

**International Conference «Constitution and Constitutional Supervision:  
Developing the Doctrine and Advancing the Case-Law»**

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**Session II « Constitutional Evolution and Constitutional Supervision:  
experiences around the world»**

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**«Current Myanmar Constitutional Supervision and its Development»**

**Mr. Chairman, Ladies and Gentlemen**

**Thank you for giving me the floor.**

**Mr. Chairman,**

I am honored to have this opportunity to address this paper behalf of the Myanmar delegation on this occasion.

First of all, I would like to thank the Constitutional Court of the Russian Federation for inviting me to attend this international Legal Forum.

Today, I am delighted to be here to present about «Current Myanmar Constitutional Supervision and its Development» under the title of constitutional evolution and constitutional supervision in this session.

**Mr. Chairman, Ladies, and Gentlemen,**

Since we gained independence, Myanmar has had three constitutions: the Constitution of 1947, the Constitution of 1974 so-called the Socialist Constitution, and the Constitution of 2008.

I would like to mention the origins and evolution of the 2008 Constitution, the current constitution of Myanmar. To evolve an enduring Constitution, that has sustainable and long-lasting solidarity, harmony and peacefully living together with the diversity of National races, religions, and cultures of the citizens of

Myanmar in one nation, by the then government of the State Peace and Development Council convened the National Convention in 1993.

In this regard, we can see in the Preamble of the fifth paragraph of the Constitution, it mentions as “As an enduring Constitution, that guarantees long-term benefits, has become essential for the future Nation, the State Peace and Development Council convened the National Convention in 1993.”

The first meeting of the National Convention was held on 9 January 1993 and was attended by over 700 delegates from 8 strata of the society including representatives from the political parties, representatives-elect, and representatives of national races, workers, peasants, intellectuals, services personnel and including with special invited persons.

**Mr. Chairman, Ladies, and Gentlemen,**

Through the process of the National Convention, laid down the 104 Principles, for the 2008 Constitution, that will guarantee the political, economic and social aspirations of the national races nationalities, and the basic structure of the State.

After the successful holding of the National Convention, the SPDC implemented under the 7 steps of roadmap process, moving forward step by step to the emergence of a genuine and disciplined democratic State.

The Draft 2008 Constitution was drafted by the Constituent Assembly. The 2008 Constitution came into force on 31 January 2011 by means of referendum adopted by the people who have Constituent power.

The 2008 Constitution established a “Union system’ consisting of a Union level of government, seven Regions, seven States, six Self- Administered Areas, and one Union Territory. Then, it outlines the power-sharing arrangements among the executive, legislative and judicial branches. So, you can see in our Myanmar Constitution as the backbone with federal characteristics.

Moreover, the 2008 Constitution defines Myanmar as a multi-party democracy, stating that “the Union practices a genuine, disciplined multi-party democratic system.” It is based on the principles of democracy and federalism in

accordance with the outcomes of the national convention and it fully guarantees the democratic rights, national equality, and the right to self-determination on the basis of liberty, equality, and justice in this constitution. This constitution emerged as the infant of federalism in Myanmar. In this constitution, the amending power is empowered to the original constituent power and delegated to its representative so-called Pyidaungsu Hluttaw.

Constitutional Supervision is the check and balance and control mechanism within the Sovereign power, respectively among legislative, executive, and judiciary authorized by the Constitution.

**Mr. Chairman, Ladies, and Gentlemen,**

In this regard, this Constitution guaranteed as the principle of the check and balance within the sovereign power and separated to the extent possible and exert reciprocal control, check and balance among themselves mentioned as the basic principle.

For the executive branch, the President is empowered to appoint the members of Union Level organizations, the Chief Ministers of the Regions or States, and other executive officials in accordance with the Constitution. However, the Legislative branch has the power to approve their appointment and can impeach them, if necessary.

Myanmar has been practicing the Common Law Legal system. In terms of supervision by the judicial body, we have two institutions such as the Supreme Court and the Constitutional Tribunal of the Union.

The Supreme Court of the Union shall have the power to issue the relevant writs relating to the case of violation of fundamental rights for the remedies by the misconduct of administrative and judicial authorities.

