

## **From Rhetoric to Action: How an NLD-led Government Can Put Federalism into Practice**

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When President U Htin Kyaw in his inaugural speech to the nation talked about the NLD-led government's commitment to federalism, almost everyone had welcomed it.

But for the form of federal arrangement acceptable to the country's ethnic nationalities to take root, amending the 2008 constitution remains the necessary first step. Yet, the NLD can still show to their non-Burman ethnic counterparts their federalist commitment even in the absence of constitutional change. In other words, there are many areas in which the 2008 constitution bears resemblance to a federal character, albeit imperfectly. The new NLD government can seize upon this and put federalism into practice without having to worry about the primacy of amending the constitution, or antagonizing the military establishment or radical religious movements such as Mabatha (Association to Protect Race and Religion).

Federalism by its very nature implies decentralization of power. If some of what we have seen over the last few weeks is indicative of a trend to come under the new NLD-led government, it should be a cause for concern for us, ethnic nationalities. Highly centralized decision-making process in the appointment of State and Regional Executives or Chief Ministers and the NLD's decision to keep a functioning discriminatory state institution such as the Ministry of Religious Affairs in a religiously diverse country makes one wonder about whether these actions really conform to the core values of federalism to which the NLD subscribed.

Not all provisions in the 2008 constitution or the 'existing laws' are necessarily against federal practice. With enough political will, there are a number of crucial areas in which the NLD government can work to match their federal rhetoric with real actions within the existing framework. From an ethnic Chin perspective, here are the seven areas where I think the NLD-led government can take advantage of to make tangible difference without having to amend the constitution first, such actions that can augment both its domestic (especially non-Burman ethnic) and international support base.

### **1. Appointment of State/Regional Executive or Chief Minister**

Although this is a presidential prerogative under section 261 of the constitution, there is no legal provision that prohibits the concerned State or Regional Legislatures to nominate/recommend a Chief Minister of their own choosing. This is also true with the 1947 constitution. But Prime Minister U Nu did choose to appoint a Chief Minister from among the party that had the most elected representatives, ostensibly out of respect for federal ideals. We do have a precedent here. Comparatively, in India, the party that has the most elected legislative members get to choose their own State Chief Minister even though the President wields the power of appointment. By contrast, the NLD for some reason chose not to follow through the precedent and instead, used its Central Executive Committee to handpick the State and Regional Chief Ministers. This unfortunately fails to meet the minimum standard of federal practice and the essence of self-determination to which the ethnic nationalities aspire. And by making full use of section 261 of the constitution and not exercising due discretion, the NLD might have missed a perfect opportunity to show its federal commitment and empathetic-ness to the non-Burman ethnic cause.

### **2. Equality and the right to freedom of religion**

To a certain extent the right to freedom of religion is already enshrined in section 352 of the constitution. Moreover, section 361/362 'recognizes' the five major religions in the country. In accordance with these

constitutional provisions, the NLD government can take concrete measures to address religious inequality by granting formal religious land ownership to non-Buddhist adherents. (For example in Chin State, 99.9 percent of the over 2000 local Christian church buildings do not have official permission, thus rendering them essentially 'illegal'.) The NLD must also do away with state interference with individual belief and conscience. Both the Ministry of Home Affairs and Ministry of Immigration and Population require registration of a person's religious faith in official records and on identity cards, which necessarily leads to discrimination on grounds of a person's religious identity.

### **3. Natural Resources**

Section (a) through to section (g) of Chapter 6 under Schedule 1 of the constitution vests all legislative powers under the purview of the Union Government concerning all natural resources. However, the constitution does not prohibit the Union Government to delegate or share management responsibility for natural resources governance. It only states that the Union Government has the authority. It can be inferred from this provision that the Union Government also has at its discretion delegate power to the State and Region governments by giving them an equitable share of management responsibility. To take an example of the exploration of nickel ore in Chin State, the Union Government had reportedly made a commitment to transfer a two-percent share of profits from the mining venture to the Chin State government. At present, most ethnic States are demanding for a 70 percent share of revenue from natural resource exploitation in their areas. While this demand can probably not be realistically met overnight, the NLD government can still meet them half way, say at 40 percent.

