Ethnicity, Elections, and Reform in Burma

David C. Williams

Indiana University Maurer School of Law, dacwilli@indiana.edu

Follow this and additional works at: https://www.repository.law.indiana.edu/facpub

Part of the Comparative and Foreign Law Commons, Election Law Commons, and the International Law Commons

Recommended Citation

Williams, David C., "Ethnicity, Elections, and Reform in Burma" (2011). Articles by Maurer Faculty. 1320. https://www.repository.law.indiana.edu/facpub/1320

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
Ethnicity, Elections, and Reform in Burma

David C. Williams

On 7 November 2010, after fifty years of military rule, Burma elected a partially civilian government under a constitution adopted in 2008. Much of the international community pressured the government of Burma—called the State Peace and Development Council, or SPDC—to ensure that the elections would be free and fair, though few believed that they would be. Whether the elections were free and fair mattered only if the constitution under which they were held addressed the underlying ethnic discord that brought on military rule in the first place. If it did not, Burma will almost certainly revert to military government within a few years—as the constitution itself permits. Sadly, the 2008 constitution fails to come to grips with Burma’s problems: it makes no provision for meaningful power sharing among the ethnic groups, and it gives the minorities no protection against continued military oppression. For that reason, the central focus of the international community should not be free and fair elections; instead, it should be seeking ways to encourage the Burmese government—both the military, which holds real power, and the new civilian office-holders—to undertake sustained dialogue with all of the country’s stakeholders, especially its ethnic minorities. The goal of
that dialogue should be a constitutional settlement giving all of the stakeholders at least a minimally acceptable bargain with which they are prepared to live.

This article first reviews the roots of Burma’s civil war in post-independence ethnic conflict and the subsequent military takeover. It then examines the dimensions of the current ethnic conflict. It then explains why the current constitution and the elections taken under it will do nothing to ameliorate that conflict. Finally, it argues that the international community should use whatever leverage it has over the regime to encourage constitutional reform, rather than focusing on electoral fairness.

**The Roots of the Conflict.**

Ethnicity lies at the base of the conflict in Burma. Too often, commentators portray the contest as a simple division between the proponents of military rule and of democracy. In this view, if the generals can be forced off stage, Burma will return to stability. In fact, however, Burma erupted into ethnic war at a time when it had a democratic constitution and no one espoused military rule. The ethnic minorities took up arms because they believed that the constitution did not provide them enough self-determination, and the military seized control in response. Even if a new constitution returned the country to civilian rule, it still would not bring peace unless it also addressed the source of ethnic discord. The 2008 constitution does neither.

When Burma became independent from Great Britain in 1948, it included a majority ethnic group, the Burmans, and many ethnic minorities, such as the Karen, the Kachin, the Mon, the Shan, the Chin, the Karenni, and the Rakhine. In centuries prior, the Burman kings had attempted to extend their rule over the other groups but never managed to gain complete control. During World War II, the minorities had largely supported the Allies, but until the end of the war, most Burmans allied themselves with the Japanese, who permitted a puppet government. As a result, Burma became independent after the war under conditions of marked ethnic hostility.

Many ethnic minorities feared that if they became part of Burma, the Burmans would oppress them. Some wished for independence, and others would agree to merge only if the constitution gave them special protection. Some leaders asked the British government for a gradual process of negotiation before independence. By contrast, Aung San, the principal leader of the Burmans, wanted immediate independence. He met with leaders of the Frontier Areas—which the British had governed separately from the rest of Burma because they were populated largely by ethnic minorities—in order to persuade them to form a United Burma. In the resulting Panglong Agreement, Aung San promised substantial home rule to the ethnic leaders, and in exchange they agreed to become part of the federal union of Burma. Tragically, Aung San and many of his associates were assassinated shortly afterward, and the subsequently adopted 1947 Constitution gave the minorities little of what they wanted.

