

Burma Election 2010: An Election of Generals

Election Summary Report Burma Parliamentary & Local Assembly Elections November 2010



Thai Action Committee for Democracy in Burma

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Preface

The Thai Action Committee for Democracy in Burma (TACDB) has long been engaged in working for the people of Burma. This report on the 2010 Elections is, we believe, a useful continuation of that history as well as a helpful contribution to the cause of democracy in Burma.

This report attempts to evaluate the elections against international benchmarks. Observation by TACDB was made particularly difficult due to restrictions imposed by the regime on observation, travel, and the free flow of information.

TACDB was formed in May 1989 in the wake of the 1988 Burmese uprising crushed by brutal military crackdown. TACDB has been working since that time to bring awareness to the international community about the circumstances inside Burma as well as the living conditions of the considerable number of Burmese migrants escaping conflict and poverty that have fled to Thailand. Part of TACDB's mission involves advocacy for better foreign policy approaches to Burma and giving support to protect the Burmese people whose human rights are often violated in Thailand. We believe that the observation we did and this subsequent report furthers all these goals.

TACDB decided to observe the November Elections with the idea that documenting the process and reporting on any irregularities found therein would increase public awareness of the injustices omnipresent within the country. TACDB produced the following report from information gathered from a network of existing contacts within Burma as well as our own visits to the country during the election period. Reports from outside of the country, from external/exile media and organizations like the Asian Network for Free Elections (ANFREL), have also been utilized. In fact, TACDB wishes to extend a special thanks to ANFREL for allowing us to include their recommendations as well as portions of their interim report here.

TACDB members are of the opinion that most of the political developments in Burma this year are changes in name only. We see very little genuine movement in a democratic direction. The structure of parliament as well as its being filled, thanks to the fraudulent elections, by USDP MPs reveal the military's intention to dominate the democratic process and use the parliament as nothing more than a rubber stamp for the wishes of Sen Gen. Than Shwe and the junta. Regardless of ethnicity, no group within the country believes in the legitimacy of the new government after an election such as this. On this matter, the junta has indeed united the country.

It is difficult to see how the people of Burma will be better able to participate in the decision making of the country after the election. With military dominance of all the new government institutions established by the 2008 Constitution, there exists no real system of checks and balances to limit their power. Given the extensive government censorship and ownership of the media, it too works as an instrument of the military rather than an effective tool for the free flow of information and free expression in Burma.

Even though fraud was evident in the implausibly high USDP vote totals coming out of the election, this report will hopefully provide some specifics of the methods of intimidation and fraud used by the junta at a crucial point of the so-called roadmap to democracy.

Finally, TACDB wishes to express our admiration and gratitude for the brave citizens of Burma. Despite toiling under the draconian rule and economic mismanagement of the military regime, they maintain an indomitable spirit that will outlive the current regime. They are an inspiration to everyone at TACDB and remain our very reason for being.

Laddawan Tantivitayapita
Chairperson
Thai Action Committee for Democracy In Burma

Maps



Figure 1: Political Map of Burma; Source: CIA World Factbook at https://www.cia.gov/library/publications/the-world-factbook/maps/maptemplate_bm.html

Burma Population Data

Country Population: 57,504,000 million
 Eligible Voters: 27,369,957 million**
 Total Townships: 325

States and Divisions Population

Arakan (Rakhine) State

Population: 3,183,000
 Percentage: 5.53%
 Total Townships: 17

Chin State

Population: 533,000
 Percentage: 0.92%
 Total Townships: 9

Irrawaddy (Ayeeyarwady) Division

Population: 7,865,000
 Percentage: 13.67%
 Total Townships: 26

Kachin State

Population: 1,511,000
 Percentage: 2.62%
 Total Townships: 18

Karen (Kayin) State

Population: 1,740,000
 Percentage: 3.02%
 Total Townships: 7

Kayah State

Population: 336,000
 Percentage: 0.58%
 Total Townships: 7

Magwe (Magway) Division

Population: 5,392,000
 Percentage: 9.37%
 Total Townships: 25

Mandalay Division

Population: 8,062,000
 Percentage: 14.01%
 Total Townships: 31

Mon State

Population: 2,997,000
 Percentage: 5.21%
 Total Townships: 10

Pegu (Bago) Division

Population: 5,793,000
 Percentage: 10.07%
 Total Townships: 28

Rangoon (Yangon) Division

Population: 6,724,000
 Percentage: 11.69%
 Total Townships: 45

Sagaing Division

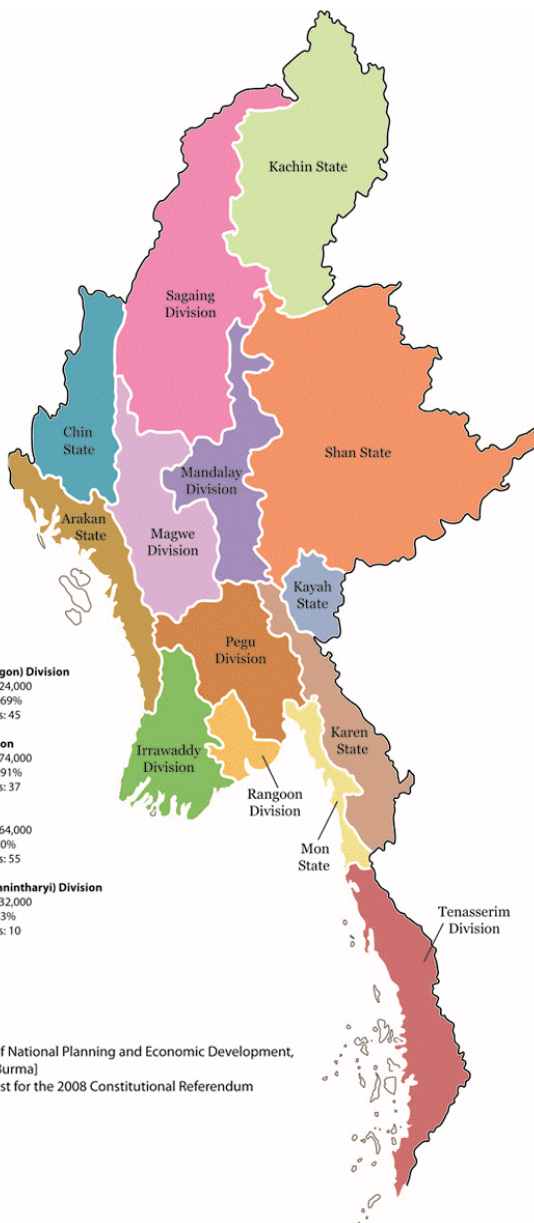
Population: 6,274,000
 Percentage: 10.91%
 Total Townships: 37

Shan State

Population: 5,464,000
 Percentage: 9.50%
 Total Townships: 55

Tenasserim (Tanintharyi) Division

Population: 1,632,000
 Percentage: 2.83%
 Total Townships: 10



Source: Statistical Yearbook 2008, Ministry of National Planning and Economic Development, the Government of the Union of Myanmar (Burma)

**The eligible voter figure is from the voter list for the 2008 Constitutional Referendum

Figure 2: Burma Population Data by Division/State; Source: Irrawaddy Media at <http://www.irrawaddy.org/election/population-data/429-burma-population-data.html>

Elected Parliamentary Seats in the New Legislative Bodies

People's Parliament = 330 seats
Nationalities Parliament = 168 seats
State and Region Parliament = 605 (including 29 minority seats)
Total Seats for all Parliaments = 1,103 seats

Distribution of Parliamentary Seats in States and Regions

Kachin State

People's Parliament = 88 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 40 seats

Kayah State

People's Parliament = 7 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 15 seats

Karen (Kayin) State

People's Parliament = 7 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 17 seats

Chin State

People's Parliament = 9 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 18 seats

Sagaing Division

People's Parliament = 37 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 76 seats

Tenasserim (Tanintharyi) Division

People's Parliament = 80 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 21 seats

Pegu (Bago) Division

People's Parliament = 28 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 57 seats

Magway (Magwe) Division

People's Parliament = 25 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 51 seats

Mandalay Division

People's Parliament = 36 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 57 seats

Mon State

People's Parliament = 80 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 23 seats



Arakan (Rakhine) State

People's Parliament = 17 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 35 seats

Rangoon (Yangon) Division

People's Parliament = 45 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 92 seats

Shan State

People's Parliament = 55 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 109 seats

Irrawaddy (Ayeyarwady) Division

People's Parliament = 26 seats
Nationalities Parliament = 12 seats
State & Region Parliament = 54 seats

Figure 3: Elected Parliamentary Seats in New Assemblies; Source: Irrawaddy Media at <http://www.irrawaddy.org/election/population-data/429-burma-population-data.html>

Executive Summary

The polls held on November 7th, 2010, Burma's first in twenty years, tragically did not meet the already low expectations set for the country's elections. This election and the eventual seating of a new supposedly civilian government were supposed to be among the final steps in a roadmap to democracy for Myanmar. Unfortunately, a process as flawed as this election cannot be considered among the final steps back to democracy. The most generous and optimistic interpretation one can have of this election is that it could bring a sliver of greater freedom and a small amount of breathing room for future democratic development. That said, virtually none of the kind of positive developments that some spectators attribute to the election have yet been realized. Whether November 7th will be seen as the beginning of any kind of substantive change rests completely on events to come rather than on a democratic foundation laid by this election. Burma's electoral performance has confirmed the expectation of many that the Junta intended to create a one-sided political game designed to keep them in power under the guise of civilian leadership.

That there would be serious structural problems in the proposed system first became clear when the junta introduced, and approved by flawed referendum, the "Constitution of the Republic of the Union of Myanmar" in 2008.¹ The electoral laws released in the spring of 2010 complemented the 2008 constitution in that they added to the fundamental problems of the proposed parliamentary system. Taken together, these documents seemed to confirm what many had feared; the election would simply be a tool for the military regime to add a veneer of civilian legitimacy to their rule.

Looking at the flaws of the electoral framework, provisions that reserved parliamentary seats for the military and a seemingly arbitrary rule that eliminated National League for Democracy (NLD) leader Daw Aung San Suu Kyi from becoming president were the most problematic sections cited by opposition groups before the election. The cumulative effect of all of these together made the NLD choose to

¹ Constitution of the Republic of the Union of Myanmar (2008).

boycott the election. Whether one agrees with the party's decision to sit out or not, the absence of the NLD, the government's primary opposition and winner of almost 80% of the seats in the last elections in 1990, was an early indicator of the election's lack of legitimacy. Without the NLD competing, a substantial portion of the population would never see the election as a genuine competition organized by the government. Their absence further removed some of whatever legitimacy the election may have once had.

The political atmosphere in the run-up to the election was largely a continuation of the prevailing atmosphere of fear and intimidation that the regime has worked to create over the years. Neither citizens nor parties had the freedom to debate and campaign freely. Strict limits on campaigning and speech prevented the kind of national dialogue and debate so common during the run up to elections in other countries.

The government's tight grip on the media also helped foster this environment where censorship and party propaganda, rather than healthy debate, was the norm. Despite a small amount of voter education programming being allowed on state television and the radio, the overall coverage was designed, like the election itself, to ensure the junta's desired outcome.

One of TACDB's primary concerns before the election was whether there would be a level playing field for all parties and whether anyone would police the use of government resources and funds by political parties. Looking back from the post election period, we can conclude that unfortunately we were correct to hold this concern. No group, the Union Election Commission (UEC) or anyone else, stepped in to ensure a level political playing field. Thanks to this dereliction of duty by the UEC, the use of government resources for political purposes, mostly by the USDP, was common.² The Union Solidarity and Development Party (USDP) is the government created vehicle for transitioning to "civilian" rule. It has its roots in the Union Solidarity and Development Association (USDA), a former government organization from which

² Latt, Kay. "How to Win an Election Before It's Held." *The Irrawaddy*, 27 October 2010. Available from: http://irrawaddymedia.com/opinion_story.php?art_id=19840

the USDP got many of its members and much of its money when the organization had its assets transferred to the USDP before it was shut down.³ Essentially, it transformed into the USDP, giving the USDP an unearned head start over other parties in both financing and membership.

In the run-up to Election Day, it became increasingly clear that the use of advance votes obtained through outright fraud or coerced voting was a major problem. These advance votes were often taken before the official advance voting period of the 5th and 6th of November. This advance voting seemed to be part of a systematic operation to give the USDP an insurmountable lead before polling day.⁴ These ballots were generally collected in every manner possible; they were often the product of proxy voting, ghost voting, or coerced voting using threats and intimidation. During the counting period, many of these ill-gotten ballots were added to the count with Election Day's relatively cleaner ballots to push USDP candidates past the finish line. Little accounting was released of the vote totals from each kind of vote or the number of spoiled, invalid and unused ballots from each polling station. The opacity of the vote counting process created, understandably, a great deal of distrust and suspicion among election stakeholders.

Allegations of fraud and counting/advance voting irregularities such as those above were common. Ideally, these should be reported to the UEC, who should be responsive and pro-active in investigating and prosecuting wrongdoers. Unfortunately, serious impediments to making complaints such as a 1,000,000 kyat filing fee as well as substantial penalties for "dishonestly and fraudulently" making an electoral complaint have had a serious chilling effect on fraud victims making official complaints to the UEC.⁵ These obstacles to addressing cases of fraud are in addition to the UEC's general failure to take action

³ "Burma: Military Party Guaranteed to Dominate Elections" *Human Rights Watch*, 19 July 2010. Available at: <http://www.hrw.org/en/news/2010/07/19/burma-military-party-guaranteed-dominate-elections>

⁴ "NUP Concedes Defeat" *The Irrawaddy*, 11 November 2010. Available from: http://www.irrawaddy.org/article.php?art_id=20031

⁵ Pyithu & Amoytha Electoral Law. Chapter XIII. sect 64. "Election Offenses and Penalties"

or respond to the numerous cases of fraud before them. Such obstacles and inaction only serve to tarnish the UEC's reputation and further delegitimize the election. If the election is to be the kind of step, however small, towards democracy that many hope for, the UEC, SPDC, and USDP need to pursue fraud claims and call for re-votes in places where the cheating was widespread.

Unfortunately, all signs point to the contrary as the new government based on the fraudulently obtained election results convened on 31 January 2011. All indications are that the USDP will use its sizeable majority to govern mostly unilaterally and according to the wishes of the military leaders that created it. If this is the case, the junta will have successfully carried out its election plan to retain its firm grip on power but it will have missed an opportunity to deliver the much-desired democratic reform it has promised for so long.

Introduction

Burma's ability to hold a free and fair election was most recently tested during the 2008 constitutional referendum where voters cast a Yes or No vote on the military drafted "Constitution of the Republic of the Union of Myanmar". Cheating and manipulation of the vote were rampant in 2008. The government's organized fraud perpetrated during the constitutional referendum foreshadowed what was to come in 2010. Though the Union Election Commission was created after the referendum to manage the 2010 election, its existence did not make any appreciable difference in the fairness of the two polls.

Focusing narrowly on the security surrounding these two elections, TACDB must acknowledge that Burma's 2010 polls were carried out with less physical violence than during the 2008 referendum though election day was not without outbreaks of violence, particularly along the eastern border with Thailand. Areas in the east of the country saw fighting breakout the morning of the election which caused between 10,000-30,000 refugees to flee into Thailand in the following few days. In spite of the marginally better security situation of 2010's Election Day, the use of intimidation and fear as a political tool was still reported to be the worst groups such as ANFREL have ever seen among ASEAN nations.

Given the similarities, the 2010 election was actually the second part, beginning with the 2008 referendum, of the Junta's plan to install their political party the USDP into power. The massive effort to do so was thorough and well coordinated. The amount of government support the junta was willing to put behind the USDP was seemingly limitless. Thanks to this support, the amount of time, resources, and opportunities to campaign were exponentially greater for the USDP than other parties and candidates.

Both the 2008 and 2010 polls were affected by cyclones that struck shortly before polling day. The victims of cyclone Nargis in 2008 and cyclone Giri, which made landfall just two weeks before the election on October 22, were also the victims of elections held soon after those

storms. Just as in 2008, many local leaders pled with government officials to delay the election in areas affected by the cyclone.⁶ As unfortunately was expected after the government's callous treatment of Nargis victims, their requests fell on mostly deaf ears and the 2010 election was held as scheduled in storm-affected areas.⁷

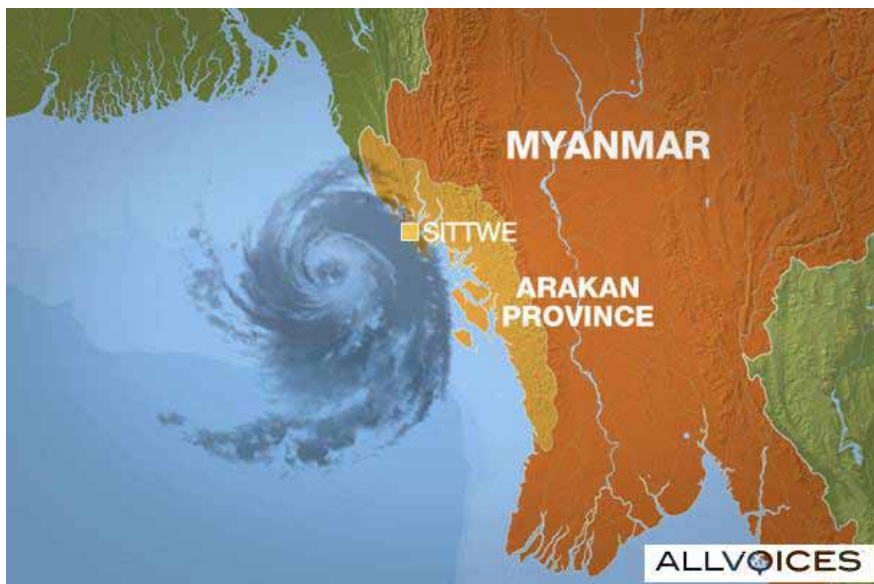


Figure 4: Cyclone Giri made landfall here two weeks before Election Day

⁶ Kaung, Ba. "Election Postponement Demanded in Cyclone-hit Region" *The Irrawaddy*, 27 October 2010. Available from: <http://www.irrawaddy.org/election/news/548-election-postponement-demanded-in-cyclone-hit-region.html>

⁷ Phone Myat, Ahunt.. "No delay on vote in cyclone-hit region" *Democratic Voice of Burma*, 1 November 2010. Available from: <http://www.dvb.no/elections/no-delay-on-vote-in-cyclone-hit-region/12500>



Figure 5: Cyclone Nargis Flooding. Source: Associated Press



Figure 6: Roof of a cyclone shelter destroyed by Cyclone Giri.

