PEACEFUL CO-EXISTENCE:

Towards Federal Union of Burma

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ငြိမ်းချမ်းစွာအတူယှဉ်တွဲနေထိုင်ရေးမူဝါဒမှသည် စစ်မှန်သောပြည်ထောင်စုစနစ်ဆီသို့

(စာစဉ်အမှတ်–၅)

FEDERALISM, STATE CONSTITUTIONS AND SELF-DETERMINATION IN BURMA

[Report on State Constitutions Drafting Process]

Series Editors:

Chao-Tzang Yawnghwe

&

Lian H. Sakhong

ထုတ်ဝေသူ
ပြည်ထောင်စုတိုင်းရင်းသားလူမျိုးများဒီမိုကရေစီအဖွဲ့ချုပ်
(လွတ်မြောက်နယ်မြေ)
ထိုင်းနိုင်ငံ
၂၀၀၃ ခုနှစ်
ပထမအကြိမ်

စာအုပ်အပြင်အဆင်နှင့် ဒီဇိုင်း
စိုင်းမော(နှ)

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2003

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လုပ်ငန်းစဉ်နှင့်ပတ်သက်သောအစီရင်ခံစာ

ဒေါက်တာ ဆလိုင်းလျန်မှုန်း ဆာခေါင်း

ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးလုပ်ငန်းစဉ်နှင့် ပတ်သက်သောအစီရင်ခံစာ

နိဒါန်း

ယနေ့ကျွန်ုပ်တို့ဆင်နွှဲနေသော အရေးတော်ပုံကြီးသည် ရန်ကုန်မြို့တွင်အစိုးရ တရပ် အပြောင်းအလဲလုပ်ရုံမျှနှင့်ပြီးမြောက်သွားမည့် သာမန်ဝါဒရေးရာတိုက်ပွဲတရပ် မဟုတ်ပေ။ ပြည်ထောင်စုအတွင်း မှီတင်းနေထိုင်ကြကုန်သော တိုင်းရင်းသားလူမျိုး ပေါင်းစုံတို့၏ ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်ရရှိရေး(Self-determination)၊ လူမျိုးတမျိုး နှင့် တမျိုးအကြား (ဝါ) ပြည်နယ်တခုနှင့်တခုအကြား နိုင်ငံရေးအရတန်းတူ ညီမျှခွင့် ရရှိရေး၊ ပြည်သူလူထုတရပ်လုံး ဒီမိုကရေစီအခွင့်အရေး ရရှိရေးနှင့် အခြေခံလူ့အခွင့်အရေး အပြည့်အဝရရှိရေးအတွက် တိုက်ပွဲဝင်နေသော အရေးတော်ပုံကြီးပင်ဖြစ်ပါသည်။ တနည်းအားဖြင့်ဆိုပါက ကျွန်ုပ်တို့ဆင်နွှဲနေသော အရေးတော်ပုံကြီးသည် ကျွန်ုပ်တို့ တိုင်းပြည်၏ အုပ်ချုပ်ရေးစနစ်နှင့် နိုင်ငံတော်ဖွဲ့စည်းပုံအပါအဝင် ကျွန်ုပ်တို့၏ လူ့ဘောင်အဖွဲ့အစည်းကိုပါ ဒီမိုကရေစီကျင့်စဉ်နှင့်အညီ ပြုပြင်ပြောင်းလဲရန် ဆင်နွှဲ နေသော အရေးတော်ပုံကြီး ပင်ဖြစ်ပါသည်။ ထို့ကြောင့် ကျွန်ုပ်တို့ဆင်နွှဲနေသော အရေးတော်ပုံကြီး၏ အခြေခံပန်းတိုင်သည် စစ်မှန်သော ဖက်ဒရယ်ပြည်ထောင်စုစနစ် တည်ဆောက်ရေးပင် ဖြစ်နေတော့သည်။

စစ်မှန်သော ဖက်ဒရယ်နိုင်ငံတော် ထူထောင်ရေးသည် ယနေ့မှနေ့ချင်းညချင်း ပေါ်လာသော နိုင်ငံရေးကြွေးကြော်သံတရပ် မဟုတ်ပါ။ ပြည်ထောင်စုကို စတင်ဖွဲ့ စည်းသည့်အချိန်မှစ၍ ဗိုလ်ချုပ်အောင်ဆန်းနှင့် တိုင်းရင်းသားခေါင်းဆောင်များ မျှော်မှန်းခဲ့သော နိုင်ငံရေးပန်းတိုင်တရပ်သာလျှင် ဖြစ်ပါသည်။ ပင်လုံတွင် ဗိုလ်ချုပ် အောင်ဆန်းနှင့် တိုင်းရင်းသားခေါင်းဆောင်များက **"နိုင်ငံရေးတန်းတူခွင့်နှင့် ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်"** အပြည့်အဝရှိသော ပြည်ထောင်စုနိုင်ငံတော်တရပ်ကို အတူတကွ ပူးပေါင်းထူထောင်ရန် မျှော်မှန်းခဲ့ကြပါသည်။ ထို့ကြောင့် ပင်လုံစာချုပ်ကို အတူတကွ လက်မှတ်ရေးထိုးခဲ့ကြခြင်း ဖြစ်ပါသည်။

သို့ရာတွင် ဗိုလ်ချုပ်အောင်ဆန်း လုပ်ကြံခံရပြီးနောက်ပိုင်း ရေးဆွဲပြဋ္ဌာန်းခဲ့ သော နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေသည် ပင်လုံတွင် မျှော်မှန်းခဲ့သော နိုင်ငံရေး မျှော်မှန်းချက်များကို အကောင်အထည်မဖော်နိုင်ခဲ့ပေ။ ဆိုလိုသည်မှာ — ၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေသည် ပင်လုံတွင်မျှော်မှန်းခဲ့သည့်အတိုင်း စစ်မှန် သောဖက်ဒရယ်ပြည်ထောင်စုစနစ်တွင် အခြေခံ၍ ရေးဆွဲပြဋ္ဌာန်းနိုင်သော နိုင်ငံ တော်ဖွဲ့စည်းပုံအခြေခံဥပဒေ ဖြစ်မလာခဲ့ပေ။ ဖက်ဒရယ်ပြည်ထောင်စုစနစ်မှ သွေဖီ

၍ **"တစ်ပြည်ထောင်စနစ်"** သို့ဦးတည်ရေးဆွဲသော ဖွဲ့စည်းပုံ အခြေခံဥပဒေတရပ် မျှသာ ဖြစ်ခဲ့ပါသည်။

၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို ပြည်ထောင်စုစနစ်မှ သွေဖီ၍ တစ်ပြည်ထောင်စနစ်သို့ ဦးတည်သွားစေသော အခြေခံအားနည်းချက် (၃) ရပ်ရှိပါသည်။ ၎င်းတို့မှာ —

(၁) ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များ၏ ပြည်နယ်ဖွဲ့စည်းပုံ အခြေခံဥပဒေများကို သီးခြားလွှတ်လပ်စွာ ရေးဆွဲပြဋ္ဌာန်းခြင်းမရှိခဲ့ပေ။

(၂) ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များ နိုင်ငံရေးအရ တန်းတူရည်တူပူးပေါင်း၍ ပြည်ထောင်စုနိုင်ငံတော်တခုကို အတူတကွ ထူထောင်ကြသည်ဆိုသော အချက်ကို နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေကို ရှင်းလင်းစွာ ဖော်ဆောင်နိုင်ခြင်း မရှိခဲ့ပေ။ ယင်းအချက်ကို ပြည်ထောင်စုလွှတ်တော်ရှိ အထက်လွှတ်တော်ကို ပြည်နယ်ကိုယ်စားပြုလွှတ်တော်အဖြစ် တန်းတူရည်တူဖွဲ့စည်းခြင်းဖြင့် ဖော်ဆောင်ကျင့်သုံးရမည် ဖြစ်ပါသည်။ ဖက်ဒရယ်စနစ်အရ အထက်လွှတ်တော်သည် ပြည်နယ်များကို ကိုယ်စားပြုသော လွှတ်တော်ဖြစ်သောကြောင့် ပြည်နယ်ကြီးသည်သေး သည်မဟူ ဦးရေတူညီသော ကိုယ်စားလှယ်များကို ပြည်နယ်အသီးသီးက အထက်လွှတ်တော်သို့ စေလွှတ်ကြရမည် ဖြစ်ပါသည်။ ထို့အတူ အောက်လွှတ်တော်သည် ပြည်သူလူထုကို လူဦးရေအချိုးအစားအလိုက် ကိုယ်စားပြုရမည် ဖြစ်သည်။ သို့ရာတွင် ၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေအရ အထက်လွှတ်တော်တွင် ပြည်နယ်များက ကိုယ်စားလှယ်ဦးရေ အညီအမျှစေလွှတ်ခြင်းမပြုပဲ၊ အောက်လွှတ်တော်ကဲ့သို့ လူဦးရေအချိုးအစားအလိုက် စေလွှတ်ခဲ့ရပါသည်။ ထို့ကြောင့် လူဦးရေ ပိုများတဲ့ ဗမာလူမျိုးများက အောက်လွှတ်တော်မှာရော အထက်လွှတ်တော်မှာပါ ပြည်ထောင်စုလွှတ်တော်တရပ်လုံးရဲ့ အာဏာကို လွှမ်းမိုးချယ်လှယ်နိုင်ခဲ့ပါသည်။

(၃) တတိယအားနည်းချက်ကတော့ ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်တခု ဖြစ်ရမည့် ဗမာလူမျိုးများဟာ သူတို့ရဲ့ သီးခြားအမျိုးသားပြည်နယ်တခုကို ထူထောင်ခြင်းမပြုပဲ၊ ဗမာအမျိုးသားပြည်နယ်ရဲ့ လုပ်ပိုင်ခွင့်နှင့် ပြည်ထောင်စုအာဏာတရပ်လုံးကို ပူးတွဲကျင့်သုံးခွင့်ပေးခဲ့ပါသည်။ ယင်းသည် ၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေရဲ့ အကြီးမားဆုံး အားနည်းချက်ပင် ဖြစ်ပါသည်။ ဗမာလူမျိုးများအတွက် သီးခြားပြည်နယ်

ဖွဲ့စည်းခြင်းမပြုပဲ ပြည်ထောင်စုအစိုးရနှင့် တွဲဖက်ခြင်းအားဖြင့် အခြားတိုင်းရင်းသားလူမျိုးများသည် ဗမာလူမျိုးများရဲ့ ကိုလိုနီနယ်မြေသဖွယ် ဖြစ်သွားခဲ့ကြရပါသည်။

ထို့ကြောင့် သမိုင်းတွင်ကြုံတွေ့ဘူးသော အမှားများကို ရှောင်ရှား၍ စစ်မှန်သောဖက်ဒရယ် နိုင်ငံတော်ထူထောင်ရန် အခုလိုကျွန်ုပ်တို့အားလုံး တိုက်ပွဲဝင်နေကြခြင်းဖြစ်ပါသည်။

(၁) ဖက်ဒရယ်ပြည်ထောင်စုစနစ်ကိုအဓိပ္ပါယ်ဖွင့်ဆိုခြင်း

ကျွန်ုပ်တို့ဆင်နွှဲနေသော အရေးတော်ပုံကြီး၏ အန္တိမပန်းတိုင်သည် **"စစ်မှန်သောပြည်ထောင်စုစနစ်"** တည်ဆောက်ရေး ထူထောင်ရေး ဖြစ်သောကြောင့် ၎င်းပြည်ထောင်စုစနစ်၏ အဓိပ္ပါယ်ကို ရှင်းရှင်းလင်းလင်း နားလည်သဘောပေါက်ရန် လိုအပ်ပါသည်။

ဆရာကြီး ဒဂုန်တာရာ၏အဆိုအရ **"ပြည်ထောင်စုစနစ်ဆိုသည်မှာ — ပြည်ထောင် (အမျိုးသားနိုင်ငံတော်) များ ညီညွတ်စည်းလုံးစွာ ကြီးငယ်မဟူ တန်းတူခြင်းအခြေခံဖြင့် ဖွဲ့စည်းထားသော စုပေါင်းနိုင်ငံတော်စနစ်"** ပင်ဖြစ်ပါသည်။ ပြည်ထောင်များစုပေါင်း၍ ဖွဲ့စည်းထားသော စုပေါင်းနိုင်ငံတော်စနစ် ဖြစ်သည်နှင့်အညီ — ပြည်ထောင်များနှင့် ပြည်ထောင်စုအကြား မည်ကဲ့သို့အာဏာခွဲဝေ သုံးစွဲကြမည်၊ မည်ကဲ့သို့သော နိုင်ငံရေးအာဏာများကို ပြည်နယ်များလက်ထဲတွင် ထားရှိရမည်၊ မည်သည့်အာဏာများကို ပြည်နယ်များနှင့် ပြည်ထောင်စုအစိုးရက ပူးတွဲ၍ ကျင့်သုံးရမည် (Concurrent Power) ဟူသော တရားနည်းလမ်းများကို နိုင်ငံတော်ဥပဒေဖြင့် အတိအကျပြဋ္ဌာန်းရေးဆွဲရန် လိုအပ်ပါသည်။ ထို့ကြောင့် ခေတ်သစ်နိုင်ငံရေးသိပ္ပံပညာရှင်များက ဖက်ဒရယ်ပြည်ထောင်စုစနစ်ကို **"ပြည်နယ်အစိုးရများနှင့် ပြည်ထောင်စုအစိုးအရအကြား နိုင်ငံရေးအာဏာများကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေနှင့်အညီ စနစ်တကျခွဲဝေသုံးစွဲသောစနစ်"** ဟူ၍ အဓိပ္ပါယ်ဖွင့်ဆိုထားကြပါသည်။

ပြည်ထောင်စုစနစ်တွင် အခြေခံနိုင်ငံရေးအဆောက်အအုံသည် ပြည်နယ်များပင်ဖြစ်ပါသည်။ ထို့ကြောင့် ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များထံတွင် နိုင်ငံရေးအာဏာများ (ဥပဒေပြုအာဏာ၊ အုပ်ချုပ်ရေးအာဏာနှင့် တရားစီရင်ရေးအာဏာ) ကိုအပြည့်အဝအပ်နှင်း ထားရမည်။ ထိုသို့ ပြည်နယ်များကို နိုင်ငံရေးအာဏာအပြည့်အဝ အပ်နှင်းထားမှသာလျှင်၊ ၎င်း အမျိုးသားပြည်နယ်များတွင် ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့် (Self-determination) အပြည့်အဝရှိသည်ဟု ခေါ်ဆိုနိုင်မည်

ဖြစ်ပါသည်။ ထို့ပြင် ပြည်နယ်များက မိမိတို့ထံ အပ်နှင်းထားသော နိုင်ငံရေး အာဏာများကို တရားဥပဒေနှင့်အညီ စည်းစနစ်ကျနစွာဖြင့် ကျင့်သုံးနိုင်ရန်အတွက် ပြည်နယ်ဖွဲ့စည်းအုပ်ချုပ်ပုံအခြေခံဥပဒေများကို သီးခြားလွတ်လပ်စွာ ရေးဆွဲပြဋ္ဌာန်းကြရမည်ဖြစ်ပါသည်။ တနည်းအားဖြင့် ဆိုပါက ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေမရှိပဲ ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်ရှိ၍ နိုင်ငံရေးအာဏာအပြည့်အဝရှိသော ပြည်နယ်မရှိနိုင်ပေ။ ထို့ကြောင့် ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများသည် ပြည်ထောင်စုစနစ်တွင် မရှိမဖြစ် လိုအပ်သော နိုင်ငံရေးအင်္ဂါရုပ်များ ဖြစ်နေပါတော့သည်။ ယင်းသည် ပြည်ထောင်စုစနစ်၏ ထူးခြားလေးနက်သော ပထမအင်္ဂါရုပ်ပင် ဖြစ်ပါသည်။

ပြည်ထောင်စုစနစ်၏ ထူးခြားသော ဒုတိယအင်္ဂါရုပ်တခုမှာ — ပြည်နယ်များကိုစုစည်းပေါင်းစပ်ပေး၍ ၎င်းပြည်နယ်အားလုံး၏ အရေးကို စုပေါင်းဆောင်ရွက်သောနိုင်ငံရေးစနစ် ဖြစ်ခြင်းပင်ဖြစ်သည်။ ထို့ကြောင့် ပြည်ထောင်စုစနစ်တွင် ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများ သာမက ပြည်နယ်အားလုံးစုစည်း၍ ပြည်ထောင်စုအရေးကို ပူးပေါင်းဆောင်ရွက်နိုင်ရန် ပြည်ထောင်စုလွှတ်တော်၊ ပြည်ထောင်စုအစိုးရနှင့် ပြည်ထောင်စုတရားရုံးချုပ်များကိုလည်း ထားရှိရမည်ဖြစ်ပါသည်။ ၎င်းပြည်ထောင်စုလွှတ်တော်၊ ပြည်ထောင်စုအစိုးရနှင့် ပြည်ထောင်စုတရားရုံးချုပ်များ တရားဥပဒေနှင့်အညီ တာဝန်များကို ကျေပွန်စွာ ထမ်းဆောင်နိုင်ရန် ပြည်ထောင်စုဖွဲ့စည်းပုံ အခြေခံဥပဒေတရပ်ကိုလည်း သီးခြားလွတ်လပ်စွာရေးဆွဲပြဋ္ဌာန်းနိုင်ရန် လိုအပ်ပါသည်။ ပြည်ထောင်စုလွှတ်တော်၏ ဥပဒေပြုအာဏာများမှာ—ပြည်နယ်များက စုပေါင်းဆောင်ရွက်ရန် ပြည်ထောင်စုသို့ တရားဝင်လွှဲအပ်ထားသော ဥပဒေပြုအာဏာများ ပါဝင်ရမည် ဖြစ်ပါသည်။ ၎င်းတို့ထဲတွင်— (၁) နိုင်ငံတော်ကာကွယ်ရေး (၂) နိုင်ငံခြားဆက်သွယ်ရေး (၃) ငွေကြေးစနစ်နှင့် ငွေဒင်္ဂါးသွင်းလုပ်ရေး စသော အာဏာများပါဝင်ရမည် ဖြစ်ပါသည်။

ပြည်ထောင်စုစနစ်၏ ထူးခြားသော တတိယအင်္ဂါရုပ်မှာ—၎င်းစနစ်သာလျှင် လူပုဂ္ဂိုလ်တဦးချင်းစီ၏ ကိုယ်ပိုင်အခွင့်အရေး (Individual Rights) နှင့်လူ့အဖွဲ့အစည်းအလိုက် (၀ါ) လူမျိုးအလိုက် ရရှိခံစားထိုက်သော အခွင့်အရေး (Collective Rights) နှစ်မျိုးစလုံးကို နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေဖြင့် စနစ်တကျ ပြဋ္ဌာန်းကာကွယ်ပေးနိုင်သော စနစ်ဖြစ်ခြင်းပင် ဖြစ်ပါသည်။ အထက်တွင်ဆိုခဲ့သည့် အတိုင်း အမျိုးသားပြည်နယ်များကို ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့် (Self-determination) ပေးခြင်းသည် လူမျိုးအလိုက် (၀ါ) လူ့အဖွဲ့အစည်းအလိုက် ရရှိခံစားထိုက်သော အခွင့်အရေး (Collective Rights) ကိုပြဋ္ဌာန်းကာကွယ်ပေးခြင်း ပင်ဖြစ်ပါသည်။ ထို့အပြင် ၎င်းအမျိုးသားပြည်နယ်များ နိုင်ငံရေးအရ တန်းတူရည်တူပူးပေါင်း၍ ပြည်ထောင်စုလွှတ်တော်ကို ဖွဲ့စည်းသောအခါ အထက်လွှတ်တော်တွင် အမျိုးသား

ပြည်နယ်များက ဦးရေတူညီသော ကိုယ်စားလှယ်များကို စေလွှတ်ခြင်းအားဖြင့် ၎င်း အမျိုးသားပြည်နယ်များ၏ Collective Rights ကိုထပ်ဆင့် ကာကွယ်ပြဋ္ဌာန်းရာ ရောက်နိုင်ပါသည်။ ထိုထက်မက အထက်လွှတ်တော်တွင် ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များက ပြည်နယ်ကိုယ်စားလှယ်အညီအမျှ စေလွှတ်ခြင်း အားဖြင့် ၎င်းအမျိုးသားပြည်နယ် များနိုင်ငံရေးအရ တန်းတူရည်တူခွင့်ရှိကြသည် ဟူသော အဓိပ္ပါယ်ကိုလည်း လက်တွေ့တွင် ဖေါ်ဆောင်သွားနိုင်မည် ဖြစ်ပါသည်။

သို့ရာတွင် ဒီမိုကရေစီစနစ်သည် လူမျိုးအလိုက်ခံစားထိုက်သော အခွင့်အရေး (Collective Rights) ရှိရုံမျှဖြင့် လုံလောက်သောစနစ်တရပ်မဟုတ်ပေ။ လူသား တဦးချင်းစီ၏ ကိုယ်ပိုင်အခွင့်အရေး (Individual Rights) ကိုအလွန်တရာ တန်ဖိုး ထားသောစနစ် ဖြစ်ပါသည်။ ထို့ကြောင့် ၎င်းပုဂ္ဂိုလ်ကိုယ်ပိုင်အခွင့်အရေး (Individual Rights) ကို တရားဥပဒေဖြင့် ကာကွယ်ပြဋ္ဌာန်းပေးရန် အထူးလိုအပ်လှပါသည်။ ယင်းကို ပြည်ထောင်စုစနစ်တွင် ပြည်ထောင်စုလွှတ်တော်နှင့် အောက်လွှတ်တော် ကိုထားရှိ ဖွဲ့စည်းခြင်းအားဖြင့် ကာကွယ်နိုင်ပါသည်။ ဆိုလိုသည်မှာ— အောက်လွှတ်တော်ကို လူဦးရေအချိုးအစားအလိုက် ပြည်သူလူထုက ရွေးချယ်တင် မြှောက်သော ကိုယ်စားလှယ်များဖြင့် ဖွဲ့စည်းခြင်းအားဖြင့် ပြည်သူလူထုတရပ်လုံး၏ မိမိတို့၏ ကိုယ်ပိုင်အခွင့်အရေး (Individual Rights) ကို တိုက်ရိုက်ကျင့်သုံး ကာကွယ်နိုင်ပါသည်။ ထို့ပြင် ပြည်ထောင်စုစနစ်နှင့် ပါလီမန်ဒီမိုကရေစီစနစ်ကို ပူးတွဲကျင့်သုံးသော တိုင်းပြည်များတွင် အောက်လွှတ်တော်ကိုယ်စားလှယ်များဖြင့် ပြည်ထောင်စုအစိုးရကို ဖွဲ့စည်းလေ့ရှိပါသည်။ ဤနည်းအားဖြင့် ပြည်သူလူထုကို တိုက်ရိုက်ကိုယ်စားပြုသော အစိုးရများကို ရွေးချယ်တင်မြှောက် ဖွဲ့စည်းနိုင်ပါသည်။

ပြည်ထောင်စုစနစ်၏ ထူးခြားသော စတုတ္ထအင်္ဂါရပ်မှာ—ပြည်ထောင်စု အဖွဲ့ဝင် အမျိုးသားပြည်နယ်များကို နိုင်ငံရေးအာဏာအပြည့်အဝပေးပြီး၊ ပြည်နယ် လွှတ်တော်၊ ပြည်နယ်အစိုးရ၊ ပြည်နယ်တရားရုံးချုပ်များ ဖွဲ့စည်းထူထောင်ခွင့် ပေး ထားသော်လည်း နိုင်ငံတော်၏ အချုပ်အခြာအာဏာကို ပြည်ထောင်စုအစိုးရထံ တွင်သာလျှင် အပ်နှင်းထားသောစနစ်ဖြစ်ခြင်း ပင်ဖြစ်ပါသည်။ နိုင်ငံတော်၏အချုပ် အခြာအာဏာသည် လူထုထံမှ ဆင်းသက်သည် ဖြစ်သောကြောင့်၊ ၎င်းအချုပ်အ ခြာအာဏာသည် ပြည်နယ်တခုအတွင်းရှိ လူထုသာမဟုတ်၊ ပြည်ထောင်စုတခုမံး လုံးရှိ ပြည်သူလူထုတရပ်လုံးနှင့် သက်ဆိုင်နေပါသည်။ ထို့ကြောင့် နိုင်ငံတော်အချုပ် အခြာအာဏာသည် ပြည်ထောင်စုအစိုးရထံတွင်သာလျှင် အပ်နှင်းလေ့ရှိပါသည်။

အချုပ်အားဖြင့် ဆိုပါက ကျွန်ုပ်တို့မျှော်မှန်းထားသော အနာဂတ်ဖက်ဒရယ် ပြည်ထောင်စုစနစ်သည်—အထက်တွင် ဖေါ်ပြထားသော ပြည်ထောင်စုစနစ်၏ အခြေခံအင်္ဂါရပ်များနှင့် ပြည့်စုံစေရမည် ဖြစ်ပါသည်။ ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုး

သားပြည်နယ်များကို ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့် (Self-determination) အပြည့်အဝ ပေးရေး၊ ပြည်နယ်တခုနှင့်တခုအကြား နိုင်ငံရေးအာဏာများ တန်းတူညီမျှစေရေး (Political equality)၊ ပြည်ထောင်စုအတွင်း တိုင်းရင်းသားလူမျိုးအားလုံး လူမျိုးအလိုက်ခံစားထိုက်သည့် အခွင့်အရေးများ (Collective rights) နှင့် လူသားတဦးချင်းစီအလိုက် ခံစားထိုက်သော ပုဂ္ဂလိကကိုယ်ပိုင်ခံစားခွင့် (Individual rights) အပြည့်အဝခံစားရရှိနိုင်ရေး စသည်တို့သည် စစ်မှန်သောပြည်ထောင်စု စနစ်၏ အခြေခံအဂိါရပ်များ ဖြစ်နေရုံမက၊ ၎င်းအခွင့်အရေးများကို အပြည့်အဝ ကာကွယ်ပြဋ္ဌာန်းနိုင်ရန် စစ်မှန်သောပြည်ထောင်စုစနစ်သာလျှင် အာမခံချက် ပေးနိုင်မည် ဖြစ်ပါသည်။ ထို့ကြောင့် ထိုအဂိါရပ်များနှင့် ပြည့်စုံသော ပြည်ထောင်စု စနစ်ကို ထူထောင်နိုင်ရန် ကျွန်ုပ်တို့တိုက်ပွဲဝင်လျက် ရှိနေပါသည်။

(၂) ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေများရေးဆွဲပြဋ္ဌာန်းရန်လိုအပ်ပုံ

အထက်တွင်ဆိုခဲ့သည့်အတိုင်း ပြည်ထောင်စုစနစ်တွင် အရေးအကြီးဆုံးသော အခြေခံအချက်မှာ—ပြည်နယ်များ ပင်ဖြစ်ပါသည်။ ပြည်နယ်မရှိပဲ ပြည်ထောင်စု မရှိနိုင်ပေ။ ထို့ပြင် ၎င်းပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များအတွက် ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများ သီးခြားရေးဆွဲပြဋ္ဌာန်းခြင်းမရှိပဲ၊ ထိုပြည်နယ်များကို **"ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့် နိုင်ငံရေးအာဏာအပြည့်အဝရှိသော ပြည်နယ်များ"** ဟု ခေါ်ဆိုနိုင်မည် မဟုတ်ပေ။ ထို့ကြောင့် ပြည်ထောင်စုစနစ်ဖြင့် တိုင်းပြည်တခုကို ထူထောင်သွားမည်ဆိုပါက ၎င်းပြည်ထောင်စု အဖွဲ့ဝင်ပြည်နယ်များအတွက် ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို သီးခြားလွတ်လပ်စွာ ရေးဆွဲပြဋ္ဌာန်းရန် လိုအပ်ပါသည်။

ကျွန်ုပ်တို့တိုင်းပြည်တွင် ၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေအရငင်း၊ ၁၉၇၄ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေအရငင်း၊ အမည်ခံပြည်ထောင်စုကို နှစ်ကြိမ်နှစ်ခါ ဖွဲ့စည်းထူထောင်ခဲ့ဘူးသော်လည်း ပြည်ထောင်စုအတွင်းရှိ တိုင်းရင်းသားလူမျိုးပေါင်းစုံတို့ မျှော်မှန်းတောင့်တသော ပြည်ထောင်စုစနစ်မျိုးကိုမူ ယနေ့တိုင်ထူထောင် ဖွဲ့စည်းနိုင်ခြင်း မရှိသေးပေ။ တနည်းအားဖြင့် **"ပင်လုံညီလာခံ"** တွင် ဗိုလ်ချုပ်အောင်ဆန်းနှင့် ကျွန်ုပ်တို့ တိုင်းရင်းသားလူမျိုးပေါင်းစုံတို့၏ ခေါင်းဆောင်များမျှော်မှန်းသော တိုင်းပြည်ကို ကျွန်ုပ်တို့ထူထောင်နိုင်ခြင်း မရှိသေးပေ။

ယင်းသို့ဖြစ်ခဲ့ရခြင်းမှာ—၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ ဖွဲ့စည်းထူထောင်ခဲ့သော **"ပြည်ထောင်စု"** သည် ပြည်ထောင်စုစနစ်မှ သွေဖီ၍ **"ပြည်ထောင်စုစနစ်နှင့် တစ်ပြည်ထောင်စနစ်"** ကို ရောစပ်ထားခဲ့ခြင်းကြောင့်ဂင်း၊

၁၉၇၄ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ ဖွဲ့စည်းခဲ့သော ပြည်ထောင်စုသည် အမည်နာမအားဖြင့်သာ **"ပြည်ထောင်စု"** ကိုခံယူခဲ့၍ အနှစ်သာရမှာ တပါတီ အာဏာရှင်စနစ်ကို ကျားကန်ပေးသော **"တစ်ပြည်ထောင်"** စနစ်ဖြစ်ခြင်းကြောင့်ဎင်း၊ ကျွန်ုပ်တို့၏ ပြည်ထောင်စုသမိုင်းတွင် စစ်မှန်သောပြည်ထောင်စုစနစ်ကို တခါဘူးမှ မထူထောင်နိုင်ခဲ့ခြင်း ဖြစ်ပါသည်။ တနည်းအားဖြင့်ဆိုပါက—ပြည်နယ်များ၏ ဖွဲ့စည်းအုပ်ချုပ်ပုံ အခြေခံဥပဒေများကို သီးခြားရေးဆွဲပြဋ္ဌာန်းခြင်း မရှိပဲ ထူထောင်သော ပြည်ထောင်စုစနစ်သည် **"ပြည်ထောင်စုစနစ်စစ်စစ်"** မဖြစ်နိုင်ပေ။

ပြည်ထောင်စုစနစ်သည် ပြည်နယ်များ (ဝါ) ပြည်ထောင်များ စုစည်း၍ ဖွဲ့စည်းထားသောစနစ် ဖြစ်သောကြောင့် ပြည်နယ်များကို အခြေခံ၍ ပြည်ထောင်စုကို ဖွဲ့စည်းရပေမည်။ ပြည်နယ်များကို အခြေခံခြင်းမရှိပဲ ကျွန်ုပ်တို့တိုင်းပြည်တွင် "ပြည်ထောင်စု" ကိုနှစ်ကြိမ်နှစ်ခါ ဖွဲ့စည်းခဲ့ဘူးပါသည်။ အမှန်စင်စစ် ပြည်နယ်များကို အခြေခံခြင်းမရှိပဲ ဖွဲ့စည်းခဲ့သော တိုင်းပြည်သည် ပြည်ထောင်စုမဟုတ်။ ရန်ကုန်မှ—ဗဟိုမှ—ချုပ်ကိုင်ချယ်လှယ်ထားသော **"ပြည်ထောင်ချုပ်"** စနစ်မျှသာ ဖြစ်ပါသည်။ "ပြည်ထောင်ချုပ်" စနစ်ကို ဖွဲ့စည်းခဲ့ရခြင်း၏ ရလာဒ်များသည်—အနှစ် ငါးဆယ်ပြည်တွင်းစစ် ပင်ဖြစ်ပါသည်။ တိုင်းရင်းသားလူမျိုးများ၏ နိုင်ငံရေးအခွင့် အရေးအားလုံး ဆုံးရှုံးခဲ့ရသည်။ ဗမာမဟုတ်သော တိုင်းရင်းသားလူမျိုးပေါင်းစုံတို့၏ ယဉ်ကျေးမှုနှင့် ဘာသာစကားများ တိုးတက်ခွင့်မရှိအောင် ပိတ်ပင်ချယ်လှယ်ခြင်း ခံခဲ့ရပါသည်။ ပြည်သူလူထုအားလုံး အခြေခံလူ့အခွင့်အရေးများ ဆုံးရှုံးခဲ့ရပါသည်။ တိုင်းပြည်စီးပွားရေးပျက်ဆီးယိုယွင်း၍ ဗိုလ်ချုပ်အောင်ဆန်း ဟောကိန်းထုတ်ခဲ့သလို တိုင်းပြည်သည် "ဖါသည်နိုင်ငံ" ဖြစ်သွားရလေပြီ။ အာဏာရှင်စစ်အစိုးရ၏ အုပ်စိုးမှုကို ကျဉ်းကြပ်စွာ ခံနေရ၍ တတိုင်းပြည်လုံးရှိ လူထုတရပ်လုံးသည် ဒေါ်အောင်ဆန်းစုကြည် ပြောကြားခဲ့သလို မိမိတို့နေအိမ်၊ မိမိတို့တိုင်းပြည်ထဲတွင် အကျဉ်းချခြင်းခံနေကြရပါပြီ။ ခြုံ၍ပြောရပါက—တတိုင်းပြည်လုံး ချုပ်နှောင်အကျဉ်းချခြင်းကို "ပြည်ထောင်ချုပ်" စနစ်ကြောင့် ခံသွားခဲ့ရလေပြီ။

ထို့ကြောင့် ကျွန်ုပ်တို့သည် **"ပြည်ထောင်ချုပ်"** စနစ်ကို ပြောင်းပြန်လှန်၍ ပြည်ထောင်များ (ဝါ) ပြည်နယ်များတန်းတူရည်တူ စုစည်း၍ ဖွဲ့စည်းထားသော **"ပြည်ထောင်စု"** စနစ်ကို အသစ်တဖန် ပြန်လည်ထူထောင်ရပေမည်။ ထိုကဲ့သို့သော ပြည်ထောင်စုစနစ်မျိုးကို ထူထောင်နိုင်ရန် အခရာအကျဆုံးသော လုပ်ငန်းစဉ်ကြီးသည် **"ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေးလုပ်ငန်း"** သာလျှင် ဖြစ်နေပါတော့သည်။ ပြည်နယ်များ တန်းတူရည်တူပူးပေါင်းသော ပြည်ထောင်စုစနစ်ကို ထူထောင်နိုင်မှသာလျှင် ပြည်တွင်းငြိမ်းချမ်းရေးကို တည်ဆောက်နိုင်ပေလိမ့်မည်။ ပြည်တွင်းငြိမ်းချမ်းရေးကို တည်ဆောက်နိုင်မှသာ ဒီမိုကရေစီနှင့် လူ့အခွင့်အရေးများ

ရှင်သန်ထွန်းကားနိုင်လိမ့်မည်။ ဒီမိုကရေစီနှင့် လူ့အခွင့်အရေးရှင်သန်မှသာ အာဏာရှင်စနစ်လည်း ချုပ်ငြိမ်းသွားပေလိမ့်မည်။ ထို့ကြောင့် စစ်အာဏာရှင်စနစ် ချုပ်ငြိမ်းသွားရေး၊ ဒီမိုကရေစီနှင့် လူ့အခွင့်အရေးရှင်သန်ကြီးထွားရေး၊ တိုင်းရင်းသား လူမျိုးများအားလုံး ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်၊ နိုင်ငံရေးအာဏာအပြည့်အဝ ရရှိနိုင်ရေး စသည်တို့အတွက် ကျွန်ုပ်တို့တိုက်ပွဲဝင်လျက် ရှိနေပါသည်။ ပြည်နယ်များ၏ ဖွဲ့စည်းပုံ အခြေခံဥပဒေ ရေးဆွဲရေးလုပ်ငန်းစဉ်ကြီးသည်—ဂင်းတိုက်ပွဲတွင် အရေးပါသော နိုင်ငံရေးစစ်မြေပြင်တခု ဖြစ်ပါသည်။ အဘယ်ကြောင့်ဆိုသော် ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို ရေးဆွဲပြဋ္ဌာန်းနိုင်ခြင်း မရှိသရွေ့ ကျွန်ုပ်တို့မျှော်မှန်း ထားသော ပြည်ထောင်စုစနစ်မျိုးကို ဘယ်သောအခါမှ ထူထောင်နိုင်လိမ့်မည် မဟုတ်ပေ။

(၃) ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေများရေးဆွဲပြဋ္ဌာန်းနိုင်ရေး အတွက် UNLD ၏ကြိုးပမ်းချက်များ

ပြည်ထောင်စုတိုင်းရင်းသားလူမျိုးများဒီမိုကရေစီအဖွဲ့ချုပ် UNLD သည် ဒီမိုကရေစီရေး၊ တန်းတူရေးနှင့် စစ်မှန်သောဖက်ဒရယ်နိုင်ငံတော် ထူထောင်ရေး အတွက် ပြည်နယ် (၇) ခုမှ တိုင်းရင်းသားလူမျိုးပေါင်းစုံဖြင့် ရှုစ်လေးလုံး အရေးတော် ပုံကြီးနှင့်အတူ ၁၉၈၈ တွင်စုစည်းဖွဲ့စည်းထားသော နိုင်ငံရေးအဖွဲ့ချုပ်ကြီး ဖြစ်ပါ သည်။ ထို့ကြောင့် UNLD ၏ ပထမအကြိမ်ညီလာခံတွင် အနာဂတ် ပြည်ထောင်စု ကြီးကို စစ်မှန်သောဖက်ဒရယ်ပြည်ထောင်စုစနစ်ဖြင့် ဖွဲ့စည်းပြဋ္ဌာန်းနိုင်ရန် နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး ကော်မတီတရပ်ကို ဖွဲ့စည်း တာဝန်ပေးအပ်ခဲ့ပါသည်။ ၎င်းကော်မတီက ရေးသားပြုစုသော နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေ (ပထမမူကြမ်း) နှင့်ကော်မတီ၏ လုပ်ငန်းအစီရင်ခံစာ တို့ကို ၁၉၉၀ ဇွန်လ (၂၉) ရက်မှ ဇူလိုင် (၂) ရက်နေ့အထိ ကျင်းပခဲ့သည့် ဒုတိယအကြိမ်ညီလာခံ သို့ တင်သွင်းအစီရင်ခံခဲ့ပါသည်။ ထိုကော်မတီ၏ အစီရင်ခံ စာအပေါ် အခြေခံ၍ **"နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရာတွင် အခြေခံရမည့် လမ်းညွှန်အခြေခံ မူ (၇) ချက်"** ကို ညီလာခံက အတည်ပြုပေးခဲ့ပါသည်။ ယင်း အခြေခံမူ (၇) ချက် မှာ—

(၁) စစ်မှန်သောပြည်ထောင်စုစနစ်ပေါ်တွင် အခြေခံသည့် နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေ ဖြစ်ရမည်။

(၂) ဒီမိုကရေစီရေးနှင့် လူ့အခွင့်အရေးကို အပြည့်အဝ ပြဋ္ဌာန်းကာကွယ်ရမည်။

(၃) ပြည်ထောင်စုမြန်မာနိုင်ငံအတွင်းရှိ တိုင်းရင်းသားလူမျိုးအားလုံးကို နိုင်ငံရေးအရ တန်းတူရည်တူအခွင့်အရေး ရရှိစေရမည်။

(၄) ပြည်ထောင်စုအဖွဲ့ဝင် ပြည်နယ်များကို ဖွဲ့စည်းသောအခါပထဝီအနေအထားအပေါ်အခြေခံ၍ ဖွဲ့စည်းခြင်း မဖြစ်စေဘဲ၊ လူမျိုးကိုအခြေခံသော အမျိုသား ပြည်နယ်များ သာဖြစ်ရမည်။ လက်ရှိနိုင်ငံရေး အခြေအနေအရ ရှိရင်းစွဲ ပြည်နယ် (၇) ခုနှင့် ဗမာပြည်မကို ပြည်နယ်တခုအဖြစ် ဖွဲ့စည်း၍ အမျိုးသား ပြည်နယ် (၈) ပြည်နယ်ကို အခြေခံသော ပြည်ထောင်စုကို ဖွဲ့စည်းရမည်။

(၅) ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များကို ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့် နိုင်ငံရေးအာဏာအပြည့်အဝ အပ်နှင်းထားရမည်။ ဆိုလိုသည်မှာ ပြည်နယ်များအား ဥပဒေပြုအာဏာ၊ အုပ်ချုပ်ရေးအာဏာနှင့် တရားစီရင်ရေးအာဏာ တို့ကို အပြည့်အဝ အပ်နှင်းထားရမည်။ ထို့အပြင် တနိုင်ငံလုံးအတိုင်းအတာဖြင့် ဆောင်ရွက်ရန် ပြည်ထောင်စုအစိုးရကို လွှဲအပ်ထားသော လုပ်ပိုင်ခွင့် အာဏာများမှအပ ကြွင်းကျန်သောလုပ်ပိုင်ခွင့် အာဏာများ (Residual Power) ကို အပ်နှင်းထားရမည်။

(၆) အမျိုးသားပြည်နယ်များတန်းတူရည်တူ ပူးပေါင်း၍ ပြည်ထောင်စုအစိုးရကို ဖွဲ့စည်းရမည်။ ပြည်ထောင်စုအစိုးရအား တနိုင်ငံလုံးအတိုင်းအတာဖြင့် ဆောင်ရွက်မည့် နိုင်ငံတော်ကာကွယ်ရေး၊ ငွေစက္ကူနှင့် ငွေဒင်္ဂါးထုတ်လုပ်ရေး၊ နိုင်ငံခြားဆက်သွယ်ရေးနှင့် အခြားယာယီလွှဲအပ်ထားသော လုပ်ပိုင်ခွင့်အာဏာများကို အပ်နှင်းထားရမည်။ ထို့အပြင် နိုင်ငံတော်အချုပ်အခြာအာဏာသည် ပြည်ထောင်စုအစိုးရ၌သာ တည်စေရမည်။

(၇) ပြည်ထောင်စုလွှတ်တော်တွင် လူမျိုးစုလွှတ်တော် (အထက်လွှတ်တော်) နှင့် ပြည်သူ့လွှတ်တော် (အောက်လွှတ်တော်) ဟူ၍ လွှတ်တော်နှစ်ရပ်ထား ရှိရမည်။ လူမျိုးစုလွှတ်တော်တွင် ပြည်နယ်များမှလွှတ်တော် ကိုယ်စားလှယ်ဦးရေ အညီအမျှ စေလွှတ်ကြရမည်။ သို့မှသာ ပြည်နယ်များ တန်းတူရည်တူ ပူးပေါင်းသော ပြည်ထောင်စုဆိုသည့် အနှစ်သာရပေါ်လွင်မည်။ ပြည်သူ့လွှတ်တော်တွင် လူဦးရေအချိုးအစားအလိုက် လွှတ်တော်ကိုယ်စားလှယ်များကို စေလွှတ်ကြရမည်။ (*)

(*) (ငြိမ်းချမ်းစွာအတူလက်တွဲနေထိုင်ရေးမူဝါဒမှသည် စစ်မှန်သောပြည်ထောင်စု စနစ်ဆီသို့ ပထမတွဲ — စာ ၉၇ – ၉၈)

(၄) UNLD(LA) ၏ဆက်လက်ကြိုးပမ်းမှုများ

UNLD ကို နဝတအစိုးရက ၁၉၉၂ တွင် တဖက်သတ် ဖျက်သိမ်းခဲ့ပါသည်။ ထို့ကြောင့် ပြည်ပနှင့်လွတ်မြောက်နယ်မြေများသို့ ရောက်ရှိလာကြသော ခေါင်းဆောင်များက UNLD ကို ပြည်ထောင်စုတိုင်းရင်းသားလူမျိုးများဒီမိုကရေစီအဖွဲ့ချုပ် (လွတ်မြောက်နယ်မြေ) UNLD(LA) အဖြစ် ၁၉၉၈ တွင် ပြန်လည်ဖွဲ့စည်းခဲ့ ပါသည်။ သက္ကရာဇ် ၂၀၀၁ ခုနှစ် ဇန်နဝါရီလတွင် ကျင်းပခဲ့သော UNLD(LA) ပထမအကြိမ် ညီလာခံတွင် UNLD မှချမှတ်ခဲ့သော လမ်းညွှန်မူ (၇) ချက်ကို ထပ်မံအတည်ပြုခဲ့ ပါသည်။

UNLD(LA) ပထမအကြိမ်ညီလာခံတွင် နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရာတွင် အခြေခံရမည့် လမ်းညွှန်မူ (၇) ချက်ကို ထပ်မံအတည်ပြုပြဋ္ဌာန်း ရုံမက ပြည်နယ်များဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေးလုပ်ငန်းကိုလည်း စနစ်တကျ အကောင်အထည်ဖေါ်ဆောင်ရွက်သွားရန် ဆုံးဖြတ်ခဲ့ပါသည်။ ထိုဆုံးဖြတ်ချက်နှင့် အညီ UNLD(LA) ၏နာယကကြီး Dr. Chao Tzang Yawnghwe က ညီလာခံတွင် တင်သွင်းသော State Constitution, Federalism and Ethnic Self-determination စာတမ်းကိုပါ ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေးလမ်းစဉ်ကြီး၏ လမ်းညွှန်စာတမ်းအဖြစ် အတည်ပြုနိုင်ခဲ့ပါသည်။ (*)

စစ်မှန်သောဖက်ဒရယ်နိုင်ငံတော် ထူထောင်ရေးနှင့် ပြည်နယ်များ၏ဖွဲ့စည်းပုံ အခြေခံဥပဒေများ ရေးဆွဲရေးလုပ်ငန်းသည် တဦးတယောက်၊ အသင်းတဖွဲ့အတွင်း ရှိ လုပ်ဆောင်ရမည့် တာဝန်မဟုတ်ပဲ၊ ပြည်ထောင်စုအတွင်းရှိ တိုင်းရင်းသားလူမျိုး ပေါင်းစုံ၊ နိုင်ငံရေးပါတီပေါင်းစုံနှင့် လူထုလူတန်းစားအသီးသီး ပါဝင်ဆောင်ရွက်ရမည့် တိုင်းပြည်၏ အသက်သွေးကြောသမျှ အရေးကြီးသော လုပ်ငန်းစဉ်ကြီး ဖြစ်ပါသည်။ ထို့ကြောင့် UNLD အနေဖြင့်၊ ၎င်းလုပ်ငန်းကို မိမိဘာသာသီးခြားလုပ်ဆောင် ခြင်းမပြုပဲ၊ တိုင်းရင်းသားလူမျိုးများ၏ လက်နက်ကိုင်နိုင်ငံရေးတပ်ပေါင်းစုကြီး ဖြစ် သည့် **"အမျိုးသားဒီမိုကရေစီတပ်ပေါင်းစု"** (National Democracy Front) ကိုဖိတ်ခေါ်၍ မိမိတို့နှင့် လက်တွဲလုပ်ဆောင်ရန် ကမ်းလှမ်းခဲ့ပါသည်။ NDF ခေါင်း ဆောင်များက အမြော်အမြင်ကြီးမားစွာဖြင့် UNLD(LA) ၏ကမ်းလှမ်းချက်ကို လက်ခံခဲ့သည်နှင့်အညီ UNLD(LA)-NDF ပူးတွဲကော်မတီတရပ်ကိုပါ ၂၀၀၁ ခုနှစ် မတ်ချ်လ (၂၀)ရက်နေ့တွင် ဖွဲ့စည်းနိုင်ခဲ့ပါသည်။ ၎င်းကော်မတီတွင် NDF ဖက်မှ ဥက္ကဋ္ဌကြီး စောဘသင် (KNU ဥက္ကဋ္ဌနှင့် လက်ရှိ NDF ဥက္ကဋ္ဌကြီးဖြစ်နေသူ) ခိုင်စိုး

(*) စာမျက်နှာ ၉၁ တွင်ရှု

နိုင်အောင် (ထိုစဉ်က NDF ၏အထွေထွေအတွင်းရေးမှူး)နှင့် Dr. Sui Khar (CNF နိုင်ငံခြားရေးတာဝန်ခံ) တို့ပါဝင်ပြီး၊ UNLD(LA) ဖက်မှ နာယကကြီး Dr. Chao Tzang Yawnghwe၊ သဘာပတိအဖွဲ့ဝင် ခွန်းမန်းကိုဘန်းနှင့် အတွင်းရေးမှူး ဒေါက်တာဆလိုင်းလျန်မှန်း တို့ပါဝင်ခဲ့ပါသည်။

(၅) UNLD(LA)နှင့် NDF တို့ပူးတွဲကျင်းပသော ပထမအကြိမ်ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးနှီးနှောဖလှယ်ပွဲ။

UNLD(LA) နှင့် NDF တို့၏ ပူးတွဲကော်မတီမှ ဦးဆောင်၍ ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး နှီးနှောဖလှယ်ပွဲ (State Constitutions Seminar) ကို သက္ကရာဇ် ၂၀၀၁ သြဂုတ်လ ၂၀–၂၅ ရက်တွင် ကျင်းပနိုင်ခဲ့သည်။ ယင်းနှီးနှောဖလှယ်ပွဲသည် ပြည်ထောင်စုသမိုင်းတလျှောက်လုံးတွင် ပထမဦးဆုံး ကျင်းပခဲ့သော ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးဆိုင်ရာ နှီးနှောဖလှယ်ပွဲကြီးပင်ဖြစ်ပါသည်။ ထို့ကြောင့် NDF ဥက္ကဋ္ဌကြီး ဗိုလ်ချုပ်ရွှေဆိုင်းက နှီးနှောဖလှယ်ပွဲအဖွင့်မိန့်ခွန်းတွင် အောက်ပါအတိုင်းပြောကြားခဲ့ပါသည်။

ဗိုလ်ချုပ်ရွှေဆိုင်းက

"UNLD(LA) နှင့် NDF ခေါင်းဆောင်များရဲ့ကြိုးပမ်းမှုကြောင့် ဒီ Seminar ကိုကျင်းပနိုင်ခဲ့ခြင်း ဖြစ်ကြောင်း၊ ဒါဟာ ကျနော်တို့ရဲ့ ပြည်ထောင်စုသမိုင်းမှာ တခါမှမကြုံဘူးသေးတဲ့ ထူးခြားလေးနက်တဲ့ Seminar ဖြစ်ကြောင်း၊ အချုပ်အခြာအာဏာပိုင်တဲ့ တိုင်းပြည်တခုမှာ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေဟာ မရှိမဖြစ်လိုအပ်ကြောင်း၊ ထိုနည်းတူ ပြည်ထောင်စုစနစ်မှာလည်း ပြည်နယ်များရဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေဟာ မရှိမဖြစ်လိုအပ်ကြောင်း၊ သို့သော် ပြည်ထောင်စုကို စတင်ဖွဲ့စည်းပြီး လွတ်လပ်ရေးရတဲ့အချိန်ကစပြီး ယခုလို ပြည်နယ်များရဲ့ဖွဲ့စည်းပုံ အခြေခံဥပဒေ ရေးဆွဲရေးလုပ်ငန်းကို တခါဘူးမျှ တိုင်တိုင်ပင်ပင် ဆွေးနွေးမှု မရှိဘူးသေးကြောင်း၊ ထို့ကြောင့် ဒီ Seminar ဟာအရေးကြီးကြောင်း" ပြောကြားခဲ့ပါသည်။ ဗိုလ်ချုပ်ရွှေဆိုင်းမှ ဆက်လက်ပြောကြားရာ၌ "၁၉၄၇ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေကို ဖဆပလကဦးဆောင်ပြီး ရေးဆွဲပြဋ္ဌာန်းခဲ့ကြောင်း၊ အမှန်မှာတော့ ၁၉၄၇ ဖွဲ့စည်းပုံအခြေခံဥပဒေဟာ ပင်လုံစာချုပ်ကို အခြေခံပြီး၊ တိုင်းရင်းသားလူမျိုးအားလုံးရဲ့ လိုအပ်ချက်ကို ဖြည့်ဆည်းပေးရမှာ ဖြစ်ကြောင်း၊ သို့သော် ဖဆပလ ခေါင်းဆောင်များက လွတ်လပ်ရေးအဆောတလျင် ရရှိရေးကိုသာ အာရုံ

စိုက်၍ တိုင်းရင်းသားလူမျိုးများရဲ့ လိုလားချက်ကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေမှာ ကာကွယ်ပြဋ္ဌာန်းနိုင်ခြင်း မရှိခဲ့ကြောင်း၊ လွတ်လပ်ရေးရရှိပြီး နောက်ပိုင်းတွင်လည်း ဖဆပလခေါင်းဆောင်များဟာ စိတ်ပြောင်းပြီး တိုင်းရင်းသားလူမျိုးများရဲ့ လိုလားချက်များကို ဖြည့်ဆည်းပေးရန် စိတ်ဝင်စားမှုမပြခဲ့ကြောင်း၊ ထို့ကြောင့် ရှမ်းခေါင်းဆောင်များရဲ့ ဦးဆောင်မှုနဲ့ ဖက်ဒရယ်လှုပ်ရှားမှုများ ပေါ်ပေါက်ခဲ့ကြောင်း၊ ဒီအချက်မှာ ဦးနုနှင့် နေဝင်းတို့အပေးအယူလုပ်ပြီး အာဏာသိမ်းခဲ့ကြောင်း၊ အာဏာသိမ်းပြီး ၁၉၇၄ မှ မဆလရေးဆွဲတဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေကို လူထုဆန္ဒခံယူပွဲနဲ့ အတင်းအဓမ္မဆန္ဒပေးခိုင်းပြီး ၉၉% ထောက်ခံမှု ရတယ်လို့ ကမ္ဘာကို လိမ်ညာလာခဲ့ကြောင်း၊ ဒီလိုနည်းနဲ့ တပါတီအာဏာရှင်စနစ်ကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေနဲ့ ထူထောင်ခဲ့ကြောင်း။

ထို့ကြောင့် ကျနော်တို့အသစ်တဖန်ထူထောင်မည့် ပြည်ထောင်စုဟာ "ပြည် နယ်ပေါင်းစု၊ ပြည်ထောင်စုဖြစ်ဖို့လိုအပ်ကြောင်း၊ ထို့ကြောင့် ပြည်နယ်များရဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးလုပ်ငန်းစဉ်ဟာ အလွန်အရေးကြီးတဲ့လုပ်ငန်းစဉ်ဖြစ်တဲ့အတွက် ခေါင်းဆောင်များ အင်တိုက်အားတိုက် ပါဝင်လုပ်ဆောင်ကြရန် လိုအပ်ကြောင်း" အကျယ်တဝင့် ရှင်းလင်းပြောကြားခဲ့ပါသည်။

၎င်း Seminar တွင်အခြေခံထား၍ လေ့လာခဲ့သောစာတမ်းမှာ "American Model of State Constitution" ဟူသောစာတမ်းဖြစ်ပါသည်။ ၎င်းစာတမ်းသည် အမေရိကန်ပြည်ထောင်စုရှိ ပြည်နယ်ငါးဆယ်မှ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများကိုအခြေခံ၍၊ ၎င်းတို့ထဲမှ ကောင်းနိုးရာရာများကို စံနမူနာအဖြစ် ထုတ်ယူကာ— အမေရိကန်ပြည်ထောင်စုတွင် ကျင့်သုံးသော ပြည်နယ်များဖွဲ့စည်းပုံအခြေခံဥပဒေ အားလုံး၏အနှစ်သာရကို ပေါ်လွင်ထင်ရှားအောင် ရေးသားထားသော ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ (နမူနာ) ပင်ဖြစ်ပါသည်။

"American Model of State Constitution" စာတမ်းအပြင် ဩစတြေးလျနိုင်ငံတွင် ဖက်ဒရယ်စနစ်ကျင့်သုံးပုံနှင့် ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေကို မည်သို့မည်ပုံရေးဆွဲပြဋ္ဌာန်းခဲ့ကြောင်းနှင့် မည်ကဲ့သို့လက်တွေ့ ကျင့်သုံးခဲ့ကြောင်းကို ဩစတြေးလျမှ ဖွဲ့စည်းပုံအခြေခံဥပဒေဆိုင်ရာ ပညာရှင်တဦးလည်းဖြစ်၊ ဩစတြေးလျနိုင်ငံ Queensland ပြည်နယ်၏ ပြည်နယ် အမတ်တဦးဖြစ်ခဲ့ဘူးသူ Mrs. Janelle Saffin ကို ပညာရှင်အဖြစ်ဖိတ်ခေါ်ပြီး သင်တန်းများကို ပို့ချစေခဲ့ပါသည်။ UNLD(LA) နှင့် NDF တို့ဦးဆောင်၍ ကျင်းပခဲ့သော ပထမအကြိမ်ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး လုပ်ငန်းစဉ် နိဒါန်းဖလှယ်ပွဲတွင် ပြည်နယ် (၇)

ခုမှ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေး ကော်မတီဝင်များ၊ NCUB အောက်တွင် ဖွဲ့စည်းထားသော ပြည်ထောင်စုဖွဲ့စည်းပုံ အခြေခံဥပဒေ ရေးဆွဲရေး ကော်မတီမှ တာဝန်ရှိပုဂ္ဂိုလ်များ၊ နိုင်ငံရေးပါတီအသီးသီးနှင့် တပ်ပေါင်းစုခေါင်းဆောင်များ၊ အမျိုးသမီးအဖွဲ့အစည်းများမှ ကိုယ်စားလှယ်များ၊ လူငယ်အဖွဲ့အစည်းမှကိုယ်စားလှယ်များ စုစုပေါင်း (၆၇) ဦးတက်ရောက်ခဲ့ပါသည်။ ၎င်း Seminar ကို NRP ၏ရံပုံငွေထောက်ပံ့မှုဖြင့် ကျင်းပနိုင်ခဲ့ခြင်းဖြစ်ပါသည်။

UNLD(LA) နှင့် NDF တို့မှူးတွဲ၍ State Constitutions Seminar ကိုကျင်းပရန် ပြင်ဆင်နေသည့်အချိန်တွင်၎င်း၊ Seminar ကျင်းပနေစဉ်တွင်၎င်း၊ Seminar ကျင်းပပြီးသည်အထိ—အချို့သော ဗမာနိုင်ငံရေးသမားများက ယခုကဲ့သို့ ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများ ရေးဆွဲရေးလုပ်ငန်းကို ဆောင်ရွက်နေခြင်းသည် ခွဲထွက်ရေးလမ်းစဉ်ကို သွားနေခြင်းလော?၊ သို့တည်းမဟုတ် Confederation ကို ဦးတည်နေကြပြီလော? ဟူ၍ သို့လောသို့လောဖြင့် မယုံသင်္ကာမှုများ၊ စိတ်ပူပန်မှုများ ပြသခဲ့ကြပါသည်။ ထူးဆန်းသည်မှာ—ထိုသို့ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးလုပ်ငန်းစဉ်ကြီးကို သံသယစိတ်ဖြင့် ဝေဖန်ပုတ်ခတ်သည့် ပုဂ္ဂိုလ်များထဲတွင် NCUB Federal Constitution ရေးဆွဲရေး ကော်မတီမှ ပုဂ္ဂိုလ်အချို့ပင် ပါဝင်ခဲ့ပါသည်။ ထို့ကြောင့် ၎င်းသံသယစိတ်များ၊ မယုံသင်္ကာမှုများ ပပျောက်ကင်းစင် သွားစေရန် Seminar စတုတ္ထနေ့ ညနေပိုင်းအစီအစဉ်တွင် UNLD(LA) နာယကကြီး Dr. Chao Tzang Yawnghwe မှအောက်ပါအတိုင်း ရှင်းလင်းတင်ပြခဲ့ပါသည်။

Dr. Chao Tzang Yawnghwe ၏မိန့်ခွန်း

အခု Workshop ကိုလာလုပ်တဲ့အခါမှာ Federalism အကြောင်းကို လာဆွေးနွေးနေတာမဟုတ်ပေမဲ့၊ ပြည်ထောင်စုအကြောင်း ခဏခဏပေါ်လာပါတယ်။ Federalism ဆိုရင် တချို့ဗမာတွေက **"ခွဲထွက်ခြင်း"** လို့သတ်မှတ်ပါတယ်။ တချို့တိုင်းရင်းသားတွေကျပြန်တော့ Federalism ဟာ **"ဗမာလက်အောက်မှာနေခြင်း"** လို့သတ်မှတ်ပြန်တယ်။ ဒါဟာကြီးမားတဲ့ပြဿနာပဲ။ ဒါကြောင့် ကျနော်တို့တိုင်းပြည် ဒုက္ခရောက်နေတာ။ ကျနော်တို့ရဲ့ခလေး၊ မိန်းမ၊ ပြည်သူလူထုတရပ်လုံး ဘယ်လောက်ဒုက္ခရောက်နေပြီးလဲ? ဘယ်နှစ်နှစ် ဘယ်နှစ်မိုးရှိပြီလဲ? ဒါကိုလေးလေးနက်နက်စဉ်းစားကြပါ။

၁၉၆၂ အာဏာသိမ်းပြီးနောက်ပိုင်း နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေ—Constitution—ဆိုတာ ဒီတိုင်းပြည်မှာမရှိတော့ဘူး။ ပြည်ထောင်စုဆိုတာလည်း

မရှိတော့ဘူး။ ဘာဖြစ်လို့လဲဆိုတော့—1947 Constitution ကိုသူတို့ဖျက်သိမ်းလိုက်တယ်ဆိုတော့ ပင်လုံစာချုပ်ကိုလည်း သူတို့ဖျက်ဆီးပစ်တဲ့သဘော ဖြစ်တယ်။ ဒါကြောင့် ဘာစာချုပ်မှမရှိတော့ဘူး။ ဒါဟာ နိဂ်ံးရေးအရမှန်တယ်။ ဥပဒေအရလည်းမှန်တယ်။ ဒါပေမဲ့ ..... ဒီလိုသာဆက်နေရင် ကျနော်တို့အချင်းချင်း ဆက်တိုက်ကြမယ်။ နှစ်ပေါင်းများစွာ ဆက်ပြီးတိုက်ကြမယ်။ လူတွေသေကြမယ်။ ဒါကို လေးလေးနက်နက် စဉ်းစားကြပါ။

Federalism ဆိုတာ အားလုံးအကျိုးရှိအောင် ပူးပေါင်းပြီး လုပ်သွားတဲ့စနစ်ဖြစ်တယ်။ အထက်အောက်ဖိနှိပ်ချုပ်ချယ်တဲ့ စနစ်မဟုတ်ဘူး။ ဒါကြောင့် Federalism က "ဗမာလက်အောက်ခံဖြစ်သွားရေး" ဆိုတာမဟုတ်ဘူး။ ဒီလိုမဟုတ်ပဲ—Federalism ကဗမာလက်အောက်ခံဖြစ်သွားရေး ဖြစ်တယ်ဆိုပြီး တဖက်ကပြော၊ တဖက်မှာလည်း Federalism က **"ခွဲထွက်ရေး"** ဖြစ်တယ်ဆိုပြီး ပြောနေရင်—အားလုံးသေကြေပျက်ဆီးတဲ့ အထိတိုက်ကြရလိမ့်မယ်။ လူဆိုတာ တိုက်ရဲပါတယ်။ ကျနော်တို့လည်း တိုက်ခဲ့ပါတယ်။ ဒါပေမဲ့ ဆက်တိုက်နေရင်—ဘယ်သူအကျိုးရှိမလဲ?

