

**Presentation on the AACC International Short Course “Maintaining  
Public Trust to Constitutional Tribunal of Myanmar”**

Good Morning

Moderator, All the participants of the AACC,

Ladies and Gentlemen,

We have a great honor and to being with you in person this moment time for representing on behalf of my nation of Myanmar attending this event both on behalf of the Constitutional Tribunal of Myanmar.

First of all, to take this opportunity, we would like to express our gratitude to the Indonesia Constitutional Court for the invitation to Myanmar to attend this Short Course.

We believe that the upcoming sessions of this short course will be gained a success under your great effort of leadership. We appreciate the successful fulfillment of your mandate.

Under the main Theme of "Peace, Democracy, and Election", Today we present the title "Maintaining Public Trust to Constitutional Tribunal of Myanmar".

Mr. Moderator or Madam and all the participants of Ladies and Gentlemen,

Myanmar launched a new chapter, the democratic transition, under the 2008 constitution. The 2008 Constitution was ratified and promulgated by the National Referendum on May 29, 2008, being approved by 92.48 percent of these people of Myanmar, who supported the draft Constitution. It came into operation throughout the Union on the day the first session of the Pyidaungsu Hluttaw was convened. The 2008 Constitution defines the basic structure of the

government and makes some commitments to the rule of law, including the separation of powers between the three branches of sovereign powers and setting out five constitutional writs available to challenge violations of individuals' rights. As the democratic transition takes hold, Myanmar is moving from rule by law to rule of law.

The Constitution of Myanmar (2008) provides the Basic Principles of the Union. Its chapter enumerates state structure, judicial principles, political and civil rights, and the setting of the Constitutional Tribunal. Section 19 of the 2008 Constitution states the judicial principles. These are:

- (1) to administer justice independently according to law;
- (2) to dispense justice in open court unless otherwise prohibited by law;
- (3) to guarantee in all cases the right of defence and the right to appeal under law.

Moreover, it prescribes that every citizen shall enjoy the right of equality, the right of liberty, and the right to justice, as prescribed in the 2008 Constitution. Section 43 states that no penal law shall be enacted with retroactive effect, and no penalty shall be prescribed that violates human dignity as Section 44 states.

Mr. Moderator or Madam and all the participants of Ladies and Gentlemen,

The 2008 Constitution reiterates a provision in the Criminal Procedure Code (CPC) that citizens may not be detained for more than 24 hours without a court's permission under section 21 (b) of the Constitution.

We may say that the only and merely legal document reinforces protection in Myanmar is the said Constitution of 2008. Chapter VIII of the 2008

Constitution enumerates several "fundamental rights", including various protections against discrimination;<sup>1</sup> rights to education and health care<sup>2</sup>; language and other cultural rights<sup>3</sup>; prohibitions on enslavement, people-trafficking<sup>4</sup>, and forced labour<sup>5</sup>; rights to property and privacy;<sup>6</sup> the right to vote and stand in elections<sup>7</sup>; and freedoms of expression, association, freedom of movement and belief<sup>8</sup>. The Supreme Court is expressly authorized under the Constitution to issue five different types of "writs " in the case of infringement of the fundamental rights by unlawful conducts or decisions done by executive, public administrative and judicial authorities that are out of line with existing laws.

Every country safeguards its citizens' rights, and most nations protect their democratic values according to their political policies.

Mr. Moderator or Madam and all the participants of Ladies and Gentlemen,

Started this portion, we would like to express the Constitutional Tribunal of the Union of Myanmar, its powers are expressed as follows;

- (1) interpreting the provisions of the Constitution,
- (2) vetting or scrutinizing the laws enacted by the legislative bodies in conformity with the constitution or not;
- (3) vetting or scrutinizing the measures of the executive authorities in conformity with the constitution or not;

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<sup>1</sup> Section 348 of the Constitution of the Union of Myanmar, 2008.

<sup>2</sup> Section 366 and 367 of the Constitution of the Union of Myanmar, 2008.