Photo courtesy of Save the Children

Outside election experts have mostly condemned the election and its results. Neighbors such as China and ASEAN however welcomed the election results as a positive step forward for Burma. Any such rapid acceptance of the election result is surely driven by political and economic considerations far more than any objective judgment of the fairness of the election.

In addition to those with political motives, other groups have defended the elections as the beginning of a new, more open era for Burmese governance. Those sincerely arguing that such a flawed process is a substantial step forward perhaps reveals more about our low expectations for Burma's elections than it does the merits of the election itself. For those that enjoy old wine from new bottles, this election presents them with a vintage the Burmese people have known for several decades. Supporters of the old regime will, expectedly, express their support for this election no matter how poorly the polls were run. For those that expected something truly different, they will be badly disappointed.

The election results of November 7th were, unsurprisingly, hugely in favor of the military backed Union Solidarity and Development Party (USDP). The party won 882 out of the 1154 total seats decided by the election on November 7th. It won 259 of 325 (79.6%) of the total elected seats in the Pyithu Hluttaw (Lower house/House of Representatives) and 129 of 168 (76.7%) of the total elected seats in the Amyotha Hluttaw (Upper House/House of Nationalities). Its electorally engineered success continued in the region and state assemblies where the party won 495 seats out of the 661 (74.8%) total seats elected on November 7th. These kinds of results, even before considering the 25% of appointed parliamentary seats that the military is guaranteed, ensures that the junta will maintain a firm grip on the affairs of the state through USDP members in parliament.⁸

⁸ Wild, Ko. "USDP Wins 77pc of Seats, Xinhua, Not the UEC, Says." *Mizzima*, 19 November 2010. Available at: <http://www.mizzima.com/news/election-2010/4593-usdp-wins-77pc-of-seats-xinhua-not-the-uec-says.html>

Final results

	Party	Total seats	%	People's Assembly	National Assembly	Local Parliaments	Uncontested seats
1.	Union Solidarity and Development Party	883	76.52	259	129	495	38
2.	National Unity Party	63	5.46	12	5	46	1
3.	Shan Nationals Democratic Party	57	4.94	18	3	36	-
4.	Rakhine Nationals Progressive Party	35	3.03	9	7	19	-
5.	All Mon Region Democracy Party	16	1.39	3	4	9	-
6.	National Democratic Force	16	1.39	8	4	4	-
7.	Chin Progressive Party	12	1.04	2	4	6	-
8.	PaO National Organization	10	0.87	3	1	6	6
9.	Chin National Party	9	0.78	2	2	5	-
10.	Phalon-Sawaw Democratic Party	9	0.78	2	3	4	-
11.	Kayin People's Party	6	0.52	1	1	4	-
12.	Taaung (Palaung) National Party	6	0.52	1	1	4	6
13.	Wa Democratic Party	6	0.52	2	1	3	3
14.	Unity and Democracy Party of Kachin State	4	0.35	1	1	2	-
15.	Democratic Party (Myanmar)	3	0.26	-	-	3	-
16.	Inn National Development Party	3	0.26	1	-	2	-
17.	Kayan National Party	2	0.17	-	-	2	-
18.	Kayin State Democracy and Development Party	2	0.17	-	1	1	1
19.	National Democratic Party for Development	2	0.17	-	-	2	-
20.	88 Generation Student Youths (Union of Myanmar)	1	0.09	-	-	1	-
21.	Ethnic National Development Party	1	0.09	-	-	1	-
22.	Lahu National Development Party	1	0.09	-	-	1	-
23.	Independent candidates	6	0.52	1	1	4	-
	Total	1,154	100%	325	168	661	55

Figure 7: Election Results Courtesy of the Alternative ASEAN Network on Burma

Source: "Burma 2010 Election Recap" Altsean Burma, 26 November 2010.

Available at:

<http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Election%20Recap.pdf>

As the chart indicates, the Junta’s electoral vehicle, the USDP, dominated the election at every level. Interestingly, the Chinese state news organization Xinhua reported the news of the official election results before anyone else. It was they, not the UEC, which first released the final results. In addition to whatever this says about Burma’s relationship with China, the fact that the UEC was initially sidelined for this announcement accurately reflects its subordinate role in the election.

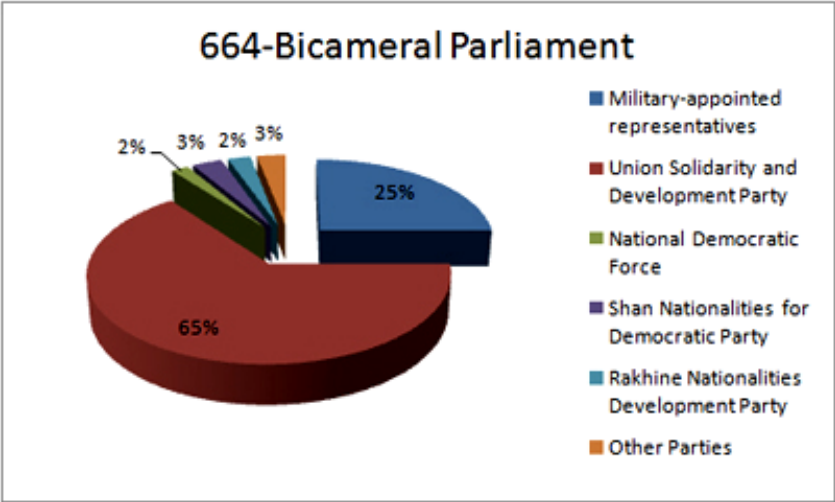


Figure 8: Makeup of the New Parliament. Courtesy of Irrawaddy News⁹

The pro-government election landslide, as this report details, does not reveal the public’s warm feelings towards the current leaders or their desire for a continuation of the status quo. Rather, it is the product of carefully orchestrated electoral fraud planned and carried out between the SPDC, the UEC, and the USDP. The overlap between the three groups is considerable and there is, in reality, little distinction between them or their goals. The results of the election were predictable, even if the primary means used to achieve their desired result did not become clear until close to polling day.

⁹ Kaung, Ba. “One-Horse race to One-Party Rule?” *Irrawaddy News*, 10 November 2010. Available at: http://www.irrawaddy.org/article.php?art_id=20034

Looking at the totality of the election administration and its results, it is fair to say that the election results were nothing short of a systematic effort to steal the election. Using all available means, the government used state resources and every instrument of state power including the media and military to pull off their election “win”. The following report will detail how they carried out their plan, assess the performance and objectivity of various stakeholders, and provide useful recommendations that TACDB deeply hopes those in power in Burma take to heart.

Analysis of the Constitutional & Electoral Framework

On 08 March 2010, the State Peace and Development Party issued five new sets of electoral laws, the Union Election Commission Law, the Political Parties Registration Law, the Pyithu Hluttaw (House of Representatives) Electoral law, the Amyotha Hluttaw (House of Nationalities) Electoral Law, and the Region and State Assemblies Law.

Despite promises of a transition to democracy, the constitution and related electoral law written by the junta provide a clear picture of a military that remains hesitant and mostly unwilling to relinquish power. When analyzing the documents themselves, the problems are repeatedly products of the continued involvement of the military in what should be civilian political matters. The overriding theme of complaints about the irregularities within the document is the continued role of the military. The electoral documents the regime has created reflect that they remain wary of the people they purport to govern. If they were not concerned about the ramifications of true democracy and their role in it, there would be no need to shield themselves from the electorate. Because they fear what the people would do if given real democracy, they instead designed a system that is far from legitimately democratic.

The most egregious example of pro-military bias within the electoral framework is the set aside of twenty-five percent of parliamentary seats for the military. This grave flaw was clear from the minute the constitution was introduced. Despite criticism for two full years

before the November election and even before the constitution was ever ratified, this troubling carve-out for the military remained in place. To secure a permanent place in Burma's politics, the military reserved for itself a quarter of the total seats in parliament and every local assembly. These "representatives who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services" are directly antithetical to the ideas of civilian government and the transition to democracy the junta was supposedly bringing about.¹⁰



Figure 9: Still Image Showing MPs Appointed by the Military Sitting in Inaugural Parliament. Photo Taken From Myanmar Radio and Television News (MRTV) (Courtesy Reuters)

These military appointed seats are useful to the junta for a number of reasons. In addition to the guaranteed power it gives them in day-to-day affairs of parliament, one of the most problematic long-term aspects of these military seats is the veto power they provide the military in amending the constitution. The new process for amending the constitution requires the cooperation of at least some

¹⁰ Constitution of the Republic of the Union of Myanmar (2008) Chapter IV "Legislature" Sections 109(b) & 141(b).

military appointed members in order to do so. In what was most certainly an intentional move, amending the constitution requires “prior approval of more than seventy-five percent of all the representatives of the Pyidaungsu Hluttaw.”¹¹ With twenty-five percent of all seats permanently reserved for the military, the “more than seventy-five percent” bar in the constitution can never be reached without some military approval. Creating this veto-point in the amendment process ensures that the 2008 Constitution cannot be amended and their seats cannot be removed, as needs to happen, without the military’s consent.

This parliamentary set aside for the military also compounds the expected gender imbalance in the parliament. Because women are vastly underrepresented in the military, military seats will almost universally go to men. The requirement that the president be “well acquainted” with the military affairs of the country could be read so as to limit that position to those that have been in the military to gain such knowledge.¹² The system is too new to know for sure whether this will be used to mandate someone with military experience but it would not surprise many Burma watchers if it were enforced in this way. If it is, this requirement not only makes a female president unlikely, it also further entrenches the military as the most powerful institution in the country.

Unfortunately, examples where the military codified into the electoral law this type of permanent, prominent role for itself are not difficult to find. The parliamentary set aside of seats for the military is consistent with other troubling sections of the constitution where the military’s desire to cling to power is clear. The constitution’s authors were not trying to hide their intent to establish the military as the backbone of the country. The constitution’s first chapter, which declares the “Basic Principles of the Union”, enshrines the military into its exclusive place in society.¹³

¹¹ Id. at Chapter XII “Amendment of the Constitution” Section 436(a).

¹² Id. at Chapter III “Head of State” Section 59(d).

¹³ Id. at Chapter I “Basic Principles of the Union”

Section 6 of that chapter lays out the “consistent objectives” of the Union. In addition to expected clauses such as “perpetuation of sovereignty” and “enhancing the eternal principles of Justice, Liberty, and Equality in the Union”, subsection (f) deals with the military. In this section, thanks to the military’s authorship of the constitution, one of only six things listed as “consistent objectives” is, “enabling the Defence Services to be able to participate in the National political leadership role of the state.”¹⁴ What exactly this clause means or how much it allows the military to participate is not spelled out here but the fact that this is in the most prominent and foundational portion of the constitution is a troubling indicator of what is to come. Even worse is that instead of simply allowing the military to play a role if necessary, it actually sets military involvement as an objective of the Union. This is exactly opposite of what a country such as Burma needs given their long history of military interference in political affairs. Codifying military interference in politics as an affirmative goal for the Union is an extremely disappointing and self-serving clause to benefit the military. A constitution designed to foster a true transition to democracy and civilian leadership cannot include such objectives as basic principles.

Article 20 of Chapter I is the second place where the constitution falls far short of creating civilian leadership. Section 20(b) gives the Defence Services “the right to independently administer and adjudicate all affairs of the armed forces” where “affairs of the armed forces” can be interpreted so broadly as to provide nearly unlimited authority if necessary.¹⁵

Article 20(c) makes the Commander-In-Chief of the Defence Services the “Supreme Commander of all armed forces.”¹⁶ A fundamental principle of civilian leadership and democratic governments is civilian control over the military. The combination of these clauses, where the commander-in-chief of the defence forces is a military

¹⁴ Id. at Chapter I “Basic Principles of the Union” Section 6.

¹⁵ Id. at Chapter I “Basic Principles of the Union” Section 20(b).

¹⁶ Id. at Chapter I “Basic Principles of the Union” Section 20(c).

general and where the military has final say over military affairs, creates space for the military to act with impunity and allows them to remain mostly unaccountable to traditional democratic means of control.

Afraid of losing power if they created a truly democratic body, military leaders stopped short of giving the country a constitution and parliament which would actually bring about civilian rule and democracy. Instead, they have produced defective charter documents that ensure the military's role in the state but do little to ensure that democracy takes root in Burma.

The Political Parties Registration Law tightened the restrictions on electoral registration rules for both parties and candidates. It set much higher registration fees than in the past and imposed a high requirement of the number of members needed in order to form a party. The relevant section requires that, when registering, parties submit an "admission that it will organize at least 1000 party members within 90 days from the day of permission for registration as a political party if it is a party that will organize throughout the entire Union or admission that it will organize at least 500 party members within 90 days from the day of permission for registration as a political party if it is a party that will organize only in a Region or State."¹⁷ Groups were given just a month to gather the requisite number of members necessary to register as a party. There likely would have been many more political parties if not for this high minimum party members requirement and the brief amount of time allowed to organize them. The fee to register parties and candidates increased significantly as well, as detailed later.

In one of the party registration law's most significant sections, it forbid parties from having "convicts" as party members.¹⁸ If they did not do so, under the new law, the parties would no longer be allowed to operate. In Burma, where the release of political prisoners is a paramount political issue, the inclusion of a provision such as this

¹⁷ Political Parties Registration Law, Chapter II, Section 5(f).

¹⁸ Id. at Chapter II, Section 10(e).

seems intentionally designed to put pressure on parties like the NLD to push out many of its most senior leadership that are imprisoned. The executive director of the U.S. Campaign for Burma claimed as much when he said, "this is a very ridiculous election law, party registration law. Actually, this is designed to force NLD party to be abolished, this is designed to force NLD party to dismiss Aung San Suu Kyi and other imprisoned members from the party."¹⁹

This piece of the Party Registration Law fits together with the portion of the constitution that eliminated Suu Kyi from being eligible for president for having a foreign spouse and children with dual citizenship. Both seem designed to pressure the NLD to cut ties with Suu Kyi or else not compete in the elections.

Chapter XIII "Election Offenses and Penalties" in both the Pyithu and Amyotha Hluttaw Electoral Law is yet another example of the system's hostility to transparency. It's designed to discourage any reports of fraud and minimize citizens acting as electoral whistleblowers. In these chapters, the penalties for various electoral violations are laid out. For most violations, including serious ones such as threatening voters, bribing voters, or destroying ballots, the maximum penalty is one year in prison, a one hundred thousand kyat fine (US \$100), or both. The maximum prison sentences and fines are uniformly capped this way throughout this chapter, regardless of the offense, with one exception. The one exception in Chapter XIII where harsher penalties are allowed applies to people that "dishonestly and fraudulently" file election related fraud complaints. "Whoever is found guilty of dishonestly and fraudulently lodging any criminal proceedings against any person regarding offences relating to election shall, on conviction, be punishable with imprisonment for a term not exceeding three years or with a fine not exceeding 300,000 kyat (US \$300) or with both."²⁰

¹⁹ "Burma Election Rules Require Opposition Party to Expel Democracy Leader" *Voice of America*, 10 March 2010. Available at: <http://www.voanews.com/english/news/Burma-Election-Rules-Requires-Opposition-Party-to-Expel-Democracy-Leader---87212142.html>

²⁰ Pyithu & Amyotha Electoral Law, Chapter XIII, Section 64 "Election Offenses and Penalties"

After the election, the UEC has warned political parties about complaining about electoral fraud, using this law as a threat. The “EC warned political parties against ‘making allegations’ that their candidates were not elected at the polls ‘through foreign radio stations and print media,’ saying that such allegations ‘go against Article 64 of the respective Election Law.’”²¹

That false electoral complaints would produce harsher penalties than actual election fraud would normally be surprising but, in Burma’s case, such illogic is unfortunately rather expected. Any rational system of electoral law penalties would be designed to discourage parties and candidates from committing electoral fraud while encouraging citizens to report it. That the drafters of this law had the opposite priorities is easy to see. If we focus on this specific facet of the law, where the penalty for “dishonestly” filing electoral complaints is three times greater than the penalty for actual electoral fraud, it is easy to spot their intent. Instead of wanting to encourage whistleblowing and reporting of irregularities, they wanted to muzzle, intimidate, and discourage citizens into not reporting anything. They feared citizens filing complaints about electoral fraud far more than the actual commission of it so they set a harsher penalty for the former. As *The Irrawaddy* put it “The regime’s handpicked Union Election Commission (EC) has effectively barred any possibility of an investigation into alleged irregularities (by threatening those making ‘false accusations’ with heavy fines and prison sentences).”²² By doing so, the regime ensured that there would be no accountability or serious investigation into the election fraud that took place during the election period.

