

## What is the SPDC? Who is Senior General Than Shwe?

The Union of Burma is currently ruled by a military junta that calls itself the "State Peace and Development Council" (SPDC). The council is a body of twelve senior generals who run the country and make key decisions. The SPDC, formerly the State Law and Order Restoration Council (SLORC) took over the government on 18 September 1988 in a military coup. Since that time, the regime's rule has been characterized by violent repression and human rights abuse.

Senior General Than Shwe is the country's head of state, Secretary of Defense, Commander-in-Chief of the armed forces and has been the chairman of the SPDC since 1992. Senior General Than Shwe's disastrous economic policies have kept Burma one of the poorest countries in the world. Free press and free speech are non-existent. The junta uses systematic rape, torture, summary execution and disappearances to control the people.

## Who is Aung San Suu Kyi?

Aung San Suu Kyi is a Burmese pro-democracy leader and political activist. She is the head of the National League for Democracy in Burma and was elected Prime Minister of Burma in the 1990 elections. The SPDC, however, prevented her from assuming this role and placed her under house arrest. Suu Kyi has been under house arrest in Burma for the majority of the past 18 years since her election as Prime Minister and remains under arrest even today, as the junta repeatedly extends her period of detention. Suu Kyi was awarded the Nobel Peace Prize in 1991 and the Jawaharlal Nehru peace prize by the Government of India for her peaceful and non-violent struggle against the Burmese military dictatorship. Her father, General Aung San, was also a renowned political activist and had negotiated Burmese independence from British colonization in 1948.

## What is Cyclone Nargis? How did it affect the political landscape for Burma?

Cyclone Nargis is the name of a strong tropical cyclone that hit the Irrawaddy Delta region in Burma on May 2 and 3, 2008. It caused the worst natural disaster in the recorded history of Burma, killing at least 138,000 people, displacing a million more, and causing an estimated ten billion US dollars of damage.

Cyclone Nargis has awakened the global community to the truly criminal nature of the Burmese regime. The junta's attempts to deliberately block the passage of international humanitarian aid into the country and their inability to provide basic aid to the victims of the cyclone has brought the SPDC under a slew of international criticism. The images of bodies floating in floodwaters and hanging in trees uncollected, while the military continues to block aid have brought global attention to the extent of the regime's brutality. Furthermore, the junta's refusal to cancel a national constitutional referendum amidst the chaos of the cyclone has fueled international criticism against them. The constitutional referendum is a part of a fourteen year process that was meant to pave a path to democracy in Burma. Instead, the junta used the chaos of the cyclone to proceed with a sham election that resulted in the passage of a constitution that granted the SPDC criminal impunity for their actions.

Cyclone Nargis has brought global attention to the situation in Burma and has opened a window of opportunity to rally the global community to bring about major political change. The SPDC should answer for their actions before the International Criminal Court, not only because they have consistently impeded the delivery of aid to dying people in the wake of Cyclone Nargis, but because of their track record of brutality that has led to the deaths of thousands over the past forty years.

## Burma or Myanmar?

In 1989, the SPDC officially changed the English version of the country's name from 'Burma' to 'Myanmar'. The renaming is contentious because since the SPDC seized power of the country illegally, their executive decision to rename the country is technically invalid. Consequently, there has been a strong internal as well as international campaign to reject the name Myanmar, as a symbolic rejection of the SPDC's power and validity. The United Nations accepts the name Myanmar, since the UN allows its members states to be known by any name they choose. The name 'Myanmar', however, has not been recognized by many Western governments such as the United States, Australia, Canada or the United Kingdom, which continue to use "Burma", while the European Union uses "Burma/Myanmar" as an alternative.

## What is the 'situation in Burma'? Is it really that bad?

The State Peace and Development Council is a brutal military regime that illegally seized power in Burma and continues to exercise dictatorial control over the country. The regime has persisted with impunity in Burma for over forty years, making Burma home to the longest running conflict in the world. Moreover, Burma repeatedly tops major global indices that demonstrate that it is currently one of the most repressive, lawless, corrupt and unstable countries in the world.

