

Submission No:101.....

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June 6, 2004

Wednesday, 9 June 2004

Greg Hunt M. P.
PO Box 274
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Australia

Dear Greg,

Further to our previous discussions I would like to present the following submission for consideration to the new bankruptcy inquiry being conducted by the House of Representatives Legal and Constitutional Affairs Committee.

As a registered domestic builder I believe I have some experience about insolvency and personal accountability. Our industry has addressed the issue by requiring builders to insure their clients against the builders death, disappearance or insolvency. The practical effect for our day to day business is that we are actually providing an insolvency insurance policy. This policy will then insure our clients against losses incurred in case our business becomes insolvent.

In much the same way, I believe that a similar insurance bond could be provided by all companies thereby providing some protection to their creditors. With such a scheme it would not necessarily need to be limited to "high income professionals" but could be applied across the board.

The criteria that qualifies domestic builders for Warranty Insurance eligibility is based solely on business performance and asset backing. If we merely siphon all company profits into our personal accounts, hide assets in trusts etc then the insurer will simply refuse to insure us as we are too high a risk. Without insurance, we are simply unable to ~~continue our normal course of business. This system is wholly administered by the~~ private sector which means it is not then the Government that is restricting rogue companies from trading, but rather the private sector.

If a business is trading properly and poses no risk to creditors and customers (who may have significant deposits lodged) then the premiums for any proposed insurance bond would be reduced accordingly. For suspect businesses, the premiums would be increased to cover the risk. As in our industry, this approach forces most of the cowboys out of business while retaining the genuine and professional operators. This, at the end of the day would appear to be one of the overall goals of any changes to legislation.

With an 'across the board' approach we would find that the relative risk for the insurers in providing insolvency insurance would be substantially reduced. At the present time in our industry, the premiums are quite high because domestic builders are the only segment of the economy that actually provide insolvency insurance. As our insolvency can be caused by the failure of other companies it follows that the risk to the insurer is quite high. If all companies were protected across the whole economy, then the risk level must be lower as the ripple or follow on effect of a particular insolvency would be substantially reduced.

Although most people in the community want rogue directors to be accountable, no-one is really interested in forcing families into the street as a result. Just the same, it is even more abhorrent when innocent families are forced out of their homes as a result of rogue company directors who openly flout the current laws.

It is important to note that there is already a major precedent for community wide mandatory insurance with the 3rd party insurance we all need to take out in order to register our motor vehicles. Logistically therefore, it is not possible to argue that it is "all too difficult".

Security of investment would be another significant advantage if an insurance bond scheme was established. If investors can have confidence that companies are accountable for their debts then Australia could be seen as a boon for investment opportunities. The effect of an insurance bond is that the underwriter is continually auditing every companies performance and without underwriting approval it would be impossible for rogue directors to "pull the wool over the eyes" of investors.

Overall, there are specific and tangible benefits for Australia if such a scheme were to be introduced. As much as anything, credibility and integrity can be forced upon Australian business, in areas where these qualities have never before existed.

I thank you for taking the time to consider this submission and would be more than happy to provide additional or supporting information if requested.

Kind regards,

Russell Joseph.

Executive Summary

- NLD decided not to attend the National Convention because SPDC refuses to guarantee basic democratic procedures and enabling conditions conducive for meaningful participation of the elected representatives.
- In addition to the NLD, the majority of political parties that won seats in the 1990 elections including two largest ethnic political parties – Shan National League for Democracy and Arakan League for Democracy – decided not to attend the Convention.
- The on-going national convention process shows every sign of political manipulation by SPDC in terms of: new additions of tighter procedural controls, overwhelming majority of hand-picked delegates, complete monopoly of agenda by the regime-appointed commission and presidium, strict prohibition of public access to the convention and delegates' access to the public, absence of international observers and media, and the worst of all, speedy adoption of constitutional provisions without adequate consultations and discussion—all making the convention a rubber stamp approval for the dictates of the ruling junta.
- SPDC thoroughly disregards every international opinion and demand including those made even by friendly neighbors. The ASEAN should not allow SPDC go scotch-free—it must stand up and take all necessary actions against this unacceptable failure of SPDC to fulfill minimal benchmarks set by the ASEAN and its dialogue partners. The upcoming ASEAN Foreign Ministerial meeting must consider a priority agenda for the resolution of the current crisis in Burma.