²¹ “USDP Wins 76.5 Percent of Vote” *The Irrawaddy*, 18 November 2010. Available at: http://www.irrawaddy.org/article.php?art_id=20118

²² “Those Shadowy Advance Votes” *The Irrawaddy*.– Vol. 18, No.12, December, 2010. Available at: http://www.irrawaddy.org/article.php?art_id=20383

Pre-Election Period Atmosphere

Much of the electorate before the election was cynical that anything would change afterwards. Many of these people were skeptical of the regime's stated desire to turn the country into a democracy. The excitement and civic engagement often found before elections elsewhere was hard to detect in Burma. Many were resigned to the fact that the USDP, as a proxy for the SPDC, would win the poll and stay in control due to the overwhelming advantages their government sponsorship gave them. Better to pay attention to things within their control, many citizens seem to have calculated.²³ This sense of inevitability about the USDP's success was reinforced by the many advantages given to the military and military friendly parties in the constitution and electoral laws. These laws revealed to many citizens just how fair they thought the accompanying elections would be. All of this plus the widespread use of threats and intimidation in the campaign period served to lessen people's expectations of change while having a chilling effect on the kind of healthy democratic debate that should have been taking place during this time.

Thanks to this, we observed surprisingly little discussion or excitement among the electorate about the coming election in the run up to Election Day. Others' reports coming from within the country confirmed that the days before November 7th lacked the anticipation normally found before an important national election. TACDB believes this is likely a result of several factors: **1)** an electorate that was not fully engaged with the election thanks to controls on media and campaigning, **2)** the fact that prominent groups within the country worked to boycott the election, and **3)** an expectation that the election's outcome was already decided and that their vote would not effect the pre-determined results. All of these are a sign that the ruling party must do much more next time to

²³ Linn, Zin. "Dialogue, not elections, is the answer to Burma's problems." *Posted on Asian Correspondent*, 01 November 2010. Available at: <http://asiancorrespondent.com/42143/solution-for-burma-is-dialogue-not-the-elections/>

foster an environment more conducive to holding free and fair elections. Voters must be free to debate and engage with politics and they must believe that their participation matters. All government efforts made to suppress voter engagement and intentional actions that increase voter cynicism in the electoral process must end.

Registration of Voters, Parties, & Candidates

Voter registration and the voter list, while not the primary problem in this election, created problems for many voters. The voter list was created by ward officials and eventually printed and sent to the wards and polling stations for viewing.

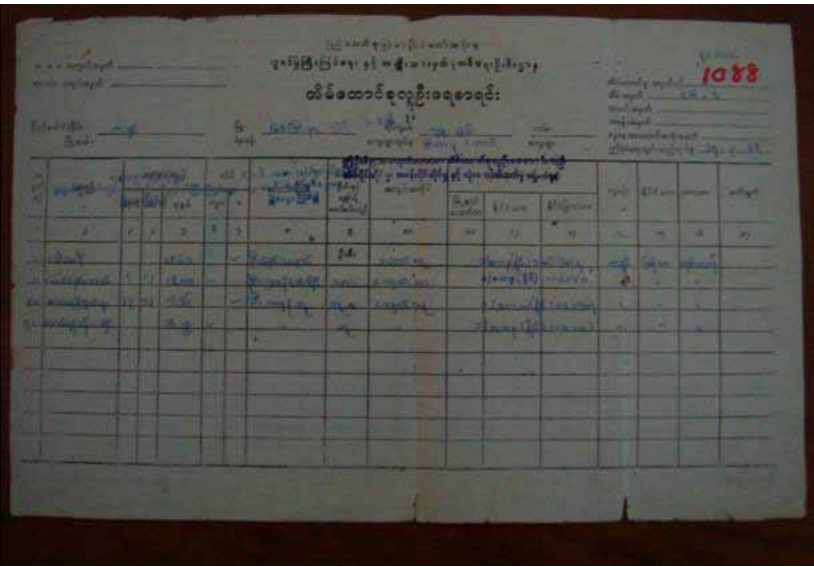


Figure 10: Example of a Family List used to create the official Voter List, often members correctly marked as deceased on a Family List still appeared on the voter List

Problems occurred when many ward or poll officials did not make the voter list available to the public for voters to correct any errors ahead of time. The voter list should be posted well in advance and perhaps publicized in local papers so that people can verify their names on the list.

If that kind of publication does not happen, errors such as deceased family members being left on the voting roll or instances where villagers found out only on Election Day that they were left off the roll will be common. These kinds of errors were commonplace but could be largely corrected if the voter list is uniformly publicized before Election Day and poll officials work to correct all reported errors.



Figure 11: Residents of Mon State are seen checking polling station lists before November 7, 2010. Source: Human Rights Foundation of Monland, Available at: <http://rehmonnya.org/archives/1787>

Haphazard management of the voter list also created opportunities for abuse when advance votes were taken and the same voter list was not used across all voting periods. Where this was done, it opens the door to multiple voting fraud. On this somewhat technical note, it is vitally important that the same voter list be used for the advance voting and polling day. Those who have cast their vote before polling day should be clearly marked on the voter list that is used at every polling station so that the risk of multiple voting is eliminated. Reports from Election Day reveal that the same voter list was used in many areas but that this was not uniformly the case.

There were also reports of ghost voting occurring where poll officials and party agents, knowing that migrant laborers couldn't vote for themselves, voted for those that were outside the country. A note on the voter list for those outside of the country and unlikely to be able to vote could be made so that their absence can't be taken advantage of. This is but one of a number of solutions, short of the ideal of having an independent UEC that thoroughly investigates election fraud, which would help to eliminate voter list abuses.

Going forward, the management and maintenance of the voter list must be given more attention and managed in a more professional and unbiased manner. Providing greater transparency, accuracy, and voter access to the voter list before the election will help to increase not only the accuracy of the ballot but it will also add to the perceived legitimacy of the process among the public.

During this election, party and candidate registration proved itself to be far more problematic than voter registration. Burdensome regulations for party and candidate registration were some of the earliest indicators that opposition parties would compete on a playing field tilted in favor of the junta's USDP. Onerous regulations such as a requirement that a party have a large number of members before it can register as well as strange policies that seemed tailor-made to exclude Aung San Suu Kyi from being president all seemed designed to favor the USDP. Additionally, exorbitant registration fees for candidates, 500,000 kyat per candidate (more than \$500 USD), had the effect of depressing the numbers of candidates that most parties were able to register.²⁴ This is an especially onerous amount when you recognize that the candidate registration fee for the 1990 Election was only 10,000 kyat.²⁵ Opposition party leaders admitted that registration fees affected their campaign strategies. "Funding is a big problem for parties," said Cho Cho Kyaw Nyein of

²⁴ The Political Parties Registration Law; Union of Myanmar, The State and Peace Development Council.

²⁵ "Junta Opens Political Party Registration" *Associated Press*, 19 March 2010.

Available at: <http://www.irrawaddy.org/election/news/162-junta-opens-political-party-registration.html>

the Democratic Party.²⁶ Instances of parties having problems affording something as basic as candidate registration fees were common. “We cannot afford to fund each and every candidate,” relayed Aye Lwin of the Union of Myanmar National Political Force.²⁷

These inflated registration fees and the short amount of time that the government gave to opposition groups to organize their candidate lists left non-military aligned parties at a severe disadvantage in the sheer number of candidates that they managed to register to run for parliament. By contrast, the junta favored USDP, benefactor of the former USDA’s wealth and most of its membership list, seemingly had no problem finding candidates and fielded 1,112 for office. The National Unity Party (NUP), the former regime’s proxy party during the 1990 elections, managed to register 995 candidates for parliament. These two, both with military ties, were the only parties to come close to competing in every constituency. Beyond them, the thirty-five other parties competing could not manage a combined total number of candidates as large as either of the military parties. They put together a total of just 880 candidates between them, with many of those candidates running against each other, leaving other constituencies without a non-military candidate running.²⁸ That left the two military parties with over 2/3rds of the total number of candidates between them.

The following chart shows how badly non-military parties were beaten before the vote even took place. By being able to run so many more candidates, the military’s parties had a distinct advantage over the opposition well before any votes were cast.

²⁶ Htwe, Ko. “Newly Registered Parties Face Financing Problems” *The Irrawaddy*, 18 March 2010. Available at:

http://www.irrawaddy.org/article.php?art_id=18073

²⁷ Id.

²⁸ Aung, Htet, “Those Shadowy Advance Votes” *The Irrawaddy Magazine*, December, 2010 – Vol. 18, No. 12. Available at:

http://www.irrawaddy.org/article.php?art_id=20383&page=1

Party (pro-junta parties in bold)	Lower House	Upper House	State/Div Assem.	Total
Union Solidarity and Development Party	-	-	-	+1,150
National Unity Party	245	149	555	999
National Democratic Force	105	36	22	163
Shan Nationals Democratic Party	45	15	96	156
Democratic Party (Myanmar)	24	9	15	48
Union of Myanmar Fed. of National Politics	25	11	10	46
Rakhine Nationals Progressive Party	12	8	24	44
Chin Progressive Party	9	14	18	41
88Generation Student Youths (Union of Myanmar)	28	6	5	39
All Mon Region Democracy Party	8	9	16	33
Kayin Peoples Party (KPP)	7	5	19	31
New Era People's Party	7	4	19	30
National Democratic Party for Development	-	-	-	25
Chin National Party	6	7	9	22
National Political Alliances League	6	3	4	13
PaO National Organization	3	1	6	10
Democracy and Peace Party	8	1	0	9
Lahu National Development Party	2	0	7	9
Unity and Democracy Party (Kachin State)	2	3	4	9
Difference and Peace Party	3	2	2	7
Kayan National Party	2	1	3	6
Kaman National Progressive Party	2	1	3	6
Inn National Development Party	1	1	3	5
Wa National Unity Party	3	1	0	4
Wunthanu NLD	4	0	0	4
Khami National Development Party	0	3	0	3
Ethnic National Development Party	-	-	-	3
Union Democracy Party	2	1	0	3

Figure 12: Table of Candidates by Party Showing the Overwhelming Numerical Advantage of Military Backed Parties Source:

<http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Burma%202010%20elections%20-%20The%20story%20so%20far.pdf>

Voter Education

Voter Education is an important part of any election but it becomes particularly important in a country such as Burma where the basic elements of democracy and voting are a foreign concept to so many. When an electorate does not have much accumulated experience with democracy, an unbiased, comprehensive effort should be made to inform the voters of their rights and responsibilities as citizens under the new constitution and electoral law.

In normal situations, an independent election commission will have its own effort to mobilize voters to pay attention to the campaigns and to vote. The higher the voter turnout, the more legitimacy and credibility an election will have. The people's participation in an election is usually strongly encouraged by all parties and seen as a good thing. But because of the peculiarities of Burma's election, this was not always the case and some parties encouraged a boycott. Given this, the UEC should not try to stop or punish those supporters of the NLD and ethnic minority parties who boycotted the election. In a democracy, such activities and different opinions should be tolerated and debated, rather than made illegal.

Unfortunately, the voter education program before the election in Burma was neither comprehensive nor as unbiased as it should have been. There were nominal regular efforts made on state television and in some state newspapers but the effort largely failed to inform the public about the particulars of the election. Voters questioned before the election knew very little about the election's basic facts such as the dates, the candidates running, or their policies.

Some of this lack of voter education may have been intentional obfuscation since the advance-voting period could be more easily taken advantage of if voters were not aware of the electoral law. Voter education is the enemy of those that plan to rig an election. Because voter education creates engaged citizens more likely to exercise their right to vote and more likely to protest any group that tries to deny them that right, the junta had good reason not to implement a thorough voter education program as was needed.

[illegible]

Sample invalid votes

အောက်ပါစံပြ အမှန်ဖြစ်ချင်းသည် ဝယ်မပြုသင့်ပါ။

အောက်ကျော်ခြင်း	<input checked="" type="checkbox"/>
အောက်ထိခြင်း	<input checked="" type="checkbox"/>
ကိုလွန်းသေးငယ်လွန်းခြင်း	<input type="checkbox"/>
အမကောက် ၂ ခုပါခြင်း	<input checked="" type="checkbox"/>
အမှန်ဖြစ်မောင်းမပါဘဲ၊ မကောက်တွင်သာအကောက်ပါခြင်း	<input checked="" type="checkbox"/>
ကပြောင်ခြင်း	<input type="checkbox"/>
မထင်မရှားဖြစ်ခြင်း	<input type="checkbox"/>
ထပ်မံထပ်မံဖြစ်ခြင်း	<input type="checkbox"/>
အင်္ဂလိပ်စာလုံး V (V) ဖဲ့သဏ္ဌာန်ဖြစ်ခြင်း	<input checked="" type="checkbox"/>
အကောက်တွင် နှိပ်စေသော အမှန်ဖြစ်	<input checked="" type="checkbox"/>
ပုံအုံဖြစ်ခြင်း	<input type="checkbox"/>
တစ်ဦးထက်ပိုမိုစွမ်းဆောင်နိုင်ခြင်း	<input checked="" type="checkbox"/>
အခြားသူများကို အမှားဖြစ်ခြင်း	<input checked="" type="checkbox"/>
အထက်အပေးခြင်း	<input checked="" type="checkbox"/>
မဝက်မှတ်မှတ်ပြနေခြင်း/ မဝက်မှတ်မပါရှိခြင်း/ မဝက်မှတ်မှတ်မပါရှိခြင်း	<input type="checkbox"/>
မဝက်မှတ်စာသားမဲ့နေခြင်း/ မထင်မရှားဖြစ်ခြင်း/ အကောက်အမှားဖြစ်ခြင်း	<input type="checkbox"/>
ကိုးသည့်လည်း မယ်မဖြစ်နိုင်ပါသည်။	<input type="checkbox"/>

Figure 14: Flyer showing very strict ballot marking guidelines

NUP's campaign on how to vote



Figure 15: Example of the NUP's voter education effort

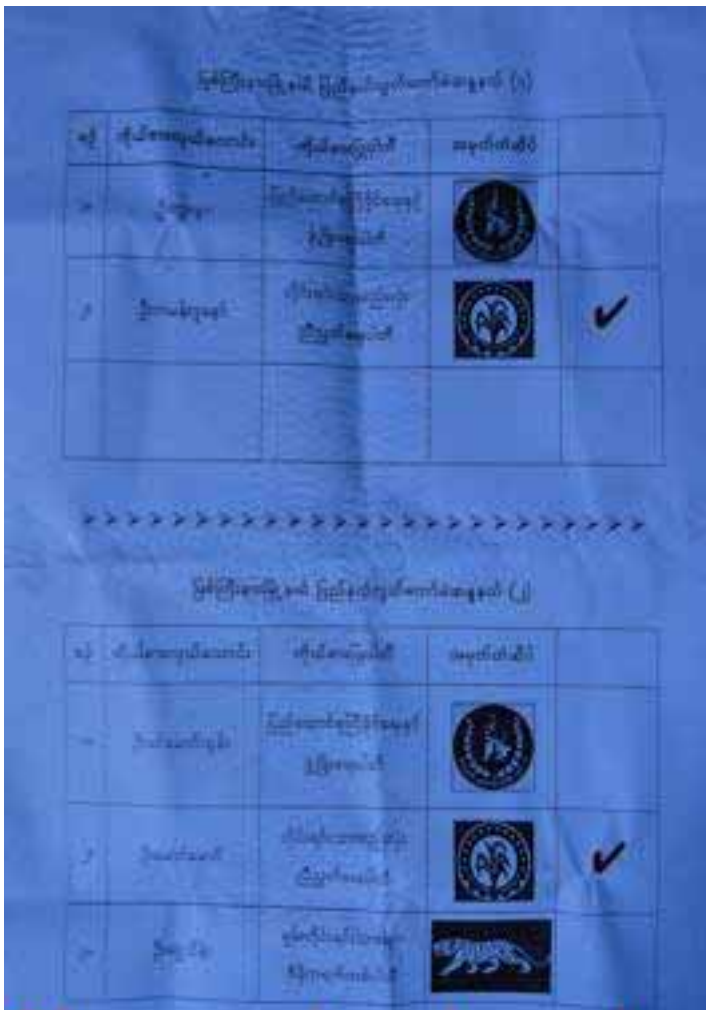


Figure 16: Campaigning & Voter Education Together: NUP Flyer showing a sample ballot with two votes form the NUP.

NGO's such as EGRESS did do a notable job conducting voter outreach and voter education but even their effort was limited to certain regions since the government forbade them from holding trainings in certain areas.

What little voter education that was done in some areas came from the political parties themselves. Even that however was constrained by the fact that regulations on campaigning made party outreach very difficult and therefore quite limited. The small amount that was done often took the form of flyers or pamphlets that doubled as campaign materials as well as voter education.

Even among engaged voters that did informal observation on polling day, many did not know the particulars of the advance-voting period, which turned out to be so critical. Better voter education is particularly important for Burma given the lack of voting experience and the risk of abuse and fraud that take advantage of the people's lack of knowledge about the system.

Campaign Activities

For a country holding its first election in twenty years, the country had a rather low level of campaign activity thanks to a number of limiting factors. The most troubling element of the campaign season's many limitations was the widespread fear among opposition supporters that openly showing their support for opposition groups would lead to retribution from the government.

This fear alone seriously curtailed opposition campaigning. The belief that those attending rallies for parties other than the USDP could face consequences and were putting themselves at risk by doing so was common. Unfortunately, the government's history of crackdown on democracy parties made voters' fears entirely logical and well founded. This belief, along with the restrictions discussed in the next section, made rallies rare and sparsely attended. The NPAP's Ohn Lwin explained the effect, "Now different townships...are swarming with [government] intelligence people

and locals are scared to attend our meetings or to join the party after seeing them. When we asked [intelligence] why they were there, they said that they were just collecting information and assisting in case we needed help from them. But people are afraid of them.”²⁹ That so many were scared to attend an opposition rally is indicative of the failure of the SPDC and UEC to create an open and competitive campaign environment. The resulting atmosphere of fear and intimidation was one of their most important tools to manipulate the election and ensure that the outcome was in their favor.

