



PEACE NEGOTIATIONS
POST-CONFLICT CONSTITUTIONS
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THE 2010 BURMESE ELECTIONS: NEITHER FREE NOR FAIR

Elections Monitoring Report

Prepared by

The Public International Law & Policy Group

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BURMESE ELECTIONS: NEITHER FREE NOR FAIR**Executive Summary**

On November 7, 2010, general elections were held in Burma, implementing a constitution adopted through an undemocratic referendum. The State Peace and Development Council (SPDC), the Burmese military regime, claims that the elections are a step towards democracy, yet numerous reports from sources within Burma reveal extensive electoral abuses, both before and during the November 7 polls. Reports show that the junta and the junta-backed Union Solidarity and Development Party (USDP) systematically threatened and coerced voters while seriously impeding the ability of opposition parties to register, campaign, and access the media. In the weeks leading up to the election, the junta and the USDP began an undisguised campaign of vote-buying, while the Union Election Commission, which has close ties to the junta, cancelled the election altogether in many ethnic areas.

The process for adopting the 2008 constitution was similarly flawed. The SPDC held the constitutional referendum on May 10, 2008, just one week after Cyclone Nargis tore through Burma's Irrawaddy Delta. The SPDC claimed a 98 percent voter turnout, despite the massive natural disaster, and a 92 percent approval rate in the referendum. This reported approval rate, coupled with the documented incidents of systematic abuse and irregularities during the referendum, demonstrates the lack of credibility of the entire referendum process.

The purpose of this report is to analyze the conduct of the State Peace and Development Council (SPDC) both before and during the 2010 general elections in Burma and to compare that conduct with basic international standards for democratic elections. The report reviews basic standards for elections and, on the basis of media and other reports, assesses the administration of the elections under those standards. The report finds that the SPDC did not conduct the elections in accordance with international law or basic democratic standards, and that the elections were neither free nor fair. The report concludes with a series of recommendations for policymakers and other actors in the international community.

BURMA ELECTIONS MONITORING REPORT NOVEMBER 8, 2010
TABLE OF CONTENTS

Executive Summary	
Statement of Purpose	1
Introduction	1
International Standards and the Elections in Burma	2
<i>Legal Structure</i>	3
<u>Legal Structure in Burma</u>	4
<i>Elections Commissions</i>	5
<u>Elections Commissions in Burma</u>	7
<i>Elections at Regular Intervals</i>	10
<u>Elections at Regular Intervals in Burma</u>	10
<i>Freedom of Candidature and Campaigning</i>	10
<u>Freedom of Candidature and Campaigning in Burma</u>	12
<i>The Right to Vote</i>	17
<u>Universal Suffrage</u>	18
Universal Suffrage in Burma	18
<u>Free Suffrage</u>	21
Right to Information	22
Freedom of Assembly and Association	22
Free Suffrage in Burma	23
<u>Equal Suffrage</u>	28
Equal Suffrage in Burma	29
<u>Secret Suffrage</u>	30
Secret Suffrage in Burma	31
<i>Elections Monitoring</i>	32
<u>Elections Monitoring in Burma</u>	34
<i>Appeals Process</i>	35
<u>Appeals Process in Burma</u>	37
Recommendations	38
Conclusion	39
About the Public International Law & Policy Group	40

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Statement of Purpose

The purpose of this report is to analyze the conduct of the State Peace and Development Council (SPDC) both before and during the 2010 general elections in Burma and to compare that conduct with basic international standards for democratic elections. The report finds that the SPDC did not conduct the elections in accordance with international law or basic democratic standards, and that the elections were neither free nor fair.

Introduction

On November 7, 2010, the State Peace and Development Council held the first elections in Burma since 1990. The elections concerned 330 seats in the People's Assembly and 168 seats in the National Assembly, both national parliamentary bodies created under the 2008 constitution, as well as 673 seats in regional and state parliaments. Twenty-five percent of the seats in those bodies are reserved for members of the military, who will be appointed. The remaining seats were elected based on a first-past-the-post model in which the candidate that receives the most votes wins the seat, whether or not that candidate receives a majority of votes. If there was only one candidate registered in a constituency, no election was to be held and that candidate would be granted the seat for that constituency. The Union Solidarity and Development Party (USDP), the main junta-backed party, is chaired by the incumbent prime minister and backed by many cabinet members and recently retired military members who ran as USDP candidates. The National League for Democracy (NLD), Aung San Suu Kyi's party and the winning party in the 1990 elections, decided to boycott the polls and was officially disbanded by the junta for that decision.

International law, state practice, and fundamental principles of democracy provide clear basic standards for elections. These basic standards have been adopted and endorsed by a range of states, regional organizations, and other international bodies through treaties, conventions, guidelines, and similar instruments, thereby demonstrating their general acceptance as standards for the conduct of elections. These basic standards, discussed below, are generally regarded as minimum requirements for elections to be considered free and fair. In addition, states often utilize additional means and protections to ensure elections are conducted in a democratic manner.

This report reviews the basic international standards for free and fair elections and analyzes the SPDC's conduct both leading up to and during the elections with respect to each of these standards. In doing so, the report draws from media reports as well as accounts from organizations and individuals working on the ground in Burma. The report finds that the SPDC has unequivocally failed to meet basic international standards in carrying out the November 7 elections. Further, the SPDC affirmatively and systematically violated the basic rights of Burmese citizens during the elections.

International Standards and the Elections in Burma

Free and fair elections are generally considered a basic human right and a fundamental element of democracy.¹ International organizations, including the United Nations, the Council of Europe, the African Union, and the Organization of American States, have developed legal standards that govern the conduct of free and fair elections.² Guidelines developed by international organizations and instances of state practice have further defined standards for a free and fair electoral process.³ For example, all participating states of the Organization for Security and Co-operation in Europe (OSCE) have agreed that “the will of the

¹ The Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001), available at http://www.osce.org/publications/odihr/2005/04/14004_240_en.pdf

² Universal Declaration for Human Rights, art. 2, 20-21 (Dec. 10, 1948), available at <http://www.un.org/Overview/rights.html>; International Covenant for Civil and Political Rights, art. 2-3, 19, 21-22, 25 (Mar. 23, 1976), available at <http://www2.ohchr.org/english/law/ccpr.htm>; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (Jan. 4, 1969), available at <http://www2.ohchr.org/english/law/cerd.htm>; International Convention on the Elimination of All Forms of Discrimination Against Women, art. 7 (Sept. 3, 1981), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2>; African Charter on Human and People's Rights, art. 13 (Organization of African Unity, Oct. 21, 1981), available at <http://www.hrcr.org/docs/Banjul/afhr3.html>; American Convention on Human Rights (Organization of American States, July 18, 1978), art. 15-16, 23, available at http://www.hrcr.org/docs/American_Convention/oashr5.html.

³ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* (Oct. 30, 2002), available at <http://www.venice.coe.int/docs/2002/CDL-AD%282002%29023-e.pdf>; Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections* (Mar. 26, 1994), available at <http://www.ipu.org/cnl-e/154-free.htm>.

people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of government.”⁴

Free and fair elections generally involve a clear legal structure governing the elections; elections held at regular intervals; an independent electoral commission; freedom of candidature and campaigning; universal, equal, free, and secret suffrage; monitoring of the elections process; and an electoral that system includes mechanisms for appeal to address any concerns over the process or the results.

In preparing for and carrying out the November 7 elections in Burma, the SPDC failed to meet any basic international standards for a free and fair elections process. According to reports from individuals and organizations working inside Burma, the USDP and the SPDC threatened and coerced voters and opposition politicians and denied access to information and the ability to freely campaign. Throughout, the Union Election Commission demonstrated a strong bias in favor of the USDP, severely restricting the actions of other parties and canceling the elections in thousands of villages.

Legal Structure

International standards provide that states conducting elections should institute a clear legal structure to govern the elections process.⁵ The legal provisions governing elections should provide “effective mechanisms and remedies for enforcing electoral rights.”⁶ The legal structure should identify rights related to elections, provide aggrieved parties the opportunity to file a complaint, ensure that the reviewing court or commission issues a prompt and fair decision, and provide that the hearing is subject to review by a higher court or commission.⁷

⁴ The Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001), available at http://www.osce.org/publications/odihr/2005/04/14004_240_en.pdf.

⁵ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 1 (2001).

⁶ United Nations Development Program, Electoral Systems and Processes Practice Note, 14, (Jan. 2004), available at http://www.undp.org/governance/docs/ElectionsPN_English.pdf.

⁷ United Nations Development Program, Electoral Systems and Processes Practice Note, 14, (Jan. 2004).

Legal Structure in Burma

The legal framework governing the 2010 elections was severely flawed. The legal framework consists mainly of the 2008 constitution and five elections laws promulgated by the SPDC. These election laws governed the creation of the Union Election Commission, the registration of political parties, and the elections to both national parliamentary chambers and regional and state chambers. The Union Election Commission was given broad powers, including the power to issue directives and make decisions related to the elections.⁸ These directives and decisions formed the rest of the legal framework and were not subject to appeal or review.⁹

The constitution that provides the basis for the 2010 elections legal framework was adopted through a referendum conducted on May 10, 2008, just one week after Cyclone Nargis tore through Burma's Irrawaddy Delta. The SPDC claimed a 98 percent voter turnout in the referendum, despite the massive natural disaster, and a 92 percent reported approval rate.¹⁰ The reported approval rate, coupled with the documented incidents of systematic abuse and irregularities, demonstrate the lack of credibility of the entire referendum process.

The 2008 constitution contains many controversial provisions that significantly undermine the democratic nature of the elections process and the future government. In particular, the 2008 constitution guarantees the military a highly privileged role in the government in Burma and excludes most democratic leaders. For example, under the 2008 constitution, the military is guaranteed one quarter of the seats in both houses of the bicameral legislature¹¹ and the Commander-in-Chief of Defense Services would exert a high degree of control over the appointment of Ministers.¹² Moreover, the heads of three Ministries—Defense, Home Affairs, and Border Affairs—are not required to resign from the military in order to hold the title of minister.¹³ Furthermore, the constitutional provisions on the qualifications for the president and vice president contain a

⁸ *Union Election Commission Law*, art. 8 (Burma, 2010), available at http://www.burmaelection2010.com/PDF/Election_Laws/1.-Union-Election-Commission-Law-English.pdf.

⁹ *Union Election Commission Law*, art. 9 (Burma, 2010).

¹⁰ Human Rights Watch, *Q&A on Elections in Burma*, 5 (Nov. 3, 2010), available at <http://www.hrw.org/node/94006>.

¹¹ MYANMAR CONST. art. 74(a), 109(b) (2008).

¹² MYANMAR CONST. art. 14, 74, 232 (2008).

¹³ MYANMAR CONST. art 232(j)(ii) (2008).

requirement that the individual be “well acquainted” with political and military affairs of the state, which likely means that only members of the military are eligible to hold these positions.¹⁴

The constitution effectively prohibited most democratic leaders from participating in the 2010 elections as candidates or voters. For instance, the constitution prevented most individuals elected in the 1990 elections from holding office because they had served time in prison—prison sentences usually imposed for their pro-democracy activities.¹⁵ Furthermore, Buddhist monks, an influential group generally opposed to the military regime, were prohibited from voting or holding office by the 2008 constitution.¹⁶

Elections Commissions

Independent and impartial election commissions are essential in facilitating free and fair elections, as “only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the elections process.”¹⁷ Establishing such elections commissions at the national level, as well as lower-level commissions responsible to the national elections commission, helps to prevent irregularities and promote democratic processes.¹⁸ Independent and impartial elections commissions administering the elections process creates greater confidence, both within and outside of the country, that elections are being conducted in accordance with international standards.¹⁹

The process by which members of an elections commission are selected affects the impartiality and independence of the elections commission.²⁰

¹⁴ MYANMAR CONST. art. 59(d) (2008).

