

Burmese Military's Constitution: Perpetual Military Authoritarianism

Backdrop

- The Burmese military was effectively established as an ultra-constitutional organization and it will continue to be above the constitution and above the law.
- The Burmese Army is the institution which abandoned both constitutions, 1947 and 1974 and it is the Burmese Army that drafted the new constitution of 2008.
- The military authorities 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 2007. This openly flaunts that fact that the authorities are duty bound to first explain to the voters how they view the 1990 election result and the reason why they refuse to accept its results.

The drafting of the constitution

- The drafting of this constitution took 15 years as the national convention was held off and on from 9-1-1993 to 17-12-2007.
- When the political party¹ of Aung San Suu Kyi surprisingly won the 1990 election, the regime announced that those elected representatives were just to write a new constitution. However when the national convention was practically held, only 15.24% of delegates were elected MPs. In the later sessions it was reduced only to 1.38%.
- The procedures of the National Convention are utterly undemocratic.
 - Freedom of speech of the delegates to the Convention was strictly prohibited by order and through the intelligence officers monitoring of all sessions.
 - Except political party representatives almost all delegates were hand-picked.
 - 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 SLORC² 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 SNLD³ walked out of the national convention in 1995⁴ as their legitimate demands were ignored.

The constitution

- The SPDC⁵ constitution establishes an authoritarian centralist government with very few checks and balances.
- In many respects the constitution is vague and confusing and open to conflicting interpretations⁶.
- The proposed system is essentially a presidential system, with extensive powers vested in the President who should be an army officer and is subject to very few limitations.

¹ NLD = National League for Democracy which got 392 seats in the parliament

² SLORC = State Law and Order Restoration Council

³ SNLD = Shan National League for Democracy which got 33 seats in the parliament.

⁴ 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."

⁵ SPDC = State Peace and Development Council

⁶ (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;

- The military is to be entrenched in every institution of State, including the Presidency, the Union Government, the Assemblies such as Pyidaungsu Hluttaw, Region Hluttaws and State Hluttaws.
- There is no guarantee for the rule of law or for the independence of the judiciary from interference from the military.
 - These discrepancies are deliberate and are designed to give the military definite flexibility in controlling the government. The constitution is silent on the entire law making process.
 - It is unclear who can initiate laws and whether laws must be passed through the one house or both houses.
 - It is unclear whether the President can veto or ignore laws passed of the Union Assembly.
 - Judges of the Supreme Court are to be nominated by the President.
 - While the constitution provides a mechanism for the impeachment of a Judge; the President is not obliged to follow this procedure or to comply with a negative outcome of a trial held in accordance with the procedure.
 - The jurisdiction of the Supreme Court is neither detailed nor guaranteed by the constitution. It is unclear what matters the Supreme Court may consider.
 - It is unclear whether the Supreme Court can even interpret the constitution.
 - It is also unclear whether there are any limits on the court's jurisdiction.
 - There is nothing in the constitution to prevent the Supreme Court convicting a person on the basis of a retrospective law or in the absence of any law at all.
 - The state judiciary power has no jurisdiction over the military.
- 75% of the members of each Assembly are to be elected and 25% are reserved for military personals.
- The President of the State shall have the right to appoint the Hluttaw representatives or non-Hluttaw representatives as the Union Ministers and the Union Deputy Ministers
- The Defence Services Commander-in-Chief is the most powerful person under this constitution.
 - His appointment and removal are not referred to in the constitution.
 - He and the military will be regulated by the military's own regulations, which will override the constitution.
 - He is entitled to nominate 25% of all members of the Union Assembly⁷, the People's Assembly⁸ and the State Assemblies and Regional Assemblies and the self-administered areas and district executive organs.⁹
 - The Commander-in-Chief will have the right to administer the military's affairs independently.
 - All military affairs, including recruitment and expansion of troops, promotion, troop positioning, budget, purchase and manufacturing of weapons, military-owned businesses, etc, will be administered by him.
 - 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 emergency.¹⁰

⁷ Union Assembly = Pyidaungsu Hluttaw

⁸ People's Assembly = Pyithu Hluttaw

⁹ The thirty Comrades who led the struggle for independence from British and Japan did not asked for reservation in the constitution.

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;
- The Tatmadaw is mainly responsible for safeguarding non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of sovereignty;
- The Tatmadaw is mainly responsible for safeguarding the State Constitution.
- 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 officials, who are to sit in the Parliament, can keep their military positions and state facilities, house and car.
- The Chief Minister of State/Region can appoint only military officials recommended by the Commander-in-Chief in their Cabinet to run the security and the border affair departments. Similarly, in Self-Administered Division and Zones, the CC will appoint a quarter of the Leading Bodies and his appointee will be the Chief of the security affair department.

The referendum

- The military regime continues exacerbating the climate of fear and intimidation leading up to the May constitutional referendum.
 - 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 \$86 for anyone who makes speeches or distributes leaflets to disrupt the voting process, tampering with ballot boxes, distributing leaflets or makes speeches against referendum.
 - Another law, Decree 5/96, punishes criticism of the regime's "roadmap to democracy" with up to 20 years in prison.
 - 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)¹¹ is assigned to overwhelm the referendum process.

¹⁰ Members of the NDCS are as follows: (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

¹¹ 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 and enter the elections.

- Chief Justice U Aung Toe who was the chairman of the State Constitution Drafting Commission as well as the head of the constitution drafting committee and is also chairman of the National Referendum Commission.
- There was no mention of independent observers being 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 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 votes.
- As the registration process for referendum started, it became clear that the regime intended to tightly control the referendum organization and force voters into approving the constitution.
 - 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.
 - In Townships across Burma the regime set up sub-commissions staffed mainly with local SPDC officials and USDA members.
 - The regime rejected an offer of UN technical assistance and help with providing observers at the referendum.
 - The SPDC charged about 20 detained pro-democracy activists, including 88 Generations Students under Law 5/96.

So grueling to amend

- Any amendment will be submitted to the Union Parliament (the combination of Peoples' Parliament and National Parliament) with a sponsorship of at least 20% of the Parliament Representatives.
- To amend the main Chapters of the constitution, 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.
- Other chapters can be amended with over 75% of the support of the Parliament.
- Since military officials occupy 25% seats in the Parliament and they will vote as instructed by the Commander-in-Chief, to receive over 75% support is almost impossible.

What to do with referendum

- We can not support the constitution, which is designed to create the military as the first class elite strata and USDA as another elite class while the people of Burma will remain a third class citizens to serve for the pleasure of the military.
- We cannot accept the constitution, which denies all democratic, and human rights, all rights of ethnic nationalities.
- We, all of the people of Burma must stand up at once and reject this sham constitution decisively.
- We need strong international support to reject the constitution and the referendum process.

End