

Myanmar 2015 General Election
Assessment Mission Analysis
01-12 September 2015



Asian Network for Free Elections (ANFREL)

From the 1st to the 12th of September, ANFREL carried out a two-person exploratory mission to assess the pre-election period in Myanmar before the November 8th General and Local Elections. The team had meetings and conducted interviews with a wide variety of Election Stakeholders throughout the course of their visit. In all, the mission provided a very helpful head start for ANFREL's Election Observation Mission Planning and gave vital political and electoral background to the two members, ANFREL's Chairman and one of its analysts, that they in turn shared with the rest of their mission.

Over the course of the two weeks, the team met with the Union Election Commission Chairman U Tin Aye and UEC Commissioners in Naypyidaw to assess the UEC's election preparations, to help push through ANFREL's observer accreditation, and to ask important questions about access for ANFREL's observers to important parts of the election process, in particular advance voting. More locally, ANFREL also met with U KoKo and his deputy from the Yangon Election Sub-Commission to find out how the commission was dealing the challenges of preparing for an election in a city like Yangon where many migrants living in the city are not registered to vote and where complaints from some parties allege massive inaccuracies in the voter list.

The assessment team also met with both pro-government and opposition parties including, importantly, multiple parties representing some of the various ethnic groups around the country. To get a non-political view of the election, the team also met with several local election related Civil Society Organizations, including the largest domestic citizen election monitoring organization, a women's group training women to be candidates and leaders, a lawyer's group that's assessing and observing the electoral law and its implementation, groups collecting and distributing electoral information, and journalists' association members that provided assessments of the media and its ability to report on the elections. Finally, the team met with several INGOS that are supporting or conducting analysis of the election. They provided a helpful outsiders' view of the state of preparations in the area where they are concentrated.

The team's visit overlapped with the beginning of the country's Campaign Period and came during one of the crucial final periods for voters to check the voter list and make corrections where needed, a frequent topic of discussion and issue of concern for interlocutors during the various meetings. In all, the assessment provided the kind of longer term perspective that ANFREL needs for all its missions. To have analysis from more than 2 months ahead of the election itself during particularly vital steps in the process such as candidate registration and voter list cleanup was invaluable for ANFREL's gaining perspective about the process, being able to brief our observers, and enrich our analysis and eventual mission findings.

Assessment Mission Findings:

To begin on a positive note, there is a widely accepted consensus that conditions for the holding of a democratic election are much better now than in 2010. This assessment is shared by political parties and candidates, civil society heads, political analysts and election

observers we have interviewed thus far. A number of reasons for the better environment were given.

1. The Election Union Commission (UEC) is admittedly more transparent and independent now than the one in 2010.
2. The UEC has been significantly more engaging with the various election stakeholders. Hence, it was able to come out with a Code of Conduct for political parties and candidates. While it is a non-binding document, it expresses the essential norms that the parties and candidates need to observe to contribute to a credible election.
3. Unlike in 2010, the UEC has now opened itself to the active participation of election observers both domestic and international. Our meetings with the political parties and candidates welcomed this as a healthy development in bringing about a credible and inclusive election. This was particularly appreciated by the smaller parties who for lack of resources cannot field party agents in all the polling stations throughout the country.
4. There is likewise a consensus that the media, the candidates and civil society organizations enjoy much more political space now than ever before. They enjoy relative freedom of speech, movement and assembly.
5. The UEC seems to be making a sincere effort to create voters' list that is as complete and accurate as possible using data sourced from the Ministry of Immigration and Population. That said, It has been found that the initial list made contained substantial and worrying numbers of errors. Hence, the need to post the list in public places and invite voters to check if their names are there and if they are correctly listed.

ISSUES of CONCERN

1. Voters' List

Almost all interlocutors the team met with expressed concern about the accuracy and completeness of the voters' list. The list as earlier released had many deficiencies.

- a. Missing names
- b. Errors in the entries such as spelling of names and other data such as sex, date of birth, etc.
- c. Dead persons that are still in the list

Again, while the list has been admitted by independent observers (the Carter Center for one) as much improved compared with the 2010 list, it seems likely that a substantial number of voters who go to the polls will not be allowed to vote because their names are not in the list. This fact will surely pose a question on the legitimacy of the election. The accuracy rate of the Voters' List is unclear. Opinions vary from as low as 30% to as high as 70% depending on whose opinion is sought. The NLD says its error rate is as much as 70% while the sub-commission of Yangon admits to an error rate of 25 - 30% but claims that those errors are mostly simple ones like misspellings, etc. and claims that most of the errors have been corrected.

