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Burma and Federal Constitution

When we look into the task of drafting constitution, serious thinking will be needed in analyzing the problems of past and present. It is relatively straightforward to understand human rights violations in Burma - the government repression of minorities and of political opposition, problems of refugees and internally/externally displaced people - when one has enough information. However, the drafting of a constitution, in my view, will certainly require considerations far beyond the effort to redress these immediate problems. For example, the ceasefire and peace settlement for minorities are the immediate answer for current problems. But one need to examine, as we look beyond this period of problems at hand and seek a longer-term solution to that problem, the question of why the minorities of Burma were in revolt and are still in revolt in the first place. In this context, the fact military government (Burman?) have done various political, economic and social injustice upon the minority people is evident; then again, one must separate between the real and perceived injustice.

When one consider a future federal constitution for Burma, various factors must be taken into account. The faulty draftmanship can cause a new circle of conflicts and violence. It is important that, in the process of searching for political solutions, considerations are made of free from prejudice at the individual level and must be made of free from self-pervations at the organizational level. Of course, we need to recognize that, in politics, no one can be free from bias and everyone has its own limited view of the situation.

After the problems are being identified, the political solution could be followed. There will be questions as to (1) how should the minority people be represented in the national/state governments (self-determination?); (2) how can the new political order guarantee to protect human rights of the ethnic minorities and, most importantly, (3) how should the people of Burma protect their country sliding back into having an authoritarian government. Question (3) is equally deserving of our attention to that of (1 & 2), since maintaining freedom and democracy can be as difficult as the task of striving to achieve it.

DISCUSSIONS ARE NEEDED

Looking around materials in regards to constitution in Burma, apart from the analyses of SLORC's National Convention by pro-democracy groups, there are few documents describing about constitution of 1947. One notable book by the Burmese historians is (The 1947 Constitution and Ethnic nationalities affairs) written in Burmese published in April 1990 (Special thanks to a pro-democracy friend who bring in this book.) Despite published in Burma under the SLORC censorship, the book does give some valuable account of the period of 1944-47 as it was compiled by historians.

The paper by Professor Silverstein also give a good review of the two draft constitutions prepared by SLORC and DAB. While the draft constitution by SLORC, in Prof Silverstein's word, is described as "the blueprint for a garrison state that is planning to erect", the DAB proposed constitution is so far apart from that of SLORC and with a diametrically opposed views and principles. The third option is certainly needed in this regards. (I still have not seen any of DAB's draft constitutions.) The ethnic representation in federal government that proposed by the DAB draft constitution(the July 1993 version), in my view, is quite complicate and may not be workable in practice.

My opinion for the possible third option is to look at Australian or American Federal Constitutions as a model. In this case, all states, in principle, are to be treated as multi-ethnic states since all states in Burma accommodate more than one ethnic group. Of course, the economic, social

and cultural rights of all ethnic minorities can still be promoted as required.

In views of the academics, the constitution and structure of governments of Australia and United States are more federal than any other system. According to K.C. Wheare (*see Federal Government, 4th ed (1963) by K.C. Wheare, Oxford University Press*), one system can be more federal than the others, but he refers the Constitution(& government) of Australia as more federal:

"If, then, the federal principle may be defined along the lines set out in the preceding chapter, what are we to mean by a federal constitution and a federal government? Are we to confine the terms to cases where the federal principle has been applied completely and without exception? It would not be sensible to do this. After all the (1787) Constitution of the United States itself, as originally drawn up, contained at least one exception to the federal principle in that the Senate was composed of representatives selected by the legislatures of the states...." (Wheare, Chapter2)

K.C. Wheare comment on Australian Federal system as follow:

"Adopting this method, then, which are the federal constitutions? The Constitution of the Commonwealth of Australia enacted in 1900 is perhaps the most obvious example, at any rate in the form in which it was originally enacted, before later amendments modified it. The Australian Constitution established a government for the whole of Australia which, within a sphere, was enabled to exercise powers independently of the governments of the states; while the latter, within a sphere, were authorized to act independently of the government of the whole Commonwealth. Neither state nor Commonwealth government acting alone could alter the scope of the other's power as laid down in the Constitution. In personnel as in powers both Commonwealth and state parliaments were to be independent of each other. Each was to be elected directly by the people. The respective cabinets were to be responsible each to its own parliament. Both Commonwealth and state parliaments were to be limited in their powers, but not by each other; they were to be co-ordinate with each other, but they were to be subordinate to the Constitution. And, while the Constitution of the United States had been silent on the point, the Constitution Act of Australian declared that the people of the associating colonies were to form a 'federal commonwealth'. The Australian Constitution of 1900 was clearly an example of a federal constitution."

His comment on Swiss and Canadian system are:

"Two other examples - Switzerland and Canada - do not appear so obvious. The Swiss Constitution of 1848 follows the American Constitution in many respects. In two matters it contains a modification in the strict application of the federal principle. First of all it provides that the upper house of the general legislature -- the Council of States -- shall be composed of two representatives from each of the cantons and that these representatives shall be paid by their cantons and their period of office and method of election shall be determined by their cantons. This admittedly creates a small degree of dependence, particularly as in some cases the cantonal representatives are elected by the cantonal council themselves. But it will be appreciated that this degree of dependence does not prevent us from describing the Swiss Constitution as federal...." (K.C. Wheare, PP-15)

There also exist quasi-federal states, such as in India, where the general government can make intervention on state governments. It cannot be claimed, of course, in general that the governments of "more-federal system" are better than that of "less-federal system". We can look at all those models and project these into our society.

I shall continue to post to BurmaNet(reg.burma@conf.igc.apc.org) of materials in regards to constitution and our friends and especially pro-democracy groups are invited to comment/contribute on this matter. -- **With best regards, U Ne Oo.**

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