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ELECTION OBSERVATION DELEGATION TO THE PARLIAMENTARY ELECTIONS IN BURMA/MYANMAR (8 November 2015)

**Report by
Ana GOMES, Chair of the Delegation**

Annexes:

- A- List of participants and programme
- B-Statement of Ms Ana Gomes
- C- Preliminary findings and conclusions
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INTRODUCTION

On 10 September 2015, the Conference of Presidents of the European Parliament authorised the sending of an Election Observation Delegation to observe general elections in Burma/Myanmar. These elections were scheduled for 8 November 2015 and would cover 75% of the seats in the two houses of Parliament of Burma/Myanmar (the *Amyotha Hluttaw* - Upper House, the *Pyithu Hluttaw* - (Lower House) and 75% of the seats in the State and Regional Assemblies. This represents 1,171 seats overall. Under the 2008 constitution the remaining 25% of seats are appointed by the Commander-in-Chief of the Defence Services.

The European Parliament Election Observation Delegation was composed of seven Members: Mr Lars ADAKTUSSON (EPP, Sweden), Mr András GYÜRK (EPP, Hungary), Ms Sandra KALNIETE (EPP, Latvia), Mr Goffredo BETTINI (S&D, Italy), Ms Rikke KARLSSON (ECR, Denmark), Ms Judith SARGENTINI (Greens/EFA, Netherlands) and Ms Ana GOMES (S&D, Portugal), who was appointed Chair of the Delegation at its constituent meeting on 28 September 2015.

The EP Delegation conducted its activities in Burma/Myanmar between 5 and 10 November 2015. In line with common practice, the Delegation was integrated within the EU EOM which had been present in Burma/Myanmar from 26 September 2015 and was led by Alexander Graf LAMBSDORFF, (ALDE, Germany), Vice President of the European Parliament. The EOM was supported by a core team of eight analysts and 30 long term observers. On Election Day, the EU EOM numbered 150 observers from all 28 Member States, as well as Canada, Norway and Switzerland. It represented the largest international observer mission in the country.

Other international observer missions present in Burma/Myanmar included the Carter Center, the Asian Network for Free Elections (ANFREL) and the Australian People for Health, Education and Development Abroad (APHEDA). Eight domestic citizen observation groups were also present.

The EP Delegation fully endorsed the findings of the EU EOM and underlined that these were historical elections for Burma/Myanmar. The Delegation welcomed the high turnout and the peaceful environment throughout the country and was impressed by the organisation of the process and by the professionalism and awareness of the staff in the polling stations. The Delegation nevertheless expressed its concern regarding the constitutional framework which underpinned the elections, including the fact that 25% of the seats in the Parliament were reserved for the military, as well as the political context, notably the high number of political prisoners and disenfranchised voters

The Delegation called upon the newly elected Members of Parliament to seize the opportunity for reconciliation in Burma/Myanmar and looked to strengthening cooperation between the two Parliaments. In particular the Delegation called upon the newly elected parliament to improve the democratic governance of the country and to promote a more inclusive society by addressing the increase in religious extremism and radicalisation and its effect on certain minorities and ethnic groups, in particular Muslim citizens - and specifically the Rohingyas.

The Delegation wishes to express its thanks to the Chief Observer, Alexander Graf LAMBSDORFF, Vice President of the European Parliament and his team for the excellent cooperation during the mission. It also warmly thanks the Head of the EU Delegation, H.E. Mr Roland KOBIA, his colleagues and the core team for their full support.

Members of the EP Delegation respected the Code of Conduct for Members of the European Parliament Election Observation Delegations, in accordance with the decision of the Conference of Presidents of 10 December 2009.

BACKGROUND¹

In August 1988 the people of Burma/Myanmar challenged the repressive military regime which had been in power since a coup in 1962. There were mass protest demonstrations led by students who were joined by Buddhist monks, and demanded the re-establishment of democracy. In September 1988 the movement was violently suppressed by the army. A new military regime was formed, which changed the name of the country from Burma to Myanmar in 1989 and announced polls. On May 1990, the first multiparty elections in 30 years were held and won by the main opposition party, the National League for Democracy (NLD). The military junta ignored the results and the leader of the NLD, Aung San Suu Kyi was placed under house arrest. On November 2005 the administrative capital was moved from Yangon to Nay Pyi Taw.

A new constitution was drafted in 2008 and was put to a referendum in May 2008, only a few days after cyclone Nargis had devastated parts of the country. According to the official data, the turnout reached 98% and 94.2% voted in favour of the new constitution. The NLD called the people to reject the constitution, which guaranteed the military 25% of the seats in both houses of the Parliament and the State and Regional Assemblies. The Constitution moreover reserved the key ministerial portfolios of home affairs, defence and border affairs to the military, which also had the power of veto on constitutional amendments. In addition it prevented anyone with close family ties to foreigners from becoming president, thereby excluding Aung San Suu Kyi who is the widow and mother of British citizens.

