

GENDERLAB TALK SERIES#3



HOW CAN A FEDERAL CONSTITUTION GUARANTEE GENDER EQUALITY?



photo courtesy of the artist

May-Oo Mutraw, Advisor of the Karen National Union, started her talk by reflecting on the current political situation and federalism development in Burma[i]. She highlighted that Burma is once again at a crossroads that will determine its political destiny, the future of its people, and whether or not it will become a federal state.

The choice to establish a federal union presents both opportunities and challenges. It is important to note that federalism requires constitutional thinking and there will be more than one constitution to be considered. Working from the premise that federalism is already a decision, the speaker wants to focus on how the Constitution might strategically address equality at the federal and state levels.



photo source: irrawaddy.com

A Litmus Test for the Principle of Equality

The speaker discussed the problem and issues of equality in Burma politics. Since the country's independence from the British in 1948, nearly all of Burma's minority groups have fought for ethnic equality against successive Burmese governments. Similarly, ethnic equality was the basis for negotiations on collective independence from the British, which were used by Aung San, a Bamar politician, and other ethnic minorities. Even authoritarian regimes are familiar with the term "equality", but the idea behind it has never been developed to be inclusive and meaningful to all members of the society. To date, many waves of struggles for democracy and the establishment of a federal union have started to define equality both as a right and a principle upon which the nation will be built. The emphasis on equality as a right and a principle is at the core of documents conveying the desires of the people.

In order to uphold the principle of equality, all groups must take a comprehensive approach to the formal and substantive implementation of the right to equality. It is undeniable that everyone has participated in and fought for equality throughout history, but the question of the commitment to equality arises when it comes to "women" and "gender equality."

It is time for all groups to rise to the challenge of equality, which appeals to treat everyone equally regardless of their gender, faith, ethnicity, sex and sexual preference, and physical ability. The speaker stressed that the rights of women and minorities are at the heart of federalism, and as such, gender equality is "a litmus test for the principle of equality" in the process of building a just and equitable society.



photo source: washingtonblade.com

[i] Though the word "Myanmar" has been used throughout the GenderLab Talk Series to refer to the country, the speaker in this specific talk used "Burma" instead of Myanmar. In fact, "Burma" and "Myanmar" are the same country. [Reference: What is the name Burma or Myanmar? What's in a Name: Burma or Myanmar? | United States Institute of Peace (usip.org)]

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Through a reflection on the situation in Burma, the speaker further discussed how the constitution and federalism may support equality. The discussion centered on the following points: the establishment of a federal state varies from one country to another; equality as the key to end the conflict that has lasted for more than 70 years; the importance of unity in diversity and the rights of citizens in federalism; and a federal state's primary feature is to have constitution at two levels: the Union level and the States level.

The speaker presented two strategic approaches to equality:

- (1) the Right – several aspects need to be considered in women's right to equality: types of rights of particular concern to women; structure of rights; limits on rights; and equality rights.
- (2) the Principle – a union that is built on the principle of equality also obliges itself not to discriminate.



photo source: iwda.org.au

The speaker claims that obtaining formal equality on its own is insufficient. Achieving result-based equality necessitates providing equal protection under the law, fairness, and justice for all. Therefore, the constitutional approach is critical. The constitution should focus on three (3) key areas: defending women's rights; women's representation and participation in politics; and issues of customary law. Constitutions at the state and union levels should address these three issues since they will have the biggest impact on women's equality in Burma.

The speaker further elaborated about formal equality and substantive equality. She explained that structural inequality is stereotypes and background conditions while formal equality pertains to discrimination based on a person's background or university entrance exam scores. For example, in the US, public education is free for all students, yet due to fiscal decentralization, under the same rules (and/or) gender insensitively, poor and minority groups are still (unfairly) disadvantaged.

In contrast, substantive equality is more concerned with 1) equality outcomes than equal treatment; a law is seen to be unconstitutional if it leads to less equality rather than more; 2) positive right: the ability to demand for government intervention to help fix the underlying structure; and 3) affirmative action which states that avoiding discrimination alone will not lead to equality for racial and religious groups; rather, a meaningful definition of equality is vital. This also applies to gender equality. Given several examples of equal rights found in constitutions, the speaker gave a few examples of other countries' situation and recommended studying and learning from their experiences.

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She specifically mentioned that there is much to learn about the South African constitution.

