



European Union  
Election Follow-up Mission

**REPUBLIC OF THE  
UNION OF MYANMAR**

Final Report



April 2019



# **Republic of the Union of Myanmar**

## **FINAL REPORT**

**10 April 2019**

## **EUROPEAN UNION ELECTION FOLLOW-UP MISSION**

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## TABLE OF CONTENTS

I. EXECUTIVE SUMMARY .....	3
II. MISSION INFORMATION .....	4
III. CONTEXT .....	4
A. Political Context .....	4
B. Institutional Context .....	6
C. EU Actions on EOM follow-up .....	7
IV. IMPLEMENTATION STATUS OF THE EOM RECOMMENDATIONS.....	7
A. Legal Framework (Recommendations 1 to 5) .....	8
B. Election Administration (Recommendations 6 to 9).....	9
C. Voter Registration (Recommendations 10 to 13).....	11
D. Registration of Political Parties and Candidates (Recommendations 14 to 16) .....	12
E. Campaign (Recommendations 17 to 23).....	13
F. Media (Recommendations 24 to 29) .....	13
G. Election Observation (Recommendation 30) .....	14
H. Gender and Disadvantaged Groups (Recommendations 31 to 32) .....	14
I. Voter Education and Voter Information (Recommendations 33 to 34) .....	15
J. Election Disputes (Recommendations 24 to 29) .....	15
K. Polling, Counting and Tabulation of Results (Recommendations 39 to 44) .....	16
L. Advance Voting (Recommendations 45 to 50) .....	17
V. THE STAKEHOLDERS ROUNDTABLE .....	18
VI. CONCLUSIONS .....	18
VII. ANNEXES.....	21
<i>ANNEX I: PRESS RELEASE</i> .....	21
<i>ANNEX II: ROUNDTABLE CONCEPT NOTE AND AGENDA</i> .....	22
<i>ANNEX III: Matrix on the Implementation Status of the 2015 EU EOM Recommendations</i> .....	25

## I. Executive Summary

An EU Election Follow-up Mission (EFM) was deployed to Myanmar from 14 March to 9 April 2019 to assess the degree to which the recommendations of the EU EOM 2015 had been implemented and the progress made in electoral reforms since the last general elections. The Mission was led by Alexander Graf Lambsdorff, Chief Observer of the 2015 EU Election Observation Mission (EOM) to Myanmar. The Mission met with the Union Election Commission (UEC), the speakers of both houses of the Union Assembly, representatives from political parties and groups, civil society, technical assistance providers and the diplomatic community.

The EU EFM conducted its activities with two main objectives: firstly, to assess the status of implementation of the recommendations offered by the EU EOM 2015, taking into account the political developments since last elections; secondly, to identify the recommendations that could still be implemented within the 18 months remaining before the next general elections.

On 4 April, the EU EFM organised a stakeholder roundtable in Yangon “*The way forward for the implementation of the 2015 EU Election Observation Mission’s recommendations*”, with the main purpose to bring together all key electoral stakeholders and initiate discussion on the challenges and opportunities for the implementation of the EU EOM 2015 recommendations. The roundtable focused on recommendations that do not require constitutional amendment as the constitutional review process was recently initiated at the Union Assembly level. The 2015 general elections were the second elections held under the 2008 Constitution, and the first in which all of the country’s main political parties competed, with Aung San Suu Kyi’s party, the National League for Democracy (NLD), obtaining an overwhelming majority of the votes. The EU EOM assessed the 2015 elections as well managed and competitive but noted that the advance voting process lacked transparency. The Mission also considered that although the constitutional framework for the 2015 elections provided some of the conditions for a competitive process, it contained a number of shortcomings for the conduct of genuine elections, with key legal reforms and procedural improvements required. Consequently, the EU EOM made 50 recommendations whose implementation would contribute to the improvement of future electoral processes. These included recommendations to amend the 2008 Constitution.

A first step towards constitutional reform was initiated in February 2019, with the formation of a 45-member Joint Committee for Amending the Constitution. Although the constitutional review process is ongoing, nearly all stakeholders shared the view that there is too little time before the 2020 elections for such a complex endeavour. In these circumstances, the best way Myanmar can demonstrate its real commitment to a legal framework that reflects internationally accepted principles for democratic elections, is to sign and ratify the International Covenant on Civil and Political Rights (ICCPR).

The EFM considers that there is an urgent need to address some of the EU EOM 2015 recommendations, which in their vast majority have not received enough attention from the authorities and legislators. The EU EFM is aware that the country faces important internal challenges in its transition, including the peace process and a new institutional set-up, which are limiting attention devoted to electoral reforms.

However, some of the recommendations are achievable before the 2020 general elections and would contribute to more credible and transparent elections. For those which require legislative adjustments, the ruling majority in Parliament could ensure swift amendment of the legislation. These mainly require action to be taken by the UEC as foreseen in the UEC Strategic Plan. Mainly, such measures relate to improving the transparency and communication of the UEC with stakeholders, to building

on the 2015 computerised voter list to achieve universal suffrage, to the adoption of consistent and clear procedures for the nomination of candidates, to securing increased transparency of election results and to the integrity of the advance voting process, among others.

Additionally, according to the UEC Strategic Plan, a Code of Conduct is to be approved by political parties for the 2020 elections. Political parties expressed strong support for a renewed Code of Conduct ahead of the next elections. The mediation committees derived from the Code of Conduct seem to be the most realistic, effective and timely approach to deal with instances of hate speech and tensions at the local level.

There was consensus that the successful preparation and conduct of the 2020 elections depends on the UEC requesting and receiving an adequate budget for the next fiscal year (October 2019 - September 2020). Furthermore, the UEC has to take over the responsibility for financing and carrying out voter education activities, which have previously been left solely to donor-funded civil society organisations.

In 2015, the UEC cancelled elections in some areas due to security concerns. The criteria for cancelling elections were however considered arbitrary and not transparent. There are concerns among interlocutors that security reasons due to ongoing conflicts may again serve as pretext for not holding elections in some constituencies in 2020 where elections could reasonably be held. Rakhine, Shan and Kachin States are likely to be the most affected.

## **II. Mission Information**

Upon the invitation of the UEC, the European Union deployed an Election Observation Mission (EU EOM) to Myanmar in 2015 to observe the general elections. In 2017, the EU also deployed a smaller Election Expert Mission (EEM) to follow the by-elections. An EU Election Follow-up Mission (EFM) was deployed to Myanmar from 14 March to 9 April 2019 to assess the degree to which the recommendations of the EU EOM 2015 had been implemented and the progress made in electoral reforms since the last general elections.

The Mission was led by Alexander Graf Lambsdorff, Chief Observer of the 2015 EU Election Observation Mission to Myanmar and former Vice President of the European Parliament and comprised two election experts. The Mission met with the Union Election Commission, the speakers of the two Parliaments, representatives from political parties and groups, civil society, technical assistance providers and the diplomatic community.

## **III. Context**

### *A. Political Context*

The 2015 general elections were the second elections held under the 2008 Constitution, and the first in which all of the country's main political parties competed. They took place in the context of a democratic transition process, initiated in 2011 by a semi-civilian government. Aung San Suu Kyi's National League for Democracy (NLD) obtained an overwhelming majority of the votes. However, the military retained executive power over the Defence, Home Affairs and Border Affairs ministries. The EU EOM assessed the 2015 elections as well managed and competitive but the advance voting process lacked transparency. The Mission also considered that although the legal framework for the 2015 elections provided some of the conditions for a competitive process, it contained a number of shortcomings for the conduct of genuine elections, with key legal reforms and procedural

improvements required. In this regard, the EU EOM made 50 recommendations whose implementation would contribute to the improvement of future electoral processes. These include recommendations to amend the 2008 Constitution.

The multi-ethnic composition of the country has shaped Myanmar's politics since independence and the country has witnessed continuous conflicts not only between the government and ethnic groups but also between different groups within ethnic States. Despite this, the 2015 high-stake general elections were held in a general peaceful atmosphere. Although the Nationwide Ceasefire Agreement (NCA) was signed in 2015 and three sessions of the 21<sup>st</sup> Century Panglong Union Peace Conference initiated in 2016 have taken place, the peace process is yet to produce tangible results.<sup>1</sup>

In 2015, the UEC cancelled elections in some areas due to security concerns.<sup>2</sup> The criteria for cancelling elections in 2015 were considered arbitrary and not transparent and the decision was not preceded by sufficient consultation with affected political parties and other stakeholders. There are concerns among interlocutors that security reasons due to ongoing conflicts may again serve as pretext for not holding elections in some constituencies in 2020, with the UEC decisions in this matter being based on unclear criteria mainly interpreted by the Ministry of Home Affairs.<sup>3</sup>

The NLD holds a comfortable majority, around 60 per cent, in both houses of the Union Assembly and it is therefore able to adopt or amend any legislation without a need to seek support from other political parties or members appointed by the Tatmadaw. By-elections were held in 2017 and 2018 to fill in 32 vacant seats (2.8 per cent of all elected seats) and did not affect the balance of power in either House of the Union Assembly or in any State/Region Assembly. Overall, NLD won 16 of the 32 available seats, losing six seats compared to the 2015 elections. The ethnic minority parties won ten seats, USDP won five seats and one seat was secured by an independent candidate.

Despite objections by the Tatmadaw-appointed lawmakers (who currently hold 25 per cent of the seats in both houses) and the opposition USDP, NLD successfully pushed through the parliament the formation of the 45-member Joint Committee for Amending the Constitution in February 2019. The composition of the Committee reflects the strength of individual political blocks in the Union Assembly. Notwithstanding the initial disagreement, both Tatmadaw-appointed lawmakers and USDP are participating in the work of the Committee.

