

# **Acts of Oppression**

**Censorship and the law in Burma**

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## INTRODUCTION

Freedom of expression has been one of the prime casualties of prolonged military rule in Burma.<sup>1</sup> Since the army first began controlling the levers of state power in 1962, numerous publications have been censored or banned; hundreds of journalists, writers, poets, playwrights and cartoonists, as well as pro-democracy activists have been arrested, detained or sentenced to long prison terms, tortured, ill-treated or otherwise harassed, even killed, and tens of thousands of ordinary people have been punished simply for peacefully expressing their views. The impact has been immense and crippling, reverberating through all aspects of life in Burma and blighting the country's social, cultural and, particularly, economic development. Years of strong-arm military dictatorship and misrule, buttressed by one of the world's severest censorship regimes and systematic abuse of human rights, have driven thousands of Burma's citizens to seek refuge abroad and marked out Burma as a pariah within the international community of nation states.

Freedom of expression is vital to democracy, good governance and ensuring official accountability, as the United Nations and other authoritative international bodies have repeatedly recognised. Freedom of expression, including the right to "seek, receive and impart information and ideas"<sup>2</sup> irrespective of national borders, is also vital to the enjoyment of other basic human rights and to the individual's ability to take informed decisions about many aspects of their lives, including their health and livelihood. Censorship, on the other hand, is most often a weapon of oppressors, those who hold power by force of arms and threat of violence rather than by virtue of a popular mandate.

Fifty years ago, virtually coinciding, paradoxically, with Burma's accession to independence from colonial rule, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), laying the modern foundations of international human rights law. Burma, as a member state of the UN, is bound under the UN Charter to respect the standards laid down in the UDHR and to work towards their full observance. But the record of successive Burmese governments in this regard has been nothing short of shameful. Under military rule, the law in Burma has been used as an instrument for the suppression of rights, not as it should be, as a framework for ensuring the protection of individual liberty, rights and freedoms.

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<sup>1</sup> The name of the country was changed from Burma to Myanmar in June 1989. The new name, despite being recognised by the UN, has not found widespread acceptance, either within the country or outside, although the military authorities have ensured that it is used in all official communications. Many ethnic minority groups reject it on the grounds that it is the name given to the country historically by the majority Burman population. Given this lack of universal consensus, the more traditional name will be used throughout this report except where the context requires otherwise.

<sup>2</sup> Article 19, International Covenant on Civil and Political Rights.

Nowhere has this been more pronounced than with respect to freedom of expression, where the law has been used to stifle discussion and debate, to prevent the free flow of information, to undermine the rights of minorities, and to deny the people at large an effective voice in how and by whom they are governed. As the United Nations' Special Rapporteur concluded in a recent report on Burma, "it is difficult to assume that open discussion and free exchange of views and opinions can possibly take place in Burma, unless they are in support of the military regime."<sup>3</sup> The aim of this report is to chart how this came about and to review the various laws and other measures which have progressively eroded the right to freedom of expression in Burma over more than three decades.

## **POLITICAL AND CONSTITUTIONAL BACKGROUND**

Burma gained independence from British rule in 1948. A land of remarkable ethnic diversity<sup>4</sup>, it has historically seen considerable tensions develop between the majority Burman people and the various minority ethnic groups — and often also between different ethnic minorities — who together comprise the Burmese population. During British rule, these tensions were broadly contained by a policy which divided Burma into two administrative units, 'Ministerial Burma', comprising the Burman majority, and the 'Frontier Areas', composed largely of the ethnic minorities. The former enjoyed a limited form of parliamentary government, while the latter continued to be governed by traditional rulers and chiefs. The founding fathers of independent Burma, headed by General Aung San, decided to constitute the country into a quasi-federation consisting of seven states and seven administrative divisions, under which the states were to enjoy a measure of functional autonomy in relation to their day-to-day administration. Curiously, the post-independence Constitution (drawn up in 1947) gave two of the states — the Karenni and the Shan — the right to secede after a ten-year period: a right which, in the event, was never exercised.

The immediate aftermath of independence saw recurrent violent conflicts between, on the one hand, insurgent groups such as the communists and certain ethnic minorities, and, on the other, the central government. The resulting political instability was compounded by growing factionalism within the ruling party, the Anti-Fascist People's Freedom League (AFPFL). This came to a head in 1958 when the

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<sup>3</sup> *Situation of human rights in Myanmar*, UN Doc. E/CN.4/1997/64, para. 106. The Special Rapporteur, appointed by the United Nations in 1992, reports to the Commission on Human Rights. Currently the post is held by Mr Rajsoomer Lallah, a former Chief Justice of Mauritius.

<sup>4</sup> Precise statistical data on the numbers and strengths of the ethnic groups is hard to come by, but it is estimated that there are around 20 major ethnic groups within the country. The State Law and Order Restoration Council (SLORC)-led government is reported to have acknowledged the existence of some "135 national races". See M Smith, *Ethnic Groups in Burma: Development, Democracy and Human Rights* (London: Anti-Slavery International, 1994).

party split into two, the 'Clean' AFPFL and the 'Stable' AFPFL, and the country's administration was handed over temporarily to the army, headed by General Ne Win. In the elections which were held 16 months later, the 'Clean' AFPFL (subsequently renamed the Union Party) was returned to power, and a civilian government, headed by Prime Minister U Nu, took office. This government, however, did not last long. Fresh secessionist pressures, coupled with ineffective political leadership, led to growing popular disenchantment and, in March 1962, the military, led by General Ne Win, took power.

Ne Win imposed a strictly authoritarian regime in which power was exercised through a Revolutionary Council and through Security Administrative Councils<sup>5</sup>, the latter virtually replacing the traditional civil service. The military launched its own political party, the Burma Socialist Programme Party (BSPP), and outlawed all other political parties. The existing (1947) Constitution was not abrogated completely, but its provisions were made subordinate to military decrees. A notable feature of the Ne Win regime was its programme of large-scale nationalization of the economy: agriculture, trade and industry were all brought under state control, often forcibly.<sup>6</sup> In 1974, a new Constitution was enacted which sought to legitimise this process of economic collectivization: Burma was re-named a socialist republic, and socialism was made the official ideology of the state.<sup>7</sup> The new Constitution also entrenched the one-party nature of the polity<sup>8</sup> and placed further restrictions on basic freedoms and civil liberties.<sup>9</sup>

In the face of growing opposition to his rule, Ne Win sought to confer a degree of democratic legitimacy on his government by holding elections to a newly-established legislative body<sup>10</sup> in January 1974 and in which he was returned as President. Shortly thereafter, he dissolved the Revolutionary Council. But these changes did not check the growing tide of public discontent with the BSPP administration, whose economic policies had given rise to acute food shortages,

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<sup>5</sup> There is some doubt about the exact nomenclature of these bodies in English translation: some commentators have referred to them as "Security and Administration Committees" (see e.g. Taylor, *State in Burma* (London: Hurst, 1987), 314), while others have used the term "Security and Administrative Councils" (see e.g. Silverstein, *Burma: Military Rule and the Politics of Stagnation* (Ithaca: Cornell University Press, 1977), 222).

<sup>6</sup> This was justified by the slogan "the Burmese Way to Socialism" which became the official ideology of the regime.

<sup>7</sup> Art. 5.

<sup>8</sup> Art. 11.

<sup>9</sup> The exercise of these freedoms was made subject to an overriding duty on the part of all citizens to refrain from undermining: (a) the sovereignty and security of the State; (b) the essence of the socialist system; (c) the unity and solidarity of the national races; (d) peace and tranquillity; and (e) public morality. Art. 166.

<sup>10</sup> The *Pyithu Hluttaw* (People's Assembly). The 1974 Constitution also created a powerful administrative body called the Council of State, to be headed by the President, with the power, *inter alia*, to convene sessions of the *Pyithu Hluttaw*, to enter into, ratify or amend international treaties, and to appoint or dismiss ministers and heads of public service bodies. Art. 73.

rampant inflation, a burgeoning black market in essential commodities and various social injustices. Student demonstrations in 1976 were one manifestation of this discontent, but were successfully put down by the authorities, as was an attempted coup staged by members of the Burmese army. Ne Win ordered fresh elections two years later in which he was re-elected as President for four more years.<sup>11</sup> He formally resigned as President in 1981, but continued to wield enormous power and influence as Chairman of the BSPP, a post to which he was re-elected in 1985.

The economic situation, meanwhile, continued to worsen, and, this coupled with growing insurgency campaigns in the countryside by communists and various ethnic minorities, provoked widespread civil unrest, culminating in student demonstrations in the capital, Rangoon, in March 1988. These demonstrations were met with brutal force by the army and riot police, leading to dozens of civilian deaths.<sup>12</sup> Even so, the student protests continued, as did their suppression by the authorities; an attempt in July by Ne Win to placate public opinion, by stepping down as head of the BSPP, failed to stem the unrest. The protests intensified, and on 3 August the authorities imposed martial law in Rangoon. Further conciliatory gestures made by Dr Maung Maung, a civilian lawyer who had been appointed to replace Ne Win as Chairman of the BSPP and to take over the reins of the Presidency<sup>13</sup>, also failed to stem the demonstrations. These had now been joined by Buddhist monks and members of the navy and air force, and a degree of anarchy ensued. This provided an excuse for the Ne Win loyalists in the army, led by General Saw Maung, to stage a *coup d'état* on 18 September, ostensibly to restore order.

General Saw Maung created the State Law and Order Restoration Council (SLORC) as the supreme body of governance, suspended the 1974 Constitution, abolished all state organs, banned demonstrations, and imposed a night-time curfew. When this failed to quell the protests, he ordered the army to use force, including lethal force, against the protestors. In the ensuing violence, it is estimated that over a thousand civilians were killed in the first few days following the coup. Concurrently with these hard-line tactics, however, General Saw Maung continued to maintain that the sole purpose of the army's intervention was to restore order, improve the economic condition of the people, and to organize a transition to democracy through multi-party elections. It was not his intention, he asserted, to "cling to power for long".<sup>14</sup>

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<sup>11</sup> It is worth noting that these were one-party elections authorized under the 1974 Constitution and not genuinely democratic multi-party elections.

<sup>12</sup> See e.g. B Lintner, *Outrage: Burma's Struggle for Democracy* (London and Bangkok: White Lotus, 1990), 193.

<sup>13</sup> Ne Win, who was the Chairman of the BSPP, was succeeded by Sein Lwin in that post on 26 July 1988. Sein Lwin also became President, succeeding the then incumbent, San Yu, a day later. Maung Maung took over both the offices from Sein Lwin on 19 August.

<sup>14</sup> Broadcast to the nation by Gen Saw Maung, 23 Sept. 1988.

It was not until May 1990, however, that the promised elections were held and then only after a large obstacles were placed in the way of the opposition parties, notably the National League for Democracy (NLD), led by Daw Aung San Suu Kyi. These included a ban on all public gatherings of more than five people and systematic intimidation of NLD leaders and activists. Daw Aung San Suu Kyi was put under house arrest and barred from contesting the election.<sup>15</sup> These blatantly partisan tactics, however, failed to weaken the popularity of the NLD: to the SLORC's obvious dismay, the NLD received an overwhelming majority of the votes, winning 392 of the 485 seats contested. By contrast, the SLORC-backed National Unity Party secured a mere 10 seats, with the remaining seats going to smaller, ethnically-based, parties.<sup>16</sup> Despite the climate of fear and intimidation engendered by the SLORC prior to the elections, the voting itself was seen by most observers to have been conducted in a free and orderly fashion.

Armed with the election results, the NLD demanded immediate dialogue with the SLORC with a view to ensuring a smooth and early transfer of power to the newly-elected representatives. The SLORC rejected this demand, claiming disingenuously that the elections had been intended to set up not a legislature but a constituent assembly to draft a new Constitution for the country. This task, it said, would now be assigned to a National Convention, whose representatives were to be chosen by the SLORC regardless of the outcome of the election. At the same time, the SLORC launched a campaign of intimidation and harassment against the NLD and other opposition activists, detaining many of those newly-elected as Members of Parliament (MPs) but effectively barred by the SLORC from taking up office. Some of the MPs-elect, however, evaded arrest and, seeking refuge abroad or in areas controlled by armed ethnic minority opposition forces, in December 1990 announced the formation of a government-in-exile, the National Coalition Government of the Union of Burma (NCGUB).

The SLORC, meanwhile, stepped up its campaign against its critics and opponents within Burma. As well as annulling the registration of several political parties, it retroactively amended the electoral law so as to disqualify many of the elected MPs<sup>17</sup>, closed universities and colleges (which had re-opened briefly in May 1991 after having been closed down since 1988), and detained many pro-democracy

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<sup>15</sup> This was done on the grounds of her "entitlement to the privileges of a foreigner" (by virtue of her marriage to Dr Michael Aris, a British citizen) and her alleged involvement with insurgents.

