

# ALTSEAN

## ALTERNATIVE ASEAN NETWORK ON BURMA

ALTERNATIVE ASEAN NETWORK ON BURMA  
campaigns, advocacy & capacity-building for human rights & democracy

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### **2010 ELECTIONS: A RECIPE FOR CONTINUED CONFLICT**

- The SPDC's proposed 2010 elections, the first step to activating the 2008 constitution, will have disastrous impacts on Burma and the region.
- Preparations for 2010 have included:
  - More crimes against humanity and escalated armed conflict, causing 43,800 refugees to cross over into China and Thailand within the past 3 months.
  - The bogus trial of Aung San Suu Kyi, fresh arrests of activists, and intensified persecution of monks and nuns.
- According to the 2008 constitution:
  - The military is above the law & military coups are legalized
  - The Presidency favors the military
  - The military occupies 25% of the seats in Parliament and controls 3 key Ministries
  - The military has effective veto power over constitutional amendments
  - The National Defense and Security Council further entrenches the military
  - Basic human rights are still threatened
  - Political activists are barred from office
  - Federalism is denied. The military has control over ethnic states.
- The conduct of the 2008 constitutional referendum indicates the elections will not be free or fair - SPDC banned campaigning and independent monitoring. The process will likely be rife with irregularities, intimidation and fraud.
- In 2008, the junta disenfranchised over a million people. The 2010 elections will disenfranchise at least 1.9 million people of voting age.
- While the SPDC intensifies instability, pro-democracy forces have come up with genuine solutions toward national reconciliation and democratic reform.
- Main indicators of progress - release of all political prisoners, cessation of hostilities against ethnic nationalities and tripartite dialogue - show that conditions are worsening as the elections near.
- The following solutions are required in order to resolve this crisis:
  - A constitutional review process involving all stakeholders
  - A UN Security Council-mandated international arms embargo and a Commission of Inquiry into crimes against humanity and war crimes
  - International protection for Burma's domestic and border-based democracy and human rights documentation groups.
- The most urgent priorities are that the election law must guarantee participation of all people including political activists, and changes to the constitutional article on amendments to reflect common practice.

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*“This constitution is a death-sentence for ethnic diversity.”* - Zipporah Sein, Karen National Union General Secretary, 13 October 2009.

*“No referendum or elections can be fair, no transition to democracy can be effective, without the release of political prisoners, the authorization for all political parties to operate, and the protection of the basic civil and political freedoms, all non-existent in Myanmar.”* - UN Special Rapporteur on human rights in Burma, Paulo Sergio Pinheiro, March 2008

*“Our focus should not be on ensuring that the elections are free and fair. Instead, the focus should be on securing constitutional change, so that someday Burma might witness civilian rule.”* - Professor David C Williams of the Indiana University Maurer School of Law, September 2009

## **WHAT IS WRONG WITH THE CONSTITUTION?**

### **Military is above the law and immune to prosecution**

The constitution provides no oversight **at all** for military affairs, including defense spending.<sup>1</sup> The military is also empowered with “safeguarding the State Constitution.”<sup>2</sup> This could be invoked at any time to prevent constitutional amendments that the military sees as contrary to its interests.

Further, Article 445 provides that no legal action can be taken against SLORC and SPDC members who officially carried out their duties “according to their responsibilities.”<sup>3</sup> This blanket immunity empowers the military regime to continue committing pervasive human rights abuses, including crimes against humanity and war crimes, until the SPDC is dissolved.

### **Presidency favors military, bars activists**

The constitution states that the President must be a person acquainted with military affairs, and prohibits people that are serving prison sentences for any offense from being considered for the position of President.<sup>4</sup> In addition, the President cannot have any children that are foreign nationals.<sup>5</sup> These provisions would bar Daw Aung San Suu Kyi and many other civilians from becoming President.

### **Military occupies 25% of Parliament and key Ministries**

The Defense Services Commander-in-Chief is given the power to appoint 25% of the seats in both the upper and lower houses of Parliament.<sup>6</sup> The President appoints the Ministers of Defense, Security/Home Affairs, and Border Affairs from a list prepared by the Commander-in-Chief.<sup>7</sup> In State and Regional Parliaments, the Commander-in-Chief of the Defense Services appoints 25% of the seats.<sup>8</sup>

<sup>1</sup> Constitution of the Republic of the Union of Myanmar, Article 20 (b)

<sup>2</sup> Constitution of the Republic of the Union of Myanmar, Article 20 (f)

<sup>3</sup> Constitution of the Republic of the Union of Myanmar, Article 445

<sup>4</sup> Constitution of the Republic of the Union of Myanmar, Article 59 (d) and (g)

<sup>5</sup> Constitution of the Republic of the Union of Myanmar, Article 59 (f)

<sup>6</sup> Constitution of the Republic of the Union of Myanmar, Article 109, 141

<sup>7</sup> Constitution of the Republic of the Union of Myanmar, Article 232 (b)

<sup>8</sup> Constitution of the Republic of the Union of Myanmar, Article 161 (d)

## Military controls constitutional amendments

For ordinary matters, the constitution can be amended when over 75% of legislative members of both houses of Parliament approve the amendment.<sup>9</sup> Any amendment to the charter's so-called "fundamental principles" would require a two-step process. The amendment would first require the approval of over 75% of the Parliament, followed by a favorable vote of more than 50% of eligible voters in a referendum.<sup>10</sup> Getting more than 75% approval in the legislature would be impossible when the army bloc could stop any such move.

