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2020 Election: Inclusive, Free and Fair?

The Perspectives
of Marginalized
Minorities

SMILE
Myanmar

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Executive Summary

As Myanmar is preparing for upcoming parliamentary elections in November 2020, SMILE Myanmar, with support from the Heinrich Böll Foundation, has been monitoring experiences of religious and ethnic minorities exercising their right to participate in the elections and the various barriers and forms of discrimination they face. SMILE's analysis concludes that the Myanmar Government and the Union Election Commission (UEC) are using laws and legal practices to discriminate against ethnic and religious minorities, denying Rohingya and Muslim candidates – as well as other religious and ethnic minorities in Myanmar – the right to stand for election. Many more minorities are being denied the right to vote as part of restrictions on access to citizenship based on their ethnicity. Internally displaced persons (IDPs) around the country also face difficulties in exercising their right to vote due to ongoing armed conflicts between ethnic armed groups and the Burmese military (Tatmadaw), and many IDPs are being denied the right to vote despite being identity card holders. This disenfranchisement of the minority populations of Myanmar is in direct contravention of the 2008 Constitution and an infringement of their fundamental human rights. Consequently, SMILE's analysis concludes that the November 8, 2020 Elections in Myanmar will not be fully inclusive, free, and fair.

The National League for Democracy (NLD)-led government has failed to tackle institutionalized and systemic racism and discrimination in the country, leading to the increased marginalization of minority groups. The perseverance of violations against minority rights and discrimination in policy and practice is having a significant bearing on the 2020 election landscape. It threatens Myanmar's democratization process as well as the future stability of the country. At the core of this remains the issue of access to citizenship. The passing of four so-called "Race and Religion Protection Laws" in 2015 have also served to further entrench racial and religious discrimination, rather than address it.

Under the NLD government, hate speech has proliferated on social media and other media forms and led to increased tensions and instances of violence. The underlying tensions remain and have fed into the rhetoric and policies of political parties vying for seats in the November 8 elections. Such rhetoric could risk igniting further conflicts or violence around the election period. Voting on religious and ethnic grounds may also lead to further polarization of Myanmar society.

Stakeholders supporting the Myanmar elections must use their influence to ensure the November elections are inclusive, free, and fair; this includes ensuring all Myanmar people, regardless of ethnicity or religion, can exercise their right to vote and participate in the electoral process. The next administration and Government of Myanmar must be encouraged and supported to prioritize addressing the issues of racial and religious conflict and discrimination.

As immediate measures, the Myanmar Government and the Union Election Commission (UEC) must ensure the political participation of ethnic and religious minorities in the November elections: this includes addressing issues around the unfair disqualification of political candidates, notably those from Rohingya and ethnic minority political parties, and addressing UEC regulations on documentation required to vote which disproportionately disenfranchises those from ethnic minority groups

Post-election, the incoming administration in 2021 must prioritize amending the country's citizenship laws in line with international human rights standards and ensure legal guarantees on fundamental rights for people of different religious beliefs; this includes reviewing and amending or repealing existing laws that are incompatible with international human rights standards. The government must also take proactive measures to address institutionalized discrimination within the country, promote interfaith dialogue and intercommunal reconciliation programs and end hate speech.

2020 Elections: Issue and Concerns Around Religious and Ethnic Minorities

The Union Election Commission (UEC) announced that the general election will be held on November 8 in Myanmar.¹ There are more than 37.4 million eligible voters in the 2020 general election not including military personnel and their family members (IDEA, 2020). The UEC has failed to include IDPs in Rakhine and Kachin states in voter lists and has skipped entire constituencies. According to the UEC, there are a total of 96 registered political parties, but only 92 political parties are eligible to participate in the 2020 Election². An estimated 7,000 candidates were fielded during the candidacy application process by the UEC and on August 30th, the respective District Election Commissions announced the final result of qualified candidates.

SMILE Myanmar conducted a series of discussions with various stakeholders from ethnic and religious minority groups in Mandalay, Yangon, and Kalaw (Southern Shan state) in 2020. The results of the focus-group discussion indicated that the majority of respondents expressed the frustration of the performance of the current government on respecting minority rights. Furthermore, the respondents shared their first-hand experiences on racial and religious discrimination, which are committed by different groups without any legal actions against perpetrators. The respondents expect that similar discrimination will occur in the upcoming election. Since 2016, the NLD administration has repeatedly failed to take action against institutionalized racial discrimination. Such failure is having a significant impact on the current political landscape and is likely to interfere with the 2020 general election.