<sup>16</sup> These include the Shan Nationalities League for Democracy, Arakan League for Democracy, Mon National Democratic Front, National Democratic Party for Human Rights, Chin Nation League for Democracy, Kachin State National Congress for Democracy, Party for National Democracy, Union Pa-O National Organisation, Democratic Organisation for Kayan National Unity, Kayah State All Nationalities League for Democracy, Naga Hills Regional Progressive Party and independents.

<sup>17</sup> See e.g. ARTICLE 19, *Burma: Beyond the Law* (London: ARTICLE 19, Aug. 1996), 59-60.

activists.<sup>18</sup> It also launched a fresh military offensive against armed ethnic minority groups in the border areas. However, in April 1992, in what appeared to be a sudden reversal of this hard-line policy, General Than Shwe, who had by then replaced General Saw Maung as Chairman of the SLORC, ordered the release of several political prisoners and signalled the military's willingness to enter into talks with the NLD leadership. Within months, the universities and colleges were re-opened, the night curfew in force since 1988 was lifted, and cease-fire agreements were entered into, or dialogue initiated with, some 17 different armed opposition groups. Even so, most of the restrictions on civil liberties imposed since 1988 continued in force.

In January 1993 the SLORC-sponsored National Convention held its inaugural session and, though several times adjourned in the face of dissent from those within its membership about certain of the proposals being pushed through, by late 1995 it was reported to have adopted a new draft Constitution containing some highly controversial principles. In particular, it was said to give the military primacy in national affairs.<sup>19</sup> The NLD, which had called unsuccessfully for the SLORC to make it a truly representative body, boycotted the National Convention and in May 1996, announced its intention to draft an alternative Constitution — a move which the SLORC swiftly thwarted by issuing an Order to prohibit such activity.<sup>20</sup>

The harassment of NLD activists has, meanwhile, continued unabated. Members of the party continue to be arrested, detained and imprisoned on specious grounds, while the authorities' attitude to the democratic opposition is exemplified by its unremitting harassment of Aung San Suu Kyi. She has been prevented from addressing meetings and is kept under constant surveillance, with the authorities monitoring and frequently disconnecting her telephone line. She continues also to be denied ready access to the media while the state-controlled Burmese media is used to try and discredit her. In July 1998, the military authorities effectively prevented her from travelling on party business outside Rangoon.<sup>21</sup>

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<sup>18</sup> Some 200 persons were reported to have been arrested in the first seven months of 1991; by the end of the year, there were 1,500 political prisoners still in detention since 1988. See Amnesty International, *Union of Myanmar (Burma): Arrests and Trials of Political Prisoners, January-July 1991* (London, Dec. 1991, AI Index: ASA 16/01/91), 1.

<sup>19</sup> For an informed critique of the National Convention and its work, see Janelle M Diller, *The National Convention in (Burma) Myanmar: An Impediment to the Restoration of Democracy* (New York: International League for Human Rights, 2 April 1996).

<sup>20</sup> *Law to protect the stable, peaceful and systematic transfer of state responsibility and the successful implementation of National Convention tasks free from disruption and opposition*, SLORC Order No. 5/96, dated 7 June 1996.

<sup>21</sup> In a widely publicised action which drew strong international criticism, the military blocked Aung San Suu Kyi and her fellow NLD Central Executive Committee member, U Hla Pe, from driving to Irrawaddy Division on the Nyaungdon-Pathain Road. She and her fellow traveller were forced to return to Rangoon after being denied food and water for several days.

In November 1997 the SLORC renamed itself the State Peace and Development Council (SPDC).<sup>22</sup> In July, the Association of Southeast Asian Nations (ASEAN) admitted Burma to membership of the association in the face of international protests against such a move, given the country's poor human rights record.

## **FREEDOM OF EXPRESSION: AN HISTORICAL OVERVIEW**

Freedom of expression has enjoyed full play for only a relatively short period during Burma's more than 50 year existence as an independent nation. This was in the period from 1948 to 1962 when, despite the increasing political and economic turmoil which followed the departure of the British, parliamentary democracy and the rule of law were allowed to prevail under the stewardship of Prime Minister U Nu. At the time, Burma had a generally free and vibrant press, with over 30 daily newspapers, including six in Chinese and three in English. Although the U Nu administration kept tabs on newspapers, magazines and books through the Press Review Department, there was no serious attempt at censorship or harassment of journalists or writers.<sup>23</sup>

That atmosphere of freedom and openness changed following the military coup in 1962. The Revolutionary Council which replaced the U Nu administration initially adopted a relaxed attitude to publishing, but by early 1963, following tensions within the Council, it began clamping down on publications which were critical of it. The biggest casualty of this crackdown was the most influential daily of the time, the *Nation*, which was forced to cease publication in May 1963, ostensibly due to its failure to pay taxes. This period also saw the arrest and detention of journalists, including the editor of the *Nation*, U Law Yone. Worse was to follow in the coming months: in July, the Revolutionary Council announced its intention to centralize the dissemination of official information — a decision which was implemented soon by the closure of all departmental journals and the publication in their place of a state-run newspaper, the *Working People's Daily*<sup>24</sup>. In September, in an even more insidious move, the Revolutionary Council decided to nationalise all private newspapers and bring them under the control of the Ministry of Information; it

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<sup>22</sup> This change in name was brought about by the Adaptation of Expressions Law 1997 (SPDC Law No. 1/97), dated 17 Nov. 1997, reproduced in *The New Light of Myanmar*, 18 Nov. 1997. The change was made effective retrospectively from 15 Nov. 1997.

<sup>23</sup> The only reported instance of official reprisals for press criticism was the 1961 suspension of the Burmese language newspaper, *Htoon Daily*, and the detention of its editor, U Htun Pe. See Anna J Allott, *Inked Over, Ripped Out: Burmese Storytellers and the Censors* (New York: PEN American Centre, 1993), 4.

<sup>24</sup> The Burmese language edition of this newspaper (*Lok-tha Pyei-thu Nei-zin*) was launched on 1 Oct. 1963, with the English version following in Jan. 1964.

announced, in classic official-speak, that journalists would be able to enjoy “full freedom of expression within the accepted limits of the Burmese Way to Socialism.”<sup>25</sup>

A legal regime had already been put in place to underpin these changes. The Printers and Publishers Registration Act 1962 made it obligatory for all printers and publishers to register with the government and to supply the government with certain specified information about themselves. Publishers were also required to submit two copies (subsequently increased to five) of every book which they wished to publish to the Press Scrutiny Board (PSB), an official censorship body which was empowered to prohibit the distribution of books deemed undesirable. Similar censorship mechanisms were set up for film scripts, songs, and paintings, and the ideological content of works in all these media were subject to close monitoring by the authorities. An additional weapon in the government’s armoury was its control over the supply of subsidized paper: this was used routinely to make most publishers toe the official line.

These measures had the effect cumulatively and progressively of turning a hitherto largely free press and a vibrant publishing industry into little more than mouthpieces for government propaganda — a state of affairs that continued until early 1988. Then, for the first time in many years, there were signs of change, with the Press Scrutiny Board adopting a less hard-line attitude to censorship. Not only were articles critical of the government allowed to appear in the popular press, but individuals and organizations in the private sector were able to obtain licences to publish new periodicals covering such diverse fields as current affairs, music, art, literature, fiction and science and technology. This process of liberalization received a boost from the emerging pro-democracy campaign: there was a greater willingness on the part of the people publicly to question the wisdom of government policies<sup>26</sup> and to demand greater honesty and openness in administration.

The strength of this newly-found assertiveness on the part of the public, in turn, forced the government to display a measure of transparency that was unprecedented. An official report on the death of a student, Maung Hpon Maw, during demonstrations at Rangoon University campus in March 1988, for example, conceded that he had been shot by the security forces. Likewise, the government admitted that 41 people who had been picked up by the police during pro-democracy protests had suffocated to death in a police van in which they had been held. This latter incident, moreover, resulted in the resignations of both the Home Minister and the Head of the Rangoon Police. This period saw a brief, general easing of political tensions: the government, under President Maung Maung, released several prominent

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<sup>25</sup> See Allott, note 23 above at 4.

dissidents who had been incarcerated, and allowed mass rallies to take place, including a three-day demonstration by workers who demanded, among other things, the resignation of the government, the holding of multi-party elections, and greater freedom of expression.

One of the more surprising by-products of this relaxation in official high-handedness was a new willingness on the part of the state-controlled press to report events more truthfully than they had done in the past. This process of openness was supplemented by the emergence of scores of unofficial publications, which fearlessly vented public criticisms, anxieties and aspirations in a manner that was wholly unprecedented.<sup>27</sup> These publications carried not only vivid reports of the anti-government demonstrations and protest rallies, but interviews with opposition leaders, searing critiques of the existing political and economic dispensation, and features commending Western-style democracy as a model worth emulating.

This period of relative freedom did not last long: indeed, it was barely a month before the authorities again clamped down on dissent following the failure to reach a political compromise acceptable to all sides. This led to further violence in the streets and to the *coup d'état* of 18 September 1988 headed by General Saw Maung. The State Law and Order Restoration Council (SLORC) then took power and swiftly tightened the screws on free speech: most of the private magazines which had appeared in previous weeks were closed down, and strict censorship was re-imposed through a strengthened Press Scrutiny Board which brooked no dissent against the military regime.

The new dispensation also saw the revival of a monolithic state-controlled press, with the *Working People's Daily*<sup>28</sup> emerging as the sole officially-approved newspaper. Soon, many leading dissident writers and journalists were arrested and imprisoned and a blacklist of "subversive" authors drawn up: no one on this blacklist was to be allowed to publish their works. The SLORC also drew up a list of topics that were "off-limits" for discussion: these included: "democracy; human rights; politics; the events of 1988; senior government officials; the BSPP; the Nobel Prize or anything that might bring Daw Aung San Suu Kyi to mind; criticism of the SLORC or of military personnel; 'immorality,' such as references to two unmarried people living together; prostitution in Burma; and any other topics determined unsuitable by

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<sup>26</sup> A striking example of this was to be found in the public circulation, in May 1988, of an "open letter" from Aung Gyi, a former army Brigadier, to Ne Win, which contained a scathing attack on the BSPP's disastrous economic policies since 1962.

<sup>27</sup> For a description of some of these new publications, see e.g. ARTICLE 19, *State of Fear: Censorship in Burma* (London: Dec. 1991), 28.

<sup>28</sup> This newspaper was renamed as the *New Light of Myanmar* in April 1993, apparently with a view to discard its socialist image and cast it in a new nationalist mould: the name was copied from one of Burma's prominent nationalist newspapers founded in 1914 (*Myanma Alin* — "Light of Burma"). *Myanma Alin* first appeared as a magazine before being transformed into a newspaper.

the PSB.”<sup>29</sup> In a further attempt to sniff out dissent, the PSB required every prospective publisher to submit with their manuscript a declaration stating whether they had engaged in political activity or ever served a sentence of imprisonment. Those answering in the affirmative naturally ran a high risk of rejection of their requests to publish.

These tough measures have had the overall effect of suppressing free speech and killing off the vibrant press which was a characteristic feature of Burma prior to 1963. As the UN Special Rapporteur on Burma concluded in his 1997 report:

[T]here is essentially no freedom of thought, opinion, expression or association in Myanmar. The absolute power of the SLORC is exercised to silence opposition and penalise those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a climate of fear in which whatever they or their family members may say or do, particularly in the area of politics, involves the risk of arrest and interrogation by the police or military intelligence.<sup>30</sup>

The SLORC — and its successor since November 1997, the SPDC — has shown no let-up in its desire to snuff out dissent of any kind. In the ten years since its accession to power, it has added a number of laws and executive decrees to its formidable armoury of repressive powers to further stifle freedom of expression. Those laws and decrees — and the manner in which they have been used over the years — are described in greater detail below.

## **THE STATE OF THE RULE OF LAW**

The rule of law, which is universally recognized as the cornerstone of any civilized democracy, is virtually non-existent in contemporary Burma. Successive governments have, since 1962, systematically run down the country’s legal system to a point where the independence and integrity of both the Bar and the Bench have been all but destroyed<sup>31</sup>, and the entire justice system has, in the words of one recent commentator, become “dysfunctional”.<sup>32</sup>

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<sup>29</sup> See Allott, note 23 above at 13.

<sup>30</sup> UN Doc. E/CN.4/1997/64, para 106.

<sup>31</sup> For an historical account of the development of law in Burma since its independence from British rule, see Andrew Huxley, “The Last Fifty Years of Burmese Law”, *Lawasia*, Jan. 1998, 9-20.

<sup>32</sup> V Coakley, “Towards the Rule of Law & ‘Discipline Flourishing Democracy’”, *4 Burma Issues*, June 1998, 5. For an overview of the extent to which the rule of law has been eroded during the first eight years of SLORC rule, see ARTICLE 19, note 17 above.

