

FEDERALISM BASICS


An Introduction to
Essential Elements
of Federalism

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C H A P T E R O N E

WHAT IS FEDERALISM?

This chapter compares unitary and federal systems of government, looks at the core institutions of government and how they relate to federalism, the division of powers in federal systems, and at the link between federalism and constitutions.

Guiding questions for this chapter are:

1. What is federalism?
2. Why are constitutions important in a federal system?
3. How is power divided in a federal system?

1.1 Unitary and Federal Systems of Government

Federalism is a system of government within one country where there are at least two levels of government. The levels of government each have powers – such as the ability to make laws or raise taxes – divided between them. There is a federal level of government that acts as a central authority for the whole country, and governments for each of the territorial constituent units that make up the country. Constituent units may be known by different names in different federal countries, for example, states, regions or provinces. There are more than 25 federal countries in the world, including India, the United States of America, Malaysia, Germany, Brazil and Nepal.

A federal system of government is different to a unitary system. A country with one government that makes laws and administers them throughout all of that country has a unitary system of government.

Almost all countries have some level of decentralisation. Decentralisation means local authorities below the central government level can administer, and sometimes even make, laws and policies. However, in a unitary state, local authorities are subject to the direction of a central government, which can overrule those laws and policies. Local authorities in different areas of a unitary country are given the right to undertake government functions by the central government, which can also take those rights away at any time.

Countries with federal systems of government usually have some common features. These include:

- a constitution, which is the fundamental basic law of a country that guarantees the federal structure and powers of the federal and constituent unit governments;
- constituent units (such as states, regions or provinces), which are geographical areas that make up the country;
- at least two levels of government directly elected by the people they represent;

- a division of powers, for example, to make and implement laws or collect taxes – between the federal government and the constituent units.
- a central federal parliament with two chambers (bicameral) with one chamber (often an ‘upper house’) that enables representatives from the constituent units to participate in decisions at the federal level;
- a system to share revenue, for example, money raised from taxes, between the federal level and constituent units, and to manage the economy through taxation, redistribution and regulation;
- institutions or processes to solve disputes between the federal level and constituent units, or between constituent units, such as a constitutional court or council of ministers.

Levels of Government in a Federal System

In a federal system of government, the constituent units have their own elected governments with constitutionally guaranteed powers to make and administer their own laws and policies. People in the constituent units also elect representatives to the central federal government to represent their interests at the federal level. The federal and constituent levels of government need to be able to work together for the federal system to be effective. They need to share information and funding and coordinate programmes and policies.

Some federal systems include a third tier of elected local government within the constituent units at the district or township level. Local governments have varying amounts of autonomy under the authority of the federal or constituent unit levels. Some local governments, such as in Nepal, may also have powers to make and administer some laws.

Discussion / Reflection

1. What do you believe could be some advantages of a unitary system?
2. What do you believe could be some advantages of a federal system?

Diagram illustrating three possible systems of government

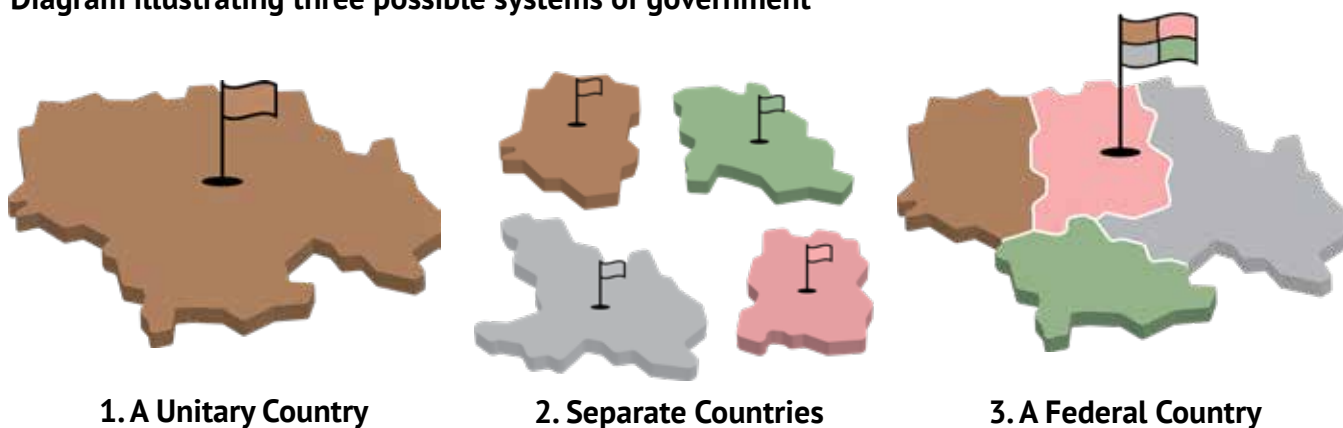
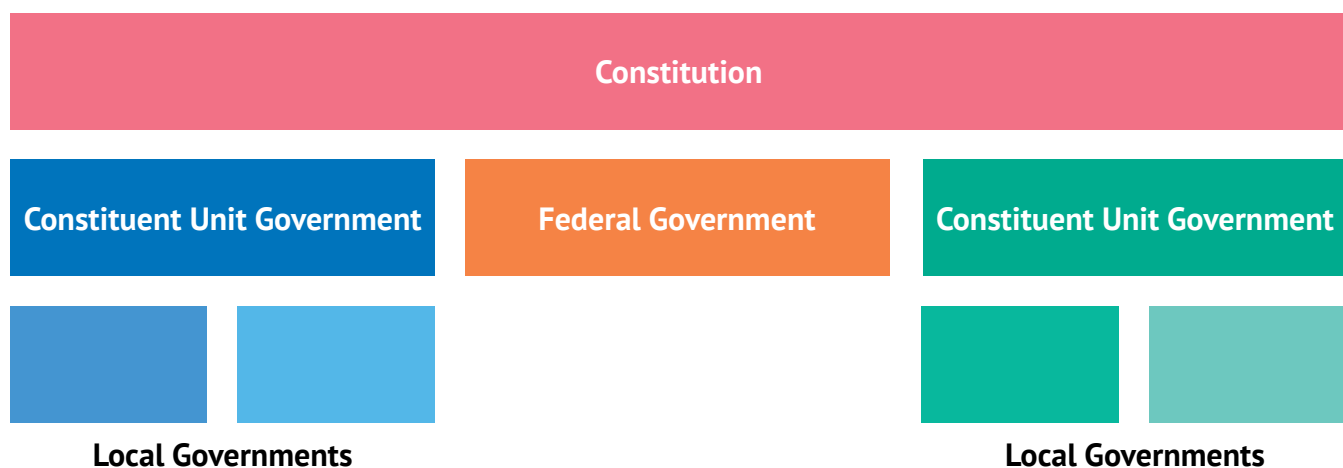


Diagram illustrating how a federal system could look



1.2 Institutions of Government

Government consists of the people and institutions that undertake the leadership, decision making and administration of a country. Governments make and implement laws, collect taxes, distribute resources, and administer services such as healthcare, education or transport. Each level of government within a federal system usually has its own institutions such as legislatures and executives.

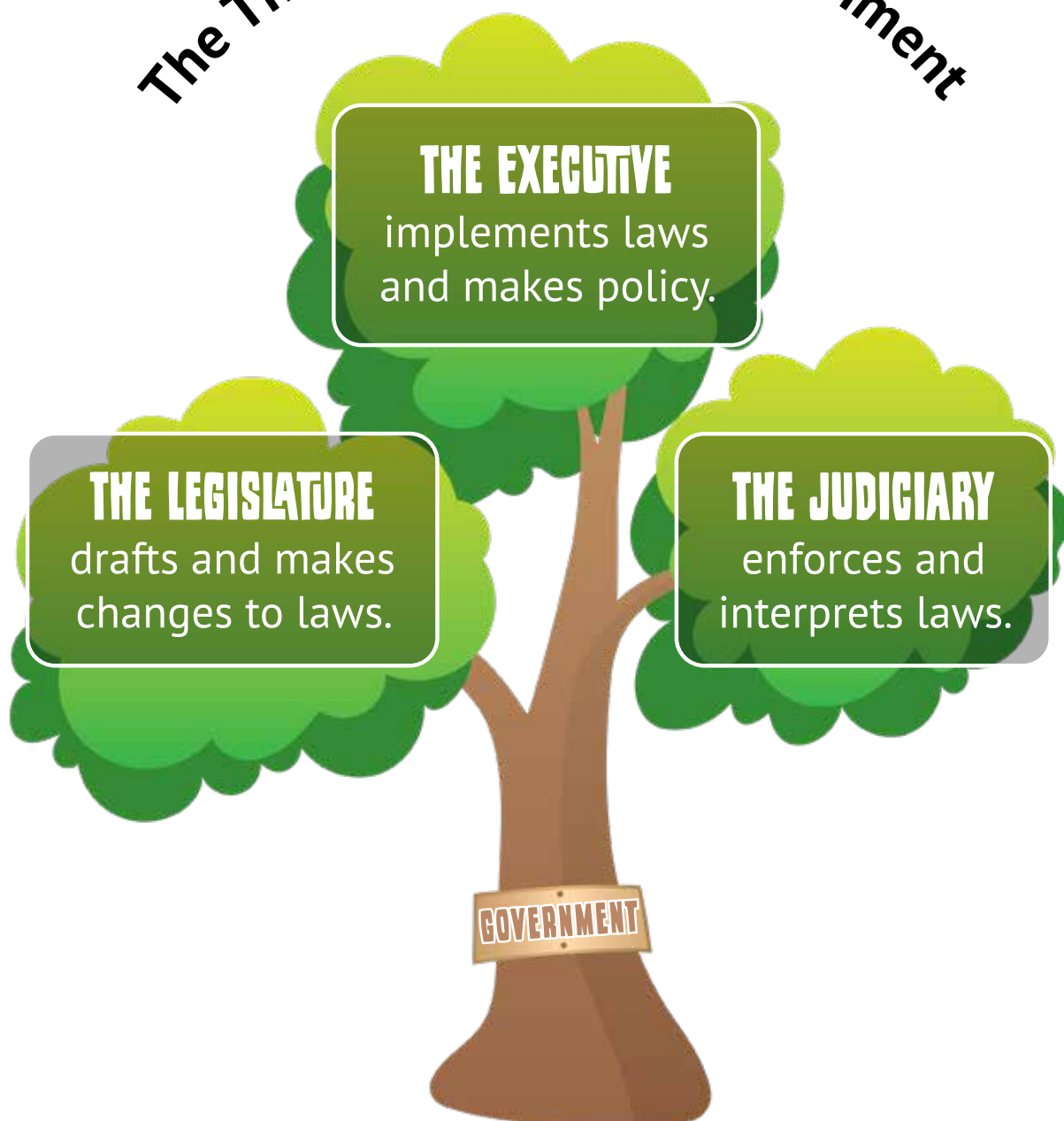
Democratic governments and federal systems usually have the following institutions:

- **THE LEGISLATURE:** A legislature is often known as a parliament. Representatives elected to a legislature draft, debate, make and change laws. The representatives can also argue for the interests of the people from the constituent units that elected them.
- **THE EXECUTIVE:** The members of an executive implement laws, make policies to guide government actions and oversee government services. Executives differ between countries in how they are chosen and organised. In a presidential system, the elected legislature and the executive are separate. The president is usually head of state and also the head of government, but is not a member of the legislature. The ministers in the executive are not necessarily elected. In a parliamentary system, the government executive is formed by, and accountable to, the elected representatives. If there is a president or some other head of state for the country, they are usually mostly symbolic.
- **THE JUDICIARY:** The judiciary interprets and enforces the laws made by the legislature. This is done through judges and courts. There are usually different levels of courts within a country, such as regional courts, high courts and a supreme court. There may also be a constitutional court that interprets the constitution and rules in disputes between the federal and constituent unit levels, or between constituent units. Judges in the judiciary are chosen carefully and often appointed for long periods of time. This is so judges are less subject to political influence from elected legislatures or executives that may change every few years.
- **SEPARATION OF POWERS** of the branches of government: This means no one branch – legislature, executive, or judiciary – can hold all the power in a government. The branches of government have checks (on each other) and balances (between their powers). Presidential systems enable more separation of powers as there is less crossover between members of the legislature and executive compared to parliamentary systems. However, the independence of the judiciary from other branches of government is regarded as central to all democratic systems.
- **THE CIVIL (PUBLIC) SERVICE:** The civil service administers the government’s laws, services and policies. Civil servants are often permanent employees of the government. They may range from heads of departments and officials to administrators, teachers, and so on. To maintain continuity in administration of a country, civil servants usually remain in their positions regardless of changes to the elected representatives in the legislature and executive.