Denied the right to vote

Constituencies skipped under pretext of safety and security

On October 16th, the UEC released its list of skipped constituencies for the 2020 Election, citing the reason that the Ministry of Home affairs cannot guarantee the safety of voters in these areas. The affected communities are being unfairly stripped of their voting rights and are being

¹ Union Election Commission Notification No. 115/2020.

² On 17th October the UEC dissolved the entire United Development Party over allegations of illegal funding, as reported in *Irrawady*

offered no alternative method to vote. Five ethnic parties have recently filed a complaint that the voting rights of over 1.3 million in Karen Mon, Chin, Kachin, Shan and Rakhine are being denied by a swift executive by the UEC without the previous level of local consultation that occurred in 2015 (Myanmar Peace Monitor, 2020).

Although some of the constituencies may in reality be affected by armed conflict, the fact that the UEC is able to cancel entire constituencies without consultation signals an unchecked decision-making power which urgently needs to be addressed by the government if the elections are to be free and fair.

Rohingya Eligible Voters in Rakhine State

On 16 October 2020, the UEC announced the skipping of the following constituencies in Rakhine state: 9 Townships (Pauktaw, Punnagyun, Rathedaung, Buthidaung, Maungdaw, Kyauktaw, Minbya, Myebon, Mrauk U), 2 Wards and 52 village-tracts in Kyaukphyu Township, 3 Wards and 29 village-tracts in Ann Township, 4 village-tracts in Sittwe Township, and 10 Wards and 52 village-tracts in Taungup Township. The only reason given for skipping these areas is that they are affected by military conflict. The outright cancellation of the polls of the entire townships precludes the opportunity of many ethnic Rakhine and minority groups, especially Rohingya, to exercise their voting rights.

On top of this, many Rohingyas are being explicitly denied voting rights despite being CSC or NCSC holders. According to estimates gathered by SMILE from local sources in Rakhine, there are more than 1,200 Rohingya CSC and NCSC holders in Maungdaw and only approximately 1,000 eligible Rohingya voters. Similarly, there are more than 800 Rohingya CSC and NCSC holders in Buthidaung in northern Rakhine and only approximately 600 eligible voters. These estimates show a significant number of eligible voters being unfairly denied the right to participate in the upcoming elections and add to the reports that ethnic and religious minorities are being silenced and excluded from the political process.

Township	Rohingya/ Kaman/CSC/NCSC Holders	Eligible Voters	Remarks
Maungdaw	1,200	1,000	
Buthidaung	800	600	
Rathedaung	-	-	
Kyaukphyu	500	400	
Punnagyun	-	-	No data available
Kyauktaw	-	-	No data available
Minbya	-	-	No data available
Mrauk U	-	-	No data available
Myebon	3,000	2,500	
Pauktaw	-	-	No data available
Ramree	3,500	3,000	
Sittwe	1,300	1,100	
Thandwe	16,000	7100	Kaman
Taunggoke	-	-	No Muslim Exist
Manaung	-	-	No Muslim Exist
Gwa	-	-	No Muslim Exist
Ann	-	-	No Muslim Exist
Grand Total	20,800	11,200	

Internally Displaced Persons

The number of Internally Displaced Person (IDPs), the majority of whom are non-Burmese, remains high in areas of Myanmar witnessing ethnic armed conflict such as Kachin, Rakhine, Shan, and other border regions. According to 2019 UN figures, there are 128,000 IDPs in Rakhine and 107,000 in Kachin and northern Shan. SMILE has received reports that Rohingya NIC/NRC holders residing in IDP camps in northern Rakhine state are being excluded from registered voter lists. While in many cases, people in IDPs camps are more concerned about their safety and basic needs rather than voting in the upcoming election, the participation of IDPs must not be disregarded and is essential to a fair and representative democracy. Stakeholders should push for the voting rights of NIC/NRC holders and household list holders to be reinstated immediately.

Exclusion of Political Candidates

Recently, the District Election Commission rejected several Rohingya candidates who are from religious minorities in Rakhine state. During the 2015 general election, over 6,100 candidates submitted applications and the UEC rejected a total number of 75. The rejections were largely based on an election law which requires evidence showing both parents of a candidate were legal citizens of the country at the time of the candidate's birth. According to the relevant legislation, a negative decision by a District Election Sub-commissions can be appealed through the relevant State or Region Election Sub-commission, whose decision should be considered as final and conclusive.

