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2010 ELECTIONS: STEALING DEMOCRACY



Towards the Necessary Solutions for Peace and National Reconciliation in Burma



Burma's upcoming 2010 elections will not bring democracy, security, or national reconciliation to the country. The 2008 Constitution was forged in an exclusive, undemocratic and non-reconciliatory manner and is only an institutional tool perpetuating military rule. Democracy and ethnic activists, ethnic communities, a far-reaching civil society, and the majority of the general public do not accept the 2008 Constitution and will not support the 2010 elections unless absolutely crucial benchmarks for democratic progress are met: (1) the unconditional release of all political prisoners, including Daw Aung San Suu Kyi; (2) cessation of attacks against ethnic communities and democracy activists; and (3) genuine and inclusive political dialogue, including a review of the 2008 Constitution.



- ❖ National Council of the Union of Burma (NCUB)
- ❖ Democratic Alliance of Burma (DAB)
- ❖ National Democratic Front (NDF)
- ❖ National League for Democracy – Liberated Area (NLD-LA)
- ❖ Members of Parliamentary Union (MPU)
- ❖ National Coalition Government of the Union of Burma (NCGUB)
- ❖ Forum for Democracy in Burma (FDB)
- ❖ Women's League of Burma (WLB)
- ❖ Students and Youth Congress of Burma (SYCB)
- ❖ Nationalities Youth Forum (NYF)

The Ten Alliances represent the most broad-based and multi-ethnic cooperation of political and civil society organizations from inside and in exile working for national reconciliation, peace and freedom of Burma.



A. SUMMARY

Burma's upcoming 2010 elections will not bring democracy, security, or national reconciliation to the country. The 2008 Constitution was forged in an exclusive, undemocratic and non-reconciliatory manner and is only an institutional tool perpetuating military rule under the domination of the armed forces. A constitution of this nature in a conflict/post-conflict period that is not derived from a process of negotiations, reconciliation and trust building can lead to untenable and often volatile results, especially when it is forcibly implemented from the start.

Genuine political dialogue involving democracy organizations and ethnic nationality groups has never been realized and continues to be prohibited in the lead up to the election. The military is taking firm measures to ensure complete dominance over the election process, including pressuring ethnic ceasefire groups, attacking non-ceasefire ethnic communities, undermining the National League for Democracy (NLD) and other opposition groups, preparing to form proxy parties, harassing and imprisoning activists and lobbying the international community with propaganda. Their latest announcements of election laws, which contain many restrictive elements, are evidence that the military regime's main concern is maintaining power and not opening democratic space.

Democracy and ethnic activists, ethnic communities, a wide-spread civil society, and the majority of the general public do not accept the 2008 Constitution and will not support the 2010 elections unless crucial benchmarks of democratic progress are met: (1) the unconditional release of all political prisoners, including Daw Aung San Suu Kyi; (2) genuine and inclusive political dialogue, including a review of the 2008 Constitution; and (3) cessation of attacks against ethnic communities and democracy and ethnic activists. These benchmarks are the minimum necessary solutions to begin the process of genuine democratization in Burma. However, following the release of the election laws and an increase in hostilities against civilians, there is little likelihood that the military regime will take the necessary steps to bring about the process of national reconciliation.

This paper seeks to provide background and future possible scenarios around Burma's 2010 elections. It also gives an overview of the flaws of the 2008 Constitution, the election laws, and why the 2010 elections are problematic and far from the genuine democracy demanded by the people of Burma. It also presents key solutions and recommendations to the international community that will further sustainable peace and freedom in Burma.

B. BACKGROUND: Regime's Seven-Step Roadmap Towards Control

Since it achieved independence, Burma has grappled with core questions relating to national identity, the role of ethnic communities and the role of the military in governance. The military first took power in Burma in 1962, and held onto that power under a single-party system for decades. In 1988, student protests became more wide spread anti-government protests, demanding democratic change. The army violently attacked the peaceful protestors. The military then formed the State Law and Order Restoration Council (SLORC), promising to conduct multiparty elections to achieve national reconciliation and build the foundation for a multi-ethnic, pluralist state.

