

Myanmar: Note for IPCM Members on Free and Fair Elections

August 2025



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Overview of Key Standards

This section provides a brief overview of the key standards which must be observed for an election to be deemed free and fair. The nature of each standard is elaborated upon in more detail in the main body of this Note.

Respect for Fundamental Freedoms

Respect for fundamental freedoms is a basic precondition for free and fair elections. While respect for all rights is important during elections, and indeed at all times, the key freedoms which must be observed for an election to be free and fair are freedom of expression, freedom of association, freedom of assembly and freedom of movement.

Respect for the Results of Elections

It seems almost too obvious to say, but a key element of a free and fair election is that everyone respects the results. Otherwise, the election is not a real or genuine election.

Periodic Elections

It is of the essence that elections should be conducted periodically, normally in accordance with constitutional provisions governing this, and in most countries this is stipulated as being between four and five years.

Violence

A key attribute of elections is that they should be free of any sort of violence. Violence during elections is antithetical to the notion of fair and peaceful competition which lies at the heart of electoral processes.

Universal Suffrage

The idea of universal, equal suffrage – namely that everyone should be able to cast their vote and that that vote should be equal to the votes of everyone else – lies at the very heart of the notion of a free and fair election.

Secret Ballot

For an election to be free and fair, the ballot itself should be secret, such that no ballot might be traced back to a specific individual, so as to protect one's freedom to vote without pressure or coercion.

Independent Oversight

Independent oversight of the conduct of an election, for example by an election commission, is essential to ensure that all of the standards mentioned above are respected.

Appeals

Everyone should have access to an independent and timely system of appeals, whether through the courts or an independent, administrative appellate body, to contest claimed irregularities in the conduct of an election.

Introduction

This Note¹ has been prepared by the Centre for Law and Democracy (CLD) so as to set out the key international standards which apply in the context of elections, in what has popularly become known as a “free and fair election”. The key aim is to support members of the Independent Press Council of Myanmar (IPCM)² so that they are able to cover an election which might be held by the military regime which is currently governing Myanmar in an objective and professional manner. It is relevant that, on 8 March, Myanmar’s military junta announced that elections would be held in December 2025 or January 2026.³ This Note then aims to elaborate on international election standards, so that members of the IPCM can refer to them as authoritative sources when highlighting how any election which is held by the military regime which is currently governing Myanmar is not free and fair.

We take it as a given that any election which is held under the auspices of the military regime would signally fail to meet international standards for free and fair elections. However, this Note does not, for the most part, delve into the ways in which the military regime governing Myanmar is failing to meet those standards. In most cases, this is clear to democratic observers of the situation in Myanmar, and it has been set out very clearly in numerous reports on the country, including many such reports prepared by CLD.⁴ We leave it to our readers to determine how any election which might take place in Myanmar respects or fails to respect the standards set out in this Note.

The idea of democracy, in the sense of the right of individuals (citizens) to choose their government by voting in periodic and genuine elections, is well established under

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² See <https://www.facebook.com/p/Independent-Press-Council-Myanmar-61553884594152/>.

³ See, for example, The Guardian, 10 March 2025, “Myanmar junta’s promise of elections denounced as ‘sham’ by experts”, <https://www.theguardian.com/world/2025/mar/10/myanmar-juntas-promise-of-elections-denounced-as-sham-by-experts>.

⁴ For more information on CLD’s publications relating to Myanmar, see our Myanmar Resource Page, which has resources covering both the situation since the 1 February 2021 coup and the situation before that. Available at <https://www.law-democracy.org/projects/myanmar-resource-page/>.

international law. It is protected in Article 21 of the *Universal Declaration of Human Rights* (UDHR)⁵ as follows:

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 to equal access to public service in his country.
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.

It is also protected in fairly similar terms in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR)⁶ as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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;
- (c) To have access, on general terms of equality, to public service in his country.

Key parts of the UDHR, including Article 21, are generally considered to be binding on all States as a matter of customary international law. While Myanmar has neither signed nor ratified the ICCPR, its Article 25 provides a useful elaboration of Article 21 of the UDHR, which is binding on Myanmar.

The rest of this Note sets out the key standards for free and fair elections, as determined in international instruments. Primary reference throughout will be to two key documents setting out international standards in this area, as follows:

1. United Nations Human Rights Committee, “General Comment No. 25: Article 25”, 27 August 1996, <https://digitallibrary.un.org/record/221930?v=pdf> (GC 25)

⁵ UN General Assembly Resolution 217A(III), 10 December 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁶ UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

2. Inter-Parliamentary Union, “Declaration on Criteria for Free and Fair Elections”, 26 March 1994, <https://www.ipu.org/impact/democracy-and-strong-parliaments/ipu-standards/declaration-criteria-free-and-fair-elections> (IPU)⁷

Election Standards

Respect for Fundamental Freedoms

It is an essential precondition for free and fair elections that countries show respect for fundamental freedoms, including freedom of expression (including the right to information), freedom of association, freedom of assembly and freedom of movement. General statements on this are found at GC 25, para. 12 and IPU, para. 4.3, and more specific standards relating to each freedom are noted below.

