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BURMA

Vote to Nowhere

The May 2008 Constitutional Referendum in Burma

HUMAN
RIGHTS
WATCH



Vote to Nowhere
The May 2008 Constitutional Referendum
in Burma

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Map of Burma



Burma

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I. Summary and Recommendations

On May 10, 2008, the Burmese military government will hold a referendum on a draft constitution that it claims will usher in a new era of “discipline-flourishing genuine multiparty democracy.”

However, the generals’ referendum, reflecting 46 years of brutal military rule, will not bring the people of Burma any closer to a democratic and rights-respecting government they so desperately seek, and for which they have courageously struggled. Instead, the draft constitution that the generals are demanding the Burmese people approve is designed to perpetuate military control in Burma, and obstruct any steps toward a meaningful multiparty democracy that upholds human rights.

The environment in Burma prior to the referendum has been one of continuing intimidation of the political opposition and general populace, denial of basic freedoms of expression, association, and assembly, and arbitrary arrests and detention. Under such widespread repression and a pervasive climate of fear, no free and fair referendum can take place in Burma.

Since the military crackdown on monks and pro-democracy protestors in August-September 2007, foreign governments and intergovernmental bodies have responded in varying ways. International criticism may be partly responsible for the referendum being announced, in February 2008, but it will not ensure that the vote is conducted freely. Concerted public pressure and targeted sanctions by the military government’s international supporters as well as its detractors is needed if there is to be any hope that real democratic progress, rather than further constitutional travesties, can be achieved.

Impossible Conditions for a Free and Fair Referendum

The Burmese people have the right to make up their own minds about the draft constitution, but the conditions for the May referendum do not allow them an informed and free choice. Most Burmese have not even seen the draft constitution, a

194-page document (in Burmese and English, and in none of the minority languages) that was released only a month before the referendum and is only available for purchase in some bookshops.

The ruling State Peace and Development Council (SPDC) has refused to allow any meaningful public discussion and debate of the draft constitution, and has arrested and jailed those who have expressed opposition to its contents. The government-controlled press writes endlessly about the merits of the “discipline-flourishing” draft constitution, and viciously denounces its opponents. The more independent weekly newspapers and magazines have decided to refrain from making any critical comments about the draft constitution, preferring self-censorship to the known consequences of speaking out—detention and the closure of their papers. At least seven prominent journalists remain imprisoned in Burma, convicted on spurious charges such as “engaging in anti-government propaganda” for writing about human rights abuses, and publishing information that “makes people lose respect for the government.”

The SPDC also denies the Burmese people the right to freely discuss the draft constitution, or to engage in any form of assembly or association to protest the upcoming referendum. SPDC spies and informants are everywhere, severely limiting the ability of people to speak freely even when talking with friends in teahouses or private homes. Any gathering of more than five people is banned in Burma, and even solitary peaceful protesters face the full wrath of the generals.

Activists have been detained for holding peaceful protests urging a “No” vote on the referendum; on March 30, security forces detained five activists of the main opposition party, the National League for Democracy (NLD), three days after they had participated in a protest by 30 NLD activists who wore T-shirts emblazoned with the word “No” during a brief, peaceful walking protest in Rangoon. Two other NLD activists were detained on the night of April 1.

Opposition political parties operate in a climate of severe harassment and repression of their activities by the authorities. Most political parties have been deregistered in Burma since the annulled 1990 elections, the NLD and the military-

backed National Unity Party (NUP) being the main exceptions. Pro-SPDC groups routinely pressure NLD members into resigning from their party, under threat of vigilante violence. In April 2008 a number of NLD officials and human rights activists were attacked by alleged pro-junta elements operating in plainclothes. There are some 1,890 political prisoners in Burma, including 755 detainees arrested since January 2007, most of them for the peaceful expression of their political beliefs or their participation in peaceful opposition activities such as rallies.

The referendum process will not be monitored by any independent local or international monitoring organizations. The SPDC has rejected UN assistance in organizing a free and fair referendum, saying that Burma “has adequate experience”—even though the last national referendum, in 1973, was blatantly rigged, and the most recent elections, in 1990, had their results overturned.

Under such repressive conditions and a pervasive climate of fear, no free and fair referendum can take place in Burma. Instead, the continuing denial of basic freedoms, arbitrary arrests, and the widespread repression show that the generals have no interest in bringing about a rights-respecting, democratic government in Burma.

A Fatally Flawed Constitution-Writing Process

The draft constitution being put to the May referendum has been 14 years in the making. These 14 years have not been well spent. Throughout, the SPDC has tightly controlled the writing process to ensure that the constitution’s language incorporates the desire of the ruling generals to remain firmly in control.

After overturning the results of the 1990 elections that were overwhelmingly won by the National League for Democracy, the military ruling body, then named the State Law and Order Restoration Council (SLORC), announced that the elected representatives would form a National Convention rather than a parliament. Even so, by the time the National Convention convened in 1993, only 106 of the 702 delegates were elected representatives, with the remaining 596 delegates handpicked by the generals to “represent” workers, peasants, intellectuals, national races, and the army, plus “specially invited persons.”

In reality, the National Convention delegates only provided a convenient fig leaf for the military to push through a draft constitution that guaranteed future military control. The delegates were supposedly brought together to draw up the “basic principles” of the draft constitution, rather than the draft constitution itself, but even the “principles” had to conform with the “objectives” of the National Convention already adopted by the generals—including the entrenchment of a large military role in the future system of government. Delegates had to have any statements they wished to make pre-approved by the military-dominated National Convention Convening Commission, which censored anything remotely at odds with the aims of the generals. Regulations prohibited any kind of protests, the distribution of leaflets, the wearing of badges, bringing in of papers not approved by the Convening Commission, or the lobbying of delegates. When the National Convention was in session the delegates were confined to their dormitories, requiring permission to leave the premises. Those who violated the strict rules faced dire consequences: NLD delegate Dr. Aung Khin Sint and his colleague U Than Hla in 1993 were sentenced to 20 and 15 years’ imprisonment respectively for disseminating speeches delivered to the convention.

In November 1995, after fruitlessly trying to change the operating procedures of the National Convention to allow for meaningful participation by the delegates, the NLD walked out of the process, announcing a boycott until the procedures were changed. Two days later the Convening Commission expelled all 86 NLD delegates on the basis that they had failed to obtain the commission’s permission for their absence.

The National Convention was adjourned in March 1996. Daw Aung San Suu Kyi was released from house arrest in early 2002. She spent all of the period 1989 to 1995 incarcerated, with conditional release between June 1995 and 1997 when she conducted popular weekend gatherings of citizens and supporters at the gates of her Rangoon home. Following her 2002 release, she immediately went on a national tour; her pro-democracy speeches drew massive, enthusiastic audiences. On May 30, 2003, the SPDC orchestrated a vicious attack on Suu Kyi’s convoy outside the town of Depayin that killed scores of NLD supporters, causing widespread international condemnation of the SPDC. After placing Suu Kyi again under house arrest (where she remains, now in her 13th year of detention), and in a bare-faced attempt to deflect

international criticism, the SPDC announced its “Seven Step Roadmap to Democracy,” starting with a reconvening of the National Convention in late 2004.

But the reconvened National Convention was no different from its first incarnation. It was no more representational than the original body, particularly after the expulsion of the NLD delegates. The strict restrictions on the participation of the delegates remained in place. Time after time, any proposal at odds with the SPDC’s own vision was firmly rejected, without any substantive discussion.

On September 3, 2007, amid rising pro-democracy protests in the country, the SPDC announced the completion of the National Convention, and in October 2007 appointed a hand-picked 54-member Commission for Drafting the State Constitution to complete the process. The NLD and other independent political parties were excluded from the final constitution-drafting process, giving the SPDC a final opportunity to ensure its draft constitution would conform to its requirements.

Facing renewed criticism in the wake of the September 2007 crackdown on monks and pro-democracy protesters, and international calls for real democratic reform, the SPDC announced on February 19, 2008, that it would hold a referendum on the draft constitution in May 2008, to be followed by parliamentary elections in 2010, renewing its commitment to the “Seven Step Roadmap to Democracy.” The SPDC’s sudden acceleration of the “Roadmap” closely mirrors its actions following the Depayin killings in 2003, when it first announced the seven-step project; whenever the SPDC comes under pressure to carry out real democratic reforms, the generals reinvigorate their sham path to democracy to lessen international pressure.

A Constitution for Military Dominance

The SPDC’s draft Burmese constitution is not designed to bring about a real transition to democratic rule; its clauses demonstrate that the document’s purpose is to continue military dominance of Burma with a civilian face, and to deny political parties the right to participate freely in the future governing of the country.

The constitution states as one of its fundamental aims “for the [military] to be able to participate in the national leadership role of the state,” and it makes good on that

promise. One-quarter of the seats in both houses of parliament are reserved for military officers appointed directly by the commander-in-chief, and standing military officers can also run for the “open” seats of parliament. An even broader role is given to the military in selecting the president and two vice-presidents. Certain cabinet positions, including those with a security or military component, are reserved for the military. The dominant military role in the government is virtually impossible to change by amendment, since any amendment of these clauses requires more than three-quarters of the votes in both houses of parliament. Since the military has one-quarter of those seats, it holds an effective veto.

By contrast, the constitution treats political parties with open hostility. Provisions bar individuals and entire political parties from eligibility for office. A custom-drafted clause prevents Aung San Suu Kyi from running for office, by barring anyone who is married to a foreign national or has children who have foreign nationality (Suu Kyi is the widow of a British citizen, and has two children who hold British nationality). But the sweeping powers to exclude others go much beyond Suu Kyi’s tailor-crafted exclusion; anyone convicted for a criminal offense can be permanently excluded, which means that thousands of opposition leaders and activists who have been arbitrarily punished for their peaceful political activism are excluded from participating in parliament.

On its face, both the referendum and the draft constitution are designed to constitutionally enshrine and forever entrench more of the same abusive rule that Burma has endured already for nearly half a century.

Recommendations to Concerned Governments

In our December 2007 report on the crackdown against popular protests, Human Rights Watch took the unusual step of not making recommendations directly to the Burmese government.¹ We said:

¹ Human Rights Watch, *Crackdown: Repression of the 2007 Popular Protests in Burma*, vol. 19, no. 18(C), December 2007, <http://hrw.org/reports/2007/burma1207/>.

Since elections were annulled in 1990, international institutions including the UN General Assembly and other UN bodies, concerned governments, and nongovernmental organizations such as Human Rights Watch have made dozens of good-faith recommendations to the government that have been systematically ignored.²

Unfortunately, the Burmese government is still not serious about respecting fundamental rights and engaging in democratic reform. All the elements for a free and fair referendum are absent, including freedom of expression, freedom of association, and freedom of assembly. The process is so flawed that the SPDC has refused to allow independent, international observers to monitor the referendum.

Human Rights Watch urges all countries and intergovernmental institutions dealing with Burma to recognize the severe limits on basic freedoms and other human rights abuses in the constitution-drafting process and the pre-referendum period. Announced approval of the draft constitution on May 10 should not result in international endorsement of the referendum process.

It is nonetheless important that concerned governments adopt strong measures in the aftermath of the referendum.

Countries that have already publicly and strongly criticized the constitution-drafting process and the pre-referendum period, namely **Australia**, the **European Union** states, and the **United States**, are urged to:

- Continue to make public statements calling on the SPDC to permit broad public participation in the constitutional process and political reforms, including by opposition political parties and ethnic minority groups.
- Press the SPDC to respect human rights and engage in a genuine political reform process by all political parties and ethnic groups. Implement such measures as targeted financial sanctions on leading military and civilian officials responsible for abuses, and on companies owned and controlled by

² Human Rights Watch, *Crackdown*, p. 123.

the military or whose revenues substantially benefit the military. In addition, impose targeted sanctions on imports, exports, and new investment in sectors of Burma's economy that substantially benefit the military or are otherwise associated with serious human rights abuses, including the petroleum, mining, precious stones, and logging sectors, as well as hydropower and other major infrastructure projects. (See Human Rights Watch's special webpage, "Crackdown in Burma: Targeted Sanctions Needed" at <http://hrw.org/english/docs/2008/01/11/burma17719.htm> for more information on targeted sanctions.)

- Call for a mandatory and fully enforced embargo on all weapons and ammunition sales and transfers to Burma, adopted by the United Nations Security Council.

Human Rights Watch urges **India, Japan, Thailand** and **other ASEAN nations**, the **ASEAN secretariat**, the **UN secretary-general**, and the **UN special advisor on Burma**, which have responded to the constitutional referendum cautiously, to:

- Make clear before the referendum that the flawed constitutional drafting process and pre-referendum abuses mean that approval of the draft constitution by the referendum cannot be accepted as a genuine expression of the popular will of the Burmese people.
- In public statements on the referendum, urge that the SPDC respect the internationally protected rights of the Burmese people.
- Press the SPDC to respect human rights and engage in a genuine political reform process by all political parties and ethnic groups.

Finally, Human Rights Watch urges **China** and **Russia** and other countries that have welcomed the constitutional referendum as a sign of "progress" and have provided political support and cover to the SPDC to:

- Refrain from making public statements about the referendum that are dismissive of the rights of the Burmese people and only serve to undermine these countries' credibility.

- Refrain from blocking meaningful statements and action by the UN Security Council on Burma.
- Publicly urge the SPDC to respect human rights and engage in a genuine political reform process with full participation by all political parties and ethnic groups.

