

# REPORT ON STATES CONSTITUTIONS DRAFTING PROCESS

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## INTRODUCTION:

Political crisis in present Burma is not merely ideological confrontation between a democracy and totalitarianism, but a constitutional problem rooted in the question of self-determination for non-Burman nationalities. This constitutional crisis can only be solved by the establishment of a genuine federal union based on the principles of equality for all nationalities and the right of self-determination for all member states of the union, and the democratic rights for all citizens of the Union of Burma.

In order to establish a genuine Federal Union, all member states of the Union should have their own separate state constitutions, their own organs of state, that is, State Assembly, Administrative Body, and Judiciary. The state constitution, indeed, are inherent and necessary components of a federal system where power is shared between two levels of governments: federal government and state governments. It is, therefore, believed that looking into federalism, the concepts and principles of federalism, federal structures and mechanism, and importantly, looking at state constitutions, will enhance the capacity of nationalities leaders to help their ethnic nations determine their future in a peaceful and democratic manner. Moreover, the process of drafting state constitutions – including state constitution seminar (s) – constitutes a very important step in reaching the goals of the democratic movement. The state constitution seminar would, ONE: lay a firm, bottom-up foundation for federalism (i.e., genuine federalism); and TWO: the draft state constitutions could and would collectively serve as a solid political platform for nationalities leaders and forces in negotiation with other players and actors on the Burma stage.

This report is divided into three parts: PART ONE is dealing with historical and political backgrounds for the need of state constitutions, PART TWO is the United Nationalities League for Democracy (UNLD) initiative for drafting the state constitutions and its follow-up activities; and PART THREE is the National Reconciliation Program (NRP) roles in this process.

## PART ONE: BACKGROUND HISTORY

The Union of Burma is a multi-ethnic, multi-cultural, “nation-state”, which was founded on the basis of the 1947 Panglong Accord. The aspiration of the [*signatories*] of the Accord was to jointly gain independence from the British, and to establish a Union of equal and co-independent states, i.e., with no nationalities or state being subordinated to any other state within the Union. This is, all constituent states of the Union were envisioned as being the equal partners of Burma Proper or Ministerial Burma, the home state of the largest ethnic nationality, the Burman.

However, as history and political events would have it, the Union of Burma that came into actual being was not in accordance with the aspiration of the non-Burman nationalities. Contrary to the Spirit of Panglong, the 1947 Constitution (finalized in September) created a “Union” where Burma Proper enjoyed the status of Mother Country, i.e., whose cabinet, government, and parliament were also those of the whole country. This kind of arrangement made the other states of the Union subordinate to Burma Proper. Their relationship to Burma Proper (or) the Burma State was like that of Scotland and or Wales to England.

An attempt was made by leaders of the non-Burman ethnic nationalities and states in 1961-61 to address the issue of inequality and other problems related to the dominance of Burma Proper over other member or constituent states. They proposed constitutional reform aimed at making the Union a genuinely federal one as agreed at Panglong *Accord*. This movement – the Federal Movement – was squashed in 1962 by the military, dominated and controlled by Burman officers.

In 1974, General Ne Win, the military dictator and chauvinist, imposed a new constitution, the Lanzin Constitution [*Constitution of the Socialist Republic of Burma*]. A notable fact about this constitution was that the state structures and arrangements, as outlined on paper, looked highly decentralized, even federal-like. However, the only and ruling party, the Lanzin Party, which held all powers and was not democratic, and was moreover controlled and dominated by military officer (in, and out, of uniform). The Lanzin state-order was therefore one where its formal (on paper) subordinates of General Ne Win exercise real and significant power.

In the post-1988 period of struggle, the Burmese opposition forces and nationalities organizations have adopted as its goal, ONE, the restoration of democracy and TWO, the establishment of a new UNION, one based on the principles of federalism, national self-determination, and equality. There have been signed several accords re-affirming the goals mentioned. These agreements are the Marnaplaw, the Mae ThaRawtha, and the ThooMweKlo Agreements. It might be added that Democracy, and Federalism have been the aspiration of the peoples of Burma and the nationalities since before the obtaining of independence.

### **State Constitution: Its Meaning and Significance**

One the other hand, as can be seen from history or the unfolding of historical events, Burma has not had any experience of federalism. Noteworthy in this regard is that none of the constituent or member states of the 1948 Union of Burma had constitutions of their own.

