

Interview with Dr. Lian Sakhong

Constitutional Development in Myanmar

In the past 70 years there have been three constitutions in Myanmar. The constitutions can be seen as markers in the political development of Myanmar. The first constitution from 1947 was part of the road to independence of the Union of Burma. The second constitution was drafted in 1974 during the socialist period of the Burmese regime and in 2008 a constitution was ratified to lead Myanmar into a democratic transition process. Dr. Lian Sakhong discussed the development process of those constitutions, their origins and its implication on the current peace process that shall lead to a democratic and federal Myanmar.

Schlagwörter:

Myanmar - constitution - federalism - democracy - reform - transition - self-determination - Panglong Agreement - National Ceasefire Agreement - Union Accord - peace process

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|| Interview with Dr. Lian Sakhong

HSS: First of all, Dr. Sakhong, please explain, what are currently the main constitutional challenges in Myanmar?

Dr. Sakhong: The biggest challenge is how we are going to transform a deeply unitary political system into a federal one. Since 1948 Myanmar called itself a “Union”, which it never really was. Instead it has always been a unitary state, not with independent states, but rather with a central regime governing a vastly heterogeneous population. This needs to be changed into a truly federal system and will be achieved through the peace and reform dialogues.

HSS: Is the current constitution, which was implemented in 2008, a part of this problem?

Dr. Sakhong: Absolutely. Compared to the previous constitutions – from 1947 and 1974 – the current constitution has many more federal elements in it, like the existence of a two-chamber parliament or the possibility of state parliaments and state governments. But it is still far from a real federal system.

In the National Ceasefire Agreement and the Union Peace Accord we agreed to base a new political system on the principles of federalism and democracy. Implementing these principles means that there are certain elements of the constitution from 2008 that need to change drastically. If necessary, even the drafting of a new constitution is imaginable.



Dr. Lian Sakhong was a student in 1988 when the student-led democracy movement emerged and was at the forefront of the political resistance against the military regime of Burma. He was one of the founders of the

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Chin National League for Democracy (CNLD), which formed the Union National League for Democracy (UNLD) with 22 other ethnic parties. He got arrested by the government multiple times and after the 1990 election he fled to Sweden, where he was granted political asylum and thus was able to continue his studies. After he finished his PhD he came back to Myanmar in 2001 and started to work for Democracy Today. He is currently vice chairman of the Chin National Front (CNF) and of the Union Peace Dialogue Joint Committee (UPDJC). In the following interview Mr. Achim Munz, Resident Representative of Hanns Seidel Foundation Myanmar talks to Dr. Sakhong about the constitutional history of Myanmar and the current status of the constitutional reform process.

HSS: What exactly needs to be changed in the constitution from 2008 to realize these principles of federalism and democracy?

Dr. Sakhong: Regarding federal principles especially for the ethnic minorities and the Ethnic Armed Organizations (EAOs) internal self-determination is of essential importance. In practice this means the development of state constitutions. Only solid and independently drafted state constitutions can put the self-determination of the states into effect. This is why they are one of the most important elements. In terms of democracy we need some form of civilian supremacy. The Tatmadaw - the armed forces of Myanmar - need to be under the control of an independent and democratically elected civilian government.

HSS: You mentioned the armed forces. What role do they play in the current political system?

Dr. Sakhong: As of now the independence of the army and the special rights granted to them by the constitution are major defects of the democracy in Myanmar. These special rights include a definite leadership role in the national politics of the country and as many as 25% of parliamentary seats reserved to representatives of the armed forces. Additionally, a number of important ministerial posts are held by the Tatmadaw. They are in no way democratically legitimized. If we want a genuine democratic system in Myanmar this certainly needs to be up for change.

HSS: Why did the 2008 constitution, with all its weaknesses and faults, get implemented in this form?

Dr. Sakhong: Because it was purely drafted by the army, which came to power in 1989 and since then suppressed all uprisings and democracy movements. It was formed with a military mindset and it therefore ensures that the army maintains control over the whole political system. It is not a departure

from the military dictatorship, in fact it strengthens it.

HSS: Let us talk a bit about the constitutional history of Myanmar. How did the Panglong Agreement come into effect and how did it try to implement federal principles even before Burma became a nation of its own?

Dr. Sakhong: Speaking in terms of federalism the Panglong Agreement is an example of so-called “coming together” federalism. The groups that signed the Agreement were independently ruling completely different regions before the British colonialists came to this part of the world. The Shan for example had a political system reminiscent of European feudal systems, while the Bamar were a kingdom. This continued under British rule, when the Bamar were ruled together with India under one governor, while the other states were ruled under their individual state acts. After the British rule ended, these four British colonies all had the option to either join the new nation of Burma, to remain independent as a state, or even to stay under British rule. On 7th of February, a few days before the Panglong agreement, the minorities, namely Chin, Kachin and Shan came together as the “Frontier Areas Committee of Enquiry” to conclude that they would only join Burma under the conditions of being equal with the Bamar and having the right to self-determination. Together with the Panglong Agreement, which was the actual agreement to join the newly formed Burma, this conclusion was put into the constitution of 1947. The 1947 constitution therefore already included basic federal principles of this “coming together” of formerly independent states.

