

THE CHALLENGES OF ETHNIC POLITICS AND NEGOTIATED SETTLEMENT:

From Ceasefire to Political Dialogue

The root cause of political crisis in Burma is not only ideological confrontation between democracy and a military dictatorship, but ethnic problems rooted in the failure to implement the Panglong Agreement in 1947. Since independence, however, ethnic problems, including over sixty years of armed conflict and civil war, have long been neglected and ignored by successive governments of the Union of Burma. Only recently, the Burman/Myanmar politicians from three different camps: the President, the ousted former military regime Prime Minister General Khin Nyunt, and democracy icon Daw Aung San Suu Kyi have expressed in unison that ethnic conflict is the major issue that today's Burma faces.

WHAT IS ETHNIC POLITICS IN BURMA?

What is "ethnic politics" in the context of today's Burma? How is it defined? There is no way that we can define "ethnic politics" based on a single factor. Several factors, perspectives and points of view are needed to be taken into account when we define "ethnic politics" in Burma; and without proper understanding of what ethnic politics is, there it will be almost impossible to recognize what the challenges are that face ethnic nationalities today. How can ethnic representatives prepare themselves to meet the challenges? It is, therefore, important to consider several factors when we define ethnic politics.

One of the base factors for defining ethnic politics in Burma could be centered on how ethnic nationalities in Burma define themselves. By raising such questions it will be possible to define the composition of the various ethnic nationalities. Why can they be described as ethnic groups? What makes, for example, a Chin a Chin, a Karen a Karen, a Karenni a Karenni, a Rakhine a Rakhine, a Mon a Mon, and a Shan a Shan? What are the chief features which distinguish one ethnic nationality from other human collectives or other ethnic groups? Which criteria make it possible for them to be recognized as a distinctive people and nationality? Such questions need to be asked before we define what ethnic politics in Burma is. When we define ethnic politics from an "ethnic" perspective, it is important to note that "ethnicity" is totally different from what can be defined as "tribal" and "clan". For instance, such terms as "Jingphaw" and "Maru" among the Kachin; "Sgaw" and "Pwo" among the Karen; "Laimi" and "Zomi" among the Chin are tribal or local names. This paper will not be dealing with tribal, clan, and local levels of naming but considers only "ethnicity" at a national level as is this where "ethnic politics" in Burma is defined.

The second area of questions that needs to be raised before we define ethnic politics is how have all ethnic nationalities in Burma defined and interpreted their own history. How did they define their history before the colonial period? What was their status? What happened to them during the colonial period? How did they envisage their status and future in the post-colonial period? What was the reason for convening the first Panglong Conference in March 1946? Why did the Shan *Sawbas* send a telegram to London during the “Aung San - Attlee Talks” in December 1946 and claim that Aung San did not represent the Shan and other ethnic nationalities? Why was the Panglong Conference in February 1947 needed? Why did Aung San attend the Panglong Conference and sign an agreement with the Chin, Kachin and Shan leaders? Why it was that only the Chin, Kachin and Shan were officially invited to the Panglong Conference? Why not the Arakan, Mon and Karen? What was the reason for Aung San representing the Arakan, Mon and Karen as peoples from Burma Proper? Why was the Frontier Areas Commission of Enquiry (FACE) formed to conduct an enquiry in March and April of 1947? Why was FACE needed after signing the Panglong Agreement? Why did the 1947 Constitution become the initiator of sixty years of ethnic armed conflict, instead of the protector of ethnic rights as envisaged at Panglong?

Thirdly, ethnic politics in Burma can be defined based how ethnic nationalities in Burma, viewing that the 1947 Constitution betrayed their dreams at Panglong in 1947, wanted to rebuild the Union of Burma based on the principles and spirit of Panglong. Why was the 1961 Taunggyi Conference convened? What demands were made? Why did they want to amend the 1947 Constitution? How did they want to make changes to the constitution? What was the strategy to achieve their goals of rebuilding the Union? What was U Nu’s position in response to the ethnic nationalities demands? Why did General Ne Win take over state power through a military coup? Why did all ethnic armed groups come together and form the National Democratic Front (NDF) in 1976? What were the aims, objectives, and policies of the NDF? What have they achieved?

Similarly, after the popular uprising for democracy in 1988, all the non-Burman ethnic nationalities came together and struggled together to rebuild the Union of Burma based on the same principles and spirit. In this paper, I would like to give the policies adopted by the United Nationalities League for Democracy (UNLD) and Ethnic Nationalities Council (ENC) as examples of how ethnic nationalities in Burma would like to rebuild the country, and limit myself when I define “ethnic politics” mainly based on how the ethnic nationalities in Burma, who joined the Union of Burma as equal partners at the Panglong Conference and through the rectification of the 1947 Constitution, would like to rebuild the Union of Burma based on the principles and spirit of Panglong.

SELF-DETERMINATION & CONSTITUTIONAL RIGHTS: (UNLD (7) POINT POLICY – 1990)

On the formation of a genuine Federal Union, the UNLD has adopted seven principles of federalism for the future constitution of the Federal Union of Burma, at its conference held in Rangoon, on June 29 - July 2, 1990. These seven principles are:¹

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

The creation of a Chamber of Nationalities based on equal representation of the member states of the Union is intended to safeguard the rights of National States and minorities in the Union government. It also intended as a symbol and instrument of the principle of equality among all nationalities of the Union.³

- (6) In addition to the Union Assembly, all member states of the Union shall form their own separate Legislative Assemblies for their respective National States. In Federalism there must be a clear separation of Union Assembly, or Federal Parliament, from the Legislative Assemblies of the member states of the Union. Moreover, the residual powers, that is, all powers, except those given by member states to the federal center, or the Union, must be vested in the Legislative Assembly of the National State. In this way, the Union Constitution automatically allocates political authority of legislative, judiciary, and administrative powers to the Legislative Assembly of the National States. Thus, all member states of the Union can freely exercise the right of self-determination through the right of self-government within their respective National States.
- (7) The Sovereignty of the Union shall be vested in the people of the Union of Burma, and shall be exercised by the Union Assembly. Moreover, the central government

of the Federal Union shall have authority to decide on action for: (i) monetary system, (ii) defense, (iii) foreign relation, and (iv) other authorities which temporarily vested in the central government of Federal Union by member states of the Union.

