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## Legal Journal on Burma

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# Legal Journal on Burma

Legal Journal on Burma is published three times a year by Burma Lawyers' Council. The journal contains academic articles relevant to legal and political issues in Burma including: constitutional reform, rule of law, federalism, refugees, judicial independence, martial law, and religious freedom. Articles are written by practising lawyers, academics, and experienced Burmese opposition activists. The views expressed in the articles are those of each author and not of Burma Lawyers' Council. The journal also, where relevant, reproduces copies of important documents relating to Burma, such as statements on behalf of the Burmese parliament. The journal's production is funded by the Friedrich Naumann Stiftung from Germany.

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The BLC Publication Team

# Legal Journal on Burma

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# LEGAL COMMENTS OF THE BURMA LAWYERS' COUNCIL

ON THE 60TH ANNIVERSARY OF UNION DAY

REGARDING THE UNJUST CONVICTIONS OF SHAN ETHNIC LEADERS

(1) The Union of Burma will be 60 years old on 12 February 2007; it was established after the signing of the Panglong Agreement on 12 February 1947. Nevertheless, the country still encounters a number of horrible problems and has not yet emerged as a genuine Union. Accusing the Shan leaders, who were attempting to re-establish the country into a genuine union by peaceful means, as secessionists, the military staged a coup in 1962, claiming that it was trying to prevent a collapse of the Union of Burma. Then, the military regime revoked the 1947 Constitution and has governed the country until today. As a result, the country's situation has gradually deteriorated. Currently, the Union of Burma continues to exist in form, but the unity of the ethnic nationalities has completely collapsed in essence. As the country has no peace, the people live under atrocious conditions of impoverishment.

(2) If efforts are exerted to re-establish a genuine Union by peaceful means, they must include not only preparing for the drafting of a constitution for the future but also the daily treatment of ethnic nationalities must be in accordance with Burma's existing laws and international human rights laws. In order for the emergence of just laws based on the Rule of Law, legal reform should be methodically implemented. The judiciary should be a central force in solving the underlying public issues, which cannot be resolved by negotiation, and in taking action on heinous crimes committed by various authorities. However, this has not been the case in all of Burma. Rather, the various authorities with military or political powers are above the law and control the society as they wish.

(3) The entire working program regarding the cease-fire agreements made since 1989 between ethnic armed groups and the SPDC is not legal under existing laws given that the Unlawful Association Act of 1908 is still effective. The SPDC has not yet done

anything for the ethnic armed cease-fire organizations, which were declared as unlawful associations, in order to transform them to legitimate organizations. There are many problems and injustices because the SPDC uses the laws when it needs to and ignores them when it does not, for the purpose of keeping its political power.

(4) The Shan State Army (Northern) is an ethnic armed organization which has entered into a cease-fire agreement with the SPDC. General Hso Ten was the Shan leader. If this organization was allowed to exist legally, it could effectively carry out its non-violent political activities widely and legally. The SPDC alleged, however, that a meeting held to form the Shan State Academics Consultative Council was contrary to law, despite the fact that General Hso Ten himself was involved in the meeting. Then, nine Shan ethnic leaders, including General Hso Ten, were accused by the military of conspiring to secede from the union such that the non-violent political action of Shan leaders was criminalized. Subsequently, they were arrested and punished with long-term imprisonment. Currently, the military officials are reusing techniques that were used by General Ne Win in 1962. On one hand, the SPDC is boasting about national unity, and on the other hand, the innocent Shan leaders are suffering long-term imprisonment.

(5) Only with the help of the people who love justice in Burma was the Burma Lawyers' Council able to receive certified copies of the judgments of the Rangoon Division Court and analyze these criminal cases from the legal perspective, referencing the existing applicable statutory laws. To help others understand more about this case, we have briefly introduced the political background that occurred before the arrests of the accused. To make the analysis more accessible to the ethnic people, it has also been translated into several ethnic languages.

(6) Under international human rights laws and the customs of democratic states, the accused Shan leaders, including General Hso Ten and U Khun Htun Oo, did not commit any crime. They were merely exercising their freedom of expression, freedom of assembly and freedom of association, within the appropriate limitations. With respect to these politically motivated cases in which the Shan leaders were unjustly punished, the BLC demands that the SPDC immediately

release them without any conditions. To this end, the BLC will cooperate with and energetically support the efforts of organizations and people both inside and outside the country from the legal aspect.

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# Political Background

## The Arrest and Sentencing of U Khun Htun Oo, Chair of the Shan National League for Democracy (SNLD), and Eight Other Shan Leaders

On 9 February 2005, nine Shan national leaders including U Khun Htun Oo, Chairman of the SNLD, were unjustly arrested by the State Peace and Development Council (SPDC) for attempting to form a committee called the "Shan State Academics Consultative Council". They were convicted of serious crimes and punished severely on 2 November 2005. U Khun Htun Oo was sentenced to 93 years and the other Shan leaders, to long-term imprisonment, respectively.

*Shan leaders (SNLD) including U Khun Htun Oo in 1993 National Convention*

This is not a common criminal case. In order to understand this case clearly and to help readers appreciate the environment in which the arrests and sentencing occurred, it is necessary to first examine some of Burma's political background.

*U Khun Tun Oo (Chair person of SNLD)*

1. Burma gained independence from the British, having signed an agreement entitled the Panglong Pact, on 12 February 1947, in order to establish a genuine union with the cooperated efforts of various ethnic nationalities.

2. The 1947 Constitution drafted after the meeting, however, failed to fully incorporate the basic principles upon which the ethnic nationalities had agreed. When the Shan leaders objected and fought for amendments in the Constitution, they were accused by the military of conspiring to secede from the union. Then, with the rationale of preventing the collapse of the union, the military staged a coup in 1962 and began to rule the country.

3. The military regime has been in the process of preparing to indefinitely govern the country by holding a National Convention, commencing from 1993, through which a new constitution would be produced that would legitimatize the rule of the military dictatorship.

4. The National League for Democracy (NLD), which won the May 1990 election but was prevented by the military from assuming power, withdrew from the National Convention. In 2003, with the support of thousands of people, Daw Aung San Suu Kyi, the leader of the NLD, traveled to the northern part of Burma to begin campaigning. During this journey, on May 30, the Union Solidarity and Development Association (USDA), the lackey organization of the military regime, attacked Daw Aung San Suu Kyi's convoy and committed a heinous crime, known as the Depayin Massacre. Following the massacre, civil political movements in the country went underground and were publicly silent. On that day, 30 May 2003, Daw Aung San Suu Kyi was detained and has yet to be released.

5. Since then, there has been some development of an ethnic youth political movement that has not involved demonstrations in the street. In addition, in 2003 and 2004, an ethnic group comprising six armed cease-fire organizations took part in a movement by which the SPDC's Basic Constitutional Principles might be re-orientated into the establishment of a genuine union.

6. During those years, the SPDC communicated with the Karen National Union (KNU) and persuaded it to attend the Convention after entering into a cease-fire agreement. For the same reason, the regime sent Christian religious leaders to the Karenni National Progressive Party (KNPP). In spite of the efforts of the southern Shan State Army to hold peace talks, the SPDC refused to respond in any meaningful way. The SPDC never expressed its willingness to engage in political dialogue with the ethnic resistance organizations on the basis of equality, but instead usually applies divergent policies in dealing with them.

7. Meanwhile, inside Burma, aiming to establish a genuine federal union, the unarmed ethnic groups continued to communicate and coordinate with each other. Additionally, the activities of the United Nationalities Alliance (UNA), led by U Khun Htun Oo and other ethnic leaders, were noteworthy. The political orientation of those ethnic organizations, including the UNA, did not include participating in the SPDC's Convention. Instead, they resisted the SPDC's ploy to conduct a sham convention. This policy was observed in the following UNA statement issued on 10 December 2003:

*We, the United Nationalities Alliance - UNA, have the serious desire to participate in the political main process of nation building. A National Convention that leads to a constitution of politically stable and economically developed democratic nation needs to be a genuine one. So the National Convention to be convened should not be the resumption of the 1993- 1996 National Convention;*

*U Sai Nyunt Lwin*

*-had not allowed to attend all the genuine representatives of the people;*

*-had not only made a prior censorships but also refused to accept genuine presentations of the representatives who attended;*

*- and had forged and accepted the 104-basic principles favoring the Armed Forces for permanent control of State political power.*

*And we, the United Nationalities Alliance-UNA, regard those attempts of resuming the adjourned National Convention, which was composed with government's hand-picks neglecting democratic principles and United Nation's General Assembly*

*Gen Hso Ten*

*resolution, as an insulting act of the will of Myanmar people and civilized international community.* (Original statement)

8. Naturally, the political perspectives of the UNA leaders, who include U Khun Htun Oo, and their position against the National Convention, are very disturbing for the SPDC.

*Sai Myo Win Tun*

9. At the same time, former Shan political leaders, Shan youth organizations, and Shan cease-fire groups began to increase their communications with the SNLD. This increased cooperation indicated that the groups were progressing toward the creation of a genuine federal union based on the principles of the Panglong Agreement, reached in 1947. At that time, the secretary of SNLD, U Sai Nyunt Lwin, stated on behalf of the organization that they would neither attend nor accept the National Convention unless the SPDC agreed to amend the 104 basic principles that would empower the armed forces to control the government. Moreover, on 8 March 2004, U Khun Htun Oo told Mr. Razali Ismail, United Nations Special Envoy, that the SNLD would not accept the results of the Convention if the SPDC did not make the objectives and process flexible to change. In April 2004, U Khun Htun Oo received an invitation from the SPDC to attend the National Convention but he mentioned that the attendance issue would be decided in an executive committee meeting of the SNLD. Meanwhile, the SPDC banned the "Sum Bai Bulletin" which was edited by U Sai Nyunt Lwin.

10. On 11 April 2004, the Restoration Council for Shan State, which is a political wing of the Shan State Army (SSA), stated that the SPDC's National Convention was a sham whose purpose was merely to legitimatize military rule in the future Burma. On 6 May 2004, U Khun Htun Oo publicly stated that the SNLD had the same political stance as Daw Aung San Suu Kyi's NLD and that the SPDC's 104 principles could not be accepted. The Union Nationalities League for Democracy (UNLD) and the United Nationalities Alliance (UNA)

stated that, like the NLD, they would not attend the National Convention.

*U Htun Nyo*

11. On 23 August 2004, the Shan State Peace Council, comprised of the Shan cease-fire groups, held their third two-week congress. Secretary 1 of the SPDC, Major General Thein Sein, who also serves as President of the National Convention Convening Committee, traveled to Kyaing Ton and Lar Show townships in Shan State to meet with some Shan cease fire groups such as the Wa and Koe Kant revolution armed groups. On 4 December 2004, he met with several ethnic leaders of cease-fire groups in the special areas 1, 2, 3, 5, and 7 of the Northeastern Military headquarters of Shan State to explain the seven steps of the SPDC's National Convention and to persuade them to attend the Convention.

12. Meanwhile, the Shan ethnic leaders implemented activities promoting the Panglong spirit, including one rewarding the families of the deceased who had signed the Panglong Agreement.

13. On 9 February 2005, nine Shan ethnic leaders, including Brigadier General Hso Ten, U Khun Htun Oo and U Sai Nyunt Lwin, were arrested by the SPDC, who alleged that they formed a "Shan State Academics Consultative Council". Making political accusations, the SPDC explained the arrest of the Shan leaders in a press conference held on 15 March 2005 as follows:

U Htay Hsin gave a speech in that meeting and U Shwe Own recommended forming a consultative council. Additionally, the statements of the Shan State Academics Consultative Council, New Generation Organization (Shan State), and Youth and Students Group were read aloud at that meeting. Afterward, the Shan State Academics Consultative Council was formed by the following members:

(1) U Khun Pan (Northern Representative of SSA, Hpayar Phyu village)
(2) U Sut Oo Kyar (Representative of SSNA, Si Paul)
(3) U Myint Than (New Generation Group, Taung Gyi Township)
(4) U Ba Thin (New Generation Group, Taung Gyi Township)

(5) U Kyaw Win (Inn Thar) (New Generation Group, Taung Gyi Township)
(6) Dr. Sai Mauk Kham (Lashio Township)
(7) Sai Kham Hsai (LashioTownship)
Despite the fact that the Shan State Academics Consultative Council was formed by the people mentioned above, the individuals primarily controlling the organization were U Hsay Htin, U Khun Htun Oo, U Sai Nyunt Lwin, U Myint Than, U Nyi Moe, U Myo Win Htun, U Htun Nyo, U Sai Hla Aung, U Thar Oo and U Own Shwe. The Council will not only be based in Shan State, but also will have branches in each of the six remaining states and the seven divisions.

After the meeting, there was a dinner at "Sein Taung Tan" restaurant in Taung Gyi Township and the SSA paid for the dinner. Some statements were distributed during the meal. These statements were of the Shan State Academics Consultative Council (for the designation of Shan State Day), of New Generation of Youth and Students (Shan State) and of New Generation (Shan State).

There were motivational quotes in the statement of New Generation (Shan State) such as, "Now we are at the first step of creating our own fortune for Shan state." and "All ethnic nationalities living in Shan State are encouraged to actively participate and work together with united spirit."

As mentioned above, the common objective of the SSA, SSNA, SURA, SNLS and Shan State Academics Consultative Council is to facilitate the construction of a genuine federal union. A "genuine federal union" means the formation of a union comprising eight constituent states in Burma: seven for the seven states that currently exist (Kachin, Kayah, Kayin, Chin, Mon, Rakhaing and Shan States) and one that represents all of the seven divisions. The term "real federal union" can be easily misunderstood, particularly to ethnic people, because upon first hearing that word, one feels the grand spirit of something ornate and beautiful. Actually behind that term, their aim is to construct a so-called federation using the term "real federal union". Finally, they will secede from the union one day and establish a separate state.

14. U Khun Htun Oo and the other arrested Shan leaders were simply attempting to implement their political aspirations by exercising their

fundamental human rights and freedoms, such as of the freedom of expression, the freedom of peaceful assembly and the freedom of association. None of them committed a crime that should be punished under any section of Burma's Criminal Law . The SPDC was assuredly concerned that this peaceful movement would spread throughout the country and inspire the other ethnic peoples. In response, the SPDC criminalized the peaceful political actions of the Shan ethnic leaders. The simple truth is that U Khun Htun Oo and the other Shan leaders were condemned to outrageously inappropriate prison sentences for attempting to facilitate the struggle of those people who would like to establish a genuine federal union.

*Note:* **BLC expresses its appreciation to the documentation section of the Network for Democracy and Development (NDD) for its contribution by providing necessary information, in compiling the political background of the case described above.**

**Brief Summary of the Case**

General Hso Ten is a chairman of the Shan State Army, a group that has entered into a cease-fire agreement with the SPDC, and a chairman of the Shan State Peace Council. U Khun Htun Oo is a chairman of the Shan National League of Democracy and an elected representative of Thee Baw Constituency No. 1. When the Committee Representing People's Parliament was organized, he was the Shan representative.

On 21 February 2005, a complaint was filed by Deputy Police Officer Khin Htay and Officer Aung Myint Than from the Special Branch office of Burma People's Police Force against nine Shan leaders, including General Hsay Htin, U Khun Htun Oo, and U Sai Nyunt Lwin.

**They were indicted on a number of charges under the following facts:**

At General Hso Ten's invitation, from 4 -5 November 2004, U Khun Htun Oo and U Sai Nyunt Lwin attended the meeting of the 15th Peace Day Anniversary organized by the SSA in Sein Kyawt village, Thee Baw District, in northern Shan State. In this meeting, all of them agreed to form the "Shan State Academics Consultative Council". U Khun Htun Oo gave his suggestions and discussed the forming of this

*Sia Hla Aung*

council in the meeting. U Sai Nyunt Lwin read out the Shan State Nationalities' Peace Letter. U Than Myint also attended the meeting. General Hso Ten gave an opening speech in the meeting.

The second meeting was held at General Hso Ten's house in Lashio on 22 December 2004. The third meeting was held at an SSA office in Taunggyi on 7 February 2005, which was Shan State Day. In this meeting, an SSACC statement, a Shan State New Generation statement, and a student youths statement were distributed. (Note: U Khun Htun Oo and U Sai Nyunt Lwin did not attend that meeting.)

On 9 February 2005, the SPDC investigated and arrested all the people who had attended the meetings. U Sai Nyunt Lwin was arrested in Rangoon and U Khun Htun Oo was arrested at Pyimana while he was on the way from Rangoon to Shan State.

