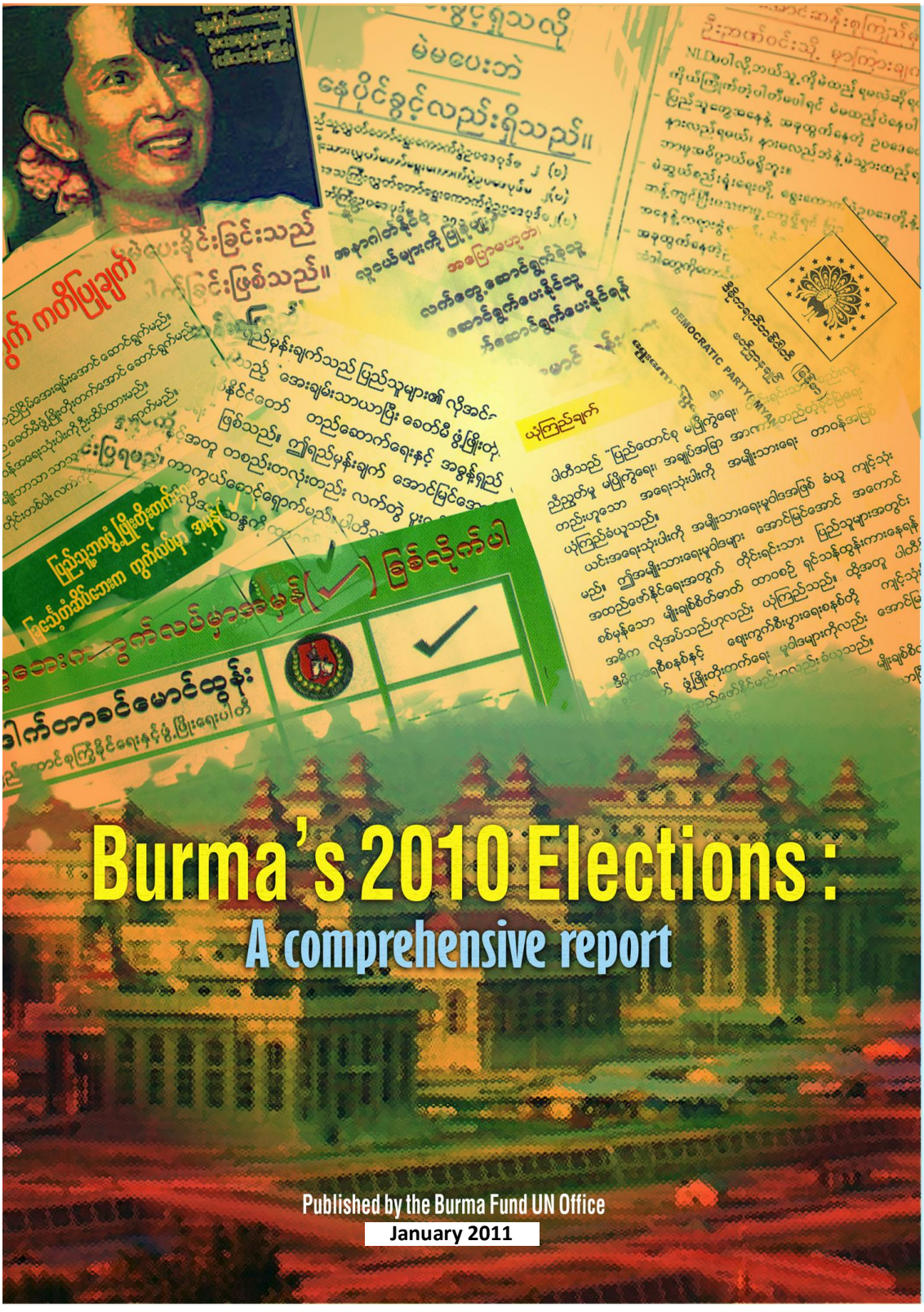

Burma's 2010 Elections :
A comprehensive report

Published by the Burma Fund UN Office
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GLOSSARY

AAPP (B)	Assistance Association for Political Prisoners (Burma)
ABC	Australian Broadcasting Corporation
Amyotha Hluttaw	National Parliament
ANFREL	Asia Network for Free Elections
AMRDP	All Mon Region Democracy Party
CNP	Chin National Party
CPP	Chin Progressive Party
DKBA	Democratic Karen Buddhist Army
DP(M)	Democratic Party (Myanmar)
DVB	Democratic Voice for Burma
ENDP	Ethnic National Development Party
HRW	Human Rights Watch
IDPs	Internal Displaced Persons
INDP	Inn-tha National Development Party
IPU	Inter-Parliamentary Union
KNDP	Kaman National Progressive Party
KNP	Kayan National Party
KNPP	Kaman National Progressive Party
KPP	Kayin People's Party
KSDD	Kayin State Democracy and Development Party
KSPP	Kachin State Progressive Party
LNDP	Lahu National Development Party
MNSP	Myanmar New Society Party
MPP	Modern People's Party
MNP	Mro National Party
MDCRDP	Myanmar Democracy Congress and the Regional Development Party (Pyay)
NDF	National Democratic Force
NDPD	National Democratic Party for Development
NLD	National League for Democracy
NUP	National Unity Party
PNO	Pa-O National Organization
PNA	Pa-O National Army
PSRD	Press Scrutiny and Registration Department
P-SDP	Phalon-Sawaw Democratic Party
Pyithu Hluttaw	People's Parliament
RNDP	Rakhine Nationalities Development Party
SPDC	State Peace and Development Council
SNDP	Shan National Democratic Party
Tatmadaw	Burma's armed forces
T(P)NP	Taaung (Palaung) National Party
UDPKS	Unity and Democracy Party of Kachin State
UEC	Union Election Commission
UKL	Union Karen League
UDP	Union Democracy Party
USDP	Union Solidarity and Development Party
VPDC	Village Peace and Development Council

WDP	Wa Democratic Party
WNLD	Wun-tha-nu NLD
88 GSY	88 Generation Student Youths (Union of Myanmar)

Burma's 2010 Elections: a comprehensive report

"This election was a sham since the beginning. This result is not the truth. But we cannot change it," Motorcycle seller, Mandalay.

Introduction

On 7 November 2010 the people of Burma had the opportunity to vote in the first elections in 20 years. The promise of elections, the first in two decades, prompted much debate and speculation. Would the elections be a step forward on the road to democracy, or the entrenchment of military rule and business as usual in Burma? Nationwide political repression and human rights abuses marred the elections, both in the pre-election period as well as on the day. On the day of the elections, fighting between the military regime, known as the State Peace Development Council (SPDC), troops and a break-away faction of the Democratic Karen Buddhist Army (DKBA) broke out killing civilians and resulting in tens of thousands of refugees fleeing across the border to Thailand.

Undercover domestic observers, individual voters and genuine opposition political parties reported widespread electoral fraud, interference from the ruling military regime in the campaign and conduct of the elections; vote buying; vote rigging; forced advanced voting for soldiers, civil servants, members of Government sponsored organizations, and ordinary villagers; violence, intimidation and arrests; and entire ethnic constituencies disenfranchised. The Election Commission, responsible for the administration of the elections and the resolution of election related disputes, lacked independence and transparency. The post-election period has proven no better and election related human rights abuses have been reported including retribution for those who supported opposition political parties in the election.

Burma is heavily militarized, with more than a dozen armed groups in the border regions, barely contained by Burmese government troops. The people from ethnic groups suffer daily human rights violations as result of this mass militarization. The elections have done nothing to ease this, instead, the post election period has seen an escalation of violence, reflecting the regime's continued persecution and targeting of ethnic communities, their disregard of ethnic equality in their 'roadmap to democracy', and the ethnic nationalities' lack of faith in the flawed electoral process.

The elections presented an opportunity for Burma to improve its human rights situation and create a meaningful political space, on its own terms, and with the world watching. These changes never happened. In the pre-election period, United Nations representatives, international organizations, world leaders and academics[1] repeatedly

1 'UN Doubts Fairness of Election in Myanmar' , New York Times, http://www.nytimes.com/2010/10/22/world/asia/22nations.html?_r=1; 'Restrictions Tighten Ahead of the Elections', Human

warned that conditions in Burma were not conducive to a free and fair vote and urged the regime to release the more than 2,200 political prisoners, before the elections. Through informal channels, the regime hinted that they would release a number of prisoners before the elections through a general amnesty.[2] This amnesty never came. Instead, in the lead up to the elections, the number of political prisoners grew.

An election that truly reflects the will of the people requires freedom of speech and expression, a free media, freedom of association and assembly, and free access to information. In Burma, none of the fundamental requirements for free and fair elections existed. Added to a legal system that already criminalises peaceful dissent, were discriminatory election laws and new directives that further tightened restrictions on the political freedoms, essential to free and fair elections.

For most people in Burma the election period was characterized by fear, resignation and apathy, rendering the elections meaningless; a veneer of democratic pretension hiding a repressive and abusive state. This was reflected in low voter turnout for an historic election, estimated at 30-70% across the country. The result was determined well before the elections and people knew that. Some observers inside Burma reported the procedure to be largely peaceful and orderly, "something guaranteed by the intense process of conditioning the population ahead of 7 November and a heavy security presence"[3].

The Burmese regime rejected requests by United Nations agencies, ASEAN member states, and other international bodies to be allowed to monitor the impartiality, fairness and credibility of the elections. Foreign and local media were also banned from observing the elections. Foreign journalists were denied visas to enter the country. In May, the Chairman of the Union Election Commission (UEC), Thein Soe, told visiting US Assistant Secretary of State Kurt Campbell: "The nation has a lot of experience with elections. We do not need election watchdogs to come here."[4] It is hard to imagine what experience they were drawing on.

After the previous election, held in 1990,the National League for Democracy (NLD) won in a landslide, however, the military regime refused to recognise the result and instead arrested thousands. The generals learnt a valuable lesson in 1990: elections must not be left to the will of the people, or they will not get the desired results. This time, the military ensured a victory through its political party the Union Solidarity Development Party (USDP). At every step of the way, standards for free, fair and credible elections were not met and the results reflect this.

The vote tabulation process was non-transparent, and undoubtedly vulnerable to electoral manipulation, evidenced in the dramatic change in results following the advanced votes in some areas.

Rights Watch, http://www.hrw.org/node/94006; Gordon Brown, 'Burma needs our Voice', http://www.guardian.co.uk/commentisfree/2010/oct/31/burma-elections-junta-suu-kyi;

2 11,000 prisoners to walk before polls', Democratic Voice for Burma, http://www.dvb.no/elections/11000-prisoners-to-walk-before-polls/12138

3 Dave Mathieson , 'Towards Realistic Hope', Human Rights Watch, http://www.hrw.org/en/news/2010/11/24/burma-s-elections-towards-realistic-hope

4 Irrawaddy, Junta Rejects International Election Observers', http://www.irrawaddymedia.com/highlight.php?art_id=18455

The military backed Union Solidarity and Development Party (USDP), won 76.5% of the seats in the general election. The National Unity Party (NUP) formed by the former Burma Socialist Program Party members and General Ne Win's loyalists, came second with 5.5%, the pro-democracy Shan Nationalities Democratic Party third with 5% and Rakhine National Development Party pulled 3%. The National Democratic Force, a breakaway faction from the NLD, came sixth with 1.4% of the contested seats. This comes as no surprise; by making use of state resources the military backed USDP fielded more than 1,100 candidates, nearly 1000 more than the strongest opposition party, the NDF, which faced significant economic and political barriers to participation. The NDF has conceded defeat. In the aftermath of the elections opposition parties lodged official complaints with the Union Election Commission citing widespread electoral fraud and corruption, by USDP candidates and members and SPDC officials.

On 31 January 2011, the new Parliament will convene for the first time. Burma's last parliamentary session took place 22 years ago in September 1988 amid a national uprising and just a few days before the 18 September military coup. Under the 2008 Constitution, the military is allocated 25% of seats in both houses of parliament and the regional assemblies. A total of 388 non-elected military officers appointed by the military regime will sit in the parliament.

One week after the elections, on the 13 November, Daw Aung San Suu Kyi was released from house arrest after her sentence expired. Her relevance, after years of detention, is undeniable; thousands of her supporters, young and old, gathered at the offices of the National League for Democracy party and near her home in Rangoon, eagerly awaiting her release. While her release is something to celebrate, we have yet to see signals from the side of the regime that they are beginning positive steps leading to an all-inclusive, time bound and genuine democratic transition in Burma. If the regime is genuinely interested in change, it must release all of those imprisoned for peacefully exercising their basic civil and political rights and begin a substantive political dialogue with the NLD, led by Daw Aung San Suu Kyi, and leaders of the ethnic nationalities.

The elections are a serious setback for the urgently needed national reconciliation. Instead of moving towards an inclusive national dialogue, the elections have exacerbated ethnic tensions and instability, pushing Burma closer to the brink of civil war and the people of Burma further away from the realisation of their basic human rights.

Legal Framework

On 8 March 2010, the military regime released a series of electoral laws[5], though the actual date of the election was not announced until 13 August. These electoral laws set the ground-rules for the elections. The laws were decried by stakeholders inside and outside of Burma as unfair and unjust. US State Department Spokesperson, P.J. Crowley said, in response to the laws, "This is a step in the wrong direction. The political party

5 The Election Commission Law; The Political Parties Registration Law; The People's Assembly Election Law; The National Assembly Election Law; The Region and State Assemblies Election Law.

law makes a mockery of the democratic process and ensures that the upcoming elections will be devoid of credibility."[6]

The laws were designed to exclude the main opposition party, the National League for Democracy and ensure a victory for proxy parties of the ruling military. The laws excluded serving prisoners from voting, being members of political parties, and standing as electoral candidates: a cruel provision that excluded the more than 2,200 political prisoners, including Daw Aung San Suu Kyi and 12Members of Parliament who won seats in the 1990 election.

To contest the elections political parties were required to expel members who were imprisoned or under detention orders. According to the Assistance Association for Political Prisoners (Burma), an estimated 412 members of the main opposition party, the NLD were imprisoned in the pre-election period. On 29 March, the NLD decided that these legal provisions were unjust and announced it would not contest the elections, with its leader and hundreds of members behind bars. The NLD was formally disbanded on 14 September. The Shan Nationalities League for Democracy (SNLD), which won the second largest number of parliamentary seats in 1990, after the NLD, was also disbanded for the same reasons. On 5 August, the Union Democracy Party Chairman Phyo Min Thein resigned over the oppressive election laws.[7]

The electoral laws also disenfranchised "persons found to be of unsound mind", "persons not declared free from insolvency", and "persons prohibited in accordance with the Electoral Laws". These provisions were broad and vague in their potential definitions, making exclusion from the voting lists highly subjective and arbitrary.

The 2008 Constitution, upon which the laws are based, comes into force when the Parliament sits for the first time, and has serious human rights implications. One of the electoral laws provides that parties must declare that they will "safeguard the Constitution". Elements of the Constitution generating serious concern are: the President being effectively above the law; impunity for past and present crimes by government officials; a total suspension of "fundamental rights" during indefinite and undefined states of emergency; and 25% of seats in the new Parliament reserved for serving military officers.