In the final figures released by the Carter Center (The Carter Center, 2020), election sub commissions denied the registration of 35 nominees. The grounds included exclusion on the basis of the citizenship status of nominees' parents at the time of their birth and that nominees had not resided continuously in Myanmar in the past 10 years. A disproportionate number of Muslim candidates have faced rejection, including Rohingya candidates from Rakhine state (Heinrich Boll Foundation, 2020). SMILE's analysis concludes that the rejection of many Muslim candidates in Rakhine state in both the 2015 and 2020 general election is part of systematic racial discrimination and further proof that the present government is denying the political participation of ethnic and religious minorities from the country's democratization process. Stakeholders must implore the NLD Government to promote the political representation and participation of ethnic and religious minorities to work towards a democracy in Myanmar which reflects its diversity.

Rohingya Candidates from Rakhine State

There are currently six Rohingya candidates on the nomination list for Maungdaw and Sittwe submitted by the District Election Sub Commission in August 2020; five candidates from the Democracy and Human Rights Party (DHRP) and one Independent candidate. Only one candidate for the Maungdaw Pyithu Hluttaw Constituency was approved whereas 3 candidates from DHRP and one independent candidate were rejected by the Maungdaw District Election Sub Commission and another DHRP candidate was rejected by the Sittwe District Election Sub Commission. All the rejected candidates submitted their appeal to the State Election Sub Commission in Rakhine State only to have their appeal further rejected. The rejected candidates submitted their petition to review the decisions to Union Election Commission in Nay Pyi Taw and the UEC validated the decisions of the State Election Sub Commission. In most cases, the reason given for rejection was that one or both parents of the candidates were not citizens at the time of the candidates' birth.

SMILE has spoken with one Rohingya candidate who was initially approved to stand in August 2020 for the Maungdaw Pyithu Hluttaw Constituency and later had his candidacy withdrawn on 1st October 2020 by the Maungdaw District Election Sub Commission. The candidate was informed that their parents were NRC holders and that this cannot be considered valid proof of citizenship. However, the NRC was issued to all citizens of Myanmar, including the Rohingya, after the 1949 Burma Resident Registration Act was passed and its rules were enacted in 1951 and was the only citizenship document issued to the people of Myanmar at that time. Moreover, the candidate's father worked as a government servant at the time of the candidate's birth, and according to law it is not possible for someone to be a government employee unless he/she is a citizen of the country.

It is worth mentioning that among the six Rohingya candidates rejected in Rakhine State, all of them **were born prior to the enactment of the 1982 Citizenship Law**, between 1945 and 1964. Two of them were allowed to run for election in 2010 and three of them had also been rejected in 2015 on the same grounds. These cases evidence the opaque administrative barriers preventing nominees providing proof of parents' citizenship and the wider discrimination against potential candidates on racial and religious grounds it represents. They also further evidence the systematic use of citizenship and election laws as mechanisms of exclusion in Myanmar.

Based on the information gathered by SMILE Myanmar so far, it is clear that a different burden of proof is applied vis-a-vis Rohingya candidates compared to candidates of other ethnicities, in terms of documentary proof required to attest that the parents of the candidates were considered citizens at the time of his/her birth.

Hate speech proliferation

Race and religious identity are potent and complicated issues in Myanmar. Over the past few years, social media has become a weaponized tool which circulates hate speech and fake news that intentionally targets and incites violence against minority groups. In the previous election in 2015, it played a central role in the marginalization of minority groups, even sparking horrendous racial and religious-based attacks in Mandalay region (Marston, 2019). Between 2015 and 2020, the number of internet users in Myanmar has tripled, from nearly 7 million at the time of the 2015 general election to 22 million in 2020 (Aung, 2020). Unsurprisingly, in the lead up to the 2020 elections, similar discrimination and attacks on minorities, particularly on Muslim candidates, has been **documented** by various human rights groups in Myanmar.

The amount of hate speech has not only increased since 2015, but the nature of the discrimination and violence has transformed. In 2015, racial and religious-based attacks were linked to the 969 movements (Marston, 2019), but in 2020 individuals (including candidates in a few political parties) attempt to attack different groups based on their race, color, sex, religion, disability, and political opinion. This widespread hate speech and fake news intensified after the official list of candidates of political parties was posted online in July 2020 (Beautifies of Diversity, 2020). The potential for hate speech to interfere with and destabilize the political process should not be understated.

