

THE
CARTER CENTER



**ELECTION OBSERVATION MISSION
MYANMAR, GENERAL ELECTION, NOVEMBER 8, 2020**

PRELIMINARY STATEMENT

Nov. 10

The Carter Center's international election observation mission was accredited by the Union Election Commission (UEC) on July 30. The mission is led by Sean Dunne and includes a core team of six international election specialists, 24 Myanmar nationals serving as long-term observers (LTOs), and 14 foreign short-term observers (STOs). Together, mission members came from 14 countries. Because of COVID-19 restrictions, mission members observed remotely during much of the preelectoral period, holding online meetings with stakeholders across the country. One week prior to election day, 12 teams of LTOs deployed to eight states and regions. On election day, a total of 43 observers visited 234 polling stations in 10 states and regions to observe voting and counting. The Carter Center continues to assess the conclusion of vote tabulation and to observe the postelection environment, including the complaints and appeals process. A statement on the social media environment for the election will be issued later this month. The Center assesses elections based on the national legal framework and international principles and commitments for democratic elections, and conducts its activities in accordance with the Declaration of Principles for International Election Observation. The Center has had an office in Myanmar since 2013 and also observed the 2015 general election.

This statement is preliminary; a final report will be published after the conclusion of the electoral process.

Executive Summary

On Nov 8, 2020, the people of Myanmar reaffirmed their commitment to democracy by turning out to vote despite the challenges posed by the COVID-19 pandemic. Although important aspects of the electoral process were impacted by restrictions imposed to combat the pandemic, the Carter Center's international election observation mission found that voters were enthusiastic and able to freely express their will at the polls and choose their elected representatives.

At the same time, the quality of democracy in Myanmar continues to be undermined by serious deficiencies in the legal framework, including the reserved seats for military appointees, highlighting the need for reform to bring the country in line with international obligations. Ongoing conflict in many areas of the country and the exclusion of more than

two million people from the electoral process because of violence or discrimination further undermine the democratic character of the election process.

The efforts of the Union Election Commission (UEC) and Ministry of Health and Sports to overcome the challenges presented by COVID-19 are commendable. Following a sometimes-contentious preelection period, election day itself occurred without significant incidents or major irregularities being reported by mission observers.

In polling stations visited by Carter Center observers, election procedures were widely adhered to, with the conduct of voting assessed positively in 94% of polling stations visited. In polling stations where counting was observed, the process was conducted according to procedures and in the presence of party agents. Tabulation proceeded smoothly in tabulation centers observed by the mission, although access for mission observers was limited or denied in three cases. The Carter Center will continue to monitor the tabulation of results and the postelection complaint process.

Key preliminary Carter Center findings and conclusions include:

Legal framework: The legal framework for elections requires reform in order to be in line with international obligations for democratic elections. Problematic aspects of the constitution include reserved seats in elected bodies for the military, inequality of the vote across constituencies, undue restrictions on who can be president, appointment procedures for the UEC that undermine its independence, and the lack of the ability to appeal UEC decisions. In addition, discriminatory provisions on citizenship continue to disenfranchise members of some ethnic minorities, particularly hundreds of thousands of Rohingya who lost the right to vote prior to the 2015 elections.

Election administration: The election administration has demonstrated resilience in adjusting to the challenges posed by COVID-19. The UEC exercised wide discretionary powers to regulate the process and has undertaken laudable efforts to update the voter roll, train election officials, and adapt procedures for voters vulnerable to COVID-19. However, the UEC's decision-making lacked transparency and openness in some instances, and it did not provide public access to timely election data. The UEC decisions on election cancellations and postponements, which disenfranchised some 1.4 million voters and will leave 22 seats in the national parliament vacant, were not supported by transparent criteria set out in advance. Given these postponements, the military should fully respect the constitutional provision that says they may only hold a number of seats equivalent to one-third of the elected members in state and regional parliaments.

The administration of advance voting raised a number of concerns. Management of advance out-of-constituency voting lacked safeguards to ensure the secrecy and integrity of the vote. The expanded use of homebound voting, while facilitating participation, also attracted criticism because of unclear or inconsistently applied procedures.

Voter registration: The majority of mission interlocutors positively evaluated the quality of voter rolls, although some concerns over possible exclusion of vulnerable groups persisted. On election day, the mission did not find significant issues with the voter rolls in polling stations visited, although the media reported that voters were missing from voter rolls for the ethnic affairs minister races in Mandalay and Yangon.

Candidate registration: While voters had a wide range of political alternatives from which to choose, there were several issues related to candidacy. Citizenship-related eligibility criteria resulted in the denial of registration or the deregistration of a number of candidates, particularly those from religious and ethnic minorities. In addition, over 15 percent of candidates were deregistered well into the campaign period (the majority because of the deregistration of one political party). This not only affected the right of individuals to stand for office but also prevented political parties from replacing candidates. Finally, collection and publication of data on candidates' ethnicities and religions does not appear to comply with the constitutional right to privacy and international data protection principles.

Participation of women: While there has been a gradual increase in the number of women candidates since 2010, only 16 percent of candidates in the 2020 elections were women. Although some parties implemented internal equity policies, temporary special measures for greater inclusion of women should be considered as a remedy. Women also remained underrepresented in the higher levels of electoral bodies, with no women serving as UEC commissioners.

Campaign environment: The visibility and intensity of public campaigning was impacted by COVID-19 restrictions that limited movement and assembly. Nevertheless, two-thirds of the contestants interviewed by The Carter Center reported having been able to campaign freely and on equal conditions. Some contestants expressed concerns over the perceived privileged access of the governing party as well as the inconsistent enforcement of COVID-19 restrictions on larger campaign events. In addition, the UEC's review of political party scripts for free airtime on television and radio appeared overly stringent and at odds with international obligations for freedom of expression.