On 20 January 2011 state media reported that 110 military officers had been chosen for the lower house, 56 for the upper house, and 222 for regional and state parliaments. Those appointed were all military men, most of whom were majors or captains, with just 19 going to colonels and one to a brigadier general who will serve in the Karen State parliament. The 25 percent quota is enough to give the military veto power over any constitutional amendments, a clause designed to block efforts to amend the Constitution, which stipulates that changes can only be made with the support of more than 75 percent of legislators in Parliament.[8]

6 P.J. Crowley quoted in VOA, US--*Burma-Election-Law-Mockery-of-Democratic-Process*, 10 March, 2010
7 Bangkok Post, 5 August 2010, Burma dissident quits as head of democracy party.
8 Irrawaddy, 21 January 2011, Low Ranking Military Officers Appointed to Parliament, http://www.irrawaddy.org/article.php?art_id=20579

Under the Constitution there is no parliamentary oversight of the military. So-called "civilian" institutions such as the parliamentary houses and regional assemblies will have no legal authority over the military. The military will effectively decide who leads and staffs these institutions. The most important ministerial portfolios are reserved for the military, including defence, home affairs (domestic repression), and border affairs (which covers cross-border trade, access to illicit trades such as drugs, logging, smuggling, and the ongoing offensives against ethnic minorities). Opposition to military rule remains a criminal offense. Anyone calling for genuine reform of the military or a review of the Constitution is likely to be removed from office or imprisoned.

For elections to be fair, the legislation governing elections should be drafted in an open and inclusive manner in order to secure broad confidence among the competing political parties, candidates, and voters[9]. The electoral laws and directives governing the 2010 elections, as well as the Constitution were drafted by the military regime and imposed upon the people.

The Constitution was adopted by vote rigging and voter intimidation, in a referendum in May 2008, held a few days after Cyclone Nargis devastated about one third of the country, leaving more than 140,000 dead. No consideration was given to the needs of the people, and thousands were forced from temporary shelters at schools and monasteries to set up polling stations and vote.[10] Though marred with blatant electoral fraud, the junta declared a 99 % voter turnout for the referendum, with 92.48% in favour of the Constitution. The draft Constitution was only published in Burmese and English and none of the other ethnic nationality languages spoken in Burma. Records of the Assistance Association for Political prisoners show that 79 activists were arrested for their involvement in 'Vote No', a peaceful campaign to encourage ordinary people to exercise their basic political rights and vote against the fundamentally flawed draft Constitution.

Election Administration: the Union Electoral Commission

In March 2010, the ruling State Peace and Development Council (SPDC) formed the Union Electoral Commission, an 18-member body hand-picked by the military government, to oversee the conduct of the elections. International standards for free and fair elections emphasize the importance of an independent national election body, such as a central election commission, responsible for administering an election. This body should be 'non-partisan, transparent, and independent from the authorities and other political influences'. The UEC did not conduct itself in an independent, impartial, or transparent manner. The election laws provided the UEC with the power to act as judge as well as jury. It manages not only the electoral process but members of UEC are the final arbitrators of election disputes that arise.

The independence of a central election commission is enhanced if composed of respected and suitably qualified individuals, nominated by a balance of interests, and free from interference or intimidation.The Chairman of Burma's Union Election Commission is former Major-General Thein Soe, who previously served as a military

9 Guidelines for Reviewing a Legal Framework for Elections, OSCE/ODIHR, 2001
10 Human Rights Watch, 'Burma: Stop Forced Evictions' *Human Rights Watch* (29 May 2008)
<http://www.hrw.org/en/news/2008/05/29/burma-stop-forced-evictions> accessed 21 October 2009.

judge advocate-general and deputy chief justice of the Supreme Court. Thein Soe is on the European Union's sanctions blacklist. The list, which targets key members of Burma's military regime, also includes Dr. Tin Aung Aye, a fellow Supreme Court Judge and also a member of the UEC. They were both included on the sanctions list for their involvement in Daw Aung Suu Kyi's 2009 trial. According to the European Union Council, members of the Burmese judiciary were targeted because of the "gravity of the violation of the fundamental rights of Aung San Suu Kyi."[11]

The lack of the UEC's independence was evident in the uneven handling of the competing political parties. Despite violating a number of election laws, the UEC never suspended or revoked the party registration of the USDP, rather the USDP appeared to operate above the law. The USDP, for example, forced civil servants to become members of the party in breach of the Political Parties Registration Law, which outlaws civil servants from membership in political parties.

Rules prohibiting marching to venues, holding flags or marching and chanting slogans in procession, were also breached by USDP candidates. The USDP opened its offices nationwide amongst large crowds with hundreds of attendees seen chanting, waving flags and marching in processions.[12] While this restriction is in itself undemocratic and repressive, it should be applied universally, instead the regime-backed party was able to ignore the restrictions while other political parties followed the regulations out of fear of the punitive consequences if they did not.

Under article 11 (a) of the Political parties Registration Law a party cannot start canvassing for members until the Election Commission has approved registration. The USDP began to canvassing for party members, and issuing membership certificates, in the months before the date it was required to by law. In the month of May, the USDP carried out extensive campaign activities, including voluntary and forced recruitment. Unlawful USDP membership recruitment campaigns were reported in Tenasserim and Rangoon Divisions,[13] Shan State,[14] and Kachin State.[15] However, by law the USDP should not have canvassed for members between 29 April and 8 June, as the USDP was in the process of applying for permission to register as a political party and was not officially registered.

The USDP's campaign efforts ahead of the legal timeline gave them a significant advantage in amassing a large membership base. In mid-August, the USDP claimed to boast a membership of 8 million individuals.[16]By late October, it boasted having amassed between 16 and 18 million members, out of a total of 29 million eligible voters in Burma.[17]

11 Mizzima News, Chairman of Burma's Election Commission on EU blacklist, 2 April 2010
12 Network for Democracy and Development, Burma: A Violent Past to a Brutal Future; The Transformation of a Paramilitary Organization into a Political Party, November 2010
13 "USDP begins election campaign," Democratic Voice of Burma, 20 May 2010.
14 "PM's party forcibly recruiting members in Shan State," Shan Herald Agency for News, 21 May 2010; "USDP Handing Out 'Incentives' in Shan State," The Irrawaddy, 26 May 2010; "Village Headmen fed up with junta backed parties campaign," Shan Herald Agency for News, 28 May 2010.
15 Network for Democracy and Development, Weekly Political Events Regarding the SPDC's Election, v. 20, 12 June 2010.
16 Network for Democracy and Development, Burma: A Violent Past to a Brutal Future; The Transformation of a Paramilitary Organization into a Political Party, November 2010
17 Wai Moe, "Than Shwe May Not be President," The Irrawaddy, 28 Oct. 2010.

Political Parties and Candidates

All individuals and political parties who wish to stand for election should be free to do so without discrimination, but in Burma this was not the case. Some opposition parties were banned from contesting the elections. Forty-seven political parties registered. The Union Election Commission only approved 42 to contest the elections. The Commission then went on to dissolve five other parties, leaving only 37 approved parties and over 80 independent candidates.

In April, all Ministers of the regime, including Prime Minister Lt. Gen. Thein Sein, resigned from the military and formed the Union Solidarity and Development Party. In August, the largest military reshuffle for decades occurred, with scores of senior military officers resigning and announcing candidacies for the USDP. The USDP absorbed the financial assets, extensive infrastructure, and much of the membership lists - containing approximately 18 million people - of the military-created-and-controlled Union Solidarity and Development Association (USDA), which was formed in 1993. The USDA and its paramilitary wings have long been implicated in violent attacks against the opposition, and in recent years have taken credit for local development projects in preparation for the elections.[18]

The National Democratic Force, a breakaway party from the NLD, formed by Khin Maung Swe and NLD MP elected in 1990, and Than Nyein, was allowed to contest the elections. The NDF split from the NLD over the NLD's decision not to contest the election. The Election Commission's use of double standards with regard to candidate registration was evident in its treatment of the NDF.

After approving its application for party registration, the Commission demanded, on 30 July, the NDF leaders meet an extra requirement to stand for elections. The UEC barred from standing as candidates most of the NDF leadership, as they were charged with treason in 1990 for trying to form the democratically elected parliament with Daw Aung San Suu Kyi, including, Khin Maung Swe who spent 16 years in prison.NDF leaders, Sein Hla Oo, Tin Aung and Thar Sai, were also barred by the Election Commission from contesting. The four appealed this ruling but were told by the Election Commission that their appeal documents were "insufficient" and the appeal was dropped.[19] The NDF fielded candidates in only 161 electorates.

Five parties were accepted by the UEC under the party registration process, but were then later forced to dissolve because they failed to register at least three candidates. They were the Union Karen League, the Myanmar New Society Party, the Mro National Party, the Myanmar Democracy Congress and the Regional Development Party (Pyay).

The UEC dissolved five parties, the NLD, the Shan Nationalities League for Democracy, the Union Pa-O National Organization, the Shan State Kokang Democratic Party and the Wa National Development Party, because they did not re-apply to register. The ten, above mentioned, political parties were prohibited from participating in any form of political activity.

18 Network for Democracy and Development, Burma: A Violent Past to a Brutal Future; The Transformation of a Paramilitary Organization into a Political Party, November 2010.

19Irrawaddy, 31 Jul 10, NDF Leaders Told to Appeal Past Treason Charges

The UEC rejected the Kachin political party and independent Kachin candidates all altogether. The Kachin State Progressive Party (KSPP) was denied approval to run and the party was abolished under the law. The Union Election Commission then rejected the application of 14 Kachin State Progressive Party members to run as independent candidates. The KSPP Secretary, Tu Raw, said: "I feel the refusal is unfair and we have not been given the right that every citizen should have to compete in the election. We will now have no opportunity to debate issues on a political stage like the new parliament." Furthermore, "the USDP knows that it is impossible for them to compete with the KSPP in Kachin State, and so it tried to stop our party from being registered," he said.[20]

Two other ethnic parties, the United Democracy Party (Kachin State), and the Northern Shan State Progressive Party, were also unfairly denied the right to register as a political party to contest the elections.

The Unity and Democracy Party of Kachin State (UDPKS), led by a former organizer of the USDA and business man, Hkyet Hting Nan, was quickly approved by the UEC to run, and received financial support from the USDP. The UEC barred two National Unity Party candidates from contesting the elections because they had foreign-born parents, further evidence of the discriminatory nature of the electoral laws.

The UEC also has the power to abolish political parties in the future, if they are not considered in line with electoral laws, the Constitution, or for any other reason they see necessary. Another discriminatory element was the cost of party registration. To register, political parties had to pay a fee of 500,000 kyat(U$US 550), double the average annual income in Burma, which is about $US200. This cost was a significant barrier to participation in the elections, depressing the numbers of candidates that most parties were able to register. However, it presented no problem for the USDP, which had illegal access to state resources and former USDA assets.

Another ruling of the UEC that unfairly favoured the USDP, was that if a constituency had only one candidate registered, the vote would not take place and the one candidate was automatically appointed the representative. The UEC stated that there were 54 constituencies out of the total of 1,163 where only one candidate was registered. In these 54 constituencies military backed candidates ran unopposed. State or Division Election Sub-Commissions declared the sole candidate the winner and no vote took place, depriving voters in these constituencies the right to vote for or not for this candidate.

20 Irrawaddy, 16 September 2010, EC Rejects Individual Kachin Candidate

Figure 1: Comparison of nationwide parties candidates to that of USDP and NUP by Parliament

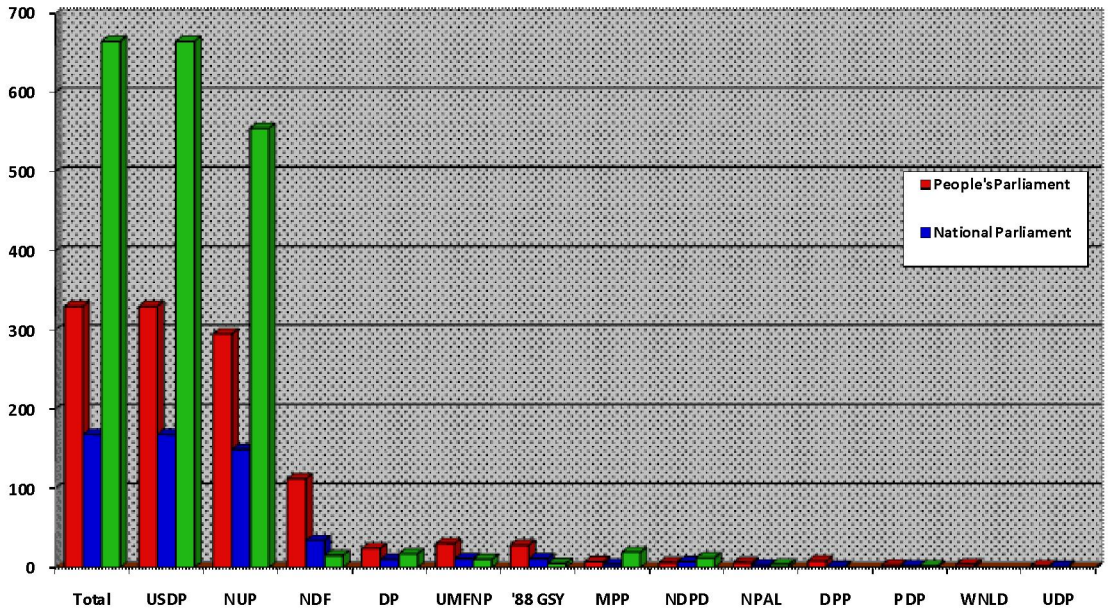
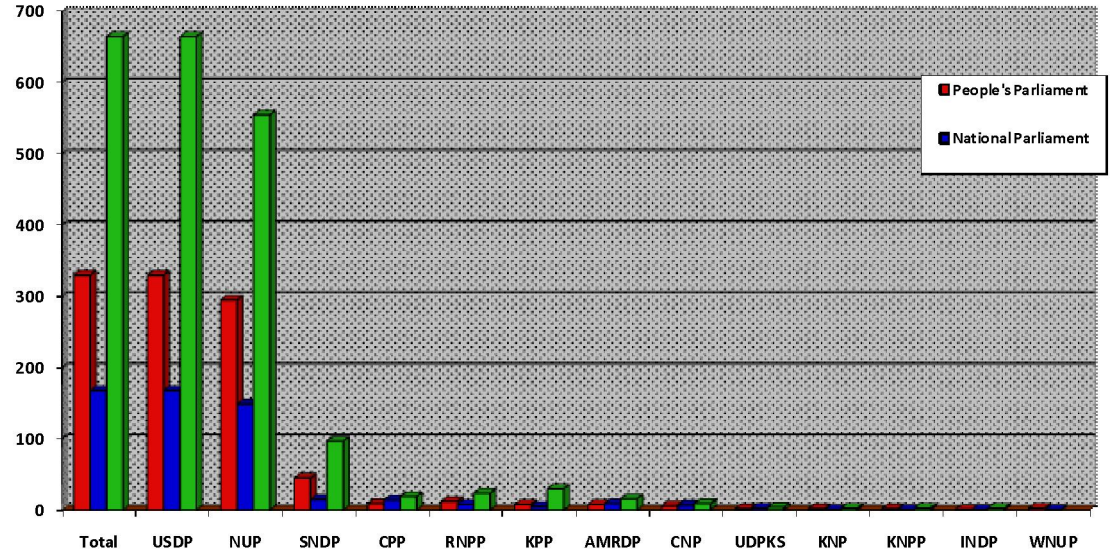


Figure 2: Comparison of ethnic parties candidates to that of USDP and NUP by Parliament



Freedom of Expression and Association

Criminalization of peaceful dissent

Freedom of assembly and association are fundamental components of democratic elections. All parties must have the right to campaign freely in the lead up to an election. Parties and candidates must be free to hold meetings and rallies to explain their policies to potential voters and persuade voters to elect them to power. Voters need to be confident that they will not face persecution or punishment before or after they vote because of their voting preference. In Burma an array of laws, directives and notifications have a chilling effect on these fundamental rights, silencing dissent.

