

# MYANMAR'S 2020 ELECTIONS:

Unfree, Unfair and Anti-Democratic

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## About the Authors

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***Senior Rohingya politicians inside Myanmar***

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# Executive Summary

Myanmar's second competitive, multi-party elections are scheduled for 8 November 2020. The elections have been billed as a milestone in Myanmar's democratic transition, yet it is increasingly obvious that the electoral process will be deeply anti-democratic and will systematically, and deliberately, disenfranchise ethnic and religious minorities, as well as civilians living in conflict-affected areas. At least 2 million people are expected to be disenfranchised in Myanmar's 2020 elections. The Rohingya are the forefront of these exclusions.

The Rohingya strongly object to their exclusion from the political process and seek to restore their:

- (i) Right to vote** in all upcoming elections;
- (ii) Right to compete** in all upcoming elections, both as parties and as candidates;
- (iii) Right to a fair electoral process**, with free access to information and the Internet, including in conflict affected-areas; and
- (iv) Right to full citizenship.**

It is imperative that the international community unambiguously endorses such aims, and makes clear that an electoral process that disenfranchises ethnic and religious minorities is not merely flawed but is inherently anti-democratic and undermines Myanmar's stated aims to achieve a democratic transition.

This report examines the Rohingya's history of electoral participation in successive Burmese elections, and the abrupt disenfranchisement that took place in 2015. It offers recommendations for the international community to consider as they respond to the 2020 elections and their aftermath.

It is clear that the elections will not at this stage become free and fair. The actions taken already have delegitimized the process and the outcome. It is critical that the international community acknowledges this, avoids any steps that might legitimize the elections or encourage similar behavior in future elections, and pursues a policy aimed at achieving a genuinely democratic Myanmar.



*Photo credit: AFP*

## I. The Right To Vote

The Rohingya have long been denied citizenship in Myanmar. Yet for many decades, they did enjoy the right to vote in Myanmar's electoral system. That right came to abrupt end in 2015, when the vast majority of Rohingya were struck from the voting rolls and denied the right to vote. This disenfranchisement is poised to be further consolidated in the 2020 elections, setting a dangerous precedent for exclusion and racism in the years to come, and undermining the foundations of Myanmar's democratic transition.

### ***Disenfranchisement of Rohingya***

The Rohingya have participated as voters and candidates in all elections since independence in 1948, with the notable exception of the 2015 elections. Their participation in Myanmar's electoral life took place despite the government's refusal to grant Rohingya citizenship, a policy that traces back to the adoption of Myanmar's 1982 Citizenship law.

The 1982 citizenship law separated the Burmese people into different tiers of citizenship based on their ethnic background. According to the law, the Rohingya were denied full citizenship and were instead granted temporary residential status through the provision of Temporary Registration Cards, also known as 'White Cards'. Using these White Cards, Rohingya voted in repeated elections, until most recently the 2012 elections. Yet in 2015, President Thein Sein decided to invalidate the White Cards—On February 11 2015, President Thein Sein announced that all Temporary Registration Certificates, known as 'White Cards', would expire on 31 March 2015, and had to be returned to the authorities, thus depriving the Rohingya of their right to vote.

The Rohingya were systematically disenfranchised in the 2015 elections. As a result, their community was deprived of political influence and representation in Myanmar's parliament. Five years later, the situation is poised to be repeated. Even before a single vote is cast, Myanmar's 2020 elections will fail to meet the standards of free and fair elections due to the exclusion of roughly 2 million Rohingya living primarily in Rakhine state and refugee camps in Bangladesh. Months before the elections were to take place Myanmar's Union Electoral Commission made clear that the Rohingya would be denied the right to vote, and as of mid-October, just several hundred Rohingya – representing less than 0.1 percent of the Rohingya population – have been added to the final voters lists. In the absence of urgent efforts to add Rohingya to the voter rolls, Rohingya will once again be denied their right to vote in national elections.



Photo credit: ONUR Coban/Anadolu Agency/Getty Images

### ***Exclusion of Rakhine State***

The exclusionary nature of Myanmar’s 2020 elections is further compounded by the fact that polling will not be held in conflict-affected areas.