Discussion / Reflection

Do you prefer the parliamentary system where ministers in the executive of government are also elected members of the legislature, or the presidential system where the ministers in the executive are separately chosen? Why?

The Three Branches of Government



1.3 Institutions of Government in Myanmar (2011 – 2021)

Myanmar's most recent government structure was based on the 2008 Constitution. It was semi-presidential and included legislatures at the Union and state/region levels. The central Union-level legislature (Pyidaungsu Hluttaw) was bicameral. The lower house (Pyithu Hluttaw) had one elected member of parliament (MP) from each of 330 townships across Myanmar, plus 110 appointed military MPs. The upper house of nationalities (Amyotha Hluttaw) had 168 elected members, with 12 representatives from each state and region, and two from each self-administered area, plus 56 appointed military MPs.

The state/region legislatures were unicameral. Two representatives from each township in a state/region were elected to the state/region legislature. Ethnic groups that constitute more than 0.1% of the population of Myanmar, but are a minority within a given state or region, could also vote for a 'national race' representative.

The Union government executive was formed by the President who was elected by representatives from both chambers of the Union parliament. The President nominated ministers, who could be either elected representatives from the legislature or appointed members of the public.

The President appointed the chief ministers for each state, region and self-administered area. Chief ministers nominated the ministers in the executive for each state or region. The elected representative for an ethnic group which is a minority within a given state or region would be the ethnic affairs minister for that ethnic group. The ministers of defence, border affairs and home affairs in the Union executive, and security and border affairs in state and region executives, were appointed by the Commander in Chief of the Defence Services.

The position of 'State Counsellor' was created in 2016 and functioned in a similar role to a prime minister with a lot of actual power in government. The State Counsellor, who was an elected member of the legislature, could work across both the legislature and the executive.

The 2008 Constitution did not include provisions for a third level of local government below the state and region level. Local administration within states and regions has been conducted by the General Administration Division (GAD). The GAD, under the military-controlled Ministry of Home Affairs, has acted as a civil service for the state and region governments. GAD activities included collecting taxes and fees, population registration, land registration and local dispute resolution.

The judiciary in Myanmar included township, district and high courts, a supreme court at the Union level, and a constitutional tribunal. The President nominated the Chief Justice of the Supreme Court with the approval of the Pyidaungsu Hluttaw. The President, with the Chief Justice and Chief Minister, appointed judges to the high courts in each state and region. The Constitutional Tribunal in Myanmar was intended to interpret the constitution and decide whether actions or laws passed by Union, state or region legislatures conformed with the Constitution. The Constitutional Tribunal consisted of nine judges with the chair appointed by the President from the tribunal members.

Discussion / Reflection

1. What are some features of the 2008 Constitution Myanmar government structure that you believe are federal/democratic? Why?
2. What are some features of the 2008 Constitution Myanmar government structure that you believe are not federal/not democratic? Why?

Myanmar Government Structure (Based on 2008 Constitution)

| | Legislature | Executive | Judiciary |
|------------------|---|--|---|
| Union | <p>Pyidaungsu Hluttaw Amyotha Hluttaw (Upper House):</p> <ul style="list-style-type: none"> ■ 224 MPs ■ 168 elected MPs (12 from each state/region) ■ 56 appointed military MPs | <ul style="list-style-type: none"> ■ President: Elected by both houses of Union Legislature ■ State Counsellor: Position created in 2016 (like a prime minister) worked across both executive and legislature ■ Union Ministers: appointed (from legislature or public) by President ■ Ministers of defence, home and border affairs appointed by Commander in Chief of Military | <p>Supreme Court:</p> <ul style="list-style-type: none"> ■ Chief Justice appointed by President with approval of Pyidaungsu Hluttaw ■ Other judges appointed by Chief Justice and President <p>Constitutional Tribunal</p> <ul style="list-style-type: none"> ■ Chair appointed by President and Chief Justice. Three judges appointed by President, three by upper house and three by lower house ■ Constitutional Tribunal meant to interpret constitution and if state/region laws conformed with it |
| | <p>Pyidaungsu Hluttaw Pyithu Hluttaw (Lower House)</p> <ul style="list-style-type: none"> ■ 440 MPs ■ 330 elected MPs (1 from each township) ■ 110 appointed military MPs | | |
| State/ Region | <p>State/Region Hluttaws (unicameral)</p> <ul style="list-style-type: none"> ■ Two representatives per township in the state/region ■ One 'national race' MP per group > 0.1% of population of Myanmar but not a majority group in the state/region ■ Appointed military MPs equivalent to one third of seats in each state/region Hluttaw | <ul style="list-style-type: none"> ■ Chief Ministers appointed by President ■ State/region Ministers appointed by Chief Minister ■ Minister of security and border affairs appointed by Commander in Chief of Military | <ul style="list-style-type: none"> ■ Township, district and high courts ■ High Court Chief Justice appointed by President, Union Chief Justice and S/R Chief Minister ■ Other judges appointed by Union Chief Justice and S/R Chief Minister |

1.4 Constitutions

A constitution sets out the basic law, structure and system of government in a country. It includes the institutions of government, how laws are made, and the fundamental rights of citizens. Constitutions typically include:

- **PREAMBLE:** brief historical context and aspirations of the country and people;
- **STRUCTURE OF THE COUNTRY:** the geographic areas that will be constituent units of the federal system and how they will be organised administratively;
- **INSTITUTIONS OF GOVERNMENT:** how government institutions (legislature, executive, judiciary) are formed and structured, their processes such as drafting passing and changing laws (a draft law is called a 'bill'), and electoral systems for choosing representatives;
- **RIGHTS OF CITIZENS:** the fundamental constitutionally protected rights of citizens that cannot, under most circumstances, be taken away. For example, freedom of speech or freedom of assembly;
- **AMENDMENT OF THE CONSTITUTION:** how the constitution can be changed, for example, requiring 75% of all representatives in parliament to agree to changes;
- **DIVISION OF POWERS:** for example, powers to make laws or raise taxes, divided between the federal and constituent unit governments.

In a federal system, a constitution is the basis for the structure of the central government and the authority of the constituent units. The constitution sets out the powers held by the central government, the powers held by the constituent units, and the powers that may be shared between them. 'Powers' refer to things such as education, health or natural resources over which the central or constituent unit governments can make laws, raise taxes and administer policies. Usually, legislative powers to make laws over something, such as certain types of natural resources or education, will have corresponding executive powers to implement and administer those laws.

Laws that are made by either the federal or constituent unit legislatures must not contradict the federal constitution. Legislative and taxation powers allocated to the centre or constituent units or shared between them are often set out in lists in the federal constitution.

Constituent units in some federal systems also have their own constitutions. These constitutions subdivide the powers and responsibilities held by the constituent unit governments, but they must not contradict the central federal constitution. Constituent unit constitutions can help further protect local customary laws, cultures or minority groups.

Constitutions are central to the concept of 'the rule of law'. They help guarantee the supremacy of the law, the separation of government powers, accountability and transparency of government institutions, and protection of human rights.

Some constitutions guarantee the rights, protection and representation of certain groups that may be disadvantaged in society. For example, the constitution of Nepal includes gender equality as a guiding principle, and includes the specific rights of women, the elderly and children. It also guarantees a minimum number of seats in the federal parliament for women and people with disabilities.

Discussion / Reflection

Why might each of these be included in a constitution?

1. Fundamental rights of citizens
2. Election processes
3. Process for making laws
4. Division of legislative powers between the federal level and constituent units
5. How the constitution can be changed

1.5 Division of Powers

The division of legislative powers is one of the most important features of a federal system. For example, the Constitution of Malaysia includes a legislative list of powers for the central federal government, a legislative list for the states, and a concurrent (shared) list.

Powers not exclusively allocated to either the federal government, constituent units, or shared between them, are known as residual powers. The constitutions of the United States and Pakistan only have a list for federal powers, residual powers go to the constituent units. In the constitution of India, any residual powers not allocated to the federal or constituent unit levels, or shared between them, go to the federal level.

Federal government powers typically include responsibility for defence, international trade, currency and relations with other countries. Constituent unit government powers may include a range of areas such as responsibility for roads, natural resources or health services within their areas. In a fully federal system, each level of government has constitutionally protected rights for the powers that it has.

Concurrent powers are shared between the different levels of government. This could be the case with powers for different types of taxes. The federal government may have powers to collect individual income taxes. People often move and work between different constituent units, so it is easier for the federal government to collect their income taxes.

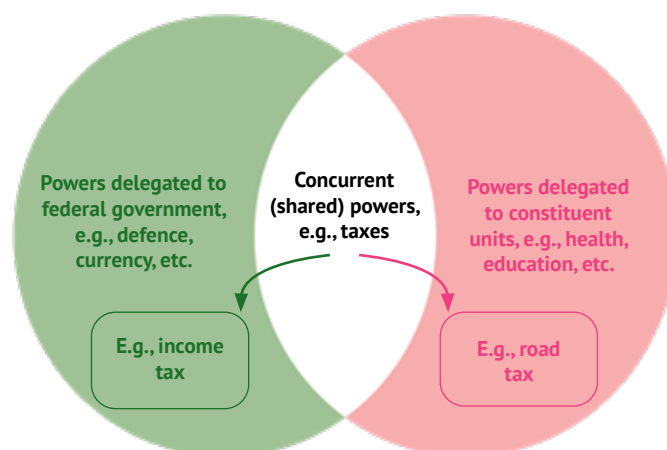
Constituent unit governments, on the other hand, may have powers to collect taxes on roads in their areas, as those taxes can help pay for road building and maintenance. The constitutions of India, Malaysia, South Africa and others include lists of concurrent powers shared between the federal and constituent unit governments.

Some federal systems also have a process to allow one level of government to authorise another level to administer certain powers on their behalf. The state governments in Malaysia and India, in certain circumstances, can authorise the federal government to administer some state powers. In Germany, the federal government can authorise the constituent units to administer some federal powers.

Discussion / Reflection

1. What are some powers you believe should go to the federal level in a federal system? Why?
2. What are some powers you believe should go to the constituent units in a federal system? Why?
3. What are some powers you believe should be shared in a federal system? Why?

An Example of Division of Power



Federal Structure in Malaysia

Malaysia's federal system developed out of Malay sultanate states brought together during British colonial rule. The territories on the Malay Peninsula formed the Federation of Malaya at independence in 1957. Malaysia was formed in 1963 when Singapore and the East Malaysian states of Sabah and Sarawak joined the federation. Singapore was later expelled from the federation in 1965.

Malaysia is composed of 13 states and three federal territories. It has a constitutional monarchy and a parliamentary system of government. The King (Agong) of Malaysia is a largely ceremonial position that is rotated amongst the sultans of the states, while the Prime Minister is head of government. Executive power is with the Prime Minister and the cabinet of ministers chosen from among both houses of the central parliament.

Malaysia has a bicameral federal parliament with a lower House of Representatives and a Senate (upper house). The 222 members of the House of Representatives are elected from single member districts. The 70 members of the Senate have three-year terms. 26 are directly elected by the 13 State Assemblies, and the remaining 44 are appointed by the King on the advice of the Prime Minister.

Each of the 13 states has its own unicameral legislature. MPs are elected from single member constituencies. The

state legislatures can enact state laws, and the majority political party in the state legislature forms the state government. In nine of the thirteen states, the government executive is led by a Chief Minister who is appointed by the Sultan, a traditional hereditary leader who acts as a local head of state. The other four states do not have a local hereditary leader. In those states a governor is appointed by the King, and the governor appoints the Chief Minister.