Although the constitutional review process is ongoing, nearly all stakeholders shared the view that amendments to the Constitution before the 2020 general elections are highly unlikely. Any constitutional amendment has to be passed by a majority of more than 75 per cent of the members of the Union Assembly (Lower and Upper House combined) and amendments to specific provisions of the Constitution, in addition to parliamentary approval, require the approval of the majority of eligible voters in a nation-wide referendum. This means that without an agreement between NLD and the Tatmadaw-appointed lawmakers, which holds 25 per cent blocking minority, no change to the Constitution is possible. Furthermore, it is highly unlikely that the ongoing review would result in a consensus on federalism and identity/citizenship issues, and complete abolishment of military representation in the Union Assembly and State/Region Assemblies.

The fundamental constitutional shortcomings in relation to the electoral process, which were

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<sup>1</sup> Ten ethnic armed organisations have signed the Nationwide Ceasefire since October 2015 with some of the larger ethnic armed groups with significant military force still to accede to it.

<sup>2</sup> This affected several hundreds of villages in four ethnic States (Kachin, Kayin, Shan, Mon) and one Region (Bago). The cancellation particularly affected Kachin, with 11 townships partly cancelled, and Shan State, in which the elections were cancelled in seven entire constituencies.

<sup>3</sup> Rakhine, Shan and Kachin States are likely to be the most affected.

addressed in the EU EOM 2015 recommendations, do not appear to be priority topics of discussion. These include the appointment of members of the UEC by the President, restrictions on the right to vote of prisoners and members of religious orders, unreasonable requirements on the right to stand for elections (requirements of citizenship of both parents of a candidate, and of 10-year and 20-year permanent residency before elections for parliamentary and presidential candidates, respectively), the removal of the 25 per cent of military representation in parliament, and judicial review of decisions taken by the UEC.

## *B. Institutional Context*

### Union Election Commission (UEC)

Five of the 15 incumbent UEC members, including the Chairperson, assumed office in March 2016 replacing the previous 15-member UEC overseeing the 2015 general elections.<sup>4</sup> Eight UEC members were appointed by the NLD-elected President only very recently, on 6 March 2019. They were directly appointed according to the existing non-transparent and non-inclusive constitutional provision, which the EU EOM 2015 recommended to change. There is no woman among the 15 UEC members. Opposition political parties on several occasions expressed their lack of confidence in the impartiality and professional capacity of the current UEC.

The eight new UEC members are expected to increase the UEC capacity ahead of the 2020 elections, however, according to the stakeholders interviewed, the overall UEC's policy and performance is not likely to be affected by this reinforcement.

Although the UEC has organised relatively successfully two by-elections in 2017 and 2018, very little has been achieved since 2015 in terms of operational improvements. Verbal commitment to reform is there but it is not always followed by action. The perceived lack of transparency in the work of the UEC, and lack of regular communication with stakeholders is viewed as one of the main setbacks in its performance.

Positively, the UEC has prepared and adopted the new Strategic Plan 2019-2022 which takes into account a number of recommendations made by both domestic and international observers and sets ambitious goals. However, the real ownership of this plan and commitment to implement it can only be assessed after the first annual monitoring and evaluation report is published in January 2020.

The UEC remains underfinanced and it is currently struggling to secure sufficient financial resources for the preparation of the voter list for the 2020 general elections. For successful preparations and conduct of the 2020 elections, it is critically important that the UEC requests and receives adequate budget for the next fiscal year (October 2019 - September 2020).

The two main providers of technical assistance are International IDEA - funded by the EU - and IFES - funded by the United States, Australia and the United Kingdom. Both provide direct technical assistance to the UEC covering practically all aspects of the electoral process. UNDP's technical assistance to the UEC is currently under consideration.

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<sup>4</sup> The Constitution stipulates only the minimum number of the UEC members, which is five. Since March 2016 the UEC was composed of only five members. Two additional members were appointed before the 2018 by-elections and eight members were appointed in March 2019.

### Civil society

Civil society organisations (CSOs) have been playing an important role in the electoral process, particularly in promoting transparency and inclusiveness. They are focusing primarily on election observation, civic and voter education, inclusion and public advocacy for electoral reform. There are three main domestic observer groups: The People's Alliance for Credible Elections (PACE), Election Education and Observation Partners (EEOP) and Election Reform Coordination Body (ERCB) supported by NDI, The Carter Center (TCC) and Democracy Reporting International (DRI) respectively. All three groups observed the recent Yangon City Development Council elections on 31 March. CSOs including domestic observer groups remain very much dependent on donor support.

### *C. EU Actions on EOM follow-up*

The EU-funded EUR 10 million Support to Electoral Processes (STEP) Democracy II programme is implemented by the consortium led by International IDEA. Other consortium members are Paññā Institute, Hornbill Organization and Scholar Institute working on voter and civic education; Democracy Reporting International supporting civil society; the Danish Institute for Parties and Democracy and the Netherlands Institute for Multiparty Democracy/Demo Finland working with political parties. The programme implementation period is 40 months.

The percentage of the EU EOM 2015 recommendations implemented in the 2020 general elections is one of the main indicators of achieving specific objectives of the STEP Democracy II programme. The main objectives of the programme are to increase inclusive participation and adherence to democratic values and principles in legislation and by the election management body, political parties and CSOs. The programme targets the UEC, political parties, CSOs, voters and first-time voters, sub-national governments and underrepresented groups.

The areas of focus of STEP Democracy II include, *inter alia*, technical support to election management bodies at the national and sub-national levels, facilitating multi-party and multi-stakeholder dialogues on reform, supporting professional domestic electoral observation, strengthening programmatic parties and the development of party platforms that are representative and inclusive, strengthening the capacity of women to effectively participate in and lead political parties and civil society organisations, supporting the capacity of partners to identify barriers to inclusion and to design strategies to become more diverse and representative, and providing civic and voter education.

The EU Delegation in Myanmar launched a joint initiative with like-minded countries to pursue common advocacy messages towards the UEC in order to encourage the Commission to address achievable recommendations ahead of the 2020 general elections.

## **IV. Implementation Status of the EOM Recommendations**

So far, little progress was made in implementing the EU EOM 2015 recommendations. As of April 2019, none of the recommendations requiring legislative change, either in the Constitution or in the electoral laws, was implemented.

Nevertheless, the EU EFM is aware of the political context of the country, the short timeframe since 2016 when the incumbent government took office and the existing legal limitations to amend the Constitution. In these circumstances, the best way Myanmar can demonstrate its real commitment to

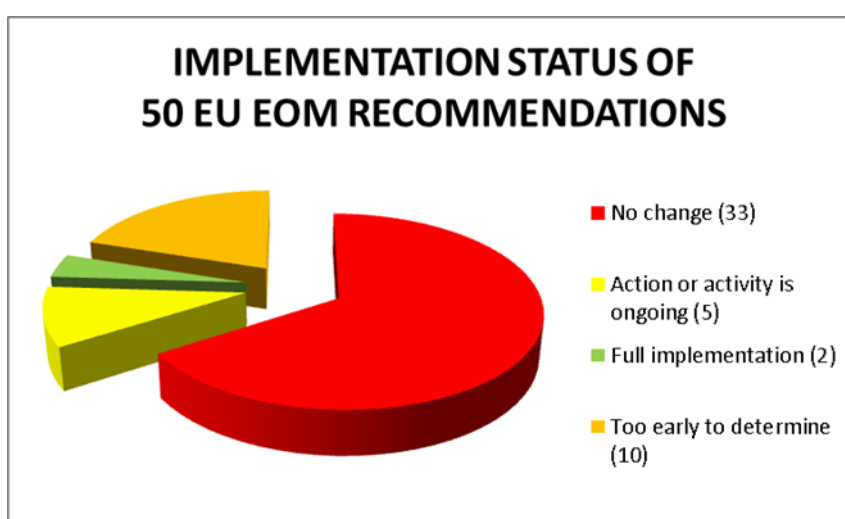


a legal framework that reflects internationally accepted principles for democratic elections, is to sign and ratify the International Covenant on Civil and Political Rights (ICCPR).

On the other hand, more could have been done with regard to reforming the media legal framework and implementing the recommendations which may be addressed by the UEC alone, through amendments of its by-laws or administrative decisions.

Implementation status of the 50 recommendations:

- 33 No change (66%)
- 5 Action or activity is ongoing but implementation has not yet been confirmed (10%)
- 2 Full implementation (4%)
- 10 Too early in electoral cycle to determine (20%)



The detailed overview of the implementation status of each recommendation is provided in the annexed Matrix on the implementation status of EOM recommendations.

The UEC prepared and presented to the EU EFM its own matrix on the implementation status of the EU EOM 2015 recommendations, which differs from the EU EFM findings. Using different categorisation, the UEC assessed 41 recommendations leaving out those proposed to the media, political parties and the Ministry of Labour, Immigration and Population. According to the UEC's assessment, 14 recommendations were implemented, implementation of 12 recommendations was ongoing and 15 recommendations were considered difficult to implement.

#### A. Legal Framework (Recommendations 1 to 5)

Five of the recommendations offered by the EU EOM 2015 relate to the need of broad legislative reform, including substantial amendments to the Constitution, to bring Myanmar's legal framework in line with international standards for elections. These include the removal of the 25 per cent representation of Tatmadaw-appointed lawmakers in the Union and State/Region Assemblies, review of the constituency boundaries for the Lower House to ensure equal suffrage and lifting restrictions deemed unreasonable on the right to vote and on the right to stand for election.

None of these recommendations were implemented and they are unlikely to be addressed before the 2020 elections. The previous legislation remains in place with no changes made since the NLD government took office in 2016. Furthermore, Myanmar is yet to sign and ratify the International Covenant for Civil and Political Rights, one of the most important legal instruments for elections.

