

The KIO proposal for constitutional provisions and clauses

From: The Central Committee, Kachin Independence Organization (KIO),
Special Region 2.

To: The Chairman, National Convention Commission, and National leaders of
the Union

Subject: The KIO strongly urges the adoption of the following amendments in
the Constitution.

1. Concerning the foundational system for the organization of the Union

(1) As currently intended, the Union will be composed of constituent states; we believe that specifying these additional goals clearly and concretely will be necessary. One, that the constituent state union system of state be technically and genuinely a system of federation of states, and two, that this system of state organization be fully transparent in its implementation. We are mindful of the fact that, whereas, the Constitution of 1947 specified a Union that is a federation of states, what actually transpired was a system where all political power was centralized, as in a *unitary system*, instead of a *federation*, and one constituent state alone held that power.

Therefore, to effectively preclude a recurrence of this fate, and the calamitous results, we urge in the strongest sense possible, that a specific constitutional mandate be included for a federal system of union and for its judicious implementation.

(2) According to the current provisions the country is to be divided into seven major divisions, and seven constituent states; further, that the major divisions and constituent states shall have exactly the same rights and authority.

We most strongly suggest that this idea be completely reconsidered, and the reason for this is clear. The constituent states are intended to be for ethnic nationality communities, and since political self-determination is already inherent in the very concept of the ethnic nationalities as constituents, we strongly urge that this right be made explicit in the constitution itself.

2. Concerning the division of authority of government

In the system of division of governing authority as currently planned the three major branches of authority are, the legislative, administrative and justice departments. These three branches of government are to apply uniformly in all levels of government, namely, the Union, the major divisions, the constituent states and in specially created self-governing units.

We strongly urge that when this proposed system is actually implemented, the authority situated in the major divisions and the constituent states be fairly and appropriately divided to separate the empowerment of each entity. In other words, major divisions and constituent states should not be identical copies of each other. We believe that much more legislative power should be granted to the major divisions and constituent states than currently envisaged. We especially want to point to the situation in constituent states where the legislatures must have the capability to function as self-governing bodies.

We propose that the legislative functions of the major division and constituent state level must be given more authority than currently conceived. We cite as example the situation where constituent state legislative bodies must make laws affecting the nationality groups in their states, but that authority clearly is not applicable in a major division.

Examples-

(1) The right of an ethnic nationality community to offer language and literature programs to promote and preserve cultural heritage, to offer instruction programs in schools, and to recognize the primary ethnic national language of the state as the second official language.

(2) In matters related to the preservation and promotion of ethnic cultures.

(3) To enable ethnic national communities to use their customary laws and practices legally and appropriately.

(4) To protect ethnic national affairs according to law.

3. In matters concerning administrative domains-

(1) If the president of the Union desires to assert direct control on constituent state affairs it will be tantamount to the Union government placing direct control on state affairs. This will have the same effect as the centralized power of a unitary system.

(2) We believe that since the head of the government of a constituent state represents the people of the state, he or she should be a member of that particular national community. During the years of AFPFL parliamentary system of government, the minister of a state represented the national community of that state, and was chosen from among their elected members of parliament. And in the era of BSPP system of government the head of the state council was selected from the national community of the state.

There is therefore, an established tradition that is consistent with the history of the founding of the Union concerning the recognition of the basic rights of constituent communities as national policy. We believe therefore, that the

Union constitution now in the process of being written should adhere to that tradition.

(3) In the matter of forming constituent state government:

(a) The head of constituent state government shall be elected by members of the state legislature by secret ballot, and the person elected by majority shall be appointed the head of the state by them, and he or she shall then be appointed minister of the state by the president of the Union.

(b) The head of a constituent state shall, in collaboration with the state legislature, create the office of the head of state, specify the number of state ministries, and carry out the functions of governance of the state. The Union president will accept this procedure and recognize the system of the constituent state.

(c) The chief justice and chief accounting officer of the state shall be appointed by the head of state in collaboration with the legislature.

(d) The chairmen of self-governing areas in a state shall be appointed by the head of the state.

(e) In the event that a state minister resigns from office the head of state shall accept the letter of resignation, and he or she shall, in collaboration with legislative leaders, make necessary arrangements to continue the functions of that office. If the head of a state is to resign the president of the Union must accept the resignation letter.

