



တရားစီရင်ရေးဆိုင်ရာ ဘဏ္ဍာငွေအရအသုံးစာရင်း

၂၉၇။ ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်သည် တရားစီရင်ရေးဆိုင်ရာ ဘဏ္ဍာငွေအရ အသုံးစာရင်းများကို ဖွဲ့စည်းပုံအခြေခံဥပဒေပါ ပြဌာန်းချက်များနှင့်အညီ ပြည်ထောင်စု၏ နှစ်စဉ်ဘဏ္ဍာငွေအရအသုံးဆိုင်ရာ ဥပဒေကြမ်းတွင် ထည့်သွင်းတင်ပြနိုင်ရန် ပြည်ထောင်စု အစိုးရထံ တင်ပြရမည်။

တရားစီရင်ရေးဆိုင်ရာ အခြေအနေတင်ပြခြင်း

၂၉၈။ ပြည်ထောင်စုတရားသူကြီးချုပ်သည် ပြည်ထောင်စုလွှတ်တော်အစည်းအဝေးတွင် ဖြစ်စေ၊ ပြည်သူ့လွှတ်တော် သို့မဟုတ် အမျိုးသားလွှတ်တော်အစည်းအဝေးတွင်ဖြစ်စေ နိုင်ငံတော် သို့မဟုတ် အများပြည်သူတို့နှင့်သက်ဆိုင်သည့် အရေးကြီးသောတရားစီရင်ရေးဆိုင်ရာ အခြေအနေကို အခါအားလျော်စွာ တင်ပြနိုင်သည်။

ပြည်ထောင်စုတရားသူကြီးချုပ်နှင့် ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်တရားသူကြီးများ ခန့်အပ် တာဝန်ပေးခြင်း

- ၂၉၉။ (က) ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်၏ အကြီးအမှူးကို ပြည်ထောင်စုတရား သူကြီးချုပ်ဟု ခေါ်ရမည်။
- (ခ) ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်တွင် ပြည်ထောင်စုတရားသူကြီးချုပ် အပါအဝင် ပြည်ထောင်စုတရားလွှတ်တော်ချုပ် တရားသူကြီးများဦးရေအနည်းဆုံး ခုနစ်ဦးမှ အများဆုံး ၁၁ ဦးအထိ ခန့်အပ်နိုင်သည်။
- (ဂ) (၁) နိုင်ငံတော်သမ္မတသည် ပြည်ထောင်စုတရားသူကြီးချုပ်အဖြစ် ခန့်အပ် သင့်သော ပုဂ္ဂိုလ်၏အမည်စာရင်းကို ပြည်ထောင်စုလွှတ်တော်သို့ တင်သွင်းသောတူညီမျှက် ရယူရမည်။
- (၂) ပုဂံမ ၃၀၀ တွင် သတ်မှတ်ထားသော ပြည်ထောင်စုတရားသူကြီးချုပ် နှင့် ပြည်ထောင်စု တရားလွှတ်တော်ချုပ် တရားသူကြီးများ၏ အရည်အချင်းများနှင့် မပြည့်စုံကြောင်း အထင်အရှားမပြနိုင်ပါက ပြည်ထောင်စု လွှတ်တော်သည် နိုင်ငံတော်သမ္မတက ပြည်ထောင်စု တရားသူကြီးချုပ်အဖြစ် ခန့်အပ်ရန် အမည်စာရင်းတင်သွင်းသူကို ငြင်းပယ်ခွင့်မရှိစေရ။

Judiciary Budget

297. The Supreme Court of the Union shall submit judiciary budget to the Union Government in order to include and present in the Annual Budget Bill of the Union in accord with the provisions of the Constitution.

Submission of the Judiciary Situation

298. The Chief Justice of the Union may submit important judiciary situation concerning the Union or the public, either to the session of the Pyidaungsu Hluttaw or the Pyithu Hluttaw or the Amyotha Hluttaw from time to time.

Appointment of the Chief Justice of the Union and the Judges of the Supreme Court of the Union

- 299. (a) The Head of the Supreme Court of the Union shall be called the Chief Justice of the Union.
- (b) Judges of the Supreme Court of the Union including the Chief Justice of the Union may be appointed in the Supreme Court from a minimum of seven and a maximum of 11 in number.
- (c) (i) The President shall submit the nomination of the person suitable to be appointed as the Chief Justice of the Union to the Pyidaungsu Hluttaw and seek its approval.
- (ii) The Pyidaungsu Hluttaw shall have no right to refuse the person nominated by the President for the appointment of Chief Justice of the Union and Judges of the Supreme Court of the Union unless it can clearly be proved that the persons do not meet the qualifications for the post prescribed in Section 301.

