House, one in a Region/State Assembly.

SNLD, ZCD) have questioned the credibility of the victories of several USDP high-profile candidates due to the alleged manipulation of advance votes.

After a first acknowledgment of defeat was made by the two most prominent USDP candidates Thura U Shwe Mann and U Htay Oo, both President Thein Sein and the Commander-in-Chief publicly recognised the election results and congratulated the NLD on its victory. In the same message, President Thein Sein pledged a peaceful transfer of power and agreed to Aung San Suu Kyi's proposal for a meeting to discuss national reconciliation, together with the Lower House Speaker Thura U Shwe Mann and the Commander-in-Chief Senior General Min Aung Hlaing, "after completion of the Union Election Commission's duties".

Annex 1 Recommendations

Legal Framework

1. Legislative reform needs to be broadly considered to bring Myanmar more into line with international standards for genuine elections, including with reference to the ICCPR, ICERD and the ILO Convention 169 on Indigenous Rights.
2. In order to provide for genuine elections, the provision for 25% of seats to be appointed by the Commander-in-Chief, rather than elected by the people, should be dropped.
3. Unreasonable restrictions on the right to vote should be amended, bringing provisions in this regard into line with international standards. Namely:
 - a. There needs to be reform of the citizenship law to ensure that persons reasonably qualified for citizenship are able to secure it (in accordance with the Universal Declaration of Human Rights' prohibition on racial discrimination and the Declaration's provisions on the right to citizenship) and are therefore entitled to vote
 - b. Restrictions on the right of members of religious orders or institutions to vote are not in accordance with international standards and consideration should be given to dropping such a restriction
 - c. Convicted prisoners should also be entitled to vote
4. Unreasonable restrictions on the right to stand should be amended, bringing provisions in this regard into line with international standards and specifically the Universal Declaration of Human Rights. In this regard:
 - a. The requirement for the parents of a candidate to have both been citizens is an unreasonable requirement and should be dropped.
 - b. The requirement for continuous residency of 10 years for a parliamentary candidate and 20 years for a presidential candidate are disproportionate and could be decreased to provide for more reasonable and inclusive eligibility criteria.
 - c. Limitations against a person becoming president in case of their children and/or spouse being foreign nationals are not reasonable and should be dropped.
5. The logic for an equal number of seats per State/Region for the Upper House is understandable, but constituency boundaries for the Lower House should be reviewed in

order to create constituencies of equal size in order to provide for equal suffrage in line with Article 25 of the ICCPR.

Election Administration

6. The UEC needs to be a truly independent institution. In this regard:
 - a. The nomination and appointment mechanism for the Chair and Members of the Commission needs to be transparent and inclusive in order to ensure confidence among stakeholders. For instance, nominations for UEC members could be proposed through a cross-party parliamentary committee.
 - b. The UEC needs to have a more independent structure, including vis-à-vis budget and staffing, avoiding undue reliance on ministries and
7. Gender representation in the UEC at sub-commission and national levels needs to be improved
8. Transparency and effectiveness of UEC decision-making and communication must be improved, with prompt publication of decisions and notifications. This will not only ensure accountability of the UEC but also that stakeholders and sub-commissions are fully and properly informed of their responsibilities and expected procedures to be adhered to. In particular, decisions of the UEC should be issued in writing and made public as relevant, notifications of procedures must be communicated to lower-level commissions in a clear and timely manner to ensure consistency of implementation.
9. The UEC should publish a clear and coherent election calendar, which will increase transparency and accountability as well as helping stakeholders to better understand the process. Such a calendar must ensure more coherence between various phases of the process, such as ensuring candidate nomination is fully complete prior to the start of the campaign.

Voter Registration

10. The UEC should build on the computerised voter list created for the 2015 polls, with a view to further updating, cleaning and revision to achieve universal suffrage.
11. Data on the voter registers needs to be fully available as public information. This includes a clear breakdown of numbers of voters per constituency.
12. The choice of database for storing and managing the voter list should be carefully considered to ensure it is relevant and applicable to the Myanmar context, in terms of how data is sorted and presented and in terms of the human capacity for managing the database.
13. The process for issuing NRCs should be continued and even speeded up, with a view to significantly increasing the number of persons in possession of an NRC prior to the next election so it can be used as a consistent and reliable form of ID for voters.