တချို့ကပြောတယ်။ ငါတို့ကလွတ်လပ်တဲ့လူမျိုး၊ စစ်တပ်က ကျူးကျော်နေလို့သာ ဒီမှာနေနေရတာတဲ့။ ကျနော်တို့ ပြောတာကိုလက်မခံကြဘူးတဲ့... ဒီလိုပြောနေရင် တရုတ်ကိုပဲ ဥပမာကြည့်ပါ။ ကျနော်တို့ပြည်နယ်ထဲက တပြည်နယ်ခွဲထွက်သွားရင် သူတို့လက်ခံမလား? လွတ်လပ်ရေးဆိုတာလုပ်တတ်ရင် ရပါတယ်။ ကျည်ဆံတတောင့်မှ မထွက်လဲလုပ်လို့ရပါတယ်။ ဒီပြည်ထောင်စုကို ဗမာတွေက လုပ်လို့ကျနော်တို့ခေါင်းပေါ်မှာ လာစွပ်နေတာလား? ဒါဟာ ပင်လုံစာချုပ်ကြောင့် ဖြစ်လာတာ။ "We are the founding nations of the Union of Burma" ဒါ ကျနော်တို့အားလုံးလုပ်လို့ ဖြစ်လာတာပဲ။ ကျွန်ဖြစ်နေတာ မဟုတ်ဘူး။ ပြည်ထောင်စုဖြစ်ခြင်းဟာ **"ဗမာလက်အောက်ရောက်သွားတယ်"** ဆိုတာ မမှန်ဘူးထင်ပါတယ်။

ဒီမှာရောက်ရှိလာတဲ့ ခေါင်းဆောင်များဟာ လူမျိုးအသီးသီးရဲ့ ခေါင်းဆောင်များ ဖြစ်ပါတယ်။ လူမျိုးအသီးသီးမှာ Right of Self-determination ရှိပါတယ်။ ဒါကို မသုံးဖို့ ပြောနေတာမဟုတ်ပါဘူး။ ဒါပေမဲ့—ကျနော်တို့တိုင်းပြည်က ဘယ်လောက်ဖျက်ဆီးနေပြီလဲ? လယ်ရှိတယ်—လယ်မလုပ်နိုင်ကြဘူး။ အိမ်ရှိတယ်—အိမ်မှာမနေနိုင်ကြဘူး။ ဒီပြဿနာကို ဘယ်လိုဖြေရှင်းကြမလဲ?။ Federal ဆိုတာ ကျွန်ဖြစ်တာလည်း မဟုတ်ဘူး။ ခွဲထွက်တာလည်း မဟုတ်ဘူး။ ဒီကိစ္စကို လေးလေးနက်နက်သုံးသပ်ကြပါ။ စဉ်းစားကြပါ။

အခုကျနော်တို့ရဲ့ State Constitutions Drafting Process မှာ—အခုချက်ခြင်း ပြည်ထောင်စုဖွဲ့စည်းရေး၊ မဖွဲ့စည်းရေးဆိုတာ ခဏသေးချိတ်ထားအုံး။ ကျနော်တို့ဘဝကို ဘယ်လိုတည်ဆောက်ကြမလဲ?၊ ကျနော်တို့ရဲ့ Self-determination အရ ဘယ်လိုအုပ်ချုပ်သွားမယ်ဆိုတာကို လေ့ကျင့်ခန်းတရပ်လာလုပ်တာပဲဖြစ်တယ်။ ရှေ့ဆက်ပြီး ဒီလုပ်ငန်းစဉ်ကို ဘယ်လိုဆက်လုပ်မယ်ဆိုတာကို ပြင်ဆင်နေတာဖြစ်ပါတယ်။ State Constitutions ရေးရင် ဗမာကျွန်ဖြစ်သွားမယ်ဆိုတာ လုံးဝမဟုတ်ပါဘူး။ State Constitutions တွေရေးလို့ ခွဲထွက်သွားမယ်ဆိုတာလည်း လုံးဝမှားတယ်။

ဒါကြောင့်—ဒီ State Constitutions Drafting Process မှာပြင်ပြင်ဆင်ဆင် လုပ်ကြပါ။ တချို့ခေါင်းဆောင်များပြောသလို "စစ်အာဏာရှင်စနစ်ကျဆုံးသွားရင် တော်ပါပြီ" ဆိုတာတော့ ဟုတ်ပြီ။ ဒါပေမဲ့—စစ်အစိုးရပြုတ်ကျသွားရင် ကျနော်တို့အချင်းချင်းဆက်ပြီး သတ်ဖြတ်ကြမလား?။ စစ်အစိုးရက ဒီလိုပဲ ဝါဒဖြန့်ပါတယ်။ ဝါတို့စစ်တပ်သာမရှိရင် တိုင်းရင်းသားတွေအချင်းချင်း သတ်ဖြတ်ကုန်ကြမယ်။ Bosnia လိုဖြစ်သွားမယ်။ Rawanda လိုဖြစ်သွားမယ်လို့ ဝါဒဖြန့်နေတယ်။ ဒီလို ဝါဒဖြန့်မှုကို ခပ်များများက ယုံနေတယ်။ အိမ်နီးချင်းနိုင်ငံများကလည်း ဒီလိုဝါဒဖြန့်တာကို ယုံကြည်နေကြတယ်။ ဒါကြောင့် ဒီနေရာမှာ ကျနော်တို့မလိမ္မာဘူး၊ မပါးနပ် ဘူးဆိုရင်—ကျနော်တို့လိုရာကိုပဲ ဆွဲမယ်ဆိုရင်—ဆွဲနိုင်တယ်။ ဒါပေမဲ့ အကျိုးရှိလား၊ မရှိဘူးလား ဆိုတာကို စဉ်းစားကြပါ။ တချို့က Sovereignty နဲ့ပတ်သက်ပြီး အကျယ်အကျယ်ငြင်းခုန် နေကြတယ်။ Federal ကိုလက်ခံရင် Sovereignty ဟာ Federal, State, Local အဆင့်ဆင့်မှာ အပြည့်အဝရှိတယ်ဆိုတာ နားလည်သင့်တယ်။ စဉ်းစားသင့်တယ်။ ဒါကျနော်တို့ရင်ဆိုင်နေရတဲ့ ပြဿနာပဲ။

Federal ကို ကျနော်တို့လက်မခံရင်—ကျနော်တို့ကလည်း လက်မခံရင်၊ ဗမာလူမျိုးတွေကလည်း လက်မခံရင်—ကျနော်တို့အားလုံး သေကြေပျက်ဆီးသွားကြဖို့ပဲရှိတယ်။ ဒါကိုစဉ်းစားကြပါ။ ကျေးဇူးတင်ပါတယ်။

(၆) ဂျာမဏီနိုင်ငံ၏ဖက်ဒရယ်စနစ်လေ့လာရေးခရီးနှစ်ခေါက်

ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး လုပ်ငန်းစဉ်ကြီးကို လက်တွေ့အကောင်အထည်ဖော်ရာ၌ ကြုံတွေ့ရသော အခက်အခဲတခုမှာ—"အတွေ့အကြုံ" မရှိခြင်းပင်ဖြစ်ပါသည်။ ကျွန်ုပ်တို့တိုင်းပြည်တွင် ပြည်ထောင်စုကို စတင်

ဖွဲ့စည်းသည့်အချိန်မှ ယနေ့တိုင် ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို ရေးဆွဲပြဋ္ဌာန်းနိုင်ခြင်း တခါဘူးမျှ မရှိချေ။ ထို့ကြောင့် ကျွန်ုပ်တို့မှာ လက်တွေ့လုပ်ကိုင်ဆောင်ရွက်ဘူးသော အတွေ့အကြုံမရှိချေ။ ထို့ကြောင့် သူများတိုင်းပြည်မှ အတွေ့အကြုံများကို သင်ခန်းစာယူရန် အထူးလိုအပ်လာပါသည်။

ထိုလိုအပ်ချက်နှင့်အညီ Brussels တွင်ရုံးစိုက်ထားသည့် Euro-Burma Office နှင့် ဂျာမဏီနိုင်ငံမှ Friendrich-Ebert-Stiftung တို့၏ အကူအညီဖြင့် ဂျာမဏီနိုင်ငံသို့ ဖက်ဒရယ်ပြည်ထောင်စုနှင့် ပြည်နယ်များဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေးဆိုင်ရာ လေ့လာရေးခရီးနှစ်ကြိမ်တိုင်တိုင် သွားရောက်ခဲ့ပါသည်။ ပထမအကြိမ်ခရီးစဉ်ကို သက္ကရာဇ် ၂၀၀၁ ဒီဇင်ဘာလ (၆) ရက်မှ (၁၅) ရက်အထိငင်၊ ဒုတိယအကြိမ်ခရီးစဉ်ကို သက္ကရာဇ် ၂၀၀၂ နိုဝင်ဘာလ (၂၅) ရက်မှ ဒီဇင်ဘာလ (၅) ရက်နေ့အထိငင်း သွားရောက်လေ့လာခဲ့ပါသည်။ လေ့လာရေးခရီးစဉ်နှစ်ခေါက်စလုံးတွင် ဘယ်လ်ဂျီယန်နိုင်ငံကိုပါ သွားရောက်လေ့လာခွင့်ရရှိခဲ့ပါသည်။

ခရီးစဉ်နှစ်ခေါက်စလုံးတွင် ပြည်နယ် (၇)ခုမှ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေး ကော်မတီဝင်များ၊ (ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးကော်မတီ မရှိသေးသော ရခိုင်ပြည်နယ်မှ ကိုယ်စားလှယ်များလည်း နှစ်ကြိမ်စလုံးပါဝင်ခဲ့ကြပါသည်)။ ဗမာပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး လေ့လာရေးကော်မတီမှ ကိုယ်စားလှယ်၊ NCUB မှကြီးမှူးဖွဲ့စည်းပေးထားသော ပြည်ထောင်စုမြန်မာနိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး ကော်မတီမှ ကိုယ်စားလှယ်များနှင့် မြန်မာနိုင်ငံအမျိုးသမီးအဖွဲ့ချုပ် (Women's League of Burma) မှကိုယ်စားလှယ်များ၊ ပထမအကြိမ်တွင် (၁၇) ဦးနှင့် ဒုတိယအကြိမ်တွင် (၂၀) ဦး လိုက်ပါခဲ့ကြပါသည်။ ခရီးစဉ်နှစ်ကြိမ်စလုံးကို "Federalism: A German-Burmese Dialogue" ဟူသောခေါင်းစဉ်ဖြင့် ဘာလင်မြို့တွင် Seminar ကျင်းပခြင်းဖြင့် အစပြုခဲ့ပါသည်။ ထို Seminar သို့ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ လေ့လာရေးအဖွဲ့သားများသာမက NCGUB ဝန်ကြီးချုပ် ဒေါက်တာစိန်ဝင်းနှင့် Euro-Burma Office မှ Director Harn Yawnghwe တို့ တက်ရောက်အားပေးခဲ့ပါသည်။ ခရီးစဉ်နှစ်ကြိမ်စလုံးကို UNLD(LA) နှင့် NDF တို့မှ ပူးတွဲဖွဲ့စည်းထားသော Supporting Committee for State Constitutions (SCSC) ဥက္ကဋ္ဌ Dr. Chao Tzang Yawnghwe နှင့် Coordinator ဒေါက်တာဆလိုင်းလျန်မှန်း တို့ကဦးဆောင်သွားခဲ့ကြပါသည်။

ထို့အပြင် ဂျာမဏီနိုင်ငံရှိ Burma Bureau Cologne အဖွဲ့နှင့် Burma Project Berlin တို့ကလည်း ခရီးစဉ်နှစ်ခေါက်စလုံးတွင် ကူညီပံ့ပိုးမှုများ ပေးသွားခဲ့ကြပါသည်။

ပထမအကြိမ် ဂျာမဏီလေ့လာရေးခရီးစဉ်တွင်ပါဝင်သူများ

(၆ – ၁၅ ဒီဇင်ဘာလ ၂၀၀၁)

(၁)	Dr. စင်ဇန့်ယောင်ဝေ	SCSC ဥက္ကဋ္ဌ– ခရီးစဉ်အဖွဲ့ခေါင်းဆောင်
(၂)	Dr. လျန်မှန်းဆာခေါင်း	SCSC- Coordinator
(၃)	Dr. စိန်ဝင်း	ဝန်ကြီးချုပ် (ပြည်ထောင်စုမြန်မာနိုင်ငံ အမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၄)	Harn Yawnghwe	Director, Euro Burma Office
(၅)	Dr. သောင်းထွဋ်	ကမ္ဘာ့ကုလသမဂ္ဂကိုယ်စားလှယ် (ပြည်ထောင်စုမြန်မာနိုင်ငံအမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၆)	ဦးသိန်းဦး	တရားရေးဝန်ကြီး (ပြည်ထောင်စုမြန်မာနိုင်ငံအမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၇)	ဦးအောင်ထူး	ဖက်ဒရယ် (မူကြမ်း) ရေးဆွဲရေးကော်မတီ
(၈)	ဂေါင်ဒီ	ကချင်ပြည်နယ်ကိုယ်စားလှယ်
(၉)	စောလှဟင်နရီ	ကရင်ပြည်နယ်ကိုယ်စားလှယ်
(၁၀)	ရွှေမျိုးသန့်	ကရင်နီပြည်နယ်ကိုယ်စားလှယ်
(၁၁)	မိုင်ချင်းချင်း	ချင်းပြည်နယ်ကိုယ်စားလှယ်
(၁၂)	နိုင်ဆွန်ထောင်	မွန်ပြည်နယ်ကိုယ်စားလှယ်
(၁၃)	ရှယ်လီဆိုင်	ဿမ်းပြည်နယ်ကိုယ်စားလှယ်
(၁၄)	ခိုင်မျိုးခိုင်	ရခိုင်ပြည်နယ်ကိုယ်စားလှယ်
(၁၅)	ဦးသန်းထွဋ်	ဗမာပြည်နယ်ကိုယ်စားလှယ်
(၁၆)	နန်းဌေးဌေးဝင်း	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၁၇)	နော်စီဖိုးရာ	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၁၈)	ဦးနွယ်အောင်	Burma Bureau, Cologne
(၁၉)	ဦးရဲမြင့်	Burma Project, Berlin

ဒုတိယအကြိမ် ဂျာမဏီလေ့လာရေးခရီးစဉ်တွင်ပါဝင်သူများ

(၂၅ နိုဝင်ဘာလ – ၅ ဒီဇင်ဘာလ ၂၀၀၂)

(၁)	Dr. စင်ဇန့်ယောင်ဒေ့	SCSC ဥက္ကဋ္ဌ– ခရီးစဉ်အဖွဲ့ခေါင်းဆောင်
(၂)	Dr. လျန်မှုန်းဆာခေါင်း	SCSC- Coordinator
(၃)	Dr. စိန်ဝင်း	ဝန်ကြီးချုပ် (ပြည်ထောင်စုမြန်မာနိုင်ငံ အမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၄)	Harn Yawnghwe	Director, Euro Burma Office
(၅)	Dr. သောင်းထွဋ်	ကမ္ဘာ့ကုလသမဂ္ဂကိုယ်စားလှယ် (ပြည်ထောင်စုမြန်မာနိုင်ငံအမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၆)	ဦးသိန်းဦး	တရားရေးဝန်ကြီး (ပြည်ထောင်စုမြန်မာနိုင်ငံအမျိုးသားညွှန့်ပေါင်းအစိုးရ)
(၇)	ဦးရဲထွဋ်	ဖက်ဒရယ် (မူကြမ်း) ရေးဆွဲရေးကော်မတီ
(၈)	မခေါ်ခွန်ဆာ	ကချင်ပြည်နယ်ကိုယ်စားလှယ်
(၉)	စောလှဟင်နရီ	ကရင်ပြည်နယ်ကိုယ်စားလှယ်
(၁၀)	ရွှေမျိုးသန့်	ကရင်နီပြည်နယ်ကိုယ်စားလှယ်
(၁၁)	Dr. ဗွမ်ဆွန်	ချင်းပြည်နယ်ကိုယ်စားလှယ်
(၁၂)	နိုင်ဆွန်ထောင်	မွန်ပြည်နယ်ကိုယ်စားလှယ်
(၁၃)	ရှယ်လီဆိုင်	သျှမ်းပြည်နယ်ကိုယ်စားလှယ်
(၁၄)	ခိုင်မျိုးခိုင်	ရခိုင်ပြည်နယ်ကိုယ်စားလှယ်
(၁၅)	ဦးသန်းထွဋ်	ဗမာပြည်နယ်ကိုယ်စားလှယ်
(၁၆)	နန်းဌေးဌေးဝင်း	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၁၇)	နော်စီဖိုးရာ	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၁၈)	နော်ထူးဖော	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၁၉)	နန်းယိင်းလဝ်	မြန်မာနိုင်ငံအမျိုးသမီးများအဖွဲ့ချုပ်
(၂၀)	ဦးနွယ်အောင်	Burma Bureau, Cologne
(၂၁)	ဦးရဲမြင့်	Burma Project, Berlin

Federalism: A German - Burmese Dialogue

Federalism အကြောင်းကိုလေ့လာသောအခါ တကမ္ဘာလုံးက ပုံသေလက်ခံထားသော Federal စနစ်သပ်သပ် ဟူ၍မရှိကြောင်းကို တွေ့ရပါသည်။ မိမိတို့တိုင်းပြည်နှင့် လူမျိုးများ၏အခြေအနေ၊ သမိုင်းနောက်ခံ၊ ပထဝီအနေအထားနှင့် လက်ရှိနိုင်ငံရေးဖြစ်ပေါ်ပြောင်းလဲမှုများအပေါ် အခြေခံ၍ မိမိတို့အခြေအနေနှင့် သင့်တင့်လျောက်ပတ်အောင် ကျင့်ကြံသွားကြသည်ကို တွေ့ရပါသည်။ ထို့ကြောင့် ဂျာမဏီပထမခရီးစဉ်တွင် ဂျာမဏီနိုင်ငံ၌ ဖက်ဒရယ်စနစ်စတင်ကျင့်သုံးခဲ့ပုံ သမိုင်းကြောင်း၊ ဂျာမဏီနိုင်ငံ၏ ဖက်ဒရယ်စနစ်ထူးခြားချက်များ၊ ပြည်ထောင်စုအစိုးရနှင့် ပြည်နယ်များအစိုးရများအကြား နိုင်ငံရေးအာဏာခွဲဝေသုံးစွဲပုံ၊ ဂျာမဏီနိုင်ငံရှိ ပြည်နယ်အစိုးရများ၏ ဂုဏ်အင်္ဂါရုပ်များနှင့် ထူးခြားချက်များကို အဓိကထား၍ လေ့လာခဲ့ရပါသည်။ ထိုကြောင့် ဘာလင်မြို့တွင် "Federalism: A German-Burmese Dialogue Seminar" ကိုကျင်းပပြီး၊ Hanova University ရှိ "Institute for Federal Studies (Deutsches Institut fur Federalismusforschung) ကိုသွားရောက်ပြီး ဂျာမဏီနိုင်ငံ၏ ဖက်ဒရယ်စနစ်အကြောင်းကိုငင်း၊ Rheinland Ptalz ပြည်နယ်၏မြို့တော် Mainz မြို့ကိုသွားပြီး ၎င်းပြည်နယ်၏ ဖွဲ့စည်းအုပ်ချုပ်ပုံကိုငင်း၊ ကိုယ်တိုင်ကိုယ်ကျ သွားရောက်လေ့လာခဲ့ကြပါသည်။ (၎င်းအပြင် အခြားမြို့များဖြစ်သည့် ဥပမာ Bonn, Cologne စသည့်မြို့များကိုလည်း သွားရောက်လေ့လာခဲ့ကြပါသည်။ သို့ရာတွင် ဤအစီရင်ခံစာသည် ခရီးသွားမှတ်တမ်းမဟုတ်သောကြောင့် ခရီးစဉ်ကို အသေးစိပ်ဖော်ပြခြင်းမပြုပဲ သင်ကြားလေ့လာမှုများကိုသာ ဦးစားပေးတင်ပြသွားပါမည်)။

ဂျာမဏီနိုင်ငံ၏ဖက်ဒရယ်စနစ်အကြောင်း (အကျဉ်းချုပ်)

ဂျာမဏီနိုင်ငံ၏ဖက်ဒရယ်စနစ်အကြောင်းကို Hanova တက္ကသိုလ်ရှိ Institutes for Federal Studies ဌာနမှ ပါမောက္ခ Hans-Peter Schneider နှင့် Dr. Jutta Kramer တို့၏ပို့ချချက်များကို အကျဉ်းချုံး၍ အောက်ပါအတိုင်း ဖော်ပြလိုက်ပါသည်။

နောက်ခံသမိုင်း
[Federal Element in the Holy Roman Empire of the German Nation]

ပါမောက္ခကြီး Hans-Peter Schneider ၏ပို့ချချက်အရ—ဂျာမဏီအပါအဝင် အလယ်ပိုင်းဥရောပရှိ ဖက်ဒရယ်ပြည်ထောင်စုစနစ်သည် အလယ်ခေတ်တွင်

စတင် ကျင့်သုံးခဲ့သော စနစ်ပင်ဖြစ်ကြောင်းသိရပါသည်။ ခရစ်သက္ကရာဇ် ၁၃၅၆ ခုနှစ်တွင် "Golden Bull" ဟုခေါ်တွင်သော Holy Roman Empire ၏ ဖွဲ့စည်းအုပ်ချုပ်ပုံစနစ်ကို ပြဋ္ဌာန်းကျေညာသောအခါ၊ ဂျာမဏီတွင် ပဒေသရာဇ်နယ်မြေအလိုက် ရွေးကောက်တင်မြှောက်ခြင်းခံရသော ဘုရင်များ [An elected monarchy based on a feudal system legitimized by the nobility of the Estates] ဖြင့်အုပ်ချုပ်သည့်စနစ်ကို စတင်ကျင့်သုံးခဲ့ပါသည်။ ထိုစဉ်က ဂျာမဏီရှိ ပဒေသရာဇ် နယ်ပယ် (၇)ခုမှ မြို့စား (၇)ပါး (နောင်တွင်နယ် ၉–ခုဖြစ်သွားခဲ့) တို့က ၎င်းတို့အထဲ မှ တဦးကို အင်ပါယာအဖြစ် ရွေးချယ်ခဲ့ရပါသည်။ ၎င်းမြို့စား ၉–မင်းသား (Princes) များကို Electors (Kurfursten) ဟုခေါ်ခဲ့ပါသည်။

အင်ပါယာရွေးချယ်ပိုင်ခွင့် (၀၊) အရွေးချယ်ပိုင်ခွင့်ရှိသော ၎င်းမြို့စားကြီးများကို စုပေါင်း၍ "League of Electors" ဟူ၍ခေါ်ဝေါ်ခဲ့ပါသည်။ အမှန်စင်စစ် ထိုကဲ့သို့အုပ်ချုပ်ရေးနယ်တွင် "League of Electors" ဟုခေါ်ဝေါ်ခဲ့ခြင်းမှာ—ဘာသာရေးနယ်ပယ်၏ အုပ်ချုပ်ရေးစနစ်မှ ပုံစံကူးချသွားခြင်းတရပ်လည်း ဖြစ်ပါသည်။ အလယ်ခေတ်တွင် အုပ်ချုပ်ရေးနှင့် ဘာသာရေးအလွန်နီးစပ် ခဲ့ပါသည်။ သက္ကရာဇ် ၁၂၂၀ ခုနှစ်တွင် Cologne, Mainz နှင့် Trier တို့မှ ဘာသာရေးဂိုဏ်းချုပ်ကြီးများကို Federick II က အခွန်တော်များကောက်ယူပိုင်ခွင့်၊ ငွေကြေးသွန်းလုပ်ခွင့်နှင့် တရားစီရင်ခွင့်အာဏာများ ပေးအပ်ခဲ့ဘူးပါသည်။ ဤနည်းဖြင့် ရွေးချယ်တင်မြှောက်ခြင်းခံရသော မြို့စားကြီးများ (Electors) များသည် တောတောင်ရေမြေတို့၏ အရှင်သခင်များဟု တင်စားခြင်းခံရကာ ပဒေသရာဇ်မင်းများ *"domini terrae"* (Lords of the Land) အဖြစ် Henry VII ကအသိအမှတ်ပြုပေးခဲ့ရပါသည်။

ဥရောပတွင် ဘာသာရေးပြုပြင်ပြောင်းလဲမှုကြောင့် မာတင်လူသား (Martin Luther) ဦးဆောင်သော Protestant Church နှင့် ပုပ်ရဟန်းမင်းဦးဆောင်သော Roman Catholic Church အကြား၊ ခရစ်ယာန်ဘာသာရေးဂိုဏ်း ၂–ခု အကြား အနှစ်သုံးဆယ် စစ်ပွဲဖြစ်ပွားခဲ့ပါသည်။ ထိုစစ်ပွဲကို သက္ကရာဇ် ၁၆၄၈ ခုနှစ်တွင် Westphalia တွင် ချုပ်ဆိုခဲ့သော ငြိမ်းချမ်းရေးစာချုပ်အရ အဆုံးသတ်နိုင်ခဲ့ပါသည်။ ၎င်း ငြိမ်းချမ်းရေးစာချုပ်အရ—ဂျာမဏီရှိနယ်မြေ ၉–ခုသည်လည်း လွတ်လပ်သော နယ်မြေများ ဖြစ်လာခဲ့ကြရပါသည်။

Westphalia ငြိမ်းချမ်းရေးစာချုပ်ကို ချုပ်ဆိုပြီးနောက်ပိုင်းတွင် လွတ်လပ်ရေးနှင့်အတူ နိုင်ငံရေးအတွေးအခေါ် ပြဿနာတရပ် ဥရောပတွင်ပေါ်ပေါက်ခဲ့ပါသည်။ ယင်းပြဿနာသည် အခြားမဟုတ် "အချုပ်အချာအာဏာပိုင်ဆိုင်မှု" ဟူသော ပြဿနာပင်ဖြစ်ပါသည်။ ပြဿနာ၏ အရင်းအမြစ်မှာ—အချုပ်အချာအာဏာ

(Sovereignty) သည် Westphalia စာချုပ်အရ လွတ်လပ်ရေးရရှိကြသော နယ်မြေ (ဝါ) တိုင်းပြည်များတွင် ရှိနေသလား? သို့တည်းမဟုတ် ရိုမန်အင်ပါယာ (Holy Roman Empire)တွင်ဆက်လက် တည်ရှိနေသလား? ဟူသောပြဿနာပင်ဖြစ်ပါသည်။

အချုပ်အချာအာဏာပိုင်ဆိုင်မှု (Sovereignty) နှင့်ပတ်သက်၍ ဥရောပတွင်လုံးတွင် အကြီးအကျယ်ဆွေးနွေးငြင်းခုန်မှုများ Westphalia စာချုပ်မချုပ်ခင်ကတည်းက ပညာရှင်များနှင့် နိုင်ငံရေးသမားများက စတင်ခဲ့ခြင်းဖြစ်ပါသည်။ ဥပမာ—ပြင်သစ်ပညာရှင် Jean Bodin က "Six Livres de la Repbulique" ဟူသော စာအုပ်ကို ၁၅၇၆ ခုနှစ်တွင် ထုတ်ဝေခဲ့ပြီး၊ **"နိုင်ငံတော်၏အချုပ်အချာအာဏာ"** ဆိုသောကိစ္စရပ်များကို ဆွေးနွေးတင်ပြခဲ့ပါသည်။ သူက **"နိုင်ငံတော်၏အာဏာကို ဗဟိုကချုပ်ကိုင်ထားရမည့်အပြင် နိုင်ငံတော်၏အချုပ်အချာအာဏာသည် ဘုရင်ထံတွင်သာ ရှိစေရမည်"** ဟုပြောကြားခဲ့ပါသည်။ [The authority of the State should be centralized, absolute and indivisible; and, secondly, the supreme sovereign power should reside in a monarch answerable only to God and natural law] ဟုရေးသားခဲ့ပါသည်။ Bodin ၏အဆိုသည် ဗဟိုဦးစီးစနစ် (ရောမအင်ပါယာ၏အာဏာ) နှင့် လွတ်လပ်စတိုင်းပြည်၏ ဘုရင်အာဏာကို နှစ်ခုစလုံးအသိအမှတ်ပြုသော သဘောရှိခဲ့ပါသည်။

ဆိုလိုသည်မှာ Sovereignty သည်လွတ်လပ်သော နယ်မြေ၏ရှင်ဘုရင်များနှင့်သော်၎င်း၊ ရောမအင်ပါယာလက်ထဲတွင်သော်၎င်း ၂-ခုစလုံးမှာရှိသည် ဟူ၍ဆိုခဲ့ပါသည်။ Professor Schneider ရဲ့စကားအရ— Bodin used the term "sovereignty" to experss a unified state power, then neither the Empire on the one hand nor the territorial states on the other hand could simultaneously be considered sovereign.

Bodin ၏ နိုင်ငံရေးအတွေးအခေါ်သည် ခေတ်သစ်ဖက်ဒရယ်စနစ်ပေါ်ထွန်းလာရေးအတွက် လမ်းစပြုပြင်မှုပင် ဖြစ်ပါသည်။ Westphalia ငြိမ်းချမ်းရေးစာချုပ်ချုပ်ဆိုပြီးနောက်ပိုင်း—အချုပ်အချာအာဏာပိုင်နိုင်ငံတော် ဟူသော စကားကို တဖက်မှာ တွင်တွင်ကျယ်ကျယ်ကျင့်သုံးလာခဲ့သလို၊ Martin Luther ဦးဆောင်ခဲ့သော ဘာသာရေးပြုပြင်ပြောင်းလဲမှု (Protestant Reformation) နောက်ပိုင်းတွင်လည်း ဖက်ဒရယ်စနစ်ကိုပါ ပို၍တွင်တွင်ကျယ်ကျယ် ကျင့်သုံးလာခဲ့ပါသည်။ ဥပမာအားဖြင့်—ဆွစ်ဇာလန်နိုင်ငံမှ ခရစ်ယာန်ဓမ္မအတွေးအခေါ်ရှင် Heinrich Bullinger ရေးသားခဲ့သော "The One and Eternal Testament on Covenant of God" ဟူသောစာအုပ်သည် ဥရောပတွင်သာမက အမေရိကန်ပြည်ထောင်စုတွင် ဖက်ဒရယ်နိုင်ငံထူထောင်နိုင်ရေးအတွက် အခြေခံအကျဆုံးသော

အတွေးအခေါ်များကို မျိုးစေ့ချပေးသည့် စာအုပ်ဟု ခေတ်သစ်နိုင်ငံရေးသိပ္ပံပညာရှင်များက ခေါ်ဆို နေကြပါသည်။

ဤသို့ဖြင့် ၁၆၄၈ တွင် Westphalia ငြိမ်းချမ်းရေးစာချုပ်ကို ချုပ်ဆိုပြီးနောက်ပိုင်း၊ ကမ္ဘာ့သမိုင်းတွင် "အချုပ်အချာအာဏာပိုင်သော လွတ်လပ်သည့်နိုင်ငံတော်များ" ဟူသော နိုင်ငံရေးစနစ်သစ်များ ပေါ်ပေါက်လာခဲ့ပါသည်။ ယင်းနှင့်အတူ ရောမအင်ပါယာ (Holy Roman Empire) နှင့် လွတ်လပ်သောနိုင်ငံများအကြား နိုင်ငံတော်၏အာဏာများကို ခွဲဝေကျင့်သုံးခြင်း ဆိုသော အုပ်ချုပ်ရေးစနစ်သစ်လည်း ပေါ်ထွန်းခဲ့ပါသည်။ ယင်းစနစ်ကို နောင်သောအခါ အစိုးရနှစ်ရပ်အကြားတွင် အာဏာခွဲဝေကျင့်သုံးသောစနစ် (၀၂) ဖက်ဒရယ်စနစ် ဟူ၍ ခေါ်ဆိုလာခဲ့ရပါသည်။

နပိုလီယံစစ်ပွဲအပြီးဂျာမန် **Confederation**

နပိုလီယံစစ်ပွဲကြောင့် Holy Roman Empire ကြီး ပြိုကွဲသွားခဲ့ပါသည်။ သို့ရာတွင် နပိုလီယံစစ်ပွဲအပြီးတွင် စာချုပ်ချုပ်ဆိုထားသည့် "ပါရီငြိမ်းချမ်းရေးစာချုပ်" [Paris Peace Treatry of 1814] အရ ဂျာမဏီမှ လွတ်လပ်သော နယ်မြေများကို ပြန်လည်ထူထောင်၍၊ ၎င်းတို့ကို စုပေါင်းကာ Conferderation တခုထူထောင်ရန် ၎င်းစာချုပ်အရ သဘောတူညီခဲ့ပါသည်။ ယင်းဂျာမန် Conferderation ကို ဂျာမဏီအတွင်းရှိ လွတ်လပ်သောနယ်မြေများနှင့် မြို့စားများ၏ နိုင်ငံတကာအဖွဲ့အစည်း (The German Conferderation was regarded as an international organization of German Princes and cities) ဟူ၍ ခေါ်ဆိုခဲ့ပါသည်။ ၎င်း German Conferderation သည် ၁၈၁၅ မှ ၁၈၆၆ အထိသက်တမ်းရှည်ခဲ့ပါသည်။ (*)

သို့ရာတွင် ၁၈၄၈ ခုနှစ်တွင် St. Paul's Parliament မှနေပြီး၊ ဂျာမဏီ၏ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေအသစ်ကို ဖက်ဒရယ်မူဖြင့် ရေးသားပြဋ္ဌာန်းရန် ဆုံးဖြတ်ခဲ့ပါသည်။ သို့ရာတွင်—ထိုစဉ်က ဂျာမဏီတွင် အင်အားအကြီးဆုံး နယ်ပယ်ဖြစ်သည့် ပရပ်ရှား (Prussia) ကလက်မခံခဲ့ချေ။ အကြောင်းမှာ— Prussia ဘုရင်က သူ့ကိုအာမခံနှင်းထားသော အင်ပါယာအဆောင်ယောင် (Imperial Titles) များကို လက်ခံလိုမှုမရှိသည့်အပြင်၊ သူ၏ အာဏာပြိုင်ဖက်ဖြစ်သော ဩစတြီးယား (Austria) ပါဝင်မှုကိုလည်း မကျေမလည်ဖြစ်ကာ ပြဿနာတက်ခဲ့ပါသည်။ ထို

(*) အချို့က German Confederation ပြိုကွဲ၍ Federal စနစ်ကိုပြန်လည် စတင်သည့်နှစ်ကို ဩစတြီးယားပြန်ပါလာသည့် ၁၈၆၆ ခုနှစ်ဖြင့် စတင်ရေတွက် ကြည့်ပါက ထို German Confederation သည် ၁၈၁၅–၁၈၆၆ ဟုၾင်း၊ German Federation ကို ၁၈၆၆–၁၉၁၉ ဟူ၍ၾင်း ရေးသားမှတ်တမ်းတင်ကြပါသည်။

ကြောင့် နောက်ဆုံးတွင် ဩစတြီးယား (Austria) နှင့် ဂျာမဏီမြောက်ပိုင်းဒေသ မပါဝင်သော ဂျာမဏီဖက်ဒရယ်ပြည်ထောင်စုကို ထူထောင်နိုင်ခဲ့ပါသည်။ (ဂျာမန်မြောက်ပိုင်းဒေသကို ၁၈၆၄ ခုနှစ်တွင် ဖြစ်ပွါးသည့် ဂျာမဏီနှင့် ဒိန်းမတ်စစ်ပွဲအပြီးတွင်၎င်း၊ ၁၈၆၆ ခုနှစ်တွင် ဂျာမဏီနှင့် ဩစတြီးယားတို့ဖြစ်ပွါးသည့် စစ်ပွဲအပြီးတွင်၎င်း ဂျာမဏီဖက်ဒရယ်ပြည်ထောင်စုသို့ ထည့်သွင်းခြင်းခံခဲ့ရပါသည်)။

၁၈၄၈ ခုနှစ်တွင် St. Paul Parliament မှထူထောင်ခဲ့သော ဂျာမန်ဖက်ဒရယ်စနစ်သည် အခြေခံအားဖြင့် နယ်ပယ်များ၊ မင်းညီမင်းသားများနှင့် မြို့စားများအကြား ပဋိညာဉ်စာချုပ် (Contract) ချုပ်ဆို၍ ဖွဲ့စည်းထားသော စနစ်ဖြစ်ပါသည်။ ထိုကြောင့် နယ်မြေ (၀၀) ပြည်ထောင်များက အင်မတန်အင်အားကြီးမားပြီး တချို့မှာ အလွန်အားနည်းခဲ့သည်ကို တွေ့ရပါသည်။ ဥပမာ ပရပ်ရှား (Prussia) ပြည်ထောင်က ပြည်ထောင်စုတခုလုံး၏ သုံးပုံနှစ်ပုံလောက်ကို လူဦးရေအားဖြင့်ရော၊ နယ်မြေအကျယ်အဝန်းအားဖြင့်ပါ လွှမ်းမိုးခဲ့ပါသည်။ ပရပ်ရှားအပါအဝင် ပြည်ထောင်စုအဖွဲ့ဝင် ပြည်ထောင် (၀၀) နယ်မြေစုစုပေါင်း ၃၀ မှ ၃၅ အထိပါဝင်ကြပြီး၊ တချို့ပြည်ထောင်များသည် လူဦးရေသုံးသောင်းလောက်မျှသာ ရှိခဲ့ပါသည်။ ထို့ကြောင့် ထိုစဉ်က ထူထောင်ခဲ့သော ဂျာမဏီပြည်ထောင်စုအတွင်းရှိ ပြည်ထောင်များ တခုနှင့်တခုအကြား မဲပေးပိုင်ခွင့်အပါအဝင် ဩဇာအာဏာလွှမ်းမိုးမှုခြင်း မတူညီခဲ့ကြပေ။ ဥပမာ—ပရပ်ရှားက မဲပေးပိုင်ခွင့် (၁၇) မဲရှိသည့်အချိန်တွင် အချို့ပြည်ထောင် (၀၀) နယ်မြေများသည် မဲပြားတမဲတည်းကိုသာ ပေးခွင့်ရရှိခဲ့ကြပါသည်။

ပထမကမ္ဘာစစ်ကြီးကြောင့် ဂျာမန်ဖက်ဒရယ်ပြည်ထောင်စု ပြိုကွဲသွားခဲ့ရပြီး၊ စစ်အပြီး ၁၉၁၉ ခုနှစ်တွင် ဂျာမဏီနိုင်ငံတော်သစ် ဝိမာသမတနိုင်ငံကို ထူထောင်ခဲ့ပါသည်။ ဂျာမဏီနိုင်ငံသမိုင်းတွင် Federal ပထမထူထောင်ခဲ့ပြီး၊ နောက်ပိုင်း နပိုလီယန်စစ်ပွဲအပြီးမှာ Confederation ကိုထူထောင်ခဲ့ကြသည်။ ထို့နောက် St. Paul's Parliament မှထူထောင်ပေးခဲ့သော Lose Federation ကိုထပ်မံထူထောင်ခဲ့သည်။ သို့သော် ပထမကမ္ဘာစစ်အပြီးတွင် ထူထောင်ခဲ့သော ဝိမာသမတနိုင်ငံသည် ဖက်ဒရယ်စနစ်မှ လမ်းခွဲကာ တပြည်ထောင်စနစ်ကို ဦးတည်ဖွဲ့စည်းခဲ့ပါသည်။ ထိုသို့ တပြည်ထောင်စနစ်ကို ထူထောင်ခဲ့ရခြင်းမှာ—နိုင်ငံရေးအချက် (၃)ချက် ကြောင့် ဖြစ်ပါသည်။

(၁) ရုရှားတွင် ဘော်ရှီဗစ်တော်လှန်ရေးအပြီး ဂျာမဏီနိုင်ငံနှင့် ဥရောပတခွင်လုံးတွင် ဆိုရှယ်လစ်ပါတီများ၏ လွှမ်းမိုးမှုကြီးထွားခဲ့ခြင်း၊

(၂) စစ်ဘေးစစ်ဒဏ်ကို အလူးအလဲခံခဲ့ရသော တိုင်းပြည်ကို ပြန်လည်ထူထောင်နိုင်ရန် အင်အားကောင်းသော ဗဟိုအစိုးရတရပ်ဖွဲ့စည်းရန် လိုအပ်သည်ဟု ယူဆခဲ့ကြခြင်းနှင့်

(၃) စစ်ပြီးကာလတွင် ငွေရေးကြေးရေးနှင့် အခြားထောက်ပံ့ကြေး အပါအဝင်—စစ်လျော်ကြေးငွေများ ပေးဆပ်ရေးကို ဗဟိုအစိုးရက စီစဉ်ပြီး ပြည်နယ်များကို ခွဲဝေဖြန့်ဖြူးရန် လိုအပ်ခြင်း စသောအချက်များ ပါဝင်ခဲ့ပါသည်။

သို့ရာတွင် တပြည်ထောင်စနစ်ဖြင့် ဖွဲ့စည်းခဲ့သော ဝိမာသမတနိုင်ငံသည် ရေရှည်မခံလိုက်ရပါ။ ဟစ်တလာ၏ နာဇီပါတီအာဏာရရှိလာသောအခါ ဝိမာသမတနိုင်ငံ (Weimar Republic) လည်း ပျက်စီးသွားခဲ့ရပါသည်။ ဒုတိယကမ္ဘာစစ်အပြီးမှာ ဂျာမဏီနိုင်ငံတော်၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေသစ်တရပ် ကို ၁၉၄၈ မှာ ထပ်မံပြဋ္ဌာန်းနိုင်ခဲ့ပါသည်။ ထိုအချိန်တွင်—ဂျာမဏီနိုင်ငံတွင် ပြည်နယ် (၁၄) နယ် ရှိခဲ့ပါသည်။ ယင်းပြည်နယ် (၁၄) ပြည်နယ်ကို စုစည်းပြီး မည်ကဲ့သို့သော ပြည်ထောင်စုစနစ်ကို ထူထောင်ကြမည်နည်း—ဟုအကြိတ်အနယ် ဆွေးနွေးတိုင်ပင်ခဲ့ကြပါသည်။ တချို့လက်ဝဲဝါဒကို ယုံကြည်သော ဆိုရှယ်လစ်အင်အားစုများက ဗဟိုချုပ်ကိုမှုအားကောင်းသော ပြည်ထောင်စုမျိုးကို လိုလားခဲ့ကြသည်။ ကျန်တချို့ကမူ ဗဟိုဦးစီးစနစ်ကို မလိုလားကြပေ။ နှစ်ဖက်စလုံး အကြိတ်အနယ်ဆွေးနွေးညှိနှိုင်းအပြီး—နှစ်ဖက်စလုံးက အဝိုးအလျှော့လုပ်ယူကာ—အစိုးရနှစ်ဆင့်အကြား နိုင်ငံရေးအာဏာများကို ခွဲဝေသုံးစွဲသော ဖက်ဒရယ်စနစ်မျိုးကို ဖွဲ့စည်းထူထောင်ရန် နောက်ဆုံးတွင် သဘောတူညီမှု ရခဲ့ကြပါသည်။ ထို့ကြောင့် ယနေ့ ဂျာမဏီပြည်ထောင်စုတွင် ပြည်ထောင်စုအစိုးရနှင့် ပြည်နယ်အစိုးရများအကြားတွင် နိုင်ငံရေးအာဏာ (၃) ရပ်စလုံးကို ခွဲဝေသုံးစွဲနေကြခြင်း ဖြစ်ပါသည်။

ဂျာမဏီပြည်ထောင်စု (Federal Republic of Germany) ၏ဖွဲ့စည်းအုပ်ချုပ်ပုံ

ဒုတိယကမ္ဘာစစ်အပြီးတွင် အသစ်ဖွဲ့စည်းပြဋ္ဌာန်းလိုက်သော ဂျာမဏီပြည်ထောင်စု၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေကိုကြည့်ပါက အခြေခံအားဖြင့် အစိုးရ (၃) ဆင့်တွင် နိုင်ငံတော်အာဏာကို ခွဲဝေသုံးစွဲနေကြောင်းကို တွေ့ရမည်ဖြစ်ပါသည်။ ၎င်းတို့မှာ

1) ပြည်ထောင်စုအစိုးရ (Federal Government)
2) ပြည်နယ်အစိုးရများ (State Governments)
3) ဒေသန္တရအစိုးရများ (Local Governments) ဟူ၍ဖြစ်ပါသည်။

ထိုသို့ နိုင်ငံတော်အာဏာ (၃) ရပ်စလုံး (ဥပဒေပြုအာဏာ၊ အုပ်ချုပ်ရေးအာဏာနှင့် တရားစီရင်ရေးအာဏာ) များ၏ ပြည်ထောင်စုအစိုးရ၊ ပြည်နယ်အစိုးရနှင့် ဒေသန္တရအစိုးရများအကြား ခွဲဝေသုံးစွဲရမည်ဟု နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေဖြင့် အတိအကျပြဋ္ဌာန်းခဲ့ပါသည်။ တနည်းအားဖြင့်ဆိုပါက ပြည်နယ်

များနှင့် ဒေသန္တရအစိုးရများ လွတ်လပ်စွာရပ်တည်ခွင့်နှင့် လုပ်ပိုင်ခွင့်အာဏာများကို နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေက အာမာအာကွယ်ပေးခဲ့ပါသည်။

သို့ရာတွင်—ပြည်နယ်များနှင့် ဒေသန္တရအစိုးရများကို အာဏာ(၃)ရပ်စလုံးခွဲဝေသုံးစွဲခွင့်ပေးသည် ဆိုသော်လည်း၊ ဥပဒေပြုအာဏာကိုမူ ဒေသန္တရအစိုးရများထံတွင် အပ်နှင်းခြင်းမရှိပဲ၊ ပြည်နယ်လွှတ်တော်ကသာလျှင် သက်ဆိုင်သည့် ပြည်နယ်အတွင်းရှိ ဒေသန္တရအစိုးရများအတွက် ဥပဒေများကို ပြဋ္ဌာန်းပေးလျက်ရှိပါသည်။ ထို့ကြောင့် ဒေသန္တရအုပ်ချုပ်ရေးဆိုင်ရာ ဥပဒေရပ်များ (Local government laws, that included municipal statutes and county statutes) များကို ပြည်နယ်လွှတ်တော်က ရေးဆွဲပြဋ္ဌာန်း ပေးရပါသည်။ သို့ရာတွင် ဒေသန္တရအစိုးရများအနေဖြင့် မိမိတို့ဒေသရှိ ရပ်ရွာအေးချမ်းသာယာရေးနှင့် တရားဥပဒေစိုးမိုးရေးအတွက် လိုအပ်သော ထုံးတမ်းဥပဒေများနှင့် စည်းမျဉ်းစည်းကမ်းများကို ချမှတ်အကောင်အထည်ဖော် နိုင်ပါသည်။ ယင်းသို့ ပြည်နယ်အစိုးရများက ဒေသန္တရအုပ်ချုပ်ရေးဆိုင်ရာ ဥပဒေများကို လွတ်လပ်စွာ ရေးဆွဲပြဋ္ဌာန်းခွင့်ကို ဂျာမဏီနိုင်ငံ၏ ဖက်ဒရယ်စနစ်အခြေခံ အုတ်တိုင်းများ (Stronghold of Federalism) ဟု ခေါ်ဆိုလေ့ရှိပါသည်။ (*)

ပြည်နယ်အစိုးရများက ဒေသန္တရအုပ်ချုပ်ရေးဆိုင်ရာ ဥပဒေများ (local government law) ကို ရေးဆွဲပြဋ္ဌာန်းနိုင်ခွင့်အပြင် ဂျာမဏီနိုင်ငံရှိ ပြည်နယ်များကို ယဉ်ကျေးမှုဆိုင်ရာ ဥပဒေများ ရေးဆွဲပြဋ္ဌာန်းခွင့်ကိုလည်း ပေးထားရပါသည်။ ယဉ်ကျေးမှုဆိုင်ရာ ဥပဒေများတွင် ရေဒီယိုနှင့် ရုပ်မြင်သံကြားထုတ်လွှင့်ရေးဆိုင်ရာ ဥပဒေများ၊ အထက်တန်းနှင့် တက္ကသိုလ်အဆင့် (သုတေသနလုပ်ငန်းအပါအဝင်) ပညာရေးဆိုင်ရာ ဥပဒေများ၊ ပြည်နယ်ပြည်သူ့ရဲများ ရွေးချယ်ခန့်ထားခြင်း အပါအဝင် အခြား ရပ်ရွာအေးချမ်းရေးနှင့် တရားဥပဒေစိုးမိုးရေးဆိုင်ရာ ဥပဒေများ၊ ပြည်နယ်အတွင်းရှိ ဝန်ထမ်းများရွေးချယ်ခန့်ထားခြင်း၊ တစိတ်တပိုင်းအားဖြင့် ၎င်းပြည်နယ်အတွင်းရှိ ပြည်ထောင်စုရေးရာဝန်ထမ်းများ ရွေးချယ်ခန့်အပ်ရေးဆိုင်ရာ ဥပဒေများ၊ ပတ်ဝန်းကျင်ထိန်းသိမ်းရေးဆိုင်ရာ ဥပဒေများကို ရေးဆွဲပြဋ္ဌာန်း ကျင့်သုံးရပါသည်။

အကျဉ်းချုံး၍ ပြန်ဖော်ပြပါက— ဂျာမဏီနိုင်ငံရှိ ပြည်နယ်များ (State or local government are the sole entities with legislative responsibility for:

1) Local (municipal and regional) governments.
2) Cultural matter (education, higher education, broadcasting, television)

(*) The local government law is regarded as the stronghold of federalism in Germany.