On 17 February 2005, the SPDC sent all the people they had arrested from Taunggyi to Rangoon. This group of people was divided into two groups. General Hso Ten and the members of Shan State New Generation were sent to Insein Prison and investigated there. The remaining people were sent to the Special Branch Office at 8 Mile crossroad, Mayangon. On 15 March 2005, the SPDC explained in a press conference the reasons for the arrests and made political accusations against them.

Together with U Khun Htun Oo, U Sai Nyunt Lwin (51), U Hsay Htin (68), U Myint Than (also known as Eh Phyu, 54, who died in Than Dwe Prison), Nyi Nyi Moe (35), Sai Myo Win Htun (also known as Eh Lone, 41), U Htun Myo (also known as Eh Nyo, 56), Sai Hla Maung (60) and Sao Tha Oo (44) were arrested. On only a prima facie case, they were prosecuted separately and punished with the highest sentences available under following laws:

1. Criminal Case No. 233/ Criminal Law 122(1) – High Treason
2. Criminal Case No. 234/ Criminal Law 124(a) – Sedition
3. Criminal Case No. 235/ Declaration 5/96 - Section 4 of the 1996 Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions

4. Criminal Case No. 236/ Section 6 of the 1988 Law Relating to Forming of Organizations
5. U Nyunt Lwin - Criminal Case No. 239/ Criminal Law 124(a) – Sedition
6. U Myint Than (also known as Eh Phyu), Nyi Nyi Moe, Sai Myo Win Htun, U Htun Nyo and Sai Hla Aung – Sections 17 and 20 of the 1962 Printer and Publisher Registration Act
7. General Hso Ten – Criminal Case No. 194/05, Section 3 of the Public Property Protection Act
8. Criminal Case No. 293/05, Control of Import and Export (Temporary Act)

Pursuant to Order No. 37/05 of the Supreme Court, the case was transferred on 18 February 2005 to a tribunal presided by Division Judge U Mya Thein (chairman) and a Joint-Division Judge. After the court accepted the case and pursuant to Criminal Procedure Section 337, the accused number 9, Sao Tha Oo, became a witness for the complainants. On 27 April 2005, the court started the proceeding based on the complaint filed by Deputy Police Officer Khin Htay.

On 2 November 2005, the accused were found guilty of high treason against the State under Section 121 of the Penal Code and accordingly were sentenced to transportation for life under Section 122(1) of the Code. The investigations of the other cases commenced on that day and similarly ended in lengthy sentences for the defendants.
In the above-described case, Chairman U Khun Htun Oo was punished with 93 years imprisonment in Bu Ta O Prison, Secretary Sai Nyunt Lwin was punished with 85 years imprisonment in K'Ley Prison, member U Sai Hla Aung was punished with 79 years imprisonment in Kyawt Phyu Prison, U Myint Than from Shan State New Generation was punished with 79 years in Than Dwe prison (where he died), U Htun Nyo was punished with 79 years imprisonment in Bu Thi Taung Prison, Sai Myo Win was punished with 79 years imprisonment in Myingyan Prison, Sai Nyi Nyi Moe was punished with 79 years imprisonment in Pakuku Prison and General Hso Ten was punished with 106 years imprisonment in Khandee Prison.

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# Rangoon Division Court (Tribunal) 2005, Criminal Case No. 235

**Legal analysis on the punishment of U Khun Htun Oo and seven other Shan leaders under the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions**

## Defendants

(1) U Khun Htun Oo, (2) U Sai Nyunt Lwin, (3) U Hsay Htin, (4) U Myint Than, (5) U Nyi Nyi Moe, (6) U Sai Myo Win Htun, (7) U Htun Nyo and (8) U Sai Hla Aung.

## Crime and Punishment

Defendants were convicted of violating Section 3 of the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions and sentenced to 20 years imprisonment and hard labor.

## Relevant Law

The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions

### Section 3

No one and no organization shall violate either directly or indirectly any of the following prohibitions:-

*a*. inciting, demonstrating, delivering speeches, making oral or written statements and disseminating in order to undermine the stability of the State, community peace and tranquility and prevalence of law and order;

*b*. inciting, delivering speeches, making oral or written statements and disseminating in order to undermine national reconsolidation;

*c*. disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution;

*d*. carrying out the functions of the National Convention or drafting and disseminating the Constitution of the State without lawful authorization;

*e*. attempting or abetting the violation of any of the prohibitions.

**Court's rationale for punishment**

(1) In the first day of a meeting of the Shan State Academics Consultative Council, paragraph 5(O) of a statement released by U Khun Htun Oo provided: "We, as the JAC, need the opinions, energy and support of you, the Shan people, regardless of your class or status. Therefore, if you try, we will support you. If we are unified, I am confident that the National Convention will be one in which all the nationalities participate and are equally represented.

(2) Page 2, paragraph 3 of a statement entitled "The Future Burma", which was confiscated from the defendants, provides: "It is necessary to build the unity of nationalities, and it must not be forced by one nation or one organization with strength. It must be unity with the consent of all. In a country where there is the use of one nation's power and force, genuine unity cannot be created.**"**

(3) The written records of a second meeting of the Shan State Academics Consultative Council held on 22 December 2004 in Lashio Township at U Hsay Htin's house and the request letter to the affiliated peace and cease-fire groups state that the opinions and positions of ethnic nationalities and tribes are basic and essential factors for building a genuine federal union of Burma. Paragraph 5 of the said meeting record provided that the Council would represent the people of Shan State in establishing a real federal union and would give direction and guidance regarding the ideas, concepts and activities necessary for such a system.

(4) It was also written in the meeting record that the Shan State has the right to self-determination and the same is for other tribes who reside in Shan State, in practicing their own cultures, traditions and

customs. These are the objectives of Shan state residents, which are deeply adopted and believed.

(5) The Shan State Academics Consultative Council was formed during a discussion by U Hso Tin about how to overcome the deadlocked political situation. The members of the Council expressed that with the emergence of this kind of council, there would be hope that a country could be built where equality, democracy and self-determination prevail, a country for which the people are longing.

(6) Paragraph 1 of the memorial statement released on Shan National Day stated that the Shan State Academics Consultative Council was formed by representatives selected and sent by the armed forces in Shan state including those which entered into ceasefires. It also stated that if the movement/functions that are started in Shan state spread first to other states and then to the whole country, it would facilitate resolving various problems of Burma. This statement is proof that the accused have illegally organized Shan State Academics Consultative Council.

**Legal Analysis**

The statements described in paragraphs 1 to 4 above were merely political expressions. Making them was not a crime under any law. They are the opinions of Shan leaders regarding the emergence of a genuine federal union. If these kinds of expressions are held to undermine the stability of the State, community peace and tranquility, and the rule of law, the SPDC must arrest and punish all other ethnic leaders as well as various nationalities in the whole country.

(1) Referring to paragraph 1 above of the court's rationale, U Khun Htun Oo's speech is not directed at the Constitution, nor is it criticism of the current National Convention. To explain, Section 3(c) of the allegedly violated law only prohibits statements that undermine the functions being carried out by the National Convention "for the emergence of a firm and enduring Constitution." Here there was no reference to the Constitution in U Khun Htun Oo's statement.

(2) Referring to paragraph 2 above of the court's rationale, the excerpt from "The Future Burma" merely addresses the unity needed among the nation's different nationalities and thus does not affect the National Convention.

(3) Referring to paragraph 3 above of the court's rationale, the phrase "able to provide proper guidelines" makes it clear that the guidelines will comply with the law. The court, however, incorrectly decided that the phrase undermined the National Convention.

(4) Referring to paragraph 4 above of the court's rationale, the phrase "the right to self-determination" does not match any of the elements of a crime. It is also irrelevant to the National Convention. Therefore, making such a statement is not a criminal act.

(5) Referring to paragraph 5 above of the court's rationale, as the formation of the Shan State Academics Consultative Council has no relation to the National Convention, it cannot affect the National Convention. The formation of the SACC is completely unrelated to the prohibitions in the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions. Whether it was a crime under other laws is different question, as a separate case has already been opened under the Unlawful Association Act.

(6) Referring to paragraph 6 above of the court's rationale, the statement made merely expressed that they absolutely believed that they could help solve many of Burma's problems. It was an expression of their attitudes toward solving the problems of Burma, and not one in any way undermined the National Convention.

(7) All citizens have the right to propose or suggest adding or not adding something in the constitution of their own country. Making a suggestion is not a crime. The representatives who attend the National Convention have the right to accept or reject proposals as they see fit. If they believe that the constitution they draft creates a real democratic federal union, they have the power to continue with what they are doing, without accepting suggestions from the people.

(8) The defendants did not do anything that could reasonably be construed as "disturbing, destroying, obstructing, inciting, delivering speeches, making oral or written statements and disseminating in order to undermine, belittle and make people misunderstand the functions being carried out by the National Convention for the emergence of a firm and enduring Constitution". To the contrary, U Khun Htun Oo and other Shan leaders were just trying to make suggestions, which may be relevant to the constitution, for the emergence of a genuine

federal union. No evidence was presented that the defendants destroyed, disturbed or condemned the SPDC National Convention or the tasks of National Convention.

(9) The SPDC needs to evaluate the laws that they alone have enacted. The courts also need to evaluate whether what they are doing is consistent with the legal principles. People should not be punished if they have not committed a crime. Furthermore, there must be clear definitions of important terms used in the laws. Otherwise, courts and governments can interpret the terms in the manner most favorable to them. Such a miscarriage of justice destroys the credibility of the justice system, and consequently the accused may end up spending their entire lives in prison without actual proof of their guilt. This type of situation should not take place in a country governed under law.

# Rangoon District Court (Tribunal), Criminal Case No. 233/05

**Legal Analysis on the Conviction of U Khun Htun Oo and Seven other Shan leaders under Penal Code Section 121 for "High Treason".**

**Defendants**

(1) U Khun Htun Oo, (2) U Sai Nyunt Lwin, (3) U Hsay Htin, (4) U Myint Than, (5) U Nyi Nyi Moe, (6) U Sai Myo Win Htun, (7) U Htun Nyo and (8) U Sai Hla Aung

**Crime and Punishment**

The defendants were sentenced to transportation for life by Rangoon District Court (Tribunal) in 2005 for violating Section 122(1) of the Penal Code. The complainant was U Khin Htay, Lieutenant General of Police, Burma police. "Transportation for life" means a life sentence in a penal colony, usually involving hard labor.

**Relevant Law**

Criminal Law, Section 121
Whoever

(*a*) wages war against the Union of Burma or any constituent unit thereof,

(*b*) or assists any State or person

(*c*) or incites or conspires with any person within or without the Union to wage war against the Union of any constituent unit thereof,

(*d*) or attempts or otherwise prepares by force of arms or other violent means to overthrow the organs of the Union or of its constituent units established by the Constitution, or takes part or is concerned in or incites or conspires with any person within or without the Union to make or to take part or be concerned in any such attempt shall be guilty of the offence of High Treason.

**A brief summary of the court's rational**

(1) On 4 November 2004, U Khun Htun Oo, chairman of the Shan State Academics Consultative Council, gave an opening speech at the Council's first day of the first meeting. Defendant U Sai Nyunt Lwin appears to have attended that meeting.

(2) The Council's process for selecting members has two rules: members must not be a member of a peace organization and must not be a member of a political party. It appears that members were selected by this process.

(3) U Sai Nyunt Lwin read a statement of the coalition of Shan ethnic people on the first day of the first meeting.

(4) U Hsay Htin was the chairman at the second day of the first meeting. The second meeting of the Council was held at his house in Lashio Township and the third meeting was held at an Shan State Army office in Taung Gyi Township with the permission of U Hsay Htin. With this evidence, U Hsay Htin was alleged to be a person who led the meetings of the Shan State Academics Consultative Council.

(5) The conduct of the accused persons was aimed at transforming the Shan State Academics Consultative Council into a National leveled organization, achieving self-autonomy and self-determination for the Shan state, and exercising the right to equality

and the right to secession. The court concluded that after they had achieved these goals, they intended to undermine the Union of Burma.

**Legal Analysis**

(1) The court's rationale described above is absolutely inconsistent with Section 121 of the Penal Code.

(2) To be convicted under Section 121, the defendants had to have committed one of the following acts:

(*a*) **wage war** against the Union of Burma,

(*b*) assist any State or person, or incite or conspire with any person, to **wage war** against the Union of Burma, or

(*c*) attempt to overthrow the organs of the Union or incite another person to do so.The witnesses of the complainant did not provide evidence of any of above points to the court. There was nothing presented about **waging war** against Burma or any other information related to the elements described in Section 121.

(3) The actions of the defendants described in the judgment were merely involvement in a political movement. If being involved in a peaceful political movement is a crime and merits life imprisonment, one fourth of the country's population will be in prison.

(4) Paragraph 5 of the court's judgment stated that "secessions are going to be created by that council and after that they intended to undermine the Union of Burma." This conclusion is a subjective political accusation that was not corroborated by any of the evidence presented.

(5) Section 121 of Criminal Law makes it a crime "to wage war against the Union of any constituent unit thereof, or attempts or otherwise prepares by force of arms or other violent means to overthrow the organs of the Union or of its constituent units ***established by the Constitution***." According to the italicized portion of the law, waging war against the government is only a crime when it is against a government that has been established by the Constitution. Thus, the defendants could not have committed the crime of treason and mutiny against the country because the military regime (SPDC), the current ruling government of Burma, is not a legitimate government established by the Constitution.

(6) The accused persons did not commit any crime prohibited under Section 122 because they were merely trying to establish a genuine federal union for Burma. Therefore, the charge that they intended to undermine the Union of Burma was completely false. In fact, this charge is political rather than legal, and the punishment is absolutely contrary to the law and unjust.

# Rangoon District Court (Tribunal), Criminal Case No. 234/05 and 239/05

**Legal Analysis on the Convictions of U Khun Htun Oo, U Sai Nyunt Lwin, and Eight Other Shan Leaders under Penal Code Section 124(a) Sedition**

**Crime and Punishment**

**(1) Case No. 234/05**.

**Defendants:** U Khun Htun Oo, U Sai Nyunt Lwin, U Hso Tin, U Myint Than, U Nyi Nyi Moe, Sai Myo Win Htun, Htun Nyo and Sai Hla Aung. Alleged crime: Based on statements made and the content of materials that were distributed during a meeting at which the defendants were present, they were accused of bringing into hatred or contempt, or exciting or attempting to excite disaffection towards, the Government (Section 124(a) Sedition of Penal Code). Punishment: Life imprisonment for all defendants.

**(2) Case No. 239/05**

**Defendants:** U Sai Nyunt Lwin. Alleged crime: Based on the content of materials found on U Sai Nyunt Lwin's computer, he was accused of bringing into hatred or contempt, or exciting or attempting to excite disaffection towards, the Government (Section 124(a) of Penal Code). Punishment: Life imprisonment.

**Relevant Law**

Criminal Law Section 124(a) provides the following information in connection with the crime of "disaffection": Whoever by words, either spoken or written, or by signs, or by visible

representation, or otherwise, bring or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards [the Government established by law for the Union or for the constituent units thereof,] shall be punished with transportation for life or a shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

## A Brief Summary of the Court's Rationale

**Case No. 234/05**

The court used the following evidence to convict the defendants:

(1) During the first meeting of the Shan State Academics Consultative Council, the accused, U Hsay Htin, stated, "The alliance that we had imagined has been implemented and, starting now, it is going to be a big alliance. Our JAC was able to form the Shan State Academics Consultative Council. So, we could say that it is our victory." (All translations have been made by the BLC unless noted otherwise.)

(2) Paragraph 2 of the statement distributed in the third meeting of Shan State Academics Consultative Council provided: "The current political situation of Burma, characterized by the power struggle between the military government that currently rules the country and political parties that won the 1990 election, has caused the country's troubles and the people's impoverishment to become greater and greater. The conditions over the last 16 years have become worse and worse, day by day."

(3) The statement described in paragraph 2 above also provided: "Even though the current situation is not slavery, we could say the impoverished lives of the Burmese people are not much different from the lives of slaves."

## Legal Analysis

**Case No. 234/05**

(1) The reference in paragraph 1 of the judgment is inconsistent with Section 124(a) of the Penal Code.

(2) According to paragraphs 2 and 3 of the judgment, the statements made during the Shan State Academics Consultative Council meeting were false. In fact, these statements accurately reflect

the current situation of Burma. True statements are not offences under the Penal Code. Moreover, the accused were merely exercising their freedom of expression.

(3) Section 124(a) of the Penal Code defines "government" as "Government established by law". As the current military government of Burma is an illegal regime that unlawfully seized power by force, Section 124(a) cannot be utilized to convict individuals who express opinions about the current government because it is not a government "established by law".