A constitutional review process was initiated on 19 February 2019 with the establishment of a dedicated committee. The 45-member Joint Committee for Amending the Constitution is to submit a proposal for amendments by 17 July 2019. However, any amendment to the 2008 Constitution requires the consent of the Tatmadaw-appointed lawmakers (who hold 25 per cent of the seats in both houses) by establishing a threshold for approval of more than 75 per cent of the representatives of the Union Assembly. But several provisions in the Constitution, including the most controversial ones, require both the approval of more than 75 per cent of the representatives of the Union Assembly and the holding of a referendum with an approval rate of more than 50 per cent of registered voters.

The representation of Tatmadaw-appointed lawmakers in both houses of the Union Assembly is provided in articles 109 and 141 of the Constitution and can only be amended with parliament's approval and a referendum. The Constitution does not explicitly refer to 25 per cent representation of the Tatmadaw but rather establishes a number of members appointed by the Commander-in-Chief. For the lower house (Pyithu Hluttaw), it is not more than 110 members nominated by the Commander-in-Chief of the Tatmadaw, meaning that this number may be reduced without any changes to the Constitution if an agreement was to exist between the government and the Commander-in-Chief. For the upper house (Amyotha Hluttaw), article 141 b) provides for the exact number of 56 nominees from the Tatmadaw, therefore any change would require the approval of the Union Assembly and of a referendum.

Restrictions on the right to vote identified in 2015 include unreasonable requirements to prove citizenship that discriminate on the grounds of ethnicity, resulting in a significant number of persons being disenfranchised. This requires reform to the Citizenship Law of 1982 so as to conform to international standards on the right to citizenship and the prohibition on racial discrimination. Article 345 of the Constitution attributes citizenship only to persons whose both parents are/were citizens of Myanmar. Further restrictions provided in article 392 of the Constitution include the ban on the right of members of religious orders or institutions as well as of convicted prisoners, to vote. An amendment to any of these provisions requires the approval of more than 75 per cent of the representatives in the Union Assembly but no referendum is needed.

Restrictions on the right to stand fall under the provisions in the Constitution that require approval both of the Union Assembly and of a referendum. Limitations to the right to stand for election include requiring citizenship of both parents of a candidate; the 10-year and 20-year continuous residency before elections for parliamentary and presidential candidates, respectively; and the ban from becoming president on persons whose children and/or spouse are foreign nationals.

In its Strategic Plan 2019-2022, the UEC aimed at proposing revisions and amendments of the electoral laws and by-laws to the parliament. A committee was recently formed at the UEC to review the electoral laws and propose concrete amendments. However, many of the provisions which needs to be amended are dependent on amendments to the Constitution. Therefore, the successful accomplishment of this task before the 2020 general elections is uncertain.

#### *B. Election Administration (Recommendations 6 to 9)*

Three recommendations proposing strengthening UEC's institutional and financial independence,

improving transparency and effectiveness of its decision-making and communication, and publishing a clear and coherent election calendar ahead of any elections have not been implemented. There is currently some activity ongoing to improve women representation at all levels as recommended by the EU EOM, however results are yet to be confirmed.

The appointment mechanism for the Chairperson and members of the UEC by the President, as stipulated in the Constitution remains unchanged. On 6 March, the President appointed eight new members of the UEC based on the existing constitutional provisions which do not provide for any meaningful involvement of opposition political parties. During meetings with the EU EFM opposition political parties expressed mistrust in the UEC questioning its professional capacity, independence and impartiality.

The UEC continues to be underfinanced and it is facing challenges in maintaining permanent staff at sub-commission levels and allocating sufficient resources for the upcoming voter registration update. Reportedly some UEC sub-commission staff is working without being paid. The UEC is currently finalising the new increased budget request for the next fiscal year starting on 1 October 2019 and it is expected to be submitted to the Union Assembly soon.

The UEC also remains dependant on external civil service staff provided by the General Administration Department (GAD), particularly at the lower sub-commission levels. In a positive development, in December 2018, the GAD was transferred from the Tatmadaw-controlled Ministry of Home Affairs to the civilian Ministry of the Office of the Union Government. Generally, stakeholders are of the opinion that if thorough civil service reforms are implemented, in a long-run this change could have a positive effect on the conduct of elections.

The UEC's transparency and communication with stakeholders were a key concern of most interlocutors. Decisions are not being systematically published, the UEC website and social media accounts are underused and nearly all political parties and civil society organisations met by the EU EFM complained about the lack of regular and meaningful communication with the UEC. As a consequence, stakeholders do not have essential information on the upcoming voter list update, such as what would be the basis for the 2020 general elections voter list.

Publication of a clear and comprehensive election calendar well ahead of elections is still not a standard practice. The UEC published a calendar for the 2017 by-elections, however it was not comprehensive, as for instance timelines for advance voting were missing. Ahead of the 2018 by-elections the UEC failed to publish any election calendar and resorted to intermittent announcements of the electoral schedule.

Positively, the UEC adopted the Gender Equality and Women's Empowerment Policy and Action Plan 2019-2022. According to this document since 2015 the UEC added 392 women commissioners in sub-commissions throughout the country and 951 women staff to other positions. The UEC claims that currently there are 24% of women commissioners at state/region level, 16% at district level and 15% at township level. The situation is, however, less favourable at the headquarters level where there is no woman among the 15 Union level commissioners, director general/deputy directors general and department directors. The highest ranked women can be found only at the department deputy director level.

The UEC Strategic Plan 2019-2022 includes three pillars - electoral operations and integrity, stakeholder relations and promotion of inclusive participation - which deal with some of the issues linked to implementation of the above recommendations. These include planning the timetable of electoral processes, developing a comprehensive electoral budget for the UEC, establishing effective

communication between the UEC and sub-commission offices, publishing electoral information on the UEC's website, enhancing transparency and ensuring quick and timely announcements of elections results, engaging regularly with all stakeholders and ensuring equal opportunities for all genders at all levels of the UEC.

### *C. Voter Registration (Recommendations 10 to 13)*

A nation-wide voter registration exercise for 2020 elections is in the very initial phase of adopting methodology, planning, budgeting and training. Therefore, the status of three recommendations related to the voter registration - to build on the 2015 computerised voter list to achieve universal suffrage, to carefully consider the choice of database for storing and managing the voter list, and to continue issuing national registration cards - could not be fully assessed at the time of writing, as it is too early in the electoral cycle. However, the UEC should make respective decisions as soon as possible in order to ensure a timely start of the voter registration update, considering the recommendation to build on the computerised voter list prepared in 2015. The recommendation which advocates for the publication of all voter registration data was not implemented as the 2015 voter registration data are still not publicly available.

A small-scale update of the 2015 voter list took place in a limited number of constituencies that held the by-elections in 2017 and 2018, including a door-to-door voter list update in 2017. Practically all stakeholders interviewed by the EU EFM believe that 2015 voter list was not accurate. However, there is no data available to quantify the error rate of the 2015 voter list. Two attempts by the domestic observer group PACE to audit the voter list ahead of the 2017 and 2018 by-elections failed since the UEC was unable to provide constituency voter lists in electronic format. Stakeholders are equally concerned about the capacity of the UEC to produce an accurate voter list for 2020.

The election law is ambiguous on whether the 2015 voter list can be used, after updating, for the 2020 elections. The UEC seems to be considering both options either to update the 2015 voter list or to compile a new voter list for the 2020 elections from scratch. The latter option, however, would require significant human and financial resources which at the moment the UEC does not appear to have at its disposal.

The main challenges of voter registration are the inclusion of 4.8 million first-time voters who will reach 18 years of age by the 2020 general elections and the removal of deceased persons, if the UEC decides to update the existing 2015 voter list. Currently, there is no effective mechanism in place to remove deceased persons from the list and their number is therefore continuously increasing. An estimated 2.4 million or 6% of deceased people on the voter list by 2020 may not be seen as a major problem for general elections due to the use of indelible ink and knowledge of neighbourhoods by polling staff. However, in case of a potential referendum to ratify constitutional amendments it would mean that in reality instead of 50 per cent, a higher number of actual voters would have to approve the amendments.

According to the UEC, voters will have an opportunity to check their details in the voter list during two 14-day display periods at lower level sub-commission offices, through the UEC website or a mobile application. Any request for correction, addition or deletion has to be physically filed at the display centre using a prescribed form. Despite mixed experience from the 2017 by-elections, the UEC, for the time being, has not ruled out the possibility of door-to-door voter list update, however only if funding is provided by donors as the UEC budget is insufficient. The UEC is also considering an option to actively involve political parties in the voter list update by providing them with a copy

of preliminary voter list, however no final decision has been made in this regard.

It appears that the UEC decided to use Excel database for storing and managing the voter register with 330 township election officers having the database access rights. The database is relatively simple and therefore should be successfully managed by the existing UEC IT staff without a need for extra capacity building. However, at the same time the database also provides less safeguards against unauthorised access and manipulation of data, making the whole system vulnerable to potential abuse by political contenders.

The process of issuing National Registration Cards (NRCs) by the Ministry of Labour, Immigration and Population is ongoing. The NRCs are intended to be the main form of identification for Myanmar citizens including for voting. The total number of NRCs issued to date is not known, but it is safe to assume that a significant part of adult population still does not have the NRC. For the 2020 elections it is not foreseen to use NRCs for identification of voters at polling stations and it is expected that, like in the 2015 general elections and the 2018 and 2019 by-elections, voters will not be required to present any ID document in order to vote.

Quantitative voter registration data, including breakdown per constituency and polling station, are not publicly available. Any political party or civil society organisation which needs such information for survey or research purposes has to go through a cumbersome process of individually requesting this information from the UEC and paying administrative fee for the copies of documents provided. Depending on the number of copies requested, the administrative fee might be rather high.

The UEC Strategic Plan 2019 – 2022 includes voter registration and data management pillar and implementation of its strategic goal “*to prepare an accurate voter list that ensures all eligible voters are included in the list...*” is foreseen until the end of 2021.