Following growing international isolation and sanctions and an increasing - and unwelcome - economic dependence on China, the country held its first general elections in 20 years on 7 November 2010. These elections formally ended the military dictatorship. The NLD boycotted the elections, which were judged by the international community to be neither free nor fair. The Union Solidarity and Development party (USDP) took more than 75% of the seats. One week after the polls Aung San Suu Kyi was released from house arrest.

On 31 March 2011, a new nominally civilian government was established led by President Thein Sein (USDP), a former general, who made commitments to democracy and reform. In December 2011 the NLD was re-registered and decided to run in the April 2012 by-elections in which it won a landslide victory, taking 43 of the 44 contested seats.

In 2013 most international sanctions were lifted and in 2014 Burma/Myanmar was appointed to chair the Association of Southeast Asian Nations (ASEAN).

This transition period however also witnessed the upsurge of communal violence: the assault on the Muslim Rohingyas in Rakhine State in 2012 ended with 237 deaths and more than 150.000 displaced people and was followed in 2013 and 2014 by several outbreaks of anti-Muslim riots in several area of the country. A major factor in the sectarian conflict was the rise of radical Buddhist nationalism around the country, evidenced by the emergence of Ma Ba Tha, (the Organisation for the Protection of Race and Religion) and in increased marginalisation of certain minorities and ethnic groups.

¹ Adapted from EP Publication, Directorate-general for external policies, Policy department: "Myanmar/Burma: The 8 November 2015 general election: an election does not a democracy make" and from "European Union Electoral Observation Mission - Myanmar 2015 Manual".

In 2014 a national census was carried out by the government, which did not allow minorities the right to self-identify. Some one million Rohingyas were instructed to either register as "Bengalis", indicating their illegal position as immigrants from Bangladesh, or to be excluded. Ahead of the 2015 elections, President Thein Sein - on a parliamentary proposal by the opposition party NLD - announced that Temporary Registration Certificates (the so called "*white cards*") would become invalid, thus denying the right to vote to some 750,000 people, including Rohingya Muslims, but also other minorities, mostly of Chinese and Indian descent.

On March 2015 four "race and religion laws", sponsored by Ma Ba Tha were adopted, without NLD and opposition parties' votes. These bills, seen as targeting Muslim communities, prevent women from undergoing religious conversion and marrying into a different faith, criminalise polygamy, introduce severe criminal penalties for adultery and introduce birth control measures.

On August 2015 peace talks between the government and rebel ethnic groups produced a Nationwide Ceasefire agreement, which was signed in October 2015 by only eight of the (more than) 20 Ethnic Armed Organisations. As a consequence, the Union Electoral Committee announced the postponement of elections in villages and townships of four States and one region. Conflicts are on-going in Kachin, Kokang and Shan States².

PROGRAMME OF THE DELEGATION

Prior to the day of the election, the Delegation met in Yangon with media, political parties, independent candidates, NGOs, the Carter Center and EU and Member State diplomatic missions, familiarising itself with the legal institutions of Burma/Myanmar and the local political climate. The European Parliament Delegation also had a meeting with U Tin Oo, Veteran Patron of the NLD. A meeting was requested with a senior representative of the USDP but with no positive response. The Delegation also met a panel of human right defenders, covering issues such as gender equality, political prisoners and ethnic minorities, as well as other analysts and experts.

In addition, the Delegation benefited from excellent support from the EU Delegation in Burma/Myanmar, represented by the Head of Delegation, Ambassador Roland KOBIA and by the Head of the Political Section, Mr Colin STEINBACH and his team. In the framework of the EU EOM, the Delegation cooperated closely with the core team, led by the Deputy Chief Observer, Mr Mark STEVENS.

On Election Day, the Delegation split into three groups and observed the vote in various polling stations, from the opening at 06.00 to the closure of the stations at 16.00 and the subsequent counting of the votes. The polling stations observed were in the centre of Yangon and the wider Yangon region, as well as in the Bago and Ayeyarwady regions.

On 10 November 2015, a joint Press Conference was held by the Chief Observer, Alexander Graf LAMBSDORFF and by the Head of the EP Delegation, Ms Ana GOMES. A Statement of Preliminary Findings and Conclusions was released and is attached to this report.