Elections were held on 27 May 1990. People were eager to participate in free and fair elections and have their voices heard. The National League for Democracy (NLD), Daw Aung San Suu Kyi's party, emerged victorious in terms of popular vote (60%) and the number of seats in Parliament (392 out of 485). Many other democratic parties of ethnic nationalities also won key seats. The National Unity Party (NUP), which was backed by the military, won only 10 seats. Despite the NLD's landslide victory, the SLORC refused to recognize the results, and those elected were never allowed to take office. Instead, the regime arrested the main leaders of the NLD and other opposition figures, stifling political dialogue. The SLORC also instituted martial law, continuing to exercise legislative, executive, and judicial power.

In 1993, rather than cede power to the elected government, the SLORC commenced its own National Convention to start the constitution drafting process. The junta initially claimed the National Convention delegates would be the elected representatives, but instead ensured over time that military leaders chose the vast majority of the delegates.

In 2003, the military government, now called the State Peace and Development Council (SPDC) announced its so-called seven-step Roadmap to Democracy.¹ Civic and political leaders have made a good faith effort to participate in the Roadmap. However, the democratic transition plan has been flawed in process and substance from its onset, and heavily controlled by the military.

Burma's military regime has confirmed that it will hold elections this year for the first time since the thwarted 1990 elections, though the date has not been announced. Election laws have now been released, and through various articles it is apparent that the military will control the election process and outcome. Democratic parties, such as the NLD, political prisoners, ethnic communities and leaders will be greatly restricted. The election laws paint a picture of an election that will be anything but free, fair, and credible. Moreover, the military regime, the Union Solidarity and Development Association (USDA), and its proxy parties have already begun 'electioneering' as well as harassing and obstructing opposition groups before the election.

C. ELECTION SCENARIOS

The military regime has shown little evidence that it will concede to the demands of the people of Burma and the international community before the elections, but has rather shown quite the opposite intentions. It is impossible to say for certain what will happen this year in the lead up to the elections, but there are a few possible scenarios

- **Scenario 1: Elections go ahead without any changes from the regime**

The SPDC will go ahead and hold elections without any concession to the NLD, democracy groups, ethnic communities or international recommendations. Restrictive election laws will force political

¹ Seven-step roadmap: (1) Reconvening of the National Convention that has been adjourned since 1996. (2) After the successful holding of the National Convention, step by step implementation of the process necessary for the emergence of a genuine and disciplined democratic system. (3) Drafting of a new constitution in accordance with basic principles and detailed basic principles laid down by the National Convention. (4) Adoption of the constitution through national referendum. (5) Holding of free and fair elections for Pyithu Hluttaws (Legislative bodies) according to the new constitution. (6) Convening of Hlut-taws attended by Hluttaw members in accordance with the new constitution. (7) Building a modern, developed and democratic nation by the state leaders elected by the Hluttaw; and the government and other central organs formed by the Hluttaw.

parties to choose between participation or deregistration. Most parties that participate will be proxy parties of the regime. Any independent reporting, political activity, or expression will be suppressed resulting in no real opposition. It is likely international election monitors will not be allowed, and if they are, will be highly restricted by the military regime. After the elections, fundamental problems will remain unchanged while the military's powers will be institutionalized through the constitution.

- Scenario 2: Elections go ahead with the regime making weak concessions

It has been a frequent move of the military regime that before a high profile UN visit that a few political prisoners are released in order to briefly appease international pressure. The SPDC could make surface-level concessions in the lead up to the elections, such as releasing a few political prisoners, making repeated public statements ensuring free and fair elections, or allowing some regional election monitoring groups, etc. However, these acts will still be grossly inadequate to create the necessary open political atmosphere, and the elections will not have democratic integrity.

- Scenario 3: Mass civil unrest happens and elections are postponed.

