



Fact Sheet

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Summary

Although Myanmar's Union Electoral Commission (UEC) welcomed both domestic and international electoral observation missions to observe the November 2015 elections, and established codes of conduct for each category of observation missions, there is no authorization in the law for electoral observation in Myanmar.

This Fact Sheet is part of a series that provides comparative examples on issues relevant to the reform of Myanmar's electoral legal framework. It summarizes the current state of the law in Myanmar and provides examples of laws establishing electoral observation in other countries.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

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Laws establishing electoral observation

The issue at a glance

Election observation directly contributes to ensuring free and fair elections and to improving the electoral process in the long-term by reducing violence, exposing and correcting weaknesses, deterring fraud, and increasing public confidence.

Ahead of Myanmar's November 2015 general elections, the Union Election Commission (UEC) of Myanmar authorized, for the first time, the official accreditation of domestic and international electoral observers. Accordingly, in March 2015 the UEC established codes of conduct for domestic and international observers. In June, it released procedures for observation of the Hluttaw elections by domestic and international elections observers. It also established a comprehensive accreditation systems.

The UEC took these steps based on article 90 of Myanmar's Electoral Laws, which confers a regulatory power on the UEC in the absence of any provision related to observation in the electoral laws, and general references limited to the counting process in the by-laws and work guidelines.

More than 11,000 domestic and 1,000 international observers, including a delegation from the European Union, were accredited to observe the elections (International IDEA 2015; EU EOM 2015). Observers were praised for their contribution to the transparency

of the process. Discussions are now proceeding on enshrining the principle of electoral observation in the election legal framework, as well as on the scope of observers' rights and duties throughout the electoral cycle.

Related Myanmar legal provisions

1. *Pyithu Hluttaw Election By-Laws*: article 48(vii) (which is broad enough to include observers) and article 65 (which references observation of counting)
2. *Work Guidelines for Presiding Officers, Assistant Presiding Officer and Member of the Polling Station Team*: articles 5(d)(4, 8), 9(i)
3. *Ward and Village-Tract Sub-Commission Work Guidelines*: article 64(g)

Myanmar has also issued specific guidelines for the conduct of observers:

1. *Code of Conduct for Domestic Observers*, Notification No.01/2015 (UEC, March 2015)
2. *Code of Conduct for International Observers*, Notification No. 02/2015 (UEC, March 2015)
3. *Issuance of Procedures for International Election Observers*, Notification No. 07/2015 (UEC, June 2015)

Examples of laws establishing electoral observation in other countries

Many countries explicitly allow and protect the work of domestic and international election observers in their electoral legal frameworks (Democracy Reporting International 2015). These protections are also outlined in international agreements such as the United Nations' 2005 'Declaration of Principles for International Electoral Observation and Code of Conduct for International Election Observers'. Different approaches have been adopted to legally define the participation and the rights of elections observers.

For example, in **Morocco**, the principle of independent and impartial election observation is enshrined in article 11 of the 2011 Constitution, which states that 'the law defines the conditions and the modalities of independent observation and neutrality of the elections in accordance with the recognized international norms'.

More specifically, Law No. 30-11 (2011) defines the requirements and modalities of election observation missions. The law details eligibility criteria for organizations and individuals (Chapter I, article 2) and defines the accreditation process (Chapter II). It also establishes a specific Election Observers Accreditation Committee, under the leadership of the National Human Rights Council, to manage the accreditation process (Chapter III).

The Committee has developed an Accreditation Application Form and an Observation Charter. The Charter details the rights and duties of election observers as prescribed in international conventions. For example, as detailed in the 2011 law, election observers should have free access to information, documents, and public meetings during the electoral campaign, as well as polling stations.

Observers should also be able to communicate with the media and interview all electoral stakeholders (Chapter IV, article 16). In return, election observers have to respect state sovereignty and laws, present their accreditation cards, observe the integrity, neutrality and independence of the elections and not interfere in electoral operations (Chapter IV, article 17).

Bosnia-Herzegovina devotes an entire chapter (Chapter 17) of its 2001 Electoral Law to the conditions of participation and rights of elections observers. As in Morocco, the first articles detail the eligibility criteria for election observers (articles 17.1 and 17.2). However, the Central Election Commission (CEC) of Bosnia-Herzegovina is mandated to manage the whole accreditation process (articles 17.3–10).

