

HANDOUT 1

Myanmar Verfassung, Seiten 3-4

Chapter I Basic Principles of the Union

The Republic of the Union of Myanmar

1. *Myanmar* is an independent sovereign Nation.
2. The State shall be known as the Republic of the Union of Myanmar.
3. The State is where multi-National races collectively reside.
4. The Sovereign power of the Union is derived from the citizens and is in force in the entire country.
5. The territory of the State shall be the land, sea, and airspace which constitutes its territory on the day this Constitution is adopted.

Basic Principles

6. The Union's consistent objectives are :
 - (a) non-disintegration of the Union;
 - (b) non-disintegration of National solidarity;
 - (c) perpetuation of sovereignty;
 - (d) flourishing of a genuine, disciplined multi-party democratic system;
 - (e) enhancing the eternal principles of Justice, Liberty and Equality in the Union and;
 - (f) enabling the Defence Services to be able to participate in the National political leadership role of the State.
7. The Union practises genuine, disciplined multi-party democratic system.
8. The Union is constituted by the Union system.

9.
 - (a) The existing seven Divisions are designated as seven Regions and the existing seven States are designated as seven States. Those seven Regions and seven States are of equal status.
 - (b) The names of those seven Regions and seven States are retained as they exist.
 - (c) If it is desired to change the name of a Region or a State, it shall be done so with the enactment of a law after ascertaining the desire of citizens residing in the Region or State concerned.

10. No part of the territory constituted in the Union such as Regions, States, Union Territories and Self-Administered Areas shall ever secede from the Union.

11.
 - (a) The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.
 - (b) The three branches of sovereign power, so separated are shared among the Union, Regions, States and Self-Administered Areas.

12.
 - (a) The legislative power of the Union is shared among the Pyidaungsu Hluttaw, Region Hluttaws and State Hluttaws. Legislative power stipulated by this Constitution shall be shared to the Self-Administered Areas.
 - (b) The Pyidaungsu Hluttaw consisting of two Hluttaws, one Hluttaw elected on the basis of township as well as population, and the other on an equal number of representatives elected from Regions and States.

HANDOUT 2

Myanmar: Towards the Elections

Crisis Group Asia Report N°174, 20 August 2009, Pages 3- 9

KEY PROVISIONS OF THE MYANMAR CONSTITUTION (2008)

The 2008 constitution is a long and detailed document. It contains 457 sections and runs to 194 pages.¹ In places the language is ambiguous or unclear, making interpretation difficult – although some of the confusion is a result of translation issues. The discussion in this report is based on a detailed review of the English and Burmese texts (only the Burmese text is authoritative).

The key features are as follows (see also the diagram in Appendix B):

The structure of the state is similar to the present. There will be seven ethnic states and seven regions (the new term for what are currently known as “divisions”). The capital, Nay Pyi Taw, is designated a union territory under the direct administration of the president. Within certain regions and states are six newly-designated self-administered areas (a “division” for the Wa, and “zones” for the Naga, Danu, Pa-O, Pa Laung and Kokang groups).

The constitution establishes a presidential system of governance with a bicameral legislature (the Pyidaungsu Hluttaw). This is similar to the original 1947 constitution. It also establishes fourteen regional legislative bodies with fairly limited powers. There will thus be three concurrent votes in 2010: one for each of the two chambers of the union (national) legislature, and one for the region/state legislatures. A quarter of the seats in all legislatures are reserved for military personnel appointed by the commander-in-chief. (The commander-in-chief is selected by the National Defence and Security Council; see below.)

The government of each region and state will be headed by a chief minister, appointed by the president from among the representatives to the legislature of that region or state. There will also be “leading bodies” for each of the six self-administered areas, which exercise limited legislative and executive powers in those areas.

The president is elected by an electoral college, made up of all members of the union legislature. They will choose the president from three nominees by secret vote. One nominee is chosen by the elected representatives of the upper house, one by the elected representatives of the lower house and one by the military appointees of both houses. The two unsuccessful nominees become vice presidents.

The president is both head of state and head of government, but not head of the military. The president is responsible for appointing ministers, other than the ministers for defence,

¹ All references in this report are to the official bilingual (English and Burmese) “Constitution of the Republic of the Union of Myanmar (2008)”, Ministry of Information, September 2008. (The Burmese and English texts are on facing pages, so there are the same number of pages for each.) Given that the English version is only a translation of the original document, where it has been translated poorly, Crisis Group has relied on its own translation of the Burmese language original.

home affairs and border affairs, who are chosen by the commander-in-chief. Legislative oversight of ministerial appointments is virtually nonexistent.

