



## Part (A)

### Constitutional and 2010 Elections

#### (A.1)

#### THE IMPOSSIBILITY OF FREE FAIR ELECTIONS UNDER EXISTING DRACONIAN LAWS

Free elections are characterized by the right of access to political information; freedom to organize for political purposes and the right to campaign; regular holding of elections that are decided by the freely cast vote of the majority; and equal voting power for all citizens.<sup>1</sup> The SPDC has restricted each of these tenets with the use of draconian laws and, with the new constitution, will be able to permanently deny free elections under various pretenses.

First, right of access to political information is currently violated due to the fact that the regime controls all media, and restricts other sources of information. The ICCPR outlines the right to information in Article 19. The Human Rights Committee specifically states that protecting the right to information includes the “freedom to seek and receive [information] regardless of frontiers and in whatever medium”.<sup>2</sup> There is no sanctioned outlet for information except for what the SPDC warrants, and those who attempt to seek or raise awareness of political options contrary to the SPDC are imprisoned.<sup>3</sup>

#### A. 1962 PRINTERS AND PUBLISHERS REGISTRATION LAW

For example, the 1962 Printers and Publishers Registration Law effectively places a muzzle on free expression. Under this Law, all printed or written material



must gain prior approval from the Central Registration Board.<sup>4</sup> Additionally, all printers must register with the government,<sup>5</sup> but registration may be revoked if the printer is found to “[harm] the ideology and views” of the government.<sup>6</sup> This law is commonly used to silence dissidents through imprisonment for publishing materials. It

is also convenient for framing opposition leaders by simply planting a scrap of unauthorized paper in their possession, and charging them under this law.<sup>7</sup> This



law has been in constant use since its inception and was only amended in 1989 to increase the harshness of its penalties, which includes up to seven years imprisonment and a fine of 30,000 kyat.<sup>8</sup> During an election, all campaign materials from all political parties would need to be approved by the regime before being distributed. This process would, at best, unnecessarily slow down campaigning and, at worst, implicate broad political networks as targets for the regime. Using only government-censored material undeniably restricts citizens' access to information and political parties' right to campaign.

## **B. 1975 STATE PROTECTION LAW**

The 1975 State Protection Law allows the military to preemptively arrest and charge people for crimes that may “endanger the sovereignty and security of the state or public peace and tranquility”—even if they have not yet been committed.<sup>9</sup> The language is sufficiently vague to allow interpretation befitting the desires of the SPDC. The prescribed consequences, however, are unfortunately specific and dire. The law carries articles that allow the Cabinet to extend the duration of a person's detention for up to three years.<sup>10</sup> However, since there is no stipulated limit on how many times a prisoner's detention may be extended, this law may be used to detain a person indefinitely.

The State Protection Law provides for arbitrary detention, or the suspension of any other “fundamental right of any person suspected” of planning to violate this act.<sup>11</sup> In the International Covenant on Civil and Political Rights (ICCPR)<sup>12</sup>—which is considered customary international law—as well as the domestic constitutions of democratic nations around the world, suspects are presumed innocent until proven guilty. Moreover, detainees are generally guaranteed speedy access to justice, and allowed to defend themselves in a competent court. Article 9(e), however, states that a person “against whom action is taken” will only be handed over to judicial authorities if “sufficient facts for filing a lawsuit have been gathered”.<sup>13</sup> The wording implies that people may still be held in detention *without trial* if ample evidence cannot be mounted. Again, the lack of specificity regarding the term “sufficient” provides likely scenarios of government abuse.

The 1975 Law not only omits access to justice, but goes as far to specifically bar detainees from appealing their detention to authorities.<sup>14</sup> Overall, the State Protection Law is an illegal tool used capriciously to strip innocent citizens of their fundamental right to liberty. Since the SPDC has historically used a broad interpretation of this law to remove opposition figures from public life, it can be inferred that political activists will either be discouraged from openly campaigning or punished for doing so. Labeled as “subversive”, political parties are routed and, therefore, denied the right to organize freely.



C. 2004 ELECTRONIC TRANSACTION LAW

The 2004 Electronic Transaction Law was promulgated by the SPDC to dictate all use of electronic technology. The purported aims of this law are to support modernization; increase opportunities for development in various social sectors; and enable communication with international organizations, regional organizations, foreign countries, government departments, etc.<sup>15</sup>



Min Ko Naing and 88 students whom were provided penalty in accordance with the Electronic Transaction Law

However, as with the aforementioned laws, it is primarily applied as a means to charge and sentence political opponents of the military. Section 33 of this law outlines “Offences and Penalties” for the misuse of electronic transaction technology including:

- (a) doing any act detrimental to the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture;
- (b) receiving or sending and distributing any information relating to secrets of the security of the State or prevalence of law and order or community peace and tranquility or national solidarity or national economy or national culture.<sup>16</sup>

In this current era, the Internet and mobile phones are powerful tools used to disseminate information widely and cheaply. In democracies, electronic technology is used to the mutual benefit of politicians and the electorate. Politicians can convey their agendas to an extensive audience in a small amount of time; public opinion regarding various political platforms can be quickly gauged and adjusted in a way that truly responds to the needs of the people. For developing countries where infrastructure makes traveling difficult, the Internet may also be utilized to inform voters of the election issues and voting process. Unfortunately, the Electronic Transaction Law renders these progressive tools obsolete through the imposition of severe punishments for normal electronic use.