The military regime is pressuring armed ceasefire groups to join a national Border Guard Force, but most of the larger armed groups are refusing to do so. Moreover, most of the non-ceasefire armed groups have also dismissed the elections, and attacks against them have increased. There is a chance that civil war could break out or at the very least we may see substantively increased military hostilities. In addition, many in the general public are disgruntled with the plunging economy and the difficulty of maintaining daily existence for their families. Mass civil unrest could occur, similar in size and scale to the Saffron Revolution, possibly leading the military regime to postpone elections.

The fundamental problem of the elections is not the state of polling booths on the day of the election, but the fact that the whole democratic transition process thus far has been dominated by the military regime and is devoid of democratic integrity. The 2008 Constitution, which the new government will be founded upon, is the core problem given that it will guarantee military supremacy. Whereas in the 1990 elections, the party that won the most votes could then create a new constitution, in these elections, even if independent leaders can be elected, they will have to work within the frame of an undemocratic constitution that holds little hope of amendment.

Below are the major flaws in the 2008 Constitution, including both procedural flaws related to its creation and substantive flaws in the constitution itself. Also outlined are the key problems of released election laws.

D. PROCEDURAL FLAWS OF THE 2008 CONSTITUTION

1. The constitutional drafting process failed to meet minimum international standards.²

² See Declaration for Human Rights; International Covenant for Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Elimination of All forms of Discrimination Against Women.

The process excluded democratic participation, was conducted in secrecy and was heavily manipulated by the military regime. First, the junta handpicked candidates in the National Conventions, ignoring the results of the 1990 elections and banning the participation of independent civil society, NLD members, and several ethnic leaders. Democratic political groups and ethnic nationalities created and submitted policy papers on constitutional principles, democracy, federal affairs, and rights of ethnic groups – but the efforts of non-military groups, or statements that did not fall in line with military objectives, were never recognized. The SPDC also criminalized open criticism of the process. Moreover, until April 2008, a month before the referendum, it was illegal to even discuss constitutional matters outside of the National Convention.

1. The constitutional referendum failed to meet minimum international standards.

There was widespread domestic and international condemnation of the constitutional referendum that failed to meet any international standards³ for a free and fair referendum process. Violations of international standards include: (a) the SPDC affirmatively violated Burmese citizens' right to vote on a broad and systematic basis; (b) ballots in the constitutional referendum in Burma were not secret; (c) citizens and the media reported that SPDC and its agents used threats, coercion, misinformation, deception, and violence to sway or force voters to approve the draft constitution; (d) within Burma, many voters did not feel that they were provided adequate information to develop an informed opinion on the draft constitution; (e) in the run up to the referendum, the SPDC systematically stifled all independent and opposition media coverage of the proposed referendum and the draft constitution; (f) despite offers and appeals from Burmese pro-democracy leaders and the international community, the SPDC refused to allow independent electoral monitors to observe the referendum voting in Burma; and (g) in contrast to international standards, electoral administration in Burma was neither neutral nor independent at any level.

Despite international pressure to cancel or postpone the referendum following the devastation of Cyclone Nargis that hit the country mere days before, the regime claimed a 92% approval rate for the referendum, which took place on May 10 and 24. This figure is not credible based on both the scale of the humanitarian crisis following Cyclone Nargis,⁴ as well as the reports calling the integrity of the referendum process into question.

E. FATALLY FLAWED CONTENT OF THE 2008 CONSTITUTION

In theory, the creation of a new constitution leading to elections could form the basis for building security, national reconciliation and democracy. It is not unusual to adopt a new constitution in the context of civil conflict to address its root causes. Many civil disputes stem from the structure of the state, the distribution of power, and access to natural resources—the very matters dealt with in a constitution.

³“A free and fair referendum process provides for universal, equal, free, and secret suffrage, with monitoring of the voting process and mechanisms for appeal should any concerns arise over the process or the results. In the specific case of a constitutional referendum, voters must have open access to the constitution, unbiased media coverage related to the constitution, and forums to discuss the constitution freely. Voters in a free and fair referendum are also provided adequate information so they may understand the question on the ballot and the implications of their vote.”

