

Let's Reject the Burmese Military Regime's Sham Constitution

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(A) Introduction:

(1) The military junta, which rules the Southeast Asia country of Burma illegally, held a multi-party general election in May 1990, in response to the growing dissatisfaction of the people of Burma against the military dictatorship. Since the 1990 elections, although it was not free and fair because the military junta pressured the people to vote for the military-back National Unity Party (NUP) (new names of former Burmese Socialist Program Party led by late dictator General Ne Win) and threatened and restricted the candidates of the democracy parties during the election campaigns, the National League for Democracy party (NLD), led by detained Nobel Peace Prize Recipient Aung San Suu Kyi, has emerged as the election winning party with a landslide victory, securing 392 out of 485 seats in Parliament. Furthermore, ethnic political parties, including the Shan National League for Democracy (SNLD), which is allied with the NLD, won altogether 67 seats and the military-back NUP won only ten seats. This is a clear declaration by the people of Burma against military rule in favor of the NLD and its ally ethnic parties to lead the country towards democracy.

(2) However, the military junta, who claimed that it will transfer the power to the election winning party and then go back to the barracks, has failed to keep its promise. It has refused to convene the Parliament with the MPs-elected, and refused to hand over the power to the election winning party. It also has ignored the repeated requests of the NLD and ethnic representatives to engage in a tripartite dialogue to solve the problems in Burma peacefully. At the same time, it has written a state constitution, aimed to grant the Commander-in-Chief and armed forces supreme power of the country, one-sided, without participation of the elected representatives and ethnic representatives. Now, the military junta is planning to call for the referendum in May 2008 to approve this constitution. By doing so, the military junta has challenged the people of Burma, who want to be free from the military dictatorship and who want to live in a democratic society. This is the junta's official denial of the 1990 election results. Once the junta approves the constitution with its usual dirty methods; the 1990 election results will be abolished, the election winning party status of the NLD will be invalid; and with this constitution, military dictatorship will become legal and generations of Burmese will become slaves of the military.

(B) National Convention and Fundamental and Detailed Principles

(1) The military junta has convened the national convention for 14 years (1993-2007), with its hand-picked delegates to draft the constitution with a goal to grant greater military power in the country's political affairs. Although some MPs-elected in the 1990 elections and delegates from ethnic cease-fire groups participated in the national convention, they were not able to resist the pressure of the junta.

(2) Therefore, the proposed constitution, which is based on fundamental and detailed principles adopted by the national convention, does not guarantee democracy and human rights in Burma and denies the rights of ethnic nationalities. Most importantly, according to this constitution, the military Commander-in-Chief will become the most powerful person in the country and the armed forces will officially become the first-class and elite citizens of Burma. The military will exist above the law and will have the right to monitor and intervene within the three power branches of the country: the executive, judiciary and

legislative. Ordinary Burmese will become second class citizens, who will be abused by the military and who will have to serve under the pleasure of the military. Detailed explanations follow.

(C) Powers Authorized to The Commander-in-Chief according to the Military-Sponsored Constitution

(1) The Commander-in-Chief (CC) 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 the CC according to this constitution. The military, which is supposed to be a state organization, is not under the supervision of the President. The Parliament is restricted not to legislate and oversee the military. All military personals who are accused of crimes, will be tried by the court-martial appointed by the CC, state judiciary power has no jurisdiction over the military. Therefore, the military is allowed to stand above all three sovereign powers.

(2) Furthermore, according to the constitution, the CC and the military are granted power to monitor and intervene in all three sovereign powers. I will explain later.

(3) If there is an emergency situation, the CC is authorized to declare a state of emergency for the whole or parts of the country. The CC is then authorized to control all three branches of powers (executive, judiciary and legislative) as long as the country is in a state of emergency. In truth, the 'state of emergency' is a tool to fend off any attempt for amending the constitution. Thus, if there were to be an attempt to amend the constitution, the CC would simply declare a 'state of emergency'; seize control of all three branches of state powers. This is authorizing the CC and the military to stage a coup at anytime they want.

(4) This constitution also protects the CC and military officers from any charges that may happen during the state of emergency period.

(D) Powers Authorized to the Commander-in-Chief to Intervene in Legislative Power according to the Military-Sponsored Constitution

(1) According to this constitution, there will be two Chambers of Parliament at the central level, called "Peoples' Parliament" (PP) and "National Parliament" (NP) respectively. The Union Parliament (UP) is formed by the combination of the PP and the NP. The PP will have 440 Representatives, in which 330 will be elected from the various Townships according to their populations while 110 will be appointed by the CC. Therefore, military officers, appointed by the CC, will control one quarter of the PP.

