



PEACE NEGOTIATIONS  
POST-CONFLICT CONSTITUTIONS  
WAR CRIMES PROSECUTION

# **BURMESE CONSTITUTIONAL REFERENDUM: NEITHER FREE NOR FAIR**

**Report**

**Prepared by**

**The Public International Law & Policy Group**

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**BURMESE CONSTITUTIONAL REFERENDUM: NEITHER FREE NOR FAIR****Executive Summary**

On 10 May 2008, just one week after Cyclone Nargis tore through Burma's Irrawady Delta killing an estimated 100,000 people and leaving at least one million others homeless, the State Peace and Development Council (SPDC), the Burmese military regime, held a referendum on its draft constitution.

In the weeks prior to the referendum, numerous pro-democracy groups, governments, and international organizations expressed concerns as to whether the SPDC would conduct the referendum in a free and fair manner, in accordance with international norms and standards for free and fair referendum processes. These groups reported that the junta was systematically threatening voters to sway them to vote in favor of the constitution, purposefully spreading misinformation to confuse voters, and suppressing all criticism of the referendum and draft constitution. Reports indicate that similar activities continued on the day of the referendum.

The purpose of this report is to analyze whether the SPDC conducted the May 10<sup>th</sup> constitutional referendum in Burma in accordance with basic international standards for free and fair referendum processes. The report reviews basic standards for constitutional referendums and, using media and other reports, analyzes the administration of the referendum under those standards.

The report finds that the referendum was not free or fair, as it was not conducted in accordance with international law or basic democratic standards.

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## **BURMESE CONSTITUTIONAL REFERENDUM: NEITHER FREE NOR FAIR**

### **Statement of Purpose**

The purpose of this report is to analyze whether the State Peace and Development Council conducted the 10 May 2008 constitutional referendum in Burma in accordance with basic international standards for referendums. The report finds that the referendum was not free or fair, as it was not conducted in accordance with international law or basic democratic standards.

### **Introduction**

On 10 May 2008, just one week after Cyclone Nargis tore through Burma's Irrawady Delta killing an estimated 100,000 people and leaving at least one million others homeless, the State Peace and Development Council (SPDC), the Burmese military regime, held a referendum on its draft constitution.

The constitutional referendum is step two in the SPDC's seven step "Roadmap to Democracy," which the military regime launched in 1994 as a military-controlled democratization process. The constitution put to vote in the referendum was drafted through a process called the National Convention—step one in the Roadmap.

International law, state practice, and fundamental principles of democracy provide clear basic standards for referendums. These basic standards have been adopted and endorsed by a range of states, regional organizations, and other international bodies through treaties, conventions, guidelines, and similar instruments, thereby demonstrating their general acceptance as standards for the conduct of referendums. These basic standards, discussed in turn below, are generally regarded as minimum requirements for referendums to be considered free and fair, and states often utilize additional means and protections to further provide for the rights of their citizens.

This report reviews these basic international standards for free and fair referendums and the SPDC's conduct before and during the referendum with respect to each of these standards, drawing from media reports and reports from organizations working on the ground in Burma. Analyzing this information, this report finds that the SPDC unequivocally failed to meet the basic international standards for conducting a free and fair referendum. Further, the SPDC

affirmatively and systematically violated the basic rights of Burmese citizens before and during the May 10<sup>th</sup> constitutional referendum.

At the end of this document, there is a brief overview of the National Convention, the constitution-drafting process that produced the SPDC's proposed constitution, and the constitution put to vote in the referendum.

## International Standards and the Constitutional Referendum in Burma

International organizations, including the United Nations, the Council of Europe, the African Union, and the Organization of American States, have developed legal standards that govern the holding of a free and fair referendum.<sup>1</sup> Guidelines developed by international organizations and instances of state practice have further defined standards for a free and fair referendum process.<sup>2</sup>

A free and fair referendum process provides for universal, equal, free, and secret suffrage, with monitoring of the voting process and mechanisms for appeal should any concerns arise over the process or the results. In the specific case of a

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<sup>1</sup> Universal Declaration for Human Rights, art. 2, 20-21 (Dec. 10, 1948), *available at* <http://www.un.org/Overview/rights.html> (last visited Apr. 12, 2008); International Covenant for Civil and Political Rights, art. 2-3, 19, 21-22, 25 (Mar. 23, 1976), *available at* [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) (last visited Apr. 12, 2008); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (Jan. 4, 1969), *available at* [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm) (last visited Apr. 12, 2008); International Convention on the Elimination of All Forms of Discrimination Against Women, art. 2, 7 (Sept. 3, 1981), *available at* <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm> (last visited Apr. 12, 2008); African Charter on Human and People's Rights, art. 13 (Organization of African Unity, Oct. 21, 1981), *available at* [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html) (last visited Apr. 12, 2008); American Convention on Human Rights (Organization of American States, July 18, 1978), art. 23, *available at* <http://www.oas.org/juridico/English/treaties/b-32.html> (last visited Apr. 12, 2008).

<sup>2</sup> Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), *available at* [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)008-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)008-e.pdf) (last visited Apr. 12, 2008); Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections* (Mar. 26, 1994), *available at* <http://www.ipu.org/cnl-e/154-free.htm> (last visited Apr. 12, 2008). *See also* OSCE/ODIHR Referendum Observation Mission, *Final Report: Republic of Montenegro Referendum on State-Status 21 May 2006* (Aug. 4, 2006), *available at* [http://www.osce.org/documents/odihr/2006/08/20077\\_en.pdf](http://www.osce.org/documents/odihr/2006/08/20077_en.pdf) (last visited Apr. 12, 2008) (analyzing the referendum in Montenegro and its adherence to international standards).

constitutional referendum, voters must have open access to the constitution, unbiased media coverage related to the constitution, and forums to discuss the constitution freely. Voters in a free and fair referendum are also provided adequate information so they may understand the question on the ballot and the implications of their vote.

