(5) Constitutional Discussion

The following is a transcript of a radio conversation among *U Aung Naing Oo*, an observer and analyst of Burmese affairs, *Burma Lawyers’ Council* General Secretary *U Aung Htoo* and BBC Burmese program presenter *Daw Yin Yin May*, addressing the questions, “To what extent will decisions from the National Convention be acceptable?” and “Who will accept these decisions?”

An authority in charge of convening the National Convention (NC) announced both inside Burma and internationally that the reconvening on 18 July will be the final meeting of the Convention. According to his announcement, the NC is supposed to finish in 2007. The NC, which started convening in 1993, is being criticized by some people who say that after 14 years it has departed from its original aims and path. They also say there is no right to hold free and open discussions since only a few delegates who represent the people are present. But some believe that only a constitution produced and confirmed at the National Convention could end the political crisis of Burma. So in order to discuss these issues, I have invited *U Aung Naing Oo*, who is living in Thailand, and *U Aung Htoo*, General Secretary of BLC currently living in Sweden, to participate in this, our BBC weekly conversation program.

**Question**: *U Aung Naing Oo*, did you observe points in the forthcoming constitution that could be applied practically in the current situation of Burma?

**Answer**: As for me, it doesn’t seem this constitution is written after complete and proper discussion to resolve the past, current and future conflicts. But if we look at it from a political viewpoint, there are some points persistently demanded by the army. Some mechanisms to protect the army demands are found in it. But the interesting thing is that the rights of freedom of speech and publishing; freedom of forming parties and freedom of organization, are provided for in the constitution. The constitution also guarantees the existence of a multi-party democratic system and it could be said this is one of its strong points. Another good thing is that the constitution grants legislative power to the state and region parliaments, with some limitations, and also the states are allowed to levy limited taxation and I think compared to the past 45 years of military administration it cannot be said that these are bad.

**Question**: *U Aung Htoo* do you think the points in the forthcoming constitution will work practically, as is *U Aung Naing Oo*’s view? For example, if you look from the perspective of ethnic groups.

**Answer**: Speaking frankly, I didn’t see any good points in the forthcoming constitution. The rights of freedom to form parties and freedom of organization, as *U Aung Naing Oo* mentioned earlier, are given in the forthcoming constitution, unless the exercise of those rights conflicts with the existing laws. There is a similar provision in the 1974 Constitution saying people are free to form organizations and free to act to achieve their aims so long as they are not against the socialist economy. In 1974, the government suppressed the labor demonstration using this provision by saying, “Don’t you see in the Constitution? We have the right to crush the demonstration if you are against the socialist economy”, and we were put down in that way. Here, *U Aung Naing Oo*, please read carefully about the rights of freedom to form organizations and freedom to act so as to achieve one’s aims. There is a restriction or limitation to those rights.
called the Exception Clause. When a constitution emerges, in order to secure their freedom the people should have the ability to repeal some existing laws that take away their freedom. But the forthcoming constitution allows continued effectiveness of the existing laws that take away the rights of the people. There is no provision in the forthcoming constitution that allows repeal of the unfair or unjust existing laws and orders, such as the 1975 State Protection Act, the 1962 Publishers and Printers Act, or the 1988 Law Relating to the Formation of Organizations. Please think it over Ko Aung Naing Oo. Hkun Htun Oo and the other Shan leaders didn’t make an insurgency and didn’t attempt to kill anyone by a bomb blast. They merely attempted to form the Shan State Professional Association; nonetheless they were convicted under several criminal sections and sentenced to 75 to 106 years imprisonment. There is no provision to form an independent judiciary to protect against this kind of incident from happening again in the future. This is the first point I would like to make. The second point is the matter of levying taxes. It is found that levying taxation is an ability of both the National Parliament and the state parliaments. Please look at it again. The National Parliament has authority over such important matters as national defense, foreign affairs, finance, economy, agriculture, raising animals and industry. State assemblies are just given authority over small and unimportant matters such as producing salt and decorating jade stone. How could the big matter of the states’ development function properly since the states have power on levying taxation from only small matters? The matters of foreign investment and financial and other aids to be received from foreign countries are all controlled by the central government. So how could the states operate their regional development? The good points that U Aung Naing Oo pointed out will surely not work in practice if we compare them with all the things I mentioned early, so it proves that the proposed constitution of the SPDC is totally inapplicable and useless.

**Question:** At the beginning of June, the Chairman of the National Convention Convensing Commission announced that the Commission will allow amending, adding and repealing some provisions of the Constitution in this coming final session of the Convention. So there is a proposal submitted by all of the CFG (13), which includes a demand that each state has its own legislative power with respect to its legal system. So, U Aung Naing Oo, could you tell me whether the ethnic groups who are representing cease fire groups and other ethnic groups will obtain all the matters mentioned above?

**Answer:** There are some interesting demands of ethnic groups. In 2004, CFG 13 submitted a proposal to the military regime with their demands. But the military regime rejected that proposal in a meeting. I have read that proposal paper. But the interesting thing is that when we look at the results of the National Conventions held in the years 2005 and 2006, the military regime, without saying anything, put some points in the Constitution that were demanded by ethnic groups as their rights. For example, the military regime gives concurrent legislative power to state parliaments and the National Parliament in some areas. But I am not sure to what extent it will work in practice, as U Aung Htoo said earlier, there was an incident in 1974 in which massive human rights abuses were committed. The citizens’ rights had been taken away by the government. Nowadays Min Ko Naing and his colleagues are also struggling for those citizen rights. So if we look from a political point of view, there might be difficulties in the present situation as well as in the future. However, isn’t it easier to struggle for rights when these are given in the constitution? For example, as Ko Aung Htoo said, there is
a limitation clause in the area of the rights and duties of citizens. There is also a provision which says no one shall be subject to more than 24 hours detention. But we have to take into consideration how to resist those laws if they still exist, such as the 1975 State Protection Act and the 1950 Emergency Provision Act. The good or bad of a constitution lies in how important political parties and people respond to it, whether they accept or boycott it after making a thoughtful decision. So now the military regime is stating that it will compromise and reconsider adding some points in the Constitution. If that statement is true, in my opinion after studying the Constitution, if the opposition groups could hold discussions with the military regime, then a new path could emerge from there and it could result in either a political solution or national reconciliation. But it depends on whether the people inside the country can accept this idea or not.