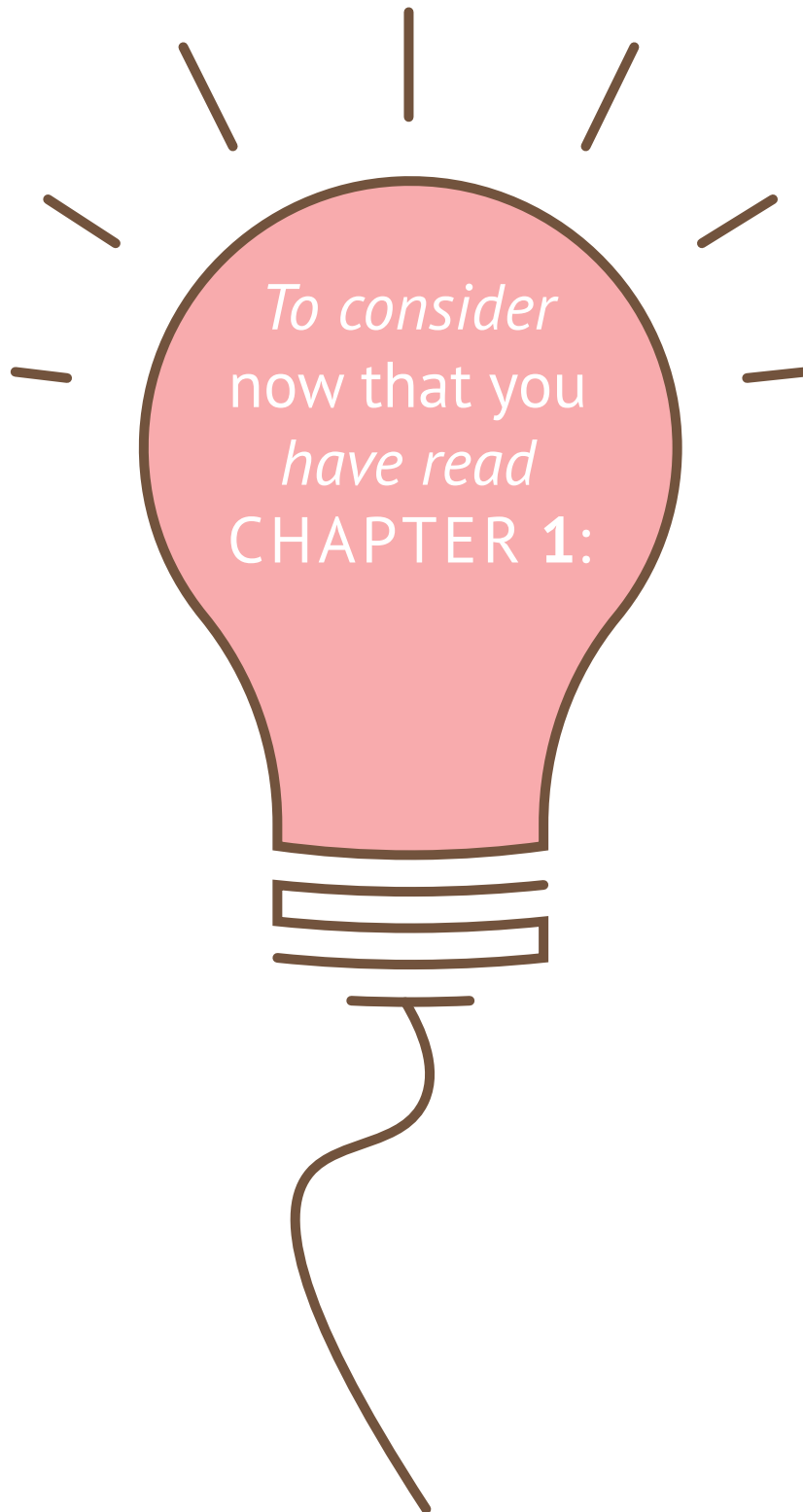
There are also local governments within the states in the Malaysian federal system. In 1965 local government elections were suspended under emergency laws. Since then, local governments have been appointed by state governments and led by an appointed state civil servant. They have the power to collect taxes and create some laws in the form of by-laws.

Election for central and state legislatures use a first-past-the-post electoral system. For much of Malaysia's modern history, most states were ruled by governments formed by a country-wide coalition of political parties. As a result, the states tended to act as one because of the centralised political control of that coalition. It often won a two thirds majority in the federal parliament, enabling it to also amend the constitution. Over the last decade this has started to change, and in 2018, a new coalition won in elections for the federal parliament.



CASE STUDY

Malaysia



What do you believe is the most important feature of the relationship between the federal and constituent levels of government in a federal system? Why?



C H A P T E R T W O

PATHS TO FEDERALISM

This chapter looks at different types of federal systems and the historical influences leading to their development. It also considers factors that have influenced Myanmar's path towards federalism and different perspectives on them.

Guiding questions for this chapter are:

1. What factors have led to the development of federal systems?
2. How has history influenced different types of federal systems?

2.1 Historical Paths to Federalism

Federal systems often have a basis in a country's past. Historical influences include past patterns of migration and settlement, the growth and decline of kingdoms or empires, wars, colonisation and independence. Over time, different groups within a country may become divided or oppressed, become a majority or a minority group and experience unequal development. Such conditions may contribute to serious social, political or economic instability and even conflict.

Some federal countries comprise different ethnic, linguistic or religious groups. In other federal countries, the majority of people in the constituent units may share a similar culture or language.

It is important to recognise that some examples of federal countries like the USA, Australia or Brazil, were created in areas of the world where indigenous people were already living. The present-day majority groups that share a similar culture and language became the majority group through colonisation and conquest. Pre-existing indigenous peoples were often unfairly and violently oppressed and displaced or became minority groups in their own areas. They had little or no input into the development of the federal systems of the new majority groups.

Federal systems can be very broadly grouped into two types: 'coming together' federalism and 'holding together' federalism.

Coming Together Federalism

'Coming together' federalism usually occurs when different territorial areas with pre-existing populations choose to come together to form a federal country. This is usually because the constituent units gain benefits for their

security, economy or development by coming together. Australia, the United States of America or Brazil are often cited as examples of coming together federalism. Because they chose to come together for their mutual benefit, many powers often remain with the constituent units.

Holding Together Federalism

'Holding together' federalism usually occurs in countries with a variety of ethnic, linguistic or religious groups concentrated in different areas of one country. This may be due to previous colonisation and later independence when a country's modern borders were established. Groups in some areas of a country may seek greater autonomy (more control over their own areas) or even secession, where their area completely breaks away to form a separate country.

Holding together federal systems are seen as a way to maintain 'unity in diversity'. Different groups can decide matters like language, education or culture, within their different constituent units, while also being part of one federal country. Examples of holding together federal countries include India, Belgium and Nigeria. In holding together federal systems, the federal government tends to hold more powers than the constituent units.

Discussion / Reflection

Two phrases that are often used to describe federalism are:

- a. 'unity in diversity', and;
- b. 'self-rule' and 'shared-rule'.

How do you believe each of these phrases demonstrate how federalism works?



2.2 Self-Determination and Federalism

Self-determination is the idea that groups of people have a collective right to make decisions for themselves and have control over their own future and development. Groups seeking greater autonomy and self-determination are often a feature of federal systems. Self-determination is recognised in the founding Charter of the United Nations and in major human rights treaties and declarations. Part 1, Article 1 in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Self-determination was a central idea for nations gaining independence to become new countries with the decline of empires and colonisation in the 20th century. In relation to federalism, self-determination now usually refers to groups of people seeking greater cultural autonomy and political participation within an existing country. However, self-determination can also lead to conflicts where groups seek greater autonomy or independence. This may pose a challenge to the sovereignty – the ultimate political and legal power over an area – of an existing government. Self-determination may also promote discrimination against other groups of people not considered to be part of the ‘self-determining’ group.

Discussion / Reflection

What are some possible connections between the idea of self-determination and federalism?

Steps towards Federalism in Sri Lanka

Sinhalese, who are mostly Buddhist, make up 75% of Sri Lanka's population. Tamils, who are mostly Hindu and concentrated in the north and east, comprise 11%. Other groups with Islam as a common religious identity make up another 10%.

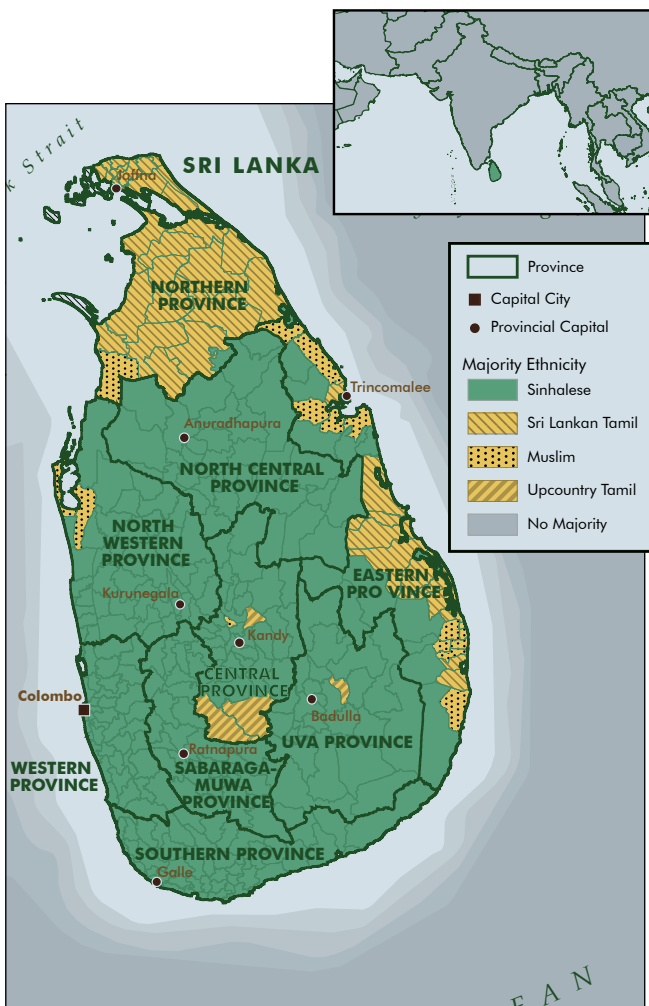
Sri Lanka, consisting of nine provinces, became independent in 1948 with a new constitution. In 1956, due to the overall dominance of Sinhalese political parties, Sinhala, the language of the majority group, replaced the former colonial language, English, as the official language. This meant many Tamils were no longer able to work in government jobs. New constitutions in 1972 and in 1978

changed the country's name from 'Ceylon' to Sri Lanka, the Sinhala name for the country. Sri Lanka was declared a 'unitary state' with Buddhism as the 'foremost' religion, and Sinhala as the official language. Tamil was recognised as 'also' an official language, and English as a 'link' language.

Tamil demands for a federal system grew, but were associated by many Sinhalese with Tamil separatism. Consequently, the term federalism was often avoided when describing decentralisation. Eventually, Tamil political parties began to call for a separate Tamil country. In 1987, an amendment to the constitution established provincial councils. There were powers for the centre, limited powers for the provinces, and shared powers. However, the central parliament retained the power to override the provincial councils through a two-thirds majority. Additionally, the central government appointed the provincial governors. Law and order powers for the provinces, although recognised in the amendment, were never implemented.

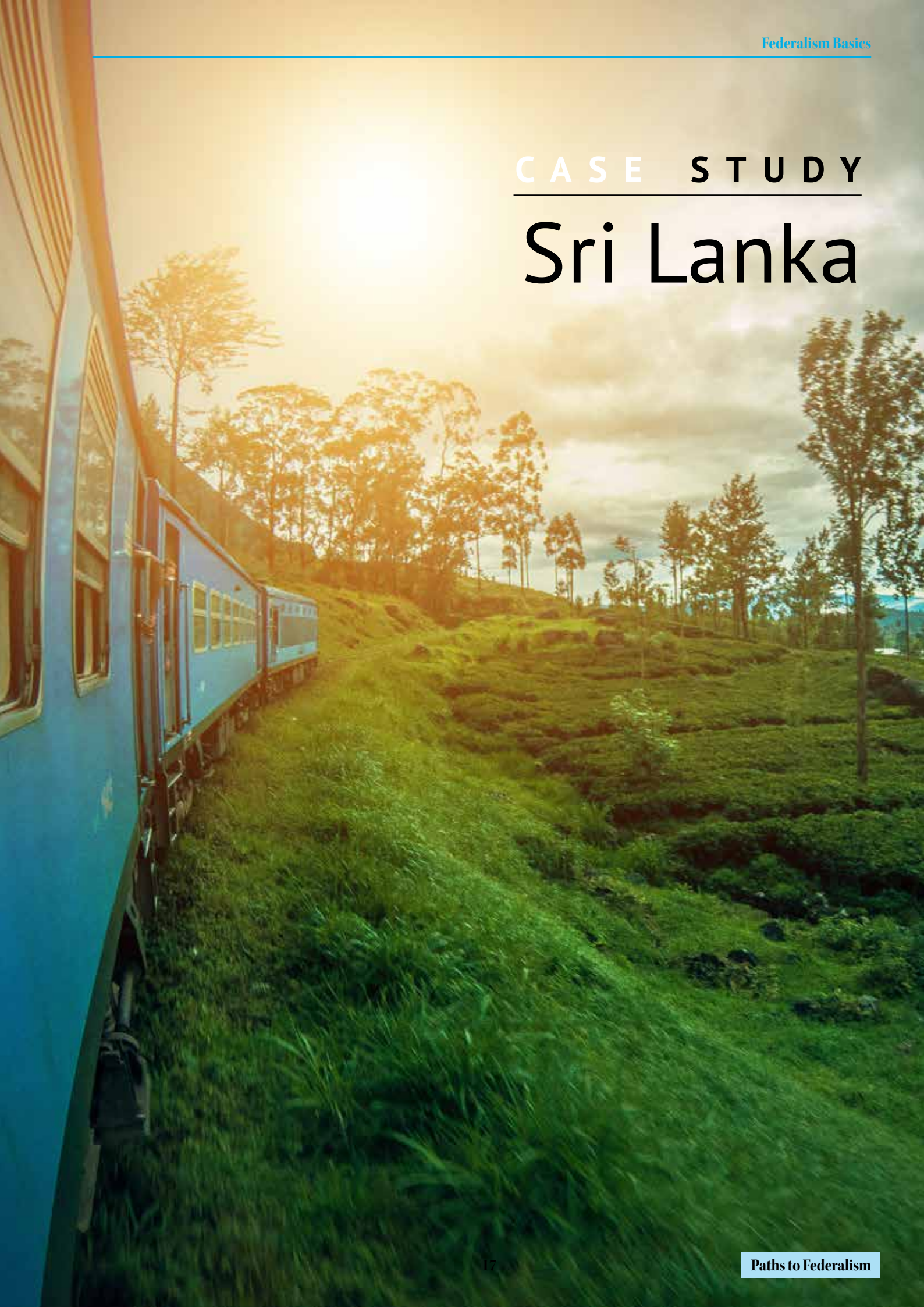
From 1983 to 2009 there were periods of civil war between the government and the Tamil armed group, the Liberation Tigers of Tamil Eelam (LTTE). Federalism was proposed as a potential solution during ceasefire negotiations. Sri Lankan government forces eventually overran LTTE controlled areas in the north in 2009. Despite the end of the war, many of the underlying issues have not been fully resolved.