**A Brief Summary of the Court's Rationale**

**Case No. 239/ 05**

On 29 January 2005, a document entitled "Future Burma", published by the United Nationalities Alliance (UNA), was found on the computer of defendant U Sai Nyunt Lwin. The court determined that possessing the document violated Section 124(a) of the Penal Code. The court described the document's contents as follows:

(1) The performances of government, whether positive or negative, have a direct effect on the lives of the people in that country. Bad governments govern the country badly and do not provide for the needs of the people. Therefore, the people have a duty to elect a good government, which will promote our dignity and life …

(2) The State Law and Order Restoration Council (SLORC) has reneged the promise that it made before the 1990 election. Moreover, it has been disturbing and controlling the process of drawing up a draft constitution. They held a sham National Convention from 9 January 1993 to 25 January 1996 at Kyatkasan Field with six goals, including one that the "The military is to play a leading role in the national politics of Burma"

(3) The SLORC completely controls and dominates the Solidarity and Development Association and ordered it to campaign for its one-sided 104 fundamental policies to be introduced at the National Convention. … Such campaigning is very dangerous for the ethnic armed cease-fire groups…

(4) The SPDC is attempting to draft a constitution with 104 fundamental polices that enable the military to continue to administer the government and secure the longevity of the current regime. If this

constitution is approved and enacted, Burma will be the country with the worst constitution in the world…

(5) Contrary to the SPDC's announcement, the Union of Burma that would be formed by the constitution that the SPDC has proposed would be a military state that would be unable to bring about the emergence of a modern developed country.

(6) Because there are seven states and seven divisions in the Union of Burma, a one-party system inadequately represents all the people of Burma, and as a result there is a lack of equality for ethnic groups and a genuine democratic system cannot emerge.

(7) Since 1948, the Burmese population has been experiencing a political crisis due to the weaknesses and shortcomings of the 1947 Constitution. Because of those weaknesses, Burma's independence was accompanied by ethnic conflicts, ideological wars, the seizing of power by the military and extreme problems of all types for the people of Burma.

(8) The statement made at the Sixth Anniversary of the Chamber of Nationalities declared that the current political, economic, educational, and social conditions in Burma have deteriorated and national unity is shattered. Under such conditions, there is great concern that a general crisis will inevitably occur in future Burma.

(9) There should be a Federal Republic of Burma governed by a genuine democracy which protects human rights, guarantees ethnic equality and self-determination for very ethnic group; and only then, it would ensure that the country will not be ruled by any dictators again.

## Legal Analysis

### Criminal Case No. 239/05

(1) In both proceeding which U Sai Nyunt Lwin is prosecuted is not in line with section 124(a) of Criminal Law.

The 1973Act for Defining Terms provides in Section 22 that when an act or omission is an offense according to two or more laws, the perpetrator shall be punished according to only one of them.

(2) For the same transaction, U Sai Nyunt Lwin was punished under all of the following laws:

9. Criminal Case No. 233/, prosecuted under Criminal Law Section 122(1) – High Treason;
10. Criminal Case No. 234/, prosecuted under Criminal Law Section 124(a) – disaffection;
11. Criminal Case No. 235/, prosecuted under Declaration 5/96 and Section 4 of the 1996 Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions;
12. Criminal Case No. 236/, prosecuted under the 1988 Law Relating to Forming of Organizations; and
13. Criminal Case No. 239/, prosecuted under Criminal Law 124(a) – disaffection

As can be seen from the above cases, the severity of U Sai Nyunt Lwin's punishment did not fit the nature of the alleged crimes. Moreover, even though there should have been only one legal case against him, U Sai Nyunt Lwin was prosecuted twice under the same criminal law for disaffection and received life sentences for both alleged violations.

**Punishment for U Sai Nyunt Lwin**

a. Criminal Case No. 233/ 2005- High Treason/ Criminal Law 122(1) = imprisonment for transportation

*b*. Criminal Case No. 234/ 2005 (first case) – disaffection/ Criminal Law 124(a) = imprisonment for transportation

*c*. Criminal Case No. 235/2005- 1996 Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions (section 4) = 20 years imprisonment

*d*. Criminal Case No. 236/ 2005 - Law Relating to Forming of Organizations Law (section 6) = 5 years imprisonment

*e*. Criminal Case No. 239/ 2006 (second case) disaffection/ Criminal Law 124(a) = imprisonment for transportation.

As stated above, U Sai Nyunt Lwin is to be punished separately for several crimes. As a result, in total he has been sentenced to 85 years imprisonment. This punishment is contrary to Section 71 of Penal Code, which provides: "Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences."

(3) Contrary to paragraphs 1 – 8 of the court's decision, all of the information in the UNA document reflected the true political situation as it currently exists. To express truth is not a crime. Rather, it is the lawful exercise of the right to freedom of expression.

(4) Contrary to paragraph 9 of the court's decision, U Sai Nyunt Lwin was acting in good faith to ensure the prosperous and secure future for the country. He did not act with criminal intent. Accordingly, U Sai Nyunt Lwin's punishment is unwarranted and unlawful.

# Rangoon Division Court,Criminal Case No.236/05

**Legal Analysis on the Conviction of U Hkun Htun Oo and Eight Other Defendants Under the 1988 Law Relating to Forming of Organizations**

**Defendants**

(1) U Hkun Htun Oo, (2) U Sai Nyunt Lwin (3) U Sao Ten, (4) U Myint Oo, (5) U Nyi Nyi Moe, (6) U Sai Myo Win Htun, (7) U Htun Nyo, (8) Sai Hla Aung and (9) Sao Thar Oo.

**Crime and Punishment**

The Defendants were sentenced to five years imprisonment and hard labor under Section 6 of the 1988 Law Relating to Forming of Organizations.

**Relevant Law**

The 1988 Law Relating to Forming of Organizations- Section 6- Any person found guilty of committing an offence under Section 3, Sub-

section (c), or Section 5 shall be punished with imprisonment for a term that may extend to five years.

Section 3(c). Organizations that are not permitted shall not form or continue to exist and pursue activities.

Section 5- The following organizations shall not be formed, and if already formed shall not function and shall not continue to exist: …
(c) Organizations that attempt, instigate, incite, abet or commit acts that may effect [sic] or disrupt the regularity of state machinery

**A Brief Summary of the Court's Rationale**

1) Parties led by Sao Hten and Hkun Htun Oo and the Shan New Generation Party led by Myint Than tried to establish the Shan State Academics Consultative Council. At the time of the ceremony celebrating the 15th Anniversary of the Cease-Fire with the SPDC, the Shan State Academics Consultative Council was formed. The second meeting of that council was held at Hso Ten's house at Lashio and the third meeting at Taunggyi at the party headquarters with the permission of Hso Ten. Accordingly, Myint Than and his members appear to be the organizers of the meetings and relevant evidence has been accumulated to prove it.

2) Topics discussed in the third meeting of the Shan State Academics Consultative Council and statements released after the meeting contained words that disparaged the proper functioning of the State and appeared to have as their purpose the hindrance of the government from running the State.

3) It is clear that the council led by the defendants is an association that the State has prohibited and, if already organized, no activities shall be carried out in accordance with Section 5(c). Accordingly, the establishment of the council organized by the defendants violated Section 5(c); thus, all defendants committed a crime under this Section.

**Legal Analysis**

To determine whether the defendants' acts were crimes under section 6 of the 1988 Law Relating to forming of Organizations, it is not sufficient if it is considered only within the scope of Section 5(c). To explain, no organization will express that it will attempt, instigate, incite,

abet or commit acts that may effect or disrupt the regularity of state machinery. Section 5 (c) establishes a guiding principle in regard to formation of an organization. Accordingly, it is realized that such an organization shall not be allowed to form and if already formed shall not function, nor shall continue to exist.

The issue is that, in regard to the status of such an organization, a decision to invalidate it shall not be made prematurely. To resolve this, a prescribed legal procedure for formation and function of an organization is set forth in the law and is important to any analysis of the organization's validity. The law provides for two parts. The first part is that having formed an organization, permission from the relevant authorities shall be sought within thirty days. After observing the application of that organization which seeks permission, the authorities may reject it if they presume that that organization may disrupt the regularity of the state mechanism, as provided for in the Section 5 (c). In this regard, Section 3 provides as follows:

(*a*) Organizations shall apply for permission to form to the Ministry of Home and Religious Affairs according to the prescribed procedure.

(*b*) Organizations that have already been formed shall apply within thirty days from the promulgation of this Law.

(*c*) Organizations that are not permitted shall not form or continue to exist and pursue activities.

Legal action may be taken against an organization if it continues to exist and pursue activities after the application of that organization is formally rejected or it is not permitted to form officially, with reference to Section 3 (c).

The second part is that legal action may also be taken against an organization if it breaks prohibitions mentioned in Section 5 (c) in pursuing its activities after it is granted to form and function formally. Section 5 (c) applies only to those organizations which have been formally registered. The disputed case is to be considered as to whether the attempts of the accused to form Shan State Academicians Consultative Council commit any crime prescribed in these two parts of the relevant sections.

What is assured is that, with reference to Section 6 of that law, legal action cannot be taken against an organization only on the ground that

it did not apply for permission from the authority for formation and function, in spite of having provisions to do so in Section 3 (a) and (b) because, in this law relating to forming of an organization, there is no penalty Section to provide punishment for any organization which does not comply with the provisions mentioned in Section 3 (a) and (b).

Without referring to Section 3 manifestly, application of the Section 5 (c) shall not be legal. In this case, the defendants were arrested and punished while trying to organize Shan State Consultative Council and while still in the period prior to the application for registration. In connection with the case, one of the defendants, U Sai Nyunt Lwin, testified as follows during the trial:

> The Shan State Academics Consultative Council was not completely organized yet as Eastern Shan State could not elect representatives. It was only an organizing committee. After discussing among the committee members, we were going to settle the organization's name, objectives, principles, rules and financial structure and apply for registration with the relevant offices.

The testimony makes clear that all the defendants were arrested before the council had been fully organized and before it could apply for registration. Thus, sentencing defendants under Section 6 of the Act is completely inappropriate.

Paragraph 2 of the court's judgment states that there were words used in the meeting and statements that undermined the proper functioning of the State and appeared to have as their purpose the hindrance of the government from running the State. However, the court failed to indicate the specific words that undermined, insulted or disrupted the regularity of state machinery.

According to U Nyunt Lwin's testimony, the statement only called for all the organizations in Shan State to be united in working for Shan State. Thus, there were no words that insulted or discouraged the government from running the State. Although the defendants were not guilty under the applicable laws, they were sentenced to lengthy terms of imprisonment. Therefore, imposing punishment on them is unjust.

Freedom of speech is a human right that everyone enjoys and is clearly provided for in Section 19 of the Declaration of Human Rights. Oppressing people who try to exercise their freedom of speech by misusing laws demonstrates the deterioration of the Rule of Law in Burma.

# Rangoon District Court (Tribunal), Criminal Case No. 294/05

**Legal Analysis on the Conviction of U Hso Tin under Section 3 of the 1963 Act for Protection of Property Relevant to the Public**

## Crime and Punishment

General Hso Tin was sentenced to life imprisonment under Section 3 of the 1963 Act for Protection of Property Relevant to the Public.

## Relevant Law

Section (2). Property relevant to the public is money or stored good, or utensil or other property owned or transferred to use or kept by:

(*a*) army;

(*b*) revolutionary government or a local governmental authority or Board, corporation, bank, other organization formed in accordance with an existing law;

(*c*) a cooperative; or

(*d*) the following organizations announced by the revolutionary government in its gazette

1. an organization registered in accordance with the Registration Act for Associations;
2. an organization registered in accordance with the Section 26 of Burma Company Act;
3. a trustee;
4. other organizations.

Section (3) Any person who commits theft, or misappropriation, or cheating in regard to property relevant to the public shall be punished with life imprisonment, or minimum ten years term imprisonment; in addition, he or she will be fined.

**Brief Summary of the Court's Rationale**

(1) The evidence in this case showed that since the formation of the SSPC in 1996, timber splitting factories in Naung Taung Gyi village, Namakaw village and Nant Onn village in Thee Paul Township, were being operated using legal and illegal timber under a license in the name of U Hsay Htin. The evidence also showed that U Hso Tin permitted Sai Lyan, Sai Nyan and Sai Mone Cho, who he trusted, to sell and buy illegal teak in the area of Nant Pan and Panmeik controlled by the SSPC.

(2) According to the statements of U Kaung Tai (witness 2) and U Pee Yar (witness 3), both witnesses for the complainant, the SSA decided in an annual meeting and assigned to Lauk Chauk, a Chinese citizen, the splitting, producing and transporting of teak to China. He was licensed to produce about 3,000 metric tons of teak and he would have to pay installments of 1 million Kyats annually to the SSA for funding. U Kaung Tai and U Pee Yar claimed to know this information from a statement made by U Lwe Maung. Accordingly, it is clear that Lauk Chauk illegally exported processed teak and other hard wood from the Nan Pan and Panmeik areas, controlled by SSA and SSPC, to China.

**Legal Analysis**

(1) Section 2 of the Public Property Protection Act defines the term "Property relevant to the public". The disputed teak in this case is not the property mentioned in Section 2. Teak is not the property owned by government; rather, they are natural resources owned by the nation. Therefore, the SPDC's charging and punishing of General Hso Tim under Section 3 of the 1963 Act for Protection of Property Relevant to the Public was against the law.

(2) In connection with the action of Lauk Chauk, General Hso Tin has already been charged in Case Number 293/05 under Section 5.5(3) of the Control of Imports and Exports (Temporary) Act.

Charging one act under several criminal laws is not in line with the principles of the rule of law and also is damaging to the fair application of justice.

(3) On behalf of his ceasefire organization, General Hso Tin, as the top leader, allowed the use of his name for this timber splitting business. U Kaung Tai, witness 2 for the complainant, stated that the timber factory was not owned by Gen. Hso Tin, but rather by the SSA. Furthermore, it is obvious that the main person who operated the factory was not Gen. Hso Tin, but U Lwe Maung. If any problem arose at that factory, the whole SSA would be responsible for it. If the actions of U Lwe Maung, who operated the business, were beyond the working procedures set by the SSA, only Lwe Maung would be responsible. As such, penalizing Gen. Hso Tin, who had no responsibility at all, was patently erroneous.

# Rangoon Division Court (Tribunal), 2005, Criminal Case No. 293/05

**Legal Analysis on the Conviction of General Hsay Htin under Section 5.5(3) of the Control of Imports and Exports (Temporary) Act of 1947**

**Crime and Punishment**

U Hsay Htin (also known as U Kyaw Sein) was sentenced to seven years imprisonment for violating Section 5.5(3) of the Control of Imports and Exports (Temporary) Act.

**Relevant Law**

The Control of Imports and Exports (Temporary) Act-

5.5(1). If any person contravenes any order made under this Act, he shall without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, as applied by subsection (2) of section 3, be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

5.5(2). Notwithstanding anything contained in any other law for the time being in force, if the contravention of any such order is in respect of paddy or rice or rice products the offender shall be punishable with transportation for life or with imprisonment for a term which shall not be less than seven years and with whipping and the property in respect of which or in connection with which such offence is committed shall be liable to confiscation.

5.5(3). Any person [who attempts to contravene any such order] who abets the contravention of any such order shall be liable to the same punishment as is provided for the contravention thereof.

**Brief Summary of the Court's Rationale**

Teak and finished products have been confiscated for exhibit in the Court. It is proven that U Hsay Htin supported the smuggling of the teak to Lout Chout, a Chinese citizen.

**Legal Analysis**

(1) Other than a Deputy-Police Officer, none of the other 16 witnesses of the complainant gave oral testimony that U Hsay Htin supported the smuggling of teak and finished product to Lout Chout to transport to another country.

(2) The statement of U Yar Pee, a witness of the complainant, provided: "Chairman U Lwe Maung made Lauk Chaung, a Chinese man, responsible for making smooth textured fabric and teak splitting. I know about this case from Chairman U Lwe Maung's talk." This statement is hearsay. The statements of U Lwe Maung and Lauk Chaung introduced in the proceeding did not include any information about this alleged statement made by them. According to the Section 60 of the Evidence Act, "hearsay is not direct evidence." Therefore, the court improperly accepted evidence that violated the rules set forth under the Evidence Act with respect to the admissibility of evidence.

(3) There was no action taken against Lauk Chaung in this case. Also, there was no evidence presented that U Hsay Htin encouraged Lauk Chaung to commit this kind of crime. Nonetheless, the court concluded that U Hsay Htin encouraged Lauk Chaung to commit this crime. Punishing U Hsay Htin is absolutely contrary to the law.