## Military coups legalized

The President is empowered to declare a "state of emergency" and "restrict or suspend" fundamental rights of the citizens.<sup>11</sup> During a state of emergency the Commander-in-Chief assumes legislative, executive, and judicial powers.<sup>12</sup> The military would receive immunity from prosecution for actions taken during emergency rule.<sup>13</sup>

Groups that oppose the 2010 elections
Arakan League for Democracy (ALD)
Committee Representing the People's Parliament (CRPP)
Ethnic Nationalities Council (ENC)
Forum for Democracy in Burma (FDB)
Kachin Independence Organization (KIO)
Kachin National Organization (KNO)
Karen National Union (KNU)
Mon National Democratic Front (MNDF)
National Coalition Government of the Union of Burma (NCGUB)
National Council of the Union of Burma (NCUB)
National Democratic Front (NDF)
Nationalities Youth Forum (NYF)
New Mon State Party (NMSP)
Palaung State Liberation Front (PSLF)
Palaung Women's Organization (PWO)
Shan State Army – South (SSA-S)
Student and Youth Congress of Burma (SYCB)
Ta'ang Student and Youth Organization (TSYO)
United Nationalities Alliance (UNA)
Women's League of Burma (WLB)

## National Defense and Security Council: the SPDC reincarnated?

The provision allowing for the formation of the National Defense and Security Council (NDSC) is another mechanism that ensures the perpetuation of military rule. The lack of clarity regarding the NDSC's powers implies its role in governance may be far greater than generally realized.

The constitution does not specify how or when the NDSC is to be constituted. For example, the NDSC must approve the President's appointment of the Commander-in-Chief, but the Commander-in-Chief has a seat on the NDSC by virtue of his position.<sup>14</sup> In all likelihood, the 11-member NDSC is likely to be comprised of current high-ranking SPDC officials.<sup>15</sup>

## Basic human rights still threatened

The constitution deprives people of their basic human rights by stipulating "exception clauses," which preserve draconian laws<sup>16</sup> that explicitly prohibit freedom of speech, association, and assembly.<sup>17</sup>

<sup>9</sup> Constitution of the Republic of the Union of Myanmar, Article 436 (b)

<sup>10</sup> Constitution of the Republic of the Union of Myanmar, Article 436 (a)

<sup>11</sup> Constitution of the Republic of the Union of Myanmar, Article 410, 414 (b)

<sup>12</sup> Constitution of the Republic of the Union of Myanmar, Article 418 (a)

<sup>13</sup> Constitution of the Republic of the Union of Myanmar, Article 432. This is in addition to Article 445, which guarantees blanket immunity to SLORC and SPDC.

<sup>14</sup> Constitution of the Republic of the Union of Myanmar, Article 342

<sup>15</sup> Constitution of the Republic of the Union of Myanmar, Article 201

<sup>16</sup> Such as the 1975 State Protection Law, 1962 Printers and Publishers Law, 1985 Television and Video Act, 1996, Computer Science and Development Law, and 2000 Internet Law

<sup>17</sup> Constitution of the Republic of the Union of Myanmar, Article 354, 376

## **Political activists barred from office**

The constitution prohibits people that are serving prison sentences for any offense from standing for election to Parliament, being appointed as a Minister, or being considered for the position of President.<sup>18</sup> Many leaders in the pro-democracy movement remain in prison because of their political activities, and would thus be barred from seeking political office.

## **Federalism denied, subjugation of ethnic groups legitimized**

The constitution does not promote or protect the rights of the ethnic nationalities and does not provide for a workable decentralized political system that grants a degree of local autonomy. In fact, it serves as a green light for the continued Burmanization of the ethnic nationality areas.

The President appoints the Minister of Border Affairs from a list provided by the Commander-in-Chief, which cedes de facto control of the ethnic nationality areas to the military.<sup>19</sup> The Commander-in-Chief also selects Defense Services personnel responsible for security and border affairs at the State and Regional level.<sup>20</sup> While the constitution provides the façade of political space, in reality, it cements military domination over ethnic areas.

The charter grants very limited legislative and executive powers to local bodies. The national Parliament and the executive branch retain exclusive power to legislate and govern on critical issues such as: land administration; use of natural resources; health; education; and justice.<sup>21</sup> Even the Chief State/Regional Ministers are likely to come from the military, since the President has the authority to appoint them from members of State and Regional Parliaments.<sup>22</sup> In State and Regional Parliaments, the Commander-in-Chief of the Defense Services appoints 25% of the seats.<sup>23</sup>

## **Entry into force date: unknown**

Article 441 provides that the constitution shall come into force on the first day that Parliament convenes.<sup>24</sup> Given this provision, the SPDC will continue to rule until the date on which Parliament finally convenes, which in the case of the 1990 elections, still has not happened.

## **One Army, many problems**

Article 338 requires that “all the armed forces in the Union shall be under the command of the Defense Services.”<sup>25</sup> In order to implement this provision and force ethnic groups to participate in the election, the SPDC issued an ultimatum in late April to the various ethnic ceasefire groups to incorporate their armed forces into a new Border Guard Force (BGF) prior to the 2010 elections.<sup>26</sup> This essentially means that ethnic defense forces would surrender control to the SPDC.<sup>27</sup> Many ethnic ceasefire groups have rejected the SPDC’s ultimatum.

