

FROM BIG BANG TO INCREMENTALISM: CHOICES AND CHALLENGES IN CONSTITUTION BUILDING

The second Melbourne Forum on Constitution Building in Asia and the Pacific

Manila, the Philippines

3-4 October 2017

Jointly organised by International IDEA and the Constitution Transformation Network

Hosted by Department of Political Science, University of the Philippines Diliman

Session IV Moving between a Federal/Devolved and Unitary State

Myanmar

Min Zaw Oo

What features of the current constitutional arrangements for decentralization prompt proposals for a more federal form of government?

The current Constitution specifies dedicated power to the state in itemized details in annexes, such as table 1, 2, 3 and 5. For example, Table 2 specifies 41 areas/issues on which state parliaments can make law. Structurally, it resembles a form of federalism but in essence, the specified areas of legislation for the states are limited. Therefore, the Constitution is criticized for not being federal enough. That prompted calls for more decentralization.

The demand for more decentralization calls for the expansion of Table 2 to allow more legislative power to state parliaments and self-administrative areas. Minorities also want state governments to have more authorities to tax in expended domains.

Currently, the president selects Chief Ministers. The minorities want them to be elected by the people of the state.

What are the drivers behind calls for a form of federalism?

- Self determination in legislative, executive and judiciary authorities in states;
- Clearly defined self-determination in the Constitution to guarantee equal rights;
- More power endowed by the Constitution to strengthen self-administration and political, economic, culture, social and customary rights.

Federal principles are subject to negotiation in the course of the peace process. Which aspects of these negotiations are likely to be most difficult and why?

- Currently, there is no common position among ethnic armed organizations (EAOs). For example, what groups in the north ask for is more akin to confederation than federalism.
- Amending the current constitution is difficult, requiring endorsement from the military

representatives in the parliament. Federal negotiation on this amendment clause will be challenging.

- The current peace dialogue is not inclusive. Therefore, all groups may not endorse the agreement.
- Negotiation on the role of the military in politics will be difficult.

What comparative models (if any) are being considered? Are any other international influences being brought to bear?

- There is no common agreement or model. Poor states are looking up to the German model. Rich states look up to the US model where no specific resource sharing is defined.
- The Australian model may be good for Myanmar but ethnic conflict, even among minorities, may make it difficult to implement.
- We may consider the decentralization model of India as a basis and incorporate US, Germany and Australia where state constitutions define their rights.
- Alternatively, there may be a hybrid model between Indonesia and Malaysian decentralization.

What challenges for acceptance of any new arrangements are anticipated?

- The Constitution paragraph 436 makes amendment very difficult.
- Despite some federal agreements reached, there has been no deal on the procedure for constitutional amendment.
- Without endorsement from the military, the amendment will be impossible.
- Disarmament, Demobilisation and Reintegration (DDR) and Security Sector Reform (SSR) will be other challenging issues.

Is there likely to be a need to provide for asymmetry in the new arrangements? If so, why?

The divide between rich and poor states may call for an asymmetric model. Rich states want 50% of resources in their own states, while poor states want asymmetric distribution.

Min Zaw Oo

Min is currently serving as Executive Director at the Myanmar Institute for Peace and Security that implements policy research and analysis supporting the peace dialogue and security transition. Min was also the Executive Director of the Technical Secretariat Centre of the Joint Ceasefire Monitoring Committee (JMC) that implements the military provisions of the Nationwide Ceasefire Agreement (NCA). He is also an adviser to the Peace Commission that implements the government's peace policy. Min worked as the Director of Ceasefire Negotiation and Implementation at Myanmar Peace Centre and facilitated the negotiation to achieve and implement historic Nationwide Ceasefire Agreement. Min worked in various international posts, including Afghanistan, before returning to Myanmar. Min received a PhD in Conflict Analysis and Resolution from George Mason University, a MA in Security Studies from Georgetown University, and an MS in Conflict Analysis and Resolution from George Mason University.