



The 2008 Constitution and Ethnic Issues:

To What Extent Did It Satisfy the Aspirations of Various Ethnic Groups?

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Abstract

Since the beginning, in 1961 at the Taungyi Conference, the “Federal Movement”, which would eventually result in a military coup in 1962, the ethnic nationalities in Burma have all been consistently demanding the rebuilding of the Union of Burma based on the spirit of Panglong and the principles of democracy, political equality and internal self-determination. They have further argued that the constitution of the Union should be formed in accordance with the principles of federalism and democratic decentralization, which would guarantee the democratic rights of citizens of Burma including the principles contained in the United Nation's declaration of universal human rights. On the formation of a genuine Federal Union, ethnic nationalities demand that all member states of the Union have their separate constitutions, their own organs of state, that is, State Legislative Assembly, State Government and State Supreme Court.

In their proposal, the ethnic nationalities demanded that the Union Assembly should 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 should send an equal number of representatives to the Upper House regardless of its population or size. They also demand that the Union of Burma be composed of National States; and all National States of the Union be constituted in terms of ethnicity or historic ethnic homelands, rather than geographical areas. 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, judicial, and administrative powers to the Ethnic National States. Thus, all member states of the Union would be able to exercise the right of self-determination freely through the right of self-government within their respective National States.

When the military regime, which traditionally was the strongest opponent of the ethnic nationalities' demands, adopted a new constitution in 2008 it contained certain

elements of federalism. These included a bicameral legislature consisting of a Amyotha Hludaw and a Pyituh Hludaw, equal representation from each state at a Chamber of Nationalities, and all member states of the Union having their own separate State Assemblies and State governments.

This paper will address to what extent the 2008 Constitution satisfies the aspirations of various the Ethnic Nationalities in Burma. I shall, however, limit myself in this paper within the constitutional framework of the “form of state” - that is, how the Union is structured and how much power and status is given to member states of the Union.

Background

On 12 February 1947, the Union of Burma was founded at the Panglong Conference by four former British colonies; these were primarily the Chin Hills, the Kachin Hills, the Federated Shan States and Burma Proper, all of which already had their own constitutions. The British had occupied these four colonies separately as independent nations in different periods of time and had applied different administrative systems in accordance with the different constitutions that the colonial power had promulgated for them. The British officially promulgated the Chinram Constitution, called the “Chin Hills Regulation,” in 1896, the “Kachin Hill Tribes Regulation” in 1895, the “1919 Act of Federated Shan States” in 1920, and the “1935 Burma Act” in 1937. The Chin Hills Regulation of 1896 covered present Chin State in Burma, present Mizoram State, Nagaland State, and part of Manipur and Meghalaya States in India. The 1935 Burma Act was applied to the area of the pre-colonial Myanmar/Burman Kingdom, which included the former Arakan and Mon Kingdoms as well as delta areas of Karen country.

The 1947 Panglong Conference, thus, was organized by the pre-colonial independent peoples and nations, who in principles had had the right to regain their independence separately from the Great Britain and to form their own respective nation-states, or to remain as a British Colony, or collective reclaim their independence and found a new nation-state together. As mentioned in the Preamble of Panglong Agreement, they all opted for the third options, 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 Panglong Agreement therefore represented a joint vision of the future of the pre-colonial independent peoples: namely the Chin, Kachin, Shan and the interim Burmese government led by Chief Minister Aung San, who came into power in August 1946 according to the Burma Act of 1935. The interim Burmese government was a government for the region formerly known as Burma Proper or Ministerial Burma, which included such non-Burman nationalities as the Mon, Rakhine (Arakan), and Karen. The Arakan and Mon were included because they were occupied by the British not as independent peoples but as the subjects of the kingdom of Burman or Myanmar.¹ The Karens were included in the Legislative Council

of Ministerial Burma according to the 1935 Burma Act because the majority of the Karens (more than two-thirds of the population) were living in delta areas side by side with the Burmans.²