The second factor which made public gatherings such as campaign rallies particularly difficult was the set of UEC restrictions that required parties to apply to hold a rally a week before it was scheduled.³⁰ Rather than working to create a healthy campaign environment, the UEC and SPDC did the opposite. Directives released by the UEC before the election laid out rules restricting public campaigning.³¹ Opposition parties understandably resented these restrictions. “If [the Election Commission] was not satisfied with our conditions and we do not qualify [to be a party] then why not just deny our registration? It’s not right to restrict us after approving the registration,” complained Ohn Lwin, from the registered National Political Alliances party (NPAP).³² Compounding the campaign rally problem were restrictions that required all published materials to be pre-approved by a censorship board before they could be used in the campaign.³³ Restrictions such as

²⁹ Id.

³⁰ Union of Myanmar, Union Election Commission. “Rights for Hluttaw candidates to assemble and canvas,” Directive No.91/2010, August 18, 2010. Available at: http://www.burmalibrary.org/docs09/Rights-to-assemble_NLM2010-08-19.pdf

³¹ Union of Myanmar, Union Election Commission, “Enlisting the Strength of Political Parties.” Directive No.2/2010, Nay Pyi Taw, June 21, 2010.

³² “Burma Elections ‘Similar to Singapore’” *Democratic Voice of Burma*, 9 June 2010. Available from: <http://www.dvb.no/elections/burma-elections-%E2%80%99similar-to-singapore%E2%80%99/10168>

³³ Union of Myanmar, Union Election Commission, “Enlisting the Strength of Political Parties.” Section 10, Directive No.2/2010, Nay Pyi Taw, June 21,

these had an intentional and inevitable effect of dampening opposition party activity during the campaign period.

In response to the restrictions on campaign rallies, much of the opposition campaigning that did happen was done door to door with volunteers handing out candidate and party pamphlets. While this method does not have the reach of a large campaign rally, it did carry the advantage of educating and engaging voters while not necessarily incriminating them as anti-government.



Figure 17: Door to Door Campaign of the NDF



Figure 18: Flyer for a National Unity Party Candidate



Figure 19: Flyer for a Unity and Democracy Party of Kachin State Candidate



Figure 20: Flyer for a National Democratic Force Candidate



Figure 21: Flyer for a National Democratic Force Candidate



Figure 22: Flyer for a Union Solidarity and Development Party Candidate



Figure 23: USDP Campaign Materials

Campaigning where so many live in a state of fear is obviously incredibly difficult. This pervasive fear undoubtedly had a profound effect on the campaign period.

There were reports of campaign advertising being destroyed or defaced on all sides of the political divide. Former National League for Democracy (NLD) members were often clandestinely campaigning for people to boycott the vote because of the election's "unjust" electoral laws. Their supporters and those from other opposition parties defaced USDP campaign advertising just as the USDP and government supporters often destroyed campaign posters and the like of opposition parties.



Figure 24: Destroyed NDF Campaign Poster

Whereas most parties had a difficult time finding the resources to fund a complete field of candidates thanks to exorbitant registration fees and little time to register, the USDP and another pro-military party, the National Unity Party (NUP) both had almost a full slate of candidates nationwide. In addition to already being short of candidates, the brief period of time that opposition parties had to

organize for the campaign period itself made worse the financial problems they were already facing. On this matter, the USDP had a clear government assisted advantage in both organization as well as resources.

The USDP obviously had a generous campaign budget, partially filled by their inheritance of USDA assets, which they used in a broad variety of ways, some legal, some not. The use of such money and the way it was often spent is especially troubling to TACDB and the international community for two reasons. The first is that the money was not rightly theirs to begin with. That is, it belonged to the government and its people when controlled by the USDA and never should have been transferred to a political party. The USDA was the largest social welfare organization in the country at the time that it was converted to become the USDP. Human Rights Watch's (HRW) Elaine Pearson put it well when she said in a report released soon after the USDP formation announcement, "the morphing of Burma's largest mass-based organization into the military's political party is a brazen if predictable distortion of the electoral process." She continued, "The future of military rule is being shamelessly scripted and played out before our eyes."

She explained how the USDA had been misused by the junta for political purposes in the past and how this final move ensured a playing field tilted against opposition parties. "For nearly two decades, Burma's military has carefully manipulated society by creating a social organization to ensure extensive local coercive capacity ahead of the 2010 polls," Pearson said. "The new USDP behemoth can now marginalize any semblance of an opposition, making participation by other parties and opposition figures even more difficult."³⁴

³⁴ "Burma: Military Party Guaranteed to Dominate Elections" *Human Rights Watch*, 19 July 2010. Available at: <http://www.hrw.org/en/news/2010/07/19/burma-military-party-guaranteed-dominate-elections>

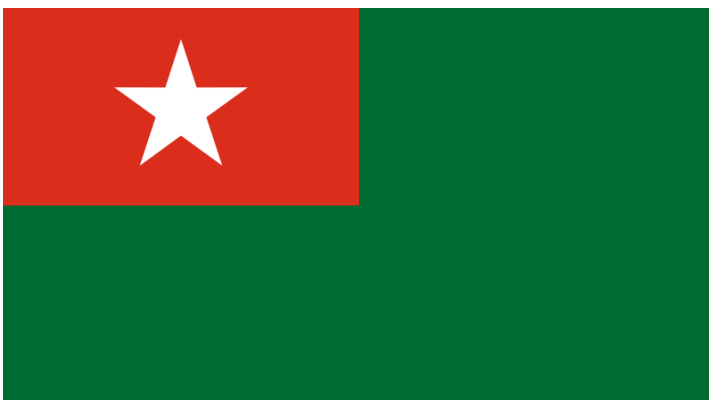


Figure 25: The common flag of both the junta founded USDA, now defunct, and the newly formed USDP. The USDA was transformed into a political party, the USDP, with the latter automatically inheriting the assets and many of the members of the USDA.
Source: Wikimedia Commons Available at:
http://commons.wikimedia.org/wiki/File:Union_Solidarity_and_Development_Association_flag.svg

The USDP's inheritance was one of the most significant abuses of state resources in the campaign period and certainly one of the most lucrative for the party. Inheritance of the USDA's assets and membership rolls gave the USDP an advantage over opposition parties from the start. While this was the largest single instance, cases such as this one where the USDP used government resources for their campaign were common.

The next troubling aspect of the USDP's campaign was that the money they had often went directly for vote buying. This was common and often given to the leader of a village or community that was then expected to deliver the support of the members of that community.



Figure 26: USDP Envelope Used to Buy Support and Votes

In addition to directly paying for votes and support, the USDP used more indirect but equally illegal plans such as targeted government construction programs or the provision of cheap loans to villages. The misuse and transfer of state funds in exchange for votes was common. The mayor of Rangoon Aung Thein Lin went so far as to boast about the USDP's beneficent public works projects. "The USDP is paving roads and digging wells," he said. "It opens free clinics and builds so many schools. It also provides low-interest loans to poor people. It daily requires 6,000 to 7,000 bags of cement to pave a road," he said, while acknowledging that the cement used is made in factories owned by the Rangoon municipal government.³⁵ Even if there was no use of state resources for these kinds of projects, such activities should still be considered a bribe and an example of USDP vote buying. On this issue, the mayor was even brazen enough to order half a road constructed with the promise that the other half would be completed after his victory and the USDP's ascension to power.

³⁵ "Rangoon Mayor Says USDP Using State Funds" *The Irrawaddy*. 04 October 2010. Available from: http://www.irrawaddy.org/article.php?art_id=19624

The kind of promise making the mayor engaged in goes beyond the usual vote buying/promise making into a bizarre kind of what is almost threatening his constituents. In addition to showing the obvious lack of respect he has for clean government, the transparent and public way that he made such a promise reveals the degree to which USDP candidates assumed correctly that they could safely act with impunity in the campaign period.



Figure 27: Rangoon Mayor Aung Thein Lin, center, at an event unveiling his party's signboard(background) Source: AP News Photo/AP Photo/Khin Maung Win.



Figure 28: Rangoon Mayor Promises 2nd Half of Road to be Completed After Successful Election as an MP



Figure 29: Campaign Promises: Vote for Rangoon Mayor for MP and he'll finish the 2nd half of the road

Additionally, the USDP enticed villagers into joining the party through the promise of low interest rate loans made available only to party members. By joining the party, citizens had access to loans such as these with below market interest rates. A former NLD member from Magway Division described how, “They [USDP] persuade people to take their loans by discounting their interest for the loans. If someone has to pay 5 to 10 kyat for the interest at other places, they [USDP] just asked the people to pay 2 kyat.”³⁶

The reach of the USDP and their overwhelming campaign resources should by now be clear. There were parts of the country however, most often in ethnic states, where a local ethnic party had long been established and had the strong support of the populace there. In an effort to coopt support for local ethnicities and contain the anti-government feelings in many places, the USDP made alliances with existing ethnic parties. In many places, they created puppet “ethnic” parties to compete for local support where they knew the USDP would not do well.



Figure 30: Example of a USDP-Ethnic Party Alliance, here with the Unity and Democracy Party of Kachin State.

³⁶ Hseng, Sai Zom. “Join the USDP Party, Get a Low-interest Loan” *The Irrawaddy*, 09 August 2010. Available from: http://irrawaddy.org/article.php?art_id=19176

The Role of the Media

State owned media that broadcasts the government's agenda is the established norm in Burma. Where media is not directly owned by the state, all content must still pass through the Press Scrutiny and Registration Division ("PSRD") of the Ministry of Information before it can be printed or broadcast. Unfortunately for the fairness of the election, this censorship and tight control of the media was largely maintained throughout the election period.

On Election Day, there was a conspicuous delay between when polls closed and the time when state television first reported on the election. In a country with a freer media, reports from during the day and at the time of polls closing would be expected. In Burma however, the first news broadcast hours after polls closed focused on Gen. Than Shwe as well as other military/government leaders casting their ballots. The national news broadcast led off with several minutes of both generals and generals turned politicians voting along with their wives while state media narrated how voting proceeded "freely and happily" while being witnessed by diplomats from North Korea, Vietnam, and China.³⁷ This fine example of Democracy Theater would not exist in a country with a free press investigating the rampant claims of irregularities that were complained of that day.

The government's tight control of the media has been well documented. Even taking into account all the media control that remained in place during the election season, some experts believe that there was a small but greater than usual amount of public criticism of the government that was allowed during this time. The opposition hopes that this is the beginning of greater freedom of the press, a necessary element of a modern democracy. Whether the media is freer to report on the new parliament's activities will be a

³⁷ "Myanmar goes to the polls with little to vote for" *The Globe and Mail* 07 November 2010. Available from: <http://www.theglobeandmail.com/news/world/asia-pacific/myanmar-goes-to-the-polls-with-little-to-vote-for/article1789318/>

key indicator of whether the new system represents any real change. At least one expert who believes that the regime did in fact allow a small amount of additional criticism during the election period is skeptical that this will last going forward during regular sessions of parliament. He and many others expect a clampdown now that the new government is seated and in full control of parliament.



Figure 31: Senior General Than Shwe casts his ballot at the polling station in Naypyitaw on November 7, Source: Myanmar News Agency

Even if some journalists were freer to criticize the government however, state ownership of much of the media meant that very little unbiased reporting reached voters before Election Day. No criticism of the SPDC or the USDP was aired on television or written in most newspapers. Government television channels and newspapers contained glowing reports of the SPDC and USDP's daily activities while mentioning the opposition very little.



Figure 32: Pro-government political cartoon mocking democracy forces abroad that were encouraging a boycott of the vote

The free flow of information and communication were shut down when the SPDC slowed the Internet to a crawl nationwide two weeks before polling day. In most places, the Internet was completely inaccessible. The regime claimed that this slow down was a result of cyber attacks coming from outside the country. This is unlikely however, since the regime ordered a similar shutdown in 2008 before the referendum and provided an equally implausible explanation for why it was occurring. In all likelihood, the shutdown was done intentionally both times as a means to prevent those inside from sending information to exile groups as well as international media. Even with these obstacles, people inside Burma still managed to send information, though much less than ideal, to Thailand, India, and even western countries.

For liberal democracy to grow in Burma, the rules controlling the media must be loosened. A relatively free press is a foundational principle of democratic societies and Burmese media is far from free. This control affects everything from open debate to voter education. If the USDP and SPDC wish to show that they mean what they say about democratic reform and civilian rule, reform of this sector needs to be among their highest priorities.

Advance Voting

The abuse of the advance-voting period was a particularly troubling aspect of the election period. It seems, beyond everything else, to have been the government's primary means of manipulating the election results. Given this, TACDB strongly recommends that advance voting be eliminated in the future until the country can put into place the proper safeguards to eliminate the rampant electoral manipulation of the advance-voting period.

Advance voting abuses took a multitude of forms. To begin with, advance voting was scheduled to take place on the 5th & 6th of November, the two days before the election. In actuality, advance voting began days before that all across the country but often at different times in each locality. In some places, the local township election commission made official announcements that voting would begin on the 3rd or 4th in order to have time to gather the votes of elderly or disabled voters. In other places, no announcement of advance voting before the official period was made but it occurred nonetheless. Part of the problem that opened this period up for abuse was that very few regulations for advance voting were created and no systematic process was followed. Unfortunately, this ambiguity and a longer timeframe for advance voting gave party agents and government officials, often working together, more time to interfere and tamper with the voting process.

The coercion of citizens to vote in advance was thorough. On Election Day, some polling stations closed by 10:00am because they reported 100% voter turnout thanks to heavy advance voting. The likelihood of such turnout is obviously implausible in a normal election but when considering the amount of coercion, pressure, and fraud that took place during the advance-voting period, it becomes more possible. As an example, the following chart from the *New Light of Myanmar* shows the unlikely breakdown of voters "choosing" to vote before Election Day in just one representative part of Karenni State.

Parliament	Eligible Voters	Voting Results				
		Direct Votes	(%)	Advance Votes	(%)	Voter Turnout (%)
People's Parliament	1,821	69	3.78	1,752	96.22	100%
Nationalities Parliament Constituency 7	143	8	5.59	135	94.41	100%
Nationalities Parliament Constituency 8	1,680	59	3.51	1,621	96.49	100%
Karen State Parliament Constituency 1	143	8	5.59	135	94.41	100%
Karen State Parliament Constituency 2	1,680	59	3.51	1,621	96.49	100%

Source: The New Light of Myanmar, Nov. 13 and 14³⁸

Looking at the votes for only this one representative area, we can see that over ninety-five percent of votes reportedly came from the advance voting period. We're apparently also to believe that, in addition to advance votes making up over 95% of the total, the district had 100% turnout across all its constituencies, an obviously unlikely event. Both numbers reveal the systematic abuse of the advance vote system and the counting that followed it.

This type of unbelievably high reported advance voter turnout was common. Not surprisingly, the percentage of advance voters choosing the USDP was usually higher than those voting on polling day, when there were greater safeguards against abuse. "According to research by The Irrawaddy, there were at least 60 confirmed cases of candidates losing overnight after advance votes were added to the total, despite having a clear lead as Election Day counting

³⁸ Aung, Htet. "Those Shadowy Advance Votes" *The Irrawaddy Magazine*, December, 2010 – Vol. 18, No. 12. Available at: http://www.irrawaddy.org/article.php?art_id=20383&page=3

39 *Id.*

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perhaps not intentionally malicious practice of allowing the head of a household to vote for all the members of that household. While not necessarily deliberately rule breaking, even this practice violates the ideal of the secret ballot and puts undue pressure on family members to vote identically to the head of the household.

At other times, the links between the proxy voter and those giving away their right to vote were much weaker and more distant, two factors which increase the likelihood of abuse. In these areas, village heads would visit houses and “take the vote” of the house while telling family members that they no longer needed to vote on the 7th. Given the nature of this kind of proxy voting, there’s unfortunately no way to verify that a village chief actually cast a vote for a village’s chosen candidate. Since many village chiefs were co-opted by parties, proxy voter fraud where the chief fails to honor the desired vote of the villager seems likely.

Even more alarming were reports TACDB received of ward officials, the primary government official at the local level, going door to door to collect the votes of the villagers in their area. This was a kind of coerced proxy voting where the ward official, an agent of the SPDC and often a USDP supporter, was taking the vote of the villager directly at their homes, moving door to door with stacks of empty ballots and casting votes for and with villagers. The loss of the villager’s right to a secret ballot is an obvious problem in such instances. That villagers reported feeling intimidated and pressured to vote for the government party in such situations was not surprising. When a powerful government official is recording your vote, coercion to choose the USDP is an intended and effective side effect of this kind of advance voting. In localities where this took place, the ward official was effectively a USDP agent out collecting votes for the party.

While many wards had USDP-supporting ward officials collecting advance votes, even worse were others that had actual party agents collecting votes and signing up members door to door. In these areas, the poll officials that were supposed to be keeping the ballots safe before Election Day instead often made them available for sale

to parties. After buying empty ballots, the party agents went door to door like the ward official and recorded votes, obviously primarily for their party. They told voters they no longer needed to go to the poll on the 7th and usually marked the voters names off on the voter list. This is an extreme example of advance voting fraud but reports of party agents collecting votes like this were quite common.