I. Substantive equality vs. formal equality

e.g. South African Constitution Article 9: “Everyone is equal before the law and has the right to the equal protection and benefit of the law.”

e.g. Constitution of the Republic of China (Taiwan):

“The State shall protect the dignity of women, safeguard their safety, eliminate sexual discrimination, and promote substantive equality.”

II. Equality as a positive right: government duty to promote equality through positive action

e.g. South African Constitution Article 9: “To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”

III. Horizontal application of the equality right

e.g. South African Constitution Article 9: “No person may unfairly discriminate directly or indirectly against anyone . . .”

She briefly discussed the importance of the power dynamics between men and women in shaping gender equality. Men typically occupy greater positions of authority and decision-making responsibilities in many societies due to historical and cultural norms that have created power imbalance between genders. Gender inequality may be sustained in a number of spheres of life, including political representation.

The focus of the correct approach should be on various forms of women's rights, such as citizenship and educational opportunities, as well as commitment to international treaties, the structure of rights, and limitations on those rights.



photo source: theseanpost.com

Moreover, since the constitution guarantees democracy in the federal system, political representation is a crucial issue to address. If only 10% of ethnic groups in the nation are represented by legislators, then there is no true equality. Thus, it must be stated clearly in the Constitution. Since Burma is committed to various international treaties and upholds the rights of its citizens, gender equality and equal representation are vital. In order to influence decisions and increase the rate of women's representation, quota systems can be helpful. People who study constitutions around the world may find quota system controversial, but research suggests that it can be used to attain social justice and equal representation. However, merely mentioning it in the constitution is insufficient; it must address the statutes and regulations that implement the constitutional law, along with the specific mechanism and execution activities to be used by the federal and state governments.

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The Women's League of Burma suggested, "Gender Equity in Government: to assure gender equity in all aspects of government, every level within the legislative, executive, or judicial branches, must include a minimum of 30% women and a minimum of 30% men among its members." This proposal has been modified for state constitutions. Each branch of the government is responsible in promulgating any rules, election protocols, or other necessary procedures to guarantee that all bodies under the authority of that branch conform with the minimum requirement. Any individual who believes that the rules regarding the composition of state governing body has failed to implement gender equity requirement may petition to the State Constitutional [or Supreme] Court to declare those rules are a violation of this Constitution.

Three (3) essential components are needed for a quota system to be implemented successfully: From a political standpoint 1) the quota language must fit the political culture; from a legal standpoint, 2) the quota should impose requirements on the government to ensure a specific level of female participation and be upholdable in court or by a commission; and from a practical standpoint, 3) the most important thing is for the state to choose the type of quota that best suits the electoral system it uses in electing its state legislature.



photo source: iwda.org.au

The speaker also emphasized the importance of cultural and traditional systems because gender roles and expectations are shaped by these norms, which results in unequal treatment and limited opportunities for women. Everyone is already familiar with ethnic traditions and culture in Burma, but it is also important to consider the area-based customs and cultures among Burmese ethnic groups. She suggested to investigate, to analyze and to understand how the customs and cultures impact women and other minority groups, and to conduct more dialogues on how to incorporate them in accordance with the state and union constitutions' fundamental human rights.

She also stated that gender equality and the plight of women are NOT the focus of current political negotiations for the establishment of a federal union; it is unlikely that any negotiated outcome would adequately address the issue at the central (Union) level; therefore, it is only practical and worthwhile to look at the state constitutions, as it is frequently easier and/or manageable to begin with smaller task.

In conclusion, the speaker stressed the significance of the state's Formation, Roles, Freedom, and Peace in upholding democratic norms and principles that guarantee gender equality. Additionally, she highlighted the critical role of women and the participation of minority groups in the development of Burma's new constitution.

GenderLab Talk Series#3 Gender Equality and Women's Rights in the (Federal) Constitution



Follow-up dialogue with participants

How can the constitution guarantee that human rights are protected and other international treaties are followed?

There is no guarantee to address all provisions and rights in the Constitution. The best guarantee is by each citizen to value them. Based on technical perspectives, the citizens are the ones who can guarantee that the provisions and measures in the constitution are sufficient.

photo source: irrawaddy.com



What are the challenges under the current movement? Any situation updates on the constitution building?