In 2016, a new government established a Constitutional Assembly. It supported a second chamber in the central parliament, clearer division of powers between the centre and provinces, and a third level of local authorities below the provincial councils. It also recommended merging the northern and eastern Tamil-majority provinces into one province. That proposal faced opposition from some other groups in those areas that would become a smaller minority in a larger Tamil-majority province. The Constitutional Assembly suggestions have not been implemented.



CASE STUDY

Sri Lanka



2.3 Moving towards Federalism in Myanmar

The area of present-day Myanmar includes a wide range of peoples with various origins, languages and religious beliefs. Due to the many river valleys and mountain ranges, the languages and cultures of different groups sometimes developed in contact with each other, and sometimes in isolation. Over time, members of these diverse communities have also merged, intermarried and moved to other areas. Some large kingdoms and empires grew and then declined over centuries, especially in the plains and river valleys. Other groups, often in more remote or mountainous areas, maintained limited relationships and/or shifting alliances with the kingdoms and empires based in the plains and valleys. Consequently, some groups came together while some became divided from others.

The British Empire gradually took control of Burma (Myanmar) in the 19th century and governed it from 1886 to independence in 1948 (occupied by Imperial Japan from 1942 to 1945). The British administered the country as two separate areas. ‘Ministerial Burma’ included the mainly Bamar areas in the plains and some Mon, Karen and Rakhine areas. The ‘Frontier Areas’ were often in hilly areas further from the plains that included Kachin, Shan and Chin and many other groups. The British presence in these areas was also minimal. They often only had an indirect relationship with traditional leaders there.

The British colonial administration attempted to label and categorise Burma’s many different peoples. They relied on theories of race (now considered scientific racism) that were popular in Europe during the late 19th and early 20th centuries. This was problematic as it led to ethnic identities being viewed as fixed and unchanging. The different

ways Ministerial and Frontier areas were administered alongside ethnic categorisations further increased existing differences and tensions between groups.

The Panglong Agreement

The Panglong Agreement in February 1947:

- followed negotiations with the British government in December 1946 that required consent from peoples of the Frontier Areas to become part of an independent Union of Burma;
- was signed on February 12th, 1947 by representatives of the Bamar, Chin, Kachin and Shan ethnic groups (but not other ethnic groups, such as Karen, Mon or Rakhine that had been included within colonial Ministerial Burma);
- was acknowledged as a means of speeding up progress towards independence for Burma;
- accepted in principle ‘Full autonomy in internal administration for the Frontier Areas’ (Shan, Kachin and Chin areas).

Discussion / Reflection

What do you believe are the most important influences on Myanmar’s path towards federalism?

2.4 Constitutions and Federal Developments in Myanmar

Myanmar has had three constitutions since 1947. Although the constitutions have included some elements of federalism, they did not directly refer to or set out an explicitly federal system.

Bogyoke Aung San and members of his interim cabinet were assassinated in July 1947, soon after the Panglong agreement in February. The Constitution of the Union of Burma was then finalised in September 1947. It included some aspects of the Panglong Agreement such as limited autonomy for the Frontier Areas, and the idea that state executives would be drawn from the Union executive (Ministerial Council).

The right to secession after ten years for Shan and Kayah states was also included. However, one of the drafters of the constitution, U Chan Htun, famously stated that the 1947 constitution, ‘though in theory federal, is in practice unitary.’ Some of the reasons for thinking this were that:

- the government of Bamar majority Ministerial Burma was effectively also the Union government;
- the states did not have their own constitutions;
- the upper house of the Union parliament representing the ethnic states was weak relative to the lower house, and;
- Burmese was proclaimed as the only official language of the Union.

In 1961 and early 1962, a group of representatives from Shan and other ethnic groups drafted suggested changes to the constitution to make it more federal. The ‘Shan Federal Proposal’ advocated for a structure of eight ethnic states including one Bamar state. All states would have

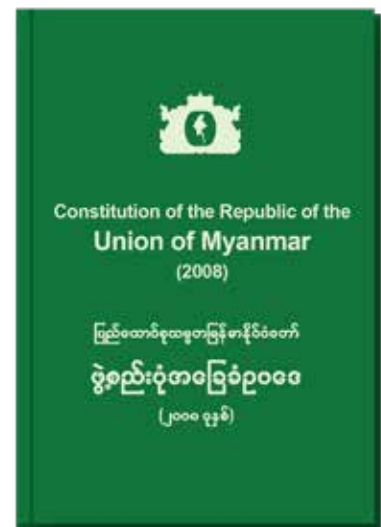
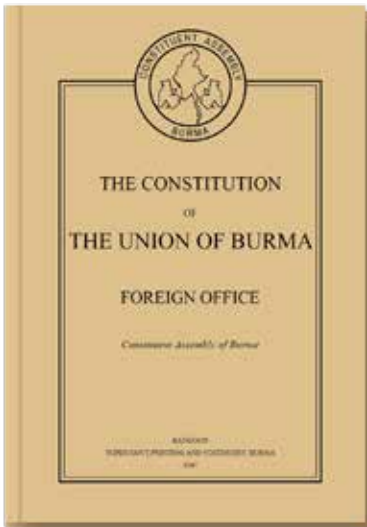
equal representation in the upper house of the Union parliament. The proposal also called for all the states to have their own constitutions, and for residual powers to go to the states.

The 1947 constitution was suspended in 1962 following a military coup, and U Ne Win’s Burma Socialist Programme Party (BSPP) developed a new constitution in 1974. The 1974 constitution set out a more symmetrical administrative structure with 14 constituent units comprising seven states and seven divisions. However, the states and divisions did not have legislatures and implemented the central government’s laws and policies through People’s Councils. There was provision for election of representatives, but candidates were selected by the BSPP. The Union parliament had only one chamber.

After another coup in 1988, a long constitution drafting process from 1993 to 2008, overseen by the military, finally produced a new constitution in 2008.

The 2008 Constitution included some features of a federal system:

- Limited division of powers between the central (Union) government and the seven states, seven regions and self-administered areas;
- Election of representatives to legislatures at both the Union and state/region levels;
- A bicameral Union parliament, and;
- Unicameral parliaments for states, regions and self-administered areas.



Myanmar has had three constitutions since it became independent.

However, the 2008 Constitution:

- guaranteed 25% of seats in all Union, state, region and self-administered area parliaments for appointed military representatives;
- required votes of more than 75% of all representatives in the Union Parliament for amendment of the constitution;
- gave the military control of the ministries of defence, border and home affairs;
- did not include constitutions for the states and regions;
- gave the president of the Union power to appoint the state/region chief ministers.

Between 2005 and 2008, a coalition of pro-democracy and ethnic organisations, the Federal Constitution Drafting and Coordinating Committee (FCDCC), developed an alternative draft constitution of the ‘Federal Republic of

the Union of Myanmar’. Some suggestions were similar to the 1961 Shan Federal Proposal. It included the creation of one Bamar ethnic state, constitutions for each state, civilian control over the military and residual powers going to the states. As well as eight ‘ethnic’ states it recommended two ‘nationalities’ states – Tenasserim and Irrawaddy – and left the possibility for adding other states in the future. The Federal parliament was bicameral. Each state had equal representation in the upper house which gave non-Bamar ethnic states a balance to a Bamar majority in the lower house of representatives.

Discussion / Reflection

What are the main differences between the official 1947, 1974 and 2008 constitutions of Burma/ Myanmar compared to the Shan Federal Proposal/ FCDCC alternatives?

2.5 Different Perspectives on Federalism in Myanmar

The Bamar majority and other ethnic groups have often held different interpretations of the country's history. For example, the Bamar view of Panglong tends to see ethnic leaders as having been brought together by Bogyoke Aung San to show their unity towards Burma's struggle for independence. Some ethnic leaders, on the other hand, point out they organised the conference in which they agreed to preserving their status and autonomy within a federal Union of Burma. These different perspectives on the past have also led to different perspectives on federalism.

For the military, federalism has been associated with the threat of secession by some ethnic groups and the potential disintegration of the country. For many non-Bamar ethnic groups, federalism has come to be seen as the best way to achieve self-determination and peaceful co-existence within the country.

Since the 1990s, the National League for Democracy (NLD) has stated its support for democratic federalism although it did not clearly state what its strategy for moving towards federalism was. In 2015, the establishment of a 'union based on the principles of democracy and federalism...' was also one of the principles of the 2015 Nationwide Ceasefire Agreement (NCA) between the then USDP government and ten ethnic armed organisations.

Democratic Federalism or Federal Democracy?

There have also been differences in expectations of how a federal system might be achieved. The military has stated that the elements of federalism are already contained within the 2008 Constitution. Between 2016 and 2020, the NLD tried to work through the existing 2008 Constitution, with some attempts to amend it while also continuing peace process negotiations through the NCA. The NLD prioritised 'democratic federalism', attempting democratic political reforms based on its electoral support of the Bamar majority first, before moving towards a federal system.

Many ethnic political parties and ethnic armed organisations argued for establishing a 'federal democracy' first as a priority, so the constituent units of the Union have equal status and participation in establishing federal democracy. This would require either fundamental changes to the 2008 Constitution, or a new constitution. However, there was little progress in either amendment of the constitution or the peace process that could have paved the way towards a genuinely federal system.

Some argue that federalism and democracy in Myanmar would be best established at the same time. This is so that one does not take precedence over and inhibit the development of the other. If democracy is established first, the majority may resist genuine federalism. On the other hand, if federalism is established first, some constituent units may not be (or not become) very democratic.