**THE BASIC PRINCIPLES FOR A FUTURE FEDERAL UNION OF BURMA
(ADOPTED BY ENC AND DEMOCRATIC FORCES IN 2005)**

In order to live as different ethnic nationalities from different political backgrounds, that practice different cultures, speak different languages, adhere to different religious beliefs and adopt different customs peacefully together, the following principles were adopted for the future Federal Union of Burma, held at the jungle conference on Union Day of 2005.

1. Popular Sovereignty

The people of the Union of Burma, not a particular ethnic nationality or state, shall be vested with the sovereign power of the Union.

2. Equality

All citizens of the country shall enjoy equal rights and equal opportunity before the law; all ethnic nationalities shall be granted equal rights to preserve, protect and promote their culture, language, religion and national identity; and all member states of the Union shall be entitled to exercise equal political powers and rights.

3. Self-determination

All ethnic nationalities and member states of the Union shall enjoy the rights to self-determination in the areas of politics, economics, religious, culture and other social affairs.

4. Federal Principles

All member states of the Union shall have their separate constitutions, their own organs of state, that is, State Legislative Assembly, State Government and State Supreme Court. Moreover, the Union Assembly must be a bicameral legislature consisting of a Chamber of Nationalities (Upper House) and a Chamber of Deputies (Lower House), and each member state of the Union shall send an equal number of representatives to the Upper House regardless of its population or size.

5. Minority Rights

The new Federal Constitution of Burma shall legally protect the minority nationalities in the member states of the Union, they shall be granted not only the rights to preserve and develop their own culture, religion, language and national identity, but also personal autonomy, which will enable them to ensure their rights by acting themselves within the framework of their own institutions.

6. Democracy, Human Rights and Gender Equality

Gender quality, democratic rights and human rights shall be enshrined in the new Federal Constitution of the Union of Burma; including, freedom of speech and expression, freedom of religion, freedom of association, freedom of movement, freedom of voting and contesting general elections, freedom of holding public office, freedom of pursuing an education and a professional life, and freedom of pursuing happiness in life. This includes gender equality, equal rights and equal opportunity for every citizen regardless of gender, race, ethnicity, language, religion and age.

7. Multi-party Democracy System

A Multi-party democracy system shall be applied as the country's governing system.

8. Secular State

The Union Assembly shall make no law that proclaims a state-religion; and the abuse of religion for political purposes shall also be forbidden. Moreover, the Union shall strictly observe neutrality in religious matters.

WHAT WAS ACHIEVED? AND WHAT CHALLENGES STILL REMAIN?

After all these years of struggle what has been achieved? It may be argued that nothing has been achieved because many of the ethnic peoples are still powerless. However, this point must be approached from a different perspective in that how much and how far has the Government adopted our policies and adopted them into their own policies. The best policy is the policy that is adopted even by our adversary and implemented for the people in the country. This is the common ground for the ethnic movement. If both parties have the same policies there will be common ground and the opportunity to move forward and face what challenges still remain.

UNLD & ENC Policies

1. Bi-cameral Legislature at Union Assembly;
2. Equal Representation at Chamber of Nationalities;
3. State Assembly, Government & Court;
4. State Constitutions (self-determination & constitutional rights);
5. Democracy, Human Rights & Gender Equality (30% reserved seats for women at all levels of National & State Assemblies).

2008 Constitution

1. Bi-cameral Legislature at Union Assembly;
2. Equal Representation at Chamber of Nationalities;
3. State Assembly, Government & Court;
4. No State Constitutions (gradual transition is needed);
5. 25% Military; No quota for women (gradual transition is needed).

This simple diagram reveals the fact that among the most five important demands that ethnic nationalities had made during the past sixty years; three demands are met in the 2008 Constitution. Based on what has already been achieved, there is the potential to establish a genuine democratic Federal Union: which can guarantee democratic rights for all citizens, political equality for all ethnic nationalities, and the internal rights to self-determination for all member states of the Union of Burma.

The most important and long term challenges that still remain include the internal rights to self-determination for ethnic nationalities who are also the member states of the Union. The UNLD and ENC clearly defined the rights to self-determination, and sought to achieve it through the right to adopt their respective state constitutions within the framework of a federal arrangement. They argued that without having the state constitutions for their respective states, they cannot claim in this Union that ethnic nationalities have their rights of self-determination. They also argued that having a State Assembly, without a state constitution there will be no guarantee of the right of self-determination; without a State Constitution, the State Assembly cannot make a genuine law because it will merely be done through the law promulgated for them by the central government, or outside of their power. Thus, the internal rights of self-determination for ethnic nationalities and member states of the Union by having state constitutions is one of the main challenges for ethnic nationalities in Burma

THE CHALLENGES OF THE DAY: ENDING ETHNIC ARMED CONFLICTS?

