



Part (A) Special Features

(A . 1)

Democratic Election Standards

In order for the 2010 Election to be considered a genuine free and fair process, a series of conditions must be met.

A. ELECTION COMMISSION

An independent election commission must be created to oversee the elections. The 2008 Constitution mandates the formation of the Union Election Commission (UEC) for this purpose, but the parameters of the commission leave little room for independence.¹ According to the constitution, the President appoints each member of the commission and does not need approval from parliament.² This is an irregular practice as it allows one person to determine and appoint a supposedly unbiased committee. Additionally, since there is currently no president, one can infer that the SPDC will choose the members of the first election commission.

While the constitution does mention the UEC being in charge of “election tribunals”—which would point to the creation of a complaint mechanism for electoral disputes—it does not go into detail as to how disputes would be resolved.³ It is likely that their election commission will not investigate charges against the SPDC. Another worrying factor

is that the UEC has conclusive decision-making power on all matters pertaining to elections.⁴ Thus, a body lacking the minimum requirements for impartiality will have an indisputable ability to determine the government. There is no higher authority open for appeal, and evident lack of UEC independence will tarnish the reliability of the entire election. In order to balance the UEC and maintain neutrality, the military regime should request international monitors to observe and adjudicate disputes in the elections either independently, or at least complementarily.



Voting on 2008 referendum in Burma



B. ELECTORAL ROLL

The electoral roll or voter registration is crucial for preventing electoral fraud in various forms. Currently, it is unclear what the military junta is using for an electoral roll. If the 2010 electoral roll is based on the one compiled for the 1990 election, it is sorely in need of an update as an entire generation has been born and gained the right to vote in that time period. During the 2008 referendum, there were numerous allegations of voter registration irregularities reported.⁵ If the junta plans to use the roll from the referendum, irregularities must be investigated and rectified. Additionally, it is doubtful that the 2008 roll includes the aforementioned disenfranchised groups.

One of the key problems with registering displaced voters is that identity documents are often destroyed or left behind when people are fleeing conflict. As a result, the SPDC should ask international organizations such as the International Organization for Migration (IOM) to help provide identity documents for displaced persons in order to compile a voter registry. The IOM has extensive experience working in post-conflict areas to provide this specific service. This process should begin immediately to ensure adequate time to cross-reference existing names on the registry, and to verify eligibility for new voters. Then, hard copies of the lists should be displayed publicly to point out possible errors or challenge the eligibility of registrants.



C. VOTING, ADVANCE VOTING, OUT-OF-COUNTRY VOTING

According to Article 391 of the new constitution, voting will be conducted by secret ballot. There are no further specifications in the constitution, but in order to prevent ballot stuffing or intimidation, election laws should specify guidelines for election day and training for poll workers. As a precursor to



election day, educators should travel around the country and explain the voting process to citizens, as well as measures for secrecy.

Due to security, it may not be feasible for a significant number of people to return to Burma and vote. In order to fulfill their positive obligation to guarantee the right to vote, the military regime should initiate advance voting and OCV measures. Advance voting allows more flexibility for citizens who may be able to travel back to Burma, but not on the specific day of elections. Alternately, OCV can be facilitated by the IOM in any country where there is a mission. The IOM has helped carry out OCV in post-conflict areas (Iraq and Afghanistan), but will not participate without a specific request from the UN member state.⁶

OCV is an admittedly difficult task to carry out, involving bilateral agreements and a high degree of regulation. However, considering the necessity of participation for pluralistic democracy building in an ethnically heterogeneous state like Burma, OCV should be prioritized and implemented.

D. ELECTION OBSERVERS

Election observers are common staples of free and fair elections. In flourishing liberal democracies, national observers may be adequate to address electoral complaints. In transitioning or young democracies, however, national observers are often complemented with international observers that have extensive election experience. Since the 2010 elections will be Burma's first



democratic election in twenty years, it would be prudent to request the assistance of international observers. Various non-government organizations (NGOs) such as the Asian Network for Free Elections (ANFREL), the Carter Center, and the National Democratic Institute (NDI) offer independent election monitoring.

ANFREL, for example, has been previously asked to partner with a number of Asian countries in training domestic observers regarding election norms. ANFREL conducted operations in Indonesia (2009), Thailand (2007/2008), Cambodia (2008), Bangladesh (2008) and others to help prepare and facilitate elections.⁷ The organization functions as an educator to election officials, as well as the general electorate by producing election materials and raising awareness of



political issues through grassroots means. Election observers are relied upon to expose fraud or other irregularities leading up to an election that do not match international standards. Observers also lend legitimacy to election results if they are perceived to be independent.