There are, ANFREL believes, well founded worries that the relatively low levels of voter awareness about this process and inadequate outreach and resources at local sub-

commission levels to support this type of mass list correcting will lead to many errors remaining on the list and not getting corrected in time. If the resources were available and planning had been done far enough in advance, ANFREL would have liked to see the UEC conduct a more thorough active voter registration given the conditions of the country and the difficulty to travel and lack of awareness found in many local areas.

2. Advance Voting

As ANFREL reported in 2010 and as was re-confirmed by numerous interlocutors, advance voting lacked transparent and proper safeguards to prevent abuse. Such loose management of the advance vote process led to what seemed to be widespread abuses. As one candidate said, “At 8:00 pm on election day, I was winning by a wide margin. I and my supporters went home, happy at the thought that we won the election. The day after, I was told that I lost. The reason given was the results of the advance voting”. This candidate’s story is one that was repeated in many places all over Myanmar. As there were over six million advance votes cast in 2010, it is perhaps unsurprising that advance votes happened to change the outcome of many local races.

Fortunately, the process for 2015 has received a lot of attention and, while it’s still possible the process will be abused, there are at least a few more safeguards and more transparency. Among them, advance votes from in-constituency must arrive at their local PS by 4pm on Polling Day so they can be counted together with the others. Lists of those persons that advance voted are to be posted at the Polling Station and the count from their votes is to be dis-aggregated and posted separately from the normal PS votes. Out-of-constituency votes are also due to arrive at the Township office for transparent counting when polls close on E-Day.

That this is progress cannot be denied. Still, out-of-constituency voting does present some concerns due to a lack of UEC procedural control over voting on military bases and some other government installations. Observers lack of access to these areas is emblematic of the wider lack of control the UEC has over the voting procedures at some government bases, centers, and offices. The opaque advance voting within these areas is the largest lingering concern about advance voting and it remains unaddressed. When ANFREL inquired with UEC Chairman U Tin Aye, he acknowledged that allowing ANFREL access to military base voting would be “very difficult”. The UEC’s inability to regulate polling in these types of places, foremost among them military camps, is a sizeable risk to the sanctity of the advance vote in particular and the election in general.

Like the broader election itself, the issue of Advance voting offers both reasons to be optimistic and acknowledge progress while at the same time hold legitimate worries about the integrity of the process.

3. UEC & Sub-Commission Operation

There is need to improve the lines of communications between the UEC and the Sub-Election Commissions and lower levels in the various states. Too often, decisions from the UEC are not properly communicated to the lower levels. This too often leads to a failed or incomplete implementation of UEC directives that can result in an uneven

playing field and/or lack of clarity for local officials, parties and candidates. Those smaller parties who are based outside of the capital that have difficulty to attend the meetings at the UEC office in Naypyidaw are at a particular disadvantage.

In general, anecdotal evidence from our interviews reveal local sub-commissions that lack capacity and less often, the will, to implement and enforce some election rules. This leads to a great deal of variation in the procedures followed across the country which can lead weaken the perceived professionalism of the UEC and the fairness of the election itself. It all generally points to the idea that more training and resources are required for local staff members.



4. Voter Education

While there were some significant voter education efforts made, ANFREL believes that there's a need for more, particularly in a country that hasn't had competitive national elections for twenty-five years. Efforts like that of the Serenity Initiative that ANFREL met with are laudable but they need more resources and support to reach every potential voter in a medium and language appropriate to the local population.

5. Constitutional Limitations

There remain very significant worries about the fairness of the electoral framework itself, starting with the 2008 constitution. In particular, the granting of 25% Military appointed seats in both the upper and lower houses of parliament is a non-democratic anomaly that limits the impact of the election and the people's ability to choose their own leaders.

For the sake of efficiency, ANFREL has chosen to in this assessment focus less on these well known shortcomings even though the military will retain significant control over important ministries and much of Myanmar's governing apparatus no matter who wins the election.

6. Campaigning

The campaign environment is yet another area where conditions are drastically better than in 2010 but still far short in a few important areas. Among them is the restriction that a candidate may not criticize the military establishment. Another limitation or bureaucratic challenge we heard complaints about is that when a political party applies for a permit to hold a campaign rally, the designated speakers have to seek approval on the topics and issues they'll speak on multiple days in advance. While we are unsure about their enforcement, the guidelines to apply for permission to hold a campaign rally are, in general, burdensome for some parties.