HSS: The current Union Peace Conferences also carry the name “21st Century Panglong”. What role does the spirit of the original Panglong Agreement still play in the current peace dialogues and what is the impact of the 1947 constitutional development process on the process of today?

Dr. Sakhong: As I explained the spirit of the Panglong Agreement symbolizes “coming together”. The four British colonies agreed to come together and to form a union, within which they would live together, share their burdens and jointly enjoy the fruit of independence from foreign colonial rule. Unfortunately, this agreement and its spirit never became reality. Since Burma’s independence, the military government neglected the federal spirit and democratic principles, concretely speaking Articles Five and Seven of the Panglong Agreement. For this reason, a civil war has been plaguing this country for seven decades. In the current peace process, we would like to fix these errors. The 21st Century Panglong does not only invoke the “coming together” spirit of the original agreement, but very practically wants to implement the articles of the Panglong Agreement, which have been ignored by the government for so long.

HSS: You, yourself, have been a part of the current peace process for a long time. What do you expect as next steps in the constitutional development after the 2008 constitution?

Dr. Sakhong: Right now we are not part of the constitutional drafting and amending process. The current peace process is still being conducted outside of the constitutional framework. But the 2008 constitution is part of the 7-step road map included in the National Ceasefire Agreement (NCA). The sixth step of this program refers to the changing of all laws, including the constitution. Every one of its articles will be reviewed and tested on its compliance with the federal and democratic principles agreed upon within the Union Peace Accord. If an article doesn’t meet these requirements it will be changed or deleted and if additional articles are needed to fulfill the principles, they will be added to the constitution.

HSS: Do you think this process will come to an amendment of the existing constitution

or will this rather end in a completely new constitution?

Dr. Sakhong: This question is intentionally trying to be avoided. On the one hand if the process would be labeled as the drafting of a new constitution based on the Union Peace Accord the Tatmadaw will pull out and the peace process would be dead. On the other hand, if it would simply be called a constitutional amendment the EAOs would not be on board. A balance must be carefully obtained to satisfy all relevant stakeholders and to be able to move forward. It is in fact not important if the constitution is being amended or if a new one is drafted. The crucial issue is the realization of the principles of democracy and federalism. A federal and democratic Union of Myanmar must be established to achieve long lasting peace and prosperity.

HSS: And the foundation of this will be this new constitution?

Dr. Sakhong: The foundation of this will be the whole political process that has been going on in Myanmar since decades. Every agreement, every document, including the 2008 and 1947 constitutions, can be traced back to the Panglong Agreement. On 12th February 1947, the whole political struggle of Myanmar started with this historic agreement.

HSS: At the start you mentioned state constitutions. You have also been involved in the development process of state constitutions. Does this process go parallel to the development of a new national constitution or can the individual state constitutions be developed even faster?

Dr. Sakhong: I believe the first step needs to be an agreement on a nation-wide federal system, which includes the possibility of state constitutions. Every relevant actor, the army, the government, the EAOs and most importantly the people have to agree on this. Right now it would be too ambitious to

start talking about the drafting of state constitutions. Even worse, it could jeopardize the whole peace process. Don't get me wrong: the need for state constitutions is vitally important, especially for the ethnic minorities. But starting to draft state constitutions before even adopting the basic principles upon which the state constitutions should be based could push the army too much and could negatively impact the political process. If we do not consider this, the whole process could fail again.

HSS: How long do you estimate will these constitutional changes take to be completed?

Dr. Sakhong: In terms of a timeframe the government has already clearly expressed their expectations. On 15th October 2017 Daw Aung San Suu Kyi stated, that the first part, i.e. the agreement on the basic principles of federalism and democracy should be finalized in 2018. Furthermore, when the New Mon State Party and the Lahu Democratic Union signed the NCA the commander-in-chief of the Tatmadaw mentioned that a clear timeframe should be determined. Unfortunately, the EAOs do not agree upon any common timeframe proposal. In my opinion, we should aim on an agreement on the basic principles in 2018, but at least before the next elections in 2020. But again I would like to stress that a sustainable agreement on these principles needs to stand firm before we can continue with the actual transition process. Only then we can start working on actual amendments of the 2008 constitution and the drafting of state constitutions.

HSS: Lastly, Dr. Sakhong, what do you expect from the transition process that will follow this agreement?

Dr. Sakhong: As I said, it is of utmost importance to finally implement federal and democratic principles in Myanmar. Especially the establishment of a real and lasting democracy with civilian supremacy will be a long and rocky way. The army will not give

up its political power voluntarily and their high-ranking officials will not resign from their political posts overnight. Plus, the DDR-process (disarmament, demobilization and reintegration) for the EAOs will not be easy as well. Some of them have big armed forces and control vast areas of land. They will also not give up their power wholeheartedly. I would expect that this transition period will take at least 10 to 15 years.

HSS: Thank you for the conversation.

Dr. Sakhong: Thank you.

|| Das Interview wurde von Achim Munz im März 2018 von Achim Munz geführt.

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