

Preliminary Findings of The Carter Center Expert Mission to Myanmar December 2014 – February 2015

Introduction and Executive Summary

The general elections in Myanmar planned for late 2015 could mark a major step forward in the political reform process that began in 2011. Despite a high level of mistrust in government, the general public appears to have an overall positive view of elections and overwhelmingly intends to vote.¹ Significantly, the government has made a public commitment to inviting international and national election observation organizations to monitor the election process, a notable difference from the 2010 and 2012 elections. The Carter Center, at the invitation of the Union Election Commission (UEC), is conducting an assessment of the pre-election environment in preparation for the deployment of a larger election observation mission. This is the Carter Center's first staff to the states and regions in December 2014.

In this preliminary assessment, The Carter Center finds that there are efforts underway to make the electoral process more transparent and less vulnerable to manipulation. However, a number of key challenges need to be addressed in order to ensure that the elections earn the confidence of voters, political parties, and civil society organizations. The main findings include:

Electoral Framework. Although there are significant weaknesses in the constitution with respect to international standards for democratic elections, the legal framework has the potential to facilitate the conduct of credible elections, provided that regulations address key gaps, such as the advance voting process.

Political Space. While the openness of political space varies among regions and states, political parties, civil society, and the media generally report a freer environment than in 2010 or 2012. While few reported overt harassment or intimidation, there are widespread fears that raising sensitive issues, such as land confiscation and corruption, will lead to retaliation by government, military, or ethnic armed groups.

Voting Rights and Political Participation. The planned expiry of temporary registration certificates is likely to result in the disenfranchisement of certificate holders unless the government acts quickly to enable them to obtain new documents. Most of the affected people are from ethnic groups and religious minorities, and the majority are Rohingya in Rakhine state. This is a significant area of concern.

Communal Tensions. Though communal tensions did not feature prominently as a concern in the states and regions visited by The Carter Center, anti-Muslim rhetoric was common, and leaders of minority religious communities expressed fear that the election process could give rise to conflict. There is a need for greater efforts on interfaith dialogue and conflict resolution.

Improving Electoral Integrity. A lack of transparency in advance voting, especially by the military, and voting by displaced and migrant populations were identified as problem areas in 4232" cpf" eqpvkpwg" vq" pggf" cvvgpvkqp0" Vjg" WGEø" eq o okv o gpv" vq" o cmkpi" vjgug" rctvu" qh" vjg" process fully observable will be important to ensuring the credibility of the election.

Election Management. The rules governing the appointment of members to election bodies at all levels could be substantially improved. There is also a widespread perception that the reliance of election sub-commissions on local government administration undermines their impartiality. At the same time, sub-commissions visited by The Carter Center were open to observation and showed a commitment to conduct their activities in a professional and transparent manner.

Elections in Areas of Ethnic Armed Group Control. Despite concerns about the impact of elections on the peace process, ethnic parties were optimistic that elections would take place. In the areas visited, armed groups indicated that they would not obstruct polling in areas under their control, with exceptions in border townships of Shan and Kayin states. Political space appears to be significantly curtailed in some areas.

International and National Observation. The UEC has committed to inviting international observers to monitor the electoral process and has engaged actively with national observer groups to develop a code of conduct and accreditation process. Carter Center field staff have been permitted broad access with few restrictions.

If conducted in a transparent and inclusive way, the elections present an opportunity to improve rwdnke" eqphkfgpeg" cpf" vq" fg o qpvtcvg" vjg" iqxgtp o gpvøu" eq o okv o gpv" vq" fg o qetcvke" reform. To develop the positive steps already taken in this direction, The Carter Center recommends the following:

The Union Election Commission

There is a need for greater clarity and transparency to build confidence among stakeholders in the election process. The UEC could address this by finalizing remaining by-laws, directives, and working guidelines and publishing them in a timely manner. The UEC could also consider publishing an election calendar, which is standard practice in many countries.

Regulations and procedures for advance voting and voting for displaced populations should allow full access to observers and party agents, including any advance voting conducted in military and police facilities.