Since President Thein Sein took office, the most pressing issues for ethnic nationalities seems to be how to engage in ceasefire talks and transform ceasefire talks to a genuine political dialogue. However, a cautious remark should be quickly made that ceasefire talks are merely a short term challenge that ethnic nationalities face after sixty years of struggles. The question is: how to reach the ultimate goal of establishing a genuine federal union which will guarantee the right of self-determination for ethnic nationalities. If the ceasefire talks are the only game in town, how will it to obtain the ultimate goal. The ENC proposed a “Negotiation Process” after the President Thein Sein offered ceasefire talks, which read as follow:

1. Ceasefire Talks: Preliminary Talks at State Level (Each armed group can talk separately to their respective state governments);
2. Political Dialogue with the Union Government (For the matter of ceasefire, each state can talk separately with the Union Government, but for political issue, Ethnic Nationalities will talk collectively);
3. Second Panglong Conference.

The ENC paper argues that the designing the “negation process” is essential to gain a “win-win” solution, and concludes that “if a negotiation process is designed that is not appropriate to the context then it is defeated before it begins.”

For the sake learning history but not for repeating itself; the comparison can be made between the current situation and the negotiation process for independence in 1947.

History: Negotiation Process for Independence in 1947

1. First Step: Pang long Conference (Agreed to join the Union)
2. Second Step: FACE (Negotiation Process for how to build a new country called the “Union of Burma” together,)
3. Third Step: 1947 Constitution (Implementation of PA & FACE)

Current: Negotiation Process for Peace & Ending 60 Years of Civil War

1. First Step: Ceasefire Talks, (EN armed groups talk separately with State governments);
2. Second Step: Political Dialogue (Negotiation for political settlement with the Union Government);
3. Third Step: Second Panglong Conference (Begin Constitutional Reform?)

In previous negotiation process for independence; the historic Panglong Agreement was the first step at which the Chin, Kachin, and Shan agreed to join the Union, as it was stated in the Preamble of Panglong Agreement, which read: “Believing that freedom will be more speedily achieved by the Shans, the Kachins, and the Chins by their immediate co-operation with the interim Burmese government”.

The second phase of “negotiation process” for independence was the formation of the “Frontier Areas Commission of Enquiry” (FACE), which was tasked to find the “Method of Association”, based on the Panglong Agreement, and in order to implement the first step of agreement at the final stage, which was the promulgation of the 1947 Constitution. As I shall argue below; the FACE was the most important negotiation process for independence; but, unfortunately, the process was so poorly designed, and a result, ethnic nationalities that joined the Union of Burma as equal partners at the Panglong Conference were manipulated and their demands marginalized. In order to avoid the past mistakes, lessons should be learnt from the history.

LESSONS FROM THE FRONTIER AREAS COMMITTEE OF ENQUIRY (THE FACE)

Under the Aung San–Attlee Agreement, the Frontier Areas Committee of Enquiry (the FACE) was formed to inquire through additional and specific consultation into the wishes of the frontier peoples. The agreement reads:

A Committee of Enquiry shall be set up forthwith as the best method of associating the Frontier peoples with the working out of the new

Constitution for Burma. Such Committee will consist of equal numbers of persons from Ministerial Burma, nominated by the Executive Council, and of persons from the Frontier Areas, nominated by the Governor after consultation with the leaders of the areas, with a neutral Chairman from outside of Burma selected by agreement. Such Committee shall be asked to report to the Government of Burma and His Majesty's Government before the summoning of the Constituent Assembly.⁴

The British government appointed Col. D. R. Rees-William as Chairman of the FACE. Since the committee conducted its inquiry after the signing of the Panglong Agreement, during March and April 1947, the evidence they heard was generally in favour of cooperation with the Burma Proper or Ministerial Burma. The reason for conducting the FACE's inquiry, as defined in its objective, was to find out the "best method of association" with the purpose of formulating the basic principles of a new Constitution; but, whether this new Constitution would become a Constitution of Federated Burma or a Unitary Burma depended heavily on the finding of the inquiry. The key to such endeavour, therefore, was to find out the desires of the Frontier Peoples: What kind of a new country they wanted to build together, a Federal Union or a Unitary State? And what kind of political system they wish to establish for themselves? As such, the FACE was assigned not only to find out the desires of the Frontier Peoples but to find the means and ways of the "coming together" of historically, politically, culturally, and ethnically different peoples as members of a new nation-state of federation called the Union of Burma.

Since the FACE inquiry was conducted in order to supplement the Panglong Conference as a transitional process, or what can be called the second phase "negotiation process", the findings of the inquiry, based on and together with the Panglong Agreement, would become the basis for a new constitution of the Union of Burma. As the committee was assigned such important tasks, the FACE conducted its inquiry in such away that the peoples of the Frontier Areas would be allowed to express their desires not only through oral testimonies but also by submitting written memoranda both collectively and individually. The FACE, thus, conducted a series of interviews not only with the signatories of Panglong Agreement, namely the peoples from the Chin Hills, Kachin Hills, and Federated Shan States. The FACE also granted a chance to express the desires of the non-Burma ethnic peoples from the so called Ministerial Burma, or Burma Proper, namely as Arakan, Mon and Karen. Surprisingly, they the FACE also conducted interviews with two groups of the Karenni. The Karenni actually should not be included; because it was recognized as an independent country during the entire colonial period. (In the later years, the Karenni people denounced those who met with the FACE as traitors to their people and their country.) The FACE, since knowing the background history of Karenni, suggested that the question of the future of Karenni, along with the political future of the Chin, should be "a matter for negotiation and discussion in the Constituent Assembly".