The constitution sets out eligibility requirements for various positions. Legislative representatives must have lived in Myanmar for the preceding ten years (except for authorised official stays in foreign countries); must not be serving a prison term; must not owe allegiance to a foreign government, be a foreign subject/citizen or be entitled to equivalent rights and privileges; must not receive (or be a member of an organisation that receives) direct or indirect support from a foreign government, or foreign religious or other organisation; must not be a member of a religious order; and must not be a member of the civil service. The eligibility requirements for government ministers are similar.

In addition, the president and vice presidents must be well-acquainted with the affairs of the union (including political, administrative, economic and military); have lived in Myanmar for the preceding twenty years (except for authorised official absences); and must not have a parent, spouse, child or child-in-law who owes allegiance to a foreign power, is a foreign citizen or subject or enjoys equivalent rights and privileges.

The constitution establishes a powerful national defence and security council. This council is chaired by the president, but the military has a majority: six of the eleven members consist of the commander-in-chief and his appointees. The commander-in-chief is not subject to legislative oversight and is chosen by the national defence and security council. The Constitution does not set out how decisions are made by the council. Another important body chaired by the president is the financial commission, which vets national and regional budgets, among other duties.

The highest judicial body is the Supreme Court. However, the Supreme Court does not have jurisdiction over military justice, which is handled by a system of courts martial, in which the commander-in-chief has the power of final decision. Constitutional matters are also not within the jurisdiction of the Supreme Court. They are handled by a separate constitutional tribunal, whose members are chosen by the president and the speakers of the bicameral legislature and are appointed only for the five-year term of the legislature (unlike Supreme Court judges who hold office until the age of 70).

The constitution contains a fairly extensive bill of rights. However, many of these rights are subject to existing laws – several of which severely limit them – and may be suspended during a state of emergency. Many rights are also guaranteed only for citizens.

The president may declare a state of emergency, in consultation with the national defence and security council, that confers broad powers on the commander-in-chief. Three emergency scenarios are contemplated. (1) If administrative functions cannot be carried out in a region or state (or other area), the president may declare a local state of emergency and take over executive and legislative power in that area. (2) If there is an emergency endangering the lives, shelter and property of the public in a region or state (or other area), the president may declare a state of emergency, allowing local administrative bodies to obtain the assistance of the military in carrying out their duties. The president may, if necessary, confer executive and judicial powers on the commander-in-chief. (3) If an emergency threatens the integrity of the Union or loss of sovereignty, the president may declare a countrywide state of emergency for one year, in which case legislative, executive and judicial powers are transferred to the commander-in-chief to speedily resolve the situation.

There is a fairly restrictive constitutional amendment procedure. Amendments require a three-quarters majority in the union legislature. For many of the more significant sections of the

constitution, a national referendum is also required, with at least 50 per cent of eligible voters voting in favour of the amendment.

The constitution gives the military the right to administer and adjudicate all its own affairs and provides immunity for the SLORC and the SPDC, their members and any member of the government for any act done in the execution of their duties.

HANDOUT 3

Potenzielle Fehlwahrnehmungen zur Myanmar Verfassung?

1. *„Durch die Heirat mit einem Ausländer ist ASSK von der Ausübung der politischen Ämter ausgeschlossen.“*
2. *„Der Präsident muss Militärerfahrung haben.“*

Article 59. Qualifications of the President and Vice-Presidents are as follows:

- (a) shall be loyal to the Union and its citizens;
 - (b) shall be a citizen of Myanmar who was born of both parents who were born in the territory under the jurisdiction of the Union and being Myanmar Nationals;
 - (c) shall be an elected person who has attained at least the age of 45;
 - (d) shall be well acquainted with the affairs of the Union such as political, administrative, economic and military;
 - (e) shall be a person who has resided continuously in the Union for at least 20 years up to the time of his election as President;
- Proviso: An official period of stay in a foreign country with the permission of the Union shall be counted as a residing period in the Union;
- (f) shall he himself, one of the parents, the spouse, one of the legitimate children or their spouses not owe allegiance to a foreign power, not be subject of a foreign power or citizen of a foreign country. They shall not be persons entitled to enjoy the rights and privileges of a subject of a foreign government or citizen of a foreign country;
 - (g) shall possess prescribed qualifications of the President, in addition to qualifications prescribed to stand for election to the Hluttaw.

