



Mr. Tomás Ojea Quintana
Special Rapporteur on the situation of human rights in Myanmar
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland
sr-myanmar@ohchr.org

Sent via mail and e-mail

October 11, 2013

Re: Open Letter to Special Rapporteur Tomás Quintana: The Incompatibility of Myanmar's Constitution with the UN Charter Must Be Addressed

Dear Mr. Quintana,

As President of the Global Justice Center, I want to express my deep appreciation of your work advancing human rights for the people of Burma. **Of singular importance is your 2013 recommendation that Myanmar's Parliament amend the military-drafted 2008 Constitution to ensure civilian control over the armed forces and bring the constitution in line with international human rights standards.** We are writing to urge that the United Nations support this effort by requesting an Advisory Opinion on Myanmar's Constitution from the International Court of Justice.

Your concerns about the 2008 Constitution are well placed.

The radical governmental framework established by the 2008 Constitution is unlike any in the world and raises issues of serious concern for the global community.

- The military is established as an independent self-governing legal entity outside of the "sovereign" state of the "Republic of the Union of Myanmar." The Commander-in-Chief is absolute ruler of this military entity and no laws apply to his actions.
- Neither the President nor the legislative or judicial branches of Myanmar have the legal capacity to hold the military accountable for grave breaches of the Geneva or Genocide Conventions, or for violating Security Council Resolutions, including those on nuclear non-proliferation or those mandating an end to impunity for the use of rape as a weapon of war or the use of child soldiers.
- Myanmar's lack of legal authority over the military and its territories renders it, as a member state of the UN, unable to comply with its fundamental obligation under Article 25 of the UN Charter to "*accept and carry out*" the decisions of the Security Council, including those seeking to end threats to global peace and security.

The military designed the Constitution to make any proposed amendments subject to a military veto. This was done by establishing a 25% military appointed quota in Parliament and then requiring more than a 75% vote to amend the Constitution. This is why international support for amending the Constitution is imperative; as stated by Daw Aung San Suu Kyi, "cannot be a democratic nation as long as the (present) constitution is in effect."

We urge you to recommend that the General Assembly request such an Opinion from the International Court of Justice on the lawfulness of the Constitution under international law, and its compatibility with the UN Charter. There are compelling reasons why this would provide invaluable help to break the current logjam:

- The International Court of Justice was established under the UN Charter to provide the UN and member states with Advisory Opinions on the kinds of international law issues raised by Myanmar's Constitution. Such an Opinion can be expeditious, in some cases taking as little as five months. An Advisory Opinion would be of enormous normative value even though such an Opinion is not binding.
- The Constitution throws into question how the civilian government of Myanmar can comply with the UN Charter and other international law obligations. An ICJ Advisory Opinion is a non-adversarial and constructive way to address these questions.
- The UN and the GA have worked for decades to promote democracy in Burma. Although there has been enormous progress, the future of democracy is still in question and, as you have stated, continued unchecked military power will undermine civilian rule.

Thank you in advance for your consideration of this issue of global importance. Please let us know if we can provide further information or assistance.

Sincerely,



Janet Benshoof
President, Global Justice Center

CC: Navanethem Pillay, United Nations High Commissioner for Human Rights