

Legal Issues on Burma

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Position Paper of the Constitutional Committee on the Revelations of the People's Aspirations

Part (1)

The Constitution, People's Aspirations and Participation

Part (2)

The Brief History of the Emergence of Burmese Constitutions

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Sectional Presentation for Systematic Revelation

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Legal Issues on Burma

J O U R N A L

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Position Paper of the Constitutional Committee on the Revelations of the People's Aspirations

Introduction

The Burma Lawyers' Council (BLC) is an organization that publishes journals and booklets, provides training for the public, conducts workshops and educational sessions and also broadcasts radio programs, in regards to constitutional affairs throughout its work. The BLC consistently aims to promote and explain the constitutional drafting process to the people of Burma.

The National League for Democracy - Liberated Area (NLD-LA) is an organization which implements and shares the NLD's political ideas amongst the ethnic and democratic organizations based along the Thai-Burma border. The NLD-LA liaises with democratic supporters; both those from within Burma or along the border and also those from the international community.

The State Peace and Development Council (SPDC) are in the process of drafting a constitution through a sham National Convention. However, policies, limitations and restrictions have been set down without first consulting the citizens of Burma or acquiring relevant advice from enlisted professionals.

If the SPDC's constitution process is successfully implemented, it will provide them with an overall right to exercise executive, legislative, and judicial power; consequently, this will prolong the power of the military dictatorship and allow them to rule legitimately. If such a process takes place, it will be impossible to overcome the current state of the country, and conditions for the people of Burma will continue to deteriorate much more than today.

Every citizen of Burma, who loves human rights, democracy and supports the establishment of liberty and justice, holds responsibility to prevent the deterioration of the country. To assist the people in fulfilling their responsibility, on the 15th September 2004, the BLC and the NLD-LA jointly formed the “**Constitutional Committee on the Revelation of the People’s Aspirations**”, outlaying the following objectives:

- (a) To promote at grassroots level, inside and outside of Burma, on understanding constitution and to enhance the participation of grassroots people in the drafting process of a future union constitution.
- (b) To create a situation in which the grass roots ethnic nationalities can submit suggestions, discuss and exchange opinions, and reach mutual agreements, so that all responsible persons involved in the drafting of the constitution, can consider their opinions.
- (c) To collect suggestions from the grassroots people and those international communities concerned with the future union constitution, and present them to the responsible political leaders, organizations and Burmese people, both outside and inside of Burma.

To fully achieve the objectives of CCRPA, the committee is undertaking the followings; distributing educational papers on constitution to grass roots Burmese peoples, inside and outside of Burma; giving short term trainings; holding meetings in the accessible places asking the opinions and suggestions; distributing the knowledge of constitution to the public through news media.

The committee will explain their aims, objectives and activities through legal professionals, writers, scholars, technicians, political parties and news media at every opportunity. The committee plan to do constitutional awareness raising program, such as writing articles, publishing and distributing pamphlets, short term training and educate the people as much as possible. The committee will communicate with leaders of various organizations, human rights activists in a possible ways and means and collect their opinions.

Intending to get support on these activities, the committee publishes the objectives of the committee to have a clear understanding by the inside and outside Burmese peoples, organization of human rights, law professionals and all the governments of the world willing to have democracy and rule of law. Then only they will cooperate with and help this committee on the constitutional works.

Part (I) The Constitution, People's Aspirations and Participation

(1) The Constitution and People's Aspirations

In order that the constitution accurately reflects the people's needs, it is the belief of the CCPRA, that people should be provided with the opportunity to say what rights they would like, which authorities they think should be vested in the government, and how to best prevent the abuse of power by the state within a federal government. Only when a constitution is drafted, based upon the people's wishes and demands, will the people trust that their nation's constitution protects them and their rights. Only then will people be willing to make sacrifices in order to protect the constitution; which will eventually lend support and lead to the development of a free, peaceful, justice and developed civil society.

Sub-section (3), of article (21), of the Universal Declaration of Human Rights states, that the will of the people shall be the basis of formation of a government. This is usually achieved by elected representatives working closely with their constituencies to draft the constitution. For example, the American constitution, the oldest constitution at over two hundred years old, was created from the bottom up, by assessing the needs of the people and turning their will into law. Since it was ratified, there has been only 26 amendments to the American constitution. A further example is Thailand's constitution. After the Thai people revolted against the monopoly of power by an army commander – who had taken power unlawfully, and killed or imprisoned hundreds of people - a constitution was drafted. The current Thai constitution is called 'The 1997 Constitution of Thailand'. In a similar case to America, the Thai people were presented with the opportunity to participate in its drafting process. The outcome of this is the emergence of a

Only when a constitution is drafted, based upon the people's wishes and demands, will the people trust that their nation's constitution protects them and their rights.

constitution that sufficiently reflects the Thai people's wishes and desires. Now is an important time for the people of Burma to share their ideas, in order that the future constitution expresses the desires of the people accordingly, as seen in the constitutions of Thailand and America.

(2) The Rights of the People to participate in the development of the Constitution

The idea that everybody should participate in the drafting of the constitution is extremely important, the basis being that the constitution should adequately reflect the daily lives of the people. If the constitution is created without this principle in mind – without considering people's aspirations or allowing them to participate as much as possible - then this process rejects democratic principles and the fundamental principles of human rights, which, in the long term, will lead to its failure. Only when a constitution is drafted, that incorporates the participation of the people, is sovereignty expressed through its citizen's and protects their rights. For this idea to be effective, people must take interest in the drafting process. However, at the present time, most of the people of Burma lack interest in the development process. The essential reasons being that:

1. The people have a lack of awareness about the constitution.

The people may know, generally, that if a constitution exists in their country they can elect a new government of their own choice every four years or periodically. However, the people of Burma have not enjoyed the protection and guarantee of a constitution for many decades, or indeed have ever experienced protection under a constitution; therefore, a great majority of people did not know what a constitution is, how it can protect them, and how important it is.

2. Many people in Burma have to struggle constantly for their day to day survival.

Consequently, people do not have time or energy to take active interest in either constitution awareness or any other forms of political knowledge.

people must take interest in the drafting process. However, at the present time, most of the people of Burma lack interest in the development process.

3. Currently people have no rights to participate in political activities.

The *Emergency Provision Act* of 1950, the *Unlawful Association Act* of 1908, the *State Protection Law* of 1975 and the law concerning the founding of associations of 1988, are all laws which largely prohibit people's participation; people are unable to act freely in political activities.

4. Oppressive laws which strictly prohibit public participation in the constitution are currently enforced in Burma, the people are afraid to take part in constitutional matters.

In 1996, the military regime ratified a law which forbids any disturbance of the systematic transference of the state's responsibilities; therefore, its underlying aim is to allow the National Convention's activities to be successfully implemented. In article (3) of that law, the following things are prohibited:

- (c) Disturbing, destroying, stopping, agitating, addressing, informing, writing, dissemination that intend to damage, downplay, or create misunderstanding amongst the people; and which acts against the activities of the National Convention, therefore preventing the emergence of a solid constitution.
- (d) Undertaking tasks consigned to the National Convention or drafting a constitution and distributing it without agreed legal authorization.

Furthermore, article (4) states:

Any person guilty of carrying out any act(s) as included in article (3) will be imprisoned, for a minimum of 5 years to a maximum 20 years, or be issued with a fine.

5. There is very little discussion of political parties, democratic groups and ethnic leaders, among the grassroots people

There is discussion, consideration and problem solving in the political parties, democratic groups and ethnic leaders on the constitution but the discussions occur primarily at the top levels. Rarely, is there any information exchanged regarding constitutional affairs between the party and grassroots people.

the military regime ratified a law which forbids any disturbance of the systematic transference of the state's responsibilities;

There may be additional reasons, aside from those stated above, for the lack of public interest in the constitution. Some people believe that constitutional matters are only important for lawyers and legal persons; whilst others feel that 'they are unable to do anything whilst the State Peace and Development Council (SPDC) monopolizes power and shapes the constitution only to comply with SPDC policies.

Anxiously if people lack interest in the constitution, do not participate in drafting their own construction and do not collectively prevent the unwanted constitution, then the military can write its own requirements into the constitution resulting in the prolong life of military rule.

Part (2)

The Brief History of the Emergence of Burmese Constitutions

To date, there have been two constitutions in effect in Burma; one was drawn up in 1947 and lasted from 1948 to 1962, and the other one was produced in 1974 and lasted from 1974 to 1988.

The 1947 constitution emerged after a period of struggle for independence. This historical era of governance, which displayed solidarity between the ethnic nationalities, was built upon the Panglong Bond. The Panglong Bond, signed on February 12th, 1947, was created when Burma sought independence from the British. During that period, the 1947 constitution was written at a constituent assembly by the 111 Individuals Committee, which included leaders of AFPFL, Members of Parliament, ethnic nationality representatives, and other professionals. With the transference of power from the British, the main achievement of the committee was the establishment of mutual trust between the ethnic nationalities, with practical needs being sought later. In actuality, there were no just provisions for the equality of ethnic nationalities, either politically or economically, in the 1947 constitution. Significantly, it gave rise to 50 years of civil war and the establishment of various armed ethnic groups.

The historical backgrounds attributing to the emergence of the 1947 and 1974 constitutions differ. With regards to the 1947 constitution, although the leaders were sincere, due to the short time period for its creation, the preparation process was insufficient and there was inadequate consultation with the public. The constitutional committee wrote the constitution based upon the analysis of the political environment and own experiences - utilizing relevant political books.

The background to the emergence of the 1974 constitution was the opposite of the 1947 constitution - there was enough time for systematic preparation in the drafting of the constitution. However, the leaders of the military regime did not envisage this process as an opportunity to help their people and country. Instead, they used the process for the benefit of their own party. They undertook to monopolize power and legitimize their party and policies. In 1973, a sham referendum was held, where a white box represented supporting votes and a black box, opposing votes. However, in order to get all of the supporting votes, they changed the opposing votes from the black box to the white box; they proclaimed that the constitution was supported by over 90% of the voters and thus they ratified the 1974 constitution. Naturally, under such circumstances, the 1974 constitution could not remain stable for a long.