In the run up to the referendum in Burma, the SPDC failed to meet a single basic international standard for a free and fair referendum process. Instead the SPDC affirmatively deprived Burmese citizens their basic democratic rights. According to reports from individuals and organizations working inside Burma, the SPDC used coercive and threatening measures to press individuals to vote in favor of adopting the constitution, denied voters access to information on the draft constitution to be put to vote, and criminalized criticism of the draft constitution.

### *The Right to Vote*

The right to universal suffrage is one of the most basic tenants of democracy. International law requires that every citizen of legal voting age must be provided the right to vote.<sup>3</sup> To implement this right, states must institute a registration process that enables all eligible voters to register easily and quickly.<sup>4</sup> States must further provide every voter the right to cast one vote, and only one vote, regardless of ethnicity, race, gender, language, culture, political beliefs, location, or any other distinguishing feature.<sup>5</sup>

### The Right to Vote in Burma

In the run up to the referendum, the SPDC affirmatively violated Burmese citizens' right to vote on a broad and systematic basis. According to pro-democracy groups in Burma, prior to the referendum, the SPDC conducted an informal census to count eligible voters for the upcoming vote. As part of this process, government agents systematically told those they suspected would cast "no" votes, including teachers, that they would vote at separate polling stations. This separation of voters raised suspicions that the SPDC would not count

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<sup>3</sup> International Covenant on Civil and Political Rights, Article 25; Universal Declaration of Human Rights, Article 21.

<sup>4</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) : . 12/07/96.CCPR/C/21/Rev.1/Add.7, General Comment No. 25., Paragraph 11

<sup>5</sup> International Covenant on Civil and Political Rights, Article 2.

opposition votes cast at these separate polling stations.<sup>6</sup> In addition, to facilitate voting, the government issued temporary identification cards to some eligible voters. Reports indicate that the SPDC issued temporary I.D. cards to visiting Chinese citizens in the hope that this would increase the number of votes in favor of the draft constitution.<sup>7</sup>

On the day of the referendum, in Hmaw Pi, Rangoon Division, a civil servant from Phoo Gyi Water Providing Project went to the polling station but his ballot had already been cast.<sup>8</sup> In Kyone Pyaw Township in Irrawaddy Division; Zee Gone, The Gone, and NattaLin Townships in Pegu Division; Sa Lin and Yay Nan Chaung Townships in Ma Gway Division; Mon Ywar in Sagaing Division; and in quarters no 1, 2 and 3, of Hmaw Pi, Rangoon Division election officials in charge of polling stations filled out ballots ahead of the referendum. Voters were given ballots pre-marked with “yes” votes and allowed to place them in the ballot box.<sup>9</sup>

The right to vote was further distorted in Burma with election authorities asking and sometimes forcing individuals to cast “representative votes,” in which the individual would vote for other members of their family, even when that family member was able and planning to vote for himself or herself.<sup>10</sup> This was reported in Hmay Pi and Hle Gu, Rangoon Division.<sup>11</sup>

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<sup>6</sup> Myo Gyi, Bamaw Police Ordered to Cast “Yes” Votes in Advance, BURMA NEWS INTERNATIONAL, May 9, 2008, *available at* [http://bnionline.net/index.php?option=com\\_content&task=view&id=4043&Itemid=7](http://bnionline.net/index.php?option=com_content&task=view&id=4043&Itemid=7) (last visited May 9, 2008).

<sup>7</sup> Hseng Khio Fah, Junta Issues I.D. Cards to Chinese Citizens, BURMA NEWS INTERNATIONAL, Apr. 26, 2008, *available at* [http://bnionline.net/index.php?option=com\\_content&task=view&id=3998&Itemid=48](http://bnionline.net/index.php?option=com_content&task=view&id=3998&Itemid=48) (last visited May 9, 2008).

<sup>8</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>9</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>10</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008; BBC News, Burmese Voice Anger on Poll Day, May 10, 2008, *available at* <http://news.bbc.co.uk/2/hi/asia-pacific/7393648.stm> (last visited May 11, 2008).

<sup>11</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

*Secret Ballot*

International law and the fundamental principles of democracy require not only that the state provide every citizen the right to vote, but that each citizen must be provided the right to vote in secrecy, without fear that his or her identity or vote will be revealed.<sup>12</sup> Implementation of this right requires a voting process where a person marks their ballot alone in a voting booth then places it in the ballot box without anyone else seeing his vote or being able to identify his ballot after the voting.<sup>13</sup> The secrecy of the votes of illiterate people, those voting at embassies, and members of the military are subject to special considerations and possible coercion.<sup>14</sup>

Secret Ballot in Burma

Ballots in the constitutional referendum in Burma were not secret. Some voters were required to provide identifying information on their ballots, and, in reported cases, identifying information was even printed on ballots beforehand, meaning that voters were provided with “their” ballot at the polling station.<sup>15</sup> Many voters reported that agents of the SPDC regularly observed voters as they voted, telling people to vote “yes” and even pointing to the “yes” box to ensure that voters filled out their ballots correctly.<sup>16</sup> Prior to the referendum, the SPDC

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<sup>12</sup> International Covenant on Civil and Political Rights, Article 25(b).

<sup>13</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 19, (2005) *available at* <http://www.osce.org/item/14004.html> (last visited Mar. 4, 2008).

<sup>14</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 19, (2005).

<sup>15</sup> Federation of Trade Unions – Burma, Subject: Burmese villagers forced to vote “Yes” in advance balloting, Violations Related to 10 May Referendum in Burma, May 1, 2008, Release No. 5/2008, *available at* <http://www.ftub.org/files/LatestNews/Violations%20Related%20to%2010%20May%20Referendum%20in%20Burma%20-%20Release%20No%205.pdf> (last visited May 9, 2008).

