

If the junta fails to conduct a transparent and fair election in three key areas, the upcoming election will lack credibility in the eyes of the people and the international community.

By repeating promises to hold a free and fair election in Burma this year, Snr-Gen Than Shwe has been playing a time game by delaying the formation of an election commission in accordance to the 2008 Constitution, the promulgation of an election law and the registration of political parties.

“Now, according to the state’s seven-step roadmap, a free and fair election will take place soon,” said Snr-Gen Than Shwe in a Feb. 12 statement released on the 63rd anniversary of Union Day. But he again failed to mention the time frame for the election process.

The existing electoral law, formulated in 1989, will be canceled when the new law is promulgated, which will lead to the automatic repeal of the 1990 election results.

For the past 20 years, the 1990 election results has been a thorny political issue which gave a popular mandate to the National League for Democracy (NLD) and challenged the legitimacy of the ruling junta, but the controversy will soon end, unresolved, and remain an ugly mark on the country’s history.

The NLD will soon face this reality, and the election will no doubt be held with the international community observing the credibility of the election, with a goal to ensure that it's inclusive, free and fair.

For a credible election, the new election law must embrace the following key principles.

1: The law must include and uphold the principles of impartiality, independence, non-partisanship, accountability and transparency and must be free from the influence of the ruling junta.

Theoretically, there are three models for election management bodies: the independent model, the governmental model and a mixed model (a combination of the former two models). According to the existing election commission law, Burma's election commission is based on the governmental model.

The existing Election Commission Law No. 1/88, issued on Sept. 21, 1988, is still in effect. Article 3 of Chapter 2, titled "*Formation*," reads: "The State Law and Order Restoration Council (SLORC) [now State Peace and Development Council] can expand the number of the EC members or replace vacant EC members."

Article 4 (b) of the Chapter 3 "*Responsibility and Rights*" reads: "The commission shall draw the necessary laws and regulations, and submit them to the SLORC." Therefore, the law does not really grant the EC a legal concept and framework to uphold the principles to be free from the control of the junta.

2: The political party registration law must guarantee all ethnic nationalities the right to form political parties and to contest in elections.

The EC is responsible for registering and recognizing the formation of political parties in accord with the law. On this point, the issue of cease-fire ethnic groups becomes critical in terms of the right to form political parties that represent their interests.

The existing registration law prohibits groups that form armed forces to fight against the ruling government from forming political parties and contesting an election.

Article 3 (B) of the law reads: "The insurgent organizations which hold arms to go against the state are not allowed to apply for the formation of political party."

The junta has removed ethnic cease-fire groups from the list of unlawful organizations, but it would be expected that, under the new law, the junta will not grant cease-fire groups the right to

form political parties without first transforming their armed forces into a Border Guard Force under the regime.

Consequently, the BGF issue is likely to prevent the junta from holding elections in constituencies controlled by some ethnic cease-fire groups, which would affect the inclusiveness of the election by leaving large numbers of people out of the process.

3: The election commission must be transparent in all the procedures of collecting and issuing voter lists and the number of ballot papers printed in order to prevent from misusing or exploiting the voter list and the ballots, leading to undermining a “free and fair” election.

In the 1990 election, Burma had 492 constituencies, but the EC held elections in 485 constituencies, leaving seven constituencies in which no election was held. The EC opened 15,154 polling stations across the country. There were 20.8 million eligible voters of which 15.1 million cast votes.

In many past elections, there have been allegations of multiple registration of the same voter in different constituencies and the manipulation of ballot tabulations.

For the list of eligible voters in Burma, the EC relies on the junta’s administrative mechanism even though the electoral law grants it that responsibility.

Article 12 (A and B) of Chapter 6 titled “*Collection of Eligible Voters*” in the existing Pyithu Hluttaw Electoral Law issued on May 31, reads: “The Commission will collect the list of eligible voters to elect Hluttaw representatives.”

Burma has not conducted a systemic population census nationwide since 1983 and the country has no capacity to introduce a computerized voter list to prevent multiple registrations.

A number of factors can lead to manipulating a voter list, if the process is not transparent. There

has been a dramatic increase in population movement in the past 20 years. Burma is now a country with millions of emigrants, including more than 150,000 refugees in Thailand and neighboring countries.

In addition, there are perhaps a half million internally displaced persons, stateless persons, and a significant number of Royhingja in the western areas of the country without permanent homes.

Article 13 (B) of the law reads: “The Ward or Village Election Commissions must include in the voter list the armed forces personnel, Burmese diplomats and their families living outside the country, the scholars and their families studying [in foreign universities] and those who the government officially allowed to go abroad.”

Most Burmese emigrants outside the country usually maintain their name on their family registration papers and the majority are eligible voters. Therefore, there are likely to be millions of blank ballots in polling stations on the day of the election set aside for those eligible voters, but who in many cases will not be able to return and cast their votes. These ballots are vulnerable to misuse by officials.

Another issue is that election commissions around the world usually print from 2 to 5 percent more ballots than are actually needed, in order to cover emergency situations. The EC must be transparent in this area to maintain public credibility.

If the past is guide, the 2008 referendum on the current Constitution should serve as a warning to those who will monitor the election. The referendum convening commission announced that 92 percent of the 98 percent of eligible voters cast a “YES” vote, leading to widespread disbelief based on the public protests of irregularities during the referendum voting.

If the junta fails to conduct a transparent and fair election in these three key areas, the upcoming election will lack credibility in the eyes of the people and the international community.