Methodology

Human Rights Watch has been monitoring the SLORC/SPDC's hijacking of Burmese democracy, the unfolding National Convention process, and the drafting of a new constitution in Burma since their beginnings. They have been background and context to the full range of our work on Burma, and have arisen in interviews with Burmese interlocutors too numerous to specify. Reference to a wide-range of specialist commentary and other published material has furthered our understanding of the constitution-drafting process over the years.

Since the referendum was called in February 2008, Human Rights Watch conducted specific, targeted research in Thailand amongst exiled and migrant worker populations. Between March and April 2008, we conducted interviews with 18 journalists, most of whom work in government controlled areas of Burma, and over 20 workers, students, and activists who are based both inside Burma and in neighboring countries. The report was supported by additional research from Human Rights Watch consultants conducted inside Burma and along the Thailand-Burma border since 2006. Some of the names of the people interviewed have been changed and interview locations withheld to protect the safety of interviewees. Many people we interviewed did agree to use their real names.

II. Political Process 1962 – 2008

Since overthrowing a democratically elected civilian government in 1962, the Burmese military has ruled Burma with an iron fist, violently repressing popular demands for the restoration of democracy and severely restricting fundamental human rights. The military's stranglehold on civil and political rights is matched only by its economic incompetence; Burma, prior to military rule one of Southeast Asia's leading economies, is now one of the poorest countries in the world.

Throughout more than four decades of oppression, courageous Burmese have tried to restore democratic rule. They have time and again expressed their desire for an end to military rule whenever they saw an opportunity to do so: during the 1988 student protests that brought hundreds of thousands onto the streets, during the annulled 1990 elections that gave the opposition National League for Democracy (NLD) 80 percent of the parliamentary seats, and most recently during the violently repressed August-September 2007 protests by monks and pro-democracy activists. This history of popular demands for democratic reforms and violent repression by the generals is fundamental to understanding the dynamics behind the May 2008 referendum.

The First Rigged Referendum – 1973

On March 2, 1962, the Burmese Army under General Ne Win staged a coup against the democratically elected government in Rangoon and took control of the country. Within weeks, basic freedoms were severely restricted, with political parties outlawed, public gatherings limited or banned, press freedoms sharply restricted, and internal and international freedom of movement regulated by the Burmese army. Those freedoms have never been regained.

The newly formed Revolutionary Council of military officers opposed all forms of perceived political dissent. Following protests by the Rangoon University Students Union (RUSU) on July 8, 1962, the army shot scores of students and blew up the student union's headquarters. Many political activists and journalists were jailed for expressing dissent.

In 1973 the Revolutionary Council staged a national referendum to adopt a new constitution. This was part of its plan to gain legitimacy for continued military rule and economic reform.

The vote was rigged and voters were manipulated—voters had to deposit their votes in one of two boxes, marked “Yes” (white) and “No” (black), and vote tallies were changed in favor of a “Yes” vote—with official results stating that more than 90 percent had voted in favor.³

Veterans of the 1973 constitutional referendum told Human Rights Watch that, notwithstanding the rigging and manipulation that secured the outcome, in the run-up they had been relatively free to campaign for or against the referendum, addressing communities throughout the country, in sharp contrast to today’s political climate in Burma.⁴

The 1974 constitution reformed Burmese federalism, establishing seven predominantly ethnic Burman divisions and seven ethnically distinct “states” to form the Socialist Union of Burma. This system remains in place today.⁵

The 1988 Student Unrest and the Army Massacres

Social tensions produced by 26 years of repressive military rule and socialist economic mismanagement came to the surface in March 1988 by way of student protests. The deaths of 42 student protestors from asphyxiation and heat after *lon htein* riot police bundled them into a van sparked a series of student demonstrations.⁶ The authorities closed all universities in Rangoon and ordered the students to return home, but this only emboldened the students. Small

³ Human Rights Watch interview with U Aung Htoo, Mae Sot, March 28, 2008.

⁴ Human Rights Watch interview with Teddy Buri, Members of Parliament Union (MPU), Bangkok, April 2, 2008.

⁵ The seven predominantly Burman (Myanmar) divisions are Tenasserim, Rangoon, Irrawaddy, Pegu, Magwe, Mandalay, and Sagaing, and the seven ethnic states are Arakan, Chin, Kachin, Shan, Karenni, Karen, and Mon. These are retained in the planned constitution, but the new capital, Naypyidaw (currently in Mandalay division), will be ruled under a special council.

⁶ Bertil Lintner, *Outrage: Burma’s Struggle for Democracy* (Bangkok: White Lotus, 1990).

demonstrations against the government began to spread throughout towns and cities in government-controlled areas.⁷

General Ne Win resigned from the leadership of the military junta and admitted government failings, but threatened that “those creating disturbances will not get off lightly.”⁸ Despite this threat, people continued to march in the streets in large numbers. As the government rapidly lost control of the streets, independent newspapers and political posters were produced and openly distributed. Service personnel from the air force joined the demonstrators.

On August 8, 1988 (commemorated in Burma as 8-8-88), a major nationwide protest took place, with hundreds of thousands of people (some estimate up to one million) marching in Rangoon calling for democracy, elections, and economic reforms. Two days later, as tens of thousands of protesters remained on the streets, army units trucked into Rangoon began shooting at unarmed protesters. At Rangoon General Hospital, five doctors and nurses who were helping the wounded were shot and killed by the soldiers.⁹

The government authority then effectively collapsed. Much of the daily order of towns and cities was now in the hands of ordinary civilians, with the Buddhist monkhood (the *Sangha*) playing an important role as marshals of demonstrations to keep them peaceful and avert rioting, looting, and reprisals.

On September 18, 1988, the army forcibly retook control of the cities and towns. Army chief General Saw Maung declared martial law and the creation of the State Law and Order Restoration Council (SLORC, or *Na Wa Ta*), a collective of senior military officers who would form a “transitional” military government—and whose successor, the military State Peace and Development Council (SPDC), still rules Burma today. Through military brutality and a shoot-to-kill policy against protesters,

⁷ By this time, there were over 20 ongoing insurgencies against the central government in Burma. The longest, by the Karen National Union (KNU) had raged since 1948, as had the Communist Party of Burma (CPB) insurgency. Other ethnic groups such as the Kachin, Shan, and Mon had large and well equipped militias which had been fighting the central government for decades.

⁸ The Extraordinary Session of the BSPP Congress, “Speech by U Ne Win, July 23,” July 23-25, 1988.

⁹ Maureen Aung-Thwin, “Burmese Days,” *Foreign Affairs* (New York), Spring 1989, pp. 143-161.

the SLORC managed to deter further street protests. Estimates of the number killed range from 1,000 to 10,000 deaths nationwide, with 3,000 deaths a commonly accepted figure. Although the army was responsible for the vast majority of the deaths, mobs murdered some suspected military intelligence agents, soldiers, and government bureaucrats.¹⁰

The Stolen 1990 Elections: SLORC Overturns the NLD's Election Victory

To gain internal legitimacy and foreign support for its rule, the SLORC changed the English name of the country to “Myanmar” and rapidly instituted a series of reforms, including promulgating an electoral law that permitted political parties to form and organize.¹¹ The National League for Democracy, led by Aung San Suu Kyi and retired generals U Tin Oo and U Aung Shwe, became the most popular and well-organized political party throughout the country.

The SLORC announced parliamentary elections for May 1990, but placed severe restrictions on political parties and activists. Suu Kyi's widespread popularity proved to be a major threat to the SLORC, which had embarked on a strategy to discredit the 1988 uprising as instigated by old guard communists, foreign “colonialist” powers, and the western media.¹² As Suu Kyi's speeches drew large rallies throughout the country, the SLORC sentenced her to house arrest in July 1989 on charges of instigating divisions in the armed forces.

Despite the repression faced by opposition parties during the campaign period, in the May 1990 elections the NLD won an overwhelming victory. A total of 13 million valid votes were cast out of nearly 21 million eligible voters. The NLD won over 80 percent of the seats (392 out of 485 parliamentary seats) and 60 percent of the popular vote. The second largest opposition party, the ethnic-based Shan Nationalities League for Democracy (SNLD), won 23 seats. The SLORC-backed National Unity Party won just 10 seats and just over 2 percent of the vote.

¹⁰ Maung Maung, “The 1988 Uprising in Burma,” Yale University Southeast Asia Studies, January 2000.

¹¹ State Law and Order Restoration Council (SLORC) Law No. 14/89, “Pyithu Hluttaw Election Law,” May 31, 1989.

¹² Ministry of Information, “The Conspiracy of Treasonous Minions Within the Myanmar Naing-ngan and Traitorous Cohorts Abroad,” State Law and Order Restoration Council, 1989.

The SLORC was taken by surprise by the magnitude of its defeat and the repudiation of military rule. It scrambled to nullify the NLD's victory, announcing in July 1990 that the new members of parliament (MPs) were elected only to form a constituent assembly to draft a new constitution, rather than sit as the elected parliament. The SLORC held that the new constitution had to be adopted before the parliament could be convened.

Without consulting the political parties that had won the elections, the SLORC assumed to speak for them by stating that:

The desire of the majority of the political parties which contested the General Election is to draw up a new constitution.... Consequently, under the present circumstances the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State.¹³

Ignoring the election results, the SLORC maintained martial law, and continued to exercise all executive and legislative powers, to the exclusion of the newly elected MPs.

The National Convention: 14 Years of “Guided” Constitution-Writing

The SLORC overturned the results of the 1990 national election by declaring that the elected MPs were elected not to sit in parliament, but only to “draw up the constitution of a future democratic State.” The generals reneged on this promise as well. After the annulled 1990 election, more protests and arrests took place, resulting in the arrest of many newly elected MPs, and forcing dozens of elected MPs to flee into exile to Thailand and the West.

In May 1992 the SLORC announced the formation of the National Convention Convening Commission, headed by SLORC member and Rangoon division army commander General Myo Nyunt. The Coordinating Commission met for two months to decide on how the National Convention would function, and who would attend.

¹³ SLORC Declaration 1/90 of July 27, 1990.

The aim of the National Convention would be to draw up a list of “Basic Principles,” which would then be incorporated into the draft constitution after the National Convention completed its work. In January 1993 the National Convention was finally convened with 702 delegates, of whom only 106 were elected representatives from the 1990 elections. All the other 596 delegates were handpicked by the SLORC to “represent” workers, peasants, intellectuals, national races, and the army, or were “specially invited persons.”

From its inception, SLORC (and its successor, the SPDC) designed and controlled the National Convention to ensure its outcome would reflect the objectives of the military junta. The delegates were only allowed to draw up the “basic principles” of the draft constitution, not the constitution itself. Moreover, the “principles” of the constitution had to conform with the “objectives” of the National Convention as already drawn up by the SLORC, which included “the participation of the *Tatmadaw* [armed forces] in the national political leadership role of the State in the future.”¹⁴

To further control the process of the National Convention, the SLORC’s strict rules for the delegates prevented free discussion, even within the convention hall. Delegates were required to pre-clear any statements they wished to make at the convention with the SLORC-dominated National Convention Convening Commission, which censored any statements it felt inconsistent with SLORC aims, and the discussions held at the National Convention were not publicly reported. The SLORC-drafted regulations for the delegates also prohibited walk-outs and any other shows of protest, prohibited delegates from distributing leaflets, wearing badges, bringing in papers that were not approved by the Convening Commission, or lobbying and influencing other delegates.¹⁵ When the National Convention was in session, the delegates themselves were required to live in dormitories guarded by the military, and required official permission to leave the compound.¹⁶ The elected delegates

¹⁴ SLORC Order 13/02, “The Formation of the Commission for Holding the National Convention,” October 2, 1992.

¹⁵ Janelle M. Diller, International League for Human Rights, “The National Convention in Burma (Myanmar): An Impediment to the Restoration of Democracy,” April 1996.

¹⁶ During the initial stages of the National Convention during 1993-1995, delegates were housed at the Kyaik Ka San park/playground in central Rangoon. Ironically, these same structures were used to incarcerate hundreds of detainees following the brutal crackdown of September 2007. Human Rights Watch interview with Khun Myint Htun, former delegate at NC and MP-elect from Thaton, Mae Sot, March 31, 2008.

were not even allowed to discuss the proceedings and their party's positions with other members of their own party.¹⁷ Any violation of the convention rules was severely punished. In 1993 Dr. Aung Khin Sint, an NLD delegate, and his colleague U Than Hla were arrested for disseminating speeches delivered to the convention, and sentenced to 20 years' and 15 years' imprisonment respectively.¹⁸

In reality, the National Convention only served as a fig-leaf for the SLORC's drafting of a constitution that guaranteed future military control, giving the process some semblance of "democratic" legitimacy. The delegates had no real input on the draft constitution itself, and were powerless to influence the outcome of the process to any significant degree. Each session of the National Convention opened with a speech by a member of the Convening Commission in which "suggestions" were made about the particular chapter of the draft constitution under discussion, and was closed by another speech summarizing the "agreed" principles. In three of the first four sessions, the opening speech and the closing speech were identical in content, showing the lack of input from the delegates. In effect, the delegates only served to rubber-stamp the "suggestions" of the SLORC-dominated Convening Commission, rather than drafting their own "fundamental" principles.

In November 1995 the elected NLD delegates walked out of the National Convention, announcing a boycott of the process, "until such time as a dialogue is held on national reconciliation, the genuine multiparty democracy system, and the drafting of a constitution which is supported and trusted by the people."¹⁹ The NLD's walk-out followed the Convening Commission's summary refusal of an NLD request to review the convention's working procedures. In response, the Convening Commission expelled the 86 NLD delegates from the National Convention, on the basis that the

¹⁷ Human Rights Myanmar, Yocho Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1995/72, U.N. Document No. E/CN.4/1996/65, February 5, 1996.

¹⁸ Human Rights Watch, *Burma: Entrenchment or Reform? Human Rights Developments and the Need for Continued Pressure*, July 1995; "U.N. Investigator Visits Leading Burmese Political Prisoner," *Associated Press*, November 14, 1993. Dr. Aung Khin Sint was released from detention in January 1995 following intense diplomatic pressure, but was again detained in July 1996 and ordered to serve the remainder of his 20 year sentence. Dr. Aung Khin Sint was among 11 NLD members released from detention on July 18, 2001. See The National Academies Committee on Human Rights, "Burmese Doctor Aung Khin Sint Released From Prison," July 18, 2001, http://www7.nationalacademies.org/humanrights/Case_Information_Aung_Khin_Sint.html (accessed April 24, 2008).

¹⁹ Aung San Suu Kyi, "Press Conference Statement: The Observations of the National League for Democracy on the National Convention," November 22, 1995; Marcia Phu, "More Reportage on NLD Boycott of Convention—NLD Leaders Explain Boycott," *BBC Burmese Service*, November 30, 1995.

NLD delegates had violated the SLORC-drafted convention rules by failing to ask permission for their two-day absence from the National Convention.

The state-controlled press vilified the NLD for boycotting the National Convention, opining that the NLD's decisions "were made with intent to mar the successes achieved so far by the National Convention... their National League for Democracy would replace [the National Convention] with a convention they would be able to dominate as they like, giving priority to promotion of the interest of their party."²⁰

Aung San Suu Kyi pointed out the fundamental flaws of the National Convention process:

SLORC Declaration 1/90 of July 27 1990 states that it is the duty of the elected representatives of the people to draw up a constitution. An examination of actual conditions within the National Convention reveals that there has been a shift away from its declared aims. The following are some of the features of the present convention. The elected representatives of the people constitute only 15.24 percent of the delegates and thus are permanently in the minority. Neither the objectives of the Convention nor its working procedures were drawn up in consultation with delegates. Papers to be presented at the Convention are censored and have to be corrected in accordance with the wishes of the authorities. Decisions are laid down before an issue has been fully discussed. The Convention is making decisions not only on broad principles for the proposed constitution but also on its details. There is no fixed timetable for the [completion of the] Convention.²¹

Soon after the NLD expulsion, the SLORC adjourned the National Convention in March 1996; it would not be reconvened until 2003. In June 1996 the SLORC passed

²⁰ *New Light of Myanmar*, November 29, 1995, quoting "Press Release on NLD Withdrawal," November 28, 1995, <http://www.burmalibrary.org/docs/BPS-NC-1995-11.htm>.

²¹ Aung San Suu Kyi, "Observations of the National League for Democracy on the National Convention," NLD Press Conference, Rangoon, November 22, 1995.

an even more repressive law to prevent any criticism of the National Convention process. Law No. 5/96, “The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Opposition,” prohibits any criticism of the National Convention, makes it illegal to make speeches or distribute statements “that belittle the National Convention,” and provides for prison sentences of up to 20 years for such criticism.

In May 2002 Aung San Suu Kyi was briefly released from house arrest and she went on a national tour, giving speeches about the need for democratic reform throughout the country. Her ability to draw large, enthusiastic audiences demonstrated her continuing national popularity, unaffected by years of house arrest and official vilification, and the continuing desire of the population for democratization and respect for human rights. The SPDC responded with violence. On May 30, 2003, a mob of SPDC-backed militias attacked Suu Kyi’s convoy near the town of Depayin, killing scores of NLD supporters. Suu Kyi was immediately placed under house arrest again, where she remains to date. Her house arrest was renewed most recently for another year on May 27, 2007, the day after she was visited by United Nations Special Advisor Ibrahim Gambari.

The “Seven Step Roadmap to Democracy”

In the wake of international condemnation of the Depayin attack and criticism of the SPDC’s continued refusal to embark on real democratic reform, Prime Minister Khin Nyunt announced a “Seven Step Roadmap to Democracy.” The roadmap envisioned the reconvening of the National Convention, to be followed by a “step-by-step process necessary for the emergence of a genuine and disciplined democratic system,” the drafting of a new constitution, the holding of a referendum, parliamentary elections, and the “building of a modern, developed and democratic nation.” But rather than embarking on an inclusive and democratic process aimed at real reform, the SPDC continued to push forward a tightly controlled, undemocratic process that excluded the NLD from participation.

When the National Convention finally resumed in late 2006, Information Minister Kyaw Hsan, the secretary of the National Convention Convening Commission, reminded the delegates of the strict restrictions under which they would be working:

The important codes of the conduct are: the delegates shall not be loyal to any state, other than the Union of Myanmar; the delegates will have to observe the directives of the panel of chairmen and the chairmen of the delegate groups; to live and act in accord with the prestige of a National Convention delegate and stay away from disturbing or undermining the tasks and functions of the National Convention; to hold discussions in an objective way and to stay away from making personal criticisms or criticizing a particular organization; and to bow to the State Flag every time they enter and exit the conference hall;... and the delegates shall keep all the news of the National Convention secret till they are officially released.²²

The reconvened National Convention was even less representative than the original one. Because of the expulsion of the NLD delegates, the number of remaining elected delegates stood at just 15 out of 1,088 delegates. The SPDC made up for the decrease in elected delegates by vastly increasing the number of delegates from “National Races”—many representing the ethnic minority groups who had signed ceasefire agreements with the SPDC—from 215 in 1993 to 633 in 2004 (for the continued participation of ethnic political parties see Chapter III, below, subsection “Freedom of association and assembly”).²³ Any proposal at odds with the SPDC’s own vision for its draft constitution was dismissed or ignored. In June 2004 the SPDC summarily rejected a proposal submitted by 13 of the ceasefire groups to establish a decentralized federal union of Burma with “ethnic or national democracy.” In December 2005 the New Mon State Party (NMSP) downgraded its involvement in the

²² “Internal and external destructive elements resorting to various means to disrupt and obstruct the National Convention. We will protect the National Convention and delegates from any forms of danger,” speech by Gen. Kyaw Hsan, Myanmar Permanent Mission to the UN press release, Geneva, October 10, 2007, http://mission.itu.ch/MISSIONS/Myanmar/n-convention/NC_11octo6%20KyawHsanSpeech.htm (accessed December 8, 2007).

²³ Maung Aung Myoe, “A Historical Overview of Political Transition in Myanmar since 1988,” Asia Research Institute Working Paper No. 95, National University of Singapore, August 2007.

convention from delegates to observers in protest to their suggestions being ignored, and the restrictions on their involvement.

Constitution Drafting and the Renewed “Path to Democracy”

Finally, in July 2007, after 13 suspensions and 14 years, the SPDC announced the convening of the “final” session of the National Convention. The Kachin Independence Organization (KIO), an ethnic minority group that signed a ceasefire with the central government in 1994 and participated actively in the convention since that time, made a last-ditch effort to change the course of the convention by releasing a 19-point list of proposals in August 2007, most of them focusing on the rights of the seven ethnic states. The SPDC ignored the proposals, and amid widespread street demonstrations in late August prompted by the increase in fuel prices, the drawn out convention concluded on September 3, 2007.²⁴

The government crackdown began on September 25, and involved widespread violence against the peaceful demonstrators, including severe beatings and the use of live gunfire into crowds, resulting in dozens of deaths—the total death toll remains unknown. Thousands of protesters were detained, and dozens of monasteries were raided during the nights of the crackdown. Detainees suffered severe beatings, torture, and inhuman conditions in overcrowded ad hoc detention facilities, resulting in additional deaths. Hundreds remain in detention, including most of the leadership of the '88 Generation students' movement, and those who have so far been sentenced have received long prison sentences for their involvement in the peaceful protests, including life sentences. The violent crackdown and the use of military-backed militias to beat and intimidate the population have resulted in a pervasive climate of fear. The story of the courageous protests, and the full horror of the violent crackdown and its aftermath, was the subject of a detailed Human Rights Watch report, “Crackdown: Repression of the 2007 Popular Protests in Burma.”²⁵

²⁴ “Burma: Constitutional Convention Reinforces Military Rule,” Human Rights Watch news release, September 5, 2007, <http://hrw.org/english/docs/2007/09/05/burma16798.htm>.

²⁵ Human Rights Watch, *Crackdown*.

In October 2007, with the crackdown on demonstrators still in the air, the SPDC handpicked a 54-member Commission for Drafting the State Constitution. This body was to draw upon the recently concluded National Commission and the finalized “fundamental principles” to write the text of the draft constitution. The NLD and other independent political parties were excluded from the constitution-drafting process, which gave the SPDC the opportunity to ensure the draft constitution would conform to the SPDC’s requirements.

Facing continuing criticism of the September 2007 crackdown and international calls for real democratic reform, the SPDC announced on February 19, 2008, that it would hold a referendum on the draft constitution sometime in May 2008, to be followed by parliamentary elections in 2010, renewing its commitment to the “Seven Step Roadmap to Democracy.” The SPDC’s sudden acceleration of the “Roadmap” closely mirrors its actions following the Depayin killings in 2003, when it first announced the seven-step path; whenever the SPDC comes under pressure to carry out real democratic reforms, it reinvigorates its own sham path to democracy to lessen international pressure.

III. Impossible Conditions for a Free and Fair Referendum

In the May 2008 referendum the Burmese people are being asked to vote on a draft constitution. A referendum that would reflect the will of the populace requires freedom of access to information, freedom of speech and expression, a free media, and freedom of association and assembly. In Burma, none of these fundamental requirements for a free and fair referendum exist.

Burma's generals claim that the draft constitution aims to bring about "discipline-flourishing genuine multiparty democracy." Yet the very run-up to the referendum would seem to preclude that possibility. The government-controlled media offers only crude propaganda in favor of a "Yes" vote, and talks of criminal penalties for those who oppose the referendum, creating a climate of fear. There has been no critical public discussion of the constitution's contents; most people have not even seen the document. The generals are sending a clear message that their hand-crafted constitution will continue the military rule that has persisted for more than four decades.

Lack of Information about the Constitution

International human rights law envisions that citizens have a right to participate in public affairs. This includes both access to information and a free exchange of viewpoints.²⁶

The proposed constitution has been 14 years in the making, yet many Burmese have not seen the draft and are unfamiliar with its content. During the National Convention sessions, long passages from the detailed guiding principles (which eventually comprised the draft constitution) and the National Convention's tightly scripted "discussions" were published in the state-controlled media, including the English-language *New Light of Myanmar* and its Burmese-language version *Myanmar*

²⁶ The International Covenant on Civil and Political Rights provides for the right of all citizens to "take part in the conduct of public affairs, directly or through freely chosen representatives" (art. 25), and the right "to hold opinions without interference" which includes "freedom to seek, receive and impart information and ideas of all kinds" (art. 19). International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Burma has not ratified the Covenant.

Alin, Kyemon (The Mirror), and on Myanmar Television.²⁷ A primer book on the future constitution was released in 2006 and prominently advertised in state-controlled media in 2006-2007, but many people in Burma have been unengaged—out of deep skepticism, disdain, or boredom with a process that seems never-ending.

The exact content of the draft constitution was not made available to the public until the SPDC released it on April 4, 2008, just one month and six days before the referendum. The SPDC had released an earlier draft (the completed principles of the constitution) to public servants in August 2007.

Even after its public release, copies of the draft constitution are only available for sale in bookstores in Rangoon (Human Rights Watch has limited information about the availability of the draft constitution outside Rangoon—it is reportedly available for reading at some public libraries) at a cost of 1,000 Kyat (US85¢)—a significant sum for most Burmese, given the endemic poverty in the country. The distribution of the draft constitution through bookshops will only reach a tiny fraction of the population, as most bookshops received only 50 copies of the draft constitution,²⁸ and there are no indications that the SPDC plans to distribute the draft constitution in Burma’s extensive rural areas, where the majority of the population resides.

The draft constitution is only available in the Burmese and English languages, and has not been translated into any of the 135 other languages spoken by an estimated 40 percent of the Burmese population who belong to ethnic minority groups.²⁹ Many of those from ethnic minorities do not read Burmese or English, again excluding much of the population from the opportunity to comprehend the constitution.

Furthermore, referendum officials have failed to inform the population how the referendum will be conducted on voting day, a significant obstacle for a population that has not been allowed to participate in a single election since 1990.

²⁷ “The Tatmadaw is the sole existing Tatmadaw which is strong and modern,” *New Light of Myanmar*, October 29, 2006, p. 7.

²⁸ “Commission for holding referendum organizes meeting No.6/2008,” *New Light of Myanmar*, April 10, 2008.

²⁹ Human Rights Watch interview with Khunsai Jaiyen, *Shan Herald Agency for News*, Chiang Mai, March 22, 2008.

The SPDC has not permitted critics of the draft constitution to produce or distribute their own materials opposing a “Yes” vote in the referendum. Under Law 5/96, criticizing the “roadmap to democracy” is a criminal offense and can lead to prison sentences of up to 20 years. Opposition politicians, journalists, activists, and political commentators told Human Rights Watch that people are unable to make informed public comment, organize debates, write articles, distribute leaflets, hold rallies, produce stickers, put up posters, or even wear T-shirts without fear of arrest and long prison sentences.

In most rural areas, the lack of information about the draft constitution coupled with the tight control exerted by local officials and the military over the local population will effectively deny the local population the opportunity to cast a free and informed vote. An ethnic Karen school headmistress from the Irrawaddy Delta region explained to Human Rights Watch how she believed government officials would pressure people to vote “Yes” on referendum day, with most of the people not even knowing what they were voting on:

We’re scared, if we don’t support [the referendum] we will have to pay [a price], [be forced to] resign from work, no promotions, summoned by the police all the time. In our area no one has seen the new constitution. In our area the authorities are very strict. If we don’t attend a [pro-government] meeting they know and there will be payback.... We hear only rumors. We have no trust in the government.³⁰

The SPDC, its security forces, and its civilian militias have used intimidation and harassment to silence political activists and drive them underground. Human Rights Watch interviewed a young NLD member who had fled to the Thailand-Burma border in March 2008 after officers from the Special Branch came looking for him and his pamphlets critical of the referendum at his parents’ Rangoon home.

My father said, “Don’t come home, the Special Branch is looking for you.” I went into hiding. My pamphlets were about the referendum. If I

³⁰ Human Rights Watch interview with Naw Paw, Mae Sot, March 11, 2008.

got caught with the pamphlets I would get three years for criticizing the referendum or 20 years under the constitution law (5/96). I cannot go back. I worry about my friends, they have to live underground.³¹

Lack of Media Freedom

Burma is a tough country in which to be a journalist, artist, comedian, rapper, or filmmaker. It remains one of the most repressive countries on earth in terms of its restrictive press laws and its frequent practice of jailing journalists. In 2007 the global press freedom organization Reporters Without Borders ranked Burma 165th out of 167 countries reviewed for press freedoms, just ahead of Cuba and North Korea.³² The US-based Committee to Protect Journalists in 2007 listed Burma the second-worst country for media freedom, coming just before North Korea, and found that Burma was the fifth-leading jailer of journalists in the world.³³

The 1962 Printers and Publishers Registration Act requires that all materials for publication must first be submitted to the Press Scrutiny Registration Division (PSRD) in the Ministry of Information for approval, and such approval for non-state-owned newspapers and magazines can often take weeks. Publishers must submit each story to be published in triplicate to the PSRD, pay a fee, and wait out a nine-stage review process.³⁴ The PSRD can refuse to allow the publication of any story it deems inappropriate, including most criticism of the SPDC or the “roadmap to democracy,” and can order editors to rewrite stories.³⁵

At least seven prominent journalists are currently in prison for their work, including U Win Tin, who was sentenced to 20 years in prison in 1989 for “engaging in anti-government propaganda” in his writings and attempting to inform the United Nations

³¹ Human Right Watch interview with Min Naing, NLD Youth member, Mae Sot, March 29, 2008.

³² Reporters sans frontières, Press Freedom Index 2007, http://www.rsf.org/article.php3?id_article=11715.h (accessed April 24, 2008).

³³ Committee to Protect Journalists, *Attacks on the Press in 2006. Worldwide Survey by the Committee to Protect Journalists* (CPJ); Brookings Institution, February 2007).

³⁴ See the guidelines posted at “The Press Scrutiny and Registration Division,” www.myanmar.gov.mm/ministry/home/secrutiny.htm (accessed April 4, 2007).

³⁵ Human Rights Watch interview with former Rangoon-based journalist (name withheld) with *The Myanmar Times*, Chiang Mai, November 8, 2006.

about human rights abuses in Burma;³⁶ Maung Maung Lay Ngwe, imprisoned since 1990 for publishing information “that makes people lose respect for the government”;³⁷ Aung Htun, imprisoned since 1998 after publishing a seven-volume history of the student movement in Burma;³⁸ Thaug Tun, imprisoned in 1999 after producing an unauthorized film that exposed government mismanagement and human rights abuses;³⁹ and Ne Min, a freelance journalist who worked for the BBC and was sentenced to 15 years in prison in May 2004 on charges of illegally passing on information to “antigovernment” organizations (namely, the BBC) based outside Burma.⁴⁰ Thaug Sein, a freelancer, and Kyaw Thwin, a columnist with *Dhamah Yate* magazine, were arrested and sentenced in March 2006 for filming near the new capital Naypyidaw, and given three-year sentences for breaching the 1996 Television and Video Act.⁴¹ In 2004 the Supreme Court sentenced Zaw Thet Htwe, once the editor of the Burmese-language *First Eleven* sports magazine, to three years in prison on charges of high treason, after he had originally been sentenced to death the previous year for an article he wrote on corruption involving a grant to Burma from the international soccer organization FIFA (Fédération Internationale de Football Association). He was released in 2005 following pressure from FIFA, Amnesty International, and Reporters Without Borders.⁴²

A typical recent case shows the extreme restrictions and the threat of criminal sanctions under which journalists in Burma work. In February 2008 security forces detained Ko Thet Zin, the chief editor of the weekly publication *Myanmar Nation*, and the weekly’s manager, U Sein Win Maung, arresting them at their paper’s offices. According to their relatives, the two journalists had been researching the September 2007 crackdown on democracy protests, and were found during the raid to be in

³⁶ Amnesty International, “Myanmar: Time for justice as human rights defender spends 75th birthday in prison,” March 11, 2005; Reporters sans frontières, “Burma: UN Envoy asked to intervene on behalf of Win Tin,” August 18, 2005.

³⁷ Committee to Protect Journalists, Burma chapter in *Attacks on the Press in 2006*.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ SLORC Law no.8/96, Television and Video Law, July 29, 1996, http://www.blc-burma.org/html/myanmar%20law/lr_e_ml96_o8.html (accessed February 22, 2007).

⁴² Kirsten Sparre, “Death Sentence for Asking About Football Money,” *Play the Game Magazine*, 2006, p. 25, <http://playthegame.org/upload/magazine%202005/ptgmagazine06%20p25001.pdf> (accessed September 15, 2007).

possession of a Burmese translation of UN Special Rapporteur for Human Rights Paulo Sergio Pinheiro's 2007 report,⁴³ a DVD with video footage of the crackdown, and a book by the ethnic Shan leader Shwe Ohn titled "Let's Build [an] Inseparable Union."⁴⁴ In March 2008 the two journalists were charged with violating the Printers and Publishers Registration Act and accused of being in possession of "illegal materials"; trial is pending at this writing, and they could face up to seven years in prison if convicted. The publication of their weekly newspaper remains suspended.⁴⁵

The state-controlled *New Light of Myanmar* never reports critically about the government, focusing its coverage on bland stories about the government's accomplishments, meetings, and charity activities engaged in by SPDC members, and vigorous denunciations of "external destabilizing elements" and their "internal stooges," who are held responsible for all of Burma's woes. During the lead-up to the referendum, the *New Light of Myanmar* faithfully reported the SPDC's propaganda, branding opposition groups inside Burma and in exile as terrorists. A typical statement reads:

Now, terrorist insurgents are active under the pretext of democracy movements not only in underground areas and border areas but also in aboveground areas and urban areas. They are rising against the government in disguise, and have become audacious to attack and kill the people. Terrorist saboteurs have no justice, nor do they have relatives. Such criminals are always happy to commit subversive acts.⁴⁶

The *New Light of Myanmar* also portrayed the military (*Tatmadaw*) as the only institution capable of protecting the country's interests:

⁴³ UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Myanmar, 6th Session, Agenda item 4, A/HRC/6/14, December 7, 2007.

⁴⁴ "Burma: Arrest of Journalists Highlights Junta's Intolerance," Human Rights Watch news release, February 19, 2008, <http://hrw.org/english/docs/2008/02/09/burma18097.htm>; Min Zin, "Silencing the 'Safron Revolution,'" *Far Eastern Economic Review* (Hong Kong), March 26, 2008; Nem Davies, "Two Journalists Arrested in Rangoon," *Mizzima News*, February 18, 2008.

⁴⁵ Human Rights Watch telephone interview with Zin Lin, vice-president of the Burma Media Association, Mae Sot, April 22, 2008.

⁴⁶ An Observer, "Any forms of subversive acts to be exposed and dealt with," *New Light of Myanmar*, April 5, 2008.

The patriotic *Tatmadaw* which is strong, efficient and modern, and can safeguard the State, its citizens and independence of the people against all internal and external dangers. These duties are assigned to it in the constitution by the national people.⁴⁷

Independent journalists, most of them working for Burma's many weekly and monthly magazines, practice extreme self-censorship to avoid any run-ins with the authorities. In a series of interviews during March 2008, Human Rights Watch spoke with more than 10 Burma-based Burmese journalists about the daily challenges of working within such a system. Because of the SPDC's severe restrictions, journalists inside Burma cannot inform the public about the critical issues in the forthcoming referendum vote for the constitution.

Journalists are unable to write stories critical of the draft constitution, or to write about how the public is responding to the issues involved. They are unable to write about how remote and rural communities view the referendum. The state media routinely ignores the views of ethnic communities, unless it is to show their support for various SPDC initiatives.⁴⁸ A journalist covering Burma for an international radio agency explained to Human Rights Watch how the Burmese public is denied news coverage free of propaganda:

Self-censorship is the enemy of journalism. If people disagree on the constitution they have no time, no way to voice those views. The [constitutional] principles have been widely distributed in government newspapers. But there has not been any articles debating or challenging the constitution. Journalists and public commentators who try to ensure Burmese people have access to real information about education, economics, trade, corruption, law and order, health and government policies, can be jailed, forced into exile or banned by the

⁴⁷ Khaing Htet Aung, "The Tatmadaw, protector of the constitution," *New Light of Myanmar*, March 24, 2008.

⁴⁸ Human Rights Watch interviews with Shan, Kachin, and Arakanese journalists, Chiang Mai, March 2008.

military government if their stories are deemed inflammatory to the regime.⁴⁹

The SPDC uses its institutions of control—the army, police, Special Branch, Military Intelligence (*Sa Ya Ka*—see below), and the military-backed Union Solidarity and Development Association (USDA)—and its vast network of informers to repress and generate fear among those journalists who dare to speak out against the government’s policies, referendum, or the constitution.⁵⁰ In April 2007 a journalist who works for a privately owned publication in Burma and an international news service spoke to Human Rights Watch about the daily harassment he faced:

I can’t write about politics in my country, unless I write pro-government views. The referendum has made me angry. I feel frustrated, and yet it’s hopeless. Working for foreign journalists is a scary experience. I was working with an international TV news crew as a researcher and translator. “Mindors” from the Ministry of Information and one from Foreign Affairs warned me not to translate everything I was told. The “mindors” were with us all the time. They warned me, “Rangoon is a small place, we can find you.” I was scared.⁵¹

In August and September 2007, during the violent crackdown against monks and citizens, Rangoon’s military commander ordered all journalists to stop taking photographs of the protests and issued a command to destroy cameras taken off people at the demonstrations. A Burmese photojournalist working for an international news agency was forced into hiding for weeks after receiving threats from police officers. He told Human Rights Watch why he had no other option but to flee Burma:

⁴⁹ Human Rights Watch interview with Aung Naing, BBC stringer and Network Media Group founder, Chiang Mai, March 2, 2008.

⁵⁰ See Network for Democracy and Development, *The White Shirts: How the USDA Will Become the New Face of Burma’s Dictatorship* (Mae Sot, Thailand: NDD, 2006).

⁵¹ Human Rights Watch interview with Aung Kyaw, location withheld, April 6, 2008.

They knew me. Even though I was wearing my press accreditation and identification card I had no protection. They knew I was Burmese. They told me to stop taking photos. I knew they would get me. I photographed the woman union leader being taken and I was close to the Japanese photographer [Kenji Nagai] when he was shot. I had to leave. My life was in danger. I hid for weeks and made my way underground to the Thai border.⁵²

A dozen journalists told Human Rights Watch that they face greater restrictions on their work as the referendum approaches. State security forces have markedly increased scrutiny of their daily activities, and many independent journalists are afraid for their security. Journalists told Human Rights Watch they suspect they are being watched and followed, and that their phone calls are monitored. They know there are laws covering the reporting and discussion of the referendum, including Referendum Law 1/2008 and Law 5/96, but are unclear how they will be applied. Reporters are afraid of being caught by government security forces with the tools of their profession—cameras, USBs, CDs, tape recorders, and notebooks are all objects that attract suspicion and attention from authorities. A journalist told Human Rights Watch:

You don't have to be beaten to be afraid. Constant rumors and whispers that people have been arrested and detained without trail is enough to make us cautious and afraid... If I see people standing outside my house, I get a taxi, I cannot go home. When I interview people I'm scared. I worry they might inform on me. I had to go to a temple for a job. I saw many plainclothes police there. I'm ready to be stopped. I try to write my notes in English so soldiers cannot read it. I don't take earphones with me. If I have an MP3 [for recording interviews] I'm always prepared to throw it away.⁵³

⁵² Human Rights Watch interview with Eh Soe Law, photojournalist, Mae Sot, February 17, 2008.

⁵³ Human Rights Watch interview with Aung Oo (not real name), Mae Sot, April 6, 2008.

Although virtually none of the media inside Burma can elude state censorship, a vigorous exile press does provide access to a wider variety of information sources to those Burmese who can afford satellite dishes to obtain their broadcasts. Although satellite dishes and receiving international broadcasts are banned in Burma, an estimated one million Burmese, most of them living in urban centers, have access to such services, according to Reporters Without Borders.⁵⁴ International news services such as the BBC Burmese Service, Radio Free Asia, Voice of America, and the Norway-based Democratic Voice of Burma (DVB) provide critical information to those who can afford—and are brave enough—to listen to them.