The Chin, Kachin, and Shan, the signatories of the Panglong Agreement, collectively submitted a written memorandum to the FACE in the name of the Supreme Council of United Hills Peoples (SCOUHP), which was formed as the Interim Authority for the Frontier Areas

for a transitional period at the Panglong Conference, in parallel with the interim Burmese government headed by Aung San. The SCOUHP memorandum highlighted three main issues, namely, (i) Equal rights with the Burman, (ii) Full internal autonomy for Hill Areas [that is, ethnic national states of Chin, Kachin and Shan], and (iii) The right of secession from Burma at any time.⁵ The SCOUHP memorandum also specified the composition and selection method of the “Constituent Assembly”, which would draft the Constitution of the Union of Burma; the State and Federal relations, especially the division of powers between the two levels of government by emphasizing the subject that should be dealt by the Federal Government; and the form of Federal Government in which they demanded equal rights and equal opportunity for Hill States. The full texts read as follows:

- (1) Representative members to the Constituent Assembly to be nominated by the Provincial Councils proportionately on intellectual basis, irrespective of race, creed and religion as far as the Hill Areas are concerned.
- (2) To take part in the Burmese Constituent Assembly on population basis, but no decision to be effected in matters regarding a particular area without 2/3rd majority of votes of the Representatives of the Areas concerned. (Special consideration for Chins in view of divergence of language, customs and difficult means of communication.)
 - (a) Equal Rights for all.
 - (b) Full internal autonomy for Hill Areas, and
 - (c) The right of secession from Burma at any time.
- (3) It is resolved that due provision shall be made in the future Burmese Constitution that no diplomatic engagements shall be undertaken or appointments made without prior reference to the Hill States.
- (4) In matters of common subjects, e.g. Defence, Foreign Relations, etc, no decision shall be made without the proper consent of the majority of representatives of the Hill States irrespective of the Burmese votes.
- (5) The provision shall be made in the Constitution of the Federated Burma that any change, amendment or modification affecting the Hill States, either directly or indirectly, shall not be made without a clear majority of 2/3rd votes of the representatives of the Hill States.
- (6) When opinion as to the interpretation of the terms in the Constitution, the matter shall be referred for decision to a bench of the High Court of Judicature at Rangoon comprising the Chief Justice and two other Justices (the Supreme Court, the appointment or selection of which judges should by convention be approved of the Federated Government).
- (7) The total numbers of the Burmese members in the Federal Cabinet shall not exceed the total numbers of the Frontier States in the said Cabinet.

Since the Chin, Kachin and Shan had already signed the Panglong Agreement, in which they had agreed to join the interim Burmese government, the essence of the Memorandum they submitted to the FACE was to establish the conditions for joining the

Union and to find the method of association with the interim Burmese government. The Memorandum, therefore, highlighted the fact that the conditions for joining the Union would be a federal basis with a strong emphasis on the federal principles of both “self-rule” and “shared-rule”, and the right to secede from the Federation at any time after the attainment of freedom.

CASE STUDY: HOW THE CHIN WERE MANIPULATED AND THEIR DEMANDS MARGINALIZED

In addition to the SCOUHP Memorandum, the Chin submitted their own Memorandum, in which they strongly emphasized the rights of self-governance within the Chin territory and the maintenance of their traditional political system. They wanted to retain “internal affairs”, that is., an administrative aspect of federal principle of “self-rule”, and “ancient custom”, which is judiciary aspect of internal self-determination. The Memorandum also emphasized another aspect of federal principles: “shared-rule”, in a form of state-federal relations. They agreed, in principle, that “Foreign Relations and External Affairs, Defence, Posts and Telegraphs, Communications, Health, Education, Customs, Currency and Coinage, Titles and Honours, and holding of Durbars, etc.,” would be regarded as the matters concerned not only for the Chin but for the entire Union of Burma.

In addition to the Memorandum that they submitted, Chief Pum Za Mang, a Chin delegate, candidly told the FACE, when he was asked whether the Chin wanted to join Ministerial Burma or Federation Burma, that, “We should like to be in the Federation according to Panglong Agreement” (the FACE, 1: 77). However, most of the Chin leaders were unable to express themselves very well when the interview was conducted in Burmese, which was a foreign language to them. The most confusing terms for them seemed the different between the contemporary Burmese standard words for “State” (*Pyi* - ပြည်), Division (*Taing* - တိုင်း), and District (*Kha-raing*- ခရိုင်); for all of them in Chin are just one word: *Ram*, which means, “country” or “nation”.

At a theoretical level, it was very difficult for them to differentiate between “the Burma Government and Federal Government” as well as “Union Government and Federal Government”. They also could not differentiate between “to federate with Burma Proper and to amalgamate with ministerial Burma”; the different between “Federal and Burma Proper”. Chief Mang Ling, for instance, admitted during his oral testimony to the Committee that he did not understand the term “federal” properly and could not differentiate the two Burmese words for “state” and “district”, for him both are the same. Chief Thang Tin Lian also admitted, “We were not quite clear regarding these terms ‘Federal’ and ‘Burma Proper’.”(The FACE, 1: 75) Thus, although both Chief Mang Ling and Chief Thang Tin Lian wanted, according to the Memorandum that they signed, to join the Federation; they, on the other hand, demanded the very opposite and the two chiefs testified orally to the FACE on 19 April, that, “We want to join Burma as a *district* in Burma” (The FACE, 1: 76, cf. 74).

Confusions, in terms of both language and constitutional theory, were enormous. The blame, however, should not be put all together on the Chin traditional leaders alone.

TheFACE, which was assigned such an important politically sensitive task for the peoples of Frontier Areas, did not organize any briefing sessions, nor provide any advice to the Chin and other leaders from the Frontier Areas. The FACE distributed “the basic set of 18 questions” to the leaders of the Frontier Areas, *a mere* 24 hours in advance. Moreover, many of these questions seemed unclear to the Chin leaders, or even misleading. What is the different, for instance, between “Union Government” and “Federal Government”? Theoretically speaking, these two terms are *exactly* the same but the FACE vaguely differentiated, and it had created a great confusion for the Chin leaders.