#### *D. Registration of Political Parties and Candidates (Recommendations 14 to 16)*

The recommendations focusing solely on the candidates’ nomination process neither require amendments to the Constitution nor to the electoral laws but rather to by-laws issued by the UEC. These refer to the need for adopting consistent and clearer procedures for and documentation to prove citizenship and residency of candidates. Additionally, there was also the need for more transparency measures in handling appeals on candidate nomination, such as public hearings, publication of decisions and written reasoning provided to applicants. There are indications that a case tracking system is to be implemented for the 2020 elections, supported by IFES. This would bring more transparency into handling of complaints but would not address the lack of consistency with regard to documentation.

The EU EOM 2015 considered that the criteria for the registration and deregistration of political parties were restrictive, namely with regard to limits on policy positions imposed by the Political Parties Registration Act 2010, and deregistration if any party member contacts members of unlawful associations or s/he is involved in narcotic traffic which requires from the party an unreasonable level of scrutiny of its members at all times. The Act remains in place with no amendments foreseen in the near future. The Constitution dedicates a chapter to political parties containing subjective provisions that limit their action.<sup>5</sup> Constitutional provisions related to political parties may be amended with the approval of more than 75 per cent of the Union Assembly.

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<sup>5</sup> Such as in article 407 of the 2008 Constitution of Myanmar which provides that “*If a political party infringe one of the following stipulations, it shall have no right of continued existence: (b) directly or indirectly contacting or abetting the*

According to the UEC Strategic Plan, a Code of Conduct is to be approved by political parties for the 2020 elections. The UEC will then monitor the compliance with the provisions of the Code of Conduct. Political parties expressed appreciation for the Code of Conduct endorsed by them for the 2015 general elections and strong support to have it renewed ahead of the next elections.

#### *E. Campaign (Recommendations 17 to 23)*

Undue limitations on freedom of assembly, association and expression contained in the Constitution and other legislation such as the Right to Peaceful Assembly and Peaceful Procession Act, the Official Secrets Act, the Unlawful Associations Act and the Electronic Transactions Act remain unaddressed.

There are other recommendations related to campaigning, which require only amendments to the UEC directives, and that may be addressed by the UEC before the 2020 elections. These relate to the excessive period required for notification of public campaign events that is encouraged to be reduced to 48 – 72 hours and the prior approval of campaign messages by the UEC. Specific mechanisms to deal with hate speech are unlikely to be adopted for the 2020 elections. The mediation committees, derived from the Code of Conduct, seem to be the most realistic, effective and timely approach to deal with instances of hate speech.

Although the UEC Strategic Plan 2019-2022 envisages a stricter monitoring of political party and campaign financing, the recommendations suggested by the EU EOM 2015 on campaign finance – increasing the campaign spending limit for candidates for the upper house; use competent independent professionals for auditing candidate campaign expenses; submission by political parties and individual deputies of regular accounts on their financing and expenditure, including party campaign account reports – have not been implemented.

The STEP Democracy II programme is currently working on simplifying Form 20 related to the disclosure of candidates' campaign expenses. Though this may simplify the reporting mechanism, it will bring little improvement to the implementation of the EU EOM's recommendations on campaign finance matters, such as random auditing of campaign expenses of candidates by independent experts and submission of political parties' detailed statements of accounts during campaign period.

#### *F. Media (Recommendations 24 to 29)*

None of the media-related recommendations has been implemented. These recommendations identified limitations on freedom of expression and of the press, while calling for the adoption of a legal framework that is in line with international standards for the media.

Interference of state authorities in activities of media and journalists, and of social media users continues to be reported. Journalists acknowledge a considerable degree of self-censorship as reactions of authorities are unpredictable and journalists may face criminal charges months after publishing a story. Interlocutors claimed that freedom of the press is more or less respected, except when reporting on corruption, the Tatmadaw and ethnic conflicts, particularly in Rakhine, Shan and

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*insurgent group launching armed rebellion against the Union or the associations and persons determined by the Union to have committed terrorist acts or the association; (c) directly or indirectly receiving and expending financial, material and other assistance from a foreign government, a religious association, other association or a person from a foreign country;”*

Kachin States.

Myanmar ranked 137<sup>th</sup> out of 180 countries in the 2018 World Press Freedom Index of Reporters Without Borders. According to the organisation, around 20 journalists were prosecuted in 2017, many of them under article 66 (d) of the Telecommunications Act, which criminalises online defamation. Two Reuters journalists were arrested in December 2017 and sentenced for seven years in September 2018 for breaking the colonial-era Official Secrets Act. Three other journalists of Eleven Media were arrested in October 2018 and accused of publishing information “with intent to cause, or likely to cause, fear or alarm to the public or to any section of the public” under article 505(b) of the Penal Code, with possible imprisonment of up to two years and/or fine. The case was, however, referred to the Myanmar Press Council for mediation.

The Myanmar Press Council prepared an election guidebook for journalists when covering election campaign. The Council may handle complaints through mediation but its decisions are not legally binding and aggrieved parties may resort to legal action. The Ministry of Information remains the body responsible for issuing licenses to the media. It is uncertain whether the Press Council will possess the required resources to conduct media monitoring during the election campaign.

#### *G. Election Observation (Recommendation 30)*

The recommendation calls for observers’ access to all stages of the electoral process including out-of-constituency advance voting, and so far no real action has been taken to implement it.

At the moment, there is no legal provision preventing observers, both domestic and international, from observing all stages of the process. However, in reality observers are not always granted access to polling stations, particularly in case of out-of-constituency advance voting for military personnel. This is mainly due to the lack of UEC control over the advance voting process.

Domestic observer groups observing the 2017 by-elections reported that they were able to observe the whole election day process without hindrance, although, due to various reasons including lack of information, access to the out-of-constituency advance voting was not tested in practice. In the 2018 by-elections, PACE/PTE domestic observers reported that they were unable to monitor the out-of-constituency advance voting process which they stated was conducted in a non-transparent manner and outside the control of the UEC.

The issue of observers’ access is also linked to overall transparency of the process and availability of a comprehensive electoral calendar. In the absence of timely and clear information about the date, time and location of advance voting, it is practically impossible to prepare for the deployment of observers.

The UEC Strategic Plan 2019 – 2022 includes election observation pillar and implementation of its strategic goal “*to enhance transparency and credibility by strengthening the electoral observation process*” is foreseen until the end of first quarter of 2021.

#### *H. Gender and Disadvantaged Groups (Recommendations 31 to 32)*

To date no meaningful action has been taken to implement the recommendation that political parties could be obliged to adopt affirmative action policies to ensure increased participation of women. The number of women candidates contesting elections remains well below the 30% minimum laid down in the Beijing Platform for Action - 13% in the 2015 general elections, 18% in the 2017 by-elections

and 9% in the 2018 by-elections. The same appears to apply to women representation in party structures though no exact data are available.

As for the recommendation which encouraged the UEC to continue its efforts to increase accessibility of polling stations for persons with disabilities, it is too early in the electoral cycle to determine whether the recommendation has been implemented. Special model polling stations for persons with disability were trialled in some areas in the 2017 by-elections while in the 2018 by-elections, PACE/PTI domestic observers reported that the polling stations were not set up to make them accessible to persons with disabilities. The existing UEC budgetary limitations may negatively impact on the implementation of this recommendation.

The UEC Strategic Plan 2019-2022 includes promotion and inclusive participation pillar and implementation of its strategic goal *“to ensure equal participation of all genders, ethnic groups, youth, persons with disabilities and IDPs by removing barriers and discrimination throughout the electoral process”* is foreseen until the end of 2021.

#### *I. Voter Education and Voter Information (Recommendations 33 to 34)*

The two recommendations encourage the UEC to be more proactive in providing voter education and to embark on a broader civic education strategy. In both cases it is too early in the electoral cycle to determine the status of these recommendations.

In the 2017 by-elections, voter education was almost completely outsourced to civil society organisations (CSOs) supported by international donors. The role of the UEC was reduced to approving the content of voter education messages disseminated in Myanmar and four other ethnic languages. While this arrangement worked for the small-scale by-elections, it is not sustainable in the long run.

In the 2018 by-elections, observers noted lack of voter education, especially in rural areas and overall the voter education was assessed to be rather limited compared to the previous 2017 by-elections and 2015 general elections. The UEC was reported to be unable to conduct voter education in the by-elections constituencies and the CSOs were also not active.

Hornbill and MYNFREL CSOs, supported by IFES and in coordination with the UEC, are currently implementing a civic education project, “First Time Youth Voters 2020”, with a particular focus on engaging young people in areas of low voter turnout. The first phase of the project is implemented in 67 out of 330 townships.

The UEC Strategic Plan 2019-2022 includes a civic and voter education pillar and implementation of its strategic goal *“to enhance public awareness of the electoral process and increase participation of all citizens through coordinated and effective civic and voter education”* is foreseen until the end of 2020.

#### *J. Election Disputes (Recommendations 24 to 29)*

Four main recommendations on the existing mechanisms for electoral dispute resolution addressed a number of concerns related to fair procedures, timely remedies, access to justice, and independence of election tribunals. Two of these main recommendations require legislative change, including of constitutional provisions. These refer to the independence of election tribunals from the UEC, requirement for disputes to be handled by the judiciary, the right to appeal the UEC decisions and the



possibility to have refundable fees in case of a successful claim. There is however no indication that the necessary legal amendments will take place before the 2020 elections.

