



## Myths Vs Realities: Burma's 2010 Elections

The military regime has announced that this year it will hold Burma's first elections in twenty years. Some members of the international community are advocating for participation in the 2010 elections with the belief that "this is the only opportunity for breakthrough" or "something is better than nothing." However, in view of the regime's systematic steps to restrict the opposition, many democratic and ethnic leaders, human rights activists, and communities in Burma have denounced the elections as an attempt to place a thin veneer of credibility while actually entrenching military rule. What they want is real progress towards a democracy that is inclusive, transparent, and respects the rights of all peoples of Burma.

This paper seeks to address some of the myths surrounding Burma's 2010 elections.

### MYTH #1:

**The 2010 elections provide an opening for a transition to democratic and civilian rule.**

**REALITY:** Military dominance will continue after the elections, as the 2008 Constitution guarantees the military control over the three branches of government.

In addition to maintaining explicit powers, the military is also planning to exert control through a new civilian façade by organizing proxy parties to run in the elections. Gradual change towards democracy will not be possible as the military has effective veto power over any future constitutional amendments. Moreover, the Election Laws state that political parties must pledge to abide by and uphold the constitution.<sup>1</sup>

The key mechanism through which the junta has guaranteed its continued hold on power is the 2008 Constitution that will come into force with these elections. This constitution, drafted almost exclusively by the military, explicitly cements their authority in the three branches of government

<sup>1</sup> Based on an unofficial translation of the Political Parties Registration Law by Mizzima News (11 Mar 10), <http://www.mizzima.com/research/3643-political-parties-registration-law.html>, Section 6(3)

through multiple provisions, including making the Commander-in-Chief and the National Defense and Security Council the highest powers in the country. The constitution makes military coups legal<sup>2</sup> and places the military above the law.<sup>3</sup>

While some junta officials will maintain power through those positions reserved for the military, others will do so by simply exchanging their military uniforms for civilian clothes, including Prime Minister Thein Sein who resigned from his military position in order to lead the Union Solidarity and Development Party.<sup>4</sup> In addition to the already guaranteed 25% seats in both the upper and lower houses of Parliament,<sup>5</sup> the regime is working to fill the remaining 75% with its proxy people, including former army personnel and businessmen.

If any independent candidates are able to hold seats in the new Parliaments, they will likely face censorship and severe restrictions.

### **MYTH #2:**

**The odds may be stacked against the opposition, but Daw Aung San Suu Kyi won in a similar environment in 1990. In 2010, we may see a similar situation whereby democratic parties could win enough seats in parliament for a new government to emerge after the elections.**

**REALITY:** The regime does not want a repeat of the 1990 elections, when it rejected the election results after the opposition's surprise landslide win, led by Daw Aung San Suu Kyi. This time, the regime is working to ensure it maintains its hold on power by keeping democracy leaders in jail, heavily manipulating election preparations, and restricting freedom of expression and freedom of assembly—the basic international standards for free and fair elections.

At the outset, the 1990 elections offered a potential step forward as the winning representatives were to lead the drafting of a new constitution. However, this time around the constitution has already been written by the military regime and will be enacted through the elections, thereby enshrining the military's power beyond 2010. Even if opposition candidates win in these elections, the fundamentally flawed 2008 Constitution will be virtually impossible to amend, providing minimal space for genuine civilian rule.

There are currently over 2,100 political prisoners in Burma, including pro-democracy and ethnic leaders, such as Daw Aung San Suu Kyi and Khun Htun Oo, members of media and civil society who express independent thought. The Election Laws bar any of these political prisoners from running in

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<sup>2</sup> Constitution of the Republic of the Union of Myanmar (2008), Articles 410, 414, 417 and 418(a)

<sup>3</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 20(b)

<sup>4</sup> Irrawaddy (30 Apr 10) Junta Registers Political Party to Contest Election

<sup>5</sup> Constitution of the Republic of the Union of Myanmar (2008), Articles 109, 141 and 161(d)

the elections, thereby excluding Burma’s most viable democratic and ethnic opposition leaders. These leaders are essential for helping to forge national reconciliation, and without them, the elections will be far from inclusive.

Instead of opening up political space before the elections, the regime is highly restricting it. The regime has not set a date for the election. The details of the Election Law are disappointing—they ensure that the elections will be controlled by the military, and will be far from free and fair. Even “Third Force” parties, that claim to be a bridge between National League for Democracy (NLD) and the military regime, are hesitant about speaking out on political issues, keeping their main discussions to economic issues.

At the outset, the 1990 elections offered a possible step forward as the winning party would be able to draft a new constitution. In these elections, however, the constitution has already been written by the military regime and passed in a sham constitutional referendum in May 2008. Even in the event that some opposition candidates do get elected, they will have minimal space to effect positive change under the current constitution.

### **MYTH #3:**

**Parliamentary elections provide a chance for marginalized ethnic groups to gain more representation.**

**REALITY:** While new regional and state parliaments may provide some representation for ethnic political voices, the constitution rejects ethnic nationalities’ long-standing demands for ethnic rights and federalism, and centralizes military control over resource-rich ethnic areas. According to the new Election Laws, the election may not even be held in many ethnic areas.

