

Local Government's Role in Bottom-Up Federalism for Myanmar Democratic Future

Author: Khanu

Background information

Myanmar is currently in a transitional phase that requires transformation across the entire nation. Political leaders are striving to establish a federalist system. However, the Myanmar military coup created numerous challenges for civilians in their day-to-day lives. Simultaneously, the National Unity Government (NUG) is developing significant government reforms, with most of the discourse focusing on political and structural reforms, particularly federalism and institutional restructuring.

Since gaining independence, Myanmar has been searching for a political system that can accommodate its diverse cultural, linguistic, ethnic, and religious identities. Ethnic minorities have been calling for federalism as a means of ensuring the equality and rights of all groups. However, under the highly centralized system imposed by the military dictatorships with the long period of military rule from 1962 -1989, 1990 – 2010 and 2021 – present. There was political instability, and no more discussion of federalism was impossible.

The political transition under the 2008 Constitution^[1] created a centralized form of federalism. During the political reform period of 2010 -2015, the 2008 Constitution was widely discussed, and efforts were made to shape the democratic system and federal structure in the peace process. However, even under the National League for Democracy (NLD) government (2016-2021), the actual work and vision of the Burmese government remained centralized.^[2] In fact, it is essential to ensure that the Constitution does not establish a centralized system. For instance, it is crucial to ensure the division of power

for the state/region in the federal and state constitutions.

[1] Constitution of the Republic of the Union of Myanmar (2008)

[2] Htet Min Lwin, Federalism at the Forefront of Myanmar's Revolution, *Tyoto Review of Southeast Asia*, Issue-31, 2022.

Federalism in Myanmar

Federalism is a system of government that divides political authority between a central government and subnational entities, such as states or provinces. This division of power is enshrined in a constitution, and each level of government has its distinct responsibilities and authority. The concept of federalism aims to achieve a balance between a strong central authority and regional autonomy. All federal constitutions divide power between the central government and more local governments such as states, provinces, landers, or cantons. However, different federal constitutions divide power in very different ways; some give much power to the states, and some give little. The 2008 Constitution gives very little power to the states. (But after the military coup in 2021, the 2008 Constitution was abolished, replacing it with a federal democratic charter.)

Nevertheless, ethnic groups attempted to build a federal system in the past, but the central government has always maintained control even under the 2008 constitution. Therefore, the top-down imposition of a federal system is not desirable. Instead, a constitutional authority should be established that grants the Union and State governments independence to exercise their legislative and executive powers given by the Constitution. In addition, devolving constitutional powers, taxation authority and financial management powers to the State governments is also necessary for self-determination.

Federalism can enhance democracy by decentralizing power, bringing it closer to the people, promoting the right to vote in democratic elections, and facilitating more effective public service delivery. It also safeguards and represents multi-ethnic communities, providing a means of managing diversity in federal democratic institutions. Minorities within minorities can



experience more participation in self-government and policymaking through federal systems.[1]

[1] One interviewee from State Constitution Coordinating Body-SCCB member, December 2023.

Local Governance in Myanmar

Federalism in Myanmar is a concept endorsed by ethnic minorities that aims to ensure equal treatment for all ethnic groups. One way to achieve this goal is to establish a power-sharing federal state that prioritizes local governance. However, local governance institutions in Myanmar are the most underdeveloped and unreformed sector of the country's governance structure, despite the enactment of the Local Administration Act in 1953. The Democracy Local Administration Act was put into place in 1953 to replace the colonial-era administration with greater public participation. Unfortunately, when the Burmese military, the Tatmadaw, took power in 1962, the 1953 Democracy Local Governance Act was repealed. Yet the 1898 Municipal Act and the 1921 Myanmar Rural Self-Government Act were maintained as the primary guides for both urban and rural administration. In 1972, the Ministry of Local Democratic Governance and Local Organizations was replaced by the Ministry of Home Affairs and Religious Affairs leading to the Department of Local Democratic Governance Strengthening being shifted to the General Administration Department (GAD) under the Ministry of Home Affairs and Religious Affairs,[1] which controlled administrative matters down to the township level.