However, observers must have free reign in the host country in order to adequately fulfill their duties. This includes the ability to travel widely to ensure universal suffrage, access to financial documents, meeting with election officials, permission to be physically present during polling and counting, speaking to representatives from all political parties, access to interview normal citizens, and anything else the monitors deem necessary to verify the validity of the election.⁸ If the SPDC truly intends to hold fair elections, there should be no hesitation in allowing observers into the country. However, if restrictions on foreigners are not removed and monitors are not given complete liberty to do their work, Burma will not be able to claim a democratic election process.

E. COUNTING, RECOUNTING, AND DECLARATION OF RESULTS

Vote counting is a crucial component of elections as this determines the new government, but is also susceptible to various forms of fraud. The ACE Electoral Knowledge Network recommends the following eight principles that should be considered when setting up guidelines for vote counting.⁹

Transparency requires allowing representatives from political parties to witness or participate in the process. National and international observers should also be present to record the counting methods used. Manual counting is considered more transparent than computerized counting, which can be manipulated more easily. Accordingly, provisions should be set out in the election laws to ensure that a representative from each political party may be present at the counting.

Security of the ballots and ballot boxes must be maintained from the beginning of voting through the completion of the count. Representatives from all political parties and election monitors should watch the boxes throughout the day, and accompany the ballots if they are moved to a central counting location. Boxes may be transparent to deter fraud. After votes are collected, boxes or bags should be individually numbered and tamper-proof. Alternately, votes may be counted at the polling station after election hours in order to minimize the likelihood of ballot stuffing en route. Either way, independent international observers should also be present to verify the integrity of the ballot boxes.

Professionalism, such as training for poll workers, is necessary for vote counting to be administered correctly. Community leaders who are known



to be unbiased should be selected as polling staff and the UN Election Assistance Division should be requested to prepare them. Counting officials must sign an oath stating their commitment to non-partisanship, in which consequences for partisan behavior include legal prosecution. Additionally, the oath should require confidentiality in protecting sensitive information, such as voter identity.

Accuracy is necessary to avoid accusations of fraud and is directly related to the integrity of the election. Clear procedures that entrench transparency, adequate staff training, and mechanisms for recounting all contribute to improved accuracy. Currently, there are no measures in place that facilitate these objectives. Thus, the government should provide funds to begin training workers and perhaps invest in vote-counting technology administered by an outside, independent firm.



Secrecy is of particular importance in the situation of Burma where there is a risk of reprisal for certain vote-casting. Voters should not be victimized or intimidated in their choice. If secrecy is an issue at the local level, ballots may be taken to a central location and randomized before counting. This, of course, would need to be weighed against security concerns. If voter identification is necessary for counting purposes, these must be kept strictly confidential by vote counters. Voters should be hidden from view when marking their selections and no one except for trained poll workers should be in the polling station. Additionally, no one should be allowed to loiter within a certain perimeter of the building and figures in authority positions (security forces, community leaders, employers, etc.) should be penalized for discussing election matters with individuals. These restrictions will allow people to vote as they please without fear



of reprisal.

Timeliness is important because delays in counting could result in a negative perception of the voting process. The election commission should outline the stages of the counting process, factoring in realistic considerations such as transport and communication, in order to present a reasonable timeline for official results. Updates should be given periodically in order to reassure the public that integrity and accuracy are being maintained. An official outside organization should give reports jointly with the national election commission in order to provide legitimacy, and to confirm that progress is being made.

Accountability at the national level will most likely fall on the election commission. Clear responsibility and chain-of-command are needed to isolate and deal with problems. Additionally, an unambiguous complaints and appeals process must be readily available. Professionals with authority and competence, as well as the confidence of the electorate, should administer these processes. Counting rules and criteria for rejecting ballots should be agreed upon and understood by everyone involved in the process. This is a precondition for the clear audit trails essential in ensuring accountability. Considering the general population's mistrust of the military regime, it is absolutely crucial for the SPDC to invite observers at all levels, and to give them access to any information requested.

Equity, or the concept that rules should be the same for all participants, helps ensure that counting is administered in a fair manner. Thus, all political parties must agree on and be satisfied with the process used to count the votes.