The campaign environment was generally calm and peaceful. However, there were isolated instances of clashes between party supporters, leading to one death, as well as acts of vandalism and destruction of campaign materials in several locations. Three NLD candidates in Rakhine State were abducted by the Arakan Army. In addition, there were reports of interference with campaigning or special rules being imposed in some areas that limited contestants' access.

Election dispute resolution: Election mediation committees were established by the UEC, and the majority of political parties agreed to a code of conduct with a monitoring committee to assess compliance. Both of these were positive, voluntary mechanisms of electoral dispute resolution. Although the committees' decisions are not legally binding, stakeholders found them effective in defusing tensions, encouraging dialogue, and building consensus.

Social media: Most contestants actively used social media, in particular Facebook, to reach their constituents. Activity across party and candidate accounts grew rapidly as the official campaign began and remained at a high level until the campaign silence period. Carter Center social media monitoring of public Facebook pages identified substantial amounts of election-related disinformation, which frequently contained hate speech directed at ethnic and religious minorities that was accessible to millions of Facebook users. Women candidates were also targeted by hate speech and harassment.

Election observation: Despite initial accreditation issues, citizen observers were able to observe most aspects of the election process. Their work in the preelection period, as well as the widespread presence of party agents and citizen observers on election day, contributed to enhancing transparency. Some observers, including Carter Center observers, reported being closely monitored by security forces and faced additional reporting requirements on deployment plans. Such restrictions are inappropriate and reduce the ability of observers to ensure transparency.

The work of the Carter Center mission has also been affected by COVID-19 prevention measures. The mission adapted its approach to enable observation activities while maintaining its core principles of independence, impartiality, and fact-based reporting. The mission could not access the process fully because of travel restrictions and therefore conducted hundreds of meetings remotely. As the mission was not able to observe the campaign and election preparations directly, it was not able to evaluate all claims made by interlocutors and is therefore not able to provide a thorough assessment of all aspects of the process.

The Carter Center wishes to thank the Union Election Commission for facilitating its work, and all stakeholders who have taken the time to meet with the mission. The mission will continue to observe the postelection environment, including the resolution of electoral disputes, and may issue further statements. The Carter Center intends to release the final report from the mission, together with recommendations, before the end of March 2021.

Statement of Preliminary Findings and Conclusions

Background

The Nov. 8 elections were the second general elections since the beginning of democratic reforms in 2011 and are an important step in the country's democratic transition. The ruling National League for Democracy (NLD) and the opposition Union Solidarity and Development Party (USDP) are the largest parties in the outgoing parliament; however, since 2015 the political landscape has evolved, with several ethnic parties merging and other new parties competing in the elections. These shifts underpin a dynamic political competition that offered voters a spectrum of choices.

The election date was announced on July 2, 2020. The preparations for elections took place in the context of the COVID-19 pandemic and health protocols that have restricted movement and led to stay-at-home orders in 22 percent of townships.¹ In addition, several areas of the country remain affected by conflict involving government forces and ethnic armed organizations. Over time, these conflicts have created large numbers of refugees and internally displaced persons (IDPs) and have led to the postponement or cancellation of elections in parts of seven of Myanmar's 14 states and regions.

The Carter Center mission was accredited by the UEC on July 30. Because of COVID-19 travel restrictions, the Center adapted its election observation methodology, including by

¹ On April 16, 2020, COVID-19 was classified by government authorities as a natural disaster.

recruiting Myanmar citizens to serve alongside foreign nationals as election observers. During the preelectoral period, the mission carried out its observation work remotely and held over 1,000 online meetings with election, security, and government officials; political parties and candidates; civil society organizations (CSOs); and media outlets across the country. The work of the mission was augmented by a social media monitoring unit. However, the Center’s ability to observe the process directly has been constrained by the COVID-19 restrictions, and the findings of this preliminary statement are necessarily limited as a result. This preliminary statement builds on two earlier interim statements published in October.²

Electoral System and Legal Framework

These elections were held to elect three-quarters of the members of the two houses of the Union Parliament as well as of the 14 state and regional parliaments. All candidates are elected in single member constituencies under a first-past-the-post electoral system. At the union level, 168 of the 224 upper house members and 330 of 440 lower house representatives are directly elected. The commander-in-chief of the Defense Services appoints one-quarter of the members of each chamber at both the union and state/region level, allowing the military to prevent changes to the constitution. The appointment of unelected military members is at odds with fundamental democratic principles, which specify that the will of the people as expressed in genuine elections is the basis for government authority.³

Each state and region has 12 members in the upper house of the Union Parliament. Constituencies for the upper house are drawn by combining or dividing townships. Each Self-Administered Zone or Self-Administered District corresponds to one constituency, guaranteeing these units upper house representation. For the lower house and state and regional assemblies, constituencies are based on the administrative boundaries of townships rather than on population or numbers of voters. For lower house elections, each of the country’s 330 townships corresponds to a constituency, while for state and regional assemblies, each township is divided into two constituencies. This results in considerable disparities in the size of constituencies. At odds with principles of equal representation and international good practice, a representative in the same assembly may represent a constituency of either a few thousand or a few hundred thousand voters.⁴

² See Interim statement 1 (Oct. 13) at www.cartercenter.org/news/pr/2020/myanmar-101320.html.

See Interim statement 2 (Oct. 30) at www.cartercenter.org/news/pr/2020/myanmar-103020.html.

³ Article 21 of the Universal Declaration of Human Rights (UDHR) states, “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections” See also the International Covenant on Civil and Political Rights, (ICCPR) Article 25, and the accompanying United Nations Human Rights Committee (UNHRC) General Comment 25, para. 7, which states that “where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.” See also the Venice Commission’s Code of Good Practice in Electoral Matters, pt. I.5.