¹⁵ MYANMAR CONST. art. 121(a-b, e-h) (2008).

¹⁶ MYANMAR CONST. art. 121(i) (2008).

¹⁷ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001); European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.68 (Oct. 30, 2002).

¹⁸ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11 (2001); European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.71 (Oct. 30, 2002).

¹⁹ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.71 (Oct. 30, 2002).

²⁰ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001).

Generally, an elections commission consists of a judge or legal officer and representatives of political parties selected based on a party-oriented formula to facilitate the expression of a variety of voices within the commission and, thus, independence from the governing authorities.²¹ Some states also include members of national minorities within elections commissions.²² International standards provide that the judge or legal officer serving in an elections commission must be independent from the authority of individuals running for office.²³ Independence within the commission also requires that political parties be represented either equally or proportionally, based on the number of votes received in the last elections and that political commissioners be prohibited from campaigning.²⁴

International law and state practice guidance suggest that members of elections commissions, particularly at the central level, should have a strong understanding of electoral issues through training or experience in the law or related fields.²⁵ Additionally, to ensure the continued independence of commissioners, international standards provide that the bodies that appoint commissioners should not generally be able to recall them.²⁶

Independent and impartial elections commissions require a clear legal framework forming the commission, detailing the authority and responsibility of central elections commissions and subordinate lower elections commissions, and establishing the relationship between all elections commissions and the state's

²¹ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11 (2001); European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.75 (Oct. 30, 2002).

²² European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.76 (Oct. 30, 2002).

²³ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.75 (Oct. 30, 2002).

²⁴ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.75 (Oct. 30, 2002).

²⁵ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11-12 (2001); European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.83 (Oct. 30, 2002).

²⁶ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1.77 (Oct. 30, 2002).

government.²⁷ Transparency in the legal structure of elections commissions enhances independence and impartiality.

International standards require that elections commissions, once formed, operate to serve the interests of all citizens and execute their duties impartially.²⁸ To facilitate such impartiality and independence, elections commissions, particularly at the central level, are generally required to work on a continual basis, not as temporary bodies established in anticipation of a single election.²⁹ Additionally, international norms require that an electoral commission's legal framework allows for appeal of decisions of the elections commission, either to a higher level elections commission or a court.³⁰ Such elections commission operating provisions are intended to safeguard the continued independence and impartiality of the commission well beyond its initial formation and composition.

Elections Commissions in Burma

The Union Election Commission (UEC) in Burma is neither independent nor impartial. Members are appointed by the SPDC with no provision for independent approval or oversight.³¹ According to the 2008 constitution, the President may also impeach members of the UEC for such vague reasons as “misconduct” and “inefficient discharge of duties.”³² This renders the commissioners vulnerable to political intervention. Furthermore, the UEC has broadly enumerated powers and duties, and its decisions are final and not subject to appeal or independent review.³³

The UEC consists of seventeen members, including one chair. The 2008 constitution and the Union Election Commission Law mandate that all members must meet the minimum qualifications needed to serve in the parliament, must be deemed an “eminent person” by the SPDC, must be loyal to the State, and may not be a member of a political party.³⁴ In practice, many commissioners have ties to

²⁷ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11 (2001).

²⁸ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 12 (2001).

²⁹ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11-12 (2001).

³⁰ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 12 (2001).

³¹ *Union Election Commission Law*, art. 3 (Burma, 2010).

³² MYANMAR CONST. art. 400 (2008).

³³ *Union Election Commission Law*, art. 3 (Burma, 2010).

³⁴ *Union Election Commission Law*, art. 4 (Burma, 2010).

the military and/or the SPDC.³⁵ The UEC chairman, Thein Soe, is the Vice Chief Justice of Burma's Supreme Court, as well as a former Army Major General. Thein Soe was also appointed to Burma's National Convention in 2007 and served on the commission that drafted the 2008 constitution.³⁶ Although there is one Kachin national on the UEC, he also is reported to have ties to the junta and served on the constitution-drafting commission, as well.³⁷

The Union Election Commission Law grants broad powers to the UEC, including the ability to postpone and cancel elections in constituencies in which a natural disaster or security concerns impede a free and fair election.³⁸ The UEC also has the duty to supervise political parties.³⁹ The only limit placed on the UEC is the possibility of impeachment under the 2008 constitution, which is not provided for in the UEC Law.⁴⁰ Under the UEC Law, the UEC may issue directives and orders, which in practice it has done to severely limit political campaigning and to cancel elections in many constituencies.⁴¹

Furthermore, there is no articulated appeals process for decisions of the UEC. The UEC Law prescribes that all decisions by the UEC relating to the election, elections tribunals, and actions under the Political Parties Registration Law are final and conclusive, and are not subject to proceedings in any court.⁴²

Organizations and individuals on the ground in Burma alleged that the UEC did not operate impartially in the weeks and months leading up to the November 7 elections, but instead openly supported the USDP. In Arakan State, the State Election Commission, a branch of the UEC, issued permits for the USDP to use religious buildings for political events, which is prohibited by Burmese elections

³⁵ Mizzima News, *Chairman of Burma's EC on EU Blacklist* (April 2, 2010), available at <http://www.mizzima.com/news/world/3780-chairman-of-burmas-election-commission-on-eu-blacklist.html>.

³⁶ Mizzima News, *Chairman of Burma's EC on EU Blacklist* (April 2, 2010).

³⁷ ALTSEAN-Burma, *Key Facts - Election Commission*, available at <http://www.altsean.org/research/2010/Key%20Facts/ElectionCommission.php>.

³⁸ *Union Election Commission Law*, art. 8 (Burma, 2010).

³⁹ *Union Election Commission Law*, art. 8 (Burma, 2010).

⁴⁰ MYANMAR CONST. art. 400 (2008); *Union Election Commission Law* (Burma, 2010).

⁴¹ *Union Election Commission Law*, art. 13 (Burma, 2010); *Rights to Assemble and Canvass for Hluttaw Candidates*, Union Election Commission Notification No. 91/2010, art. 10 (Burma, 2010), available at http://www.burmalibrary.org/docs09/Rights-to-assemble_NLM2010-08-19.pdf.

⁴² *Union Election Commission Law*, art. 9 (Burma, 2010).

law.⁴³ The State Election Commission denied requests from other parties to use similar buildings.⁴⁴ The UEC also demanded that each family in townships in Karenni and Arakan States pay five hundred to one thousand kyat to supplement the government's elections funds, regardless of whether or not members of the family planned on voting.⁴⁵

In Mongshu Township in Shan State, local authorities would not allow the Shan Nationals Democratic Party to see the eligible voters list.⁴⁶ Meanwhile, USDP members were allowed to enter polling stations to tell voters to vote for USDP candidates.⁴⁷ USDP posters were also allowed near the entrance to polling stations, despite electoral law mandating that no campaign posters be allowed within 500 yards of polling stations.⁴⁸

The membership and behavior of the UEC and its state branches showed a strong link to the SPDC, with a bias in favor of the USDP. This bias undermined the credibility of the UEC, and, as such, the UEC's conduct did not meet international standards governing elections commissions. Furthermore, there is no provision for transparency in the UEC Law, and requests by parties to explain and review decisions went unanswered.⁴⁹

⁴³ Narinjara, *Arakan State EC Abuses Election Law* (Sep. 29, 2010), available at <http://www.narinjara.com/details.asp?id=2745>.

⁴⁴ Narinjara, *Arakan State EC Abuses Election Law* (Sep. 29, 2010).

⁴⁵ Kantarawaddy Times, *Union Election Commission Collects Election Funds from Villagers* (Sept. 28, 2010), available at <http://ktimes.org/en/news/regional/item/132-union-election-commission-collects-election-funds-from-villagers>.

⁴⁶ Election Watch 2010, *26 October – 1 November Developments*, ALTERNATIVE ASIAN NETWORK ON BURMA, available at http://www.altsean.org/Research/2010/Developments/Weeks/Week34.php?pageNum_rs_elections=1&totalRows_rs_elections=32&Submit=Developments (last visited Nov. 7, 2010); Burma Partnership, *Burma Election Tracker, Shan Party Denied Access to Voters' Lists* (Oct. 30, 2010), available at <http://www.burmaelectiontracker.org/node/223>.

⁴⁷ The Irrawaddy, *Electoral Irregularities Rampant* (Nov. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19984.

⁴⁸ The Irrawaddy, *Electoral Irregularities Rampant* (Nov. 7, 2010).

⁴⁹ The Irrawaddy, *USDP Vote Buying Begins* (Oct. 13, 2010), available at http://www.irrawaddy.org/highlight.php?art_id=19721.

Elections at Regular Intervals

International standards provide that elections must be held at regular intervals.⁵⁰ The OSCE guidelines note that general elections are typically held at intervals of four or five years, and that presidential elections may be held at longer intervals, not to exceed seven years.⁵¹ Holding elections at regular intervals allows voters to express their views regularly, based on the performance of the government, and is essential to a fair and free electoral system.

Elections at Regular Intervals in Burma

Elections in Burma have not been held at regular intervals. Before November 7, 2010, Burma had not held an election since 1990, when the NLD soundly defeated the military regime's candidates. The last elections before that was in 1962. Intervals of more than two decades between general elections are significantly longer than those recommended by international standards and do not allow voters to truly participate in the democratic process. Elections in Burma are widely seen as a public relations ploy, particularly given the unwillingness of the SPDC to accept the results of the 1990 election.⁵²

Freedom of Candidature and Campaigning

Freedom of individuals to stand and campaign for elections is a prerequisite for any form of free and fair election.⁵³ Without this freedom, no voting process,

⁵⁰ Universal Declaration for Human Rights, art. 21.3 (Dec. 10, 1948); International Covenant for Civil and Political Rights, art. 24(b) (Mar. 23, 1976); American Convention on Human Rights (Organization of American States, July 18, 1978), art. 21.2; Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 1 (March 26, 1994); Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 5.1, 6, 7.1 (Jun. 29, 1990), available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf.

⁵¹ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 24 (2001).

⁵² *Myanmar's 1st Poll in 20 Yrs Just a Façade?*, TIMES OF INDIA (Nov. 8, 2010), available at <http://timesofindia.indiatimes.com/world/south-asia/Myanmars-1st-poll-in-20-yrs-just-a-facade/articleshow/6886467.cms>.