To ensure that the process is free from discrimination and that each individual is able to exercise the right to vote, the UEC should provide for maximum inclusivity in updating voter lists.

the state of election preparations, and the breadth of political space. The Carter Center bases its analysis on well-established international obligations and standards.²

The Carter Center works to advance democratic elections and governance consistent with universal human rights. The Center is credited with making substantial contributions to the professionalization of the field of election observation and assistance; reinforcing the linkage between election observation and human rights; building civil society capacity for monitoring

Legal Framework and the Electoral System³

Elections are governed primarily by the 2008 constitution, a set of three election laws, the Law on the Union Election Commission and the Political Parties Registration Law.⁴ These are supplemented by directives, by-laws, notifications, and working guidelines issued by the UEC. The constitution regulates many fundamental aspects of the elections, including the election system, eligibility criteria for voters and candidates, and the structure, membership, and nomination process for electoral bodies. Although the legal framework contains gaps, and in some instances lacks clarity, it has the potential to facilitate the conduct of credible elections, provided that subsidiary acts of the UEC address outstanding issues and that the laws, rules, and regulations are implemented in good faith.

Myanmar has acceded to very few international human rights instruments. Notably, it is not yet a party to the International Covenant on Civil and Political Rights (ICCPR). Nonetheless, in view of the stated intention of the coupvt{øu"cwvjqtktvkgu"vq"eqpfwev"gngevkqpu"kp"nkpg"ykvj"kpvtgpcvkqpcn" standards, and in view of the fact that the fundamental human rights identified in the ICCPR are generally considered a part of customary international law, the Ectvgt"Egpgvtøu"cuuguu o gpv"of the legal electoral framework makes reference to the ICCPR (in particular, Article 25). The assessment also refers to a number of other documents and guidelines for democratic elections that are relevant to a democratic election process.

The Union Parliament and the state and regional assemblies are elected under a first-past-the-post system, with the candidate receiving the highest number of votes elected. For the lower chamber of the Union Parliament and for state and regional assemblies, constituencies are based on administrative boundaries of townships.⁵ In the upper chamber of the Union Parliament, each state and region is represented by 12 members.⁶ The upper chamber recently passed legislation that would shift its elections to a proportional representation system, now under review by the constitutional tribunal. Although the electoral system is the sovereign choice of each state, international best practice suggests that changes should not be effected less than a year before an election and should be agreed on in an inclusive process.⁷ Major changes made so close to the date of an election can complicate voter education efforts and the work of electoral bodies.

announcement of results; and rules for safekeeping of election materials. The resolution of the election laws do not establish a clear process for the resolution of disputes regarding all aspects of the election process.⁸ As these issues are important for integrity, enhancing public confidence, and protecting the rights of candidates and voters, the general rules governing them should be regulated by the election laws rather than by subsidiary acts.

process. In accordance with international standards, election management bodies must be independent and impartial.¹⁴

Voter and Candidate Eligibility. Citizens who are 18 years old are eligible to vote, with

to publish their reports. In 2012, international observers were invited belatedly, without adequate notice to effectively deploy observers. National organizations were able to deploy a limited number of observers but were hampered by a lack of access to the process and the absence of a coherent framework governing observation.

The environment for observers appears to have improved substantially. The UEC has publicly committed to invite international observers, and has initiated a series of consultations with civil society around the establishment of a code of conduct and procedures for accreditation. Several organizations are currently preparing their observation efforts, but pending accreditation, they are not yet actively observing in the field.

Code of Conduct and Framework for Accreditation. The establishment of a framework for observation, absent in both 2010 and 2012, will go a long way toward building confidence in the process. The draft code of conduct for observers and the accreditation procedures for observers were discussed with civil society organizations and with The Carter Center. During the most recent coordination meeting between the UEC and civil society on Feb. 16, contentious issues were openly discussed and largely resolved in an inclusive and transparent manner. The final version of the code was issued on March 19. Civil society organizations and political parties are awaiting the final version of the accreditation procedures, as well as the procedures for observing advance voting by military and other security personnel.

Access to Sub-Commission Meetings and Activities. The Carter Center has been warmly welcomed by election sub-commission staff in all states, regions, and townships visited. In Mandalay Region and Shan State, the Center observed the voter list updating process at the township level. There was inconsistency regarding access to meetings of sub-commissions and/or to their meeting minutes, with some sub-commissions offering and

Framework Governing Political Party Activity. The election laws do not specifically regulate election campaigning, although the UEC has drafted (but not yet adopted) a Directive on the

surveillance by Special Branch police. Several parties reported that their activities were significantly curtailed in areas with an armed group presence.