As a result, the SPDC Army increased its military presence in Kachin, Shan, and Karen States in an attempt to coerce the ceasefire groups into joining the BGF.<sup>28</sup> In a calculated show of

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<sup>18</sup> Constitution of the Republic of the Union of Myanmar, Article 59 (g), 121 (a), 232 (a)

<sup>19</sup> Constitution of the Republic of the Union of Myanmar, Article 232

<sup>20</sup> Constitution of the Republic of the Union of Myanmar, Article 262

<sup>21</sup> Constitution of the Republic of the Union of Myanmar, Article 96, 188, 196, 216, 249

<sup>22</sup> Constitution of the Republic of the Union of Myanmar, Article 261

<sup>23</sup> Constitution of the Republic of the Union of Myanmar, Article 161 (d)

<sup>24</sup> Constitution of the Republic of the Union of Myanmar, Article 441

<sup>25</sup> Constitution of the Republic of the Union of Myanmar, Article 338

<sup>26</sup> Mizzima News (28 Apr 09) Junta meets leaders of ethnic ceasefire groups; Irrawaddy (28 Apr 09) Junta Commanders Court Ceasefire Groups; Kachin News Group (04 May 09) KIA told to change to border force by junta; DVB (04 May 09) Intelligence chief meets with ceasefire groups; SHAN (04 May 09) Junta tells Wa ceasefire days are over

<sup>27</sup> Irrawaddy (04 May 09) Armed Ceasefire Groups to be ‘Border Guard Force’;

<sup>28</sup> Kachin News Group (11 Aug 09) Four ethnic ceasefire groups to take on junta in event of war; Mizzima News (14 Aug 09) KIO trains administrative staff; Irrawaddy (25 Aug 09) Tension Mounts between Junta and Kokang Ceasefire Group; SHAN (24 Aug 09) Tension sparks people to flee into China; SHAN (14 Aug 09) Junta’s ploy is to push Kokang to shoot

strength against recalcitrant ceasefire groups, the SPDC Army broke the 20-year ceasefire agreement with the Myanmar National Democracy Alliance Army (MNDAA) and attacked the Kokang Self-Administered Zone of Northern Shan State in August.<sup>29</sup> After toppling the MNDAA, the SPDC installed a new provisional government in Kokang, which promptly announced that its armed forces would join the BGF.<sup>30</sup>

Name of ceasefire group	Response to BGF order	No. of soldiers	Notes
United Wa State Army (UWSA) <sup>31</sup>	Rejected	20,000 – 36,000	SPDC crackdown on the Wa drug trade. <sup>32</sup> 50,000 plus refugees expected from war.
Shan State Army (SSA) “North” <sup>33</sup>	Rejected	5,000	
New Mon State Party (NMSP) <sup>34</sup>	Rejected	3,500	Warned other ceasefire groups against becoming BGFs. <sup>35</sup>
Myanmar National Democratic Alliance Army (MNDAA) [aka Kokang] <sup>36</sup>	Rejected	600 - 1,000	MNDAA leadership fled Kokang region in late August after the SPDC offensive and is now hiding in Wa territory.
Kachin Independence Army <sup>37</sup>	Rejected	4,000 - 6,000	Its proposal to create independent border guard force roundly rejected by SPDC. <sup>38</sup>
National Democratic Alliance Army (NDAA) [aka Mongla] <sup>39</sup>	Rejected	1,200 - 5,000	Along with the Wa, are seen as potential next targets for the SPDC. <sup>40</sup>
Kayan New Land Party (KNLP) <sup>41</sup>	Rejected	200	
Pa-O National Organization <sup>42</sup>	Accepted	800	
Kayan National Guard (KNG) <sup>43</sup>	Accepted	150	
Karen Nationalities People’s Liberation Front (KNPLF) <sup>44</sup>	Accepted	600	
Democratic Karen Buddhist Army (DKBA) <sup>45</sup>	Accepted	6,000	On a recruiting drive to expand to 9,000 troops. <sup>46</sup> Includes child soldier recruits. <sup>47</sup>
Kachin Defense Army (KDA) <sup>48</sup>	Accepted	400 - 800	
New Democratic Army Kachin (NDAK) <sup>49</sup>	Accepted	1000	
Lasang Awng Wa Peace Group in Kachin State	Accepted	N/A	

The SPDC Army offensive against the MNDAA pushed nearly 37,000 refugees into China, and made other ceasefire groups wary of SPDC intentions.<sup>50</sup> Both the Kachin Independence Organization (KIO) and the United Wa State Army (UWSA) are on standby for possible

first; Irrawaddy (10 Aug 09) Kokang Thwart Burma Army Drug Raid; Irrawaddy (13 Aug 09) Tension Mounts at Three Pagodas Pas; Irrawaddy (31 Aug 09) Junta Sends Major Reinforcements to Shan State

<sup>29</sup> SHAN (27 Aug 09) Rebels say junta shell kills Chinese soldiers

<sup>30</sup> Reuters (02 Sep 09) Myanmar rebels head home ‘in disarray’; SHAN (03 Sep 09) Junta’s next move still a question mark; Xinhua (11 Sep 09) Kokang group ready to participate in 2010 Myanmar vote

<sup>31</sup> Washington Post (29 Aug 09) China Urges Burma to Bridle Ethnic Militia Uprising at Border; SHAN (Dec 09) Will ethnic armies join new border force?

<sup>32</sup> SHAN (29 Sep 09) Boom days over for Wa;

<sup>33</sup> Irrawaddy (Mar-Apr 09) To Fight or Not to Fight; SHAN (Dec 09) Will ethnic armies join new border force?

<sup>34</sup> Irrawaddy (8 Sep 09) New Mon Party Forming for Election; Irrawaddy (Mar-Apr 09) To Fight or Not to Fight; SHAN (Dec 09) Will ethnic armies join new border force?

