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THE SPDC CONSTITUTIONAL REFERENDUM: A DEAD END FOR DEMOCRACY IN BURMA

"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." - **Paulo Sergio Pinheiro - UN Special Rapporteur on human rights in Burma, 14 March 2008**¹

On 10 May 2008, the people of Burma will vote in an SPDC-manipulated referendum on a draft constitution that is designed to entrench military rule.

The likely consequences of a forced "Yes" vote or a majority "No" vote will have serious regional repercussions. A forced "yes" vote will likely intensify unrest in Burma among a population increasingly dissatisfied with the entrenchment of a regime notorious for its abuses and economic mismanagement. A majority "no" vote despite the regime's threats, intimidation, and fraudulent practices would result in a deeper political crisis, since the regime has repeatedly made it clear that it intends to remain in power if the constitution is rejected.²

WHAT IS WRONG WITH THE REFERENDUM?

Adoption rules altered, conflicting

According to its Transitory Provisions, the constitution can be adopted by as few as 25% of eligible voters, provided that a 50% quorum is reached.³ This provision is significantly different than the document approved by the National Convention, which required a "Yes" vote by more than 50% of all eligible voters.⁴ It must be noted that the SPDC's Referendum Law states that the constitution will be adopted simply by reporting the percentage of "Yes" votes in relation to the total number of eligible voters.⁵ It is not clear which law the SPDC will choose to rely on when vote counting ends. Neither the Referendum Law nor the draft constitution say what will happen if the constitution is rejected.

Voters not informed

A month before the referendum, the SPDC finally made the 457-article, 194- page text of the constitution available in bookstores at a price equivalent to person's daily wage.⁶ The SPDC

¹ Reuters (14 Mar 08) UN rights sleuth says Myanmar democracy is fantasy; Reuters (14 Mar 08) U.N. rights envoy sees "elfin" democracy in Myanmar

² Nation (28 Apr 08) Junta control the only sure outcome in Burmese vote; IMNA (09 Apr 08) Vote "No" and wait a decade for elections: Referendum Commission; Khonumthung News (21 Apr 08) Thura Aung Ko campaigns for referendum in western Burma

³ NLD (24 Apr 08) Special Statement No 7/14/ 08 (Unofficial Translation); Nation (28 Apr 08) Junta control the only sure outcome in Burmese vote

⁴ NLM (03 Sep 07) This Constitution shall come into force throughout the Union after its adoption in a referendum by the assenting votes of more than half of all the people who have the right to vote, Page 5

⁵ NLM (28 Feb 08) The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008, Chapter 9, Art. 23

⁶ AP (10 Apr 08) Myanmar junta sets May 10 for holding constitutional referendum. 1,000 kyat - the UN estimates that more than 90% of the population in Burma lives on less than US\$1 - 1,200 kyat - a day

printed only 465,000 copies of the constitution for a voting public of over 30 million.⁷ The regime did not translate the constitution into any of the ethnic nationalities' languages. In addition, the regime's public relations campaign contains no information on the content of the draft constitution. Instead, the SPDC has waged an uninterrupted propaganda program for a "Yes" vote in its controlled media, while barring the independent print media from publishing the views of supporters of a "No" vote.⁸

Prohibiting campaigning

Between 29 February and 22 April, the SPDC has arrested 58 people, including 34 NLD members, for discussing or opposing the referendum.⁹ [See *Annex I: List of arrests*] The Referendum Law provides for imprisonment up to three years and a 100,000 kyat fine for anyone who distributes leaflets or makes speeches against the referendum. In addition, the regime continues to use Law 5/96, which provides for imprisonment up to 20 years for criticizing the constitution-drafting process, to intimidate opponents of the constitution.¹⁰ 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. Attacks against NLD members were reported in Rangoon, Mandalay, Irrawaddy Divisions, and in Arakan State.¹¹ [See *Annex II: List of attacks on political activists*]

Disenfranchising citizens

The Referendum Law bars monks and nuns from voting.¹² Burma's Buddhist clergy represents a significant political voice. The Referendum Law also excludes refugees and the overwhelming majority of Burmese migrant workers from the poll.¹³ It is also likely that over 200,000 internally displaced persons (IDPs)¹⁴ living in conflict-affected areas will be unable to vote. It is estimated that at least one million people will be excluded from voting.