A particular iniquity of the system is the inaccessibility and vagueness of many of the laws which the military regime has sought to rely upon to support its actions. These laws are often introduced and applied in an *ad hoc* manner, and seldom do the authorities respond to requests for information or clarification concerning such laws. Not only does this have profound consequences for actual and potential litigants within Burma, especially defendants in criminal trials, but it makes any meaningful study of the legal system extremely difficult.

The analysis which follows has, therefore, of necessity had to be based on information often gleaned from secondary sources whose authenticity could not be easily verified or corroborated. Nevertheless, we believe that it provides a generally clear and comprehensive statement of current law and practice in Burma as regards the basic right to freedom of expression.

## **FREEDOM OF EXPRESSION AND ITS PROTECTION IN LAW**

### **(a) The constitutional position**

A plethora of laws — including some passed by a democratically elected legislature in the early years of post-colonial government — have impacted, directly or indirectly, on freedom of expression in Burma since the country became independent in 1948. Before analyzing them, however, it is useful to consider briefly the state of constitutional protection afforded to this important freedom.

The 1947 Constitution guaranteed “the right of the citizens to express freely their convictions and opinions.”<sup>33</sup> The exercise of this right was made subject only to “law, public order and morality”.<sup>34</sup> The importance attached by those who drafted this Constitution to freedom of expression was emphasised by the Constitution’s Preamble, which spoke of the “liberty of thought, expression [and] belief” as being one of the ‘eternal principles’ underlying that Constitution.

The 1974 Constitution affirmed that “every citizen shall have freedom of speech, expression and publication to the extent that such freedom is not contrary to the interests of the working people and socialism.”<sup>35</sup> No other qualification was imposed on the exercise of that freedom, although in practice the military regime of General Ne Win interpreted the article so restrictively as to prevent the expression of any dissenting opinion through the mass media.

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<sup>33</sup> Art. 17(i).

<sup>34</sup> Art. 17.

<sup>35</sup> Art. 157.

To what extent the guarantees contained in either of the above documents continue to enjoy any legal status is today a moot point. Representatives of the SLORC repeatedly stated that both the 1947 and 1974 Constitutions had been abolished, but they also often contradicted this assertion by citing provisions from one or the other of those documents to justify legislative or executive measures when it suited them.<sup>36</sup>

## **(b) Specific legislative measures: a detailed analysis**

### *1 The Printers and Publishers Registration Law 1962*<sup>37</sup>

This law, which has historically been the main instrument of official censorship, requires all books, magazines, other periodicals, song lyrics, and motion picture scripts to be submitted for vetting to the government prior to publication or, in some cases, prior to distribution. It replaced a more benign pre-independence law on the subject, the Press (Registration) Act 1867<sup>38</sup>, which merely required publishers to deliver a stated number of copies of books, newspapers, magazines and other periodicals to the authorities within a prescribed period. Both laws required printers and publishers to register with the government and to identify themselves in publications for which they were responsible.

The task of vetting publications under the 1962 Act was entrusted to the Press Scrutiny Board (PSB), a 30-member body answerable to the Ministry of Home and Religious Affairs. It is currently headed by a former army officer. The PSB enjoys extensive powers, including the power to prohibit the publication of material submitted to it. The Board carries out its censorship duties through a number of departments, each responsible for a different medium — for example, articles, book covers, and so on — but decisions are taken by the Board as a whole. By a bizarre coincidence, the PSB is housed in the same building in Rangoon from which the Japanese secret police — the *Kempetai* — operated during the Second World War — a coincidence which has not escaped the attention of many foreign commentators. The PSB is widely believed to work in close co-operation with military intelligence and other security agencies of the regime.

In terms of the actual mechanics of censorship, the 1962 Act has presented a nightmarish prospect for publishers and has spawned a culture of self-censorship that

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<sup>36</sup> For example, the SLORC in 1993 justified the practice of forced portering — which has been the subject of much adverse international criticism over the years — on constitutional grounds: a line of defence which the UN Special Rapporteur found to be inconsistent with its claims that the two Constitutions had been abolished. See UN Doc. E/CN.4/1993/37, para. 181, 36.

<sup>37</sup> Revolutionary Council Law No. 26 of 1962.

<sup>38</sup> India Act XXV of 1867.

has become more and more pronounced over the years. Publishers are required to submit copies of most books to the PSB *after* they are printed but before they are distributed.<sup>39</sup> This means that if the PSB recommends changes or deletions, the publisher has to reprint and/or rebind large parts of the book all over again, at considerable cost. If the PSB orders a ban, the cost to the publisher is even greater: the publisher must pulp all copies printed — a risk few publishers will be prepared to take, particularly given the prohibitive cost of paper and given the generally unprofitable nature of the publishing trade.<sup>40</sup>

In 1975, the government, presumably in an attempt to lessen the uncertainties inherent in the system, issued a set of guidelines. These set out the broad parameters of censorship followed by the PSB. According to these guidelines, the following material would not be tolerated:

- (a) anything detrimental to the Burmese socialist programme;
- (b) anything detrimental to the ideology of the state;
- (c) anything detrimental to the socialist economy;
- (d) anything which might be harmful to national solidarity and unity;
- (e) anything which might be harmful to security, the rule of law, peace and public order;
- (f) any incorrect ideas and opinions which do not accord with the times;
- (g) any descriptions which, though factually correct, are unsuitable because of the time or circumstances of their writing;
- (h) any obscene (pornographic) writing;
- (i) any writing which would encourage crimes and unnatural cruelty and violence;
- (j) any criticism of a non-constructive type of the work of government departments;

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<sup>39</sup> Only books relating to politics, economics and religion are exempt from this procedure: they have to be submitted in manuscript form before publication.

<sup>40</sup> An idea of the difficulties faced by publishers can be had from the fact that books and magazines are beyond the reach of a vast majority of the Burmese population: they cost, on average, around 150 kyats and 100 kyats respectively which, considering that the per capita monthly income of a Burman is only approximately 1,000 kyats, makes them prohibitively expensive. (The 'kyat' is the name of Burmese currency — its official value is fixed at US\$1 = 6 kyats, but its market value has been quoted to be \$1 = 300-375 kyats.)

The financial impact of the censorship regime on publishers is no less striking: very few of them own typewriters, so they have to pay to get their manuscripts typed; they also have to pay the PSB a reading fee per page and a further charge for each spelling mistake detected in the manuscript, all of which add up to a substantial amount. The fees paid to the PSB are non-refundable, so that where the work is disallowed for publication, the publisher has to bear this cost in addition to the other costs involved.

- (k) any libel or slander of any individual.<sup>41</sup>

These prohibitions are as sweeping as they are vague, and their effect has been to shut out any criticism whatsoever of the ruling elite. Their harshness was enhanced by an amendment<sup>42</sup> to the Printers and Publishers Registration Law, introduced in 1989, which increased the penalties which can be imposed on those convicted of breaching the law. Under this, anyone who failed to comply with any rules or regulations framed under the law could, for example, be imprisoned for up to seven years and fined up to 30,000 kyats.<sup>43</sup>

*Use and abuse of the Printers and Publishers Registration Law*

The Printers and Publishers Registration Law has been used extensively over the years both to ban the publication of material deemed undesirable by the government and to blacklist individual writers and publishers. In July 1992, for instance, U Tin Moe, a highly acclaimed poet and editor of the literary magazine, *Pei-hpu-hlwa*<sup>44</sup>, was convicted under this law and sentenced to four years in prison for allegedly violating the censorship rules. His magazine was subsequently proscribed. Another prominent writer, 29-year-old Ma Thida, who is also a medical doctor, was sentenced to 20 years' imprisonment in October 1993 for having distributed anti-government leaflets. She is believed to be in poor health and her case has been repeatedly highlighted by international observers, including recently by the UN Special Rapporteur on Burma.<sup>45</sup> Earlier, in September 1990, three NLD officials, Hla Min, Htay Win and Thida Aye, and a printer, Khin Maung Than, of the Thein Than Printing Works, were detained under the Printers and Publishers Registration Law for attempting to publish, without official permission, a report of the NLD's historic Gandhi Hall meeting held two months previously.<sup>46</sup>

Among other victims of this law are a number of parliamentarians, one of whom, U Kyi Myint, was arrested with Ma Thida and also sentenced to 20 years' imprisonment for distributing the *New Era Journal*. He was subsequently disqualified

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<sup>41</sup> *Memorandum to All Printers and Publishers Concerning the Submission of Manuscripts for Scrutiny, Issued by the Printers' and Publishers' Central Registration Board*, Ministry of Home and Religious Affairs document, reproduced in Allott, note 23 above at 6-7.

<sup>42</sup> *Law Amending the 1962 Printers and Publishers Registration Law*, Law No. 16 of 1989.

<sup>43</sup> *Ibid.* Sec. 2B.

<sup>44</sup> Literally, 'Palm Leaf Manuscript'.

<sup>45</sup> Report of the UN Special Rapporteur, 1997: UN Doc. E/CN.4/1997/64, para. 26.

<sup>46</sup> ARTICLE 19, note 27 above at 47-48. At the July 1990 meeting held in Rangoon's Gandhi Hall, the then newly-elected MPs belonging to the NLD passed a resolution calling upon the SLORC to hand over power to the People's Assembly by September 1990. The full text of the 'Gandhi Hall Declaration' can be found in All Burma Students' Democratic Front Documentation and Research Centre (ABSDF), *To Stand and Be Counted* (Bangkok: June 1998), Appendix III.

as an MP on the basis of this conviction.<sup>47</sup> Another MP, U Saw Oo Reh, a 70-year-old veteran of the Second World War, was sentenced to 17 years in prison for writing a book, entitled *The Crisis of Kayah State and Causes of Civil War in Burma*. U Saw Oo Reh is reported to be suffering from serious health problems and is known to have been held shackled and tied to his bed while in hospital.<sup>48</sup> Yet another MP, Dr Aung Khin Sint, a medical doctor by training and one of the few opposition figures appointed to the SLORC-inspired National Convention, was sentenced to 20 years in jail for distributing leaflets that questioned the restrictions placed upon members of the Convention. His case drew widespread international condemnation, including from the UN Working Group on Arbitrary Detention which, after an extensive consideration of it, concluded that Dr Aung Khin Sint had been detained solely for the peaceful exercise of his right to freedom of opinion and expression.<sup>49</sup> In October 1997, Amnesty International expressed grave concern over his health following reports that he had been taken ill with heart problems, diabetes and high blood pressure.<sup>50</sup>

As recently as March 1998, the SPDC used the Printers and Publishers Registration Law to sentence Aung Htun, a leading student activist and member of the central executive committee of the All Burma Federation of Student Unions, to 15 years' imprisonment after he had written a seven-volume history of the Burmese student movement.<sup>51</sup> Aung Htun, who was a civil engineering student at the Rangoon Institute of Technology, had previously served a four-year prison term, including two years in solitary confinement, for his political activities. Five others — Dr Maung Maung Kyaw, a well-known lawyer, Suu Suu Win and Khin Moe Aye, both student leaders, and U Tha Ban and Khun Sai, ethnic minority leaders — were also sentenced to long prison terms for helping Aung Htun with the preparation of his book. Dr Maung Maung Kyaw and the two ethnic leaders were each sentenced to 10 years' imprisonment, while the two student leaders were each given seven years by a Special Court in April 1998. All of them had been held in detention before by the SLORC for their pro-democracy activities.

Another victim of official high-handedness to be detained in connection with Aung Htun's book project was U Ohn Myint, a respected senior adviser to the NLD, who was arrested in February 1998 and held incommunicado for questioning. Subsequently, this 81-year-old friend of the Burmese independence hero, General

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<sup>47</sup> ABSDF, above note 46 at 204.

<sup>48</sup> Ibid. at 111.

<sup>49</sup> Opinion No. 20/1997 of the Working Group on Arbitrary Detention, adopted on 2 December 1997, UN Doc. E/CN.4/1998/44, Annex. III.

<sup>50</sup> Amnesty International, *Myanmar: A Challenge for the International Community* (London: Oct. 1997, AI Index: ASA 16/28/97), 9.

<sup>51</sup> Like many other defendants, Aung Tun was also charged with offences under the Emergency Provisions Act 1950.

