

INTRODUCTION

1. PHYSICAL CHARACTERISTICS OF BURMA

Burma has an area of 671,000 sq km, bordered in the east by Thailand and Laos, in the west by Bangladesh, and in the north by India and China. The Bay of Bengal and the Andaman Sea form the southern boundary.

The country is mountainous in the east along the Thai border and in the north which is the easternmost end of the Himalayas. The central part of Burma features extensive plains and wide rivers, with most of the country's agriculture centred along the floodplains of the Ayeyarwady (Irrawaddy) River.

Burma is a resource-rich country, possessing large stands of hardwood timber, an abundance of fisheries, gems, oil, natural gas and mineral deposits.

2. HISTORICAL BACKGROUND

Burma gained independence from Britain in 1948. Since then it has had two Constitutions, the first proclaimed in 1947 and the second in 1974. The 1947 Constitution, though rooted in a strong democratic tradition, suffered from shortcomings, notably in the area of ethnic rights, as a result of which it engendered considerable dissatisfaction among sections of the population, especially the ethnic nationalities. In 1962, the Burmese military, then headed by General Ne Win, took advantage of this growing dissatisfaction and staged a *coup d'état* which effectively tolled the death-knell of the 1947 Constitution. In a bid to consolidate its hold on power, the military junta proclaimed a new Constitution in 1974 which held sway for 14 years until it too was abrogated by another military regime, the State Law and Order Restoration Council (SLORC) headed by General Saw Maung, which seized power in September 1988. Neither of the two Constitutions thus succeeded in establishing a stable and peaceful democratic state in independent Burma. unaccompanied as they appeared to be by political will and a commitment to .

The circumstances which preceded the enactment of the 1947 and 1974 Constitutions were radically different. Whereas the former was drafted by an 111-member committee largely representative of the Burmese peoples and whose democratic credentials were beyond doubt, the latter was imposed on the nation without any consultation by a military regime which had usurped power by unlawful means and whose only purpose in enacting the Constitution was to legitimise its hold on power. The perceived failure of the 1947 Constitution and the illegitimate nature of the 1974 have combined to weaken the concepts of democratic constitutionalism, federalism and the rule of law in Burma..

Following the bloody coup of 1988, thousands of predominately Burman democracy activists fled to the areas controlled by the ethnic opposition groups. An alliance was soon established between democratic and ethnic forces to oppose the military

government and to re-establish democracy in Burma. Thus in late 1988 the Democratic Alliance of Burma (DAB) was born. United for perhaps the first time in Burma's history, all Burma's nationalities were brought together to evaluate the problems in Burma's past and to identify solutions for Burma's future.

Democracy, equality for the ethnic nationalities, and the protection of human rights were identified as the key ingredients for peace and stability in Burma.

One of the tangible results of this discussion by the alliance has been a recognition by all the peoples of Burma that, if a truly plural civil society is to be established in the future, there needs to be a broad-based, democratic constitution which would not only reflect the aspirations of different sections of the population, but also enshrine the basic principles of the rule of law.

3. THE CONSTITUTION-MAKING PROCESS

The DAB commenced the drafting process for a new democratic constitution in 1990 and a wide range of consultations were subsequently held with democratic and ethnic organisations and other interested persons. Those consultations provided the basis for the presentation of a draft constitution to the 1993 Congress of the DAB. At that time, the following democratic and ethnic organisations participated in the Congress:

- (1) Arakan Liberation Party (ALP)
- (2) All Burma Students' Democratic Front (ABSDF)
- (3) All Burma Young Monks' Union (ABYMU)
- (4) Committee for Restoration of Democracy in Burma (CRDB)
- (5) Chin National Front (CNF)
- (6) Democratic Party for New Society (DPNS)
- (7) Karen National Union (KNU)
- (8) Kachin Independence Organisation (KIO)
- (9) National United Front of Arakan (NUFA)
- (10) People's Liberation Front (PLF)
- (11) Plaung State Liberation Front (PSLF)
- (12) Muslim Liberation Organisation (MLO)
- (13) Overseas Karen Organisation (OKO)
- (14) Wa National Organisation (WNO)
- (15) New Mon State Party (NMSP)

The draft constitution which establishes a Federal system of government, was approved by the DAB and also, subsequently, by five additional organisations which were unable to attend the Congress: the All Burma Muslim Union (ABMU), the People's Patriotic Party (PPP), the Overseas Burmese Liberation Front (OBLF), the Lahu National Organisation (LNO) and the German Burmese Association (GBA).

In 1993 a new peak council was established to represent the DAB, the National League for Democracy (Liberated Areas) (NLD-LA), the Members of Parliament Union and the National Democratic Front (NDF). Known as the National Council of the Union of Burma (NCUB), the new council, established a constitution drafting committee to continue the constitution-making process initiated by the DAB.

A "Constitutional Seminar on the Constitution of the Union of Burma" was convened by the NCUB in October 1994 in Manerplaw inside Burma near the Thai-Burma border then under the control of pro-democratic forces. A total of 159 delegates including 9 elected representatives and 66 observers from 41 organisations from within and without Burma attended the seminar.

The seminar determined that the Constitution of the future federal state should provide for:

- (1) the derivation of the power of the State from the people;
- (2) the institution of Burma as a Federal Union on the basis of the intent of the Panglong agreement reached between General Aung San and the ethnic nationalities who have been struggling for over 40 years, the Bo Aung Gyaw street declaration, the agreement reached between the National League for Democracy (NLD) and the Union Nationalities League for Democracy (UNLD), the Manerplaw agreement, and the historical development of peaceful co-habitation of various ethnic nationalities;
- (3) national equality and right of self-determination for each of the ethnic nationalities with firm guarantees;
- (4) entrenchment of a multi-party democratic system and institutionalisation of human rights;
- (5) an agreed division of power between the federal and state governments;
- (6) a system of bi-cameral legislature in which there is a National Assembly composed of representative from the States, and the People's Assembly consisting of representatives of the people;
- (7) a system in which the legislative, executive and judicial powers are exercised separately;
- (8) subordination of the armed forces to civilian control, with its status being equivalent only to other Departments in the service of the State, with no right to participate in politics.

An international seminar, "The Future Democratic Constitution in Burma", held in Manila from October 23 to October 27 1995, was attended by legal experts from the United States, Germany, India, Norway, Australia, Thailand, Singapore, Cambodia, the Philippines, leaders of the Burmese democratic and ethnic forces and overseas patriots.

Based on suggestions and opinions gathered by the NCUB in the Manerplaw seminar in October 1994 and the Manila seminar in October 1995, the constitution drafting committee of the NCUB modified and revised the DAB draft and prepared the first draft of the NCUB document in November and December 1995.

The fourth Conference of the National Council of the Union of Burma was held between May 16 and 23 1996. It was attended by the elected MPs from the 1990 elections, who had sought refuge in the liberated areas. Leaders from the DAB, NDF and NLD-LA participated. During the Congress the first draft of the Federal Union of Burma's Constitution was approved.

The NCUB's Constitution is a dynamic document and the process has not concluded yet. The NCUB has still to consult widely with the people inside Burma before that task can be considered to be complete.

The process of constitution-making has attracted considerable public attention both within Burma and outside in recent times, partly because of the widely-publicised decision of the SLORC to write a new constitution for Burma – a decision which led to the establishment of the controversial National Convention in January 1993– and partly because of the more recent announcement by the National League for Democracy (NLD), led by Daw Aung San Suu Kyi, that they too were preparing a constitution. The people in Burma are keenly interested, but are prohibited by the ruling military junta from participating under Law No. 5/96.

These developments have served to galvanise public interest in the work of the DAB and the NCUB, and this booklet is intended to meet the growing demand from the international community for more information on the subject.

4. BASIC PRINCIPLES

The NCUB strongly asserts that any constitution must be rooted in the experience of the people it is intended to serve and must reflect their basic values and aspirations. Towards this end, those who participated in the writing of this draft constitution constantly bore in mind the experience of the civil war in Burma, the sad legacy of military dictatorship and the untold suffering that the Burmese peoples have endured over the years. They were acutely conscious, too, of the shabby treatment accorded to the ethnic minorities in the past, and have made a concerted effort to redress that injustice by ensuring that the minorities are granted equal rights and the broadest possible measure of autonomy to run their own affairs.

The drafting process has been participatory and inclusive, reflecting the belief that constitutions derive their legitimacy largely from the people they are intended to serve. (This stands in stark contrast with the furtive and secretive manner in which the SLORC/SPDC have been going about their constitution-drafting process.) Following a process of education and information, the draft should be put before the people of Burma, ideally through a referendum, before it is finally adopted. In this way it will possess the widest possible degree of democratic legitimacy.

5. FUNDAMENTALS

This draft constitution is based on a number of specific principles about which there appears to be a broad consensus among the peoples of Burma. These include:

- (a) **The rule of law:** The rule of law as conceived in this consensus is intended to embrace the wider concept of civil society, and find concrete expression in such recognisable attributes as guaranteed fundamental rights, an independent judiciary, transparent and accountable government, representative democracy and respect for international law. Not only does this require that every action of the State would be based on the authority of law rather than on individual whim or

caprice, but also that the law itself should conform to an acceptable standard of reasonableness, clarity and permanence.

- (b) Federalism:** There is widespread agreement among the people in Burma that one of the major reasons for the failure of the 1947 Constitution and especially the 1974 Constitution was the inadequate recognition given in those documents to the concept of federalism. This failure manifested itself, for example, in insufficient powers of taxation and thus an insufficient revenue base for the States; inadequate representation of the States in the Union Parliament; gross inequities brought about by the special privileges accorded to the Burman majority at the expense of the ethnic nationalities; and an unsatisfactory division of powers between the Union and the States. All such shortcomings have been addressed and remedies sought in the present draft constitution.
- (c) Self-Determination:** One aspect of the draft constitution which calls for some explanation is the concept of “self-determination” for the States in Article 130. While this may be a controversial and an evolving concept in international political and legal discourse, in the Burmese context it is a readily understood idea which commands widespread popular support, having regard to the systematic marginalisation of the ethnic peoples by successive central governments. What is meant by the right of self-determination is the right of States to be able to exercise utmost autonomy in their internal affairs and freedom from undue interference from either the Federal Government or from the Governments of other Member States. Such autonomy is essential for the preservation of ethnic cultures and traditions, for the economic advancement of the ethnic nationalities, and to fulfil the political aspirations of the peoples of Burma. The authors of the draft constitution believe that this does not detract from the goal of establishing a stable federation: on the contrary, by giving every constituent member wide enough scope for self-expression, the arrangements envisaged in the constitution will strengthen the federation.
- (d) National State and Nationalities State:** A major reason for the formation of a Federal Union of Burma arises from the need to reckon and acknowledge the multiplicity of ethnic populations in the country. Although many complications and problems with the formation of ethnic national states may be anticipated, Burmese politicians agree that the formation of States where possible in line with the geographic location of ethnic populations is essential if a way is to be paved for military conflict to cease. It will result in the creation of a new political system of unity in diversity.