U Kyin Thein, Page 127 (Article 299(c))

Arrested in 1995 for 8 years for the charges of ‘published law and illegal organization’. In January 1993, Myanmar’s National Convention was first convened by the military to draft the country’s new constitution. On November 1995, Daw Aung San Suu Kyi issued a press statement that criticized the National Convention for being undemocratic in its composition and work procedures (only 15% of the 677 delegates had been actually elected). After this, all 86 of the NLD delegates briefly attended the Convention and then walked out. One of them was U Kyin Thein. They were officially expelled from the Convention for being absent without permission.

PAGE 127 OF THE 2008 CONSTITUTION. ARTICLE 299 (c)(i)-(ii). This Article excessively limits the legislature’s ability to participate in the appointment of judges, giving the President almost unrestricted power over the appointment process.

NAME OF POLITICAL PRISONER: U Kyin Thein

GENDER: Male ETHNICITY: Burmese RELIGION: Buddhism DATE OF BIRTH: 2.9.1959 Age 55 EDUCATION: Geography at Yangon University OCCUPATION: Tuition teacher at free NLD Education School (Mother Home School)

TIME IN PRISON

ARRESTED on November 1995 for 8 years for the charges of ‘published law and illegal organization’. Myanmar’s National Convention was convened to formulate basic guidelines to draft the country’s constitution. On November 1995, Daw Aung San Suu Kyi issued a press statement that criticized the National Convention for being undemocratic in its composition and work procedures (only 15% of the 677 delegates had been actually elected). After this, all 86 of the NLD delegates briefly attended the Convention and then walked out. One of them was U Kyin Thein. They were officially expelled from the Convention for being absent without permission.

WISHES FOR 2015: Free and fair elections.

HISTORY CLOSE-UP: THE 2008 CONSTITUTIONAL REFORM

The sweeping electoral victory of the National League for Democracy (NLD) that followed in 1990 was denied by the military. Many of the NLD’s elected members were locked away in prison under brutal conditions. The leader of the NLD, Daw Aung San Suu Kyi, spent many years under house arrest. In those years, a process of drafting a new constitution was initiated by the military. Proceedings were under strict control of the military. Any criticism of the constitution-making process was criminalised.

From 1988 to 2011, the military ruled in Burma (which it changed to ‘Myanmar’) without a constitution. Since 2011, the regime has allowed for a transition to a more democratic form of government led by a civilian-military government. The 2008 Constitution was a key part of this process. Yet the form of legality it endorses is one that ensures the executive-military remains in firm control of the transition process.

In February 2013, the reformist President Thein Sein announced that a committee would be established in the national parliament to consider amendments to the Constitution. This has created a welcome window of opportunity for constitutional reform. This potential avenue for real change is important for a number of reasons.

First, the 2015 elections are fast approaching. The 2008 Constitution was specifically designed to ensure that Daw Aung San Suu Kyi, as the leader of the democracy movement, could never run as president. The provisions on the requirements of a presidential candidate must be amended so that she is allowed to be nominated as president by the presidential electoral college.

The second is the role of the military. The 2008 Constitution appears to implicitly sanction the military as a fourth branch of government. It allows the military to occupy a quarter of the seats in parliament, and it leaves open the possibility for the military to take over power at any time. The Commander-in-Chief also occupies a position that potentially rivals that of the President, and his powers in a state of emergency are absolute. These privileges amount to abuse of the rule of law and must be abolished. Seats in parliament should not be reserved for the military, and the military must be made subordinate to the executive branch.

The third is the separation of powers. While the Constitution recognises a limited form of the separation of powers, it is clear that the executive retains control over both the judiciary and the legislature. It is vital that a separation of the branches of government is made real. In particular, the judiciary must be granted independence through a transparent appointment process and security of tenure.

Fourth, federalism is an issue that remains to be addressed. At its heart is the relation between the central government and local communities. The key consideration is to give greater powers to the States and Regions to govern their own affairs. At present, the Chief Ministers of the States and Regions are appointed by the President. At the very least, this appointment process must change so that the States and Regions are empowered to independently appoint their own Chief Ministers. An additional step forward would be to empower State and Regional governments to manage their own affairs, without threat of national government interference.

Finally, this amendment process must open up opportunities for future constitutional amendments. The Constitution sets an extremely high benchmark in order to pass amendments. It requires more than 75 per cent of all representatives in the national parliament, as well as more than half the votes at a national referendum. This leaves no doubt that the military controls the current constitutional amendment process, given that it occupies 25 per cent of the seats in parliament. The provision on amending the Constitution must be amended to ensure that this is no longer the case.

The list of potential amendments could go on, yet the above issues would be a real start. These formal and structural reforms to the legal order would then open the way for more substantive changes to take place.