⁴ Cyclone Nargis hit Irrawaddy and Rangoon Divisions on the evening of May 2 and morning of May 3, 2008. The storm devastated a huge swath of the Irrawaddy Delta region, wiping out entire villages and leaving an estimated 138,000 Burmese dead or missing. UN Office for the Coordination of Humanitarian Affairs (OCHA)

In the case of Burma, however, the manner in which the constitution was developed as well as the substantive provisions instead diminishes the likelihood of reconciliation and democracy. The constitution, drafted and approved with military interference, is substantively problematic because it ensures the military maintains implicit and explicit control over all of Burma's institutions. Moreover, rather than reflecting the will of the people while protecting the vulnerable, the constitution exposes ethnic minorities and political opponents to considerable risk.

1. The structure of the legislature ensures the military maintains heavy control of parliament.

Twenty-five percent of all seats are allocated for the military, which will give the military veto power over any legislation process that needs more than a 75% approval vote.

2. The Executive branch will also be subject to military influence and shares its power with the National Defense and Security Council.

Because of the way the Presidential office is selected, an army official will hold one of the three executive positions, either president or one of two vice-president positions. Once in office, the president wields enormous powers, including the power to appoint most positions of power. The relationship between the Commander in Chief and the President is also problematic and structured to ensure the military maintains control over Burma's institutions. The Commander in Chief can remove the President and some Presidential actions require approval of the Commander in Chief. During periods of "state emergency" the Commander in Chief can supersede both President and Parliament. In addition, he is the only counteracting weight to the President, for the constitution states that he is "not answerable to any parliaments." The Commander in Chief is not appointed by parliament and has no period of tenure. There is no procedure for his removal. Moreover, the constitution calls for the formation of a National Defense and Security Council in the Executive Branch, which will exercise executive power in conjunction with the President. Selection of the eleven seats will guarantee the military always has a majority.

3. The judicial system is deeply flawed and under the influence of the armed forces.

The Burmese judiciary consists of ordinary courts, the courts martial and the Constitutional Tribunal. Overall, the procedure for the appointment of judges is highly politicized. The constitution does not stipulate rules about the independence of the judiciary, and the Supreme Court does not have the power to interpret the constitution. There is also no independent commission with powers to organize and manage the courts. In addition, the Supreme Court lacks jurisdiction over the military forces.

4. Ethnic nationalities are marginalized.

Decades-long ethnic conflicts stem from a constitutional crisis that is unable to deal with Burma's ethnic plurality. Ethnic minorities have long agitated for a truly federal system ever since they were persuaded to join Burma at the time of independence. The 2008 Constitution stipulates that all regional and self-administered areas are subject to the national executive and legislature, and the union system is supreme, effectively ending the vision of a federal government structure in Burma.

The complex structure of territorial division of the country and a plethora of institutions at every level of government is merely a subterfuge to hide the highly centralized nature of the state and administration. There are no measures in the Parliament to ensure ethnic representation. In other words, the 2008 Constitution will centralize control over ethnic minority areas further. In a country in

which most ethnic nationalities have been fighting for greater self-determination for decades, a constitution that ignores Burma's multi-cultural and multi-ethnic character and does not provide any adequate and proper recognition of its diversities is unsound and should be rejected.

On the issues of language, culture and religion, crucial to minorities, little authority is given to regional or self-administered communities. They will be prevented from using local languages in administration or education in their states. Moreover, ethnic communities will have little control over their traditional land, which is central to the culture of many communities. Furthermore, the regime's push for armed ceasefire groups to relinquish their power and become "border guards" is already creating substantial tension between the military regime and ethnic armed forces.

5. There are no mechanisms to promote and protect fundamental human rights.

The constitution infringes on the fundamental human rights of the people in the name of state security and public tranquility. Many provisions outlined in the 2008 Constitution relating to human rights and freedoms are deeply flawed, and several important rights are missing. Nothing is said, for example, about rights of minorities, children, and the disabled. Most rights are also confined to citizens of Burma—the definition of citizen in the constitution is questionable and appears to be politically motivated to exclude opponents of the regime. This is again in stark contrast to international law, which usually allows such restriction only for rights regarding elections and participation in public affairs. A number of key rights (including rights and freedoms of expression, assembly, association and unions, language, and culture) may also be limited for reasons of 'state security, prevalence of law and order, community peace and tranquility or public order and morality'. For example, the ILO has stated concern that the constitution will allow forced labor to continue.