During the age when the 1947 constitution was in force, the people of Burma and the ethnic nationalities were able to enjoy their democratic rights moderately. Therefore, between 1947 and 1962, Burma to some extent developed economically and was able to be a proud member among the countries of South East Asia. However, during the time when the 1974 constitution was in force, a totalitarian or one-party regime ruled the country and the ethnic nationalities presumed their rights lost completely. As a result, the country encountered economic recession and, since 1998, Burma has become one of the least developed countries in the world (LDC). The lives of the people directly reflect the state of a constitution.

In Burma, genuine peace needs to be restored through the establishment of a valid constitution. It is necessary that the people research and visualize a constitution that will benefit the interest of the entire public and not just one, corrupted, ruling body. Both constitutions that emerged in Burma lasted for a short period and many problems arose; they could not guarantee stability, peace, and development.

Part (3)

Work Schedule of the Emergence of the Constitution

(a) Work program of the Opposite Political groups

The parliamentary members of the National League for Democracy (NLD), which won more than 82% of the total seats in the 1990 multiparty general election, gathered at Gandhi hall in Kyauktadar Township, Rangoon, on the 28th and 29th of July, 1990. They discussed the general affairs of the state, the calling of people's parliament for the benefit of the people and unanimously decided and announced the "Gandhi Hall Declaration"... In this declaration concerning the transfer of power in accordance with the law (or) the power in accordance with the law, NLD had already drafted the constitution. The parliamentary members of NLD asked the State Law and Order Restoration Council (SLORC) to convene the People's Parliament in September 1990, in conformity with the people's desire and in accordance with chapter (2), article (3), of the People's Parliamentary election law, and with the essence of the democratic system and international practices.

On 29th August, 1990, representatives of the NLD, United Nationalities League for Democracy (UNLD) met to discuss and release the Bo Aung Kyaw Road Joint Statement which stated, to the SLORC, that the people's parliament would be convened during September of 1990, according to article (3) of chapter (2).

Article (4-b) of the Bo Aung Kyaw Road Joint Statement No (1) states as follows:

After members of parliament have been elected, and government and par-

liament formed, a National reconciliation convention, to include the ethnic nationalities, organizations and individuals, will be convened as soon as possible under the initiatives of parliament and guiding principles will be laid down for the establishment of the union. The NLD and UNLD unanimously agree that parliament must make and draft the constitution according to these guidelines.

On the 16th September, 1998, the NLD and four ethnic parties legally formed the Committee Representing People's Parliament (CRPP). It was formed according to the mandate conferred by the 251 members of Parliament, in order to meet the people's aspirations successfully.

Nobel Peace Prize laureate Daw Aung San Suu Kyi, general secretary of the NLD and member of the CRPP, appealed to the people on 19th September, after the CRPP had been formed, that "the parliament elected in 1990 was in agreement with the public and the life of the parliament would expire after the constitution in accordance with the policies of democracy was prescribed."

On the 30th August, 2003, the then Prime Minister, General Khin Nyunt, announced the seven steps in the road map for the building of the state. He definitively stated that these seven steps were the military regime's policies by which Burma would proceed forthwith. The seven step road map was later reaffirmed by the current Prime Minister, Lt General Soe Win and Lt General Thein Sein, Secretary 1, of the SPDC. On the 16th September, 2003, the CRPP released its statement on its stance regarding the seven step road map, it stated: "Such a road map can tackle neither the political and economic crisis currently facing the people nor the neglected result of the 1990 election which demonstrated the will of the people. This was the SPDC's intention to create a future of Burma based upon its own will. The people of Burma do not accept the SPDC's decision to hold the next election, especially after the results of the 1990 election were rejected. The SPDC's policies do not work towards national reconciliation, democracy, human rights, or the formation of a genuine union that respects the self-determination of the ethnic nationalities."

The guidelines of the military does not take into account the aspirations of the people and, in addition, the NLD, UNLD and SNLD all firmly announced that these guidelines are policies that do not aim at building a genuine union as

above-mentioned. In 1997, on the seventh anniversary of winning the election, the NLD also firmly announced the following:

Reference to the statement (1/90) of the SLORC, which stated that Members of Parliament are the people responsible for writing the constitution and its slogan that the emergence of the constitution is the responsibility of the entire people of Burma, all together 80 pages were compiled in regard to constitution.

The constitution cannot, however, be approved by a person or by an organization, as the NLD firmly believes that the conference should be attended by genuine representatives of the ethnic nationalities - as happened in the Panglong - and that only then can the constitution be approved. As such the NLD decided to back the proposal that the draft compilation should not be submitted to the state and be suspended.

Similarly, since 1990, the Democratic Alliance of Burma (DAB), an umbrella political alliance, drafted a constitution and in 1993 the first draft was approved. The leaders of the above organizations widely studied and exchanged the draft in a seminar held in October of 1994. In May of 1996, the first draft of the constitution of the future federal Union of Burma was approved, in the fourth conference of the National Council of the Union of Burma (NCUB). The NCUB formed a drafting committee to promote the federal constitution draft and is still, currently, trying to make the second draft public.

The ethnic armed groups are currently working on state constitutions with respective drafting teams. There is, however, little interest in the constitution from the country as a whole. Even though the state constitution is being drafted, the people cannot widely participate in the process, and it is now at the stage where the leaders of the organizations are discussing and adjusting it themselves.

The positions of the NLD on the Union are expressed in the Multi-party General Election Statement of the NLD, inter alias, as follows:

A Multi-Ethnic Nationalities National Convention will lay down the guidelines for the future union, and will be held, like the Panglong conference, for the purpose of adopting the foundations for a democratic society - endurance, development, peace and pleasure of the union.

Therefore, all political strengths throughout the union and outside the country are consistently working towards the emergence of a genuine constitution for the whole nation. Thus we, the CCRPA, are trying to determine the genuine aspirations of the people by reaching out to the nation as far as possible.

(b) The process implemented by the SPDC (military rulers)

In Burma, the democratic uprising broke out in 1988. After the 18th September, the day the SLORC brutally cracked down on the uprising and took control of the country. The SLORC held a multi-party general election according to the People's Parliament Election Law on the 25th May, 1990 and admit that it was both free and fair. The SLORC had approved and enforced this People's Parliament Election Law since 1988.

Yet even though they stated that this election was free and fair, they refused to implement the results of the election, and, to this day, have not allowed the people's representatives of parliament to convene.

Article (3) of the People's Parliament Election Law plainly and clearly prescribed that "the parliament must be formed with the representatives elected from their constituencies."

Official Speeches, from Authoritative Figures within the Burmese Military Regime

1. On the 23rd September, 1988, a former chief of staff from the army said:
" We are soldiers and our organization formed from the gratitude of the state, so we will not breach that promise under any circumstances. We want the people to believe what we say."
2. On the 27th March, 1988:
" We, soldiers, go back to the barracks and try to serve our original primary duties, from the past to the present day. "
3. On the 3rd July, 1990, he expressively stated:
" After the multiparty election has been held, what are we going to do? Are

we to draw the constitution? We have already said that the SLORC won't draw it and so we cannot accept this accusation against us. The representatives from the elected parties must draw the constitution ”.

4. General Khin Nyunt, former Secretary (1) of the SPDC, at the 100th press release held on 13th July, 1990, said:

“ The parties which won the election have to draw up a constitution for the future sake of the people of Burma. The responsibility for the constitution lies on the political parties ”.

5. He mentioned the following at the 104th press release held on the 11th September, 1990:

“ The SLORC should not draw the constitution; the representatives of the people must draw it. As we have said before so plainly and clearly, the people's representatives from the currently elected political party must draw the constitution ”.

Despite these public announcements, the military regime, through various means, refused the transference of power to the elected parties, and prohibited the writing of the constitution and the convening of the People's Parliament of the NLD and CRPP - the election results were never officially recognized. The military group promised that they would hold the election, transfer power and convene the People's Parliament and they proclaimed in statement no. (1/90), that the people's representatives must make the constitution. However, within the same statement, they also specified that they would not accept the establishment of a government with a temporary constitution in order to retain state power.

On April 24, 1992, the military regime released statement no. (11/92) and announced that they would hold a National Convention within next six months, in order to adopt the concrete constitutional principles. And, accordingly, they convened the National Convention on the 9th January, 1993.

Section (12) of statement (1/90), released on the 27th July, 1990, and article (3) of the People's Parliament Election Law stated: “according to the law, parliament must be formed with the representatives elected from the constituencies.” According to this provision, they firmly stated that the SLORC would arrange

the convening of parliament. In addition, section (20) of that statement read, "At the present time, the responsibility of the representatives, elected by the people, is to draw up the constitution". However, even though there were 702 people who could officially attend the National Convention, the number of representatives, who could actually participate, was only 107. This figure is only 15.24% of the total number of attendees - they are always the minority in the National Convention. The NLD won 392 of the total 485 seats in the 1990 election. Therefore, the authority's procedures for holding the convention are not in line with democratic principles. Furthermore, these responsible persons are unilaterally undertaking the attitude of the military group. In protest, the NLD did not participate, and has awaited a fair and proper convention since the 29th November 1995.

The commission holding the National Convention neglected to notify the NLD regarding the commencement of the convention, thus ensuring that the NLD wouldn't be able to attend. The commission also took away the status of NLD representatives, according to section (48) of the procedures for holding the National Convention.

The military group limited the activities of, and oppressed, the NLD by various means and detained the NLD representative in May and June of 1996. The SLORC proclaimed Order No (5/96) on the 7th June 1996. This order prohibits the addressing of speeches, discussing, writing or spreading information about the constitution, and clearly states that any person who does not adhere to these restrictions will be sentenced to imprisonment.

After the National Convention finished, the then Prime Minister, General Khin Nyunt, on the 30th August 2003, officially announced the seven steps of the Road Map for the building of the state. The military group held the next National convention on the 17th of May 2004, in accordance with the above statement. In this convention there were only 1088 people who could attend; with only 15 representatives elected in the 1990 election - a percentage of 1.38%. This figure dropped significantly from the 15.24% who were allowed to attend the National Convention in 1993. Furthermore, this figure indicates that the people's representatives were taking part only nominally.

The military regime's plan for the constitution excludes the participation of the people. This process allows the National Convention to create a constitution that favors the military regime and forces the people to approve it.