(2) The NP will have 224 Representatives, in which 168 will be elected from States and Regions (12 each from 7 states and 7 regions) and 56 will be appointed by the CC. Therefore, the CC will control a quarter of the NP with its military officials.

(3) 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 appointed by the CC to sit in the Parliament, are not required to do so. They still can keep their military positions and state facilities, house and car.

(4) The Union Parliament is supposed to be the highest body in the country's legislative affairs. However, according to this constitution, the Parliament has no right to legislate and/or oversee military affairs. The CC-appointed military officers in the Parliament are authorized to discuss the military affairs and budget separately and the Parliament is to approve their submission. Therefore, the Parliament will become a rubber stamp to endorse the CC's proposal.

(5) As for States and Regions, there will be a State or Region Parliament. This Parliament will have two representatives each, elected from every Township and one each, elected from the ethnic nationalities (who do not have the status of the State). As usual, one quarter of State and Region Parliaments will be appointed by the CC. The CC will control all State and Region Parliaments with its military officers, who will occupy a quarter of the Parliament.

(6) In all State and Region Parliaments, military officials are only authorized to manage the security affairs individually and the State and Region Parliaments must approve their submission, Therefore, all State and Region Parliaments will become the rubber stamps to approve the proposals of the CC.

(E) Powers Authorized to Commander-in-Chief to Intervene in Executive Power according to the Military-Sponsored Constitution

(1) According to this constitution, there will be one President and two Vice-Presidents at the executive branch. Three groups from the Union Parliament will have to submit one nominee each and the whole Union Parliament (combination of Peoples' Parliament and National Parliament), as the presidential electoral college, will vote to choose one of the three nominees. Then the one who obtains most votes will be the President and the other two will become the Vice-Presidents.

(2) Three groups are divided as follows.

(I) 330 Elected Representatives from Peoples' Parliament

(II) 168 Elected Representatives from National Parliament

(III) 166 Military officials both from the PP (110) and the NP (56)

(3) This constitution describes the characteristics, eligible to be the President and Vice-Presidents. Some of them are as follows:

(I) the President is not necessarily to be an elected representative.

(II) The President should be well acquainted with the State's Affairs, including political, administrative, economic and military

(III) The President should be at least 45 years old and should have lived in the country for at least 20 years.

(4) According to the election method, one of the three Presidential nominees will be a current military officer or a former military officer, nominated by the military representatives in the Parliament. According to the stated criteria, Presidential nominee needs to be well acquainted with military affair and therefore two other nominees nominated by two other groups are also expected to be former military officers. As military officials appointed by the CC occupy one quarter of the Union Parliament, which will become the presidential Electoral College, no nominee can be elected without the support of military officials. Therefore, only the nominee who is favor by the military officials will become the President.

(5) Even so, the President has no right to exercise his executive power over the Commander-in-Chief and the military. Reversely, the CC has the authority to influence over the President

(6) When the President establishes his Cabinet, he will not have power to appoint the ministers for defense, home and border area affairs. The CC will recommend three military officials to run these departments and the President is required to appoint the CC's nominees. Deputy ministers for these departments will also be recommended by the CC and then appointed by the President. It is clear that by controlling the three most important Ministries (Defense, Home and Border Area Affairs) in the Cabinet, the Commander-in-Chief will be more powerful than the President.

(7) According to this constitution, those appointed for ministers and deputy ministers should retire from

their civil servant positions, if they are civil servants, and stop working for the respective political party during the term in the Cabinet, if they are members of the political parties. However, military officials in the Cabinet are exempt from doing so.

(8) Similarly, 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.

(9) 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.

(10) Therefore, according to this constitution, the Commander-in-Chief is more powerful than the President and he can effectively influence the executive powers at all administrative levels: from Union to State and Regions, and the Self-Administered Divisions and Zones.

(F) Powers Authorized to the Commander-in-Chief to Intervene in Judiciary Power according to the Military-Sponsored Constitution

(1) Judiciary power is one of the major sovereign powers of the country. However, according to this constitution, Judiciary power does have power on ordinary citizens only and does not have jurisdiction over the military, which is the first class elite citizen.

(2) According to this constitution, the Commander-in-Chief will have the authority to administer the military affairs freely, including judiciary. Military personal, who involves in any crime, will be tried by court martial, appointed by the CC. The civilian courts have no authority to try the military personals. In that way, the military is above the law.

(3) According to this constitution, the President has the authority to appoint the Chief Justice and State Judges. He has the authority to not only appoint the Judges, but also to fire them. Actually, the executive power and judiciary power are supposed to be equal and should check and balance each other. An Independent judiciary is major essence of democracy. As Judges can be appointed and fired by the President as he wishes, judiciary power is under the influence of executive power. Furthermore, the judiciary system has no jurisdiction over the military. As the President himself is less powerful than the Commander in-Chief, the CC will be able to intervene in judicial power freely.