The authorities introduced several new laws and directives in the run up to elections, adding to the list of oppressive decrees and directives, which already ban gatherings of more than five people, outlaw debate on the Constitution and criminalize membership of trade unions, human rights organizations and student groups, through the Unlawful Associations Act.[21]

Directive 2/2010, issued on 23 June, prohibits holding flags, chanting slogans and marching to and from an assembly venue.[22] In August, the Union Election Commission Notification 91/2010, was introduced which forbid candidates from giving speeches or distributing materials that criticize the Constitution, "tarnish" the image of the state or the military, or "harm security." Another notification warned that candidates must avoid causing disturbances near government offices, factories, markets, schools, sports grounds, hospitals, and religious places.

Parties were even required to get permission from the UEC seven days in advance when holding gatherings at their own party headquarters or branches, and the speakers had to then be approved.

In the lead up to the elections, state media warned potential dissidents that anyone who disrupts the country's election could face up to 20 years in prison, under the 1996 Law on the Transfer of State Responsibility, which is still in force. This is a law that provides up to 20 years imprisonment for anyone who "incites, delivers a speech or makes oral or written statements that undermine the stability of the state, community peace and tranquillity and prevalence of law and order"[23].

Political Prisoners

The existence of political prisoners reflects the systematic denial of the fundamental freedoms of expression, opinion, assembly and association; essential conditions for free, fair and credible elections. At the time of the elections there were at least 2203 political prisoners in Burma.[24] The number of political prisoners has doubled in the past few years. The figure steadily increased throughout 2009 and 2010. In the year before the election, October 2009 to October 2010, 110 political activists, or individuals considered to be in opposition to the regime, were arrested and imprisoned. In the two months before the election, there were 25

21 The Assistance Association for Political Prisoners, *The Role of Political Prisoners in National Reconciliation*, March 2010.

22 Election Commission, Enlisting the Strength of Political Parties

23 New Light of Myanmar, 4 August 2010, the author was only identified as Law Analyst.

24 The Assistance Association for Political Prisoners, press release, 3 November 2010

new arrests and only six political prisoners released. According to the Assistance Association for Political Prisoners, for more than 40 political prisoners this was their second election behind bars, having spent the last one, twenty years earlier, in prison.[25]

The widespread and unlawful detention of political activists had a significant impact on the elections in two main ways. Most of the prominent activists and opposition members were removed from public or political life. These imprisoned leaders were prevented from standing as candidates, organising against the elections or educating the people on political issues. Lead members of National League for Democracy party, including Daw Aung San Suu Kyi, and lead ethnic politicians who promote peaceful dialogue and national reconciliation, such Gen Hso Ten and U Khun Tun Oo, were unable to contest the elections. In 2009 Daw Aung San Suu Kyi was arrested for violating the conditions of her house arrest after American John Yettaw trespassed on her property. She was subsequently sentenced to a further eighteen months, on top of her already unlawful sentence, just long enough to keep her out of the way on and before election day.

The harsh sentences handed down and the torture and punishments inflicted on political activists threatens the wider population, sending a clear message: refrain from opposition activities or risk the consequences. The consequences are well known. These practices ensure populations live in fear, thereby preventing any politically critical activities. This fear stifles dissent, prevents a vibrant civil society and halts any criticism of the regime; key components of a genuine democratic transition.[26]

Election related arrests and detention

The arrest and imprisonment of individuals for their political beliefs is at complete odds with international human rights standards. At least 38 villagers, of Rohingya ethnicity were reportedly arrested on election day, in Arakan State. Other reports reveal that directly before, on, and after the election, local authorities arrested as many as 100 villagers in Buthidaung who supported the NDPD and are now subjecting them to forced labour.[27] Other methods were used to punish those villagers who did not vote for the USDP. According to a local from the Buthidaung, a man and two women were put in the stocks, by the Village Chairman, for refusing to vote USDP on the election day. The use of stocks as a public form of humiliation and punishment by local military authorities in parts of Arakan state has been documented by the ILO in the past.

Authorities reportedly arrested NDPD candidate Khin Maung Myint, also known as Enayet Ullah, for interfering at a polling booth, after he complained about the vote rigging taking place at the booth. He is reportedly still in custody in Maungdaw police station.[28]

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25 The figures related to the arrests and release of political prisoners are from the Assistance Association for Political Prisoners-Burma.
26 Assistance Association for Political Prisoners, Silencing Dissent, 2010 Elections, 3 November 2010.
27 Burma News International, 23 November 2010, Buthidaung Villagers targeted for forced labour, http://www.bnionline.net/news/kaladan/9834-buthidaung-villagers-targeted-for-forced-labour.html , and Asian Tribune, 11 November 2010, http://www.asiantribune.com/news/2010/11/11/intimidation-and-arrests-ethnic-areas-during-burma%E2%80%99s-elections

28 Burma Election Tracker and Kaladan Press, 9 November 2010, http://www.burmaelectiontracker.org/node/391

Just three days before the elections, the authorities arrested seven supporters of the NDPD, in Maungdaw Township. They are reportedly still being held at Na-Sa-Ka military Camp 7 in Aley Than Kyaw, in Arakan State.[29]

In several cases documented, authorities targeted people who supported the opposition boycott. In Rangoon in September, 11 university students were arrested for anti-election campaigning. Of the 11 arrested, reportedly, nine remain in detention at an interrogation centre in Insein Prison, where they have now been held unlawfully, without trial, for four months. The students distributed leaflets at Dagon University campus with slogans, which included "If you vote the USDP [the junta-backed Union Solidarity and Development Party], monks and people will be killed again" and "the 2008 constitution and elections guarantee that military rule will be prolonged."[30]

U Oakkantha, a 28 year-old monk, was arrested by Special Branch police in January in Thanbyuzayat Township, Mon State, after he launched a campaign opposing the 2010 elections. He was arrested for painting "No 2010 Election" along the highway from Moulmein to Ye townships to mark New Year's. When he was arrested, police seized a video camera, a computer and leaflets opposing the 2010 election. He was sentenced on 27 September 2010 to 15 years imprisonment under three charges – the Press Law, the Electronics Act, and article 505(b) of the Penal Code, for 'disturbing public tranquillity' –carrying a sentence of four years, 10 years and one year respectively. He was disrobed and tortured by authorities while being detained in Thanbyuzayat Township, according to sources and was hospitalised briefly at Moulmein Hospital due to his deteriorating condition.[31]

In other arrests documented, journalists and anti-election campaigners were held unlawfully for short periods of time in an attempt to prevent journalists or opposition supporters from observing the elections or participating on election day. Most were held arbitrarily for a night or two and then released.

Free media

Burma is one of the most repressive and censored countries in the world, due to both its restrictive press laws and its practice of imprisoning journalists. This lack of freedom for both Burmese and international news media was a significant impediment to the free and fair nature of the recent elections. In October 2010, *Reporters Without Borders* released their annual press freedom report, ranking Burma 174th out of 178 countries. On 18 October the regime, announced that foreign journalists would not be granted access to Burma for the elections.

Journalists should have had unrestricted access to information, polling stations, all the participating parties (including their candidates), the Union Election Commission and the SPDC, but in Burma's elections this was definitely not the case. The censorship, intimidation, and imprisonment of foreign and local journalists, as reported in Burma, is at complete odds with a free election.

29 Burma Election Tracker, http://www.burmaelectiontracker.org/taxonomy/term/563
30 Assistance Association for Political Prisoners, Silencing Dissent, 2010 Elections, 3 November 2010
31 Ibid.

The arrest of Japanese journalist, Toru Yamaji in Myawaddy in Karen State on the morning of the elections is reflective of this policy. As *Reporters without Borders* said, "the military junta denied foreign reporters entry to Burma, it is only natural that some tried to enter without press visas … We support Toru Yamaji's attempt to do some reporting despite the restrictions. This episode highlights the enormous difficulties that the international media have had in covering these undemocratic elections." Mr Yamaji was then deported on 9 November.

Two Australian documentary makers, Hugh Piper and Helen Barrow, filming a documentary for the Australian Broadcasting Corporation (ABC), in Burma, were arrested and deported on 11 November. The journalists were making a film about independent media in Southeast Asian countries. According to Piper, they were deported because of the sensitivity over foreign reporting on the country's election.

Despite having long-stay visas for Burma, they were expelled from the country. A Department of Foreign Affairs and Trade spokesman said the matter was raised with senior Burmese officials, as they were 'concerned' over the arrests and that they were not informed of the arrests of their own citizens, who were working for public broadcaster ABC.[32]

Two Burmese journalists were arbitrarily detained on election day. The two women worked for the 'True News' journal and were reportedly arrested by representatives of the Election Commission, in South Okklappa, Rangoon, though they were released the following day. Four journalists reported having their films destroyed in front of the Union Election Commission authorities in Rangoon, on election day, after taking photos. Intimidation of journalists and the confiscation and destruction of their property was reported throughout the country, including in Arakan State and Magwe where journalists report being threatened with arrest during the elections.

There was increased censorship in the lead up to the elections, as one journal editor said: "Three officials normally check our newspaper at the Press Scrutiny Board but, with the elections coming up, each line is now read and re-read by a dozen officials." He added that additional staff were assigned to the Press Scrutiny Board, in May. *Favourite News*, a privately-owned magazine, was closed down for publishing a cartoon that made an ironic reference to the elections.[33]

Strict censorship applied to political parties as well as the media. Political parties had to apply to the military regime's Censorship Board within 90 days of their registration if they wanted to publish election-related material. The order said political parties must not publish material that opposes the SPDC, makes any attempt to divide the armed forces, and does not conform to the restoration and prevalence of law and order.34 The Censorship Board charged political parties 100,000 kyat (US$100) for the application and 500,000 kyat (US$500) as a deposit, preventing smaller parties from participating fairly in the election campaign period. On top of the 500,000 kyat fee for party registration, this was another economic barrier to participation in the elections in an impoverished country.

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32 Australian Broadcasting Corporation, 12 November 2010, ABC doco crew arrested in Burma, http://www.abc.net.au/news/stories/2010/11/12/3064251.htm

33 Reporters Without Borders, *With elections just two months away, media still denied freedom and access*, 7 September 2010, available at: http://www.unhcr.org/refworld/docid/4c8df2971e.html

34 ALTSEAN-Burma, 2010 Election Watch, http://www.altsean.org/Research/2010/Developments/Months/01March.php?pageNum_rs_elections=2&totalRows_rs_elections=66&Submit=Developments

Three weeks before the elections saw the sentencing of newspaper editor Nyi Nyi Tun. He was sentenced to 13 years in prison on 14 October under a closed trial held inside Insein prison. Nyi Nyi Tun was brutally tortured during his interrogation. Nyi Nyi Tun is one of 41people imprisoned for their media activities. The ongoing detention, arrest and harassment of journalists contravenes a fundamental tenet of democratic elections: a free press.

Right to information

Not only was access to information curtailed through strict control of the media but also through the control of the flow of information. Flow of information was heavily restricted and limited in the pre-election period in an effort to limit awareness on the elections and exposure to democratic practices from outside the country. In Mon State, for example, two days before the election, the Military Affairs Security Unit ordered all townships in Mon state to shut down the phone lines from 3 p.m. Saturday and all day Sunday[35]. A number of reports from all over the country indicate that as the elections drew closer, phone and internet connections suffered massive hits or reductions in service. Internet services were frequently cut off or excessively slow, which prevented sending video or photo footage out of the country.[36]In most places, the Internet was completely inaccessible prohibiting the free flow of information and open communication, closing off parts of the country from each other as well as from the outside world. The regime claimed that this slow down was a result of cyber attacks coming from outside the country. This is unlikely, however, as the regime ordered a similar shutdown in 2008 before the Constitutional referendum and provided an equally implausible explanation for why it was occurring[37].

Civic Education

After decades of military rule, the people of Burma have little experience of multi party elections. A vital role of the state in any election is to educate people on their civic rights, and voting rights, in particular. For an election to be free and fair, an environment must exist in which the values of democracy are understood and acted upon by the population. Such an environment is not something that simply happens overnight. Rather, it is a consequence of actions by those in leadership positions, to establish non-partisan civic education programs that promote democratic values among the entire population.

In the lead up to the elections in Burma, election education for the general population was limited and biased towards the regime's interests. Even though state media aired a program regarding voting, it only reiterated that people must vote but did not raise other democratic election-related rights, like the right not to vote, as stated under the electoral laws and the right to a secret ballot.

In an interview, a woman from Pakan Township, Myitkyina District, Kachin State, said,

> "I want to know details about the elections but I don't have any chance to learn about it. In my region, we are not allowed to do anything related to politics. If we talk about it, even just a little bit, we are warned. Right now, gathering more than 5 people is

35 Independent Mon News Agency , 6 November 2010 Jaloon Htaw, Jury Chai News
36 Kantarawaddy Times, Regime tampers with internet ahead of polls, 2 November 2010.
37 Asia Network for Free Elections (ANFREL), Preliminary Elections Report, November 2010

> unlawful. In 2008 referendum as well, we were not allowed to express our genuine desire." [38]

Burma Election Tracker conducted approximately 200 personal interviews with citizens inside Burma, 50 of which complained about a critical lack of voter education. Media reports indicate that limited voter education was a problem throughout the country and worse in ethnic areas. As this voter from Chin State, said, "I do not have any knowledge on the election, they required to me to vote, so I did it."

Some voters appeared unaware of the elections altogether. A woman interviewed by a journalist in Shan State on 4 November; when asked about the elections replied, "We don't know anything about this yet." Later the journalist discovered that local ethnic villagers were given party leaflets in Burmese, which the villagers could not read.[39]

The UEC only published ballots and voter instructions in the Burmese language, which posed a significant barrier in ethnic areas where some people cannot read Burmese, due to poverty and policies of discrimination, which limit access to educational opportunities in these areas.

Illiteracy in the Burmese language was serious problem for many Muslim voters. A member of the NDPD who was observing a number of polling stations in Maungdaw Township, Arakan State said,

> "Most of the people in the area, especially Muslims, do not understand how to vote because they are unable to read the Burmese language, and have been asking what to do with their ballots. But no one has the right here to explain or talk to them. We are afraid that most of the votes will be discarded as disqualified votes".[40]

Similar problems were reported in Buthidaung Township, Arakan State. According to a local UNICEF official, who wished to remain anonymous, about 90 per cent of the Muslim population living in these two townships cannot read or write the Burmese language: "Most of the people in the area do not understand how to cast their ballots due to the lack of practical education on how to vote in the election. This is the responsibility of the local election commissions" he said.

Lack of information and education, as well as inaccessible polling booths ,and the insufficient provision of polling booths in remote areas, prevented people from voting.
"There are many people who do not know where they have go to vote and even members of the same household are being assigned to separate and distant polling stations", said a woman from Aungbala Village in rural Maungdaw. This was not an isolated incident as one villager explained, 'almost every family in our village and nearby villages is experiencing the same problems in voting in this election."

Freedom of movement

The SPDC did not allow political parties to campaign freely. Some opposition political parties and their supporters were prevented from travelling for campaign purposes. The Shan

38 ND Burma, Pre-Election Report, November 2010
39 Burma Election Tracker, Campaign Analysis, http://burmapartnership.org/2010elections/wp-content/uploads/2011/01/campaign-analysis.pdf
40 ND Burma, Pre-Election Report, November 2010

Nationalities Development Party was blocked from campaigning for votes in Karenni State. During elections, the government should ensure that freedom of movement and assembly are respected, particularly in the context of political rallies and meetings and candidate canvassing. If parties can not travel freely to canvass in their respective constituencies, they could lose many votes. The USDP, on the other hand, faced unfettered movement and access to their constituencies.

