

# THE SHAN FEDERAL PROPOSAL

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**Document containing proposals**

**For the**

**REVISION**

**of the**

**CONSTITUTION OF THE UNION OF BURMA**

**submitted by**

**THE SHAN STATE**

**Translated by Sao Singha**

This document was ratified by the Convention, attended by delegates from the entire Shan State, which was held in Taunggyi, on Saturday, 25<sup>th</sup> of February 1961.

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**RESOLUTIONS**

**OF**

**THE (SHAN STATE) STEERING COMMITTEE**

**FOR THE**

**REVISION OF THE CONSTITUTION OF THE UNION OF BURMA**

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

The Steering Committee has therefore unanimously decided that to ensure equal rights and opportunities for all, the Constitution should be revised in accordance with the principles of a truly federal constitution.

*The Steering Committee hereby resolves that in redrafting the Constitution, in accordance with genuine federal principles, the following basic requirements for ensuring equality shall be included:*

1. *Establishment of a Burmese State;*
2. *Assignment of equal powers to both Chambers of the Union Parliament;*
3. *Each State to be represented by an equal number of representatives in the Chamber of Nationalities;*
4. *The following Departments shall be vested in the Central Union, while all other powers, rights and entitlements shall be transferred to the States.*
  - (a) *Foreign Affairs;*
  - (b) *Union Defence;*
  - (c) *Union Finance;*
  - (d) *Coinage and Currency;*
  - (e) *Posts and Telegraphs;*
  - (f) *Railways, Airways and Waterways;*
  - (g) *Union Judiciary;*
  - (h) *Sea Customs. Duty.*
5. *Union revenue to be distributed equitably.*

The above proposals were unanimously adopted on Tuesday, the 24<sup>th</sup> January 1961.

The Union of Burma covers an area of 262,000 square miles. The Shan State, with a population of approximately two million, and covering an area of 60,416 square miles, is the largest State, and occupies almost a quarter of the total area of the Union of Burma. The Shan State lies in the eastern part of the Union of Burma, with the Kachin State and the People's Republic of China bordering it to the north, Laos and Thailand to the east, the Kayah State to the south, and the Districts of Yamethin, Mandalay and Shwebo bordering it to the west. The Shan State lies on a thickly forested plateau whose average height is between 2,000 and 3,000 feet above sea level, but there are some low-lying areas which are barely 800 feet above sea level.

The Shan State enjoys a very favorable climate and consequently produces such crops as rice, pulses, fruit and vegetables in every part of the State. But because of the sparse population and difficult communications, rice production has not developed much, though the potential for development is there. On the other hand, in spite of the drawbacks, the orchards have produced a surplus of valuable fruits which have been distributed throughout Burma. Apart from agricultural products, many types of minerals have also been located all over the Shan State. If valuable minerals such as iron, zinc, tin, silver, wolfram can be systematically extracted, using modern techniques, the economy of the Shan State could dramatically improve, so to speak, overnight. Even today, the Bawdwin Mines in Namtu, is the largest mine in the Union of Burma. If the Shan State were to receive the revenues being collected annually from the mine, it would contribute greatly to the State's funds. Further, if zinc mines in the vicinity of the State Capital, Taunggyi, at Pingno, Thandaung, and in Mong Pawn could be systematically exploited, they could become big and well-known mines, not only in the Union of Burma, but even throughout Southeast Asia. By creating such huge mining industries, a source of economic development for the entire population of the Shan State could come into being. There are also many natural waterfalls in the Shan State and harnessing hydro-power could also bring benefits to the State.

## HISTORICAL BACKGROUND

According to historians, the (Tai) Shans lived an independent people, south of the Yangtze River in China, round about 650 B.C. Certain descendants of those (Tai) Shan people are said to have migrated into Burma and the Shan State. Their kins, descended from the same ancestors, now inhabit northeast Assam, Yunnan, Laos, Cambodia and Thailand. The (Tai) Shan people had been gradually pushed south, at about the start of the Christian Era by the advance of the Tartars. About 650 A.D. the (Tai) Shan people established the famous kingdom of Nanchao. During the years 754 to 763 A.D. the Nanchao (Tai) Shans extended their rule into the upper basin of the Irrawaddy River and came into contact with the (Pyu) who were then rulers of the Upper Burma plains. Trade and commerce and internal and external relations developed through these contacts with Nanchao and with China. Even in those days, some Shan ventured beyond Upper Burma into Lower Burma to mingle and live together with the Mons.

Even before the fall of the Nanchao Kingdom, the Shans had crossed Upper Burma to establish the once powerful Ahom Kingdom.

The Shans moved into the area now known as the Shan State and settle down and were well established by the time King Anawrahta ascended his throne.

The (Tai) Shans tried desperately to defend their city and their kingdom of Nanchao from the Chinese attackers, but finally in 1253 the Kingdom fell into the hands of the Chinese. The Shans, unwilling to live under foreign domination, moved towards the south in strength, to seek freedom. They joined up with Shans already in the area, and in 1262 took over Chiengrai, in 1296 Chiengmai and in 1351 took Ayuddhya, and established their own kingdoms. In Upper Burma the Shans established the kingdoms of (Mong Kawng) Mongaung and (Mong Yang) Mohnyin, and in the Shweli basin, the Mao Kingdom.

To give a brief history of Burma prior to the start of the Pagan Dynasty, it should be noted that in Lower Burma the Mons had a kingdom in Thaton called Thuwunnabhommi, another in Prome called Thayekhittaya and a third in Pegu called Uttha, and they had relations with the Indian kingdom of Kalinga in the west. At about this time the Burmese (Pyu), and the Shans were descending into the plains and settling down. In 832 A.D. the Pyu kingdom was conquered by the Nanchao kingdom. The Pyus in turn went into Kyaukse, where there were a few Mon settlements and seized the area, from which they spread into the Chin State in the Irrawaddy basin, and the Sandoway area of the Arakan State. Other Pyus spread into Prome, Taungdwingyi, Chindwin and Shwebo and mingled with the people already settled in those areas. A reference to history will thus show that Burma proper was formerly occupied by a wide variety of races and that it was only in about 1050 A.D. that the race known as Burmans came into being. According to Burmese literature the kingdom of Pagan was established in 108 A.D. and there were 40 rulers who succeeded to the throne, but there is no mention of their titles or the length of their various reigns.

In 1044 A.D. King Anawrahta ascended the throne, and during his 43 years reign, he was able to unify Burma under his rule for the first time in history. At the same time King Anawrahta sent detachments of his army into the Shan States to ensure the security of his Kingdom. However, he had no intention of annexing the Shan States. He merely wished to defend the low-lying plains of Burma from raids by the Shans. For this purpose he established a string of fortified towns along the length of the foothills.

During the reign of King Alaungsithu, relations between Shans and Burmese became friendlier. However, the Kingdom of Pagan fell to the Chinese attackers in 1287 A.D. and was destroyed. Then in 1312 A.D. a Shan Prince took the Kingly Title of “Thihathu” and ascended the throne in the City of Pinya.

The (Mao) Shans who had established kingdoms in Mohnyin, Mogaung and the Shweli areas then overran the kingdoms of Pinya and Sagaing in 1364 A.D. When they had withdrawn, a Shan Prince from Ava, whose title was Thadominbya, combined Pinya and Sagaing and established a new kingdom, over which he ruled. The Shans ruled Upper Burma from 1287 A.D. to 1531 A.D.

In 1527 A.D. due to the attacks of the Sawbwa of Mohnyin on Ava, the Shans and Burmese of the area left their homes and descended southwards towards Toungoo, where they established a new city and Kingdom. Thohanbwa, the son of the Sawbwa of Mohnyin, who became King of Ava, was soon assassinated due to his lack of skill in Statecraft and administration, and in 1543 A.D. Onbaung Khun Maing succeeded him on the throne.

However, in the year 1555 A.D. King Bayinnaung succeeded in unifying the whole of Burma and the Shan States, for the Second time in the history of Burma. In accordance with the traditions of the earlier Burmese Kings, the administrative set-up was as follows: The Shan Sawbwas who submitted to the suzerainty of the Burmese King retained full powers to rule over their own states. Therefore, since there existed this relationship of mutual respect based on affection, the Shan State and Burma developed co-operation that was very close indeed. The military forces of Burma included contingents of Shan soldiers. The Shan forces were loyal to the Royal cause to the extent that they were ready to sacrifice their lives in the service of the king.

That is why Shans and Burmans had lived closely together, like brethren, till the fall of Upper Burma to the British in 1886.

So close were the relationships between the Shans and the Burmans that after the fall of Upper Burma, the Shan Sawbwa, with the intention of restoring freedom to Burma and the Shan States, chose the Burmese Princes Limbin and Saw Yan Naing to head their confederacy, and started waging war against the British. However, the noble intentions could not be achieved. Instead, the Shan States ended up being carved up in 1893 and confined within its present borders, for the convenience of British administration, and was placed in the hands of expansionist masters.

From 1886 to 1893, the British Government administered the Shan States by following the traditional methods adopted by the Burmese Kings. They recognized the Sawbwas by presenting them with Sanads, and allowing them to administer their states in accordance with Shan State custom. However, they introduced the important British Frontier Area Service Assistant Residents into the Shan States.

Between 1897 and 1922 home rule was gradually introduced into Burma, and one Shan Sawbwa was appointed, as a representative of the Shans, to the Governor’s Advisory Council, to advise him on matters pertaining to the Shan States.

Then from 1922 to 1935 the Dyarchy Government came into being in Burma, and the Federated Shan States was established in the Shan States. The British Commissioner was

appointed Chairman of the Federated Shan States Council and the Sawbwa were given the privilege of discussing and advising the Commissioner on administration of the Federated Shan States, on Finance and on important matters concerning General Administration. There had been suggestions, even in those days, that a Council whose membership included representatives of the people should be set up.

In 1935 a Government with 91 Departments was introduced in Burma. In the Shan States, thanks to the efforts of the Sawbwas, a Permanent Executive, selected by the Federal Council, came into being. The Permanent Executive was able to have frequent meetings with the Governor to discuss General Administration matters. Thus the administration of the Federated Shan States drifted within the ambit of the powers of the Shan States Federal Council. By the Burma Act of 1935 the Shan States were administratively separated from Burma proper and put under a second administrative circle. In spite of the administrative separation, Shan-Burmese relations became even closer, partly because of pride in their combined heritage, partly because of the constant movement of people between the Shan States and Burma.

In 1942 during the Second World War, the Japanese invaded Burma and the Shan States and occupied the entire country. The Shan States were administered jointly with Burma by the Japanese. The Japanese also unilaterally and forcibly handed over the eastern Shan states of Keng Tung and Mong Pan to Thailand. Due to the oppression of the Japanese (Nippon), nationalism and the desire for independence were aroused not only in Burma but in the Shan States as well.

This was the reason why the nationals of the Shan States were able to rise as one and successfully throw off the yoke of the Fascists.

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## **(PART TWO)**

### **THE SHAN STATES AFTER THE SECOND WORLD WAR**

At the end of the Second World War, the British Armies reoccupied Burma. Before the return of the Burma Government-in-exile that had taken refuge in Simla, India, the whole Burma, including the Shan States came under military administration.

During the Military Administration period, civilian matters were dealt with by the Civil Administration Service (Burma), headed by military officers, and known by the initials CAS(B). CAS(B)'s primary function was to provide aid and assistance to victims of war, and to restore the war-shattered economy of the country.

The Shan Sawbwas, the popular leaders and the people as a whole had gone through great suffering during the war, but had emerged with heightened political awareness. The principles embodied in the Atlantic Charter, the Teheran Declaration and the Charter of the United Nations acted as beacons for the leaders of the Shan States. They yearned for the right to self-determination for every nationality. The resistance against the Fascists further strengthened this desire.

The Burma Government-in-exile, headed by the Governor of Burma, Sir Reginald Dorman-Smith, eventually returned to Burma. Sir Reginald who appeared to be unaware of the great changes in the political outlook and circumstances that had taken place in the post-war period in Burma, brought along with him a bundle of plans drawn up in Simla, for the revitalization of the former expansionist colonial administration. Among these plans, the one which directly affected the Shan States was entitled “Frontier Areas Administration”.

Up until the outbreak of the Second World War, the frontier areas, comprising the Arakan Hills, the Chin Hills, the Naga Hills, the Kachin Hills, the Shan Plateau and the Salween District were designated as Reserved Areas and placed under the direct rule of the Governor.