Political Space for Civil Society Organizations. Civil society organizations in the areas visited also reported a much-improved environment since 2010, with few restrictions on their activities. Carter Center staff also witnessed several sizable public protests ó addressing issues such as ethnic rights and land seizures ó an indication of the increased political space. However, there

The preliminary voter list update program is scheduled to finish in July, with preliminary voter list display phases foreseen between March and July for townships and village tracts/wards that have completed data entry. The new voter lists will be displayed again at the village tract/ward level during a nationwide display period in August, offering voters a final opportunity to check their records and request changes before the voter list is finalized.

Overall, the process of updating the voter list appeared to be proceeding professionally and according to schedule in the townships visited, with particular efficiency in southern Shan State and Mandalay Region. While delays were reported in some areas, they do not seem to be putting the overall timetable at risk. Electricity supply problems, which were reported to The Carter Center at multiple locations, have been dealt with efficiently by the UEC and sub-commissions, with generators supplied to affected townships.

The Carter Center was able to observe and/or gather basic information about the process in all six states and regions visited. With one exception (where a sub-commission informed The Center that lists could be viewed only at the end of the process), field staff were invited to observe without hindrance wherever the process was underway. Except for one township in Mandalay Region, civil society organizations did not appear to be playing a monitoring role, which was carried out exclusively by government and sub-commission staff.²⁶

Citizenship and Voter Eligibility. The election laws state that full citizens, associate citizens, naturalized citizens, and holders of temporary registration certificates (TRCs) are eligible to vote. However, there has been a heated debate about whether holders of TRCs (so-called "white-card holders") should be excluded from electoral rights. The number of white card holders is not known, but estimates range from 600,000 people to over one million. The vast majority are people who self-identify as Rohingya, a mostly Muslim ethnic group concentrated in Rakhine Upro. "y j q" ctg" qhhkekcmm {"eqpukfgtgf" ödgp i cnk. ö" J q y gxgt." considerable numbers from other ethnic groups also hold TRCs.

At state and regional levels, confusion surrounding the issue of TRCs was apparent in the lack of uniformity in the way sub-commissions visited by Carter Center field staff handled the inclusion of white-card holders during the voter list updating process. Most sub-commissions were maintaining white-card holders in the updated voter lists, while two township sub-commissions stated that they would not be included.

The ambiguity ended Feb. 11, 2015, when the ptgukfgpvøu" office announced that TRCs would expire at the end of March. TRC holders will now be required to hand them over to the cwv j qtkvkgu." y j gtg" v j g {" y knn" dg" öuetwvkpk | gf" kp" ceeqtf cpeg" y kv j " v j g" nc y u." twngu" cpf" tg i wncvkqpu" eqpegtpgfö²⁷ The Constitutional Tribunal subsequently ruled that only citizens are eligible to vote in the proposed constitutional referendum ó a ruling that may also have consequences for the constitutionality of the election laws.

The Carter Center notes that TRC holders had the right to vote in the 2010 and 2012 elections. International human rights norms afford a high level of protection to fundamental rights, and the limitation or revocation of rights require due process and must not have a discriminatory effect. If the decision to set an expiration date for TRCs results in the cancellation of voting rights,

²⁶ The UEC has agreed that civil society organizations can observe the process of updating the voter lists and intends to issue them a letter of acknowledgment, as it did during the voter list update pilot project in 2014.

²⁷ See *The Global New Light of Myanmar*, February 12, 2015.

especially for a large number of people through an administrative procedure, this would run counter to a number of provisions of

outside their home constituency, and the overly

constituencies.²⁹ S

The clear outlier was Mandalay, where anti-Muslim rhetoric was more common and more likely to be intermixed with political speech than in the other states and regions visited. For instance, Carter Center staff was informed that in some townships, patronizing Muslim businesses was actively discouraged, and human rights defenders reported being defamed and intimidated, including on social media, for their perceived pro-Muslim sympathies.

Representatives of the Muslim community commonly expressed a sense of vulnerability, if not fear, and in two instances declined to speak with The Carter Center out of concern that it could lead to retaliatory action against them. Political party representatives ó often, but not exclusively, from the NLD ó commonly alleged that other parties, and in particular the USDP, had sought to portray them as pro

