



European Union Election Observation Mission

MYANMAR, General Elections, 2015

PRELIMINARY STATEMENT

Yangon, 10 November 2015

A well-run Election Day and competitive polls mark Myanmar's critical 2015 elections, with key legal reforms and procedural improvements still required

Summary

Myanmar has embarked on a historic political reform process. The holding of competitive elections on 8 November 2015, contested by 91 parties and over 6,000 candidates, is an important milestone in the country's democratic transition. On Election Day, EU observers reported that the voters of Myanmar turned out in large numbers and calmly cast their votes in a generally well-run polling process, with secrecy of the vote respected. The process for advance voting, though, was less well managed and lacked transparency. Now the critical results process is underway and it is important to ensure a high level of transparency and integrity throughout. The legal framework for these elections provides some of the conditions for a competitive process, but it also contains a number of shortcomings with regard to the conduct of genuine elections. Most notable is the fact that not all the seats in parliament are directly elected by the people. Parties were largely able to conduct their campaigns freely and peacefully, though some inflammatory references to religion and race did raise concern.

- 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.

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.

- The legal framework provides some of the conditions for competitive elections, including freedom of association for parties, allowing independent candidates and a reasonable deposit mechanism for candidacy. 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 is 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 must be a citizen of Myanmar and the Citizenship Act of 1982 establishes requirements to prove citizenship which impose burdens that are 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. Myanmar has ratified the Convention on the Elimination of Discrimination Against Women, but there are currently no special measures, and no real initiative by political parties, to promote women's participation.
- 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 impose some limitations on freedom of expression by excluding certain topics from criticism. The provocative Buddhist nationalist discourse invoked by some parties, as well as by *Ma Ba Tha*, raised concerns during the campaign. The use of religion in politics is prohibited by campaign regulations and the Constitution.
- The media has 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 on topics such as the military, Buddhist nationalism and the plight of the Muslim population. Criminal cases have been brought against several social media users. During the campaign, state-funded media largely ignored the political contestants, focusing instead almost entirely on activities of the UEC, and of the ruling authorities, particularly the President. Private, foreign and social media dedicated significant coverage to the election, with a number of them showing a visible preference towards the NLD.

This Statement is made prior to completion of the election process. The mission's final assessment will reflect observation of the remaining phases of the process, including tabulation of the results and the handling of any complaints and appeals.

Preliminary Findings

Background

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 are 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. On 8 November, the people of Myanmar were electing 168 of the 224 members for the *Amyotha Hluttaw* (Upper House of Parliament); 330 of the 440 members for the *Pyithu Hluttaw* (Lower House); and 644 of the 860 members of State/Regional *Hluttaws* (Assemblies). The remaining 25% in each case are military-appointed. Twenty-nine Ethnic Affairs Ministers were also elected.

The holding of competitive elections is relatively new to Myanmar, where democratic culture is still being nurtured. The country is dealing with a number of internal conflicts between the Myanmar Army (*Tatmadaw*) and a number of ethnic armed groups. In that context the signing of the Nationwide Ceasefire Agreement, albeit by only eight out of 15 groups, on 15 October, during the campaign, was a significant achievement. However, the UEC, citing security concerns in Bago, Kachin, Kayin, Mon and Shan, cancelled elections in some 590 village tracts nationwide, as well as in seven entire townships in Shan State.

Legal Framework and Electoral System

Myanmar is party to some international human rights treaties pertinent to elections, and has acceded to the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the UN Convention Against Corruption. In July 2015, Myanmar signed the International Covenant on Economic, Social and Cultural Rights. However, Myanmar is not yet a party to the International Covenant on Civil and Political Rights (ICCPR), the main human rights instrument relevant to genuine elections.