Various types of administration were employed for those areas, depending on the state of development each area had attained. The plan brought in by Sir Reginald Dorman-Smith, however, would abolish the various types of administration and replace them with a single type. Whereas, in former days, there were traditional leaders such as the Chin Taungoks, the Kachin Duwas, the Shan Sawbwas and Karen Sawkes who administered their own areas, the new plan would replace these traditional leaders with appointed advisory committees at various levels, ostensibly to bring the administration closer to democracy.

Although the new system of administration appeared, superficially at least, to be progressive, in actuality, it was devised to ensure a secure foothold for the expansionist colonial administration.

It was inevitable that, sooner or later, independence would have to be granted to Burma proper, which had just emerged, with morale raised, from its successful war of resistance against Fascism. The real reason for the Frontier Areas Administration plan was that when the inevitable occurred and independence had to be granted to Burma proper, the frontier areas would form a single unit which would be withheld from the grant of independence.

The traditional rulers such as the Sawbwas, Duwas and Taungoks who, heretofore, had ruled, according to Customary Law, on their own, would, under the Frontier Areas Administration system, have to share the administration of their area with the advisory councils at various levels, thus reducing the powers they formerly enjoyed, and at the same time being transformed from being the chief administrator to no more than the official collector of revenue. This was the reason why the Sawbwas, Duwas and the Taungoks refused to accept the Frontier Areas Administration rules.

Everyone understood that Burma proper would undoubtedly gain independence. However, neither the Administration of the Government of Burma, nor the British Government would comment on the future status of the Frontier Areas of which the Shan States formed a part.

Every available trick was being utilized to exclude the Frontier Areas from the Independence that the British Government was going to be forced to grant to Burma proper.

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## **THE FIRST PANGLONG CONFERENCE**

The leaders of the Frontier Area put into action their plans for demanding independence for the Frontier Areas in conjunction with Burma proper.

The expansionist colonial government tried its best to cut the political communications between the Frontier Areas and Burma proper, by attempting to sow division and discord between the different peoples, hoping thereby to ensure that there would be no coming together of the two sides.

However, the forward-looking Shan Sawbwas, made preparations for a conference to be convened somewhere in the Shan State, to be attended by leaders from the Frontier Areas and from Burma proper. Thus came into being the First Panglong Conference in 1946.

British Officials in the Shan State tried to prevent the issuance of invitations to attend the Conference to the Burmese representatives led by General Aung San.

The idea and spirit of a Union took root at the first Panglong Conference. The leaders of the Frontier Areas became united. It was decided that a second Panglong Conference would be held next year.

The struggle for Independence in Burma intensified. This resulted in the Aung San-Atlee Agreement on the formation of an Interim Government for Burma and for the summoning of a Constituent Assembly. Regarding the Frontier Areas the following conclusions were reached between Aung San and Atlee.

#### **CONCLUSION REACHED IN CONVERSATION BETWEEN HIS MAJESTY'S GOVERNMENT AND THE DELEGATION FROM THE GOVERNOR'S EXECUTIVE COUNCIL, AT LONDON, REGARDING THE FRONTIER AREAS**

It is the agreed objective of both His Majesty's Government and the Burmese Delegates, to achieve the early unification of the Frontier Areas and Ministerial Burma with the free consent of inhabitants of those areas.

In the meantime, it is agreed of Frontier Areas should, in respect of subjects of common interest, be closely associated with Government of Burma, in a manner acceptable to both parties.

For these purposes it has been agreed as follows: -

- (a) There shall be free intercourse between peoples of the Frontier Areas and peoples of Ministerial Burma, without hindrance.
- (b) Leaders and representatives of peoples of the Frontier Areas shall be asked either at the Panglong Conference or at a special conference to be convened for the purpose, to express their views upon the form of association with the Government of Burma which they consider acceptable during the transition period, whether by:
  1. appointment of a small group of Frontier Representatives to advise the Governor on Frontier Affairs and to have close liaison with the Executive Council; or
  2. by appointment of one Frontier Areas Representatives as Executive Councillor in charge of Frontier affairs; or
  3. by some other method.

(c) after the Panglong Conference or Special Conference, His Majesty's Government and the

Government of Burma will agree upon the best method of advancing their common aims in accordance with the expressed views of the peoples of the Frontier Areas.

- (d) A Committee of Enquiry shall be set up forthwith as to the best method of associating the Frontier peoples with the working out of the new Constitution for Burma.

Such Committee will consist of an equal number of persons from ministerial Burma, nominated by the Executive Council and of persons from the Frontier Areas nominated by the Governor after consultation with leaders of those areas, with a neutral Chairman from outside Burma selected by agreement.

Such Committee shall be asked to report to the Government of Burma and to His Majesty's Government before the summoning of the Constituent Assembly.

The Aung San-Atlee Agreement made the question of unification between the Shan State and Burma an extremely urgent matter. On what terms would such unification be carried out? Would the Shan States be participating in the soon to be summoned Constituent Assembly? The Shan Sawbwas and other leaders of the Shan States needed to urgently come up with the answers to those questions.

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## THE SECOND PANGLONG CONFERENCE

At the Second Panglong Conference which was held from the 6<sup>th</sup> to the 12<sup>th</sup> of February 1947, the leaders of the Frontier Areas unanimously agreed to participate in the Constituent Assembly for the purpose of establishing a future Union.

On the question of the terms for unification, the representatives of the Shan Sawbwas, the representatives of the Shan people and the leaders of the Kachins made the following decision.

### DECISION ARRIVED AT BY THE SHAN-KACHIN COMMITTEE AT ITS MEETING AT PANGLONG ON 6<sup>TH</sup> FEBRUARY 1947 AT 2:30 P.M.

The Committee is of the opinion that the freedom for the Shans and the Kachins would be achieved sooner through the co-operation with the Burmese; as such the two races would send in their respective Representatives to take part in the Executive Council of the Burmese Government during the transition period, with the following conditions:

1. **Same status, rights and privileges as enjoyed by the Burmese on democratic lines.**
2. **The Shan and Kachin members in the Executive Council would be responsible for all their internal affairs and would jointly be responsible for common subjects e.g. Defence, Foreign Affairs, Railways, Customs etc.**
3. This Committee supported the demand of the Kachins for their desire to have a distinct separate Kachin State.
4. **The term of agreement, as arrived at between the Burmese delegates and His Majesty's Government, is not to be binding on the Shans and Kachins.**

5. **The right to secede after attainment of freedom from Confederation with Burma, if and when we choose.**

**SHAN COMMITTEE**

**Sd. Hkun Pan Sing, Saohpalong of Tawngpeng State.**

**Sd. S.S.Thaike, Saohpalong of Yawnghwe State.**

**Sd. Sao Hom Hpa, Saohpalong of North Hsenwi State.**

**Sd. Sao Num, Saohpalong of Laihka State.**

**Sd. Sao Sam Htun, Saohpalong of Mong Pawn State.**

**Sd. Sao Htun E, Saohpalong of Hsamonghkam State.**

**Sd. Hkun Paung.**

**Sd. Tin E.**

**Sd. Htun Myint.**

**Sd. Kya Bu.**

**Sd. Sao Yape Hpa.**

**Sd. Hkun Htee.**

**KACHIN COMMITTEE**

**Sd. Sinwa Naw,  
Myitkyina.**

**Sd. Zau Rip,  
Myitkyina**

**Sd. Dinra Tang,  
Myitkyina.**

**Sd. Zau La, Bhamo.**

**Sd. Zau Lawn, Bhamo.**

**Sd. Labang Grong,  
Bhamo.**

The decision was placed before a combined meeting including the Chins who arrived the next day.

**DECISION ARRIVED AT BY THE COMBINED CHIN-KACHIN-SHAN  
COMMITTEE AT ITS MEETING AT  
PANGLONG ON 7<sup>TH</sup> FEBRUARY 1947 AT 9 A.M.**

The Chin Delegation having arrived on the night of the 6<sup>th</sup> of February 1947 was welcomed to the meeting. It consisted of:

1. U Hlur Hmung, ATM, I.D.S.M., B.E.M., Falam, Chin Hills
2. U Thawng Za Khup, ATM, Tiddim, Chin Hills
3. U Kio Mang, ATM, Haka, Chin Hills

**1. The terms of the decision arrived at yesterday by the Shan Representatives and the Kachin Delegation at their meeting at 2:30 P.M. was duly read out and explained to the Chin Delegates who approved of the decisions and subscribed to the same with the following additions which was unanimously approved by all.**

- (a) All rights and privileges as regards Central Revenue enjoyed by Shans shall also be extended to the Chins and Kachins on a population basis.**

- (b) Any deficiency in local finance to be made good from Burma Revenues.
- (c) There shall be formed s Supreme Executive Council of the United Hill Peoples, composed of representatives of Shans, Chins and Kachins, which shall have full power of decision on all matters of policy between the Hill Peoples and the Government of Burma.

#### **SHAN COMMITTEE**

Sd. Hkun Pan Sing, Saohpalong of Tawngpeng State.  
 Sd. S.S.Thaike, Saohpalong of Yawnghwe State.  
 Sd. Sao Hom Hpa, Saohpalong of North Hsenwi State.  
 Sd. Sao Num, Saohpalong of Laihka State.  
 Sd. Sao Sam Htun, Saohpalong of Mong Pawn State.  
 Sd. Sao Htun E, Saohpalong of Hsamonghkam State.  
 Sd. Maung Pyu, Representatives of Hsahtung Saohpalong.  
 Sd. Hkun Pung.  
 Sd. Tin E.  
  
 Sd. Htun Myint.  
  
 Sd. Kya Bu.  
 Sd. Hkun Saw.  
 Sd. Sao Yape Hpa.  
 Sd. Hkun Htee

#### **KACHIN COMMITTEE**

Sd. Sinwa Naw,  
 Myitkyina.  
 Sd. Zau Rip, Myitkyina.  
 Sd. Dinra Tang,  
 Myitkyina.  
 Sd. Zau La, Bhamo.  
 Sd. Zau Lawn, Bhamo.  
  
 Sd. Labang Grong,  
 Bhamo.

#### **CHIN COMMITTEE**

Sd. Hlur Hmung, ATM, I.D.S.M.,  
 B.E.M., Falam.  
 Sd. Thawng Za Khup, ATM,  
 Tiddim.  
 Sd. Kio Mang, ATM, Haka.

At the meeting of the Chin-Shan-Kachin Committee at Panglong on 7<sup>th</sup> February 1947 at 1 P.M., it was unanimously resolved that a Sub-Committee of the under-listed members be formed and given full powers for the purpose of negotiating with the Burmese leaders according to the terms of the decisions fo the 6<sup>th</sup> and 7<sup>th</sup> February 1947, arrived at by

- a. **the Kachin-Shan Committee and**
- b. the Combined Chin-Shan-Kachin committee:
  1. U Kya Bu. (Shan)
  2. Saohpalong of Mong Pawn State. (Shan)
  3. Sinwa Naw. (Kachin)
  4. Zau Lawn. (Kachin)
  5. U Hlur Hmung. (Chin)
  6. U Thawng Za Khup. (Chin)

The decisions reproduced above were the forerunners of the world-reknowned Panglong Agreement. When the Burmese leaders headed by General Aung San, accompanied by the Representative of His Majesty's Government, Mr. A.G. Bottomley arrived on the 10<sup>th</sup> February 1947, the question of confederation between Burma and the Frontier Areas did not require much further discussion.

By refining the decisions of the Frontier Areas peoples, the Panglong Agreement was achieved.