The demarcation of State boundaries on the basis of ethnicity is complicated by the fact that many ethnic populations are to be found in different parts of Burma, so there is often no clear-cut boundary line. In this situation, the draft Constitution, with the agreement of most of the elected Burmese politicians, proposed the following two methods to be used in the formation of Member States in the new Federal Union of Burma.

- **National State:** Although there may be more than one ethnic group in a particular territory, one Ethnic population may have the majority of the population in that territory. There are some such territories in Burma. The

States formed in those territories will be called “National States” and, despite the fact that there is a multi-ethnic population, one major ethnic group will represent the State. However, other ethnic minority groups will have the right to protect and promote their ethnic identity through the formation of “Autonomous Regions” and “Special National Areas” within that State by agreement.

- **Nationalities State:** If more than two ethnic groups overlap in a territory where no group has a majority population, such territory will be referred to as a “Nationalities State”. In this situation, no particular ethnic group in that territory will dominate the State representation. Representation of a Nationalities State will be based not on ethnic identity, but on a system by which representatives will be drawn from across the inhabitants of that State. This structure should be seen in the context that the ethnic populations will be represented through the National Assembly, the Peoples Assembly and in their own State Parliaments.

A review of State boundaries and divisions set up under the 1974 Constitution will be made under these provisions. Whatever State boundary demarcation is considered for the new Federal Union, economic sustainability, geography and size of population will also be given priority alongside the ethnic distribution.

Autonomous Regions and Special National Areas: As there are not less than eight major ethnic groups and sub-groups living in Burma and some populations are widely dispersed, there will be many smaller ethnic populations which will find themselves in a National State represented by another ethnic group, or as citizens of a Nationalities State. These groups will be granted the right to form either Autonomous Regions or Special National Areas within a State. Their form of political representation will be different from that of the State. While States will have direct representation at the National level, Autonomous Regions and Special National Areas will make their national representations indirectly through their State.

- (e) **Pluralism:** Given the catastrophic experience of the Burmese peoples with a succession of one-party states over the years, this constitution is intended to ensure the utmost democratic pluralism in the running of the new Burma. Towards this end, a number of measures have been proposed which would support and strengthen a multi-party political system and facilitate pluralism.
- (f) **Separation of powers:** Another prime casualty of successive military regimes in Burma has been the almost total eclipse over the years of the concept of separation of powers. There is widespread agreement that this concept is vital for democracy and it has been given pride of place in this draft constitution. For example, in the provisions concerning the judiciary, it has been made clear that no judge will be allowed to hold any office in any other branch of government, but rather that the judiciary will enjoy constitutionally entrenched independence. However, as with the constitutions of other leading democracies such as the United Kingdom, the concept of separation of powers has not been enshrined in absolute terms: the Prime Minister and his ministerial colleagues have been allowed, for instance, to remain members of both the legislature and the executive. This has not posed any

serious problems in other democracies and is therefore worthy of emulation in Burma whose peoples have had, and have embraced, a common law tradition for decades.

(g) Parliamentary form of government: Given the people's prolonged experience of dictatorial rule by presidential-style military regimes, it was felt that to replicate such a system of authoritarian government would be quite unsuitable. Moreover, in any presidential form of government, the electoral system plays a very significant role. Direct election is usually seen to be the fairest democratic electoral system in choosing a president. However, given the great disparity of population size between Burman and non-Burman nationalities, a direct election system could cause major voting inequities between the different nationalities. Instead, the present constitution opts for a parliamentary form of government, which provides that the President will be appointed by the Parliament.

(h) Economy : The present constitution expresses a clear preference for open economic policies. It recognises that economic freedom should be used responsibly by the people for the larger good. It guarantees the right of the individual to own property and to be compensated on just terms in situations where the State requires such property for the common good. In particular it is intended that economic growth will be consistent with sustainable development and a responsible use of natural resources.

COMMENTARY ON INDIVIDUAL PROVISIONS

PREAMBLE

We, the people of the Union of Burma have clear aspirations on the establishment of basic human rights, the guaranteeing of democratic rights and the rights of all the ethnic nationalities, lasting peace, and in the formation of a union of multiple States that will generate prosperity and unity. We aspire to establish a representative government in accordance with a constitution which defends, protects and upholds the rights of all people, based on freedom, equality before the law, fairness, peace, and the rule of law.

Based on these aspirations, we steadfastly resolve to live together in peace and harmony in this free and fully sovereign Federal Union of Burma, and we accept and adopt this Constitution as the highest law of the Federal Union.

Comment:

As with other constitutions, it is intended that the preamble to the present constitution shall be accorded a high persuasive value, especially in the interpretation of the rest of the provisions. The preamble sets out a number of ideals which should guide successive governments. Particularly noteworthy among these ideals are: the supremacy of the constitution; the prime importance of the rule of law; the separation of powers; and the right of Member States to self-determination in accordance with the principles set out in the document as a whole.

The commentary which follows is selective. Not all Articles are considered to require explanatory notes. Where they are made, comments and explanations, rather, seek to highlight those Articles which focus on the above concepts, demonstrating and emphasising how the peoples of Burma will apply them to the development of a federal system of government and, in so doing, entrench democracy at last.

CHAPTER 1. FORM OF THE FEDERAL UNION OF BURMA

ARTICLE 1. THE FEDERAL UNION OF BURMA

The Federal Union of Burma shall be a sovereign democratic state.

Comment:

ARTICLE 2. FORMATION

(a) The Federal Union shall be formed and based on equal rights and the right of self-determination of its Member States in accordance with this Constitution.

(b) The Federal Union and its Member States are obliged to conduct affairs of common interest with mutual loyalty and cooperativeness.

Comment:

(a) The federalism within this constitution is intended to allow Member States a great deal of freedom to manage their own affairs, whilst ensuring the integrity of the Union.

Self-determination is an evolving concept in international political and legal discourse, but this Constitution recognises the right of States to manage their own affairs within the Union.

This Article is also intended to allow the full recognition of the laws, customs, public acts, records and judicial proceedings of the Member States within the Union.

The principle of equal rights referred to in (a) is intended to underpin equality of political status for each Member-State.

(b) The Federal Union and Member States have a duty to be loyal to each other and to work together in a spirit of co-operation for the common good.

ARTICLE 3. PUBLIC AUTHORITY
All public authority emanates from the citizens.

Comment:

This Article reflects the position in international law that the will of the people shall form the basis of the authority of any government. (See, for example, Article 21 of the Universal Declaration on Human Rights.)

Since 1962, the people of Burma have been obliged to give absolute respect to the State. In the process they have been totally subjugated by the State with which the military is synonymous. This Article is a reversal of that process and seeks to re-instate the primacy of the people.

This Article defines the most basic principle of democracy. People have authority and government is obliged to govern the people within the authority they exercise on behalf of the people. It is the essence of the representative democracy system.

ARTICLE 4. EXERCISE OF PUBLIC AUTHORITY
The legislative, executive and judicial powers shall be vested in the Congress of the Federal Union, the Government of the Federal Union, the Federal Supreme Court and the other courts, as established by this Constitution.

Comment:

This Article is an endorsement of the doctrine of separation of powers, a doctrine not currently respected in Burma.

The exercise of authority under this Article shall not be arbitrary, and shall only be exercised independently by institutions of the Union specified therein.

Since 1988, all powers – including Presidential, executive, legislative and judicial – have been exercised by the military regime without any regard to the doctrine of separation of powers.

Similar authority shall be vested in the institutions of member States under the provisions of Article 132 of this Constitution, so that the separation of powers doctrine will be entrenched within all spheres of power in the Union..

ARTICLE 5: TERRITORY

The territory of the Federal Union shall be composed of the whole of the Member States. The territory of the Federal Union shall not be altered without the consent of all of the Member States.

Comment:

(ref. Articles 12, 34, 38)

The totality of the Federal Union shall be composed of the sum of the territories of the Member States and that this shall not be changed without the explicit consent of all Member States. Past experience has seen the imposition of boundaries by British colonial power or, under the 1974 constitution, military authoritarian power.

ARTICLE 6. OFFICIAL LANGUAGES

(a) Both the Burmese and the English languages shall be the official languages of the Federal Union.

(b) In the Member States, the native languages may be used as official languages.

Comment:

(b) reflects the intention of the constitution to deliver self-determination to the States.

ARTICLE 7. POLITICAL SYSTEM

(a) The political system of the Federal Union shall be a multi-party democratic system. The political parties shall have the right to freely form and participate in the political process.

(b) Political parties shall perform and function in accordance with basic democratic principles and with the law enacted by the Federal Congress based on this Article.

Comment:

(a) The people of Burma demanded a multi-party democracy during the 1988 nationwide uprising, but the expression of their will, demonstrated clearly in the 1990 landslide election results, has been, and continues to be, ignored by the military junta.

Those political parties and activists who assert their democratic rights following the 1990 election results have been suppressed brutally. For example, the leading political party in Burma, the National League for Democracy (NLD), has been persistently refused permission to carry out its normal activities, despite winning a landslide majority in the 1990 elections, and its members and supporters are subjected to continuous harassment. Many of the NLD activists continue to be subjected

systematically to serious political and civil restrictions, including imprisonment. Such harassment extends to other political parties as well.

This Article guarantees political pluralism and the right of parties to participate freely in the political process.

(b) This Article is intended to ensure political parties are constituted in a democratic manner and regulated by the Federal Congress consistent with the freedom granted to them by (a) of this Article.