<sup>35</sup> DVB (03 Sep 09) Mon party warn on border guard pressure

<sup>36</sup> The Jamestown Foundation (10 Sep 09) Emerging Fault Lines in Sino-Burmese Relations: The Kokang Incident; Irrawaddy (Mar-Apr 09) To Fight or Not to Fight

<sup>37</sup> NYT (10 May 09) Ethnic Groups in Myanmar Hope for Peace, but Gird for Fight; Irrawaddy (8 Sep 09) Kachin’s Hard and Soft Strategy; Irrawaddy (Mar-Apr 09) To Fight or Not to Fight; SHAN (Dec 09) Will ethnic armies join new border force?

<sup>38</sup> Kachin News Group (08 Sep 09) KIO delegates arrive in Myitkyina for meeting with junta; Kachin News Group (10 Sep 09) Contentious KIO-junta meeting continues for second day

<sup>39</sup> Irrawaddy (Mar-Apr 09) To Fight or Not to Fight; Mizzima News (09 Sep 09) Feuding militias come in the way of junta’s plans; SHAN (Dec 09) Will ethnic armies join new border force?

<sup>40</sup> Washington Post (25 Sep 09) Burma’s Junta Intensifies Bid For Unification Bringing Autonomous Ethnic Enclaves Back Into Fold Poses Major Challenges; SHAN (30 Sep 09) Wa and Mongla deny deal with junta

<sup>41</sup> SHAN (Dec 09) Will ethnic armies join new border force?

<sup>42</sup> Irrawaddy (Mar-Apr 09) To Fight or Not to Fight

<sup>43</sup> SHAN (Dec 09) Will ethnic armies join new border force?

<sup>44</sup> SHAN (Dec 09) Will ethnic armies join new border force?

<sup>45</sup> Irrawaddy (18 Jun 09) DKBA: Burma’s Second Largest Non-state Armed Group?

<sup>46</sup> DVB (02 Sep 09) DKBA expands troops in eastern Burma

<sup>47</sup> IMNA (24 July 09) DKBA ramps up civilian abuses and set sights on Brigade 6; RFA (14 Sep 09) Conflict Children in Forced Labor

<sup>48</sup> Kachin News Group (14 Sep 09) Former KIA brigade warned not to help KIA in event of war on September 9; Irrawaddy (Mar-Apr 09) To Fight or Not to Fight

<sup>49</sup> SHAN (Dec 09) Will ethnic armies join new border force?

<sup>50</sup> DVB (01 Sep 09) Kokang conflict ‘could spark bigger problems’; SHAN (08 Sep 09) Junta engages in diversionary tactics; Straits Times (02 Sep 09) Border intrigue, or was it?

hostilities with the SPDC Army.<sup>51</sup> Military observers and analysts predict that if the SPDC Army launched an offensive against the UWSA, an estimated 50,000 Shan and Wa refugees would flee to neighboring Thailand and even more into China.<sup>52</sup>

## PROCEDURAL ISSUES WITH THE ELECTIONS

At the time of writing, the SPDC had not promulgated the Election Law. However, if the rules that govern the conduct of the SPDC's 2010 elections will be anything akin to the procedures under which the junta conducted the 2008 constitutional referendum, the elections will not be free and fair. The problems during the constitutional referendum were:

### 1. Prohibiting campaigning

The Referendum Law provided for imprisonment up to three years and a 100,000 kyat fine for anyone who publicly opposed the referendum. In addition, the regime invoked Law 5/96, which provides for imprisonment up to 20 years for criticizing the constitution-drafting process.<sup>53</sup> Between 29 February and 16 May 2008, the SPDC arrested 127 people for discussing or opposing the referendum.<sup>54</sup> The regime also stepped up harassment of NLD members and political activists through junta-backed Union Solidarity and Development Association (USDA) and Swan Arr Shin thugs.<sup>55</sup>

### 2. Disenfranchising citizens

It was estimated that at least one million people were excluded from voting in the 2008 referendum. The Referendum Law barred monks and nuns, numbering over 300,000, from voting.<sup>56</sup> The Referendum Law also excluded refugees and the overwhelming majority of millions of Burmese migrant workers from the poll.<sup>57</sup> It was also likely that over 200,000 internally displaced persons (IDPs)<sup>58</sup> living in conflict-affected areas were unable to vote. Taking into account recently revised figures of Burmese refugees and migrant workers, the 2010 election will likely disenfranchise at least 1.9 million people of voting age.

Migrant workers <sup>a</sup>	3,000,000
Asylum seekers/ refugees <sup>b</sup>	700,000
IDPs <sup>c</sup>	200,000
Monks & Nuns	300,000
Total	4,200,000
Percent of eligible voters <sup>d</sup>	X 47%
<b>Total disenfranchised<sup>e</sup></b>	<b>1,974,000</b>

<sup>a</sup> Irrawaddy (07 Oct 09) UN Report Speaks Up for Migrant Workers. Only includes the number of migrant workers in Thailand.

<sup>b</sup> USCRI (16 Jul 08) World Refugee Survey 2008.

<sup>c</sup> TBBC (Oct 08) Internal Displacement and International Law in Eastern Burma – 2008 Survey, only IDPs in conflict-affected zones are included in this table.

<sup>d</sup> NLM (27 May 08) 92.48 percent approve Constitution; Calculated by dividing the number of eligible voters in the 2008 referendum (27.2 million) by the total Burmese population (57.3 million).

<sup>e</sup> Conservative estimate as migrants to other regional countries not included.