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## THE PANGLONG AGREEMENT 1947

A Conference having been held at Panglong, attended by certain Members of the Executive Council of the Governor of Burma, all Saohpas and representatives of the Shan States, the Kachin Hills and the Chin Hills:

The Members of the Conference, 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 Members of the Conference have accordingly, and without dissentients, agreed as follows:

- 1. A Representative of the Hill Peoples, selected by the Governor on the recommendation of representatives of the Supreme Council of the United Hill Peoples (SCOUP), shall be appointed a Counsellor to the Governor to deal with the Frontier Areas.**
- 2. The said Counsellor shall also be appointed a Member of the Governor's Executive Council, without portfolio and the subject of Frontier Areas brought within the purview of the Executive Council by Constitutional Convention, as in the case of Defence and External Affairs. The Counsellor for Frontier Areas shall be given executive authority by similar means.**
- 3. The said Counsellor shall be assisted by two Deputy Counsellors representing races of which he is not a member. While the two Deputy Counsellors should deal in the first instance with the affairs of their respective areas and the Counsellor with all the remaining parts of the Frontier Areas, they should on Constitutional Convention act on the principle of joint responsibility.**
- 4. While the Counsellor, in his capacity as Member of the Executive Council, will be the only representative of the Frontier Areas on the Council, the Deputy Counsellors shall be entitled to attend meetings of the Council when subjects pertaining to the Frontier Areas are discussed.**
- 5. Though the Governor's Executive Council will be augmented as greed above, it will not operate in respect of the Frontier Areas in any manner which would deprive any portion of those Areas of the autonomy which it now enjoys in internal administration. Full autonomy in internal administration for the Frontier Areas in accepted in principle.**
- 6. Though the question of demarcating and establishing a separate Kachin State within a Unified Burma is one which must be relegated for decision by the Constituent**

Assembly, it is agreed that such a State is desirable. As a first step towards this end, the Counsellor for Frontier Areas and the Deputy Counsellors shall be consulted in the administration of such areas in the Myitkyina and the Bhamo Districts as are Part II Scheduled Areas under the Government of Burma Act 1935.

7. Citizens of the Frontier Areas shall enjoy rights and privileges which are regarded as fundamental in democratic countries.
8. The arrangement accepted in this Agreement are without prejudice to the financial autonomy now vested in the Federated Shan States.
9. The arrangements accepted in this Agreement are without prejudice to the financial assistance which the Kachin Hills and the Chin Hills are entitled to receive from the revenues of Burma, and the Executive Council will examine with the Frontier Areas Counsellor and Deputy Counsellors the feasibility of adopting for the Kachin Hills and the Chin Hills financial arrangements similar to those between Burma and the Federated Shan States.

**SHAN COMMITTEE**

Sd. Hkun Pan Sing,  
Saohpalong of Tawngpeng State.

Sd. S.S. Thaïke, Saohpalong of  
Yawnghwe State.

Sd. Sao Hom Hpa, Saohpalong of  
North Hsenwi State.

Sd. Sao Num, Saohpalong of  
Laihka State.

Sd. Sao Sam Htun, Saohpalong  
of Mong Pawn State.

Sd. Sao Htun E, Saohpalong of  
Hsamonghkam State.

Sd. Maung Pyu, Representatives  
of Hsahtung Saohpalong.

Sd. Khun Pung.

Sd. Tin E.

Sd. Htun Myint.

Sd. Kya Bu.

Sd. Sao Yape Hpa.

Sd. Hkun Saw.

Sd. Hkun Htee.

**KACHIN COMMITTEE.**

Sd. Sinwa Naw, Myitkyina.

Sd. Zau Rip. Myitkyina.

Sd. Dinra Tang, Myitkyina.

Sd. Zau La, Bhamo.

Sd. Zau Lawn, Bhamo.

Sd. Labang Grong, Bhamo

**CHIN COMMITTEE**

Sd. U Hlur Hmung, ATM,  
IDSMS, B.E.M., Falam.

Sd. U Thawng Za Khup,  
ATM, Tiddim.

Sd. U Kio Mang, ATM,  
Haka.

**BURMESE  
GOVERNMENT.**

Sd. Aung San

12/2/47

In accordance with the Panglong Agreement, the Saohpalong of Mong Pawn State was selected to be a Member of the Governor's Executive Council, and Counsellor for the Frontier Areas, and Sama Duwa Sinwa Naw and U Vum Ko Hau were elected as Deputy Counsellors for the Kachin Hills and Chin Hills.

In this way the desire of the leaders of the Frontier Areas to co-operate with Burma to more speedily achieve freedom was initially put into effect. However, it was as yet, merely a temporary union for the transition period.

The establishment of a future Federation, consisting of Burma proper and the Frontier Areas, although prescribed in the decision of 6<sup>th</sup> February 1947, was not mentioned in the Panglong Agreement as it was understood that the matter should be considered in detail at the Constituent Assembly which was yet to be convened.

The Sub-Committee of the Supreme Executive Council of the United Hill Peoples, headed by the Saohpalong of Mong Pawn and U Kya Bu, negotiated with the Burmese Delegation headed by General Aung San, on the 10<sup>th</sup> February 1947, at Panglong and the demands tabled by the representatives of the Frontier Areas: - for full internal autonomy, for the establishment of a separate Kachin State, and for the federal organ to deal with only common subjects such as Defence, Foreign Affairs, Railways and Customs etc. – was accepted in principle by General Aung San.

General Aung San, however, requested that the demand for the Right of Secession from Burma at any time after attaining freedom, should be decided at the Constituent Assembly.

Then, in accordance with Point 8 (d) of the Aung San-Atlee Agreement, the Government set up the Frontier Areas Committee of Enquiry headed by Labour Party M.P. Col. Rees-Williams to enquire into the best method of associating the Frontier peoples with the working out of the New Constitution of Burma.

The Frontier Areas Committee of Enquiry was to begin its enquiries in April 1947 and to submit its report before the summoning of the Constituent Assembly in June 1947. The leaders of the Frontier Areas therefore went into urgent discussions in order to ensure that the principle of co-operation with Burma would be in the forefront, in testimony before the Committee.

Since there had never been any election held in the Frontier Areas under British rule, the leaders of the Frontier Areas also had to discuss among themselves the question of sending representatives to the Constituent Assembly for the working out of a new Constitution.

According to Point 1 of the Aung San-Atlee Agreement, in Burma proper, representatives would be elected by popular vote under the 1935 Act. In the Frontier Areas, however, there had never been any experience with popular elections, and in the extremely short period of time available, election by popular vote was not feasible. The leaders of the Frontier Areas therefore agreed to select and appoint representatives in accordance with the circumstances prevailing in each area.

In the Shan States, the Governor's call for the convening of the pre-war Shan States Federal Council, composed entirely of Saohpas (Sawbwas), was rejected by the Saohpas at the Conference in Panglong, as well as by the leaders of the people. Instead they called for the

Federal Council to be dissolved and replaced by a Shan States Council, composed of Saohpas, and an equal number of representatives of the people.

The Council of Shan States Saohpas decided that the Shan States Council should be established as follows.

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### THE SHAN STATES COUNCIL

1. It shall be called the Shan States Council.
2. Members shall be equally represented on the Council from the Saohpas and the people. (33 Saohpas and 33 popularly nominated representatives.)
3. For immediate purposes the Representatives of the people shall be nominated on intellectual basis, but election on population basis shall be the fundamental rule of election.
4. The nomination of the Representatives of the people shall be left to the existing representatives of the people, with the power to call in for advice and assistance, anybody having the genuine interests of the Shan States at heart.
5. This Council shall be invested with the following powers:
  - (a) Legislative,
  - (b) Executive and
  - (c) Finance.
6. An Executive Committee consisting of 8 members (4 Saohpa and 4 representatives of the people) shall be selected from the Council to be in charge of all the Departments in the Shan States.
7. The present Executive Committee of the Council of Shan States together with 2 nominated representatives of the people shall carry on with the work till such time as the Shan States Council and its Executive Committee comes into existence as contemplated in 3 and 4.
8. The Shan States Federal Fund be revived and placed within the sole financial power of the Executive Committee.

**Sd. Hkun Pan Sing**  
President, Council of Shan States Saohpas.

Dated Taunggyi, the 15<sup>th</sup> February 1947.

Addition to 5. - (d) Judicial (the Shan States shall have a separate High Court  
above, within the Shan States).  
Addition to 6. - If 8 members is considered to be too many 4 to 5 main departments  
above, can be started with.

**Sd. Hkun Pan Sing**  
President, Shan States Council.

**Dated Camp Maymyo, the 21<sup>st</sup> April 1947.**

After the Shan States Council had decided that the Shan States Representatives to the Burma Constituent Assembly would consist of 33 Saohpas and 33 representatives of the people, it was decided to send the following communication to the Frontier Areas Committee of Enquiry (F.A.C.E.) regarding the matter.

**The Shan States desire the following facts be taken into consideration by F.A.C.E. in its report to the Governments concerned: -**

- 1. The Shan States shall participate in the forthcoming Constituent Assembly, members to be nominated by the Shan States Council on population basis.**
- 2. In the Constituent Assembly no decision shall be effected in matters regarding the Shan States or any change, amendment, modification affecting the Shan States in the future Constitution of the Federation, without a clear majority of two-thirds of the votes of the members from the Shan States.**
- 3. Association with Burma shall be on a Federal basis with –**
  - a. equal rights and status;**
  - b. full internal autonomy for the Shan States;**
  - c. right of secession from the Federation at any time after attainment of freedom.**
- 4. Federation on subjects which cannot be dealt with by the Shan States alone, such as:**
  - 
  - a. Defence,**
  - b. Foreign Affairs,**
  - c. Railways, Post and Telegraph,**
  - d. Coinage and Currency,**
  - e. Customs, etc.,****Would be defined as common subjects by the Constituent Assembly.**
- 5. The selection and appointments of the Judge of the Supreme Court to interpret the Constitution, should, by Convention, be approved by the majority of the Frontier members of the Federal Government.**

**At the Kachin Representatives also agreed to adopt the Shan States model, the Conference of the Supreme Executive Council of the United Hill Peoples, held at the Haw of the Saohpalong of Yawnghwe State, in Yawnghwe, from the 18<sup>th</sup> to the 27<sup>th</sup> of March 1947 approved the following decisions.**

- 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 two-thirds majority of votes of the Representatives of the Areas concerned. \***
  - a. Equal rights for all.**
  - b. Full internal autonomy for all Representatives of Hill Areas.**
  - c. Right of secession from Burma proper at any time after attaining freedom.**

3. **It is resolved that due provisions 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, etc., no decision shall be made without the prior 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 two-thirds votes of the Representatives of the Hill States.**
6. **When opinion differs as to the interpretation of the terms in the Constitution, the matter shall be referred for decision to a Bench of the **\*\*High Count of Judicature at Rangoon, comprising of the Chief Justice and two other Justices.****
7. **The total number of the Burmese members in the Federal Cabinet shall not exceed the total number of the members of the Frontier States in the said Cabinet.**

The Frontier Areas Committee of enquiry during its official enquires held in Maymyo, gathered evidence from 10 groups of representatives from the Shan States, 8 groups of Kachin representatives from the Bhamo and Myitkyina District, and 10 groups of representatives from the Chin Hills, and found that a majority of them favoured the above decisions of the Supreme Executive Council of the United Hill Peoples, taken at the Yawnghe Haw. Therefore Part 3 of the Committee's report stated as follows:

**The Future of the Frontier Areas – The views of the witnesses from the Federated Shan States and from the Kachin Hills are strongly in favour of a federated Burma in which the Federated Shan States will form a State or unit and the Kachin Hills another. They desire the fullest possible autonomy for the Shan States within the federation but agree that certain subjects of general scope should be entrusted to the federation.**

Since the Shan State was to send 25 representatives to the Constituent Assembly, the numbers were allocated as follows:

1. 11 Saphpas
2. 11 Representatives of the people
3. 1 Representative of Kokang State
4. 2 Representatives of Kachins from the Northern Shan States

Total 25 Representatives.

### **THE CONSTITUENT ASSEMBLY**

The Constituent Assembly was convened on the 10<sup>th</sup> June 1947.

Before the Constituent Assembly convened, the preliminary conference of the Anti-Fascist People's Freedom League (AFPFL), drew up a draft Constitution, to serve as a basis for discussion by the Constituent Assembly.

*\*Special consideration for Chins in view of divergence in language, customs and difficult means of communication.*

*\*\*Supreme Court, the appointment or selection of whose judges should, by convention, be approved by the majority of Frontier members of the Federal Government.*

The A.F.P.F.L. also prescribed 14 proposals for the drawing up of the Constitution, Proposal No. 3 dealt with the determination of the level of the constituent States as follows:

3. **(1) If the Areas showing in (b), (c), (d) and (e) enjoy all or some of the following characteristic features and the Constituent Assembly according makes the relevant decisions concerning the level of autonomy of the Areas, those decisions will be incorporated in the future Constitution, and the Areas will enjoy the status of either a Union State, an Autonomous State or a National Area.**

### **CHARACTERISTIC FEATURES**

1. **Having a distinct geographical boundary.**
2. Having a single language which is different from the Burmese language.
3. Having a homogenous culture.
4. Having a people with a unique historical heritage.
5. Having a people enjoying economic benefits and economic sufficiency.
6. Having an adequate population.
7. Having the desire to live as a distinct and separate constituent unit of the Union.