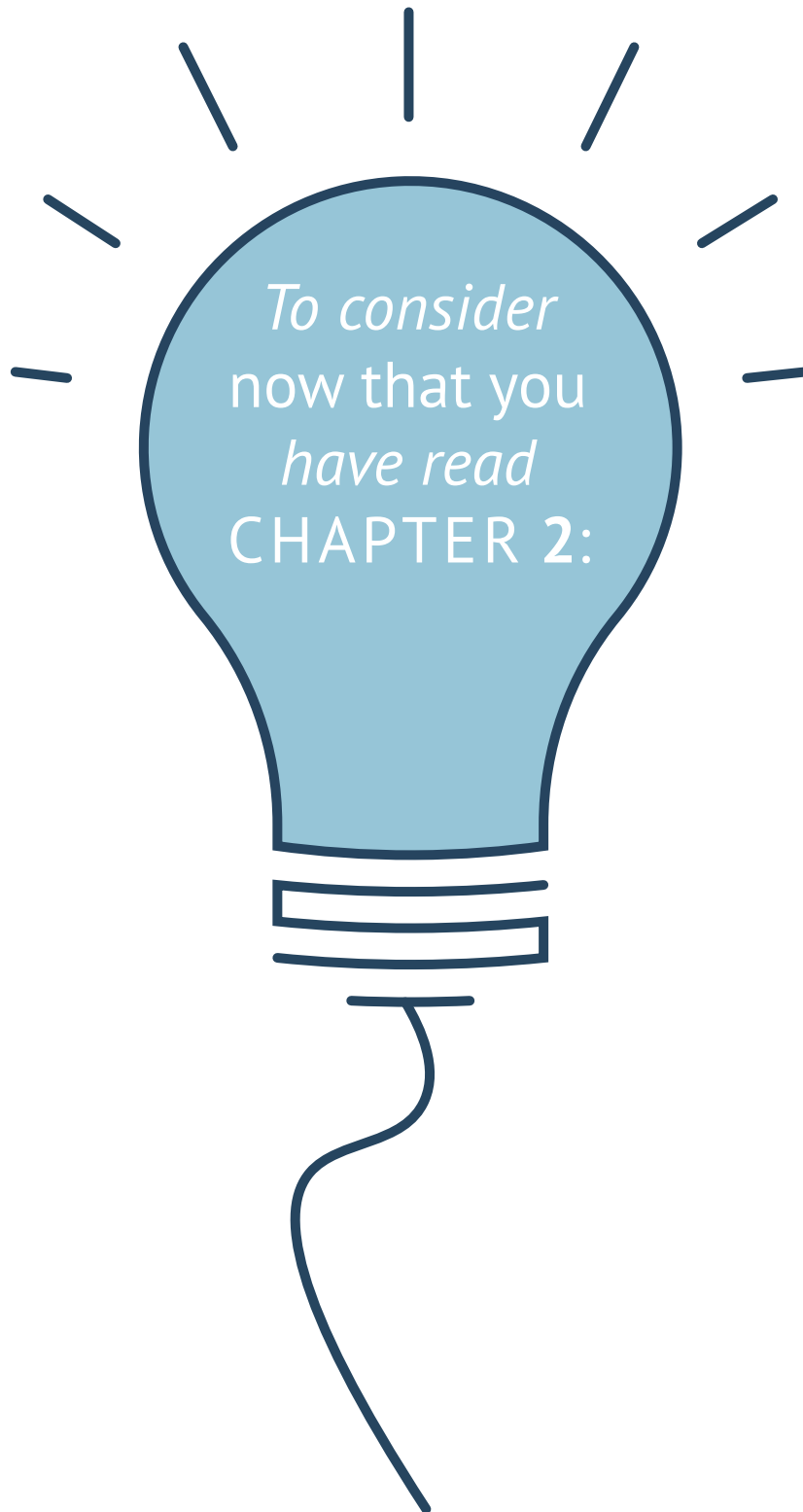
There have also been differences in expectations of federalism between ethnic groups. Some groups may want greater autonomy and powers for their existing ethnic-based states. Other smaller ethnic groups present within states may want greater protection for minorities, their own autonomous areas, or even creation of new states.

There are now potential opportunities for country-wide political parties, ethnic political parties, civil society groups and ethnic armed organisations to work together towards a genuinely federal system.

Discussion / Reflection

What do you believe are potential advantages and potential disadvantages in the case of Myanmar from each of these three scenarios?

1. Maintaining a unitary state
2. Creating a federal system
3. Complete secession of some parts of the country



What do you believe are the most important elements for the development of successful federal systems?

C H A P T E R T H R E E



FEDERAL DESIGN ISSUES

This chapter outlines important elements in the design of federal systems, and different perspectives on them. These federal design issues are also explored within the context of Myanmar.

Guiding questions for this chapter are:

1. How should decisions about establishing a federal system be made?
2. What elements are important in the design of a federal system?

3.1 Constitution Drafting and Federal Design



Above: (Top) The first day of the Constituent Assembly in India, 1946. The Constituent Assembly was elected to draft the Constitution of India. After independence from Britain in 1947, the Constituent Assembly served as the first parliament of India; (Bottom) The female members of the Constituent Assembly.

The drafting of a constitution is central to development and design of a federal system. The constitution will be the basis for the overall structure, institutions of government and division of powers. Usually, an official body, such as a constituent assembly or constitution drafting committee, is established to develop a constitution. The process is likely to include legal experts and representatives of interested groups such as political parties, ethnic groups and civil society.

The development of a constitution often involves extensive input from the public since it will form the basis for the government, laws, political system and rights of citizens. Sometimes, a new constitution is developed through amendments to an existing one. This was the case in Indonesia between 1999 and 2002. In other cases, an entirely new constitution is written from the start. This is more common if the previous constitution and system it supported has been widely discredited. This was the case in Nepal between 2008 and 2015 – at the end of ten years of civil war. A new constitution may also be subject to public scrutiny and acceptance through a referendum – a country wide vote – before it can come into effect.

A constitution is an essential basis for a federal system, but it is also only a beginning. The development of a functioning federal system in practice may take years, and face many challenges in implementation.

Discussion / Reflection

1. What aspects of drafting a constitution do you believe these groups might contribute to?
 - Legal experts
 - Political parties
 - Ethnic groups
 - Civil society organisations
2. What other groups might be included and what could they contribute to?

3.2 Identity and Federalism

The design of a federal system in a multi-ethnic country will need to consider people's sense of belonging to different ethnic, linguistic or religious groups, and their sense of identity with the federal country. The people of the constituent units need to have some shared commitment to the values and institutions of the federal country as a whole. 'Civic identity' is the sense of belonging to the larger federal country alongside one's own ethnic, linguistic or religious identity. It is an important issue for the design of federal systems. Many multi-ethnic federal countries try to develop a civic identity through having a common language, or symbols representing the whole country like a flag, animal or national anthem.

Constitution of Nepal, 2015

6. Language of the nation

All the mother tongues spoken in Nepal shall be the national language.

7. Language of official transaction

1. The Nepali language written in Devanagiri script shall be the language of official business in Nepal.

2. In addition to Nepali language, a province shall select one or more national language that is spoken by majority of people in that province as the language of official business, as provided for by the provincial law.

3. Other matters concerning language shall be as decided by the Government of Nepal on the recommendation of the Language Commission.

Language

The language or languages used in schools, government institutions and workplaces in a federal system is an important issue for countries with linguistically diverse populations. It can influence people's education outcomes, employment opportunities, political participation and sense of identity with the country as a whole.

Sometimes a federal country uses a neutral language as the common language for the whole country.

- India uses English as an official language as well as Hindi and regional languages. English was the language of the British colonial power before India's independence in 1947, but it is not the original language of any national group in the country.
- Indonesia uses Bahasa Indonesia derived from Malay as the common language rather than Javanese, which is the language of the largest ethnic group.
- Some federal countries, such as India, South Africa and Nepal allow the constituent units to choose their own language alongside the official federal language.

However, some other countries choose the language of the largest ethnic national group. In Sri Lanka, the language of the largest ethnic national group, Sinhala, is also the official national language.

Myanmar has a lot of different languages. Some people argue for the use of Myanmar/Burmese, the language of the largest group, as the common language for use in schools and government services. They say that if all people are able to speak Burmese it will make it easier for them to move to different parts of the country for work or for education opportunities. It is also claimed that using one common language will help with communication between different ethnic groups and support development and economic opportunities.



Others argue that recognising the languages of different ethnic groups is important for their development. They say that it will allow culturally relevant services in different ethnic areas, contribute to education, and recognise the distinct characteristics of those ethnic groups. Resentment from ethnic groups at the lack of recognition of their languages and cultures is often considered to be an important factor contributing to conflicts in Myanmar.

Some educators now advocate for a combination of teaching subjects in ethnic first languages or ‘mother-tongues’ in the early years of schooling and gradually introducing a second language, such as Burmese, when the child is older. Mother-tongue-based-multi-lingual-education could enable people in the future to maintain and use their own ethnic languages while also being able to use Burmese as the federal or union language.

Religion

The status of religion in a country can be an important issue in federal design. Secularism is the idea that religion should be separate from the government and institutions of the country. It also means people are free to practise their different religions and should not be discriminated against for doing so. Many federal countries, such as Nepal, Nigeria or South Africa, have secularism or freedom of religion included as a fundamental right enshrined in their constitutions. Some other countries, like Pakistan or Sri Lanka, include a special status in their constitutions for one religion. Countries established with a federal system of government have usually recognised the importance of secular values.

In Myanmar, it has been argued that Buddhism, the religion practised by the majority of people, can provide a sense of identity for the country as a whole. However, significant groups in the population practise other religions, including Christianity, Islam and Hinduism.

The 2008 Constitution recognised the ‘special position’ of Buddhism as the ‘faith professed by the great majority of the citizens of the Union’. It also recognised Christianity, Islam and Hinduism as ‘religions existing in the Union’. It stated that every citizen has the right to freely practise their religion without discrimination. Those who argue for a completely secular constitution prefer this type of right that recognises all religions equally, rather than a constitution favouring one religion in particular.

Discussion / Reflection (1)

How do you believe language should be addressed in a federal system in Myanmar?

Constitution of Nepal, 2015

26. Right to religious freedom

1. Each person shall be free to profess, practice, and preserve his/her religion according to his/her faith.
2. Every religious denomination shall, maintaining its independent existence, have the right to manage and protect its religious places and religious trusts in accordance with law...

Discussion / Reflection (2)

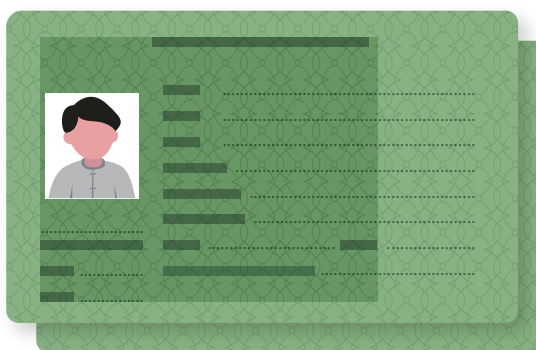
How do you believe religion should be addressed in a federal system in Myanmar?

3.3 Citizenship and Federalism

If someone is legally recognised as a citizen of a federal country, they are a citizen regardless of which constituent unit they come from, or ethnic, linguistic or religious group within the country they identify with.

Constitutions usually include the fundamental rights of citizens. Some constitutions also define who is a citizen and/or how people become citizens. The constitutions of Malaysia and Nepal state who is defined as a citizen and how people may become citizens, but citizenship issues are dealt with in detail in specific citizenship laws for those countries. Some other countries' constitutions do not define citizenship. Instead, citizenship is addressed in the countries' citizenship laws. The constitution of Pakistan refers to the fundamental rights of citizens, but details of who is legally considered a citizen and how they become a citizen are covered in specific citizenship laws.

Some countries base the criteria for citizenship on who a person's parents were and if they qualified as citizens. Other countries base citizenship on a person being born within that country, rather than it just being based on their parents' citizenship status. Countries may also have a process, such as naturalisation, by which a person can become a legal citizen. Some constitutions, such as South Africa's, include citizenship as a fundamental right that cannot be taken away.



If people are not legally recognised through constitutions or laws as citizens of any country, they may be (or become) stateless. They may belong to a group within a country that does not meet the criteria for (full) citizenship, their citizen status may have been removed/changed, or they may have been forced across borders into a country where they are not recognised as citizens. This is a serious problem, as stateless people do not have the rights and protections that are guaranteed for citizens of a country in its constitution

and/or citizenship laws. They may not be able to access government services like health and education, seek employment, or travel freely, and may be at greater risk of exploitation or abuse.

Discussion / Reflection

What do you believe is most important about citizenship in federal systems?

3.4 Identity and Citizenship in Myanmar

In Myanmar, government attempts to distinguish who are recognised as citizens and to construct a national identity for the Union have often centred on the idea of *Taingyintha* or 'national races'. The term was not used in the 1947 Panglong agreement and only briefly in the 1947 constitution. During the era of U Ne Win's BSPP government in the 1960s and 70s, the concept of *Taingyintha* was promoted as a way to try to unify different ethnic groups within the Union of Burma. The criteria for being recognised as national races was that these groups had lived in pre-colonial times before 1823 in the area of what was now post-colonial Burma. As well as trying to create a national identity, the concept also acted to exclude certain other groups from citizenship. Some people of Indian or Chinese ancestry who were considered to have arrived in Burma during the colonial era after 1824 were excluded by this definition of citizenship.

The concept and supposed number of officially recognised national races is believed to have its basis in colonial era ethnic categorisations. A government document in 1960 listed 45 ethnic groups and 160 sub-groups, while a 1972 government list included 144 groups. Governments of Myanmar in recent decades have officially recognised eight 'national races' comprised of 135 ethnic groups. The term national race has more often been used by the Union of Myanmar government in relation to non-Bamar ethnic groups. Under the 2008 Constitution, to establish institutions like ethnic affairs ministries or self-administered areas, a group must officially be recognised as a national race or a component ethnic group of a national race.