Since these peoples were included in the Legislative Council of Ministerial Burma, Aung San could represent them in Panglong as the head of their government. Thus, the Panglong Agreement should be viewed as an agreement to found a new sovereign, independent nation-state between peoples from pre-colonial independent nations of what they then called Frontier Areas (Chin Hills and Kachin Hills), Federated Shan State and Burma Proper, who in principle had the right to regain their independence directly from Great Britain, and to form their own respective nation-states. In other words, the Panglong Agreement was an agreement signed between the peoples of a post-colonial nation-state-to-be.³

The essence of the “Panglong Agreement”, declared in its preamble was not only to hasten the ethnic peoples own search for freedom but also to establish a new multi-national-state of the Union of Burma for those who struggled together to free themselves from colonial power. Therefore, based on the “Panglong Agreement”, the Constituent Assembly of the Interim Government of the Union of Burma promulgated a new constitution on September 24, 1947, thus paving the way for securing “independence” from Great Britain on January 4, 1948. Ever since, the day the Union of Burma gained independence in 1948, the same date as the Panglong Agreement was signed, has been celebrated as Union Day.

The observance of February 12th as Union Day means the mutual recognition of the Chin, Kachin, Shan and other nationalities, including the Burmans, as “different people historically and traditionally due to their differences in their languages as well as their cultural life.”⁴ It is also the recognition of the distinct national identity of the Chin, Kachin, Shan, and other nationalities that had the right to gain their own independence separately and to found their own nation-state separately. In other words, it is the recognition of pre-colonial independent status of the Chin, Kachin, and Shan, and other nationalities as well as their post - colonial status of nation-state-to-be.

Finding the Method of Association: The Frontier Areas Commission of Enquiry (The FACE)

Under the Aung San-Attlee Agreement, the Frontier Areas Commission of Enquiry (the FACE) was formed to inquire through additional and specific consultation into the wishes of the frontier peoples in order to find what they called was the “Method of Association”. The agreement reads:

A Commission 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 Commission 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.⁵

The British government appointed Col. D. R. Rees-William as Chairman of the FACE. Since the commission 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 Burma Proper or Ministerial Burma. The reason for conducting the FACE 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 an 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 Agreement as a transitional process, or what can be called the second phase of a “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 commission was assigned such important tasks, the FACE conducted its inquiry in such a way 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 Ministerial Burma, or Burma Proper, namely the Arakan, Karen and Mon. 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 the Chin, Kachin and Shan], and (iii) The right of secession from Burma at any time.⁶ 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.

The 1947 Constitution and Ethnic Issues

At the Panglong Conference in 1947, the Chin, Kachin, Shan and other non-Burman nationalities were promised, as Silverstein observes, the right to exercise political authority of [administrative, judiciary, and legislative powers in their own autonomous national states] and to preserve and protect their language, culture, and religion in exchange for voluntarily joining the Burman in forming a political union and giving their loyalty to a new state.⁷

Unfortunately, Aung San, who persuaded the Chin, Kachin, Shan and other non-Burman nationalities to join Independent Burma as equal partners, was assassinated by U Saw on July 19, 1947. He was succeeded by U Nu as leader of the AFPFL. When U Nu became the leader of the AFPFL, the politics of Burmese independence movement shifted in a retro-historical direction, backward toward the Old Kingdom of Myanmar or Burman. The new backward-looking policies did nothing to accommodate non-Myanmar/Burman nationalities who had agreed to join Independent Burma only for the sake of “speeding up freedom”.

As a leader of the AFPFL, the first thing U Nu did was to give an order to U Chan Htun to re-draft 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 Union 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/Myanmar 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 told Tinker, “Our country, though in theory federal, is in practice unitary.”⁸

U Chan Htun had reversed all these principles of a Federal Union after Aung San was assassinated. According to U Chan Htun’s version of the Union Constitution, Burma Proper or the ethnic Burman/Myanmar did not form their own separate National State; instead they combined the power of the Burman/Myanmar National State with sovereign authority of the whole Union of Burma. Thus, while one ethnic group, the Burman/Myanmar, controlled the sovereign power of the Union, that is, legislative, judiciary, and administrative powers of the Union of Burma; the rest of the ethnic nationalities who formed their own respective National States became almost like “vassal states” of the ethnic Burman or Myanmar. This constitutional arrangement was totally unacceptable to the Chin, Kachin and Shan who had signed the Panglong Agreement on the principle of equality, a view that was shared by the other nationalities.

