



တိုင်းရင်းသားလူမျိုးများရေးရာစင်တာ (ပြည်ထောင်စုမြန်မာနိုင်ငံ)
Ethnic Nationalities Affairs Center (Union of Burma)

မှ စီစဉ်ပြုလုပ်ပြီး ထွက်ပေါ်လာသော

မြန်မာနိုင်ငံဖက်ဒရယ်စနစ်ဆိုင်ရာ အဓိကကျသော
မူဝါဒ နှင့် လက္ခဏာများ (မူကြမ်း)

**Key Principles and Characteristics for a Federal Union
of Burma (Draft)**

(၂၀၁၆)

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မှ စီစဉ်၍

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(Drafting Key Principles and Characteristics for a Federal Union of Burma)

နှင့်

၂၀၁၆ ခုနှစ်၊ ဇွန်လ ၃၀ ရက်နေ့မှ ဇူလိုင်လ ၂ ရက်ထိ ရန်ကုန်မြို့တွင်
ညီညွတ်သော တိုင်းရင်းသားလူမျိုးများစုမဟာမိတ်
(United Nationalities Alliance)

နှင့် ကျင်းပသည့်
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(Drafting Key Principles and Characteristics for a Federal Union of Burma)

မှ ရရှိထားသော မူကြမ်းကို

၂၀၁၆ ခုနှစ်၊ ဇွန်လိုင်လ ၁၃ နှင့် ၁၄ ရက်နေ့များတွင် ညီညွတ်သောတိုင်းရင်းသား လူမျိုးများ
ဖက်ဒရယ်ကောင်စီ (United Nationalities Federal Council) ၏ သုတေသနဌာန

မှ စီစဉ်မွမ်းမံ ထားသော

မြန်မာနိုင်ငံဖက်ဒရယ်စနစ်ဆိုင်ရာ အဓိကကျသော
မူဝါဒ နှင့် လက္ခဏာများ (မူကြမ်း)
Key Principles and Characteristics for a Federal Union of Burma (Draft)

ဤမူကြမ်းကို ဇူလိုင်လ ၂၆ မှ ၃၀ ရက်နေ့ထိ တွင်ကျင်းပသော
Mai Ja Yang Summit တွင် တင်သွင်းဖတ်ကြားခဲ့သည်။

Background

Since its founding, the Ethnic Nationalities Affairs Center (ENAC) has supported efforts to establish a federal union in Burma. Papers and recommendations to establish a federal constitution are produced through workshops and consultations with ethnic armed organizations, ethnic political parties, community-based organizations, and civil society organizations together with domestic experts and international scholars. Two workshops on issues of federalism were conducted in October 2014, one in Yangon with ethnic political parties (EPPs) and one in Chiang Mai with ethnic armed organizations (EAOs), community-based organizations (CBOs), and civil society organizations (CSOs). At those workshops, the constitutions of the United States of America, Germany, Belgium, and Switzerland were analyzed for comparative lessons on federal systems and constitutions. In March 2015, two workshops were conducted to review the 2008 Constitution and train leaders on federalism issues, one in Yangon with EPPs and one in Chiang Mai with EAOs, EPPs, CBOs, and CSOs.

The constitutional recommendations (draft) below were first produced at the “Drafting Key Principles and Characteristics of Federal Constitution Workshop,” held from March 21-26, 2016 in Chiang Mai with domestic experts, ethnic armed organization leaders, and an international scholar. An additional workshop was conducted in Yangon from June 30 – July 2, 2016 with United Nationalities Alliance (UNA) members to include the views of ethnic political party stakeholders. The modified draft, prepared by UNFC’s research department, enshrines the common ethnic understanding of key principles and characteristics for a federal union. These key principles were presented at the EAO’s Mai Ja Yang Summit held from July 26-30, 2017.