ARTICLE 8. FLAG

The flag of the Federal Union shall be as follows:

ARTICLE 9. STATE SEAL

The State seal of the Federal Union shall be as follows:

ARTICLE 10. EXECUTIVE SEAL

The seal of the Executive of the Federal Union shall be as follows:

ARTICLE 11. NATIONAL ANTHEM

The National anthem of the Federal Union shall be as follows:

ARTICLE 12. CAPITAL CITY

Greater Rangoon shall be the capital city of the Federal Union. It shall have the status of a Member State.

Comment:

Article 12 refers to political status and not geographic status. The people of Burma intend to give Greater Rangoon a special status and make it a separate State as has happened in the case of many national capitals throughout the world. It is intended that Greater Rangoon would be a “Nationalities State” and shall enjoy equal status with other Member States within the Union. The choice of Rangoon is simply a choice of convenience because it is a well-established domestic and international commercial and administrative hub.

ARTICLE 13. SUPREME LAW

This Constitution shall be the supreme law of the Federal Union.

Comment:

(ref. Articles 4 and 131)

This Article is intended to invalidate any legislation or executive action taken by any public authority which is inconsistent with the provisions of this Constitution.

This Article does not prevent Member States from having their own constitutions under Article 131. Those constitutions, however, shall not be inconsistent with the

broad principles of the Federal Union Constitution. The framers of the draft constitution envisage that Member States will have democratic constitutions.

CHAPTER II. BASIC RIGHTS

Comment:

Certain rights have been conferred in this chapter on citizens of the Union and certain rights on all people present in the Union. Such a distinction is not uncommon among democratic constitutions, and is based on the relative status accorded to citizens and non-citizens respectively.

ARTICLE 14. INALIENABLE RIGHTS

(a) Every person in the Federal Union

(i) shall be equal before the law, irrespective of national or social origin, religion, social status, political opinion, language, sex, age, colour or race,

(ii) shall have the right to life,

(iii) shall have the freedom of thought and belief, and

(iv) shall be respected as a human being, and his or her human dignity shall not be violated.

(b) No person in the Federal Union

(i) shall be enslaved,

(ii) shall suffer forced labour, and

(iii) shall be subjected to torture, cruel, inhumane or degrading treatment.

(c) These rights shall under no circumstances be encroached upon or withdrawn.

Comment:

The guarantee conferred by (c) in this Article, has been given to underpin the expectation of the people of Burma, that these important human rights shall not be abridged or denied at any time, including during a state of emergency.

ARTICLE 15. BASIC FREEDOMS

(a) Every person in the Federal Union

(i) shall have the right to freedom of expression, publication and dissemination of and access to information,

(ii) shall have the right to seek political asylum,

(iii) shall have freedom of worship and of religious practices, and

(iv) shall have the right to assemble peacefully.

(b) Every citizen in the Federal Union

(i) shall have the right to form and participate freely in associations,

(ii) shall have the right to move freely within the borders of the Federal Union,

(iii) shall have the right to freely choose residence, trade and employment within the Federal Union, and

- (iv) shall have the right to leave and return to the Federal Union.
- (c) The implementation of these rights shall be in accordance with the laws passed by the Congress of the Federal Union.
- (d) If the implementation of the basic freedoms mentioned in this article contravenes basic democratic principles or affects public health or morality, the Congress of the Federal Union may enact laws restricting these rights.

Comment:

A distinction is sought to be made between inalienable rights and other basic freedoms and this distinction has been recognised in international Human Rights standards which confer special status on certain non-derogable rights.

15(c) is meant to impose a positive obligation on the Federal Congress to give effect to those rights.

In clause 15b(iii), the expression “trade and employment” includes professions.

ARTICLE 16. MARRIAGE

Every person at full age shall have the right to marry in accordance with his or her own free will without discrimination as to race, religion or social status.

Comment:

This Article must be read with 73(xvii). It brings Burmese law into line with international standards on the right to marry.

ARTICLE 17. WORK

Every citizen in the Federal Union shall have the right to work and to choose an occupation free of discrimination on the ground of race, religion, sex , age or colour.

Comment:

This Article should be read as conferring the right to seek work and to pursue a means of livelihood rather than a legally enforceable obligation on the part of the State to provide work. The State's obligation is to take positive action to prevent occupational discrimination and to provide a remedy where it does occur.

However, it is expected the State will facilitate strategies to pursue full employment.

Every citizen of the Federal Union shall be permitted to seek work free of all discrimination.

ARTICLE 18. CITIZENSHIP

Every person in the Federal Union shall have the right to apply for citizenship.

Comment:

There is an expectation that all applications for citizenship of the Union will be considered fairly by the authorities. This Article has to be read with the provisions of chapter XI and Article 136 in particular.

It is intended to remove the practice of previous governments of systematically denying people even the right to apply for citizenship.

ARTICLE 19. PRIVACY

(a) No person in the Federal Union shall suffer or be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honour or reputation.

(b) Every person residing in the Federal Union shall be protected from unlawful searches of the person, home, premises or property.

Comment:

This Article is intended to redress the situation where it has been, and still is, common for searches to be carried out unlawfully and for the privacy of homes to be invaded without due process of law.

ARTICLE 20. PROPERTY

(a) Every citizen shall have the right to own, transfer and dispose of property legally acquired, and the right of inheritance in accordance with the law.

(b) These rights shall only be revoked or restricted for the public benefit in accordance with the law. The private and public interests must be balanced, and the private rights shall only be revoked, when adequate compensation has been awarded by law.

Comment:

(a) The right to own individual property has been systematically denied since 1962 and this, among other effects, has resulted in the widespread stifling of free enterprise. The development of chronic shortages of essential items and the demise of employment opportunities for the common people has followed.

The intention of this Article is to guarantee and protect the ownership of private property, and to contribute to economic development.

(b) It is expected that the processes which will be developed as a result of this sub-Article will be transparent and the compensation paid for deprivation of property, fair.

ARTICLE 21. ARREST AND DETENTION

(a) No person in the Federal Union shall be detained or imprisoned save pursuant to a law.

(b) Every person arrested or detained shall be treated with the respect due to a human being.

(c) Every person arrested without a warrant shall not be detained for more than 24 hours. If there are sufficient grounds to detain a person

for more than 24 hours, the arrested person must be brought before a competent court, and an application to a judge of that court for a detention order, in accordance with existing laws, to continue the detention, must be filed.

Comment:

This Article limits the power of the State to detain people arbitrarily, to imprison without due process of law, and to delay bringing accused people before the court.

The need for this Article derives from numerous experiences, continuing still, of arbitrary detention and ill-treatment, including torture.

It gives force to the requirement under international human rights standards that every arrested person shall be treated with dignity and brought before a competent court at the earliest opportunity.

ARTICLE 22. CRIMINAL CHARGE

- (a) Every person charged with an offence shall have the right**
- (i) to be informed without unreasonable delay of the charge and the specific offence,**
 - (ii) to be tried within a reasonable time,**
 - (iii) not to be compelled to be a witness in proceedings against a person in respect of the same offence,**
 - (iv) to defense to the fullest extent in accordance with the law or through legal assistance of his or her own choice,**
 - (v) to be tried in a language which he or she understands or, failing this, to have the proceeding interpreted to him or her.**
- (b) All proceedings shall be open to the public.**

ARTICLE 23. TRIAL AND PENALTY

- (a) A person shall only be tried for an offence under the law existing at the time of the offence.**
- (b) No penalty degrading to the human dignity of the individual shall be imposed.**
- (c) A person acquitted of an offence shall not be retried for the same offence.**
- (d) Nobody may be punished for the same act more than once.**

Comment:

People have been, and still are, subjected to harsh treatment in the absence of provisions similar to those contained in Articles 22 and 23. See also the comments following Article 21.

ARTICLE 24. CULTURAL RIGHTS

Every citizen shall have the right to promote his or her ethnic culture, customs and traditions. The Government of the Federal Union and State Governments shall support the promotion.

Comment:

This Article underpins the right of ethnic peoples to pursue maintenance of their cultures with positive encouragement and support from governments.

ARTICLE 25. EDUCATIONAL RIGHTS

- (a) Every citizen shall have the right to freely pursue education.**
- (b) He or she shall have the right to freely choose education, vocational education, or higher education.**
- (c) Compulsory elementary education shall be provided free of charge.**

Comment:

It is expected that an adequate financial provision would be made by the State to facilitate the attainment of this right, as stated in (c).

ARTICLE 26. NATIONAL LANGUAGE

Every citizen shall have the right to freely study and promote the language and literature of his or her nationality.

Comment:

Language is the carrier of culture. In the past, the study and promotion of ethnic languages in the schools either has been denied or has been actively discouraged. This Article remedies that injustice.

ARTICLE 27. EDUCATIONAL ESTABLISHMENTS

The right to establish private schools, colleges and universities, and vocational institutions in accordance with existing laws shall be guaranteed.

Comment:

It is intended that the Federal Union and the State Governments will pass laws which will allow the establishment of private schools, colleges and universities, and it is intended that they will operate within the public education system, implementing a common curriculum.

ARTICLE 28. RIGHTS OF CHILDREN

- (a) Every child shall have the right to protection, which is required by his or her status as a minor. The care and upbringing of children is the natural right of parents. Every child is entitled to the care of the community.**
- (b) Children shall not be separated from their families without the consent of their parents or guardians. In cases where the parents or guardians have neglected their responsibilities or in circumstances where children may need to be protected, separation of the children from their families shall be carried out only in accordance with the law.**
- (c) Children shall be protected from social and economic exploitation, and from employment that may harm their moral, health, life or physical growth.**
- (d) The Congress of the Federal Union shall prescribe by law the age limit of children who may be employed for work.**

Comment:

This Article seeks to implement international standards on the rights of children.

(a) It is expected that the State will provide for children where their family or their community is unable to do so.

(b) It is expected that there will be laws passed to provide for the needs of children. The military junta acceded to the Convention on the Rights of the Child and passed the Children's Law, yet they have in no way met their obligations to the country's children.

ARTICLE 29. POLITICAL RIGHTS

Every citizen at full age shall have the right:

(a) to take part in the conduct of political affairs, directly or through freely elected representatives.

(b) to vote and be elected in periodic elections which shall be general, free, equal, direct and secret.

Comment:

This Article should be read with the restriction on coming to office, Article 59(b), and Article 80(a) (iv).