Myanmar has in recent months ratcheted up violence in Rakhine and Chin states—areas that are home to high numbers of ethnic and religious minorities. Since the onset of the COVID-19 pandemic, the Burmese military has authorized clearance operations in Rakhine State and human rights groups including Human Rights Watch and Amnesty International have documented homes being burned to the ground and indiscriminate airstrikes—in patterns reminiscent of the 2017 genocide. The acceleration of violence in these areas is used as an excuse by the Burmese authorities to bar conflict-affected areas from voting, or to limit access to the 2020 electoral process.

Just weeks before the 2020 elections, the election commission announced that it would cancel the electoral process over half of Rakhine state, where hundreds of thousands of people, including half of the Rohingya remaining in Myanmar live. This decision serves as a profound act of disenfranchisement that is bound to further antagonize the people of Rakhine State, and mimic the process of disenfranchisement which took place 5 years ago, when elections were never ultimately held in areas where polls were postponed.

### ***Towards a Solution***

The full enfranchisement of the Rohingya requires significant changes to Myanmar’s 1982 citizenship law— a law which the Advisory Commission on Rakhine State warned only served to “create tension between communities, lead to frustration for those who are not citizens, contradict recent laws, including the 2008 constitution, and fall short of

international standards, including those which Myanmar has approved.” Looking beyond the 2020 elections, it is imperative that the 1982 citizenship law be brought into alignment with international standards, treaties and best practices, or be revoked entirely. The very existence of this law – which creates distinctions between gradations of citizenship based on ethnic and religious identity – threatens the integrity of Myanmar’s electoral process. In accepting the 2017 recommendations stipulated by the Advisory Commission on Rakhine State, Myanmar’s government agreed to work to reform the law and to present a credible plan laying out how it would do so. Three years later, Myanmar has yet to take any steps to reform the law or bring it into international compliance.

Yet there are steps that can be taken, even on the short-term, to support Rohingya enfranchisement. Chief amongst these policies is the return to the use of so-called ‘household lists’, which were compiled in 2010 and go back several decades. Myanmar’s Union Electoral Commission (UEC) could compile a Rohingya voter list based on the 2010 household lists, thereby providing the vast majority of Rohingya the right to vote. In accepting the inclusion of household lists as a valid basis for voter lists, alongside citizenship cards and national registration cards, Myanmar would be laying the foundations of a fair and inclusive democratic process, which is the cornerstone of the country’s democratic transition.

## II. The Right To Compete

As with voting, the Rohingya have a long tradition of competing as parties and candidates in Myanmar’s electoral process. But in 2015, such competition was abruptly overturned, when over 60 Muslim candidates were denied the right to compete in parliamentary elections—including citizens and veteran politicians who had long represented their constituents in parliament. As Myanmar heads to the 2020 elections, ethnic and religious minorities are being similarly obstructed from the competition. Rohingya candidates have been barred from electoral competition by the UEC, meaning that the Rohingya population will once again lack representation in Myanmar’s political life.

### ***How Rohingya are Denied the Right to Compete***

For many decades, the Rohingya competed as candidates and had their own parties representing them in parliament. Even today, Rohingya-led political parties are registered in Myanmar to represent their constituents. But in 2015, Rohingya candidates – and indeed, all Muslim candidates – were barred from competing in the elections, with no sound legal basis provided for their exclusion. A similar dynamic is playing out in 2020. Of the more than 1,000 candidates put forward by the ruling National League for Democracy (NLD) party to compete in the 2020 elections, just two were Muslim and zero were Rohingya. Several dozen Rohingya candidates registered to compete in the 2020 elections. To date, all Rohingya candidates have been barred from competing in the 2020 elections.

### ***Restoring Rohingya’s Right to Compete***

7 August 2020 was the official last day by which all candidates across Myanmar had to register to compete in the 2020 elections. Dozens of Rohingya candidates, who ran as independents or for parties that defend the rights of Rohingya—including the Democracy and Human Rights Party (DHRP), the National Democratic Party for Development (NDPD), and the National Democracy and Peace Party (NDPP)—ultimately registered their candidacy with the UEC. After scrutinizing all applications, the UEC rejected all Rohingya candidates, on the biased claim that they had failed to prove their parents were citizens at the time of their birth. The lack of Rohingya candidates in the 2020 elections is a major stain on the credibility of Myanmar’s electoral process and warrants a forceful condemnation by the whole of the international community.

