

Friedrich-Naumann-Foundation for Freedom

An Accelerated Move

An Analysis of the 2012 Myanmar By-election

by
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Executive Summary

Myanmar has successfully shown its commitment to the democratization process by holding a peaceful and fairly transparent by-election on April 1, 2012. The results – a victory by the National League for Democracy (NLD) led by Noble Laureate Daw Aung San Suu Kyi, known as Myanmar's democratic hero – is a testament to this. A total of 17 parties plus six independent candidates contested in the election where 45 seats were up for grabs. NLD won 43 seats out of 44 it contested, the ruling Union Solidarity and Development Party (USDP) one seat and the Shan National Democratic Party (SNDP) one seat.

The total eligible votes exceeded six millions and the turnout was high with 70 percent. NLD won about 60 percent of the total votes cast.

The very fact that NLD was back in the formal political process and Daw Aung San Suu Kyi contested for a seat made the election significant. For many ordinary Myanmar people, she is still seen as the only person who could bring democracy to the country. The democratization process had accelerated even before the election as she visited and campaigned at different places around the country and she made speeches that provided political education for the general public.

Some of the recognizable positive outcomes according to the Union Election Commission (UEC) were:

- The presence of international election observers from the ASEAN, U.N., U.S., EU, Australia and ASEAN's trade partner countries.
- The entire process was observable and transparent.
- Political parties could campaign freely and voters could vote freely.
- All political parties had the same rights.
- UEC promised to be unbiased so that political parties felt secure and confident.

The whole process seemed very smooth on the surface but several forms of misconducts were also reported: verbal personal attacks on candidates including Daw Aung San Suu Kyi, applying wax on ballots so it was difficult to vote for certain parties, inaccurate voters' lists which included dead persons but excluded some eligible voters and the utilization of government resources for campaigning. Although those shortcomings were ugly, they were not widespread and it did not affect the overall fairness of the election.

The way the elections were conducted and the results are already having an impact on other countries' foreign policy toward Myanmar. For example, the EU has already suspended its sanctions on Myanmar for a year and the U.S. is mulling its options at the time of this report.

Once NLD MP-elect have taken their oath, their party will be the second largest and the largest democratic party in parliament. The political landscape has changed due to the NLD's participation. The public has become politically active as many people accept the NLD as the only genuine, democratic party that would work for them.

Introduction

Myanmar is now in a transitional period towards democracy. It can be said that the process started with the 2010 general election. However, there were many questionable practices that were reported in 2010, so people were cautious about the 2012 by-election. The interest heightened when the public saw Daw Aung San Suu Kyi's efforts to participate in the process.

After it registered to participate in the elections, NLD, together with the military-backed ruling party USDP, which has millions of members, became the two main influential political forces. Although 17 parties contested in the by-elections, people thought of it as a competition between NLD and USDP.

Methodologies

We created an observation group with human rights researchers, journalists and social workers. We focused on three things: observing the conditions of campaigning and overall condition of pre-election, election and post-election days; interviewing politicians, voters and the media; and case-study of three candidates including Daw Aung San Suu Kyi. We interviewed about 100 voters before and on election day. We also analyzed media reports at home and abroad of the by-election and Myanmar. The objective was to report how the election was conducted.

Background

The 2012 by-election in Myanmar aroused considerable interest internationally and domestically. It became a main factor for changing some countries' foreign policy towards Myanmar. Many foreign leaders were still questioning whether the Myanmar government was committed to a real democratization process and saw the by-election and how it is conducted as an important clue.

Unlike the by-election, the 2010 general election did not raise much excitement even though it was the first election in two decades and it was one of the steps as prescribed by the junta's "Seven-step Road Map." Most people, both in Myanmar and abroad, did not believe the junta would make democratic changes. Many even suspected the election and the power handover were not genuine. History has taught them otherwise.

Most of the criticisms for the 2010 elections concerned the undemocratic constitution, unfair electoral commission laws, an uneven playing field, that main party being a military-backed one stacked with former high-ranking military officers, the uncertainty of power handover and the possibility of vote cheating practices.

Some electoral laws seemed to have been created with intention to exclude Daw Aung San Suu Kyi, who was still under house arrest at the time of the 2010 elections. The NLD central committee unanimously decided not to re-register as a party according to the new laws, for several reasons. The government announced that parties who have not registered are illegitimate, but the NLD spokesmen consistently claimed otherwise.