(4) U Yar Pee, a witness for the complainant, stated: "The SSA intended for their wood factory enterprise to be legal as was decided in their meeting at which U Hsay Htin was a chairman. That is why the wood factory enterprise is licensed under the name Hsay Htin." This statement makes it clear that U Hsay Htin took responsibility as a representative of the SSA, which entered into a cease-fire agreement with the SPDC. This is not a crime. If the SPDC wants to revoke business rights given to the ethnic armed cease-fire groups, they should revoke them for all the groups. Only revoking the business of the SSA is unfair and inconsistent with the law.

# Rangoon District Court (Tribunal), Criminal Case No. 237/05

**Legal Analysis on the Conviction of U Myint Than and Six Other Shan Leaders under the Printer and Publisher Registration Act of 1962**

**Crimes and Punishment**

In Case 237/05, defendants U Myint Than and six other Shan leaders were convicted of violating Section 6 of the Printer and Publisher Registration Act of 1962 and consequently were sentenced to seven years imprisonment and hard labor under Section 17 of the Act.

Additionally, U Myint Than and the other seven Shan leaders were convicted of failing to follow the procedure of Section 18 of the Printer and Publisher Registration Act of 1962 and consequently were sentenced to seven years imprisonment and hard labor under Section 20 of the Act.

These two punishments were given separately.

**Relevant Law**

Printers and Publishers Registration Act of 1962

Section 6: (1) Any person who is a printer or publisher must make confession with his signature according to

Section 3 and register it to the registration officer with the application form and within the time limitation.
(2) No one is allowed to engage in the enterprise of printing or publishing except with the registration testimony card and rules in this card or under the requirements of the law.

Section 17: Anyone who engages in the enterprise of printing or publishing without any registration under Section 6 will be punished with 1 year to 7 years imprisonment or fined three thousand to thirty thousand, or both punishments will be given.

Section 18: Anyone who mentions a fact which is false and which he knows or believes to be false will be punished with 6 months to 5 years imprisonment or fined two thousand to twenty thousand Kyat, or both punishments will be given.

Section 20: Anyone who opposes or fails to obey the procedure of this law and order of any authority under this law will be punished with 1 year to maximum 7 years imprisonment or fined three thousand to thirty thousand, or both punishments will be given.

**A brief summary of the court's rationale**

According to the court, U Myint Than and the other seven Shan leaders were guilty because the three statements published at the third meeting of the Shan State Academics Consultative Council and on the 58th Anniversary of Shan State Day were not registered according to Section 6, subsections (1) and (2) of Printers and Publishers Registration Act. Accordingly, they were subject to the punishment provided for in Section 17 of the Act. Moreover, they failed to follow the procedure of Section 18, and thus they were subject to punishment under Section (20) of the Act.

**Legal Analysis**

1. There was absolutely no evidence presented that the statement of the Shan State Academics Consultative Council and the three other statements were printed by U Myint Than. For instance, the meeting records of the Shan State Academics Consultative Council and the

book entitled "Self-Determination and the Right to Retain One's Own Destiny" were found during a search of U Myint Than's house, according to a statement made in court the complainant, deputy sub-inspector of police, Ye Hlaing Win. The evidence did not show that U Myint Than printed the three statements.

2. U Myint Than only distributed the three statements to the people who attended the meeting. Because it was a limited distribution, registration of the distribution was not required under Section 3 of the Act. Accordingly, he did not violate the law and could not be punished under Section 6 of Printers and Publishers Registration Act of 1962.

3. Four of the other defendants, U Hso Tin, U Htun Nyo, Sai Hla Aung and Sao Thar Oo, attended the first, second and third meetings of the Shan State Academics Consultative Council, but did not print or publish anything. Therefore, they did not violate the law and cannot be punished.

4. Two of the other defendants, U Nyi Nyi Moe and Sai Myo Win Htun, led the meetings of the Shan State Academics Consultative Council and participated in the discussions. Furthermore, they wrote a draft statement for New Generation Group and Students and gave it to U Myint Than. They were not involved in printing or publishing contemplated by the Printers and Publishers Registration Act. Consequently, they did not violate Section 6 of this law and should not be punished.

In conclusion, the seven year imprisonment sentences for violating section 17 and the additional seven year imprisonment sentences for violating section 20 were absolutely erroneous under the law.

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# Analysis on the Situation of the Refugee Camps From the Rule of Law Aspect

**(January 27, 2007)**

**Camps Researched:** Mae-la, Umpium, Noe Poh, Mae-la-Oo, Kareeni 1 and Kareeni 2

**Executive Summary**

This research paper has been produced to highlight the security situation within the refugee camps along the Thai/Burma border in Thailand. The objective of this paper is to give a comprehensive overview of the failings of the administrative, judicial and legislative structures within the camps and the consequences this has had on the individual security of camp residents. By analyzing the camps from the rule of law perspective this research indicates that without adequate institutional and structural reforms, too many individuals are vulnerable to violence and attack that deprives them of one of their most basic human rights.

The Burma Lawyers' Council (BLC) is to some extent familiar with the issues of refugees from Burma as it has been working with many of them in some camps for several years. In addition to this, the information compiled in this report was diligently gathered over an 8 month period in which staff members of the BLC conducted over 50 interviews with a diverse range of peoples. These people included camp officials, camp judges, victims of crime, witnesses to violent crime, family members affected by crime, security officials, members of various groups within the camps- such as the Karen Women's Organization (KWO), Karen Refugee Committee (KRC), The Sex and Gender Based Violence group (SGBV), members of the different ethnic resistance organizations – such as the Karen National Union (KNU) and the Karenni National Progressive Party (KNPP) - along with employees of NGOs and volunteer organizations working within and around the camps.[1]

Many obstacles had to be overcome in order to produce such a comprehensive study- the least of which was the reluctance of many victims of crime to discuss their ordeal. Victims and witnesses to crime

were not open to discussing their ordeals for fear of retribution from their attackers, members of the camp administration or the Thai authorities. The types of retribution included fear of attack upon their person or family, banishment from the camp or arrest and detention. These facts alone indicate the vulnerability that individuals feel and how their security is not adequately provided for by the procedures currently in place.

Other difficulties experienced by the research team included the logistical obstacles that needed to be overcome to conduct the interviews. Many interviewees were not willing to be interviewed at their homes and as such more clandestine meeting venues had to be arranged. There was also an air of resentment and suspicion towards the research team from senior camp officials as to why the research needed to be conducted and the purposes for which it would be used. Finally and interestingly, many of the most forthcoming interviewees were of Muslim background. It appears that while crime is not disproportionably perpetrated against or by Muslim residents, those of Karen and Karenni nationality were less inclined to discuss their experiences due to the negative impact this may have on their national identity and dignity.

This paper begins by outlining, step by step, the failings of the administrative system within the camp and the adverse effect these failings are having upon the individual security of the camp residents.[2] Included in this analysis are allegations of corruption and nepotism within the administrative bodies and how these issues contribute greatly to the lack of authority and trust officials have amongst camp residents. This is followed by looking at the major issues within the legislative process and how the lack of effective legislative mechanisms within the camps has contributed to the vulnerability of residents to violence. In this section, the research utilizes case histories to substantiate the claims made and the difficulties victims of crime have in ensuring justice is served. [3]

The third part of this report is dedicated to the judicial process where there are significant problems. These range from the overlapping of authority between the various judiciaries and the lack of knowledge and expertise of the members of the judiciary to how deficiencies in direction from the Thai authorities have contributed to the insecurity residents feel. Incorporated in much of this analysis is how inefficient procedural codes and institutional defects within the camps are having a profoundly negative impact on the security of residents.

The final section of this research makes recommendations as to what can, and needs to be done, in order to establish more transparent, accountable, impartial and fair governance structures within the camps, so that the individual security of camp residents is greatly improved. These recommendations will focus on how adopting the principles of the rule of law as a framework for instigating institutional reform within the camps is the most effective and practical method of ensuring the objectives of this research are met; and, in so doing, ensuring a more secure and safe environment for all camp residents.

The BLC anticipates that the information and analysis gleaned from this report may be used by the refugee people themselves, governmental authorities of Thailand and the international community in order to develop a framework for establishing more effective systems of camp governance and, in the process, alleviating camp residents' susceptibility to violence. The BLC believes that by reforming these governance institutions and promoting the rule of law within the camps it will ensure a more secure environment for each camp resident and hence uphold one of their basic human rights. It will also have a positive impact on Thailand within the international community and, more importantly, if refugees become accustomed to living in camps with a background established upon the Rule of Law, their return to their mother land after a democratic transition will assist in the promotion of human rights, peace and stability of society in Burma as well as the region, as a whole.

## Part I: Administration

There are many major administrative flaws within all refugee camps that have impacted the camp residents negatively. While the camp administrative bodies are elected to serve the interests of the residents[4] they have in some cases become self-serving entities that greatly inhibit the development of a safe and secure environment for their residents. This is not to say that all camp administrative bodies are failing or are not carrying out their designated functions. Many administrative bodies do a good job contributing to stability of the camps and promoting the welfare of the refugee people. However, as the objective of this research is to study the flaws or failings of rule of law institutions within

the camps, only those areas of concern will be highlighted. The failings of these administrative bodies can be summarized under the following issues;

**I. A. Flaws within the electoral process-**

While elections are held within all camps there are no guarantees that those officials elected by popular vote will be appointed to their posts. The reasons for this vary from nepotism and discrimination to personal grievances. For instance, during the 2002 camp elections in Karenni 1 a resident received the highest number of votes within his section. This enabled him to take up the position of section leader. However due to conflict with members of the camp administration committee he was appointed deputy section leader. The basis for this decision was that while the elected official could speak Karenni language fluently, he was married to a woman of Shan nationality and therefore should not serve as section leader. Similarly in Noe Phoe camp, an incident occurred whereby an elected chairperson was dismissed before he took his position and replaced with another due to pressure exerted upon the committee by a local ethnic armed organization who wished for another candidate to carry out the function of chairperson.

These types of incidents leave residents feeling aggrieved towards election officials and pessimistic about the impartiality and fairness of the election process. Without respect for elected officials and the process under which they were elected it is very difficult for a democratic system of governance to fully take hold within the camps. This places the security of residents at risk because in many cases the administration bodies are the institution that upholds justice and the rule of law within the camps.

**I. B. Accountability of elected officials and administrative officials-**

There are no internal camp mechanisms to hold elected officials accountable for their actions. If they breach their official duties or break the law, residents are powerless to impose penalties or have them punished. In one instance, in Mae Kong Kha camp, a committee member was allegedly involved in the murder of a camp resident. However due to his position within the camp no investigation was ever conducted or charges brought. Once again these types of abuses do little to install confidence amongst camp residents that the

administrative bodies are there to serve their needs. Instead it leaves residents frustrated and upset over the lack of avenues open to them for justice within the camp system.

**I.C. Lack of guidelines and administrative regulations-**
Quite often elected officials are unsure of what their mandate includes or where their elected duties begin and end. Within the various camp administration bodies[5] the authority of the section, zone and camp bodies is not clearly demarcated. As a consequence, residents are unsure as to where grievances should be taken, how they will be dealt with and who has the authority to issue punishments. Residents are forced in some cases to take matters into their own hands in order to seek compensation or justice. This promotes an environment of mistrust, suspicion and insecurity amongst camp residents and one that does not adhere to the principles of the rule of law.

**I.D. Administrative corruption-**
Due to a lack of mechanisms to hold officials accountable for their actions, corruption within the administrative has been known to occur. There have been serious accusations leveled at administration officials such as fraud. For example a committee member of Mae-la-Oo camp was found to have sold 400 bags rice for 100,000 baht. This rice was part of the camp rations. He kept 20,000 baht for himself and the remaining 80,000 baht were to be shared amongst the rest of the committee. Even though this was a serious breach of his duties and a criminal act, the committee only reprimanded him because he had taken an unequal proportion of the profits, not for the crime itself. These types of corrupt practices have a profound effect on the credibility of the administrative bodies and their officials. A lack of credibility leads to a lack of trust which means that decisions made by administration bodies will either be ignored or not accepted as decisions from a respected and corrupt free body.

**I.E. Involvement of revolutionary groups –**
The relationship that the camp committees have with the various revolutionary groups along with the Thai authorities severely impairs their impartiality and ability to administer justice. There are numerous examples where camp committees in conjunction with different revolutionary groups have been implicated in the murder of camp residents[6]. The status and influence these revolutionary groups have

within the camps is profound. While their initial involvement in the early establishment of the camps contributed to the existence, functioning and administration, undue actions by many of their influential officials have undermined the regulatory and administrative authority that the camp bodies now have. Complicating this issue further is that some administrative bodies are proxy governments of these revolutionary groups. Within the Karenni camps the main camp committee is in fact not voted for by camp residents but rather appointed by the KNPP[7]. This compromises the ability and effectiveness of the main administration to act impartially and make decisions based on the interest of camp residents and not those of the KNPP. Despite the efforts of the external government to promote the rule of law, some of its officials have been implicated in serious crime within the camp, and with the internal governments powerless to exert any influence, residents are left in an unenviable position where their avenues to seek justice are already limited. With a reluctance to seek the help of Thai authorities[8], the security of residents is severely compromised and the environment within the camp is again characterized by suspicion and mistrust.

All too often elected officials are more concerned about their own positions within the camp administrative structures than being responsive to the needs and wishes of the residents. Corruption, in some camp bodies, is part of the administration psyche and with no mechanisms to hold officials accountable for their actions it is difficult to see this changing in its current form. Adding to the complexity of this issue is the negative impact that involvement by the various revolutionary armies and government have within the administrative process. All of these factors seriously undermine the security situation within the camp. The social contract that the camp residents and elected officials enter into when they are elected is compromised in almost everyway. Ensuring for the welfare and protection of its residents no longer becomes the primary concern of these administrative bodies,

*Karenni Refugee Camp ( N.O .1)*

*located in Thailand-Burma Border*

and with no strong administrative deterrents in place to stop would-be criminals, residents find themselves even more vulnerable to crime and therefore insecure.

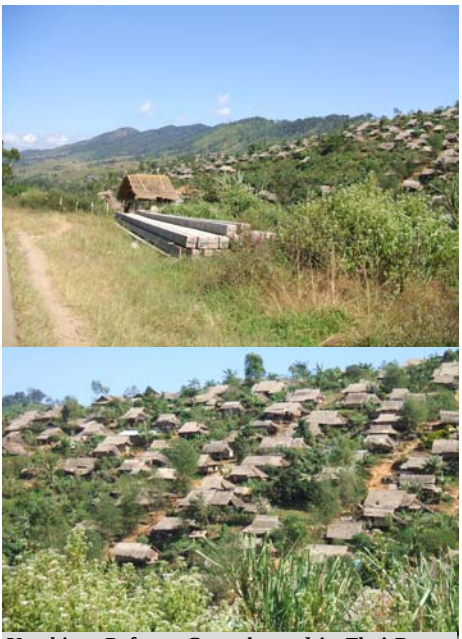
## Part II: Legislative Process

In all refugee camps along the Thai/Burma border areas, there is no governing Penal Code that is commonly practiced. Different criminal laws prevail in different camps and depending on their locations and geographical situations there are various levels of influences from non-state actors. Additionally the whims of the camp administrative committees, Thai local authorities and persuasion, pressure and intervention of international organizations has impacted significantly upon the legislative process within the camps. To make matters worse, there is no criminal procedural law that is applied within the existing camp courts resulting in the denial of procedural justice.

The lack of statutory laws, the overlapping of the legislative power of various camp authorities, vagueness of effective laws, denial of participation of refugee people in producing these effective rules and regulations and an ignorance of basic criminal procedural law within the camps has created an environment where there is ambiguity, inconsistency and interference in the legislative process. These incidents are detailed below.

### II. A. Overlapping of Legislative Powers-

The legislative processes that are in place within the Karen refugee camps are a product of collaboration between two Karen Organizations: The Karen Refugee Committee (KRC) and the Karen Elders Advisory Board (KEAB) now known as the Karen Education Committee (KEC). The KRC acts as both a legislature and an executive within the camp. It makes policy and helps to carry out these policy goals. While the KNU does not play an active role in the legislative process within the camps, the KRC sometimes will use KNU laws within the camp context creating issues of consistency and impartiality. Due to lack of formal legislative processes of the refugee



*Umphium Refugee Camp located in Thai-Burma Border*

camps, within the two Karenni camps the effective criminal laws and procedures are the same as the rules, regulations and criminal codes exercised by the Karenni Government in its Karenni land. The Judicial Committees within each camp must refer to these codes and administer justice accordingly. These rules and regulations are supposed to provide the guidelines that residents must adhere to when living in the camps. On top of these regulations are the specific regulations of the Thai authorities. The Thai authorities have not established any statutory laws within the camp; rather they have protocols that the residents must abide by whilst living in the camps. The problem with these protocols is that they are not expressed in any written form, but rather conveyed verbally to residents in all camps, over loudspeaker in the mornings.