The absence of state constitutions in what was supposedly a Union of equal states is a very serious flaw. What this situation indicates is this: namely, that whatever power the governments of states enjoyed and exercised in the 1948 Union were given to them by a central government – and this is a characteristic of unitary state order. In a unitary state order, power lies in the hand of the central government, and the powers of local governing or administrative units are derived fro, or developed to them by the central government.

In contrast, in a federal state order, the member or constituent states are the basic and founding units of the federation, and whatever powers they exercise or possess are not given to them by the center. The powers of the constituent states of a federation are, in principle,

derived from the people of the respective states, and it is thus stated in most state constitutions in countries that are federal in form.

A federation is formed when a number of states agree for some reasons to live and work together under one flag. And because these is an arrangement among founding states to band together as equal partners, there arises a need for another category or level of government to handle matters of common interest. Accordingly, this government – the federal or national government – is given, or vested with some powers by the member states. In a federation, therefore it is the power of the federal government (or) center that is derived – i.e., given to the federal center by the member or constituent states.

In federalism, therefore, the federal or national government is not a superior government that holds all powers. Various and significant powers are held by the member states, and this is spelled out clearly in the state constitutions. As well, some powers, which are shared by all, are given to the federal government, and this is also spelled out or defined in the federal constitution.

There is, therefore, in a federation, two levels of powers, and two levels of governments. It might also be said that there are two “sovereignities”, but which are intertwined, yet separated. Hence, there are in federalism two constitutions. One is the federal (or) national constitution, and there exist concurrently, another set of constitutions i.e., the constitutions of member or constituent states.

In Burma, however, although state constitutions are basic to the idea or concept of federalism, they did not exist, and not much attention has been given, until recently, to state constitution on the part even of nationalities leaders and organizations. This is indeed a strange situation.

## **PART TWO**

### **THE UNLD-LA INITIATIVES**

The UNLD was established in 1989 as an umbrella political organization for the non-Burman nationalities in Burma. From the vary beginning, the UNLD political platform called for the establishment of a genuine federal union based on democratic rights for all citizens, political equality for all nationalities and the right of self-determination for all member states of the Union.

The member parties of the UNLD contested the 1990 general election under the slogan of “democracy and equality”, and won 35 percent of the popular vote and 16 percent of parliamentary seats (67 seats) in the national parliament of the Union of Burma. The election results established the UNLD as the second largest political party in Burma. The UNLD was unilaterally dissolved and declared illegal by the ruling military junta. The UNLD political platform stood in direct contrast to the policies of the military regime that was intent on establishing a unitary state dominated by the central government.

The UNLD was reestablished as the UNLD (LA) in 1998 by its original members, most of whom had been forced to flee the country. The inaugural conference of the UNLD (LA) was held, as mentioned, from January 15-19, 2001, with the aims and objectives of:

1. Official Re-establishment of UNLD
2. Adoption of UNLD Political Agenda
  - Concept and Principles on the Federal Constitution;
  - Concept and Principles on State Constitution;
  - Concept and Principles on Political Dialogue; and
  - Concept and Principles on a National Convention
3. Strengthening and Expansion of UNLD
4. Building Understanding with Allied Forces
  - Preparation for Tripartite Dialogue and
  - Preparation for State Constitutions

The UNLD believes that for building a genuine federal union, the Union Constitution must be based on a democratic administrative system, because as noted by a Shan analysis, "...democracy is an essential pre-condition for federalism. Federalism will not work in a polity where there is no democracy because federalism, is, at the bottom, about decentralization of powers and limits placed on power. In federalism the above is achieved via a set of arrangement that limits and divides or disperses power, so that parts of the whole are empowered and are further enabled to check central power and prevent the concentration of powers." In short, democracy and federalism are inseparable, as head and tail of a coin, in a pluralistic and multi-ethnic country like Burma.