The second flaw in the 1947 Union Constitution, in the view of ethnic nationalities, was the structure of the Chamber of Nationalities. The original idea of the creation of the Chamber of Nationalities was that it was not only to safeguard the rights of non-Burman nationalities but also the symbolic and real equality envisaged at the Panglong Conference. Thus, what they wanted was that each National State should have the right to send equal

representatives to the Chamber of Nationalities, no matter how big or small their National State might be. But what had happened, based on U Chan Htun's Union Constitution, was that while all the non-Burman nationalities had to send their tribal or local chiefs and princes to the Chamber of Nationalities; it allowed Burma Proper to elect representatives to the Chamber of Nationalities based on population. Thus, the Burman or Myanmar from Burma Proper, who composed the majority in terms of population, was given domination of the Union Assembly.

In this way, the Union Assembly, according to U Chan Htun's version of the 1947 Union Constitution, was completely under the control of the Burman or Myanmar ethnic nationality. Not only did the powerful Chamber of Deputies have the power to thwart aspirations and the interests of non-Burman nationalities, but the Burmans also dominated the Chamber of Nationalities. That was the reason why the total votes of non-Burman nationalities could not block the state religion bill in 1961 even at the Chamber of Nationalities. Thus, all the non-Burman nationalities now viewed the Union Constitution itself as an instrument for imposing "a tyranny of majority" and not as their protector.

The 1961 Taungyi Conference and Federal Seminars

On 8-16 June 1961, the Supreme Council of the United Hills Peoples (SCOUHP) organized a conference in Taungyi to discuss the constitutional crisis that all ethnic nationalities had endured, and to find means and ways to amend the Union Constitution. The conference, financially sponsored jointly by the governments of Shan State and Karenni State, was attended by all the non-Burman ethnic nationalities who demanded statehood in the Union, namely, for the Chin, Mon, and Rakhine; and those who had already formed States, namely, the Kachin, Karen, Karenni and Shan. No Burman or Myanmar ethnic nationality and parties were invited.

After nine days of deliberations and heated debates, the Taungyi Conference passed five resolutions, which read as follows:

1. To strive in unity for the perpetuation of the Union of Burma, for the developments of the states, and equality of all ethnic nationalities, the conference unanimously passes a resolution for the formation of an All States Unity Organization.
2. As the present Constitution of the Union of Burma does not contain sufficient provisions for the equality of states and ethnic nationalities, and also with the desire for perpetuation, and out of the consideration for the good of the Union of Burma, it is deemed that a revision of the constitution has necessary. Therefore:
 - (a) The conference unanimously agrees to endorse in principle the proposal for revising the Constitution of the Union of Burma,
 - (b) A request will be made to revise the Constitution of the Union of Burma, based on the principles proposed by Shan State.
3. The conference expresses the desire that a National Convention, composed of all nationalities in the whole Union, be immediately called at an appropriate place to ensure that the development and prosperity of the Union of Burma;

for the better and closer relationship of the peoples of the states within the Union; for consultation with one another on the question of equality of all citizens of the Union.

4. This conference passes a resolution urging the Union government to immediately create new states within the Union that meet requirement of statehood, to fulfil the strong desire of the Mon, Rakhine and Chin nationalities.
5. The conference passes a resolution denouncing the Kuomintang forces which are committing armed aggression against the Union, and earnestly praises the Armed Forces which are driving out the KMT forces with might and aim (Sai Aung Tun, 2009: 422)

As the resolution stated, the ethnic leaders also decided to reform the Supreme Council of United Hills Peoples (SCOUHP), which was established at the Panglong Conference in 1947, comprise of the Chin, Kachin and Shan. They changed the name, from SCOUHP to the “States Unity Organization”, and the membership also was extended, including, the original members of the Chin, Kachin, and Shan, and the new members of the Karen, Karenni, Mon and Rakhine. The States Unity Organization was to be steered by a supervisory committee composed of six representatives from each state. The Taungyi Conference formed an Interim Executive Committee of the States Unity Organization, and Sao Hkun Hkio, Chief Minister of Shan State Government was elected as the first Chairman of the organization. The States Unity Organization eventually led the constitutional reform, which came to be known as the “Federal Movement”.