**II. B. Ambiguity of Prevailing Laws and Vagueness of Effective Laws**

While a great majority of refugee people do not have any accurate knowledge of prevailing criminal laws in the camps, camp authorities use rules and regulations, as effective laws, as they think fit, or in line with the guidance that they receive from internal or external sources. Ambiguity of prevailing criminal laws poses a critical problem in the camps for two reasons. First, authorities never publish the whole sets of criminal laws; and, second, these laws are never publicized formally.

The KRC and KEC have drafted a set of rules and regulations along with the relevant penalties for breaches of these rules, which are displayed within the camps[9]. They can be regarded as effective laws in which flaws are obvious.

**II. C. Exercise of Dual or Triple Powers**

The formation, function and responsibilities of KRC are not publicly known. The KRC might be created by the local people's organizations to deal with the international community and to facilitate the existence and administration of the camps along with the welfare of the camp residents. The major question labeled towards the KRC is whether or not it has been exercising dual or triple powers. The KRC can be identified as a semi-legislative body as all Karen refugee camps are obliged to comply with the rules and regulations issued by it. It can also be understood as an executive body given it receives some types of material support from the international community and is charged with distributing this support within the camps. It also supervises the administration of inferior camp committees and in some cases has adjudicated some significant criminal cases as an appellate court.

Although the KRC was able to contribute to the Karen refugee people in earlier periods, it now needs to be reformed as it has become institutionally defunct. Two factors are responsible for this. Firstly the formation of the KRC, which was made up of elected representatives on the basis of regular elections, no longer exist. Secondly, some qualified leaders appointed by local people's organizations have now left KRC under the UNHCR's resettlement program.[10] In a seminar entitled "Women at Risk" conducted by UNHCR at Mae La refugee camp, Raw San Phoe, a leading member of the KRC, admitted that KRC needs to be reformed, however leaders are finding it difficult to find the time and resources to implement such reforms.[11]

**II. D. Punishment is not proportionate to crime committed-**

The level of punishment meted out to convicted criminals is not always proportionate to the crime committed. In one such instance a perpetrator was fined 2,000 baht for raping his victim. After sentencing the convicted man joked that had he known he was going to get such a small fine he would have happily paid 6,000 baht for the same offence. This type of fine has a number of negative consequences for the overall security situation within the camp. Firstly it does not act as any meaningful deterrent to would-be criminals or those who have committed crimes before. Knowing that the most likely outcome is a

small fine, criminals are given very little disincentive to break the law. Secondly it places convicted criminals back into the camp system without any meaningful rehabilitation time served with the distinct possibility that they will violate the law again. Having criminals, convicted of serious crimes, living within the camp environment days after they have committed their crime, does not establish a healthy and secure environment in which residents must live. Finally, handing down such disproportionate punishments gives victims of crime the impression that there are no appropriate justice mechanisms within the camp. Such an environment breeds apathy and general discontent amongst camp residents towards the justice process. Without an engaged community with a positive view of its justice system, officials find it ever increasingly difficult to maintain some semblance of structure within the camp justice system[12].

**II. E. Legal knowledge of legislative bodies-**

Questions abound as to the legal knowledge of the law enforcement bodies and indeed the knowledge of the residents. Officials elected to administer justice are more often than not respected or popular members of their communities, rather than experienced legal practitioners[13]. With no formal training or knowledge in law, the passing of judgment comes down to the individual interpretation of the presiding official. This has created an environment in which precedent is not established and with radically alternative judgments being handed down from one case to the next.

***Noh Poe Refugee Camp, Thai-Burma Border***

In Noh Poe camp a step-father was found guilty of raping his 14 year old step-daughter after it was revealed she was pregnant with his child. The camp judiciary found him guilty of this offence and fined

him 5,000 baht, to be paid to his victim. In another incident within Noh Poe a victim was molested by
her friend after returning from a night out. The defendant was found guilty by the same camp judiciary as the aforementioned case, fined 10,000 baht and served 42 days in detention prior to his trial[14]. While not condoning the actions of either perpetrator, this highlights the ambiguity and inconsistency in which sentences are handed down. One crime is abhorrent, that of pedophilia and rape, yet the accused received a lighter sentence than a person convicted of molestation. Victims in these instances are often left bewildered and frustrated at the lack of adequate justice. They have little recourse to appeal the decisions and perpetrators are left to offend again.

**II. F. Lack of Camp Constitutions-**

Compounding these problems further is that no camp researched has a formally written and agreed to constitution. While the KNU and KNPP provide guidelines for legislative operations within the camps, no camp body has established their own constitutional framework upon which they must abide by as a political entity nor have the rights of its residents ever been expressed; verbally or in written form. The absence of this framework creates an environment of uncertainty and opens up the possibility of abuse by elected officials. Having an accessible and understood constitution gives camp residents the opportunity to gauge whether or not the administrative structures within the camp are functioning as they should be, and what their rights as residents are. In their present structure too much authority is assumed by the executive, legislative and judicial bodies within the camps. These assumptions lead to a crossover of decision making and as our research indicates this crossover has serious implications on the level of justice that camp residents receive. Without a proper written, agreed to and understood constitution, outlining where the authority and jurisdiction of each administrative body begins and ends, the issuance of justice will continue to face problems.

**II. G. Ambivalence of the Thai authorities-**

When the Thai government established the camps it did not create the necessary substantive criminal laws and legal structures that an effective criminal justice system requires. That may have been because it did not want to institutionalize the governing system of refugee camps in any formal capacity with a major concern that the refugee camps should

not exist in the territory of Thailand for the long term. This has given rise to the current problems outlined above. The camps which have attempted to develop a system of justice and a legislative procedure that are able to function within the camp environment have not yet achieved success. Due to the growth in populations within the camps and the increase in criminal acts, the flaws and failings of this system are becoming more and more exposed; and as a consequence the security of the camp residents is compromised.

## Part III: Judiciary

All camps have a Judiciary whose main role is to ensure that the camps rules and regulations are adhered to. The judiciaries also hear criminal cases and issue sentences to convicted criminals[15]. The most serious cases however, those involving murder, rape, drug trafficking, use of timber, and smuggling of people and weapons are supposed to be adjudicated by the Thai authorities. As our research will indicate, this is not always the case. Different camps, depending upon the seriousness of the crime, have various judiciary committees that will hear these cases. These consist of a Section Judiciary, a Zone Judiciary and a Camp Judiciary. Complicating the role and structure of the judicial process within the Karen camps is the involvement of the KRC. The KRC is the quasi-legislative body for all the Karen refugee camps and at times forms its own judicial committee, as an appeals court, to deal with a case. This can sometimes be in direct conflict with the ruling of the related camp judiciary[16].

The judicial system adopted by the various camps has become convoluted with too many individuals and camp bodies interfering within the judicial process. As a consequence a number of significant flaws have developed that inhibit victims and perpetrators alike, such as their ability to receive a fair and impartial trail. The pursuit of justice within the camps researched has been inhibited by the following factors:

**III. A. No independent judicial structure-**

Within all camps researched there are serious concerns regarding the independence of the judiciary from the camp administrative bodies, the Thai authorities and the ethnic revolutionary groups who play an important role in the camps' operation. In almost all camps it appears

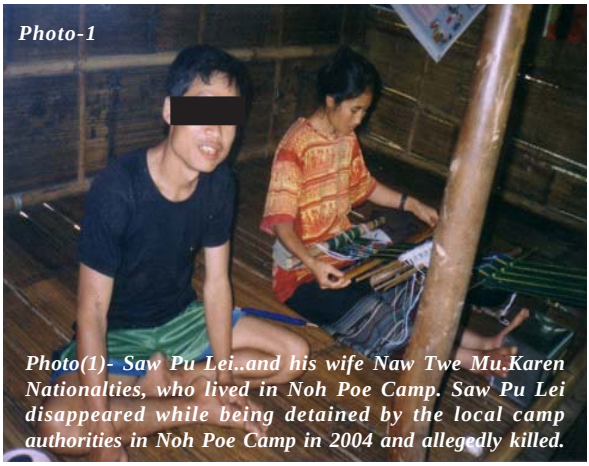


*Photo-1*

*Photo(1)- Saw Pu Lei..and his wife Naw Twe Mu.Karen Nationalties, who lived in Noh Poe Camp. Saw Pu Lei disappeared while being detained by the local camp authorities in Noh Poe Camp in 2004 and allegedly killed.*

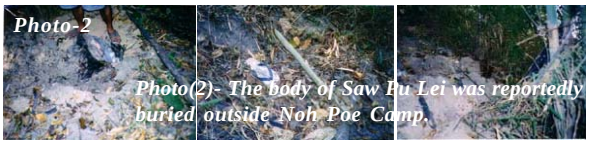


*Photo-2*

*Photo(2)- The body of Saw Pu Lei was reportedly buried outside Noh Poe Camp.*

that the judiciaries formed have no separation of powers from the administrative bodies and merely act as agents or mouthpieces for them. This is clearly illustrated in the election process and the manner in which grievances and cases appear before the judiciary. In all Karen camps a member of the camp committee is also a member of the judicial committee, and more often than not, the individual charged with overseeing the entire camp judicial process. This immediately creates a conflict of interests and blurs the distinction between the role and function of the judiciary and that of the administrative body. It also allows for interference from the administrative bodies into the rulings and decisions reached by the judiciary. Apart from these obvious flaws the most telling aspect of this interference is in instances where camp administration officials have been implicated in serious crimes. Cases of this nature are either not heard or the administrative bodies decide the outcome of the case.

An example of such an event occurred in Noe Poh camp. After the murder of a camp resident due to allegations of being a spy it was revealed that the authority for his murder had been issued by the head of camp security who was acting under instruction from members of the camp administration. The only action ever undertaken was the dismissal of the individual who personally carried out the murder from his post as a security officer. The directive for this came from the camp administration itself and not the judiciary. In fact the judiciary has not intervened in this case and appears to be hamstrung by the involvement of committee officials in the murder[17]. The full details of

the administrative and legal structure and the election process of all camp judiciaries need to be observed.[18]

While this example is an extreme case of how a lack of independence within the judiciary impacts on natural justice being practiced in the camps, other examples of interference abound due to the way in which the judiciaries and reporting procedures are organized within the camps. These structures have caused confusion for camp residents and inconsistencies in how justice is applied within the camps. While a camp judiciary exists within all camps researched, it is not always the case that sentences or cases will be heard by them. In all camps, petty criminal acts such as small theft and domestic grievances are heard by either zone or section leaders. These officials are nominally elected individuals who oversee the administration of their particular areas within the camps. While it would appear practical to have them hear small criminal cases, so as not distract the camp judiciary from hearing more serious cases, it does create an environment where authority overlaps, residents are left confused as to who and what body issues justice within the camps and, more disturbingly in some instances natural justice is overlooked due to delays associated with the reporting protocols and a lack of procedural guidelines.

In Mae-la camp a 17 year old rape victim was denied natural justice through a combination of factors. Firstly due to interference from the camp committee the original sentence handed down to her attacker of 3 years imprisonment by the camp judiciary was overturned to a 3,000 baht fine. Secondly upon hearing of this reduced sentence the victim sought to appeal its leniency only to be denied due to procedural delays that had occurred after the rape attack. Whilst she had reported the crime to the section committee immediately after her attack, the tardiness of the various camp administrative bodies and the judiciary meant the case was not heard until 6 months after the attack. When the victim took her appeal to UNHCR, it transferred the case to the Thai authorities, but it was rebuffed on the grounds that the attack happened more than 3 months before the appeal and the victim was under 18 years of age. As a result, the Thai authorities could not hear the case and the reduced sentence stood[19].

The two incidents highlighted in sections A and B illustrate how the absence of an independent and all encompassing camp judiciary denies

victims of crime their right to natural justice. This impacts significantly on the security situation within the camps and leaves victims of crime vulnerable to repeat attacks. Knowing that interference occurs and that their crimes committed can be heard in front of more sympathetic bodies, criminals are faced with little deterrent not to break the law. Subsequently, victims feel aggrieved and frustrated by the lack of a strong and empowered judicial authority that will ensure law and order are maintained within the camps. It may also prompt victims of crime to take matters into their own hands in order to feel that justice has been served.

**III. B. Institutional defects-**

Exacerbating all aforementioned issues are the institutional defects endemic to all camps. These defects are; the formation, selection and duties of the security officials; inadequacies of the medical examination system, especially in instances of rape; and a lack of facilities for judicial proceedings.

The mechanism for enforcing rules and regulations within the camp is an area of deep concern. The security teams within each camp are the closest thing to a law enforcement body that each camp has. These personnel are charged with patrolling the camps and guarding those in detention. Too often security officials only follow the instructions of the camp administration and are not responsive to the needs and complaints of ordinary camp residents. In addition, the head of camp security is often a member of the administrative committee who has a vested interest in ensuring that the administration committee members are free from prosecution. Additionally the security officials charged with investigating the cases lack clear procedural guidelines. Interviewing of victims, the accused and witnesses is done at random and too often the investigators are open to corruption or have some vested interest in the case that impairs their ability to act impartially. In most cases the only way in which victims can seek justice is if they carry out the investigation themselves and provide sufficient evidence for a case to be heard. This places added stress and pressure on victims to produce evidence in order to ensure natural justice is served. Victims are often under enough stress due to the nature of the crime committed upon them and do not need the added burden of investigating crimes against them.

Victims of rape, while often subjected to horrendous physical injuries, are not always afforded swift and adequate medical care. Compounding this further is that the Thai courts only accept the medical evaluation conducted by Thai authorities. This is not always practical given the distance of the camps from the nearest general hospitals in Mae Sot and Mae Hon Son. While there are medics in the camps to provide care, these medics are made up of representatives from NGOs and as such any evaluations conducted by these bodies are not accepted by the Thai courts. In instances where Thai officials have been accused of rape, a loophole in this procedure has been used to ensure cases are never brought to trial. For example following the rape of a 14 year old girl in Mae-la camp by a Thai soldier the victim was sent to Mae Sot general hospital for medical care and evaluation. During the medical examinations however Thai Ministry of Interior (MOI) officials intervened and had the girl removed before all examinations were complete. Subsequently the Thai authorities refused to investigate the case for lack of medical evidence to the rape[20].

The physical infrastructures to house judicial hearings are also virtually non existent within the camps. Cases heard by section or zone leaders are often done so in their private residence which gives the hearings a lack of formality and authority. Those heard by the camp judiciary are carried out in the camp administrative offices and once again give the impression that the judicial body and camp committee are one and the same. Small matters such as this give residents the impression that the judicial process is a relatively informal affair where precedence does not hold and the law and the institutions manifested within it are not always respected by all parties involved in the judicial process.

**III. C. Lack of legal knowledge of judicial officials-**

As is the case in the legislative process the officials charged with administering justice within the camps are usually ignorant about the judicial process and what their duties entail. In the Karen camps, judicial officials are nominated and selected by the camp committees and those they elect are either friends of committee members or respected members of the camp. While this may be the best method currently available, without having knowledgeable people in charge of administering justice opens up many procedural problems. Firstly, cases are to a large extent adjudicated in an arbitrary and inconsistent manner as justice is served by individuals who are left to interpret the law as

they see fit. Without a grounding or knowledge of the rule of law and its principles it is little wonder that the punishments meted out and verdicts reached fluctuate wildly from one case to the next. This is not to mention the negative impact this has on victims of crime and the refugee population's perception of the judicial process and rule of law.

**III. D. Intervention of Administrative Authorities**

There are numerous examples within the camps where these issues have impacted upon the justice that victims of crime receive. For instance in Mae-la camp a seventeen year old rape victim's attacker was initially jailed by the camp judiciary for 3 years. However the camp administration body then intervened in the case and reduced the sentence to a 3,000 baht fine[21]. These types of incidents and interferences leave victims feeling aggrieved and frustrated about the entire legal process and as such less likely to report or instigate criminal proceedings against attack in the future. This sort of attitude impacts severely on the security situation within camps as crimes are not always reported meaning criminals never face the prospect of prosecution and remain free to commit crimes again within the camps.