² The country comprises seven regions, inhabited by the dominant ethnic group, the Burma, and seven states, inhabited in majority by ethnic minorities. There are 135 officially recognised major ethnic indigenous groups in Burma/Myanmar. This figure of 135 has been used for the 2014 census, but is highly controversial. Among the unrecognised ethnic groups the largest are the Chinese - 3% of the population, the Indians - 2% of the population, the Anglo-Burmese and Ghurkha - around 52.000 in the country and 1.6 million outside the country and the Muslim Rohingyas - more than a million in the Rakhine State). Under the 1982 Citizenship Act, only those who belong to one of the 135 officially recognised "national races" are entitled to full citizenship.

ASSESSMENT OF THE ELECTORAL PROCESS

The Delegation was impressed by the peaceful atmosphere on Election Day and by the excellent organisation of the poll itself. To a large extent, the public perception was that these were a historic step forward in the democratic transition of Burma/Myanmar.

The Delegation welcomed the fact that a high number of Myanmar citizens - notably young people - exercised their right to vote, with no apparent interference from the police. The EP Delegation particularly applauded the prominent role played by women in the functioning of the polling stations.

The Delegation equally appreciated the very clear division of labour among the different officers and the smooth development of a complex voting procedure. The layout in polling stations was adequate for the voting procedure, guaranteeing the secrecy of the vote. Contrary to previous elections, domestic and international observers enjoyed access to the process, including the vote count, which was conducted in a transparent manner in the places observed by the Delegation.

The Delegation regretted, however, the exclusion from the vote of some 760.000 "white cards holders", mainly the Muslim Rohingyas, who had been allowed to vote in previous elections and had been disenfranchised for the 2015 elections. The Delegation equally regretted the lack of transparency of the process for advance voting.

During the press conference it was underlined by both the Chief Observer Mr Lambsdorff and the EP Delegation that the legal framework and in particular provisions of the 2008 Constitution did not permit the elections to be fully democratic because of the continuing reservation of 25% of the Parliament seats for the military, as well as some limitations on the right to vote and the right to stand, including the aforementioned pre-conditions for eligibility to become President.

RESULTS AND POLITICAL CONTEXT

The Delegation appreciated that, shortly after voting closed, the ruling party USDP conceded defeat.

As of 20 November and taking into consideration the 25% of seats reserved for the Military in each legislature, the NLD holds 59% of the seats in the Lower House, 60% in the Upper House, and 56% in the State/Region Assemblies. The USDP holds 7% of the Lower House, 5 % of the Upper House and 9% of State/Region Assemblies.

In terms of the directly elected members, NLD won 255 seats or 79% in the Lower House, 135 or 80% in the Upper House, 475 or 75% in region and state parliaments, and 21 or 72% of Ethnic Affairs Minister seats. The USDP is the second largest party with 30 and 12 seats (9% and 7%) in the two houses of Parliament, 74 seats (12%) in the State and Region Assemblies, and two Ethnic Affairs Ministers (7%). Ethnic parties and candidates represent the third largest 'bloc', with 38 seats in the Lower House (12%), 21 in the Upper House (12%), 80 in the Region and State Assemblies (13%) and six Ethnic Affairs Ministers seats (20%). Out of 309 independent candidates, only 5 were elected, all in the ethnic states. None of the 28 Muslim candidates was elected. The NLD therefore has an absolute majority in both Houses.

The number of women in the parliaments has increased considerably but remains relatively low. Women will hold 43 seats (c.10% of the total seats, including military appointees) in the Lower House and 23 seats (c.10% of the total seats, including military appointees) in the Upper House. Women have won 88 of the seats in the State/Regional Assemblies, also representing around 10%

of the total number of seats, including military appointees. More than 97% of all elected women are members of the NLD.

The "old parliament" already resumed its work on the investment law, and government spending for 2015-16. The new parliament will convene in January 2016 and will select a speaker to succeed Shwe Mann (who lost his seat) before choosing three vice-presidents in February, one of whom will be named by the military. The vice president with the most votes will become president. The new government will be formed in March 2016.

CONCLUSIONS

The Delegation concluded that the people of Myanmar had demonstrated their strong desire for democracy. Nevertheless the MEPs stressed that this process towards full democratic governance is only just beginning and that the country needs economic, social and legal reforms. Priority should be given, at this stage, to building capacity in the Parliament and political parties, including the NLD, where assistance from the European Union is crucial.

The EP Delegation believes that democracy and human rights are also about inclusion and embracing diversity. They therefore encouraged the new the new leadership to speed up as much as possible the peace process, the end of ethnic conflicts (which is the real emergency and priority of the country) and to guarantee that Myanmar becomes a more inclusive society in which all citizens enjoy full political, social and economic rights

The European Parliament will assist the newly elected Parliament with capacity building activities to enhance democratic oversight, within the Comprehensive Democracy Support Approach (CDSA), under the leadership of Judith SARGENTINI (Greens/EFA, Netherlands).