Curfews were imposed by the military regime in a number of areas, including in Loikaw in Karenni State and Maungdaw, Arakan State on 4 November. In Loikaw, "people [were] not allowed to leave their houses from 6 pm to 6 am" resulting in "villagers facing difficulties going out to work". People were prohibited from leaving their homes and as one local reported 'two or more people are not allowed to talk to each other after 9pm."[41]

On 2 November, villagers in Kyar Inn Seik Gyi township, Karen State, were ordered not to go outside their villages on the day of the election, an area where polling has been cancelled by the Union Election Commission. They were told: "Villagers can go outside the village at their own risk".[42]

Restriction on movement also occurred in urban centres, authorities in Rangoon issued warnings to residents not to go out after 9 pm on the days leading up to the elections due to increased security measures. The informal curfew affected East Dagon, West Dagon, Tamwe, Mingaladon, North Okkalapa and South Okkalapa in Rangoon, some townships in the Mandalay area. Teashops, internet cafes, video shops and in the week before the elections other public places were ordered to close by 8 p.m.[43]

Freedom of Association

The right to free association applies, not only to the right to belong to a group or organization of choice, but also the right to not belong to one. Forced membership in any organization is a serious violation of an individual's fundamental freedoms. Forced membership in the USDP was widespread. Civil servants were forced to become members of the USDP. On 18 June 2010, in Kamamo village, Chaungzon Township, Mon State, college graduates and government employees were forced to give their ID numbers and other census information to authorities. When some asked why, U Sha, an authority of the village replied: "By orders from above, we have to make lists of all government employees as USDP members and to vote in the elections, from every village. You don't need to worry for you are government employees and you need to follow the instructions. [44]

In October 2010, USDP members including U Chit Tin, a member of USDP Organizing Committee in Namhkam Township, Northern Shan State instructed government employees from the township to vote for the Lion (USDP logo) in the elections. They informed staff that being a government employee meant that they were automatically members of USDP and must therefore vote for the party. This not only violates the right to free association but also

41 Burma News International, 2 November 2010, Burmese Army imposes curfew on Karenni town, http://www.bnionline.net/news/mizzima/9664-burmese-army-imposes-curfew-on-karenni-town.html
42 Burma Election Tracker, http://www.burmaelectiontracker.org/node/32
43 Irrawaddy, 3 November 2010, Election Timeline, http://www.irrawaddy.org/article.php?art_id=19931
44 ND Burma, Pre-Elections Report, 2010

the military regime's own election laws, which prohibit civil servants from joining political parties.

Citizen's reports recorded by Burma Election Tracker stated that a local USDP leader from a village group in Shan State went to four neighbouring villages and ordered at least one from each family to work as a member of USDP. According these reports, the USDP forced 80 villagers from the first village, over 100 villagers from the second village, 20 from the third, and 60 from the fourth village to register as USDP members. They gave them USDP membership cards and told them it was not necessary to go to the polling station to vote on election day as they now had membership cards.

Even the NUP submitted a complaint to the Union Election Commission because U San Win, a USDP organizer seized the party membership cards of 16 NUP members from Myauklayyone village, Tharawaddy Township, Pegu Division on 19 September and forced them to join USDP.[45]

Election related violence

Members or supporters of opposition parties, as well as human rights defenders and other activists have routinely faced serious physical assaults in Burma. The election period was no exception. Election related violence was reported in the immediate weeks before the elections, as well as on the day. Two students from Kyauk Hlaikhar (Dargadil) village, Arakan State were severely beaten for wearing T-shirts with the Rohingya party, the National Democratic Party for Development (NDPD) logos, according to a source who spoke on the condition of anonymity. The assault took place on 1 November, led by Syed Alam, a man aligned with the military Border Security Force,'Na-sa-ka'. In a similar politically motivated attack, seven supporters of the NDPD were beaten by Na-sa-ka soldiers in front of a polling station on election day.46

On 26 October an organizer for the All Mon Region Democracy Party was beaten unconscious by the Village Peace and Development Council (VPDC) Chairman and local militia in Ye Township, Mon State. He was beaten for two hours and he was hospitalized because of the assault. The VPDC Chairman then ordered his wife, Mi Win Thin, to sign a statement that he fainted due to his own problems. The wife asked why she had to sign for him if he fainted on his own and the Chairman threatened her and forced her to sign the statement, which she did, in order to be with her husband.

Even the NUP, another military aligned party, faced physical intimidation. On 29 October, NUP candidate Kyaw Aye was injured in a suspicious motorcycle accident caused by an unknown perpetrator who fled the scene. The 70-year-old candidate was the only person running against Thein Sein, Burma's current Prime Minister who heads the USDP.[47]

An armed clash between the Pa-O National Army (PNA) and Mark Kieng militia unit occurred in Southern Shan State's Namzang Township, between the 18 October to 21 October, resulting in 4 dead and one seriously injured. The fighting was directly related to the elections and developed from an argument between Pa-O National Organization (PNO) party campaigners

45 NDD, Weekly Political Events, 19-25 September 2010, p. 3.
46 Assistance Association for Political Prisoners, November 2010 Monthly Chronology
47 Irrawaddy, 4 November 2010, PMs Opponent Injured in Suspicious Incident

and villagers of Mark Kieng, Mongzit village tract on 17 October. According to one local: "The PNO came to conduct campaigning in the village. But local villagers refused to allow them to campaign and asked them to leave saying no one would support them. The campaigners then got angry with the villagers and left immediately." The campaigners reportedly returned the next day with 150 strong PNA force but were stopped by 20 strong Mark Kieng militia led by Captain Mo Khurh at Hsai Nguen village.

Other incidents of politically motivated violence took place earlier in the year. In June 2010, Ko Myint Soe, an NLD member from Twante Township, Rangoon Division, was brutally beaten by USDA members, apparently for wearing a t-shirt emblazoned with the image of Burmese independence leader General Aung San.[48]

NLD member Chit Tin was attacked by a *Swan Arr Shin* member in Mon State, in May 2010. The attacker was acting under the orders of Ngwe Aung and Myat Moe, two local USDA members. Chin Tin suffered serious injuries and was hospitalized for over one month. He tried to file a case with the authorities but the two USDA members later paid the police 1.2 million kyat [approximately $US1,150] to close the case.[49]

Threats and Intimidation

A fundamental principle of free and fair elections is that the voter is free to support or to oppose government, without undue influence or coercion of any kind, which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.

In a report released just days after the elections, ND Burma, a human rights documentation organization with field-workers working inside the country reported 247 cases of election related rights violations of which 86 were threats of violence, intimidation and other forms of coercion.[50]

In Myint Hlut village, locals were violently forced to vote for the USDP rather than the favored National Democratic Party for Development (NDPD), as one resident reported to ND Burma: "We tried to vote for the NDPD on the paper ballots, but they gave our vote to the USDP. Nasaka forces [border security force] entered the area and fired warning shots, before forcing us to mark our ballots for the USDP."

According to the Chin Human Rights Organisation, in Tedim town, Chin State, polling stations were guarded by USDP agents who asked voters if they would be voting for USDP, and those who said no were refused entry to the polling station. USDP organizers in the area told some villagers that ballots had already been cast on their behalf in favour of the USDP, and warned them that soldiers from the Burma Army Light Infantry Battalion (LIB) 269 would arrest them if they tried to vote or complain.

48 Network for Democracy and Development, Weekly Political Events Regarding the SPDC's Election, v. 20, 12 June 2010; National League for Democracy (Liberated Area), Activities of National League for Democracy: May-July 2010 (August 2010) 27.
49 Democratic Voice of Burma, 6 May 2010 , NLD member 'attacked by junta thugs,.
50 ND Burma, The Road to Military Victory in the 2010 Elections, November 2010.

A similar situation arose in Kachin State, where voters in Pangwa Township were directly threatened at the polling booth, as local SPDC officials stood by the entrance and declared, "You all should vote for the USDP's Zahkung Ting Ying. We see and know who you are voting for, so be careful." Witnesses noted that all voters then voted for the USDP candidate. Burma Election Tracker reported, other incidents of less direct intimidation also took place in Kachin State, as voters reported that police, soldiers and USDP members, all in uniform, monitored the polling station, frightening voters and subsequently, influenced the voters' decisions.[51]

In Pegu division, a group of USDP members led by Zaw Win, the party's village organizer, threatened a group of 40 supporters from the National Unity Party (NUP) and blocked them from going to the polling station to cast votes.[52]

Reports from election day reveal that in Mandalay Division, local SPDC authorities announced over loudspeakers that anyone found to have abstained from voting would be fined 100,000 kyat [$100 USD) and sentenced to 1 year imprisonment.

Throughout the country, civil servants were told they would lose their jobs if they did not support the USDP. In Rakhine state, the owners of salt fields were told their land would be confiscated if they did not vote for the USDP.53 In other areas, villagers were warned all development programmes and public services would be cut if they did not vote for the USDP.

Bullying and harassment from the USDP resulted in some parties and candidates stopping campaigning out of fear for their constituencies. "People from the USDP know that they are going to lose the election in our area so they are trying to bully us," an NDPD member, who asked to remain anonymous, told The Irrawaddy. "They obstruct our electioneering efforts and threaten us. They have warned us that Rohingya villages will be dismantled if we don't do as they say." Such threats, ultimately forced the NDPD to stop campaigning in Dunyaung Paungkyu Village in Maungdaw Township on 15 October, three weeks before the elections.[54]

Independent candidates campaigning in the election said they faced regular harassment from the police, government officials and members of the regime-backed Union Solidarity and Development Party and accused the Township Sub-Election Commissions of neglecting their complaints.

In a typical incident, authorities confronted independent candidate Saw Aung and his group after they had been campaigning in South Okkalarpa Township in Rangoon. "Two police trucks blocked the road. USDP members, the fire brigade and ward authorities were waiting with the police. They wanted to arrest us for meeting too late at night and threatened my supporters" said Saw Aung.[55]

Kaung Myint Htut, who ran against Rangoon Mayor, Ex Brig-Gen Aung Thein Lin, a leading USDP member and junta heavyweight, said the USDP circulated rumours that he had been arrested. A local source claimed, "Aung Thein Lein wants Kaung Myint Htut killed because he has got a lot of public support".

51 Burma Election Tracker, 19 November 2010, http://www.burmapartnership.org/2010/11/burma%E2%80%99s-elections-marked-by-violence-intimidation-and-ethnic-persecution/

52 Irrawaddy, Election Timeline, 7 November 2010, http://www.irrawaddy.org/article.php?art_id=19990&Submit=Submit

53 The Guardian, 8 November 2010, Burma election observers report voter intimidation.

54 Irrawaddy, 27 October 2010, Rohingya Party Prevented from Campaigning.

55 Irrawaddy, 3 November 2010, Independent Candidates Harassed.

Yu Zar Maw Tun, an independent running in Rangoon's Hlaing Township, told The Irrawaddy that in the lead up to the elections a group of plain-clothes Special Branch Police took photos and names of people at meetings, saying they were there to maintain security, but they made potential supporters afraid. She also said they took her campaign pamphlets.[56]

Intimidation of 'no vote' campaigners

In North Okkalapa, Rangoon, on 31 October, riot police surrounded "no-vote" campaigners as they tried to distribute information about the right to boycott the election."Now, we can't go outside. The security forces with red armbands are everywhere, on all street corners," Burma Pro-Development Group, activist Thein Aung Myint told Mizzima. Others expressed fears of being arrested or beaten by security forces. Some of the security forces were, reportedly, from the *Swan Arr Shin* militant wing of the junta-backed Union Solidarity and Development Party (USDP). "We are not staging a demonstration, we are just assisting people who don't known about this election," Thein Aung Myint said.[57]

On 27 October 2010 young members of the NLD distributed election boycott leaflets in Insein and Mingalardon Townships in Rangoon Division. The leaflets, which were distributed in markets and busy streets, stated everyone has the right not to vote. One young NLD member explained: based on what party leader Aung San Suu Kyi has said, we distributed leaflets saying people have the right not to vote in the general election. While the authorities did not disrupt their protest, they were photographed handing out the leaflets.58

In September, shortly after the NLD was officially dissolved, State media warned the NLD to stop protests against its dissolution, and threatened imprisonment for anyone obstructing the smooth running of the elections. While the NLD was not directly named, the New Light of Myanmar said "a party" was "attempting to mislead the people into misunderstanding the law" and that the party was persuading people to "protest against the elections by boycotting" the 7 November election.

It then listed activities, including "undue influence" to prevent a person from voting and "instigation, writing, distributing or using posters or attempting by other means to disturb voting", which were prohibited by law. Under the acts could "on conviction be punishable with imprisonment for a term not exceeding one year or with fine not exceeding one hundred thousand kyat (US$1,000) or with both," it said.

Vote buying and unfair use of state resources

For an election to be fair, the incumbent government must treat all political parties equally. The military regime ignored the constitutional provision preventing political parties from using state funds and resources, and instead provided the USDP access to public property, government buildings, vehicles, and staff. While other political parties struggled to raise funds for basic campaigning, the USDP committed blatant electoral fraud through vote buying. A number of independent reports show cash or in-kind contributions were offered to people in

56 Ibid.

57 Mizzima and Burma Election Tracker, http://www.burmaelectiontracker.org/node/55

58 The Assistance Association for Political Prisoners, Silencing Dissent: the ongoing imprisonment of Burma's political activists in the lead up to the elections, 3 November 2010.

exchange for USDP votes and membership. The USDP handed out free medical care and identity cards if villagers committed in writing to vote for the USDP.

Under its campaign activities in Rangoon, the USDP built roads, provided water wells, opened free health clinics, repaired schools and handed out low-interest loan by using funds from the City Municipal Committee, according to sources interviewed by The Irrawaddy.[59]

One source described how the USDP used its special access to state funds. For instance, if a USDP candidate wanted to build a road in a ward, a Road Construction Committee consisting of seven influential local residents is formed during a meeting with the appropriate state authorities.[60]

Reportedly the Ward Peace and Development Council would then arrange a meeting with the new committee of local residents, who were told to gather the names and support of community members who will vote for USDP candidates. If 75 percent of the residents living around the proposed road sign up for USDP membership and pledge to support its candidates, the road will be built. Before the election, Mayor Aung Thein Linn, the Chairman of the City Municipal Committee, reportedly claimed that 1,050 roads are under construction and 250 roads have been completed by the USDP.[61]

During a campaign tour in Zeyathiri Township, Naypyidaw, Shwe Mann reportedly told ward members and leaders of the community:

> "Everyone should understand the government's good-will, and if the community needs something, tell the USDP. The UDSP is the only one party that can work for the betterment of the country. If you all want peace and prosperity in the country, vote for the USDP candidates."

Reports of this nature were documented throughout the country. In May, the SPDC reportedly donated 100,000,000 kyat to the USDP to build a party office in Falam, Chin State.[62]

In April 2010, in villages in Namsan Township, Northern Shan State, USDP members promised to provide financial and material supports to youth leaders and teachers in the area if they could convince residents to vote for USDP. USDP members, led by U Khun Pwin, offered 1.5 million kyat per village and computers, cell phones and fuel expenses during the election time if the villagers voted for the USDP.[63]

In Karen State, a USDP candidate paid village leaders 200,000 kyats and in Arakan State, elderly people were given reading glasses and hospital patients 50,000 kyats by the USDP candidate for their support.[64]

The New Ear Journal reported the USDP in Ye Township, Mon State were granting permits to the local population, such as a permits for producing and distributing alcohol and other business permits. The use of incentives, like this, completely disadvantaged other political parties, which were in no position to provide them.

