

The new constitution, the 2010 election, the formation of a parliament and the creation of the organs of state are all filled with potential pitfalls. The outcome will determine Burma's future.

After two decades of military rule, Burma's State Peace and Development Council is now working to consolidate its military rule through parliamentary elections and the restoration of a civilian government in 2010.

The country's prolong political deadlock began with the SPDC's rebuff of the 1990 election results in which the majority of voters chose candidates of the National League for Democracy.

The Burmese people have serious doubts about whether the SPDC will conduct a free and fair election and respect the votes cast in the 2010 election.

The constitution of the Republic of the Union of Myanmar [Burma], which was written by the junta's hand-picked delegates and approved in a 2008 referendum, included an important chapter titled "Transitory Provisions," which is intended to guide the post-election process for the transfer of power.

However, in spite of a 14-year National Convention to draw up the new constitution, the chapter is largely based on Article 195, 196, 199 and 202 of the "General Provisions" of the 1974 socialist constitution. In addition, it lacks important details on the transfer of power process to a civilian government.

One provision the junta didn't overlook, however, was a constitutional guarantee to protect the military government from any legal action for its gross violations of human rights, such as extra judiciary killings, disappearances and arbitrary detentions such as the fourth house arrest of the democratic leader Aung San Suu Kyi.

Section 445 of the constitution states: "No proceeding shall be instituted against the said Councils (the SPDC and its former State Law and Order Restoration Council) or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties."

Uncertain Post-election Transition

After the 2010 election, the constitution will come into operation at the first session of the Pyidaungsu Hluttaw (a Union Parliament combined with Pyithu or People Hluttaw and Amyotha or Nationalities Hluttaw). However, the SPDC “shall continue to exercise State sovereignty before this Constitution comes into operation,” according to the Section 442 of the Transitory Provisions.

In his recent book, “The State in Myanmar,” Prof Robert H. Taylor, a well-known pro-junta Western scholar, analyzed the constitution and concluded: “The new constitution will come into effect from the first meeting of the Pyihtaurnsu Hluttaw...In the meantime, the SPDC will remain in power.”

Therefore, Section 442 may lead some constitutional observers to the conclusion that the SPDC will relinquish its power a few months after the election because the first session of Pyidaungsu Hluttaw must convene within 15 days after the first session of Pyithu Hluttaw, which also must convene within 90 days after the commencement of the general election, according to Section 78 and 123.

Taylor offered no further analysis on the issue of power transfer through his comparative view of the constitution. The SPDC’s “seven-step roadmap,” however, offered some clues to what might transpire.

According to the roadmap, holding an election and parliamentary sessions are the fifth and sixth steps of the roadmap. The SPDC will carry out the roadmap’s seventh step: “Building a modern, developed and democratic nation by the state leaders elected by the Hluttaw, and the government and other central organ formed by the Hluttaw.”

Moreover, one important factor that is often overlooked is the SPDC’s order 1/90 issued in 1990 which is still in operation as stated in Section 447: “Existing rules, regulations, by-laws, notifications, orders, directives and procedures shall remain in operation in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Union Government.”

Order 1/90 said: “It is hardly necessary to clarify the fact that a political party cannot automatically obtain the three aspects of State power – legislative power, executive power and judicial power just because a Pyithu Hluttaw has come into being.”

Therefore, it appears that the SPDC will hold its sovereign power until the presidential election and the formation of all the executive and judicial bodies have been completed throughout the country.

Although Section 60/f of the constitution said that necessary law shall be enacted for the election of the president, it does not stipulate in Section 399 whether the duties of the Election Commission will include either the enacting of the law or holding the election.

Therefore, the first important task of the Hluttaws, as stated in the seventh step of the roadmap, would be to enact the presidential election law, but no timeframe was set in the constitution for drafting the law and holding the election.

The duties of the president are detailed in the chapters “Head of State” and “Executive,” but the constitution lacks a timeframe for the formation of a new government and its administrative organs at the level of states, regions, and one self-administrative division and five zones.

The lack of a timeframe for drafting a presidential election law, electing the president and the formation of a government injects a constitutional loophole that some observers say could allow the SPDC to prolong its hold on power for an indefinite period in the name of achieving the last goal of its road map which is to build a modern developed and democratic nation.

A Glimpse into History

Burma has had the experience of drawing a new constitution, holding an election and

transferring power to a new government twice: the first instance was the transfer of power from the British to an independent Burma under the 1947 constitution; the second time was the transfer of power from the Revolutionary Council to the socialist government under the 1974 constitution.

To transfer power to an independent Burma, the British government signed an agreement with Gen Aung San, Burma's independent leader and the father of Aung San Suu Kyi, in January 1947 in what's known as the Aung San-Attlee Agreement.

The Aung San-Attlee Agreement outlined the necessary steps which included the Panlong Conference, a Constituent Assembly, a new constitution and a national election in accord with the constitution for the transfer of power to the new government of Burma one year before its independence.

This was an historic negotiation between Burmese national leaders led by Gen Aung San and the British government. The steps were carried out and the country gained independence within a year. The British kept their promise and transferred the country's sovereign power to the people of Burma in a timely manner.

However, the power transfer under the 1974 constitution was only a symbolic act of transforming a military junta to a civilian government.

Gen Ne Win, the then commander-in-chief of the Burmese military, staged a military coup in 1962 which ended the parliamentary democratic system and led to rule by a Revolutionary Council until 1974.

Abolishing the multi-party political system in the country, Gen Ne Win introduced a one-party system and founded the Burma Socialist Programme Party. He created a new socialist constitution and handed power over to a new socialist government in which he became the president in 1974.

Despite a military coup, Gen Ne Win was at least honest in one aspect: he believed in socialism

and ruled the country as a one-party system. However, the current generals who rule the country lack any political ideology. They also have a history of dishonesty and lack of respect for the basic principles of democracy, free speech and rule of law.

The country's future will be dictated by the junta-approved constitution which is designed to give a disproportionate share of power to the military, by the results of the 2010 election, by the parliament that is eventually formed and by the organs of state that it creates.

It is a process full of potential pitfalls, and one which observers will watch carefully.

Htet Aung can be reached at htetaung69@gmail.com