**III. E. Inadequate and ineffective detention facilities-**

The reasons why more pecuniary penalties are imposed over long term detention is in part a result of the inadequacies of the physical camp infrastructures. The areas in which defendants and criminals are held are either primitive or ineffective in keeping people incarcerated. Putting accused people in stocks is one method used, where their ankles are shackled to a wooden stock and the accused are forced to pay 100 baht each time they want to have the stock removed and a further 100 baht when being re-shackled.

Through the case studies it has also been revealed that while criminals are convicted and sentenced to detention, they are witnessed walking freely around the camps. In Karenni 2, 5 convicted murderers were observed wandering around the camp, several months after they were sentenced to serve at least 1 to 2 years jail[22]. In other instances, the convicted resident has been ordered to pay compensation to the victim or their families. In few instances however do these people receive their entitlements. These types of failings again impact negatively on the security situation within the camps and the well-being of its residents.

Knowing that criminals can 'get away' with breaking the law is hardly an environment that promotes feelings of security and stability amongst the general refugee population. Having convicted murders and rapists walking the streets with law abiding residents is a very tangible example of why the citizens do not feel their security needs are being met by the current camp system.

**III. F. Abuses during detention-**

There have also been occurrences of abuse and torture within the detention facilities. More often than not, defendants are held in detention without the presumption of innocence and ordered to complete forced labor until their case is heard. Torturing defendants for confessions is another accusation labeled at the security personnel who are charged with guarding the detainees. In Karenni 1 a defendant who was waiting to stand trial on a charge of theft, witnessed the interrogation and torture of a number of prisoners. The prisoners were tied upside down from a tree where their throats were put in chains and their genitals exposed and beaten. This type of incarceration and punishment does not adhere to the principles of the rule of law and exposes weaknesses in the legislative processes within the camps. Without the presumption of innocence, innocently charged people face the distinct possibility of being sentenced for crimes they did not commit.

**III. G. Relationship of Thai authorities and camp judiciaries-**

As stated earlier serious crimes that occur within the camps- murder, rape, narcotics, timber and weapons smuggling should all be referred to the Thai authorities for prosecution under Thai law and through the Thai judicial system. Camps have been notified of this verbally but have never received written authorization that they must do so. It is little wonder then that many serious offences are still being handled by the in-camp justice mechanisms and confusion surrounds how and who should be notified of these offences. It is understandable that the Thai authorities should wish to try serious crimes under their legal system as the crimes being committed are done so on sovereign Thai soil. Where confusion sets in is when cases are referred to the Thai authorities and they in turn instruct the camps to administer justice as they see fit. Such a case involved the rape of a 13 year old girl in Mae-la camp. The victim followed all the correct procedures as understood by her family. They reported the crime immediately to the

camp judiciary who in turn reported it to the Thai authorities. The victim was transferred to Mae Sot general hospital for examination, where the rape was confirmed. Once all of this was done the Thai authorities then instructed the Mae-la camp judiciary to try the case themselves according to their laws[23]. These types of incidents cause confusion not only for victims of crime but also for those charged with administering justice within the camps. As no precedent has been set, the notification of serious crime, to the Thai authorities, is ad-hoc and arbitrary.

This type of situation does little to engender a sense of security and stability within the camps. Not establishing clear and adhered to protocols between the camp judicial system and the Thai system places victims at risk, insomuch that their cases may never be heard or tried before either system. It also means that victims become exasperated with the entire legal process and may in fact decide never to report crimes against them. This means an environment develops where criminals can 'slip' through the cracks in the system and are free to commit crime again and residents worry about their personal security.

**Analysis from Sociological Aspect:**

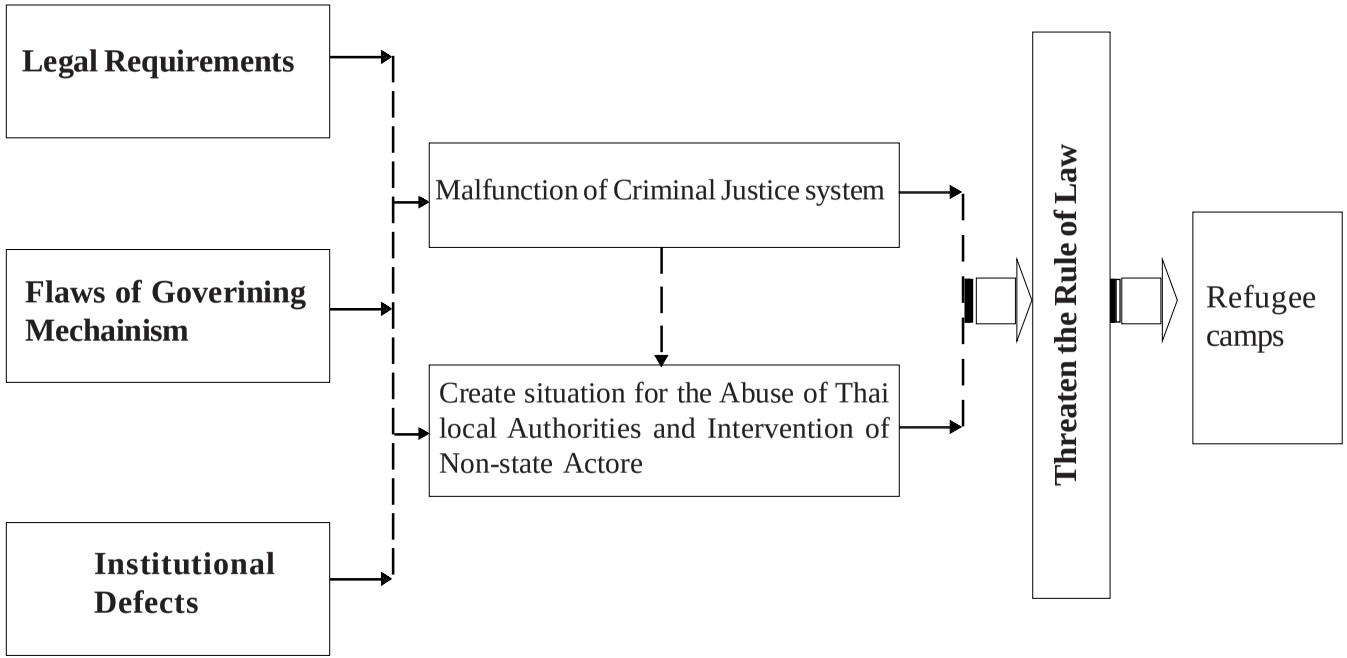
**The refugee camps have existed along the Thai-Burma border areas for almost three decades. As there has not yet been a genuine transition to democracy in their mother land, the Royal Government of Thailand may not force the repatriation of these Burmese refugees under the close watch of the international community. If this is the case, the refugee people should not continue to suffer from legal and human rights abuses even in the territory of Thailand. Their temporary stay in the territory of Thailand should not be an excuse to ignore the 'abuses' and 'violations of rights' taking place within the camps. They should at least enjoy the right to security under a certain criminal justice mechanism, regardless of whether their situation is resolved in the long or short term residents.**

**What is assured is that it is not practical to resolve all disputes, abuses and violations of rights taking place in the refugee camps only by Thai courts under the existing criminal justice system of Thailand. There are two main reasons for this; Firstly the Royal Thai government may not be able to afford to cover all**

**necessary expenses for the effective extension of justice mechanism of Thailand to encompass all the refugee camps; secondly, the refugee people from Burma have different social, racial and cultural backgrounds, not to mention problems associated with language differences. As such, it is necessary to take into account how a new mechanism, centering on the camp judiciary, be created within the framework of the existing justice mechanism of Thailand to ensure that the natural justice of refugees can be achieved under the present circumstance. This can happen only if Thai society grants the existence and functioning of camp judiciaries and allow them a certain degree of autonomy. The role of any judiciary, first and foremost, is to administer justice. Denying them a certain degree of autonomy to carry out this task is to also deny camp residents the right to natural justice.**

# " Analysis on the Situation of Refugee Camp from the Aspect of the Rule of Law"

## Research Finding



## Recommendations for Reform

**Legal Reform:**

**1. Within the framework of the Thai legal system, a Camp Manual, in which rule making processes, structure of the administrative system and judicial autonomy are prescribed, may be drawn up and applied as force of law; the manual may also contain the provisions that address issues such as security, human dignity, human development, health and education, dispute resolution, settling grievances, remedying abuses, joint inspection by Thai authorities and NGO representatives, etc. To draw up the Camp Manual, Thai authorities may initiate the holding of a Community Conference in which the participation of the local civil society organizations and the international NGOs is also allowed.**

**2. In order to promote the criminal justice system of refugee camps, the laws relevant to camp society may be extracted from the entire body of effective laws in Thailand, and one complete abridged Law comprising criminal sections, criminal procedures and judicial processes should be drafted, approved and enforced.**

**3. The most serious cases, involving murder, rape, drug trafficking, timber, and the smuggling of people and weapons should continue to be adjudicated by the Thai Courts while judicial power to deal with the less serious criminal and civil cases should be apportioned to the camp judiciaries. Such delegation should be approved by the Ministry of Justice of Thailand or a similar judicial institution, in written form.**

**4. The Ministry of Justice of Thailand should try to reform the legal process so that in rape cases medical evaluations issued by qualified medics who are trained and appointed by the international NGOs are be formally accepted by the Thai courts, not necessarily only by qualified doctors or hospitals.**

**Institutional Reform:**

**1. With the knowledgeable persons, appointed or selected by the local people's organizations, a Camp Community Assembly should be instituted to function as a rule-making body for all refugee camps.**

**2. A newly established institution should be created as Refugee Administrative Committee (RAC) which will exercise central administrative power while dealing with all international organizations for promoting welfare of the camp residents. It should be formed by elected representatives from each camp.**

**3. In the joint meetings of members of the Camp Community Assembly and RAC, the persons must be selected, approved and appointed as judges for local courts as well as appellate courts. Those people should come from among those who are not the members of Camp Community Assembly and KRAC, and those who are proposed by local peoples' organizations. This will prevent the local camp administrative bodies from getting rid of judges they find troublesome by dismantling or reorganizing the court on which they serve. Here, recommendation is made on appointment of judges given that the elected judge who faces the prospect of standing for reelection may be unduly influenced by that prospect.**

**4. In such a judiciary, power to take legal action on the administrative officials for some major power abuses must be bestowed to the highest courts. Similar to the administrative courts that exist in Thailand. Details should be mentioned in the Camp Manual. Included in this should be how those judges, incapable of discharging the responsibilities of judicial office be dealt with and the penalties to be administered to those judges who abuse their judicial power**

**5. Offices of camps judiciary and trial venues must be separated from the offices of camp administrative bodies in order to avoid the implication that the judicial body and camp committee are one and the same. This will assist in highlighting the independence of judiciary.**

**6. Security forces in each and every camp must be reformed and they should be separated from the camp administrative committees. They should take responsibility for policing and be accountable to the RAC, instead of local camp administrative committees. They should also have separate buildings to be used as offices and detention centers.**

**7. Judges and security officials should be provided with the necessary and suitable facilities, in accordance with the Camp Manual, so that they are able to focus on their responsibilities impartially and without having concern for their economic survival.**

**8. UNHCR or an international organization may take responsibility to create a legal aid mechanisms by which assistance can be provided to victims and perpetrators alike in serious crimes which are going to be dealt with by Thai courts. Facilities such as safe houses should be provided to ensure the victims' rights are upheld and they are protected from the perpetrators and administrative pressures.**

**9. Public complaint procedures must be instituted to provide consumers of courts services some redress when judges fail to treat them in a polite, fair and efficient manner.**

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**(Footnotes)**

[1] A comprehensive list of the questions asked during the interview process can be found in Appendix 1.

[2] Annex (A) contains a comprehensive overview of the electoral procedures of each camp and the various administration bodies within these camps.

[3] Appendixes 2 to 36 outline the types of crimes committed in the camps and the inconsistency and inadequacies of the legislative and judicial process. Several of these cases will be used to illustrate major failings.

[4] See Annex (A).

[5] See Annex (A).

[6] For comprehensive details of these instances refer specifically to appendixes 2, 3, 4 and 10.

[7] For specific details refer to Annex (A).

[8] This reluctance will be elaborated on further in the litigation and judicial analysis, however it should be noted that Thai officials have also been implicated in perpetrating crimes against camp residents. For examples refer to Appendixes 10 and 25.

[9] Refer to Appendix 37 for a full list of rules, regulations and penalties imposed.

[10] Interview with Nang Myint Myint Aye, a former camp committee member, and Daw Nge, a former election committee member, from the Noe Poh refugee camp.

[11] Interview with Daw Nge, a former election committee member from Noe Phoe camp, who attended UNHCR seminar on "Women at Risk".

[12] This is a serious issue and will be elaborated upon in more depth within the judicial analysis.

[13] For full details of procedures and election of officials refer to Annex (B).

[14] For full details of both cases refer to appendixes 14 & 15.

[15] See appendix 37 for list of rules and regulations produced by KRC.

[16] See Annex (B) for full details of the structure of judiciaries within each camp and the election processes undertaken within each camp.

[17] See appendix 4 for full case details.

[18] See Annex (B).

[19] See appendix 8 for full case details.

[20] Refer to appendix 11 for full case details.

[21] Refer to appendix 8 for full case details.

[22] Refer to appendix 2 for full details.

[23] Refer to appendix 12 for full case details.

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## Justice is conscience, not a personal conscience but the conscience of the whole of humanity

Reviewed by: BK Sen

ALEXANDER SOLZHENITSYN

### Ambivalent Justice ICJ acquits Serbia of responsibility in Bosnian genocide

The landmark judgment delivered by the International Court of Justice (ICJ) on genocide in the case of Bosnia and Herzegovina vs. Serbia and Montenegro is an example of judiciousness not always proving to be good judgment. This was the first time that a UN member of state has been tried for genocide, and the ICJ has lost the only remaining opportunity for an authoritative legal ruling on the Bosnian genocide and Serbia's role, since Slobodan Milosevic's death deprived the International Criminal Tribunal for former Yugoslavia (ICTY) of the possibility of ruling on his responsibility. The court ruled that although what occurred in 1995 in Srebernica was indeed an act of genocide, the Serbian state was not directly complicit in it. It is a flawed verdict, with a little in it for all sides. This compromise in judgment has done little but stoke old fires in the ethnically volatile Balkans. The faith in ICJ is undermined.

The judgment raises several larger issues. Genocide is widely recognized to be the supreme international crime and, in an increasingly fragmented world, any attempts to establish culpability are enormously important. Commentators have argued that governments of the present cannot be held accountable for the crimes of governments of the past. There is also a call for a distinction to be drawn between the state and the government. However the extraordinary and horrific nature of genocide makes it morally imperative for the international (or national) communities to bring perpetrators to book. But the difficulty in establishing specific intent to get rid of a particular protected group means that judgments like the ICJ's will be par for the course. This proves that courts are perhaps not the best instruments for achieving reconciliation in international politics. If the current government such as Serbian PM Vladimir Kostunica's administration is serious about establishing its lack of complicity in the systematic eradication of a minority, its records post-conflict ought to reflect efforts at rehabilitations and reintegration. The experiences of Western Europe after the two World Wars are proof that divided nations need to be brought together on a personal level. What are needed are common

narratives along the lines of South Africa's Truth and Reconciliation Commission to bring out the stories of those who suffered. Along with a plan for reintegration which would include housing and monetary compensation for displaced persons, this is perhaps the best way to ensure not only peace, but also exorcism of past traumas.

The question is who are the perpetrators? In the case of Burma, the ruling Junta has been accused of genocide. Systematic elimination of ethnic nationalities, especially the Karens, is well documented. There has been large scale displacement and migration. In the context of the ICJ judgment, the ruling Junta will go scot-free. This is very discouraging and the international community has to wake up to find proper effective remedies.

**"Burma and the common law? An uncommon question"**
**(Legal Journal on Burma, Issue No. 25, December 2006)**

The above article by John Southalan is written with depth and erudition. He is of the opinion that common law probably has little space in a future legal system in Burma. To support that, he has given the definition of common law and its historical fate in Burma over the years. He of course has been candid to suggest that unless there is specific legislative revival, the common law's future in Burma is dim. The core factors as to erosion of common law are the military regime, abolition of the rule of law and the constitution. So with the end of the military regime, the first priority in a democratic transition will be "specific legislative revival". And when there is revival the question is whether it will follow the track of common law or civil law or a hybrid of the two. To me, it appears that although the author has labored hard to place common law in the right perspective, he did not appreciate the context of Burma in the light of the common law legislative change that democracy will bring in the wake of political reform.