(f) If there is security concern in a state the head of state shall, after consulting with legislative leaders, report to the president of the Union. Upon receiving the report the president will consult with the head of the state to assess the problem before the security situation is informed to the public.

(g) In the selection of personnel by authorized persons for state government employment candidates from the home state shall be given preference.

(h) The head of state has full rights to supervise directly the police force of the state.

(i) Subsequent to electoral approval and acceptance of the constitution, all members of ceasefire armed organizations, and any citizen of the state, shall have the right to serve in their state as defense force units of the national armed forces command, but under the control of the head of state.

4. In matters concerning territorial boundaries, whether of the Union or a constituent state, or changing an existing name of a state, no change shall be made without prior consent of the majority of the citizens of the state concerned.

5. In the laws concerning religion and the practice of belief systems we want full constitutional guarantees for nondiscrimination, and noninterference from the state.

6. The National House of Representatives is concerned with the affairs of national communities, as such, we want to see a clause in the constitution that stipulates that each constituent state shall send to the House of Representatives only elected representatives of the national community of that state.

7. We do not agree that a specific Union government ministry for the border areas or regions is necessary. Any security matter in a border area can be managed by national defense department officials and the government of the state concerned. We raise this objection because a separate ministry for the border areas will have the same effect as direct centralized control of constituent state affairs.

8. We believe that those constituent states with international boundaries should have the legal authority to issue permits for short-term cross-border travel and trading. If state and federal authorities can work together in such a framework there will be better overall fairness and less illegal activities.

9. The legislature of a constituent state should have the authority to make laws requiring equitable sharing of benefits between the state and the federal government, from commercial developments of natural resources in the state. For instance, in the matter of precious (gem) stones, in addition to allowing constituent states the right to carve and polish stones, they should be permitted to also explore for such resources, develop mining industries and to sell the products. Additionally, the authority to develop accommodation facilities and transportation media should belong to the state legislature.

10. Regarding agriculture we want to see the following matters to be also included among the responsibilities of state legislatures; the classification of land for cultivation and reserved wilderness areas, boundary and site inventories, mechanized farming and agricultural research, classification of water resource and watershed priorities, the management of production and use of chemical fertilizers and pesticides, and setting aside grazing and furloughed lands.

11. Concerning taxes levied on timber production, the current system states that except for teak and specified hardwood varieties, a state may collect tax on all other forest products. We ask that this stipulation be amended to say, with the exception of teakwood, a state can levy tax on all the remaining forest products.

12. Concerning transportation and communication, we want to see appropriate authority vested in state legislatures in these areas; developing or sustaining river and tributary systems, communication media including postal,

wireless, telephone, facsimile, electronic mailing, internet, intranet and similar media, satellite relay system for audio-visual transmission and reception, and broadcasting and recording.

13. In matters concerning communities, we want to see state legislatures authorized to pass laws to allow: private schools and instructional programs; private charitable hospitals and dispensaries; private medical practice; special aid programs for children, women, handicapped persons, geriatric patients, and aid for the homeless.

14. In matters concerning the following also we want state legislatures to have authorities: general administration, dividing rural, municipal and township areas, regulating house and land leasing. civic organizations, border area development programs and census surveys.

15. Concerning the territorial entity of Kachin State, we want its boundaries to be exactly as it was when the state was originally recognized.

16. A constitution can become the law of the land only if the required majority of its citizens give their approval; accordingly, we want to include in the constitution a specific clause to say it is the fundamental duty of every citizen to protect that right.

17. Concerning citizenship. In the same sense that citizenship of the Union exists, we suggest that there is need for state citizenship as well, and that the law for this should be written. The reason why we support this position is this: in future elections will held according to democratic practice, and assumption of duties by elected representatives will occur. But if there exists only federal law governing this, then we cannot say that the future will not be free of problems of ambiguity and conflict between state and federal electoral jurisdictions.

18. We want to see the laws governing constituent states written in a manner that does not contradict federal laws; however, one region of the country may be very different from other regions from the standpoint of what needs to be in state law to reflect conditions. For this reason, in order for the Union to be strong constituent states must have the authority to write laws that reflect their needs, instead of a top-down legislative system in which state law will be written elsewhere.

19. The defense forces charged with the responsibility to protect the whole country should be a force where all Union nationalities are adequately represented, and only such an integrated force should be called the Tatmadaw of the Union.

The statement is issued by the Central Committee of the Kachin Independence Organization in mid-July, 2007.