The legal framework for the 8 November elections, while establishing basic structures and rules for the conduct of elections, does not comply entirely with international standards for democratic elections. Legal provisions applicable to the elections are spread across a plethora of laws and regulations, including the Constitution of 2008, election laws from 2010, an extensive range of delegated legislation and notifications from the UEC. While principal rules have been published in the official *Gazette*, much subsidiary legislation has not been published or disseminated by the UEC. Election law is fragmentary, and it is very difficult to determine, with certainty, the law pertaining to a particular issue.

There are limitations on the right to vote and universal suffrage is therefore not adequately provided for. While the law provides that citizens, associate citizens and naturalised citizens, who have reached the age of 18, may vote, holders of temporary registration certificates, so-called "white cards," who were allowed to vote in previous elections, are now not entitled to do so, following revocation of some 760,000 'white cards' earlier this year. It is estimated that there are more than one million stateless persons in Myanmar, with the vast majority of these being from the Rohingya ethnic group in Rakhine State, as well as some persons of Indian, Chinese and Nepali descent.

Extensive decision-making powers, without a right of appeal, have been granted to the UEC on all electoral matters. This undermines right of access to justice. There are also lacunae in the law, such as in the limited regulation of disputes during the campaign period, in the absence of powers of administrative sanction during this period, and in the absence of time limits for the determination of post-electoral disputes, thereby undermining access to effective and timely legal remedies. The imposition of high fees for election petitions further undermines effective access to a legal remedy.

The electoral system for representatives in the national parliament and State/Region assemblies is a simple majority system, based on single-seat constituencies. There are major disparities in the numbers of voters in electoral constituencies for the Lower House, which are based on Township administrative divisions. Based on figures provided by the UEC Chair, the range is from the smallest of 1,408 voters (Injyang Township) to the largest of 521,976 (Hlaing Township), and equal suffrage is therefore not provided for in a number of cases. Twenty-five percent of the seats in all *Hluttaws* are reserved for the military, to be nominated by the Commander-in-Chief. Article 21 of the Universal Declaration of Human Rights provides that the will of the people is the basis of governmental authority. This can be interpreted as requiring that all representatives should be freely chosen by voters and should be accountable to them.

Election Administration

Election administration is based on a five-tier structure comprising the UEC and sub-commissions at the State/Region, District, Township and Ward/Village Tract levels. The UEC consists of 15 members, including the Chair, nominated by the President. The UEC is responsible for the appointment of members of subordinate commissions, which are largely comprised of civil servants from the General Administration Department (GAD) 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 body.

The UEC has 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. Inside the UEC there was an over-concentration of decision-making power in the office of the Chair. At the same time, due to its decentralised structure throughout the country, instructions from the UEC were not implemented in a consistent manner. However, the decentralised structure of the election administration resulted in inconsistent implementation of regulations and processes.

The UEC has had a welcoming attitude towards the EU EOM. In addition, the UEC organised meetings with political parties and civil society. But, only a few notifications have been made public through the UEC's website, and in a number of instances, the UEC has not provided the EU EOM with information requested and precise data. Moreover, international observers were not authorised to observe the out-of-constituency advance voting despite repeated requests to do so. Sub-Commissions at different levels generally appeared well organised, but again the EU EOM encountered difficulties in receiving timely and precise information about voter list figures, polling station lists and advance voting activities.

The UEC ensured sensitive and non-sensitive materials were produced and distributed to the polling stations in a timely manner. The UEC launched a voter information campaign, including the use of text messages, to encourage voters to verify their names in the voter list. Another voter information

campaign was launched shortly before Election Day to inform voters about voting procedures. The UEC produced some 33 million “voting slips”. These were primarily for voters who lacked ID, but were not intended as a requirement for voting *per se*. The slips were also intended to be used for updating the voter list in case of errors in the details of a voter.

Certain categories of voters unable to attend their polling station on Election Day could request an advance vote. For the administration of out-of-constituency advance voting, the UEC relied on institutions such as civil service institutes, military barracks and universities to administer the process, resulting in a lack of transparency. The EU EOM requested official figures on advance voting from the UEC, but these were not made available prior to Election Day. 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, despite this being part of the Memorandum of Understanding signed with the EU and despite an earlier assurance from the Commander-in-Chief.