Part (4)

Sectional Presentation for Systematic Revelation

(A) Rule of Law

To establish freedom, peace and justice in a society, the rule of law is of paramount importance. Currently, there is no rule of law in Burma. In every country, having produced a constitution, the government itself is to obey it. The declaration of rules, laws and orders, which are contrary to the constitution, should be prohibited. For instance, Chapter 11 of the 1974 Constitution of the Union of Socialist Republic of Burma recognizes **“The fundamental rights and duties of the citizens”**. Furthermore, it is enshrined in section 159 (A) of this chapter that **“The personal liberty and security of every citizen shall be guaranteed,”** and in section (159) (B) that **“Without the permission of the relevant judiciary, a citizen should not be kept in custody for more than 24 hours”**. In reality, officials appointed by the Burmese Socialist Program Party (BSPP) can arrest and extend the detention periods of suspected persons at any time without sound proof. This case clearly demonstrates violations of the constitution and the absence of rule of law.

The deterioration of rule of law in Burma is indicated through the blatant disregard of the results of the May 1990 multiparty general election held in accordance with the 1989 parliamentary election law. Moreover, despite bilateral cease-fire agreements between the ethnic armed forces and the SPDC, the status of ethnic groups as unlawful associations has not been annulled in accordance with the existing law of the SPDC. Such actions undermine the law and point toward the lack of real peace in the near future. Therefore, the main objective of the Constitutional Committee for the Revelation of the People’s Aspiration is to establish the rule of law and real peace in the country.

To re-establish the rule of law, a constitution is needed in which the authority of the government are limited, the rights of the freedom of an individual are granted, and the rights of self-determination of the ethnic nationalities, social strata and groups are protected. If such a constitution is developed, current laws, including those removing and restricting the basic rights of the citizen, can be abolished, and newly created laws will not be able to affect the basic rights of the citizen. Only then can the rule of law really be established.

For example, the General Secretary of the NLD, Daw Aung San Suu Kyi, was placed under house arrest on 19th July 1989 by the SLORC, under section (10)(a) of **“the law protecting the country from the danger of disturbances and destructions”**. Under this law, a maximum detention period of 3 years was originally stipulated. However, in 1991, this section was rephrased to extend the detention period stating that **“A continued detention period may be extended for one year at a time up to a total of five years, with the permission of the cabinet ministers.”** At the time of Daw Aung San Suu Kyi’s arrest the maximum penalty period was prescribed as 3 years, so the period of confinement should not have exceeded 3 years. The military dictator defied this rule of law by extending the detention period retrospectively according to the newly changed law. Such an action displays a clear disregard of the fundamentals of the Rule of Law.

Unjust laws, imposed by the military regime, shall be eliminated only with the emergence of a new constitution, that guarantees the fundamentals of the Rule of Law, and accordingly just laws can be enacted. The SPDC, formerly known as SLORC, is a government not borne from the constitution; exists above the law; and administers and rules the country at its own disposal. Since the Rule of Law is a must for a country, the creation of a constitution which enshrines the principles of the Rule of Law is essential, and the elimination of current unjust laws is urgently needed.

(B) Human Rights and Constitution

Out of norms of the Universal Declaration of Human Rights (UDHR) and international human rights laws, those accepted by the society of Burma should be enshrined in the constitution. Only then, these rights will transform into na-

To re-establish the rule of law, a constitution is needed in which the authority of the government are limited, the rights of the freedom of an individual are granted, and the rights of self-determination of the ethnic nationalities, social strata and groups are protected.

tional laws, and systematic protection of the people will ensue. As such, correlation of human rights with the constitution is pivotal. Everybody deserves to enjoy human rights without the distinction of country, race and origin. During fifty years of civil war the people of Burma have suffered torture, forced labour, arbitrary detention, punishment without due process of law and fair trial, and forced displacement; transgressions committed in complete violation of the Rule of Law. In order to prevent future atrocities, it is essential to prescribe the appropriate human rights into the constitution as a means to protect the people of Burma.

Although forced labor is prohibited in paragraph (4) of the UDHR declaration, evidence exists of forced labor being employed by the SPDC. Paragraph (20) of the UDHR clearly states that **“forced registration into any association should not be done to anybody else”**. Nevertheless, the military regime continues the practice of forcing students, youths and other civilians to register with the Union Solidarity and Development Association (USDA) and other government affiliated associations.

This committee convinces that it is impracticable to prescribe all the provisions of the UDHR into Burma’s constitution. On the basis of Burma’s diverse geography, cultures, ethnic nationalities, traditions and customs, it is important to incorporate the appropriate human rights that will assign more basic freedoms to the individuals in the constitution. Inclusion of these rights into the constitution will create them as national laws.

(C) Bill of Rights

It is a tradition to prescribe the basic rights of a citizen into the constitution in countries where the Bill of Rights does not exist. Every citizen has to seriously consider which rights ought to be prescribed in the future constitution of our country.

Globalization has facilitated faster flow of information and communication between countries around the world and there are two polarized views on how globalization has contributed to the spread of ideas on human rights. Scholars argue that the worldwide spread of ideas and views on human rights can be attrib-

uted to the globalization phenomenon. As such, the validity of thirty articles of the UDHR cannot be ignored by anyone in the world. This declaration has become the ideal framework of human rights for all peoples of the world.

However, all the provisions of the UDHR cannot be prescribed in Burma's constitution, because the declaration is a set of norms for the entire world. While constitution is a legal text to be compiled with practically for Burma, it is necessary to develop her own constitution, which may include some important provisions of the UDHR. It is true that in adopting provisions of the UDHR, we cannot apply and enforce these norms immediately. Such expectations would be impracticable and impossible. It is important to embrace and adopt these ideals slowly rather than expecting immediate and abrupt change.

Ideally, we would like to prescribe all articles of the UDHR into Burma's constitution because it may be best interest for all people in Burma. In spite of that, if we duplicate all articles of the UDHR into constitution of Burma, there will arise difficulties, obstacles and problems. That is the concern of this committee.

Some consider that, although the provisions of the UDHR are worthy, the main concern is not the substance of these provisions, but how appropriate, applicable and useful these provisions are to a country. There are those who simply ignore the profound essence of the UDHR by asserting that when prescribing the rights of people in a constitution, consideration should be based mainly on the country's geography, cultures and traditions. This committee believes that this should not be a major consideration.

Individuals cannot exercise their absolute freedom in a society. The exercise of rights comes with restrictions. The challenge lies in determining the extent of these limitations. It is wrong to have no restrictions and an excess of restrictions can destroy the basic freedoms of each individual, leaving their life without essence.

For this reason, international human rights scholars have accepted the concept of "limitation is limited" on restrictions. This idea is described in the UDHR Article 29 (2), as follows:

“ In the exercise of their rights and freedoms, everyone shall be subject only to such limitations, as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and general welfare in a democratic society. ”

This means that while limitations are accepted, those in power cannot impose any limitations they want by law. For example, Article 19 of the UDHR prescribes that **“everyone has the right to freedom of opinion and expression”**. If we include this stipulation in the constitution, it will result in absolute freedom. Whether we should limit the freedom of expression or not depends on the situation of the people, the empowerment of the government and the functioning of other governmental institution.

In the constitution of the United States of America, amendment (1) states that **“congress shall make no law . . . abridging freedom of expression”**. This establishes that the constitution of the United States guarantees the freedom of expression without restrictions. To achieve such liberty, the U.S. has an independent judicial system and the courts can make decisions according to the law. In addition, a citizen cannot violate the basic freedom of another citizen in exercising the right to freedom of expression without any limitation. If such an incident occurs, the victim can sue the perpetrator, who may then be ordered by the court to pay sufficient compensation throughout their life. Therefore while every American citizen is given the right to freedom of expression, they have a duty to avoid insulting the dignity and the rights of other citizens.

To include the aforementioned section of the United States constitution in the Burmese constitution, it is important to assess whether Burma has the conditions to fully apply an independent judicial system or not. Unfortunately, the present judicial system under the ruling military junta, SPDC, is unreliable. Therefore, consideration to limiting freedom of speech in Burma has increased. For instance, in the aftermath of Burma independence, the judicial system was to a larger extent independent but freedom of speech was limited. This was exemplified in the 1947 constitution in which limitations was placed on the freedom of speech. In section 17 of the 1947 constitution:

“There shall be liberty for the exercise of the following rights subject to law, public order and morality,” and

(i) **“The right of the citizens to express freely their convictions and opinions”**.

While these limitations were accepted, there were concerns pointing to their vagueness and lack of precision. For example, the **“subject to (the) law”** clause is quite ambiguous. It is uncertain which laws will be ratified in the future. As a result, there is criticism that the constitution will only support future laws and creates a channel for further limitations on the people’s freedom of speech.

When the 1974 constitution of Burma emerged, restrictions on freedom of speech became even vaguer. Section 157 of the 1974 constitution states that:

“ Every citizen has the freedom of speech and expression and is free to publish independently, as long as it does not hinder the benefit of the people and socialism ”.

The restriction in the constitution is that citizens are not allowed to oppose the benefit of the working people and their socialist government. Due to the difficulty of defining the meaning of these terms, there were many cases where citizens were accused by BSPP authorities of opposing socialism and greater benefit to the socialist regime.

We can accept limitation of rights, but acceptance should be based on the concept of “limitation is limited” as regards to the basic rights of a citizen, including freedom of speech. All of the rights of a citizen should be carefully considered from this perspective. The people of Burma have been deprived of their dignity and basic rights for over four decades. When the new constitution is introduced they will not be able to immediately enjoy all of their rights as enshrined in the UDHR. However, the constitution can be used as a clear foundation for the people to receive the full benefits of human rights in the future.

Today, referring to the UDHR, and also to the lessons from our experiences, and diverse geography, cultures, ethnic nationalities, traditions and customs, we should gather to collect common aspirations by exchanging our equal opinions on

people's rights. The time has arrived to express the outcome of this discussion and be incorporated them into the constitution.

(D) The Structure of a State

In order to achieve an appropriate constitution for future Burma, it is worthy to provide opinions on the structure of the state. The following three systems will help in studying and considering it:

- (1) Unitary State
- (2) Semi-federal State
- (3) Federal State

(1) Unitary State

In unitary states the power of the state such as legislative, executive and judicial power is centralized. As for judiciary, the appellate power rests only with the Supreme Court, the highest court of the state. Some portions of administrative power are allotted to the states, divisions, districts and townships at the disposal of central government. An advantage to the unitary state is the rapid implementation in terms of administration. Strong centralization results in the easy stabilization of a country. The weakness of the unitary state is its political instability resulting from the unequal sharing of political power among different nationalities. Countries practicing a unitary state style of governance often become dictatorships. The unitary state model is practiced in Thailand, Japan, Philippines, Indonesia, South Korea, China, Russia and Great Britain.