The draft Constitution drawn up by the A.F.P.F.L. preliminary Conference contained details of the above-mentioned

1. Union State,
2. Autonomous State and
3. National Area. [See Annexure 1].

Regarding the determination of a Union State, there is no mention of Burma becoming a Union State, but according to Proposal No. 3, it is evident that Burma proper and the Shan State would qualify for the level of Union State.

At the opening of the Constituent Assembly, General Aung San presented seven basic directives.

### **THE SEVEN DIRECTIVES OF GENERAL AUNG SAN.**

(Guidelines for the drafting of the Constitution of a Sovereign Independent Burma)

The representatives of the peoples of Burma, including those of the Frontier Areas and Karenni, having assembled in order to fulfil the expressed wishes of the people for the drafting of a Constitution, have passed the following enactments.

1. The constitution to be drafted, shall be known as the Constitution of the Sovereign Independent Republic of the Union of Burma. Furthermore ...
2. Within the Union, the individual States established by the Constitution, shall enjoy the powers of autonomy prescribed by the Constitution. Furthermore ...
3. The powers of the governmental organization of the Sovereign Independent Republic of Burma and of the Constituent States shall derive from the people. Furthermore ...
4. Every citizen of the Union of Burma shall enjoy perfect equality in the social, economic and political fields; and as long as it is not against the law or against public morality, every person shall enjoy freedom of thought, speech, belief, religion, worship, livelihood, action and the freedom to organize, and these rights shall be enshrined in the Constitution. Furthermore ...
5. The Constitution must have sufficient provision for the protection of the minorities. Furthermore ...
6. In ensuring the unity and integrity of the territory of the sovereign, Independent Republic of Burma and in the exercise of the command of the Nation's Army, Navy and Air Force, the rules of Justice and International Law shall be observed. Furthermore ...
7. We pledge that this Nation of Burma, which has had a distinguished history, shall achieve its deserved place in the world; shall strive with goodwill, to promote progress and economic well-being of all humanity; shall join hands with other nations, conducting ourselves on the basis of justice and international law, with a view to achieving world peace.

With regard to the formation of a Union or Federation, draft proposal No. 2 of the Directives presented the merest outline. However, General Aung San himself had introduced the Draft Constitution drafted by the Preliminary Conference of the A.F.P.F.L. to the Constituent Assembly "as a basis for discussion" so it is quite apparent that there had been some efforts made to classify the Constituent States into several levels.

Unfortunately, the National Leaders headed by General Aung San were assassinated before the Constituent Assembly could complete its task. The whole country went into mourning. The fraternal national races became even more united.

The representatives of the Colonialists approached the representatives of the Shan States and warned them that the situation in Burma was very bad, and that the Shan representatives should go home. They also tried to create divisions by promising the Frontier Areas more financial assistance for economic development if they decided not to federate with Burma but would remain separate.

But the representatives of the Shan States who had already committed themselves to achieving Independence by co-operation with Burma proper, were not to be swayed. They carried on participating in the work of the Constituent Assembly.

The Representatives of the Shan States who participated in the Constituent Assembly were:

1. Politically immature;
2. Had no understanding of legislative processes;
3. Were preoccupied with the proposal of total independence within one year;
4. Were trying to exhibit a united front after the loss of their leaders through political assassination.

Therefore they very casually accepted the provisions and wording of the Constitution.

They accepted General Aung San's exhortation to trust the intentions rather than the words of the law.

They never dreamt that after having gained Independence, those they considered as brethren, might bring pressure on them by resorting to precise and literal interpretations of the words of the Constitution.

After the Constitution of the Union of Burma had been drafted and was submitted to the Constituent Assembly for approval, U Chan Htoon, the Adviser on Constitutional Law, explained the legal principles involved in the drafting, on the basis of

1. The System of Government,
2. The Division of Powers, and
3. The Legislature.

Concerning the System of Government, U Chan Htoon asked, "Do we want a Federal System of Government or a Unitary System?" He further explained that however much one may believe in the superiority of the Unitary System of Government, the circumstances prevailing at the moment were such that only a Federal System of Government would have to be considered. The Directives also made the same point. Therefore, the Nation we have envisaged is a Federal Type of Nation. However, the Federal Union we envisage is different from other existing Federal Unions. Because the Frontier Areas and Burma Proper differ greatly in population, in the area they occupy, in financial resources and in the political awareness of their people, the Draft Constitution had not established Burma proper as a separate Constituent State, but has combined it with the Central Union Government.

With regard to the Separation of Powers, U Chan Htoon explained that they had studied the various Federal Unions in existence. There were the United States of America, Switzerland and Australia, three countries considered to be the Extreme type of Federation, where the Shan States hold the residual powers and the Central is given only the powers considered necessary. Then there was Canada which was considered to be a Moderate Type of Federation, where the Federal Government holds all the powers and allocates only limited powers to the Province.

"What we have drawn up may be considered rather similar to the Canadian model though it is not exactly the same. To sum up briefly, we have very strictly detailed the powers we are giving to the States, and reserved the remainder for the Central Government to utilize as it thinks fit." (Quotes added by Editor)

According to the explanations given by U Chan Htoon, there were to be

1. a Union Legislative Lists;
2. a State Legislative List and
3. a Concurrent Legislative List.

However, when the draft Constitution was finalized only

1. the Union Legislative List and

2. the State Legislative List remained. Thus contrary to U Chan Htoon's claim, our Constitution was not merely similar to Canada's but was exactly like it.

Despite the explanations and changes that were incorporated, the Shan State Representatives

- a. were at the time, in deep mourning at the assassination of the National leaders;
- b. were eager to gain freedom as speedily as possible in accordance with the guidelines laid down by their leaders.
- c. never even entertained the thought that their own brethren would begin pressuring and bargaining against them after freedom had been obtained;
- d. never realized that by allowing Burma proper to be combined with the Union Government instead of being established as a Constituent State, they would be doing a great disservice to the Shan State;
- e. failed completely to understand that by allowing the Separation of Powers to be conducted according to the Canadian model, the Shan State would lose its dignity and autonomy;
- f. knew only joy at the completion of the Constitution in October 1947 in time to be presented to the British Parliament, foreshadowing the Transfer of Power and granting of Independence;

Yes indeed, it was for the reasons stated above, that the Saohpalong of Tawngpeng State, on behalf of the Representatives of the Shan State, warmly supported the Constitution.

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### (PART THREE)

## **THE DEFECTS AND DIFFICULTIES THAT THE SHAN STATE HAS ENCOUNTERED IN THE PRACTICAL APPLICATION OF THE CONSTITUTION OF THE UNION OF BURMA**

### **The Preamble**

The words Frontier Areas appear to be demeaning. In co-operating together to demand total Independence, the Shans supported the move as Shans, the Kachins supported the move as Kachins and the Chins supported co-operation as Chins, which led to the defeat of the British attempts to cause divisions between the Burmans and the Shans, so instead of the words Frontier Areas, the Preamble should use the words, including the Shan State, the Kachin State, the Karen State, the Kayah State and the Chin State.

A genuine Federal Union is one where free States come together, in certain circumstances, to form a union, the States retaining their internal administrative autonomy, handing over to the Central Government only those important subjects that concern all the States. Thus the residual powers should reside with the States. Therefore, in Political Science, Canada cannot be regarded as a representation of a genuine federal system of government.

In the A.F.P.F.L. Conference held in May 1947, General Aung San had openly declared that it was not appropriate to establish a Unitary State. However, after he was assassinated, his advice was conveniently forgotten.

The Arakanese and the Mons, in demanding States of their own, do so not because they are enamoured of the present Constitution. Once they have attained their own States, they are likely to demand a genuinely federal Constitution as well. When the Central Committee holds hearings to gather evidence from witnesses it is most likely that Arakanese and Mons will participate in the discussions and totally support the proposals put forward by the Shan State.

Therefore, the necessary amendments should be made in the Preamble to the Constitution in order to emphasize its history and the principle of genuine Federalism.

### **Section 8**

Since Section 222, sub-section (b) defines the meaning of the term *unit* as all the territories of the Union of Burma not forming part of any State, and since Section 8 enacts that all powers in relation to Burma proper can only be exercised by the Departments and Officials of the Union of Burma, or on their authority, it means that Burma proper controls solely, the executive power of the Union Government. In effect, it means that the executive powers of the Union will be increasingly used solely for the benefit of Burma.

If the principle of genuine federalism is accepted, then this section will have to be scrapped. In the fields of administration and finance, this section had been the barrier that has prevented the States from receiving fair and equitable rights. As a result of the existence of this section, Burma proper was given primary consideration, instead of the Union as a whole, in the setting up of the Civil Service, in the drawing up of Plans and Projects, and in the establishment of Boards and Corporations for economic development. It was only when the States put up demands for their rights that certain concessions were made. The concessions were limited, and it could not be said that the States automatically enjoyed those rights.

For example, consider the issue of Japanese Reparations. It was only two years after the Reparations had begun flowing in, that the Shan State demanded its share and was given entitlements. There was no provision for sharing it with the States in the original proposal. Regarding the Shan State Economic Development Corporation, this has only recently come into being and only through the understanding and goodwill of the Union Party Government, which enabled the Shan State Ministry in the Union Government to enact the necessary laws to set it up. At this time, Emergency Economic Plans have been drawn up for the Districts which together form Burma proper, and the funds needed for their implementation are being distributed, but an official statement has been issued declaring that the States are not included in those Economic Plans. It is a well known fact that in comparison with Burma, the States are lacking in every aspect of development. If a genuine feeling of unity or Union Consciousness were present, it would be most appropriate to foster even greater development in the States.

If this Section did not exist, Burma would be just another State. In that case, it would experience at first hand, the extent to which the Constitution limits the powers of the States.

The Shan State willingly accepts in its entirety the fundamental human rights enshrined in the Constitution. In view of such acceptance and in view of the fact that the Shan State knows

best what are its problems and what fundamental human rights concerns its population, the Shan State should be empowered to control its own destiny. If the Shan State were provided with those rights and power and as a result of exercising those rights, the State's economy were to develop, the revenues would increase and the entire people of the State would be able to enjoy better, the fundamental human rights.

It is only natural that the political parties in the Shan State should try by all democratic means to gain political power. However, because the definition of the term *Naing-Ngan-Daw* is ambiguous, political parties are unable, under the present Constitution, to present to the voters, clear political or economic policies, or promises. They are clearly at a political disadvantage. It is undesirable that, because of this ambiguity every matter that needs to be done in the Shan State to be referred, over the head of the head of Shan States Council, to the Parliament.

The present governing Union Party has adopted the policy of non-interference in the affairs of the Shan State, but the important Executive Powers are vested in the Government of the Union of Burma and the Shan State finds itself powerless under the Constitution, to affect its own destiny. Thus in Shan State politics, the definitions attached to the term *Naing-Ngan-Daw* should no longer be accepted.

### Section 9

In this Chapter and in Chapter III and IV, the term *Naing-Ngan-Daw* means, according to the context, the Executive or Legislative authority, either of the Union or of the unit concerned.

According to the definition given above, in order to gain a clear meaning of the term, it seems one would have to look up and compare the Union Legislative List and the State Legislative List, but even that exercise does not clarify the situation. Because the meaning of the term *Naing-Ngan-Daw* is ambiguous, when important sections in the Constitution are applied, the term is interpreted to mean that these sections do not apply to the States, with the result that the Shan State loses out on many of its rights. The English terms used in the Constitution may be amenable to unambiguous interpretation, but since the Burmese term *Naing-Ngan-Daw* does not clearly signify that it refers to the Constituent State, it has been interpreted, (in order to accord with the wishes of the powers that be,) to mean the Union Government. In effect, this means that the States have no power to do anything in the area of fundamental human rights. For example, the States are not empowered to act under sections 42, 43 and 44. Furthermore ...

In certain parts of the Constitution it is not clear whether the term *Naing-Ngan-Daw* refers to the Constituent State, to Burma proper, or to the Union.

In referring to the economic rights under section 23 (4) and (5), the THIRD SCHEDULE, List 1, Union Legislative List, 5. General:, (4) would appear to indicate that the Shan State enjoyed no such power. Since it has no power in this field it would appear that the Shan State could not participate in the establishment of a Socialist System.