<sup>16</sup> Federation of Trade Unions – Burma, Subject: Burmese villagers forced to vote “Yes” in advance balloting, Violations Related to 10 May Referendum in Burma, May 1, 2008, Release No. 5/2008; BBC News, Burmese Voice Anger on Poll Day, May 10, 2008, *available at* <http://news.bbc.co.uk/2/hi/asia-pacific/7393648.stm> (last visited May 11, 2008); The Irrawaddy, Massive Cheating Reported from Referendum Polling Stations, May 10, 2008, *available at* [http://www.irrawaddy.org/article.php?art\\_id=11923](http://www.irrawaddy.org/article.php?art_id=11923) (last visited May 11, 2008).

distributed sample ballots. These ballots included spaces for the voter's name and address, which many voters understood to mean that the vote would not be secret.<sup>17</sup>

Voters reported that the day before the referendum in Hnaw Kone Kyaing Pite village, U Htee Doe, chairman of the Ward Peace and Development Council, the secretary and his nephew took the ballot box to each house with ballots on which they had already ticked a "yes" vote and forced people to cast "yes" votes.<sup>18</sup>

Election officials also used subtler means to trick people into revealing their vote. In Yaynan Chuang, Magway Division, polling officials told voters "if you want to vote 'yes', vote here, or if you want to vote 'no,' you have to go inside the polling booth."<sup>19</sup> This confused voters, as following those instructions would identify their vote, and many voters did not know what to do.<sup>20</sup>

### *Freedom of Opinion and Freedom from Coercion*

Key to democratic participation is the freedom of opinion. All citizens have right to form an opinion freely, without coercion or pressure, and to express their wishes freely.<sup>21</sup> All citizens have the further right to seek and share information and opinions without coercion or interference, through conversation, in writing, or through other media.<sup>22</sup> The freedom of opinion extends to the right of peaceful assembly.<sup>23</sup>

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<sup>17</sup> Federation of Trade Unions – Burma, Regime continues coercion, propaganda campaign to push 'Yes' vote in referendum, Violations Related to 10 May Referendum in Burma, May 2, 2008, Release No. 6/2008.

<sup>18</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>19</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>20</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>21</sup> Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19, U.N. Doc. A/6316 (1966), "1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

<sup>22</sup> Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19, U.N. Doc. A/6316 (1966).

<sup>23</sup> Right to Freedom of Opinion and Expression, Commission on Human Rights res. 1997/27, U.N. Doc. E/CN.4/1997/27 (1997); Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Art. 11, Rome.4XI.1950 (1950)

### Freedom of Opinion and Freedom from Coercion in Burma

Citizens and the media reported that SPDC and its agents used threats, coercion, misinformation, deception, and violence to sway or force voters to approve the draft constitution. In the weeks prior to the referendum, SPDC representatives visited numerous townships and conducted mandatory town meetings, telling voters that if they failed to adopt the draft constitution the SPDC would stay in control of the country for another 20 years. If they approved the draft constitution, however, the SPDC would only remain in control of the country for another five years.<sup>24</sup>

SPDC representatives frequently utilized threats to secure votes in favor of the constitution. In the Gawatalit Ward of Bahan Township, village headmen were told that they must secure an 80 percent “yes” vote in their villages or the SPDC would cut water and electricity to their ward.<sup>25</sup> In South Dagon Township, citizens were told that they would be arrested if they did not vote to approve the draft constitution.<sup>26</sup> Similar threats were used in Rangoon, where the police telephoned one family to tell them they would go to jail for three years if they did not vote “yes.”<sup>27</sup> In Insein Township, teachers from the No. 2 high school were told that their students must vote in favor of the draft constitution, and that only those students who voted in favor of the draft constitution would be allowed to pass the

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<sup>24</sup> Federation of Trade Unions – Burma, Violations Related to 10 May Referendum in Burma, May 1, 2008, Release No. 2/2008, *available at* <http://www.ftub.org/files/LatestNews/Violations%20Related%20to%2010%20May%20Referendum%20in%20Burma%20-%20Release%20No%202.pdf> (last visited May 9, 2008); Federation of Trade Unions – Burma, Subject: SPDC Continues Coercive Acts and Misleading Propaganda for its “Vote Yes” Campaign, Violations Related to 10 May Referendum in Burma, April 30, 2008, Release No. 4/2008, *available at* <http://www.ftub.org/files/LatestNews/Violations%20Related%20to%2010%20May%20Referendum%20in%20Burma%20-%20Release%20No%204.pdf> (last visited May 9, 2008); Federation of Trade Unions – Burma, Regime continues coercion, propaganda campaign to push ‘Yes’ vote in referendum, Violations Related to 10 May Referendum in Burma, May 2, 2008, Release No. 6/2008.

<sup>25</sup> Federation of Trade Unions – Burma, Regime continues coercion, propaganda campaign to push ‘Yes’ vote in referendum, Violations Related to 10 May Referendum in Burma, May 2, 2008, Release No. 6/2008.

<sup>26</sup> Federation of Trade Unions – Burma, Regime continues coercion, propaganda campaign to push ‘Yes’ vote in referendum, Violations Related to 10 May Referendum in Burma, May 2, 2008, Release No. 6/2008.

<sup>27</sup> Bangkok Post, Referendum first, disaster relief later, May 10, 2008, *available at* [http://www.bangkokpost.com/News/10May2008\\_news21.php](http://www.bangkokpost.com/News/10May2008_news21.php) (last visited May 10, 2008).

10<sup>th</sup> grade.<sup>28</sup> Civil servants were told that they must vote in favor of the constitution or they would lose their jobs.<sup>29</sup>

On election day there were reports that six people at the Thayet Cement Factory who voted “no” were arrested for their vote at the Yone Gyi quarter polling station.<sup>30</sup> Voters reported that in Tharrawaddy Township, Pegu Division, authorities seized identity cards from voters and only returned the cards to those who voted “yes.”<sup>31</sup>

### *The Right to Information*

In order to freely form an opinion prior to a referendum, voters must have access to adequate information. International standards require that voters be provided access to enough basic information that they may freely form an opinion on the issue to be subject to the referendum.<sup>32</sup> Internationally established codes on conducting a free and fair referendum require that authorities provide objective information by providing explanatory reports or balanced campaign material from both the draft constitution’s supporters and its opponents.<sup>33</sup> Authorities must make these materials available in advance of the referendum by publishing them in official newspapers, sending the materials directly to citizens, printing them in all

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<sup>28</sup> Federation of Trade Unions – Burma, Subject: SPDC Continues Coercive Acts and Misleading Propaganda for its “Vote Yes” Campaign, Violations Related to 10 May Referendum in Burma, April 30, 2008, Release No. 4/2008.

