

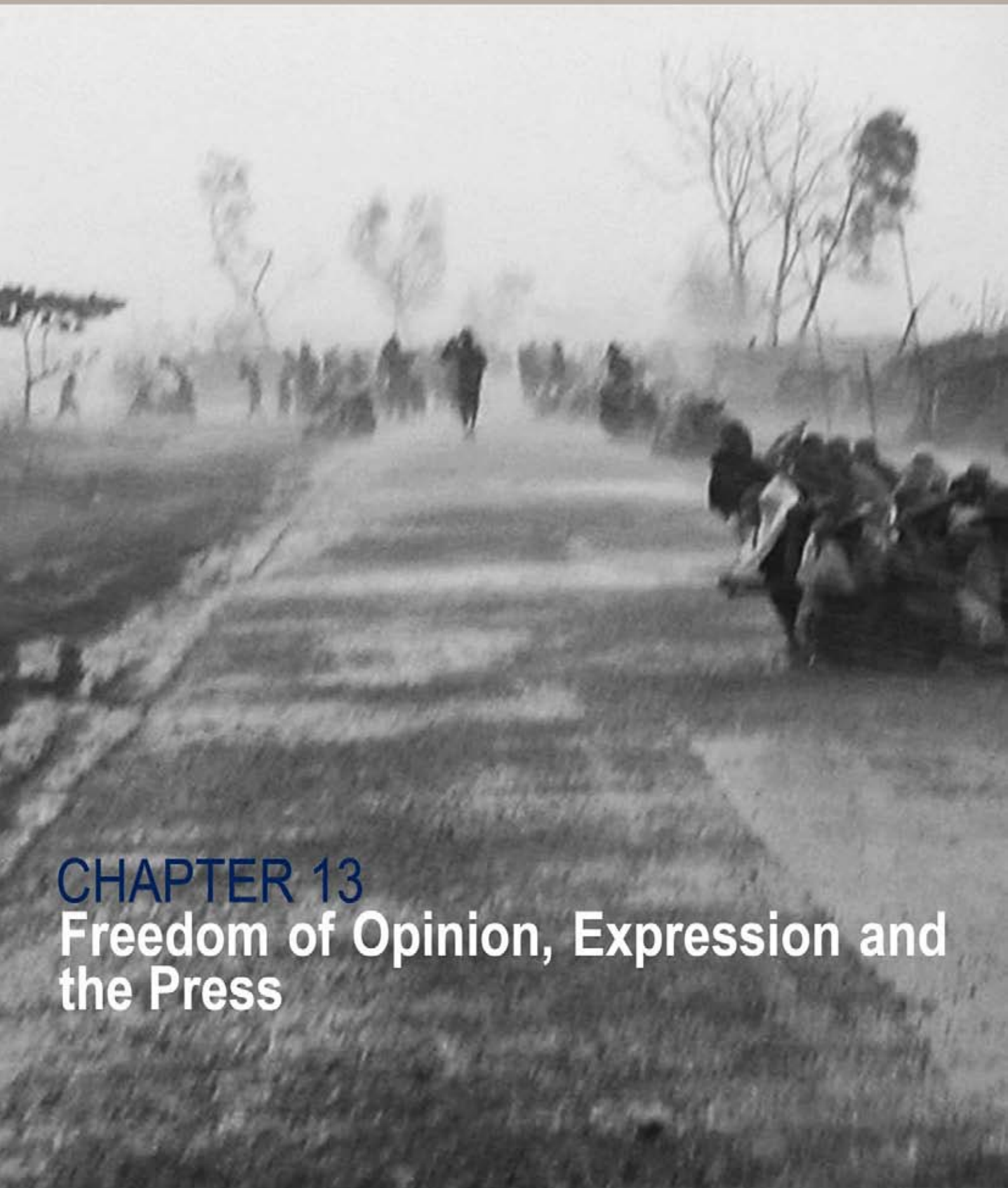
15th Annual Edition

# BURMA

HUMAN RIGHTS YEARBOOK 2008



HUMAN RIGHTS DOCUMENTATION UNIT  
NATIONAL COALITION GOVERNMENT OF THE UNION OF BURMA



## CHAPTER 13

# Freedom of Opinion, Expression and the Press



# BURMA

HUMAN RIGHTS YEARBOOK 2008





## 13.1 Introduction

Upon release after his 19 years in prison, journalist and political activist, U Win Tin realised that freedom of expression in Burma was just as limited in 2008 as it was when he was arrested. At the 10<sup>th</sup> anniversary of the South East Asian Press Alliance, he said “*many members of the press in Burma are still discriminated (sic), persecuted and imprisoned.*”<sup>1</sup> The year of 2008 saw over ten journalists and countless other citizens arrested for merely expressing an opinion or the truth.<sup>2</sup> Hundreds and perhaps thousands more have been intimidated into silence by repressive laws and the strict practice of censorship.

As in years past, freedom of expression in the arts was met with stringent censorship. The regime imprisoned poet Saw Wai for publishing a Valentine’s Day poem with a hidden message denouncing General Than Shwe. The editor of the magazine *Cherry*, Htay Aung, was dismissed for publishing a poem about the ancient history of Depayin that could have been construed as a reference to the 2003 Depayin Massacre, which targeted National League for Democracy (NLD) leaders and supporters. The State Peace and Development Council (SPDC) censorship board also banned popular American film, *Rambo*, which denounced the violence of the regime.

The Internet, televised media, and printed press also continued to be strictly censored throughout 2008. During Cyclone Nargis and in its aftermath, the regime prevented the unaffected regions of the country from obtaining accurate information on the destruction and humanitarian crisis. The SPDC not only restricted access to the cyclone hit regions, banning the use of cameras or video recorders, but they also limited the print media to releasing positive images of the regime handing out food and supplies and providing shelter. While the regime has always censored access to the Internet, for the first time in 2008, authorities arrested blogger Nay Phone Latt for his reporting on the September 2007 Saffron Revolution. In November of 2008, he received a sentence of 20 and half years in prison.

All media continued to be subject to the publishing guidelines of the Press Scrutiny Board. Publishers and artists must submit their work to the censorship board in advance of dissemination and then wait for comments and exclusions. Once it has been reworked, the final product must be approved a second time by the board, before it goes to the public. Such a lengthy process has made self-censorship the more convenient option amongst weekly news journals. It has also prevented the immediate release of relevant information, as was the case with delayed coverage of the cyclone and referendum. Understandably, the Burmese public have turned to the internet and international media sources for information on what is happening inside Burma as an alternative to junta mouthpieces such as the *Myanmarhlaing*, and the *Mirror*.

Politically, the regime forced the entire eligible voting population of Burma to participate in a tightly controlled and engineered referendum to approve a draft constitution that was the product of a 14-year long, undemocratic National Convention. None of the requirements for free and fair voting, including freedom to vote in privacy; availability of information related to the issues, freedom from intimidation or bribery, and independent monitoring, were ensured by the regime during the referendum process. Instead, individuals met with forced advance voting, threats, and a new Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (issued on 26 February 2008), which prevented any speech against the referendum or dissemination of political information.<sup>3</sup> The end of the year saw the regime preparing for the next step in the seven-step roadmap to democracy, national elections in 2010. Evidence to date suggests that the campaigns and election will be conducted under similarly repressive conditions as those that marred the referendum on the draft constitution, eventually leading to the SPDC’s goal of a transition to a ‘disciplined democracy’.

## 13.2 Laws Restricting Freedom of Opinion, Expression and the Press

### The Official Secrets Act (1923)

This law, intended to prevent treason, prohibits the collection, possession, and dissemination of any information that is prejudicial to State interests. The breadth of this law has allowed the regime to interpret any conversations with exile media groups or possession of information regarding the undisclosed activities of the government to be violations. There is no exception for the disclosure of classified information on public interest grounds. Anyone convicted under this law is liable to be punished with imprisonment for up to fourteen years or a fine or both.<sup>4</sup>

### The Burma Wireless Telegraphy Act (1933)

Under this act, no one can possess, without official permission, any “*wireless telegraphy apparatus.*”<sup>5</sup> In 1995 and again in 1996, the SPDC added amendments to expand coverage to unlicensed fax machines and computer modems. Anyone found in possession of these devices without official permission can be imprisoned for up to three years or a fine of up to 30,000 kyat.

### Emergency Provisions Act (1950)

The Emergency Provisions Act grants the regime unchecked power to punish any real or perceived dissent, even in the absence of an official recognised state of emergency. The breadth of the law covers collection and dissemination of information that could be construed as jeopardising the State as well as outlawing any act that is “*intended to cause, or causes, sabotage or hinders the successful functioning of the State military organizations and criminal investigative organizations.*” Similarly, Article 5(e) prohibits individuals from “*spread[ing] false news about the Government*” and Article 5(j) outlaws any actions causing or intending to “*disrupt the morality or the behaviour of a group of people or the general public.*” Persons convicted under this Act can face punishments as harsh as life imprisonment and even death.<sup>6</sup>

### Section 122, Penal Code of Burma (1957)

Section 122 of the Penal Code defines High Treason as those actions taken in an attempt to overthrow the State. Such actions are punishable by death or life imprisonment. The regime has used this law to suppress dissent, particularly of oppositional political parties such as the NLD.<sup>7</sup>

### The Printers and Publishers Registration Law (1962)

First established in 1962 and amended in 1971, this law proscribes the registration procedures to which all publishers must subscribe in order to print or distribute any material. The regime takes broad powers to view and censor all materials prior to publication and bans any publication of any false information or information contrary to State interest. As stated in the censorship guidelines, banned publications include anything, “*detrimental to the*

*ideology of the State; anything which might be harmful to security, the rule of law, peace, public order, national solidarity and unity; and any incorrect ideas and opinions which do not accord with the times.”<sup>8</sup>*

More than any other, the SPDC uses this law to suppress freedom of expression and freedom of press inside Burma. The law serves to deter any dissent as well as punish those brave enough to speak the truth. In addition to a suspension of their printing licenses, violators can be punished with up to three years in prison, a 2,000 kyat fine, or both.

## **State Protection Law (1975)**

Also known as the Law to Safeguard the State from the Dangers of Destructive Elements, the regime wields the State Protection Law of 1975 to suspend individuals' fundamental rights, including that of due process and freedom of movement. While the declaration of a State of Emergency gives the regime the right to restrict any individual's freedom it is not necessary to do so. As amended in 1991, the period of detention without trial or warrant can be extended from 180 days to five years. Those detained under this law have no right to appeal in regular courts, but only through the SPDC cabinet.<sup>9</sup> The regime has previously used this law to extend the unlawful detention of Daw Aung San Suu Kyi among others.

## **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 Oppositions (1996)**

Also known as SLORC Law No.5/96, the SPDC passed this law specifically to control the happenings of the National Convention, making it illegal to incite, demonstrate, deliver speeches, write statements or disseminate material that would “*disrupt and deteriorate the stability of the state, community peace and tranquillity and prevalence of law and order,*” or “*affect and destroy national reconciliation.*” It also forbids:

*“disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution.”<sup>10</sup>*

Punishment ranges between three months to 20 years imprisonment along with a possible fine. Organisations convicted under these provisions risk bans and confiscation of property. The SPDC has used this law to imprison and ban NLD leaders.

## **The Television and Video Law (1996)**

Established with the objectives to both, “*Cause emergence of video tapes which will contribute towards national solidarity and, dynamism of patriotic spirit; [and] to prohibit and ban decadent video tapes which will undermine Myanmar culture and Myanmar tradition,*”<sup>11</sup> This law establishes the regulations by which each television, satellite, and video cassette recorder must be registered and operated as well as establishing a video censorship board and regulations for video businesses. Those found illegally operating television businesses can be imprisoned for up to five years and fined and those found illegally possessing or distributing banned videos can be imprisoned for up to three years and fined.<sup>12</sup>

## **The Motion Picture Law (1996)**

Similar to the Television and Video Law, this law has the objective of promoting those films *“beneficial to the all-round development of the State and to the preservation of Myanmar cultural heritage; [and] to prohibit decadent motion picture films which will undermine Myanmar culture and Myanmar traditions and customs.”*<sup>13</sup> The law establishes the regulations and licensing process for those persons wanting to create a motion picture or operate a cinema as well as establish a Motion Picture Censor board. Punishments for showing banned films include imprisonment for up to one year and a fine of up to 100,000 kyat.

## **The Computer Science Development Law (1996)**

Under this law, individuals inside Burma must apply for a license and register if they would like to purchase, import, or use any form of computer technology. Those found in possession of such technology without a permit, or assisting in the connection or installation of unlicensed technology may be punished with a prison term ranging from seven to 15 years and a fine. Additionally, the law can be used to punish those using licensed technology for the purpose of *“carrying out any act which undermines State Security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture.”*<sup>14</sup>

## **Electronic Transactions Act (2004)**

In 2000, the SPDC issued new regulations through the Myanmar Post and Telecommunications (MPT) regarding the prohibition of the posting of any writings on the internet that may be deemed detrimental to the interests of the Union, its policies or security affairs. Violations of these guidelines are punishable with imprisonment, a fine, or both.<sup>15</sup>

## **Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008)**

Passed on 26 February 2008, the regime banned *“lecturing, distributing papers, using poster or disturbing voting in any other manner at the polling booth or near the premises of the polling booth or at a public or private place to destroy the referendum”* with a punishment for up to three years and/or a fine for those caught violating the provisions of the law. In addition to the Printers and Publishers Act, this law attempted to quash all dissent leading up to the referendum.<sup>16</sup>



## 13.3 Freedoms of Speech and Expression

The year following the bloody crackdown on participants of the Saffron Revolution of 2007 saw a continuing repression of any speech or expression deemed to be anti-regime. All types of expression, from ethnic celebrations to religious activities to political protests were subject to a regime clamp-down. For example, on 18 February 2008, local Police Chief U Sein Win of Pwintbyu Township in Magwe Division prevented Mandalay Abbot U Thu Mingala from Moegok Wipathana monastery from finishing a three-day '*dhamma*' talk (sermons on Buddhist teachings), demanding that the abbot leave town immediately and that the pavilion serving as the venue for the talks be demolished. When Kone Zaung village youth Chit Wai San demanded an explanation for the cancellation of U Thu Mingala's talks, Police Chief U Sein Win punched and then arrested the youth who was held in custody until the village negotiated a 100,000 kyat bribe to be paid to the police chief.<sup>17</sup> In another example of restrictions on freedom of expression, a group of ethnic Chins were prevented from celebrating Chin National Day. The year of 2008 marked the 60<sup>th</sup> anniversary of Chin National Day on 20 February, the day on which the Chin State government decided to embrace a democratic system in 1948. The military regime prevented celebrations in the Chin State capital of Haka in Haka Township and prevented Chin university students from celebrating on Kalay University campus in Sagaing Division. Authorities ordered organisers refer to the occasion as '*Chin Culture Day*', in attempt to stifle the political import of the anniversary.<sup>18</sup>

