

Myanmar's 2015 General Elections: Structure, Process, and Issues

BACKGROUND - November 2015



Photo: Freedom House/CC

SUMMARY

The second general elections since the beginning of Myanmar's political transformation toward a multiparty democracy will take place on November 8. This year's election will comprise all opposition parties and domestic and international expectations are high. Due to the complex electoral system and the large number of parties taking part, scenarios regarding the outcome are difficult to predict. Yet, during this new chapter in Myanmar's reform process, the government has the opportunity to demonstrate that it can stage free and fair legislative elections. Most observers, however, will regard the presidential nominations in early 2016 as the stepping-stone for future progress. This paper outlines the basic structures and procedures of the election, how they relate to the current governance system, and what the key issues of concern might be.

Elections and Roadmap to Democracy

In 2003, Myanmar's military government laid out a roadmap for the transformation of Myanmar's political system to democracy. The seven-stage

model involved the establishment of a National Convention, the drafting of a constitution, staging of elections, and the convening of a parliament (Hluttaw). After a constitutional referendum, the first elections were held in November 2010.

The 2010 elections were held in line with the new 2008 constitution. Yet the elections, which were won by the newly formed United Solidarity and Development Party (USDP), were criticized on various grounds. Key arguments were related to impartiality and fairness of the provisions by the Union Election Commission (UEC) regarding fundraising, eligibility, and issues of election observation. New procedures for the ballots have since been introduced and access for international observers been granted.

In 2012, a by-election was held in order to fill 45 vacant parliamentary seats. Forty-three of the seats were filled by the opposition National League for Democracy (NLD) which ran in the election. The election was open to observers from a range of

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from a range of countries including ASEAN states, the U.S., and the EU, among others.

Ninety-one parties have registered to compete in the upcoming general elections on November 8 with many consisting of newly formed parties. In particular, the Regional/State Assemblies in seven ethnic states (Shan, Mon, Chin, Kayah, Kayin, Kachin, Rakhine) and seven Bamar Divisions (Magway, Bago, Ayeyarwady, Sagaing, Tanintharyi, Yangon, Mandalay) have gained special attention. The ethnic parties regard regional representation as important because a large number of the ethnic parties and ethnic voting blocs (NBF, UNA, FDA)¹ are competing both on a national level and in the regional assemblies; they also regard the regional assemblies as a stepping stone toward federalism.

The major national parties, meanwhile, including the NLD and USDP, have laid increasing emphasis on the regional assemblies and nominated candidates in ethnic states where they are contesting for the positions of ethnic affairs ministers. This is seen to be controversial as Bamar-majority parties are not viewed as necessarily representing ethnic interests.

Within the framework of Myanmar's transition process, however, two key issues remain items of contention:

- Similar to the former Indonesian *dwifungsi* transition model, provisions in the constitution ensure 25 percent of the seats in the Hluttaws are reserved for Defense Services personnel.² The model is intended to guarantee a gradual and stable transition from military rule to democratic governance. Meanwhile the key issues of resolving the country's ethnic conflicts and building state institutions are essential for democratic progress. One of the key issues is that according to Article 436 any amendments to the constitution require a 75 percent parliamentary majority. Additionally, key ministries (defense, home affairs, border and security affairs) also remain under the auspices of the military as they are directly appointed by the

Commander-in-Chief of the Myanmar Defense Services.

- Article 59(f) of the 2008 constitution states that Burmese nationals who are subject to a foreign power in one way or the other are not eligible to become president.³ Further specified is that any candidate with family relations with foreign persons is barred. Without a constitutional amendment, this automatically bars NLD party-leader Aung San Suu Kyi from becoming president.⁴

The Election System: Structures and Procedures

The elections are overseen and implemented by the Union Election Commission. The UEC leadership must be comprised of at least five commissioners, each of whom is appointed by the president. At present, eight commissioners have been appointed. The UEC was set up as an independent body. The commissioner must be at least 50 years old and not be a member of any of the political parties or a serving parliamentary member. However, previous members of parliament are eligible.

