

“Existing laws shall remain in force until and unless they are repealed or amended by the Pyidaungsu Hluttaw”

YANGON, 24 July — *The following is the collection of suggestions made by NC delegates on the “Transitory Provisions” submitted to the Plenary Session of the National Convention held at the Pyidaungsu Hall of Nyaungnapin Camp in Hmawby Township.*

Transitory Provisions

At the plenary session of the National Convention held on 13 November 2006, the Chairman of the National Convention Convening Work Committee in connection with the chapter — Transitory Provisions — said as follows:

“In formulating a State Constitution, the situation of a nation before the Constitution does not come into force is somewhat different from that after the Constitution comes into force. It is, indeed, transition from one system to another. In the process, there follow changes in the major pillars—legislation, executive and judiciary—and economic and social infrastructures during the transitional period.

“It is required to prescribe transitory provisions in the State Constitution to ensure continuous exercise of State sovereign powers as well as charter, duties and responsibilities to be carried out during the transitional period.

“It is found that the State Constitutions of the nations of the world carry transitory provisions, and so does the 1947 Constitution of Myanmar in Sections 233 and 234 of Chapter XIV.

“The 1974 Constitution does not feature a separate heading for transitory provisions, but transitory provisions are prescribed in its Chapter XVI “General Provisions”.

“Based on the findings and assessments that have been presented, a collection of the points that should be adopted for the Chapter “Transitory Provisions” will be presented.

1. **“This Constitution shall come into force throughout the Union after its adoption in a nationwide referendum by more than half of all the people who have the right to vote.”**
2. **“The State Peace and Development Council shall, continuing to exercise State sovereignty, carry out during the interval between the coming into force of this Constitution and the day the first session of the Pyidaungsu Hluttaw is convened, all the functions of the Pyidaungsu Hluttaw under the Constitution.”**
3. **“The work done by the State Peace and Development Council to bring the Constitution into force shall be deemed to have been carried out in accord with this Constitution”**
4. **“All policy guidelines, laws, rules, regulations, notifications, proclamations, measures, responsibilities and rights of the State Peace and Development Council shall devolve on the Union of Myanmar”**
5. **“Existing laws shall remain in force in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Pyidaungsu Hluttaw”**
6. **“Existing rules, regulations, bye-laws, notifications, orders, directives and**

procedures shall remain in force in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Union Government”

7. **“All courts existing on the date of the coming into operation of this Constitution shall continue to exercise their jurisdiction until new courts are established by law in accord with this Constitution. All cases, civil, criminal and revenue, pending in the said courts, shall be disposed of in accord with the laws exercised on the date on which the cases came up for trial.”**
8. **“All functioning State service personnel of departmental organizations including Tatmadaw under the State Peace and Development Council on the day this Constitution comes into force shall continue in their functions unless otherwise prescribed by the Government of the Union of Myanmar”**

National Convention delegates,

The National Unity Party said, “The situations before and after the promulgation of the Constitution will not be the same. Hence, the nation will reach a situation that is different from the past. Hence, the pillars— the legislative, executive and judicial powers— and the economic and social infrastructures will also change in accord with the new situation.

“All detailed basic principles explained by the Work Committee Chairman concerning the chapter should be adopted as they are appropriate for the continued discharging of principle duties for the continuous existence of the State’s sovereign power.”

The Union Pa-O National Organization agreed to adopt the eight points explained by the Work Committee Chairman in connection with the chapter “Transitory Provisions”.

Shan State Kokang Democratic Party said, “The Work Committee Chairman’s clarification concerning the paras 1 and 2 in connection with the coming into force of the Constitution, the exercising of the State power during the interval between the coming into force of this Constitution and the day the first session of the Pyidaungsu Hluttaw is convened; the para 5 in connection with the existing law should be adopted.

“The para 6 concerning the continued existence of rules, regulations, bye-laws, notifications, orders, directives and procedures, the para 7 concerning the judicial cases, and the para 8 concerning the State service personnel are in accord with the nation’s current situations. They should be adopted as detailed basic principles.”

Mro or Khami National Solidarity Organization said, “We have studied and reviewed the clarifications made by the Work Committee Chairman. We have noticed the following points.”