Political expression was dealt with in a particularly harsh fashion 2008. Most notably during the period leading up to the referendum when expression contrary to the referendum was banned and breaches were severely punished. (For more information, see Section 13.11 Referendum, below). Additionally, in anticipation of the 20-year anniversary of the 1988 uprising, security was tightened across Burma. As early as 5 August 2008, SPDC forces were in Sittwe responding to a poster campaign that urged residents to fight for democracy on the anniversary of the 1988 uprising.<sup>19</sup> Hundreds of police and plain clothed officials were dispatched to locations of customary political unrest in Rangoon, including high schools, universities, and monasteries. Monks were instructed by regime authorities to not leave their monasteries except for the collection of their daily alms.<sup>20</sup> Additional barricades and a fire engine were brought to the location where Daw Aung San Suu Kyi is still kept under house arrest in Rangoon.<sup>21</sup> Rangoon University students reported that access to the campus was limited to two gates and their professors were told to not tolerate any political activity from their students.<sup>22</sup> Additionally, ten battalions of troops were sent to the Thai-Burma border where the regime anticipated violent outbreaks to mark the anniversary.<sup>23</sup>

Despite these measures to discourage commemoration, the All Burma Federation of Student Unions (ABFSU) distributed leaflets at universities in the towns of Mandalay, Kyauk Se, Monywa and Magwe calling for a renewed revolution.<sup>24</sup> Youth activist group, Generation Wave, engaged in a red paint campaign to commemorate those killed in the 88 Uprising.<sup>25</sup> Although quickly removed by authorities, the activists splattered red paint on Alone High School (3) and near the theatre in Alone and had planned to spread more red paint throughout the city.<sup>26</sup> Residents of Rangoon wore black in the streets and the NLD held a rally in Yenangyaung Township, Magwe Division.<sup>27</sup>

Reported arrests surrounding the anniversary of the 1988 demonstrations include Myo Teza, a leader of the All Burma Federation of Students' Unions, and two of his colleagues on 7 August 2008.<sup>28</sup> On Friday, 8 August 2008, the SPDC arrested at least 30 residents of Taungup in southern Arakan State, for marching in commemoration of the 88 uprising.<sup>29</sup> Another planned protest in which monks in Sittwe, the capital of Arakan State, gathered early in the morning at Bura Gri temple, was prevented by riot police who stormed the temple and stopped the demonstration.<sup>30</sup> As of 22 September 2008, an estimated 370 activists had been arrested or detained by the police and 56 persons were imprisoned for their dissident activities.<sup>31</sup>

The regime sent military and police forces to prevent any commemoration or renewed protest in the lead up to the anniversary of the Saffron revolution, in September, just as they had done previously for the anniversary of the 1988 uprising. On 2 September 2008, 52 police officers, led by Taungup township police chief U Win Aung, staged a training session believed to be a show of force in Taungup Township, Arakan State. Local residents, who were very active during 2007's protests, believed this display was intended to intimidate residents as the one year anniversary of the Saffron Revolution approached. In addition to the trainings that were held in public, the town also saw an influx of military intelligence officials and military affairs security officers from Naypyidaw to monitor the situation in the town.<sup>32</sup> The SPDC also increased their military presence in Pegu Town, Pegu Division on 2 September 2008. Security personnel equipped with shields and batons were noticed around the city and specifically around the Shwe Maw Daw Pagoda. Teashop owners and other restaurants were alerted that a curfew of 10:00 pm would be imposed and all businesses had to be closed by that time.<sup>33</sup> Security was also stepped up in the former capital where according to an Associated Press (AP) report on 25 September 2008, "As many as nine truckloads of riot police holding assault rifles and tear gas and carrying shields and batons cruise the streets [of Rangoon] daily."<sup>34</sup> Rangoon in particular saw SPDC military, Union Solidarity and Development Association (USDA) members, members of the auxiliary fire brigade (essentially a regime backed militia), and other civil servants wearing red scarves to signal their readiness to combat any renewed protests.<sup>35</sup>

On 5 September 2008, *Democratic Voice of Burma* (DVB) reported that the State Sangha Maha Nayaka had sent a directive to monasteries in Chauk Township, Magwe Division, ordering monks to not take part in political activities and that 'swift action' would be taken against any monks found to be breaking the law.<sup>36</sup> Other sources in central Burma reported on 5 September 2008 to *Mizzima News* that abbots were forced to sign pledges that they would not permit their monks to participate in any protests.<sup>37</sup> In Pakokku Town, a key city of protest in the Saffron Revolution, monks again refused to accept donations from regime officials; in response, soldiers set up barbed wired barricades to block traffic and constantly monitored the actions of local monasteries.<sup>38</sup> Regime authorities also sought to make their presence felt in Sittwe, the capital of Arakan State, where the military moved their daily drills from the private outskirts of the city to the public main streets where they marched and shouted military slogans with the intention of intimidating residents.<sup>39</sup>

It was reported on 16 September 2008 that the SPDC had arrested 14 democracy activists over the course of the previous week in anticipation of an attempt to revive 2007's demonstrations. Six persons were arrested on 9 September 2008 in Rangoon and an additional eight were taken into custody on 11 September in Meiktila Township, Mandalay Division. Arrested individuals included, Aung Ko Ko Lwin and Ko Moe Htet Hlyan, relatives of activist-monk U Gambira who played a leading role in the previous year's anti-regime protests.<sup>40</sup> The junta further prepared for the anniversary by imposing a curfew on three monasteries in Sittwe, Arakan State and conducting night surveillance on monasteries in Pegu Division.<sup>41</sup>

July through September 2008 saw a huge increase in the SPDC crackdown on political opposition in preparation for the upcoming 2010 elections. The exile group, the Assistance Association for Political Prisoners Burma (AAPPB), reported that over 91 political activists were arrested in those three months.<sup>42</sup> Additionally, many of those activists imprisoned during the 2007 Saffron Revolution faced trial and were subject to sentencing in 2008. Win Mya Mya, a 50-year-old female NLD party member received a 12-year prison sentence on 24 September 2008. On the same day, five male NLD members from Mandalay met with sentences ranging from eight to 13 years under Section 505(b) and 153(a) of the criminal code, both of which punish any speech that the regime interprets as a disturbance to public tranquillity. Sentences were handed down in secret trials held inside Mandalay prison.<sup>43</sup>

(For more information, see Chapter 1: Arbitrary Detention and Enforced or Involuntary Disappearances and Chapter 14: Freedom of Assembly, Association and Movement).

The end of 2008 brought increasing numbers of trials and sentencing for arrested activists. According to Reporters without Borders, in November, *“jail terms with a combined total of several hundred years were imposed on poets, bloggers, monks, comedians, singers, ethnic minority leaders, trade unionists, and political activists”* in a two-week span of time.<sup>44</sup> AAPPB reported that 53 activists were sentenced between 5 and 11 November 2008 alone. Those sentenced included:

1. Zarganar, comedian and blogger, 45 years;
2. Tin Maung Aye, student of Zarganar, 29 years;
3. U Ashin Gambira, monk leader of Saffron Revolution, 65 years;
4. Ma Hanny Oo, ABFSU leader of Saffron Revolution, 9.5 years;
5. Min Ko Naing, 88 Generation Student Leader, 65 years;
6. Ko Ko Gyi, 88 Generation Student Leader, 65 years;
7. Ko Myo Yannaung Thein, 88 Generation Student Leader, 2.5 years;
8. Ko Min Min Soe, 88 Generation Student Leader, 2.5 years;
9. 15 NLD Party Leaders from Hlaingthaya Township, 7.5 years;
10. U Nanda, monk from Ngwe Kyar Yan monastery, 6.5 years;
11. U Wilar Thekka, monk from Ngwe Kyar Yan monastery, 6.5 years;
12. U Agga Dhama, monk from Ngwe Kyar Yan monastery, 6.5 years;
13. U Eithiriya, monk from Ngwe Kyar Yan monastery, 6.5 years;
14. U Zarnayya, monk from Ngwe Kyar Yan monastery, 6.5 years.<sup>45</sup>

The last five monks had been members of Ngwe Kyar Yan monastery which had been raided on 26 November 2007 by SPDC officials who dragged away over 100 monks. They were sentenced in a special court inside Insein prison on charges of unlawful assembly and association, as well as crimes against public tranquillity and speaking out against the state.<sup>46</sup> International organisations such as Reporters Without Borders and the Burma Media Association strongly condemned the trials as illegitimate and called on the European Union and the United Nations (UN) to include the head of the justice system, U Aung Toe, and other judges who participated in the trials in the list of those officials targeted by political sanctions.<sup>47</sup>

The repression of public expression of opinion drives such expression underground, however many people in Burma found other ways to express their opinions about the military regime. In one example, activists scattered kyat banknotes and pamphlets with pictures of General Aung San and anti-regime slogans throughout Gyobingauk Township, Pegu Division. Although the authorities quickly confiscated the materials, some of the messaged notes were still circulating at the time of the report on 23 September 2008.<sup>48</sup>

## Restrictions on Freedoms of Speech and Expression - Partial list of incidents for 2008

On 29 February 2008, the High Court of Rangoon rejected out of hand a complaint filed by the NLD against the junta for failing to convene the peoples' parliament in accordance with the 1989 Election Law and the results of the 1990 election. Nyan Win, a lawyer and spokesman for the NLD said at the time, *"If a case filed at the highest level of courts is rejected, then where can we file our complaints?"*<sup>49</sup>

On 10 June 2008, several cyclone survivors marched from their homes in North Dagon Township to Rangoon with the intentions of approaching international aid organisations for help; however, they were stopped by the authorities. The reporters who recorded these protests were arrested at the United Nations Development Programme office on Natmauk Road, Tamwe Township in Rangoon and charged under Section 505(b) of the Criminal Code.<sup>50</sup> (For more information, see Section 13.5 Freedom of the Press, below).

On 28 August 2008, Rangoon mayor, General Aung Thein Linn ordered all 'provocative' advertisements displayed outside to be taken down, as it offended Burmese tradition and culture. This included billboards and posters of private businesses. Advertising firms and businesses were at a loss to explain this directive, since many of these advertisements, which pictured models in relatively revealing clothing, would have to be recalled and redesigned, without compensation from the Mayor's office.<sup>51</sup>

On 9 September 2008, the SPDC stepped up security measures in Sittwe, the capital of Arakan State, to prevent commemoration of the 69<sup>th</sup> anniversary of monk Ashin Ottama. Ottama is seen as a national hero for his resistance to English colonial rule. Riot police and soldiers were stationed at monasteries, Payagyi Temple and U Ottama Hall and other local places and teachers were told to be on alert for any political activities undertaken by their students.<sup>52</sup>

On 12 September 2008, three Pakokku residents, U Nayla, U Tha Aung, and U Sein Lin, who were previously arrested for speaking to foreign media outlets, were sentenced to two years in prison. U Thant Shin, arrested on similar charges, was sentenced to nine years.<sup>53</sup>

On 15 September 2008, SPDC troops took several lake owners from Karen State into custody for failing to pay a bribe that had been demanded of them. One of the men, Saw Oh Thi was accused of *"listening to the radio"*, in addition to not paying the 50,000 kyat to the battalion. For this infraction, IB #60 Colonel Ko Ko Aung shot and killed Saw Oh Thi on the spot. (For more information, see Chapter 3: Extra-judicial, Summary or Arbitrary Executions).<sup>54</sup>

On 18 September 2008 it was reported that the All Kachin Student Union (AKSU) marked the 20<sup>th</sup> anniversary of the regime takeover by pasting over 400 small posters in and around Myitkyina, the capital of Kachin State. The posters contained the following declarations:

1. Immediately free all political prisoners;
2. Quickly implement a political Tripartite Dialogue;
3. Fall of the SPDC - the military junta;
4. Success of the democracy movement.

In response to the campaign Commander Major General Soe Win, who could find no individual to hold responsible, imposed a mandatory curfew of 10:00 pm on all of Myitkyina.<sup>55</sup>



On 26 September 2008, in Sittwe, Arakan State, one monk was arrested during a peaceful march of about 150 monks across Buluma Bridge. The march was seen as a protest and plain-clothed security personnel attempted to block the demonstration. Four other monks were also arrested later the same evening.<sup>56</sup>

On 16 October 2008, exiled *Kachin News Group* covered the story of Nalung village headman, Salang Ladai Brang Awng of Kachin State being assaulted and tortured by SPDC forces at the Lajayang military checkpoint for alleged connection to the Kachin Independence Army (KIA). After seeing the news coverage, Lieutenant Colonel Aung Thaug Htike, the officer in charge of the checkpoint and LIB #105, forced Salang Ladai Brang Awng to retract his statement and sign a new one clarifying he had not been assaulted by regime military personnel.<sup>57</sup>

On 23 November 2008 at an opposition meeting of exiled Burmese activists in Kuala Lumpur, Malaysia, a spy from the Burmese Embassy was identified. The suspected spy was carrying a voice recorder and camera as well as making frequent phone calls from the meeting. The opposition group confiscated the recorders but let the man go.<sup>58</sup>

On 30 December 2008, at least nine NLD supporters were arrested for protesting the continued detention of Daw Aung San Suu Kyi. The protesters marched from the conclusion of a party meeting on West Shwegondine Street in Bahan Township to an old parliament building where the SPDC police assaulted them before taking them into custody. They were shouting NLD slogans and carrying “Free Daw Aung San Suu Kyi” posters.<sup>59</sup>



The Federal Constitution Drafting and Coordinating Committee (FCDCC) in session in February 2008. The FCDCC has been tasked with the production of an alternative constitution for a future Federal Burmese Republic which recognizes the rights of the nation's ethnic minorities. [Photo: © Mizzima]

## 13.4 The Roadmap to Democracy

The year 2007 marked the end of a 14-year National Convention (NC) and the drafting of a national constitution, fulfilling the first steps in the SPDC's seven-step roadmap to democracy. The following year, 2008, saw the completion of that draft, a national referendum, and the scheduling of multi-party democratic elections for 2010. None of the SPDC's actions so far, however, have given the people of Burma confidence that the implementation of the rest of the seven-step roadmap will break the current pattern of political oppression and the suppression of free expression and opinion that have been characteristic of the SPDC's rule thus far.