Neither the process of constitution making nor its contents pay any heed to globally accepted standards for human rights principles. The judiciary—central to the maintenance of rights—will not be independent and will not be able to protect human rights. No other institutions, like a human rights commission or ombudsperson, is provided for or envisaged. The actual terms in which rights are framed leave many possibilities of their derogation, and indeed suspension. Nor are the structures of state, which are dominated by the military, conducive to respect for rights.

Fundamentally, the military regime has been one of the worst perpetrators of systematic human rights violations, and even crimes against humanity. The 2008 Constitution grants impunity to all crimes committed by the military regime.

6. Falls drastically below international standards of gender equality.

Women are disqualified from holding many positions of power because multiple posts require prior military service. This includes the Presidency, Vice-Presidency, and key ministries. In addition, the most powerful position, the Commander in Chief, is solely reserved for those in active military service. Though the constitution says that there will not be discrimination based on sex in regards to appointments, the constitution also adds, "However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only." This is contrary to guaranteeing equality regardless of sex and will fail to fulfill the obligations under the Convention on the Elimination of all forms of Discrimination Against Women.

F. ELECTION LAWS: NEITHER FREE NOR FAIR

"We can rightfully say that the Electoral Law does not aim at a democratic election. We have long predicted that this law will not guarantee a democratic election because the 2008 Constitution itself is not of a democratic path. It is like the junta is trying in every way to continue their rule by giving up their military uniforms and putting on civilian dress." – Aung Thein NLD Legal Advisor⁵

On 8 March 2010, Burma's military regime announced it had enacted the election laws for this year's polls, but did not set a date for the general election. Here are some notable points of concern:

1. **The Election Commission was handpicked by the regime.** The Commission has the authority to convene the elections, final decision-making power throughout, and the ability to administer and direct political parties. This means that the elections will unfold according to the junta's wishes.
2. **Most key political figures are barred from forming or participating in the elections.** Articles 4 and 10 of the Political Parties Registration Law also bans democracy organizations or armed groups who oppose the junta, those receiving support from outside Burma, as well as those in prison or who are appealing a sentence. Daw Aung San Suu Kyi and many democracy and ethnic leaders will be unable to participate.
3. **All political parties must pledge to abide by and protect the 2008 Constitution,** which has been criticized as being undemocratic and fundamentally flawed. This shows the regime does not envision the elections and the ensuing government to be a transformative step towards constitutional dialogue or true democracy, but rather a means to maintain power.
4. **Deadline of 60 days.** Article 25 gives all political parties, including existing parties such as the National League for Democracy (NLD), 60 days to register with the Commission. If the NLD decides to re-register, it will be required to exclude Daw Aung San Suu Kyi and any other leaders and members who are in prisons. The Commission will have the authority to approve or reject any registration.
5. **The elections may not be held in many ethnic areas.** The Election Commission has the power to determine if the election should be held in those places that are affected by "natural catastrophe or security reasons." This may mean there will be no polling in areas controlled by armed ethnic organizations that have signed cease-fire agreements but failed to transform into the Border Guard Force under the control of the regime's Army, or in other ethnic areas.
6. **Nullified 1990 Election results.** The National League for Democracy won a landslide victory in 1990, and this order stands in direct contrast to the NLD's demand for recognition.

Furthermore, the military regime is also restricting freedom of expression; the SPDC Censorship Board has barred weekly publications in Burma from publishing any comment or analysis of the election laws. Even if international monitors observed the elections to ensure fairness, because of the problems of the election laws and the 2008 Constitution, there is little hope that elections can bring democracy and stability.