(2) Semi-federal State

In semi-federal states sovereign power is mostly centralized yet some of the power is distributed and practiced by states of the union. This model was practiced in India, Malaysia and Burma (under the 1947 constitution).

(3) Federal State

In a federal state, sovereign power is shared between the central government and the constituent units of that state. Scholars point out both benefits and weak-

nesses of the federal state structure. Switzerland, Germany, Belgium, Australia and the US practice the federal state model.

Benefits:-

- Distribution of sovereign power results in a struggle for power without violence, allowing the question of control to be solved through politics.
- It can prevent the total domination of sovereign power by the winner of the election.
- It can reduce conflicts, differentiation and ethnic problems by creating a basis for collaboration, coordination and negotiation.

Weaknesses:-

- In practicing a federal system, a constituent unit (or a member state) with a strong economy may distribute its wealth to an economically weak state. In addition, member states with rich natural resources may share their resources with other member states that have lesser natural resources. Ignorance of unequal distribution of economic factors and natural resources will lead to the collapse of the federal system.
- If a federal union is formed mainly on the basis of ethnic nationalities, the states may practice extreme nationalism. This will lead to the disintegration of the federal union.
- Besides the risk of weak management by the federal union government, the practice among the member states of different education, economic, healthcare, judicial, and transportation systems may break up the federal system.

It is the duty of the people to reveal their aspiration on the type of state to be adopted by the country.

(E) Sovereignty and Constitution

The essential requirement to possess and exert absolute power for the firm survival of a country is the State Sovereignty of that country. This means the power to enact laws that will affect citizens living in different localities, to execute and to adjudicate the disputes in accordance with the law. In other words, subject to international human rights law, a country, on the basis of its sovereignty, has

the autonomy to develop relationships with other countries without interference from foreign nations.

The fashion in which sovereign power is practiced differs between democratic and dictatorial countries. In a dictatorship, State Sovereignty is mainly practiced; the dictator places more importance on the stability and strength of the country rather than on the type of government. In democratic countries where constitutionalism is adopted, Popular Sovereignty is the main system, that is, the sovereignty belongs to the people.

Based on the distinctive features of background history, geographic nature, mix of nationalities, economic conditions, and culture and traditions, there are differences to be taken into account when determining the country's administrative system. In a parliamentary system, suitable representatives are chosen from the elected candidates of the winning party to form a government. In a presidential system, the candidate with the highest number of votes by the citizens of the country will become President. Regardless of what system is used in the country, popular sovereignty is practiced in the federal and provincial governments formed by representatives elected in free and fair elections.

There is a stark contrast in the practice of sovereignty in dictatorial countries and in democratic countries. In a dictatorship, State Sovereignty is the prime factor and communicating with the people is a secondary factor. This means state sovereignty is foremost, and the people are a subordinate consideration. In a democracy, Popular Sovereignty is the highest consideration and the country is secondary. In other words State Sovereignty is controlled and prevented by Popular Sovereignty.

In trying to establish the constitution of Burma, the people have to consider whether to practice State Sovereignty or Popular Sovereignty.

To draft the constitution based primarily on State Sovereignty, the people are not important in forming the legislature or the government. On the other hand, if the constitution is based on Popular Sovereignty, the legislature and the government must be formed solely with elected representatives. In a Presidential System the people may show disapproval of the presidents' appointed cabinet

Regardless of what system is used in the country, popular sovereignty is practiced in the federal and provincial governments formed by representatives elected in free and fair elections.

members because they are not elected. However, the government must be lead by a popularly elected president. If the people disapprove of the president, the whole cabinet will be dissolved.

In the U.S, where Popular Sovereignty is practiced, the introduction of the constitution states “We, the people of the United States...” India’s constitution begins likewise with “We, the people of India...” Lastly, the introduction of the constitution of Switzerland states that “We, the Swiss people and Cantons...” In these countries, the role of the people is emphasized and expressly stated in the introduction of the constitution.

The concept on Popular Sovereignty is also reflected in Section (2) of the Constitution of the People’s Republic of China as follows:

All power in the People’s Republic of China belongs to the people.

The most important feature of Popular Sovereignty is the people’s right to elect and remove all legislative members or the entire government. The powers of election and dismissal are not in the hands of any part of the government, nor of any authority, nor of any armed forces, but in the hands of the people.

Therefore, this committee’s concern in drafting the constitution is to procure the peoples’ opinions with regard to the following decision:

(1) Stability and firmness of sovereignty – to adopt the basic policy of sovereignty without any intention of practicing sovereignty, or in other words, to emphasize the stability of the country without regard for whom will hold legislative or executive power. OR

(2) Only members elected by the people should participate in the Union or State Legislative Parliament and in the Union government or State government. By following this course of action, representatives of the people will practice legislative power, executive power and judiciary power and thus maintain the stability and firmness of sovereignty.

The powers of election and dismissal are not in the hands of any part of the government, nor of any authority, nor of any armed forces, but in the hands of the people.

(F) Government Systems

It is necessary to prescribe and confirm whether to adopt the government system that corresponds with one of the government system of other countries or to adopt a newly created government system in our constitution.

Government systems practiced by the countries of the world can be roughly categorized as follows:

1. Presidential Government.
2. Semi-presidential government.
3. Parliamentary government.
4. Collegial government.

Presidential Government is practiced in the United States of America, Philippines, Indonesia, South Korea and Latin America. Countries practicing this type of system do not have a Prime Minister and the President exercises his or her administrative power with the assistance of appointed cabinet ministers. Therefore the President is politically the most important person and the people have to vote individually in order to achieve meaningful democracy. The strengths of a Presidential Government lie in the country-wide announcement of the presidential candidate and the right of people to vote directly for the president of their own choice. The weakness is that all administrative powers are in the hand of the president alone and it becomes easier to establish a dictatorship. In other words, countries trying to establish a dictatorial regime practice the Presidential system of government. Examples can be seen in the Philippines, Indonesia, South Korea and Latin America.

Up until now, the United States of America has been the only country to successfully implement Presidential Government. The reasons for the success of this system in the U.S. are the high level of basic education of the people; the prescription, guarantee and protection of the basic freedom of each person by law; the successful practice of an independent judiciary system controlling the operations of the administration; the powerful news media; and the close supervision of government activities by independent public associations, lawyers, labor unions, and human rights societies. Such methods of accountability mean that the President has no right to do whatever he likes. With this background of social

scrutiny, it is not very easy for the President of the United States of America to be a dictator.

In considering the application of a Presidential Government system, it is wrong to apply this system in a country based simply on the success in the United States of America. It will be a success only if all other conditions in the practicing country are the same as in the United States of America. If such conditions are not evident in the country, the life of a current dictatorship could be prolonged or the basis for another dictatorship be created.

In review of the SPDC's Presidential System, which is based upon basic principles of the current constitution, benefits of the Presidential System are negated by the following factors:

- (a) The President can be a non-elected person. To be more precise, after being directly appointed by the chief-of-staff and becoming a parliamentary member, a military officer can become the President.
- (b) In the United States of America, although the President is elected by the Electoral College, in practice the President is directly voted in by the people. This means the people may vote for the President of their choice. In the Presidential System of the SPDC the people are uninformed of the identity of the nominated President. Even though the people do know the candidates, they cannot vote for and elect their head of state. The President is effectively elected by the Electoral College.
- (c) In order to successfully practice the Presidential System as in the United States of America, it has to be acknowledged that there is no basic civil society in Burma as there is in the United States of America.
- (d) If an opportunity does arise, to practice a true presidential system by direct vote, in a country like Burma, where so many ethnicities coexist, the practicalities of this system have to be reconsidered. Because the majority of the population is Burman and the president is elected on the basis of votes by the populace, the chances of electing a president of another ethnicity such as Shan, Kachin, Mon, Rakhine or Chin will be very rare. This is a very important fact to consider.

In the Parliamentary Government system, the lower House of Representatives is composed of representatives elected by the people. The political party with a majority of parliamentary seats leads, and based on the lower House of

Representatives a government body is formed in accordance with the constitution. In the Parliamentary Government system, all the members of the government body are elected parliamentary members. Inclusion of opposition members in the House of Representatives can highlight and subsequently adjust any weaknesses in government functions.

The main weakness of the Parliamentary system of government is the formation of an unstable coalition government if, despite winning a majority of seats in the election, one party does not hold enough seats to form a government. To practice the Parliamentary Government system, formation of a stable government is necessary and consideration must be made on how to design the constitution to achieve this. The main strength of a Parliamentary Government is that opposition parties are able to criticize serious mistakes made by the government and ultimately depose the government. The development of a dictatorship can thus be prevented. In practicing proportional representation, seats in the House of Representatives are held by not only the political party with majority votes but also by the political party with minority votes, and political compatibility can be attained.

This is an outline consideration of Government Systems by the Committee. The people of Burma may have more complete information and more complete considerations. The time has arrived for the people to consider and reveal the type of government system preferred for the union government or provincial governments.

(G) Independent Judiciary and Court Power

In the constitution, the judiciary is prescribed as a separate chapter. In every human society, to achieve independence and justice, a judiciary pivot is a crucial need. Every time the rights of each citizen are affected, they try to reclaim their rights through committing crimes on which they are subsequently penalized. To decrease any such crimes in the future only the courts can carry out this task. Therefore, in order to have an independent administering of justice in the courts, serious consideration on how to create and entrust these conditions in the constitution should be seriously considered. Referring to the Basic Principles on The Independence of the Judiciary, which is a part of the International Law of Hu-

man Rights, the practical problems in Judiciary cases of Burma should be studied and prescribed in the constitution and the people should gave their opinions on this matter.

To ponder retrospectively the brief judiciary history of Burma, according to the 1947 constitution, the implementation of the judiciary system was successful after independence in 1948. Whenever an authorized person of a government hurt and violated the rights of each citizen, the chief court protected and looked after the citizen as much as possible. In the case of detaining the members of opposition political parties arbitrarily, the court immediately released the detainee of insufficient evidences by issuing Habeus Corpus. Premier U Nu recognized the protection and was looked after by the court at that time. The judges had responsibility on the constitution and other laws, and there was an independent judiciary system. After the coup d'etat by the military in 1962, the Independent Judiciary System slowly disappeared. At the time of the Burma Socialist Program Party (BSPP), when the 1974 constitution dominated, the judges appointed by BSPP made decisions under the guidance of the party. At that time, the popular usage of "Whatever the law says" was the acclaimed fashion.

