



# Freedom of Movement in Political Campaigning: an Information Brief

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The International Institute for Democracy and Electoral Assistance — International IDEA is an intergovernmental organization that supports sustainable democracy worldwide ([www.idea.int](http://www.idea.int)). Its objective is to strengthen democratic institutions and processes. International IDEA acts as a catalyst for democracy building by providing knowledge resources, policy proposals and supporting democratic reforms in response to specific national requests. It works together with policy makers, governments, international organizations and agencies and regional organizations engaged in the field of democracy building.

International IDEA is undertaking programming in Myanmar to develop knowledge resources, promote institutional development and facilitate inclusive and informed dialogue about democratic reform options. International IDEA seeks to provide objective, neutral, non-prescriptive and informative perspectives on policy challenges for Myanmar's democratic actors and decision-makers.

This is the first in a series of Information briefs designed to stimulate reflection and discussion on issues important to Myanmar's democratic transition.

## Introduction

Recently, several news outlets in Myanmar have reported on potential changes in electoral regulations which could affect the way that parties and candidates campaign by limiting campaigning by candidates to their respective constituencies. While no formal changes in regulations have been announced, some political leaders and observers have indicated that restrictions on campaigning would be unfair. Others have argued that regulating campaigning could assist in mitigating the potential of electoral violence and that party leaders

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campaigning on behalf of candidates can confuse matters as to who is running for election within a constituency.<sup>1</sup>

International IDEA has received queries regarding regulations on campaigning and their compatibility with international obligations, norms and practices in facilitating a democratic electoral process.

In light of these comments, and upcoming by-elections in late 2014, there is a possibility that new electoral regulations will be enacted in the near future. It is useful to refer to international good practice in ensuring credible, transparent and democratic elections, in considering regulations that may limit campaigning by candidates to their respective constituencies and therefore restrict party leaders and others from campaigning nationwide.

## International protocols

There are a number of international protocols, principles, commitments, obligations, and good practice guides that form standards for political campaigning during elections. Domestic and international observers, political parties, civil society organisations and the international community will draw upon these when assessing whether the upcoming elections in Myanmar uphold principles of equity and fairness – particularly in light of possible restrictions on movement of political candidates.

The Declaration of International Principles for Electoral Observation, is a document endorsed by 42 intergovernmental and international organizations which are engaged in the process of improving international election observation. The document states:

‘Observers must note if laws, regulation or the actions of state and/or electoral officials unduly burden or obstruct the exercise of election-related rights guaranteed by law, constitution or applicable international instruments.’<sup>2</sup>

International IDEA’s Electoral System Design handbook further elaborates:

‘... the design of electoral systems today takes place in the context of a number of international covenants, treaties and other kinds of legal instruments affecting political issues. While there is no single complete set of universally agreed international standards for elections, there is consensus that such standards include the principles of free, fair and periodic elections ...’<sup>3</sup>

Therefore, any regulations enacted governing the electoral system should always be developed with international protocols and experience in mind.

Existing international protocols uphold the freedom of movement, freedom of association and freedom of speech. Article

<sup>1</sup> ST Zin & TZ Htet, ‘Burma Election Commission to ban Suu Kyi’s campaign strategy’, The Irrawaddy, 9 April 2014, accessed 9 April 2014.

<sup>2</sup> Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, United Nations, New York, 2005, p.1.

<sup>3</sup> International Institute for Democracy and Electoral Assistance (IDEA), Electoral System Design: The New International IDEA Handbook’, Stockholm, 2005, p.14.

12(1) of the International Covenant on Civil and Political Rights (ICCPR) reads, ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence’.<sup>4</sup> Article 5(d.1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) also upholds the, ‘right to freedom of movement and residence within the border of the State’.<sup>5</sup> It is important to note the tension within Article 12 of ICCPR. Article 12(3) provides that:

‘the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.’<sup>6</sup>

In an election context, this Article does provide room for Election Management Bodies (EMBs) to restrict the movement of people should there be concerns of national safety such as election related violence. Notwithstanding this provision, there are a range of other manuals and documents that further guide election observers and practitioners in ensuring free and fair elections.

Internationally recognised for their work in election observation, the Carter Center draws from international obligations in

their document, *Identifying Obligations for Democratic Elections: Narrative of Obligations*, which points to the freedom of movement and freedom of association as fundamental rights during election periods:

‘Freedom of Movement is a fundamental right that ensures that everyone, including candidates, voters, domestic monitors, and poll workers are able to move throughout the territory.’<sup>7</sup>

The *Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers*, states that:

‘Candidates must have the freedom to convey their programs to the voters without disruption of campaign meetings, and without geographic infringement imposed by government through ‘no-go areas.’<sup>8</sup>

The *Handbook for European Union Election Observation* explicitly refers to the ability of all candidates, political parties and supporters to travel around the country as an indicator of a free and fair election:

‘Freedoms of expression, assembly, association and movement without discrimination are prerequisites for a democratic election process. For there to be an open and fairly contested campaign,

<sup>4</sup> International Covenant on Civil and Political Rights (ICCPR), Article 12(1), United Nations, 1966.

