

BURMA: STATE CONSTITUTIONS AND THE CHALLENGES FACTING THE ETHNIC NATIONALITIES

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Introduction: The Politics of Ethnicity

The general impression that persists regarding politics in Burma is that it is torn by ethnic conflict and ethnic violence, and that there is therefore a great danger of the country breaking up into fragments like former Yugoslavia, or that inter-ethnic strife and bloodshed as in Bosnia is a likely scenario in future for the country.

The above is precisely the justification put forward by the military and successive military rulers – who seized power in 1962 and has ruled (or misruled) the country since then. They claim that they had to take over power because there was a secession plot by the leaders of the ethnic nationalities (or the “national races”, the term used by the present regime)¹. They further claim that without a strong military presence within the state, there will be secession and/or ethnic groups going for each other’s throats. This claim is but a justification for continued military rule. If taken at face value, the military must necessarily remain at the helm of the state forever in order to preserve the territorial integrity of the state (or the nation) and prevent bloody inter-ethnic conflict in Burma.

The situation is not helped when ethnic nationalities leaders and resistance movements have adopted the language of ethnicity in articulating the aspirations of their respective ethnic groups for rights and equality. For example, they speak of a “genuine federal union of equal ethnic nations (or nationalities).

What is the aspiration for ethnic equality, one may ask? The answer is that this aspiration is, in reality — it might be said — their desire not to be dominated and imposed upon by another or other ethnic segments, and to have the right to promote and protect their culture and environment, including land².

The aspiration of Burma's ethnic nationalities are in one sense the same as that of ethnic groups and minorities (and indigenous peoples) everywhere, in a situation where they are endangered or are marginalized and discriminated against by the state. In this general sense, it may be said that the non-Burman ethnic segments³ face the same problem, and have articulated the same kind of demands or aspirations of minorities, ethnic or otherwise, and indigenous peoples elsewhere, or everywhere.

However, in another sense, within the Burma context, the case is different from other countries. The Union of Burma was formed by an accord signed at Panglong in 1947, one year prior to the emergence of Burma as a post-colonial independent nation-state (in 1948). The accord was between leaders of what became the Union of Burma, who happened to "belong" to different ethnic groups. Actually, they represented the different territorial entities which became the Union of Burma. In this sense, or analytically, the ethnic nationalities are the founding nations of the Union of Burma, but the accord – the 1947 Panglong Accord – was not one between ethnic segments.

Also, Burma's ethnic conflict, so-called, is a political conflict, rather than a conflict between warring ethnic groups. The conflict is primarily a conflict between the ruling military in monopolistic control of the state in Burma and the ethnic nationalities. It is a vertical conflict between the state and various ethnically defined societies.

The so-called ethnic conflict is an integral part of the broader conflict between the military and its state and broader society. It is a conflict about how the state is to be constituted and how the relation between the constituent components of society and the state be ordered. It is not the case of ethnic segments feuding with and killing each other, nor is it driven by the secession impulse.

In other words, what is perceived as ethnic conflict in Burma is part of the wider conflict between the state on the one hand, and society on the other. Looking at Burma's history since 1948, there is to be observed a long-standing and serious dysfunctional relation between the state and broader society, which has been exacerbated by long years of monopolistic military

rule (i.e., since 1962).

The Panglong Accord of 1947 and the Constitutional Problem

As mentioned above, “modern” or present-day Burma is founded on an agreement, the 1947 Panglong Accord. However, as already mentioned, Panglong is not an accord between ethnic segments – between the Burman and the non-Burman⁴. Rather, it is an accord between Ministerial Burma (or Burma Proper) and other territories which were not part of Ministerial Burma – i.e., the Frontier Areas, including the Federated Shan States. It was signed by U Aung San, the head of the interim executive council of Ministerial Burma, and Shan princes, Kachin and Chin chiefs, and the representatives of the people of those areas. The Karen, Mon, Rakhine and Karenni leaders were present at Panglong as observers.

The Panglong Accord is then, in essence, an agreement among the leaders of former British possessions of “further India” (so to speak), to join together in order to jointly obtain independence from Britain. As well, there was an understanding that no constituent territory would be more equal than others or occupy a super-ordinate or “superior” position, vis-a-vis the rest. By the same token, no constituent state was to be subordinated to any other territorial entities or units.

The above is the core, the essence, of the 1947 Panglong Accord and the Panglong spirit.