The general election was held on November 2, 2010 without NLD despite international

pressure to make it inclusive. Soon after the votes were closed and counting started, unofficial election observers and analysts denounced it as a “sham,” saying many constituencies were won by advanced votes in an opaque process.

The first parliamentary meetings were held in January 2011 and leaders elected. Former Prime Minister U Thein Sein became the President. Ministers in government had to resign from their parliament seats, as stipulated by the constitution, triggering a by-election.

Initially, government officials said the by-election was set for November 2011. However, an announcement regarding the by-election was made only in the first week of December.

This was preceded by some major changes, especially the meeting between Daw Aung San Suu Kyi and the President at his residence, which came as a surprise to the whole world.

Several meetings between Daw Aung San Suu Kyi and the Minister of Labor, U Aung Kyi, followed. Joint statements were released after each meeting. Then the President invited her to a workshop on poverty alleviation in the new capital, Nay-Pyi-Daw. The event provoked questions amongst the people and Myanmar observers.

Although there were no official announcements, people believed some meaningful agreement between Daw Aung San Suu Kyi and the President must have been reached.

This belief was proven right when NLD announced that if their three claims were fulfilled, they would consider re-registering. They were:-

1. To allow political prisoners as party members,
2. To recognize the 1990 election results in some ways and,
3. To change the party- and election laws to the effect that parties are just compelled to "respect" the constitution rather than having to

"safeguard" it.

The NLD decided to register with the UEC after the government purportedly fulfilled the claims. The UEC amended the electoral laws to delete the clause that marginalize prisoners from being party members and replace the word “htein-thein-saunt-shout” which means “safeguard/maintain” the constitution with the word “lite-nar” which means “obey” the constitution. The speaker of the Senate, U Khin Aung Myint, said in parliament he recognized the 1990 election results.

The new government started working on international relations and said the country is now ready to take the chairmanship role of the regional bloc ASEAN in 2014. The international community encouraged the government to include Daw Aung San Suu Kyi and NLD in the process. ASEAN agreed to reward the chairmanship to Myanmar after analyzing the conduct in the by-election. The meeting between President U Thein Sein and President Obama at the ASEAN summit was a chance to improve the often-thorny relationship between Myanmar and the United States. Secretary of State Hillary Clinton's visit to Myanmar in December became a historic point for Myanmar – U.S. relations.

The central election commission announced on December 29, 2011 that the by-election would be held on three months later, on April 1, 2012. There were 48 vacant constituencies – 40 for the Lower House (Pyithu Hluttaw), six for the Upper House (Amyothar Hluttaw) and two for Regional or State Parliaments. The officials initially said the 17 constituencies which

were not included in the 2010 elections due to security issues would be included in the by-election, in reality it did not happen. In addition, three constituencies from Kachin State were left out due to ongoing clashes between government and Kachin Independent Organization (KIO).

Many countries advocated for a free and fair election and the U.S. and EU said they would make policy adjustments regarding their sanctions depending on how the election was conducted. The government allowed some international election-observers.

Findings

Political Parties

Seventeen parties contested the by-election. Six were newly registered parties including the NLD.

National League for Democracy (NLD)

A major reason for the popularity of the by-election was Daw Aung San Suu Kyi's decision to contest for a seat in the Lower House (Pyi-Thu-Hluttaw) in addition to NLD contesting for all vacant seats.

To participate in the formal political process was a U-turn for the NLD. Although the voters wanted to vote for it in 2010, the party decided not to re-register since the leader of the party was under house arrest, the laws excluded her from participating in the election and other leaders did not want to participate over what they see as unfair regulations and an undemocratic constitution. Other political parties including National Democratic Force (NDF), founded in 2010 by former NLD leaders, welcomed the NLD's re-registration.

There were a few underlying reasons for NLD's return. An obvious one was that the existence of the organization was threatened. The Ministry of Home Affairs not only announced in the media about the illegality of the party but also sent to NLD official statements that said organizations that are not registered could not enjoy the rights of political parties. The second reason was the government's cooperation which provided NLD with a good reason for registration.

Daw Aung San Suu Kyi, in her public statements, said there are three major purposes for running in the election. They were to work for:-

1. Law and order,
2. Domestic Peace, and
3. Constitutional Amendment.

The UEC rejected one NLD candidate, citing the law regarding the quality of a candidate which states he or she must have been born from parents who are Myanmar citizens. NLD said the commission did not give the candidate a chance to appeal and ignored the candidate's explanation that his father gained citizenship in 1962.