After the coup d'etat by the military again in 1988, the conditions of the courts become excessively worse. The generals of the SLORC and SPDC appointed and dismissed the judges of the court at any time as they wished. There exists no constitution that would guarantee tenure of judges, and also in other judiciary laws, not a single word was prescribed in this respect. In the text book on law reports, only the standard rulings of the Supreme Courts or Chief Courts are usually described. However, in the day of powerful General Khin Nyunt, the Secretary (1) of the SPDC, his speeches and directives on judiciary were included in the report of Burma Rulings.

Also U Aung Toe, the Chief Justice of the Chief Court, was ordered to act as the Chairman of the National Convention Committee, which is the political responsibility and is not concerned with the judicial affairs. So, the Chief Justice fell down into a disfigured stage. In summary, through out the time of the SLORC and SPDC dominated period, the major issue in the judiciary system was, and is, the influence of the judiciary by the executive body and the lack of independence in judiciary.

The second is the power of the court. Which type of power should be entrusted to the court according to the law? The power of the Supreme Court to issue five writs, including Habeas Corpus, that was enshrined in the 1947 Constitution, is now lacking. So, lawless action of the military authorities upon citizens cannot not protected and looked after by the existing judicial system and the courts are to look on with folded hands. The Supreme Court is not authorized to apply Judicial Review Power upon the government. In reverse, executive review of the activities of the court was carried out by the government. Case complaints by citizens upon the executive body were not punished: to the contrary, based upon the complaints of the executive authorities, there were many cases of the people being penalized. Therefore, the Supreme Court exists as merely a structural form, and because of bias favoritism, the people disbelieve in the law and the judiciary system. In order to reform, transform and make progress, the time has arrived for the people to consider and reveal their opinions upon whether to anchor the judiciary system both in the Union or Province constitutions.

Judiciary is prescribed in chapter (3) of the constitution of the United States of America. Also, the judiciary is prescribed in the constitution of Australia in chapter (3), in the constitution of India in chapter (4), in the constitution of South America in chapter (8), in the constitution of Thailand in chapter (8), in the constitution of Germany in chapter (9), in the 1947 constitution of Union of Burma in chapter (8) and in the 1974 constitution of the Union of Burma in chapter (7) respectively.

In democratic countries, to promote freedom and justice, judiciary is separated from the executive and legislative bodies and independent adjudication by the judges is clearly guaranteed in the constitution.

For example, in Section (165) of the South African constitution, the judiciary power of the Presidential system is confined to the court and the courts have to follow independence, freedom from fear, and make non-bias decisions, according to the constitution and laws. All the associations must protect and support the courts in the independent judiciary.

In the implementation of the judiciary pivot, there are differences in the formation of the courts according to the structure of the nation. Generally in the

Unitary State, finalized decisions are made by the Supreme Court. In the Federal State, due to the sharing of judicial power, some cases can be finalized by the highest courts of member States while others prescribed by the law can be finalized by the Federal Supreme Court. In some countries, the Supreme Court is given power to decide cases concerned with the constitution, and in some countries the constitutional courts are formed and given the power of judgment; for instances, in Germany, South Africa and Thailand there are Constitutional Courts.

In the United States of America, the highest court is the Supreme Court. Nine federal appeal courts were formed in prescribed localities by the law. Before 1948, these courts were called the Circuit Court of Appeal. Federal appeal courts hear and examine the appeal cases put forward by the district federal courts. Judges in this court are appointed by the President in agreement with the Senate Parliamentary members. Cases of basic law dispute, cases where the State law disagrees with basic law as decided by the Federal court, and cases where the Supreme Court has an opinion to consider, can appeal to the Supreme Court. Other than this, the Federal Appeal Court's decision is final.

There exist District Federal Courts under the Federal Appeal Court. There is at least one District Federal Court in a State. The judges of the District Federal Court are directly appointed by the President. Cases concerned with the prescribed federal law are filed as the primary case in the District Federal Court including the civil suit. Appeals on the decision of the District Court can be submitted to the Federal Appeal Court. In some cases the appeal can be directly submitted to the Supreme Court. These federal courts are within the United States federal circle and are formed under chapter (3) of the basic law. Under chapter (2) of the basic law, there are administrative courts formed by the Congress power, namely: the Custom court, Court of Custom and Patent Appeal, Territorial court, Tax court and the Military Appeal Court. The Military Appeal Court was formed in 1950 and three civilian persons were appointed as judges by the President, in agreement with the Senate Hluttaw, to adjudicate the appeal cases of the Court of Military Appeal.

In the states, there are sequences of courts formed by the basic state law. These courts adjudicate cases violating the law prescribed by the State Legislature. If one State law contradicts the Union basic law or Union law, it can appeal to the Union Supreme Court on the decisions of the State Supreme Court.

In section (73) of the constitution of Australia, High Court is the highest court in a Union. In 1977, the Federal court was formed with twenty-five judges. This court applies the laws prescribed by the Union Parliament, and established the Family Court for industrial dispute and bankruptcy. In this Federal Court, forty-two judges were appointed.

In the states, to dispense justice according to the laws prescribed by the state legislature, the State Supreme Court, the Intermediate Court and the Magistrates were formed in sequence. All these courts inspect the civil suit and criminal cases and make decisions. Although the State Supreme Court is the highest court in the State, the decision of these courts can appeal to the Union Supreme Court. The Union Supreme Court can make decisions upon an appeal by referring to the State Laws.

In South Africa, according to section (166) of the basic law, the Constitutional Court, the Supreme Court, the High Courts and the ordinary courts are the courts to be formed in accordance with the law. If there are cases of controversy regarding the basic law, then the constitutional court can adjudicate them. In some countries, controversy regarding the basic law is adjudicated by the Supreme Court, as it was prescribed in the constitution.

Every country has the Supreme Court as the highest court; its duty is to carry out judiciary as specified and prescribed by the constitution. In the Supreme Court, a chief judge and other Supreme Court judges are appointed and assigned by the constitution; however, the number of judges is not fixed. For the Supreme Court, the original jurisdiction and appellate power against the jurisdiction are prescribed in the constitution.

In brief, the people of Burma may provide their opinion about whether the judiciary of Burma should be prescribed in the future Union Constitution and State Constitution, in accordance with the following:

- (a) To establish independent judiciary - in whose hand the appointment of Supreme judges should be kept? As in the case of some countries, can independent judiciary be awarded to the separately formed independent judicial commission? Based on the proposal by the President or the Premier, how should the system of selection and appointment

- by the relevant legislative assembly is applied?
- (b) To guarantee the judicial tenure - how should dismissal and action of the Chief Justices be prevented with the law as prescribed in the constitution?
 - (c) Which power should be awarded to the Supreme Court of the Union?.
 - (d) Should the power, to decide disputes regarding the constitution, be awarded to the Supreme Court? Or should the constitutional court be formed separately?
 - (e) How should judicial power be differentiated and applied to both the Supreme Court of Union and the High Courts of member States? In criminal cases, such as those regarding the death penalty, should the highest power to decide the appeal be in the hand of the Supreme Court of Union or in the High Courts of member States?

It is time for the people to give their opinions on how to prescribe the judiciary in the constitution.

(H) Political Parties and Civil Society Organizations

Political Parties are associations who announce their policies and objectives with the aim of achieving political power by gaining seats in an election. After winning an election the political party forms a government and carries out the tasks of the government. Parties that win a minority of seats in the parliament will stand as opposition parties and exercise effective control on the performance of government tasks.

Civil Society organizations are those which aim to resolve problems of society such as health, education, the natural environment, etc. . . . And are comprised of community groups such as labor unions, peasant unions, teacher unions, merchant associations, business associations, lawyer associations, doctor associations, office worker unions, township associations, national culture and literature groups, or groups of some other cultural, religious, or racial nature.

Public associations try to benefit the people by offering their skills and services. Furthermore, while civil society organizations cooperate with the government, they also act as watchdogs, monitoring daily work of the government, and

pointing out and criticizing any weaknesses. Such observations have the effect of controlling and conferring the power held by the government.

The independent civil society organizations, contributing the society, play important roles in many countries. However, in Burma, strict suppression of the formation, movement and functioning of such associations denies the people the right to participate in politics and beneficial work.

In section (17) (c) of the 1947 Constitution, the right to freedom of association is prescribed. However, it is restricted in order that the exercise of that right shall not be contrary to the law, public order and morality of the people. Restriction that may benefit society should be prescribed; but those based purely on suspicion should not be allowed. Factors that may affect the public order should be definitely and clearly stated, and also the meaning of the term 'morality of the people' should be defined as clearly as possible.

The number of restrictions, on the formation and function of associations, increased after the coup d'état in 1962. Following the enforcement of the 1974 Constitution, the number of restrictions escalated to a maximum, as can be seen today.

On the 30th of September 1988, the military regime prescribed that "Formation and function of associations cannot continue without permission" in the Association Law chapter (2) section (3) sub-section (c). In chapter (3) section (5) of the Association Law, the following organizations are not allowed to exist and function :-

- (a) According to the 1988 political parties registration law, those that cannot register, and those already registered, but rejected by the multi-party-democracy general election committee.
- (b) Organizations trying to strive, stimulate, encourage and urge the people to disturb the rule of law, public order of the administrative unit of the state, or those troubling the safe and smooth transportation of the state.
- (c) Organizations trying to strive, stimulate, urge or encourage in the halting (or) disturbing of the administrative machine of the state;
- (d) Organizations comprising the persons as members serving in the people's army, the administrative mechanism of the nation and the people's police force, government employees (or) civil servants receiving a sal-

ary from the government budget, under the influence of or connected with a political party.

It is a great obstacle to the independent formation and function of people's associations.

Therefore, people who wish to achieve independent formation of associations, and freedom of related activities, may express their opinions on how to prescribe and protect them in the future constitution. Only then will restrictions on the independent formation of associations and their activities come to an end, and the people will be able to start exercising their democratic rights.