Recent History

- 1. The Origin of National Convention and its demise in 1996**
- 2. May 30 attack and detention of NLD leaders**
- 3. Revival of national convention process**
- 4. NLD demands and SPDC response**

Background 1

Origin of NC and its demise in 1996

- ❖ On May 27, 1990 SLORC held general elections; NLD won 392 seats out of 485 total seats (80% of seats);
- ❖ SLORC (a former title of SPDC) failed to honor the election results, and issued Declaration No. 1/90 which stated that elected representatives draw up a "new" constitution before transfer of power to the parliament.
- ❖ In 1991, SLORC cracked down the NLD party and its elected representatives; some 200 MPs signed a resolution to form a "parallel government," which was later set up at the Thai-Burma border as the National Coalition Government of the Union of Burma.
- ❖ SLORC announced the National Convention plan in 1992; it laid down six guiding principles—one of them stipulates "the participation of the Defense Services in the leading role in the national politics of the state in the future."
- ❖ SLORC opened the National Convention 9th January of 1993, inviting 702 representatives out of which only 106 represented elected MPs, the rest being chosen by the SLORC.
- ❖ SLORC laid down Order 5/96 that penalizes political parties against any discussions and criticisms against convention procedures and principles set by the junta.
- ❖ SLORC unilaterally laid down 104 detailed principles for a new constitution, which enshrines permanent constitutional rule of the military government in Burma. When NLD disputed the validity of SLORC's unilateral imposition of the constitutional prerogatives, SLORC dispel the NLD from the NC in November 1995.
- ❖ SLORC suspended the convention in March 1996 without citing any reasons.

Background 2

May 30 attack and detention of NLD leaders

- ❖ Secret talks between SPDC and NLD, came to a deadlock after two years of facilitation by the UN Special Envoy since early 2000.
- ❖ NLD party led by Daw Aung San Suu Kyi mobilized public support for the beginning of national reconciliation process through out the country; the entourage traveled many parts of the country including remote border areas populated by the ethnic nationalities and ceasefire groups.
- ❖ Threatened by a growing number of people openly rallying in support of the NLD, SPDC began a systematic campaign of harassing the NLD entourage during their trips.
- ❖ On May 30, a few thousands of regime-affiliated local militia attacked the entourage of Daw Aung San Suu Kyi at Depayin in central Burma, leaving dozens of casualty and subsequent detention of top leaders of NLD while closing down NLD offices.
- ❖ The international community took a demarche of condemnations and demands for the immediate release of NLD leaders, which was completely ignored by the SPDC till now.

Revival of NC process and SPDC roadmap

- ❖ In order to deflect growing international criticism, SPDC announced its 7-point roadmap in September 2003 with the appointment of Gen. Khin Nyunt as new prime minister.
- ❖ SPDC announced the reconvening of the National Convention (suspended in 1996) as the first step of its seven-point roadmap plan.
- ❖ Burma's neighbors were misled by SPDC roadmap plan and persuaded to rally support for the implementation of SPDC plan, which was thought to be flexible enough in incorporating a reconciliation process with NLD.
- ❖ In January, SPDC declared that it would continue applying the same restrictive procedures and 104 principles that led to the demise of previous convention.
- ❖ SPDC refused to release NLD leaders, and failed to attend the second meeting of the Bangkok Process.

NLD demands and SPDC response

- ❖ Despite of persistent disregard of SPDC toward repeated NLD requests for the resumption of talks and being aware of all the flaws and dangers of participating in the National Convention, the NLD CEC nevertheless decided to attend the Convention if SPDC agrees to:
 - ❖ Release Daw Aung San Suu Kyi and U Tin Oo so that NLD can decide its participation in the convention;
 - ❖ Allow the NLD to determine its own representation (SPDC sent invitation to individual NLD MPs and members)
 - ❖ Review the existing guidelines, principles and procedural codes used in the previous convention; and amend them to enable meaningful participation of the NLD.
 - ❖ Revoke Order No. 5/96 that restricts broad-based discussions and debates about the NC procedures and constitutional principles.
- ❖ NLD waited until May 14, 2004 when SPDC officials told that it would not concede any of these benchmarks and demands by claiming that these positions are unreasonable.
- ❖ NLD announced its non-participation, and the majority of political parties including SNLD and ALD followed suit.