Many of the ethnic groups, including the powerful and restive Karen,
received no home rule at all, and others became the titular nationalities in states with varying degrees of limited power.\textsuperscript{[9]} The country soon broke into civil war. The conflict was partially ideological: the Communist Party took up arms because it had been driven out of government.\textsuperscript{[20]} But it was also partially ethnic: the Karen formed an insurrectionary force to fight for self-determination.\textsuperscript{[21]} Over the following decades, more ethnic groups would join the Karen in resistance, and today virtually every sizable group has formed an insurgent army.\textsuperscript{[22]} Meanwhile, the Communist Party dissolved into smaller, ethnically identified pieces.\textsuperscript{[23]} As a result, virtually all the resistance forces today conceptualize their struggle as a fight for ethnic self-determination, rather than a disagreement over economic ideology.

In response to the civil war, the civilian government asked the army to run the country for a period in the late 1950s.\textsuperscript{[24]} The military returned to the barracks, but in 1962, with the war raging unabated, the military took power again, this time uninvited, and for good.\textsuperscript{[25]} Since then, the army has insisted that it must rule because it alone can keep the country together against the ethnic forces that would tear it apart.\textsuperscript{[26]} In other words, military rule in Burma is the product of ethnic unrest.

The Current Problem. A return to democracy will therefore not bring peace to Burma unless the constitution also addresses the ethnic division there. Burma faces tremendous obstacles in transitioning to democracy. The economy and the educational system are in shambles.\textsuperscript{[27]} The country has not experienced democracy for fifty years, so few officials have practice in running one. The junta—which continues to dominate even after the elections—is deeply xenophobic and uninterested in learning from neighboring democracies.\textsuperscript{[28]}

Even if the country were not ethnically divided, making democracy work in Burma would therefore be a difficult task. But whenever a democratic government ultimately comes to power, it will confront a profoundly fissured country, full of groups suspicious of the government and each other. Burma is torn by the world’s longest-running civil war, which is rooted in ethnic fear. The ethnic armies are not strong enough to overthrow the military junta, but the junta has been unable to suppress the opposition. Despite decades of conflict, some of the ethnic armies are still in active resistance, bloodied but unbowed.\textsuperscript{[29]} The junta bought peace with most of the larger groups through ceasefire agreements allowing substantial self-rule.\textsuperscript{[30]} Recently, the regime ordered the ceasefire groups to become border guard units within the Burmese army, but as the groups have refused to join and the regime has allowed deadline after deadline to pass, it seems increasingly clear that the junta cannot enforce the edict.\textsuperscript{[31]}

These decades of war have left a deep legacy. Decades ago, the ethnic tensions did not run as deep, but for many years, ethnic differences have been politicized and the minorities have been marginalized. The result is a climate of distrust that would make any democratic regime fragile. On the one hand, although many pro-democracy Burmese leaders believe in ethnic self-determination, the regime has taught ordinary
Burmans to fear the ethnic armies. Some likely buy into the junta’s self-portrait as the nation’s savior; in this view, without a dominant military, the minorities would swoop down and kill ordinary people in their beds. Many from the army’s top brass built their careers fighting the ethnic armies, and thus view them with hatred.\(^3\)

On the other side, the ethnic minorities have long feared the central government. They want to govern themselves in their own way because their cultures differ from that of the Burmans, especially with respect to language, religion, and culture, and the SPDC has sought to “Burmanize” the minorities.\(^5\) Even putting cultural differences aside, however, the minorities do not want to be ruled from the center because they do not trust the people there.

For the Burmans, the military takeover in 1962 marked a sharp departure from parliamentarianism to authoritarianism. For many of the minorities, by contrast, 1962 was not especially important; before the transition they felt oppressed by the Burman-controlled parliamentary government, and after, they felt oppressed by the Burman-controlled military. From their perspective, the current atrocities are largely continuous, with mistreatment meted out from the center will not lay down their arms. Second, ethnic relations will remain poisonous so long as the majority is able electorally to dominate the minorities. Only when the constitution forces the two groups to work together as partners will the situation improve.

Unhappily, the 2008 Constitution fails meaningfully to empower the minorities, and the resistance groups have overwhelmingly rejected it.\(^4\) Their objections are many, but three are especially important.

First, they want federalism.\(^3\) Burma’s ethnic minorities are concentrated in seven states lying in the country’s periphery.\(^3\) Devolution of power to these state governments will therefore entail devolution to the

At this point... the international community should focus on promoting deep structural change rather than dissecting elections that were only window dressing.
minorities. Federalism will bring the minorities what they want, however, only if the minorities themselves are in control of the state governments and those governments have power over the issues that are especially important to the minorities. The 2008 constitution provides for neither.