⁴ UNHRC General Comment 25, para. 21, provides that “the vote of one elector should be equal to the vote of another.” The Venice Commission’s Code of Good Practice, 2.2.1, provides for equal voting power and states with regard to the number of voters or residents per constituency: “The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).”

To facilitate representation of ethnic minorities, 29 ethnic affairs ministers are elected to state and regional assemblies in areas where the ethnic population is equal to or greater than 0.1 percent of the total national population. This does not apply to minorities that are the majority within their state and region. Ethnic affairs ministers are elected by voters from the respective minority.

Legal Framework

General elections are primarily regulated by the constitution, a set of three election laws,⁵ the Law on the Union Election Commission, and the Political Parties Registration Law; all of the laws were adopted in 2010. These are supplemented by bylaws, rules, and regulations issued by the UEC.

The legal framework retains a number of provisions that structurally impact the democratic character of the electoral process. In addition to reserved seats for the military and the mismatched delimitation of constituencies, there are restrictions on the right to vote and to stand as a candidate, issues with the authority and independence of the election management body, restrictions on eligibility for the presidency, insufficient regulation of advance out-of-constituency voting, and a lack of provision for the appeal of UEC decisions. In addition, discriminatory legal provisions on citizenship effectively disenfranchise members of unrecognized ethnic minorities, particularly the Rohingya.⁶ The Carter Center has recommended addressing all of these issues in the past and continues to recommend changes to these areas.

However, some positive steps have been taken to improve the legal framework, and some past Carter Center recommendations have been fully or partially implemented. Amendments to laws and bylaws passed in 2019 and 2020, *inter alia*, formalized the role of election mediation committees (EMCs) for dispute resolution, required military personnel and their families to vote outside of barracks, obliged election subcommissions to facilitate voting by persons with disabilities, acknowledged the right of observers to be in polling stations, and provided for the replacement of spoiled ballots. In addition, parliament considered constitutional amendments in 2020, many of which would have brought the legal framework more in line with international obligations.⁷

Election Administration

Structure and Composition

Elections are administered by the UEC at the national level and by subcommissions in states and regions (14), Nay Pyi Taw as the union territory (1), districts (82), townships (330), and in wards and village tracts (17,067). Approximately 42,047 polling stations were established, some 1,800 more than in 2015, to facilitate distancing as part of COVID-19 preventive measures and to accommodate the increased size of the electorate.

⁵ The Amyotha Hluttaw (upper house) Election Law, Pyithu Hluttaw (lower house) Election Law, and the Region and State Hluttaw Election Law. Apart from provisions on candidate registration, the three laws are identical.

⁶ In 2017, some 700,000 Rohingya were displaced to Bangladesh during a major operation by security forces.

⁷ Although supported by the majority of lawmakers, the amendments did not receive the approval of the qualified majority (75%) required for adoption.

The UEC is a permanent body appointed by the president and approved by the parliament. Members serve five-year terms. Parliament has limited discretion to confirm the appointments.⁸ Five UEC members, the minimum number set by the constitution, assumed office in 2016, and an additional 10 members were appointed in 2019. The authority of the executive to appoint UEC members does not provide a mechanism that ensures the impartiality and independence required by international principles.⁹

Subcommissions at the region/state, district, and township levels are appointed by the UEC and are generally composed of volunteers and civil servants from government departments at the respective level. Meanwhile, polling station staff are appointed by the respective township subcommissions. Gender-disaggregated data on the composition of Myanmar's electoral bodies is not publicly available. However, there are no women among the UEC commissioners or in the leadership of its secretariat. According to the UEC, women make up over 20 percent of commissioners at the state/regional level and over 15 percent at district/level and township level. Women do appear to be well represented among polling staff at managerial level. Observers noted that some 75 percent of polling station officers in locations visited were women.

Transparency and Consultation

The legal framework gives wide discretion to the UEC to regulate the election process. Since the announcement of elections on July 2, the UEC has issued public updates on key election dates and activities via 83 announcements and notifications. Despite past recommendations, the UEC did not publish an electoral calendar, and as a result, uncertainty over the election schedule continues to detract from the transparency and predictability of the framework for all stakeholders.

The election law does not require the UEC sessions to be public or that the UEC publish the records of its meetings.¹⁰ Throughout the process, interlocutors expressed concerns about a lack of transparency in UEC decisionmaking and communication, as well as insufficient stakeholder engagement. As importantly, the UEC did not publish key election data prior to election day, including the final list of registered candidates or the final numbers of registered voters.

At the grassroots level, subcommissions were reported to be more open to stakeholder engagement. Over 80% of party and candidate representatives interviewed reported that subcommissions held ad hoc or periodic meetings to provide election-related information and updates. This engagement contributed to building confidence and to transparency around subcommissions' work. Overall, 69% of interlocutors stated that subcommissions provided sufficient and relevant information to parties and candidates.

⁸ The constitution provides that appointments by the president shall not be refused unless it can clearly be proved that the nominee does not meet the qualifications required by the constitution.

⁹ General Comment 25 to ICCPR, para. 20, specifies that "an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."

¹⁰ Paragraph 81 of the Venice Commission's Code of Good Practice in Electoral Matters provides that "the meetings of the central electoral commission should be open to everyone, including the media." Paragraph 19 of UNHRC General Comment No. 34 to Article 19 of the ICCPR states that "to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective, and practical access to such information."

Election postponements and cancellations

Constitutional and legal provisions allow the UEC to postpone or cancel elections because of natural disaster or insecurity.¹¹ On Oct.16, the UEC postponed elections in 15 full townships and cancelled elections in parts of 41 townships located in Bago Region and Kachin, Kayin, Mon, Rakhine and Shan states. The UEC decisions were criticized as opaque by a range of political parties and stakeholders. Criticisms emphasized the failure to explain inconsistencies in the assessment of security conditions and the disproportionate effect on voters and contestants in ethnic minority areas. Subsequently, additional cancellations were announced in 94 of Paletwa's 95 village tracts, while postponements were rescinded in one ward and nine village tracts within five townships. The cancellations and postponements resulted in 22 seats in the Union Parliament and 32 seats in Rakhine (20) and Shan (12) state parliaments being vacant, and an estimated 1.4 million voters being disfranchised, including up to 1 million in Rakhine State alone.

