

THE MISSING LINK

STRENGTHENING REPRESENTATION AND ACCOUNTABILITY IN MYANMAR'S LOCAL GOVERNMENT

EXECUTIVE SUMMARY

Between 2012 and 2013, Myanmar saw important changes at the lowest level of its governance system: the introduction of indirect Ward/Village Tract Administrator elections and the establishment of semi-elected Township Development Affairs Committees. However, because Township Development Affairs Committees are only indirectly elected and therefore concern a small group of people, their impact on strengthening democracy is limited - in fact there is little public awareness about the role of these newly established municipal bodies. Citizens are, however, directly impacted by decisions taken at the township level, on issues such as local roads, garbage collection, building permits or the registration of business. More accountability and representativity of municipal government bodies would not only bring the government closer to its citizens but also increase public trust in a democracy that delivers.

Myanmar's state and region governments should make use of their legislative competence and seize the opportunity to further strengthen democratic practice by making municipal elections more accountable and inclusive. This is possible within the framework of Myanmar's 2008 Constitution, as there are no detailed provisions on municipal governance that would preclude any legislative changes to the composition and election of township and village-level representatives.

At this critical juncture, when major changes in Myanmar's state structure and political system are subject to achieving peace and constitutional amendment, genuine municipal elections bear the opportunity to bring the country forward through legal reforms. It is time to initiate a broad-based policy debate about the possibilities to strengthen democracy where it matters most to people.

1. LOCAL GOVERNANCE: WHAT IS IT AND WHY IS IT IMPORTANT FOR MYANMAR'S DEMOCRACY?

Local governance is often the most tangible link between citizens and the state: access to social services, welfare and economic growth directly affect anyone in a community. In most democracies, local governance is decentralised to elected municipal and/or village councils to ensure the efficient provision of services and improved accountability between the government and citizens.¹ Often, local governments are more efficient than national governments in the provision of services, because they are closer to communities and more exposed to local needs and priorities. Water supply, waste management, roads and infrastructure or access to basic social, health services and jobs are often the most pressing concerns of citizens and local governments are their primary facilitators. It is therefore important that local members of government are elected in genuine elections, strengthening accountability and enhancing their representativeness.

There are a wide variety of arrangements for elected local governance around the world. In some countries, citizens directly elect executive positions like the mayor, and in others they only elect municipal councils. The systems used to elect candidates to these positions also vary greatly. In decentralised countries like the United States, there are many variations of local government arrangements and electoral systems utilised. In more centralised countries like Denmark, a uniform local governance arrangement and electoral system is utilised across the country. Denmark has 98 municipal councils, each elected from party-lists using a proportional representation system. The mayor or each municipality is indirectly elected by the members of each municipal council.

Since 2012, Myanmar has initiated substantive reforms of its local government system: the introduction of the indirect election of Ward and Village Tract Administrators was a first step towards improved links between the population and the state, following a “bottom up approach” to development. From 2013 onwards, all States and Regions also enacted municipal

Township Development Affairs Committees (TDAC)



There are 322 TDAC in Myanmar- each township having its TDAC. The townships within the urban areas of Yangon and Mandalay form a bigger municipal committee, the Yangon City Development Committee (YCDC) the Mandalay City Development Committee (MCDC), which oversees the work of the municipal administration.

TDACs manage and supervise the work of the Township Development Affairs Organisation (DAO), which is providing township services, such as water supply, sewage disposal or roads and bridges. It also manages township economic governance, such as business licenses, construction permits or vehicle registration.

TDACs are under State/Region Government authority.

State/Region Parliaments are responsible for municipal matters and each has its own law.



TDACs manage and administer their own funding through tax collection.

Ward or Village Tract Administrator (W/VTa)



There are 16,785 Ward/Village-Tract Administrators in Myanmar

WVTAs are responsible for the maintenance of law and order, registering deaths and births and assisting the Township Administrator and the General Administration Department with rural development, poverty reduction or maintaining irrigation works.

W/VTAs work under the supervision of the Township Administrator, the main official at the General Administration Department.

All W/VTAs are ruled by the same law, the “Ward and Village Tract Administrator Law”, enacted by the national parliament.



W/VTAs do not manage funds or collect taxes.