### Section 23

The economic powers provided for under section 23 sub-section (3), (4) and (5) would appear to be beyond the powers of a State. The THIRD SCHEDULE, List 1, Union Legislative List,

5. General, (4) makes it clear that the Shan State does not have the right to exercise those powers.

In effect, the above sections, interpreted in the light of the Third Schedule, bring one to the conclusion that the Shan State has no power to acquire anything for its purposes. If the Shan State needs anything it is the Shan Ministry which enjoys full power as part of the Union Government, which will have to issue the necessary orders in the gazette. In carrying out its duties, the Shan State, when it needs certain materials has to go out and purchase them, just like ordinary people, and this fact diminishes its dignity greatly. According to the law in force, the Shan State cannot do anything without first getting permission from Burma proper.

On the other hand, when Union Government Departments wish to take things from the Shan State, they use the Executive Powers of the Union Government, and since they consider that there is no need for consultation with the State, they expropriate those things without even consulting with the State Government, which amounts to slighting the State Government.

For example, in connecting Hydro-electricity from Lawpita to Upper Burma, by building transmission lines across the Shan State, land on which to build the transmission towers had to be expropriated. In expropriating those pieces of land, it is not known whether compensation was ever paid for land which had been cleared for use by the people. The Union Government also did not inform the Shan State about the matter. As a result affected people from the Shan State had lodged complaints with the Shan State Government about their losses. There are many examples of such occurrences.

If Union Government Departments can, on their own volition, take over things belonging to the Shan State Government itself, what can one expect in regard to the ordinary people of the State. The very valuable and very important section 23 (1) of the Constitution appears, therefore, to have no relevance for the Shan State.

### **Section 30 (1), (2) and (3)**

The section is very acceptable in principle, but the Shan State Government is not invested with the powers to carry out the duties that it entails.

The *Naing-Ngan-Daw* is the ultimate owner of all lands, but is the *Naing-Ngan-Daw* Burma proper or is it a State, or does that statement mean that all land in Burma proper belongs to Burma and that all lands within a State belongs to that State's Government. A reference to the Legislative Lists will reveal that the term *Naing-Ngan-Daw* appears to apply only to Burma proper. If this interpretation is correct, it would appear that even the land within a State belongs to Burma proper.

The Shan State does not appear to have any powers to carry out redistribution or resettlement of the land within its boundaries, and must implement, without demur, within the Shan State, land regulations that are prescribed by the politicians in Burma proper.

In the Shan State, apart from an insignificant amount of freehold land, the remainder of the land is designated as *Ayardaw*. This means that the farmers in the Shan State have only the right to work the land, but do not have the right to own it. For this reason, the Shan State would encounter no problem in carrying out land nationalisation. But under the present constitution, the rights enjoyed by the Shan State before Independence with regard to

ownership of land, the drawing up of regulations for a system of land-ownership that would prevent deprivation of Shan State people's ownership of land, transfer of title, surrender of title, and succession have all been lost. The Shan State had sought a decision in the High Court, on this matter, but had been unsuccessful.

The Shan State covers a large area and has a small population. So it needs a great many more farmers, who will work the land and who will be loyal to the Shan State and to the Union. But under the laws in force the Shan State has no say in the matter, which could some day result in racial problems arising from land ownership questions.

### **Section 31**

The defects in Section 31 are similar to those above. The Shan State is powerless to do anything to protect workers' rights.

In the Shan State, only workers at the Bawdwin Miners are entitled to the rights provided for under this section. Other ordinary workers do not enjoy rights such as those enjoyed by workers in Burma proper. Although the Shan State wishes to protect the rights of the workers, it does not have the powers to do so. Should there be any labour problem, the only power the Shan States can exercise is in ensuring public order. Since the Shan States cannot provide protection for the workers, the Shan State Government is unlikely every to gain the confidence and respect of the workers.

### **Section 91**

The powers conferred by Section 91 are not conferred upon the State Council. It adversely affects the dignity of the State Councils in the establishment of Representative Local Authorities within the States.

If this section is read in conjunction with Section 92, it becomes apparent that the powers conferred under section 91 cannot be exercised by the Shan State. The question of devolution of administrative, cultural and economic powers to the Local Authorities in the Shan State, lies within the exclusive jurisdiction of the Parliament to legislate, so it is an extremely unsatisfactory situation for the Shan State. If the Union Parliament legislates a transfer of administrative powers to a Local Authority, it would amount to the creation of a third competing government within the Shan State. In the field culture, it cannot be claimed that any other State could know more about Shan culture than the Shan State. In the economic area too, the Shan State Government has the duty to act courageously on behalf of its people. Therefore the powers conferred under section 91 should be exercised only by the Shan State.

### **Section 92 (3)**

Under this section, the State Councils may, by decision, surrender their territories and their powers to the Union of Burma. However, the Parliament has no power to grant any part of Burma proper, or any of its powers to the States.

Under genuine federal principles, the Central Union Government would be empowered to deal with matters pertaining to the States, and in wielding such powers it should act only with the concurrence of the States. No State should be able to surrender its territory or power without the agreement of all the other States. If one compares the Union Legislative List and

the State Legislative List, one would find that the powers reserved to itself by the Union is already extremely lop-sidedly in its favour. If States were to surrender any more territory or power to the Union they would be left with nothing. According to the present Legislative Lists, the States can have no reason to surrender any of their rights.

### **Section 93**

Forestry, mines and petroleum matters are included in the Union Legislative Lists, so the Union Government has the right to regulate those industries. According to Section 93, in exercising those rights, such as the issuing of licences for the extraction of forestry, mineral or petroleum products, the Union must, prior to taking such action, first consult with the Union Minister appointed for the State concerned.

But in reading this section together with section 122 (a) it is evident that only the Union has the power to extract and utilize the most valuable resources of the States: - forestry products, minerals and petroleum. Although the section states that the Union Minister for the State concerned must be consulted, it is clear that the decision of the authorities of Burma proper will be ultimately upheld. In truth, the right to exploit those resources should reside with the State concerned.

[Please refer to Section 219 also]

In conferring the power to exploit the valuable natural resources such as forestry, mineral and petroleum products, the legislation as embodied in the various handbooks, such as the Forestry Handbook, the Mining Handbook and the Petroleum Handbook, makes it very clear that the Shan State has absolutely no power in those matters, and that only the officials (administration) of the Department concerned, their district counterparts and the Union Government had the powers. Which left the Shan State Government in limbo. When dissatisfied with such matters, it was found that they could not be discussed in the Shan State Council. They could only be brought up in Parliament. For example it has been said that the Union Government entered into a contract with a German owned company to investigate and to mine iron ore from the Pin-ngo iron mountain near Taunggyi. Yet the important economic development industry for the Shan State, the Shan State Government would be the most suitable body to negotiate on behalf of the State.

### **Section 94**

Section 94 (1) is also very important for the Shan State. If we look up the history of military administration in the Southern Shan State, we will notice that the term "President" refers only to the Ministry of Defence or the Home Ministry of the Union Government. Nowhere is it mentioned that in issuing emergency proclamations, either the Shan State Council or the Shan State Government should be consulted first.

### **Section 96**

The exception to section 96 provides for the revenues of the governments of constituent State to be supplemented by grants from the revenues of the Union Government, where a Board or other authority appointed for that purpose, recommends such support, and a determination is made to provide such supplementary amount as is considered necessary.

The context of this provision would appear to suggest that although there exists no right on the part of the States to receive these monies, Burma proper is granting assistance to the States from its own revenues merely out of kindheartedness. The fact of the matter, however, is that this “assistance” or grant is the amount due to the State from revenues that are supposed to be shared proportionately between Burma proper and the States, and therefore the word grant should not be used here.

Where revenues that the States are entitled to, are disbursed to the States, there should be no need to obtain a recommendation from any Board or authority.

If money in excess of a State’s entitlement to portion of the revenues is to be granted, then this amount is indeed a grant, and therefore the proviso, that the recommendation of a Board or authority should first be sought, is legitimate.

The Board appointed under this section is known as the Board for “grant assistance to the States”, and its principal function is to inform the Heads of States how much money each of the States will be receiving during the coming financial year.

The allocations are not calculated according to any principle, the information is merely conveyed that during this year this amount is all that can be given.

As yet, the principle by which the revenues collected under the Union Revenue List, should be proportionately disbursed to the States, has still not been formulated. If the present practice continues, the financial difficulties faced by the Shan State will find no solution even to the end of the world. A comparative study of the amount of revenue spent on the population of the Shan State, (both regarded as Union citizens under the Constitution), from Independence to the present, will clearly show how the rights of the population of the Shan State has been diminished. It is only in Burma proper that, due to the greater amount of money spent, fundamental human rights are beginning to take shape. In the Shan State, the status quo has remained undisturbed.

## **Section 122**

The States have been made to face many difficulties due to interpretations based on this section. Section 122 provides that subject to the provisions of the Constitution, the executive authority of the Union extends to:

- a. Matters with respect to which the Parliament has power to make laws. This means that any matter on which Parliament has the right to legislate comes under the administrative authority of the Union. In other words since forestry, mines and petroleum come under the Union Legislative List, the State has no administrative power with regard to forestry and mines. There has come into being the perception that apart from being able to collect revenues on those forests and mines, the States do not have any further say in the matter. Similarly, in the case of alcoholic liquors for human consumption and narcotic and non-narcotic drugs, it is believed that the States have the right to collect excise duties, but that the administrative powers belong only to the Union.

In reading this section together with the Union Legislative List, the State Governments find themselves face to face with such problems as their inability to set up industries or build factories.

### **Section 128**

This section requires the appointment of an Auditor General to control and audit all disbursements made on behalf of the Union Government in accordance with the appropriations passed, through the exercise of their powers, by the Parliament or the State Councils.

Thus according to this section, all disbursements made in accordance with the appropriations and on behalf of the State Councils are controlled and audited by the Auditor General acting on behalf of the Union Government. In that context, it would appear that appropriations and expenditures passed by the State Councils are subject to scrutiny and supervision by the Union Government. However, the Section should, in fact provide for the Auditor General to audit the money appropriated by Parliament, on behalf of the Parliament, and to audit money appropriated by the State Council on behalf on the State Councils.

### **Section 131**

This section requires that the Auditor General submit a report to Parliament, at such times as prescribed by law, on the budgets of the Union and of the States. By presenting a report on the State's Budget to the Chamber of Deputies, it would appear to indicate that the State Governments are subservient to the Finance Committee of the Chamber of Deputies. In fact the State Budget Report should only be submitted to the State Council. Only the Finance Committee appointed by the State Council should have the power to penalize the State Government.

### **Section 154**

The use of the English word "Council" as in the Shan State Council and Kachin State Council is not appropriate. It is therefore submitted that the words "State Legislature" be substituted for the words "State Council".

### **Section 160**

Although this section states that in appointing a Minister for the Shan State the Prime Minister should consult with the State Council, the Supreme Court has already held that the Prime Minister can appoint a Member of Parliament as Minister for the Shan State even though he does not enjoy the support of the Shan State Council.

If a person is appointed Minister for the Shan State by the Prime Minister, in disregard of the wishes of the State Council, and that person has to be accepted as the Head of State, there is bound to be administrative difficulties. On the other hand one cannot expect the Prime Minister to appoint someone who he does not like to his cabinet.

The only solution to this problem is therefore the creation of a truly federal union.

### **Section 162**

It is difficult to understand the thrust of this section.

162 (1) says that in the Executive Powers, the Head of State must carry out the decisions of the State Council. To ensure that the Council can give a decision every time an executive action needs to be taken, the Council would have to be in permanent session. This is an impossibility.

162 (2) It is impossible to guess what “other matters” here means.

162 (3) To empower the Council to select Ministers of the State Government, whether the Head of State agrees to the choice or not is something that is not feasible. It is also difficult to tell how much power is entrusted to the Ministers in the State Governments.

### **Section 164 (2)**

This section provides that the State Council shall have the power to approve the State Budget, provided it is not inconsistent with the regulations prescribed by the Union Government in connection with the Union Government’s grant assistance. To satisfy the President of the Union that the State has complied with those regulations, the State Budgets have to be shown in the Union Government’s Budget.

As already discussed above in connection with the Exception to section 96, the money involved is actually not a *grant* from the Union Government, but rather the entitlement of the States to a certain proportion of the revenues. Therefore the Union Government, but rather the entitlement of the States to a certain proportion of the revenues. Therefore the Union Government should not be making regulations with regard to this amount. Regulations should only apply to amounts granted in excess of these proportionate entitlements.