The UEC may address two other recommendations through amendments to the by-laws or the establishment of procedures ahead of the next general elections. These relate to clear and reasonable time limit for decisions on post-election legal challenges, the decentralisation of the hearings to adjudicate disputes to the states and regions and transparency of decisions. In its Strategic Plan 2019-2022, Strategic Pillar 6, the UEC aims at enhancing the transparency of the dispute resolution process. According to its objectives, the UEC plans to review the laws and procedures on election disputes, ensure that different levels of sub-commissioners are assigned with the exact mandate and trained to resolve election disputes, form tribunals at the UEC office and other areas across the country to improve public access to justice, allow for public attendance during hearings and decisions of the tribunal, and create another appellate level in case the aggrieved person is dissatisfied with the decision. The UEC, with the support of IFES, is also planning to establish a computerised case tracking system (CTS), which would include not only the details of each case but also the decisions taken by the tribunals. If implemented ahead of 2020, these actions are likely to considerably improve the consistent application of the law and the transparency of decisions thus increasing public trust in the mechanisms available to deal with election disputes.

Furthermore, the UEC will rely on the different levels of the election mediation committees to handle complaints before and during elections, namely during the campaign period. This would require training on the mandate and procedures of these committees.

#### *K. Polling, Counting and Tabulation of Results (Recommendations 39 to 44)*

Out of six recommendations in this thematic group one was fully implemented – vote should be considered valid as long as the intention of the voter is clear; in one case action or activity is ongoing but implementation is yet to be confirmed – retention of UEC staff and access to experienced staff; and in one case it is too early in electoral cycle to determine – training of election officials focused on adherence to procedures. Three recommendations remain unaddressed with no action taken to implement them – right to new ballot if the original one was spoiled; right to recount in a polling station; and prompt publication of all results data and any related complaints.

Ahead of the 2017 by-elections, the UEC in the Polling Manual broadened the definition of what constitutes a valid ballot and provided samples of valid and invalid votes to polling staff. In order to make this solution more sustainable it is desirable to include this broadened definition also in the election by-laws. Positive effect of implementing the recommendation can be seen in the decreasing number of invalid votes – 5.38% in the 2015 general elections, 4.3% in the 2017 by-elections and 2.3% in the 2018 by-elections. Other factors, such as previous 2015 election experience and socio-economic structure of by-election constituencies might have also contributed to the lower number of invalid votes.

The UEC addressed the issue of keeping the existing staff and recruitment in the new strategic plan which includes planned improvements in staff recruitment, promotion and training, as well as establishment of a training unit within the UEC. However, successful implementation of these improvements largely depends on availability of sufficient financial resources to maintain permanent contracts for experienced staff at the sub-commission levels.

The quality of polling staff training was problematic in both recent by-elections. Training manuals prepared by the UEC ahead of the 2017 by-elections reinforced procedures which were not always

strictly adhered to previously, including public display of results after the count at polling stations. However, observers reported that this aspect was less well managed and not consistently implemented. Also, in the 2018 by-elections observers noted inconsistent implementation of procedures and insufficient polling staff training.

No action has been taken by the UEC to allow voters who accidentally spoil the ballot paper to receive a new one, and to allow a recount of votes at polling station. The UEC did not publish polling station results after the 2017 and 2018 by-elections and it informed the EU EFM that there are no plans to publish full polling station results on the UEC website after the 2020 elections. They cited lack of time and human resources as the reason for not implementing this fundamental transparency measure.

The UEC Strategic Plan 2019-2022 includes two pillars – institutional and professional development and electoral operations and integrity – which deal with some issues linked to implementation of above recommendations.

#### *L. Advance Voting (Recommendations 45 to 50)*

Out of six recommendations related to advance voting one was fully implemented – introduction of double envelope system to protect the secrecy of the vote; in one case it is too early in electoral cycle to determine – increased voter education and improved administrative arrangements for overseas voters; and four recommendations remain unaddressed with no action taken to implement them – UEC taking full responsibility for all aspects of advance voting; reducing the period for in-constituency advance voting, introducing adequate safeguards for handling of advance votes and ballot boxes; and reducing the number of categories of voters eligible for advance voting.

The double envelope system to protect the secrecy of the vote was successfully used for out-of-constituency advance voting both in the 2017 and 2018 by-elections. To make it more sustainable it is desirable to include this practice also in the election by-laws.

The UEC improved administrative arrangements for overseas advance voters ahead of the 2017 by-elections, by, for instance, developing a manual for out-of-country advance voting. The election law allows those who are outside the country with the permission of the Union government and members of their household to vote in advance for their respective constituency. However, it does not appear that all migrant workers who are holders of Myanmar passport are included in this category of eligible voters.

The UEC still does not have full control over all types of advance voting and particularly out-of-constituency advance voting for military personnel remains problematic. PACE/PTE domestic observers reported that during the 2018 by-elections they were unable to observe the out-of-constituency advance voting which according to them was conducted in a non-transparent manner and outside the control of the UEC. No action has been taken by the UEC to reduce the period for the conduct of in-constituency voting, and number of categories of voters eligible for advance voting. The UEC has not introduced any additional safeguards for handling of advance votes and ballot boxes.

The UEC Strategic Plan 2019 – 2022 includes an electoral operations and integrity pillar which deals with some issues linked to the implementation of the above-mentioned recommendations.

## V. The Stakeholders Roundtable

The EU EFM organised on 4 April in Yangon the stakeholder roundtable “*The way forward for the implementation of the 2015 EU Election Observation Mission’s recommendations*“. The main purpose of the roundtable was to bring together all key electoral stakeholders and initiate discussion on the challenges and opportunities for the implementation of the EU EOM 2015 recommendations.

The roundtable was attended by more than 45 participants representing the UEC, main political parties and coalitions (National League for Democracy, Union Solidarity and Development Party, People’s Party, United National Alliance and National Brotherhood Federation), civil society organisations (PACE, New Myanmar Foundation, Myanmar Women Journalists Society, Hornbill, MYNFREL, Panna Institute and Free Expression Myanmar), international technical assistance providers (International IDEA, IFES, NDI, The Carter Center, Democracy Reporting International, UNDP, Netherlands Institute for Multiparty Democracy/Demo Finland and Danish Institute for Parties and Democracy) and the EU Delegation.

The roundtable focused on recommendations which do not require a constitutional amendment as the constitutional review process was recently initiated at the Union Assembly level. Participants were divided into three thematic working groups, as follows: group 1) election administration, voter registration and candidate nomination; group 2) campaign and election disputes; and group 3) advance voting, polling, counting and tabulation of results. Each group discussed a set of recommendations and during the final session presented conclusions of the discussion, identifying priority recommendations whose implementation was considered essential for the improvement of 2020 electoral process.

Overall, political parties or groups and civil society organisations had the opportunity to jointly discuss at length a number of electoral issues with senior-level UEC staff. The conclusions of the roundtable discussions were in line with the EFM conclusions. While in principle all stakeholders agreed with the EU EOM recommendations pre-selected for the group discussions, within the given time they identified priority recommendations whose implementation is considered essential for improving the 2020 electoral process. These focused on the need for financial independence and adequate budget of the UEC avoiding undue reliance on ministries; the publication of a clear and coherent election calendar; the publication of data on the voter registers including a breakdown of voters per constituency; a shorter period for notification of public campaign events, such as 48 or 72 hours; enhanced training of election officials on procedures, especially on counting and tabulation; full responsibility of the UEC for all aspects of advance voting; improved access to justice by decentralising Election Tribunals to the states and regions and full and prompt publication of all data related to results and to complaints by the UEC.

## VI. Conclusions

The EU EFM conducted its activities with two main objectives. Firstly, to assess the status of implementation of the recommendations offered by the EU EOM 2015, taking into account the political developments since last elections; secondly, to identify the recommendations that could still be implemented within the 18 months remaining before the next general elections.

Myanmar faces important internal challenges, which are limiting attention devoted to electoral reforms. In spite of this, a constitutional review process was recently initiated that may in the long-run eventually address some concerns raised by the EU EOM 2015 in relation to aligning the country's legislation with internationally accepted principles for democratic elections. The current

constitutional reform should not leave aside matters such as restrictions deemed unreasonable on the right to vote and on the right to stand for election, review of the constituency boundaries for the Lower House to ensure equal suffrage, the removal of the 25 per cent military representation in the Union Assembly, and limitations on freedom of expression in particular both of the media and of political parties. Equally important are matters related to political inclusivity and representation and the involvement of the judiciary in the electoral process as the last appellate level.

The recommendations identified as still achievable within 18 months remaining before the 2020 general elections mainly require actions to be taken by the UEC, and many of these actions are also foreseen in the UEC Strategic Plan 2019 – 2022. They are as follows:

**Election Administration:** In order to improve transparency and communication with stakeholders, the UEC needs to develop and implement an effective communication strategy that will keep all stakeholders regularly informed about the status of electoral preparations and any problems encountered, as provided in the EU EOM 2015 recommendations 8 and 9 and pillar 7 of the UEC Strategic Plan. Related to this is the publication of an election calendar well in advance containing the specific dates for all stages of the electoral process as provided in pillar 4 – electoral operations (4.1 Plan the timetable of the electoral process) of the Strategic Plan.

**Voter Registration:** The EU EFM maintains the view of the EU EOM 2015 in relation to the recommendations on voter registration, emphasising recommendations 10 and 11 which advise the UEC to build on the computerised voter list created for the 2015 elections and to publish the data of the voter register, including a clear breakdown of numbers of voters per constituency.

**Candidate Nomination:** In line with the pillar 9 of the UEC Strategic Plan, the EU EOM 2015 recommendation 14 on the need for adopting consistent and clear procedures to prove citizenship and residency of candidates may be implemented as provided in the strategic objective 9.4 – to conduct education programmes related to the submission of candidate nominations.

**Campaign:** These recommendations relate to the excessive period required for notification of public campaign events that is encouraged to be reduced to 48 – 72 hours and that campaign messages should not be subject to prior approval of the UEC, as provided in EU EOM 2015 recommendations 18 and 19. The UEC plans to adopt a revised Code of Conduct (strategic objective 9.2) whose Monitoring Committees may effectively and timely deal with instances of hate speech and campaign violations, therefore addressing to a certain extent the EU EOM recommendation 20.