3) The law governing the police force and public order, and
4) Partly the law for civil servants and environmental issues

ဂျာမဏီနိုင်ငံတွင် ယဉ်ကျေးမှုဆိုင်ရာကိစ္စရပ်များအား ပြည်နယ်အစိုးရကို လုံးလုံးလျားလျား အာဏာပေးထားခြင်းနှင့်ပတ်သက်၍ ပြဿနာတခါတက်ခဲ့ဘူးပါသည်။ 1960s ဆယ်စုအစပိုင်းတွင် ထိုစဉ်က အလွန်တန်ခိုးဩဇာကြီးမားသော Chancellor တဦးက ပြည်ထောင်စုအစိုးရအနေဖြင့် ရုပ်မြင်သံကြား ရုံအသစ်တခုကို ဖွင့်လှစ်ရန် ကြိုးပမ်းခဲ့ဘူးပါသည်။ သို့သော် သူ၏ကြိုးပမ်းမှုသည် နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေနှင့် မကိုက်ညီသောကြောင့် မအောင်မြင်ခဲ့ပေ။ ရုပ်မြင်သံကြားထုတ်လွှင့်ခြင်းသည် ယဉ်ကျေးမှုရေးရာနှင့် သက်ဆိုင်သော ပြည်နယ်အစိုးရ၌သာ တာဝန်ရှိပါသည်။ ပြည်ထောင်စုအစိုးရက ဝင်ရောက်ချယ်လှယ် ပိုင်ခွင့် မရှိပေ။ မည်မျှဩဇာကြီးမားသော Chansellor ဖြစ်ပါစေ၊ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို လွန်ဆန်၍ ပြည်နယ်များ၏ လုပ်ပိုင်ခွင့်အာဏာကို ဝင်ရောက်စွက်ဖက်၍ မရခဲ့ချေ။

ရိုင်းလဲန်းပြည်နယ်မြို့တော်၊ မိန်းမြို့ကိုသွားရောက်လေ့လာကြည့်ရှုခြင်း

ဂျာမဏီခရီးစဉ်တလျှောက်လုံးတွင် တိုက်ရိုက်အကျိုးရှိဆုံးသော လေ့လာတွေ့ရှိချက်မှာ—ရိုင်းလဲန်းပြည်နယ်မြို့တော် မိန်းမြို့ကို သွားရောက်လေ့လာခြင်းပင်ဖြစ်မည်ဟု ထင်မိပါသည်။ ဒီမိုကရေစီအရေးတော်ပုံကြီးနှင့်အတူ ဖက်ဒရယ်ပြည်ထောင်စု ထူထောင်ရေးကို ကျနော်တို့ ကြွေးကြော်ခဲ့ကြသော်လည်း၊ တကယ်လက်တွေ့တွင်မူ ဖက်ဒရယ်စနစ်ကို အတော်များများက ရှင်းရှင်းလင်းလင်း နားလည်သဘောပေါက်ခြင်း မရှိခဲ့ကြပေ။ ယင်းကိစ္စသည်—ဖက်ဒရယ်စနစ်တွင် မရှိမဖြစ်လိုအပ်သော ပြည်နယ်များဖွဲ့စည်းပုံ အခြေခံဥပဒေရေးဆွဲရေး လုပ်ငန်းစဉ်စတင်သောအခါ ပို၍ ထင်ရှားလာပါသည်။ တချို့ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး လုပ်ငန်းကို **"ခွဲထွက်ရေး"** ဟုထင်ကြပါသည်။ တချို့က ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေ လိုအပ်မှန်းလည်းမသိကြ။ ထိုကဲ့သို့ သံသယစိတ်ဖြင့် စိုးရိမ်ပူပန်သော ပုဂ္ဂိုလ်အတော်များများ ဂျာမဏီခရီးစဉ်တွင် ပါလာခဲ့ကြပါသည်။

ကျနော်တို့အားလုံး ရိုင်းလဲန်းပြည်နယ်မြို့တော်ရှိ ပြည်နယ်ပါလီမန်အဆောက်အဦရှေ့မှောက်ကို ရောက်လာသည်နှင့် တပြိုင်နက် အတော်များများသော သံသယစိတ်များ ပျောက်ကင်းသွားခဲ့သည်ဟု ထင်မိပါသည်။ ပြည်ထောင်စုစနစ်တွင် ပြည်နယ်လွှတ်တော်၊ ပြည်နယ်အစိုးရ၊ ပြည်နယ်တရားရုံးချုပ်များ မရှိမဖြစ်လိုအပ်ကြောင်း၊ ရိုင်းလဲန်းပြည်နယ်၏ ပြည်နယ်လွှတ်တော် အဆောက်အဦးကြီးက သက်သေပြခဲ့လေပြီ။ လွှတ်တော်အဆောက်အဦရှေ့တွင် ဝါကြွားစွာလွှင့်ထူထား

သော **"ပြည်နယ်အလံတော်"** ကို ကျနော်တို့အားလုံး ကြည်ညိုရှုမြင်ခွင့် ရရှိကြပါသည်။ **"ရိုင်းလဲန်းပြည်နယ်၏ အမျိုးသားသီချင်း"** ကို နားထောင်ခွင့် ရရှိခဲ့ပါသည်။

ရိုင်းလဲန်းပြည်နယ်၏ လွှတ်တော်ကြီးမှ လွှတ်တော်ရုံးတာဝန်ခံ အမတ်ကြီးနှင့် တကွ ၎င်းပြည်နယ်တက္ကသိုလ်မှ ပါမောက္ခကြီး Dr. Klaus Eckert Gebauer တို့က ကြိုဆိုကြပြီး၊ သူတို့ပြည်နယ်အကြောင်းကို ရှင်းလင်းပြခဲ့သည်။ ပါမောက္ခကြီး Gebauer က ရှင်းပြရာ၌ ဤပြည်နယ်၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေကို ပြည်ထောင်စုမှ ဝင်ရောက်ချယ်လှယ်ခြင်းမရှိပဲ သီးခြားလွှတ်လပ်စွာဖြင့် ရေးသားပြုစုပြဋ္ဌာန်းခြင်း ဖြစ်ကြောင်း၊ အမှန်စင်စစ် လက်ရှိဂျာမဏီပြည်ထောင်စုကို ဒုတိယကမ္ဘာစစ်ပြီးမှ ဖွဲ့စည်းခဲ့သော်လည်း ယင်းမတိုင်ခင် နှစ်ပေါင်းများစွာကတည်းက ရိုင်းလဲန်းပြည်နယ်ရဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေ၊ ပြည်နယ်လွှတ်တော်၊ ပြည်နယ်အလံတော်နှင့် ပြည်နယ် (နိုင်ငံတော်) သီချင်းများ ရှိထားခဲ့ပြီး ဖြစ်ကြောင်း ရှင်းပြပါသည်။

သူက ဆက်လက်ပြီး ရှင်းပြရာ၌ ဂျာမဏီပြည်ထောင်စုတွင် ယဉ်ကျေးမှုရေးရာသည် ပြည်နယ်အစိုးရမှ အချုပ်အချာအာဏာရှိသည်နှင့်အညီ ယဉ်ကျေးမှုနှင့် စပ်ဆိုင်သော ကိစ္စများတွင် ရိုင်းလဲန်းပြည်နယ်အနေဖြင့် နိုင်ငံခြားနှင့် တိုက်ရိုက် ဆက်သွယ်၍ရကြောင်း၊ ဥပမာ ယခုလက်ရှိတွင် ရိုင်းလဲန်းပြည်နယ်နှင့် ပြင်သစ်နိုင်ငံတို့ ယဉ်ကျေးမှုဆိုင်ရာ သဘောတူညီစာချုပ်များနှင့် ယဉ်ကျေးမှုဖလှယ်သည့် အစီအစဉ်များရှိကြောင်းကို ပြောပြခဲ့ပါသည်။

ပြည်နယ်အစိုးရနှင့် ပြည်ထောင်စုအစိုးရအကြား ဆက်ဆံရေးနှင့်ပတ်သက်၍ ဆက်လက်ရှင်းပြရာ၌ ဂျာမဏီပြည်ထောင်စုရှိ ပြည်ထောင်စုလွှတ်တော်၏ အထက်လွှတ်တော်ကို ပြည်နယ်အသီးသီးမှ ပြည်နယ်ဝန်ကြီးချုပ်များဖြင့် ဖွဲ့စည်းထားကြောင်း၊ ၎င်းလွှတ်တော်ရှိ ပြည်နယ်များ၏ အရေးအရာများကို ဆွေးနွေးတိုင်ပင်ဆုံးဖြတ်ကြကြောင်း ရှင်းလင်းပေးခဲ့ပါသည်။ (ဤနေရာတွင် ဂျာမဏီနိုင်ငံသည် အမေရိကန်ပြည်ထောင်စုနှင့် မတူညီသော အချက်များကို နှိုင်းယှဉ်ပြလိုပါသည်။ အမေရိကန်ပြည်ထောင်စုတွင် ပြည်ထောင်စုလွှတ်တော်၌ ပြည်နယ်ကို ကိုယ်စားပြုသော အထက်လွှတ်တော်အမတ်များမှာ Senators များဖြစ်ကြပါသည်။ တပြည်နယ်လျှင် အထက်လွှတ်တော်အမတ် (Senators) ၂-ဦးစီ ရွေးချယ်တင်မြှောက်ရပါသည်။ ထိုအထက်လွှတ်တော်အမတ်များသည် ပြည်ထောင်စုအတိုင်းအတာဖြင့် ဆောင်ရွက်ရမည့် ကိစ္စများတွင် မိမိတို့ပြည်နယ်ကို ကိုယ်စားပြုခြင်းဖြစ်၍ ပြည်နယ်အုပ်ချုပ်ရေးတွင်မူ Senators များ တိုက်ရိုက်ပါဝင်သက်ဆိုင်ခြင်း မရှိပေ။ ပြည်နယ်အုပ်ချုပ်ရေးအတွက် ပြည်နယ်လွှတ်တော်ကိုယ်စားလှယ်များနှင့် ပြည်နယ်ဝန်ကြီးချုပ် (Governor) ကို သီးခြားစီ ရွေးချယ်ရပါသည်။ ဂျာမဏီတွင်မူ—ပြည်နယ်ဝန်

ကြီးချုပ်က ပြည်နယ်အုပ်ချုပ်ရေးတာဝန်များသာမက ပြည်ထောင်စုလွှတ်တော်၏ အထက်လွှတ်တော်အမတ် တာဝန်ကိုပါ ပူးတွဲထမ်းဆောင်ရပါသည်)။

ပါမောက္ခကြီး Dr. Klaus Eckent Gebaner က ဆက်လက်၍ ပြည်နယ်အစိုးရများ အုပ်ချုပ်ရေးယန္တရားလည်ပတ်နိုင်ရန် မည်ကဲ့သို့ အခွန်တော်များကို ကောက်ယူရသည့်အကြောင်းနှင့် လူမှုရေးလုပ်ငန်း၊ ကျန်းမာရေးနှင့် ပညာရေးလုပ်ငန်းများကို မည်သို့မည်ပုံ ပြည်နယ်အစိုးရက ဆောင်ရွက်ကြောင်း အကျယ်တဝင့် ရှင်းလင်းခဲ့ပါသည်။

ဂျာမဏီနိုင်ငံ၏ ဒေသန္တရအုပ်ချုပ်ရေးစနစ်

အထက်တွင် ဆိုခဲ့သည့်အတိုင်း ပထမအကြိမ် ဂျာမဏီခရီးစဉ်တွင် ဂျာမဏီနိုင်ငံ၌ မည်သို့မည်ပုံ ဖက်ဒရယ်စနစ်ကို စတင်ကျင့်သုံးခဲ့ပုံ၊ ဂျာမဏီပြည်ထောင်စုဖွဲ့စည်းပုံ၊ ပြည်ထောင်စုအစိုးရနှင့် ပြည်နယ်အကြား အာဏာခွဲဝေ သုံးစွဲမှုများ၊ ပြည်နယ်များဖွဲ့စည်းပုံသဏ္ဌာန်နှင့် အင်္ဂါရုပ်များကို ဦးစားပေး၍ လေ့လာခဲ့ပါသည်။

ဒုတိယအကြိမ် ဂျာမဏီခရီးစဉ် (သက္ကရာဇ် ၂၀၀၂ နိုဝင်ဘာလ (၂၅) ရက်မှ ဒီဇင်ဘာလ (၅) ရက်အထိ) တွင်မူ ဂျာမဏီနိုင်ငံနှင့်တကွ ဘယ်လ်ဂျီယန်နိုင်ငံများရှိ ဒေသန္တရအုပ်ချုပ်ရေးစနစ်များကို ဦးစားပေး၍ လေ့လောခဲ့ပါသည်။ ထိုခရီးစဉ်တွင် ကျနော်တို့သဘောပေါက်ခဲ့ရသောအချက်မှာ—ပြည်ထောင်စုစနစ်၏ ထူးခြားလေးနက်သော အင်္ဂါရုပ်တခုမှာ—ပြည်နယ်များအပြင် ဒေသန္တရအုပ်ချုပ်ရေးစနစ်ဖြင့် လူ့အဖွဲ့အစည်း၏ အခြေခံအကျဆုံးသော လူမှုအဖွဲ့အစည်း (grass-root) မှ ဒီမိုကရေစီကို လွှတ်လပ်စွာကျင့်သုံး အကောင်အထည်ဖော် ခြင်းပင် ဖြစ်ပါသည်။ ထို့ကြောင့် ဒေသန္တရအုပ်ချုပ်ရေးစနစ် (local government) ကို ဖက်ဒရယ်စနစ်၏ ခံတပ်ကြီး (local governments are the stronghold of federalism) ဟူ၍ ခေါ်တွင်နိုင်ခြင်းဖြစ်ပါသည်။

ဂျာမဏီနိုင်ငံရှိ ဒေသန္တရအစိုးရများအကြောင်းကို လေ့လာရာ၌—ဘာလင်မြို့တွက် ဒုတိယအကြိမ် " Federalism: A German-Burmese Dialogue" ဖြင့် စတင်ခဲ့ပါသည်။ ထို Seminar တွင် Cologone မြို့ရှိ University of Northrhine-Westphalia State, Public Administration and Public Law ဌာနမှ ပါမောက္ခ Professor Dr. Harald Hofmann က "Federalism and Local Self-government in Germany" ဆိုသောစာတမ်းကို တင်သွင်းဟောပြောခဲ့ပါသည်။ (*)

(*) စာတမ်းအပြည့်အစုံကို စာမျက်နှာ ၂၁၇ မှ ၂၃၃ တွင်ရှုပါ။

ထို့ပြင် Bonn University, Center for Development Research ဌာနမှ Dr. Christian Wagner: "Federalism and Local Autonomy: Experiences in Neighbouring Countries with Local Self-Government: The case of South Asia" ဟူသော စာတမ်းကို တင်သွင်းခဲ့ပါသည်။

ပါမောက္ခကြီး Dr. Harald Hofmann က ဂျာမဏီနိုင်ငံတွင် ကိုယ်ပိုင်လွတ်လပ်စွာ အုပ်ချုပ်သော ဒေသန္တရအစိုးရများ ပေါ်ပေါက်ခဲ့ပုံကို သမိုင်းနှင့်ချိန်၍ ရှင်းလင်းတင်ပြရာ၌—၁၃၀၉ ခုနှစ်တွင် ရေးသားပြဋ္ဌာန်းခဲ့သော Colongn City Constitution ဖြင့် အစပြုရမည် ဖြစ်ကြောင်းနှင့် ယင်းကိုလုံးမြို့အုပ်ချုပ်ပုံ အခြေခံဥပဒေကို ခေတ်သစ်ပါလီမန် ဒီမိုကရေစီစနစ် ပေါ်ပေါက်ခဲ့ပုံကို လေ့လာရာ၌လည်း မည်သို့မည်ပုံ မြို့ပြအုပ်ချုပ်ရေးစနစ်တွင် အခြေခံခဲ့ကြောင်းကို ရှင်းပြခဲ့ပါသည်။ လက်ရှိ ဂျာမဏီနိုင်ငံ၏ ဒေသန္တရအုပ်ချုပ်ရေးကို ဂျာမဏီပြည်ထောင်စု၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေဖြင့် အာမခံချက်ပေး၍ ပြဋ္ဌာန်းကာကွယ်ခဲ့ကြောင်း၊ သို့ရာတွင် ဒေသန္တရအုပ်ချုပ်ရေးစနစ်၏ ဥပဒေပြုအာဏာသည် သက်ဆိုင်ရာပြည်နယ်များ၏ လွှတ်တော်၌သာ တည်ရှိကြောင်း ရှင်းပြပါသည်။

ဂျာမဏီပြည်ထောင်စုရှိ ဒေသန္တရအုပ်ချုပ်ရေးစနစ်၏ လုပ်ပိုင်ခွင့်အာဏာများကို အကြမ်းအားဖြင့် အောက်ပါအတိုင်း သတ်မှတ်နိုင်ပါသည်။

- အထွေထွေအုပ်ချုပ်မှု (General Administration)
- ဒေသအတွင်းရှိအဖွဲ့အစည်းများနှင့် ဝန်ထမ်းများကိုကြီးကြပ်ခြင်း (Organization and Personel)
- တရားဥပဒေရေးရာ (Legal Matters)
- ရပ်ရွာငြိမ်းချမ်းရေး (Public Order)
- ဘဏ္ဍာရေးကိစ္စများ (Finance)
- လူမှုရေးနှင့် လူမှုဖူလုံရေး (Social Matters)
- ကျောင်းနှင့် ပညာရေး (School / Education)
- ယဉ်ကျေးမှုရေးရာ (Culture)
- စီးပွားရေး (Economic Matter)
- ဆောက်လုပ်ရေးနှင့်စီမံကိန်းရေးရာ (Construction/ Planning)
- သယ်ယူပို့ဆောင်ရေးနှင့်ယာဉ်စည်းကမ်းထိန်းသိမ်းရေး (Traffic/ Transport)
- ကျန်းမာရေး (Health) စသည်တို့ပါဝင်ပါသည်။

ယင်းလုပ်ပိုင်ခွင့်အာဏာများကို လက်တွေ့အကောင်အထည်ဖော်ဆောင်ရွက်သောအခါ တရားဥပဒေနှင့်အညီ ဆောင်ရွက်ရမည်။ အောက်ပါလုပ်ငန်းလည်ပတ်မှု (အုပ်ချုပ်ရေးယန္တရားလည်ပတ်မှု) Legal Functions များပါဝင်ပါသည်။

(1) ဒေသန္တရအစိုးရ၏ အုပ်ချုပ်ရေးယန္တရားလည်ပတ်မှု (Self-government Function) ၎င်းအထဲတွင် တရားဥပဒေအရ မလုပ်မနေရ ဆောင်ရွက်ရမည့် (Mandatory) နှင့် မိမိကိုယ်ပိုင်စိတ်ပါဝင်စားမှုအရ လုပ်အားပေး၍ ဆောင်ရွက်ရမည့် (Voluntary) အပိုင်းဟူ၍ ထပ်မံခွဲခြားနိုင်ပါသည်။

(2) ညွှန်ကြားချက်အတိုင်း ဆောင်ရွက်ရမည့် တရားဥပဒေအရ မလုပ်မနေရ လုပ်ဆောင်ရမည့် ကိစ္စရပ်များ (Mandatory function to be fulfilled on instruction),

(3) ကော်မရှင်အရဆောင်ရွက်ရမည့်လုပ်ငန်းများ (Action on Commission) များ ဖြစ်ပါသည်။

ထိုသို့ ဒေသန္တရအစိုးရ၏ အုပ်ချုပ်ရေးယန္တရားများကို လည်ပတ်အကောင်အထည်ဖော်ရာတွင် ပြည်နယ်အစိုးရအနေဖြင့် ကြီးကြပ်ပုံကြီးကြပ်နည်း နှစ်မျိုးရှိပါသည်။ ပထမတမျိုးမှာ—တရားဥပဒေနှင့်အညီ ဆောင်ရွက်မှုရှိမရှိ ဟူသော **"ဥပဒေအရ ကြီးကြပ်ခြင်း"** (Legal Supervision) နှင့် ကော်မရှင်အရ လုပ်ဆောင်အကောင်အထည်ဖော်ရသော လုပ်ငန်းများတွင် လုပ်ငန်းစဉ်လည်ပတ်မှုကိုပါ အသေးစိပ်ကြီးကြပ်ခြင်း (Operational Supervision) ဟူ၍ နှစ်မျိုးရှိနိုင်ပါသည်။

ဒေသန္တရအစိုးရများအနေဖြင့် မိမိတို့စိတ်ပါဝင်စားမှုအရ လုပ်အားပေး၍ ဆောင်ရွက်နိုင်သော (Voluntarily) နေရာများမှာ—

(1) ပြည်သူလူထုနှင့်တိုက်ရိုက်ပတ်သက်သော ကိစ္စရပ်များ၊ ဥပမာ—မြို့တော်ခန်းမ တည်ဆောက်ခြင်း (Assembly Hall)၊ အိုးအိမ် (Housing)၊ လူငယ်အပန်းဖြေစခန်း (ဌာန) (Youth Certre)၊ ရပ်ကွက်အသင်းအဖွဲ့ (Local Club)၊ အလုပ်လက်မဲ့များ ဆုံဆည်းစည်းဝေးနိုင်မည့် နေရာအခန်းများ (Meeting Place for unemployed)၊ လူအိုရုံ (Residential Centre for Elderly)၊ မြို့နယ် ရပ်ကွက်ငွေစုငွေချေးဘဏ် (Local Sarving Bank)၊ ဒေသဆိုင်ရာလူထုဆန္ဒ ခံယူပွဲ (Local Referendum) စသည်များ ပါဝင်ပါသည်။

(2) ယဉ်ကျေးမှုဆိုင်ရာ (Cultural Affairs) ယင်းတွင် စာကြည့်တိုက်၊ ပြတိုက်၊ ဇတ်ရုံများ၊ ဒေသအတွင်းရှိ အပျော်တမ်းအနုပညာသည်များကို ထောက်ပံ့မြှင့်တင် ခြင်း၊ ရုပ်ရှင်ရုံ၊ အနုပညာအဆိုအတီးသင်တန်းကျောင်း (Music School)၊ ပညာသင်ဆုများ ထောက်ပံ့ခြင်း၊ ပျော်ပွဲရွှင်ပွဲများ ပြုလုပ်နိုင်သည့် လေဟာပြင်များ ထားရှိခြင်း စသည်များ ပါဝင်ပါသည်။

(3) Existing Services, ရပ်ရွာအတွင်းတည်ရှိနေသော ဘတ်စ်ကားလိုင်းများ၊ မြို့ပတ်ရထားများ၊ လေဆိပ်များကို ကြည့်ရှုစောင့်ရှောက်ခြင်း၊ အများတကာသောက်သုံးနိုင်မည့် သောက်ရေများကို စနစ်တကျထားရှိခြင်း၊ ရပ်ရွာအတွင်း လျှပ်စစ်ဓါတ်များ ဖူဖူလုံလုံရရှိအောင် စီမံပေးခြင်း၊ ရပ်ရွာအတွင်းရှိ အိုးအိမ်များ အန္တရာယ်ဓါတ်ပေးရေးနှင့် မီးဖိုချောင်တွင် အသုံးပြုသည့် လျှပ်စစ်ဓါတ်နှင့် သဘာဝဓါတ်ငွေ့များ စီမံပေးခြင်း၊ ရပ်ရွာအတွင်းရှိ ကျောင်းများ၊ ဆေးရုံများကို ကြည့်ရှုစောင့်ရှောက်ခြင်း။

(4) Bussiness Development: ရပ်ရွာအတွင်း စီးပွားရေးတိုးတက်အောင် ဆောင်ရွက်ခြင်း။

(5) အားကစား (Sport Matter)

(6) လူထုအပန်းဖြေစခန်းများ၊ ၎င်းအတွက်လိုအပ်သော သုံးကုန်ပစ္စည်းများကို စီမံဖြည့်ဆည်းပေးခြင်း၊ (Recreation Funtion) စသည်များ ပါဝင်ပါသည်။

ဒေသန္တ ရအစိုးရများအနေဖြင့် မလုပ်မနေရ ဟု တရားဥပဒေက ပြဋ္ဌာန်းချမှတ်ထားသော လုပ်ငန်းစဉ်များမှာ—

(1) အမှိုက်သရိုက်များသိမ်းယူခြင်း၊

(2) ညစ်ညမ်းသောရေများသုတ်သင်ခြင်း၊

(3) အိုးအိမ်အဆောက်အဦးများကိုထိန်းသိမ်းခြင်း၊

(4) သင်းချိုင်းကုန်းများထားရှိစီမံခြင်း၊ (Cemeteries)

(5) မီးသတ်တပ်ဖွဲ့များထားရှိခြင်း၊

(6) ဒေသန္တ ရအစိုးရ၏ ရွေးကောက်ပွဲများကိုကျင်းပခြင်း၊

(7) ဒေသန္တ ရပြတိုက်များ (Management of local archives)

(8) ရပ်ရွာအတွင်းသောက်သုံးရေဖူလုံအောင်ထားရှိခြင်း၊

(9) နေ့ကလေးထိန်းကျောင်းများဆောက်လုပ်ထားရှိခြင်း၊

(10) လူမှုဖူလုံရေးနှင့်လူငယ်များအတွက် အထောက်အကူပြုလုပ်ငန်းများ ဆောင်ရွက်ခြင်း၊

(11) မြို့ပြများ၏ အပန်းဖြေစခန်းများတည်ထောင်ခြင်း၊

(12) ရပ်ရွာတခုနှင့်တခုအကြား ဆက်စပ်သည့်လမ်းများဖေါက်လုပ်ခြင်း၊ ယာဉ်စည်းကမ်းထိန်းသိမ်းခြင်း၊ ဘတ်စ်ကားလိုင်းများထားပေးခြင်း၊

(13) သဘာဝဘေးအန္တ ရယ်များနှင့် ကြုံတွေ့သောအခါ ကယ်ဆယ်ရေးလုပ်ငန်းများကိုဆောင်ရွက်ခြင်း။

ကော်မရှင်အရဆောင်ရွက်ရမည့်လုပ်ငန်းများ (Activities on Commission)

ကော်မရှင်အရလုပ်ဆောင်ရမည့်လုပ်ငန်းများကို နှစ်မျိုးခွဲနိုင်ပါသည်။

(1) ပြည်နယ်လွှတ်တော်မှ ပြဋ္ဌာန်းထားသော ဥပဒေအရ ဆောင်ရွက်ရမည့် လုပ်ငန်းနှင့်

(2) ပြည်ထောင်စုလွှတ်တော်မှ ချမှတ်ထားသော ဥပဒေနှင့်အညီ ဆောင်ရွက်ရမည့် လုပ်ငန်းဟူ၍ ဖြစ်ပါသည်။

ပြည်နယ်အရ ဆောင်ရွက်ရမည့် လုပ်ငန်းထဲတွင် ပြည်နယ်လွှတ်တော်နှင့် ပြည်နယ်အစိုးရ ရွေးကောက်ပွဲများကို အောင်မြင်စွာကျင်းပနိုင်ရေးအတွက် ဆောင်ရွက်ခြင်းဖြစ်သည်။ ပြည်ထောင်စုအစိုးရ၏ ဥပဒေအရ ဆောင်ရွက်ရမည့်လုပ်ငန်းများတွင်—

- မွေးဖွားခြင်း၊ မဂ်လာဆောင်ခြင်းနှင့် သေဆုံးသွားသူများ၏ စာရင်းအင်းများပြုစုခြင်း၊
- ပြည်ထောင်စုတပ်မတော်တွင် စစ်မှုမထမ်းမနေရ ဥပဒေအရ တာဝန်ထမ်းဆောင်သည့် စာရင်းများပြုစုခြင်း၊ (National Records for Military service)
- စက်မှုလက်မှုအသက်မွေးဝမ်းကျောင်း သင်တန်းများကို တိုးမြှင့်ပေးခြင်း၊ (Promotion of Vocational Training)
- လူထုကာကွယ်ရေး (Civil Defence)
- ပြည်ထောင်စုလွှတ်တော်နှင့် ပြည်ထောင်စုအစိုးရများကို ရွေးကောက်တင်မြှောက်သော ရွေးကောက်ပွဲများအောင်မြင်အောင် ကျင်းပဆောင်ရွက်ပေးခြင်း၊ [Implementation of General (National) Elections] စသည်များ ပါဝင်ပါသည်။

ဂျာမဏီလေ့လာရေးခရီးစဉ်၏ရလာဒ်များ

စာတွေ့နှင့်လက်တွေ့ပေါင်းစပ်သောစနစ်သည် အကောင်းဆုံးသော သင်ကြားနည်းတရပ်ဖြစ်သည်ဟု အဆိုရှိပါသည်။ ဂျာမဏီခရီးစဉ်သို့ နှစ်ကြိမ်တိုင်တိုင် ပြည်ထောင်စုစနစ် (Federalism) အကြောင်းနှင့် ပြည်ထောင်စုစနစ်၏ အဓိကအင်္ဂါရုပ်များဖြစ်သော ပြည်နယ်များဖွဲ့စည်းပုံ အခြေခံဥပဒေနှင့် ဒေသန္တရအစိုးရများဖွဲ့စည်းရေးဆိုင်ရာ လေ့လာချက်များသည် တန်ဖိုးဖြတ်၍မရသော အကျိုးကျေးဇူးများကို ကျွန်ုပ်တို့ခံစားခဲ့ရပါသည်။

ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးလုပ်ငန်းကို စာတွေ့အားဖြင့် နေရာတကာမှာသင်ကြား ရယူနိုင်သော်လည်း၊ ကျွန်ုပ်တို့တိုင်းပြည်တွင် စစ်မှန်သော ပြည်ထောင်စု ဖွဲ့စည်းနိုင်ခဲ့ခြင်း မရှိဘူးသောကြောင့်ငင်း၊ ပြည်နယ်များ ဖွဲ့စည်းပုံအခြေခံဥပဒေ မရှိခဲ့ဘူးခြင်းကြောင့်ငင်း—လက်တွေ့သင်ခန်းစာကို ကျွန်ုပ်တို့တိုင်းပြည်တွင် မရရှိနိုင်ခဲ့ပေ။ ထိုကြောင့် ဖက်ဒရယ်ရေးရာနှင့် ပတ်သက်၍ ကမ္ဘာတွင် အစဉ်အလာကြီးမားသော ဂျာမဏီပြည်ထောင်စုတွင် လေ့လာသင်ကြားရန် ဆုံးဖြတ်ခဲ့ခြင်းဖြစ်ပါသည်။

ခရီးစဉ်နှစ်ကြိမ်စလုံးတွင် စာတွေ့အားဖြင့် ကမ္ဘာကျော်ထိပ်သီးပညာရှင်များ၏ ပို့ချခြင်းကို ခံယူနိုင်သည့်အပြင်၊ လက်တွေ့အားဖြင့် ပြည်နယ်များ၊ ဒေသန္တရအစိုးရများကို လေ့လာခွင့်ရရှိခဲ့ပါသည်။ ထို့အပြင် တကယ့်အတွေ့အကြုံရှိ၍ ကျွမ်းကျင်တတ်မြောက်သော နိုင်ငံရေးသမားများ၊ ပြည်ထောင်စုအဆင့်နှင့် ပြည်နယ်အဆင့်မှ လွှတ်တော်အမတ်များ၊ ဒေသန္တရ အုပ်ချုပ်ရေးအရာရှိကြီးများနှင့် လက်တွေ့ဒူးတိုက် ဆွေးနွေးခွင့်များ ရရှိခဲ့ပါသည်။ ထိုသို့ စာတွေ့နှင့် လက်တွေ့ပေါင်းစပ်၍ လေ့လာခြင်းသည်—ပို၍အကျိုးရှိသည်ဟု ထင်မြင်သုံးသပ်ခဲ့မိပါသည်။

အထက်တွင် ဖော်ပြခဲ့သည့်အတိုင်း ဖက်ဒရယ်စနစ်သည် တကမ္ဘာလုံးကလက်ခံရယူရမည်ဟု တရားသေသတ်မှတ်ထားသော ပုံသေကားချပ်စနစ်မဟုတ်ပေ။ မိမိတို့တိုင်းပြည်၏ နိုင်ငံရေးသမိုင်းနောက်ခံ၊ လူမျိုးရေးအခြေအနေနှင့် ပထဝီအနေအထားတို့ကို အခြေခံ၍ သင့်တော်သလို ကျင့်သုံးရသော စနစ်တခုဖြစ်ပါသည်။ ထို့ကြောင့် ကျွန်ုပ်တို့လိုလားချက်များသည် တကယ်လက်တွေ့တွင် ဖြစ်နိုင်ချေ ရှိမရှိ၊ ချိန်ဆတွက်ချက်ရပါသည်။ ထိုသို့ ချိန်ဆတွက်ချက်ရာတွင် အထောက်အကူအပြုဆုံးသော နည်းလမ်းတခုမှာ တခြားတိုင်းပြည်၊ တခြားလူမျိုးတို့၏ အတွေ့အကြုံကို သင်ခန်းစာ ရယူခြင်းပင် ဖြစ်ပါသည်။

ဖက်ဒရယ်ပြည်ထောင်စုကို အတူတကွထူထောင်ရန် ဗိုလ်ချုပ်အောင်ဆန်းနှင့် ချင်း၊ ကချင်၊ ဿမီး စသောတိုင်းရင်းသားခေါင်းဆောင်များက ပင်လုံညီလာခံတွင် သဘောတူစာချုပ်ချုပ်၍ မျှော်မှန်းခဲ့ကြပါသည်။ ထိုမျှော်မှန်းချက်ကို တခေတ်ပြီးတခေတ် လက်ဆင့်ကမ်းယူ၍ ယနေ့အထိ ကျွန်ုပ်တို့အားလုံး တိုက်ပွဲဝင်နေရခြင်းဖြစ်ပါသည်။

ထို့ကြောင့် လက်ရှိအရေးတော်ပုံတွင် ပါဝင်ဆင်နွှဲနေကြသော ကျွန်ုပ်တို့အနေဖြင့် ဖက်ဒရယ်နိုင်ငံတော်ထူထောင်ရေးကို—သမိုင်းတွင် အမွေဆက်ခံရသော မျှော်မှန်းချက်တခုဟု—မျက်စိမှိတ်လက်ခံခြင်းထက်၊ မိမိတို့ကိုယ်တိုင် လေ့လာသုံးသပ်ချိန်ဆတွေးတောပြီးမှ လက်ခံခြင်းကပို၍ ကောင်းပါသည်။ ထို့ကြောင့် ကျွန်ုပ်တို့တတွေ ယခုလိုချိန်ဆတွေးခေါ်နိုင်ရန် ဘယ်လ်ဂျီယန်နိုင်ငံအပါအဝင် ဂျာမဏီခရီးစဉ်

က အထူးအထောက်အကူ ပြုသည်ဟု ထင်မိပါသည်။ ဤခရီးစဉ်က ကျွန်ုပ်တို့၏ ရပ်တည်ချက်ကို ပိုမို၍ခိုင်မာစေပါသည်။ မိမိတို့အနေအထားနှင့် သမိုင်းနောက်ခံကို ဓမ္မဓိဌာန်ကျကျ ပြန်လည်သုံးသပ်ခွင့် ရရှိရုံမက၊ တခြားနိုင်ငံမှ ဖက်ဒရယ်နိုင်ငံတော်ကို ထူထောင်ခဲ့သော တိုင်းပြည်များနှင့်လည်း နှိုင်းယှဉ်ခွင့် ပေးခဲ့ပါသည်။

ဥပမာ—ပထမခရီးစဉ် သွားစဉ်က ဘာလင်မြို့တွင် ကျင်းပခဲ့သော Seminar တခုနှင့် ဂျာမာန်နိုင်ငံရေးသိပ္ပံပညာရှင် Dr. Christian Wagner က ဂျာမဏီနိုင်ငံ၏ ဖက်ဒရယ်အတွေ့အကြုံသာမက၊ တခြားတိုင်းပြည်မှ အတွေ့အကြုံများကို ရှင်းလင်းပြီး၊ ကျွန်ုပ်တို့ ယင်းကဲ့သို့သော ဖက်ဒရယ်နိုင်ငံထူထောင်သင့်မသင့် မေးခွန်းတခုမေးခဲ့ဘူးပါသည်။ သူကဆိုရာ၌—ဂျာမဏီ၊ အမေရိကန်နှင့် အခြားဖက်ဒရယ်နိုင်ငံအတော်များများကို လေ့လာသုံးသပ်ပါက ဖက်ဒရယ်ပြည်ထောင်စုကို မထူထောင်ခင်—ငင်းပြည်ထောင်စုအဖွဲ့ဝင်ဖြစ်လာမည့် ပြည်နယ် (၀၊) ပြည်ထောင် (၀၊) အမျိုးသားနိုင်ငံများသည် သီးခြားလွတ်လပ်ခဲ့ကြပြီး၊ သီးခြားဖွဲ့စည်းပုံ အခြေခံဥပဒေ ရှိခဲ့ကြသည့် ပြည်ထောင်များ၊ လူမျိုးများ ဖြစ်ခဲ့ကြပါသည်။ သူကဆက်ပြောရာ၌

> ဥပမာ—အမေရိကန်ပြည်ထောင်စုကို ကြည့်ပါ။ လွတ်လပ်ရေးမရခင်က သီးခြားရပ်တည်ခဲ့ကြသည့် ကိုလိုနီ (၁၃) နယ် ပူးပေါင်းပြီး ထူထောင်ခဲ့ခြင်း ဖြစ်ပါတယ်။ ဂျာမဏီဆိုရင်လည်း ဒီအတိုင်းပဲ၊ သီးခြား လွတ်လပ်ခဲ့သော နယ်မြေတွေ၊ သီးခြားဖွဲ့စည်းပုံအခြေခံဥပဒေ ရှိခဲ့တဲ့ ပြည်ထောင်တွေ ဖြစ်တယ်။ ဒါကြောင့် ပြည်ထောင်စုစနစ်ကို ထူထောင်တဲ့တိုင်းပြည်တိုင်းဟာ သီးခြားလွတ်လပ်တဲ့ ပြည်ထောင်တွေအတူတကွ စုစည်းပြီးထူထောင်ကြတယ်ဆိုတဲ့ (coming together) ဆိုတဲ့ အခြေခံဟာ အထူးလိုအပ်နေတဲ့ အချက်ဖြစ်ပါတယ်။ **ဒီလိုမျိုး သမိုင်းနောက်ခံ မင်းတို့ ဆီမှာ (ပြည်ထောင်စုမြန်မာနိုင်ငံမှာ) ရှိသလား”** လို့ မေးခဲ့ပါသည်။

ထိုသို့ တိုက်ရိုက်မေးခွန်းမမေးမိက ကျွန်ုပ်တို့အားလုံး—အတိတ်သမိုင်းကို လေးလေးနက်နက် စဉ်းစားခဲ့မိသည့် ပုဂ္ဂိုလ်အတော်နည်းပါးမည်ဟု ထင်မိပါသည်။ ထိုမေးခွန်းကြောင့် ကျွန်ုပ်တို့အဖြေကိုရှာရပါသည်။ အဖြေက —

> “ဟုတ်ကဲ့ရှိခဲ့တယ်။ Coming together ဆိုတဲ့ Concept ဟာ ကျနော်တို့အတွက် ပိုပြီးကိုက်ညီတဲ့ နိုင်ငံရေး Concept တခုဖြစ်တယ်။ ကျနော်တို့ရဲ့ သမိုင်းကြောင်းကို ပြန်လေ့လာကြည့်ရင်—ဗြိတိသျှကိုလိုနီလက်အောက်မရောက်ခင်က သီးခြားလွတ်လပ်တဲ့ လူမျိုးများသာလျှင် ဖြစ်ပါတယ်။ ဒါကြောင့် ဗြိတိသျှကိုလိုနီအပြီးမှာ ဆိုရင်လည်း—သီးခြားစီဖြင့် လွတ်လပ်ရေးရယူပြီး သီးခြားနိုင်ငံတော်ကို ထူထောင်နိုင်တဲ့ လူမျိုးများ၊ ပြည်ထောင်များပဲ ဖြစ်ပါတယ်။ ဒါကြောင့် ကိုလိုနီခေတ်အကုန်၊

ဗြိတိသျှထံမှ လွတ်လပ်ရေးရယူဖို့ ပြင်ဆင်ခဲ့စဉ်တုန်းက ဗြိတိသျှကိုလိုနီခေတ် မတိုင်ခင်တုန်းက သီးခြားလွတ်လပ်တဲ့လူမျိုးများ၊ ဗြိတိသျှကိုလိုနီခေတ်တလျောက်လုံး သီးခြားဖွဲ့စည်းပုံအခြေခံဥပဒေဖြင့် သီးခြားစီအုပ်ချုပ်ခဲ့တဲ့ လူမျိုး (၀၊) ပြည်ထောင်များ အတူတကွပူးပေါင်းပြီး ပြည်ထောင်များစုထားတဲ့ပြည်ထောင်စု နိုင်ငံတော်တခုထူထောင်ဖို့ ပင်လုံစာချုပ်ကို လက်မှတ်ရေးထိုးခဲ့ခြင်း ဖြစ်ပါတယ်။ ဒါကြောင့် ပင်လုံစာချုပ်ကို ပြန်လည်သုံးသပ်ကြည့်ရင် သီးခြားဖွဲ့စည်းအုပ်ချုပ်ပုံ အခြေခံဥပဒေများဖြင့် သီးခြားစီအုပ်ချုပ်ခဲ့တဲ့ ပြည်ထောင် (၄) ပြည်ထောင်ပူးပေါင်းတဲ့ စာချုပ်ဖြစ်နေတာကို တွေ့ရမှာဖြစ်ပါတယ်''။

''ဒင်းတို့ဟာ 1937 Burma Act ဆိုတဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေ အရ Burma Proper, 1896 Chin Hills Regulation ဆိုတဲ့ ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ အုပ်ချုပ်ထားခဲ့တဲ့ ချင်းပြည်ထောင်၊ Kachin Hill Regulation အရအုပ်ချုပ်ခဲ့တဲ့ ကချင်ပြည်ထောင်နှင့် Federates Shan State တို့ဖြစ်ကြောင်း'' ရှင်းပြ ခဲ့ပါသည်။

''ဒင်း (၄) ပြည်ထောင်ဖြင့် ပြည်ထောင်စုကို စတင်ထူထောင်ရန် သဘောတူစာချုပ်ချုပ်ပြီးနောက်ပိုင်း— အမေရိကန်ပြည်ထောင်စုကို ကိုလိုနီ (၁၃) နယ်မှစတင်ပြီး တဖြည်းဖြည်းတိုးချဲ့ခဲ့သလို—အခြားအမျိုးသားပြည်ထောင်များ ပြည်ထောင်စုအဖွဲ့ဝင်များအဖြစ် ပါဝင်လာခဲ့ကြောင်း၊ ဒါကြောင့် ကျနော်တို့ရဲ့အခြေအနေဟာ "Coming together" ဟူသော Federal နိုင်ငံတော်တခုကို ထူထောင်ရန် အခြေခံလိုအပ်ချက်နှင့် ကိုက်ညီကြောင်း'' ရှင်းပြခဲ့ပါသည်။

ထို့ကြောင့် ဂျာမဏီခရီးစဉ်နှစ်ခေါက်က ကျွန်ုပ်တို့ဆင်နွှဲနေသော အရေးတော်ပုံကြီး၏ အန္တိမပန်းတိုင်ကြီးသည် ဖက်ဒရယ်နိုင်ငံတော် ထူထောင်ရေးဖြစ်သည်ဆိုသော ခံယူချက်များကိုပို၍ ခိုင်မာစေခဲ့ပါသည်။ ထို့ပြင် ဖက်ဒရယ်နိုင်ငံတော်ထူထောင်ရေးသည်—မိမိတို့တိုင်းပြည်၏ နိုင်ငံရေးနောက်ခံသမိုင်း၊ လူမျိုးရေးနောက်ခံသမိုင်းများနှင့် ကိုက်ညီသည်သာမက လက်ရှိတိုင်းပြည်နိုင်ငံရေး ပကတိလိုလားချက်နှင့်လည်း အထူးကိုက်ညီသော စနစ်ဖြစ်ကြောင်း ပို၍ထင်ရှားလာခဲ့ပါသည်။

ထို့ကြောင့် ဤခရီးစဉ်ကို ဖြစ်မြောက်အောင် ဆောင်ရွက်ပေးခဲ့သော Euro-Burma Office မှ Harn Yawnghwe နှင့် Baudee Zaw Min တို့ကိုငင်း၊ Friedrich-Ebert-Stiftung မှ Norbert Von Hafmann, Roland Feicht နှင့် Sabine Gurtner တို့ကိုငင်း၊ Burma Bureau မှ ဦးနွယ်အောင်နှင့် သူရဲ့လုပ်ဖော်ကိုင်ဖက်များကိုငင်း၊ Burma Project Berlin မှ ဦးရဲမြင့်၊ ဦးခင်မောင်ရင်နှင့် သူတို့

၏လုပ်ဖေါ်ကိုင်ဖက်များကိုလည်း၊ ခရီးစဉ်နှစ်ကြိမ်စလုံးတွင် ဖွင့်ပွဲ Seminar နှင့် လာရောက်အားပေး၍ အဖွင့်မိန့်ခွန်းကို ပြောကြားပေးခဲ့သော ဝန်ကြီးချုပ် ဒေါက်တာစိန်ဝင်းကိုလည်း အထူးကျေးဇူးတင်ရှိပါကြောင်း မှတ်တမ်းတင်အပ်ပါသည်။

(၇) အခြားတိုင်းပြည်များမှဖက်ဒရယ်စနစ်များကိုလေ့လာခြင်း

ဩစတေးလျ၊ အိန္ဒိယနှင့် နိုက်ဂျီးရီးယား

အထက်တွင်ဆိုခဲ့သည့်အတိုင်း တကမ္ဘာလုံးက ပုံသေကားချပ်သတ်မှတ်၍ လက်ခံကျင့်သုံးနိုင်သော ဖက်ဒရယ်စနစ်ဟူ၍မရှိပေ။ တိုင်းပြည်အသီးသီးက မိမိတို့၏ တိုင်းပြည်နှင့်လူမျိုးများ၏ အခြေအနေ၊ သမိုင်းနောက်ခံနှင့် ပထဝီအနေအထားများအပေါ် အခြေခံ၍သင့်တော်သလို ပြုပြင်ကျင့်သုံးနိုင်သော နိုင်ငံတော်ဖွဲ့စည်းပုံစနစ်တမျိုးသာလျှင် ဖြစ်ပါသည်။ ထိုကြောင့် ဖက်ဒရယ်စနစ်ကိုလေ့လာသောအခါ တိုင်းပြည်တခု၊ လူမျိုးတမျိုးထံမှ တရားသေပုံတူကူးချ၍ မရနိုင်ပေ။ အခြေအနေချင်းမတူသော တိုင်းပြည်များစွာ၊ အတွေ့အကြုံများစွာကို နှိုင်းယှဉ်၍ ဖက်ဒရယ်စနစ်အမျိုးမျိုးကို ချင့်ချိန်၍ လေ့လာရန်အထူးလိုအပ်လှပါသည်။ သို့မှသာ—မိမိတို့၏တိုင်းပြည်အခြေအနေနှင့် ကိုက်ညီ၍တိုင်းရင်းသားလူမျိုးပေါင်းစုံတို့၏ လိုအင်ဆန္ဒကို ဖြည့်ဆည်းပေးနိုင်သော ဖက်ဒရယ်ပြည်ထောင်စုကိုထူထောင်နိုင်ပေလိမ့်မည်။

ထိုလိုအပ်ချက်နှင့်အညီ သက္ကရာဇ် ၂၀၀၂ အောက်တိုဘာလနှင့်နိုဝင်ဘာလများတွင် ဖက်ဒရယ်စနစ်ကိုကျင့်သုံးသော နိုင်ငံတကာမှအတွေ့အကြုံများကို ရယူနိုင်ရန် "The Role of State Constitutions in the Protection of Nationality and Minority Rights Under Federalism" ဟူသော ခေါင်းစဉ်အောက်တွင် နှီးနှောဖလှယ်ပွဲ 'Seminar' နှစ်ခုကို အိန္ဒိယနိုင်ငံ နယူးဒေလီမြို့နှင့် ထိုင်းနိုင်ငံ ဇင်းမယ်မြို့များတွင် ကျင်းပပြုလုပ်ခဲ့ပါသည်။ ၎င်းနှီးနှောဖလှယ်ပွဲသို့ ပြည်နယ်အသီးသီးမှ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ မူကြမ်းရေးဆွဲရေးကော်မတီဝင်များ နိုင်ငံရေးပါတီများမှခေါင်းဆောင်များ၊ လူထုအဖွဲ့အစည်းအသီးသီး (Civil Society) မှ ကိုယ်စားလှယ်များ၊ NCUB ဖက်ဒရယ်ပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေးကော်မတီမှ ကိုယ်စားလှယ်များ တက်ရောက်ခဲ့ကြပါသည်။ ထိုနှီးနှောဖလှယ်ပွဲကို ဆွီဒင်နိုင်ငံ စတော့ဟုမ်းမြို့တွင်အခြေစိုက်ထားသော International Institute for Democracy Electoral Assistance (International IDEA) ၏ကူညီထောက်ပံ့မှုနှင့် ကျင်းပနိုင်ခဲ့ခြင်းဖြစ်ပြီး၊ ဖက်ဒရယ်စနစ်ကို ကျင့်သုံးသော ဩစတြေးလျနိုင်ငံ၊ အိန္ဒိယနိုင်ငံနှင့် နိုင်ဂျီးရီးယားနိုင်ငံတို့မှ အတွေ့အကြုံများကို လေ့လာခဲ့ပါသည်။ (ထို့ပြင် နိုင်ငံများ၏အတွေ့အကြုံနှင့် ပြည်ထောင်စုမြန်မာနိုင်ငံမှ

အတွေ့အကြုံများကို နှိုင်းယှဉ်လေ့လာနိုင်ရန် Dr. Chao Tzang Yawnghwe ကလည်း၊ ၎င်းနိုးနှောဖလှယ်ပွဲများတွင် "Burma: State Constitutions and the Challenges Facing the Ethnic Nationalities" ဟူသော ခေါင်းစဉ်ဖြင့် စာတမ်းတင်သွင်းခဲ့ပါသည်)။ ထိုနိုးနှောဖလှယ်ပွဲ တွင် တင်သွင်းခဲ့ကြသော စာတမ်းများကို အင်္ဂလိပ်ဘာသာဖြင့် ပူးတွဲဖော်ပြထား သဖြင့်၊ ဤနေရာတွင် အသေးစိပ်ပြန်လည်တင်ပြခြင်းမပြုပဲ၊ မြန်မာဘာသာဖြင့် အကျဉ်းချုပ်ကိုသာ တင်ပြသွားမည်ဖြစ်ပါသည်။ ထို နိုးနှောဖလှယ်ပွဲ ဖြစ်မြောက်ရေး အတွက် ကူညီပေးခဲ့သော International IDEA နှင့် ၎င်းဌာနမှ Sakhuntala Kadirgamar-Rajasingham နှင့် Leena Rikkila တို့ကိုအထူးကျေးဇူးတင်ရှိကြောင်း မှတ်တမ်းတင်အပ်ပါသည်။

Internatioanl IDEA နှင့်ပူးတွဲကျင်းပသော နိုးနှောဖလှယ်ပွဲတွင် ဖက်ဒရယ်စနစ်ကိုကျင့်သုံးသော နိုင်ငံသုံးနိုင်ငံမှ အတွေ့အကြုံများကို လေ့လာရန်ဆုံးဖြတ်ခဲ့ပါသည်။ ၎င်း သုံးနိုင်ငံသည် အခြေအနေချင်း မတူကြပါ။ ဥပမာ—ဩစတြေးလျသည် အလွန်တိုးတက်ဖွံ့ဖြိုးသော တိုင်းပြည်တခုဖြစ်ပြီး၊ အိန္ဒိယမှာ အလွန်ဆင်းရဲသောနိုင်ငံဖြစ်ပါသည်။ နိုင်ဂျီးရီးယားမှာ ဘာသာရေးနှင့် လူမျိုးရေးပဋိပက္ခအလွန်များပြားပြီး သဘာဝအားဖြင့် သယံဇာတအလွန်ပေါများကြွယ်ဝသော တိုင်းပြည်ဖြစ်ပါလျက်နဲ့ နိုင်ငံရေးပြဿနာမျိုးစုံကြောင့် စီးပွားရေးအလွန်နိမ့်ကျသော အာဖရိကတွင် အကြီးဆုံးတိုင်းပြည်တခုဖြစ်ပါသည်။ ထိုကြောင့် ကျွန်ုပ်တို့အနေဖြင့်—နိုင်ငံတကာမှအတွေ့အကြုံများကို လေ့လာဆန်းစစ်သောအခါ အောင်မြင်မှုများကိုသာ အာရုံစိုက်၍ လေ့လာခြင်းမျိုးမဟုတ်ပဲ၊ မအောင်မြင်သေးသော ရှုန်းကန်လှုပ်ရှားဆဲ တိုင်းပြည်များ၏အတွေ့အကြုံများကိုလည်း လေ့လာရပါသည်။ သို့မှသာ အကောင်းနှင့်အဆိုးကို ဒွန်တွဲမြင်နိုင်နိုင်ပြီး အဆိုးထဲက အကောင်း၊ အမှားထဲက အမှန်ကို သင်ခန်းစာရယူနိုင်မည် ဖြစ်ပါသည်။

(ဂုဒ) ဩစတြေးလျနိုင်ငံ၏ဖက်ဒရယ်အတွေ့အကြုံ

ဩစတြေးလျနိုင်ငံတွင်ကျင့်သုံးသော ဖက်ဒရယ်စနစ်နှင့် ၎င်းနိုင်ငံအတွေ့အကြုံများကို မဲလ်ဘုန်းတက္ကသိုလ်မှ ပါမောက္ခကြီး Cheryl Saunders က "Australian Federalism, State Constitutions and the Protection of Minority Rights" ဟူသောခေါင်းစဉ်ဖြင့် စာတမ်းတင်သွင်း၍ ပို့ချခဲ့ပါသည်။ (*)

(*) စာတမ်းအပြည့်အစုံကို စာမျက်နှာ ၁၁၁ မှ ၁၄၁ အကြားတွင် ရှုပါ။

ပါမောက္ခကြီး Cheryl Saunders က ဩစတြေးလျနိုင်ငံ၌ ဖက်ဒရယ်စနစ် စတင်ကျင့်သုံးပုံကို သမိုင်းနောက်ခံနှင့်တကွ တင်ပြခဲ့ပါသည်။ သူက တင်ပြရာ၌ ဩစတြေးလျနိုင်ငံ၏ ဖက်ဒရယ်ပြည်ထောင်စုစနစ်သည် ယခင်ဗြိတိသျှကိုလိုနီနယ် (၆) နယ်မှ အစပြုခဲ့ခြင်းဖြစ်ကြောင်း၊ ၎င်းကိုလိုနီနယ်များသည် ဆယ့်ရှစ်ရာစုကတည်းက စတင်ထူထောင်ခဲ့သော ကိုလိုနီနယ်များဖြစ်ကြပြီး၊ သီးခြားလွတ်လပ်စွာဖြင့် အုပ်ချုပ်ခဲ့သော နယ်ပယ်များဖြစ်ကြောင်း၊ ထိုကြောင့် ၎င်းကိုလိုနီနယ်များစုပေါင်း၍ "ပြည် ထောင်စု" ကိုမထူထောင်ခင်ကတည်းက ၎င်းကိုလိုနီနယ်များသည်—သီးခြားဖွဲ့စည်းပုံအခြေခံဥပဒေ၊ သီးခြားလွှတ်တော်၊ သီးခြားအစိုးရများရှိခဲ့ကြပြီး ဖြစ်ကြောင်း ရှင်းပြ ခဲ့ပါသည်။ ထိုကြောင့် ၎င်းသီးခြားလွတ်လပ်သောနယ်ပယ်များ စုပေါင်း၍ နိုင်ငံတော်တခုကို ထူထောင်နိုင်သော၊ အားလုံးကလက်ခံနိုင်သော နည်းလမ်းမှာ "ဖက်ဒရယ်" စနစ်သာလျှင် ဖြစ်ခဲ့ပါသည်။

သီးခြားလွတ်လပ်စွာအုပ်ချုပ်ခဲ့ကြသော နယ်ပယ် (၆) နယ်ပယ်ပူးပေါင်း၍ "ပြည်ထောင်စု" နိုင်ငံတော်တခုထူထောင်ရန် လှုံဆော်ပေးခဲ့သော အခြေခံအချက်များမှာ—စီးပွားရေးနှင့်ကူးသန်းရောင်းဝယ်ရေး အကျိုးဖြစ်ထွန်းရေးအတွက် တူညီသောသွင်းကုန်ပို့ကုန်ပေါ်လစီ ချမှတ်ရန်လိုအပ်လာခြင်း၊ ကျယ်ပြန့်သော စီးပွားရေးဈေးကွက်လိုအပ်ခြင်း၊ တူညီသော လူဝင်မှုကြီးကြပ်ရေးပေါ်လစီ တရပ် ချမှတ်ရန်လိုအပ်ခြင်းနှင့် ကာကွယ်ရေးတွင် အချင်းချင်းကူညီပံ့ပိုးရန် လိုအပ်လာခြင်း စသောအချက်များ ပါဝင်ခဲ့ပါသည်။

ထိုလိုအပ်ချက်များနှင့်အညီ ပြည်ထောင်စုနိုင်ငံတော်တခုထူထောင်နိုင်ရေးအတွက်—နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေ ရေးဆွဲရေးဆိုင်ရာညီလာခံကို ၁၉၀၁ ခုနှစ်တွင် ခေါ်ယူကျင်းပခဲ့ပါသည်။ ထို ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး ညီလာခံသို့ သီးခြားအုပ်ချုပ်သော ကိုလိုနီနယ်အသီးသီးမှ ဦးရေတူညီသော ကိုယ်စားလှယ်များကို စေလွှတ်ခဲ့ကြပါသည်။ နယ်အသီးသီးမှ ဦးရေတူညီသော ကိုယ်စားလှယ်များကို စေလွှတ်ခဲ့ကြသော်လည်း နယ်ပယ်တခုနှင့်တခု ကိုယ်စားလှယ်ရွေးချယ်ပုံခြင်းမှာမူ မတူညီကြပေ။ အနောက်ဩစတြေးလျနယ် (Western Australia) မှလွဲ၍ ကျန်သောနယ်ပယ်များသည် မိမိတို့ပြည်နယ်/နယ်ပယ်ကိုယ်စားလှယ်များကို လူထုကတိုက်ရိုက် ရွေးချယ်စေလွှတ်ခဲ့ရပါသည်။ သို့ရာတွင် တောင်ပိုင်းဩစတြေးလျ (Southern Australia) မှလွဲ၍ ကျန်ပြည်နယ်များတွင် အမျိုးသမီးများကို မဲဆန္ဒပေးပိုင်ခွင့် မပေးခဲ့ကြပေ။ တောင်ပိုင်းဩစတြေးလျတွင် အမျိုးသမီးများကို ဆန္ဒမဲပေးခွင့်ပေးသော်လည်း ပြည်နယ်ကိုယ်စားလှယ်အဖြစ် ရွေးချယ်ပိုင်ခွင့်ကိုမူ မပေးခဲ့ပေ။ ထိုကြောင့် နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေဆိုင်ရာ ညီလာခံတွင် အမျိုးသမီးတယောက်မျှ ပါဝင်ခဲ့ခြင်းမရှိခဲ့ချေ။ ထို့ပြင် အနောက်ဖက်ဩစတြေးလျ

(Western Australia) နယ်၏ ကိုယ်စားလှယ်များကို လူထုကတိုက်ရိုက်ရွေးချယ်တင်မြှောက်ခြင်းမပြုပဲ ၎င်းပြည်နယ်၏ "လွှတ်တော်" က တိုက်ရိုက်ရွေးချယ်၍ စေလွှတ်ခဲ့ရပါသည်။

ဤနည်းဖြင့် ပြည်နယ် (၀၊) လွှတ်လပ်သောကိုလိုနီနယ်များမှ ဦးရေတူညီစွာ စေလွှတ်သော ကိုယ်စားလှယ်များက—နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို ရေးဆွဲပြီး၊ ပြည်နယ်အသီးသီးတွင် လူထုဆန္ဒခံယူပွဲများ ကျင်းပကာ—၎င်း ဖွဲ့စည်းပုံအခြေခံဥပဒေကို အတည်ပြုစေခဲ့ပါသည်။ ထိုသို့ ပြည်နယ်အသီးသီးတွင် လူထုဆန္ဒခံယူပွဲများကျင်းပရာ၌—ပြည်နယ်အသီးသီးတွင် ဗီတိုပါဝါ (Veto Power) များပေးအပ်ခဲ့ပါသည်။ ဆိုလိုသည်မှာ— အသစ်ဖွဲ့စည်းမည့် ပြည်ထောင်စုတွင်ပါဝင်ရေး၊ မပါဝင်ရေးသည် ပြည်နယ်တခုစီတွင် လွှတ်လပ်စွာဆုံးဖြတ်ပိုင်ခွင့်ရှိပြီး၊ ထိုသို့ ဆုံးဖြတ်ရာ၌လည်း ထိုပြည်နယ်ရှိ ပြည်သူလူထု၏ဆန္ဒအတိုင်းသာ ဖြစ်ရမည်--- ဟူသော ပေါ်လစီကို ကျင့်သုံးခဲ့ပါသည်။