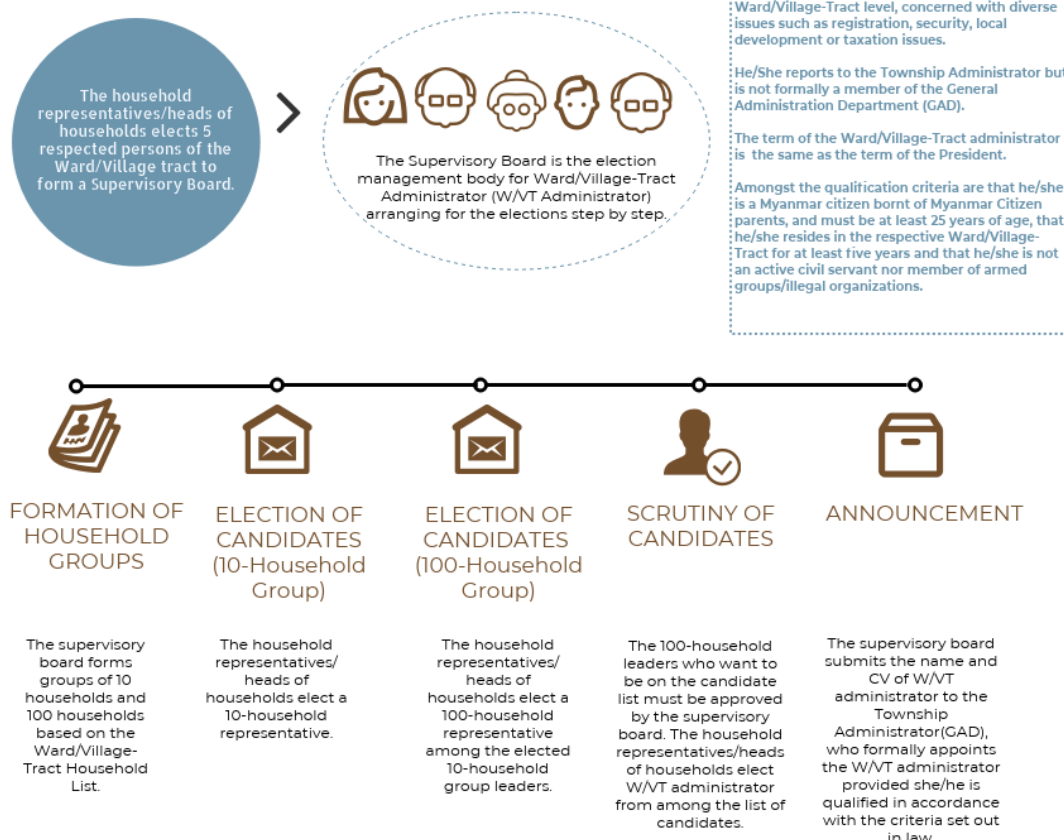
laws which established new semi-elected bodies, the Township Development Affairs Committees, mandated to supervise a new municipal administration, the Development Affairs Organisation. The “Local Governance Mapping” conducted by the United Nations Development Programme (UNDP) shows that there is still limited awareness about the representative dimension of these bodies.²

¹ For further reading on Decentralisation, refer to [DRI Briefing Paper 87, Decentralising Government: What you need to know, 2017.](#)

² United Nations Development Program: Local Governance Mapping. The State of Local Governance in Myanmar: A Synthesis of People's Perspectives Across all States and Regions, Yangon, 2015.

Ward/Village-Tract Administrator Elections in Myanmar

Ward/Village-Tract Administration Law 2012, Amendment 03/2016



2. LOCAL GOVERNANCE IN MYANMAR: TOWNSHIP DEVELOPMENT AFFAIRS COMMITTEES AND WARD OR VILLAGE-TRACT ADMINISTRATORS

Below the state/region level, Myanmar has two sets of semi-elected institutions with decision-making authority: (1) the Township Development Affairs Committees (TDACs)³ or, in the case of Mandalay and Yangon cities the Yangon City and Mandalay City Development Committees and; (2) Ward or Village Tract Administrators, which are single positions (i.e., one administrator per ward or village).⁴ In the current setup, Myanmar has 322 TDACs, each with some indirectly elected and some appointed members, and 16,785 Ward or Village

Tract Administrator positions held by indirectly elected individual office holders.

In 283 townships (outside of Yangon, Mandalay and Naypyidaw cities), the TDACs serve to oversee several aspects of municipal governance. The systems through which the committee members are elected and appointed, as well as their powers, are governed by separate laws passed in each State/Region parliament. TDACs are composed of both elected and appointed members, and the composition varies across States and Regions (see table on page 5 for details). Development Affairs Organisations (DAOs), sometimes referred to as municipal offices, are responsible for water and sewage services, drainage, trash collection, street lighting, road and bridge construction and maintenance, provision of business licenses, and collection of taxes and fees, among other responsibilities.

³ The Burmese term (si-pin-tha-yar-ye) can be translated to English as either "municipal matters" or "development matters." In some cases, TDACs are called Township Municipal Committees in English. As TDACs oversee the work of the Development Affairs Organisations, the authors found it more appropriate to use the term of TDAC instead of Township Municipal Committees.

⁴ In this paper, the term local government is used to refer to both levels of local government, the municipal-level TDACs and the Ward and Village-Tract Administrators. "TDAC" and "Ward/Village Tract Administrators" are used when referring to specific details of each of these local government bodies.