Further, the section requires that the State Budgets be shown in the Union Government’s Budget to prove that the regulations have been strictly observed. This requirement has given rise to unending problems.

In order to be able to show the State Budgets in the Union Budget, the State Council will need to approve the State Budget in time. To enable the State Councils to approve the State Budgets in time, the State Governments must prepare the budgets, have them printed and bound and ready in good time as well. And to enable the State Governments to prepare and to finalize their Budgets, it is necessary for the Union Government to make a decision on the amount of “grant assistance” it is willing to give. Since this decision on the part of the Union Government is perpetually late, the preparation, printing and binding of the State Budgets for submission to the State Councils always entails great difficulty for the State Governments, year after year.

### **Section 219**

Under this section, all timber lands, mining lands, forests, water, fisheries, minerals, coal, petroleum and other mineral oils, and all sources of potential energy and other natural resources located within the States are to be exploited and developed by the Union Government.

If the timber lands, mineral lands, forests, minerals, coal and petroleum located in Burma proper were also to be exploited by a truly federal government, and the revenues and profits were shared between Burma, the Shan State, the Kachin State, the Kayah State and the Karen State, then there would be fairness and justice. The practical experience, however, is that the law is interpreted to mean – all valuable basic materials found in the States, are to be exploited by Burma proper under the name of the “Union Government” and this means there is no justice or fairness.

## **Section 222**

This section clearly considers Burma proper to be merely another constituent unit of the Union. But in practice, not only is Burma proper not regarded as a Constituent State, but even worse, under the name “Union Government” it has been given all the powers only a truly federal government should be allowed to enjoy.

The cause of all the dissatisfaction among the States boils down to this. They see that Burma proper is unfairly lording it over them in the guise of the Union Government.

## **THE THIRD SCHEDULE**

### **List I**

#### **UNION LEGISLATIVE LIST**

In examining this List in the light of Section 92 (1) and Section 122, the reasons for the discontentment of the Shan State becomes even clearer. Only those points in the List which are of concern to the Shan State are discussed below:

#### **1 Defence:**

- (1). In employing the Armed Forces to uphold the Laws of the Union and of the States during the period which ended in the recent General Elections, many problems, discontentments and dissatisfaction were encountered throughout the Union, due to defective administration, lack of administrative experience and political machinations. The Armed Forces were moved into the Shan State, and because of lack of understanding, unwelcome difficulties have arisen. Therefore, since security has now been restored in the Shan State, the powers that have been entrusted to the Army to enable it to bring about Law and Order in the State, should now be reviewed, so that Army and Civil Authorities will have a clear demarcation within which they may operate, and thus bring about conditions in which they can serve the interests of the Union in a closer and more amicable manner.
- (4). In creating cantonment areas in the Shan State, many difficulties have been encountered. The Army has expropriated certain lands to set up cantonment areas, and the Shan Government has not yet been able to sign agreements for some of these lands. Cantonments are an invention of the British Regime and are no longer relevant to the times. By sticking to those outmoded systems we are merely creating inconvenience for our townspeople.
- (5) Although the Shan State Government is entrusted with the duty of preserving Law and Order, it is hampered in its efforts by shortages in its arsenal, especially in modern small

arms which are indispensable if it is to succeed in its tasks. The shortages are so critical, that in the State Government's battles against the various insurgent groups, robbers and dacoits, it sometimes finds its forces outgunned by its foes. The Shan State which has ever been loyal to the Union is unable to conceive how certain high authorities could be having doubts concerning the wisdom of sending small arms and ammunition to the Shan State Government, on the grounds of National Security.

Although **List II, STATE LEGISLATIVE LIST** entrusts the maintenance of Public Order in the Shan State to the Shan State Government, the State Government has no power to purchase for its Police Force, the indispensable tools of their trade, namely the small arms, like Bren guns and Sten guns, and the ammunition for those weapons.

According to the Police Handbook, for a Police Force of about 3,000 like the one in the Shan State, there should be at least 1,500 rifles. After the Shan Sawbwas (Sao Hpas) had surrendered their hereditary traditional administrative and judicial powers to the Shan State Government, the numbers of the Police in the State had grown larger, but due to lack of arms and ammunition, the Police had been unable to effectively carry out their duties of maintaining Public Order (Security) in the State. Approaches to the Union Ministry of Home Affairs had also not made any headway. Since the Shan State has already clearly demonstrated its loyalty to the Union, its State Government should be empowered to purchase and provide the needed arms and ammunition to its Police Force.

## **2. External Affairs:**

- (2) United Nations Organization.
- (3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
- (5) The entering into and implementing of treaties and agreements with other countries.

Such treaties and agreements are particularly relevant to the development of the economy, agriculture and health of the Union and of the States, so in concluding such agreements the State Governments should be consulted; and, ratification by the State Council should also be required in addition to the ratification by Parliament, as is presently required.

- (6) Regulation of Trade and Commerce with foreign countries.

The Shan State has an area of 60,416 square miles and a population of approximately 2 million, and should certainly play an important part in Trade and Commerce. Therefore in drawing up regulations pertaining to Trade and Commerce, the Shan State Government should be a participant, so that the principal objectives of the Shan State in the field of Trade and Commerce may be achieved.

- (7) Foreign Loans.

It appears that the States have no rights or entitlements to foreign loans. Although some understanding has now been worked out to allow the States to share the proceeds of foreign loans, because the States' rights are not set out in the Constitution, it still cannot be taken for granted.

If the States have good reasons for taking the loan, and if they can work within the financial regulations, they should also be allowed to take out foreign loans.

(16) Import and export across customs frontiers as defined by the Union Government.

The Shan State borders on the friendly nations of the People's Republic of China, Laos and Thailand, and has enjoyed benefits from the cross-border trade for many years. Since the Shan State Government knows the Shan State situation best, the Union Government should entrust the powers in connection with this matter to the Shan State Government. The revenue gained therefrom should also be included in the State Revenue List.

### **3. Communications:**

(11) Wireless and Broadcasting.

The Shan State Government, in order to facilitate its work, has installed and operates, Wireless Stations in Towns which are headquarters to District Commissioners, and in certain towns serving as headquarters to Assistant Residents, and in Police Stations which are considered to be important. The Shan State Government should have the right, under the Constitution, to operate such Wireless Stations, and should not have to pay licence fees to the Union Government.

Broadcasting.

The Shan State Government should be given the right to broadcast programmes that would educate the peoples of the Shan State about their culture, in line with the Constitution, and without detriment to democratic principles.

The Burma Broadcasting Service has been providing a Shan Language broadcast, but the Shan State has encountered difficulties in assisting with the programming. The Shan Language that is being broadcast is also considered to be very stilted and not normal. The content of the broadcast is also considered not relevant to the Shan State. When neighbouring Thailand is allowing Trading Concerns the right to make broadcasts, why should not the Shan State Government be given the right to broadcast? Especially when it could provide programmes that would raise the level of education, knowledge and culture in the Union and in the Shan State, thereby effectively assisting in the development of the Union.

### **4. Finance:**

(1) The borrowing of money on the credit of the Union.

In borrowing money in this manner, the States have been taken into account. In repaying the debts of the Union, the States also, indirectly, bear responsibility for the repayment. Therefore there should be prior consultation with the State Governments before borrowing takes place. In ratifying the agreement, the confirmation of the State Councils should also be sought.

In deciding how the borrowed money is to be used, if all matters are carefully considered and the money is then used on projects that would benefit the majority of the people over the entire Union, the States would have no cause for complaint. But if the money is to be spent solely for Burma proper, the States will have to clearly object to it. If it is argued that this is something that absolutely has to be spent on Burma proper, then the States should also be allowed to borrow for projects they deem indispensable for their own

States.

Although at present, due to the lack of economic development, the finances of the States are in very straitened circumstances, with the development of surface and underground mines, the financial situation could improve dramatically in the very near future, and so it is necessary to make demands now, to preserve our future prosperity.

(2) Duties of customs including export duties.

States should also share, proportionally, in the duties of customs. If the export duties are collected on goods from the Shan State, the whole amount collected should be turned over to the Shan State after deducting expenses. For example the duties on lac.

Export duties, including those on lac, are collected at the Port of Rangoon and are appropriated to the Union Treasury.

Export duties on Teak, hardwoods and minerals exported from the Shan State are similarly taken by the Union Government. Before the Second World War those export duties were received by the Shan State Government.

(4) Taxes on the sale of goods.

Taxes on commodities and trade in the Shan State should be collected by the Shan State, for use by the Shan State Government.

The Tax Department is levying a sales tax of twelve and a half per cent on goods imported into Burma Proper. Since the Union of Burma has a population of approximately 20 million of which 2 million come from the Shan State, it can be generally argued that the Shan State is entitled to ten per cent of the revenue collected. If this argument is not accepted, then the traders in the Shan State should be examined about the goods imported into the Shan State, and steps should be taken to levy the sales tax on those goods within the Shan State. Since this will not be an inconsiderable amount, the right to it should not be surrendered.

(6) Taxes on income.

It is most satisfactory that Shan State Civil Servants pay income tax to the Union Government and not to the State Government. It is our view that income tax collected from non-government employees within the Shan State should also be received by the Shan State Government.

Before the Second World War, 99 per cent of the income tax from the Bawdwin Mines was received by the Shan State Government, which made the State Government's financial situation, at that time very good.

(9) Estate duty and duties in respect of succession to property.

These taxes have not yet been levied. When they are collected, the Shan State Government should be entitled to them.

(10) Excess profits tax.

The Shan State should get this too.

(11) Savings Banks.

If companies can operate savings banks, the Shan State Government should have the right to establish savings banks too.

(12) Stamp duty in respect of bills of exchange, cheques, promissory (On demand) notes and other documents.

The Shan State should receive the stamp duty levied on promissory notes and other negotiable instruments.

## 5. General:

- (4) There is no similar provision in the State Legislative List, so the States have no power to acquire property. The right to acquire property should be specifically included in the State Legislative List.

In the acquisition of property for the purpose of the Union, there is a great deal of dissatisfaction. Within the Shan State, there can be satisfaction and understanding on the part of the populace only when the acquisition is effected by the Shan State Government. Allowing the State Government to act in the matter would also boost its image and dignity.

- (11) Public debt of the Union.

There will be no need for objection if and when a truly federal Government comes into existence. Under the present Constitution, however, there is no fairness in the allocation of Union Government expenditure, so the Shan State Government should not be liable to repay any portion of the debts of the Union Government.

- (13) The administration, Jurisdiction and Powers in respect of Civil Law should be given to the Shan State as is given in the case of Criminal Law.

- (16) The Shan State Government should have the right to administer Printing Presses. This is not a demand for powers to regulate the press. It is to point out that under existing law, the Shan State Government does not even have the right to establish a Government Printing Press.

- (23) Electricity.

There is complete and utter dissatisfaction with the service provided by the Electricity Supply Board. In the Shan State the Board is doing things in the most haphazard manner. Where the Board cannot provide service, the Shan State Government should have the right to provide it.

The Shan State is still facing difficulties and dissatisfaction with regard to the supply of electricity. For example, because there is a project to supply electric power to distant Upper Burma towns and cities like Meiktila, Myingyan, Kyaukse and Mandalay by May 1961, transmission lines were erected right across the Shan State. It was made known that some towns in the Shan State like Yawngnaw and Shweyaung would also be supplied with electricity. However, Taunggyi, the Capital of the Shan State, (and only 11 miles from Shweyaung) was bypassed by the Electricity Supply Board. It was only after the Shan State Government made its disappointment known in no uncertain manner did the Union Government Cabinet learn about it and passed a direct order to the Board to supply electricity to Taunggyi. Large and small towns in eastern and northern Shan State are still without electricity, because despite their demands, the Electricity Supply Board will not supply it. Neither would the Union Government allow either private companies or individuals to step in and provide the service. In the end it is the public which has to suffer.

- (28) Planning.

It is not included in the State Legislative List, yet it is absolutely necessary to include Planning in the List.

- (29) The relations between landowners and tenant farmers are very important in the Shan State. The Shan State Government should be the authority for implementing the Land Nationalization Laws within the Shan State.