### **4. Mother-tongue basic education**

In fact, this has been one of the central demands of students' groups protesting the draft National Education Law, some of whom are close allies of the NLD. It is not just enough to learn one's mother language as a separate subject in basic education school. It is imperative that mother tongue itself is used as a medium of instruction. In other words, basic education should incorporate mother tongue learning as a central element. The Union and State government should have a 50-50 share of responsibility in curriculum/syllabus development. This kind of arrangement is not just unique to federal countries but is also widely practiced in non-federal states.

### **5. Demarcation of State/Region boundaries**

For the non-Burman ethnic people, land and territories have deeply significant meanings and play vital roles in their culture, traditions, spiritual practice, heritage and identity. Territorial boundaries should be restored in accordance with the 1947 constitution and other applicable laws.

### **6. Decentralization of power**

Without having to amend the constitution and with enough political will, a government with absolute majority can easily decentralize power by delegating certain responsibilities to the State and Region governments. This can be done with due process under the current constitutional framework. The Union Government has a list of over 150 legislative power under Schedule 1 of the constitution. Much of these can be transferred to the State and Region governments. It is tempting to pre-conclude that this is simply impossible. But examples in other countries, including the United States, have shown that certain powers can be transferred from one layer of government to another either due to economic or security situation at a given period of time. At a minimum, the

State and Region should have the power to appoint civil servants at a sub-national level, as well as issue permits and licenses for small-scale industries.

## **7. Review and repeal laws and institutions infringing the rights of minorities**

An obvious case in point is the Ministry for Religious Affairs. No genuine democracy with plural societies should maintain a law or institution whose explicit nature is discriminatory against minorities. One might argue that keeping the age-old Ministry of Religious Affairs has its own political merits in the face of a growing radical religio-nationalist movement in the country. In fact, Article 5 under Chapter 1 of the Nationwide Ceasefire Agreement, which was signed by both the President and Commander-in-Chief, has already committed to building a 'secular state.' This in itself negates any argument for keeping the Ministry of Religious Affairs under a democratic government. Moreover, the four set of laws, so-called Race and Religion Protection Laws, must be repealed.

In summary, some might argue that it is essentially meaningless to have all of these progressive measures undertaken without having the constitution amended first. But the merit lies in the actual experience that will be gained from the very practice/exercise of doing it:

(a) It will serve as an eye-opening, or even inspiration for skeptics who might be nervous about the possible fallout from political wrangling around the debates on decentralization of power and greater ethnic rights. With successful implementation of policies that accommodate everyone's interests, skeptics will come to realize that greater ethnic rights are not about Burmans granting non-Burman ethnic people their rights, from out of their pockets, or something as a loss for the nation. Instead, they will come to comprehend that decentralization of power not only facilitates a more efficient administrative machinery but is vital to the speedy development of the nation as a modern democratic state.

(b) Having recognized the NLD's goodwill, the non-Burman ethnic people will develop greater trust on the NLD leadership, which many still view as essentially another Burman-dominated club. And the danger for the NLD lies in not opting to implement reform measures that can otherwise be easily single-handedly undertaken with their near-super majority in parliament. If these relatively small but significant issues are not dealt with by the NLD-led majority government, it will prove to be even more difficult when confronted with other more substantive issues that cannot be sorted out single-handedly by NLD alone inside the parliament, and involve multiple players outside of the parliament - such thorny issues as the questions of a Federal Army, State-based constitutions, delegation of residual powers, ethnic-based territorial demarcation of federal constituent political units etc.

After all, there will be no need for ethnic armed groups to exist if the NLD is able to successfully bring to fruit the promise of federalism, as laid out in the President's inaugural speech. We would not need to have negotiations after negotiations, let alone contemplating about whether to have a two, three or five party-dialogue. In short, the NLD majority government has everything to gain from addressing all these small yet significant issues without focusing all their energy on "changing the constitution first". By so doing, it will gain the trust of not only the ethnic people but that of the entire nation, leading to a sustainable, peaceful and prosperous federal union.

By

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