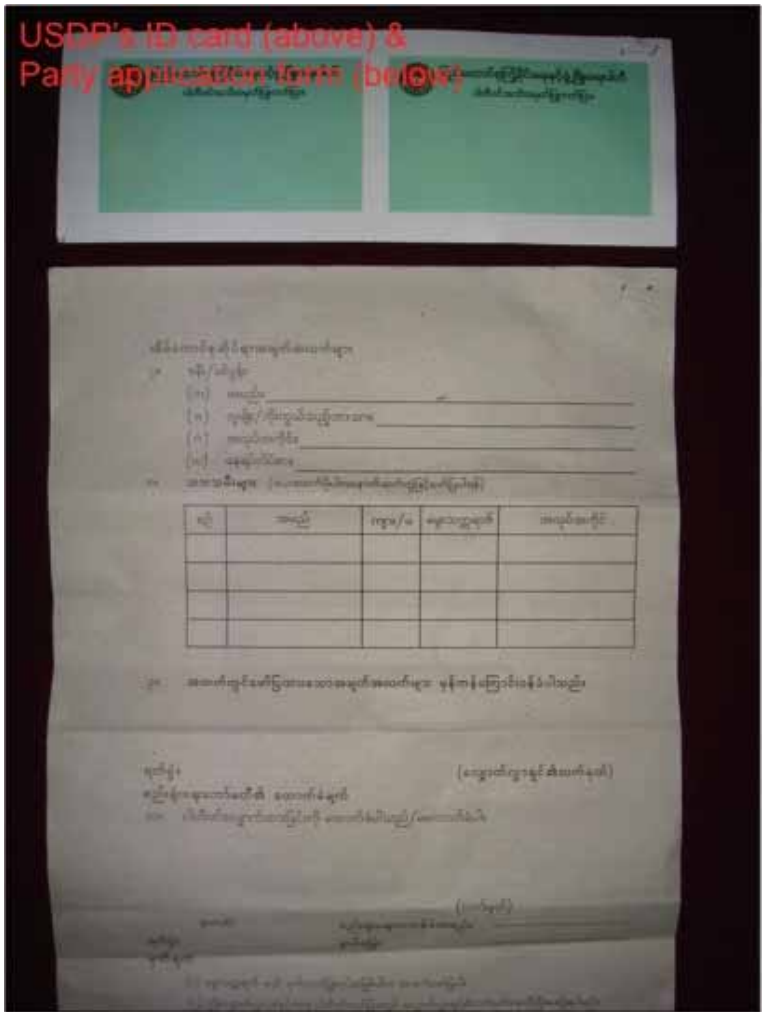


Figure 34: Party Membership Application Often Delivered Along with Advance Vote Ballots Door to Door

Storage of the advance vote ballots was also a problem. Ideally, both used and unused ballots should be stored in a secure place and kept under lock and key until counting on Election Day. This was rarely the case in Burma before the election and many people outside the official polling officers had access to the ballots.



Figure 35: Stacks of advance ballots being handled before election day.



Figure 36: Advance Votes sitting out in open boxes before Election Day

As explained above, the advance-voting period was taken advantage of in many, many ways. It is for all these reasons that TACDB strongly recommends that advance voting be eliminated for the time being in future elections. It's true that the effect of this would be to make it more difficult for some citizens, especially the elderly and infirm, to vote. This tradeoff would be worth it, however, considering the increased accuracy of the polls that would result if advance voting fraud was eliminated. Until the institutional control of the logistics, distribution, and overall management of the advance vote ballots is improved, Burma should eliminate its advance-voting period. This would also have the added benefit of simplifying the voting period for voters already lacking electoral knowledge thanks to an insufficient voter education effort.

Whether the UEC or USDP is willing to do this is another matter entirely. Given that the USDP seemed to be relying on it as their primary means to win this election, it seems unlikely that they will be in favor of its elimination. Abuse of the advance vote period seems to be the primary means, among many, with which the SPDC/USDP unfairly tilted election results their way.

Disenfranchised Voters

Another significant major challenge Burma must face is the issue of disenfranchised voters. Many village tracts had no elections on November 7th, with those of most affected concentrated in ethnic areas. Estimates ranged from 400,000 to 1.5 million disenfranchised ethnic voters because their areas had been deemed too dangerous to hold polls and, as a result, were "in no position to host free and fair elections."⁴⁰ Whether or not there is any merit to the claim that these areas were too dangerous to hold polls, the UEC, SPDC, as well as local ethnic parties and militias, should have found a way to allow voters in these areas to vote. At the very least, they could have held

⁴⁰ Aung, Htet. "Questioning the EC Definition of 'Free and Fair'" *The Irrawaddy*, 22 September 2010. Available at: <http://www.irrawaddy.org/election/news/474-questioning-the-ec-definition-of-free-and-fair.html>

elections for their local representative to the local assembly. But to do as they did, and leave these areas without any representation, will only serve to further marginalize them and increase their isolation from the rest of the country. Those among these groups that wish to have their own country anyway will understandably argue that their having no representation inside Burma only strengthens their case for independence. This fact could well push them even further into wanting to have their own state, making future reconciliation even more difficult.

A more common but also worrying case of disenfranchisement occurred with the migrant laborers from Burma in neighboring countries that were unable to vote. Estimates of up to two million laborers from Burma live abroad and, for most of these, the government made little to no effort to allow them to vote. This is a serious problem and one that would not be particularly difficult to fix. Unfortunately, very little was done. For example, instead of trying to enable migrant laborers to vote, the Burmese Embassy in Thailand quietly announced a single day of advance voting for only some of their people living in Thailand. Without an invitation from the embassy, most of those living in Thailand did not even know what day the voting was happening. Others, that tried to go back to Burma to vote in their homes, were arrested at the border. For this reason, most were resigned to stay abroad and were left with no choice but to squander their right to vote.

Election Day Administration

As previously mentioned, advance voting was more significant than most expected for obvious reasons. Additionally, the NLD boycott of the election led many of its supporters to stay home on Election Day in protest. Thanks to such factors, voter turnout observed on November 7th was quite low in most places.

Voting on Election Day was also plagued by a number of issues that did not meet standards of fairness and transparency. Problems such as voter list issues and polling station setups that did not meet international standards were common but, when compared with the

advance-voting period, it was a somewhat better voting environment. TACDB was happy to see that the Election Day's administration was better than the advance voting period though this is, admittedly, a very low bar to cross.

A strange pattern reported from many different regions was that of polling stations reporting one hundred percent voter turnout and closing before noon. This seems improbable, especially considering that those living away from their village were often left on the voter list. The existence of these types of voters, those that live away from home, who were on the voter list, but could not return to vote, should automatically have kept most PSs from reaching 100% turnout. Polling stations that reported 100% turnout should be scrutinized and investigated by the UEC where irregularities are found.

Reports of vote buying by a number of different parties were common. Canvassers were paid 20,000 kyat or given in-kind gifts to deliver votes for parties. Village heads and ward leaders were often part of this system as well.

On Election Day, double, proxy, and multiple votes could be easily executed for several reasons:

1. A person could vote more than one time if they have more than one ID card where each is listed on the voter list, as was often the case.
2. Many people do not have ID cards but are willing to take other people's cards to vote on their behalf (proxy vote) at the same or different polling stations on both advance voting days and polling day.
3. Family members could often vote for family members that had passed away regardless of whether they'd previously informed officials to remove the names.
4. People could often vote for family members or friends who are working outside the country.

5. Employers and other leaders could and often did vote for their employees, workers, underage workers, or underage soldiers.
6. As mentioned, officials often requested consent directly (proxy voting) from villagers/the illiterate/elderly/female/minorities etc. to vote in place of them by asking them to not go to vote on polling day, as the official would vote in their place.

Every kind of violation and illegal voting above was often done with the cooperation of corrupt ward and polling officials without original or real signatures because they know that no one will bother to investigate or check their actual signatures. This was usually done without checking their ID cards or photos. The only thing they required is that their names were on the voter list so they could sign.

Among other problems, party agents were often allowed inside the polling station's voting area. In some instances, they were even permitted to assist voters to the polling booth and with putting their ballots in ballot boxes. Party Agents should be kept outside of the voting area and be required to in no way interfere or influence voters.

Management of polling day was made somewhat simpler by the relatively low voter turnout, especially for a country's first election in twenty years when voter interest should be otherwise high.

When looking at the organization of the polling station itself, some changes since 2008 should be applauded. For instance, the standard issue ballot box changed in most places from being opaque white to a much better translucent variety that comes closer to meeting international standards. In many places, new polling booths were used that are more appropriate than the ones used in 2008. While it's true that these are improvements, we must acknowledge that, from a technical standpoint, a great deal of additional progress is still needed. For example, many of the new ballot boxes lacked proper seals or padlocks and many of them were not sealed at all.



Figure 37: Example of the wax seal used in many places to seal ballot boxes

Source: Chinese television station in Burma



Figure 38: Compromised Secret Ballot: Example of the flawed setup of polling stations across the country where voting booths open up to the room

The new booths had in most instances, unfortunately, been turned to face the opposite way they should have been so that the voter's back was to PS officials and the screen around the booth was facing the wall. With a voter's ballot so exposed, anyone who wished to see the voter's selections could do so easily. Whether such a design was done intentionally or was simply a result of a lack of expertise, such an arrangement threatens the principle of the secret ballot.

We saw this loss of the right to a secret ballot time and time again in Burma, be it through door to door advance voting or poorly setup polling stations. Because putting voters in positions where they did not have access to a secret ballot ensured the effectiveness of the regime's intimidation and scare tactics, we believe this trend was by design.

Why is the Secret Ballot Essential?

A secret vote is an essential integrity issue because it allows voters the independence to vote their conscience. If a vote is made in public, or can be identified when it is counted, the voter could be intimidated into voting a different way. In the case of manual voting methods which are still used in most countries, secrecy is usually achieved by marking a standard ballot in a private place, such as behind a screen, out of the sight of others. It is then placed in a ballot box where it is mixed with many other ballots, making it impossible to trace back to a specific voter. The number of ballot boxes that need to be mixed together before counting to ensure the secrecy of the ballot can be an issue which is discussed in Counting.

Secrecy makes intimidation or coercion less effective. It also makes it more difficult for special interest groups, unions or ethnic groups to "deliver the vote" for certain candidates or political parties.

Secrecy is only effective if it is enforced and therefore mechanisms have to be designed and implemented to ensure that privacy rules are respected during voting and that nothing is done that would jeopardize that secrecy.

Figure 39: Text Courtesy of the International Institute for Democracy and Electoral Assistance(International IDEA) , International Foundation for Election Systems (IFES), and the United Nations. Available at <http://www.aceproject.org/main/english/ei/eie12a.html>

Each polling station had at least three ballot boxes, one each for the People's & Nationalities Parliament and one for the local assembly. Often, polling stations would have more than just those three because, if a region/state had any single ethnic minority with greater than .1% of the total Union population living within its borders, then that minority group received a reserved seat in the local assembly intended to represent that particular ethnic minority. The figure below shows which minority populations in a particular state/region qualified for a minority seat in the local assembly.

States or regions which qualify and will have Minority Seats:

Arakan State:

668	Chin (Ethnic Seat)
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Irrawaddy Region:

673	Kayin (Ethnic Seat)
684	Rakine (Ethnic Seat)

Yangon Region:

677	Kayin (Ethnic Seat)
685	Rakine (Ethnic Seat)

Karen State:

664	Burman (Ethnic Seat)
681	Mon (Ethnic Seat)
682	PaO (Ethnic Seat)

Kachin State:

662	Burman (Ethnic Seat)
679	Lisu (Ethnic Seat)
686	Bawang (Ethnic Seat)
687	Shan (Ethnic Seat)

Kayah State:

663	Burman (Ethnic Seat)
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Mon State:

Magway Division:

667	Chin (Ethnic Seat)
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Mandalay Division:

688	Shan (Ethnic Seat)
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665	Burman (Ethnic Seat)
675	Kayin (Ethnic Seat)
683	PaO (Ethnic Seat)

Pegu Region:

674	Kayin (Ethnic Seat)
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Sagaing Division:

669	Chin (Ethnic Seat)
689	Shan (Ethnic Seat)

Shan State:

661	Aka (Ethnic Seat)
666	Burman (Ethnic Seat)
670	Inn Tha (Ethnic Seat)
671	Kachin (Ethnic Seat)
672	Kayan (a) Padaung (Ethnic)
678	Lahu (Ethnic Seat)
680	Lisu (Ethnic Seat)

Tenasserim Division:

676	Kayin (Ethnic Seat)
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To choose the representatives for these minority seats, the members of qualifying minority groups in that locality cast an additional vote for a minority representative. Diverse areas with large populations of minorities would often have four or more ballot boxes per PS.

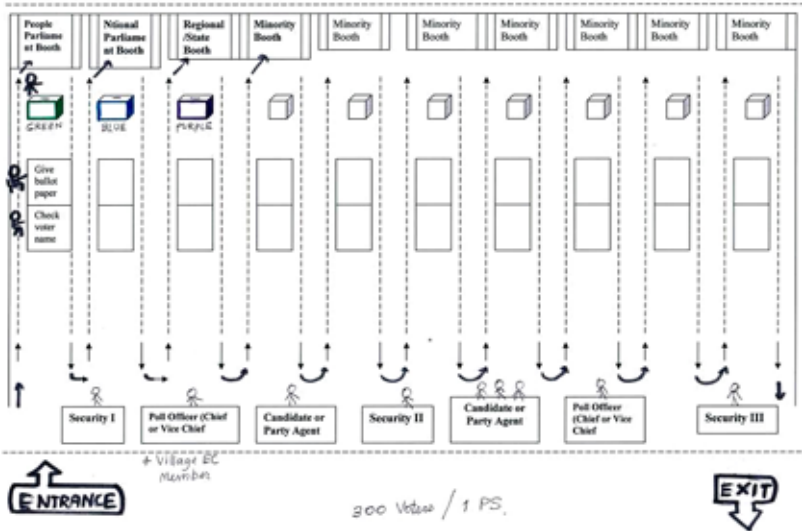


Figure 40: Diagram of a sample polling station with the number of ballot boxes determined according to the local minority population.

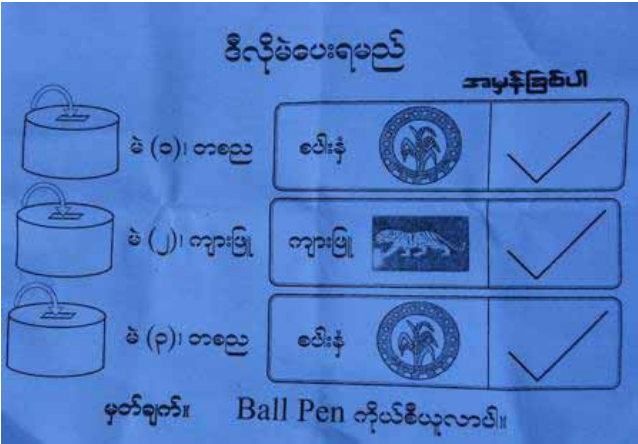


Figure 41: Voter Education, with party support shown, explaining the 3 different ballots and ballot boxes that would be used.

Contrary to the low voter turnout observed on Election Day, on December 8th state media reported official turnout of over 77% of the roughly 29 million eligible voters.⁴¹ To the extent this number is true, it is likely the product of the extensive advance vote production of the regime. On polling day, many polling stations were mostly empty throughout the day and lines were rare after the early morning period immediately after polls opened. This low turnout surveyed on Election Day was unsurprising given the coercive and thorough advance vote effort of the regime and the low interest in the election expressed by those interviewed before the election.

Poll Officers and Party agents

Without the usual mechanisms to ensure transparency at the polls on polling day, the two types of stakeholders that were permitted to remain at polling stations, poll officers and party agents, were the only hope for a transparent Election Day. This is because local election observers, international observers, and independent media were forbidden from observing and reporting on the election. Normally both groups of stakeholders mentioned should receive clear instructions from the UEC regarding the electoral process and its regulations. All parties and candidates must be made aware of all regulations that the UEC has announced or ordered. This ensures that they are on a level playing field and can work to ensure the fairness of the polling station.

While both poll officers and party agents should receive the same manual from the UEC, party agents will often have their own separate manual for their training. We found that many of them, from both groups of stakeholders, either did not have enough training or had not been trained at all. Meanwhile, the UEC did not provide enough funding for training and for workers on polling day. They were expected to stay until counting was finished but were

⁴¹ "Myanmar voter turnout 77%: State Media" *Channel News Asia*, 08 December 2010. Available at: http://www.channelnewsasia.com/stories/afp_asiapacific/view/1098010/1/html

paid only 1000 kyat (\$1 dollar) for all their work and travel. Better funding for this aspect of election administration, both for training and compensation, would likely result in more professional administration of polling stations.



Figure 42: NUP Voter Education Booklet Used by Party Agents in Lieu of Proper Party Agent Training

Counting Process

The counting process was tainted by the inclusion and counting of the previously mentioned advance vote ballots. Advance ballots were supposed to be counted at the polling stations and many indeed were. Unfortunately, and for reasons unexplained, others were counted directly at the township office and added to the vote totals of candidates when their polling station counting totals and ballots arrived at the township office. This was not designed to be part of the process and votes that were counted at the township office should be treated with extreme suspicion.



Figure 43: Poll Workers Tally Votes Source: Reuters via The Economist at http://www.economist.com/blogs/asiaview/2010/11/myanmars_election_results

Additionally, there were reports from polling stations of bags of previously unaccounted for advance votes being brought from trucks unexpectedly in the middle of the night and in the middle of counting. Reports of these bags of ballots being added to polling station ballots when the USDP was losing were common.⁴² Often

⁴² Aung Kyaw, Htet. "Anger at 'Fraudulent' Vote Rages On" *Democratic Voice of Burma*, 10 November 2010. Available at

during these instances, official counting would stop abruptly, witnesses would be asked to leave the counting area, and the counting would continue only after the delivery had been made behind closed doors without any transparency as to what had just been done. This kind of practice is always objectionable but, particularly because of the irregularities that occurred during the advance voting period, these advance ballots should have been counted separately and transparently at the polling station. Vote totals for advance votes, including separate vote totals for those taken during the official period and before it, should have been released for each polling station. By combining all the ballots together, there was little way to determine whether advance vote totals unrealistically favored one party or another, possibly due to coerced and proxy voting. Combining ballot types like this was obviously intentional and part of the SPDC's plan. Nevertheless, it must be eliminated in the future to help make more difficult the advance ballot fraud that was clearly so prevalent this time around.