GENERAL ELECTIONS IN MYANMAR
ELECTION OBSERVATION DELEGATION

List of participants

Members

Ms Ana GOMES, S&D, Portugal (Head of Delegation)
Mr Lars ADAKTUSSON, EPP, Sweden
Mr András GYÜRK, EPP, Hungary
Ms Sandra KALNIETE, EPP, Latvia
Mr Goffredo BETTINI, S&D, Italy
Ms Rikke KARLSSON, ECR, Denmark
Ms Judith SARGENTINI, Greens/EFA, Netherlands

Secretariat

Mr Tim BODEN, Administrator
Ms Cristina CASTAGNOLI, Administrator
Ms Helen COLLINS, Assistant

Political Groups

Mr Jonas KRAFT, EPP Advisor
Mr Renaud SAVIGNAT, S&D Advisor

FINAL PROGRAMME

Friday 6 November	
9:30 – 10:30	Internal Meeting of the EP Delegation <i>(Venue: Elephant Room, Inya Lake Hotel)</i>
10:30 – 11:30	Meeting with Panel of Media representatives Khin Maung Win, DVB, Deputy Director; Win Naing, Radio Free Asia, Bureau Chief; Soe Mint, Mizzima.com, Managing Director <i>(Venue: Elephant Room, Inya Lake Hotel)</i>
11:45 – 14:45	Working Lunch Meeting and Briefings with Core Team and Security Meeting with Chief Observer (CO) and Deputy Chief Observer (DCO) 11.45 Welcome and Introduction from DCO 11.50 Political Overview, Alienor Benoist, Political Analyst 12.20 Media Environment, Ivan Godarsky, Media Analyst 12.40 Legal Framework and Human Rights, Anne Marlborough, Legal and Human Rights Analyst 13.20 Election Administration and Election Day Procedures, Adolfo Cayuso, Election Analyst 13.50 Chief Observer and Deputy Chief Observer <i>(Venue: Elephant Room, Inya Lake Hotel)</i>
15:00 – 16:00	Meeting with Ambassadors from EU Member States <i>(Venue: Elephant Room, Inya Lake Hotel)</i>
16:30 – 17:15	Meeting with United Nationalities Alliance of ethnic parties Mrs. Angela Thaung, representative of the UNA and of the Kayah National Party <i>(Venue: Elephant Room, Inya Lake Hotel)</i>
17:30 - 18:15	Meeting with the Shan Nationalities League for Democracy Sai Nyunt Lwin, General Secretary <i>(Venue: Elephant Room, Inya Lake Hotel)</i>

19:30 Reception hosted by H.E. Mr Roland Kobia, EU Ambassador
(Venue: Ambassador's Residence, 9A May Kha Road, Mayangone Township)

Saturday 7 November

09.30 Meeting with election-day drivers and guides

10.30 - 11:30 Meeting with U Tin Oo, Veteran Patron of the NLD
(Venue: NLD HQ, 97B West Shwe gondine St, Bahan Township)

12.15 - 13:00 Meeting with Dr Nyo Nyo Thin, independent candidate, Lower House, Bahan (Yangon)
(Venue: Elephant Room, Inya Lake Hotel)

13.00 - 14.30 Lunch meeting with the Carter Center
Leadership team: Mary Robinson, Jason Carter, Bhojraj Pokharel, David Carroll, Director of the Carter Center Democracy Program, and Professor Mary Callahan.
(Venue: Elephant Room, Inya Lake Hotel)

15.00 - 16:30 Meeting with Richard Horsey – ICG
(Venue: Elephant Room, Inya Lake Hotel)

16:30 – 17:30 Panel of human rights defenders
May Sabe Phyu, Director, Gender Equality Network; Bo Kyi, Joint Secretary, Assistance Association for Political Prisoners; Wai Wai Nu, Director, Women Peace Network Arakan; Joseph Wa, Advocacy Officer, Equality Myanmar.
(Venue: Elephant Room, Inya Lake Hotel)

17:45 – 18:30 Meeting with CSO Open Myanmar Initiative (Parliamentary Watch)

Sunday 8 November	Election Day
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05:00	Departure from hotel
06:00 - 16:00	Observation of polling stations
16:00	Observation of counting

Team 1 Yangon

Ana Gomes MEP (Head of Delegation)
 Goffredo Bettini MEP
 Tim Boden (EP secretariat)
 Renaud Savignat (S&D group official)

Team 2 Bago City

Lars Adaktusson MEP
 Andras Gyurk MEP
 Helen Collins (EP secretariat)
 Jonas Kraft (EPP group official)