Common law has been rooted in the legal system of Burma since the monarchy ended and colonial rule was established. The colonialists were clever and passed Burma Laws Act, Section 13(a), which ensured the existence of customary law. The hierarchical system of courts and administration of justice was based on laws which did not exist before

but rather were brought by the colonialists. These were not only precedents but later were codified into statutory laws.
For over a century these laws have been administered. The first challenge was met when Burma was under Japanese occupation during World War II. Ironically, the Japanese did not touch the legal or judicial system. When the British reoccupied Burma, they continued with the system. When Burma got independence, the new democratic government passed a law, Burma Laws Adaptation Act 1948. By virtue of the said law, all the then existing laws continued to remain in force. The then existing laws originated from common law.

In 1962, NeWin staged a military coup but continued the system. The second challenge came when the 1974 constitution was promulgated. The justice system was based on party rule and laws were made to be in consonance with socialism. This system collapsed when the historic uprising of 1988 took place. The Junta, which took power, restored the system which prevailed post-1962 coup. The SLORC/ SPDC has not removed it. The fa ade of common law, although its main ingredients have been wiped out, remains in force.

It is therefore argued that common law has survived the ups and downs of history and a future legal system will have to be based on common law shorn of its hazzles.

The author rightly has suggested some areas for attention and stated that then there may be potential for renewed use of common law principles. The author has given food for thought to reformers and he deserves credit for his contribution.

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## Korea and Japan Trips for Promoting the Rule of Law

### *Trip Report of the BLC General Secretary*

The General Secretary of the BLC, U Aung Htoo, made trips to Korea and Japan on March 15- 27, 2007, with the invitation of National League for Democracy- Liberated Area (NLD-LA) Korea Branch and the Japanese Environmental Lawyers' Federation (JELF).

The BLC General Secretary, accompanied by U Maung Maung Lwin, U Nay Tun Naing, U Zaw Moe Aung and other comrades from NLD (LA) Korea Branch, attended a series of meetings in Korea.

On March 15, a meeting was held with the two Korean lawyers – Mr. Jihoon Cha from Sewha Park and Goo Law Firm and Mrs. Sang-Hee Lee from Hankyul Law Firm. U Aung Htoo observed the functions of the Korean legal NGOs which monitor the activities of Korean companies, operating outside Korea, from the aspect of human rights.

In the evening, the BLC General Secretary observed a trial in the Supreme Court of Korea, in which 14 high-ranking officials from the companies, including Daewoo International President Lee Tae-yong, were indicted by the Korean government on charge of exporting a number of Korean defense equipment production facilities and weapons technology to Myanmar in violation of the law on exports of strategic goods.

He provided comment that an aspect of the question is whether there would be state responsibility for Korea if the exported weapons had been used against the Burmese population in a way that violates international human rights or humanitarian law. Under the international law of state responsibility, a state can be made to answer not only for its own actions but also for the actions of its private citizens or private corporations. A pre-requisite for state responsibility based on the actions of such private actors is however that the state has been complicit in some way. It is unlikely that state responsibility would apply in this case if the exports occurred without the complicity of Korea.

He also commented that if the exported weapons to Burma have been used against the population in a way that violates human rights and/or humanitarian law, and if the leaders of the Korean companies knew or should have known that the weapons would be used for such purposes, then perhaps it could be argued that they should answer for their complicity under international criminal law. Prosecution could in such a case be lodged before the International Criminal Court or perhaps before the Korean courts themselves (if domestic rules provide for jurisdiction to prosecute international crimes).

Meeting with the President of Human Rights Commission of Korea

On March 16, the BLC General Secretary and the leaders from NLD (LA) Korea Branch met officials from the National Human Rights Commission Korea, including Prof. Kyong-Whan Ahn, President, Chiljoon Kim, Secretary General, and Dr. Byung-hoon Oh, Chief Human Rights officer, in their hospitable office in Seoul. U Aung Htoo shared information on human rights abuses in Burma, learnt about the function of the National Human Rights Commission of Korea, and exchanged opinions on the status of the Korean Judiciary in regard to the possible practice of universal jurisdiction. Korean officials in the Commission agreed to find ways and means to support the human rights movement of Burma. In the afternoon, a meeting with Korean Human Rights NGOs was held. It was attended by representatives from Citizen's Solidarity for Human Rights, Korean House for International Solidarity, Open Network Nawauri, and etc.


Meeting with Korea NGOs

On March 17, the BLC General Secretary provided a lecture to the students at Inter-Asia Graduate School of NGO Studies, Sung Kong


On March 17th 2007, the BLC General Secretary provided a lecture to the students at Inter-Asia Graduate School of NGO Studies, *Sung Kong Hoe University*

Hoe University, with the title "Possible emergence of civil society, social change and current socio/ political and human rights situation background of Burma" for three hours. He responded to the question raised by Assistant Prof. Dr. Eun-Hong Park, highlighting the discrepancies between Burma and Korea from the aspect of the existence of civil society and the practice of the Rule of Law, as to why Burma could not achieve economic development under the rule of the military dictatorship while it was the case for Korea under former President Park Chun Hee, being a dictator. It is expected that Inter-Asia Graduate School of NGO Studies may join hands with the Burma Lawyers' Council for the emergence of civil society inside Burma.

On March 18, a meeting with the Burmese community in Korea was held. It was attended by about forty Burmese activists from NLD(LA) Korea Branch, Myanmar Association in Korea, Burma Action Korea, the Millennium Window Journal, etc. The BLC General Secretary talked about legal issues, encountered by citizens within the society of Burma, from the aspect of the Rule of Law and answered the questions raised by the participants.

On March 19, the BLC General Secretary met Mr. Lim Si Heung, Deputy Director, Southeast Asia Division, at the Ministry of Foreign Affairs, Korea. On March 20, he left Seoul, Korea for Nagoya, Japan.

At the Nagoya airport, he was welcomed by Ms. Mitsuishi Akemi, a staff from Japanese Environmental Lawyers' Federation (JELF) and U Myint San, a Burmese economic academician and democracy activist. He was also a lawyer inside Burma, previously. With the support of JELF and other Burmese activists, U Myint San was able

to arrange all meeting schedules for BLC General Secretary successfully. In addition, he also provided valuable suggestions to BLC General Secretary from economic aspect and it was applied in a series of meetings held later in Japan.

Meeting with oversea Burmese in Nagoya (Japan)

On March 21, the BLC General Secretary met Japanese lawyers who are mainly working on cases relevant to refugee issues. He suggested that they provide legal assistance to those who fall within the criteria provided for in 1951 Refugee Convention while differentiating them from migrant workers who left their motherland mainly to earn money. In the evening, he met the Burmese activists from League for Democracy in Burma (LDB) and NLD (LA) Japan Branch and elaborated the issues of Burma from the legal perspective.

Meeting with Burmese Relief Centre (BRC)

On March 22-23, the BLC General Secretary, accompanied by Burmese activists, U Myint San, U Min Thein and U Ohn Lwin, made a trip from Nagoya to Osaka and met members and Japanese volunteers from Burmese Relief Center (BRC) led by Mrs. Keiko Nakao, Mr. Tetz Hakoda, Director of BurmaInfo and Japanese Attorney Mr. Shunji Kogirima.

On March 24, the BLC General Secretary met Prof. Yamazaki Koshi, Professor of Law from Niigata University, Mr. Takaaki Kagohashi, President of Japanese Environmental Lawyers' Federation (JELF), Japanese Attorney Ms. Kazuko Ito from the organization "Human Rights Now" and other lawyers from JELF and Japan Young Lawyers'

Meeting with Japanese lawyers from Japan Envoronmental Lawyers' Federation (JELF)

Association and prepared for presentation to be made in the International Human Rights Conference the next day. In the evening, along with some Burmese activists, he joined the dinner hosted by Japan Young Lawyers' Association, with the participation of over one hundred Japanese lawyers.


International Human Rights Seminar at Nagoya City Hall (Japan)

On March 25, the BLC General Secretary made a major presentation on Burma, taking fourty minutes, in the International Human Rights Seminar, held at Nagoya City Hall, attended by over two hundred participants, the majority of whom were Japanese lawyers. There, a brief background of the Burma Lawyers' Council was introduced; and the situation of human rights in Burma was elaborated from the aspect of not only civil and political rights but also the economic, social and cultural rights, highlighting the action of Burma Lawyers' Council on the politically motivated cases such as the U Khun Tun Oo and Shan leaders' case and Advocate U Aye Myint's case. Finally, the presentation was concluded with an analysis on Official Development Assistance provided by the Japanese government to the military regime in Burma as follows:

> The major aims of Official Development Assistance (ODA) are to bring social development, support a market economy and promote democracy and human rights.

The BLC applauds and appreciates Japan for taking concrete steps in its attempt to raise the standard of living for people in Burma and discourage the violations of human rights and restrictions of freedoms. Unfortunately, however, the implementation of the ODA fails, in many aspects, to actually contribute to improving the human rights situation in Burma.

Japan has historically taken a soft approach towards Burma, favoring positive sanctions through extensive financial support with the apparent hope that Burma's leaders would learn good governance and financial transparency as a result of Japan's influence. Japan's ODA is characterized by its focus on economic infrastructure, while it emphasizes less the building of political and civil infrastructure. In 1997, grass roots grants totaled 177 million yen for 20 projects while a loan project to expand Rangoon Airport reached 2.5 billion yen.

Too often, aid is manipulated by the regime. For instance, Japanese trucks provided to Burma were used for military purposes. Debt relief granted by Japan lacks a stringent monitoring system. It is estimated that for over four years, it was unclear how approximately 4 billion yen of debt relief was used. Foreign aid actually legitimizes the military regime.

As a result of the aid, the military regime in Burma becomes stronger and has even less of a reason to bring about political change or respect the rights of its citizens. The source of the problems is due to its own corrupt authoritarian rule; and even when the regime has money, it spends an enormous amount of its budget on arms and the military. Foreign aid should include accountability, transparency and independent monitoring.

With the title "Cultural grant", between 1975 and 2004, 404 million yen was provided under ODA. But it lacked any transparency at all. A major part of ODA should be

channeled to the right areas, such as support for political, legal and human rights education, establishment of public institutions, and the emergence of civil society and other democratic institutions.

I would like to discuss the establishment of the economic infrastructure from the aspect of the Rule of Law, focusing on the emergence of the independence of judiciary. The market economy in a society will never be successful if it lacks independence of the judiciary based on the Rule of Law. It was evident in the case of Yaung Chi Oo company from Singapore that the judiciary failed to protect the operation of a foreign company from the unlawful interference of the ruling military authorities.

Let me also introduce the Human Resource Development program for Burma, being implemented by Japan, as a part of ODA. The human resource development program initiated by Japan should not strengthen only the administrative mechanism of the military regime. It should also focus on the capacity building of grassroots people.

The young ethnic people/ who come from inside Burma and who are working with and learning from Civil Society organizations, including Burma Lawyer's Council and other democratic and ethnic organizations, should enjoy

an opportunity for a higher education or university level education, at least, along the Thai Burma border areas and, in addition, if possible, in Japan.

To create a new legal generation which may replace the existing legislative, administrative and judicial mechanism of the state gradually, the BLC has already established Peace Law Academy along the Thai Burma border area. There, the students are from various ethnic backgrounds of Burma. They deserve the support of the Japanese people and their government, possibly under a program of Official Development Assistance.

**Suggested Principles for Implementation of ODA:**

(1) ODA should be used to foster the livelihoods of local people, facilitate the emergence of civil society, support the independence of judiciary, and promote the rule of law;

(2) In all ODA processes, transparency should be practiced and it should open to the public;

(3) In providing ODA, human rights norms should be applied, and all ODA related projects should be evaluated from the aspect of human rights.

**Request to Japanese Government**

- (1) Effective monitoring system and necessary monitoring teams with the participation of democratic opposition, representatives from the dignified international NGOs and independent local people's organizations should be established;

- (2) In implementing all ODA related projects, space for participation of local civilian people and civil society organizations, which are not lackeys of the ruling regime, should be created;

- (3) Reports on merits and demerits of all ODA related projects should be produced and distributed widely;
- (4) Financial and material assistance to independent civil society organizations, which are based in Thai Burma border areas, should also be provided.

**Request to Japanese People**

- (1) The Japanese people should persuade their government to comply with the recommendations mentioned above, mainly regarding ODA;

- (2) The Japanese people should provide support to civil society organizations inside Burma and along the border

areas of Burma, which are independent, and are also struggling for human rights, the rule of law and sustainable development.

In the evening of 25th March, the BLC General Secretary, accompanied by U Myint San, traveled to Tokyo and held a brief meeting with the leaders of NLD(LA) Japan Branch and League for Democracy in Burma (LDB).

Meeting with Japanese lawyer Mr. Watanabe and Mr. Hisao Tanabe

Meeting with Japanese MP Mrs. Fukushima

On 26th March, the BLC General Secretary, U Myint San and Japanese Lawyer Watanabe San visited the office of the Ministry of Foreign Affairs and met Mr. Yoshinori Yakabe, Deputy Director, First Southeast Asia Division and mainly suggested that the Japanese government ODA be used in the right direction for the benefit of people in Burma, focusing on the establishment of civil and political infrastructure while implementing a policy of transparency. Then, the group also met with Mrs. Mizuho Fukushima, member of the House of Councilors and leader of Social Democratic Party, and explained to her the background of the U Khun Tun Oo and Shan leaders' case and mainly requested her assistance to initiate a campaign for their release. In the evening, the BLC General Secretary and U Myint San visited the law office of Japanese Attorney Watanabe San, met Mr. Hisao Tanabe, a Japanese Journalist, and talked about the legal issues of Burma. Then, the group also met three Burmese lawyers who submitted BLC membership applications and discussed how to further their legal studies. On 27th March, the BLC General Secretary left Tokyo.

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# Statement and Press release

**Statement of the Burma Lawyers' Council Regarding the Threat of Legal Action Against U Aung Shwe, Chair of the National League for Democracy, and U Aye Tha Aung, Secretary of the Committee Representing People's Parliament**

On February 15, 2007, the BBC reported that the Chief of Police of the State Peace and Development Council (SPDC), the military regime currently ruling Burma, threatened to take legal action against U Aung Shwe, Chair of the National League for Democracy (NLD) and U Aye Tha Aung, Secretary of the Committee Representing People's Parliament (CRPP), for the allegedly illegal formation of the CRPP. It is known that the objective of CRPP is to convene People's Parliament as an implementation of the results of the May 1990 election, in which the NLD prevailed but the SPDC refused to honor.

The reported threat by the SPDC Police Chief gravely concerns the Burma Lawyers' Council (BLC). The SPDC has a history of punishing its political opposition by claiming that the formation of their organizations violates the law. For instance, in 2005, the SPDC arrested and convicted nine Shan leaders, including U Khun Htun Oo, Chairman of the Shan National League for Democracy (SNLD), for attempting to form a committee called the "Shan State Academics Consultative Council". The leaders were accused, among other things, unlawfully interfering with the National Convention, violating a law related to the forming of organizations, printing and publishing prohibited materials and etc. Despite a complete lack of evidence, the Shan leaders were condemned to multiple sentences of imprisonment for life and hard labor.

A statement recently released by the BLC, carefully analyzing each of the charges and the evidence against the Shan leaders, unequivocally concluded that none of the charges were justified based on the current laws of Burma, the verdicts violated numerous international human rights and recognized freedoms, the sentences did not fit the alleged crimes, and the convictions were political statements that were intended to punish and intimidate the opposition. The BLC found that the judge deciding the case regularly ignored important

legal provisions favorable to the defendants, misinterpreted the laws that nearly any act could be criminalized, and relied on blatantly inadequate evidence upon which to base the convictions. The verdicts clearly reflected the SPDC's unlawful control over the judiciary in Burma.

Legal action, threatened by the SPDC, for the formation of the CRPP would similarly be unlawful. To the knowledge of the BLC, the CRPP has never engaged in any illegal activities. Its objectives are not to bring about instability or violence, but rather to restore a legitimate government in Burma. U Aung Shwe and U Aye Tha Aung have done nothing that would justify the Police Chief's threat. Accordingly, any action taken against them would be a severe violation of law.

The BLC demands that the SPDC cease its illegal harassment of U Aung Shwe and U Aye Tha Aung and respectfully calls upon all organizations and people both within and outside Burma to similarly condemn the SPDC's unlawful actions. To this end, BLC will cooperate with and energetically support all efforts to bring about justice and protect human rights from the legal aspect, including one for the immediate and unconditional release of U Khun Tun Oo and other Shan national leaders.

## Statement of the Burma Lawyers' Council Regarding the Arrests of Peaceful Demonstrators in Burma

**(February 23, 2007)**

Media sources reported that on February 22, 2007, between 12 and 50 demonstrators took to the streets of Rangoon to protest against the ruling military regime. Accordingly, the demonstrators were calling upon the military government to rectify the country's economic and social crisis and eliminate corruption. All sources reported that the demonstrations were peaceful but many of them were arrested.