# III. The Right To A Fair Process

Myanmar's 2015 election was touted as the freest in Myanmar's history. In reality, however, alongside the deliberate disenfranchisement of ethnic and religious minorities, the election was inherently unfair. The months leading up to the 2015 elections saw Buddhist nationalist/fundamentalist elements ratcheting up anti-Muslim sentiment with divisive rhetoric and the rise of fake news facilitated by social media and in some cases foreign influence. Conflict-affected areas were excluded from the electoral process, and international monitors were denied access to those areas. There are clear signs that the 2020 general elections will be similarly unfair. Alongside the proliferation of hate speech, there are serious concerns of information suppression and the targeting of independent journalists in conflict-affected areas. Local independent elections observers have struggled to gain the right to observe the 2020 elections, at a time when their participation is vital given the strong likelihood that COVID-19 could negatively impact international electoral observers' access to Myanmar. These dynamics are poised to render the 2020 elections unfair and illegitimate and must be urgently addressed by the international community.

## ***Access to Conflict-Affected Areas***

In March 2020, in an effort to placate the UN Secretary-General's calls for COVID-19 related ceasefires, the government of Myanmar declared a nationwide ceasefire. Yet excluded from that ceasefire were the country's most prominent conflict-affected areas, among them Rakhine State. Since the onset of the so-called ceasefire, violence has proliferated across Rakhine State, with new reports of clearance operations and indiscriminate bombardment of civilian-occupied areas. Despite the threat posed by COVID-19 to conflict-areas, Myanmar has continued to impede access to these areas and on 16 October--just weeks before the elections were meant to take place--Myanmar barred elections from taking place across much of Rakhine State. Areas barred from participating in the elections included several areas where there is no active fighting. The cancellation of the 2020 elections across much of Rakhine State effectively deprives a population of some 1.2 million voters (more than 70 percent of Rakhine State's population) of their legal right to vote.

## ***Access to Information***

As violence has flared in conflict-affected areas, access to information has dwindled. Even before the elections in much of Rakhine State were canceled the authorities shut down the Internet in major parts of Rakhine State, Burmese authorities have shut down the Internet in major parts of Rakhine State, effectively blocking civilians inside conflict-areas – many of them Rohingya – from accessing information that would be vital to the electoral process. At the same time, Myanmar also stopped the outside world from accessing information about what was happening inside Rakhine State. Foreign journalists have long been denied access to Rakhine State and other areas affected by conflict in Myanmar. Internally, Myanmar has also targeted and intimidated independent reporting on the conflict. The result is that aspiring voters inside conflict-areas are poorly positioned to participate meaningfully in the 2020 electoral process.

But access to independently verified data regarding the elections extends far beyond conflict-affected areas. There is also a growing risk that independent local election observers will be barred from observing the electoral process. On 24 August—after first rejecting and then approving its accreditation, the UEC determined that the People's Alliance for Credible Elections (PACE) would only be granted accreditation after it had been registered under the Association Registration Law—a decision PACE warned “not only limits citizens' election observation rights through legal procedures, it also limits and regulates freedom of association and political participation, fundamental political rights of the citizens.”<sup>1</sup>

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<sup>1</sup> PACE. “The Commission's Decision Poses a Major Hindrance in Election Observation Process”, 24 August 2020. Available here: <https://www.pacemyanmar.org/accreditation-rejection-statement-aug24-eng/>



By early September, the UEC had accredited 8,416 domestic observers from 12 civil society organizations and two international election observation missions (The Carter Center and the Asian Network for Free Elections). The delays in accrediting monitors negatively impacted local CSO's ability to organize for observation of the preliminary stages of the election process. PACE was the lone civil society organization preparing for “a large-scale, countrywide election observation exercise, covering the campaign period, election day, and the consolidation of results”.<sup>2</sup> It previously planned to deploy 2,900 observers throughout the country, and freely observed the 2015 elections, as well as the 2017 and 2018 bi-elections. The participation of PACE and other local observers is critical in the 2020, not least because COVID-19 will seriously undermine international observers' ability to access Myanmar in November 2020.