In June 2007, the International Committee for the Red Cross (ICRC) issued a global alert that condemned the SPDC, stating that they had breached the Geneva Conventions and were systematically causing thousands of people to suffer under their regime. This was a major departure from the ICRC's usual policy of neutrality and was the second time in its history that it issued such a statement. The only other time that the ICRC had issued a similar call was in response to the Rwandan genocide.

In September 2007, Burmese monks led a peaceful protest against the regime in the Burmese capital city, Yangon, which came to be known as the Saffron Revolution. The junta responded to the peaceful protestors with brutal violence, killing a number of protestors and arresting many more. The UN Human Rights Council's Special Rapporteur reported that 30 to 40 monks and 50 to 70 civilians killed as well as 200 beaten, although unofficial estimates place the death toll much higher. In October 2007, Al Jazeera News reported that over 1,000 people had been arrested but foreign media sources claimed that the number was over 6,000.

In May 2008, Cyclone Nargis hit Burma, destroying homes, infrastructure, food and water supplies. Instead of attempting to provide disaster relief for the people affected by the cyclone, the junta refused to allow any nonpolitical international humanitarian aid to enter Burma until almost a month after the cyclone. Even today, although international humanitarian aid groups have the resources to help the people affected by the cyclone, they still face problems entering the country and distributing food, water and basic supplies to the people. The junta's deliberate attempts at blocking humanitarian aid have led to the unnecessary deaths of thousands of people and amount to crimes against humanity.

A week after the cyclone hit, in a widely criticized move, the junta decided to hold a national referendum on a military constitution that had been drafted by the junta. The referendum was a part of a 14-year long process known as The Road Map to Democracy, which was meant to be a process reestablishing democratic rule in Burma. Despite domestic and international pressure to postpone the referendum, the junta went ahead with the vote and claimed that their constitution had been overwhelmingly approved by 92.4% of the voting population. The referendum, however, was clearly a sham and was denounced by international authorities, as well as by the NLD. The military constitution is a disaster for Burma. Not only does it grant the SPDC immunity from any criminal prosecution through the constitution, but it is also the worst constitution ever drafted for women and makes gender inequality a permanent feature of the government. The constitution also bars Aung San Suu Kyi from public office.

The Burmese military junta has ignored over 30 United Nations resolutions that have called for an independent investigation of crimes by the junta. Although eight U.N. envoys have attempted to carry out fact-finding missions in Burma, all their attempts have been thwarted by the regime. Every diplomatic solution that has been tried, has failed.

## Why is the pursuit of criminal accountability important for Burma?

Impunity emboldens criminals like Senior General Than Shwe, suggesting that dictatorial heads of state can get away with the gravest crimes against humanity without any consequences. The SPDC's actions go far beyond a repudiation of democracy; they are criminal violations of international humanitarian and human rights law, including violations of the Geneva Conventions. War criminals cannot be granted immunity for their actions as this enables others to follow in their stead. A focus on criminal investigation will also reframe the dialogue from democracy and human rights to criminal accountability and will put pressure on the SPDC by alienating it from political and economic friends, such as China and Russia.

Moreover, the recent wide-spread protests by monks and civilians in August/September 2007, and ensuing violent crackdown, has opened a new window of opportunity to end impunity for the ongoing crimes being perpetrated by Burma's military leadership. Burma was added for the first time to the United Nations Security Council Agenda last year. Special powers are granted under Chapter VII of the United Nations Charter which allow the Security Council members heightened power to address situations that constitute a threat to international peace and security. Over the last two decades, in particular, there has been a growing international consensus not only that lawless states are a threat to security, but also that the world community has a moral and legal duty to protect people held prisoners by their own leaders. The world is thus at a crossroads for achieving global justice now. It is imperative for the United Nations to send a clear message to the world community that impunity will not be granted to war criminals, by referring Burma to the ICC.

Finally, it is inconceivable that a war criminal like Senior General Than Shwe be allowed to participate in the negotiations for a democratic Burma. Senior General Than Shwe has been the head of the SPDC for over fifteen years and has consistently thwarted all efforts for Burma's democratization. He has upheld and repeatedly extended Aung San Suu Kyi's term under house arrest; it is thus not only unthinkable but also illegal that a war criminal be allowed to negotiate the terms of Burmese democratization with Suu Kyi, the elected head of state. The pursuit of criminal accountability against the SPDC is imperative before democracy can be achieved in Burma.