As the FACE enquiry was conducted after the Panglong Agreement, joining the Union was no longer a major problem for the Chin but the “method of association” was what they wanted to clarify with the enquiry committee. The purpose of the FACE inquiry itself was to define the constitutional means, that is., “the method of association”, through which the peoples from Frontier Areas would be associated themselves with Burma. The main concern for the Chin, therefore, was constitutional questions, like: What kind of constitution should be adopted: a federal system or a unitary system? What kind of a new country they wanted to build together with other ethnic nationalities: a Federal Union or a Unitary State? The Memorandum that they submitted collectively to the FACE was meant to be the answers for such important questions.

However, most of the questions raised by the FACE during oral interviews did not aim directly at making a choice for constitutional systems. The questions mostly were vague, unclear, and confusing. For instance, one of the most important questions read: “Do you desire union with ministerial Burma or a federation with Burma?” This question is lacking in clarity because the term “ministerial” is not a theoretical term, at least in terms of constitutional theory. It is a functional or instrumental term which can be applied both in federal system and a unitary state. Thus, no matter what kind of constitutional system is adopted, Burma can always be called ‘Ministerial Burma’ so long as it has a proper government in place; either a federal or a unitary system, or even without a constitution. The term “ministerial” is merely a functional term for any government. As a matter of fact, the term “Ministerial Burma” was first used in 1937 when the 1935 Burma Act was officially promulgated, and the “Burma Proper” had its own government.

Based on oral testimonies, not on the Memorandum, the FACE concluded in its final report that the Chin “expressed their unwillingness to federate with Burma Proper but preferred to amalgamate with ministerial Burma” (RFACE, 1, p.27). This was how the Chin’s testimonies were misinterpreted and their demands were marginalized. It was obvious, even in this misinterpreted version of testimonies that the Chin did not want to join “Burma Proper”, which was a different country with clearly defined territory; or *Miphun dang Ram* in Chin. Moreover, what the term “ministerial” meant for the Chin was an administrative function, a mechanism through which the country should be administered together by all member states of the Union.

The Chin leaders did not consider such expressions as “to federate”, “union with”, “to amalgamate”, etc., which implied “joining the Union”, as important issues because all have

the same meaning in their language: *kawmh*. Their main concern rather was the difference, in term of both terminologies and meanings, between “Burma Proper” and “Burma”, which implied two different kinds of countries or different *Ram*, with clearly defined territories; “Burma Proper” meant a totally different country owned by *Kawl* (Burman/Myanmar) in which they did *not* like to be in any means, and “Burma” meant a *new* country that they wanted to build together with other nationalities, including the Burman/Myanmar. So, they wanted to join “Burma” not the “Burma Proper”. The “Burma Proper” simply referred to pre-colonial Myanmar/Burman Kingdom, which was nothing to do with the Chin.

Unfortunately, there were many levels of confusions for the Chin leaders partly caused by their own inadequate knowledge of expressing and understanding the foreign languages. Moreover, a certain words in the working languages of the enquiry committee, both English and Burmese, could not be translated verse-to-verse or word-to-word into *any* Chin dialects. As mentioned above, the English words for “union” and “federate”; “amalgamate” and “join” have only one vocabulary in Chin, that is., *kawmh*. Worst of all, the term *kawmh* in Chin was wrongly translated into Burmese as “*pu-pawng*” (ပူးပေါင်း- amalgamate), not as “*pa-win*” (ပေါင်း - federate). It was almost impossible for the Chin leaders to understand the different between those words in foreign languages. They simply thought that what they said, and wanted, was that they didn’t like to *kawmh*, or *combined*, their *Ram* with “Burma Proper”, but wanted to *administer* a new Burma together. In this way, the misinterpretation of a few simple words and phrases, which actually have more or less the same meaning, caused a long misery for the Chin’s political future.

Because of such confusions and misinterpretations, Chief Thang Tin Lian admitted at one point that they did not understand Burmese, or *Myanmar-ska*, very well. Apart from the poor knowledge of the working language, the Burmese language itself is very confusing. At the time of the FACE inquiry, Burmese language seemed still lacking the standard definition and usage for such important terms as “*Pyi*” (ပြည်), “*Taing*” (တိုင်း), and “*Kha-raing*” (ခရိုင်). According to the *Judson’s Burmese-English Dictionary*, first published in 1852 but still in use even today; “*Pyi*” (ပြည်), “*Taing*” (တိုင်း), and “*Kha-raing*” (ခရိုင်) have more or less the same meaning, **a country**; read as: (ပြည်) - n. a country), (တိုင်း) - n. a country; more extensive than (ပြည်), (ခရိုင် - n. a country or state).

Since all these terms: “*Pyi*” (ပြည်), “*Taing*” (တိုင်း), and “*Kha-raing*” (ခရိုင်) have the same meaning in the Chin language and thought form, the Chin leaders did not make any mistake whatever term they deployed to denote the word *Ram* in Chin. Thus, when Chief Mang Ling and Chief Thang Tin Lian said that they wanted to join Burma as a district (*Kha-raing*), what they meant was a *country*, in Chin is *Ram*, or at least they meant a “State” with “the single jurisdiction of a government”, as the *Judson’s Burmese-English Dictionary* defined the term *Dha-ma Kha-raing*. They, therefore, maintained that “*Kan ram cu kanmahte in ukkan duh*”, which means, “we want to rule our country by ourselves according to our political system”.⁶ If we translate literally what they said; what the Chin leaders wanted and demanded was even more than a federation; it was rather a kind of commonwealth of independent nation-states with full autonomy, and self-determination.

