

The actions by the Burmese regime are simply a repeat and repackaging of old tactics and without a new approach, the country could easily fall back into its historic conflict patterns and civil war.

The 2008 Constitution and the upcoming election guarantee a continuation of Burma's longest civil war, and the only hope for a peaceful Burma is to constitutionally accommodate ethnic diversity.

Beginning with independence, Burma has a history of ignoring critical issues and interests. In 1947, Aung San and his Anti Fascist People's Freedom League (AFPFL) tried to aggressively secure Burma's national independence from the British by securing the ethnic minorities' agreement to join a proposed Union of Burma.

As a result, the Panglong Agreement was signed designed to reward Burma with independence. The 1947 Constitution was drafted for an independent Burma and ratified in 1948. In theory, a federal union (*Pyidaungsu*) and a democratic government was established.

The newly independent Burma, however, was understandably fragile. First, the young country was not prepared to implement democratic principles. Second, the promised democratic union never came to be, and the ethnic groups who agreed to join the non-existent union rebelled.

A decade of constitutionalism and electoralism gave way to the first military coup d'état in 1958 and then to the more permanent military takeover in 1962.

A careful look into the handling of the ethnic discontent would indicate that the government deliberately avoided constitutional discussion which might have helped to reach a peaceful resolution. Instead, the fledgling parliamentary democracy regime turned to the army (*Tatmadaw*) for help in quelling perceived threats from ethnic groups.

A second Constitution (1974) was ratified to affirm the first military coup of 1962, through which the military government transformed itself to civilian rule by adopting the "Burmese Way of Socialism." The Burma Socialist Program Party (BSPP) ruled until the demise of the party in 1988. Now, the third Constitution (2008) paves the way to affirm the second military rule, planning to transform itself to a civilian government through upcoming elections.

What will be the outcome of the 2008 Constitution and attempts to transform the ruling military leadership into a civilian government? While we cannot say for certain, we can point to distinctions between this constitution and prior constitutional efforts. We also can identify key issues, which may present challenges and obstacles for the future based on Burma's past.

There are substantive differences between the 1947 Constitution and the 2008 Constitution. But, there are also striking similarities between the two documents.

### **The 1947 and 1974 Constitutions**

An inadequate basis for federalism in a multi-ethnic society is one of the factors contributing to

the failure of democracy. The government's consistent refusal to address the question of ethnic diversity constitutionally is the fundamental root-cause of the ongoing civil war in the country.

Generally speaking, ethnic discontent began with the broken promises following the drafting of new constitution in 1947. Minorities joined or agreed to join *Pyidaungsu* (the Union) based upon the premise that all members of the Union would adhere to the federal principles and thus enjoy full-membership in the Union. Although the word "federal" never appeared in either of the Constitutions, both documents mentioned repeatedly the equivalent Burmese word "*Pyidaungsu*"

Some said that the 1947 Constitution established a federal framework by establishing a bicameral national legislature and provisions that spelled out minority rights. The territories of four ethnic groups, the Karen, Karenni, Shan and Kachin, were recognized and each was designated a separate state in the Constitution but with unequal status. For example, while Shan State and Karenni State were constitutionally granted the right to secession, while the other states were not. Moreover, spelling out the right to secession in the Constitution is operationally meaningless.

The 1974 Constitution continued to term Burma as *Pyidaungsu* or the Union. Some analysts say it also provided a federal theory. For example, ministerial Burma was divided into seven states and seven divisions with little real power and autonomy. But, the same Constitution provided for a unicameral legislature and centralized all powers even further and entrenched the Burma Socialist Programme Party (BSPP) as the only legal political party in the country.

The same constitution continued to recognize the Burmese language the only official language, and prohibited the teaching, publishing and printing of any other ethnic languages by law.

### **The 2008 Constitution**

It is normal to expect that the constitution would address the problems of democratization and the recognition of Burma's ethnic and linguistic plurality, principally by engaging these stakeholders in a dialogue regarding reconciliation. The general understanding is that most civil, armed or unarmed, disputes are about 1) the structure of the state, 2) control over natural resources, and 3) the question of groups' right to self-determination, or some combination thereof.

These issues are most commonly matters necessarily dealt with in a constitution and constitutional laws governing a country. It is then natural to expect that the coming into effect of a new constitution can mean the end of civil (often armed) conflict. And, a constitution producing this sort of result ought to be comprised of the negotiations and debates between the stakeholders.

However, such a dialogue and collaborative process were largely forsaken by the current regime. The constitutional drafters failed to actively involve the participation of the people governed, throughout the process of deciding and drafting the Constitution. On the contrary,

the upcoming 2010 election appears only to affirm two things: first, the hegemony of Burma's Armed Forces and second, the guaranteed continuation of the current civil war.

The 2008 Constitution acknowledges the multi-ethnic character of Burma. The constitution gives token significance to the separation of power between the branches of government, spheres of government and the military but practically provides little to no mechanism in which this division can occur.

Constitutional law experts observe that the sub-national governments at states and local levels have very little effective powers and almost no self-government as they are subordinated to the *Pyidaungsu* legislature and especially to the executive. In effect, regardless of the repetitious use of the term

*Pyidaungsu*

or the Union, Burma is by no means a federal state under 2008 Constitution.

What should bother all citizens most, regardless of their ethnicity, is the way in which the 2008 Constitution addresses civil rights. The way rights are formulated and the limitations placed upon them are even more problematic. The people of Burma will, if at all, enjoy their most fundamental human rights at the pity of the regime.

### **The Upcoming Election**

Will this attempt at legalizing elections and forsaking the question of minorities succeed? Or will Burma continue to repeat the well-established patterns of its past? The Burmese military regime is moving forward with a plan to legitimize and solidify military rule.

The recent election law released by the Burmese regime is shocking to many, given the regime's persistent rejection of concerns of the people of Burma and the global community.

As for Burmese expatriates, experience tells us that the military has repeatedly used elections and the constitution as a platform to shepherd in new military leadership under the guise of reform.

As for ethnic minorities, we sense the impact of an unfolding political fiasco. We are haunted by the ghost of our country's history. Twenty years after staging the coup, the Burmese military once again launched another reform effort through the 2008 Constitution. Bold public proclamations declare the government will now transform itself to a civilian government via an election in 2010. Once again will this be a shuffling of rank, responsibility and fiefdoms?

Burma is at a crossroads, the country could advance, or fall back into the well established pattern of military rule and human rights abuses. How the United States and the United Nations respond to the upcoming election and the Burmese regime could probably impact the course of the election, the Burmese Constitution, and set a precedent for the rest of the world.

The actions taken by the Burmese regime are simply a repeat and repackaging of old tactics

and without a new approach, the country could easily fall back into its historic conflict patterns and civil war.

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