

PROPOSALS OF ETHNIC COMMUNITY DEVELOPMENT FORUM TO THE
FEDERAL CONSTITUTION DRAFTING AND COORDINATING COMMITTEE
CHIANG MAI, 10 FEBRUARY 2006

The ECDF after careful consideration of the 8 Basic Principles, all the issues to be kept in consideration, the draft FUB Constitution and interacting with the three honourable members of the FCDCC make the following proposals to the FCDCC for necessary consideration and incorporation in the draft FUB constitution. These proposals are initiated with consultations with experts, discussed threadbare and recommended to the FCDCC:

PROPOSAL I

A New Chapter on "Economic Social and Cultural Rights" including the Three Principles of Development for the people and Strengthening of old Art 21 - The Right to Intellectual Property

A new chapter to be added immediately after the Chapter on Basic Rights under the title of **ECONOMIC, SOCIAL AND CULTURAL RIGHTS (Please refer to ECDF Note on Justification annexed)**

This new chapter will include the relevant provisions the existing Basic Rights and also include the ECDF recommendation of the 3 Principle of Development for the people of Burma. The articles in Basic Rights should be re-organized and renumbered technically as necessary. The articles in new Chapter of Economic, Social and Cultural Rights will be numbered accordingly with reference to aforementioned renumbering.

Draft of Proposed Chapter on "ECONOMIC, SOCIAL AND CULTURAL RIGHTS"

Article - (old Art 18, new number to be assigned): The Right to Work

Every citizen shall have the right to work and the freedom to choose his or her occupation free of discrimination based on birthplace, religion, class or social status, gender, color, race or ethnicity, or age.

Article - (old Art 19, new number to be assigned): Property Rights

- (A) Every citizen of the Federal Union of Burma shall have the right to own, transfer, dispose trade, sell, devise and inherit lawfully acquired property.
- (B) The rights in subsection (A) shall be revoked or restricted only for the benefit of the public large in accordance with law. In revoking these private rights for public at interests, proper and adequate compensation must be awarded in accordance with law.

Article - (old Art 20, new number to be assigned): The Right to Pursue a Living

- (A) Every citizen of the federal Union of Burma shall have the right freely to pursue a living and to establish business associations.
- (B) The Federal Union of Burma may regulate the right specified in subsection (A) above in the interest of economic policy, planning, national security, the public interest, and public health.

Article - (old Art 21, new number to be assigned): The Right to Intellectual Property

(New A) Every citizen of the Federal Union of Burma shall enjoy the freedom to engage in creative work and to establish the right to intellectual property in accordance with the law.

(New B) The freedoms in subsection (A) shall be also enjoyed by the ethnic nations and nationalities, and the local communities, including the rights to cultural heritage and tangible or intangible traditional or customary cultural properties.

Article - (old Art 23, new number to be assigned): Rights to Education

Every citizen of the Federal Union of Burma shall:

- (A) Have the right freely to pursue an education
- (B) Have the right freely to choose his or her desired subject, course of vocational training, and higher education;
- (C) Be provided a mandatory free basic education.

Article - (old Art 29, new number to be assigned): Ethnic Nationalities Language

[Please also refer to PROPOSAL VII below for a specific proposal with regard to language]

Every citizen shall have the right feely to learn his or her languages, including but not limited to his or her ethnic language, and shall have the right to develop and promote his or her own language and literatures, including but not limited to his or her own ethnic languages and literatures

Article - (old Art 30, new number to be assigned): Cultural rights

Every citizen shall have the right to develop and promote his or her cultures, customs, and traditions.

Article - (old Art 31, new number to be assigned): The Right to Establish Academic Institutions

The right to establish private schools, universities, colleges, science and vocational training institutions, and higher academic institutions shall be guaranteed.

NEW ARTICLES PROPOSED FOR INCORPORATION HEREIN

Article - (new number to be assigned): The Rights to Ownership of Natural Heritage and Resources

The people shall have the right to ownership, use, management, continued conservation of their natural heritage and natural resources which have been handed down from generation to generation.

Article - (new number to be assigned): The Right to Prior and Informed Consent

With the prior and informed consent of the people, and after considering the imperative need to protect the environment, the people shall have the right to freely make their own decision with regard to their development activities of community concern.

Article - (new number to be assigned): The Right to Sustainable Development

The people shall exercise their right to sustainable development after consideration of the protection of environment, rational management of natural resources, the needs of people and future generations.