However, what transpired was that the 1947 Union Constitution was drawn up in haste – in about four months – in a very unstable and traumatic period for U Aung San and most members of the interim Executive Council, were assassinated in July 1947. The communists were in that time period denouncing the negotiated independence as a sell out, as pseudo-independence, and were threatening to wage an armed revolution to obtain genuine independence⁵. Internationally, the world was being divided into two camps, the “free world” and the communist-socialist world.

The 1947 Union Constitution, which was proclaimed on September 1947, was one that provided for a semi-unitary arrangement: Ministerial Burma occupied the position of a Mother unit – the Pyi-Ma, in Burmese. There were in addition four subordinated units or states⁶: the Chin Special Division, the Kachin State, the Shan State, and the Karenni State, which had their

own executive and legislative bodies, but no constitution of their own. Their power or responsibilities and autonomy were defined or provided for in sections of the Union constitution – which was practically the constitution of the Pyi-Ma (or the Mother state). In effect, the constituent states of the union were, in effect, subordinates of the Mother state (or Burma Proper)⁷.

Most strangely, although the Union was in effect semi-unitary, there were included a constitutional clause that permitted secession⁸ – i.e., the right of secession provision was constitutionally granted to the constituent states (which the Kachin State government renounced in the mid-1950s). As so happened, the right of secession provision became a thorn in the side of the military, and provided the military top brass and General Ne Win with a cause: a duty to prevent secession or the break up of the Union at all cost.

The 1947 Union Constitution was therefore not in line with the Panglong Accord or the spirit in which the agreement was signed (in February 1947). However, it was understood that it could be amended at any time in the future. Thus, in the early 1960s, the constituent states led by Sao Shwe Thaik — a senior Shan prince, the First Union President (1948-1952), twice Speaker of the Upper House (Chamber of Nationalities) — initiated a move to amend the 1947 Union constitution, to make it more federal, or “genuinely federal”.

In response, General Ne Win staged a coup, claiming that the military had to step in to foil a secessionist plot, and to “clean up the mess” made by incompetent, spineless, and corrupt politicians.

Under Ne Win and successor ruling generals, the meaning of federalism has been grossly distorted — federalism has been equated with secession and the fragmentation of the country. This is so despite the continued celebration of February 12th – the day the Panglong Accord was signed – as Union Day, and despite the rhetoric and slogans about the equality of “national races”. As well, it is strange that federalism should be equated with secession when the term Union in Burmese (the language of the Burman) – Pyidaung-zu – is unambiguous. “Pyidaung-zu” means the coming together of different national states.

Federalism and Ethnic Equality and Rights

There has been an agreement among ethnic-based resistance organizations since the early 1970s to adhere to the idea of federalism, or in other words, an agreement for all the people and ethnic segments of the Union to live together under one flag, within a genuinely federal framework. In the early 1990s, after the 1988 people's power uprising, there was an agreement among all forces within the democracy movement that federalism was the common goal⁹.

It can be said that apart from the military, there is currently a broad consensus among political actors in Burma with regard to the Panglong Accord and its spirit, and a consensus to rebuild the country as a democratic, federal Union.

Although there is a broad consensus regarding the future Union of Burma, the ethnic nationalities faces the challenge, firstly, of understanding federalism – specifically, whether a federation is a union of territories or a union of ethnic segments. It can be observed that there is currently a widespread confusion in this regard.

The answer, based on Panglong, would be that federation in Burma is about the union of territories, not of ethnic societies or segments. Furthermore, a federation or federalism is a system of sharing power and dividing jurisdiction between and among territorial components making up the union or federation. In other words, a federation is about how different territorial entities will relate to one another within a larger nation-state configuration.

The essence of federation or federalism is the equality of constituent members, one where there is no Mother State dominating and controlling other member states. And also, it is one where the national or federal government and legislature is not biased or weighted in favor of one member state, but is formed to promote the welfare and security of the union or the federation as a whole (and by extension, the people as a whole). The national or federal government does not “possess” a specific piece of territory – to which and for which it is mainly responsible.

The above leads to the second challenge or question: what about ethnic equality and rights? Do they have a place in federalism?

The second question is an important one for the ethnic nationalities because no constituent state in Burma is ethnically homogenous. They are all multi-ethnic in the broad or general sense

of the word. Even in the most ethnically homogeneous state – the Chin and the Karenni State – there are to be found dialectical groups that are quite different from one another, in varying degrees.

Furthermore, the aspiration for ethnic equality has been unleashed in the course of events that transpired – where resistance to the military-monopolized state is ethnic-based (in the constituent states), and the language of ethnicity has been widely employed by ethnic-based resistance movements to rally followers and legitimize the cause. The demand for ethnic equality will therefore have to be dealt with by the ethnic nationalities leaders and other political actors in Burma.