(I) Women's Rights and the Constitution

Equality of gender rights has been recognized and elucidated around the world. Accepting, as a premise, the importance of joint cooperation of women in the development and progress of human society, people across a variety of disciplines have been working to promote the life and ability of women. The decline of human society, due to the disparities and differentiated relationships which exist amongst individuals, is highlighted by people's unrest around the world. Consequently, the elimination of differentiated relationships is paramount.

Recognizing the various methods of oppression and discrimination against women, the global community has concentrated on the total eradication of these forms of discrimination, with the aim of protecting women's rights. This extraordinary task encompasses the right of women to citizenship, women's sexuality and reproductive rights, and addresses the gender differentiation ingrained in some cultures and the norm status of women as defined by the law,

In article(1) of the UDHR, discrimination on the basis of gender is rejected and it is firmly prescribed that *all human beings are born free and equal in dignity and rights*. It is affirmed that gender equality, freedom and other basic human rights, as declared in the UDHR, can be achieved by the people.

Countries which have adopted the Universal Standard of Human Rights have a responsibility to guarantee the right of gender equality on economic, so-

cial, cultural, citizenship, and political grounds. Women need to participate fully and equally with men in every aspect of the development process of a country, and in the progress of the world towards peace. To attain full gender equality in human society and in the family, consideration must be given to the study and reform of the traditional and habitual ideas influencing the relations between men and women.

In the pursuit of full equality between men and women, an outcome sought by society as a whole, it is essential that family values should not be ignored. The generally accepted values desired by society are freedom, peace and justice. Working toward gender equality facilitates the enjoyment of these values in human society and doesn't hinder them. The men and women establish the human society together. Thus the common struggle for gender equality will result in a firm alliance between the sexes and will bring forth more justice in human society. But if cooperation between men and women for equality is forced, the bond will be torn and justice will suffer. This must not happen.

The family is an important foundation of human society. As such it is essential to build up an affectionate unity in each family. In trying to attain absolute equality between husband and wife, the aim is to strengthen the prospect of affectionate unity within the family. However, in building absolute equality between husband and wife, care should be taken not to ruin the affection which ties them together.

The application and no application of Absolute Equality in human society are correlated with equality of gender rights. Absolute equality cannot be applied in any society. There are differences in mental intelligence, physical features, body structure, living environment, qualities and endeavors. These differences result in unequal beneficial effects.

Generally, there is equality by rights, equality by opportunity and equality before the law, when approached from an equal basis. In the application of equal rights between persons in human society, ideological recognition of this concept is needed by the individual or society. The UDHR strongly reflects this idea. If equality of rights is to be accepted, it should be clearly prescribed in the Constitution. Accepting this concept of equality by rights is not the end however. It is

important to create equal opportunities, for the individual as well as the group, in order to exercise these rights.

Human society has the responsibility to create the preconditions for the independent practice of freedom by individuals, and to accept the practice of these basic freedoms. It is implicit that without understanding the nature of these freedoms, each person cannot know how to apply them. Moreover, people cannot know how to achieve their basic freedoms and how to retrieve them if they are lost. It follows that educating the people about their rights is very important and men and women should work together towards this aim.

Human society must create opportunities wherein women can participate equally with men in the political, social and economic fields. It is desperate that equal rights for both women and men are prescribed in the Constitution. Gender equality exists only on paper if conditions are not created for women to attain these rights. In order to become equal with men in development issues, it is necessary for the women of Burma to create equal rights for those women who have been left behind taking care of cultural and family duties. The laws detrimental to the right to equal opportunity have to be withdrawn from the present active law. With respect to the new Constitution and the organic laws, the right to equal opportunity has to be enshrined in.

One of the main factors for the lack of female participation in politics is the lack of support that society gives them. Amongst the cultural traditions accepted by Burmese society, while women are valued, there are cases where they are not respected and are not thought highly of. As a result, women in Burmese society are unable to make progress and are marginalized. In order to overcome such disrespectful attitudes toward women and to attain their political rights, consideration should be made pertaining to this matter when drafting the Constitution.

Some propose to fix the number of female representatives of government bodies in the Constitution is one solution. This move will guarantee that women will serve in legislative parliament, government organizations and courts. Women will have more opportunity to demonstrate their qualities. If the number is not fixed, it is argued that under the present conditions in Burma, open competition between genders for positions in the legislative parliament, government organizations and courts will favor men, and the participation of women will decrease.

Others have different presumption that, the right to equal opportunity applies to both genders and is not a separate issue for women only. According to this principle, it is sufficient to prescribe in to the Constitution the equal participation of women and men in elections, as elected ministers in the parliament, and as elected Presidents. It is unnecessary to allocate a set number of positions to women. In order to solve the country's problems, qualified persons are required in the legislative parliament, government organizations and courts during the transitional state from dictatorship to democracy. If elections are gender neutral, posts will be filled by the most qualified candidate, regardless of gender.

Moreover, if the number of female representatives is prescribed in to the Constitution, and there is an abundance of qualified female candidates, some qualified women would lose their opportunity. It follows that a fundamental aim is the creation of equal opportunities for men and women, rather than their mere prescription into the Constitution. Equal opportunity will enable qualified women to participate fully in the legislative parliament, government bodies and courts. As indicated by scholars, this will not give priority to human hierarchy, and will guarantee equality.

In the Constitutions of the United States and Australia, the participation of women in parliament was not prescribed. In the United States, there are sixty-two female parliamentary members in the Senate and fourteen female members in the House of Representatives. In each of Australia's seven States, female parliamentary members are included in both the Senate and the House of Representatives.

From a constitutional perspective, it is necessary to lay down solid foundations for women to seek remedies for the injuries suffered under the military regime and ensure that they do not happen again in the future. Based upon the aforementioned considerations, it is time for the people of Burma to provide their opinions on whether to include the following facts:

- (1) To prescribe the formation of a free women's association, without the influence of any political organization and with the ability to act freely in the Union Constitution or Federal Constitution, or not to prescribe it.
- (2) To guarantee the participation of women by percentage or ratio in the

- Union parliament or in Federal parliament, or not to guarantee.
- (3) To guarantee the participation of female ministers by percentage or ratio either in the Union government or in the Federal government, or not to guarantee it. Whether or not it is appropriate to create a Ministry of Women's Affairs, such as in Cambodia?
 - (4) To prescribe in the Constitution the participation of women as judges in the Supreme Court of the Union, the Federal court, and their subordinate courts, or not to prescribe it.
 - (5) To prescribe in the Constitution the formation of a separate and free Women's Affairs Commission that is not subordinate to the government, as in the Constitution of South Africa, or whether not to prescribe it.

(J) Conservation of Natural Environment and the Constitution

The Importance of Protection and Conservation of the Natural Environment

With the aim of economic profit, people cut down and sell timber and other valuable forest resources, destroying the natural environment. Many wild animals depend upon the forest for their survival. Men also have to depend on the natural forest. Deforestation results in migration and the increased scarcity of wild animals and living creatures, leading ultimately to the extinction of rare species. Forests help prevent erosion and land slides, and their depletion leads to soil erosion and a subsequent loss of nutrient fertility, creating problems for agriculture in the near future. Simultaneous changes in the weather occur, which have a detrimental effect on the population.

Deforestation causes rivers, streams, ponds and lakes to dry up, creating a natural disaster. Due to drought, aquatic creatures become rarer and rarer, and species finally die out altogether. Weather abnormalities lead to the overflow of rivers and streams, and ultimately the flooding of towns and villages, causing unexpected loss and damages. Deforestation also has a negative impact on the gathering of medicinal plants and herbs which are found in natural forests.

The construction of dams in the bid for progress and development is beneficial in that electricity can be generated. On the other hand, such development

projects bring with them a real risk of massive earthquakes, irreversible harm to natural wonders, outbreaks of cholera, loss of traditional heritages, and dislocation of many villages, causing heavy damage to nature. Also, there can be changes in temperature and negative consequences for health. Therefore, protection and conservation of the natural environment is pivotal.

The Present Condition of the Natural Environment in Burma.

After the rise of the SLORC in 1988, the regime encountered a number of problems which required a large amount of money to solve. *To access these funds, foreign timber traders and companies were invited and issued licenses to extract timber. Money obtained from these companies was funneled into the purchase of weapons, which were subsequently used to suppress armed ethnic forces.* Similarly, most of these armed ethnic forces extracted timber from areas under their control and sold it to buy weapons for use in their revolution. Consequently, continuous damages and loss were inflicted upon the natural environment.

Instead of using donations from international communities for the protection and conservation of the natural environment, the military regime directed these funds into the army. Thus external efforts to protect and conserve the natural environment met with no success. In chapter (10) of the Forest Law, sections (32-36) authorize government officials to search, arrest, and take action against those responsible for harming the environment. In section (33a), possible courses of action to be taken by forest officers, on the seizure of forest products, are prescribed.

However, in practice, prescribed actions have little impact upon the protection of the natural environment. Officers in the SPDC government accept lump sums of money illegally from black marketers and natural resource traders, rendering it ineffective to apply the law. *Logging trucks were seized by government officers; however, no action was taken because of bribery received from the black marketers.* As a result of such tacit arrangements, the illegal timber industry is growing rapidly.

The facilitation of timber extraction by the practice of bribing officials makes timber traders unafraid of laws imposed by the government. Because SPDC officers do not adhere to prescribed laws, the laws exist only on paper and are ineffective. Thus, timber stocks in Kachin State were allowed to be depleted, and

when the Irawaddy River overflowed during the period from July 18th to 22nd, 2004, the whole town of Myitkyina was flooded. This avoidable disaster caused significant damage, destroying homes and resulting in suffering, illness, and death.

Scholars estimate that 3.2% of the forests in Burma are destroyed yearly. According to studies conducted by the scholar Norman Miyarz in 1991, Burma stands third in the world, after Brazil and Indonesia, in terms of forest depletion.

Protection by Law against Future Damage to the Natural Environment

It is necessary to precisely devise the constitution and the other relevant laws in order to prevent the future loss of the natural environment through unexpected natural disasters. To be effective in protecting the environment, good Union and State governments are needed to take action in accordance with these laws. Repeated selling of timber and other natural resources to foreign companies, by authorities inside the Union or State governments, with the involvement of bribes, *to the extent that natural environment is hugely degraded*, must be prevented. To ensure this doesn't reoccur, independent media should report news on environmental degradation, research should be conducted regarding the natural environment, and measures should be carried out by non-governmental organizations to educate people; ultimately preventing future losses and protecting the natural environment.

