

Statement in Support of Daw Aung San Suu Kyi's Comment on the Rule of Law

The Burma Lawyers' Council wholeheartedly supports comment on the importance of the Rule of Law, made by Daw Aung San Suu Kyi during the press conference for anniversary of her release. Now it is to be considered: 'What are major fundamental principles of the rule of law?' In today's world, the rule of law has become a convergence of diverse concepts, adopted by both western and eastern societies. Common practice of the rule of law found in both jurisprudences includes, inter alia, the following:

- (1) every person is equal before the law;
- (2) operation of government is governed by just law;
- (3) the conduct of each individual in his relations with others is regulated by law; and,
- (4) the judiciary must be independent, impartial and efficient.

The 2008 Constitution vividly violates the abovementioned principles. Every person who committed crimes must be dealt with in accordance with the law. Contrary to this, section 445 of the 2008 Constitution grants blanket amnesty to former members of the military regimes who allegedly committed crime against humanity or war crimes. By incorporating 'exception clause,' which is 'union security,' in the section 354, the 2008 Constitution strengthens the existence of draconian laws such as 1975 State Protection Act, 1988 Law Relating to Forming of Organizations, 2004 Election Transaction Law, and etc. As such, operation of government is being governed by unjust laws.

So long as the 2008 Constitution exists, the conduct of each individual in his relations with others cannot be regulated by law. It is because the Constitution establishes the Armed Forces, led by Commander-in-chief, as the strongest institution in the state by creating the following:

1. presidential election system in which the group formed the representatives of the Armed Forces shall elect a Vice-President, who can also become the President;
2. the National Defense and Security Council - the most powerful organ of state - in which the military leaders constitute majority numbers; and,
3. the separate military tribunals which are not under the supervision of the civilian judicial mechanism but under total control of the Commander-in-chief of the Armed forces.

In accordance with the 2008 Constitution, the executive enjoys full power to appoint and dismiss the Justices of the Supreme Court. As such, under the 2008 Constitution, the emergence of the judiciary which is independent, impartial and efficient will only be a myth.

With reference to the abovementioned factors, it connotes that adoption of the 2008 Constitution with the term mentioned in its section 405 - 'A political party shall abide by and respect this Constitution' - is against the Rule of Law.

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