National Convention without NLD

- 1. The Participants**
- 2. The Organizers**
- 3. New Procedures**
- 4. On-going discussion of detailed principles**

The Participants

1. SPDC planned to invite only 54 delegates from the NLD to the convention where SPDC has selected the majority of a total delegates of over 1,100 invited to attend the convention.

Both absolute number and ratio of NLD delegates to the whole convention were dramatically reduced. Among 54 NLD members, at least six were those expelled from the party for their overt collaboration with SPDC against the interests of their constituencies.

2. Without the NLD, SNLD and ALD, political parties represent a meager 3% of the total delegates.

44 delegates represent political parties that won at least one seat in the 1990 elections out of 1088, a total number of delegates who are attending the current convention.

3. There are 633 delegates from ethnic nationality category representing 60% of the total delegates and a sizable increase from the previous convention.

Only a quarter of them are genuine representatives of ethnic nationality groups, as many of them are handpicked by the junta.

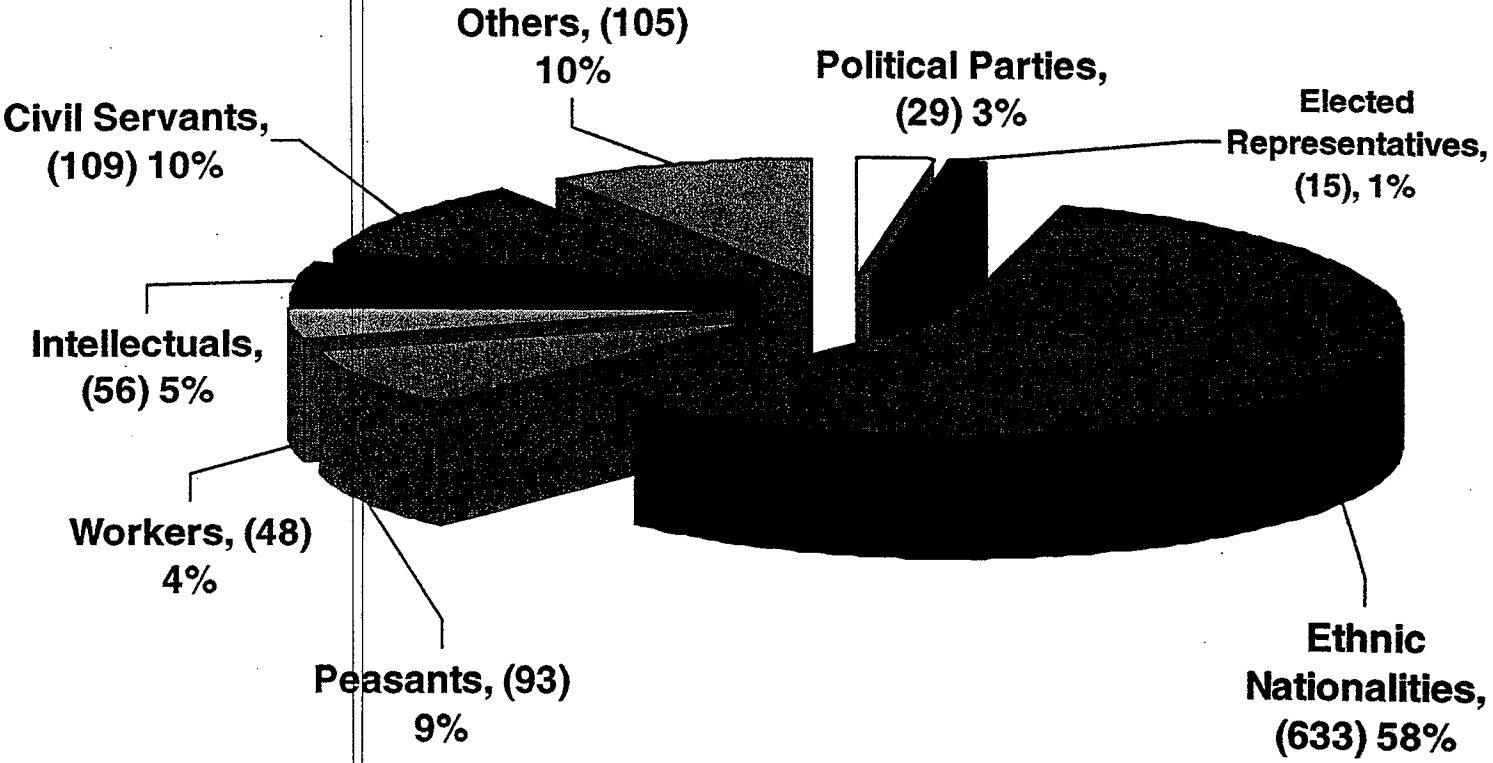
4. All the regime-appointed original members of the Presidium or Panel of Chairmen (who control the agenda) were reappointed.