3. „Jeder, der wegen eines Verbrechens verurteilt wurde, kann bei den Wahlen nicht antreten.“

Disqualification for the Pyithu Hluttaw Representatives

Article 121. The following persons shall not be entitled to be elected as the Pyithu Hluttaw representatives :

- (a) a person serving prison term, having been convicted by the Court concerned for having committed an offence;
- (b) a person who has no right to be elected a Pyithu Hluttaw representative due to having committed an offence relating to disqualification for the Pyithu Hluttaw representative and being convicted for such offence, unless the period specified by the authority for him has not expired, before or after the Constitution comes into operation;
- (c) person who is of unsound mind as adjudged by the relevant law;
- (d) person who is an undischarged insolvent as being declared by the relevant court;
- (e) person who owes allegiance to a foreign government, or subject to a foreign government or a citizen of a foreign country;
- (f) person who is entitled to enjoy the rights and privileges of a subject of a foreign government or a citizen of a foreign country;
- (g) person himself or is of a member of an organization who obtains and utilizes directly or indirectly the support of money, land, housing, building, vehicle, property, so forth, from government or religious organization or other organizations of a foreign country;
- (h) person himself or is of a member of an organization who abets the act of inciting, giving speech, conversing or issuing declaration to vote or not to vote based on religion for political purpose;
- (i) member of a religious order;
- (j) Civil Services personnel;

Proviso: The expression shall not be applied to Civil Services personnel including the Defence Services personnel selected and appointed in the Hluttaws and organizations formed under the Constitution.

- (k) person himself or is of a member of an organization who obtains and utilizes directly or indirectly the State-owned money, land, housing, building, vehicle, property, so forth;

Proviso: (i) The expression ‘State-owned money’ does not include pension, allowance, money or salary, allowances, money officially granted by the Union for services rendered for the benefit of the Union;

(ii) The expression ‘State-owned land, housing, building, vehicles and property’ does not include State-owned land, housing, building and apartments, other building and apartments, State-owned aircraft, trains, vessels and motor vehicles and property, so forth, which have been permitted by the Union to be used under an existing law or as required by duty, or leased from the Union on payment.

- (l) a person who has no right to be elected a Pyithu Hluttaw representative due to having committed a malpractice under relating to the Election Law or acting an omission relating to disqualification for a Pyithu Hluttaw representative being convicted under the Election Law, the period specified by the authority for him has not expired, before or after the Constitution comes into operation.

4. „Dem Militär wird ein Drittel der Sitze auf der regionalen/staatlicher Ebene eingeräumt.“

Formation of the Region Hluttaw or the State Hluttaw

Article 161. The Region or State Hluttaw shall be formed with the following persons:

- (a) representatives of the Region or State Hluttaw, two of each are elected from each township in the Regions or the States;
- (b) representatives of the Region Hluttaw, each is elected from each national race determined by the authorities concerned as having a population which constitutes 0.1 percent and above of the population of the Union, of the remaining national races other than those who have already obtained the respective Region or a Self-Administered Area in that Region;
- (c) representatives of the State Hluttaw, each is elected from each national race determined by the authorities concerned as having a population which constitutes 0.1 percent and above of the population of the Union, of the remaining national races other than those who have already obtained respective State or a Self-Administered Area in that State;
- (d) representatives of the Region or State Hluttaw who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services in accord with the law for an equal number of one-third of the total number of Hluttaw representatives elected under Sub-Sections (a) and (b) or (a) and (c).

HANDOUT 4

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22. The Union shall assist :
- (a) to develop language, literature, fine arts and culture of the National races;
 - (b) to promote solidarity, mutual amity and respect and mutual assistance among the National races;
 - (c) to promote socio-economic development including education, health, economy, transport and communication, so forth, of less-developed National races.

HANDOUT 5

National League for Democracy
97B - West Shwegondaing Street,
Bahan Township, Rangoon

April 29, 2009

Shwegondaing Declaration

We the members of the National League for Democracy (NLD) including the Central Executive Committee, representatives of State and Division organizational committees, the Members of Parliament- elect still standing with the NLD, representatives of the Central Women's Affairs Committee, representatives of the Youth Affairs implementation Committee gathered on the 28th and 29th of April 2009 in the meeting hall of the Head Quarter of the NLD on West Shwegondaing Street and held discussions on the political and organizational Situations and the analytical report regarding the Constitution with the aim to resolve all the political impasse in striving to build up the Union of Burma as a democratic state in accordance with the inspiration of all the people.

