

Burma Briefing

Burma's New Constitution - Denying Ethnic Rights



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Introduction

Very little attention has been paid to the wide-ranging negative impacts Burma's new Constitution will have on ethnic groups in Burma. The Constitution is likely to lead to the continued Burmanisation of ethnic minorities, as no real cultural protection is included in the Constitution. It will lead to increased militarisation of ethnic areas, with the subsequent increase of human rights abuses which always follows the presence of the Burmese Army. It could also lead to large-scale conflict as armed ethnic groups with ceasefire agreements are told to become part of the Burmese Army as border guard forces, and are threatened with military attack if they refuse. This in turn could lead to a major human rights and humanitarian crisis.

Burma's dictatorship has introduced a new Constitution in order to legalise and maintain its rule. The Constitution was voted on in a rigged referendum in 2008, just days after Cyclone Nargis hit Burma, with the dictatorship claiming 94 percent of people voted in favour.

At the National Convention which drafted the Constitutional principles, every single one of the proposals by ethnic representatives that would give more power, autonomy and protection of ethnic cultures was rejected by the dictatorship.

Ignoring ethnic groups

The international community has never paid proper attention to what happens in ethnic areas of Burma, and to the rights and protection demanded by ethnic groups. But to ignore the legitimate rights and aspirations of Burma's ethnic groups is to make the same mistakes made by governments in Burma and by the international community since before Burma gained its independence.

The failure to address the legitimate rights and aspirations of Burma's ethnic groups is a root cause of instability and dictatorship in Burma. Speaking after the military coup in 1962, Brigadier Aung Gyi, member of the Revolutionary Council, stated that the issue of federalism was "the most important reason" for the coup. There will not be peace and stability in Burma until ethnic rights are addressed.

This is why Burma's new Constitution is fatally flawed. It does not address any of these issues. There is no way that Burma, under the 2008 Constitution, can achieve peace, stability, democracy and full human rights.

Burmanisation of ethnic minorities

Burmanisation has been the policy of successive dictators in Burma. They don't see ethnic diversity as something to celebrate and encourage; instead they follow the slogan of the Burmese Army: One Blood, One Voice, One Command.

Burmanisation policies are pursued by the dictatorship in many different ways, from repressing the teaching of ethnic history, language and culture, right through to military attacks against civilians. Some of these are so serious that the United Nations Special Rapporteur on Burma has called for them to be investigated as possible war crimes and crimes against humanity.

For those ethnic people living in areas of Burma under the control of the dictatorship, there is little hope that there will be major changes from current policy. While the Constitution technically says every citizen has the right to develop arts, customs and traditions, article 365 of the Constitution states that they cannot do so if it is detrimental to national solidarity. As the dictatorship views ethnic diversity as detrimental to national security, in practice there is unlikely to be any real improvement in freedoms.

Regional Parliaments

Some have argued that while on a national level the prospects for improvements are small, in region and state hluttaws, (parliaments) there may be more space to start a process of incremental change which benefits ethnic people. Given the new Constitution, and the actions of the dictatorship on the ground, it does not seem likely that there will be any meaningful change.

For the Karen, for example, one of the largest ethnic nationalities in Burma, most do not live in Karen State, so even if state and regional parliaments did have some power to promote ethnic culture, most Karen would not benefit.

In the region or state hluttaws, it is the national president who decides who the chief minister of the state or region will be. Other ministers are then chosen by the chief minister and the commander in chief of the defence services.

Hluttaw representatives do not have the power to reject ministers unless it can be proved that they do not meet basic qualifications, which are so low it is hard to fail. As in national hluttaws, the military also have guaranteed seats reserved for them.

Responsibilities for security and border affairs are reserved for defence services personnel nominated by the commander in chief of the defence services. It is the president, not the chief minister, who appoints approved ministers to their individual posts.

The president only has to coordinate with the chief minister in deciding who gets which post. And to further tighten the president's control over regional hluttaws, the chief minister of a state or region is responsible to the president, not his own hluttaw and its elected representatives.

At the regional and state level the dictatorship's grip is therefore likely to be as strong, or stronger, than before.