According to the President's spokesperson, the government investigates fake news and related websites and promises to take action against them in line with the law (Aung, 2020). It is forbidden for candidates to appeal to racial or religious identity in their campaigns. Despite this statement, SMILE has seen no evidence of this taking place and the Union Election Commission has failed to show they are adequately preparing for or responding to these issues in the election runup.

Citizenship and legislation

As citizenship and statelessness issues gain higher priority in the global agenda, more research is being done into the extent of stateless persons and those at risk of statelessness in Myanmar. In a country of almost 55 million, just over 40 million population are reported to possess an identity card such as a citizenship card, temporary registration card, or religious card, whereas 11 million people have no identity documents whatsoever (Ministry of Immigration and Population, 2015). A 2017 study (SMILE Myanmar and Justice Base, 2017) into citizenship issues conducted by SMILE in collaboration with Justice Base and UNHCR revealed that 40% of youth (25 years or under) respondents did not hold any form of identity card. Citizenship issues are therefore a major factor in the disenfranchisement of minorities in the upcoming election.

1982 Citizenship Law

Issues of citizenship and statelessness pose a significant impediment to Myanmar's development. The 1982 Citizenship Law in Myanmar discriminates on the grounds of race and is implemented in an inconsistent manner. The application processes for citizenship documents are characterized by decision-making processes that are arbitrary and corrupt (Brinham, 2019). The law effectively weaponizes citizenship paperwork against minorities in Myanmar. If minority people cannot provide the required documents, their citizenship rights are ignored. This not only includes the right to vote, but almost all public services rely on national identity cards in Myanmar, further excluding minorities from basic civil rights.

Race and Religion Protection Laws

This controversial legislative package is comprised of four laws: *The Population Control Law*, *the Interfaith Marriage Law*, *the Religious Conversion Law*, and *the Monogamy law*. These laws were enacted under pressure from influential Buddhist nationalists under U Thein Sein's administration (Lwin, 2017) and adopted in the spring of 2015. Rather than respecting and protecting the rights of religious and ethnic minorities, the Race and Religion Protection Laws actually encourage further discrimination among the different religions in the country. The package also serves as a legislative tool used to fundamentally undermine and restrict the rights of certain religious and ethnic minorities – particularly Muslims (Equality Myanmar, 2016).

Interfaith Harmony Bill

One of SMILE's values is that *Diversity is Beautiful*, and our mission is to promote the rights of different religions and ethnic groups in Myanmar. The marginalization of the ethnic minority groups, often facilitated by law and legal practices, poses a serious threat to national unity (Thura K., 2015). In a dialogue facilitated by SMILE with Members of Parliament in Nay Pyi Taw and Mandalay, the MPs expressed that they faced a dilemma between the interests of different majority and minority groups in their political life leading to a failure to resume the *Interfaith Harmony Bill* and that its resumption was uncertain under the law-making processes of the NLD-led government. Some MPs stated that social harmony or cohesion is something to be

exercised by people in their personal life rather than political life. The majority of MPs failed to comment on the incitement of violence and violent acts committed against a person based on religion or belief and also based on race, ethnicity, and nationality. After the 2020 general administration, the new administration and stakeholders must start promoting the concept of the freedom of religion and belief and ensuring legal guarantees for minority groups to freely practice their religion and express their beliefs without fear of discrimination.

Recommendations

The political participation and the fulfilment of civil rights of all ethnic and religious minority groups must be prioritized in the 2020 general election. SMILE stands up for the rights of the people who are marginalized and vulnerable in Myanmar society and believes their inherent rights should not be disregarded under any circumstances. In order to work towards protecting their rights, the following key points are recommended to the key stakeholders in Myanmar;

- In the 2020 general election, the political participation of ethnic and religious minority groups needs to be actively increased and respected.
- The National Registration Card (NRC) or identity card issue needs to be seriously considered before the 2020 general election considering the NRC was the only citizenship document issued to the people in Myanmar before the 1982 Citizenship Law was enacted.
- The Union Election Commission (UEC) needs to protect the rights of the people who have no NRC or other forms of registration card to exercise the right to vote.
- The voting rights of NIC/NRC or household list holders who reside in IDP camps should be reinstated immediately.
- The UEC should cease all legal discrimination against ethnic and religious minorities in the 2020 general election and the international community and international organizations must hold the UEC accountable to hold credible, free and fair elections.
- The Myanmar National Human Rights Commission's (MNHRC) performance needs to reflect the voices of these vulnerable and marginalized people and transparently investigate their political participation in the upcoming 2020 general election.
- MNHRC needs to investigate the people who were perpetrated in various form of violation
- The 1982 Citizenship Law and the Election Laws must be amended regarding citizenship issues and the amendment needs to be in line with international human rights standards.
- The treatment of ethnic and religious minorities with regards to the internal instructions/memo for the citizenship application process should cease and if there is a need for such instruction(s), it must be communicated to the public in a transparent manner.