ထိုကြောင့် ပြည်နယ်တခုအတွင်းရှိ လူထုတရပ်လုံး၏ အပြည့်အဝထောက်ခံအားပေးမှု မရရှိပါက—၎င်းပြည်နယ်အနေဖြင့် ပြည်ထောင်စုအဖွဲ့ဝင်ပြည်နယ်ဖြစ်ခြင်းမှ **"ရပ်ဆိုင်း"** နိုင်သည်။ သို့မဟုတ် ပြည်ထောင်စုအဖွဲ့ဝင်ပြည်နယ် အဖြစ်မနေပဲ သီးခြားလွှတ်လပ်စွာ ဆက်၍နေနိုင်ပါသည်။ ယင်း ဗီတိုအာဏာ (Veto Power) ကို ပြည်နယ်ကိုယ်စားလှယ်များထံတွင် မဟုတ်ပဲ၊ ထိုပြည်နယ်ရှိ ပြည်သူလူထုထံတွင် တိုက်ရိုက်အပ်နှင်းခဲ့ပြီး လူထုဆန္ဒခံယူပွဲဖြင့် အကောင်အထည်ဖော်ရပါသည်။

နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး ညီလာခံတွင် ပြည်နယ်အသီးသီးမှ ကိုယ်စားလှယ်များ အကြိတ်အနယ်ဆွေးနွေး၍ အပြန်အလှန်အတိုးအလျှော့များ ပြုလုပ်ပြီးနောက် အောက်ပါသဘောတူညီချက်များကို ရရှိနိုင်ခဲ့ပါသည်။

- ဩစတြေးလျကိုလိုနီနယ်များ ပူးပေါင်း၍ နိုင်ငံတော်တခုကို ပူးပေါင်းထူထောင်သောအခါ၊ ဖက်ဒရယ်ပြည်ထောင်စုစနစ်ကို ကျင့်သုံးရန်၊ Federation as an appropriate form of government for the United Australia Colonies);
- ပြည်နယ်တခုနှင့်တခုအကြား လွှတ်လပ်စွာကုန်သွယ်ကူးသန်းရောင်းဝယ်ရေးနှင့် ဘုံဈေးကွက်များကိုအကာအကွယ်ပေးရန်၊
- ပြည်ထောင်စုလွှတ်တော် (The Commonwealth Parliament) တွင် အထက်လွှတ်တော် (Senate) ကို ဖန်တီးသွားရန်၊
- ပြည်ထောင်စုတခုလုံးကို လွှမ်းခြုံသော ပြည်ထောင်စုတရားရုံးချုပ်တခုကို ဖန်တီးသွားရန်---ဟူသောအချက်များ ပါဝင်ပါသည်။ (*)

(*) See Page 111 to 141

ဩစတြေးလျနိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး ညီလာခံကြီးတွင် သဘောတူညီမှု လွယ်လင့်တကူမရရှိခဲ့ပေ။ လိပ်ခဲတင်းလင်းဖြစ်ခဲ့ရသောအချက်နှစ်ချက်မှာ—နိုင်ငံတော်ဘတ်ဂျက်ခွဲဝေသုံးစွဲရေးနှင့် ဆီးနိတ်ခေါ် အထက်လွှတ်တော်သို့ ပြည်နယ်ကိုယ်စားပြု လွှတ်တော်များစေလွှတ်ရေး တို့ပင်ဖြစ်ခဲ့ပါသည်။ အထက်လွှတ်တော်ကို ဖွဲ့စည်းရာ၌ သဘောကွဲလွဲခဲ့ကြသောအချက်မှာ—လူဦးရေပို၍များပြားသော ပြည်နယ်များက အာဏာမြင့်မားလွန်းသော အထက်လွှတ်တော်ကို မလိုလားခဲ့ကြပေ။ သို့ရာတွင် လူဦးရေနည်းပါးသော ပြည်နယ်များကမူ နိုင်ငံရေးအာဏာအပြည့်အဝရှိသော အထက်လွှတ်တော်ကို လိုလားကြပါသည်။ နောက်ဆုံးအဆင့်တွင် အောက်ပါအတိုင်းသဘောတူညီမှုကို ရရှိနိုင်ခဲ့ပါသည်။

- အထက်လွှတ်တော် (ဆီးနိတ်) တွင် ပြည်နယ်များမှ ဦးရေတူညီသော ကိုယ်စားလှယ်များ စေလွှတ်ကြရန်၊
- အထက်လွှတ်တော်၏ လုပ်ပိုင်ခွင့်အာဏာသည် အောက်လွှတ်တော်၏ လုပ်ပိုင်ခွင့်အာဏာနှင့် တူညီနီးပါး တူညီစေရမည်၊
- သို့ရာတွင် အထက်လွှတ်တော်အနေဖြင့် အခွန်အကောက်အပါအဝင် ငွေကြေးဆိုင်ရာဥပဒေများကို စတင်တင်သွင်းခြင်း၊ ပြဋ္ဌာန်းခြင်း မပြုစေရ၊

ဟူသော အချက်များပါဝင်ခဲ့ပါသည်။

ဩစတြေးလျပြည်ထောင်စု၏ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများ

အထက်တွင် ဆိုခဲ့သည့်အတိုင်း—ဩစတြေးလျပြည်ထောင်စုသည် သီးခြားလွှတ်လပ်ခဲ့သော ကိုလိုနီနယ်ပယ် (၆)နယ်မှ အစပြုခဲ့ပါသည်။ ထိုကြောင့် ဩစတြေးလျပြည်ထောင်စုကို ဖွဲ့စည်းသောအခါတွင်လည်း အခြေခံအားဖြင့် ၎င်းပြည်နယ် (၆) ပြည်နယ်ကို အခြေခံ၍ ဖွဲ့စည်းခဲ့ပါသည်။ နောက်ပိုင်းတွင် ကိုယ်ပိုင်အုပ်ချုပ်ရေးနယ်ပယ်သစ်များ (Self-governing territories) များပေါ်ခဲ့သော်လည်း၊ ၎င်းတို့ကို ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ "ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်ရှိသောပြည်နယ်များ" ဟူ၍ သတ်မှတ်ရန် ခဲယဉ်းပါသည်။ ထိုကြောင့် မူလ (၆) ပြည်နယ်ကိုသာ ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်ရှိသော ပြည်နယ်များဟု ခေါ်ဆိုရမည်ဖြစ်ပါသည်။

ဩစတြေးလျပြည်ထောင်စု၏ မူလအဖွဲ့ဝင်ပြည်နယ် (၆) ပြည်နယ်သည် ဩစတြေးလျပြည်ထောင်စု မဖွဲ့စည်းခင်ကတည်းက မိမိတို့ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများ ကိုလိုနီခေတ်ကတည်းက ရှိထားခဲ့ပြီးဖြစ်ပါသည်။ ၎င်းပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများသည် မိမိတို့ပြည်နယ်များက ရေးဆွဲခဲ့ကြပြီး၊ ဗြိတိသျှပါလီမန်က အတည်ပြုပြဋ္ဌာန်းခဲ့ပါသည်။ ဤနေရာတွင် ကျွန်ုပ်တို့အခြေအနေနှင့် နှိုင်းယှဉ်သင့်

သော အချက်မှာ ဖြိတိသျှကိုလိုနီလက်အောက်မကျရောက်ခင်က သီးခြားနယ်မြေ (ဝါ) ပြည်ထောင် (ဝါ) လူမျိုးများကိုအခြေခံ၍ သြစတြေးလျရှိ ကိုလိုနီနယ်များကဲ့သို့ ကိုလိုနီနယ်များကို ဖွဲ့စည်းခဲ့ပါသည်။ ၎င်းကိုလိုနီနယ်များအတွက်လည်း—သြစတြေးလျရှိ ကိုလိုနီနယ်များကဲ့သို့သို့ ဖွဲ့စည်းပုံအခြေခံဥပဒေများ ရေးဆွဲပေးခဲ့ပါသည်။ ဥပမာ—ချင်းလူမျိုး (ဝါ) ချင်းပြည်ထောင်အတွက် Chin Hills Regulation ကို ၁၈၉၆ ဖြစ် တွင်၎င်း၊ Kachin Hills Regulation ကိုလည်း၊ Federated Shan State Regulation ကိုလည်း၊ သီးခြားစီရေးဆွဲ၍ သီးခြားစီဖြင့် ဖြိတိသျှပါလီမန်က အတည်ပြုပြဋ္ဌာန်းခဲ့ပါသည်။ ထိုကဲ့သို့သော ကိုလိုနီနယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို ရေးဆွဲရာ၌ ၎င်းကိုလိုနီနယ်များ၏ ရိုးရာဓလေ့ထုံးတမ်းဥပဒေ (Customary Law) များကို အခြေခံ၍ရေးဆွဲခြင်းဖြစ်သောကြောင့်၊ သြစတြေးလျကိုလိုနီနယ်မှ ၎င်းကိုလိုနီနယ်များက မိမိတို့ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲ၍ ဖြိတိသျှပါလီမန်က အသိအမှတ်ပြုပြဋ္ဌာန်းပေးခဲ့သော အစဉ်အလာနှင့် သဘောချင်းအတူတူပင်ဖြစ်ကြောင်းကို တွေ့မြင်နိုင်မည်ဖြစ်ပါသည်။

ထို့ကြောင့်ပင် သြစတြေးလျနိုင်ငံကဲ့သို့ ဖြိတိသျှကိုလိုနီမတိုင်ခင်က သီးခြားလွတ်လပ်၍၊ ကိုလိုနီခေတ်တွင် သီးခြားဖွဲ့စည်းပုံအခြေခံဥပဒေများဖြင့် အုပ်ချုပ်ခဲ့သော လူမျိုးများ၊ ပြည်ထောင်များပူးပေါင်း၍ **“ပြည်ထောင်စုနိုင်ငံတော်”** တခု အတူတကွထူထောင်ရန် ပင်လုံစာချုပ်ကို လက်မှတ်ရေးထိုးခဲ့ခြင်း ဖြစ်ပါသည်။

ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို ရေးဆွဲပြဋ္ဌာန်းရခြင်း၏ ရည်ရွယ်ချက်မှာ—၎င်းပြည်နယ်အတွင်းတွင် နိုင်ငံရေးယန္တရားများ လွတ်လပ်ချောမွေ့စွာ လည်ပတ်နိုင်ရေးပင်ဖြစ်ပါသည်။ ထို့အပြင် ပြည်နယ်အတွင်း ငြိမ်းချမ်းရေးကို စည်းစနစ်ကျစွာ ထိန်းသိမ်းရေးနှင့် တရားဥပဒေနှင့်အညီ ဖွဲ့စည်းထားသောအစိုးရ (Peace order and good government) ကိုဖန်တီးနိုင်ရေးတို့လည်း ပါဝင်ပါသည်။ ဆိုလိုသည်မှာ—ဖွဲ့စည်းပုံအခြေခံဥပဒေအရ—နိုင်ငံရေးနှင့် အုပ်ချုပ်ရေးယန္တရားများဖြစ်သော ပြည်နယ်လွှတ်တော်၊ ပြည်နယ်အစိုးရနှင့် ပြည်နယ်တရားစီ ရင်ရေးများကို တရားဥပဒေနှင့်အညီ ထူထောင်၍ တရားဥပဒေနှင့်အညီ စီမံအုပ်ချုပ်ခန့်ခွဲရေးတို့ပင်ဖြစ်ပါသည်။ ထို့အပြင် တရားဥပဒေနှင့်အညီ ရွေးကောက်ပွဲများကျင်းပခြင်း၊ လူထုဆန္ဒခံယူပွဲများ ကျင်းပခြင်း၊ ခေတ်စနစ်နှင့်လျော်ညီစွာ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို လူထုဆန္ဒခံယူ၍ ပြင်ဆင်ပြဋ္ဌာန်းခြင်း-- စသည်တို့ကို တရားဥပဒေဘောင်အတွင်း ပြည်နယ်များက မိမိတို့မွေးရာပါ ဒီမိုကရေစီအခွင့်အရေးများနှင့် နိုင်ငံရေးအာဏာများကို လွတ်လပ်စွာအကောင်အထည်ဖော်နိုင်ရန် ဖြစ်ပါသည်။

သို့ရာတွင် ပြည်ထောင်စုစနစ်သည် ပြည်နယ်များတန်းတူရည်တူ ပူးပေါင်း၍ "ပြည်ထောင်စုနိုင်ငံတော်" တရပ်ကို ဖွဲ့စည်းထူထောင်သော စနစ်တရပ်ဖြစ်သည်နှင့်အညီ ပြည်ထောင်စုအဖွဲ့ဝင်ပြည်နယ်များက မိမိတို့၏နိုင်ငံရေးအာဏာများကို ပြည်ထောင်စုအစိုးရထံသို့ ခွဲဝေ၍ တချို့အာဏာများကို လွှဲအပ်ပေးရန် လိုအပ်လာပါသည်။ ဩစတြေးလျပြည်ထောင်စုတွင် ပြည်နယ်များနှင့် ပြည်ထောင်စုအစိုးရအကြား အာဏာခွဲဝေသုံးစွဲပုံကို ယေဘူယျအားဖြင့် အောက်ပါအတိုင်းမြင်နိုင်ပါသည်။

ဩစတြေးလျဖက်ဒရယ်စနစ်တွင် ပြည်ထောင်စုအစိုးရထံသို့ လွှဲအပ်ထားသော နိုင်ငံရေးအာဏာများမှာ

(၁) နိုင်ငံခြားဆက်ဆံရေး (External Affairs)

(၂) နိုင်ငံတော်ကာကွယ်ရေး (Defence)

(၃) ငွေကြေးဆိုင်ရာနှင့် ကူးသန်းရောင်းဝယ်ရေး

ဥပမာ—ပြည်နယ်တခုနှင့်တခု ကူးသန်းရောင်းဝယ်ရေး၊ ပြည်ပကူးသန်းရောင်းဝယ်ရေး၊ အသက်အာမခံနှင့် လျော်ကြေးစနစ်၊ အလေးချိန်နှင့်တိုင်းတာမှုစနစ်၊ ငွေဒင်္ဂါးနှင့်ငွေစက္ကူထုတ်လုပ်မှုအပါအဝင် ငွေကြေးစနစ်တခုလုံး၊ [Commercial matters: interstate and overseas trade; banking; insurance; weigth & measures; currency and coinage, foreign trade and financial corporations]

(၄) လူမှုရေးဆိုင်ရာအာဏာတချို့ စသည်တို့ပါဝင်ပါသည်။

ပြည်နယ်အစိုးရများထံတွင် အပ်နှင်းထားသော နိုင်ငံရေးအာဏာများမှာ—

(၁) ပညာရေး၊ ကျန်းမာရေး၊ အိုးအိမ်ဆောက်လုပ်ရေးနှင့် လမ်းပန်းဆက်သွယ်ရေး၊

(၂) မြေယာများ၊ စိုက်ပျိုးရေးနှင့် သဘာဝသယံဇာတများ၊

(၃) ဒေသန္တရအစိုးရများ၏ ဖွဲ့စည်းအုပ်ချုပ်ပုံဆိုင်ရာဥပဒေပြဋ္ဌာန်းခွင့် အပါအဝင်၊ ဒေသန္တရအစိုးရများနှင့် ပတ်သက်သမျှသော နိုင်ငံရေးလုပ်ပိုင်ခွင့်အာဏာများ၊

(၄) ပြည်သူ့လွတ်လပ်ခွင့် (Civil Liberties) နှင့် လူ့အခွင့်အရေး (Human Rights)၊

(၅) သဘာဝပတ်ဝန်းကျင်ထိန်းသိမ်းပြုစုနိုင်ရေးဆိုင်ရာ လုပ်ပိုင်ခွင့်အာဏာများ၊ စသည်တို့ဖြစ်ပါသည်။

လူနည်းစုများ၏အခွင့်အရေးကာကွယ်ရေး

ပါမောက္ခကြီး Cheryl Saunders ကတင်ပြရာ၌ ဩစတြေးလျူပြည်ထောင်စု၏ ဖက်ဒရယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေ (Commonwealth Constitution) ရော၊ ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများကပါ အခြေခံလူ့အခွင့်အရေးများကို ကာကွယ်ပေးရမည်ဟူသောအချက်များ မရှိခဲ့ကြောင်း ရှင်းပြသွားပါသည်။ ပါမောက္ခကြီးက ဆက်လက်အကြံပေးရာ၌—ဩစတြေးလျ၏အတွေ့အကြုံကို အဆိုးဖက်ကသင်ခန်းစာယူပြီး၊ ရှောင်ရှားသင့်သောအချက်မှာ—လူနည်းစုများ၏ အခွင့်အရေးကို ဥပေက္ခာပြုသော ပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေနှင့် ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများ မပြဋ္ဌာန်းမိရေးပင်ဖြစ်ကြောင်း တင်ပြခဲ့ပါသည်။ လူတဦးချင်း၏အခွင့်အရေး (Individual Rights)၊ လူမျိုး (ဝါ) လူ့အဖွဲ့အစည်းအလိုက် ခံစားသင့်ခံစားထိုက်သော အခွင့်အရေးများ (Collective Rights)၊ ပြည်ထောင်စုအဖွဲ့ဝင် အမျိုးသားပြည်နယ်များက ခံစားသင့်ခံစားထိုက်သော ပြည်နယ်အခွင့်အရေး (State Rights) များကို အပြည့်အဝကာကွယ်ပြဋ္ဌာန်းရန် လိုအပ်သောအချက်များပင်ဖြစ်ပါသည်။

ဩစတြေးလျတိုက်တွင် လူဖြူများစတင်အခြေချခဲ့သော ခရာဇ် သက္ကရာဇ် ၁၇၈၈ မှစ၍၊ ဌာနေတိုင်းရင်းသားလူမျိုးများကို လူဖြူများကစတင်နှိမ်နင်းခဲ့ပါသည်။ ဌာနေတိုင်းရင်းသားလူမျိုးများ၏ မိရိုးဖလာထုံးတမ်းဓလေ့နှင့် ဥပဒေများ၊ ကျင့်စဉ်များ၊ ယဉ်ကျေးမှုနှင့်ကိုးကွယ်သည့်ဘာသာများကို အလျဉ်းမျှအလေးပေးခြင်း မရှိပဲ နှိမ်နင်းခံခဲ့ပါသည်။ ထို့ပြင် ဌာနေတိုင်းရင်းသားလူမျိုးများကို စိုက်ပျိုးရေးနှင့် ကူးသန်းရောင်းဝယ်ရေး အချက်အခြာကျသည့် ပင်လယ်ကမ်းခြေနှင့် မြေပြန့်လွင်ပြင်ဒေသများမှ မောင်းထုတ်ကာ ဩစတြေးလျတိုက်ကြီး၏ မြောက်ပိုင်းနှင့် အနောက်ပိုင်းဒေသများကို အတင်းအဓမ္မရွှေ့ပြောင်းမှုများ ပြုလုပ်စေခဲ့ပါသည်။

ဤသို့ဖြင့် ဩစတြေးလျပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေကို အတည်ပြုပြဋ္ဌာန်းသည် သက္ကရာဇ် ၁၉၀၁ ခုနှစ်အထိ၊ ဌာနေတိုင်းရင်းသားလူမျိုးများ၏ အကျိုးစီးပွားနှင့် အခွင့်အရေးကိုကာကွယ်ပြဋ္ဌာန်းပေးသည့် ဥပဒေပိုဒ်မ တပိုဒ်တလေမျှ ပါဝင်ပြဋ္ဌာန်းခြင်းမရှိခဲ့ချေ။

၁၉၆၀ ကာလနောက်ပိုင်းတွင်သာလျှင် ဌာနေတိုင်းရင်းသားလူမျိုးများ၏ အခွင့်အရေးဆိုင်ရာလှုပ်ရှားမှုများပေါ်လာခဲ့ပါသည်။ ၁၉၆၇ ခုနှစ်တွင် ဩစတြေးလျနိုင်ငံ၏ ပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေကို ပြင်ဆင်ပြဋ္ဌာန်းပြီးနောက် ဌာနေတိုင်းရင်းသားလူမျိုးများ၏ အခွင့်အရေးကိုကာကွယ်ပြဋ္ဌာန်းသည့် ဥပဒေများကို ပြဋ္ဌာန်းပေးရုံသာမက၊ ၎င်းဥပဒေများကို ပြည်ထောင်စုအစိုးရနှင့် ပြည်နယ်အစိုးရ

များပူးတွဲကျင့်သုံးနိုင်သော (Concurrent Power) များအဖြစ် ပြဋ္ဌာန်းနိုင်ခဲ့ပါသည်။ ထို့ပြင် ဌာနေတိုင်းရင်းသားလူမျိုးများကိုလည်း ဆန္ဒမဲပေးပိုင်ခွင့်များ အပ်နှင်းလာခဲ့ပါသည်။ သက္ကရာဇ် ၂၀၀၂ သန်းခေါင်စာရင်းအရ ဩစတြေးလျရှိ ဌာနေတိုင်းရင်းသားလူမျိုးများ၏ လူဦးရေမှာ ဩစတြေးလျ တနိုင်ငံလုံးရှိ လူဦးရေစုစုပေါင်း ၂% မျှသာရှိကြောင်း—ပါမောက္ခကြီး Cheryl Suanders ကရှင်းလင်းပို့ချခဲ့ပါသည်။

(၇၂) အိန္ဒိယနိုင်ငံ၏ဖက်ဒရယ်အတွေ့အကြုံ

International IDEA နှင့်ပူးပေါင်း၍ကျင်းပခဲ့ရသော State Constitutions Seminar နှစ်ခုတွင် အိန္ဒိယနိုင်ငံ၏ ဖက်ဒရယ်အတွေ့အကြုံများကို သင်ခန်းစာယူလေ့လာရန်ဆုံးဖြတ်ခဲ့ပါသည်။ ထိုသို့အိန္ဒိယနိုင်ငံ၏ အတွေ့အကြုံကို သင်ခန်းစာယူရန်ဆုံးဖြတ်ခဲ့ရခြင်းအကြောင်းမှာ—ကျွန်ုပ်တို့တိုင်းပြည်တွင် ကြုံတွေ့ခဲ့သော ပြဿနာများနှင့် အိန္ဒိယနိုင်ငံတွင် ရင်ဆိုင်နေရသောပြဿနာများတူညီရုံတင်မက၊ လက်ရှိအိန္ဒိယနိုင်ငံတွင် ကျင့်သုံးနေဆဲဖြစ်သော အိန္ဒိယနိုင်ငံ၏နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေနှင့် ၁၉၄၇ ရေးဆွဲပြဋ္ဌာန်းခဲ့သော ပြည်ထောင်စုမြန်မာနိုင်ငံတော်၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေများ သမိုင်းကြောင်းအရသော်ငင်း၊ အနှစ်သာရအရသော်ငင်း တူညီမှုများရှိခဲ့သောကြောင့် ဖြစ်ပါသည်။

အိန္ဒိယနိုင်ငံ၏ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေနှင့် ၁၉၄၇ တွင်ရေးဆွဲပြဋ္ဌာန်းခဲ့သော ပြည်ထောင်စုမြန်မာနိုင်ငံ၏ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေတို့သည် ၁၉၃၇ ခုနှစ် ဗမာပြည် (Burma Proper) ကို အိန္ဒိယမှခွဲထုတ်ပြီးနောက်၊ ဒွန်တွဲပြဋ္ဌာန်းခဲ့သော 1937 India Act နှင့် 1937 Burma Act တို့ကိုကျောရိုးထား၍ ဖွဲ့စည်းခဲ့သော နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေများ ဖြစ်ပါသည်။ ထိုကြောင့် လွတ်လပ်ရေးနှင့်အတူ ဖြစ်ပေါ်ပြောင်းလဲသွားခဲ့သော နိုင်ငံရေးအခြေအနေ (ဥပမာ– ပင်လုံစာချုပ်ကိုလက်မှတ်ရေးထိုးခဲ့ခြင်း) များကိုထင်ဟပ်ပေါ်လွင်စေသော ပြဋ္ဌာန်းချက်များကို ထည့်သွင်း၍၊ ဖက်ဒရယ်ပြည်ထောင်စုစနစ်ကို ဦးတည်သွားခဲ့ကြသော်လည်း၊ ကိုလိုနီအမွေအနှစ်ဖြစ်သော ဗဟိုဦးစီးစနစ်နှင့် တပြည်ထောင်စနစ်ကို ပစ်ပယ်ကျော ခိုင်းနိုင်ခြင်းမပြုခဲ့ကြပေ။ ယင်းအချက်များကို ထင်ဟပ်ပေါ်လွင်စေသောအချက်များမှာ—ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေများကို နှစ်နိုင်ငံစလုံးတွင် သီးခြားရေးသားပြဋ္ဌာန်းနိုင်ခြင်းမရှိသော အချက်နှင့် အထက်လွှတ်တော်တွင် ပြည်နယ်များဦးရေတူညီသော ကိုယ်စားလှယ်များကို စေလွှတ်ခြင်းမပြုပဲ၊ လူဦးရေကိုအခြေခံ၍ စေလွှတ်သောစနစ်ကို ကျင့်သုံးကြခြင်းပင်ဖြစ်ပါသည်။ ထိုထက်မက အိန္ဒိယနိုင်ငံတွင် ပြည်နယ်အစိုးရနှင့် ပြည်နယ်လွှတ်တော်များအပြင်၊ အုပ်ချုပ်ရေးအာဏာအလွန်

ကြီးမားသော ပြည်နယ်ဘုရင်ခံ (Governors) များကို ဗဟိုမှတိုက်ရိုက်ခန့်ထားခြင်း ပင်ဖြစ်ပါသည်။ ထိုပြည်နယ်ဘုရင်ခံများက ပြည်နယ်လွှတ်တော်များကို ရုတ်သိမ်းပြီး ပြည်နယ်အစိုးရများကို ဖျက်သိမ်းနိုင်သော နိုင်ငံရေးအာဏာများလည်း ရှိနေပါသည်။ ထိုကြောင့် အိန္ဒိယနိုင်ငံရှိ ပြည်နယ်ဘုရင်ခံများသည် ကိုလိုနီခေတ်တုန်းက ဗြိတိသျှအစိုးရကလန်ဒန်မှ စေလွှတ်ခဲ့သော ဘုရင်ခံများကဲ့သို့ပင် နိုင်ငံရေးသြဇာ အထူးကြီးမားကြပြီး၊ ထိုဘုရင်ခံများက ပြည်နယ်များကို နယ်ချုံးဒေလီ၏ ကိုလိုနီနယ် များကဲ့သို့ ဆက်ဆံသော အခြေအနေများသို့ ရောက်လေ့ရှိတတ်ပါသည်။

သို့ရာတွင် အိန္ဒိယနိုင်ငံ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေသည် စစ်မှန်သောဖက်ဒရယ် ပြည်ထောင်စုစနစ်မှ သွေဖီ၍တပြည်ထောင်စနစ်အသွင်ကို ဆောင်ယူနေပါသော်လည်း နှစ်ပေါင်းငါးဆယ်ကြာကြာ အိန္ဒိယပြည်ထောင်စုကို ထိန်းသိမ်းနိုင်ခဲ့သည် သာမက၊ ကမ္ဘာတွင်အကြီးဆုံးသော ဒီမိုကရေစီနိုင်ငံတော်အဖြစ် ဆက်လက်ရပ် တည်နိုင်ခဲ့ပါသည်။ ထို့ကြောင့် အိန္ဒိယနိုင်ငံတွင်ကျင့်သုံးသော ဖက်ဒရယ်စနစ်၏ အားနည်းချက်များ အားသာချက်များကို စနစ်တကျလေ့လာဆန်းစစ်နိုင်ရန် အိန္ဒိယ နိုင်ငံမှ ဥပဒေနှင့်နိုင်ငံရေးသိပ္ပံပညာရှင် Dr. Yogendra Yadav ကိုဖိတ်ကြား၍ "Federalism, Diversity and Minority Rights: What Can We Learn from India" ဟူသောခေါင်းစဉ်ဖြင့် တင်သွင်းပို့ချစေခဲ့ပါသည်။ (*)

Dr. Yogendra Yadav အဆိုအရ—အိန္ဒိယနိုင်ငံ၏ ဖက်ဒရယ်စနစ်နှင့် ဒီမို ကရေစီစနစ်တို့ကို နှစ်ပေါင်းငါးဆယ်ကြာ ရပ်တည်စေခဲ့သောအချက်သုံးချက်ရှိ ကြောင်း တင်ပြခဲ့ပါသည်။ ပထမအချက်အနေဖြင့်—ရှေးကျလှသော အိန္ဒိယယဉ် ကျေးမှုက ခေတ်သစ်အိန္ဒိယလူမှုအဖွဲ့အစည်းတွင် သဘာဝအလျောက် ရောင်ပြန် ဟပ်လွှမ်းမိုးခြင်းပင် ဖြစ်ပါသည်။ အစဉ်အလာအရ—ဟိန္ဒူဘာသာကိုအခြေခံ ထားသော အိန္ဒိယယဉ်ကျေးမှုတွင်၊ ဘာသာရေးအရ သည်းခံခွင့်လွှတ်စိတ်နှင့် ဟိန္ဒူ ဘာသာမဟုတ်သော အခြားဘာသာရေးများကို လွှတ်လပ်စွာကိုးကွယ်ယုံကြည်ခွင့် ပေးခဲ့သော (Religious Tolerance) သဘောသဘာဝများ အိန္ဒိယလူမှုအဖွဲ့ အစည်းတွင် ယနေ့တိုင်ထွန်းကားနေပါသည်။ ထိုဘာသာရေးသည်းခံခွင့်လွှတ်စိတ် က တခြားဘာသာကို ကိုးကွယ်ယုံကြည်သူများနှင့် လူမျိုးခြားများကို သည်းခံခွင့် နိုင်စိတ်ကို လူမှုအဖွဲ့အစည်းအတွင်း မွေးဖွားပေးခဲ့ပါသည်။ Dr. Yogendra Yadav က ဆက်လက်ပြောကြားရာမှာ ယခုလက်ရှိအစိုးရမှလုပ်နေသော ဟိန္ဒူဘာသာရေး အယူသည်းဝါဒသမားများသည် အိန္ဒိယယဉ်ကျေးမှုအစဉ်အလာနှင့် ဆန့်ကျင်သူ များဖြစ်ကြောင်း၊ သက္ကရာဇ် ၂၀၀၂ တွင် ဂုဂျရပ်စ် (Gujarat) ပြည်နယ်တွင် ဖြစ်ပွား

(*) စာတမ်းအပြည့်အစုံ ကို စာမျက်နှာ ၁၄၃ မှ ၁၅၅ တွင်ရှုပါ။

ခဲ့သော ဘာသာရေးအရေးအခင်းသည် အိန္ဒိယကို ကမ္ဘာ့အလယ်တွင် မျက်နှာငယ်စေခဲ့ကြောင်း ပြောပြခဲ့ပါသည်။

ထိုသို့ ရှေးယခင်ကတည်းက အိန္ဒိယယဉ်ကျေးမှုတွင် အမြစ်တွယ်လာခဲ့သော ဘာသာရေးသည်းခံစိတ် သာမက၊ ယနေ့အိန္ဒိယတိုက်ငယ်ကို ဆန်းစစ်ပါက၊ မည်သည့်လူမျိုးကမျှ အခြားလူမျိုးများကို လွှမ်းမိုးချယ်လှယ်နိုင်လောက်အောင် အင်အားကြီးမားခြင်း မရှိကြကြောင်း၊ ထို့ကြောင့် အိန္ဒိယနိုင်ငံရှိလူမျိုးအားလုံးတို့သည်—အိန္ဒိယတိုက်ငယ်ရှိ လူဦးရေသန်းပေါင်းများစွာထဲမှ လူနည်းစုများသာဖြစ်ကြောင်း၊ ထိုကဲ့သို့ လူမျိုးတိုင်းက "လူနည်းစု" များအဖြစ်ခံစားရခြင်းက အိန္ဒိယနိုင်ငံ၏ ဖက်ဒရယ်စနစ်ကို ခိုင်မာတည်တံ့နိုင်ခဲ့ကြောင်း Dr. Yogendra Yadav ရှင်းလင်းတင်ပြခဲ့ပါသည်။

အိန္ဒိယနိုင်ငံ၏ ဒီမိုကရေစီစနစ်နှင့်ဖက်ဒရယ်စနစ်တို့ကို ခိုင်ခန့်စေခဲ့သော ဒုတိယအချက်မှာ—လွတ်လပ်သောခေတ်သစ်အိန္ဒိယနိုင်ငံ၏ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေပင်ဖြစ်ပါသည်။ အထက်တွင်ဆိုခဲ့သည့်အတိုင်း—အိန္ဒိယနိုင်ငံရှိ ပြည်နယ်များသည် သီးခြားပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများရေးဆွဲပြဋ္ဌာန်းခြင်း မရှိသော်လည်း—ပြည်နယ်များကိုလူမျိုး (၀၇) ဘာသာစကားအပေါ် အခြေခံ၍ ဖွဲ့စည်းခြင်းအားဖြင့်၊ ထိုပြည်နယ်ရှိလူမျိုးများကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေက အကာအကွယ်ပေးပြီးသား ဖြစ်သွားခဲ့ပါသည်။

ထို့အပြင်—နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေက အခြေခံလူ့အခွင့်အရေး (Fundamental Rights) များကို ပြဋ္ဌာန်းအကာအကွယ်ပေးနိုင်ခဲ့ပါသည်။ ၎င်းအခြေခံလူ့အခွင့်အရေးများတွင်

- လူတိုင်းတရားဥပဒေရှေ့မှောက်တွင် တန်းတူအခွင့်အရေးရရှိစေရေး၊ (Right to Equality)
- လူသားတိုင်းမွေးရာပါအခွင့်အရေးအဖြစ် ရရှိခံစားထိုက်သော လွတ်လပ်ခွင့်များ၊ (Right to Freedom)
- လူသားတိုင်းမိမိတို့ကိုးကွယ်ယုံကြည်သောဘာသာတရားများကို လွတ်လပ်စွာကိုးကွယ်ယုံကြည်ခွင့်၊ (Right to Religious Freedom)
- လူမျိုးစုများ၊ လူနည်းစုများအတွက် ယဉ်ကျေးမှုနှင့်ပညာရေးဆိုင်ရာ အထူးအခွင့်အရေးများ၊ (Cultural and Educational Right for Minotiry) စသည်များပါဝင်ပါသည်။

ဤသို့သောနည်းလမ်းများအားဖြင့် အိန္ဒိယနိုင်ငံတွင် ဒီမိုကရေစီအခွင့်အရေးနှင့်အခြေခံလူ့အခွင့်အရေးများကို နိုင်ငံသားတဦးချင်းစီတွင်၎င်း၊ လူမျိုးအလိုက်သော်၎င်း၊ အဆင့်ဆင့်အကာအကွယ်ပေး၍ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေဖြင့်

ပြဋ္ဌာန်းကာကွယ်ပေးခဲ့ပါသည်။ လူမျိုး (၀၊) ဘာသာစကားကိုအခြေခံ၍ ပြည်နယ်များဖွဲ့စည်းခြင်းဖြင့် ၎င်းလူမျိုးများကို အကာအကွယ်ပေးရုံသာမက၊ ၎င်းပြည်နယ်များအတွင်းရှိ လူမျိုးငယ်များကိုပါ ဥပဒေဖြင့်ထပ်ဆင့်၍ အကာအကွယ်ပေးနိုင်ခဲ့ပါသည်။ ဥပမာ—Schedule Castes နှင့် Schedule Tribes များကို အထူးအကာအကွယ်ပေးသော ဥပဒေများပင်ဖြစ်ပါသည်။

အိန္ဒိယနိုင်ငံ၏ ဒီမိုကရေစီစနစ်နှင့်ဖက်ဒရယ်စနစ်ကို ရပ်တည်ခိုင်ခန့်စေသောတတိယအချက်မှာ—ဒီမိုကရေစီစနစ်ကိုအခြေခံ၍ ဖွဲ့စည်းထူထောင်ထားသော "နိုင်ငံရေးပါတီများ" ဖြစ်ကြောင်း၊ Dr. Yogendra Yadav ကရှင်းပြခဲ့ပါသည်။ လွတ်လပ်ရေးရရှိသည့်အချိန်မှစ၍ ယနေ့တိုင်—အိန္ဒိယနိုင်ငံရှိနိုင်ငံရေးပါတီများသည် ပြည်ထောင်စုအဆင့်ရွေးကောက်ပွဲများတွင် သာမကပဲ၊ ပြည်နယ်အဆင့်နှင့် ဒေသန္တရအဆင့်ရှိ ရွေးကောက်ပွဲများတွင် လေးနှစ်တကြိမ် ပါဝင်ယှဉ်ပြိုင်အရွေးခံကြပါသည်။ ထိုနိုင်ငံရေးပါတီများအနက် အချို့သည် ပြည်နယ်နှင့်ဒေသန္တရများကိုအခြေခံ၍ ဖွဲ့စည်းထားကြသော်လည်း၊ အများစုသောအင်အားကြီးပါတီများသည် ပြည်ထောင်စုတဝှမ်းလုံး၊ အိန္ဒိယတနိုင်ငံလုံးကို လွှမ်းခြုံကိုယ်စားပြုနိုင်ရန် ဖွဲ့စည်းထားသောနိုင်ငံရေးပါတီများ ဖြစ်ကြပါသည်။ ထိုပါတီကြီးများသည် လူမျိုးရေးနှင့် ဘာသာရေးအပေါ်အခြေခိုက်၍ ဖွဲ့စည်းခြင်းမျိုးမဟုတ်ပေ။ လူထုတရပ်လုံး၏ အကျိုးစီးပွားကိုဆောင်ရွက်ရန် ဦးတည်ပြီး ဖွဲ့စည်းခဲ့ကြပါသည်။ ထို့ကြောင့် ၎င်းနိုင်ငံရေးပါတီများသည် လူမျိုးရေးနှင့်ဘာသာရေးဘောင်အတွင်းသာမက၊ ပြည်နယ် နယ်နိမိတ်များကို ကျော်လွှားကာ တနိုင်ငံလုံးအတိုင်းအတာဖြင့် ဖွဲ့စည်းစည်းရုံးနိုင်ခဲ့ပါသည်။ ယင်းနိုင်ငံရေးပါတီများသည် အိန္ဒိယနိုင်ငံ၏ ဒီမိုကရေစီစနစ်နှင့်ဖက်ဒရယ်စနစ်ရပ်တည်နိုင်ရန် အရေးကြီးသောအသက်သွေးကြောများ ဖြစ်ကြောင်း Dr. Yogendra Yadav ကရှင်းပြခဲ့ပါသည်။

အိန္ဒိယနိုင်ငံ၏ဖက်ဒရယ်စနစ်မှရရှိသောသင်ခန်းစာ

အိန္ဒိယဖက်ဒရယ်စနစ်၏ အဓိကအားနည်းချက်မှာ—ပြည်နယ်များအတွက် သီးခြားဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲပြဋ္ဌာန်းခြင်းမရှိပဲ၊ ပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေတွင် ပူးတွဲ၍ ပြဋ္ဌာန်းစေခြင်းဖြစ်ပါသည်။ ထိုကြောင့် ပြည်နယ်တခု၏ အရေးအရာနှင့် ပတ်သက်၍၊ ၎င်းဖွဲ့စည်းပုံအခြေခံဥပဒေတွင် ပါဝင်သည့်အချက်များ၊ ပုဒ်မများကို ပြည်နယ်လူထုဆန္ဒအရ လွယ်လင့်တကူ ပြင်ဆင်ပြဋ္ဌာန်းရန် အင်မတန်အခက်အခဲ ရှိပါသည်။ ထိုကြောင့် ပြည်နယ်များ၏အခွင့်အရေးအားလုံးကို ဗဟိုမှ လုံးဝချုပ်ကိုင်ထားသလို ဖြစ်နေပါသည်။ ထို့ပြင် ပြည်ထောင်စုလွှတ်တော်၏

အထက်လွှတ်တော်တွင် ပြည်နယ်များက ပြည်နယ်ကိုကိုယ်စားပြုသော လွှတ်တော်ကိုယ်စားလှယ်များဦးရေ အညီအမျှစေလွှတ်ခြင်းမပြုပဲ၊ လူဦးရေအလိုက်စေလွှတ်ကြသောကြောင့် လူဦးရေပိုများသော ပြည်နယ်များ၏ လွှမ်းမိုးချယ်လှယ်မှုကို ပြည်နယ်ငယ်များက ခံစားနေရပါသည်။ ထိုကဲ့သို့ နိုင်ငံရေးအာဏာတန်းတူမှုမရှိသောကြောင့်၊ တချို့ပြည်နယ်များသည် အိန္ဒိယပြည်ထောင်စုထဲမှ တန်းတူသောပြည်နယ်များအဖြစ် ခံယူနိုင်ခြင်းမရှိပဲ၊ အိန္ဒိယတိုက်နယ်၏ ကိုလိုနီနယ်သဖွယ် ခံစားနေကြရပါသည်။ ထိုကြောင့် အာသံ (Assam)၊ နာဂလဲန်း (Nagaland)၊ မိဇိုရမ် (Mizoram)၊ ကက်စမီးယား စသောပြည်နယ်များသည် အိန္ဒိယပြည်ထောင်စုထဲမှ ခွဲထွက်သွားရန် လက်နက်ကိုင်တော်လှန်ရေးများ ဆင်နွှဲတိုက်ပွဲဝင်နေကြခြင်း ဖြစ်ပါသည်။

ထိုကဲ့သို့ လူမျိုးရေးနှင့်ခွဲထွက်ရေးပြဿနာများကို ဖြစ်ပေါ်စေသောအခြေခံအချက်များကို သင်ခန်းစာယူ၍—နောင်မကြာခင်တွင် ဖွဲ့စည်းမည့်ပြည်ထောင်စုမြန်မာနိုင်ငံ၏ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို အကောင်းဆုံးရေးဆွဲပြဋ္ဌာန်းနိုင်ရန် ကြိုးစားကြရပေမည်။

(၇း၃) နိုင်ဂျီးရီးယားနိုင်ငံအတွေ့အကြုံ

အာဖရိကတိုက်တွင် လူဦးရေအထူထပ်ဆုံး (သန်းပေါင်း ၁၂၀) နိုင်ငံဖြစ်ပြီး စစ်အာဏာသိမ်းမှု၊ လူမျိုးရေးနှင့်ဘာသာရေးပဋိပက္ခအများဆုံး ဖြစ်ပွါးသည့်တိုင်းပြည်—နိုင်ဂျီးရီးယားနိုင်ငံ၏အတွေ့အကြုံကို လေ့လာသင်ကြားရန်၊ နိုင်ဂျီးရီးယားနိုင်ငံမှ နိုင်ငံရေးသိပ္ပံပညာရှင် Dr. Otive Igbuzor ကို International IDEA နှင့်ပူးတွဲ၍ကျင်းပသော နှီးနှောဖလှယ်ပွဲသို့ဖိတ်ခေါ်ခဲ့ပါသည်။ သို့ရာတွင် အိန္ဒိယပြည်ဝင်ခွင့်ဗီဇာအခက်အခဲကြောင့် Dr. Otive Igbuzor ကိုယ်တိုင်မလာနိုင်ခဲ့ပေ။ ထို့ကြောင့်သူ့စာတမ်းကို နယူးဒေလီတွင် ကျင်းပသောနှီးနှောဖလှယ်ပွဲတွင် Dr. Lian H. Sakhong မှ သူ့ကိုယ်စားဖိတ်ကြားတင်သွင်းပေးခဲ့ပါသည်။

နိုင်ဂျီးရီးယားကို ၁၈၆၁ ခုနှစ်တွင် ဗြိတိသျှကိုလိုနီအဖြစ် သိမ်းပိုက်ခံခဲ့ရပါသည်။ ဗြိတိသျှကိုလိုနီလက်အောက်မရောက်ခင်တုန်းက—မင်းနိုင်ငံများ၊ အင်ပိုင်ယာကြီးများ နိုင်ဂျီးရီးယားမြေပေါ်တွင် ပေါ်ထွန်းခဲ့ဘူးပါသည်။ ဥပမာ—Yoruba Kingdom, Benin Kingdom အပြင် Fulani , Lgbo နှင့် Urhobo စသောမင်းဆက်များ၊ ရိုးရာအုပ်ချုပ်မှုစနစ်များလည်း ပါဝင်ခဲ့ပါသည်။ ၁၉၁၄ ခုနှစ်တွင် ဗြိတိသျှကိုလိုနီအစိုးရက နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေတရပ်ကို နိုင်ဂျီးရီးယားနိုင်ငံအတွက်

ပြဋ္ဌာန်းပေးပြီး၊ နိုင်ဂျီးရီးယားမြောက်ပိုင်းနှင့်တောင်ပိုင်းတို့ကို နိုင်ငံတခု၏ နယ်နိမိတ်အတွင်းပူးပေါင်းပေးနိုင်ခဲ့ပါသည်။

၁၉၂၂ ခုနှစ်တွင် နိုင်ဂျီးရီးယားနိုင်ငံ၏ ဖွဲ့စည်းပုံအခြေခံဥပဒေကိုပြင်ဆင်ကာ Clifford Constitution of 1922 ကိုပြဋ္ဌာန်းခဲ့ပါသည်။ ယင်းသည် ထိုစဉ်က ဘုရင်ခံချုပ် Sir Hugh Clifford ၏နာမည်ကို အမှီပြု၍မှည့်ခေါ်သော ဖွဲ့စည်းပုံအခြေခံဥပဒေဖြစ်ခဲ့ပါသည်။ ဒုတိယကမ္ဘာစစ်အပြီးတွင် နိုင်ဂျီးရီးယားနိုင်ငံသားများက ကိုလိုနီဆန့်ကျင်ရေးနှင့် ကိုယ်ပိုင်ပြဋ္ဌာန်းခွင့်ရရှိရေး လှုံ့ဆော်လှုပ်ရှားမှုများအပေါ် အခြေခံ၍ ဗြိတိသျှအစိုးရက နိုင်ဂျီးရီးယားဖွဲ့စည်းပုံအခြေခံဥပဒေကို ၁၉၄၆ ခုနှစ်တွင် ထပ်တခါပြင်ဆင်ပြဋ္ဌာန်းပေးခဲ့ပြီး၊ နိုင်ဂျီးရီးယားနိုင်ငံသားများကို နိုင်ငံရေးအခွင့်အရေးများကို တိုးမြှင့်ပေးခဲ့ပါသည်။ ၎င်းဖွဲ့စည်းပုံအခြေခံဥပဒေကို ထိုစဉ်က ဘုရင်ခံချုပ်၏နာမည်ကိုအစွဲပြု၍ 1946 Richards Constitution ဟုခေါ်ဆိုခဲ့ပါသည်။ ထို့ပြင် ၎င်းဖွဲ့စည်းပုံအခြေခံဥပဒေအရ နိုင်ဂျီးရီးယားကို အရှေ့ပိုင်း၊ အနောက်ပိုင်း၊ မြောက်ပိုင်းဟူ၍ ဒေသကြီး (၃) ခုဖြင့် ခွဲခြမ်း၍အုပ်ချုပ်စေခဲ့ပါသည်။

နိုင်ဂျီးရီးယားတွင် ဖက်ဒရယ်ပြည်ထောင်စုစနစ်ကို အုတ်မြစ်ချပေးခဲ့သော နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေမှာ ၁၉၅၄ ခုနှစ်တွင် ပြဋ္ဌာန်းခဲ့သည့် 1954 Lyttleton Constitution ပင်ဖြစ်ပါသည်။ ၎င်းဖွဲ့စည်းပုံကိုလည်း ထိုစဉ်ကဘုရင်ခံချုပ်၏ နာမည်ကိုအစွဲပြု၍ မှည့်ခေါ်ထားခြင်းပင်ဖြစ်ပါသည်။ Lyttleton Constitution of 1954 က ယခင်ဖွဲ့စည်းပုံအခြေခံဥပဒေများတွင် ပါရှိခဲ့သည့် တပြည်ထောင်စနစ် (Unitarianism) အခြေခံအချက်အလက်များနှင့် ပုဒ်မများကိုဖယ်ရှားကာ၊ ဖက်ဒရယ်စနစ်ဖြင့် နိုင်ဂျီးရီးယားကို ဖွဲ့စည်းအုပ်ချုပ်စေခဲ့ပါသည်။

ထို Lyttleton Constitution အရ ပြည်ထောင်စုလွှတ်တော်ဥပဒေပြုစာရင်း (Exclusive Legislative List of Federal Government)၊ ပြည်နယ်အစိုးရများက ဥပဒေပြုနိုင်သောအာဏာများနှင့် ပြည်ထောင်စုအစိုးရနှင့် ပြည်နယ်အစိုးရများ ပူးတွဲကျင့်သုံးရမည့်အာဏာများ (Concurrent Power) များတိတိကျကျစာရင်းချုပြဋ္ဌာန်းပေးခဲ့ပါသည်။ ထို့ပြင် ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေများကိုလည်း သီးခြားပြဋ္ဌာန်းခဲ့ရုံသာမက၊ ပြည်နယ်များက ပြည်ထောင်စုအစိုးရထံ လွှဲအပ်ထားသောအာဏာများမှအပ၊ ကြွင်းကျန်သောအာဏာများကိုလည်း ပြည်နယ်များထံတွင်အပ်နှင်းခဲ့ပါသည်။

ထိုကြောင့် ၁၉၆၀ ခုနှစ်တွင် နိုင်ဂျီးရီးယားနိုင်ငံလွတ်လပ်ရေးရရှိသောအခါ နိုင်ဂျီးရီးယားနိုင်ငံရှိ ပြည်နယ်များအားလုံးသည် မိမိတို့၏ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေများအတည်တကျ ရှိထားပြီးဖြစ်ခဲ့ပါသည်။

စစ်တပ်မှအာဏာသိမ်းခြင်းနှင့်နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကိုဖျက်သိမ်းခြင်း

နိုင်ဂျီးရီးယားနိုင်ငံကို ကံဆိုးမိုးမှောင်ကျစေခဲ့သောအချက်မှာ—လွတ်လပ်ရေး သက်တမ်း ၄၂ နှစ်တွင် နှစ်ပေါင်း ၂၉ နှစ်ကြာကြာ စစ်အာဏာရှင်များ၏ မာရှယ်လောအောက်တွင် တိုင်းပြည်ကျရောက်သွားခဲ့သောအချက်ပင် ဖြစ်ပါသည်။ ၁၉၆၀ လွတ်လပ်ရေးရရှိပြီး ဒီမိုကရေစီစနစ်အရ လူထုရွေးကောက်တင်မြှောက်သော အစိုးရသက်တမ်း ၆ နှစ်မျှသာ ကြာမြင့်ခဲ့ပါသည်။ ၁၉၆၆ ခုနှစ်တွင် စစ်တပ်မှ အာဏာသိမ်းယူပြီး၊ စစ်ဗိုလ်ချုပ် ၄ ဦးက ၁၉၆၆ မှ ၁၉၇၉ အထိ တိုင်းပြည်ကို မာရှယ်လောဖြင့်အုပ်ချုပ်သွားခဲ့ပါသည်။ ထိုစစ်အစိုးရလက်အောင်တွင် ပြည်ထောင်စုဖွဲ့စည်းပုံအခြေခံဥပဒေသာမက၊ ပြည်နယ်အားလုံး၏ဖွဲ့စည်းပုံအခြေခံ ဥပဒေများကိုပါ ဖျက်သိမ်းခြင်းခံခဲ့ရပါသည်။ ၁၉၇၉ ခုနှစ်တွင် အာဏာသိမ်းစစ်ဗိုလ်ချုပ် အိုဘာဆန်ဂျာ (Olusegun Obasanjo) က မိမိဆန္ဒဖြင့်ရာထူးမှ ဆင်းသွားကာ၊ အရပ်သားအစိုးရကို ပြန်လည်ဖွဲ့စည်းအာဏာအပ်နှင်း ခဲ့ပါသည်။ ထိုသို့ အရပ်သားအစိုးရကို အာဏာအပ်နှင်းပြီး နိုင်ငံတော်ဖွဲ့စည်းပုံအုပ်ချုပ်ပုံ အခြေခံ ဥပဒေအသစ်တရပ်ကို ပြဋ္ဌာန်းပေးခဲ့သော်လည်း၊ ပြည်နယ်များ၏ ဖွဲ့စည်းပုံအခြေခံ ဥပဒေများကိုမူ—ပြန်လည်ရေးဆွဲပြဋ္ဌာန်းပေးခြင်း မရှိတော့ပေ။ ထိုကြောင့် နိုင်ဂျီးရီးယားနိုင်ငံတွင် စစ်မှန်သောဖက်ဒရယ်စနစ် ၁၉၉၉ အထိ ပြန်လည်ထွန်းကားနိုင်ခြင်း မရှိတော့ပေ။

ထို့အပြင်၊ ၁၉၇၉ ခုနှစ်တွင် အာဏာအပ်နှင်းခြင်းခံရသော အရပ်သားအစိုးရသည် ၄ နှစ်မျှသာ သက်တမ်းရှည်ခဲ့ပါသည်။ ၁၉၈၄ ခုနှစ်တွင် နောက်ထပ်အာဏာသိမ်းမှုနှင့် နိုင်ဂျီးရီးယား ကြုံဆုံနေရပြန်သည်။ ၎င်းအာဏာသိမ်းမှုအပြီး၊ အဆက်ဆက်သောစစ်ဗိုလ်ချုပ်ကြီးများ၏ အုပ်ချုပ်မှုဖြင့် ၁၉၉၉ ခုနှစ်အထိ စစ်တပ်က အာဏာထိန်းထားခဲ့ပါသည်။ ၁၉၉၂ ခုနှစ် စစ်အစိုးရ၏ ကြီးကြပ်မှုအောက်တွင် ရွေးကောက်ပွဲ ကျင်းပခဲ့သော်လည်း—စစ်အစိုးရမှ အာဏာလွှဲအပ်ရန် ငြင်းဆိုခဲ့ပါသည်။ (ကျွန်ုပ်တို့တိုင်းပြည်နှင့်အလားသဏ္ဌာန် တူပါသည်)။ ၁၉၉၉ ခုနှစ်တွင် စစ်အစိုးရ ခေါင်းဆောင်ဗိုလ်ချုပ်ကြီး ဆန်နီအာဘာချာ (General Sanni Abacha) လေယာဉ်ပျက်ကျသေဆုံးပြီးနောက်၊ စစ်အစိုးရမှ အရပ်သားကြားဖြတ်အစိုးရထံသို့ အာဏာပြန်လည် အပ်နှင်းခဲ့သည်။

ဘာသာရေးနှင့်လူမျိုးရေးပဋိပက္ခများဖြေရှင်းရေး

Dr. Otive Igbuzor ကသူ့စာတမ်းတွင်—၁၇၅၄ ခုနှစ်မှ ၂၀၀၂ ခုနှစ်အကြား နိုင်ဂျီးရီးယားနိုင်ငံတွင် ဖြစ်ပွားခဲ့သော ဘာသာရေးအခိုက်ရက်ပေါင်း (၅၄) ခုကို စာရင်း

ဇယားနှင့် တင်ပြခဲ့သည်။ ထိုကဲ့သို့ဖြစ်ပွားသော ဘာသာရေးနှင့်လူမျိုးရေး အဓိကရုဏ်းတွင် တချို့ကမူဆလင်ဘာသာဝင်များကို အပြစ်တင်ပြီး၊ အချို့က ခရစ်ယာန်ဘာသာဝင်များကို အပြစ်ဖို့လေ့ရှိပါသည်။

Dr. Otive Igbuzor ၏အကြံပေးချက်အရ၊ ထိုကဲ့သို့သော အဓိကရုဏ်းဖြစ်ပွားမှုများ ကို သူကြောင့်၊ ကိုယ့်ကြောင့်ဟု အချင်းချင်းအပြစ်တင်နေကြမည့်အစား၊ ၎င်းပြဿနာများကို ရေရှည်ရှောင်ရှားနိုင်မည့် နိုင်ငံရေးနည်းလမ်းများ ရှာဖွေရန် လိုအပ် ကြောင်း၊ ၁၉၉၉ ခုနှစ်တွင် အသစ်ရေးဆွဲပြဋ္ဌာန်းသော နိုင်ဂျီးရီးယားနိုင်ငံ၏ ဖက်ဒရယ်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို သင်ခန်းစာအဖြစ် အောက်ပါအတိုင်းတင်ပြခဲ့ပါသည်။

(၁) စစ်မှန်သောဖက်ဒရယ်စနစ်ဖြင့် နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေကို ရေးဆွဲပြဋ္ဌာန်းခြင်း၊
(၂) အခြေခံလူ့အခွင့်အရေးများကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေဖြင့် ကာကွယ်ပြဋ္ဌာန်းပေးခြင်း၊
(၃) ပါတီစုံဒီမိုကရေစီစနစ်ကိုကျင့်သုံးခြင်း၊
(၄) ရွေးကောက်ပွဲစနစ်ကို မွမ်းမံပြင်ဆင်ခြင်း၊ ဥပမာ—နိုင်ဂျီးရီးယားသမတ အဖြစ် အရွေးခံရမည့်ပုဂ္ဂိုလ်မှာ ပြည်ထောင်စုတာဝမ်းလုံးတွင် ဆန္ဒမဲ အများဆုံးအနိုင်ရယူရမည့်အပြင်၊ နိုင်ဂျီးရီးယားနိုင်ငံ၏ သုံးပုံနှစ်ပုံသော ပြည်နယ်များမှ အနည်းဆုံးလေးပုံတပုံဆန္ဒမဲများကို ရရှိနိုင်ရမည် ဟူသော ပြဋ္ဌာန်းချက်များပါရှိသည်။
(၅) နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေက လူမျိုးရေးနှင့်ဘာသာရေးကို အခြေခံသော နိုင်ငံရေးပါတီများ ထူထောင်ခြင်းကိုပိတ်ပင်ထားခြင်း၊

Dr. Otive Igbuzor ကဆက်လက်တင်ပြရာ၌—အခြေခံလူ့အခွင့်အရေး များနှင့် လူနည်းစုများ၏အခွင့်အရေး ကာကွယ်ရေးတို့ကို နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေ တွင်ရေးဆွဲပြဋ္ဌာန်းခြင်းသည် အကောင်းဆုံးနည်းလမ်းဖြစ်သော်လည်း—တခါတရံ နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေတွင် စာသားအဖြစ်ပါရှိလောက်နှင့် မလုံလောက်ကြောင်း ရှင်းပြခဲ့ပါသည်။ ဥပမာ—နိုင်ဂျီးရီးယားနိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံဥပဒေက—မည်သည့်ဘာသာ (Religion) ကိုမျှ နိုင်ငံတော်ဘာသာ (State Religion) အဖြစ်သော်၎င်း၊ ပြည်နယ်ဘာသာအဖြစ်သော်၎င်း၊ မပြဋ္ဌာန်းရဟု---တားမြစ်ထားသော်လည်း၊ ပြည်ထောင်စုအဆင့်မှာရော၊ ပြည်နယ်အဆင့်မှာပါ နိုင်ငံရေးသမား တော်တော်များများက ဘာသာရေးကို နိုင်ငံရေးတွင်ခုတုံးလုပ် အသုံးချမှုများ နိုင်ဂျီးရီးယားနိုင်ငံတွင် ရှိနေကြောင်း ထို့ပြင် လူထုတရပ်လုံးအတွက် အခြေခံလူ့အခွင့်အရေးများကို နိုင်ငံတော်ဖွဲ့စည်းပုံအခြေခံ

ဥပဒေက ကာကွယ်ပြဌာန်းပေးခဲ့သော်လည်း၊ စာမတတ် ပေမတတ် အောက်ဆုံးလွှာ မှလူထုတော် တော်များများက မိမိတို့၏အခွင့်အရေး ဘာမှန်းမသိရသော အခြေ အနေများ ရှိခဲ့ကြောင်းကိုလည်း ထောက်ပြခဲ့ပါသည်။

ထိုကြောင့် Dr. Otive Igbuzor အကြံပေးသွားသည်မှာ နိုင်ငံတော်ဖွဲ့စည်းပုံ အခြေခံဥပဒေကို ရေးဆွဲပြဌာန်းသောကာလတလျှောက်လုံးတွင် ပြည်သူလူထု တတ်နိုင်သမျှ ပါဝင်စေခြင်းအားဖြင့်၊ ပြည်သူလူထုတရပ်လုံးက **"ဒါဟာမိမိတို့၏ အခွင့်အရေးကို အကာအကွယ်ပေးတဲ့ ဖွဲ့စည်းအုပ်ချုပ်အခြေခံဥပဒေဖြစ်တယ်--ဒါကြောင့် မိမိကိုယ်တိုင် ပါဝင်ပါတ်သက်ဖို့တာဝန်ရှိတယ်--"** ဟူသောအမြင် သဘောထားများ ရယူနိုင်ကြမည် ဖြစ်ကြောင်း တင်ပြခဲ့ပါသည်။

နိဂုံးချုပ်

သက္ကရာဇ် ၂၀၀၁ ဇန္နဝါရီလမှ စတင်ခဲ့သော ပြည်နယ်များ ဖွဲ့စည်းပုံအခြေခံ ဥပဒေရေးဆွဲရေးလုပ်ငန်းစဉ်၏ နှစ်နှစ်တာအစီရင်ခံ နိဂုံးချုပ်အနေဖြင့်တင်ပြလိုသည် မှာ—ပြည်နယ်များ၏ဖွဲ့စည်းပုံအခြေခံဥပဒေရေးဆွဲရေး လုပ်ငန်းစဉ်ကြီးသည် စစ်မှန် သောဖက်ဒရယ် ပြည်ထောင်စုကြီးထူထောင်နိုင်ရေးအတွက် မရှိမဖြစ်လိုအပ်သော လုပ်ငန်းစဉ်ကြီးဖြစ်သလို၊ ဒီမိုကရေစီအရေးတော်ပုံကြီး၏ အရေးကြီးသောအင်္ဂါရုပ် တခုအဖြစ် ဒွန်တွဲပါရှိနေသော လုပ်ငန်းစဉ်ကြီးလည်း ဖြစ်ပါသည်။ ထိုကြောင့် ဤ လုပ်ငန်းစဉ်ကြီးအောင်မြင်ရေးသည် ဒီမိုကရေစီအရေးတော်ပုံကြီးအောင်မြင်ရေး အပေါ်မှာ တည်မှီနေပါသည်။ ထိုကြောင့် ဤလုပ်ငန်းစဉ်ကြီးနှင့်တကွ ဒီမိုကရေစီ အရေးတော်ပုံကြီးအမြန်ဆုံး အောင်ပွဲဆင်နိုင်ရေးအတွက် ကျွန်ုပ်တို့အားလုံး ဆက် လက်ကြိုးပမ်း တိုက်ပွဲဝင်သွားကြရမည် ဖြစ်ပါသည်။

ပြည်နယ်များဖွဲ့စည်းပုံအခြေခံဥပဒေလုပ်ငန်းစဉ်ကြီး ချောမွေ့စွာလည်ပတ် လှုပ်ရှားနိုင်ရန်၊ UNLD-LA နှင့် NDF တို့မှ ပူးတွဲကြိုးစားကြရသည်နှင့်အညီ— Supporting Committee for State Constitutions (SCSC) တရပ်ကိုလည်း ဖွဲ့စည်းနိုင်ခဲ့ပါသည်။ ၎င်း SCSC ကော်မတီတွင် အောက်ပါပုဂ္ဂိုလ်များ ပါဝင်ပါသည်။

Dr. Chao Tzang Yawnghwe	(Chair Person)
ဗိုလ်မှူးကြီး ခွန်ဥက္ကာ	(NDF- Member)
ဗိုလ်မှူးကြီး ထူးထူးလေး	(NDF- Coordinator)
ခွန်းမာရ်ကိုဘန်း	(UNLD-Member)
Dr. ဆလိုင်းလျန်မွန်း	(UNLD- Coordinator)

SCSC ကော်မတီအနေဖြင့် ပြည်နယ်အသီးသီးမှ ပြည်နယ်ဖွဲ့စည်းပုံအခြေခံ ဥပဒေရေးဆွဲရေးကော်မတီများ၏ လုပ်ငန်းဆောင်ရွက်မှုကို အဆင်ပြေနိုင်ရေး အတွက် ကူညီပံ့ပိုးသွားမည် ဖြစ်ပါသည်။ တဖက်မှာလည်း—နိုင်ငံတကာမှ ပညာရှင်များ၊ အလှူရှင်များနှင့် ဆက်သွယ်ညှိနှိုင်းပေးပြီး၊ လိုအပ်သောကူညီပံ့ပိုးမှုများကို တစိုက်မတ်မတ်လုပ်ဆောင်သွားမည်ဖြစ်ကြောင်း အစီရင်ခံအပ်ပါသည်။

လေးစားစွာဖြင့်

(ဒေါက်တာ ဆလိုင်းလျန်မှုန်း ဆာခေါင်း)
Dr. Lian H. Sakhong
Coordinator- SCSC

Chiang Mai, 2003-09-15

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PART TWO: ENGLISH SECTION

CHAPTER ONE

INTRODUCTION

FOREWORD

The long-standing goal of the political movement of the ethnic nationalities, in keeping with the aspirations of the people and the 1947 Panglong Accord, has been the establishment of a federal union, or a Burma Pyidaungzu. This goal was opposed by successive Burmese military juntas, but has been consistently supported by Burmese democratic forces, more so after 1988.