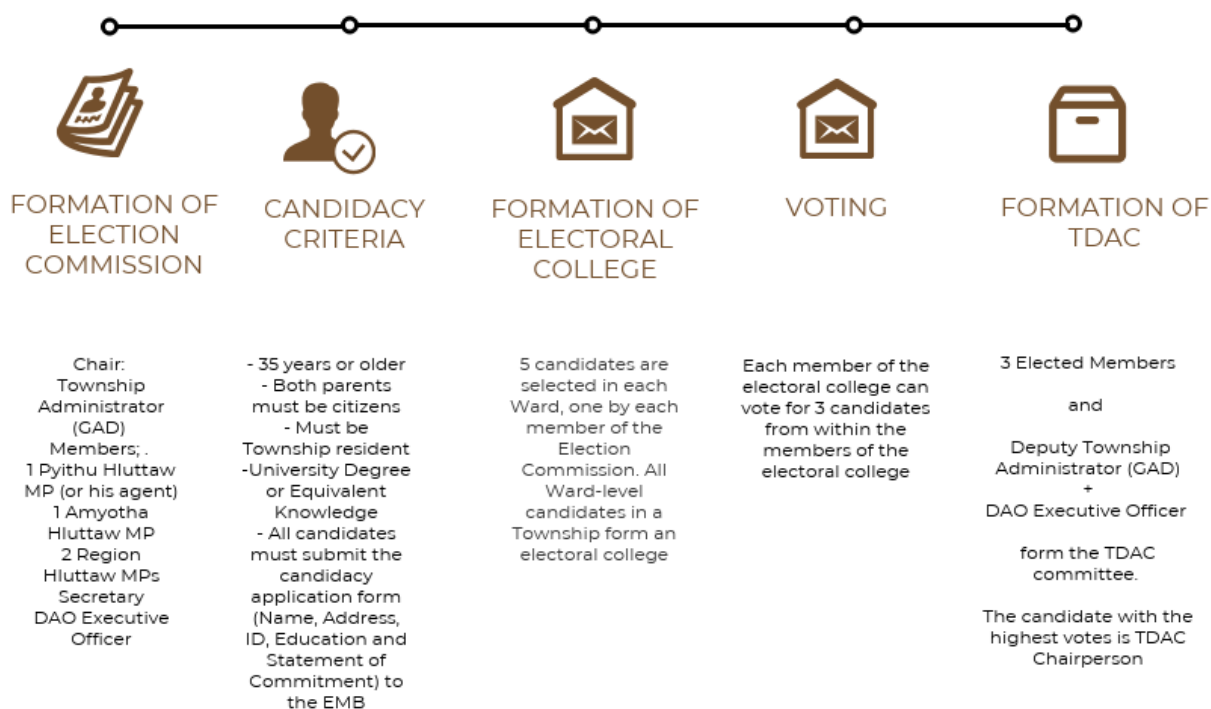
In the cities of Yangon and Mandalay, there are three-tiered municipal committees known as the Yangon City Development Committee (YCDC) and Mandalay City Development Committee (MCDC), respectively, which are municipal administrative bodies.⁵ These committees are comprised of both appointed members and indirectly elected members, the composition of which vary between levels of committee and in both cities. Naypyidaw also has a municipal committee (the Naypyidaw Development Committee or NPTDC), but its members are all government-appointed, so it is not discussed here.

The framework and process for electing committee members varies among the States/Regions and in both cities. The main elements of the elections are summarised in a table at the end of this section.

Governed primarily by the (national) 2012 Ward and Village Tract Administration Law, Ward or Village Tract Administrators (WA/VTAs) serve as the lowest level of public power, acting as a link between local communities and the state. In addition to their representative capacity, they have some executive authorities, including duties to maintain security, law and order and undertake administrative tasks such as maintaining the birth and death registry.⁶ Under the General Administration Department (GAD), WA/VTAs carry out instructions issued by the township administration. The framework and processes for electing WA/VTAs are summarised in the table below.⁷

TDAC Elections in Ayeyarwaddy Region

Ayyerawaddy Hluttaw DAO Law 03/2012, Ayeyarwaddy Hluttaw Law 06/2013, Ayeyarwaddy Hluttaw 04/2016, Procedures for TDAC elections 10/2018



⁵ The lowest tier committees in the YCDC and MCDC are at the township level and are also referred to as TDACs, which can be a source of confusion.

⁶ For more details, see, e.g: Kempel, Susanne and Aung Tun. "Workshop Report: Myanmar Ward and Village Tract Administrator Elections 2016." Norwegian People's Aid. 2016; and Kyed, Helene Maria, et. Al., "Local Democracy in Myanmar: Reflections on ward and village tract elections in 2016." Danish Institute for International Studies, 2016.