**Voter Education:** the EU EOM recommendations 33 and 34 may still be implemented in line with the UEC Strategic Plan pillar 5 which foresees development of a national civic and voter education coordination plan with all stakeholders, broadcast of voter education messages on the UEC’s website, social media and across mass media outlets, and more voter education materials published and distributed in ethnic languages.

**Election Disputes:** Implementation of the majority of the EU EOM recommendations related to the handling of election disputes entail legislative reform which has not taken place. Nevertheless, the UEC Strategic Plan provides, in pillar 6, for the adoption of measures that would make the resolution of election disputes significantly more effective and transparent. These include review of election dispute procedures, training different sub-commissioners on election disputes, forming tribunals across the country to improve public access to justice, allowing for public hearings of the tribunals, creating another appellate level and the establishment of a case tracking system. The EU EFM encourages the UEC to effectively adopt the planned actions in pillar 6.

**Polling, Counting, Tabulation and Results:** The EU EOM recommendations 39 and 44 on

enhancing the quality of training of election officials and prompt publication of full results including by polling station can be linked to the UEC Strategic Plan pillar 2 – institutional and professional development and pillar 4 – electoral operations and integrity.

**Advance Voting:** Pillar 4 (strategic objective 4.13) of the UEC Strategic Plan foresees the adoption of measures to increase the transparency and integrity of the advance voting process, namely ensuring that political parties and observers can observe the process, implementing the same procedures for regular and advance voting, and announcing the date for advance voting. Not all EU EOM recommendations on advance voting are addressed in the Strategic Plan. Therefore, the UEC may still consider the implementation of the EU EOM recommendations 45 (UEC’s full responsibility over the process), 47 (reducing the period for conducting advance voting), 49 (reducing the number of categories of voters eligible for advance voting) and 50 (increase voter education for overseas voters and improve the administrative arrangements for them).

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## VII. Annexes

### Annex I: Press Release



## EUROPEAN UNION ELECTION FOLLOW UP MISSION MYANMAR 2019

### PRESS RELEASE

Yangon, 4 April 2019

#### **EU Election Follow Up Mission suggests implementing more election reform recommendations ahead of 2020 elections.**

The European Union (EU) deployed an Election Follow-up Mission to Myanmar on 14 March 2019. The Mission was led by Alexander Graf Lambsdorff, Chief Observer of the 2015 EU Election Observation Mission (EOM) to Myanmar and former Vice President of the European Parliament.

The purpose of the Follow-up Mission was to assess the degree to which the recommendations of the EU EOM had been implemented and the progress made in electoral reforms since the 2015 general elections. The Mission met with representatives of the Union Election Commission (UEC), the Parliament, political parties, civil society and technical assistance providers.

Some recommendations identified by the EU EOM in 2015 have been implemented; a number however still remain relevant and unaddressed. The EFM has specifically focused on a set of priority recommendations that could be implemented before the 2020 general elections. These relate primarily to transparency in the work of the UEC, voter registration, campaign, election dispute resolution, advance voting and a more prominent role for women in political parties.

In this context, the Mission organised a roundtable on 4 April with the UEC, political parties, civil society organisations, national observers' groups and international technical assistance providers. Participants had the opportunity to jointly discuss the feasibility of implementing further EU EOM recommendations that would improve the 2020 electoral process.

In a press conference held today, Mr Lambsdorff said *“One important conclusion of the roundtable was the need to improve communication between the UEC, political parties and civil society organisations involved in election-related activities. This is a legitimate request from electoral stakeholders. We encourage the UEC to develop an effective communication strategy that will keep all stakeholders regularly informed about the status of electoral preparations. Beyond that, now is the right time for Myanmar institutions and political parties to start working on all relevant measures that will increase the level of inclusiveness, credibility and transparency for a successful Union election in 2020.”*

The deployment of the Electoral Follow-up Mission demonstrates the EU's strong commitment to the democratisation process in Myanmar. The Mission welcomes the formation and the ongoing work of a Joint Constitutional Amendment Committee mandated to review the Constitution, and encourages the government to sign the International Covenant on Civil and Political Rights (ICCPR) signalling its commitment to uphold fundamental democratic values.

**Annex II: Roundtable Concept Note and Agenda**

## **ROUNDTABLE**

### ***THE WAY FORWARD FOR THE IMPLEMENTATION OF THE 2015 EU ELECTION OBSERVATION MISSION'S RECOMMENDATIONS***

Yangon, 4 April 2019  
Novotel Yangon

#### **INTRODUCTION**

At the invitation of the authorities of the Union of Myanmar, the EU deployed an Election Observation Mission (EU EOM) to Myanmar in 2015 to provide a comprehensive, independent and impartial assessment of the electoral process as well as recommendations identifying areas that needed to be improved within the electoral framework. The follow-up of these recommendations is an important element of the EU continuous support to the consolidation of democracy. In this sense, an EU Electoral Follow-up Mission (EFM) headed by the former Chief Observer Alexander Graf Lambsdorff was deployed to Myanmar from March to April 2019. The purpose of the EFM is to assess the degree to which the EU EOM 2015 recommendations have been implemented and the progress made in electoral reforms since 2015 elections.

#### **METHODOLOGY**

The main objective of the roundtable is to serve as a forum for national interlocutors to exchange views on the challenges and opportunities for the implementation of the EU EOM 2015 recommendations.

The opening session will be conducted by the Chief of Mission (CM) and former Chief Observer of the EU EOM 2015, Mr. Alexander Graf Lambsdorff, the representative of the Union Election Commission (UEC) and the EU Ambassador, Mr. Kristian Schmidt. Mr. Lambsdorff will present the result of his consultation with stakeholders during the EFM, and the recommendations identified as more feasible and essential ahead of the 2020 elections. The representative of the Union Election Commission (UEC) will present the UEC's priorities and plans ahead of 2020. The EU Ambassador will present the current EU funded support provided to the electoral process.

Participants will be organised in three groups. Each group will discuss during one hour a set of recommendations and in particular:

- Identify three recommendations whose implementation is considered essential for the improvement of the 2020 electoral process
- Main challenges to their implementation
- Actions that participants can take as well as institutional and international support needed
- Timeframe for implementation

Each group will appoint its spokesperson who will present the conclusions and proposals of the group at the end of the discussion. The Chief of Mission of the EFM and the representative of the UEC will

summarise the main conclusions of the groups, namely on the way forward to implement the recommendations considered feasible.

**Thematic groups:**

Group 1: Election Administration, Voter Registration and Candidate Nomination

Group 2: Campaign and Election Dispute

Group 3: Advance Voting, Polling, Counting and Tabulation of Results

PROGRAMME

Time	ACTIVITY
9:00 - 9.30	Registration of Participants
9:30-10.15	Opening session
10:15- 11.15	Group Debate
11:15 – 11.30	Coffee Break
11:30 – 12.15	Group presentation
12:15 – 13.00	Q&A and Conclusions

***Recommendations to be debated in each thematic group***

*Group 1: Election Administration, Voter Registration and Candidate Nomination*

1. The UEC needs to have a more independent structure, including vis-a-vis budget and staffing, avoiding undue reliance on ministries.
2. Transparency and effectiveness of UEC decision-making and communication must be improved, with prompt publication of decisions and notifications.
3. The UEC should publish a clear and coherent election calendar.
4. The UEC should build on the computerised voter list created for the 2015 polls, with a view to further updating, cleaning and revision to achieve universal suffrage.
5. Data on the voter registers needs to be fully available as public information. This includes a clear breakdown of numbers of voters per constituency.
6. For candidate nominations, the rules on documentation required as proof of citizenship and residency need to be clarified and fair and consistent checking procedures adopted.
7. Procedures for the handling of appeals on candidate nomination must be transparent, including the use of public hearings, publication of decisions and written reasoning provided to applicants.

*Group 2: Campaign and Election Dispute*

1. The requirement for notification of public campaign events is reasonable, but the period of notice currently required is excessive. Parties should be able to provide notice of a far shorter period, such as 48 or 72 hours.
2. Campaign messages should not be subject to prior approval and there should not be undue limitations on topics allowed to be covered in the campaign.



3. There should be effective and timely mechanisms to deal with instances of hate speech.
4. Political parties and individual deputies should be required to submit regular accounts on their financing and expenditure, including party campaign account reports.
5. There should be a clear and reasonable time limit for decisions on post-election legal challenges.
6. It must be ensured that Election Tribunals are independent of the UEC, or that such disputes are dealt with before the courts. Hearings to adjudicate disputes should also be decentralised to the states and regions.
7. The handling of election complaints must respect the principles of fair procedures and provide a guarantee of impartiality. This includes the right to appeal decisions of the UEC.

Group 3: Advance Voting, Polling, Counting and Tabulation of Results

1. Training of election officials should be conducted in a manner to specifically enhance adherence to procedures, especially on counting and tabulation.
2. In case a voter accidentally spoils a ballot paper, he/she should be able to receive a new ballot to avoid a person de facto being denied the right to vote.
3. There should be the right to a recount in a polling station.
4. All data related to results and any related complaints must be fully and promptly published by the UEC and the UEC should publish full results by polling station.
5. Careful consideration needs to be given to the practice of advance voting, given prevailing doubts among some stakeholders as to its integrity. If the practice is to continue, the UEC should take full responsibility for all aspects of advance voting, including out of constituency advance voting.
6. There must be adequate safeguards for the handling of advance votes and ballot boxes, especially overnight.
7. Consideration could be given to reducing the number of categories of persons eligible for advance voting.