At the Taungyi Conference, all the delegates, apart from three cabinet members of U Nu’s government, agreed to amend the Union Constitution, and adopted the document known as the “Establishment of a Genuine Federal Union”, which served as the guiding principles for the “Proposed Amendment of the Union Constitution”. The proposed document contained the following headings:

1. The Structure
2. Distribution of Rights and Powers
3. Establishment of Parliament
4. Distribution of Union Revenues and Finance
5. Complete Autonomy for the State.

The proposed document was based on what came to be known as the “Shan Principles”, for it was first adopted by the Shan State Council on January 24, 1961. The original version of the “Shan Principle” read as follows:

That the provisions for equal rights and opportunities between the various states and nationalities are not adequately prescribes in the present Constitution of the Union of Burma.

To ensure that equal rights and opportunities for all, the constitution should be revised in accordance with the principles of a genuine federal constitution.

In redrafting the constitution in accordance with genuine federal principles, the following basic requirements for ensuring equality shall be included:

1. Establishment of a Burman [Myanmar] state;
2. Assignment of equal powers to both chambers of the Union parliament;
3. Each state shall be represented by an equal number of representatives in the Chamber of Nationalities;
4. The following departments shall be vested in the Central Union, and all other powers, rights, and entitlements shall be transferred to the states:
 - (a) Foreign Relations
 - (b) Union Defence
 - (c) Union Finance
 - (d) Coinage and Currency
 - (e) Post and Telecommunications
 - (f) Rail, Air, and Water Transport
 - (g) Union Judiciary
 - (h) Collection of Custom duties and Seaports
5. Union revenue shall be distributed equally.

In order to establish a “Genuine Federal Union”, it was suggested in the “Proposed Amendment of the Union Constitution” to amend the Union Constitution that the “structure”, or what the social scientist called “form of state”, should be amended first. A “Genuine Federal Union” was meant to be a Union based on, and formed by, the constituent states, all of which have an equal powers and the right to self-determination. Thus, the formation of Union of Burma, according to the proposed document, should be based on the constituent states of ethnic nationalities, including the ethnic Burman/Myanmar; and all member states of the Union must have an equal political powers of legislation, administration and jurisdiction; and all of them must equally enjoy the right to internal self-determination, as it was agreed and envisaged at the Panglong Conference.

They therefore demanded that the Union Constitution be amended and a Genuine Federal Union be established, composed of national states, including the Burman or Myanmar national state, all of which would have the full rights of political autonomy by establishing their own separate state legislative assembly, state government, and state supreme court. In order to exercise the legislative, administrative and judicial powers freely, and in accordance with the right to self-determination, all member states of the Union should be granted the right to promulgate their respective “state constitutions” within the legal framework of the Union Constitution. They also demanded the establishment of Chin State, Mon State and Rakhine (Arakan) State with full autonomous status and equal right to self-determination.

Regarding the distribution of power, or what can be termed as the “states and federal relations”, the proposed document pointed out that the “distribution of power under the present Union Constitution was contrary to the wishes of the frontier leaders”. Although “the Burma Proper was not a constituent state, it held all the powers of the Union government, which should not be the case” (Sai Aung Tun, 2009: 398). In contrast to the federal principle, the Union Constitution had given the residuary powers to the Union Assembly while strictly enumerated the state legislative powers. Although the state legislative powers were listed in the constitution, the member states of the Union could not enjoy political powers, especially the legislative power, in practice. Since the states did not have separate state constitutions for their respective states, the legislative power in a sense of the right to make laws was in the hands of the Union Assembly. The state councils could discuss or debate the bills, but they were not granted the legislative powers of passing the bills into the laws, as Silverstein observes:

