

Burmese Military's Constitution: Perpetual Military Despotism

Burma is a country which has been ruled by Burma Army without constitution for 30 years: from 1962 to 1974 and from 1988 to 2008. The military regime can do everything in Burma: crackdown, arrest and kill the students, the Members of Parliament and the monks. But it is impossible to kill the results of 1990 election because it was voted by the people. To kill the election results they twisted the Roadmap. The referendum like the election is where the people have opportunity to be involved. "Boycott" has no legitimacy. So to deny the constitution for perpetual military despotism the people have to vote "No".

The Burmese Army and the Constitution

- The Burmese Army was established as an ultra-constitutional authority and it will continue to be above the constitution and above the law and forever
- The Burmese Army is the institution which abandoned both constitutions by coups, 1947 and 1974 and it is the Burmese Army that drafted the new constitution of 2008
- But in the draft it is said, "The *Tatmadaw*¹ is mainly responsible for safeguarding the State Constitution."
- The Burmese Army held the election in 1990 and prevented from convening the parliament. The regime has announced that new election would be held in 2010 after this constitution was approved by the referendum in May 2008. The authorities are compelled to explain how they view the 1990 election result and the reason why they refuse to honor its results

The drafting of the constitution 2008

- The drafting of this constitution took 14 years 11 months and 12 days as the national convention was held off and on from 9-1-1993 to 17-12-2007 while 1974 constitution took only 7 months
- When the NLD² and the ethnic parties surprisingly won the 1990 election, the regime announced that those elected representatives were to write a new constitution.³ However when the national convention was practically held, in the beginning, only 15.24% of delegates were elected MPs. In the later sessions it was reduced to 1.38%
- Except political party representatives almost all delegates were hand-picked
- The procedures of the National Convention are utterly undemocratic as freedom of speech of the delegates to the Convention was strictly prohibited by order and through the intelligence officers monitoring of all sessions
- All proposals submitted by NLD and the ethnic delegates were turned down
- One of the six objectives for the formulation of the constitution as stipulated in the SLORC⁴ order 13/92 said the *Tatmadaw* (Army) was to be able to participate in the national political leadership role of the future State
- The largest election winners, the NLD and the SNLD⁵ walked out of the national convention in 1995⁶ as their legitimate demands were ignored

¹ *Tatmadaw* = Burma Army

² NLD =National League for Democracy which got 392 seats in 1990 election

³ The SLORC Announcement 1/90 on 27-7-1990

⁴ SLORC = State Law and Order Restoration Council

⁵ SNLD = Shan National League for Democracy which got 33 seats in 1990 election

⁶ NLD party chairman U Aung Shwe: "The NLD has come to the conclusion that it will not benefit the nation by participating in the National Convention. Therefore it has been decided that the NLD will not attend the convention." SNLD chairman U Khun Htun Oo: "We will not attend the NC because we know our demands will not be fulfilled."

The very constitution

- Although it is written, “Sovereign power of the State is derived from the citizens” and “the Union is constituted by *Pyidaungsu* (Union) systems”, the SPDC⁷ constitution is to establish an “Authoritarian Centralist” government
- In many respects the constitution is blurred and puzzling and open to conflicting interpretations⁸
- The proposed system is essentially a presidential system, with extensive powers vested in the President who should have to be an army officer
- The military is to be entrenched in every institution of State, including the Presidency, the Parliaments, the Central and the local Governments
- The President of the State shall have the right to appoint the *Hluttaw* representatives⁹ or non-*Hluttaw* representatives as the Union Ministers and the Union Deputy Ministers
- There will be virtually no opposition party or the Leader of Opposition which is characteristic of the multi-party democracy
- The Chief Ministers will be nominated by the President and he or she may or may not be the same nationality of the people of the State while all States in Burma are formed on ethnic nationality basic
- There is no guarantee for the rule of law or for the independence of the judiciary from interference from the military
 - The State judiciary power has no jurisdiction over the military
 - The Judges of the Supreme Court are to be nominated by the President
 - It is uncertain if the Supreme Court can even interpret the constitution
 - It is uncertain who can initiate laws and whether laws must be passed through the one House or both Houses
 - It is uncertain if the President can veto or ignore laws passed of the Union Assembly
 - These discrepancies are deliberant and are designed to give the military definite flexibility to control the administration

Aung San Suu Kyi or any woman or any non-military man cannot be the president

- The President of the Union shall be well acquainted with affairs of State such as political, administrative, economic and military affairs
- The President of the Union shall be a person who has been residing continuously in the country for at least 20 years up to the time of the election
- The President of the Union himself, parents, spouse, children and their spouses shall not owe allegiance to a foreign power, shall not be subject of a foreign power or citizen of a foreign country. They shall not be persons entitled to the rights and privileges of a subject or citizen of a foreign country

Everywhere is Army (*Tatmadaw*)

- The *Tatmadaw* has the right to independently administer all affairs concerning the armed forces
- The *Tatmadaw* has the right to administer for participation of the entire people in State security and defense i.e. all citizen can be made soldiers
- If civil servants are elected in the elections, they are required to retire from their occupations and abandoned the facilities, provided by the state. However, military