### 3. Severe restrictions, no independent monitoring

The SPDC had exclusive control of the referendum proceedings through its hand-picked 45-member Referendum Convening Commission.<sup>59</sup> The SPDC staffed sub-commissions across the country with local SPDC officials and USDA members.<sup>60</sup> The SPDC rejected a UN offer of technical assistance and did not permit independent observers to monitor the referendum.<sup>61</sup>

<sup>51</sup> SHAN (02 Jun 09) Tension grows between southern Wa, junta

<sup>52</sup> Mizzima News (10 Sep 09) Civil war imminent in Burma: Observers

<sup>53</sup> AP (01 Mar 08) Lawyer says detained Myanmar activists face new charge carrying 20-year jail term

<sup>54</sup> See Altsean-Burma's March – May 2008 Burma Bulletins

<sup>55</sup> Reuters (10 Apr 08) Myanmar crackdown on "no" campaign begins: opposition; Irrawaddy (18 Apr 08) Pro-Junta Thugs Continue Attacks on Activists

<sup>56</sup> NLM (28 Feb 08) The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, Chapter 5 - Art. 11(d)

<sup>57</sup> NLM (28 Feb 08) The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, Chapter 5 - Art. 11(d)

<sup>58</sup> TBBC (Oct 08) Internal Displacement and International Law in Eastern Burma – 2008 Survey

<sup>59</sup> AFP (27 Feb 08) Myanmar Outlaws Speeches, Leaflets About Referendum; AP (27 Feb 08) Myanmar to Jail Referendum Disrupters

<sup>60</sup> Irrawaddy (20 Mar 08) Referendum sub-commissions formed by local authorities; Narinjara News (24 Mar 08) Township Election Commission Formed in Western Burma; Kachin News Group (25 Mar 08) Junta forms Quarter Election Commissions in Myitkyina

<sup>61</sup> AFP (08 Mar 08) Myanmar rejects UN proposal for observers at referendum

## POLLING DAY PROBLEMS WILL PERSIST

The SPDC has repeatedly stated that the 2010 elections will be free and fair.<sup>62</sup> However, the widespread voting irregularities and fraud that characterized the constitutional referendum cast doubt on the regime's promises.

Despite the SPDC's promises that the referendum would be free and fair,<sup>63</sup> the regime conducted the process in what the EU described as "an overall climate of intimidation."<sup>64</sup> Widespread voting irregularities and fraud were reported in most States and Divisions:

- **Unauthorized proxy voting:** SPDC authorities cast "Yes" ballots on behalf of voters. In many cases, voters went to the polling stations on voting day only to find out that their ballots had already been cast.<sup>65</sup>
- **Absentee voting:** The regime made extensive use of absentee ballots to secure "Yes" votes ahead of voting day. In most cases SPDC authorities delivered ballots door-to-door and coerced people to vote in favor of the constitution.<sup>66</sup> In one incident in Tharawaddy, Pegu Division, SPDC authorities forced about 700 employees of a local factory to cast absentee "Yes" votes.<sup>67</sup>
- **Pre-marked ballots:** SPDC authorities forced voters to cast ballots that had already been ticked to indicate a "Yes" vote.<sup>68</sup> In Mandalay, SPDC officials ordered local civil servants to tick "Yes" on 6,000 ballots the night before voting day.<sup>69</sup>
- **No privacy:** Voters cast their ballots while SPDC officials, army soldiers, USDA and Swan Arr Shin members looked on to make sure they voted "Yes."<sup>70</sup>
- **Threats and intimidation:** In the days leading up to the referendum as well as on voting day, the regime told voters that failure to vote "Yes" would be punished with fines and imprisonment.<sup>71</sup> Civil servants were also threatened with dismissal if they did not vote "Yes" to the constitution.<sup>72</sup>

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<sup>62</sup> SPDC (29 Sep 08) Statement by H.E. U Nyan Win Minister for Foreign Affairs and Chairman of the Delegation of the Union of Myanmar in the General Debate of the 63<sup>rd</sup> session of the United Nations general Assembly; SPDC (28 Sep 09) Statement by H.E. General Thein Sein, Prime Minister of the Union of Myanmar – 64<sup>th</sup> session of the United Nations General Assembly

<sup>63</sup> Xinhua (24 Apr 08) Over 4 mln Yangon population declared as eligible voters for Myanmar referendum

<sup>64</sup> DPA (29 May 08) EU "strongly deploras" Suu Kyi arrest extension

<sup>65</sup> SHAN (10 May 08) Junta fights to win in Shan State; DVB (12 May 08) Junta continues dirty tricks as Burma votes; Mizzima News (11 May 08) Burma concludes referendum polling, but results 'pre-determined,' voters say; Mizzima News (24 May 08) Burma concludes second round of referendum polling; Irrawaddy (12 May 08) Mandalay Referendum Vote a Non-event; SHAN (14 May 08) Shan party dismisses "rigged" referendum; Khonumthung News (19 May 08) Chin National Council rejects junta's poll result; DVB (26 May 08) Voters go to the polls in delayed referendum; Mizzima News (15 May 08) Surprised voters learn junta cast votes for them in 'rigged' referendum; IMNA (12 May 08) Seven residents arrested; Irrawaddy (10 May 08) Massive cheating reported from Referendum polling stations