**Annex III: Matrix on the Implementation Status of the 2015 EU EOM Recommendations**

No.	Year	Recommendation	Electoral Theme	Status (1-6)	Comments and Additional information
1.	2015	Legislative reform needs to be broadly considered to bring Myanmar more into line with international standards for genuine elections, including with reference to the ICCPR, ICERD and the ILO Convention 169 on Indigenous Rights.	Legal Framework	1 No change	No legislative reform was undertaken to date and Myanmar did not sign any further election-related international treaty after 2015 elections. Although the constitutional review process is ongoing, it is unlikely to lead to implementation of this recommendation.
2.	2015	In order to provide for genuine elections, the provision for 25% of seats to be appointed by the Commander-in-Chief, rather than elected by the people, should be dropped.	Legal Framework	1 No change	This recommendation requires amendment of the specific sections of the Constitution and therefore such amendment, after being passed by 75%+ super majority in the Union Assembly needs to be subsequently approved in a nation-wide referendum. Therefore, the implementation ahead of 2020 elections is not realistic.
3.	2015	Unreasonable restrictions on the right to vote should be amended, bringing provisions in this regard into line with international standards. Namely: a. There needs to be reform of the citizenship law to ensure that persons reasonably qualified for citizenship are able to secure it (in accordance with the Universal Declaration of Human Rights' prohibition on racial discrimination and the Declaration's provisions on the right to citizenship) and are therefore entitled to vote b. Restrictions on the right of members of religious orders or institutions to vote are not in accordance with international standards and consideration should be given to dropping such a restriction c. Convicted prisoners should also be entitled to vote	Legal Framework	1 No change	This recommendation requires amendment of the Citizenship Act (3a) and the Constitution (3b and 3c) by 75%+ super majority of the Union Assembly. It is politically highly sensitive and controversial issue and therefore the implementation ahead of 2020 elections is not realistic.
4.	2015	Unreasonable restrictions on the right to stand should be amended, bringing provisions in this regard into line with international standards and specifically the Universal Declaration of Human Rights. In this regard: a. The requirement for the parents of a candidate to have both been citizens is an unreasonable requirement and should be dropped. b. The requirement for continuous residency of 10 years for a parliamentary candidate and 20 years for a presidential candidate are disproportionate and	Legal Framework	1 No change	This recommendation requires amendment of the Constitution, including its specific sections and therefore, after being passed by 75%+ super majority in the Union Assembly it needs to be subsequently approved in a nation-wide referendum. Therefore the implementation ahead of 2020 elections is not realistic.

		could be decreased to provide for more reasonable and inclusive eligibility criteria. c. Limitations against a person becoming president in case of their children and/or spouse being foreign nationals are not reasonable and should be dropped.			
5.	2015	The logic for an equal number of seats per State/Region for the Upper House is understandable, but constituency boundaries for the Lower House should be reviewed in order to create constituencies of equal size in order to provide for equal suffrage in line with Article 25 of the ICCPR.	Legal Framework	1 No change	This recommendation requires amendment of the specific sections of the Constitution and therefore such amendment, after being passed by 75%+ super majority in the Union Assembly needs to be subsequently approved in a nation-wide referendum. Therefore, the implementation ahead of 2020 elections is not realistic.
6.	2015	The UEC needs to be a truly independent institution. In this regard: a. The nomination and appointment mechanism for the Chair and Members of the Commission needs to be transparent and inclusive in order to ensure confidence among stakeholders. For instance, nominations for UEC members could be proposed through a cross-party parliamentary committee. b. The UEC needs to have a more independent structure, including vis-à-vis budget and staffing, avoiding undue reliance on ministries.	Election Administration	1 No change	This recommendation (6a) requires amendment of the Constitution by 75%+ super majority in the Union Assembly. Its implementation ahead of 2020 elections is highly unlikely. On 6 March the President appointed eight new members of the UEC based on the existing constitutional provisions. The UEC continues to be underfinanced and dependent on external civil service staff provided by the General Administration Department.
7.	2015	Gender representation in the UEC at sub-commission and national levels needs to be improved.	Election Administration	2 Action or activity is ongoing	Since 2015 the UEC added 392 women commissioners and 951 women staff to other positions. There are 24% of women commissioners at state/region level, 16% at district level and 15% at township level. There is no woman among 15 Union level commissioners.
8.	2015	Transparency and effectiveness of UEC decision-making and communication must be improved, with prompt publication of decisions and notifications. This will not only ensure accountability of the UEC but also that stakeholders and sub-commissions are fully and properly informed of their responsibilities and expected procedures to be adhered to. In particular, decisions of the UEC should be issued in writing and made public as relevant, notifications of procedures must be communicated to lower-level commissions in a clear and timely manner to ensure consistency of implementation.	Election Administration	1 No change	EU Election Expert Mission to 2017 by-elections observed that transparency of the UEC and its communication with stakeholders remains problematic and some essential electoral information was not available to the public. Nearly all political parties and civil society organisations met by the EU EFM complained about the lack of regular and meaningful communication with the UEC.
9.	2015	The UEC should publish a clear and coherent election calendar, which will increase transparency and	Election Administration	1 No change	The UEC published a calendar for 2017 by-elections, though it was not comprehensive, including missing

		accountability as well as helping stakeholders to better understand the process. Such a calendar must ensure more coherence between various phases of the process, such as ensuring candidate nomination is fully complete prior to the start of the campaign.			timelines for advance voting (EU EEM 2017). However, ahead of 2018 by-elections the UEC failed to publish a complete election calendar and resorted to intermittent announcement of the electoral schedule (ANFREL IEOM 2018).
10.	2015	The UEC should build on the computerised voter list created for the 2015 polls, with a view to further updating, cleaning and revision to achieve universal suffrage.	Voter Registration	5 Too early to determine	A nation-wide voter registration update for 2020 elections is only in the very initial phase (adopting methodology, planning, budgeting and training). A small-scale update of 2015 voter list, in the limited number of constituencies, was conducted prior to 2017 and 2018 by-elections.
11.	2015	Data on the voter registers needs to be fully available as public information. This includes a clear breakdown of numbers of voters per constituency.	Voter Registration	1 No change	Data on the voter register are not publicly available.
12.	2015	The choice of database for storing and managing the voter list should be carefully considered to ensure it is relevant and applicable to the Myanmar context, in terms of how data is sorted and presented and in terms of the human capacity for managing the database.	Voter Registration	5 Too early to determine	It appears that the UEC has decided to use simple Excel database for storing and managing the voter list.
13.	2015	The process for issuing NRCs should be continued and even speeded up, with a view to significantly increasing the number of persons in possession of an NRC prior to the next election so it can be used as a consistent and reliable form of ID for voters.	Voter Registration	5 Too early to determine	The process of issuing National Registration Cards (NRCs) by the Ministry of Labour, Immigration and Population is ongoing. The total number of NRCs issued to date is not known, however for 2020 elections it is not foreseen to use NRCs for identification of voters at the polling stations
14.	2015	For candidate nominations, the rules on documentation required as proof of citizenship and residency need to be clarified and fair and consistent procedures adopted for the checking of documentation among all candidates. This will help to ensure both election administration and prospective candidates have a clear and consistent understanding of what is required, and fair and consistent procedures adopted for the checking of documentation of all candidates.	Registration of Parties and Candidates	1 No change	The rules on documentation required as proof of citizenship and residency were not clarified. There were no major problems with candidate nomination reported during 2017 and 2018 by-elections.
15.	2015	Procedures for the handling of appeals on candidate nomination must be transparent, including the use of public hearings, publication of decisions and written reasoning provided to applicants.	Registration of Parties and Candidates	5 Too early to determine	The implementation of this recommendation can only be assessed after the candidate nomination process for 2020 elections is completed.

16.	2015	Criteria for the eligibility of parties to be registered need to be reasonable, without restrictions which unfairly limit freedom of expression	Registration of Parties and Candidates	1 No change	This recommendation requires amendment of the Political Parties Registration Act.
17.	2015	There should not be limitations on freedom of assembly and association which may unduly impact on the general environment for the elections.	Campaign	1 No change	This recommendation requires amendments of several laws, such as Right to Peaceful Assembly and Peaceful Procession Act, Official Secrets Act, Unlawful Association Act, Electronic Transactions Act.
18.	2015	The requirement for notification of public campaign events is reasonable, but the period of notice currently required is excessive. Parties should be able to provide notice of a far shorter period, such as 48 or 72 hours.	Campaign	1 No change	The UEC has not amended Directive No. 1/2014, which regulates the campaign.
19.	2015	Campaign messages should not be subject to prior approval and there should not be undue limitations on topics allowed to be covered in the campaign.	Campaign	1 No change	The UEC has not amended Directive No. 1/2014, which regulates the campaign.
20.	2015	There should be effective and timely mechanisms to deal with instances of hate speech.	Campaign	1 No change	There is no such mechanism in place.
21.	2015	Consideration could be given to increasing the campaign spending limit for candidates for the upper house, as the territory they cover is far greater than candidates for the Lower House.	Campaign	1 No change	The UEC has not amended Election by-laws (Article 74) and Political Parties Registration by-laws (Article 21).
22.	2015	For auditing candidate campaign expenses, the UEC should use competent independent professionals to support them.	Campaign	5 Too early to determine	This recommendation can only be assessed during the auditing of candidate campaign expenses after 2020 elections.
23.	2015	Political parties and individual deputies should be required to submit regular accounts on their financing and expenditure, including party campaign account reports.	Campaign	1 No change	This recommendation requires amendment of the Political Parties Registration Act.
24.	2015	The legal framework for media needs to be brought into line with international standards, without undue restrictions on freedom of expression.	Media	1 No change	There was no reform of the legal framework for media undertaken to date. The Myanmar Press Council is currently preparing draft amendments to the Media Law.
25.	2015	State authorities should refrain from harassment or interference in activities of media and journalists, and of social media users.	Media	1 No change	State authorities continue to prosecute journalists using the old repressive laws (e.g. the case of two jailed Reuters journalists). In 2018 World Press Freedom Index by Reporters Without Borders, Myanmar ranked 137 <sup>th</sup> out of 180 countries.
26.	2015	State authorities should move ahead with plans to transform Myanmar state broadcaster to a public service media, with a view to decrease the role of the state in the whole sector.	Media	1 No change	There are currently no plans to transform Myanmar state broadcaster to a public service media.