Freedom of Expression

It goes without saying that no election can be free and fair if freedom of expression – for parties and candidates, for the media, for other commentators, for civil society organisations and for the public as a whole – is not vigorously respected. All of these different actors should be able to engage in robust criticism of the party (or in the case of Myanmar, the regime) in power, and its policies and political positions, as well as other parties and candidates contesting the election. Some specific aspects of this include the following:

- Everyone has the right to express political opinions without interference (IPU, para. 3.3).
- Everyone has the right to seek and receive information so as to make informed electoral choices, as well as to receive information about voting, including in minority languages (IPU, paras. 3.3, 4.1 and 4.2; GC 25, para. 12).
- Every party and candidate has equal opportunity of access to the media and a reasonable opportunity to present their electoral platforms (IPU, paras. 3.4 and 4.3).
- Media should be encouraged to accept a code of conduct to govern their reporting during the election period (IPU, para. 4.2).

⁷ Readers may also wish to refer to the following documents: OSCE, “International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections. OSCE ODIHR Draft Paper”, 20 November 2002, <https://www.osce.org/odihr/elections/16859>; “OSCE Election Commitments”, 29 June 1990, <https://www.osce.org/odihr/elections/19114>; and Carter Center, “Election Obligations and Standards: A Carter Center Assessment Manual”, 22 March 2023, <https://www.cartercenter.org/resources/pdfs/peace/democracy/cc-oes-handbook-10172014.pdf>.

- Parties and candidates have equitable access to State and public service media, and these media are required to report on the election in a non-partisan manner (IPU, para. 4.3).

Transparency on the part of public authorities is part of the right to freedom of expression, which encompasses not only the right to impart information and ideas but also to seek and receive them. Reflecting this, para. 3.7 of IPU calls on States to “take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.”

Freedom of Association

Like freedom of expression, freedom of association is absolutely central to the whole idea of a free and fair election. This encompasses the ability of political parties to organise themselves freely, to espouse whatever political views they might wish to, including views about changing the constitutional nature of the country (as long as they do not advocate using violence to achieve this), subject only to internationally sanctioned limits (such as putting forward platforms which undermine human rights). Some specific aspects of this include the following:

- Everyone has an equal opportunity to become a candidate for election, subject only to national rules which are consistent with international standards (IPU, para. 3.1).
- Everyone has the right to join or establish a political party or organisation so as to compete in an election, and any restrictions on this must be justifiable on objective and reasonable criteria (GC 25, para. 15; IPU, para. 3.2).
- Conditions relating to nomination dates, conditions (such as regarding the required number of supporters for nominations), fees or deposits are reasonable and not discriminatory (GC 25, para. 16).
- Political opinion should never be a barrier to standing for election (GC 25, para. 17).
- Every party and candidate has the right to campaign on an equal basis with other parties and candidates (IPU, para. 3.3).
- Parties and candidates respect the rights and freedoms of others (IPU, para. 3.10).
- States should provide for the formation and free functioning of political parties, separation of party and State, and equitable conditions for competition in legislative elections (IPU, para. 4.1).

Freedom of Assembly

Freedom of assembly is also key to the conduct of free and fair elections. Political parties often rely heavily on rallies as part of their campaigns, while other participants in the electoral process – including civil society organisations – may also use protests or demonstrations to try to raise the political profile of the issues they are interested in. International standards in this area permit of only very limited restrictions on peaceful assemblies, even when they are otherwise in breach of the law (for example because they are blocking streets or other areas). Reflecting this, IPU, para. 4.3 specifically refers to the right to freedom of assembly and the need to respect it in the context of political rallies and meetings.

Freedom of Movement

Freedom of movement is another essential underpinning of free and fair elections. Candidates, party representatives and their supporters should be free to move about the country to promote their parties and platforms, including to provide support to other candidates. And electors need to be free to move about on election day and during any pre-voting period, so as to be able to cast their votes. Some specific aspects of this include the following:

- Everyone has the right to move freely within the country to campaign in an election (IPU, para. 3.3).
- States should respect freedom of movement, including so that parties and candidates can communicate their views to the electorate (IPU, para. 4.3).

Respect for the Results of Elections

It seems almost too obvious to say, but a key element of a free and fair election is that everyone respects the results and of course this is precisely what the military regime currently governing Myanmar did not do when it perpetrated the coup on 1 February 2021. It is up to the independent bodies which should be overseeing the election rather than competing parties and candidates to declare the results (sometimes alongside media actors and of course parties and candidates are free to cede losses when they are ready to do so). This is, of course, without prejudice to the right of parties and candidates (and other actors) to ask for a recount or to dispute the results, albeit these actions should again be undertaken by independent bodies (normally the election body or the courts).

Reflecting the importance of this, para. 19 of GC 25 states, simply: “The results of genuine elections should be respected and implemented.” Similarly, para. 3.11 of IPU states: “Every

candidate and political party competing in an election shall accept the outcome of a free and fair election.”

