Part B: Rule of Law

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Conclusive Recommendations of the General Secretary of the Burma Lawyers' Council at the 21st Conference of LawAsia

(held in Kuala Lumpur, Malaysia, from October 29 to November 1, 2008)

On October 14, 2007, the Chairperson of ASEAN, the Singapore Foreign Minister, raised the issue of stability in Burma, mentioning his concern with anarchism, with reference to the existence of various ethnic armed organizations in Burma, seemingly supporting the military might of the SPDC army.

Our democratic movement and the people in Burma are really upset about his comment. Standing here, let me respectfully respond to him as well as to ASEAN.

Cause and Effect

He is ignoring the cause and effect theory. He did not exert efforts to realize the causes of destabilization in Burma, including why the ethnic nationalities are taking up arms. Instead, he focuses only on the effect, in terms of his concern about destabilization which may lead to anarchism. Actually, oppression of the regime and its denial of the right to self-determination of the ethnic nationalities are the causes of destabilization.
Stability, Justice and Sustainable Development

Without justice and sustainable development, we will never achieve genuine stability of a society. The military regime usually forces stabilization of the country by using military might at the expense of justice and sustainable development of the people, resulting in serious violations of human rights.

In contrast, if justice and sustainable development for the people can be achieved, society will certainly stabilize.

Rule of Law and Constitution

He also did not initiate ASEAN’s encouragement of the SPDC regime to resolve the rule of law aspect of ethnic issues of Burma, centering on the emergence of a democratic constitution which guarantees the right to self-determination of the ethnic nationalities.

Those countries which seek stability, justice and sustainable development may have a constitution in which:

1. A rights protection mechanism, particularly the existence of an independent judiciary, is instituted.
2. Inclusiveness of individual citizens, social strata and racial groups is guaranteed in governance.
3. Decentralization of power is exercised.

The SPDC's 2008 Constitution lacks all these foundations. The Judiciary is totally under the control of the Executive in which the military leaders mainly operate under the name of the National Defense and Security Council.

The Constitution, as the supreme law of the land, should at minimum reflect the two principles of the rule of law:
1. Every person shall be equal before the law.
2. Perpetrators who commit crimes shall be accountable under the law.
However, Burma is encountering these two rule of law issues. Equality before the law has never become a reality while seeking criminal accountability is totally denied. The SPDC’s 2008 Constitution lacks this rule of law foundation. For instance, Article 445 of the Constitution provides self-amnesty to the SPDC military government for all crimes that they committed previously.

With the background of the 2008 Constitution, the SPDC's 2010 election is a ploy to perpetually deny justice for the people and the right to self-determination of the ethnic nationalities which will actually lead to destabilization. It is the result of the lack of the rule of law.

A possible way to restore the rule of law in Burma is to take action on the perpetrators who committed heinous crimes by using international justice mechanisms, particularly the International Criminal Court.

I call upon our comrade lawyers, leading legal academicians and honorable justices.

1. With the background of the rule of law, let's work together to seek justice, sustainable development and stability in this Asian region.

2. The issues on the restoration of the rule of law in Burma may not be regarded as an internal affair of a respective state.

3. You may use your wonderful legal knowledge to reduce the plight of our ethnic nationalities in Burma.

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