<sup>29</sup> Sai Sein Kyi, Despite Threats “No” Vote Leaflets Being Distributed, NEWS S.H.A.N., May 7, 2008, *available at* [http://bnionline.net/index.php?option=com\\_content&task=view&id=4087&Itemid=6](http://bnionline.net/index.php?option=com_content&task=view&id=4087&Itemid=6) (last visited May 8, 2008).

<sup>30</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>31</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>32</sup> African Charter on Human and People’s Rights, art. 0 (Organization of African Unity, Oct. 21, 1981), *available at* [http://www.achpr.org/english/\\_info/charter\\_en.html](http://www.achpr.org/english/_info/charter_en.html) (last visited May 9, 2008)

American Convention on Human Rights (Organization of American States, July 18, 1978), art. 23, *available at* <http://www.oas.org/juridico/English/treaties/b-32.html> (last visited Apr. 12, 2008).

<sup>33</sup> Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting, art. 3.1(d) (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), *available at* [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)008-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)008-e.pdf) (last visited May 9, 2008).

the state's official and minority languages, and imposing sanctions where authorities violate the duties of neutrality and free access of information.<sup>34</sup>

Access to information not only serves to educate voters about the specific provisions they are to vote on in the referendum, but access to information also allows voters to cast their ballots free from the influence of discrimination and prejudice. This freedom ensures that the referendum process will encourage tolerance and understanding through the voting process.<sup>35</sup>

### The Right to Information in Burma

Within Burma, many voters did not feel that they were provided adequate information to develop an informed opinion on the draft constitution. In a poll of 2,000 Burmese voters conducted just days prior to the referendum, 69 percent of those surveyed reported that they had “no awareness of the details of the proposed Constitution.”<sup>36</sup> Such results are not surprising, as the SPDC officially released the 194-page draft constitution only one month prior to the referendum,<sup>37</sup> and, as noted below, media analysis of the document was extremely limited. Further, the constitution was released primarily in print form, and the SPDC charged voters 1,000 kyat for the document.<sup>38</sup>

The information that was provided on the draft constitution was regularly biased in favor of the document. State-run television ran a media campaign that told the public “the approval of the draft constitution is the responsibility of every citizen, so go to the polling booth and approve the constitution”<sup>39</sup>

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<sup>34</sup> Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting, art. 3.1(d) (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), *available at* [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)008-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)008-e.pdf) (last visited May 9, 2008).

<sup>35</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 7 (Jan. 4, 1969), *available at* [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm) (last visited May 9, 2008).

<sup>36</sup> Burma News International: Release of nationwide voters survey on the Burmese referendum, BUMRANET NEWS, May 7, 2008, *available at* <http://www.burmanet.org/news/2008/05/07/burma-news-international-release-of-nationwide-voters-survey-on-the-burmese-referendum/> (last visited May 8, 2008).

<sup>37</sup> BBC News, New Burma constitution published, Apr. 9, 2008, *available at* <http://news.bbc.co.uk/2/hi/asia-pacific/7338815.stm> (last visited May 8, 2008).

<sup>38</sup> BBC News, New Burma constitution published, Apr. 9, 2008.

<sup>39</sup> Bangkok Post, Referendum first, disaster relief later, May 10, 2008, *available at* [http://www.bangkokpost.com/News/10May2008\\_news21.php](http://www.bangkokpost.com/News/10May2008_news21.php) (last visited May 10, 2008).

The National League for Democracy organized a vote no campaign to encourage people participating in the referendum to reject the draft constitution. The SPDC systematically disrupted opposition attempts to encourage people to vote no. In Aung Lan, Magway Division, at the polling station in the Zay Gone quarter, people who were wearing vote no t-shirts were forced to remove them.<sup>40</sup> In Sanchuang quarter, seven people were arrested for distributing vote no pamphlets.<sup>41</sup>

### *Freedom of the Media*

The freedom of the media is founded on the freedom of individuals “to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>42</sup> This right is broad, but it is subject to restrictions that are “provided by law and necessary,” which protect the reputations of others, national security, public order, public health or morals.<sup>43</sup> The freedom of the media extends to media of all kinds from “oral, writing or print . . . or through any other media of [the individual’s] choice.”<sup>44</sup> The freedom of the media is a broad-based right that facilitates the flow of information and enables the individual to make informed decisions.<sup>45</sup>

### Freedom of the Media in Burma

In the run up to the referendum, the SPDC systematically stifled all independent and opposition media coverage of the proposed referendum and the draft constitution. Criticism of the referendum, which, according to the SPDC, includes campaigning for a “no” vote and reporting on the vote no campaign, was

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<sup>40</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>41</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>42</sup> Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19 (2), U.N. Doc. A/6316 (1966).

<sup>43</sup> International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19 (3), U.N. Doc. A/6316 (1966).

<sup>44</sup> International Covenant on Civil and Political Rights, General Assembly Resolution 2200A (XXI), Art. 19 (2), U.N. Doc. A/6316 (1966).

<sup>45</sup> Charter of the Fundamental Rights of the European Union, Art. 11, 2000/C 364/01 (2000).

criminalized, subjecting such activities to three years in jail.<sup>46</sup> In April 2008, Reporters Without Borders reported that Burmese media outlets had been prohibited from reporting on any activities associated with a vote no campaign and were forced to publish SPDC-approved stories extolling the virtues of the SPDC's draft constitution.<sup>47</sup>

### *Electoral Monitoring*

International observers “play a [central] role in states which have no established tradition of impartial verification of the lawfulness of elections.”<sup>48</sup> The role of domestic and international observers is to monitor the referendum to ensure a free and fair referendum process, by “guarantee[ing] the integrity of the election process.”<sup>49</sup> Monitoring begins before the referendum and continues until the final results are announced, including monitoring voter registration, vote counting, dissemination of information, and the day of the referendum.<sup>50</sup> International election monitoring ensures the conduct of elections in accordance with international norms, which enhances the legitimacy of the electoral process by safeguarding the rights of the population.<sup>51</sup>

Domestic election observers can be both partisan and non-partisan in nature. The observers should have access to all stages of the electoral process before,

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<sup>46</sup> Narinjara News, Four Arrested for Anti-Referendum Campaign in Chin State, REFERENDUM WATCH, May 7, 2008, *available at* [http://bnionline.net/index.php?option=com\\_content&task=view&id=4073&Itemid=7](http://bnionline.net/index.php?option=com_content&task=view&id=4073&Itemid=7) (last visited May 8, 2008).