Seeing that the foundation of a federal union is the autonomy, based on the principle of self-determination, of the constituent states, the state constitutions drafting process facilitated by the National Reconciliation Program (NRP) and led jointly by the Nationalities Democratic Front (NDF) and the United Nationalities League for Democracy (Liberated Areas) UNLD(LA) is a step in the right direction, and is most politically relevant, much needed, and important for the peoples of Burma. To assist and coordinate the state constitutions process, a working committee, the Support Committee for State Constitutions (SCSC), was formed jointly by the NDF and the UNLD in 2002.

The state constitutions drafting process comprises several components and sub-processes. These sub-processes proceeded in parallel streams that overlap. This is owed to the different situations of the various organizations and states, and the different time the participating organizations, committees, etc., entered the process.

There was firstly, in the politics of Burma, a problem about the kind of understanding and comprehension, or misunderstanding, about federalism – basically, what it is and what it is not. There has been much anxiety and confusion among the people – on the part both of the Burman and the ethnic nationalities – about what federalism is and how it works. This sad state of affairs is due to the misinformation, disinformation, and distortion by the military of what federalism is: that federalism was secession, the breaking up of the country or the Union. And on the part of the some ethnic nationalities individuals and groups, there was a prevailing belief, stemming from past

experiences, that federalism means "deception and enslavement by the Burmans".

Activities in this process – the preliminary stage, constituting the first sub-process – involved the participation of members of the state constitutions drafting committees and leaders in a series of workshops and conferences on federalism and states-federal relation. These events were held twice in Berlin, Germany, in Thailand, and in a border camp. It also involves on-going exchanges, discussions, and debates on federalism between and among leaders within the movement.

The second part of the process involved the convening a series of inter- and intra-ethnic state constitutions consultative conferences. The guiding principles and frameworks were discussed by leaders and participants from various ethnic nationalities within a state format – like for example the holding of a Mon State Constitutional Consultative Conference. The outcome was the formation of constitution drafting committees. The Chin and the Shan State entered into this sub-process earlier, while the Karenni, Mon, Karen, and Kachin States followed suit later. The Rakhine State drafting committee is in the process of being formed. A state constitution study group to look into a constitution of a Burma State – formerly Burma Proper – has recently been set up by democratic Burmese groups and organizations.

The state constitutions drafting – or rather, study and exploration – process continued apace with a landmark workshop/seminar where participants, which included leaders from the big political fronts, various organizations, and members of state constitution drafting committees, were presented with a model state constitution, compiled from state constitutions of the United States. This workshop was jointly organized by the NDF and the UNLD and assisted by the Burma Lawyers Council (BLC).

The third sub-process kicked off with study tours and exploration of state constitutions in other federations of the world. The participants were members of the Federal constitution drafting committee and the states constitutions

drafting bodies. The study group toured Germany and Belgium and met members of state governments, and state assemblies or legislatures, and as well held discussions and briefings, and it also consulted with constitutional experts and scholars. The study tours also included getting acquainted with local governments, where the participants gained some knowledge and an understanding of how local governments functioned and were run in a democratic-decentralized system, through many briefings and discussions with mayors and members of the local government councils, in Germany and Belgium.

The fifth sub-process involves consultations with the grassroots, leaders, political parties, the intelligentsia, and those interested and concerned. This wide consultation is currently on-going in all the states, except in Rakhine.

The sixth sub-process will involve a series of workshops to discuss the completed first draft of the various state constitutions. Participants will involve members of the various state constitutions drafting bodies, the federal constitution drafting committee, political leaders, representatives from women and youth groups, and leaders of ethnic-based organizations. Experts or persons with knowledge of state constitutions and local governments (in decentralized democratic systems) will facilitate discussion and clarify points that needed clarification or elaboration.

The first workshop of this sub-process will look at the first draft of the Chin drafting committee. The Chin State draft will be discussed widely and deeply by the workshop participants and resource persons. The Chin State draft constitution workshop will be followed by similar workshops focusing on the work done by the drafting committees of other constituent states.

A case might validly be made that a lot of ground has been covered in the state constitutions drafting process so far, and this is precisely what this publication will cover comprehensively.

The publication of this series will provide all the relevant documents, records, reports, papers, essays pertaining to the

state constitutions drafting and study process which began in 2001.

It might be noted that the end goal of the state constitutions drafting process is not to produce actual state constitutions, but to prepare leaders, activists, the politically aware segments, and as well the grassroots for a time to come in the near future – hopefully not too far off – when a new Union will be rebuilt. The aim rather is to arm the people with an awareness and knowledge about constitutions and how they relate most significantly to the aspirations of the ethnic nationalities for freedom, self-determination, self-rule, human security, human dignity, and rights that are alienable to every man and woman.

As such, this publication is a valuable one and it will become a historical and defining work since it records all the activities related to the process of state constitutions drafting undertaken by the ethnic nationalities. The publication also provides analytical insights into issues related to the constitutional problem that has afflicted the country for decades and which has never been resolved in Burma. In fact, discussions of and writing about constitutions have been banned by the military regime, and many have suffered long prison sentences as a result.

It is certain that this publication – the compilation of the activities and thoughts of ethnic nationalities leaders and peoples on their future in a stable, prosperous, and peaceful Union, founded in equal partnership at Panglong in 1947 – will go a long way to remind readers of the blood, sweat, and tears that had been expended by all to get to a future envisioned and bequeathed to the people by the founding fathers of the Burma Pyidaungzu, many, many years and dreams ago.

Dr. Chao-Tzang Yawnghwe
Chairman
Supporting Committee for State Constitutions (SCSC)

Chiang Mai, Thailand
2003-09-16

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REPORT ON STATE CONSTITUTIONS DRAFTING PROCESS
(2001-2002)

Introduction

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

In a federal system where power is shared between two levels of governments: federal government and state governments, all member states of the Union should have their own separate state constitutions, their own organs of state, that is, State Assembly, Administrative Body, and Judiciary. The state constitutions, therefore, are inherent and necessary components of a federal system.

It is, therefore, believed that looking into federalism, the concepts and principles of federalism, federal structures and mechanisms, and importantly, looking at state constitutions, will enhance the capacity of nationalities leaders to help their ethnic nations determine their future in a peaceful and democratic manner. Moreover, the process of drafting state constitutions constitutes a very important step in reaching the goals of the democratic movement. The state constitution drafting process would, therefore, lay a firm, bottom-up foundation for federalism (i.e., genuine federalism), and the draft state constitutions could and would collectively serve as a solid political platform for nationalities leaders and forces in negotiation with other players and actors on the Burma stage.

This report is divided into four parts; part one is dealing with historical and political backgrounds for the need of state constitutions, part two is the UNLD initiative for drafting the state constitutions and its follow-up activities with the NDF, and part three is about the role of NRP in this process. This report is concluded with the formation of Supporting Committee of State Constitutions (SCSC).

Part One

Background History

The Union of Burma is a nation-state of diverse ethnic nations (ethnic nationalities or nationalities), founded in 1947 at the Panglong Conference by pre-colonial independent ethnic nationalities such as the Chin, Kachin, Karen, Karenni, Mon, Rakhine (Arakan), Myanmar (Burman), and Shan , based on the principle of equality. As it was founded by formerly independent peoples in 1947 through an agreement, the boundaries of the Union of Burma today are not historical. Rather, the Union of Burma, or Burma in its current form, was born of the historic Panglong Agreement signed in 1947.

In order to understand the complex background of religious and ethnic diversity in Burma, one might firstly note that there is an age-old identification of Burman/Myanmar ethnicity and Buddhism, which has been the dominant ideological and political force in what is today called the Union of Burma or Myanmar. Secondly, there are other ethnic nations or nationalities such as the Mon, Rakhine (Arakan), and Shan, who are Buddhists, but feel dominated by the Burman/Myanmar majority. Thirdly, there are ethnic nationalities who are predominantly Christians within a Baptist tradition. The most prominent Christian groups are the Chin, Kachin and Karen. They—like the Mon and the Shan—form ethnic communities which transcend the boundaries of the modern nation-states of Burma, Bangladesh, India, China, and Thailand. The present state of relations between majority Burman/Myanmar Buddhists and minority Christian ethnic

groups must be understood against the background of colonial history.

The British annexed "Burma Proper", i.e., the Burman or Myanmar Kingdom, in three Anglo-Burmese wars fought in 1824-26, 1852 and 1885. As a result, the British took over Burma Proper in three stages: the Rakhine (Arakan) and Tenasserim coastal provinces in 1826, Lower Burma (previously Mon Kingdom) including Rangoon—the present capital of Burma—in 1852, and Upper Burma including Mandalay, the last capital of the Burman Kingdom in 1885. When the last King of Burma, Thibaw, was deposed and exiled to India, the possessions of the Burman Kingdom—including semi-independent tributaries of the Burman king, such as the Arakan and the Mon—were transferred to the British. However, this arrangement did not include the Chin, Kachin, Shan and Karenni, who were completely independent peoples, and had never been conquered by the Burman King. Thus, the British separately conquered or "pacified" them during a different period of time. The Chin people, for instance, were "pacified" only ten years after the fall of Mandalay, and their land Chinram, or Chinland,[1] was not declared a part of British India until 1896.

During the colonial period, the British applied two different administrative systems: "direct rule" and "indirect rule". The first was applied to the peoples and areas they conquered together with the Burman Kingdom, i.e., "Burma Proper". "Indirect rule", on the other hand, was applied to the peoples who were "pacified" or added by treaty (the Shan principalities, for example) to the British Empire after the annexation of the Burman kingdom. Under the British policy of "indirect rule", the traditional princes and local chiefs of the Chin, Kachin and the Shan were allowed to retain a certain level of administrative and judiciary powers within their respective territories.

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[1] Here I use Chinland and Chinram interchangeably. At the "Chin Seminar", held in Ottawa, Canada, on 29th April to 2nd May 1998, Dr. Za Hlei Thang, one of the most outstanding politicians and scholars among the Chin, proposed the word *ram* in Chin should be used in stead of the English word *land,* as *Chinram* instead of *Chinland*. It was widely accepted by those who attended the seminar.

In 1937, when the Burma Act of 1935 was officially implemented, Burma Proper was separated from British India and given a Governor of its own. The 1935 Act also created a government structure for Burma Proper, with a Prime Minister and cabinet. The Legislative Council for Burma Proper was also created, although essential power remained firmly in the hands of the British Governor and Westminster. From that time on, Burma Proper was commonly known as "Ministerial Burma". In contrast to this, the term "Excluded Areas" was used to denote the Chin, Kachin and Shan States (Federated Shan States), which were not only subject to "indirect rule", but also excluded from the Legislative Council of Ministerial Burma. The term "Excluded Areas", however, was superseded by the term "Frontier Areas" when the British government created a "Frontier Area Administration" soon after the Second World War.

After Second World War, the British returned to Burma in the spring of 1945. They outlined their long-term plan for the future of Burma in the form of a White Paper. This plan provided for a three-year period of direct rule under the British Governor, during which economic rehabilitation from the ravages of war was to be undertaken. Next, the Legislative Council of Ministerial Burma would be restored in accordance with the 1935 Burma Act. Only after the elections had been held under this Act would the legislature be invited to frame a new constitution "which would eventually provide the basis on which Burma would be granted dominion status."[2]

For the Frontier Areas, the White Paper provided a means of maintaining the pre-war status quo. The Karenni (Kayah) State was still bound by the pre-colonial treaty as an independent nation. Since the Chinram, the Kachin State and the Federated Shan States were excluded from the administration of Burma Proper, they would, according to the White Paper, have "a

[2] Aung San Suu Kyi, *Freedom from Fear*, (London: Penguin Books, 1991), p. 24.

special regime under the Governor".[3] When Stevenson became the Director of the Frontier Areas Administration, he even promoted plans to create a "United Frontier Union" for the Chin, Kachin, Karen, Shan and other non-Burman nationalities. However, the plans did not come to fruition as the British Conservative Party of Prime Minister Winston Churchill, lost the general election in 1945.

In the early stage of the post-war period, the British strongly highlighted the rights and interests of the Chin, Kachin, Karen and other non-Burman nationalities from the Frontier Areas who had loyally defended the British Empire during the war. But when the Labour Government came to power, Britain reversed its policy, and Burma's political agenda became largely a matter of bilateral negotiation between the British Labor government and U Aung San's AFPFL (Anti-Fascist People's Freedom League).[4] Thus, in December 1946, the Labor government invited only U Aung San, the undisputed leader of the Burmese nationalist movement. The delegation, which did not include a single representative from the Frontier Areas, went to London to discuss "the steps that would be necessary to constitute Burma a sovereign independent nation."[5] Since Attlee's Labour Government had already prepared to grant Burma's independence either within or without the Commonwealth, the London talks were largely a formality, at most putting into more concrete form the principles to which they had already agreed.[6] It might be said—as Churchill stated in parliament—the people of the Frontier Area were abandoned by the British and left to salvage what they could of their former independent status with U Aung San and the AFPFL.

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[3] The White Paper, Part 11, Section 7, cited also in Aung San Suu Kyi (1991), p. 24.

[4] Clive Christie, *Modern History of South East Asia* (London: Tauris Academic Stdies, 1998), p. 155

[5] Aung San Suu Kyi (1991), op.cit., p. 30

[6] U Maung Maung, *Burmese Nationalist Movements, 1940-1948,* (Honolulu: University of Hawaii Press, 1989), p. 253

The Question of Non-Burman Nationalities

At the London Talks in December 1946, the Burman delegates demanded that "the amalgamation of the Frontier Areas and Ministerial Burma should take place at once, and that the Governor's responsibility for the Frontier Areas should end."[7] As noted already, the London Talks was bilateral negotiation between the British Labor government and Aung San's AFPFL without a single representative from non-Burman nationalities. Although there were at least three Karen members in the Constituent Assembly of the Interim Burmese government, none of them were included in the London Talks. Instead, Aung San included several councilors, civil servants and politicians in the delegation. He even included his main rival politicians such as U Saw and Ba Sein.

On the demand of amalgamation of Frontier Areas with the Ministerial Burma, the British countered the AFPFL's demand with the following position:

> The HMG for their part are bound by solemn undertakings to the people of those Areas to regard their wishes in this matter, and they have deep obligations to those peoples for the help that they gave during the war. According to the information available to HMG the Frontier Areas are not yet ready or willing to amalgamate with Burma Proper.[8]

During the talk, Attlee received a cable from the Shan *Sawbwa* (princes), through the Frontier Areas Administration and the Governor, stating that Aung San and his delegation did not represent the Shan and the Frontier Areas.[9] Stevenson, Director of Frontier Areas Administration, also cabled to London, saying that,

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[7] Hugh Tinker, *Burma: The Struggle for Independence(1944-1948)*, (London:1984) p. 217.

[8] Ibid., quoted also in Maung Maung (1989), p. 257.

[9] See in C. T. Yawnghwe, *The Shan of Burma* (Singapore: Institute of Southeast Asian Studies, 1987), p. 99.

> We understand that the Hon'ble U Aung San and the Burman Mission visiting London will seek the control of FA. If this is the case we wish to state emphatically that neither the Hon'ble Aung San nor his colleagues has any mandate to speak on behalf of FA.[10]

In short, Aung San and his delegation had no right to discuss the future of the Frontier Areas.

Indeed, it might rightly be said that Aung San and his delegation neither represented nor had the right to discuss the future of the peoples of the Frontier Areas, especially the Chin, Kachin, and Shan because they were independent peoples before the colonial period and were conquered separately by the British, and they were not part of Ministerial Burma (Burma Proper). Aung San could therefore legitimately represent only Burma Proper, or the Ministerial Burma, which belonged to an old Burman or Myanmar kingdom before colonial period. In the pre-colonial period, no Burman or Myanmar King had ever conquered, for instance, the Chin people and their land, Chinram. That was the reason the British had applied two different administrative systems. Thus, when Burma and India were to be given independence by the British, the Chinram was not to be handed over to either India or Burma since it was not annexed by the British as a part of either country. They had the full right to be a sovereign independent state by themselves when the British withdrew its imperial administration from British India and Burma. In a nutshell, Aung San did not and could not represent the Chin and/or other nationalities from the Frontier Areas without any mandate from the peoples themselves.

During this critical period, U Aung San showed not only his honesty but also his ability for great leadership, which eventually won the trust of the non-Burman nationalities. He acknowledged the fact that the non-Burman nationalities from the Frontier Areas had the right to regain their freedom, independence, and sovereign status because they were not the subjects of the pre-colonial Burman or Myanmar Kingdom.

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[10] Original document is reprinted in Tinker 1984 and quoted in Maung Maung (1989).

Thus, they had the very right of self-determination: to decide on their own whether they would like to gain independence directly from Great Britain, and to found their own sovereign nation-states, or to jointly obtain independence with Burma, or even to remain as Provinces of the Commonwealth of Great Britain. Aung San reassessed his position and bravely and wisely put his signature to the historic agreement, the Aung San-Attlee Agreement, signed on January 27,1947. This historic agreement spelled out the position of the Frontier Areas vis-à-vis independence that was to be granted Ministerial Burma, as below:

> 8. Frontier Areas:
> - (b) The leaders and the representatives of the peoples of the Frontier Areas shall be asked, either at the Panglong Conference to be held at the beginning of next month or at a special conference to be convened for the purpose of expressing their views upon the form of association with the government of Burma which they consider acceptable during the transition period . . .
> - (c) After the Panglong Conference, or the 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.[11]

However, on that particular issue of non-Burman nationalities, two members of the Burman delegation refused to sign the Aung San-Attlee Agreement. One was U Saw, the former Prime Minister, and the other was Thakin Ba Sein, who had shared with Thakin Tun Ok the leadership of the minority

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[11] The full text of this document is reprinted in Tinker (1984), pp. 325-328.

faction of *Dobama Asi-Azone* after it split earlier (in 1938).[12] In their view, the clause concerning the Frontier Area in the Agreement carried an implicit threat of "dividing Burma into two parts."[13] Thus, they not only ignored the history of non-Burman nationalities such as the Chin, Kachin and Shan, but also the will of the people from the Frontier Areas.[14] Upon their return to Rangoon, U Saw and Thakin Ba Sein joined Ba Maw and Paw Tun, another former Prime Minister, formed the National Opposition Front, and accused Aung San of having sold out for the sake of holding office.[15]

U Aung San, however, was not unduly troubled by the accusations of his political opponents and plunged straight into negotiation with pre-colonial independent nationalities such as the Chin, Kachin and Shan. As mentioned above, the Aung San-Attlee Agreement had left the future of the Frontier Areas to the decision of its people.[16]

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[12] In 1938, the *Dobama Asi-Azone* split into two factions: one faction was led by Aung San and *Thakin* Kodaw Hmaing, and the other by Tun Ok and Ba Sein. Although each claimed to maintain the *Dobama Asi-Azone,* they were in reality two separate parties. While Aung San and Kodaw Hmaing opted for the "non-racial, non-religious secular" approach of inclusive secularism, Tun Ok and Ba Sein centered their political conviction on "race" and religion, namely, Burman or Myanmar "race" and Buddhism. As they put it well, to be Myanmar is to be a Buddhist ("*Buda-bata Myanmar-lu-myo",* their creed in Burmese). Moreover, while Aung San stood for democracy and federal Union, Tun Ok and Ba Sein were in favour of totalitarian form of national organization and the restoration of monarchy, a country in which the Burman or Myanmar race would tightly control the entire political system. See in Maung Maung (1989), and Khin Yi, *The Dobama Movement in Burma,* 1930-1938, (Cornell University, 1988).

[13] U Maung Maung (1989), op.cit., p. 255.

[14] Ibid., pp. 20-21.

[15] Aung San Suu Kyi, *Aung San of Burma: A Biography Portrait by His Daughter* (Edinburgh: University of Queensland Press, 1984), p. 46.

[16] Ibid. However, not withstanding the British insistence that tha Frontier Areas people be consulted on their wishes and aspirations, the commitment of the British Labor government to the FA peoples is doubtful. Would the Labor HMG have supported the FA peoples had they opted for independence — against its treaty partner, Aung San and the AFPFL —is an open question. Besides, the Labor HMG was at the time embroiled in the bloody partition of the Indian subcontintent into two new nation-sates – India and Pakistan. As such, it might not be unfair to say that the Labor HMG was more than happy to let the FA peoples negotiate on their own their future with Aung San and the AFPFL.

Jointly gaining Independence with Burma

After having successfully negotiated with the British, U Aung San turned his attention to the non-Burman nationalities and persuaded them to jointly obtain independence with Burma. He promised the frontier peoples separate status with full autonomy within the Burma Union, active participation at the centre within a Senate-like body, protection of minority rights, and the right of secession.[17] He also promised to make the agreed terms into law as guarantee of their right for the future, and told them they need have no fear of the Burman.[18] The negotiations between Aung San, as the sole representative of the interim Burmese government, and the Chin, Kachin and Shan, were held at the Panglong Conference in February 1947.

U Aung San successfully persuaded the Chin, Kachin, and Shan to join Independent Burma as equal, co-independent partners, and the historic Panglong Agreement was thus signed on February 12, 1947. The essence of the Panglong Agreement – the Panglong Spirit — was that the Chin, Kachin, and Shan did not surrender their rights of self-determination and sovereignty to the Burman. They signed the Panglong Agreement as a means to speed up their own search for freedom together with the Burman and other nationalities in what became the Union of Burma. Thus, the preamble of the Panglong Agreement declares:

> 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.[19]

The Panglong Agreement therefore represented a joint vision of the future of the pre-colonial independent peoples — namely the Chin, Kachin, Shan and the interim Burmese government led by Chief Minister Aung San, who came into

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[17] John F. Cady, *A History of Modern Burma,* (Cornell University Press, 1958), p. 539

[18] Maung Maung (1989), op.cit., p. 282

[19] Cited by Aung San Suu Kyi (1991), op.cit., p. 32

power in August 1946 according to the Burma Act of 1935. The interim Burmese government was a government for the region formerly known as Burma Proper or Ministerial Burma, which included such non-Burman nationalities as the Mon, Rakhine (Arakan), and Karen. The Arakan and Mon were included because they were occupied by the British not as independent peoples but as the subjects of the kingdom of Burman or Myanmar.[20] The Karens were included in the Legislative Council of Ministerial Burma according to the 1935 Burma Act because the majority of the Karens (more than two-thirds of the population) were living in delta areas side by side with the Burmans.[21] Since these peoples were included in the Legislative Council of Ministerial Burma, U Aung San could represent them in Panglong as the head of their government. Thus, the Panglong Agreement should be viewed as an agreement to found a new sovereign, independent nation-state between peoples from pre-colonial independent nations of what they then called Frontier Areas and Burma Proper, who in principle had the right to regain their independence directly from Great Britain, and to form their own respective nation-states. In other words, the Panglong Agreement was an agreement signed between the peoples of a post-colonial nation-state-to-be.[22]

Ever since the Union of Burma gained independence in 1948, the date the Panglong Agreement was signed has been

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[20] The Mon Kingdom was conquered by the Burman King Alaung-paya in 1755, and the Rakhine (Arakan) Kingdom by King Bodaw-paya in 1784.

[21] The Karen National Union (KNU) rejected the terms of the 1935 Burma Act in 1946 because they demanded independence for a separate homeland. They thus boycotted general elections of the 1947 Constituent Assembly, but the Karen Youth Organization (KYO) entered the general elections and took three seats in the Constituent Assembly and even the cabinet post in the Aung San's Interim Government.

[22] My concept of "nations-to-be" can be compared with Benedict Anderson's theory of "imagined political community" and Shamsul's "nations-of-intent". See Benedict Anderson, *Imagined Community: Reflections on the Origin and Spread of Nationalism* (London: Verso (2nd.ed) 1991 and Shamsul A. B. "Nations-of-Intent in Malaysia" in Stein Tönnesson and Hans Antlöv (ed.), *Asian Forms of the Nation* (Copenhagen: NIAS, 1996), pp. 323-347.

celebrated as Union Day. The observance of February12th as Union Day means the mutual recognition of the Chin, Kachin, Shan and other nationalities, including the Burmans, as "different people historically and traditionally due to their differences in their languages as well as their cultural life".[23] It is also the recognition of the distinct national identity of the Chin, Kachin, Shan, and other nationalities who had the right to gain their own independence separately and to found their own nation-state separately. In other words, it is the recognition of pre-colonial independent status of the Chin, Kachin, and Shan, and other nationalities as well as their post-colonial status of nation-state-to-be.

Condition Underpinning the Creation of the Union of Burma

According to the Aung San-Attlee Agreement, the Frontier Areas Committee of Enquiry (FACE) was formed to inquire through an additional and specific consultation about the wishes of the frontier peoples. The British government appointed Col. D. R. Rees-William as Chairman of the FACE. Since the committee conducted its inquiry after the signing of the Panglong Agreement during March and April 1947, the evidence they heard was generally in favour of cooperation with Burma but under the condition of:

(i) Equal rights with Burman,
(ii) Full internal autonomy for Hill Areas [that is, ethnic national states], and
(iii) The right of secession from Burma at any time.[24]

The FACE finally concluded its report to the Government that the majority of witnesses who supported cooperation with Burma demanded the "right of secession by the States at any time".[25]

[23] Lian Uk, "A Message on the Golden Jubilee of National Chin Day" in Chin Journal (February 1998), p. 185

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

[25] Ibid.

The FACE report, particularly the right of secession, was strongly criticized by such Burman nationalists as U Saw and Thakhin Ba Sein who had earlier refused to sign the Aung San-Attlee Agreement. They accused Aung San of having given up Burman territory and argued that the Frontier Areas were just the creation of the colonial policy of "divide and rule". U Aung San dismissed this criticism as historically unfounded and politically unwise. And he said, "The right of secession must be given, but it is our duty to work and show (our sincerity) so that they don't wish to leave."[26] And in keeping with his promise to the Chin, Kachin and Shan leaders at the Panglong Conference to make agreed term into law, the right of secession was provided for in the 1947 Union Constitution of Burma, Chapter X, Article 201, and 202:

> Chapter (X): The Right of Secession
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> 201. Save as otherwise expressly provided in this Constitution or in any Act of Parliament made under section 199, every state shall have the right to secede from the Union in accordance with the condition hereinafter prescribed.
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> 202. The right of secession shall not be exercised within ten years from the date on which this Constitution comes into operation.

Although the "right of secession" was put into law in the Union Constitution, Burma did not become a genuine federal union.

The End of Aung San's Policies of Pluralism and Federalism

At the Panglong Conference in 1947, the Chin, Kachin, Shan and other non-Burman nationalities were promised, as Silverstein observes, the right to exercise political authority of

[26] See Aung San's speeches "*Bogyoke Aung San i Maint-khun-mya,* (Rangoon, 1969); quoted also in Tun Myint, *The Shan State Secession Issue*, (Rangoon, 1957) pp. 10-11.

[administrative, judiciary, and legislative powers in their own autonomous national states] and to preserve and protect their language, culture, and religion in exchange for voluntarily joining the Burman in forming a political union and giving their loyalty to a new state.[27]

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

As a leader of the AFPFL, the first thing U Nu did was to give an order to U Chan Htun to re-draft U Aung San's version of the Union Constitution, which had already been approved by the AFPFL Convention in May 1947. U Chan Htun's version of the Union Constitution was promulgated by the Constituent Assembly of the interim government of Burma in September 1947. Thus, the fate of the country and the people, especially the fate of the non-Burman/Myanmar nationalities, changed dramatically between July and September 1947. As a consequence, Burma did not become a genuine federal union, as U Chan Htun himself admitted to historian Hugh Tinker. He said, "Our country, though in theory federal, is in practice unitary."[28]

On the policy of religion, U Nu also reversed U Aung San's policy after the latter was assassinated. Although Aung San, the hero of independence and the founder of the Union

[27] Josef Silverstein, "Minority Problems in Burma Since 1962", in Lehman (ed.,), *Military Rule in Burma Since 1962* (Singapore, 1981), p. 51.

[28] Hugh Tinker, *Union of Burma* (London, 1957); quoted also in Tun Myint 1957, p. 13 ; See also my article in *Chin Journal* (March, 1997) No.5, pp. 84-94.

of Burma, had opted for a "secular state" with a strong emphasis on "pluralism" and the "policy of unity in diversity" in which all different religious and racial groups in the Union could live together peacefully and harmoniously, U Nu opted for a more confessional and exclusive policy on religion.[29] The revision of Aung San's version of the Union Constitution thus proved to be the end of his policy for a secular state and pluralism in Burma, which eventually led to the promulgation of Buddhism as the state religion of the Union of Burma in 1961.

For the Chin and other non-Burman nationalities, the promulgation of Buddhism as the "state religion of the Union of Burma" in 1961 was the greatest violation of the Panglong Agreement in which U Aung San and the leaders of the non-Burman nationalities agreed to form a Union based on the principle of equality. They therefore viewed the passage of the state religion bill not only as religious issue, but also as a constitutional problem, in that this had been allowed to happen. In other words, they now viewed the Union Constitution as an instrument for imposing "a tyranny of majority", not as their protector. Thus, the promulgation of Buddhism as the state religion of Burma became not a pious deed, but a symbol of the tyranny of the majority under the semi-unitary system of the Union Constitution.

There were two different kinds of reactions to the state religion reform from different non-Burman nationalities. The first reaction came from more radical groups who opted for an armed rebellion against the central government in order to gain their political autonomy and self-determination. The most serious armed rebellion as a direct result of the adoption of Buddhism as state religion was that of the Kachin Independence Army, which emerged soon after the state religion of Buddhism was promulgated in 1961. The "Christian Kachin", as Graver observes, "saw the proposal for Buddhism to be the state religion as further evidence of the Burmanization [*Myanmarization*] of

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[29] Josef Silverstein, "Minority Problems in Burma", in Lehman (ed.), *Military Rule in Burma since 1962*, (Singapore: SIAS, 1981),pp.51-58

the country,"[30] which they had to prevent by any means, including an armed rebellion. The Chin rebellion, led by Hrang Nawl, was also related to the promulgation of Buddhism as the state religion, but the uprising was delayed until 1964 owing to tactical problems. Thus, the Chin rebellion was mostly seen as the result of the 1962 military coup, rather than the result of the promulgation of Buddhism as the state religion in 1961.

The second reaction came from more moderate groups, who opted for constitutional means of solving their problems, rather than an armed rebellion. The most outstanding leader among these moderate groups was Sao Shwe Thaike of Yawnghwe, a prominent Shan Sawbwa who was elected as the first President of the Union of Burma. Although a devout Buddhist, he strongly opposed the state religion bill because he saw it as a violation of the Panglong Agreement. As a president of the Supreme Council of United Hills People (SCOUHP), formed during the Panglong Conference, he invited leaders of not only the Chin, Kachin and Shan, the original members of the SCOUHP, but also other non-Burman nationalities — the Karen, Kayah, Mon, and Rakhine (Arakan) — to Taunggyi, the capital of Shan State, to discuss constitutional problems. Unfortunately, these problems still remain unsolved. The conference was attended by 226 delegates and came to be known as the 1961 Taunggyi Conference, and the movement itself was known later as the Federal Movement.

The Federal Movement in 1961-62

At the Taunggyi Conference, all delegates, except three who belonged to U Nu's party,[31] agreed to amend the Union Constitution based on Aung San's draft, which the AFPFL convention had approved in May 1947, as noted already. At the AFPFL convention, U Aung San asked, "Now when we build

[30] Mikael Graver, *Nationalism as Political Paranoia in Burma* (Copenhagen: NIAS, 1993), p. 56 (Emphasis added!)

[31] Those three delegates who did not agree to the idea of a federal Union were Za Hre Lian (Chin), Aye Soe Myint (Karen), and Sama Duwa Sinwanaung (Kachin).

our new Burma shall we build it as a Union or as Unitary State?. "In my opinion", he answered, "it will not be feasible to set up a Unitary State. We must set up a Union with properly regulated provisions to safeguard the right of the national minorities."[32] According to U Aung San's version of the constitution, the Union would be composed of National States, or what he called "Union States" such as the Chin, Kachin, Shan and Burman States and other National States such as Karen, Karenni (Kayah), Mon and Rakhine (Arakan) States. The original idea, as Dr. Maung Maung observes, "was that the Union States should have their own separate constitutions, their own organs of state, ***viz.*** Parliament, Government and Judiciary."[33]

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

They therefore demanded at the 1961 Taunggyi Conference the amendment of the Union Constitution and the formation a genuine Federal Union composed of National States, with the full rights of political autonomy, i.e., legislative, judiciary and administrative powers within their own National States, and self-determination including the right of secession. They also

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

[33] Maung Maung (1989), p. 170.

demanded separation between the political power of the Burman/Myanmar National State and the sovereign power of the Union, i.e., the creation of a Burman or Myanmar National State within the Union.[34]

The second point they wanted to amend on the Union Constitution was the structure of Chamber of Nationalities. The original idea of the creation of the Chamber of Nationalities was that it was not only to the safeguard of the rights of non-Burman nationalities but also for the symbolic and real equality, envisaged at the Panglong Conference. Thus, what they wanted was that each National State should have the right to send equal representatives to the Chamber of Nationalities, no matter how big or small their National State might be. In other words, they wanted a kind of Upper House like the American Senate.

But what had happened according to U Chan Htun's Union Constitution, was that while all the non-Burman nationalities had to send their tribal or local chiefs and princes to the Chamber of Nationalities; it allowed Burma Proper to elect representatives to the Chamber of Nationalities based on population. Thus, the Burman or Myanmar from Burma Proper, who composed majority in terms of population, were given domination in the Union Assembly.

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

[34] See *Documents of Taunggyi Conference, 1961* (Rangoon: Published by the SCOUP, 1961) in Burmese.

Taunggyi Conference.[35] Thus, the Federal Movement and its Taunggyi Conference can be viewed, as noted by a Shan scholar Chao Tzang Yawnghwe, as "a collective non-Burman effort to correct serious imbalances inherent in the constitution" of 1947.[36]

In response to the demand of the 1961 Taungyi Conference, U Nu had no choice but to invite all the political leaders and legal experts from both Burman and non-Burman nationalities to what became known as the Federal Seminar at which "the issues of federalism and the problems of minorities would be discussed with a view to finding a peaceful solution."[37] The meeting opened on 24 February, 1962 in Rangoon while the parliament was meeting also in regular session. But before the seminar was concluded and just before U Nu was scheduled to speak, the military led by General Ne Win seized state power in the name of the Revolutionary Council in the early morning of 2 March, arresting all the non-Burman participants of the Federal Seminar and legally elected cabinet members, including U Nu himself, dissolving the parliament, suspending the constitution and ending all the debate on federal issues.

The Military Coup in March 1962

Brigadier Aung Gyi, the most powerful but second only to General Ne Win in the Revolutionary Council, stated that the main reason of the military coup in 1962 was "the issue of federalism."[38] The Burma Army, which staged the *coup d´état*, was "the product of Burman nationalism," as a Shan leader and scholar Chao Tzang Yawnghwe pointed out, "a national sentiment revolving around racial pride and memories of the

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[35] See *Documents of Taunggyi Conference, 1961* (in Burmese).

[36] Chao Tzang Yawnghwe, "The Burman Military", in Josef Silverstein (ed.), *Independent Burma at Forty Years: Six Assessments* (Cornell University, 1989), pp. 81-101.

[37] Josef Silverstein in Lehman (1981), op. cit., p. 53.

[38] *Guardian,* March 8, 1962; cited also in Josef Silverstein, *Burma: Military Rule and the Politics of Stagnation* (Cornell University Press, 1977), p. 30.

imperial glories of Burinnong, Alaungpaya and Hsinphyusin,[39] and was very much enraged by the federal movement. They were desperate too, since a successful constitutional reform would undermine the army's supremacy in the non-Burman areas."[40] Moreover, if the constitutional reform was carried out successfully, the Burman would be on the same level as non-Burman nationalities and this certainly was unthinkable for Burman national-chauvinists like Ne Win and Aung Gyi.[41]

Although the Burma Army was originally established by Aung San as the BIA (Burma Independence Army) during the Second World War, two factions from very different backgrounds made up the Thirty Comrades, the core of the BIA. "Twenty-two of the young comrades were followers of the old writer and national hero, Thakhin Kodaw Hmaing" and were later known as "Kodaw Hmaing-Aung San faction". But another eight, including Ne Win, came from the "Ba Sein-Tun Oke faction."[42] As noted already, Ba Sein refused to sign the Aung San-Attlee Agreement, mainly because of non-Burman nationalities issues on which he could not agree with U Aung San. As a matter of the fact, while Aung San had officially recognized, by signing that agreement, the pre-colonial independent status of the Chin, Kachin, Shan and other non-Burman nationalities, and their right to regain independence directly from Great Britain and their right to form their own respective sovereign nation-states without any mutual attachment to Burma, Ba Sein and his fellow U Saw, who later killed Aung San, could not recognize historical truth and refused to sign that agreement in 1947. They also accused U Aung San of being a traitor of Burman traditional nationalism, and they went about

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[39] Those are the Burman or Myanmar Kings who conquered their neighbouring countries such as Mon, Rakhine, Shan and Siam in their past history. But no Burman king ever conquered the Chinland.

[40] Chao Tzang Yawnghwe, *The Shan of Burma: Memoirs of a Shan Exile* (Singapore: Institute of Southeast Asian Studies, 1987), p. 120.

[41] Ibid.

[42] Bertil Lintner, *Outrage: Burma's Struggle for Democracy* (Hongkong: Review Publishing, 1989), p. 34.

saying that Burma had been sold down the river by Aung San.[43] Hence, General Ne Win and Brigadier Aung Gyi, as the most faithful disciples of the Ba Sein-Tun Oke Burman national-chauvinist faction, reclaimed their vision of Burma which in their view U Aung San betrayed. And they promulgated the Unitary State Constitution in 1974 by force.

Ever since the chauvinistic Burma Army launched a full range of "Myanmarization" measures under the leadership of General Ne Win, the Chin, Kachin, Karen, Karenni (Kayah), Rakhine (Arakan), Shan and other non-Burman nationalities have had no choice but to struggle for their survival by any means, including the use of arms. Today almost all non-Burman nationalities are fighting against the central government in order to gain full political autonomy and self-determination within the Union of Burma. Thus, the civil war in Burma which began at the time of independence intensified under General Ne Win's military dictatorship and his successor, the present military junta, which came into power in 1988, in order to suppress the nation-wide popular uprising for a democratic change.

Struggle for the Second Independence

As Daw Aung San Suu Kyi correctly points out, the struggle for democracy, equality and self-determination in present Burma is the struggle for the second independence of Burma because what Burma's leaders tried hard to achieve in the first independence movement had all been coercively negated by General Ne Win in the 1962 military coup. Moreover, the 1962 military coup abruptly interrupted the federal movement, which indeed was a struggle for the reformation of a genuine federal union in accordance with the Panglong Agreement and Spirit. Thus, the nation-wide democratic movement in 1988 can be seen as the struggle for the second independence, especially as the revival of the spirit of Panglong. Likewise, the formation of the UNLD can be viewed as the continuation of federal movements in 1950s and 1960s, then led by the SCOUHP.

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[43] Dr. Maung Maung, *Burma's Constitution* (The Hague: Martinus Nijhoff, 1959), p. 80.

Part Two:

The UNLD Initiative for State Constitutions Drafting Process

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

In order to achieve the goal of the struggle for the second independence, the UNLD adopted the following policies as its objectives:

(1) To establish a genuine federal union.
(2) To guarantee democratic rights, political equality, and self-determination for all nationalities of the Union.
(3) To build a firm unity of all nationalities in the Union based on the principles of equality and justice.
(4) To promote the development of all member states of the Union.
(5) To abolish all types totalitarianism in Burma.
(6) To establish internal peace and tranquility through dialogue.

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

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

(1) The constitution of the Federal Union of Burma shall be formed in accordance with the principles of federalism and democratic decentralization.

(2) The Union Constitution shall guarantee the democratic rights of citizens of Burma including the principles contain in the United Nation's declaration of universal human rights.

(3) The Union Constitution shall guarantee political equality among all ethnic national states of the Federal Union of Burma.

(4) The Federal Union of Burma shall be composed of National States; and all National States of the Union shall be constituted in terms of ethnicity, rather than geographical areas. There must be at least eight National States, namely, Chin State, Kachin State, Karen State, Kaya State, Mon State, Myanmar or Burma State, Rakhine (Arakan State), and Shan State.

(5) The Union Assembly shall be consisting of two legislative chambers: the Chamber of Nationalities (Upper House) and the Chamber of Deputies (Lower House).
   (i) The Chamber of Nationalities (Upper House) shall be composed of equal numbers of elected representatives from the respective National States; and
   (ii) The Chamber of Deputies (Lower House) shall be composed of elected representatives from the respective constituencies of the peoples.

   The creation of Chamber of Nationalities based on equal representation of the member states of the Union

is intended to safeguard the rights of National States and minorities in the Union government. It also intended as a symbol and instrument of the principle of equality among all nationalities of the Union.

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

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

The UNLD–LA Activities

The member parties of the UNLD contested the 1990 general election under the slogan of "democracy and equality" and won 35% of the popular vote and 16% of parliamentary seats (67 seats) in the national parliament of the Union of Burma. The election results established the UNLD as the second largest political party in Burma. The UNLD, however, was unilaterally dissolved and declared illegal by the ruling military junta in 1992.

The reason seems quite simple; the UNLD political platform stood in direct contrast to the policies of the military regime that was intent on establishing a unitary state dominated by the central government.

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

- Preparation for Tripartite Dialogue
- Preparation for State Constitutions

The UNLD-NDF State Constitutions Seminar (August 20-25, 2001)

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

The UNLD, therefore, organized the state constitutions seminar, together with the NDF, on 20-25 August 2001. The seminar was attended by the state constitutions drafting committee members from Chin State, Karen State, Karenni State, Mon State, and Shan State. Observers from Arakan State and Kachin State also were invited for they were still under preparation for forming their state constitutions drafting committees. Members of democratic forces from the Burman

ethnic group and federal constitution drafting committee members also were invited to the seminar. Mrs. Janelle Saffin, constitutional law expert and Member of State Parliament from New South Wales, Australia, was invited as a resource person.

The seminar particularly focused on:

1. The basic principles of federalism.
2. The structures and functions of state constitutions, including:
   (i) Bill of Rights
   (ii) Suffrage and elections
   (iii) The Legislature
   (iv) Initiative and referendum
   (v) The Executive
   (vi) The Judiciary
   (vii) Finance
   (viii) Local government
   (ix) Civil service
   (x) Public welfare
   (xi) General provisions
   (xii) Constitutional revision

At that seminar, the "American Model of State Constitutions" was presented for discussion. In addition to "American Model of State Constitution", Mrs. Janelle Saffin also explained the background of the "coming together" model of the Australian constitution with a focus on drawing lessons for Burma. Six former British colonies which already had their own constitutions and governments (with three branches – executive, legislative and judiciary), came together as states to form the country of Australia, mostly for economic reasons, rather than for ethnic equality or minority protection. Although the Australian federal constitution together with its state constitutions has a limited role in protecting minority rights, over the last 100 years, the federation has done a good job of balancing national unity and the states' autonomy.

There were considerable differences of opinion when drafting the federal constitution. The conflict was particularly on how to divide power and money between the federal union

or national level government (The Commonwealth government) and the state governments. After negotiations, the upper house became symmetrical, giving an equal number of seats to each of the states. All executive, legislative and judicial power is divided between the union and the states and many powers are concurrent. The only exclusive powers to the union are customs duties, defense, commercial regulations (banking, insurance, copy right, interstate and overseas trade, etc….) and a few social powers (marriage, divorce, and some social welfare schemes). Other powers including health, education, transport and housing remain in the states. However, giving the High Court the role of final appeal, even for state court cases, favors union supremacy over the states in judiciary power. Likewise, giving the union the right to redistribute tax money favors the union to expand its financial power to influence the states. Therefore it is important for the states to clearly pre-determine which powers they would like to maintain and which powers they are willing to give away to the union, since when ambiguities or overlaps arise, the union is likely to gain more control over time. Another good lesson from the Australian constitutional arrangement is that constitutional amendments cannot be made only by a majority vote at the national level parliament (without an agreement from the states parliaments). Majority parliamentary votes at both the national and state levels are required.

Two Study Trips to Germany and Belgium

As a follow up of that seminar, 17 members of state constitutions drafting committees from seven states, namely, Chin, Kachin, Karen, Karenni, Mon, Rakhine, Shan and two representatives of Burma Lawyer Council, went a study trip to Germany for ten days, from December 5-15, 2001. This study trip emphasized the function and structure of German Federalism in the light of how federal government and state governments are functioning, how federal and state government are related with each other and at the same time separated, and how two levels of government can co-exist and shared power or separate power in a federal system. For the group, one of the most interesting points was to see the fact in their own eyes

that each and every state in Germany has their own separate constitution and their own organs of state, that is—state parliament, state government, and state judiciary.

The second federal study trip to Germany and Belgium was conducted by the SCSC, from November 25-December 5, 2002. The specific theme of this study trip was to see how local government are functioning and how local and state governments shared and divided power in federal system. Seventeen members from seven state constitution committees and federal constitution drafting committee members participated in the study trip. [44]

We would like to express our sincere thanks and gratitude to Mr. Nobert von Hofmann, Roland Feicht and Sabine Gurtner from Friedrich Ebert Foundation in Germany, Mr. Harn Yawnghwe, Director of Euro-Burma Office in Brussels, Belgium, for their hospitalities and financial assistance, which made us able to conduct federal study trips twice to Germany and Belgium.

The Second State Constitutions Seminar (October 29-November 6, 2002)

In October and November 2002, the UNLD organized two seminars in New Delhi, India, and Chiang Mai, Thailand, under the title of *The Role of State Constitutions in the Protection of Nationality and Minority Rights Under Federalism: Dialogues in Support of a Democratic Transition in Burma***.** The seminars were conducted under the NRP program, and funded by International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm.

The specific themes of the seminars include:

(i) The rationale for federalism:
- Is it affordable?
- Will it exacerbate religious and ethnic conflict, be an impetus for secession?

[44] Please sees detail account of Germany trips in my report on "State Constitutions Drafting Process" in *Peaceful Co-existence: Towards Federal Union of Burma,* Series No. 5, UNLD Press, 2003.

(ii) Boundary delimitation:

- How is the federal unit to be structured?
- On the basis of historical boundaries or ethnic/ linguistic or religious lines?
- The advantage/disadvantage of using historical boundaries/ ethnic/ religious criteria, and or the creative drafting of new boundaries?
- How federalism and decentralization can ensure ethnic rights?

(iii) Conceptualizing state constitutions:

- Should they be uniform, contain core features, represent the unique features, history and aspirations of the state?

(iv) Powers and functions of the Central government and State governments:

- Scope of the legislative/ executive powers
- Subject matters under the control of Central government and State governments
- How power is shared between State and Federal governments, e.g. health, education, etc.
- Role of National/State Institutions (Planning commissions, Ombudsman, Auditors, Central Bank)
- Challenging issues (Fiscal powers - taxation, police, judiciary, land rights).

Scholars from Australia (Professor Cheryl Saunders, Australia National University, Melbourne), India (Professor Yogendra Yadav, Centre for the Study of Developing Societies, New Delhi), and Nigeria (Dr. Otive Igbuzor, Secretary, Citizens' Forum for Constitutional Reform, Lagos) were invited to present their papers and to share their countries experiences.

We would like to express our sincere thanks and gratitude to Dr. Sakhuntala Kadirgamar-Rajasingham and Ms. Leena Rikkila from international IDEA in Stockholm, for their financial assistance and personal interest they have shown for peace building and State Constitutions Drafting Process in Burma.

Part Three:

The Role of NRP in State Constitutions Drafting Process

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

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

The Program encourages and empowers all ethnic nationalities to:

1. Discuss and define their own political futures,
2. Dialogue with other nationalities regarding their political future,
3. Engage in preparing for political structures they wish to establish,
4. Create conditions to safeguard and promote democratic and political structures that will be established.

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

The NRP program not only encourages but also empowers all ethnic nationalities to discuss and define their own political futures. In doing this, the NRP supports the state constitutions

drafting process as part and partial of intra-inter ethnic dialogue in national reconciliation program, through which all ethnic nationalities in Burma can engage in their preparation for political structures they wish to establish, and create conditions to safeguard and promote democratic and political structures that will be established. The NRP program, therefore, assists the state constitutions drafting process, initiated by the UNLD and NDF, by providing financial assistance and technical needs.

Part Four:

The Formation of Supporting Committee for State Constitutions (SCSC)

In order to assist the state constitutions drafting process effectively, the UNLD and NDF jointly formed the "Supporting Committee for State Constitutions" at the meeting held in Mae Sod on August 17, 2002.

The SCSC committee members are:

1. Dr. Chao Tzang Yawnghwe (Chairperson)
2. Col. Htoo Htoo Lay (NFD, Coordinator)
3. Col. Hkun Okker (NDF, member)
4. Khun Marko Ban (UNLD, member)
5. Dr. Lian Hmung Sakhong (UNLD, Coordinator)

The SCSC will as a coordinating body of the following state constitution drafting committees and study groups:

1. Chinland Constitution Drafting Committee (led by Lian Uk, formed as Working Group 1 of Chin Forum in 1998).
2. Kachin State Constitution Drafting Committee (led by U Khun Sa, formed under the KNO leadership).
3. Karen State Constitution Drafting Committee (led by Col Htoo Htoo Lay, formed under the KNU leadership)
4. Karenni State Constitution Drafting Committee (led by Abel Twide, formed under the KNPP leadership).
5. Mon State Constitution Drafting Committee (led by Nai Hongsar, formed under the leadership of MUL and NMSP).

6. Rakhine (Arakan) State Constitution Drafting Committee (under the process of formation).
7. Shan Democratic Union, which undertaking the task of drafting Shan State Constitution (led by Sao Seng Suk).
8. A study group of the Burman State Constitution (led by Than Tun).

(Note: This report is originally prepared for the UNLD-LA Second Conference, held in Febuary 2003.)

Dr. Lian H. Sakhong
General Secretary, UNLD-LA
Co-ordinator, SCSC

Chiang Mai, Thailand
September 15, 2003

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CHAPTER TWO

FEDERALISM,

STATE CONSTITUTIONS

AND

SELF-DETERMINATION

STATE CONSTITUTIONS, FEDERALISM AND ETHNIC SELF - DETERMINATION

Dr. Chao- Tzang Yawnghwe

The Federal Aspiration

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

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

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

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

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

State Constitutions: Its Meaning and Significance

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

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

governing or administrative units are derived from, or developed to them by the central government.