However practicing the Common Law legal system, Myanmar focused and concentrated on remedies to have the maintain Basic Structure of the 2008 Constitution. For this purpose, the 2008 Constitution laid down a principle in Section 46 to establish the Constitutional Tribunal which was reached a consensus on this mechanism by the National Convention.

Our Constitutional Tribunal, one of the judicial bodies of the Union has supervision power to the legislative sector and executive sector in accord with empowering the functions and powers under the constitution and the Tribunal Law.

The major jurisdictions of the Constitutional Tribunal are;

- Interpretation of the provision of the Constitution;
- Vetting the laws in constitutionality;
- Vetting the administrative activities of the executive authorities are inconsistent with the constitution or not;
- Deciding on the constitutional disputes between the units; and besides, under the clause of “to perform other duties prescribed in this constitution.”<sup>1</sup>

The Tribunal shall decide on the constitutional disputes arising in the implementation of the Union Laws.<sup>2</sup>

In constitutional Supervision, the validity of all legislation and executive action is judged under the distinguish Supreme Judicial Body so-called the Constitutional Tribunal. Furthermore, the resolution of the Constitutional Tribunal is final and conclusive.

**Mr. Chairman, Ladies, and Gentlemen,**

I would like to present some case law as the constitutional supervision on the legislative and executive sector according to the jurisdiction of the Constitutional Tribunal.

The first case of the first term of the Tribunal is submitted by the Chief Justice of the Supreme Court, to decide the constitutionality or not to confer the power of criminal jurisdiction to the sub-township administrative officers which was requested by the Ministry of Home Affairs.<sup>3</sup> The Tribunal held that the provisions of the 2008 Constitution clearly stipulate that the legislative power, the executive power and the judicial power of the Union shall be separately exercised. The Judicial power empowered to the Courts and Judges are clearly in prescribed in the only to those Judges who are empowered by the Constitution. The conferring

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<sup>1</sup> Section 46 of the Constitution of Republic of the Union of Myanmar (2008).

<sup>2</sup> Section 322 (e) of the Constitution of Republic of the Union of Myanmar (2008).

<sup>3</sup> The Supreme Court of the Union vs. Ministry of Home Affairs, Petition No.1/2011.

of the judicial power to administrative offices of the General Administration Department of the Ministry of Home Affairs is not in conformity with the Constitution. After that, the Supreme Court repealed the empowering order of the power of criminal jurisdiction to them.

The second case as my presentation is the petition which is submitted by MPs of the Amyotha Hluttaw.<sup>4</sup> The subject was the constitutionality of the law which is “the law of Emoluments, Allowances, and Insignia of Office for Representatives of the Regions or States concerning with the Emoluments, Allowances, and Insignia of Minister of National Races Affairs. Under this petition, the Tribunal held that some of the Section of said law is inconsistent with the Constitution. Later on, passing the judgment, the Union Parliament amended the Law in line with the Constitution.

Finally, I would like to present the petition which was occurred in Kachin State Hluttaw. The Speaker of the Kachin State Hluttaw submitted a petition to decide “whether the Kachin State Hluttaw has the right to refuse or curtail the Region or State Annual Budget Bill’.<sup>5</sup> The Tribunal held that the Budget bill for the Kachin State is drawn in line with the Union Budget Law. Before the enactment of this Law, an estimated budget for the Region or State shall be discussed, approved, refused or curtailed in accordance with the Budget Law and Rules with the exception of the matters restricted in section 193 (b) of the Constitution.

In this petition, the resolution of the Tribunal can make clear the budget law-making process between the executive and legislature. These two bodies can perform in line with the decision of the Constitutional Tribunal without ambiguity.

That brings me to the end of my presentation. It was a pleasure being here today. I thank you Mr. Chairman.

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<sup>4</sup> Representatives of Amyotha Hluttaw including Dr. Aye Maung vs. The Republic of the Union of Myanmar, Petition No.2/2011.

<sup>5</sup> The speaker of the Kachin State Hluttaw vs. The Kachin State Government, Petition No. 4/2014.