However, what the Chin leaders had said was misinterpreted and their demands were marginalized. It was only due to the misinterpretation made by the committee members of the FACE that the Chin had ended up without a State in the Union of Burma. As final attempt, they submitted a written explanation of their position to the Committee, which reads;

It was never the intention of the Chins to go in as a *District [Kha-raing]* in Burma Proper. The Chin State shall remain in the SCOUHP. The evidence as given to the Frontier Areas Committee of Enquiry by some certain Chin witnesses on the 19th April 1947 should not be taken to imply in the least our intention to drift ourselves away from the SCOUHP. It is the intention of the Chins to stick to the general principles as outlined in the Panglong Agreement executed between the SCOUHP on the one hand and the Burmese government on the other. The statement as made by the witnesses was made without understanding precisely the difference between the terms “Union Government” and “Federal Government”.

It is our intention to associate with Burma on a Federal basis and what we mean by “Central Government” in our Memorandum submitted to the Frontier Areas Committee of Enquiry is the Federal Government. Details and methods of association with the Burman shall be as would be determined by the SCOUHP.⁷

In addition to the Chin representatives composed of the traditional chiefs, a group of progressive Chin, led by Captain Mang Tung Nung, sent their own delegations to Maymyo and submitted their own different version of a memorandum to the the FACE. This memorandum reads:

- a. Panglong Agreement executed in February 1947 by the representatives of Frontier Areas and those of the Burma Government is confirmed.
- b. Supported and confirmed the resolutions from the Frontier Areas held in March 1947 at Yawngwe Hall.
- c. To participate in the forthcoming Constituent Assembly. To have twelve representatives in the Assembly in view of the fact that there are four tribes among the Chin nationals, difficulties in communication between one village and another, difference in dialects and one place being too far away from another. To elect such representatives by votes under the democratic principles.
- d. Two conditions under which to unite with Burma:
 - First: To join the Federation.
 - Second: To secede at any time.
- e. To include Naga Hill Areas and Arakan Hill District, Paletwa Township in the Chin Hill areas. There are Chin nationals in the said areas, and they are also geographically linked to one another.
- f. (i) The Government has converted *Bobabaing* (freehold) lands into

Ayardaw (leasehold) lands;

(ii) To restore immediately such freehold lands, bought by our ancestors but converted into *Ayardaw* lands by the Government, to the rightful owners.⁸(The translation is wrong; Bobabaing land is “a land traditionally and hierarchically owned by a family or a clan”. Here they used Burmese words, not Chin, Bobabaing and *Ayardaw*, which created more confusion for the translation.)

The Chin representatives concluded their memorandum by reminding the British Government how the Chin had been faithful to them, which read as follows:

We never consider that the British would forget us, Chin National, who had fought effectively in the First World War from 1914 to 1918 and in the Second World War from 1942 to 1945 with a view to save the British Empire. We, therefore, earnestly urge the Enquiry Committee to carry out successfully the desires and demands for the future welfare of the Chin National, who defended at the sacrifice of their lives for the security of Burma and British Empire.⁹

Despite of such an appeal, the FACE did not make any recommendation for the Chin in terms of their status as a member of the Union of Burma. Unlike the Chin, other co-signatories of Panglong Agreement, namely the Kachin Hills and Federated Shan State, were recommended to be “constituent States of the Union of Burma”. Unfortunately, instead of using its authority to define the *form of state* in the guiding principles of the future constitution, the FACE referred to the Constituent Assembly to decide whether the Chin should form a constituent State or not. Sadly, the Chin ended up without a State, only with a mere “Special Division” status in the new Union of Burma.

The FACE concluded its enquiry on 24 April 1947, and submitted its final report to the British Government, which was adopted by the Governor’s Executive Council on 3 May and declared as the British Government’s policy on 18 May 1947. The FACE report was generally divided into two parts: the first part was entitled “Recommendation” and the second part was called “Observation”. As the objectives of the enquiry committee clearly stated, the FACE report in its first part recommended the “method of participation of Frontier Areas” and the Karenni State in the Constituent Assembly, including selection method of representatives and the codes of conduct of the Constituent Assembly. Regarding the composition of the Constituent Assembly, the FACE recommended that at 45 representatives, out of the total number of seats of the Constituent Assembly should be from the Frontier Areas and Karenni State.

The FACE also recommended that the representatives of the Frontier Areas and Karenni State at the Constituent Assembly should have the same rights and status as representatives from the Burma Proper, with regards to full participation in deliberations and to serve on the committees. The FACE further reminded the British Government in its final report that “the participation of the representatives of Frontier Areas should not be taken to mean their commitment to union or federation with the Burma Proper”.

The “Observation” of the FACE final report, which was supposed to be the guiding principles of the constitution of the Union of Burma, read as follows:

1. The witnesses from the Federated Shan States and from the Kachin Hills were strongly in favour of a federated Burma in which the Federated Shan States would form a state or unit and the Kachin Hills another.
2. Witnesses unanimously expressed their desires for the fullest possible autonomy for the states within the Federation and agreed that certain subjects of general scope should be entrusted to the Federation.
3. Representatives from the Chin Hills expressed their unwillingness to federate with Burma Proper but preferred to amalgamate with ministerial Burma. They wanted no interference with their tribal customs and traditions, preferring their chieftains to be allowed to administer their tracts as at present.
4. The witnesses from the Somra Tracts, Thaungdut, SingkalingHkamti, and the Homalin Subdivision wanted their areas to be incorporated in ministerial Burma and to be given the same constituency and other rights as other areas in Burma Proper.
5. The representatives from Karenni stated clearly that their wish to participate in the Constituent Assembly but did not definitely commit themselves to any view about the entry of Karenni State a federated Burma.
6. The present circumstances would call for an elastic interim constitution establishing perhaps a Federal Council that would be somewhat on the lines of a legislature with such subjects as could be allocated to the federal sphere... The Federal Council when established by the Constituent Assembly could then be elaborated into a Senate or a federal legislature.
7. The consensus among witnesses indicated that if there should be a Burma Federation, the federal organ should deal with the following subjects:
 - (i) External Affairs;
 - (ii) Defence;
 - (iii) Post and telegraphs;
 - (iv) Communications;
 - (v) Currency and Coinage;’
 - (vi) Customs;
 - (vii) Titles and Honours.

