



(A.2)
THE 2010 ELECTIONS: POLITICAL PARTIES AND ETHNIC ORGANIZATIONS

A. POLITICAL PARTIES

Chapter 10 of the 2008 Constitution outlines requirements for political parties. Paramount among the goals of political parties is "non-disintegration of the Union, non-disintegration of national solidarity and perpetuation of sovereignty".¹ Additionally, the 2008 Constitution predetermines a set of unalterable party objectives. In liberal democracies, however, political parties are formed precisely to represent an array of viewpoints and offer different options to voters. The issue of set objectives is significant in the case of Burma because the majority of political parties disagree with the 2008 Constitution and will not comply with it. The regime cannot force a political party to change its agenda, but if a political party cannot adhere to the constitution, then it automatically disqualifies itself. Thus, objections to the constitution and failure to register as a political party under its guidelines may lead to cancellation of the legal status of the party. Without official legal status, the SPDC can effectively bar these groups from elections and government. This can be interpreted as a deliberate attempt to restrict the role of the opposition in political participation, which then renders the possibility of true multi-party democracy obsolete.

Article 407, discusses the justification for dissolving political parties by stating:

If a political party infringes one of the following stipulations, it shall have no right of continued existence:

- (a) having been declared an unlawful association under the existing law;
- (b) directly or indirectly contacting or abetting the insurgent group launching armed rebellion against the Union or the associations and persons determined by the Union to have committed terrorist acts or the association declared to be an unlawful association;
- (c) directly or indirectly receiving and expending financial, material and other assistance from a foreign government, a religious association, other association or a person from a foreign country;
- (d) abusing religion for political purpose.²

The provisions of this article do not meet the standards of fairness or objectivity that are found in the constitutions of other democratic countries. In



South Korea, for instance, political parties may only be dissolved if the "purposes or activities of a political party are contrary to the fundamental democratic order", which is determined by the judgment of the Constitutional Court.³ The Burmese constitution, however, does not allow for any review of activities by an impartial and legitimate body. The scope of this article is so broad that it effectively allows the SPDC to eliminate any political party it chooses. At the same time, it is targeted to encompass groups that have opposed the SPDC. Given its historic conflict with groups representing ethnic minorities, as well as its antagonism towards the NLD, the chances of fair participation are virtually nonexistent.

B. ETHNIC ORGANIZATIONS

Burma exercises a "First Past the Post" (FPTP) electoral system, which constitutes handing power to the candidate in a district with the highest percentage of votes. Burma has myriad minority groups (at least 135, according to the military regime) and a 60 percent ethnically Burman majority.⁴ With the FPTP system, it will be virtually impossible for minorities to win seats in parliament. Lack of representation in government has historically been a point of serious contention for the ethnic minorities, but the electoral system does nothing to address this issue.

In democracies around the world, lawmakers have prioritized ensuring representation for traditionally marginalized populations such as ethnic minorities and women. Most often, this is accomplished by reserving a quota for members of this group. Additionally, electoral systems such as list proportional representation (list PR) can be a powerful way for the government to signify its support of smaller communities. However, reserving a quota system or list PR is nonexistent in the 2008 Constitution. Since independence, Burma has practiced a simple majority or FPTP system. As such, in a number of constituencies, representatives were elected without obtaining over 50 percent of the vote. This reality negatively impacts the representation of ethnic minorities, in terms of total population, in legislative assemblies.

The National Assembly, known as the *Amyotha Hluttaw*, would seem to be the logical place for minority representation, but nothing is specifically reserved for ethnic groups. Instead, the *Amyotha Hluttaw* is simply formed by an equal number of representatives (twelve) from each region and state.⁵ While the *Amyotha Hluttaw* may seem to equalize the power in parliament with representation being based on area instead of population—and with the knowledge that states are occupied by a predominant ethnicity—the lack of specific provisions in the 2008 Constitution could still result in almost all ethnically Burman representatives.