I. Name of Country

- A. When referring to the country as the “Federal Democratic Union of Myanmar,” either in English or in Burmese, it is understood that both “Myanmar” and “Burma” refer to only the Burman (Bamar) people, one of the many ethnic nationalities who live in this country.
- B. Thus, when establishing a genuine federal union and realizing the principle of equality among all ethnic groups, the union’s name should represent all peoples living in the country.

II. Legislature

A. Federal Union Parliament

1. The Federal Democratic Union Parliament shall be composed of a Chamber of Nationalities and a Chamber of People’s Representatives;
2. The Chamber of Nationalities and the Chamber of People's Representatives should be equal in legislative power.
3. Any candidate either for the Chamber of Nationalities or the Chamber of People’s Representatives shall not be an active civil servant.¹
4. A citizen intending to be a candidate for the Chamber of Nationalities or the Chamber of People’s Representatives shall belong to a recognized ethnic nationality of the State in which the candidate is seeking election. If a candidate is not a recognized ethnic nationality of the State in which he or she is seeking election, he or she must have been a citizen and resident of that State for at least ten years.
 - i. A citizen intending to be a candidate for the Chamber of Nationalities should be an ethnic person whose family has resided within the State in which the candidate is seeking election for generations. (“Generations” refers to three generations.)
 - ii. The previous provision shall not be applicable to those whom are recognized as a member of the main ethnic group of that Member State from which they are seeking to represent.

¹ Inclusive of the Tatmadaw and all armed organizations.

B. Chamber of Nationalities

1. The Chamber of Nationalities shall be composed of an equal number of representatives from each Member State in accordance with the provisions of the constitution of the respective state.²
2. The Chamber of Nationalities should be composed of an equal ratio of representatives from Member States of the Federal Democratic Union.
3. The term of office of members of the Chamber of Nationalities should be four years. Every two years, half the number of members should be elected.³ In the first term of the Chamber, half of the total number of members shall only be mandated for a half-term period.
4. The members of Chamber of Nationalities should elect the Chairperson and Vice-Chairperson of the chamber from among their members. The Chairperson and Vice-Chairperson should not be from the same Member State.⁴

C. Chamber of People's Representatives

1. The Chamber of People's Representatives shall be composed of members elected by citizens of each township.⁵
2. Chamber of Peoples' Representatives members shall be elected by citizens through a First-Past-the-Post plurality electoral system based on population.⁶

D. Legislative Process

1. Each chamber should vote separately to adopt a bill.
2. The Federal Democratic Union Parliament sessions shall be held in accordance with

² Federal Constitution of FCDCC (2nd Draft), Art. 72(a). ² National State concept derived from the idea that the federal union will be comprised of national states and nationalities states. *See* Art. 49, The Constitution of the Federal Republic of the Union of Burma, Second Draft, drafted by the Federal Constitution Drafting and Coordinating Committee (FCDCC) [hereinafter "FCDCC"].

³ FCDCC, Art. 75

⁴ Art. 74, *id.*

⁵ *See* Art. 82, *id.* (The FCDCC refers to population of the State rather than specifying by township here).

⁶ Two different opinions formed from group discussions amongst the United Nationalities Alliance's member participants: 1) Chamber of People's Representatives members should be elected by citizens through a First-Past-the-Post system electoral system by township; and 2) Chamber of People's Representatives members should be elected by citizens through an Open List Proportional Representation electoral system based on state population. There is a need to conduct further discussion and studies on these system options.

- the adopted procedures.
3. Where voting is required, a bill must receive more than half of the total votes in both Chambers to pass.
 4. Both the Chamber of Nationalities and the Chamber of People's Representatives shall form committees of Members of Parliament and lay down rules of procedure to support its legislative process.
 5. Where one chamber cannot agree, in whole or in part, on a bill that has been passed by the other chamber, a joint coordination committee shall be formed with an equal number of members from each chamber to find a solution.