Aung San, was convicted in May 1998 and sentenced to seven years' imprisonment. Amnesty International has declared him a prisoner of conscience.<sup>52</sup>

The record of the use of the Printers and Publishers Registration Law in the area of censorship is no less disturbing. In fact, it has often verged on the absurd: in some cases, overzealous censors have apparently demanded of book reviewers, for example, that they obtain the approval of the authors of books they have criticized before permission is granted to publish<sup>53</sup>. One article about legends was turned down for publication by the censor, apparently, on the grounds that "there was no proof that any of the legends was true".<sup>54</sup>

More seriously, the authorities have operated the censorship regime so harshly and so irrationally as to effectively run into the ground the rich literary tradition of modern Burma and to deny to the country's people their basic rights freely to seek, receive and impart information and ideas. In one case, for example, the publishers of an anthology of short stories dedicated to the memory of a respected writer, Mo Mo, who had died suddenly in 1990, were ordered to rip out four stories from the book after it had already been printed and bound. The authors of the stories concerned had either been arrested or had become politically suspect in the eyes of the authorities between the time of the anthology's printing and its actual publication.<sup>55</sup> Likewise, when the publishers of the popular literary journal, *Sa-pay Gya-neh*, sought to dedicate its June 1995 issue to the leading poet and NLD MP, Min Thu Wun, the authorities blocked the move at the last moment. This was reportedly done on orders from the Deputy Minister of Home and Religious Affairs, although the issue carrying Min Thu Wun's portrait had already been passed by the censor.<sup>56</sup> Equally arbitrarily, the censors in January 1996 ripped out 50 pages of an issue of the magazine, *Thint Bawa*, which had sought to commemorate the 75th anniversary of the founding of Rangoon University.<sup>57</sup>

The censorship authorities have also ensured, through the maintenance of pervasive blacklists, that those critical of the government are never allowed to get their name into print. Since July 1990 they have repeatedly denied the NLD a publication licence, with the result that the party has not been able to publish any written material for more than eight years.<sup>58</sup>

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<sup>52</sup> Amnesty International, *Happy 10th Anniversary? Myanmar 1988-1998* (London: 1998, AI Index: ASA 16/17/98). U Ohn Myint has, however, since been released from prison.

<sup>53</sup> Allott cites the amusing example of a censor asking a book reviewer to get a letter of no objection from an author who had died several years earlier! Allott, note 23 above at 7.

<sup>54</sup> *Ibid.* at 8.

<sup>55</sup> *Ibid.* at 13.

<sup>56</sup> See UN Doc. E/CN.4/1996/65, para. 121.

<sup>57</sup> See UN Doc. E/CN.4/1997/64, para. 32.

<sup>58</sup> See Amnesty International, *Myanmar: Intimidation and Imprisonment, September-December 1996* (London: Feb. 1997, AI Index: ASA 16/01/97), 1.

*Compatibility with international law*

The Printers and Publishers Registration Law has clearly been used to deny to the people of Burma their fundamental right to freedom of expression as guaranteed under international human rights standards<sup>59</sup>, and it is, therefore, incompatible with international law. While international human rights law recognises that governments may place restrictions on the enjoyment of freedom of expression, it stipulates that any such restriction, to be legitimate, must relate strictly to one or more specified purposes, such as the preservation of national security or public order, the protection of public health or morals, or the protection of the rights and reputations of others. Any such restriction, moreover, must be ‘necessary’ to achieve the purpose in question and must conform to the principle of proportionality: it should not, in other words, be excessively wide in scope or severity.<sup>60</sup>

The Printers and Publishers Registration Law confers an unacceptably high level of discretion on the executive, couched as it is in the vaguest and broadest possible terms. The inclusion of phrases such as “anything detrimental to the ideology of the State” in the guidelines issued by the Ministry of Home and Religious Affairs in 1975, for instance, makes it clearly susceptible to arbitrariness and whimsical application by bureaucrats. Indeed, the experience of the use of the law so far indicates clearly that it has been applied in a wholly repressive manner by successive Burmese regimes to stifle peaceful dissent and to suppress the legitimate exercise by people in Burma of their right to free speech.

*2 Emergency Provisions Act 1950<sup>61</sup>*

Contrary to what its title may suggest, the Emergency Provisions Act has little to do with states of emergency; rather, it is a law which confers sweeping powers on the authorities to silence and punish any act of real or perceived dissent, even in the absence of a proclaimed state of emergency. This law makes it an offence, punishable with imprisonment for up to seven years, to commit any act which “violates or infringes upon the integrity, health, conduct and respect of State military organisations and government employees towards the ... government”,<sup>62</sup> or “causes or

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<sup>59</sup> E.g. Art. 19, Universal Declaration of Human Rights (UDHR); Art. 19, International Covenant on Civil and Political Rights (ICCPR). Although Burma is not a party to some of the UN human rights treaties, it has publicly declared its adherence to “those provisions and principles embodied in the [ICCPR] which are taken from the Charter of the UN and the Universal Declaration of Human Rights or have attained the status of rules of customary international law”. See Memorandum submitted by the Burmese Ambassador to the United Nations, Mr Win Mra, to the UN Secretary-General on 2 Nov. 1994: UN Doc. A/C.3/49/15, dated 10 Nov. 1994.

<sup>60</sup> See e.g. the jurisprudence of the UN Human Rights Committee, and its General Comment No. 10, adopted under Art. 40(4) of the ICCPR: UN Doc. HRI/GEN/1/Rev.1, dated 29 July 1994.

<sup>61</sup> Act No. 17 of 1950.

<sup>62</sup> Art. 5(a).

intends to spread false news about the government”,<sup>63</sup> or “causes or intends to disrupt the morality or the behaviour of a group of people or the general public.”<sup>64</sup>

A more sweeping provision in the law renders any act which is “intended to cause, or causes, sabotage or hinders the successful functioning of the State military organisation and criminal investigative organisations” liable to be punished with death or life imprisonment.<sup>65</sup> Similar punishment is prescribed for “collecting and divulging, or intending to divulge, information to people involved in treason against the State, on the movements, the strength, the location, the guidelines and regional defence strategies of the State military organisations and criminal investigative organisations who are engaged in preserving the stability of the State.”<sup>66</sup>

The act is, surprisingly, silent on procedural matters. It does not, for example, indicate whether anyone convicted under its provisions can appeal to a higher court against conviction and sentence, nor does it make any provision for the granting of bail pending trial or sentence.

### *Use and abuse of the Emergency Provisions Act*

The Emergency Provisions Act (EPA) has been one of the most heavily used laws over the past half century. Those currently or previously imprisoned under it include opposition politicians, monks and other clerics, students, writers, and trade unionists. Despite not being a law exclusively aimed at suppressing freedom of expression, it has frequently been invoked towards that end, usually in conjunction with other media-directed laws such as the Printers and Publishers Registration Law and the Official Secrets Act.

The extent of its abuse is highlighted by a 1991 case involving some seven children from the Monywa State High School in northern Burma who were charged with “causing or intending to disrupt the morality or the behaviour of a group of people or the general public”. This occurred after they attempted to organize a rally to commemorate Martyrs’ Day, the anniversary of the assassination of Burma’s independence hero, Aung San. Four years later, another group of students were arrested and sentenced to seven years’ imprisonment under this law for singing the pro-democracy anthem, *Kaba ma kye bu* (“the world won’t forgive” — a pun on the national anthem).

In February 1995, the law was used to arrest nine young activists, Aung Zeya, Tin Than Oo, Nyunt Myaing, Moe Maung Maung, Maung Maung Oo, Moe Myat Thu, Moe Kalayar Oo, Cho New Oo and Aye Aye Moe, for chanting slogans during

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<sup>63</sup> Art. 5(e).

<sup>64</sup> Art. 5(j).

<sup>65</sup> Art. 3.

<sup>66</sup> Art. 2.

the funeral of the former Prime Minister, U Nu.<sup>67</sup> Likewise, in July 1996, U Kan Saung, a resident of Rangoon who was not a member of any political party, was arrested and subsequently sentenced to seven years' imprisonment under Section 5(j) of the EPA,<sup>68</sup> apparently for chanting "Long Live Daw Aung San Suu Kyi". In November 1997, the General Secretary of the Mon National Democratic Organisation, a proscribed organization,<sup>69</sup> Dr Mann Soe Lin, was detained under Sec. 5(j) of the EPA, allegedly for his membership of a committee set up to celebrate the 50th Mon National Day — an event which the SLORC had banned.<sup>70</sup>

In August 1996, two NLD activists, U Win Htein, a retired army officer, and Maung San Hlaing, one of Aung San Suu Kyi's bodyguards, were sentenced to 14 and seven years' imprisonment respectively for allegedly passing on information to foreign journalists about the torture of political prisoners. Their trial reportedly took place *in camera*, with neither of them being allowed legal representation.<sup>71</sup> Others imprisoned under this act on account of their alleged contacts with foreigners include: Daw San San Nwe, a 53-year-old journalist and writer, who was sentenced to seven years' imprisonment in 1994 for, among other things, speaking to the UN Special Rapporteur on Burma<sup>72</sup>; Myo Myint Nyein, a magazine publisher, who was also sentenced to seven years' imprisonment in March 1996 after being found guilty of, among other things, attempting to hand over a letter detailing illegal detentions by the SLORC to the UN Secretary-General<sup>73</sup>; Ko Thein and Khin Hlaing, two student activists, who were sentenced to death in April 1998, allegedly for attempting to hand over a similar letter to Alvaro de Soto, the UN Secretary-General's special envoy to Burma during his visit to the country the previous January.<sup>74</sup>

Unsurprisingly, NLD activists and supporters have been particular targets of the EPA. In May 1996, when the party planned an event to commemorate the sixth anniversary of its abortive victory in national elections, some 300 of its members and MPs were detained under the Act. Scores of NLD MPs continue to languish in jail, including: U Kyi Maung, a former interim chairman of the party, who was sentenced to seven years' (since increased to 14 years) imprisonment in August 1990 after

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<sup>67</sup> See UN Doc. E/CN.4/1996/65, para. 95.

<sup>68</sup> Amnesty International, note 58 above at 4.

<sup>69</sup> The Mon National Organisation was reportedly banned by SLORC Announcement No. 8/92, dated 19 March 1992.

<sup>70</sup> ABSDF Press Release, Bangkok, 12 Nov. 1997.

<sup>71</sup> Amnesty International, *Myanmar: Update on Political Arrests and Trials* (London: Sept. 1996, AI Index: ASA 16/46/96), Appendix, 1-2.

<sup>72</sup> Daw San San Nwe was also sentenced to a further 3 years' imprisonment under the Unlawful Associations Act 1908 for "contact with illegal organisations".

<sup>73</sup> ABSDF, *Pleading Not Guilty in Insein* (Bangkok: Feb. 1997), 14-15. Myo Myint Nyein was one of 22 people sentenced together for the same or similar offences by the Northern District Court, Rangoon. The farcical nature of their trial is described at some length in the above mentioned publication.

<sup>74</sup> Press Release of the All Burma Students' Democratic Front, Bangkok, 29 April 1998.

participating in the Gandhi Hall meeting the previous month<sup>75</sup>; U Sein Hla Oo, a journalist, who was sentenced to seven years' imprisonment for, among other things, producing a translation into Burmese of Aung San Suu Kyi's book, *Freedom from Fear*<sup>76</sup>; Khin Maung Swe, Chairman of the NLD Central Information Department, who was sentenced to 20 years' imprisonment, seven of them under the EPA, for attempting to smuggle abroad the aforesaid Burmese translation of Aung San Suu Kyi's book<sup>77</sup>; and Daw San San, a former civil servant, who was sentenced to 25 years' imprisonment, six of them under the EPA, for, among other things, criticizing the Burmese regime in an interview with the British Broadcasting Corporation (BBC).<sup>78</sup> At least one detained MP, U Hla Than, has died while in prison, reportedly after being tortured and being denied proper medical treatment by the jail authorities.<sup>79</sup>

*Compatibility with international law*

The EPA contravenes several basic norms of international human rights law. By being worded excessively broadly and vaguely, it falls foul of the principle enshrined in Art. 29(2) of the Universal Declaration of Human Rights (UDHR) and in Art. 5(1) of the ICCPR that no one shall, in the exercise of their rights and freedoms, be subjected to greater limitations than are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The EPA also lacks essential safeguards such as a right of appeal<sup>80</sup>, and a requirement that all arrestees shall be informed, at the time of their arrest, the reasons for arrest<sup>81</sup>; brought promptly before a judge or other judicial authority<sup>82</sup>; be entitled to be considered for conditional release pending trial<sup>83</sup>; and be entitled to compensation should the arrest and/or detention be shown to be unlawful.<sup>84</sup>

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<sup>75</sup> See ABSDF, note 46 above at 192-93.

<sup>76</sup> Ibid. at 199-200.

<sup>77</sup> Ibid. at 208. Khin Maung Swe was also convicted under the Official Secrets Act and Sec. 122(1) of the Burmese Penal Code.

<sup>78</sup> Ibid. at 208-209.

<sup>79</sup> Ibid. at 194. U Hla Than, who died from tuberculosis, had reportedly been carrying the human immuno-deficiency virus, which appears to be widespread in Burmese prisons due to the lack of sterile needles for prison doctors.

<sup>80</sup> Art. 14(5), ICCPR.

<sup>81</sup> Art. 9(2), ICCPR.

<sup>82</sup> Art. 9(3), ICCPR.

<sup>83</sup> Ibid.

<sup>84</sup> Art. 9(5), ICCPR.