In contrast, in a federal state order, the member or constituent states are the basic and founding units of the federation, and whatever powers they exercise or possess are not given to them by center. The powers of the constituent states of a federation are, in principle, derived from the people of the respective states, and it is thus stated in most state constitutions in countries that are federal in form.

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

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

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

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

State Constitutions and Ethno-nationalism

State constitutions are inherent and necessary components of a federal state order or system where power is shared between tow levels of governments. Therefore, looking into state constitutions and the drafting of state constitutions can be viewed as a very important process in situation where the goal is to establish a federal union - like the current situation in Burma.

State constitutions also serve a very crucial purpose. It is the function of the state constitutions to create order, to define how individuals, groups, population segments, and as well how various structures within a state will relate to each other and interact with one another. The constitution also lay down the rules of the game, regulatory and other rules, and as well institutional and other boundaries, so that actions and relations become predictable (or "readable", even transparent) and thus ensure stability and harmony.

There are all kinds of constitutions. Some are democratic and empowering on enabling, while others are restrictive and repressive. Some constitutions define nation or community in a very narrow way, favoring certain groups and ethnic segments over others, while others are liberal, ethnically open or neutral, and some recognize ethnic interests and aspirations.

In the process of looking into state constitutions, one cannot escape the fact that in Burma, the politics of ethnicity plays a very major role at both national and state level politics. Almost all political players in Burma are deeply inspired by ethnic interest and aspirations or are greatly influenced by ethnic orientations and sentiments. History is narrated and understood in ethnic terms, and wars — both and ancient and modern — are seen as wars of aggression and resistance between ethnic nations, i.e., between Burmans and Shan, Burmans and Mon, Rakhine and Burmans, and so on.

Moreover, successive government in Burma, especially the military elites (and rulers), have defined nationhood in terms of the Burman language, Burman history, the Burman claims to empire-hood, and so on. They have also repressed and

suppressed the language, tradition, history, and identity of the non-Burman nationalities, or relegated them to the margins, as subordinated culture and language, etc.

The result has been politics and political struggles that revolve around ethnic nationalism, with each ethnic group or segment advancing its ethnic interests, and/ or projecting ethnic aspirations or fears, or resentment, anger, and so on. There has been generated a pervasive demand for ethnic self-determination on the part of almost all ethnic groups in Burma. There is even demands for independence or separation on the part of some nationalities forces.

This focus on ethnicity or ethno-nationalism is therefore very, very problematic. This is all the more so since no territorial unit — no state — is ethnically homogeneous. Even Burma Proper — the Burman State — is a multi-cultured, multi-ethnic entity. The Shan, Kachin (etc.) states, are all multicultural and ethnically diverse. And all ethnic groups in Burma (and in the various states as well) are mobilized around their respective ethnic identities and aspirations.

In looking into state constitutions, therefore, there is need to take into serious account the awakened ethnic consciousness, aspiration, fear, anger, suspicion, etc., that afflicts or drives all political leaders and organizations.

Constitutional Framework: Addressing Ethnic Aspirations

One area that needs to be seriously and might be fruitfully, looked into is how the respective state constitutions can address the demands for ethnic self-determination, or defuse ethnic anger, suspicion, and resentment.

The key and crucial question therefore is how can ethnic aspirations for self-determination be met? One area that might be rewarding to look into is a system of administration where power is democratically decentralized. This is a system where local communities within a state, defined ethnically or otherwise, are administratively empowered by the constitution of the state

of manage their own affairs, autonomous of control from the top, i.e., the state government.

In this kind of administrative arrangement, powers with regard to matters of local interest and concern are left in the hands of the local community and the local government elected by this community. In this administrative context, the government of the state would deal only with matters that transcend local interest, and it will perform functions and provide services that are beyond the scope of the capacity of local governments and local communities.

As far as Burma is concerned, the system of democratic decentralized administration is a very novel one, and has never been experienced by the people or leaders. The fact of the matter is that this system is compatible with the principle and practice of democracy and at the same time recognizes and acknowledges the self-determination aspiration of various ethnic groups and cultural segments.

Given the fact of heightened ethnic politics and ethnic demands in Burma, and also given that the aim of democratic and nationalities leaders and organizations is to establish democracy and promote self-determination, it might be the case that the various states of the new Union will have to necessarily — unavoidably — consider adopting a decentralized democratic administrative system, which has long been established and practiced in stable democracies.

State Constitutions, Capacity Building, and National Reconciliation

Due therefore to the multiethnic composition of all states in a country called the Union of Burma, and owning to long years of confrontational politics based on ethnonationalistic perceptions and demands, it is important for ethnic-Burmese and nationalities leaders to seriously study or look into state constitutions. The reason why this is important is because how the state constitution is drafted — and the mechanisms and structures that it provides — will significantly determine how

different ethnic groups will live and work together within each member state of the future democratic, federal Union.

It is envisioned by the National Reconciliation Program/ NRP — which established by nationalities and ethnic Burmese leaders of the democratic movement — that for national reconciliation to be a success, a firmer and better understanding of how ethnic nations can live and work together, and how they can resolve problems (and even conflicts) peacefully and democratically, in most essential. It is also believed — by the NRP and leaders of the democratic movement — that looking into federalism, the concepts and principles of federalism, federal structures and mechanisms, and importantly, looking at state constitutions, will enhance the capacity of nationalities leaders to help their ethnic nations determine their future in a peaceful and democratic manner.

As well, the process of looking into and drafting state constitutions initiated by the NRP constitutes a very important step in reaching the goals of the democratic movement. The state constitution process would, ONE, lay a firm, bottom-up foundation for federalism (i. e., genuine federalism), and TWO, the draft state constitutions could and would collectively serve as a solid political platform for nationalities leaders and forces in negotiation with other players and actors on the Burma stage.

BURMA: STATE CONSTITUTIONS AND THE CHALLENGES FACTING THE ETHNIC NATIONALITIES

Dr. Chao-Tzang Yawnghwe

Introduction: The Politics of Ethnicity

The general impression that persists regarding politics in Burma is that it is torn by ethnic conflict and ethnic violence, and that there is therefore a great danger of the country breaking up into fragments like former Yugoslavia, or that inter-ethnic strife and bloodshed as in Bosnia is a likely scenario in future for the country.

The above is precisely the justification put forward by the military and successive military rulers – who seized power in 1962 and has ruled (or misruled) the country since then. They claim that they had to take over power because there was a secession plot by the leaders of the ethnic nationalities (or the "national races", the term used by the present regime)[1]. They further claim that without a strong military presence within the state, there will be secession and/or ethnic groups going for each other's throats. This claim is but a justification for continued military rule. If taken at face value, the military must necessarily remain at the helm of the state forever in order to preserve the territorial integrity of the state (or the nation) and prevent bloody inter-ethnic conflict in Burma.

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[1] The term used here is "ethnic nationalities" rather than "national minorities" to denote the ethnic groups of the country. Burma is a multi-ethnic country. The major groups are the Burman, Shan, Karen, Kachin, Chin, Rakhine, Mon, and Karenni. There is indeed much confusion as regard the majority-minority equation. There exists a perception that the Burmans are the majority, in the absolute sense, and that the rest are ethnic minorities. The Burmans do indeed constitute an overall majority (perhaps about 50 percent plus), but they are a minority in, say, the Shan State, the Chin (etc.) states. The equation becomes more complicated when the constituent states are themselves more or less multi-ethnic, despite the names: the Shan State, the Karen State, etc. However, in the Burmese language, a distinction is made between minorities and ethnic national groups (nationalities) – Lu-Ne-Zu, denoting minorities, and Lu-Myo-Zu for ethnic nationalities.

The situation is not helped when ethnic nationalities leaders and resistance movements have adopted the language of ethnicity in articulating the aspirations of their respective ethnic groups for rights and equality. For example, they speak of a "genuine federal union of equal ethnic nations (or nationalities).

What is the aspiration for ethnic equality, one may ask? The answer is that this aspiration is, in reality — it might be said — their desire not to be dominated and imposed upon by another or other ethnic segments, and to have the right to promote and protect their culture and environment, including land[2].

The aspiration of Burma's ethnic nationalities are in one sense the same as that of ethnic groups and minorities (and indigenous peoples) everywhere, in a situation where they are endangered or are marginalized and discriminated against by the state. In this general sense, it may be said that the non-Burman ethnic segments[3] face the same problem, and have articulated the same kind of demands or aspirations of minorities, ethnic or otherwise, and indigenous peoples elsewhere, or everywhere.

However, in another sense, within the Burma context, the case is different from other countries. The Union of Burma was formed by an accord signed at Panglong in 1947, one year prior to the emergence of Burma as a post-colonial independent nation-state (in 1948). The accord was between leaders of what became the Union of Burma, who happened to "belong" to different ethnic groups. Actually, they represented the different territorial entities which became the Union of Burma. In this sense, or analytically, the ethnic nationalities are the founding

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[2] In the passages that follows, "ethnic equalty" will be in reference to this definition.

[3] The non-Burmans are ethnic segments that do not speak Burmese as their mother tongue like, for example, the Shan, Mon, Karen, etc. The Burmans are ethnic Burmese, speaking the Burmese language, i.e., the Burmese-speaking ethnic group. Apart from the eight major segments, there are numerous other ethnic groups like the Ta-Ang or Palaung, PaO, Lahu, Wa, Akha, Kayan. As well, there are Chin, Burman, Kachin (etc.) dialect groups.

nations of the Union of Burma, but the accord – the 1947 Panglong Accord – was not one between ethnic segments.

Also, Burma's ethnic conflict, so-called, is a political conflict, rather than a conflict between warring ethnic groups. The conflict is primarily a conflict between the ruling military in monopolistic control of the state in Burma and the ethnic nationalities. It is a vertical conflict between the state and various ethnically defined societies.

The so-called ethnic conflict is an integral part of the broader conflict between the military and its state and broader society. It is a conflict about how the state is to be constituted and how the relation between the constituent components of society and the state be ordered. It is not the case of ethnic segments feuding with and killing each other, nor is it driven by the secession impulse.

In other words, what is perceived as ethnic conflict in Burma is part of the wider conflict between the state on the one hand, and society on the other. Looking at Burma's history since 1948, there is to be observed a long-standing and serious dysfunctional relation between the state and broader society, which has been exacerbated by long years of monopolistic military rule (i.e., since 1962).

The Panglong Accord of 1947 and the Constitutional Problem

As mentioned above, "modern" or present-day Burma is founded on an agreement, the 1947 Panglong Accord. However, as already mentioned, Panglong is not an accord between ethnic segments – between the Burman and the non-Burman[4]. Rather,

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[4] The term scholars usually use is "Burman and Burmese", the latter denoting all ethnic groups of Burma, like the term "British". However, the term Burman and non-Burman is here used rather than "Burman and "Burmese", because the "Burmese" denotes the language of the Burman, and things Burman, like the music, food, garments (etc.) of the Burman ethnic group. Culturally, however, there is not much of a difference between the Mon, Rakhine, Burman, and Shan, all being Buddhist.

it is an accord between Ministerial Burma (or Burma Proper) and other territories which were not part of Ministerial Burma – i.e., the Frontier Areas, including the Federated Shan States. It was signed by U Aung San, the head of the interim executive council of Ministerial Burma, and Shan princes, Kachin and Chin chiefs, and the representatives of the people of those areas. The Karen, Mon, Rakhine and Karenni leaders were present at Panglong as observers.

The Panglong Accord is then, in essence, an agreement among the leaders of former British possessions of "further India" (so to speak), to join together in order to jointly obtain independence from Britain. As well, there was an understanding that no constituent territory would be more equal than others or occupy a super-ordinate or "superior" position, vis-a-vis the rest. By the same token, no constituent state was to be subordinated to any other territorial entities or units.

The above is the core, the essence, of the 1947 Panglong Accord and the Panglong spirit.

However, what transpired was that the 1947 Union Constitution was drawn up in haste – in about four months – in a very unstable a traumatic period for U Aung San and most members of the interim Executive Council, were assassinated in July 1947. The communists were in that time period denouncing the negotiated independence as a sell out, as pseudo-independence, and were threatening to wage an armed revolution to obtain genuine independence[5]. Internationally, the

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[5] The communist did indeed unleash an armed revolution right after independence, plunging the country into a civil war. To complicate matter, the Karen also took up arms against what they viewed as an attempt by Burman leaders to eliminate them. This mistrust and hostility has its root in the period when the Japanese drove the British out during the Second World War. The Karen were loyal to the British and resisted the Japanese. Burman nationalists and leaders allied themselves with the victorious Japanese. There were several massacres of the Karen during the war, perpetrated by Burman militias. Attempts were made after the war by both Karen and Burman leaders to heal old wounds, but they were not successful. Thus began the Karen armed resistance against what they regarded as the Burman-dominated state informed by an agenda to destroy them as a people.

world was being divided into two camps, the "free world" and the communist-socialist world.

The 1947 Union Constitution, which was proclaimed on September 1947, was one that provided for a semi-unitary arrangement: Ministerial Burma occupied the position of a Mother unit – the Pyi-Ma, in Burmese. There were in addition four subordinated units or states[6]: the Chin Special Division, the Kachin State, the Shan State, and the Karenni State, which had their own executive and legislative bodies, but no constitution of their own. Their power or responsibilities and autonomy were defined or provided for in sections of the Union constitution – which was practically the constitution of the Pyi-Ma (or the Mother state). In effect, the constituent states of the union were, in effect, subordinates of the Mother state (or Burma Proper)[7].

Most strangely, although the Union was in effect semi-unitary, there were included a constitutional clause that permitted secession[8] – i.e., the right of secession provision was constitutionally granted to the constituent states (which the Kachin State government renounced in the mid-1950s). As so happened, the right of secession provision became a thorn in the side of the military, and provided the military top brass and General Ne Win with a cause: a duty to prevent secession or the break up of the Union at all cost.

The 1947 Union Constitution was therefore not in line with the Panglong Accord or the spirit in which the agreement was

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[6] There were originally only four constituent states (including the Chin Special Division). In the 1950s, the Karen State was created and added, and paradoxically, the Mon and Rakhine State was created by Ne Win, or during his rule.

[7] This arrangement was similar to that obtaining between England, Scotland, Wales, and Ireland until recently, with England occupying the dominant position as a mother state.

[8] The reason why the secession clause was inserted in the constitution was that because the late U Aung San, Burma's independence hero, stated that the Union was voluntary and that member states could opt out after ten years of living together under one flag.

signed (in February 1947). However, it was understood that it could be amended at any time in the future. Thus, in the early 1960s, the constituent states led by Sao Shwe Thaike — a senior Shan prince, the First Union President (1948-1952), twice Speaker of the Upper House (Chamber of Nationalities) — initiated a move to amend the 1947 Union constitution, to make it more federal, or "genuinely federal".

In response, General Ne Win staged a coup, claiming that the military had to step in to foil a secessionist plot, and to "clean up the mess" made by incompetent, spineless, and corrupt politicians.

Under Ne Win and successor ruling generals, the meaning of federalism has been grossly distorted — federalism has been equated with secession and the fragmentation of the country. This is so despite the continued celebration of February 12th – the day the Panglong Accord was signed – as Union Day, and despite the rhetoric and slogans about the equality of "national races". As well, it is strange that federalism should be equated with secession when the term Union in Burmese (the language of the Burman) – Pyidaung-zu – is unambiguous. "Pyidaung-zu" means the coming together of different national states.

Federalism and Ethnic Equality and Rights

There has been an agreement among ethnic-based resistance organizations since the early 1970s to adhere to the idea of federalism, or in other words, an agreement for all the people and ethnic segments of the Union to live together under one flag, within a genuinely federal framework. In the early 1990s, after the 1988 people's power uprising, there was an agreement among all forces within the democracy movement that federalism was the common goal[9].

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[9] This refers to the 1990 Bo Aung Gyaw Street Declaration between the NLD (National League for Democracy) and the UNLD (United Nationalities League for Democracy) to establish a democratic federal Union , and the 1991 Manerplaw Agreement between the NCGUB (National Coalition Government of the Union of Burma) and ethnic nationalities armed resistance organizations.

It can be said that apart from the military, there is currently a broad consensus among political actors in Burma with regard to the Panglong Accord and its spirit, and a consensus to rebuild the country as a democratic, federal Union.

Although there is a broad consensus regarding the future Union of Burma, the ethnic nationalities faces the challenge, firstly, of understanding federalism – specifically, whether a federation is a union of territories or a union of ethnic segments. It can be observed that there is currently a widespread confusion in this regard.

The answer, based on Panglong, would be that federation in Burma is about the union of territories, not of ethnic societies or segments. Furthermore, a federation or federalism is a system of sharing power and dividing jurisdiction between and among territorial components making up the union or federation. In other words, a federation is about how different territorial entities will relate to one another within a larger nation-state configuration.

The essence of federation or federalism is the equality of constituent members, one where there is no Mother State dominating and controlling other member states. And also, it is one where the national or federal government and legislature is not biased or weighted in favor of one member state, but is formed to promote the welfare and security of the union or the federation as a whole (and by extension, the people as a whole). The national or federal government does not "possess" a specific piece of territory – to which and for which it is mainly responsible.

The above leads to the second challenge or question: what about ethnic equality and rights? Do they have a place in federalism?

The second question is an important one for the ethnic nationalities because no constituent state in Burma is ethnically homogenous. They are all multi-ethnic in the broad or general sense of the word. Even in the most ethnically homogeneous state – the Chin and the Karenni State – there are to be found

dialectical groups that are quite different from one another, in varying degrees.

Furthermore, the aspiration for ethnic equality has been unleashed in the course of events that transpired – where resistance to the military-monopolized state is ethnic-based (in the constituent states), and the language of ethnicity has been widely employed by ethnic-based resistance movements to rally followers and legitimize the cause. The demand for ethnic equality will therefore have to be dealt with by the ethnic nationalities leaders and other political actors in Burma.

It may not be enough therefore to agree on federalism, i.e., on how power is to be shared among and between territorial components composing the federation or the union, and between the federal center and the constituent states. The ethnic nationalities and political actors in Burma will have to look at ways to accommodate the aspirations for ethnic equality – i.e., the desire of ethnic groups not to be dominated by another ethnic group.

The challenge therefore is how to ensure ethnic equality and rights both within a federation and within the multi-ethnic member states of the Union.

Regarding the above problem, it is clear that state constitutions hold the key. That is, how different ethnic (or dialect) groups living within the territorial boundary of a constituent or member state should relate to each other as equals, is a question that state constitutions should deal with and provide solutions for. The state constitutions are the sites where a framework or arrangement to provide for, or ensure ethnic equality and rights, have to be worked out, or should be seriously explored.

State Constitutions and Ethnic Equality

From the above passages, it becomes clear that the ethnic nationalities are faced with two very important challenges.

One, it is none other than to establish a genuinely federal union where all the member states are equal, and where there is

no Mother State (or a Pyi-Ma) — as envisioned by the founding leaders at Panglong in 1947. It may rightly be said that an arrangement where one member state is more equal than others cannot be defined as a federation or a Union.

Two, is the challenge revolving around the question of ensuring ethnic equality and rights, specifically within a multi-ethnic member state, so that smaller groups are not dominated and marginalized by a major ethnic group within a given state.

It is here suggested that democratic de-centralization should be seriously looked into by ethnic nationalities leaders and political actors in drafting the state constitutions.

That is, the idea of empowering local communities, ethnically defined or otherwise, through the system of local governments and councils elected and run by local people, should be seriously explored and discussed. This is all the more so necessary because there has been no experience in Burma of democratic decentralization as local governments in the past have been established from the top — an arrangement where administrative officers are appointed from the top and sent down to administer locally.

The system of de-centralized administration, if adopted, would provide ethnic communities with the opportunity and/or the power to manage their own affairs through the democratic control of highly autonomous local governments. In other words, people in the local communities – an ethnic community, for example – would, as electorates, have control over local governments and local councils. They would therefore be in position to exercise their rights not only as individuals within a democratic system, but collectively as an ethnic group as well, through local governments responsive to the collective aspirations of the local public. Thus, the aspiration of an ethnic group for equality and the right to determine its own fate would, to a very large extent, be fulfilled.

To give an example, in a locality, say, in the Shan State, where the majority of inhabitants (or the electorates) are ethnically Pa-O (or Lahu), the local government would be one run and managed by the Pa-O (or Lahu). Thus, in the Shan State, there

would be at least one, if not several local governments that are ethnically defined (as Pa-O, or Lahu, Palaung, Akha, etc, townships or areas). This would be the pattern in every constituent state if a system of democratic de-centralization or autonomous local government is put in place or adopted in the state constitutions.

Another advantage of establishing a system of local governments where power is democratically de-centralized, is that local governments would have to accommodate the aspirations of minority ethnic groups within its jurisdiction. That is, because democratic local governments do not possess the power and capacity to coerce or exclude (and therefore marginalize) minority groups, ethnically defined or otherwise. Rather, they would have to be, as elected local governments, responsive to the minorities as well.

The State government and the State legislature would (as would the federal government and the federal parliament) operate at another level, and they would not be responsible to, or for, any specific local government or a particular community, however defined. State-level officials and law-makers will be responsible only for, and to, the whole state and all its citizens, not to particular ethnic communities or any local governments.

The relationship between the state government and local governments — if the system of democratic de-centralization is adopted — will not be top-down, but it will be based on accommodation, consultation, cooperation, and the division and sharing of power and responsibility as well.

In theory or idealistically therefore, the so-called ethnic conflict in Burma can be resolved through constitutional means. That is, through the adoption of a federal framework at national level and putting in place at state level, a system of democratic, de-centralized local governments that empower and are responsible to local communities, ethnically defined or otherwise[10].

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[10] See ANNEXE I.

Concluding Thoughts on the Challenges ahead

Given, however, Burma's turbulent political history, and the lack of experience of the people and leaders alike with the system of democratic de-centralization or autonomous local governments, and as well unfamiliarity with federalism, the challenges facing ethnic nationalities leaders and political actors will be very formidable and most daunting. But these challenges cannot be avoided and must be faced squarely and the difficulties be overcome.

The above indicates that federalism and the system of democratic local government must be well and deeply understood and studied by ethnic nationalities leaders and political actors whose job it is to bring about positive and constructive political change and build a better future for the people in Burma.

The task will not be easy because these challenges and problems (and the resultant conflict) are rooted in the protracted and serious dysfunction in state-society relation that characterizes Burma and its politics these five decades.

The restoration of democracy or democratic politics would be helpful in this regard. But it alone will not be sufficient because the aspiration for ethnic equality and rights, and for a genuinely federal union have been an integral and fundamental part of politics of Burma since 1948.

ANNEXE (I):

Other Alternatives to Democratic Decentralization.

One alternative to a system of democratic de-centralization based on highly autonomous local governments as suggested in this paper, is an arrangement where a higher authority or a national convention or a constitutional assembly, creates autonomous regions or special areas for ethnic minorities. Such an arrangement is currently in place in China, and was included in the constitution of the now defunct Soviet Union. Theoretically, such an

arrangement will provide ethnic minorities with self-government and autonomy, and ethnic equality as well. Another alternative is for there to be provisions in the constitution for a certain number of seats in the national parliament to be reserved for ethnic minorities – i.e., a system of ethnic quota. The British in Burma did put in place such an arrangement where the Karen and other minorities were provided with a number of seats in the legislative assembly of Burma Proper. Such an arrangement would, at the very least, ensure the representation for minorities at the national level, and as well provide them with a vehicle to preserve their identity and values.

CHAPTER THREE

THE ROLE OF STATE CONSTITUTIONS IN THE PROTECTION OF NATIONALITY AND MINOTIRY RIGHTS: LESSONS FROM OTHER COUNTRIES

AUSTRALIAN FEDERALISM, STATE CONSTITUTIONS AND THE PROTECTION OF MINORITY RIGHTS

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1. Introduction

This paper is written for workshops on the role of State Constitutions in the protection of National and Minority Rights under Federalism, with particular reference to issues that might be relevant to a democratic transition in Burma.

In order to decide what is relevant and what is not, it is necessary to make some preliminary points about the context of Australian federalism.

First, in many ways Australia is very different to Burma. It is a prosperous and peaceful country, a long way away from the world's centres of conflict. It has a robust form of majoritarian democracy, which is so well established that it is taken for granted. It has a small population, of only 19 million people. The population is culturally diverse, but largely as a result of relatively recent immigration. With the very important exception of the indigenous people, there is no minority culture with deep roots in the country. Ethnicity is not a significant factor in the design of the constitutional system.

There are some potential similarities as well, however, around which I have developed this paper. The Australian federation is the result of a compromise between six, distinct colonial communities, which saw some mutual advantage in unity, but which also wanted to retain considerable autonomy. Those colonies (now the Australian States) varied in size and wealth. Despite the absence of cultural cleavages, they had very different interests, and there were traditional suspicions between them. Nevertheless, by astonishingly democratic means, they managed to agree on a form of federal union. The essential elements of that union are still intact, despite much grumbling, one serious

attempt at secession and a widespread but probably minority view that Australia should have a unitary form of government. The original colonies are now the States and their variety persists. If anything, federation has provided an institutional framework through which their differences can democratically be expressed.

Particular aspects of the Australian experience that may be of interest to Burma include the following. The first is the way in which, and the process by which, the Australian Constitution originally accommodated the conflicting interests of the constituent parts of the federation. A second is the strengths and weaknesses of the manner in which the balance was struck between central, or Commonwealth, and State power in Australia, including the significance of State Constitutions. The third is the way in which cultural minorities have fared under the Australian federation; in particular, the indigenous people of Australia.

2. Overview of the Australian federation

(1) Rationale for federation in Australia

Australia became a federation largely for reasons of history and geography. The six Australian colonies were established by Britain towards the end of the 18th century and in the first half of the 19th century, around the edge of a very large land mass and on the island of Tasmania. They were a long way apart from each other. By the time a movement for union seriously began, each colony had its own Constitution and its own institutions of government: Parliament, executive government and courts. The only form of union that was politically acceptable in these circumstances was federalism. Federalism enabled united action on matters of mutual benefit, while leaving each of the colonies, now to become States, with considerable autonomy to govern themselves.

Even now, more than 100 years later, there is a rationale for federalism in Australia. Most obviously, it has the advantage of being the established system of government, around which institutions, expectations and interests have been built. But it

meets other purposes as well. It deepens democracy, in the sense that it provides two levels of government at which people can express their democratic preferences, one of which is physically more accessible. Federalism also operates as a check and balance; an important consideration in a system that otherwise relies heavily on majoritarian parliamentary government, and has resisted constitutional protection of rights.

(2) How Australia became a federation

The federation movement began in the mid 19th century, but became more intense in the decade of the 1890s. The principal motivating factors were the economic advantages of a common tariff policy and a common market and the need for co-ordination in defence and immigration. The process that was followed to achieve federation in the later stages involved a Constitutional Convention with an equal number of delegates from each participating colony.[1] All but one of the colonies sent delegates directly elected for the purpose by the voters of the colony. In the case of South Australia, the voters included both men and women, the latter having been enfranchised in 1894. No woman delegate was elected, however. Western Australia sent a delegation appointed by the Parliament.

The Australasian Federal Convention began its task by agreeing on a set of principles on which the draft Constitution would be based. They were limited, by modern standards; this nevertheless was an important starting point for the Convention's work. In more recent times, the use of agreed principles as a basis for writing a Constitution has become considerably more sophisticated. The 34 constitutional principles on which the South African Constitution was based offer an excellent example of what such principles might look like although, of course, the principles themselves must reflect the consensus that can be reached on what is appropriate for the community concerned. A copy is attached at Appendix A. A copy of the more limited Australian principles is attached at Appendix B.

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[1] One colony, Queensland, was not a participant at the Convention but joined the movement later.

Once the draft Australian federal Constitution was approved by the Convention it was put to referendum in each colony. Each colony had a veto, in the sense that it would not join the federation unless its voters had approved the Constitution. After a somewhat tortuous process, the Constitution was approved by all six colonies and was sent to Britain, as the colonial power, for enactment.

(3) The issues that divided the colonies

Some of the Australian colonies were more enthusiastic about federation than others. Queensland was too preoccupied with its own affairs to participate in the Convention of 1897-98 and therefore played almost no role in shaping the final form of the Constitution. The voters of the largest colony, New South Wales, voted against the Constitution in the first referendum, possibly because the balance had swung too far towards the interests of the smaller colonies. Federation was impracticable without New South Wales, and some changes were made to the draft to ensure that the referendum succeeded on the next attempt. Western Australia hesitated about joining the federation until the last moment. It was induced to do so in part by a special concession in the Constitution, applicable for the first 10 years of federation, that gave it some power to continue to impose its own duties of customs, despite the exclusive Commonwealth power over duties of customs.

There was basic agreement between most delegates on a number of key points. These included federation as an appropriate form of government for the united Australian colonies; the broad lines of the federal division of power; the need for guarantees of interstate mobility and of a common market; the creation of a Senate, as an upper House of the Commonwealth Parliament, to represent the States; and the establishment of one single court (the High Court) as the final court of appeal within Australia in all matters, as an alternative to appeals to the Imperial Privy Council. They also agreed that the Constitution in which these arrangements would be set down should be relatively hard to change.

But the delegates were deeply divided on many matters as well. Some of the differences were ideological. Thus there were the usual divisions between progressives and conservatives, which were given a particular focus over particular issues, such as votes for women. There was another important division between delegates who supported free trade and those who advocated tariff protection. Some of the most important divisions, however, reflected State interests. These were a response to geography, economic development and, above all, population size and resultant wealth. In addition, there was at least one issue that united most of the Australian delegates on one side, against the British government on the other. This was the jurisdiction of the Privy Council.

Some of the main areas of disagreement concerned the Senate. As a generalisation, the less populous States wanted a powerful Senate in which the States were equally represented. The larger States, and in particular New South Wales, preferred representation in the Senate that reflected population size in some way. If equal representation was accepted, however, the larger States tended to favour a weaker, rather than a stronger Senate. In the end, this difficult issue ended in compromise. The original States would be equally represented in the Senate. The Senate would have almost co-equal power with the House of Representatives. It would not, however, be able to initiate tax or appropriation bills, nor amend bills imposing taxation or the key appropriation bills. The voters of each State, acting as a single electorate, would also directly elect the Senators for the State.

A second, very difficult issue was the fiscal settlement. It was accepted that both levels of government would have their own taxing powers. It was also accepted, however, that the Commonwealth would have exclusive power to impose duties of customs. This was an important taxation source for the colonies. If it were transferred to the Commonwealth, it would be necessary for some revenue to be redistributed regularly by the Commonwealth to the States. The disagreement was over the basis on which redistribution should occur. More customs revenue was collected in some colonies than in others. These

took the view that the moneys should be redistributed in proportion to collections. Other colonies, understandably, preferred another basis for redistribution; population numbers was the obvious alternative. In the end, there was another compromise. Revenue would be distributed initially on the basis of collections. After a short initial period in which this was guaranteed, however, distribution would be made on whatever basis the Commonwealth Parliament deemed "fair".

There was some conflict between the interests of the various colonies over the procedure for constitutional change as well. A referendum was the obvious procedure, given the means by which the Constitution would be approved in the first place. But should the people vote nationally, which would give the larger States greater influence, or within States, giving the smaller States more of a say? The result was to require both: a national majority and a majority in a majority of States to approve a referendum. In addition, certain parts of the Constitution of particular importance to the States, such as their proportionate representation in the Parliament, and the protection for State boundaries, could be altered only with the approval of voters in the States that were concerned.

For the most part, the British Parliament simply enacted the Constitution approved in Australia. There was, however, conflict between the British government and the colonists over appeals to the Privy Council, which had been greatly restricted by the Australian draft. Without compromise, enactment of the Constitution was threatened, at least in the form that the Australians had agreed. The restrictions on appeals were relaxed, a little, while still preserving exclusively for Australian courts the sensitive constitutional issue of the boundary of power between the Commonwealth and the States.

These are old battles. Upper Houses and fiscal federalism are issues in federations everywhere, but the detail of these struggles in Australia is not relevant for Burma. They are noted here as examples of conflicts between State interests, in forming a federation, and of the accommodations that in this case were made to resolve them. Another point may be of interest as

well: while the particular compromises served to achieve federation, none worked out precisely as expected. The Senate votes on political party lines. It has done relatively little to protect State interests, beyond increasing the representation of the smaller States in the Commonwealth Parliament well beyond that to which they would otherwise have been entitled. Neither of the two alternatives for revenue redistribution over which the framers of the Constitution fought were serious contenders for long. Rather, revenue redistribution now occurs on the basis of the principles of fiscal equalisation, through a system in which the population of each State is weighted by a factor that takes into account State revenue raising disabilities and expenditure needs. The Commonwealth Constitution has proved very difficult to change and, in most cases, even national majorities reject referendum proposals. Predictably, appeals to the Privy Council became irrelevant, with Australian independence. Arguably, however, the focus on the Privy Council prevented the States from perceiving how important the High Court would become, in interpreting the Constitution and from recognising the potential significance of the fact that the Commonwealth government alone would appoint that Court.

3. State Constitutions

The constituent parts of the Australian federation are the six original States. Australia also has some territories, some of which are "self-governing" but which lack the constitutional autonomy of the States. One of these, the Northern Territory aspires to become a State. The potential relevance of this for indigenous Australians will be considered in that context, below.

Each of the Australian States has its own Constitution. Each State Constitution dates back to the colonial period. Each was drafted by the State (then colonial) Parliament, relying on authority granted by the British Parliament. The State Constitutions are broadly similar, because they derived from the same colonial model. They are not identical, however and they have become increasingly dissimilar over time, as changes have occurred.

The main purpose of each State Constitution is to establish the governing institutions of the State. Thus a State Constitution typically establishes the State Parliament and confers power on it to, for example, make laws for the "peace order and good government" of the State. The High Court has held that this power is territorially limited; in other words, within a federation, there are limits on the power of State Parliaments to legislate for matters outside their territorial boundaries.

Australian State Constitutions also deal with the executive government and, in most cases, the State court system. In addition, as a result of increasing pressure to acknowledge the significance of local government, most State Constitutions now also recognise local government as well. Some parts of most State Constitutions are protected from being changed in the same way as ordinary law, so as to give them the status of higher law. Sometimes the special amending procedure requires special parliamentary majorities. Sometimes it requires the people of the State, voting in a referendum, to approve a proposal for change.

In Australia, neither the national Constitution nor the State Constitutions provide protection for rights. Partly as a result, and partly because of their age, State Constitutions tend to be rather dry documents, which do not attract much interest or attention from the people of the State. They thus do nothing to enhance a sense of State political community. One lesson from the Australian experience with State Constitutions may be to treat them more seriously, as instruments that provide the fundamental law for a sub-national political community, subject only to the national Constitution.

The Australian experience also raises some interesting questions about the relationship between State Constitutions and the national, Commonwealth Constitution.

The first is the legal relationship between the two. The Commonwealth Constitution was superimposed on the existing colonies, which would become States in the new federated Australia. It became the highest Australian law, with which the State Constitutions must comply. Necessarily, it took some power

away from State governments, Parliaments and courts. Otherwise, however, it "saved" State Constitutions; in other words, it provided that State Constitutions should "continue" unless altered in accordance with their own procedures.

There is a question about what this means for the way in which State Constitutions can be changed. Of course, it means that if a State wishes to alter its own Constitution it can do so, by following the alteration procedure laid down in the Constitution. The more sensitive question is whether changes to the Commonwealth Constitution can effectively change a State Constitution. The answer almost certainly is that they can. The procedure for alteration of the Commonwealth Constitution is complex. It requires the Commonwealth Parliament to pass a bill, which must then be accepted at referendum by a national majority and by a majority of people voting in a majority of States. It is therefore theoretically possible for a State Constitution to be changed by an alteration to the national Constitution that is not approved by a majority of people in the State concerned.

In fact, despite this theoretical possibility, there is very little in the Commonwealth Constitution to control the structure and standard of government at the State level. The real question that arises from this aspect of the Australian experience is whether this is appropriate. Most federations provide some common standards for governance in the national Constitution in relation to, for example, democracy, the rule of law and protection of individual and minority rights. The Australian federation is an exception, which has been able to continue only because each State in fact has broadly common standards, and there has so far been no cause for real concern.

4. Division of power

The federal division of power is set out in the Commonwealth Constitution. The principle on which the framers of that Constitution worked was as follows. Each colony, soon to become a State, already had full powers of self-government, within its own territory. In order to establish a federation, the States must lose some powers to the new national

government, the Commonwealth. Only the powers that were considered necessary for the Commonwealth, however, should be transferred in this way. This principle was given effect both in the model for the division of powers between the Commonwealth and the States and in the particular powers that were conferred on the Commonwealth.

(1) Model for the division of powers

Powers are divided under the Australian Constitution by giving particular powers to the Commonwealth and leaving the remainder with the States. Most of the Commonwealth powers are "concurrent". This means that the States can exercise them as well, although if there is a conflict between a Commonwealth and a State law, the Commonwealth law will prevail and the State law will be "inoperative". A few Commonwealth powers are "exclusive", including power to impose duties of customs and excise. The States may not legislate at all in relation to Commonwealth exclusive powers.

The Australian federal model divides executive and judicial power between the Commonwealth and the States as well, in a way that broadly matches the division of legislative power. In this respect Australia (and most of the other common law federations) is different to the German federal model, where the States have more administrative than legislative power. This approach is also reflected in the institutional structure of government. With a few exceptions, there is a complete set of governing institutions at the national level and within in each State, to exercise these various powers.

Thus each State has a Parliament, an executive government with a Governor representing the Queen, and a court system. Other institutions are duplicated as well, including Auditors-General and Ombudsmen. Similarly, the Commonwealth has a Parliament, executive government and Governor-General and court system; although the highest Commonwealth court, the High Court of Australia, also acts as the final court of appeal from all State courts and State courts can exercise federal judicial power. Some institutions are found only at the Commonwealth

level, because they fall within Commonwealth power, or have been established by co-operation between governments. The Reserve Bank of Australia, the Australian Competition and Consumer Commission and the Australian Corporations and Investment Commission are examples.

The mere description of the Australian model for dividing federal power makes it sound as if it favours the States, as indeed it was expected to do. In practice, however, power has gradually shifted to the Commonwealth, largely through judicial interpretation, but in a manner that seems to have reflected the changing needs and circumstances of the Australian people. Australia is not unique in this regard; a similar pattern of growth of central power can be seen in, for example, the United States, which divides federal power in the same way. The US and Australian experience suggests that, if particular powers need to be guaranteed to the States in a federation in Burma, the Constitution should expressly say so by, for example, providing a list of exclusive State powers.

It might be helpful to give an example of how the division of powers works in the Australian federation. One of the legislative powers given to the Commonwealth by the Constitution is a power to make laws with respect to "external affairs". The High Court has held that this enables the Commonwealth Parliament to incorporate into Australian law any international treaty to which Australia is a party. Some of these treaties deal with matters otherwise within State power; the environment is an example. By relying on the external affairs power, the Commonwealth Parliament therefore can make laws on matters that the States had previously thought were their responsibility. Moreover, the decision to sign and ratify a treaty is an executive decision, which falls within Commonwealth executive power. Any legal dispute arising under a Commonwealth law incorporating a treaty involves federal judicial power and will be dealt with in Commonwealth courts unless the Commonwealth Parliament has given jurisdiction to the State courts.

(2) The particular powers given to the Commonwealth

The Australian Constitution gives 40 legislative powers to the Commonwealth Parliament. The list is attached at Appendix C.

Within this list, it is possible to identify particular categories of powers, as follows:

- **External affairs** and associated matters (for example, relations with the islands of the Pacific; quarantine; the influx of criminals)
- **Defence**, including maintenance of the defence forces, which effectively is an exclusive Commonwealth power, under section 114. The Commonwealth has an obligation to defend the States, under section 119. By contrast, the general police force is a State responsibility; while there is a federal police force, it deals only with criminal matters arising under Commonwealth law (for example, offences dealing with the importation of drugs).
- **Commercial** matters: interstate and overseas trade; banking; insurance; weights and measures; currency and coinage (effectively also exclusive, under section 114); foreign, trading and financial corporations.
- A few **social** powers, although these are the exception rather than the rule; in particular, marriage and divorce and the power in section 51(23A) to make certain welfare payments.

Grouped in that way, it is possible to understand the logic underlying the allocation of most of these powers to the Commonwealth. As a generalisation, the Commonwealth was given powers that could not be handled adequately within State borders, particularly if, as was the case in Australia, federation was intended to establish a national common market. As originally conceived, the Australian federal model left to the States all or most of the powers necessary to run their own communities. Important powers left to the States included, for example:

- Health, education, housing and intrastate transport,
- Land, agriculture and natural resources. Section 51(31) of the Constitution also ensures that the Commonwealth cannot acquire property, from the States or anyone else, without providing "just terms",
- Local government,
- Civil liberties and human rights,
- Environment,

In practice, however, it has proved almost impossible for Commonwealth and State powers to be exercised in isolation from each other. The area of health provides an obvious example. The States have power in relation to hospitals and health services. The Commonwealth has power in relation to health insurance and medical benefits. Clearly it is not possible for these two sets of powers to be exercised completely independently. As a result, health and hospitals are now managed through a complex intergovernmental scheme.

Another complication for the federal division of powers is that matters that in 1901 were seen as purely a State concern gradually have developed a national dimension. Human rights and the environment are obvious examples. Another, less obvious example is education. Education traditionally is considered to be a sub national power in a federal system. On the other hand, there are aspects of education that now have some relevance for areas of national power. A skilled and educated workforce, for example, has significance for national economic management.

The Australian Constitution has proved difficult to change and there have been relatively few changes to the list of Commonwealth powers. As mentioned earlier, judicial interpretation has enabled the Commonwealth to expand into some areas of purely State concern. Thus the interpretation of the external affairs power now enables the Commonwealth to make laws in relation to human rights and some aspects of the environment. Other areas in which the Commonwealth lacks power but in which a national response is needed are often handled through co-operation between the Commonwealth and the States.

As a result, the Australian federal system now has an extensive network of intergovernmental co-operation, involving regular meetings of ministers from the different governments, agreements and schemes to achieve uniform laws and conditional Commonwealth funding for particular State services including education, transport, housing and health. While all of these arrangements involve joint action, their general effect is to shift power away from the States. They also raise some accountability problems, for both levels of government. In drafting a federal Constitution for Burma, attention might be given to providing a constitutional framework for intergovernmental co-operation, to minimise accountability problems and to recognise that this is now a normal aspect of any functioning federation.

5. Fiscal federalism

All federations need to provide in some way for a division of financial resources between governments, to enable both the centre and the States to exercise the powers allocated to them. There are two broad models for this purpose, with many variations on each of them. At one extreme, each government has the constitutional authority to raise taxes for its own purposes, and is self-sufficient. The United States is the paradigm example. At the other extreme one level of government, usually the central government, imposes all or most taxes but the Constitution makes it clear that the sub-national governments are entitled to the proceeds of particular taxes. Germany is an example of this approach.

The original Australian model was closer to the United States approach. Under the Commonwealth Constitution, both the Commonwealth and the States have a general power to tax. The only exception, which proved important, was the power to impose duties of customs and excise, which was given exclusively to the Commonwealth, in the interests of a single market. Customs duties were an important revenue source for the colonies immediately before federation, however. It was therefore necessary for the new federal Constitution to provide for the redistribution to the States of some of the customs

revenue raised by the Commonwealth. This was one of the most difficult issues for the framers of the Constitution. They could not agree on a lasting system for revenue redistribution and so they left this to the Commonwealth government and Parliament, to be decided after federation was achieved. They also included in the Constitution a power for the Commonwealth Parliament to grant financial assistance to the States "on such conditions as the Parliament thinks fit" in case a financial emergency arose.

This has been one of the least satisfactory aspects of the Australian federal design. As a result of judicial interpretation and strategic federal legislation, the Commonwealth now imposes most of the taxation, including income tax and taxes on goods and services. The States are left with relatively minor taxes: land tax, gambling taxes, motor taxes, payroll tax, stamp duties. The States are more dependent than ever on revenue redistribution, for which the Constitution makes no clear provision, other than allowing grants of financial assistance to be made.

As a result, the States rely on the Commonwealth government and Parliament to decide the amount that will be made available to them each year and the basis on which that amount will be determined. Systems that have been used for this purpose over the years include formula based arrangements, tax sharing of various kinds and commitments to match the previous year's grant levels. Under current arrangements, the Commonwealth makes available to the States the proceeds of the federal Goods and Services Tax. Some grants are also made on condition, that they will be spent in a particular way. Through the use of these grants, the Commonwealth influences policy in a range of areas of State responsibility that require significant expenditure including education, housing, health and transport.

Revenue redistribution from the centre to the States in a federation typically has two aspects. The first aspect concerns the total amount to be distributed to the States. The second concerns the manner in which the total will be allocated between the States. Australia and many other federations divide such funds between States with the assistance of "fiscal equalisation" principles. In Australia, the goal is to put each State in a position

in which it can offer broadly comparable services to the other States, without unduly raising its own taxes and charges. To this end, an independent body, the Commonwealth Grants Commission, recommends "factors" by which the population of each State should be weighted, in distributing federal funds. The factors are calculated by reference to State revenue disabilities and expenditure needs. The Grants Commission's recommendations are almost always accepted. The system is complex, however, and the principle of fiscal equalisation itself is intermittently under attack from the richer States, which receive less per capita than the others.

It is important to note that the general revenue funds that are distributed between the States in accordance with fiscal equalisation principles are not subject to any conditions. In particular, a State is not required to spend the funds on the "expenditure needs" by which its State factor was calculated. This feature of the system is also criticised from time to time. On the other hand, there is a sense in which it provides a good illustration of how the combined principles of unity and diversity can work in a federal system. The principle of unity suggests that it is fair for States that are poorer to receive more than the richer States and, in effect, for the latter to assist the former. The principle of diversity, however, suggests that neither the centre nor the richer States should tell the others how to spend the funds that they have received. In a federal system, they should be able to determine expenditure priorities for their own communities, by democratic means, through democratic institutions.

6. Indigenous people

The Australian federal system has worked reasonably well to protect small State communities from the larger States, while still enjoying the advantages of union. All Australian Constitutions, however, both Commonwealth and State, were written for a monocultural society. At the beginning of the 20th century, the Australians saw no need for their Constitutions to accommodate cultural diversity. There is no protection of rights in either the

Commonwealth or State Constitutions, although the former precludes the establishment of any religion.

One hundred years later, largely as a result of immigration, the Australian population is very diverse. Moreover, although there have been no relevant changes to the Commonwealth Constitution, the system has adapted to these new circumstances reasonably well, although without seriously challenging the dominant culture. New, multicultural policies have been adopted, through the ordinary political processes, at both Commonwealth and State levels. Anti-discrimination legislation has been introduced and works quite effectively. There is relatively little intercultural conflict. All Australians, whatever their background, are free to pursue their own religion, to speak their own language and, within limits, to follow their own culture within the private sphere.

The Australian constitutional system has worked much less well for indigenous Australians, however. The indigenous people are a small minority of the Australian population; in 2002 approximately 2 %. They live in all States, although with a larger concentration in the north, diluting their influence further still. Their culture is unfamiliar. They occupied the whole territory, at the time of European settlement and in that sense represented a threat. Partly as a consequence, there is a direct conflict between their interests and those of the majority community.

At the time of European settlement, from 1788, Australia was deemed to be "terra nullius". The indigenous legal system was ignored and, with it, indigenous interests in land. The indigenous people were dispossessed by the settlers and pushed north and west. More than one hundred years later, at the time of federation in 1901, the indigenous people were expressly excluded from Commonwealth power. Their interests and welfare thus remained entirely with the States. The State Constitutions contained little, if anything, to protect them. There was no special provision for indigenous representation; indeed, they were not fully included in the franchise until the 1960s.

As a result, throughout most of the 20th century, the indigenous people of Australia were treated very badly. Until

relatively recently there was no recognition of their law and little of their culture. Many groups lost their languages. Except in the far north, they were generally without land. They suffered extreme social and economic disadvantage. They were politically powerless to remedy their own situation.

The situation began to change in the latter 20th century, as world opinion changed. In 1967, the Constitution was changed to give the Commonwealth concurrent power in relation to indigenous people. In the 1970s the Commonwealth began to implement land rights legislation, although only in the Northern Territory, where it had more complete legislative power. In South Australia, also, some public lands were given to indigenous people; but in general the States resisted the land rights movement at this stage. In 1992, in the landmark decision in *Mabo v Queensland (No.2)* the High Court of Australia held that the common law of Australia would, after all, recognise indigenous title to land, if it could be proved and if it had not been subsequently overridden by, for example, the general land law. While the *Mabo* criteria were difficult for indigenous groups to meet, it was a symbolically important decision. The Commonwealth enacted legislation to control the claims process. The States were unable to nullify the effect of the *Mabo* decision, because of supervening Commonwealth law. The greater bargaining power of the indigenous people led to some greater willingness to negotiate with them, on the part of States and private sector interests. By the end of the 20th century, there were some specifically indigenous local government areas, within States and territories and other areas where indigenous people pursued their own culture, on their own lands.

In the scheme of things, these changes were important, but minor. Indigenous Australians are still struggling for land, equal economic opportunity and recognition of their law and culture. Nevertheless, their new bargaining power, however small, may enable them to make the federal system work better for them. Federal systems involve different governments, with different ideologies and policy preferences. In principle, they offer the opportunity for experimentation; and successful experiments tend to spread. Thus more States are considering the return of

lands to indigenous people; some States are experimenting with indigenous court systems; some are entering into agreements with indigenous people, to provide a greater measure of self-government and economic development. It is easier for indigenous people to achieve representation in the relatively smaller State or territory Parliaments, although there is presently one indigenous Senator in the national Parliament as well. It is possible that one or more State Constitutions might eventually recognise the indigenous people and provide some protection for their interests. In particular, if and when the Northern Territory becomes a State, there will certainly be pressure for acknowledgement of indigenous law and culture in the Constitution of a State in which indigenous people constitute 25% of the population.

In general, however, this aspect of the Australian experience throws up negative lessons. It shows that minorities, especially small minorities, need protection from majorities that are likely to be hostile or indifferent to their interests. It shows that the protection needs to be provided by both national and State Constitutions. And while protection of political, economic and cultural rights is necessary, the Australian experience suggests that it is not sufficient. Treatment of minorities in a way that is perceived as "special" by the majority community creates resentment. Desirably, steps should be taken to create a climate in which cultural diversity in general and the minority culture in particular is valued and respected. True enjoyment and development of its culture by the minority community also calls for a measure of self-government. A properly functioning federation should enable each of these developments to occur.

7. Conclusion

I was asked to answer two additional questions in the course of this paper. They were whether federalism is expensive and complicated and whether it encourages conflict.

My answers, based on the Australian experience, are as follows. First, of course federalism is more expensive and

complicated than a unitary system in a relatively compact, monocultural country in which everything is working smoothly; but that is not usually the alternative. Thus, in Australia, federalism was the only basis on which the six colonies would have agreed to unite. A unitary system might have been possible, but it would have been smaller, certainly without Western Australia and possibly without Queensland as well. Even now, 100 years later, federalism assists to maintain the unity of the country, provides greater opportunity for democratic and responsive government and, as a consequence, contributes to efficiency as well. Secondly, federalism provides institutions through which conflict can occur, openly and in a democratic manner, consistently with the rule of law. It thus provides a means to express conflicts that are latent; but it provides a framework to manage them as well.

In my view, therefore, these are not serious objections to federalism, although of course they should be considered in the federal design, in order to minimise cost and complexity and avoid unnecessary division and delay. More importantly, however, objections of this kind often mask attitudes to governance which are not conducive to federalism and which need to be confronted to establish an effective working federation. There is more to federalism than designing a federal constitutional model. A federal culture is needed also, to underpin the institutions and inform the principles and to find agreed solutions as problems arise and changes occur. A federal culture requires a commitment to both unity and diversity; a respect for difference; and a willingness to share power. It does not necessarily come easily in any political system. It needs to be exposed as an issue and given some priority.

Appendix A

South Africa

CONSTITUTIONAL PRINCIPLES

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

III

The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

IV

The Constitution shall be the supreme law of the land. It shall be binding on all organs of state at all levels of government.

V

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

VI

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

VII

The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

VIII

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

IX

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

X

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

XI

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

XII

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

XIII

1. The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.
2. Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution .

[Constitutional Principle XIII substituted by s. 2 of Act 3 of 1994.]

XIV

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XV

Amendments to the Constitution shall require special procedures involving special majorities.

XVI

Government shall be structured at national, provincial and local levels.

XVII

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII.

XVIII

1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.

2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution.
3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.
4. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.
5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

[Constitutional Principle XVIII substituted by s. 13 (a) of Act 2 of 1994.]

XIX

The powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

XX

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need for and promotes national unity and

legitimate provincial autonomy and acknowledges cultural diversity.

XXI

The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity- in particular in relation to other states- powers should be allocated to the national government.
4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
5. The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
6. Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia-
   a. for the purposes of provincial planning and development and the rendering of services; and

b. in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province.

7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.
8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.

XXII

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

XXIII

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

XXIV

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

XXV

The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

XXVIII

Notwithstanding the provisions of Principle XII, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.

XXIX

The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective

public finance and administration and a high standard of professional ethics in the public service.

XXX

1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members or the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.
2. Every member of the public service shall be entitled to a fair pension.

XXXI

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

XXXII

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.

XXXIII

The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.

XXXIV

1. This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall

not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.

2. The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.
3. If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.

[Constitutional Principle XXXIV added by s. 13 (b) of Act 2 of 1994.]

Appendix B

PART V.-POWERS OF THE PARLIAMENT.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power* to make laws for the peace, order, and good government of the Commonwealth with respect to:-

(1) Trade and commerce with other countries, and among the States:
(2) Taxation; but so as not to discriminate between States or parts of States:
(3) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:
(4) Borrowing money on the public credit of the Commonwealth:
(5) Postal, telegraphic, telephonic, and other like services:
(6) The naval and military defiance of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:

(7) Lighthouses, lightships, beacons and buoys:
(8) Astronomical and meteorological observations:
(9) Quarantine:
(10) Fisheries in Australian waters beyond territorial limits:
(11) Census and statistics:
(12) Currency, coinage, and legal tender:
(13) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
(14) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:
(15) Weights and measures:
(16) Bills of exchange and promissory notes:
(17) Bankruptcy and insolvency:
(18) Copyrights, patents of inventions and designs, and trade marks:
(19) Naturalization and aliens:
(20) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
(21) Marriage:
(22) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:
(23) Invalid and old-age pensions: Inserted by No. 81, 1946, s.2
(23A) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:
(24) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
(25) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceeding of the States: Altered by No. 55, 1967, s. 2.
(26) The people of any race for whom it is deemed necessary to make special laws:
(27) Immigration and emigration:

(28) The influx of criminals:
(29) External affairs:
(30) The relations of the Commonwealth with the islands of the Pacific:
(31) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:
(32) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:
(33) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:
(34) Railway construction and extension in any State with the consent of that State:
(35) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:
(36) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:
(37) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:
(38) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:
(39) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

FEDERALISM, DIVERSITY AND MINORITY RIGHTS: what can we learn from India?

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Allow me to begin with two general remarks before I get to the specifics of what lessons can the experience of Indian federalism yield for the lawmakers in a neighbouring country like Burma for the purposes of ensuring diversity and protection of minority rights.

First a point about comparisons and what they can yield. There was a time in the discipline of Political Science and Law that people under-emphasised how much could be learnt from comparative constitutions. The pendulum has swung to the other extreme by now and I think there is a real danger of over-doing the comparative constitutions, especially since the business of designing democracies has turned global of late. With a check list model of democracy dominating the democratic imagination, there is a all round search for "best practices". I am not sure it is a very happy development for democratic imagination. While democracy is expanding all over the world (and I really hope it comes sooner than later in Burma), our notion of what it means to be a democracy it actually shrinking. I fear that sometimes comparisons contribute to this tendency. There is of course very little to be said in favour of re-inventing the wheel. To that extent it is desirable and essential to look around at available models and practices so that one can orient one's search more clearly. At the same time, it is essential to remember that most successful democracies made institutional innovations. If there is one lesson of comparative politics that I would like to carry with me it is the uniqueness of each place and the need to tailor the constitutional-legal frame to fit the specificities of each place.

I raised this somewhat abstract point right at the beginning to remind everyone of some basics about any constitution. One, there is no pure or true or genuine form of any institution like federalism or democracy. The worth of the any constitutional

design must to judge solely by how it addresses the specific requirements of the people it is meant to serve, and not by how well it follows an original design. Two, a constitution is embedded into a social structure with its cultural pattern. The same institutional design can yield one set of results in a society and quite different in another, one set of results in one period and quite different in another. Unfortunately the current drive for global recipes for democratisation often forgets this basic lesson of history. Three, and this is more salient for my argument today, institutions work depending on how they are made to work by the political force. Politics is all about bending and stretching the rules of the game. Every legal-constitutional provision has political consequences. The exact outcome is determined by the dynamics of the interaction between the rules of the game and the players themselves. In designing political institutions therefore one must the following question: what are the likely political consequences of the proposed design? What kind of behaviour would it encourages or discourage?

Let me turn to the other general consideration. How does one look upon the experience of Indian federalism? Is it a success story or a cautionary tale? Year 2002 is a particularly inopportune time to foreground the strength of the Indian system with regards to the minorities. The massacre of nearly 2000 Muslims early this year in the state of Gujarat right under the nose of the state government (under its benign silence or active connivance, depending on which version you believe in) has left sensitive Indians rather shamefaced in talking too loudly about the virtues of Indian democracy. It has served to remind everyone that the performance of Indian system in political accommodation of social diversities has left a lot to be desired. But one must not allow the recent happenings in Gujarat to determine the overall impression of the last fifty years. The examples from India's neighbours show that we could have done worse.

No doubt Gujarat is not the only exception in the last fifty years. There are areas like the state of Jammu and Kashmir and hill states like Nagaland and till recently Mizoram in the North-East where the principle of democratic governance and the spirit of tolerance for expressions of diversity were not extended.

There were periods (Mrs Gandhi's second regime from 1980 to 1984 or the current NDA government since 1998) which constitute an exception to the general trend. And there are episodes like the anti-Sikh riots in 1984, the Demolition of Babri Masjid in 1992 and the Gujarat massacre of 2002 that are a blot on the record of Indian democracy.