PROPOSAL II

Right to Recall

New Article 77: The Right to Recall

Notwithstanding Article 76 Subsection (A), on the petition signed and duly submitted by not less than 20,000 citizens who have right to vote at the time of petition, urging upon the recall of a people's representative, that particular representative shall be recalled.

PROPOSAL III

Right to Referendum

Article 103 New Subsection (N)

(N) The President of the Federal Union shall constitute a 3-member Referendum Commission comprising the Speaker of the Chamber of the People's Representatives, and a member each from the government and opposition. The Referendum Commission shall hold the nation wide Referendum on vital issues of the Federal Union, or the ethnic nations, or ethnic nationalities.

PROPOSAL IV

Replace Article 92 Subsection (9) *International Trade Regulations by the following:*

"International trade and commerce, International Financial Institutions and Arrangements"

Replace Article 92 Subsection (1) *Foreign Affairs by the following:*

"Foreign Affairs, Diplomacy and United Nations"

PROPOSAL V

Right to Petition and Initiate Legislation

Article 177 on the Expression of Public Opinion to be replaced by the following:

Article 177 (New text): The Right to Petition and Initiate Legislation

Any citizen, or group of citizens may make petition or submit opinion or advice to any government authority, and also submit draft legislation for enactment by the Assembly of the Federal Union of Burma and respective Assemblies of the Member States.

PROPOSAL VI

Specific proposals have also been made by ECDF for improvement of the following Articles of the draft FUB Constitution:

Articles 6

Proposal to re-word the English text as "Separation of Powers"

Article 7

A specific provision of the power 'to cede territories by the Federal Union of Burma' should be provided in the Draft FUB Constitution.

Article 11 (D)

The Right to Life is an important basic right that should be provided for in a separate Article.

Current draft provides for this right as a Subsection to Article 11. Articles 11 and 12 are also identified in the current draft as Irrevocable Rights in Article 13. This is read as a clear indication that the Federal Union of Burma shall accede to Optional Protocol II of the International Covenant on Civil and Political Rights (ICCPR 1966) on the question of the Death Penalty. The Government of Burma is a State Party to the ICCPR, and has, therefore, binding international obligations.

A specific proposal for a new Article under Basic Rights is as follows:

Proposed New Article of Basic Rights (To be assigned a new number)

No person in the Federal Union of Burma shall be deprived of his or her life except under due process of law.

Article 14

The 'Freedom of Conscience' is an important freedom for every citizen in the federal Union of Burma. The relevance of this individual freedom in the political and historical experience of modern Burma need not be reiterated.

A specific proposal is to include this freedom under Article 14 Subsection (B) or, alternatively, include this freedom as new Subsection of Article 14

Proposed New Article 14 (B)

The right to worship, practice religion and freedom of conscience

Article 116

The Power to create a new Ministry, or any number of Ministries, as appropriate and in accordance to needs of the people and Federal Union of Burma should be clearly provided for under Article 116 of the draft FUB Constitution. Ministries should not be permanently limited to 13, or 14.

Article 155

Proposal to include Financial Emergency in the list of emergencies under Article 155 A State of Emergency

New Article 155 Subsection (D)

"Financial emergency that threatens to injure or destroy the security and sovereignty of the people"

Article 169

The Federal Union of Burma, in accordance to being State Party to the UN Convention on the Rights of the Child and also in accordance to Basic Principle No. 5 may include the following Commissions under the provisions of Article 169 of the draft FUB Constitution:

The Children's Commission

The Commission on National Minorities

PROPOSAL VII

Articles 8 and 29 of the draft FUB Constitution make provisions with regard to language. However, none of these said articles address the issue sufficiently or explicitly with regard to the protection and promotion of the languages of the Ethnic Nations and Ethnic Nationalities as National Languages. In the Federal Union of Burma, the national recognition, protection and promotion of the ethnic nationality languages of the people is an imperative to firmly secure understanding and unity in due diligent accordance with, *inter alia*, established Basic Principles No. 2, 3, 4, and 5.

Proposed New Article 9: National Languages

The Federal Union of Burma recognizes the following as the national languages:

- 1) Burmese
- 2) Kachin
- 3) Karen
- 4) Karenni
- 5) Chin
- 6) Mon
- 7) Arakanese
- 8) Shan