



March 30, 2020

Burma's Military Blocks Constitutional Amendments

In mid-March, Burma's military, the Tatmadaw, blocked several constitutional amendments introduced in Burma's Union Parliament. The amendments, proposed by State Councilor Aung San Suu Kyi and her political party, the National League for Democracy (NLD), would have reduced the military's role in government. The Tatmadaw's opposition to governance reform may complicate U.S. efforts to foster Burma's transition to a democratic civilian government and encourage an end to the nation's civil war.

In addition, Aung San Suu Kyi has refused to consider several constitutional amendments proposed by ethnic-minority political parties (EPPs)—to provide Burma's regions and states more autonomy—which has fueled questions about her support for the creation of the decentralized federal state sought by many of Burma's ethnic minorities.

The blockage of the constitutional amendments, and other recent actions by the Tatmadaw, may elicit congressional interest in action that would revise U.S. policy in Burma, such as the Burma Unified Through Rigorous Military Accountability Act of 2019 (H.R. 3190) and the Burma Human Rights and Freedom Act of 2019 (S. 1186).

The 2008 Constitution

In 2003, Burma's ruling military junta—the State Peace and Development Council (SPDC)—began drafting the country's third constitution since independence in 1947, as part of the SPDC's "Seven-Step Roadmap for a Flourishing and Disciplined Democracy." In 2008, the document was purportedly ratified by 94% of voters in a national referendum. The referendum's results were condemned by many—including President Obama—as fraudulent.

Critics of the 2008 constitution state that it allowed the SPDC to consolidate and preserve military power. Several key provisions give the military sweeping authority in the government (see shaded box). Aung San Suu Kyi and the NLD see the constitution as granting the military too much control over the governance of the country. Not only does it give the military a large presence in the legislature, Article 59(f) effectively prevents Aung San Suu Kyi from becoming President, a measure ostensibly designed to keep the office of the presidency "clear of foreign influence."

In addition, the constitution does not provide for a decentralized federal state in which the seven ethnic states—Chin, Kachin, Kayah, Kayin, Mon, Rakhine, and Shan—have the high degree of administrative autonomy they seek. The lack of a decentralized federal state is one of the major causes of Burma's ongoing civil war, which dates back to the Union's formation in 1947.

Article 436(a) requires that more than 75% of the members of the Union Parliament approve a constitutional amendment. With military officers constituting 25% of the parliament, they have the power to block any changes.

Key Constitutional Provisions Granting Military Special Powers

Article 20(b): Grants the military administrative and judicial independence.

Article 20(c): Designates the Tatmadaw's Commander-in-Chief as "the Supreme Commander of all armed forces."

Article 40(c): Grants the Commander-in-Chief the ability to "exercise State sovereign power" during an emergency that could cause the disintegration of the Union of Burma.

Article 60(b): Grants the military members of the Union Parliament the authority to nominate one of the three candidates for President and the two Vice Presidents.

Article 109(b): Empowers the Commander-in-Chief to appoint military officers to serve as 110 of the 440 members of the Pyithu Hluttaw (the Union Parliament's lower chamber).

Article 141(b): Empowers the Commander-in-Chief to appoint military officers to serve as 56 of the 224 members of the Amyotha Hluttaw (the Union Parliament's upper chamber).

Article 201: Provides the Tatmadaw 6 members in the 11-member National Defence and Security Council.

Article 232(b): Grants the Commander-in-Chief the right to nominate active military officers to serve as Ministers of Border Affairs, Defence Services, and Home Affairs.

Article 413(b): Permits the President to transfer "executive powers and duties and the judicial powers and duties" to the Commander-in-Chief after a declaration of a state of emergency.

Article 419: If the President declares an emergency that could cause the disintegration of the Union of Burma, the Commander-in-Chief has "the right to exercise the powers of legislature, executive, and judiciary."

Article 445: Provides immunity to members of Burma's previous military juntas, the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council.

The NLD's Key Proposed Changes

In 2015, the NLD won a supermajority in the Union Parliament. After her 2016 appointment as State Counselor, a newly created position similar to a Prime Minister, Aung San Suu Kyi indicated that one of the new government's top priorities was to amend the 2008 constitution. The NLD launched its first attempt at constitutional reform in early

2019. Among the NLD's 114 proposed amendments, its top objectives were to (1) lower the number of military members in the Union Parliament; (2) reduce the military's autonomy; (3) diminish the military's role in the government; and (4) remove the military's ability to effectively veto constitutional amendments.