<sup>66</sup> Mizzima News (11 May 08) Burma concludes referendum polling, but results 'pre-determined,' voters say; Kachin News Group (12 May 08) Junta rewards nursing student for supporting referendum; IMNA (12 May 08) NMSP will not recognize constitutional referendum; SHAN (22 May 08) Authorities force people to tick on referendum eve; Mizzima News (08 May 08) Villagers complain to commission over forcible voting; DVB (26 May 08) Voters go to the polls in delayed referendum; DVB (26 May 08) Voters go to the polls in delayed referendum; Mizzima News (24 May 08) Burma concludes second round of referendum polling; Mizzima News (14 May 08) Cyclone survivors told to make room for voters

<sup>67</sup> DVB (12 May 08) Junta continues dirty tricks as Burma votes

<sup>68</sup> Irrawaddy (10 May 08) Massive cheating reported from Referendum polling stations; SHAN (12 May 08) The art of boxing with a bound opponent; Irrawaddy (11 May 08) Black Saturday; Mizzima News (15 May 08) Surprised voters learn junta cast votes for them in 'rigged' referendum; DVB (12 May 08) Junta continues dirty tricks as Burma votes; SHAN (13 May 08) Outskirts coerced, downtown free to cast "No"; SHAN (14 May 08) Shan party dismisses "rigged" referendum; Narinjara News (08 May 08) Readymade Ballots Distributed Before Referendum; Mizzima News (23 May 08) Junta's vote rigging efforts exposed again; DVB (26 May 08) Voters go to the polls in delayed referendum

<sup>69</sup> Mizzima News (15 May 08) Surprised voters learn junta cast votes for them in 'rigged' referendum

<sup>70</sup> IHT (15 May 08) Myanmar says military-backed constitution approved in referendum; Irrawaddy (10 May 08) Massive cheating reported from Referendum polling stations; Irrawaddy (11 May 08) Black Saturday; DVB (12 May 08) NLD accuses junta of manipulating vote; Khonumthung News (15 May 08) Irregularities in constitutional referendum: CHRO; IMNA (15 May 08) Many polling stations in Mon state flouted referendum law

<sup>71</sup> DVB (26 May 08) Voters go to the polls in delayed referendum; Mizzima News (24 May 08) Burma concludes second round of referendum polling; IMNA (11 May 08) Burmese authorities cheat and threaten to get 'Yes' vote; Kaladan News (10 May 08) Referendum starts in Northern Arakan; Kaowao News (12 May 08) Southern Ye voting centers coerced; DVB (12 May 08) Junta continues dirty tricks as Burma votes; IMNA (12 May 08) NMSP will not recognize constitutional referendum;

<sup>72</sup> IMNA (24 May 08) Rangoon civil servants have no option but to vote 'Yes'; Khonumthung News (15 May 08) Irregularities in constitutional referendum: CHRO

- **Military presence:** The regime deployed soldiers, police, and USDA members at polling stations throughout Burma on voting day. In many cases they ordered people to cast “Yes” votes.<sup>73</sup>
- **Food for votes:** SPDC Authorities told cyclone Nargis survivors that they had to vote “Yes” to receive food aid.<sup>74</sup>
- **No independent monitoring:** The SPDC did not allow any independent monitoring of the referendum proceedings.<sup>75</sup> No foreign correspondents were allowed near the polling stations.<sup>76</sup>
- **No polling stations:** In some villages, the SPDC failed to set up polling stations and people could not vote as a result.<sup>77</sup>
- **Early closing:** In many townships polling stations closed earlier than scheduled.<sup>78</sup>
- **Tampering with ballots:** Lack of independent monitoring of voting procedures and pervasive misuse of absentee voting facilitated the regime’s mishandling of ballots. Many reports emerged of SPDC authorities altering or destroying ballots and stuffing ballot boxes.<sup>79</sup>

## DEMOCRACY MOVEMENT PROMOTES SOLUTIONS

Pro-democracy forces inside and outside Burma have repeatedly engaged the SPDC and proposed solutions for the country’s protracted political, social, and economic crises. The regime has routinely rejected those proposals.

On 28-29 April, the NLD convened its first general meeting in more than a decade to discuss political issues including the SPDC’s 2010 elections.<sup>80</sup> Following the meeting the NLD adopted an official position on the elections. The “[Shwegondaing Declaration](#)”, issued on 29 April, outlined the NLD’s conditions for participating in the polls. The NLD said it would take part in the elections only if the SPDC released all political prisoners, reviewed the constitution, and held “inclusive free and fair” elections “under international supervision.”<sup>81</sup>

The NLD position on the 2010 elections is consistent with the party’s previous calls for genuine political dialogue and the release of all political prisoners.

The last time the NLD was able to hold a general meeting was in September 1997.<sup>82</sup> Following that meeting the NLD called for “meaningful dialogue” with the junta as the only way to “solve the nation’s problems.”<sup>83</sup>

More recently, on 12 February 2006, the NLD offered to recognize the military regime as the country’s legitimate transitional government if the junta freed Daw Aung San Suu Kyi and convened the Parliament in accordance with the 1990 election results.<sup>84</sup> The NLD proposal

<sup>73</sup> Narinjara News (02 May 08) Army to be deployed in rural areas for referendum; Kaladan News (10 May 08) Referendum starts in Northern Arakan; SHAN (16 May 08) Civilians shed tears at referendum results; DVB (12 May 08) NLD accuses junta of manipulating vote; SHAN (10 May 08) Junta fights to win in Shan State; DVB (26 May 08) Voters go to the polls in delayed referendum; IMNA (11 May 08) Burmese authorities cheat and threaten to get ‘Yes’ vote; Kaowao News (12 May 08) Southern Ye voting centers coerced; Khonumthung News (19 May 08) Chin National Council rejects junta’s poll result