Those mainly effected by the massive loss and damages to the natural environment are the residents of the impacted areas. At the root of this problem lies the SPDC's total rejection of public participation in conservation, prevention and protection, and considering only exploitation. Most importantly, decisions upon the handling of forests and other resources are imposed by SPDC army authorities and other regional armed forces. There is no discussion or consultation with local people.

The extraction of timber was prohibited in China's Yunan province in 1996; extraction of timber was banned countrywide in Thailand in 1988. In southern parts of Thailand, significant flooding due to natural environmental disasters caused heavy loss and damages. In section (79) of Thailand's constitution, increased acceptance by the government of the participation of people in the conservation, prevention, protection and use of natural resources was plainly prescribed. Con-

sequently, Thai people have the advantage of forming associations and acting independently on education, research, prevention and protection of the natural environment. They can draw attention to poor administration of the natural environment by government servants and regional authorities. The people can effectively sue in court and demand compensation for damages to their health resulting from the actions of factories owned by foreign companies.

Therefore, the time has arrived for the people of Burma to reveal their opinion on the elements necessary to effectively protect the natural environment, and to consider and prescribe their inclusion in the constitution, which is the basis of the rule of law.

(K) Self-determination of ethnic nationalities according to the Constitution

Self-determination can be defined as the use of legislative, executive and judicial power by constitutional units (or) ethnic groups corresponding to provisions of national characters, if they are included as a State of the Union.

Historical Background

The ethnic peoples of Burma, such as Kachin, Karen, Karenni, Chin, Shan, Mon, Burman, Rakhine, are native nationals who lived independently with their own Kings, Chiefs, Duwas, and Subordinate Chiefs in traditions dating from the ancient time of feudal barons. These ethnicities are not subordinate to each other and each has its own full self-determination.

At the time of the struggle for independence, General Aung San and leaders of the Shan, Kachin, and Chin nationalities discussed with great vision the cooperation of ethnic groups in a Union and an agreement was set down in the historical Pinlon Pact. After the assassination of General Aung San, the 1947 Constitution was prescribed. This initial Constitution was criticized for its weakness and deviation from the fundamental principles of the Pinlon Pact, resulting in a lack of equality and disregard for the aims of the ethnic nationalities. After independence, the constitution was instituted, the independent standing and activities of political parties were oppressed, and the civil war started.

In accordance with the 1947 Constitution, an independent judiciary system was implemented and individual freedoms were *to a larger extent* protected by law.

Consequently Burma was able to achieve significant economic progress and development. However, it was not able to create racial equality, as it included the practice of naming the areas occupied by Burman majority as Main Land, resulting in an unequal distribution of economic advantages. To be worse, the 1974 Constitution imposed the rule of the military junta, by the name of Socialist. As a result, the once rich and prosperous Burma faced drastic economic decline, eventually becoming one of the least developed countries in the world. When the 8888 people's uprising erupted as a result of these conditions, the 1974 constitution came to an end.

Restrictions on the basic freedom and democratic rights of an individual, and a need for the protection of the self-determination of the ethnic nationalities in accordance with the constitution, are the major problems facing the whole society of Burma today. Only when these rights are appropriately and practically prescribed in the future constitution will there be peace, freedom, and equality, and will Burma be able to become a developed union.

The Right to Self-determination and Secession

Today, all nationalities and nearly all leaders accept self-determination as their political right. There are still many armed forces proclaiming their self-determination as they have done for decades.

There is dispute over the exact meaning of self-determination in the political field and in the legal field. Although this term is used in the Charter of United Nation and International Human Rights Law, some criticize its exact definition. The main conflict revolves around the inclusion, or not, of secession in self-determination. The United Nation Human Rights Committee has noted that a precise definition of this word would bring about more harm than good.

All the nationalities of Burma generally accept the definition of self-determination as the right to solve their own political fate by themselves. There are many ideas on whether or not to include secession.

Argument To Prescribe Secession in the Union Constitution.

There are distinctions when applying an individuals own self-determination and there may be more differences in practicing it in the whole society. Some argue that self-determination will be meaningful only when secession clause is

included in the Constitution. In so doing, the ethnic nationalities will feel secure in terms of mentality and the union government dare not oppress them as it has concern on the possible secession of ethnic nationalities from the union. In the event that there is still oppression of one ethnic group by another group, or oppression of the Member States by the Union government, in spite of provisions in the constitution, can the nationalities apply their secession rights systematically according to the law.

The right to secede was prescribed in the 1947 constitution as follows: -

Chapter (10) The Right of Secession:

201 – Save as otherwise expressly provided in this Constitution or in any Act of Parliament made under section 199, every State shall have the right to secede from the Union in accordance with the conditions hereinafter prescribed.

202 – The right of secession shall not be exercised within ten years from the date on which this constitution comes into operation.

An argument is that even General Aung San accepted and prescribed the right to secession in the constitution and it is unsuitable for our national leaders to lose this achieved right. Therefore, some propose that in drafting the future constitution, self-determination and secession should be clearly prescribed.

Argument against the Provision of Secession Clause in the Constitution

Whether included in the constitution or not, it is impossible to prevent the secession of a Member State or ethnic group, if they truly desire independence. So, the main consideration is not whether to prescribe the right to secession or not in the constitution, but the political aspiration of the group. Secession is not a constitutional problem, but it is a political issue. Secession will occur when the Union begins to disintegrate through disunity, or when internal and external forces favor disintegration.

For example, in the United Kingdom (or Britain) there is no written constitution and the right to secession is not prescribed on paper - it is a unitary nation. However, the secession of southern Ireland could not be prevented. There is a constitution in Pakistan, but the right to secession is not prescribed. Growing dissatisfaction, and internal and external conditions, resulted in the secession of

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the present day Republic of Bangladesh. At present, fifteen states have separated from the Soviet Union, but not because permission to do so was enshrined in the constitution. Although termed a Union, as centralization was very tight, and secession, which already existed in the hearts of the people, arose when conditions became favorable. In Yugoslavia, the right to independence is not prescribed, however secession occurred regardless. Secession is not dependent upon whether it is prescribed in a constitution or not; the major factor is the disintegration of the union.

(Shwe Ohn, U - Towards Third Union of Burma, When, Why, and How? page 90.)

If the right to secession is prescribed into the Constitution, racial extremists may be able to exhort secession as stipulated and activities by separatist States or Provinces of the Union may provoke an unstable situation in the Union. The possibility of secession by the Member States from the Union, and also by minority nationalities who do not enjoy similar status from majority nationalities who achieve Member State status, will cause instabilities within the country. In such an environment, conditions will be ripe for the army to stage another coup d'etat, citing their ability to stabilize the country.

In Burma's past experience, the stipulation of the right to secession in the 1947 Constitution was a major problem. The chances of a successful coup d'etat by the army were increased by obscuring the activities of Shan leaders in the formation of a real Federal Union, and blaming the faction of threatening to secede. Were secession to be prescribed in the constitution, a similar coup d'etat could happen again. Therefore, if secession is openly included in the self determination section of the constitution, it could invite mischief rather than merit. In the contemporary world, secession has not been prescribed in the constitution of any country. Accordingly, there are people proposing not to prescribe secession into the constitution.

Application of Secession and the People's Desire

All political leaders, parties and associations define the term self-determination in various ways; however, it is the people who actually own this right. A political party, or a government without the support of the nation, cannot decide

Secession is not dependent upon whether it is prescribed in a constitution or not; the major factor is the disintegration of the union.

to secede. In Quebec, one of the federal unions of Canada, a political party, Party Quebeca, organized the people on the basis of the state's future secession from the union. When it won the election, a referendum was held to investigate the reality of forming an independent state. In opposition to the will of the party, the people voted against secession and now Quebec province is included in the Union of Canada. This experience clearly demonstrates that the real self-determination body is the people.

Exercise of Self-Determination in Accordance with the Constitution

The attempt to establish a Union is a symbol of unity, so secession should not be focused upon. On the other hand, some scholars have pointed out that it would be practically beneficial to prescribe into the constitution the self-determination desired by each ethnic group.

If this proposal is accepted, the practicalities of prescribing the political, cultural, economic and social rights to determination for each nationality in the constitution, needs to be considered.

For example, should the participation of selected parliamentary members in State parliament or Union parliament and in the State government or Union government be prescribed, or not, into the union constitution as well as the state constitution.

From the aspect of economic self-determination, each Member State should have their own income and conditions which need to be developed on how this income can be used to develop their own state. Therefore, consideration must be given to which economic authority will be in the hands of the Member States and which will be transferred to the Union. Also, the taxation system to be exercised by the Member States and the Union must be considered. Furthermore, the allocation of the budget must be overseen to guarantee equality between the Union and the Member States, and amongst the Member States. Consideration must be given on whether to include these points into the constitution or not.

A political party, or a government without the support of the nation, cannot decide to secede.

At the time of the establishment of the Federal Union of Australia, international relationships were unimportant for individual Member States. Responsi-

bility for foreign affairs was in the hands of the Union. As the scope of international relationships became broader in the wake of the twentieth century, the Member States wanted to be increasingly involved in foreign affairs handled by the Union, particularly with regards to the economy. Through studying these past experiences, the types of foreign business relationships to be handled by the Member State should be considered and included in the self-determination section of the future constitution.

At present, the teaching of Mon language and literature are restricted. This is a direct encroachment on the right to self-determination of this national tribe. In South Africa, where many national tribes coexist, ten types of national tribe languages were prescribed as official languages. Likewise, in Burma, opinions need to be expressed regarding the teaching of ethnic languages and literature in order to restore the self-determination of each ethnic nationality in accordance with the constitution.

Taking into account these examples and considerations, the people of Burma must decide on how to prescribe the right of self-determination of the national tribes in the State or Union Constitution.

(L) The Role of the Army in the Constitution

In drafting the Constitution of Burma, based upon the present political situation, the role of the army in the constitution becomes a critical problem. This is due to the following three factors:

- (1) The army is currently holding the political power and rules the country;
- (2) The army is conducting the National Convention for the emergence of a constitution and openly demands the political leadership in accordance with the constitution.
- (3) “ How to relocate the armies set up by the ethnic revolutionary organizations in accordance with the constitution ” is a fact to be known by all personnel serving in those armies.