As a result, it competed in 44 constituencies.

Union Solidarity and Development Party (USDP)

The ruling party USDP won a landslide victory in 2010 election. It contested in all 48 constituencies in the 2012 by-election and was considered as NLD's main competitor.

Myanmar Fraternal Democratic Parties

The 10 fraternal democratic parties planned to contest in the election as alliance – only one candidate from the parties for one constituency. After several discussions, the National Democratic Force (NDF) agreed to contest in 13 constituencies, the Unity and Peace Party in three constituencies and Shan National Democratic Party, Democratic Party (Myanmar) and All Mon Region Democracy Party in one constituency each.

National Unity Party

The National Unity Party is a party of the former old socialist government before 1988 uprising. They won 17 seats in the 2010 election and contested in 22 constituencies in the by-election.

Other Newly Registered Parties

Newly registered parties were required by law to contest in at least three constituencies and five new parties contested in three constituencies each.

Pre-Election Days

Active political campaigns and continuous reports on election irregularities marked the pre-election days. Thousands of ordinary citizens participated in NLD's activities.

Election Commission's Performance

The UEC repeatedly promised the by-election would be free and fair. The commission held three meetings with political parties before the election, listened to what the parties said, asked for suggestion and explained their actions and plans.

Advocacy and international pressure to allow international observers worked and less than 14 days before the by-election, the commission and government invited delegations from the ASEAN chair, ASEAN countries, U.S, EU, diplomats from inside and outside of Myanmar, ASEAN partner countries and many international journalists to monitor the elections.

Independent Observers

In addition to these official observers, many other independent observers also came using journalist and tourist visas.

Parties' Campaigns

In Yangon and by-election constituencies, NLD stickers were seen on almost every car. Many people loved wearing NLD T-shirts, scarves and small stickers. Other parties including USDP were rarely seen canvassing in public.

Daw Aung San Suu Kyi traveled to many constituencies where hundreds of thousands of

sympathizers welcomed her. She planned to use football stadiums and fields for her speeches, but sometimes ran into difficulties with local authorities. However, most problems were solved after negotiation.

In many constituencies including her constituency Kawt-Hmu, small sheets of papers with gossip about Daw Aung San Suu Kyi were anonymously delivered and some candidates were physically attacked during their campaigns.

During her visits to Kaw-Hmu, she told the public she chose the place as her constituency to help the poverty-stricken community improve their standard of living.

The government allowed the parties contesting in the by-election to use state television to present party policies. The presentations were broadcasted twice. Party officials said their original scripts were censored by the UEC.

Complaints

The NLD campaign committee released statements complaining about irregularities before the by-election and sent them to the UEC. The most common complaints were about abuse of power, vote buying, incorrect voter lists, personal attacks on candidates, and official authorities participating in campaigning for the ruling USDP.

Election Day

As soon as the polling stations were opened on the morning of April 1, some were ready to vote. The stations were most crowded between 8 a.m. and 11 a.m. with voters and observers.

Most polling stations were in schools. There were white lines for observers and journalists, stopping them from entering inside the ballot stations. Authorities sat on benches inside the station while security persons guarded outside.

Voters seemed to be very active. Even old women and disable persons were motivated and came to vote. Many were courageous enough to say they voted for NLD. In all the random interviews, voters said they were not threatened to vote for specific persons and could vote freely. They unanimously said the voting system was secret voting.

We also met some people wailing in sorrow because they were not on the voters' list.

Journalists interviewed voters near polling stations while observers run from one polling station after another to see the conditions. The authorities at some stations asked independent observers for personal information and some official observers complained they could not to watch the voting process since they could not enter the stations.

At the NLD headquarters, there were complaints about voters' list and waxed ballots. Many voters were not on the list while some dead persons were. When vote counting began and results started coming in, the NLD announced them at its headquarters using an LED board.

Some authorities denied the candidates' attempts to observe the polling station.

Vote Counting

The voting was over after 4 p.m. The counting practices differed a little from one station to another, but the authorities arranged it so the observers could watch the process carefully, took photographs and made videos.

Results

NLD won all the seats it contested except one (43 out of 44 seats) which was won by an ethnic party.