⁵ "Burmese opposition displeased with Electoral Law". Mizzima. 11 March 2010

G. POSSIBLE IMPLICATIONS OF THE REGIME'S SHAM DEMOCRATIZATION

The 2008 Constitution and the upcoming elections **are not a step towards democratization of Burma's political process.** While the military junta portrays the SPDC as a transitional body whose powers will cease to exist once the 2010 elections are over, the special privileges, representations, and immunities for state institutions and the military as listed in the 2008 Constitution, will prevent any true transitional efforts. Various regulations adopted by the military show the junta's true intentions. The fact that it is very difficult to amend the 2008 Constitution is only one sign of the determination of the military to prevent genuine democracy, participation and the protection of rights.

The severe flaws in the 2008 Constitution outlined above will have serious implications for the 2010 elections and beyond, if not addressed immediately. As the recent history of ethnically diverse countries such as Burundi, Nigeria, Papua New Guinea, Sri Lanka or the former Yugoslavia amply shows, a constitution that systematically entrenches injustice will eventually trigger chaos and unrest. **There is a strong possibility that the unresolved conflicts within Burma will continue or even be aggravated** because of the blatant exclusion of ethnic nationalities in the constitution. The military has been increasing pressure against ceasefire and non-ceasefire armed groups, demanding that they become a 'Border Guard Force', essentially relinquishing their arms and subverting to SPDC control. Many large armed groups are still expressing a strong unwillingness to join the Border Guard Force unless there is more federalism and ethnic participation in the new government. The likelihood of resumed conflict in these areas, particularly along the China-Burma border, is the greatest it has been in two decades. The August 2009 outbreak of conflict between the SPDC and the small Kokang forces was enough to send 30,000 refugees into China. The military regime's refusal to address the demands of Burma's ethnic nationalities could further deteriorate the stability of the region, bringing an eruption of renewed fighting.

In areas under the control of non-ceasefire armed groups, the military regime has stepped up their attacks against ethnic communities, seeking to finally eradicate any opposition before the elections. Forced labor, scorched earth campaigns, sexual violence, extrajudicial killings, and other human rights violations are happening on a widespread and systematic level. Recently, UN Special Rapporteur Quintana said, "According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the statute of the International Criminal Court."⁶ While the SPDC is not allowing political prisoners to participate in the elections, military officials who have been potentially complicit in crimes against humanity are leading the 'democratization' process.

Peace and stability cannot prosper in a climate of fear created by the political hegemony of a small military elite. With no strong measures to promote or protect human rights, widespread atrocities will continue – particularly against ethnic groups and women, perpetuating instability and insecurity. Gross disregard of the fundamental rule of law, freedom of speech and association, and the continuing

⁶ Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Mr. Tomas Ojea Quintana, A/HRC/13/48, 5 March 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-48.pdf>,

imprisonment of political activists, will contribute to the further eradication of the legitimacy of Burma's political system.

Furthermore, women must be able to have a strong voice in their communities, and their exclusion from full participation in a new government will be highly detrimental. **Women's participation in peace building and national reconciliation is indispensable for a future democratic Burma. This is not only a matter of women's rights, but also of building a more stable society.**

Burma's socio-economic situation has plummeted drastically under the control of the military regime, and there is no guarantee that Burma's collapsed healthcare, education, and other social services will improve under the false democratic system emerging from these elections. **A government still dominated by the same military will continue its disregard and violation of crucial development and stability issues of environmental sustainability, gender equality, refugees, migrants, and more.**

H. SOLUTIONS: TOWARD THE CHANGE WE NEED

A solution to overcome the hardships besetting the nation can be found in a short time if all political stakeholders work together by showing goodwill and keeping national reconciliation in mind. A review and/or amendment of the 2008 Constitution will help overcome the present political and socioeconomic hardships as well as guide the nation onto the correct path of development. Furthermore, the *Tatmadaw* (armed forces) has an important political role to play during the transition period when together with the pro-democracy and ethnic nationality forces of Burma, it will be jointly responsible for guiding the nation towards democracy and development. With this conviction, all organizations in the Movement held a series of consultations and prepared a Proposal for National Reconciliation so that it can be presented to the SPDC, the people, the *Tatmadaw* and the international community.