⁵³ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.1 (March 26, 1994); Universal Declaration for Human Rights, art. 21 (Dec. 10, 1948); International Covenant for Civil and Political Rights, art. 25 (Mar. 23, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c) (Jan. 4, 1969); International Convention on the Elimination of All Forms of Discrimination Against Women,

no matter how it is structured, can remedy the electoral system. International standards require that “equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, including in regards to the coverage of the elections campaign; coverage by the media, in particular the publicly owned media; and public funding of parties and campaigns.”⁵⁴

Freedom of candidature requires that everyone have the right to take part in the government of their country and have an equal opportunity to become a candidate for election.⁵⁵ Furthermore, freedom of campaigning grants everyone the opportunity to freely join or establish a political party or political organization for the purpose of competing in an election.⁵⁶ Freedom of campaigning requires that every candidate be able to campaign on an equal basis with other political parties, including the party forming the existing government.⁵⁷ For free campaigning to take place, there must be no administrative action, violence, or intimidation that prohibits candidates from freely presenting their views.⁵⁸ To this end, every candidate for elections and every political party should have equal opportunity of access to the media to put forth their political views. This in turn entails a neutral attitude by state authorities.⁵⁹ Candidates must also have the freedom to move freely within the country to campaign for election.⁶⁰

art. 7(a) (Sep. 3, 1981); African Charter on Human and People’s Rights, art. 13.1 (Organization of African Unity, Oct. 21, 1981); American Convention on Human Rights (Organization of American States, July 18, 1978), art. 23.1.1.

⁵⁴ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 2.3 (Oct. 30, 2002).

⁵⁵ Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.5 (June 29, 1990); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.1 (Mar. 26, 1994).

⁵⁶ Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.6 (June 29, 1990); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.2 (Mar. 26, 1994).

⁵⁷ Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.6 (June 29, 1990); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.4 (Mar. 26, 1994).

⁵⁸ Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.7 (June 29, 1990)

⁵⁹ Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.8 (June 29, 1990); Inter-

Finally, freedom of candidature and campaigning is accompanied by certain responsibilities that must be undertaken by all candidates and parties. These include the obligations not to engage in violence, to respect the rights and freedoms of other candidates and parties competing in an election, and to accept the outcome of the fair and free election.⁶¹

Freedom of Candidature and Campaigning in Burma

The 2008 constitution and the SPDC's actions in the months leading up to and during the 2010 elections clearly violated international standards regarding free candidature and campaigning. Demonstrating its strong link to the SPDC, the USDP used state resources and exercised state functions in order to both bribe and coerce voters to support its candidates.⁶² The actions of the Union Election Commission further undermined free candidature and campaigning, as the UEC denied registration to some opposition ethnic parties on disputed grounds while allowing the USDP to violate elections laws with impunity.⁶³

The 2008 constitution contains several provisions that inhibit free candidature and campaigning. The 2008 constitution disqualifies certain individuals from candidacy for key legislative and executive positions, including individuals serving a prison term, members of a religious order, and persons who owe allegiance to a foreign government or are subjects or citizens of a foreign country.⁶⁴ Although these provisions are not completely unreasonable at face value, their effect was to bar many domestic activists and democratic leaders, as well as members of religious orders, from taking part in the November 7

Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.3 (Mar. 26, 1994).

⁶⁰ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.9-3.11 (Mar. 26, 1994).

⁶¹ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.9-3.11 (Mar. 26, 1994).

⁶² ALTSEAN-Burma, *Misuse of State Funds*, available at <http://www.altsean.org/Research/2010/Indicators/CAM/CAM3.php?Submit=Developments>.

⁶³ *Illegal USDP Campaign Tactics* (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671; Ko Htwe, *EC Rejects Individual Kachin Candidates*, THE IRRAWADDY (Sept. 16, 2010), available at http://www.irrawaddy.org/article.php?art_id=19487.

⁶⁴ MYANMAR CONST. art. 121 (2008).

elections.⁶⁵ These provisions, together with residency requirements, also barred political exiles.⁶⁶ In addition, many of these provisions are purposefully unclear, allowing the SPDC to broadly construe them to limit freedom of candidature and campaigning. Furthermore, political party registration was prohibitively expensive for many who wanted to take part in the election. Parties were required to pay 300,000 kyat (about USD300) to register and deposit an additional 500,000 kyat (about USD500) per candidate.⁶⁷ Some parties attempted to make alliances in order to meet campaign expenses, as the fees were too much for them to manage on their own.⁶⁸

Contrary to the SPDC's elections law, reports indicate that the USDP used state resources to bribe voters, both before and during the elections. Burma's elections law includes a ban on the direct or indirect use of state resources, including money, state buildings, and other state property, for campaign activities.⁶⁹ However, voters reported that the USDP offered road-building projects, free identification cards, mobile phones, health care, low-interest loans, and other incentives to voters and villages in exchange for support on election day.⁷⁰ In Kachin State, Ohn Myint, a USDP candidate and former Northern Regional Commander in the military, offered free temporary identification cards to voters while he canvassed, demanding that if residents accepted the card they had to vote for him.⁷¹

⁶⁵ *Myanmar: Towards the Elections*, INTERNATIONAL CRISIS GROUP, 10 (Aug. 20, 2009), available at <http://www.crisisgroup.org/home/index.cfm?id=6280>.

⁶⁶ MYANMAR CONST. art. 121 (2008).

⁶⁷ The Associated Press, *Junta Opens Political Party Registration* (Mar. 19, 2010), IRRAWADDY, available at http://www.irrawaddy.org/article.php?art_id=18076.

⁶⁸ Ko Htwe, *Parties Seek Alliances to Meet Election Expenses*, IRRAWADDY (Jun. 18, 2010), available at http://www.irrawaddy.org/article.php?art_id=18751.

⁶⁹ *Political Parties Registration Law* art. 7(c) (Burma, 2010), available at http://www.burmaelection2010.com/PDF/Election_Laws/2.-Political-Parties-Registration-Law-English.pdf.

⁷⁰ Khonumthung News Group, *USDP Tries to Mobilize Mara People for Votes* (Oct. 9, 2010), available at <http://www.khonumthung.org/news.php?readmore=296> (identification cards); *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671 (mobile phones, roads and loans); Shan Herald, *USDP to Provide Free Health Care During its Campaigns* (Sep. 1, 2010), available at <http://www.burmaelection2010.com/news-from-shan-state/219-usdp-to-provide-free-health-care-during-its-campaigns-.html>.

⁷¹ Kachin News Group, *USDP Candidate Trades Free Temporary ID Card for Votes in Phakant* (Oct. 27, 2010), available at <http://www.bnionline.net/news/kng/9623-usdp-candidate-trades-free-temporary-id-card-for-votes-in-phakant.html>.

While some handouts could be funded independently of the SPDC, others demonstrate the government's involvement. Road-building projects, for example, are begun only if a local committee, convened by the local branch of the SPDC, can secure pledges to vote USDP from seventy-five percent or more of the residents living around the area of the proposed road.⁷² Low-interest loans, meanwhile, are often funded by the City Municipal Committee.⁷³ Rangoon mayor and USDP central executive member Aung Thein Lin explicitly told local reporters that his party was using state funds for its campaign activities, describing extensive infrastructure projects as joint efforts between the USDP and the Rangoon municipality.⁷⁴ In Arakan State, authorities in villages devastated by cyclone Giri took advantage of aid distribution to campaign for the USDP.⁷⁵ A candidate for the local opposition party, Rakhine Nationalities Development Party, claimed that government authorities in Myebon township instructed victims to vote for the USDP and promised aid for their votes.⁷⁶ Village authorities told residents in other cyclone-damaged villages that they had to vote USDP if they wanted aid.⁷⁷ Such actions are in clear violation of Burmese law and indicative of the regime's willingness to buy the votes of its people.⁷⁸

The SPDC also went beyond bribery to intimidation tactics against opposition parties and those who associate with them. Opposition politicians claimed that their phone lines were tapped in an attempt to limit their contact with the media.⁷⁹ State security forces followed and questioned villagers who attended opposition events, and security personnel threatened voters with fines,

⁷² *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

⁷³ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010).

⁷⁴ *Rangoon Mayor Says USDP Using State Funds*, IRRAWADDY (Oct. 4, 2010), available at http://www.irrawaddy.org/article.php?art_id=19624.

⁷⁵ *Arakan Authorities Bartering Aid-for-Votes*, DEMOCRATIC VOICE OF BURMA (Nov. 3, 2010), available at <http://www.burma2010election.com/context/report/272>.

⁷⁶ *Arakan Authorities Bartering Aid-for-Votes*, DEMOCRATIC VOICE OF BURMA (Nov. 3, 2010); Burma Partnership, *Burma Election Tracker, Reports, Cyclone Victims in Arakan State Promised Aid if They Vote for the USDP* (Nov. 5, 2010), available at <http://www.burmaelectiontracker.org/node/197>.

⁷⁷ *Thein Sein Campaigns Among Cyclone Victims*, IRRAWADDY (Nov. 5, 2010), available at http://www.irrawaddy.org/article.php?art_id=19961.

⁷⁸ *Rangoon Mayor Says USDP Using State Funds*, IRRAWADDY (Oct. 4, 2010), available at http://www.irrawaddy.org/article.php?art_id=19624.

⁷⁹ *Myint Maung, Junta Continues to Bug Our Phones, Politicians Say*, MIZZIMA (Sep. 14, 2010), available at <http://www.mizzima.com/news/election-2010-/4359-junta-continues-to-bug-our-phones-politicians-say.html>.

imprisonment, or violence if they did not vote for the USDP.⁸⁰ Opposition leaders that own businesses, especially printing and media shops, claimed that local authorities forced them to shut down.⁸¹ The USDP ordered militias to prevent opposition parties from traveling and campaigning in some ethnic areas, demonstrating its strong connection to the junta in its ability to issue orders to militias.⁸² Supporters and relatives of some opposition politicians and candidates were threatened and discriminated against. Family members of imprisoned ethnic politician Gen. Sao Hso Ten, for instance, were not allowed to vote on election day.⁸³ A border security force in Arakan State arrested seven supporters of the opposition National Democratic Party for Development.⁸⁴

In the weeks leading up to the election, intimidation against opposition candidates and supporters became violent. The only candidate opposing USDP Chairman Prime Minister Thein Sein in Naypyidaw was forced to drop out of the election after being severely injured in a motorcycle accident.⁸⁵ Kyaw Aye, the National Unity Party candidate, was hit from behind while riding on the back of a motorcycle by a cyclist who fled the scene but was believed to be connected to the USDP.⁸⁶ An organizer for the All Mon Region Democratic Party was seriously beaten by the Youth Peace and Development Council (YPDC) in Ye township in Mon State. The organizer, Nai Ba Shin, lost consciousness and was brought to the hospital by his wife, who was forced by the YPDC to sign a statement that her

⁸⁰ *People Avoid RNDP Rally*, NARINJARA (Sep. 29, 2010), available at <http://www.narinjara.com/details.asp?id=2746>; *Community Groups Oppose 'Unfair' Vote*, KANTARAWADDY TIMES (Sep. 3, 2010), available at <http://ktimes.org/en/news/regional/item/122-community-groups-oppose-unfair-vote>.

⁸¹ *Rigged Constitution, Vague Laws and Dirty Tricks*, SHAN HERALD (Aug. 28, 2010), available at http://www.shanland.org/index.php?option=com_content&view=article&id=3169:rigged-constitution-vague-laws-and-dirty-tricks&catid=94:feature&Itemid=267.

⁸² Hseng Khio Fah, *Shan, Taang Parties Face Campaign Restrictions*, SHAN HERALD (Oct. 8, 2010), available at http://www.shanland.org/index.php?option=com_content&view=article&id=3237:shan-taang-parties-face-campaign-restrictions&catid=85:politics&Itemid=266.

⁸³ Ko Htwe, *Poll Irregularities May Thwart SNDP*, IRRAWADDY (Nov. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19982.