Overseas voting was administered by the UEC in cooperation with embassies in a number of countries. Some 34,000 persons registered to vote. The Ministry of Foreign Affairs (MFA) informed the EU EOM that some 4-5,000 forms requesting the vote had not been filled out correctly, resulting in the total number registered being reduced to some 29,000. However, the MFA also informed the EU EOM that there were significant administrative problems, including late delivery of ballots to embassies and cases of ballots being sent to the wrong country. The UEC Chair publicly acknowledged the “lack of experience and time to prepare the [overseas] operation”. The EU EOM requested official figures from the UEC, but these have yet to be made available.

Voter Registration

Myanmar uses a passive registration system. The voter list was initially extracted from the GAD and the Ministry of Immigration and Population’s household lists and logbooks and entered into an electronic database. This is the first time the voter list has 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. Problems were also experienced during the inputting and sorting of voter data. 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, 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, with lists displayed for voters to check their names and request corrections or additions. The final number of voters was not officially announced by the UEC, but it estimated the total number of registered voters to be some 33.6 million voters. During the display period, the UEC organised a nationwide voter education campaign, with the distribution of pamphlets and posters in several ethnic languages throughout Myanmar. Local observers noted that the public turnout for the verification was “modest”, meaning many people did not check their details. The list was being corrected just days prior to Election Day, which represented a major, but very late, effort on behalf of administrators. On Election Day, observers reported that there were some instances of people not finding their name, while others knowing their name was not on the list will not have attempted to vote.

Registration of Candidates

The right to stand is afforded to citizens of Myanmar. However, the qualifications to run for election do still impose some unreasonable restrictions, particularly when considered in conjunction with the controversial process for granting citizenship in the country, with associate and naturalised citizens disqualified from running for office. In addition, the parents of a prospective candidate must both have been citizens at the time of her/his birth and the candidate must also have been resident in Myanmar for ten years consecutively up to the time of the election.

UEC sub-commissions scrutinised candidate nominations and the candidate registration process was finalised at the end of September, with over 6,000 candidates confirmed. This process resulted in the rejection of 99 nominations (largely due to a more strict application of the citizenship requirement, which notably impacted on Muslim candidates, particularly in Rakhine State), from which there were 67 appeals, with 24 decisions eventually being reversed. A notable example was the case of U Shwe Maung, a Muslim Rohingya and a sitting USDP MP, who was elected to the Pyithu Hluttaw in 2010. His application to run for election as an independent candidate was rejected on citizenship grounds. Based on the list of candidates issued by the UEC, it appears that Muslim candidates were particularly underrepresented, with just 28 Muslims estimated to have stood.

Participation of Women

The Constitution provides that there shall be equality before the law for all citizens, irrespective of sex. The 2013-2022 National Strategic Plan for the Advancement of Women committed the government of Myanmar to achieving equality for women and men. The UEC Chair called on political parties to include greater numbers of women amongst their candidates. While Myanmar has ratified CEDAW, there are currently no special measures to promote women's participation and there appears to be an absence of political will to promote women's role in politics.

There is no woman on the Supreme Court and only one female amongst the 15 UEC Commissioners. Women accounted for just 800 of the more than 6,000 candidates, with parties fielding female candidates in greater numbers in the State/Region Hluttaw elections than in the national elections. Women at present comprise just 1.79% of members of the Lower House, holding just four out of the 224 seats in the house, while they comprise 5.59% of the members of the Upper House, holding 25 of the 440 seats, the lowest rate of female representation in the ASEAN region.