Team 3 Ayeyarwady

Sandra Kalniete MEP
 Rikke Karlsson MEP
 Judith Sargentini MEP
 Cristina Castagnoli (EP secretariat)

Monday 9 November

09.30	Debriefing and internal EP delegation meeting	
		<i>(Venue: Elephant Room, Inya Lake Hotel)</i>
17:30.	Post-election meeting with CO and EU Member State Ambassadors	
	(Head of EP Delegation only)	<i>(Venue: Elephant Room, Inya Lake Hotel)</i>

Tuesday 10 November

11:00	Press conference	
		<i>(Venue: Sedona Hotel)</i>

END OF PROGRAMME

Statement by Ms. Ana GOMES

Chair of the European Parliament Election Observation Delegation for the General Elections in Myanmar

(10 November 2015)

Ladies and gentlemen, dear friends,

I am Ana Gomes, Member of the European Parliament, from Portugal, and it is my pleasure to have this opportunity to speak to you on behalf of the Parliament's Delegation.

I have had the honour to lead a **Delegation composed of seven Members of the European Parliament**. We come from seven countries and different political parties to observe the general elections.

Prior to Election Day, we met in Yangon with members of political parties, the media and civil society, including human rights defenders and ethnic minority representatives. Everywhere we went we received an exceptionally friendly reception.

This Delegation was integrated within the framework of the European Election Observation Mission (EOM). I would like to thank my colleague, Alexander Lambsdorff, the EOM Chief Observer and his team, for the excellent cooperation during this period.

The European Parliament delegation fully **supports and endorses the preliminary findings** and conclusions of the Observer Mission. Of particular concern to our Delegation is the constitutional framework which is underpinning these elections, including the fact that 25% of the seats in the Parliament are reserved for the military. We also believe, as the EU EOM pointed out, that counting and tabulation are a crucial part of the election process to ensure its integrity.

On Election Day we observed voting in the Yangon, Bago and Ayeyarwaddy regions, from the opening to the closing of activities, as well as the vote count. We were impressed by the calm and peaceful atmosphere, **the professionalism of the staff in the polling stations and of the organisation of the process**. We welcome the fact that a high number of Myanmar citizens - notably **young people** - exercised their right to vote, and with **no apparent interference** from the police. We particularly applaud the **prominent role played by women**, as well as young teachers, as staff in polling stations.

However, we noted the problems of registration which led to the **disenfranchisement of a significant number of citizens**, particularly from certain ethnic minorities and groups. We trust that the newly elected government **will improve the democratic governance of the country and promote a more inclusive society** by addressing the increase in religious extremism and radicalisation and its effect on certain minorities and ethnic groups, in particular Muslim citizens - and specifically the Rohingyas.

We congratulate the people of Myanmar and we will continue to support the democratisation of this country. Now is the **time to seize the opportunity for reconciliation in Myanmar**. We look forward to the final results of the elections being accepted by all. We will work especially to **strengthen the cooperation between our Parliaments, with a view to enhancing democratic oversight in Myanmar**.

Thank you very much for your attention.

European Union Election Observation Mission

MYANMAR, General Elections, 2015

PRELIMINARY STATEMENT

Yangon, 10 November 2015

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

Summary

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

On Election Day, observers reported very positively on the voting process in polling stations, with 95% rating the process as 'good' or 'very good'. In the vast majority of cases, polling stations opened on time and were well prepared. Officials worked hard to administer the process, but procedurally some inconsistent practices and anomalies were noted. Most voters, in polling stations visited, found their names on the voter list, but in 7% of polling stations visited some absences on the list were observed. Voters were able to cast their vote in secret, and, after voting, ink was applied in virtually all cases observed. Domestic and international observers enjoyed access to the process and political party agents were present in the vast majority of the polling stations observed. For the vote count at the polling station, in places observed it was reported to have been conducted in a transparent manner.

Advance voting can help to ensure those working on Election Day do not lose their right to vote. There was, though, a lack of clear understanding on behalf of electoral officials as to who was allowed to vote in-constituency in advance for these polls, resulting in some inconsistencies, and also in a lack of adequate safeguards for materials. In addition, out-of-constituency advance voting also lacked adequate safeguards and transparency. Observers were denied the right to observe out-of-constituency voting in military barracks.

The legal framework provides some of the conditions for competitive elections, including freedom of association for parties, allowing independent candidates and a reasonable deposit mechanism for candidacy. However, the framework does not fully provide for the conduct of genuine elections, with limitations concerning the number of seats directly elected to the parliament, the right to vote and the right to stand, as well as an inadequate framework for the resolution of election disputes.