Fraudulently obtained advanced vote ballots by themselves are not worth much if you cannot return those ill-gotten votes to be counted. The vote counting process was the second half of the advance voting fraud that took place. In the future, party agents from all parties and the voters themselves should be able to witness every step of the counting process. Tabulation paper should be used and each vote should be counted, announced, and shown to witnesses at the polling station. No advance votes should be counted before polling day and absolutely no votes should ever be counted behind closed doors as was common.

Post-Election Period

The post-election period, like the pre-election and election day periods before it, could be called disappointing if significant malfeasance and tampering with the process was not already expected from the junta and the UEC.

Opportunities Lost

The post-election period leaves stakeholders with almost as many questions as existed before polling day. The election results, a resounding and seriously tainted victory for the USDP, have been released but the course the country will take remains to be seen.

The long awaited release of Daw Aung San Suu Kyi on November 13th is the most significant democratic development since the election. Her release was met with a great deal of immediate excitement in Burma as well as internationally. Large crowds began gathering outside her house in anticipation of her release later that day. On her first full day out of house arrest, she gave a speech in front of NLD headquarters attended by thousands of her supporters where she told the crowd that, "there is no reason to lose heart."⁴³ The crowds at this rally were supposedly larger than those greeting her release in 2002. The size of this rally, together with the crowd that gathered at her house at the time of her release, revealed that, despite the passage of time, she still has a great deal of support. She told a BBC reporter that day that, despite her prolonged detention, she was willing to reach out to Gen. Than Shwe. "I think we will have to sort out our differences across the table, talking to each other, agreeing to disagree, or finding out why we disagree and trying to remove the sources of our disagreement," she said.⁴⁴

⁴³ "Thousands gather for Suu Kyi rally following her release from house arrest" *The Australian Newspaper*; 14 November 2010. Available at: <http://www.theaustralian.com.au/news/world/freed-suu-kyi-to-rally-her-supporters-as-world-leaders-hail-her-release-from-house-arrest/story-e6frg6so-1225953268825>

⁴⁴ "Burma's Suu Kyi Tells Followers Not to Give Up Hope" *BBC News*, 14 November 2010. Available at: <http://www.bbc.co.uk/news/world-asia-pacific-11752047>



Figure 44: Admirers as well as media clamor to get close to Suu Kyi upon her release on 13 November 2010. Source: Reuters



Figure 45: Aung San Suu Kyi after 7 years of house arrest addresses supporters in front of her house in Rangoon. Source: AFP, Soe Than Win

Coming just a week after polling day, her release drew attention away from the continued reports of election irregularities that were coming in at that time. That her release seemed intentionally timed in order to draw attention away from such stories was not surprising in an election where everything else, including the results, seemed to be predetermined as well.

For many Burmese however, that fact could not take away from their excitement over having the democracy leader free for the first time in seven years. Her first public comments focused on her intent to listen to the people to determine their wishes and the need to work together to achieve any of their shared goals.

An ongoing story from before and after her release has been the NLD's attempt to be re-registered as a political party. The party was dissolved for failing to register before the election and they have been appealing that dissolution ever since. On 13 January 2011, the Supreme Court agreed to hear the NLD's final appeal. Their previous appeal was denied on 22 November 2010 and this appeal was their final chance to re-establish themselves as a party barring rule changes. On 28 January 2011, the decision of the Supreme Court came down rejecting the NLD's appeal and upholding the appeals court ruling that held the NLD to be an unlawful association thanks to its refusal to properly register as a political party before the election.⁴⁵

Since her release, much of the public's focus has been on two things, what Suu Kyi will do now that she is free and the formation of the new government. The constitution sets out that the new government must be formed within 90 days of November 7th, 2011. The transition, formation, and early days of the "new" government has been an almost completely opaque process thus far and one that the public has not had any participation in.

After the election and up until the end of the year, the USDP was almost completely shut off from the public and had offered little indication of their platform or vision in the new parliament. Given that they, along with those MPs appointed directly from the military, will control over eighty percent of the total seats in parliament and local assemblies, their silence left the public in the dark about the proposed policy agenda of the country's rulers.

⁴⁵ "Burma upholds dissolution of Suu Kyi's NLD party" *BBC News*, 28 January 2011. Available at: <http://www.bbc.co.uk/news/world-asia-pacific-12307838>

In late December however, the USDP gathered in the capital to organize their party and set its agenda. According to the constitution, the party had ninety days from Election Day on November 7th to form the new government.⁴⁶ To this end, the USDP met this constitutional deadline when they convened on 31 January 2011 at 8:55 AM under heavy security. The timing was almost certainly chosen because it was believed by the superstitious regime to bring good fortune. Regional/State Parliaments and the National/People's Assembly all began, as scheduled, at the same time as required by the constitution. It marked the first time in over twenty-two years that Burma has had a sitting parliament.



Figure 46: Security was high as burmese security officials inspect a bus transporting newly elected MPs headed to Parliament's first session on 31 January 2011 in Naypyitaw. Source: AP Photo/Khin Maung Win

⁴⁶ Constitution of the Union Of Myanmar, Chapter 4, Sections 123 & 154.



Figure 47: MPs head into Parliament for its First Session.

Source: Reuters/MRTV via Reuters TV

Neither journalists nor diplomats were invited to attend the opening ceremony and roadblocks assured that the public was kept at a distance. Thanks to the landslide fraudulent election results, the USDP appears willing to keep the public and other opposition parties almost entirely out of the governing process. This is a pity and an ominous sign of what may be to come under the new government. If the USDP continues its course of unilateral action, there will have been a real missed opportunity to begin to build a functioning parliament where opposition, while not ruling, is still involved and able to voice their opinions and/or dissent. Much of the small amount of hope that optimists had for this election rested on there being some, however small, newly created political space for opposition parties to operate. A common place for this space to exist is in a parliament where political parties out of power still participate in such things as committee work and floor debates. It's not too late for the new parliament to allow this kind of activity but the early indicators for whether it will ever operate in this kind of inclusive manner are poor.

To prepare the public beforehand, the government announced in mid-January that a set of 17 books detailing parliamentary procedures and bylaws for the new body would be released for sale to the public. By the next day, the primary government bookstore in

Rangoon run by the Ministry of Information had sold out of the set.⁴⁷ Publication of these rules of procedure has been long overdue and that they are finally available to the public, albeit in limited supply, should be welcomed. That said, there exists no good excuse for why the regime waited until just over two weeks before Parliament's first session to publish the rules of procedure. The rules are signed by Gen Than Shwe and dated 21 October 2010, almost three months before they were finally made public. These laws, like the constitution and electoral laws before it, would have benefitted from being made public and opened up for debate and feedback well in advance. Unfortunately and unsurprisingly, this was not done. For opposition parties in parliament as well as groups hoping to interact with the new parliament, this is yet one more instance where they have been left out of what should have been a more inclusive planning process.

Any excitement among the opposition over the new parliament being seated was almost immediately dampened by a number of the SPDC & USDP's early actions in the new parliament. One such glaring cause for concern was Parliament's choosing Gen. Than Shwe's right hand man, the former general and ex-SPDC Prime Minister **Thein Sein**, to be president. Thein Sein was previously chosen to head the USDP and his taking the reins of the presidency reveals that Senior Gen. Than Shwe appears to, as feared, continue to arrange events in order to maintain his total control over the affairs of state. Post-election speculation centered on whether he would have himself named president when the parliament voted for that position. Many believed that either he or a close ally would be named president.⁴⁸ Parliament confirmed everyone's pessimism when Sein, Than Shwe's former figurehead prime minister, was named as the country's new president. Thein Sein has long been a subordinate of Than Shwe and this relationship appears likely to continue for the foreseeable future.

⁴⁷ "Parliamentary Books Sell Out on First Day" *The Irrawaddy*, 11 January 2011. Available at: http://www.irrawaddy.org/article.php?art_id=20503

⁴⁸ Moe, Wai. "Than Shwe Threatens Coup d'Etat" *The Irrawaddy*, 24 January 2011. Available from: http://www.irrawaddy.org/article.php?art_id=20595

Since the new president, and supposed head of state, was named, state-run newspapers have continued to cover Than Shwe's every move, no matter how routine, as worthy of front-page coverage. Large photos of Than Shwe in full military dress appeared in the newspapers everyday during the same week that parliament began its first session and named the country's first civilian president in decades. By contrast, the story about the appointment of Thein Sein as president did not even include a picture of him.⁴⁹ With Thein Sein's assumption of a leadership role in the new government and, given his figurehead role as PM in the past one, it now seems even more likely that parliament will operate as nothing more than a "civilian" proxy for the SPDC.



Figure 48; Deja Vu: Thein Sein, left, now the junta's handpicked President, in a photo from when he was Gen. Than Shwe's chosen prime minister. Source: AP Photo/Myanmar News Agency

⁴⁹ "Junta Chief Overshadows President-elect in State Media" *The Irrawaddy*, 07 February 2011. Available from: http://www.irrawaddy.org/article.php?art_id=20688

Concerns about military intervention in the new parliament's operation were already high thanks to reports of a meeting Than Shwe held with senior military leaders where the general helpfully reminded commanders that the Tatmadaw (Armed Forces) "must only work for 'the sake of the nation and people' and not for a particular political party."⁵⁰ His commitment to the parliamentary experiment was perhaps best demonstrated by his reported quote that "the Tatmadaw must be ready to launch a coup d'etat if the USDP 'fails to fulfill the nation and the people's needs.'"⁵¹

Most people have far too much experience with the ruling junta to believe that much will change thanks to the new parliament. Given this, there is more hope being placed in Aung San Suu Kyi than with the new parliament. She does appear to have a great deal of broad based support, even among a younger generation of Burmese citizens too young to remember the NLD's win in the 1990 elections. Thanks to this, much of the public is analyzing her every word and anxiously awaiting her next move.

Updating Panglong

One of the most talked about issues raised by Suu Kyi and many ethnic leaders is of the need to update the Panglong Agreement of 1948. The Kalay Declaration, signed by ethnic party leaders, NLD leaders, as well as democracy activists before the election on 24 October 2010, made a commitment to hold a second Panglong Conference. It, at the same time, declared the signatories opinion that "The 2010 elections and results, held under the 2008 constitution, will not bring any change towards democracy, human rights and national reconciliation for the people of Burma. Under the leadership of Daw Aung San Suu Kyi, an inclusive dialogue for the unity of all ethnic nationalities and national reconciliation must be

⁵⁰ Id.

⁵¹ Id.

implemented.”⁵² Given this belief, the group’s commitment in provision 3 to hold a second Panglong is understandable. Their final goals are made clear in that provision which states that a “Second Panglong must be held to establish a Federal Union based on democracy and equality for all ethnic nationalities dwelling in Burma, rather than through a centralized country or separatist states. All ethnic nationalities must work together for the conference to occur.”⁵³

With that as the background on the issue prior to Suu Kyi’s release, she wasted no time when, less than a week out of house arrest, she discussed the possibility of holding a “Panglong Agreement for the 21st Century” using modern communication technology that would avoid the need to apply for meeting permits from the government.⁵⁴ “We must seek alternatives. That’s why I’ve said we must find alternatives suited to the 21st Century. I heard about the [idea of a] second Panglong Conference on the radio when I was detained under house arrest. Since that time, I thought we should apply modern technology. Our young technicians will find ways.”⁵⁵ Since signing the Kalay Declaration and after meeting with her, the group that put it together has officially handed over its implementation to Suu Kyi and the NLD.

The first Panglong Conference, negotiated between Suu Kyi’s father Aung San and various ethnic leaders, was the basis for the Union Of Burma being formed in 1948. Many ethnic leaders argue that, because the commitments made at the first Panglong Conference were never kept, there is a great need for a second conference. The

⁵² Kalay Declaration, Provision 2, Signed 24 October 2010. Available at: <http://www.burmapartnership.org/wp-content/uploads/2010/11/Kalay-Declaration-English-unofficial-translation.pdf>

⁵³ Id. at Provision 3.

⁵⁴ “Suu Kyi Floats Panglong II Via Modern Technology” *Mizzima News*, 17 November 2010. <http://www.mizzima.com/news/inside-burma/4587-suu-kyi-floats-panglong-ii-via-modern-technology.html>

⁵⁵ “Dialogue With The Lady, Aung San Suu Kyi” *Mizzima News*, 18 November 2010. Available at: <http://www.mizzima.com/edop/interview/4591-dialogue-with-the-lady-aung-san-suu-kyi-.html>

issue of a second Panglong Conference or a “Panglong Conference for the 21st century” is a delicate, complex one for all parties involved.

What exactly a conference such as this might include depends on whom you ask. Many believe that talk about a second Panglong Conference is just that, talk. Many in this group believe that speaking of a second Panglong is simply a political gesture. Some maintain that a second Panglong is not a sincere desire of many of the leaders mentioning it. Others believe that it takes away from that which is most important, namely democratization. In this view, these leaders believe that a second Panglong is either unrealistic, unnecessary, or both. Many of them encouraged Suu Kyi to avoid too much discussion of a second Panglong because of the sensitive nature of the issue. “I told her to focus on the democratization process rather than on Panglong since it was a dangerous and complex topic, but she said she must actively work on it along with other issues,” recounted Thu Wai, an experienced politician and the chairman of the Democratic Party in Rangoon.⁵⁶

Despite detractors such as those above, others are much more hopeful that some kind of substantive agreement can be forged that will bring the Burmese opposition groups into closer alliance with ethnic groups and lay the foundation for a democratically elected Federal Union. People arguing that Panglong must be updated hold that such an agreement is the only way to unite the opposition and guarantee a sustainable model of governance in the future. They want to see a real agreement come about that will set out terms for a future Federal Union. The persistent desire for regional autonomy over local affairs, at the heart of the original Panglong as well as any Federal Union, remains the desire of most of this group pushing for a concrete second Panglong.

The government’s response to the idea of a second Panglong after Suu Kyi raised it was unequivocal. Through the government

⁵⁶ ““Second Panglong Proposal Could Mean Trouble for Suu Kyi” *The Irrawaddy*, 30 November 2010. Available at: www.irrawaddy.org/article.php?art_id=20216

mouthpiece newspaper, *New Light of Myanmar*, they ridiculed the discussion of a second panglong as a “cheap political stunt” and declared, “if someone truly wants to engage in politics with the aim of supporting the state’s interest, one should proceed plainly, officially and candidly within the structure of the constitution.”⁵⁷ Such a reaction reveals that the regime sees a second Panglong as inherently illegal and as a challenge to the new parliamentary system they have setup. It said that calls for restoring the “Panglong Spirit” would interfere with the seven-step roadmap to democracy the regime claims to follow and would “bring more harm than good.” It warned in a commentary in late December that the political opposition needs to work with the new parliamentary government that will be formed.⁵⁸ “People on the side of true democracy have to support and make submissions with an optimistic attitude as well as consider the government elected in the 2010 elections as a democracy co-worker,” the government mouthpiece said in the December 25th commentary.⁵⁹ This statement reveals the government’s entirely expected and clear opposition to a second Panglong Conference led by Suu Kyi.

Responding to the government’s clear opposition, some ethnic leaders have tried to emphasize the idea that a second Panglong will be a tripartite dialogue including opposition Burmese groups, ethnic groups, and, of course, the military. They seem to recognize how important a role the military, or Tatmadaw, could play. Pu Cin Sian Thang, a spokesperson for the United Nationalities Alliance, revealed the group’s pragmatism when he said, “the Panglong spirit is about achieving national unity, and this can’t be done without the Tatmadaw. From the time we first started discussing the idea of

⁵⁷ Linn, Zin. “Burma junta bids to quash the ‘Panglong spirit’” *Asian Correspondent*, 08 December 2010. Available at <http://asiancorrespondent.com/43481/burma%E2%80%99s-junta-blame-on-the-coming-of-second-panglong-conference/>

⁵⁸ Linn, Zin. “Junta Chief Turns Down Suu Kyi’s second Panglong Approach” *Asian Correspondent*, 25 December 2010. Available at: <http://asiancorrespondent.com/44606/junta%E2%80%99s-chief-turns-down-suu-kyi%E2%80%99s-second-panglong-approach/>

⁵⁹ *New Light of Myanmar*, Burmese Edition, 25 December 2010.

holding a second Panglong Conference, we have never said that we wanted to exclude the military from the process.”⁶⁰

In times when it is not addressed, the subject of the government’s participation is the proverbial elephant in the room for all this talk of a second Panglong. Their participation and interest, or lack thereof, in holding a second Panglong will determine its success. Without negotiating with the military, it’s unlikely that any new agreement would affect much immediate change. With them participating however, it’s unclear whether the parties could come to an agreement.

What is clear is that the government believes that the new parliament is the place where national policy making should be taking place. From the government’s perspective, the idea of a second Panglong that will determine the future of the country is a direct challenge to them and their new parliamentary system. They believe that, now that they have created it, the best means of carrying out national debate is through parliament. A state-run newspaper responded to the talk of a new Panglong when it declared, “Parliament is the best place to strengthen the already gained national unity. If they [the opposition] choose to follow this idealistic way while ignoring the best way [parliament], they should be aware that that it will bring more harm than good to the country.”⁶¹⁶²

It’s clear then that a second Panglong presents challenges for opposition groups as well. To be effective, they will have to compromise in ways that are certainly unappealing for them. Firstly, to have the major impact they desire, opposition groups will likely have to include the military in the discussions. Secondly, they may

⁶⁰ “Second Panglong Would Do ‘More Harm than Good’: State Media” *The Irrawaddy* quoting *Myanmar Ahlin Newspaper*, 08 December 2010. Available at: http://www.irrawaddy.org/article.php?art_id=20275

⁶¹ Id.