Periodic Elections

It is of the essence that elections should be conducted periodically, normally in accordance with constitutional provisions governing this, and in most countries this is stipulated as being between four and five years, sometimes on a fixed schedule and sometimes based on when elections are called. The term “periodic” appears in both Article 21(3) of the UDHR and Article 25(b) of the ICCPR, thus signalling the essential nature of this feature of elections. The need for periodic elections is reflected in paras. 9, 19 and 22 of GC 25 and in paras. 1 and 4.1 of IPU.

Violence

A key attribute of elections is that they should be free of any sort of violence. Violence during elections undermines respect for the fundamental freedoms listed above and is in any case antithetical to the notion of fair and peaceful competition which lies at the heart of electoral processes. Thus, GC 25 notes, in para. 19: “Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.” IPU adds a few more specific elements to this:

- The right of candidates to security for their persons and property shall be recognised and protected (para. 3.5).
- Parties and candidates have responsibilities to the community, including not to engage in violence of any sort (para. 3.9).
- States should “take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and ... to prevent electoral violence” (para. 4.8).

Universal Suffrage

The idea of universal, equal suffrage lies at the very heart of the notion of a free and fair election. Everyone, subject only to very limited and justifiable restrictions, should be able to cast their vote and that that vote should be equal to the votes of everyone else. As para. 21 of GC 25 makes clear, while international standards do not prescribe any particular form of elections, the “principle of one person, one vote must apply, and ... the vote of one elector should be equal to the vote of another.” Similarly, IPU, para. 2.1 states: “Every adult citizen

has the right to vote in elections, on a non-discriminatory basis”, while para. 2.6 makes it clear that every voter has the right to have “his or her vote accorded equivalent weight to that of others”. Furthermore: “Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria” (GC 25, para. 4).

All countries impose age limits on voting and standing for election, and some countries impose limits based on mental incapacity, although it is not legitimate “to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements” (GC 25, para. 10).

Article 25 of the ICCPR is somewhat unique among the rights guaranteed in that Covenant inasmuch as it is limited to “citizens” rather than applying to “everyone”, as most of the other rights it guarantees do. It is clear, however, that no distinctions in the enjoyment of the Article 25 rights may be made on “grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (GC 25, para. 3), and distinctions between those whose citizenship is based on birth and on naturalisation are viewed with great suspicion. It may also be noted that other human rights standards, in particular those relating to discrimination, prohibit discrimination on the basis of nationality in extending recognition of citizenship to individuals.⁸ GC 25, para. 3 also recognises that some States may afford other groups, such as permanent residents, certain voting rights.

Some additional specific aspects of this include the following:

- Everyone who is entitled to vote “has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters” (IPU, para. 2.2; see also IPU, para. 4.2).
- Everyone who is entitled to vote “has the right to equal and effective access to a polling station in order to exercise his or her right to vote” (IPU, para. 2.5).
- The “drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters” (GC 25, para. 21).
- States should also ensure “that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification” (IPU, para. 4.6).

⁸ See, for example, *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD), UN General Assembly Resolution 2106A(XX), 21 December 1965, entered into force 4 January 1969, Article 1(3), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

- “The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents” (GC 25, para. 20).

Secret Ballot

Closely linked to the idea of universal suffrage is the idea that the ballot itself should be secret, such that no ballot might be traced back to a specific individual. The core idea behind this, of course, is to protect one’s freedom to vote without pressure or coercion. As para. 20 of GC 25 notes: “States should take measures to guarantee the requirement of the secrecy of the vote during elections including absentee voting”. IPU, para. 2.7 is even more categorical, stating: “The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.” It then goes on to make it clear that States are obliged to “take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation” (IPU, para. 4.5).

Independent Oversight

Independent oversight is important in a number of areas of democratic governance – including media regulation and the protection of human rights – but it is perhaps more important in relation to elections than anything else, given that the whole framework of democracy depends on free and fair elections. As GC 25, para. 20 indicates: “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”. IPU, para. 4.2 also stresses the need for “the establishment of a neutral, impartial or balanced mechanism for the management of elections”, along with the need for those who are responsible for running different aspects of elections to be “trained and act impartially”. The same paragraph also refers to the importance of “national and international observers”.

Appeals

It is important to establish an independent body to oversee elections, but that does not mean that the decisions of that body should be final and not subject to being contested. Even the most professional bodies can make mistakes and the ability to challenge decisions is central to democratic processes. As GC 25, para. 20 notes: “There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process”.

IPU adds a few more specific elements to this:

- Every individual and political party has the right to protection of the law and to a “remedy for violation of political and electoral rights” (IPU, para. 3.6).
- Anyone who has been denied the right to vote or to be registered to vote, or whose “candidature, party or campaign rights are denied or restricted” should have access to a competent review process which can “correct errors promptly and effectively” (IPU, paras. 2.4 and 3.8).
- Any complaints relating to the electoral process should be “determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority” (IPU, para. 4.8).