<sup>47</sup> Reporters Without Borders and the Burma Media Association, Press forbidden to refer to campaign for a No vote in referendum on new constitution, REPORTERS WITHOUT BORDERS, Apr. 24, 2008, *available at* [http://www.rsf.org/article.php3?id\\_article=26694](http://www.rsf.org/article.php3?id_article=26694) (last visited May 8, 2008).

<sup>48</sup> Venice Commission, *Code of Good Practice in Electoral Matters* (Oct. 16, 2002), Section 3.2(89), *available at* [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.asp).

<sup>49</sup> NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide, NATIONAL DEMOCRATIC INSTITUTE, p. 2, (1995) *available at* <http://www.accessdemocracy.org/showdoc.asp?lang=1&id={3CBAD929-BBF7-11D4-B41A-00D0B7C8CF21}> (last visited May, 4, 2008).

<sup>50</sup> NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide, NATIONAL DEMOCRATIC INSTITUTE, p. 5, (1995)

<sup>51</sup> Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, THE CARTER CENTER, THE UNITED NATIONS ELECTORAL ASSISTANCE DIVISION, ET AL., p. 1-2, (Oct. 27, 2005), *available at* <http://www.ndi.org/globalp/elections/highlights/undeclaration.asp> (last visited May 4, 2008).

during, and after the election.<sup>52</sup> By ensuring that all interested parties are able to observe the process, domestic partisan observers are able to watch the actions of the other partisan observers while observing the voting process.

### Electoral Monitoring in Burma

Despite offers and appeals from Burmese democratic leaders and the international community, the SPDC refused to allow independent electoral monitors to observe the referendum voting in Burma. Critics of the SPDC note that there are ample opportunities for the SPDC to rig the referendum results, making such observers particularly important. In particular, critics have noted that the SPDC plans to announce the referendum results from the capitol Naypidaw, rather than announcing them from each polling station, as was done in the 1990 elections.<sup>53</sup>

Members of pro-democracy groups report that police prevented them from monitoring polling stations. On the day of the referendum, National League for Democracy leaders Thakhin Soe Myint and Dr. Myo Aung were traveling to Hmaw Pi Township to observe the polls, but the police stopped them and forced them off the public bus, sending them back to the NLD's headquarters.<sup>54</sup> They were prevented from monitoring the election.

In contrast, reports indicate that those supporting the constitution were not kept from polling stations. For example, in Hmaw Pi, Rangoon Division, a civil servant from the Phoo Gyi Water Providing Project was allowed to return to the polling station after he had already voted.<sup>55</sup> Members of the Union Solidarity and Development Association, the civilian party associated with the SPDC, and the Ward/Village Peace and Development Council deployed around the polling station while the polls were open.<sup>56</sup> Reports indicate that some members were even going

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<sup>52</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 18, (2005) *available at* <http://www.osce.org/item/14004.html> (last visited Mar. 4, 2008).

<sup>53</sup> Bangkok Post, Referendum first, disaster relief later, May 10, 2008, *available at* [http://www.bangkokpost.com/News/10May2008\\_news21.php](http://www.bangkokpost.com/News/10May2008_news21.php) (last visited May 10, 2008).

<sup>54</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>55</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>56</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

inside the polling stations, contrary to official rules, and forcing voters to cast “yes” votes.<sup>57</sup>

### *Independent Electoral Administration*

A free and fair referendum process requires “an election administration at all levels [that acts] in a professional and neutral manner.”<sup>58</sup> The administration of elections includes the counting of votes, which should be “visible and verifiable” from the polling station up to the national level.<sup>59</sup> Participants in the election, including candidates, parties and voters, should be able to obtain “prompt and effective redress” for violations of human rights or national law, with the possibility of review by an independent judiciary.<sup>60</sup> The availability of redress in fair, transparent, and credible ways increases the confidence of stakeholders in the electoral process.<sup>61</sup> Ultimately, an election law should provide a means for the partial or complete invalidation of election results where election misconduct makes the results unsalvageable.<sup>62</sup> The power to invalidate an election is frequently confined to the highest electoral authority and reviewable by the state’s highest judicial court.<sup>63</sup>

### Electoral Administration in Burma

In contrast to international standards, electoral administration in Burma was not neutral or independent at any level. According to the National League for

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<sup>57</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>58</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 1-2, (2005).

<sup>59</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 18, (2005).

<sup>60</sup> Organization for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights, Election Observer Handbook, 5th ed., p. 18, (2005).

<sup>61</sup> Democratic Governance Group, Bureau for Development Policy, Electoral Assistance Implementation Guide, p. 23, UNITED NATIONS DEVELOPMENT PROGRAMME (2007), available at [http://www.undp.org/governance/guidelines-toolkits.htm#guides\\_elections](http://www.undp.org/governance/guidelines-toolkits.htm#guides_elections) (last visited May 4, 2008).

<sup>62</sup> Denis Petit, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2000), sec. G, par. 30.

<sup>63</sup> Denis Petit, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE OF DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (2000), sec. G, par. 30.