In contravention of the mandate of the Pyithu Hluttaw Election Law which provided for the drafting of a constitution by those publicly elected officials in the 1990 elections, the delegates to the NC were hand picked by regime officials and were extremely limited in their powers of deliberation and reporting to the public.<sup>60</sup> Originally formed in 1993, the NC went into recess in 1996 after the regime passed the repressive Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions Order 5/96 and members of political opposition parties boycotted the remainder of the NC. Under the law, a person or an organisation can be arrested for,

*“disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution.”<sup>61</sup>*

A person charged under the law could be sentenced to anywhere from three months to 20 years in prison, along with a possible fine. When finally reconvened in 2004, the regime continued to use the law to prosecute persons and organisations that it found to be disruptive to the NC process despite already having absolute control over the outcome of the NC.<sup>62</sup> Finally the NC concluded in August 2007, and in October 2007 the regime appointed 54 officials to draft a constitution in line with the NC's recommendations.<sup>63</sup>

On 9 February 2008, the SPDC announced that the final draft of the Constitution was complete and that, following a referendum in May 2008, elections would be held in 2010.<sup>64</sup> Critics, however, doubted the regime's intentions. The junta's premature scheduling of elections before the referendum had confirmed the drafted constitution was interpreted as a sign that the entire process would be engineered to the regime's liking.<sup>65</sup> At the time when the dates for the elections were announced, the public still did not have access to the newly drafted Constitution. Moreover, the regime never publicised the principles of the National Convention.<sup>66</sup> Thus, the public had no access to the political information they needed to understand the 'principles' used by the Convention to draft the Constitution. Political opposition member Zaw Min of the Democratic Party for a New Society stated his belief that *“the climate today is worse than when Burma had its last referendum in 1974 to approve [the] second constitution. There was a little more openness then.”<sup>67</sup>*

On 15 February 2008, the Federal Constitution Drafting and Coordinating Committee (FCDCC) announced that it had completed the second draft of its alternative Constitution for the Federal Republic of Burma, endorsed by over 90 pro-democracy and ethnic organisations. Compared to the regime's draft constitution, the FCDCC insists that its drafting process was inclusive and democratic; however, this alternative constitution was ignored by the regime.<sup>68</sup>

As early as 21 February 2008, groups ranging from ex-politicians to pro-democracy activists to leaders of ceasefire groups released statements calling for a free and fair referendum and general election. Generation Wave as well as the 88 Generation Students Group called for the referendum to be free and fair and for it to include independent monitoring mechanisms.<sup>69</sup> Veteran politicians, including Thakin Chang Htun and Thakin Thein Pe, urged that the regime to comply with the following requests; to release a copy of the drafted Constitution so that the people would have adequate time to review it before the referendum, to free political prisoners so that they could participate in the referendum and election process, and to allow international observers and journalists to monitor the voting. Even ceasefire groups, such as the Kachin Independence Organisation (KIO) who participated in the NC called on the regime to host fair and monitored elections.<sup>70</sup>

29 February 2008, the Ethnic Nationalities Council (ENC) called on the military regime to come together with the various ethnic and political parties to negotiate a new and inclusive constitutional drafting process.<sup>71</sup> On 1 September 2008, the ENC again criticized the Constitution for being undemocratic and said that it could not participate in the 2010 elections under such circumstances. The ENC reiterated its call for a tripartite dialogue between NLD, ethnic leaders and the military regime.<sup>72</sup>

The next step of the roadmap was the actual referendum on the draft constitution held on 10 May 2008 and in the cyclone affected areas on 24 May 2008. Both the lead-up and the execution of the referendum were tightly controlled by the SPDC regime. As much as possible, the regime cracked down on opposition. For example, on 30 March and 1 April 2008, authorities detained seven activists peacefully demonstrating by wearing 'No' t-shirts in the streets of Rangoon. The AAPPB, which keeps statistics on arrests and convictions for political activities, noted that between 25 and 28 April alone, the regime arrested over 70 activists.<sup>73</sup> Further, the regime used tactics such as vote buying, voter intimidation, and door-to-door collection of advanced votes in order to skew results in favour of a 'yes' vote that would affirm the constitution. During the actual voting process, citizens reported that they arrived to polls where their vote had already been registered and that when polls were closed no members of the public were allowed to watch the counting. The referendum process ensured that the regime reached the desired outcome of a confirmed constitution. (For more information, see Section: 13.11 Referendum, below).

Once the junta tallied the votes and announced the overwhelmingly positive reaction to the draft constitution, they turned their attention to the 2010 elections. As the regime had done with the referendum, persuasion, coercion, and bribery were employed to garner support for their proposed representatives. In June and July of 2008, Major General Soe Win and Brigadier General Thein Zaw met with religious communities in Myitkyina, Kachin State, donating rice, oil, and money to win their favour. Similarly in August, general secretary of the Kachin State USDA, Rawang Jung, met with church leaders and congregations in Putao to encourage them to vote for the USDA in the 2010 elections. Some of the residents, however, complained that they were forced to attend the meetings and to listen to pro-junta propaganda.<sup>74</sup>

At times the sweeteners offered by regime officials were not enough to sway staunch detractors of the regime. In these cases when bribery could not be used to sway opinion, the SPDC simply responded by locking up critics. According to NLD spokesperson Nyan Win, at least 30 party members were sentenced to at least two and a half years in prison between September and early October. NLD members Hline Aye and San Pwint were sentenced to two and a half years jail on 22 September 2008 for disturbing the public tranquility, and on 6 October 2008 Soe Kywe, Khin Aye, and Myint Thein received the same sentence. Nyan Win believed the regime had imprisoned and intimidated critics "so that they can manipulate the elections any way they like."<sup>75</sup>

On 22 September 2008, the NLD released a statement criticizing the convention process as well as the referendum and calling for the regime to reconsider the Constitution through the formation of a constitutional review committee representing all stakeholders, including military regime representatives, ceasefire groups, constitutional experts, ethnic nationalities representatives, and opposition political parties. On 25 September 2008, regime police Brigadier General Khin Yi summoned members of the NLD's central executive committee to the interior ministry and told them that the NLD must withdraw its statement, since it contained statements that might incite the public to act against the state. The NLD refused to do so, claiming that their statement contained credible information. The brigadier general warned the members releasing the statement that action could be taken against them, though what that 'action' would constitute was not made clear by the representative of the interior ministry.<sup>76</sup>

On 29 October 2008, NLD spokesperson, Nyan Win, said, *"If we have a chance to talk with the regime, we will hold bilateral negotiations and go on based on the agreement. Our idea is for 'democratic reform.' We willingly want to negotiate with them."*<sup>77</sup> Yet, in response, the junta only continued to imprison those calling for negotiations and rebuffed requests for dialogue, noting that the Constitution was drafted by over 1,000 delegates and approved by the public in the referendum.<sup>78</sup>

Ceasefire groups also had reservations about the junta's roadmap.<sup>79</sup> Although they publicly endorsed the draft constitution at the time of the referendum, the representatives of the KIO for example, had previously warned that they would most likely not accept the order to lay down arms before the 2010 elections.<sup>80</sup> The New Mon State Party echoed the KIO's desires to have more of a dialogue before laying down arms and held particular reservations over the fact that the Constitution did not provide for ethnic groups' rights or a federal system.<sup>81</sup> On 12 October 2008, the Arakan League for Democracy announced a boycott of the 2010 elections, citing the illegitimacy of the referendum and the lack of attention to the issue of ethnic rights.<sup>82</sup> More recently on 15 December 2008, the Chin National Front (CNF) stated that it would protest the 2010 elections and would only discuss political progress through a tripartite dialogue, composed of representatives of ethnic groups, political opposition groups and the junta.<sup>83</sup>

In response to the criticism and in preparation for the 2010 election, the SPDC continued its intimidation with military action against the Karen National Union (KNU) and planned major offensives against the Shan State Army-South and Karenni National Progressive Party in 2008. Thailand-based military analyst Htay Aung concluded that these offensives were directly linked to the SPDC's desire to completely control the upcoming election, *"I think the military government will mount a major offensive for two reasons: to threaten the ceasefire groups and to wipe out the non-ceasefire groups."*<sup>84</sup>

Following his August 2008 visit to Burma, UN Special Rapporteur Tomas Ojea Quintana suggested that the military regime needed to make more reforms with regards to human rights before Burma would be ready for democracy. Specifically, he said, *"The right to freedom of peaceful assembly and association, as well as the right to freedom of opinion and expression, are fundamental rights to be respected in the process towards the establishment of a solid and reliable democracy."*<sup>85</sup> Underlining the seriousness of the UN's criticisms, five prominent rights experts from the UN, including Frank La Rue, Special Rapporteur for Freedom of Opinion and Expression signed a statement urging the junta to implement reforms and release those persons imprisoned for peacefully *"exercising their internationally recognized human rights."*<sup>86</sup>



Despite widespread criticism, the military regime seemed to be proceeding as if the results of the election in 2010 were already secured. Sources within the junta released the names of Lieutenant General Myint Swe and Minister of Industry Aung Thaung as probable choices for president once 2010 elections were completed and the parliament formed.<sup>87</sup> Many people speculate that the junta-backed USDA, which claims to have more than 23 million members, will be transformed into a political party to shore up the regime's influence in parliament.<sup>88</sup> Additionally, since the regime's constitution grants a quarter of the parliamentary seats to the military and will surely engineer a majority of the other seats in the upcoming election, the SPDC seem certain to maintain their authoritarian status well beyond the 'transition' to democracy.<sup>89</sup> The regime scheduled the release of the new Election Laws for January 2009, thereby minimising the time frame for opposition groups to coordinate a well organised campaign ahead of the election (at the time of this publication the laws had still not been released, thereby further decreasing the future opportunities for opposition groups to organise prior to the election). The delay of the release of the electoral laws, as well as the continued harassment and arrest of opposition politicians in conjunction with overt pressure and bribery from the SPDC and the USDA, all serve to weaken the opposition's ability to contest the elections in any meaningful manner.<sup>90</sup>



A hawker sells copies of countries draft constitution in Rangoon. [Photo: © AFP]

## 13.5 Freedom of the Press

Freedom of the press declined all over the world in 2008 and Burma was no exception. The military regime strictly controlled the freedom of journalists and publications to report the truth about the state of the nation.<sup>91</sup> An American research group, the Freedom House, which ranks nations based on a 'freedom index' has consistently ranked Burma amongst the worst nations in the world for press freedom. Burma shares this honour with Cuba, Libya, North Korea, and Turkmenistan.<sup>92</sup> Reporters without Borders ranks Burma 170th out of 173 nations—only having marginally more press freedom than the worst three: Turkmenistan, North Korea, and Eritrea.<sup>93</sup> While the junta makes promises of a transition to democracy, the state of press freedom in 2008 proves that Burma has a long road to travel before reaching this goal.

In advance of the national referendum, the SPDC increased suppression of the media. Anyone critical of the regime knew that they could face prison if they expressed their ideas through printed material. The media was ordered to reprint junta propaganda and was barred from critiquing the draft constitution or the referendum.<sup>94</sup> Human Rights Watch (HRW) Asia Director, Brad Adams, noted that *"The arrests of journalists and repression of access to information deny the Burmese people any real opportunity to debate the proposed new constitution."*<sup>95</sup> (For more information, see Section 13.7: Continuing Detention of Journalists, below).

Cyclone Nargis brought with it a crackdown on both domestic and foreign journalists trying to cover the natural disaster. The junta imposed a travel ban for all domestic and foreign journalists attempting to travel to the affected Irrawaddy delta areas, forcing reporters to go undercover into those areas. The SPDC set up police checkpoints and searched those hotels popular with foreign journalists. The regime found and deported at least ten foreigners following the cyclone, including a British Broadcasting Company (BBC) journalist.<sup>96</sup> Several journalists attempting to enter Burma through neighbouring Thailand learned at the Burmese Embassy in Bangkok that they had been blacklisted from entering the country. Immigration authorities proscribed bans on journalists who had previously visited to Burma on tourist visas in 2007 to cover the September demonstrations.<sup>97</sup> Junta officials even seized cameras from individuals, non-journalist citizens, and camera stores to prevent any documentation of the disaster. Local military authorities in Kungyongon Township, Rangoon Division had confiscated at least ten cameras by 12 June 2008.<sup>98</sup>

Unlike foreign journalists who faced deportation, Burmese journalists faced prison sentences if they were caught violating the junta's orders. Some were lucky, such as the eight Burmese reporters detained overnight and then released in Laputta Township on 19 May 2008 after promising to leave and stay away from the area.<sup>99</sup> Others such as Ein Khaing Oo however, were not so fortunate. It was reported on 14 November 2008 that 24 year old Ein Khaing Oo, a reporter for *Ecovision Journal*, was sentenced to two years in prison for covering the cyclone.<sup>100</sup> (For more information, see Section 13.7: Continued Detention of Journalists, below). Those providing information to international media sources were also in jeopardy of facing prison sentences. In one such case, SPDC officials and police searched sports writer Zaw Thet Htway's house and took him into custody after he helped distribute aid to cyclone survivors and spoke about his experience to the DVB. According to the victims wife,

*"About seven government officials from Bahan Township and police Special Information Division officers came with ward authorities and searched our house ..... They seized his mobile phone, a PC, a couple of computer discs and some documents"*<sup>101</sup>

The regime also controlled the information that did reach news-stands; forcing local media to publish stories that diminished the severity of the disaster and made it appear that the junta had the relief effort firmly under control.<sup>102</sup> The regime even attempted to control its international image through inviting foreign diplomats to visit the affected area. The visits were carefully orchestrated however, ensuring that the diplomats could only see “neatly configured aid camps” instead of the real extent of the catastrophe.<sup>103</sup> On 13 May 2008, *Mizzima News* reported Prime Minister Thein Sein’s orders that anyone assigned to reconstruction or aid work would not be permitted to carry cameras.<sup>104</sup> Burmese journalists and publishers could not report on the misery and destruction, print pictures of dead bodies, or describe how international aid was not reaching the starving survivors.<sup>105</sup> The aid work of Buddhist monks and local relief groups were also struck from publications.<sup>106</sup> Journalists were only permitted to print positive stories about the regime’s aid and reconstruction efforts.<sup>107</sup> The SPDC also tore out the coverage of Cyclone Nargis from international news sources such as *Newsweek*, *The Economist*, and *The Bangkok Post*.<sup>108</sup> Reports from late in May reveal that news regarding aid distribution was still censored by the regime. A Rangoon journalist told *Irrawaddy* magazine, “the government doesn’t want people, especially the international community, to know that so many survivors are still waiting for aid.”<sup>109</sup>