- the coming into force of the Constitution
- the continuation of exercising State sovereignty during the interval between the coming into force of this Constitution and the day the first session of the Pyidaungsu Hluttaw is convened,
- the work done by the State Peace and



U Maung Gyi of Delegate Group of Representatives-elect.— MNA

Development Council to bring the Constitution into force until the Constitution comes into force,

- the devolving of all policy guidelines, laws, rules, regulations, notifications, proclamations, measures, responsibilities and rights of the State,
- existing laws,
- existing rules, regulations, bye-laws, notifications, orders, directives,
- the cases pending in all courts existing on the date of the coming into operation of this Constitution, and
- all functioning State service personnel.

“So, we would like to make no suggestions about these points, and suggest that they should be adopted as detailed basic principles.”

Lahu National Development Party said, “As the eight points explained by the Work Committee Chairman concerning the chapter — Transitory Provisions — are based on the history and in conformity with the current situation, they should be adopted.”

Union Kayin League said that it has no further suggestions concerning the clarifications made by the Work Committee Chairman; and that it agrees to adopt the eight points.

Kokang Democracy and Unity Party said, “The eight points are in conformity with the current work programmes of the government and they are the requirements for the transition to the new Constitution. Hence, the detailed basic principles in connection with the chapter should be adopted in accord with the clarifications of the Work Committee Chairman.

The Wa National Development Party said that the Work Committee Chairman made the clarifications after studying the constitutions of world nations and the 1947 Constitution and the 1974 Constitution of Myanmar. As they are suitable to the forthcoming Constitution, the eight points are comprehensive enough to be adopted as detailed basic principles for the chapter.

National Convention delegates,

Of the four papers presented by representatives-elect group, the papers presented by the representative of NUP and the representative of Mro or Khami National Solidarity Organization are the same as the papers presented by the respective parties.

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“Existing laws...

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Independent representatives-elect Dr Hmu Htan of Thantlang Township Constituency in Chin State, U Aung Thein of Ywangan Township Constituency in Shan State (South) and U Tun Kyaw of Namhsan Township Constituency in Shan State (North) said, “The eight points explained by the Work Committee Chairman at the plenary session of the National Convention held on 13 November 2006 in connection with the chapter “Transitory Provisions” are suitable to be adopted as detailed basic principles.”

The group also gave the following separate suggestions:

“In order to complete the drawing of the State Constitution, the National Convention has adopted the fundamental principles and detailed basic principles that reflect the policies and stances, which are necessary foundations for building a new nation. We have to draw the State Constitution with these fundamental principles and detailed basic principles. The aspiration of the people will come true if the fourth step of the Road Map—Adoption of the Constitution through a national referendum—is realized within one year after the completion of the National Convention. Personally, I suggest that the officials take necessary measures to hold a referendum within one year after the completion of the National Convention.

“I would also like to make a suggestion about the fifth step of the Road Map —The holding of free and fair elections for Hluttaws (Legislative bodies) according to the new Constitution. Section 233 of the 1947 constitution says “The first general elections under this Constitution shall be held within eighteen months from the date of the coming into operation of this Constitution”.

“Regarding the 1974 constitution, the 1974 constitution was declared on 3 January 1974, the first elections were held under the 1974 constitution from 27 January to 10 February 1974. In addition, the first session of the Pyithu Hluttaw was held in Yangon at 11 am on 2 March 1974.

“So, I would like to make a suggestion that officials concerned should make preparations for implementation of the fifth step in a suitable occasion through a referendum for speedy building of a modern and developed nation.”

Independent representatives-elect U Tin Win of Kyaiklat Township Constituency-2, U Thein Kyi of Taungdwingyi Township Constituency-1, U Hla Soe of Minbu Township Constituency-2, U Mya Hlaing of Twantay Township Constituency-2, U Kyi Win of Mingaladon Township Constituency-1 and U Tin Tun Maung of Mingaladon Township Constituency-2 discussed in support of all the points explained by the Work Committee Chairman except from paras (2) and (5).

I would like to make suggestions about paras No 2 and No 5.

Paragraph No 2 says “The State Peace and Development Council shall, continuing to exercise State sovereignty, carry out during the interval between the coming into force of this Constitution and the day the first session of the Pyidaungsu Hluttaw is convened, all the functions of the Pyidaungsu Hluttaw under the Constitution.”

This point means the SPDC will have to exercise the sovereign power just till the first session of the Pyidaungsu Hluttaw is held. In such time, I do not think it is convenient to hand over the sovereign power to the Pyidaungsu Hluttaw. The Pyidaungsu Hluttaw will have to elect and access the State President, who is the administrative head. Then, the State President will have to form this governing body and appoint the

State chief justice. Only such a time will it be convenient for the bodies that have to take over the State’s sovereign powers ready to assume discharge of their duties. So, the para (2) should be:

“The State Peace and Development Council shall, continuing to exercise State sovereignty, carry out till the bodies, which are formed and assigned duties under this Constitution beginning from the date on which this State Constitution comes into force, assume discharge their duties.”