Election Campaign

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 two largest parties in Shan State and the Arakan National Party. Campaigning often involved posters, public rallies, concerts, music trucks, motorcycle parades and door-to-door canvassing. The vast majority of independent candidates and smaller parties, including ethnic parties, lacked resources, and reserved campaigning until the last weeks.

Observers reported that electoral authorities adopted a generally flexible approach to the notice requirements for an event, dispensing with the strict notice period of the law in many instances. As to the content of the campaign, the regulations are more restrictive and open to interpretation, with prohibitions on content which might, among other matters, undermine the Constitution, the dignity of the armed forces, or the sovereignty of the state. While freedoms of association and assembly

were basically provided for during the campaign, there remain concerns more broadly on these issues in Myanmar, which need to be addressed. On 17 October Myat Nu Khaing, an independent candidate in Bago, was arrested in relation to participation in a protest in December 2014.

A Political Parties Code of Conduct (CoC) was signed by 88 parties and several independent candidates. It is a self-regulatory mechanism and was widely disseminated by the parties. Party representatives indicated that it had a pacifying impact on the atmosphere of the campaign. However, it lacked an enforcement mechanism. 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”.

The campaign was generally peaceful, and parties and candidates enjoyed freedom of movement and assembly with the exception of areas affected by conflict or localised violence or tension, leading some parties to decide it was not safe in certain areas. 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. 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 rally. Campaigning activities were drastically limited for all contestants in rural areas of northern Shan, due to volatile security. The NLD decided against holding rallies in areas of Kachin state for security concerns. In the past month, four armed assaults on NLD members were reported.

The use of inflammatory language during the campaign was observed, mostly targeting the Muslim community. Also, in the midst of the campaign, *Ma Ba Tha* embarked on a ‘tour’ to celebrate ‘Race and Religion Laws’, which had an impact on the tone of the campaign. Observers witnessed racist speech at a number of the rallies of the USDP and the Myanmar Farmers Development Party, largely against the Muslim community, but no action was taken on such incidents by the UEC. There was an apparent convergence of messaging among a number of actors stressing the “good of the nation” and the “protection of Buddhism”. For instance, these themes were prevalent in the pronouncements of *Ma Ba Tha*, campaign speeches of USDP and comments by the Commander-in-Chief, urging the military to vote for candidates who can “protect race and religion”.

Media Environment

Myanmar’s media landscape has seen dramatic changes since 2011, with pre-publication censorship abolished. As a result, a relatively vibrant media scene has emerged with a number of privately-owned newspapers, a flourishing online media presence and an increase in the number of internet users, notably via Facebook. Nevertheless, television and radio, the main sources of information, remain mostly controlled by the state, military or close affiliates of the ruling authorities.

Numerous EU EOM interlocutors cited a restrictive legal framework and widespread self-censorship on topics such as the military, corruption, Buddhist nationalism and the plight of the Muslim population. There are currently five journalists imprisoned, all were convicted in 2014 in connection with military-related reporting. In the lead-up to the election, several Facebook users were detained on criminal charges. These cases adversely impact on freedom of expression.

EU EOM media monitoring showed that only some media provided a diversity of information to enable voters to make an informed choice. DVB, a satellite TV channel, foreign radio services, online media and several newspapers presented a wide range of contestants, including in the ethnic states, offering more comprehensive coverage. Media monitoring also showed that a number of monitored media focused on NLD and USDP, with a visible preference for the NLD. On 6 November, DVB organized a first national debate with six major parties and audience participating.

However, the 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 campaign, focusing almost entirely on activities of the UEC and ruling authorities, in particular the President. The President was widely presented in his official capacity touring the country to promote developments, surrounded by USDP flags and colours, thus blurring the line between party and state.

Each registered party was granted two free-of-charge 15-minute slots to air a political address on state television and radio as well as in newspapers, and 85 of the 91 registered parties took advantage of this. However, there was a need for prior approval by the UEC and there were limitations on topics allowed to be covered, with the authorities and military exempted from criticism. In the event, state MRTV, as well as state newspapers, did not undertake the second round of broadcasting and printing of the political addresses by registered parties.