The regime also battled domestic and international criticism through its own print media. In the regime-published *New Light of Myanmar*, an article from early June accused ‘self-seekers’ of faking video footage and giving it to foreign media sources to purposefully mislead the international community and tarnish Burma’s image. The conditions, the regime stated, were not as bad as media sources were making them out to be through their wilful exaggeration.<sup>110</sup> The junta insisted that the foreign news coverage itself was ‘more destructive than Nargis’ and was intended to drive a wedge between the SPDC and international donors. The regime noted that in contrast to international reports that people in the affected regions were dying, the natural resources in the delta would flourish in the wake of the cyclone and the people would have more than enough fish, frogs, fresh vegetables, mushrooms and water clover, to sustain them.<sup>111</sup> *The New Light of Myanmar* reported that “life is returning to normal” in the delta region even though international organisations suggested that the relief and reconstruction effort would stretch well into the next six months.<sup>112</sup>

Official figures released also differed greatly from those found by independent international sources. The regime’s numbers alleged that roughly 84,537 people were killed, 53,836 were missing and that 19,359 were injured. The storm, the junta reported, severely affected only about 2.4 million people. In comparison, other sources reported that 300,000 people were killed and 5.5 million were severely affected.<sup>113</sup> The UN figures estimated that between 62,000 and 100,000 people died and that the cyclone had left another 2 million people without food, clean water, or medicine.<sup>114</sup> Despite international pressure on the junta to allow journalists to tell the real story, including a statement by the International Press Institute (IPI) specifically addressing the SPDC’s disregard for the rights of journalists and freedom of the press during and after Cyclone Nargis, the regime tightened censorship and suppressed the truth where possible.<sup>115</sup>

Suppression of the media was not a phenomenon that was limited to the timeframe of cyclone Nargis unfortunately. In July 2008, the SPDC, in taking a proactive step to secure their power, ordered military officials to listen to exile and foreign radio broadcasts so that the regime could more effectively respond through state-run media.<sup>116</sup> In the same month, on 19 July 2008, Martyrs’ Day in Burma, the police prevented journalists from taking pictures at the memorial site in Rangoon where Martyr’s Day is traditionally celebrated. Martyrs’ Day commemorates the 1947 slaying of national hero and father of NLD leader Aung San Suu Kyi, General Aung San, and eight others. One journalist reported being detained and another said the police physically attacked him. The police also confiscated cameras and film. Foreign journalists were banned altogether from attending the commemorations.<sup>117</sup>

In late July, the Internet servers for exile news sources *Mizzima News* and DVB came under a Distributed Denial of Service (DDoS) attack, whereby the attackers tried to disable the site by overwhelming it with requests. While no one can confirm that the SPDC engineered the attacks, they came from countries where several members of the regime are studying.<sup>118</sup> Similar attacks occurred again in September 2008 against DVB, *Irrawaddy*, and *New Era Journal*. Anonymous tips traced the attackers to regime technicians operating from Russia.<sup>119</sup>

On 26 August 2008, Rangoon police summoned reporter Saw Myint Than of *Flower News Journal* and chastised him for a PSB approved article he wrote regarding a murdered couple in Thingangyun Township. On 3 September 2008, he appeared in court to answer charges under the Unlawful Associations Act and the Electronic Communications Law. According to a regime source, his actions of releasing the news to an exiled media source defamed the police department.<sup>120</sup> On 16 September 2008, a Rangoon court transferred the journalist to Insein prison.<sup>121</sup> The regime used Saw Myint Than's situation as an example for other local publications. Officials visited at least six Rangoon journals and warned them about making contact with exile media and foreign news sources.<sup>122</sup> Finally, seven weeks after being arrested, on 20 October 2008 Saw Myint Than was released. The police stated that there was insufficient evidence to determine that Saw Myint Than had contacted the *Irrawaddy* regarding the murder case.<sup>123</sup>

The restriction of information, however, continued through to the end of 2008. Township police stations stated in early September that they would no longer be able to field questions or give out information regarding crimes. Interested journalists would have to approach the Divisional Police headquarters for such information.<sup>124</sup> Later into September, as protests against the Thai government flared in Thailand, the junta censored all print and broadcast media coverage of the situation. They even blocked the coverage on international network CNN, available to residents of Burma via satellite.<sup>125</sup> Further, throughout October the censor board maintained a ban on any information or reporting of cases of contaminated Chinese milk powder. This ban continued even after a young Burmese girl died in early October from drinking contaminated milk powder. Thus, consumers continued to buy the contaminated product, unknowingly putting themselves at risk because they did not have the information necessary to make better consumer choices.<sup>126</sup> A case such as this illustrates how the regime's paranoia over the state's control of information has greater consequences than just those which affect the political opposition and reflects just how cynical the junta has become.

While the regime does everything within its power to silence the media in Burma, the international community has attempted to recognise and pay tribute to the independent media. In August 2008, the International Women's Media Foundation recognised Burmese female journalist Aye Aye Win, 54, a correspondent for the Associated Press, for her courageous reporting under the almost constant surveillance and threats of the military regime. Although she could not attend for fear of her family's safety, Aye Aye Win responded through her publisher, saying she did nothing extraordinary for a journalist in Burma.<sup>127</sup> In other recognition for the hard work of being a journalist in Burma, DVB was invited to speak at the Global Investigative Journalism conference on the dangers and difficulties faced by both staff reporters and anonymous sources and citizens inside Burma to get the truth to the world.<sup>128</sup> Freedom of the press in Burma is merely a chimera, and 2008 may have been one of the most repressive years in the recent past. (For more information, see 13.7 Continuing Detention of Journalists, below).



## 13.6 The State of Publications

About 100 privately-owned publications are registered inside Burma.<sup>129</sup> Several of those have close connections to the regime and the censorship board, such as: MK Media, Yangon Media, Eleven Media, and *The Myanmar Times* – run by Myat Khaing, Ko Ko, Than Htut Aung and Ross Dunkley.<sup>130</sup> These publishers exploit their ties with the regime to hamper their competition, further distorting the freedom of press and expression in Burma and making publishing even more difficult for their unconnected competition.<sup>131</sup>

Established by the Printers and Publishers Act, the Press Scrutiny Board (PSB) must approve all media content before printing.<sup>132</sup> The PSB crosses out and redacts information it deems unfit for print and sends the mark-up back to the publisher to be reformatted. The board then reviews the final version once more before it is actually printed. Customarily, anywhere from a few to over half of the articles can be censored by the PSB. Thus, publishers include extra articles in order to have enough to print. Even if a journal strictly adheres to the PSB guidelines and recommendations, they may not necessarily be safe. Journalists and their editors face punishment for articles that pass the PSB but later displease the authorities. If this happens, the regime punishes the publisher and reporter, not the censorship board. In one January 2008 example, *Myanmar Times* ran a PSB approved article regarding the increase in satellite television licensing fees, yet when the authorities subsequently found this article too critical, they closed the journal and ordered the firing of senior reporter Win Kyaw Oo.<sup>133</sup>

In the first few months of 2008, the PSB literally started using magnifying glasses and mirrors to do their work. The new tools came as a result of the publication of a poem entitled “*February 14*” that ridiculed Senior General Than Shwe through the first letters of each line of the poem and a Danish advertisement which contained the hidden message “*Killer Than Shwe.*” The extra vigilance increased the time the PSB needed to review publications, further burdening independent journals.<sup>134</sup>

On 16 September 2008, *Mizzima News* reported that publications all over Burma were suffering due to the temporary absence of the director of the PSB, Major Tint Swe. As usual, the publishers submitted their drafts to the censorship board, removed the censored articles, re-typeset the publication, and finally resubmitted them for final approval. While under the more sympathetic Tint Swe, some articles could merely be modified before being reconsidered by the board. The Deputy-Director Major Aung Kyaw Oo however, tightened censorship criteria so as not to make any mistakes and directed news journals to “*delete all news covering government ministries and departments without interviewing the responsible person of the department concerned.*”<sup>135</sup>

These restrictions resulted in heavy losses for the print media inside Burma. One unnamed weekly journal removed half of its 80 articles after the PSB board reviewed original drafts. Other literary magazines, such as *Mahaythi*, *Cherry*, *Ahtwe Ahmyin*, *New Ni*, and *Sabephyu* suffered losses too. One monthly magazine went from 10,000 copies to 7,000 and another went from 3,000 copies to just below 1,000 copies sold due to the reduced and more heavily censored content.<sup>136</sup>

*Cherry* magazine had a particularly rough year with the censorship board. After the PSB took an extra week to review submitted poems, the publication had to delay its August issue until September. The PSB responded that it was short on manpower; however, other magazines received their mark-ups in normal time. The magazine staff believed that the delay related to a previously published poem, ‘Depayin’, which passed the PSB but displeased the regime authorities.<sup>137</sup> (For more information, see Section 13.10 Freedom of Expression in the Arts below)

However, *Cherry* was not the only magazine to face excessive censorship; the board suspended the publication of 80 pages in an issue of *Padaukpwinthit* magazine that discussed writer U Nyo Mya of *Oway* magazine. U Nyo Mya was involved in the Burmese independence movement and was a close associate of national hero General Aung San. The board gave no reason as to why they restricted the article.<sup>138</sup> Even an article on the Free Funeral Service Society (FFSS), a Non-Governmental Organisation (NGO) helping the impoverished to bury their loved ones, was stricken by the PSB.<sup>139</sup> The FFSS had previously fallen afoul of regime authorities, especially following Nargis for providing free funerals for cyclone victims. The junta took offense to a private group providing this service as it made the regime appear as if it were not in total control of the relief effort

In September 2008, the PSB suspended the publishing licenses of two Rangoon weekly journals, *True News* and *The Action Times* for extremely minor infractions. *The Action Times* was suspended for one month after it published an article on released prisoner, U Win Tin with the title modified to read *Sayagyi* (Great Master) Win Tin after the version reading U Win Tin had been approved by the censor board. Similarly, *True News* was suspended for two months after adding a caption to a photograph after the censor board had approved the print layout.<sup>140</sup>

Late in the year, the censorship board released a directive with ten rules for domestic publications to follow. While not a drastic change from the prior directives, these rules reminded publishers that every word or image must be approved by the board before publication. It goes on to list the possible punishments for violating the directives, including confiscation of the printed materials, suspension of publication license, confiscation of the actual printing press, and revocation of the publication license. In addition the directive stipulates laws that provide for heavy prison sentences should the directives be breached.<sup>141</sup> The SPDC then issued a new directive, further attempting to streamline the censorship process, which created a press committee for each ministry. The press committees serve as the contact point for all information flowing outward to the press and public. On one hand this could streamline a complex process of releasing information to the public, however, critics worry that this will further enable the regime to withhold information and only release news that reflects positively on the regime.

As one magazine editor from Rangoon noted when the idea of the committees was broached,

*"The media space will likely become more constricted. The media community will run into a wall while covering departmental news because senior officials of the concerned ministry and department will not disseminate news. They will make evasive denials in issuing official news. So, the media space will be more stifling,"*<sup>142</sup>

Finally, in December 2008, the junta unofficially announced that it would start the publication of a new regime-run daily newspaper from Naypyidaw, the 'Nay Pyi Taw.' This publication was set to supplement the three current regime Burmese-language daily publications, *Myanma Ahlin Kyemon*, and *Yadanabon* and the English-language daily, *The New Light of Myanmar*.<sup>143</sup>

## 13.7 Continuing Detention of Journalists

The year of 2008 saw a rise in the number of detained and imprisoned journalists, from an estimated seven or eight imprisoned media workers in January to at least 14 journalists and media workers by 1 December 2008.<sup>144</sup> The AAPPB reported that there were at least 41 journalists imprisoned in Burma as of September 2008.<sup>145</sup> According to the Committee to Protect Journalists (CPJ), Burma ranks third worst worldwide for detention of journalists, right behind China and Cuba and only slightly better than Eritrea.<sup>146</sup>

Despite its unenviable rating, and in a move that surprised journalists and activists worldwide, on 23 September 2008, after 19 years in prison, the military regime released journalist U Win Tin. The regime, then known as State Law and Order Restoration Council (SLORC), originally arrested the former editor of the daily *Hanthawaddy*, vice-president of the Burma Writers Association, and mentor to NLD leader Daw Aung San Suu Kyi, on 4 July 1989 for publications and actions that the junta viewed as subversive. He was subjected to torture and further suppression during his time in prison including solitary confinement.<sup>147</sup> Upon his release, U Win Tin refused to sign 'document 401' which forces released prisoners to denounce political ambitions and avowed to continue his activist work.<sup>148</sup> He also refused to be released on grounds of old age and poor health and wore his prison uniform home in protest.<sup>149</sup> Despite the good news of U Win Tin's release, 2008 saw more journalists imprisoned than released.

### Continuing Detention of Journalists - Partial list of incidents for 2008

#### Maung Maung Lay Ngwe, September 1990

In September of 1990, Maung Maung Lay Ngwe was arrested and imprisoned for writing and distributing a collection of publications entitled *Pe-Tin-Thau*, translated as "Echoes", which the authorities believed would undermine the regime. The CPJ has been unable to confirm his current whereabouts or legal status since his imprisonment over 18 years ago.<sup>150</sup>

#### Aung Htun, February 1998

On 17 February 1998, writer and activist, Aung Htun, was imprisoned for writing and disseminating a book on the history of the 1988 generation student movement. Sentenced under the Printers and Publishers Act, the 1950 Emergency Provisions Act, and the Unlawful Associations Act, Aung Htun received 17 years total. In 2002, Amnesty International issued an urgent appeal requesting that Aung Htun be granted access to medical treatment for health problems that he was suffering in prison. According to the Burma Media Association, another urgent appeal was issued in July 2007 for his medical release. Also in 2007, ABFSU re-published Aung Htun's book. As of 2008, he is being held in Rangoon's Insein Prison.<sup>151</sup>

#### Ne Min (Win Shwe), February 2004

On 7 May 2004, Ne Min, a lawyer and former journalist for the BBC, received 15 years in prison for passing information on to exiled anti-regime organisations, according to the AAPPB. The regime had previously sentenced him to 14 years of hard labour in 1989 for his work for the BBC. Under that sentence, he served nine years in Insein prison before his release in 1998.<sup>152</sup>

### Thaung Sein (Thar Cho) and Kyaw Thwin (Moe Tun), March 2006

On 27 March 2006, in the days after their arrest, Thaung Sein, a freelance photojournalist, and Kyaw Thwin, a columnist at the Burmese-language magazine *Dhamah Yate*, were sentenced to three years in prison for taking footage of the capital city Naypidaw.

Because the two journalists did not have a certificate from the regime indicating their approval of the footage, they were charged with the 1996 Television and Video Act, and imprisoned at Yemethin Prison in central Burma, according to AAPPB. A 2007 appeal in Yemethin Court was denied. The photographs and videotapes were never released.<sup>153</sup>

### Win Saing, August 2007

On 28 August 2007, photographer Win Saing was arrested for his documentation of the Saffron Revolution. While the authorities arrested thousands of people and several journalists, Win Saing remained in detention in 2008 without being charged, according to the BMA.