⁷ This comparative table was prepared in cooperation with the New Myanmar Foundation, who works on observing local government elections and legal reforms advocacy in six states/regions of Myanmar. Contact <http://en.newmyanmarfoundation.org> and <https://www.facebook.com/new.myanmar.foundation>

	Yangon City Development Affairs Committee (YCDC)	Mandalay City Development Affairs Committee (MCDC)	Township Development Affairs Committees (TDACs)	Ward or Village-Tract Administrators
Main functions	The administration for all of Yangon's city municipal matters, including tax raising and a wide range of responsibilities.	The administration for all of Yangon's city municipal matters, including tax raising and a wide range of responsibilities.	TDACs are the semi-elected body that oversee and coordinate the work of the Development Affairs Organisation- the urban administrative agency with wide responsibilities managed by State/Region Governments, including raising funds/taxes and providing a comprehensive range of services.	The indirectly elected Ward and Village Tract Administrator oversee the work of the GAD's Ward and Village Tract Development Committee, the lowest level of governance in Myanmar.
Legal Framework	YCDC municipal law passed by Yangon Region Hluttaw; amendments. By-laws (e.g. "Election Rules") approved by the Yangon Region Parliament (drafted by YCDC) Townships in Yangon outside Yangon city are governed by the Yangon Region Development Affairs Organisation Law.	MCDC municipal law passed by Mandalay Region Hluttaw; amendments. By-laws (e.g. "Election Rules") passed by the Mandalay Region Parliament (drafted by MCDC) Townships in Mandalay outside Mandalay city are governed by the Yangon Region Development Affairs Organisation Law.	There are 14 Development Affairs Organisations (DAO) laws, passed by each state and region Hluttaw (based on the legislative powers conferred by Schedule 2 of the 2008 Constitution). By Laws and Procedures are issued by Ministries of Development Affairs in each state/region and passed by the state/region Parliament.	Pyidaungsu Hluttaw Law- the only local government structure that is ruled by a Union Law (vs. State/Region Laws that regulate TDACs and YCDC/MCDC)
Elected Bodies	3-tiered committee structure; 1 top committee (4 members elected, 5 appointed); 4 district-level committees (3 members elected, 2 appointed); 33 township-level committees (3 members elected, 2 appointed)	3-tiered committee structure; 1 top committee (6 members elected, 7 appointed); District- and township-level committees not elected	There are 283 TDACs in total (the remaining 50+ townships are amalgamated into YCDC and MCDC). They all have elected and appointed members, though their composition varies throughout the different state/regions: <ul style="list-style-type: none"> Between 3 elected and 2 appointed members (e.g. Ayeyarwaddy, Kayin) to 4 elected and 3 appointed members (e.g. Kachin, Mandalay, Rakhine) The appointed members are most often: 1. GAD Township Administrator (or its Deputy), 2. Executive Officer of Development Affairs Organisation and an Officer from the Rural Development Department (GAD). 	Individual office-holders for each ward and village tract
Term	Same as Union Government	Same as Union Government	In most cases their term is linked to the Union Government's term, with some exceptions (e.g. in Rakhine TDAC have a 2 year term)	Same as Union Government

Electoral System	One vote per household; 7 ballots, electing 1 member to the top committee and 3 each to voter's district- and township-level committees; FPTP used for all seats; Top committee uses single-mandate constituencies, one from each district; District and township-level committees use multi-member constituencies	One vote per household; Only top committee has elected members, elected through single-mandate constituencies (one for each township) using FPTP	TDAC are not elected by universal suffrage. The system, however, varies: <ul style="list-style-type: none"> - In some states/regions, the household heads elect TDAC members- either in single-member (e.g. Chin, each household head electing one member) or multi-member constituencies (e.g. Rakhine, Bago, each household head voting for at least 3 candidates) - In others, there is a two-round process, either through an "electoral college" that is appointed by the region Government and Parliament (e.g. Ayeyarwaddy) or through township elders, which form an "electoral college" (e.g. Kachin) and elect candidates amongst themselves. 	Heads of household vote to select 10 heads, who use an indirect process to select the administrator
Candidacy Requirements	Both parents need to be citizens; 10 year residency; high age threshold, which vary by committee level (top: 45-65; district: 40-60; township: 35-55); in addition, other criteria such as: Possess moral character, loyalty, knowledge of urban planning/city management and others	Minimum age 30 years, bachelor's degree; 5 year residency;	The level of detail on candidacy requirements in laws and procedures varies. Where there are concrete provisions, the following criteria are set out: <ul style="list-style-type: none"> - Often, e.g in Ayeyarwaddy, Bago, Rakhine, full citizenship of both parents is required - Between 25-35 minimum age in most state/regions - Between 5 (e.g. Bago) and 10 years (e.g Kachin) residency requirement - In some areas, the laws and regulations specifically ban party activity and require candidates to cease any party membership (e.g. Mandalay Region, Rakhine) 	Minimum age 25 years, both parents are required to be full citizens; 10 year residency; other general criteria such as: possess dignity, respect, morality of family, other qualities; others
Electoral Authority	Election commission formed by YCDC top committee.	Election commission formed by Mandalay Region cabinet.	The state/region Development Affairs Minister appoints of the election management commission, which in most cases is formed by Government and GAD staff, with some exceptions: <ul style="list-style-type: none"> - In Ayeyarwaddy, in addition to the GAD Township Administrator and the Executive Officer, the township' representative in Pyithu Hluttaw (or is agent), one Amyotha Hluttaw MP and and 2 Region MPs form the EMB - In Bago, in addition to GAD officers, the UEC Township Sub-Commission and the Township Officer of Ministry of Immigration are part of the EMB. - In Kachin the election is managed by a Supervisory Board appointed by the Development Affairs Minister. 	GAD and supervisory bodies of 5 elders in each area
Status of Elections	Last held in December 2014, new elections due in 2016, expected March 2018	Elections held in September 2016	<ul style="list-style-type: none"> - Between 2015 and 2017, elections were held in Chin State, Kayah State, Kayin State, Shan State, Magwe Region, Mandalay Region, Kachin State, Ayeyarwaddy, Bago and Sagaing Region - Due to be held in - 2018 Mon State, Rakhine State 	Elections held in January 2016