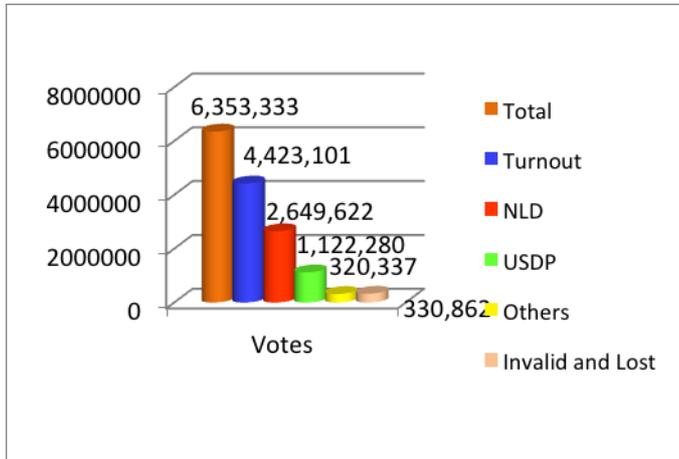


Figure 1: Comparison of total eligible votes, turnout, votes for NLD and USDP

The turnout was high – about 70 percent on average. Daw Aung San Suu Kyi got 55,902 votes while her opponent got only 9,172 votes. Other candidates also won 65 to 75 percent of the votes cast. The percentage of invalid votes was 7.4 while the total votes lost was 0.1%. The main reason for invalid votes was inadequate voter education. Some also suspect waxed ballots played a part.