There was a danger that the anxiety of the constituent states for the fullest possible internal autonomy might lead to the constitution of a weak federal or central government that would be the government of Burma which deal with the outside world.

8. *Rights of Secession.* The majority of the witnesses who favoured a Federation of Burma asked for the right of secession by the states any time. Few federal

constitutions contained provision for the secession of states... if any such right was to be contained in the federal constitution for Burma; it would have to be carefully limited and regulated.

9. *Constitutional Safeguard.* The recommendation of the Constituent Assembly relating to Frontier Areas should be incorporated in the Burma Constitution and in the appropriate act of parliament.
10. *Interim Arrangement.* During the transitional period, the Shan counsellor or the deputy counsellors for the Kachins and Chins should continue in office. The Frontier Areas administration should also continue in this period under the control of the counsellor and his deputies. Where possible, administrative officers should be drawn from indigenous peoples of the Frontier Areas.

As a guiding principle, the FACE recommended that the independent Burma should be a “Federation” with strong emphasis on the internal self-determination of member states of the Union in accordance with the federal principles of “self-rule”; and highlighted the federal legislative lists, which should be handled by the federal organ according the federal principles of “shared-rule”. All the needed principles for the establishment of a “Federation” were there in the report, but the FACE unfortunately could not provide a clear guideline for the future of Burma. Although the “federal system” was recommended, it was not really a genuine federal system but “asymmetry federal system” with strong inclination towards a unitary system. In this way, without providing clear guidelines, the FACE ended up by suggesting the Constituent Assembly to adopt an *interim* or a *temporary* constitution.

The FACE finally concluded in its report to the Government that the majority of witnesses who supported cooperation with Burma demanded the “right of secession by the States at any time”.¹⁰ Although the “right of secession” was enshrined in law in the Union Constitution, as the FACE had recommended, Burma did not become a genuine federal union. The “right of secession” as safeguards for ethnic nationalities was included but the essence was not there, which eventually lead Burma into constitutional crisis and sixty years of on-going civil war.

While the FACE was the most significant process to find a common ‘Method of Association’ it also provided a vehicle that would eventually be used to manipulate and marginalize the ethnic nationalities. As a result of FACE, the Panglong Agreement was never fully implemented because what had been decided on at Panglong was discarded during the second phase of “negotiation process”, that is., the FACE.

THE 1947 CONSTITUTION WITHOUT THE RIGHT TO SELF-DETERMINATION FOR ETHNIC NATIONALITIES

On the basis of the Panglong Agreement and the Report of the Frontier Areas Commission of Enquiry (the FACE), the Union Constitution was framed. Aung San drafted a new constitution for a new Union of Burma, which was duly approved by the AFPFL convention in May 1947, at the Jubilee Hall in Rangoon. Aung San delivered a long speech at the convention and

explained the essence of the Panglong Agreement, which had the aim of establishing a Federal Union. He also argued:

When we build our new Burma, shall we build it as a Union or as a Unitary State? In my opinion it will not be feasible to set up a Unitary State. We must set up a Union with properly regulated provisions to safeguard the rights of the national minorities.¹¹

Aung San also insisted on the right of self-determination for ethnic nationalities who signed the Panglong Agreement to found a new Federal Union with so-called Burma Proper. He referred to his co-signatories, the Chin, Kachin and Shan, as nations, or *pyidaung* in Burmese. He said:

The right of self-determination means that a nation can arrange its life according to its will. It has the right to arrange its life on the basis of autonomy. It has the right to enter into federal relation with other nations. It has the right to complete secession.¹²

Unfortunately, Aung San, who persuaded the Chin, Kachin, Shan and other non-Burman or non-Myanmar nationalities to join an independent Burma, was assassinated six months before Burma gained her independence, on July 19, 1947. He was succeeded by U Nu as leader of the Burmese independence movement under the banner of the Anti-Fascist People's Freedom League (AFPFL). As leader of the AFPFL, the first thing U Nu did was to order U Chan Htun to redraft Aung San's version of the Union Constitution, which had already been approved by the AFPFL Convention in May 1947. U Chan Htun's version of the Constitution was promulgated by the Constituent Assembly of the interim government of Burma in September 1947. Thus, the fate of the country and the people, especially the fate of the non-Burman nationalities, changed dramatically between July and September 1947. As a consequence, Burma did not become a genuine federal union, as U Chan Htun himself admitted to historian Hugh Tinker. He said, "Our country, though in theory federal, is in practice unitary."¹³

The most serious flaw in the 1947 Constitution was the absence of state constitutions for all the member states of the Union. In contrast to the original agreement, according to which Aung San and Chin, Kachin and Shan leaders intended to establish a separate state constitution for each and every state, U Chan Htun's version of the Union Constitution incorporated clauses covering all the affairs of the states. In this way, state affairs became part and parcel of the Union Constitution, with no separate constitutions for the Chin, Kachin, Shan and other ethnic nationalities. Such a constitutional arrangement indicated that whatever powers the governments of states enjoyed and exercised under the 1947 Constitution were given to them by the central government, characteristic of a unitary state system. In a unitary system, power lies in the hands of the central government, and the powers of local governing or administrative units derive from or are devolved to them by the central government.