<sup>3</sup> Section 365 of the Constitution of the Union of Myanmar, 2008.

<sup>4</sup> Section 358 of the Constitution of the Union of Myanmar, 2008.

<sup>5</sup> Section 359 of the Constitution of the Union of Myanmar, 2008.

<sup>6</sup> Section 353 of the Constitution of the Union of Myanmar, 2008.

<sup>7</sup> Section 369 (a) of the Constitution of the Union of Myanmar, 2008.

<sup>8</sup> Section 354 of the Constitution of the Union of Myanmar, 2008.

- (4) deciding the constitutional disputes between different levels of the government.

Furthermore, any court is able to refer to the Constitutional Tribunal through the Supreme Court of the Union with regard to the constitutionality of any laws under Section 323 of the 2008 Constitution.

Our Constitutional Tribunal is the judicial institution, particularly established to safeguard the Constitution in the event of infringements of fundamental principles by the legislator or executive. It is only the judicial institution vested with the power to decide on the constitutionality of laws and the related constitutional matters. Although all the infringements of the fundamental rights of the Citizens are constitutional matters, the Constitutional Tribunal does not have the power to deal with those fundamental rights of the Constitution. Under Section 323 of the 2008 Constitution, in hearing a case by a Court, if there arises a dispute whether the provisions contained in any law contradict or conform to the Constitution, and if no resolution has been made by the Constitutional Tribunal of the Union on the said dispute, the said Court shall stay the trial and submit its opinion to the Constitutional Tribunal of the Union in accord with the prescribed procedures and shall obtain a resolution.

Mr. Moderator or Madam and all the participants of Ladies and Gentlemen,

Most of the Constitutional Courts in the world have the jurisdiction to protect individual fundamental rights. Although the Constitutional Tribunal of the Union of Myanmar has no direct jurisdiction to protect such rights, but deal with interpretation of the provisions of the Constitution and having the power of adjudicating or constitutionality test of any existing law. By way of its functions and powers, i.e. interpretation opinion, and constitutional dispute

resolution, the Constitutional Tribunal has the authority to protect fundamental rights. The Constitutional Tribunal has the power to examine and scrutinize the law in conformity with the Constitution. If a law is inconsistent with any provision of the Constitution, it is declared null and void. Moreover, the Constitutional Tribunal has the power to vet whether the measures of the executive authorities of the Union, the Region and State, and Self- Administered Areas are in conformity with the Constitution or not. Thus, the Constitutional Tribunal can declare the acts of the Executive null and void if they are found to be in conflict with the provisions of the Constitution.

State institutions and citizens must have wide knowledge about the Tribunal and how to access it in their pursuit of justice. To get public recognition and trusted judicial institution of the Constitutional Tribunal, particularly the grievance individuals have to know how to obtain access to the Constitutional Tribunal. Therefore, the Constitutional Tribunal tries to disseminate information about its role, functions, and decision-making to raise public awareness. The Constitutional Tribunal has been planned an e-Court system and electronic filing system of proceedings for submitting to the Tribunal easier. The resolutions of the Constitutional Tribunal must be enforced and final and conclusive. Furthermore, the resolutions are being decided in accordance with constitution and existing law. The Legislators are important for the Constitutional Tribunal to get public recognition. The duties of the legislators include the safeguarding the Constitution and the existing laws for aiming at enable to obtain as well as carrying out to enjoy the fundamental rights of the citizens. The reason of why, legislators are conducting with the public and they all submit the constitutional matters to the Tribunal through their respective legislature bodies. In order to get the trust of the public, it is the duty of the legislative body i.e Hluttaw Representative because the 10 percent of representatives can submit to the Constitutional Tribunal on behalf of the

citizens. Thus, Tribunal could implement the welfare of the citizens in line with the Constitution and can access public trust.

To conclude our presentation, we would like say that the Constitutional Tribunal should trying its best to get more public recognition and trust in line with its legitimate powers under the Constitution and existing laws.

**Thank you all for your attention.**