Even if the problem of ethnic representation in parliament could be sorted out, there would still be the controversial issue of ethnic militias and the transitional period. Many of the ethnic groups have standing security forces, although the majority has signed cease-fire agreements with the SPDC. In April 2009, *Tatmadaw* officers approached leaders of various groups with the suggestion of transforming ethnic armies into a Border Guard Force (BGF). The BGFs would retain the ethnic soldiers for border security and be paid on equal footing with the regular *Tatmadaw* soldiers, but would add *Tatmadaw* officers to ‘oversee’ operations.⁶ Almost all cease-fire groups refused this arrangement, and the SPDC retaliated by sending thousands of troops to northeast Burma. After nearly twenty years, ceasefire agreements were broken with renewed violence between SPDC forces and the Kokang army.⁷

Such a critical issue should have been discussed in the National Convention with the agreement of ethnic leaders sought before the constitution was formally drafted. From there, guidelines could have been laid out in the Chapter on Transitory Provisions. Unfortunately, no such actions were taken by the military regime. Rather, simply by using military might, ethnic cease-fire organizations were forced to transform into BGFs at the disposal of the regime,

without regard to the constitution. As a result, the military regime has created another constitutional problem that will cause long-term destabilization.



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If the 2008 Constitution comes into effect, all armed forces will be technically under the command of Defense Services.⁸ Given the historical reality of over sixty years of civil war, it is not feasible to place all ethnic armed organizations under the command of the SPDC Army. Despite the fact that the SPDC was able to force smaller ethnic armed organizations to accept the BGF position, stronger organizations such as the

United Wa State Army (UWSA) and the Kachin Independence Organization (KIO) have not complied with the SPDC’s plan. The deadline for compliance was 31 October 2009, but the USWA and KIO have stated their intention to continue negotiations and meetings with senior military officers.⁹ Both organizations have demanded autonomy in their ethnic region, which would be threatened by the inundation of *Tatmadaw* officers under the BGF plan. The KIO has expressed its intent to become the Kachin Regional Guard Force under the new government instead of a subset under the *Tatmadaw*,¹⁰ though no progress has yet been made between the opposing sides.



The last demographic of major ethnic armed organizations are those in active hostility with the regime, such as the Karen National Union, Karenni National Progressive Party, and the Shan State Army (South). They have publicly declared that the 2008 Constitution is unacceptable and must be revised. If the SPDC adheres to its own plan of holding the 2010 elections without addressing the self-determination issue of the ethnic minorities in a revised constitution, civil war and the unnecessary loss of life will persist.

If the current trend continues, there will be a clear division between the ethnic forces that have assumed the BGF role and those that have not. In that case, under the authority of the 2008 Constitution, the SPDC or the 'elected government' may order the BGF—which is under the direct command of the Defense Services—to fight against the ethnic armed organizations that have refused to transform into the BGF. The SPDC has created a situation where one ethnicity is systematically forced to fight against its own ethnic group.

(Endnotes)

¹ Constitution of the Republic of the Union of Myanmar (2008), Article 404(a).

² Constitution of the Republic of the Union of Myanmar (2008), Article 407.

³ Constitution of the Republic of Korea (1988), Article 8.

⁴ Nehnginpaio Kipgen, 'Obama Energizes Burma's Ethnic Minorities' *The Irrawaddy* (11 November 2008) <http://www.irrawaddy.org/article.php?art_id=14606> accessed 30 October 2009.

⁵ Constitution of the Republic of the Union of Myanmar (2008), Article 141.

⁶ Wai Moe, 'Border Guard Force Plan Leads to End of Ceasefire' *The Irrawaddy* (31 August 2009) <http://www.irrawaddy.org/article.php?art_id=16691> accessed 31 October 2009.

⁷ *Id.*

⁸ Constitution of the Republic of the Union of Myanmar (2008), Article 338.

⁹ Saw Yan Naing, 'Border Guard Deadline Passes Without Agreement' *The Irrawaddy* (2 November 2009) <http://www.irrawaddy.org/article.php?art_id=17116> accessed 19 November 2009.

¹⁰ *Id.*

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