It may not be enough therefore to agree on federalism, i.e., on how power is to be shared among and between territorial components composing the federation or the union, and between the federal center and the constituent states. The ethnic nationalities and political actors in Burma will have to look at ways to accommodate the aspirations for ethnic equality – i.e., the desire of ethnic groups not to be dominated by another ethnic group.

The challenge therefore is how to ensure ethnic equality and rights both within a federation and within the multi-ethnic member states of the Union.

Regarding the above problem, it is clear that state constitutions hold the key. That is, how different ethnic (or dialect) groups living within the territorial boundary of a constituent or member state should relate to each other as equals, is a question that state constitutions should deal with and provide solutions for. The state constitutions are the sites where a framework or arrangement to provide for, or ensure ethnic equality and rights, have to be worked out, or should be seriously explored.

State Constitutions and Ethnic Equality

From the above passages, it becomes clear that the ethnic nationalities are faced with two very important challenges.

One, it is none other than to establish a genuinely federal union where all the member states are equal, and where there is no Mother State (or a Pyi-Ma) — as envisioned by the founding leaders at Panglong in 1947. It may rightly be said that an arrangement where one member state is more equal than others cannot be defined as a federation or a Union.

Two, is the challenge revolving around the question of ensuring ethnic equality and rights, specifically within a multi-ethnic member state, so that smaller groups are not dominated and marginalized by a major ethnic group within a given state.

It is here suggested that democratic de-centralization should be seriously looked into by ethnic nationalities leaders and political actors in drafting the state constitutions.

That is, the idea of empowering local communities, ethnically defined or otherwise, through the system of local governments and councils elected and run by local people, should be seriously explored and discussed. This is all the more so necessary because there has been no experience in Burma of democratic decentralization as local governments in the past have been established from the top — an arrangement where administrative officers are appointed from the top and sent down to administer locally.

The system of de-centralized administration, if adopted, would provide ethnic communities with the opportunity and/or the power to manage their own affairs through the democratic control of highly autonomous local governments. In other words, people in the local communities — an ethnic community, for example — would, as electorates, have control over local governments and local councils. They would therefore be in position to exercise their rights not only as individuals within a democratic system, but collectively as an ethnic group as well, through local governments responsive to the collective aspirations of the local public. Thus, the aspiration of an ethnic group for equality and the right to determine its own fate would, to a very large extent, be fulfilled.

To give an example, in a locality, say, in the Shan State, where the majority of inhabitants (or the electorates) are ethnically Pa-O (or Lahu), the local government would be one run and managed by the Pa-O (or Lahu). Thus, in the Shan State, there would be at least one, if not several local governments that are ethnically defined (as Pa-O, or Lahu, Palaung, Akha, etc, townships or areas). This would be the pattern in every constituent state if a system of democratic de-centralization or autonomous local government is put in place or adopted in the state constitutions.

Another advantage of establishing a system of local governments where power is democratically de-centralized, is that local governments would have to accommodate the aspirations of minority ethnic groups within its jurisdiction. That is, because democratic local governments do not possess the power and capacity to coerce or exclude (and therefore marginalize) minority groups, ethnically defined or otherwise. Rather, they would have to be, as elected local governments, responsive to the minorities as well.

The State government and the State legislature would (as would the federal government and the federal parliament) operate at another level, and they would not be responsible to, or for, any specific local government or a particular community, however defined. State-level officials and law-makers will be responsible only for, and to, the whole state and all its citizens, not to particular ethnic communities or any local governments.

The relationship between the state government and local governments — if the system of democratic de-centralization is adopted — will not be top-down, but it will be based on accommodation, consultation, cooperation, and the division and sharing of power and responsibility as well.

In theory or idealistically therefore, the so-called ethnic conflict in Burma can be resolved through constitutional means. That is, through the adoption of a federal framework at national level and putting in place at state level, a system of democratic, de-centralized local governments that empower and are responsible to local communities, ethnically defined or otherwise¹⁰.

Concluding Thoughts on the Challenges ahead

Given, however, Burma's turbulent political history, and the lack of experience of the people and leaders alike with the system of democratic de-centralization or autonomous local governments, and as well unfamiliarity with federalism, the challenges facing ethnic nationalities leaders and political actors will be very formidable and most daunting. But these challenges cannot be avoided and must be faced squarely and the difficulties be overcome.

The above indicates that federalism and the system of democratic local government must be well and deeply understood and studied by ethnic nationalities leaders and political actors whose job it is to bring about positive and constructive political change and build a better future for the people in Burma.