- In lieu of the amendment of the 1982 Citizenship Law, as a short-term approach, the current implementation of the law should be fair and transparent regardless of ethnicity and religious identity. According to the *section 6 of the law* “A person who is already a citizen on the date this Law comes into force is a citizen. Action, however shall be taken under *section 18 for infringement of the provision of that section.*” Necessary legal guarantees of the fundamental rights of the people who have different religions and beliefs should be in place.
- Encourage faith-based and interfaith activity and tolerance of minority religion and belief
- Investigate all perpetration of persecution, discrimination, intolerance and hate speech based on religion or ethnicity.
- Respect the freedom of religion and belief across all the diverse communities of Myanmar
- Existing laws, orders, and regulation (*Including the four Race and Religion Protection Laws*) should be reviewed and ensure the amendment should be aligned with international standards.
- Avoid undermining the right to freedom of religion and belief of all people in Myanmar
- Resume the process of *Interfaith Harmony Bill*.

References

Aung, S. Y. (2020, July 9). *Election 2020: Myanmar President Tells Officials to Control Hate Speech Ahead of Election*. Retrieved August 2020, from The Irrawaddy: <https://www.irrawaddy.com/elections/myanmar-president-tells-officials-control-hate-speech-ahead-election.html>

Beautifies of Diversity. (2020). *Fake News and Hate Speech Monitoring Report*. Yangon: Beautifies of Diversity.

Brinham, N. (2019, May 14). *Blog*. Retrieved August 2020, from European Network on Statelessness: <https://www.statelessness.eu/blog/citizenship-under-threat-myanmar-shared-experience>

Equality Myanmar. (2016). *Situation of Freedom of Religion and Belief in Myanmar*. Yangon: Equality Myanmar.

Heinrich Boll Foundation. (2020). *A pre-electoral assessment: Myanmar on the road towards the 2020 elections*. Yangon: Heinrich Boll Foundation.

Lwin, E. E. (2017, September 27). *Draft hate speech bill sent parliament*. Retrieved August 2020, from Myanmar Times: <https://www.mmtimes.com/news/draft-hate-speech-bill-sent-parliament.html>

- Marston, H. (2019, April 6). Retrieved August 2020, from Frontier Myanmar: <https://www.frontiermyanmar.net/en/the-hate-speech-threat-to-the-2020-election/>
- Ministry of Immigration and Population. (2015). *The 2014 Myanmar Population and Housing Census*. Retrieved from MIMU: <https://www.themimu.info/census-data>
- Myanmar Peace Monitor. (2020, October 23). UEC under fire for unfair disenfranchisement of more than a million voters in six ethnic states. Retrieved from <https://www.bnionline.net/en/news/uec-under-fire-unfair-disenfranchisement-more-million-voters-six-ethnic-states>
- SMILE Myanmar. (2020). *Advocating for the inclusion of Religious Minorities in the 2020 Election in Myanmar*. Yangon: SMILE Myanmar.
- SMILE Myanmar and Justice Base. (2017). *Access to Documentation and Risk of Statelessness*. Yangon.
- The Carter Center. (2020, October 13). *Carter Center Interim Statement on Myanmar General Elections*. Retrieved from <https://www.cartercenter.org/news/pr/2020/myanmar-2020-preelection-statement.pdf>
- Thura, K. (2015, September 17). *Rediscovering the beauty of diversity*. Retrieved August 2020, from Global New Light of Myanmar: <https://www.gnlm.com.mm/rediscovering-the-beauty-of-diversity/>
- Thura, M. (2019, November 29). *Number of eligible voters to reach more than 37 million in 2020*. (M. Times, Producer, & Myanmar Times) Retrieved August 2020, from Myanmar Times: <https://www.mmtimes.com/news/number-eligible-voters-reach-more-37-million-2020.html>
- Union Election Commission. (2020, August 24). *Existing Political Party list*. Retrieved from Union Election Commission: <https://www.uec.gov.mm/pages.php?pagename=တည့်ဆဲ%20နိုငံရေးပါတီမဲကြီးစာရင်း&menu=နိုငံရေးပါတီဆိုရာ>