Votes in Parliament

In a series of parliamentary votes in mid-March, virtually all of the NLD's proposed amendments received majority support, but failed to gain the necessary approval of more than 75% of members, as the military block voted against them. **Table 1** lists some of the key amendments.

Table 1. Key Defeated Constitutional Amendments
Amendments must be approved more than 75% of members

Proposed Amendment: Article and Summary	Vote to Approve
Revoke Article 59(f): removes the prohibition on someone with a foreign citizen spouse or children becoming President.	62%
Revoke Articles 338: removes the military's sole authority over all of Burma's security forces.	63%
Revise Articles 109(b) and 141(b): reduces the share of allocated seats for military officers over 10 years.	62%
Revise Article 436(b): eliminates the military members' ability to block constitutional amendments.	64%
Revoke Article 445: eliminates immunity to past members of Burma's military governments.	62%

Source: CRS Research

The Ethnic Parties' Proposed Changes

Various ethnic political parties also proposed draft constitutional amendments, but none were brought to a vote. The Shan National Liberation Party, for example, proposed an amendment to Article 261(b) that would allow the region or state legislatures to elect their own Chief Ministers, rather than having them appointed by the President. Many of the ethnic minority political parties in parliament have condemned Aung San Suu Kyi's coalition for refusing to consider their proposed amendments.

Implications for Burma

The failure of the NLD and ethnic minorities to obtain parliamentary approval for their proposed constitutional changes has implications for Burma's potential transition to democracy, the peaceful resolution of its long-standing civil war, and for the upcoming 2020 parliamentary elections.

Democracy

The Tatmadaw's rejection of the NLD's amendments indicates that it is unwilling to relinquish any power within the government at this time, and raises concerns that it has no intention of ever doing so. The NLD's rejection of the amendments proposed by the ethnic minority parties also may indicate that Aung San Suu Kyi and her party do not support the political decentralization that many observers view as necessary to ending the country's civil war.

War and Peace

Burma's seven-decade-old civil war has been fought primarily over the rights of its ethnic minorities for equal treatment and relative autonomy. The 2008 constitution provides neither, and the NLD's refusal to put the ethnic parties' amendments to a vote enhances the view that the NLD prefers a more centralized government.

This lack of support by Aung San Suu Kyi and the Tatmadaw for ethnic minorities' priorities may undermine efforts to encourage more of Burma's ethnic armed organizations (EAOs) to sign a ceasefire agreement. A 2015 agreement between the military and 10 of the more than 20 EAOs calls for the establishment of a nationwide ceasefire before negotiations over constitutional reform can begin. To date, most of the larger and more influential EAOs have not signed the agreement. In addition, 2 of the 10 signatories—the Karen National Union and the Reconstruction Council of Shan State—have suspended their formal participation in the ceasefire talks.

2020 Parliamentary Elections

Aung San Suu Kyi's 2015 electoral victory was achieved largely as a result of widespread support from Burma's ethnic minorities, who voted for the NLD as a protest against the Tatmadaw and its political party, the Union Solidarity and Development Party (USDP). The NLD's failure to amend the constitution and its rejection of ethnic minority input may hurt the party's prospects in the parliamentary elections expected in November 2020.

Many of Burma's ethnic minority parties are trying to create a united slate of candidates for the elections in hopes of winning a majority of their state's seats in the Union Parliament. This approach is modeled after the success of the Arakan National Party (ANP) in the 2015 elections, in which the ANP won a majority of the Rakhine State seats. If successful, the ethnic minority members of the 2020 Union Parliament could control enough seats to force either the NLD or the USDP into forming a coalition government.

Implications for U.S. Policy

Since Aung San Suu Kyi and the NLD took power in 2016, U.S. policy has been based on an assumption that Burma is transitioning to a democratic, civilian government. The actions of the Tatmadaw since—from rejection of proposed constitutional amendments, to escalated fights against several of the EAOs—suggest this premise is false, and the Tatmadaw is not interested in political changes. The escalated fight against the Arakan Army in Rakhine State is further complicating prospects for the safe return of more than 700,000 Rohingya who fled to Bangladesh in 2017 to escape Tatmadaw attacks.

The failure of Aung San Suu Kyi and the Tatmadaw to consider constitutional changes proposed by ethnic parties may heighten tensions with the EAOs, undermining U.S. efforts to help end the civil war.

Michael F. Martin, Specialist in Asian Affairs
Kirt Smith, Research Assistant

IF11481

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