All legislation from the state council had to be promulgated by the president. He could suspend promulgation and call upon the Supreme Court for advice on questions of the constitutionality of any piece of legislation, returning it if the court advised him it was faulty. The constitution permitted the states to surrender their rights, territory, and powers to the Union but did not permit the Union to reciprocate. In a proclaimed state of emergency, the Union parliament could legislate for any state on any matter regardless of legislative lists.⁹

Thus, the ethnic nationalities at the Taungyi Conference, who eventually became members of the States Unity Organization, demanded that in revising the constitution, the principles of a genuine federalism must be applied, with the central government being given only those powers concerning subjects common to all, while allowing the states to retain all residual powers.

In order to establish a genuine Federal Union, the third point they wanted to amend in the Union Constitution was the structure and power of the Chamber of Nationalities, under the heading of the “Establishment of Parliament”. The 1947 Union Constitution established the Union parliament with two houses, the Chamber of Nationalities (Upper House) and the Chamber of Deputies (Lower House). However, the Chamber of Nationalities did not enjoy the same power as the Chamber of Deputies. Since the Union government was responsible only to the Chamber of Deputies, Chamber of Nationalities had “little influence and as such could not defend the rights of the states” (ibid). Moreover, as mentioned in chapter one, the states did not have the right to send an equal number of representatives to the Upper House. In revising the constitution, the proposed document suggested that “the Chamber of Nationalities must be given powers equal to those of Chamber of Deputies and every state should also have the rights to send an equal number of representatives to the Chamber of Nationalities” (Sai Aung Tun, 2009: 398).

The fourth point they would like to amend in the Union Constitution was concerned with the Union revenues and budget allocation, for which the document of the “Proposed Amendment of the Union Constitution”, stated:

On the revenue apportioned to the states under section 96 (1) of the constitution, apart from the revenue on lands and forests, all the rest do not amount to anything. The revenues collected are inadequate even for the current expenditure of the states. The states have to depend on the grant from the Union provided under the exception to section 96. The states have been unhappy with the way the revenues are distributed since independence. No definite financial policy has been laid down up to now. That is why, when the new truly federal constitution is drawn up, the question of distributing revenues must be considered in depth, and enacted explicitly. (Cited by Sai Aung Tun, 2009: 299).

Finally, the Taungyi Conference adopted three principles for “Complete Autonomy for the States” as part and parcel of “the “Establishment of a Genuine Federal Union”. The principles read as follows:

1. The right of every constituent state, including the Burman State which shall be established, to complete autonomy shall be spelled out in the new constitution. The constitution shall require that there be no interference by the central government or by other state in the internal affairs of any state.
2. Since the revised new Constitution of the Union of Burma will be of the genuine federal type, the states shall each have their own constitution, their own State Legislative Assembly, their own separate government, and their own distinct and separate judiciary and courts of law, provided that these state institutions are not inconsistent with the Central Union Constitution.
3. For those peoples who lack the qualifications for forming a state, national areas shall be established, and guarantees for the protection of their national rights shall be entrenched in the new constitution.

The States Unity Organization submitted its proposal for the “Establishment of a Genuine Federal Union” to the Union parliament in the following months, and also organized a series of seminars, meetings, and press conferences which became to be known as “federal movement” in an unfulfilled history of the Burma’s ethnic nationalities.

In response to the demands of the Taungyi Conference, U Nu had no choice but to invite all the political leaders and legal experts from both the Burman and the non-Burman nationalities to what came to be known as the Federal Seminar, at which “the issues of federalism and the problems of minorities would be discussed with a view to finding a peaceful solution”.¹⁰ The States Unity Organization launched a series of discussions and debates both inside and outside of the parliament, and conducted a number of press conferences, even before the first round of “Federal Seminar” was opened.