<sup>74</sup> Irrawaddy (12 May 08) Rangoon struggles to survive; DVB (17 May 08) Cyclone survivors forced to work and pay for food; DVB (26 May 08) Voters go to the polls in delayed referendum

<sup>75</sup> DVB (12 May 08) NLD accuses junta of manipulating vote

<sup>76</sup> Irrawaddy (10 May 08) Massive cheating reported from Referendum polling stations

<sup>77</sup> Mizzima News (26 May 08) Burma’s draft constitution: ‘Overwhelming support in cyclone hit regions’; DVB (26 May 08) Voters go to the polls in delayed referendum; Mizzima News (24 May 08) Burma concludes second round of referendum polling

<sup>78</sup> DVB (12 May 08) NLD accuses junta of manipulating vote; SHAN (12 May 08) The art of boxing with a bound opponent; IMNA (15 May 08) Many polling stations in Mon state flouted referendum law

<sup>79</sup> Kachin News Group (12 May 08) Junta rewards nursing student for supporting referendum; Kaladan News (12 May 08) Burma holds referendum regardless of cyclone devastation; IMNA (13 May 08) ‘Yes’ votes stuffed by poll station staff in Mon state; SHAN (14 May 08) Shan party dismisses “rigged” referendum

<sup>80</sup> AFP (27 Apr 09) Suu Kyi party members meet; AFP (27 Apr 09) Aung San Suu Kyi party members meet in Myanmar: spokesman; Irrawaddy (28 Apr 09) NLD Hold First General Meeting in a Decade; AP (28 Apr 09) Myanmar opposition meets on next year’s election; AP (28 Apr 09) Myanmar opposition to decide later about 2010 poll

<sup>81</sup> NLD (29 Apr 09) Shwegondaing declaration; AP (29 Apr 09) Myanmar party sets terms for taking part in polls

<sup>82</sup> Irrawaddy (28 Apr 09) NLD Holds First General Meeting in a Decade

<sup>83</sup> Nation (29 Sep 97) Suu Kyi calls on opposition, military junta to being dialogue

<sup>84</sup> Reuters (14 Feb 06) Myanmar opposition offers to recognize military rule



received unanimous support from ethnic groups, other pro-democracy organizations inside and outside Burma, and many legislators from around the world.<sup>85</sup> However, the SPDC rejected the NLD proposals for dialogue and described it as “mere fantasy” and “not logical.”<sup>86</sup>

On 15 February 2008, Burmese opposition groups in exile announced the completion of a draft federal constitution. Over 90 pro-democracy and ethnic organizations endorsed the draft constitution. The draft constitution outlined a genuine federal system that excludes the right to secession.<sup>87</sup>

On 13 August, the Movement for Democracy and Rights for Ethnic Nationalities (MDREN)<sup>88</sup> released their “[Proposal for National Reconciliation](#)” following a two-day meeting in Jakarta.<sup>89</sup> The “Proposal for National Reconciliation” calls for the unconditional and immediate release of all political prisoners including Daw Aung San Suu Kyi, a declaration of a nationwide ceasefire, a review of the SPDC’s 2008 constitution, and a new or reformed electoral law ahead of the 2010 elections.<sup>90</sup>

The “Proposal” acknowledges the right of the military to play a “significant role” during Burma’s transition to democracy and calls for measures to transform military administration into civilian rule. The document also outlines a plan for socio-economic reforms to be implemented during the democratic transition.<sup>91</sup>

## **INDICATORS OF PROGRESS TOWARDS FREE AND FAIR ELECTIONS**

Since 1991, 17 UN General Assembly resolutions, 19 UN Human Rights Council/Commission on Human Rights resolutions, five UN Security Council press statements and one presidential statement, and three UN Sec-Gen envoys have consistently called for:

1. The release of all political prisoners;
2. The cessation of hostilities toward ethnic nationalities;
3. Genuine tripartite dialogue between all stakeholders.

The international community must adhere to these criteria, also consistently supported by the pro-democracy movement, as indicators to measure progress toward free and fair elections in Burma in 2010.

## **Situation of political prisoners**

In the run up to the 2010 elections, the SPDC has intensified its crackdown on the pro-democracy movement and imprisoned more people. On 4 September, the Thailand-based Assistant Association for Political Prisoners (AAPP) said that the number of political prisoners in Burma had reached a record-high of 2,211.<sup>92</sup> In August and September alone, the SPDC intensified its crackdown on pro-democracy activists, arresting 101, including 59 NLD

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<sup>85</sup> DVB (13 Feb 06) Exiled pro-democracy Burmese groups welcome NLD proposals; DVB (14 Feb 06) Renowned Burmese students express full support for NLD statement; DVB (14 Feb 06) Unofficial translation of 88 Generation students’ statement in support of the NLD special statement; DVB (14 Feb 06) More support for NLD’s special statement on Burma’s Union Day; Irrawaddy (14 Feb 06) Activists Back NLD Proposal

<sup>86</sup> Kyodo News (26 Apr 06) Myanmar junta says no dialogue with Suu Kyi’s NLD; Mizzima News (28 Apr 06) Palpable tension in Rangoon as military slams NLD offer

<sup>87</sup> Mizzima News (15 Feb 08) Burmese opposition groups challenge junta’s constitution

<sup>88</sup> MDREN is not a new group, merely a coalition comprising the National Coalition Government of the Union of Burma, the National Council of the Union of Burma, the Ethnic Nationalities Council, the Women’s League of Burma, the Forum for Democracy in Burma, the Students and Youth Congress of Burma, and the Nationalities Youth Forum.

