

## Burma's 'constitutional' dictatorship

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***Burma looks set to create a new form of authoritarian state as the National Convention has completed a marathon session, drafting guidelines for its next constitution, which will maintain the military's central role in government with little or no checks and balances.***

The junta-sponsored National Convention, which started in 1993, ended its final session in early September with 15 chapters of basic principles set out for the constitution, which is to be drafted by a committee that has yet to be named. The timeline for the new constitution for the military-ruled country remains unknown. Burma has now completed only the first of the seven steps on its "road map to democracy".

Burma has previously had two constitutions: the democratic one of 1947 during the U Nu regime and the authoritarian one of 1974 during the reign of dictator Ne Win. The current junta, the State Peace and Development Council, wants its own version to fit new circumstances.

The junta, previously known as the State Law and Order Restoration Council, called the 1990 election but refused to open the People's Assembly and hand over power to those who had won the election. Instead, the junta set up the National Convention three years later to lay down principles for the drafting of a constitution. Very few of those elected in 1990 participated in the convention.

Basically, the 14 years of constitution drafting had only two objectives: barring major opposition leader Aung San Suu Kyi from leading the country, and constitutionalising the military's political power.

The basic principles for the constitution make it clear that Aung San Suu Kyi, whose National League for Democracy won a landslide victory in the 1990 elections, would have no chance to stand as a candidate for the leadership of the country. Among the qualifications it sets for the position of state president is a clause stating that "either of his/her parents, spouse, any legitimate child or the spouse of any of legitimate children shall not be a loyal subject to any foreign government or a person under the influence of a foreign government or citizen of an alien country".

Aung San Suu Kyi was married to Briton Michael Aris, who died in 1999. With his death, Suu Kyi could claim that she has no spouse, but her children could still be deemed loyal subjects of a foreign government. Even if she could prove that they are not the subjects of any foreign government, she might still be disqualified for lacking a military background, as the constitution stipulates that the candidate for state president should have a vision for military matters, as well as national, administrative and economic affairs.

It is too naive to imagine that the military, which has run the country since the 1962 coup to overthrow the democratic U Nu government, would work itself out of politics. On the contrary, the new Burmese constitution would provide legal grounds for the generals to continue holding on to political power.

The guidelines for the new constitution indicate that the military will be entrenched in every state institution including the union presidency, the union government, the union assembly as well as regional and state assemblies.

The Burmese military, known locally as Tatmadaw is essentially established as an ultra-constitutional organisation. The constitutional guidelines state that the Tatmadaw is the sole

existing army and that it must be strong and modern. The commander-in-chief of the army is constitutionally the most powerful person in the country. The president would appoint the commander-in-chief with approval of the National Defence Ministry and the Security Council, but the process for his removal was not mentioned in the National Convention's adopted guidelines. The commander-in-chief has complete authority over the armed forces. His decision is final in matters of military justice. He is not responsible to any assembly, but he has the authority to pick some members of the assemblies within the military's quota.

Burma's parliament, which is called Pyidaungsu Hluttaw (Union Assembly), comprises two assemblies: the People's Assembly, which is composed of representatives elected on the basis of population, and the National Assembly, composed of representatives from different states and regions. Nonetheless, the commander-in-chief has the authority to pick up to one-fourth of the total number of members in each assembly. In other words, the military has a quota of 110 out of 440 seats in the People's Assembly and 56 out of 224 seats in the National Assembly.

Like the Thai military, the Burmese military also believes in selection rather than election, as Burma's constitutional guidelines state that the state president of the union (the head of state) shall be "elected" by the presidential election body, rather than directly by the population. The presidential election body was formed by members of the parliament, including those MPs who were picked by the commander-in-chief of the army. In short, the selection of the top leader of the country cannot be done without military approval.

Burma's state president is very powerful. The president is authorised to pick ministers to sit in cabinet, summon an emergency or special session of the Union Assembly and appoint and dismiss heads of public-service agencies. The president, in principle, needs to report to the Union Assembly but he/she "shall not be responsible for answering to any assemblies or to any courts for the exercise or performance of the duties and functions vested in him by the constitution or any of the existing laws or for any of his action in the exercise and performance of these powers and functions".

The Burmese military got what the Thai military only dreamed of when they sponsored the 2007 constitution-drafting process. The Tatmadaw is able to exercise full power during a state of emergency. The president is obligated to announce a state of emergency and later transfer executive, legislative and judicial power to the commander-in-chief, enabling the latter to take necessary measures to restore the country to normalcy. All assemblies would be terminated during the emergency.

In practice, the president should refrain from declaring a state of emergency, as it could dissolve his authority unless he is also acting as the commander-in-chief of the Defence Force. The constitutional guidelines do not bar the commander-in-chief from holding the presidency. In that case, a military leader, in his capacity as the president and the commander-in-chief, could declare an extended state of emergency and impose dictatorship for as long as he pleases.

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