Burma's Election and Constitutional History: A Snapshot

This is an outline of a speech given by the Honourable Janelle Saffin MLC, BLC Executive Member, at a seminar on Burma and its path towards independence and democracy, hosted by the New Zealand Asia Institute on the 18th-19th August 2000. For the complete text of the speech and other Burma commentary please see in the upcoming New Zealand Asia Institute's publication of the seminar's proceedings. The Institute is housed at Auckland University Auckland New Zealand. The Institute Director is Professor Chris Tremewan who is also Pro Vice Chancellor of Auckland University. Ms Xin Chen is the Executive Officer.

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> "Burma is a country at war, but at war with its own people."

The summary seeks to capture the essence of the presentation that was to introduce the listener to Burma's troubled and confused path in seeking to gain independence and to consolidate democracy, which implicitly illuminates the absence of the rule of law.

The nation's constitutional and election history highlights the difficulties that have been encountered in securing peace with the people, particularly as the armed forces (Tatmadaw) have long ruled Burma. There is no culture of consent between the governed and the government and this is a constant of political life. Until this is remedied, the country embroiled in its own civil war for 52 years will stay at war in one form or another.

The 1990 election is but symptomatic of the affliction that besets Burma. Because of the armed forces complete mistrust of the people and a supreme belief in the military's primary role as the true saviours of the people, in 1990 those elected were and continue to be denied the right of incumbency. The party that won a landslide majority, and thus the right to form government, were denied that right

The military junta without the support of the people have clung through armed might to power. They make the laws at a whim and break them with impunity when the outcome is not to their liking. This is the continuing legacy of what was imposed upon the people following the 1990 election.

Daw Aung San Suu Kyi has said, "Please use your liberty to help promote ours."

The speech in part is a response to her call.

This is a snapshot of Burma's constitutional and election-electoral history, from 1922 until the present. It is a rebuttal of the Tatmadaw, also called the State Peace and Development Council (SPDC), government's claim that the 1990 multi-party general elections were not general elections. It makes clear that the 1990 election was supported by Burmese election law promulgated by the then named State Law and Order Restoration Council (SLORC) in 1989.

It demonstrates that, for the thirty-eight years (plus sixteen months as a caretaker military government from 1958), the Tatmadaw have ruled Burma since its formal independence effected at 4.20 a.m. on the 4th January 1948, they have proved incapable of effecting a lasting settlement and peace with Burma's large ethnic population. Significantly there is no rule of law and there has not been for a very long time. They have also failed to develop an institutional framework that can accommodate Burma's diverse political interests.

During the past 79 years Burma has had four constitutions. The first two of 1922 and 1935 (constitutional to some degree) were circumscribed by their colonial roots, and the 1947 (their independence) and 1974 (one-party state) constitutions all suffered from a lack of acceptance by the people.

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Burma currently has neither constitution nor constitutional government, and is ruled by a military junta that enacted a military coup d' etat on the 18th September 1988 in which they suspended the 1974 constitution *inter alia* by issuing Order 1/88 on the 19th September 1988. The SPDC is currently orchestrating a

'national convention' that has drawn up an administrative document referred to as 'constitutional principles' that would, if adopted, consolidate the Tatmadaw's role in politics and exclude the popular will of the people.

It, too, is doomed to failure.

In 1996 the then SLORC passed Order 5/96 that prohibited (and still prohibits) anyone from involving themselves in constitutional matters, even discussion. A breach of that Order carries a penalty of twenty years maximum gaol sentence. At the same time, the military junta continues to exhort the people in their national newspapers to be involved as a matter of civic duty. The contradiction is stunning.

The speech provides a revealing account of the processes set in place for the formation of the various constitutions. It highlights that, in particular, the 1974 referendum to approve or reject the constitution drawn up by the Burma Socialist Program Party (BSPP) (again the creature of the Tatmadaw under the stewardship of General Ne Win), had separate "yes" and "no" ballot boxes at the polling booths. The psychological warfare and control the junta had had of the population by this stage resulted in a very predictable if extraordinary high "yes" vote.