Nay Phone Lett whom was provided penalty in accordance with the 2004 Electronic Transaction Law

A violation of this section may result in seven to fifteen years of imprisonment.<sup>17</sup> This punishment was recently used to sentence pro-democracy leader Min Ko Naing, Chairperson of the

All Burma Federation of Student Unions and 88 Generation Students group, and nearly forty other dissidents to sixty-five years in prison.<sup>18</sup> The members of the 88 Generation Students group were charged with violating four counts of



the Electronic Transaction Law, with each violation carrying the maximum fifteen-year sentence. This is a highly disproportionate punishment for simply using email communication<sup>19</sup> and, similar to the State Protection Law, presents a serious risk for political opponents of the SPDC.

#### D. SECTION 505(B) OF THE PENAL CODE

Under Section 505(b) of the archaic Burmese Penal Code, people can be charged for any statement, rumor, or report made “with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility”.<sup>20</sup> The junta has used this law to repress and punish those taking part in free expression, peaceful demonstrations, and forming organizations.<sup>21</sup> Most notably, Section 505(b) was used in-part to charge U Gambira, leader of the All Burma Monks’ Alliance and key activist in the 2007 Saffron Revolution, with a total of 68 years in prison.<sup>22</sup> The Saffron Revolution was an entirely peaceful protest of religious figures that were brutally crushed by the military junta.<sup>23</sup> With the harsh consequences of this law widely known, political parties are denied their right to organize and campaign. This, in turn, additionally violates citizens’ rights to access the political information necessary to make an informed choice during polling.

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#### (Endnotes)

<sup>1</sup> Eric Bjornland, *Beyond Free and Fair Election: Monitoring Elections and Building Democracy* (Wilson Center Press and Johns Hopkins University Press, Baltimore 2004).

<sup>2</sup> UNCHR ‘General Comment 10’ in ‘Note by the Secretariat, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies’ (2008) UN Doc HRI/GEN/1/Rev.9 (Vol. I).

<sup>3</sup> Assistance Association for Political Prisoners (3 October 2009) <<http://www.aappb.org/>> accessed on 2 November 2009.

<sup>4</sup> 1962 Printers and Publishers Registration Law (1962), Part 5.

<sup>5</sup> 1962 Printers and Publishers Registration Law (1962), Part 4.

<sup>6</sup> 1962 Printers and Publishers Registration Law (1962), Part 4(10).

<sup>7</sup> Interview with U Nyi Nyi Hlaing, Defense Lawyer, Mae Sot (12 November 2009).

<sup>8</sup> Law No 16/89—the Law Amending the 1962 Printers and Publishers Registration Law (1989).

<sup>9</sup> State Protection Law (1975), Article 7.

<sup>10</sup> State Protection Law (1975), Article 14.

<sup>11</sup> *Id.*

<sup>12</sup> International Covenant on Civil and Political Rights, Article 14(2).

<sup>13</sup> State Protection Law (1975), Article 9(e).

<sup>14</sup> Notification No 11/91—the Law Amending the State Protection Law (1972).

<sup>15</sup> The Electronic Transactions Law (2004), Section 3.

<sup>16</sup> The Electronic Transactions Law (2004), Section 33.

<sup>17</sup> *Id.*

<sup>18</sup> Phanida, ‘Min Ko Naing & “88 Generation Students” Given 65 Years’ *Mizzima* (15 November 2008) <<http://www.mizzima.com/news/inside-burma/1307-min-ko-naing-a-88-generation-students-given-65-years.html>> accessed 10 November 2009.



<sup>19</sup> Interview with U Nyi Nyi Hlaing, Defense Lawyer, Mae Sot (12 November 2009).

<sup>20</sup> The Penal Code (1860), Section 505(b).

<sup>21</sup> Human Rights Watch '2100 by 2010: Free Burma's Political Prisoners' *Human Rights Watch* (16 August 2009) <<http://www.hrw.org/en/free-burmas-prisoners/background>> accessed on 2 November 2009.

<sup>22</sup> 'U Gambira to Serve Total of 68 Years in Prison' *Mizzima* (21 November 2008) <<http://www.mizzima.com/news/inside-burma/1343-u-gambira-to-serve-total-of-68-years-in-prison.html>> accessed on 10 November 2009.

<sup>23</sup> Andrew Buncombe, 'Burma: Inside the Saffron Revolution' *The Independent* (27 September 2007) <<http://www.independent.co.uk/news/world/asia/burma-inside-the-saffron-revolution-403645.html>> accessed on 12 November 2009.

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