Cancellations and postponements have an impact on suffrage rights, political representation, and the equality of conditions for election. If the election in a full constituency is postponed, the seat is left vacant and a by-election can only be held after one year. The cancellation of voting in parts of constituencies still allows for representatives to be elected by voters in the remaining wards and village tracts, which creates concerns about actual or perceived manipulation of election outcomes.¹²

Following the 2015 elections, The Carter Center recommended that the UEC establish transparent criteria for decisions regarding the postponement and cancellation of elections. The Center notes that the UEC's decisions regarding cancellations and postponements during the 2020 elections were similarly not supported by clear criteria.

Poll Worker Training

COVID-19 health protocols have had an impact on poll worker training. Voters' impressions of the performance of election authorities is often shaped by their interaction with poll workers and the competence with which polling stations are run. COVID-19 created challenges for the organization of trainings and also necessitated the implementation of new health procedures at polling stations. A notable innovation of the UEC was the development and distribution of a range of training materials for subcommissions, including a guide, polling and counting training videos, and other self-learning resources. Online and some in-person training was carried out for polling station staff, medical personnel, and volunteers who served on election day.

Voter Education

In cooperation with national civil society organizations and international partners, the UEC carried out a nationwide public outreach campaign targeted at key demographics, including women, youth, and first-time voters. This outreach included the distribution of pamphlets, posters, game boxes, billboards, street theater guidebooks, mock voting kits, easy-to-read cartoons, and educational and motivational video series. Materials were produced in 22 ethnic languages, and in Braille in three languages. Based on interviews conducted with stakeholders from a sample of 108 townships (approximately one third of

¹¹ Section 399(e) of the constitution, Section 50 of the election laws, Section 10(f) of the UEC law.

¹² For example, the lower house seat for Paletwa in Chin State will be determined by 8 of its 102 wards and village tracts.

all townships), mission observers reported that the intensity of voter education was low in just under 50% of townships, medium in just over 40% and high in only 10%. These efforts were complemented by online efforts, including the UEC's dedicated website for voters to check their registration status, mobile apps, and text messaging to reach out to voters.

Voter Eligibility and Registration

The election law provides that citizens, associate citizens, and naturalized citizens who are at least 18 years old and recorded on the voter roll are eligible to vote. Members of religious orders, persons serving prison sentences, those declared to be “of unsound mind” by a competent court, those not cleared from bankruptcy, and those who have assumed foreign citizenship do not have the right to vote. These restrictions on the right to vote are not fully in line with the principles of universal and equal suffrage.¹³ In addition, the former holders of temporary citizenship certificates, whose voting rights were removed prior to the 2015 elections, remain disenfranchised. The majority of these were ethnic Rohingya from Rakhine State.

Preliminary voter rolls are drawn from the data provided by the General Administrative Department (GAD) and the Ministry of Labor, Immigration, and Population. To verify the voter list, the UEC undertook two rounds of voter roll display, giving voters an opportunity to review and update their records, although some areas were omitted because of ongoing armed conflict. Voters could also check their records and polling station assignments through a website and mobile applications. Over 9 million voters (about 24%) reportedly checked their records. The main corrections requested were changes to names and addresses, inclusion of missing eligible voters, and removal of deceased voters. Following the first display, 953,466 additional voters were included on the voter roll. As of election day, the UEC had not published the total number of voters on the voter roll.¹⁴

Fifty percent of interviewed party and candidate interlocutors who applied to receive a copy of an entire voter list reported that they did not receive it for one reason or another, including that their request was not sufficiently justified. At the same time, 76% of those interviewed reported that they received a digital copy for the constituency in which they were competing. Over 80% of the 479 party and candidate representatives interviewed characterized the quality of the voter roll as good or adequate.

However, a notable 40% of political interlocutors in Kayin State and 33% from Shan (North) assessed the quality of the voter roll as poor. In addition, 69% of CSOs and 64% of media interlocutors expressed concern over the possible exclusion of vulnerable groups, particularly migrant workers, IDPs, and ethnic and religious groups. Over 38% of

¹³ UN HRC General Comment 25, para. 10, states: “The right to vote [...] may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote.” Article 29 of the Convention of the Rights of Persons with Disabilities (CRPD) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”. Paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 (Hungary) states that “[...] an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability [...]”

¹⁴ The total number of voters on the voter roll was 37,268,876, published on Nov 9.

interlocutors in Rakhine State, 50% in Mon and Kayin states, and 67% in Chin and Kachin states stated that security impacted IDPs' ability to check the voter roll.

The legal amendments made in 2020 reduced the residency requirement for voters from 180 to 90 days. This change was especially important for seasonal workers, migrant workers returning from abroad, and IDPs. However, several ethnic communities raised concern over the potential influence of seasonal workers on election outcomes in their areas. Moreover, while these measures facilitated participation, the administrative procedures to transfer registration were described by a number of interlocutors as cumbersome because of documentation requirements.

Candidate Eligibility and Registration

Out of 7,030 candidate nominations, 6,969 candidates were initially registered to contest the elections. Over 93% of the interviewed candidates and political party representatives stated that they had an opportunity to correct mistakes in their nomination documentation; 92% reported that subcommissions displayed the lists of prospective candidates following registration; and 98% confirmed that the scrutiny of their nomination documentation took place within the legal deadlines.