Controlling the procedures and refusing independent monitoring

The SPDC has exclusive control of the referendum proceedings through its hand-picked 45-member Referendum Convening Commission.¹⁵ The SPDC staffed sub-commissions across the country with local SPDC officials and USDA members.¹⁶ The SPDC rejected a UN offer for technical assistance with the organization of the constitutional referendum. The regime also said that it would not allow independent observers to monitor the referendum.¹⁷

Rigging the vote

Despite the SPDC's claims that the polling would be conducted in a free and fair manner,¹⁸ the regime has already committed serious voting irregularities and fraud in the weeks leading up to referendum day. The regime included in the voters' roll people ineligible to vote, including citizens under the age of 18 and foreign nationals.¹⁹ SPDC authorities threatened

⁷ NLM (17 Apr 08) Commission for Holding Referendum meets with sub-commissions at different levels in Sagaing, Magway, Bago, Bago (West), Ayeyawady Divisions; UNICEF (Jan 08) State of the World's Children 2008

⁸ Reuters (21 Apr 08) Myanmar arrests keep pressure on "no" campaign; New Straits Times (23 Apr 08) No room for No amid the junta's Yes drive

⁹ According to the referendum Law, anyone who distributes leaflets or makes speeches against the referendum can be imprisoned for up to three years or fined up to 100,000 kyat.

¹⁰ AP (01 Mar 08) Lawyer says detained Myanmar activists face new charge carrying 20-year jail term

¹¹ Reuters (10 Apr 08) Myanmar crackdown on "no" campaign begins: opposition; Irrawaddy (18 Apr 08) Pro-Junta Thugs Continue Attacks on Activists

¹² 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)

¹³ 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)

¹⁴ TBBC (Oct 07) Internal Displacement in Eastern Burma – 2007 Survey

¹⁵ AFP (27 Feb 08) Myanmar Outlaws Speeches, Leaflets About Referendum; AP (27 Feb 08) Myanmar to Jail Referendum Disrupters

¹⁶ 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

¹⁷ AFP (08 Mar 08) Myanmar rejects UN proposal for observers at referendum

¹⁸ Xinhua (24 Apr 08) Over 4 mln Yangon population declared as eligible voters for Myanmar referendum

¹⁹ Kachin News Group (14 Apr 08) Junta includes underage people in voters' list; SHAN (25 Apr 08) Junta issues ID cards to Chinese citizens

voters into casting a “Yes” vote,²⁰ instructed poll booth officers to get “Yes” votes,²¹ and ordered civil servants to vote “Yes”.²² Numerous reports of vote buying have also surfaced.²³

WHAT IS WRONG WITH THE CONSTITUTION?

Military is above the law

The constitution provides no oversight for military affairs, including defense spending.²⁴ The military is also empowered with “safeguarding the State Constitution”. This principle could be invoked at any time to prevent constitutional amendments that the military sees as inimical to its interests.²⁵

Military President

The President must be a person acquainted with military affairs. In addition, the President cannot have any children that are foreign nationals. Both of these provisions would bar Daw Aung San Suu Kyi from being appointed as President.²⁶

Military occupies 25% of Parliament

The Armed Forces commander-in-chief is given the power to appoint 25% of the seats in both the upper and lower houses of Parliament.²⁷ The President appoints the Ministers of Defense, Security/Home Affairs, and Border Affairs from a list prepared by the commander-in-chief.²⁸

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. Any amendment to the charter’s so-called “fundamental principles” would require a two step process. The amendment would first require the approval of 75% of the Parliament, followed by a favorable vote of more than

UNPOPULAR CONSTITUTION

Political parties, pro-democracy groups, and ethnic organizations that have rejected the referendum include:

- National League for Democracy
- Committee Representing People’s Parliament
- United Nationalities Alliance
- Shan Nationalities League for Democracy
- Chin National League for Democracy
- 88 Generation Students
- All Burma Federation of Student Unions
- All-Burmese Monks Alliance
- Mon National Democratic Front
- New Mon State Party
- Chin National Front
- Pa-O National Liberation Organization
- Shan State Army–South
- Ethnic Nationalities Council
- National Coalition Government of the Union of Burma
- National Council of the Union of Burma
- Women’s League of Burma
- Kachin Women’s Association Thailand
- Forum for Democracy in Burma
- Nationalities Youth Forum
- Student and Youth Congress of Burma

²⁰ Mizzima News (21 Mar 08) Immigration officials mobilize locals to support new constitution; SHAN (24 Mar 08) ID cards issued in Shan State; voters coerced to support constitution; Irrawaddy (20 Mar 08) Referendum: “No” Vote Gaining Momentum; Kachin News Group (10 Mar 08) Junta force school teachers to support referendum; Kaladan News (15 Mar 08) Burma’s security’s campaign for next constitutional referendum; Kaladan News (19 Mar 08) Junta campaigns to get “yes” vote in northern Arakan; SHAN (19 Mar 08) Junta authorities coax, threaten civilians to support charter; DVB (31 Mar 08) Burma military pressures people to vote Yes; DVB (28 Apr 08) “Vote No” campaign continues across Burma; DVB (30 Apr 08) Businesses threatened with closure for ‘No’ vote; Irrawaddy (24 Apr 08) Junta using threats to win referendum vote, says NLD