The UEC administered the polls in challenging circumstances. It made a major effort to train some half-a-million staff and reach out to election stakeholders. The UEC also accredited hundreds of international observers and some 12,000 domestic observers. However, election administration at various levels lacked consistency and transparency.

The UEC created a computerised voter list for the first time. It is an improvement on previous lists, and should be built on in the future, as some deficiencies were apparent.

In terms of the right to vote, a person must be a citizen of Myanmar and the Citizenship Act of 1982 establishes requirements to prove citizenship which impose burdens that are very difficult to meet for many, and as a result universal suffrage was not properly provided for, and the elections were not as inclusive as they could have been.

The elections were competitive, including over 6,000 candidates. The qualifications to run as a candidate, though, imposed unreasonable limitations on the right to stand, notably with regard to citizenship and residency criteria. The management of appeals during candidate nomination lacked transparency, and some decisions appeared to be arbitrary, with a notable percentage of Muslim candidates being rejected. Myanmar has ratified the Convention on the Elimination of Discrimination Against Women, but there are currently no special measures, and no real initiative by political parties, to promote women's participation.

The election campaign was largely calm with parties able to hold rallies and public meetings, despite some isolated incidents. Electoral officials generally implemented the regulations on organising events without undue rigour. The campaign regulations impose some limitations on freedom of expression by excluding certain topics from criticism. The provocative Buddhist nationalist discourse invoked by some parties, as well as by *Ma Ba Tha*, raised concerns during the campaign. The use of religion in politics is prohibited by campaign regulations and the Constitution.

The media has seen dramatic changes since 2011, with pre-publication censorship abolished and a noticeable increase in the use of social media. At the same time, television and radio remain largely controlled by the state. Further, interlocutors cited restrictions on freedom of expression due to a restrictive legal framework and widespread self-censorship on topics such as the military, Buddhist nationalism and the plight of the Muslim population. Criminal cases have been brought against several social media users. During the campaign, state-funded media largely ignored the political contestants, focusing instead almost entirely on activities of the UEC, and of the ruling authorities, particularly the President. Private, foreign and social media dedicated significant coverage to the election, with a number of them showing a visible preference towards the NLD.

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

Preliminary Findings

Background

The 2015 General Elections were the second nationwide elections held under the 2008 Constitution, but the first in which all of the country's main political parties competed. These elections are the first nationwide polls to be held since the initiation of the reform process, under a semi-civilian government, in 2011, and as such were a critical test for Myanmar. On 8 November, the people of Myanmar were electing 168 of the 224 members for the *Amyotha Hluttaw* (Upper House of Parliament); 330 of the 440 members for the *Pyithu Hluttaw* (Lower House); and 644 of the 860 members of State/Regional *Hluttaws* (Assemblies). The remaining 25% in each case are military-appointees. Twenty-nine Ethnic Affairs Ministers were also elected.

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

Legal Framework and Electoral System

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

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

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

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

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

Election Administration

Election administration is based on a five-tier structure comprising the UEC and sub-commissions at the State/Region, District, Township and Ward/Village Tract levels. The UEC consists of 15 members, including the Chair, nominated by the President. The UEC is responsible for the appointment of members of subordinate commissions, which are largely comprised of civil servants from the General Administration Department (GAD) or other ministries. As a result of this, and of the fact that the Chair is a former USDP Member of Parliament (MP), opposition representatives expressed a lack of confidence in the independence of the election management body.

The UEC has broad responsibility and extensive powers for the management, organisation and supervision of all aspects of the electoral process, including voter registration and designation of constituencies. Inside the UEC there was an over-concentration of decision-making power in the office of the Chair. At the same time, due to its decentralised structure throughout the country, instructions from the UEC were not implemented in a consistent manner. However, the decentralised structure of the election administration resulted in inconsistent implementation of regulations and processes.

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

The UEC ensured sensitive and non-sensitive materials were produced and distributed to the polling stations in a timely manner. The UEC launched a voter information campaign, including the use of text messages, to encourage voters to verify their names in the voter list. Another voter information campaign was launched shortly before Election Day to inform voters about voting procedures. The UEC produced some 33 million "voting slips". These were primarily for voters who lacked ID, but were not intended as a requirement for voting *per se*. The slips were also intended to be used for updating the voter list in case of errors in the details of a voter.

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

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

Voter Registration

Myanmar uses a passive registration system. The voter list was initially extracted from the GAD and the Ministry of Immigration and Population’s household lists and logbooks and entered into an electronic database. This is the first time the voter list has been computerised in Myanmar. It was widely acknowledged that these initial lists were not entirely accurate, however, and this created challenges for the registration process. Problems were also experienced during the inputting and sorting of voter data. The UEC acknowledged that the database software should have been tested properly and better tailored to the country’s specific conditions. In some sub-commissions, such as in Ayeyarwady, officials replaced the database provided and worked instead on Excel.