Following the certification of candidate lists, approximately 1,317 candidates were deregistered – nearly 19% of the total – and four candidates died. Most deregistered candidates (1,129) were from the United Democratic Party (UDP), which was dissolved by the UEC on Oct. 17.¹⁵ On election day, there were an estimated 5,639 candidates representing 91 political parties and over 250 independent candidates. Deregistrations also occurred well into the campaign period, affecting the rights of individuals to stand, preventing political parties from replacing candidates, and potentially affecting the rights of voters who had already cast advance ballots. Because of the late timing, ballots were not reprinted or adjusted before election day, and voters were to be informed of changes through announcements and posters in subcommissions and in polling stations. The Center's observers noted that signs to inform voters that UDP candidates were cancelled were prominently placed at polling stations; however, publicly posted information on other excluded candidates were not in evidence.

Some 17 candidate nomination rejections and deregistrations were made on the grounds of candidates' parents not holding Myanmar citizenship at the time of their birth. Unclear changes in the classification of past citizenship documents have made the proof of parents' citizenship an opaque administrative barrier to determine eligibility. These difficulties disproportionately affected Muslim candidates and those of Chinese descent, and led to the exclusion of all Rohingya candidates. Many of these decisions were appealed, but the UEC and its subcommissions upheld the rejections. The Carter Center notes that the implementation of these citizenship-based candidate eligibility criteria resulted in unwarranted restrictions of fundamental political rights.

There are no legal requirements or special measures to encourage the participation of women as candidates. Only 16% of candidates were women, although there has been a

¹⁵ According to the UEC, the dissolution of the party arose in connection to the UDP chairman's arrest as an escaped convict and allegations of financial impropriety.

gradual increase in the percentage of women candidates since 2010. While the number of women nominated by most political parties remained low, several parties have implemented internal equity policies and fielded 25% to 50% women candidates for the lower house of the national parliament. Interlocutors pointed to negative stereotypes, cultural and social factors, and structural disadvantages as challenges affecting the participation of women, with some highlighting the need for the adoption of special measures as a remedy.

Data Privacy and Protection

Information about candidates published by the UEC via an app listed candidates' religious affiliation and ethnic identity. While a form annexed to bylaws required prospective candidates to identify their religion and ethnicity, this information is not listed among the eligibility criteria for candidates in either the constitution or election laws. Meanwhile, the election laws make the use of religion and race in campaigning an election malpractice.¹⁶ The publication of this information could facilitate such malpractices. Further, the collection and publication of this data does not appear to comply with the right to privacy afforded by the constitution or with data protection measures recommended by international instruments to protect citizens' data.¹⁷

Political Space and the Campaign

The COVID-19 pandemic had a considerable impact on the visibility and intensity of campaigning. With an upsurge in the numbers of infections in late August and September, the UEC imposed social distancing measures on campaign events and restrictions on large-scale rallies. Although these were reasonable measures to limit the spread of infection, they also had the effect of limiting the opportunities for contestants to engage in traditional in-person campaigning, restricted their movement, and curbed the access of observers and local media. Variations in quarantine procedures across states and regions, as well as stay-at-home orders in 22% of townships, compounded these challenges. Calls by a number of opposition parties to postpone the elections because of COVID-19 continued to be made well into the campaign period.

Carter Center long-term observers noted that in several areas, some candidates were not allowed to access villages by local residents and village administrators ostensibly because of fears of COVID-19. However, in several cases, candidate representatives suggested that these actions were politically motivated. In Rakhine State, campaigning was very limited because of the combined effects of insecurity, COVID-19 lockdown measures, and internet restrictions.

Despite these limitations, parties were generally able to reach out to voters through a variety of methods. The 60-day campaign predominantly featured smaller rallies and meetings, as well as vehicle convoys, loudspeakers, door-to-door canvassing, signboards, leaflets, and party merchandise. Several larger rallies were also held, some reportedly in breach of COVID-19 protocols. Although local authorities and police enforced regulations in some cases, several interlocutors in Ayeyarwady, Mandalay, and Shan (East) raised concerns over the lenience of authorities toward campaign events of both

¹⁶ See Article 66(k) of the parliament election laws.

¹⁷ U.N. General Assembly Resolution 73/179, Dec. 17, 2018, on the right to privacy in the digital age www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/179.

NLD and USDP parties, while others pointed to a lack of clarity as to which agencies were responsible for enforcement.

Election contestants are granted 15 minutes of free airtime on state radio and television to present their campaign programs. Because of COVID-19 restrictions, these opportunities had heightened importance, giving parties an opportunity to impart their messages to the public. However, several parties condemned the UEC's censorship of their campaign messages as part of a legally required preview of scripts. As many as 10 political parties gave up their airtime in protest against what they considered to be undue interference by the UEC with their right to freedom of expression. Many of the changes mandated by the UEC did not appear to adhere to international obligations regarding freedom of expression.¹⁸

Seventy percent of political parties and candidates interviewed in states and regions reported that the campaign conditions were equal for all contestants, while 62.5% reported that they themselves could campaign freely. Among those who described campaign conditions as unequal, the main concern was that the ruling party had an advantage because of greater access to venues. Overall, the UEC was reported to have facilitated contestants' access to public meeting venues, with only rare rejections based on COVID-19. However, cumbersome approval procedures were noted in some cases, while considerably increased costs associated with the conduct of COVID-19 compliant campaigning were also reported by several parties.

Over the last days of the campaign, public exchanges between the military and the president's office over the competency and transparency of the UEC escalated. Initially triggered by earlier announcements of postponed and cancelled elections, the exchange reignited over the organization and administration of advance voting. The military alleged UEC errors in the conduct of the elections, questioned the UEC's impartiality, and suggested that the government was ultimately responsible for ensuring the credibility of elections. The president's office issued a lengthy statement to rebut the allegations, leading to a response by the military about issues of constitutional interpretation. The exchanges raised concerns over the military's intervention in the election process.