<sup>89</sup> VOA (13 Aug 09) Exiled Dissidents Propose Democratic Transition for Burma

<sup>90</sup> Movement for Democracy and Rights for Ethnic Nationalities (13 Aug 09) Proposal for National Reconciliation. [http://www.mdren.org/resources/Proposal\\_for\\_National\\_Reconciliation.pdf](http://www.mdren.org/resources/Proposal_for_National_Reconciliation.pdf)

<sup>91</sup> Movement for Democracy and Rights for Ethnic Nationalities (13 Aug 09) Proposal for National Reconciliation

<sup>92</sup> Mizzima News (04 Sep 09) Political prisoners on the rise in Burma: AAPP; Mizzima News (04 Sep 09) Former air force officer sentenced to two years

members, and imprisoning eight, including four NLD members.<sup>93</sup> These actions undermined the release of 128 political prisoners on 17 September.<sup>94</sup>

### **Situation of hostilities toward ethnic areas**

The SPDC has continued its persecution of ethnic nationalities in Eastern Burma. In 2008, the SPDC Army destroyed and forcibly relocated at least 142 villages and displaced over 66,000 people.<sup>95</sup> In July and early August of 2009, the SPDC Army's military offensive against civilian populations in Central Shan State forced an estimated 10,000 people out of their villages and burned more than 500 homes.<sup>96</sup> The SPDC also attacked the Kokang Self-Administered Zone of Northern Shan State in August and increased its military presence in Kachin, Shan, and Karen States in an attempt to coerce the ceasefire groups into joining the BGF. [See above *One Army, many problems*].

### **Situation on tripartite dialogue**

Tripartite dialogue between the regime, pro-democracy groups, and ethnic nationality leaders is essential for moving forward on changing constitutional provisions that allow for full participation in the elections and charter amendments. The NLD and other groups have offered up countless opportunities for dialogue and have recognized the military as an important player in a future Burmese democracy. Instead of responding to these calls for dialogue, the SPDC continues to detain NLD leaders, including Daw Aung San Suu Kyi and Tin Oo, and ethnic leaders such as Hkun Htun Oo, Chairman of the Shan Nationalities League for Democracy (SNLD). While the SPDC has at times made token gestures in an attempt to deflect international criticism, it has in fact ignored 18 years of calls from the international community for genuine dialogue with pro-democracy and ethnic leaders.

## **WHAT ARE THE SOLUTIONS?**

### **1. The SPDC constitution, in its present form, must be universally condemned**

The constitution, as written, is flawed. If implemented in its current form, the constitution will exacerbate existing problems, destroy hopes for ethnic diversity, and entrench military rule. The new constitution will intensify the root causes that have caused millions of people to leave Burma in the past decade.

### **2. Establish a constitutional review committee composed of all of Burma's stakeholders**

For the constitution to meet the "minimum" requirements for elections to be held, it must provide for free and full participation by all of Burma's people in an atmosphere free of intimidation, harassment, and coercion. In addition, the procedures for amending the constitution must provide for an affirmative vote by two-thirds of the members of Parliament, as is done in most democratic countries.

### **3. The UN Security Council must impose an international arms embargo on the SPDC**

The SPDC's recent armed aggression against the MNDA indicates that it intends to force ethnic nationalities to comply with its political agenda through military operations against civilians in ethnic areas. As long as the SPDC has easy access to military arms on the international market, the SPDC Army's aggression against Burma's ethnic nationalities will continue.

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<sup>93</sup> See Altsean Burma August-September 2009 Burma Bulletins

<sup>94</sup> AP (17 Sep 09) Myanmar announces amnesty for 7,114 prisoners; Irrawaddy (19 Sep 09) More Political Prisoners Released: AAPP

<sup>95</sup> TBBC (Oct 08) Internal Displacement and International Law in Eastern Burma

<sup>96</sup> Irrawaddy (13 Aug 09) 10,000 Villagers Forcibly Relocated in Shan State: Rights Groups; DVB (13 Aug 09) 500 Shan houses burned in scorched earth campaign

#### **4. The UN Security Council must pass a resolution to establish a Commission of Inquiry to investigate the junta's crimes against humanity and war crimes**

The constitution gives the SPDC and their military predecessors blanket immunity against their pervasive and ongoing human rights abuses. The establishment of a Commission of Inquiry will be a vital source of pressure to stop the regime from continuing to commit serious crimes. It will also serve as a starting point for transitional justice that is essential for long-term national reconciliation in Burma.

#### **5. Provide protection to Burma border-based pro-democracy groups and grassroots organizations that provide training and documentation relevant to human rights and democracy**

Burma's brave citizens who put their lives on the line on a daily basis to record and document the situation of human rights and democracy must receive necessary international protection to continue their work. Their work is essential in order to monitor the progress (or lack thereof) of any commitments to transition Burma into a democracy. Their programs to build capacity at the grassroots are a vital complement to other international efforts.

**This brief has been prepared in cooperation with the member organizations of the Euro-Burma Network.**

**For background information on the SPDC-sponsored constitution-drafting process, please see other Altsean briefers:**

- National Convention: roadmap to instability  
<http://www.altsean.org/Reports/NCRoadmaptoinstability.php>
- National Convention - The SPDC Delusion Of Democratic Reform  
<http://www.altsean.org/Reports/NCDelusion.php>
- Burma's National Convention - Illegitimate Unrepresentative And Oppressive  
<http://www.altsean.org/Reports/NCIllegitimate.php>