### ***Hate Speech***

Myanmar's 2015 elections were mired by rampant hate speech directed at ethnic and religious minorities, in particular Myanmar's Muslim population. In subsequent years, hate speech has only continued, with the UN's Special Rapporteur for Human Rights calling hate speech “pervasive” and “institutionalized”. As the same time, government critics have been detained and imprisoned on false charges of incitement, defamation and sedition, without genuine efforts on the government's part to tackle the prevalence of divisive, racist language and policies. Hate speech has remained rampant in the 2020 elections, given the major growth in mobile phone penetration throughout Myanmar and the proliferation of fake news. In July, Myanmar's President met with UEC officials to discuss the 8 November elections and publicly pledged to combat hate speech. Yet divisive commentary has remained.

### ***Establishing a Fair Process***

A fair electoral process requires that Myanmar's government take genuine efforts to combat and preempt hate speech. This necessitates more than declarative statements on the government's part. Anti-discrimination legislation should be adopted, as should amendments to the Penal Code to deter speech that constitutes incitement. In addition, it is imperative that independent election monitors, including local observers as well as those from the EU, UN and US, be granted full access to oversee the electoral process and that they be granted access to all areas of Myanmar, including Rakhine and Chin States.

## **IV. The Right To Full Citizenship**

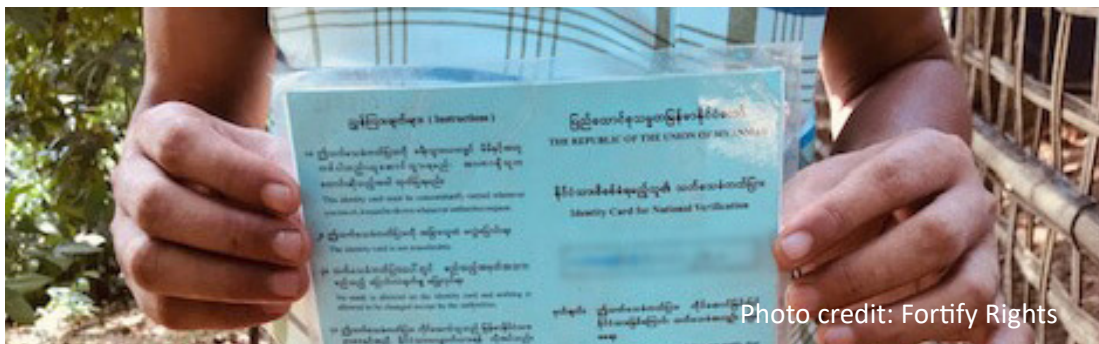
Rohingya should not be asked to choose between their right to full citizenship and their right to vote. Yet that is precisely what many Rohingya fear could happen across Myanmar, if the authorities seek to link voting rights to NVC cards. The Rohingya overwhelmingly reject NVC cards and do not believe they provide a legitimate or credible means to secure enfranchisement. There are also major concerns amongst Rohingya that in their efforts to register as voters, they will risk having their existing identity cards confiscated. The international community should therefore be clear that the NVC process is not a solution to the issue of disenfranchisement. In addition, steps should be taken to ensure that existing identification card holders are protected from harassment and that laws are in place to deter confiscation of identification documents and to hold any violators to account.

### ***The Pitfalls of NVCs***

Developing voter lists on the basis of household lists would provide a practical and feasible means to alleviate Rohingya disenfranchisement in the short-term.

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<sup>15</sup> Author's interview with Rohingya refugee in Cox's Bazar.



But relying on so-called National Verification Cards—an unfeasible option that the Burmese government has sought to promote—would not provide a tenable alternative. To the contrary, NVCs are strongly opposed by the Rohingya community and have been overwhelmingly rejected since their introduction in 2015. NVCs formally identify Rohingya as ‘foreigners’, and the process through which they have been forced upon the Rohingya community—through coercion, intimidation and violence—violates customary international law, as well a human rights treaties to which Myanmar is party. Conditioning Rohingya enfranchisement on the community’s acceptance of NVC cards would effectively strip Rohingya of their claim to full citizenship rights, and they do not accept NVC cards as a legitimate means to secure the rights that they have long enjoyed in their country.