On balance, however, the Indian elite has stuck to the "salad bowl" rather than the "melting pot" model of integration of diversities. That is to say, various communities and aspiring nationalities have not been forced to give up their identity as a pre-condition of joining the Indian enterprise. They have been accepted as distinct and different ingredient in the Indian mix of multi-culturalism. And, again on balance, it has worked: legitimate political articulation of social and regional diversities and the mediation of competing claims through mechanisms of political accommodation has achieved what consociational arrangements for power sharing among different social groups do in other societies. There have been more than one instances of majoritarian excess, but democratic politics seems to have evolved mechanisms of self-correction in this respect (the 1997 elections in Punjab and the politics of UP since 1992 could illustrate that). In retrospect, effective political accommodation of visible diversities might look like one of the outstanding achievements of Indian democracy in the last fifty years.

But by its very nature, it is an inherently fragile achievement, ever contingent on the skills of the political actors in working out the power sharing arrangements or in allowing the mechanisms of self-correction to work themselves out. This is a lesson well worth remembering as India confronts the most organised challenge to the politics of diversities in the form of the right wing Hindutva government at the centre. The most serious challenge to the survival of diversities comes from forces which are less organised, less visible and may not even be considered political in the ordinary sense: forces of cultural homogenisation, the monoculture of modernity and the ideology of nation-state. While there is something to be said for the capacity of democratic politics to deal with the more obvious and political challenges to diversity, it has proved a

very weak ally in the struggle against these deeper threats from within.

In other words it is not an unmixed record, but on balance something of a success. Now, what accounts for this success (to the extent to which it is so)? Those who study Indian democracy have offered three accounts of this success. Schematically, the explanation could reside one of the following:

- The nature of Indian society and civilization
- The provisions of the Indian constitution
- The nature of competitive politics in India since independence

I must state my bias right away. While there is a lot to be said in favour of the first two explanations, in the last instance, the Indian enterprise has worked because of the third factor. This is something that tends to be ignored in studies of constitutional law and political institutions. Given the mandate of this workshop, I would like to focus on the constitutional provisions, even if that is not the principle locus of explanation. Let me first mention the social context before turning to a detailed analysis of the institutional-constitutional features and concluding on a note on the political dynamics.

The societal context

It is often said that the nature of the Indian society and culture is uniquely suited to the success of the federal enterprise of safeguarding the interest of the minorities. The argument involves reference to India's traditions of religious tolerance, the open-ended nature of the Hindu religion. While there is an element of truth in this, I am not sure if this guides us in the right direction. It is not clear if the Indian traditions are unique in religious tolerance or particularly resistant to the modern forces of homogenisation. As for the nature of Hindu religion, at least the modern version of political Hinduism has been as bigoted and intolerant as anything else seen in modern world.

There is something else about the Indian society that does help growth of federalism and democracy. The nature of

multiple and cross-cutting social divisions in India is such that it does not permit any permanent or safe majority for any community. No single social cleavage has such salience that it overrides everything else. The demographic distribution (or its political articulation?) is such that every community feels like a minority. This shared feeling of being in minority has contributed to Indian federalism.

The constitutional framework

The framers of the Indian constitution were acutely aware of the challenge of protecting minority rights. It could not be otherwise, for the partition of India dominated their mind. The Indian national movement was committed to the idea of a secular India. It should be noted that India does not have separate constitution for the states. There is a common constitution for the entire country that spells out the institutional set up of state government at length. The Indian constitution provided for four sets of provisions to safeguard the minorities:

- It provided some guarantees in the forms of Fundamental Rights
- Federal structure of the constitution coupled with the linguistic reorganisation of states protected the rights of linguistic minorities
- It incorporated many special provisions meant to safeguard special anxieties and concerns of different minorities or states.
- Finally, it also provided for independent constitutional watchdogs to ensure that the rights provided in the constitution were enjoyed in practice.

Let me turn to these features one by one. But it is important to notice what the framers of the constitution did not do. They did not provide for any special representation for religious minorities in the parliament and state assemblies. Given the experience of partition, there was a strong sentiment against separate system of elections introduced by the British. The only group that enjoy special political representation are:

- Schedule Castes (the ex-untouchables) have constituencies reserved for them in proportion to their share in the population
- Scheduled Tribes or the indigenous people also have the same protection
- The president of India can nominate two Anglo-Indians to the parliament if they are not sufficiently represented.

It needs to be remembered that the first two groups were given special representation not on the ground of being a minority but for being deprived and oppressed. This system has worked well in the last fifty years and has ensured due representation to these groups and thus fostered a rise in political leadership. It should also be noted that the lack of any special measure to ensure representation for the Muslims, the biggest religious minority that is thinly spread all over the country, has meant that they has always been under-represented in the assemblies.

Basic guarantees

The basic guarantees offered by the constitution include:

- Preamble to the constitution
- Right to Equality
- Right to Freedom
- Right to religious freedom
- Cultural and educational rights for the minorities

A look at the Preamble of the Indian Constitution is necessary where the term secular appears. The secular objective of the State has been specifically expressed by inserting the word 'secular' in the Preamble by the Constitution (42nd Amendment) Act, 1976. There is no provision in the Constitution making any religion the 'established Church' as some other Constitutions do. The provisions of the Indian Constitution for the protection of the minorities are exhaustively enumerated in Articles 25- 30 and allied provisions of the Indian Constitution. The minorities into consideration here are the religious and linguistic minorities in India... On the other hand, the liberty of ' belief, faith and

worship' promised in the Preamble is implemented by incorporating the fundamental rights of all citizens relating to 'freedom of religion' in Arts. 25-29, which guarantee to each individual freedom to profess, practise and propagate religion, assure strict impartiality on the part of the State and its institutions towards all religions. Though the provisions guaranteeing religious freedom to every individual cannot, strictly speaking, be said to be specific safeguard in favor of the minorities, they do protect the religious minorities.

Any section of the citizens of India having a distinct language, script or culture of its own shall have the fundamental right to conserve the same [Art. 29(1)]. This means that if there is a cultural minority which wants to preserve its own language and culture, the State would not by law impose upon it any other culture belonging to the majority of the locality. This provision, thus, gives protection not only to religious minorities but also to linguistic minorities. The promotion of Hindi as the national language or the introduction of compulsory primary education cannot be used as a device to take away the linguistic safeguard of a minority community as guaranteed by Arts. 29-30.

No citizen shall be denied admission into any educational institution maintained by the State or receiving State aid, on grounds only of religion, race, caste, language or any of them [Art. 29 (2)]. This means that there shall be no discrimination against any citizen on the grounds of religion, race, caste, or language, in the matter of admission into educational institutions maintained or aided by the State. It is a very wide provision intended for the protection not only of religious minorities but also of 'local' or linguistic minorities, and the provision is attracted as soon as the discrimination is immediately based only on the ground of religion, race, caste, language or any of them.

All minorities, whether based on religion or language, shall have the fundamental right to establish and administer education institutions of their choice [Art. 30(1)]. While Art. 29(1) enables them to run their own educational institution, so that the State cannot compel them to attend any other institutions, not to their liking. By the 1978 amendment, favourable treatment has been accorded to such minority educational institutions in the matter

of compensation for compulsory acquisition of property by the State. While, by reason of the appeal of art. 31, all persons have lost their constitutional right to compensation for acquisition of their property by the State, including educational institutions established by a minority community lie entrenched in this behalf. Their property cannot be acquired by the state without payment of such compensation as would safeguard their right to exist, as is guaranteed by Art. 30 (1A).

The State shall not, in granting aid to educational institutions on the ground that it is under the management of a minority, whether based on religion or language [Art. 30 (2)].

The ambit of the above educational safeguards of all minority communities, whether religious, linguistic, or otherwise, can be understood only if we notice the propositions evolved by the Supreme court of the above guarantees:

(a) Every minority community has the right not only to establish its own educational institutions, but also to impart instruction to the children of its own community in its own language.

(b) Even though Hindi is the national language of India and Art. 351 provides a special directive upon the State to promote the spread of Hindi, nevertheless, the object cannot be achieved by any means, which contravenes the rights guaranteed by Art. 29 0r 30.

(c) In making primary education compulsory [Art. 45], the State cannot compel that such education must take place only in the schools owned, aided or recognized by the State so as to defeat the guarantee that a person belonging to a linguistic minority has the right to attend institutions run by the community, to the exclusion of any other school.

(d) Even though there is no constitutional right to receive State aid, if the State does in fact grant aid to educational institutions, it cannot impose such conditions upon the right to receive such aid as would, virtually, deprive the members of a religious or linguistic community of their right under Art. 30

(1). While the State has the right to impose reasonable conditions, it cannot impose such conditions as will substantially deprive the minority community of its rights guaranteed by Art. 30 (1). Surrender of fundamental rights cannot be exacted as the price of aid doled out by the state. Thus, the State cannot prescribe that if an institution, including one entitled to the protection of art. 30 (1), seek to receive state aid, it must subject itself to the condition that the State may take over the management of the institution or to acquire it on its subjective satisfaction as of certain matters, - for such condition would completely destroy the right of the community to administer the institution.

(e) Similarly, in the matter of the right to establish an institution in relation by the State, though there is no constitutional or other right for an institution to receive State recognition and though the State is entitled to impose reasonable conditions for receiving state recognition, e.g., as to qualifications, it cannot impose conditions for acceptance of which would virtually deprive a minority community of their right guaranteed by art. 30

(1). Where, therefore, the state regulations debar scholars of unrecognized educational institutions from receiving higher education or from entering into public services, the right to establish an institution under art. 30(1) cannot be effectively exercised without obtaining State recognition that the institution must not receive any fees tuition in the primary classes. For, if there is no provision in the State law or regulation as to how this financial loss is to be recouped, institutions solely or primarily dependent upon the fees charged in the primary classes cannot exist at all.

(f) Minority institutions protected under Art. 30(1) are, however, subject to regulation by the educational authorities of the State to prevent mal-administration and to ensure a proper standard of education. But such regulation cannot go to the extent of virtually annihilating the right guaranteed by Art. 30 (1).

Furthermore, the constitution directs every State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups and empowers the President to issue proper direction to any State in this behalf [Art. 350 A].

Federal division of power

India is a union of states, where the territories of the units of the federation may be altered or redistributed if the Union Executive and Legislature so desire. In practice this has been used to reorganise the states on linguistic lines. So, in effect, the federal design serves as a way to safeguard the interest of linguistic minorities. Since the commencement of the Constitution, this power has been used by the Parliament to enact various acts for reorganization of states. Initially, we notice major reorganization of the boundaries of the different States of India in the 1950s' by The States Reorganization Act, 1956, in order to meet local and linguistic demands. The reorganization of States continued and the next major change was introduced by the Punjab Reorganization Act, 1966, by which the State of Punjab was split up into State of Punjab and Haryana and the Union territory of Chandigarh. The recent reorganization of States and carving out of the states of Chhattisgarh, Jharkhand and Uttaranchal in the year 2000 is a step further in this direction. (Refer to Appendix I)

The Indian constitution introduces a federal system as the basic structure of government of the country, though there is a strong admixture of unitary bias and the exceptions from the traditional federal scheme are many. The Union of India is composed of 28 states and both the Union and the States derive their authority from the Constitution, which divides all powers, legislative, executive and financial, as between them. The judicial powers are not divided and there is a common Judiciary for the Union and the States. The result is that the states are not delegates of the Union and that, though there are agencies and devices for Union control over the States in many matters, - subject to such exceptions, the States are autonomous within

their own spheres as allotted by the Constitution, and both the union and the states are equally subject to limitations imposed by the Constitution, say for instance, the exercise of legislative powers being limited by Fundamental Rights. As regards the subject of legislation, the constitution adopts from the government of India Act, 1935, a threefold distribution of legislative powers between the Union and the States. They are as follows:

1) List I or the Union List includes 99 subjects over which the Union shall have exclusive power of legislation. These include defence, foreign affairs, banking, insurance, currency and coinage, union duties and taxes.

2) List II or the State List comprises 61 items or entries over which the State Legislature shall have exclusive power of legislation, such as public order and police, local government, public health and sanitation, agriculture, forests, fisheries, State taxes and duties.

3) List III gives concurrent powers to the Union and the State Legislatures over 52 items, such as Criminal law and procedure, Civil procedure, marriage, contracts, torts, trusts, welfare of labour, economic and social planning and education.

In case of overlapping of a matter as between the three Lists, predominance has been given to Union Legislature. Thus, the power of the State Legislature to legislate with respect to matters enumerated in the State List has been subject to the power of Union Parliament to legislate in respect of matters enumerated in the Union and Concurrent lists, and the entries in the State List have to be interpreted accordingly. In the concurrent sphere, in case of repugnancy between a Union and a State law relating to the same subject, the former prevails. (Refer to Appendix II)

Constitutional Watchdogs

The constitution provided for agencies or mechanisms for ensuring that the rights offered in the constitution can actually be enjoyed by the people.

- The foremost of these is of course the Supreme Court of India, the apex of a unified judiciary that has the power to enforce the fundamental rights and to review legislation if they do not conform to these.
- The Constitution provided for a Commissioner of Scheduled Castes and Tribes to report on their conditions and to give advise on improvement in their conditions
- A Special Officer for linguistic minorities shall be appointed by the President to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President [Art. 350 B].
- After the adoption of the constitution, two more bodies have been added to the list of watchdogs:
- National Commission for Minorities constituted by the government of India in 1978. The national Commission for Minorities, a statutory body, was set up under The National Commission for_Minorities Act, 1992. Refer to Appendix V for the functions to be performed by the Commission.
- National Human Rights Commission: Refer to Appendix VI for provisions of The Protection of Human Rights Act, 1993, an act to provide for the constitution of a National Human Rights Commission.

Special provisions for different areas/states

Indian constitution is full of special provisions for special areas. Of these two merit special attention:

- The constitution allows for the formation of Autonomous Councils to protect the rights of the minorities within the state. This provision has been used extensively in the north eastern parts of the country and has provided modicum of self-rule to these communities.

There are many provisions in the constitution exempting some area or the other from the application of central laws. The most famous of these is the Article 370 that exempts the state of Jammu and Kashmir from the ambit of federal laws. It says:

(a) the power of parliament to make laws for the said State shall be limited to-
   (i) those matters in the Union list and the Concurrent list which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of accession of the State to the Dominion Legislature may make laws for that State; and
   (ii) such other matters in the said Lists, as, with the concurrence of the Government of the State, the President may by order specify."

It needs to be reiterated that there are similar provisions in the constitution for a number of other states.

Democratic Politics

- Role of politics: Politics as the unifying force
- Melting pot versus the salad bowl model of national unity
- Indian National Congress as a social coalition
- Politicisation of social cleavages and its impact on federalism
- Regional parties and their impact on deepening federalism

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NIGERIA'S EXPERIENCE IN MANAGING THE CHALLENGES OF ETHNIC AND RELIGIOUS DIVERSITY THROUGH CONSTITUTIONAL PROVISIONS

Otive Igbuzor

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PREAMBLE

Ethnicity and Religion are two issues that have played dominant roles in the way of life and governance in Africa. As Kalu argued,

> Religion dominates the roots of the culture areas of Nigeria…Little or no distinction existed between the profane and the sacred dimensions of life. Thus, all activities and instruments of governance and survival were clothed in religious ritual, language and symbolism (Kalu, 1989:11).

Enwerem made the same point when he pointed out that over and above the factors of environment, political organization and outlook of traditional Nigeria, the religious factor remained the major source of inspiration in the catalyst for the people's activities and world view (Enwerem, 1995). Equally, Dlakwa has argued that the political behaviour of some Nigerians is still influenced heavily by the hyperbolic assumption that one's destiny is intrinsically and exclusively linked with one's ethnic, linguistic and religious identity (Dlakwa, 1997). In this paper, we give an overview of Nigeria's political and constitutional history and the evolution of its Federal system. The paper argues that the evolution of federal system in Nigeria was truncated by military intervention. The paper also reviews the operation of federalism in Nigeria and posits that minority rights are not protected. Finally, the paper outlined the challenges of ethnic and religious diversity in Nigeria and drew lessons particularly for countries in democratic transition.

1. INTRODUCTION

Nigeria is the most populous country in Africa with a population of over 120 million people of diverse ethnic, linguistic, cultural and religious identities. The history of the country can be traced to pre-colonial times when there were "elaborate systems of governance, which varied in scale and complexity depending on their geographical environment, available military technology, economic, spiritual and moral force." (Political Bureau Report, 1987). There were various kingdoms and empires such as the Yoruba kingdom, the Benin kingdom, the Fulani emirate, the Igbo traditional system, the Urhobo gerontocratic system etc. All these changed with the conquest of Lagos in 1861 by the British and the subsequent amalgamation of Southern and Northern Nigeria in 1914. As a result of a lot of struggle, Nigeria gained independence in 1960. The First Republic lasted only six years under a parliamentary system of government with Sir Abubakar Tafawa Balewa as Prime Minister and the military took over political power by force in 1966. The military ruled for thirteen years under four heads of state (Gen. J.T. Aguiyi Ironsi: January 1966-July, 1966; Yakubu Gowon: July 1966- July, 1975; Gen. Murtala Mohammed: July, 1975 –February, 1976 and General Olusegun Obasanjo : February, 1976 –October, 1979) and handed over power in 1979. The Second Republic changed to a Presidential system of Government under Alhaji Shehu Shagari which lasted only four years and the military took over again in 1983. The military ruled for another sixteen years under four military rulers(Gen Muhammadu Buhari:1984-1985, Ibrahim Babangida:1985-1993, Sanni Abacha:1994-1998 and Gen. Abdulsalami Abubakar:1998-1999) and an illegal contraption called Interim National Governmet headed by Ernest Shonekan. The military handed over power on 29th May, 1999 to Chief Olusegun Obasanjo who was a military ruler from 1976-1979. Thus out of the 42 years of post-independence Nigeria, the military has ruled for 29 years. It has been argued that "Nigeria's political misfortunes in the past and the failure to evolve a united, prosperous and just nation can be blamed partly on inadequate and defective structures and institutions as well as on the

orientation which British colonialism bequeathed to the young nation at independence and the reluctance of succeeding Nigerian governments to tackle these problems decisively." (Political Bureau Report, 1987).

2. CONSTITUTIONAL HISTORY OF NIGERIA

Nigeria has had a very rich history of constitution making. There has been at least ten attempts to make constitution for the country. These include the 1914 amalgamation constitution, the 1922 Clifford Constitution, the 1946 Richards Constitution, the 1951 Macpherson Constitution, the 1954 Lyttleton Constitution, the 1960 Independence Constitution, the 1963 Republican Constitution, the 1979 Constitution, the 1989 Constitution and the 1999 Constitution. Nigeria was brought together as one country by the amalgamation Constitution of 1914 which united the Southern and Northern protectorates. But the first main constitution was however the Clifford Constitution of 1922 named after the Governor, Sir Hugh Clifford. The constitution was made following agitation by Nationalists at that time. With the introduction of this constitution, for the first time in the history of the country four people were elected into the legislative council of 46 members(Three from Lagos and one from Calabar). After the Second World War, the fight for the right to self-determination and struggle against colonialism increased in tempo leading to a review of the Clifford Constitution. In 1946, the Richards Constitution was made also named after the Governor, Sir Arthur Richards. With the Richard Constitution, twenty-eight people were elected into the legislative council of 46. Four of the twenty-eight were directly elected and the remaining twenty four were indirectly elected from their regional assemblies. It has been documented that the lack of consultation that characterised the making of the Richards constitution angered many Nigerians. According to Dare and Oyewole, "With the promulgation of the constitution, many people were angry because the Governor did not consult the nation before the constitution was drawn up. It was therefore regarded as an

arbitrary imposition on the country" (Dare and Oyewole, 1987:132) As a result of the non-consultation, the criticism and rejection of the Richards constitution was immediate. This led to a series of activities that culminated in the making of the Macpherson Constitution of 1951 also named after the then Governor Sir John Macpherson. It is instructive to note that before the Macpherson constitution was promulgated into law, the draft was debated at village, district, provincial and regional level. In addition, there was a general conference held in Ibadan to discuss the draft. According to Sagay, 'the 1951 constitution came into being after an unprecedented process of consultation with the peoples of Nigeria as a whole…..On 9 January, 1950, a general conference of representatives from all parts of Nigeria started meeting in Ibadan to map out the future system of Government in Nigeria with the recommendation of the Regional Conferences as the working documents" (Sagay, 1999:14). The Macpherson constitution provided for a central legislature with 147 members out of which 136 were members elected from the three regional houses.

Despite the consultation that went into its making, the implementation of the Macpherson Constitution was ridden with crisis. This led to the 1953 London Conference and the 1954 Lagos conference culminating in the promulgation of the Lyttleton constitution in October, 1954. Under the constitution, Nigeria became a federation of three regions, Northern, Western and Eastern regions. According to Oyovbaire et al, the Lyttleton constitution "removed the elements of unitarism contained in the 1951 constitution. Consequently, the constitution for the first time established a federal system of government for Nigeria (Oyovbaire et al,1991:193). In preparation for independence, the London Constitutional conferences of 1957 and 1958 were held leading to the 1960 independence Constitution. In 1963, the Republican Constitution was made. According to Sagay, "both the 1960(Independence) constitution and the 1963(Republican) constitution were the same. The only differences were the provisions for a ceremonial President (1963) in place of the Queen of England (1960) and the judicial appeals system which terminated with the supreme court (1963) rather

than the judicial Committee of the British Privy Council (1960) (Sagay,1999)

The military intervened in the political scene in 1966 and the 1979, 1989, 1994 and 1999 constitutions were made during military regimes. The 1979 constitution was written by a constitution drafting committee made up of 49 wise men (no woman). A draft of the 1989 constitution was debated by an elected Constituent Assembly (with one-third of the members appointed by the regime). But as Jega pointed out, fundamental alterations were effected through another review process undertaken by the regime(Jega,1999:11) A Constitutional Conference was convened to discuss the 1994 constitution. However, the election into the conference was boycotted as a result of protest against the annulment of the June 12th 1992 election believed to have been won by Chief M.K.O. Abiola. The result was annulled by the Babangida regime. More than one-third of the membership of the conference was appointed by the regime. In addition, 'the regime effectively used its control of the technical/executive committee of the constitutional conference to literally, alter decisions arrived at on the floor of the conference"(Jega,1999:12). The 1999 Constitution was promulgated into law by the Military regime of General Abdulsalami Abubakar after the Constitution Debate Co-ordinating Committee led by Justice Niki Tobi submitted its report. The Tobi Committee had barely two months to consult with all Nigerians before submitting its report. On 19th October, 1999, the Obasanjo regime inaugurated the Presidential Technical Committee on the Review of the 1999 Constitution to co-ordinate and collate the views and recommendations from individuals and groups for a review of the 1999 constitution. The review process is still on.

3. NIGERIA'S FEDERAL SYSTEM

The concept of federalism has attracted the attention of scholars, political activists, politicians and public affairs commentators over the years. It has been noted that federalism did not begin as a concept of social and political organization evolved by reflective philosophers or postulated by didactic

political scientists (Ramphal, 1979). The earliest most profound theoretical exposition is probably the 85 essays that appeared in 1788 under the now famous title "the Federalist". These essays were actually written in defence and support of the 1787 constitution of the United States. In any case, the discussion of contemporary federalism normally starts with K.C. Wheare who stressed the formal division of powers between levels of government. According to him, the federal principles include the following:

1. The division of powers among levels of government
2. Written constitutions showing this division, and
3. Coordinate supremacy of the two levels of government with regards to their respective functions (Wheare, 1943 34.)

Wheare's formulation has been criticized as being too narrow and legalistic. A scholar, William Livingstone suggest a process approach which points to the phenomenon of intergovernmental cooperation that cuts across and formal constitutional division of powers. According to him,

> The essential nature of federalism is to be sought for, not in shading of Legal and constitutional terminology but in the forces-economic, social, political, cultural-that have made the outward forms of Federalism necessary ..... The essence of Federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the Federal qualities of the society are articulated and protected. (Livingstone, 1956:1-2).

Livingstone distinguished between a federal constitution which is the legal document and a Federal Society which is characterized by historical, cultural and linguistic background and geographical location. According to Ramphal, the broad patterns of classical federalism include:

1. The need for a supreme written constitution.
2. A predetermined distribution of authority between federal and state governments.

3. An amending process which allows revision of the federal compact but by neither the federal government nor the state government acting alone.
4. A supreme court exercising powers of judicial review.
5. Some measure of financial self-sufficiency (Ramphal, 1979).

From the above, three things are clear. First is that constitutional specification is the starting point of any federal arrangement. Second, economic, social, political and cultural factors determine and affect the nature of any federal system. Third, federalism is a concept for promoting unity in diversity and has to be worked upon by the country to reflect economic, social, cultural and historical reality.

The federal system in Nigeria is unique. There are specific factors that led to federal formation in Nigeria which include among other reasons diversity of the country, desire for political unity in spite of ethnic and religious differences, shared colonial experience since 1914 amalgamation by the colonialists, problems associated with the emergence of tribal nationalism and ethnic based political parties, desire for economic and political viability as a country and general disenchantment with experimenting of unitary constitutions and the eventual breakdown of the Macpherson Constitution.

From the constitutional delineation above, it is clear that the move for federalism in Nigeria started with the Richards constitution of 1946, which created three regional councils for the Western, Eastern and Northern Regions. The Macpherson constitution consolidated this by providing that whenever central and regional laws were inconsistent, the law which was made later would prevail. The Lyttleton constitution concretized the federal Structure for Nigeria. It provided for exclusive legislative list which specified the items on which the federal government could legislate and concurrent list stating the items that the Federal and Regions could legislate. Although, whenever there is a conflict, the federal law would prevail over regional laws, the residual powers resided with the regions. The independence and republican constitutions retained most of the provisions of the

Lyttleton Constitution. Thus at independence, each region in Nigeria had its own constitution, coat of arms, motto and semi-independent missions. The federal list contained items such as archives, aviation, external borrowing, copyright, defence, currency, external affairs, extradiction, immigration, meteorology, armed forces, nuclear energy while the regional list contained items such as antiquities, arms and ammunition, census, higher education, labour, prisons, security, traffic etc. The advent of military regime completely undermined federalism in Nigeria. The regions were broken into States by the military (from four regions to 12 States in 1967 to 19 states in 1976 to 30 states in 1991 to 36 states in 1996). The constitution was suspended throughout the 29 years of military rule. On return to civilian rule in 1979, there is only one constitution for the whole country.

We have argued elsewhere that federalism in Nigeria particularly as it affects resource allocation and minority groups can be divided in to two phases:

> the phase before military rule and the phase after the military take over in 1966. During the first republic (1960-1966), the revenue of the country was distributed based on derivation principle. 50 percent of the revenue from mineral resources was given to the region from where the minerals were extracted. Another 30 percent was put in a distributable pool, which is divided among all the regions including the producing region. Only 20 percent went to the Federal Government. The military took over power in 1966, which was followed by a 30 month civil war. Most of the oil producing communities was in the Republic of Biafra that was declared by then Col. Emeka Odumegwu Ojukwu. In 1969, when the Federal Military Government had successfully "liberated" the oil producing communities, it promulgated the petroleum Decree (No 51) of 1969 that vested all the lands and the resources in, under or upon the Land on the Federal Military Government. There is no doubt that the Federal Government has continued with this war strategy on the Niger Delta people till date (Igbuzor, 2002).

4. CHALLENGES OF ETHNIC AND RELIGIOUS DIVERSITY IN NIGERIA

The ethnic and religious composition of Nigeria and its manipulation by the political elite has posed a lot of challenges to governance and security in Nigeria. This has been aggravated by the failure of the State to perform its core duties of maintaining law and order, justice and providing social services to the people. For instance, the failure of the State has led to the mergence of ethnic militias in several parts of the country such as the Odua Peoples' Congress (OPC) and Baakasi Boys.

Meanwhile, it has been documented that the nature of violent conflict in the world is changing in recent times particularly in terms of the causes of the conflict and the form of its expression (Bloomfield and Reilly, 1998). According to Harris and Reilly, one of the most dramatic changes has been the trend away from traditional inter-State conflict (that is, a war between sovereign States) and towards intra- State conflict (that is one which takes place between factions within an existing State) (Harris and Reilly, 1998). They argued that conflicts originating largely within states combines two powerful elements: potent identity based factors, based on differences in race, religion, culture, language and so on with perceived imbalance in the distribution of economic, political and social resources (Harris and Reilly, 1998).

Various Scholars have written on the politicization and manipulation of ethnic and religious identities in Nigeria (Otite, 1990; Nnoli, 1978). In the past twenty years, there is a resurgence of ethnic and religious violence in Nigeria. It is instructive to note that this resurgence coincided with economic crisis experienced in Nigeria and the introduction of Structural Adjustment Programme (SAP) (Ihonvbere, 1993; Osaghae, 1995 and Egwu, 1998). Shawalu has argued that the sources of conflict in Nigeria include militarism, absence and distortions of democracy, economic problem, collapse of the educational sector, the growing army of almajirai[1], security inadequacy,

[1] Children that are given to experienced Islamic clerics for the purposes of Koranic lessons. In most cases, they are left to fend for themselves through begging.

intensification of micronationalism, absence of justice and equity and weakness of Civil Society groups (Shawalu, 2000). One common thread that runs through the writings of scholars is the argument that most ethnic clashes in Nigeria often have religious dimensions (Okafor, 1997; Alemika, 2000 and Okoye, 2000). The table below shows a survey of ethnic and religious clashes in Nigeria.

Table 1: Survey of Ethnic and religious Clashes in Nigeria

DATE	REGIME	DESCRIPTION OF CONFLICT
1754-1817	Pre-Independence	Usman dan Fodio Jihad which led to the conquering of the Hausa States in Northern Nigeria
1960-1966	First Republic	External mutual respect but internal spite and disaffection
1967-1970	Civil war period	Although not a religious war, Biafran propaganda argued that they were fighting and resisting Muslim expansion.
1970-1975	Gowon regime	Religious cold war. Christian Mission schools in the South were taken over by Govt. but Koranic schools in the North were funded and preserved by Govt.
!976	Murtala/ Obasanjo Regime	Riot between Chamba and Kuteb in Taraba State over alleged manipulation of electoral wards.
1976-1979	Murtala/ Obasanjo Regime	Sharia controversy during the drafting of the 1979 Constitution: To have provisions of the Sharia written into the laws providing for the supreme Court of Nigeria. The compromise reached was the establishment of Sharia Courts and Customary Courts of Appeal at the State level for those States that deserve them.
18-29/ 12/1980	Shagari Regime	Kano Matatsine Riot when a Muslim sect attacked all those they considered pagans and infidels including Muslims that did not belong to their sect. Approximately 4,179 people lost their lives.

10/1982	Shagari Regime	Burning of Churches in Kano. This has been described as the first open and violent religious conflict between Christians and muslims allegedly caused by the laying of the foundation of a Christian Churh near a Mosque
26/10/1982	Shagari Regime	Two years after the Maitatsine riot, some members of the group escaped to Maiduguri and a violent episode occurred when police tried to arrest them for allegedly threatening the lives of the people of Bulumkutu area of Maiduguri.
27/2/1984	Buhari Regime	The Jimeta uprising by members of Matatsine Movement who survived the Bulumkutu Riot
29/5/1985	Buhari Regime	With the crushing of the Jimeta riot, Musa Makanaki, who was in charge of defence in the Jimeta uprising moved to his home town Gombe and settled with other surviving Maitatsines. After a few months, another riot broke out.
1/1986	Babangida Regime	Nigeria applied for membership of Organisation of Islamic Conference (OIC)
3/1986	Babangida Regime	The Ilorin disturbances. A Christian procession during Palm Sunday angered the Muslims and they attacked the Christians. Eight persons were injured and two churches were damaged.
3/5/1986	Babangida Regime	The Students Union of the Usman dan Fodio University organized a gala night to commemorate the achievements of Nana Asaman, the daughter of Usman dan Fodio. Among the events scheduled for the night was a Miss Nana Beauty contest. This angered the Muslim students Society who thought that it was absolute abomination to associate the name of Nana, a virtous woman with the parade of nude girls in the name of beauty contest. They stormed the scene of the programme which led to a fight.

5/1986	Babangida Regime	Clashes between Bassa and Gbagyi against Ebira in Nasarawa State
5/5/1986	Babangida Regime	On 5 May 1986, the University of Ibadan Statue of the risen Christ was burnt by unknown persons.
18/7/1986	Babangida Regime	Muslim Students Society of the University of Ibadan demonstrated on campus destroying offices and halls of residence with inscriptions "cross must give way to the mosque"
6/3/1987	Babangida Regime	During the Federation of Christian Students Annual Fellowship in Kaduna, a preacher and convert from Islam, Bello Abubakar from Kano State was attacked by Muslims mainly of the Izala group. The crisis spread to Zaria and Kafanchan. The Christian Association of Nigeria recorded that 153 churches were burnt.
3/1978	Babangida Regime	In Zaria, the land that has been housing St. Michaels' Church for 50 years belonged to Muslims and they demanded the land back. The Christians refused and it led to fighting
5/1988	Babangida Regime	A clash occurred between Izala Muslim movement and Darika Muslim group over disagreement on the conduct of Ramadan Koranic reading
6/1988	Babangida Regime	Violence broke out at the Ahmadu Bello University when it became clear that a Christian student would win the Students union election. Earlier, the Student (Mr. Stephen) had earlier campaigned on the slogan of "a vote for Steve is a vote for Christ"
20-22/ 4/1991	Babangida Regime	A ten year old Muslim boy bought Suya meat from a Christian. Another young boy challenged the boy that the Suya bought from the Christian could have been pork or dog meat. This led to fight.

11/10/1991	Babangida Regime	A group of Muslim Youth attacked people in Sabongari and Fagge area of Kano metropolis as a protest against the religious crusade organized by the State Chapter of Christian Association of Nigeria with a renown German Preacher Reinhard Bonke.
10/1991	Babangida Regime	A Story in Fun Times, a Daily Times of Nigeria Publication tried to show that a prostitute who repents can lead a decent life. He gave examples with the Bible & Koran. He mentioned that "Prophet Mohammed had an affair with a woman of easy virtue and later married her" . An Islamic preacher used this to mobilize against the Governor of the State who is a Christian and they destroyed the offices of Daily times.
4/1992	Babangida Regime	On 2 April 1992 there was an uprising in Bauchi which led to the destuction of many Churches and Mosque. The clash was over the use of abattoir in Tafawa Balewa town . The abattoir had three sections: one for the Izala Muslims, one for the other Muslims and the other for the Christians. The muslims protested the "Desecration" of the abattoir and this led to the clash.
5/1992	Babangida Regime	In Zangon –Kataf, the Local Govt Chairman Mr. Ayoke, a Kataf Christian, ordered the relocation of a market. The order was opposed by Alhaji Mato, the Uncle of Dabo Lere the then Governor of Kaduna State. This led to a fight.
12/4/1994	Abacha Regime	Clashes as a result of protest over the appointment of an Hausa man as the Chairaman of the Caretaker Management Committee of Jos North Local Government.
15/5/1999	Obasanjo Civilian Regime	Struggle for Local Government Headquarter in Niger Delta. 200 people died.

18/7/1999	Obasanjo Civilian Regime	Clashes between Hausa and Yoruba over traditional rites in Shagamu. 60 people were killed.
22/7/1999	Obasanjo Civilian Regime	Clashes between Hausa and Yoruba, retaliation to Shagamu's conflict in Kano. 70 people were killed.
5/8/1999	Obasanjo Civilian Regime	Clashes between Ijaw & Ilaje over oil rich land in Niger Delta.
11/8/1999	Obasanjo Civilian Regime	Conflicts between Kutebs and Chambas (causes unknown) in Taraba state. 200 people were killed.
9/9/1999	Obasanjo Civilian Regime	Conflict between the Yoruba separatist and the Oduas People Congress in Lagos. 16 people were killed.
4/10/1999	Obasanjo Civilian Regime	Fight over the control of land near Nigeria's biggest oil Refinery at Port Harcourt between Okrikas & Elemes. 30 people were killed.
21/11/1999	Obasanjo Civilian Regime	Ijaw Youth were accused to have killed 12 Policemen in Niger Delta. The retaliation of the Federal government to the above accusation by the Military led to the death of 60 Civilians.
25/11/1999	Obasanjo Civilian Regime	Riot between Yoruba and Hausa over the control of a market in Lagos. 100 people died.
21/2/2000	Obasanjo Civilian	Fight between Muslim and Christians in Kaduna. 100 people died.
20/5/2000	Obasanjo Civilian	Fight between Muslim and Christian in Kaduna. 100 people died.
27/5/2000	Obasanjo Civilian	Crisis between the Urhobo and Itsekiri near the oil rich town of Warri in Niger Delta.
21/6/2000	Obasanjo Civilian	Proclamation of Sharia law in Kano.
25/6/2000	Obasanjo Civilian	Fight between Tiv and Hausa speaking ethnic group in Nasarawa.

15/10/2000	Obasanjo Civilian	Four days fight between OPC and Hausa Fulani in Lagos. 100 people died.
18/10/2000	Obasanjo Civilian	Three days fight between OPC and Muslim Hausa Fulani in Lagos. 100 people died.
26/11/2000	Obasanjo Civilian	Implementation of Sharia Laws in Kano.
7/8/2001	Obasanjo Civilian	Conflicts between Muslims and Christians in Jos 165 died while 900 were injured.
12-23/ 10/2001	Obasanjo Civilian Regime	Communal fights between the Tiv and Jukun. The Military intervention led to the death of 19 Soldiers and 200 Civilians.
25/10/2001	Obasanjo Civilian	Clash between Itsekiri and Uhrobo in Niger Delta. 5 people were killed Regime.
11/2001	Obasanjo Civilian Regime	Relocation of Sanga Local Government Headquarter in Kaduna State. 10 people were killed.
4/5/2002	Obasanjo	Political parties crisis in Jos (PDP**)**
13/10/2001	Obasanjo Civilian Regime	Violent riots in Kano against USA led air strikes on Afghanistan 8 People were killed and 5 Churches burnt.
11/2001	Obasanjo Civilian Regime	Another Ethnic crisis between Junkun/ Chamba Settlement in Taraba State. 50 people were killed.
4/2002	Obasanjo Civilian Regime	Conflict between Olusola Saraki's faction versus Governor Lawal's faction at Ilorin the Headquarters of Kwara state. One killed and property worth millions of Naira were destroyed**.**
2/2002	Obasanjo Civilian	Ethnic Conflicts btw Hausa and Yoruba in Lagos.
15/10/2002	Obasanjo Civilian	Ethnic crisis in Jos, the headquarter of Plateau state .16 people killed.

Sources: Udoidem, 1997:154-181, Ikubaje, 2002 and CFCR, 2002

A cursory glance at the table above surveying ethnic and religious crises in Nigeria will bring out clearly some trends. First, it gives the impression that the crises are caused mainly by

religious reasons. But as alluded to earlier, the reasons for the crisis go beyond religion to include political and economic factors. As Williams has argued, as the political class lacks national acceptance and cannot spearhead a national mobilizing ideology, it resorts increasingly to the politicization of ethnicity, fetishization of religious differences, and the awakening of pristine and atavistic norms and practices(Williams, 1997). Second, it can also be seen from the above survey that the Muslims were always on the offensive. But some scholars have pointed out that "Muslims are often provoked into violent action by offensive preachings by some Christian Evangelists" (Udoidem, 1997:179). Thirdly, the frequency and intensity of conflicts increased during the Babangida regime. This may not be unconnected with the controversy that engulfed the nation when Nigeria applied for membership of Organisation of Islamic Conference (OIC). Finally, there has been a lot of crisis since return to civil rule in Nigeria. Studies have shown that when countries emerge from long years of authoritarian rule through pacted transition programmes, there is the tendency for increased violence particularly if focus is not placed on the building of institutions and mechanisms.

Okafor has documented measures that have been taken to curb ethnic and religious conflicts (Okafor, 1997). These measures include:

- **Adoption of Federalism in Nigeria:** It was reasoned that with the diversity of Nigeria, federalism would be the best system suited for the country. As noted earlier, the move towards federalism, which started with the Richards Constitution of 1946, was consolidated by the Lyttleton Constitution of 1954 when there was co-existence of the Federal Government alongside the Regional Governments of North, East and West. In 1963, the Midwest region was created bringing the number of regions in the country to four. Each region had its own police, Courts and Prisons. The intrusion of the military into governance changed all these and turned the country into more or less a unitary State after the manner of military high commands.

- **Entrenchment of fundamental Human Rights provisions in the Constitution**: During the 1954 Constitutional Conference that led to the making of the Lyttleton Constitution of 1954, minority groups in Nigeria expressed fears of discrimination, marginalisation and oppression. This led to the setting up of the Willinck Commission on 26 September 1957. The Commission recommended the entrenchment of fundamental human rights in the Constitutioon. This recommendation was accepted and fundamental human rights provision has formed part of Nigeria Constitution from the Indfependence Constitution of 1960 till date.
- **Adoption of Multi-party system:** It was reasoned that multi-party system would give the ethnic minorities an opportunity to protect their interest.
- **Modification of Electoral system:** As from the second republic, to become a president of Nigeria, a successful candidate is not only required to obtain a majority of votes cast but must also obtain not less than one-quarter of the votes cast in the election in each of at least two-thirds of all the States of the Federation. This was provided for in Sections 125-126 of the 1979 Constitution and replicated in sections 130-132 of the 1989 Constitution and sections 131-134 of the 1999 Constitution.
- **Constitutional prohibition of Ethnic and Religious parties:** In the first Republic, the major political parties were of ethnic origin. The Northern Peoples Congress(NPC) emerged from a Northern based cultural group known as Jam'iyyar Mutanen Arewa with the support of Hausa-Fulani while the Yoruba cultural organization Egbe Omo Oduduwa metamorphosed into the Action group with its base in Western Nigeria. The National Convention of Nigerian Citizens (NCNC) had its base within the core of Igboland in Eastern Nigeria. Other smaller parties like Northern Elements Progressive Union (NEPU), United Middle Belt Congress (UMBC) and Niger delta Congress had their ethnic support from the Hausa/Fulani peasants,

Tiv and Ijaw/Kalabari respectively. It has been argued that the ethnic orientations of the political parties was one of the main reasons for the collapse of the republic (Abubakar, 1997). In order to address this pitfall, the 1979 Constitution of the second republic prohibited the formation of political parties with ethnic or religious connotation. Section 202 of the constitution provides that "No association by whatever name called shall nfunction as a political party unless-

a. The names and addresses of its national officers are registered with the Federal Electoral Commision;

b. The membership of the association is open to every citizen of Nigeria irrespective of his place of origin, sex, religion or ethnic grouping;

c. A copy of the constitution is registered in the principal office of the Commission in such a form as may be prescribed by the commission;

d. Any alteration in its registered constitution is also registered in the principal office of the Commission within 30 days of the making of such alteration;

e. The name of the association , its emblem or motto does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and

f. The headquarters of the association is situated in the capital of the federation.

This provision was repeated in Section 220 of the 1989 Constitution and section 221 of the 1999 Constitution.

- Constitutional prohibition of State Religion: Section 10 of both the 1979 and 1999 Constitutions and section 11 of the 1989 Constitution provides that "The Government of the Federation or of a State shall not adopt any religion as State religion".

Apart from the measures described above, government usually sets up a Commission of Enquiry after every major crisis in Nigeria. Unfortunately, the reports of most of the

Commissions are neither made public nor acted upon. In the recent past, the Federal Government set up an Institute for Peace and Conflict Resolution. Meanwhile, there is no mechanism for early warning signal and conflict prevention in Nigeria.

5. LESSONS FRON NIGERIA'S EXPERIENCE

There are a lot of lessons that can be learnt from Nigeria's experience in managing ethnic and religious diversity. First, constitutional engineering after the failure of the first republic in Nigeria has prevented the emergence of religious parties in Nigeria. Although some of the political parties have more following in certain regions of the country(Unity Party of Nigeria (UPN) and Alliance for Democracy (AD) in South Western Nigeria, Peoples' Redemption Party (PRP) in Northern Nigeria, All Progressive Grand Alliance (APGA) in eastern Nigeria, the outlook, programmes and mobilization of all the parities are national. Second, the Nigerian experience has shown that constitutional provisions alone cannot prevent ethnic and religious conflicts. Furthermore, the constitutional prohibition of State religion has not prevented Governments (both Federal and State) from giving preferential treatment to certain religions. It has also not stopped some State Governments in Northern Nigeria from introducing the Sharia legal system. In addition, the experience of constitution making in Nigeria shows that the people have never really participated in the making of a constitution for the country. Since the people did not participate in the making of the constitution, they cannot relate to the final product as their own. They are therefore alienated from the political process and the end result is lack of respect for the rule of law, corruption and conflict. As we have shown in the paper, religion is used by the elite as a tool to manipulate to have access to power. There is therefore a big difference between constitutional provisions and reality. The challenge is to ensure the creation of institutions and mechanisms that will anticipate, forecast and try to prevent these conflicts and mobilize the people to ensure good governance, accountability and transparency while ensuring that there are institutions of horizontal accountability that are independent.

6. CONCLUSION

Nigeria is a nation with great ethnic and religious diversity and a very rich history of constitutional development. This diversity has posed a lot of challenges to governance in Nigeria manifested by many religious and ethnic conflicts. There have been various efforts to address these challenges but the manipulation by the political elite has led to the persistence of the problems caused by this diversity. At present, there are a lot of efforts to tackle these challenges. Other countries have a lot to learn from Nigeria's experience. But whether the problems posed by these challenges will be resolved will depend on the balance of forces within the Nigerian State and the mechanisms and institutions that are put in place for political accommodation, and management of social diversities and religious difference.

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CHAPTER FOUR

AMERICAN MODEL

OF

STATE CONSTITUTION

AMERICA MODEL STATE CONSTITUTION *

Article I

BILL OF RIGHTS

Section 100. *Political Power.*[1] All political power of this state is inherent in the people, and all government herein is founded on their authority.

Section 101. *Inherent Rights.* All persons are by nature equally free and independent and have certain inherent rights; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.[2] These rights carry with them certain corresponding duties to the state.

Section 102. *Legal Rights.* No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to any other citizen, unless by the law of the land; nor shall any person be deprived of due process of law, or be denied the equal protection of the laws. There shall be no imprisonment for debt and a reasonable amount of the property of individuals may be exempted from seizure or sale for payment of any debt or liabilities.

Section 103. *Right to Organize.* Citizens shall have the right to organize, except in military or semi-military organizations not under the supervision of the state, and except for purposes of resisting the duly constituted authority of this state or of the United States. Public employees shall have the right, through representatives of their own choosing, to present to and make known to the state, or any of its political subdivisions or agencies, their grievances and proposals.[3] Persons in private employment shall have the right to bargain collectively through representatives of their own choosing.

Section 104. *Searches and Seizures.* The right of the people to be secure in their persons, houses, papers and effects, against

unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Evidence obtained in violation of this section shall not be admissible in any court against any person.

Section 105. *Writ of Habeas Corpus.* The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

Section 106. *Rights of Accused Persons.* In all criminal prosecutions, the accused shall have the right to demand a specific statement of the charges against him, and to appear and defend himself in person and by counsel; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial in the county or district in which the offense is alleged to have been committed, unless he shall waive this right in order to secure a change of venue.

Section 107. *Double Jeopardy; Excessive Bail.* No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.[4]

Section 108. *Right of Assembly.* The people peaceably to assemble, and to petition the government, or any department thereof, shall never be abridged.

Section 109. *Freedom of Speech.* There shall be no law passed nor executive action taken abridging the freedom of speech or of the press.

Section 110. *Freedom of religion.* No law shall be passed respecting the establishment of religion, or prohibiting the free exercise thereof.

Section 111. *Freedom from Legislative Abuses.* The power of the state to act in the general welfare shall never be impaired by the making of any irrevocable grant of special privileges or immunities.

Section 112. *Eminent Domain.* Private property shall not be taken or damaged for public use without just compensation.

Section 113. *Sanction.* Any citizen or taxpayer may restrain the violation of any provision of this constitution by a suit with leave of the general court of justice, upon notice to the chief law officer of the state.

Article II

SUFFRAGE AND ELECTIONS

Section 200. *Qualifications for Voting.* Every duly registered citizen of the age of eighteen years who shall have been a citizen for ninety days, and an inhabitant of this state for one year next proceeding an election, and for the last ninety days a resident of the county and for the last thirty days a resident of the election district in which he[5] may offer his vote, shall have equal voting rights at all elections in the election district of which he shall at the time be a resident, and not elsewhere, except as hereinafter provided, but no person shall become entitled to vote unless he is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the ligislature to enforce this provision.

Section 201. *Absent Voting.* The legislature may, by general law, provide a manner in which qualified voters who may be absent from the state or county of their residence may register and vote, and for the return and canvass of their votes in the election district in which they reside.

Section 202. *Disqualifications from Voting.* No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, or withdraw or withhold or threaten to withdraw or

withhold any money or other valuable consideration as a compensation or reward for the giving or withholding of a vote at an election shall vote at such election. No person under conviction of bribery or of any infamous crime shall exercise the privilege of the suffrage.

Section 203. *Residence.* For the purpose of voting, no person shall be deemed to have gained or lost a residence simply by reason of his presence or absence while employed in the service of the United States; or while engaged in the navigation of the waters or this state, or of the United States, or of the high seas; nor while a student at any institution of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

Section 204. *Registration of Voters.* Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the privilege of the suffrage and for the registration of all qualified voters. Registration shall be upon personal application in the case of the first registration of any voter and shall be completed at least ten days before each election. Such registration shall be effective so long as the voter shall remain qualified to vote from the same address or for such other period as the legislature may prescribe.

Section 205. *Methods of Voting.* Voting at all elections or on referenda shall be by such method as may be prescribed by law, provided that secrecy of voting be preserved. The legislature shall have power to provide for the use of mechanical devices for voting or counting the votes.

Section 206. *Election officers.* All officers and employees charged with the direction or administration of the election system of the state and of its civil divisions shall be appointed in such manner as the legislature may by law direct, provided that appointment shall be made according to merit and fitness, to be determined, so far as practicable, by competitive examination.

Section 207. Regular election shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law.

Article III

THE LEGISLATURE

Section 300. *Legislative Power.* The legislative power shall be vested in a legislature, which may delegate to other public officers the power to supplement statutes by ordinances, general orders, rules, and regulations, provided a general standard or principle has been enacted to which such delegated legislation shall conform. All such delegated legislation, promulgated by state officers, departments, offices, or agencies, shall be reported to the legislative council, and shall be adopted and published in accordance with a fair procedure prescribed by law. The legislature may delegate to the legislative council authority to approve or disapprove ordinances, general orders, rules and regulations supplementing existing legislation.

Section 301. *Composition of the legislature.* The legislature shall be composed of a single chamber of such number of members as may be prescribed by law, but not to exceed . . . . . members. Except as otherwise provided in this constitution, any qualified voter shall be eligible to membership in the legislature.[6]

Section 302. *Election of Members.* The members of the legislature shall be chosen by the qualified voters of the state for a term of two years by proportional representation, under a method to be prescribed by law. For the prupose of electing members of the legislature, the state shall be divided into districts, composed of contiguous and compact territory, from each of which there shall be elected from three to seven members, in accordance with the population of the respective districts. The term of members of the legislature shall begin on the first day of December next following their election.

Section 303. *Apportionment.* After each decennial census, the secretary of the legislature shall reallot the number of members assigned to each district, in accordance with the changes in the population of the several districts. The boundaries of the districts and the total number of members may be altered only by law and not more frequently than once in each census period.

Section 304. *Time of Election.* The members of the legislature shall be elected at the regular election in each odd numbered year, beginning in 19 . . . . . .

Section 305. *Vacancies.* Whenever a vacancy shall occur in the legislature, it shall be filled by a majority vote of the remaining members from the district in which said vacancy occurs, or in such other manner as may be provided by law. If, after thirty days following the occurrence of vacancy, it remains unfilled, the governor shall appoint some eligible person for the unexpired term.[7]

Section 306. *Compensation of Members.* The members of the legislature shall receive an annual salary, as may be prescribed by law, but the amount thereof shall neither be increased nor diminished during the term for which they are elected.

Section 307. *Sessions.* The legislature shall be deemed a continuous body during the biennium for which its members are elected. It shall meet in regular sessions quarterly or at such times as may be prescribed by law. Special sessions may be called by the governor or by a majority of the members of the legislative council.

Section 308. *Organization and procedure.* The legislature shall be judge of the election, returns and qualifications of its members, and may by law vest in the courts the trail and determination of contested elections of members. It shall choose its presiding officer, and a secretary who shall serve for an indefinite term. It shall determine its rules of procedure; it may compel the attendance of absent members, punish its members for disorderly conduct and, with the concurrence of two-thirds of

all the members, expel a member; and it shall have power to compel the attendance and testimony of witnesses and the production of books and papers either before the legislature as a whole or before any committee thereof.

Section 309. *Legislative Immunity.* For any speech or debate in the legislature, the members shall not be questioned in any other place.

Section 310. *Local and Special Legislation.* The legislature shall pass no special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be matter for judicial determination. No local act shall take effect until approved by a majority of the qualified voters voting thereon in the district to be affected, except acts repealing local or special acts in effect before the adoption of this constitution and receiving a two-thirds vote of all the members of the legislature on the question of their repeal.

Section 311. *Transaction of Business.* A majority of all the members of the legislature shall constitute a quorum to do business but a smaller number may adjourn from day to day and compel the attendance of absent members. The legislature shall keep a journal of its proceedings which shall be published from day to day. The legislature shall prescribe the methods of voting on legislative matters, but a record vote, with the yeas and nays entered in the journal, shall be taken on any question on the demand of one-fifth of the members present. Mechanical devices may be employed to record the votes of members.

Section 312. *Committees.* The legislature may establish such committees as may be necessary for the efficient conduct of its business. Each committee shall keep a journal of its proceedings as a public record. One-third of all members of the legislature shall have power to relieve a committee of further consideration of a bill when the committee to which it was assigned has not reported on it. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published one week in advance in the journal.

Section 313. *Bills and Titles of Bills.* No law shall be passed except by bill. Every bill, except bills for appropriations and bills for the codification, revision or rearrangement of existing laws, shall be confined to one subject, which shall be expressed in the title. Bills for appropriations shall be confined to appropriations.

Section 314. *Passage of Bills.* No bill shall become a law unless it has been read on three different days, has been printed and upon the desks of the members in final form at least three legislative days prior to final passage, and has received the assent of a majority of all the members. No act shall become effective until published, as provided by law.

Section 315. *Action by the Governor.* Every bill which shall have passed the Legislature shall be presented to the governor; if he approves he shall sign it, but it not he shall return it with his objections to the legislature. Any bill so returned by the governor shall be reconsidered by the legislature and if, upon reconsideration, two-thirds of all the members shall agree to pass the bill it shall become a law. In all such cases the vote shall be by roll call, and entered on the journal.

If any bill shall not be signed or returned by the governor within fifteen days after it shall have been presented to him it shall be a law in like manner as if he had signed it, except that, it the legislature shall be in recess at the end of such fifteen-day period, the governor may sign the bill at any time during the recess or return it with his objections upon the convening of the legislature, and if the legislature shall adjourn finally before the governor has acted on a bill that has been presented to him less than fifteen days before, it shall not become law unless the governor sign it within thirty days after such adjournment.

Section 316. *Referendum on Legislation.* Any bill failing of passage by the legislature may be submitted to referendum by order of the governor, either in its original form or with such amendments which were considered by the legislature as he may designate. Any bill which, having passed the legislature, is returned thereto by the governor with objections and, upon reconsideration, is

not approved by a two-thirds vote of all the members but is approved by at least a majority thereof, may be submitted to referendum by a majority of all the members. Bills thus submitted to referendum shall be voted on at the next succeeding regular election occurring at least sixty days after action is taken to submit them, unless the legislature shall provide for their submission at an earlier date.

Section 317. *Legislative Council.* There shall be a legislative council consisting of not less than seven nor more than fifteen members, chosen by and from the legislature. Members of the legislative council shall be chosen by the legislature at its first session after the adoption of this constitution and at each subsequent session following a regular election. Members of the legislative council shall be elected in such a manner as the legislature shall direct, and when elected shall continue in office until their successors are chosen and have qualified. The legislature, by a majority vote of all the members, may dissolve the legislative council at any time and proceed to the election of a successor thereto.

Section 318. *Organization of Legislative Council.* The legislative council shall meet as often as may be necessary to perform its duties. It shall choose one of its members as chairman, and shall appoint a director or research; it shall adopt its own rules of procedure, except as such rules may be established by law. The secretary of the legislature shall serve ex officio as secretary of the council.

Section 319. *Duties of the Legislative Council.* It shall be the duty of the legislative council to collect information concerning the government and general welfare of the state and to report thereon to the legislature. Measures for proposed legislation may be submitted to it at any time, and shall be considered and reported to the legislature with its recommendations thereon. The legislative council may also recommend such legislation, in the form of bills or otherwise, as in its opinion the welfare of the state may require. Other powers and duties may be assigned to the legislative council by law.

Section 320. *Compensation of Members of the Legislative Council.* Members of the legislative council shall receive such compensation, additional to their compensation as members of the legislature, as may be provided by law.

Article IV

INITIATIVE AND REFERENDUM

Section 400. *The Initiative.* The people reserve to themselves power by petition to propose laws and amendments to this constitution, and directly to enact or reject such laws and amendments at the polls. The reserved power shall be known as the initiative.

Section 401. *Initiative Procedure.* An initiative petition shall contain either the full text of the measure proposed, or an adequate summary thereof, and, to be valid, shall be signed by qualified voters equal in number to at least . . . . . per cent of the total vote cast for governor in the last preceding regular election at which a governor was chosen. An initiative petition proposing a constitutional amendment shall be signed by . . . . . .[a greater] per cent of the qualified voters of the state. Not more than one-fourth of the signatures counted on any completed petition shall be those of the voters of any one county. Initiative petitions shall be field with the secretary of the legislature for report by the legislative council. If the proposed measure is not enacted into law at the next ensuing session of the legislature or, in the case of a constitutional amendment, if it is not passed at such session and repassed at the first session meeting at least six months thereafter, the question of the adoption of the measure shall be submitted by the secretary of the legislature to the qualified voters at the first regular election held not less than sixty days after the end of the session which fails to take the indicated action, except that a constitutional amendment shall be submitted at the second regular election after each session. The legislature may provide by law for a procedure by which the sponsors may withdraw an initiative petition at any time prior to its submission to the people.