From the manner of its implementation over the years, it is clear that this law has been used routinely and systematically to deny the inhabitants of Burma their fundamental right to freedom of expression, contrary to the requirements of international law.<sup>85</sup>

### *3 State Protection Law 1975*<sup>86</sup>

This law, also known as the “Law to Safeguard the State from the Dangers of Destructive Elements”, allows the government to declare a state of emergency in a part or the whole of Burma “with a view to protect state sovereignty and security and public law and order from danger [*sic*]”<sup>87</sup>, and to restrict any fundamental rights of the citizens in specified regions or all over the country.<sup>88</sup> Although any state of emergency declared under this law has to be approved by the People’s Assembly within 60 days, it can be extended indefinitely by the Assembly.<sup>89</sup>

The law gives the authorities sweeping powers: anyone who is suspected of having committed, or who is committing, or who is about to commit, any act which “endangers the sovereignty and security of the state or public peace and tranquillity”, can be imprisoned for up to five years without trial on the orders of the executive.<sup>90</sup> The law also allows the executive to pass restriction orders under which anyone can be confined to a specified area or have their freedom of movement otherwise restrained, or be prohibited from possessing or using specified articles.<sup>91</sup> No order passed under this law can be the subject of an appeal to any court<sup>92</sup>, although appeals are allowed to be made to the Union Cabinet.<sup>93</sup> The law also contains provisions for periodic reviews of detention or restriction orders to be carried out by the executive.<sup>94</sup>

In 1994, the SLORC announced that, according to advice received from their legal advisors, they would be justified in holding anyone arrested under the State

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<sup>85</sup> Art. 19, UDHR; Art. 19, ICCPR.

<sup>86</sup> People’s Assembly Law No. 3 of 1975, passed on 5 Feb. 1975.

<sup>87</sup> Sec. 3 (unofficial translation from Burmese).

<sup>88</sup> Sec. 4.

<sup>89</sup> If the People’s Assembly refuses to approve a declaration, the state of emergency comes to an end immediately, although any action taken while it was in force would continue to be valid.

<sup>90</sup> Sec. 14, as amended by Law 11/91, dated 9 Aug. 1991. These powers are in practice exercised by a cabinet committee chaired by the Home and Religious Affairs Minister and including the Ministers of Defence and Foreign Affairs. See Sec. 8. The amendment carried out in 1991 was made applicable retroactively, so that prisoners suffering detention prior to its enactment could also be subjected to the enhanced punishment.

<sup>91</sup> Sec. 11.

<sup>92</sup> An original provision, Art. 21, which allowed for appeals to a civilian court, was repealed in 1991.

<sup>93</sup> Art. 20.

<sup>94</sup> Art. 9(d). Such reviews have to be carried out at least once every 60 days (Sec. 16).

Protection Law for a total of 6 years, arguing that the period of five years specified in Section 14 was in addition to the period of one year initially allowed under the section — an interpretation which has been criticised by human rights monitors.<sup>95</sup>

*Use and abuse of the State Protection Law*

Successive Burmese governments have used the State Protection Law routinely to suppress peaceful dissent. Those detained under it have included leading political figures, such as former Prime Minister U Nu<sup>96</sup> and the Nobel Peace Prize laureate and NLD leader, Aung San Suu Kyi.<sup>97</sup> This law has often been used in conjunction with other laws such as the Printers and Publishers Registration Law and the Emergency Provisions Act 1950.

In October 1997, for instance, a prominent NLD MP, Daw San San, was arrested under the State Protection Law after she had given an interview to the BBC in the course of which she made critical remarks against the ruling SLORC. She was subsequently charged under the Official Secrets Act and the Emergency Provisions Act and sentenced to a total of 25 years in prison after refusing the regime's demand that she cease her political activities.<sup>98</sup> Another prominent NLD activist, the writer, U Thein Tin, was detained under Section 10(a) of the State Protection Law in March 1996 along with other political activists and literary figures, reportedly as a pre-emptive measure to prevent their participating in a commemorative event planned by the NLD in May 1996. He died in February 1998, while still in detention, allegedly after being subjected to physical and mental torture by the authorities.<sup>99</sup>

Other recent victims of the State Protection Law include: U Soe Thein, a NLD MP from Pegu Division, who was reportedly arrested on 21 May 1996<sup>100</sup>; and U Chit Khaing, a NLD MP from Mandalay Division and a former Lieutenant-Colonel in the Burmese army, who was sentenced to 10 years' imprisonment for contributing to a NLD strategy paper written after the Gandhi Hall meeting in July 1990<sup>101</sup>.

*Compatibility with international law*

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<sup>95</sup> See e.g. Human Rights Watch/Asia, *Burma: Entrenchment or Reform?* (New York/London: July 1995), 7.

<sup>96</sup> U Nu was kept under house arrest between December 1989 and April 1992 for his opposition to the SLORC government.

<sup>97</sup> Aung San Suu Kyi was kept under house arrest between July 1989 and July 1995.

<sup>98</sup> ABSDF Press Release, 21 April 1998.

<sup>99</sup> ABSDF Press Release, 9 March 1998; Amnesty International, *Myanmar: 1988 to 1998, 10 Deaths in Custody* (London: May 1998, AI Index: ASA 16/16/98), 4.

<sup>100</sup> Amnesty International, note 71 above at Appendix 2, 1. This report wrongly refers to U Soe Thein as being an MP for 'Sagaing' Division.

<sup>101</sup> ABSDF, note 46 above at 148-49. U Chit Khaing has since passed away.

As with the laws discussed above, the State Protection Law is inconsistent with a number of internationally recognized human rights norms. As well as suffering from the vice of vagueness and over-breadth in the definition of the grounds on which a person may be arrested or detained, the law violates many of the guarantees concerning personal liberty contained in instruments such as the International Covenant on Civil and Political Rights (ICCPR) — guarantees which, the UN Human Rights Committee has been at pains to emphasize, apply as much to preventive detention as to detention following a criminal charge.<sup>102</sup> These include the requirements that preventive detention “must not be arbitrary, must be based on grounds and procedures established by law; information about the reasons must be given and court control of the detention must be available as well as compensation in the case of a breach”<sup>103</sup> — requirements which are clearly absent in both the wording and manner of application of the State Protection Law.

The law also contravenes another fundamental principle of international human rights law, namely, the prohibition against retrospective enhancement of punishments.<sup>104</sup> The 1991 amendment which allowed the Burmese authorities arbitrarily to increase the maximum term of imprisonment of those already detained from three to five years, clearly falls foul of this principle. The importance of the prohibition against retroactivity is underlined in international law by the fact that it cannot be derogated from even during times of war or other grave emergencies threatening the life of a nation.<sup>105</sup> The Burmese government has, by allowing this principle to be ignored, shown clear contempt for international law.

#### *4 The Television and Video Law*<sup>106</sup>

This is another law, albeit a recent one, whose addition to the statute book has had a considerable adverse impact on the state of freedom of expression in Burma. Though aimed ostensibly to:

- (a) modernise and uplift the standard of the video business”<sup>107</sup>;
- (b) cause the emergence of video tapes which will be beneficial for the all-round development of the State and the preservation of Myanmar cultural heritage<sup>108</sup>;

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<sup>102</sup> General Comment 8 of the Human Rights Committee, adopted in 1982. UN Doc. HRI/Gen/1/Rev. 1, dated 29 July 1994, 8.

<sup>103</sup> Ibid.

<sup>104</sup> Art. 11(2), UDHR; Art. 15(1), ICCPR.

<sup>105</sup> Art. 4(2), ICCPR.

<sup>106</sup> SLORC Law No. 8/96, dated 29 Jul. 1996.

<sup>107</sup> Sec. 3(a).

<sup>108</sup> Sec. 3(b).

- (c) cause the emergence of video tapes which will contribute towards national solidarity and dynamism of patriotic spirit<sup>109</sup>;
- (d) prohibit and ban decadent video tapes which will undermine Myanmar culture and Myanmar tradition<sup>110</sup>; and
- (e) control and prevent malpractices which are caused through video business<sup>111</sup>,

this law has, in practice, further restricted freedom of expression in the country.

It provides for compulsory licensing of television sets, video cassette recorders<sup>112</sup> and satellite television<sup>113</sup> by the Ministry of Communications, Posts and Telegraphs, and of the video business by newly-constituted State or Divisional Video Business Supervisory Committees.<sup>114</sup> The latter has been brought within the jurisdiction of the Ministry of Information<sup>115</sup>, but the role of determining the conditions to be imposed on licences has been allocated to the state-run Myanmar Motion Picture Enterprise.<sup>116</sup> A Video Business Supervisory Central Committee, comprising government officials and representatives of the public<sup>117</sup>, has been entrusted with the task of supervising the State and Divisional Committees, including “finding that any order or decision made by [them] is not in conformity with the law.”<sup>118</sup> The State and Divisional Committees have been given responsibility for deciding on the grant of video business licences and for inspecting and supervising video businesses within their territorial jurisdictions.<sup>119</sup> A provision has been made for constituting District or Township Video Business Supervisory Committees where the State or Divisional Committees consider it necessary.<sup>120</sup>

The law also provides for mandatory censorship of all video tapes, whether locally produced or imported, by a Video Censor Board composed of government

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<sup>109</sup> Sec. 3(c).

<sup>110</sup> Sec. 3(d).

<sup>111</sup> Sec. 3(e).

<sup>112</sup> Sec. 4.

<sup>113</sup> Sec. 8. The regime for the licensing of satellite television is separate and distinct from that for terrestrial TV and videos. It covers not only the use of satellite TV receivers, but also their import, possession, sale and transfer.

<sup>114</sup> Sec. 9. Different licences have been provided for different aspects of the video business such as production, taping, editing, copying, distribution, hiring and exhibition of video tapes.

<sup>115</sup> Sec. 13.

<sup>116</sup> Sec. 14.

<sup>117</sup> Sec. 16. The Committee is headed by the Managing Director of the Myanmar Motion Picture Enterprise, and has as its members representatives from “the relevant government departments and organisations”, and “suitable citizens”, with a Director of the Myanmar Motion Picture Enterprise acting as member-secretary. By contrast, the State and Divisional Video Supervisory Committees are composed exclusively of government officials. Sec. 19.

<sup>118</sup> Sec. 18.

<sup>119</sup> Sec. 20.

<sup>120</sup> Sec. 21.

officials and representatives of the public.<sup>121</sup> In deciding censorship applications, the Board has three options:

- (a) to permit unrestricted exhibition of the video tape to the public or “for a family show;
- (b) to prohibit the public exhibition of the tape and to order its seizure or destruction; or
- (c) to permit exhibition of the tape after excisions, amendments or erasures are made of matter deemed unsuitable for public viewing.<sup>122</sup>

The law makes it compulsory for every video tape exhibited within Burma to include the censorship certificate and for that certificate to be shown at every screening of the tape.<sup>123</sup> The Censor Board has been empowered to re-inspect any video tape which it has previously certified for public exhibition, and to revoke any certificate issued by it “if there is valid reason to do so”.<sup>124</sup>

A right of appeal to the Ministry of Information has been provided against decisions of the Censor Board or of any of the Video Business Supervisory Committees. Such appeals have to be lodged within 60 days of the making of the decision<sup>125</sup>, and the Ministry has been given powers to confirm, set aside or revise the decision, or to direct a re-examination by the authority concerned.<sup>126</sup> The decision of the Ministry has been made final and conclusive.<sup>127</sup>

The law lays down stiff penalties for non-compliance with its provisions. Operation of a television transmission business without permission from the government is punishable by imprisonment for up to five years or an unspecified fine, and may render the property which relates “directly to the offence” liable to confiscation.<sup>128</sup> A number of other offences, such as: operating a video business for commercial purposes with a licence; copying, distributing, hiring or exhibiting a video tape without a censorship certificate; copying, distributing, hiring or exhibiting a video tape in disregard of directions from the Censor Board to make excisions, amendments or erasures; exhibiting to the general public an imported video tape

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<sup>121</sup> Sec. 22. The Board is headed by the Managing Director of the Myanmar Motion Picture Enterprise, and has as its members representatives from “the relevant government departments” and “suitable citizens”, with a Director of the Myanmar Motion Picture Enterprise acting as member-secretary.

<sup>122</sup> Sec. 24. The phrase “family show” has not been defined in the law, but it appears that this is a category of audience intended to be more restrictive than the general public.

<sup>123</sup> Sec. 25.

<sup>124</sup> Sec. 26.

<sup>125</sup> Sec. 28.

<sup>126</sup> Sec. 29.

<sup>127</sup> Sec. 30.