ARTICLE 30. INTERNATIONAL COVENANTS

International Covenants on Human Rights ratified by the Federal Union shall be directly applicable by the courts.

Comment:

This Article is intended to cover all relevant human rights instruments.

All courts at whatever level under this Article have the competence to apply the instruments, but the High Court maintains appellate jurisdiction.

ARTICLE 31. HUMAN RIGHTS COMMISSION

Every person whose human rights have been violated shall have the right to seek protection by the Human Rights Commission.

Comment:

It is anticipated that, in the terms of this Article, power will be given to the Human Rights Commission to adjudicate and offer redress, and to give injunctive relief.

ARTICLE 32. CONSTITUTIONAL REMEDIES

(a) Every person shall have the right to apply to the Supreme Court for the enforcement of his or her constitutional rights.

(b) The power to enforce the rights conferred in sub-paragraph (a) above shall not be suspended under any circumstances.

ARTICLE 33. PROTECTION OF THE FEDERAL UNION

Every citizen shall be entitled to the protection of the Federal Union whether within or without the country.

**CHAPTER III
COMPOSITION OF THE FEDERAL UNION**

ARTICLE 34. FORM OF THE FEDERAL UNION

(a) The Federal Union comprises National States and Nationalities States as Member States.

(b) National Autonomous Regions and Special National Territories shall be formed as necessary within the territories of the Member States.

Comment:

A National State is a State where one ethnic nationality has a clear majority.

A Nationalities State is a State where there are two or more ethnic nationalities, without any of them having a clear majority of the population in the State.

The right to form the entities set out in 34(b) is with the Member State, and is framed to enable the protection of smaller minorities.

See also Introduction.

ARTICLE 35. NATIONAL STATES

National States are:

- (i) Kachin National State
- (ii) Karen National State
- (iii) Karenni National State
- (iv) Chin National State
- (v) Burman National State
- (vi) Mon National State
- (vii) Arakan National State
- (viii) Shan National State
- (x) ----- State
- (xi) ----- State
- () -----State
- () -----State

ARTICLE 36 NATIONALITIES STATES

Nationalities States are:

- (i) -----
- (ii) -----
- (iii) -----
- (iv) -----

ARTICLE 37. ONE NATIONALITY ONE STATE

Each ethnic nation shall have one state only.

Comment:

This provision limits to one, the number of Member States that an ethnic nation may have, irrespective of where they are located geographically. It does not create an entitlement that every ethnic nation shall have its own Member State.

ARTICLE 38. NEW STATES

(a) The Federal Congress may on application establish new Member States, and may make or impose such terms and conditions, as it thinks fit.

(b) The Federal Congress may, with the consent of the Assembly of a Member State and with the approval of a two thirds majority of the electors of that Member State, vote on the question to increase, diminish or otherwise alter the boundaries of that Member State.

(c) The Federal Congress may, with the consent of the Assemblies of the Member States affected and with the approval of a two thirds majority of the electors of those Member States, form a new Member State through unification of two or more Member States or parts of Member States, or part of a Member State.

Comment:

(a) It is intended that the terms and conditions contemplated in this Article will not negate the guarantee of equality contained in Chapter II Basic Rights.

(b) This provision tries to create a balance between the need to provide groups desiring statehood with a legitimate outlet, and a safeguard against risks of disintegration of the Union.

CHAPTER IV CONGRESS OF THE FEDERAL UNION

ARTICLE 39. FORMATION

The Congress of the Federal Union (Federal Congress) shall be composed of the National Assembly and the People's Assembly.

ARTICLE 40. POWER

The legislative power of the Federal Union shall be vested in the Federal Congress.

ARTICLE 41. JOINT SESSIONS OF THE FEDERAL CONGRESS

(a) Regular joint sessions of the Federal Congress shall be held once a year.

(b) Special joint sessions of the Federal Congress shall be held to handle the following matters:

- (i) ratification of an amendment to this Constitution,
- (ii) confirmation of the declaration and cancellation of a state of emergency,
- (iii) confirmation of the declaration of war and declaration of the end of war,

(iv) confirmation of the appointment of the President of the Federal Union and swearing in of the judges of the Federal Supreme Court.

(c) Sessions of the Federal Congress shall be convened by the President of the Federal Union upon request of the majority of the members of either Assembly or upon request of the Prime Minister.

Comment:

(a) Regular joint sessions.

The Constitution assumes that Congress will meet at least (but not limited to) once a year, and (b) and (c) provide for special sessions contemplated in (b).

(c) The reference to “majority of Members” should be read as “majority of the total membership of the respective Assembly.”

ARTICLE 42. QUORUM

The number of representatives constituting a quorum of the session of the Federal Congress shall be 50 per cent of the members of the National Assembly and 50 per cent of the members of the People’s Assembly.

Comment:

"Members" mean "membership".

ARTICLE 43. VOTING

Decisions in the sessions of the Federal Congress shall be made by a majority of votes of the members present of each Assembly.

ARTICLE 44. CHAIRPERSON

The Chairperson of the National Assembly and the Chairperson of the People’s Assembly shall alternately be the Chairperson of the sessions of the Federal Congress.

ARTICLE 45. DEBARMENT

A member of one Assembly shall not be a member of the other Assembly at the same time.

ARTICLE 46. INDEMNITY AND IMMUNITY

(a) Representatives may not be questioned or held liable or be subject to disciplinary action or otherwise called to account for a vote cast or a statement made in any Assembly or publication thereof.

(b) Representatives may not be called to account or arrested for a punishable offence without the permission of the Federal Congress, unless he or she is apprehended in the act of committing the offence.

Comment:

By this provision the Constitution recognises the tradition of parliamentary privilege.

ARTICLE 47. REMUNERATION

Representatives of the Federal Congress shall be entitled to adequate remuneration in accordance with the law. Increases of such remuneration shall come into effect no sooner than the next term of the Federal Congress.

Comment:

Representatives are given protection when either House is sitting and for a period before and after. The provision gives effect to international conventions.

NATIONAL ASSEMBLY

ARTICLE 48. FORMATION OF THE NATIONAL ASSEMBLY

The National Assembly shall be composed of four representatives from each Member State.

Comment:

Elections or appointments shall be as determined by the State Assemblies.

ARTICLE 49. CHAIRPERSON AND VICE CHAIRPERSON

A Chairperson and a Vice-Chairperson shall be elected from amongst the representatives of the National Assembly. The Chairperson and the Vice-Chairperson shall not be from the same Member State.

Comment:

Implicit in the Constitution is the idea that there will be a system of Standing Orders for the two Houses.

ARTICLE 50. TERM OF OFFICE

The term of office of the representatives shall be four years. Half of the representatives shall be elected every two years.

ARTICLE 51. CONVENING OF SESSIONS

(a) At the request of representatives from two Member States, the Chairperson of the National Assembly shall convene the National Assembly.

(b) At the request of the Prime Minister of the Federal Union, the Chairperson of the National Assembly may convene the National Assembly.

Comment:

This provision is directed at the situation where there is a need to convene the Assembly out of session.

ARTICLE 52. QUORUM AND VOTING

The number of representatives constituting a quorum shall be 30% for debate and 50% for voting. Decisions shall be made by a majority of votes.

Comment:

The provision refers to decisions being made by a bare majority of those voting.

ARTICLE 53. AUTHORITY OF THE CHAIRPERSON

The Chairperson shall have the authority to supervise and to enforce the rules and regulations of the sessions. No search or seizure may take place on the premises of the National Assembly without the permission of the Chairperson.

Comment:

The Chair has two broad powers:

- to supervise the Assembly, and
- to enforce the rules and regulations of the Assembly at all times.

ARTICLE 54. COMMITTEES

The National Assembly shall appoint a Committee on Foreign Affairs and a Committee on Defence.

Comment:

The provision makes these two Committees mandatory, intending not to limit the discretionary power to form other Committees when that is thought to be useful and desirable.

PEOPLE'S ASSEMBLY

ARTICLE 55. FORMATION OF THE PEOPLE'S ASSEMBLY

The People's Assembly shall be composed of representatives elected by the citizens.

Comment:

The Constitution enshrines the principle that the People's Assembly is truly representative of the people and that those who are elected are chosen in a secret ballot in free and fair elections by all citizens.

It is expected that those drafting the Constitution will address the issue of the number of members and balance between the Assemblies. In 1990, the People's Assembly had 485 constituencies

It has been discussed by various groups in Burma that representation by women should have further consideration.

ARTICLE 56. CHAIRPERSON AND VICE CHAIRPERSON

A Chairperson and a Vice-Chairperson shall be elected from amongst the representatives of the People's Assembly.

Comment:

It is worth considering the establishment of a convention whereby the Chairman and Vice Chairman belong to the ruling and the opposition parties respectively.

ARTICLE 57. TERM

The regular term of the People's Assembly shall be four years. The term of office of the representatives shall be the same as that of the People's Assembly.

Comment:

(ref. Articles 62-64)

It is expected that people elected to the People's Assembly will serve a four-year term, and that regular elections will be held.

ARTICLE 58. ELECTION OF REPRESENTATIVES

The representatives shall be elected by general, free, equal, direct and secret elections.

Comment:

There are five principles enshrined in the Constitution about elections. They are: that the elections should be general (covering all constituencies), free (without interference), equal (votes will be of equal value), direct (not collegiate), and by secret ballot.

It is intended that the voting system shall be based on the principle of "one person, one vote".

The Constitution does not qualify who has a right to vote. It is envisaged that the qualification for voters will be laid down in an electoral law.

ARTICLE 59. QUALIFICATION OF REPRESENTATIVES

Candidates for the People's Assembly shall be:

(a) citizens of the Federal Union having attained the age of 25 years on the day of the election,

(b) in the case of naturalised citizens, residents in the Federal Union for at least five years continuously after naturalisation, and having attained the age of 25 years on the day of the election.

Comment:

The age of 25 was chosen having regard to the level of maturity and education in the country.

It is expected that the issue of disqualification of representatives will be addressed in due course by an electoral law.

No member of the People's Assembly or the National Assembly shall be entitled to be a member of both Assemblies.