ASSESSMENT of INTERVIEWS MADE

We have met with several interlocutors – the election commission (central and regional), party officers and

candidates, CSO heads, INGOs, local EMOs and of course members of the media. Here are some observations:

1. There appears to be a prevalence of confusion on several issues. Different interlocutors we met have confusing if not conflicting positions on vital issues in the elections such as the Voters' List; Advance Voting; polling stations in military camps; etc.
2. On similar questions made with the UEC in Nay Pyi Taw and the sub-election commission in Yangon, we got divergent answers such as observing the voting in military camps. The Yangon EC seemed to indicate that ANFREL would be able to observe polling on military bases while the UEC Chair and others have indicated that that would not be possible.
3. The sub-elections commission do not have the confidence of the public since they are mostly from the military and therefore partial to the USDP. (Most of the political parties and CSOs).
4. A number of politicians are exploiting the issue of race and religion, directed against the Rohingya population in particular and the Muslim community of Myanmar in general. The Ma Ba Tha (a strong lobby group of Buddhists) is campaigning openly against candidates who promote religious tolerance. While the campaign code of conduct restricts the use of religion in this way, the UEC points out that they only have narrow jurisdiction over parties and candidates.

Related to the Ma Ba Tha campaign, Diplomats and CSOs expressed concern over the withdrawal of 'white cards' that effectively disenfranchised the holders who are mostly Muslims. This move was obviously made to appease the militant Buddhists from the Ma Ba Tha.

5. There were two reasons given by the UEC and the lower levels for the rejection of candidate nominations. These are citizenship and age. "Underage" as ground for rejection is a bit strange. It implies that the aspiring lawmakers do not know the law regarding qualifications. On the issue of citizenship, cases where voting rights were given in the past but were denied this time raised questions about the process for disqualification. Evidence exists that in some places enforcement of these laws and their application to both citizens as well as candidates registering to run was unequal.

RECOMMENDATIONS

1. The UEC has to release the mechanics, rules, and procedures of Advance Voting as soon as possible. To enhance credibility of the process, it must allow observers to witness each step of the process – the voting, the security and custody of the ballots, the counting and consolidation of the results. Concerned Local groups and the International Community should strongly advise that, given the events of 2010, transparency here is absolutely necessary and a failure to open up this

process will have wide-ranging consequences for the election itself. By being more transparent, the UEC can allay some fears of the opposition parties that the Advance Voting will be used again as a tool to manipulate the results of the election.

2. The UEC has to issue guidelines on the treatment of errors in the voters' list. These guidelines have to be proactive so as to promote the principle of participation and non-discrimination. That said, the issue of disenfranchisement of those previously issued with temporary registration cards should also be settled. If they were able to vote then (2010), why not now?

While this is obviously to some degree a political issue more so than an electoral one, ANFREL strongly believes that mass, group disenfranchisements such as that seen in some parts of Myanmar have a critically negative impact on the Election Process, its inclusiveness, and its ability to properly represent the desires of the people of Myanmar. From a strictly electoral standpoint, ignoring any broader human rights concerns, if the Government wants to apply very strict citizenship standards for voting eligibility, it should at the very least have a proper process and equal enforcement of that harsh law. In this case, such a process was not followed, with unequal enforcement and investigations into the backgrounds of citizens and candidates before ruling them ineligible. As citizenship has been conveniently used to deny the nomination of some candidates particularly the Muslims. The next parliament should consider enacting a measure to define/clarify who the citizens of the country are and apply a fair standard to all.

3. The role of the military not only in elections but in the life of every citizen is a sensitive issue. The UEC can help defuse the animosity of the public towards the military, through the following measures:
 - a. The list of advance voters of the military must be made transparent
 - b. There should be no polling done in military camps/installations
 - c. The military personnel should be confined to barracks on election day except when they go to the polls to vote
4. The UEC should release an Election Calendar of Activities which is standard practice in many countries in Asia. This will guide the various stakeholders and allow them to synchronize the planning of their activities with that of the UEC.
5. The UEC has to continue with improving the voters' list during these last few weeks before the elections. A very low turnout often times presents a question of legitimacy of the election. Tri-media, Civil Society, and political parties must be employed to inform the public to check whether their names are in the list and that these are correctly listed.
6. While a census based voter registration is said to be the most accurate, it is suggested that a general voter registration be conducted for the next election if the public does not trust the census.

7. The national cease-fire should continue to be pursued and, when conditions allow, by-elections in those areas with cancelled elections should be held as soon as possible. The criteria for cancelling elections in certain areas should also be released. More public consultation with political parties from the effected areas should be pursued and the reasoning behind determinations to cancel in some areas while remaining open in others should be released.