The UEC established mechanisms to allow for inclusions, corrections, and deletions in the voter lists, and provisions were made to facilitate voter transfers between constituencies. In order to update and correct the list, public verification exercises were conducted, with lists displayed for voters to check their names and request corrections or additions. The final number of voters was not officially announced by the UEC, but it estimated the total number of registered voters to be some 33.6 million voters. During the display period, the UEC organised a nationwide voter education campaign, with the distribution of pamphlets and posters in several ethnic languages throughout Myanmar. Local observers noted that the public turnout for the verification was “modest”, meaning many people did not check their details. The list was being corrected just days prior to Election Day, which represented a major, but very late, effort on behalf of administrators. On Election Day, observers reported that there were some instances of people not finding their name, while others knowing their name was not on the list will not have attempted to vote.

Registration of Candidates

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

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

Participation of Women

The Constitution provides that there shall be equality before the law for all citizens, irrespective of sex. The 2013-2022 National Strategic Plan for the Advancement of Women committed the government of Myanmar to achieving equality for women and men. The UEC Chair called on political parties to include greater numbers of women amongst their candidates. While Myanmar has ratified CEDAW,

there are currently no special measures to promote women's participation and there appears to be an absence of political will to promote women's role in politics.

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

Election Campaign

The official campaign began on 8 September and concluded at midnight on 6 November. Up to mid-October, campaigning was largely limited to the USDP and the NLD and some of the larger ethnic parties such as the two largest parties in Shan State and the Arakan National Party. Campaigning often involved posters, public rallies, concerts, music trucks, motorcycle parades and door-to-door canvassing. The vast majority of independent candidates and smaller parties, including ethnic parties, lacked resources, and reserved campaigning until the last weeks.

Observers reported that electoral authorities adopted a generally flexible approach to the notice requirements for an event, dispensing with the strict notice period of the law in many instances. As to the content of the campaign, the regulations are more restrictive and open to interpretation, with prohibitions on content which might, among other matters, undermine the Constitution, the dignity of the armed forces, or the sovereignty of the state. While freedoms of association and assembly were basically provided for during the campaign, there remain concerns more broadly on these issues in Myanmar, which need to be addressed. On 17 October Myat Nu Khaing, an independent candidate in Bago, was arrested in relation to participation in a protest in December 2014.

A Political Parties Code of Conduct (CoC) was signed by 88 parties and several independent candidates. It is a self-regulatory mechanism and was widely disseminated by the parties. Party representatives indicated that it had a pacifying impact on the atmosphere of the campaign. However, it lacked an enforcement mechanism. During the campaign, the CoC Monitoring Committee felt compelled to remind parties not to "encourage hatred between any religion, tribe, group, gender, language, or community" and "to refrain from any form of intimidation or incitement to violence vis-à-vis any person or group of persons or beliefs".

The campaign was generally peaceful, and parties and candidates enjoyed freedom of movement and assembly with the exception of areas affected by conflict or localised violence or tension, leading some parties to decide it was not safe in certain areas. Observers received reports of forced attendance of students and civil servants at USDP rallies in Bago, and several reports of pressure on government workers to attend USDP public events and to vote for them in Tanintharyi. In Rakhine, local *Ma Ba Tha* leaders acknowledged they attempted to influence voters, and in Mon and Kayin, observers received several allegations of monks trying to dissuade voters from voting for the NLD. There were also allegations of distribution of money and goods in some areas, and some people at a USDP rally in Magway confirmed to EU observers they had been paid to attend the rally. Campaigning activities were drastically limited for all contestants in rural areas of northern Shan, due to volatile security. The NLD decided against holding rallies in areas of Kachin state for security concerns. In the past month, four armed assaults on NLD members were reported.

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

Media Environment

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

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

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

However, the state-funded media, including *MRTV*, *Myanma Radio*, newspapers *Kyaymon* and *Myanma Ahlin*, still the most important source for a significant part of population, largely failed to cover the campaign, focusing almost entirely on activities of the UEC and ruling authorities, in particular the President. The President was widely presented in his official capacity touring the country to promote developments, surrounded by USDP flags and colours, thus blurring the line between party and state.

