

When Burma's EC chief Thein Soe told a US delegation that the founding of the USDP was legal under Burmese law, he was lying.

“Justice and power must be brought together, so that whatever is just may be powerful, and whatever is powerful may be just,” said Blaise Pascal, a 17th-century French philosopher.

But in 21st-century Burma, justice and power are still poles apart. One of the main reasons for this is that the military junta's top legal experts interpret the law with the interests of the generals, not the people, in mind.

The most recent high-profile abuse of the law happened during the May 9-10 official visit of a US delegation led by Assistant Secretary of State for East Asian and Pacific Affairs Kurt Campbell.

Asked by the delegation on whether the formation of a political party by the incumbent ministers was in accord with the law of the land, Thein Soe, the chairman of the Union Election Commission (EC) cunningly responded with two direct lies. Thein Soe is a former military judge advocate-general and later served as deputy chief justice of the Supreme Court. Junta supremo Snr-Gen Than Shwe recently appointed him head of the EC. His response was published by the state-run *New Light of Myanmar* on Wednesday.

He replied that indeed the move was legal and he presented the Americans with two reasons. First he said that the “present ministers’ formation of the Union Solidarity and Development Party [USDP] is in conformity with the law,” because “a provision says that state service personnel shall not be organized in political parties, [but] ministers are political posts, not state service personnel.”

Let's address that first point briefly. On what legal basis does Thein Soe interpret government ministers as not being state service personnel? I don't know whether Kurt Campbell chose to shoot this question back at Thein Soe, but it really is a curious statement.

Lawyers who spoke to *The Irrawaddy* said that the legal text defining who is and who is not a civil servant in Burma is found in the Penal Code of the Union of Burma, which was issued in 1861 under British administration, and was last amended on April 27, 1963.

Chapter 2 of the Penal Code gives the legal explanations of the terms. Article 21 of this chapter reads: “*Pyithu Wonhtan* [public servant] means the following persons:” and it lists under sub-article (9) that this includes “government ministers.”

In the 2008 Constitution, the text uses the Burmese term “*Naingant Wonhtan*,” which can be directly translated as “state servant,” as opposed to “*Pyithu Wonhtan*.” However, there is no difference between the two.

Both Burmese expressions mean “Civil Servant” in the Myanmar-English Dictionary issued by the Department of the Myanmar Language Commission under the Ministry of Education.

Therefore, Prime Minister Thein Sein and his colleagues must be deemed as “*Naingant Wonhtan*” or “civil servants,” whichever way you look at it. In short, their participation in forming the USDP contradicts the law.

According to the *New Light of Myanmar*, Thein Soe then referred the US delegation to Article 444 (A) and 448 of the Constitution’s “Transitory Provisions” as evidence that the Constitution and Burmese law permitted the founding of the USDP by the military government.

So, let's take a look at these articles.

Article 444 (A) reads: “The Government that exists on the day this Constitution comes into operation shall continue to discharge the respective duties until the emergence of the new Government formed and assigned duties in accord with this Constitution.”

Article 448 reads: “All functioning Civil Services personnel of departmental organizations including the Defense Services under the State Peace and Development Council on the day this Constitution comes into operation, shall continue in their functions unless otherwise

prescribed by the Government of the Republic of the Union of Myanmar.”

I reread these provisions as second and then a third time. But I still could not see the relevance of the articles to the foundation of the USDP.

The terms “Government,” “Civil Services personnel,” “Defense Services” and “State Peace and Development Council” are all used in these articles; however, they don’t directly refer to—and certainly cannot be interpreted to allude to—the EC chairman’s claim that the prime minister is allowed by law to form his own political party.

Within the Constitution, there are two articles—Article 26 (a) and 121 (j)—that directly draw a line between the civil service and politics.

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Article 26 (a) reads: “Civil Services personnel shall be free from party politics.”

Article 121 reads: “The following persons shall not be entitled to be elected as the Pyithu Hluttaw [People’s Parliament] representatives: ...” and it goes on to list convicted criminals, persons of unsound mind, foreigners, etc. Sub-article (j) reads “Civil Services personnel.”

However, the Article 121 (j) contains a proviso: “The expression shall not be applied to Civil Services personnel including the Defense Services personnel selected and appointed in the *Hluttaws* and organizations formed under the Constitution.”

To me, the words “selected and appointed” stand out. It does not say “elected.” Therefore, the proviso clearly applies to military-appointed parliamentary representatives who will be selected and appointed by the Commander-in-Chief.

It cannot be applied, however, to the ministers who formed the USDP.

Thein Soe’s comments were clearly unrepresentative of the truth. The 2008 Constitution—which the military junta spent over 14 years drafting into their own words—does not allow for an incumbent prime minister nor other government ministers to found a new political party.

The USDP is, in effect, illegal under Burmese law.

In the application process for political party registration, the representatives of each political party are required to sign a declaration that they will abide by the Constitution. Article 6 (c) and 12 (a/4) of the Political Parties Registration Law, states that the EC has the right to disband any party that violates their declaration.

The EC has evidently chosen not to apply the law to the USDP.

And to make matters worse, the people of Burma have no legal mechanism, domestically or internationally, to seek justice.

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