The central government's political grip on ethnic areas also remains just as strong. Aside from the president's control over regional hluttaws, the commander in chief of the defence services can decide who the national ministers of defence, home

affairs and border affairs are, choosing them from serving members of the military. They can also remain as serving members of the military. These three posts are the main key positions that will dominate policy making in ethnic areas.

National legislation overrides local legislation, giving the central government effective veto power over any moves by regional and state hluttaws to increase local control or promote and protect ethnic culture.

The defence services are not answerable to national or state governments in all areas of the armed services. If the commander in chief of the defence services decides there is a state of emergency which could cause disintegration of the union, or even just the broad and undefined "disintegration of national solidarity," he can take control.

This catch-all phrase of national solidarity could in theory mean that legislation passed by the hluttaw which, in the view of the military, goes too far in promoting ethnic rights and culture is grounds for the military to assume control. The military are likely to use this threat as a way of forcing hluttaw representatives not to pass any such legislation.

Some ethnic political parties with hluttaw representatives will of course use every opportunity they can to improve the lives of their people, but the odds stacked against them are incredibly high.

They may have some small successes over the course of a few years, but it is a long way from the major and immediate change that is desperately needed.

What is more likely to happen in practice is that the new Constitution provides new political and government structures through which the dictatorship increases its control in ethnic areas.

The risk of increased conflict

While in some ethnic areas the dictatorship's control is being increased via political structures, in other areas military force is currently being used, or the dictatorship is threatening to use military force in the future.

The end of ceasefires?

Those groups that have ceasefire agreements with the dictatorship have been told to become Border Guard Forces, with their armed wings subsumed into the Burmese Army, while their political wings operate as political parties facing severe restrictions and hoping to get elected to powerless parliaments in rigged elections.

There is a very real danger of the dictatorship breaking ceasefires and plunging the country into increased civil war. Burma Campaign UK has been warning of this danger for years, and calling for action to be taken to try to avert this threat.

Many of the largest ceasefire groups, including the Kachin Independence Organisation, United Wa State Army, and New Mon State Party, have refused to become Border Guard Forces.

They see the demands as breaking ceasefire agreements and amounting to unconditional surrender, without any of their demands for autonomy and ethnic rights being granted. The ceasefire groups took part in the National Convention, which drew up the principles of the new constitution, but every single one of their proposals was rejected.

Burma's military dictatorship has already shown it is prepared to use force to subdue those groups that refuse to submit to its demands. In August 2009 the Burmese Army attacked the ethnic Kokang group, forcing almost 30,000 refugees to flee to China. Already ethnic Mon refugees have started arriving in Thailand, fearing attacks by the Burmese Army.

Within hours of election polls closing on 7th November 2010, the Burmese Army launched an assault on Myawaddy Town, in Karen State, which had been peacefully occupied by Brigade 5 of the Democratic Karen Buddhist Army (DKBA). This Brigade has refused to accept a decision by the leadership of the DKBA to become a Border Guard Force under control of the Burmese Army. They occupied Myawaddy Town on the day of the election, claiming they were doing so to protect civilians who had been threatened by Burmese Army soldiers. When they moved into the town,

the Burmese Army pulled out. The DKBA Brigade say they expected the Burmese Army to hold talks with them, but instead, on the morning of the 8th November, the Burmese Army attacked the town. A child soldier who was in the Burmese Army and took part in the attack, told Burma Campaign UK that they attacked the town with heavy weapons and mortars, without any consideration for the civilian population: "We didn't aim for civilians, but we didn't try to avoid them. We just fired wherever we thought DKBA soldiers might be."

More than 20,000 people fled to Thailand to escape the attack, and as fighting spread along the Thailand Burma border, more than ten thousand more refugees were also forced to flee their homes. Since the escalation of fighting there are also increased reports of human rights abuses, and investigations by Burma Campaign UK confirm the Burmese Army is targeting civilian villages for military attacks, using rape as a weapon of war, and using forced labour, including taking prisoners from jail and using them as porters and human minesweepers.



Karen villagers flee the Burma Army attacks in November 2010

This renewed conflict and the suffering it has caused is in fact a relatively small-scale example of what could happen if other ceasefires break down. The DKBA Brigade 5 has just a few hundred soldiers, yet the fighting has caused major displacement and led to increased abuses and humanitarian problems. The United Wa State Army claim to have around 25,000 soldiers, and the Kachin Independence Army up to 10,000. The scale of fighting would be much larger, and human rights and humanitarian consequences more severe.