⁸⁴ Kaladan Press, *Nasaka Arrest Seven NDPD Supporters in South Maungdaw*, BURMA NEWS INTERNATIONAL (Nov. 6, 2010), available at <http://www.bnionline.net/news/kaladan/9705-nasaka-arrest-seven-ndpd-supporters-in-south-maungdaw.html>.

⁸⁵ *Election Timeline November 4*, IRRAWADDY (Nov. 4, 2010), available at http://www.irrawaddy.org/article.php?art_id=19950.

⁸⁶ *Election Timeline November 4*, IRRAWADDY (Nov. 4, 2010).

husband had lost consciousness on his own accord.⁸⁷ These actions of the USDP and SPDC officials violate the rights of Burmese residents to freely associate and assemble by creating a threatening environment in which civilians are punished for their association with opposition groups.

The UEC also enforced the Political Party Registration Law in a discriminatory manner. This law forbids the registration of a party that directly or indirectly uses state resources to campaign.⁸⁸ Yet the UEC accepted the USPD's registration despite its many violations of elections law, while prohibiting the Kachin State Progressive Party (KSPP) from registering as a party, registering individual candidates, or contesting the election.⁸⁹ The Political Parties Registration Law also prohibits political parties with direct or indirect ties to illegal organizations, and the UEC claimed that the KSPP had connections with certain ethnic ceasefire groups that have been declared illegal organizations.⁹⁰ As a result of the KSPP's dissolution, only parties supported by the regime were able to participate in the elections in Kachin State.⁹¹

During the election, UEC officials refused opposition parties access to the registration list and polling stations, while taking no action on USDP violations of elections laws. As noted above, in Mongshu Township in Shan State, local authorities would not allow the Shan Nationals Democratic Party to see the eligible voters list.⁹² Members of the USDP, on the other hand, were allowed to enter polling stations to tell voters to vote for USDP candidates.⁹³ Officials also

⁸⁷ Mehm Aue, *Young Dein Villager Beaten for Organizing AMRDP Campaign*, INDEPENDENT MON NEWS AGENCY (Nov. 4, 2010), available at <http://www.bnionline.net/news/imna/9673-young-dein-villager-beaten-for-organizing-amrdp-campaign.html>.

⁸⁸ *Political Parties Registration Law* art. 7(c) (Burma, 2010).

⁸⁹ Ko Htwe, *EC Rejects Individual Kachin Candidates*, IRRAWADDY (Sep. 16, 2010), available at http://www.irrawaddy.org/article.php?art_id=19487.

⁹⁰ Ko Htwe, *EC Rejects Individual Kachin Candidates*, IRRAWADDY (Sep. 16, 2010).

⁹¹ Kachin News Group, *Three Regime-Backed Kachin Armed Groups to Contest Election*, BURMA NEWS INTERNATIONAL (Oct. 5, 2010), available at <http://www.bnionline.net/news/kng/9468-three-regime-backed-kachin-armed-groups-to-contest-elections.html>.

⁹² Election Watch 2010, *26 October – 1 November Developments*, ALTERNATIVE ASIAN NETWORK ON BURMA, available at http://www.altsean.org/Research/2010/Developments/Weeks/Week34.php?pageNum_rs_elections=1&totalRows_rs_elections=32&Submit=Developments (last visited Nov. 7, 2010); Burma Election Tracker, *Shan Party Denied Access to Voters' Lists in Monghsu, South Shan State* (Oct. 31, 2010), available at <http://www.burmaelectiontracker.org/node/223>.

⁹³ *Electoral Irregularities Rampant*, IRRAWADDY (Nov. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19984.

permitted the USDP to place posters near the entrance to polling stations, despite electoral law mandating that no campaign posters be allowed within 500 yards of polling stations.⁹⁴ In some places, USDP members purported to provide security for polling stations, but instead intimidated voters on their way to vote.⁹⁵ In one constituency in Mon State, advance ballots for civil servants did not include the name of the ethnic opposition candidate, and in the polling station there was no ballot box for the All Mon Regions Democracy Party.⁹⁶

Candidature and campaigning in Burma before and during the elections were not free, and the SPDC's conduct clearly failed to meet numerous international standards. The constitution and elections laws effectively barred most democratic leaders from standing for election, and many of those who did qualify were refused registration. The SPDC was not neutral, but instead used state resources to support the USDP and stifle opposition parties. The Union Election Commission applied the elections law strictly to opposition parties, while allowing the USDP to continue its campaign activities, despite flagrant violations.

The Right to Vote

The right to vote is a fundamental human right and one of the most basic tenets of democracy.⁹⁷ International standards articulate that the right to vote includes (i) universal suffrage, (ii) equal suffrage, (iii) free suffrage, and (iv) secret suffrage.⁹⁸

⁹⁴ *Electoral Irregularities Rampant*, IRRAWADDY (Nov. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19984.

⁹⁵ *Electoral Irregularities Rampant*, IRRAWADDY (Nov. 7, 2010).

⁹⁶ *Election Timeline Nov. 05, 2010*, IRRAWADDY (Nov. 5, 2010), available at http://www.irrawaddy.org/article.php?art_id=19963.

⁹⁷ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001); Universal Declaration for Human Rights, art. 21 (Dec. 10, 1948).

⁹⁸ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3 (Mar. 26, 1994); Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 9-10 (2001).

Universal Suffrage

International law and standards require that every citizen of legal voting age be provided the right to vote.⁹⁹ To implement this right, states must institute a registration process that enables all eligible voters to register easily and quickly.¹⁰⁰ To this end, voter registries should be transparent and updated regularly.¹⁰¹ Although residency is an acceptable restriction on suffrage, permitting citizens outside the state to vote by mail or at embassies increases participation and inclusivity and therefore increases perceptions of a fair election.¹⁰²

Universal Suffrage in Burma

Suffrage in Burma is not universal. Thousands of villagers were categorically denied the right to vote in the November 7 elections, while other Burmese had their votes automatically attributed to the USDP. For instance, the UEC announced in September that there would be no polling in specific village-tracts in Kachin, Kayah, Kayin, Mon, and Shan States as “they are in no position to host free and fair elections.”¹⁰³ These cancellations, which in the case of Shan

⁹⁹ International Covenant for Civil and Political Rights, art. 25(b) (Mar. 23, 1976); Universal Declaration for Human Rights, art. 21.3 (Dec. 10, 1948); Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 10 (2001); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 2.1, 3.2 (Mar. 26, 1994); American Convention on Human Rights (Organization of American States, July 18, 1978), art. 23.1.2.

¹⁰⁰ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 4.1 (Mar. 26, 1994); Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 13-14 (2001).

¹⁰¹ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 13-14 (2001).

¹⁰² Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, *Election Observation Handbook 57* (5th ed. 2005) available at <http://www.osce.org/item/14004.html>; ACE: Electoral Knowledge Network, *ACE Encyclopedia, Electoral Systems, Remote Voting* (last visited Nov. 7, 2010), available at <http://aceproject.org/ace-en/topics/es/esd/esd06/esd06e>.

¹⁰³ *Notification No. 99/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010), available at <http://www.burmalibrary.org/docs09/NLM2010-09-17.pdf> (Kachin State); *Notification No. 100/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Kayah State); *Notification No. 101/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Kayin State); *Notification No. 102/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION

State include the entire Panghsan, Namphan, Pangwaun, and Mongmad Townships, disenfranchised the residents of nearly 24,000 villages.¹⁰⁴ Most of these villages are in areas dominated by ethnic minority groups, including areas under control of ethnic ceasefire groups that have refused to join the Border Guard Forces.¹⁰⁵ Cancellations in the Wa special region in Shan State disenfranchised 460,000 people, bringing the estimated total of voters disenfranchised due to election cancellations up to 1.5 million.¹⁰⁶

In the ethnic areas where polling occurred, there were widespread reports of tampering with the voter lists. A candidate from the Kaman National Progressive Party in Arakan State reported that there were twice as many names on the voter list as eligible voters in the village—the voter list included the names of some villagers he knew were not eligible to vote.¹⁰⁷ In Myitkyina township, in Kachin State, residents reported that all family members, friends and associates of Kachin Independence Organization members were excluded from the voting list.¹⁰⁸

The SPDC's elections laws allow for absentee ballots for those who are seriously ill or very old, as well as members of the civil service serving away from the constituency in which they are on the voting roll.¹⁰⁹ However, a government official in the Ministry of Finance and Revenue reported that the Prime Minister (also the head of the USDP) had ordered all government departments to ensure that every absentee ballot from a civil servant was voted in favor of the USDP.¹¹⁰ Local authorities also reported that individual ward elections commissions

COMMISSION (Sep. 16, 2010) (Mon State); *Notification No. 103/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Shan State).

¹⁰⁴ ALTSEAN-Burma, *Areas Where Elections are Cancelled*, available at <http://www.altsean.org/Research/2010/Key%20Facts/Constituencies/Black%20areas.php>.

¹⁰⁵ Ron Corben, *Burma Excludes Thousands from Voting in Elections*, VOICE OF AMERICA (Sep. 17, 2010), available at <http://www.voanews.com/english/news/Burma-Excludes-Thousands-103126854.html>.

¹⁰⁶ Naw Noreen, *460,000 in Wa State Not Voting*, DEMOCRATIC VOICE OF BURMA (Nov. 7, 2010), available at <http://www.burma2010election.com/context/report/310>.

¹⁰⁷ Burma Election Tracker, *Voter List Fraud Exposed in Shan State* (Oct. 29, 2010), available at <http://www.burmaelectiontracker.org/node/37>.

¹⁰⁸ Kachin News Group, *Voter List Irregularities in Myitkyina*, BURMA NEWS INTERNATIONAL (Nov. 5, 2010), available at <http://www.bnionline.net/news/kng/9689-voters-list-irregularities-in-myitkyina.html>.

¹⁰⁹ *Amyotha Hluttaw Electoral Law*, art. 45 (Burma, 2010), available at http://www.burmaelection2010.com/PDF/Election_Laws/4.-Amyotha-Hluttaw-Electoral-Law-English.pdf.

¹¹⁰ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

transferred all absentee ballots to votes for the USDP, whether or not the voter chose the USDP or even had already voted.¹¹¹ For instance, one student from Chin State living in Rangoon reported that he discovered his vote had already been cast for the USDP on his behalf when he went to cast his absentee ballot.¹¹²

Additionally, military commanders and village headmen were instructed to collect as many advance USDP votes as possible.¹¹³ One intercepted military report detailed that as many as 400 troops and 315 villagers in Myaike and Tavoy Districts had already voted by October 19 under the direction of a military commander.¹¹⁴

In the weeks leading up to the election, advance voting eventually was extended to include anyone the USDP and local authorities could coerce into voting early for the USDP in an attempt to ensure victory.¹¹⁵ A National Unity Party candidate who ran in Hinthada Township of the Irrawaddy division accused his USDP rival of violating elections laws by collecting advance ballots from people who were not eligible for advance voting.¹¹⁶ Prison authorities at Insein prison in Rangoon and Hpa-an prison in Karen State, in cooperation with the Union Election Commission, coerced prisoners awaiting sentencing into voting for the USDP, taking advantage of the fact that Burmese elections law denies the right to vote to any person convicted of a crime.¹¹⁷

Although Burmese expatriates were allowed to vote ahead of the November 7 elections in embassies abroad, Burmese embassies did little, if anything, to notify those eligible that advanced voting was available.¹¹⁸ Embassies in Thailand, Japan,

¹¹¹ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010).