²¹ Mizzima News (13 Mar 08) Junta appoints poll booth officers in Mandalay; Kaladan News (12 Apr 08) SPDC’s referendum training concluded in Arakan

²² Irrawaddy (17 Mar 08) ‘Vote Yes’ Junta Tells Civil Servants; Kaladan News (19 Mar 08) Junta campaigns to get “yes” vote in northern Arakan; SHAN (19 Mar 08) Junta authorities coax, threaten civilians to support charter; Khonumthng News (19 Apr 08) Constitutional training for government employees; SHAN (11 Apr 08) Many townships forced to support the draft constitution; Irrawaddy (24 Apr 08) Junta using threats to win referendum vote, says NLD

²³ DVB (02 Apr 08) Prisoners offered sentence reductions to vote “Yes”; Mizzima News (21 Apr 08) Authorities in Kachin state campaign for ‘Yes’ vote; DVB (22 Apr 08) Rural Kachin offered incentives to vote “Yes”; AsiaNews (23 Apr 08) In the Burmese countryside, elderly and sick forced to vote “yes”; Irrawaddy (23 Apr 08) Military commanders join referendum “vote yes” campaign; Kachin News Group (24 Apr 08) Junta woos rural people with rice and salt in referendum campaign; Kaladan News (22 Apr 08) MOCs woo people to cast the “Yes” vote in Kyauktaw; Mizzima News (28 Apr 08) Villagers paint cross signs on walls, reject constitution; Narinjara News (28 Apr 08) Army stops toll collection in western Burma; SHAN (27 Apr 08) Junta offers eye treatment for free

²⁴ Draft constitution of the Republic of the Union of Myanmar, Chapter 7

²⁵ Draft constitution of the Republic of the Union of Myanmar, Chapter 7

²⁶ Draft constitution of the Republic of the Union of Myanmar, Chapter 3

²⁷ Draft constitution of the Republic of the Union of Myanmar, Chapter 4

²⁸ Draft constitution of the Republic of the Union of Myanmar, Chapter 5

50% of eligible voters in a referendum. Getting 75% approval in the legislature would be impossible when an army bloc could stop any such move.²⁹

Military coups legalized

The Armed Forces commander-in-chief is empowered to declare a “state of emergency” and the power to “restrict or suspend” fundamental rights of the citizens if he perceives a threat of “disintegration of national solidarity.”³⁰ The military would receive immunity from prosecution for actions taken during emergency rule.³¹

Immunity for the junta

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.³²

Political activists barred from office

The constitution prohibits people that have been convicted or are serving prison sentences for any offence from standing for election to Parliament, being appointed as a Minister, or being considered for the position of President.³³ Many leaders in the pro-democracy movement have been convicted of offences or remain in prison because of their political activities.

Federalism denied

A multiethnic country like Burma is suitable for federalism because it allows greater autonomy for ethnic States. However, the power of the President to appoint the Chief Ministers of States goes against federal principles.³⁴

Entry into force date: unknown

Article 441 provides that the constitution shall come into force on the first day that Parliament convenes.³⁵ Given this provision, even if the constitution is approved, the SPDC will continue to rule until the date on which Parliament finally convenes.

For more background information on the SPDC-sponsored constitution-drafting process, please see:

- 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>

WHAT IS THE SOLUTION?

1. The constitutional referendum process must be abandoned

The referendum process and draft constitution are fatally flawed. The process will not bring urgently-needed political and economic reforms to Burma. In fact, it is likely to intensify tensions that have caused at least two million people to leave Burma in the past decade.

2. Daw Aung San Suu Kyi and all political prisoners must be freed

This provision is non-negotiable. The release of Daw Aung San Suu Kyi and all other political prisoners is the only way that the SPDC can show “good faith” prior to the start of tripartite dialogue.

²⁹ Nation (28 Apr 08) Junta control the only sure outcome in Burmese vote

³⁰ Draft constitution of the Republic of the Union of Myanmar, Chapter 11

³¹ Draft constitution of the Republic of the Union of Myanmar, Chapter 11; Straits Times (02 Apr 08) New Myanmar constitution keeps military dominant

³² Nation (28 Apr 08) Junta control the only sure outcome in Burmese vote

³³ Draft constitution of the Republic of the Union of Myanmar, Chapter 3, 4, and 5

³⁴ Nation (28 Apr 08) Junta control the only sure outcome in Burmese vote

³⁵ NLD (24 Apr 08) Special Statement No 7/14/ 08 (Unofficial Translation)

3. The SPDC must engage in tripartite dialogue

Genuine and time-bound tripartite dialogue remains the only viable, sustainable mechanism to start reform processes that have the broad support and participation of all key stake-holders as well as the international community. The parties involved in the tripartite discussions should draft a new constitution through a transparent, inclusive, and participatory process.