And para (5) says “Existing laws shall remain in force in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Pyidaungsu Hluttaw.” From the time the State Constitution comes into force to the time of the emergence of the Constitutional Tribunal, there will not be yet an organization that has power to decide whether a law is contrary to the State constitution. So, in the para, the expressions “Existing laws shall remain in force in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Pyidaungsu Hluttaw” should be “Existing laws shall remain in force until and unless they are repealed or amended by the Pyidaungsu Hluttaw”.

The Delegate Group of National Races gave the following suggestion:

“The Work Committee chairman made clarification to the suitable points for the Chapter “Transitory Provisions” referring to the laws exercised at home and abroad. These points should be adopted as detailed basic principles due to many reasons such as:

- “(a) The date on which the State Constitution comes into force across the nation is fixed.
- “(b) Responsibilities are devolved on the State Peace and Development Council to take necessary steps during the interval between the coming into force of this Constitution and the day the first session of the Pyithu Hluttaw is convened.
- “(c) The Union of Myanmar will be able to continue practising the policy guidelines, laws, rules, regulations, orders, and proclamations existing in the time of the SPDC.
- “(d) Existing laws and rules will remain in force in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Pyithu Hluttaw.
- “(e) Jurisdiction is devolved upon all existing courts to continue to hear the pending cases until new courts have been established under the Constitution.
- “(f) All functioning State service personnel of departmental organizations including Tatmadaw under the State Peace and Development Council continue in their functions unless otherwise prescribed by the Government of the Union of Myanmar.”

National Convention delegates,

The Delegate Group of Peasants agreed to adopt the eight points explained by the Work Committee Chairman concerning the chapter “Transitory Provisions” at the plenary session of the National Convention held on 13 November 2006.

The Delegate Group of Workers said that the eight points explained by the Work Committee Chairman concerning the chapter “Transitory Provisions” should be adopted as detailed basic principles.

The Delegate Group of Intellectual and Intelligentsia said, “We members of the delegate group of intellectuals and intelligentsia evaluated that the eight detailed basic principles the Work Committee Chairman presented at the plenary session held on 13



U Saw Philip (a) U Philip Sam of Delegate Group of Political Parties.—MNA

November 2006 for the Chapter “Transitory Provisions” really required for the chapter as detailed basic principles.

“So, these points should be adopted as detailed basic principles for the Chapter “Transitory Provisions”.

The Delegate Group of State Service Personnel expressed its opinion, saying, “The Work Committee Chairman explained the eight detailed basic principles of the chapter reasonably and comprehensively after studying the 1947 Constitution and Acts and bylaws enacted by the constitution, the 1974 Constitution and the laws and bylaws enacted by the constitution, and the constitutions of some world nations. The said eight detailed basic principles should be adopted.”

The Delegate Group of Other Invited Persons said, “The eight points explained by the Work Committee Chairman in connection with the chapter “Transitory Provisions” should be adopted as detailed basic principles.”

The Group also said, “The Work Committee Chairman gave the clarifications regarding the chapter “Transitory Provisions” at the plenary session of the National Convention held on 13 November 2006.

Regarding the coming into force of the State Constitution, he called for advice and suggestions of the delegates to decide whether or not the point:

“This Constitution shall come into force throughout the Union after its adoption in a nationwide referendum by more than half of all the people who have the right to vote.” should be adopted as a detailed basic principle.

Now, the seven-step Road Map is in the process of being implemented, and under the fourth step, the State constitution will be approved through a referendum in accordance to the detailed basic principles to be adopted unanimously by the National Convention.

In the process, seeking the approval of the people, approving the State Constitution by the votes of more than half of all the people who have the right to vote, coming into force of the State Constitution throughout the Union after its adoption in a referendum, that points conform with the constitutions of many other countries as well as the 1947 constitution and 1974 constitution of our nation. So, these points should be adopted as detailed basic principles.

Here, I would make a suggestion that the word “votes” should be replaced with the expression “assenting votes” because it can also be assumed as votes against, or abstentions.

Therefore, the principle should be:

“This Constitution shall come into force throughout the Union after its adoption in a referendum by the assenting votes of more than half of all the people who have the right to vote.”

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