



ASIAPACIFIC Bulletin

Number 14
April 28, 2008

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ANALYSIS

BURMA'S REFERENDUM IN 2008: DANGEROUS STATUS QUO OR CRITICAL BREAKTHROUGH?

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The Burmese people are being asked to vote on a new constitution on May 10, 2008—15 years after the drafting process began and 18 years after the ruling military junta, the State Peace and Development Council (SPDC), refused to honor the election results of 1990 and crushed subsequent democratic protests. The upcoming May referendum represents a rare opportunity for the Burmese people to express their opinions on the proposed constitution as well as the junta's preferred seven-point roadmap, a protracted path to "guided democracy."

Burma's main opposition party, the National League for Democracy (NLD), is urging the public to vote "no" against the proposed constitution, while the state news media is actively calling for a "yes" vote. The SPDC has not bothered to propose any remedial measures should the public reject the constitution. Many suspect that the SPDC will seek to get the referendum approved by any means; however, the opposition's campaign to vote "no" is also gathering momentum, leading to a potential showdown in May.

The upcoming referendum is a comparatively swift process given the 15-year period taken to formulate the draft constitution at the National Convention. The draft has been publicly available only since April 10, the day before the country began a ten-day holiday marking the new year. Prior to that, a law forbade discussion of constitutional matters outside the National Convention. All of this means that voters will have very little time to understand fully the document they are voting on, and that the regime and the opposition have few opportunities to shape or inform public opinion.

Worse still, the final draft has several new clauses and amendments that are qualitatively different from the constitutional principles approved at the National Convention in August 2007. The net effect of these changes is to preserve the power and prerogatives of the ruling military junta. For example, one last-minute change is that ratification of a constitutional amendment will now require a 75 percent majority vote by parliament *plus* public approval through a referendum, thereby creating a formidable obstacle to changing the constitution. Previously, only a 50 percent majority vote in the national parliament was required. Other significant changes include conditioning citizens' rights only in "accord with existing laws" or "subject to laws enacted for State security." The new draft also makes the President "not answerable to any parliaments" even though the president is elected jointly by both the lower and upper chambers of parliament. And the powers of the Commander-in-Chief as well as the National Defense and Security Council are to supersede both the president and the parliament during a declared period of "state emergency." In sum, the latest draft, if approved, will effectively codify stronger political control of the armed forces over the Burmese population indefinitely.

The short-fused referendum process is also bound to have several procedural mishaps. For instance, the recently released referendum law prohibits the country's half-million Buddhist monks from voting. Several monks counter that the upcoming referendum is not about partisan politics but rather about voting on the law of the land that will also govern the Buddhist order. The law also bars "those who left the country illegally" from casting a vote, potentially disqualifying several millions who may have migrated to neighboring countries or returned afterwards.

Another procedural problem is that the SPDC's referendum commission has done very little in preparing for voter registration, which is critical in determining a meaningful threshold for approving or rejecting the SPDC's constitution. Indeed, the referendum law does not require a minimal threshold for voter turnout. Such a low quorum requirement allows manipulation of the referendum process, and is also less suited to a country as diverse as Burma. More importantly, it contradicts the rigid procedure of amending the constitution once it is (easily) approved. In the absence of serious preparations for a free and fair process, the SPDC seems to be resorting to the usual *modus operandi* by threatening to persecute anyone who is trying "to destroy the referendum" while preparing security units across the country for riot control. Yet, there is no legal recourse for public complaint against misconduct during the referendum process. The country's chief justice also served as the chairman of the referendum's management body, leaving no room for proper checks and balances. The regime also rejected any international monitoring mechanisms—even from friendly ASEAN states or the United Nations.

Meanwhile, the Burmese democracy movement has finally come to rally behind the strategy of voting "no" to the proposed constitution when the NLD Central Executive Committee announced the call for rejection of the draft constitution. The campaign against approval of the new constitution faces several challenges, of which the most important, perhaps, is that the "no vote" campaign has little access to rural areas, where 75 percent of the Burmese population lives. Some ethnic populations in ceasefire areas already have been instructed by their leaders to "stay neutral" by abstaining from the voting process. It is possible a scenario not unlike the one currently unfolding in Zimbabwe—where the vote-counting process was centralized—could unfold.

Nevertheless, the democracy movement has one very important task it must undertake urgently: formulating viable options for both positive and negative scenarios as well as credible alternatives that can be offered to the military should the public reject the proposed constitution and the SPDC be willing to concede defeat.

Whatever the actual outcome of the May referendum, Article 441 makes the SPDC Constitution irrelevant for the post-referendum period until it becomes effective on the first day of parliament following the proposed multi-party elections in 2010. A "yes" vote will embolden the SPDC to consolidate their authoritarian controls through a charade of legitimacy supported by select regional friends. Article 43 of the SPDC constitution bars "any penal law to provide for retrospective effect," which could potentially fuel the culture of impunity, particularly in the period leading up to 2010.

Such opportunities for authoritarian consolidation through constitutional order may indeed bring some political stability to Burma. However, one potential danger still exists, as the proposed constitution has inherent contradictions in implementing "the leading role of the armed forces in national politics." For instance, large-scale military participation in both legislative and executive branches, as well as the strange division of power between a strong president and omnipotent commander-in-chief (who cannot be the same person), could seriously divide the armed forces. If current power configurations at the apex of SPDC leadership remain unchanged, the current leaders of the Union Solidarity and Development Association (USDA) will take over the more powerful executive branch of the government while the current strongmen, mostly comprising regional commanders, may be slotted as military-appointed MPs in a weaker parliament. Factional rivalries are now in play within the SPDC to shape the post-referendum power configuration. Since the USDA is the only driving force behind the seven-point roadmap, including the upcoming referendum process, further divisions may emerge between those who control the USDA and those who control the army units. History can repeat itself along the same fault line between "party wing" and "army wing" of the socialist past, a system which ultimately imploded in 1988. Unfortunately, the referendum train has left the station before anyone—including the SPDC—can correct these flaws.

The latest draft of Burma's constitution, if approved, will effectively codify stronger political control of the armed forces over the Burmese population indefinitely.