<sup>128</sup> Sec. 31.

which is certified by the Censor Board as suitable only for family showing, are made punishable with imprisonment for up to three years or with a fine of up to 100,000 kyats, or both<sup>129</sup>, as are the offences of: distributing, hiring or exhibiting, for commercial purposes, copies of any television programme transmitted by the government; and copying, hiring, distributing or exhibiting for commercial purposes any video tape without the permission of its owner or licence-holder.<sup>130</sup>

Other offences which are punishable under the law are: operating a video business in contravention of the terms of its licence<sup>131</sup>; transfer of a video business for operation by another person; failing to comply with orders or directives issued by the Ministry of Information<sup>132</sup>, the Censor Board or the Video Business Supervisory Central Committee.<sup>133</sup>

The requirement of obtaining censorship certificates has been extended also to video tapes imported by foreign diplomatic missions or agencies of the UN for public exhibition. For this category of material, the Censor Board is entitled to make one of three determinations — it may:

- (a) certify the tape as suitable for public exhibition in its existing form;
- (b) permit public exhibition after ordering excisions or erasures; or
- (c) permit exhibition only to a restricted audience within the premises of a foreign diplomatic mission or UN organisation.<sup>134</sup>

The Censor Board has, additionally, been given a role in relation to video tapes being imported into, or exported, from Burma. As well as being allowed to decide whether any tape that is imported ought to be allowed public exhibition within the country, either with or without excisions, amendments or erasures, the Board is empowered to advise the Customs Department as to whether or not any tape sought to be exported should be allowed to be exported.<sup>135</sup>

Some broad exceptions have been laid down as to the application of the law. The law does not, for example, apply to any video-taping that relates to a “family affair” nor to the hiring or exhibition of such tapes, if done without charge. It also does not apply to the video-taping of motion pictures which have already been cleared

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<sup>129</sup> Sec. 32.

<sup>130</sup> Sec. 33.

<sup>131</sup> Sec. 34. This offence is punishable with imprisonment for up to a year or with a fine of up to 100,000 kyats, or with both.

<sup>132</sup> Sec. 35. This offence is punishable with imprisonment for up to six months or with a fine of up to 50,000 kyats, or with both.

<sup>133</sup> Sec. 36. This offence is punishable with imprisonment for up to six months or with a fine of up to 50,000 kyats, or with both.

<sup>134</sup> Sec. 37.

<sup>135</sup> Sec. 38.

by the Censor, and to the non-commercial exhibition of such pictures.<sup>136</sup> The Ministry of Information is empowered to exempt any government department or government organization from the application of the law<sup>137</sup>, and to make rules for its implementation.<sup>138</sup> The law, while repealing previous legislation<sup>139</sup>, allows for some of the structures and procedures established under it to continue as long as they are not inconsistent with its own provisions.<sup>140</sup>

*Use and abuse of the Television and Video Law*

Though relatively new, the Television and Video Law has already been used quite extensively by the SLORC, and its successor, the SPDC, to restrict freedom of expression in Burma. Those prosecuted under this law have also frequently been charged with offences under other laws and sentenced to lengthy prison terms.

In August 1996, for instance, three pro-democracy activists, U Kyaw Khin, a NLD MP-elect from Shan State, Dr Hlaing Myint, a NLD member and businessman from Rangoon, and Maung Maung Wan, a student, were each sentenced to three years' imprisonment, reportedly for obtaining recorded video tapes containing anti-government messages broadcast by foreign TV stations.<sup>141</sup> A month later, a professional photographer, Daw Khin Aye Kyu, and her videographer brother, Ko Sein Ohn, were each sentenced to three years' imprisonment for possessing, in their homes, videotapes without censor certificates which the authorities deemed to be commercial.<sup>142</sup> In practice, they are believed to have been targeted because of their NLD links: Daw Khin Aye Kyu was the NLD's official photographer and had often taken pictures of NLD leaders. Another NLD activist to be convicted under the law was U Win Htein, an aide to Aung San Suu Kyi, who was also given a three-year prison term for compiling an anti-government video.<sup>143</sup> In 1996, U Khun Myint Tun, a NLD MP-elect from Mon State, was sentenced to three years' imprisonment after being convicted of giving a video cassette of Aung San Suu Kyi's weekly speeches to a journalist working for the Australian Broadcasting Corporation.<sup>144</sup>

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<sup>136</sup> Sec. 42.

<sup>137</sup> Sec. 40.

<sup>138</sup> Sec. 45. This section also allows the Ministry, as well as the Myanmar Motion Picture Enterprise, Video Censor Board and Video Business Supervisory Central Committee to issue "such orders and directives as may be necessary". The Ministry of Communications, Posts and Telegraphs is likewise empowered to issue orders and directives concerning the licensing of TVs and video recorders.

<sup>139</sup> The Television and Video Law, Pyithu Hluttaw Law No. 12 of 1985.

<sup>140</sup> Secs. 44, 46.

<sup>141</sup> Amnesty International, note 71 above at 5.

<sup>142</sup> Amnesty International, note 58 above at 4.

<sup>143</sup> ABSDF, note 46 above at 29.

<sup>144</sup> Ibid. at 162-63.

Concurrently, the SLORC launched a crackdown on hundreds of video shops throughout the country and forced many of them to close, after discovering that home-made video tapes of NLD rallies and of Western reports on Burma were being distributed through them. Brigadier-General Myo Thant, the Minister of Broadcasting, defended the crackdown in October 1994 on grounds that “[n]ational culture has been badly damaged due to the easy availability of uncensored foreign video features.”<sup>145</sup>

The authorities have also blocked public access to foreign satellite television broadcasts by setting licence fees at an exorbitantly high level, effectively restricting access to the wealthy and ruling elite.<sup>146</sup> According to the US State Department, licences for satellite receivers are “almost impossible to obtain by ordinary citizens.”<sup>147</sup>

### *Compatibility with international law*

The Television and Video Law contains provisions which are questionable under international human rights law. While international law does not contain any blanket prohibition against censorship, it does require that any restriction imposed (whether by way of prior restraint or otherwise) is justifiable under one or more of the permissible grounds, such as the protection of national security or of public order or of public health or morals.<sup>148</sup> Given the ‘catch-all’ character of the Television and Video Law, the over-broad nature of many of its provisions — for example, the Video Censor Board is allowed to revoke any certificate granted “if there is valid reason to do so” — and the manner in which they have been applied, it is clear that the Burmese authorities have shown scant regard for the international law guarantees on freedom of expression.

The provision in the law which requires foreign diplomatic missions and the UN to submit all imported video tapes for scrutiny and certification by the Video Censor Board may also be subject to challenge under the international law governing diplomatic privileges, which makes representatives of a foreign state immune from the application of the host state’s municipal law and from its legal processes.<sup>149</sup>

One of the glaring inequities of the Television and Video Law is the absence of any provision for appeal from the decisions of the Video Censor Board or the Video Business Supervisory Central Committee to an independent authority. The

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<sup>145</sup> *The Nation*, Bangkok, 16 Oct. 1994.

<sup>146</sup> In October 1993 the satellite TV licence fee was set at 12,000 kyats (US\$2,000), which was well beyond the means of most Burmese.

<sup>147</sup> US Department of State, *Country Reports on Human Rights Practices for 1996* (Washington, D.C.: 1997), 602

<sup>148</sup> Art. 19(3), ICCPR.

<sup>149</sup> Vienna Convention on Diplomatic Relations 1961; the General Convention on the Privileges and Immunities of the United Nations 1946.

right of appeal provided for in the law<sup>150</sup>, to the Ministry of Information, would be considered by most objective observers as inadequate; indeed, a similar provision in an Indian law authorizing censorship of motion pictures<sup>151</sup> was successfully challenged before that country's Supreme Court on the grounds that it effectively amounted to an appeal from "Caesar to Caesar".<sup>152</sup>

### *5 The Motion Picture Law*<sup>153</sup>

Many of the criticisms made above in relation to the Television and Video Law can also be made against the Motion Picture Law, which creates a regime of censorship for conventional cinematograph films. This law, which repealed the previous law on the subject<sup>154</sup>, has objectives similar to the Television and Video Law, including "to prohibit decadent motion picture films which will undermine [Burmese] culture and [Burmese] traditions and customs."<sup>155</sup> It requires anyone who is desirous of engaging in the motion picture business to apply for a licence to the Myanmar Motion Picture Enterprise, a state agency<sup>156</sup>, which has been given sole discretion to grant or refuse such licence<sup>157</sup>, and, where granted, to determine its terms and conditions.<sup>158</sup> Violation of the terms and conditions of a licence are punishable with a fine ranging from 5,000 kyats to 50,000 kyats and with revocation of the licence.<sup>159</sup>

The law also provides for the establishment of a Motion Picture Censor Board consisting of officials from the Myanmar Motion Picture Enterprise, government representatives and private citizens, all to be nominated by the Ministry of Information.<sup>160</sup> Anyone desirous of producing a motion picture is required to submit to the Censor Board a copy of the film's script in advance of filming. The Board may either approve it — with or without modifications — and allow the picture to be

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<sup>150</sup> Sec. 28.

<sup>151</sup> The Cinematograph Act 1952.

<sup>152</sup> *K A Abbas v. Union of India*, [1971] All India Reporter SC 481. In this case, the Attorney-General, appearing for the Government of India, conceded at the outset of the case that the provision was unsatisfactory, and gave an undertaking to the effect that the law would be amended to provide for appeals to be made to a court or a tribunal — an undertaking which has since been implemented.

<sup>153</sup> SLORC Law No. 9/96, dated 20 Aug. 1996.

<sup>154</sup> The Union of Myanmar Motion Picture Law 1962.

<sup>155</sup> Sec. 3(e).

<sup>156</sup> Sec. 4. Separate licences are required for such different aspects of the business as production, filming, developing and printing, sound recording, editing, distribution, import and export of motion pictures.

<sup>157</sup> Sec. 5.

<sup>158</sup> Sec. 8 (a).

<sup>159</sup> Sec. 8(b).

<sup>160</sup> Sec. 10.

filmed, or refuse permission to film.<sup>161</sup> Where a motion picture has been made following approval of the script, or where it has been imported from outside Burma, its owner is obliged to submit it to the Censor Board in order to obtain approval before it may be exhibited. The Board may either: (a) approve the film for unrestricted exhibition, or for exhibition to a ‘reserved’ — that is, restricted, audience — or for exhibition subject to cuts, or (b) prohibit its exhibition altogether and order its destruction.<sup>162</sup> All films approved for exhibition are required carry the certificate issued by the Censor Board.<sup>163</sup>

As with the Television and Video Law, the Motion Picture Censor Board is empowered to revoke any licence already granted “if there is reason to do so”.<sup>164</sup> No provision is made for the licence holder to have an opportunity to show cause against such revocation, nor is any guidance provided on the circumstances under which this drastic power may be invoked. The Censor Board is allowed to retain or destroy any film in respect of which a licence has been revoked.<sup>165</sup>

The law also provides for a licensing regime for cinema houses. Anyone desirous of using premises for public exhibition of motion pictures is required to obtain a “cinema hall licence” from the Myanmar Motion Picture Enterprise<sup>166</sup>, which is empowered to determine the terms and conditions for such licences.<sup>167</sup> Failure to comply with any of the terms and conditions is made punishable with a fine ranging from 1,000 kyats to 10,000 kyats, and with possible revocation of the licence.<sup>168</sup> Exhibition of a motion picture on premises that do not have a cinema hall licence is made punishable with imprisonment for up to six months or with a fine of up to 50,000 kyats or with both; where the offence is a continuing one, a further fine of 500 kyats is payable for each day during which it continues.<sup>169</sup>

Foreign diplomatic missions and the UN have also been made subject to the censorship regime under this law, so that any motion picture which those entities may wish to exhibit to the public has to be cleared in advance with the Motion Picture Censor Board.<sup>170</sup> The powers of the Board in relation to such films are identical to those conferred on the Video Censor Board.

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<sup>161</sup> Sec. 12.

<sup>162</sup> Sec. 13.

<sup>163</sup> Sec. 14(b). Failure to do so is punishable with imprisonment for up to one year or with a fine which may extend to 100,000 kyats or with both; in the case of continuing offences, there is a further fine of 1,000 kyats payable for each day during which the offence continues.

<sup>164</sup> Sec. 17(a).

<sup>165</sup> Sec. 17(b).

<sup>166</sup> Sec. 24.

<sup>167</sup> Sec. 28(a).

<sup>168</sup> Sec. 28(b).

<sup>169</sup> Sec. 33(b).

<sup>170</sup> Sec. 35.

Appeals against decisions of the Motion Picture Censor Board or the Myanmar Motion Picture Enterprise can only be made to the Ministry of Information,<sup>171</sup> whose decision on appeals are final and conclusive,<sup>172</sup> and not to the courts.

### **Use and abuse of the Motion Picture Law**

The Motion Picture Law has been routinely used by the Burmese authorities as a potent weapon in their campaign to suppress dissent. Not only have film scripts been arbitrarily refused approval by the censors, but several prominent film-makers, such as U Aung Lwin, chairman of the Burma Film Society, have been imprisoned for their pro-democracy views.<sup>173</sup> Others who have suffered the brunt of this law include actors and film directors such as Maung Moe Thu and U Tin Soe, both of whom were arrested, also reportedly for expressing dissenting views.<sup>174</sup> Film-makers are also often the victims of whimsical censorship decisions which require extensive cuts to their finished pictures.