## Social and Economic Boards and Corporations of the Union of Burma

These Boards and Corporations, established for the purpose of promoting the social and economic development of the Union of Burma, should, generally speaking, provide their services to the entire Union, including the States. In practice, however, they have always given preference to Burma proper. But within the past five or six years, the States have been able to enjoy some of the benefits, though not to the full extent of what should have been their entitlements. This has been entirely due to the unremitting efforts on the part of the States. Therefore it will be necessary, when framing the directives concerning these Boards and Corporations, to state categorically that the States do have entitlements to the benefits to be produced by these organizations.

The officials of these organizations, at both the Senior and the Junior levels need to be made aware that they should act for the benefit of the entire Union, including the States, in the spirit of a truly federal union constitution.

A further cause for dissatisfaction is the fact that in drawing up Plans and Special Projects, the Ministries of the Union Government have been overlooking the States for the past three or four years at least, if not entirely. For the least 4 Year Plan which is to be implemented soon, it was only during the past few weeks that the Shan State has been allowed to participate because it had made strong representations. The invitation to participate has consequently come very late, meaning that the Shan State has a very short period of time in which to draw up its Plans, which will perforce have to be very general with nothing definite in it. So in the future, when the Union Government starts drawing up such Plans, the Shan State Government should be informed at the same time to start working on their own Plans.

(31) Standard Weights and Measures.

The Shan State Government should administer this subject in accordance with "principles" set down by the Union Government.

(32) This is very important for the Shan State, and since former laws still remain in force, only the Shan State Government should be responsible for its implementation.

Opium ,excluding duties of excise on opium.

People in areas of the Shan State east of the River Salween who are engaged in opium cultivation, manufacture and sale, are quite numerous. Although such cultivation of opium, its manufacture and sale are clearly undesirable, it is not easy to provide suitable crop substitution. At present, due to the threat posed by the presence of the White (KMT) Chinese, there are battles being fought in the area, and the Shan State Government itself must continue administering the matter of opium cultivation in accordance with the law in force, as this is the only way this problem can eventually be resolved.

(34) The Shan State

The Shan State has been able to begin establishing industries in the State only a few months ago, after receiving a clarification that it was a mis-interpretation that the Shan State had no power to establish industries. To ensure greater clarity, this subject should be included in the State Legislative List.

Although we have stated that clarification was received, there has as yet been no definite

directive issued from the Union Government Ministry concerned. When every citizen of the Union has the individual right to set up an industry, the interpretation that the State has no right to establish an industry should be dismissed completely.

- (35) This is very important for the economy of the Shan State. By playing politics with the Co-operatives, a proven and successful enterprise for the welfare of the people has been brought into disrepute by the Burmese Politicians. These same people want to intervene in the politics of the Shan State, so it is best that the Shan State Co-operatives be administered by the Shan State Government.
- (36) This matter is very important for the Shan State. According to sections 93 and 122 the Shan State Government has no administrative power to regulate on such matters as forests, mines and petroleum. With regard to the administration of forests, the Shan State used to administer its forests in its own right before Independence. It seems that it is only upon gaining Independence that it has fallen in status to the point where it will have to surrender this right. The Union Government has promised that they will themselves administer the forests, and after deducting administrative and other costs, if there is any money remaining, these will be handed back to the Shan State. As the forestry revenue of the Shan State amounts to 3 million kyats, there is need to object strongly to this encroachment upon the State's rights.
- (37) Migration within the Union.  
In this regard the States need have no say where it concerns migration into Burma proper, but when it deals with migration from Burma Proper to the States or from one State to another, the prior consent of the State Government of the receiving State should be obtained. Migration should not adversely affect the original inhabitants. The Union Government should reconsider the proposals to settle Israelis on 1.5 million acres of land in the Shan State.

Infringement of laws dealing with subjects within the Union Legislative List.

As is well known, there has been a proliferation of new laws passed to deal with new subjects since Independence. For example there has been numerous prosecutions under new Immigration and Military Administration Laws, so that these cases outnumber cases brought to Court by the Shan State Government. And since matters concerning prisons and prisoners have not been concluded between the Union and the State, the Shan State Government finds itself, despite the financial stringency it is in, having to carry the burden of feeding those prisoners convicted of infringements of Laws enacted under the Union Legislative List, which is patently unfair. Shan State Judges have also been unable to devote themselves full-time to their Shan State duties, because they have had to devote more time to those cases.

- (40) The State Legislative List, when properly scrutinized, reveals that it contains very little in the way of important legal matters. Therefore when new subjects arise, the States should be consulted as to which Legislative List the new subject should go into.

## **List II**

### **STATE LEGISLATIVE LIST**

The List is incomplete. Also the powers granted are related only to revenue expenditures.

## 2. Economic Affairs:

- (1) Because this item mentions only agriculture, it would appear that the Veterinary Department does not come within the powers of the Shan State Government, and the argument had been once put forward that the Department should be administered only by the Union Government. The same could be argued in respect of land conservation. Therefore it is highly desirable to be more exact in determining the divisions between the Lists.
- (3) Land; land improvement and agricultural loans.  
Due to its unfavourable financial situation, the Shan State Government has been unable to provide agricultural loans, Except for emergency loans, to the extremely poor farmers, who have as a result, to rely for loans on the Co-operatives and the Agricultural Banks. But because of either rivalry between the Agricultural Banks and the Co-operatives, or else the scarcity of village agricultural banks and co-operatives, only five per cent of the farmers in the Shan State who annually need loans are likely to obtain them. If the Shan State farmers have to carry on in this manner, it is unlikely that they will ever obtain the facilities that their counterparts in Burma proper are enjoying, even at the end of 20 years from now.

Therefore to ensure the provision of agricultural loans to the needy farmers in the Shan State, the Shan State Government should, in accordance with the principle prevailing in Burma proper, administer the Co-operatives and Agricultural Banks within the State.

## 3. Security:

- (3) & (4) The administration of justice.

As discussions are on-going with the Supreme Court concerning the appointment of Judges in the Shan State, there is no need to go into details at this moment. But care must be taken to ensure that existing rights are not lost in the process.

## **FOURTH SCHEDULE STATE REVENUE LIST**

When the State Legislative and State Revenue List are studied it will be seen that the Departments placed under the State Government by the Legislative List are revenue spending Departments. The Revenue List reveals that the only items yielding appreciable revenue are Land, Forests and excise duties on alcoholic liquors and narcotics. In receiving annual shares of revenue from the Union Government, the Shan State has been getting less than its fair share because it has been generous towards the smaller States. But in the present circumstances, when the annual budget deficit of the Shan State ranges from 25 million to 30 million, it is apparent that the State Government's income is no longer sufficient. It is now perfectly clear that the State Government will only be able to achieve effective administration, satisfactory development and sound economy when the Union Government returns to the State some of the revenues it has collected and taken over for itself.

### **1. Land Revenue:**

- a. Land revenue proper. It will take several more years before a

proper land revenue collection, like the one in Burma Proper can be established. No maps or land records are available and work on these have just begun.

- b. Rents and other fees on fisheries are negligible. Not in accord with section 219.
- c. No Royalty on petroleum is available to the State.
- d. Royalty on minerals and taxes on mineral rights are received in appreciable amounts.
- e. Royalty on Rubber is non-existent.
- f. Capitation and *Thathameda* taxes been abolished because they are outmoded taxes.

## **2. Duties of Excise:**

- a. on alcoholic liquors for human consumption is collected;
- b. on opium is also collected;
- c. on Indian hemp and other narcotics, not collected;
- d. on non-narcotic drugs, not collected.

## **3. Negligible.**

4. This is the largest revenue earner. But the limitation on Forestry Royalty should be reconsidered. The profits earned by the State Timber Board through the sales of Shan State Teak should be shared proportionally with the Shan State.

## **5-11. Negligible.**

12. Since the Saohpas (Sawbwaw) have surrendered their powers, this source of revenue is no longer available.
13. See our remarks on section 96(2)
14. In spite of the numerous items enumerated, very little revenue is raised.

The following are the important point that emerged from an examination of the Constitution.

1. The Panglong Agreement was the basis for the creation of the Union. But the Parliament, the Union Government (Council of Ministers), and important senior and junior Union Civil Servants seem to have forgotten or are indifferent to the agreements and guarantees made in connection with that historic document.
2. The sections in the Constitution are interpreted very one-sidedly.
3. The assumption that in carrying out matters included in the Union Legislative List, it is unnecessary to consult with the State Governments.
4. The fact that Union Civil Servants entertain a very low opinion of the States.
5. They do not even accord State Ministers with the requisite respect.
6. In carrying out government functions (including financial ones), they act in a very biased and domineering manner.
7. The States do not receive the assistance they are entitled to.
8. In dealing with matters in the Union Legislative List within the Shan State, Union Government Departments completely disregard the Shan State Government.
9. They interfere in the politics and administration of the Shan State.

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## (PART FOUR)

### THE ESTABLISHMENT OF A TRULY FEDERAL UNION

To summarise the matters presented above:

1. Historically, the Shan Peoples have established and maintained independent States.
2. Because of its natural resources, the Shan State can be economically viable. It has its own distinct language and culture.
3. The experiences of the Second World War has awakened the political consciousness of the Shan peoples.
4. Although the Shan State had the qualifications to become a separate independent nation, it decided to co-operate with Burma proper to gain independence together, sooner. It signed the Panglong Agreement and laid the foundation for a Union of Equality.
5. At the Constituent Assembly, the present Constitution was unquestioningly and too easily accepted, by the Shan State because its Representatives were: impatient to gain independence; politically immature; and too trusting towards the Political Leaders of Burma.

But the present Constitution, during 13 years in existence, has exhibited many defects and deficiencies, as detailed above in PART THREE. It is now quite clear that the rights enjoyed by the States are not equal to those enjoyed by Burma proper. A complete examination of the present Constitution shows that there are serious defects in its

1. Structure; in the
2. Distribution of Powers; in the
3. Establishment of the Parliament; and the manner of
4. Distribution of Revenues; and these defects have cost the States dearly, in the way of loss of their rightful entitlements.

#### (1) The structure

Even at the time various drafts of the Constitution were being submitted to the Constituent Assembly for ratification, U Chan Htoon had explained that a federal type of structure had been adopted due to unavoidable circumstances. But in adopting the federal structure, the United States of America and Switzerland, considered to be examples of the true federal type, were not chosen as models for the Union of Burma's Constitution. It was the Canadian type, (or what U Chan Htoon considered as the moderate type) that was adopted.

Further, according to Mr. Tinker, a former Professor of History at the University of Rangoon, the Constitutional Advisor, Chan Htoon, observed much later that "our Constitution, though in theory federal, is in practice unitary."\*

PART TWO of this document entitled The Shan State after the Second World War, has shown that the oft-repeated demands of the leaders of the Frontier Areas for a federal union was certainly not for the Canadian type, nor for a union that was in theory federal, but in practice unitary. What they demanded was for a truly federal structure.

U Chan Htoon had further commented that “the Chapters setting up the States together with the concession of the right of secession (under stringent safeguards) were inserted to assuage the doubts of the frontier leaders rather than to meet actual political and administrative requirements; a form of atonement for the age-old suspicion of the Burmese the hill peoples could not at once discard.”

But the frontier leaders’ desire for a truly federal structure was not due to suspicions of the Burmese, as U Chan Htoon erroneously supposed, but was based on the “Right of the Nations to self-determination” that was proclaimed by World Leaders at the time.

If we look at the federal structures anywhere in the World, we will find that the structure was established by various constituent units or States coming together to form a union by common agreement. In the case of the Union of Burma, although individual States were formed for the peoples of the Frontier Areas, such as the Shan State, the Kachin State and the Karen State, there was no separate State established for Burma proper. Instead Burma was established as the one and the same entity as the Central Union Government.

This structure of the Union under the present Constitution, apart from doing away with the principle of equality, is what has made frontier peoples more suspicious of the Burmese.

This structure could one day become the principal cause of the break-up of the Union.

Therefore, in revising the Constitution, if we wish to ensure stability and equality, we must see to it that Burma proper is established as one of the constituent States.

## **(2) Distribution of powers**

There are two methods of distribution of powers in a federal system.

- (i) In a truly federal nation, the (Central) Federal Government is given powers in respect of subjects common to all, and the residuary powers are retained by the States.
- (ii) In a moderate type of federal nation, limited powers are given to the States and the Federal Government tightly controls all the residuary powers.

What the frontier leaders wanted was power distribution according to the truly federal type. The power distribution under the Constitution of the Union of Burma goes directly against the wishes of the frontier leaders.