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59 Irrawaddy, 8 October 2010, USDP illegal campaign tactics.
60 Irrawaddy, 8 October 2010, USDP illegal campaign tactics.
61 Irrawaddy, 8 October 2010, USDP illegal campaign tactics.
62 Burma Election Tracker, http://www.burmaelectiontracker.org/node/116
63 ND Burma, Pre- Election Report, November 2010
64 The Guardian, 8 November 2010, http://www.guardian.co.uk/world/2010/nov/08/burma-election-voter-intimidation

On 22 October, Cyclone Giri hit the Arakan state coastline. The United Nations estimates that at least 100 people died, many more reported missing and ill, and some 70,000 left homeless. A request to delay voting by one month in areas of western Burma devastated by Cyclone Giri, was ignored by the military regime.[65]

Instead, village authorities in cyclone-affected areas in Arakan State used relief aid donated by international and local NGOs to garner political support for the USDP, according to local sources. Villagers were denied the right to aid, unless they promised to join or support the USDP. One town elder, explains: "Village council chairmen in some villages told cyclone victims to vote for USDP candidates. If they don't, it will be impossible for them to get relief aid. I heard some village officials in Mray Bon decided to give priority to USDP supporters in disbursing aid."[66]

The exploitation of the desperate needs of cyclone victims was reported in other villages, including Nga Shwe, Ah Ngu, and Amyat Htut. Many victims were told that only USDP supporters would receive aid.

The right to vote

In terms of voting, the State Peace and Development Council, the USDP and the Election Commission violated a number of international standards for free and fair elections. There are numerous reports of officials casting votes on behalf of voters, without their knowledge or consent, of eligible voters excluded from the list and the use of ghost voting. As one person from Karenni state reported: "I returned after traveling and was not able to vote. I realized someone else had voted on my behalf and I don't know which party that person voted for. There will not be change. "[67]

<u>The exclusion of ethnic areas from voting</u>

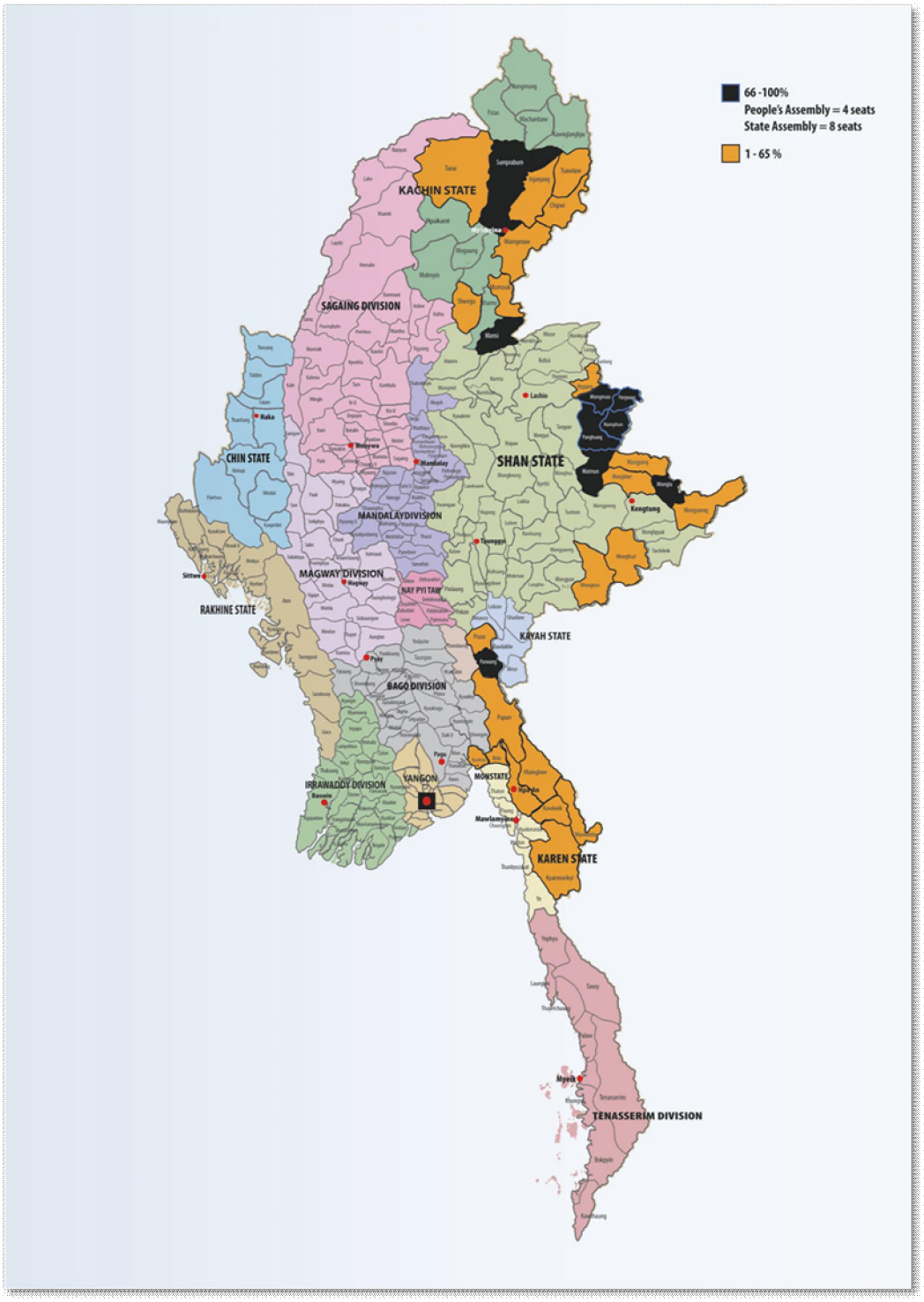
On 16 September, the Union Election Commission announced elections would not be held in certain parts of the country, largely ethnic areas where ethnic minorities make up the majority of the population. This exclusion disenfranchised an estimated 1.5 million voters from ethnic areas and is a gross violation of their basic civil and political rights. The regime announced that a number of areas in five ethnic-minority states would not participate in upcoming elections, seriously affecting the free and fair nature of the elections. State radio and television listed around over 3,400 villages across Kachin, Karenni, Karen, Mon and Shan states that would be excluded from voting in the 2010 elections. The announcement said: “The multiparty general election on 7th of November 2010 will not be held in the following places as there is no condition to hold a free and fair election”. In reality, the excluded areas were constituencies where the regime’s proxy parties had little chance of winning.

The Union Election Commission cancelled voting in 12 more village tracts in six constituencies in Karenni State. UEC Chairman U Thein Soe said in October, "The main reason for not holding elections in these constituencies is that there are armies in these areas that

65 DVB, 1 November 2010, No delay on vote in cyclone-hit region.
66 Burma News International, 4 November 2010, Relief aid used by USDP to garner votes
67 Burma Election Tracker, http://www.burmaelectiontracker.org/taxonomy/term/716

some parties might use to threaten voters. Instead of voting in 1,163 constituencies, the final number of seats will be 1,157".68

Figure 3: Map depicting areas where voting was cancelled



68 HRW, Q&A on Elections, http://www.hrw.org/en/news/2010/11/02/qa-elections-burma#_Will_there_be

The exclusion of IDPs, refugees and migrants

The military regime did not set up ballot boxes for refugees, displaced people, or Burmese migrant workers, in disregard of UN Guiding Principles on Internal Displacement, which states "Internally displaced persons, whether or not they are living in camps, shall not be discriminated against… in the enjoyment of the following rights: the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right." There are about 2 million Burmese working in Thailand and hundreds of thousands of refugees living in nine camps in Thailand, located along the Thai-Burma border.

Misuse of the voter lists

A number of reports from inside the country show large numbers of voters denied the right to vote because their names were not on the voting list. The deliberate use of the voting lists to exclude voters who were unlikely to vote for the USDP was evident in the exclusion of activists and individuals suspected of being involved in the monk led 'Saffron Revolution' of 2007. These were individuals with no criminal record and there was no legitimate means for excluding them from the lists. The exclusion of the family of imprisoned Shan leader General Hso Ten from the voter lists further illustrates the manipulation of the voter lists.[69]

The list of eligible voters included names of under-aged, deceased and people who do not exist, and their votes were counted in support of USDP. Referred to as 'ghost voting' a form of election fraud, whereby voters who do not exist or who are not eligible to vote (i.e. too young) are added to the electoral register. A network of local human rights and democracy groups working inside Burma reported a number of issues to Burma Election Tracker, including ghost voting:

"Polling station officials in (….) villages in Irrawaddy Division recorded ID numbers of people who had been dead for 2 months and counted their votes as votes in favor of USDP. ID numbers of voters who came to the polling station to cast votes did not match (Same name different ID No). Polling stations were not considered safe. Mr. (…..) a village head from (……) village, (……) township also reported that USDP members were persuading voters to vote for them at the polling station. A mob of USDP members in uniforms intimidated citizens by marching back and forth many times in front of the houses of those who did not vote."[70]

Burma Election Tracker received reports of the use of underage voters, including the following example. A Ward Chairperson took a 13 year old person to the polling station and forced the child to vote for USDP. At 10:30 am in the morning, the Polling Station Commission announced that all the 3,000 eligible voters had cast their votes already and USDP had a landslide victory. A voter went to the polling station at 3:00 pm in the afternoon to vote and was told that he had already voted. The voter explained that he had not cast a vote yet and would complain to the police. He was finally allowed to cast a vote.

Another potential voter who lost the right to vote, in Magwe, explained, "my name and my wife's name are not on the register…When I talked to the local authority, he said, 'Let it be.'

69 Burma Partnership, 18 January 2011, http://www.burmapartnership.org/2011/01/fraudulent-elections-undermine-citizen%E2%80%99s-electoral-rights/ and Democracy for Burma, Elections Update, 7 November 2010, http://democracyforburma.wordpress.com/2010/11/07/elections-update-shan/

70 Burma Election Tracker: details were removed to protect sources.

Although our names are not on the register, the guy on my street who already died is on the register. How come?"[71]

Another barrier to voting was inaccessible voting booths. On the 6 November, election commissions in Mongkeung township, Southern Shan state, cancelled the plan to set up polling booths in Ham-ngai and Mongkhun villages tract citing security. People from these village tracts, were told to go and cast votes in Pangkaytu, 20 miles far from their village tract. "They just came and told us last night at about 18:00. How could we have time to inform villagers. Then villagers had to go there on foot because there is no motor road," a SNDP member told a journalist. "It is like they were bullying us. We think there may be only 10 out of 100 percent going there to vote," he said.

One local observer commented, "the authorities didn't arrange to watch and check how many times a person voted. There were many difficulties when voting because the authorities let over 3000 people vote in a polling station suitable for only 1500 people. The authorities openly performed all this inequality, malpractice and tyranny in front of our eyes and they will be more and more in unreachable places in Burma."

Manipulation of the election outcome through advanced votes and vote rigging

The abuse of advance-voting to manipulate the election results is particularly troubling aspect of the election. Civil servants, soldiers, members of government sponsored non-governmental organisations, as well as ordinary villagers were coerced into advance voting for the USDP. According to local sources, local authorities and USDP collected advanced votes, which favoured the USDP.

A number of fundamental democratic electoral norms were breached in the process of advanced voting, including the right to vote in secret, described by the Inter-Parliamentary Union (IPU) as an 'absolute, which shall not be restricted in any manner whatsoever"[72]. In far too many cases, advance ballots were collected door-to-door, a blatant violation of the principle of the secret ballot and a situation ripe for voter intimidation, said the Asian Network for Free Elections in a statement calling for comprehensive electoral reform in Burma.[73]

This example from Northern Shan State's Hsenwi township illustrates: "We were instructed by our ward headman to vote for USDP. We could not do anything else because it was not us that marked the ballot paper," a voter who was there said. "A member of a government department did it on our behalf. We just had to take the marked ballots and put into the ballot boxes," he added.[74]

Advanced voters also report having to vote verbally, by telling the authorities which party they wanted to vote for in front of other employees and their employer. "We have to cast our vote before the election day. There will be no ballot papers for us, so we have to say verbally

71 Bangkok Post, 8 November 2010, Fear and Loathing at the Polls, http://m.bangkokpost.com/topstories/205235

72 The Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections

73 ANFREL, 7 December 2010, Myanmar after the Elections: a call for comprehensive electoral reform.

74 Shan Herald Agency for News, 2 November, Forced Voting for USDP in Shan State North

which party we want to vote for to the concerned authorities to note down," said a government employee in Rihkhawdar town, Chin State.75

According to voters in Mudon Township, Mon state, the UEC collected the ballots with the help of the USDP. Advanced votes were also taken at the residence of the elderly and the ill and they too were forced to vote for the USDP, as one elderly resident explained, "the USDP came in person to collect the votes. They asked the voter who they wished to vote for, but then ticked the ballot in favour of the USDP…it was easy to see where they placed the tick mark".76

The impact of the advanced votes on the outcome of the election has been felt by many of the opposition parties. As one candidate said: "The situation turned upside down when the bag of advance votes arrived," adding that the party was hoping to file a complaint to the Union Election Commission about irregular vote counting.77

The vote in Shadaw constituency in Karenni state illustrates the impact of advance voting. In Shadaw constituency, reportedly, every single eligible voter voted for all five seats representing the area in both houses of parliament and in the state assembly, in an election that claimed a 77 percent national turnout. How did Shadaw, a state where decades of conflict between government forces and Karenni rebels has taken a huge toll on the local population, achieve 100 percent turnout? The answer: through advanced voting. In reality only 69 out of 1,821 eligible voters actually showed up to cast their ballots on the day.78

Throughout the country, advance votes played a key role in determining the outcome of contests. In Maukmai, Shan State, scarcely three percent of the local electorate cast their ballots for the Shan State parliament on election day. However, advance votes and absentee ballots more than made up for this low turnout at polling stations. As in Shadaw, most of these votes went to the USDP rather than to its main local rival, the Shan Nationalities Democratic Party. Interestingly, all 189 votes cast on the actual election day were rejected by the local EC, meaning that the final outcome was based entirely on advance and absentee votes.79

According to research by The Irrawaddy, there were at least 60 confirmed cases of candidates losing overnight after advance votes were added to the total, despite having a clear lead as election day counting neared completion. In almost every case, the final outcome favoured the USDP.

Pongsak Chanon, a senior election observer with the Asian Network for Free Elections , stated, "I don't see any reason why the military should have been so afraid when it had done everything possible to seal the advance votes, manipulate the campaigns and also intimidate and threaten people of dire consequences if they did not vote for their party, the USDP."

According to another observer, interviewed by the Irrawaddy, "A systematic plan was executed by the military junta when they found that there were possibilities that the low turnout could work against their interests". In a number of polling stations, the NDF and the Democratic Party (Myanmar) candidates were leading by a margin of more than a 1,000 votes

75 Burma News International, 1 November 2010, Advance voting, a mockery of the elections.
76 ND- Burma, Pre-Elections Report, November 2010.
77 Democratic Voice for Burma, Anger at 'fraudulent vote rages on', 10 November 2010.
78 The Irrawaddy Magazine, Those Shadowy Advanced Votes, DECEMBER, 2010 - VOL.18, NO.12
79 Ibid.

when the count was suspended. Chanon asserts, "there could be many reasons, but the military junta definitely did not want to take any chances and therefore engaged directly in swapping the actual results with rigged ballots".[80]

Post Election period

Election Results

The election results are highly contentious. The USDP, which contested all 1,154 seats in the bicameral and regional parliaments, to no surprise, won 76.5% percent of the seats. It won more than 81 percent of parliamentary seats in the Rangoon constituencies, 99 percent in Mandalay, 93 percent in Irrawaddy and 97 percent in the Tenasserim Regions. On top of this are the seats reserved for the military, 25% of the whole parliament leaving the military/USDP with a huge majority.