E. Forms of Government

- a. The form of the Federal Democratic Union should be a Parliamentary System.⁷

III. Member States

- a. The Member States of the Federal Democratic Union can freely draft and enact their own State Constitutions, in accordance with the basic principles of the Union Constitution.⁸
- b. The sovereign power of the federal union originates from and belongs to the Member States of the federal union and the respective citizens of the States.⁹
- c. Only limited power to carry out the common interests of all Member States of the Federal Union are given to the Federal Government.¹⁰
- d. Member State legislatures should be composed according to the following principles:
 1. The legislative bodies of the Member States should be unicameral or bicameral, based upon the unique situation and background of the respective State.
 2. For the States with many different ethnic nationalities, the legislative body should be bicameral: a House of Nationalities and a House of People's Representatives.
- e. The Federal Democratic Union Constitution shall define the schedule of federal legislative power, concurrent power, and residual power for States.
- f. All powers not enumerated in the schedule of federal power, state power and concurrent power shall reside in Member States.
- g. The Federal Democratic Union shall be composed of four levels of government: Union, State, Self-Administered Region, and Local.

⁷ More studies on the strengths and weaknesses of presidential systems should be conducted.

⁸ Art. 50, FCDCC.

⁹ Art. 3, *id.*

¹⁰ Art. 51, *id.*

- h. The list of ethnic nationalities who have resided within the state consistently should be collected and included in each State Constitution.
- i. Practicing bicameral system in a State:
 - 1. The House of Nationalities shall be composed of representatives sent in equal numbers from National Self-Administered Regions.
 - 2. The House of People's Representatives shall be composed of representatives elected by citizens of that State through a FPTP electoral system.
- j. Form of State governments should be based on the parliamentary model, led by Chief Minister, or presidential model, led by Governor, depending on the unique situation and background of the individual Member State. States with many different ethnic groups should adopt a parliamentary system.
- k. Member States have equal status and rights
- l. No State shall interfere with the internal affairs of other States.

IV. Division of Power

A. Power of the Union

The following powers should reside with the Union:

- 1. Foreign affairs; (Note: Further study should be conducted to determine if some foreign affairs powers should reside at the state level.)
- 2. Issue Currency;
- 3. Postal service and telecommunications;
- 4. National Defense;
- 5. Union Judicial Matters;¹¹
- 6. Social Welfare Matters; (Federal Union Social Welfare Law)
- 7. Industrial Matters;¹²
- 8. Basic Infrastructure Matters;¹³
- 9. Land (includes earth, forest, water, and fishery and related resources)
- 10. Citizenship Matters;
- 11. Port Taxation
- 12. Union Finance

¹¹ FCDCC, Art. 103 (g)

¹² Art. 103 (i), *id.*

¹³ Refers to union level transportation.

B. Power of the States

The following powers should reside with the States:

1. Police and State security forces;
2. Education;
3. Health; (Hospitals, Clinics, Appointment of health workers, State level healthcare services)
4. Judicial Matters; (Criminal and Civil laws)
5. Social Welfare; (State Social Welfare and other power should be exercised at the State level.)
6. State-level Infrastructure;
7. Land; (Indigenous land title, and land ownership rights)
8. State Residential Matters;
9. Exploration, extraction, production and sales of above and underground natural resources in a State; and
10. Regulations concerning farmers

Note: Need to develop power to issue citizenship and schedule of legislative power for State. More power should be provided to State.

C. Concurrent Legislative Powers¹⁴

The following powers shall be resided in both the Union and the States. The Chamber of Nationalities and each State Assembly have the concurrent legislative power within their respective bodies on the following matters:

1. Matters concerning taxes, including sale tax, business tax, income tax and excise tax within the Federal Union;
2. Environmental protection;
3. Narcotic and harmful drugs;
4. Birth and death registration;
5. Federal energy projects and large development projects within the territory of the Member State;
6. Exploitation, production, and sale of aboveground and underground natural resources within the territory of the Member State;
7. Matters concerning investment by foreign governments and private corporations in the respective Member States;

¹⁴ FCDCC, Art. 104

8. Regional radio and television broadcasting services;
9. Banking and Insurance;
10. Matter concerning transfer of real property;
11. Regulation of universities and vocational institutions;
12. Rules and regulations of interstate rivers and waterways, and sea and coastal transportation; (trains, ships, airplanes)
13. Matter concerning refugees and political asylum;
14. Criminal laws and civil procedure codes;
15. Union Civil service training courses;
16. Regulations concerning workers;
17. Trade;
18. Immigration;
19. States have right to retain concurrent legislative powers in a matter of they can perform it.
Note: Need to do more studies on concurrent power and leave it for State when it should be.