Restrictions on Freedom of Expression, Assembly, and Association

Freedom of expression

In Burma, government surveillance by a variety of formal and informal security structures, as well as “mass-based” organizations such as the USDA, is so omnipresent that most Burmese are too afraid to utter any critical opinions of the government in public, in semi-private places like teahouses, and even in private homes. They know security forces may question them about conversations, and they risk arrest and imprisonment for speaking critically about the government.⁵⁵ In such a climate of fear and surveillance, free and open discussion about the referendum and draft constitution is impossible.

The SPDC uses a wide variety of overlapping organizations to monitor and control the population, and to create this pervasive climate of fear. Various security agencies, including the Special Branch police and Military Intelligence (*Sa Ya Ka*, from its Burmese acronym derived from Office of Military Affairs Security), normally in plainclothes, frequent any area of potential dissent, such as teahouses, guesthouses, markets, and shops, monitoring the conversations taking place and collecting intelligence from informers. Most known activists are under constant

⁵⁴ Reporters sans frontières, Press Freedom Index 2007.

⁵⁵ Emma Larkin, *Finding George Orwell in Burma* (New York: Penguin Books, 2004).

surveillance by these formal security agencies, and anyone these activists come into contact with risks arrest and questioning.⁵⁶

An ethnic Karen schoolteacher from Pa-An town described for Human Rights Watch how the constant surveillance prevented candor on political issues even during private conversations:

Even if we have [private] discussions, the government has many people who spy on us—the Ya Ya Ka [local government], “white shirts” [USDA], “Masters of Force” [a USDA-linked militia, see below]—they’re [recruited] from our community. We have no personal security amongst those in our community; they train these people to be able to watch their neighbors.⁵⁷

The formal security agencies are only the first level of control. Even more invasive and prevalent are the different levels of the SPDC, operating from the national level right down to the township and ward level, and the “mass-based” USDA, the “civilian” organization created and controlled by the SPDC to provide a civilian face for its military rule. At local levels the USDA and its abusive militia, the *Swan Arr Shin* (“Masters of Force”), directly monitor the activity of all persons in their area, and deal violently with anyone believed to be a threat to the SPDC.⁵⁸ Other mass-based organizations completely under the control (and leadership) of the SPDC, such as the Myanmar War Veterans’ Association (MWVA), the Myanmar Women’s Affairs Federation (MWAF), and even the Auxiliary Fire Brigade, engage in a variety of activities to ensure SPDC control, including harassment, monitoring, and physical attacks against opposition activists.⁵⁹

In Burma, all household residents have to be registered and a list of all occupants given to the local authority, after which a copy of the list is attached to the outside of

⁵⁶ See “Arrests in Lieu of Others,” in National Coalition Government of the Union of Burma, Human Rights Documentation Unit, “Bullets in the Alms Bowl. An Analysis of the Brutal SPDC Suppression of the September 2007 Saffron Revolution,” March 2008.

⁵⁷ Human Rights Watch interview with Naw Paw, March 11, 2008.

⁵⁸ Human Rights Watch, *Crackdown*.

⁵⁹ Human Rights Watch interview with former *Ya Ya Ka* official, Mae Sot, April 1, 2008.

the house. Local authorities have to be notified of all visitors, and households have to have those exact people staying there, no fewer and no more.⁶⁰ At any time of the day or night local authorities or the security agencies can enter any home to check the occupants against the list of household residents.

The military runs networks of informers, and neighbors spying on neighbors creates a sense of paranoia and mistrust among people in the communities. The SPDC rewards those who inform with personal gains such as preferential access to education, job promotion, and foodstuffs.⁶¹

Authorities also intimidate employers to pressure their workers to side or vote for the government. This intimidation is not subtle. It comes in undiluted threats from the military intelligence. Plainclothes military personnel monitor workers, and report “wrongs” or “suspicions” to authorities for further action to be taken against the “culprits.” Aung Zay, a trader from Kyai Klad in Irrawaddy division, explained to Human Rights Watch how workers must cooperate or risk harassment:

The company owner tells his workers which way to vote—workers depend on the boss—they have to listen to the boss, but the workers can choose. If the boss doesn’t listen he will be restricted in his trading, he will find it hard to get permits [for goods, selling licenses, to travel, and sending and receiving freight].⁶²

A former member of the government-sponsored USDA from a Rangoon township told Human Rights Watch about the work he did for the USDA on orders from the SPDC in relation to the referendum. He explained how the SPDC used violent thugs working with the local authorities to generate fear in local ward/quarters and to persuade voters of the merits of a “Yes” vote. He said that military intelligence officers and members of the local authority usually accompanied the USDA on their forays. He

⁶⁰ Human Rights Watch interview with Min Naing, Mae Sot, March 29, 2008; Min Lwin, “Junta Forcing Migrants Home for Referendum,” *The Irrawaddy* (Thailand), March 10, 2008, http://www.irrawaddy.org/article.php?art_id=10783 (accessed April 19, 2008).

⁶¹ Human Rights Watch interview with Aye Myo Myat, Mae Sot, March 28, 2008.

⁶² Human Rights Watch interview with Aung Zay (not real name), a trader from KyaiKlad, Irrawaddy district, interviewed in Mae Sot, March 20, 2008.

related an incident from March 2008 in which their mission was to identify “Yes” and “No” referendum voters. The potential “Nos” were later targeted for nighttime threats, abuse, and beatings.

The people who say “No” we write down their name and address. If they still say “No” we go back late at night and beat them. We go with Ya Ya Ka and take them to the jail. We accuse them of being a thief, a drunk. We explain we can give them trouble, give them many problems. Most are scared. [One person] we talked to about the referendum... he said he was not interested, he was against it. We came back later to his house and took him to the Ya Ya Ka office and pushed and beat him and told him he faced many problems.⁶³

Freedom of association and assembly

Freedom of association and assembly is sharply restricted in Burma by a range of laws, as well as by police and military actions to disperse any public gatherings deemed to be anti-government. The colonial-era Unlawful Association Act (1908) remains in force, broadly outlawing any association that “interferes with the administration of the law... [or is] a danger to the public peace.”⁶⁴ SLORC Order No. 2, issued during the student demonstrations of 1988, bans “[g]athering, walking, marching in procession, chanting slogans, delivering speeches, agitating, and creating disturbances on the streets by a group of five or more people... regardless of whether the act is with the intention of creating a disturbance or of committing a crime or not.”⁶⁵ The State Protection Law of 1975 permits the administrative detention for 90 days (renewable for an additional 90 days) of persons mobilizing for perceived anti-government activity.⁶⁶ During the 2007 crackdown, authorities also invoked article 144 of the Penal Code, which bans groups of five people gathering together.⁶⁷

⁶³ Human Rights Watch interview with Ko Aye, USDA member from Rangoon, Mae Sot, April 1, 2008.

⁶⁴ The Unlawful Associations Act, India Act XIV, 1908, December 11. Part II, sec. 16.

⁶⁵ SLORC Order 2/88, State Law and Restoration Council, Rangoon, September 18, 1988.

⁶⁶ State Protection Law, Article 10, Pyithu Hluttaw Law No. 3, February 1975.

⁶⁷ Penal Code (1861), Article 144, Prohibiting “disturbance of the public tranquility, or a riot, or an affray.”

On August 22, 2007, *New Light of Myanmar* reported the arrest of 18 political activists who had engaged in a peaceful “walking” protest against rising prices. The papers headline trumpeted, “Agitators taken into custody for undermining stability and security of the nation, attempting to disrupt the National Convention.” The newspaper story named the “agitators” and their “crimes”:

Information was received in advance that with ill-intention of grabbing power, internal and external destructive elements who do not wish to see the endeavors of the government are plotting to oust the government by resorting to three strategies; to disrupt the National Convention, to cause civil unrest similar to the '88 disturbances and to commit various acts within [sic.] the framework of law.... Tonight, authorities concerned have taken into custody and are interrogating the so-called '88 generation students Min Ko Naing, Ko Ko Gyi, Pyone Cho (a) Htay Win Aung, Min Zeya, Min Aye (a) Thura, Kyaw Min Yu (a) Jimmy Zeya (a) Kalama, Kyaw Kyaw Htwe (a) Markee, Arnt Bwe Kyaw, Panneik Tun, Zaw Zaw Min, Thet Zaw and Nyan Lin Tun for their acts may undermine the efforts for ensuring peace and security of the State, the success of the National Convention and the seven-step road Map and peaceful transfer of the State power.⁶⁸

Even peaceful and non-threatening protests may subject the protestor to arrest and a long prison term. For example, in April 2007 an HIV-positive man, Ko Tin Ko, held a peaceful solitary protest outside the Dagon Center in Rangoon to call on the authorities to provide more antiretroviral drugs, and was promptly arrested and detained at a communicable diseases hospital for his actions.⁶⁹

On August 23, 2007, security forces detained Ohn Than for mounting a solo protest in front of the disused US Embassy in Rangoon, shouting pro-democracy slogans. In

⁶⁸ “Agitators taken into custody for undermining stability and security of the nation, attempting to disrupt national convention,” *New Light of Myanmar*, August 22, 2007. (a) in Burmese government publications stands for ‘alias.’

⁶⁹ “Solo Protest Staged by HIV Patient in Rangoon,” *The Irrawaddy*, April 4, 2007, http://www.irrawaddy.org/article.php?art_id=6991 (accessed April 18, 2008).

April 2008 he was sentenced to life in prison for “causing disaffection to the state,” the crime of sedition under section 124(a) of the Penal Code of Burma.⁷⁰

Despite these severe restrictions, activists are seeking to mount protests against the upcoming referendum, and security personnel are detaining them as a result. On March 27, 2008, more than 30 NLD activists wearing T-shirts with “NO” emblazoned on them briefly took to Rangoon streets urging the public to register a “NO” in the May 10 referendum. Three days later, on March 30, security forces detained five of the activists who had taken part in the protests. Khin Oo, Ye Zaw Tike, Zarni Aung, Aung Kyaw, and Tin Oo Maung were taken from their homes by the authorities to undisclosed locations. On the night of April 1, Tin Myint and Tun Aung, respectively chairperson and a youth member of Thigankyun township NLD branch, were arrested by Special Branch police, and at this writing are still in custody.⁷¹

In rural regions, villagers say they are also threatened and beaten by soldiers and local officials for perceived anti-SPDC activities.⁷² A Karen district officer told Human Right Watch about the problems faced by his constituents trying to make sense of the constitution:

If we meet to discuss [the constitution] the soldiers will cause us problems, so we have to meet in secret. If we campaign or hand out leaflets we will be killed. Even in small cases, not big like the referendum, they will kill.⁷³

Rallies called by the USDA or other pro-government organizations do not face any obstacles being organized, and attendance at such stage-managed events is often mandatory for the residents of an area. If residents refuse to attend, they can be

⁷⁰ “Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards [the Government established by law for the Union or for the constituent units thereof.] shall be punished with transportation for life or a shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.” Penal Code (1861), section 124(a).

⁷¹ Human Rights Watch interview with Myint Soe, secretary NLD/LA, Mae Sot, April 23, 2008.

⁷² Karen Human Rights Group, “Development by Decree: The politics of poverty and control in Karen State,” KHRG 0701, April 2007.

⁷³ Human Rights Watch interview with Saw Hla Hta, Ban Mae Tao (Mae Sot District), March 11, 2008.

“fined” an unofficial tax imposed by local authorities or military units for non-compliance. The refusal may be used against them and their families in other ways too.⁷⁴ Human Rights Watch spoke to a manager of a computer shop who was told to send staff to one such rally:

The SPDC order us to attend mass rallies, they use trucks to bring the people [to the rallies]. You know you can't refuse, if you do you will face hardships. You stop getting permits, orders for stock from the government. The Ya Ya Ka [local authorities] and members of the [volunteer, pro-government] Fire Brigade came to my shop and asked me to send two staff to a rally in December. I had to send them to the Ya Ya Ka office by 4 a.m. I'm a businessman, I have to contribute to whatever they want. I want a good relationship with them.⁷⁵

As already noted, the SPDC has created a variety of government-controlled, “mass-based” (and purportedly volunteer) organizations as part of a civilian facade to continued military rule. Independent nongovernmental organizations are permitted to operate in “non-political” spheres—development work and health and local community programs—but must carefully circumscribe their activities in order not to run afoul of the government.

Political parties are subjected to particular scrutiny by the SPDC, and their activities are severely curtailed. By 1996 the Election Commission of Burma had deregistered at least 80 of the 93 political parties that had contested the 1990 elections, often using spurious reasons with no legal foundation as a basis for their decisions. Aside from the NLD and the military-backed National Unity Party (NUP), the only political parties that continue to function in Burma are those that represent the interests of certain ethnic nationalities, in some cases those that have signed ceasefire agreements with the SPDC such as the Kachin Independence Organization (KIO) and United Wa State Party (UWSP). Legal political parties organized along ethnic lines still exist and attended the National Convention from the beginning, such as the

⁷⁴ Human Rights Watch interview with former *Ya Ya Ka* official (name withheld) from Rangoon, (location withheld), April 1, 2008.

⁷⁵ Human Rights Watch interview with Lyan Myat, Rim Moei (Mae Sot District), March 27, 2008.