Legislative structures and the election

The general elections are primarily legislative elections. The legislature consists of three bodies:

- Lower House (Pyithu Hluttaw): 440 (330 elected) seats
- Upper House (Amyotha Hluttaw): 224 (168 elected) seats
- Regional/State Assembly (7 Ethnic States, 7 Bamar Regions): 644 elected seats (an additional 29 seats from Self-Administered (ethnic) Zones are directly elected and nominated according to Article 161 of the constitution).

Twenty-five percent of seats in all assemblies are reserved for military personnel who are appointed by the commander-in-chief. These seats are therefore not contested in elections.



Government (Executive) structures and nomination

Presidential selection process

The Presidential Electoral College (PEC) chooses the president. The college consists of three groups: two of which are comprised of elected representatives in the Upper House (168) and the Lower House (330), and a third comprised of appointed military representatives (110+56) from both houses. The vote needs to be based on an absolute majority. Each of the groups nominates a candidate.

The winner becomes president while the two defeated candidates become vice-presidents.

Appointment of ministers

The Commander-in-Chief of the Defense Services provides a list of suitable candidates from the defense personnel for the ministerial positions of home affairs, defense, and border affairs.

Chief ministers are appointed by the president following the PEC selection procedure.

Special provisions for ethnic minorities

Self-Administered Zones elect their own ethnic affairs ministers. Chief ministers in the regional assemblies are appointed by the president.

Election process

Myanmar's legislative election is based on a First-Past-The-Post (FPTP) system. The candidate who receives the most votes in each constituency wins a seat in parliament.

Voters cast three separate ballots for candidates to the Lower House, Upper House, and regional assemblies (in SAZs an additional ballot is cast for the ethnic affairs ministers).

The constituencies are demarcated in line with the 2008 constitution and are structured as follows:

- Lower House: The seats are distributed almost proportionally according to population. Each township (330) constitutes a constituency.
- Upper House: Each of the 14 states/divisions is represented with 12 seats. The divisions are subdivided into administrative areas, regardless of population size. The system is thus non-proportional.
- Regional: Each township is represented with 2 seats.

Election Eligibility and Procedures

Eligibility

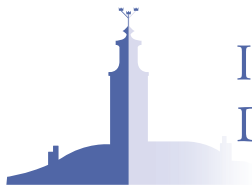
Voting is not compulsory. All citizens (whose parents are Myanmar nationals) who have reached the age of 18 are eligible to vote.

Notable exceptions include members of religious orders (monks), persons serving prison terms, and temporary white-card holders³ (the Rohingya minority are provided with such cards as well as migrant workers).

Voters primarily identify themselves with a National Identification Card. But the guidelines are not strict and other forms of identification might apply.

Procedures

- Voters will stamp ballots to elect a candidate for each of the 3 assemblies (and a fourth in the case of SAZs).
- Voters will subsequently have their left little finger inked.
- The ballots will be counted on site. Domestic and international election observers will oversee the process.
- After counting, the ballots will be collected in sealed evidence bags.



Parties: Registration, Nomination, and Campaigning

Parties operate under the provisions of the Political Party Registration Law of 2010. Parties need to have at least 1,000 members, 15 executive members, and run in at least three constituencies. Revisions to the law ahead of elections have excluded white-card holders from forming political parties and holding key party positions.

Parliamentary candidates are nominated by the political parties. The submission date was in mid-August 2015. The nomination process varies between the political parties.

The campaigning period is 60 days long and lasts from September 8 to November 6.