### Nay Phone Latt (Nay Myo Kyaw), January 2008

On 29 January 2008, well-known blogger and Internet café owner, Nay Phone Latt, who wrote about democracy and the regime's violence after the September 2007 peaceful demonstrations on his blog at [www.nayphonelatt.blogspot.com](http://www.nayphonelatt.blogspot.com), was taken into custody.<sup>154</sup> At the age of 28, Nay Phone Latt became the first blogger to be imprisoned along with his co-defendant Thin July Kyaw, under section 32(b)/36 of the Video Act, section 505(b) of the Criminal Code, and section 33(a)/38 of the Electronic Act.<sup>155</sup>

After his hearing in July, Nay Phone Latt was moved to Insein Prison, according to the AAPPB and the US Campaign for Burma. Finally, on 10 November 2008, he was sentenced to 20 and a half years, according to the BMA.<sup>156</sup>



Nay Phone Latt (left) sentenced to 20.5 years and Ein Khaing Oo (right) sentenced to two years were two of the many journalists and bloggers detained and imprisoned for reporting on Cyclone Nargis. [Photo: © Irrawaddy]

### **Thet Zin and Sein Win Maung (Ko Soe), February 2008**

On 14 February 2008, the SPDC raided offices of *Myanmar Nation*, arresting Editor Ko Thet Zin and Office Manager U Sein Win Maung after a four-hour search turned up a copy of a UN Human Rights report, Shan ethnic leader Shwe Ohn's book on federalism, and a VCD on the Saffron Revolution. A few days later regime officials raided the office for a second time, and on 19 February 2008, the junta stopped the publication and distribution of the magazine. The public knows Editor Thet Zin to be critical of the SPDC as he was previously arrested for his activism in 1988.<sup>157</sup> According to *Mizzima News*, they were first held in Thingangyun Township police station until they were charged on 25 February.<sup>158</sup> They were then moved to Insein prison where they were detained, interrogated, and tortured for several months.<sup>159</sup> Finally, on November 2008, a Rangoon court sentenced the two to six years in prison under the Printing and Publishing Law.<sup>160</sup>

Although the *Myanmar Nation's* offices were only temporarily shut down until March, the newspaper closed for "lack of leadership."<sup>161</sup>

### **Maung Thura (Zarganar), June 2008**

On 4 June 2008, authorities arrested well-known comedian and blogger, Zarganar, in his Rangoon home. The authorities also confiscated a computer, several banned films, and US\$1,000 from his home that he collected in donations for cyclone refugees.<sup>162</sup>

At the time of his arrest, Zarganar was working with other entertainers to raise money and help survivors of Cyclone Nargis. During his trips to the Irrawaddy delta region, Zarganar took photographs and footage which he then released to international media.<sup>163</sup>

After receiving his sentence in August, Zarganar was held in Insein prison on charges of violating Section 505(b) and the Electronics Law until 21 November 2008 when a special court sentenced him to 45 years in prison.<sup>164</sup> On 27 November, he received 14 more years for his communications with exiled media groups and foreign media.<sup>165</sup>

The regime had previously detained Zarganar in 2007 for helping Buddhist monks during the Saffron Revolution. His blog, Zarganar-window, continued to be maintained by his supporters after his incarceration, according to BMA.<sup>166</sup>

### **Ein Khaing Oo and Kyaw Kyaw Thant, June 2008**

On 10 June 2008, 24-year-old *Ecovision* reporter Ein Khaing Oo and freelance journalist Kyaw Kyaw Thant, were arrested for reporting on the Cyclone Nargis devastation and a protest staged by 30 survivors in front of a United Nations Development Program (UNDP) office in Tamwe Township.<sup>167</sup> On 14 November 2008, a Tamwe Township court in Rangoon Division sentenced Ein Khaing Oo to two years in prison and sentenced Kyaw Kyaw Thant to seven years under Section 505(b) and 124(a) of the Criminal Code for undermining the regime.<sup>168</sup>

At the time of arrest, Ein Khaing Oo, a graduate in law, had only worked as a reporter for *Ecovision* for two months.<sup>169</sup>



### **Zaw Thet Htwe, June 2008**

On 13 June 2008, military police arrested magazine editor of *First Eleven Journal*, Zaw Thet Htwe while he was visiting his mother in Minbu, Magwe Division.<sup>170</sup> He was helping to distribute aid to cyclone survivors along with Zarganar and speaking with international media sources.<sup>171</sup> On 21 November 2008 a special court judge in Insein prison sentenced him to 15 years in prison for the photographs he took during the referendum.<sup>172</sup> On 28 November 2008, he was given another four years.<sup>173</sup>

Zaw Thet Htwe knows the price of free speech well; he was previously imprisoned in 2003 for an article he authored regarding the misappropriation of funds by the regime.<sup>174</sup> The regime accused him of plotting to overthrow them and sentenced him to death, although the sentence was later commuted.<sup>175</sup>

### **Aung Kyaw San, June 2008**

On 15 June 2008, editor of the *Myanmar Tribune*, Aung Kyaw San, was arrested along with 15 others who had been working to help bury the deceased cyclone victims in the Irrawaddy delta region. According to BMA, photographs that Aung Kyaw San took while working appeared on some websites in violation of the junta's orders. The newspaper was subsequently closed and he has not yet been formally charged.<sup>176</sup>

Aung Kyaw San had also been imprisoned in 1990 for more than three years for political activities.<sup>177</sup>

## 13.8 Academic Freedom

Since the 1988 student-led protests the regime has taken a particularly harsh stance towards academic institutions. International democracy monitoring organisation, Freedom House, again reported that in 2008, academic freedom was severely limited in Burma. In addition to being subject to the repressive laws against free expression imposed on all citizens, the regime holds professors accountable for the action of their students and limits their ability to freely publish academic work and speak freely in lectures.<sup>178</sup> The Ministry of Education prohibits teachers and professors from discussing politics at work or joining any political organisations other than the mandatory Union Solidarity and Development Association (USDA) membership. Further, academics must obtain advance permission for meetings with foreigners, who are likewise not permitted on campuses or to attend student or teacher meetings without regime approval. The regime also dictates curricula, censors course materials and uses intimidation tactics to keep teachers from straying from the proscribed script.<sup>179</sup>

The delivery of quality education was negatively affected by the regime through practices of compulsory donations and school fees at public schools coupled with a lack of adequate textbooks and materials. Schools were also sites of discrimination, forced labour, bribery, and plagiarism. These factors all combined to adversely impact upon the education system.<sup>180</sup> Religious schools such as Buddhist monastery schools, Christian seminaries, and Muslim madrassas were similarly monitored and regulated. Private schools and classes were all but banned under the Private Tuition Act. Aung Pe, a private teacher and NLD supporter, remains in prison, serving a three-year sentence under Private Tuition Act charges. The act prohibits the delivery of private tuition without a permit from the authorities. It was reported however that Aung Pe had actually been apprehended for teaching lessons about General Aung San on Union day in Burma, which is standard for teachers, and also for hanging a t-shirt bearing the image of Aung San Suu Kyi in his classroom.<sup>181</sup> (For more information, see Chapter 15: Right to Education).

In June 2008 the writers of a paper for the United Nationalities Alliance (UNA) were still in prison for the publication of an eight-page report, *“The Future of Burma”* that angered the regime. Originally written in 2005, the paper was only released on 27 September 2008. Those sentenced to prison for treason and defamation of the state include:

1. Major General Hso Ten, Shan State Army, 106 years;
2. Khun Tun Oo, leader of Shan Nationalities League for Democracy, 93 years;
3. Sai Hla Aung, 79 years;
4. U Myint Than, died in prison, 79 years;
5. U Tun Nyo, 79 years;
6. U Nyi Nyi Moe, 79 years;
7. Sai Myo Win Tun, 79 years;
8. Sao Tha Oo, released, 12 years.

The paper highlighted the weaknesses of the regime’s plans for development and hailed the counter-proposals submitted by the National Coalition Government of the Union of Burma (NCGUB).<sup>182</sup> (For more information see Chapter 15: Right to Education)

## 13.9 Control of Computer Technology and Communications

### The Internet

French organisation, Reporters Without Borders ranks Burma as the worst nation in the world, along with China, for internet access and freedom.<sup>183</sup> According to the Burmese Journalist Protection Committee (BJPC), the regime blocks 80 percent of websites.<sup>184</sup> Furthermore, only about one percent of the total population in Burma even has access to the Internet.<sup>185</sup> The limited section of the general populace that does have access often utilise internet cafés, as it is too expensive to have internet in the home. Even internet cafés, though, must seek a license from Myanmar Info-Tech Corporation Ltd and pay both a registration fee and a monthly fee to stay open.<sup>186</sup> In 2008, the regime increased surveillance of internet cafés and pressured owners to record identity information and internet usage of patrons. The regime also attempted to block access to blog sites and email servers such as Gmail, Yahoo and Hotmail, as well as slowing down transmission speeds to make uploading photographs difficult.<sup>187</sup> Industrious café owners and users found proxy sites to access blocked information. Few feel safe, however, as the regime raids internet cafés unannounced to question patrons and pressures internet café owners to take screen-shots of internet usage as often as every five minutes.<sup>188</sup>



Though Internet café usage has reportedly increased across Burma, only one percent of the population has access to the Internet. Meanwhile, use of the Internet remains tightly regimented, with approximately 80 percent of all websites being blocked by the junta. *[Photo: © AFP]*

As mentioned above in Section 13.7 Continued Detention of Journalists, for the first time in January 2008, the junta arrested an internet café owner and blogger, Nay Phone Latt, for blogging about politics and the September 2007 protests. In November he was sentenced to 20.5 years in prison.<sup>189</sup> This harsh crackdown coupled with the potentially long prison sentences for violations of the Electronic Law purposefully intimidate everyday users of the internet.<sup>190</sup>

Despite the internet being down for several days following the cyclone, it still provided a crucial source of information for the rest of the world and the rest of Burma about the conditions in the affected areas.<sup>191</sup> The BBC noted that because the regime would not release information nor allow reporters to publish their findings, average citizens posting on

the internet became the main source of information regarding what was going on in Burma at that time.<sup>192</sup>

Later in May 2008, the military regime stepped up their censorship of the internet. Authorities became aware of several proxy sites used to access the World Wide Web and exile media group sites and subsequently blocked access to them. The regime utilises its connections and control over the nation's three internet service providers: Myanmar Teleport; Bagan Net; and Myanmar Posts and Telecommunications, to limit public access to information and contact with the rest of the world.<sup>193</sup>

In July 2008 the websites of exile media groups *Mizzima* and DVB came under attack by internet hackers. The Distributed Denial of Services (DDoS) attack overwhelmed and disabled the sites.<sup>194</sup> A similar attack occurred in September against DVB, *Irrawaddy*, and *New Era Journal*.<sup>195</sup> The attacks also brought down proxy sites and seemed to be timed to coincide with the anniversary of the Saffron Revolution. Suspicions point to a regime backed offensive coming from SPDC supporters living and studying abroad as well as paid hackers.<sup>196</sup> Reporters Without Borders denounced the regime attacks as they limited the ability for people inside Burma to access a main source of information regarding events and politics in their own country.<sup>197</sup>

## Telecommunications

In February 2008, the junta attempted to block access to foreign broadcast networks through raising the license fee from US\$5 to US\$800 for satellite dishes.<sup>198</sup> On 11 February 2008 Colonel Myint Oo, Commander of the Area Operations Command announced a new tax on entertainment systems such as TVs, VCD players, and satellite dishes for villagers in Pong Pa Khem Sub-Township, Mong Ton Township in eastern Shan State. The tax amounts to 20,000 kyat for possession of all three and households with auto satellites were forced to pay 40,000 kyat.<sup>199</sup> In May 2008, a junta-friendly company released a new satellite service, Family Entertainment, which allowed citizens to watch foreign news broadcasts such as CNN and MTV, however the channels were censored by the authorities. The satellite receives 19 channels and costs US\$250 including the first year's fee.<sup>200</sup>

Cyclone Nargis left the telecommunications infrastructure of the affected areas in tatters. Cell phone towers and phone lines were toppled and television broadcasts were disabled.<sup>201</sup> Telecom Sans Frontieres (TSF), an international NGO that responds along with the UN to deliver emergency telecommunication services such as satellite phones and remote offices to disaster areas, received clearance to enter Burma following the cyclone; however employees of the organisation then found themselves detained in Rangoon. Aid workers for the NGO stated that it was clear that the regime did not want the telecommunications equipment in the affected areas. It is reasonable to assume that regime fears of accurate information leaking out of the delta to foreign media prompted these restrictions on the group. TSF chose to leave the country, to the detriment of cyclone survivors, due to the limitation placed on the organisation by the junta.<sup>202</sup>

Also in response to the cyclone's devastation, China sent Burma over 2000 radios for distribution to victims. Yet, the regime worried about victims using the radios to listen to foreign broadcasts. Authorities also worried that if they did not distribute the radios, they would anger China, and so an attempt was made to adapt the radios to only obtain local signals. The result, however, was that the radios only picked up one station – the regime broadcast Myanmar Radio and Television Department.<sup>203</sup> At the same time, the junta attempted to stop the dissemination of information through a ban on satellite televisions. They warned several dealers in Rangoon not to sell to individuals without a license and

confiscated 50 satellites from another dealer.<sup>204</sup> Currently, only 60,000 licensed satellite dishes exist in Burma, a country of 55 million people.<sup>205</sup>

The price of mobile phones in Burma remains prohibitively high where the average income is US\$300 per year.<sup>206</sup> One source quoted the price for the most common type of mobile phone as 2.3 million kyat or US\$1,800 for a Global System for Mobile (GSM) phone in addition to a permit and Subscriber Identity Module (SIM) Card fees. Even for those who can afford the costs, permits are extremely hard to come by since the SPDC officials have first access to them. Many individuals resort to renting a mobile phone on the black market from one of these junta officials for around 40,000 to 50,000 kyat a month.<sup>207</sup> The price of a SIM Card in Burma remains high at US\$1,300 from the official company and between US\$1,600 and \$2,000 on the black market. As of the beginning of 2008, approximately 250,000 mobile phones operated in Burma.<sup>208</sup>