While the parliament was in session, the first round of “Federal Seminar” was opened and chaired by Prime Minister U Nu, at 6:00 PM on 24 February 1962. In order to broadcast the discussion alive on radio, the seminar was held in the main hall of the Burma Broadcasting Service. After Prime Minister’s opening speech, the “Federal Principles” was presented by Sao Hkun Hkio, Chairman of the States Unity Organization. His presentation was seconded by Duwa Zau Lawn, Kachin State representative, Captain Mang Tung Nung, Chin Special Division representative, U Htun Myint (Tuangyi), Shan State representative, and U Sein, Karenni (Kayah) State representative.

Soa Hkun Hkio, as the Chairman, presented the “Federal Principle” as part and parcel of the document of the “Establishment of a Genuine Federal Union” that the States Unity Organization had adopted at the Taungyi Conference. He highlighted in his concluding remarks, saying that: “I would like to present on behalf of the States Unity Organization the form of union we desire.” This will involve:

- (1) The establishment of Burma Proper as one of the constituent states;
- (2) The granting of equal powers to the two chambers of parliament;
- (3) The sending of an equal number of representatives from each states to the Chamber of Nationalities;
- (4) The voluntary granting of certain restricted powers to the Union government by the states and retention of all reserve powers by the states.

After Kayah U Sein’s presentation, who was the last person to speak on behalf of the States Unity Organization, the first round of Federal Seminar was concluded. The second round of the seminar was held on 1 March 1962, and third round of seminar was scheduled on 7 March. But before the third round of seminar was opened and before U Nu was scheduled to speak, the military led by General Ne Win seized state power in the name of the Revolutionary Council. In the early morning of 2 March 1962, he arrested all the non-Burman participants of the Federal Seminar and legally elected cabinet members, including U Nu himself, dissolved parliament, suspended the constitution and thus ended all debate on federal issues.

The United Nationalities League for Democracy (UNLD)

After 27 years in power, General Ne Win was forced to resign during the student-led democracy movement in 1988. The nation-wide popular uprising for democracy also created an opportunity for ethnic nationalities to unite and struggle together for their common goal of rebuilding the Union as it was envisaged in the 1947 Panglong Conference. As a result, the United Nationalities League for Democracy was formed as an umbrella political organization of all the non-Burman ethnic nationalities in 1988.

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) 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.
- (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.¹¹

- (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 Future Federal Union of Burma (2005)

On the Union Day of 2005, democratic forces and ethnic nationalities in exile adopted “The 8 Basic Principles for Future Federal Union of Burma”. The document was signed by 104 representatives from 42 organizations, which read as follows:

1. Popular Sovereignty

The people of the Union of Burma, not a particular ethnic group 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 Principle

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 equality, 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 has been achieved in the 2008 Constitution? 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 Policies & 8 Basic Principles

	<u>2008 Constitution</u>
1. Popular Sovereignty	1. Popular Sovereignty
2. Bi-cameral Legislature at Union Assembly;	2. Bi-cameral Legislature at Union Assembly;
3. Equal Representation at Chamber of Nationalities.	3. Equal Representation at Chamber of Nationalities;
4. State Assembly, State Government & State Supreme Court	4. State Assembly, State Government & State Supreme Court;
5. Multi-party Democracy	5. Multi-party Democracy
6. State Constitutions (self-determination & constitutional rights);	6. No State Constitutions (gradual transition is needed);
7. Democracy, Human Rights & Gender Equality (30% reserved seats for women at all levels of National & State Assemblies)	7. 25% Military; No quota for women (gradual transition is needed).
8. Equality and Self-determination	8. Equality but Ambiguity & No real self-determination.

This simple diagram reveals the fact that among the five most 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 member states of the Union. Consequently, the UNLD policy and the “Basic Principles for Future Federal Union” clearly define the rights to self-determination, and have sought to achieve it through the right to adopt their respective state constitutions within the framework of a federal arrangement. They argue that without having state constitutions for their respective states, they cannot claim in this

Union that ethnic nationalities have their rights of self-determination. They also argue that having a State Assembly, without a state constitution 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

Concluding Remarks

In this paper, I addressed to what extent the 2008 Constitution satisfies the aspirations of various Ethnic Nationalities in Burma but limit myself within the constitutional framework of “form of state”. In so doing, I first explored what ethnic nationalities have demanded in order to rebuild the Union of Burma based on what they call “the Panglong Spirit”, and what kind of political system they have chosen for their future.