Estimated Timeline

- November 8, 2015: Election Day
- November 2015: Preliminary results released
- End of January 2016: Current legislative term ends
- During February 2016: Formation of PEC and the election of a president
- End of March 2016: Current administrative term ends
- End of March 2016: New administration

Party Agendas

So far the party system and campaigning still seem to be in their infancy. The agendas more or less reflect the lines between opposition and government. Correspondingly the election manifestos contain issues of the political transformation such as constitutional changes. Neither the USDP nor NLD have published any concrete statements on existing social issues or how they seek to address them. While documents list broad themes (education, reforms, economic upturn, judicial fairness, and so on), they are more declaratory about state-building rather than providing any clear policy

agenda.

Election Issues

During the run up to the elections, a range of issues have been raised as to whether the process will be fair. Compared to the 2010 general election, the election guidelines and procedures are more in line with international standards, and a high number of international observers (150 from the EU alone) will be present to observe the election. There will also be around 16,000 local observers. While Myanmar's "transition model" and constitution remain items of contention (*see* Elections and the Roadmap to Democracy), the following concerns exist:

Non-proportional voting

Representation in the Upper House will be according to administrative areas and therefore not proportional according to population. Furthermore, whereas during the first legislative period the government sought to introduce a system of proportional representation, this move was rejected by the NLD and several ethnic parties.⁶ Thus, the current electoral system for the Lower House precludes greater representation and pluralism.

Party funding and transparency

The government has under its principle of Disciplined Multi-Party Democracy permitted political parties to form businesses as a means of fundraising. A set of rules is supposed to guarantee the transparency and fairness of party funding including financial records. Legitimate sources of funding are membership fees, donations of any kind from nationals, and profits from party-owned businesses.

Criticism has been raised for two reasons, however: (1) Many observers have criticized the strong



links between Myanmar's political elites and business interests, with the result that bigger parties, in particular, have greater financial advantages. At the same time, (2) the affiliation with private businesses would open doors for channelling international party funding. So far it is in the power of the UEC to audit party finances.

Voter education

Educating voters on electoral processes is particularly important as registration and voting are not compulsory. The first digitalized voter roll has been introduced for the 2015 elections with a strict window of opportunity to check and amend voter details between September 14-27. Campaigns initiated (through the UEC, international NGOs, and political parties) have attempted to raise civic awareness on voter registration, as the onus of responsibility relies largely on voters to check their details and submit any amendments. That is a huge challenge for low-income voters in rural locations who make up a significant portion of the population (almost 70 percent).

Eligibility

Holders of temporary white-cards have been disqualified to vote as well as to run as candidates in the elections. The system puts certain groups and particularly the Rohingya minority in the same category as migrant workers under the 1982 Citizenship Law and two sections of the election law: 8e prohibits people from running for office if their parents were not Myanmar citizens at the time of their birth; and section 10e requires candidates to have lived in the country for the past consecutive 10 years. Due to populist mobilization based on religious and xenophobic grounds, the topic has become a highly charged political issue that none of the established parties (government and opposition) have sought to tackle.

Cancellation

Due to ongoing fighting, it is reported that voting has been cancelled in over 400 village areas, predominantly in the border regions of Shan, Kachin, and Kayin States.

Notes

¹ Nationalities Brotherhood Federation, United Nationalities Alliance, Federal Democratic Alliance.

² These include Articles 109(b) and 141(b), which reserve 110 and 56 seats for military representatives in the Lower and Upper House, respectively.

³ The constitutional law resembles Article 74(I) of the post-colonial Constitution of the Union of Burma of 1948 and was originally intended to diminish foreign influence in the newly independent country.

⁴ Aung San Suu Kyi's late husband was a British citizen. She has two sons by him both of whom are also British.

⁵ White cards refer to temporary identification cards issued by the Myanmar government in 2010. This enabled holders to vote in the November elections that year. However, the government nullified the white cards on March 31 this year with the result that holders (mostly Rohingya) cannot vote in the upcoming elections.

⁶ The move was regarded as an attempt by the government to improve its chances in the upcoming elections. At the same time, the opposition parties may have hoped to gain more FPTP victories, as was the case during the 2012 by-elections.