Annex I: List of arrests

- **29 February:** SPDC authorities arrested three Rangoon residents for discussing the referendum.³⁶
- **27-28 March:** SPDC authorities arrested three NLD members in Taunggoat Township, Arakan State.³⁷
- **30 March:** SPDC authorities arrested six NLD members in connection with the 27 March anti-referendum protest in front of the party headquarters in Rangoon.³⁸
- **1 April:** SPDC Special Branch police arrested NLD youth coordinator Aung Htun and Thingangyun Township's NLD chairman Tin Myint in Rangoon.³⁹
- **6 April:** Police arrested Thein Lwin, NLD member from Rambree Township, Arakan State, for possessing statements against the referendum.⁴⁰
- **13 April:** SPDC authorities arrested more than 20 NLD activists for campaigning against the referendum in Akyab, Arakan State. The activists were released the next day.⁴¹
- **15 April:** SPDC authorities arrested NLD youth member Myo Nyunt near Rangoon.⁴² SPDC authorities also arrested NLD member Tin Win for posting "No" signs on billboards during the Thingyan festival in Rangoon.⁴³
- **22 April:** SPDC authorities arrested at least 23 people wearing "No" t-shirts in Akyab, Arakan State.⁴⁴

Annex II: List of attacks on political activists

- **27 March:** Two unidentified assailants attacked and injured human rights activist Myint Aye in Rangoon's Sanchaung Township.⁴⁵
- **31 March:** An unidentified assailant attacked and injured the 74-year-old Chairman of Hlaingtharyar Township NLD Myint Hlaing in Rangoon.⁴⁶
- **3 April:** Two thugs armed with clubs attacked and injured NLD member Tin Yu in Rangoon.⁴⁷
- **7 April:** Village Peace and Development Council Chairman Aung Myint accompanied by about 200 workers ransacked the shop of NLD member Ba Sein in Akyab, Arakan State.⁴⁸
- **16 April:** Thugs armed with clubs attacked Thi Han, an NLD youth leader from Rangoon's South Dagon Myothit Township. Thi Han was wearing a "No" vote t-shirt when the attack occurred.⁴⁹
- **20 April:** Thugs on motorcycles threw rocks at the homes of senior NLD members Myint Soe and Aung Ko Ko in Mandalay.⁵⁰
- **22 April:** SPDC officials and police raided the homes of three NLD members in Rangoon's South Dagon Myothit Township.⁵¹

³⁶ Irrawaddy (03 Mar 08) Three People Arrested for Comments on Referendum

³⁷ Narinjara News (11 Apr 08) NLD member arrested for statement

³⁸ DVB (31 Mar 08) NLD members arrested after demonstration; Mizzima News (02 Apr 08) Junta arrests more opposition members; Irrawaddy (04 Apr 08) More opposition activists attacked by thugs

³⁹ DVB (02 Apr 08) NLD youth coordinator arrested; Mizzima News (02 Apr 08) Junta arrests more opposition members

⁴⁰ Narinjara News (11 Apr 08) NLD member arrested for statement; Irrawaddy (09 Apr 08) Activists Take "Vote No" Campaign to Countryside

⁴¹ Reuters (16 Apr 08) Junta briefly detains "No" campaigners; Guardian (15 Apr 08) Burmese junta arrests opposition aide; Irrawaddy (18 Apr 08) Pro-Junta Thugs Continue Attacks on Activists

⁴² AFP (15 Apr 08) Myanmar detains at least 20 activists; AP (15 Apr 08) Myanmar Detains at Least 20 Activists

⁴³ Irrawaddy (18 Apr 08) Pro-Junta Thugs Continue Attacks on Activists; DVB (18 Apr 08) NLD member beaten and arrested for "No" placards

⁴⁴ New Straits Times (23 Apr 08) No room for No amid the junta's Yes drive

⁴⁵ Irrawaddy (02 Apr 08) Junta-backed thugs continue attacks on opposition

⁴⁶ Mizzima News (01 Apr 08) Burmese opposition leader attacked; Irrawaddy (02 Apr 08) Junta-backed thugs continue attacks on opposition

⁴⁷ Irrawaddy (04 Apr 08) More opposition activists attacked by thugs; DVB (07 Apr 08) Second NLD member attacked in Hlaing Tharyar; Mizzima News (04 Apr 08) Another NLD member beaten up

⁴⁸ Kaladan News (11 Apr 08) NLD member's shop destroyed and looted in Sittwe

⁴⁹ Irrawaddy (18 Apr 08) Pro-Junta Thugs Continue Attacks on Activists

⁵⁰ DVB (23 Apr 08) NLD secretary's home attacked; Irrawaddy (24 Apr 08) More harassment, attacks on opposition activists underway

⁵¹ Irrawaddy (24 Apr 08) More harassment, attacks on opposition activists underway