Burma’s myriad of ethnic groups, which make up approximately 40% of the population, have never had equal rights or political footing with the majority Burman ethnic group. Instead of establishing a federal system and protecting the fundamental ethnic rights for which ethnic communities have fought for decades, the military’s 2008 Constitution aims to use token ethnic participation in the new parliaments to legitimize continued military dominance over the ethnic population. The regime’s approach brings to mind that taken by South Africa’s white leadership when it introduced its 1983 apartheid constitution, giving token participation to non-whites in a move to assuage international criticism.

In the 1990 elections, Burma exercised a “First Past the Post” system, which hands power to the candidate with the most votes in a district. If used again, this system would make it very difficult for ethnic candidates to gain seats in parliament.<sup>6</sup> The constitution also makes it nearly impossible for

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<sup>6</sup> Burma Lawyers’ Council (7 Mar 10) An Analysis of the Elections in Burma in 2010 and the Following Period, p.11

ethnic leaders to hold powerful positions such as the presidency.<sup>7</sup> Instead of addressing such long-running issues of representation, the regime has assured its continued control and profit from resource-rich ethnic areas through its constitutional role in appointing Chief Ministers of states and the Minister of Border Affairs.

Under the constitution, the Ministers of Defense, Border and Home Affairs will be appointed by the President, chosen from a list of military personnel prepared by the Commander-in-Chief of Defense Services.<sup>8</sup> The same will be true of Chief Ministers, the most powerful official in state governments. The National Defense and Security Council will be made up of a majority of military personnel, who will constitute a requisite quorum to pass motions.<sup>9</sup> Ethnic leaders will be kept out of these important positions, because they do not have SPDC military background. Furthermore, state governments will be very weak, with the constitution giving the central government power to override state law.<sup>10</sup>

The elections may not even be held in many ethnic areas. The Election Commission has the power to determine if the election should be held in those places that are affected by "natural catastrophe or security reasons".<sup>11</sup> This may mean there will be no polling in areas controlled by armed ethnic organizations that have signed ceasefire agreements but failed to transform into the junta-controlled Border Guard Force.

#### **MYTH #4:**

**In ethnically diverse countries such as Burma, elections may lead to greater national and regional stability.**

**REALITY:** Elections without efforts to engage in dialogue and national reconciliation will not address the root causes of Burma's decades-long conflicts. The regime's elections preparations thus far have been far from conciliatory or stabilizing. The military's attacks against ethnic armed and ceasefire groups forced over 43,000 ethnic people to flee Burma in 2009 alone.

In order to consolidate control of all armed forces before the elections, as provided for in the constitution,<sup>12</sup> the regime has been trying to force ethnic ceasefire groups to join a new Border Guard Force under the command of the SPDC Army. Given the history of over 60 years of civil war and the fragility of existing ceasefire agreements, it will be impossible to bring all ethnic ceasefire armed groups under the control of the Army. While some smaller groups have accepted the offer, the

<sup>7</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 59

<sup>8</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 232(b)

<sup>9</sup> Burma Lawyers' Council (7 Mar 10) An Analysis of the Elections in Burma in 2010 and the Following Period, p.9

<sup>10</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 198(b)

<sup>11</sup> Based on an unofficial translation of the Union Election Commission Law by Mizzima News (09 Mar 10), <http://www.mizzima.com/research/3634-election-commission-law-in-english.html>, Section 8(f)

<sup>12</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 338

largest armies, including the 6,000-member Kachin Independence Army and 30,000 strong United Wa State Army, have thus far refused to comply and are preparing for the likelihood of renewed hostilities by SPDC Army.

The military regime has also been stepping up hostilities against non-ceasefire ethnic armed groups in a move to consolidate control of its borders before the elections. In 2009, it targeted ethnic Shan and Karen civilians, resulting in widespread and systematic human rights violations and forcing over 43,000 people to flee into neighboring Thailand and China. Aid groups on the Thai-Burma border have said that they are expecting more refugees as the army increases pressure on ceasefire groups to join the Border Guard Force.<sup>13</sup> China has also prepared refugee camps along its border with Burma.<sup>14</sup> With the constitution granting immunity to the military for past human rights violations,<sup>15</sup> hostilities against ethnic groups can be expected to continue beyond the elections, perpetuating instability and insecurity in Burma and its neighboring countries.

The exclusionary military-crafted Electoral Laws also prohibit many of the ethnic groups and leaders from participating and contesting in the elections because of their support or affiliation with the armed-groups.<sup>16</sup> This enables the regime to accuse any critical ethnic leaders of being associated with the armed groups, thereby disqualifying them or their political party for raising the voices and concerns of the people.

