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**The Statement 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 on the basis of the Rule of Law, legal reform should be implemented one step after another. 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 the whole country of Burma. Rather, the various authorities with military or political powers are above the law and control the society as they like.
- (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 and General Hso Ten was the leader. If this organization was allowed to exist legally, it could effectively carry out its non-violent political activities widely and legally. As it was not the case, despite the fact that General Hso Ten himself was involved in such disputed meeting, the SPDC alleged that the attempt to form the Shan State Academics Consultative Council in that meeting was contrary to law. Then, nine Shan ethnic leaders, including General Hso Ten, were accused by the military of conspiring to secede from the union in a



way that the non-violent political action of Shan leaders was criminalized. Subsequently, they were arrested and punished with long-term imprisonments. 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 introduced a brief political background that occurred before the arrest of the accused. To make the analysis more accessible to the ethnic people, it has also been translated into several ethnic languages.
- (6) Under the 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, BLC demands that the SPDC immediately release them without any conditions. To this end, BLC will cooperate with and energetically support the efforts of the organizations and people both inside and outside the country from legal aspect.

Burma Lawyers' Council

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Political Background

On the Arrest and Sentencing of U Khun Htun Oo, Chairman 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 given severe punishments on 2 November 2005. U Khun Htun Oo was sentenced to 93 years and the other Shan leaders, to long-term imprisonments, respectively.

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

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.

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.

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.

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. 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 with the SPDC, it 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.

Meanwhile, inside Burma, aiming to establish a genuine federal union, the non-armed ethnic nationalities' 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. It was observed in the following statement of the UNA 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;

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

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.

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.

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.

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 some 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.

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.

On 9 February 2005, nine Shan ethnic leaders, including Brigadier General ---, 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 the 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 (Lashio Township)

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.

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 Criminal Law in Burma. 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.

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Note: BLC expresses its appreciation on documentation section of the Network for Democracy and Development (NDD) for its contribution by providing necessary information, in compiling political background of the case, mentioned 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 the Sein Kyawt village, Thee Baw District, 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 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 Pakku Prison and General Hso Ten was punished with 106 years imprisonment in Khandee Prison.

Burma Lawyers' Council

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”.

Crime and Punishment

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.

Burma Lawyers' Council

Rangoon District Court (Tribunal), Criminal Case Nos. 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 Kyatksan 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 every 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 1973 Act 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.

**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, Subsection (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.

Burma Lawyers' Council



**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 Tin 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.

Burma Lawyers' Council

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.

Burma Lawyers' Council

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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