

KEY ISSUES IN REGULATION OF ELECTION OBSERVERS

BRIEF FOR CIVIL SOCIETY ORGANISATIONS

BACKGROUND

PROCESS FOR THE DEVELOPMENT OF REGULATIONS

There is currently no legislation regulating the practice of election observation in Myanmar. However, the United Election Commission of Myanmar (UEC) is now developing administrative regulations to guide the relationship between the election administration and observers. These regulations should establish the rights and obligations of observers, define the eligibility to observe elections, and provide guidelines for the process of observer accreditation.

Before finalising the regulations, the UEC invited election observation stakeholders to advise the UEC on the code of conduct for observers. The *code* will be an integral part of the regulations.

INTERNATIONAL STANDARDS ON ELECTION OBSERVATION

Building on the experience of hundreds of domestic election observers and international observation missions, the “Declaration of Global Principles for Nonpartisan Election Observation and monitoring by Citizen Organisations,” and the “Declaration of Principles for International Election Observation” provide a very good standard for the code of conduct for observers and Myanmar CSOs. Therefore, the *Declaration* could be used to advocate for a fair code of conduct as part of the UEC regulations for election observers.

NOT EVERYTHING IS IN THE CODE OF CONDUCT!

However, it is of key importance that the CSOs pay special attention to the other aspects of the UEC regulations: the provisions that regulate the accreditation process and management of observers’ activities have tremendous impact on how the observation will be conducted. As experience has shown, election management bodies in younger democracies tend to “over-regulate” accreditation and the management of observers, which sometimes undermines observation activities.

This short brief highlights the key issues which could be considered by CSOs as they prepare for discussions with the UEC on effective regulations for election observers. It focuses on the accreditation and management of observers, while it emphasises that the *Declaration* already provides a very good model for the code of conduct

ADMINISTRATIVE FRAMEWORK

Experience shows that non-partisan election observation is most efficient if conducted by organisations, rather than by independent individuals. Yet, election management bodies (EMBs) sometimes issue regulations that are geared towards individual observers and require every individual observer to register with the EMB.

Also, on many occasions the legislation and regulations define the same procedures for international observers and citizen organisations. However, international and citizen observation have different needs and requirements. Citizens have the right to observe elections in the country and usually rely on the short-term engagement of a large numbers of volunteers. International missions, however, observe only in response to an invitation from the host country and these missions are fielded with a smaller number of observers who often need to apply for visa before arrival.

TO CONSIDER:

- Regulations should recognise that election observation is carried out by organisations, rather

than individuals. Accredited organisations are obliged to ensure that their observers follow the code of conduct and adhere to the regulations for observers. Should the EMB allow observation by occasional individual observers, this distinction should be made in the regulations.

- The basis for accreditation of the international mission (and resident diplomats) could be simply an invitation letter from Ministry of Foreign Affairs.

ACCREDITATION PROCESS AND OBSERVATION ID

In countries where domestic election observers are a novelty, EMBs occasionally require organisations to submit a list of observers that will be deployed as part of the accreditation process. This is, however, very challenging for domestic election organisations because they rely on activists and volunteers whose availability varies throughout the electoral process. In fact, processing every individual accreditation is a huge administrative challenge both for the observer organisation and the EMB. This would mean that a badge/ID for every single observer would have to be produced by the EMB.

TO CONSIDER:

- Organisations themselves should be made responsible for the management of their observers. The UEC should accredit organisations without requiring a full list of observers. Instead of printing an individual ID for every observer, the UEC could provide a blank badge to organisations, which would then fill it out with the observer's data. This ID could then be validated by a stamp and a signature by any of the sub-commissions, as the sub-commissions would recognise accreditation of the higher-level sub-commission.
- If organisations are accredited by the UEC at the national level, field coordinators could then approach any sub-commission to validate the ID of an observer, with the written certificate issued by the organisation confirming that the observer is endorsed and trained by the organization and that he or she has signed the mandatory code of conduct. This would provide the necessary flexibility for observer organisations and also ensure every observer is accountable according to the code of conduct.

DISCLOSURE OF FUNDS

The financial operations of civil society organisations are usually regulated within the existing legislation and there are designated state bodies in charge of monitoring and compliance. Any attempt by the EMBs to seek the disclosure of funding by election observers should be in line with the existing legal framework for civil society organisations. The UEC regulations on observer organisation should aim to complement the existing legislation and ensure its enforcement. To avoid any perception of bias, any requirement to COS should not rely on ad-hoc and vague regulations.

TO CONSIDER:

- Unless in line with existing laws on operations of the CSOs, the UEC should not introduce any vaguely defined requirement for the disclosure of funds.

REPORTING

Credible reporting based on real facts is one of the key principles of election observation. This standard is defined in the *Global Declaration* as the requirement to “report impartially, accurately and timely all observation and findings”. Hence, election observation organisations adhering to these standards have the responsibility to report their findings and recommendations in the form they deem to be the most appropriate in order to contribute to the improvement of the electoral process. Any restrictions on reporting would obstruct the observer's ability to react on electoral developments in a timely manner.

On the other hand, experience has shown that the premature speculations and projections of election results released by the media may undermine the process and introduce confusion. This is why some countries have put

reasonable restrictions, such as a ban on projection of results while the voting process is still on-going.

TO CONSIDER:

The UEC should not restrict the public communication of observer organisations. The UEC, however, may consider a reasonable restriction on publishing projections of results by the media while the voting process is on-going, in order to prevent influence the electoral process



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