Several landline subscribers in northern Kachin State also saw their prices increase in September 2008 after they learned that numbers starting with 25, indicating Chinese made telephone service operating machines, would need to be changed to a number beginning with 20 as the operating machines changed to Israel manufactured systems. The change would cost families US\$464, payable to the State Telecommunications Office.<sup>209</sup> Landline subscribers in Irrawaddy Division also encountered problems after Cyclone Nargis destroyed much of the telecommunications infrastructure. Although the SPDC promised to restore the lines, over 50 residents of Pyapon Township still did not have service a month after the cyclone and were being told it would cost a bribe of 20,000 kyat to fix their phone lines.<sup>210</sup>

In August 2008, the regime approved a service to send text messages abroad. The service had a membership fee of 5,000 kyat which allowed texts that cost between 100 kyat and 600 kyat depending on the destination country.<sup>211</sup> Because the text messages go through a web service, it is presumed that the military can monitor these messages. Direct international text messages from mobile phones remained disabled.<sup>212</sup>

In November 2008, Myanmar Post and Telecommunications Department announced that it would introduce a prepaid coupon system for mobile phones similar to those sold elsewhere in the world. The system was to be targeted at tourists and priced in US dollars, but would also be available to the public. The proposed service was aimed at alleviating the long lines mobile customers must wait in each month to pay their bill.<sup>213</sup> Upon release in December, the short-term SIM Cards proved exceedingly popular as they cost closer to 24,000 kyat or about US\$20 compared to the astronomical price of permanent SIM Cards.<sup>214</sup>



## 13.10 Freedom of Expression in the Arts

The regime continued to repress the artistic expression of Burma's poets, actors, visual artists, comedians and musicians in 2008. Within Burma the censorship is so strict that creating art outside regime-approved themes can easily result in a hefty prison sentence. The oppression is so virulent that many artists have been forced into exile. Those artists often use their medium to publicise the plight of those inside Burma and criticise the regime before international audiences. The regime has gone as far as to discourage body art such as tattoos by banning images of them in printed and televised media.<sup>215</sup>

An article that ran in the 15 February 2008 issue of *Newsweek* described the thriving underground political art community. Images of Daw Aung San Suu Kyi and other 88 Generation Student Group leaders are printed, painted, and traded on the black market or sent abroad to be sold and displayed. Despite the fact that every painting or piece put on display in a Burmese gallery must pass the censorship board, artists create pieces with hidden messages attempting to evade their scrutiny. Musicians must also have their lyrics approved before they can perform or record and police attend concerts to make sure no anti-regime songs are performed.<sup>216</sup>

### Film and Television

The newest Rambo film was released in the United States on 25 January 2008, and while banned in Burma, quickly became an underground sensation. Despite the fine of a 100,000 kyat (US\$81), or 3 years in jail if caught with a contraband copy, burned VCD copies circulated amongst friends who related to the film's depiction of a Burmese regime soldiers terrorising Karen villagers as starring actor, Sylvester Stallone came to the rescue.<sup>217</sup> In an interview, Stallone stated that his film was both angering authorities and inspiring resistance to the brutal regime as people were using rallying quotes, such as "*Live for nothing...or die for something.*" Two of the Burmese-born actors, Stallone reported, had family members jailed as retribution for their participation in the film. International exile media groups have engaged in a dialogue regarding the neo-colonialism and stereotypes the film serves to perpetuate, however, without the legal ability to view the film in the first place, such open expression and dialogues cannot take place inside Burma.<sup>218</sup>

Following the devastation of Cyclone Nargis, documentarians took the little video footage that made it out of the affected areas and created an educational film. In Arakan State, however, in June 2008, authorities declared that the watching or possession of such films was prohibited. While residents understood the prohibition on documentaries of the 2007 Saffron Revolution because they were of a clearly political nature, they could not understand why this non-political disaster was being censored. It had not become apparent to some parts of the Burmese population that the aftermath of Nargis and the junta's negligent response to the crisis had become a highly political matter. The film showed accurate images of the devastation, death, and the suffering of survivors, which provided a stark (and in the opinion of the SPDC, unacceptable) contrast to what the regime's mouthpiece media outlets were seeking to portray.<sup>219</sup>

## Visual and Performance

In April 2008, popular hip-hop artist Yan Yan Chan of ACID was arrested.<sup>220</sup> Two months earlier another member of his group, Zeyar Thaw, was detained for political involvement and possession of foreign currency, which resulted in a six-year prison sentence being handed down on 20 November 2008. Zeyar Thaw had helped create an anti-regime album as part of ACID and was also a member of the activist group Generation Wave.<sup>221</sup>

The regime has also continued to censor traditional music performances. The *Thangyat* performances and poems recited during the New Year's Water Festival traditionally poke fun at politics and current events. Since the regime has banned their performance inside Burma, exile groups have been producing CDs which are then smuggled and distributed inside Burma. Of course, it is dangerous for people to listen to these CDs as they face imprisonment, but it has not stopped their circulation.<sup>222</sup>

Television continued to be under the complete control of the regime. Favourite meteorologist, Tun Lwin, lost favour with the public when he followed the regime's orders to not release information about the approaching cyclone.<sup>223</sup>

On 31 May 2008, a concert to benefit cyclone survivors to be put on by comedians Maung Moe and U Kyaw Kyar as well as Pa Pa Lay, commonly known as the 'Moustache Brothers', was halted by regime authorities. The officials told the group right before they were to go on stage that they must reschedule the performance for 4 June. The performers believe this may have been a result of the concert's date coinciding with the fifth anniversary of the Depayin Massacre, however, performers insisted their only intentions were to help the cyclone survivors.<sup>224</sup>

In August 2008, over 70 cartoonists banded together to create an exhibit for Lawkanat Art Gallery to raise funds for cyclone survivors. Over 100 cartoons were displayed and the show earned 1.1 million kyat for the survivors. Yet, the regime denounced several cartoons and would not let the cartoons or any stories about the exhibit be published in weekly journals.<sup>225</sup>

## Poetry

On 22 January 2008, poet Saw Wai was arrested for the publication of a Valentine's Day poem entitled "February Fourteen". Undetected by the PSB, the first letters of each line of the poem spelled out "Power Crazy Than Shwe." When finally noticed, the regime imprisoned Saw Wai and suspended the publication of *Achit Journal* for three weeks. Saw Wai was charged under Section 505(b) of the Criminal Code for treason.<sup>226</sup> On 10 November 2008, Saw Wai was sentenced during a closed hearing in Insein prison to two years in prison for disrupting public tranquillity.<sup>227</sup>

In June 2008, regime authorities forced monthly magazine *Cherry* to fire their poetry editor, Htay Aung for publishing a poem about the city of Depayin. The poem addressed the ancient history of Depayin, but since this was also the site of the 2003 attack on NLD leaders and party members, people could choose to interpret the poem differently. While the poem initially passed the PSB's censors, regime authorities later found out about it and requested that Htay Aung be fired regardless.<sup>228</sup>

## 13.11 The Constitutional Referendum

The last referendum was held in Burma in 1973, on the 1974 Constitution. The regime declared that more than 99 percent of the voters supported the constitution, but most observers believed that the entire process was a sham.<sup>229</sup> In many ways, history repeated itself in 2008. After announcing the coming referendum, the regime passed the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, on 26 February 2008. The law provided for up to three years in prison and/or a fine of up to 100,000 kyat for anyone caught, “lecturing distributing papers, using posters or disturbing voting in any other manner at the polling booth or near the premises of the polling booth or at a public or private place to destroy the referendum.”<sup>230</sup> The regime arrested at least 70 persons under this law in late April for trying to stage a peaceful ‘Vote No’ demonstration. (For more information, see Section 13.12 Vote No Campaign, below)<sup>231</sup> The law also excluded key groups of voters such as all Buddhist religious leaders, Christian religious leaders, Hindu religious leaders, prisoners (including political prisoners), and persons illegally living abroad.<sup>232</sup> In addition 700,000 Muslim Rohingyas (who are not officially recognised citizens of Burma), and the millions of refugees in exile and in conflict zones were not allowed to vote. Widespread reports of referendum fraud including advance voting for USDA members and civil servants, among many other types of irregularities, confirmed the real reason many suspected the junta had for not permitting international observers—the regime never had intentions of holding a free and fair referendum.<sup>233</sup>

Former UN Special Rapporteur for Human Rights in Burma, Paulo Sergio Pinheiro said,

*“A referendum without some basic freedoms – of assembly, political parties and free speech – is a farce. What the Myanmar government calls a process of democratization is in fact a process of consolidation of an authoritarian regime.”*<sup>234</sup>

Representative for the US State Department Tom Casey echoed Pinheiro's comments saying,

*“A credible political transition in Burma must be inclusive and transparent. It must involve universal suffrage, secrecy and security of the ballot, and freedom of speech and association, . . . The credibility of the process also must be evaluated through comprehensive, long-term monitoring by independent domestic and international observers.”*<sup>235</sup>

Although the referendum was announced months in advance, the draft constitution only became available a short time before the vote. Copies were in short supply and printed only in Burmese, a language not spoken by many of Burma’s ethnic minority communities. Even then, the sale price was 1,000 kyat (about US\$1), an amount that many people could not afford.<sup>236</sup> International organisations as well as the exile media groups dissected the draft constitution and diagnosed it as a tool to consolidate and legitimise the regime’s power for years to come.<sup>237</sup> Amnesty International noted the following problematic aspects of the Constitution:

1. A limitation on the protection of individual freedoms for threats to the State or peace and tranquility (Chapter VIII);
2. Members of certain religious orders and destitute persons may not vote (Chapter IX);
3. The military can suspend all individual rights as necessary in an emergency for a period to last up to one year (Chapter VI);
4. During a declared state of emergency, the commander-in-chief along with the National Defence and Security Council assume all legislative, executive, and judicial powers (Chapter XI);

5. Appointed military will comprise 25 percent of the members of parliament and one third of all state and regional assemblies (Chapter IV);
6. A member of the military must be one of three candidates for president to be elected by parliament and therefore must at least be one of the two vice-presidents (Chapter III) and the president does not answer to either the judicial or legislative branch in exercising his duties (Chapter V);
7. Only military officials can occupy the positions of Minister for Defence, Ministers of Security and Home Affairs, and Minister of Border Affairs (Chapter V);
8. The military is independent of all government branches answering only to the commander-in-chief (Chapter VII) and the judiciary has no power over military courts (Chapter VI);
9. Lastly, the Constitution contains an impunity clause stating that no legal action may be taken against those “*who officially carried out their duties according to their responsibilities*” during the period of military rule.<sup>238</sup>

In addition, the regime added a clause that bans Daw Aung San Suu Kyi from running for office in the 2010 elections. In a report released in April 2008, Human Rights Watch (HRW) definitively stated that the conditions for a free and fair referendum did not exist in Burma. HRW described a political climate characterised by widespread repression, censorship, bans on political activity, and a lack of any independent monitoring body.<sup>239</sup>

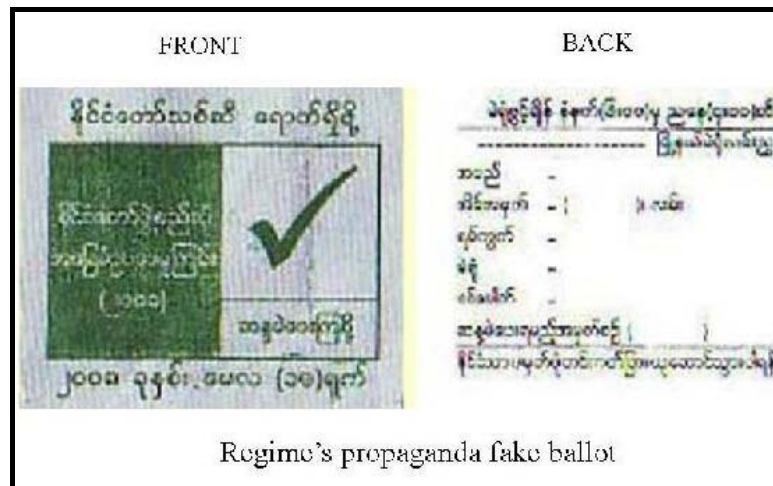
In the week leading up to the referendum, polls conducted across Burma revealed that a majority of persons planned to vote ‘no’.<sup>240</sup> A poll conducted by *Irrawaddy* found that half of voters opposed the draft constitution, while another 40 percent were unsure. In a telephone pole surveying 300 people in the Rangoon, Sagaing, and Irrawaddy Divisions, as well as Shan State, only 17 percent responded in support of the draft constitution and eight percent refused to answer.<sup>241</sup> A similar poll conducted by *Mizzima* found that 71 percent of 416 persons polled did not understand the substance of the draft constitution.<sup>242</sup> The fact that very few people understood the details of the draft constitution is testament to the fact that political opposition groups within Burma had their right to free expression stifled and were prevented from disseminating essential information regarding the flaws in the new document. The ignorance of large parts of the population to the intricacies of the new proposed constitution facilitated the regime being able to step up their tactics of bribery and coercion to elicit ‘yes’ votes from Burmese citizens.

The junta imposed additional restrictions on international NGOs operating inside Burma in the month leading up to the referendum, whether or not their mission was political. The organisations included Save the Children Fund; Population Services International, Marie Stopes International, Care International and World Vision. They were summarily told to stop all educational activities at the grassroots level, particularly in rural areas.<sup>243</sup>

The regime’s actions, however, were met by severe international criticism including an Executive Order passed by US President George W. Bush blocking all property interests held by individuals tied to the regime and a statement condemning the lack of freedoms in Burma as well as the SPDC’s failure to comply with the directives issued by the United Nations.<sup>244</sup>

When Cyclone Nargis devastated Burma right before the scheduled referendum, international organisations attempted to send support to the country but also pleaded that the regime postpone the referendum to clean up after the natural disaster and to take care of the survivors. Exile Burmese government officials and HRW called the junta’s decision to continue with the referendum despite the tragedy “*inhuman.*”<sup>245</sup> In a statement issued on 8 May 2008, UN Secretary-General Ban Ki-Moon called on the regime to focus their efforts on helping those affected by the natural disaster rather than continue promoting the

referendum.<sup>246</sup> Yet, on 9 May 2008, the regime continued its appeal for residents to vote 'yes'. Despite the millions of suffering people in the cyclone affected areas, regime propaganda implored, "If you are patriotic and you love your nation you must give an affirmative vote," on television messages accompanied by performances of popular Burmese musicians and celebrities.<sup>247</sup>



An example of one of the pre-marked ballot papers distributed by the SPDC. As can be seen, the ballot has already been marked in favour of the draft constitution with no space to vote against it. [Photo: © Human Rights Defenders & Promoters]

## Voting Irregularities

In advance of the referendum, the regime did everything within its power to engineer and ensure the success of the draft constitution. Beyond the repressive laws that limited opposition, the SPDC ran its own Vote 'Yes' campaign, as well as mobilised its influence and resources across the country to collect advance votes, intimidate and bribe voters, and staff polling stations with regime supporters.