All the ceasefire groups which have rejected the generals' demands have indicated that while they will not start any violence, they will defend themselves if attacked.



Kachin Independence Army troops in training

On 4th February 2011 Burmese State owned media made the significant step of describing the ceasefire group, the New Mon State Party as an insurgent group, rather than a ceasefire group. Then on 7th February 2011 fighting broke out between the Burmese Army and Kachin Independence Army, with eight Burmese Army soldiers reportedly injured or killed.

If the Burmese Army becomes more active in Mon State, Shan State and Kachin State, abuses will escalate, especially slave labour and rape.

Many of these ceasefire groups also play an important role in protecting and promoting ethnic culture.

If the dictatorship were to succeed in destroying the groups, there will be no havens in Burma where ethnic culture can survive free from restrictions and interference. The slow process of Burmanisation which has taken place in other parts of Burma would take hold across the whole country.

The danger of the Burmese Army attacking ceasefire groups is very real. As the Burmese Army deliberately targets civilians, the result would be hundreds of thousands of refugees and internally displaced people, and a huge humanitarian crisis which the international community has done little to try to avoid, or to prepare for.

New Ethnic Alliance formed

In February 2011, in direct response to the increased threats from the dictatorship to impose its new constitution on ethnic groups, a new military alliance and political coalition was created, the United Nationalities Federal Council (Union of Burma).

The new coalition is made up of 15 organisations, some which have ceasefire agreements, and some which do not.

The objectives of the coalition are:

- To strive for the resolution of political problems by political means;
- To endeavour for gaining more legitimacy and recognition for the just resistance struggle of the ethnic nationalities;
- To struggle for gaining fully rights to national equality and self-determination, which are the lawful rights of the ethnic nationalities;
- To strive for the emergence of a genuine federal union;

This new alliance could field between 40,000 to 80,000 soldiers, according to various estimates. For security, political and propaganda reasons, some of the organisations refuse to divulge how many soldiers and reserves they have, or are thought to exaggerate their numbers.

Members have pledged to defend each other if attacked, and also agreed to explore how to establish a single military command structure.

By imposing its own Constitution unilaterally, instead of negotiating with ethnic groups to find an equal political settlement, the dictatorship has unintentionally united these armed ethnic organisations. It has also greatly increased the risk of a significant increase in conflict.

Escalation of existing conflict

Those ethnic political parties with armed wings which have not signed ceasefires also expect an escalation of military attacks, as the dictatorship shows no sign of being willing to enter into genuine negotiations with them to reach a political settlement. They face a choice of either submitting completely to the dictatorship's control under the new Constitution, or facing increased military attacks.

In September 2010 an offer of dialogue from the Karen National Union, which does not have a ceasefire agreement with the dictatorship, was ignored by the regime. This is despite the KNU announcing a unilateral one-day ceasefire on the United Nations International Day of Peace, as a sign of its goodwill. This is further evidence of the unwillingness of the dictatorship to compromise on the Constitution and its own agenda, and seek peaceful political solutions to the problems in Burma.



Zipporah Sein, General Secretary, Karen National Union: "Burma's new constitution is a death sentence for ethnic diversity in Burma."

The civil war taking place in Burma is the world's longest, starting in January 1949. It is astonishing that no significant international attention is paid to this conflict, despite the major humanitarian impact.

The horrific human rights abuses committed by the Burmese Army in Eastern Burma are well documented. In March 2010 the UN Special Rapporteur on Burma called for a UN Commission of Inquiry into war crimes and crimes against humanity committed by the dictatorship.

No serious effort has been made to negotiate a ceasefire, and reach a long term settlement. In the past 20 years more than 40 UN envoys have paid visits to Burma, but meeting leaders of the armed ethnic political groups is very rarely in their itinerary.

The focus is always on events in Rangoon, or meetings with Aung San Suu Kyi and the NLD, and the dictatorship. Key ethnic organisations that will have to be at the table if any long-term political solutions are to be found are routinely excluded from these initiatives.