The USDP won over 75% of the seats (129) in the national parliament (upper house). The USDP also won an almost complete majority in ethnic Burman regions, and around 65% from ethnic states, where a handful of ethnic-based parties and other candidates won the remaining seats.

In the people's parliament (lower house), the USDP won 259 seats or around 80%. Other parties also won seats in the lower house, though their numbers are significantly lower, including the opposition National Democratic Force (twelve seats), the National Unity Party (eight seats), the Rakhine Nationalities Development Party (RNDP, nine seats), and the Shan Nationalities Democracy Party (SNDP, eighteen seats).

The situation in the ethnic areas however, was different. In Arakan, the RNDP took about half the seats, with less than 40% going to the USDP; in Shan state, the SNDP has 31 seats along with a sprinkle of other groups such as Pa-O, Karenni, and Inn ethnic parties. The USDP took most seats in Kachin state, but the NUP also gained several and the Kachin and Shan parties won two and four respectively.

Overall the USDP won 882 of the total 1,154 seats. Trailing behind was the NUP, which also holds close ties to the ruling military regime, with only 64 seats.

80 The Irrawaddy Magazine, Those Shadowy Advanced Votes, DECEMBER, 2010 - VOL.18, NO.12

Table 1: Members of Parliament (National Parliament) by State and Division

State&Division	Composition of the National Parliament																	
	USDP	SNDP	PNO	TNP	WDP	NUP	UDPKS	CPP	CNP	RNDP	PSDP	KPP	AMRDP	KSDD	NDF	Independent	Military Quota	Total
Shan	7	2	1	1	1											1	4	16
Kachin	6	1				3	1										4	16
Chin	6							4	2								4	16
Arakan	5									7							4	16
Karenni	12																4	16
Karen	6										3	1	1	1			4	16
Mon	8					1							3				4	16
Tennasserim	12																4	16
Pegu	12																4	16
Rangoon	8														4		4	16
Irrawaddy	12																4	16
Mandalay	12																4	16
Sagaing	11					1											4	16
Magwe	12																4	16
Total:	**129**	**3**	**1**	**1**	**1**	**5**	**1**	**4**	**2**	**7**	**3**	**1**	**4**	**1**	**4**	**1**	**56**	**224**

Figure 3: Composition of the National Parliament

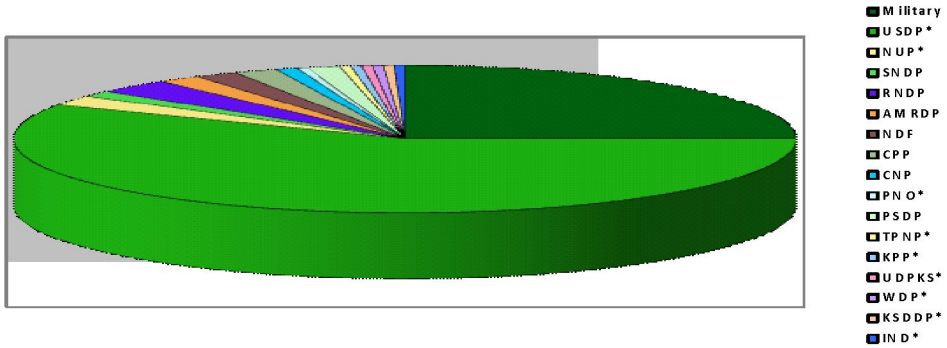


Table 2: Members of Parliament (People's Parliament)by State and Division

State&Division	Composition of the People's Parliament																	
	USDP	SNDP	PNO	TNP	WDP	INDP	NUP	UDPKS	CPP	CNP	RNDP	PSDP	KPP	AMRDP	NDF	Independent	Military Quota	Total
Shan	23	17	3	1	2	1	2									1		50
Kachin	14	1					2	1										18
Chin	5								2	2								9
Arakan	8										9							17
Karenni	7																	7
Karen	4											2	1					7
Mon	6						1							3				10
Tennasserim	10																	10
Pegu	26						2											28
Rangoon	37														8			45
Irrawaddy	25						1											26
Mandalay	36																	36
Sagaing	34						3											37
Magwe	24						1											25
Total:	259	18	3	1	2	1	12	1	2	2	9	2	1	3	8	1	`110	435

Figure 4: Composition of the People's Parliament

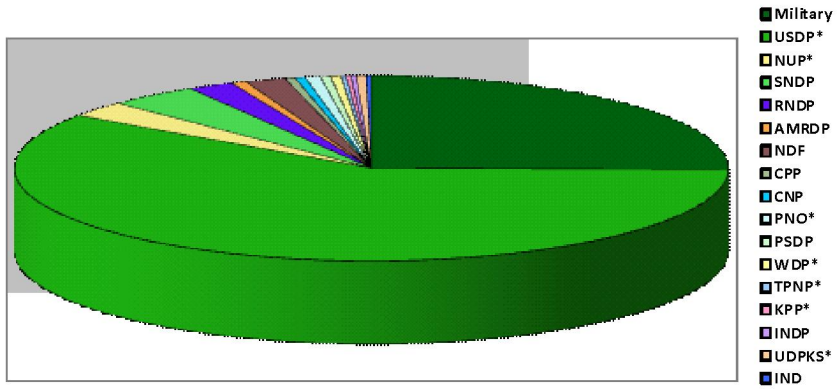


Table 3: Members of Parliament (Regional and State Parliament)by State and Division

State and Division	Composition of the Regional and State Parliament																							
	USDP	SNDP	PNO	TNP	WDP	INDP	KNP	NUP	LNDP	UDP KS	CPP	CNP	ENDP	RNDP	NDPD	PSDP	KPP	AMRDP	KSDD	NDF	DP (M)	88 Gen	Indepe ndent	Mili tary	Total
Shan	54	31	6	4	3	3	2	1	1														2		107
Kachin	20	4						11		2													1		38
Chin	7										5	5	1												18
Arakan	14							1						18	2										35
Karenni	15																								15
Karen	7															4	2	2	1				1		17
Mon	14							2										7							23
Tennasserim	20							1																	21
Pegu	51							5									1								57
Rangoon	75							8						1			1			4	2	1			92
Irrawaddy	48							6																	54
Mandalay	56	1																			1				58
Sagaing	66							8			1														75
Magwe	47							4																	51
Total:	494	36	6	4	3	3	2	47	1	2	6	5	1	19	2	4	4	9	1	4	3	1	4	**222**	**661**

Figure 5: Composition of the Regional and State Parliament

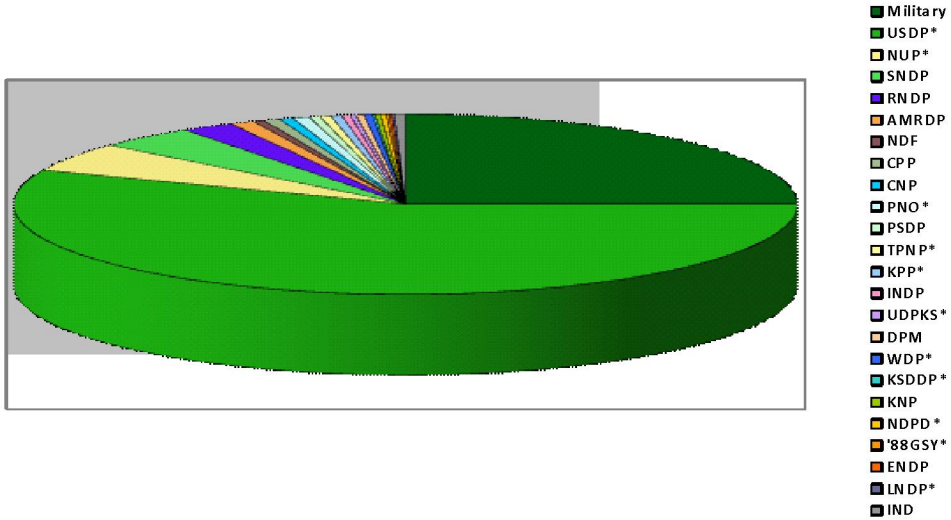
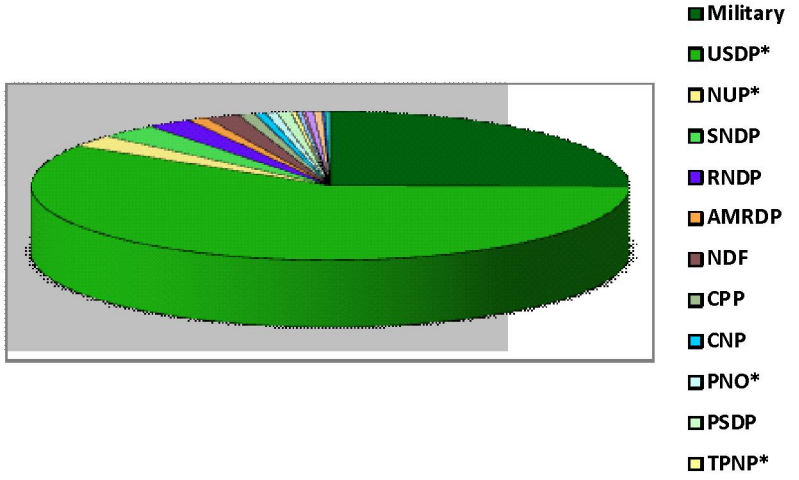


Table 4: Composition of Elected Representatives

Name of Parties	National Parliament	People's Parliament	Regional and State Parliament	Total
88 Generation Student Youths (Union of Myanmar)			1	**1**
All Mon Region Democracy Party	4	3	9	**16**
Chin National Party	2	2	5	**9**
Chin Progressive Party	4	2	6	**12**
Democratic Party (Myanmar)			3	**3**
Ethnic National Development Party			1	**1**
Independent	1	1	4	**6**
Inn National Development Party		1	3	**4**
Kayan National Party			2	**2**
Kayin People's Party	1	1	4	**6**
Kayin State Democracy and Development Party	1		1	**2**
Lahu National Development Party			1	**1**
National Democratic Force	4	8	4	**16**
National Democratic Party for Development			2	**2**
National Unity Party	5	12	47	**64**
Pa-O National Organization	1	3	6	**10**
Phalon-Sawaw Democratic Party	3	2	4	**9**
Rakhine Nationalities Development Party	7	9	19	**35**
Shan National Democratic Party	3	18	36	**57**
Taaung (Palaung) National Party	1	1	4	**6**
Union Solidarity and Development Party	129	259	494	**882**
Unity and Democracy Party of Kachin State	1	1	2	**4**
Wa Democratic Party	1	2	3	**6**
Military Quota	**56**	**110**	**222**	**388**
Total				**1542**

Figure 6: Composition of the Elected Representatives



Results and Complaints

The election results are plagued by controversy. The NDF announced legal challenges, despite the UEC warning that challenges could result in three years imprisonment. A number of pro-democracy candidates in the lead after the initial vote count were in for a surprise, as they were then declared losers after bags of mysterious advance "joker ballots," as the public has dubbed them, suddenly come to the rescue of USDP candidates. Following her release, Daw Aung San Suu Kyi was asked if the NLD made the right decision to not contest the elections. Laughing, she answered, "Yes, think of how busy those fiddling with the vote would have been if the NLD had run!"[81]

Dr Saw Naing, an independent candidate, in South Oklappa Township, Rangoon, was told publicly he had won. He then signed the UEC declaration, in front of two witnesses, who were also candidates. Then in State media on 10 November the USDP candidate was declared the winner. The UEC actually changed their decision three times in the space of three days before declaring the USDP competitor Aung Kyaw Moe the official winner.[82]

An Election Commission official in Buthidaung said that NDPD candidates Mostafa Kamal, Abu Taher and Jahidullah won in the constituencies for which they contested in the election. However, the authorities tried to alter their vote counts by adding advance-votes from the army and others to give more votes to their USDP opponents, a politician said. Reportedly, election officials deemed many ballots cast in favour of the NDPD to be "spoiled" ballots.[83]The Rohingya party, the NPDP, reportedly won in Buthidaung Township, Arakan State, but the Election Commission then forced the NPDP to sign a document accepting that the USDP won. NPDP candidates refused to sign and faced arrest.

Several parties have already lodged complaints with the Electoral Commission, but most are unlikely to proceed with them. A leading opposition politician, Than Nyein, urged his National Democratic Front party candidates and others not to sign declarations recognizing the election results.

The complaint system for voting irregularities is arbitrary and flawed and made up of members of the UEC. Given the lack of independence and impartiality of this body, it is no wonder the opposition candidates have little faith in the complaints process fairly arbitrating disputes.

Flawed Election Complaints System

The unfair and discriminatory nature of the election laws and the Election Commission is evident in the structure of the election complaints system. In order to file an election complaint, a party must pay a fee of one million kyat (US$1,000) before the EC will investigate the complaint. This fee is well beyond the capability of many political parties, who have spent the majority of their funds on the costly candidate registration fee of 500,000 kyat per candidate (US$500).

81 Quoted in http://www.hrw.org/en/news/2010/11/24/burma-s-elections-towards-realistic-hope
82 Irrawaddy, 11 November 2010, Recounts Favor USDP.
83 Kaladan Press, 10 November 2010, Rohingya Fear Reprisals.

In a country where 500,000 kyat is approximately the annual salary of an average civil servant, the expense of the fees is debilitating. Only once the complaint is submitted along with one million kyat fee will the EC then form an Election Tribunal to investigate the complaint.

The maximum penalty for an election violation such as "violence, threat, undue influence, cheating, taking or giving of bribes to prevent a person from exercising the right of voting and the right to stand for election" is 100,000 kyat (US$100) and/or one year imprisonment. The cost of committing an election violation is one-tenth of the cost of submitting a complaint, in this respect the system is used to deter parties from filing complaints.

The New Light of Myanmar newspaper warned on 16 November that accusations of fraud made through "foreign radio stations and print media" about the elections "go against the Article 64 of the respective Election Laws", and could result in punishment.

Article 64 reads: "Whoever is found guilty of dishonestly and fraudulently lodging any criminal proceedings against any person regarding offences relating to election shall, on conviction, be punishable with imprisonment for a term not exceeding three years or with fine not exceeding three hundred thousand kyats [$US300] or with both."

Article 64 only refers to fraudulent criminal proceedings, not general criticism in the media, and this is evidence of the regime's exploitation of the election laws to control the population through threats and fear.