United Karen League, Union Pa-O National Organization, Shan State Kokang Democratic Party, Mro O Khami Unity Organization, Kokang Democracy and Unity Party, Lahu National Development Party, and the Wa National Development Party.

The party that won the second highest number of seats in the 1990 election, the Shan Nationalities League for Democracy (SNLD), was outlawed in 2005 after the SPDC arrested the leadership, including Hkun Htun Oo and others, and sentenced them each to over 90 years in prison for attempting to liaise with members of the Shan armed faction.⁷⁶

The SPDC continues to severely repress the NLD, although it remains a lawful political party. As noted in Chapter II, NLD leader Aung San Suu Kyi has been under strict house arrest since May 2003. The NLD's national committee, made up mostly of elderly NLD officials, is allowed to meet occasionally, but the SPDC have arrested and imprisoned hundreds of NLD branch leaders and members over the years for carrying out ordinary party activities.⁷⁷

Authorities harass members of the NLD in order to pressure them to resign from the party. A teacher, a former NLD member in Pa-An town, explained how he was pressured to resign from the NLD by the local authorities in 2007:

They called me in to the Ya Ya Ka office and told me to resign from the NLD. If I didn't they said they'd find something "wrong" with me. They have all the names of NLD members. We have no choice, we have to resign. Even though I resigned they still investigated me to find something "wrong." It is easy to find something wrong—they accuse you of being drunk, or they deny you a promotion or travel documents. My family was worried. I had to sign my resignation statement.⁷⁸

⁷⁶ "Burma: Arrest of Journalists Highlights Junta's Intolerance," Human Rights Watch news release, February 19, 2008, <http://hrw.org/english/docs/2008/02/19/burma18097.htm>.

⁷⁷ See, for example, "NLD's acts are disagreeable. 43 members of Labutta Township NLD quit," *New Light of Myanmar*, August 24, 2007; Assistance Association for Political Prisoners, "8 Seconds of Silence. The Death of Democracy Activists Behind Bars," May 2006.

⁷⁸ Human Rights Watch interview with Kaw Kwark, Mae Sot, March 19, 2008.

A trader from Irrawaddy division told Human Rights Watch how he witnessed a noodle maker lose his business after he joined the NLD in 2005:

He soon lost his permit [to trade] and was closed down. He no longer lives there, he had to move away. As a businessman I have to act according to their [SPDC's] rules. If I do so, if I do it's okay. The unwritten law is don't join the NLD. If you maintain a good relationship with the SPDC there's no trouble. I do business with people who are connected [to the SPDC], I can't join opposition groups, I can't have an opinion, I can't talk about politics, I can't talk about the referendum. I can only talk with close friends and listen to the radio in secret. I can't listen openly to the BBC.⁷⁹

Pre-referendum attacks on political activists

Since late March 2008, plainclothes assailants believed to be members of the security forces, the USDA, or the *Swan Arr Shin* militia, have committed a number of attacks on NLD and human rights activists, apparently to intimidate the opposition while hiding government responsibility.

On April 3, two men attacked NLD member Tin Yu in Hlaing Tharyar township. The assailants arrived on a motorcycle, and one had a walkie-talkie at his waist (normally used by security officials). According to Tin Yu, his assailants hit him in the face with batons. After the attack Tin Yu was taken to a hospital and had 20 stitches for facial wounds he sustained in the attack. He told journalists he was convinced he was attacked by the security forces or an SPDC-backed organization:

The only people who have walkie-talkies are Swan Arr Shin, the Union Solidarity and Development Association, and the Fire Services Department. Of course, the police and the military intelligence also have them. So, who can it be except them?⁸⁰

⁷⁹ Human Rights Watch interview with Aung Zay (not real name), March 20, 2008.

⁸⁰ "Second NLD member attacked in Hlaing Tharyar," *Inside Burma*, April 7, 2008.

The Hlaing Tharyar township NLD chairman, Myint Hlaing, was hit on the head and required several stitches to his head after an unknown assailant attacked him outside his home on March 30.⁸¹

Myint Aye, a founder of the Human Rights Defenders and Promoters (HRDP) group and one of the few human rights activists openly working inside Burma, was attacked by two assailants in Sachaung township in Rangoon on March 27. The men beat him severely on the head with batons, and he had to be hospitalized after the attack. Myint Aye believed he was attacked because of his human rights activities.⁸²

Continued Widespread Detention of Political Activists

According to the Thailand-based Assistance Association for Political Prisoners—Burma (AAPP), there are at least 1,890 political prisoners currently held in Burmese prisons. This includes 755 new detainees since January 2007, the majority of whom were detained following the September 2007 crackdown. Political opposition activists face constant harassment, state-sponsored violence, vicious slandering in the state-controlled press (where they are routinely described as the “internal stooges” of “external destabilizing elements”), arbitrary arrest and detention, and long-term imprisonment. Many have been imprisoned after unfair, often summary trials simply for engaging in peaceful political actions or peacefully expressing their political beliefs, including some who have received life sentences.⁸³ Such arrests and imprisonment continue in the run-up to the referendum.

The widespread arbitrary detention of political activists impacts on Burma’s political scene in two major ways. First, it has removed many of the most prominent activists, including most of the top leadership of the ’88 Generation student movement, from

⁸¹ “Burmese Opposition Leader Attacked,” *Mizzima News*, April 1, 2008.

⁸² Human Rights Watch interview with Myint Soe, secretary NLD/LA, Mae Sot, April 23, 2008. In April 2007 two other HRDP activists, Myint Naing and Maung Maung Lay, were brutally attacked by a group of suspected USDA members while they were engaging in a rights awareness campaign in Hinthada township. Their assailants beat them with clubs and sharpened bamboo sticks, and the two activists were so seriously injured that they required extensive hospital treatment. After reporting the attack to the police, one of the victims, Myint Naing, and five of his colleagues were sentenced to between four and eight years in prison for the crime of “causing public mischief” under the State Emergency Act.

⁸³ Human Rights Watch interview with Myint Soe, secretary NLD/LA, Mae Sot, April 23, 2008. The Thailand-based Assistance Association for Political Prisoners (Burma) maintains a detailed list of people imprisoned for their political beliefs in Burma, including the charges they were convicted under, on the website www.aappb.org.

the public scene, preventing them from organizing against the referendum and other issues. Second, the harsh sentences handed down against political activists serve to intimidate the larger population of Burma, sending a clear message to refrain from opposition activities or risk the consequences.⁸⁴

In the first three months of 2008 at least 52 activists have been detained by the security forces. Most of those recently detained are members of the NLD, the '88 Generation, human rights activists, and labor rights activists, accused of involvement in the August-September 2007 democracy protests or smaller protests since then, including anti-referendum protests (as documented elsewhere in this report).

Lack of Independent Monitoring Structures, and SPDC Control over the Organs of State

There will be no domestic or international monitoring of the constitutional referendum. The SPDC does not permit domestic monitoring groups—there are no independent, nongovernmental organizations that would be allowed to monitor and report on the conduct of the referendum. The state Referendum Commission is not expected to play a monitoring role, and if it did, there is no basis for believing it would or could act independent or impartially.

Burma has refused to allow any foreign monitoring of the referendum. The Referendum Commission rejected a proposal from UN Special Advisor Ibrahim Gambari that Burma invite international monitors to observe the referendum vote and to ensure the process met international standards. The government responded that it was within Burma's sovereign right to hold such a referendum and that foreign monitors had not been invited to monitor Burma's 1973 referendum.⁸⁵ The Referendum Commission also refused Gambari's offer of UN technical assistance with organizing the referendum, saying that Burma "has adequate experience"

⁸⁴ Human Rights Watch interview with Myint Soe, secretary NLD/LA, Mae Sot, April 23, 2008. See, also, Amnesty International, "Arrests of Political Activists Increase in Myanmar," January 25, 2008; "Spring postponed," *The Economist* (London), April 10, 2008.

⁸⁵ "Voting will be conducted in line with the international systems; Arrangements have been made for every eligible voter not to lose the right to vote; The law on voting has already been issued both in Myanmar and English newspapers; Commission for Holding Referendum receives UNSG's Special Advisor," *New Light of Myanmar*, March 8, 2008.

conducting elections.⁸⁶ Since the government rigged the 1973 referendum, and overturned the results of the most recent national election in 1990, SPDC claims of having “adequate experience” ring hollow.

The absence of domestic and international monitoring mechanisms, as well as the sharp restrictions on both domestic and international media, mean that both the Burmese people and the international community will be kept in the dark about the conduct of the referendum. Any SPDC manipulation of the process, whether behind-the-scenes or in public, may go unpublicized, at least in the short term.

⁸⁶ Ibid.

IV. A Constitution for Military Dominance

A complete, clause by clause analysis of the entire draft constitution—a document numbering some 194 pages with 15 chapters—is beyond the scope of this report. Briefly discussed here are some of the draft constitution’s more problematic aspects.

Entrenchment of Military Power

The SPDC’s “Seven Step Roadmap to Democracy” project has been designed in large part to entrench within the constitution continued military rule.⁸⁷ The draft constitution makes this clear in its opening clauses, listing as one of the six “aims and objectives of the State” “for the *Tatmadaw* [military] to be able to participate in the national leadership role of the State.”⁸⁸

The draft confers constitutional legitimacy to the military’s broad powers, ensuring effective military control over the proposed “civilian” government. One-quarter of the seats in both the upper and lower houses of the new national parliament, the Union Assembly (*Pyidaungsu Hluttaw*)—110 of the 440 seats in the lower “People’s Assembly” (*Pyithu Hluttaw*) and 56 of the 224 seats in the upper “Assembly of Nationalities Parliament” (*Amyotha Hluttaw*)—are reserved for military appointees directly selected by the commander-in-chief of the Burmese armed forces.⁸⁹ The commander-in-chief is also entitled to appoint a similar proportion of military appointees to all state and regional parliaments, ensuring a dominant military role at all levels of governance.⁹⁰ In addition to their reserved appointed seats, serving military officers are also allowed to stand for election for the non-reserved seats, and are likely to do so in significant numbers, potentially leading to a significantly higher military representation than the one-fourth reserved seats.⁹¹

⁸⁷ Supalak G Khundee, “Burma’s ‘constitutional’ dictatorship,” *The Nation*, September 13, 2007, p.9A.

⁸⁸ Burma Draft Constitution (February 2008), Chapter I (State Fundamental Principles), art. 2 (f).

⁸⁹ Draft Constitution, Chapter IV (Legislature), arts. 4 and 13.

⁹⁰ Draft Constitution, Chapter IV (Legislature), art. 38.

⁹¹ Draft Constitution, Chapter I (State Fundamental Principles), art. 26 (a).

The draft constitution gives the military even broader representation in the selection of the Burmese president and two vice-presidents. The presidential electoral college is to be formed by equal numbers of elected representatives of the People’s Assembly, elected representatives of the Assembly of Nationalities, and military members of both assemblies appointed by the commander-in-chief, giving the appointed military members a one-third vote in the process, rather than the one-fourth vote they have in both assemblies.⁹² The commander-in-chief holds the same level of position as a vice-president, according to the draft constitution.⁹³

The military bias in the selection of the president and vice-presidents is further reflected by the requirement that any president or vice-president who belongs to a political party “shall not participate in party activities of that party... during the time in office.”⁹⁴ By contrast, serving military officers elected to the presidency or vice-presidency are not required to resign from their military post and are allowed to continue to participate in military activities.

Certain cabinet positions—including the minister and deputy minister of defense, the minister and deputy minister of security and home affairs, and the minister and deputy minister of border affairs—are reserved for military officers, and can only be appointed from names submitted by the commander-in-chief, thus entrenching military control over key security portfolios.⁹⁵ As with the president and vice-presidents, cabinet members who belong to a political party must “refrain from participating in party activities during the term of office,”⁹⁶ but military officials who serve in cabinet positions are not required to refrain from continuing in active military service. Significantly, the functions of the military are beyond the control of the executive and the cabinet, the ostensible civilian authorities—as the draft constitution states, the military “has the right to independently administer all affairs concerning the armed forces.”⁹⁷

⁹² Draft Constitution, Chapter III (The Head of State), art. 5.

⁹³ Draft Constitution, Chapter VII (The *Tatmandaw*), art. 8.

⁹⁴ Draft Constitution, Chapter III (The Head of State), art. 9.

⁹⁵ Draft Constitution, Chapter V (Executive), arts. 2 and 3.

⁹⁶ *Ibid.*, art. 5.

⁹⁷ Draft Constitution, Chapter VII (The *Tatmandaw*), art. 10.

The military has also ensured that the dominant role assigned to it in the draft constitution is virtually immune from legislative amendment. The draft constitution declares that the military “is mainly responsible for safeguarding the State Constitution,”⁹⁸ and the most important chapters of the draft constitution, including those enumerating the role of the military in governance, require the approval of more than three-quarters of the members of both houses of the Union Assembly and a majority of all eligible voters in a nationwide referendum.⁹⁹ Since the commander-in-chief directly appoints a quarter of the members of the Union Assembly, the military holds an effective veto over any proposed changes to the constitution.