V. Revenue and Resource Sharing

1. Federal Democratic Union should adopt asymmetric federalism based upon symmetric federalism. The level of privilege based on the amount of natural resources present within the States is as follows:¹⁵
 - a. Karenni State; Kachin State; Rakhine State
 - b. Mon State; Shan State; Karen State; Myanmar State; Chin State
 - c. Nationalities States

2. In an asymmetric federal democratic system, the three States with first level privilege should benefit the most from natural resources within their own State and the rest of natural resources revenue should be shared with Federal Government and amongst other States.

¹⁵ See Art. 49, *id.*; There were two different opinions amongst UNA representative participants:

Group (1) -> Due to being unfamiliar with the two concepts, a decision between symmetric and asymmetric federalism could not be made until further study.

Group (2) -> Should adopt asymmetric federalism based upon symmetric federalism. The importance of natural resources should be determined based on their geopolitical and socio-economic importance and include land, water, forest, biological, and mineral resources. (Remark: There were varied understandings of asymmetric and symmetric federalism.)

3. Revenue from other natural resources and other business in other Member States should also be distributed to the respective State, Federal Government, and amongst other States.
4. The Joint Financial Management Committee, comprised of equal number of representatives from each Member States, should be formed in order to manage funding that it to be redistributed amongst Member States.
5. Federal Government and every State Government should commit the funding transferred from the Joint Financial Management Committee to the following fields and areas:
 - a. University education;
 - b. Infrastructure development;
 - c. Formation of institutions for science and technological innovation;
 - d. Establishment of financial institutions that promote competitive markets;
 - e. Public health and social security; and
 - f. Reparations for people and rehabilitation for ecosystems negatively impacted by natural resource extraction.

6. There should be an annual audit, conducted by an independent and internationally accredited auditing firm, of the Joint Financial Management Committee, who is responsible for managing revenues from natural resources and other sources. The Federal Government and State Governments who receive funding should also be audited to ensure funds are spent responsibly and according to the law.

7. Funding should also be committed to the following sectors in order to strengthen the administration of the federal government and to prevent autocratic tendencies within Member States of the Federal Union:
 - a. Provide necessary support to civil society organizations that would monitor, raise awareness, and criticize the abuse of power at three levels of governments and protect the rights of the people; and
 - b. Support direct democracy by conducting referendum votes for decisions that State Legislatures deem important.

8. If the Union Assembly or the Assembly of any Member States is enacting a law concerning extraction and production of natural resources, marketing, foreign investment and production of energy, the law should come into force only when it has obtained consent of the other.¹⁶
 - a. Member States should get to enjoy taxes revenue in a fair manner.
 - b. Member States should get at least 50 percent of federal taxes revenue.

¹⁶ FCDCC, Art. 107

- c. In distributing federal taxes revenue to Member States, 75 percent of the amount should be based on the population of respective States.¹⁷
- d. The remaining 25 percent should be committed for poverty reduction and infrastructure development.¹⁸

VI. Constitutional Court

- a. An independent Constitutional Court should be established in order to resolve constitutional disputes between Federal and State constitutions.¹⁹
- b. Constitutional Court Justices should not be members of any state or federal legislature, government, or political party.
- c. The term of office of a judge should be 12 years and non-renewable.
- d. A Constitutional Court should be formed and Constitutional Court Justices selected as follows:²⁰
 - 1. The Constitutional Court should be composed of nine Justices.
 - 2. The Prime Minister, Chairperson of Chamber of Nationalities, and Chairperson of Chamber of People's Representatives should nominate four candidates each, and the Member States should collectively nominate three candidates. The Union Parliament should select and appoint nine Constitutional Court Justices out of the 15 nominees.
- e. If and when a Constitutional Court Justice violates a law, an inquiry committee should be formed to investigate the incident. The findings of the inquiry committee should be submitted to the Chamber of Nationalities. The Chamber of Nationalities should make a decision on removal based on the finding of the inquiry committee.

