



(A.3)
**THE NEXUS BETWEEN THE 2008 CONSTITUTION
 AND 2010 ELECTION**

The international community has repeatedly called for the junta to hold free and fair elections in 2010, as well as allow international monitors to observe, but this alone is an inadequate response to the overall political situation. Before focusing on the future, the international community must turn to the past and address the aspects of the 2008 Constitution that intrinsically flout democracy. First, the constitution was written without the consensus of stakeholders.¹ Second, it was presented to a population where 69 percent claimed to have "no awareness of the details of the proposed constitution".² Third, though the UN has documented a multitude of human rights violations on the parts of SLORC and the SPDC, Article 445 promises impunity for military.³ Thus, the very premise of the 2010 election as a step towards democracy is already compromised.

Additionally, the constitution contains major flaws related to each branch of government that do not represent democratic norms. In the legislative branch, 110 of the 440 seats of the *Pyithu Hluttaw* (People's House) are reserved for military personnel.⁴ The *Amyotha Hluttaw* (National Assembly) contains 224 seats, with 56 reserved for military personnel.⁵ Thus, a full 25% of the *Pyidaungsu Hluttaw* (Union Parliament) would be comprised of military servicemen appointed by the Commander-in-Chief of Defense Services. This proportion has special significance because the 2008 Constitution can only be amended with over 75 percent of parliamentary approval.⁶ As a result, it will be impossible to change the constitution without military approval.



The SPDC Will Transform Themselves Into
 The National Defense And Security Council

The executive is headed by the President, which is chosen by the Presidential Electoral College (PEC).⁷ The PEC is comprised of three bodies: one from each chamber of parliament, and one from the military personnel appointed by the Commander-in-Chief of Defense. Each group then nominates



a vice presidential candidate from which the president will be chosen after a vote from the entire PEC. This ensures that an incumbent army official will hold one of the three head-of-state positions (either as President or one of two Vice Presidents). The constitution provides the executive with broad powers even though he is not elected by popular vote and, thus, is not accountable to the population.

From the State Peace and Development Council (SPDC) to the National Defense and Security Council (NDSC)

The new constitution also mandates the formation of an irregular council in the Executive branch called the National Defense and Security Council (NDSC).⁸ The NDSC is comprised of eleven people representing various government bodies and ministries. However, the process used to choose representatives guarantees a majority of military officials in the NDSC. The President appoints ministers by selecting from among the *Hluttaw* representatives and a list of military candidates submitted by the Commander-in-Chief of Defense.⁹ The ministers of defense, home affairs, and border affairs are exclusively appointed from the military candidates.¹⁰ Thus, at least six of the eleven seats in the NDSC will be military personnel, which constitutes a requisite quorum to pass motions.

- State President
- Vice President
- Vice President
- Speaker of the People's House
- Speaker of the House of Nationalities
- Commander-in-Chief of the Defense Services
- Deputy Commander-in-Chief of the Defense Services
- Minister for Defense
- Minister for Foreign Affairs
- Minister for Home Affairs
- Minister for Border Affairs

The NDSC essentially exercises executive power in conjunction with the President, including the power to declare a state of emergency effective throughout the entire nation.¹¹ Under a prescribed state of emergency, all executive, legislative, and judicial power would be transferred to the Commander-in-Chief of Defense Services for up to one year, which can then be extended for another year.¹² If the parliament term ends during a state of emergency, then there are simply no representatives in the legislature until another election—as organized by the NDSC—can take place.¹³ Thus, the military would run the country under constitutionally legal pretense.



(Endnotes)

¹ Larry Jagan, 'Democracy and death in Myanmar' *AsiaTimes* (29 May 2008) <http://www.atimes.com/atimes/Southeast_Asia/JE29Ae01.html> accessed 21 October 2009.

² 'Burma News International: Release of nationwide voters survey on the Burmese referendum' *BurmaNet News* (7 May 2008) <<http://www.burmanet.org/news/2008/05/07/burma-news-international-release-of-nationwide-voters-survey-on-the-burmese-referendum>> accessed 22 October 2009.

³ Constitution of the Republic of the Union of Myanmar (2008), Article 445.

⁴ Constitution of the Republic of the Union of Myanmar (2008), Article 109.

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

⁶ Constitution of the Republic of the Union of Myanmar (2008), Article 436.

⁷ Constitution of the Republic of the Union of Myanmar (2008), Article 60.

⁸ Constitution of the Republic of the Union of Myanmar (2008), Article 201.

⁹ Constitution of the Republic of the Union of Myanmar (2008), Article 232(b).

¹⁰ Constitution of the Republic of the Union of Myanmar (2008), Article 232(b)(ii).

¹¹ Constitution of the Republic of the Union of Myanmar (2008), Article 417.

¹² Constitution of the Republic of the Union of Myanmar (2008), Article 418.

¹³ *Id.*

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