ARTICLE 60. CONVENING OF SESSIONS

The Chairperson shall convene special or emergency sessions on

- (i) the directive of the President,**
- (ii) the request of the Prime Minister, or**
- (iii) the request of one fourth of the representatives.**

Comment:

(ref. Article 51b)

The obligation of the Chairman in Article 60 is mandatory and the obligation of the National Assembly Chairman is discretionary. (See Article 51(b))

However, the power of the Chairman of the People's Assembly to convene other sessions of the Assembly remains unaltered.

Article 60 reflects the important position accorded to the President and Prime Minister under the Constitution.

The reference in (iii) is to one quarter of the total membership of the Peoples Assembly.

ARTICLE 61. QUORUM AND VOTING

The number of representatives constituting a quorum of the People's Assembly shall be 30 per cent for debate and 50 per cent for voting. Decisions shall be made by a majority of vote.

Comment:

The references to 30 percent and 50 percent in this Article relate to the total membership of the Assembly, and the reference to a majority refers to a majority of those present and voting.

ARTICLE 62. ELECTIONS

Elections to the People's Assembly shall be held three months prior to the expiration of the current term.

Comment:

The rationale for Article 62 is to allow sufficient time for the election process having regard to the difficulties for voters in certain rural and remote areas and the difficulties of communication .

It is expected that a Convention and will be developed whereby outgoing Governments will not pass controversial legislation nor will they take substantial action on controversial matters during the three month period.

ARTICLE 63. SESSIONS FOLLOWING ELECTIONS

The People's Assembly shall assemble within 30 days following the election.

Comment:

There appears to be a contradiction between the wording of this Article and that of Article 62. The thinking in Article 63 is to avoid a situation where a newly elected People's Assembly is not convened quickly enough as happened with the Assembly elected in 1990. It is expected that the contradiction will be resolved as a matter of urgency.

ARTICLE 64. DISSOLUTION

(a) The President shall dissolve the People's Assembly on the advice of the Prime Minister.

(b) Elections shall be held within 60 days following the dissolution.

(c) The President shall appoint a caretaker government following the dissolution of the People's Assembly to administer the country until a new government is formed.

Comment:

This Article is intended to provide for circumstances where, for reasons of a parliamentary deadlock or the loss of confidence in the government or otherwise, the Prime Minister might want a dissolution of the People's Assembly. A safeguard has been introduced to ensure that, where such dissolution does take place, elections are not postponed indefinitely.

The principle enunciated on the role of a caretaker government in the commentary on Article 62 applies to (c).

The same apparent contradiction referred to concerning Articles 62 and 63 applies to Article 64, and it is expected that this apparent contradiction will be resolved as a matter of urgency.

ARTICLE 65. AUTHORITY OF THE CHAIRPERSON

The chairperson shall have the authority to supervise and to enforce the rules and regulations of the sessions. No search or seizure shall be made on the premises of the People's Assembly without the permission of the chairperson.

Comment:

(ref. Article 53)

ARTICLE 66. COMMISSION OF INVESTIGATION

Upon the motion of one fourth of its members the People's Assembly is obliged to set up a Commission of Investigation. The Federal Congress shall enact a law for the constitution and the mandate of the Commission.

Comment:

It is intended to allow for the setting up of machinery to investigate important matters of concern to representatives, and for reporting their findings and recommendations to the People's Assembly.

The People's Assembly will form the Commission of Investigation regarding various matters that may occur, to correctly inquire into the events and causes, and to take appropriate action. The Commission is not a permanent one, but temporary, depending for its existence on the event which has taken place. The Congress has to provide by law for the structure and for the mandate of the Commission.

The reference to "1/4 of its members" is a reference to 1/4 of the total membership of the People's Assembly.

CHAPTER V. FEDERAL LEGISLATION

ARTICLE 67. THE INITIATION OF BILLS

(a) Bills shall be introduced by the Government of the Federal Union or by representatives of either of the two Assemblies.

(b) Federal budget bills and revenue bills shall only be introduced in the People's Assembly.

(c) Bills relating to natural resources shall only be introduced in the National Assembly.

Comment:

Burma is rich in natural resources that are to be found mainly in the mountainous area in which the non-Burman ethnic nationalities live. Since independence in 1948, the wealth derived from natural resources has been controlled by central governments. The ethnic nationalities from Member States perceived that the funds were not fairly allocated and, consequently, that the States of the ethnic nationalities remained in poverty while the proper Burma benefited at their expense.

The provision of Article 67(c) is intended to ensure that non-Burman ethnic people will be involved in decisions relating to the management of their natural resources.

ARTICLE 68. ADOPTION OF A BILL

(a) Except for the Federal budget bill, a bill introduced in the People's Assembly receiving a majority vote, and a majority vote of the statutory members in the National Assembly, shall become law.

(b) A bill introduced in the National Assembly receiving a majority vote, and a majority vote of the statutory members in the People's Assembly, shall become law.

Comment:

In this Article, the phrase "statutory members" means members present and voting.

ARTICLE 69. ADOPTION OF A BUDGET BILL

The annual Federal budget bill shall be introduced in the People's Assembly. The approved bill shall then be forwarded to the National Assembly. If the National Assembly approves it within 14 days, it shall become law. If the bill is not approved by the National Assembly, it shall be returned to the People's Assembly. If further approved by the People's Assembly with a majority of its statutory members, the bills shall become law.

Comment:

In this Article, the phrase "statutory members" means the total membership of the Assembly.

ARTICLE 70. JOINT COMMITTEE

- (a) The National Assembly, the People's Assembly or the Government may demand that a bill be referred to a joint committee when a bill or part of it is adopted by one Assembly only.
- (b) The Joint Committee shall be set up with equal number of representatives from each Assembly .
- (c) The Committee shall be dissolved on the completion of its task.
- (d) A bill which has not been approved of by the Joint Committee shall be considered a dead bill.
- (e) If there are amendments to or alterations of the bill by the Joint Committee, it shall be sent back to the Assembly where it was introduced. If the bill as approved by the original Assembly is approved by the other, it shall become law.
- (f) If the bill referred to in sub-paragraph (e) is not adopted in accordance with Article 68, it shall be considered a dead bill.

Comment:

This Article does not apply to money Bills.

This Article was included to provide a mechanism to resolve deadlocks, but it is not exhaustive. It is expected that rules concerning the membership and the operation of Joint Committees will be laid down by legislation or through Standing Orders.

ARTICLE 71. DEAD BILLS

A dead bill shall not be reintroduced in any Assembly within a period of two years from the date of its rejection.

ARTICLE 72. PROMULGATION

The Federal President shall sign and promulgate every bill adopted by the Federal Congress within seven days. A bill shall become law, even if the Federal President does not sign the bill at the end of the seven days period.

Comment:

The seven-day period referred to in the Article will commence from the date of adoption of the legislation.

ARTICLE 73. EXCLUSIVE LEGISLATION

The Federal Congress shall have exclusive legislative powers in the following areas:

- (i) foreign affairs,
- (ii) defence of the Federal Union,
- (iii) postal services and telecommunications with the exception of local radio and television services,
- (iv) currency, money and coinage,
- (v) weights and measures,
- (vi) the annual Federal Union budget,
- (vii) federal highways, railways, waterways, air and sea transportation,
- (viii) postgraduate education,
- (ix) trade and commerce with other countries,
- (x) citizenship in the Federal Union and immigration,
- (xi) police force of the Federal Union,
- (xii) state of emergency,
- (xiii) census,
- (xiv) production, sale, exportation and importation of arms, ammunitions and explosives,
- (xv) election to the People's Assembly,
- (xvi) copyright, patents, designs and trade marks,
- (xvii) marriage, divorce and inheritance with regard to mixed marriages,
- (xviii) customs, export/import taxation.

Comment:

These lists are subject to revision based on feedback through consultation and further discussion.

Article 73 exclusively limits the Federal Congress to make laws in the stated areas. This is in keeping with a Federal system in which the powers are limited to specific heads of power

This power should be read as being subject to the rest of the Constitution. This means, for example, that the Federal Congress should not (cannot) use Article 73 powers to limit the basic rights conferred on the people by the Constitution.

ARTICLE 74. CONCURRENT LEGISLATIVE POWERS

Member States shall possess legislative powers concurrently in relation to the following areas:

- (i) purchase and sales tax, business enterprise tax, income tax, liquor and tobacco tax, port tax within the Federal Union.
- (ii) protection of the environment,
- (iii) drugs,
- (iv) registration of births and deaths,
- (v) Federal Union energy and development projects within Member States,
- (vi) exploration, exploitation and sale of natural resources within a State,

- (vii) investment by foreign governments and companies within a Member State,**
- (viii) local radio and television services,**
- (ix) banking services,**
- (x) transfer of homes, premises and land matters,**
- (xi) university and vocational education,**
- (xii) regulations relating to rivers and waterways crossing Member State's borders, domestic sea and coastal transportation,**
- (xiii) refugee and political asylum matters,**
- (xiii) criminal law and civil procedural codes, and**
- (xv) education and vocational training for public servants.**

Comment:

This Article allows Member States to exercise legislative powers together with the Federal Congress in respect of the areas listed.

It is intended that these powers will ordinarily be exercised by Member States and only when necessary by the Federal Congress .

ARTICLE 75. CONCURRENT LEGISLATION OF FEDERAL CONGRESS

The Federal Congress shall make laws on concurrent matters when a Member State by making the said law would endanger another Member State or its people or would endanger the economic interests of the whole Federal Union.

Comment:

This Article envisages three circumstances where the Federal Congress would make laws on concurrent matters.

The Federal Congress would have such power where it appears to it that the making of any such law by a Member State would endanger another Member State or its people or the economic interest of the whole Federal Union.

ARTICLE 76. JOINT AGREEMENTS

Laws relating to the exploitation and sale of natural resources, foreign investment and production of energy, shall come into force only after, in case of federal law, the Member States involved, and in case of a state law, the Federal Congress have agreed upon the said law.

Comment:

It is expected that there will be further discussion and clarification of how the agreement envisaged in this Article will be reached.

Article 76 identifies three areas considered to be of such importance to the Federal Union and to the Member States as to require that the laws governing the areas under consideration must be agreed to by the Member States affected and by the Federal Congress.

ARTICLE 77. LEGISLATIVE POWER OF MEMBER STATES
Member States have the right to legislate in so far as this constitution does not confer legislative powers on the Federal Congress.

Comment:

This Article underpins the concept of Federalism with primacy being given to the State over the Union.