Local governance should have been more generally noticed during the government reform process introduced by the civilian-led government. However, GAD is currently in control of local governance at the township level, and there has yet to be a third tier of elected local government in the Myanmar governance system. This has limited local participation in public decision-making, democratic accountability, and effective local public service delivery. Local governance from the township level downward is essential as a building block to Myanmar's subnational administration and public service delivery.[2]

Myanmar's current local government system has been centralized over several decades, which can be clearly evidenced in the country's laws and institutions. However, Myanmar lacks effective formal local governance, resulting in the proliferation of unrecognized and informal entities that undertake various governmental functions within local communities. The long absence of an effective central government in ethnic states, coupled with the dearth of formalized local governance institutions, has led to the emergence of community-based non-state entities responsible for social protection and the provision of public goods.

In the future, a potential legal reform whether in the form of a new federal or state constitutions could change this. It could design Myanmar's local governments as institutions promoting democratic decentralization and citizen participation, especially by designing for gender and social inclusion through the local government election. As per the Federal Democracy Charter Part-II (No.4)[3], the Union exercises Power Sharing, Revenue Sharing, and Fiscal Federalism while adhering to the "Subsidiary Principle". This principle allows the government level closest to the people to act, which is significant in moving away from a centralized governing system in the future federal democratic Union of Myanmar. It means a lot to be no longer centralized governing system in future federal democratic union of Myanmar.[4] Anyhow, the Federal Constitution must guarantee the establishment of a third tier of local government. Additionally, the state constitutions should also provide for local government.

Local government is a platform for minorities to be more involved in the politics. It can also accommodate and manage cultural diversity, especially for highly divided society in smaller groups. The benefit of having third tier of government, and through local government elections, the government can establish a third tier of local government to promote inclusivity in the government sector and political arena, particularly women's participation and social inclusion. For instance, in India, local self-government elections have a basic quota system that mandates a one-third allocation of seats to women. However, some state amendments have raised this quota to 50%.



Similarly, Nepal has two types of local self-government: a municipal executive for urban areas and a village executive for rural areas. The constitution requires every executive body to include at least four female and two ethnic minority members.[5] However, quota for women and minority participation is not to be a permanent policy its only can adjust under the local capability, whether quotas promote equality or compromise meritocracy. Quotas are basic to address historical disadvantages and systemic discrimination, ensuring equal representation and opportunities for underrepresented groups especially needed in Myanmar. On the other hand, quotas undermine merit-based selection processes and may lead to individuals being selected based on factors other than qualifications.

[1] [https://asiafoundation.org/publication/policy-dialogue-brief-series-no-7-municipal-governance-myanmar/\(2016\)](https://asiafoundation.org/publication/policy-dialogue-brief-series-no-7-municipal-governance-myanmar/(2016)).

[2] https://spp.cmu.ac.th/wp-content/uploads/2021/09/PB2_Township-Government_Policy-Brief_CN-28Sep21-d.pdf (2021)

[3] Federal Democracy Charter Part-II (No.4), The Union exercises Power Sharing, Revenue Sharing and Fiscal Federalism. In doing so, it exercises the Subsidiary Principle where the system allows the government level closest to the people can act.

[4] One of interviewees from State Constitution Coordinating Body-SCCB member, December 2023.

[5] <https://www.salweeninstitute.org/uploads/1/2/6/3/12630752/si-local-government-by-shine-eng.pdf> (2022)

Recommendations:

I. Bottom-up federalism and recognition of the existing local self-administration: It is hard to generalize how to do this, because the initiative must be designed locally, so there will be variation. Leaders may want to guide and coordinate, and local people may desire guidance, but it must be supportive, not directive. "The local governments are not the creations of the constitution; they are its creators." [1] Local administrators understand how their communities work, and all successful democratic government must begin with what actually is working even they have not any principal documents.