¹⁷ Two different opinions, from group (1) and (2) discussions, which did not reach to a reconciliation in a workshop with United Nationalities Alliance:

Group (1) → Nothing to change.

Group (2) → In distributing taxes to States, 50 percent of the amount should be based on population. The remaining 25 percent of the amount should be committed for poverty reduction and infrastructure development.

¹⁸ Two different opinions, from group (1) and (2) discussions, which did not reach to a reconciliation in a workshop with United Nationalities Alliance:

Group (1) → Nothing to change.

Group (2) → Move this point to (c).

¹⁹ FCDCC, Art. 134(a)

²⁰ Two different opinions were expressed by UNA representative participants and were not reconciled:

Group (1) → The Chambers of Nationalities, Chamber of People's Representatives, and Chamber of every Member States send one justice each to form a Constitutional Court.

Group (2) → The Prime Minister, Chairpersons of Chamber of Nationalities, and Chamber of People's Representatives, and all Member States should send one nominee each. The Union Parliament should then select and appoint nine justices among those nominated.

VII. Armed Forces

- a. All the armed forces shall be subject to civilian control.
- b. The federal army shall be under the command of civilian Defense Minister.
- c. The Chief of Staff, Deputy Chief of Staff, and Chiefs of Army, Navy, and Airforce should be from different ethnic nationalities.
- d. The police force, security forces, and intelligence forces should be controlled by Home Affairs Ministry.
- e. There should be only one federal army within the Federal Union.
- f. A Military Administration Committee, composed of equal number of representatives from Member States, should be formed in order to administer the Federal Army.
- g. Every Member States should contribute troops proportionally in all levels of the Federal Army.
- h. The size of the State Security Forces and the regular Federal Army should not exceed 0.5 percent of population of the Federal Union.
- i. Member States of the Union should have the right to establish State Security Forces. The State Government should administer the State Security Forces. The Federal Government should be able to deploy State Security Forces in case of national security and states of emergency.
- j. There should be both federal police and state police forces.

VIII. Electoral System

The following electoral systems were discussed:²¹

1. Plurality System
2. True Majority System (50+1%)
3. Proportional Representation System
4. Alternative Voting (also known as Instant Runoff Voting)

IX. Definitions of Key Concepts

²¹ Two different opinions were expressed by UNA representative participants and were not reconciled: Group (1) → Plural system should be practiced, as it is in use currently. Depending upon the development of a new system, Proportional Representation may be more appropriate. Group (2) → (1) PR could be confusing for citizens, as the public does not even understand the very simple FPTP system. PR's weakness can be found by examining population density issues; (2) The FPTP system may not do enough to secure minority rights; (3) Both FPTP and PR systems have pros and cons, there should be a quota system for minority representation.

A. Democracy

1. Should be a multi-party democracy system
2. Sovereign power originates from the Member States and the peoples of those States.²²
3. Should promote and realize human rights
4. Should respect the rule of law, an independent judiciary, and equality before the law
5. Should have secret, direct, regular, free, and fair elections
6. People should be able to freely participate in political, social, and economic processes.
7. Should be accountable, responsible, and transparent

B. Equality

1. Every citizen should have equal rights in political, social, economic, and judicial affairs without discrimination based on ethnicity, religion, and gender.

C. Self-determination

1. Exclusive legislative powers of the Union and the concurrent legislative powers are established by the constitution, all remaining powers should reside in the Member States.
2. Member States have full rights to self-determination.

²² Art.3