ARTICLE 78. PRECEDENCE OF FEDERAL LAW
Federal law shall override state law.

Comment:

It is hoped that this Article will be interpreted by the courts to be read that Federal law shall override State law only to the extent of inconsistency between the two laws.

CHAPTER VI
PRESIDENT OF THE FEDERAL UNION

ARTICLE 79. HEAD OF STATE
The Federal President shall be Head of State.

Comment:

This Article reflects the intention of the Burmese people to establish a Republican form of government, and a President shall be head of the Republic.

ARTICLE 80. QUALIFICATIONS

(a) A candidate seeking election as a Federal President or Federal Vice-President must

- (i) be a citizen of the Federal Union,**
- (ii) be born of parents both of whom are citizens of the Federal Union,**
- (iii) have resided continuously in the Federal Union for over 10 years, and**
- (iv) be over the age of 35 years on the date of his or her submission.**

(b) The Federal President or the Federal Vice- President may not be a member of the Government nor of a legislative body of the Federal Union or a Member State. A representative of either Assembly, being elected Federal President or Federal Vice-President, shall resign from his or her office in the respective Assembly or the Government .

Comment:

(a) The office of Vice President, although not explicitly stated in this Constitution, is provided for in Article 80. The reference in 80(a) (iii) to continuous residence in the Federal Union should be read as a "continuous residence prior to the election at which the candidate seeks office".

ARTICLE 81. ELECTION

(a) The National Assembly shall elect the Federal President and the Federal Vice-President from amongst the candidates proposed by the legislative bodies of the Member States.

(b) A person from one Member State having been Federal President, no person of that Member State shall be eligible for the presidency for three consecutive terms. The term of the Federal President shall not include the term of the Vice-President.

(c) Details shall be subject of the federal law.

Comment:

(a) This Article provides for indirect election of the President through the Member States.

(b) The reference to the term of the Federal President not including the term of the Vice President is intended to allow any Vice President who fills the vacancy caused by death, resignation or impeachment of the President to contest the election as President in his/her own right despite the bar imposed by this sub-Article.

(c) It is intended that detailed provisions for the election of President and Vice President will be made in a law passed by the Federal Congress.

ARTICLE 82. TERM OF OFFICE.

The term of office of the Federal President shall be four years from the date of taking office.

ARTICLE 83. RESPONSIBILITIES

(a) The Federal President shall be the Supreme Commander of the Federal Armed Forces.

(b) The Federal President, in consultation with and on approval of the government of the Federal Union shall have the right to declare war against foreign countries and enter into agreements on the cessation of war.

(c) The Federal President has the right to grant pardons.

Comment:

(b) This sub-Article is intended as a check on the power to declare war insofar as it requires the Federal President to gain the approval of the Federal Government.

ARTICLE 84. IMPEACHMENT

(a) If the Federal President

(i) commits an act of high treason,

(ii) violates this Constitution of the Federal Union,

(iii) commits an act of gross misconduct,

he or she shall be subject to an inquiry upon the request of at least one third of the representatives of either the National Assembly or the People's Assembly.

(b) A joint committee with equal number of representatives from either of the two Assemblies shall conduct the inquiry. The findings of the inquiry shall be submitted to the Federal Congress.

(c) If the Federal Congress determines that there are grounds to impeach the Federal President, the Chairperson of the Federal Congress shall commence proceedings against the Federal President in the Federal Supreme Court.

(d) The Federal President shall be dismissed from office if he or she is found guilty by the Federal Supreme Court.

(e) The provisions of this Article shall also be applicable to the Federal Vice-President .

Comment:

This Article contains a number of safeguards in relation to the impeachment process and provides adequate checks and balances by making the impeachment process a legislative and a judicial two-stage process.

(b) In this clause, "either" should be read as "each".

ARTICLE 85. VACANCY

When a vacancy occurs in the office of the Federal President due to death or inability to continuously perform the responsibilities or by dismissal according to article (84), the vacancy shall be filled as follows:

(a) The Federal Vice-President shall perform the duties of the Federal President until the regular term of the Federal President expires.

(b) The Chairperson of the National Assembly shall perform the duties of the Federal Vice-President.

(c) If a further vacancy occurs during the regular term of the Federal President, new elections according to Article 81 shall take place.

Comment:

It is intended that the Federal Vice President shall only perform the duties of the Federal President in the event of a vacancy, and not assume the office of President.

The same comment applies to the Chairman of the National Assembly.

ARTICLE 86. IMMUNITY

No person shall be entitled to commence criminal or civil proceedings against the Federal President in respect of the performance of his or her responsibilities.

Comment:

This clause should be read as excluding impeachment proceedings. It is to be read in conjunction with Article 84.

ARTICLE 87. NO SECONDARY OCCUPATION

The Federal President and Vice-President may not hold any other salaried office, nor belong to the management of an enterprise carried out for profit.

Comment:

This Article should be read as excluding the office of Vice President when held by the Chairman of the National Assembly.(See Article 85).

**CHAPTER VII
FEDERAL GOVERNMENT**

ARTICLE 88. FORMATION

(a) The Government of the Federal Union shall be formed with Ministers headed by the Federal Prime Minister.

(b) No person shall be a Minister unless he or she is a representative of the People's Assembly.

(c) The Federal Government shall be collectively responsible to the People's Assembly.

Comment:

This Article embodies the principles of parliamentary government and collective responsibility.

(b) will not apply to Ministers under a caretaker government.

ARTICLE 89. TERM

The term of the Federal Government shall be four years and shall not exceed the term of the People's Assembly.

Comment:

This Article is intended to exclude any term of office enjoyed by a caretaker government.

ARTICLE 90. FEDERAL PRIME MINISTER

(a) The Federal President shall appoint a representative elected by the People's Assembly as the Federal Prime Minister.

(b) The candidate attaining the votes of the majority of the representatives is elected.

(c) If no candidate has been elected within fourteen days of the ballot, the candidate gaining most votes is elected.

(d) The Deputy Federal Prime Minister and the Federal Ministers shall be appointed or dismissed by the Federal President upon the proposal of the Federal Prime Minister.

(e) No representative of the People's Assembly shall serve as Federal Prime Minister for more than two terms.

(f) At the request of the Federal President, the Federal Prime Minister or the Federal Ministers, shall be obliged to continue in office until a successor has been appointed.

Comment:

In 90(b) the reference to the election of Prime Minister is intended to be read as an absolute majority rather than a simple majority.

ARTICLE 91. DEPUTY FEDERAL PRIME MINISTER

The Deputy Federal Prime Minister shall perform the duties of the Federal Prime Minister in case the Federal Prime Minister is prevented from performing those duties, and upon the authorisation of the Federal Prime Minister.

Comment:

In this Article "and upon" should be read as "or upon".

It is intended that where the Federal Prime Minister is unable to give the authority, the Deputy Prime Minister shall perform the duties.

ARTICLE 92. VACANCY

When the office of the Federal Prime Minister becomes vacant, election shall take place as provided for in Article 90.

ARTICLE 93. MOTION OF NO CONFIDENCE

(a) A no confidence motion against the Government shall be submitted not before 18 months after the formation of the Government.

(b) The People's Assembly may express its lack of confidence only by electing a successor to the Federal Prime Minister with the majority of the representatives.

(c) Not before 48 hours after the successor to the Federal Prime Minister has been elected, a motion of no confidence shall be voted upon. If the motion obtains the vote of the majority of the representatives, the entire government shall resign from office.

(d) The person elected according to sub-paragraph (b) shall be appointed Federal Prime Minister by the Federal President.

Comment:

In 93 (a), "shall" should be read as "may".

The motion of confidence in (c) refers to the motion mentioned in (a).

ARTICLE 94. POWER WITHIN GOVERNMENT

The Federal Prime Minister shall determine the policy guidelines. Within these guidelines every minister shall run the ministry on his or her own responsibility.

Comment:

It is intended that the Federal Prime Minister in laying down policy guidelines will consult with members of his Cabinet in a spirit of collective responsibility, and act in accordance with the tenets of responsible government. See also 88(c).

ARTICLE 95. MINISTRIES

The following Ministries shall be formed as necessary in the Government of the Federal Union:

- (i) Ministry of Foreign Affairs.
- (ii) Ministry of Defence.
- (iii) Ministry of Transport and Communication.
- (iv) Ministry of Finance.
- (v) Ministry of Interior.
- (vi) Ministry of Justice.
- (vii) Ministry of Energy and Mining.
- (viii) Ministry of Health, Education and Culture.
- (ix) Ministry of Forestry, Agriculture and Environment.
- (x) Ministry of Information.

Comment:

Article 95 sets out Ministries that may be formed by government. It is envisaged that these may be added to as necessary.

**CHAPTER VIII
FEDERAL JUDICIARY**

ARTICLE 96. INSTITUTION OF COURTS

(a) To exercise federal judicial powers, federal courts shall be established.

(b) The Federal Congress shall enact laws for the establishment and the proceedings of the federal courts.

FEDERAL SUPREME COURT

ARTICLE 97. ESTABLISHMENT

(a) The Federal Supreme Court shall be composed of nine judges.

(b) The Federal President shall appoint those proposed by the Federal Prime Minister and approved of by the Federal Congress as judges of the Federal Supreme Court.

(c) No person from either of the two Assemblies of the Federal Congress shall be proposed as judges of the Federal Supreme Court.

(d) The judges of the Federal Supreme Court shall elect from amongst themselves a judge whom the Federal President shall appoint as Chief Justice.

Comment:

The appointment process envisaged in (b) provides for a series of checks and balances thereby safeguarding the separation of powers - specifically independence of the judiciary..

ARTICLE 98. SITTINGS

The seat of the Federal Supreme Court shall be the capital city. The Court shall also hold sittings at other places, especially on venues of other Federal Courts in Member States.

Comment:

This Article is intended to give effect to the principle of decentralisation of the administration of justice.

ARTICLE 99. QUALIFICATIONS

The Judges of the Federal Supreme Court shall be citizens of the Federal Union and shall have practiced for at least ten years in the field of law.

Comment:

The reference to "shall have practised "in this article should be understood as "shall have experience" as laid down in the original Burmese version of this Constitution.

JUDGES OF THE FEDERAL COURTS

ARTICLE 100. JUDGES

The judges shall be appointed regardless of race, religion, colour or sex.