One such tactic included the distribution of pre-marked 'yes' ballots across the country. The front of the ballot reads, "voting 'YES' to new democratic nation" and the back has a place for the resident's personal identification information. These ballots lacked any place to mark 'no'.<sup>248</sup>

Reports from 10 May 2008, as voting took place recorded the following irregularities in voting across the Burma:

1. Voters were asked to leave the polling stations for the counting process although junta supporters were permitted to stay;
2. Some voters were forced to vote 'yes' by security and official staff;
3. One person being permitted to vote for the entire family;
4. Police and security forces stood near polling booths (an act of intimidation);
5. Foreign and local journalists were not permitted near polling stations;
6. Voters did not have access to the draft constitution before voting;
7. Voters found that their votes had been cast in advance only after arriving at the polling stations;
8. Military members and their families were forced to vote 'yes.'<sup>249</sup>



On 15 May 2008, the junta announced the results of the election. Read by Chief Justice Aung Toe, 92.4 percent (20,786,596 votes) of the more than 22 million voters were in favour of the draft constitution. The regime also reported that 1,375,480 'no' ballots were cast and 334,584 ballots were cancelled. The official turnout rate was 99.07 percent of eligible voters in 278 of the 325 townships.<sup>250</sup>

The second official round of voting took place on 24 May 2008 in 47 townships in cyclone affected areas. Voters reported similar harassment to that described above at the polling stations. A resident of Sanpya ward in Tadarchuang village of Dala Township in Rangoon Division said a women's affairs group member snatched his ballot and marked 'yes' for him. Similarly, at a polling station in Thingangyun Township of Rangoon Division, a voter reported that, *"The headman of the locality kept shouting 'vote yes' – if you vote 'no' you will be penalized with three years in prison and a fine of 100,000 kyat (approximately USD 100)."*<sup>251</sup>

On 26 May 2008, state radio announced the results of the 24 May 2008 voting in the cyclone devastated areas. In the 47 townships, 92.93 percent of the 4,580,393 voters cast 'yes' votes which brought the total acceptance rate to 92.48 percent in favour of the draft constitution.<sup>252</sup> NLD spokesperson, Nyan Win, however, revealed that some villages did not even have polling booths and authorities cast votes on behalf of entire villages.<sup>253</sup>

In spite of the SPDC's confidence, the results of this contrived referendum, however, were on the whole, rejected by the international community. Human Rights Watch stated that the referendum procedures fell short of any existing standards and US Ambassador to the UN, Zalmay Khalilzad, said that the referendum did not meet the UN Security Council standards for an open and fair process.<sup>254</sup> President George W. Bush himself declared the referendum a sham.<sup>255</sup>

What follows is a partial list of incidents of voter coercion and corruption leading up to and on the days of the referendum for the draft constitution:

### **Arakan State**

On 2 April 2008, reports from Maungdaw Township, Arakan State, claimed that District Peace and Development Council authorities called a mandatory meeting for all Rohingya girls over 18 from the village tracts of Nwah Yon Taung, Bag Gone Nah, Ay Tah Li Yahtilla of Maungdaw Township to meetings in two locations; the local VPDC office and a primary school. The girls were told that they would be given Identity Cards, marriage restrictions would be lifted, and they would be permitted to move freely if they promised to cast 'yes' votes. The girls were also informed that the casting of their votes would be monitored and their votes checked afterward and threatened that any person casting 'no' votes would be subject to immediate interrogation in order to find out the reason.<sup>256</sup>

Throughout April the District Peace and Development Council (DPDC) Chairman, U Hla Win, summoned village elders and community leaders in Maungdaw Township, Arakan State to his office to encourage them to vote 'yes' and to have their followers do the same in exchange for future benefits.<sup>257</sup>

On 11 April 2008, SPDC officials warned residents of Maungdaw Township in Arakan State during a mandatory meeting, that if they cast 'no' votes, the country would be overtaken by hardships. All of the attendees were forced to promise to vote 'yes' and encourage others to do the same.<sup>258</sup>

On 21 April 2008, despite the referendum law passed to prevent any opposition groups from rallying against the drafted constitution, USDA members, Village Peace and Development Council (VPDC) members, Township Peace and Development Council (TPDC) members, and

members of the women's affairs council along with the Township Referendum Commissioner, held a rally to campaign for a 'yes' vote in Kyauk Pyu Township of Arakan State.<sup>259</sup>

On 22 April 2008, it was reported that Light Infantry Battalions (LIB's) #373, #374, #375, and #376 based in Kyauk Taw Township promised farmers in rural Arakan State lower taxes on rice and infrastructure such as road building, in exchange for a 'yes' vote. They also collected the names of everyone over 18 to ensure that they would report and vote 'yes'.<sup>260</sup>

On 30 April 2008, authorities in Maungdaw Township invited Muslim religious leaders, including over 1,000 *maulanas* (religious teachers) to a meeting where they were told that since they were the only religious leaders permitted to vote in the election, they therefore must vote wisely and vote 'yes'.<sup>261</sup>

In rural areas of Arakan State, SPDC soldiers walked the streets to intimidate people into voting 'yes'.<sup>262</sup> Conversely, on the border with Bangladesh, soldiers stopped their usual practice of collecting taxes and harassing traders and asked people in a 'friendly' way to vote 'yes' as it was important for the future of Burma.<sup>263</sup>

On 7 May 2008 in Gyikan Pyin (Kawarbill) village of Maungdaw Township, NaSaKa border security forces distributed 500-600,000 kyat to four village *madrasas* (muslim religious schools): Meyazan Pur Madrasa of Loung Don village tract; Amedia Madrasa of Aung Seik Pyan village tract; Ngakura Madrasa and Ngar Sar Kyeu (Naitha Pru) village tract. Additionally, each student received 1,000 kyat and each teacher received 10,000 kyat.<sup>264</sup>

On 10 May 2008, a voter in Aung Seik Pyan village in Maungdaw Township faced humiliation by members of the VPDC before being thrown out of the polling place for casting a 'no' vote. Another voter from Lake Ya village in Maungdaw Township was detained for two hours by police for casting a 'no' vote.<sup>265</sup>

On 10 May 2008, voters in Maungdaw Township reported having to show their identity card to military personnel before voting and then reveal how they voted upon leaving the polling station. Residents also reported that the authorities forced heads of households to vote on behalf of their entire family and closed shopkeepers' stores, forcing them to vote. In each instance authorities demanded that the voter mark 'yes'.<sup>266</sup>

On 10 May 2008, a Rohingya male, Mohammed Jamal, of Kyauk Chaung village in Maungdaw Township, was arrested for asking a NaSaKa officer if the referendum was a real referendum, and "*if so, why do you force people to cast the 'Yes' vote?*" At the same time, the authorities were looking for six other youth from the same village to arrest them for voting 'no'.<sup>267</sup>

On 11 May 2008, villagers in Shwe Hlain Vay and Palawa of Pauk Taw Township of Arakan State had to re-vote 'yes' after a group of Arakan Liberation Party members confiscated two ballot boxes and discovered that some individuals had originally voted 'no'.<sup>268</sup>

## Chin State

On 24 March 2008, Chairman of the TPDC in Paletwa Township called over 100 village heads to attend a mandatory training programme for their role as monitors during the referendum. The attendees were forced to sign a statement of their approval of the draft constitution, they were instructed to disallow any 'no' vote campaigning, and they were told that they must persuade the citizens in their village to vote 'yes' by whatever means.<sup>269</sup>

On 19 April 2008, reports from Matupi Township in Chin State stated that Chairman of the TPDC, U Than Oo required that all civil servants, such as clerks and teachers, attend a

training session on the referendum. One Matupi teacher reported that, *“the trainees were told that they must cast the ‘yes vote’ in the referendum. They were threatened with dismissal from their jobs if they did not comply.”*<sup>270</sup> Another teacher added that local authorities were warning residents that they would be arrested if they cast a ‘no’ vote.

At the end of April 2008, the SPDC conducted a mock poll for the referendum to test the response in Chin State. After ‘no’ votes dominated the poll, they switched tactics from telling people that if they voted against the draft constitution, they would see 15 more years of regime rule, to bribing residents of Hakha Township, who were facing a food shortage, with 150 bags of rice in order to secure a ‘yes’ vote.<sup>271</sup>

### **Irrawaddy Division**

On 10 May 2008, it was reported that in Kyone Pyaw Township in Irrawaddy Division, polling station authorities handed residents pre-ticked ‘yes’ ballots and told them to place the ballots in whichever ballot box they would like.<sup>272</sup>

On 26 May 2008, reports regarding the delayed referendum from Bogale Township stated that ballot papers had already been marked ‘yes’ when voters received them. A resident of Bogale stated the following; *“Authorities collected ‘Yes’ votes from locals in advance the day before the referendum. Some voting tickets were already checked in the ‘Yes’ field.”*<sup>273</sup>

### **Kachin State**

In early March 2008, Brigadier General Thein Zaw, minister of Communication, Post, and Telegraph, visited several Christian churches in Myitkyina Township, Kachin State. The minister gave 5,000 kyat (about US\$4.20) to each attendee at the meetings and donated 600,000 (about US\$492) kyat to the church. He also brought rice, cooking oil, and salt, as well as promises of future deliveries of cement for church improvements and landline and mobile telephones by April.<sup>274</sup> Other villages that hosted Thein Zaw required residents to attend the meeting under threat of being banished from the village. They also had to decorate the village and prepare traditional Kachin dances to perform for the Brigadier General.<sup>275</sup>

On 30 April 2008, police in Bhamo Township of Kachin State were forced to cast a ‘yes’ vote as well as submit their names, personal numbers, and ranks with their vote. The township Head of the Education Department, U Ohn Ngwe, was similarly pressured to persuade his staff to vote ‘yes’.<sup>276</sup>

### **Karen State**

On 30 April 2008, Battalion Commander Ko Ko Oo from LIB #590 gathered villagers from Mee Daing Taw, Myaung Oo, Pau Pi Der, and Aung Chan Tha to tell them that if they rejected the draft constitution they would be fined 100,000 kyat and potentially imprisoned for three years. The commander of LIB #599 conferred the same message to villagers from Ko Ni (Nyaung Bo) and Ta Kot Bwa.<sup>277</sup>

On 10 May 2008, the commander of LIB #101 gathered all the residents of P’Deh Gone and Ba Ga Ta villages in Karen State and forced the entire population over 18 to vote ‘yes’.<sup>278</sup>

It was reported on 12 May 2008 in Nyaunglebin Township, that residents who arrived at the polls found that their ballots had already been ticked 'yes' for them. One Nyaunglebin resident said,

*"We were disappointed to find out that the ballot station officials had already ticked 'Yes' on our ballot slips and we demanded an explanation from them,.....They said it was only an error."*<sup>279</sup>

### **Karenni State**

On 16 May 2008, it was reported that LIB #248 investigated 'no' votes in Kaylyar and Htaybyarnyi villages of Karenni State. The local SPDC authorities threatened the village headmen from Phruso, Shadaw, and Loikaw Townships where citizens had voted 'no'.<sup>280</sup>

### **Mon State**

On 22 April 2008, students at nursing schools in Moulmein Township in Mon State were told that if they did not attend the mandatory pre-referendum ceremony, they would lose their right to attend the next level in school, their nursing permit would be cancelled, and in the worst case scenario, their right to further education would be revoked completely.<sup>281</sup>

### **Magwe Division**

On 2 May 2008, it was reported that in Magwe Township, Magwe Division, an oil-mill owner who met with junta authorities prior to the referendum related that the district authorities had warned traders that their business licenses would be revoked if they voted 'no'.<sup>282</sup>

On 4 May 2008, in Yenangyaung Township, it was reported that the Ballot Commission went throughout the township to collect advance votes from elderly persons' houses during an electrical outage. The residents were forced to mark a 'yes' vote in front of their village headman in the dark.<sup>283</sup>

On 6 May 2008 in Salin Township of Magwe Division, three NLD members, Ko Aung Soe, Ko Win Shwe, and Ko Thein Lwin, were arrested for distributing pamphlets containing information on how to vote in the referendum. The pamphlets did not tell people to vote yes or no, but rather just encouraged voter participation.<sup>284</sup>

### **Mandalay Division**

On 22 April 2008, Minister Aung Thaung made a public speech in Kyauk Padaung Township and required that all residents of the surrounding areas attend or pay a 3,000 kyat fine. His speech warned residents to support the draft constitution or *"wait for 18 years more."*<sup>285</sup> He also promised the villagers of Latkaphar, near Mount Popa, that if they all cast 'yes' votes, the SPDC would build a school and provide electricity. He also warned, however, that if they voted 'no' the regime would cut off their water supply.<sup>286</sup>

On 10 May 2008, the actual day of voting, residents of Mandalay Township in Mandalay Division said that polling station officers turned them away, saying that their votes had previously been collected. Voters at polling station No. 390-391 at primary school No 34 in Southwest Mandalay Township were only asked to provide a signature by authorities since their votes had already been counted.<sup>287</sup>

On 10 May 2008, in Myingyan Township, Mandalay Division, members of the junta-supported women's groups forcefully took ballots from voters and marked them in support of the draft constitution.<sup>288</sup>

On 12 May 2008, it was reported that loudspeakers in Myingyan Township, Mandalay Division announced to residents that those who voted 'no' in the referendum would be sent to Naypyidaw and imprisoned.<sup>289</sup>

On 15 May 2008, *Mizzima* published the confession of a SPDC official in Mandalay. The anonymous official who was the secretary of an undisclosed ward in Mandalay that controlled seven polling booths, worked through the night at the request of the SPDC to tick 'yes' on thousands of ballots. Previously, the SPDC had recorded the names of each eligible voter. Of the approximately 6,000 voters, the anonymous official said that they managed to tick 'yes' for about 5,405 of them. The following day, when voters arrived, the authorities told them that their ballot had already been cast.<sup>290</sup>

### **Pegu Division**

On 10 May 2008, residents of Zigon Township in Pegu, including a 50-year-old businessman, reported that members of the Women's Affairs Council were entering the private voting booths and forcing voters to mark a tick for 'yes'.<sup>291</sup>

On 10 May 2008, reports from Nga Phyu Law, Magyi Kwin, Taung Whay Shae, Koemeenin, Yaydwingone, Kywechaninn villages in Tharawaddy Township stated that farmers were told not to go to the polls as their votes had already been cast for them by authorities.<sup>292</sup>

On 12 May 2008, it was reported that SPDC authorities collected 'yes' ballots from 700 workers of the Tharawaddy Township dish factory in advance of the referendum.<sup>293</sup>