27.	2015	The new media regulatory body should issue licenses in a manner which will lead to more local-based media and a more diverse media environment, notably in the television sector.	Media	2 Action or activity is ongoing	There is no operational new media regulatory body (Broadcast Council was not established during the period stipulated by the Law) and licences are still being issued by the Ministry of Information. There are no reports of denied licences and some new licences were issued also to community-based media.
28.	2015	The media regulatory body should consider conducting media monitoring during the election campaign, to have first-hand information on prospective infringements.	Media	1 No change	For the time being the media regulatory body is not planning to conduct media monitoring during the election campaign.
29.	2015	Media could consider internal assessments to foster and strengthen professional and ethical standards and donors should consider further support for development of the media sector, including business-oriented skills, quality-based reporting and digital literacy.	Media	2 Action or activity is ongoing	Some donor-supported media trainings for journalists are currently being conducted by several Myanmar media organisations.
30.	2015	All stages of the electoral process, including out-of-constituency advance voting, should be open to observers.	Observation	1 No change	During 2018 by-elections PACE/PTE domestic observers were unable to monitor the out-of-constituency advance voting process, which was conducted in a non-transparent manner outside the control of the UEC.
31.	2015	In order to ensure increased female participation, political parties could be obliged to adopt affirmative action policies for the inclusion of women in party structures and as candidates, potentially to the 30% minimum laid down in the Beijing Platform for Action.	Gender and Disadvantaged Groups	1 No change	The number of women candidates contesting elections remains very low – 13% in 2015 general elections, 18% in 2017 by-elections and 9% in 2018 by-elections.
32.	2015	The UEC should continue its commendable efforts to increase accessibility of polling stations for persons with disability.	Gender and Disadvantaged Groups	5 Too early to determine	Special polling stations for persons with disability were trialed in some areas in 2017 by-elections. In 2018 by-elections, PACE/PTI domestic observers reported that the polling stations were not setup to make them accessible to persons with disabilities
33.	2015	The UEC should take an even more proactive role on voter education and voter information, including for voter registration, and such programmes should be inclusive and provided in various ethnic languages and must also reach outlying areas.	Voter Education and Voter Information	5 Too early to determine	Voter education ahead of 2017 by-elections was produced in ethnic languages, however it was almost completely outsourced to CSOs. In 2018 by-elections observers noted lack of voter education, especially in rural areas.
34.	2015	The UEC should also adopt a comprehensive strategy, providing information on a broader range of issues including democratic values and the legal rights of stakeholders, with a gender sensitive and human rights-based approach informing all public messaging.	Voter Education and Voter Information	5 Too early to determine	Hornbill and MYNFREL CSOs, supported by IFES and in coordination with the UEC, are implementing civic education project “First Time Youth Voters 2020” with a particular focus on young people in areas of low voter turnout.

35.	2015	There should be a clear and reasonable time limit for decisions on post-election legal challenges.	Election Disputes	1 No change	There is still no time limit for decisions on post-election legal challenges included in the election laws or by-laws.
36.	2015	It must be ensured that Election Tribunals are independent of the UEC, or that such disputes are dealt with before the courts. Hearings to adjudicate disputes should also be decentralised to the states and regions.	Election Disputes	2 Action or activity is ongoing	The Election Dispute Resolution Manual stipulates criteria for the use of independent legal experts (judges, lawyers or law officers) on Tribunals. However, Tribunals in 2017 by-elections were composed of the UEC members only. According to the UEC hearings were decentralised.
37.	2015	The handling of election complaints must respect the principles of fair procedures and provide a guarantee of impartiality. This includes the right to appeal decisions of the UEC.	Election Disputes	1 No change	This recommendation requires amendment of the Constitution by 75%+ super majority in the Union Assembly. Its implementation ahead of 2020 elections is unlikely.
38.	2015	The fee required for the submission of a challenge to the results of an election should be refundable in case of a successful claim.	Election Disputes	1 No change	The UEC has not amended the Article 90 of the by-laws which covers this issue.
39.	2015	Training of election officials should be conducted in a manner to specifically enhance adherence to procedures, especially on counting and tabulation.	Polling, Counting, Tabulation and Results	5 Too early to determine	Training manual for 2017 by-elections reinforced procedures which were not always strictly adhered to previously, including public display of results. However, observers reported that this aspect was less well managed and not consistently implemented. In 2018 by-elections observers noted inconsistent implementation of procedures and insufficient polling staff training.
40.	2015	A mechanism to ensure the UEC can retain staff, or access experienced staff, should be adopted to increase the institutional capacity of the UEC at all levels and help the body retain institutional knowledge.	Polling, Counting, Tabulation and Results	2 Action or activity is ongoing	The UEC addressed this issue in the new strategic plan which includes improvements in recruitment and training, as well as establishment of a training unit within the UEC.
41.	2015	In case a voter accidentally spoils a ballot paper, he/she should be able to receive a new ballot to avoid a person de facto being denied the right to vote	Polling, Counting, Tabulation and Results	1 No change	The UEC has not made any provisions for spoilt ballot replacement in the election by-laws.
42.	2015	There should be the right to a recount in a polling station.	Polling, Counting, Tabulation and Results	1 No change	The UEC has not made any provisions for polling station recount in the election by-laws.
43.	2015	The instruction to counting staff should be that a vote should be considered as valid so long as the intent of the voter is clear. There should not be an overly strict application of invalidity as it unduly and unfairly disqualifies what is a legitimate vote.	Polling, Counting, Tabulation and Results	4 Full implementation	Ahead of 2017 by-elections, the UEC in the Polling Manual broadened the definition of what constitutes a valid ballot and provided samples to polling staff. It is desirable to include this broadened definition also in the election by-laws.
44.	2015	All data related to results and any related complaints must be fully and promptly published by the UEC and the UEC should publish full results by polling station.	Polling, Counting, Tabulation and Results	1 No change	The UEC did not publish polling station results in 2017 and 2018 by-elections and neither it intends to publish polling station results in 2020 elections. Constituency results were announced and published promptly in both by-elections.

45.	2015	Careful consideration needs to be given to the practice of advance voting, given prevailing doubts among some stakeholders as to its integrity. If the practice is to continue, the UEC should take full responsibility for all aspects of advance voting, including out of constituency advance voting. This will help to ensure consistent and appropriate application of regular procedures.	Advance Voting	1 No change	Advance voting will be used also in 2020 elections. The UEC still does not have the full control of and responsibility for advance voting. The respective provisions of election laws and by-laws covering advance voting have not been amended.
46.	2015	The secrecy of the vote, as provided for in the ICCPR, must be ensured for all votes, including out-of-constituency. If an envelope is to be used then the double envelope system should be used, whereby the inner envelope does not identify the voter.	Advance Voting	4 Full implementation	The double envelope system was used for out-of-constituency advance voting both in 2017 and 2018 by-elections. It is desirable to include this practice also in the election by-laws.
47.	2015	The period for the conduct of in-constituency advance voting could be substantially reduced.	Advance Voting	1 No change	Duration of in-constituency advance voting has not been reduced. The respective provisions of election laws and by-laws have not been amended.
48.	2015	There must be adequate safeguards for the handling of advance votes and ballot boxes, especially overnight.	Advance Voting	1 No change	The UEC has not introduced any new safeguards.
49.	2015	Consideration could be given to reducing the number of categories of persons eligible for advance voting.	Advance Voting	1 No change	The same categories of voters as in 2015 remain eligible for advance voting. The respective provisions of election laws and by-laws have not been amended.
50.	2015	Efforts should be made to increase voter education for overseas voters and improve the administrative arrangements for them, ensuring that all eligible persons living abroad are able to exercise their franchise if they so wish.	Advance Voting	5 Too early to determine	The UEC improved administrative arrangements for overseas voters ahead of 2017 by-elections, by, for instance, developing a manual for out-of-country advance voting.



## Guidance Notes

**Column 1:** The number relates to the number of a recommendation in the EOM Final Report

**Column 2:** Where two EOMs were deployed in a single year e.g. 2017, the first should be written as 2017(1) and the second should be written as 2017(2)

**Column 3:** The text of the recommendation should be inserted. Priority Recommendations should be written in **bold**

**Column 4:** ‘Electoral Themes’ are the thematic area under which the recommendation appears in the EOM Final Report e.g. Electoral/Legal Framework, Election Administration, Voter Registration, Campaign Finance, Media, Polling Procedures etc.

**Column 5:** The implementation status of a recommendation should be selected from the following:

Category	Description	Guidance
1	No change	No action has been taken to implement this recommendation.
2	Action or activity is ongoing but implementation of the recommendation has not yet been confirmed	Examples may include the formation of a working group to review legislation, or the preparation of a legislative bill of reform, but the change has not yet been confirmed by legislative change.
3	Partial implementation of recommendation	The recommendation has been addressed/implemented in part, but other elements of the recommendation have not been addressed.
4	Full implementation of recommendation	The recommendation has been implemented in full e.g. electoral legislation has been amended and all aspects of the recommendation have been addressed.
5	Too early in electoral cycle to determine	Some recommendations may relate to administrative action/practice which can only be assessed at a later stage i.e. strengthening of civic/voter information
6	Recommendation is no longer relevant	For example, a change in the electoral system may make redundant a recommendation on candidate registration under the old electoral system.

**Column 6:** Comments on the implementation status e.g. the government / parliamentary majority does not support the recommendation.