#### **MYTH #5:**

**The United Nations and international governments should assist the junta with the elections, while insisting that the process be “free and fair.”**

**REALITY:** Focusing on making elections “free and fair” overlooks the real danger of enacting the junta’s constitution, and the non-inclusive process leading up to it. Moreover, there can never be “free and fair” elections in any country in which democratic opposition and activists are imprisoned and civilians are brutally attacked by the ruling authorities. Moreover, the unjust Election Laws should be a harsh and loud wake up call to the international community.

The 2008 Constitution seriously violates international law, including the Geneva and Genocide Conventions, by granting blanket amnesties and removing all military crimes against humanity and war crimes from civilian oversight, including the Supreme Court.<sup>17</sup> The UN Security Council set a precedence for upholding the precepts encoded in these conventions in 1984, when it declared South

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<sup>13</sup> Telegraph (7 Jan 10) Burma election could provoke a rise in refugees into Thailand and China

<sup>14</sup> Kachin News Group (2 Mar 10) [China arranging refugee camps near Burma border](#)

<sup>15</sup> Constitution of the Republic of the Union of Myanmar (2008), Article 445

<sup>16</sup> Political Party Registration Law, Section 4(e)

<sup>17</sup> Constitution of the Republic of the Union of Myanmar (2008), Articles 445, 343(b), and 419

Africa's apartheid constitution "null and void," noting its violations of the UN Charter, and calling on states not to recognize the elections or any resulting government.

By calling on the regime to hold "free and fair" elections, the international community fails to draw attention to the real obstacle for an election with democratic integrity—the constitution and the entire process of the regime's "Seven-Step Roadmap to Democracy" leading up to it. The National Convention's constitution-drafting process was completely dominated by the military regime, to the exclusion of opposition and ethnic voices. Furthermore, the 2008 Constitution was approved by 92.4% in a highly questionable referendum in which manipulation, threats, and coercion were widely documented and criticism against the process was punishable by 20 years in prison. Moreover, the regime went ahead with the referendum despite a chorus of appeals to postpone it after the devastation of Cyclone Nargis caused over 140,000 deaths.

The 2008 constitutional referendum is an excellent indicator of how the regime will handle the 2010 elections process. As they did in 2008, the junta will likely reject any foreign monitoring of the elections. Even if foreign monitors are allowed, their access is likely to be highly restricted. Those best positioned to independently document manipulation are the underground civil society networks that were able to collect the most reliable information around the referendum.

The Election Laws are highly restrictive and favour the military regime and their supporters. The Election Commission has been handpicked by the regime, given the authority to convene the election, final decision-making power throughout, and the ability to administer and direct political parties.<sup>18</sup> This means that the elections will unfold precisely according to the junta's wishes.

### **MYTH #6:**

**Instead of rejecting the elections, democratic opposition should compromise and engage in the process for the sake of the people.**

**REALITY:** Pro-democracy groups inside Burma and in exile are eager for real elections, and have made repeated offers to engage with the military. However, the military has refused to take genuine steps towards dialogue and instead restricts those who express opinions contrary to their own. These elections guarantee continued military rule and offer no solutions for the crises faced by the people of Burma. Democratic and ethnic groups are open to compromise and dialogue, but also want to ensure that genuine democratization takes place.

In spite of Burma's conflict-ridden history, leaders of ethnic and non-ethnic pro-democracy forces are working closely to move the country towards true national reconciliation. This diverse movement for democracy and rights for ethnic nationalities has expressed the desire for long-lasting peace and

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<sup>18</sup> Union Election Commission Law, Sections 3 and 8

development in a democratic federal union, and it has shown its willingness to compromise with the military regime to reach this goal. Daw Aung San Suu Kyi has repeatedly asked to have a meeting with Senior- General Than Shwe, extending her hand, and asking for dialogue in order to create a better Burma. She has always been refused. Furthermore, the democracy and ethnic rights movement has worked for years to build cooperation amongst ethnic nationalities, communities, political parties, and armed groups. Much has already been accomplished, including an inclusively-drafted federal constitution.

A wide-spread and broad-based network of groups have collectively stated that the 2010 elections will not be a step towards democratization unless the regime first meets crucial benchmarks: (1) the release of all political prisoners; (2) the cessation of attacks against ethnic communities and pro-democracy activists; and (3) dialogue with all stakeholders, including a review of the 2008 Constitution. The UN Security Council, UN General Assembly, UN Secretary General, Human Rights Council, ASEAN, China and the EU have all pushed for genuine political dialogue, and have made repeated calls for the release of all political prisoners. A United Nations General Assembly Resolution also echoed these demands on Christmas Eve 2009. These benchmarks are the necessary solutions that could finally help Burma begin the path towards peace and stability.

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### ***About Burma Partnership***

*Burma Partnership is a network of organizations throughout the Asia-Pacific region, advocating for and mobilizing a movement for democracy and human rights in Burma. We promote collaboration and facilitate coordination between Burma's movement for democracy and rights for ethnic nationalities and solidarity organizations in the Asia-Pacific region, assist border-based groups in their media outreach and advocacy efforts, and produce and disseminate comprehensive and timely information and resources that are reflective of the positions, priorities and efforts of the movement.*

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