**Question:** U Aung Htoo, what will be the attitude of the political organizations, pro-democracy groups and people toward the forthcoming constitution if the military regime makes some compromises on it? As a legal academician, how could you explain this with the words that the normal citizen could understand?

**Answer:** It is simple. Let me explain based on the point that Ko Aung Naing Oo made earlier, if the normal citizens are given the fundamental rights simply from that ground, then we can participate in the so-called democracy process of the SPDC. For example, please try to put the rights of freedom of speech and freedom of assembly in today’s constitution simply without limitation clauses. Please Ko Aung Naing Oo, reread it. Those limitation clauses don’t allow repealing the existing laws and beside that it seems we have to accept a constitution which allows the continued existence of unfair laws. What I want to say is if this constitution gets confirmed, the people’s condition will become worse. Earlier, Ko Aung Naing Oo said isn’t it better to struggle for rights by referring to a constitution in which those rights are guaranteed? I affirm that the constitution doesn’t guarantee the rights but it seems that we have to recognize legitimately the oppressive rule of the military regime on the people by using those unfair and unjust laws. To answer Daw Yin May’s earlier question, if you want to participate in the constitution drafting process of the SPDC, first it needs to include the fundamental rights that the people should get in the constitution. If these are put in it then it may be first thing for us to be able to participate in the SPDC constitutional drafting process. The second thing is that we have to view the constitution from the aspect of a mechanism of resolving conflicts. But there might be different ways of viewing the constitution. We should not view the constitution from the political perspective. When we view the constitution from the perspective of resolving conflict, then we would see different conflicts in it. For example, a conflict could occur from sharing legislative power and administrative power between national and state levels. When those conflicts occur, they should not be resolved through the use of armed attacks, but through the judiciary, which should be the main mechanism responsible for resolving those conflicts. Look in the SPDC constitution, there are judiciary mechanisms constituted but they are not empowered to handle those conflicts. The chief justice is appointed by the president upon the confirmation of the union parliament, but the union parliament cannot object to the chief justice unless it proves through evidence that he/she is disqualified for the position. Also the constitution empowers the president to dismiss the chief justice on the ground of when he/she betrays the state or when he/she is considered to conduct an insurgency or when he/she violates the constitution.
or when he/she is considered not qualified for the position, but all of these matters are not tasks of a president. The question of violating the constitution or not is the task of the legal academicians from the constitutional court by holding a serious debate. The president alone could not decide whether someone is committing treason or not and convict the person. So it proves there is no independent judiciary under the constitution of the SPDC.

**Question:** So, Ko Aung Naing Oo, do you think the delegates of the National Convention, delegates of ethnic nationality groups who are supposed to confirm the constitution in this coming final session, could understand the facts that U Aung Htoo has mentioned?

**Answer:** As for me, compared to the suffering of people, we should think wisely about whether our three main duties are more important or changing the political situation is more important. Another thing is, whether the constitution is bad or good, if we don’t have one what would we continue to do? If we want to object to this constitution we should boycott it clearly or we shouldn’t hesitate to make an objection. If we make the objection, as a result, how long will the military rule continue? What I mean is, our country has a dilemma and it does not have many other options to choose. What I am trying to say is that I would rather think more basically about whether there is any possibility that participating in the National Convention can lead to a resolution for the political deadlock. Or would the constitution possibly lead to political changes? These are important and fundamental concepts. There is a problem of whether the constitution could apply in practice or not if the military regime persists to hold on to its original principles without any changes or compromises. So the delegates who are supposed to attend the National Convention are really the people who need to think of the above questions. So I think the military regime should make proper compromises on it.

**Question:** U Aung Htoo, could you explain to me what the results would be if the constitution receives objections?

**Answer:** Earlier Ko Aung Naing Oo said that the SPDC should make proper compromises for the political process to progress and I think that is a reasonable suggestion. To answer Daw Yin May’s question, it is our responsibility to think clearly irrespective of the constitution. It is the responsibility of our people to think about the question of what we would do if we don’t have a constitution. But if we accept this constitution then it is like we jump out from the hot oil pot into the fire under it because we feel like living in the hot oil pot is so hot. We shouldn’t have uncertainties about what would happen if we accept the military constitution; the situation may be getting better, please don’t even think that way because there is nothing good in the constitution. Show me if there is anything good. So I would like to suggest to people that you shouldn’t jump into the fire from the hot oil pot. There is nothing to be happy for, people, because the constitution continues restricting the rights of the people and it is a document which recognizes the military leadership as a legitimate government and allows them to rule the country officially. There are no constitutions in either communist or authoritarian countries which are written on the basis of military leadership in politics. This is totally unacceptable that the military regime forces the people to accept its constitution, no country in the world even has a similar one, and this is obviously the military regime insulting its own people. So finally I would recommend that if the SPDC
realizes this it should carry out proper compromises as Ko Aung Naing Oo said earlier to be able to take another step in the political process and it will be beneficial to solve the conflicts of the country.