



HE Minister of Foreign Affairs Espen Barth Eide  
Ministry of Foreign Affairs  
7. juni-plassen/ Victoria Terrasse  
Oslo, Norway

October 4, 2012

Re: Norway's Support for an International Court of Justice Advisory Opinion on Burma's 2008 Constitution

Dear Minister Eide,

We are writing to you in your capacity as Minister of Foreign Affairs of Norway, to request that Norway take a leadership role in obtaining an Advisory Opinion from the International Court of Justice ("ICJ") on the compatibility of the 2008 Burma Constitution (the "Constitution") with international law. There are three reasons why we believe it is in Norway's interest to do so.

1. The Constitution raises critical issues of international law which are central to Norway's foreign policy. Burma's legal structure of government is unlike any other in the world. The Constitution provides that the "Defense Services," the military, is an autonomous legal entity that operates outside of the sovereign state. Therefore, the civilian state has no legal capacity to ensure that the military comply with Burma's fundamental obligations under Article 25 of the U.N. Charter, Security Council Chapter VII Resolutions, and the Geneva and Genocide Conventions.
2. For two decades, Norway's foreign policy has emphasized promoting democracy and justice in Burma. Now Norway is taking the step of investing "in country" with significant development aid as part of its "Norwegian Peace Support Initiative." For this investment to succeed, however, Norway must address the major structural obstacle to democracy and rule of law in Burma –namely, the 2008 constitution which establishes the military as an autonomous legal entity outside of all control by the civilian government.
3. Daw Aung San Suu Kyi and others have identified constitutional reform and establishing a rule of law as their top priorities. Although change must come from within Burma, current avenues for change are limited. The Constitution requires more than 75% approval for amendments to the Constitution and reserves 25 % of parliamentary seats for the military. This situation means that the military may essentially veto Constitutional amendments. Therefore, international avenues to support democracy activists on the ground, such as requesting an ICJ Advisory Opinion, should and must be taken. In fact, the Forum of Burmese in Europe has already sent a letter to the European Union in support of such action. Requesting such a step would not "open the floodgates" for reviews of national constitutions as Burma's Constitution sets up a form of government unlike any in the world. Further, the U.N. General Assembly has twice requested the government of Myanmar/Burma to undertake a "transparent, inclusive and comprehensive review of compliance of the Constitution and all national legislation with international human rights law" A/RES/65/241 (21 March 2011) & A/RES/66/230 (3 April 2012). This has never been done and Norway could lead the process for such an authoritative review by the ICJ.

The ICJ was established precisely to address these kinds of serious questions of international law. In fact, the Secretary General's 2012 report on the Rule of Law recommends that the U.N. General Assembly, Security Council and other U.N. organs, "commit themselves to making greater use of their ability to request advisory opinions from the ICJ" because it can act to increase the "legitimacy of their actions" (A/66/749). Such guidance from the ICJ would be invaluable as the EU, the U.N. and its member states continue to consider and define their engagement with Burma.

For these reasons, we urge Norway to take the global leadership on a step critical to Burma's continued reform and introduce a General Assembly resolution requesting an Advisory Opinion from the ICJ on the legality of Burma's 2008 Constitution under international law. We believe that this step will continue Norway's tradition of commitment to issues of international justice and lead the process for normative change.

We would sincerely appreciate the opportunity to discuss the information contained in this letter in further detail with you. Please do not hesitate to contact us if you require any further information.

Sincerely,



Janet Benshoof  
President

CC: Minister of International Development, Heikki Holmås  
State Secretary in the Ministry of Foreign Affairs, Gry Larsen  
Political Advisor, Ingrid Johansen Aune  
International Secretary, Arbeiderpartiet, Signe Brudeset  
Deputy Leader, Arbeiderpartiet, Helga Pedersen