Electoral Security

The campaign environment outside the conflict zones was reported by interlocutors to be generally calm and peaceful. However, there were isolated instances of violence and clashes between NLD and USDP supporters, including one fatal incident. Two incidents involving explosives occurred in Nay Pyi Taw and Bago Region and were seen by stakeholders as attempts at election-related intimidation. Acts of vandalism and destruction of campaign signboards were reported; however, these were not widespread and did not appear to target any particular party.

¹⁸ ICCPR, Article 19. Media reports quoted a number of lines that party leaders said were cut. For example, the People's Party was told to cut the sentences "Local entrepreneurs are now facing major hardships in competing with foreign investors because of high bank interest rates. In collecting tax revenue, we will make sure to broaden the base for collecting taxes to avoid tax burdens and create a simple and fair tax revenue system." See Radio Free Asia, Sep. 30, 2020, at www.rfa.org/english/news/myanmar/party-censorship-09302020201609.html.

Electoral security committees (ESCs) were formed in all townships in each state and region. However, several stakeholders noted that ESCs did not play a sufficiently active role in ensuring a secure environment during campaign events and attributed this to insufficient communication by the UEC and political parties with the police and ESCs.¹⁹ In several townships in Kachin and Shan states where ethnic political parties were campaigning, there were reports of threats, interference, and special campaign rules being imposed by the military, militia groups, local border guards, or ethnic armed organizations.²⁰ In Rakhine State on Oct. 14, three NLD candidates were abducted by the Arakan Army. Overall, 19% of political party interlocutors reported having encountered some form of violence, intimidation, or interference with their campaign efforts.

Social Media

The Carter Center is observing the impact of social media on the elections, with a specific focus on Facebook as Myanmar's primary social media platform. The significant increase in the number of platform users since 2015 (over 350%) intensified concerns in the preelectoral period about potential abuse, including the use of fake accounts, misinformation, disinformation, hate speech, and speech that could increase the risk of violence.

Most political parties and many candidates actively used Facebook to reach their constituents.²¹ Contestants generally refrained from using negative rhetoric or attacking opponents on their public pages or profiles. Negative content was generally found on groups and pages not directly linked to parties or candidates. Activity across party and candidate accounts increased rapidly as the official campaigning period began and remained at a high level until the campaign silence period. Based on Carter Center analysis, election-related activity on Facebook was substantially higher during this campaign than in 2015. Nevertheless, according to a survey conducted by the People's Alliance for Credible Elections (PACE), traditional media and institutions remain the main source of news for a sizeable portion of citizens.²²

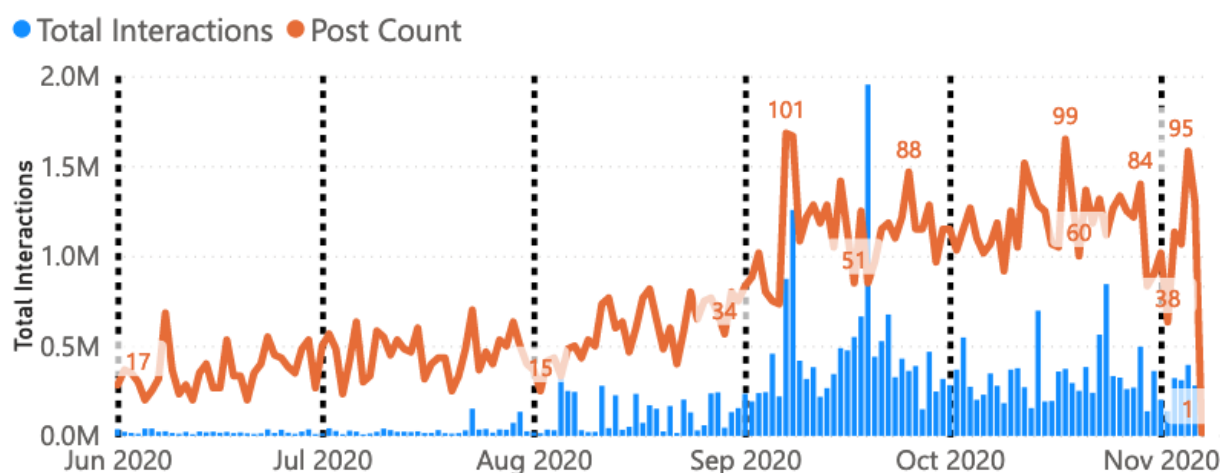
¹⁹ See New Myanmar Foundation Recommendations on Electoral Disputes, Conflicts and Security for the 2020 General Election, dated Oct. 29. See also www.mizzima.com/article/nmf-survey-finds-electoral-security-support-weak (accessed on Nov. 8.).

²⁰ For instance, the Ta'ang National Party (TNG) reported harassment and restrictions on campaigning imposed by the Restoration Council of Shan State/Shan State Army-South (SSA-South) in some areas, including Mongkai township. TNG also experienced attempts to prevent them from campaigning in Kutkai (Shan State North) and reported restrictions in nearby Kyaukme Township because of armed conflict. Separately, militia members in Kutkai and Muse townships were alleged to have instructed voters on how to vote and threatened to disrupt voting. Four parties reported restrictions in four village tracts in Monghsat (Shan State East) controlled by United Wa State Army (UWSA).

²¹ Based on Carter Center analysis, 78% of parties and at least 37% of candidates for the Union Parliament had a Facebook account in some form during the elections.

²² See www.pacemyanmar.org/pre-election-2020/?fbclid=IwAR3xUjG5QHBDiG14rMWEs11Y7NNemf1xMN51XAqFS0pp-D3xW-m-xfteBo.