Past Historical Events, Present Problems and the Shaping of the Future

In designing the constitution, it is to consider the lessons from the country's past historical events and the problems currently facing. Only then, attempts should be made to avoid reappearing of the past tragic incidents in the future, and insertion of precise provision is the best. In Burma, the army took over the power in 1958, and again in 1962 and 1988. Thus, as regards the administration of the country, merits and demerits should be put into consideration and the constitution should be drafted.

Is Allocating Political Power to the Chief-of-Staff (Defense Services) in Accordance with Constitution and Democracy practice or not?

The 1947 constitution lasted for fourteen years, from independence of Burma in 1948 until 1962. In 1958, the country's leader, Premier U Nu, handed over the Premiership to Chief-of-Staff, General Ne Win; to administer the country. There is a disputed on the power handing, whether it is in accordance with the constitution or not. There is a consideration following the handing over of power that, the army gained confidence in its ability resulting in the emergence of frequent coup d'états. The army's thirst for power overruled their original duty of protecting the country against foreign threats. The people may deliberately decide how to design the future union constitution, in order to prevent the conferring of power to the military as in 1958, and event should not appear again in the future.

The Concept of Suitable Accommodation

In the systematic transformation from dictatorship to democracy, the concept of suitable accommodation for groups, that were able to create the fate of the country, was successfully practiced in South Africa. The people as well as the personnel serving in the present armed forces may think about the suitable role of the army in a future Burmese societies, in accordance with the constitution.

Interim Constitution

The people need to think about the Interim Constitution in two sections. During the transformation from dictatorship administration to democracy, an In-

terim Constitution will be practiced for a suitable duration, fixing from the date of transformation. For smooth and stable transition of the country during the transformation period, cooperation of the present day ruling army is needed. To ensure a peaceful transformation in this transitional period, National League for Democracy, leaders of democratic groups and leaders of the ethnic groups need to consider politically the role of the army in the country's administrative machinery. It depends upon the changes in the political situation, as well as the opinions and suggestions of the people. In this transitional period, the role of political parties and the army, which can influence the fate of the country may be specifically stated in the Interim Constitution, and acted accordingly, can re-establish the country's stability and will facilitate the beginning of the rule of law.

In the transition period, the appointment and dismissal of military officers, the military budget, and joint cooperation of the army with civilian political leaders in the administrative works, may be included in the Interim Constitution without affecting the basis of quick revelation on good and prosperous benefits for the country and reducing the anxiety of the military leaders as far as possible.

Comparison of the Interim Constitution and the Permanent Constitution

The Interim Constitution is for a recognized period and means temporary. The Permanent Constitution does not have a defined period and is of long-term duration. Until there is a change of official provision in the chapter on amending the constitution it will still be in use. Attempting to prescribe the Interim Constitution and Permanent Constitution separately, the background considerations are not the same. In an Interim Constitution, to achieve a smooth transformation from dictatorship to democracy aiming on national reconciliation, the present political situation may be mainly considered. In the Permanent Constitution, to resolve long-term problems, the main consideration should be on the basis of good and standardized principles to use in the country. The intention of this committee is not on Interim Constitution but on how to prescribe the role of army in the Permanent Constitution.

To achieve this aim, a basic consideration is whether to prescribe Civilian Supremacy or Military Supremacy into the constitution.

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Civilian Supremacy

Civilian Supremacy is based on the duty of the regular army to protect the country from external dangers. To carry out this duty, decisions on assembling the army, creation of the army, appointment and dismissal of high ranking army leaders, allocation of the budget for army personnel, purchase of supplies and ammunition, the protective duty of the army and whether to enter into war on behalf of the country, are lead and managed by the responsible civilian members of the administrative body, elected by the people.

By accepting this concept, the highest ranking authority in the army, the Chief-of-Staff, can never be appointed as Defense Minister. In countries with a Presidential Government, the President elected by the people will appoint a qualified civilian as a Defense Minister. In countries with a Parliamentary Government, the Defense Minister is a civilian as well as an elected parliamentary member. The political leaders are mainly responsible for the appointment and dismissal of the top army officials. The government submits the budget for the army to the parliament and, after approval, it is allowed to be distributed and used. The army cannot allocate funds independently. This is Civilian Supremacy in conformity with the Constitution.

Under Civilian Supremacy the army is controlled by the government elected by the people; the army acts methodically to protect the country from external danger. Without government supervision, the highest ranked person in the army, the Chief-of-staff, cannot appoint, dismiss or take action against subordinate personnel of their own accord. Under Civilian Supremacy, a military serviceman has their life assured and carries out their duty with dignity on the basis of professionalism.

Military Supremacy

The opposite of Civilian Supremacy is Military Supremacy. The principle of Military Supremacy is applied in countries with a dictatorial regime. It is characterized by the following beliefs:

- (1) As the army led the country for independence from colonialism; it is deserved to administer the country.
- (2) As only the army can stabilize and control internal instabilities and

violence, the political power of the country should be held by the army leaders.

- (3) Bribery and corruption among civilian politicians, and disagreements between them, weaken the development and progress of the country.
- (4) Since the army is united under one commander, it controls the source of strength and is able to strengthen the development and progress of the country.

The Indonesian Army exemplifies the first belief; the army demanded administrative power on the basis of the army's traditional effectiveness in freeing a country from colonialism. Indonesian guerillas played a main role in the struggle for liberation from the Dutch, and the army ruled the country for most of the century. Fifty years of army rule, which ended in 1998, resulted in violations of human rights and the death of millions of people. Now the Indonesian Army has taken a noticeable step back from political leadership and administrative duties.

Contrary to reasons (2), (3) and (4), the military governments of about twenty Latin American countries were unable to achieve true stability or successful development, resulting in the handing over of power to the people's elected government. In the early 1970s, there were only a handful of democratic countries in Latin America. In the early 1990s, with the exceptions of Cuba and Guyana, the leaders of all Latin American countries, were elected democratically by the people. There is not a single country lead by the army which has achieved long-term stability and true development.

The main aspiration of the people is to apply either the Civilian Supremacy or Military Supremacy according to the constitution in the Union as well as Provincial levels.

Union Security Forces

Union Security Forces mean the following: -

- (a) Regular Armies
- (b) Police Forces
- (c) Intelligence Forces
- (d) People's Militias

- (a) Referring to the Regular Army, should the present-day SPDC army continue to be constructed according to strictly controlled centralization, or centralization without the command of only one person, but the collective leadership by army commission in the Union Army, be under the administration of the State Government of the Union or constructing the Union Army without totally building the State Army in the duty of protecting the country.
- (b) Should Police Forces be continued to be constructed as Army subordinates, or constructed as separate and independent security bodies under the direct supervision of the Union Government and the Governments of Member States?
- (c) To collect information in battle, soldiers are recruited to form Military Intelligence Forces. For the security of the whole population, should persons in Military Intelligence be selected from the army or from the ranks of smart and outstanding civilians?
- (d) To reduce military expenditure in the Union or Member States, and to be able, in emergency, to rapidly increase the armed forces, should the number of regular armies be set by percentage, and a People's Militia be organized and trained? If this is the case, how will the Militia be organized?
- (f) Should the Army be given the duty of internal security or the duty of protection from external threats?
- (g) For the Union army as well as the State Security Forces, should the purchase, receipt, fixing, sale and transfer of arms from foreign countries, under the supervision of the government, be prescribed or not?
- (h) Should the budget for forming and training the army, and performing the duties of protecting the country, be allotted by the legislature, and should the army be allowed to participate in commercial activities, or not?

The Future of the Ethnic Armed Revolutionary Forces

This heading does not apply to all armed forces. Today, there are many armed ethnic forces fighting to achieve a successful political objective, without affecting the welfare of the people. It is important to reflect upon, and express a vision for, their existence in the future Constitution. The time has arrived for

these armed ethnic groups to consider and articulate their outline for the future.

The following examples can be taken into consideration:

- (1) To abandon all weapons and stand as legal political parties;
- (2) To abolish all party associations and weapons, and transform their armed forces into civilians;
- (3) To stand as political parties and combine their armed forces with the Union Army or State Security Forces;
- (4) To stand as political parties and combine their armed forces with the Police forces or People's militia.

Announcing the State of Emergency and Authority

In Burma's past, a State of Emergency was frequently announced, resulting in numerous restrictions of people's basic rights. In order to prevent the future loss of rights the conditions for the announcement of a State of Emergency should be openly prescribed into the constitution. Thus, the following factors must be considered: -

(a) Which of the following administrative bodies should be responsible for the announcement of a State of Emergency?

- To announce based solely upon a decision by a council of ministers.
- To announce after calling an emergency meeting of the legislative senate.
- To announce after temporary approval by the government and subsequent approval by the legislative senate.
- To permit the announcement in another way.

(b) Under which conditions should a State of Emergency be announced?

(c) After announcing a State of Emergency, should the government be able to use executive power as well as legislative power?

(d) Under a State of Emergency, should the regular court continue to exist? Should the regular court be abolished and substituted with a special court responsible for administering the law?

(e) How should a State of Emergency be prescribed to avoid encroaching upon the fundamental rights of citizens?

- (f) To prevent another coup d'etat by the army, which provisions should be prescribed under a State of Emergency?
- (g) Which provisions should be prescribed, to prevent the use of the army, police, intelligence and militia, by any political force in accomplishing its political objectives through the State of Emergency or any other avenues?

Burma Lawyers' Council

Everyone is equal before the law.

Wisdom is power to transform the society into a just, free, peaceful and developed one.

Mission Statement

“By vigorously opposing all unjust and oppressive laws, and by helping restore the principle of the Rule of Law, the Burma Lawyers Council aims to contribute to the transformation of Burma where all the citizens enjoy the equal protection of law under the democratic federal constitution which will guarantee fundamentals of human rights.”

The Status of Organization

The Burma Lawyers' Council is an independent organization which was formed in a liberated area of Burma in 1994. It is neither aligned nor is it under the authority of any political organization. Individual lawyers and legal academics have joined together of their own free will to form this organization.

Objectives of the BLC

- Promote and assist in the educating, implementing, restoring and improving basic human rights, democratic rights, and the rule of law in Burma;
- Assist in drafting and implementing a constitution for Burma, and in associated matters of legal education; and
- Participate and cooperate in the emergence of a Civil Society in Burma.