Comment:

It is intended that the word "race" cover "ethnic origin". It is intended that provision will be made for the appointment of judges to the Federal Courts.

ARTICLE 101. INDEPENDENCE OF JUDGES

The judges shall be independent and subject only to the law.

Comment:

It is intended that the judges should be independent of the other arms of government, in accordance with the doctrine of the separation of powers

ARTICLE 102. DEBARMENT FROM OTHER OFFICE

The judges may not:

- (a) hold any other salaried offices,**
- (b) hold a management position in an enterprise carried out for profit,**
- (c) be members of any legislative body or of a government.**

Comment:

It is hoped that a convention will be established whereby any financial interest (that is, and actual or a perceived conflict of interest) will be put in a Trust during the period during which the judges hold office.

This Article underpins the principle of separation of powers.

ARTICLE 103. REMUNERATION

The judges shall receive remuneration fixed by the Federal Congress, to enable them to independently carry out their duties.

Comment:

It is expected that judges will be remunerated adequately in order to insulate to them from any pressures in carrying out their duties.

ARTICLE 104. TERM

The term of the judges shall expire:

- (i) at their own request,**
- (ii) when being permanently incapable to perform their duties,**
- (iii) committing an act of gross misconduct, or**
- (iv) when they complete the age of 75 years.**

ARTICLE 105. INVESTIGATION

On request of the Federal Attorney General with regard to Article 104 (ii) and (iii), a joint committee of an equal number of representatives of the National Assembly and the People's Assembly shall be set up. It shall submit the findings of its investigations to the Federal Congress.

Comment:

It is expected that provision will be made for a final decision on the findings submitted to the Federal Congress.

ARTICLE 106. IMMUNITY

Judges shall at no time be liable for performing their judicial duties, except for intentional infringement of the law.

Comment:

This provision is intended to protect judges from civil and criminal proceedings in respect of performing their official duties.

JURISDICTION OF THE FEDERAL COURTS: ATTORNEY GENERAL

ARTICLE 107. JURISDICTION OF THE FEDERAL COURTS

- (a) The Federal Courts shall have jurisdiction in the following matters:-**
- (i) disputes and complaints concerning this Constitution,**
 - (ii) disputes between Member States,**

- (iii) disputes between Member States and citizens of other Member States,
 - (iv) transfer of cases from one state court to another state court,
 - (v) jurisdiction disputes between Member State courts,
 - (vi) disputes arising out of contracts between foreign companies and domestic companies or the Federal Union, and
 - (vii) bankruptcy and insolvency.
- (b) The Federal Congress shall provide by law for the exclusive jurisdiction of the Federal Supreme Court.

Comment:

(ref.Clause 32(a))

It is intended that most civil and criminal disputes will be handled by other courts including State Supreme Courts and that the power conferred on the Supreme Court under this Article shall be confined to resolution of disputes concerning the Constitution and the other disputes mentioned in this Article.

ARTICLE 108 ATTORNEY GENERAL

(a) The Federal President shall appoint a person proposed by the Federal Prime Minister and approved of by the Federal Congress, as Attorney General who shall advise and represent the Government of the Federal Union on all legal matters.

(b) The Attorney General has the right to attend sessions of the Federal Congress without the right to debate.

Comment:

It is expected that the role of the Attorney General will be defined more clearly by legislation to be enacted.

**CHAPTER IX
BASIC PROVISIONS CONCERNING THE FEDERAL UNION**

DEFENCE

ARTICLE 109.COMMAND

(a) The Federal Armed Forces shall be established for the only purpose to defend the Federal Union from external danger. They shall be under the command of the Minister of Defence.

(b) No person in active service in the Federal Armed Forces shall be appointed Minister of Defence.

Comment:

This Article is based on past experience whereby the Armed Forces have been repeatedly misused to deal with political matters.

Any request for protection from any Member State under Article 135 shall not involve the use of Federal forces, but may involve the use of any Federal police services which may be established.

This Article should be read as allowing an exception in states of emergency as outlined in chapter XII.

ARTICLE 110. DEFENCE POLICY

The Minister of Defence and the Federal Government shall formulate policies of defence, which will be implemented by the Federal Armed Forces.

Comment:

This Article is intended to prevent the Minister for Defence from determining defence policy matters unilaterally.

ARTICLE 111. ESTABLISHMENT

(a) In accordance with the requirements of the Federal Armed Forces, the Army, the Navy and the Air Force shall be established.

(b) The Federal Armed Forces units shall be drawn from the Member States on proportional basis.

(c) The Federal Congress shall enact laws on the organisation of the Federal Armed Forces.

Comment:

It is intended that this Article will be read as: "The Federal Congress shall enact laws on the organisation of the Federal Forces, that is, the Army the Navy and the Air Force, in accordance with the requirements of those Forces".

The reference in Clause (b) to "proportional basis" is intended to be read as "proportional in relation to the population".

It is intended that some weight may be given to numbers, having regard to special circumstances prevailing in particular States.

ARTICLE 112. DEFENCE ACADEMIES

Separate defence academies shall be established for the Army, the Navy and the Air Force. Officer cadets from the Member States shall be entitled to attendance on a proportional basis.

Comment:

The comment in relation to Article 111 applies to this Article as well, insofar as the reference to proportional places is concerned.

ARTICLE 113. STRENGTH

The strength of the Federal Armed Forces shall not exceed 0.1 per cent of the population of the Federal Union.

Comment:

Given the historical experience of the use of extensive forces to subdue the nation and to prop up undemocratic government, it is felt necessary to restrict the number of the Armed Forces to a small proportion of the population.

This Article does not preclude the involvement of volunteer forces in the event of a national emergency such as war.

ARTICLE 114. ARMED FORCES STAFF

(a) The Staff of the Federal Armed Forces shall consist of one commander from each Member State.

(b) The Chief of Staff shall be selected by the Prime Minister from amongst the members of the staff on an annually rotating basis.

(c) The person selected shall be appointed Chief of Staff by the Federal President.

Comment:

This Article is intended to provide participation and equality to States in the running of the Armed Forces and to prevent control of the armed services by a single Member State. However, the practical administration of the Armed Forces shall rest with a Chief of Staff selected from among those Commanders. The term of the Chief of Staff shall be for one year on a rotational basis.

ARTICLE 115. CIVIL ADMINISTRATION

The Federal Armed Forces shall at all times remain under civil administration.

Comment:

This Article reinforces the subordination of the Federal Armed Forces to the democratic civil administration.

ARTICLE 116. STATE OF EMERGENCY

In a state of emergency the Federal President shall take command of the Federal Armed Forces in his or her capacity as the Supreme Commander of the Federal Armed Forces.

ARTICLE 117. EDUCATIONAL PROGRAMS

(a) The Minister of Defence shall provide for regular instruction of the military personnel.

(b) Military training and instruction at all levels shall include the following subjects;

(i) basic principles of democracy and human rights,

(ii) outlines of civil administration.

Comment:

Having regard to the historical experience in Burma, this Article provides for the education of the Armed Forces with emphasis on the rule of law in civil society.

ARTICLE 118. COMPULSORY SERVICE

There shall be a compulsory service in the Federal Armed Forces. Details shall be subject of a federal law.

FINANCIAL MATTERS

ARTICLE 119. MINISTRY OF FINANCE

(a) The Ministry of Finance of the Federal Union shall implement financial laws enacted by the Federal Congress.

(b) The Ministry of Finance shall prepare the annual budget bill. The Government shall introduce the budget bill to the People's Assembly.

ARTICLE 120. FINANCIAL MATTERS

The Government of the Federal Union shall collect the revenue of the Federal Union, grant development aid to Member States, borrow and repay loans on behalf of the Federal Union, pay the expenses of the Federal Union, and salaries of the civil servants of the Federal Union.

ARTICLE 121. FEDERAL BANK

To manage the monetary matters of the Federal Union, Federal Bank shall be established by law. The Bank shall be independent and free from political interference. The Bank shall issue a single official currency.

Comment:

It is expected that the power to set up the Bank will be conferred on Federal Government under Article 73.

Historically, there has been gross interference in financial matters by the military. This Article is meant to reverse the trend.

ARTICLE 122. MONETARY PROVISIONS

(a) All income of the Government of the Federal Union shall be deposited in the Federal Bank.

(b) No person shall withdraw money from the Federal Union Bank except under appropriation made by law.

(c) The Government of the Federal Union is prohibited from declaring moneys to be unlawful.

Comment:

The clauses in this Article have been inserted in the Constitution because of the historical experience of the people concerning the military junta interfering and manipulating the national finances. This Article is intended also to prohibit any government from declaring any legal tender illegal.

ARTICLE 123. FINANCIAL EQUALISATION

When a Member State although carrying out its financial matters properly, arrives at a situation where it cannot carry out its functions

due to a lack of finances for some reason, or where it will reach a situation where it will not be able to carry out its functions, the Government of the Federal Union shall have the responsibility to resolve such situations by either permitting the apportionate use of Federal Union finances, or by arranging proportional assistance from other States.

Comment:

In this Article, "shall" should be read as "may".

ARTICLE 124. AUDITOR GENERAL

The Federal President shall appoint a person proposed by the Federal Prime Minister and approved of by the Federal Congress as Auditor General. The Auditor General shall have the right to audit all the accounts of the Federal Union. The findings of the Auditor General are to be submitted to the Government of the Federal Union and the Federal Congress.

Comment:

It is intended that the audit contemplated under this Article will be a mandatory audit. It is expected that the findings of the Auditor-General will be published and made available to the public.

WORKERS AND FARMERS

ARTICLE 125. WORKERS' RIGHTS

- (a) The Federal Union shall provide for working conditions that guarantee human dignity to all working persons.
- (b) Every working person shall be entitled to equal pay and conditions for equal work.
- (c) The Federal Congress shall enact laws providing for social security, appropriate working hours and leave for all working persons.
- (d) The right to freely form and participate in workers unions shall be guaranteed.
- (e) No person shall be discriminated against for seeking workers' rights in accordance with the law.

Comment:

There is a history of servitude and forced labour which has been documented by international organisations. This provision is intended to bring that situation to a halt.

It is expected that specialist tribunals or industrial courts will be set up to implement (a)-(e) on workers' rights.