Democracy, the “National Convention Convening Work Committee (NCCWC), the Constitution Drafting Commission, and Commission for Holding Referendum for the Approval of the Draft Constitution are all chaired by the same person,”<sup>64</sup> U Aung Toe, who also serves as Chief Justice of the Supreme Court.<sup>65</sup>

At the local level, Burmese voters reported that local electoral officials were instructed to secure a large percentage of “yes” votes, with some officials going to far as accompanying voters as they filled out their ballots and instructing them on where and how to mark the ballot.<sup>66</sup> In the brick making factory in Hmaw Pi, Rangoon Division, the manger forced 100 workers to cast a “yes” votes, however there was one “no” vote. The manager said he would have to pay 100,000 kyat to compensate for that “no” vote.<sup>67</sup>

With regard to the counting of ballots, Burmese law, established by the SPDC, requires that at least 10 eligible voters oversee the counting of ballots in the polling station,<sup>68</sup> but there are no provisions for security in the transport of ballots from the polling station to the central locations where votes were compiled. In Magway Division, U Toe Lone, chairman of the Aung Lan Quarter Peace and Development Council took ballot boxes to Magway town without counting them in front of the last ten voters in the polling station.<sup>69</sup> The ballots from Thayet District, Thayet Division, were also sent to the Magway Commission Office in Magway without being counted in front of the last ten voters in the polling station.<sup>70</sup>

Voters reported that they did not access to avenues of redress for even small problems related to the referendum. Although some of the polling booths did not

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<sup>64</sup> National League for Democracy, Special Statement No. 7/14/08 (Unofficial Translation), Apr. 24, 2008, *available at* <http://uscampaignforburma.org/statements/2008-special-statement-no-71408-national-league-for-democracy-april-24-2008.html> (last visited May 9, 2008).

<sup>65</sup> Letter from U Aung Htoo, General Secretary, Burma Lawyers' Council, to Anthony Murray Gleeson, Chief Justice, High Court of Australia (Apr. 10, 2008) (on file with the author).

<sup>66</sup> Federation of Trade Unions – Burma, Release No. 5/2008, Burma Violations Related to 10 May Referendum in Burma, May 1, 2008, *available at*

<sup>67</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>68</sup> Nay Thwin, *Analysts Apprehend Vote Rigging*, MIZZIMA, Apr. 23, 2008 *available at* <http://www.mizzima.com/news/inside-burma/4-inside-burma/351-analysts-apprehend-vote-rigging> (last visited May 9, 2008).

<sup>69</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>70</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

provide pens or pencils to mark ballots, people were afraid to request pens so they returned their ballots without marking their votes.<sup>71</sup> When a female activist refused to cast a representative vote on behalf of her mother, the SPDC demanded her name and address for interrogation.<sup>72</sup> A military officer, dressed in civilian clothing, excluded another female from the polling station without explanation when she refused to vote “yes” in the referendum.<sup>73</sup> The SPDC prohibited pro-democracy activists from helping voters locate their names on voter registration lists or answering any questions on the referendum process.<sup>74</sup>

### *Legal Structure*

International standards require that states conducting referendums institute a clear legal structure to govern the referendum process.<sup>75</sup> The legal provisions governing elections should provide “effective mechanisms and remedies for enforcing electoral rights.”<sup>76</sup> The legal structure should identify rights related to elections, provide aggrieved parties the right to file a complaint, ensure that the reviewing court or commission provides prompt and fair decision, and that the hearing is reviewable by a higher court or commission.<sup>77</sup>

### Legal Structure in Burma

Pro-democracy groups have expressed a number of concerns with regard to the legal framework governing the referendum. The SPDC’s failure to publicize the draft constitution and referendum law in a timely manner prohibited authorities from setting up any clear structure to facilitate a legitimate transitional process after the referendum. Pro-democracy groups have highlighted that the SPDC

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<sup>71</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>72</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>73</sup> National League for Democracy (Liberated Areas), Immediate News Release concerning Referendum, May 10, 2008.

<sup>74</sup> National League for Democracy (Liberated Areas), Immediate News Release Concerning Referendum, May 10, 2008.

<sup>75</sup> Office for Democratic Institutions and Human Rights, Former Yugoslav Republic of Macedonia: 7 November 2004 Referendum (2004), 3-4.

<sup>76</sup> United Nations Development Program, Electoral Systems and Processes Practice Note, p. 14, (Jan. 2004), *available at* [http://www.undp.org/governance/practice-notes.htm#pn\\_elections](http://www.undp.org/governance/practice-notes.htm#pn_elections) (last visited May 4, 2004).

<sup>77</sup> United Nations Development Program, Electoral Systems and Processes Practice Note, p. 14, (Jan. 2004).

repeatedly violates provisions designed to establish a legitimate legal structure by excluding the people's elected representatives from the National Convention. As the NLD states, "this state constitution was not actually written by the Peoples' Representatives elected by the people."<sup>78</sup> Leaders of the NLD have issued statements holding the SPDC accountable for the problems that will arise from this clear lack of a legitimate legal structure to support the results of the referendum. The statement declares that:

They [the SPDC] will be responsible for possible consequences such as worsening the general crises of political, economic and social situation of the country, discouragement of the politically meaningful dialogue and the national reconciliation which is especially necessary for the present days, affect to the stability of the country and degradation of the integrity of the country.<sup>79</sup>

### **The National Convention and the Draft Constitution**

The legitimacy of a constitution depends on both the drafting process and the substance of the document itself. In order to build the most inclusive and effective government, many states work to provide for broad popular representation and participation, media access, freedom of speech, and a realistic timetable during their constitution-drafting processes. These concepts promote democratic ideals in the constitution-drafting process itself, as well as in the resulting document. Supporting this sentiment, on 18 July 2007, United Nations Secretary-General Ban Ki-moon urged the SPDC "to seize this opportunity to ensure that this and subsequent steps in Myanmar's political roadmap are as inclusive, participatory and transparent as possible."<sup>80</sup>

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<sup>78</sup> National League for Democracy, Special Statement No. 4/13/08 (Unofficial Translation), Apr. 2, 2008, *available at* <http://uscampaignforburma.org/statements/2008-special-statement-no-71408-national-league-for-democracy-april-24-2008.html> (last visited May 9, 2008).

<sup>79</sup> National League for Democracy, Special Statement No.97/b (Unofficial Translation), Feb. 18, 2008, *available at* <http://uscampaignforburma.org/statements/2008-special-statement-no-71408-national-league-for-democracy-april-24-2008.html> (last visited May 9, 2008).