F. ELECTORAL FRAUD

There are myriad ways that electoral fraud could occur in the upcoming elections. One of the most glaring and difficult to control will be abuse of government power. Since the SPDC is in charge of all aspects of this election and, thus far, have not requested assistance from any independent organizations, it is doubtful that their practices will adhere to international standards. With absolute control over the election laws and media, it will be difficult for other political parties to raise awareness regarding their platforms. Due to current laws, political parties and activists are already prohibited from organizing freely, which eliminates the possibility of countering government propaganda.¹⁰

Looking at the 2008 referendum as an example reveals widespread intimidation and the use of pre-marked ballots. Ballots also included identification details that prevented secrecy, and many voters were forced to fill out their ballots under the watchful gaze of 'election monitors'.¹¹ Threats of expulsion from villages or loss of employment were also used to dictate the outcome.¹²



The SPDC was also accused of other forms of fraud such as ballot stuffing and demographic manipulation.¹³ To expose electoral fraud, election monitors must be allowed into the country and given the freedom to travel anywhere within it, as well as access to information and documents. Anything less will compromise the legitimacy of the election.

CASE STUDY: ZIMBABWE 2008

It is difficult to overemphasize the need for free, fair, and credible elections. At stake are not only the next government of Burma and the subsequent direction of the country, but the ideals of democracy itself. Countries such as Zimbabwe present a warning of dictators who use the guise of democracy to drive their own countries to ruin. The 2008 Zimbabwe elections should be reviewed as an example of what to avoid and secure against in order to administer genuine elections.

Electoral fraud was identified in Zimbabwe's national election on 29 March 2008 when voter rolls identified over 8,000 non-existent voters. The 'voters' were registered as residing on a plot of land known to be uninhabited. The opposition party, Movement for Democratic Change (MDC), filed the complaint to the Zimbabwean Electoral Commission (ZEC). Unfortunately, the ZEC was also accused of printing 50 percent more ballot papers than the number of registered voters.

The MDC reported that their supporters were turned away from polling stations, and erasable voting ink was used to change ballots cast. Local election observers noted that voter turnout was low, and intimidation was used in the incumbent President Robert Mugabe's strongholds. Furthermore, in certain districts, village heads had instructed the local population to vote for Mugabe. International observers were banned from the country.

Thus, the main sources of voter fraud in the election included the registration of non-existent voters, intimidation/threats at polling stations, coercion by local leaders to dictate voter outcome, and lack of safeguards against ballot tampering. Another evident problem was the lack of electoral commission independence, and its position as a lackey of Mugabe.

At the time of the election, Zimbabwe could have easily been considered a dictatorship under Robert Mugabe with the pretense of 'democracy' as evidenced by opposition parties. The absence of international observers, which must be invited by the government, is an indication in itself of a lack of transparency and unwillingness to adhere to international norms for democratic elections. Though opposition parties were vocal, they were restricted at every level



due to Mugabe's total control. This situation demonstrates "illiberal democracy", a term coined by author and editor of *Newsweek International* Fareed Zakaria in describing countries that simply hold elections without building institutions of liberty, law, and governance.¹⁴

Despite talk of a genuine transition to democracy, the SPDC has now created a legal instrument capable of entrenching its power. The international community should be wary of the upcoming elections and the risk of lending a façade of legitimacy to a brutal military dictatorship. The "democracy" label will not end the human rights abuses or bring perpetrators to justice. Liberal democracies necessarily involve the existence of institutions that protect and promote individual rights—not just the casting of a ballot. One positive example that can be taken from the case of Zimbabwe, however, is the affect of international pressure on Mugabe to establish a coalition government with Morgan Tsvangirai and the MDC. The SPDC, though much more resistant than Mugabe, has responded to international pressure in the past. In the coming months leading to the elections, the international community should use its collective influence to force a change in the best interest of the Burmese population.



G. COMPLAINT MECHANISM AND THE ROLE OF JUDICIARY

As discussed in Section A of this chapter, the only complaint mechanism currently available is administered through the Union Election Commission (UEC), which has the final say on all election disputes. This is highly irregular as most functional democracies employ courts that are a permanent part of the



judicial system as final arbitrators of dispute. These courts may be Constitutional Courts (Spain, Austria, France, Germany), Electoral Tribunals (Mexico), or a Supreme Court (US); either way, they are recognized as autonomous and impartial, with a definitive grounding in due process and rule of law.