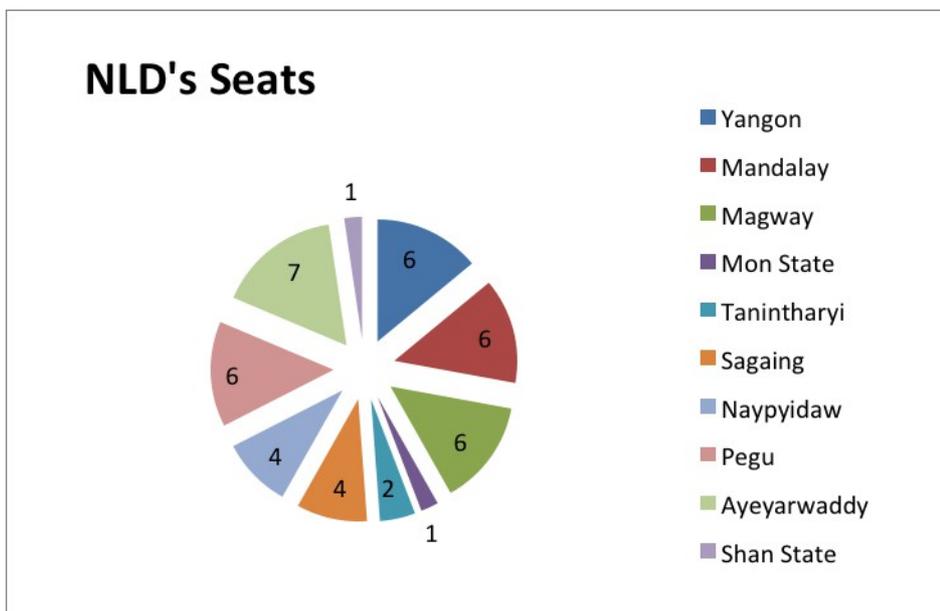


Figure 2: Number of NLD seats regionally

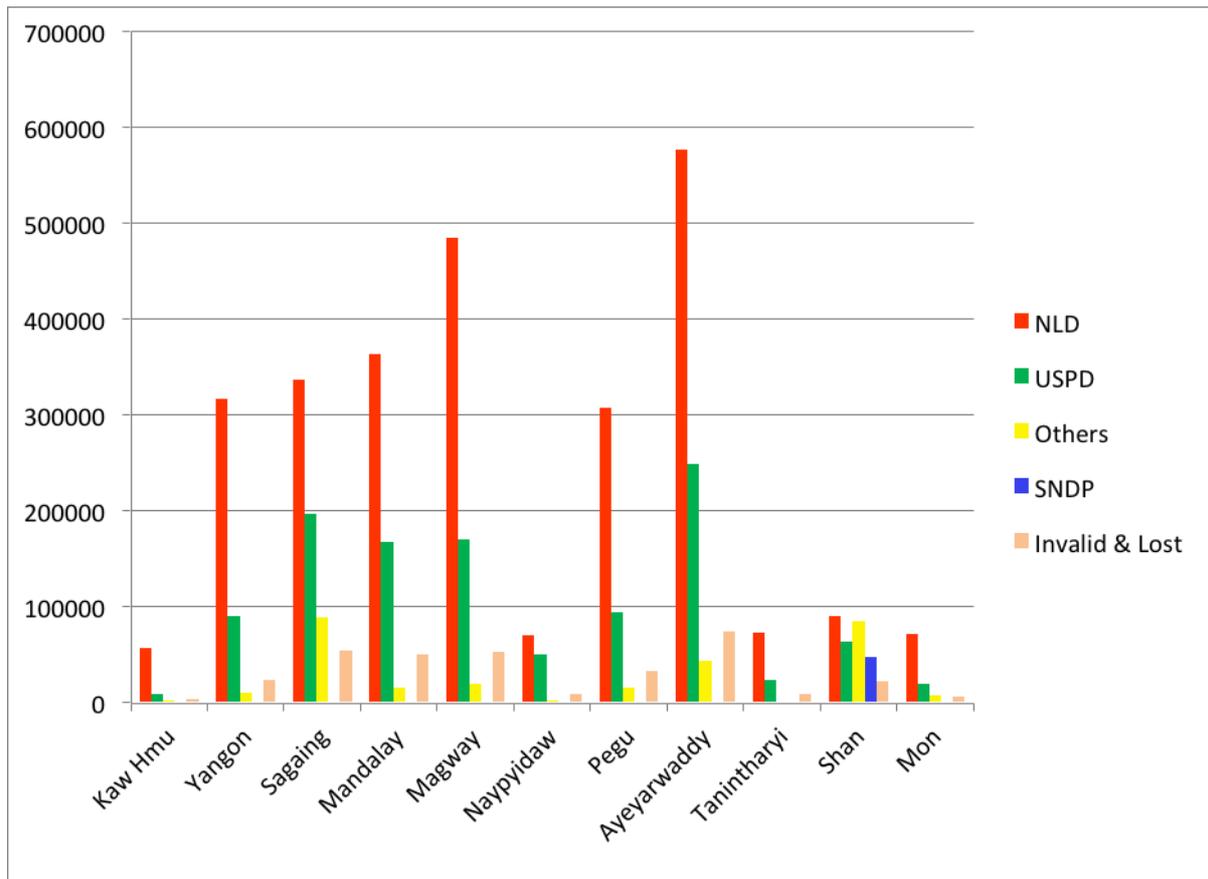


Figure 3: Comparison of votes in different regions

Post-Election Days

Post-election days were overwhelmed by the inevitable joy on NLD's victory. Many celebrities and singers participated in the celebrations.

Observers' Responses

Most election observers remarked that the by-election was free and transparent enough for the democratization process. Although many election frauds had been reported, they said they were unable to find a case with evidences and actual witnesses.

Parties' Responses

NLD thanked the public for voting for its candidates. USDP said they accepted the results. Other parties congratulated NLD and welcomed it to the formal political process.

Electoral Complaints

Advanced voting was not a serious issue this time as it was in the 2010 election. Still, the majority of the advanced votes were for USDP, just as in the 2010 election. NLD only won a majority in 15 out of 44 constituencies.

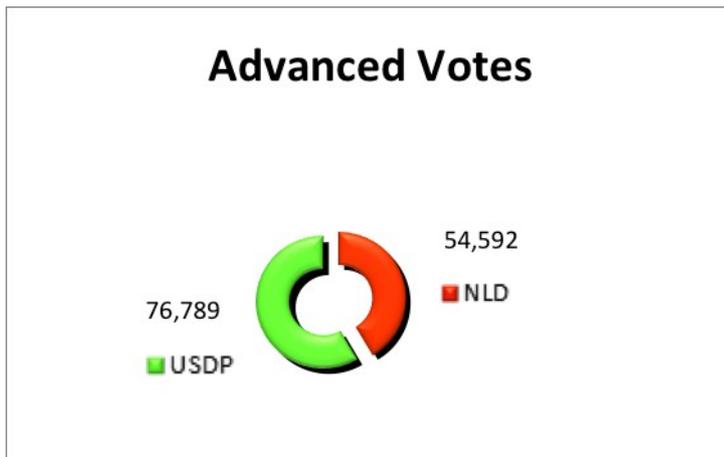


Figure 4: Comparison of advanced votes in 44 constituencies

NLD has filed a collection of complaints to the Central Election Commission. Most of them concerned applying wax on ballots in 11 constituencies.

USDP also filed 16 complaints against NLD over exceeding the amount of money limited for campaigning and breaking the existing laws.