<sup>80</sup> *As Myanmar's National Convention Resumes, Secretary-General Urges Inclusive Participatory, Transparent Political Process*, Statement of the Secretary-General, July 18, 2007, *available at* <http://www.un.org/News/Press/docs//2007/sgsm11095.doc.htm> (last visited May 8, 2008).

*The National Convention*

Throughout the 14-year National Convention, pro-democracy groups reported that the SPDC excluded from the drafting process representatives from the opposing National League for Democracy (NLD), as well as several other political parties that won seats in the 1990 elections.<sup>81</sup> Rather than providing for a broad and inclusive political process, the SPDC handpicked each of the 1,100 delegates to participate in the National Convention.<sup>82</sup> Frank and open discussion on the National Convention was prohibited by the SPDC. The government prevented delegates from speaking to the press and limited their ability to make proposals.<sup>83</sup> Law 5/96, adopted in 1996, criminalized criticism of the National Convention, subjecting those found guilty of criticizing the process to up to twenty years in prison.<sup>84</sup>

Many international actors expressed concern over the lack of political representation in the National Convention.<sup>85</sup> Several political parties within Burma boycotted the National Convention because of the control and intimidation exercised by the SPDC.<sup>86</sup> In 2004, the United Nations Special Rapporteur, Paulo Sergio Pinheiro, dismissed the National Convention as a failure because it

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<sup>81</sup> HUMAN RIGHTS WATCH, *Human Rights Overview: Burma* (2006), available at <http://hrw.org/english/docs/2006/01/18/burma12268.htm> (last visited Aug. 13, 2007).

<sup>82</sup> Seth Mydans, *Myanmar Constitution Guidelines Ensure Military Power*, THE NEW YORK TIMES, Sept. 4, 2007, available at <http://www.nytimes.com/2007/09/04/world/asia/04myanmar.html?scp=4&sq=burma+national+convention&st=nyt> (last visited May 8, 2008).

<sup>83</sup> HUMAN RIGHTS WATCH, *Burma: New Constitutional Convention a Façade for Military Rule*, Jul. 18, 2007, available at <http://hrw.org/english/docs/2007/07/18/burma16413.htm> (last visited May 8, 2008).

<sup>84</sup> Tom Case, Deputy Spokesman, *Press Statement: Burmese Regime's Referendum Law Continues Climate of Intimidation*, U.S. DEPARTMENT OF STATE, Feb. 28, 2008, available at <http://www.state.gov/r/pa/prs/ps/2008/feb/101471.htm> (last visited May 8, 2008).

<sup>85</sup>“The National Convention has been dismissed as a sham by the international community and the Burmese opposition, because most of the delegates are hand-picked by the junta. Burma’s main opposition party, the NLD, which won a landslide victory in 1990 but was refused power by the junta, has stayed away from the convention since its delegation walked out in protest in 1996, saying it was undemocratic and that the junta was manipulating the proceedings.” Khun San, *National Convention Progress “Depends on International Pressure,”* THE IRRAWADDY (Jan. 15, 2007), [http://www.irrawaddy.org/article.php?art\\_id=6582](http://www.irrawaddy.org/article.php?art_id=6582) (last visited Aug. 13, 2007).

<sup>86</sup> ALTSEAN, *Burma's National Convention: Illegitimate, Unrepresentative, and Oppressive* (Feb. 16, 2005) at 19-20, available at <http://www.altsean.org/Reports/NCIillegitimate.php> (last visited Aug. 13, 2007) (noting that the NLD and the United Nationalities Alliance that represents eight ethnically based political parties have boycotted the National Convention).

“lack[ed] national and international credibility.”<sup>87</sup> The United Nations General Assembly has issued several resolutions expressing its concern over the legitimacy of the National Convention.<sup>88</sup> The United States, the European Union, and members of the Association of South-Eastern Asian Nations (ASEAN) have all voiced similar concerns.<sup>89</sup> In 2004, United Nations Secretary-General Kofi Annan released a statement calling upon the SPDC to incorporate the NLD and other political actors into the process. The statement noted that:

It is the Secretary-General’s judgment that the National Convention does not currently adhere to the recommendations made by successive resolutions of the General Assembly. The Secretary-General believes that, unless and until the views of the National League for Democracy (NLD) and other political parties are sought and considered, the National Convention and the road map process will be incomplete, lacking in credibility and, therefore, unable to gain the full support of the international community, including the countries of the region.<sup>90</sup>

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<sup>87</sup> Jack Barton, *UN Rights Envoy Dismisses Myanmar Convention as a Failure*, AGENCE FRANCE PRESSE (Jun. 1, 2004).

<sup>88</sup> See e.g., U.N. General Assembly, *The Situation of Human Rights in Myanmar*, para. 2, UN Doc. A/RES/61/232 (Mar. 13, 2007), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/508/29/PDF/N0650829.pdf?OpenElement> (last visited Aug. 13, 2007).

<sup>89</sup> See *National Convention Chronology*, THE IRRAWADDY (Aug. 2006), <http://www.irrawaddy.org/aviewer.asp?a=3564&z=14> (last visited Feb. 1, 2007) (noting that in December of 2005, the U.S. State Dept. slammed the National Convention as a sham attended by the junta’s hand-picked delegates); EUROPEAN UNION, *The EU’s Relations with Burma/Myanmar* (Jun. 2007), available at [http://ec.europa.eu/comm/external\\_relations/myanmar/intro/index.htm](http://ec.europa.eu/comm/external_relations/myanmar/intro/index.htm) (last visited Aug. 12, 2007) (noting that the National Convention’s flaws and that “prospects for an inclusive process of national reconciliation remain unclear, given the SPDC’s absolute control over the process and the failure to reach an agreement between SPDC and both political parties (NLD and others) and several ethnic groups.”); ALTSEAN, *Burma’s National Convention: Illegitimate, Unrepresentative, and Oppressive* (Feb. 16, 2005) at 18-19, available at <http://www.altsean.org/Reports/NCillegitimate.php> (last visited Aug. 13, 2007) (noting statements from Indonesia, Malaysia, and the ASEAN Parliamentarians indicating the National Convention’s lack of credibility).