What the Chin, Kachin, Shan and other ethnic nationalities envisioned in Panglong was a federal system, in which the member or constituent states were the basic and founding units

of the federation, and whatever powers they exercised or possessed were not given to them by the center. The powers of the constituent states of a federation are, in principle, derived from the peoples of the respective states, as is stated in most state constitutions in countries that are federal in form. U Chan Htun's version of the 1947 Union Constitution of Burma did not allow for the existence of separate constitutions for the founding member states of the Union, namely, the Chin, Kachin, Shan and other nationalities—including the Burman/Myanmar.

Unfortunately, the right of self-determination for ethnic nationalities, which could only be implemented through the state constitutions through federal arrangement, still remained the biggest challenge for today's Burma.

CONCLUSION: LESSONS FOR THE CURRENT SITUATION

History teaches not to repeat past mistakes. One of the most severe mistakes that Burma has made in its past history occurred during the negotiation process for independence through the misconduct of the FACE. During the enquiry process, the FACE did not ask such important questions as to the choice for a system between “unitary” and “federalism”, and most of the questions for “Method of Association” were unclear and vague. Moreover, these unclear and ambiguous questions without a standard language were given to ethnic leaders *only* 24 hours in advance with no proper explanation or an advisor. In this way, all that was agreed to at the Panglong Conference was thrown away during the FACE enquiry process. As a result, the 1947 Constitution did not become what had originally been envisioned at the Panglong Conference. Because the second phase of the negotiation process was neglected and manipulated, the third stage of the negotiation process that implemented the first and second stages, as in the adoption of the 1947 Constitution, created the numerous ethnic problems in the country and resulted in sixty years of civil war.

Compared to the negotiation process for independence, the current situation seems more worrisome than the past, despite President Thein Sein's goodwill. Even at the first stage of negotiation there have already been differences in how such processes are approached. Subsequently, there are two major dynamics in relation to the negotiation process. The Kachin Independence Organisation, based on previous experience seeks to ensure that “political dialogue” is the most important objective to be obtained and only then can they agree to ceasefire. Conversely, the Karen National Union, the Chin National Front, and Restoration Council of Shan State have opted for a different strategy in proffering a ceasefire prior to political dialogue.

For its part, the Government requires a ceasefires and simultaneous development as its main priority with political dialogue coming only after these objectives have been achieved. The combination of ceasefire agreement and development is particularly worrisome for ethnic nationalities that had signed ceasefire agreements with the past government and were allowed to engage in business but not political negotiation. Because of the negative experiences over the past 17 years, the KIO is proposing what they called a “new paradigm of negotiation”, which is: political dialogue first, and ceasefire second. It is essential, therefore, that all parties

find a common ground first; and then consider the outside factors that need to be taken into account.

Most importantly, the government should not impose the negotiation process discriminatorily, the way they did during the implementation of the so called “seven-step roadmap”. This is a time to come together, the way the founding fathers of the Union met at the Panglong Conference; and design together the negotiation process from the very first step to the final stage in order to find a lasting peace through a win-win solution. There can be no development without peace, however, and peace cannot be achieved until and unless the ethnic issue is addressed through political dialogue first. This, therefore, must be a priority, and until this issue is addressed the current situation is unlikely to change.

Notes

¹ I do not follow the original Burmese version of the UNLD text strictly here, but I am confident that this English translation will not miss the points we have described in Burmese, for I myself drafted the original version in Burmese. See the UNLD documents in Lian H. Sakhong, *Peaceful Coexistence: Towards Federal Union of Burma* (Chiangmai: NPR Program Printing, 1999), pp.94-95 [in Burmese!]

² The UNLD ethnic-based 8 States policy was revised by the UNLD-LA Conference in 2001 because it is impractical to adopt purely ethnic-state in Burma. None of member states of the Union are ethnically homogenous.

³ As James Madison once explained regarding the role of the Senate in the USA, the role of the Chamber of Nationalities also will be “first to protect the people against their rulers, and secondly to protect against the transient impressions into which they themselves might be led”.

⁴ Hugh Tinker, *Burma: Struggle for Independence*, Vol. II (London: 1984), pp. 325–328.

⁵ See the resolutions of the Chin, Kachin and Shan leaders at the SCOUHP’s meeting on March 23, 1947, and the memorandum they presented to the FACE (the FACE report 1947).

⁶ See my dissertation, *Religion and Politics among the Chin People in Burma, 1896–1949* (Uppsala: 2000), pp. 324–325.

⁷ the FACE, II, p. 85.

⁸ the FACE, II, pp. 90–91.

⁹ the FACE, II, pp. 90–91.

¹⁰ the FACE, II, p. 91.

¹¹ Aung San, *Burma’s Challenge* (Rangoon, 1947), reprinted in Josef Silverstein, *The Political Legacy of Aung San* (New York: Cornell University Press, 1993), cited in MaungMaung, *Burma’s Constitution* (The Hague, 1959), p. 169.

¹² *Bogyoke Aung San’s Speeches*, pp. 306–307. Also cited in *The 1947 Constitution and the Nationalities, Volume 11* (Rangoon University: University Historical Research Centre, 1999), p. 60.

¹³ Hugh Tinker, *Union of Burma* (London, 1957); also quoted in TunMyint 1957, p. 13. See also my article in *Chin Journal* (March 1997), no. 5, pp. 84–94.