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

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

Electoral Disputes

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

Polling and Counting

EU observers reported very positively on the voting process. Polling stations observed mostly opened on time and had required materials. In many instances there were long queues, which created some organisational problems, but generally speaking these were managed by polling staff. Party agents were present in the vast majority of the polling stations observed. The UEC had previously announced it had accredited some 12,000 domestic observers from 31 organisations. On Election Day, EU observers found domestic observers present in 27% of polling stations visited. Most voters found their names on the voter list and many had the voting slips to help with identification. However, in 7% of polling

stations visited there were reports of some persons not finding their name on the list. Voters were able to cast their vote in secret and polling staff worked well on the whole to administer the process in an effective way. However, crowded conditions in some places may have impacted on secrecy. Observers did report some instances of local officials involved with the management of the process in the polling station. While the ink was not always checked upon arrival of a voter at a polling station, it was applied in virtually all instances observed. For the vote count in the polling stations, observers reported it was conducted in a transparent manner, with party agents and domestic observers present in most places observed. Officials conducted the count inconsistently and did not adhere to the formal regulations in all respects. The announcement of the results by the UEC on a rolling basis was a positive feature, and this is on-going.

Problems were more evident with the advance voting. EU observers followed the in-constituency advance voting from 29 October and reported that officials appeared unfamiliar with procedures, allowing a broader range of persons to vote than envisaged in the regulations. In many instances the types of integrity checks and ballot security measures foreseen for regular voting were not evident, for instance with ballot boxes unsecured and not entirely closed. Out-of-constituency advance voting lacked transparency and due to the modalities for military voting the regular procedures were not applied.

The European Union was invited by the UEC to observe the elections of 8 November 2015 and a Memorandum of Understanding between the EU and the UEC was signed on 21 August 2015. The EU EOM is led by Alexander Graf Lambsdorff MEP, a Vice President of the European Parliament, from Germany. The mission comprises a core team of nine analysts who have been present in Yangon since 26 September, 30 Long Term Observers (LTOs), who have been present since 7 October and 62 Short Term Observers (STOs), who have been present since 2 November. In addition, the mission is joined by 37 Local Short Term Observers (LSTOs) and a 7-person Delegation of Members of the European Parliament, led by Ana Gomes MEP from Portugal. Overall observers are drawn from all 28 EU member States as well as Canada, Norway and Switzerland.

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

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

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

For media enquiries please contact Eberhard Laue, EU EOM Press Officer

Tel. 092 6554 0579 / Email: eberhard.laue@eueom-myanmar.eu

Annex D

Press Release

A well-run, competitive election with legal reforms and procedural improvements remaining

YANGON 10 November 2015 – “The 2015 general elections are a historic juncture in the democratic transition of Myanmar. The poll was well organised and voters had a real choice between different candidates. In the future, constitutional, legal and procedural improvements will be required for truly genuine elections”, summarised Alexander Graf Lambsdorff, Chief Observer of the European Union Election Observation Mission (EU EOM) the Preliminary Statement of the mission today in a press conference in Yangon.

The Chief Observer highlighted: “Our 150 EU observers reported from over 500 polling stations in rural and urban areas that the people of Myanmar turned out in large numbers to calmly cast their votes in a generally well-run polling process, and that the secrecy of the vote was respected. Before that, the election campaign was nearly entirely peaceful. The process for advance voting, however, was less well managed and lacked transparency. For example, EU observers were not given access to out of constituency advance voting in military barracks, despite prior assurances”. “It is important for everyone to note that the election is not over. The results process is still underway. This is a critical part of the process and it will be important to maintain a high level of transparency and integrity throughout”, said Lambsdorff, adding: “EU observers will remain in the field to observe the tabulation and results processes as well as any complaints and appeals.” Lambsdorff also emphasised that “the legal framework does not fully provide for the conduct of genuine elections, most notably because of limitations concerning the number of seats directly elected to the parliament, as well as some limitations on the right to vote and the right to stand”.

Ana Gomes, Head of the Delegation of the European Parliament, which observed as part of the EU EOM the polls, endorsed the preliminary statement of the EU EOM and stated: “The people of Myanmar showed they want democracy. This is just the beginning of the process. The European Parliament will assist in capacity building and promoting democratic governance and oversight. We believe that democracy and human rights are also about inclusion and embracing diversity.”

The EU Election Observation Mission will present a Final Report with recommendations to the public at a later stage.

Note to Editors:

The European Union (EU) was invited to deploy an observation mission by the Union Election Commission of the Republic of the Union of Myanmar and has signed a Memorandum of Understanding with the Union Election Commission. The EU EOM is independent from any EU institutions or Member States or government institutions and is committed to remain neutral and abide by the Declaration of Principles for International Election Observation and the Code of Conduct, as well as the laws of Republic of the Union of Myanmar.

For media enquiries, please contact:

Eberhard Laue (English) Mobile +95 (0) 9265540579 email: eberhard.laue@eueom-myanmar.eu
Nwe Yin Aye (Myanmar) Mobile +95 (0) 9977065595 email: nweyin.aye@eueom-myanmar.eu