

# BURMA'S 2010 ELECTIONS & 2008 CONSTITUTION



democratization or  
militarization?

## **Burma's 2010 Elections & 2008 Constitution: Democratization or Militarization?**

Twenty years after its nullification of the 1990 elections results in which the people of Burma voted overwhelmingly to end military rule, Burma's military regime is preparing to hold another election. In doing so, the regime has escalated attacks against ethnic groups, continued the imprisonment of Daw Aung San Suu Kyi and other opposition leaders, and demanded that ceasefire groups be placed under control of the regime's army.

While the international community is focusing on making the elections process "free and fair" they are overlooking the most critical obstacle to Burma's democratization—the 2008 constitution. **This constitution, which will be enacted as a result of the 2010 elections, is the key mechanism by which Burma's military generals are guaranteeing their hold onto power under a new "civilian" façade.**

The military-written constitution guarantees the further entrenchment of its dominant rule by placing army officials in top positions of power and above the law, providing blanket immunity for past atrocities, and cementing military control over every aspect of the life of people. Any hope for the elections leading to "gradual change" has been dashed by the military's power to veto constitutional amendments.

### **Constitution Drafting & Referendum: Exclusive, undemocratic and non-reconciliatory**

The origin of the undemocratic constitutional drafting process lies in the regime's refusal to honor the results of the 1990 May elections, when Daw Aung San Suu Kyi's National League for Democracy and ethnic opposition parties won more than 80% of seats in parliament.

#### *The Drafting Process*

- The regime's constitution drafting body—the National Convention initiated in 1993—sidelined the participation of democratically elected opposition and independent voices from ethnic communities.
- The drafting process was undemocratic, conducted in secrecy, and heavily manipulated by the military.

#### *2008 Constitutional Referendum*

- Most people hadn't seen or read the constitution before the referendum. Anyone who criticized the process and principles faced imprisonment of up to 20 years.
- Immediately following the massive devastation of Cyclone Nargis, which killed more than 140,000 people, the regime went ahead with the referendum despite domestic and international appeals to postpone it.
- The regime used threats, coercion, misinformation, deception, and violence to sway or force voters to approve the draft constitution by a highly dubious 92.4 %.
- The regime refused to allow any foreign monitoring of the referendum, rejecting the UN's offer for monitoring and technical assistance.

## **The Devil is in the Details : Fundamental Flaws in the Constitution**

### *Violates international norms of human rights and the rule of law*

- Instead of promotion and protection, this 2008 constitution leaves the military the ability to infringe on the fundamental rights of the people in the name of state security and public tranquility.
- It provides blanket immunity to the regime for past human rights violations, as well as for future violations committed during a “state of emergency.”
- It places the military above the law, giving the Supreme Court no jurisdiction over the military forces.
- It provides the Commander-in-Chief power to influence the declaration of a “state of emergency” and the imposition of martial law. It also allows the army to exercise sole power during a period of martial law.

### *Falls drastically below international standards of gender equality*

- It disqualifies women from holding positions of power, reserving certain posts for those with military experience, and describing unspecified posts as “suitable for men only.”

### *Bars opposition leaders from office*

- The constitution bars candidates with ‘foreign ties’ and political prisoners from office, preventing the participation of Daw Aung San Suu Kyi and key ethnic leaders.
- Currently there are more than 2,100 political prisoners in Burma with lengthy sentences of up to 106 years, many of whom are leaders of the pro-democracy and ethnic opposition.

### *Denies federalism & centralizes military control over ethnic states*

— The 2008 constitution is not a solution for reconciliation between the military and ethnic armed groups and communities.

- There is no recognition of ethnic groups’ longstanding demand for equality, self-determination, and a federal system. The constitution does not even recognize ethnic and linguistic plurality. The central government and military will still have complete control over ethnic areas.
- There is no chance for non-Burman ethnic nationalities to become the president.

### *Entrenches military rule*

- The army will maintain its role as an integral and permanent part of the political process and governance at every level. There are no checks and balances in the system against the powers of the military power and the Commander-in-Chief, particularly their complete control over defense policy and spending.
- The military will occupy 25% of seats in National Parliament, one third of seats in State and Regional parliaments and control three key ministries – defense, home (internal) and border affairs.
- The constitution guarantees the military’s continued rule through the formation of and majority position in a powerful National Defense and Security Council.
- Constitutional amendments are virtually impossible without the consent of the military.

## **2008 Constitution & 2010 Elections: Not a solution to conflicts in Burma**

It is internationally recognized that constitutions conceived and adopted in conflict/post conflict situations should be the result of negotiations, reconciliation and trust building if they are to succeed. **A constitution that systematically entrenches injustice will prolong conflict and instability in ethnically diverse Burma.**

A government dominated by the same military will continue its disregard for democratic principles, socio-economic development, environmental sustainability, gender equality, and other vital social issues.

The 2010 elections, under the rules of the military's 2008 constitution, will not only fail to address the root causes of Burma's crises, but will in fact further entrench military rule, sewing the seeds for further instability and armed conflict.

Burma's movement for democracy and rights of ethnic nationalities has articulated **three key benchmarks that the regime must meet if the elections are to be a step towards democratization.**

- 1. The release all political prisoners**
- 2. Cessation of hostilities against ethnic groups and pro-democracy forces**
- 3. Inclusive dialogue with key stakeholders from democracy groups and ethnic nationalities, including a review of the 2008 Constitution**

Unless the regime meets these benchmarks, the international community must denounce the elections as undemocratic, and withhold recognition of its results. These benchmarks are the minimum conditions that must be met in order to begin a process of national reconciliation and genuine democratization.

### **WHO WE ARE:**

We, *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 in Burma.

- 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