Given the particular harshness of the Motion Picture Law, and its double censorship requirement — before shooting the film begins and again after its completion — it has operated as a serious disincentive to aspiring film-makers and more and more producers are said to have become resigned to giving up traditional film-making in favour of making videos, which are quicker and cheaper to make but which generally can expect to be seen by much less of an audience.

## ***6 The Computer Science Development Law***<sup>175</sup>

One of the most far-reaching pieces of legislation affecting freedom of expression passed by the SLORC is the Computer Science Development Law 1996. This has been the subject of universal and strong condemnation by human rights monitors in recent years. Together with the Television and Video Law and another 1996 law forbidding the drafting of alternative Constitutions for the country<sup>176</sup>, it has been characterized by the United States Department of State as “Orwellian”.<sup>177</sup>

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<sup>171</sup> Sec. 30. All appeals have to be preferred within 30 days from the date of the decision.

<sup>172</sup> Sec. 32.

<sup>173</sup> See ARTICLE 19, note 27 above at 56. U Aung Lwin was convicted of treason by a military tribunal which sentenced him to five years’ imprisonment in December 1989.

<sup>174</sup> Ibid.

<sup>175</sup> SLORC Law No. 10/96, dated 20 Sept.1996.

<sup>176</sup> The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Oppositions, SLORC Law No. 5/96, dated 7 June 1996. This law is discussed at greater length below.

<sup>177</sup> US Department of State, note 147 above at 602.

This law requires anyone who wishes to import, possess or use computer equipment, notably those with networking or communication facility, to obtain a licence from the Ministry of Communications, Posts and Telegraphs.<sup>178</sup> It also requires those desirous of “setting up a computer network or connecting a link inside the computer network” to apply for prior sanction to that Ministry.<sup>179</sup> The Ministry is granted absolute power to grant or refuse licences and sanctions<sup>180</sup> and to impose such conditions as it may deem fit.<sup>181</sup> Failure to obtain a licence or sanction is made punishable with imprisonment for between seven and 15 years and with an unspecified fine.<sup>182</sup>

The law also makes it an offence to use a computer network “or any information technology” for the following purposes:

- (a) carrying out any act which undermines State Security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture;
- (b) obtaining or sending and distributing any information or State secret relevant to State security, prevalence of law and order and community peace and tranquillity, national unity, State economy or national culture.<sup>183</sup>

This offence is also punishable with imprisonment for between seven and 15 years and with an unlimited fine<sup>184</sup>, as is the offence of importing or exporting any type of computer software proscribed by the Myanmar Computer Science Development Council<sup>185</sup>, a state-appointed body entrusted with wide-ranging powers to implement the provisions of the law.<sup>186</sup>

The law imposes strict controls on the formation and operation of computer-related associations. It lists three types of associations which may be formed with official sanction, and makes all other associations illegal.<sup>187</sup> The officially-approved

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<sup>178</sup> Sec. 27. The Ministry of Communications has been empowered to determine the class or classes of computer equipment which may be subjected to the licensing regime. Sec. 26(a).

<sup>179</sup> Sec. 28.

<sup>180</sup> Sec. 29.

<sup>181</sup> Sec. 30.

<sup>182</sup> Secs. 31, 32.

<sup>183</sup> Sec. 34.

<sup>184</sup> *Ibid.*

<sup>185</sup> Sec. 36, read with Sec. 7(g).

<sup>186</sup> The Council, set up under Sec. 4, is composed of a chairman nominated by the SLORC, government ministers, heads of government departments and “suitable computer scientists”, all chosen by the SLORC.

<sup>187</sup> Anyone forming, running or belonging to an illegal association is liable to be punished with imprisonment for up to three years, or with a fine, or with both. Sec. 37.

types of associations are: the Computer Enthusiasts' Association<sup>188</sup>, the Computer Scientists' Association<sup>189</sup>, and the Computer Entrepreneurs' Association<sup>190</sup>, each of which can be formed at township, district, state/division and national levels.<sup>191</sup> Anyone wishing to form such associations is obliged to comply with a number of formalities before being allowed to operate legally.<sup>192</sup> The law also provides for a Myanmar Computer Federation, comprising representatives from each of the above-mentioned associations, with wide-ranging duties and powers for the development of computers and computer science within the country.<sup>193</sup>

The law makes attempts or conspiracy to commit any offence punishable with the same severity as the offence itself.<sup>194</sup> It requires the prior sanction of the Ministry of Home Affairs for all prosecutions.<sup>195</sup>

*Use and abuse of the Computer Science Development Law*

Information about prosecutions launched under the Computer Science Development Law has been hard to come by, but human rights monitors have reported that the law has had a chilling effect on freedom of expression since its introduction. One Western journalist who visited Burma surreptitiously in late 1997 described the situation thus:

[N]o one has e-mail or internet access in Burma except for a select few business owners who are friendly with the military regime that rules the country. Diplomats at a few foreign embassies also acknowledge that they have Net access and e-mail, despite the Burmese government's restrictions. Even then, they say their e-mail is intercepted and read by the Burmese authorities.<sup>196</sup>

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<sup>188</sup> The law defines a 'computer enthusiast' as "a person who is interested in computer science and is studying the same in any manner. This expression also includes a person who is utilising a computer in any manner". Sec. 2(h).

<sup>189</sup> A 'computer scientist' has been defined as "the holder of a local or foreign degree, undergraduate diploma or a postgraduate diploma in the field of computer science. This expression also includes a person who is conversant with computer programming". Sec. 2(f).

<sup>190</sup> A 'computer entrepreneur' is defined as "a person engaged in the business of producing and selling computer hardware or computer software locally or in the business of exporting or importing the same. This expression also includes a person engaged in maintenance service of computers and a person who has established a private computer training course". Sec. 2(g).

<sup>191</sup> Secs. 8-13.

<sup>192</sup> Secs. 14-17.

<sup>193</sup> Secs. 18-24.

<sup>194</sup> Sec. 38.

<sup>195</sup> Sec. 41.

<sup>196</sup> Matthew McAllester, "A Whisper from Burma", *Newsday*, 19 Nov. 1997 (distributed on the Internet by the Human Rights Information Network).

Concern about the effect of this law on freedom of expression has also been expressed by the UN Special Rapporteur on Burma in his annual report for 1997.<sup>197</sup>

*Compatibility with international law*

The Computer Science Development Law is highly questionable under international human rights law. It not only imposes restrictions on freedom of expression that are unjustifiable under any of the permitted grounds for restriction, but creates offences that are excessively wide in scope and severity. This law also does not recognize the well-established principle in international law that a state can only impose such restrictions as are strictly ‘necessary’ to meet a given contingency and not merely desirable or expedient on grounds of political convenience.

**7 The Official Secrets Act 1923<sup>198</sup>**

Another law which has frequently been used by the Burmese authorities to stifle freedom of expression is the Official Secrets Act 1923, a pre-independence law which has been jettisoned even in its country of origin in favour of more liberal legislation.<sup>199</sup> Under this act, it is an offence, among other things, to possess, control, receive or communicate any document or information, the disclosure of which is likely to affect the sovereignty and integrity of the state or friendly relations with foreign states or otherwise prejudicial to the safety of the state.<sup>200</sup> The government enjoys an almost open-ended power to classify official information as ‘secret’ under the act, and no exception is made whatsoever for disclosure of classified information on public interest grounds. Anyone convicted of an offence is liable to be punished with imprisonment for up to two years, or with a fine, or with both.<sup>201</sup>

*Use and abuse of the Official Secrets Act*

The Official Secrets Act has been used against a large number of people over the years, usually in retaliation for their peaceful expression of dissenting views. Sometimes, this law is used in conjunction with some of the other laws described above, such as the Emergency Provisions Act or the Printers and Publishers

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<sup>197</sup> UN Doc. E/CN.4/1997/64, para. 19.

<sup>198</sup> India Act XIX, 1923, dated 2 April 1923.

<sup>199</sup> The 1923 Act, drawn up by Burma’s colonial masters, is modelled on a much-criticized previous law applicable in England, the [British] Official Secrets Act 1911. This law was considered so antithetical to free speech that it was replaced in England by the Official Secrets Act of 1989.

<sup>200</sup> Sec. 5.

<sup>201</sup> Ibid.

Registration Law, so that those targeted receive longer sentences of imprisonment than would be possible under this Act alone.

The extent to which the Official Secrets Act has been abused is perhaps best illustrated by the 1990 case of U Chit Khaing and U Kyi Maung, both senior NLD functionaries, and Nita Yin Yin May, a Burmese national who at that time was employed at the British Embassy in Rangoon. All three were sentenced to long prison terms<sup>202</sup> after U Chit Khaing and U Kyi Maung had given Nita Yin Yin May a letter addressed by the SLORC to the NLD Central Committee for translation into English. They were convicted, among other things, of “handing over classified state secret documents of national interest to unauthorised persons.”<sup>203</sup>

Similar official hypersensitivity to criticism characterized the arrest and subsequent conviction of Dr Khin Zaw Win, a former UNICEF worker, who was sentenced to two years’ imprisonment in October 1994 for attempting to smuggle abroad certain ‘state secrets’, including a Burmese translation of Aung Saw Suu Kyi’s book, *Freedom From Fear*.<sup>204</sup> Other victims of the abuse of the Official Secrets Act include: Dr Aung Khin Sint, a NLD Central Committee Member, who was sentenced to 20 years’ imprisonment jointly under this act and the Printers and Publishers Registration Law for distributing leaflets which opposed the restrictions imposed by the SLORC on the National Convention<sup>205</sup>; and Daw San San, a NLD MP-elect from the Rangoon Division, who was charged under this act in October 1997 after being interviewed by the BBC.<sup>206</sup>

### *Compatibility with international law*

The over-broad nature of the offences created by the Official Secrets Act makes it clearly incompatible with international law guarantees on freedom of expression. The ‘catch-all’ character of the law means that it allows for restrictions to be imposed on free speech which go well beyond the range of restrictions permitted, for instance, on

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<sup>202</sup> U Chit Khaing was sentenced to seven years’, U Kyi Maung to ten years’, and Nita Yin Yin May to three years’ imprisonment following show trials before military tribunals. It was reported that the sentences of U Chit Khaing and U Kyi Maung were subsequently doubled. See *Bangkok Post*, 1 Jun. 1991. U Chit Khaing was also convicted under the State Protection Law for his role in the production of the NLD’s Three Strategies Paper. See above p.23.

<sup>203</sup> International Commission of Jurists, *The Burmese Way: To Where?* (Geneva: 1991), 60-61.

<sup>204</sup> ARTICLE 19, *Censorship Prevails: Political Deadlock and Economic Transition in Burma* (London: March 1995), 8. Dr Khin Zaw Win was sentenced to an additional 13 years’ imprisonment under other laws such as the Emergency Provisions Act and the Unlawful Associations Act.

<sup>205</sup> ABSDF, note 46 above at 205.

<sup>206</sup> Daw San San was not sentenced under the Official Secrets Act, but was convicted of related offences under the Emergency Provisions Act and sentenced to six years’ imprisonment — a sentence which was, in April 1998, arbitrarily increased to 25 years after she failed to promise to end her political activities. See *ibid.* at 208-209.

grounds of national security, under the ICCPR.<sup>207</sup> The Act is also couched in unacceptably vague terms, and the experience of its use indicates that many, if not most, of the restrictions imposed under cover of its provisions cannot, by any objective standard, be considered to be “necessary” for the purposes of meeting the genuine needs of national security.<sup>208</sup>

It is worth noting in this context that the trend in international human rights law and practice in recent years has been to construe any provision which allows governments to restrict free speech on grounds of national security in the narrowest possible manner. Indeed, as one recent standard on the subject puts it:

No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.<sup>209</sup>

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.<sup>210</sup>

The manner in which the Burmese authorities have applied the Official Secrets Act reveals a clear and complete disregard for international law norms on human rights, including those which they have, on their own admission, undertaken to respect.

## **8 Other laws**

Successive Burmese governments have also resorted to a number of other, lesser known laws to justify their frequent clampdowns on freedom of expression. These include:

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<sup>207</sup> Art. 19(3).

<sup>208</sup> See e.g. General Comment 10 of the Human Rights Committee, UN Doc. HRI/GEN/1/Rev.1, 11.

<sup>209</sup> Principle 1(d) of The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (London: ARTICLE 19, 1996).

<sup>210</sup> Principle 2(a).