### ***Fears of ID Confiscation***

Many Rohingya—particularly those in Rakhine State—are also fearful that the process of voter registration will lead to further pressure to adopt NVC cards. In registering to be included in voter rolls, Rohingya would have to show their existing identification cards (ie. white cards, tri-fold cards, etc.). There is a concern that these cards would be confiscated and replaced with NVC cards – which the Rohingya overwhelmingly reject.

### ***Protecting Rohingya’s Right to Full Citizenship***

The vast majority of Rohingya were stripped of their citizenship rights with the adoption of the 1982 citizenship law. Over the ensuing decades, Myanmar has systematically sought to erode any claims that the Rohingya have to Rakhine State – the NVC being the latest manifestation of this effort. It is imperative that the Rohingya’s right to vote not come at the expense of their citizenship claims. Voting should not be used as a carrot to coerce the Rohingya into accepting NVCs that they deem to be illegitimate. The international community should be very clear that the Rohingya must not be forced to choose between accepting their right to full citizenship and their right to partake in Myanmar’s political process, nor should repatriation be made contingent on the acceptance of NVCs. Monitoring mechanisms should be put in place to ensure that existing identification cards are not confiscated by the authorities, and any reports that this is occurring should be investigated and condemned in the strongest terms.

# Policy Recommendations

**A free, fair and inclusive electoral process depends on Myanmar's efforts to ensure the following:**

1. **The right to vote for all ethnic and religious minorities** including Rohingya, whose inclusion can be restored relying on existing household lists utilized in the 2010 elections
2. **Rohingya candidates can compete** in the 2020 elections and all forthcoming elections in Myanmar.
3. The UEC provides a **plan** to hold elections in conflict-areas, including Rakhine State. The military is not allowed to dictate if, when and where elections are held.
4. **Independent local monitors have full access to conflict-affected areas** and are granted access to conflict-affected areas, to determine whether the elections are proceeding in a manner that is free, fair and inclusive.
5. **Internet access is restored in conflict-affected areas**, which is a fundamental part of a fair electoral process, in conflict-affected areas.

**When Myanmar fails to uphold these criteria in advance of the now imminent 2020 elections, the international community should:**

6. Publicly underscore the failure of Myanmar's electoral process, being clear in public statements that the 2020 elections do not meet the criteria of a democratic process and is not free, fair or inclusive.
7. Withdraw further support for the UEC, given its complicity in supporting an electoral process which is blatantly racist.
8. End its involvement in international electoral observation missions, given that the minimal requirements of an inclusive, free and fair electoral process have not been met.

**Looking beyond the 2020 elections, the international community should work to ensure the following:**

9. Myanmar revokes or amends the 1982 citizenship law to ensure alignment with international standards, treaties and best practices.
10. Resources, training and other support are provided to **Rohingya political parties** and **local independent monitors** operating in conflict-affected areas to ensure transparency in the electoral process and to help level the political playing field.
11. Voting rights are not used to coerce the Rohingya into accepting **National Verification Cards**.
12. **Anti-discrimination legislation** is adopted, as are amendments to the Penal Code to deter speech that constitutes incitement.

## About the Organizations Involved in this Report

**Arakan Rohingya National Organisation (ARNO)** is a diplomatic and advocacy organisation led by Rohingya people for Rohingya people in and outside of Burma. ARNO works to peacefully find solutions to ending persecution and crimes against our people and living peacefully in Arakan.

**The Burmese Rohingya Organisation of the UK (BROUK)** works to highlight the plight of the Rohingya internationally and to support the Rohingya community through a number of initiatives, including by promoting and carrying out research activities on relevant topics, monitoring the human rights situation in Myanmar through an extensive network of contacts, and highlighting ongoing violations against Rohingya through international media and high-level advocacy.

**Independent Diplomat (ID)** is a non-profit diplomatic advisory group that strives to create more inclusive, just, effective and lasting peace processes by building the diplomatic capacity of marginalized groups and democratic governments. Our work follows a simple premise: we help those most affected by crises and conflict to access the high-level political discussions about them. We work inside the diplomatic system to help these groups advocate for the legitimate interests of those they represent, leading to more durable and sustainable solutions.





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