¹¹² Election Watch 2010, *26 October – 1 November Developments*, ALTERNATIVE ASIAN NETWORK ON BURMA, available at http://www.altsean.org/Research/2010/Developments/Weeks/Week34.php?pageNum_rs_elections=1&totalRows_rs_elections=32&Submit=Developments (*last visited* Nov. 7, 2010).

¹¹³ Wai Moe, *Junta Win May Already Be Secured*, IRRAWADDY (Nov. 3, 2010), available at http://www.irrawaddy.org/article.php?art_id=19937; Burma News International, *As Polls Open, Ethnic Feel Pressure to Vote for Regime-Backed Parties* (Nov. 6, 2010), available at <http://www.burmaelection2010.com/news-from-kachin-state/593.html>.

¹¹⁴ Report from sources inside Burma (Oct. 19, 2010), on file with the author.

¹¹⁵ Wai Moe, *Junta Win May Already Be Secured*, IRRAWADDY (Nov. 3, 2010).

¹¹⁶ Htet Aung, *NUP Files Complaint Against USDP Vote Rigging*, IRRAWADDY (Nov. 6, 2010), available at http://www.irrawaddy.org/article.php?art_id=19969.

¹¹⁷ Naw Noreen, *Insein Detainees Cast Advance Vote*, DEMOCRATIC VOICE OF BURMA (Nov. 6, 2010), available at <http://www.burma2010election.com/context/report/297>.

¹¹⁸ Ko Htwe, *Burmese Embassies Restrict Advanced Voting*, THE IRRAWADDY (Oct. 21, 2010), available at http://www.irrawaddy.org/article.php?art_id=19790.

and the UK sent only a handful of invitations to select few Burmese citizens who were supportive of the junta.¹¹⁹ The Burmese embassy in India had already sent the advance ballots back to Burma and was no longer accepting expatriates' votes more than two weeks before election day.¹²⁰

The denial of the right to vote to entire villages is in direct violation of international standards of universal suffrage. Furthermore, the policy of automatic conversion of all absentee ballots to USDP votes effectively disenfranchises the voters who use absentee ballots. As a result of these policies, suffrage in Burma was not universal for the November 7 elections.

Free Suffrage

Free suffrage requires that every voter should have the ability to form an opinion freely, without coercion or pressure, and the ability to express his or her desires freely.¹²¹ In order to implement the ability to form an opinion freely, voters must benefit from freedom of information, including access to campaign information and a list of candidates and unbiased media coverage.¹²² Furthermore, the ability to form and express one's opinions freely requires freedom of assembly and association, such that individuals may assemble to hold meetings, discussions, demonstrations, rallies, and campaign activities; and associate to form political parties, non-governmental organizations, and other political organizations.¹²³ Thus, the ability to form an opinion freely implies that the government must carry out its duties impartially, ensure equality of opportunity between parties and

¹¹⁹ Ko Htwe, *Burmese Embassies Restrict Advanced Voting*, THE IRRAWADDY (Oct. 21, 2010).

¹²⁰ Ko Htwe, *Burmese Embassies Restrict Advanced Voting*, THE IRRAWADDY (Oct. 21, 2010).

¹²¹ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.26 (Oct. 30, 2002); Universal Declaration for Human Rights, art. 19 (Dec. 10, 1948); International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19, U.N. Doc. A/6316 (1966).

¹²² European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.1 (Oct. 30, 2002).

¹²³ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.3-3.4 (March 26, 1994); Right to Freedom of Opinion and Expression, Commission on Human Rights res. 1997/27, U.N. Doc. E/CN.4/1997/27 (1997); Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Art. 11, Rome.4XI.1950 (1950)

candidates, and apply equally laws regarding assembly, association, and media coverage uniformly to all.¹²⁴

Right to Information

The freedom to form an opinion required for free suffrage rests on the right to unbiased information. International standards regarding freedom of information require that voters be able to learn about and discuss the views of the political parties, without intimidation.¹²⁵ In order to form an opinion freely, voters must have access to campaign information and a list of candidates, including civic education, voter information, and information about the political parties.

Voters must also have access to unbiased media coverage.¹²⁶ Freedom of the media is a broad-based right that facilitates the flow of information and enables the individual to make informed decisions.¹²⁷ It is founded on the freedom of individuals “to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹²⁸ Freedom of the media is broad and applies to all types of media communications, but it can be subject to restrictions that are “provided by law and necessary” to protect the reputations of others, national security, public order, public health, or morals.¹²⁹

Freedom of Assembly and Association

The right to free assembly and association gives individuals access to information needed to implement the right to form one’s opinion freely and is a component of the right to express an opinion freely. The right to organize to

¹²⁴ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 2.3.18, 3.1 (Oct. 30, 2002).

¹²⁵ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 7.7 (March 26, 1994).

¹²⁶ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.4 (March 26, 1994).

¹²⁷ Charter of the Fundamental Rights of the European Union, Art. 11, 2000/C 364/01 (2000).

¹²⁸ Universal Declaration for Human Rights, art. 19 (Dec. 10, 1948); International Covenant for Civil and Political Rights (Mar. 23, 1976); General Assembly Resolution 2200A (XXI), Art. 19 (2), U.N. Doc. A/6316 (1966).

¹²⁹ International Covenant for Civil and Political Rights (Mar. 23, 1976); General Assembly Resolution 2200A (XXI), Art. 19 (3), U.N. Doc. A/6316 (1966).

discuss and debate the views of the political parties is a necessary part of the freedom to form an educated opinion.¹³⁰

The freedom to organize to hold demonstrations, rallies, and campaign activities, and associate to form political parties, non-governmental organizations, and other political organizations is also a means to express one's opinion freely. Because voters also express their political opinions through voting, the ability to express one's wishes freely is dependant on strict observance of voting procedures in which voters can cast their vote for registered candidates into a ballot box without intimidation or coercion from the authorities or individuals.¹³¹ To express their wishes freely, voters must feel secure in casting their votes, without fear of retribution.¹³²

Free Suffrage in Burma

The SPDC systematically prevented the citizens of Burma from exercising their free suffrage rights, including the right to information and the right to assemble and associate freely. Citizens and the media reported that the SPDC and its agents used threats, coercion, misinformation, deception, and violence to sway or force voters to vote for SPDC candidates.¹³³ Citizens had little to no access to unbiased information, and the freedoms of association and assembly were severely limited and monitored by the state and the UEC.¹³⁴ Voters were unable to freely form and express opinions and were coerced and threatened so that they could not vote freely for the candidate of their choice.¹³⁵

¹³⁰ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 7.7 (Mar. 26, 1994).

¹³¹ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.1 (Oct. 30, 2002).

¹³² European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.1 (Oct. 30, 2002).

¹³³ *Community Groups Oppose 'Unfair' Vote*, KANTARAWADDY TIMES (Sep. 3, 2010), available at <http://ktimes.org/en/news/regional/item/122-community-groups-oppose-unfair-vote>; *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

¹³⁴ *Election Analysis Barred in Burmese Publications*, MIZZIMA (Mar. 12, 2010), available at <http://www.mizzima.com/news/election-2010-/3658-election-analysis-barred-in-burmese-publications.html>; *Rights to Assemble and Canvass for Hluttaw Candidates*, Union Election Commission Notification No. 91/2010, art. 10 (Burma, 2010), available at http://www.burmalibrary.org/docs09/Rights-to-assemble_NLM2010-08-19.pdf.

¹³⁵ *Community Groups Oppose 'Unfair' Vote*, KANTARAWADDY TIMES (Sep. 3, 2010), available at <http://ktimes.org/en/news/regional/item/122-community-groups-oppose-unfair-vote>.

Citizens in Burma had little access to unbiased information about political parties, candidates, and the November 7 elections. The USDP is reported to have used the Ministry of Information's printers to publish hundreds of thousands of weekly newsletters, which it distributed for free.¹³⁶ Many political parties did not have sufficient funds to publish informational materials, however, and those that were able to publish newsletters were required to charge around 500 kyat (about USD0.50) each for them.¹³⁷ The Ministry of Information also required that all political parties register with the Press Scrutiny and Information Division and pay a 100,000 kyat (about USD100) registration fee and a 500,000 kyat (about USD500) deposit printing and distributing political materials.¹³⁸ Such fee policies, in addition to the costs of printing, meant that the information the public received was almost entirely provided by the USDP.

The Burmese regime regularly censors the media inside Burma and added more severe restrictions on the coverage of politics and polling prior to the November 7 elections. When the elections laws were announced, weekly publications were barred from printing any analysis or commentary that was critical of the laws or interviews with political party leaders who planned to run.¹³⁹ More recently, the Ministry of Information suspended publication licenses for media outlets that published political cartoons of the USDP or addressed Aung San Suu Kyi's ineligibility to vote.¹⁴⁰ Main Burmese media outlets that broadcast from abroad experienced cyber-attacks in the months leading up to the election,

¹³⁶ Hset Lin, *USDP Distributes 100,000 Newsletters*, THE IRRAWADDY (Sept. 22, 2010), available at <http://www.irrawaddy.org/election/news/479-usdp-distributes-100000-newsletters.html>.

¹³⁷ Hset Lin, *USDP Distributes 100,000 Newsletters*, THE IRRAWADDY (Sept. 22, 2010), available at <http://www.irrawaddy.org/election/news/479-usdp-distributes-100000-newsletters.html>.

¹³⁸ Hset Lin, *USDP Distributes 100,000 Newsletters*, THE IRRAWADDY (Sept. 22, 2010), available at <http://www.irrawaddy.org/election/news/479-usdp-distributes-100000-newsletters.html>.

¹³⁹ Mizzima, *Election Analysis Barred in Burmese Publications* (March 12, 2010), available at <http://www.mizzima.com/news/election-2010-/3658-election-analysis-barred-in-burmese-publications.html>.

¹⁴⁰ Wai Moe, *Journal Suspended for Cartoon*, THE IRRAWADDY (Oct. 4, 2010), available at http://www.irrawaddy.org/article.php?art_id=19628; The Irrawaddy, *Censors Bar Reporting of Suu Kyi's Voting Right* (Oct. 1, 2010), available at http://www.irrawaddy.org/article.php?art_id=19607.

interrupting and at times shutting down their websites.¹⁴¹ Some attributed these attacks to the Burmese junta, and hypothesized that they were a test run for more comprehensive cyber-attacks closer to the election.¹⁴² Indeed, the cyber-attacks worsened as the elections neared, largely cutting off Burma's access to the internet altogether in the days leading up to the polls.¹⁴³

During the election, communication and mobility of residents in ethnic villages was severely limited. The day before and day of the election, Military Affairs officials ordered phone lines in all townships in Mon State to be shut down, including lines into neighboring Thailand, in order to stem the flow of information. A Thai source explained that the phone lines would be shut off until after the elections because the authorities did not want residents in Mon State to be able to communicate with each other or with people in Thailand.¹⁴⁴ Villagers in Kyar Inn Seik Gyi township in Karen State were ordered by a border guard force to remain within their villages during the election, even though the elections had already been cancelled in some of those villages.¹⁴⁵ Local authorities set a curfew in Ward 4 of Maungdaw township in Arakan State, forbidding more than two people from gathering and anyone from leaving their homes after nine at night. Residents believed this was the result of tensions between junta and opposition parties in the township, where the opposition National Party for Development is popular.¹⁴⁶ In Three Pagodas Pass, another town with a curfew at nine o'clock at night, fifty residents were arrested just after nine, despite the fact that the implementation of the curfew was not widely publicized.¹⁴⁷ Even after polls closed and results were being calculated, the junta continued to limit freedom of assembly and association

¹⁴¹ Reporters Sans Frontières, *Stop Cyber Attacks Against Independent Burmese Media* (Oct. 5, 2010), available at <http://en.rsf.org/burma-nouvel-article-05-10-2010,38494.html>.