(Photo credit to Bhikkhū Sāsana Lahe: <https://www.facebook.com/u.nage.>)

In places where Bottom-Up Federalism has worked, the localities already share a certain amount of political culture. So, their various organizations are different. This is probably true in Myanmar. In other words, we need not worry too much about variation: to the extent that harmonization is necessary. Indeed, it is probably not very useful to think about "models" of local governance borrowed from other countries. However, learning process from other counties is needed. Myanmar is in a unique situation right now. More importantly, the point is to build on what is there and deal with localization from their existing local self-administration, not impose something from somewhere else. The goal of local governance right now is to deal with the situation right now-not to create permanent structures. The governing document must guarantee the competencies/capacities of the local units. The local units must, to the extent possible, be based on pre-existing local government initiatives because the existing structures are consistent with local practices and customs. On the other hand, the governing documents must be designed by local governments. The local governments must themselves be constitutive partners in the central government. Any governing document will need to be flexible and responsive to the situation. We are in a revolution, and revolutions impose urgent needs. If the local units lack capacity to address a need, there are two possibilities: Assign the need to a more central tier of government or build the capacity of the local unit. In addition, the Federal Constitution must guarantee the establishment of a third tier of government (Local government).

II. Strengthening the local federal units in State level: Strengthening and capacity building of local governance and its administrative system is very important to extend especially in the current political crisis in Myanmar and to contribute the federal democratization process and one of the main to establish federal democratic union in Myanmar. For instance, after the military coup in 2021, some state such as Karenni State is trying to build the federal system in State level through the Karenni State Consultative Council (KSCC) and Karenni State Interim Executive Council (IEC). "KSCC strengthening and exercising the right to self-determination from the revolutionary period to the present day federal democratic system building period." [2]

III. Need to design a fiscal federalism in federal constitution: In a federal system, the federal government gives the respective state/provincial governments the right to collect themselves; Management authority financial measures are allocated according to the federal constitution. Division of power defined in Federal Constitution, but federalism does not acknowledge and grant every government level of competencies unless designed to do so. Therefore, the constitution drafter should think for the fiscal federalism where the federal government will be responsible for and what will the state/region government be responsible for? What taxes will the federal or state/ local government collect? Therefore, the constitutional authority should be established to grant not only the Union, State and Local governments independence to exercise their legislative and executive powers given by the Constitution but also the taxation authority and financial management powers to the State governments is also necessary guarantee for self-determination in the federal constitution.

[1] Professor David Williams, SCCB's weekly online lecture, 2023.

[2] One of interviewees from KSCC/IEC member, Nov-2023.

Research Methodology:

The data and evidence used in this analysis based on two main sources. First, it is obtained through interview with the individuals those who are currently participants in State constitution drafting committee member known as State Constitution Coordination Body (SCCB), member of NUCC and political activists. In addition, I obtained the data from published newspapers, articles, and SCCB's weekly online lectures, etc.

References:

1. Pyidaungsu Institute (Peace and Dialogue), This Matter To Us: Informal Local Governance Case Studies in Myanmar Rural Area, 2018.
2. Shine Ko Ko Lwin (2022), Local Self-Government The Future Federal Democratic Union, Salween Institute for Public Policy,
3. The Asia Foundation, Policy Dialogue Brief Series No. 7: Municipal Governance in Myanmar (2016).
4. Htet Min Lwin (June 2022), Federalism at the Forefront of Myanmar's Revolution, Tyoto Review of Southeast Asia.
5. Ethnic Nationalities Affairs Center-ENAC, Fiscal Federalism: Implications for Future Federal Democratic Union of Myanmar (June 2018).
6. Local Governance and Democratic Institution-building in Myanmar: Elected township government (September 2021), 2021 SPP Summer School Fellows, School of Public Policy, Chiang Mai University.