



## **Statement (2) on U Ko Ni case**

### **What are the factors which caused the assassination of Supreme Court lawyer U Ko Ni?**

The Preamble of the UDHR provides, inter alia, that human rights should be protected by the Rule of Law. In Burma, the deprivation of Supreme Court lawyer U Ko Ni's right to life was caused by the lack of the Rule of Law, wherein the Constitution – the supreme law of the land – is of paramount importance. In regard to the flaws of the 2008 Constitution, which can never be amended, the courageous comments made by U Ko Ni created enormous concern for the ruling Burmese military leaders – former or incumbent – that they might lose their grip on political power.

U Ko Ni was the legal brain of the National League for Democracy (NLD). Even though the NLD led by Mrs. Aung San Suu Kyi bowed to the legal framework of the 2008 Constitution, U Ko Ni was quite aware of the flaws of the said Constitution, by which military dictatorship is entrenched. In addition to his public statements made at many events, in his interview with the VOA prior to the Nov 2015 elections, he highlighted this by saying:

"From the outset, the soldiers wrote this Constitution with the prior intention of ruling the country for ever in one way or another. They knew that people would exert efforts to amend it. Therefore, in accordance with the Constitution, the soldiers have occupied 25% of the seats of all legislative chambers, while the amendment process is granted only with a 76% requirement. Can we amend it after the forthcoming elections? The answer is clear. No. Because the soldiers will continue to occupy 25% of the seats. So long as they don't agree to amend it, efforts for amendment will fail. That is why, since the beginning, I have said that this Constitution can never be amended. What we should do is draw up a new Constitution, and replace the incumbent Constitution with a new one. This is the only alternative."

In addition, in a debate program of the Democratic Voice of Burma (DVB), U Ko Ni publicly stated that the 2008 Constitution was only quasi-federal, meaning that federalism could never be established under the 2008 Constitution. Before he was assassinated, he also told the DVB, 'This is the time to amend the Constitution in line with the election promises; so that the issues of peace, freedom, and development can be resolved. To this end, from the beginning of 2017, concrete and systematic steps should be taken.'<sup>1</sup>

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<sup>1</sup>The Democratic Voice of Burma (DVB) television broadcast interview with U Ko Ni in the evening of January 30, 2017.

It may appear that U Ko Ni was being contradictory by saying on the one hand that the 2008 Constitution could never be amended, and on the other that now was the time to amend the 2008 Constitution. However, he was taking the correct approach. He warned the NLD to keep its election promise, made before the November 2015 elections, to attempt to amend it. At the same time, more importantly, he encouraged the NLD first to publicly declare that the 2008 Constitution could not be amended through the Union Parliament -- known as the Pyidaungsu Hluttaw in Burmese<sup>2</sup> -- and secondly, to move forward for the emergence of a new Constitution.

Contrary to U Ko Ni's statement, the Union Solidarity and Development Party (USDP) – a major political party formed by former military generals – has recently started calling for the amendment of the Constitution. This is likely an attempt to convince the entire people that the Constitution is amendable by proving that some unimportant articles of the Constitution can be amended. Nevertheless, U Ko Ni was right. The following backbone structures of the Constitution – which entrench the rule of military dictatorship and also prevent the emergence of a genuine federal Union – can never be amended:

- (1) The article which provides for the formation and existence of the National Defense and Security Council – the most powerful institution, which indirectly assumes legislative, executive and judicial powers – in which the military Generals occupy a permanent majority, and other relevant articles which authorize this in one way or another;
- (2) Chapter (1) which authorizes rigid centralization, denying the sharing of sovereign power between the federal level governance institutions and those of the States, in terms of constituent units of the Federal Union;
- (3) Chapter (2) which prevents the emergence of a new federal union formed of national states and nationalities states, as demanded by the ethnic resistance organizations and leaders for decades;
- (4) Chapter (3) which provides for a fabricated presidential electoral system by which an army representative can become the President of the State, or at minimum, Vice-President;
- (5) The articles which allow Army representatives to occupy 25% of the total number of seats in all legislative bodies in the country;
- (6) The article which provides for the existence of the Military Tribunal – in which the Commander-in-Chief of the Armed Forces assumes appellate power – in parallel with the civilian Supreme Court and the Constitutional Court, the apex courts of the country, and other relevant articles which prevent the emergence of a Judiciary which is independent, impartial and efficient;
- (7) The article which provides blanket amnesty for heinous crimes allegedly committed by former Burmese military leaders – the members of the SLORC<sup>3</sup> and the SPDC<sup>4</sup>; and,
- (8) The article which provides for the amendment of the Constitution.

In peaceful political transitions – in countries which have transformed from the rule of dictatorship to democracy in the world – legal and constitutional strategy, with the underpinning of human rights and the rule of law, commonly plays an instrumental role. In the case of Burma, federalism also needs to be added to strengthen legal strategy. Unfortunately, in this aspect, the NLD

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<sup>2</sup> U Aung Thein, another leading lawyer within the NLD also admitted by saying, 'Neither the amendment of the Constitution nor drawing up a new one can be implemented simply through the Pyidaungsu Hluttaw.'

<sup>3</sup> The State Law and Order Restoration Council

<sup>4</sup> The State Peace and Development Council

has lost its legal brain; and as the legal suggestion of U Ko Ni has also been ignored for some years, the NLD's legal strategy has already become bankrupt.

If NLD courageously complies with the suggestion of U Ko Ni to draw up a new Constitution, it has to withdraw not only from its superficial position in government but also from all legislative bodies; it then needs to call for a genuine tripartite dialogue, comprising democratic forces led by Mrs. Aung San Suu Kyi, Burmese military leaders – former and incumbent -- and the ethnic resistance organizations and ethnic political forces. This will automatically terminate the sham peace seminar being convened with the title, 'the 21 Century Pang Long Conference,' which will simply end in the framework of the 2008 Constitution. Only with the emergence of a new democratic federal Constitution through tripartite dialogue, will the dream of U Ko Ni for peace, freedom and development become a reality.

Unfortunately, Mrs. Aung San Suu Kyi rejected the suggestion of U Ko Ni, the legal brain of the NLD, as was the case for the NLD's political brain, the late U Win Tin, who firmly stood against the 2008 Constitution. Later, U Ko Ni alone became the major target of the ruling military regime. The military rulers might think that, once the life of U Ko Ni has been terminated, no one will dare follow his path, and the rule of military dictatorship in accordance with the 2008 Constitution will remain entrenched.

Even though the NLD has now lost its legal brain, if it practices transparent and accountable principles, it still has an opportunity to rectify its ways and save the country. To this end, Mrs. Aung San Suu Kyi must publicly explain not only to the various ethnic nationalities and the entire people but also to the international community how the current constitutional crisis will be overcome and resolved in detail, rather than delivering rhetorical speeches, which sound good but lead nowhere.

If not, Mrs. Aung San Suu Kyi will, together with the military rulers, jointly bear the blame for dragging the entire Union into the hell of military dictatorship.

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