⁷ SPDC = State Peace and Development Council

⁸ (5) (a) the three branches of State power, namely legislative power, executive power and judicial power are separated as much as possible and exert reciprocal control, check and balance among themselves;

⁹ *Hluttaw* representatives = Members of Parliament

officials, who are to sit in the Parliament, can keep their military positions and state facilities, house and car

- The Army which has approximately 400,000 and which is 1/8th of the approximately 32,000,000 voters will have 1/4th of all Parliamentary seats (110 out of 440 Lower House seats and 56 out of 224 Upper House seats) and all are nominated
- The **Defense Services Commander-in-Chief** is the most powerful person under this constitution
 - His appointment and removal are not referred to in the constitution
 - He will appoint army officers as the security and the border affair ministers in the State/Region and in the Self-Administered Division and Zones governments
 - He is entitled to nominate 25% of all members of the Union Assembly¹⁰, the People's Assembly¹¹ and the State Assemblies and Regional Assemblies and the self-administered areas and district executive organs¹²
 - He is also entitled to nominate the Ministers of Defense, Security/ Home affairs and Border affairs
 - He appoints 6 out of 11 members of the National Defense and Security Council which can declare a state of emergency¹³
 - He will administer all military affairs, including recruitment and expansion of troops, promotion, troop positioning, budget, procurement and manufacturing of weapons, military-owned businesses, etc,

So grueling to amend the constitution

- Any amendment will have to be submitted to the Union Parliament¹⁴ with a sponsorship of at least 20% of the Parliament Representatives
- Although the other chapters can be amended with over 75% of the support of the Parliament, to amend the main Chapters, including State Fundamental Principles, Formation of the State, Formation of Legislative Power, Formation of Administrative Power, Formation of Judiciary Power, State of Emergency, in addition to over 75% of the support of the Parliament, over 50% of support from the national referendum is required
- In the official version of the draft constitution received by political parties, there is intentionally-made typing error which said the constitution be approved by all voters at the referendum. Only when NLD pointed out, the correction was added as it required simple majority at the referendum

The referendum

- The military regime continues exacerbating the climate of fear and intimidation leading up to the constitutional referendum in May 2008
 - On 29 February, SPDC Special Branch police arrested three Rangoon residents for making comments about the referendum
 - The SPDC also ordered civil servants to vote “Yes”
 - SPDC local authorities appointed poll booth officers and instructed them to get “Yes” votes

¹⁰ *Pyidaungsu Hluttaw* = Union Assembly (Upper House + Lower House)

¹¹ *Pyithu Hluttaw* = People's Assembly (Lower House)

¹² The thirty Comrades who led the struggle for independence from British and Japan did not asked for reservation in the constitution

¹³ Members of the NDCS are: (i) President, (ii) Vice-President, (iii) Vice-President, (iv) Head of Peoples' Parliament, (v) Head of National Parliament, (vi) Commander-in-Chief, (vii) Deputy Commander-in-Chief, (viii) Minister for Defense, (ix) Minister for Home Affairs, (x) Minister for Foreign Affairs and (xi) Minister for Border Area Affairs

¹⁴ The Union Parliament = The joint session of the Peoples' Parliament and the National Parliament

- In Townships across Burma the regime set up sub-commissions staffed mainly with local SPDC officials and USDA members
- The SPDC charged about 20 detained pro-democracy activists, including 88 Generations Students under Decree 5/96
- The Constitution Approval Law is full of tricks allowing the regime to do as it pleases
- The law carries a three-year prison term and a fine of 100,000 *Kyat* for anyone who makes speeches or distributes leaflets to disrupt the voting process, tampering with ballot boxes, distributing leaflets or makes speeches against referendum
- Decree 5/96 punishes criticism of the regime's "roadmap to democracy" with up to 20 years in prison
- The Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, 2008 does not set the timing when to declare the vote results
- The Law also allows for voting to be postponed or canceled in places affected by a "natural disaster, security breach or other harm that could endanger the holding of a free and fair referendum"
- The Union Solidarity and Development Association (USDA)¹⁵ is assigned to overwhelm the referendum process
- Chief Justice U Aung Toe who was Chairman of the National Convention Convening Work Committee as well as the chairman of the State Constitution Drafting Commission is also chairman of the National Referendum Commission
- No observers are allowed to oversee voting or ballot counting
 - The Burmese regime has firmly rejected the UN proposal for serious dialogue, and amendments to the draft constitution
 - The regime rejected an offer of UN technical assistance and help with providing observers at the referendum

What to do with referendum

- We can not support the constitution because
 - It is designed to create the military as the first class elite strata and USDA as the second elite class while the people of Burma will remain a third class citizens to serve for the pleasure of the military
 - It is for perpetual Military Despotism
 - It denies all democratic, and human rights, all rights of ethnic nationalities
- We urge the entire people of Burma to stand up and reject this unacceptable constitution decisively by voting "No" in the referendum
- We need strong and effective international support to reject the constitution and the referendum process

Compiled by Dr. Tint Swe

¹⁵ The USDA was established in September 1993, under the patronage of Senior General Than Shwe, as an instrument for the mobilization of support for the military government. The USDA has 24 million members among 32 million voters. After the referendum, USDA is expected to become a political party to contest the 2010 election