For countries that lack an independent judicial system—such as Burma—Alternative Dispute Resolution may be a legitimate option. This model entails the creation of a body of experts with the backing of an international organization such as the UN. The dispute resolution body considers local laws and customs when arbitrating, without neglecting due process and democratic principles. This model can be particularly useful to build confidence in a setting where accusations of bias run particularly high, or previous conflict make it difficult for opposing sides to agree on terms of resolution. Alternative Dispute Resolution has been successfully used in Bosnia, Cambodia, and South Africa.¹⁵

H. RIGHT TO INFORMATION AND THE ROLE OF THE MEDIA

As highlighted earlier, the right to information is an aspect of Article 25 of the ICCPR. Historically, the junta has failed to impart information regarding procedure or content of actions requiring political participation. For example, the text of the 2008 Constitution was released only one month before the referendum, and it was sold in bookstores for a price equal to the daily wage of a person.¹⁶ The constitution was not translated into any ethnic languages, which not only indicates the junta's disregard for ethnic participation in the government, but is also a violation of facilitating Article 25.¹⁷ The basic tenets were not explained,¹⁸ and the majority of the population admitted to not understanding its principles.¹⁹ The media was prohibited from printing anything hinting at a 'No' vote on the referendum and were instead forced to publish government propaganda advocating an enthusiastic 'Yes'.²⁰ These practices must be prevented in the 2010 elections.

Freedom of expression has been entirely censored in Burma, and those who are brave enough to defy the SPDC find themselves beaten, imprisoned, or both.²¹ Independent media outlets exist in Burma, but are under constant threat to tout the party line. In next year's elections, coverage by independent journalists and foreign correspondents should be publicly broadcast. Opposition parties should be able to campaign without fear of reprisal, and the election commission should disseminate information to the extent that citizens are able to make an informed decision about their political options. Without public discourse on the role of the government, the system cannot be declared democratic or reflective of the will of the people.



(Endnotes)

¹ Constitution of the Republic of the Union of Myanmar (2008), Article 398.

² *Id.*

³ Constitution of the Republic of the Union of Myanmar (2008), Article 399.

⁴ Constitution of the Republic of the Union of Myanmar (2008), Article 402.

⁵ 'Burma: Events of 2008' *Human Rights Watch* (2008) <<http://www.hrw.org/en/node/79297>> accessed on 5 November 2009.

⁶ 'Overview Information' *UN Electoral Assistance Division* <http://www.un.org/Depts/dpa/ead/overview.html#Requesting_Assistance> accessed 4 November 2009.

⁷ 'Country Observation and Monitoring' *Asian Network for Free Elections* (November 2009) <<http://www.anfrel.org/countrymonitoring/index.asp>> accessed 19 November 2009.

⁸ 'Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers' *United Nations Electoral Assistance Division* (27 October 2005).

⁹ 'Guiding Principles of Vote Counting' *ACE Electoral Knowledge Network* <<http://aceproject.org/ace-en/topics/vc/vc20>> accessed 4 November 2009.

¹⁰ The Penal Code (1860), Section 505(b).

¹¹ Max Quincy, 'A people's ballot, Burma style: vote for the army or else' *The Observer* (4 May 2008) <<http://www.guardian.co.uk/world/2008/may/04/burma.humanrights>> accessed 4 November 2009.

¹² *Id.*

¹³ 'Burma: Events of 2008' *Human Rights Watch* (2008) <<http://www.hrw.org/en/node/79297>> accessed 5 November 2009.

¹⁴ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (W.W. Norton & Company, New York 2003).

¹⁵ 'Legal Framework' *ACE Electoral Knowledge Network* <<http://aceproject.org/ace-en/topics/lfb/lfb12/lfb12a/lfb12a05>> accessed 19 November 2009.

¹⁶ 'Survey: 66.4% to Vote "No" in Referendum on Burma's New Charter' *The Friedrich Naumann Foundation* (May 2008) <http://www.fnfasia.org/index.php?option=com_content&view=article&id=173:survey-664-to-vote-no-in-referendum-on-burmas-new-charter&catid=24:burma&Itemid=55> accessed 5 November 2009.

¹⁷ UNCHR 'General Comment 25' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies' (2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I).

¹⁸ Max Quincy, 'A people's ballot, Burma style: vote for the army or else' *The Observer* (4 May 2008) <<http://www.guardian.co.uk/world/2008/may/04/burma.humanrights>> accessed 4 November 2009.

¹⁹ 'Burma News International: Release of nationwide voters survey on the Burmese referendum' *BurmaNet News* (7 May 2008) <<http://www.burmanet.org/news/2008/05/07/burma-news-international-release-of-nationwide-voters-survey-on-the-burmese-referendum>> accessed 4 November 2009.

²⁰ 'Fifteen IFEX members and others call on junta to allow free expression of views on referendum' *World Press Freedom Committee* (2 May 2008) <<http://www.wpfc.org/?q=node/177>> accessed 5 November 2009.

²¹ *Id.*

* * * * *