The major achievement in the 2008 Constitution, in terms of the form of state, is the certain elements of a federal system that it has adopted, such as a bicameral legislature consisting of Amyotha Hludaw and Pyituh Hludaw, equal representation from each state at the Chamber of Nationalities, and that all member states of the Union now have their own separate State Assemblies and State governments. However, there is no state constitution for member states of the Union. So long as there is no state constitution, ethnic nationalities in Burma have argued since the 1961 Taungyi Conference that internal self-determination cannot be guaranteed. So long as internal self-determination is absent, there is no guarantee that ethnic nationalities in Burma would be able to protect, promote and preserve their respective languages, cultures, religions, ways of life, homeland and their respective ethnic national identities.

There are many more pitfalls and flaws that can still be identified in the 2008 Constitution, even from the point of view of “form of state” (let alone the “form of government” and the “rule of law” perspectives). For instance, the composition of “states” and “divisions” are very ambiguous, though they are given more or less the same power. For ethnic nationalities, as it was described in the document entitled “Proposed Amendment of the Union Constitution” at the Taungyi Conference, a “Genuine Federal Union” is meant to be a Union based on, and formed by, the constituent states, all of which have an equal powers and the right to internal self-determination. Thus, the formation of Union of Burma should be based on the constituent states, and all member states of the Union shall enjoy not only equal power and status but even bearing the same connotation. As such, if the member states of the Union are called “state” or “pyi”, there should be no “division” or “taing”. After all, “pyi” and “taing” have more or less the same meaning as *a country*, according to the 1852 Judson’s Burmese-English Dictionary, which read as: (ချုပ်ငြိမ်း) - n. a country), (တိုင်း) - n. a country; more extensive than (ချုပ်ငြိမ်း).

It is hope, however, that after fifty years of military rule, the 2008 Constitution would, one way or another, be able to usher a democratic transition and eventually lead the country

into a genuine federal Union as it was envisaged in the 1947 Pang long Conference, and ethnic nationalities are striving for since then.

Endnotes

- ¹ The Mon Kingdom was conquered by the Burman King Alaung-paya in 1755, and the Rakhine (Arakan) Kingdom by King Bodaw-paya in 1784.
- ² The Karen National Union (KNU) rejected the terms of the 1935 Burma Act in 1946 because they demanded independence for a separate homeland. They thus boycotted general elections of the 1947 Constituent Assembly, but the Karen Youth Organization (KYO) entered the general elections and took three seats in the Constituent Assembly and even the cabinet post in the Aung San's Interim Government.
- ³ My concept of "nations-to-be" can be compared with Benedict Anderson's theory of "imagined political community" and Shamsul's "nations-of-intent". See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso (2nd. ed) 1991) and Shamsul A. B. "Nations-of-Intent in Malaysia" in Stein Tonnesson and Hans Antlov (ed.), *Asian Forms of the Nation* (Copenhagen: NIAS, 1996), pp. 323-347.
- ⁴ Lian Uk, "A Message on the Golden Jubilee of National Chin Day" in *Chin Journal* (February 1998), p. 185
- ⁵ Hugh Tinker, *Burma: Struggle for Independence*, Vol. II (London: 1984), pp. 325-328.
- ⁶ 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).
- ⁷ Josef Silverstein, "Minority Problems in Burma Since 1962", in Lehman (ed.), *Military Rule in Burma Since 1962* (Singapore, 1981), p. 51.
- ⁸ Hugh Tinker, *Union of Burma* (London, 1957); quoted also in Tun Myint 1957, p. 13 ; See also my article in *Chin Journal* (March, 1997) No.5, pp. 84-94.
- ⁹ Josef Silverstein, *Burma: Military Rule and the Politics of stagnation* (1977), p. 58.
- ¹⁰ Josef Silverstein in Lehman (ed.), *Military Rule in Burma Since 1962* (Singapore, 1981), p. 53.
- ¹¹ 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".