The task will not be easy because these challenges and problems (and the resultant conflict) are rooted in the protracted and serious dysfunction in state-society relation that characterizes Burma and its politics these five decades.

The restoration of democracy or democratic politics would be helpful in this regard. But it alone will not be sufficient because the aspiration for ethnic equality and rights, and for a genuinely federal union have been an integral and fundamental part of politics of Burma since 1948.

ANNEX I:

Other Alternatives to Democratic Decentralization.

One alternative to a system of democratic de-centralization based on highly autonomous local governments as suggested in this paper, is an arrangement where a higher authority or a national convention or a constitutional assembly, creates autonomous regions or special areas for ethnic minorities. Such an arrangement is currently in place in China, and was included in the constitution of the now defunct Soviet Union. Theoretically, such an arrangement will provide ethnic minorities with self-government and autonomy, and ethnic equality as well. Another alternative is for there to be provisions in the constitution for a certain number of seats in the national parliament to be reserved for ethnic minorities – i.e., a system of ethnic quota. The British in Burma did put in place such an arrangement where the Karen and other minorities were provided with a number of seats in the legislative assembly of Burma Proper. Such an arrangement would, at the very least, ensure the representation for minorities at the national level, and as well provide them with a vehicle to preserve their identity and values.

(backnotes)

1 The term used here is “ethnic nationalities” rather than “national minorities” to denote the ethnic groups of the country. Burma is a multi-ethnic country. The major groups are the Burman, Shan, Karen, Kachin, Chin, Rakhine, Mon, and Karenni. There is indeed much confusion as regard the majority-minority equation. There exists a perception that the Burmans are the majority, in the absolute sense, and that the rest are ethnic minorities. The Burmans do indeed constitute an overall majority (perhaps about 50 percent plus), but they are a minority in, say, the Shan State, the Chin (etc.) states. The equation becomes more complicated when the constituent states are themselves more or less multi-ethnic, despite the names: the Shan State, the Karen State, etc. However, in the Burmese language, a distinction is made between minorities and ethnic national groups (nationalities) – Lu-Ne-Zu, denoting minorities, and Lu-Myo-Zu for ethnic nationalities.

2 In the passages that follows, “ethnic equality” will be in reference to this definition.

3 The non-Burmans are ethnic segments that do not speak Burmese as their mother tongue like, for example, the Shan, Mon, Karen, etc. The Burmans are ethnic Burmese, speaking the Burmese language, i.e., the Burmese-speaking ethnic group. Apart from the eight major segments, there are numerous other ethnic groups like the Ta-Ang or Palaung, PaO, Lahu, Wa, Akha, Kayan. As well, there are Chin, Burman, Kachin (etc.) dialect groups.

4 The term scholars usually use is “Burman and Burmese”, the latter denoting all ethnic groups of Burma, like the term “British”. However, the term Burman and non-Burman is here used rather than “Burman and “Burmese”, because the “Burmese” denotes the language of the Burman, and things Burman, like the music, food, garments (etc.) of the Burman ethnic group. Culturally, however, there is not much of a difference between the Mon, Rakhine, Burman, and Shan, all being Buddhist.

5 The communist did indeed unleash an armed revolution right after independence, plunging the country into a civil war. To complicate matter, the Karen also took up arms against what they viewed as an attempt by Burman leaders to eliminate them. This mistrust and hostility has

its root in the period when the Japanese drove the British out during the Second World War. The Karen were loyal to the British and resisted the Japanese. Burman nationalists and leaders allied themselves with the victorious Japanese. There were several massacres of the Karen during the war, perpetrated by Burman militias. Attempts were made after the war by both Karen and Burman leaders to heal old wounds, but they were not successful. Thus began the Karen armed resistance against what they regarded as the Burman-dominated state informed by an agenda to destroy them as a people.

6 There were originally only four constituent states (including the Chin Special Division). In the 1950s, the Karen State was created and added, and paradoxically, the Mon and Rakhine State was created by Ne Win, or during his rule.

7 This arrangement was similar to that obtaining between England, Scotland, Wales, and Ireland until recently, with England occupying the dominant position as a mother state.

8 The reason why the secession clause was inserted in the constitution was that because the late U Aung San, Burma's independence hero, stated that the Union was voluntary and that member states could opt out after ten years of living together under one flag.

9 This refers to the 1990 Bo Aung Gyaw Street Declaration between the NLD (National League for Democracy) and the UNLD (United Nationalities League for Democracy) to establish a democratic federal Union, and the 1991 Manerplaw Agreement between the NCGUB (National Coalition Government of the Union of Burma) and ethnic nationalities armed resistance organizations.

10 See ANNEX I.