Myanmar's 1982 citizenship law was also based on the concept of *Taingyintha* with children whose parents were members of recognised national groups being eligible for full citizenship. People whose group or parents fell outside the criteria for full citizenship were sometimes included in other categories as associate or naturalised citizens. However, these other categories reduced the extent of their rights compared to those of full citizens. In practice, some people were made stateless by how the citizenship law was implemented.

Some now argue for a more inclusive approach to citizenship in a future federal Myanmar. They suggest criteria for citizenship should not be focused on the arbitrary idea of *Taingyintha* or 'national races' that act to exclude some people or groups. Instead, a broader concept of citizenship could be achieved with the development of a new constitution and removal of the 1982 citizenship law.

An historical example of a broader approach could be seen in the 1947 Constitution of the Union of Burma. Although citizenship criteria in the 1947 Constitution included people who had parents or grandparents belonging to 'indigenous races', it also included criteria that recognised a person's place of birth and the period of time they had lived there. People born to parents who had lived permanently within the territories that became the Union of Burma for eight out of the ten previous years could also be legally considered citizens.

Discussion / Reflection

How do you believe citizenship should, or should not, be defined in a future federal system in Myanmar?



3.5 The Bases and Boundaries of Constituent Units

The bases of the constituent units refer to the criteria that are used to allocate constituent units. Two main sets of criteria that have often been applied are *territory* and *ethnicity*.

In territorial-based federal systems, the boundaries of the constituent units are mainly based on geographic features like mountains or rivers rather than areas of different ethnicity. Historical events or migration may have influenced development of territorial constituent units, but ethnic differences are not the primary factor. Examples include the territorially-based constituent units in ‘coming together’ federal countries like the USA, Australia or Brazil.

In ethnic-based federal systems, the constituent units are delineated within a country based on areas where different ethnic groups are concentrated. Therefore the sizes and boundaries of the different constituent units are decided by where the populations are concentrated. The languages, cultures or religions of these groups may also be features of the different ethnic-based constituent units. Constituent units based on ethnicity and/or language are often a feature of ‘holding together’ federal systems, such as in India, Belgium or Pakistan. For example, Pakistan consists of four main ethno-linguistic provinces.

Federal systems often combine ethnic and territorial criteria in deciding the boundaries of constituent units. This hybrid model focuses on both identity and territorial viability. Identity criteria may include ethnicity, language, culture and history of the populations. Viability is about the ability of the constituent unit to function effectively as a part of the federal system. Viability criteria may include economic capability, population size, existing infrastructure like roads or railways and availability of natural resources. Demarcation of some of the constituent units and their boundaries in Nepal combine identity criteria such as ethnicity, language and culture with viability criteria such as access to rivers to generate hydropower.

Federal systems all have different numbers of constituent units. There is no set rule for how many there should be. However, federal countries with a small number of constituent units, especially if one is a lot larger and/or more politically or economically powerful have tended to be more unstable. For example, the Federal Republic of Czechoslovakia from 1969 to 1992 consisted of two constituent units. The Czech Republic had a larger land area and population, and more economic and political power compared to the smaller Slovak Republic. The federal republic eventually separated peacefully into two separate countries in 1993.

Non-territorial Autonomy

There are also ways to recognise and protect the rights of groups that are either too small or too dispersed to have their own territorial units. Non-territorial autonomy could include legal protections for a group enshrined within the federal constitution, access to their own judicial systems, and guaranteed representation for the group in institutions of government. In India, Hindu, Muslim and Christian groups each have their own legal codes applying to issues of marriage and divorce regardless of their location. In Nepal, the federal constitution guarantees representation of certain minority groups within the national legislature. In several countries in Eastern Europe, non-territorial cultural councils are established with special powers for cultural development, language, and sometimes education.

Discussion / Reflection

How would each of these be important for a constituent unit in a federal system?

- Infrastructure
- Ethnicity
- Resources
- Population size
- Geographic features
- History
- Language
- Culture

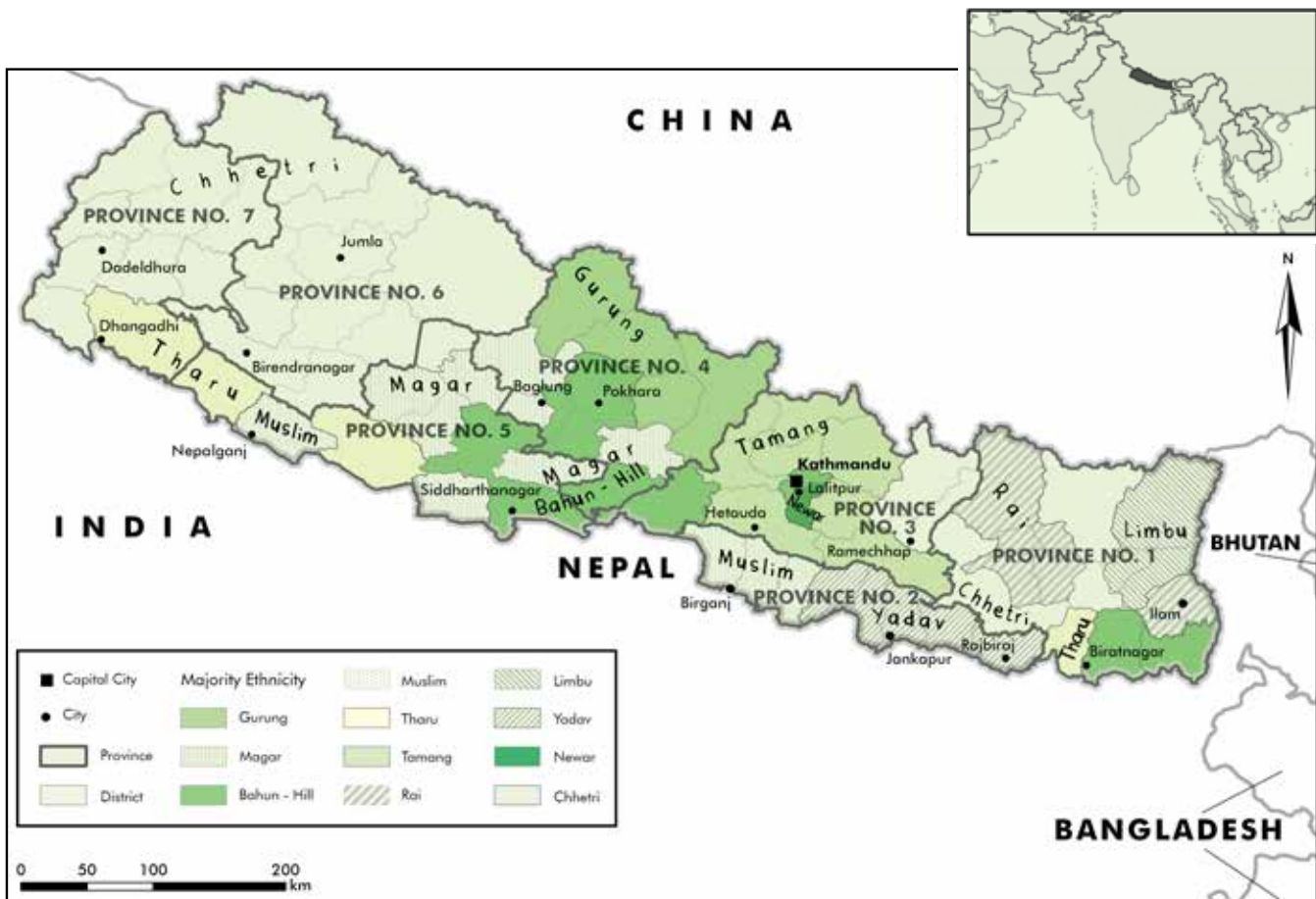
Bases and Boundaries of Constituent Units in Nepal

In Nepal, after 10 years of civil war, a peace agreement abolished the monarchy and an interim constitution (2007 – 15) made a commitment to develop a federal system. Nepal had been a unitary state ruled over by a monarchy for hundreds of years. Federalism was seen as a way to decentralise power from the dominant Hindu/caste-based centre, balance development across the country, increase people’s participation in government and reduce discrimination. Constituent Assemblies (CAs) worked on different parts of a new federal constitution through thematic committees.

The first CA drafting process involved a lot of input from different communities, ethnic groups and civil society, but it could not agree on the constituent unit boundaries. Constituent unit boundaries were then considered by a state restructuring commission (SRC) comprised of appointed experts. In 2011, the SRC suggested a federal structure with 10 provinces. A second CA from 2014 to

2015 finished the constitution drafting process agreeing on six (later seven) constituent units. Political leaders from different political parties mostly negotiated among themselves during the second CA to reach an agreement on the Constitution by September 2015. The new constituent units of Federal Nepal are shown in the map.

Approximately 50% of the population of Nepal lives in the Terai, which is the strip of flat plains long the southern border of Nepal with India. 70% of the population of the Terai are from the Madhesi (Indian ancestry) and Tharu ethnic groups. The Terai is one of the poorest parts of Nepal and also has no capacity to create hydropower. Madhesi and Tharu groups in the Terai have seen themselves as being different to other ethnic groups in the hills to the north. Following the announcement of the new federal constitution and province boundaries in 2015, there were protests and outbreaks of violence in the Terai. Many Madhesi and Tharu in particular remain unsatisfied.



CASE STUDY

Nepal



3.6 Bases and Boundaries of Constituent Units in Myanmar

Myanmar's current administrative structure is hybrid to some extent, with differences in the criteria demarcating states compared to regions. The seven states are more ethnically based and named after the largest non-Bamar ethnic group in that state. The seven regions all have a Bamar majority population, with other ethnic groups also present. The area and boundaries of the regions are more based on geographic features like rivers or mountains, and on economic viability. However, the boundaries of ethnic states do not correspond exactly to the ethnicity of the populations living in them. Most ethnic groups have many people residing in other states or regions. Smaller ethnic groups also reside within the states named after the largest ethnic group in the state. Some of these groups have self-administered areas.

In Myanmar, many ethnic groups see themselves as distinct nations with their own languages, cultures and political aspirations. They often argue that they should be recognised through a system of ethnic federalism with constituent unit states corresponding to areas they claim as their homelands. They also argue that they have been living in and managing their historical homelands, in some cases providing services and security in parts of them independently from the Myanmar Union government. They want these arrangements to be formally recognised and incorporated into a federal system.

Some opponents of ethnic federalism in Myanmar argue that it will increase divisions between different communities. There are many more ethnic groups than there are ethnic-based states. Ethnic-based federalism could further marginalise smaller groups that become a minority within constituent units dominated by larger ethnic groups. Creation of new ethnic-based constituent units could also create further tensions or conflicts with other groups.

Those supporting a territorial-based federal system in Myanmar focus on development rather than ethnicity. They argue that the boundaries of constituent units should be designed so that they are economically viable. Each constituent unit should have the infrastructure, natural resources and sufficient population to develop

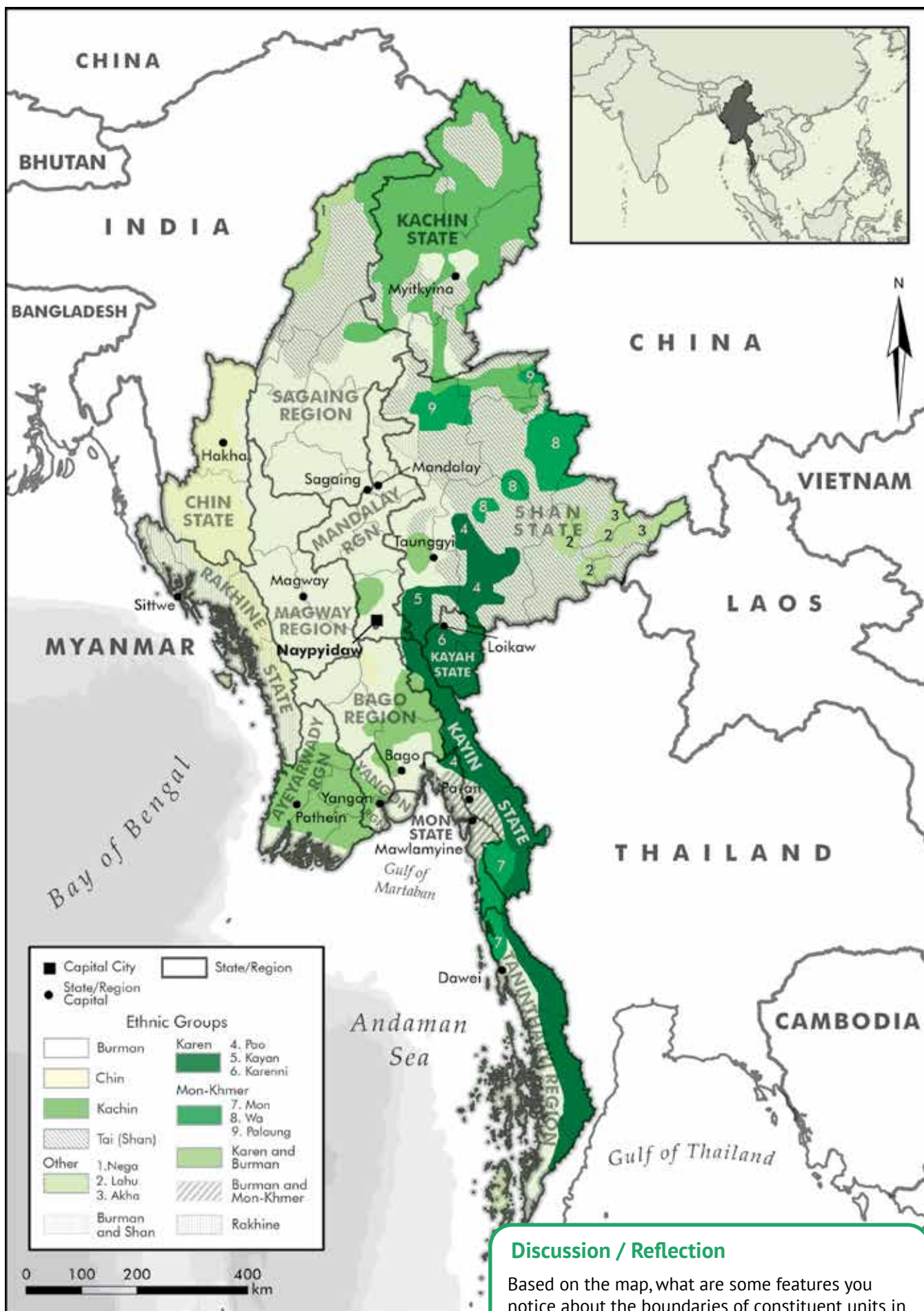
and function effectively rather than only including territory where a particular ethnic group is concentrated.