On the forming a genuine federal union, the UNLD has adopted seven principles of federalism for the future constitution of the Federal Union of Burma, at its conference held in Rangoon, on June 29 – July 2, 1990, and reconfirmed at the inaugural conference of the UNLD (LA). These seven principles are:

1. The constitution of the Federal Union of Burma shall be formed in accordance with the principles of federalism and democratic decentralization.
2. The Union Constitution shall guarantee the democratic rights of citizens of Burma including the principles contain in the United Nations' declaration of universal human rights.
3. The Union Constitution shall guarantee political equality among all ethnic national states of the Federal Union of Burma.
4. The Federal Union of Burma shall be composed of National States; and all National States of the Union shall be constituted in terms of ethnicity, rather than geographical areas. There must be a least eight National States; namely, Chin State, Kachin State, Karen State, Kaya State, Mon State, Myanmar or Burma State, Rakhine (Arakan) State, and Shan State.
5. The Union Assembly shall be consisting of two legislative chambers: The Chamber of Nationalities (Upper House) and the Chamber of Deputies (Lower House);
  - i. The Chamber of Nationalities (Upper House) shall be composed of equal numbers of elected representatives from the respective National State; and
  - ii. The Chamber of Deputies (Lower House) shall be composed of elected representatives from the respective constituencies of the people. The creation of Chamber of Nationalities based on equal representation of the member states of the Union is intended to safeguard the rights of National States and minorities in the Union government. It also intended as a

symbol and instrument of the principle of equality among all nationalities of the Union.

6. In addition to the Union Assembly, all member states of the Union shall form their own separate Legislative Assemblies for their respective National States. In federalism there must be a clear separation of Union Assembly, or Federal Parliament, from the Legislative Assemblies of the member States of the Union. Moreover, the residual powers that is, all powers, except those given by member states to the federal center, or the Union, must be vested in the Legislative Assembly of the National State. In this way, the Union Constitution automatically allocates political authority of legislative, judiciary, and administrative powers to the Legislative Assembly of National States. Thus, all member states of the Union can freely exercise the right of self-determination through the right through the right of self-government within their respective National State.
7. The Sovereignty of the Union shall be vested in the people of the Union of Burma, and shall be exercised by the Union Assembly. Moreover, the central government of the Federal Union shall have authority to decide on action for: (i) monetary system; (ii) defense; (iii) foreign relation; and (iv) other authorities which temporarily vested in the central government of Federal Union by member states of the Union.

#### THE UNLD (LA) STATE CONSTITUTION SEMINAR (August 20-25, 2001)

State Constitutions are inherent and necessary component of a federal system where power is shared between two levels of government. Due to the multiethnic composition in the Union of Burma, and owing to long years of confrontational politics based on ethno-nationalities perceptions and demands, it is important for all ethnic nationalities (including ethnic Burma) leaders to seriously study or look into state constitutions together at a seminar, so that leaders from various nationalities can not only participate but share their different experiences and learn the new insight together. The reason why this is important is that it provides – will significantly determine how different ethnic groups will live and work together within each member state of the future democratic, federal union.

In line with this policy, the UNLD (LA) organized the state constitutions seminar, together with the NDF, on 20-25 August 2001. The seminar was attended by the state constitutions drafting committee members from Chin State, Karen State, Karenni State, Mon State, and Shan State. Observers from Arakan State, and Kachin State also were invited for they are still under preparation for forming their state constitutions drafting committees. Members of democratic forces from the Burman ethnic group and federal constitution drafting committee members also were invited to the seminar.

The seminar particularly focused on:

1. The basic principles of federalism;
2. The structures and functions of state constitutions, including
  - i. Bill of Rights;
  - ii. Suffrage and election
  - iii. The Legislature
  - iv. Initiative and referendum
  - v. The Executive

- vi. The Judiciary
- vii. Finance
- viii. Local government
- ix. Civil Service
- x. Public welfare
- xi. General provisions and
- xii. Constitutional revision

As a follow up of that seminar, 17 members of state constitutions drafting committees from seven states, namely, Chin, Kachin, Karen, Karenni, Mon, Rakhin, Shan, and two representatives of Burma Lawyer Council, went a study trip to Germany for ten days, from December 5-15, 2001 and observed how state/local governments are functioning, and how state governments and federal government could co-exist and shared power in a federal system.

### **FUTURE PLAN; THE SECOND STATE CONSTITUTIONS SEMINAR IN OCTOBER 2002**

The UNLD (LA) and NDF will jointly conduct the second state constitutions seminars in New Delhi, India, and Chiangmai, Thailand, in October 2002. The seminar will be sponsored by the International IDEA (Stockholm, Sweden), under the NRP Program.