MRTV aired numerous voter education spots to increase election awareness. However, in the last days of the campaign and on Election Day, it broadcast some programming comparing stability achieved under President Thein Sein with images of violence and chaos in Egypt as a consequence of change.

Electoral Disputes

Extensive powers to adjudicate upon complaints and disputes are conferred on the UEC. The rules create exclusive competence for the UEC in areas such as deciding on the registration of political parties and on the registration of candidates. The UEC did not, however, have a clear role in receiving complaints during the election period, or in adjudicating upon them. Recourse was made instead to election mediation committees, which were created in September by the UEC. This approach was successful in that the number of complaints recorded was low, but there were no sanctions applied for infractions of campaign rules, such as the destruction of posters and billboards, with the UEC simply requesting non-repetition of the behaviour. The law applied only to candidates, not to third parties who supported them. Challenges to the results of the elections will be adjudicated upon by election tribunals, entities which will be entirely subordinate to the UEC, and no time limits for adjudication apply.

Polling and Counting

EU observers reported very positively on the voting process. Polling stations observed mostly opened on time and had required materials. In many instances there were long queues, which created some organisational problems, but generally speaking these were managed by polling staff. Party agents were present in the vast majority of the polling stations observed. The UEC had previously announced it had accredited some 12,000 domestic observers from 31 organisations. On

Election Day, EU observers found domestic observers present in 27% 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% of polling stations visited there were reports of some persons not finding their name on the list. Voters were able to cast their vote in secret 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 some instances of local officials involved with the management of the process in the polling station. While the ink was not always checked upon arrival of a voter at a polling station, it was applied in virtually all instances observed. For the vote count in the polling stations, observers reported it was conducted in a transparent manner, with party agents and domestic observers present in most places observed. Officials conducted the count inconsistently and did not adhere to the formal regulations in all respects. The announcement of results by the UEC on a rolling basis was a positive feature, and this is on-going.

Problems were more evident with the advance voting. EU observers followed the in-constituency advance voting from 29 October and reported that officials appeared unfamiliar with procedures, allowing a broader range of persons to vote than envisaged in the regulations. In many 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. Out-of-constituency advance voting lacked transparency and due to the modalities for military voting the regular procedures were not applied.

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 is led by Alexander Graf Lambsdorff MEP, a Vice President of the European Parliament, from Germany. The mission comprises a core team of nine analysts who have been present in Yangon since 26 September, 30 Long Term Observers (LTOs), who have been present since 7 October and 62 Short Term Observers (STOs), who have been present since 2 November. In addition, the mission is joined by 37 Local Short Term Observers (LSTOs) and a 7-person Delegation of Members of the European Parliament, led by Ana Gomes MEP from Portugal. Overall observers are drawn from all 28 EU member States as well as Canada, Norway and Switzerland.

The EU EOM assesses all aspects of the electoral process and the extent to which the election process complies with national laws and international standards for democratic elections. The mission is independent in its findings and conclusions and operates in accordance with the Declaration of Principles for International Election Observation. Observers have been deployed across all 14 Regions and States of Myanmar as well as the Union Territory of Nay Pyi Taw and have met with election officials, government representatives and local authorities, candidates, parties, media representatives, civil society groups, domestic observers and voters. On Election Day, observers reported from all Regions and States and Nay Pyi Taw, observing in around 500 polling stations. Observers will remain to follow the tabulation of results and the EU EOM will continue to observe post-election developments. A Final Report will be issued later, containing detailed findings, conclusions and recommendations.

The EU EOM wishes to express its appreciation for the cooperation of the people of Myanmar, the Government, UEC, Sub-Commissions, Myanmar Police Force, political parties, media, civil society, EU Delegation and Missions of the EU Member States.

The English language version of the EU EOM preliminary statement is the only official version.

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