<sup>5</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d.1), United Nations, 1965.

<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR), Article 12(3), United Nations, 1966.

<sup>7</sup> The Carter Center, *Identifying Obligations for Democratic Elections: Narrative of Obligations*, 2009, p.28.

<sup>8</sup> Norwegian Helsinki Committee, ‘Election Observation’, *Manual on Human Rights Monitoring: An Introduction for Human Rights Field Officers*, Oslo, 2008, p.14.

it is crucial that there is opportunity for all candidates, political parties, and their supporters – regardless of whether they are in favour of incumbents or opposition – to promote their policies, hold meetings and travel around the country. The electorate should be informed on their range of choice of parties and candidates.’<sup>9</sup>

The Centre for Human Rights’ Handbook on the Legal, Technical and Human Rights Aspects of Elections, adds:

‘Political parties should not face unreasonable restrictions on participation or campaigning.’<sup>10</sup>

Tied in with freedom of movement for political campaigning is the free communication of ideas and information. The United Nations Human Rights Committee, General Comment 25 on the Right to Participate Public Affairs, Voting Rights and the Right to Equal Access to Public Service refers to this:

‘In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on

public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.’<sup>11</sup>

These documents are unanimous in stressing the need to uphold the freedom of movement for the purposes of political campaigning and using it as a key indicator of robust and just elections.

## International perspectives

Looking to international examples of regulations governing where and when political campaigning can occur during election periods can be helpful to those who wish to engage in discussions about this issue in a Myanmar context. The information gathered below was sourced from the ACE Practitioners’ Network<sup>12</sup>, a network of election experts and practitioners from around the world that share knowledge on best practice and comparative information on election management.

<sup>9</sup> Handbook for European Union Election Observation, (2nd ed.), European Commission, 2008, p.50.

<sup>10</sup> United Nations, Human Rights and Elections: A handbook on the Legal, Technical and Human Rights Aspects of Elections, Centre for Human Rights, 1994, para 107

<sup>11</sup> United Nations Human Rights Committee, ‘The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service’, General Comment 25, Office of the High Commissioner of Human Rights, 1996, paragraph 25.

<sup>12</sup> <http://aceproject.org/about-en/practitioners2019-network>

Electoral regulations in Indonesia are governed by their election commission (Komisi Pemilihan Umum (KPU)). The KPU regulates public campaigning activities such as rallies or parades by assigning parties days and times when they can campaign in given areas. The motivation for this roster system is to mitigate electoral violence. They do not, however, restrict the movement of candidates to solely within their own constituency.

The Bangladeshi election commission issues a code of conduct prior to elections which stipulates the conditions where by candidates must register with authorities when they hold public rallies and events but there are no restrictions on the movement of political candidates.

An indirect restriction to freedom of movement existed in Nepal. In the 2008 Constituent Assembly Elections, the election code of conduct prohibited candidates from using chartered helicopters and airplanes. The rationale was to maintain a level playing field among contesting political parties. This in effect prevented prominent national figures from reaching the remote Himalayan districts of Nepal. The rule was relaxed for the elections in 2013 where the use of such aircrafts was allowed for the 13 remotest districts.

Malaysia, Pakistan, Australia, and looking outside the Asia-Pacific region, Kenya, all do not have restrictions in

place that limit the movement of political candidates during election periods.<sup>13</sup>

The ability of candidates, particularly party leaders, to travel allows them to market their policies to a wider community who otherwise would not have access to political information. The opportunity for candidates to travel nation-wide raises the profile of a robust political system as it stimulates debate amongst communities and facilitates a better-informed voting public.

## Conclusion

It is hoped that this introductory document can be useful to all those who seek to explore the strengthening of Myanmar's electoral framework. Readers are encouraged to share this information and to use it as a starting point to explore this issue more deeply as well as other issues important to electoral administration and regulation that is informed and inspired by international good practice, protocols and obligations.

An electoral management body has the mandate and responsibility to develop a large number of regulations, which govern the electoral environment. In doing so, they must strike an appropriate balance between effective electoral administration, peaceful electoral processes and ensuring adherence to international standards of good practice.

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<sup>13</sup> Information sourced through the ACE Electoral Knowledge Network.

## Further reading

-The Carter Center Database of Obligations Bibliography

-United Nations Electoral Assistance Division, Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers

-The ACE network promotes credible, and transparent electoral processes with emphasis on sustainability, professionalism and trust in the electoral process.

Feedback on this paper and any future suggestions can be directed to: [info-myanmar@idea.int](mailto:info-myanmar@idea.int)

\*This paper is designed to stimulate in-country discussion using international comparisons to address relevant and current political debate. Information briefs aim to be informative rather than prescriptive and does not cover all possible scenarios.