¹⁴² Reporters Sans Frontières, *Stop Cyber Attacks Against Independent Burmese Media* (Oct. 5, 2010), available at <http://en.rsf.org/burma-nouvel-article-05-10-2010,38494.html>.

¹⁴³ *Burma Hit by Massive Net Attack Ahead of Election*, BBC (Nov. 4, 2010), available at <http://www.bbc.co.uk/news/technology-11693214>.

¹⁴⁴ Jaloon Htaw and Jury Chai, *Authorities Order Phone Lines to Shut Down* (Nov. 6, 2010), available at <http://www.bnionline.net/news/imna/9703--authorities-order-phone-lines-to-shut-down.html>.

¹⁴⁵ Nan Phaw Gay, *Villagers Told Not to Step Out on Poll Day*, BURMA NEWS INTERNATIONAL (Nov. 5, 2010), available at <http://www.bnionline.net/news/kic/9686-villagers-told-not-to-step-out-on-poll-day-.html>.

¹⁴⁶ Burma Election Tracker, *SPDC Imposes Curfew in Maungdaw's Ward Four, Arakan State* (Nov. 4, 2010), available at <http://www.burmaelectiontracker.org/node/213>.

¹⁴⁷ Jury Chai and Thu Rein, *Over Fifty Three Pagodas Pass Residents Arrested*, INDEPENDENT MON NEWS AGENCY (Oct. 28, 2010), available at <http://www.bnionline.net/news/imna/9634-over-50-three-pagodas-pass-residents-arrested.html>.

by imposing a ninety-day state of emergency, which prohibits political gathering and forbids soldiers from leaving the military.¹⁴⁸

The USDP, supported by the SPDC, used various other methods to coerce people into registering as members of the USDP, thus violating their freedom to associate. In Kachin State, Bhamo voters reported that they were forced to listen to USDP election speeches.¹⁴⁹ In other areas, the USDP offered low-interest loans to farmers if they joined the USDP.¹⁵⁰ The USDP also used information obtained by the government while registering members of ethnic minority groups for identification cards to simultaneously register those same individuals for USDP membership.¹⁵¹

Registered political parties faced severe restrictions on their rights to assemble and campaign. Parties were required to apply to the sub-commission of the UEC seven days in advance of any political assembly and speech, and the UEC granted permission only on certain limited conditions.¹⁵² Party members and supporters were not allowed to carry flags or shout slogans on the way to or from the assembly site, and the gatherings could not cause a disturbance in a public place or disrupt traffic.¹⁵³ The UEC also placed restrictions on the content of speeches and rallies, prohibiting speech that could promote disunity, harm security, provoke conflict, or tarnish the image of the state.¹⁵⁴ These broad prohibitions could be applied to speech that criticized the military or the SPDC or that promoted the self-determination of an ethnic group.

¹⁴⁸ Zoe Daniel, *Burma Declares State of Emergency After Poll*, AUSTRALIAN BROADCASTING CORPORATION (Nov. 7, 2010), available at <http://www.abc.net.au/news/stories/2010/11/08/3059556.htm>.

¹⁴⁹ Burma Election Tracker, *Bhamo Voters Forced to Listen to USDP Speech* (Nov. 4, 2010), available at <http://www.burmaelectiontracker.org/node/188>

¹⁵⁰ *USDP Arranges Loans to Farmers for Votes*, KHONUMTHUNG NEWS GROUP (Sep. 16, 2010), available at <http://www.khonumthung.org/news.php?readmore=283>.

¹⁵¹ *Community Groups Oppose 'Unfair' Vote*, KANTARAWADDY TIMES (Sep. 3, 2010), available at <http://ktimes.org/en/news/regional/item/122-community-groups-oppose-unfair-vote>.

¹⁵² *Rights to Assemble and Canvass for Hluttaw Candidates*, Union Election Commission Notification No. 91/2010, art. 4 (Burma, 2010), available at http://www.burmalibrary.org/docs09/Rights-to-assemble_NLM2010-08-19.pdf.

¹⁵³ *Rights to Assemble and Canvass for Hluttaw Candidates*, Union Election Commission Notification No. 91/2010, art. 8 (Burma, 2010).

¹⁵⁴ *Rights to Assemble and Canvass for Hluttaw Candidates*, Union Election Commission Notification No. 91/2010, art. 8 (Burma, 2010).

The USDP, with the backing of the SPDC, also threatened voters and pressured schools, local governments, and civil servants to vote for USDP candidates. Regime officials told civil servants in Naypyidaw to vote for the USDP and collected their identification card numbers, addresses and ballot numbers to ensure compliance.¹⁵⁵ Deans of various universities in and around Naypyidaw were likewise told to instruct their teachers and students to back the USDP.¹⁵⁶ USDP leaders made a series of threatening statements at campaign events, telling voters that they would regret it if their village did not support the USDP.¹⁵⁷ SPDC members openly campaigned for USDP candidates and instructed their employees on how to vote.¹⁵⁸ USDP officials' intimidation tactics also took advantage of vulnerable populations. For instance, USDP officials threatened Burmese citizens who regularly cross illegally into Thailand for work, telling them they could be arrested, but that the threat of arrest would decrease if they joined the USDP.¹⁵⁹

In direct violation of numerous international standards, the USDP began a campaign of undisguised vote-buying three weeks before the November 7 elections. Party members, accompanied by high-level local officials, went door to door in Rangoon, Irrawaddy Division, and Arakan State, offering money, loans, and identification cards to people if they cast advance votes in their favor.¹⁶⁰ During these visits, they recorded the information of all registered voters in the household.¹⁶¹ The money offered for advance votes reportedly reached 10,000 kyat (about USD10) per vote.¹⁶²

An important part of free suffrage is the right to choose not to vote. However, many citizens of Burma feared repercussions if they did not cast votes, and the Burmese authorities arrested students and activists for advocating a boycott. State media threatened those advocating a boycott with imprisonment of

¹⁵⁵ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

¹⁵⁶ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010).

¹⁵⁷ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

¹⁵⁸ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010).

¹⁵⁹ Nang Kham Kaew, *Shan Party Decries USDP "Threats,"* DEMOCRATIC VOICE OF BURMA (Sep. 14, 2010), available at <http://www.dvb.no/elections/shan-party-decries-usdp-%E2%80%98threats%E2%80%99/11748>.

¹⁶⁰ *USDP Vote Buying Begins*, IRRAWADDY (Oct. 13, 2010), available at http://www.irrawaddy.org/highlight.php?art_id=19721.

¹⁶¹ *USDP Vote Buying Begins*, IRRAWADDY (Oct. 13, 2010).

¹⁶² *USDP Vote Buying Begins*, IRRAWADDY (Oct. 13, 2010).

up to one year, a fine of 100,000 kyat (about USD1,000), or both.¹⁶³ Security forces and riot police harassed activists campaigning for a boycott in the days leading up to the election.¹⁶⁴ A Buddhist monk was arrested and sentenced to fifteen years' imprisonment and hard labor for possession of anti-election fliers and anti-election documents on a laptop.¹⁶⁵ Eleven students in Rangoon were arrested for distributing fliers on their university campus urging voters not to vote in the election.¹⁶⁶

To ensure its victory, the SPDC-backed USDP combined threats and coercion with overt vote-buying. Voters in Burma did not have access to unbiased information, and political parties could not assemble freely. Voters were coerced to vote for the USDP and threatened with criminal charges if they did not vote.

Equal Suffrage

In addition to free suffrage, states must further provide for equal suffrage, such that every voter has the right to cast one vote, and only one vote, regardless of ethnicity, race, gender language, culture, political beliefs, location, or any other distinguishing feature.¹⁶⁷ Equal suffrage also requires that each voter have equal access to polling sites.¹⁶⁸

In conjunction with international standards requiring freedom of information and freedom of candidature and campaigning in the elections process, equal suffrage also requires equality of access to information and state support in

¹⁶³ *Burma Jail Threat to Suu Kyi Party on Boycott*, SUNDAY OBSERVER (Sep. 18, 2010), available at <http://www.sundayobserver.lk/2010/09/19/wld001.asp>.

¹⁶⁴ Ko Wild, *Riot Police Surround 'No-Vote' Campaigners in Rangoon*, MIZZIMA (Nov. 1, 2010), available at <http://www.mizzima.com/news/election-2010/4521-riot-police-surround-no-vote-campaigners-in-rangoon.html>.

¹⁶⁵ Wai Moe and Min Naing Thu, *Monk Jailed for Anti-Electioneering*, IRRAWADDY (Sep. 28, 2010), available at http://www.irrawaddy.org/article.php?art_id=19573.

¹⁶⁶ Wai Moe, *Students Arrested for Urging Election Boycott*, IRRAWADDY (Sep. 29, 2010).

¹⁶⁷ International Covenant for Civil and Political Rights, art. 2, 25(b) (Mar. 23, 1976); Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 11 (2001); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 2.2 (March 26, 1994); Universal Declaration for Human Rights, art. 21.3 (Dec. 10, 1948); American Convention on Human Rights (Organization of American States, July 18, 1978), art. 23.1.2; European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 2.1.1 (Oct. 30, 2002).

¹⁶⁸ Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections*, art. 3.5 (March 26, 1994).

campaigning. Equal suffrage provides that every voter has an equal opportunity to learn about and participate in the election, including access to civic education, voter information, information about the political parties, and media coverage. Furthermore, equal suffrage implies the need for a neutral attitude by state authorities with regard to the elections campaign, media coverage, and the public funding of parties and campaigns.¹⁶⁹

Equal Suffrage in Burma

State media coverage of the elections was not equal between parties in Burma, and the state clearly supported the USDP by allowing it to use state resources and accompanying USDP candidates on vote-buying campaigns.¹⁷⁰ Furthermore, the Union Election Commission (UEC) allowed the USDP to violate elections laws while holding opposition parties to strict standards, further violating the principle of equal suffrage.¹⁷¹

The UEC granted each approved party the opportunity to apply for permission to broadcast on state radio and television, but this broadcast was limited by restrictions on content. According to a UEC notification, parties could submit a manuscript of their proposed statement seven days prior to the broadcast day scheduled by the UEC. Statements were required to meet certain criteria, including not tarnishing the image of the state or the junta, or making statements that could cause conflicts or offend dignity. Most parties made broadcasts, but many were forced to amend their statements to remove portions that the UEC censored.¹⁷² For example, the Chin National Party, an ethnic Chin party, claimed its transcript was censored to remove references to religious freedom and the right of Chin people to learn their own language in schools.¹⁷³ Such censoring violates the principle of equal access to information that is critical to equal suffrage.

¹⁶⁹ Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension* (Jun. 29, 1990), reprinted in 29 International Legal Materials 1305, 1308; Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AMERICAN JOURNAL OF INTERNATIONAL LAW 46, 66-67 (1992).