3. WHAT ARE THE SOURCES OF INTERNATIONAL STANDARDS FOR LOCAL ELECTIONS?

The standards that apply to national elections apply at the local level as well: any election needs to be the expression of the free will of the people. The political rights laid out in international treaties or declarations, such as the International Covenant on Civil and Political Rights (ICCPR) or the Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights or the Bangkok Declaration on Free and Fair Elections, are all standards and good practices that apply to local elections just as they apply to national elections.⁸

Article 25 of the International Covenant for Civil and Political Rights (ICCPR) is the cornerstone of international standards for democratic elections. In language that is starkly similar to article 21 of the Universal Declaration of Human Rights (UDHR)⁹, ICCPR article 25 states that, “every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2,” including “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” “and without unreasonable restrictions: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; [and] c) to have access, on general terms of equality, to public service in his country.”

Other international legal instruments, such as the Convention Against Corruption (CAC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD), contain election-related provisions that collectively establish the core of international standards for democratic elections. While Myanmar is a state party to CEDAW, CRPD and CAC, the government has yet to sign on to ICCPR and CERD. As such, provisions in ICCPR and CERD are not obligatory on Myanmar authorities in the way that they are to state parties to the instruments, who are mandated to adopt laws and measures to “give effect” to the instruments’ provisions. Nevertheless, the election-related provisions in these instruments represent significant international consensus on the core principles regarding what constitutes a genuine democratic election.

Reinforcing and expanding upon election-related provisions in international legal instruments, additional standards for democratic elections are found in documents outlining political commitments. For example, the Bangkok Declaration on Free and Fair Elections, jointly adopted by Myanmar and 33 other Asian countries, elaborates a set of “aspirations and commitments” related to human rights in the region.¹⁰ Election-related provisions in the Declaration include: a “commitment to principles contained in [...] the Universal Declaration on Human Rights;” encouragement for Asian nations to ratify ICCPR and other international human rights instruments; reiteration that “all countries, large and small, have the right to determine their political systems;” including a “strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political [...] concerns of society and the eradication of all forms of discrimination [...] against women.”¹¹

4. STRENGTHENING LOCAL GOVERNANCE IN MYANMAR THROUGH MORE GENUINE ELECTIONS PROCESSES

4.1. ELEMENTS OF A STRONG LEGAL FRAMEWORK FOR GENUINE LOCAL ELECTIONS

In some countries, local elections are part of the national elections law. In Indonesia, for example, all elections are ruled by the same law, managed by the same body and held at the same time. In other countries, like Pakistan, local elections are part of the diverse “Local Government Acts” that each of the four provinces has passed. Each province has different bodies and election schedules, but they are all implemented by the same election management body, the Election Commission of Pakistan. Regardless of the model chosen, laws should follow a legal and institutional hierarchy and define the rights and duties of all stakeholders and institutions involved in a coherent manner.

It is a good practice to enshrine these key provisions in primary legislation and to provide for public consultation and broad-based consensus on electoral provisions in the law. Elections concern access to power, and it is vital that these “rules of the game” are regarded as legitimate and accepted by all stakeholders. The legal framework for municipal or local elections must include clearly defined provisions on key

⁸ Authoritative interpretation of ICCPR concludes that: “the conduct of public affairs [...] is a broad concept which relates to the exercise of political power. [...] It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.” Human Rights Committee, General Comment 25, paragraph 5. Paragraph 6 continues: “Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. [...] Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues.”

⁹ UDHR, article 21: “1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives; 2) Everyone has the right of equal access to public service in his country; [and] 3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

¹⁰ Bangkok Declaration, preamble. See: http://faculty.washington.edu/swhiting/pols469/Bangkok_Declaration.doc

¹¹ Ibid, preamble and paragraph 1; preamble; paragraph 22.

aspects of the process, particularly voter and candidacy criteria, election management, campaigning, transparency and dispute resolution.