Panglong Agreement

Aung San, the leader of Burma's independence movement, understood that the rights and aspirations of ethnic people must be respected if Burma was to remain a united and peaceful country. He negotiated the Panglong Agreement with representatives of the Shan, Kachin and Chin, in a bid to keep the country together. However, following his death the agreement was not honoured, and in 1962, when Burmese Prime Minister U Nu agreed to meet Shan and Karenni leaders to discuss their demands, General Ne Win organised a military coup, and there has been dictatorship ever since.

Aung San's daughter, Aung San Suu Kyi, now leader of Burma's democracy movement, has also floated the idea of a second Panglong Agreement. This is also a recognition that ethnic people must be included in any future dialogue intended to solve political problems in Burma.

Much greater focus needed on ethnic issues

Until the election, the United Nations and other international organisations, and many governments, focussed almost exclusively on trying to reform the dictatorship's so-called roadmap to democracy.

They tried and failed to persuade the generals to reform the National Convention. They tried and failed to persuade the generals to reform the election drafting committee.

They tried and failed to persuade the generals to conduct a free and fair referendum on the constitution. They tried and failed to persuade the generals to create an environment conducive to free and fair elections.

They tried and failed to persuade the regime to hold free and fair elections. Every single attempt by the UN and international community to reform the generals' roadmap failed.

But at the same time they knew what was really necessary; they just didn't do anything about it. The United Nations Security Council, United Nations General Assembly, United Nations Secretary General, the G8, European Union and many other governments have all stated that the solution to Burma's problems lies in securing genuine dialogue between the dictatorship, the democracy movement and ethnic representatives.

However, no serious coordinated effort to secure such dialogue has ever been made. The last serious effort to secure dialogue was initiated by UN envoy Razali Ismail ten years ago, but this largely excluded ethnic representatives.

As well as this being morally essential, it is also practically essential. The international community will have to meet with armed ethnic groups, understand their positions, and include them in dialogue. As they have military might, there will not be peace without their agreement. But also, for most, their main goal is no different from the official position of the United Nations. They want respect for human rights, and are working for a federal Burma. The UN cannot continue to sideline them from political dialogue if it genuinely wants dialogue and a political settlement.



A soldier from the Shan State Army South

What next?

The argument that with new Parliaments in place there can be incremental, gradual change which in decades to come may lead to significant change is flawed. The Constitution is designed to stop this from happening. The military still have complete control, politically and militarily. The Constitution creates the illusion of more space, while in fact increasing control over ethnic areas.

Even if it were possible to have some kind of incremental political change through the regional Parliaments, to sit back in the uncertain hope that this will happen is simply not an option. Military attacks by the Burmese Army are taking place now, creating enormous human suffering. With the threat of a massive escalation of these attacks, sitting back and hoping for incremental change through structures created by the dictatorship simply isn't credible, or morally acceptable.

The United Nations and international community must make it clear to Burma's dictatorship that attacks against ethnic groups will not be tolerated. Such attacks would be a threat to regional stability, and therefore require United Nations Security Council intervention.

One immediate step the international community should take is to establish a UN Commission of Inquiry into war crimes and crimes against humanity in Burma. There is already ample evidence that such crimes are already taking place.

Also, at this time, with the threat of increased conflict, the establishment of such an Inquiry could have an important preventative impact. Increased conflict is likely to mean increased abuses by the Burmese Army. Establishing a Commission of Inquiry is an important step towards ending the sense of impunity enjoyed by the dictatorship, and so could help prevent or reduce the scale of abuses committed.

The UN should focus on implementation of UN Security Council and UN General Assembly demands that the dictatorship enter into genuine tri-partite dialogue.

United Nations humanitarian organisations and international aid agencies should put in place contingency plans for assisting refugees and internally displaced people created if the Burmese Army does break ceasefires.

This should include funding for cross-border aid, where people from affected communities cross into neighbouring countries to collect and return with aid. This is likely to be the only way to reach many people internally displaced by Burmese Army attacks and increased conflict.

On paper, the UN and others are committed to tripartite dialogue as the solution to solving the problems in Burma. In practice, what few efforts are made to persuade the generals to enter into real dialogue pay only lip-service to ethnic participation.

The international community cannot continue to ignore what happens to ethnic people in ethnic areas of Burma, not only on a moral basis, but also on a practical basis. There will not be peace, democracy and stability in Burma if the rights and aspirations of ethnic people continue to be suppressed.



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