Section 402. *The Referendum.* The people also reserve to themselves power to require, by petition, that measures enacted by the legislature be submitted to the qualified voters for their approval or rejection. This reserved power shall be known as the referendum.

Section 403. *Referendum Procedure.* A referendum petition against any measure passed by the legislature shall be field with the secretary of the legislature within ninety days after the adjournment of the session at which such measure was enacted and, to be valid, shall be signed by qualified voters equal in number to not less than . . . . . per cent of the total vote cast for governor at the last preceding regular election at which a governor was chosen. Not more than one-fourth of the signatures counted on any completed petition shall be those of the voters of any one county. The question of approving any measure against which a valid referendum petition is filed shall be submitted to the voters at the first regular or special election held not less than thirty days after such filing.

Section 404. *Effect of Referendum.* A referendum may be ordered upon any act or part of an act, except acts continuing existing taxes and acts making appropriations in amounts not in excess of those for the preceding fiscal year. When the referendum is ordered upon an act, or any part of an act, it shall suspend the operation thereof until such act, or part, is approved by the voters.

The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of the measure from becoming operative. No act shall take effect earlier than ninety days after the adjournment of the legislative session at which it was enacted, except acts declared to be emergency measures. If it be necessary for the immediate preservation of the public peace, health, or safety that a measure become effective without delay, the facts constituting such necessity shall be stated in a separate section, and if, upon a record vote entered in the journal, two-thirds of all the members of the legislature shall declare the measure to be an emergency

measure, it shall become effective at the time specified therein; but no act granting or amending a franchise or special privilege, or creating any vested right or interest, other than in the state, shall be declared an emergency measure. If a referendum petition be field against an emergency measure, such measure shall be operative until voted upon, and if not approved by a majority of the qualified voters voting thereon, it shall be deemed repealed.

Section 405. *Special Election.* Any referendum measure shall be submitted to the qualified voters at a special election if so ordered by the governor or if a separate petition requesting a special election be signed by . . . . . per cent of the qualified voters. Any such special election shall be held not less than one hundred and twenty nor more than one hundred and fifty days after the adjournment of the legislative session at which the act was passed.

Section 406. *Passage of Constitutional Amendments and Laws by the Initiative and Referendum.* Each measure shall be submitted by a ballot title, which shall be descriptive but not argumentative or prejudicial. The ballot title of any initiated or referred measure shall be prepared by the legal department of the state, subject to review by the courts. The veto power of the governor shall not extend to measures initiated by, or referred to, the qualified voters. Any measure submitted to a vote of the qualified voters shall become law or a part of the constitution only when approved by a majority of the votes cast thereon, provided that, in addition, no initiative measure shall become effective unless the affirmative votes cast therefor shall equal 30 per cent of the total vote cast for governor at the last preceding regular election at which a governor was chosen. Each measure so approved shall take effect thirty days after the date of the vote thereon, unless otherwise provided in the measure. If conflicting measures referred to the people at the same election shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

Section 407. *Restrictions on Direct Legislation Procedure.* The initiative shall not be used as a means of making appropriations of public

funds, nor for the enactment of local or special legislation. No measure submitted by the initiative shall contain therein the name of any person to be designated as administrator of any department, office or agency to be established by the proposed law or constitutional amendment.

No law shall be enacted to hamper, restrict or impair the exercise of the powers herein reserved to the people. No measure adopted by vote of the qualified voters under the initiative and referendum provisions of this constitution shall be repealed or amended by the legislature within a period of three years except by a two-thirds vote of all the members.

Article V

THE EXECUTIVE

Section 500. *Establishment of the Executive.* The executive power of the state shall be vested in a governor, who shall be chosen by the district vote of the people for a term of four years beginning on the first day of December next following his election.

Section 501. *Election of the Governor.* The governor shall be elected at the regular election in each alternate odd numbered year, beginning in 19 . . . . .. Any qualified voter of the state shall be eligible to the office of governor.

Section 502. *Legislative Powers.* The governor shall, at the beginning of each session, and may at other times, give to the legislature information as to the affairs of the state, and recommend such measures as he shall deem expedient. He shall have the power veto over bills approved by the legislature, as prescribed in section 315 of this constitution.

The governor, the administrative manager, and heads of administrative departments shall be entitled to seats in the legislature, may introduce bills therein, and take part in the discussion of measures, but shall have no vote.

Section 503. *Executive and Administrative Powers.* The governor shall take care that the laws are faithfully executed, and to this end shall have power, by appropriate action or proceeding brought in the name of the state in any of the judicial or administrative tribunals or agencies of the state or any of its civil divisions, to enforce compliance with any constitutional or legal mandate, or restrain violation of any constitutional or legal duty or right by any department, office, or agency of the state or any of its civil divisions; but this power shall not be construed to authorize any action or proceeding against the legislature.[8]

He shall commission all officers of the state. He may at any time require information, in writing or otherwise, from the officers of any administrative department, office or agency upon any subject relating to their respective offices. He shall be commander-in-chief of the armed forces of the state (except when they shall be called into the service of the United States), and may call them out to execute the laws, to suppress insurrection or to repel invasion.

Section 504. *Executive Clemency.* The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be prescribed by law relative to the manner of applying therefor.

Section 505. *Administrative Manager.* The governor shall appoint an administrative manager of state affairs, whose term shall be indefinite at the pleasure of the governor. The governor may delegate any or all of his administrative powers to the administrative manager. The administrative manager shall be assisted by such aides as may be provided by law.

Section 506. *Administrative Departments.* There shall be such administrative departments, not exceed twenty in number, as may be established by law, with such powers and duties as may be prescribed by law. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, offices and agencies, and it may increase, modify, or diminish the powers and functions

of such departments, offices, or agencies, but the governor shall have power to make from time to time such changes in the administrative structure or in the assignment of functions as may, in his judgment, be necessary for efficient administration. Such changes shall be set forth in executive orders which shall become effective at the close of the next quarterly session of the legislature, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members.[9]

All new powers or functions shall be assigned to departments, offices or agencies in such manner as will tend to maintain an orderly arrangement in the administrative pattern of the state government. The legislature may create temporary commissions for special purposed or reduce the number of departments by consolidation or otherwise.[10]

The heads of all administrative departments shall be appointed by and may be removed by the governor. All other officers in the administrative service of the state shall be appointed by the governor or by the heads of administrative department, as provided by article IX of this constitution and by supporting legislation. No executive order governing the work of the state or the administration of one or more department offices and agencies, shall become effective until published as provided by law.

Section 507. *Impeachment.* The legislature shall have the power of impeachment by a two-thirds vote of all the members, and it shall provide by law a procedure for the trial and removal from office of officers of this state. No officer shall be convicted on impeachment by a vote of less than two-thirds of the members of the court hearing the charges.

Section 508. *Succession to Governorship.* In case of the failure of the governor to qualify, or of his impeachment, removal from office, death, resignation, inability to discharge the powers and duties of his office, or absence from the state, the powers and duties of the office shall devolve upon the presiding officer of the legislature for the remainder of the term, or until the disability be removed.

Article VI

THE JUDICIARY

Section 600. *Establishment of the Judiciary.* The judicial power of the state shall be vested in a general court of justice which shall include a supreme court department and such other departments and subdivisions and as many judges as may be provided by law.

Section 601. *Jurisdiction.* The general court of justice shall have original general jurisdiction throughout the state in all causes, including claims against the state. The jurisdiction of each department and subdivision of the general court of justice shall be determined by statute or by general rules of the judicial council not inconsistent with law provided that the legislature shall determine the jurisdiction of the supreme court department by law.

Section 602. *Selection of Justices and Judges.* The chief justice shall be elected by the qualified voters of the state at a regular election in an odd numbered year in which a governor is not elected. He shall hold office for a term of eight years, beginning on the first day of December next following his election.

Whenever vacancies occur the chief justice shall appoint the other judges of the general court of justice from eligible lists containing three names for each vacancy, which shall be presented to him by the judicial council. The term of office of each judge so appointed shall be twelve years, subject to recall, removal, or retirement as hereafter provided. After any appointed judge shall have served for four years, the qualified voters of the state or of a judicial district shall decide at the next regular election whether he shall retained or recalled from office. The judicial council, subject to any general rules that the legislature may prescribe by law, shall determine on the basic of the record of the judge's service in what, if any, particular district the question of his retention or recall shall be submitted. A separate ballot shall be used (unless voting machines are employed) on

which there shall appear no other question than that of the retention or recall of the judge. If a majority of the votes on the question are against retaining the judge, his term shall end upon the thirtieth day next following the election.

The judicial council shall designate a judge to act in place of the chief justice in case of a vacancy in the office or in case of the absence of the chief justice from the state or of his inability to discharge the powers and duties of his office. In case of a vacancy, a new chief justice shall be elected for a full term at the next regular election held in an odd numbered year in which a governor is not elected, unless the legislature provides by law for an earlier election to fill an unexpired term.

Section 603. *Establishment of Judicial Council.* There shall be a judicial council, to consist of the chief justice, who shall preside at its meetings, one other member of the supreme court department, and two judges of other departments of the general court of justice to be designated for four years by the chief justice; three practicing lawyers, to be appointed by the governor for overlapping terms of three years, from an eligible list containing three times as many names as there are appointments to be made and presented to him by the governing board of the state bar association; three laymen citizens of the state, to be appointed by the governor for overlapping terms of three years; and the chairman of the judiciary committee of the legislature. The judicial council shall meet at least once in each quarter, at a time and place designated by the chief justice.

Section 604. *Powers of the Judicial Council.* The judicial council, in addition to the other powers conferred upon it by this constitution or by law, shall have power to make or alter the rules relating to pleading, practice, or procedure in the general court of justice. It shall also have power to make rules respecting the administration of the general court of justice, including rules prescribing the duties of the administrative director and his subordinates and all other ministerial agents of the court, determining the location of offices and places of sittings of the various departments and subdivisions of the general court of

justice, and establishing or altering judicial districts for the handling of specified types of judicial business.

Rules of pleading, practice, and procedure shall be effective only when published as provided by law and the legislature may repeal, alter, or supplement any of them by a law limited to that specific purpose. All other rules made by the judicial council shall be subject to any statutes theretofore or thereafter enacted.

Section 605. *Judicial Administration.* The chief justice shall be the presiding justice of the supreme court department and shall be the executive head of the general court of justice, exercising the powers conferred by this constitution, by law, and be rules of the judicial council.

The chief justice, subject to rules of the judicial council, shall assign judges to service in the several departments, subdivisions, and judicial districts and shall designate such presiding judges therein as may be required by law or by rule of the judicial council. Presiding judges shall serve on such conditions and with such administrative responsibilities and such powers of appointment, assignment, and control over calendars as may be determined by law or by rule of the judicial council.

The chief justice shall appoint an administrative director of the general court of justice to serve at his pleasure, the clerk of the supreme court department, and all other ministerial agents of the general court of justice whose appointment is not by law or by rule of the judicial council vested in the administrative director of the general court of justice, the clerk of the supreme court, or the presiding judges.

The chief justice shall supervise the work of the general court of justice and of all its agents. He shall publish an annual report covering the business done by every department, subdivision, district or agency of the general court of justice and stating the condition of the dockets at the close of the year. He may require periodic or special reports from any judicial officer or agent.

Section 606. *Retirement and Removal.* The legislature shall provide by law for retirement of judges. The chief justice may assign a retired judge to temporary active service as need appears at any time prior to the end of the term for which he had been appointed.

The legislature may, upon due notice of reasons given and opportunity for defense, remove from office any judge upon the concurrence of two-thirds of all the members. Judges and ministerial agents of the general court of justice may be removed for cause, after due notice and opportunity for defense, by the judicial council.

Section 607. *Compensation.* All remuneration for the services of judges and court officials shall be paid from an appropriation by the legislature. The annual compensation paid to any judge shall be neither increased nor diminished during the term of office to which he shall be elected or appointed.

Section 608. *Fees, Costs, and Fines.* All fees collected in any department of the general court of justice or by any officer thereof shall be collected and received by the administrative director and shall be accounted for by him monthly and paid to the state treasury. The judicial council shall have power to establish or alter fees to be collected in the several court departments, within such limits as the legislature may by law establish.

Section 609. *Ineligibility to Other Offices.* No judge shall hold any office or public employment, other than a judicial office, during the term for which he shall have been elected or appointed, nor shall he engage in the practice of law or other gainful occupation during his continuance in office. No judge shall be eligible for election to any non-judicial office until two years after the expiration of the full term for which he was appointed or elected.

Section 610. *Disqualifications in Certain Cases.* No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity

within such degrees as may be prescribed by law, or where he shall have been of counsel in the case, or on appeal from a trial in which he presided.

Section 611. *Writ of Habeas Corpus.* Each judge of the general court of justice shall have power to issue writs of habeas corpus.

Article VII

FINANCE

Section 700. *Powers of Taxation.* The power of taxation shall never be surrendered, suspended, or contracted away.

Section 701. *Borrowing Power.* The credit of the state or any civil division thereof shall not in any manner, directly or indirectly, be given or lent to or used in aid of any individual, association, or private corporation.

Section 702. *Debt Limitations.* No debt shall be contracted by or in behalf of this state unless such debt shall be authorized by law for a single project or object distinctly specified therein; and no such law shall, except for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural catastrophes, or redeeming the indebtedness of the state outstanding at the time this constitution is approved, take effect until it shall have been submitted to the qualified voters at a regular election and have received a favorable majority of all votes cast upon such question at such election; except that the state may by law borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues of such year, but all debts so contracted in anticipation of revenues shall be paid within one year.

Section 703. *The Budget.* Three months before the opening of the fiscal year, the governor shall submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated income of all departments, offices and agencies of

the state for the next ensuing fiscal year. For the preparation of the budget the various departments, offices and agencies shall furnish the governor such information, in such form, as he may require. At the time of submitting the budget to the legislature, the governor shall introduce therein a general appropriation bill to authorize all the proposed expenditures set forth in the budget. At the same time he shall introduce in the legislature a bill or bills covering all recommendations in the budget for new or additional revenues or for borrowing by which the proposed expenditures are to be met.

Section 704. *Legislative Budget Procedure.* No special appropriation bill shall be passed until the general appropriation bill, as introduced by the governor and amended by the legislature, shall have been enacted, unless the governor shall recommend the passage of an emergency appropriation or appropriations, which shall continue in force only until the general appropriation bill shall become effective. The legislature shall provide for one or more public hearings on the budget, either before a committee or before the legislature in committee of the whole. When requested by not less than one-fifth of all the members of the legislature it shall be the duty of the governor to appear in person or by designated representative before the legislature, or before a committee thereof, to answer any inquiries with respect to the budget.

The legislature shall make no appropriation for any fiscal period in excess of the income provided for that period. The governor may strike out or reduce items in appropriation bills passed by the legislature, and the procedure in such cases shall be the same as in the case of the disapproval of an entire bill by the governor.

Section 705. *Appropriations for Private Purposes Prohibited.* No tax shall be levied or appropriation of public money or property be made, either directly or indirectly, except for a public purpose, and no public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for any sect, church, denomination, or sectarian institution. No public money

or property shall be appropriated for a charitable, industrial, educational or benevolent purpose except to a department, office, agency or civil division of the state.

Section 706. *Expenditure of Money*. No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. The appropriation for each department, office, or agency of the state, for which appropriation is made, shall be for a specific sum of money, and no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof.[11]

No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates. The governor shall have authority to reduce expenditures of state departments, offices and agencies under appropriations whenever actual revenues fall below the revenue estimates upon which the appropriations were based, or when other changed circumstances warrant economies, and, through allotments or otherwise, to control the rate at which such appropriations are expended during the fiscal year, provided that the legislature, by resolution concurred in by a majority of all the members, may exempt specific appropriations for the legislative department from the exercise of this power by the governor.

Section 707. *Purchasing Methods.* All public purchases made by the government of this state, or by any of its cities, counties, or other civil divisions, shall, so far as practicable, be made under a system of competitive bidding. Centralized purchasing shall be practiced wherever practicable.

Section 708. *Post-auditing.* The legislature shall, by a majority vote of all the members, appoint an auditor who shall serve during its pleasure.[12] It shall be the duty of the auditor to conduct post-audits of all transactions and of all accounts kept by or for all departments, offices and agencies of the state government, to certify to the accuracy of all financial statements issued by

accounting officers of the state, and to report his findings and criticisms to the governor and to a special committee of the legislature quarterly, and to the legislature at the end of each fiscal year. He shall also make such additional reports to the legislature and the proper legislative committee, and conduct such investigation of the financial affairs of the state, or of any department, office or agency thereof, as either of such bodies may require.

Section 709. *Excess Condemnation.* The state, or any civil division thereof, appropriating or otherwise acquiring property for public use, may, in furtherance of such public use, appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or acquired; and such bonds, when made a lien only against the property so appropriated or acquired, shall not be subject to the restrictions or limitations on the amount of indebtedness of any civil divisions prescribed by law.[13]

Article VIII

LOCAL GOVERNMENT

Section 800. *Organization of Local Government.* Provision shall be made by general law for the incorporation of counties, cities, and other civil divisions; and for the alteration of boundaries, the consolidation of neighboring civil divisions, and the dissolution of any such civil divisions.

Provisions shall also be made by general law (which may provide optional plans of organization and government) for the organization and government of counties, cities, and other civil divisions which do not secure locally framed and adopted charters in accordance with the provisions of section 801, but no such law hereafter enacted shall become operative in any

county, city, or other civil division until submitted to the qualified voters thereof and approved by a majority of those voting thereon.

Section 801. *Home Rule for Local Units.* Any county or city may adopt or amend a charter for its own government, subject to such regulations as are provided in this constitution and may be provided by general law. The legislature shall provide one or more optional procedures for nonpartisan election of five, seven or nine charter commissioners and for framing, publishing, and adopting a charter or charter amendments.

Upon resolution approved by a majority of the members of the legislative authority of the county or city or upon petition of 10% of the qualified voters, the officer or agency responsible for certifying public questions shall submit to the people at the next regular election not less than sixty days thereafter, or at a special election if authorized by law, the question "Shall a commission be chosen to frame a charter or charter amendments for the county (or city) of . . . . . ?" An affirmative vote of a majority of the qualified voters voting on the question shall authorize the creation of the commission.

A petition to have a charter commission may include the names of five, seven or nine commissioners, to be listed at the end of the question when it is voted on, so that an affirmative vote on the question is a vote to elect the persons named in the petition. Otherwise, the petition or resolution shall designate an optional election procedure provided by law.

Any proposed charter or charter amendments shall be published by the commission, distributed to the qualified voters and submitted to them at the next regular or special election not less than thirty days after publication. The procedure for publication and submission shall be as provided by law or by resolution of the charter commission not inconsistent with law. The legislative authority of the county or city shall, on request of the charter commission, appropriate money to provide for the reasonable expenses of the commission and for the publication, distribution and submission of its proposals.

A charter or charter amendments shall become effective if approved by a majority of the qualified voters voting thereon. A charter may provide for direct submission of future charter revisions or amendments by petition or by resolution of the local legislative authority.

Section 802. *Powers of Local Units.* Counties shall have such powers as shall be provided by general or optional law. Any city or other civil division may, by agreement, subject to a local referendum and the approval of majority of the qualified voters voting on any such question, transfer to the county in which it is located any of its functions or powers, and may revoke the transfer of any such function or power, under regulations provided by general law; and any county may, in like manner, transfer to another county or to a city within its boundaries or adjacent thereto any of its functions or powers, and may revoke the transfer of any such function or power.

Section 803. *County Government.* Any county charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law. Such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of this state in cities and other civil divisions; it may provide for the succession by the county to the rights, properties, and obligations of cities and other civil divisions therein incident to the powers so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. No provision of any charter or amendment vesting in the county any powers of a city or other civil division shall become effective unless it shall have been approved by a majority of those voting thereon (1) in the county, (2) in any city containing more than 25 per cent of the total population of the county, and (3) in the county outside of such city or cities.

Section 804. *City Government.* Except as provided in sections 802 and 803, each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.[14]

The following shall be deemed to be a part of the powers conferred upon cities by this section when not inconsistent with general law:

(a) To adopt and enforce within their limits local police, sanitary and other similar regulations.

(b) To levy, assess and collect taxes, and to borrow money and issue bonds, and to levy and collect special assessments for benefits conferred.

(c) To furnish all local public services; and to acquire and maintain, either within or without its corporate limits, cemeteries, hospitals, infirmaries, parks and boulevards, water supplies, and all works which involve the public health and safety.[15]

(d) To maintain art institutes, museums, theatres, operas, or orchestras, and to make any other provision for the cultural needs of the residents.

(e) To establish and alter the location of streets, to make local public improvements, and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements, and also to acquire additional property in order to preserve and protect such improvements, and to lease or sell such additional property, with restrictions to preserve and protect the improvements.

(f) To acquire, construct, hire, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection

of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(g) To issue and sell bonds, outside of any general debt limit imposed by law, on the security in whole or in part of any public utility or property owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(h) To organize and administer public schools and libraries.

(i) To provide for slum clearance, the rehabilitation of blighted areas, and safe and sanitary housing for families of low income, and for recreational and other facilities incidental or appurtenant thereto; and gifts of money or property, or loans of money or credit for such purposes, shall be deemed to be for a city purpose.[16]

Section 805. *Public Reporting.* Counties, cities and other civil divisions shall adopt an annual budget in such form as the legislature shall prescribe, and the legislature shall by general law provide for the examination by qualified auditors of the accounts of all such civil divisions and of public utilities owned or operated by such civil divisions, and provide for reports from such civil divisions as to their transactions and financial conditions.

Section 806. *Conduct of Elections.* All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

Article IX

THE CIVIL SERVICE [17]

Section 900. *General Provisions.* In the civil service of the state and all of its civil divisions, all offices and positions shall be

classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.[18]

Section 901. *Administration and Enforcement.* There shall be a department of civil service which shall, in accordance with the provisions of this article and the laws enacted pursuant thereto, administer the personnel functions of the state and of such of its civil divisions as elect to come under the jurisdiction of the department. For the administration of the personnel functions of civil divisions that do not elect to come under jurisdiction of the department, and which do not make provisions for the administration of their personnel functions in a home rule charter adopted pursuant to section 801 of this constitution, provision shall be made by law. No payment for any employment hereunder shall be made without the affirmative certification by the department, or of a designated local authority in the case of a civil division over which the department does not have jurisdiction, as to the legality of such employment. The legislature shall enact laws necessary to carry out the provisions of this article and the department shall make such rules as may be necessary to carry out the provisions and intent of such laws.

Section 902. *Legislative and Judicial Employees.* Employees of the legislature shall be selected in conformity with the provisions of this article and shall be appointed and supervised by the secretary of the legislature. Employees of the courts likewise shall be selected in conformity with the provisions of this article, and shall be appointed and supervised as provided in this constitution or as may be prescribed by law.

Article X

PUBLIC WELFARE

Section 1000. *Public Education.* The legislature shall provide for the maintenance and support of a system of free common

schools, wherein all the children of this state may be educated, [19] and of such other educational institutions, including institutions of higher learning, as may be deemed desirable.

Section 1001. *Public Health.* The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its civil divisions and in such manner and by such means as the legislature shall from time to time determine. [20]

Section 1002. *Public Relief.* The maintenance and distribution, at reasonable rates, or free of charge, of a sufficient supply of food, fuel, clothing, and other common necessities of life, and the providing of shelter, are public functions, and the state and its civil divisions may provide the same for their inhabitants in such manner and by such means as may be prescribed by law. [21]

Section 1003. *Public Inspection of Private Charitable, Correctional, or Health Institutions and Agencies.* The state shall have the power to provide for the inspection by such state departments, offices or agencies, and in such manner as the legislature may determine, of all private institutions and agencies in the state, whether incorporated or not incorporated, which are engaged in charitable, correctional, or health activities. [22]

Section 1004. *Public Housing.* The state may provide for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto, in such manner, by such means, and upon such terms and conditions as are prescribed elsewhere in this constitution or as may be prescribed by law. [23]

Section 1005. *Conservation.* The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the state are public uses, and the legislature shall have power to provide for the same and enact legislation necessary or expedient therefor.[24]

Section 1006. *Sightlines, Order and Historic Associations.* The natural beauty, historic associations, sightlines and physical good order of the state and its parts contribute to the general welfare and shall be conserved and developed as a part of the patrimony of the people, and to that end private property shall be subject to reasonable regulation and control.

Section 1007. *Powers of the State.* The enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government. The state government shall have full power to act for the government and good order of the state and for the health, safety, and welfare of its citizens, by all necessary and convenient means, subject only to the limitations prescribed in this constitution and in the constitution of the United States.

Article XI

INTERGOVERNMENTAL RELATIONS

Section 1100. *Federal-State Relations.* Nothing in this constitution shall be construed in such manner as to impair the constitutionality or any act passed by the legislature for the purpose of making effective the cooperation of the state with the federal government under any legislation which Congress has the power to enact.

Section 1101. *Interstate Relations.* The legislature shall provide by law for the establishment of such agencies as may be necessary and desirable to promote cooperation on the part of this state with the other states of the Union. The legislature may appropriate such sums as may be necessary to finance its fair share of the cost of any interstate activities.

Section 1102. *Cooperation of Governmental Units.* Agreement may be made by any county, city, or other civil division with any other such civil division, or with the state, or with the United States, for a cooperative or joint administration of any of its functions or powers, and the legislature shall have power to facilitate such arrangements.

Section 1103. *Consolidation and Cooperation of Local Units.* The legislature may, by appropriate legislation, facilitate and encourage the consolidation of existing civil divisions, or the establishment of cooperative enterprises on the part of such civil divisions.

Article XII

GENERAL PROVISIONS

Section 1200. *Self-Executing Clause.* The provisions of this constitution shall be self-executing to the fullest extent that their respective natures permit. The legislature, the governor, and the judicial department shall each have power to take any action consistent with its nature in furtherance of the purposes of this constitution and to facilitate its operation.

Whenever legislation shall be needed to carry out a mandate of the constitution, the governor shall call the matter to the attention of the legislature, and he may issue an executive order to carry out the mandate. Every such executive order shall be transmitted to the legislature while it is in session and shall become effective as law sixty days after its transmittal unless it shall have been modified or replaced by a resolution concurred n by a majority of all the member of the legislature.

Section 1201. *Equal Rights.* Whenever in this constitution the term "person," "persons," "people," or any personal pronoun is used, the same shall be interpreted to include persons of both sexes.[25]

Section 1202. *Oath of Office.* All officers of the state – legislative, executive and judicial – and of all the civil divisions thereof, shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the constitution of the United States, and the constitution of the state of . . . . . ., and that I will faithfully discharge the duties of the office of . . . . . to the best of my ability."

Article XIII

CONSTITUTIONAL REVISION

Section 1300. *Amending Procedure.* Amendments to this constitution may be proposed by the legislature of by the initiative. When the initiative is used, the procedure set forth in sections 401 and 406 of this constitution shall be followed.

Amendments proposed by the legislature shall be twice agreed to by record vote of a majority of all the members and each time entered on the journal, a period of not less than six months having intervened between such approvals, Amendments thus approved shall be submitted to a vote of the qualified voters at the first regular or special statewide election held not less than two months after the second action by the legislature.

Section 1301. *Constitutional Conventions.* The legislature, by an affirmative record vote of a majority of all the members, may at any time submit the question "shall there be a convention to amend or revise the constitution?" to the qualified voters of the state. If the question of holding a convention is not otherwise submitted to the people at some time during any period of fifteen years the secretary of the legislature shall submit it at the general election in the fifteenth year following the last submission.

The legislature, prior to a vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions to assist the voters, and if a convention is authorized the commission shall be continued for the assistance of the delegates. If a majority of the qualified voters voting on the question of holding a convention approves it, delegates shall be chosen at the next regular election not less than three months thereafter unless the legislature shall by law have provided for election of the delegates at the same time that the question is voted on or at a special election.

Any qualified voter of the state shall be eligible to membership in the convention, to which as many delegates shall

be elected from each existing legislative district as there are representatives in the legislature from that district. Election shall be by proportional representation, in the same manner as for members of the legislature. The convention shall convene not later than one month after the date of the election of delegates and may recess from time to time.

No proposal shall be submitted by the convention to the voters unless it has been read on three different days in the convention, has been printed and upon the desks of the delegates in final form at least three days on which the convention was in session prior to final passage therein, and has received the assent of a majority of all the delegates. The yeas and nays on any question shall, upon request of one-tenth of the delegates present, be entered in the journal. Proposals of the convention shall be submitted to the qualified voters at the first regular or special statewide election not less than two months after final action thereon by the convention, either as a whole or in such parts and with such alternatives as the convention may determine.

Section 1302. *Adoption of Revision or Amendments.* Any constitutional revision or amendment submitted to the voters in accordance with this article shall become effective by approval of a majority of the qualified voters voting thereon. The provisions of section 406 concerning ballot titles, effective dates of approved measures and the resolution of conflicts among such measures shall apply to all measures for amendment or revision of the constitution.

Article XIV

SCHEDULE

Section 1400. *Effective Date.* This constitution shall be in force from and including the first day of . . . . . 19 . . . , except as herein otherwise provided.

Section 1401. *Existing Laws.* All laws not inconsistent with this constitution shall continue in force until specifically amended or

repealed, and all rights, claims, actions, orders, prosecutions, and contracts shall continue except as modified in accordance with the provisions of this constitution.

Section 1402. *Officers.* All officers filling any office by election or appointment shall continue to exercise the duties thereof, according to their respective commissions or appointments, until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

Section 1403. *Choice of Officers.* The first election of governor under this constitution shall be in 19 . . . . .. The first election of chief justice under this constitution shall be in 19 . . . .. The first election of members of the legislature under this constitution shall be in 19 . . . ..

Section 1404. *Establishment of the Legislature.* Until otherwise provided by law, members of the legislature shall be elected from the following districts: The first district shall consist of the counties of . . . . . and . . . . . ., and said district shall be entitled to . . . . . members in the legislature, etc. [The description of all the districts from which the first legislature will be elected should be inserted in similar language.]

If by . . . . . [date] the legislature has not prescribed by law a system of proportional representation for the election of members of the first legislature under this constitution, such members shall be selected by the Hare system of proportional representation, each voter having a single transferable vote, under regulations promulgated by the governor.

Section 1405. *Administrative Reorganization.* The governor shall submit to the legislature orders embodying a plan for reorganization of administrative departments in accordance with section 506 of this constitution prior to . . . . . [date]. These orders shall become effective as originally issued or as they may be modified by law on [a date three months later] unless any of them are made effective at earlier dates by law.

Section 1406. *Establishment of the Judiciary.* The general court of justice shall be inaugurated on September 15, 19 . . . . . Prior to that date the justices, judges, and principal ministerial agents of the general court of justice shall be designated or selected and any other act needed to prepare for the operation of the general court of justice shall be done in accordance with this constitution.

The judicial power vested in any court in the state shall be transferred to the general court of justice and the justices and judges of the [here name all the courts of the state except justice of the peace courts] holding office on September 15, 19 . . . . . ., shall become justices and judges of the general court of justice and shall continue to serve as such for the remainder of their respective terms and until their successors shall have qualified. The justices of the [here name the highest court of the state] shall become justices of the supreme court department, and the judges of the other courts shall be assigned by the chief justice to appropriate service in the other departments of the general court of justice, due regard being had to their positions in the existing judicial structure and to the districts in which they had been serving.

The judicial council shall be organized as soon as practicable after the adoption of this constitution. The first members of the judicial council shall include the chief justice [the chief justice elect, when one has been chosen under the new constitution], together with a justice who will become a members of the supreme court department and two judges who will become members of other departments of the general court of justice. Prior to . . . . . [date], the legislature and the judicial council shall adopt all needed legislation and rules for the satisfactory operation of the general court of justice and the chief justice [or chief justice elect] shall organize the court.

End Notes:

[*] Drafted by the Committee on State Government of the National Municipal League and reproduced by the courtesy of the League. The explanatory articles that accompany the Model and published by the League are most helpful.

[1] The Committee has adopted the policy of inserting short headings at the beginning of each paragraph; these are intended as aids to reference and have nothing to do with the legal operation or judicial interpretation of the sections.

[2] Virginia constitution, article I, section 1.

[3] New Jersey constitution, article I, section 19.

[4] Based on provisions in the Iowa and New Jersey bills of rights.

[5] The masculine pronoun is here used generically; see section 1201.

[6] The committee recommends a unicameral legislature but believes that most of the provisions of this Model State Constitution are applicable to the bicameral system, with slight modification, in any state which may wish to retain it.

[7] Some authorities prefer a recount of the ballots cast at the original election which have been left unrepresented as a result of the vacancy. This prevents a district majority from appropriating to itself a vacated seat of a district minority.

[8] Follows Report of the 1947 New Jersey Committee for Constitutional Revision.

[9] This follows a procedure that has become fairly well standardized in federal government.

[10] Follows New York State constitution, article V, section 3.

[11] Follows Georgia constitution, article IX, paragraph 1.

[12] Or it may be provided that the legislature shall contract with qualified public accountants to conduct all post-audits for the state. The auditor or auditors should, in any case, be certified public accountants.

[13] Follows Ohio constitution, article XVIII, section 10.

[14] General grant follows New York constitution. Last clause follows Wisconsin constitution.

[15] Michigan constitution, article VIII, section 22.

[16] Paragraph (b) gives general bonding power, subject to general limitation by general law and paragraph (g) gives additional bonding

power for public utilities, etc. Paragraph (i) is an addition agreed to by the Committee on Revision of the Model City Charter. In relation to this section, see sections 709 and 1004.

[17] Draft prepared through the cooperation of committees representing the National Municipal League, the Civil Service Assembly of the United States and Canada, and the National Civil Service League.

[18] In part from New York State constitution, article V, section 6.

[19] New York State constitution, article IX, section 1.

[20] New York State constitution, article XVII, section 3.

[21] Combines New York State constitution, article XVII, section 1, and the Massachusetts constitution, Amendments, article XLVII.

[22] Adapted from New York State constitution, article XVII, section 2.

[23] Adapted from New York State constitution, article XVII, section 1; see also sections 709 and 804 (i).

[24] A dapted from Massachusetts constitution Amendments article XIIX

[25] Follows New Jersey constitution, article X, paragraph 4,

CHAPTER FIVE

GERMAN MODEL

OF

LOCAL GOVERNMENT

FEDERALISM AND LOCAL SELF-GOVERNMENT IN GERMANY

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I. The Roots of Local Self-Government in Germany

1. The first forms of parliamentary democracy developed at the level of **cities and municipalities.** Cologne is an early example: already in the year 1396 Cologne craftsmen and merchants adopted their own **Cologne City Constitution** [1] by drawing up the "Verbundbrief" (a pledge of alliance - of which there are still nine original copies) with the aim of establishing an autonomous form of self-government. City Councilors were permitted to be in office for no more than one year; they then had to give up the position for the next two years before they could,, hold council " once again. The council elected from its own ranks two mayors who again were allowed only one year of office.

In the periof that followed the wording of this "Cologne Basic Law" (as the "Verbundbrief" of the city is also called at times) was not necessarily always in step with medieval local-government-reality, yet this early form of a city constitution remained formally in force until the French revolutionary forces marched into the city in 1794.

2. A more broadly-based active involvement and self-government of free citizens at the local level were the aims behind **reform efforts** which are largely associated with the name of **Baron vom und zum Stein**. The serious shortcomings of the absolutist State had paved the way for ideas of constitutional reforms and self-government not only in Germany. The French Revolution of 1789 and the English

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[1] Further details in: Hofmann/ Muth/ Theisen, Kommunalrecht in Nordrhein-Westfalen (Municipalities and Law in Northrhine-Westphalia), 11th edition, 2001, p. 44

constitutional models left their mark on the political approach to law.

Although vom Stein limited his efforts to systemic changes of the social structure, within this framework he aimed at more liberties for the citizens and greater powers of participation by parliaments. Historically, cities and municipalities were thus the first political entities, which granted the right of participation and consultation to (male, propertied) citizens at a time when a general franchise was inconceivable at the level of the State. The Prussian **City Government Regulations** [2] **of 1808** played a prominent part in the concept of local self-government as a result.

3. Genuine parliamentary democracy developed during of the **Weimar Republic**. The Constitution of the German Reich of **1919** also included decisive measures to ensure **democratic legitimacy** of local self-government and a general direct and secret ballot in **local elections** for both men and women throughout the provinces of the Reich. This provision superseded the existing class system of franchise, in other words the denial of political rights to segments of the population with limited or no property. When by 1930/31 the economic crisis had become more acute, democratic rights gradually lost their importance in local politics. Considerable problems arose in parallel as a result of the disastrous state of local government finance in the economically critical period from 1930 onwards.

4. During the **period of National-Socialism**, this form of local democracy was completely abolished. As early as 1924 Adolf Hitler had propagated the destruction of all democratic structures, including at the municipal level, in his book "Mein Kampf" he noted:

> " In its organisation, the State, ... starting with local government, ... must incorporate the principle of personality. They are no majority decisions ... and the term 'counsel' will be reduced to its original meaning ...

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[2] cp. excerpts from facsimile print-out in: Hofmann/ Muth/ Theisen, (Municipalities and Law in Northrhine- Westphalia), 11st edition, 2001, p. 47 f

> The national State, starting with local government, ..., has no representative body in which the majority takes decisions, but only consultative bodies to assist the elected acting leader (Fuhrer)...".

Hitler obscured his idea of unconditional leadership with the euphemistic term "principle of personality": the acting leader decided everything in his own right, if necessary in consultation with "consultative bodies" only. When the National-Socialists seized power, they followed this idea to the letter. [3]

Once local democracy had been eliminated, many councillors and mayors were not only removed from their legitimate functions but killed [4]. The technique applies by Hitler's NS-party for seizing power in the cities and municipalities consisted of a combination of deliberate violations of existing local-government-law and other offences and criminal acts, including physical terror against representatives of other political parties and public administration. " Measures from above and from below". e.g. violation of rights by the State and quasi-revolutionary actions by local NS-party organisations – went hand in hand in this process.

5. When the war was over, local-government-laws were adopted by the Federal States as from 1946. Although the homogeneity clause and the self-government guarantee of Art. 28 of the Basic Law (the German Constitution) ensure that the same conditions are in place in all parts of the country under the **current local government law in the Federal Republic,** legislative power for local government rests with the Federal States nowadays; as a result, local government constitutions in the various Federal States have developed in different directions below the level of harmonising provisions of the Basic Law. In other words, **Federalism and local self-government function in combination** in this respect.

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[3] with regard to the public-law implications of the road to the NS-dictatorship: Schunk/De Clerck/Guthardt, Allgemeines Staatsrecht des Bundes und der Lander, chapter 18, VII; Kippels, Grundzuge Deutscher Staatsund Verfassungsgeschichte p. 62 ff

[4] Tigges, Das Stadtoberhaupt, p. 141-145, describes in detail the hard fate of individual mayors.

II. The Bases of Federalism and Local Self-Government under the Current Body of Law in Germany

A large number of legal norms exist, which have both federal and local government implications. This applies, in particular, to **Art. 28 of the Basic Law** for the Federal Republic of Germany (the national Constitution for the entire country), the corresponding articles of the **Federal-States-Constitutions** (for example, Art. Art. 78 of the constitution of the Federal State of Northrhine-Westphalia), the respective **"local government laws" (municipal statutes, country statutes)** and also to the body of law established by local authorities (local laws). Even this brief list of various existing sources of law demonstrates the extent to which national law, federal States law and local law are inter-related in their functioning. For the purpose of describing the sources of law, a distinction needs to be made (based on the hierarchy of norms) between constitutional law and other legal norm's [5]. In addition, supranational norms as European-Community-Law are increasingly playing a role as well.

1. The Basic Law (Constitution) for the Federal Republic of Germany

Owing to the **federal structure of the State,** the Federal States are the sole entities with legislative responsibility for local government (according to Art. 70 and Art. 73 – 75 of the Basic Law). In addition to the laws regulating education, higher education, broadcasting, television and other cultural matters, the law governing the police force and public order and also (parts of) the law for civil servants and environmental issues, this **law pertaining to municipalities and municipal associations** is a subject in which the **Federal States can exercise full legislative powers**. The local government law, in particular, is regarded as the "stronghold of federalism". Although the national government has no legislative authority in this context, it still leaves its mark to some extent on the law

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[5] For further details: Hofmann/ Gerke, Allgemeines Verwaltungsrecht (Administration and Law in Germany), 8th edition, 2002, 3rd Section, 3.3.1 and 3.3.2

governing municipalities and municipal associations. This is due to the fact that the Basic Law sets out some fundamental requirements in respect of local government constitutions adopted by the Federal States (Art. 28 Basic Law) which the national government has to monitor with regard to their observance; in addition, simple national law has an impact on the functioning of local governments [6] as well.

Art. 28 of the Basic Law sets out the fundamental norm and the constitutional line of departure for drawing up local government law, while the practical implementation of the principle thus established is the **responsibility of the Federal States**. The policy-making opportunities thus available to the Federal States have been used to varying degrees. However, structural requirements and fundamental guarantees set out under Art. 28 of the Basic Law apply to all municipalities in the Federal Republic equally and ensure a minimum level of homogeneity in local government laws in all the Federal States.

Counties and municipalities are explicitly mentioned in Art. 28 of the Basic Law; municipalities and municipal associations are cited **as entities endowed with self-government rights;** in other words, the Basic Law presupposes the existence of municipalities and municipal associations and in so doing ensures that they exist as institutions. This "institutional guarantee", however, is not intended to protect the status quo, let alone the existence of every individual municipality. It is still possible under Art. 28 of the Basic Law to dissolve and to merge municipalities or to change municipal boundaries as long as corresponding legal regulations are complied with.

Art. 28, sect. 1, line 2 of the Basic Law provides for the respective representation of the people to result from a "general, direct, free, equal and secret ballot" in order to ensure the **representative democratic structure** of cities, municipalities and counties. Line 4 of the same paragraph mentions a local assembly, thus offering a means of direct democracy without

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[6] cp. Hofmann/ Muth/ Theisen, Kommunalrecht in Nordrhein-Westfalen (Municipalities and Law in Northrhine-Westphalia), 11th edition, 2001, 2.2.3 and 2.2.5.1– 2.2.5.7

involvement of an elected representative intermediary body; this option can probably be used only in very small municipalities. **Elements of direct democracy** such as regulations for public petitions and local referenda, which are contained in the local government regulations of the Federal States, are intended to produce a similar effect. [7]

2. **Constitutions of the Federal States** (the example of Northrhine-Westphalia)

The normative rule established under Art. 28 sect. 2 of the Basic Law according to which municipalities and municipal associations govern themselves is covered, for example, by Art. 78 of the constitution of Northrhine-Westphalia. Municipalities and municipal associations are defined as local authorities and their **right of local self-government** which they have been granted under the Basic Law is again confirmed. This constitutional guarantee emphasises the special role of municipalities and municipal associations and illustrates that local governments (unlike district government) do not function as organisational sub-structures of the Federal States governments. Under Art. 79 of the constitution of Northrhine-Westphalia, municipalities are granted their own sources of taxation and a financial burden-sharing scheme in order to guarantee the funding required for their activities.

3. (Simple) **Laws**

The constitutional principles governing local government structures which have been described so far are fleshed out in simple legislation from various sources of law. From amongst the "local government laws", pride of place has to be given to the **local government regulations** of the Federal States concerned. They are the most important source of the law for practical local government activities in addition to the regulations for the counties and the laws concerning local elections.

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[7] For NRW more details example, in: Hofmann, Burgerbegehren und kommunaler Dialog in NRW (Public petitions and Lokal Referenda) in' Deutsche Verwaltungspraxis 2001, pages 231 ff – and Hofmann, Erfolgsquote von Burgerbegehren (Results of Lokal Referenda) in: Verwaltungsrundschau 2001, pages 51 ff.

4. Own Legislation by Local Governments

Laws adopted by the local governments themselves constitute an important source of law with regard to individual authorities. Such laws are often called more descriptively "local laws". Examples of such legislation would be, in particular, **the statutes** (for example fiscal statutes or statutes regulating local referenda) as a formal expression of the legislative power of local authorities. Moreover, mention needs to be made of the power of municipalities and counties to issue **statutory regulations.**

III. Local Self-Government

1. Structural Principle

The mothers and fathers of the Basic Law and of the constitutions of the Federal States have defined **local self-government as one of the key structural principles of democracy** in the Federal Republic by incorporating it in both Art. 28, sect. 2 of the Basic Law and the respective constitutional provisions of the Federal States.

The actual content of what constitutes local self-government is not exhaustively regulated in the every detail – as has been illustrated by the discussion about the business activities of local authorities; but fundamental structures have been largely laid down by the Federal Constitutional Court, the constitutional courts of the Federal States, the administrative courts and corresponding literature: in the words of the Federal Constitution Court, local self-government is "... influenced by the idea of adding weight to the right of self-determination of local citizens by extending again the responsibilities of local representative bodies. Both by nature and intent, ... local self-government aims at motivating local stakeholders to take care of their own affairs..." By reinforcing local self-government, **current constitutional law has responded to the centralist tendencies during the period of National Socialism.**

The mothers and fathers of the Basic Law and of the constitutions of the Federal States put their trust in the

municipalities as the nuclei of democracy and the entities most resistant to dictatorships by following the principle of building democracy "from the bottom up". According to Art. 28, sect. 1, line 2 of the Basic Law, local decision-making therefore has to follow democratic principles, i.e. starting from the citizens to the decision-making or executive levels. The Federal Constitutional Court noted in this context that since the end of the NS-dictatorship both written and practiced local government law has been aimed at "re-emphasising the idea of self-determination on the part of the citizens, while **fighting back bureaucratic-authoritarian elements".** [8]

2. The Tension between State Influence and Local Self-Government

The fact that both the national and the Federal States parliaments tent to regulate everything comprehensively might to some extent undermine the responsibility of municipalities, cities and counties; some tension exists between the influence exerted by the State and local self-government. In legislative practice, many responsibilities have been transferred over the years from the local to the higher administrative tiers, thus jeopardising self-government of local authorities. A "functional reform" has therefore aimed to reverse this tendency by transferring some competences from the district governments to the counties (and towns administered as a county in their own right) and from the counties to the municipalities. Constitutionally, the above-mentioned **tension** is "pre-programmed" by the fact that **on the one hand local self-government is guaranteed** under Art. 28, sect. 2 of the Basic Law, while **on the other possible restrictions are incorporated by means of laws** (Art. 28, sect. 2, line 1 Basic Law: "within the framework of the laws").

3. The Inherent Responsibility of Municipalities

It is in the nature of local-government that municipalities can take on public tasks **in their own responsibility and on**

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[8] Collection of Decisions by the Federal Constitutional Court (BVerfGE) vol. 79, pages 127 ff, pages 149

their own account in their area of jurisdiction; although local government is part of the State, it function independently of it by means of its own elected bodies and it has to accept intervention by the State only if it has infringed upon statutory regulations. The question of **whether** the municipality is allowed to act in a particular area has to do with its competence for a specific function. The question of **how** the functions are to be handled has to do with its inherent responsibility.

The scope of **supervisory rights to the State** is of particular importance in this context:

- In the area of self-government, the State has merely to supervise whether the law is complied with (legal supervision),
- While in areas in which the municipality is commissioned to act by the State, the latter can supervise its performance (operational supervision).

In each area of responsibility, general supervision ensures that the – self-governing – municipalities, cities and counties act in compliance with the law, in other words that self-government does not disregard the limits imposed on its function by breaking away from the higher bodies of law (of the Federal States or national Government or European-Community law).

The wording "in its own responsibility" in Art. 28 sect. 2 line 1 of the Basic Law is made more concrete by transferring a number of "sovereign powers" (autonomies, protected areas) to the cities and municipalities: territorial sovereignty, organisational sovereignty, personnel sovereignty, financial sovereignty, planning sovereignty, autonomy in formulating its statutes and essential provision [9].

4. Self-Government as a Right Enforceable in the Courts of Law

The tension between local self-government and State influence has already been referred to above. The safeguards

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[9] Hofmann/ Muth/ Theisen, Kommunalrecht in Nordrhein-Westfalen, (Municipalities and Law in Northrhine-Westphalia), 11th deition, 2001, pages 106 - 125

for this self-government guarantee as a subjective-public right [10] manifest themselves, in particular, in the **options for legal protection** of the municipality concerned in the event that this right has been infringed upon.

In the event that other sovereign bodies infringe upon self-governing powers, a distinction needs to be made with regard to the means used for such intervention; it may have been done by means of, for example,

- law/ statutory regulation (a),
- individual measure/ administrative act (b),
- or by an act of the European Communities (c),

a) in the event of intervention by means of law (such as challenging the merger of municipalities by adopting municipal restructuring legislation), the Basic Law (in Art. 93 sect. 1 nr 4 b) offers municipalities and municipal associations the opportunity of filing a special "constitutional complaint … for violation of the right of self-government", such **local government constitutional complaints** will be lodged with the Federal Constitutional Court. When intervention by legislation of the Federal States is involved, the constitutions of the Federal States regulate the necessary procedures to be followed.

b) in the event of an intervention which is not the direct result of a legal norm but an individual measure (of the supervisory authority), the municipality may take **legal action in the Administrative Court** (40 ff regulations for administrative courts).

c) if the self-government rights of a local authority are directly infringed upon by an act of one of the bodies of the European Communities, it may file **a rescission complaint** [11] — as any natural or legal person — on

[10] cp. subjective-public right: Hofmann/ Gerke, Allgemeines Verwaltungsrecht (Administration and Law in Germeny), 8th edition, 2002, 4. section, 2. 1 and 4. 2. 2

[11] cp. for details: Fischer, European Law; 8, margin nr. 14 ff, especially 24

the basic of Art. 230 sect. 4 EC- Treaty **with the European Court of Justice** (EuCJ).

IV. The Tasks of Cities and Municipalities

Municipalities and municipal associations are responsible for very different functions which can be combined into **subject-specific operational areas** such as:

- general administration/ organization/ personal,
- legal matters,
- public order,
- finances,
- social matters,
- school/ education,
- culture,
- economic matters,
- construction/ planning,
- traffic/ transport,
- health.

This listed functions - which are also (in various forms) reflected in the organization structure of local authorities in the city/ municipality concerned - are mainly involved with the following **legal functions** (described here for Northrhine-Westphalia):

1. self-government functions (voluntary and mandatory),
2. mandatory functions to be fulfilled on instruction and
3. activities on commission.

More recent legal categories of functions (including "civil matters/ concerning the citizens" and "self-help functions") are not yet widespread.

1. Self-government functions

Local authorities take on the functions of self-government under the protection of Art. 28 sect. 2 Basic Law - as described above - **in their own responsibility,** unless otherwise regulated in higher bodies or law. For the sake of better understanding,

these functions can be sub-divided into voluntary (a) and mandatory (b) self-government functions:

a) Voluntary self-government functions:

In connection with voluntary self-government functions, local governments are free to decide whether to take on a specific function and how this should be done, if so desired. There are no special regulations by law in this respect nor is the (statutory) supervisory authority for local government authorised to issue instructions or to control. There is only one proviso, notably that the municipality has to act in compliance with general legislation; this is ensured by general local government supervision[12] (for legal supervision only).

Accordingly, the practice of local government comprises a large number of activities of this kind; its responsibilities for essential services and economic, sports and cultural matters, in particular, are organised along these lines. The municipality has the right to identify potential functions in its area of jurisdiction; it may be assumed (but refuted on legal grounds) that such activities would be of a voluntary nature. It is **in the discretion of the municipality to decide "whether and how"** it will take on and organise its voluntary activities within the framework of self-government.

Functions which are often taken on voluntarily in practice include, **for example:**

- civil/ citizens-related matters (citizens-assembly hall, youth-centre, OAP-club, outpatient social service facilities, housing, sponsoring of local clubs, meeting-place for the unemployed, residential centre for the elderly, meeting hall, local saving bank, twinning contacts with municipalities from abroad, public petition and local referenda);
- cultural affair (library, extra-mural education, museum, theatre, opera, sponsoring of non-professional arts circles, local cinema, town archive, orchestra, music school, granting

[12] cp. Hofmann/ Muth/ Theisen, Kommunalrecht in Northrhein-Westfalen, (Municipalities and Law in Northrhine-Westphalia), 11st edition, 2001, p. 520 ff

scholarships, rehearsal rooms, prizes for fine arts, open-air events);

- existential services (tram, underground train, bus line, port, public utilities for water, power, district heating and gas, hospital);
- business development (low-cost or free building sites, low-cost space to let, soft loans, providing securities, industrial estates, consultancy for start-ups, direct subsidies, providing adequate infrastructure for business operations, industrial fair, making available production sites);
- sport matters (outdoor municipal pool, indoor pool, sports ground, ice-skating rink, sport school, sponsoring of sports clubs, organisation of running events, leasing sport equipment, donating prizes for sports);
- recreational facilities (green space, hiking routes, playground, park area, promenade, public fountains, barbecue area, woodland nature trail).

In the event that local government supervision controls other than the legitimacy (legal supervision) of self-government functions and interfers, for example, with local considerations of expediency, the city/ municipality concerned has recourse to the administrative courts.

b) Mandatory self-government functions

In addition to the voluntary functions of self-government described above there exist mandatory self-government functions (sometimes called "obligatory functions without instruction"). In contrast to voluntary functions for which it is entirely in the discretion of the municipality concerned to decide whether to take them on or not, local authorities are obliged by law **to fulfil mandatory self-government functions**. In other words, the municipalities are not free to decide **whether** to implement a given statutory regulation, but they can decide in their own right **how** they wish to fulfil the function. In the event that the (statutory) supervisory authority for local government interfers with their decision-making powers in this respect, municipalities can file a complaint in the administrative courts.

Mandatory self-government functions can be transferred to municipalities by force of national or Federal States legislation. These mandatory functions exist, in particular, in connection with essential administrative services.

Examples of mandatory self-government functions would be:
- waste disposal consultancy,
- waste water disposal,
- development of building sites,
- planning for construction management,
- fire protection,
- organisation of local elections,
- cemeteries,
- management of local archives,
- waterways maintenance and extension,
- disaster relief,
- kindergarden places,
- welfare and youth assistance,
- urban rehabilitation,
- road building for local roads, inter-communal roads, local traffic roads,
- providing structure of certain types of school.

2. Mandatory functions on instruction

In addition to the described self-government functions, the Land concerned may oblige municipalities, cities and counties to take on and to implement specific public functions by issuing legal regulations. Typically, the law which transfers such a mandatory function to municipalities also sets out the **detailed limitations of the right to issue instructions** on the part of the statutory (supervisory) authority. This is the reason for the formulation "mandatory functions on instruction". In other words, the municipalities cannot decide itself whether it wishes to take on the function nor how it will implement it in detail because the special legislation concerned provides for the statutory authorities to instruct the municipality how to exercise the function; conversely, it is in the discretion on of the municipality to decide on all modes of implementation which are not covered by the supervisory authority's right to instruct or for which no instructions have been issued.

Examples of such mandatory functions which are fulfilled according to instructions (in Northrhien-Westphalia, for example) are the functions of local authorities in their capacity as:

- municipal authority for public order,
- municipal authority for the environment/ maintenance of landscape,
- water management authority,
- municipal authority for construction supervision,
- municipal authority for fire protection,
- municipal authority for the protection of monuments,
- providing structure for assistance for the mentally ill.

All the constitutions of the German Federal States contain **funding standards** (varying in detail) which regulate that the State can transfer functions to local authorities **only if the State assumes responsibility for their funding**. There is a danger in local government practice of a growing number of functions being transferred to municipalities and municipal associations, thus relieving the national or Federal States governments of some of their financial responsibilities at the expense of local authorities. In legal practice, the State often meets its obligation of refunding the costs incurred by municipalities to an insufficient degree.

3. Activities on commission

Individual statutory functions are transferred to local authorities for implementation (by force of national or Federal States legislation); the transferring authorities – which, incidentally, also finance the costs of implementation – reserve for themselves an unrestricted function – specific right to issue instructions for such commissioned activities. This right may involve very detailed regulations, including considerations of expediency and discretion. Instructions of this kind issued by the authority in charge of operational supervision cannot, as a rule, be challenged in a court of law. With regard to such commissioned activities, the municipality has merely some decision-making powers in matters concerning personal and organisation (because of its sovereignty in such matters). In practice, instructions may be issued in various forms: for

example, by individual order, circular decree or administrative regulation (of the ministries, district governments or the specialised authorities responsible).

Examples:

- On the basis of Federal States legislation the involvement of municipalities in the preparation and implementation of elections to the Federal-States-parliaments is a function commissioned:
- Functions on behalf of the national Government legislation include, for example:
  - the register of births, marriages and deaths,
  - national records for military service,
  - promotion of vocational training,
  - civil defence,
  - the implementation of general (national) elections.

4. Assessment of the de-facto-legal-situation of cities, municipalities and counties in the federal structure of Germany with regard to functions and matters subject to instructions

It is generally assumed that in practice some three quarters of local government functions are based on instructions from the State and on commissions. Considering that – in addition to that – a major part even of the self-government functions are mandatory[13], no more than 10% remain as voluntary functions according to these estimates. The de facto legal situation **is obviously not what the mothers and fathers of the Basic Law had in mind when they set out local self-government rights under Art. 28 sect. 2 Basic Law.**

Yet instructions are very rarely issued in local self-government practice even for commissioned activities, thus rendering commissioned functions or mandatory functions on instruction in the eyes of the municipalities ".... preferable to

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[13] cp. Ibid IV, 1, b

implementation of these functions by statutory bodies from outside local government"[14].

The often inadequate funding of functions transferred to cities, municipalities and counties, however, appears to give cause for **concern** about the current situation and the future of local self-government in the federal state in view of **the strain this puts on the functionability and financial resources of local government.**

Prof. Dr. Harald Hofmann
Cologne, 10.11.02

[14] Wansleben, in: Held/ Becker/ Decker/ Kirchhof/ Kramer/ Wansleben, Commentary to local government statues, 3, 6 (He assumes that "99 percent of individual cases" are managed without instructions).