ARTICLE 126. FARMERS' RIGHTS

- (a) Farmers shall have the right
 - (i) freely to grow and sell their crops and produce,
 - (ii) to pay all taxes and levies in cash, and

- (iii) to freely form and participate in farmers' unions.
- (b) Farmers shall not be discriminated against for seeking their rights in accordance with the law.**

Comment:

It is intended that the right of farmers to sell crops and produce is a right which is exercisable in the open market.

Furthermore, the right to pay in cash is intended to abolish the corrupt historical practice of farmers being compelled to pay such taxes and levies in produce.

CIVIL SERVANTS

ARTICLE 127. TRAINING OF CIVIL SERVANTS

- (a) The Government of the Federal Union and the Government of every Member State shall establish appropriate institutes for conducting civil service training courses. The institute for senior service courses shall be under the direction of the Ministry of the Interior.**
- (b) The participants in senior and special service courses shall be drawn from the Member States on a proportional basis.**

Comment:

The intention of this Article is to provide for equity in training for the senior civil service.

ARTICLE 128. FREE CHOICE OF DEPARTMENT

Civil servants may not be hindered from changing departments.

Comment:

This Article is intended to prevent arbitrary prohibition of movement of civil servants between departments.

HUMAN RIGHTS COMMISSION

ARTICLE 129. HUMAN RIGHTS COMMISSION

- (a) The Federal Prime Minister shall establish Human Rights Commission consisting of seven members whom the Federal Congress has consented to.**
- (b) The Commission shall be competent to investigate on its own initiative or on a receipt of a complaint any alleged violation of human rights.**
- (c) The Human Rights Commission shall submit a report of its activities to the Federal Congress.**
- (d) The Federal Congress shall enact laws with regard to the competences of the Human Rights Commission.**

Comment:

Given the persistent refusal of previous regimes to acknowledge the concept of Human Rights, this Article is intended to underpin the supreme importance of that concept, and to create wide public awareness of it.

It is intended that the Federal Congress shall, on receipt of the findings of the Human Rights Commission, refer appropriate cases of Human Rights violations to competent courts.

It is also hoped that the Federal Congress will deal with such findings in a non-partisan manner, and that the reports of the Human Rights Commission shall be published and made widely available.

CHAPTER X MEMBER STATES OF THE FEDERAL UNION

ARTICLE 130. SELF DETERMINATION

The Member States shall have the right of self-determination in accordance with this Constitution.

Comment:

This Article is intended to give the maximum possible autonomy to the Member States in accordance with this Constitution.

It is hoped that the right conferred by this Article will be used responsibly by Member States after the widest possible consultation with the peoples, for example, through a referendum.

ARTICLE 131. STATE CONSTITUTIONS

(a) The Constitutions of the Member States shall conform to the democratic principles of this Constitution.

(b) The National Autonomous Regions and Special National Territories shall within their areas have the right to manage all affairs of local concern in accordance with the constitution of the respective Member State.

Comment:

(a) is intended to encourage the Member States to practise the concept of democracy in their own States and to ensure that they do not act contrary to the principles laid down in this Constitution.

(b) is intended to offer special protection to the small minorities who are unable to form Member States on their own strength.

ARTICLE 132. LEGISLATIVE, EXECUTIVE AND JUDICIAL POWERS

Member States shall be entitled to legislative, executive and judicial powers.

Comment:

Historically, the Member States have not been able to exercise such powers, and this has denied them the benefits of federation, has led to conflict, and has prevented them from managing their own affairs.

It is intended that the powers conferred by this Article will be exercised in conformity with the provisions of this Constitution, including multi-party democracy and the separation of powers.

ARTICLE 133. STATE CONGRESS

To ensure minority rights, one assembly of State Congress may be based on the population of that Member State, and the other may be composed of representatives from National Autonomous Regions and Special National Territories on proportional basis.

Comment:

Although Member States are not under an obligation to have a bi-cameral system, when they do exercise the option, this Article reinforces the intention of those who drafted this Constitution to confer additional protection to the small minorities within Member States.

ARTICLE 134. SECURITY FORCES

Member States may establish security forces, the strength of which may not exceed (0.1) per cent of the state population.

ARTICLE 135. GUARANTEE OF FEDERAL PROTECTION

The Federal Union guarantees that it will on request protect any Member State from external and domestic danger.

Comment:

There is a need to reconcile the duty imposed by Article 135 with (a) of Article 109, the modalities of which it is hoped will be worked out in due course.

**CHAPTER XI
CITIZENSHIP**

ARTICLE 136. FEDERAL UNION CITIZENS

- (a) A Citizen of the Federal Union of Burma is anybody, who
- (i) possesses Burmese citizenship at the time of the adoption of this Constitution,
 - (ii) is born of parents both of whom are Burmese citizens,
 - (iii) has been granted citizenship according to a federal law.
- (b) Burmese citizens who have been deprived of their citizenship prior to the adoption of this Constitution, shall have that citizenship restored on application.

Comment:

(b) is intended to address the injustice caused to a number of Burmese citizens who have been arbitrarily deprived of their citizenship since Independence by successive regimes.

In this Article "shall" should be read as "may".

ARTICLE 137. FOREIGNERS' RIGHTS TO CITIZENSHIP

(a) All foreigners born prior to 4 January 1948 in Burma and since then residing continuously in Burma shall be entitled to Burmese citizenship.

(b) Federal legislation shall make it possible for foreigners to acquire Burmese citizenship.

Comment:

This Article is intended to confer citizenship rights on those foreigners who have been arbitrarily deprived of the right to acquire Burmese citizenship by successive regimes since Independence.

ARTICLE 138. DUAL CITIZENSHIP

Burmese citizens acquiring a foreign citizenship may not lose their Burmese citizenship.

Comment:

This Article is intended to give to persons of Burmese extraction, who may be living abroad and who have obtained foreign citizenship, the opportunity to regain Burmese citizenship so that they can offer their services to Burma.

ARTICLE 139. MEMBER STATE CITIZENSHIP

The legislature of the Member States shall be entitled to enact laws for Member State citizenship.

Comment:

This provision is intended to preserve the ethnic identity of the peoples of Member States and it is expected that it will not be applied inconsistently with the basic rights laid down in chapter II of this Constitution.

**CHAPTER XII.
STATE OF EMERGENCY**

ARTICLE 140. STATE OF EMERGENCY

A state of emergency shall be declared when:

- (i) the territory of the Federal Union is attacked by external armed forces or such an attack is imminent,**
- (ii) massive destruction, death and injury resulting from natural disasters have occurred,**

(iii) peace and security of the population are seriously threatened.

Comment:

Historically, regimes have misused the power to declare states of emergency for purposes of self-preservation. This Article is intended to prevent such misuse of power. It is expected that the power conferred by this Article will only be used to meet genuine situations of exceptional threat to the peace and security of the people.

ARTICLE 141. DECLARATION

On request of the Federal Government, the Federal President shall declare the state of emergency for the territory either of the whole Federal Union or part of it.

ARTICLE 142. PERIOD

The period of the state of emergency shall be stated in the aforesaid declaration and shall not exceed six months from the date of the declaration. Any prolongation, which may neither exceed six months, affords the approval of the Federal Congress.

ARTICLE 143. MANDATE AND RESPONSIBILITY

(a) The Federal Government shall during a state of emergency be entitled to

- (i) deploy security forces of the Member States,**
- (ii) issue directives to State Governments.**

(b) The Federal Armed Forces may only be deployed when actions taken by security forces of the Member States are insufficient. Such deployment shall be approved by the Federal Congress.

(c) The Federal Government shall during the state of emergency report on all actions taken to the Federal Congress.

ARTICLE 144. JUDICIARY IN THE STATE OF EMERGENCY

In any state of emergency judicial power shall remain with the courts. Courts for special jurisdiction shall not be admissible.

Comment:

Articles 141-144.

These Articles are intended to provide certain safeguards against the abuse of emergency power. However, in the light of recent discussion, it appears that these provisions require further consideration with a view to ensure the incorporation of further safeguards.

ARTICLE 145. LAWS, COURTS AND LEGAL PROCEEDINGS

(a) Any law being in force prior to the adoption of this Constitution and not contradicting it shall remain in force.

(b) Courts on all levels shall continue their proceedings until a new judiciary system has been established according to this Constitution.

ARTICLE 146. CIVIL SERVANTS

All civil servants carrying out their duties at the time of the adoption of this Constitution shall remain in office.

CHAPTER XIII TRANSITIONAL PROVISIONS

ARTICLE 147. INTERNATIONAL TREATIES

All treaties with foreign countries or companies entered into by the Burmese government prior to the adoption of this Constitution shall be reviewed by the Federal Government and then referred to the Federal Congress.

Comment:

This Article gives recognition to the belief of the Burmese people that the acts of successive previous regimes lack democratic legitimacy and therefore need to be reviewed. However, this will not prejudice the continuing in force of existing Treaties unless they are expressly revoked or denounced.

ARTICLE 148. CENSUS

After the adoption of this Constitution, the Federal Government shall take measures to carry out a census of the whole population.

Comment:

This Article is intended to fill the gap that has arisen because no comprehensive nationwide census has been conducted for many decades in Burma.

CHAPTER XIV AMENDMENT TO THE CONSTITUTION

ARTICLE 149. ADOPTION OF THE BILL

(a) This Constitution may be amended only by a law expressly modifying or supplementing its text.

(b) Any amendment of this Constitution shall be effected in the following manner:

(i) A bill of amendment shall be introduced in either the People's Assembly or the National Assembly by at least one third of the representatives of the respective Assembly.

- (ii) The proposal shall be notified to the respective other Assembly, the Federal Government and all Member States.**
- (iii) The Federal Government and the Member States shall submit their comments to the Federal Congress within 45 days from receiving the proposal.**
- (iv) At a joint session according to Article (41) (b), the bill of amendment must be carried by a vote of two thirds of the representatives of each assembly to become law.**
- (v) Such law shall then be signed by the Federal President and promulgated in the Federal Law Gazette.**

Comment:

(a) The reference to the law in (a) is a reference to any law passed under the procedure prescribed by (b) in this Article.

(b) (i) It is intended that the Bill referred to in (b) (i) would be a Bill supported by at least one-third of total membership of the National Assembly of the People's Assembly.

Transmitted by Burma Lawyers' Council