The peoples of the frontier areas are greatly dissatisfied and are suspicious that the Burmese are trying to dominate them because only limited powers are given to the States while the residuary powers are tightly controlled by the Union Government, and because Burma proper has not only not been made a constituent State but concurrently holds the reins of power together with the Union Government.

Therefore in revising the Constitution, the genuine federal principle must be followed, with the Central Government being given only those powers in respect of subjects common to all, while allowing the States to retain all residuary powers.

## **(3) Establishment of the Parliament**

Parliaments in Federal Unions normally consist of an Upper House and a Lower House.

The Lower House is usually composed of members chosen by the people on a population basis. The States therefore have the right to elect and send to the Lower House of Parliament the number of Representatives their population entitles them to. With regard to the Upper House, however, States, whether large or small, send the same number of representatives. Such a composition of the Upper House ensures that larger and more populous States cannot act in a domineering manner over the smaller ones; and the Upper House can also act as a check on the powers of the Lower House. In other words, by forming the Upper House in this way, it ensures the equality of all the constituent States in the Union, and also safeguards the rights of the smaller States.

Furthermore, the two Houses of Parliament in a Federal Union are usually granted equal powers. In the present Parliament of the Union of Burma however, the Chamber of Nationalities which is the Upper House, does not enjoy the same powers as the Chamber of the Deputies, the Lower House. The States also do not have the right to send the same number of representatives to the Chamber of Nationalities. And since the Union Government is made responsible only to the Chamber of Deputies, the Chamber of Nationalities little influence, and cannot defend the rights of the States.

Therefore the way the Parliament is established in the present Constitution will have to be changed. Not only must the Chamber of Nationalities have powers equal to those of the Chamber of Deputies, but every State must have the right to send an equal number of members to the Chamber of Nationalities.

#### **(4) Distribution of Union Revenues**

Of 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 grants from the Union provided under the exception to section 96.

The States have been unhappy with the way the revenues are distributed from the date of Independence till the present. Up to now, no definite financial policy has been laid down. That is why when the new truly federal Constitution is drawn up, the question of the distribution of revenue must be considered in depth, and precisely enacted.

#### **(5) Complete Autonomy for the States**

The right of every Constituent State, (including Burma State, which shall be established), to complete autonomy shall be spelled out in the new Constitution. The basic Law shall require that there shall be no interference by the Central Government or by any other State in the internal affairs of any State.

Since the revised new Constitution of the Union of Burma will be of the genuine federal type, the States shall each have their own State Constitution, their own State Legislative assembly, their own separate State Government, and their own State Constitution, their own State

Legislative assembly, their own separate institute Judiciary and Courts of Law, provided that these State institution are not inconsistent with the Central Union Constitution.

For those peoples who lack the qualifications to form a State, National Areas shall be established, and guarantees for protecting their national rights shall be entrenched in the new Constitution.

In revising the Constitution, it will be worse than useless to try to conduct a mere patch-up job by tinkering with the defective sections mentioned above. What is needed here is to discard altogether the old Constitution as well as the principle on which it is based, and to replace it with a completely different Constitution, based on genuine federal principles.

The Members of the Shan State Steering Committee for the Revision of the Constitution of the Union of Burma are as follows:

1. Thiripyanchi Sao Hkun Aung	Shan State United Hill Peoples Party	Member
2. U Hme	Shan State United Hill Peoples Party	Member
3. Sao Yawt Mong	Shan State United Hill Peoples Party	Member
4. Agga Maha Thraysithu Agga Maha Thiri Thudhamma Sao Shwe Thaike	Saohpas Association	Member
5. Wunna Kyaw Htin Sao Man Hpa	Saohpas Association	Member
6. Sao Kya Saing	Saohpas Association	Member
7. Thray Sithu Sao Shwe Hmon	Shan State Unity Party	Member
8. U San Mya	Shan State Unity Party	Member
9. U Htun Ohn	Shan State Unity Party	Member
10. U Htun Aye	Shan State Unity Party	Member
11. U Khan	Shan State Unity Party	Member
12. U Aung Than	Shan State Unity Party	Member
13. U Lun	In People's Freedom Party	Member
14. U Soe Maung	In Peoples Freedom Party	Member
15. U Chit Oo	In Peoples Freedom Party	Member
16. U Pyu	Pao National Party	Member
17. U Hla Pe	Pao National Party	Member
18. U Kyaw Seing	Pao National Party	Member
19. U Htun Pe	Independent	Member
20. U Hkun Htee	Independent	Member
21. U Htun Myint Galay	Independent	Member
22. U Hkun Naung	Independent	Member
23. U Yee Yao	Independent	Member
24. Sao Man Hpa	Co-opted Member	Member
25. Maha Thray Sithu U Kya Bu	Co-opted Member	Member

26. Thiripyanchi U Ba Nyan	Co-opted Member	Member
27. Mahathra Sithu Sao Htun E	Co-opted Member	Member
28. U Khun Sam Myat	Co-opted Member	Member
29. Sao Kyaw Khaung	Co-opted Member	Member
30. Sao Hso Hom	Co-opted Member	Member

(Sd.) Thray Sithu Sao Pye  
Chairman, Shan State Council  
Chairman

(Sd.) Sao Kya Sone  
Secretary, Shan State Council  
Secretary

Taunggyi, Dated the 22<sup>nd</sup> of February 1961.

## ANNEXURE 1

### THE UNION STATE

1. The Union State shall have its own constitution in conformity with the constitution of the Union and its own specific characteristics and features.
2. It is suggested that the Head of the Union State may be called the GOVERNOR who should be elected by the State Legislature.
3. In the Union State the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated: -

#### **(1) Constitutional Affairs:**

- a. The amendment from time to time of the Constitution of the Union State subject to this Constitution;
- b. The conduct of the elections to the Union State legislature and other local bodies;
- c. The establishment and tenure of Union State officers and the appointment and payment of State officers.

#### **(2) Finance:**

- a. Direct taxation within the Union State, other than federal taxes and revenue in order to the raising of a revenue, for Union State purpose;
- b. Land Revenue;
- c. Minor minerals as defined in Chapter VIII of the Shan State Manual;
- d. Timber other than exportable timber,
- e. Taxes on luxuries and entertainments;
- f. Sale tax;
- g. Taxes on professions, trade, callings and employment;
- h. Excise duties on alcoholic liquors and narcotic drugs;
- i. Shop, saloon, tavern, auctioneer and other licences in order to the raising of revenue

for State, local or Municipal purpose.

**(3) Economic Affairs:**

- a. Agriculture and Veterinary;
- b. Fisheries within the State;
- c. Regulation of land tenures;
- d. Internal trade and commerce;
- e. Water supplies and Irrigation;
- f. Unemployment and Relief of the poor.

**(4) Security:**

- a. Police Administration;
- b. Administration of justice by Court subordinate to High Court;
- c. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Union State made in relation to any matter coming within any of the classes of subjects enumerated in this section.

**(5) Communications:**

Local works and undertakings within the State other than Railways, subject to the power of the Union Assembly to declare any work a national work and to provide for its construction and by arrangement with the State legislature or otherwise.

**(6) Education:**

- a. Education, other than higher education;
- b. Management and control of all educational institutions;
- c. Non-federal libraries, museums and other institutions;
- d. Theaters, dramatic performances and cinemas.

**(7) Health:**

- a. Public health and sanitation;
- b. The establishment, maintenance and management of hospitals, asylums and dispensaries.

**(8) Local Governments:**

- a. municipalities and other bodies;
- b. Charities and charitable institution.

**AUTONOMOUS STATE**

**Chief of State**

1. In the Autonomous State there should be a Chief Executive Officer elected by the State Council and in whose name all Executive acts related to State Affairs which should be done, shall be done.
2. Such Chief should hold office for a term not exceeding 4 years, removable by impeachment or incapacity.
3. There shall be a State Council. The number of members and the method of election or appointment should be regulated by law.
4. Subject to the provisions of the Constitution and the assent of the Presidents as hereafter provided, the State Council may make ordinances in relation to matters coming within the following classes of subjects: -
  - a. Direct Taxation within the State in order to raise a revenue for State purposes.
  - b. The borrowing of money for the sole credit of the State with the consent of the President and in accordance with regulation to be framed by the Union Assembly.
  - c. Education, other than higher education.
  - d. Agriculture to the extent and subject to the conditions to be defined by Union Assembly.
  - e. The Establishment, Maintenance, and Management of Hospitals and Charitable institutions.
  - f. Municipal institutions, District Councils, and other local institutions having authority and functions in any area in respect of the Local Government of, or to preservation of Public Health, in the area.
  - g. Local works and undertakings within the State other than railways subject to the power of the Union Assembly to declare any work a national work and to provide for its construction and by arrangement with the State Council or otherwise.
  - h. The imposition of punishment by fine, penalty or imprisonment for enforcing any law or any ordinance of the Autonomous State made in relation to any matter coming within any other clause or subjects enumerated in this Section.
  - i. Generally, all matters which, in the opinion of the President, are of a merely local or private nature in the State.
5. Any ordinance made by the State Council should have effect in and for the State so long and so far only as it is not repugnant to any Act of the Union Assembly.
6. The State Council may recommend to the Union Assembly the passing of any law relating to any matter in respect of which such Council is not competent to make ordinances.
7. The State Revenue Fund should be formed into which should be paid all revenues raised by the State or accruing to the State Council and all moneys paid over by the President to the Council. Such fund should be appropriated by the State Council by ordinances for the purposes of the State Administration, generally, or in the case of moneys paid over by the President for particular purposes, then for such purposes.
8.
  1. The State Council should at its First Meeting elect from among its members or otherwise 4 persons to form with the Chief who shall be chairman, the Executive of the Autonomous State. The members of the Executive other than the Chief shall hold office until the election of their successors in the same manner.
  2. The Chief and any other member of the Executive, not being a member of the Council, shall have the right to take part in the proceedings of the Council but

shall not have the right to vote.

9. The Executive shall, on behalf of the State Council, carry on the Administration of the State Affairs. Until the first election of the members to serve on the Executive such Administration shall be carried on by the Chief.
10. All questions arising in the Executive shall be determined by a majority of votes of the members present, and, in the case of an equality of votes, the Chief shall have also a casting vote. Subject to the approval of the President, the Executive may make rules for the conduct of its proceedings.
11. Subject to the provisions of any law passed by the Union Assembly regulating the conditions of appointment, tenure of office, retirement and superannuation of Public services, the Executive shall have power to appoint such officers as may be necessary in addition to Officers appointed to the State by the President under the provisions of this Constitution, to carry out the services entrusted to them and to make or enforce regulations for the organization and discipline of such officers.
12. In regard to all matters in respect of which no power are served or delegated to the State Council, the Chief shall act on behalf of the President when required to do so, and in such matters the Chief may act without reference to the members of the Executive.

*NOTE. (This part is a model on the Constitution of the Constituent Units forming part of the Union of South Africa including all the subjects and powers assigned by the Act to the Constituent Provinces.)*

## **NATIONAL AREA**

### **Administrator**

1. In each national area there should be Chief Executive Officer appointed by the President who should be called "the Administrator" and in whose name all executive acts relating to the Area should be done.
2. In the appointment of the Administrator of any area, the President should, as far as practicable, give preference to persons resident in the area.
3. Such Administrator should not hold office for a longer term than three years and should not be removed before the expiration thereof except by the President for cause assigned.
4. The President may, from time to time, appoint a Deputy Administrator to execute the office and functions of the Administrator during his absence, illness or incapacity and to generally assist him.
5. There should be Advisory Council in each area to aid and advise the Administrator. The number and method of selection may be prescribed by law.
6. Powers of the Advisory Council:  
The Council should have the following powers and functions: -
  - a. All the power and functions of the local self governing bodies of Burma.
  - b. All matters which, in the opinion of the President, are of merely local or private



									15,465,909 *2
1958-59	3,817,702	1.90	1,850,683	0.92	842,429	0.42	681,980	0.34	13,000,000
									8,971,280 *3
									10,496,212 *4
1959-60 (estimate)	4,205,600	2.10	2,019,000	1.01	1,140,000	0.57	641,700	0.32	12,500,000
									12,787,800 *5
1960-61 (estimate)	4,240,500	2.12	2,220,300	1.11	1,214,800	0.60	662,000	0.33	12,500,000
									8,500,000 *6

\* Commuted Pension for Saohpas.

\*2 War Reparations and Cash

\*3 War Reparations

\*4 Commuted Pension for Saohpas

\*5 Estimated War Reparations

\*6 War Reparations

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