International Response

The day after the by-election, the United Nations released a statement where the Secretary General, Mr. Ban Ki-moon congratulated the people of Myanmar for the orderly election. It also stated that the Secretary-General believes this is another significant step towards a better future for Myanmar.

The way the election was conducted and the results also affected the U.S. foreign policy towards Myanmar. The Secretary of State Hilary Clinton released a statement saying the Obama's administration has eased some sanctions against Myanmar and that President Obama would request the Congress to reconsider the economic sanctions.

ASEAN also praised the election, saying, "As far as Indonesia (the current chair) is concerned, this is a very good development. An important step in further making irreversible the democratization process in Myanmar."

The Parliament

Since NLD would fill 43 seats, it will be the second largest party or the largest democratic party in the national parliaments. USDP is still the biggest party.

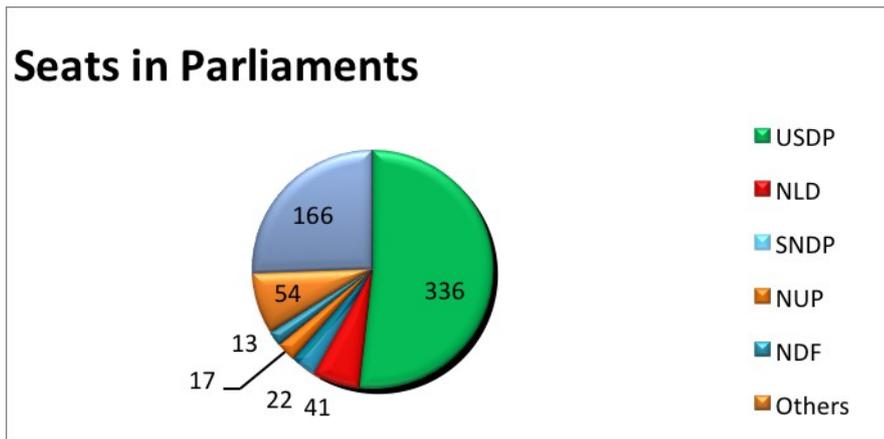


Figure 5: Comparison of Seats in union level parliaments (lower- and upper house combined)

Impact of Election on the Future of Myanmar

The 2012 by-election became the election for NLD. Its landslide victory means accelerating the democratization process in Myanmar. The public support for Daw Aung San Suu Kyi and NLD is not a single event, but is continuous, like a wave.

Obviously, the NLD's participation has changed the political landscape. Previously, USDP was seen as a monster that is very difficult to defeat. The strongest democratic competitor used to be the NDF which, compared to USDP, is very weak. In the new setting, although NLD shares only 6.4 percent of parliamentary seats, it showed it has the strongest public support nationwide.

Many scholars predicted Myanmar's political system would become a two-party system due to the two dominant parties, NLD and USDP. Each party has their own supporters - democratic forces for the NLD and supporters of the former government for USDP.

From April 23, 2012, Myanmar will have a stronger legislative branch with NLD representatives and Daw Aung San Suu Kyi in parliament. However, observers have questions on what her role would be and to what extent could she approach democratic principles in parliament.

The question many observers have been asking is, "What will be the political setting in the next general election in 2015?"

It is not easy to give an exact answer. The changes in the past few months have been dramatic. Few can guarantee the changes would be stable and sustainable. Many politicians still believe nothing much has changed since NLD has only 43 seats. Some believe the situation is still reversible.

What we can say, however, is that should the reform-process not be reversed in the next three years, the 2015 general election will be a landmark in Myanmar. Another landslide victory for NLD is very possible, if the people's desire for democracy and development is allowed free reign. However, some said the government could afford to hold a free and (relatively) fair by-election since the results cannot hurt its position greatly. The 2015 elections might be another matter.

General Recommendations for the 2015 election

The 2012 by-election could be said to be free and fairly transparent despite several well-documented weaknesses. It is imperative to ensure the 2015 election is seen as credible, free and fair for the sake of continuing democratization process and the development of Myanmar. To do so:-

1. More international observers should be invited and they must be able to carefully observe the voting practices and talk to people;
2. International and domestic non-governmental organizations (NGOs) should be officially permitted to create their own election observation programs;
3. The voters' lists should be carefully developed so it is accurate;
4. Advanced voting should be arranged so that it is transparent and observable; and
5. Different levels of election commissions and NGOs should create more voter education programs to ensure the voters are well informed.