### **Rangoon Division**

As early as February 2008, the Ministry of Immigration and Population along with the USDA began granting temporary citizen cards to residents of Hlaingthaya, North Dagon, and Kemmendine Townships in Rangoon without the customary fee to garner support for the upcoming referendum. At the same time, USDA members encouraged the residents to become USDA members, promising favours such as new roads and clinics.<sup>294</sup>

On 30 April 2008, it was reported that No.2 high school in Insein Township threatened students who were eligible to vote that only those students who voted 'yes' would be allowed to pass the tenth grade.<sup>295</sup>

Also on 30 April 2008, almost 700 employees of the Ministry of Electric Power in Rangoon were forced to vote under the eyes of authorities as well as their supervisors. Those who refused to vote 'yes' had to hand in their resignation.<sup>296</sup>

On 2 May 2008, the Human Rights Defenders & Promoters reported that educators in Twante Township were being threatened with three years imprisonment and a fine for voting 'no'.<sup>297</sup>

On 3 May 2008, it was reported that authorities threatened to cut Bahan Township residents' electricity and water supplies if the referendum did not result in 80 percent 'yes' votes.<sup>298</sup>



On 7 May 2008, *Mizzima* reported that a teacher in Rangoon was told that if she did not vote 'yes' she would lose her job or be sent to a remote school. The same report detailed how ten people had been arrested and detained by authorities for speaking out against the referendum in a teashop.<sup>299</sup>

On 8 May 2008, residents of Hlegu Township filed a collective complaint with the Referendum Commission for forced 'yes' votes that were collected on 5 May in advance of the referendum date by VPDC members U Thein Zaw and Daw Kay Thi Lwin. The complaint also mentioned the forced 'yes' votes on 6 May 2008 by VPDC Chairman U Kyi Moe, commission members U San Htay, U Then Myint, and U Aye Kyi and police constable Maung Kyaw of Baungyi West village tract. The Referendum Commission rejected the complaint and told the residents to send the complaint by mail to Rangoon.<sup>300</sup>

In May 2008, NLD member Aung Aung of Dagon Township was arrested for taking photographs at the polling station. On 28 August 2008, Dagon Township Court sentenced him to three years in jail.<sup>301</sup>



SPDC leader Senior General Than Shwe casts his vote on the constitutional referendum in Mandalay on 10 May 2008. [Photo: AFP]

On 14 May 2008, cyclone survivors were ordered to vacate their temporary home in a community hall in San-Yeik-Nyine Quarter of South Dagon Township by 20 May 2008 so that the buildings could be used as polling stations on 24 May 2008 for the referendum. USDA members also collected advance votes from residents in South Dagon Township.<sup>302</sup>

On 21 May 2008, it was reported that in Kemmendine Township, all teachers had been instructed to vote 'yes' by the principal. Those who did not abide and voted 'no' in the advance vote were told to change their vote. Locals in Thingangyun Township were also given rice and cooking oil if they agreed to vote 'yes'.<sup>303</sup>

On 22 May 2008, in Rangoon Division, preceding the second wave of voting in the cyclone affected areas, officials from the ward-level Peace and Development Council distributed pre-marked 'yes' ballots and told people to appear with their identity cards ready to sign on the days of voting.<sup>304</sup>

On 22 May 2008, authorities in Hlaingthaya, Rangoon Division turned 60 cyclone victims around at the Ough-Toe Gate checkpoint and told them to return to Irrawaddy Division to vote for the referendum. The villagers were travelling to Rangoon to seek emergency supplies from the NGOs which were stationed there.<sup>305</sup>

On 22 May 2008, VPDC headman, U Thet Aung told about 90 cyclone victims that they had to leave their temporary shelter in the Buddhist community hall, since it would be used as a polling place. The victims had no where else to go, so they were forced to move into the much smaller kitchen until the end of the referendum.<sup>306</sup>

On 26 May 2008, reports regarding the recent referendum from South Dagon Township stated that polling stations broadcast loud 'vote yes' propaganda on the day of the referendum. Additionally, in the refugee camps, such as Kunchangone, cyclone refugees were forced to vote 'yes' or told they would not receive food rations. In Thingangyun Township, authorities told voters that they would be punished with three years imprisonment and 100,000 kyat fine if they voted 'yes'.<sup>307</sup>

### **Sagaing Division**

On 1 May 2008, citizens in Shwebo Township reported that ID card numbers and detailed addresses were necessary for advanced voting. Since so much information had to be given, voters feared repercussions if they voted 'no'.<sup>308</sup> Public officials including teachers, military, and civil servants were given pre-marked 'yes' ballots and told to vote in advance.<sup>309</sup>

On 10 May 2008, voters in Monywa Township of Sagaing Division reported that officials allowed and even forced one person to vote for their entire family, disregarding the one person, one vote dictum.<sup>310</sup>

On 10 May 2008, in Kalewa Township of Sagaing Division, officials took photographs of registered voters as they cast their vote.<sup>311</sup>

On 11 May 2008, it was reported that in Monywa Township of Sagaing Division, voters saw the authorities going door-to-door in the weeks leading up to the referendum to collect ballots from the elderly and civil servants. Critics suspect that these would all have become yes votes since they were cast in front of military officials.<sup>312</sup>

### **Shan State**

On 20 April 2008, in Maing Inn village, Kengtung Township in eastern Shan State, five villagers filled out the ballots for 1350 residents of their village, marking 'yes' under orders from the Chairman of the VPDC.<sup>313</sup>

On 8 May 2008, the Chairman of the VPDC in Ho Hae village in Maing Khon village group, Kyaing Township of Shan State voted 'yes' on behalf of villagers who did not know how to vote. He also forced a further 250 villagers to cast 'yes' votes.<sup>314</sup>

On 16 May 2008, several voting irregularities were reported. In Kengtung Township, only two ballots were given to each family and the remaining ballots were marked 'yes' by the officials and then cast. In Lashio Township, voters were given pre-marked ballots or told to go home since their vote had already been cast; and in Rubyland Mogok, when there were 900 'no' votes to 700 'yes' votes, the authorities ticked 'yes' for all those people that failed to appear and counted the marks other than a tick for 'yes' or a cross for 'no' as votes in favour of the draft constitution.<sup>315</sup>

During the referendum, an Ethnic Palaung Youth Working Group gathered evidence from 57 polling stations in nine Shan State townships for their published report, *The Ballots which Oppose the People's Will*. They recorded several instances of voting irregularities and rigging. The report cited instances of coercion such as when U Kyaw Ying of the Palaung ceasefire group threatened voters in Nyeinchanyay Kone village, Kyaukme Township that they would be evicted from their homes if they voted 'no', or when Captain Than Htut of the ceasefire group threatened to ban rice imports from lower Burma if the 'no' votes were high in his area.<sup>316</sup>

### Tenasserim Division

On 23 April 2008, six residents of Chaung Zone village, Tavoy Township who were set to travel on the date of the referendum were told that they had to vote before they left. They were given ballots and envelopes that they did not understand without time to read them and told to place ticks where the former village headman, U Than Shein, indicated.<sup>317</sup>

### The Aftermath

Despite the regime's proclaimed success in the referendum, authorities still sought out for retribution those who voted 'no'. On 15 May 2008, Burmese border security forces (NaSaKa) in Arakan State arrested Maungdaw Township resident, Noor Mohamed (25), for voting 'no'. NaSaKa officers asked for a 1.2 million kyat bribe, which Mohamed paid, after which time he was released. He was, however, rearrested on 1 June 2008 and told he must pay an additional 200,000 kyat to be released.<sup>318</sup> Similarly, on 16 May 2008, Tun Their Maung (28) and Kyaw Aung (27) of Ramree Township in Arakan State were arrested after casting 'no' ballots on 10 May 2008 and writing notes on the ballot papers of their family members and elders telling them to also cast 'no' votes.<sup>319</sup>

Those in charge of generating support for the draft constitution were also punished when they failed to do so. Following the referendum the regime removed those responsible for overseeing voting from their official posts in areas such as Katha Township of Sagaing Division, an area that overwhelmingly voted 'no' during the referendum.<sup>320</sup>

The SPDC also punished those villages where the rate of voting against the constitution was high. On 4 June 2008, after the referendum, Captain Thang Cing Thang of LIB #20 stationed in Paletwa Township of southern Chin State, called for all villages in the area to engage in forced labour. The labourers were used for building and fencing military camps on the Indo-Burma border. Many villages in the area voted 'no' during the referendum and villagers believe the forced labour order was punishment for their votes. If the village refused to send workers, they were forced to pay a 30,000 kyat fine.<sup>321</sup> Also in Chin State, on 7 June 2008, commanders of LIB #140 stationed in Matupi Township questioned village heads from Lawnthaung, Pala, Ruava, and Thawnlang villages regarding who had been responsible for promoting the draft constitution in their areas. After the village heads responded that villagers acted against their recommendations to vote 'yes', commander of LIB #140, Major Kyaw Lynn Oo, forced villagers in the surrounding areas of Lailenji village, Matupi Township, Chin State to carry military rations as punishment for their votes.<sup>322</sup>

As late as 19 August 2008, it was reported that in Yenangyaung Township, Magwe Division, authorities cut off the electricity supply to areas that had overwhelmingly voted against the constitution while extending the electricity supply to 24-hours a day for pro-junta and USDA occupied areas.<sup>323</sup>

## 13.12 Vote No Campaign

Despite the severe restrictions on opposition to the referendum, a strong Vote 'No' campaign developed across the country to try to disseminate information regarding the consequences and realities of the draft constitution. The activists were up against the regime which had started its own Vote 'Yes' campaign on 11 April 2008.<sup>324</sup> The activists were also going against the wishes of opposition groups such as the United Nationalities League for Democracy (UNLD), who felt the vote should be boycotted altogether.<sup>325</sup> The activists faced severe penalties for their work and the regime did not hesitate to arrest and imprison dissidents. In April alone, over 70 protesters were arrested.<sup>326</sup>

Starting in various places across Burma as early as March, students began distributing information. Members of the All Kachin Student Union (AKSU), on 25 March 2008, passed out over 600 posters in areas of Myitkyina and Waingmaw Townships in Kachin State that urged people to vote down the draft constitution.<sup>327</sup>



An example of one of the vote 'No' campaign posters that were distributed throughout Burma in the run up to the constitutional referendum that was held on 10 May 2008. [Photo: © Naringara News]

It was not only students and activists however, who participated in these community campaigns. In Arakan State, on 31 March 2008, in Taungup Township, anonymous citizens distributed protest flyers urging the public to vote against the draft constitution.<sup>328</sup> The SPDC police also found anonymous Vote 'No' campaign materials distributed across Ramree and Kyauk Pyu Towns, as well as in Sittwe, the capital of Arakan State on 24, 25, and 26 April.<sup>329</sup> Similarly, in Shan State, during the water festival, Vote 'No' posters were displayed across Taunggyi, Panglong, and Keng Tung areas. The posters were put up anonymously at night time and promptly taken down by SPDC soldiers.<sup>330</sup> During the last week of April 2008, Vote 'No' activists enlisted the help of dogs running around Sittwe, the capital of Arakan State, by tying small posters around their necks marked with an 'X' and the word "against" written in Arakanese.<sup>331</sup>

Mon State was the stage for an anti-referendum graffiti campaign. The campaign began on 14 April 2008, during the water festival and spread throughout the state. Activists used red and white paint to write their message across pro-junta billboards and in other public places – simply scrawling ‘No’ on them. Since the authorities could not find the responsible parties, they forced village officials to clean the graffiti.<sup>332</sup>

Not all of the protests, though, went unpunished by the regime. In March 2008 in Taungup Township of western Arakan State, four NLD members were arrested for distributing leaflets urging voters to oppose the draft constitution. They were finally sentenced on 27 June 2008 for “*trespassing with intent to commit offence.*”<sup>333</sup> In Mon State, on 16 April 2008, authorities assaulted almost 20 youths who were riding motorbikes from Mudon to Moulmein Township wearing ‘No’ t-shirts in protest.<sup>334</sup> Also during the water festival from 13 to 17 April, over 50 people were arrested by SPDC soldiers in Arakan State for wearing ‘No’ t-shirts.<sup>335</sup> Finally, on 6 May 2008, in Paletwa Township of Chin State, four people: U Kho Take; U Hla Tun Aung; U Aung Be; and U Hwe Lan were arrested for possessing anti-referendum posters and pamphlets.<sup>336</sup>

Opposing the referendum even carried the most severe punishment of death. In a family of eight people, seven were killed by township administrator Nyar Reh and USDA secretary Noe Reh, in Pekhon Township of Shan State, after authorities found a ‘no’ vote campaign flyer in front of their house.<sup>337</sup>

On 11 May 2008, SPDC officials arrested Sai Ngeun Hsoi Hsai, former headman of Wanpong-Wanoi, Kunlong village, Namkham Township, northern Shan State for having Vote ‘No’ leaflets in his home. The leaflets had been distributed prior to the referendum, but could not be traced.<sup>338</sup>



## Endnotes

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- <sup>12</sup> Source: *Ibid.*
- <sup>13</sup> Source: "The Motion Picture Law (1996)." Accessed online in the Burma Lawyers Council Archive at: [http://www.blc-burma.org/html/myanmar%20law/lr\\_e\\_ml96\\_09.html](http://www.blc-burma.org/html/myanmar%20law/lr_e_ml96_09.html) on 8 July 2009.
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- <sup>31</sup> Source: "Saffron Revolution a Year Later: It's Not Over," Altsean, 22 September 2008.
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The Human Rights Documentation Unit (HRDU) is the research and documentation division of Burma's government in exile; the National Coalition Government of the Union of Burma (NCGUB). The HRDU was formed in 1994 to document the human rights crisis confronting the many and varied peoples of Burma, and to defend and promote those internationally recognised human rights that are inherent and inalienable for all persons irrespective of race, colour, creed, ethnicity or religion. To this end, the HRDU published the first *Burma Human Rights Yearbook* in 1995 to comprehensively document the systematic and egregious nature of the human rights abuses being perpetrated in Burma throughout the previous year. This report, the *Burma Human Rights Yearbook 2008*, represents the 15<sup>th</sup> annual edition of the *Burma Human Rights Yearbook*, which, combined with all previous editions collectively comprise well over 10,000 pages of documentation and provide an unbroken historical record spanning the past one and a half decades.

All editions of the *Burma Human Rights Yearbook* and all other reports published by the HRDU can be viewed online on the NCGUB website at <http://www.ncgub.net> as well as on the Online Burma Library at <http://www.burmalibrary.org>. Any questions, comments or requests for further information can be forwarded to the HRDU via email at [enquiries.hrdu@gmail.com](mailto:enquiries.hrdu@gmail.com).

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