In Myanmar, each state/region has passed “Development Affairs Organisations” laws, which include provisions on TDAC elections. In most cases, however, laws are not detailed on TDAC candidacy criteria, voter eligibility or the election calendar. Many details are left to the secondary legislation (e.g. YCDC, Chin State) or are not available in writing (e.g. Kachin State). There has been little public debate on election provisions for TDACs and general awareness about the provisions is low. Similarly, the (Union-level) Ward and Village Tract Administrator Law describes the process for indirect elections positions (see infographic on page 3), but no details or guarantees are provided, lacking provisions on timelines, campaigning or independent scrutiny, among other issues.

Potential Avenue for Reform: States and Regions to engage in broad debate on municipal government elections with all stakeholders; key rights and guarantees, such as the right to vote and to be elected, should be enshrined in primary legislation.

4.2. UNIVERSAL SUFFRAGE AND VOTER ELIGIBILITY

Universal suffrage is key to the right of all citizens to participate in public affairs. Universal suffrage is a collective right and requires the state to make efforts to include as many citizens as possible in elections. Restrictions on participation exist in every country, but these restrictions are typically limited to reasonable and objective criteria, such as: minimum age (generally 18, but ranges from 16 to 21); residency; incarceration; and mental incapacity. Measures to increase participation in voting include voter education and awareness as well as an inclusive voter register and mechanisms to facilitate registration of all those eligible to vote.¹² In many cases, the requirement to hold a country’s citizenship is waived to ensure participation at the local level.

In Myanmar voting rights for municipal and local elections are often granted only to household heads or those designated by heads-of-household. In some states and regions (in e.g. Ayeyarwaddy, Kachin, Bago), an indirect system is used where only a pre-selected group serve as electors (e.g. local elders or a group appointed by the Region Minister). The right to vote in these elections is, by definition, not universal. The right to vote is also unequal in the sense that the weight of votes are unequal, given the varying sizes of households or, in the case of the Ward or Village-Tract Administrator elections, the household groups. No special procedures exist for the inclusion of vulnerable groups, such as migrant voters or those

without National Identifications Cards in municipal and local governance.

Given the lack of a digitalised and updated civil register that the authorities could use to implement universal suffrage at the municipal and ward/village level, a cooperation between municipal authorities and the UEC on voter registration could be useful. This would avoid duplication of effort and better meet voter expectations that they should not have to register separately for different elections. Many countries approach voter registration in this way, utilizing the same registry and processes for local and higher-level elections. This also serves to improve the accuracy of voter registration data over time, in the sense that it is used and updated more frequently.

Potential Avenue for Reform: Consider granting citizens the right to participate in local government through elections held with universal suffrage.

Lawmakers and local authorities engage in consultative dialogue with the Union Election Commission regarding potential cooperation and integration of voter registration processes.

4.3. INCLUSION OF MARGINALISED COMMUNITIES

Inclusiveness is key to a genuine election, as are the principles of non-discrimination and equality. Achieving women’s full political participation at all levels of decision-making and public life is a Sustainable Development Goal and includes women holding seats in local government. As a state party to CEDAW, Myanmar is obliged to ensure the equal exercise of active and passive voting rights by men and women. Currently, only 41 out of the 16,785 Ward/Village Tract Administrators are women. The under-representation of women is as worrying at the municipal committees’ level: for example, in Shan state, there are only 8 women in the 54 TDACs.

Myanmar’s National Strategic Plan for the Advancement of Women has called for a discussion of temporary measures such as gender quotas in legislative, executive and judicial branches but so far no concrete steps have been made.¹³ Discussing ways to promote women participation at the local level can be a step towards strengthening equality at the higher level, since generally local government is more accessible and women candidates could develop valuable experience while raising the electorate’s awareness of the equal role of men and women in political affairs.

An inclusive electoral process also refers to the participation of other traditionally marginalised communities, such as persons with disabilities and minorities. Myanmar ratified the CRPD, which specifically protects the right of people with disabilities to participate in public affairs and therefore is obliged to take

¹² “(...) States to adopt such legislative and other measures to ensure that citizens have an effective opportunity to enjoy the rights it protects”, Human Rights Committee, General Comment 25.

¹³ Myanmar National Committee for Women’s Affairs, Ministry for Social Welfare, Relief and Resettlement 2013: National Plan for the Advancement of Women 2013-2022, Naypyidaw.

measures to ensure this right is met across all levels of government.

Potential Avenue for Reform: Consider the introduction of gender quotas at all levels of local government and include special legal provisions to protect the right to participate in public affairs of people with disabilities and minorities.