- ***The Burma Wireless Telegraphy Act 1933***,<sup>211</sup> which makes it an offence to possess, without official permission, any ‘wireless telegraphy apparatus’<sup>212</sup> — a phrase which has been defined as “any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made [by the government].”<sup>213</sup> This law was amended in 1995 to cover the use of unlicensed fax machines, and again in 1996 to cover computer modems.<sup>214</sup> In April 1996, the SLORC used this law to prosecute James Leander Nichols, a close friend of Aung San Suu Kyi, on charges of operating unregistered telephone and facsimile lines from his home in Rangoon. Nichols was sentenced to three years’ imprisonment, but died two months into his prison term, allegedly as a result of previous medical problems. Amnesty International expressed concerns over the SLORC’s treatment of Nichols while in detention.<sup>215</sup>
  
- ***Section 122, Penal Code of Burma***,<sup>216</sup> which makes it an offence to commit treason against the government established by law. This offence is punishable with death, or with imprisonment for life. It has, over the years, been used against a large number of people who have merely expressed peaceful dissent against the authorities. For example, several of the NLD functionaries who attended meetings in Mandalay in September and October 1990 with a view to forming a provisional government-in-exile after the SLORC had disregarded the results of the May elections, were targeted under this law. One of them, Dr Zaw Myint Maung, a NLD MP-elect from Mandalay, was sentenced to 25 years’ imprisonment,<sup>217</sup> while another, U Khin Maung Swe, a MP-elect from Rangoon, was sentenced to 10 years.<sup>218</sup>
  
- ***The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention Against Disturbances and Oppositions***,<sup>219</sup> which makes it an offence, among other things, to:

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<sup>211</sup> India Act XVII of 1933, dated 1 Jan. 1934.

<sup>212</sup> Sec. 6(1).

<sup>213</sup> Sec. 2(2).

<sup>214</sup> See Human Rights Watch/Asia, *Burma: Children’s Rights and the Rule of Law* (New York/London: Jan. 1997), 15. Anyone found possessing these apparatus without official permission was made liable to be imprisoned for up to three years or fined up to 30,000 kyats.

<sup>215</sup> Amnesty International, note 71 above at 12. See also, Amnesty International, note 99 above at 3-4.

<sup>216</sup> Inserted by Act XX of 1950.

<sup>217</sup> ABSDF, note 46 above at 134.

<sup>218</sup> Ibid. at 208.

<sup>219</sup> SLORC Law No. 5/96, dated 7 Jun. 1996.

- (a) incite, demonstrate, deliver speeches, make oral or written statements and disseminate [them] in order to undermine the stability of the state, community peace and tranquillity and prevalence of law and order;
- (b) incite, deliver speeches, make oral or written statements and disseminate [them] in order to undermine national reconsolidation;
- (c) disturb, destroy, obstruct, incite, deliver speeches, make oral or written statements and disseminate [them] in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution; or
- (d) draft and disseminate the Constitution of the state without lawful authorization.<sup>220</sup>

Each of these acts is made punishable with imprisonment for between three and 20 years and a possible fine, as are attempts or abetment of them.<sup>221</sup> This law was used, for example, against nine students in September 1996 after they had distributed leaflets outside Aung San Suu Kyi's house in Rangoon. The students were accused by the authorities of "disrupting the nation's peace and tranquillity".

- ***The Unlawful Associations Act 1908***,<sup>222</sup> which, though primarily used to deny freedom of association, has often been applied in a manner that has impacted adversely on freedom of expression. This law, among other things, makes it an offence, punishable with imprisonment for between two and three years and a possible fine, to have contact with any organization which the Burmese authorities have declared illegal.<sup>223</sup> In October 1994, for example, a dentist and former consultant to UNICEF, Khin Zaw Win, was sentenced to three years' imprisonment under this law after being accused of, among other things, carrying documents relating to the pro-democracy movement in Burma and making arrangements for sending allegedly fabricated news to the UN Special Rapporteur on Burma.<sup>224</sup>

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<sup>220</sup> Sec. 3.

<sup>221</sup> Sec. 4.

<sup>222</sup> India Act XIV of 1908, dated 11 Dec. 1908.

<sup>223</sup> Sec. 17(1).

<sup>224</sup> Amnesty International, *Myanmar: Human Rights Still Denied* (London: Nov. 1994, AI Index: ASA 16/18/94), 7-8.

## EXTRA-LEGAL DENIAL OF FREE SPEECH

The Burmese authorities have also, over the years, indulged in large-scale extra-legal — that is, arbitrary — denial of freedom of expression to the peoples of Burma. This has included instances of both sporadic — often petty — harassment, and far more serious persecution on a gross and systematic scale.

In September 1988, for instance, the SLORC authorities banned “literary rallies”, a popular form of public expression going back to pre-independence Burma, in which leading writers, poets and other artists read out their works to spontaneously assembled audiences. The ban was formally revoked in 1991, but despite this the authorities continued to clamp down on several such rallies because some of the scheduled speakers were unacceptable to them. The authorities were also reported to be requiring organizers of literary rallies to undertake to speak favourably about the *tatmadaw* (army) as a precondition for granting permission.<sup>225</sup>

Another manifestation of the military regime’s intolerance of free speech is to be found in the barring of several pro-democracy activists from making public speeches. By far the most prominent example in this category is the NLD leader, Aung San Suu Kyi, whose attempts at addressing her followers through weekend meetings from the compound of her house in Rangoon have been repeatedly thwarted by the authorities since September 1996.<sup>226</sup> Aung San Suu Kyi has also, in recent months, been prevented from travelling out of Rangoon to meet with and address her supporters, in clear breach of both Burma’s own domestic law<sup>227</sup> and international human rights norms. Scores of other, lesser known, individuals have also been similarly barred from making public speeches for political reasons.<sup>228</sup>

The Burmese government has also frequently sought to deny its people access to news and information from abroad. For example, it has jammed foreign radio broadcasts, particularly Burmese language programmes on the BBC,<sup>229</sup> in clear breach of international human rights law.<sup>230</sup> As the UN Human Rights Committee has been at pains to point out, the right to freedom of expression - as guaranteed, for example, by the ICCPR — “includes not only freedom to ‘impart information and ideas of all

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<sup>225</sup> ARTICLE 19, note 204 above at 24.

<sup>226</sup> See e.g. Amnesty International, note 50 above at 3.

<sup>227</sup> See e.g. *Burma Lawyers’ Council Condemns the Unlawful Action of the SPDC against Daw Aung San Suu Kyi*, press release dated 1 Aug. 1998, issued by the Burma Lawyers’ Council (Bangkok).

<sup>228</sup> The UN Special Rapporteur on Burma highlighted the case of one such person, U Aung Thin, in his 1996 report. See UN Doc. E/CN.4/1996/65, para. 121.

<sup>229</sup> *Ibid.*, para. 132. The jamming began shortly after the BBC had broadcast an interview with Aung San Suu Kyi following her release from house arrest in July 1995.

<sup>230</sup> Art. 19, UDHR; Art. 19, ICCPR.

kinds', but also freedom to 'seek' and 'receive' them 'regardless of frontiers' and in whatever medium ... ."<sup>231</sup>

Burmese citizens have also been systematically deterred from establishing contacts with foreigners or foreign organizations. Some have been given lengthy prison terms for such contacts. In October 1989, for instance, U Nay Min, a respected lawyer and 'stringer' for the BBC, was sentenced to 14 years' hard labour for "sending false rumours to the BBC to fan further disturbances in the country."<sup>232</sup> Others similarly punished include individuals who have either met, or sent information to, the UN Special Rapporteur on Burma.<sup>233</sup>

Foreign journalists, too, have been routinely harassed by the Burmese authorities. In December 1996, for example, a correspondent for the Japanese daily, *Yomiuri Shimbun*, was beaten up by police while covering student demonstrations in Rangoon although he had obtained prior permission to cover the event.<sup>234</sup> Another reporter for the same newspaper, Shigefumi Takasuka, was also reportedly beaten up by the police a few days later.<sup>235</sup> In May 1997, the SLORC asked the Thai Foreign Ministry to instruct 15 Thai journalists, who were in Burma to report on a visit to Burma by Thailand's Prime Minister, not to approach the house of Aung San Suu Kyi or to report on her activities. The letter made it clear that officials from the Burmese Ministry of Information would closely monitor the movements of the visiting journalists.<sup>236</sup> Other journalists have been summarily deported from Burma.<sup>237</sup>

Another example of the Burmese authorities' systematic denial of freedom of expression is to be found in the treatment of members of the controversial National Convention, set up in 1992 by the SLORC to produce a new Constitution for Burma. Members of this body, who were hand-picked by the military regime, were subjected to a wide range of restrictions: not only were all speeches required to be submitted for prior vetting, but no member was allowed to carry any documents into or out of the Convention premises without official approval; lobby other members; distribute leaflets or wear badges of any kind; or participate in walk-outs, individually or collectively with others. The work of the Convention itself was steeped in utmost secrecy.<sup>238</sup> The cumulative impact of such measures on freedom of expression was widely criticized, including by the UN Special Rapporteur.<sup>239</sup>

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<sup>231</sup> General Comment 10, UN Doc. HRI/GEN/1/Rev. 1, at 11.

<sup>232</sup> Amnesty International, note 224 above at 5.

<sup>233</sup> See e.g. case of Dr Aung Khin Sint, UN Doc. E/CN.4/1998/70, paras. 40-47.

<sup>234</sup> Press Release by the Committee to Protect Journalists, New York, 3 Dec. 1996.

<sup>235</sup> Press Release by the Committee to Protect Journalists, New York, 7 Dec. 1996.

<sup>236</sup> Press Release by the Committee to Protect Journalists, New York, 12 May 1997.

<sup>237</sup> In 1996, at least three journalists were deported, see UN Doc. E/CN.4/1997/64, para. 58(c).

<sup>238</sup> See e.g. International League for Human Rights, *The National Convention in (Burma) Myanmar* (New York: April 1996).

<sup>239</sup> UN Doc. E/CN.4/1996/65, para. 151.

Other actions of the Burmese government which have also given cause for concern on grounds of freedom of expression include: the severe clamp-down on the education sector in recent years and the effect it has had on the freedom of teachers and other academics,<sup>240</sup> and the suppression of the rights of ethnic minorities to use their own languages and literature.<sup>241</sup>

## **CONCLUSIONS AND RECOMMENDATIONS**

As this report shows, more than three decades of military rule have been accompanied by the systematic and virtually total denial of the right to freedom of expression of the people of Burma. This process can be directly traced to the accession to power of General Ne Win in 1962 and his promotion of the so-called “Burmese Way to Socialism” and, today, it remains unrelenting. The only moments of relative openness and liberalism, as in 1988, have been fleetingly brief and followed by new bouts of savage repression and intensified censorship.

The lack of a strong tradition of constitutionalism in Burma has made freedom of expression all the more vulnerable. Successive military governments, while invariably adopting the legal form, have shown scant regard for the rule of law, both in its domestic manifestation and in terms of respect for international norms.<sup>242</sup> This has led to the introduction, usually without any element of popular consultation, of a plethora of arbitrary and repressive laws, orders and decrees which have been used to all but snuff out the right of dissent in Burmese society.

It is vital that this situation be changed, and that those in power in Burma should be made to recognize that their denial of human rights and disregard for international law can no longer be tolerated. In particular, governments of neighbouring states, notably Burma’s partners within ASEAN (Association of South East Asian Nations), as well as those maintaining trade and diplomatic relationships with the SPDC, have a particular obligation to press for urgent and far-reaching reform, and for the democratization of Burma. They should bring all possible influence to bear through their diverse contacts with the Burmese authorities in order to press, at the general level, for the entrenchment of constitutionalism and the rule of law, for the restoration of democratic accountability and for full and legally-enforceable guarantees for freedom of expression. Specific reforms should include:

- the immediate and unconditional release of all those detained or imprisoned for the peaceful expression of their views;

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<sup>240</sup> See e.g. ARTICLE 19, *“Our Heads are Bloody but Unbowed”*: *Suppression of Educational Freedoms in Burma* (London: Dec. 1992).

<sup>241</sup> See e.g. ARTICLE 19, note 27 above at 24-25.

- implementation without further delay of the SLORC/SPDC's stated commitment to return Burma to democratic government, having regard to the results of the general election held in May 1990;
- prompt reinstatement of the 1947 and/or 1974 Constitution, at least as an interim measure pending the drafting of a pluralist, democratic Constitution in full consultation the NLD and representatives of Burma's ethnic minorities;
- immediate withdrawal of all emergency measures and restrictions on fundamental freedoms, including freedom of expression;
- revocation or amendment of all laws, orders, decrees and regulations to ensure their full compliance with international human rights norms and/or international humanitarian norms;
- early introduction of access to information legislation conducive to the full enjoyment by the inhabitants of Burma of the right to freedom of expression, including the right to impart, seek and receive information and ideas of all kinds, regardless of frontiers and through any media;
- accession to relevant international instruments on the protection and promotion of human rights, particularly the International Covenant on Civil and Political Rights and its Optional Protocols;
- fulfilment, in good faith, of the obligations assumed by Burma under Articles 55 and 56 of the Charter of the United Nations, under which it accepted to take joint and separate action in co-operation with UN to achieve universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion;
- further co-operation with the United Nations and other international organizations in ensuring the full and speedy restoration of the rule of law and civil government in Burma.

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<sup>242</sup> For a wide-ranging critique on the subject, see ARTICLE 19, note 17 above.