¹⁷⁰ *USDP Vote Buying Begins*, IRRAWADDY (Oct. 13, 2010), available at http://www.irrawaddy.org/highlight.php?art_id=19721.

¹⁷¹ *Arakan State EC Abuses Election Law*, NARINJARA (Sep. 29, 2010), available at <http://www.narinjara.com/details.asp?id=2745>.

¹⁷² Myint Maung, *Party Canvassing on State Media Heavily Censored*, MIZZIMA (Sept. 24, 2010), available at <http://www.mizzima.com/news/election-2010-/4403-party-canvassing-on-state-media-heavily-censored.html>.

¹⁷³ ALTSEAN-Burma, *Key Facts – Chin National Party*, available at <http://www.altsean.org/research/2010/Key%20Facts/Parties/Chin%20National%20Party.php>.

Furthermore, as noted on above, the UEC announced ahead of the elections that there would be no polling in specific village-tracts in Kachin, Kayah, Kayin, Mon, and Shan States, as “they are in no position to host free and fair elections.”¹⁷⁴ These cancellations, which in the case of Shan State included the entire Pangshsan, Namphan, Pangwaun, and Mongmad Townships, disenfranchised the residents of nearly 24,000 villages.¹⁷⁵ Most of these villages were in areas dominated by ethnic minority groups, including areas under control of ethnic ceasefire groups that refused to join to the Border Guard Force.¹⁷⁶

Secret Suffrage

Secrecy of the vote is a minimum standard for a democratic election.¹⁷⁷ International law and the fundamental principles of democracy require not only that the state provide every citizen the right to vote, but that each citizen be provided the right to vote confidentially, without fear that his or her identity or vote will be revealed.¹⁷⁸ Implementation of this right requires a voting process where a person marks his or her ballot alone in a voting booth before placing it in a ballot box. No one must be able to see his or her vote or be able to identify his or her ballot after the voting.¹⁷⁹ The secrecy of the votes of illiterate people, those

¹⁷⁴ *Notification No. 99/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010), available at <http://www.burmalibrary.org/docs09/NLM2010-09-17.pdf> (Kachin State); *Notification No. 100/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Kayah State); *Notification No. 101/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Kayin State); *Notification No. 102/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Mon State); *Notification No. 103/2010: Areas Where Elections Will Not Be Held*, UNION ELECTION COMMISSION (Sep. 16, 2010) (Shan State).

¹⁷⁵ ALTSEAN-Burma, *Areas Where Elections are Cancelled*, available at <http://www.altsean.org/Research/2010/Key%20Facts/Constituencies/Black%20areas.php>.

¹⁷⁶ Ron Corben, *Burma Excludes Thousands from Voting in Elections*, VOICE OF AMERICA (Sep. 17, 2010), available at <http://www.voanews.com/english/news/Burma-Excludes-Thousands-103126854.html>.

¹⁷⁷ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 25 (2001).

¹⁷⁸ International Covenant for Civil and Political Rights, art. 25(b) (Mar. 23, 1976); Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 7.5 (June 29, 1990).

¹⁷⁹ Organization for Security and Co-operation in Europe (OSCE), Office of Democratic Institutions and Human Rights, *Election Observation Handbook 57* (5th ed. 2005) available at <http://www.osce.org/item/14004.html>.

voting at embassies, “family voting,” and members of the military may be subject to special considerations, however.¹⁸⁰

Secret Suffrage in Burma

Burmese elections law mandates that ballots and polling stations be set up to ensure secrecy. However, without monitoring and an appeals process, secrecy was not enforced. The process for advance voting showed little concern by the UEC for secret suffrage, as advance ballots were not secret. Civil service employees were told to vote for the USDP, and their ballot identification numbers were recorded to ensure compliance.¹⁸¹ Advance ballots received by the district sub-commissions were changed to reflect votes for the USDP, allowing commissioners to see voter information. Local officials and USDP members went door to door, recording whether or not members of the household agreed to vote USDP.¹⁸² Officials threatened individuals with retribution if they did not vote for the USDP, indicating that authorities would be aware of how votes will be cast.¹⁸³ Such practices demonstrate that voting was not secret on November 7.

The principles of secret suffrage were further compromised during the campaign period, when well-known community leaders, such as school headmasters and headmistresses, medical doctors, and teachers were compelled to be USDP representatives in their local areas and were forced to organize voters in the communities.¹⁸⁴ According to a resident of the Naung Lay Bin Township, most of the village headmen in the township were forced by the authorities to sign a guarantee to the effect that they would ensure all the voters in their particular villages would vote for the State backed parties.¹⁸⁵ Residents were further

¹⁸⁰ Organization for Security and Co-operation in Europe (OSCE), Office of Democratic Institutions and Human Rights, *Election Observation Handbook 57* (5th ed. 2005) available at <http://www.osce.org/item/14004.html>.

¹⁸¹ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

¹⁸² *USDP Vote Buying Begins*, IRRAWADDY (Oct. 13, 2010), available at http://www.irrawaddy.org/highlight.php?art_id=19721.

¹⁸³ *Illegal USDP Campaign Tactics*, IRRAWADDY (Oct. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19671.

¹⁸⁴ *USDP's Manipulations to Win in Elections*, HUMAN RIGHTS FOUNDATION OF MONLAND (Sep. 20, 2010), available at <http://rehmonnya.org/archives/1602>.

¹⁸⁵ *SPDC Election Training Pressures Villagers; Headmen Sign Guarantee of Pro-Regime Votes by Residents*, HUMAN RIGHTS FOUNDATION OF MONLAND (Sep. 25 2010), available at <http://rehmonnya.org/archives/1675>.

informed that the polling attendance record would consist of the names of every household in the village and attendance or absence would be noted.¹⁸⁶

Across Burma on election day, there were reports of a lack of secrecy in the polling process—so much so that many voters felt coerced into voting for the USDP. In Mandalay Division, for instance, voters were so fearful of polling officers' threats that they voted for USDP.¹⁸⁷ In Rangoon, voters complained that they could not freely cast their vote because pro-junta candidates were watching them so closely.¹⁸⁸ In some instances, as in the Mudon Township in Mon State, USDP party members even allegedly took ballot cards from voters and marked the ballots for the USDP, clearly violating the principles of secret suffrage.¹⁸⁹ Observers also witnessed incidents where voters who asked officials for help at ballot booths were told to tick the box of the USDP.¹⁹⁰ In addition, military personnel were given the alternatives to cast their votes in front of a commanding officer or sign declarations that their vote had been cast in advance for the USDP.¹⁹¹

Elections Monitoring

International standards support the use of national and international elections observers to promote a free and fair electoral process.¹⁹² Observation serves the purpose of providing evidence as to whether the elections have been regular.¹⁹³ As such, observation typically focuses on the extent to which the authorities carry out

¹⁸⁶ *Mudon Township Residents React to USDP Campaign Tactics*, HUMAN RIGHTS FOUNDATION OF MONLAND (Oct. 28, 2010), available at <http://rehmonnya.org/archives/1724>.

¹⁸⁷ Burma Elections Tracker, *Polling Officers Manipulate Votes and Threaten Voters to Vote for the USDP* (Nov. 7, 2010), available at <http://www.burmaelectiontracker.org/node/252>.

¹⁸⁸ Burma Elections Tracker, *Rangoon Voters Allege Harassment* (Nov. 7, 2010), available at <http://www.burmaelectiontracker.org/node/190>.

¹⁸⁹ *Voters Felt Pressure to Cast for USDP*, BURMA NEWS INTERNATIONAL (Nov. 7, 2010), available at <http://www.burmaelection2010.com/news/national-news/602.html>.

¹⁹⁰ Aung Hla Tun, *Apathy and Fraud Charges Mar Rare Myanmar Election*, REUTERS (Nov. 7, 2010), available at <http://www.reuters.com/article/idUSTRE6A600V20101107?pageNumber=1>

¹⁹¹ *Soldiers Forced to Vote for USDP*, IRRAWADDY (Nov. 6, 2010), available at <http://www.irrawaddy.org/election/news/595-soldiers-forced-to-vote-for-usdp.html>.

¹⁹² European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2 (Oct. 30, 2002).

¹⁹³ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.86 (Oct. 30, 2002).

their duty of neutrality.¹⁹⁴ Monitoring begins before the elections and continues until the final results are announced, including monitoring voter registration, dissemination of information, the voting process on the day of the election, and vote counting.¹⁹⁵ Before the election, observers generally ascertain whether there have been irregularities with regard to registration of candidates, restrictions on free expression, or violation of rules on access to media or public funding.¹⁹⁶ During the elections, observers generally monitor the pressure, if any, exerted on voters, and any instances of multiple voting and violations of secret suffrage.¹⁹⁷ After the election, observers review the vote counting process for irregularities.¹⁹⁸

Both domestic and international observers should monitor the elections to “guarantee the integrity of the election process.”¹⁹⁹ International observers “play a [central] role in states which have no established tradition of impartial verification of the lawfulness of elections.”²⁰⁰ International election monitoring encourages the conduct of elections in accordance with international norms, which enhances the legitimacy of the electoral process by safeguarding the rights of the population.²⁰¹

¹⁹⁴ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.88 (Oct. 30, 2002); Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 8 (June 29, 1990).

¹⁹⁵ NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide, NATIONAL DEMOCRATIC INSTITUTE, 5 (1995); European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.88 (Oct. 30, 2002).

¹⁹⁶ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.88 (Oct. 30, 2002).

¹⁹⁷ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.88 (Oct. 30, 2002).

¹⁹⁸ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.88 (Oct. 30, 2002).

¹⁹⁹ NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide, NATIONAL DEMOCRATIC INSTITUTE, p. 2, (1995) available at <http://www.accessdemocracy.org/showdoc.asp?lang=1&id={3CBAD929-BBF7-11D4-B41A-00D0B7C8CF21}> (last visited May 4, 2008).

²⁰⁰ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.2.89 (Oct. 30, 2002).

²⁰¹ Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, THE CARTER CENTER, THE UNITED NATIONS ELECTORAL ASSISTANCE DIVISION, ET AL., 1-2 (Oct. 27, 2005), available at <http://www.ndi.org/globalp/elections/highlights/undeclaration.asp> (last visited May 4, 2008).

Domestic election observers can be both partisan and non-partisan in nature. The observers should have access to all stages of the electoral process before, during, and after the election.²⁰² By ensuring that all interested parties are able to observe the process, domestic partisan observers are able to watch the actions of the other partisan observers while observing the voting process.

Elections Monitoring in Burma

Despite offers and appeals from the international community and Burmese democratic leaders, the SPDC refused to allow independent electoral monitors to observe the elections in Burma.²⁰³ Furthermore, the junta barred all foreign journalists and election observers from entering the state. In the weeks leading up to the polls, the Union Election Commission formally barred foreign observers and journalists from monitoring the elections.²⁰⁴ The government announced that diplomats and foreign news organizations would instead be taken on mandatory, state-sponsored tours of Burma prior to November 7.²⁰⁵ The Information Ministry, meanwhile, announced that all individuals associated with the media—including Burmese journalists—would be prohibited from coming within fifty meters of polling stations.²⁰⁶

The UEC had sole authority, through the Township Sub-Commissions, to monitor the polling booths by setting up monitoring teams consisting of civil servants and “trusted and respected” members of the community.²⁰⁷ Each candidate running in a constituency could designate an agent and assistant agent to act on his or her behalf at a polling station, though the powers of these agents were

²⁰² Organization for Security and Co-operation in Europe (OSCE), Office of Democratic Institutions and Human Rights, *Election Observation Handbook 57* (5th ed. 2005) available at <http://www.osce.org/item/14004.html>.