This Shwegondaing Declaration is issued to inform the people as the agreement of the majority was obtained through these discussions for the plan to create a fair climate for the evolvement of a dialogue which is the best means for resolving the above impasse.

The NLD believes that the current political problems facing the country such as

- The immediate and unconditional release of all the political prisoners including U Tin Oo, Daw Aung San Suu Kyi;
- Review of the Constitution;
- Establishment of a genuine Union based on the principle of equality for all the ethnic nationalities; recognition in some ways of the result of the 1990 general election;

are the main issues to be resolved immediately for the benefit of the country and the people.

The stands of the League are:

- (a) Unconditional Release of All the Political Prisoners including U Tin Oo and Daw Aung San Su Kyi
- (b) Review of the Draft Constitution (2008)
A State Constitution based on the democratic principles is required to establish a democratic state - The not yet in force Constitution (2008) of the State Peace and

Development Council contains provisions which are not in accord with democratic principles. Therefore the emergence of a Constitution which is acceptable to all the people including the ethnic nationalities is urgently required.

(c) Organization in this Union of Burma where all the ethnic nationalities live together, a unity based on the principles of equal opportunity and mutual good will must be established. Genuine democracy can flourish only on such a fertile ground. Furthermore, all the political parties must have the freedom to organize. Therefore, the offices of the State! Divisional and Township Organization Committees which were closed and sealed since May 31 2003, said to be a temporary measure, should be reopened immediately together with those of the parties of ethnic nationalities.

(d) Recognition of the result of the Multi Party Democracy General Election (1990) At the present recognition in some way of the People's Parliament, which is the outcome of the 1990 elections, is urgently needed in accordance with the Section 3 of the People's Parliament Election law. Only then the democratic traditions can be maintained. Otherwise the State Peace and Development would seem to be breaching their own laws and regulations enacted by themselves.

(e) Political Dialogue

The NLD has been constantly striving for finding solution through political dialogue since 1988. Daw Aung San Su Kyi, the General Secretary of the NLD has candidly stated the fact that she can work with flexible approach according to the political necessity as follows: "We have repeatedly stated that the NLD would negotiate flexibly to get beneficial outcomes for the people of Burma. Nevertheless such dialogues should not aim for the good of the NLD nor should they aim for the benefit of the authorities. Only the interests of the people of Burma should be targeted."

Therefore, the NLD requests again with pure intention that the dialogues that can resolve all the problems be carried out without fail. The agenda of the dialogue envisaged by the League is as follows:

(1) Unconditional dialogue participated by the decision makers should be commenced immediately based on the principles of mutual respects and national reconciliation.

(2) During the dialogues the issues of provision of equal opportunities for the ethnic nationalities: the unconditional release of all political prisoners including U Tin Oo and Daw Aung San Su Kyi: review of the Constitution (2008); recognition in some way of the People's Parliament which is the result of 1990 election; issues of the elections of the future: development of the living condition of the people etc shall be considered.

- (3) To arrange to recognize the result of the 1990 elections by approving the result of the dialogues at the People's Parliament which is to be formed according to the People's Parliament Election Law.
 - (4) All the stake holders to follow unitedly the political course for the future delineated by the agreements of the dialogue as adopted by the People's Parliament.
- (f) Attitude towards the Possible Future Elections
 The NLD firmly believes that enduring political stability and the development of the country could be achieved only by resolving the fundamental problems mentioned above.

The people shall be informed what will be its stand if the State Peace and Development Council -uni-laterally hold upcoming elections at their own arrangement, without considering to resolve through dialogue.

The League accepts that elections are the landmarks to be passed in the journey to democracy. The NLD will not abandon the struggle for democracy. The League will stand by the people in all circumstances.

Therefore if the State Peace and Development Council unilaterally hold possible upcoming elections with their own plan and if:

- (1) All the political prisoners including the leaders of the NLD were unconditionally released,
- (2) The provisions of the (2008) Constitution which are not in accord with the democratic principles were amended,
- (3) All inclusive free and fair general election were held under international supervision:

The National League for Democracy, through this Shwegondaing Declaration, states that, anticipating for the realization of the benefit of the whole people, it intends to participate in the elections only after gravely considering as a special case and after studying the coming Party Registration Act and the Laws relating to the Elections.

As per the resolution made at the meeting of the Central Executive Committee held on 29 April 2009