Figure 1: Posts and Interactions Across 20 Political Party Pages on Facebook²³



From Aug. 1 to Nov. 8, the Carter Center's social media monitoring identified instances of election-related disinformation (defined as deliberately making false, misleading, or unverified claims) being shared across Facebook, accessible to millions of users.²⁴ Posts containing disinformation often attacked a political party or candidate (mainly NLD or USDP candidates), frequently included hate speech directed at ethnic or religious minorities, and occasionally went viral (i.e., reaching a large audience quickly). At times, this information was posted by accounts that were, or appeared to be, coordinating to spread election disinformation and hate speech.

Harassing and hateful content directed at candidates was also observed throughout the campaign period. In some instances, women candidates were attacked in posts containing sexist and other derogatory language. Myanmar's first openly gay candidate also faced online harassment. In the last week of the campaign, monitors observed an increase in the number of posts about advance voting, with many spreading concerns about potential problems, and some including disinformation intended to undermine the credibility of the process and the election administration.

The legal framework does not contain specific provisions to regulate online campaign activities, although several provisions can be interpreted as applicable. In at least two instances, electoral authorities warned of legal action being taken against those sharing disinformation on Facebook.²⁵ The voluntary code of conduct signed by 65 political parties also covered online activities by parties and candidates. On Nov. 3, the UEC issued an announcement that campaign silence provisions also applied to online media and social networks.

²³ Data Source: CrowdTangle for the 20 political party pages with the highest number of interactions between Jun. 1 and Nov. 7, 2020 (Data as of Nov. 7).

²⁴ Disinformation is defined as deliberately making false, misleading, or unverified claims.

²⁵ On Nov. 4, the UEC announced that the sharing of disinformation on Facebook is in violation of section 58(d) of the relevant Hluttaw Election Law, see www.gnlm.com.mm/announcement-about-spreading-election-disinformation/ (accessed Nov. 5). On Oct. 30, the Magway Region subcommission made an announcement about taking legal action against those sharing posts containing disinformation about a township-level election officer. The announcement appeared on the subcommission's verified Facebook page. See: www.facebook.com/111092773953507/posts/172507301145387/ (accessed Nov. 5).

Civil Society and Election Observation

Positively, the 2020 amendments give observers a legal right to observe the electoral process. However, several changes to the UEC procedures in the runup to the elections raised concerns about the ability of citizen observers to access key aspects of the process and to conduct their activities freely. This included the removal of guarantees of protection and security, the withdrawal of permission to observe the printing of ballots and the resolution of election disputes, and the introduction of a requirement for citizen observers to preregister with subcommissions to be able to observe.

Additional accreditation requirements imposed on civil society organizations receiving international funding caused delays in accreditation and the beginning of observation activities by PACE and other organizations. The requirement communicated to international observers and diplomatic missions to disclose precise plans for election day deployment constitutes an unjustified limitation on the work of observers and undermines the transparency provided by independent election observation.

The UEC accredited 8,416 domestic observers from 12 CSOs and two CSO networks, and 137 observers from two international election observation missions — the Asian Network for Free Elections (ANFREL) and The Carter Center — as well as an election expert mission from the European Union, plus observers from diplomatic missions and service providers.

The Carter Center spoke with 176 interlocutors from 32 CSOs, and 83% of them stated that COVID-19 restrictions had impacted their activities and access to the process. Nevertheless, the majority reported having participated in voter roll updates, observed candidate registration, engaged in voter education and information activities, and continued to observe the campaign.

Electoral Dispute Resolution

The law grants the UEC extensive powers to adjudicate complaints and appeals on all matters pertaining to elections. Contrary to international standards guaranteeing the right to an effective remedy, the decisions of the UEC are final and conclusive, and are not subject to judicial review.²⁶

Allegations of minor campaign violations and breaches of the political party code of conduct were addressed by election mediation commissions established by the UEC. As an additional self-regulatory oversight mechanism, the campaign behavior of the 65 parties that signed the political party code of conduct was monitored by a committee of its signatories. Although decisions were not binding, parties and candidates found both mechanisms effective for diffusing tensions, building consensus, and addressing issues of

²⁶ The UDHR states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law," (Article 8), and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations" (Article 10). The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy..." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

minor misconduct and accusations.²⁷ Alleged or established perpetrators were asked not to repeat the behavior addressed by the complaint.

The UEC published an election dispute guide with templates for filing complaints and discussed dispute resolution with civil society and political parties, contributing to transparency around the procedures for complaints and appeals. However, the UEC did not disclose the number and the nature of complaints filed at the union and lower levels or the efforts taken to address them. This detracted from the transparency of the process.

The law provides long timeframes – 45 days from the announcement of results – for the submission of postelection complaints with election tribunals to be established by the UEC. There are no deadlines for the review of complaints. Costs associated with the filing of postelection complaints and appeals remain prohibitively high.²⁸

Advance Voting

The election law allows for out-of-country voting (OCV) and out-of-constituency and in-constituency advance voting. OCV took place at some 45 embassies and consular offices abroad between Sept. 24 and Oct. 27. Over 100,000 citizens registered for OCV, an increase of over 300 percent from 2015, and an estimated 70 percent of those voted.

Out-of-constituency advance voting by students, detainees, hospital inpatients, military and their families, and other voters stationed outside their constituency was undertaken from Oct. 8-21. Its administration by the respective institutions remains opaque. Just as in 2015, this process lacked safeguards to ensure the secrecy and integrity of the vote, particularly for military personnel. Positively, based on a 2020 amendment to the bylaws, these voters were marked in the voter roll for election-day voting as a safeguard against potential multiple voting. Persons unable to return to their permanent residences because of COVID-19 travel restrictions voted at their temporary locations between Oct. 25 and Nov. 7.

In-constituency voters had an opportunity to cast advance votes at ward and village election subcommission offices. In addition, because of COVID-19, the UEC extended the right to vote at home to include those who were 60 years of age and above and who were in townships under stay-at-home orders or lived in densely populated areas. Homebound voting was carried out between Oct. 29 and Nov. 5.