Others, like **Cambodia**, have defined legal provisions throughout the electoral cycle. References to election observers' prerogatives and rights are more or less implicitly included in all articles of the 2012 Law on Elections of Members of the National Assembly (LEMNA). For example, article 91 related to the opening of the polling station on election day states that the Chairperson 'shall open and show the ballot box in the presence of all members of the Commission, the representatives of political parties and the observers to make sure that there is nothing in the ballot box'. Specific articles are dedicated to the eligibility criteria of election observers and the accreditation process for which the National Election Committee is responsible (articles 26–28).

Many countries regulate the nature and the number of election observers. In several instances, the electoral management body (EMB) is responsible for establishing and processing the application forms of organizations and for delivering the

Box 1. Election observation by civil society groups in Indonesia

Indonesia enables a wide variety of civil society actors to engage in the electoral process to ensure that important rights are upheld and protected. According to one report (Hasanuddin 2014):

‘Civil society organizations active during the election [in 2014] included not only those with a particular attention to electoral issues, such as Perludem, the People’s Voter Education Network (JPPR), and the Independent Election Observer Committee (KIPP), but also organizations focused on sectoral issues such as counter-corruption (Indonesia Corruption Watch, Transparency International Indonesia), environmental management (Walhi, Jatam, Sawit Watch, ICEL, Kiara), budget transparency (Fitra), public services (Ecosoc Rights, Yappika), legal reform (PSHK, the Legal Aid Institute network), women’s empowerment (Indonesian Women’s Coalition, Women’s Solidarity), and disability rights (SIGAB, PPUA Penca).’

official accreditations for election observers—as is the case with the CEC in Bosnia-Herzegovina.

While eligibility criteria vary, independence is often emphasized. For example, under article 17.4 of Bosnia-Herzegovina’s Electoral Law, the CEC establishes independence at the main condition for being accredited: ‘the application for accreditation shall include a signed statement by the authorized person of the association of citizens that the association is not established or sponsored by or engaged in any activities on behalf of a registered political party, coalition.’

Provisions governing electoral observation in **Indonesia** can be found in Chapter XVIII of the 2012 Law on Legislative Elections. While some countries limit elections observation to election specialized organizations, Indonesia enables a wide variety of civil society actors to engage in the electoral process to ensure that important rights are upheld and protected (see Box 1).

Media organizations are sometimes accredited through the same process as observers. **Yemen’s** Supreme Commission for Elections and Referendum (SCER) provides representatives of the local and international media and observers from foreign countries with official accreditations. These observers are invited by the SCER, civil society organizations and international non-governmental organizations which are, according to the SCER’s Observation Manual, ‘specialized in the democratic process and elections’ (Chapter 2).

Numerous countries which enshrined observers’ rights and duties in their electoral law provide election observers with a wide range of rights such as access to all relevant documents, electoral centres and voters. Bosnia-Herzegovina’s Electoral Law states that elections observers ‘shall have access to relevant documents and public election commission meetings,

shall be free to contact any person at any time during the entire period of the electoral process, and shall have access to all Voter Registration Centres, Polling Stations, Counting Centres and other relevant location’ (Chapter 17, article 2).

The mission of election observers runs over the whole election day from the opening of the polling station (checking that ballot boxes are empty) to the delivery and receipt of the minutes. To ensure the enforcement of the legal provisions related to observers’ rights, the Yemeni Observation Manual defines competences of the SCER for the implementation of the Manual’s provisions; it refers, for example, to coordination with other ministries and authorities and ‘follow-up on the reports issued by organizations observing the elections’ (Chapter 3, article 9).

Conclusion

Election observation represents a key mechanism of a democracy to ensure free and fair elections and to build public confidence in the election and the EMB. Consequently, it is particularly crucial to legally enshrine the principle of election observation as well as the rights and duties of election observers.

Different legal options are available and used throughout the world. Efficient and effective election observation would also depend on the diversity of the election observers and the scope of their rights and duties.

In addition to pure election observation missions, the legal framework and the EMB should also grant spaces and consideration for recommendations resulting from observations, and aim to produce real long-term changes on the path towards greater democracy.

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