⁶² Kipgen, Nehginpao. “Burma Conflicts and a Second Panglong Conference.” *The Epoch Times*, 05 January 2011. Available at: <http://www.theepochtimes.com/n2/content/view/48713/>

have to work through some of the new official political channels that they would prefer to boycott. Without making these compromises, it seems likely that the junta will find a reason to shut down the talks or use them as a cause for further detention for leaders that take part. Mizzima summarized the paradox facing those organizing a second Panglong when it wrote, "In the end, though a Panglong II inclusive solely of like-minded parties and organisations would assuredly be less contentious and far simpler in production, it would also assuredly mitigate any meaningful contribution that may be forthcoming from its convening."⁶³

Whatever approach the government and opposition take to deal with the new parliament as well as a second Panglong Conference, their decisions are intertwined and will affect one another, with the future of the new government and democracy held in the balance. With Parliament just seated and many outside of Parliament working steadily on a second Panglong, the international community will not have to wait long for serious developments on these issues.

UEC Failures in the Post Election Period

Speaking more broadly, one of the most unacceptable aspects of the post-election period has been the utter failure of the UEC to investigate or punish those responsible for the fraudulent election. They continue to overwhelmingly turn a deaf ear to fraud complaints, just as they did before the election. Whether it is not investigating pre-election complaints about the misuse of state resources or ignoring widespread reports of advance vote fraud in the post-election period, the UEC continues to show a consistent indifference to their electoral responsibilities. This continued failure to act further confirms their complicity in the regime's scripted election.

⁶³ "Panglong II requires further touches, military on board" *Mizzima News*, 27 December 2010. Available at <http://www.mizzima.com/edop/editorial/4705-panglong-ii-requires-further-touches-military-on-board.html>

The constitution establishes the UEC as the primary rule maker and judge in electoral disputes. Chapter IX, Section 399(g) of the 2008 Constitution gives the UEC complete power to create election tribunals to investigate such claims but the commission has thus far almost entirely refused to use this power.⁶⁴ In fact, the system is organized so that the UEC does not even have to deal with most of the electoral fraud claims that should rightfully be filed with them thanks to their charging an exorbitant fee to file a claim. The UEC continues to impose a 1,000,000 kyat (~1,000 USD) fee for anyone wishing to file a claim of election fraud or malfeasance against another party or the UEC itself.⁶⁵ Opposition figures realize the fruitlessness of an appeal to the UEC. “We are well aware of the USDP’s cheating, but we don’t see any point in disputing the results of the election,” he said. “If we sue them, we will have to pay one million kyat for every constituency that they stole. We don’t want to waste our time and money on this.”⁶⁶

This fee is in addition to the previously mentioned backward penalties that impose a harsher penalty for making fraudulent accusations of electoral fraud than they do for committing actual electoral fraud.⁶⁷ This fact, combined with the complaint filing fee and the lack of responsiveness that the UEC has shown, keeps many of those with legitimate complaints from coming forward.

⁶⁴ Constitution of the Republic of the Union of Myanmar, Chapter IX, Section 399(g).

⁶⁵ “USDP Lodges Poll Complaint Against Rival Lawmakers-elect” *Mizzima News*, 23 December 2010. Available at: <http://www.mizzima.com/news/election-2010-/4700-usdp-lodges-poll-complaint-against-rival-lawmakers-elect.html>

⁶⁶ Hseng, Sai Zom. “Main Ethnic Parties Plan to Sit in New Parliament” *Irrawaddy News*, 20 November 2010. Available at: <http://www.irrawaddy.org/election/news/613-main-ethnic-parties-plan-to-sit-in-new-parliament.html>

⁶⁷ “Electoral Fraud Cases in ‘in legal limbo’” *Mizzima News*, 14 December 2010. Available at <http://www.mizzima.com/news/election-2010-/4671-electoral-fraud-cases-linger-in-legal-limbo%20-aye-lwin.html>

Perhaps fortunately, fraud victims could also bring their complaint directly to the local police department without having to go through the UEC process. This was a little known way of bypassing the UEC, avoiding their substantial complaint fee, and still filing a claim, though with the police. This was a different but parallel complaint system that unfortunately even the police often did not know very much about. Too often, they would advise victims to go to the UEC and file since they did not know that they too were responsible for hearing and investigating complaints. Like the UEC, going to the police to make an electoral fraud complaint has also been a mostly futile effort for candidates and their parties. Even if the police hear and investigate the complaints, the cases have stalled when handed over to the court. According to Aye Lwin of the Union of Myanmar Federation of National Politics (UMFNP), twenty-nine formal complaints about electoral fraud were being held up in trial courts as of mid-December.⁶⁸

Somewhat ironically, the USDP itself has filed a number of cases with the UEC. USDP candidate Sai Kham Hlaing filed a lawsuit alleging that his opponent's Shan Nationalities Development Party (SNDP) had fifty members organizing within five hundred yards of a polling station and that the party organized with members of the local militia to put pressure on local residents to vote for the SNDP.⁶⁹ While it is encouraging to see that the USDP actually realizes that such activities are a violation of electoral law, it would be far better if USDP members had not done the exact same things they accuse their opponents of at countless locations across the country. It's wishful thinking to believe that complaints from the USDP will spur the UEC to do its job and actually address the threats and intimidation used against voters. Unfortunately, it seems more likely that the UEC will give preferential treatment to the USDP complainants instead of cracking down on the problem in general. The UEC has shown so

⁶⁸ "Electoral fraud cases 'in legal limbo'" *Mizzima News*, 14 December 2010. Available at: <http://www.mizzima.com/news/election-2010-/4671-electoral-fraud-cases-linger-in-legal-limbo%20-aye-lwin.html>

⁶⁹ "USDP Files Lawsuits Alleging Vote Rigging" *The Irrawaddy*, 22 December 2010. Available at: http://www.irrawaddy.org/article.php?art_id=20367

little desire thus far to enforce the electoral laws that hoping that they will start now is simply naïve. Comprehensive reform that includes new UEC leadership seem to be the only way to create an even minimally competent UEC going forward.

Military Draft Law

Rumors began to spread in late 2010 that a conscription law was drawn up and passed by the SPDC shortly before the election in November. They were at first only rumors because, for what were likely political reasons, no new law had been released publicly at that point. The public's fears were validated when the Junta's law No. 27/2010 was finally released in January confirming that the SPDC had passed a law three days before the November election requiring qualified adults to register for the draft.⁷⁰ It's as yet unclear whether the regime will use the new law to require mandatory military service. What we do know is that eligible adults, men between the ages of 18-34 and women between 18-26, that are called up for ordinary military service would be subject to two years of service. The new law does not require military service but it will provide for the government the list of names and ability to more easily require military service in the future if it so desires. The timing of the law just three days before the election and the way it was not announced until over two months later indicate that the military understood well how the public would react.

The new law is enabled by, and sometimes confused with, Section 386 of the constitution which states that, "Every citizen has the duty to undergo military training in accord with the provisions of the law and to serve in the Armed Forces to defend the Union."⁷¹ Given the

⁷⁰ Phanida & Myo Thant, "Military Draft Seen as Threat to Ethnic Armed Groups" *Burma News International*, 11 January 2011. Available at: <http://bnionline.net/news/mizzima/10000-military-draft-seen-as-threat-to-ethnic-armed-groups.html>

⁷¹ Constitution of the Union of Myanmar, Chapter VIII, "Citizen, Fundamental Rights and Duties of the Citizens", Section 386.

relationship the military government has with most of its people, whether Burman or ethnic minority, it's obvious why this provision and the new draft list law are controversial.

The specifics of what appears to be the mandatory military service required by Section 386 are still unclear two years after the approval of the constitution. What is clearer is that if the new law is used to create universal military service for those of military age, the move will be widely unpopular. The fact that the military is most commonly used internally makes being forced to join it even more unpopular. Decades of military tyranny have left the institution despised and resented by the general public. "I don't care what the law says, I can't send my sons to the army, not for a short time or a long time," a Burmese mother with two military age sons said anonymously. "I believe other parents think the same way as I do, so we will all oppose it together. If we can't stop it, we will have no choice but to protest against it until we die."⁷²

Burma already has one of the largest standing armies in the region while spending an inordinate amount of its national budget on military affairs. If the country's decision makers were rational, this law will not be used to create a draft. Because the former cannot be assumed, citizens of Burma across the country will remain wary of possible military service.

Continued Military Control of the Media

The post-election period has also seen the Press Scrutiny and Registration Division continue to censor the media. Much of their effort has been directed at controlling the media's coverage of the release of Daw Aung San Suu Kyi. On November 21st, just eight days after Suu Kyi was released, the PSRD announced that nine journals would be suspended for one to two weeks for their coverage of her

⁷² "Unease Grows over Plans to Introduce Draft" *The Irrawaddy*, 10 January 2011. Available at: http://www.irrawaddy.org/article.php?art_id=20497

release.⁷³ This decision is of course disappointing though there was a substantial amount of coverage, within PSRD guidelines, of her release overall. The PSRD, for example, didn't allow newspapers and journals to put news of her release on the front page of their publications, even though public interest in her release made the news undoubtedly one of the biggest news events of the year. Similarly, magazines and journals were not allowed to run pictures of her over a certain size.

All of this is evidence that parts of the government are stumbling forward in this new era. They appear to have not yet decided how they will deal with Suu Kyi now that she has been released so they stumble between tolerance and crackdown. "Aung San Suu Kyi is now a free person. There is no reason to reject the news about her [automatically]. If the news about her agrees with the rules and regulations released by the division, we will allow it to be published. If not, there will be restrictions," a PSRD official explained after banning the journals.⁷⁴ The official provided more light on the situation the country's media and censors find themselves in currently when he said, "We are giving more opportunities for journals now than in the past but sometimes they are not using these opportunities responsibly. There is only limited trust between us and the media at the moment. It would be more convenient if we had more mutual trust."⁷⁵ All this seems to indicate that some in the PSRD know that its work and mission do not belong in a government claiming to be a democracy such as Burma. Most officials there continue to operate according to the rules of the past however where their first instinct is to exercise control over the media. Which impulse wins out will determine whether Burmese media is able to maintain any of the newfound freedoms it discovered during the election period.

⁷³ "Nine journals suspended by censorship board" *Myanmar Times*, 29 November – 5 Dec 2010. Available at: <http://www.mmtimes.com/2010/news/551/news55103.html>

⁷⁴ Id.

⁷⁵ Id.

Reasons for Optimism

After all the fraudulent ways that the regime has carried out this election and instituted its new “democratic” system, it can be difficult to see anything positive coming from this process. Even considering the myriad flaws with this election process, there are still small reasons for optimism. Any inkling of hope that we can have about the election’s changes however will only be realized over the long term and still depend almost entirely on what happens going forward rather than on the groundwork laid by this election.

Room for optimism exists not in the USDP government as it is currently being formed, but rather in the way that the election created a small space for politics to grow for the first time in many years. Opposition parties, even small ones that did not win any seats, have seen an uptick in party interest and membership applications since the election. This newfound attention to politics is likely a product of several things, including Daw Aung San Suu Kyi’s release. But some of it is surely a reaction to the election itself and the dawning realization that politics is an important issue for every citizen and that discussing politics, while not free, is also not a completely forbidden practice as it perhaps once was.⁷⁶ “The last election has made people realize that politics is not a dangerous issue and that it is relevant for every single person in the country,” U Nay Myo Wai, general secretary of the Peace and Diversity Party, was quoted as saying.⁷⁷

Even if all the necessary changes are not possible in the new parliament, as they likely will not be, the existence of a parliament that includes some minority opposition members is arguably an improvement over the status quo military dictatorship of the past several decades. Democratic change will likely be slower than

⁷⁶ “Myanmar election losers attract new supporters” *Deutsche Press-Agentur*, 05 December 2010. Available at: http://www.monstersandcritics.com/news/asiapacific/news/article_1603496.php

⁷⁷ Id.

everyone outside the junta wishes but if opposition political parties are able to organize and criticize, even if less than completely freely, this will be an improvement. Even if it is more a testament to how bad things have been in the past, it is nevertheless true. Just how much parties will be able to do this in the new parliament remains to be seen but there is reason to hope that they will be. Since the election, many have been able to recruit new members since the election that will be useful in the interim period before the election in 2015. “When we were registering our party, we needed to have 1,000 members, and at that time, it was very hard for us to convince people to join, but now here they are, coming to us without any encouragement,” U Nay Myo Wai said.⁷⁸ The same appears to hold true for some ethnic parties that did largely better than their Burman counterparts in the election. U Zaw Aye Maung from the Rakhine Nationalities Development Party provides one such example when he explains, “Many Rakhine people have come and joined up at our offices in Rakhine region. It is such a big improvement.”⁷⁹

The existence of a parliament and regular elections creates a set of normative standards against which Burmese citizens and the international community can measure the regime’s performance. By having a parliament that is, in theory at least, supposed to be open and operate according to parliamentary rules of procedure, the junta has created a body with standards and pre-existing metrics we can use to assess, and when necessary condemn, its performance.

⁷⁸ Id.

⁷⁹ Id.

Recommendations for Electoral Reform from the Asian Network for Free Elections

Constitutional Amendments

- 1) The constitution needs a considerable amount of amending, if not an outright redrafting. The amending process must be a nationwide and inclusive project. It needs participation from all the people of Burma with public forums to encourage their inclusion in the process.
- 2) A democratic constitution must create a parliament made up of only civilian parliamentarians. The current design setting aside one quarter of parliament's seats for representatives appointed by the military must end. No parliamentarians with dual functions as military officers and legislators should be allowed.
- 3) A system of proportional representation should be considered for the country to ensure opposition parties with sizeable popular support are represented in parliament. This could be a particularly effective system where ethnic identification with their own ethnic parties is strong and ethnic voters continue to vote along ethnic lines.
- 4) If the system of proportional representation mentioned above fails to adequately capture the diversity of Burma's minority ethnic groups, then a system that includes quotas for minority seats in parliament should be considered. However it is done, bringing historically marginalized ethnic minorities into the democratic process is a necessary part of any successful transition to democracy.
- 5) Religious leaders, prisoners, and those eligible voters living outside of Burma must all have the opportunity to vote as citizens of the country.

Voter Registration

- 6) Burma needs to conduct a comprehensive census of its population and needs to update that number every year. All

issued ID cards should be reviewed and rechecked and a new tamper proof system should be established to replace the current system if need be.

- 7) Regarding the voter list, all citizens 18 years and older must be able to register to vote without discrimination and the registrar must permanently remove the names of the deceased from the list. Those names should not be put back on the list for any reason.

Parties and Candidates

- 8) Eliminate the constitution's forbidding presidential candidates from having a spouse from another country or children that are citizens of another country. In addition to having no relevance to a leader's ability to be an effective president, this section seems to exist only to eliminate Daw Aung San Suu Kyi from running for president. An improved constitution would not include a clause targeted to weaken the government's opposition.
- 9) Remove or significantly lower the candidate registration fee. Currently, the fee is 500,000 kyat (approximately 500 USD). This severely limits the number of candidates that less well-funded parties can afford to register. This clause seems entirely unnecessary and intended only to favor wealthy parties tied to the military. As such, it should be removed or substantially lowered.
- 10) To end political interference by the military and current government, the UEC must sincerely enforce the current law forbidding parties from abusing government resources for campaign purposes.

Campaign Period

- 11) The use of intimidation or threats to pressure voters and other stakeholders must be punished. No matter the party or official doing it, such threats should not be tolerated and those perpetrating these kinds of threats should be prosecuted.

- 12) Campaign laws must be in accordance with international principles on the freedom of movement, assembly, and association. The climate of fear that exists for many supporters of parties other than the USDP is a serious problem. Elimination of both the government sponsorship of the USDP as well as the outright threats made to voters to support the USDP would go a long way towards making voters feel like they are free to cast their vote without fear of government retribution. The provision requiring a week's notice before a planned rally should also be dropped.
- 13) Promulgate a new law on campaign finance for more equal electoral competition and then actually enforce that law. Enactment and enforcement of a well-written law on campaign finance would also have the beneficial effect of limiting the misuse of state facilities and government human resources in the campaign.
- 14) Voter education and civic education must begin early in the election cycle, i.e. well before the election. The UEC must provide a comprehensive education, in a neutral manner, to voters by any and all means possible. They should not overly rely on television or any media that is consumed mainly by wealthier city dwellers. Outreach programs and community information sessions should be thoroughly and impartially carried out all over the country.
- 15) The government should do everything in its power to ensure that all areas have polling stations. Because areas without elections were far too common this election, the government and UEC must do more in the future to ensure that each citizen has access to a polling station and feels free to vote as they desire. Even if that requires a 3rd party ethnic administration to help to manage the poll's logistics, the government must do more to ensure that no areas are kept from voting.
- 16) Illegal efforts to destroy opposition campaign materials must be investigated and punished.

Union Election Commission

- 17)** Truly independent election commissions should be established at all levels of administration, from the Union Election Commission on down.
- 18)** The UEC must have a diverse set of members that are either appointed by various groups within society or else fairly elected by the people. Its members should represent all parts of the country and its people, not simply the elite military members that appointed them, as is mainly the case now. Members should operate in an objective manner but, failing that, having members from a variety of different backgrounds that are each biased in their own ways and can serve as checks on each other is better than the status quo of a homogenous bias.
- 19)** To give them greater independence, UEC members should not be able to be easily replaced by the president or a parliament controlled by a single military allied party, as is currently the case. In time, a truly independent parliament could be trusted to approve UEC members but even then UEC commissioners should be given ample room to operate without fear of reprisal from a politically motivated parliament.
- 20)** An independent election complaint tribunal should be set up to investigate and prosecute electoral complaints, disputes, and infractions. This body should work with, but be independent from, the Union Election Commission and Township Commissions. The UEC may of course refer cases to the tribunal but the court should also hear cases brought directly to it by the relevant stakeholders.
- 21)** The UEC and complaint tribunal should investigate claims of vote fraud and, where a great deal of fraud is found, the appropriate district must re-vote. Where lesser fraud is found, those responsible should be sacked if they are election or UEC officials and otherwise punished through the use of the UEC and tribunal's power to investigate and prosecute.

