Rival Constitution Writing Processes: A Problem in National Reconciliation in Burma

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One of the major issues proving to be an obstacle to the achievement of national reconciliation in Burma is the rival constitution writing processes initiated by opposing forces. As the competing political forces use the constitutional drafting process as a political football, the chance for dialogue and prospects for national reconciliation remain dim.

The State Peace and Development Council's (SPDC) constitution drafting process, which started in January 1993, emerged as a method utilized by the junta to deter the National League for Democracy (NLD) from taking power. As the junta strictly controls the entire constitution writing process, other forces including the NLD and ethnic organizations who have signed ceasefire agreements with the junta, have been denied the right to freely participate in the junta initiated process.

Whilst formerly armed ethnic groups have agreed to give up their weapons for a range of reasons, no group has ceased its opposition to the perceived domination of Burmans, an ethnic group composing a majority, and their general opposition to inequality among the different ethnic groups. All ethnic groups consider that the constitutional principles laid down by the junta's National Convention are lacking not only in ethnic rights, but also democratic rights for the people as a whole. The key strength that the junta currently wields regarding their own constitution drafting process is the political power to realize the constitution drafting process.

When Daw Aung San Suu Kyi was released from house arrest in 1995, the NLD firstly called upon the junta to reform its National Convention in order to allow...
the NLD to become fully involved in the junta’s constitution drafting process. As the junta refused, 85 NLD delegates attending the National Convention prior to Daw Aung San Suu Kyi’s release boycotted the National Convention. The NLD later declared that they will also draft a new constitution. In response to the NLD’s plan, the junta promulgated Law No. 5/96 prohibiting everyone including NLD members and elected representatives from drafting, debating or even discussing a future constitution, outside the junta’s National Convention.

Again in September this year, the NLD reconfirmed that they will go ahead with the plan to draft a future constitution. The NLD’s plan emerged as a legitimate political initiative in response to the junta’s unfair and exclusive writing process. The response is also indicative of their ongoing struggle against the current regime. The strength of the NLD’s constitution drafting process lies not in its current power to realize the process but rather its political legitimacy to do the job.

Since 1989, exile opposition groups under the banner of the National Council of the Union of Burma (NCUB) have also been sponsoring a drafting of what they call a constitution for future Burma. This process has been ongoing for some time and involves continuing debate, consultation and seminars to brainstorm and discuss constitutional principles that will ensure unity among ethnic groups. The NCUB is gradually extending the participation of ethnic and democratic forces that are not yet part of its drafting process. The strength of the NCUB’s process, which does not enjoy the political legitimacy as that of the NLD, is to provide the foundations for a long term vision of resolving the ‘ethnic question’ and to sustain genuine reconciliation among the different groups.

Each one of the above three processes has its shortcomings and its unique strengths. Since each process is competing with each other, each process has become exclusive of the others, regardless of its initial intention. Under such an atmosphere of rivalry, no group may singly and definitively produce a constitution conducive to national unity. A combination of all three processes is necessary to put all strengths—power to implement the process, legitimacy to do the job and vision on the ‘ethnic question’—together, leading to the adoption of a constitution that enshrines the achievement of national unity.

As many ethnic groups remain dissatisfied with the constitutional principles proposed by the abovementioned processes on the issue of equality among the ethnic groups, most major ethnic groups such as the Karen, Shan, Chin, Arakan, Kachin and Karenni are in the process of, or are commencing, writing state constitutions which reflect their own views and ideals. What can be interpreted from the junta’s constitutional principles is that it has no commitment to granting equal rights to ethnic minorities with majority Burmans.
Although almost the entire opposition movement agrees that Burma should have a federal system of government which divides political power between national and state levels of government, no agreement on key federal issues such as the division of power, has yet been reached. The lack of such agreement leads ethnic groups to produce their own versions of state constitutions, each interpreting the proposed federal system in their own way. While some ethnic groups are firmly committed to a unified federation, some prefer to exercise the right to secede on the basis that ethnic rights are not fully supported.

Numerous and differing interpretations of the proposed federal model from each ethnic group may not be helpful to the achievement of harmony between the two levels of government and may even lead to secessionist movements from certain ethnic groups within the country.

No group currently conducting its own constitution writing process can claim absolute control over the actual document that will emerge as a foundation for new form of government when transition comes. What is essential prior to reaching this stage is agreement between the various groups as to how a constitution is to be drafted and what the main constitutional principles should look like.

Unless the SPDC, NLD and NCUB work together on one common, genuine and inclusive constitution drafting process, bringing to that single process all the strengths of each perspective, national reconciliation will remain in doubt. Furthermore, unless agreement is reached on how to divide powers between national and the state level governments, again, national reconciliation will remain in question. The question of Burma’s national reconciliation is also the question of how rival constitution drafting processes can be reconciled.

**Endnote**

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