²⁰³ Prakash B. Das, *Than Shwe Signals a “No” Vote to Election Observers*, IRRAWADDY (Apr. 22, 2010), available at http://www.irrawaddy.org/opinion_story.php?art_id=18295.

²⁰⁴ Ron Corben, *Burma Bars Foreign Observers, Journalists from Elections*, VOICE OF AMERICA (Oct. 18, 2010), available at <http://www.voanews.com/english/news/Burma-Bars-Foreign-Observers-Journalists-From-Elections-105167194.html>.

²⁰⁵ *Myanmar to Keep Close Watch on Media Before Poll*, REUTERS (Oct. 31, 2010), available at <http://in.reuters.com/article/idINIndia-52570220101031>.

²⁰⁶ *Myanmar to Keep Close Watch on Media Before Poll*, REUTERS (Oct. 31, 2010).

²⁰⁷ *Pyithu Hluttaw Electoral Law*, art. 39 (Burma, 2010), available at http://www.burmaelection2010.com/PDF/Election_Laws/3.-Pyithu-Hluttaw-Electoral-Law-English.pdf.

not enumerated in the law.²⁰⁸ Any irregularities were to be reported to a UEC-created election tribunal, and all appeals were to go to the UEC for final review.²⁰⁹

Not surprisingly, however, in the absence of international monitors, the UEC did not display vigilance in monitoring the USDP's actions, nor did the commissions thoroughly investigate opposition parties' complaints. In Arakan State, the opposition Rakhine Nationalities Development Party (RNDP) filed a complaint to the UEC that witnesses observed several USDP candidates, helped by government officials, canvassing in numerous wards of the Arakan State capital beyond the November 1 campaign deadline.²¹⁰ The UEC summarily dismissed the claim, denying giving any political party the permission to campaign beyond the deadline.²¹¹ Similarly, the complaints filed by the Democratic Party Myanmar (DPM) were not properly investigated. One week before the elections, the party lodged multiple complaints on election irregularities practiced by the USDP including vote buying, phantom voting, unauthorized advance voting, intimidations and coercion. The complaints were largely ignored by the UEC.²¹²

The junta not only rebuked offers of the UN and western states to provide assistance with election observers, but also rejected offer from fellow ASEAN member states to provide observers. The fact that the junta would turn away all observers suggests a deeply flawed elections process.

Appeals Process

“The right to vote is a human right and the right to a remedy for violation of the right to vote is also a human right.”²¹³ Participants in an election, including candidates, parties, and voters, should be able to obtain “prompt and effective redress” for violations of human rights or national law, with the possibility of

²⁰⁸ *Pyithu Hluttaw Electoral Law*, art. 40 (Burma, 2010).

²⁰⁹ *Pyithu Hluttaw Electoral Law*, art. 68 (Burma, 2010).

²¹⁰ Aye Nai, *Fraud Election Authority Accused of Bias*, DEMOCRATIC VOICE OF BURMA (Nov. 5, 2010), available at <http://www.dvb.no/elections/election-authority-accused-of-bias/12608>.

²¹¹ Aye Nai, *Fraud Election Authority Accused of Bias*, DEMOCRATIC VOICE OF BURMA (Nov. 5, 2010).

²¹² Joseph Allchin, *Fraud Allegations Ignored by Election Body*, DEMOCRATIC VOICE OF BURMA (Nov. 6, 2010), available at <http://www.dvb.no/elections/fraud-allegations-ignored-by-election-body/12619>.

²¹³ Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, 31 (2001).

review by an independent judiciary.²¹⁴ The availability of redress in a fair, transparent, and credible manner increases the confidence of stakeholders in the electoral process.²¹⁵

An appeals process, if legitimate, places a check on possible violations during the election process and may provide a means to challenge the results of an election in the event of severe and widespread abuse.²¹⁶ The appeal body must have authority over issues relating to the right to vote, including voter registration, as well as matters of eligibility of candidature, observance of campaign rules, and the outcome of the election.²¹⁷ The appeal body in electoral matters can be either an electoral commission or a court,²¹⁸ but final appeal to a court must be available.²¹⁹ Ultimately, an election law should provide a means for the partial or complete invalidation of election results where election misconduct makes the results unsalvageable.²²⁰ The power to invalidate an election is frequently confined to the highest electoral authority and reviewable by the state's highest judicial court.²²¹

²¹⁴ Organization for Security and Co-operation in Europe (OSCE), Office of Democratic Institutions and Human Rights, *Election Observation Handbook* 57 (5th ed. 2005) available at <http://www.osce.org/item/14004.html>; Organization for Security and Cooperation in Europe, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, art. 5.10-5.11 (June 29, 1990).

²¹⁵ Democratic Governance Group, Bureau for Development Policy, Electoral Assistance Implementation Guide, p. 23, UNITED NATIONS DEVELOPMENT PROGRAMME (2007), available at http://www.undp.org/governance/guidelines-toolkits.htm#guides_elections (last visited May 4, 2008).

²¹⁶ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.3(e) (Oct. 30, 2002).

²¹⁷ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.3(d) (Oct. 30, 2002).

²¹⁸ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.3(a) (Oct. 30, 2002).

²¹⁹ European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.3(a) (Oct. 30, 2002).

²²⁰ Denis Petit, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2000), sec. G, par. 30; European Commission for Democracy through Law (Venice Commission), *Code of Good Practices in Electoral Matters: Guidelines and Explanatory Report* art. 3.3(e) (Oct. 30, 2002).

²²¹ Denis Petit, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2000), sec. G, par. 30.

Appeals Process in Burma

Burma's elections laws do not provide for a judicial review process. The only body competent to hear appeals of election-related actions and decisions is an election tribunal created by the UEC, which is also the body charged with making decisions and creating procedures for the election.²²² The UEC creates an election tribunal in the case of disputes related to the election, but decisions of that tribunal are subject to appeal to the UEC.²²³ The election tribunal may only invalidate the election of a member of parliament if it is "apparent" that the representative's election can be attributed to malpractice. It is a defense that the representative was unaware of the malpractice or did his best to stop it.²²⁴ Even if the tribunal invalidates a representative's election, the UEC can set aside the decision, and its power to do so has no restrictions.²²⁵ The Political Parties Registration Law reinforces the finality of UEC decisions and mandates that there shall be no appeal or instigation of any other proceeding in any court.²²⁶

As described above, the conduct of UEC has illustrated that is unlikely to provide the impartial and effective redress that international standards require. The amount of electoral irregularities the USDP was able to achieve, with the cooperation and assistance of the various election commissions,²²⁷ demonstrates that the system of check and balances was seriously flawed. For instance, the NDF requested the UEC to cancel any advance ballots that were obtained by fraudulent methods and were therefore in violation of article 45 of the Election Law.²²⁸ The NDF added that if the counting of votes revealed that advance ballots account for more than fifty percent of the eligible votes in a particular constituency, the ballots should be deemed invalid.²²⁹ However, the UEC has not moved to recount or discount any advanced ballots thus far.²³⁰

²²² *Pyithu Hluttaw Electoral Law*, art. 68 (Burma, 2010), available at http://www.burmaelection2010.com/PDF/Election_Laws/3.-Pyithu-Hluttaw-Electoral-Law-English.pdf.

²²³ *Pyithu Hluttaw Electoral Law*, art. 69 (Burma, 2010).

²²⁴ *Pyithu Hluttaw Electoral Law*, art. 71, 73 (Burma, 2010).

²²⁵ *Pyithu Hluttaw Electoral Law*, art. 75 (Burma, 2010).

²²⁶ *Political Parties Registration Law*, art. 20 (Burma, 2010).

²²⁷ *Electoral Irregularities Rampant*, IRRAWADDY (Nov. 7, 2010), available at http://www.irrawaddy.org/article.php?art_id=19984.

²²⁸ Ba Kaung, *NDF Calls for Cancellation of Unfair Advance Votes*, IRRAWADDY (Nov. 6, 2010), available at http://www.irrawaddy.org/article.php?art_id=19976.

²²⁹ Ba Kaung, *NDF Calls for Cancellation of Unfair Advance Votes*, IRRAWADDY (Nov. 6, 2010).

²³⁰ Ba Kaung, *NDF Calls for Cancellation of Unfair Advance Votes*, IRRAWADDY (Nov. 6, 2010).

Any appeal process from the November 7 election results will be challenging. Indeed, the election commissions are purposely rendering the process confusing for those lodging complaints. For instance, when residents of Myitkyina presented a complaint on the counting of voters to their township commission office, they were referred to the state commission office, which in turn sent them back to the township commission office.²³¹ A fair resolution to the many allegations of electoral violations seems unlikely at this point.

Recommendations

The conduct of SPDC and its proxies during the elections have so violated international norms and standards that the United Nations, regional organizations, and foreign governments must respond. These international actors must take steps to reject the SPDC's efforts to entrench military rule under the guise of elections and must support democratic actors in Burma in order to promote real democratic reform. While the elections themselves will not promote positive change in Burma, the political maneuvering surrounding the elections has unbalanced the SPDC's hold on power. Before the military regime secures its new hold on power, international actors should take strong steps to promote reform. These steps should include:

- Foreign governments that have not rejected the elections and their outcomes should do so immediately, recognizing that the elections served only to entrench the military regime.
- International actors should redouble their efforts to ensure the timely release of Aung San Suu Kyi and to secure the immediate release of all other political prisoners.
- International actors should also redouble their demands for immediate, inclusive democratic reforms.
- Because Burma's ethnic nationalities have been a particular target of the SPDC during the electoral process, international actors should increase cooperation with and support to ethnic organizations that support democratic change in Burma.
- Foreign governments should review sanctions laws and ensure that all sanctions currently in place are fully enforced.
- Noting that the SPDC has used the elections to empower the military in Burma, and noting that the SPDC is known to be working with North Korea on

²³¹ *Voters List Irregularities in Myitkyina*, KACHIN NEWS (Nov. 5, 2010), available at <http://www.kachinnews.com/news/1781-voter-list-irregularities-in-myitkyina.html>.

weapons programs, the United Nations should consider adopting and implementing an arms embargo against Burma.

- Finally, United Nations Member States should accept the rival claimant credentials challenge submitted by Burmese democratic leaders.

Conclusion

The November 7 elections in Burma were designed by the SPDC to increase its hold on power while attempting to convince the international community that it is undertaking democratic reforms. The SPDC, the Union Election Commission, and the USDP failed to meet even the most basic international standards in conducting the elections. The results of the elections were a foregone conclusion before the voting even began. The coercion, threats, bribery, and prohibitions that accompanied the election process undermined the ability of parties that were not aligned with the junta to register and campaign, undercut the ability of voters to make free choices, and severely restricted democratic change and reform. Voters had little to no access to unbiased information, and entire villages were systematically disenfranchised. There was no independent monitoring, and no ability to appeal decisions related to the election. Thus, as demonstrated by the SPDC's policies and actions, the November 7 elections were not nor could ever have been conducted in a free or fair manner.

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