The UEC, however, is fully exempt from any prosecution: No civil or criminal action shall be taken against the Commission and members of the Commission, Sub-commissions at various levels and their members, Election Tribunals, members of the Election Tribunals, members of the polling booth teams including polling booth officers who in the exercise of the powers conferred lawfully discharge their duties according to law, in good faith and to the best of their ability.[84]

Increased Censorship post election

The censorship board, the Press Scrutiny and Registration Division (PSRD) under the Ministry of Information, ordered the Rangoon based Weekly Eleven Journal to remove election news from its website. According to the Irrawaddy, Weekly Eleven provided more in-depth coverage of the election with several interviews of voters as they left polling stations across the country. The Weekly Eleven carried an apology to its reader saying that the journal regretted not being able to publish a 12-page special report on the election as it had planned.[85]

The PSRD suspended nine private journals on 21 November for publishing news of Daw Aung San Suu Kyi that did not follow their guidelines. The censorship board suspended publication of the top sports journal, First Eleven and the Hot News journal for two

84 Electoral Law, Pyithu Hluttaw Electoral Law and Regions and States Hluttaw Electoral Law, article 87
85 The Irrawaddy, 10 November 2010, Junta Censors Election Fraud News.

weeks while other journals such as7 Days News, The Voice, Venus News, Pyithu Khit, Myanmar Post, The Snap Shot and Myanmar Newsweek were suspended for only one week. The censorship board, headed by ex-Maj Tint Swe, said the suspensions were given for use of photos and reporting that exceeded the prescribed limits of one picture and one report that must not be on the front page.[86]

The two-week suspensions were for putting in information that it had not approved, while one week suspensions were given to journals covering the Aung San Suu Kyi news with an extra full-page report, some using more than one photo in their editions. According to journalists and officials with the Ministry of Information, Tint Swe also commented that while journals were not very willing to print articles about government policy, they wrote about Suu Kyi "quite emotionally," adding that the press should not forget that the *Tatmadaw* (Burma's armed forces) government still rules the country.[87]

The media was also banned from reporting on vote rigging in the election, according to sources. "The PSRD told us that with regard to election news, we would be allowed to carry only official news issued by the Union Election Commission. A PSRD editor said that even news about voters casting their ballots wouldn't be permitted, or if we said the turnout was low," said a source from a private news journal. "What really happened on election day must be revealed. Otherwise, it is meaningless to say we are marching towards a new democratic country. In this election, vote rigging took place throughout the country. We were very wrong to trust the regime," an independent candidate told the Irrawaddy.

There was a news blackout on the current fighting, which broke out between the Democratic Karen Buddhist Army and Burmese troops in the border city of Myawaddy on election day. No reports appeared in state-run media.

Law introduced clamps down on parliamentarian's free speech.

The regime introduced a new law to muzzle any opposition voices in the new parliament. This law clamps down on freedom of expression in parliament by restricting what parliamentarians can discuss. They are banned from voicing their opinions if they jeopardize national security and the unity of the country, or oppose the Constitution**.** This limits the capacity of parliamentarians to carry out their duties, further restricts those who may pose a challenge to the military, and could prohibit a parliamentary review of the Constitution. The new law also provide a two-year prison term for those who stage protests in the parliament compound. In addition, anyone other than a parliamentarian who enters the parliament hall when the body is in session faces a one year prison term and a fine.[88]

86 The Irrawaddy, http://www.irrawaddy.org/article.php?art_id=20151
87 Ibid.
88 AFP, 27 November 2010, http://www.news.com.au/breaking-news/burma-restricts-speech-of-new-parliament/story-e6frfku0-1225962011778

Retribution

The consequences of not voting for the USDP are already being felt, threats made to villagers in the pre-election period are now being realised. Villagers suspected of voting for the opposition party, the NDPD, in Arakan state, have reportedly been arrested.

A village authority in Arakan state fined two local villagers who voted for the National Democracy Party for Development, according to local sources. On 23 November two villagers were each fined 150,000 kyats by village chairman Ahsar Mad of Taungbro Sub-Township in Maungdaw Township for casting their votes for the NDPD candidates.[89]

In Duyar village, Ye Township, Mon State, one of the heads of the polling station is reportedly in hiding because the Election Commission threatened to punish him if the USDP lost in the vote.

A voter from Mon State who spoke to Burma Election Tracker said:

"There were over 4,500 eligible voters in our village. I voted for Nai Lawi Aung who is a member of the Mon ethnic party. Most of the people voted for Mon. The USDP lost the vote in my Township and spoke the head of the village. They (USDP and village head) assembled villagers and frightened them asking why they voted for the Mon party. Four men and 3 women answered that they are Mon therefore they chose to vote for Mon party whatever the result will be. All these 7 people were fined 5,000 kyat each for saying that.

In Chin State, after it emerged that the USDP lost in three townships, the chairman of the Chin SPDC ordered an investigation into the voting patterns amongst local civil servants. Officials indicate that this investigation will be highly invasive, with heads of departments ordered to investigate which staff members had voted, and carry out checks on voter IDs on ballots. Failure to vote for the USDP will have definite consequences: “Demotion at the very least. The USDP's loss in Hakha and Thantlang made him [Hung Ngai] very furious,” one official stated. “It was quite a deafening scolding we had to go through during that meeting.”[90]

The cruelty of the regime is evidenced, in the cutting of supplies of relief aid to victims of Cyclone Giri in some villages of Arakan State because they did not vote for the regime proxy party the USDP. ''We were told the day after the election: 'you did not vote for the USDP, so go and ask for aid from the party you did vote for,''' a resident of Wat Gaung, Myebon Township, told *The Irrawaddy*. Dr Aye Maung, chairman of the Rakhine National Democratic Party (RNDP), confirmed that he had been told by local people that they were being overlooked by the local authorities because they had voted for his party, which won a majority of the votes cast in Arakan State.

Sources in the region said local authorities were angry because most residents of the Arakan State towns of Kyaukpyu, Myebon, Pauktaw, Minbyar, Myanaung, Yanbyae,

89 Euro Burma Office, Election Monitor, 1-6 December 2010, http://euro-burma.eu/doc/EM_No_51_-_08-12-10.pdf
90 Chinland Guardian, 15 November 2010 , http://www.chinlandguardian.com/news-2009/1119-civil-servants-to-be-probed-for-voting-against-usdp.html

Ponnagyune and Sittwe, which were particularly badly hit by the cyclone, voted for the RNDP. A resident of Pike Sate ward of Kyaukpyu Township said 300 local people had been removed from the list of people eligible for relief aid because they had not voted for the USDP.

The failure of the elections to realize ethnic aspirations

The elections have increased tensions with ethnic nationality groups. Ethnic groups were ordered to transform their militias into Border Guard Force units under the direct command of the military prior to the elections. Soon after the Democratic Karen Buddhist Army (DKBA) agreed to become a border guard force in August 2010, the Karen State Democracy and Development Party was registered as a political party by the UEC. Large militias such as the United Wa State Army, with an estimated 20-25,000 soldiers, the Kachin Independence Organization with more than 7,000 fighters refused to become Border Guard Forces. Several armed groups without ceasefire agreements, including the Karen National Union and Shan State Army declared the election process illegitimate.

Within 24 hours of the elections, fighting broke out between the Burma army and a breakaway faction of the DKBA along a 150km stretch of the Thai-Burmese border. In the days that followed over 25,000 civilians fled to Thailand, thousands more were internally displaced and the fighting spread to other parts of the border. The Karen Human Rights Group, reported on 17 November that relations between the *Tatmadaw* (military regime) and armed Karen groups were highly unstable, and the *Tatmadaw* reinforced troops in Dooplaya District, particularly at Myawaddy and Three Pagodas Pass. By 17 November, intelligence suggested1,000 Tatmadaw troops were positioned between Tha Song Yang, to the north of Myawaddy town, and Waw Lay to the south[91].Throughout December and January conflict intensified.

The renewed conflict in Karen state raises concerns that the regime will expand its offensive against ethnic minority groups in Northern and Eastern Burma, leading to more crimes against humanity and war crimes in the ethnic areas. The latest fighting reflects the failure of the elections to meet ethnic aspirations and offer a genuine solution to the ongoing struggle for equality, self-determination and democracy for ethnic groups in Burma.

Conclusion

The first elections in Burma in 20 years were neither free nor fair. The ruling regime and the Election Commission did not abide by international standards of free and fair elections. Without the realization of these standards, the elections in no way reflect the genuine will of the people. In a damning conclusion to their preliminary election report, ANFREL, the Asia Network for Free Elections, stated, “the amount of intimidation and fear is the worst we have ever seen among the ASEAN nations”.92

91 Karen Human Rights Group, 17 November 2010.
92 ANFREL, Interim report, 12 November 2010

Reports of voting irregularities, political repression and intimidation were not isolated events, but undermined the freedom and fairness of the vote all over Burma. In fact, more than 3,400 villages in ethnic areas were excluded from the vote entirely. The people of Burma had no confidence in the regime's ability to carry out free, fair and genuine elections, reflected in a low voter turnout for a historic election. Low voter turnout was also linked to lack of education on voting and electoral processes, and opposition to the elections in the form of a deliberate boycott.

According to Burma's state run media, voters cast their ballots "freely and happily". Junta chief Snr-Gen Than Shwe described the elections as "free and fair" and a step "toward handing power to the people."[93] However, mounting evidence suggests masses of voters were coerced into advance voting for the military regime's political party, the USDP; polling booths manned by thugs and soldiers barred groups of voters from entering because of their perceived support of opposition candidates; villagers in cyclone damaged areas denied aid they desperately needed unless they voted for the USDP. President Obama described such conduct as "unacceptable". "It is unacceptable", he said to "gun down peaceful protesters and incarcerate political prisoners decade after decade… It is unacceptable to steal an election, as the regime in Burma has done again for all the world to see."[94]

For elections to be free and fair, they must be competitive. Opposition parties and candidates must enjoy the necessary freedoms of movement, speech, assembly, and association to openly voice their criticisms of the government and bring alternative policies to the voters. It is not enough to simply grant opposition parties access to the ballot on election day, as was the case in Burma, where the basic conditions allowing for the exercise of these rights do not exist.

Genuine opposition parties are vital to the functioning of free and fair elections, but in Burma, opposition party candidates, members, supporters and ordinary voters faced increasing threats, attacks, and harassment in the pre-election period. In addition, the arbitrary nature of the rules governing the election ensured the legal status of all parties, as well as their campaigning activities, was at the whim of the military appointed Union Election Commission. The Commission chose which political parties could contest the election, all the while retaining the power to dissolve any party, at any time, whose members failed to meet the requirements of the election laws, including those who do not swear allegiance to the undemocratic 2008 Constitution.

The consequences of not voting for the USDP are already being felt, threats made in the pre-election period are now being realised. Villagers suspected of voting for the opposition party, the NDPD, in Arakan state, have reportedly been arrested. Similarly, other villagers have had their land confiscated, and aid denied. Strict censorship prevails. Burma's censorship board, the Press Scrutiny and Registration Division, has banned domestic media from publishing any reports of vote-rigging or electoral fraud in the wake of the election. In another move to further restrict media, the Censorship Board then suspended nine journals and newspapers for carrying news about Daw Aung San Suu Kyi.

93 Reported in the New Light of Myanmar

94 President Barack Obama, quoted in VOA, 8 November, 2010

Putting aside electoral fraud and voting irregularities on the election day, or in the weeks or months before; the most chilling feature of the elections are the years of repression that preceded it and the impact of this long term repression. The consequences of opposition to military rule are well known. The more than 2,200 political prisoners are a constant reminder of the consequences of vocalizing the desire for a democratic and peaceful Burma.

Sadly, the elections are a lost opportunity. They were not the step forward that some hoped. The elections present a serious setback for national reconciliation, and have only exacerbated political and ethnic tensions.

Burma's most famous political prisoner, Daw Aung San Suu Kyi, has now been released. While significant this must not be seen as a concession by the regime. Daw Aung San Suu Kyi should never have been imprisoned in the first place. The regime had no legal reasons for extending her already unlawful and arbitrary detention. In the absence of rule of law, in the face of an impartial judiciary, and laws that criminalise basic civil and political rights, opposition voices, including Daw Aung San Suu Kyi, will continue to face re-arrest. Her release was timely, coming just one week after the elections, it has served to distract the international community from the illegitimate elections they orchestrated.

Daw Aung San Suu Kyi, the day after her release, stated she is willing to talk with General Than Swe. "We [Than Shwe and I] can talk about anything so let's just talk…let's speak directly. Everything starts with dialogue and exchange." The ethnic nationalities have also made dialogue and national reconciliation a priority. It is only the regime that has refused. The heart of any solution to the problems in Burma is dialogue; when the alternative to dialogue is more ethnic conflict, more political instability, more poverty, all of which have serious regional ramifications. A genuine inclusive dialogue is urgently needed to resolve the current conflicts and make progress towards peace and democracy in Burma. Such a dialogue will not happen on its own but with a concerted effort by the UN and regional actors.

The international community must intensify pressure on Burma to ensure the release of Daw Aung San Suu Kyi is unconditional and that she is allowed to contribute meaningfully to the process of national reconciliation and democratic transition in Burma. For this to happen she must be free to travel, associate and speak freely with international and domestic political leaders, journalists and supporters, free from the watchful eye of Military Intelligence service and censors.

World leaders must now turn their efforts to the release of the more than 2200 political prisoners who remain in prison. Attention should focus on the release of key ethnic politicians, such as General Hso Ten and U Khun Htun Oo; monk leader, Gambira; and, Burma's most famous student leader, Min Ko Naing , who has spent 18 years in solitary confinement and is currently serving a 65-year sentence. As Daw Aung San Suu Kyi said, after her release in 2002, "My release should not be looked at as a major breakthrough for democracy. For all people in Burma to enjoy basic freedom – that would be the major breakthrough".

The post election period should be closely monitored. The election is over but it is not time to move on. Dissatisfaction is permeating throughout society due to the flawed electoral process. In many constituencies, candidates from opposition parties have refused to sign their approval of the election result. Since the legal filing of cases of electoral fraud to the Election Commission is an expensive procedure opposition parties have chosen to expose irregularities through press conferences. Frustration is also high among the people because the military regime fails to resolves the socio-economic challenges people are facing on a daily basis. The signs of civil war are looming in the ethnic areas as the SPDC has insisted ceasefire groups transform themselves into Border Guard Forces and both sides are in combat ready positions.

Burma's parliament convenes on 31 January 2011. However, the answers to the problems in Burma will not be found in the newly 'elected' parliament. The elections were neither free nor fair and failed to reflect the will of the people; and in turn neither will the parliament. The elections have ensured that same military regime will continue to operate with impunity, simply under a new guise.

The human rights abuses that have taken place, and continue to take place, must be exposed. The violations committed in the pre-election period took place within a culture of impunity. Those who commit these abuses do so without fear of repercussions and accountability. Evidence suggests, military and SPDC officials, as well as members of the Union State Development Party, operate above the law. Without the rule of law, reform of the judiciary, a review of the Constitution and the country's draconian laws, human rights violations will continue unabated. An independent Commission of Inquiry is necessary to expose the truth, end the culture of impunity and deter further violations of international human rights and humanitarian law in the context of escalating civil war.