The Aims and Objectives of the Second State Constitutions Seminar will be:

1. To study the basic principles of power relations between federal government, state governments and local government, and
2. To make a comparison between different federal systems in different countries in terms of how they separate power, yet intertwined, between federal, states, and local governments.

### **PART THREE**

#### **THE ROLE OF NRP IN STATE CONSTITUTIONS DRAFTING PROCESS**

The National Reconciliation Program (NRP) was established in 1998 with the aims and objectives of:

1. To bring about a peaceful transition to democracy and the establishment of a Federal Union of Burma by assisting the ethnic nationalities in preparing for a tripartite dialogue;
2. To introduce a culture of dialogue and conflict resolution/management skills and institutions to Burmese society; and
3. To assist political stakeholders in increasing their capacity building efforts as part of the preparation for tripartite dialogue and transition to democracy.

The Program encourages and empowers all ethnic nationalities to:

1. Discuss and define their own political futures;
2. Dialogue with other nationalities regarding their political future;

3. Engage in preparing for political structures they wish to establish; and
4. Create conditions to safeguard and promote democratic and political structures that will be established.

In order for political stakeholders to achieve the goal of national reconciliation, the NRP has supported capacity building projects designed to equip political organizations with knowledge and understanding of dialogue and conflict resolution techniques. As participation of woman and youth in the political process is crucial, the NRP has implemented programs among women and youths of various ethnic backgrounds. The primacy task of NRP though is to see that projects and related activities – seminars, workshops, trainings, etc., are relevant to the strategy, need and focus of the national reconciliation goals. This involves:

1. Dealing with donors or potential donors and consulting with them about the needs of the movement and its organizations with reference to the national reconciliation aims and goals, and working with them, with the aim of achieving greater efficiency and effectiveness.
2. Dealing with interested third parties and institutions (academic and otherwise), and also with political groups approached by the former, with the aim of ensuring that the activities are politically relevant and really needed by the movement.
3. Dealing with service providing organizations so that the real capacity building needs of political organizations are met. This would also involve consultation with service providers, existing or leading political organizations and leaders so that the activities and projects are strategy relevant.
4. Dealing with political organizations engaged in national reconciliation efforts, and assisting them in this regard.
5. Assisting political organizations and other socio-political groups in setting up and designing strategy-relevant projects focuses on national reconciliation by providing suggestions and advices.
6. In terms of implementation, the NRP focuses on the study of issues that are relevant to national reconciliation in general, and dialogue and transition related issues in particular, preferably in conjunction and cooperation with donors, *donors*, interested third parties and institutions (academic or otherwise). The goal of this would be to provide input related to national reconciliation activities, programs, projects, and facilitate or upgrade the operational capacity and reach of political leaders and organizations especially with reference to the Dialogue-Transition process.

In lines with its aims and objectives that “encourage and empowers all ethnic nationalities to discuss and define their own political futures; to engage in preparing for political structures they wish to establish; to create conditions to safeguard and promote democratic and political structures that will be established,” the NRP program has supported the state constitutions process, initiated by UNLD and NDF, by providing financial assistances and technical needs.

In addition to the UNLD (LA)-NDF Joint Action Committee for State Constitutions Drafting process, there are at least seven state Constitutions Drafting Committees and one study group:

1. Chinland Constitution Drafting Committee (led by Pu Lian Uk, formed as Working Group (I) of the Chin Forum in 1998)

2. Kachin State Constitution Drafting Committee (led by U Khun Sa, formed under the KIO leadership)
3. Karen State Constitution Drafting Committee (led by Col. Htoo Htoo Lay, formed under the KNU leadership)
4. Karenni State Constitution Drafting Committee (led by Abel Twide, formed under the KNPP leadership)
5. Mon State Constitution Drafting Committee (led by Nai Hongsar, former under the leadership of MUL and NMSP)
6. Rakhine (Arakan) State Constitution Drafting Committee (under the process of formation)
7. Shan Democratic Union, which undertaking the task of drafting Shan State Constitution (led by Sao Seng Suk) and
8. A study group of the Burman State Constitution (led by Than Tun.

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