(G) Restrictions against Ethnic Nationalities

(1) According to this constitution, the Country is formed by seven States and seven Regions, all of which are equal in status. This formation has actually denied equality among all ethnic nationalities as Burman majority has seven Regions, which are equal level with States. There are also one Self-Administered Division and five Self-Administered zones.

(2) The seven States include the Shan, Kachin, Karen, Karenni, Mon, Rakhine (Arakan) and Chin. The Self-Administered Division is for Wa and the Self-Administered Zones are for Naga, Danu, Pa-O, Palaung, and Kokang.

(3) All States and Regions will each have a State/Region Parliament, and military officials appointed by the Commander-in-Chief will occupy one quarter of all Parliaments. The expectation of ethnic nationalities to obtain the right of self-determination will never be realized as unelected military officials will effectively intervene in their State affairs.

(4) According to this constitution, State Representatives will not have the chance to elect their Chief

Minister, who will be at the head of the State. The President will select one of the State Representatives to be the Chief Minister and the State Chief Minister will be responsible to the President. Ethnic nationalities do not even have a chance to elect their head of State by themselves. They have to accept someone chosen by the President.

(5) Then, the State Chief Minister has no right to form his or her Cabinet as he or she wishes. He or she has to compile a list of individuals to fill in the State Cabinet and submit it to the President. Two of the State Cabinet members, who will run the security and border area affairs, will be appointed by the CC.

(6) States do not have the right to appoint State Judges too. The President will appoint the State Judges, in consultation with the Chief Justice of the Union. Therefore, the judiciary power in States will be handled by the judges appointed by the President.

(7) As mentioned above, military officials occupy a quarter of State Parliaments and will intervene in State legislative affairs, as instructed by the Commander-in-Chief. Military officials also take charge of State security and border affairs and will effectively intervene in the State Executive power. Then Judges appointed by the President will handle the State judiciary affairs. There is no realistic possibility that equality among all ethnic nationalities and self-determination are met.

(8) Self-Administered Division and Zones will be led by the Leading Bodies and as usual, one quarter of the Bodies will be military officials appointed by the CC. The President will appoint the Chairman of the Leading Bodies, while Judges appointed by the President will handle the Self-Administered Division and Zones judiciary affairs. Contrary to its name, there is no real self-administration

(9) Next important thing is the role of the General Administration Department (GAD). GAD is actually a civil service department under the Ministry of Home Affairs in the President's Cabinet, with branches at all administrative levels. According to this constitution, GAD is authorized to serve in all State and Region Governments, as well as in the Leading Bodies of the Self-Administered Division and Zones. The Head of State and Region GAD will be the secretary of the State/Region Government and his or her office will be the office of the State/Region Government. Also the Head of GAD in the Self-Administered Division and Zones will be the secretary of the Leading Bodies of the Self-Administered Division and Zones and his or her office will be the office of the Leading Bodies of the Self-Administered Division and Zones.

(10) This sham constitution systematically denies equality among all ethnic nationalities and self-determination, demanded by all ethnic groups for a long time. It also puts all of them under a central rule with effective intervention of the Commander-in-Chief and the military in their executive, judiciary and legislative affairs.

(H) National Defense and Security Council

(1) According to this constitution, National Defense and Security Council (NDSC) will be formed with 11 persons. The NDSC will have responsibilities to declare the state of emergency and appoint the Commander-in-Chief, who is the most powerful person in the country.

(2) Members of the NDSC 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

- (3) According to this formation, the Commander-in-Chief secures at least eight votes at his side. They are
- (i) President, who can be elected only with the support of the military representatives in the Parliament
 - (ii) Vice-President, who will be nominated by military representatives in the Parliament
 - (iii) Commander-in-Chief himself
 - (iv) Deputy- Commander-in-Chief, who is appointed by the CC
 - (v) Minister for Defense, appointee of the Commander-in-Chief
 - (vi) Minister for Home Affairs, appointee of the Commander-in-Chief
 - (vii) Minister for Border Area Affairs, appointee of the Commander-in-Chief
 - (viii) Minister for Foreign Affairs, appointee of the President

(4) With this super majority vote, the NDCS will be also a rubber stamp to advance the agenda of the Commander-in-Chief.