Registration of Parties and Candidates

14. For candidate nominations, the rules on documentation required as proof of citizenship and residency need to be clarified and fair and consistent procedures adopted for the checking of documentation among all candidates. This will help to ensure both election administration and prospective candidates have a clear and consistent understanding of what is required, and fair and consistent procedures adopted for the checking of documentation of all candidates.
15. Procedures for the handling of appeals on candidate nomination must be transparent, including the use of public hearings, publication of decisions and written reasoning provided to applicants.
16. Criteria for the eligibility of parties to be registered need to be reasonable, without restrictions which unfairly limit freedom of expression

Campaign

17. There should not be limitations on freedom of assembly and association which may unduly impact on the general environment for the elections
18. The requirement for notification of public campaign events is reasonable, but the period of notice currently required is excessive. Parties should be able to provide notice of a far shorter period, such as 48 or 72 hours.
19. Campaign messages should not be subject to prior approval and there should not be undue limitations on topics allowed to be covered in the campaign
20. There should be effective and timely mechanisms to deal with instances of hate speech
21. Consideration could be given to increasing the campaign spending limit for candidates for the upper house, as the territory they cover is far greater than candidates for the Lower House
22. For auditing candidate campaign expenses the UEC should use competent independent professionals to support them.
23. Political parties and individual deputies should be required to submit regular accounts on their financing and expenditure, including party campaign account reports

Media

24. The legal framework for media needs to be brought into line with international standards, without undue restrictions on freedom of expression
25. State authorities should refrain from harassment or interference in activities of media and journalists, and of social media users
26. State authorities should move ahead with plans to transform Myanmar state broadcaster to a public service media, with a view to decrease the role of the state in the whole sector

27. The new media regulatory body should issue licenses in a manner which will lead to more local-based media and a more diverse media environment, notably in the television sector
28. The media regulatory body should consider conducting media monitoring during the election campaign, to have first-hand information on prospective infringements
29. Media could consider internal assessments to foster and strengthen professional and ethical standards and donors should consider further support for development of the media sector, including business-oriented skills, quality-based reporting and digital literacy.

Observation

30. All stages of the electoral process, including out-of-constituency advance voting, should be open to observers

Gender and Disadvantaged Groups

31. In order to ensure increased female participation, political parties could be obliged to adopt affirmative action policies for the inclusion of women in party structures and as candidates, potentially to the 30% minimum laid down in the Beijing Platform for Action
32. The UEC should continue its commendable efforts to increase accessibility of polling stations for persons with disability.

Voter Education and Voter Information

33. The UEC should take an even more proactive role on voter education and voter information, including for voter registration, and such programmes should be inclusive and provided in various ethnic languages and must also reach outlying areas.
34. The UEC should also adopt a comprehensive strategy, providing information on a broader range of issues including democratic values and the legal rights of stakeholders, with a gender sensitive and human rights based approach informing all public messaging

Election Disputes

35. There should be a clear and reasonable time limit for decisions on post-election legal challenges

36. It must be ensured that Election Tribunals are independent of the UEC, or that such disputes are dealt with before the courts. Hearings to adjudicate disputes should also be decentralised to the states and regions.
37. The handling of election complaints must respect the principles of fair procedures and provide a guarantee of impartiality. This includes the right to appeal decisions of the UEC.
38. The fee required for the submission of a challenge to the results of an election should be refundable in case of a successful claim.

Polling, Counting, Tabulation and Results

39. Training of election officials should be conducted in a manner to specifically enhance adherence to procedures, especially on counting and tabulation
40. A mechanism to ensure the UEC can retain staff, or access experienced staff, should be adopted to increase the institutional capacity of the UEC at all levels and help the body retain institutional knowledge.
41. In case a voter accidentally spoils a ballot paper, he/she should be able to receive a new ballot to avoid a person de facto being denied the right to vote
42. There should be the right to a recount in a polling station
43. The instruction to counting staff should be that a vote should be considered as valid so long as the intent of the voter is clear. There should not be an overly strict application of invalidity as it unduly and unfairly disqualifies what is a legitimate vote.
44. All data related to results and any related complaints must be fully and promptly published by the UEC and the UEC should publish full results by polling station

Advance Voting

45. Careful consideration needs to be given to the practice of advance voting, given prevailing doubts among some stakeholders as to its integrity. If the practice is to continue, the UEC should take full responsibility for all aspects of advance voting, including out of constituency advance voting. This will help to ensure consistent and appropriate application of regular procedures.
46. The secrecy of the vote, as provided for in the ICCPR, must be ensured for all votes, including out-of-constituency. If an envelope is to be used then the double envelope system should be used, whereby the inner envelope does not identify the voter
47. The period for the conduct of in-constituency advance voting could be substantially reduced
48. There must be adequate safeguards for the handling of advance votes and ballot boxes, especially overnight.
49. Consideration could be given to reducing the number of categories of persons eligible for advance voting

50. Efforts should be made to increase voter education for overseas voters and improve the administrative arrangements for them, ensuring that all eligible persons living abroad are able to exercise their franchise if they so wish.
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