The most powerful official in the state governments will be the Chief Minister, who will be entirely controlled by the President of the Union. The President has the power to name the Chief Minister, and the state legislature may reject the president’s nominee only if he lacks the constitutional qualifications to serve in that capacity. In addition, “[t]he Chief Minister of the Region or State shall be responsible to the President,” so the President may presumably remove him at will. In short, the Chief Minister will not be answerable to the state citizenry; he will be a local agent of the central government.

In addition, the state governments will be very weak. Schedule One of the Constitution lists the powers of the Union legislature; Schedule Two lists the powers of the state legislatures. It is not possible concisely to summarize these two lists, but a few points may give a sense of how feeble the states will be. In the official English version, the list of Union powers spans seven pages; the list of state powers, only three. As one example of the balance of powers, Schedule One gives the Union power over “[m]inerals, mines, safety of mine workers, and environmental conservation and restoration,” as well as “[g]ems.” By contrast, Schedule Two gives the states power over “[c]utting and polishing of gemstones within the . . .

State.” In addition, the Constitution gives the Union legislature residual legislative power, meaning that all powers not specifically enumerated in the Schedules belong to the Union. Finally, whenever legislation passed by a state legislature conflicts with legislation passed by the Union, the latter shall prevail. In other words, the central government has the power to void state law.

Second, the minorities want a super-proportional share of power in at least one major decision-making body in the central government. In particular, they desire that representation in the upper house of the legislature be structured in the same way as the U.S. Senate; each state, regardless of population, would have the same number of representatives. Because the minorities tend to live in the less populated states, they would have super-proportional power.

This sort of arrangement is not anomalous in Burma’s history. The 1947 Constitution provided for a Chamber of Nationalities in which the ethnic minorities received super-proportional power. Even the 2008 Constitution provides that each of the seven states shall send equal numbers of representatives to the upper house. But the Constitution also provides that each of Burma’s seven regions—which are dominated by Burmans—will send the same number of representatives. In addition, the minorities will not likely elect all of the representatives even from the states, both because the SPDC has resettled large numbers of Burmans there, and because under the constitution, the military will appoint 25 percent of all members of the upper house, even those from minority states. As a
result, the minorities will not have the numbers to influence legislation.

Third, the minorities want guarantees that the military will not resume attacks. The 2008 Constitution promises the opposite. Article 20(b) provides that the civilian government shall have no power over the military within its domain: "The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces." That domain is extremely broad; it includes "safeguarding the non-disintegration of the Union, the non-disintegration of National solidarity and the perpetuation of sovereignty."\(^{49}\) The army's power to write its own ticket is a threat to all Burmese people, but it is a special threat to the ethnic minorities. The junta has long claimed that the ethnic minorities want to disintegrate the union and that only armed force can stop them. Article 20(e)’s reference to "non-disintegration of the Union" is therefore code; it means that the army can do anything it wants to the minorities.

Further, if the military perceives a threat from the ethnic groups, it has power to dissolve the civilian government altogether. "If there arises a state of emergency that could cause disintegration of the Union . . . the Commander-in-Chief of the Defence Services has the right to take over and exercise State sovereign power . . ."\(^ {50}\) In other words, the Tatmadaw could seize control as it did in 1962, but this time it would be legal. The whole constitution is based on a "wait and see" strategy—if the civilian government does what the Tatmadaw wants, then it will be allowed to rule; if not, then it will be forced out.

**Beyond the Elections.** By all accounts, the 2010 elections were not free and fair, but even if they had been, it would not have mattered because under the constitution the military still rules and the ethnic minorities are still at risk. The elections did not and could not bring real change by themselves. At this point, therefore, the international community should focus on promoting deep structural change rather than dissecting elections that were only window-dressing.

As has become clear, the rest of the world has limited influence on the SPDC, but for that very reason, it must spend its limited capital wisely. As the United Nations has long realized, the only path for real change in Burma is trilateral dialogue between the SPDC, the democracy proponents, and the ethnic minorities. Such dialogue is necessary not only for justice, but also for peace. Though the elections will not themselves cause reform, they may create more fluid conditions in which reform might become more possible. The best option for the international community will be to support those domestic actors who have the will and the capacity to move the country toward reform. That support should consist of direct funding, legitimization, education, opportunities for travel and exposure, and, to the extent possible, protection.