Barring of Opposition Members from Elected Offices

The draft constitution has a clause apparently designed specifically to prevent the popular NLD opposition leader Aung San Suu Kyi from being appointed to the presidency. Under an article entitled “Qualifications of the President and Vice-Presidents,” the draft constitution requires that “[t]he President of the Union shall be a person who has been residing continuously in the country for at least 20 years up to the time of the election,” and that “[t]he President of the Union himself [*sic*], parents, spouse, children and their spouses shall not owe allegiance to any foreign power, shall not be subject of a foreign power or citizens of a foreign country. They shall not be persons entitled to the rights and privileges of a subject or citizen of a foreign country.”¹⁰⁰ Suu Kyi is the widow of a British citizen, the late academic Michael Aris, and has two children who hold British citizenship, although she has always remained a Burmese citizen. Such arbitrary restrictions would also limit the ability of the large number of highly educated Burmese who were forced to go into exile during the period of military rule to stand for executive office, as they would not meet the requirement of 20 years of continuous residence.

The eligibility requirements for members of parliament also seem targeted at excluding a significant number of opposition leaders; persons “punished for the commitment of an offense that makes him or her lose qualifications” for election to

⁹⁸ Draft Constitution, Chapter I (State Fundamental Principles), art. 9 (f).

⁹⁹ Draft Constitution, Chapter XII (Amendment of the Constitution), art. 4.

¹⁰⁰ Draft Constitution, Chapter III (The Head of State), art. 4 (e) and (f). Art. 4 (h) states that vice-presidents shall be subject to the same qualifications.

parliament are permanently excluded,¹⁰¹ which would affect the thousands of opposition activists who have been convicted and imprisoned for peaceful opposition activities. Even more sweeping, also excluded is any “person who obtains and makes use of [,] or member of any organization that obtains or makes use of money, land, housing, building, vehicle, property, etc. directly or indirectly from a foreign country’s government, or religious organization or other organizations.”¹⁰² This clause could effectively bar any member of a political organization that has ever received any financial support from a foreign government—for example by having a foreign government sponsor a study tour for members of a political party, which is a common practice in many countries.

Members of political parties are also barred from standing for certain important positions in government service, although similar bans are not extended to serving military officers. For example, members of political parties cannot be appointed as either chairperson or members of the Union Civil Service Board which regulates and oversees the civil service, but active military officers are not similarly excluded.¹⁰³

Provisions on the “Fundamental Rights and Duties of Citizens”

While there are no international requirements for the protection of individual rights in national constitutions, the provisions in Burma’s draft constitution concerning fundamental rights will all too easily allow the promulgation of laws that do not meet international standards.

Burma is not a party to the International Covenant on Civil and Political Rights (ICCPR), yet language in the draft constitution’s chapter on the fundamental rights and duties of citizens seems drawn from that document. For instance, the rights to freedom of expression, association, and assembly are protected, “subject to the laws enacted for State security, prevalence of law and order, community peace and tranquility or public order and morality.”¹⁰⁴ The language of the relevant articles of

¹⁰¹ Draft Constitution, Chapter IV (Legislature), art. 33.

¹⁰² *Ibid.*, art. 33 (g).

¹⁰³ Draft Constitution, Chapter V (Executive), art. 18.

¹⁰⁴ Draft Constitution, Chapter VIII (Citizenship, Fundamental Rights and Duties of Citizens), art. 10.

the ICCPR is similar, but also requires that any restrictions provided by law “are necessary.”¹⁰⁵ As Prof. Manfred Nowak in his authoritative commentary on the ICCPR writes, the “requirement of necessity implies that the restriction must be *proportional* in severity and intensity to the purpose being sought and may not become the rule.”¹⁰⁶ Without this “necessity” provision, the draft constitution provides no constraints on the Burmese government from adopting legislation that unjustifiably cites state security and public order to restrict fundamental rights to expression, association, and assembly.

Other constitutional protections seem similarly subject to easy abuse by the government or on their face violate international human rights standards. The provision providing citizens with the right to “freely develop literature, culture, arts, customs and traditions” nonetheless requires that they “avoid any act which is to the detriment of national solidarity”¹⁰⁷—a restriction that seems intended to allow the clampdown on otherwise permitted activities by Burma’s minority populations. And a provision prohibiting discrimination in the qualifications for “posts or duties” on the basis of race, birth, religion, or sex concludes, “However, not[h]ing in this section shall prevent appointment of men to the positions that are naturally suitable for men only.”¹⁰⁸

¹⁰⁵ ICCPR, arts. 18, 19, 21, and 22.

¹⁰⁶ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rein: N.P. Engel, 2005, 2nd ed.), pp. 426, 460, etc.

¹⁰⁷ Draft Constitution, Chapter VIII (Citizenship, Fundamental Rights and Duties of Citizens), art. 23.

¹⁰⁸ *Ibid.*, art. 8.

V. International Response to the Referendum

International pressure on the Burmese military government to address human rights concerns intensified after the September 2007 crackdown on peaceful pro-democracy demonstrators. Intergovernmental bodies and influential governments briefly united in condemnation of the SPDC and in calling for real democratic reform in Burma. The condemnation included a presidential statement in the UN Security Council,¹⁰⁹ a resolution in the UN Human Rights Council,¹¹⁰ and a strengthening of targeted sanctions by the United States, European Union, and Australia. The UN secretary-general's special advisor on Myanmar, Ibrahim Gambari, the central figure in international efforts to engage with the SPDC, made several visits to Burma in the aftermath of the crackdown, attempting to start a serious dialogue between the generals and Aung San Suu Kyi.¹¹¹

The international consensus for real democratic reform and an end to military rule in Burma broke down almost immediately. The military junta's long-time defenders, particularly China and Russia, returned to their stance of "non-interference" in the internal affairs of Burma. The Association of Southeast Asian Nations (ASEAN) returned to its more usual stance of silence and inaction in the face of rampant human rights abuses within one of its own members states, while Thailand focused on its trade relationships with the Burmese generals.

This deep division is reflected in the stance of the international community, including the United Nations, towards the May 10 constitutional referendum. China and Russia have uncritically "welcomed" the referendum as a step toward democratization. Australia, the European Union, the United Kingdom, and the United States have expressed grave concern about the referendum; Australia and the US have already denounced it as a "sham."

¹⁰⁹ United Nations Security Council, "Statement by the President of the Security Council," S/PRST/2007/37, October 11, 2007.

¹¹⁰ United Nations Human Rights Council, "Resolution S-5/1: Situation of human rights in Myanmar," October 2, 2007.

¹¹¹ International Crisis Group, "Burma/Myanmar: After the Crackdown," Brussels, Asia Report No.144, January 2008.

Actions by the United Nations

UN Secretary-General Ban Ki-moon greeted the February 19 announcement of the referendum with caution, renewing his call on the SPDC “to make the constitution-making process inclusive, participatory and transparent in order to ensure that any draft constitution is broadly representative of the views of all the people of Myanmar [and] to engage without delay in a substantive and time-bound dialogue with Daw Aung San Suu Kyi and other relevant parties to the national reconciliation process.”¹¹²

The efforts of special envoy Ibrahim Gambari have been the main focus of UN efforts, but given the perennial difficulties of having useful dialogue with the SPDC, the “good offices” mandate has been used as much to maintain contact as achieving discernable progress in Burma. A four-day March 2008 visit led to no tangible gains. Nonetheless, Gambari reported to the Security Council that his meetings with SPDC officials, including the Referendum Commission, were “fruitful,” and that he succeeded in conveying the UN’s concerns about the transparency of the process:

I left with my interlocutors a list of detailed questions and observations prepared by our [UN] experts regarding the conduct of the constitution making process, the referendum and elections, which I hope they will find useful with a view to enhancing the credibility and inclusiveness of the process.... I encouraged the authorities to take further steps to ensure that the credibility of the process is enhanced.... The better educated voters are, and the more public space there is for open debate on the draft constitution, the more confidence the process will generate from all political actors and the public at large, and the more the process will be perceived as credible to the outside world.¹¹³

¹¹² “Secretary-General calls for ‘inclusive, participatory and transparent’ process as Myanmar announces plans for constitutional referendum,” statement by the office of the UN Secretary General, February 11, 2008, <http://www.un.org/News/Press/docs/2008/sgsm11409.doc.htm> (accessed April 24, 2008).

¹¹³ Briefing to the Security Council by Mr. Ibrahim Gambari, Special Advisor to the Secretary-General on Myanmar, March 18, 2008. Copy on file with Human Rights Watch.

Although Gambari correctly mentioned that he raised the concerns of the international community with the SPDC leadership, his report to the UN Security Council failed to acknowledge that the SPDC had failed to act on a single one of his recommendations.¹¹⁴

The outgoing UN special rapporteur on the situation of human rights in Myanmar, Paulo Sergio Pinheiro, has regularly criticized the human rights abuses associated with the “seven steps to democracy” program during his eight-year tenure. In an interview published on April 14, one of his last before retiring from his post, he described the referendum as “surreal” given the severe repression that continues in Burma:

How can you have a referendum when you make repression against those that are intending to say “no”? This is completely surreal. You cannot have a political transition if you keep almost 2,000 political prisoners and you continue the crackdown after the repression of the end of last year. If you say a real political transition process is taking place in Myanmar, this would be almost offensive to countries in Asia like the Philippines and Indonesia or Thailand that passed through a transition process to democracy.¹¹⁵

Despite these strong statements of concern by some UN officials, the UN’s primary institutions, particularly the Security Council, have been severely hampered from taking action by the objections of China and Russia. In April 2008 the US, UK, and France introduced a draft presidential statement at the Security Council calling for an end to military rule in Burma and for the full participation of all political opposition groups in a transition to democracy. China and Russia objected strongly to the draft language, effectively stopping the presidential statement from being issued by the council.¹¹⁶

¹¹⁴ See Ian MacKinnon, “Cold Shoulder for UN Envoy over Burma Referendum,” *Guardian* (London), March 7, 2008, Security Council Report, “Myanmar,” Update Report No.2, March 18, 2008, <http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b3961583/> (accessed April 4, 2008).

¹¹⁵ David Brunnstrom, “UN rights expert calls Myanmar vote plan ‘surreal,’” *Reuters*, April 14, 2008.

¹¹⁶ Lalit K Jha, “China, Russia Oppose UN Security Council’s Draft Presidential Statement,” *The Irrawaddy*, April 9, 2008.

Association of Southeast Asian Nations

ASEAN reacted united and forcefully to the September 2007 crackdown, issuing a statement on September 27 expressing “revulsion... over reports that the demonstrations in Myanmar are being suppressed by violent force.” However, the organization has been deeply divided over the upcoming referendum, with some member states welcoming the referendum and others demanding a more inclusive process.

Surin Pitsuwan, the former Thai minister of foreign affairs who currently serves as the secretary-general of ASEAN, expressed support for the referendum: “It has to begin somewhere and now it has a clear, definite beginning. I think it is a development in the right direction.”¹¹⁷

Australia

In February 2008 Foreign Minister Stephen Smith responded to the announcement of the referendum: “We’re frankly very skeptical. We are not persuaded that this is anything more than a cynical sham.... Any genuine movement towards democracy or respect for human rights can only be done in cooperation with the international community and also with the political leaders in Burma.”¹¹⁸ Australia issued a joint statement with the United Kingdom in April 2008 describing the constitution drafting and referendum process as “deeply flawed” (see “United Kingdom” below).

China

China has consistently defended the actions of the SPDC, shielding it from criticism at the international level. Following the September 2007 crackdown, China briefly took a more critical stance, joining a strong presidential statement issued by the UN Security Council in November 2007, and reportedly helping facilitate access to Burma for Gambari and Pinheiro. In February 2008 China applauded the SPDC for making “constant new progress in promoting democracy.”¹¹⁹

¹¹⁷ Nopporn Wong-Anan, “Asean Chief: Burma Charter Vote a First Step,” *The Irrawaddy*, February 12, 2008, http://www.irrawaddy.org/article.php?art_id=10335 (accessed April 12, 2008).

¹¹⁸ “Military Junta’s election plan, referendum meet with skepticism,” *The Straits Times* (Singapore), February 11, 2008.

¹¹⁹ Regular Press conference of Foreign Ministry Spokesperson Liu Jianchao, February 14, 2008.

European Union

The European Union and the European Parliament have strongly rejected the upcoming referendum, stating that only an inclusive process of democratization can be acceptable. Responding to the Burmese government announcement to hold the referendum in May 2008 and multi-party elections in 2010, the Council of the European Union stated that “only a process that involves the full participation of the opposition and ethnic groups will lead to national reconciliation and stability. To this end, [we call] for the release of all political detainees, including Aung San Suu Kyi, the start of a substantial time-bound dialogue with all political stakeholders, and full respect for human rights and fundamental freedoms.”¹²⁰ The European Parliament rejected the referendum, saying it was a pretext for military dominance: “[Burma’s] next move is a 10 May referendum on a Constitution that will give the military power and keep opposition leader Aung San Suu Kyi out of politics.”¹²¹

India

India has drastically altered its Burma policy from one of support to the democratic opposition following the crushing of the nationwide protests in 1988, to one of political, trade, and military engagement with the SPDC and silence on its abusive rule. Since the mid-1990s India has attempted to engage with the military government on strategic concerns, aiming to offset Chinese influence in Burma and to increase its trade with the country.¹²²

India has repeatedly stressed the need for an inclusive, broad-based process of democratic reform in Burma. The deputy head of the SPDC, General Maung Aye, visited India in April 2008. During this visit, Indian Prime Minister Manmohan Singh noted “the positive steps being taken by the Myanmar Government towards national reconciliation and political reforms,” but stressed “the need for Myanmar to expedite

¹²⁰ European Commission, “Bulletin of the European Union,” EU 1/2-2008, 2851st meeting, 1.38.12. External Relations, February 18, 2008, <http://europa.eu/bulletin/en/200801/p138012.htm> (accessed April 24, 2008).