- 22) The time allowed for investigations of electoral injustice should not be limited. An independent UEC and electoral tribunal should be encouraged to act the sooner the better but there should be no limiting deadlines after which they cannot investigate fraud.
- 23) The UEC must investigate the use of government resources for some parties' campaigns, primarily the USDP. Where abuses are found, both the party and the candidates responsible should be held accountable.
- 24) Remove the current UEC fee that charges a party or individual 1 million kyat (1000 USD) to sue the UEC or an opposing party in court.
- 25) Enforce the laws to establish electoral justice and to create a system free from special privileges or discrimination. In areas with the worst electoral malfeasance, re-elections should be held and these new political norms can begin to be implemented.

Media

- 26) Eliminate the Press Scrutiny and Registration Division of the Ministry of Information. Its stranglehold on the media prevents the development of the free press that is so necessary for a healthy democratic environment.
- 27) Government ownership of major media outlets should be stopped or, at the very least, each should be given an independent charter so that they can operate free from government influence and interference.
- 28) The few private media groups that do exist should not have to pass the aforementioned censorship board and should not have to self-censor their reports because they fear government reprisal for anything negative they report.
- 29) Government control over the Internet should be eased. Major government censorship, surveillance, and intentional slowing of the Internet handicaps the country's development democratically, culturally, and economically.

- 30) An independent media commission should be established to promote freedom of expression and monitor the public's equal access to media.
- 31) The media must be able to play their proper role during the election season in providing balanced and fair news on all parties and candidates.

Advance Voting & the Counting Process

- 32) All counting, no matter the time, location, or whether the vote is from the advanced voting period or Election Day, should be done in full view of party agents for all parties, voters, as well as other stakeholders. This is a bedrock principle that must not be violated.
- 33) Due to the ease of electoral abuse of the advance voting option, ANFREL strongly recommends eliminating the Advance Voting Period. Since manipulation during the advance-voting period was the primary means of ballot and vote fraud during this election, its elimination will simplify the voting and counting processes and likely lessen the amount of fraud.
- 34) If advance voting is not eliminated, the results of the advance vote and e-day vote should be announced separately at all polling stations and cumulative totals should be announced before ballots are moved from PSs to Ward Offices and from Ward Offices to Township Offices.
- 35) Unmarked ballots for the advance vote period as well as Election Day should be kept in a safe and secure place where they will not be tampered with or taken. Votes from the advance-voting period should similarly be kept in a secure place where they cannot be added to or removed.
- 36) All advance vote ballots should be kept in secure places monitored by all parties. They should be transported to the polling stations before polls open on polling day and, at the latest, before they close. No votes should be kept behind at the township office or delivered in the middle of the count of polling day votes.

- 37) Advance votes should not be collected outside of the predetermined voting period and should not be counted before Election Day.
- 38) Just like votes on Election Day, advance votes should be cast following international standards respecting the sanctity of the secret ballot. In far too many cases, advance ballots were collected door-to-door, a blatant violation of the principle of the secret ballot and a situation ripe for voter intimidation.
- 39) All advance voting must use the same voter list as is used on Election Day to avoid the possibility of multiple vote fraud.
- 40) Vote totals of advance votes marked on the voter list should be reconciled with the number of advance ballots being brought to polling stations to lessen the amount of fraudulent advance vote ballots sent to polling stations.
- 41) Proxy voting must be eliminated. All citizens wishing to vote must do so individually. Heads of households should not be allowed to vote in place of their family members going and voting themselves. Regardless of whether the family member wishes to consent to this kind of arrangement, it violates the principles of one person, one ballot and the secret ballot. Additionally, leaders, be they in government ministries, the military, or private companies should not coerce those under them to vote or vote for their employees.

Appendix & Reference Materials

Maps of Election Results

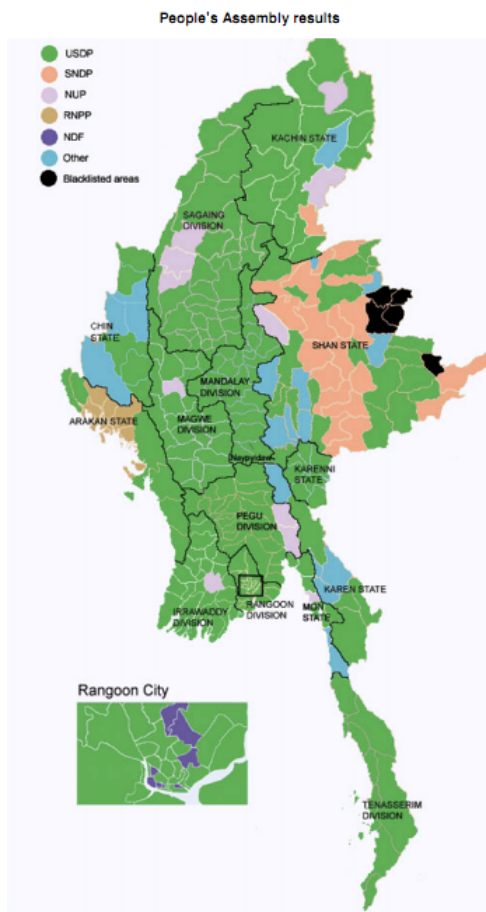


Figure 49: People's Assembly Election Results Courtesy of the Alternative ASEAN Network on Burma. Available at: <http://altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Election%20Recap.pdf>

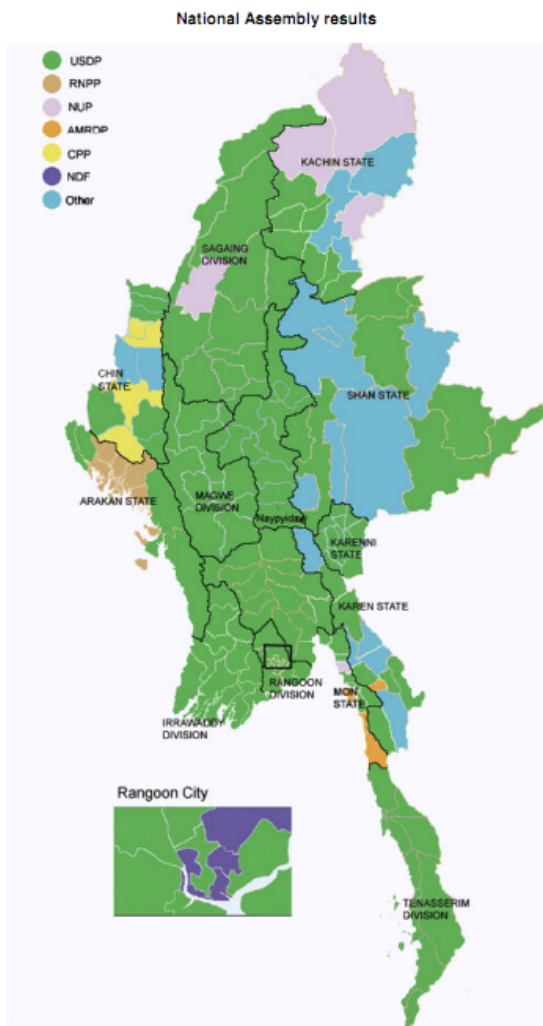


Figure 50: National Assembly Election Results Courtesy of the Alternative ASEAN Network on Burma. Available at:
<http://altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Election%20Recap.pdf>

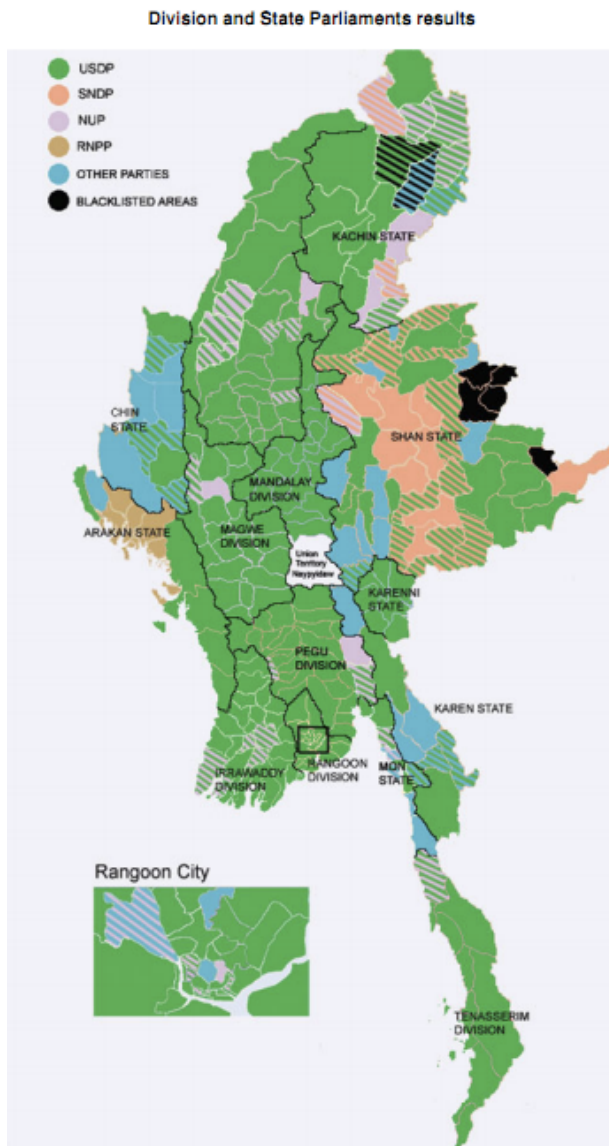


Figure 51: Local Assembly Election Results Courtesy of the Alternative ASEAN Network on Burma. Available at: <http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/Election%20Recap.pdf>

Parliament & Local Assembly Leaders

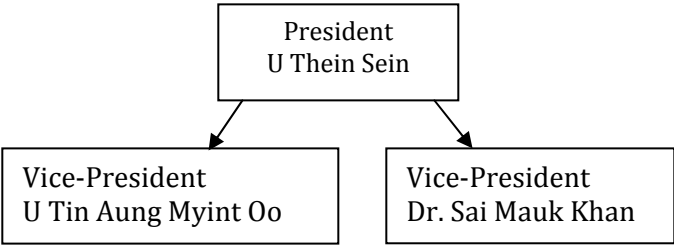
#	Name	Party	Position	State and Region
1	U Thein Sein	USDP	President	Burma
2	U Tin Aung Myint Oo	USDP	Vice-President (1)	Burma
3	Dr. Sai Mauk Kham	USDP	Vice-President (2)	Burma
4	U Khin Aung Myint	USDP	President	National Parliament
	U Mya Nyein	USDP	Vice President	National Parliament
5	U Shwe Mahn	USDP	President	People Parliament
	U Nanda Kyaw Swa	USDP	Vice President	People Parliament
6	U Lajung Ngan Seng	USDP	President	Kachin Sate
7	U Rawang Jung	USDP	Speaker	Kachin Sate
8	U Sai Myint Kyaw	USDP	Deputy Speaker	Kachin Sate
9	U Sai Tun Yin	USDP	President	Shan Sate
10	U Sai Lone Saing	USDP	Speaker	Shan Sate
11	U Sai Kham Mayt	USDP	Deputy Speaker	Shan Sate
12	U Khin Maung Oo	USDP	President	Karenni Sate
13	U Kyaw Swe	USDP	Speaker	Karenni Sate
14	U Maung Maung Aye	USDP	Deputy Speaker	Karenni Sate
15	Brigadier Zaw Min	Army	President	Karen Sate

16	U Saw Aung Kyaw Min	USDP	Speaker	Karen Sate
17	U Man Hla Myaing	USDP	Deputy Speaker	Karen Sate
18	U Ohn Myint	USDP	President	Mon Sate
19	U Kyin Pe	USDP	Speaker	Mon Sate
20	U Htay Lwin	USDP	Deputy Speaker	Mon Sate
21	U Htein Lin	USDP	President	Rakhine Sate
22	U Hla Maung Tin	USDP	Speaker	Rakhine Sate
23	U Thar Nyunt	USDP	Deputy Speaker	Rakhine Sate
24	U Home Wine	USDP	President	Chin Sate
25	U Hau Khin Kham	USDP	Speaker	Chin Sate
26	U Ohn Lwin	USDP	Deputy Speaker	Chin Sate
27	U Maung Maung Win	USDP	President	Yangon Division
28	U Sein Tin Win	USDP	Speaker	Yangon Division
29	U Tin Aung	USDP	Deputy Speaker	Yangon Division
30	U Aung Zan	USDP	President	Madalay Division
31	U Win Maung	USDP	Speaker	Mandalay Division
32	U Aung Htay Kyaw	UDSP	Deputy Speaker	Mandalay Division
33	U Phone Maw Shwe	USDP	President	Magwe Division
34	U Ye Myint	USDP	Speaker	Magwe Division
35	U Saw Win Maung	USDP	Deputy Speaker	Magwe Division
36	U Tin Ngwe	USDP	President	Sagaing Division

37	U Thin Hlaing	USDP	Speaker	Sagaing Division
38	U Thaung Sein	USDP	Deputy Speaker	Sagaing Division
39	U Thein Aung	USDP	President	Irrawaddy Division
40	U Son Tint	USDP	Speaker	Irrawaddy Division
41	Dr. Htein Win	USDP	Deputy Speaker	Irrawaddy Division
42	U Nyan Win	USDP	President	Pago Division
43	U Win Tin	USDP	Speaker	Pago Division
44	U Win Myint Soe	USDP	Deputy Speaker	Pago Division
45	U Myat Ko	USDP	President	Thanintharyi Division
46	U Htin Aung Kyaw	USDP	Speaker	Thanintharyi Division
47	U Kyi Win	USDP	Deputy Speaker	Thanintharyi Division

Figure 52: List Courtesy of Myanmar Citizen Congress Watch Available at: http://www.mccw.info/index.php?option=com_content&view=article&id=96&Itemid=85

National Government Structure



#	Ministries in the New Government
1	Ministry of Defense
2	Ministry of Home Affair
3	Ministry of Border Affair
4	Ministry of Foreign Affair
5	Ministry of Information
6	Ministry of Agriculture and Irrigation
7	Ministry of Finance and Revenue
8	Ministry of Commerce
9	Ministry of Communication , Post and Telegraph
10	Ministry of Immigration and Population
11	Ministry of Forestry
12	Ministry of Transport
13	Ministry of Industry No.1
14	Ministry of Industry No.2
15	Ministry of Railways Transportation
16	Ministry of Energy
17	Ministry of Electrical Power No.1

18	Ministry of Electrical Power No.2
19	Ministry of Education
20	Ministry of Health
21	Ministry of Religious Affair
22	Ministry of Science and Technology
23	Ministry of Immigration and Population
24	Ministry of Myanmar Economic Development
25	Ministry of Construction
26	Ministry of National Planning and Economic Development
27	Ministry of Livestock and Fisheries
28	Ministry of Mining
29	Ministry of Co-operative
30	Ministry of Labour
31	Ministry of Ministry of Hotel and Tourism
32	Ministry of Culture
33	Ministry of Sport
34	Ministry of President's office

Bolded Ministries Indicate New Entities

#	New Ministers (Specific positions not yet announced)	Source of Seat
1	Senior General Ko Ko	Appointed
2	General Hla Minn	Appointed
3	General Thein Htay	Appointed
4	U Wanna Maung Lwin	Appointed
5	U Kyaw San	Lower House
6	U Myint Hlaing	Lower House
7	U Hla Htun	Lower House

8	U Tin Naing Thein	Lower House
9	U Thein Htun	Upper House MP
10	U Khin Maung Myint	Lower House
11	U Win Htun	Appointed
12	U Nyan Htun Aung	Lower House
13	U kyaw Swa Khine	Lower House
14	U Soe Thein	Lower House
15	U Aung Minn	Lower House
16	U Than Htay	Lower House
17	U Zaw Minn	Lower House
18	U Khin Maung Soe	Lower House
19	Dr. Mya Aye	Lower House
20	Dr. Pe Thet Khin	Lower House
21	Thura U Myint Maung	Lower House
22	U Aye Myint	Lower House
23	U Khin Yee	Appointed
24	Wanna Kyaw Htin U Win Myint	Upper House MP
25	U Soe Maung	Lower House
26	U Thein Htike	Lower House
27	U Tin San	Lower House
28	U Thein Nyut	Lower House
29	U Ohn Myint	Lower House
30	U Aung Kyi	Lower House

Seat Distribution in Parliament & Local Assemblies

Senate		
MP Affiliation	Seats	% of the seats
Military Appointed	56	25%
Ethnic groups	30	13.38%
NUP	5	2.23%
NDF	4	1.78%
USDP	129	57.53%
Total	224	

House		
Type of MP	Seats	% of the seats
Military Appointed	110	25%
USDP	259	59.311%
NDF	8	1.832%
Ethnic	46	10.534%
NUP	12	2.748%
Total	435	

Local Assemblies		
Type of MP	Seats	% of the seats
Military Appointed	222	25%
USDP	493	55.7%
NDF	4	0.452%
Ethnic	117	13.221%
NUP	47	5.311%
Total	883	

	Lower house (Pyithu Hluttaw)	Upper House (Amyotha Hluttaw)
Number of MPs	435	224
Military Appointed Members	110	56
Number of Non- Military Members	325	168
Number of Ministers	22	2