It has also been suggested that in a future federal system self-administered areas may wish to become states. However, if self-administered areas were upgraded, that could create issues within the states or regions in which they are located.

One way that the development of new states could be managed in a future federal system would be through an agreement or process, such as a moratorium on creation of new constituent units. For example, a period of time such as ten years after the creation of a new federal system and its constituent units, before any further units could be created or changed. This may allow time for in-depth consultation with populations in these areas and consideration of the potential advantages and disadvantages involved.

There have also been suggestions to merge the seven Bamar regions into one Bamar state. Supporters of this idea argue that it would provide equal representation between the states in the upper House of Nationalities in the Union parliament compared to a Bamar-dominated House of Representatives. It may also help more even distribution of finances between the constituent units. However, having one large majority ethnic constituent unit compared to the others may lead to instability. Having one large 'ethnic core' in a federal system has contributed to the break-up of some countries, such as in the former Yugoslavia and in the USSR. Furthermore, one large constituent unit with a majority of the country's population and resources could dominate the house of representatives of the central parliament and the executive for the rest of the country.

Some now argue that future federal constituent units in Myanmar should aim to include a diverse range of ethnicities. They argue this could help reduce tensions based around ethnicity in the longer term. The growth in inter-ethnic unity, especially among youth in federal and democratic movements could be seen as an example of this way forward.



Discussion / Reflection

Based on the map, what are some features you notice about the boundaries of constituent units in Myanmar?

3.7 Division of Powers in Federal Design

The division of powers in federal systems is influenced by:

- how the federal system was formed;
- if the powers deal with issues that cross unit boundaries;
- if the powers deal with issues that require consistency across the country;
- if the powers involve relations with other countries;
- if the powers can be dealt with inside the constituent units;
- the capacity of the constituent units and their governments.

Usually, the federal level will hold international-facing powers such as relations with other countries, international trade and defence. The federal level may also have powers for matters that need to be consistent country-wide such as currency or income tax. There is a wide range of powers that may be held by constituent units. Some federal countries allocate powers relating to law and order, natural resources, education and health to the constituent units. Other federal systems maintain most of these powers at the central level. For example, constituent units in India have most of these powers, while the federal government in Malaysia retains most of these powers.

The reasons for establishing a federal system will also influence how powers are divided. If the purpose is to accommodate ethnic diversity, matters like education, language and cultural policy are more likely to be allocated to the constituent units. If the primary purpose is development, then allocation to the constituent units of economic powers over issues such as natural resources and tax policy may be more important.

If a country has previously been very centralised, the capacity of new or existing constituent units is an important consideration in the division of powers. Extra funding, training and a transition period may be needed for the constituent units to develop further capacity before fully taking on certain powers.

Subsidiarity is an important principle in the division of powers in federal systems. This means that matters should be handled by the most local level of government possible. Matters that only affect people living in a small area should be handled by local government and those affecting a state or region by constituent unit governments. Only those matters that affect people across a large part of the country, or that have international implications, should be handled by the federal government. This allows for better consultation with people affected by government decisions. It ensures that people in government have a strong knowledge of the issues they are dealing with, and it improves accountability by ensuring those affected by a decision are a large part of the constituency that elects decision-makers.

Being able to make locally appropriate and relevant decisions, and fit laws and policies to local conditions, helps contribute to the autonomy of constituent units. However, some laws and policies will affect people throughout a country, so decision-making at the federal level may be more appropriate.

Discussion / Reflection

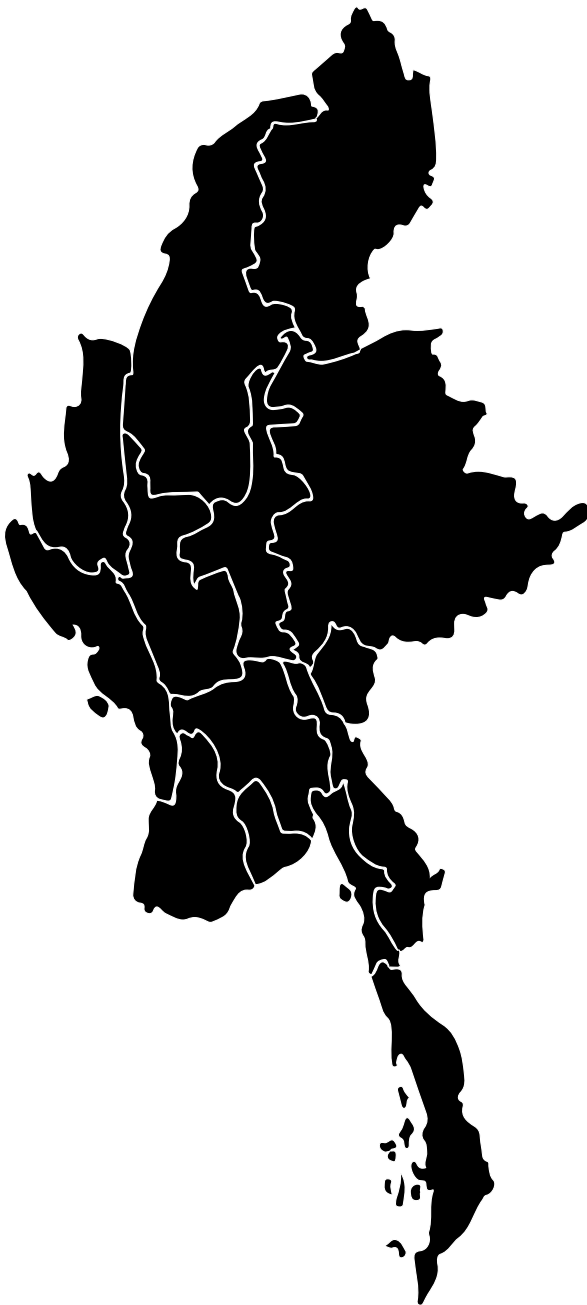
What do you believe are the most important things to consider about division of powers in the design of a federal system?

Comparison of Powers Allocated to Constituent Units in Federal Systems in Asia

| Powers | India | Pakistan | Malaysia | Nepal | Myanmar | Sri Lanka |
|-----------------------|----------------------|------------------------------|----------|----------------------------|---------------------------|----------------------------|
| Public Law and Order | Yes | Yes | No | Yes | No | Yes, (not implemented yet) |
| Key Natural Resources | Yes | Yes, except oil and minerals | Mixed | Yes (mines are shared) | No (with some exceptions) | Yes |
| Land | Mixed | Yes | Yes | Yes | No | Yes, (not implemented yet) |
| Taxation and Revenue | Yes | Yes, (most with centre) | No | Yes (most with the centre) | Yes (most with centre) | Yes (most with centre) |
| Education | No (some concurrent) | Yes (concurrent) | No | Local Government Level | No | Yes |
| Health | Yes | Yes | No | Mixed | No | Yes |
| Culture and Language | Not specified | Yes | Mixed | Concurrent | Yes (and no) | Yes |

Sources: Jorge Martinez-Vasquez, 2011, Fiscal Decentralization in Asia: Challenges and Opportunities, Asia Development Bank, Manila, pp 3-4; Nixon, Joelene, Saw, Linn, & Arnold, 2013, The Asia Foundation, Yangon, Table 5, p 10.

3.8 Division of Powers in a Federal Myanmar



In Myanmar, some constituent units, or parts of them, are seen as having been historically independent areas. The people who live there have had traditional control over land and resources. They argue that the central government should only have powers over matters like foreign affairs and international trade. Following the principle of subsidiarity, the governments of the constituent units can be more sensitive to local needs such as with education or use of natural resources. Some areas have been administered independently of the Union government by ethnic armed organisations. Their existing administrations, including healthcare and education, could contribute to a future federal system. The potential role of their armed forces at the local or federal levels would also need to be considered.

On the other hand, some believe the central government should, in the short term, retain most powers. They believe this is necessary to hold the country together. Conflicts with ethnic armed organisations seeking greater autonomy in some areas of the country are seen as a reason for this. They also argue that some states and regions in the current system do not yet have the capacity to operate effectively and are not making full use of the powers they currently have.

Discussion / Reflection

In Myanmar, should each of these powers go to the centre, to the constituent units, or be shared between them? Why?

- Law and order
- Natural resources
- Taxation
- Education
- Health
- Language
- Culture
- Environment

3.9 Electoral Systems and Federal Design

The type of electoral system has a significant influence on a federal system. Elections allocate the number of seats held by different political parties in a legislature. This decides which party or parties hold enough seats to form the government. In most federal systems, some or all representatives (members of parliament) in the legislatures of the constituent units and in the federal legislature will be selected through elections.

Democratic electoral systems can be divided into two main types: plurality and proportional systems. The first-past-the-post (FPTP) electoral system is the most common plurality electoral system. It is sometimes referred to as a ‘winner takes all’ system. In each seat, the winning candidate who will be the representative in the legislature is the one who received the most votes. If Candidate A gets 51% of votes they win and get a seat in the legislature. If Candidate B got the other 49% of votes, they do not get a seat. 49% of the votes did not contribute to selecting any representative or political party. Federal countries using FPTP electoral systems include India, Malaysia and Ethiopia.

In proportional representation (PR) systems, votes cast translate more closely to allocating the number of seats held by different political parties in the legislature. For example, if a party gets 29% of the votes, it gets 29% of the seats. If, after an election, Party A gets 60% of the votes, Party B gets 30% and Party C gets 10%, then the proportion of seats for each party in the legislature is similar. Political parties choose or elect candidates onto an ordered ‘party list’ to go into parliament. How many candidates from a party list go into parliament depends on the proportion of votes that are cast for that party. Some PR systems have a minimum percentage of votes for a party to be eligible for seats in the legislature.

PR systems make it more likely that smaller parties have opportunities to form coalitions with other parties. They might join with other smaller parties to form a larger coalition, or work with a larger party to form a government. However, smaller political parties may also hold a lot of influence relative to their small size if they hold the ‘balance of power’ when larger parties need them to form a coalition government. Additionally, candidates chosen by political parties to go on party lists may have less connection to voters than candidates who actually live in their constituencies, as is typical in FPTP systems. Federal countries using PR electoral systems include Brazil, Belgium and South Africa.

Some electoral systems include a mix of both plurality and proportional representation. For example, voters may be able to vote for a representative for their local constituency and also cast a party vote. The constituency representative is chosen by FPTP while the party vote contributes to proportional representation of seats for political parties. This system is sometimes called mixed member proportional representation (MMP). It is used in the federal system in Germany, and some non-federal countries including Thailand and New Zealand.

Discussion / Reflection

Which electoral system outlined here do you prefer? Why?