¹²¹ “Burma: EU needs ‘coherent strategy’ ahead of military’s poll,” European Parliament news, April 16, 2008, http://www.europarl.europa.eu/news/public/story_page/030-26636-168-06-25-903-20080415STO26613-2008-16-06-2008/default_en.htm (accessed April 25, 2008).

¹²² Bertil Lintner, “India stands by Myanmar’s status quo,” *Asia Times Online*, November 14, 2007, http://www.atimes.com/atimes/South_Asia/IK14Dfo2.html (accessed November 18, 2007).

the process and make it broad-based to include all sections of society, including Daw Aung San Suu Kyi and the various ethnic groups in Myanmar.”¹²³

Indonesia

Among ASEAN members, Indonesia has been one of the most skeptical of the referendum process. In April 2008 the House of Representatives rejected the incoming Burmese ambassador to Indonesia, as is permitted under Indonesian law. According to House speaker Agung Laksono, the Indonesian government should only accept a Burmese ambassador after there are democratic elections in the country and the junta reconciles with pro-democracy groups.¹²⁴

Japan

Japan has adopted a more critical approach to its relations with the military government, which have been close for decades, since its support for UN Security Council discussions on Burma in September 2006. Japan’s aid has concentrated on grants for basic human needs since the May 2003 Depayin incident. After the 2007 crackdown, in which a Japanese journalist was willfully shot dead by Burmese troops, the government further suspended one of its bilateral aid projects. Following the announcement of the referendum date the Japanese Foreign Ministry stated:

Japan takes it positively that the Government of Myanmar showed a time frame concerning a democratization process by announcing the timing of a referendum on a new constitution and general elections. On the other hand, participation of Daw Aung San Suu Kyi and others concerned has not been realized in the process of establishing a new constitution in Myanmar. Japan deems it important for Myanmar’s

¹²³ Syed Ali Mujtaba, “India-Burma Relations Gaining Momentum of Its Own,” *Global Politician*, April 9, 2008, <http://www.globalpolitician.com/24457-india-burma> (accessed April 24, 2008). See also, the similar March 3, 2008, statement of Minister for External Affairs Lok Sabha: “We have emphasized to Myanmar that the process of national reconciliation should be broad-based to include all sections of society including Aung San Suu Kyi and the various ethnic groups. India fully supports the UNSG’s good offices and his Special Envoy Mr. Ibrahim Gambari’s mission to initiate a process of dialogue.... Considering our common ethnic linkages and security considerations, it is essential for India to ensure that there is peace and stability in Myanmar during the period of its political reforms.”

¹²⁴ “House rejects new Myanmar ambassador,” *Jakarta Post*, March 8, 2008.

national reconciliation that genuine dialogue involving all the parties concerned will be conducted.¹²⁵

Russia

The Russian government has made statements on Burma at the UN Security Council supporting the SPDC's "roadmap to democracy" without criticism. Moscow has cynically suggested that the calls for democracy and respect for human rights in Burma are "tensions being fanned by certain countries around the so-called Myanmar question," a barely veiled attack on Western governments' expressions of concern. The Russian Ministry of Foreign Affairs issued a statement welcoming the referendum on February 12, 2008:

The Russian Ministry of Foreign Affairs notes with satisfaction the official announcements issued on February 9 by the Myanmar State Peace and Development Council of plans for a national referendum to be held this May on a draft constitution of the Union of Myanmar, followed by general multiparty parliamentary elections in 2010.

The Russian side hopes that the determination of the distinct time parameters to implement the next phases of political change in Myanmar, envisaged by the well-known Roadmap and aimed at moving to a civilian democratic form of rule, will help reduce tension being fanned by certain countries around the so called Myanmar question and will constitute an additional impulse to intensify the dialogue of all concerned political forces within Myanmar on the issues of the future of that state.¹²⁶

¹²⁵ Ministry of Foreign Affairs press statement, Tokyo, February 10, 2008, http://www.mofa.go.jp/announce/announce/2008/2/1177696_980.html (accessed April 15, 2008).

¹²⁶ "Transition to Subsequent Phases of the Roadmap for Political Change in Myanmar," Ministry of Foreign Affairs of the Russian Federation press release, February 12, 2008, http://www.mid.ru/brp_4.nsf/e78a4807of128a7b43256999005bcbb3/bba4c933185e4636c32573ed005f70e7?OpenDocument, (accessed April 15, 2008).

Thailand

The new Thai government sworn in in February 2008 (ending 16 months of military rule) has become one of the biggest supporters of the referendum, reviving the close relationship forged between the SPDC and the deposed government of former prime minister Thaksin Shinawatra. Following a visit to Burma in March 2008, Thai Prime Minister Samak Sundaravej, a close Thaksin ally, gave viewers on his weekly television program, “Samak’s Talk” a bizarre defense of the SPDC’s actions:

Burma is a Buddhist country. Killings and suppression are normal even in Buddhist countries. China, also a Buddhist country is doing suppression in Tibet now. But General Than Shwe does meditation. You may think Samak has been hoodwinked. Burma’s PM Thein Sein tells me he prays in the morning, and also prays in the evening... The Burmese leaders say they live in peace. The Burmese leaders told me they are building a new parliament for the government in the future. They are building the new capital for the future. There will be a referendum in two months and elections in two years.¹²⁷

Thai Foreign Minister Noppadon Pattama also indicated that international criticism of the referendum was unwarranted. Following the March 2008 visit, he said that the referendum was an “internal affair of Myanmar.”¹²⁸

United Kingdom

The United Kingdom has firmly rejected the proposed referendum, describing the process as “deeply flawed,” and stating that “only an inclusive process of national reconciliation can bring stability and prosperity” to Burma. Following an April 7, 2008, meeting in London, UK Prime Minister Gordon Brown and Australian Prime Minister Kevin Rudd issued a statement stressing their common position on Burma:

¹²⁷ Samak’s Talk program, Channel 11 (Bangkok), March 16, 2008. Transcript on file with Human Rights Watch.

¹²⁸ Aung Zaw, “Samak’s ‘Flashback’ Visit to Burma,” *The Irrawaddy*, March 17, 2008; “Noppadon: Thailand backs Myanmar referendum on constitution,” *MCOT English News*, February 21, 2008, <http://enews.mcot.net/view.php?id=2921> (accessed April 24, 2008).

The Prime Ministers underlined their shared commitment to work for political change and respect for human rights in Burma. They agreed that the regime's draft constitution and referendum process were deeply flawed. In the continued absence of progress the UK and Australia would seek to further increase pressure on the regime.¹²⁹

Meg Munn, under-secretary of state in the Foreign and Commonwealth Office, explained the UK government's concerns with the upcoming referendum in a March 2008 speech:

We are highly skeptical about the Burmese regime's 9 February announcement of a referendum in May and elections in 2010. Only an inclusive process of national reconciliation can bring stability and prosperity to the country. The regime's so-called "roadmap to democracy" excludes participation by the opposition and ethnic groups and does little to address the aspirations of Burma's people. What we know of the draft constitution suggests it is designed to entrench the military grip on power behind a veneer of civilian rule. There is no question of a referendum being free and fair while it's an offense punishable by 20 years in prison to criticize the roadmap process.¹³⁰

United States

The United States has historically been one of the strongest advocates for democratic reform and respect for human rights in Burma. The Bush administration has denounced the referendum as a "sham," stressing that the constitution was "drafted in a closed process by a hand-picked committee dominated by senior regime officials," and that the referendum will take place in "a pervasive climate of fear."¹³¹ The White House criticized the SPDC for showing a "lack of seriousness

¹²⁹ Prime Minister Gordon Brown, "Joint Statement with the Australian Prime Minister, Mr. Kevin Rudd, Progressive Plan of Action on Common Interests: Climate Change, Trade, Development and Global Institutions," April 7, 2008.

¹³⁰ Meg Munn, "International Security, democracy and trade unions," speech at the Northern TUC International Forum, March 19, 2008, <http://www.fco.gov.uk/en/newsroom/latest-news/?view=Speech&id=3033194> (accessed April 24, 2008).

¹³¹ US State Department spokesperson Sean McCormack statement, February 11, 2008.

about an open and fair process for the restoration of democracy,” and condemned “the nontransparent and exclusive processes being promulgated by the regime.”¹³²

¹³² White House press secretary Dana Perino, February 11, 2008.

Appendix I: Glossary

Amyotha Hluttaw: Assembly of Nationalities (parliamentary upper house) with 224 members. Of these, 168 will be directly elected from state and division level (12 each) and 56 seats are reserved for *Tatmadaw* members (one member each from specially designated self-administered zones).

BSPP: Burma Socialist Program Party, the ruling party of Burma from 1974 to 1988, a mass-based movement controlled by the Burmese military. Predecessor of the NUP.

KIO: Kachin Independence Organization, an ethnic minority organization that signed a ceasefire with the central government in 1994 and participated in the National Convention. Its armed wing is the Kachin Independence Army.

Lon Htein: Riot Police, a special unit of the Burmese police force.

MWAF: Myanmar Women's Affairs Federation, a government-controlled NGO that engages in development work and pro-SPDC propaganda efforts.

MWVA: Myanmar War Veterans' Association, a veterans' organization controlled by the SPDC, with over 170,000 members, which engages in development work and pro-SPDC activities.

Na A Pa: SPDC, State Peace and Development Council.

NLD: National League for Democracy, the political party that won the majority of seats and votes in the 1990 parliamentary elections but has never been permitted to form a government.

NMSP: New Mon State Party, an ethnic minority organization that signed a ceasefire with the central government in 1995 and participated in the National Convention until 2005.

NUP: National Unity Party, a.k.a. *Ta Sa Nya*, the military-backed political party formed after 1988 from the BSPP, and which contested the 1990 elections, coming third in parliamentary seats won.

PSRD: Press Scrutiny and Registration Division, a department of the Ministry of Information that reviews, restricts, and clears all print material published in Burma.

Pyidaungsu Hluttaw: Union Assembly.

Pyithu Hluttaw: People's Assembly (parliamentary lower house) with 440 members. Of these, 330 members will be directly elected from township-level candidates, and 110 seats are reserved for *Tatmadaw* members.

RC: Revolutionary Council, the *Tatmadaw* council that staged a coup d'état in 1962 and ruled until the BSPP government assumed power in 1974.

Sa Ya Pa: Military Affairs Security (MAS), the *Tatmadaw* intelligence wing created in late 2004 following the purge of the Department of Defense Services Intelligence (DDSI) and its then leader, Prime Minister Khin Nyunt.

Sangha: Buddhist monkhood.

SB: Special Branch, the investigative and intelligence department of the police force that is often involved in arbitrary arrests against perceived political opponents.

SLORC: State Law and Order Restoration Council (in Burmese *Na Wa Ta*) a military ruling council that seized power in September 1988 and ruled until November 1997, when it was renamed the SPDC.

SNLD: Shan Nationalities League for Democracy, a Shan political party that won the second highest number of seats in the 1990 election, and whose leaders were arrested in 2005 and sentenced to prison terms of over 90 years for alleged sedition.

Swan Arr Shin: “Masters of Force,” a government-controlled militia formed to harass and intimidate opposition political parties and protestors and curb perceived anti-SPDC activities. The militia has been linked to attacks on grassroots human rights defenders and political opposition figures.

Ta Sa Nya: See NUP.

Tatmadaw: Burmese armed forces, inclusive of the *Tatmadaw Kyi* (Army), *Tatmadaw Ye* (Navy), and *Tatmadaw Lay* (Air Force).

USDA: Union Solidarity and Development Association, a government-formed and -controlled “social welfare” organization with 24 million members, many of whom are coerced into joining. Members of the paramilitary wing of the USDA have been responsible for attacks on Aung San Suu Kyi and other opposition politicians since 1997.

UWSP/A: United Wa State Party/Army, the largest ethnic minority group that signed a ceasefire with the central government in 1989.

Ya Ya Ka: Village-/Ward-level Peace and Development Council (V/W-PDC).

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Vote to Nowhere

The May 2008 Constitutional Referendum in Burma

On May 10, 2008, the Burmese military government will hold a nationwide referendum on a draft constitution that it claims will end over four decades of military rule and usher in a new era of “discipline-flourishing genuine multiparty democracy.” This report shows how the true aim of the referendum is to extend military rule in Burma.

The draft constitution the Burmese people will vote on is the result of a 14-year-long writing process tightly controlled by the Burmese military. Most of the delegates to the National Convention were hand-picked by the military, and had to follow strict military-defined “objectives.” No free debate was allowed: all proposals and statements delivered by delegates had to be pre-approved and censored by a militarily-controlled Convening Commission. Several delegates critical of the convention or the process were charged and sentenced to prison terms of up to 20 years.

The result of this regime-controlled process is a draft constitution designed to maintain the military’s grip on government. If approved, the military will dominate the post-referendum “democracy.” The draft constitution treats independent political parties with open hostility, with provisions that ban individuals and entire parties from eligibility for office.

Conditions for a credible referendum do not exist in Burma, one of the world’s most repressive countries, characterized by widespread human rights abuses and a pervasive climate of fear. Instead of showing any respect for human rights in the run-up to the referendum, the Burmese generals have stepped up arrests and detention of anyone who urges a “No” vote on the constitution.

Human Rights Watch urges all countries and inter-governmental institutions to refuse to endorse the May 10 referendum and to demand genuine democratic and human rights reforms from Burma’s military rulers.

Burmese police officers in Rangoon walk under a billboard advertising the May 10 constitutional referendum.

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