for three vacant positions formerly held by NLD, SNLD and Lahu National Development Party were assigned to two Wa parties and one Kokang party—the staunchest allies of the junta.

National Convention without NLD - 2

The Participants

... continued



Note: Even if NLD decided to attend it would have constituted only 3% of the total delegates

The Organizers

1. National Convention Convening Commission – Chaired by SPDC Secretary 2 Lt. Gen. Thein Sein, it has a final power to control the convention mechanisms. All 18 members are higher officials of SPDC.
2. National Convention Working Committee – Chaired by SPDC Chief Judge U Aung Toe, it proposed and approved detailed constitutional principles. All 35 members are higher officials of SPDC.
3. National Convention Management Committee – Chaired by SPDC Auditor General Brig. Gen. Lun Maung, it facilitates all logistics and administrative matters.
4. Panel of Chairmen – SPDC selected all 45-members of powerful Panel of Chairmen that controls agenda and impose procedural codes among delegates.

New procedural codes

The followings are some samples of new procedural code that is even tougher for the hand-picked delegates to follow.

- To strictly follow the instructions of group leaders, member of panel of chairmen. (45-member appointed by SPDC).
- To keep all the information of NC secret.
- To have group discussions within a group (meaning NLD members were supposed to discuss their proposals only within their own group had they attended) and only those permitted by the panel of chairmen could be further discussed at the whole convention.
- To submit all the proposed discussions in written format in advance to get the approval of the panel of chairmen before a delegate can present it to the floor in the exact statement.

Note: SPDC never revokes its notorious Order 5/96 that can punish anyone who criticizes (inside or outside) the convention, its procedures and decisions up to 20-year imprisonment.

On-going discussions on detailed principles

- The Convention has expedited many important discussions and unilaterally laid down detailed principles on the issues such as
 - Detailed structures of state administrative territories and fiscal responsibilities of sub-national administrative units
 - Detailed sectoral proposals such as judiciary, defense, security, etc.

Conclusion .. serious implications

- **SPDC continues to undertake sham national convention at full speed without considering any reasonable advice from the international community or leaving any recourse for a genuine reconciliation process within the country.**
- **Meanwhile, Daw Aung San Suu Kyi and many opposition leaders have been detained for more than a year, drawing widespread international condemnations and actions against the regime.**
- **SPDC's strong-arm tactics have created an unbearable damage to the integrity of ASEAN and severed its delicate relationship with dialogue partners, creating uncertainty over the questions of ASEM process and ASEAN chairmanship in 2006.**

Conclusion . . . some action plans for ASEAN

SPDC actions are hurting the ASEAN, and therefore, the following actions should be considered:

- **Send a clear message to the SPDC that ASEAN cannot recognize the current national convention as a legitimate forum leading to democratization and national reconciliation in Burma.**
- **Urge the SPDC to immediately revive the political dialogue with Daw Aung San Suu Kyi and other leaders of the NLD under the facilitation of UN Special Envoy.**
- **Call on the SPDC to immediately release Daw Aung San Suu Kyi and U Tin Oo, and ensure to begin a credible and inclusive course of national reconciliation leading to democracy.**
- **Send a Special Envoy of ASEAN to Burma to have dialogue with SPDC, leaders of NLD and ethnic nationalities and explore how ASEAN can assist for the success of national reconciliation in Burma.**

■If SPDC refuses to oblige by the end of June, the ASEAN ministerial meeting should consider all possible penalties against the SPDC including the postponement of Burma's ASEAN chairmanship in 2006 and endorsement of ASEM-1.

■Revival of Informal Consultative Group Meeting for Myanmar at the United Nations level with a member of the ASEAN as a possible host to coordinate international positions and policies toward Burma.