There was no such thing as a secret ballot.

The first elections were held in 1922, and subsequently in 1926, 1929, 1932 and 1935. All were free and fair given the limitations imposed by their colonial framework. Those polls were, however, boycotted by the active and strong political organisation, the General Council of Burmese Association. This Council had been initially established as the famous Young Men's Buddhist Association (YMBA).

After 1935 and Burma's separation from India, effected in 1937, there were no elections until 1947. During this period the Japanese Imperial Army occupied Burma for a period of three years. The 1947 elections were in preparation for independence and to have a constituent assembly design a constitution.

That constitution was adopted by the Constituent Assembly on the 24th September 1947 and, whilst it can be said it is a democratic constitution with regular 'rule of law' and 'separation of powers' safeguards, it too is criticised as wanting in form regarding its lack of inclusiveness, its colonial bias, and for the lack of public participation in the process.

It did, however, contain the surprising secession clause (after ten years) for three states. The untimely assassination in July of that year Burma's national hero, General Aung San (by that time U Aung San), removed the one person who had

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the trust of the many people of Burma.

It is widely said that if he had lived he would have put right what was missing from the constitutional form and process.

There were elections in 1951/52 that took seven months to complete due to the civil war that had erupted in 1949 and is still raging today, despite seventeen cease-fire agreements between various leading ethnic armies and organisations and the Tatmadaw. Elections followed in 1956 and 1960, and then by military coup, the Tatmadaw seized control on the 2nd March 1962.

On the 28th March 1964, all political parties were banned along with all other non-government organisations and it was not until the 26th October 1988 with the *Introduction of the Political Parties Registration Act* that parties were again able to form, and well over two hundred did.

Elections for the People's Assembly were held in 1974, 1978, 1984 and 1986 with only BSPP candidates allowed to stand, and the only choice being sometimes two candidates offered in the one constituency. The most recent election was held on the 27th May 1990. In this watershed election, the National League for Democracy (NLD) won 392 of the 485 constituencies contested (seven were deemed too unstable), thus the right to form government. The SLORC refused to cede power.

The SLORC claimed retrospectively that the elections were not multi-party general elections, that they were merely to elect a group to work out a constitution.

However, the respective *Political Parties Registration Law*, and the *People's Assembly Multi-Party General Election Law* (known as the election law), the establishment of the Multi Party Election Commission and public comments and assurances given in SLORC media conferences, despite some dissembling and ambiguity at times in terms of the SLORC's comments, put beyond doubt that that the legal purpose of the 1990 elections was to elect MPs to the People's Assembly.

The powers and responsibilities of the Election Commission were defined in an order issued by the SLORC on the 21st September 1988 as doing "whatever is necessary for the successful holding of fair and free democratic multi-party general elections."

That the SLORC-supported party, the National Unity Party (NUP), won only 10 of the 485 constituencies shocked the Tatmadaw and this shock result remains the reason for them not ceding power. In fact the result was a shock only to the Tatmadaw who were and still are so out of touch with popular sentiment).

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Burma's people have rarely been able to exercise their political will or have their voices heard by those that rule the country and the 1990 election was no different. The people spoke with actions, including the Tatmadaw members who voted for civilian government; yet again the Tatmadaw who claims to truly represent their interests ignored them.

The Burmese Tatmadaw Government representative to the United Nations 45th general Assembly claimed that "his country upheld the principles embodied in the Charter of the UN and the Universal Declaration of Human Rights (UDHR) and abided by them scrupulously." Article 21 of the UDHR says

> … The will of the people shall be the basis of the authority of government, this will be expressed in periodic and genuine elections…

The Tatmadaw have not accepted the will of the people as so clearly and so decisively expressed in the 1990 election. They have chosen to violate the UDHR that they claim to scrupulously abide by. They have continued to repeat that lie in various other forums wherever the opportunity arises.

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Justice Rajsoomer Lallah, the previous UN Special Rapporteur on Human Rights Violations in Burma, best described the situation that prevails today in Burma as

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