3.10 Electoral Systems in Myanmar

Myanmar has used a FPTP system in elections for representatives to the Pyidaungsu Hluttaw and state/region hluttaws. Elections have been held at the same time for all of these parliaments. The FPTP electoral system in Myanmar has tended to favour the few large country-wide political parties like the USDP in 2010, or NLD in 2015 and 2020. These parties could contest seats across the country. Other ethnicities were often under-represented, as 60% of seats in the house of representatives in the Union parliament were located in Bamar majority areas. Also, a variety of different ethnic political parties representing different ethnic groups in states and regions often competed with each other.

The FPTP system encouraged voters, even in non-Bamar ethnic areas, to choose the candidate ‘most likely to win’ to avoid ‘wasting’ their votes. This also favoured the larger parties. Differences in population size between townships also impacted on representation in the FPTP system. For example, based on the 2014 census of Myanmar, the largest township in Yangon had one MP in the Pyithu Hluttaw representing over 400,000 voters, while another constituency in Yangon had an MP representing a little over 1,000.

Changing to a PR system in Myanmar has been advocated in the past. In 2014, the USDP promoted the idea when it was in government, although it later dropped the proposal before the 2015 election. Given Myanmar’s great ethnic diversity, PR has been seen as a way to achieve a more representative distribution of seats for smaller and/or ethnic political parties. However, under the 2008 Constitution, with 25% of military-held seats in all parliaments, PR could increase the number of smaller parties in parliament that might support the military or military-backed parties. It could also result in fragmentation among other smaller parties. Many small or ethnic-based parties able to gain seats in parliament in a PR system, may have less incentive to work together to form coalitions or merge into bigger parties.

In a future federal system in Myanmar with no role for the military in politics, PR could encourage a more representative distribution of seats for smaller and ethnic political parties in parliaments. There is a question of whether a PR system would be used alongside FPTP in some form of MMP, or be used exclusively. Additionally, people would need to consider whether PR is used in elections for one or both chambers of the central parliament, and for both central and constituent unit elections, or at only one level.



Discussion / Reflection

What type of electoral system FPTP, PR or MMP (or other) do you prefer for a federal Myanmar? Why?

3.11 Fiscal Powers in Federal Design

Fiscal powers refer to the collection of government funds (revenue) such as through taxes, fees or royalties and government expenditure. Governments use the revenue they collect to pay for services and infrastructure for their citizens. In a federal system this relates to the extent that the central government and the constituent unit governments each have powers to raise revenue and decide how it is spent. Fiscal powers are important to the economy of the federal system as a whole and to the extent of the autonomy of the constituent units.

It is unlikely the constituent units of a federal system can all raise the same level of revenue. They will have different types and amounts of resources, different geography, and population sizes. Consequently, federal systems usually have some form of 'fiscal equalisation'. This means that some of the funds raised by the federal government or by the individual constituent units is redistributed back through the federal government to all of the constituent units. This ensures that each unit can afford to provide basic services to its citizens and develop or maintain infrastructure like roads or electricity. Distribution of revenue may be calculated

through formulas, based on the relative population sizes of the different constituent units. Often, a central finance commission is established to make decisions about the distribution of revenue raised in a federal system. Finance commissions usually include financial experts as well as representatives from the federal government and from the constituent unit governments.

Revenue from the extraction of natural resources in federal systems is usually shared between the central government and the constituent units. Transfers of revenue from natural resources may be arranged between the two levels of government, or taken as a proportion of taxes by both levels. Different levels of government may also have powers to raise revenue from different natural resources. For example, in Malaysia, royalties paid by foreign companies for mining are collected by the state governments, while royalties paid for extraction of petroleum are collected by the federal government.

Discussion / Reflection

Why are fiscal powers important in federal design?



3.12 Fiscal Powers in Myanmar

In Myanmar, under the 2008 Constitution, the Union government retained most of the powers to raise taxes and to distribute and spend that money. This included most of the revenue raised from resource extraction in the states and regions. The states and regions did have limited powers to collect taxes on a few natural resources. These were set out in Schedule 5 of the 2008 Constitution. They included taxes from small-scale mining, some forest products, stone, sand, land and water. States and regions could also raise revenue from tolls on roads, the sale or rent of state/region properties and profits from state-/region-owned businesses.

The Union government received most of the revenue from major resource extraction industries such as mining, oil, gas and timber. This larger share of revenue included taxes, licence fees and shares of the sale of resources extracted by foreign businesses.

The state and region governments did not raise enough revenue themselves to meet their expenses. They were reliant on transfers of funds from the Union government. In 2016, approximately 65% of spending in states and regions was covered by transfers of funds from the Union government. The largest area for spending by states and regions has been on road building and infrastructure for electricity supply.

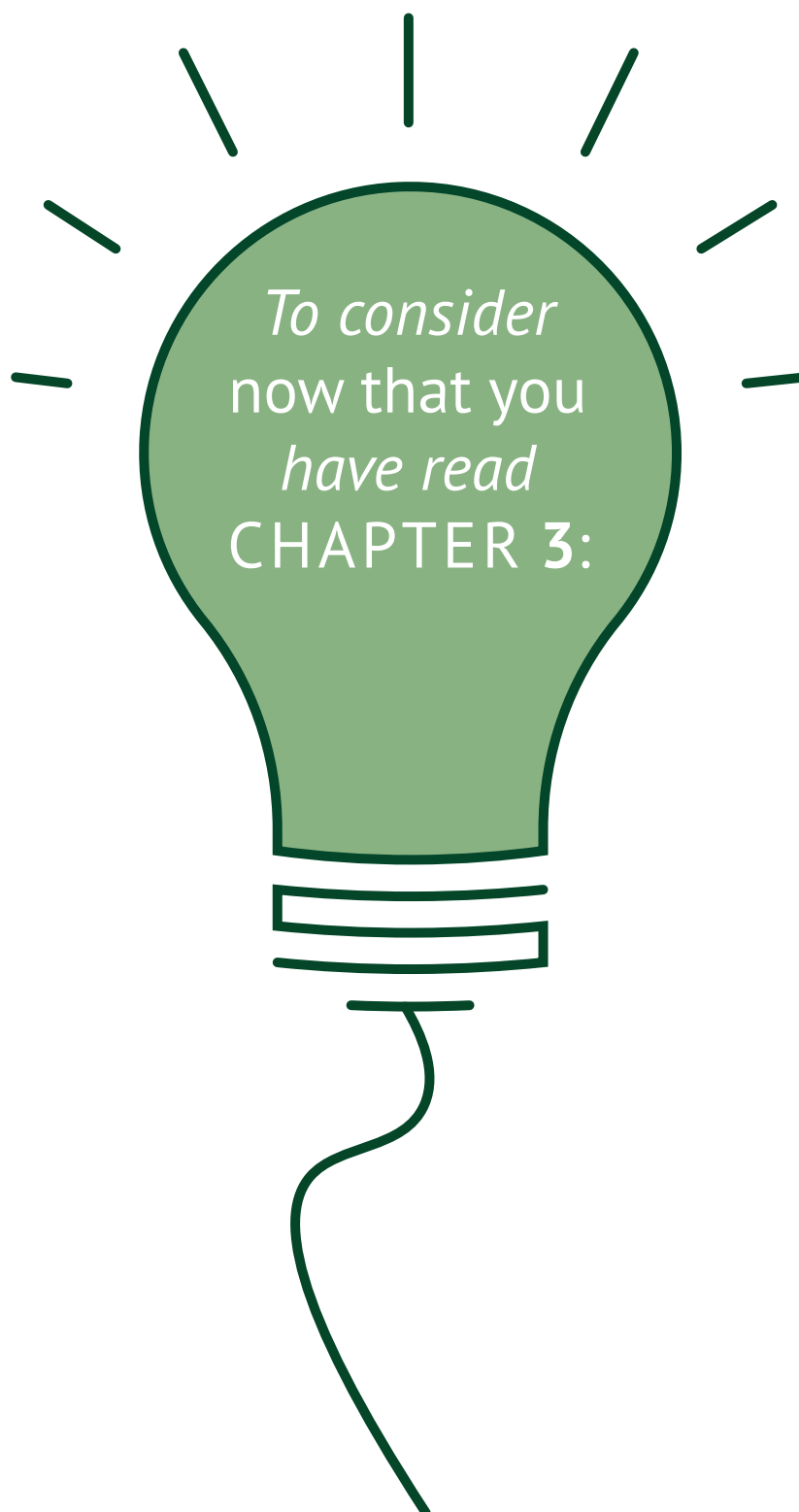
A Financial Commission oversaw the distribution of funds to the Union, state and region governments. The Financial Commission included the President, Vice President, Union Finance Minister, Union Auditor General and Advocate General, and the Chief Ministers of all 14 states and regions. Based on requests from their ministries and departments, the state and region parliaments discussed, amended and then submitted their budget proposals to the Union Financial Commission. The Financial Commission then reviewed the budgets and integrated them into the Union budget. The Union budget was then sent to the Union parliament for review, before being approved by the President.

A future federal system in Myanmar will need agreement about management of natural resources and the revenue from them. Different areas have different types and quantities of resources such as oil, gas, minerals, forests and rivers. Issues that will need to be addressed include management of resources, proportions of revenue going to the constituent units and to the centre, and a process for equitable sharing of the revenue between the units.

It is likely federal constituent units will want much greater control over resources and revenue in their areas. Constituent unit constitutions could strengthen local environmental protection and recognise customary land tenure and existing management of some resources by local communities. At the federal level, a body such as a committee with representatives from each of the unit governments may need to address resource issues, such as rivers or forests that cross unit borders. A federal system to redistribute revenue will also be needed, as the constituent units will all differ in the extent of their resource wealth.

Discussion / Reflection

What sources of revenue (specific natural resources, taxes, rents, tolls, fees, licenses etc.) in Myanmar do you believe should go to central or constituent unit governments, or be shared in some way?



1. What process would you prefer or recommend for developing a new federal system?
2. Which people or types of organisations do you believe should be involved in the process? Why? How?

Federalism

This short book has provided a brief introduction to the main elements of federalism. It has also looked at case studies of federalism in South and Southeast Asia and in the context of Myanmar.

The first chapter dealt with the difference between unitary and federal systems, and some of the essential elements of democratic and federal systems such as branches of government, separation of powers, constitutions, protection of rights, and division of powers between levels of government.

The second chapter looked at factors that have influenced some countries'

paths towards federalism. These included historical developments like previous empires and kingdoms, patterns of migration, colonisation, independence, and the idea of self-determination. It also considered how these factors influenced federal systems as coming together or holding together.

The third and longest chapter explored central issues in the design of federal systems. These issues included constitution drafting and consultation, identity and citizenship, division of powers, bases and boundaries of constituent units, electoral systems, and fiscal arrangements.

Summary

Further Questions about Federalism

Some further questions about federalism to consider:

- What are some ways you can think of that democracy and federalism are related?
- What are some ways that federal systems could protect the rights of non-majority groups?
- Do you think constituent units in a federal system should have one group as a majority group, or have a more balanced mix of different groups? Why?

Some further questions to consider about federalism and Myanmar:

- What do you believe would be the most important historical impacts on Myanmar's path towards federalism? Why?
- What would be some potential advantages of a genuine federal system for Myanmar?
- What could be some potential disadvantages of a genuine federal system for Myanmar?
- Do you believe Myanmar should maintain its current constituent unit structure, or have more (or less) constituent units in a federal system in the future? Why?
- Should all the present or potential constituent units in the Union of Myanmar remain within a federal system or not? What could be possible alternatives?
- What would be the biggest challenges to developing a genuine federal system in Myanmar? Why?

Acknowledgements

Federalism Basics was adapted and expanded from an information booklet written by Michael Breen, Khin Zaw Win and Baogang He for participants in a 2018 deliberative polling project on federalism in Myanmar.

Thanks to Kirke Narusk and Michael Breen for permission to republish their maps of Sri Lanka (p.16), Nepal (p.30) and Myanmar (p.33).

We would like to acknowledge and thank Michael Breen and Khin Zaw Win for their input and feedback on earlier drafts of *Federalism Basics*.

Federalism Basics provides a short introduction to the main elements of federalism. It introduces the structure and institutions, historical influences, and important design issues related to federal systems, with a focus on Myanmar, and relevant examples from South and Southeast Asia.

Topics in federalism covered in this book include:

- unitary and federal systems;
- levels of government and government institutions;
- constitutions and the process of constitution drafting;
- division of powers;
- citizenship;
- constituent units;
- electoral systems;
- fiscal powers.

Federalism Basics is designed for individual or group study, with or without the guidance of a trainer. Each section addresses particular topics in federalism and concludes with questions to help the reader reflect further upon those topics.

There is a Trainer's Guide to accompany *Federalism Basics* for use in face-to-face or online workshops. This includes tasks to activate prior knowledge or check comprehension, interactive pair and group activities, and discussion questions to encourage participants to further consider their own perspectives.