Although a welcome measure to facilitate participation, the procedures for voting from home were criticized by some stakeholders as needing greater safeguards for secrecy and integrity of the vote, including for assisted voting. Concerns included unclear or inconsistently applied procedures, poor transparency, and absence of indelible ink, as well as the low quality of secrecy envelopes. The UEC dismissed some of the concerns as incorrect. However, it acknowledged and acted on several cases involving instances of multiple voting and the use of an unofficial stamp to mark the ballots. It also announced

²⁷ At least 43 disputes were mediated by EMCs, dealing primarily with disturbance of campaign events (49%); illegal campaigning (20%); undue influence, violence, or threat (11%); and hate speech (7%).

²⁸ It costs 500,000 Kyat (about US\$380) to file a complaint with the UEC, and 300,000 Kyat (about US\$230) to appeal against an election tribunal's decision. Respondents wishing to counterclaim against the applicant must also pay a fee of 500,000 Kyat.

that administrative errors and the poor quality of materials would not impact the validity of advance votes.

Voting, Counting, Tabulation

Silence Period

A campaign silence period began at midnight on Nov. 6 and continued through election day. It required silence on social media as well as the removal of publicly displayed campaign materials. The mission observed that the silence period was nearly universally observed by candidates and political parties. The Carter Center's social media monitoring team identified infractions on Facebook pages apparently managed by two parties and 20 candidates.

Election Day

Throughout the country, election day appeared to proceed calmly, with no major irregularities reported. Carter Center observers were deployed to 10 of the 14 states and regions (all but Rakhine, Kayah, and Chin states and Tanintharyi Region). As of the evening of Nov. 9, the UEC had not announced final voter turnout figures.

Mission observers were present for the opening of 19 polling stations. All opened no later than 6:15 a.m. Almost all stations had between 30 and 100 voters waiting in the queue. Overall, opening procedures were assessed positively in all polling stations observed. With a few exceptions, such as not showing the ballot box to be empty and not reading aloud ballot box seal numbers, established procedures were followed in the polling stations observed.

Mission observers visited 234 polling stations. They estimated that most voters spent an average of 30 minutes in a queue and took nine minutes to be processed and to cast their vote. Candidate agents were present in 98% of stations observed, while citizen observers were present in 31%, with access to polling stations rarely a problem. COVID-19 mitigating measures, particularly social distancing, were followed inside of polling stations, although this was challenging in some sites because of infrastructure. In lines outside polling stations, voters did not always comply with social distancing measures. Personal protective equipment was available at almost all polling stations.

Voter lists were displayed outside polling stations in almost all cases. In one instance, 82 voters were not on the voter roll, but most were permitted to vote after presenting voter slips or ID cards.²⁹ The media also reported that some voters were missing from lists for ethnic affairs minister races in Mandalay and Yangon regions. Mission observers noted that names of voters who had voted in advance were underlined with red pen in the voter roll in nearly 92% of polling stations observed. Form 13, which contains advance voters' names, was published outside nearly 82% of polling stations observed.³⁰

²⁹ Voters are recorded in up to four voter rolls (one per election race) in each polling station. These voters were reported to be found on other voter rolls and were therefore allowed to vote in a race in which they were not listed.

³⁰ Form 13 was not published in 18.4% of stations observed, and in 8.8% of polling stations observed, advance voters' names were not underlined in the main voting roll (Form 1).

The election environment and conduct of voting were assessed as very good in 54% of the 234 polling stations observed and as reasonable in 41% of those stations. Mission observers characterized the overall process as smooth and transparent, with a high level of compliance with procedures. However, observers witnessed some problems where the layout of polling stations was not in accordance with regulations. This sometimes led to problems complying with COVID-19 mitigation measures (38 cases); at other times, the layout did not effectively facilitate the flow of voters (25 cases); and in other places there was an insufficient number of staff working at the polling station for an efficient and orderly process (11 cases). Voters' understanding of the procedures was assessed as inadequate in 30 cases, which may indicate lack of voter education.

In 96% of polling stations observed, polling station staff demonstrated very good or reasonable understanding and implementation of the voting procedures. Carter Center observers reported that in 23 stations, voters were not always checked for traces of ink on their fingers. In 12 cases, voters were turned away for not having an ID card or voter slip. Procedures such as the signing of voter lists and ballot counterfoils were adhered to, with few exceptions. In all seven cases where voters asked to replace accidentally spoiled ballots, they were granted a new one. Observers noted problems with casting ballots in secrecy in six stations.

The UEC announcement that deregistered UDP candidates still appeared on ballot papers was displayed at 78% of polling stations observed. There were 85 reported problems with assisted voting, while 36% of polling stations observed did not appear accessible for physically disabled persons.

The polls were scheduled to close at 4 p.m. or after voters in queue had been given the opportunity to vote. Polling stations could close early if all voters on the voter roll had voted. Closing procedures were well adhered to in the 19 polling stations where closing was observed. The vote count was assessed positively in all but one of the 18 polling stations where it was observed.³¹ Counting was transparent, and candidate and party agents were present at all counts observed, while citizen observers were present in half. Isolated cases of interference in the counting process were noted in three instances, two by candidate or party agents and once by a citizen observer.

The initial stages of the tabulation process were observed in 13 township subcommissions. Tabulation was assessed positively in 10 cases. The remaining three cases were assessed negatively because mission observers had limited or no access to the tabulation premises and the process in Kyaikto (Mon State), Kengtung (Shan State), and Magway (Magway Region) townships. Mission observers also noted one case of significant disorder. Party and candidate agents were present in 12 and citizen observers in eight of the township subcommissions observed. Independent access for persons with disabilities was not available in five township subcommissions observed.

³¹ Counting in one polling station in Mon State was assessed negatively because procedures were not followed correctly, and party agents interfered in the count.