- *From The Proposal for National Reconciliation (2009)*

We, the Ten Alliances, democratic forces and ethnic nationalities inside and outside the country have stated on numerous occasions that we do not accept the military regime's roadmap to democracy. We eagerly welcome genuine political dialogue and hold out hope that the military regime may yet demonstrate a sincere desire for national reconciliation. While we have stated our willingness to engage in dialogue, the military regime must meet crucial benchmarks to demonstrate its sincerity.

1. Release of all political prisoners: Junta leaders have continually ignored calls from the opposition groups as well as the international community to release all political prisoners, including Daw Aung San Suu Kyi, Khun Htun Oo, and '88 generation students. Those imprisoned are crucial leaders whose role is vital for genuine national reconciliation.

2. Cessation of attacks and human rights violations: Democracy and ethnic communities have also firmly demanded a cessation of systematic human rights violations committed by the regime against civilians, specifically ethnic and religious groups and as well as democracy activists. These attacks amount to crimes against humanity and must end. National reconciliation cannot truly be achieved as long as these atrocities continue.

3. Genuine inclusive political dialogue and a review of the 2008 Constitution: Tripartite dialogue is critical for lasting genuine national reconciliation in Burma. Without meaningful dialogue between the military regime, democratic parties, and ethnic nationalities, the people of Burma will continue to live in a fractured and oppressive system. Elections are meaningless as long as opposition groups are denied genuine involvement in the drafting of a democratic constitution. Moreover, after decades of armed conflict and struggle for ethnic minority rights, the only durable solution for the future of Burma must include concrete constitutionally guaranteed rights for Burma's ethnic nationalities.

For the democratic process to be sustainable and effective, the grievances of ethnic minorities must be addressed, fundamental human rights must be protected, and governmental accountability must be safeguarded. The inclusion of democratic opposition parties in the constitutional process would not only assure political pluralism, it would offer a more effective representation of the people through an already drafted federal constitution.

Burma's opposition, which includes ethnic nationalities' leadership and pro-democratic forces based inside Burma, in Burma's border areas and throughout the diaspora, has developed an alternative draft constitution based on a federal system of states that guarantees the protection of rights of all people in Burma, particularly of the ethnic nationalities. Through the process of drafting this federal democratic constitution, we have collectively developed strategies to address key factors that currently underlie the nation's security crisis. We are already addressing key constitutional concerns, as well as other fundamental factors of genuine democratic transition.

I. RECOMMENDATIONS

The regime's newly released election laws, which bar the opposition's most viable leaders from the elections, are a clear signal that the regime does not plan to meet these benchmarks and that these elections will in no way be free, fair, or credible.

We therefore ask the international community and individual governments to:

- Denounce the 2010 Elections as undemocratic and reject the results.

We also ask the UN Security Council to:

- Impose an Arms Embargo to prevent the regime's access to new weapons and new weapons technology that can be used in scorched earth campaigns to devastate ethnic civilians.

- Establish a Commission of Inquiry into international crimes in Burma, including war crimes and crimes against humanity. This call has been advocated by many human rights groups, governments, and experts, including the UN Special Rapporteur for Human Rights in Myanmar. Considering the 2008 Constitution's blanket immunity for crimes committed by the SPDC, a Commission of Inquiry could be an initial step towards ending the reign of impunity in Burma and deterring the regime's future perpetration of widespread and systematic human rights abuses against ethnic civilians. The time to do so is now as more crimes are being perpetrated – indeed, increasing – in the lead up to the election.

To ASEAN:

In light of Burma's serious breaches of the principles of the ASEAN Charter, ASEAN leaders must take serious measures to address Burma's non-compliance.

- The AICHR should conduct on-site investigation into crimes against humanity in Burma. ASEAN should support a UN Commission of Inquiry.
- ASEAN should appoint an envoy for Burma that will work directly with other international envoys.

To United States and European Union:

- The US should hasten efforts to appoint its Burma envoy. Both US and EU envoys should be dispatched immediately to work in coordination with each other and in cooperation with the UN Secretary General Ban Ki-moon.
 - The US, UK and EU must impose stronger targeted financial sanctions.
-