



Part B: Constitutional Law

How the 2008 Constitution restricts multi-party democracy in Burma

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Burma's 2008 Constitution, touted as bringing 'democratic' reforms to the country, has instead institutionalized bias in favour of the army and the ruling elite.

Heralded as a crucial part of the military government's 'roadmap to democracy', the 2008 Constitution was put to a referendum on 10 May, 2008. Though many reputable Burmese groups and international organizations claimed the process was fraudulent, the government hailed the referendum as a success that showed high approval for the new Constitution.

Unfortunately, the entrenchment of the new Constitution has been a victory for the ruling elite, not for the Burmese people.

The claim put forward by the new government is that the 2010 elections marked a transition to a multi-party democratic system. However, the 2008 Constitution's provisions restrict opposition parties and organizations, entrench continued military presence in the national government and grant impunity to past and present government officials.



With respect to the rule of law, the 2008 Constitution is unfair and unjust, depriving the Burmese population of their political right to the genuine multi-party democratic system stipulated by the new Constitution.

A careful look at the articles of the country's new Constitution illustrates the inconsistencies between the claim that the Constitution and subsequent election mark a turn to multi-party democracy and the limits placed on potential for a democratic system by the provisions of the new Constitution.

Section 7 of the 2008 Constitution provides that the 'Union practices genuine, disciplined multi-party democracy'. However, Section 407 states that where a political party infringes one of several stipulations, 'it shall have no right of continued existence'.

These stipulations include a prohibition on parties that have direct or indirect contact with groups or associations deemed 'unlawful' by the government, parties that directly or indirectly receive financial or material support from foreign governments or associations or from religious organizations and groups that 'abuse religion for political purposes'.

Section 408 states that where a party infringes one of the stipulations, their party registration will be revoked.

These provisions are easily subject to abuse, granting wide powers to the government, clearly impeding Section 7's promise of a 'genuine' multi-party democracy. These arbitrary restrictions merely concentrate power in the hands of the ruling party.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states that, 'all persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. This idea, manifested in the 'one person, one vote' principle, is absent from Burma's 2008 Constitution.

Sections 74, 109(b) and 141(b) clearly illustrate this problem. Section 74 stipulates that in addition to elected officials, the Pyidaungsu Hluttaw [Burma's bicameral legislature] is to be comprised of Defence Services Personnel nominated by the Commander-in-Chief. Section 109(b) states that 110 individuals, or one-third of the total number of representatives, can be nominated by the Commander-in-Chief to the Pyithu Hluttaw [lower house]. Section 141(b) provides that the Commander-in-Chief reserves the right to nominate 56 individuals, or one quarter of the total number of representatives, to the Amyotha Hluttaw [upper house]. Sections 74, 109(b) and 141(b), therefore, permit the presence of government-appointed military representatives in the Pyidaungsu Hluttaw.



This means that the 2008 Constitution allows for 25 per cent of the officials in the Hluttaw to serve as unelected appointees. This represents a significant departure from the ‘one person, one vote’ principle. More broadly, it reflects an unjust departure from a multi-party democratic system in which officials are duly elected.

Similarly, Article 14 of the ICCPR states that ‘all persons shall be equal before the courts and tribunals’.

However, Article 445 of the 2008 Constitution states that ‘all policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council and State Peace and Development Council [SPDC]... shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member in the Government, in respect of any act done in the execution of their respective duties’.

It is clear that SPDC military regime officials and their government allies are granted immunity by the provision. This is in sharp contrast with the principle of accountability within a functioning multi-party democracy.

What elements are required in a multi-party democracy?

Freedom of expression and the freedom of association are two fundamental principles of democracy. Article 19 of the Universal Declaration of Human Rights stipulates that ‘everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.

Freedom of expression is necessary in order for true political dialogue in the public sphere and, therefore, is a necessary precondition for genuine multi-party democracy.

The right to freely form associations is also fundamental to a functioning democracy. Article 20 of the Universal Declaration of Human Rights (UDHR) states that ‘everyone has the right to freedom of peaceful assembly and association’. This right is also reflected by Article 22 of the International Covenant on Civil and Political Rights. These rights mean that workers, farmers, students and religious groups must be legally entitled to form unions. Similarly, it allows people to form and join political parties. The ability to do so is a necessary precondition for a multi-party democratic system.



Why is a multi-party system so important to Burma?

A genuine multi-party system is essential to re-establishing the rule of law in Burma. Unfortunately, Burma has not seen this type of government since General Ne Win imposed a one-party system following his coup in 1962.

The presence of many ethnic minorities is one reason a multi-party democratic system is so essential to the rule of law in Burma. It would allow for various regions to be governed by those with the closest understanding of the issues faced by groups and individuals in the locality. Ethnic minorities would be represented in the political sphere and would be less inclined to resort to violence.

A thriving multi-party democratic system would ensure that ethnic, social and political minorities have their voices heard in the Hluttaw. Opposition groups representative of minorities would be able to represent the views of those groups on an ongoing basis. In a genuine multi-party democracy, as opposed to the current political situation in Burma, opposition groups are not merely present during electoral periods. Instead, they serve a vital role to the functioning of government in a continuous manner.

The mere existence, then, of multiple parties during elections does not ensure a functioning democracy. Instead, opposition parties must be given a level of respect at all times by ruling parties. Opposition parties must be given the opportunity to get involved in the legislative process as good governance flows from a dialogue between parties.

At present, Burma's one-party state heavily restricts any potential for a multi-party democracy and, therefore, fails to represent the diverse interests of the Burmese population.

Despite promising a genuine multi-party democracy, the current Burmese Constitution only serves to restrict the activities of potential opposition groups and entrench the continued political presence of the ruling elite.

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