The Burma Lawyers' Council (BLC) denounces these improper arrests by the ruling military regime, SPDC. The SPDC is fully obliged to publicly explain under which law and which precise section the demonstrators and journalists were arrested, the current

location of all detained individuals, and for how long they will remain in custody. It must provide assurances that none of them have been harmed in any way and provide the detainees all rights afforded under the law, including the right to due process, the right to seek the assistance of an attorney, the right to communicate with outside world, and the right to receive support of family members. Moreover, the entire process must be transparent and fully open to the public.

It is internationally recognized in Article 19 of the United Nations Declaration of Human Rights that all people have the right to freedom of speech. This means that everyone must be able to express their opinions without fear of censure or punishment by the government. Demonstrators and journalists taking part in a peaceful demonstration are no exception.

If the SPDC has any respect whatsoever for the rule of law, they must treat all demonstrators equally. In late January, pro-government demonstrations were held outside the U.S. and British embassies in Rangoon. The SPDC did not make any arrests and did not force the demonstrators to disperse. The rule of law requires equal treatment for all, whether their speech is favorable or not to the ruling regime.

The BLC demands that the SPDC immediately and unconditionally release all individuals arrested during the peaceful demonstrations held on February 22, 2007. The BLC respectfully calls upon all organizations and people both within and outside Burma to similarly condemn the SPDC's unlawful actions and encourages all lawyers and law-respecting individuals to come forward and defend the legal rights of people who are victims of the SPDC's abuse of law.

## Appeal to Lawyers inside Burma for Reactivation of the Burma Bar Council and Bar Associations and Reformation of the Burma Judiciary

1. In February 2007, a BLC representative attended a seminar on "The Role of Lawyers, the Bar and the Bench in Preventing and Combating Corruption within the Justice System" held in Bangkok, Thailand. The leading lawyers of 35 bar associations from around the world, including the International Bar Association, Law Asia, the Lawyers Council of Thailand, the American Bar Association, the Integrated Bar of the Philippines, and others participated in the seminar. The seminar made clear that lawyers and bar associations have a duty to combat corruption.

2. Corruption is rampant in the administrative mechanism of Burma. For instance, on October 19, 2004, the military junta charged its prime minister, General Khin Nyunt, of corruption. In May 2005, approximately 250 customs officials were arrested for corruption.[1] In May 2006, eight customs officers as well as 10 from Merchant Associations were arrested in Mu-se near the China-Burma border for corruption.[2] The same happened to Brigadier Aung Kyi, Deputy Minister in the Ministry of Social Welfare, and Brigadier Win Sein, Deputy Minister in the Ministry of Labor, against whom action was taken in November 2006.[3] These are just examples of a system rife with corruption at all levels. As a result of the corruption, government authorities retain the wealth of the country while the vast majority of the citizenry lives in poverty.

3. In most countries, the judiciary plays a critical role in promoting a clean government and facilitating good governance. But in Burma, the judiciary is just as corrupt as the administration. A number of judges as well as court officials regularly take bribes and rule in favor of those who can bribe them. When the judiciary itself is corrupt, taking legal action against public officials on charges of corruption is pointless. There is no better time than now for the lawyers to participate in the reformation of the judiciary and revitalize the role of the Bar Council and Bar Associations. Specifically, the BLC respectfully makes the following recommendations:

- The Bar Council and Associations should actively support lawyers who fight for justice. When appropriate, the Council and Associations should speak out publicly in defense of lawyers who protect the rights of people legally.

- The Bar Council and Bar Associations should insist on proactive participation by their members in bringing about reform of the judiciary and reduction of corruption. The Bar must initiate and facilitate changes on the Bench.

- To maintain its independence from the ruling military regime, the chair of the Bar Council must not be the Attorney General. In most countries, unlike in Burma, the chair of the Bar is elected by its members. The attorneys of Burma should revitalize the spirit of the Bar Council and Bar Associations that existed prior to 1988. At that time, elected bar leaders ran the Bar Council. While the Attorney General was the head of the Council, the position was merely a ceremonial one. The bar played a crucial role in initiating the 1988 Uprising and everyone respected the bar. Now, unfortunately, it is silent and has lost much of its strength and credibility. The BLC requests the leading lawyers in Burma to once again stimulate the Bar Council and motivate younger lawyers to defend justice.

Now, more than ever, the country of Burma needs to hear the voices of lawyers crying out against injustice and corruption. It is also the responsibility of lawyers to reinvigorate society from the legal point of view, reactivate the Bar Council and Bar Associations, and fight for the rule of law.

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[1] Source: Democratic Voice of Burma (DVB), Oct. 31, 2006
[2] Source: Democratic Voice of Burma (DVB), May 7, 2006
[3] Source: Irrawaddy News, November 11, 2006

**Appeal from the Burma Lawyers' Council to Police Officers inside Burma for a Neutral, Independent and Collaborative Police Force**

1. A neutral, independent and collaborative police force is necessary for a peaceful, safe and just society. Citizens rely on police to enforce the laws fairly and humanely. They reasonably expect the police to treat all criminal suspects equally, without discrimination. Under no circumstances should the police ever be the lackey of a political party or the government, on one hand arresting political opposition leaders for flimsy "crimes" while on the other hand releasing political allies without investigation. The police must be vested with the authority and independence to take action against any person who breaks the law, regardless of that person's identity whether a lawyer, farmer, or government official. In democratic countries, there are established procedural safeguards to ensure that the police force is a neutral body that treats everyone the same.

2. Burma Police Manual, Article 1056, provides that the police are obligated to build a cordial and cooperative relationship with the citizenry. They must work together with the people to create a secure society. It is clear that under this Article, the police must not presume that they are somehow superior to ordinary people. Their relationship is not one of master and servant, or shepherd and sheep. Unfortunately, the current situation in Burma is not consistent with Article 1056. Rather than the collaboration called for in the Manual, many police officers impose their view of law enforcement upon the citizens without receiving any community input. This results in unsafe communities where the police have an adversary relationship with the community members.

3. Burma Police Manual, Article 1060, provides that police officers cannot have other jobs. Accordingly, any breach of this provision constitutes a criminal offence, punishable three months imprisonment or fine, not more than the amount of three months salaries, or both. This Article seeks to ensure the independence and neutrality of the police force by requiring officers to serve only one master. The current chief of the Burma police, Major General Khin Yi, is violating Article 1060. In addition to his police post, he is also a Major General in the army. He must either resign as chief of police or resign from the army. Other

countries, even military governments such as Thailand's, respect the independence of the police. After the recent coup in Thailand, no military official took over the top police position.

4. Burma Police Manual, Article 1142, Chapter 48, Part 1, states that all police must wear their police uniforms while on duty (with exceptions made for positions such as undercover detectives). Major General Khin Yi violates this provision of the Manual as well. He always wears his military uniform, even when he is serving the police force. Anyone who sees him knows that he is under the thumb of the SPDC. He wholly lacks the neutrality and independence so important for a police officer, and even worse, the police chief. This master-servant relationship between the SPDC and the Burma police force undermines both the dignity of the profession and the trust that the people have for the police. Understandably, the people of Burma cannot trust a police force that is simply a pawn for the government.

5. The current unlawful interference and influence of the military over the police force is not acceptable. The BLC respectfully calls upon the police officials in Burma to uphold the dignity of the profession, comply with all provisions of the Burma Police Manual, collaborate with the citizenry, and fight for the autonomy, impartiality and neutrality of the police force. All military officers should withdraw immediately from the police force, particularly those in leadership positions.

### Statement of the Burma Lawyers' Council Regarding the SPDC's Unlawful Support to the DKBA (April 11, 2007)

(1) It has come to the BLC's attention that the fighting between the Karen National Liberation Army (KNLA) and the Democratic Karen Buddhist Army (DKBA) has recently escalated, resulting in great hardship and suffering for the Karen people. The DKBA is notorious for crossing the Thai border to burn refugee camps.[1] It has also been involved in well-documented human rights abuses against civilian populations and is known for regularly using forced labor and demanding food and money from villagers.[2] Human Rights Watch has called the DKBA's actions a "terror campaign".[3]

(2) Section 15(2)(a) of the Unlawful Association Act defines an "unlawful association" as an association "which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts." The DKBA's history of violence and intimidation is well-documented. Accordingly, the DKBA is clearly an unlawful association. The SPDC has declared the Karen National Union (KNU) and other armed ethnic resistance groups to be "unlawful associations". Laws must be applied fairly, without discrimination. The SPDC cannot justify its failure to also declare the DKBA an unlawful association. Turning a blind eye to the unlawful acts of its allies and even supporting those acts, while misusing the laws to punish its political and military opponents, seriously undermines the SPDC's claim that it respects the rule of law.

(3) Section 17 (1) of the Act adds that anyone who "in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to fine. " According to information collected by Assistance Association for Political Prisoners (AAPP), Nanda Sit Aung and Zaw Linn Tun were sentenced into three years imprisonment by Rangoon District Court (Eastern) on February 2, 2004, on charge of Unlawful Association Act, alleging that the accused communicated and cooperated with All Burma Federation of Students' Union (ABFSU). Actually, ABFSU is merely a student union. It never commits any violent act against civilian population. However, SPDC criminalized the innocent actions of young people.

(4) Previously, a large number of civilians who communicated with the Karen National Union were also criminalized and imprisoned on charge of Unlawful Association Act. For similar actions, there should

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[1] Human Rights Watch, World Report 1999, http://www.hrw.org/worldreport99/asia/burma.html.

[2] Karen Human Rights Group, *Consolidation and Control: The SPDC and the DKBA in Pa'an District* (Sep. 7, 2002), http://www.khrg.org/khrg2002/khrg02u4.html; *see also Karen Between a Rock and a Hard Place*.

[3] Human Rights Watch, World Report 1999, http://www.hrw.org/worldreport99/asia/burma.html.

have no exception for SPDC senior military commanders and administrative officials as they are dealing with DKBA on a daily basis publicly. Assistance of SPDC to the DKBA and involving in a conspiracy with DKBA constitutes a serious crime. The SPDC's violation of the law is not a mere legal technicality. Real lives are affected by the violence that the SPDC has encouraged and continues to fund. People have died. Houses have been destroyed. Livelihoods have been lost. The stability of the entire Karen region has been compromised.

(5) The Burma Lawyers' Council calls upon the SPDC to immediately cease all communication, assistance and cooperation with the DKBA. To do otherwise would be illegal and an insult to the people of Burma, who have a right to expect equal application and enforcement of the law. By encouraging the fighting between the KNLA and DKBA, the military regime is breaking the laws that it has sworn to enforce.

**Statement of the Burma Lawyers' Council On Unlawful Arrest and Detention of Demonstrators in Burma (April 24, 2007)**

1. The Chapter V of the Code of Criminal Procedures, which is the effective national law in Burma, provides how arrest can be made. Accordingly, arrest without warrant or without an order from a Magistrate can be made for suspects categorized in section 54 of that law. Arrest of innocent civilian who participated in peaceful demonstration, took place in Rangoon on April 22, 2007 was unlawful as it was not in accordance with provisions enshrined in the section 54 of the Code of Criminal Procedure.

2. Pursuant to Section 32 of Police Act and Section 38 of Rangoon Police Act, any Magistrate or District Superintendent or Assistant or Deputy Superintendent of Police, or Inspector or officer in charge of a police-station, may stop any procession or public assemblies for maintenance of law and order. Nevertheless, it can happen only when the concerned people violate the conditions of a license granted under Section 31(3) of Police Act and Section 37(3) of Rangoon Police

Act. As the police did not allow application processes for licensees to this end contrary to provisions in Police Act, any public procession or assembly shall not be deemed to be an unlawful assembly. As such, any arrest of peaceful demonstrators is unlawful.

3. Arrest of peaceful demonstrators by members of Union Solidarity and Development Association (USDA) and lackeys of the ruling military regime (SPDC) including military intelligent, who were not police wearing police uniform, is also against the existing Police Act.

4. The Burma Lawyers' Council demands as follows:

(*a*) The SPDC administrative authorities and police shall comply with the existing laws relevant to arrests and detentions;

(*b*) They shall publicly declare the establishment of application process for licensees, to be granted for gathering of peaceful processions and public assemblies, along with necessary conditions for maintaining law and order; Otherwise, cease all unlawful arrests and detentions of peaceful demonstrators.

(*c*) Demonstrators arrested on April 22 shall not be detained more than twenty four hours and; after that, release them immediately and unconditionally.

## "Korean Court continued its trial on the case of Daewoo International"

14 high-ranking officials from the companies, including Daewoo International President Lee Tae-yong, were indicted by Korea government on charge of exporting a number of Korean defense equipment production facilities and technology of weapons to Myanmar in violation of the law on exports of strategic goods. According to Kang Shin-who, Staff Reporter of Korea Times Newspaper, it was known that this is the first time that Korean companies are indicted on charges of illegal outflow of the nation's strategic goods and technology in a way to build plants overseas. The Korean Court continued its trial in a chamber of Supreme Court in Seoul, at 4:00 p.m, on March 15, 2007.

U Aung Htoo, General Secretary of the Burma Lawyers' Council, Kim Kyoung, Coordinator of Korean House for International Solidarity and U Zaw Moe Aung, from National League for Democracy (NLD-LA) Korean Branch, observed the trial. The court examined the accused one after another, listened to the argument of defense lawyers and adjourned the trial. It will resume again at 2:00 p.m, April 12, 2007.

U Aung Htoo commented that an aspect of the question is if the exported weapons had been used against the Burmese population in a way that violates international human rights or humanitarian law, whether there would be state responsibility for Republic of Korea. Under the international law of state responsibility, a state can be made to answer for its own actions but also for the actions of its private citizens or private corporations. A pre-requisite for state responsibility based on the actions of such private actors is however that the state has been complicit in some way. It is unlikely that state responsibility would apply in this case if the exports occurred without the complicity of Republic of Korea.

He also commented that if the exported weapons to Burma have been used against the population in a way that violates human rights and/or humanitarian law, and if the leaders of the S. Korean companies knew or should have known that the weapons would be used for such purposes, then perhaps it could be argued that they should answer for

their complicity under international criminal law. Prosecution could in such a case be lodged before the International Criminal Court or perhaps before the S. Korean courts themselves (if domestic rules provide for jurisdiction to prosecute international crimes).

### International Seminar on Human Rights in Japan

An International Seminar on Human Rights, jointly organized by Japan Young Lawyers' Association and Japanese Environmental Lawyers' Federation, was held in Conference room in Nagoya City of Japan, on March 25, 2007. It was attended by about two hundred participants, majority of whom were Japanese lawyers. Atty. Takaaki Kagohashi, President of JELF, took responsibility as master of ceremony and the three major presenters were Japanese Law Prof. Yamazaki Koshi, from Niigata Law School and the two lawyers from Burma and the Philippines.

U Aung Htoo, General Secretary of the Burma Lawyers' Council made a presentation on human rights situation of Burma with the background of the Rule of Law, focusing on cancellation of 1975 State Protection Act and immediate and unconditional release of U Khun Tun Oo and Shan ethnic leaders and Daw Aung San Suu Kyi, from legal aspect. Furthermore, in regard to Oversea Development Assistance provided by Japanese Government, U Aung Htoo suggested as follows:

(1) ODA should be used to foster the livelihoods of local people, facilitate the emergence of civil society, support the independence of judiciary, and promote the rule of law;

(2) In all ODA processes transparency should be practiced and it should open to the public;

(3) In providing ODA, human rights norms should be applied, and all ODA related projects should be evaluated from the aspect of human rights.

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# Burma Lawyers' Council

**Everyone is equal before the law.**

Wisdom is power to transform the society into a justice, free, peaceful and developed one.

## Mission Statement

"By vigorously opposing all unjust and oppressive laws, and by helping restore the principle of the Rule of Law, the Burma Lawyers Council aims to contribute to the transformation of Burma where all the citizens enjoy the equal protection of law under the democratic federal constitution which will guarantee fundamentals of human rights."

## The Status of Organization

The Burma Lawyers' Council is an independent organization which was formed in a liberated area of Burma in 1994. It is neither aligned nor is it under the authority of any political organization. Individual lawyers and legal academics have joined together of their own free will to form this organization.

## Objectives of the BLC

- Promote and assist in the educating, implementing, restoring and improving basic human rights, democratic rights, and the rule of law in Burma;
- Assist in drafting and implementing a constitution for Burma, and in associated matters of legal education; and
- Participate and cooperate in the emergence of a Civil Society in Burma.

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