4.4. ELECTION CAMPAIGN: A LEVEL PLAYING FIELD

There are multiple international standards regarding the campaign period as a “level playing field” essential for a genuine election process. The freedoms of expression, opinion, assembly and movement, as articulated in ICCPR¹⁴ (and UDHR)¹⁵ form the basis for free campaigning. ICCPR further states that “no restrictions may be placed on the exercise of [the right of peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.”¹⁶

To establish a level playing field for electoral contestants, countries enshrine these standards into election legislation, including mitigation of the abuse of administrative resources in favour of or against electoral contestants, support for a pluralistic and free media environment, and often the regulation of financing and spending by contestants and political parties. Authoritative interpretation of ICCPR describes this enabling environment as including the freedom from threats and coercion and notes the potential need for limitations on campaign expenditures.¹⁷

Currently, there are no provisions on campaigning in TDAC elected seats in any of the laws passed by States/Regions or for Ward/Village Tract Administrator elections.

Potential Avenue for Reform: The legal framework for local elections be reviewed to identify areas where free campaigning and a level playing field can be better guaranteed, including: campaign period and silence days, regulation of campaign financing and expenditures, misuse of state resources including equal access to state media for campaign purposes.

4.5. THE RIGHT TO BE ELECTED AND CANDIDACY CRITERIA

The right to “be elected” is equally key to genuine participation in public affairs. ICCPR expressly states that no distinctions should be made against the enjoyment of this right on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁸ Authoritative interpretation of ICCPR states that, “any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria.”¹⁹

The criteria to stand as a candidate in Myanmar’s township elections varies throughout State and Regions. Where the criteria are clearly defined in the law or by-law, in most cases they restrict youth participation, requiring candidates to be, on average, 25 years old and in some cases even 35 years old (Ayeyerwaddy Region). Often, 10 years of residency within the township is required, which could be overly restrictive. Ward or Village Tract Administrators should be 25 years or older.

In some States, such as Kachin and Rakhine, some of the elected seats of TDACs are reserved for specific communities, such as members of the “business” or “technical” communities, but no special measures are in place to promote the equal representation of women or other vulnerable groups.

In Mandalay Region and Rakhine State, candidates are required to disassociate themselves from political parties. Restrictions against party affiliation conflicts with the right of “freedom of association” enshrined in ICCPR (and UDHR), which expressly includes association in political parties, according to authoritative interpretation of ICCPR.²⁰

Potential Avenues for Reform: The legal framework for municipal elections be amended to remove unreasonable and subjective candidate eligibility requirements.

Timelines, procedures and forms for registration of candidacies should be made accessible to the public.

4.6. INDEPENDENCE IN ELECTION MANAGEMENT

International standards do not prescribe an election management model and municipal elections can either be managed by the same body that manages elections at the

¹⁴ ICCPR, articles 19, 21 and 12.

¹⁵ UDHR, articles 19, 20 and 13.

¹⁶ ICCPR, article 21.

¹⁷ UN Human Rights Committee, General Comment 25, paragraph 19. “Persons entitled to vote must be free to vote for any candidate for election [...] and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”

¹⁸ ICCPR, article 2.

¹⁹ Human Rights Committee, General Comment 25, paragraph 15.

²⁰ Human Rights Committee, General Comment 25, paragraph 26. “The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by [ICCPR] article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.”

central level or, alternatively, dedicated bodies set up for the purpose. The standards only highlight the importance of independence in election management bodies. Authoritative interpretation of ICCPR states that “an independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with [ICCPR].”²¹ In many countries, there is concern that election management bodies that are insufficiently independent from government have incentives or can be more easily pressured to administer elections in a partial manner, often in favour of the ruling party.

In Myanmar’s local and municipal elections, a special, temporary election management body is set up, either by the General Administration Department (for the Ward or Village Tract Administrator Elections) or by the State and Region government (for the TDACs). There are no mechanisms to ensure operational independence such as appointment criteria, legislative oversight of election management or an assigned budget.

In some cases, elections are administered by the State/Region Government directly. For example, in both Shan State and Ayeyawaddy Region, the DAOs and GAD share election administration duties and are appointed by the State/Region Government, while in Chin State an *ad hoc* election committee was created by the Minister of Municipal Affairs to administer the recent TDAC elections. The YCDC similarly uses a government-appointed election commission to administer the YCDC elections, and certain provisions could be viewed as weakening its independence. For example, the YCDC top committee, which presumably would include contestants for re-election in the municipal elections, appoints the members of the election commission itself.

Potential Avenue for Reform: The legal and administrative frameworks for local elections be reviewed to identify areas where the independence of the election management bodies can be strengthened, in particular: timelines for recruitment of EMB, appointment criteria, functions, powers and responsibilities.

The State/Region Legislature could be given a role in approving appointments and overseeing election commission performance.

To avoid doubling of efforts and capitalise on lessons learned and institutional memory, consideration could be given to cooperation with or delegation of selected duties to the Union Election Commission.