## What is the ICC and how can it help the people of Burma?

The International Criminal Court (ICC) was established in 2002 as an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. It was established by the Rome Statute, an international treaty, which as of July 2008 has been signed and ratified by 106 countries. The ICC can only prosecute crimes that have taken place after 2002.

The people of Burma have suffered under a military junta for over forty years. Aung San Suu Kyi remains under house arrest and the SPDC continue their unlawful rule in Burma. Religious persecution, ethnic cleansing, forced relocations of indigenous communities, summary executions, arbitrary arrests, the use of civilians as human mine sweepers, slave labor and gang-rapes have been documented in five reports by women's rights NGOs from Burma operating on the Thai/Burma border, as well as by international organizations and bodies, such as Amnesty International and the U.N. Human Rights Commission. As a result of these abuses, an estimated 800,000 refugees have been driven out of Burma into neighboring Thailand, Bangladesh and India, and an estimated 600,000 people struggle to survive as internally displaced persons, although exact numbers remain unknown.

All UN efforts to engage with the junta on any level have failed, including 28 resolutions by the General Assembly and Commission on Human Rights, such as those calling for an independent investigation of such crimes as the Depayin massacre and the detailed military rapes of ethnic women. Special Advisor to the Secretary General Ibrahim Gambari has been on more than four trips since 2006. There have been six previous envoys, with the first nearly 18 years ago, in 1990. The second Special Rapporteur, Mauritian Rajsoomer Lallah, who was not allowed to enter Burma, said, "We are faced with a country which is at war with its own people." Razali Ismail, who served from 2000 to 2006, made twelve visits, stating on his resignation, "It is best to conclude that I have failed." Thus, every diplomatic solution that has been tried has miserably failed.

The military's violent suppression of the September 2007 Monk Protests and their subsequent denial of aid to victims of Cyclone Nargis were not isolated events; the violent rapes, murders, and acts of torture that this regime has committed against its own people have persisted for more than four decades. The time has come to stop negotiating. A referral of the situation in Burma to the International Criminal Court is the only remaining course of action that will hold the SPDC accountable and will force an end to their criminal actions against the people of Burma.

## What is the legal basis for referring Burma to the ICC?

The ICC can generally only exercise jurisdiction in three situations: in cases where the accused is a national of an ICC member country, in cases where the alleged crime took place on the territory of an ICC member country, or when a situation is referred to the Court by the United Nations Security Council. Since Burma has not ratified the Rome Statute on the ICC, Burma can only be brought to the ICC through the third situation: a referral by the United Nations Security Council.

A number of Security Council resolutions acknowledge that state sponsored crimes can constitute a threat to international peace and security. For instance, Security Council Resolution 1325 on Women, Peace and Security underscores the need to end impunity for crimes against women and children during conflict. This resolution supports the "Responsibility to Protect" Doctrine which was adopted by the Security Council, in Resolution 1592 and 1674 on the protection of civilians in armed conflict. In addition Burma is a party to the Genocide Convention, which requires prosecution of perpetrators and the Security Council can be seized under Article 8 for enforcement. In addition, Burma has been in a state of internal armed conflict for over forty years, devoting nearly half of its budget to maintain a standing army; thus the crimes inflicted on civilians are also violations of Common Article 3 of the Geneva Conventions.

The referral of the situation in Darfur, Sudan comprises a model for Burma's referral to the ICC. On March 31, 2005, the situation in Darfur, Sudan was referred to the Prosecutor of the International Criminal Court (ICC) to open investigations to the serious human rights violations occurring in the region since July 1, 2002. Even though the Sudanese government continues to oppose ICC involvement, the UN Security Council was able to use its authority under the Rome Statute of the ICC to adopt resolution 1593, leading to the ICC referral.

Finally, in July 2008 the ICC requested an arrest warrant for the President of Sudan, Omar al-Bashir, for genocide, crimes against humanity, and war crimes. This request sends a clear message that no one, even a sitting head of state, is immune from prosecution.