At least two sets of actors are particularly relevant: the new civilian legislators and the ethnic resistance armies. As to the first, the 2008 Constitution allows the military to dominate the civilian government, and the SPDC surely hand-picked virtually all the new
legislators. Over time, however, the civilian office-holders may develop a sense of shared interest, separate from the military. Many of the candidates in the last election were until recently army officers whom the SPDC had forced to retire so that they could take up civilian seats. These ex-officers have cause for resentment; in depriving them of military rank, the SPDC also deprived them of their revenue base, and they may now be interested in creating a new legislative revenue stream. In other words, they will have a focused self-interest in shifting power away from the army and toward the somewhat-more-democratic union, state, and regional parliaments.

Second, many of the ethnic resistance armies command local loyalty and deeply desire democracy and self-determination. These groups currently govern territory, will be critical to any peace settlement, and will play a leading role in any genuinely democratic local government. They need the assistance of the international community to govern their territory wisely now and to prepare themselves for a democratic future.

Other groups have been more concerned with profiteering than democracy, but even some of those groups are now changing their focus. The United Wa State Army, for example, is seeking assistance from the United Nations to shift its economic base away from narco-trafficking. The international community should help and encourage these groups to reform themselves. Admittedly, it can sometimes be difficult to discern the complicated agendas of the various groups, but the international community must learn the landscape.

It will not be possible to script the next several years. As conditions become more fluid, change will occur, but its exact nature will be difficult to predict. For that reason, international actors should now be collecting information and forging the relationships that will allow them to respond quickly and intelligently when opportunities appear. The strategy of pressuring the SPDC from the sidelines has failed. It is time now to help those Burmese people who want to find a way to lasting ethnic peace.

*NOTES*


2 U.S. State Department Deputy Spokesman Mark Toner said, "This election cannot be inclusive or credible under current circumstances...We urge the authorities to release all political prisoners and to enter into genuine dialogue with all stakeholders as a first step towards national reconciliation." Lalit K Jha, "US, UN Respond to Burma’s Election Date," Internet, http://www.irrawaddy.org/article.php?art_id=19216 (date accessed: 31 August, 2010).

3 "The President... may, if necessary, restrict or suspend as required, one or more fundamental rights of the citizens residing in the areas where the state of emergency is in operation." Constitution of Myanmar ch. XI, sec. 414(b) (2008).
ETHNICITY, ELECTIONS, AND REFORM IN BURMA


6 Lintner, Burma in Revolt, 169.

7 Smith, Burma, 90–33.

8 Ibid., 28–39.


11 Lintner, Burma in Revolt, xiv.


13 Lintner, Burma in Revolt, xiv.

14 Ibid.

15 Smith, Burma, 66.

16 Ibid., 78.

17 Lintner, Burma in Revolt, xiii.

18 Smith, Burma, 79.

19 Ibid., 80-87.

20 Ibid., 106.

21 Ibid., 110.

22 Ibid., 93-94.

23 Lintner, Burma in Revolt, 364-68.

24 Ibid., 143-45.

25 Ibid., 169.

26 The military’s role in the constitution includes “safeguarding the non-disintegration of the Union, non-disintegration of National solidarity and the perpetuation of sovereignty.” See Constitution of Myanmar, ch. 1, sec. 20 (2008).


28 Ibid., 107 and 238.


30 Smith, Burma, 440-50.


33 Smith, Burma, 441.


36 Smith, Burma, 262.


38 Ibid., ch. V, art. 261(d).

39 Ibid., ch. V, art. 262(b).

40 Ibid., Schedule One, Union Legislative List, art. 6(c).

41 Ibid., art. 6(d).

42 Ibid., Schedule Two, Region or State Legislative List, art. 4(c).

43 Ibid., ch. IV, art. 98.

44 Ibid., ch. IV, art. 198(b).


48 Ibid., ch. IV, art. 141(b).

49 Ibid., ch. I, art. 20(e).

50 Ibid., ch. I, art. 40(e).