4.7. INDEPENDENT SCRUTINY AND PROACTIVE TRANSPARENCY

Authoritative interpretation of ICCPR calls for “independent scrutiny of the voting and counting process [...] so that electors have confidence in the security of the ballot and the counting of the votes.”²² This means that actors independent from election officials and candidates such as journalists and nonpartisan observers should be allowed to observe voting and counting processes. No such access is granted in any of the legislation pertaining to Ward and Village Tract Administrator or TDAC elections in Myanmar.

Independent scrutiny by nonpartisan observers and journalists is also reinforced by the CAC, to which Myanmar is state party, which mandates state parties to “take appropriate measures [...] to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption.”²³ This is relevant in the sense that the manipulation of electoral processes (e.g. through vote buying or abuse of government resources in support of personal aims) is a form of corruption.

International good practice further suggests that independent scrutiny is bolstered by nonpartisan observers being allowed to observe all aspects of a given election, including pre-election processes such as voter registration and boundary delimitation, polling and results operations, and post-election processes such as recounts and electoral dispute resolution mechanisms.²⁴

Potential Avenue for Reform: The legal and administrative frameworks for local elections be reviewed to identify areas where independent scrutiny can be better guaranteed, including consideration of defining observer rights and responsibilities in the legal framework.

4.8. COMPLAINTS AND APPEALS

The independent and impartial resolution of disputes is key to any genuine election process, including local government elections. If a citizen’s right to political participation is breached during any stage of the process - including the campaign period or polling day - an effective remedy needs to be available, including the right to appeal decisions to a higher body. There is no universal model for the resolution of electoral disputes- in some cases the election management body serves the first instance adjudicatory body with the option of judicial appeal, in some other cases a dedicated court is established to

²¹ Human Rights Committee, General Comment 25, paragraph 20.

²² UN Human Rights Committee, General Comment 25, paragraph 20.

²³ CAC, article 13(1).

²⁴ See, e.g.: *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*, 18(b): “election management bodies and other governmental authorities concerned with electoral related processes honor the right to participate in government and public affairs by providing non-partisan [observers] access to polling stations and all other election related facilities and processes in the pre-election, election-day and postelection periods, including by providing accreditation, where it is required for access, in a timely manner, without proscribed discrimination or unreasonable restrictions.”

determine on the cases. In any case, election dispute resolution mechanisms are ideally enshrined in primary legislation and a protocol for the filing of complaints must be available to the public throughout the process.

In the case of local government elections, a central body might not be best placed to adjudicate all complaints, depending on the nature of the election management body or the court system. In India, for example, high courts are the first instance body to adjudicate electoral disputes and complaints related to national and state parliament elections, whereas lower courts are the first instance adjudicating on complaints and dispute related to local bodies elections.

Potential Avenue for Reform: Include provisions on election dispute resolution in legislation that define election offences as well as the competent body (-ies) and procedures for appeal.

5. CONCLUSION: STRONGER MUNICIPAL GOVERNMENT THROUGH BROAD BASED DEBATE AND REFORMS

Local elections are of high relevance for democracy and the newly introduced election processes for local bodies in Myanmar have the potential to improve accountability. In particular, the Township Development Affairs Committees provide a unique opportunity to further strengthen Myanmar's democracy within the current constitutional framework – not only because townships are the backbone of Myanmar's administrative and political structure, but also because the township administration (Development Affairs Organisation) is the only decentralised administrative body which solely depends of the State/Region Governments, unlike the rest of the state's administrative infrastructure, which is entirely embedded in the Ministry of Home Affairs General Administration Department.

There has been, however, little debate on how to improve the accountability and representativeness of municipal governance in Myanmar. Although civil society organisations have been actively engaged in observing the (indirect) elections to both Ward/Village Tract Administrators and TDACs, decision-makers have so far shown little interest in their recommendations.

In November 2017, a draft law on Yangon City Development Committee (YCDC) included universal suffrage, a key step towards more accountable government. Serious considerations, such as the responsibilities for the preparation of the voter list, polling station staff or election dispute resolution need to be made to ensure genuine elections in an area of about five million inhabitants. Civil society and the public need to be involved in these crucial reforms and have so far not been consulted. The costs of the operation as well as the possible role of the UEC should be carefully assessed as well.

As fundamental changes are expected in Yangon, a holistic debate about implementing genuine municipal elections in

Myanmar is timely. Whereas each state/region has different needs and challenges, a regular forum for exchange among Municipal Affairs Ministers could support a more systematic approach towards reforms and help to advance municipal elections in the country. A regular exchange between dedicated committees within each Parliament could also be useful since each State and Region legislated on elections for TDACs in different ways, providing the opportunity for dialogue on the challenges and solutions to move forward.

ABOUT DEMOCRACY REPORTING INTERNATIONAL

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes political participation of citizens, accountability of state bodies and the development of democratic institutions world-wide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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