(I) Intervention of the Union Solidarity and Development Association (USDA)

(1) The military junta has formed the USDA as a civic organization. Gradually, USDA became the political arm of the military junta and a mechanism to monitor and oppress the people of Burma, on behalf of the junta. USDA is now involved in many activities, from midnight check and inspections in neighborhoods, road blocks and check points to watching activities of democracy activists and NLD members. With strong backing of the junta, USDA today is more arrogant and engaging in violent acts to crackdown on the peaceful protests. USDA members help police and military intelligence to arrest democracy activists and sometimes, even without law enforcement official, USDA members attack and detain democracy activists in many places. During the peaceful protests in August in September 2007, led by Buddhist Monks and student activists, the junta deployed thousands of USDA members, along with thousands of its security forces, to brutally attack Monks and peaceful demonstrators. The USDA is now given the assignment to run the referendum by the junta. We are confident that USDA members will employ all inappropriate and undemocratic methods, such as intimidation, vote buying, cheating and other frauds to endorse this sham constitution.

(2) After the referendum, USDA will become a political party and enter the elections. By using bullying methods and threat, it will surely try to get more seats in the Parliament and try to block democracy activists and honorable citizens from contesting in the elections. We are expecting to see a significant number of USDA representatives in the Parliament, who will stand together with military officials in the Parliament... It is clear that there will be no opportunities to amend the constitution in the future and it will also be impossible to promote democracy, human rights and equality among all ethnic nationalities, within the framework of this constitution.

(3) I mentioned earlier that if this constitution is approved, the military will emerge as the first class elite strata and the people of Burma will become second class citizens. Actually, it will be worse than that, if you add the USDA into the calculation. While the military is sitting on top as the first class elite citizens, the USDA will become another elite class, who will also be above the law. Therefore, ordinary citizens of Burma will become third class citizens and endure the oppression of the military and the USDA for generations.

(J) Democracy Activists Are Not Allowed to Contest in the Elections

(1) Some expect that if all democracy activists unite and compete in the elections, they may capture all elected seats, which is 75% of the Parliamentary. Then, they may have chance to save the country, by working through the Parliament. However, we need to notice that there are restrictions in the constitution that limit the participation of many democracy activists in the elections.

(2) According to this constitution, those who were/are in prison and convicted by courts for crimes are not allowed to contest in the elections. Almost all of NLD leaders, members and MPs, as well as student leaders, human rights defenders and democracy activists are in and out of prisons many times and some are still in prison, serving longer jail terms. They are surely not allowed to participate in the elections.

(3) Also, individuals, who were judged by an authoritative body as he or she is not eligible to contest in the elections, are also not allowed participating in the upcoming elections. The elections commission, formed in 1989 by the military junta, made decision in 1990 that ban Daw Aung San Suu Kyi from competing in the 1990 elections. Therefore, as this ruling continues, she will not be eligible to contest.

(4) This constitution also bars those, who are loyal to the foreign governments and receive fund from them, since the military junta has accused all democracy forces as foreign stooges and axe-handles.

(5) There are some unfair restrictions in forming political parties in this constitution. It restricts that all political parties should pledge to accept and practice discipline-flourishing genuine multiparty democracy and abide by the constitution and the existing laws. As the junta's sponsored discipline-flourishing genuine multiparty democracy is actually abolishing all freedom, democracy and ethnic rights, it will be very difficult for the NLD and ethnic political parties to agree. Also, as this constitution is only to grant the supreme power to the Commander-in-Chief and the military, it is very difficult for the NLD and all ethnic parties to abide by the constitution and the existing laws.

(6) There are some conditions in this constitution for the continued existence of a political party too. If a political party has been declared as an unlawful organization and it makes connection with or provide support and assistance to insurgent groups, if a political party directly or indirectly receives financial, material and other assistance from the government or a religious organization, or any other organization or an individual person of a foreign country, then the party's registration will be revoked. This will be a clear indication that the junta will revoke the NLD from its legal status soon as soon as it approves the constitution, with all accusations above.

(K) We Can't Change It Later

(1) The junta makes it difficult to amend the constitution as follows.

(2) 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.

(3) 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.

(4) 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. As USDA members will also sit in the Parliament, there is no chance to gain the sufficient support to amend the constitution. There will be a huge mistake if one considers amending the constitution in the future.

(5) Even there are over 75% support with all the 75% of elected representatives agree to amend the constitution and joining some military officials who might disobey the Commander-in-Chief, the CC will immediately declare the state of emergency with the reason to protect the constitution, and stage a coup officially, as the constitution has granted.

(L) Let's Reject the Burmese Military Regime's Sham Constitution

(1) The people of Burma have only two choices. Will they support the military-sponsored constitution and choose to be the slaves of the military for generations? Or will they reject the sham constitution and call for the junta to recognize the 1990 election results. The junta has challenged.

(2) We have to choose one only. We can not afford to put our generations to be the slaves of the military. We cannot accept the constitution, which denies all democratic, and human rights, all rights of ethnic nationalities. 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, all of the democracy forces, all of our ethnic brothers and sisters, all of the people of Burma must stand up at once and reject this sham constitution decisively.

Respectfully,

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