There are many challenges regarding the Constitution. After gaining independence in 1948, the country adopted the 1947 constitution, which was widely acknowledged as the most successful democracy in the Southeast Asian region from 1948 until internal conflict broke out in 1958. Following 1962, the nation adopted the one-party system known as anti-democracy and the 1974 constitution, which lasted until 1988. From 2010 until 2020, the nation was under military rule, and the 2008 constitution was used. Throughout this time, the country has failed to uphold the rights of its citizens.

By learning all those lessons, living in unity and diversity is directly proportional to how we are going to write a new constitution in this revolution. Two things should be considered when drafting a new constitution: 1) critical points from the technical perspectives and historical perspectives; and 2) historical realities should be used to teach us that the source of all our suffering stems from the 2008 constitution. All those in leadership positions utilize the public and citizens as pawns in their struggle for dominance. The main barrier is power being prioritized over the intention of raising people's awareness of their rights.

There are state constitutions and union transitional constitutions that are being developed. How can these be integrated?

Individuals should be curious about it and ask questions. A state-level constitution is unavoidable if we intend to draft a union constitution. We have been talking about the state formation since 1996–1997. It has paused for a while, but with this revolution, it has returned stronger than before. National Unity Consultative Council (NUCC) is working on a collective constitution, while many states are also working on their own constitutions. In order to coordinate and integrate the effort, a forum for communication between the state and union levels is needed. Having such discussions between the state and the union are sometimes criticized. It has to be recognized that it is not about military/State Administration Council vs. pro-democracy. It is also important to develop a better coordination and having dialogues with various entities such as bordering states like Kachin and Shan. Thus, having an open dialogue will bring about greater chance to minimize conflicts. In addition, respecting justice and historical lessons should be used to foster discussion between state-to-state and union levels to prevent any negative consequences and to have more unity.

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Follow-up dialogue with participants



Women's participation is increasing in this revolution, but when it comes to leadership women are still marginalized. What can we do to increase women's voices in these dialogues especially women in ethnic groups?

Men will systemically and culturally marginalize women since we live in a patriarchal society. The Brazilian educator and philosopher, Paulo Freire who was an advocate for eradicating literacy for people said that women have two layers of responsibilities: to fight for their freedom, as well as to liberate the ones who oppress them. He explained that women's freedom would only be guaranteed if we also fight for the liberation of those who oppress us (women). That will only be the real freedom for women.

Thus, women have the primary duty to provide an answer on how to increase women's voices in those dialogues, particularly women from ethnic groups. It is not only the right but also the responsibility of women to participate in society and take on leadership roles. Women should not only work for the right to have safety, security and future development of women, but also have the responsibility to build a fair and just society for all. That is the only way to guarantee sustainability and uphold the rights of everyone, including women.

photo source: [cnn.com](https://www.cnn.com)



In the 2008 constitution, there is some level of autonomy for some ethnic groups within the Self-Administered Zones (SAZs), but many are living scattered as minority groups in different parts of the country, rather than living in their own SAZ. Are there any experiences of other countries' constitutions which ensure/guarantee the rights of such minority people?

It is important for Burma to live in diversity and unity. The heart of federalism is self-determination. We must approach using the core federalist idea of self-determination rather than by looking for answers in other countries. No matter where they reside, it is crucial to protect the rights of the minority groups as stipulated in the constitution. The constitution must specify in detail the requirements and limitations for these minority groups in order to determine when and how they can exercise their rights to self-governance, self-administration, and political participation. For instance, a particular ethnic community, such as the Kayin or Pa-O, should have the ability to establish a local government and engage in self-administration if they have a particular number of population and/or political group.

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Follow-up dialogue with participants

If there are new areas or regions that emerged under current political situation, do we need a new constitution? Or how can we integrate them as part of the states?

Although it is important, there is no concrete answer. However, it should be noted that the current map of Burma, which names the States and Regions showing the geographical boundaries, was created by the military regimes which was altered to take advantage of their superiority and to suit their needs. As a result, the map should be reviewed and updated, with the people's response as the deciding factor. Nonetheless, historical contexts, equality, diversity, peace and stability, development, and self-administration viewpoints must all be considered during that process.

What is your opinion on the gender equality policy or gender equality initiative in the National Unity Government/National Unity Consultative Council (NUG/NUCC)?

Under this spring revolution, everyone faces huge challenges. Given how brutal the military is in suppressing and killing civilians, this is the worst and most challenging period in history. When it comes to gender equality, no evident shifts in perspective have been noted in NUG. Women must change the way they see themselves; we must fight and take responsibility to attain equality. Women need to be persistent in our quest for sustainable rights.