<sup>90</sup> United Nations Secretary General Press Release, *On Myanmar, Secretary-General calls for immediate release of Daw Aung San Suu Kyi, engagement in ‘substantive dialogue’ with NLD, other political parties*, SG/SM/9448 (Aug. 17, 2004), available at <http://www.un.org/News/Press/docs/2004/sgsm9448.doc.htm>

*The Draft Constitution*

Pro-democracy groups and members of the international community have expressed similar concerns regarding the SPDC's draft constitution, the product of the National Convention. The draft constitution would guarantee the military a highly privileged role in the government in Burma and would exclude most leaders in the pro-democracy movement. For example, under the draft constitution, the military would be guaranteed one quarter of the seats in both houses of the bicameral legislature<sup>91</sup> and the Commander-in-Chief of Defense Services would exert a high degree of control over the appointment of Ministers.<sup>92</sup> Furthermore, the constitution would prevent Daw Aung San Suu Kyi from holding office on the basis of her having married a foreigner, and most individuals elected in the 1990 elections would be prohibited from holding office because they had served time in prison—prison sentences generally imposed for their pro-democracy activities.<sup>93</sup>

The United States, and other world leaders, have expressed concern that the draft constitution fails to provide a framework for genuine democratic change in Burma. United States Department of State Spokesman Sean McCormack said that the draft constitution “would appear intended only to perpetuate the rule of the existing military regime in Burma. It does not provide for the kind of open, serious and sustained dialogue with the democratic opposition forces in Burma that we as well as other members of the international community have called for, and that for example Aung San Suu Kyi has called for.”<sup>94</sup> The current ASEAN President, Singaporean Foreign Minister George Yeo, called the draft constitution's provision that bars Aung San Suu Kyi from participating in future elections “odd and out of date.”<sup>95</sup>

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<sup>91</sup> Chapter IV(4)(b), Chapter IV (13)(b)

<sup>92</sup> Chapter V(2)(a)

<sup>93</sup> Chapter III(4)(e-h), Chapter IV(33)

<sup>94</sup> David Gollust, US Finds Serious Flaw in Burma's Draft Constitution, VOICE OF AMERICA NEWS, Apr. 10, 2008, *available at* <http://www.voanews.com/english/2008-04-10-voa54.cfm> (last visited May 9, 2008).

<sup>95</sup> US Criticizes Burma's New Draft Constitution, VOICE OF AMERICA NEWS, Feb. 20, 2008, *available at* <http://www.voanews.com/english/archive/2008-02/2008-02-20-voa54.cfm?CFID=236035596&CFTOKEN=28884490> (last visited May 9, 2008).

## Conclusion

The SPDC violated international standards for fair and free referendums in the 10 May 2008 constitutional referendum, utilizing oppressive and secretive tactics to try to ensure that the draft constitution would receive the support of a majority of voters in the referendum.

Pro-democracy groups and members of the international community have expressed concern over the failure of both the National Convention and the draft constitution to allow for a democratic transition. The National Convention discouraged contributions from democratic opposition groups and the SPDC criminalized open criticism of the process. The draft constitution reinforces these principles by proposing to guarantee the military a privileged role in the government and to exclude most leaders from the pro-democracy movement.

The referendum failed to meet basic international standards for a free and fair referendum. The SPDC denied Burmese the fundamental right to vote by manipulating voter lists and preventing some voters from casting their ballots. Although international standards guarantee a secret ballot, the SPDC printed identification information on individual ballots and observed as Burmese voters cast their ballots. The SPDC threatened that voters would lose their jobs and access to water and electricity if they failed to support the referendum. The SPDC also prevented the Burmese from reading and understanding the draft constitution prior to the referendum by forbidding the media to publish critical reports of the draft constitution and by failing to make the draft constitution easily accessible to the diverse population in Burma. The SPDC forbid international election observers from entering Burma, despite appeals from the international community. The SPDC further violated international standards for a free and fair referendum by failing to select an independent election committee, designed to maintain the legitimacy of the referendum process. Instead, the SPDC appointed its own leaders to influence voters throughout the process.

Through its failure to follow established international norms in conducting a free and fair referendum, the SPDC used the referendum as yet another step to prevent a successful transition to democracy in Burma.

### About the Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, is a non-profit organization, which operates as a global pro bono law firm providing free legal assistance to states and governments involved in peace negotiations, drafting post-conflict constitutions, and prosecuting war criminals. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution.

PILPG's four primary practice areas are:

- **Peacebuilding**
- **War Crimes**
- **Post-Conflict Political Development**
- **Public International Law**

To provide pro bono legal advice and policy formulation expertise, PILPG draws on the volunteer services of over sixty former legal advisors and former Foreign Service officers from the US Department of State and other foreign ministries. PILPG also draws on pro bono assistance from major international law firms including Covington & Burling; Curtis, Mallet-Prevost, Colt and Mosle; DLA Piper Rudnick; Steptoe & Johnson; Sullivan & Cromwell; Vinson & Elkins; Wilmer, Cutler & Pickering; and graduate international affairs and law students at American University and Case Western Reserve Schools of Law. Annually, PILPG is able to provide over \$2 million worth of pro bono international legal services.

Frequently, PILPG sends members in-country to facilitate the provision of legal assistance and its members often serve on the delegations of its clients during peace negotiations. To facilitate this assistance, PILPG is based in Washington, D.C. and has points of contact in New York City, Boston, Seattle, Cleveland, London, Paris, Rome, The Hague, Stockholm, Belfast, Krakow, Budapest, Zurich, Tbilisi, Kabul, and Nairobi.

PILPG was founded in London in 1995 and moved to Washington, D.C. in 1996, where it operated under the auspices of the Carnegie Endowment for International Peace for two years. PILPG currently maintains an association with American University in Washington, D.C., and Case Western Reserve University in Cleveland, Ohio. In July 1999, the United Nations granted official Non-Governmental Organizations status to PILPG.

In January 2005, a half dozen of PILPG's pro bono clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial pro bono legal assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice."