

Lack of Democracy, Lack of Equality

**Political analysis of Constitutional Principles
Laid down by the SLORC National Convention**

The Burma Lawyers' Council

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Internet Version (English)
November, 2002

English-Burmese Dual Version
October 1995

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Preface

The state Law and Order Restoration Council (SLORC), Ruling junta of Burma has convened a so-called national Convention since early 1993 aiming to lay down the basic principle for state constitution. All the analysis shows that the junta is attempting to gain the right to legally prolong its rule by framing up a state constitution. In order to do so, the military junta manipulated both convening process of the National Convention and its outcomes.

In Burma, in aftermath of military coup of 1962, the ruling military junta has manipulated the laws as an instrument to oppress the people in order to prolong their power. Most Burmese people no longer believe in the laws and the concept of the rule of law as a shield protecting their fundamental rights and freedom. As a result, common Burmese people are not interested in laws and law making processes as they have been convinced the laws as a tool of oppression.

The SLORC is taking advantage upon the lack of people's awareness on constitution making process. At the same time they are deterring the politically conscious dissidents from taking part in the constitution making process. By putting up in jails or forcing them to live in exile, their voices are unheard in the National Convention that SLORC is working on to complete a state constitution. Despite the SLORC strictly deters the people from taking part in constitution making, it is the right and duty of all citizens of Burma to prevent the creation of SLORC proposed constitution which will surely not uphold the aspiration of the people.

Very few people's representatives in the ongoing National Convention want to work out for the interest of Burmese people and get aware of the peoples' aspiration. Unfortunately they hold very small percentage of the representatives and can not be able to convert the constitutional principles set up by SLORC. The Burma Lawyers' Council sincerely feels that it is the responsibility of those who have better chance than those who are under total control of the SLORC to examine what are wrong in SLORC constitution making process and its constitutional principles. For this reason, the Burma Lawyers' Council, as an independent organisation, takes responsibility for examining on the constitution principles laid down by SLORC's "National Convention."

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1. Background

1.1 The 1990 general election

Holding a general election and transferring power to the elected representatives of the people was their final duty, the State Law and Order Restoration Council (SLORC), declared the same day they seized state power on 18 September of 1988. It became known world-wide that the SLORC would conduct four main duties during their hold on power. Gen. Saw Maung, the first chairman of the SLORC, promised that the SLORC would transfer state power to the elected representatives soon after the Elections. Drawing up a constitution is not the business of the SLORC or army- it is the responsibility of elected representatives according to SLORC's official announcements before the elections including Gen. Saw Maung's speeches. There is no reason for SLORC to continue to hold state power after general elections were held, he repeatedly said. Unfortunately, the outcome of the elections was unpredictable for SLORC. The Over shelming victory of the National League for Democracy led by Daw Aung San Suu Kyi is the main reason they refused to honour the election results. Had the National Unity Party, (the SLORC backed party which was transformed form the Burmese Socialist Program Party); won in the elections, the SLORC would have transferred power. Following their loss the elections, the military junta immediately planned to manipulate sate power by convening a National Convention through which SLORC will create a political system to secure their continuing control of politics.

1.2 The National Convention

The first SLORC's move was issuing its declaration No. 1/90 which stated that the duty of the elected representatives was not to take over power from the SLORC but to draw up a constitution. Secondly, the SLORC announced the schedule for convening the National Convention in the middle of 1992 after they failed to occupy Manerplaw, the main Headquarters of the opposition, by military means.

Even according to SLORC electoral law, the 1990 elections were elec-

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tions for a People's Assembly which normally exercises state power according to Burmese political traditions, not a Constituent Assembly which normally draws up a constitution. Despite the fact that there is no firm state constitution, it is the right of people representatives elected in 1990 elections to assume state power. The People's Assembly, a unicameral legislature, which had been created in Burma under the 1974 constitution, was supreme in state power. SLORC did not allow the people's representatives to assemble, and the elected representatives were labeled as those who have responsibilities only for drafting a constitution.

The National Convention first met on the 9th January of 1993 to begin to lay down basic guide line principles for the state constitution. Through the National Convention, SLORC intends to create a political system which will perpetuate military rule and authoritarianism in Burma. Despite the fact that most of the principles laid down by the National Convention are questionable, some of these principles which can be observed as central to the political system will be examined in this paper. Before discussing these constitutional principles in detail, SLORC's preparation for the unlawful National Convention should be discussed in order to provide information why it does not respect the aspirations of the people.

1.3 Some of SLORC's preparations to manipulate the outcome of the National convention

Although it is the duty of the elected representatives, even according to SLORC's declarations, to draft a constitution, more than 600 out of 702 representatives to the National Convention have actually been selected by the SLORC itself. Furthermore, in order to effectively control the National Convention's outcomes, SLORC prepared a procedural code for the National Convention as they (the SLORC) preferred. SLORC unilaterally declared "the Six Aims of Convening the National Convention" to be as follows:-

1. Non-disintegration of the Union,
2. Non-disintegration of National Unity,
3. Stability of Sovereignty,
4. Development of genuine multi-democracy
5. Promotion of social truth such as justness, freedom, equality etc. in the state and

6. Participation of the military in the leading role in national politics in the future.

SLORC made clear that there can be no questioning of the principle of the military's leading role in politics. The delegates' freedom of speech is strictly prohibited by the procedural code for the National Convention. Action can be taken against a delegate at any time for matters included in their discussions. Thus SLORC convened the National Convention under circumstances well prepared by the SLORC to represent its own interest.

2. The lack of democracy

2.1 Democracy and political equality

Democracy recognizes political equality of the citizens regardless of social status, ethnic background, religion, belief or belonging to any organisation or institution. It is not a democracy if there are no basic principles which guarantee the political equality of the individual citizens. Political equality for the purpose of this paper, means that each and every citizen has the same vote in the polls and that every vote has the same value, and equal right and opportunity of all citizens in political participation. Nobody in a democracy is allowed to enter national politics with special opportunity, as a right. Thus, no democratic constitution provides for any kind of inequality of citizens in terms of political participation.

2.2 The lack of democracy; the elections of the legislature

SLORC's intention in laying down the constitutional basic principles was to consolidate the political role of the army. Army-appointed representatives, who are surely from full time army officials, must be members in each Assembly of both national and regional legislatures with the ratio of one army representatives for every three people's representatives, according to SLORC constitutional principles. The army-appointed representatives may not be removed from office except by the army chief. This army inclusion in the legislatures to represent the interest of the army, not

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the people, is an invasion of the rights of other citizens by the army because while other citizens are to take part in politics on an individual basis, the soldiers are to take part on the basis of a powerful organisation. Why should soldiers receive special political privileges when the soldiers are just the same as other citizens serving the country in their ways?

Furthermore, the number of soldiers is not over 400, 000 in the country of Burma of which the population is 45 million. Thus, the actual ratio of soldiers to people is less than one to one hundred, or one per cent of the total population. The army's representative should not then be over one per cent of the total seats in each Assembly, but the ratio proposed by SLORC is twenty five per cent. It is obvious that this SLORC principle, with the ratio of one to three, is to exploit the rights of other citizens. How can there be democracy in this situation of inequality between soldiers and the ordinary citizens?

2.3 The lack of democracy; the presidential election

SLORC's constitutional principles seek a presidential government with a unique electoral system for the presidency. The president will be elected by an electoral college of which twenty five per cent of total members will be army appointees. Almost all the countries which exercise presidential government practice direct election or processes comparable to direct election for the presidency because the election of the president, the most powerful person in the presidential government, is required to be the most democratic. Indirect election for the presidency is exercised in countries following parliamentary government in which the role of the president is just a head of state. SLORC does not dare to hold a direct election because they are afraid of difficulties in controlling the direct election result that they desire. Thus, SLORC's proposed principles regarding the presidential election are clearly undemocratic. Moreover, SLORC's proposed nominee for the presidency automatically becomes vice-president even he is not elected to be president, according to basic principles laid down by the National Convention. It means that the army can appoint at least a vice-president. An army-appointed nominee for vice-president is also not acceptable for a democratic government. Every key political post should be assumed only through the electoral process. (Further examination on Presidential government can be seen below)

2.4 Sovereignty derives from the people

SLORC's constitutional principles include the principle of "the sovereignty shall be derived from the people" as in other democratic constitutions. The philosophy of the rights to exercise sovereignty by the people is central to democratic theory. In the case of Burma, the exercise of sovereignty by the people, of course, must include a determination by the people of what sort of political system shall be in the country. What sort of political system do the people need in Burma? Who has the responsibility to choose a political system- the government that appointed itself or the people? The clear answer is that it is the people who must determine the political system. Now only the ruling junta, the SLORC, is about to choose a political system for Burma. It is not acceptable for the entire Burmese people. If SLORC, as they mentioned in their principles, recognizes the principle of "sovereignty shall be derived from the people", why are they refusing participation of the people in the constitution making process which determines what sort of political system for Burma?

2.5 What SLORC will have to do?

SLORC's principles aim to secure the army's leading role in politics. Even though one of the stated aims of convening the National Convention was the "development of genuine multi-party democracy", the SLORC principles are totally lacking in democracy. As long as the SLORC's demand of the "army's leading role in politics" remains among the constitutional principles, whatever other principles SLORC laid down will be subordinate to that one. SLORC will always try to implement that principle over and above other constitutional provisions. This examination does not reject the possibility of participation by soldiers in politics on an individual basis. Democracy can not coexist with the principle of the "army's leading role in politics". Either of the two- democracy or the army's leading role in the politics- must be taken away from the constitutional principles for the creation of a long lasting constitution. Which one should be removed?

3. State Structure

3.1 The State Structure is

The issue of what kind of state structure should be chosen for Burma is a critical political issue. While many political scientists refer terminology "form of national government", the terminology "state structure" is accustomed with Burmese political traditions. In the 1974 constitution, the word "state structure" appeared and SLORC's National Convention also uses it. For Burmese, state structure refers to the basis-Unitary, Federal or Confederation- on which the state will be organised.

3.2 The State Structure SLORC provided

The SLORC principles concerning state structure are summarized below;

- (a) **The Village Tract and the Ward** – the Villages are integrated parts of the Village Tract. The Village Tract and the Ward are the same and the lowest level of the constituent units.
- (b) **The Township** – Villages, Wards and Towns are integrated parts of the Township.
- (c) **The District** – the Townships are integrated parts of the District.
- (d) **The Region, and the State** – the Districts are integrated parts of the Region or the State, the Region and the State being the same level of constituent units and the highest level integrating the country.

The above four are the series of levels of constituent units. There are still some constituent units bearing special characters as summarized below;

-Self Administered zone- the Townships of an ethnic group may be integrated as a Self Administered Zone. In this Zone there may be other ethnic groups, but the ethnic group who gained the Zone must be the majority.

-Self Administered Division- the Districts of an ethnic group may be integrated as a Self Administered Division. There may be other ethnic groups in the Districts of a Division, but the ethnic group who gained the Division must be majority in every District.

These two specially characterized constituent units are integrated in a Re-

gion or State together with the other Districts.

The State structure SLORC provided in the constitutional principles is a unitary basic system with some federal features for cosmetic reasons. It is important to note that the political terminology used by SLORC has different meanings in Burmese that it does in its English translation. SLORC can strategically manipulate these nuances in meanings in order to pretend that it will exist federal system, when in reality, according to the Burmese definitions, it will not. If the Burmese word "*Pyi Daung Su*" is translated into English, it means "**Federal**", but SLORC does not dare to use the word "federal"; instead uses the word "**Union**". That word "Union" is the main gesture by the SLORC in the defying of federalism.

"Union" in SLORC's meaning is that the country must be united as one. SLORC refuses to accept a federal structure because the military governments in Burma including SLORC have been propagating that federalism means the disintegration of the country. While all the political opposition groups are seeking a federal system as they see that as the cure to the civil war, SLORC can not totally deny federalism. In order to promote their artificial federalism, "Union" comes into SLORC's Constitutional principles.

In reality, SLORC's Union is nothing but Unitary state structure. The State is to be composed of seven Regions, which are the renamed Divisions of the 1974 constitution, inhabited mainly by Burmans, the major ethnic group in Burma, and seven States inhabited by seven different ethnic groups. That system is the same as in the 1974 constitution. That system was criticized by ethnic leaders who pointed out that there are seven Divisions for one ethnic Burma people while other ethnic people own one State for one ethnicity. The most suitable form of division of constituent units of country is to allow one ethnicity to have only one constituent unit in the same level. While other ethnic people have only one State for their ethnicity, having seven Divisions for Burmans is an obvious example of inequality among the ethnic groups. Principles laid down by the National Convention provided seven States and seven Regions again.

3.3 The state structure Burma requires

Recognising that Burma is a multi-ethnic state, the state structure should

be compatible with that fundamental reality. Civil war between successive juntas and the major ethnic groups is due to the fact that the state structure has not reflected for the multi-ethnic state, or the plural society. Countries having multi-ethnicity like Burma must assume the all the different segments in the country have equal opportunity to enter national politics. No one group of a plural society should receive special privileges to dominate national politics. Unity of diversity may be possible only when all the different segments see there is equal opportunity among them. The state structure should be designed to formulate equal opportunity for all segments. A legal system, and most importantly the constitution, becomes first priority to guarantee real equality.

According to Arend Liphart, (*Democracy in Plural Society*), a federal system is the most suitable one for plural society. A federal system is defined as a system of division of power between national level and constituent levels with allowance for the constituent members to protect their rights. In the context of Burma, the lack of an appropriate state structure is the main cause of civil war and reform based on a genuine federal system can lead to the end of civil war, according to Burma experts. Almost all the ethnic politicians ask that Burma be transformed into a genuine federal system on the basis of equality among the different ethnic groups.

State structure based on a federal system will surely cure or solve the problem of civil war. A paper presented by ethnic Shan leaders in 1962 known as "Shan principles" and which is considered as the most advanced paper in the federal movements in Burma demanded the transformation of state structure into a genuine federal one. If Burmese politicians do not ignore the importance of civil war in politics, they should accept that a federal system is probably the best cure for civil war. All the opposition organizations including the National League for Democracy, Daw Aung San Suu Kyi's party, could have agreed on this political solution.

3.4 Division of constituent units

Although it is true that the constituent units needed to be re-organised under the new constitution, it is important to consider the principle basis upon which the units will be divided. This issue is one of the most complicated problems of Burmese diversity. Despite the fact that there is no

clear cut solution to this problem, some principles, which have been just framed by the SLORC, should not be considered.

Almost all federal states where substantial diversity exists have different levels of constituent units integrating the nation. Burma, a country of gross ethnic diversity, needs to follow the practice of dividing the country into different levels of constituent units. First of all, any consideration to divide or organize the units must take into account the equality of different ethnic groups. No ethnic group should have more chances than others. SLORC principles favour more chances for the Burmans, just one of the ethnic groups in Burma, by giving Burmans seven divisions while other ethnic groups are granted only one state for one ethnic group. In order to guarantee equality among the different ethnic groups only one state or division should be granted for one ethnic group. To organize other levels of constituent units, it should be the concern of State or Division in which those units integrate. When the decisions were made for the Naga Self Administered Zone, Danu Self Administered Zone, Pa-o Self Administered Zone, Palaung Self Administered Zone, Kokant Self Administered Zone and Wa self administered Division in the last secession of the National Convention of March of 1995 before it was postponed, it could be understood that the SLORC made these decisions without upholding the desire of the ethnic groups concerned. The ethnic groups who were granted those constituent units are criticizing for The SLORC 's decisions.

3.5 Political consequences when an incompatible state structure is applied

More constituent units representing one ethnic group have better access to national politics. Seven Regions representing only one ethnic group, the Burmans, possess the same rights and opportunities as seven State which represent seven ethnic groups. Such a situation makes an equation of the rights of one non-Burman ethnic group equal to one-seventh of the rights and opportunities of the Burman group. Although it would not be a problem for a homogenous society to divide the constituent units in this way, it is big problem for a plural society. A more detailed discussion on this matter can be found below in the examination of the composition of the national legislature.

4. Type of national government

4.1 SLORC proposed national government

According to the principles laid down by the SLORC National Convention, the national government in Burma is a presidential government with a unique electoral system for the presidency. There is no doubt that the option of political institutions for a country's political system must take into account the political background of that country. Before an examination of whether the presidential type of national government is suitable or not for Burma, it is important to note why the SLORC opted for the presidential system. SLORC considers that this system is, through the electoral system they provided, easier for them to control the formation of government which is expected to uphold the interest of the army. It is for this reason that the SLORC's presidential government provides a unique electoral system which has never been practiced in other presidential governments.

4.2 The electoral college to elect the president

The president will be elected by an Electoral College. Twenty five percent of total members will be army-appointed members in the electoral college. The groups and the ratio of persons who compose the Electoral College are as follows;

- the elected representatives of the House of Nationalities, or the upper house, which is composed of equal numbers from the Regions and States and the army-appointed or non-elected members,
- the elected representatives of the House of Representatives, or the lower house, which is composed of elected representatives from the constituencies and the army-appointed or non-elected members,
- the army representatives, number of the army representatives is the same number as those who are appointed by the army chief for each house.

Note: - For the purpose of the formation of the Electoral College,

SLORC categorized three groups as mentioned above. There is twenty five percent of army appointed representatives in each house. Thus, the percentage of army representatives in the Electoral College is twenty five percent.

4.3 What is wrong in the formation of electoral college

There are three major faults in the SLORC's proposal for electing a president by an electoral college. SLORC has chosen the Electoral College with no care as to whether that electoral system is suitable or not for a presidential government. Providing the indirect election, while direct election is appropriate for the presidency of a presidential government, is the first mistake of the SLORC. Secondly, the army involvement in the proposed Electoral College is clearly undemocratic. The army representatives appear in the college in order to secure the election result with the army desires. The civilian Electoral College members come from different ethnic groups and political parties while army appointed members represent only one organisation, the army. It may be difficult to get a consensus among the civilian college members to elect a president because of their background of political differences, as it will be easy for army representatives to elect the army appointed nominee to be president. Thirdly, there is unequal participation of different ethnic groups in the Electoral College because the composition of each house in the national legislature is ethnically unbalanced. Thus, the composition of the Electoral College is also ethnically unbalanced. (See below composition of legislature)

4.4 Presidential nomination

The presidential nomination according to the SLORC principles is also unique and totally unacceptable. The three categories of Electoral College members can propose one presidential nominee for each category concerned. Thus, the army can propose on presidential nominee, who becomes vice-president even he is not elected to be president. Among the SLORC's principles of eligibility for the president there are two important undemocratic principles, meant surely to prohibit Aung San Suu Kyi's role in politics. First presidential candidates must have knowledge

in the affairs of politics, military, economics and administration. Secondly, nobody who has married a foreigner, or has any close relatives with foreign citizenship is allowed to be nominated for the presidential election.

The SLORC's constitutional principles cut off the relationship between the president and political parties. In a multi-party democracy, the key executive posts require a political connection with political parties because the elections in a multi-party democracy are contests for key executive posts. To be a meaningful multi-party democracy, all the executive members must be held responsible to the election manifesto for which the people voted.

4.5 Whether a presidential or parliamentary government is suitable for Burma

The faults in the SLORCs' proposed presidential government system have been explored. SLORC will need to open a direct election for the presidency, or at least processes comparable to direct election like the one used in United States, and correct some wrong principles in order to achieve a democratic presidential government. Even then one still must consider whether a presidential government is suitable or not for Burma. The major political problem to be considered when the presidential direct election is opened is what will be consequences in a multi-ethnic state of Burma. Keeping in mind that the consideration to opt for a political system for a multi-ethnic state, or plural society, may be different from a homogeneous society, it is important to consider whether a direct election for president is appropriate to Burma. Different population numbers of different ethnic groups ensure that the ethnic group with largest population, i.e. the ethnic Burmans in Burma, can influence the result of direct election. Direct election for the presidency can not guarantee the equality of the different ethnic groups which are different in population count. Therefore, the presidential government is not suitable one for the multi-ethnic state of Burma.

Compared to the presidential government, the parliamentary government gives more chance for the ethnic minorities in terms of forming the national government. The key executive posts in the parliamentary government come from parliament in which more representatives of minorities are members. Burma had an experience with the parliamentary govern-

ment under the 1947 constitution. Despite criticism of the weakness of the 1947 constitution, such criticism does not focus on the system of parliamentary government.

5. composition of the legislatures

5.1 SLORC proposed principles for composition of legislatures

The SLORC proposed principles for the composition of legislatures for both national and regional levels are summarized as follows;

- The *Pyi Daung Su Htuttaw*, the national legislature, is comprised of the House of Representatives, the lower house, and the House of Nationalities, the upper house.
- *The House of Representatives* is composed of people's representatives who are elected from the constituencies which are divided on the population basis.
- *The House of Nationalities* is composed of equal representatives from each Region and State.
- *The army-appointed representatives* shall comprise in each house of legislature by the ratio of three people representatives to one army representatives.
- *The number of army representatives* in the Region and State legislature is the same as it is in the houses of national legislature.

5.2 Lack of equality

Even though SLORC is trying to create a state structure combining with some cosmetic federal institutions, their principles relating to the composition of legislature are still far from the federal institutions as needed in a multi-ethnic state. SLORC Constitutional principles of composition of legislature are inequality among the different ethnic groups in Burma. There may be different reasons and political background concerning bicameralism in unitary state and federal states. For a federal state, compo-

sition of bicameral legislature is vital to federal principles and essential for the exercise of equal opportunity of different constituent units.

The constitutional principles that SLORC provided might not be a problem in a unitary state, they would be a major problem for a federal state. In the upper house, or the House of Nationalities, Burma representatives, by representing seven Regions, occupy the same number of seats as the seats of the other seven different ethnic groups. The lower house, or the House of Representatives, which represents the entire people, is composed of people's representatives who are elected from various constituencies which are divided according to the population inhabiting in the constituencies. Therefore, the representatives of Burma, as largest population in the country, also are the majority in the House of Representatives. Both houses of national legislature, the *Pyi Daung Su Hluttaw*, are to be Burman dominated according to SLORC principles.

5.3 One house represents the people, another one represents the constituent units

Two houses of a bicameral legislature in a genuine federal state have different representative formation. The lower house, or the House of Representatives in Burma, is to represent entire people as the whole. Thus, the lower house is also known as the popular house. The upper house or the House of Nationalities in Burma, is to represent different constituent units which are normally formed on the lines of different ethnic groups in a multi-ethnic federal state like Burma. The people in a multi-party democracy will exercise their democratic rights to elect people's representatives in the elections of lower house. These elections are known as general elections. To elect the representatives of the upper house in a federal state is the concern of the constituent units because the house in a federal state is to represent the various constituent units. In a federal system, representing the constituent units is not the only or the ultimate political responsibility of the upper house. To secure the political equality among different constituent units is the ultimate responsibility of the upper house. The Burmans representatives, representing large population, can occupy more seats in lower house in accordance with the number of population. The upper house is crucial to give equal representation to all different ethnic groups in order to balance the legislation between the two houses. By giving equal representation to all different ethnic groups in the upper house, the upper house can check the power of lower house when

the bills have been passed in the lower house that may be dominated by a Burman majority.

According to SLORC's principles, in spite of the fact that the upper house, the House of Nationalities, is composed of representatives from the Regions and States, that representation is not a representation in order to secure real equality among the constituent units. The Burmans representatives, under the unequal representation principles of the SLORC, can dominate the legislation process in both houses. This kind of unequal representation in the upper house under the 1947 constitution was criticized by all ethnic minorities.

SLORC proposed principles relating to the composition of legislature are lack of equality among different ethnic groups. Is it possible that SLORC tailored constitution can maintain long lasting unity of diversity without equality among the ethnic groups? Unity of diversity is only possible when all the different ethnic groups are convinced that there is equal opportunity to enter national politics.

6. Civil rights

6.1 Army leadership never upholds interests of the people

What ever principles concerning civil rights were laid down by the National Convention, as long as SLORC continues to deny real participation of the people in politics, those rights are merely in principle. The people should be permitted to discuss freely what sorts of rights are theirs because these rights are not the rights of the government in power. For this reason, the SLORC will need to open for public participation the laying down of the basic principles for a constitution in which civil rights of the people are compiled. And further more, the SLORC must first revoke all the unlawful orders and restrictive laws in order to achieve real public participation. Otherwise, the principle "army's leading role in politics" will dominated all other constitutional principles including civil rights. Therefore, the principle of the army's leading role in the politics should also be revoked.

6.2 People are forced for the reason "security"

One of the SLORC's principles concerning the army's leading role in politics states that the army could arrange for the full participation of the people when it is needed to maintain security and defence of the state. This principle enforces the unlimited authority of the government that leads to the different kinds of human rights violations against their own people. Giving the full authority to the government to do whatever they like has allowed the human rights abuses since the first military coup in 1962. The army can force the people to act as porters in the civil war which SLORC repeatedly claims to protect the country from disintegration. Many human rights organizations including Amnesty International, Human Rights Watch/Asia have documented the human rights violations by SLORC against the civilian during the civil war. Many porters are tortured, many women are raped, many villages are burnt down and relocated, and properties of the people are destroyed or looted by the army during the so-called counter-insurgency operations. SLORC, through the constitutional provisions, desires to take the right to commit such human rights abuses.

6.3 No citizen can be arrested without permission of a court

SLORC, is one of its constitutional principles, protects the citizens from being arrested without permission from a court. This principle should be examined whether it is workable or not. It is an obvious example of Daw Aung San Suu Kyi who was detained for six years under house arrest without any trial and court permission or decision. Many prisoners inside the country are held without charge or trial under administrative detention provisions. All civilians are liable to arrest, interrogation and detention in accordance with the law "Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts". In the arrests relating to political activities, the courts or judges do not have any prior knowledge of arrest since it was totally done by the military government. Laws, in this sense, have become inferior to the government officials who exercise coercive power in order to restrict the rights of the people. As long as the government itself interprets the laws in this way, no citizen is secured under the principle "no citizen is arrested without permission of a court". No citizen is secured in a society where the rule of law is not respected.

7. Judicial

7.1 Rule of law in Burma

Democracy can not exist in a society where there is no respect for the "rule of law". In Burma, since the first military coup in 1962 until the present era, the rule of law has never been respected. All judges in all levels of courts have come from the ruling Burmese Socialist Program Party (BSPP) according to the 1974 constitution, which was a totalitarian constitution. Under this system, the executive branch, which was undertaken by the BSPP, could influence the decision of the judicial branch. The judges were elected in the elections held at the same time as the elections of "People assembly", the unicameral legislature under the 1974 constitution. Nobody could be elected for any branch including judicial branch unless he or she was a member of the BSPP. Thus to become a judge one did not need any legal knowledge but he or she needed only to be member of the BSPP. To operate the legal system, there were other legal officers who were experienced persons in the field of legal affairs. But the decisions were in the hands of the judges who upheld the instruction of the executive branch and the BSPP rather than their own opinion. Under the 1974 constitution, the whole judicial system was totally controlled by the government and the BSPP. In this situation, the rule of law was located outside of Burmese society and within the government.

7.2 SLORC and the rule of law

Now in the era of the SLORC, the legal system has deteriorated further. The refusal to honour the results of the 1990 elections is an obvious violation of the rule of law. All new laws are created by the SLORC. There is no legislature at all. Once, Gen. Saw Maung, first chairman of the SLORC said that martial law means no law at all. Some principles relating to judicial affairs laid down by the National convention seem to be simple principles which always appear in other constitutional laws, but those can not be interpreted as perfect. There will need to wait and see whether those are workable or not as the constitution develops in Burma. The SLORC, are not likely to respect the rule of law judging by their behaviour until now. SLORC has not said anything about constitutional disputes or who shall judge them.

8. The political system SLORC desired

8.1 SLORC follows Asian Ideology

SLORC admires the political system of Indonesia. The army involvement in the politics is the main character of the political system of both Indonesia and Burma. Many Asian nations are extending their ideology, or the Asian way to democracy, by advocating economic development before political liberalization. This has been criticized as the ideology has been applied to perpetuate a long hold on power by the ruling regimes. The SLORC, for this reason, aims to follow this ideology. Whether or not this ideology could be successful in the region in long term, a look at the different political background can answer that this ideology will not be successful in Burma. Burma's political background is unique in the region. No other national has the complex ethnic diversity like Burma despite the fact that there are some ethnic differences in the countries which advocate the Asian way to democracy. And no government of those countries is similar to that in Burma where the government not only has no knowledge about running a market economy but also has no arrangement for the participation of intellectuals to develop the economy. Most of the countries which advocate Asian way to democracy have had sufficient plan to develop their economy on the market basis. For those countries, the Asian way to democracy, or economic development before political liberalization, is probably possible because of their success in economic development.

8.2 SLORC desired political system can not be possible; ethnic conflict

The main examination in this analysis is about the incompatibility of the SLORC's proposed political system with the ethnic diversity of Burma. There have been enough experiments by successive governments and the SLORC that show that the ethnic conflict in Burma, the prime problem of civil war, can not be solved by military means. Only the design of a proper political system with the participation of the concerned ethnic groups can end the civil war. The Asian ideology may not work in Burma where the ethnic diversity is deeply involved in the political problems unless these problems are solved properly.

8.3 SLORC desired political system can not be possible; economically

During the SLORC's period, economic development may not be possible as long as this problem has not been solved. The regular increase of inflation which happens because of increase of the overall government expenditure is one of the most important problems to be solved for a successful market economy. As it is usual in totalitarian governments, the Burmese government prints more money without balancing the national production to cover its expenditures, while the supply of money depends on the national production in a market economy. In a market economy, the relative position of inflation and unemployment must be balanced. But in Burma, the position of the inflation and unemployment is simultaneously high. This situation indicates that despite a potential increase in the Gross Domestic Product (GDP), the government expenditure is more than the increase of the GDP. As long as the SLORC can not solve this inflation problem, the development of the economy is just a dream. In addition, as long as SLORC is trying to control the politics through coercive agencies of the government, main tools of the military junta and for which the government is expending a large amount of the national income, there will be regular increase in inflation. The decrease of government expenditure may be possible only when the government trusts its people, and this trust can be obtained when the authority of the government is based on the will of the people. It is why the economic development before political liberalization in Burma may not be possible. The political liberalization must come first before economic reform.

Conclusions and recommendations

The National Convention through which the SLORC needs to create a political system which they desired is crucial political process for SLORC. Even after Aung San Suu Kyi was released, the National Convention is still playing in a crucial role. Despite expectation that there would be some changes concerning the continuation of the National Convention which has widely spread among the Burmese population after Daw Aung San Suu Kyi's release, there is no sign that SLORC accepts that change or compromise with Aung San Suu Kyi.

The SLORC's National Convention manipulated to lay down the basic constitutional principles is nothing more than their ploy to ensure its control in future politics, under the new name of SLORC. The military has given a written order to the convention instructing it turn out a constitution that guarantees the military the leading role in national politics in the future. If the SLORC has an honest desire to resolve political problems by political means, it should completely stop the National Convention and state dialogue to do so. As long as the concept of solving the political problems by peaceful political means is ignored, it is impossible to draw up a long-lasting constitution which maintains unity of diversity in Burma. The desire of a political force to manipulate the national politics can not bring out the happiness of others in a human society. The lack of democracy and equality in the constitution principles laid down by the National Convention is a prime mistake of SLORC.

Although some changes including the release of Daw Aung San Suu Kyi have been occurred, there is no evidence can be pointed to that the SLORC is moving towards democracy. Hand to hand with Burmese people who are fighting for democracy, the international community, with their concrete action, can play in an important and critical role to deter the birth of constitution authoritarianism in Burma. To accomplish these actions, we, the Burma Lawyers' Council, call upon the international community as follows;

- Not to recognize the outcome of the National Convention unless political dialogue between SLORC and opposition groups led by Daw Aung San Suu Kyi has come out to solve the political problems,
- To work alongside with democratic forces in order to solve the political

problems and create a genuine democratic constitution,

- Not to renew the foreign investment or resume the foreign economic assistance to SLORC which directly strengthen the perpetuity of military rule. As well as stop doing any new economic investment in Burma until and unless human rights are prevailed.

Burma Lawyers' Council

Burma Lawyers' Council (BLC) was formed in 1994 in Marnaplaw, Burma. BLC is a non-government organization that is neither aligned nor under the authority of any political organization. BLC was formed by individual lawyers and legal academics joining together of their own free will.

BLC aims to contribute to transforming Burma into a free, just and peaceful society where all citizens enjoy protection under a federal constitution. BLC will achieve this aim by vigorously opposing all unjust and oppressive laws, in helping restore the rule of law. In particular, the BLC will:

- promote and assist in the educating, implementing, restoring and improving basic human rights, democratic rights, and the rule of law in Burma;
- assist in drafting and implementing a constitution for Burma, and in associated matters of legal education; and
- seek the assistance and support of similar organizations.

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