Recommendations:

The international community should impress on the regime to carry out the following measures, as a first step towards national reconciliation:

1. **Unconditionally release all political prisoners and ensure their participation in the political process.**
2. **Undertake a transparent and comprehensive review of the Constitution and national legislation to ensure compliance with international human rights law. Sections of the law and the Constitution that do not meet international democratic norms or reflect international human rights law must be redrafted or where necessary repealed.**
3. **Defuse military tension between the Burma Army and ethnic ceasefire groups, and ensure all parties keep the existing ceasefire agreements.**
4. **End hostilities in ethnic nationality areas and begin a national dialogue to revive the spirit of the historic Palaung Agreement.**
5. **Reinstate the National League for Democracy and other parties, which were unlawfully dissolved by the Union Election Commission and create a political space for all political parties to pursue their activities.**

6. **Establish a mechanism, such as a National Reconciliation Council or an Advisory Council in which key stake-holders can freely pursue dialogue on a variety of issues and contribute to the process of nation building.**

The United Nations Secretary General should:

- **Immediately appoint a Special Envoy for Burma to continue dialogue through direct engagement with all relevant parties to help advance national reconciliation and the establishment of a democratic and civilian government.**
- **Convene a high level meeting of the UN Secretary General's Friends of Burma Group to be held in Southeast Asia in order to develop a coordinated strategy to assist in a peaceful, broad-based and inclusive political transition in Burma.**
- **Establish a UN led independent Commission of Inquiry to investigate into violations of international human rights and humanitarian laws with a view to expose the truth, end the culture of impunity and deter further violations.**

Annex 1: Geographical distribution of political constituencies

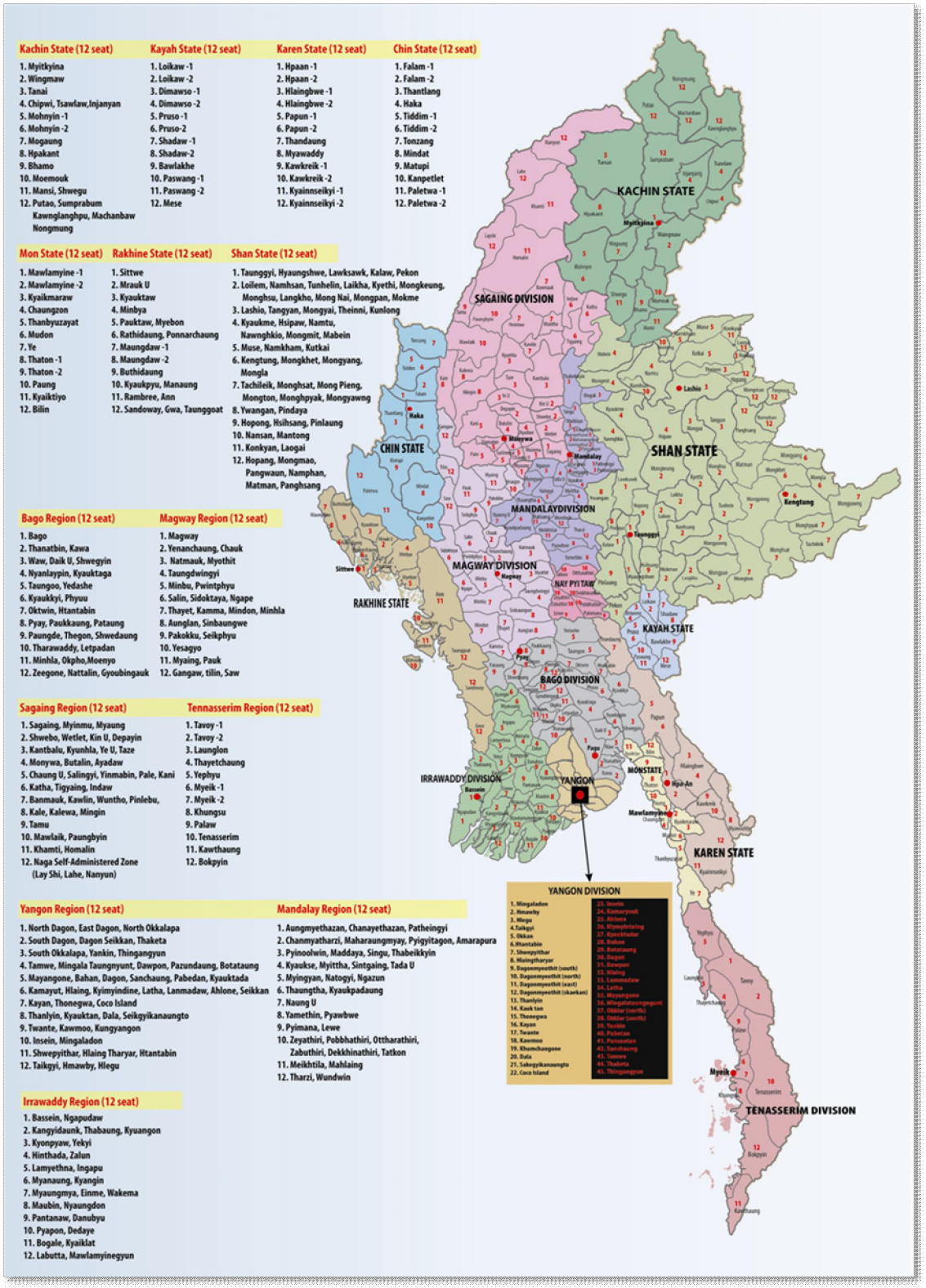


Figure 7: Map of Constituencies of the National Parliament

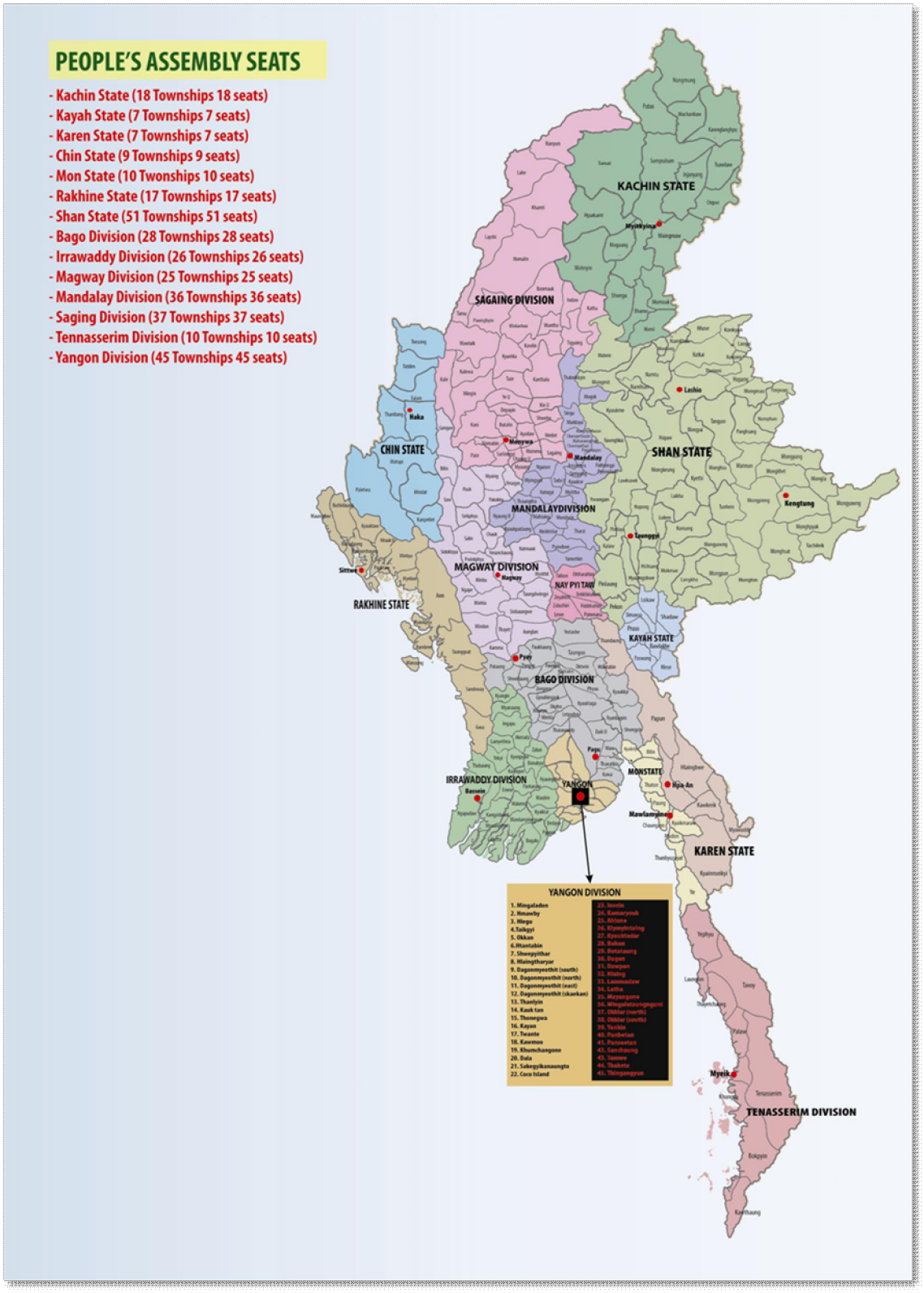


Figure 8: Map of Constituencies of the People's Parliament

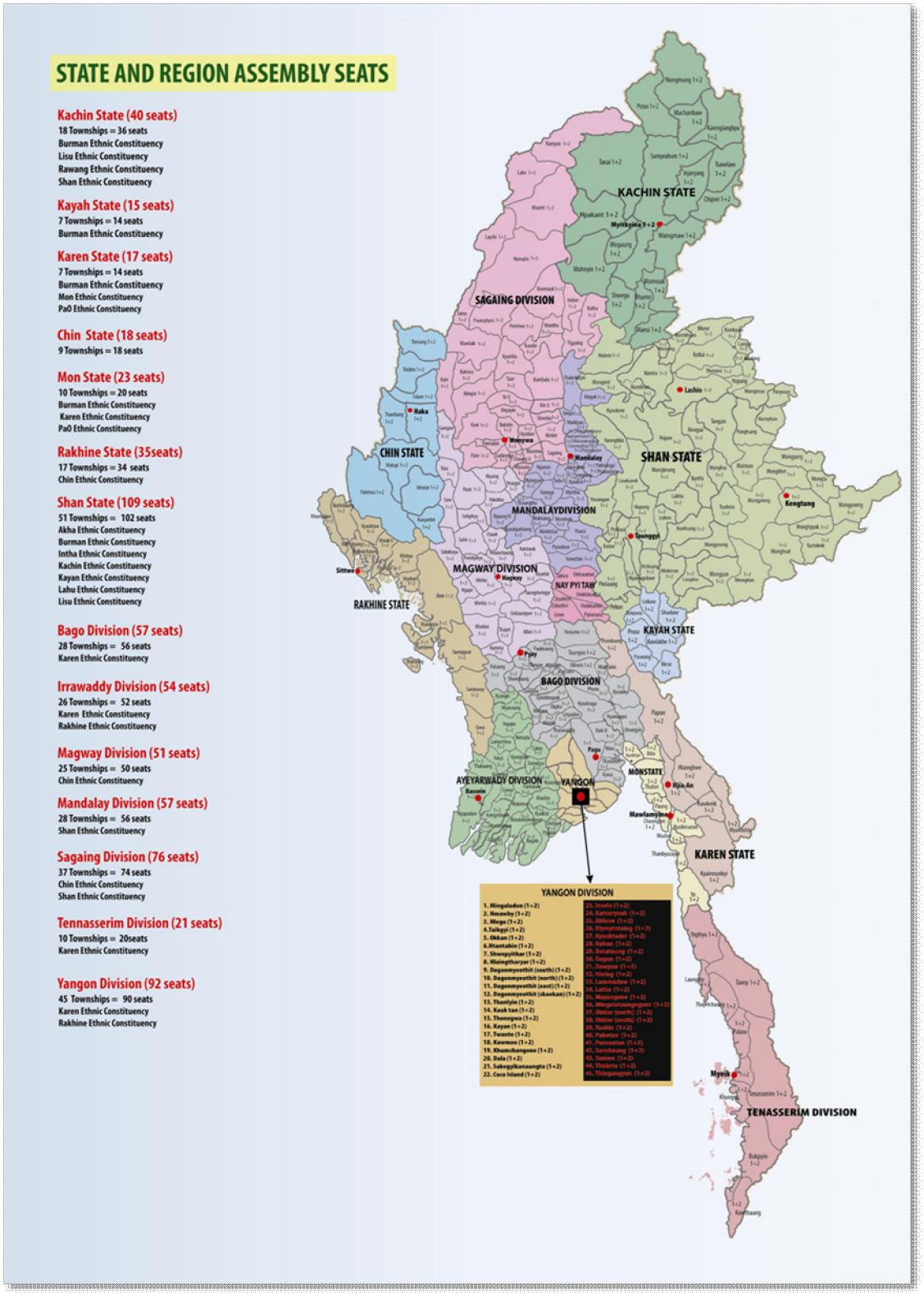
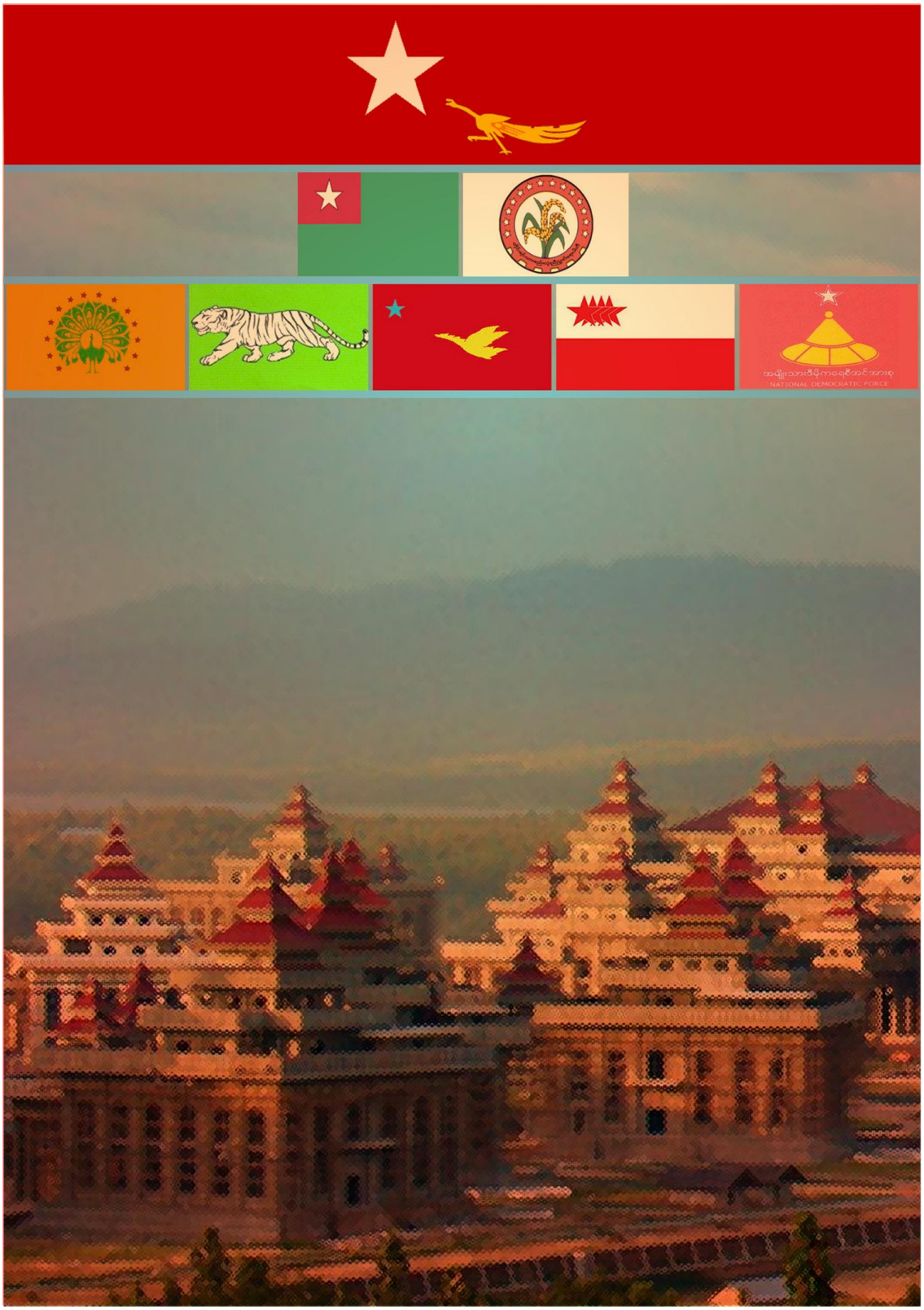


Figure 9: Map of Constituencies of the Regional and State Parliament


NATIONAL DEMOCRATIC FORCE